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Consultation on universal postal service accounting obligations

Submissions to Consultation 15/135

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An Coimisiún um Rialáil Cumarsáide

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This Information Notice contains non-confidential submissions by respondents to ComReg's Consultation 15/135 'Consultation on universal postal service accounting obligations' which ran from 21 December 2015 until 27 January 2016. Responses were received from the following:

1. An Post
2. Chartered Accountants Ireland
3. KPMG
4. PricewaterhouseCoopers

The responses of Chartered Accountants Ireland, KPMG, PricewaterhouseCoopers focussed on certain matters, namely:

- The proposed appointment of the Regulatory Auditor by ComReg;
- The proposed scope of the Regulatory Audit to meet ComReg's requirements and to meet the requirements of the Communications Regulation (Postal Services) Act 2011.

ComReg is currently considering all the responses received and it is planned to publish the Response to Consultation in Q2, 2016.

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1: An Post

An Post’s Response to ComReg’s “Consultation on Universal Postal Service Accounting Obligations”

ComReg Ref. 15/135

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27 January 2016



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Executive Summary

An Post welcomes the opportunity to provide comments on ComReg's 'Consultation on Universal Postal Service Accounting Obligations' (the "Accounting Obligations Consultation").

An Post recognises the importance of an appropriate regulatory regime, aimed at supporting the delivery of the Universal Service. To this end, An Post appreciates that completeness, accuracy and transparency of the information provided by An Post is necessary for ComReg to be able to discharge its duties and objectives as sector regulator. An Post has always been, and continues to be, supportive of this objective and of continued co-operation with ComReg in this regard.

However, An Post is concerned that the Accounting Obligations Consultation presents many shortcomings which, if not addressed, could damage An Post and distort the competitive process. An Post's general concerns with the Accounting Obligations Consultation are:

- Many of ComReg's requirements do not meet the principle of proportionality. Consistent with regulatory best practice, ComReg should keep requirements to the minimum necessary to enable effective regulation, and should only impose requirements after careful consideration of the burden and cost they impose. Instead, ComReg does not appear to have appropriately considered the cost to An Post of implementing many of its recommendations. In particular, the cost-benefit analysis conducted by ComReg is incomplete and high level, and thus not sufficient to arrive at robust conclusions. For example, ComReg did not undertake a cost-benefit analysis of calculating the costs associated with carrying out the detailed volume reconciliations recommended in this Consultation. An Post's cost estimates to implement these recommendations are substantial and would require extensive changes to the current Regulatory Financial Statements (RFS).
- ComReg fails to appropriately consider that the postal sector in Ireland has changed significantly in the past few years and competitive pressures on An

Post have increased. This implies that some of the requirements that were imposed in 2006, when the current Accounting Direction was implemented, might no longer be appropriate. For example, the increase in competition and number of market players imply that a large portion of the information included in the RFS has now become commercially sensitive and should therefore be submitted only confidentially to ComReg rather than be made public.

- ComReg has not adequately considered international regulatory standards, nor ComReg's own recommendations to Eircom (currently known as "eir") and RTE/2rn. For example, ComReg's position in the Accounting Obligations Consultation in regard to the audit of the RFS is in some aspects inconsistent with ComReg's own conclusions with respect to the requirements imposed on Eircom. An Post believes that ComReg has not engaged with the professional Accounting Body during the pre-consultation period and we believe that this has resulted in a significantly flawed draft Direction.
- Many of ComReg's preliminary views are without legal basis because they exceed the legal limits on the permissible content of an Accounting Direction under Section 31 of the Communications Regulation (Postal Services) Act 2011 (the 2011 Act).

The discussion above summarises An Post's general concerns with the Accounting Obligations Consultation. In relation to specific proposed requirements, An Post's main observations are:

- The requirement of an auditable reconciliation of volumes, in particular within the framework of a 'present fairly' audit opinion, of operational and revenue based volumes is not implementable due to the different nature of the volumes estimations.
- ComReg is proposing that it should appoint the Regulatory Auditor, as the independence, and therefore credibility, of the statutory auditor might otherwise be compromised. There is no issue regarding the independence of the Statutory Auditor (as auditors' independence is regulated by both legal and professional standards requirements). This recommendation is also

inconsistent with what is required by ComReg from Eircom and RTE/2rn. An Post believes that the 'Duty of Care' specified in the tri-partite agreement between ComReg, An Post and KPMG (the current Regulatory Auditor) gives ComReg more than is required to guarantee the independence of the Regulatory Audit. The implementation of the recommendation would involve a breach of procurement law.

- Appointing separate statutory and regulatory auditors would cause duplication of work by the auditors, increasing costs for An Post. This also does not appear to be in line with international precedents.
- An Post disagrees with the proposed 10 week timeline for production of the RFS. Such a short timeline is not in line with other national and international precedents and is unworkable, especially in light of the increased reporting requirements envisaged in the Accounting Obligations Consultation by ComReg. In fact, if ComReg was to insist on its recommendation to have separate auditors (leaving aside that this itself is problematic), the timeframe is simply not achievable. We further note that there would appear to be no timeline given by ComReg as to the completion of their suggested auditing approach, which in itself, is counter to the increased transparency that is a key principle of regulatory accounting.
- An Post's ability to service the Universal Service Obligation (USO) in a sustainable financial environment is not singularly measurable by the cash balance on a quarterly balance sheet. The requirement to provide An Post's cash position quarterly until this exceeds €100 million is arbitrary and unjustified. Further, this is not in line with international precedents.

In summary, An Post believes that ComReg has not sufficiently considered the implications of some of the requirements that it is trying to impose and it has not articulated the precise issue that some of these requirements are intended to address.

ComReg should revisit its proposals, drawing a clearer link between the issues it has identified with the current regulatory process and consider the minimum set of obligations that would address such issues. In any case, An Post expects that, at a

minimum, ComReg revises its impact assessment with a more complete consideration of the costs that its proposals would impose on An Post and whether they are implementable at all. An Post remains available to engage further with ComReg on these issues.

1. Introduction and Structure of this report

1.1 Background

This document sets out An Post's response to the "Consultation on Universal Postal Service Accounting Obligations", (the "Accounting Obligations Consultation"), document 15/135 issued by ComReg on 21st December, 2015.

The Accounting Obligations Consultation is based on a Pre-Consultation document (the "Pre-Consultation document"), which was prepared for ComReg by Frontier Economics. An Post was given the opportunity to provide initial comments and articulate major concerns on the Pre-Consultation document.

Therefore, while this document sets out An Post's formal response to the Accounting Obligations Consultation document, it builds upon the responses already provided in the Pre-Consultation stage.

1.2 An Post general comments on the Accounting Obligations Consultation

An Post agrees that it is in the interest of all stakeholders to ensure that the information contained in the RFS prepared by An Post is of the highest standard and meets all the appropriate requirements. An Post has shown its commitment to this over the years and has made significant progress in its regulatory reporting, even before many of the requirements had been formalised. For example:

- Establishment of Regulatory Accounting to inform the business of key financial metrics, in advance of any requirement to provide formal accounts to the regulator;
- Establishment of a detailed Accounting Manual, provided to ComReg annually;
- Review of the Accounting Manual by external experts in this area;
- Formal Audit of the Regulatory Accounts;
- Establishment of a tri-partite appointment for the regulatory audit, incorporating the views of the accounting professional body; and

- Establishment of agreed Regulatory Accounts formats, in conjunction with ComReg.

The current Accounting Direction, which sets out An Post's current obligations in terms of regulatory financial reporting, was put in place in 2006, and An Post's compliance was reviewed for ComReg by Analysys Mason in 2012. Since the 2006 Accounting Direction, however, the Postal Market in Ireland has changed significantly. In particular, the sector is now fully liberalised and a Price Cap Mechanism (PCM) has been put in place. An Post would have expected these changes, and the impact they have on An Post, to be taken into account in the 2015/16 review of the Accounting Direction.

However, this does not appear to be the case. An Post is particularly concerned that in relation to some of the proposed requirements, ComReg fails to consider how:

- The costs (including the opportunity costs) of compliance to An Post of current obligations have changed as the market has evolved;
- Some requirements would put An Post at a significant competitive disadvantage compared to other players in the market. For example, ComReg does not consider how some of the details which it recommends should be included in the published version of the RFS may disadvantage An Post in a competitive market (see section 3.2 for a more detailed discussion on the matter of confidentiality); and
- The need for some of the current or prospective requirements has changed in light of other regulatory remedies that have been introduced, such as the PCM.

Therefore, An Post would like to draw ComReg's attention to the principles of materiality and proportionality as being of key importance in deciding to mandate any changes. In this regard it is worth noting ComReg's own quote from the Eircom Accounting Direction – *“While ComReg is mindful that the documenting of regulatory accounting systems could, conceivably, be open-ended it requires Eircom to address the more material aspects that drive costs within its regulatory accounting process. It is of the view that the enhanced documentation required will be in line with international best practice but also reflective of ComReg's own regulatory needs while*

at the same time being proportionate for Eircom".¹ An Post would expect similar considerations to be an integral part of this Accounting Obligations Consultation process and would expect this to be more fully addressed before a final decision is taken.

While ComReg has revised some of the recommendations which it had originally made in the Pre-Consultation document, there are still a significant number of recommendations that would make An Post's reporting requirements some of the strictest compared to other jurisdictions. An Post believes many of the new requirements are not proportionate to the scale of operations of An Post compared to other European operators and are unlikely to assist ComReg in discharging its regulatory duties.

Furthermore, the regulatory impact assessment ComReg has undertaken is presented at a high level with no consideration of the actual costs associated with the requirements. This is not consistent with regulatory best practice and leads ComReg to draw incorrect conclusions with respect to the burden imposed by specific requirements. In particular An Post would ask ComReg to be mindful of its own recommendation contained in the Eircom Accounting Separation direction "*It is not ComReg's intention to increase the regulatory burden ... unless absolutely necessary*".² Considering in particular the current level of USO losses borne by An Post, it would seem appropriate for ComReg to exercise more caution and conduct a fuller analysis than what is currently presented in the Accounting Obligations Consultation.

Finally, An Post is concerned that many of ComReg's preliminary views are without legal basis because they exceed the legal limits on the permissible content of an Accounting Direction under Section 31 of the 2011 Act. This is discussed in more detail in the appropriate sections in the remainder of this document.

¹ ComReg Document 10/67, section 1.24

² ComReg 10/67, D08/10, paragraph 3.71

1.3 Structure of this report

This report is structured as follows.

- Section 2 presents An Post's comments to the preliminary views on the accounting obligations covered in sections 4.1 to 4.6 of the Accounting Obligations Consultation.
- Section 3 presents An Post's comments to the preliminary views on the format of the Regulatory Accounts, covered in sections 4.7 and 4.6.1 of the Accounting Obligations Consultation.
- Section 4 presents An Post's comments on the preliminary views on the draft regulatory impact assessment, covered in section 5 of the Accounting Obligations Consultation.
- Section 5 presents An Post's comments to the preliminary views on the draft accounting direction, covered in section 6 of the Accounting Obligations Consultation.
- Section 6 provides a conclusion to An Post's response to the Consultation.

2. An Post comments on question one of the Accounting Obligations Consultation

This section discusses An Post's response to the question:

“Do you agree or disagree with ComReg’s preliminary views on updating the Accounting Direction? Please explain your response and provide any supporting evidence.”

This section covers the preliminary views presented in sections 4.1 to 4.6 of the Accounting Obligations Consultation.

2.1 Measuring mail volumes and revenues

This section discusses ComReg's proposals with respect to mail volumes and revenues, set out in section 4.1 of the Accounting Obligations Consultation.

Accounting Direction rules for measuring mail volumes and revenues

ComReg proposes that the current requirement that revenue-based volumes and operational based volumes are both presented in the RFS is carried over from the 2006 Direction.

An Post agrees with ComReg that the current methods for recording volumes and revenues are appropriate and therefore they do not need modifications.

Reconciliation of revenue and operation mail volumes

ComReg proposes that the reconciliation of revenue based and operational based volumes is provided at format level, as currently provided by An Post, rather than at service level as was originally suggested in the Pre-Consultation.

An Post agrees with ComReg that a reconciliation at service level would require a significant amount of additional resources and therefore is disproportionate.

Notwithstanding the above, An Post is surprised by ComReg's expectations in relation to this reconciliation. Specifically, An Post is concerned that a detailed reconciliation, in the “accounting” sense, is not possible.

This is because, as explained by 2010 Analysys Mason's report for Postcomm³, the difference between the operational and revenue based volumes is largely due to the factors characterising the two estimation methods, rather than specific service characteristics.⁴ The two methods are based on different principles, one being a bottom-up estimation based on operational data and assumptions, and the other being a top-down estimation, based on total revenues and unit prices and other weights. Hence, it is not possible to reconcile on a 'unit by unit' basis the two volumes.

At present, An Post provides a comparison, rather than a reconciliation, of volumes by format, which is accompanied by qualitative explanations of the differences based on the estimation methods.

Due to the intrinsic differences between the two estimation methods, An Post suggests this high level comparison, in line with that included in the past RFSs, should continue to be required for inclusion in the RFS, instead of a "reconciliation".

This distinction is important and might have significant implications for the auditability of this report, as discussed below. It is not possible to reconcile the two results in an accounting sense. An audit is therefore not possible, in particular in the context of the "presents fairly" framework which ComReg requires.

Moreover, ComReg has not sufficiently explained what issue it is trying to resolve in proposing this requirement. Therefore, it is necessary for ComReg to clarify exactly whether it is proposing to introduce an additional requirement compared to what is currently provided by An Post, and, if so, why this is necessary.

An Post is also concerned with the level of confidentiality of the "reconciliation", or comparison, which An Post considers should not be included in the public version of the RFS. This is discussed in more detail in section 3.2 of this report.

Requiring a volume reconciliation does not appear to be common practice among European operators. Royal Mail, for example, is not required to provide a volume

³ Analysys Mason, 2010, 'Cost transparency'. Report for Postcomm

⁴ Analysys Mason, 2010, 'Cost transparency'. Report for Postcomm, p.33

reconciliation nor the estimation of a second set of volumes on top of the revenue based volumes used in the Royal Mail's RFS.

