Commission for
Communications Regulation

How to assess and finance any unfair financial burden on the universal postal service provider

Submissions to Consultation 13/83

Submissions to Consultation

Reference: ComReg 13/116s

Date: 4 December 2013

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Submissions Received from Respondents

Consultation:	13/83
Response to Consultation:	13/116

Content

Section

1: An Post

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4 October 2013

Reference: Consultation 13/83

Dear Mr. Brogan

Please find enclosed the An Post response to the above consultation.

Yours sincerely

Brian Fay

Brian Fay
Head of Regulatory Affairs

Consultation on how to assess and finance any unfair financial burden on the universal postal service provider

COMREG DOCUMENT 13/83

An Post Response
4 October 2013

Contents

1. Introduction

An Post welcomes this opportunity to contribute to this consultation paper on:

- how ComReg will determine whether any net cost request represents an "*unfair financial burden*"; and
- how it will apportion that net cost among providers of postal services within the scope of the universal postal service.

ComReg quite rightly observes that no definition of "*unfair financial burden*" is to be found in Communications Regulation (Postal Services) Act 2011 ("the Act") or in the Annex to Postal Directive 2008/06/EC. ComReg proposes to apply a three criteria test in making this assessment. An Post requires some clarifications to this approach and these issues are set out in the response to Question 1 below.

An Post has, however, serious concerns with ComReg's preliminary views on how to finance any unfair financial burden.

Firstly, ComReg must satisfy itself that all operators obliged by the nature of their activities actually contribute to the fund intended to compensate for any unfair financial burden. There may be operators supplying services which are "*within the scope of the universal service*" but, in spite of ComReg's Guidelines concerning postal services within the scope of the universal service, operators may be able to avoid having their services classified as such due to vague service descriptions. An Post therefore urges ComReg to put in place appropriate systems to ensure that postal operators, who should be making declarations under Section 38 of the Act, are actually in compliance with this obligation.

Secondly, the proposal to apportion the net cost on a pro-rata basis using only market share is unfair on An Post as the Universal Service Provider ('USP'). This is because other postal operators may decide to only service profitable routes and therefore their profitability may be significantly higher relative to the profitability of the USP who is obliged to service all routes regardless of profitability. In spite of this, ComReg's preliminary view is that contributions should be based on market share, ignoring the difference in profitability of the USP relative to that of other operators. One of the reasons An Post will have some market share is because it is likely that no other operator will want to service certain routes. An Post will not only be obliged to provide that unprofitable service but will, based on ComReg's preliminary views, also be penalised in calculating who shoulders the share of the net cost burden. In An Post's view, this is not an equitable solution.

In addition, a decision to retain in the draft Regulations a contribution cap on smaller operators or new entrants is not required and could have unintended consequences. For example, it could act as a disincentive for businesses to grow and develop so as to remain below the revenue or market share threshold obliging them to contribute. This could lead to a very fragmented market. In addition, a multitude of small players would greatly complicate the task of regulatory oversight and not be advantageous to the customer. This will inevitably lead to a shortfall in the funding of the Universal Service Obligation (the 'USO'). The Regulatory Impact Assessment ('RIA') does not address the impact of this. An Post is also concerned by the lack of definition provided for the terms '*new entrants'* and '*smaller operators'*.

In conclusion, An Post is of the view that as a result of its large market share for universal services, most of the net USO cost will have to be borne from its own resources. However, input to the sharing mechanism from other operators is important to ensure a level playing pitch. This is critical so as to stimulate and encourage an orderly development of the postal market that is regulated in a fully transparent fashion.

2. Response to consultation questions

Q. 1 Do you agree or disagree with ComReg's preliminary views on how to assess any unfair financial burden on the USP? Please explain your response.

An Post notes that there is no definition of the term *'unfair financial burden'* set out in either the Postal Directive or the Act. An Post requires clarification in relation to some aspects of ComReg's preliminary views on how to assess an '*unfair financial burden'*:

Paragraphs 13 and 32 - The terms '*material*' and '*material impact'*, which are crucial to the proposed "Three Criterion Test", are not defined in the document. An Post believes that some guidance in relation to these terms is required. An Post suggests that any cost which is greater than the administrative costs of a sharing mechanism is material.

