



Commission for
Communications Regulation

Responses to Consultation on Draft Postal Strategy Statement 2012 – 2014

Submissions to Consultation 12/99

Submissions to Consultation

Reference: ComReg 12/116s

Date: 30/10/2012

An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

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Submissions Received from Respondents

Consultation:	12/99
Response to Consultation:	12/116 & 12/116a

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1: An Post

ComReg's Draft Postal Strategy Statement 2012 - 2014

COMREG DOCUMENT 12/99

**An Post Response
3 October 2012**

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1. Introduction

An Post welcomes the opportunity through this consultation to contribute its views on ComReg's Draft Postal Strategy Statement for 2012 to 2014.

An Post also welcomes, in broad terms, the high level goals set out in the Strategy Statement as prepared by ComReg as it largely reflects the implementation requirements of the Communications Regulation (Postal Services) Act, 2011 ('the Act').

As the designated Universal Service Provider, it is important, and in the interests of all stakeholders in the industry, that An Post remains a strong and vibrant Company. This was recognised in the Programme for Government and is reflected in the current Strategy Statement of the Department of Communications, Energy and Natural Resources. The Programme for Government stated:

"A universal postal service is an essential public service, in particular for rural communities and those disadvantaged communities affected by digital divide. A publicly owned, commercially viable, profitable and efficient An Post is critical to the long-term viability of the postal market".

The importance of the Universal Service was set out clearly in the Act with ComReg's objective to facilitate the development of competition and innovation being subject to the overriding objective of the availability of the Universal Service.

The Strategic Context and Environment section of the consultation paper sets out the many challenges facing the postal industry, mainly due to the decline in traditional mail volumes. The postal market is now fully open to competition since the passing into law of the Act and this fact, together with new technologies, provides customers with more choice than ever in meeting their communication needs. Promoting the interests of postal service users is one of the high level goals set out by ComReg. It is unfortunate that the Actions set out do not include a detailed assessment of the needs of users given the significant changes occurring in the market. This assessment may drive other actions such as reviewing the current Quality of Service Standard which has been in place since 2004.

Although there are no simple solutions to the challenges facing the postal industry, An Post has set out, in a Five Year Financial Planⁱ, its plans to address the financial issues that arise from a decline in mail volumes while at the same time fulfilling its Universal Service obligations. An Post's strategy includes the implementation of each of the following;

- Significant cost reductions including a forecast reduction in employee Full Time Equivalents ('FTEs') of 2,600. In the period from 2008 to the end of 2011, a reduction of 1,100 FTEs was achieved and an additional reduction of 1,500 FTEs will be achieved in the period 2012 – 2016,

totalling a reduction of 2,600 FTEs over the entire period. Substantial non payroll savings have also been achieved.

- Development of new revenue streams, mainly outside the Universal Service area.
- Appropriate price increases in Universal Postal Services.

This Five Year Plan is designed to ensure that an efficient and high quality Universal Service can be maintained to meet the needs of all our customers and financed, as far as is practicable, from within the resources of the Company. As volumes continue to decline it is imperative that the targets set out in the Five Year Plan are met within the stated timeframe in order to ensure the financial viability of the Universal Service.

The importance of the Universal Service was reflected in Section 10 of the Act. The final Strategy Statement should reflect both the priority given to the Universal Service in the Act and the importance to all parties interested in the postal industry in Ireland in ensuring a vibrant An Post as a Universal Service Provider. It is also critical that ComReg is proactive in ensuring that all postal service providers meet their obligations to protect the market as a whole.

2. Response to consultation questions

Q1. Do you agree with ComReg’s analysis of the Strategic Context and Environment? Are the developments / challenges the correct and most important ones? Please give detailed reasons to support your views.

Market definition

The extraordinary rate of technical progress has seen us witness a blurring in the distinction between physical and electronic mail. The challenge, not only for the operators but also for the regulator, is to ensure that the needs of both the senders and the recipients of mail are fulfilled by services which are appropriate for them.

Market decline

The extent of the market decline is 23.5% over the period 2008-2011 and is likely to be close to 30% in the five years to the end of 2012. The details are set out by ComReg on page 15 of the consultation paper.

An Post’s strategy for maintaining the Universal Service in the face of declining volumes is described in the consultation paper as being a two pronged approach. The approach is stated to be “*a combination of delivering costs savings and development of new revenue streams. Notwithstanding this, the universal service provider has also increased certain postage rates earlier this year*” (Page 14 of the consultation paper). However, An Post has been very clear that all three policy levers under its Five Year Plan must be harnessed in order to safeguard delivery of a viable USO (cost reduction programmes, exploiting new business opportunities and price increases for

Universal Postal Services). An Post has previously highlighted that price increases form a critical component of its overall Plan and it has applied to ComReg, as required by the Act, to increase Universal Service tariffs (ComReg's prior approval is required to change tariffs of Universal Services for items weighing up to 50 grams). Further increases will be required over the life of this Five Year Plan. The justification for price increases was clearly set out in the Chief Executive's Review contained in the Annual Report of An Post for 2011 in which he stated that:

"This trend has resulted in a serious and unsustainable shortfall in USO funding, jeopardising both the future of the service and the viability of An Post's wider operation. The underlying loss in the USO in 2011 has increased on the €50m loss in 2010. In spite of significant cost reduction, mail volume decline means that without the necessary price adjustments, the situation will continue to deteriorate. Our European counterparts have recently made at least one price change, leaving Ireland as the second lowest basic tariff across the EU15 group of countries" .

The prescription for dealing with the decline in mail volumes is presented by ComReg in stark and simplistic terms and it implies that a wide range of attainable options exist when this is not the case (page 6 of the consultation paper). An Post is exhorted to *"address this trend in order to ensure the continued availability of the universal postal service"*. However, no simple solution exists. The decline in mail volumes is both structural in nature and impacted by the current recession. An Post has set out its Plan which is both realistic and achievable and needs the support of ComReg to ensure its success.

