



Response to Consultation on Draft Postal Strategy Statement 2015 – 2017

Response to Consultation

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1 Introduction

- 1 In Document 14/131, ComReg commenced a public consultation on its draft Postal Strategy Statement for the period 2015-2017. ComReg sought written responses from interested parties on the strategic direction outlined in the consultation and received two responses. Within this document, ComReg has summarised the two responses received and set out its views on how the respective issues will be treated.
- 2 The strategic direction proposed in the draft Postal Strategy Statement is supported by both respondents. However, following consideration of certain views expressed by the respondents, as discussed herein, some adjustments have been made to the finalised Postal Strategy Statement (Document 15/18) which is published in tandem with this document.

List of responses

- 3 Submissions were received from two respondents.

Respondents
An Post
Irish Bulk Mail Producers Association (“IBMPA”)

- 4 The non-confidential responses received are published on ComReg’s website as ComReg Document 15/18s.

2 Key responses

High Level Goals

- 5 ComReg's draft Postal Strategy Statement set out proposed high level goals for the postal sector and invited comments from interested parties.
- 6 In its response, **An Post** broadly welcomes the proposed high level goals as being appropriate broad objectives designed to lead to the attainment of a more dynamic postal market. **IBMPA**, in its response, made a proposal which is dealt with later in this document.

High Level Goal #1: Ensure the provision of the universal postal service

- 7 **An Post** outlines its support of ComReg's goal to ensure the provision of the universal postal service but asserts what is, in its view, a crucial qualification, namely that encouraging competition and innovation must not adversely impact on provision of the universal postal service. (as required by section 10 of the Communications Regulation Act 2002, as amended by the Communications Regulation (Postal Services) Act, 2011 ("2011 Act")). **An Post** asserts that this requirement should be highlighted in the Strategy Statement particularly as the postal market continues to develop.
- 8 **An Post** notes a number of competitive advantages from providing the universal postal service that were outlined by ComReg in the draft Strategy Statement. These include brand/corporate reputation and VAT exemption.
 - a) **An Post** states that it has worked hard to enhance its brand and reputation and asserts that being designated as the universal postal service provider does not automatically confer a brand benefit and that much of the continued high brand value can be attributed to its corporate reputation, its high level of trust (needed as a successful intermediary) and its high levels of quality and customer service in both the Mails and Retail businesses.

- b) In relation to the universal postal service VAT exemption, An Post states that this is a complex area and that the question of fiscal neutrality (i.e. that similar transactions should attract the same VAT treatment) in the field of postal services was considered at length in the ECJ cases of TNT and Rank¹. An Post asserts that, in those judgments, the ECJ found that in order to assess the comparability of services it is necessary to not only look at the services being provided but also at the context in which those services are being provided. An Post further states that the ECJ ruled that the obligations on the universal postal service provider put it in such a different position from its competitors that the differing VAT treatments did not result in a breach of fiscal neutrality.
- 9 An Post also noted ComReg's expressed view that there would appear to be scope for universal postal service providers to "*rework their legacy networks into parcel networks*", in order to better meet the challenge of e-commerce. An Post submits that this potential is limited, particularly in urban areas where dedicated letter and parcel channels are more practical.

ComReg's response

- 10 ComReg welcomes An Post's views with regard to the high level goal.
- 11 In response to An Post's submission that promotion of competition and innovation must not adversely impact on provision of the universal postal service, ComReg takes note that it has the core statutory function "*to ensure the provision of a universal postal service that meets the reasonable needs of postal service users*" and it has three objectives in the exercise of that function, namely:
- (i) to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users,*
- (ii) to promote the interests of postal service users within the Community,*
- and*
- (iii) subject to subparagraph (i), to facilitate the development of competition and innovation in the market for postal service provision,*
- 12 As per the above provisions, ComReg is aware that its objective to facilitate the development of competition and innovation is subject to its objective to promote the availability of an affordable universal postal service within, to and from the State. ComReg considers that this is properly reflected in the final Strategy Statement.

