



Commission for  
**Communications Regulation**

## Response to Consultation

### **The Universal Postal Service**

#### **A working definition**

<b>Document No:</b>	<b>05/85</b>
<b>Date:</b>	<b>15 November 2005</b>

## Contents

1	Foreword.....	3
2	Executive Summary .....	4
3	Introduction .....	6
4	Legal Basis .....	7
4.1	COMMUNICATIONS REGULATION ACT 2002 .....	7
4.2	THE EUROPEAN COMMUNITIES (POSTAL SERVICES) REGULATIONS 2002.....	7
5	Key points .....	8
5.1	WHY COMREG IS FORMULATING A WORKING DEFINITION FOR THE UNIVERSAL POSTAL SERVICE .....	8
5.2	COMREG IS ACTING WITHIN ITS LEGAL POWERS .....	8
5.3	COMREG BELIEVES THE TIMING OF THE CONSULTATION TO BE APPROPRIATE .....	9
5.4	COMREG IS NOT IMPOSING NEW REGULATORY OBLIGATIONS .....	9
5.5	THE WORKING DEFINITION MAY FORCE COMREG TO TAKE ACTION .....	9
5.6	ONLY UNIVERSAL SERVICES CAN BE RESERVED.....	9
5.7	COMREG IS NOT USING THE DEFINITION OF THE UNIVERSAL SERVICE FOR INAPPROPRIATE PURPOSES.....	10
5.7.1	<i>Implementation of competition policy.....</i>	10
5.7.2	<i>Inclusion of discounted bulk mail services in the universal service.....</i>	10
6	Developing a working definition of the universal service .....	11
6.1	CONSULTATION PAPER .....	11
7	Services proposed for inclusion as part of the working definition of the universal service .....	12
7.1	LETTER SERVICES .....	12
7.1.1	<i>Summary of consultation issue .....</i>	12
7.1.2	<i>Is a single tier letter service sufficient? .....</i>	12
7.1.2.1	Views of respondents.....	12
7.1.2.2	ComReg position.....	12
7.1.3	<i>Should the universal service include a deferred delivery option for meter customers? .....</i>	13
7.1.3.1	Views of respondents.....	13
7.1.3.2	ComReg position.....	13
7.1.4	<i>Should the universal service include a special Christmas Card stamped mail service? .....</i>	14
7.1.4.1	Views of respondents.....	14
7.1.4.2	ComReg position.....	14
7.2	BULK MAIL SERVICES .....	14
7.2.1.1	Summary of consultation issue.....	14
7.2.1.2	Views of respondents.....	14
7.2.1.3	ComReg position.....	15
7.2.2	<i>Should different considerations apply to international bulk mail services where markets are already fully open to competition? .....</i>	16
7.2.2.1	Views of respondents.....	16
7.2.2.2	ComReg position.....	16
7.3	SEPARATE INSURED AND REGISTERED MAIL SERVICES.....	17
7.3.1	<i>Summary of consultation issue .....</i>	17

7.3.2	<i>Should the universal service include a lower cost service, providing proof of delivery only, without the secure handling necessary for transporting valuable goods?</i>	17
7.3.2.1	Views of respondents	17
7.3.2.2	ComReg position	17
7.3.3	<i>What limit should be placed on the compensation payable for items lost or delayed in the insured service?</i>	17
7.3.3.1	Views of respondents	17
7.3.3.2	ComReg position	18
7.3.4	<i>Should the universal service include one single standard parcel offering?</i>	18
7.3.4.1	Summary of consultation issue	18
7.3.4.2	Views of respondents	18
7.3.4.3	ComReg position	19
7.4	ANCILLARY SERVICES	19
7.4.1	<i>Summary of consultation issue</i>	19
7.4.2	<i>Views of respondents</i>	19
7.4.3	<i>ComReg position</i>	20
7.5	OTHER SERVICES	21
7.5.1	<i>Summary of consultation issue</i>	21
7.5.2	<i>Views of respondents</i>	21
7.5.3	<i>ComReg position</i>	21
<b>Appendix A – Legislative basis</b>		<b>23</b>
	COMMUNICATIONS REGULATION ACT 2002	23
	EUROPEAN POSTAL SERVICES DIRECTIVE	23
	THE EUROPEAN COMMUNITIES (POSTAL SERVICES) REGULATIONS 2002	23
	UNIVERSAL POSTAL CONVENTION	24
<b>Appendix B – Defining the Universal Service in other Member States</b>		<b>25</b>
	<i>Germany</i>	25
	<i>The Netherlands</i>	25
	<i>Sweden</i>	25
	<i>The UK</i>	25
	<i>Other</i>	25

## **1 Foreword**

This document represents the culmination of a process to formulate a working definition of the universal service which began on March 2<sup>nd</sup>, 2005 when ComReg launched its consultation on the 'The Universal Postal Service - Formulating a working definition', ComReg document number, 05/16. The consultation document discussed a wide range of services and comments were invited on whether individual services should be included in the working definition.

A total of eight responses were received by the closing date and ComReg was pleased by the positive and constructive nature of these responses.

Having considered the views of all respondents, ComReg has formulated a working definition of the universal service, describing the basic package of postal services which must remain available to everyone in Ireland at an affordable price. This definition will both ensure that ComReg is safeguarding the services which postal customers need and result in increased certainty for customers (businesses, organisations and individuals) as to what services the universal service provider is obliged to provide for them.

It is the Commission's intention to issue a Direction with regard to Bulk Mail access at an appropriate time.

As a final point, it is important to re-iterate that the current working definition is not definitive. It is anticipated that the opening up of the market and the development of effective competition will bring innovation in response to customers' needs and therefore wider choice. Therefore, it is anticipated that ComReg's working definition will be continuously revised in order to allow it evolve to reflect changing levels of competition and customer demand.

ComReg wishes to thank all those who responded to the consultation.

