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Communications Regulation

Postal Regulatory Framework Implementation of the Communications Regulation (Postal Services) Act 2011

Consultation

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Additional Information

All responses to this consultation should be clearly marked:-
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Chapter 1

1 Introduction

- 1.1 The Communications Regulation (Postal Services) Act 2011 (the “2011 Act”) came into force on 2 August 2011. The Act establishes a new statutory framework for the regulation of postal services in the State, including the universal postal service, and it transposes the European regulatory framework for the postal sector as established by the Directive 97/67/EC, adopted in 1997 and later amended in 2002 and 2008 (the “Postal Directive”). On 19 August 2011, the Commission for Communications Regulation (“ComReg”) published an Information Notice¹ setting out the implications of the 2011 Act on ComReg’s work programme for 2011 and beyond.
- 1.2 This is the first in a series of consultations about the measures that are necessary to implement ComReg’s obligations under the Act.
- 1.3 Given the need for certainty about the new regulatory framework ComReg has decided to initiate this Consultation before preparing and publishing a draft of its Postal Strategy Statement for the period to 30 June 2014.
- 1.4 Once the key features of the regulatory framework have been put in place, following this consultation, ComReg will consult stakeholders about its draft Postal Strategy Statement. This will set out the regulatory policies which will guide ComReg in carrying out its statutory functions under the 2011 Act, in accordance with its statutory objectives.
- 1.5 As foreseen in the Information Notice published last August and in the interest of convenience for all interested parties ComReg will undertake the remaining detailed consultations in accordance with the “Next Steps” set out in Chapter 8 of this document.

¹ ComReg document 11/56; see http://www.comreg.ie/_fileupload/publications/ComReg1156.pdf

Chapter 2

2 Executive Summary

2.1 This consultation addresses three important issues affecting the future regulation of the Irish postal sector: the scope of regulation; An Post's role as the designated "*universal postal service provider*"; and provision of postal services "*within the scope of the universal postal service*".

The scope of Regulation

2.2 The 2011 Act set the scope of postal regulation by ComReg as follows:

- by defining "*postal services*". Chapter 4.1 sets out ComReg's understanding of that definition and how it is minded to apply it;
- by setting out how "*postal service providers*" are to be authorised. Chapter 4.2 sets out how ComReg proposes to implement this; and
- the obligations and rights of authorised "*postal service providers*" which is summarised in Chapter 4.3.

2.3 Until the 2011 Act was enacted, on 2 August 2011, the definition of "*postal services*" in Irish law was exactly the same as in EU legislation. This is no longer the case. Section 6 & 8 of the 2011 Act, taken together, provide that the term "*postal services*" is now defined as "*services involving the clearance, sorting, transport and distribution of postal packets*". According to Section 6(1) and Section 50 the two distinguishing features of a "*postal packet*" are that it is *addressed* and that it has been accepted or intended for *transmission by post*.

2.4 The definition of "*transmission by post*" in section 6(3) of the 2011 Act appears to encapsulate everything which happens to a "*postal packet*" "*from the time of its being presented at an access point to the time of its being delivered ... to the addressee*". Additionally most of the key features of the common law principle of *transmission by post* have been incorporated into the 2011 Act and are imposed on *postal service providers* as a condition of their authorisation (see paragraph 4.44).

2.5 The issue raised by these changes is that there are certain "*added value*" services where the sender does not deposit an item at an "*access point*", as defined, or where all four features (*clearance, sorting, transport and distribution*) contained in the definition of a "*postal service*" are not discernible.

2.6 ComReg is minded to proceed on the basis that "*Document Exchange*" and "*Express and Courier services*" and the delivery of unaddressed advertising

material lack certain constituent features by which to be deemed “*postal services*”. On the other hand other services that do not involve all four constituent features of a “*postal service*” - i.e. – “*clearance, sorting, transport and distribution*” – but which are nevertheless consistent with the definition of “*transmission by post*” (such as direct mail) may be considered to be *postal services*.

2.7 All “*postal service providers*” require authorisation under the 2011 Act. The key features of the authorisation process are as follows:

- Each undertaking must notify ComReg that it intends to provide one or more “*postal services*” as defined in the 2011 Act.
- When an undertaking is authorised it must then comply with the obligations set out in the 2011 Act, as summarised in Chapter 4.3, Chapter 5 and Chapter 6 of this Consultation Paper.
- ComReg must maintain a register of *postal service providers*.
- If there is serious or repeated non-compliance by a *postal service provider* with the obligations imposed on it, ComReg may suspend or withdraw its authorisation.

An Post’s role as the designated “universal postal service provider”

2.8 This consultation considers An Post’s role as the designated “*universal postal service provider*” under the 2011 Act which involves examining the following:

- the additional obligations and rights imposed on An Post. Chapter 5.1 summarises the relevant provisions of the 2011 Act;
- the range of “*universal postal services*” that An Post must provide to meet the needs of users. Chapter 5.2 deals with the Regulations ComReg must make in this regard, in accordance with section 16(9) of the 2011 Act; and
- the approval and publication of An Post’s Terms and Conditions and Charges for its “*universal postal services*”. Chapter 5.3 deals with the Direction ComReg must issue under section 22 of the 2011 Act.

2.9 Section 16 of the 2011 Act sets out a general description of the “*universal postal service*” that An Post as the designated “*universal postal service provider*” is required to provide. It is essentially identical to that described in the Postal Directive and in the now revoked S.I. 616 of 2002. However, unlike the situation pertaining before the 2011 Act came into effect, ComReg is now required by section 16(9) to “*make regulations specifying the services to be*

provided by a universal postal service provider relating to the provision of a universal postal service”.

- 2.10 This has a number of consequences, in that not only may ComReg determine the services that An Post must provide, but *universal postal services* are exempt from VAT and it is only in respect of the *universal postal services* that An Post may make any claim for the cost of providing that service, where there is found to be a net cost which constitutes an unfair financial burden on An Post.
- 2.11 The consultation examines the existing set of universal postal services provided by An Post and those under the existing working definition of universal postal services (ComReg Document 05/85). It seeks views as to what services should be specified as being included in the universal postal service and options are examined in the consultation and in the draft RIA. The preliminary view of the consultation is to set a ‘*de minimis*’ set of postal services that meet the needs of *postal service users*, while also minimising the regulatory burden on An Post.
- 2.12 In relation to the publication of the terms and conditions of the “*universal postal service*” provided by An Post, the Act requires that these must be published on An Post’s website and by any other means that ComReg determines. The consultation seeks views as to whether publication on An Post’s website alone is sufficient or whether there should be additional publication requirements. The preliminary expressed view is to require additional publication beyond publication on An Post’s website, for the reason that not all *postal service users* have access to the internet and it is reasonable and appropriate that terms and conditions should be available in printed format on request and at the point of sale.

Provision of postal services "within the scope of the universal postal service"

- 2.13 Chapter 6 of the consultation document deals with two issues
- The publication of the guidelines concerning services “*within the scope of the universal postal service*” which ComReg is required to issue under section 37(2) of the 2011 Act; and
 - the obligations imposed on providers of services “*within the scope of the universal postal service*” by sections 39 and 42 of the 2011 Act.
- 2.14 Section 37 of the 2011 Act introduces the concept of a “*postal service within the scope of the universal postal service*” and Section 37(2) requires ComReg to “*publish guidelines concerning postal services within the scope of the universal postal service to which persons shall have regard when making a notification*

under section 38”.

2.15 According to Section 37(1) there are three circumstances in which a postal service may be considered to be *within the scope of the universal postal service*:

- if the service is within the description of the universal postal service set out in section 16;
- if the service would be within the description of the universal postal service set out in section 16 but for the fact that clearance or delivery is not made on every working day or the service is not provided throughout the State, or the service is not provided at an affordable price; or
- the postal service is of a kind that, having regard to postal service users, could reasonably be said to be interchangeable with a service of a description set out in section 16 .

2.16 Section 37(1) is specific in stating that *Document Exchange* and *Express or Courier services* are not *within the scope of the universal postal service*. This reflects specific provisions in the Postal Directives (Recital 21 to the First Directive in the case of *Document Exchange*, and Recital 18 to the First Directive) and is consistent with EU case law (e.g. Case C-320/91 [*Corbeau*]) in the case of *Express or Courier services*.

2.17 Draft guidelines are included at Annex 7. These guidelines are important as providers of services *within the scope of universal postal service* will be liable to pay a levy to ComReg to cover its expenses incurred in regulating postal services and they may be required to fund the *universal postal service* where the net cost of same is found to be unfair financial burden on An Post.

Regulatory Impact Assessment (RIA)

2.18 ComReg has conducted a draft Regulatory Impact Assessment ('RIA'), which is dealt with in Chapter 7, for those aspects of the consultation where ComReg is imposing regulatory obligations. The draft RIA addresses two matters:

- Options for the specification of the *universal postal service*; and
- Options for the publication of terms and conditions of the *universal postal services*.

Chapter 3

3 Background

- 3.1 This is the first in a series of consultations as to the measures that are necessary to implement the Communications Regulation (Postal Services) Act 2011 (the “2011 Act”). The 2011 Act transposes into Irish Law the European regulatory framework for the postal sector, as established by Directive 97/67/EC, adopted in 1997 and later amended in 2002 and 2008 (the “Postal Directive”).
- 3.2 As hitherto, all financial and other non-postal services which are provided at “post offices” are outside the definition of “postal services” and therefore such services are outside the remit of ComReg.
- 3.3 All references to statutory sections in this document are references to sections of the 2011 Act, unless stated otherwise. A full listing of all the Terms and Abbreviations used in this document is set out in tabular form at Annex: 1

3.1 ComReg’s functions and statutory objectives

- 3.4 Section 9 of the 2011 Act amends section 10 of the Communications Regulation Act, 2002 (the “2002 Act”) so that ComReg’s statutory functions in respect of “postal services” are now the following:

“(ba) to ensure the provision of a universal postal service that meets the reasonable needs of postal service users,

(c) to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 in relation to the provision of postal services,”

- 3.5 The statutory objectives to be met by ComReg, in exercising the above functions, are set out in section 12 of the 2002 Act, as amended by section 10 of the 2011 Act: and are now as follows:

“(i) to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users,

(ii) to promote the interests of postal service users within the Community, and

(iii) *subject to subparagraph (i), to facilitate the development of competition and innovation in the market for postal service provision*".

3.2 Scope and purpose of current consultation

3.6 There are three categories of postal services which are subject to regulation under the 2011 Act:

- i. The "*universal postal service*" as defined in section 16 and which must be provided exclusively by An Post for the first twelve years of the 2011 Act, subject to review by ComReg after the first seven years.
- ii. Postal services which fall "*within the scope of the universal postal service*" on the basis that they meet any one of the three criteria set out in section 37(1). According to section 37(1) this category does "*not include a document exchange or express or courier services*".
- iii. Other postal services; this being a residual category comprising postal services that are not part of the two previous categories.

3.7 The 2011 Act grants certain rights and imposes certain obligations on providers of postal services, depending on the type of service being provided - i.e. whether it is a "*universal postal service*", or a service "*within the scope of the universal postal service*", or a residual category of "*postal service*". These rights and obligations are set out in detail in Chapters 4, 5 and 6. The particular type of service being provided thus determines the specific rights and obligations that shall apply to the provider of that service.