ComReg itself seems to have misunderstood that the purpose to which the revenue based volume estimates are being utilised is to calculate an allocation basis for revenues and cost, with the revenues being those captured in An Post Statutory revenue General Ledger. As such, An Post would acknowledge the importance of these allocations and would like to highlight that these allocations are currently subject to extensive scrutiny, including by ComReg itself. For example, the Real Mail study (RMS) is reviewed by an independent auditor appointed by ComReg.

In the interests of transparency and proportionality it is incumbent on ComReg to highlight what deficiencies it has found over the course of its reviews that would necessitate this requirement. Without such a dialogue An Post is at a loss as to the objective of this additional, and costly, reconciliation.

Reconciliation of operational volume counts

ComReg proposes that a reconciliation between Mail Centre (MC) and Delivery Service Unit (DSU) mail volumes is provided by An Post on a quarterly basis.

An Post disagrees with this requirement, as it considers it to be disproportionate in relation to the perceived shortcomings it is attempting to address.

An Post currently estimates both MC and DSU volumes for operational reasons. However, the two volumes are based on different methodologies. In particular, MC volumes are based on daily volume counts at four MC's while volumes in the c. 300 DSU's are based on a higher level count of containers, with average container fill values then applied to estimate total volumes. For this reason, an 'accounting style' reconciliation of the two is not possible. The different methodologies were highlighted by Analysys Mason in their 2012 report to ComReg. Significant additional resources would need to be invested in collecting the additional data and perform the necessary checks that would be needed for An Post to perform a high-level reconciliation of the two sets of volumes. In addition, An Post is not confident that even with additional resources such a reconciliation would be possible, due to the intrinsic differences highlighted above.

In light of the cost that such reconciliation would impose on An Post, it is ComReg's duty to provide evidence of the benefits that could be derived from this requirement and to demonstrate that these benefits outweigh the additional cost to An Post. Currently, it is An Post's belief that there are no evident benefits from the reconciliation, and as such the requirement appears disproportionate.

An Post notes that the volumes currently used are those at the MC level, which are mostly based on machine counts and therefore more accurate.

However, in the spirit of co-operation, An Post suggests that some additional visibility on these estimates could be provided to ComReg in the form of a comparison, and a qualitative explanation of the differences could be provided, similarly to what is currently being provided for revenue driven and operational volumes.

Audit of the reconciliation of revenue derived volumes with operational based volumes

ComReg proposes that the reconciliation of the operational derived volumes and the revenue derived volumes is audited by the Regulatory Auditor.

An Post considers that auditing of the reconciliation, as currently conducted by An Post and as defined in Table 2 of ComReg's Accounting Obligations Consultation document, would not be possible.

Given the inherently different nature of the methodologies underpinning the two sets of estimations and the reliance of both estimates on differing assumptions, it would not be possible for an auditor to opine on such matters in a manner that would give an acceptable level of assurance.

Further, ComReg's understanding that the auditing of the reconciliation represents 'best practice' is unfounded. In the ERGP⁵ study mentioned by ComReg and Frontier Economics it is found that only in six of the 17 countries sampled the volume reconciliation is part of the audit of the regulatory accounts. Moreover, the sample of countries does not appear to be closely comparable to Ireland. For

⁵ The European Regulators Group for Postal Services (ERGP), 2013, 'Report on specific issues related to cost allocation'

example, countries such as the UK are not included in the sample. Yet, in its Pre-Consultation document, ComReg noted how the obligations imposed on Royal Mail are considered as the preferred benchmark for best practice in regulatory accounting and reporting. It therefore seems inconsistent to now claim that a requirement that is not imposed on Royal Mail is best practice and as such should be adopted by An Post. Finally, the ERGP study does not specify the type of “reconciliation” that applies in these six countries and therefore it is not possible to conclude that the requirements in these countries are comparable to what is being put forward in the Accounting Obligations Consultation.

An Post would also highlight that ComReg itself should acknowledge that this type of request is much closer in nature to the regulatory information that both Eircom and RTE/2rn currently provide to ComReg under the heading of “Additional Financial Information” (“AFI” for Eircom) or “Additional Financial Data” (“AFD” for RTE/2rn). As such, An Post would again highlight that such a format would both provide the information that appears to be required by ComReg, as well as acknowledging the commercially sensitive nature of certain aspects of such requests. In addition, and on an exceptional basis, it provides an ideal mechanism for provision of data that could be difficult for auditors to provide an opinion on, but “agreed upon procedures” could be entered into with an auditor to enable the necessary assurance to be provided. ComReg itself should acknowledge that such an approach is more consistent with its current approach in dealing with such issues in the case of Eircom and RTE/2rn and provides assurance in both a proportionate and a practical manner.

In summary, and for the reasons set out above, An Post does not consider that a reconciliation is possible and an audit of the volume reconciliation is therefore not appropriate or proportionate. An Post currently includes an unaudited comparison of volumes in the RFS provided to ComReg and believe that this meets the requirements of the existing Accounting Direction. Further, it does not appear to be indisputably best practice, as is claimed by ComReg.

*Reporting the process for measuring operational based volumes and their accuracy:
Automated machine counts*

ComReg proposes to include details on how operational based volumes are to be calculated. In particular, ComReg considers that An Post should be specifying the process for validating machine counts and the degree of accuracy to which machines are tested, in order to ensure accuracy and thereby increase confidence in the machine counts.

An Post is concerned that the cost that this requirement would pose on An Post is not proportional to the benefits that would derive from it.

First, operational volumes are not used in the RFS, other than to provide a comparison and a cross check for the revenue based volumes, which are instead the basis for the RFS. Thus, requiring significant additional investments to increase the level of control over the estimation of the operational volumes does not seem justified.

Moreover, Section 31 of the 2011 Act does not provide a clear legal basis for an Accounting Direction to require that such specific details be included, or that a specified format should be used, in a written document that is maintained by An Post, such as the Accounting Manual.

Reporting the process for measuring operational based volumes and their accuracy: Manual counts

ComReg proposes that An Post includes in its Accounting Manual details of the process for reviewing average container fills. ComReg further proposes that assumptions on average container fills are revised quarterly, and that An Post reports the results of the average container fill reviews in its Accounting Manual.

An Post believes that these requirements violate the principles of materiality and proportionality that should guide any regulation, as discussed in the introduction to this report. The reasons given by ComReg to justify the need for new stricter rules regulating manual counts do not seem to hold against the additional cost that would be incurred by An Post to satisfy these requirements.

Further, An Post considers unnecessary reviewing average container fills' assumptions on a quarterly basis. As volumes are reported annually, the assumptions used to estimate the volumes should be annual estimates, which, when correctly derived, already control for seasonality. Thus, there is no need for seasonal estimates to be provided. Instead, An Post would consider providing updated estimates on average container fills on an annual basis, to update the assumptions used in the volumes estimation.

Hence, An Post proposes that the reporting of the manual counts process is left unchanged.

2.2 Cost identification and allocation

This section discusses ComReg's proposals with respect to cost identification and allocation, set out in section 4.2 of the Accounting Obligations Consultation.

Identification of costs

ComReg proposes that the existing requirements of the 2006 Accounting Direction, requiring An Post to provide details of the processes by which it identifies avoidable, variable, and fixed costs, should remain unchanged in the revised Accounting Direction. However, ComReg considers insufficient the level of detail currently provided by An Post in this regard. In particular, ComReg considers that no information is provided in An Post's RFS on the process by which An Post identifies avoidable costs.

An Post considers the level of details already included in the existing Accounting Manual sufficient. Neither the ERGP⁶ nor the CERP⁷ reports suggest that detailed examples and definition of the types of costs should be provided by the operators. At a minimum, ComReg should work with An Post to establish what material areas and allocations need to be covered in the Accounting Manual.

⁶ The European Regulators Group for Postal Services (ERGP), 2013, 'Report on specific issues related to cost allocation'

⁷ European Committee for Postal Regulation (CERP), 2009, 'Recommendation on best Practices for Cost Accounting Rules III'

Further, An Post notes that Royal Mail does not provide detailed information for all its products, but in its cost manual it describes the process for defining avoidable costs in First Class mail and Second Class mail only. Hence, Royal Mail does not report at the level of detail that ComReg suggests and would like to require from An Post.

In its Accounting Obligations Consultation ComReg also refers to the example of access costs as a potential area which might require ComReg to obtain more detailed information on avoidable costs. However, An Post has already put a solution in place to agree downstream access prices with other postal providers. This solution has resulted in formal agreements being put in place with a number of postal providers.

Further, while the identification of avoidable, fixed and variable costs is an integral part of cost modelling exercises, these are costing labels which are not normally used within Historical Cost Accounts, which is the basis for the production of An Post's Regulatory Accounts. For neither Eircom, nor RTE, do these form part of the regulatory accounts, and their identification is of a highly specific nature. For example ComReg's Accounting Direction to Eircom (D08/10) states the following: "*3.325 where necessary ComReg may require the submission of schedules for direct indirect and common costs for certain services and products. However, this is likely to be on an ad hoc basis (such as a price review) and would form part of AFI*" (with the AFI being a process for the private submission of accounts based information to ComReg, with the provision of such information being agreed on an annual basis between ComReg and Eircom).

While An Post acknowledges the requirement for the identification of costs types for pricing and cost modelling purposes, the requirement for the inclusion of the identification process for these costs on an ongoing annual basis appears both unnecessary and disproportionate. Further, An Post does not believe that providing detailed descriptions and examples of the definition of cost types is common practice among other operators.

In relation to the cost of the USO, ComReg issued a separate direction on this so An Post does not think any adjustment needs to be made in the Accounting Direction in relation to this.

Moreover, the relevant legal basis does not allow for specific details, such as worked examples, to be mandated within the Accounting Manual.

For the reasons listed above, An Post believes that the existing process of providing information as requested on an ad hoc basis only, if and when the need for such information arises is appropriate and any additional requirement is disproportionate.

The allocation of the cost activities

ComReg proposes to maintain the current requirements in respect to the allocation of cost activities. These are high level requirements that specify the principles that should be used in allocating direct, indirect or common costs.

An Post agrees with ComReg that the current requirements on the allocation of cost activities are still relevant and should be maintained in the revised Accounting Direction.

Cost drivers

While retaining the high level principles from the current Accounting Direction, ComReg proposes to increase the level of information that An Post would need to provide regarding the methodology used to set cost drivers. This would take the form of a detailed description of the cost drivers in the Accounting Manual and the detail of any changes year-on-year.

An Post already undertakes an annual review of the cost drivers and it provides any updates to the cost allocation methodology in its annual Accounting Manual. The level of detail provided in its Accounting Manual is consistent with best practice.

An Post is unclear on what additional information ComReg is recommending to be provided and would require more detail on the information requested before commenting on its appropriateness.

More broadly, ComReg should refrain from placing requirements on cost drivers which would remove flexibility for An Post on the methodologies used. This could have the adverse effect of preventing, rather than encouraging, improvements to be made year on year. This would be an undesired outcome that should be avoided.

Further, there is no mention in ComReg's Accounting Obligations Consultation that the provision of information should be proportional to the materiality of the drivers or services, or that the commentary on annual changes would be required only for material changes. This requirement is explicitly referenced in both the Royal Mail and Eircom Regulatory Accounting Directions. Without such a reference, the requirements would be both disproportionate and unworkable.

To provide ComReg with additional reassurance and in order to avoid delays in the publication of the RFS, An Post suggests that year on year methodology changes associated with material cost drivers could be discussed with ComReg in advance of the publication of the annual RFS. This is an approach adopted in other sectors and jurisdictions and one that An Post could engage with ComReg to implement. This would also be consistent with other precedents set by ComReg itself. For example, in Eircom's case, ComReg directed that Eircom should provide "*k) Details of material period on period changes to the form and content of the Separated Accounts and changes to cost allocations methodologies having a material impact.*"⁸ This requirement ensures that only material changes are the focus of attention.

However, as discussed above, ComReg would need to clarify what type of details it is looking to obtain, which are not currently provided by An Post.

Costs for each universal postal service price

ComReg proposes to require An Post to:

- provide the cost associated with universal postal services, at each price point, rather than at format level;
- provide a detailed explanation in its Accounting Manual of how costs are allocated to services with different price points; and
- provide a detailed explanation in its Accounting Manual of where the weight factors used in the allocation process do not align with the various tariff price points.

⁸ ComReg 10/67, D08/10, "Response to Consultation Document No. 09/75 and Final Direction and Decision: Accounting Separation and Cost Accounting Review of Eircom Limited"

An Post does not believe that it is practical to provide cost estimates for all services at tariff level within the Regulatory Accounts. This issue has been discussed between An Post and ComReg in the past, as outlined in ComReg's document 02/15 section 4.2.7, which clearly states "*it is the format of the item rather than the weight that determines the cost*". The current reporting template was agreed with ComReg. It has been in place since 2009 and this has been the basis of the provision of Regulatory Accounts to ComReg since then.

The model used by An Post to produce the RFS does not currently allow for this level of disaggregation and extensive re-design and modification of the model would be required to introduce this level of granularity. Yet, this is not recognised by ComReg and An Post is disappointed to see that these significant costs are not taken into account in ComReg's Impact Assessment.

The impracticality of providing these cost estimates is also highlighted by ComReg's own statement that while volumes are important for the correct estimation of costs, the workload that would be imposed in reconciling volumes at the individual service level would be excessive and therefore reconciliation would only be required at the format level.

Further, An Post believes that this requirement is inconsistent with the current PCM, which is defined at the level of a basket of services, rather than at individual tariff level. Hence, it is unclear why this level of disaggregation would be required for ComReg to ensure An Post's compliance with the price control.

In addition, An Post would again like to highlight to ComReg that a similar original request was suggested in relation to Eircom, but in a recognition of the practical issues this was modified to provide the volume, pricing and cost comparison at a higher level. Specifically, ComReg stated: "*The Separated Accounts will also contain details regarding average revenues and average costs of **material services and products** and where relevant associated volumes*"⁹ (emphasis added). The preamble to this decision makes it clear that proportionality was a key consideration in reducing the regulatory burden of producing regulatory information and An Post

⁹ ComReg 10/67, D08/10 Paragraph 3.224

would again ask that the same level of analysis and subsequent justification is provided by ComReg to An Post. It is not at all clear as to whether such analysis has been completed to date by ComReg.