**Mike Byrne,  
Commissioner,  
Commission for Communications Regulation.**

## 2 Executive Summary

As outlined in ComReg 05/16 The European Communities (Postal Services) Regulations 2002<sup>1</sup> contains a list of ‘minimum facilities’ that must form part of the universal postal service. This broad framework of the universal service requirements required a customer focussed working definition of the ‘universal service’ in order to fully protect postal customers and help ensure that ComReg safeguards the services that postal customers need.

Further liberalisation of postal services in Ireland is scheduled from 1 January 2006 opening up competition between An Post and other operators for items of correspondence weighing over 50g. Accordingly, it is increasingly important to identify the essential elements of a postal service which, in a competitive market, will need to be guaranteed.

Specific considerations are discussed in the context of individual services; however the overarching factors considered by ComReg are importance to customers and the level of competition in the market. In brief, ComReg assessed whether there is customer demand and further, the potential danger that this demand will not be met.

The working definition sees the provision of a bulk mail service which includes

- a service offering ‘delivery only’ to businesses, bulk mailers or consolidators of mail from different customers who are able to present their mail sorted in delivery sequence or by delivery office
- a service offering ‘deferred delivery’ to businesses, bulk mailers or consolidators of mail from different customers
- a service offering a combination of ‘delivery only’ and an extended delivery cycle (e.g. the existing Postaim service, without any restriction as to content)

The most persuasive argument for including bulk mail in ComReg’s working definition of the universal service is that the market is restricted and that no other companies have the opportunity to compete. The situation for international bulk mail is more complex. Given the anomalous VAT situation<sup>2</sup>, which for many customers means that An Post is de facto the only service provider of international bulk mail services, such services are also included in the working definition of the universal service.

The amount of compensation payable for items lost or substantially delayed in the insured service under the working definition will be set at an upper limit of €4,600, while the existing bundling arrangement for registration and insurance services will remain.

The universal postal service includes a parcel service to all destinations with target delivery times, prices that comply with the tariff principles and a registered and insured service.

---

<sup>1</sup> S.I. No. 616 of 2002

<sup>2</sup> Although there are other market players, the anomalous VAT situation means that for customers not registered for VAT they would be unable to reclaim any VAT charges imposed by service providers other than An Post whose standard services are not currently liable for VAT.

A series of ancillary services are also included in the working definition of the universal service:

- Redirection
- Mailminder
- “Private boxes / bags”
- Free Certificate of posting.

Other services provided as part of the universal service are:

- Free postal service for blind and partially sighted persons
- Sending books abroad
- Business Reply/ Freepost

### 3 Introduction

A universal postal service is of key importance both socially and economically to modern society. However the current definition of the universal service is phrased in terms of minimum requirements and facilities<sup>3</sup> and therefore lacks sufficient clarity and allows for some flexibility in interpretation. Accordingly there is a need to formulate a **working** definition of what constitutes the universal postal service in terms of specific services, so that ComReg can fulfil its statutory objective to ensure that these services will continue to be available at an affordable price<sup>4</sup>.

On March 2<sup>nd</sup>, 2005 ComReg launched its consultation on the ‘The Universal Postal Service - Formulating a working definition’, ComReg document number, 05/16, (‘the Consultation paper’), addressing issues which required consideration in advance of formulating a working definition of the universal service. Comments were invited on whether individual services should be included in the definition. To enable all parties to comprehensively respond the deadline for receipt of submissions was extended to 4th May 2005.

In total, 8 responses to the consultation were received, namely;

- An Post
- European Express Association (EEA)
- Irish Association of International Express Carriers
- Irish Charities Postal Users’ Forum
- National Council for the Blind of Ireland
- The Irish Missionary Union
- TiCo Group Ltd
- Vodafone

Using the responses received, ComReg formulated a working definition of the universal service, describing the basic package of postal services which must remain available to everyone in Ireland at an affordable price. This customer focussed working definition of the universal service should help ComReg ensure that it is safeguarding the essential elements of the postal service. It will also result in increased certainty for customers (businesses, organisations and individuals) as to what services the universal service provider is obliged to provide for them. ComReg believes that the best way of safeguarding the universal service is if customers know exactly what they have a right to expect.

However, as the postal market develops, the scope of the universal service will need to evolve<sup>5</sup>. ComReg will review the requirements of the universal service periodically and therefore the outcome of the current consultation should not be seen as permanently fixing the definition.

---

<sup>3</sup> Regulation 4(4) of the European Communities (Postal Services) Regulations 2002 as enacted by S.I. No. 616 of 2002 (the ‘2002 Regulations’)

<sup>4</sup> In accordance with the tariff principles set out in 9(1) of the 2002 Regulations

<sup>5</sup> Article 5 of the Postal Services Directive 97/67 makes specific reference to the need for the universal service to ‘evolve in response to the technical, economic and social environment and to the needs of users’

## 4 Legal Basis

### 4.1 Communications Regulation Act 2002

The Communications Regulation Act 2002 (s.12(1)(c)) places an obligation on ComReg to exercise its functions in a manner which promotes ‘the development of the postal sector and in particular the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all users.’

### 4.2 The European Communities (Postal Services) Regulations 2002

Regulation 4(1)(a) of The European Communities (Postal Services) Regulations 2002<sup>6</sup> (the ‘2002 Regulations’) provides that ‘Users at all points in the State shall enjoy the right to a universal service (“universal service”) involving the permanent provision of a postal service of a specified quality and, subject to Regulation 9(1), at affordable prices for all users.’

Regulation 4(4) of the 2002 Regulations requires that the universal postal service includes the following minimum facilities;

- the clearance, sorting, transport and distribution of postal items up to 2kg;
- the clearance, sorting, transport and distribution of postal packages up to 20kg;
- services for registered items; and
- services for insured items.

These minimum requirements are almost exactly the same as in Directive 97/67/EC<sup>7</sup> (the ‘Postal Services Directive’), except Ireland chose to set the limit for domestic postal packages at 20 kg (the Postal Services Directive allows a range from 10 kg and a maximum of 20 kg).