¹ TNT Post UK Ltd v HMRC Case c-357/07 and HMRC v The Rank Group Case C-259/10

- 13 In relation to the possible benefits arising from the provision of the universal postal service, ComReg notes that it would assess these in accordance with Decision 09/13, should An Post decide to seek funding for the net costs (if any) of providing the universal postal service, pursuant to section 35 of the 2011 Act. Notwithstanding this, ComReg would note that various publications by the European Commission², European Postal Regulators Group³, other National Regulatory Agencies (NRAs)⁴, and academic/expert texts have identified certain advantages, in terms of brand/corporate reputation and VAT exemption, as being possible benefits of providing the universal postal service. See Annex 3 of Decision D09/13 (Document 13/69) for further information.
- 14 Regarding An Post's contention that there is limited potential for it to rework its mails network into a parcel network, ComReg notes that, in the first instance, such matters are very much for An Post's management team to address in order to take advantage of the growth and development in the parcel market. ComReg would, however, note developments elsewhere, where incumbent postal operators such as Austria Post, bpost (Belgium), and the Nordic postal operators have made developments with the aim of realising the opportunities that the evolving postal market offers.

High Level Goal #2: Promote the interests of postal service users

- 15 **An Post** notes that it supports ComReg's goal.

ComReg's response

- 16 ComReg welcomes An Post's support of ComReg's approach to this goal.

High Level Goal #3: Promote the development of the postal sector

- 17 **An Post** outlines its support for ComReg's goal to promote the development of the postal sector.
- 18 Notwithstanding, An Post maintains that the contention by Boston Consulting Group (BCG)⁵, referred to in the Strategy Statement, that the parcel market will soon outgrow that of mails is unlikely to occur in Ireland in the short to medium term.

² See, for example, http://ec.europa.eu/internal_market/post/doc/studies/2012-net-costs-uso-postal_en.pdf

³ http://ec.europa.eu/internal_market/ergp/docs/documentation/2012/ergp-12-29-report-net-costs-of-vat_en.pdf

⁴ http://www.arcep.fr/uploads/tx_gspublication/etude-wik-su-postal-mai2010-eng.pdf

⁵ At page 39 - http://www.ipc.be/~media/Documents/PUBLIC/Brochures/IPC-BCG_Focus%20on%20the%20Future.ashx

- 19 An Post also makes a number of points on the issues relating to declining letter mail volumes, increasing parcel volumes, and the changing postal sector:

Declining letter mail volumes

- 20 An Post estimates that the extent of decline in letter volumes, from peak volumes in 2007, is c. 32% to the end of 2014 and An Post anticipates that it will experience further declines of c. 3-4% per annum over the medium term.
- 21 An Post states that its strategy for maintaining the universal postal service places focus on improved efficiency. However, according to An Post, improving efficiency is dependent on arresting the rate of decline in volumes, which An Post claims is not totally under its control.
- 22 An Post submits that the worldwide decline in mail volumes has structural and economic causes - it reflects not only changing usage patterns but also the impact of the recent deep recession. An Post notes that it has set out its 5 Year Plan which it contends is both realistic and achievable though it further states that it needs the support of ComReg to ensure the plan's success.
- 23 An Post notes, in particular, that its 5 Year Plan harnesses three policy levers (cost reduction programmes, exploiting new business opportunities, and appropriate price increases for universal postal services) in order to safeguard delivery of a viable universal postal service.
- 24 In relation to cost reduction programmes, An Post claims that its payroll costs and non-payroll costs have already been significantly reduced and that it will continue to re-size its business to reflect the reality of its reducing mail volumes. However, An Post submits that its scope to achieve further reductions in staff hours could be limited by the current USO specification.
- 25 In relation to revenue, An Post agrees with ComReg's observation that An Post has full commercial freedom in relation to the pricing of its non-universal postal services and other commercial services. However, An Post notes that it currently derives over 70% of its total postal revenues from universal postal services.

Increasing parcel volumes

- 26 An Post agrees that there are growth opportunities in the parcels and packet market but it also maintains that it is not realistic for it to replace its reduced revenue, arising from the decline in letter volumes, with volume increases in what it describes as being a very competitive parcels and packet market. In support of this view An Post references the Hooper report (2010)⁶.

