



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Review of Postal Universal Service Provider Designation

Response to Consultation on Step 2 of the
Section 17 designation review and decision in
the context of the Coronavirus (COVID-19)

**Response to Consultation and
Decision**

Reference: ComReg 20/131
and D13/20

Date: 30/12/2020

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Additional Information

Consultation Document	20/49
Submissions to Consultation 20/49	20/131s

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1 Introduction

- 1 As the national regulatory authority for postal services in the State the Commission for Communications Regulation ("ComReg") has a statutory function to ensure the provision of a universal postal service that meets the reasonable needs of postal service users.
- 2 An Post is designated¹ as the sole postal universal service provider ("USP") for postal services in the State, for a period of 12 years following the passing of the 2011 Act (i.e. from 2 August 2011 – 1 August 2023), subject to USP designation review/decision by ComReg after the expiry of 7 years (i.e. after 1 August 2018). The USP must fulfil the universal postal service obligation ("USO") for the State, which consists of a basic but high quality postal service for all postal service users for the collection, sorting, transport and delivery of universal postal service postal packets, at affordable prices irrespective of where they are located in the State.
- 3 In December 2019 ComReg commenced a public consultation² on Step 1 of its USP designation review,³ in accordance with procedures established and maintained by ComReg for this purpose.⁴
- 4 The Procedures set out two main steps for USP designation reviews by ComReg. In Step 1 ComReg considers whether there is a requirement for a USP designation or whether the postal market will provide the universal postal service without a designation. If ComReg decides that there is a requirement for USP designation, ComReg then proceeds to Step 2 to consider which Postal Service Provider(s) ("PSPs") should be designated as USP(s) for the State. Regardless of whatever USP designation decision ComReg makes, ComReg will at all times continue to safeguard and ensure the provision of a universal postal service that meets the reasonable needs of postal service users.
- 5 Having considered all responses to its consultation document on Step 1 [ComReg 19/125] ComReg published its Response to Consultation and Decision [ComReg 20/26] which confirmed its decision as:
 - a. that there is a continued requirement for universal postal service provider designation(s) at this time, and

¹ Under Section 17(1) of the Communications Regulation (Postal Services) Act 2011 ("the 2011 Act").

² "Review of Postal Universal Service Provider Designation. Consultation on Step 1 of review: Is there a need for postal universal service provider designation?", Consultation and Draft Decision, ComReg 19/125, dated 20 December 2019 ("ComReg 19/125")

³ Pursuant to section 17 of the 2011 Act.

⁴ Postal Universal Service Provider Designation Procedures, ComReg Document 19/64a ("the Procedures"), published on 26 June 2019 following public consultation.

b. that ComReg will proceed to Step 2.

- 6 However, the Coronavirus (COVID-19) pandemic in Ireland arose in early 2020 and ComReg had to consider the impact and effect of the pandemic on the Review of Postal Universal Service Provider Designation, and on the provision of the universal postal service itself.
- 7 Thus, ComReg consulted [ComReg 20/49] on Step 2 in the context of the adverse impacts of the Coronavirus (COVID-19) pandemic and sought the views of stakeholders on ComReg's preliminary conclusion and draft decision to deviate from Step 2 of the Procedures and, pursuant to section 17(2)(a)(1) of the 2011 Act, to continue the designation of An Post as the USP for the entire State for the remaining period of the designation specified in section 17(1) of the 2011 Act. ComReg received one response to this consultation. The response received was from An Post.
- 8 Having fully considered An Post's response to ComReg 20/49, which agreed with ComReg's preliminary view in ComReg 20/49, and in light of the COVID-19 circumstance, ComReg has made the decision to continue the designation of An Post as the USP for the entire State for the remaining period of the designation specified in section 17(1) of the 2011 Act. . The final decision instrument is at Annex 1 to this document.