In summary, An Post disagrees with ComReg about the requirement to produce costs at individual price points on an ongoing annual basis for inclusion in the RFS.

Inter-company and inter-segments transactions

ComReg proposes that the current requirements under the 2006 Accounting Direction, with regard to inter-company and inter-segment charges, are carried over and that the RFS should include the source of inter-segment revenue, in a matrix form. Further, ComReg proposes that the nature and detail of all inter-company and inter-segment charges should form part of the scope of the audit conducted by the Regulatory Auditor.

An Post notes that details regarding inter-segment revenues are already reported in the Accounting Manual, in Appendix 10. An Post agrees to modify the way it reports inter-segment revenues and inter-segment costs, to be consistent with the matrix form suggested by ComReg.

However, the inter-segment revenues/costs breakdown of the Mails business segment proposed by ComReg is too intrusive and not particularly insightful. The inter-segment matrices should not be included in the published RFS, as they contain sensitive information, disclosure of which may put An Post at a competitive disadvantage in the marketplace.

Regarding the issues of the scope of the audit, An Post notes that inter-segment allocations are included within the RFS at present and are already covered by the existing audit scope. (See further comments and explanation on the nature of the existing audit opinion in section 2.4 of this document). It is unclear to An Post what ComReg means when it states that the “*nature and detail*” of transfer charges should also be included within the scope of the audit. A clear explanation of what this requirement means, with specific examples, is necessary for An Post to be able to comment further on this recommendation.

2.3 Regulatory reporting

This section discusses ComReg’s proposals with respect to regulatory reporting, set out in section 4.3 of the Accounting Obligations Consultation.

An Post believes that regulatory reporting requirements should follow several principles. This position is widely shared among governments and regulators as outlined by the Irish Government 2004 White Paper on Better Regulation¹⁰ and the 2009 “*Revised RIA guidelines, how to conduct a Regulatory Impact Assessment*”. In the documents, six principles of ‘Better Regulation’ are defined:

- *“Necessity – is the regulation necessary? Can we reduce red tape in this area? Are the rules and structures that govern this area still valid?”*
- *Effectiveness – is the regulation properly targeted? Is it going to be properly complied with and enforced?*
- *Proportionality – are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?*
- *Transparency – have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is it supported by good explanatory material?*
- *Accountability – is it clear under the regulation precisely who is responsible to whom and for what? Is there an effective appeals process?*
- *Consistency – will the regulation give rise to anomalies and inconsistencies given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?”¹¹*

¹⁰ Taoiseach Government, 2004, “Regulating Better”

¹¹ Taoiseach Government, 2009, “Revised RIA guidelines, how to conduct a Regulatory Impact Assessment” see: http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

These principles are consistent with those set by Ofcom in its 2012 document “*Regulatory financial reporting: a review*”¹², and are also in line with the position expressed in the European Commission 2005 ‘Recommendation on accounting separation and cost accounting systems under the regulatory framework for electronic communications’:

*“The cost accounting and accounting separation systems of the notified operators need to be capable of reporting regulatory financial information to demonstrate full compliance with regulatory obligations. It is recommended that this capability be measured against the qualitative criteria of relevance, reliability, comparability and materiality.”*¹³

An Post broadly agrees with these principles. However, how these principles are applied in practice requires careful consideration.

The UK and Ireland follow very similar corporate governance systems in respect of financial reporting for businesses and utilities. In this context, in respect of financial reporting for regulatory accounting for the national postal operator, An Post would encourage ComReg to put in place reporting regimes very much in line with those in the UK and for other regulated utilities in Ireland. In corporate businesses this is the case and there is no reason to think that it would not work well for regulation of the postal sector. The precedents both in Ireland and the UK could be very valuable and give all parties insight into what appears to be a practical and balanced regulatory regime.

An Post is concerned that this does not appear to be the case at present. Many of the proposals made by ComReg in the Accounting Obligations Consultation are disproportionate and impractical and would seem prejudicial to the value of the business in the event of Government deciding that private capital in the national postal operator would be desirable. If ComReg is going to put a regime in place that

¹² Ofcom, 2012, “Regulatory financial reporting: a review” see: <http://stakeholders.ofcom.org.uk/binaries/consultations/reg-financial-report/summary/condoc.pdf>

¹³ EC, 2005, ‘European Commission recommendation of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications’, (2005/698/EC)

is very much different to that in the UK, or to other regulated utilities in Ireland, An Post considers that the Government ought to be consulted in advance.

Reporting balance sheet at regular intervals

ComReg proposes that An Post submits its balance sheet on a quarterly basis, until the company cash at bank and in hand reaches €100 million, to ensure the provision of the universal postal service is sustainable.

An Post disagrees with ComReg on the necessity of providing the balance sheet and the cash position on a quarterly basis as, in An Post's opinion, this is unnecessary and impractical. In particular, An Post notes that:

- It is not correct to say that without a quarterly An Post balance sheet, ComReg would not be aware of An Post's cash position until Regulatory Accounts are presented after each year end. There are regular review meetings (including at CEO and Commissioner level) where these issues are discussed.
- The ability to service the USO by An Post in a sustainable financial environment is not singularly measurable by the cash balance on a quarterly balance sheet. ComReg has not outlined how they intend to use this information to determine that An Post is in a position to continue to service the USO, and An Post does not believe that it is possible make such a determination based on this information.
- The level of €100 million seems arbitrary and unjustified. An Post has demonstrated over the past number of years (see Figure 2 on page 37 of ComReg's Accounting Obligations Consultation) that the USO can be provided when cash on hands is significantly lower than this level. Further, many public utility and USO providers have no free cash and indeed extended debt. Many of the most profitable and better run mail and other logistic operators do not have free cash on their balance sheet and would have a finance structure with a mix of debt. Information on cash held provides only a partial view of An Post's financial position.

- The €100 million threshold may impact negatively on An Post's ability to invest, especially in the current context of low interest rates. An Post's investments would be stifled by the requirement of keeping liquidity at all times. If An Post was to borrow money to finance investments, given the current low interest rates, it may well be that much less than €100 million would be needed to honour the loan's repayment.
- It appears that the requirement proposed by ComReg is not consistent with international precedent in other jurisdictions. For example, La Poste¹⁴ and the Hellenic Post¹⁵ are both required to provide balance sheets on an annual basis.

In light of these arguments, An Post recommends that the existing process in relation to cash reporting should remain unchanged - it has proven effective to date and there does not appear to be a valid reason to change it.

Capital expenditure

ComReg proposes that An Post provides detailed commentary on its capital expenditure (capex) in its RFS.

An Post agrees with the need to provide a capital employed statement on an annual basis, and will continue to do so. Also, An Post agrees with ComReg that it would be practically difficult to split capex between USO and non-USO services and that any such disaggregation would need to be based on a number of methodologies.

However, An Post believes that providing a detailed commentary on capex in the published version of the RFS would risk damaging An Post commercially as well as add significant costs and increase the timelines for production of Regulatory Accounts with little or no benefit accruing. Detailed capex figures would include commercially sensitive information on An Post's commercial strategy. The disclosure of this information to competitors could distort competition and

¹⁴ Arcep, 2012, "Consultation publique du 17 janvier au février 2012 (partie 1) et du 17 janvier au 2 mars 2012 (partie 2)", Article 1

¹⁵ EETT, Decision of 3 December 2003, Article 8, paragraph (1)

disadvantage An Post, reducing the incentive for An Post to invest and innovate in their own businesses.

Further, it does not appear that detailed information on capex is provided by postal operators in other jurisdictions. EETT, the Greek communications regulator, requires the USP to provide a breakdown of costs and revenues as well as capital employed annually for USO, non USO, exclusive and non-exclusive products. However, the regulator does not require data on the return on capital by service nor comments on capex figures.¹⁶ In addition, ComReg itself, in requesting capex details from Eircom, has been careful to ensure that such requests are both reasonably high level and also provided privately to ComReg.

In light of these arguments, An Post proposes that information on capex in the RFS is not accompanied by a detailed commentary.

Payroll costs

ComReg proposes that An Post provides information on its payroll and average staff numbers - Full time equivalent (FTE) - by business segment and, for the mail business segment that it shall report separately for the USO and non-USO postal services.

An Post considers that ComReg has not sufficiently explained the rationale and benefits arising from the inclusion of payroll cost and FTE by business unit in the RFS. These should be clarified by ComReg as the changes that would be required on the costing system to enable such reporting in the RFS may be very costly. In addition to the costs associated with reporting, this recommendation would require An Post to disclose commercially sensitive information, and as such it raises the same competition concerns that have already been outlined above.

In light of the above, An Post considers that ComReg would need to provide further arguments to justify such requests, including specific examples of areas where the availability of such data would be beneficial to ComReg in discharging its regulatory duties.

¹⁶ EETT, Decision of 3 December 2003, Article 8 paragraph (8)

Further, the level of detail requested by ComReg is not in line with that provided by operators in other jurisdictions. For example, Ofcom requires Royal Mail to provide payroll costs data by productivity metrics such as staff headcount and FTE data by business unit only.¹⁷ An Post, on the other hand, currently publishes payroll for the mail products, split between USO and non-USO services, and FTE numbers for the entire group, as well as a split between the company and its subsidiaries. It is also clear that such levels of detail are not required by ComReg of either Eircom or RTE/2rn, and again An Post would question why such a requirement is put forward in the case of An Post.

An Post proposes that the payroll costs reporting remains unchanged.

Account commentary

ComReg proposes that the existing requirement under the 2006 Accounting Direction in relation to An Post having to provide commentary on the RFS should remain under the Proposed Accounting Direction. ComReg is also of the preliminary view that the accessibility of the RFS could be improved by including charts and trends similar to those included in An Post's Annual Report.

An Post is concerned that ComReg's request of detailed commentary and graphic content in the RFS would create unnecessary and unjustified costs for An Post. An Post would also reference the Eircom and RTE/2rn regulatory accounting commentary requirements and highlight that this request greatly exceeds what ComReg requested of either company. An Post would ask that ComReg reconsiders these requirements in light of these precedents. It should also be noted that as the Regulatory Accounts are based and reconciled to An Post's Statutory Accounts then trends and commentary information from An Post's Annual Report is of equal relevance to the An Post Regulatory Accounts.

¹⁷ Ofcom, Consultation October 2013, p11, see:

<http://stakeholders.ofcom.org.uk/binaries/Consultations/regulatory-reporting-framework/summary/framework.pdf>

An Post is of the opinion that the current level of detail included within the Regulatory Accounts is already in excess of the requirements of the 2011 Act as well as exceeding international standards. A comparison of An Post published Regulatory Accounts to Royal Mail Regulatory Accounts evidences the disproportionate level of narrative of the two documents. The detail included in the Royal Mail formal Regulatory Accounts is very limited, and confined to the introduction section. Excluding the independent auditor's report and the statement of responsibility, the document has fewer than 3 pages of narrative. On the other hand, An Post's public RFS contains numerous explanations, both at the beginning of the RFS and accompanying tables.

In light of these arguments, An Post proposes that it will continue to provide commentary that may improve the users' interpretation of the annual RFS, but that this should not be mandated under the Accounting Direction.

Other reporting requirements

ComReg proposes that the existing requirement under the 2006 Accounting Direction, in relation to An Post having to provide, upon request, an ad hoc report on the availability of the universal service to ComReg, should be carried over in the Proposed Accounting Direction. ComReg also proposes that it may arrange for the Regulatory Auditor to conduct "Agreed Upon Procedures" in respect of any such ad hoc report, as may be requested by ComReg from time to time.

An Post currently provides ComReg with ad hoc documents on USO availability when required. As in the past, An Post will continue to work closely with ComReg on the provision of ad hoc reports where requested by ComReg. An Post also considers that any future regulatory requirement on providing additional information should be predictable, consistent, relevant and proportionate, to minimise the reporting burden imposed on An Post.

There is no legal basis for ComReg to require the production of information to it only pursuant to an Accounting Direction.

An Post does not agree that the ad hoc reports it provides to ComReg should be audited on an "Agreed Upon Procedures" basis. In particular, An Post would again

like to highlight that both Eircom and RTE/2rn, who currently provide regulatory information of this nature to ComReg, do so under the heading of “Additional Financial Information” (“AFI” for Eircom) and “Additional Financial Data” (“AFD” for RTE/2rn). The auditing of this information is on an ‘as needed’ basis and is the exception and not the norm. Therefore An Post would question as to why this approach would not provide a suitable basis for An Post. Additional comments on the audit standards can be found in section 2.4 below.

Publication of the Accounting Manual

ComReg proposes that An Post shall be required to include in its RFS details of the accounting principles which it applied in preparing its Regulatory Accounts, in sufficient detail as to clearly inform stakeholders on how those accounting principles were applied.

An Post agrees with ComReg that the Accounting Manual should not be published because of the amount of confidential and commercially sensitive information that it contains.

An Post points out that the published RFS currently includes a section dedicated to the regulatory accounting principles and the basis of preparation of the RFS. An Post believes that the information is provided in sufficient detail and thus considers this recommendation already fulfilled.

2.4 Compliance requirements

This section discusses ComReg’s proposals with respect to compliance requirements, set out in section 4.4 of the Accounting Obligations Consultation.

Scope of audit

ComReg proposes that the Proposed Accounting Direction should require that the scope of the audit should be on a “present fairly” basis, and that it should include commentary and verification of compliance by An Post with its internal cost accounting systems, in respect of the following:

- the Regulatory Accounts and the Accounting Manual;

- the revenue, costs, and volumes included in the Regulatory Accounts;
- the reconciliation between the Regulatory Accounts and Statutory Accounts;
- correctness of figures, including operational volumes and the reconciliation of revenue-derived volumes to operational volumes;
- methodologies used regarding amortisation, cost capitalisation, and cost allocation (including transfer charges / inter-segment charges);
- appropriateness of the usage of the cost drivers;
- nature and detail of all transfer charges / inter-segment charges;
- the frequency of updates used for cost allocation purposes;
- appropriateness of any changes in the cost allocation methodology; and
- whether the Accounting Manual continues to fairly present the USP's processes, procedures, and policies in preparing the Regulatory Accounts.

