



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Review of the universal postal service specification

Response to consultation and further consultation on certain bulk mail services

Response to consultation and further consultation

Reference: ComReg 18/100

Date: 26/11/2018

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Additional Information

Consultation on review of universal postal service specification	18/66
Submissions to consultation 18/66 on review of universal postal service specification	18/99s

Submissions to Further Consultation

All submissions to this further consultation should be clearly marked “Reference: Submission to ComReg document No 18/100”, and sent by post or e-mail to arrive on or before 5 p.m, 7 January 2019, to:

Retail Division,
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Please note in accordance with ComReg's Consultation Procedures in ComReg Document 11/34, ComReg will publish all respondents' submissions with the Response to Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information in ComReg Document 05/24.

Legal Disclaimer

Where the document concerns matters relating to the further consultation, the document is not a binding legal document and also does not contain legal, commercial, financial, technical or other advice. The Commission for Communications Regulation is not bound by it, nor does it necessarily set out the Commission's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by it of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Commission for Communications Regulation. Inappropriate reliance ought not therefore to be placed on the contents of this document.

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1 Executive Summary

- 1 The universal postal service guarantees postal services of a specified quality at an affordable price for the benefit of all postal service users (both the senders and receivers of post), irrespective of their geographic location. The universal postal service is part of the European regulatory framework laid down by the European Postal Services Directive¹, transposed into Irish law by the Communications Regulation (Postal Services) Act 2011 (the “Postal Act”).
- 2 Section 16(9) of the Postal Act requires the Commission for Communications Regulation (“ComReg”) *“For the purposes of ensuring that the universal postal service develops in responses to the technical, economic, and social environment and to the reasonable needs of postal service users ... following a public consultation process, [to] make regulations specifying the services to be provided by a universal postal service provider relating to the provision of a universal postal service.”* In 2012, following a public consultation, ComReg made the Communications Regulation (Universal Postal Service) Regulations 2012 (SI 280 of 2012) (“the Regulations”), specifying the universal postal service.
- 3 Given the passage of time and developments in the postal sector since 2012, by a public consultation² ComReg revisited the specification of the universal postal service to examine whether certain services should remain in the specification of the universal postal service³. The preliminary views in the public consultation were formed following consideration of supporting research and analysis on changes to the technical, economic, and social environment and to the reasonable needs of postal service users⁴. The consultation proposed:
 - the removal from the universal postal service of certain bulk mail services, namely “Delivery only” (largely An Post Ceadúnas Discount 9), “Deferred Delivery” (largely An Post Ceadúnas Discount 6), International Bulk Mail Service (“IBMS”) (together referred to as “the certain bulk mail services”); and
 - amending the maximum weight of the basic parcel service in the universal postal service from 20kg to 10kg; and

¹ Directive 97/67/EC as amended by Directive 2002/39/EC and Directive 2008/6/EC.

² ComReg Document No. 18/66 dated 11 July 2018 (<https://www.comreg.ie/publication/review-of-universal-postal-service-specification-consultation-and-draft-amending-regulation/>) (“Consultation 18/66”)

³ As required by section 16(9) of the Postal Act. This was noted as Goal 2 in the Postal Strategy Statement (“PSS”) 2018 – 2020.

⁴ ComReg Document No. 18/66a: Report by Frontier Economics ‘Research and recommendations on the universal postal service specification’ – April 2018

- keeping the ‘ancillary services’ in the universal postal service.
- 4 There were two responses to Consultation 18/66; (1) An Post and (2) Tico Mail Works Limited (“Tico Mail Works”).
 - 5 This document addresses the responses to Consultation 18/66 on the certain bulk mail services in the universal postal service and initiates a further consultation on these. The maximum weight of parcels and keeping the ancillary services in the universal postal service is addressed in a separate document, ComReg Document No. 18/99, D13/18.
 - 6 Having considered these responses, together with other relevant evidence, and for the reasons set out in this document and in Consultation 18/66, ComReg proposes to keep the certain bulk mail services in the universal postal service specification, but to amend the universal postal service specification in order to prescribe in a more detailed way the minimum requirements to avail of these bulk mail services. ComReg considers that this will ensure that these services are more suited to the needs of small and medium-sized enterprises (“SMEs”). In this document ComReg is conducting a further consultation seeking the views of interested parties on this proposal.