3.8 The "*universal postal service*" specified in section 16, can only be provided by An Post for the first twelve years of the 2011 Act, subject to review by ComReg after seven years (see sections 17 and 21). However any undertaking (including An Post) may provide services in either of the following two categories:

- i. Postal services "*within the scope of the universal postal service*" (as defined in section 37), or
- ii. Postal services outside the scope of the universal postal service, or

3.9 Of course, any undertaking may also provide services which are not in fact "*postal services*", as that term is defined in the 2011 Act, and which therefore are not subject to any form of regulation under the 2011 Act.

3.10 This consultation addresses three important issues affecting the future regulation of the Irish postal sector: the scope of regulation; An Post's role as the designated "*universal postal service provider*"; and provision of postal

services “*within the scope of the universal postal service*”.

- Consideration of the scope of regulation involves the following:
 - the definition of “*postal services*” (section 8);
 - the authorisation of “*postal service providers*” (sections 38 to 44); and
 - the obligations and rights of authorised “*postal service providers*”.
- Consideration of An Post’s role as the designated “*universal postal service provider*” (section 17) involves the following:
 - the additional obligations and rights imposed on An Post;
 - the range of “*universal postal services*” that An Post must provide to meet the needs of users (section 16(9)); and
 - the approval and publication of An Post’s Terms and Conditions and Charges for its “*universal postal services*” (sections 22 to 25 and 28 to 30);
- Consideration as to who may be deemed to be a provider of services “*within the scope of the universal postal service*” (section 37) involves the following:
 - publication of guidelines concerning services “*within the scope of the universal postal service*” (section 37(2)); and
 - the obligations imposed on providers of services “*within the scope of the universal postal service*” (sections 39 and 42)

3.11 In this document, ComReg sets out its understanding of its statutory remit under the 2011 Act and the options available to it where it is required to make regulations, issue directions or provide guidelines. The purpose is to give stakeholders the opportunity to state their views as to the options open to ComReg, and to comment on the draft Regulatory Impact Assessment (“RIA”) as to the impact of any regulatory measures on postal service providers. It also provides an opportunity for stakeholders to comment on ComReg’s understanding of its statutory remit.

3.12 ComReg will allow its standard four-week period for submitting responses to this consultation. In accordance with paragraph 2.3.1 of its published consultation procedures², ComReg will consider any justified request for an extension to the consultation period, provided that any such request is received no later than 7 May 2012. If no extension is requested or granted, then the consultation period will end on 28 May 2012 and ComReg will endeavour to publish its decision and RIA by 29 June 2012.

² ComReg document 11/34; see http://www.comreg.ie/_fileupload/publications/ComReg_1134.pdf

Chapter 4

4 The scope of regulation

4.1 The 2011 Act set the scope of postal regulation by ComReg as follows:

- by defining “*postal services*”. Chapter 4.1 sets out ComReg's understanding of that definition and how it is minded to apply it;
- by setting out how “*postal service providers*” are to be authorised. Chapter 4.2 sets out how ComReg proposes to implement this; and
- the obligations and rights of authorised “*postal service providers*” which is summarised in Chapter 4.3.

4.1 Definition of postal services

4.2 Until the 2011 Act was enacted, on 2 August 2011, the definition of “*postal services*” in Irish law was exactly the same as in EU legislation³. This is no longer the case. Section 6 & 8 of the 2011 Act, taken together, provide that the term “*postal services*” is now defined as “*services involving the clearance, sorting, transport and distribution of postal packets*”.

4.3 According to Section 6(1) and Section 50 the two distinguishing features of a “*postal packet*” are that it is *addressed* and that it has been accepted or intended for *transmission by post*.

4.4 The definition of “*transmission by post*” in section 6(3) of the 2011 Act appears to encapsulate everything which happens to a “*postal packet*” “*from the time of its being presented at an access point to the time of its being delivered ... to the addressee*”.

4.5 The issue raised by these changes is that there are certain “*added value*” services where the sender does not deposit an item at an “*access point*”, as defined, or where all four features (*clearance, sorting, transport and distribution*) contained in the definition of a “*postal service*” are not discernible.

4.6 However for ComReg to seek to exclude a service from the cache of regulated “*postal services*” merely because it does not fully accord with a strict legal definition of “*postal service*” may be unduly restrictive. For example, to exclude a service merely because it involves collection, rather than the sender inputting the mail into an “*access point*”, does not seem reasonable. Also if *postal*

³ Section 2 of the Communications Regulation Act 2002 (the “2002 Act”) stated that “‘postal services’ has the meaning assigned to it by Directive 97/67/EC of 15 December 1997 (O.J. No. L015, 21.1.98, p. 14)”.

packets are deposited at an *access point* in bulk and in such manner that they do not require “*sorting*” then it would not seem reasonable to argue that the service being provided was not a “*postal service*” merely because the “*sorting*” element was absent.

4.7 Section 37(1) of the 2011 Act expressly states that “*document exchange*” and “*express or courier services*” are not services “*within the scope of the universal postal service*”. However, the Act does not go so far as to expressly state that they are not “*postal services*” – i.e. it does not state that such services are altogether excluded from the scope of the Act.

4.8 ComReg is minded to proceed on the basis that “*Document Exchange*” and “*Express and Courier services*” and the delivery of unaddressed advertising material lack certain constituent features by which to be deemed “*postal services*”. On the other hand other services that do not involve all four constituent features of a “*postal service*” - i.e. – “*clearance, sorting, transport and distribution*” – such as direct mail may be considered to be *postal services*.

4.9 The following paragraphs explain in more detail why ComReg has reached its understanding of how the new definition of postal services introduced by sections 6 and 8 of the 2011 Act should be implemented (any emphasis, where it appears, is ComReg’s):

- Section 2 of the 2002 Act defined “*postal services*” as “*services involving the **clearance, sorting, transport and delivery of postal items***”. This is the same definition as in the First Postal Directive.
- The 2002 Act did not define a “*postal item*” but the First Postal Directive and Regulation 2(1) of S.I. 616 of 2002 both defined this term as meaning “*an item addressed in the final form in which it is to be carried by the universal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value*”. This definition, as contained in the First Postal Directive, remains in effect⁴.
- The 2011 Act replaced the definition of “*postal services*” found in the 2002 Act. Sections 6 and 8 of the 2011 Act, taken together, provide that “*postal services*” is now defined as “*services involving the **clearance, sorting, transport and distribution of postal packets***”.

⁴ In the Third Directive the reference to “*universal service provider*” has been amended to “*postal service provider*” and the reference to “*postal packages*” has been changed to “*postal parcels*”.

- The terms “*clearance*” and “*distribution*” are also re-defined by the 2011 Act. Regulation 2(1) of S.I. 616 of 2002 provided that “*clearance*” meant “*the operation of collecting postal items deposited at access points*”. This is also the same definition of “*clearance*” as in the First Postal Directive. However, the 2011 Act now defines “*clearance*” as “*the operation of collecting postal packets by a postal service provider for transmission, including to places outside the State*”⁵. In addition, “*distribution*” is now defined as “*the process from **sorting** of postal packets at the distribution centre to **delivery** of postal packets to their addressees*”.
- Therefore, the 2002 Act defined “*postal services*” according to a particular definition of the term “*clearance*” and by the term “*delivery of postal items*”. However, the 2011 Act now defines “*postal services*” according to a different definition of the term “*clearance*” and by the term “*delivery of postal packets*”.
- Section 6(1) of the 2011 Act also defines a “*postal packet*” as “*an item addressed in the final form in which it is to be carried by a postal service provider and includes a letter, parcel, packet or any other article **transmissible by post***”.
- The term “*transmission by post*” is also defined in the 2011 Act and this term, or any slight variations thereof, is used throughout the 2011 Act in conjunction with the term “*postal service*”⁶. Section 6(3) defines “*transmission by post*” as follows:
 - (3) *For the purposes of this Part—*
 - (a) *a postal packet shall be deemed to be in the course of transmission by post from the time of its being **presented at an access point** to the time of its being delivered,*
 - (b) *the delivery of a postal packet of any description to any person authorised to receive postal packets of that description for the post shall be a delivery to a post office, and*
 - (c) *the delivery of a postal packet—*
 - (i) *at the premises to which it is addressed or redirected, unless the premises are a post office from which the postal packet is to be collected,*

⁵ Before the 2011 Act came into operation Regulation 2(1) of S.I. 616 of 2002 provided that “*clearance*” means *the operation of collecting postal items deposited at access points*. This is identical to the definition in the first Postal Directive, though that definition was amended by the Third Postal Directive so that it now reads - “*Clearance; the operation of collecting postal items by a postal service provider*”.

⁶ See sections 16(12), 46, 47, 53, 55 and 58 of the 2011 Act

(ii) *to any box or receptacle to which the occupier of those premises has agreed that postal packets addressed to persons at those premises may be delivered, or*

(iii) *to the addressee or to the addressee's agent or to any other person considered to be authorised to receive the postal packet,*

shall be a delivery to the addressee.

- The term “*transmission by post*” is thus defined by reference to the definition of “*delivery*” (in section 6(3)(c)) and by the definition of “*access point*”, which is as follows:

*“access point” means any box, receptacle or other facility, including post boxes, provided for the public either on the public road or at a post office, where postal packets, or any class of postal packets, may be deposited with a postal service provider by senders for transmission by post*⁷.

4.10 The definition of “*transmission by post*” thus appears to encapsulate everything which happens to a “*postal packet*” “*from the time of its being presented at an access point to the time of its being delivered ... to the addressee*”. This is fully consistent with the definition of a “*postal item*” in the First Postal Directive.

4.11 However, the amended definition of “*clearance*” – as contained in the Third Postal Directive and (in slightly different wording) in the 2011 Act - extends the definition of “*postal item*” in the Postal Directives to include items that are collected from senders’ premises. The new definition of “*postal service*” in the 2011 Act appears to maintain the *status quo* by confining the meaning of “*postal services*” to items that are deposited at “*access points*”. ComReg must, however, have regard to the wider scope apparently envisaged by the Third Postal Directive.

4.12 What is essentially at issue, in regard to all of the above, is that there are certain “*added value*” services where the sender does not deposit an item at an “*access point*”, as defined. For example, with courier services items are normally collected from senders’ premises - senders do not deposit the items at “*access points*”. Furthermore, it would appear that items collected by couriers are not then “*transmitted by post*”, as this term is defined as encapsulating everything which happens to a “*postal packet*” “*from the time of its being presented at an access point to the time of its being delivered*”. Nor does a

⁷ Before the 2011 Act came into operation Regulation 2(1) of S.I. 616 of 2002 provided that “*access points*” means *physical facilities, including letter boxes provided for the public either on the public highway or at the premises of the universal service provider, where postal items may be deposited with the public postal network by customers*

courier service have all four features (*clearance, sorting, transport and distribution*) contained in the definition of a “*postal service*” as an item conveyed by courier typically goes directly from sender to recipient.