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31808/10-1143-saving-royal-mail-universal-postal-service.pdf

Changing postal sector

- 27 An Post observes that ComReg's draft Strategy Statement addresses the key developments and challenges that face the Irish postal sector over the next three years.
- 28 An Post contends that the draft Strategy Statement urges An Post to focus attention on the growing parcel market. However, according to An Post, this does not fully take into account the significant advances already achieved by An Post in relation to new or enhanced revenue streams such as Admailer.ie⁷ and a range of service enhancements to meet the demands of on-line shoppers.
- 29 An Post also agrees with ComReg that all postal service providers must uphold their obligations under the 2011 Act. According to An Post, if customer trust is not maintained then the postal industry as a whole will suffer.
- 30 Accordingly, An Post recommends the following challenges are further highlighted in the finalised Strategy Statement:
- Ensuring the universal postal service remains strong and financially viable over the period; and
 - Ensuring that all operators in the postal market are meeting their obligations which will help to maintain the current high confidence levels of postal users.

ComReg's response

- 31 In relation to An Post's contention that parcel market growth will not outpace the decline of mails volumes in the short to medium term, ComReg notes that this statement relates solely to An Post. ComReg further notes that though there are other operators in the Irish parcel market, ComReg currently has limited information on this market. ComReg has therefore commissioned research on this market and will report on this in due course.
- 32 In relation to An Post's observations with regard to the ongoing decline in letter volumes, ComReg notes that An Post's forecast declines are within the range set in the Price Cap decision⁸. Therefore, An Post's pricing of its universal postal services under the Price Cap decision should compensate for the forecast future decline of universal postal service letter mail, thus ensuring that the universal postal service provision can be profitable, subject to certain efficiency adjustments being made by An Post⁹.

⁷ An unaddressed postcard that is delivered direct to postal service users doors advertising/promoting the relevant business that bought the Admailer service.

⁸ ComReg Decision D05/14 dated 18 June 2014

⁹ The price cap decision should bring the price-controlled universal postal services back to profitability, all other things being equal and provided that An Post meets or betters the efficiency target which forms part of the decision. If An Post does meet the efficiency target then, based on

- 33 In relation to An Post's observations with regard to its cost reduction programmes, ComReg recognises that this is a matter for An Post management to continue to address. ComReg's regulatory remit requires ComReg to put in place incentives for the efficient provision of the universal postal service which ComReg executed by way of its Price Cap decision.
- 34 ComReg does not agree with An Post's contention that its 5 Year Plan needs the support of ComReg in order to ensure its success. ComReg makes regulatory decisions within the scope of its obligations and powers under the 2011 Act. An Post's rolling 5 Year Plans are set by An Post management for the implementation of certain strategic goals and targets by An Post management over the applicable 5 year period.
- 35 With regard to An Post's statement that the available scope to continue to achieve further reductions in staff hours could be limited by its obligation to provide the universal postal service to its current specification, ComReg notes that this is an issue for An Post management to address in the first instance. ComReg also notes that any application by An Post to seek to fund the net costs (if any) of providing the universal postal service should provide An Post management with some useful information in this respect, as such an application would have to set out how An Post would re-optimize its whole operation in the absence of the USO – i.e. such an application would identify the changes to services that An Post would make if it operated on an unconstrained commercial basis.
- 36 In relation to An Post's comment that ComReg ensures that all postal service providers in the postal market are meeting their obligations to maintain the current high confidence levels of postal users; ComReg notes that it performs this task as required by the 2011 Act. However, this task does not sit under High Level Goal No.1 – *Ensure the provision of the universal postal service*. ComReg has set this task out under High Level Goal No. 3 – *Promote the development of the postal sector*.

Priorities

- 37 In its draft Postal Strategy Statement, ComReg set out the proposed priorities within its high level goals and invited comments from interested parties on same.
- 38 **An Post** responded as follows:

current data, An Post is forecast to make a return (above efficient operating and capital expenditure) of c. €58 million from provision of the universal postal service over the 5-year period of the price cap control, thereby underpinning and strengthening the provision of the universal postal service.