Further consultation on the certain bulk mail services in the universal postal service

- 7 The preliminary view in Consultation 18/66 was to remove the certain bulk mail services from the specification of the universal postal service. That preliminary view was informed by certain major changes since 2012, including that:
 - There has been a major shift in bulk mail volumes away from universal postal service following the launch by An Post of a new domestic non-universal postal service bulk product in July 2014 which is the cheapest of all bulk mail services provided by An Post;
 - There is increased electronic substitution offering competitive alternatives; and
 - There is a general trend in other EU Member States for bulk mail not to be included in the universal postal service; 12 EU Member States do not include bulk mail in the universal postal service.
- 8 Any removal of a service from the universal postal service would represent a decrease in the regulatory oversight placed on the universal postal service provider (“USP”) as such services would no longer be subject to regulatory oversight on price, access, quality, and terms and conditions. This means that the USP would have full commercial freedom in providing these services.

- 9 With regard to the proposed removal of the certain bulk mail services from the universal postal specification, both An Post and Tico Mail Works submit that this should not happen.
- 10 An Post submits that it is *“not asking lightly”* for regulation to be maintained. An Post makes the following points about the removal of the certain bulk mail services from the universal postal service:
- An Post states that it is *“questionable whether any or all of the current [bulk mail] services would be offered in their current form or at their current prices if the product set was not anchored by the universal service bulk requirements”*. According to An Post, vulnerable user detriment would also arise if An Post stopped delivering bulk mail but continued delivering single piece mail in specific rural areas.
 - An Post submits that, as a result, there might be increased postal prices for users of its bulk mail services (in particular charities and banks) and reduced service guarantees for its bulk mail services.
 - According to An Post, the consequences of the removal of bulk mail from the specification of the universal postal service could lead to harmful social exclusion, in particular of older people.
- 11 An Post submits that at least one bulk mail service should remain in the universal service specification.
- 12 Tico Mail Works submits that there are justifiable concerns that users' needs would be adversely affected by the proposed removal of existing bulk mail services from the universal postal service specification. According to Tico Mail Works, An Post remains the dominant player for delivery of mail, including bulk mail, and that An Post would become a price setter in the absence of a regulatory regime. Tico Mail Works submits that the threat of e-substitution is not an effective dampener on An Post's bulk mail prices and cites as evidence for this An Post's responses to the Joint Oireachtas Committee on Communications, Climate Action and Environment on 17 January 2017.
- 13 As set out in Consultation 18/66, ComReg would not remove a service from the specification of the universal postal service if such a removal would be to the detriment of postal service users' needs.

- 14 The responses to Consultation 18/66 give rise to a serious concern that the removal of bulk mail services from the universal postal service specification would be detrimental to postal service users' needs. ComReg notes the submissions by An Post and Tico Mail Works outlining that An Post is the only provider of a national delivery service and that there are no alternative bulk mail providers. In particular, ComReg notes the submission of An Post acknowledging the exit of the competing postal service provider, Citypost, in July 2018. Citypost provided competing bulk mail services.
- 15 ComReg now proposes to maintain the certain bulk mail services in the universal service by amending the specification of universal postal service to prescribe in a more detailed way the minimum requirements to avail of these services. ComReg considers that this will ensure that such services can be more readily availed of by SMEs. This course of action was a recommendation made to ComReg on foot of previous research conducted⁵ which noted that minimum volume and auto-sort thresholds are barriers to mailers using bulk mail services in the universal postal service. ComReg is consulting on this proposal in this further consultation.
- 16 For the avoidance of doubt, the proposed more detailed minimum requirements of the certain bulk mail services in the universal postal service (if proceeded with) will not mean that An Post:
- cannot offer other bulk mail services in the universal postal service that meet the requirements of the universal postal service specification, but have a volume / auto-sort requirement that is higher than the minimum, once that minimum requirement is offered and available.
 - cannot continue to offer various different bulk mail services; these bulk mail services would be outside the universal postal service and not subject to regulatory oversight. For example, An Post could offer deferred delivery over 3 days, or 5 days, if postal service users are willing to accept such delays for a lower price reflective of the cost saving associated with the delayed delivery.
- 17 By this further consultation, ComReg is seeking the views of interested parties on this revised proposal for the certain bulk mail services only. It should, however, be noted that the process is not equivalent to a voting exercise and ComReg will exercise its judgement having considered the merits of the views expressed and any supporting evidence provided.