With respect to this requirement, An Post has concerns with respect to both the level of audit opinion, as well as the specific list of areas that should be covered within the scope of the audit.

With respect to the first issue, An Post notes that the audit opinion set out on pages 8 and 9 of the 2014 Regulatory Accounts are currently prepared on a 'present fairly' basis. However, An Post believes the audit standard should be conducted on a "properly prepared in accordance with" (PPIAW) basis. A review of international precedents highlights that there is no single standard practice in relation to the type of audit opinion provided. For example, while a 'present fairly' basis is applied for some operators, RTE/2m and Royal Mail's regulatory audits

are carried out on a PPIAW basis¹⁸, which Frontier Economics and ComReg have failed to discuss in the Pre-Consultation report as a possible option.

An Post would ask that ComReg revisit this section of the Draft Direction in detail as the information provided is both difficult to interpret as well as using language that from an auditing perspective does not provide the clarity necessary to either An Post or an auditor. An Post would specifically ask that ComReg review the auditing requirements with experts in this area, and use the precedence of the establishment of the tri-partite engagement and the “Duty of Care” dialogue when agreeing this highly technical area; this involved ComReg, An Post, the Auditors as well as the CAI¹⁹. Given the highly specialised nature of auditing, An Post notes with surprise that such an engagement has not commenced to help inform this Draft Consultation, despite the clear opportunity to do so during the pre-consultation phase.

In particular An Post requests that more detail and wider engagement is required to be given to the following, in relation to the requirement as listed in Paragraph 164 of the Draft Consultations:

- What specifically are the detailed requirements of “present fairly”?
- What specifically is required when “*commentary*” is to be included? Is this to be included as part of the detail of the audit opinion or separately?
- What, from an auditing perspective does ComReg require when it requests:
 - “*correctness of figures*”?
 - “*appropriateness of the usage*”?

¹⁸ See Royal Mail engagement letter with Ernst & Young:
<http://stakeholders.ofcom.org.uk/binaries/post/engagement-letter.pdf>

¹⁹ Chartered Accountants Ireland.

- “*whether the Accounting Manual continues to fairly present the USP’s processes, procedures, and policies in preparing the Regulatory Accounts*”?

An Post notes that there would appear to be differences between the details provided in Section 4.4 of the Draft Consultation document and the proposals as detailed in Section 6.2. An Post would ask ComReg to provide clarification on its audit requirements as these could easily lead to confusion and misinterpretation. For example, An Post requires further detail on the requirements to provide a ‘present fairly’ audit opinion specifically on the Accounting Manual. For other regulated entities, the audit opinion directly relates to the financial statements. The related accounting documentation is provided to detail the basis of preparation of the statements.

With regards to the second issue, An Post notes that the scope of the audit covers the totality of the Regulatory Accounts and not specific aspects therein, in accordance with International Standards on Auditing. This is also set out in the tripartite engagement letter An Post has agreed with ComReg, which states that An Post’s regulatory audit covers “*the Regulatory Accounts as whole and not individual factors/components within the Regulatory Accounts or individual areas of compliance with the Direction*”. Hence, the entirety of the RFS is currently audited.

Further, the existing audit engagement with KPMG, including a “Duty of Care” to ComReg, was fully accepted by ComReg in January 2013 (see letter from ComReg of 16 January 2013). An Post thus do not see any reason to change the outcome of such a recent engagement.

In light of the above, An Post would encourage ComReg to revisit, through engagement with the necessary experts in this area, these audit requirements.

Appointment of the Regulatory Auditor

ComReg proposes that the auditor of the Regulatory Accounts (the Regulatory Auditor) should be appointed by ComReg and not by An Post and that the appointed auditor shall not be the same entity that audits An Post’s statutory accounts.

ComReg justifies this requirement on the basis of the potential for the independence of the Regulatory Auditor to be compromised. The Regulatory Auditor will also have a 'duty of care' to An Post.

Right to appoint the Regulatory Auditor

An Post is highly concerned by the implications of this recommendation. The independence of an accredited auditor should not be questioned. As there are not and there should not be any suspicions on the independence of an auditor, there is no need for the Regulatory Auditor to be appointed by ComReg rather than An Post as it is currently the case.

Currently An Post's auditor has a duty of care to both An Post and ComReg as is outlined in the Letter of Engagement, which was agreed between ComReg, Chartered Accountants Ireland, An Post and KPMG. The auditor's appointment is re-evaluated and re-tendered every 3-5 years in accordance with public procurement requirements on an arm's length basis by An Post. The audit letter of engagement is signed by ComReg, An Post and the auditor. This arrangement is working successfully and An Post is not aware of any instance where there has been doubt as to the independence and validity of the Regulatory Auditor's conclusions.

It is not customary or usual in Ireland for an auditor to be appointed to a semi-state body, which operates on a commercial or quasi-commercial basis, by a third party or regulator – this type of procedure would more usually correspond with a public body (e.g. a hospital or university where the Comptroller and Auditor General is appointed by persons other than the board of directors to conduct an audit). Indeed, in the case of Eircom, ComReg in its 2009 Accounting Direction²⁰ discusses the issue of independence of the auditor but does not recommend that the regulatory auditors should be appointed by ComReg.

An Post would also highlight the WIK report²¹ which states that, "*In 7 Member States (EL, FR, IE, IT, MT, NL, RO), the auditor is an accounting firm retained by the USP*".

²⁰ Accounting Direction Doc. 09/75

²¹ WIK-Consult, 2009, The Role of the Regulator in a More Competitive Postal Market <http://ec.europa.eu/internalmarket/post/doc/studies/2009-wikregulators.pdf>

Given the report shows an even split between jurisdictions where the auditor is appointed by the regulator and jurisdictions where the auditor is appointed by the operator the quote on the appointment by the regulator being “*best practice*” appears to be unfounded.

An Post would also like to highlight the inconsistent position of ComReg with respect to the WIK report mentioned above. This report, together with another report also by WIK²², was quoted by An Post in the response to the Consultation on Quality of Service Standard for Universal Postal Service²³. However, ComReg in its response to An Post rejected the reference to the two reports, arguing:

*“An Post provides quotes from a consultant’s report to the European Commission with regard to its submission that there is an increased availability of alternative means of communications. ComReg would note that such reports are, in general, for the purpose of assisting the European Commission to consider possible future amendments which it may make to the European Postal Directive, including any amendments reflecting a change in policy.”*²⁴

In light of this quote, it appears highly inconsistent that ComReg in both the Pre-Consultation and the Accounting Obligations Consultation uses the very reports whose use it previously rejected as the only justification for its proposal to grant itself the right to appoint An Post’s Regulatory Auditor.

Separation of Regulatory Auditor and Statutory Auditor

An Post also disagrees with ComReg’s recommendation that the Statutory Auditor and the Regulatory Auditor should not be the same entity. In An Post’s view, where the Regulatory Auditor is not the same as the Statutory Auditor, this would add considerably in terms of cost and burden on An Post, as the Regulatory Auditor typically leverages from the financial information and general knowledge it obtains through the statutory audit, in conducting the regulatory audit. For example, in auditing the regulatory accounts there is a requirement on the auditor to complete an

²² WIK-Consult, Main Developments in the Postal Sector (2010-2013)

²³ ComReg, 15/126

²⁴ ComReg, 15/126

extensive and detailed examination of the underlying financial sources, in particular at a General Ledger (GL) level. This is required to ensure that the underlying financial systems, for example the GLs, are accurately capturing costs and to gain the required understanding of the costs to ensure that the most appropriate driver(s) have been employed to allocate these costs in the RFS. This would imply a significant duplication of effort were the auditors different.

As the appointment of the Statutory Auditor continues to be the responsibility of the An Post shareholders, in An Post's view the responsibility for appointment of the Regulatory Auditor should also be retained by the An Post shareholders.

An Post would also highlight that the restriction suggested by ComReg that An Post's Statutory Auditor could not audit the Regulatory Accounts is, as far as it can be determined, without precedence and based on the premise that there is a question of the independence of the auditor in this situation. As this premise has not been based on anything other than a comment from a report by WIK consultants, An Post would seek a clarification from ComReg as to the basis and the logic of these requirements.

It should also be noted that in a subsequent 2013 WIK report on the main developments in the postal sector²⁵ the two regulatory accounting regimes that were mentioned as best practice are the UK and France, and in both these jurisdictions the same auditor is retained for the Statutory and Regulatory Audits.

In addition, in ComReg's Decision for Eircom, ComReg stated that "*ComReg was of the initial view that a suitably qualified independent body conduct the audit of Eircom's separated accounts. In its view the Regulatory Auditor, which could be the same as the Statutory Auditor, should have the necessary expertise to conduct the audit.*"²⁶ Further, in the same Direction issued by ComReg to Eircom in 2010 it is stated that:

"(a) The auditor of Eircom's Separated Accounts be independent and have the necessary skills to undertake the audit.

²⁵ WIK-Consult, Main Developments in the Postal Sector (2010-2013)

²⁶ ComReg, 10/67, D08/10

(b) There should be a “Duty of Care” to ComReg from Eircom’s Regulatory Auditors.

(c) An auditor’s letter of engagement should be a tri-partite arrangement covering Eircom, ComReg and Eircom’s Regulatory Auditors.”

Further, in the 2009 Eircom Draft Accounting Direction²⁷, ComReg states:

“While ComReg does not object to the regulatory auditor also being the statutory auditor, it is however important that the appointed auditor has the right skills to perform the specific audit tasks set out in the letter of engagement.”

The document also states that:

“ComReg is of the preliminary view that the proposals set out in this consultation (see recommendation section below) with regard to cost allocation and apportionment [of the auditor] are consistent with the practices employed in the countries considered in our benchmarking analysis, with Commission Recommendations (including ERG) and with other regulated industries (i.e. Postal Sector).”

In light of the above, there appears to be a clear contradiction in ComReg’s position across industries and Directions.

As mentioned above, Royal Mail also appoints its auditor, after consulting with Ofcom:

“The new regulatory financial reporting requirements were set out in the USP Accounting Condition (‘USPAC’) which was published as Annex 10 of the March Statement.

1.3 The USPAC requires Royal Mail to select and appoint an auditor upon Ofcom giving their approval to the appointment and the terms of the engagement. Royal Mail have advised us that they propose to select Ernst & Young LLP (‘Ernst & Young’) as auditor for the financial year ending 31 March 2013.

²⁷ Accounting Direction Doc. 09/75

1.4 In the February Consultation we proposed to approve the appointment of Ernst & Young as auditor.”

Moreover, in its compendium “The Law of Public and Utilities procurement: Regulation in the EU and UK”²⁸ Professor Arrowsmith specifies that the Court of Justice has stated²⁹ as a general principle that contracting authorities can decline to consider firms only if they fail to respect four professional quality factors. These factors are: economic and financial standing, technical and professional ability, suitability to pursue the professional activity (i.e. possession of the appropriate professional qualification and authorisations), and professional honesty, solvency and reliability. Since the participation of the Statutory Auditor in the tender for the regulatory audit does not contradict any of these factors, it appears that ComReg’s proposed recommendation is not in line with what is stated by the Court of Justice.

Further, according to the Public Sector Directive³⁰, ComReg is obliged to ensure competition among tenders is open, fair, transparent and inclusive. Four TFEU³¹ principles must be upheld by the procuring body: the principles of equal treatment, transparency, proportionality and mutual recognition. The principle of equal treatment is concerned with ensuring that the same rules are applied to all tenders, so that equal rights of access are guaranteed. Hence, all tenderers admitted to participate in procurement procedures must have equal access to procurement opportunities and must be treated in an equal manner. The statement included in the Accounting Obligations Consultation clearly breaches this principle as it prohibits the Statutory auditor from acting as the Regulatory auditor: *“ComReg proposes that the auditor of the Regulatory Accounts (the Regulatory Auditor) should be appointed under contract by ComReg and that the appointed auditor shall not be the same entity as audits An Post’s statutory accounts (and as appointed by An Post).”*³²

²⁸ Professor Sue Arrowsmith, 2014, “The Law of Public and Utilities procurement: Regulation in the EU and UK”

²⁹ Joined Cases C-226/04 and C-288/04, La Cascina v Ministero della Difesa, 2006, Paragraph 21 of the judgment.

³⁰ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC

³¹ Treaty on the Functioning of the European Union

³² ComReg, Accounting Obligations Consultation, Paragraph 168

In light of these considerations, An Post suggests that the proposed recommendation is changed to enable An Post to appoint the Regulatory Auditor, which will continue to be subject to a duty of care to ComReg, without any restrictions due to the auditing of the Statutory Accounts.

ComReg's approval of the USP's Accounting Manual

ComReg proposes that it would be more efficient if An Post was only required to notify ComReg of any changes to the Accounting Manual and if it was not required to obtain ComReg's approval for each annual edition of the Accounting Manual. To ensure that the Accounting Manual correctly sets out the procedures and policies for preparing the Regulatory Accounts, ComReg proposes that the Regulatory Auditor would assess any such changes and would report to ComReg as to whether the Accounting Manual continues to fairly present An Post's processes, procedures, and policies in preparing the Regulatory Accounts.

An Post agrees with ComReg that it is impractical to validate the entire Accounting Manual early. The original requirement of needing pre-approval did not appear to be consistent with international precedent. Pre-approval of the Accounting Manual is not requested in any European jurisdiction as far as An Post is aware.

An Post broadly agrees with ComReg that the preliminary view in the Accounting Obligations Consultation would represent an improvement in the requirement. However, without limiting this requirement to material changes, there is every risk that this recommendation would prove unworkable and would delay the existing working arrangements.

Statement of compliance

ComReg proposes that the Accounting Direction shall maintain the requirement that the Directors of An Post furnish a signed statement, acknowledging their responsibilities for the preparation of the Accounting Manual and the Regulatory Accounts and confirming that said documents comply with section 31 of the 2011 Act and with the Proposed Accounting Direction.

This is the current situation and therefore An Post considers this recommendation already implemented. An Post would also highlight that ComReg is potentially

introducing added complexity and practical difficulties with the continued provision of the Directors statement in a situation where the auditors were by appointment of ComReg.