- 4.13 If an item sent by courier is not “*transmitted by post*”, then it would appear that it is not a “*postal packet*” as such packets are defined as items that are “*transmissible by post*”. And if it is not a “*postal packet*” then the service at issue is not a “*postal service*”, because “*postal services*” are defined by reference to “*postal packets*”.
- 4.14 However for ComReg to seek to exclude a service from the cache of regulated “*postal services*” merely because it does not fully accord with the legal definition of a “*postal service*” may be unduly restrictive. For example, to exclude a service merely because it involves collection, rather than the sender inputting the mail into an “*access point*”, does not seem reasonable. For example, if a law firm grows from small to medium-sized, so that instead of sending a member of staff to the nearest post box at 4.30 pm every evening, the firm engages a “*postal service provider*” to collect the post directly from its offices, then the firm would still appear to be using a “*postal service*”. Nothing has changed other than the extra amount which has to be paid to the “*postal service provider*” for the “*value-added*” service. The service being provided is still, for all intents and purposes, a “*postal service*”. Therefore, in terms of utility to the user, it would seem unduly restrictive to seek to exclude such a service from the scope of the Act merely because it does not strictly meet the statutory definition of a “*postal service*”.

Document exchange and express and courier services

- 4.15 Section 37(1) expressly states that “*document exchange*” and “*express or courier services*” are not services “*within the scope of the universal postal service*”. However, the Act does not go so far as to expressly state that such services are not “*postal services*” – i.e. it does not state that such services are altogether excluded from the scope of the Act.
- 4.16 Section 37(4) defines “*document exchange*” as “*provision of means, including the supply of premises specifically for that purpose and transportation by a third party, allowing self-delivery by mutual exchange of postal packets between persons subscribing to this service*”. “*Mutual exchange*” in this context appears to be fundamentally different from a postal service involving “*clearance, sorting, transport and distribution*”.
- 4.17 Recital 18 to the First Postal Directive, and the European Commission’s

Statement regarding Recital 27⁸ also draw a distinction between “*express and courier services*” and other postal services. Furthermore, providers of such services might not be able to comply with some of the provisions contained in sections 47, 53, and 55 of the 2011 Act.

4.18 However, as stated in paragraph 4.15, while section 37(1) goes so far as to specify that such services are not “*services within the scope of the universal service*”, the Act does not expressly state that they are not “*postal services*” at all. On the other hand, if they were to be regarded as “*postal services*”, regulatory obligations would be imposed on the many undertakings providing such services, which would be disproportionate to any public interest benefit that may result.

Unaddressed and addressed advertising material

4.19 One service currently provided by An Post is the door to door delivery of **unaddressed** advertising material. However, the definition of both “*postal item*” in the EU Postal Directives and “*postal packet*” in the 2011 Act refers to “*an item addressed in the final form in which it is to be carried by ...*” It would therefore seem that door to door delivery of unaddressed advertising material is not a “*postal service*” as defined in the 2011 Act, but is more akin to other forms of advertising such as in newspapers, or on radio, television or the internet, or in any other media.

4.20 **Addressed** advertising material (Direct Mail) is more problematic than unaddressed advertising material, as Direct Mail is similar in many respects to a traditional postal service. Direct Mail items are normally printed in delivery sequence and therefore do not need to be “*sorted*”, which is one of the four features in the legal definition of a “*postal service*”. Historically the provider of the Direct Mail services would appear to have an obligation only to the sender as the recipient/addressee would in most cases be indifferent as to whether the communication was received or not. Indeed, recent data protection legislation requires recipients to “*opt in*” to receiving certain unsolicited advertising and many undertakings do seek the addressee’s permission before sending addressed advertising material. Furthermore, delivery of Direct Mail on or by a specified day would be more important than delivery in due course of post - i.e. speed of delivery would not necessarily be of great concern. Six EU Member States have always excluded addressed advertising material from the postal monopoly and the First and Second Postal Directives therefore included a specific definition of such material so as to enable those six Member States to

⁸ Communication from the Commission to the European Parliament pursuant to the second subparagraph of Article 251 (2) of the EC Treaty concerning the common position of the Council on the adoption of a Directive of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services. – COM(2007)695 final, 9.11.2007

distinguish it from more traditional *postal items*⁹.

4.21 It is also difficult to distinguish Direct Mail from other bulk mail such as invoices where both senders and addressees have an interest in the item, as the senders want to be paid and the addressees need to know of their liability to pay, and where speed of delivery may be of the essence to the sender.

4.22 ComReg will proceed on the basis that delivery of unaddressed advertising material is not a "*postal service*" for the purposes of the 2011 Act, and therefore does not fall to be regulated, but that there can be no similar, general presumption in respect of addressed advertising material, which may be a type of "*postal service*" which does have to be regulated to some extent.

Network access

4.23 Finally the issue of *network access* also needs to be considered. Section 6(1) defines the "*postal network*" as:

the system of organisation and resources of all kinds used by a universal postal service provider for the purposes, in particular, of—

(a) the clearance of postal packets,

(b) the routing and handling of those postal packets from the access point to the distribution centre, and

(c) the distribution to the addresses shown on postal packets;

4.24 An Post, as the designated "*universal postal service provider*", owns such a *postal network*. In order to achieve economies of scale, density and scope, and thereby keep the cost of providing the "*universal postal service*" to a minimum, An Post utilises its network to provide not only the "*universal postal service*" but also other "*postal services*" (which may fall within or outside the scope of the universal postal service) and non postal services (such as the delivery of unaddressed advertising leaflets).

4.25 An Post also allows other "*postal service providers*", and in particular the

⁹ Article 2 point 8 defined Direct Mail as "a communication consisting solely of advertising, marketing or publicity material and comprising an identical message, except for the addressee's name, address and identifying number as well as other modifications which do not alter the nature of the message, which is sent to a significant number of addressees, to be conveyed and delivered at the address indicated by the sender on the item itself or on its wrapping. The national regulatory authority shall interpret the term 'significant number of addressees' within each Member State and shall publish an appropriate definition. Bills, invoices, financial statements and other non-identical messages shall not be regarded as direct mail. A communication combining direct mail with other items within the same wrapping shall not be regarded as direct mail. Direct mail shall include cross-border as well as domestic direct mail;". This definition has been excluded from the Third Directive simply because it is no longer needed following Full Market Opening.

“Designated Operators” of the Universal Postal Union (“UPU”)¹⁰ and members of the European Parcels Group (“EPG”), access to its *“postal network”*. By this arrangement both *“postal service providers”* and An Post, as owner of the network, should benefit from the further economies of scale, density and scope that should arise.

- 4.26 Some *“postal service providers”* may wish to access An Post’s *“postal network”* in order to provide their *“postal services”*. Section 33 of the 2011 Act gives them *“the right to enter into negotiations with a universal postal service provider with a view to concluding an agreement with that provider to access the postal network of the universal postal service provider”* and makes provision for ComReg to provide a dispute resolution function. It appears to ComReg that while such negotiated access is a type of *“postal service”*, as defined, it is distinct from the provision of the *“universal postal service”*. This view is supported by the wording of section 33 *“with a view to concluding an agreement”* rather than including provision for same within the definition of the *“universal postal service”* in section 16.
- 4.27 On the other hand, other *“postal service providers”* may chose to simply purchase a *“universal postage service”* to ensure delivery of *“postal packets”* in areas where they do not have a delivery network.
- 4.28 Either way these *“postal services”* enable both *“postal service providers”* and An Post, as owner of the network, to benefit from the economies of scale, density and scope that should arise.

Transmission by Post

- 4.29 A key feature of the definition of a *“postal service”* is the concept of *“transmission by post”*. As observed in paragraph 4.10 the definition of *“transmission by post”* in the 2011 Act appears to encapsulate everything which happens to a *“postal packet”* *“from the time of its being presented at an access point to the time of its being delivered ... to the addressee”*.
- 4.30 The concept of *“transmission by post”* was a feature of the common law, under which the postal service provider became the agent of the addressee immediately upon the posting of a postal packet, with the sender having no right to reclaim the packet after it was posted, nor could the sender have a packet detained or delayed even if a request to that effect appeared on the cover. The postal service provider was required to forward the packet to its marked address and could not divert it to any other address, even at the request of the sender.

¹⁰ An organisation under the auspices of the United Nations and established by inter-governmental treaty to facilitate the inter-operability of *“postal networks”* at the global level.

4.31 In the light of these principles it should be noted that:

- Section 53(1) of the 2011 Act provides that “*A person commits an offence if he or she, without the agreement of the addressee ...*”:
 - delays, detains, interferes with or opens a postal packet; or
 - does anything to prevent its delivery; or
 - discloses the existence or contents of a postal packet; or
 - uses any information obtained from a postal packet.
- Section 47(3) does however give postal service providers the right to open postal packets that are —
 - (a) undeliverable,¹¹
 - (b) awaiting collection *poste restante* and not collected,
 - (c) due for collection and not collected, or
 - (d) not in compliance with its terms and conditions for the transmission of postal packets,and the name and the address of the sender cannot be ascertained
- Section 49 allows for the recovery of any unpaid postage as a simple contract debt, confirming that the postal packet itself cannot be returned to the sender once it has been deposited at an access point.

4.32 In other words most of the key features of the common law principle of *transmission by post* have been incorporated into the 2011 Act and are imposed on *postal service providers* as a condition of their authorisation (see paragraph 4.44). Also it should be noted that Section 25 of the Interpretation Act 2005 allows for the presumption in legal proceedings that proof of posting of a “*postal packet*” is proof of delivery unless the contrary can be proved.

Summary

4.33 Section 6 & 8 of the 2011 Act, taken together, provide that the term “*postal services*” is now defined as “*services involving the **clearance**, sorting, transport and **distribution** of **postal packets**”*. According to Section 6(1) and Section 50

¹¹ Section 47(4) provides that “*a postal packet is considered to be undeliverable if it cannot be delivered through want of a true direction, or by reason that the addressee is dead, or cannot be found, or has refused the same, or has refused or neglected to pay any charges thereon, or for any other sufficient reason*”.

the two distinguishing features of a “*postal packet*” are that it is **addressed** and that it has been accepted or intended for **transmission by post**.

4.34 The definition of “*transmission by post*” in section 6(3) of the 2011 Act appears to encapsulate everything which happens to a “*postal packet*” “*from the time of its being presented at an access point to the time of its being delivered ... to the addressee*”. Additionally most of the key features of the common law principle of *transmission by post* have been incorporated into the 2011 Act and are imposed on postal service providers as a condition of their authorisation (see paragraph 4.44).

4.35 ComReg is therefore minded to proceed on the basis that “*Document Exchange*” and “*Express and Courier services*” and the delivery of unaddressed advertising material lack certain constituent features by which to be deemed “*postal services*”. On the other hand other services that do not involve all four constituent features of a “*postal service*” - i.e. – “*clearance, sorting, transport and distribution*” – but which are nevertheless consistent with the definition of “*transmission by post*” (such as direct mail) may be considered to be *postal services*.

Q. 1 Have you any reasoned observations to make about ComReg's understanding of the definition of postal services in the Communications Regulation (Postal Services) Act 2011?