⁵ ComReg Document No.16/107 ' Research on postal service users needs' – published 7 December 2016 (<https://www.comreg.ie/publication/research-postal-users-needs/>)

Structure of this document

- 18 Chapter 2 initiates a further consultation on proposed amendments to the specification of the certain bulk mail services in the universal postal service and sets out ComReg's preliminary views in this regard. Chapter 3 sets out the text of the proposed statutory instrument which amends the Regulations. Chapter 4 sets out the draft Regulatory Impact Assessment ("RIA") of this proposal.

2 Further consultation on the certain bulk mail services

19 ComReg's 2012 specification of the universal postal service required the provision of the following certain bulk mail services as part of the universal postal service:

- For domestic next day delivery (currently accounts for less than 1% of universal postal service volumes⁶)
- For domestic deferred delivery service, delivery within 2 days (currently accounts for c.20% of universal postal service volumes/c.12% of total Mails volumes⁶); and
- International service for items deposited in bulk (currently accounts for c.2% of universal postal service volumes⁶) (together "the certain bulk mail services").

2.1 ComReg's preliminary view in Consultation 18/66

20 In Consultation 18/66, ComReg proposed the removal of the certain bulk mail services from the specification of the universal postal service for reasons that included:

20.1 Many large users now use a non-universal postal service bulk product (Bulk Discount 11), introduced by An Post in 2014, rather than universal postal service bulk products. This product is the cheapest bulk product offered by An Post and is the predominant bulk mail service used. This non-universal postal service is also used by many postal service providers and mail consolidators to facilitate delivery to their customers using An Post's national postal network.

20.2 For many bulk mail users, electronic mail is a viable alternative.

20.3 There is a general trend in other EU countries for bulk mail to not be included in the universal postal service; 12 EU Member States do not include bulk mail in the universal postal service.

20.4 ComReg outlined its view as to why it seemed reasonable to assume that An Post would continue to choose to provide bulk mail services if these services were not in the universal postal service.

⁶ ComReg analysis of An Post's Regulatory Accounts 2017 (available at <http://www.anpost.ie/AnPost/MainContent/About+An+Post/Annual+Reports/Annual+Reports/>)

20.5 Removing the certain bulk mail services from the universal postal service will mean that the regulatory oversight (price, access, quality, terms and conditions) on An Post, as designated USP, for these services is no longer required. This means An Post will have full commercial freedom for these services.

21 In Consultation 18/66, ComReg therefore asked:

Q. 1 Do you agree with the preliminary view to remove the certain bulk mail services from the specification of the universal postal service? Please explain your response.

2.2 Submissions to Q.1 of Consultation 18/66

22 An Post states that it is *“questionable whether any or all of the current [bulk mail] services would be offered in their current form or at their current prices if the bulk mail services set was not anchored by the universal service bulk requirements.”*

23 An Post states that rather than deleting bulk mail services from the specification of the universal postal service, ComReg should consider if a change to the definitions is needed to ensure continued provision of the bulk mail services actually used by postal service users. In particular, An Post notes that the continuing requirement for bulk mail is evident from Figure 5 in Consultation 18/66 where 43% of SMEs have none or little likelihood to move general correspondence to electronic communications.

24 An Post also states its belief that there is no alternative delivery network to An Post's and further submits that following the exit of Citypost from postal service provision in June 2018, there are no alternative providers in the Irish postal market for domestic bulk mail services.

25 Furthermore, An Post clarifies that it does not negotiate prices for bulk mail and that bulk mail is only sold at its published rates, regardless of whether it is in the universal postal service specification or not. An Post states that large users and SMEs both use:

- Bulk mail services directly with An Post
- Intermediaries, who in turn pass most of the mail onwards for delivery by An Post.

- 26 According to An Post, no other operator delivers bulk mail throughout the State. An Post submits that *"there is no basis for the conclusion that 'the market' will meet all needs if it becomes unprofitable for An Post to do so"*. An Post states that it is *"not aware of any evidence regarding the dynamics of competition in the Irish postal market on which ComReg could base a reasonable assumption that postal users' needs in relation to bulk mail will inevitably continue to be met by normal conditions of competition, and therefore do not require the safeguards provided by their inclusion in the specification of the universal postal service."*
- 27 An Post further submits that if bulk mail was taken outside the specification of the universal postal service, increased postal prices for senders (in particular charities and banks) and reduced service guarantees might result in (i) deliveries to these customers being terminated or reduced or (ii) senders of bulk mail seeking to pass on the bulk mail price increases to their customers.
- 28 An Post also submits that vulnerable user detriment would arise if An Post stopped delivering bulk mail but continued delivering single piece mail in specific rural areas. Furthermore, according to An Post, the removal of bulk mail from the specification of the universal postal service could lead to harmful social exclusion, in particular of older people.
- 29 An Post also expresses a hope that any decision arising from the public consultation should facilitate achievement of the Department of Communications, Climate Action and Environment ("DCCA") stated strategic objective;
- "[t]o ensure Irish customers, both business and residential, enjoy competitively priced, high quality postal services on a par with the highest quality standards in key comparator EU economies"* (emphasis added by An Post)
- 30 An Post states its view that at least one bulk mail service should remain in the universal service specification.
- 31 Regarding the 'pre-sort' requirement for the 'Delivery only' bulk mail service in the universal postal service specification, An Post submits that this pre-sort requirement *"does not make commercial sense for either An Post or for users"* and that this is demonstrated by the lack of take-up for the pre-sorted discount 9.
- 32 An Post submits that Consultation 18/66 did not address the requirement for international bulk mail in any meaningful way, noting that owing to due to demographics and location (island) such bulk mail service is important for multinationals located in Ireland.