Timetable to comply with direction

ComReg is of the preliminary view that An Post should be in full compliance with the requirements of the Proposed Accounting Direction, given under section 31 of the 2011 Act, by the start of financial reporting period commencing 1 January 2017, in order that the Regulatory Accounts ending 31 December 2017 shall be fully compliant with the Proposed Accounting Direction (when made).

An Post is concerned that ComReg has not appropriately considered the numerous changes to An Post's systems/procedures that would be necessary to comply with, if the accounting recommendations proposed in the Accounting Obligations Consultation were implemented. Hence, An Post believes ComReg should consider that it may be not possible to implement all changes in time for the 2017 RFS.

3. An Post comments on question two of the Accounting Obligations Consultation

This section provides An Post's response to the question:

“Do you agree or disagree with ComReg’s preliminary views on the format of the Regulatory Accounts as set out in ComReg 15/135b? Do you agree or disagree with ComReg’s views on what in the Regulatory Accounts is made public as set out above and in the Summary Regulatory Accounts set out in ComReg 15/135c? Please explain your response and provide any supporting evidence.”

This section covers the preliminary views presented in sections 4.7 and 4.6.1 of the Accounting Obligations Consultation.

3.1 Format of the Regulatory Accounts

Format of the Regulatory Accounts

An Post is of the opinion that the format of the RFS should be established by An Post, in discussion with ComReg, and also that the current level of detail included within the Regulatory Accounts is in excess of the requirements of the 2011 Act. In An Post's opinion, there is a requirement for significant changes to be made to the format of the Regulatory Accounts.

Moreover, An Post understands that there is no clear legal basis for an Accounting Direction to require compliance by An Post with a certain written format.

Regarding the details of the Regulatory Accounts proposed by ComReg, the table below presents a summary of ComReg's proposed changes to the Regulatory Accounts by schedule and An Post's response.

SECTION OF THE PROPOSED RFS	COMREG'S PROPOSED CHANGE	AN POST RESPONSE
Financial Summary and Business Review	Include financial liquidity measures in the KPIs.	<p>Opposed.</p> <p>Inclusion of financial liquidity measures in the RFS is outside the norm.</p> <p>Gathering a complete understanding of the liquidity position of a company requires the analysis of a number of metrics.</p>
Financial Review	Add an annual figure of net assets including pension liability to the financial review.	Accepted.
USO Performance	Include high-level summary of An Post USO annual performance and a summary of USO performance split by geography (inbound inter-community, inbound rest of the world and outbound international).	<p>An Post accepts ComReg's proposal of including a high level financial review of USO services.</p> <p>An Post believes that the split by geography should be moved to the appendix and included in the confidential version only.</p> <p>A review of Ofcom RFS guidelines highlighted that Royal Mail is not required to produce a similar split of USO performance in its accounts, suggesting that Frontier Economics' requirements are not in line with UK best practice.</p>
Profit and Loss Account for each Business Segment	<p>In line with what published in previous An Post RFS.</p> <p>Includes detailed symmetric tables on inter-segment revenues and costs, split by business segments (Mail, Retail and Subsidiaries) and Mail inter-segments (USO and non-USO).</p>	<p>An Post agrees that such an account should be included in the Published and Confidential RFS.</p> <p>See section 2.2 of this report</p>

<p>Per Unit Revenue, Cost and Profit/(Loss) details for each USO service</p>	<p>Include per unit cost, revenue and profit figures for each USO service.</p>	<p>Opposed.</p> <p>An Post believes these figures are superfluous as aggregate information on volumes, revenues and costs is easily available in the Confidential RFS and thus unit figures can and should be calculated by users when necessary.</p> <p>This position is in line with Royal Mails (RM) RFS, both the public and the private accounts, where the aggregate figures are presented but no unit figures are provided.</p>
<p>Balance Sheet for each Business Segment</p>	<p>Include a breakdown at business segment level, with the Mail segment being further split between USO and non-USO.</p>	<p>Opposed.</p> <p>While An Post agrees on the recommended format of the balance sheet, An Post believes that the split into USO and Non-USO mail is unnecessarily invasive. An Post thus proposes to present figures for the Mail segment aggregated.</p> <p>This is also in line with what was requested by Ofcom to RM: RM is requested to provide the balance sheet at Group level and at Reported Business level.</p>
<p>Detailed Profit and Loss Account for Mails Business Segment</p>	<p>Detailed P&L should be split by business operating process, as to give a “pipeline” view of An Post’s business. The proposed P&L accounts are to be provided by category for USO and Non-USO Mail services. Separate accounts should be created for domestic, international inbound intra-EU and international inbound to the rest of the world operations.</p>	<p>Opposed for public version.</p> <p>An Post proposes that a summarised version of the P&L for all geographies broken down by USO services is included in the Confidential RFS, with the tables suggested by ComReg included in the appendix.</p>

Detailed Profit and Loss Account for Each Universal Service	Detailed P&L accounts at service level for all USO services. These should be split by business operating processes, as to give a “pipeline” view of the An Post business. There should be separate proposed P&L accounts for domestic, international inbound intra-EU and international inbound to the rest of the world operations.	Opposed for public version. This would crowd the RFS, while not providing insightful information to the public.
Estimated cost of providing USO services by price point	Include average cost to provide services and the tariff is provided for each price point, international outbound and domestic (both fully paid price and bulk products) services.	Opposed. See section 2.2 of this report.
Notes to the Regulatory Financial Statements	<p>Include a reconciliation of turnover, costs and profits/loss with the figures reported in the Statutory accounts in the Public and Confidential RFS.</p> <p>Include information on fixed assets, debtors, creditors and capital employed scheduled.</p> <p>Include detailed accounts of staff and payroll costs, split by cost type (payroll cost only) and area of employment (both payroll and staff).</p>	<p>Accepted.</p> <p>Accepted.</p> <p>Opposed. See section 2.3 of this report.</p>
Supplementary information - reconciliation of revenue-derived and operational volumes	Include reconciliation of revenue derived and operational volumes at format level.	Opposed. See section 2.1 of this report.
Supplementary information - reconciliation of Mail Centre and Delivery Service Units Volumes	Include reconciliation of Mail Centre and Delivery Service Units volumes.	Opposed. See section 2.1 of this report.
Cash Balance	Include in balance sheet the amount of cash at bank and in hand at the end of each quarter is reported when the figure in the current quarter is below €100 million.	Opposed. See section 2.3 of this report.

Treatment of parcels

It is ComReg’s preliminary view that the service level should include parcels as a separate category, as the current Regulatory Accounts do not provide disaggregated information on parcels. Given the growth in e-commerce, parcels are potentially a large component of revenues, and therefore it would seem to be appropriate for it to be a separate line item, rather than including it in “other” as is the case currently. This would also ensure that the reporting of parcels is consistent with the reporting of packets (smaller parcels).

An Post is of the opinion that this requirement is already fulfilled, as data at parcel level is already included in An Post Regulatory Accounts. For example, in the summary Profit and Loss account in the publicly available Regulatory Accounts, USO parcels are reported as a separate category, while the confidential version has detailed information on USO and Non-USO parcels.

3.2 Confidential and public versions of Regulatory Accounts

ComReg’s preliminary view in relation to the confidentiality of the additional information requirements proposed for the updated Accounting Direction is set out in the table below.

ADDITIONAL INFORMATION	COMREG PROPOSED TREATMENT
Commentary and additional KPI in “Schedule 1 - Financial Summary and Business Review”	Public as does not contain confidential information
Commentary on USO volumes in “Schedule 3 - USO Performance”	Public as does not contain confidential information
Split on International Inbound profit/(loss) between intra-Community and Rest of World	Public as does not contain confidential information; improves information for section 29 of 2011 Act
Split on intra-segment revenue and cost, USO and non-USO	Public as does not contain confidential information
Per unit Revenue, Cost and Profit(Loss) for each universal postal service	Public as does not contain confidential information; improves information for section 28(1) of 2011 Act
Split non-USO Parcels from other	Confidential as relates to non-USO Parcels
International Inbound by intra-Community and Rest of World	Public as does not contain confidential information

Estimated cost of providing universal postal service by price point	Confidential
Average FTE and Payroll costs by business segment, USO, non-USO	Public as does not contain confidential information

An Post is concerned that ComReg has not explained sufficiently the benefits that it expects from the publication of the information in the table above. Following the liberalisation of the sector, competition in the postal service markets has increased significantly in Ireland. For this reason, An Post believes that mandating the disclosure of sensitive information, such as service-level information, would provide competitors with commercially sensitive information which would disadvantage An Post with respect to other operators and further undermine the provision of the Universal Service.

An Post believes it is ComReg's duty to justify the need for the information it would like to make publicly available by demonstrating the expected benefits from publication. Some of the areas where the impact of the breach in confidentiality would be damaging for An Post are:

- Per unit Revenue, Cost and Profit (Loss) for each universal postal service
 - An Post is concerned that publically providing this information would give its competitors an insight to the operational process at An Post and this could put them at a competitive disadvantage.
- Average FTE and Payroll costs by business segment, USO, non-USO:
 - This would require An Post to disclose commercially sensitive information that may put it at further disadvantage when competing against other market participants.
- Non-USO products breakdown:
 - As the market for Non-USO products is competitive, information on Non-USO products should be limited and provided only at aggregated level.
- Detailed Profit and Loss Account for Mails business segment and for each universal service, to be provided by category for USO and Non-USO Mail

services. Separate accounts should be created for domestic, international inbound intra-EU, and international inbound to the rest of the world operations.

- An Post is concerned that ComReg has not sufficiently demonstrated the benefits of publishing this information, while the costs in terms of loss of confidential information are evident.

Overall, An Post believes that the published RFS should not include any data on Non-USO services. This is because An Posts' activity in Non-USO markets should be regarded as that of any other operator in the market, as An Post's operations in these markets are not subject to any specific requirements/treatments.

Moreover, a comparison of An Post published Regulatory Accounts to Royal Mail Regulatory Accounts shows how the level of information provided by An Post is greater than Royal Mail's. Notably the detail included in the Royal Mail formal Regulatory Accounts is limited to two services i.e. aggregated USO Service and Other Operations. This, along with supplementary information supplied to Ofcom, is sufficient for the regulator to carry out its regulatory duties.

In light of these arguments, An Post believes that ComReg has not identified any reason to support their view that publishing of the data is necessary for the correct functioning of the market.

4. An Post comments on question three of the Accounting Obligations Consultation

This section provides An Post's response to the question:

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

This section covers the preliminary views presented in section 5 of the Accounting Obligations Consultation.

An Post believes that ComReg has failed to quantify or adequately justify why it believes the additional costs of these requirements would be outweighed by the alleged benefits, which do not seem to be adequately justified within the context of ComReg's regulatory duties. While the costs of implementing the requirements will depend on the exact detailed specification of the options, An Post estimates the costs of implementing these changes are likely to be between €2.5m and €5m per annum. These costs are significant and a more detailed impact assessment is required before proceeding with the implementation of the options.

In addition, An Post considers highly inadequate the Regulatory Impact Assessment (RIA) conducted by ComReg, especially when compared to the RIAs that the regulator has recently conducted against other regulatory proposals, for example in the telecommunication sector for Eircom³³ and RTE/2rn³⁴. Indeed, both those RIAs are more detailed than that performed in the postal sector, and are in line with the six principles of 'Better regulation' set by the Irish government.³⁵ For example, both the telecommunications RIAs include an explicit discussion of the six principles of 'Better

³³ ComReg, 2010, Response to Consultation Document No. 09/75 and Final Direction and Decision: Accounting Separation and Cost Accounting Review of Eircom Limited, ComReg 10/67

³⁴ ComReg, 2013, "Market Review Broadcasting Transmission Services in Ireland", ComReg 13/71

³⁵ Taoiseach Government, 2009, "Revised RIA guidelines, how to conduct a Regulatory Impact Assessment" see: http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf

Regulation' and explain why each of the principles is met in the RIA. Given that these are Government guidelines, updated as recently as 2009, for the completion of RIA we fail to understand the reason that these guidelines were not followed before the issuing of this Draft Direction. In particular, when ComReg came to decide on, what for An Post and ComReg, is a significant step, having the potential for significant *incremental* cost implications on An Post, with unclear *incremental* benefits on the industry as a whole.

Further details on An Post's view on the costs that would be imposed by the proposed requirements are provided in Appendix 1 of this document.

4.1 Comments on the draft Regulatory Impact Assessment

The following comments relate to ComReg's determination of the impacts on stakeholders and competition in paragraph 201.

- **Option 2a:** ComReg fails to identify whether the cost of carrying out the reconciliation are significant. ComReg state that all that is required is to "*provide more detailed commentary in relation to existing reconciliation*", referring to the comparison of revenue and operational volumes at the format level. However, this does not currently contain a detailed reconciliation of the volumes.

As stated previously in this response, the differences between revenue based and operational volumes ultimately derive from the underlying assumptions of the two methodologies and therefore it is not possible to undertake a quantitative reconciliation. The qualitative "*reconciliation*" currently provided by An Post provides all the possible clarity on the differences between the two sets of volumes, given the information currently collected by An Post.

- **Option 2b:** ComReg considers that the impact of this requirement should not be "*onerous*" and is "*a matter of more detailed reporting*". An Post has systems in place to meet its current obligations and undertaking more detailed reporting of operational volumes at the Mail Centre and Delivery Service Unit level would require changes to the reporting systems. An Post does not believe that

the benefits to ComReg would be commensurate to the costs imposed on An Post.

- **Option 2c:** An Post believes that a reconciliation is not possible, as already discussed.
- **Option 2d:** An Post does not believe this would result in a material improvement in the non-machine counts. Non-machine counts are by nature more time consuming than machine counts so although these account for a small share of the total volumes, the relative workload required to improve these is significant. An Post has previously recommended that ComReg introduce a materiality consideration, before introducing such a requirement.
- **Option 2e:** As mentioned previously, compared to other precedents An Post already provides a sufficient level of detail when identifying different types of costs. Providing further detail on this would not be proportional to the benefits obtained from this information. The justification presented by ComReg also appears weak, as An Post already has a solution in place to agree access prices with other providers which is working effectively, as shown by a number of agreements.

Therefore, the additional costs to An Post in meeting this option are not proportionate to the limited impact this will have on ComReg's ability to regulate effectively.