Paragraph 38 – An Post notes in relation to Criterion 2 that the profitability assessment should be *"carried out at the level of universal services as a whole".* This is confined to the profitability of the USO and does not extend to other activities such as non-USO mails, retail or other An Post Group activities.

Paragraph 40 – An Post agrees that there is an important relationship between an unfair financial burden assessment and any price control determination. ComReg states that *"a price control when implemented should cover the efficient cost of providing the universal postal service, leaving no net cost for the USP."* ComReg is reminded that under Section 30 (3) ComReg must have regard to the tariff principles (including cost orientation) and is required to ensure that a price cap provides incentives for efficient universal service provision. This is different to what ComReg has stated.

In addition, there are circumstances, other than the two listed, which may result in a net cost of the USO arising. For example, if ComReg was of the opinion that a price for one of the universal services was not affordable and issued a direction to reduce the price below the cost of providing the service[1], this scenario would result in a net cost arising.

Paragraph 41 – Criterion 3 is not precisely or clearly stated. In particular,

- How will '*significant competitive disadvantage'* be assessed?
- Criterion 3 appears to contradict Criterion 1.

Q. 2 Do you agree or disagree with ComReg's preliminary views on how to finance any unfair financial burden on the USP? Please explain your response.

An Post disagrees with ComReg's preliminary views. An Post would make the following points in relation to ComReg's preliminary views:

Paragraph 24 - ComReg declares that only two other postal operators have notified it of providing, or intending to provide, postal services within the scope of the universal postal service. In spite of ComReg's issued Guidelines concerning postal services "*within the scope of the universal service*"[2], An Post is concerned that this self assessment regime has the potential to be circumvented with loose 'ad hoc' product definitions. Consequently an objective system of oversight backed by appropriate enforcement measures must be put in place by ComReg. Otherwise some operators may escape liability from their statutory obligations to make a contribution.

Paragraphs 54 and 55 – An Post disagrees with ComReg's proposal to use a pro-rata contribution based on market share as set out to apportion the cost of the USO. An Post's view is based on the fact that, while An Post as the USP will provide services to all areas of the country, other postal service providers are free to choose what services they provide (or what routes they cover). Any rational business will only choose to service the profitable routes. Therefore the profitability of the USP relative to that of other providers is likely to be different. An Post may have some market share which no other operator will want and, if ComReg's preliminary views are implemented, that market share will then count against An Post in apportioning the unfair financial burden. Therefore, the USP will not only service the unprofitable routes, but will also, under ComReg's preliminary views, be penalised in the calculation to apportion the net cost because of the fact that it is servicing the unprofitable routes. An Post urges ComReg to examine this again as it does not seem to be an equitable solution.

[1] Under Section 28(5) of the 2011 Act
[2] ComReg document 12/81a

Paragraphs 57-61 – An argument is advanced for some measure of protection of '*smaller*' providers and '*new entrants'*. ComReg is quite correct in its observation that the Act does not make provision for the exclusion of any operators. Nowhere is the term '*smaller'* defined which leaves it potentially open to ComReg to provide protection to all operators on the grounds that they are small compared to An Post as the USP. Small operators could also deliberately choose to remain small and thus avoid a potential liability to contribute. This could lead to a market fragmentation which is neither in the customer's best interest nor ComReg's interest in terms of oversight. Equally, the term '*new entrants'* is devoid of a precise meaning. The real possibility is that a subsidiary either of an existing cash rich business located in Ireland or of a foreign public postal operator could seek entry to the postal market here. An Post does not believe that such a '*new entrant'* should be favourably treated under the Regulations. Compounding the issue is the proposal that An Post then make up this shortfall.

Paragraph 61 – ComReg proposes to employ two criteria to determine the level at which contributions should be capped. These are an '*ability to pay'* test and the likely impact on competition. An Post does not believe that any protection for these operators is required. For example, no mention is made in the analysis of new or small operators selectively servicing only the more lucrative routes which may impact on relative profitability.

Paragraph 64 – An Post agrees with ComReg's proposal that the USP should not be required to send its contribution to ComReg to fund any unfair financial burden simply to have that contribution returned to it in due course.

Q. 3 Do you have any views on this draft Regulatory Impact Assessment and are there other factors ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any factors that should be considered by ComReg.