- 33 In a section titled “*Timing of Consultation*”, An Post appears to suggest that a decision on bulk mail should be delayed to wait for (1) the European Commission review of postal user needs (2) Brexit (3) awarding of the National Broadband Plan contract as this will increase the likelihood of e-substitution over time and could therefore result in volume declines.
- 34 Tico Mail Works is opposed to the proposal to remove the certain bulk mail services from the universal postal service and strongly advocates a “no change” position.
- 35 Tico Mail Works states that the existence of the certain bulk mail services within the universal postal service did not inhibit An Post launching its commercial Bulk Discount 11 service, which is a non-universal postal service. Therefore, according to Tico Mail Works, the existence of certain bulk mail services within the universal postal service specification did not hinder competition.
- 36 Tico Mail Works submits that there are justifiable concerns that users’ needs would be adversely affected by the proposed removal of the certain bulk mail services from the universal postal service specification. According to Tico Mail Works, An Post remains the dominant player for delivery of mail, including bulk mail, and that An Post would become a price setter in the absence of a regulatory regime. Tico Mail Works submits, as evidenced by An Post’s responses to the Joint Oireachtas Committee on Communications, Climate Action and Environment on 17 January 2017⁷, that “*the threat of e-substitution is not an effective dampener on An Post’s bulk mail price increases*”.

2.3 ComReg’s revised preliminary view

2.3.1 International bulk mail service

- 37 Following consideration of An Post’s submission noting the importance of this service to multinationals in Ireland, it is not proposed to change the International Bulk Mail Service in the universal postal service specification at this time. The proposal is that the specification of this service within the universal postal service will remain as is, which is a service for the clearance, transport and distribution of foreign “postal packets deposited in bulk” pre-sorted by country of destination..

Q. 1 Do you agree with the proposal to keep the international bulk mail service as is in the universal postal service specification? Please explain your response.

7

https://www.oireachtas.ie/en/debates/debate/joint_committee_on_communications_climate_action_and_environment/2017-01-17/3/

2.3.2 Domestic bulk mail services

- 38 Regarding An Post's suggestion that the removal of bulk mail services from the universal postal service should await a number of future matters including European Commission analysis, Brexit, and the awarding of the National Broadband Plan, ComReg notes that An Post has provided no evidence to support why ComReg should await these events. In response, ComReg notes that the European Commission analysis is only at early stages and will be used to evaluate the functioning of the Postal Services Directive. When the European Commission process is complete, ComReg will consider then whether any further amendment to the specification of the universal postal service is required. Regarding the other matters, these do not prevent ComReg amending the specification of the bulk mail services within the universal service now. ComReg notes that there can be further change to the specification, if required, at a later date.
- 39 As set out in Consultation 18/66, ComReg would not propose a removal of services from the specification of the universal postal service if such a removal would be to the detriment of postal service users' needs.
- 40 On the basis of the submissions to Consultation 18/66, ComReg is concerned that the removal of bulk mail services from the universal postal service specification would be detrimental to postal service users' needs. ComReg notes the submissions by An Post and Tico Mail Works outlining that An Post is the only provider of a national delivery service and that there are no alternative bulk mail providers. In particular, ComReg notes the submission of An Post acknowledging the exit of the competing postal service provider, Citypost, in July 2018. Citypost provided competing bulk mail services.
- 41 ComReg further notes An Post's statement acknowledging that SMEs have a "*continuing requirement*" for bulk mail services, supported by the research noting that 43% of SMEs have none or little likelihood to switch away from post to more electronic communications such as e-mail for general correspondence. However, ComReg considers that this could change over time so that more SMEs could move to electronic communications.
- 42 ComReg notes An Post's submission that at least one bulk mail service should remain in the universal service specification. ComReg also notes An Post's submission that the 'pre-sort' requirement for the 'Delivery only' bulk mail service in the universal postal service specification is not required.

