



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Review of Postal Universal Service Provider Designation

Response to Consultation on Step 1 of review:
Is there a need for postal universal service provider designation?

Response to Consultation and Decision

Reference: ComReg 20/26 and D03/20

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Additional Information

Consultation Document	19/125
Submissions to Consultation 19/125	20/26s

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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 will consider 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 will then proceed 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 In ComReg 19/125, ComReg sought written responses from interested parties on its preliminary conclusion and draft decision reached following completion of Step 1 that there is a continued need for USP designation(s) at this time. ComReg received responses from:

- 1) An Post, 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.

2) Tico Mail Works Ltd. ("TiCo").

- 6 ComReg has considered these responses in full. In this document ComReg sets out its position in relation to the main points articulated by the respondents relating to this consultation, however it is not possible to respond to every single individual comment.
- 7 Having fully considered the responses to ComReg 19/125, which broadly supported ComReg's position, ComReg has made no changes to its draft decision instrument as set out at Annex 1 to ComReg 19/125. The final decision instrument is at Annex 1 to this document
- 8 In addition, ComReg 19/125 sought views from stakeholders on the appropriate upcoming designation period for a USP designation(s) pursuant to section 17(2)(a)(ii) of the 2011 Act, if applicable.
- 9 In relation to the upcoming Step 2 of the USP designation review, having considered the responses to ComReg 19/125, ComReg will proceed to conduct Step 2 on the basis of a 5 year period for potential USP designation(s) under section 17(2)(a)(ii) (if the section 17(2)(a)(ii) option is applicable). The actual designation period for a designation of a USP under section 17(2)(a)(ii) will be set at the USP designation decision stage, if the USP designation decision is made under section 17(2)(a)(ii).
- 10 However, if the USP designation decision is that the designation of An Post as a USP will be continued pursuant to section 17(2)(a)(i), the duration of this designation will be for the remainder of the unexpired period until 1 August 2023 in accordance with the 2011 Act.
- 11 ComReg will now proceed to Step 2 of the review. ComReg is considering Step 2 next steps in light of the recent development and impact of the Coronavirus (COVID-19) related crisis in Ireland. ComReg will issue a publication for stakeholders in respect of Step 2 shortly.

2 Analysis of responses to consultation

2.1 Background to Question 1

- 12 In ComReg 19/125, ComReg set out the information it had gathered as part of Step 1. ComReg then outlined its assessment of this information. ComReg reached the preliminary conclusion that there is a continued need for USP designation at this time in order to safeguard and ensure the provision of the full universal postal service for the entire State. ComReg therefore proposed to make the decision as set out at Annex 1 to the consultation and to proceed to Step 2 of the review. ComReg sought views on its proposed decision by asking:

Q. 1 Do you agree or disagree with ComReg's assessment and preliminary conclusion as set out above and ComReg's draft decision as set out at Annex 1 of this document? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data where appropriate to support your view.

2.1.1 Respondents' views

- 13 An Post and TiCo both answered question 1 in the affirmative and agree that there is a continued need for a USP designation. Tico states that it *"generally agrees that there should continue to be a USP"*. An Post states that it *"agrees that a USP designation is necessary in order to safeguard and ensure the provision of the full universal postal obligation (USO) for the entire State"*.

2.1.2 ComReg's position

- 14 In light of the responses received no change will be made to the draft decision instrument and ComReg will proceed to Step 2 of the USP designation review.
- 15 ComReg notes that many of An Post's comments made in response to this question are not directly related to this consultation on Step 1 of the review and appear to be more related to Step 2. ComReg invites An Post to consider including these views as part of the public consultation process relating to Step 2.
- 16 ComReg notes that TiCo's comments in relation to terminal dues rates are outside the scope of this consultation.

2.2 Background to Question 2

- 17 ComReg 19/125 also sought views from stakeholders on the appropriate period for the proposed upcoming USP designation in the case of a USP designation decision pursuant to section 17(2)(a)(ii). In this regard, ComReg proposed that the designation period should be set at 5 years. ComReg sought views on the proposed upcoming designation period by asking:

Q. 2 Do you agree or disagree with ComReg's proposal for the appropriate USP designation period as set out above? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data where appropriate to support your view.