- **Option 2f:** An Post already undertakes an annual review of the cost drivers and the level of detail provided in its Accounting Manual is consistent with best practice. In this context, An Post is unclear on what additional information ComReg is recommending be provided. An Post would require additional detail on the information requested before commenting on the impact of this requirement.
- **Option 2g:** ComReg has significantly understated the costs associated with this option. Frontier Economics, in their recommendations to ComReg, stated that "*there are numerous inter-segment charges, and it would have been impractical ... to detail all of them ... as part of this review*". Therefore

ComReg should specify a materiality requirement for this option in order to ensure that the requirements are proportional.

- **Option 2h:** The suggestion that this option should increase the cost of the audit needs clarification as this already forms part of the audit. ComReg has been unclear as to what is required as part of the audit and the expected increase in cost suggests that the “*nature and detail*” of the transfer charges requires more than just continuing the requirement as stated by ComReg.
- **Option 2i:** ComReg is already aware of An Post’s cash position at intervals throughout the year so this additional requirement is not proportionate as there will not be a significant additional benefit to ComReg. It is also not clear how ComReg can use this limited information to provide assurance on the provision of the Universal Service.
- **Option 2j:** Providing a detailed commentary on An Post’s capex may put it at a competitive disadvantage as competitors will have sight of the investments it is making that could affect non-USO services. ComReg has neglected to consider the impact this could have on An Post. An Post considers this risk to outweigh any benefits that ComReg might receive from this information.
- **Option 2k:** Similarly to option 2j, this option creates competition concerns for An Post as it involves commercially sensitive information. This cost to An Post has not been included in ComReg’s assessment of the regulatory impact.
- **Option 2l:** Having ComReg appoint the auditor will increase the costs of the audit, due to the lost efficiencies of the dual regulatory appointment, An Post disagree that this would provide greater assurance to ComReg as the regulatory auditor already has a duty of care to ComReg under the current tri-partite arrangement.

An Post also believes that ComReg has not correctly accounted for the financial impact on An Post. Suggesting that the cost to An Post will be lower due to the audit increasing the cost of regulation is misleading as the cost of regulation is covered by the postal levy which will result in An Post continuing to pay for the audit, regardless of who appoints the auditor. In addition, the

duplication of effort, both on the part of the auditors and of An Post, has not been fully acknowledged by ComReg.

- **Option 2m:** An Post agrees that this change would improve the production of the regulatory accounts and better reflects the experience of previous years. However, An Post would like to state that the extra assurance burden placed on the regulator is likely to increase the cost of the audit.

4.2 Other factors to be considered

An Post believes that ComReg has not considered the impact of providing the accounts at each price point. ComReg has stated that this does not currently occur and An Post will need to make significant changes in order to meet this requirement. However, this option was not discussed in the regulatory impact assessment, thus biasing the overall assessment.

Some of the potential costs of this option are briefly discussed in section 4.2.1.3. of the Accounting Obligations Consultation. However, there was no discussion of whether these would be proportionate to the regulatory benefit. Additionally the costs considered by ComReg do not appear to include the full costs of meeting this requirement. As ComReg have mentioned in the Accounting Obligations Consultation, volumes are an important driver of costs but there are difficulties in consistently recording them at the most granular level. This suggests that while imposing a large cost to An Post in updating their systems and the model, the benefits are not going to be significant because it will not be possible to provide sufficient assurance that the volumes, and therefore costs, are accurate. This is also recognised by ComReg when stating that they do not require the reconciliation of revenue and operational volumes at the service level because of the “*significant additional resources*” required.

5. An Post comments on question four of the Accounting Obligations Consultation

This section discusses An Post's response to the question in section 6:

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

This section covers the preliminary views presented in section 6 of the Accounting Obligations Consultation.

Response

An Post's comments from the previous sections apply to this section. In addition, An Post:

- Agrees with ComReg on the necessity to remove reference to the Reserved and Non-Reserved Sectors, as these no longer apply;
- Agrees with ComReg regarding the need to update the IAS14 standard to the IFRS8 standard;
- Has a concern that there is no clear timeline for the completion of the auditing activities. This is highly unusual and this lack of clarity on the production of Regulatory Accounts could have a significant impact on An Post, both in terms of cost and the lack of clarity and transparency that this introduces into the regulatory process; and
- Has a concern about the timeline of submitting the accounts to ComReg within 10 weeks of the financial year ending.

In regard to the last point, it is not clear to An Post why ComReg believes that it is possible, or indeed acceptable, to reduce the reporting timelines from the existing 19 weeks to 10 weeks while also significantly increasing the reporting requirements.

In addition, a timeline of 10 weeks is significantly shorter than that allowed by Ofcom to Royal Mail, as well as significantly shorter than what ComReg itself allows Eircom for its regulatory accounts.

Indeed, Ofcom in the USP Accounting Conditions (USPAC 1.3.7) requires Royal Mail to publish the RFS within 120 days – approximately 17 weeks - after the end of the financial year for which the statement has been prepared.

ComReg in its 'Final Direction and Decision on Accounting Separation and Cost Accounting' states: *"ComReg also proposed that Eircom publish its separated accounts on its website within five months [i.e. over 20 weeks] of the first financial year end and four months thereafter."*³⁶

In light of the above, it appears unjustified for ComReg to allow An Post less than half of the time it allows Eircom for the preparation of its regulatory accounts. The proposal to provide accounts to ComReg prior to audit does not yield this level of saving in preparation time.

Therefore, An Post opposes the proposed 10 week timeline as it is not in line with other national and international precedents and is unworkable, especially in light of the increased reporting requirements envisaged in the Accounting Obligations Consultation by ComReg.

³⁶ ComReg Decision D08/10

6. Conclusion

An Post welcomes this opportunity to provide comments on the Accounting Obligations Consultation. In considering this response An Post anticipates that ComReg will give due consideration to the issues raised in our response, considering in particular:

- The legal limits on the requirements that may be included in any new Accounting Direction based on the relevant legal basis under Section 31 of the 2011 Act;
- The proportionality of any recommendation proposed. The financial burden that the introduction of a recommendation will impose on An Post should be compared to the expected benefits it may provide to ComReg in exercising its statutory functions;
- How market and regulatory changes since 2006 (including the PCM) have changed the competitive pressures in the postal sector in Ireland, and how these changes impact the proposed recommendations;
- The need to work closely with An Post and relevant auditing experts to establish and agree the exact auditing requirements and associated timeline; and
- The need to prove that the publication of any data from An Post is necessary for the correct functioning of the market and/or for ComReg to discharge its statutory duties.

An Post recommends that the parties work together, and with the Accounting profession, to review regulatory reporting requirements that are proportionate. Should ComReg wish to meet to discuss further, An Post is available to meet.

Appendix 1- Confidential

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2: Chartered Accountants Ireland

Mr. Stephen Brogan
Commission for Communications Regulation
Abbey Court, Block DEF
Abbey Street Lower
Dublin 1
D01 W2H4

27 January 2016

Dear Mr Brogan

Consultation on universal postal service accounting obligations (ComReg 15/135)

This letter sets out comments from the Audit and Assurance Committee ('AAC') of Chartered Accountants Ireland ('the Institute') on the Consultation on universal postal service accounting obligations issued by the Commission for Communications Regulation ('ComReg') on 21 December 2015.

The Consultation Paper contains extensive and detailed proposals regarding the preparation and audit of regulatory accounts: in the short timescale allowed for comment (21 December 2015 to 27 January 2016) it is not feasible to provide comments on all matters that may need consideration in finalising the proposals it contains. However, the AAC has a number of overriding issues of principle which it considers require consideration by ComReg.

Appointment of the auditor of the regulatory accounts

We have a number of concerns regarding the proposals on this point.

- (1) First, the Consultation Paper appears to express a view that an auditor of statutory financial statements is not independent (paragraph 169). This is factually incorrect.

Our members who act as statutory auditors are required to adhere to Ethical Standards issued by the Financial Reporting Council ('FRC'). These set demanding criteria for ensuring that independence of any entity to which they are appointed auditor is maintained at all times. Audit firms are also required, by the International Standard on Quality Control 1 (UK and Ireland) '*Quality control for firms that perform audits and reviews of historical financial information and other assurance and related services engagements*' to maintain firm wide policies and procedures to this end and applies this requirement to both financial statement audits and other assurance engagements (of which the report on regulatory accounts is one example).

Additionally, the FRC's recent consultation on implementation of the EU Audit Directive and Regulation ('Enhancing Confidence in Audit') proposes to extend current Ethical Standards, with enhancements to meet the new EU requirements and other additional matters considered appropriate by the FRC, to all 'public interest' assurance engagements, as well as to the audit of financial statements.

Further, in other regulated sectors, the auditor appointed under company law is regarded as independent for regulatory reporting purposes – for example, reporting on insurance companies' regulatory returns and other assurance reporting required by the Central Bank of Ireland, including provision of assurance relating to internal governance arrangements. Other regulators also look to the statutory auditor to provide reports on regulatory accounts, including the Commission for Energy Regulation and equivalent regulatory bodies in the UK. Indeed, as set out below, there is perceived value in the same team reporting on regulatory information.

- (2) Secondly, ComReg indicates that in its view the auditor reporting on the regulatory accounts ('the regulatory auditor') should not be the auditor appointed to report on the USP's statutory financial statements.

In our view, this proposal increases both risk and cost. Risk increases in that the knowledge obtained in the course of auditing the financial statements assists the auditor when considering regulatory accounts and enhances the quality of assurance that can be given - whereas another auditor appointed to report on the regulatory accounts will be faced with the need to gather sufficient background understanding of the entity to plan and perform an effective audit of those accounts. This will involve significant additional cost and time, on the part of the USP as well as the regulatory auditor - and will be hampered by lack of direct knowledge of the processes and judgements that support the statutory financial statements, giving rise to a risk that inconsistencies in reporting by the entity between its statutory and regulatory accounts will not be detected.

We also note that in other regulated sectors appointment of auditors is normally made by the regulated entity rather than the regulator, as ComReg proposes.

- (3) Additionally, it is not clear from the Consultation Document what criteria determine eligibility to be appointed as regulatory auditor under its proposals, or what professional standards would be expected to apply to the provision of assurance in that capacity. This potentially undermines the quality of reporting provided to ComReg.

Matters on which the regulatory auditor is to report

The Consultation Paper indicates that the regulatory auditor is to report on a ‘fairly presents’ basis on both the Accounting Manual prepared by the USP to give effect to the Accounting Direction issued by ComReg and the regulatory accounts prepared in accordance with that Manual. Whilst some aspects of the proposed scope of work are feasible, we believe there are a number of potential problems with that scope arising from the level of detail and nature of the specific matters to be addressed.

The Paper sets out a number of detailed points on which it states the auditor is to give both assurance on a ‘fairly presents’ basis and also ‘commentary and verification’. Whilst the form of report is not discussed in the paper, this scope appears to mix very different concepts.

- (1) ‘Fairly presents’ is a widely used term in the context of giving reasonable assurance in accordance with the International Framework for Assurance Engagements issued by the International Federation of Accountants (IFAC). The Framework underpins both International Standards on Auditing (ISAs), relating to audits of historical financial information and International Standards on Assurance Engagements (ISAEs), relating to provision of assurance on other matters.

Provision of reasonable assurance is based on an assessment of an entity’s report on specified matters in the light of criteria which are required to be suitable for the particular purpose - these will consist of either an appropriate financial reporting framework for reporting on financial statements under ISAs (UK and Ireland), or other suitable criteria when reporting on other matters, as set out in International Standard on Assurance Engagements 3000 ‘*Assurance engagements other than audits or reviews of historical financial information (revised)*’ (‘ISAE 3000’), a copy of which is attached for reference (see requirement in paragraph 24, in particular (b)(ii), and related application guidance in paragraphs A10 and A45 onwards. It is not clear as to what constitutes suitable criteria in relation to many of the detailed matters required to be included in the regulatory accounts. It would be necessary to establish such criteria in order to provide meaningful assurance. Additionally, given the nature of those matters, we believe that may be more appropriate to consider obtaining assurance as to whether the regulatory accounts are properly prepared in accordance with the Direction issued by ComReg.

- (2) Providing commentary on the way in which the entity meets the requirements of the Accounting Direction is the responsibility of the entity’s management. An auditor may provide assurance as to whether that commentary properly reflects the underlying circumstances and whether the stated processes are put into practice, to the extent that the preconditions for providing assurance set out in ISAE 3000 are met. For a number of matters specified in the Consultation Paper, we believe it is unlikely that this will be feasible.

Equally, considering whether the processes put in place meet regulatory requirements is the responsibility of the regulator, not the auditor. Some of the points included – for example, ‘appropriateness of the usage of the cost drivers’ and ‘appropriateness of any changes in the cost allocation methodology’ appear to come close to requiring the auditor to take responsibility for regulatory matters, rather than give assurance on a report made by the USP’s management. We query whether this is appropriate.

- (3) ‘Verification’ implies an absolute level of certainty. Current professional literature (for example guidance issued by the Institute in Miscellaneous Technical Statement 39 *“Reporting to third parties”*) advises against acceptance of engagements to report in such terms.

In the light of these issues, we consider that the precise scope of reporting requires further consideration and discussion with the professional bodies whose members may be impacted by the proposals prior to their finalisation.

Conclusion

As set out in this letter, we believe there are a number of important matters of principles to consider in taking the proposals further – including the agreement of relevant criteria to support the provision of assurance. We would be pleased to meet with you and colleagues to assist in developing an appropriate framework for the regulatory auditor’s work and report relating to regulatory accounts, both in this particular instance and more generally. Should you wish to discuss the points raised in this letter, or any related matters, please contact me at karen.flannery@charteredaccountants.ie or by phone at (01) 637 7389.

Yours faithfully,



Karen Flannery

Secretary to the Audit and Assurance Committee of Chartered Accountants Ireland

Attachments

ISQC (UK and Ireland) 1

ISAE 3000

3: KPMG



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27 January 2016

Consultation on universal postal service accounting obligations

Reference: ComReg 15/135

Dear Mr Brogan

We have considered the Commission for Communications Regulation's ("ComReg") consultation on universal postal service accounting obligations dated 21 December 2015 (the "Consultation Document") and appreciate the opportunity to comment on it. We currently act as both the Statutory Auditor and the Regulatory Auditor to An Post.