- 43 Having considered the submissions made, ComReg is now minded to keep the certain bulk mail services within the universal postal service specification. However, ComReg proposes to amend the specification of the universal postal service in order to prescribe minimum requirements to avail of the certain bulk mail services. ComReg considers that this approach will ensure that the services can be availed of by more postal service users, particularly SMEs.
- 44 The provision of a more detailed specification of the bulk mail services in the universal postal service was a recommendation made by Frontier Economics in 2016⁸ which found that minimum volume and auto-sort thresholds are barriers to mailers, particularly SMEs, using the bulk mail services in the universal postal service. Therefore, Frontier Economics recommended that consideration should therefore be given to amending the bulk mail specification in the universal postal service regulations to make these available to more postal service users.
- 45 The proposal to amend the bulk mail specification, is based *inter alia* on the following findings drawn from research ^{8 9} conducted on the use of bulk mail services by SMEs:
- 86% of SME bulk users reported that the average number of items in each of their bulk mailings were under 200 items;
 - 11% of SMEs send bulk mail with an average number of items between 200 and 1999;
 - 8% of SMEs reported outsourcing their mailings to a managed print service provider;
 - Approximately 60% of SMEs bunch their mail in order to reach volume thresholds for discounts.
- 46 Given the above, ComReg considers that there is merit in specifying a minimum volume threshold for the domestic bulk mail services in the universal postal service. ComReg considers that this approach will better meet the needs of postal service users, particularly SMEs, due to the lower minimum volume thresholds. ComReg considers that this will facilitate the achievement of the DCCAE strategic objective referenced above.

⁸Report by Frontier Economics 'Research on postal users' needs, published 18 November 2016 - https://www.comreg.ie/media/dlm_uploads/2016/12/16107.pdf

⁹ ComReg Document No. 18/66a – Report by Frontier Economics 'Research and recommendations on universal postal service specification'

2.3.2.1 Current domestic bulk mail universal postal services

- 47 The current universal postal service specification requires two domestic bulk mail services:
- (1) Next working day delivery
 - (2) Deferred delivery, with delivery within two working days
- 48 The current universal postal service specification does not prescribe minimum volume or auto-sort thresholds.
- 49 The current universal postal service specification does require presentation of such mail at Delivery Service Units/Offices (“DSU/DSO”) to ensure that SMEs do not have to travel too far a distance to present their bulk mail. However, in practice the USP has limited presentation to the 4 Mail Centres (“MC”) and 39 DSUs (whereas currently there is a total of 114 DSUs and 111 DSOs). The current specification requires bulk mail services for all “postal packets” (letters, large envelopes, packets, parcels) as defined by the Postal Act, but in practice the USP does not offer any bulk mail services for postal packets that weigh more than 1kg.

50 The current domestic bulk mail service provided by the USP to meet the universal postal service specification are set out in the tables below. Table A shows the “Deferred Delivery” services, Table B shows the “Delivery Only” services:

Table A: “Deferred Delivery” services

An Post’s bulk mail services in universal postal service	Delivery	Minimum volume in single posting	Minimum auto-sort	Presentation	What can be sent
Bulk A: Deferred Manual Processing before noon	D+2	200	0%	4 MC and 39 DSU	Packets 100g-1kg
Bulk B: Deferred Automated Processing before noon	D+2	200	85%	4 MC and 39 DSU	Letters and large envelopes 100g-500g
Bulk 6: Deferred Processing before noon	D+2	2000	85%	4 MC and 39 DSU	Letters and large envelopes 100g-500g
Bulk 7: Deferred Processing before noon	D+2	2000	0%	4 MC and 39 DSU	Letters and large envelopes 100g-500g and Packets 100g-1kg

Table B: “Delivery Only” services

An Post’s bulk mail services in universal postal service	Delivery	Minimum volume in single posting	Minimum Auto-sort	Presentation	What can be sent
Bulk 9: Pre-sorted (151 sorts) before 5:30pm	D+1	2000	0%	4 MC and 39 DSU	Letters and large envelopes 100g-500g

2.3.2.2 Proposed amendments to the specification of certain domestic bulk mail services in the universal postal service

- 51 For the reasons outlined above, ComReg proposes to now amend the specification of the universal postal service to detail the minimum requirements to avail of the certain bulk mail services in the universal postal service. ComReg considers that this will safeguard the interests of postal service users, particularly SMEs.
- 52 The proposed amendment to the specification takes account of the current bulk mail services provided by An Post. In particular amendments will be made to reflect the current service provision by An Post, namely maximum weight and presentation locations. ComReg is not aware of any issues with these and therefore it seems reasonable that this current service provision by An Post is meeting the needs of postal service users. However, ComReg would be interested in hearing views of interested parties in relation to this.