An Post would make the following points in relation to the RIA:

Paragraph 78 – As stated under Question 2, An Post disagrees with ComReg's proposal for a pro rata contribution mechanism based only on market share. The difference in profitability between the USP and that of other operators must form part of the mechanism in apportioning any net cost.

Paragraph 72 – ComReg attaches importance to ensuring that any sharing mechanism does not have an '*adverse effect'* on competition. In An Post's opinion, ComReg's obligation under Section 36 to establish a sharing mechanism of the Act cannot be diluted in any way by its secondary objective to promote competition under Section 10. There is a qualification on the aforesaid objective under Section 10 to promote competition which is subject to the requirement *"to promote, the development of the postal sector and, <u>in particular</u>, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal users".* The clear intention is that the needs of the USP should assume priority over the promotion of competition.

Paragraphs 17 and 81 - ComReg anticipate that measures aimed at the protection of some operators will result in a shortfall in the net USO cost. There is nothing in the Act which would impose an obligation on An Post to make up any '*shortfall*' in the net USO cost. Section 36(1) states that ComReg *"shall apportion the net cost among providers within the scope of the universal postal service".* If it was the legislators' express objective to cater for the contingency of a deficit in the funding arrangement they would have made the necessary provision in an explicit manner.

Furthermore An Post sees no justification for the assertion that any shortfall *"would be small relative to the contribution to any unfair financial burden that An Post would be making".* It would be totally premature for ComReg to arrive at such a conclusion.

Q. 4 Do you have any comments on the draft Regulations? Please explain your response and provide details of any amendments that should be considered by ComReg.

An Post strongly urges ComReg to re-consider its proposals in relation to a pro-rata apportionment based on market share.

An Post strongly believes that the references to a contribution cap and its obligation to make good any 'shortfall' should be removed from the draft Regulations for the reasons outlined in its response under Question 3.

Please refer to Section 4 below which sets out An Post's proposal for a revised wording of the draft Regulations.

3. Conclusions

An Post believes that the opening up of the postal market to greater competition should be accomplished in a manner that is not at the expense of the long term viability and sustainability of the USO. This fundamental principle must be reflected in the design of the sharing mechanism for the net USO costs.

In a market characterised by low entry barriers and virtually no sunk costs, as is found in many capital intensive industries, An Post sees no legitimate grounds for preferential treatment by ComReg of some operators under the proposed contribution system for sharing the net cost of the USO.

4. Proposed revised draft Regulations

S.I. No. [] of 2013

COMMUNICATIONS REGULATION (FINANCING OF PROVISION OF UNIVERSAL POSTAL SERVICE) REGULATIONS 2013

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 36(2) of the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011), hereby makes the following Regulations:

Citation

1. These Regulations may be cited as the Communications Regulation (Financing of Provision of Universal Postal Service) Regulations 2013.

Interpretation / Definitions

2. (1) In these Regulations, unless the context otherwise requires:

"Act of 2002" means the Communications Regulation Act 2002 (No. 20 of 2002);
"Act of 2011" means the Communications Regulation (Postal Services) Act 2011 (No.21 of 2011);
"administrative costs" means any costs associated with the establishment and operation of a sharing mechanism
"applicable undertaking" means a postal service provider providing a postal service within the scope of the universal postal service;
"Commission" means the Commission for Communications Regulation;
~~"contribution cap" means, in relation to an applicable undertaking, a cap on the contribution to the unfair financial burden in order to promote the development of the postal sector for the provision of postal services within the scope of universal postal service and to promote the interests of postal service users availing of postal services within the scope of universal postal service;~~
"fund" has the meaning set out in section 36 of the Act of 2011;
"net cost" has the meaning set out in section 35 of the Act of 2011 and shall be calculated in accordance with ComReg Decision D09/13 dated 25 July 2013;
"postal service" has the meaning set out in section 6 of the Act of 2011;
"postal service provider" has the meaning set out in section 6 of the Act of 2011;
"postal service user" has the meaning set out in section 6 of the Act of 2011;
"postal service within the scope of the universal service" has the meaning set out in section 37 of Act of 2011;
"relevant financial year" means, in relation to an applicable undertaking, the financial year of the applicable undertaking;
"relevant turnover" means, in relation to an applicable undertaking, the gross revenue, excluding value added tax, paid or payable, of the applicable undertaking in respect of the provision of postal services within the scope of universal postal service in its relevant financial year;
"sharing mechanism" has the meaning set out in section 36 of the Act of 2011;
"unfair financial burden" has the meaning set out in section 36 of the Act of 2011 and ComReg D[]/13 dated [];
"universal postal service" has the meaning set out in section 6 of the Act of 2011;