4.2 Authorisation of postal service providers

4.36 All “*postal service providers*” require authorisation under the 2011 Act. The key features of the authorisation process are as follows:

- Each undertaking¹² must notify ComReg that it intends to provide one or more “*postal services*” as defined in the 2011 Act.
- On receipt of the notification, the undertaking is authorised automatically, and it must then comply with the obligations set out in the 2011 Act, as summarised in Section 4.3 and in Chapter 5 and Chapter 6 of this Consultation Paper.
- ComReg must maintain a register of postal service providers.

¹² Whereas the Postal Directives define *postal service provider* as an “*undertaking that provides one or more postal services*” the 2011 Act defines *postal service provider* as “*any person providing one or more than one postal service*” albeit that the term *undertaking* is used in Schedule 4 in relation to contributions to a universal postal service compensation fund. As the CJEU has observed two or more separate legal or natural persons may be considered to form one economic unit and therefore to be a single undertaking (see Annex: 1. ComReg therefore will proceed on the basis that it is the undertaking that should make the notification but that the names of all legal or natural persons included in the undertaking should be disclosed.

- If there is serious or repeated non-compliance by a *postal service provider* with the obligations imposed on it, ComReg may suspend or withdraw its authorisation.

Notification Process

- 4.37 Section 38(1) of the 2011 Act requires any (legal or natural) person who intends to provide a “*postal service*” to notify ComReg of his or her intention before doing so. Section 38(2) requires any (legal or natural) person who was providing a “*postal service*” immediately before the passing of the 2011 Act¹³, to notify ComReg within one month of the publication of ComReg’s decisions following this consultation¹⁴. A notification under sub-section 38(1) or (2) shall be in such form as ComReg shall determine under section 38(3), and shall include a declaration under section 38(6) stating whether the postal service concerned is, or is not, within the scope of the universal postal service.
- 4.38 It is ComReg’s intention that the notification should be made “online”. However, in view of the penalties that arise from a failure to make a notification or from making a notification or submitting a declaration which is false or misleading, hardcopies of the notification and declarations should also be printed off and signed and sent to ComReg by registered post. A draft of the proposed form of notification and declaration is at Annex: 2.
- 4.39 On acknowledgement by ComReg of such written notification, the “*postal service provider*” is deemed to be authorised to provide the postal service or services described therein, subject to the conditions specified in section 39.
- 4.40 Section 41 gives ComReg power to suspend or withdraw an authorisation when it considers that there is or has been serious or repeated non-compliance by a *postal service provider* with the conditions imposed on it.

Holders of existing postal service authorisations

- 4.41 Section 38(8)(b) provides that the obligations applying to the holder of a “*postal service authorisation*” granted under Regulation 7 of S.I. 616 of 2002 shall continue to apply until the holder of such an authorisation makes a notification to ComReg as described above, seeking a new authorisation under the 2011 Act. Subject to its consideration of the responses to this consultation, and particularly responses to Questions 1, 2 and 3 above, ComReg proposes that holders of “*postal service authorisations*” granted under Regulation 7 of S.I. 616 of 2002, but who only provide “*express or courier services*” or “*Document Exchange*” services, shall not need to make a notification to ComReg under

¹³ On 2 August 2011

¹⁴ It is ComReg’s aim to publish its decision by the end of June 2012 and if this ambition is met the deadline for the receipt of notifications will be the end of July 2012.

Section 38 of the 2011, on the basis that the particular services they are providing are not “*postal services*” as defined by the 2011 Act. For the avoidance of any doubt, holders of “*postal service authorisations*” granted under Regulation 7 of S.I. 616 of 2002, and who do not consider themselves to be “*postal service providers*” for the purposes of the 2011 Act should notify ComReg accordingly.

4.42 A draft form to enable holders of postal service authorisations granted under Regulation 7 of S.I. 616 of 2002 to notify their status as “*postal service providers*” or otherwise is at Annex: 3.

Criminal Offence

4.43 Section 38(7) provides that it is a criminal offence to fail to make a notification or to make a notification or a declaration which is false or misleading in any material respect and the offender is liable on summary conviction to a “class A” fine, the largest fine permissible under the Fines Act 2010 following summary conviction.

4.3 Obligations and rights of postal service providers

4.44 As noted in paragraph 4.39 above, the postal service provider is deemed to be authorised to provide the services subject to compliance with the obligations set out in the following sections:

- Sections 11-12 “*Power of Commission to obtain information from postal service provider*”;
- Section 42 “*Withdrawal of postal services*”;
- Section 43 “*Complaints and redress procedures*”;
- Section 45 “*Protection of whistleblowers*”;
- Section 47 “*Powers as to the transmission of postal packets*”;
- Section 53 “*Prohibition on opening of postal packets and mail bags*”, and
- Section 54 “*Ministerial directions to postal service providers*”.

4.45 A number of rights and benefits also accrue to authorised postal service providers, under the following sections:

- Section 33 “*Access to postal network of universal postal service provider*”;
- Section 34 “*Access to postal infrastructure*”;
- Section 46 “*Inviolability of mails and immunity from prosecution*”;

- Section 47 *“Powers as to the transmission of postal packets”*;
- Section 55 *“Prohibition on sending certain articles by post”*;
- Section 57 *“Prohibition on interference with post boxes”*; and
- Section 58 *“Secretion of a postal packet”*.

4.46 Additional obligations apply to An Post as the designated *“universal postal service provider”* (see Chapter 5), or in respect of services which fall *“within the scope of the universal postal service”* (see Chapter 6).

4.47 Chapter 8 provides an indicative listing of the future consultations that ComReg will conduct in relation to these obligations and rights.

Chapter 5

5 An Post's role as designated universal postal service provider

5.1 Consideration of An Post's role as the designated "*universal postal service provider*" (section 17) involves the following:

- the additional obligations and rights imposed on An Post (Chapter 5.1);
- the range of "*universal postal services*" that An Post must provide to meet the needs of users (section 16(9)) (Chapter 5.2); and
- the approval and publication of An Post's Terms and Conditions and Charges for its "*universal postal services*" (Chapter 5.3);

5.2 The "*universal service*" concept within the EU is not unique to postal services; rather it applies to all Services of General Economic Interest (SGEI). According to the European Commission¹⁵ such services "*are different from ordinary services in that public authorities consider that they need to be provided even where the market may not have sufficient incentives to do so*". The characteristics of such services are set out not just in sector specific legislation such as the Postal Directives, but in other EU legislation and in relevant decisions of the Court of Justice of the European Union ("CJEU").

5.3 Under Section 17 of the 2011 Act, An Post is designated as the "*universal postal service provider*" for a period of 12 years beginning on 2 August 2011, subject to possible review by ComReg after 7 years.

5.4 ComReg has two specific statutory functions set out in Section 10 of the 2002 Act, as amended by section 9 of the 2011 Act:

"(ba) to ensure the provision of a universal postal service that meets the reasonable needs of postal service users,

(c) to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 in relation to the provision of postal services,"

5.5 The "objectives" to be met by ComReg in exercising the above functions are set out in section 12 of the 2002 Act, as amended by section 10 of the 2011 Act:

¹⁵ COM(2000) 580 final 20.9.2000

“(i) to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users,

(ii) to promote the interests of postal service users within the Community, and

(iii) subject to subparagraph (i), to facilitate the development of competition and innovation in the market for postal service provision”.

5.1 Additional Rights and Obligations on An Post¹⁶

5.6 An Post, in its capacity as one of a number of "postal service providers" operating in a liberalised postal market, is subject to the same obligations and has the same rights as all other authorised "postal service providers" in that market. However, when acting in its capacity as the designated "universal postal service provider", An Post is also subject to certain additional provisions, as set out in the following sections of the 2011 Act:

- Section 16 "Universal postal service";
- Section 17 "Designation of An Post as universal postal service provider";
- Section 22-25 "Terms and conditions of and charges made in respect of provision of universal postal service";
- Section 28 "Tariff requirements";
- Section 29 "Terminal dues and evasion of postage";
- Section 30 "Price regulation";
- Section 31 "Universal postal service accounting obligations"¹⁷;
- Section 32 "Quality of service Standards"; and
- Section 34 "Access to postal Infrastructure".

5.7 To facilitate universal service provision, special rights accrue to the designated universal postal service provider, including:

- Section 26 "Limitation of liability of universal postal service provider";

¹⁶ These rights and obligations on An Post only apply in respect of the services it is obliged to provide as the designated universal postal service provider under §17 of the 2011 Act.

¹⁷ This obligation relates to the accounting records of the An Post group of companies.

- Section 27 *“Power to require carrying of postal packets and mail bags by ship or aircraft”*;
- Sections 35-36 *“Net cost of provision of universal postal service”* and *“Financing of provision of universal postal service”*;
- Section 46(2) *“Inviolability of mails and immunity from prosecution”*;
- Section 49 *“Evidential provisions in relation to postage”*;
- Section 56 *“Obstruction of a universal postal service provider”*;

5.8 The following two sections of this consultation paper address two specific issues:

Section 5.3 - The range of universal services that An Post must provide to meet the needs of users (section 16(9) of the 2011 Act);

Section 5.4 - Approval and publication of An Post's Terms and Conditions and Charges for its universal services (section 22 to 25 and 28 to 30 of the 2011 Act).

5.2 Services to be provided by An Post¹⁸

Legal basis

- 5.9 Section 16 of the 2011 Act sets out a general description of the *“universal postal service”* that An Post as the designated *“universal postal service provider”* is required to provide. It is essentially identical to that described in the Postal Directive and in the now revoked S.I. 616 of 2002. However, unlike the situation pertaining before the 2011 Act came into effect, ComReg is now required by section 16(9) to *“make regulations specifying the services to be provided by a universal postal service provider relating to the provision of a universal postal service”*.
- 5.10 S.I. 616 of 2002 set out the types of services that An Post was required to provide but ComReg did not have the legal powers to specify the precise nature of these services. ComReg could only publish, following a public consultation, a *working definition*¹⁹ of the *“universal postal service”* setting out the minimum range of services which An Post should provide. An Post was, however, free to provide additional services within the scope of the *“universal service”* described in Regulation 4 of S.I. 616 of 2002.

5.11 When exercising its new power under section 16(9) of the 2011 Act to make

¹⁸ As the universal service provider designated under §17

¹⁹ See ComReg document 05/85

regulations specifying the services to be provided by An Post relating to the provision of the “*universal postal service*” ComReg will have regard to “the technical, economic and social environment and the reasonable needs of postal service users”.