Growing parcel market

ComReg cites a statement by the Boston Consulting Group (BCG) that the parcel market will become larger than the letter market (page 21 of the consultation paper). However, the BCG report goes on to state that for most operators this will happen in the next ten years and is certainly outside the time period for this Strategy Statement. An Post agrees that the parcels and packet market is where the growth opportunities will arise but replacing the reduction in revenue arising from a decline in letter volumes with increases in a very competitive parcels and packet market is not realistic. The Hooper report, a seminal piece of research on the Universal Postal Service commissioned by the UK Government, provides a more relevant assessment of the state of the industry. This report finds:

"The decline in letter volumes worldwide is predominantly structural in nature, caused by e-mail and mobile data substitution. This structural decline has been exacerbated by cyclical decline caused by the recession. The hole created by falling letter revenues and profits will not, unfortunately, be filled by the welcome growth in revenues and profits from packets and parcels as a result of online shopping (e-fulfilment). This is because the packets and parcels market is smaller than the letters market and is much more competitive." ⁱⁱ

Changing postal sector

The consultation document urges the establishment of new channels for the purchase of stamps (page 21). However the emphasis is placed on the provision of on-line facilities and does not take into account the significant advances already achieved by An Post in relation to state of the art vending machines (some incorporating self service facilities) and the introduction of SOAR (adhesive stamps on a roll) available at post office counters.

Q1. (Continued) Are there other developments / additional challenges for the Irish postal sector and for postal regulation over the next two years?

An Post is satisfied that the document addresses the key developments and challenges that face the Irish postal sector over the next two years. However, there a number of issues in postal regulation that should be reflected in the final version of ComReg's Postal Strategy Statement for the period under review and they are as follows:

- The Department of Communications, Energy and Natural Resources ('DCENR') Statement of Strategy 2011-2014ⁱⁱⁱ should also be considered by ComReg in the development of its Postal Strategy Statement. In particular, one strategic objective in relation to postal is framed as

"In line with Programme for Government commitment, work to ensure An Post remains a strong and viable company, providing a high quality, nationwide postal service and availing of commercial opportunities to leverage its asset base and to diversify."

A strong An Post will benefit users and other operators who may seek to use An Post's network. It is desirable that the Strategy Statements of the DCENR and the Regulator should be designed so that they do not conflict and are both capable of being achieved.

- During the preparations leading up to the liberalisation of the postal market, the DCENR issued an Options Paper. Page 7 of this Options Paper sets out the Principles of Postal Regulation. These principles included:

"An overriding principle in designing the new regulatory framework must be that regulatory intervention occurs only when necessary. A nuanced approach to regulation is required that takes account of the evolving nature of post and the differing likelihoods of effective competition developing across the different sectors."

The WIK Consult Report for the European Commission^{iv} also set out as a best regulatory practice *"national regulatory authorities will also need to develop a reasoned doctrine of 'forbearance'. That is, postal regulators, like regulators in other sectors, should develop reasoned criteria that identify circumstances in which regulatory controls should not be exerted even though they may be available."*

ComReg should be mindful of these principles and they should be reflected in the final Strategy Statement.

- ComReg set out on page 22 of the consultation paper, under the heading ‘Securing the trust of postal service users’, a paragraph which, in An Post’s view is critical to how users view the industry. It is worth repeating here for emphasis as if customer trust is not maintained, the industry as a whole will suffer:

“In order to compete, ComReg considers that new entrant and existing postal service providers need to secure the trust of postal service users in order to develop and expand their businesses. ComReg recognises that this is a particularly challenging task for new entrants competing against the An Post brand which is generally highly regarded, trusted and respected. Consequently, it is essential that every postal service provider upholds their obligations under the 2011 Act to provide clear and unambiguous codes of practice to ensure that the interests and trust of postal service users is secured so that competition can develop. ComReg will play its part by ensuring compliance with those obligations.”
(emphasis added)

A regime aimed at encouraging as many operators as possible, irrespective of their size or resources, to enter the mails market may have unintended consequences. Although designed to increase the range of consumer choice these may not regard themselves as having a longer term commitment. Furthermore it may have the perverse effect of undermining the survival of more viable and long established players. Decisions that result in access at multiple points to An Post’s network need to be considered carefully.

Based on the above, An Post sees the following challenges as requiring consideration in the completion of ComReg’s Strategy Statement

- Ensuring the Universal Service remains strong and financially viable over the period;
- Developing a reasoned doctrine of regulatory ‘forbearance’ as described by WIK Consult; and
- Ensuring that all operators in the postal market are meeting their obligations, and not just An Post, which will help to keep user confidence high.

For these reasons, An Post sees regulation of all postal service providers as being extremely important so as not to lose the confidence of consumers in the system of supervision which would undermine all operators in the market.

Q2 Do you agree with ComReg’s proposed high level goals? Please give detailed reasons to support your views.

Overall, the four high level goals are welcome as broad objectives designed to lead to the attainment of a more dynamic postal market.

It is important both to An Post and all postal service providers that “regulatory certainty” is established as soon as is possible. More emphasis, therefore, could be assigned to the goal of “*regulatory certainty*” possibly by designating it as a fifth high level goal (combining Actions 4.3.1, 4.3.2, 4.3.3, 6.1.1, 6.1.2 and 6.1.3 set out in the consultation paper).

Q3. Do you agree with ComReg’s proposed priorities within the high level goals? Please give detailed reasons to support your views.

An Post has the following comments in relation to the high level goals:

High Level Goal 1: Ensure provision and availability of Universal Postal Service

The crucial qualification that encouragement of competition and innovation must not adversely impact on the Universal Service (as required by section 10 of the Act) receives insufficient emphasis in the draft Strategy Statement. In order to clearly recognise this situation the Priority at 6.2 on facilitating competition (page 41 of the consultation paper) should be referenced back to the Priority at 4.2 on protecting the stability of the Universal Service (page 28 of the consultation paper).

ComReg sets out on Page 13 some of the perceived competitive advantages from providing the universal postal service. These include brand/corporate reputation and VAT exemption. However, it should be borne in mind that An Post has worked hard to enhance its brand and reputation. It is not the case that being designated as the universal service provider automatically confers a brand benefit. In fact, the universal service attracts an additional risk of adverse publicity especially through regulatory interventions.

In relation to VAT exemption, this is a complex area. The question of fiscal neutrality (that similar transactions should attract the same VAT treatment if they meet the same needs of the customer) in the field of postal services was considered at length in the ECJ cases of TNT and later of Rank.^v In these judgments the court found that in order to assess the comparability of the services it is necessary to not only look at the services being provided but also the context in which those services are supplied. The obligation on the public postal service put it in such a different position from that of a competitor such that the differing VAT treatments did not result in a breach of fiscal neutrality.

Quality of Service

Section 32(1) of the Act states that ComReg may, from time to time, revise the Quality of Service Standard. The current Direction is in place since 2004.

Quality of service must be viewed in the context of a mails market undergoing a profound and radical transformation. While An Post shares the observation expressed in the paper that quality of service *“is central to enabling businesses to operate efficiently”* and that a next working day service should be provided (pages 26-27 of the consultation paper), it is vital that the service levels and targets are reflective of current market needs.