---

<sup>6</sup> S.I. No. 616 of 2002

<sup>7</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 with regard to the further opening to competition of Community postal services.



## 5 Key points

### 5.1 Why ComReg is formulating a working definition for the Universal Postal Service

Regulation 4(4) of the European Communities (Postal Services) Regulations 2002, as enacted by S.I. No. 616 of 2002 (the ‘2002 Regulations’) defines the universal postal service in terms of minimum requirements and facilities.

The current definition of the universal service clearly envisages that additional elements are present but, as it is phrased in terms of minimum requirements and facilities<sup>8</sup>, it lacks sufficient clarity and allows some flexibility in interpretation. Accordingly, there is a need to formulate a **working** definition of what constitutes the universal postal service in terms of specific services, so that ComReg can fulfil its statutory objective to ensure that these services will continue to be available at an affordable price<sup>9</sup>.

The concept of universal service is fundamental to the regulatory framework and therefore a prescriptive list of the totality of services or facilities that currently comprise the universal service will facilitate ComReg in carrying out its designated regulatory function including :-

- the identification of which services An Post (as the current universal service provider) should be providing in order to discharge its obligation to provide a universal service of specified quality.
- the clarification of which services are subject to regulation and obligations such as the specific accounting provisions.
- clarifying for which services ComReg is obliged to specify and monitor a quality of service target.

Specific issues that have arisen in this regard include disputes about which parcel services and “discounted” letter services are within the universal service.

### 5.2 ComReg is acting within its legal powers

In its response, An Post contends that ComReg is exceeding its legal powers in attempting to extend the USO beyond the minimum defined in the 2002 Regulations. It argues that primary legislation would need to be enacted in order to exceed the minimum universal service set out in the Postal Services Directive as it is for the Member State and not the National Regulatory Authority to define the universal service.

ComReg recognises that it is for the legislature to define the scope of the universal service and ultimately for the Courts to interpret that definition. However, in the absence of any judicial decision and as ComReg is required by law to ensure that the legislature’s definition is enforced; a working definition of how it believes the current legislation falls to be interpreted is needed.

It is not for the universal service provider (‘USP’), any other industry operator, or ComReg to definitively interpret and rule on the precise meaning of legislative provisions.

---

<sup>8</sup> Regulation 4(4) of the European Communities (Postal Services) Regulations 2002

<sup>9</sup> In accordance with the tariff principles set out in 9(1) of the 2002 Regulations

### **5.3 ComReg believes the timing of the consultation to be appropriate**

The European Commission is currently engaged in a comprehensive process of review and analysis which will be key to the future liberalisation of the postal market. The definition of the universal service is a central focus of this work.

In light of this, two respondents suggest that it is premature at this point to consider a change to the definition of Ireland's universal service. Another respondent enquires as to the timing of this consultation given the work of the European Commission.

As outlined in 5.1, the current definition lacks clarity, and accordingly there is a need for ComReg to formulate a **working** definition of what constitutes the universal postal service in terms of specific services, to enable ComReg to fulfil its statutory objectives.

Therefore ComReg believes the timing of the consultation to be appropriate.

Contrary to one respondent's suggestion, ComReg's working definition does not represent a change in the definition. It is simply a clarification of ComReg's interpretation of the definition that currently exists.

### **5.4 ComReg is not imposing new regulatory obligations**

An Post alleges that the consultation does not follow due process as no regulatory impact assessment has been conducted.

It is not appropriate to perform a Regulatory Impact Assessment (RIA). ComReg is not imposing any new regulatory obligations but simply outlining our interpretation of the statutory definition of the Universal Postal Service.

### **5.5 The working definition may force ComReg to take action**

While the formulation of a working definition will not have any regulatory effect in the sense of creating regulatory obligations, the decision does have the potential to create an expectation that ComReg will intervene where necessary to give effect to its interpretation of the Regulations. In other words, there will be an expectation that if a service is not being provided (or is being provided but not in a manner which is consistent with the rules regulating the universal service) that ComReg would take action to ensure it is provided.

### **5.6 Only universal services can be reserved**

An Post has argued that the reserved area and the USO are separate sets of services. It contends that it is possible to have reserved services that do not form part of the USO and therefore are outside of regulatory control.

ComReg disagrees with this position. As set out in the Consultation paper, ComReg is of the view that, under the current regulatory framework, only services within the scope of the universal service may be reserved to a universal service provider.

## **5.7 ComReg is not using the definition of the universal service for inappropriate purposes**

### *5.7.1 Implementation of competition policy*

An Post alleges that ComReg is using the definition of the universal service for an inappropriate purpose, namely the implementation of competition policy. ComReg rejects this assertion on the basis that it is merely ensuring (as it is required to do<sup>10</sup>) that its interpretation of the 2002 Regulations, via the working definition of the universal service, does not encourage any behaviour that is contrary to EC Competition law.

### *5.7.2 Inclusion of discounted bulk mail services in the universal service*

An Post objects to ComReg's suggestion that the universal service includes delivery only bulk mail services. They characterise such suggestions as ComReg seeking to use the definition of the universal service as a vehicle for the inappropriate introduction of downstream access.

'Downstream access' simply allows customers (including mail consolidators) enter the postal value chain (or buy the postal product) at the most appropriate point for their requirements. An Post argues that this breaches their monopoly over sorting and transport. On the contrary, ComReg is of the view that it is doing nothing inappropriate by clarifying its view that bulk mail discount services fall within the definition of the universal service, particularly as such services are currently part of An Post's product portfolio.

An Post re-iterated the points it made against downstream access in the response to ComReg 04/92 'Universal Service Obligation - Bulk Mail Access - Draft Direction to An Post'. The relevance of these points is questionable as the purpose of the current process is simply to clarify ComReg's interpretation of what services are included in the universal service. The issues of access to and pricing of services will be dealt with in the context of other consultations.