"universal postal service provider" has the meaning set out in section 6 of the Act of 2011.
(2) In these Regulations:
(a) a reference to an enactment or regulation shall be construed as a reference to the enactment or regulation as amended or extended by or under any subsequent enactment or regulation;
(b) a reference to a Regulation is to a Regulation of these Regulations, unless it is indicated that a reference to some other enactment is intended; and
(c) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.
(3) A word or expression that is used in these Regulations and that is also used in the Act of 2011 has, unless the context otherwise requires, the same meaning in these Regulations that it has in that Act.
(4) A word or expression that is used in these Regulations and that is also used in the Act of 2002 has, unless the context otherwise requires, the same meaning in these Regulations that it has in that Act.
(5) The Interpretation Act 2005 (No. 23 of 2005) applies to these Regulations.

Applicability

3. These Regulations apply to applicable undertakings following any determination by the Commission under section 35(4)(b) of the Act of 2011 that the net cost of provision of the universal postal service represents an unfair financial burden on the universal postal service provider concerned.

Assessment

4. The Commission shall assess the contributions of providers of postal services within the scope of the universal service for the purposes of meeting the unfair financial burden referred to in regulation 3 on the basis of the statements of relevant turnover provided by applicable undertakings to the Commission as required by regulation 6(1) of the Communications Regulation Act 2002 (Section 30) Postal Levy Order 2013 (S.I. No. 181 of 2013) and this regulation.

Apportionment

5. The Commission shall apportion the verified net cost determined to be an unfair financial burden among applicable undertakings as follows:

~~(a)~~ an apportionment amongst applicable undertakings based on the profitability and relative revenue-based market shares of applicable undertakings determined from the statements of relevant turnover from applicable undertakings under regulation 4. ~~subject to any contribution cap determined by the Commission to apply to any applicable undertaking in accordance with this regulation;~~
~~(b) the Commission shall determine whether a contribution cap is to apply to each applicable undertaking other than the universal postal service provider having regard to:~~
~~(i) the impact of apportioning the net cost on the basis of paragraph (a) on the sustainability and profitability of each applicable undertaking other than the universal postal service provider; and~~

~~(ii) the impact of apportioning the net cost on the basis of paragraph (a) on the development of competition in the provision of postal services within the scope of universal postal service; and~~
~~(c) if a contribution cap is determined by the Commission to apply to an applicable undertaking other than the universal postal service provider, the universal postal service provider shall cover any shortfall between the contribution that would have applied to that applicable undertaking based on paragraph (a), and the actual contribution to be made by that applicable undertaking under the contribution cap determined by the Commission to apply to that applicable undertaking under paragraph (b).~~

Collection

6. (1) If the Commission determines that the total contributions from applicable undertakings other than the universal postal service provider under regulation 5 would be less than the cost of establishing and maintaining the sharing mechanism, then no sharing mechanism will be established and the universal postal service provider will fund the unfair financial burden in full, and the Commission shall make this publicly known by way of an information notice.

(2) If subsection (1) does not apply, each applicable undertaking, except for the universal postal service provider, shall pay to the Commission its contribution to the fund as determined by the Commission under regulation 5.

(3) The Commission shall inform each applicable undertaking in writing of its contribution as specified in subsection (2) and contributions shall be paid to the Commission within 30 days by way of banker's draft or such other means and on such other terms, if any, as the Commission may decide.

(4) A request by the Commission to an applicable undertaking under this regulation may be delivered or sent by post to the applicable undertaking at the last address notified to the Commission of the applicable undertaking.

(5) In accordance with section 36(4) of the Act of 2011, the sharing mechanism and fund can be administered by the Commission or by any person appointed on such terms and conditions as the Commission determines, possessing, in the opinion of the Commission, the requisite degree of independence from a universal postal service provider and the applicable undertakings and who shall be under the supervision of the Commission.