On gauging the actual needs of users a European Commission postal study conducted by WIK Consult^{vi} declared that *“these needs may evolve over time. If, for example, expanding use of email reduces the need of rapid delivery of letters, then the quality of service standards should be relaxed.”*

It seems reasonable that the ComReg Strategy over a period to 2014 would, at least, conduct market research and review the current Direction to ensure that the Standard set still reflects the needs of users.

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

Survey of User Needs

An undertaking that policy will continue to be based on *“robust and accurate evidence derived through....consultation with key stakeholders”* (page 50 of the consultation paper) is not supported by empirical research on actual consumer needs. This is essential in view of the stipulation in Article 5.1 of Directive 97/67/EC that the Universal Service *“shall evolve in response to the technical, economic and social environment and to the needs of users”*. Unfortunately the Ipsos MRBI surveys commissioned by ComReg on Business and Residential users focus more on measuring satisfaction levels than in seeking to identify evolving needs. Moreover the last survey was conducted in 2010.^{vii}

An Post would direct ComReg’s attention to a report published by Consumer Focus in July 2012 entitled ‘Sense and Sustainability – A Report on the Universal Service in Britain’ that was prepared for UK consumer watchdog by the market research consultants Accent. The research was commissioned to provide a better understanding of what residential and SME consumers in the UK are likely to need from a postal service in the future.

The actions set out in the final Strategy Statement should include an assessment of user needs.

Consumer Complaints

An Post recognises that ComReg does have a statutory objective to promote the interest of users and pledges its full cooperation to ComReg in *“rectifying any unfair or unreasonable treatment of consumers”* which might unintentionally occur. But considerable time and resources have been expended by both the staff of ComReg and An Post on attempting to resolve frivolous and vexatious cases. To ensure that the vast majority of genuine enquiries receive the attention they deserve, those which are manifestly unreasonable should not be entertained as a matter of policy.

High Level Goal 3: Facilitate competition and innovation

The priority given to the universal service in the Act as mentioned earlier should also be noted here.

In references to cross subsidies contradictory messages are expressed on how An Post may finance its operations from internal resources. The paper correctly notes that *“relying on profits from non universal postal services”* is one option (page 17 of the consultation paper) but subsequently declares its intention to impose a blanket ban on cross subsidies (page 41 of the consultation paper). Directive 97/67/EC only prohibited subventions from the reserved to the non reserved area.^{viii} Directive 2008/6/EC in the context of liberalisation viewed only internal transfers within an operator’s business *“adversely affecting competition”* as a concern.^{ix}

High Level Goal 4: Highly effective and innovative organisation

Postal Levy

The Postal Levy Order is to be reviewed in accordance with the 2011 Act (page 40). As An Post will remain the dominant market player for the foreseeable future it will have to meet the majority of ComReg’s expenses (relating to the regulation of the postal sector) from its own resources.

Stakeholders are assured that ComReg applies *“continuous and rigorous scrutiny of costs in all of our activities”* (page 12 of the consultation paper). As its declared intention is to be guided by best practice in Europe it should be noted that in the UK, Ofcom has undertaken in its annual report to reduce costs of regulation by 28% over the next three years:

“Over the three years to 2004/15, Ofcom will continue to reduce its budget by 28.2% in real terms. In a drive to reduce uncertainty and to reshape the organisation swiftly, we made the majority of our cuts in 2011/12, when Ofcom’s budget was £115.8m; this was set before Ofcom assumed responsibility for postal service regulation from Postcomm whose 2011/12 budget was £8.9m. At the end of March 2012, we said that our budget for

2012/13 was £121.4m; this included £7.2m for Ofcom to fulfil its new duties to regulate the postal services sector”

As Ireland’s population is one thirteenth that of the UK it would be An Post’s legitimate hope and expectation, with the implementation of similar economies, that the annual cost of postal regulation here would fall proportionately.

It is important to the industry that ComReg can demonstrate that it operates in an efficient manner relating to postal matters and the level of expenditure and therefore the Postal Levy is kept to a minimum.

Q4. Do you agree with ComReg’s proposed actions to achieve the priorities within each of the high level goals? Are there additional sanctions required over the period of this Strategy Statement? Please give detailed reasons to support your views.

The Act states^x that the ComReg should take all reasonable measures in *‘ensuring that postal service users may avail of a universal postal service that meets their reasonable needs’*. The action plan should include the conduct of market research to understand the needs of users and a review of the Quality of Service target based on this assessment of the needs of users.

Q5. Do you agree with ComReg’s proposed timing of the actions? Please give detailed reasons to support your views

The programme of consultations set out is challenging. However, it is critical that these timeframes are adhered to. For example, the consultation on the methodology for calculating the net cost of the Universal Service (timeframe reference 12 in the consultation document) is scheduled for quarter 2, 2013. An Post is entitled under Section 35 of the Act to submit a claim for the net cost of providing the Universal Service in early 2013 in respect of 2012^{xi}. ComReg note this fact but point out that a first claim will need to be audited and a claim could not be made before June 2013. However, any delay in completing this consultation may disadvantage An Post in its capacity as a Universal Service Provider.

3. Conclusions

Both ComReg and An Post have a shared interest in seeing a Postal Strategy Statement developed which can be demonstrated to be a coherent and balanced approach. It is imperative therefore from An Post’s perspective that ComReg first give due consideration and weight to our observations. Only in this way will it be possible to translate into action the statutory responsibilities of both organisations with a sufficient level of clarity.

4. References

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- ⁱ This Plan has been copied to ComReg on a confidential basis.
- ⁱⁱ Hooper Report, Saving the Royal Mails universal postal service in the digital age, September 2010, Page 8 (<http://www.bis.gov.uk/hooper-report>).
- ⁱⁱⁱ <http://www.dcenr.gov.ie/Corporate+Units/Press+Room/Publications/Corporate+Publications.htm>
- ^{iv} European Commission – Role of Regulators in a More Competitive Postal Market: (WIK 2009 page iii)
- ^v TNT Post UK Ltd v HMRC Case C-357/07 and HMRC v The Rank Group plc Case C-259/10
- ^{vi} European Commission – Role of Regulators in a More Competitive Postal Market: (WIK 2009 page 301)
- ^{vii} ComReg Ipsos -MRBI Business and Residential Surveys 2010 (10/107a and 10/107b)
- ^{viii} Directive 97/67/EC Recital 28
- ^{ix} Directive 2008/6/EC Recital 41
- ^x Section 10 (b)
- ^{xi} Section 35 of the Act allows the designated postal service provider to submit a request for financial support “no earlier than after the end of the first financial year immediately following the designation under section 17 or 18 and thereafter no later than 6 months after the accounts for the financial year have been audited, unless the Commission agrees otherwise”

2: Communications Workers' Union

SUBMISSION RE:

ComReg 12/99

October 2012

submitted by

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Communications Workers' Union Submission:

Response to the Draft Postal Strategy Statement 2012-2014

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 Draft Postal Strategy Statement 2012-2014 (hereinafter referred to as the "Strategy Statement") issued by the Commission for Communications Regulation (hereinafter referred to as "ComReg" or the "Regulator").