---

<sup>10</sup> The European Court of Justice has held that Member States and their authorities have a duty not to adopt or maintain in force any measure which could be construed as encouraging behaviour that is contrary to the Treaty. See case 66/86 Ahmed Saeed [1989] ECR 803 [1990] 4 CMLR 102, especially paragraphs 48 & 49.

## 6 Developing a working definition of the universal service

In the Consultation paper ComReg noted that both the current market situation and the importance to customers would be considered when developing the working definition of the universal service.

In assessing the responses to the consultation, ComReg has employed these same factors i.e.

1. **Importance to customers** – The primary factor taken into account is the importance of the service to customers. ComReg assessed whether the service is necessary to satisfy the basic social or commercial needs of users i.e. if it is an essential element of the universal service.
2. **Current market situation** - Lack of real competition in the specific market was taken into account when deciding if a service should be included in the working definition of universal service. If the level of competition is low, the necessity to protect a service is higher (and vice-versa).

As noted in the Consultation paper, the working definition of the universal service will evolve as the postal market develops. This will be reflected by a changing of emphasis i.e. as Ireland moves towards a competitive postal market, the latter factor will be less of an issue, leading to the former factor increasing in importance.

In brief, when formulating the working definition ComReg assessed whether there is customer demand and the likelihood of that demand being met. Thereby, ComReg has tried to formulate a customer focussed working definition of the universal service that will help to ensure that it safeguards the services that customers of all types need.

### 6.1 Consultation Paper

All points raised by the respondents have been considered, although readers will appreciate that it is not feasible to refer to every point made by every respondent in a document of this nature.

With the exception of material marked confidential, the written comments of respondents are available for inspection at ComReg's offices in Dublin.

## **7 Services proposed for inclusion as part of the working definition of the universal service**

### **7.1 Letter services**

#### *7.1.1 Summary of consultation issue*

In approximately half of EU countries, customers are given a choice between a priority service with a next day delivery target and a slower cheaper non-priority service. In a single tier service it is only possible to meet the service requirements of all customers by providing the quicker (priority) service, however this means that some customers have to pay for a higher level of service than they require.

Given that ComReg asked whether the current offer of a single tier service was acceptable and/or sustainable, and if the level of work (and resulting increased costs) required to segregate mail between priority and non-priority mail would be justified in the context of both stamped and metered mail.

#### *7.1.2 Is a single tier letter service sufficient?*

##### **7.1.2.1 Views of respondents**

The four respondents who specifically answered this question were all in agreement that it was not necessary to include a two tier letter post system in the working definition of the universal service. The reasons for this stance differed however.

Two respondents, while recognising that it would be in customers interests to have a greater degree of choice, on balance did not advocate the inclusion of a two-tier letter post system. One stressed that it was more important to bring the existing service into line with delivery targets. The other noted that the hardship caused by this lack of choice is minimal and declining due to the fall in use of letter post.

One respondent said that it should be a commercial decision for An Post whether to provide a second tier service or not.

An Post put forward the opinion that a 2nd class service for stamped mail would not be appropriate given the low volumes and high costs involved.

##### **7.1.2.2 ComReg position**

Taking into account the representations received, ComReg is of the view that on balance, the provision of a single tier service is sufficient to comply with the obligations set out in the 2002 Regulations at a minimum level and at present appears to meet the needs of users. Therefore a second tier service will not be included in the working definition of the universal service.

In the light of this decision, it is important to note that the standard service must fulfil the service requirements of all customers i.e. meet the needs of those who require a next day (D+1) service and exceed the needs of those who do not. Therefore by confining the service to a 'standard service', it is imperative that An

Post's quality of service performance for this service complies with the prescribed target<sup>11</sup>.

### 7.1.3 *Should the universal service include a deferred delivery option for meter customers?*

#### 7.1.3.1 Views of respondents

There was some support for this proposal amongst respondents, one respondent noting that such a service would enable a deferred delivery service to be offered more broadly to smaller customers. However support was limited.

The majority of respondents opposed the suggestion. One of such respondents suggested, as an alternative to a deferred delivery service for metered mail, the minimum mailing for the 'general' bulk mail deferred delivery service should be reduced from 2,000 to 1,000 items, thereby giving access to deferred delivery to more users.

An Post adopted an opposing position, arguing that from the point of view of discounts, the key variable is volume per posting and that such a service could only be introduced in the context of a complete review of the bulk mail discounts. An Post further argues it is not operationally feasible to provide the service, using arguments based on the premise that such a service would involve the segregation into 4 pouches (Priority Dublin, Priority Forward, Deferred Dublin, Deferred Forward) as opposed to the current two (Standard Dublin, Standard Forward)<sup>12</sup>.

#### 7.1.3.2 ComReg position

In the case of ordinary letters these are reserved to the Universal Service provider and are clearly part of the Universal Service. Where customers have such a choice and there is a notable differential in price, about 70% of mail is posted at the cheaper / slower non-priority postage rates<sup>13</sup>. However, as pointed out in the consultation paper in those countries where only a single tier service is provided this group of customers have to pay for a higher level of service than they require.

On the other hand there maybe, as An Post point out, additional costs in segregating the mail into 2 streams which outweigh the potential benefits. In view of the responses received ComReg agrees, however, that the working definition of the Universal Service should not include a deferred delivery option.

---

<sup>11</sup> The current target for mail posted throughout the State for delivery in the State is 94% to be delivered on the next working day and 99.5% to be delivered within three working days D+3 ('Response to Consultation, Quality of Service Target 2004, Single Piece Priority Mail, 1 June 2004', Document No. 04/56). Current performance falls well short, the TNS Mrbi monitor commissioned by ComReg shows the corresponding results to be 72% and 96% respectively in 2004 ('An Post's Quality of Service - Domestic single piece mail. Annual Report - January to December 2004', Document No. 05/19)

<sup>12</sup> ComReg at no stage suggested that the service would involve segregation into four pouches. The method of implementation of universal service requirements is entirely a matter for An Post.