Quality of Service target

- 39 An Post notes that section 32(1) of the 2011 Act states that ComReg may, from time to time, revise the Quality of Service Standard and that the current Direction relating to Quality of Service has been in effect since 2004.
- 40 An Post contends that Quality of Service must be viewed in the context of a mails market that is undergoing a profound and radical transformation. While An Post shares the observation expressed in the draft Strategy Statement that “*the availability of an efficient, high quality postal service on a par with the best in Europe is a key objective for a modern competitive society such as Ireland’s*” and that a next working day service should be provided, An Post also submits that it is vital that the service levels and targets are reflective of current market needs.
- 41 On gauging the actual needs of users, An Post notes that a European Commission postal study conducted by WIK Consult¹⁰ declared that “*these needs may evolve over time. If, for example, expanding use of email reduces the need of rapid delivery of letters, then the quality of service standards should be relaxed.*”
- 42 An Post further notes that WIK Consult,¹¹ in a more recent report to the European Commission, recommended that as part of a more flexible USO definition “*Member States to adapt parameters such as service quality to the needs of users*”.
- 43 In this context, An Post welcomes ComReg’s commitment to review the existing Quality of Service target within the period of this Strategy Statement.

ComReg’s response

- 44 ComReg plans to consult on the Quality of Service Standard and to seek the views from interested parties on its preliminary view as to the appropriate standard for delivery of single piece mail on the next working day.

Access Points

- 45 An Post notes that ComReg intends to review its 2003 Direction¹² on access points which may focus on the requirements set for a “minimum” number of access points to the universal postal service e.g. postboxes. An Post welcomes ComReg’s planned review of the Direction.
- 46 An Post claims that other universal postal service providers across Europe have embarked on quite radical restructuring programmes of their own networks. According to An Post, one striking example is a draft law before the Dutch Parliament which, if enacted, would see the collection box network there being practically halved.

¹⁰ European Commission – Role of Regulators in a more competitive Postal Market (WIK 2009 page 301)

¹¹ Main developments in the postal sector (2012 – 2013) (WIK page 339)

¹² ComReg Document 03/50

ComReg's response

- 47 ComReg notes An Post's view with regard to the review of the 2003 Direction on access points. ComReg further notes that the 2003 Direction, and any revised Direction, only requires a *minimum* number of access points. Any additional provision by An Post of access points beyond that minimum requirement is a business issue for An Post management and should not of itself be confused with universal service obligations.

5.2 PRIORITY: Protect the stability of the universal postal service by considering all possible means to ensure the efficient provision of the universal postal service

Net USO cost

- 48 An Post states that it does not fully agree with ComReg's observation under Priority 5.2 that "*ComReg considers that it is likely that a request to seek any net cost arising from the universal postal service may realistically only be for the period from the enactment of the 2011 Act (2 August 2011) to July 2014 when ComReg's price cap decision took effect*". An Post contends that although its USO losses are expected to reduce, the USO will nevertheless continue to incur significant losses in the medium term due to the following - the price increase limits imposed by the Price Cap decision, An Post's obligation to comply with International Postal agreements (i.e. the UPU inter-governmental agreement), and An Post's continued observance of the principle of affordability and its adherence to a uniform tariff regime.

ComReg's response

- 49 ComReg notes with some concern An Post's contention that the universal postal service which it delivers will continue to incur significant losses in the medium term.
- 50 ComReg's Price Cap decision⁸ will ensure that An Post can make a profit on the universal postal services provided that future volume declines remain within the range forecast by An Post (which is currently the case) and subject to An Post achieving or exceeding the efficiency adjustment provided in the Price Cap Decision. Further, the Price Cap decision also took into consideration An Post's requirement to comply with the principles of affordability and uniform tariff as required by section 28 of the 2011 Act. See ComReg Decision D05/14 for further information.

51 ComReg is particularly concerned by An Post statement that its international postal agreements (also known as “terminal dues”), could be resulting in significant losses in the provision of the “International Inbound” aspect of the universal postal service. As An Post is aware, pursuant to section 29 of the 2011 Act, An Post is required to ensure that its agreements on terminal dues for intra-Community cross-border mail must be fixed to meet the costs of processing and delivering the costs of processing and delivering such incoming cross-border mail. In other words, it is for An Post to ensure that it is recovering its costs on International Inbound mail such that there is no scope for losses to arise which of itself would inevitably result in Irish postal service users subsidising those abroad. In light of An Post’s statements with regard to the losses on International Inbound mail as set out in its consultation response, ComReg will extend its proposed work programme to include a review of An Post’s terminal dues pursuant to section 29 of the 2011 Act. This is reflected in the final Postal Strategy Statement 2015 – 2017.