In considering the issues raised in the Strategy Statement it is vitally important to start with the functions and statutory objectives of ComReg, as these should form the basis for all further discussions in relation to the proposals contained in the Strategy Statement.

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 now 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 goes on to state 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 aspects of the 2011 Act must be the context for any further debate or discussion on matters raised in the Strategy Statement and indeed, in further consultations into the future. It would not be appropriate for ComReg to go beyond the bounds of the 2011 Act or to reinterpret aspects of the legislation in a manner that is inconsistent with these functions and objectives, as outlined above. It is worth noting that the statutory objectives oblige ComReg *“to facilitate the development of competition and innovation in the market for postal service provision”* but specifically this can only be done subject to *“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”*.

This clearly sets 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 objective, and in contravention with 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 the Strategy Statement must be considered.

Pricing

It must be noted that the request from An Post for an increase in the price of a stamp has, as of yet, not been granted by ComReg and, as acknowledged in the Strategy Statement, this is one of the options available to it in the context of managing its cost base in a very challenging environment. The fact that Ireland now has the lowest postal costs reflects the fact that the price of the stamp has not tracked inflation over the years and that a review of the tariff is long overdue.

In line with its statutory functions to protect and maintain the universal postal service there should be no further delay on this issue which is becoming increasingly vital to the commercial viability of An Post. It should be noted that this price increase is being sought in circumstances where the company has already undertaken a comprehensive review of its cost base with the result that staff head count is being reduced considerably and that major investment in state of the art technology has also taken place.

It is not helpful, in the context of the very challenging economic circumstances the country and the company find itself in, that the Regulator has decided to pursue a legal action against An Post with a view to imposing a fine of €12m. An action, which if successful, would have the contradictory effect of pushing a barely profitable company very much into the red which in no circumstance could be described as being in keeping with the spirit and intent of the statutory functions for ComReg as set out in the Act as above.

Better Regulation

It should be noted that all too often ComReg has not adhered to the principles set out in the Government White Paper 'Better Regulation' which calls for an evidence based approach to regulatory decision making.

In the interest of transparency and a more informed consultation process for all stakeholders it is incumbent on ComReg to adhere more closely to the principles outlined in this paper and to set out supporting evidence for the decisions it proposes to make.

Conclusion

ComReg's statutory function and objectives are clearly drawn in the 2011 Act; to promote, in particular, the development of a universal postal service at an affordable price to all users. Furthermore it must ensure that *'postal service users derive maximum benefit in terms of choice, price and quality'*. All decisions taken by the regulator must be judged within in this legal context. As such, decisions that have a negative impact on postal revenues, the ability of the universal postal provider to provide the universal postal service and fund this responsibility or indeed the ability of the postal operator to achieve a fair price for services must be considered to be in contravention of the 2011 Act.

All considerations at this time should be made in the context of the very real challenges facing An Post as it struggles to come to terms with falling mail volumes arising from e-substitution and a depressed economy. It should be noted that without a positive decision on the requested tariff increase the company is facing a dire

financial future and substantial losses which will further jeopardise the universal postal service and the long term viability of a vital part of the country's national infrastructure which has never required state subvention. If the regulator is serious about its statutory function and objectives it would do well to consider carefully how it proceeds.

3: DX Network Services Ireland



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01 October 2012

Reference: Submission re ComReg 12/99

Dear Mr Brogan,

Thank you for the opportunity to contribute to the Commission's consultation on its Draft Postal Strategy Statement 2012 – 2014. The Draft Statement is, in itself, very useful in facilitating the regulatory certainty to postal service providers that is one of its priorities.

Even though the postal sector is now fully liberalised and open to competition there are continuing market distortions resulting from An Post's former monopoly status and benefits such as its continuing VAT exemption and we are glad that the Commission recognises these¹.

It is, of course, important that An Post continues to reduce its cost base and the participation of other postal service providers will be an important factor in ensuring that this happens. At the same time it will be important for all providers to make sure that they are meeting customer needs in the best possible way and that the Commission allows them to do so. Whilst "the universal postal service remains essential to the economy"² it is very likely that customer requirements from the universal service will also continue to change and that the universal service itself will need to change to accommodate them. The residential and business surveys described in 6.3 are therefore welcome and we encourage the Commission to make sure that they are used to influence the future nature of the universal service.

The Commission is right to believe that access to the universal service provider's network has mutual benefits for the universal service provider and other postal service providers.³ The future success of the postal market depends on service providers being able to develop products that fulfil customer requirements and many of these requirements relate to the interface between provider and customer. Although price is important other factors such as collection times, billing arrangements and customer service also play a role and these can be best met by a variety of providers who are able to access the incumbent's delivery infrastructure. The finalisation of dispute resolution procedures to resolve disputes between postal services providers and the universal service provider in relation to access to its postal network is therefore paramount. This form of access will ultimately benefit the universal service provider because it will prolong the relevance of postal services for business customers.

¹ 3.1 High Level Goal #1, page 13

² page 17

³ page 22



The Commission has rightly identified the risk of the universal service provider cross-subsidising between competitive and non-competitive parts of its business in order to exclude other service providers⁴. When a service provider is the subject of this type of activity it normally lacks the evidence in the form of accurate cost data to prove that the activity is taking place. This leads to considerable delays in bringing a complaint and bringing that complaint to a conclusion, perhaps too late to prevent irrecoverable damage. The Commission should ensure that the Accounting Direction that is designed to minimise this risk is fully adhered to and that the Direction is regularly reviewed in order to ensure that it is fit for purpose.

Please contact me if you need any clarification of this submission.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'K. Galligan'.

Kevin Galligan
Regional Director

4: Nightline

Response by Nightline to ComReg Consultation 12/99

Draft Postal Strategy Statement 2012 – 2014

Nightline is pleased to provide our feedback on ComReg's Draft Postal Strategy Statement 2012-2014, as part of ComReg Consultation 12/99.