<sup>13</sup> For example in Britain where such a choice is offered to all customers (Source: 'The UK Letters Market 2000-2003, A Market Report, January 2004', Postcomm) or for bulk mail customers in Ireland, where discounts are offered for "deferred delivery"

#### 7.1.4 *Should the universal service include a special Christmas Card stamped mail service?*

##### 7.1.4.1 Views of respondents

One respondent would welcome the introduction of such a service on the basis that it would increase the volume of mail in the system which would ‘be good for the overall health of An Post and the Irish postal market’.

Another respondent, while voicing support for such initiatives, rejected its inclusion in the universal service as they say the mandating of such service offerings would be ‘tantamount to micromanaging the postal sector’. Further they said that concerns about the quality of services offered by An Post should be addressed by ComReg through the monitoring and enforcement of An Post’s existing obligations.

An Post point out several operational difficulties that would arise were the Christmas Card Service to be introduced. However, all but one of the objections were based on the An Post assumption that the Christmas Card service would involve posting the deferred service in post-boxes and handing in priority mail at the post office. No such specifics were outlined in the consultation and the method of implementing would be a matter for An Post<sup>14</sup>.

##### 7.1.4.2 ComReg position

As outlined in the consultation, ComReg is of the opinion that the provision of a Christmas Card service would have the likely result of an improvement in quality of service at Christmas time, increasing volumes and better meeting customers’ needs. Nevertheless, and in light of the submissions received ComReg will not pursue the inclusion of a Christmas card service in the universal service.

## 7.2 Bulk mail services

### 7.2.1.1 Summary of consultation issue

ComReg suggested that a limited range of bulk mail services should be regarded as part of the universal service for the foreseeable future. The services that ComReg suggested should be part of that range are as follows;

- a service offering ‘delivery only’ to businesses, bulk mailers or consolidators of mail from different customers who are able to present their mail sorted in delivery sequence or by delivery office
- a service offering ‘deferred delivery’ to businesses, bulk mailers or consolidators of mail from different customers
- a service offering a combination of ‘delivery only’ and an extended delivery cycle (e.g. the existing Postaim service, without any restriction as to content)

### 7.2.1.2 Views of respondents

All respondents agreed that the universal service should include a bulk mail service. The importance of the bulk mail service to users is evident from the responses. One respondent thought that the ‘inclusion of bulk mail in the working definition of universal services should ensure that bulk customers can seek recourse on matters

---

<sup>14</sup> This means that the responses provided by An Post are, for the most part, objecting to the service on a basis that was not proposed.

relating to central delivery, service quality and pricing’ and another that ‘bulk mail is critical to the development of the postal market in Ireland as it is ‘the engine that generates mail volumes in a relatively small market’. A representative organisation said that their members ‘make significant use of bulk mail services and many of them are highly dependent on these services for their survival and advancement’. An Post agreed that a standard bulk mail service forms part of the universal service.

In relation to the second part of the question, there was some divergence. An Post voiced the opinion that although the standard bulk service forms part of the universal service, bulk discount services do not form part of the USO. It argues that bulk mail discounts are provided at the discretion of An Post and ComReg has ex-post jurisdiction to ensure that such discounts take account of avoided cost<sup>15</sup>. An Post strongly asserted that discounted bulk services are commercial services and that it is for An Post to decide whether to provide them or not. An Post voiced the concern that inclusion of such services would be injurious to the financial viability of the USO<sup>16</sup>.

The other respondents to this question disagreed with An Post. Responses show that customers feel that they have little influence with An Post. One respondent contended that ‘Many customers have failed to reach commercially agreed discounts for more efficient delivery of bulk mail into An Post’ and blamed the lack of ‘realistic alternative sources of supply’ even for the larger customers. Similarly another respondent talked of their members having ‘no practical alternative service provider countrywide’ but a ‘high dependence on the postal service’. This respondent talked of An Post imposing conditions on a ‘take it or leave it basis’ and said that the lack of ‘meaningful customer relations with An Post’ has resulted in business customers having to rely more heavily on ComReg in order to be heard’. The picture emerging from these responses is of customers who feel that their needs will not be met if bulk mail is outside the universal service.

#### 7.2.1.3 ComReg position

It is clear from the responses that bulk mail is an important service, for which there is substantial demand. Most respondents agreed that a bulk mail service should be included as part of the universal service.

It is also evident from the responses that the current bulk mail service is not meeting the needs of users and that there is little competition in the marketplace. Even the needs of the larger players<sup>17</sup> in the market are not being met (which indicates that smaller customers must be virtually without influence) and will not be until there is greater competition in the market place. Until then, in order to ensure that customers both large and small can obtain the basic set of bulk mail services they require, a set of bulk mail services will be included in ComReg’s working definition of the universal service.

---

<sup>15</sup> This argument is flawed as ComReg only has jurisdiction (ex post or ex ante) to assess prices of services within the universal service.

<sup>16</sup> Section 7 ‘Impact Assessment’ of the Consultation paper explains why it is incorrect to conclude that the smaller the universal service, the smaller the burden (and cost) it will incur.

<sup>17</sup> While the larger producers of bulk mail have considerable buying power, very few will have sufficient volumes on their own account to encourage the market entry of new postal operators.



ComReg notes An Post's argument that while the standard bulk mail service forms part of the universal service, discounted bulk mail services do not. ComReg is firmly of the view that this is not the case, the nature of a service does not change dependent on the price charged. Pricing is a separate issue, dealt with under the tariff principles.