We have confined our observations in this response largely to *Section 4.4 Compliance requirements* of the Consultation Document. The focus areas include the appointment of the Regulatory Auditor and the proposed expansion of the scope of the audit.

This covering letter summarises our key points. A more in-depth discussion is contained in the appendices.

Appointment of the Regulatory Auditor:

We do not support ComReg's Preliminary View that the Regulatory Auditor should not be the same entity as the Statutory Auditor. ComReg mentions ensuring independence and better alignment with best practice as two reasons for its preliminary view.

In accordance with International Standards on Auditing, we are independent of An Post, both for the Statutory Audit and the Regulatory audit. We believe that it is not best practice for the Regulatory Auditor to be different from the Statutory Auditor. We understand that it is unprecedented for the Statutory Auditor to be prohibited from being appointed as Regulatory Auditor, either in Ireland, the UK or across Europe. Should ComReg proceed with the Preliminary View as outlined, then we believe that there would be significant implications for the cost and timing of the Regulatory Audit due to the loss of significant synergies from having the same Regulatory and Statutory Auditor. We encourage ComReg to reconsider whether the costs would exceed the perceived benefits and whether the timing would fit in with the required timetable.

Shaun Murphy • Darina Barrett • Alan Boyne • Patricia Carroll • Brian Clavin • Colm Clifford • Mark Collins • Ivor Conlon • Hubert Crehan
Killian Croke • Jon D'Arcy • Eamon Dillon • Paul Dobey • Jorge Fernandez Revilla • Caroline Flynn • Laura Gallagher • Frank Gannon
Michael Gibbons • Ruaidhri Gibbons • Roger Gillespie • Selwyn Hearn • Declan Keane • Jonathan Lew • Niamh Marshall • Ryan McCarthy
Tom McEvoy • Emer McGrath • David Meagher • Cliona Mullen • Ian Nelson • Arthur O'Brien • Colin O'Brien • Barrie O'Connell
Conall O'Halloran • Sean O'Keefe • Garrett O'Neill • Colm O'Sé • Vincent Reilly • Eamonn Russell • David Wilkinson

KPMG, an Irish partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity

Offices: Dublin, Belfast, Cork and Galway

KPMG is authorised by Chartered Accountants Ireland to carry on Investment Business.

Scope of the Regulatory Audit:

We note that the ComReg Preliminary View would significantly expand the scope of the Regulatory Audit. It is not clear to us that the proposed changes are proportionate and that the expected benefits would exceed the additional costs incurred by all parties. We encourage ComReg to reconsider certain aspects in the scope expansion.

We are also not clear from the Consultation Document what the proposed audit scope is in a number of instances. For example, we are not clear what ComReg means when it proposes that the Regulatory Auditor shall “audit the Accounting Manual” (section 6.2 of the Draft Direction). We are also not clear what type of commentary would be expected from the Regulatory Auditor and what format this would be in (paragraph 164).

We encourage ComReg to consult with an appropriate professional oversight body, such as Chartered Accountants Ireland or The Consultancy Committee of Accountancy Bodies – Ireland, in so far as aspects of the Consultation Document relate to the Regulatory Auditor. We would be happy to participate in this exercise.

We would be happy to provide any further clarification or explanation required in respect of the matters set out in this letter or to discuss any other relevant matters with ComReg.

If you believe it would be useful to discuss these matters, please contact Eamonn Russell, Head of KPMG Department of Professional Practice, at eamonn.russell@kpmg.ie.

Yours sincerely

KPMG

KPMG

Appendix 1: Appointment of the Regulatory Auditor

ComReg preliminary view:

Paragraph's 168 and 169 of the Consultation Document state:

ComReg proposes that the auditor of the Regulatory Accounts (the Regulatory Auditor) should be appointed under contract by ComReg and that the appointed auditor shall not be the same entity as audits An Post's statutory accounts (and as appointed by An Post).

ComReg is of the preliminary view that its appointment of the Regulatory Auditor would ensure independence, would be better aligned with best practice and with the requirements of the Postal Directive, and therefore provide greater assurances over the inputs and outputs of the Regulatory Accounts for all parties, including the USP. In particular, given that the Regulatory Auditor would be tasked to review the USP's adherence to the requirements set out in ComReg's accounting direction, it is reasonable and logical that ComReg should appoint this Regulatory Auditor to provide greater assurance to ComReg in relation to adherence by the party subject to the audit (i.e. the USP) with its obligations under the Proposed Accounting Direction. ComReg already appoints and retains the auditor in a related regulatory context in postal where ComReg currently appoints and retains the auditor of the USP's RMS which informs cost allocation (among other things).

KPMG response:

That the Regulatory Auditor not be the same as the Statutory Auditor:

We do not support ComReg's preliminary view that the Regulatory Auditor should not be the same entity as the Statutory Auditor. ComReg mentions ensuring independence and better alignment with best practice as two reasons for its preliminary view.

Independence:

We perform both the Statutory Audit and the Regulatory Audit in accordance with International Standards on Auditing (UK and Ireland) as issued by the Financial Reporting Council. Those standards require us to comply with the Financial Reporting Council's Ethical Standards for Auditors. This includes considerations of independence. We are currently in compliance with those standards and are therefore independent of An Post from an audit perspective. This includes both the Statutory Audit and the Regulatory Audit. The fact that we act as both Statutory Auditor and Regulatory Auditor is not considered to impair our independence under those standards.

Specifically, we are required to comply with auditing standard ISQC (UK and Ireland) 1 "Quality control for firms that perform audits and reviews of historical financial information and other assurance and related services engagements" on all audits. This includes a requirement that "*The firm should establish policies and procedures designed to provide it with reasonable assurance that the firm, its personnel and, where applicable, others subject to independence requirements (including experts contracted by the firm and network firm personnel), maintain independence where required by the IFAC code and national ethical requirements*". We are currently in compliance with ISQC 1 in relation to both the statutory and regulatory audit of An Post.

Best practice:

We believe that it is not best practice for the Regulatory Auditor to be different from the Statutory Auditor. The roles are not separated elsewhere in Ireland. Nor are they separated in the United Kingdom or France, two jurisdictions that were mentioned in a 2013 WIK report as best practice regulatory regimes. We also note that this issue was previously dealt with by ComReg in the context of eir and that the conclusion was that separation was not required.

We understand that it is unprecedented for the Statutory Auditor to be prohibited from being appointed as Regulatory Auditor, either in Ireland, the UK or across Europe. We note that this was echoed in the consultation issued by ComReg in 2010 in relation to proposed changes to the eir (formerly eircom) regulated accounts Direction which stated, *"In its view the regulatory auditor, which could be the same as the statutory auditor, should have the necessary expertise to conduct the audit."* Furthermore, it is noted that in the UK, Royal Mail have the same auditor for both their statutory and regulatory accounts. Also, as far as we are aware, for situations in which the National Regulatory Authority (the NRA) does appoint the Regulatory Auditor (for example in Poland), there is no such restriction placed on the auditor of the statutory financial statements.

Other observations:

Should the final Direction require that the Regulatory Auditor not be the same as the Statutory Auditor, then we believe that there will be negative implications for both the cost and timing of completion of the Regulatory Audit. This would be due to the loss of significant synergies of the same auditor being in place arising from the loss of depth of knowledge of An Post's systems and processes. We encourage ComReg to consider whether these costs would exceed the perceived benefit.

The nature of the interaction between the Statutory Auditor and the Regulatory Auditor would also need careful further consideration as there may be unforeseen difficulties.

Cost:

There are clear synergies arising from having the same Regulatory Auditor and Statutory Auditor as there is significant information gathered during the Statutory Audit that is relevant for the Regulatory Audit. The synergies include the fact that as part of the Statutory Audit, an audit of the cost and revenue ledger accounts is performed and the auditor gains an understanding of each cost and revenue stream which assists with, what can be termed, the 'first pass' assessment as to where these general ledger accounts should be allocated within the Regulatory Accounts. For a separate Regulatory Auditor to achieve a "fairly presents" audit opinion, there will likely be significant duplication of the work performed by the Statutory Auditor.

We note that the efficiencies associated with having the same Statutory and Regulatory Auditor were previously acknowledged in a report commissioned by ComReg in 2006 as part of the original Accounting Separation consultation issued in relation to An Post. In this report LECG, when referring to the appointment of the Regulatory Auditor stated the following: *"In most cases, the universal services provider typically appoints the same auditor as the one performing the audit of the statutory financial statements. This tends to be the most cost effective approach (i.e. there are economies of scope given the overlap between financial statements and regulatory statements)"*.

The efficiencies are shared by both the Regulatory Auditor and An Post. Therefore, we believe that a separation would result in a significantly higher fee being charged by the Regulatory Auditor for performance of that audit. There would also be increased internal costs for An Post as a result of duplication of effort.

Timing:

In addition to the cost implications of the suggestion, it is probable that there would be a delay in sign-off of the regulatory accounts due to the additional efforts required. More specifically in relation to the timing implications we would respectfully ask that ComReg review the current practical timing issues, associated with having separate Statutory and Regulatory Auditors. For example, we understand that in Poland there is a recognition by the NRA, UKE, of the need for the statutory financial statements to be completed in advance of the commencement of the audit of the regulatory accounts. Amongst the most significant issues is the need for certainty of the underlying statutory figures to avoid replication of

efforts by the Regulatory Auditor. In the case of Poland we understand that this additional timeline is significant. We therefore draw your attention to the challenges associated with the proposed requirement in the Draft Direction (section 6.1) that the Accounting Manual and Regulatory Accounts be provided to ComReg within 10 weeks of the end of the financial year.

Interaction between the Statutory Auditor and the Regulatory Auditor:

The nature of the interaction between the Statutory Auditor and the Regulatory Auditor, should they be separated, would also need careful further consideration as there may be unforeseen difficulties. We are concerned that sufficient consideration has not been given to this issue through discussions with the relevant organisations. We recommend that ComReg consult with the appropriate regulatory body for auditors in order to seek their views on this if ComReg is minded to proceed with the Preliminary View to have separate entities as the Statutory Auditor and the Regulatory Auditor. We would be happy to participate in this exercise.

That the Regulatory Auditor be appointed under contract by ComReg:

While we do not object to this element of the ComReg Preliminary View as an audit firm, we note that it is the directors who take responsibility for financial statements. It is therefore reasonable to expect that the directors of an entity would want responsibility for selection of the auditor. The prevailing practice in our experience of statutory and regulatory audits is that the directors appoint the auditors. This is not considered to impair the independence of the auditor.

We note that it is not customary, nor is it the case in practice in Ireland or the UK, for an auditor to be appointed to regulated entities by persons other than the board of directors.

We also respectfully remind ComReg that in addition to An Post, ComReg is also a party to the current Regulatory audit engagement letter and that our audit opinion on the Regulatory Accounts is addressed to both An Post and ComReg. ComReg would appear to imply that were they to appoint the Regulatory Auditor that a similar duty of care would continue to be provided to An Post and ComReg by the Regulatory Auditor.

Comment on Draft Direction:

We would like to draw to your attention to an apparent inconsistency between the Preliminary View and the wording of the Draft Direction: While the Preliminary View includes that the Regulatory Auditor not be the same entity as the Statutory Auditor, we do not see this element of the Preliminary View in the Draft Direction.

Appendix 2: Scope of the Regulatory Audit

ComReg preliminary view:

Paragraph 164 of the Consultation Document states:

ComReg, pursuant to section 31(3)(g) of the 2011 Act and having considered the recommendations of Frontier Economics, proposes that the Proposed Accounting Direction should require that the scope of the audit, conducted pursuant to section 31(3)(d) should continue to be on a “present fairly” basis, and that it should include commentary and verification of compliance by the USP with its internal cost accounting systems, in respect of the following:

- *the Regulatory Accounts and the Accounting Manual;*
- *the revenue, costs, and volumes included in the Regulatory Accounts;*
- *the reconciliation between the Regulatory Accounts and statutory accounts;*
- *correctness of figures, including operational volumes and the reconciliation of revenue-derived volumes to operational volumes;*
- *methodologies used regarding amortisation, cost capitalisation, and cost allocation (including transfer charges / inter-segment charges);*
- *appropriateness of the usage of the cost drivers;*
- *nature and detail of all transfer charges / inter-segment charges;*
- *the frequency of updates used for cost allocation purposes;*
- *appropriateness of any changes in the cost allocation methodology; and*
- *whether the Accounting Manual continues to fairly present the USP’s processes, procedures, and policies in preparing the Regulatory Accounts.*

KPMG response:

We note that the ComReg Preliminary View would significantly expand the scope of the Regulatory Audit. It is not clear to us that the proposed changes are proportionate and that the expected benefits would exceed the additional costs incurred by all parties. We encourage ComReg to reconsider this.

We are also not clear from the Consultation Document what the proposed audit scope is in a number of instances. We encourage ComReg to consult with the appropriate professional oversight body, such as Chartered Accountants Ireland or The Consultancy Committee of Accountancy Bodies – Ireland, in so far as aspects of the Consultation Document relate to the Regulatory Auditor. We would be happy to participate in this exercise.

- For example, with regard to the last item proposed above, “*whether the Accounting Manual continues to fairly present the USP’s processes, procedures, and policies in preparing the Regulatory Accounts*”, we are unclear as to what the specific requirement is. Linked with this is the proposal in the Draft Direction (section 6.2) that the Regulatory Auditor shall “*audit the Accounting Manual*”. We would ask ComReg to provide further clarification, if minded to proceed with this. We respectfully highlight that if this is a requirement to provide a “fairly presents” audit opinion specifically on the Accounting Manual, such a request would be both difficult and highly unusual. The audit opinion for all other regulatory accounts relates to the financial statements themselves, with the accounting manuals and documentation providing the basis on which the statements have been prepared.
- Given the changes proposed in the scope of matters to be considered by the auditor, including non-financial information - the use of ISAs (UK and Ireland), which deal with a financial statement audit, will no longer be appropriate. Assurance given by audit practitioners on a broader range of matters apply the standards in ISAE 3000 (Revised) *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*, issued by the International Audit and Assurance

Standards Board. However, we are concerned that aspects of the proposed scope may make it challenging to meet the ISAE's requirement for necessary preconditions to be met, including existence of suitable criteria for forming an objective judgment: careful and detailed discussion of each element would be required. In addition, for example, the proposals involve giving assurance that a particular matter is 'appropriate'. The Regulatory Auditor would need to have a common understanding with ComReg of what it is that makes a matter 'appropriate'. For your convenience, a copy of ISAE 3000 is available at this link: <https://www.ifac.org/publications-resources/international-standard-assurance-engagements-isae-3000-revised-assurance-enga>. We draw your attention particularly to paragraphs 20 to 25.