As emphasised in our earlier submissions to ComReg Consultations 12/38 and 12/82, Nightline believes that the **creation of fair and dynamic competition in the market for postal services in Ireland, via the creation of a cost-based Downstream Access (DSA) mechanism**, is the single most important element which should underpin ComReg's Postal Strategy in the period up to and beyond 2014. We strongly believe that this priority should be reflected both in the framing of ComReg's Postal Strategy for 2012-14 and in the implementation of that strategy.

We also request ComReg to give further thought in its formulation of a Postal Strategy Statement to the issue of the distinction between wholesale and retail markets in Ireland's postal sector. We note that such a distinction is clearly observed in the regulation of Ireland's telecommunications and energy sectors, yet appears to be missing from all discussion of postal regulation here. We believe that full market opening will not become a reality for Irish postal users until such time as this distinction is recognised and implemented, and cost-based DSA is introduced.

As requested by ComReg, we have framed our response to the Consultation according to the questions as set out in Section 9 of the document (p 60-62)

ComReg Q.1. Do you agree with ComReg's analysis of the Strategic Context and Environment? Are the developments / challenges the correct and most important ones? Are there other developments / additional challenges for the Irish postal sector and for postal regulation over the next two years? Please give detailed reasons to support your views.

The Chairperson in his Introduction has identified 4 significant changes or macro-trends which affect postal markets globally, and which he believes are likely to constitute the Strategic Context and Environment over the next 2 years for Irish postal users and service providers. These are listed as follows (p 6):

- 1. "Significant opportunities from the rapid growth of fulfilment of online transactions and from continued growth in advertising mail (direct mail)"...***
- 2. "A significant decline in letter volumes"...***
- 3. "A significant threat to traditional mail volumes arising from electronic substitution"....***
- 4. "The economic recession and the impact this is having on the number of businesses and general economic activity"...***

Nightline agrees that these trends will most likely constitute the Strategic Context and Environment for future postal services in Ireland. We note, however, that this introductory statement overlooks the key role which can be played by service providers other than An Post in addressing certain of these trends. For example, regarding the "Significant decline in letter volumes" ComReg notes:

*"In particular, **An Post**, as the current universal postal service provider and the market leader in the delivery of letters, **must address this trend** (emphasis ours) in order to ensure the continued availability of the universal postal service. **ComReg will have its part to play by providing appropriate incentives to An Post** (emphasis ours), as the current universal postal service provider, to achieve these important efficiencies."*

Nightline believes that it is for all market players, not only An Post, to work together to address this trend. ComReg can address this by providing similar "appropriate incentives" to alternative service providers, particularly by requiring An Post to introduce and implement in a timely fashion a fair,

cost-based downstream access regime, which treats other service providers on a non-discriminatory basis to its own retail arm.

In general, we believe that the main strategic challenge which faces ComReg over the next two years will be to **drive the actual implementation** of full market opening in Ireland's postal sector. Full market opening has been achieved in formal terms by virtue of the transposition of the 3rd EC Postal Directive into Irish law. However, ComReg faces a considerable task in ensuring that market liberalisation is achieved in practice, and is not frustrated by the incumbent. For this ComReg will need to bring its analysis of postal issues up to the same level which it currently deploys on telecommunications market issues. The liberalisation of the telecommunications market has seen the development of a vibrant telecommunications market in Ireland in the years since full market opening in 1998. ComReg has played an important role in establishing and implementing clear distinctions between wholesale and retail markets in the telecommunications sector. Similar pro-competition interventions will be required from ComReg if full market opening in Ireland's postal sector is to become a reality. Nightline believes that there is a strong risk that ComReg may be side-tracked in its pro-competition brief by its focus on the "provision and availability of a universal postal service". We note that ComReg mentions the promotion of competition only at the end of the list elements which comprise its mission:

"Our Postal Mission: Through effective and relevant regulation, our mission is to promote the development of the postal sector, to ensure the provision and availability of an affordable, high quality universal postal service; to promote the interests of postal service users; and to facilitate the development of competition and innovation in postal service provision"

Nightline believes that ComReg will achieve its overall strategic goals more effectively if it reorders its priorities and puts the promotion of 'competition and innovation' at the top of the list.

We note also that ComReg's statement of its own statutory objectives appears to indicate that its third objective, namely the facilitation of the development of competition and innovation is "**subject to**", and hence subordinate to, its first objective, which relates to support for the universal postal service:

"ComReg's statutory objectives are:

- 1. 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,*
- 2. To promote the interests of postal service users within the Community, and*
- 3. **Subject to [1 above]**, to facilitate the development of competition and innovation in the market for postal service provision.*

The qualification in this statement that the development of competition and innovation is "subject to" the provision of an affordable and comprehensive universal postal service suggests that ComReg perceives these two objectives as being in conflict with each other. Nightline requests ComReg to confirm that this is not the case.

ComReg Q.2. Do you agree with ComReg's proposed high level goals? Please give detailed reasons to support your views.

ComReg has proposed 4 high level goals, as follows:

- High Level Goal #1: Ensuring the provision and availability of the universal postal service
- High Level Goal #2: Promoting the interests of postal service users

- High Level Goal #3: Promoting the development of the postal sector by facilitating competition and innovation
- High Level Goal #4: Striving for organisational excellence

We note that 'facilitation of competition and innovation' is listed High Level Goal Number Three on ComReg's list. We ask ComReg to confirm that this goal is of no lesser significance than, or in any way subordinate to, goals number 1 or 2.