Impact of decisions made by ComReg

- 5.12 Only the services specified by ComReg in regulations made under section 16(9) will form part of the “*universal postal service*” provided by An Post. This will have two significant impacts.
- 5.13 First, only the “*universal postal service*” is exempt from VAT. In 2009, the CJEU decided²⁰ that the exemption from VAT “*only applies to the public postal services acting as such – that is, in their capacity as an operator who undertakes to provide all or part of the universal postal service in a Member State*”. As a result of that decision, section 130 of the Finance Act 2010 amended Schedule 1 of the Taxes Consolidation Act 1997 with regard to VAT on postal services as follows:
- Postal services*
- 1. Public postal services; including the supply of goods and services incidental to their provision, by An Post (including postmasters) or by designated persons in accordance with the European Communities (Postal Services) Regulations 2002 (S.I. No. 616 of 2002) but only if that supply is not on terms that have been individually negotiated.*
- 5.14 Second, it is only in respect of the “*universal postal service*” that An Post may seek funding in respect of the net costs (if any) of providing the “*universal postal service*”, under Section 35 of the 2011 Act.
- 5.15 Other “*postal services*” provided by An Post may however fall “*within the scope of the universal postal service*”, as set out in section 37(1) of the 2011 Act. In respect of these services An Post will be subject to the same obligations and rights as other authorised *postal service providers* who provide services “*within the scope of the universal postal service*”, as discussed in Chapter 6.
- 5.16 This means that An Post will not be subject to any provisions of the 2011 Act which solely relate to its role as the designated “*universal postal service provider*”, in respect of those “*postal services*” which it provides and which fall “*within the scope of the universal postal service*” but which are not actual “*universal postal services*”. An Post will have flexibility in terms of pricing, quality and contract terms for all of its “non-universal” postal services and it

²⁰ Case C-357/07 TNT Post UK Ltd v The Commissioners for Her Majesty’s Revenue and Customs [2007]

should also be able to reduce its prices for these services as a result of being able to reclaim input VAT.

Proposed Regulations

5.17 ComReg needs to consult on the services that will form part of the “*universal postal service*” provided by An Post, under regulations made by ComReg pursuant to section 16(9) of the 2011 Act. Recital 11 to the First Postal Directive states:

*... it is essential to guarantee at Community level a universal postal service encompassing a **minimum range of services** of specified quality to be provided in all Member States at an affordable price for the benefit of all users, irrespective of their geographical location in the Community*

5.18 In addition, and as noted above, ComReg has the statutory function to ensure the provision of a *universal postal service* that meets the reasonable needs of postal service users and one of its objectives, to be met in the performance of that function, is to promote the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users.

5.19 A good starting point, in deciding which services shall form part of the “*universal postal service*”, is to look to the list of services specified in ComReg document 05/85 *The Universal Postal Service - A working definition*. These are:

- Standard Post - Letter services (Three Formats; D+1 standard) and Parcels (as per current ‘priority’ offering from An Post)
- Services for businesses, bulk mailers or consolidators of mail from different customers:
 - ‘delivery only’ for mail sorted in delivery sequence or by delivery office
 - ‘deferred delivery’
 - a combination of ‘delivery only’ and an extended delivery cycle
- Registration and Insurance (bundled; compensation up to €4,600)
- Free postal service for blind and partially sighted persons
- International bulk mail services
- Sending books abroad
- Business Reply / Freepost

- Redirection
- Mailminder
- Private boxes / bags
- Certificate of posting (free)

5.20 It is then necessary to consider what changes if any, should be made to the above list, having regard to the technical, economic and social environment and the reasonable needs of postal service users.

Standard Postal services (single piece mail)

5.21 The current range of *universal postal services* is marketed by An Post under the brand name “*Standard Post*”. This includes separate services for each type of “*postal packet*” – i.e. “*letters*”²¹, “*large envelopes*”²², “*packets*”²³ and “*parcels*”²⁴ - in recognition of the fact that there are different operational processes and different cost structures for each type of “*postal packet*”.

5.22 All of these “*universal postal services*” are provided at a “*single piece tariff*”²⁵ and offer a basic, but nevertheless high quality, level of service for “*postal packets*” deposited at an “*access point*” for delivery to addressees at their home or premises. “*Domestic postal packets*” should be delivered on the next working day after the day of posting, “*Intra-EU postal packets*” should be delivered within 3 working days, and “*international postal packets*” should be delivered within 5 to 9 working days. However, there is no actual guarantee that delivery will occur within these time periods, nor are there any “*value-added*” features such as collection from senders’ premises, track and trace²⁶, proof of delivery, or insurance against loss or damage. A uniform tariff applies throughout the State for “*domestic postal packets*” and a higher uniform tariff

²¹ Minimum dimensions: 90mm x 140mm x .18mm, with a tolerance of 2mm. Maximum dimensions: 162mm x 235mm x 5mm. Maximum weight 100grams

²² Minimum dimensions: 90mm x 140mm x .18mm, with a tolerance of 2mm. Maximum dimensions: 300 mm x 400 mm x 25mm. Maximum weight 500g (1kg for domestic items)

²³ Minimum dimensions: 70mm x 100mm x 25 mm (In roll form: length and twice diameter: 170mm, greatest dimension not less than 100mm). Maximum dimensions: length, width and depth combined: 900 mm, greatest dimension not exceeding 600mm, with a tolerance of 2mm (In roll form: length and twice diameter: 1040mm, greatest dimension not exceeding 900mm) with a tolerance of 2mm. Maximum weight 2kg.

²⁴ Maximum dimensions: Length 1.5 metres, Length + Girth 3 metres [Girth = 2 x (Depth + Width)]. Maximum weight 20 kilograms

²⁵ §28(4) provides that “*service provided at single piece tariff*” means “*a postal service for which the tariff is set for individual postal packets by a universal postal service provider in its charges published under section 22 or 23, as the case may be*”.

²⁶ An Post exceptionally offer “track and trace” on Standard parcels for delivery with Ireland.

applies for all “*international postal packets*”²⁷.

5.23 Section 16(1)(b) of the 2011 Act specifically requires the provision of services for registered and insured items which allows “*postal service users*” to obtain proof of delivery or compensation for loss or damage providing that the appropriate fee is paid in addition to the basic postage rate.

Services for “letters”, “large envelopes” and “packets”

5.24 In approximately half of all EU Member States, “*postal service users*” are given a choice between a priority postal service with a next-day delivery target and a slower but cheaper non-priority postal service. Where there is a single tier service, such as that currently provided by An Post, it is only possible to meet the requirements of all “*postal service users*” by providing the priority (and more expensive) service. This means that some “*postal service users*” have to pay for a higher level of service than they actually require.

5.25 In its consultation prior to publishing its *working definition*²⁸, ComReg sought the views of interested parties as to whether such a single tier service was acceptable and/or sustainable. ComReg also sought views as to whether the increased level of work (and resulting increased costs) in having to segregate “priority” and “non-priority” mail would be justified in the context of both stamped and metered mail.

5.26 At the time, ComReg took the view that, on balance, the provision of a single tier service was sufficient to meet the requirements of the 2002 Postal Regulations while also meeting the needs of “*postal service users*”.

5.27 The option of having a two tier service as part of the “*universal postal service*” must now be considered afresh. In addition to again taking into account the submissions of all interested parties, ComReg shall take into account other factors including the provisions set out in section 12(2A) of the 2002 Act, as inserted by section 10 of the 2011 Act, which set out the reasonable measures which ComReg shall take in order to achieve its statutory objectives in relation to the postal sector (as set out in section 12(1)).

5.28 ComReg must also consider the potential impact on operational efficiency of such a two tier service. For instance, ComReg must consider whether Ireland has sufficient volume of mail per capita to support the efficient provision of a two tier service²⁹. ComReg must also consider whether the geographical size of Ireland imposes limitations on An Post’s ability to reduce its costs (and

²⁷ The exceptions are in respect of packets weighing more than 500g for international destinations and parcels for delivery in Britain.

²⁸ *The Universal Postal Service - Formulating a working definition* ComReg document 05/16

²⁹ Countries such as Britain or France that currently provide a two tier service have approximately twice the volume of mail per capita compared to Ireland.

therefore its tariffs) by offering postal service users the choice between “priority” and “non-priority” services.³⁰ In considering these issues, ComReg will also take account of developments in other jurisdictions.

- 5.29 If ComReg determines that a two tier service is not required the question that arises should the “*status quo*” be retained, i.e. a single tier service offering delivery the next working day.

Q. 2 Should the “*status quo*”, i.e. a single tier service offering delivery the next working day, be retained as part of the *universal postal service*? Please give reasons for your views.

Service for “Parcels”

- 5.30 The Parcels market is already very competitive. An Post’s market share is approximately 15%³¹, of which about half might be encompassed within the present working definition of the “*universal postal service*” (ComReg Doc 08/85). Most “*postal service users*” appear to demand something more than the basic parcel service envisaged by the EU Postal Directive. As this demand is being met by the market there is no need to mandate the provision of anything other than a basic parcel service as forming part of the “*universal postal service*”. That is not to say that where a feature such as track and trace is used by An Post to ensure operational efficiency, that such a feature may not be offered to those who choose to have their parcels delivered as part of the *universal postal service*, providing that a premium price is not charged and additional “*value added*” features such as day certain or time certain are not provided.

Q. 3 Do you agree that there is no need to mandate the provision of anything other than a basic parcel service as forming part of the “*universal postal service*”? Please give reasons for your views.

- 5.31 It should be noted that section 16(3) of the 2011 Act provides for ComReg to make an Order reducing the maximum weight of a standard parcel from 20kg to a weight not less than 10kg. ComReg does not intend to use this power at this time but will review the position from time to time. The reason for this is that the UPU [International] Parcels Post Agreement provides for a maximum weight per parcel of 20kg. So if ComReg were to make an Order reducing the maximum weight for parcels posted and delivered within the State to say 10kg there would be an anomaly in that a customer in Dundalk or Letterkenny could

³⁰ For example there is only a single option provided in the Netherlands, another geographically small country.

³¹ See findings from qualitative research into the national need for communication and distribution services prepared by The Research Perspective Ltd on behalf of The Commission for Communications Regulation http://www.comreg.ie/fileupload/publications/ComReg_10102.pdf

only post a parcel weighing 10kg, whereas a customer in a neighbouring town or city in Northern Ireland, such as Newry or Derry, could post a parcel weighing 20kg.

Q. 4 Should ComReg reduce the maximum weight for domestic parcels at the present time, or leave it as is? Please give reasons for your views.

Pricing

5.32 Section 28 of the 2011 Act requires An Post to comply with specified tariff requirements in respect of the four standard types of *postal packet*, relating to *cost orientation, affordability, transparency* and *non discrimination*. A new requirement is that there should be uniform pricing though this requirement is not defined in the 2011 Act.

5.33 As a minimum, uniform pricing requires that the same price is charged irrespective of where in the State the *postal packet* is posted and where in the State it is to be delivered. On the other hand, the requirement for uniform pricing does not require that the same (uniform) price shall apply for different types of "*postal packet*" - i.e. "*letters*", "*large envelopes*", "*packets*" and "*parcels*" – as the costs of processing each type are significantly different.

Q. 5 Do you agree that uniform pricing does not require that there be uniform prices for different types of "*postal packet*" - i.e. "*letters*", "*large envelopes*", "*packets*" and "*parcels*" – as the costs of processing each type are significantly different? Please give reasons for your views and suggest whether there are any other attributes that should be regarded as being outside the uniform pricing principle.

Bulk Mail / Access Products

5.34 In principle, it seems that Bulk Mail and access products are not entirely consistent with the concept of universal postal service provision and in this context some countries confine the universal postal service to single piece items. Specific examples include Britain³² and the Netherlands.