2 Analysis of responses to consultation

2.1 Background to Question 1

9 In ComReg 20/49, ComReg set out the following 4 options to fulfilling the USP designation review in light of COVID-19;

- **Option 1:** To proceed now as originally intended for Step 2 and request expressions of interest followed by detailed submissions to be made by interested PSPs, and then to make a decision to designate PSP(s) to provide the universal postal service;
- **Option 2:** To proceed now as originally intended for Step 2 and request expressions of interest followed by detailed submissions to be made by interested PSPs, but allow extra time for responses⁵ for both expressions of interest and detailed submissions, and then to make a decision to designate PSP(s) to provide the universal postal service;
- **Option 3:** To delay Step 2 of the section 17 review until later this year and then proceed as intended for Step 2 with a designation decision potentially being made during the first half of 2021;
- **Option 4:** To not proceed as originally intended for all the stages of Step 2 but instead to deviate and to make a decision under section 17(2)(a)(i) of the 2011 Act (without completing the process of inviting expressions of interest and of submitting comprehensive submissions from interested PSPs) to continue An Post's designation until August 2023. In this case, ComReg will commence a section 18 review of the USP designation in late 2021/early 2022 in order to make a new USP designation(s)⁶ decision in advance of August 2023.

10 ComReg's preliminary view was to proceed with Option 4 as this will better ensure ComReg meets its obligation to ensure the provision of the universal postal service for the State which meets the needs of postal service users during this time of disruption caused by COVID-19. ComReg therefore proposed to make the decision as set out at Annex 1 to the consultation. ComReg sought views on its proposal by asking:

Q. 1 Do you agree or disagree with ComReg's proposed Option 4 as set out above?

⁵ The extra time will allow interested PSPs to harness their resource expertise to complete the comprehensive submissions

⁶ If the decision in Step 1 of Section 18 at that time is that a designation is needed to ensure the provision of the universal postal service

2.1.1 Respondents' views

11 An Post answered question 1 and confirmed it agreed with ComReg's Option 4 proposal to proceed directly to make a decision under section 17(2)(a)(i) of the 2011 Act (without completing the process of inviting expressions of interest and of submitting comprehensive submissions from interested PSPs) to continue An Post's designation until August 2023.

2.1.2 ComReg's position

12 In light of the response received, and for the reasons set out in the consultation 20/49, ComReg's position is to proceed as per Option 4.

13 ComReg notes that paragraph A.1.4 of the Procedures provides for deviation from the Procedures where ComReg considers it is warranted, and a significant deviation is clearly identified to the relevant stakeholders along with the reasons for the deviation. ComReg believes that this deviation is warranted due to the significant and long-term consequences caused by COVID-19.

14 The rationale for proceeding with Option 4 is as follows;

- In the context of the uncertainty and unpredictability that the Covid-19 crisis has raised it makes sense to ComReg to retain the service provision that is currently in place and has been operating for a long time, until after the crisis.
- The section 18 review would commence at end of 2021/start 2022 at which stage it would be expected that the COVID-19 crisis should be over, and PSPs will have the necessary resources available to participate in the review.
- This should also allow sufficient time for a COVID-19 national recovery period after which the impact on the State's economy, and consequently on the postal market will be clearer.
- This timeline allows time for ComReg and interested PSPs to have a clearer view of what the universal postal service will have become following COVID-19 (in terms of changes to mail mix, volumes etc.).
- The EU Commission will likely have given significant consideration to its 4th Postal Directive which may provide clarity on the universal postal service, in particular the statutory obligation to collect and deliver postal packets on every working day, or it may indeed be in place by this time.

- 15 ComReg has made the decision to continue the designation of An Post as the USP for the entire State for the remaining period of the designation specified in section 17(1) of the 2011 Act. The draft decision set out in the consultation has therefore finalised and that decision is made final by this Decision document.

3 Next Steps – Section 18 review

13. ComReg plans to commence a review of the USP designation under Section 18 of the 2011 Act in late 2021 / early 2022, in accordance with the Procedures in order to make a new USP designation(s)⁷ decision in advance of August 2023.

⁷ If the decision in Step 1 of the Section 18 Review at that time is that a designation is needed to ensure the provision of the universal postal service

Annex: 1 Final USP Designation Decision Instrument

PART I – DEFINITIONS AND INTERPRETATION

1. Terms that are used in this Decision Instrument shall have the same meaning as when they are used in the Communications Regulation (Postal Services) Act 2011 (“**the 2011 Act**”), unless the context otherwise admits or requires.
2. Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.