If it is the case that the numbering of the goals does reflect ComReg's order of priorities, then - as per our response to Question 1 above - Nightline believes that the facilitation of competition and innovation should be accorded the highest priority by ComReg, and that the High Level Goals should be renumbered accordingly as follows:

- **High Level Goal #1: Promoting the development of the postal sector by facilitating competition and innovation**
- High Level Goal #2: Promoting the interests of postal service users
- High Level Goal #3: Ensuring the provision and availability of the universal postal service
- High Level Goal #4: Striving for organisational excellence

Regarding the High Level Goal to **Ensure the provision and availability of the universal postal service**, Nightline notes ComReg's statement that "In ComReg's Regulations specifying the universal postal service, ComReg has set a 'de minimis' universal postal service to meet postal service users' needs that would not be met by competition at an affordable price". We believe that these regulations will in themselves be sufficient to enable An Post to provide a universal postal service which will address the requirements of all postal users and be affordable to all. We do not believe that any further incentives to An Post will be required. We agree with the analysis provided by ComReg, in its statement of this high level goal, of the current competitive advantages enjoyed by An Post in the market for postal services in Ireland by virtue of its status as provider of the universal postal service:

*Though the postal sector is now fully liberalised and open to competition, **An Post has maintained a high market share, in particular in the mailing of letters.** Evidence suggests that **incumbent operators typically enjoy dominant market shares for long periods after full market opening.** Incumbent operators, such as An Post, have a number of **competitive advantages such as ubiquity of network and service offering, ability, brand strength, and consumer trust.** It can be argued that **providing the universal postal service has the additional competitive advantages of brand / corporate reputation enhancements, VAT exemption, and customer life cycle benefits.***

We urge ComReg to be vigilant of potential abuse by An Post of its dominant position in the market, particularly as ComReg pursues its High Level Goal of **Promoting the development of the postal sector by facilitating competition and innovation.** There is a strong risk here that margin squeeze may occur, since the incumbent, An Post, will simultaneously be delivering inputs to such competing postal providers as Nightline (for example in form of downstream access) and will also be competing on their/our output market.

We note with concern ComReg's apparent ready acceptance of the inevitability of further decline in mail volumes. ComReg speaks of a break in the correlation between GDP and letter mail volumes and states that "therefore, a decline in letter volumes is likely to continue over the period of this Strategy Statement". Nightline notes, however, that ComReg has tools at its disposal which may assist market players to counteract the effects of this global trend - we believe that the provision of a robust downstream access regime, as outlined in our earlier submissions to ComReg Consultations

12/38 and 12/82 is one such tool. We do not believe that further decline in mail volumes in Ireland is an inevitability, if ComReg acts quickly to promote competition – particularly by ensuring implementation of an equitable, cost-based DSA mechanism.

Scope exists for players other than An Post to help grow the market and drive volumes, especially for direct mail, provided that a correctly priced, cost-based downstream access product is made available as soon as possible. This will assist ComReg to address another of the priorities listed within this high level goal, namely the high cost base at An Post. It is likely that in Ireland, as in the UK, most competition will develop within the sorting segment of the market. New entrants such as Nightline will be using the third party access rights afforded by the downstream access mechanism, when implemented, in order to inject generally pre-sorted mail into the distribution network of An Post. If alternative service providers, notably Nightline, are provided with the wholesale inputs we require to drive volume (notably cost-based downstream access), then the unit costs incurred by An Post in the delivery and distribution parts of its business will be reduced or at least stabilised.

Regarding ComReg’s High Level Goal of ‘Promoting the development of the postal sector by facilitating competition and innovation’, we note ComReg’s inclusion of Access as a significant priority. On the subject of Access Requirements ComReg has stated:

*While entry into the postal sector, as a labour intensive network business, requires relatively little capital investment and few sunk costs, there are advantages to be gained by having economies of scale. Consequently, ComReg considers that **there are mutual benefits for the universal postal service provider and postal service providers in allowing access to the universal postal service provider’s postal network on a non-discriminatory basis** (emphasis ours).*

*Where commercial negotiations between a postal service provider and the universal postal service provider cannot agree on access to the universal postal service provider’s postal network, **The Competition Authority and / or ComReg, in accordance with their respective remits, may intervene in order to resolve any complaints / disputes** (emphasis ours).*

Nightline agrees that there are mutual benefits for An Post, for alternative postal service providers and for postal users also in ensuring cost-based and non-discriminatory access for alternative postal service providers to the An Post network. However, **we urge ComReg to adopt a more proactive position on how such access should be achieved**. We do not believe that the statement made in the second sentence above offers a sufficiently strong guarantee to alternative postal service providers that an adequate access solution will be implemented in the Irish market within an acceptable timeframe. We ask ComReg to clarify how, in the event of a dispute over access terms, ComReg proposes to work with the Competition Authority to ensure resolution of such a dispute. We also ask ComReg to state what aspects of the respective remits of ComReg and the Competition Authority will be relevant under various scenarios, which we ask ComReg to specify.

We are fully supportive of ComReg in its High Level Goals of Promoting the interests of postal users and of Striving for Organisational Excellence within ComReg itself.

Regarding the goal of Promoting the interests of postal users, we note ComReg’s comment that “...generally, ComReg considers that postal service users require postal products and services that are affordable, reliable, high quality and that meet their individual needs”. Nightline believes that the **interests of postal users in this regard are best promoted by the development of vigorous competition within the postal sector**. We request that ComReg redrafts this section of the strategy statement to include explicit mention of the role to be played by competition in promoting the interests of postal users.

Regarding the latter goal - Striving for Organisational Excellence - ComReg has highlighted “harnessing IT in innovative ways, whether for internal or external use [in order to] enable us to deliver useful and innovative e-services to our stakeholders”. We also believe that ComReg should

continue to deepen its expertise around postal competition issues. This could possibly involve some internal reorganisation – for example, by seconding persons with relevant expertise in telecommunications liberalisation to postal sector responsibilities within ComReg; or it may involve retention of external experts, particularly consultants with expertise of markets such as the UK, with extensive experience of wholesale postal markets, downstream access mechanisms and pricing principles. In any event, it is Nightline’s view that ComReg needs to devote considerable resources and expertise to postal issues over the next 12-24 months, and we urge ComReg to ensure that it will have the necessary budget at its disposal to achieve this.

ComReg Q.3. Do you agree with ComReg’s proposed priorities within the high level goals? Please give detailed reasons to support your views.

As per our response to Question 2 above, Nightline believes that ComReg should give increased priority to the development of competition in its overall statement of high level goals. The potential of competition to create dynamism within the market, to grow mail volumes, offset the effects of An Post’s high cost base, provide innovative services to businesses and individuals should be recognised by ComReg as **central** to its strategy.

Similarly, within the high level goal dealing with “Promoting the development of the postal sector by facilitating competition and innovation” we believe that **ComReg should prioritise the downstream access issue**, which we believe is crucial to the development of a properly functioning postal market in Ireland.

‘Provision of regulatory clarity’ – which ComReg mentions at the end of its list of priorities in this section, though it is mentioned first in Section 6 - should go hand in hand with this.

Q.4. Do you agree with ComReg’s proposed actions to achieve the priorities within each of the high level goals? Are there additional actions required over the period of this Strategy Statement? Please give detailed reasons to support your views.