5.35 While An Post currently provides an extensive range of services for Bulk Mail very few of these are universal in character in that they are only provided at a very limited range of access points, or where they are provided at a broader range of *access points* they are subject to different quality standards. Some are not provided throughout the year and are only available if the contents meet certain criteria.

³² See The Postal Services (Universal Postal Service) Order 2012, UK Statutory Instrument 2012 No 936

5.36 In terms of the three *de minimis* services for bulk mail specified in the *working definition* An Post does not provide a service offering a combination of 'delivery only' and an extended delivery cycle.

5.37 In terms of access to the *postal network* by other postal service providers, Section 33 of the 2011 Act is quite clear that such service providers should "*enter into negotiations with a universal postal service provider with a view to concluding an agreement*" rather than being required to purchase a *universal postal service* at a published tariff.

5.38 Now that there are no restrictions on other postal service providers providing a service for postal service users, ComReg needs to consider whether it is necessary or appropriate to include any bulk mail services within the universal postal service, and if it is then to what extent. The following options for a Bulk Mail service within the universal postal service need to be considered:

- Include all Bulk Mail services currently provided by An Post.
- Include a selection of the Bulk Mail services currently provided by An Post.
- Maintain the three bulk mail services specified in ComReg document 05/85
- Include a "last resort" service only
- Exclude Bulk Mail from universal service altogether

5.39 It seems to ComReg that while in principle Bulk Mail could be excluded from the universal postal service altogether, such an approach runs the risk that some users would not have sufficient bargaining power to secure provision of the postal services that they require. On the other hand, by specifying an extensive range of Bulk Mail services as coming within the universal postal service ComReg might deprive customers of the ability to negotiate terms and conditions that suit their particular requirements, and where they are registered for VAT to recover the input VAT incurred by An Post. It would also impose restrictions on An Post's pricing and other conditions at a time when An Post needs the maximum flexibility in negotiating with its customers in order to secure the sustainability of its postal services.

5.40 Of the 17 Bulk Mail services provided under Schemes made by An Post, prior to the 2011 Act coming into effect, only six are available at a nationwide range of access points³³. Details of the main features of the six services are summarised at Annex: 4.

5.41 ComReg is therefore minded to only require a single bulk mail service of "last

³³ See ComReg document 07/06 Regulation of Postal Services – Universal Service Obligation - Bulk Mail Access

resort" to meet the needs of users who are unable or unwilling for any reason to negotiate terms and conditions that suit their particular requirements, or who are unable to deposit mail at one of An Post's four mail centres which are the only access points it currently offers to users of its most popular Bulk Mail services.

5.42 In principle, if only a single "last resort" Bulk Mail service is to form part of the universal postal service then it should either be one of the six nationally available Bulk Mail services or a "composite" service encompassing the main features of all six. Before making a decision, ComReg wishes to hear the preferences of postal service users as to whether they might wish to avail of such a "last resort" Bulk Mail service rather than negotiating an individual bespoke agreement with An Post.

5.43 An Post offers a single outbound international mail product for Bulk Mail – IBMS³⁴ and ComReg is minded to retain this within the mandated range of universal services to be specified in the Regulations made under Section 16(9).

- Q. 6 Should An Post be required to provide a single "last resort" Bulk Mail service as described in paragraph 5.41? If not, what Bulk Mail services should An Post be required to provide? Should all Bulk Mail services be excluded from the universal postal service? Please give reasons for your views.
- Q. 7 What type of "last resort" Bulk Mail service, if any, should An Post be required to provide as part of the universal postal service? Please give reasons for your views.

Registered / Insured

5.44 In its consultation leading to the publication of ComReg's current working definition of the universal postal service (ComReg Document no. 05/85) ComReg pointed out that Regulation 4(4)(c) of S.I. 616 of 2002 required that the *universal postal service* should include a standalone service for *registered items*. 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 if An Post should provide a standalone 'registration' system (as provided for in the Regulations) for those customers who only require proof of delivery. It was decided on that occasion that although the regulations as drafted require the provision of a standalone registration service, in view of responses received ComReg could accept that An Post's bundling of services would be sufficient to fulfil customers' needs.

³⁴ International Bulk Mail Service

- 5.45 The definitions of “*registered items service*” and “*insured items service*” in Section 16(12) of the 2011 Act means that the distinction between the two services is now copper-fastened in primary legislation. Furthermore, there are significant costs in providing secure handling for postal packets for which the only customer requirement is to obtain proof of the handing in of the postal packet and/or of its delivery to the addressee.
- 5.46 ComReg is therefore minded to specify separate (i.e. unbundled) registered and insured services.

Q. 8 Should An Post provide standalone services for registered and insured postal packets? Please give reasons for your views.

Collections from business premises etc.

- 5.47 As noted in paragraph 4.14, many postal service users require to have their *postal packets* collected from their premises. However, as the CJEU observed in *Corbeau*³⁵ such a service is inconsistent with provision of the *universal postal service*. ComReg cannot therefore require that collection from the senders premises should be a feature of the *universal postal service* that An Post is required to provide. That is not to say that should a feature is inconsistent with the definition of a *postal service* or that it may not fall “*within the scope of the universal postal service*”.

Other products and services

- 5.48 Having considered the other services specified in ComReg document 05/85 ComReg is minded to make no further changes to the services which make up the current universal postal service. These services include:
- Free postal service for blind and partially sighted persons
 - Sending books abroad
 - Business Reply / Freepost
 - Redirection
 - Mailminder
 - Private boxes / bags

³⁵ Case C-320/91 *Corbeau* [1993] ECR I-2533 at point 19 observed that “*the exclusion of competition is not justified as regards specific services dissociable from the service of general interest which meet special needs of economic operators and which call for certain additional services not offered by the traditional postal service, such as collection from the senders' address, greater speed or reliability of distribution or the possibility of changing the destination in the course of transit*”.

- Certificate of posting (free)

Q. 9 Should the services listed in paragraph 5.48 form part of the universal postal service? Should any of these services be excluded, or should any additional services be included? Please give reasons for your views.

Draft Regulation

5.49 ComReg is therefore minded to make regulations in the form of the draft at Annex: 5 based on the observations above.

Q. 10 Do you wish to suggest any amendments to the draft regulations that ComReg proposes to make under Section 16(9) of the 2011 Act? Please give your reasons for any such suggestions.

5.3 Approval and publication of An Post's Terms and Conditions and Charges for its universal services

5.50 Prior to enactment of the 2011 Act, An Post provided its services under a public law "Scheme" made under Section 70 of the 1983 Act. The third Postal Directive requires the removal of all special and exclusive rights and therefore this power to provide services under public law has been revoked³⁶.

5.51 However additional obligations have been imposed on An Post in its capacity as the designated universal service provider, in respect of approval and publication of the terms and conditions for its universal postal services (Section 22-25) and their pricing (Section 28-30), specifically:

- An Post must give to the Commission a statement in writing of the terms and conditions and the charges made by it in respect of its universal postal service (Section 22(1)(a)).
- ComReg must approve the terms and conditions, "*with or without amendment*" (Section 22(2) and Section 24(3)).
- The charges must comply with the tariff requirements set out in Section 28(1) and with any Price Cap set by ComReg under Section 30(7).
 - The tariff requirements relate to affordability, cost-orientation, uniform pricing in respect of single-piece mail, transparency, and non-discrimination.

³⁶ Any undertaking is now allowed to accept postal packets for "*transmission by post*" by notifying ComReg under §38 of the 2011 Act and accepting the obligations to the addressee required by §42, 43, 47, 53, 54, 55 and 58 of the 2011 Act.

- The purpose of the price cap is to provide incentives for efficient universal postal services provision having regard to the tariff principles and the protection of the interests of postal service users and in particular those of SMEs (small and medium-sized enterprises) (Section 30(3)). Pending the introduction of a price cap *“no change shall be made by An Post to any charge that applies immediately before the passing of this Act for postal services within the scope of the universal postal service relating to postal packets weighing less than 50 grams without the prior consent in writing of [ComReg]”*
- An Post must publish the terms and conditions of its universal postal service *“on its website and by such other means as the Commission may direct”* (Section 22(1)(b)).
- An Post must give at least 30 days notice of any proposal to change the terms and conditions and ComReg can approve these *“with or without amendment”* (Section 24(4)).
- Changes to An Post’s charges must be published on its website and in such other manner as ComReg may determine and the new charges shall not come into effect earlier than 14 days after such publication (Section 24(8))
- ComReg may direct An Post to modify its terms and conditions where it considers it appropriate or where they *“may have a significantly adverse effect on postal service users”* (Section 24(5))
- ComReg may direct An Post to comply with the tariff requirements (Section 28(5)) or a Price Cap ((Section 30(13))

5.52 The above matters will be the subject of separate consultations by ComReg (see Chapter 8 - Next Steps) but for the moment it is necessary to consult on the broad principle of what should be included in the terms and conditions of the universal postal service and how these terms and conditions and the details of Charges should be published.

5.53 Section 24(2) requires that the terms and conditions of the universal postal service should be in compliance with all the obligations imposed by or under the 2011 Act and must include:

“(a) the terms and conditions in accordance with which a postal service user may avail of the postal services concerned, and

(b) terms and conditions relating to, and its procedures for dealing with, complaints made by postal service users relating to the universal postal service provision”

5.54 In ComReg’s opinion, it is essential for the benefit of postal service users that

all of the terms and conditions of the universal postal service are set out in a single, comprehensive document and in plain language. The statutory provision regarding complaints procedures is very important bearing in mind An Post's the immunity from liability under section 26 in respect of any loss or damage suffered by a postal service user.

5.55 A requirement that the terms and conditions of the universal postal service and details of charges should be published solely on An Post's website may not be appropriate for two reasons:

- Not everyone has access to the internet³⁷, or might not have access at the time of depositing a *postal packet* at one of An Post's *access points*; this may be one reason why a *postal service* is being used rather than a electronic communications media; and
- Information available on the website at the time a *postal packet* is deposited with An Post may not be available at a later time when a dispute arises.

5.56 It seems to ComReg therefore that it would be appropriate to require An Post:

- to make printed copies of a booklet containing the terms and conditions of the universal postal service and a Schedule of Charges available to postal service users at every place where postage stamps are sold,
- to make available the printed copy of the booklet containing the terms and conditions of the universal postal service and a Schedule of Charges on request and
- to published the Terms and Conditions and the Schedule of Charges in *Iris Oifigiúil* as a journal of record.

5.57 A draft Direction is set out at Annex 6.

Q. 11 Do you agree that An Post's terms and conditions for its *universal postal service* should be set out in a single, comprehensive document and in plain language? Please give your reasons.

Q. 12 Should An Post be required to publish the terms and conditions of its *universal postal service*, including its Schedule of Charges, in *Iris Oifigiúil* and make them available in printed form on request and wherever postage stamps are sold? Please give your reasons.

³⁷ According to the CSO 78% of all Irish households have access to the internet – Information Society and Telecommunications in Households 2009 – 2011 December 2011

Q. 13 Do you wish to suggest any amendments to the draft Direction to An Post? Please give your reasons.

Chapter 6

6 Providers of services within the scope of the universal postal service

6.1 Guidelines to be issued under Section 37 of the 2011 Act

6.1 Section 37 of the 2011 Act introduces the concept of a “*postal service within the scope of the universal postal service*” and Section 37(2) requires ComReg to “*publish guidelines concerning postal services within the scope of the universal postal service to which persons shall have regard when making a notification under section 38*”.