(6) In accordance with section 36(6) of the Act of 2011, any amount payable by way of a contribution pursuant to these Regulations that remains unpaid by an applicable undertaking may be recovered by the Commission as a simple contract debt in any court of competent jurisdiction and any such amount shall include interest at the rate for the time being standing specified in section 26 of the Debtors (Ireland) Act 1840, on the amount or part thereof remaining unpaid in respect of the period between the date when the amount or part thereof fell due and the date of payment of such amount or part.

Distribution to the universal postal service provider

7. (1) All contributions from applicable undertakings other than the universal service provider collected by the Commission pursuant to these Regulations shall be distributed by the Commission to the universal postal service provider within 60 days of receipt of the contributions from such applicable undertakings.

(2) All distributions to the universal postal service provider, including the notional distribution by the universal postal service provider to itself, will be recorded by ComReg and published in its annual report.

GIVEN under the Official Seal of the Commission for Communications Regulation this [] 2013

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[],
Commissioner.
on behalf of the Commission for Communications Regulation

2: Communications Workers' Union

SUBMISSION RE:

ComReg 13/83

September 2013

submitted by

Ian McArdle
Head of Regulatory Affairs

Communications Workers' Union
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Communications Workers' Union Submission:
ComReg 13/83

Introduction

The Communications Workers' Union (hereinafter referred to as "CWU" or the "Union") represents approximately 16,000 workers employed in the communications sector in the Republic of Ireland, of which over half are employed in the Postal & Courier Sectors. The CWU represents staff working in the following postal and courier companies:

- An Post
- UPS
- DPD
- PrintPost
- Data Ireland
- IO Systems

As the trade union representing a significant number of workers in the postal & courier markets, the CWU welcomes this opportunity to respond to the Consultation on how to assess and finance any unfair burden on the universal service provider (hereinafter referred to as the "Consultation") issued by the Commission for Communications Regulation (hereinafter referred to as "ComReg" or the "Regulator").

In considering the issues raised in the Consultation it is vitally important to begin by outlining the functions and statutory objectives of ComReg, as these should form the basis and context for all further considerations on the questions posed in the Consultation.

ComReg's revised statutory function, as per Section 9 of the 2011 Act is *"to ensure the provision of the Universal Postal Service that meets the reasonable needs of postal service users"*. In conjunction with this, the statutory objectives that ComReg must meet in exercising this function 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 interest of postal service users within the Community, and

(iii) subject to sub-paragraph (i), to facilitate the development of competition and innovation in the market for postal service provision"

Furthermore, in relation to ComReg's objectives, Section 10 of the 2011 Act states that:

"the Commission shall take all reasonable measures aimed at achieving those objectives including -

(a) ensuring that postal service users may avail of a universal postal service that meets their reasonable needs

(b) insofar as the facilitation of competition and innovation is concerned, ensuring that postal service users derive maximum benefit in terms of choice, price and quality"

These sections of the 2011 Act clearly set the context for any further debate or discussion on questions raised in the Consultation, notwithstanding the specific sections of the Act which might be relevant to this consultation.

These sections clearly set out the paramount importance of the provision of a universal postal service at an affordable price for all users and, in regulating the marketplace, ComReg must adhere to this objective at all times. To do otherwise would be in breach of its statutory function and objectives and in contravention of the 2011 Act. Therefore, any course of action that might have an adverse effect on An Post's ability to provide, fund and maintain a universal postal service must be considered as contrary to these functions and objectives and in contravention of the 2011 Act. It is in this context that this Consultation must be considered.

This Consultation is primarily concerned with the assessment and financing of any unfair financial burden on the universal service provider which in this case is An Post. Accordingly the Consultation outlines ComReg's preliminary views on:

1. How ComReg will determine whether any net cost request represents an unfair financial burden on the USP; and

2. If ComReg should determine that the net cost of provision of a universal postal service does represent an unfair financial burden on the USP concerned, how it will apportion that net cost among providers of postal services within the scope the universal postal services. For completeness, a set of draft Regulations, as required by the 2011 Act, are also provided.

Interestingly the Consultation does not address a particular scenario which could possibly and will probably arise. It is unclear what will happen if it proves that the establishment of a sharing mechanism or fund is determined to be impractical due to the lack of other operators providing postal services within the scope of the universal postal service. Put simply, what happens if there are no postal operators to contribute to a fund but the cost of providing the universal service is considered a net cost on the universal service provider? In these circumstances it is unclear how the universal service will be funded.