5.3 PRIORITY: A universal postal service that meets the reasonable needs of postal service users by ensuring that the universal postal service provider complies with its obligations

52 An Post welcomes, in broad terms, the high level actions set out in Priority 5.3 as they largely reflect, in its view, the implementation requirements of the 2011 Act.

ComReg’s response

53 ComReg welcomes An Post’s response on this.

6.1 PRIORITY: Protect postal service users by ensuring postal service providers comply with their obligations

Terms and conditions of universal postal services

54 An Post submits that modifications to its Terms and Conditions could have serious and negative implications for its profitability and that ComReg should therefore take account of the financial viability of An Post before requiring any such modifications.

ComReg’s response

55 ComReg does not consider it necessary or appropriate to modify the text in the manner suggested by An Post. ComReg’s power to modify terms and conditions of universal postal services is set out in section 24(5) of the 2011 Act. In exercising this power ComReg would, of course, take into account its functions and objectives as set out in sections 10 and 12 of the Communications Regulation Act 2002, as amended by the 2011 Act.

- 56 ComReg has amended the text in the finalised Strategy Statement to clarify this point and, for the avoidance of any doubt, note that the terms and conditions for the universal postal services are, as yet, unapproved by ComReg¹³.

6.2 PRIORITY: Empower postal service users by ensuring the availability of appropriate information on postal services

Complaints and redress procedures

- 57 An Post believes that certain private postal providers may be remiss in their responsibility to their customers and workforce in not properly advising them on procedures for processing and handling undeliverable mail. An Post claims that, in some instances, undelivered mail of other operators is directed, perhaps inadvertently, to An Post for attention. As a consequence, An Post maintains that ComReg should ensure that *“the codes of practices set out by the respective postal service providers are sufficient and contain appropriate information.....”*.

ComReg’s response

- 58 ComReg notes that An Post has not, as yet, provided any evidence to support its contention regarding the actions of other postal service providers. In response ComReg notes, as required by the 2011 Act, that it ensures that all postal service providers comply with their codes of practices. In ComReg Document No. 14/06, ComReg set out guidelines to assist all postal service providers in drawing up, implementing and publishing their Codes of Practice and in particular to facilitate compliance with section 43 of the 2011 Act.

6.3 PRIORITY: Protect postal service users by ensuring complaints and redress procedures provided are transparent, simple, inexpensive, and enable disputes to be settled fairly and promptly

Consumer and redress procedures

- 59 An Post welcomes ComReg’s process to implement Dispute Resolution Procedures pursuant to section 43(3) of the 2011 Act and expects that this will outline a range of remedies that are proportionate to the gravity and seriousness of the complaint.

ComReg’s response

- 60 The section 43(3) Dispute Resolution Procedures are now established and published at Document No. 15/07. The finalised Postal Strategy Statement has been updated to reflect this.

¹³ ComReg has been engaging with An Post in an effort to assist An Post to produce a set of terms and conditions, which it could notify to ComReg. In November 2014 An Post notified a set of terms and conditions to ComReg. ComReg will shortly consult on these terms and conditions, with a view to approving a set of terms and conditions in the second half of 2015.

7.1 PRIORITY: Provide information regarding the provision of postal services in Ireland

- 61 An Post notes that ComReg refers to its role in maintaining a register of authorised postal service providers. In An Post's view, this is a responsibility which demands constant vigilance in order to ensure that operators are not exceeding the terms of their authorisation.
- 62 An Post notes that ComReg intends to extend the range of market surveys which it undertakes: "*ComReg also intends to publish further research and market data on the postal sector in Ireland ComReg plans in the coming year to commission and publish research on the growing parcel sector*". An Post maintains that this is to comply with the stipulation in Article 5.1 of Directive 97/67/EC that the universal postal service "*shall evolve in response to the technical, economic and social environment and to the needs of users*". An Post submits that ComReg should be mindful that any research conducted in relation to the parcel sector should acknowledge the limitations of such research, particularly given the potential shortage of data (in a highly competitive market) and the rapidly developing nature of the sector.