PART II – STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION

3. This decision by the Commission is made;
 - a. having had regard to its statutory functions and objectives in relation to postal services, as set out in sections 10 and 12 of the Communication’s Regulation Act 2002 (amended) (“the 2002 Act”);
 - b. in accordance with the procedures established, maintained and published by the Commission pursuant to section 19 of the 2011 Act (ComReg 19/64a) “**the Procedures**”;
 - c. having conducted a public consultation (ComReg 20/49);
 - d. having had regard to the assessment and reasoning set out in ComReg 20/49; and
 - e. having taken account of the representation of An Post submitted in response to Consultation Document No. 20/49 as set out in Response to Consultation Document No. 20/131.

PART III – DECISION INSTRUMENT

4. The Commission has decided:
 - a. in accordance with paragraph A1.4 of the Procedures, in the circumstances of the ongoing COVID-19 crisis that a different approach is warranted, and for this reason it will deviate from Step 2 of the Procedures for this review of the universal postal service provider (USP) designation for the State; and
 - b. pursuant to section 17(2)(a)(i) of the 2011 Act, to continue the designation of An Post as the USP for the entire State for the duration of the unexpired period of the designation specified in section 17(1) of the 2011 Act.
 - c. to publish;
 - I. the response to consultation,
 - II. the decision, and

III. the non-confidential An Post submission.

PART IV - CONTINUATION OF COMREG DECISIONS

5.1 All other decisions imposed by ComReg in relation to universal service obligations, which were immediately in force prior to the effective date of this Decision and Decision Instrument, shall continue to have full force and effect.

PART V- EFFECTIVE DATE AND DURATION

6.1 This Decision and Decision Instrument is effective from 30th December 2020 until 1st August 2023, unless or until reviewed by ComReg.

GARRETT BLANEY

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE 30TH DAY OF DECEMBER 2020

Annex: 2 Legal Basis

ComReg's functions and objectives relating to the postal sector

A 1.1 ComReg's statutory functions in relation to the postal sector are set out in section 10(1) of the Communications Regulation Act 2002, as amended, ("the 2002 Act") and are as follows:

"(ba) to ensure the provision of a universal postal service that meets the reasonable needs of postal service users,

(c) to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 in relation to the provision of postal services."

A 1.2 ComReg's statutory objectives, in exercising the above functions, are set out in section 12(1)(c) of the 2002 Act, and are as follows:

"(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".

A 1.3 The European Postal Directive⁸ and national legislation have set down the requirements for a "universal service" which guarantees, one clearance and one delivery to the home or premises of every natural or legal person every working day, even in remote or sparsely populated areas.

Designation of An Post as USP

A 1.4 Section 17 "Designation of An Post as universal postal service provider." provides:

"(1) Subject to subsection (2), An Post is designated as the universal postal service provider for a period of 12 years beginning on the passing of this Act.

⁸ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service as amended by Directive No. 2002/39/EC of 10 June, 2002, and Directive No. 2008/6/EC of 20 February, 2008, of the European Parliament and of the Council.

(2) After the expiration of 7 years after the passing of this Act, and following a review under section 19 by the Commission of the designation of An Post under subsection (1), the Commission may—

(a) decide to—

(i) continue the designation of An Post as a universal postal service provider for the duration of the unexpired period of the designation specified in subsection (1), or

(ii) with the prior consent of the Minister, designate one or more than one postal service provider as a universal postal service provider for such period, subject to section 18 (4), as the Commission considers appropriate,

or

(b) with the prior consent of the Minister, decide that no such designation is required.

(3) Where the Commission proposes to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the Minister, following consultation with such persons as he or she considers appropriate having regard to the proposal concerned, shall give notice in writing to the Commission of his or her decision to consent, or to refuse consent, within 4 months of the date on which the Commission seeks consent.

(4) When giving or refusing consent in relation to a proposal by the Commission to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the Minister shall require to be satisfied as to whether or not the Commission's proposal ensures the provision of a universal postal service.

(5) Where the Minister refuses consent to a proposal by the Commission to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the designation of An Post shall continue for the duration of the unexpired period of the designation specified in subsection (1).

(6) Where, with the prior consent of the Minister, the Commission makes a decision under subsection (2)(a)(ii), the designation of An Post under subsection (1) shall cease to have effect on the date on which that decision takes effect.