An Post has indicated that the universal service cost the company over €60m in 2012. The Consultation confirms that there is only one company currently providing a service in the universal service area. The question of how the USO will be funded in the absence of a sharing mechanism is a fair and legitimate one which has been ignored by this Consultation.

The only funding option available in the Act is the sharing mechanism and if it is the case that this does not provide adequate, or indeed any funding then the only other option is that An Post self funds the USO. This is only a realistic option if an appropriate pricing regime is introduced.

In a previous ComReg consultation it was noted that, *"A further significant decline in An Post's Mail Volumes, absent any commensurate reduction in its costs, would significantly increase An Post's costs per unit, thereby possibly placing the financial viability of the Universal Postal Service provider at risk"*.

In circumstances where; volumes are declining and per unit costs are rising; where the company is aggressively pursuing a cost reduction programme; where the financial loss on USO services has run to over €60m; where Ireland has the second lowest stamp price in Europe; where the company is viewed internationally as one of the most efficient operators in the EU and in a country where the USO is vital public service the CWU is strongly of the view that in the absence of a functioning sharing mechanism that the Regulator must introduce an adequate pricing mechanism. It is vital that ComReg takes steps to address this issue, to do otherwise would be in conflict with the statutory obligations placed on it by the Act.

<u>Q. 1 Do you agree or disagree with ComReg's preliminary views on how to assess any unfair financial burden on the USP? Please explain your response.</u>
<u>Q. 2 Do you agree or disagree with ComReg's preliminary views on how to finance any unfair financial burden on the USP? Please explain your response.</u>

The CWU response will consider both of these questions together.

The CWU has a number of issues with the preliminary views in relation to the assessment of the unfair financial burden. ComReg proposes that it will apply a three criteria test to establish whether the net cost represents an unfair burden. The CWU is concerned that the cumulative nature of the tests will mean that the second and third criteria, which examine the impact of the net cost on the profitability and competitiveness of the USP, will not be given any consideration.

It seems from the views expressed by ComReg (Section 2.1) that the second and third criteria will only be used if the first test on the absolute net cost of the USO is passed and the nature of this test is very concerning.

Section 2.2 sets out ComReg's preliminary views *'on the form and operation of a possible sharing mechanism'*. ComReg proposes to assess whether contributions from other postal service providers, excluding An Post as the USP, would be *'greater than the administrative costs of establishing and implementing'* a sharing mechanism. If these contributions are less than the cost of collecting and distributing the contributions then the sharing mechanism will not be established. In this case An Post would be expected to fund any unfair burden in its entirety.

It would appear, based on the process outlined in section 4.1 which details the 'Three Criteria Test', that failure to establish *'whether this net cost is material compared to the potential administrative costs of establishing and implementing a sharing mechanism'* will mean the two subsequent criteria tests will not be applied.

From the Frontier report:
It is also important that the second and third criteria should only be applied if it is found that the positive net cost is material compared to the potential administrative costs associated with any sharing mechanism.

The CWU is very much opposed to this approach as the subsequent criteria tests could provide useful information on the unfair burden that the USO might represent. To ignore the impact of the net cost on the profitability and competitiveness of the USP because a sharing mechanism has not been established would be extremely short sighted. The CWU proposes that the three criteria be applied in full.

In particular the second test *'Impact of the net cost on the profitability of the USP´* is very important. The estimated cost of the universal service obligation is €60m. An Post announced an operating loss for the first time in ten years of €17.5m for 2012 due in no small part to the funding of the USO. In a context where core mail volumes are declining, electronic substitution is increasing (and being promoted by ComReg) and where there is still significant uncertainty in the general business environment, An Post described this burden at the time as *'unsustainable'*.

In circumstances where there is only one other operator in the universal service area at present besides An Post it is unlikely that a sharing mechanism will be established which begs the question; how will the USO be funded?

An Post is already doing all that it can in terms of reducing costs and growing/diversifying the business. A practical view of the situation would indicate that an adequate pricing model is needed to continue to deliver this vital public service. CWU notes ComReg's reference to the relationship between an unfair financial burden and price controls. (Section 4.1) CWU notes that ComReg observes that there should *'no net cost for the USP'*.

CWU welcomes this view and would encourage the regulator to ensure that this approach is adopted in the upcoming price control consultation process.