6.2 According to Section 37(1) there are three circumstances in which a postal service may be considered to be within the scope of the universal postal service:

(1) A postal service is within the scope of the universal postal service (in this Part referred to as a “postal service within the scope of the universal postal service”) if

a) the service is within the description of the universal postal service set out in section 16 ,

(b) the service would be within the description of the universal postal service set out in section 16 but for the fact that—

(i) in the case of a service consisting of the clearance and delivery of postal packets, the clearance or delivery is not made on every working day as required by section 16 (1) (a),

(ii) the service is not provided throughout the State, or

(iii) the service is not provided at an affordable price in accordance with a uniform tariff applicable throughout the State pursuant to section 28 (2),

or

(c) the postal service is of a kind that, having regard to postal service users, could reasonably be said to be interchangeable with a service of a description set out in section 16 ,

but does not include a document exchange or express or courier services

- 6.3 Section 37(1) is specific in stating that *Document Exchange* and *Express or Courier services* are not *within the scope of the universal postal service*. This reflects specific provisions in the Postal Directives (Recital 21 to the First Directive in the case of *Document Exchange*, and Recital 18 to the First Directive) and is consistent with EU case law (e.g. Case C-320/91 [*Corbeau*]) in the case of *Express or Courier services*.
- 6.4 EU Law also suggests that an additional three categories of postal services cannot be considered to be “*universal postal services*”, namely:
- New services (i.e. services quite distinct from conventional services)³⁸.
 - Services with Value Added Features³⁹ (such as collection from the senders' address, greater speed or reliability of distribution, or the possibility of changing the destination in the course of transit), and
 - Services provided under individually negotiated contracts⁴⁰.
- 6.5 Because Section 37(1) of the 2011 Act does not make any specific reference to these categories of postal services, ComReg needs to consider the following:
- whether these categories of services do in fact fall within the definition of “*postal service*” as set out in the 2011 Act; and
 - if they do fall within the definition of “*postal services*” can they be considered to be “*postal services within the scope of the universal postal service*”?

Do new services, services with Value Added Features, etc., fall within the definition of *postal service*

- 6.6 ComReg can see no reason why the categories of services described in paragraphs 6.4 above should not be deemed to be “*postal services*” as defined in the 2011 Act. Indeed many postal service users would be denied access to services involving *transmission by post* if ComReg were to take any other view. For example:

³⁸ See Recital 21 to the First Directive “*Whereas new services (services quite distinct from conventional services) do not form part of the universal service*”

³⁹ The ECJ in Case C-320/91 *Corbeau* [1993] ECR I-2533 at point 19 observed that “*the exclusion of competition is not justified as regards specific services dissociable from the service of general interest which meet special needs of economic operators and which call for certain additional services not offered by the traditional postal service, such as collection from the senders' address, greater speed or reliability of distribution or the possibility of changing the destination in the course of transit*”. Also Recital 18 to Directive 97/67/EC observes that “*the essential difference between express mail and universal postal services lies in the value added (whatever form it takes) provided by express services and perceived by customers*”

⁴⁰ The ECJ in Case C-357/07 *TNT Post UK Ltd* 23 April 2009 - point 48– observed that “*it is apparent [from recital 15 to Directive 97/67] that the option to negotiate contracts with customers individually does not correspond, in principle, with the concept of universal service provision*”.

- Government Departments and other Public Bodies are obliged to tender for the provision of postal services if annual expenditure exceeds the thresholds set from time to time by the EU. Therefore the postal services they use are provided under individually negotiated contracts, but in most cases it will be essential that the successful tenderer accepts the items as postal packets for transmission by post.
 - Many businesses require the postal service provider to collect the items from the senders address⁴¹.
- 6.7 The acid test is whether the postal service provider accepts postal packets for *transmission by post* or whether the postal service provider enters into a private law contract with the sender without accepting any responsibility to the addressee⁴².
- 6.8 It might be thought that collection from the senders' address or the possibility of changing the destination in the course of transit is inconsistent with the definition of "*in the course of transmission by post*" in Section 6(3) of the 2011 Act. However it should be noted that Section 37(3) does expressly states that that "[*in*] this section a reference to a postal service includes a part of a postal service."
- 6.9 Much will depend on the nature of the contract between the sender and the postal service provider. Where there are two separate prices - one for collection and the other for transmission - then clearly the latter is a *postal service* for the purposes of the 2011 Act. Where there is a single, inseparable price covering collection and transmission then ComReg would take the view that these are postal services for the purpose of the 2011 Act unless the contrary can be proved.

Can New services, services with Value Added Features, etc., be considered to fall within the scope of the universal postal service

- 6.10 The second question raised in paragraphs 6.5 is whether such *postal services* can be considered to be "*postal services within the scope of the universal postal service*", as defined in Section 37. ComReg takes the view that the provisions of the Postal Directive and the case law of the CJEU is binding on it and that, having regard to same, such categories of postal services cannot be considered to be "*postal services within the scope of the universal postal*

⁴¹ See Findings from qualitative research into the national need for communication and distribution services prepared by The Research Perspective Ltd on behalf of The Commission for Communications Regulation http://www.comreg.ie/fileupload/publications/ComReg_10102.pdf

⁴² or in exceptional cases entering into a private law contract with the addressee without accepting any responsibility to the originator.

service”.

6.11 However, taking into account the provisions of Section 37(2)(c), ComReg is minded to take the view that it is necessary for services with Value Added Features not only to have such features but to charge a premium price for same. Otherwise, it could be argued that despite the Value Added Features because of a low price the service was in fact of a kind that could reasonably be said to be interchangeable with the *universal postal service* described in Section 16 of the 2011 Act. Furthermore while the option to negotiate contracts with customers individually does not correspond, in principle, with the concept of *universal postal service* provision it cannot be reasonably said that services provided in this manner are not interchangeable with the universal service.

Proposed Guidelines

6.12 ComReg is minded to “*publish guidelines concerning postal services within the scope of the universal postal service to which persons shall have regard when making a notification under section 38*” as required by Section 37(2) on the lines of the draft at Annex: 7:

Q. 14 Have you any observations to make about ComReg’s analysis of the issues involved?

Q. 15 Have you any amendments to suggest concerning the proposed guidelines set out in Annex 7? Please give your reasons.

6.2 Additional Obligations if service is within the scope of the universal postal service

6.13 If a service falls *within the scope of the universal postal service* as defined by the legislation the *postal service provider* will be obliged by:

- Section 39
 - to pay a levy to cover ComReg’s cost of postal regulation, and
 - to contribute to compensation fund to reimburse to An Post net cost of universal service provision if this is an unfair burden
- Section 42 to give three months notice of its intention to withdraw the service

6.14 In order to comply with the first two obligations providers of the postal services concerned will be obliged to maintain separated accountings distinguishing between services falling *within the scope of the universal postal service* and other activities.

6.15 Chapter 8 provides an indicative listing of the future consultations that ComReg will conduct in relation to these obligations and rights.

Chapter 7

7 Regulatory Impact Assessment (RIA)

- 7.1 A RIA is a structured approach to the identification and assessment of available regulatory options to meet the policy issue, including the likely impact of the regulatory options on different stakeholders. Based on this assessment, the RIA concludes with the choice of the best option to meet the policy issue. This best option should be the most effective and least burdensome regulatory option – it should be appropriate, effective, proportionate, and justified.
- 7.2 ComReg's approach to the RIA is set out in the "Guidelines on ComReg's Approach to Regulatory Impact Assessment" published in August 2007⁴³ and have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009 ("the Department's RIA Guidelines"), adopted under the Government's Better Regulation programme.
- 7.3 The guidelines set out, amongst other things, the circumstances in which ComReg considers that a RIA is appropriate. In summary, ComReg indicated that it would generally conduct a RIA in any process that might result in the imposition of a regulatory obligation, or the amendment of existing regulatory obligations to a significant degree, or which might otherwise significantly impact on any relevant market or on any stakeholders or consumers
- 7.4 This Chapter set outs ComReg's draft Regulatory Impact Assessment ("RIA") on:
- The draft regulations "*specifying the services to be provided by a universal postal service provider relating to the provision of a universal postal service*" - see section 5.2 / Annex: 5 and
 - The draft Direction setting out how An Post's terms and conditions (which includes its charges) for its universal postal services should be published – see section 5.3 / Annex: 6.
- 7.5 It is only in relation to these universal postal services that there are regulatory options open to ComReg. The rest of the consultation concerns matters of interpretation or fact in relation to the 2011 Act and are therefore not within the scope of a RIA assessment.
- 7.6 ComReg invites interested parties to review this draft RIA and to submit any comments or information which they believe ComReg has not considered and should consider in finalising its decision to specify the universal postal services

⁴³ ComReg document 07/56a

and how terms and conditions for these universal postal services should be published. Subject to respondents' views and consideration of any other evidence, this draft RIA will be finalised in ComReg's forthcoming Decision which is expected to be issued at the end of June.

Steps involved

7.7 In assessing the available regulatory options, ComReg's approach to RIA follows five steps as follows:

Step 1: describe the policy issue and identify the objectives

Step 2: identify and describe the regulatory options

Step 3: determine the impacts on stakeholders

Step 4: determine the impacts on competition

Step 5: assess the impacts and choose the best option

Step 1: Describe the policy issue and identify the objectives

7.8 As noted in section 5.2 the first policy issue is to set the range of universal services that An Post, as the universal postal service provider, must provide to meet the needs of postal users. This policy issue arises as, pursuant to Section 16(9) of the 2011 Act ComReg is now required, following this public consultation, *"to make regulations specifying the services to be provided by a universal postal service provider relating to the provision of a universal postal service"*.

7.9 As noted in paragraph 5.10, up to now ComReg did not have the legal powers to specify the precise range of universal postal services to be provided by An Post. As a result of the 2011 Act, ComReg will now specify the services to be provided by the universal postal service provider, An Post, relating to the provision of a universal postal service. As with the current working definition of universal postal services, the objectives of this policy issue are two-fold:

- to safeguard the postal services which postal customers need
- to provide certainty for customers (businesses, organisations and individuals) as to what services the universal service provider is obliged to provide for them.

7.10 As noted in section 5.3, An Post, as the designated universal postal service provider, has obligations in respect of the publication of its terms and conditions (which also contain its schedule of charges). Under the 2011 Act, these must be published on its website and by such other means as ComReg may direct.

Therefore, the second policy issue is whether publication by An Post of its terms and conditions on its website is sufficient or should there be additional publication methods to ensure that all customers are fully aware and certain of An Post's terms and conditions.

Step 2: Identify and describe the regulatory options

7.11 In relation to the first policy issue, in identifying the regulatory options for the universal postal services, ComReg needs to assess postal customer demand and whether this will be met without being set as a universal postal service. As a result, ComReg has considered the changes to the needs of postal services users and to the wider technical, economic and social environmental changes since ComReg's working definition of universal postal services was published in 2005. For example, as noted in paragraph 5.11 of the Consultation:

- there are no longer any restrictions on undertakings other than An Post providing a service if An Post decides not to do so,
- the demand for postal services has changed substantially with evidence of significant “e-substitution” including:
 - the use of electronic billing by most major utilities rather than posting bills to every customer
 - the increased use of electronic media by advertisers and government bodies.