(7) Where, with the prior consent of the Minister, the Commission makes a decision under subsection (2)(b), the designation of An Post under subsection (1) shall cease to have effect on the date of that decision.”

Designation of USPs - General

A 1.5 Section 18 “Designation of universal postal service providers – general provisions.” provides:

“(1) Before the end of the period for which the designation of An Post is continued under subsection (2)(a)(i) or (5) of section 17 or, as the case may be, before the end of the period for which a universal postal service provider is designated under subsection (2)(a)(ii) of that section or, in a case where a universal postal service provider is designated under this section, before the end of the period for which the provider is so designated, the Commission—

(a) shall conduct a review of the designation, and

(b) may with effect from the expiry of that period—

(i) decide to designate one or more than one postal service provider as a universal postal service provider for such period, subject to subsection (4), as the Commission considers appropriate, or

(ii) decide that no such designation is required.

(2) Where the Commission makes a decision—

(a) with the prior consent of the Minister, under section 17 (2)(b), or

(b) under subsection (1)(b)(ii),

it shall, at such intervals as it considers appropriate, conduct a review under section 19 for the purpose of deciding whether a designation of one or more than one postal service provider as a universal postal service provider is required and may decide that—

(i) no such designation is required for the time being, or

(ii) such designation is required for such period, subject to subsection (4), as the Commission considers appropriate,

and this section applies to a decision made under subparagraph (i) or (ii), as the case may be, as it applies to a decision made under subparagraph (i) or (ii) of subsection (1)(b).

(3) The Commission may determine that different universal postal service providers, the subject of a designation made by the Commission under section 17 (2)(a)(ii) or this section, shall provide different parts of the universal postal service or provide that service in respect of all or any part or parts of the State, or both, having regard to the need to ensure that there is no duplication of the obligations imposed on each universal postal service provider so designated.

(4) The designation of a universal postal service provider by the Commission under section 17 (2)(a)(ii) or this section—

(a) shall be for such period as the Commission considers appropriate, having regard to the need to ensure that the designation is of sufficient duration for the return on investments,

(b) shall take effect 14 days after the date on which notice of approval of the terms and conditions of its universal postal service provision is published under section 23 (2)(a), and

(c) shall cease to have effect—

(i) on the date on which the designation of a universal postal service provider takes effect under paragraph (b), or

(ii) on the date on which the Commission decides that no such designation is required.”

USP Designation Reviews

A 1.6 Section 19 “Review by Commission” provides:

“(1) A review by the Commission for the purposes of section 17 or 18 shall, subject to subsection (2), be conducted in accordance with such procedures as may be established and maintained by the Commission having regard to its functions and objectives under the Communications Regulation Acts 2002 to 2011 relating to postal services, in particular the need to ensure the provision of a universal postal service and compliance with the requirements specified in section 18.

(2) The procedures referred to in subsection (1) shall—

(a) make provision for the carrying out of an assessment of the extent to which the market for the provision of postal services in the State is meeting the reasonable needs of postal service users,

(b) be such as the Commission considers to be efficient, objective, transparent, non-discriminatory and proportionate, and

(c) be published by the Commission.”

Notification of USP Designation

A 1.7 Section 20 “Notification of designation” provides:

“(1) The continuance of the designation of An Post under subsection (2)(a)(i) or (5) of section 17 or, as the case may be, the designation of a universal postal service provider under subsection (2)(a)(ii) of that section, or the designation of a universal postal service provider under section 18, shall be in writing, and the Commission shall—

(a) publish notice of the such continuance or designation in Iris Oifigiúil and in such other manner as it considers appropriate, and

(b) notify in writing—

(i) the European Commission of such continuance or the identity of any universal postal service provider so designated, and

(ii) the Minister of the identity of any universal postal service provider so designated.

(2) Where the Commission makes a decision under section 17 (2)(b) or subsection (1)(b)(ii) or (2)(i) of section 18, as the case may be, that no designation is required, it shall—

(a) publish notice of such a decision in Iris Oifigiúil and in such other manner as it considers appropriate, and

(b) notify in writing the Minister and the European Commission.”