53 Therefore, ComReg's preliminary view is that it is appropriate to amend the Regulations to prescribe in further detail the minimum requirements to avail of the two domestic bulk mail services in the universal postal service as follows:

Domestic bulk mail in universal postal services	Delivery	Minimum volume in single posting	Minimum Auto-sort	Presentation	What can be sent
Deferred Delivery	D+2	200	85% letters and large envelopes / 0% packets	MCs and 39 DSU	Letters and large envelopes 100g-500g, Packets 100g-1kg
Delivery only	D+1	200	85% letters and large envelopes / 0% packets	MCs and 39 DSU	Letters and large envelopes 100g-500g, Packets 100g-1kg

54 The proposal above is based on current service provision by An Post so ComReg is confident that the USP can offer the above services. The only difference between the two services is that one is next day delivery, the other is deferred delivery over 2 days. ComReg anticipates that the Deferred Delivery service would be offered at a lower price, recognising the cost savings associated with deferring the delivery (in accordance with s.28 of the Postal Act).

55 For the avoidance of doubt, the proposed specification of the certain bulk mail services in the universal postal service would not mean that An Post:

- cannot offer other bulk mail services in the universal postal service that meet the requirements above, but have a volume / auto-sort requirement that is higher than the above minimum, once that minimum requirement is offered and available e.g. An Post can offer a Deferred Delivery in the universal postal service that has a minimum volume of 2,000 items, once a Deferred Delivery for a minimum volume of 200 items is offered and available.

- cannot continue to offer various different bulk mail services. These bulk mail services would be outside the universal postal service and not subject to regulatory oversight. For example, An Post could offer deferred delivery over 3 days, or 5 days, if postal service users are willing to accept such delays for a lower price reflective of the cost saving associated with the delayed delivery.

56 In the following chapter, the proposed draft amending regulations for this proposal is set out. Chapter 4 then sets out the draft RIA of the proposal to further detail the minimum requirements of the certain bulk mail services in the universal postal service.

Q. 2 Do you agree with the proposal to further detail the minimum requirements to avail of the certain domestic bulk mail services in the universal postal service? Please explain your response.

3 Draft Amending Regulations relating to certain domestic bulk mail services

STATUTORY INSTRUMENTS

S.I. No. of 2019

Communications Regulation (Universal Postal Service) (Amendment) Regulations 2019

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 16(9) of the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011) hereby makes the following regulations:

Citation

1. (1) These Regulations may be cited as the Communications Regulation (Universal Postal Service) (Amendment) Regulations 2019.

(2) These Regulations, the Communications Regulation (Universal Postal Service) (Amendment) Regulations 2018 and the Principal Regulations may be cited together as the Communications Regulation (Universal Postal Service) Regulations 2012 to 2019 and shall be construed together as one.

(3) These Regulations shall come into operation on [].

Interpretation

2. In these Regulations “Principal Regulations” means the Communications Regulation (Universal Postal Service) Regulations 2012 (S.I. No. 280 of 2012).

Amendment

3.(1) Regulation 2(1) of the Principal Regulations is amended by substituting for the definition of “postal packets deposited in bulk” the following text :

“means a minimum number of 200 letters, large envelopes, or packets up to 1kg in weight, capable of being processed, though not necessarily auto-sorted, by automated equipment,

deposited with a universal postal service provider at the same place and time, to be transported and distributed to the addressees as marked on each of the postal packets;”

(2) Regulation 2(.1) of the Principal Regulations is amended by substituting for the definition of “delivery only” the following text:

“means deposited at a delivery office for delivery within the State using the “D+n” formula”;

(3) Regulation 2(.1) of the Principal Regulations is amended by substituting for the definition of “delivery office” the following text:

“means a mail centre managed by the universal service provider for the purposes of processing postal packets and an office managed by the universal service provider for the purposes of processing postal packets immediately prior to the activity of delivery to the addressee and is limited to the following locations: Ballina, Bray, Carlow, Carrick-on-Shannon, Castlebar, Cavan, Clonmel, Cork City, Drogheda, Dundalk, Dungarvan, Ennis, Galway, Glenageary, Kilkenny, Killarney, Letterkenny, Lifford, Limerick, Longford, Mallow, Maynooth, Monaghan, Mullingar, Naas, Navan, Nenagh, Newbridge (Droichead Nua), Dublin 2 Delivery Service Unit (Ravensdale Road), Roscommon, Shannon, Sligo, Swords, Thurles, Tralee, Tuam, Tullamore, Waterford and Wexford. ”.