Furthermore the CWU is completely opposed to the idea that An Post would be expected to *‘cover any shortfall in the contributions to the unfair financial burden fund’* where the contributions from other, smaller operators are capped in the interest of competition. (Section 2.2)

This would amount to An Post funding the competition, as well as the regulator, the universal service obligation and the sharing mechanism all while delivering a vital public service. The idea that postal users, who ComReg are duty bound to protect, could find themselves funding other postal operators calls into question the very raison d’être of the regulator. One is always wary of competition just for the sake of it in a regulated market but this appears to go beyond even that. It is the very opposite of free market competition.

It is important to note that in Section 9 of the Act the *‘the development of competition and innovation in the market’* is subject to 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.’* In simple terms the development of competition should not be and cannot be to the detriment of the availability of a universal postal service at an affordable price. Expecting the USP to carry the costs of its competitors as proposed is in clear contravention of this.

The CWU would agree with ComReg that as a point of principle all postal service providers, including new entrants, should make contributions to the net cost if it is found to be an unfair burden.

It is interesting to note that the consultation paper outlines the costs that will be considered in the establishment of the sharing mechanism:

1. the establishment costs of a sharing mechanism
2. the on-going administrative costs

However there are no estimates provided for what these costs might be which would have been helpful in allowing a fuller response to the consultation.

In addition to this, some of the terminology used is not clearly defined. ComReg might accept that there is a direct net cost to the USP of providing the universal postal service but it must have a *‘material effect’*. It is not clear what ‘material’ means in this context.

Q. 3 Do you have any views on this draft Regulatory Impact Assessment and are there other factors ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any factors that should be considered by ComReg.

Q. 4 Do you have any comments on the draft Regulations? Please explain your response and provide details of any amendments that should be considered by ComReg.

Any concerns the CWU has in relation to these questions have already been covered above. However the CWU does reject the definition applied to "contribution cap" in the draft regulations. It is not appropriate that this is defined as being '*in order to promote the development of postal services within the scope of the universal postal service and to promote the interests of postal service users.'* Not only does this definition go beyond any reasonable meaning of "contribution cap" it represents a view that the CWU utterly rejects. As outlined above, the application of a cap in circumstances where An Post is expected to make up any shortfall in the funding of the unfair burden is unacceptable and anti-competitive.

3: DX Ireland

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03 October 2013

REFERENCE: **ComReg Consultation 13/83 – Assessment and Financing of any Unfair Financial Burden on the Universal Postal Service Provider**

Dear Mr Brogan,

Thank you for the opportunity to contribute to ComReg's thinking about the methods to be applied to the assessment and financing of any unfair financial burden on the universal postal service provider.

DX Ireland has two points to share with ComReg and the primary point relates to the fairness of any universal service support levy on any postal operator at all.

DX Ireland believes that the purpose of a universal service support levy is to ensure the provision of the universal service in the face of competition from non-universal postal services that undermines the capability of the universal service provider to provide that service. In such a situation, it seems reasonable to apply a levy to services that are within the scope of the universal, including such services provided by the universal service provider. However, the main factor currently driving declining mail volumes and thereby potentially damaging the universal service is electronic substitution and yet electronic media are not subject to a levy that supports the universal postal service. It would therefore be unfair to apply a levy on postal operators when the damage has been caused by entirely different media.

A simple theoretical example makes the point clearly. Imagine that An Post loses 50% of its universal service revenue to electronic substitution and 2% of its revenue to competition from services within the scope of the universal service: 1% to its own services and 1% to competitor services. If the levy is based solely on postal service revenues then An Post would pay 50% of the levy and other operators the remaining 50%. If the levy included electronic services then An Post and the other operators would only pay about 1.92% each.

This means that any levy on postal operators must be limited to the amount of any net cost that is directly attributable to the effects of competition from their services. If this is not sufficient to make up the entire net cost, the shortfall needs to be made up using another method, including Government support. ComReg must recognise this point explicitly in its decision about the universal service support mechanism.

A secondary point that we should like to make relates to the proposed contribution cap for smaller postal service providers. Whilst we welcome the principles behind this proposal, we would like to suggest to ComReg that it is necessary to provide some guidance about the likely level of the cap in order to remove risk from smaller operators. We also believe that a minimum threshold is needed in order to avoid uneconomic administrative expenditure.