ComReg is including a service incorporating delivery only with an extended delivery cycle in the working definition of the universal service as;

- the level of demand for the existing Postaim service is an indication of the importance of this service to customers and the need for this type of service, and
- the current market situation, which because of the reserved area, prevents operators providing this service for items less than 50g

Therefore, as suggested in the Consultation paper, the working definition of the universal service will include;

- a service offering 'delivery only' to businesses, bulk mailers or consolidators of mail from different customers who are able to present their mail sorted in delivery sequence or by delivery office
- a service offering 'deferred delivery' to businesses, bulk mailers or consolidators of mail from different customers
- a service offering a combination of 'delivery only' and an extended delivery cycle (e.g. the existing Postaim service, without any restriction as to content)

#### *7.2.2 Should different considerations apply to international bulk mail services where markets are already fully open to competition?*

##### *7.2.2.1 Views of respondents*

Two respondents questioned the degree of competition in this market. One pointed to the competitive advantage that An Post has in that, unlike other postal service providers, it does not have to charge Irish customers VAT for EU destinations, while another said that 'whilst the international market is open to competition for bulk mail services, the range of service offerings is quite limited at present. This may warrant such services being included until this market develops.'

Another respondent said that if open competition is established, international bulk mail did not need to be included in the universal service.

An Post is of the view that international bulk mail services should not form part of the universal service as they argue that the universal service is fulfilled by the retail outbound international service currently provided by An Post and further because the market is competitive.

##### *7.2.2.2 ComReg position*

The most persuasive argument for including bulk mail in ComReg's working definition of the universal service is that the market is restricted and that no other companies have the opportunity to compete. The situation for international bulk mail is more complex. Although there are other market players, the anomalous VAT situation (as described above) means that for customers not registered for VAT An Post is defacto the only service provider (as if they used any other service provider they would be charged VAT, which they could not claim back). This is not a level playing field and therefore could not be described as a fully competitive market.

Therefore, on balance, ComReg has decided that international bulk mail services will be included in the working definition of the universal service.

## **7.3 Separate insured and registered mail services**

### *7.3.1 Summary of consultation issue*

Regulation 4(4)(c) of the 2002 Regulations requires that the universal service include a stand alone service for registered items<sup>18</sup>. As provision of a combined registration and insurance service may require some customers to pay for secure handling, which may not be required or necessary, ComReg asked the question whether An Post should provide a stand alone 'registration' system (as provided for in the Regulations) for those customers who only require proof of delivery<sup>19</sup>. ComReg also asked what limit should be placed on compensation for items lost or delayed in the insured service.

### *7.3.2 Should the universal service include a lower cost service, providing proof of delivery only, without the secure handling necessary for transporting valuable goods?*

#### 7.3.2.1 Views of respondents

One respondent agreed with this question while another, although recognising that the 2002 Regulations require that proof of delivery is provided as a stand-alone service asked that that consideration be given to the economic benefits that may be derived from the bundling of the registration and insurance services.

An Post argues that the existing service it provides meets the domestic and international obligations and further is 'operationally sensible'.

#### 7.3.2.2 ComReg position

Although the regulations as drafted require the provision of a standalone registration service, in view of responses received ComReg accepts that An Post's bundling of services is currently sufficient to fulfil customers needs.

### *7.3.3 What limit should be placed on the compensation payable for items lost or delayed in the insured service.*

#### 7.3.3.1 Views of respondents

Two respondents agreed with ComReg's proposal that a limit of €4,600<sup>20</sup> should be placed on the compensation payable for items lost or delayed in the insured service, in line with the UPU Letter Post Regulations.

---

<sup>18</sup> A 'registered item' is defined in the 2002 Regulations as 'a service providing a flat-rate guarantee against risks of loss, theft or damage and supplying the sender, where appropriate upon request, with proof of the handing in of the postal item or of its delivery to the addressee'

<sup>19</sup> There are over 600 Acts of the Oireachtas that require the use of registered post in certain circumstances.

<sup>20</sup> An approximation of 4,000 SDR, € 4,893 on 15th November 2005. The SDR (Special Drawing Right) is an artificial "basket" currency used by the IMF (International Monetary Fund).

An Post maintain that their current position is in line with the UPU Letterpost Regulations<sup>21</sup>. They further contend that there are no requirements to offer compensation for delayed insured items.

#### 7.3.3.2 ComReg position

It is impossible in practice to distinguish between items which will never arrive and items which have been delayed for a very long time<sup>22</sup>. On this basis, ComReg's definition of lost items includes items which have been substantial delayed<sup>23</sup>.

In line with the responses to the question, ComReg has decided that the limit to be placed on the compensation payable for items lost or delayed in the insured service will be €4,600.

#### 7.3.4 *Should the universal service include one single standard parcel offering?*

##### 7.3.4.1 Summary of consultation issue

ComReg suggests that there should be one universal service parcel offering and that this should be as follows;

A parcel service to all destinations with:-

- target delivery times - as per current 'priority' offering from An Post
- prices that comply with the tariff principles (geared to cost, affordable etc., see Regulation 9(1) of the 2002 Regulations)
- a registration option
- an insurance option – with compensation payable for the value of the goods up to a maximum of €4,600, (the lowest level permissible under the UPU Parcel Post Regulations, see above)

##### 7.3.4.2 Views of respondents

All respondents that answered this question agreed that such an offering should be part of the universal service.

An Post concurred with ComReg's position and confirmed that the universal service should include one single standard parcel offering to all destinations as a minimum offering.

---

<sup>21</sup> ComReg reject An Post's contention that Article 15.2 of the UPU Letterpost Convention refers to an exception to maximum amount set out in the Regulations. Article 15.2 clearly imposes two conditions on the maximum amount. Firstly that it must be at least 4,000 SDR and secondly that it must be equal to or higher than the amount of indemnity set for the loss of a registered item – these represent two conditions to be fulfilled rather than alternate conditions.

<sup>22</sup> This position is set out in CEN/TS 14773 'Postal services – Quality of service – Measurement of loss and substantial delay in priority and first class single piece mail using a survey of test letters'

<sup>23</sup> An item shall be classified as lost or substantially delayed if the item has not been received by the recipient within a transit time that is less than or equal to 7 days (D+1 domestic mail) or 10 days (D+1 cross border mail) (As in CEN/TS 14773 *ibid*, s. 4.2)

An Post also confirmed that they will be shortly including a single standard parcel offering in their product portfolio, which will provide a standard priority service, with routing times corresponding to the existing Priority service, and a registration/insurance option.