GIVEN under the official seal of the Commission for Communications Regulation,
2019

[], Commissioner

For and on behalf of the Commission for Communications Regulation

Q. 3 Do you have any comments on the draft amending Regulations to further detail the minimum requirements to avail of the certain domestic bulk mail services in the universal postal service? Please explain your response.

4 Draft Regulatory Impact Assessment: ComReg's preliminary views to further detail the certain domestic bulk mail services

- 57 A Regulatory Impact Assessment (“RIA”) is a structured approach to the identification and assessment of available regulatory options to meet the policy issue, including the likely impact of the regulatory options on different stakeholders. Based on this assessment, the RIA concludes with the choice of the best option to meet the policy issue. This best option should be the most effective and least burdensome regulatory option – it should be appropriate, effective, proportionate, and justified.
- 58 ComReg’s approach to the RIA is set out in the “Guidelines on ComReg's Approach to Regulatory Impact Assessment” published in August 2007¹⁰ and have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009 (“the Department’s RIA Guidelines”), adopted under the Government’s Better Regulation programme.
- 59 The guidelines set out, amongst other things, the circumstances in which ComReg considers that a RIA is appropriate. In summary, ComReg indicated that it would generally conduct a RIA in any process that might result in the imposition of a regulatory obligation, or the amendment of existing regulatory obligations to a significant degree, or which might otherwise significantly impact on any relevant market or on any stakeholders or consumers

Steps involved

- 60 In assessing the available regulatory options, ComReg’s approach to RIA follows five steps as follows:
- Step 1: describe the policy issue and identify the objectives
 - Step 2: identify and describe the regulatory options
 - Step 3: determine the impacts on stakeholders
 - Step 4: determine the impacts on competition
 - Step 5: assess the impacts and choose the best option

¹⁰ ComReg document 07/56a

Step 1: Describe the policy issue and identify the objectives

- 61 The Postal Act requires ComReg *"for the purposes of ensuring that the universal postal service develops in responses to the technical, economic, and social environment and to the reasonable needs of postal service users ... following a public consultation process, [to] make regulations specifying the services to be provided by a universal postal service provider relating to the provision of a universal postal service."* In 2012, following a public consultation, ComReg made the Communications Regulation (Universal Postal Service) Regulations 2012 (S.I. 280 of 2012) specifying the universal postal service.
- 62 Given the passage of time and developments in the postal sector since 2012, it is appropriate to revisit the specification of the universal postal service for the purposes of ensuring that the universal postal service develops as required by section 16(9) and this was noted as Goal 2 in the Postal Strategy Statement ("PSS") 2018 - 2020.
- 63 Consequently, the policy issue and the objective is to ensure that the specification of the universal postal service that the universal postal service provider ("USP"), must provide continues to develop in response to the technical, economics and social environment, and to the reasonable needs of postal service users.

Step 2: Identify and describe the regulatory options

- 64 The inclusion of a service within the universal postal service, among other things, is intended to safeguard the provision of that service at an affordable price to all postal service users in a transparent and non-discriminatory way. Without this protection, these services may not be offered commercially, or offered only to a sub-set of the population where it is most profitable to do so.
- 65 However, in line with ComReg's statutory duties, a balance must be struck between the protection that the universal postal service affords postal service users (both senders and receivers), and any potentially detrimental impact on the development of competition that could result from restricting commercial freedom as universal postal services are subject to regulatory oversight on price, quality, access, and terms and conditions.
- 66 In identifying the regulatory options, ComReg has considered the changes to the reasonable needs of postal service users and to the wider technical, economic and social environment changes since 2012, noting that these two considerations are very much interlinked.

67 As a result:

67.1 Option 1 is to maintain the universal postal service specification of the certain domestic bulk mail services as that set in the Regulations.