ComReg's response

- 63 In response to An Post's view on the authorisation process, ComReg's role in relation to the authorisation of postal service providers is clearly set out in section 38 of the 2011 Act and all authorised service providers are of themselves required to be compliant with the obligations set out in the 2011 Act, and in particular section 39 of the 2011 Act. Upon receipt of a written complaint supported by evidence, ComReg has and would make contact with a postal service provider if there are concerns in relation to the terms of its authorisation.
- 64 In relation to the surveys and research that ComReg plans to undertake, ComReg should clarify that ComReg does not undertake research only to meet the requirement of Article 5.1 of Directive 97/67/EC. For example, the research currently underway with regard to the packets and parcels sector in Ireland is focussed on enhancing ComReg's information and understanding of this sector. It is also worth noting that the packets and parcels market in Ireland extends beyond the basic universal postal service. ComReg intends to share the findings of this study with interested parties in due course. ComReg is further of the view that such market research falls firmly within two of its primary objectives which are "*to promote the development of the postal sector*" and "*to facilitate the development of competition and innovation in the market for postal service provision.*"

7.2 PRIORITY: Facilitate the development of the postal sector by acting in accordance with our mandate set by legislation

65 An Post welcomes, in broad terms, the high level actions set out in section 7.2 as they largely reflect the implementation requirements of the Communications Regulation (Postal Services) Act, 2011.

ComReg's response

66 ComReg welcomes An Post's response.

7.3 PRIORITY: Facilitate the development of the postal sector by applying effective and proportionate regulation

67 An Post states that it is important that customers can rely on a continuous service from all postal service providers, particularly considering the potential impact of withdrawal of a service provider from the market (e.g. the recent closure of City Link in the UK). An Post suggests that a mechanism be put in place to ensure that postal service users are protected from such losses of service.

ComReg's response

68 ComReg notes that pursuant to section 42 of the 2011 Act, an authorised postal service provider must give ComReg a minimum prior notice in writing of its intention to stop providing a postal service.

Actions

69 In its draft Postal Strategy Statement, ComReg proposed actions within the priorities and invited comments from interested parties.

70 **An Post** responded and suggested that the appropriate information on postal services be amended to include the identity of the sender and the service provider used by the sender.

ComReg's response

71 An Post has not provided any rationale for its suggestion. Therefore, ComReg has not modified its Strategy Statement to take account of this suggestion.

Proposed Timing of Actions

72 In its draft Postal Strategy Statement, ComReg set out the proposed timing of the actions and invited comments from interested parties.

73 **An Post** in its response requested that the timing of Action 5.1.3 (Consider Access Points Direction) be deferred to Quarter 3, 2016, in order to afford sufficient time for the new national postcode system ("Eircode") to be assessed.

ComReg's response

- 74 An Post has not explained why the implementation of the Eircode system should defer the timing of ComReg's consideration of its Access Points Direction. Absent any rationale for its request, ComReg cannot see any particular dependencies between these matters. Therefore, ComReg has not modified its Strategy Statement to take account of this suggestion.

2.1 Other issues raised

- 75 The **IBMPA** in its response makes a proposal to ComReg to implement certain steps and measures in relation to the move to e-substitution by certain postal service users. IBMPA requests ComReg to ascertain the statutory and administration procedures for e-substitution in a number of sectors with a view to making proposals on nationwide best practice systems. IBMPA maintains that this is required to ensure that postal service users continue to receive paper communications. IBMPA believes that ComReg, as regulator for the postal sector, is well placed to do this.

ComReg's response

- 76 In response, ComReg notes that the proposed steps and measures that IBMPA request ComReg to make are not within its regulatory remit. ComReg's regulatory remit is clearly defined by the 2011 Act.

3 Conclusion

- 77 In its final Postal Strategy Statement for 2015-2017, published in parallel with this response to consultation, ComReg has set out its strategic priorities for the next two years. ComReg appreciates the responses received from An Post and the IBMPA and has taken account of both responses. These have been very helpful in enabling ComReg to consider its overall approach and to set its goals, priorities, and actions and the timing of its actions for the period 2015 - 2017.
- 78 The Postal Strategy Statement for 2015-2017 will be implemented through ComReg's published annual Action Plan.