#### 7.3.4.3 ComReg position

The responses show that there is strong demand for such a single standard parcel offering and therefore it is proposed to include such a service in ComReg's working definition. Similarly as with mail services, the universal service will not include a separate registration and insured service. The following parcel service will be included in ComReg's working definition of a postal service.

A parcel service to all destinations with:-

- target delivery times - as per current 'priority' offering from An Post
- prices that comply with the tariff principles (geared to cost, affordable etc., see Regulation 9(1) of the 2002 Regulations)
- the provision of a registered and insured service which is optional for customers to avail of - with compensation payable for the value of the goods up to a maximum of €4,600, (the lowest level permissible under the UPU Parcel Post Regulations, see above)

These obligations would not prevent An Post providing other parcel services. This remains a commercial decision for An Post.

## 7.4 Ancillary services

### 7.4.1 Summary of consultation issue

ComReg asked whether a number of 'ancillary services' should be characterised as part of the universal service, namely;

- **Redirection**
- **Mailminder**
- **"Private boxes / bags"**
- **Certificate of posting**

### 7.4.2 Views of respondents

Two respondents submitted that these services should be included in the definition of the universal service as they are inseparable from the actual services themselves.

One respondent argued that these services should not be included in a definition of the universal service as no evidence has been provided to demonstrate any shortcomings in the provision of these ancillary services.

An Post argued individually against the inclusion of these services in the working definition of the universal service, the basic premise of their argument being that the services are not basic services and therefore should be provided solely on a commercial basis.

An Post proposed that Redirection is not a universal service as it is not a basic service and further because it cannot always be offered (the example was given of the case where non-unique names are at the same address and only one moves and also when a minor is leaving home.)

An Post argued that Mailminder is not a basic service but is a facility to hold mail for a certain period on instruction.

Certificates of posting are seen by An Post as a receipt for a service and as such do not constitute a service provided at a Post Office counter in its own right or a receipt for any content.

In An Post's view private boxes/bags are not basic services and therefore should be excluded from the working definition of the universal service. They argue that it is only included in the universal service in countries where the demographics demand it.

#### *7.4.3 ComReg position*

This range of services are not viewed by ComReg as separate services, but requirements that stem from the provision of the universal postal service. There is significant customer use of this range of services currently. Furthermore, no service provider other than An Post could realistically provide these services. Resultantly there is no competition in the market for these services. Nevertheless these services are necessary to preserve the security and integrity of the mail. These services are also important generally as they provide reassurance to customers, particularly vulnerable groups.

ComReg rejects An Post's argument that Redirection cannot be part of the universal service as it cannot always be offered. When circumstances arise where the USP feels that it is unfeasible to provide their universal service obligation, it has the option of applying to ComReg, which may (in exceptional circumstances) grant specific derogations from the universal service.

With the evolution of the definition of the universal service, in the future some of these services may be provided as part of industry best practice, rather than as a result of the universal service obligation. However, for the moment, ComReg has decided to include the following services in the working definition of the universal service;

- Redirection                      A service that ensures your mail is sent on to you after you move address (private or business).
- Mailminder                      A service that allows your mail to be held while you are away from your usual address
- "Private boxes / bags"        A service providing a box/bag into which post can be delivered. This can be then

- Certificate of posting (free) either collected by the addressee or delivered to the addressee by the service provider.
- A certificate of proof that an item has been accepted at a post office counter to be posted to the addressee.

## 7.5 Other services

### 7.5.1 Summary of consultation issue

ComReg pointed to a range of other postal services that some customers may consider should be included within ComReg's working definition of the universal service, this includes;

- Business reply / Freepost
- Swiftpost
- Publicity post
- Special collections for businesses
- Free postal service for blind and partially sighted persons
- Periodicals service
- Sending books abroad

### 7.5.2 Views of respondents

Of the services suggested, one respondent identified that Business Reply and Freepost should be included in the universal service. The rationale given was that they are an integral part of the letterpost service.

An Post accepted that free postal services for the blind and partially sighted persons and the service for sending books abroad should remain within the universal service, but none of the other suggested services should be included in the working definition of the universal service.

An Post argued that Business Reply/Freepost is merely a payment mechanism and not a service in its own right and as such should not be included in the working definition.

Those respondents that expressed an opinion voiced strong support for having the free postal service for blind and partially sighted persons within the universal service.

### 7.5.3 ComReg position

The 2002 Regulations, the UPU letter post Convention and the Postal Services Directive all make special provision for services to the blind. Therefore ComReg is required to ensure that free services for blind and partially sighted people are provided by the USP. As such these services will be included in the working definition.

The 'sending books abroad' service provides special rates for posting books to addresses outside of Ireland. Due to demand for this service by charities it has been decided to include this service within the working definition of the universal service.

ComReg is of the view that Business Reply/Freepost is not merely a ‘payment mechanism’ but rather a service which enables customers (businesses in particular) pay other customers return postage<sup>24</sup>. Furthermore it is a service for which there is substantial demand and which is, for the most part, not open to competition (most relevant items weigh less than 100g, and as such are currently reserved to An Post). ComReg also agrees with the respondent who points out that such a service is an integral part of the letter post service. It is for these reasons that it has decided to include the Business Reply/FreePost service in the working definition of the universal service

An Post’s argument that Business Reply/Freepost is merely a ‘payment mechanism’ is therefore rejected. For the avoidance of doubt, ComReg notes that methods of payment i.e. stamps, counter automation labels, franking machines, cash or account (the current ‘Ceadúnas’ method) are equally important features of the universal service and An Post must make these available for all services as appropriate.