Nightline here offers our comments on the proposed actions to achieve the priorities within the High Level Goal of “**Promoting the development of the postal sector by facilitating competition and innovation**”, which ComReg reformulates as follows in the introduction to Section 6: “**To provide regulatory certainty** that facilitates competition and innovation in the postal sector”.

Nightline acknowledges ComReg’s explicit appreciation of its key role in this regard:

“ComReg has a **statutory objective to promote the development of the postal sector and to facilitate the development of competition and innovation in the market of postal service provision** (*emphasis ours*). In achieving this objective, ComReg will ensure that postal service users derive maximum benefit in terms of choice, price, and quality”.

We note that in section 6 ComReg has listed the priorities relating to this High Level Goal in a different way to that used in section 3.3. In section 6 the priorities, and the actions resulting from them, are listed as follows:

6.1 PRIORITY: Provide regulatory certainty to postal service providers

6.1.1 Set Regulatory Framework which includes:

How postal service providers should notify ComReg of their intention to provide postal services

Detail on the obligations and rights of postal service providers as set out in the 2011 Act

ComReg's guidelines on postal services within the scope of universal postal service

Regulations specifying the universal postal service

Direction specifying the publication requirements for the terms and conditions for universal postal service.

Nightline notes that ComReg has stated in Section 8.1 that “**The first action, setting the Postal Regulatory Framework, is already complete.** This Regulatory Framework was required in order to enable the completion of the following actions as it laid the foundation as to the understanding of what is a postal service, guidelines on postal services within the scope of universal service, and the specification of universal postal services”. We note that, although the Postal Regulatory Framework is complete, certain key elements required for the Framework to operate are not yet in place – these include the calculation of the net cost (if any) of the provision of the universal postal service, and implementation of a properly functioning, cost-based access regime. These elements are addressed elsewhere in ComReg’s Postal Strategy Statement, but their resolution is of crucial importance to alternative postal service providers notably Nightline.

6.1.2 Consult on and introduce a revised postal levy arising from the requirements of the 2011 Act.

6.1.3 Set timeframe for next steps to continue implementation of the 2011 Act.

Nightline notes that the next steps referred to here are set out by ComReg as follows:

- *Following ComReg’s Regulation specifying the universal postal service, consultation on ComReg’s approval or otherwise of An Post’s proposed terms and conditions for its universal postal services.*
- *ComReg will consult on whether the conditions exist where ComReg must impose a price cap on An Post’s services within the scope of universal postal service and if so, what efficiency factor should be used and how should these services be grouped into “baskets”.*
- ***ComReg will consult on the form in which An Post should submit any request for funding of the universal postal service where this is a net cost. (emphasis ours)***
- *ComReg will review the codes of practice that postal service providers must publish and will consult on the dispute resolution procedures to be carried out by ComReg or an independent person appointed by ComReg.*

Of these steps Nightline believes that ComReg needs to allocate particular priority and resources to the consultation regarding funding (if any) of the net cost of the universal postal service (if a net cost is found to exist). Clarity on this issue is crucial to the business plans of all market players, including Nightline. We believe that it will be established that no net cost is incurred by An Post in providing the universal service, when all other benefits accruing to the universal service provider are taken into account – but we require formal confirmation as soon as possible that this will be the case. We note that this matter is also dealt with in Section 4.3, which discusses the **Calculation of net cost (if any) associated with the provision of universal postal service**

“In order to assess whether there is a net cost associated with the provision of universal postal service, any net cost request, in accordance with the 2011 Act, must be in such a form and manner as ComReg determines. Consequently, in order to provide regulatory certainty on this, there is a need for ComReg to consult publicly on what form and manner the net cost request should be made.

“Also, the methodology employed is critical in any calculation of net cost. Consequently, in order to provide regulatory certainty on this and to minimise any delay in an application, there is a need for ComReg to consult publicly on what methodology is appropriate for the calculation of net costs. This will also include consultation on what market benefits should be considered and how they should be calculated. The methodology will consider the guidance annexed in Schedule 4 of the 2011 Act and at Annex 1 of the Third Directive.

“Furthermore, as noted by the 2011 Act, the net cost submission should be accompanied by such supporting information as may be reasonably required by ComReg. Again, in order to provide regulatory certainty, by way of public consultation, ComReg will provide detail, insofar as possible, on the supporting information it would require for any net cost submission in advance of any net cost submission being made by the universal postal service provider.

Nightline agrees with the approach taken by ComReg, as reproduced above, with regard to this public consultation. We urge ComReg to commence the Consultation process as soon as possible – in any event before the end of 2012.

6.2 PRIORITY: Facilitate authorised postal service providers to enter / compete in the provision of postal services

Nightline believes that this priority, as stated above, should constitute the cornerstone of ComReg’s Postal Strategy for the period 2012-14 and beyond. However, we do not believe that the steps identified below as supporting this priority are – taken together - sufficiently proactive to achieve the desired result.

6.2.1 Ensure An Post is compliant with its Accounting Direction. Nightline agrees that this is crucial.

6.2.2 Liaise and provide assistance to the Competition Authority where competition law matters arise in the postal sector. Nightline believes that matters relating to the development of competition in the postal sector are best dealt with through ex ante regulation. We ask ComReg to explain what role the Competition Authority might have in addressing competition law matters – and in particular what view does ComReg take on the likely timeframe involved if the Competition Authority were to be involved in resolution of particular issues.

6.2.3 Set appropriate notification and authorisation requirement on postal service providers. Nightline agrees that this is important.

6.2.4 Set dispute resolution procedures between postal service providers and the universal postal service provider in relation to access to the postal network of the universal postal service provider. Nightline notes that, following ComReg Consultation 12/82, in which Nightline participated, ComReg expects to issue definitive dispute resolution procedures during Q4 2012. We urge ComReg to be

mindful of the risk to the process of real market opening if the procedures are not seen to be robust and if they do not adhere to a fast timetable.

6.3 PRIORITY: Provide information about the provision of postal services in Ireland

6.3.1 Publish register of authorised postal service providers and services offered.

6.3.2 Undertake and publish business and residential surveys that provide relevant market data (subject to resource availability).

6.3.3 Undertake and publish ad-hoc reports that provide relevant market data (subject to resource availability).

Nightline agrees with the approach proposed here by ComReg regarding provision of information about postal services.

Q.5. Do you agree with ComReg's proposed timing of the actions? Please give detailed reasons to support your views.