2.2.1 Respondents' views

- 18 TiCo indicated that it had *"no objection"* to ComReg's proposal for a five year designation period in the case of a USP designation decision made under section 17(2)(a)(ii).
- 19 An Post submitted that the designation period for a USP designation under section 17(2)(a)(ii) should be for *"a minimum period of five years, and preferably 7"*. An Post noted that the next five years will be a period of considerable change for the postal service. An Post expressed its view that considerable investments in infrastructure will be required by any designated provider during this period and therefore *"designation for a reasonable period will be required to secure a return on investment"*. An Post stated *"that the designation time period is a matter of crucial importance to the commercial viability of an entity required to have the infrastructure in place to fulfil the postal USO"*.
- 20 An Post submitted that *"the manner in which possible decisions under Section 17 of the Act has been presented is not entirely clear"* and *"An Post emphasises that under Section 17(2)(a)(ii), it is permitted to appoint one USP only for a period of time, whether that is for 5 years or otherwise and assumes that this is also ComReg's interpretation."*
- 21 An Post stated that consideration of the possible designation time period was not included in Step 1 of the Procedures.

2.2.2 ComReg's position

22 ComReg notes that An Post has indicated that the proposed five year designation period for a section 17(2)(a)(ii) designation decision is acceptable at a minimum but has expressed a preference for a seven year designation period. ComReg agrees with An Post's view that the next five years will be a period of considerable change in the postal service market. In particular ComReg notes that due to possible legislative developments relating to the universal postal service⁵ it would be preferable not to have a designation period of seven years as the universal postal service may be altered within that timeframe due to these legislative developments. On balance, ComReg considers that the proposed five year designation period for a section 17(2)(a)(ii) decision is appropriate as it will give adequate predictability and would be of sufficient duration for the return on investments while taking into account the likelihood of future market changes (including potential legislative changes). As such, ComReg will proceed to conduct Step 2 on the basis of a 5 year period for potential USP designation(s) under section 17(2)(a)(ii). The actual designation period for a section 17(2)(a)(ii) will be set at the USP(s) designation(s) decision stage.

23 An Post queries the possible decisions under section 17 of the 2011 Act and the possible designation time periods. In relation to the possible decisions, these are outlined in section 17(2)(a) of the 2011 Act which states:

“(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”

⁵ European Commission Work Programme 2020 published 29 January 2020 includes the Evaluation of the Postal Services Directive 97/67/EC.

See: https://eur-lex.europa.eu/resource.html?uri=cellar:7ae642ea-4340-11ea-b81b-01aa75ed71a1.0002.02/DOC_2&format=PDF

- 24 Therefore, in ComReg 19/125 ComReg proposed that the designation period should be set at five years for a section 17(2)(a)(ii) decision. ComReg did not need to set a designation period for a section 17(2)(a)(i) decision as the designation period is set by the legislation as being until 1 August 2023. ComReg must correct An Post's assumption that ComReg's interpretation is that "*under Section 17(2)(a)(ii), it is permitted to appoint one USP only for a period of time, whether that is for 5 years or otherwise*". The wording of section 17(2)(a)(ii) clearly indicates that "*one or more than one postal service provider*" can be designated and therefore the number of USPs which ComReg can appoint is not limited to one, as is asserted by An Post.
- 25 Regarding the non-inclusion of ComReg's consideration of the designation period in Step 1 of the Procedures, the Procedures at paragraphs A1.9 – A1.13 refer to the requirement for ComReg to determine the appropriate designation period⁶ when making a designation decision under section 17(2)(a)(ii). Though this is not part of Step 1, to provide clarity to all interested parties, ComReg considered it appropriate to seek views from stakeholders on its proposal for the appropriate designation period for a decision under section 17(2)(a)(ii) prior to commencing Step 2 of the review. As stated above, ComReg will proceed to conduct Step 2 on the basis of a 5 year period for potential USP designation(s) under section 17(2)(a)(ii). The actual designation period for a section 17(2)(a)(ii) decision will be set at the USP(s) designation(s) decision stage in Step 2 (if applicable).

⁶ In accordance with section 18(4) of the 2011 Act.

3 Next Steps – Step 2 of the review

- 26 ComReg will now proceed to Step 2 of the review. ComReg is currently considering next steps in light of the recent development and impact of the Coronavirus (COVID-19) related crisis in Ireland. ComReg will issue a publication in respect of Step 2 for stakeholders shortly.

Annex: 1 Final Decision Instrument for Step 1

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 Principal Act;
 - b. having followed the procedures established and published by the Commission pursuant to section 19 of the 2011 Act (ComReg 19/64a) “**the Procedures**”;
 - c. having conducted a public consultation;
 - d. having had regard to the assessment and reasoning set out in Consultation Document No. 19/125; and
 - e. having taken account of the representations of interested parties submitted in response to Consultation Document No. 19/125 as set out in Response to Consultation Document No. 20/26.

PART III – DECISION

4. The Commission decides:
 - a. that there is a continued requirement for universal postal service provider designation(s) at this time, and
 - b. that ComReg will proceed to Step 2.

GARRETT BLANEY

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE 7TH DAY OF APRIL 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 Directive⁷ 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.

⁷ 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.”