‘Other services’ were given merely as an illustrative list and as ComReg received no responses on any other individual issues, ComReg is not going to include them in the working definition of the universal service. Therefore ComReg has decided to only include the following services in the working definition of the universal service;

- Free postal service for blind and partially sighted persons
- Sending books abroad
- Business Reply (A service which enables businesses pay other postal customers return postage) / Freepost

---

<sup>24</sup> It also encourages customers to use the medium of post

## Appendix A – Legislative basis

### **Communications Regulation Act 2002**

The Communications Regulation Act 2002 established ComReg as the regulator for the postal services industry. The Act in s.12(1)(c) places an obligation on ComReg to exercise its functions in a manner which promotes ‘*the development of the postal sector and in particular the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all users.*’

### **European Postal Services Directive**

The Postal Services Directive 97/67/EC (as amended by Directive 39/2002/EC) is designed to gradually open the Community postal market to competition, while harmonising and enhancing the universal postal service for all citizens of the Community. While accepting the authority of member states to shape universal service to meet country-specific requirements, it requires member states to meet certain minimum requirements in the provision of a universal service (one collection from appropriate access points and one delivery to all addresses, every working day, in respect of postal items up to 2kg and postal packages up to 10 kg, plus services for registered items and insured items, all at affordable prices). These minimum criteria imply considerable freedom for a member state government in designing its national universal service obligation.

Recital 11 to Directive 2002/39/EC provides that ‘The basic aim of safeguarding the durable provision of a universal service matching the standard of quality defined by the Member States in accordance with Article 3 of Directive 97/67/EC on a consistent basis throughout the Community can be secured if, in this area, the possibility of reserving services is maintained and, at the same time, conditions of high efficiency ensured by a sufficient degree of freedom to provide services.’

### **The European Communities (Postal Services) Regulations 2002**

The 2002 Regulations (contained in S.I. No. 616 of 2002) gave effect in Ireland to the Postal Services Directive. Regulation 4(1)(a) provides that ‘*Users at all points in the State shall enjoy the right to a universal service (“universal service”) involving the permanent provision of a postal service of a specified quality and, subject to Regulation 9(1), at affordable prices for all users.*’

Regulation 4 of the Regulations provides that the universal postal service comprises of at a minimum;

- one collection from appropriate access points and one delivery to all addresses
- every working day (at a minimum 5 days a week) in respect of postal items up to 2 kg and postal packages up to 20 kg;
- services for registered items and
- services for insured items.

These minimum requirements are almost exactly the same as in the Postal Services Directive, except Ireland chose to set the limit for domestic postal items at 20 kilograms (the Postal Services Directive gives a range of minimum 10 kilograms and maximum 20 kilograms).



Regulation 5 states the requirements of the universal service. Regulation 5(e) of the 2002 Regulations requires that the services of a universal service provider 'shall evolve in response to the technical, economic and social environment and to the needs of users'

Regulation 6 specifies the information to be provided by the universal service provider in respect of the universal service.

Regulation 8 sets out the services reserved to An Post as a universal service provider, namely -

- (a) the clearance, sorting, transport and delivery of items of domestic correspondence, cross-border correspondence and direct mail, whether by accelerated delivery or not, within both of the following weight and price limits -
  - (i) the weight limit shall be -
    - (i) from 1 January 2003, 100 grams, and
    - (ii) from 1 January 2006, 50 grams,
  - (ii) these weight limits do not apply -
    - (i) from 1 January 2003, if the price is equal to or more than three times, and
    - (ii) from 1 January 2006, if the price is equal to or more than two and a half times,the public tariff for an item of correspondence in the first weight step of the fastest category,
- (b) the free postal service for blind and partially sighted persons operated by An Post from time to time,
- (c) until 1 January 2004, outgoing cross-border correspondence within the same weight and price limits referred to in paragraph(a).'

Regulation 9 specifies the tariff principles to be observed. Regulation 11 specifies the accounting procedures.

### **Universal Postal Convention**

The Universal Postal Union (UPU) via Article 1 of the Universal Postal Convention obliges its 189 member countries to ensure that '*all users/customers enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices*' and further provides that '*With this aim in view, member countries shall set forth, within the framework of their national postal legislation or by other customary means, the scope of the postal services offered and the requirement for quality and affordable prices, taking into account both the needs of the population and their national conditions.*'

## Appendix B – Defining the Universal Service in other Member States

### *Germany*

In Germany the universal service is defined in some detail in law and includes:-

- a letter post service (up to 2 kg) including next day standard; letters/postcards, registered, insured, cod and express delivery items;
- a parcel post service (up to 20 kg), including a registered parcel service and an insured parcel service;
- a newspaper and periodicals service; and
- a bulk direct mail service (defined in this instance as letters with identical content up to 50 grams with a minimum 50 items per mailing).

### *The Netherlands*

In the Netherlands where since the late 1970s a distinction has been drawn between private and business customers, the universal service specifically excludes bulk mail outside the reserved area and only applies to the following:-

- a single class overnight letter service (up to 2kg), including a registered service and an insured service; and
- a parcel service (up to 10kg domestic, 20kg international), including a registered service and an insured service.

### *Sweden*

In Sweden, the universal service obligation is not laid down by law, but is provided for in the licence granted to Posten AB. It includes:-

- a priority and a non-priority mail service for “single or a few” letters (up to 2 kg), including a registered service and an insured service;
- a parcel service for “single or a few” items (up to 20 kg), including a registered service and an insured service; and
- a bulk direct mail service.

### *The UK*

In the UK the NRA, Postcomm recently adopted a universal service definition based on an extensive public consultation process about the needs of postal users.

Postcomm defined five key areas of universal service. These are:-

- priority and non-priority mail services (for letters and packets up to 2kgs), including a registered service and an insured service;
- a provision for a basic bulk mail offering;
- a non-priority parcel service (up to 20kgs), including a registered service and an insured service;
- an international outbound service;
- a range of support services seen as necessary to the security and integrity of the mail e.g. re-direction and retention of mail.

### *Other*

In other countries such as France the universal service includes all services traditionally provided by state-controlled postal operators.