Regarding Timeframe reference 2 (**Set dispute procedures for access by postal service provider to postal network of universal postal service provider**) – as per our response to Question 4 above – Nightline notes that ComReg expects that “following consideration of responses to that consultation and other relevant evidence, final procedures will be in place by **October 2012**”. We hope that ComReg will meet the timelines indicated and that the resulting procedures will contribute to ComReg’s priority as stated in Section 6.2 of Consultation 12/99 namely “Facilitate authorised postal service providers to enter / compete in the provision of postal services”.

Regarding Timeframe reference 12 (**Methodology for net cost calculation**) ComReg states that “Arising from the 2011 Act, the universal service provider can submit a request for funding for the net costs of providing a universal postal service after the end of the first financial year following its designation as universal service provider... ComReg will first consult on and then, following consultation, determine the form and manner that any request must be made. ComReg will also consult to determine the methodology to be used to calculate the net costs including any intangible and market benefits. Furthermore, as required by the 2011 Act and the Postal Directive, the calculation for net costs must incentivise for cost efficiency”. Nightline notes that “ComReg plans to consult in **Quarter 1, 2013** on all these aspects and subject to the views of respondents and other relevant evidence to make a final determination in **Quarter 2, 2013** on the methodology of any net cost submission”. We note these timeframes, but believe that they should be accelerated by one quarter in each case, that is, consultation to commence before the end of 2012 and final determination to be made during Q1 2013. Market players require certainty regarding what costs may or may not be levied on them before they can determine what level of investment they are prepared to make in postal services and infrastructure. Nightline would urge ComReg to give priority to this Consultation process.

Otherwise Nightline has no particular comment on the timing of actions, provided that a fast pace of activity can be maintained.

We wish ComReg well in the redrafting, completion and execution of its Postal Strategy for the period 2012-14.

We reiterate, in conclusion, our strong belief that ComReg will succeed in meeting most of its objectives if it foregrounds its own statutory role in promoting competition and innovation in the Postal Sector. In particular we believe that the provision of Downstream Access (DSA) for other postal service providers to the network of An Post, on an equitable, cost-based basis and in a timely manner, **is the single most important issue to be resolved by ComReg and other stakeholders in**

the creation of a healthy, competitive postal sector in Ireland. We urge ComReg to give further consideration to this priority in your reformulation of the current Draft Postal Strategy Statement. Furthermore, as outlined in our response to ComReg Consultation 12/82, we maintain that it is vital to put clear and unambiguous procedures in place around how DSA is sought and achieved. It is our expectation that ComReg will deliver on this when the final version of the procedures is issued before the end of October 2012. We also ask ComReg, in the final version of its Postal Strategy Statement 2012-14, to give further consideration to how a meaningful wholesale – retail distinction can be implemented in Ireland’s postal sector.

Response prepared by:

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5: TCo Mail Works



**Mail
Works**

27 September 2012

Mr Stephen Brogan
Commission for Communications Regulation
Abbey Court
Block DEF
Lower Abbey Street
Dublin 1

Consultation Com Reg 12/99

Draft Postal Strategy Statement 2012 - 2014

Dear Mr. Brogan

On behalf of TICo Group Limited, trading as TICo Mail Works, I refer to the Com Reg Consultation 12/99 of 5 September 2012 concerning the draft Postal Strategy Statement.2012 -2014.

In our response we wish to focus on:

- Pricing/Postal Levy/ Costs
- Dispute Resolution for Postal Service Providers
- Dispute Resolution for Postal Service Users

1. Pricing/Postal Levy/Costs

1.1 Threat to the industry

TICo Mail Works welcomes Com Reg's recognition that costs and pricing are critical issues. In particular, the statements at pages 15 and 29 respectively that:

"...with a declining letter volume there is a need to also reduce the cost base in order to have a sustainable business mode."



**Mail
Works**

and

"....the universal provider be agile and flexible in order to adapt the structure and cost base to reflect new realities."

are useful summaries of what needs to be done and the emphasis on reducing costs is entirely justified

1.2 Consumers will not bear additional costs

The grave position facing the industry, as aptly summarised in the two extracts above from the draft Strategy Statement, would suggest that there should be one overriding priority for the High Level Goal 1: *To apply effective and proportionate regulation to ensure the provision and availability of the universal postal service.*

That priority must be to ensure that the universal service provider structures its business in such a way that, while maintaining its obligations to the universal service, it **absolutely avoids increasing prices or triggering a postal levy.** To do otherwise, will mean the universal service provider seeking to recover costs from consumers with the consequent activation of the "*dangerous spiral*" referred to at page 17 of the draft Strategy Statement.

In our view, it is possible that the dangerous spiral has already begun and it is likely that we are already in the territory of needing to devise measures to retrieve the position. This fear is surely evidenced by the alarming decline in mail volumes identified in the draft Strategy Statement.

1.3 Need to strengthen the Postal Strategy Statement on cost reduction

The survival of the industry and with it the universal service is at stake here. Accordingly, TICo Mail Works considers that the final Strategy Statement should place strengthened emphasis on the need to reduce the costs of the universal service provider. We recognise that the Strategy document addresses this issue and the extracts we have quoted above indicate that the Regulator is seized of the requirement for the universal service provider to act accordingly. We would, however, urge you to expand and strengthen the subsequent text to reflect the Regulator's determination to achieve the essential reduction in the cost base as the only viable means of ensuring the industry's long term survival.



**Mail
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2. Dispute Resolution for Postal Service Providers

2.1 Tico Mail Works has already made a submission

TICo Mail Works has already made a submission in response to the Com Reg consultation 12/82 on "Dispute Procedures for access by a postal service provider to the postal network of a universal service provider."

2.2 Early intervention model - summary

In our submission, we proposed an alternative "early intervention" model. In summary, TICo Mail Works considers that Com Reg should establish a straight forward process that requires the universal service provider to respond quickly to a complaint to Com Reg from a postal service provider seeking access to the network. We believe that this will be the best way of achieving the Com Reg goal that dispute resolution procedures are "used sparingly".

2.3 Emergency intervention in exceptional circumstances

We also believe that an emergency intervention system be established where, in defined exceptional circumstances, Com Reg can take immediate action. Such circumstances would arise where a postal service provider's business is suffering serious damage as a result of actions taken by the universal service provider. The prevention of such a situation arising would be aided by the very existence of such emergency procedures.

3. Dispute Resolution for Postal Service Users

We note that Com Reg will be consulting on planned dispute resolution procedures for postal service users and we look forward to seeing the draft document when available. Our comments in relation to the dispute procedures for postal service providers will, we believe, be relevant here also. It is important that postal service users can quickly access such procedures where a dispute between a user and provider is unresolved.

Yours sincerely

Michael O'Dwyer

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