- We recommend that ComReg consult with the appropriate professional oversight body for auditors in order to agree appropriate language for the proposed requirements, if minded to proceed. For example, whether terms like "correctness of figures" and "appropriateness of the usage" are acceptable and appropriate for auditors to opine on in this context. We also draw attention to the language currently used in respect of eir.
- It is also noted that the preliminary views above make reference to "commentary" to be provided whereas the Draft Direction does not. We would ask ComReg to clarify whether commentary is required and if so, whether it is to be included in the audit opinion or in separate correspondence.

End

4: PricewaterhouseCoopers



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

27 January 2016

Dear Mr Brogan

**Submission to ComReg 15/135
Consultation on universal postal service accounting obligations**

We have considered ComReg's Consultation Document on universal postal service accounting obligations, reference 15/135 (the Consultation Document). We have set out below our views in respect of a number of preliminary conclusions that are included in the Consultation Document. We have not reviewed in detail all aspects of the Consultation Document and we do not necessarily support or agree with items we have not commented on.

We understand that Chartered Accountants Ireland ("CAI") are also responding to the Consultation Document on certain matters including the definition of the audit scope and form of reporting as outlined in the Consultation Document.

Question 1 "Do you agree with ComReg's preliminary views on updating the Accounting Direction?"

We do not agree with certain aspects of the proposals outlined in section 4 of the Consultation Document.

The Consultation Document states that "*Comreg is of the preliminary view that its appointment of the Regulatory Auditor would ensure independence, would be better aligned with best practice and with the requirements of the Postal Directive, and therefore provide greater assurances over the inputs and outputs of the Regulatory Accounts for all parties..*".

Auditor Independence

Auditors are required to adhere to the highest standards of professional practice at all times. One of the key tenets of this is the need to maintain objectivity and independence. Auditors are required to be independent in accordance with Ethical Standards for Auditors issued by the Auditing Practices Board ("APB"). APB Ethical Standard No. 1 "Integrity, Objectivity and Independence" sets out the requirements for auditors in this respect. We fundamentally disagree with any suggestion that a Regulatory Auditor appointed by ComReg would in some way ensure a higher level of independence.

ISQC (UK and Ireland) 1 "Quality control for firms that perform audits and reviews of historical financial information and other assurance and related services engagements" requires that "The firm

.....
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Feargal O'Rourke Olwyn Alexander Paul Barrie Brian Bergin Damian Byrne Pat Candon John Casey Mary Cleary Siobhán Collier Andrew Craig Thérèse Cregg Richard Day Fiona de Búrca John Dillon Ronan Doyle John Dunne FCCA Kevin Egan Martin Freyne Alisa Hayden FCCA Paul Hennessy Gareth Hynes Ken Johnson Patricia Johnston Paraic Joyce Andrea Kelly Joanne P. Kelly John Loughlin Vincent MacMahon Enda McDonagh John McDonnell Deirdre McGrath Ivan McLoughlin Declan Murphy Brian Neilan Damian Neylin Andy O'Callaghan Jonathan O'Connell Denis O'Connor Marie O'Connor FCCA Paul O'Connor Irene O'Keefe Ger O'Mahoney Dave O'Malley Padraig Osborne Ken Owens Anthony Reidy Mary Ruane Emma Scott Mike Sullivan Billy Sweetman Paul Tuite

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should establish policies and procedures designed to provide it with reasonable assurance that the firm, its personnel and, where applicable, others subject to independence requirements (including experts contracted by the firm and network firm personnel), maintain independence where required by the IFAC Code and national ethical requirements". The IFAC code and the national ethical requirements in Ireland set out detailed requirements for auditors' independence ensuring their integrity, objectivity and independence is maintained. Auditors are therefore required to implement safeguards and practices to ensure that independence is maintained and demonstrable.

Auditor appointment

The Consultation Document proposes that "*the auditor of the Regulatory Accounts (the "Regulatory Auditor") should be appointed by ComReg and that the appointed auditor shall not be the same entity as audits An Post's statutory accounts...*"

It is our view that separation of the function of Statutory and Regulatory auditors would lead to increased cost, increased disruption to the USP, increased administrative burden and potentially a greater risk of audit failure. It is common practice for the Regulatory Auditor to place reliance on, and gain significant leverage from work performed and knowledge gained during the statutory audit process in the Regulatory audit process.

In the absence of knowledge gained while performing the statutory audit, a Regulatory Auditor who is not the Statutory Auditor would be at a significant disadvantage in respect of the Regulatory audit. We consider that such separation may give rise to a greater risk of audit failure in the Regulatory audit process.

In a situation where the statutory and regulatory auditors were different audit firms significant duplication of work would also be required in the Regulatory audit process. The Consultation Document acknowledges this. However, it seems to suggest that the additional cost burden to be recovered through the postal levy would be offset by a cost benefit to the USP (who would no longer be paying for the audit of the Regulatory Accounts). It is our view that this is not the case and in a situation where the statutory and regulatory auditors were different audit firms this offset would not be cost neutral and the overall cost of the Regulatory Audit would increase significantly.

It is also our view that those charged with the governance of the entity who are responsible under law for the preparation of the Regulatory Accounts are the appropriate body to appoint the auditor of those accounts.

Moreover, given the requirement for the Regulatory Auditor to be independent, the directors of the USP, or the Audit Committee to whom it has been delegated, are best placed to determine the initial (and manage the ongoing) independence of the Regulatory Auditor which should be part of that decision.

Given the public interest factors present the Regulator should have some recourse if the Regulatory Auditor is not performing his function. This is normally achieved by certain reports required under the statute to be provided to the Regulator and the Regulator having legal recourse if these are not provided. The existing arrangements for a number of regulated entities is that the Auditor accepts a duty of care to the Regulator where the Regulator agrees to the terms of business. A direct influence on the decision to appoint a Regulatory Auditor, without establishing criteria by which Regulatory Auditors should be eligible for appointment and setting out legal obligations of the same Regulatory Auditor, could result in apparently arbitrary decisions being made in respect of the Regulatory Auditors appointment/removal.



Level of Assurance

The Consultation Document also states that the appointment of the Regulatory Auditor by ComReg would “*therefore provide greater assurances over the inputs and outputs of the Regulatory Accounts for all parties*”. We do not believe that there is a valid basis for this assertion. The level of assurance provided by an audit opinion on Regulated Accounts is not impacted by whether the auditor is appointed by ComReg or by the USP. All audits conducted under International Standards on Auditing (UK & Ireland) (“ISA (UK& Ireland)”) are performed under the same standards. ISA (UK and Ireland) 200 establishes the independent auditor's overall responsibilities when conducting an audit of financial statements in accordance with ISA (UK & Ireland). Specifically, it sets out the overall objectives of the independent auditor, and explains the nature and scope of an audit designed to enable the independent auditor to meet those objectives. It also explains the scope, authority and structure of those standards, and includes requirements establishing the general responsibilities of the independent auditor applicable in all audits, including the obligation to comply with ISA (UK & Ireland).

Audit scope

Section 4 of the Consultation Document sets out the proposed scope of the audit, including a requirement for the audit opinion to continue to be prepared on a “present fairly” basis and a requirement that this opinion be extended to cover additional information included in the Regulatory Accounts.

We are of the view that proposed scope of the audit is simply not possible under ISA (UK and Ireland). ISA (UK and Ireland) is designed for the audit of financial statements or other historical financial information and the scope of an audit is clearly defined in ISA (UK and Ireland) and cannot be amended. Section 4.4.1 includes in the proposed scope of the audit a number of items that do not relate to historical financial information such as, for example the accounting manual, cost drivers and operational volumes. In addition, we are also concerned that the proposed scope may not meet the pre-conditions for an audit under ISA (UK and Ireland) 210 in the absence of specific appropriate criteria being developed by ComReg for the evaluation or measurement of all of the financial information proposed to be included in the Regulatory Accounts. Certain items which ComReg are proposing be included within the scope of the audit would appear to be suited to alternative forms of assurance under International Standard on Assurance Engagements 3000 “Assurance Engagements Other than Audits or Reviews of Historical Financial Information”, or, where they do not meet the preconditions for an assurance engagement agreed upon procedures performed in accordance with the International Standard on Related Services 4400 “Engagements to perform Agreed Upon Procedures Regarding Financial Information”. We believe that further review of the proposals contained in the Consultation Document and extensive consultation will be necessary with the relevant Accounting bodies to fully understand and agree an appropriate proposed scope and to design a workable framework to meet the needs of ComReg.

The Consultation Document proposes that the USP includes a commentary in the Regulatory Accounts which meets certain minimum requirements. We have not considered the appropriateness of the proposed commentaries required. However in our view any commentary should be required to be published with the Regulatory Accounts rather than forming part of the Regulatory Accounts.

It would not be appropriate in our view for the independent auditor's report on the Regulatory Accounts to cover the commentary as proposed in section 4.3.4 of the Consultation Document.

ISA (UK and Ireland) 720 establishes standards and provides guidance on the auditor's consideration of other information in documents containing audited financial statements. This standard requires



that the auditor should read the other information to identify material inconsistencies with the audited financial statements. If as a result of reading the other information, the auditor becomes aware of any apparent misstatements therein, or identifies any material inconsistencies with the audited financial statements, the auditor should seek to resolve them.

We also note terms such as “review” and “verify” in the Consultation Document are used without any definition or explanation. This could result in differing interpretations of these terms which will lead to confusion and misinterpretation and could result in legal issues.

In particular “verify” is used in respect of certain assurances required from auditors. We do not believe that this is an appropriate term and the requirement for auditors to “verify” matters is not appropriate or in accordance with International Standard on Accounting (UK and Ireland).

Reconciliation of revenue and operational volumes

Section 4.1.2 of the Consultation Paper sets out ComReg’s proposed change to the 2006 Accounting Direction with respect to reconciliation of Revenue-derived and Operational-based volumes.

“[] ComReg is of the preliminary view, pursuant to section 31(3)(g) of the 2011 Act, that requirements in the 2006 Accounting Direction, on reconciling Revenue-derived and Operational-based mail volumes, remain appropriate. However, having considered the USP’s statement that a reconciliation at service level would require significant additional resources, and the view of Frontier Economics in respect of this, ComReg proposes to reduce the requirement of the reconciliation by service to a reconciliation at a less detailed level, namely by format (i.e. letter, large envelope, packet, parcel). ComReg considers that this proposal is proportionate, given the USP’s statement on its capability to reconcile its volume by service. ComReg thus proposes that the current requirement in the 2006 Accounting Direction be amended to a less onerous requirement such that the USP “reconciles by format revenue derived volumes with operational data recorded in the outward phase of the postal pipeline, together with details of volume trends by format recorded using the two methods”.”

The reconciliation of Revenue-derived volumes and Operational-based volumes are derived from fundamentally different systems and processes. Variances between both sets of the data would be expected given factors such as the manual nature of the non-machine based counts, double counting of mail items due to mail routing processes, timing of recognition of revenue (e.g. stamps bought today but used in 6 months’ time), etc.

Consequently, there would be significant costs associated with designing and implementing processes and procedures to attempt to reconcile both sets of data and any such reconciliation would be challenging.

The Consultation Document proposes that this reconciliation be subject to audit. We consider that this is not appropriate as the nature of the reconciliation includes items which do not relate to historical financial information and consequently may not meet the pre-conditions for an audit under ISA (UK & Ireland). Consistent with our comments under Audit Scope above, ComReg should consider whether any work required in respect of this data should be the subject of Agreed Upon Procedures.

Reconciliation of operational volume counts

Section 4.1.3 of the Consultation Paper sets out ComReg’s proposed change to the 2006 Accounting Direction with respect a new requirement to reconcile Mail Centre and Delivery Service Unit mail volumes on a quarterly basis.



“ComReg [] is of the preliminary view that the Proposed Accounting Direction, pursuant to section 31(3)(g) of the 2011 Act, should require the USP to reconcile quarterly its Mail Centre and DSU mail volumes, by format. This should not be onerous on the USP and is a matter of more detailed reporting. This reconciliation would be included in the supplementary schedule of volume reconciliation in the Regulatory Accounts. This requirement should ensure that the volume information in the Regulatory Accounts is robust. This is of particular importance given that volume declines are somewhat outside the control of the USP. Also, it is critical to know actual volume declines as if actual volume declines should significantly exceed the USP's forecast declines, as provided by the USP for the price cap decision, then this could have an adverse effect on the provision of the universal postal service where such actual volume declines are outside the control of the USP”.

We understand that there are considerable difficulties in reconciling Mail Centre volumes with Delivery Service Unit volumes due to, for example, double counting of mail processed at more than one Mail Centre, double counting of mis-sorted mail, manual nature of non-machine counts at the Mail Centres, manual nature of counting at DSU level, etc.

It is our understanding that these volumes are used purely for production planning purposes and that this data is not used for any accounting purpose. As a result, the business case for making a significant investment to increase the accuracy and attempt to reconcile the data is not clear.

Question 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.”

We refer to our responses in respect to question 1 above.

In particular we note that that in a situation where the statutory and regulatory auditors were different audit firms' it is our view that the overall cost of the Regulatory Audit would increase significantly. We also believe that this would result in additional operational burdens being placed on the USP.

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

We refer to our responses in respect to question 1 above.

We hope that ComReg finds our comments useful we would be happy to provide any further clarification or explanation required in respect of the matters set out above or to discuss any other relevant matters with ComReg. In the event you wish to discuss our comments in further detail please contact Paul O'Connor at our offices at One Spencer Dock, North Wall Quay, Dublin 1 (email paul.w.oconnor@ie.pwc.com).

Yours faithfully

A handwritten signature in black ink that reads 'Paul O'Connor' with a stylized flourish at the end.

PricewaterhouseCoopers