67.2 Option 2 is to further detail the minimum requirements to avail of the certain domestic bulk mail services in the universal postal service: The proposal is being made following consideration of:

- Submissions to Consultation 18/66, particularly submissions by An Post regarding adverse effects on postal service users that would arise without the safeguards afforded by a universal postal service specification.
- The current bulk mail services offered by An Post to meet the universal postal service specification.
- Relevant research published by ComReg⁸.

Steps 3 & 4 & 5: Determine the impacts on stakeholders and competition, assess the impacts and choose the best option

68 Option 1 maintain the status quo. There would be no additional impact on stakeholders and competition.

69 Option 2 would have a number of impacts:

- it continues to ensure a minimum set of domestic bulk mail services, that would otherwise not be provided according to the submission by An Post, to meet the needs of postal customers, particularly SMEs;
- it specifies minimum volume and auto-sort requirements on the domestic bulk mail services in the universal postal service to the benefit of SMEs, noting that previous research recommended that this be done to remove barriers to the use by SMEs of domestic bulk mail services⁸;
- it specifies the presentation locations and maximum weights as per An Post's current provision, noting that ComReg is not aware of any issues with these so that it appears that these requirements are meeting the needs of postal service users;
- the proposal should have minimal impact on competition, submissions by An Post and Tico Mail Works have noted the very limited competition in bulk mail services and in particular ComReg notes that:

- the proposed detailed specification considers the current provision of bulk mail services by An Post, namely Bulk A and Bulk B¹¹
- research has found very limited outsourcing by SMEs of their mailings to a managed print service providers.

70 The options are assessed as follows for impact on stakeholders, namely the USP and postal service users, and on competition as follows:

Options	Impact on the USP (An Post)	Impact on postal service users	Impact on competition
Option 1: Leave specification of domestic bulk mail services as is	Maintains the status quo.	Maintains status quo but SMEs will continue to face barriers to use of bulk mail services in the universal postal service given An Post's minimum volume requirements.	Maintains status quo, no effect on competition according to submissions by An Post and Tico Mail Works.

¹¹ http://www.anpost.ie/AnPost/Downloads/050318/2018_BulkMail200.pdf

Options	Impact on the USP (An Post)	Impact on postal service users	Impact on competition
<p>Option 2: Further detail the minimum requirements to avail of the certain domestic bulk mail services in the universal postal service</p>	<p>The further detail of the minimum requirements matches current provision of bulk mail service (Bulk A and B) by An Post so should cause no issues.</p>	<p>Should enable more SMEs to avail of bulk mail services given lower minimum volume thresholds.</p>	<p>Given SMEs currently make limited use of bulk mail services and limited use of outsourcing of postal services, the detailed specification should have minimal impact on existing competition. If there is increased use of bulk mail services by SMEs, this may increase competitive dynamics in the postal sector, noting in particular that 43% of SMEs are not likely to move general correspondence to electronic substitutes¹² so such communication should remain with post.</p>

Q. 4 Do you have any comments on the draft RIA for this proposal to further detail the minimum requirements to avail of the certain domestic bulk mail services in the universal postal service? Please explain your response.

¹² Figure 5, Consultation 18/66 – acknowledged by An Post in its submission to the consultation

5 Next Steps

- 71 The purpose of the further consultation is to allow ComReg to consider the views of interested parties in the context of reaching a decision on amending the specification of the certain bulk mail services in the universal postal service.
- 72 All responses to this further consultation will be considered and account will be taken of the merits of views expressed and the supporting evidence provided in deciding whether and how to amend the specification for the certain bulk mail services in the universal postal service specification. It should, however, be noted that the process is not equivalent to a voting exercise on proposals and ComReg will exercise its judgement having considered the merits of the views expressed and any supporting evidence provided.
- 73 Having considered responses to this further consultation, together with relevant evidence, it is planned that a final decision on the proposed amendment to the specification of the certain bulk mail services in the universal postal service will be made by the end of Quarter 1, 2019.

Questions

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- Q. 1 Do you agree with the proposal to keep the international bulk mail service as is in the universal postal service specification? Please explain your response. ... 12
- Q. 2 Do you agree with the proposal to further detail the minimum requirements to avail of the certain domestic bulk mail services in the universal postal service? Please explain your response. 19
- Q. 3 Do you have any comments on the draft amending Regulations to further detail the minimum requirements to avail of the certain domestic bulk mail services in the universal postal service? Please explain your response. 21
- Q. 4 Do you have any comments on the draft RIA for this proposal to further detail the minimum requirements to avail of the certain domestic bulk mail services in the universal postal service? Please explain your response. 26