Yours sincerely,

Kevin Galligan
Regional Director, Ireland

4: Nightline Logistics Group

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ALSO BY EMAIL: marketframeworkconsult@comreg.ie

4 October 2013

Ref: Consultation on how to assess and finance and any unfair financial burden on the universal service provider (ComReg 13/83)

Dear Stephen,

Nightline Logistics Group is pleased to respond to the above Consultation, having previously responded to your document 'Consultation on ComReg's draft determination on the form and manner of any net cost request by the universal postal service provider under section 35 of the 2011 Act (document 13/48 Consultation and Draft Determination)' and having reviewed your subsequent decision 'Response to Consultation and ComReg's determination on the form and manner of any net cost request by the universal service provider under Section 35 of the 2011 Act (document 13/69 and Decision D9/13)' .

We have studied these and the accompanying report by Frontier Economics with interest. We also note your 'Response to Consultation and Opinion on scope and form of proposed price control (document 13/82 and Decision 13/13)' and Frontier's report in this regard.

<u>We now answer the questions in turn as posed:</u>

Q. 1 Do you agree or disagree with ComReg's preliminary views on how to assess any unfair financial burden on the USP? Please explain your response

We agree with the three criteria test.

However, only ComReg, through the Regulatory Accounts, can determine that burden, or its fairness or otherwise.

In answering this we point you to our responses to ComReg 12/38 and 13/48 which provide a detailed analysis of what we consider to be acceptable. We would like these to be further taken into account, along with this response. This clearly shows that WiK, Copenhagen Economics, and others have proposed that no shortfall should be supplemented. It seems clear that the VAT, brand and ubiquity advantages outweigh any loss. However, all studies mark a need for efficiency, and indeed you have recognised this in your published documentation[1]. Our response detailed in ComReg (12/81) demonstrates that that the USO is in fact universally seen as a net benefit. This is further supplemented by USO studies by Postcomm (as previously referenced in our submissions). It may

[1] http://www.comreg.ie/publications/an_post_s_price_application__response_to_consultation_and_comreg_s_consent_to_change_the_charges_of_certain_postal_services_within_the_scope_of_the_universal_postal_service_relating_to_postal_packets_weighing_less_than_50_grams.583.104312.p.html

also be worthwhile looking at studies by Oxera such as 'Funding universal service obligations in the postal sector' which conclude that it was not, despite there being a net cost in some cases in accounting terms, but which was offset by benefits in all cases.

It does seem, that the cost of administering any such 'sharing mechanism' would be unfair. This is something to which we would strongly object. In particular it seems counter-intuitive to us that we would have to fund the cost, in some way, of proving whether there were a burden on any USO operator.

As to whether it represents a net burden – see for example your own study which in respect of eircom (ComReg 13/45), concluded this was not the case – although there was an accounting loss, it was not proved material. We note that this study included WiK, TERA, and Oxera, which we assume was at some expense. Again, we do not wish to be forced be partially fund any such expensive studies.

Q. 2 Do you agree or disagree with ComReg's preliminary views on how to finance any unfair financial burden on the USP? Please explain your response.

An Post has previously stated that its preference is that any shortfall should be funded through price adjustments[1]. This is clearly illustrated in previous publications[2] – see which at Page 55 states

'However, it is the clear preference of An Post to continue – as it has done throughout its existence – to self-finance the Universal Service, where practicable'. It references the McCarthy Report[3] which states *'An Post has to date financed the USO from its own revenues…[i]t is expected that the company will continue to finance the USO from its commercially generated revenues after full opening of the postal market'*

We see no reason why that should change at present.

Q. 3 Do you have any views on this draft Regulatory Impact Assessment and are there other factors ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any factors that should be considered by ComReg.

As stated above, the cost of implementing such a regime needs to be specifically subject to a Cost Benefit Analysis.

Q. 4 Do you have any comments on the draft Regulations? Please explain your response and provide details of any amendments that should be considered by ComReg.

We further comment at this stage.

We are happy to discuss any of this further.

Yours sincerely

Kevin Murray

Managing Director

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[2] http://www.comreg.ie/_fileupload/publications/ComReg12138s1.pdf

[3] http://per.gov.ie/wp-content/uploads/Report-of-the-Review-Group-on-State-Assets-and-Liabilities.pdf