7.12 As a result, ComReg has identified the two following regulatory options which may be adopted in order to meet the first policy issue, setting the universal postal services, in line with the requirement of Section 16(9) of the 2011 Act. These regulatory options are as follows:

- Option 1 – A “de minimis” set of universal postal services to be provided by An Post. This will be:
 - the existing uniform priced standard delivery single piece letter
 - a single “last resort” bulk mail service
 - basic parcel service
 - registered service (not to be bundled with insurance)
 - insurance service
 - free postal service for blind and partially sighted persons
 - sending books abroad

- Business Reply / Freepost
 - Redirection
 - Mailminder
 - private boxes / bags
 - certificate of posting (free)
- Option 2 – A wider set of universal postal services to be provided by An Post. This will be in addition to the services set out in Option 1 above by including more bulk mail and/or parcel services

7.13 In relation to the second policy issue, publication by An Post of its terms and conditions, again, ComReg must consider postal customer needs in reviewing the possible regulatory options.

7.14 As a result, ComReg has identified the two following regulatory options for the second policy issue which may be adopted in order to meet the policy issue of setting the publication requirement on An Post for its terms and conditions in line with the requirement of Section 22(1)(b) of the 2011 Act. These regulatory options are as follows:

- Option 1 - Only publication on An Post's website
- Option 2 - Publication on An Post's website together with a printed single comprehensive document available to postal users on request and at every place where postage stamps are sold. The terms and conditions will also be published in *Iris Oifigiúil* as a journal of record.

Steps 3 & 4: Determine the impacts on stakeholders and competition

Policy issue 1:

7.15 In relation to the first policy issue, setting the universal postal services, only the services specified by ComReg in the Regulations it will issue following this consultation will be part of universal postal service. ComReg considers that the stakeholders to be affected by the options outlined above are:

- Postal users including:
 - Individual consumers
 - SMEs who are registered for VAT
 - SMEs who are not registered for VAT

- Larger businesses who are registered for VAT
 - Larger businesses who are not registered for VAT
 - Government departments and other public bodies
 - NGO⁴⁴s including charities
- The universal postal service provider, An Post
 - Other postal service providers

Policy Issue 1: Option 1

7.16 Option 1 would mean that only a “*de minimis*” set of universal postal services need be provided by An Post. The “*de minimis*” set of universal postal services is set by reference to postal customer needs to ensure that only those postal services that postal customers would not otherwise be able to obtain (at affordable prices) are provided. This ensures that postal customer needs are safeguarded.

7.17 This also means that An Post will be freed from detailed regulatory control in respect of the majority of its postal services as they will not be universal postal services. An Post will therefore have considerable flexibility in terms of pricing, quality, and contract terms.

7.18 Also, as the majority of An Post’s postal services will not be universal postal services, An Post should also be able to offer lower prices as a result of being able to reclaim input Vat (however, An Post’s Vat exempt customers would not benefit to the same extent). This will put An Post on the same commercial basis as its competing postal service providers as they cannot offer Vat exempt postal services and should consequently facilitate the further development of competition in the market for postal service provision.

7.19 Also, in setting a “*de minimis*” set of universal postal services it will be only in respect of these specified universal postal services that An Post would be able to seek financial support for universal postal service provision under Section 35 of the 2011 Act, if such provision would involve “*net costs*” for an efficient service provider and if that “*net cost*” was an unfair burden on An Post.

Policy Issue 1: Option 2

7.20 Option 2 will expand the “*de minimis*” set of universal postal services under Option 1 by including more bulk mail and/or parcel options. Taking this Option will require robust evidence that these additional mail services, beyond the “*de*

⁴⁴ Non-Governmental organisations

minimis” set, are required to be set as universal postal services in order to meet postal customer needs that would otherwise not be met. If Option 2 is taken, expanding the set of universal postal services beyond the “*de minimis*” set, it will have the following impacts on stakeholders and competition. It will increase the number of postal services provided by An Post that will be subject to regulatory control. Furthermore, it will also increase the number of postal services provided by An Post that are Vat exempt and therefore subject to a different Vat treatment than those provided by competing postal service providers who cannot avail of the Vat exemption. It will also increase the number of postal services to be included in any “*net cost*” calculation associated with the provision of the universal service.

Policy Issue 2:

7.21 In relation to the second policy issue, publication by An Post of its terms and conditions, ComReg considers that the stakeholders to be affected by the options outlined above are:

- Postal users
- The universal postal service provider, An Post

Policy issue 2: Option 1

7.22 In requiring An Post to only publish the terms and conditions on its website, it minimises the requirement on An Post to that explicitly set out in the 2011 Act.

Policy issue 2: Option 2

7.23 Option 2 requires An Post to have the terms and conditions set out in a single, comprehensive printed document available to An Post’s customers on request and at each location where stamps are sold. This printed document will be in plain and understandable language for postal users so that all postal users can be fully informed and certain when making their purchase of postal services or when making a complaint where their postal services has been unsatisfactory - this is to the benefit of postal users and to the benefit of An Post in case of any subsequent disputes. Furthermore, it ensures that all postal users have access to the terms and conditions of their purchase, not just those postal users with access to the internet. Furthermore, it means all postal users have access to the terms and conditions on request and at the point of sale. Option 2 will also require publication by An Post of its terms and conditions in *Iris Oifigiúil* as a journal of record - this will benefit postal users and An Post in case there are subsequent disputes in relation to the terms and conditions (which includes charges and complaint procedures).

Step 5: Assess the impacts and choose the best option

Policy issue 1:

7.24 In relation to policy issue 1, setting the universal postal services, as set out above, Option 1 has a number of impacts:

- it ensures a minimum set of postal services, that would otherwise not be provided, to meet the needs of postal customers
- it minimises the scope of regulatory control on An Post
- it puts An Post and its competing postal service providers on the same Vat treatment footing for the majority of postal services

7.25 Option 2 for policy issue 1 has a number of impacts

- it expands the number of universal postal services once it is demonstrated that such postal services would not otherwise be provided
- it expands the scope of regulatory control on An Post
- it expands the number of postal services for which An Post will have a different Vat treatment than its competing postal service providers

7.26 Having regard to the impacts assessed above, the preliminary view of this draft RIA for Policy Issue 1, setting the universal postal services, is that Option 1, a “*de minimis*” set is best to address the policy issue of setting universal postal services pursuant to Section 16(9) of the 2011 Act as it is the most effective and least burdensome regulatory option.

Policy issue 2:

7.27 In relation to policy issue 2, setting the publication requirement on An Post for its terms and conditions, Option 1, publication on An Post's website alone, would minimise the regulatory burden on An Post but would also limit information about the terms and conditions to those postal users with access to the internet.

7.28 Therefore, Option 2 expands the publication requirement to include provision of a printed publication on request and wherever postal stamps are sold. Option 2 also includes publication of the terms and conditions in *Iris Oifigiúil* as a journal of record.

7.29 Having regard to the impacts assessed above, the preliminary view of this draft RIA for Policy Issue 2, publication by An Post of its terms and conditions, is that Option 2 is best to address the policy issue pursuant to Section 22(1)(b) of the

2011 Act as it is the most effective regulatory option to ensure that all postal users are fully informed when making their purchase of postal services from An Post. Option 2 also adds certainty in relation to those terms and conditions (and complaint procedures) in the case of any subsequent disputes between An Post and its customers.

Q. 16 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.

Chapter 8

8 Next Steps

- 8.1 As indicated in paragraph 3.12, the public consultation period in respect of this document will end on 28 May 2012 and ComReg will endeavour to publish its decision and RIA by 29 June 2012. This will include publication of:
- Universal Service Regulations (Section 16(9))
 - Services *within the scope of the universal postal service* Guidelines (Section 37(2))
 - Notification Procedures (Section 38)
 - Direction setting out the publication requirements for An Post's terms and conditions for its universal postal services (Section 22)
- 8.2 Assuming this target of publishing the decision by end of June 2012 is met the deadline for Notifications under Section 38 would be the end of July 2012.
- 8.3 ComReg plans to publish for consultation a draft of ComReg's Postal Strategy Statement 2012 - 2014 shortly. Assuming a decision is made by 29 June 2012 following this consultation, ComReg plans to publish its Postal Strategy Statement 2012 – 2014 by the end of August 2012.
- 8.4 Once a decision has been made following this consultation, ComReg will consult and make its decision concerning its approval or otherwise of An Post's proposed Terms and Conditions for its universal postal services.
- 8.5 Furthermore, there are a significant number of other tasks that ComReg must undertake following the coming into operation of the 2011 Act.
- 8.6 **Postal Levy:** In accordance with Section 44 the cost of regulating the postal sector is in future to be borne solely by postal service providers offering services *within the scope of universal postal service*. ComReg will therefore review its Postal Levy Order in accordance with the Act.
- 8.7 **Price Cap:** ComReg consult on the Price Cap required by Section 30. This will involve three separate tasks:
- Decide if the conditions exist where ComReg must impose a price cap.
 - Decide on what the efficiency or "-X" factor should be. Consultants to investigate scope of efficiencies starting Q4 2012

- Decide how An Post's services should be grouped into "baskets"
- 8.8 **Financing of Universal Service Provision** The Act makes provision for An Post to seek funding of its universal services provision. In accordance with section 35 of the Act, ComReg must determine the form in which An Post should submit any request for funding.
- 8.9 **Code of Practice and Out of Court Settlement Procedures** Section 43 of the Act requires postal service providers to publish a code of practice for dealing with complaints in accordance with directions given by ComReg and to put in place out of court settlement procedures.
- 8.10 **Review of existing Directions etc** The Act also provides for the review of a number of ComReg's existing Directions. Accordingly, ComReg will review and amend or update such directions as required in due course.

Annex: 1 Terms and Abbreviations used in this document

Term	Definition for the purpose of this document
You / Your	The legal or natural person reading and/or responding to the Consultation document including an "undertaking" or a "user" of postal services
Undertaking	An entity engaged in an economic activity, regardless of its legal status and the way in which it is financed ⁴⁵ . Two separate legal entities may be considered to form one economic unit and therefore to be a single undertaking. In this respect the [European] Court of Justice looks at the existence of a controlling share or functional, economic and organic links ⁴⁶
User	any person benefiting from postal service provision as a sender or as an addressee
RIA	Regulatory Impact Assessment
CJEU	The Court of Justice of the European Union, formerly known as the European Court of Justice (ECJ) and Court of First Instance (CFI)
The 1908 Act	Post Office Act, 1908. [8 EDW. 7. Cu. 48.]
The 1983 Act	Postal and Telecommunications Services Act, 1983. (1983 No. 24)
The 2002 Act	Communications Regulation Act, 2002. (2002 No. 20)
The 2011 Act	Communications Regulation (Postal Services) Act 2011. (2011 No. 21)
Section nn ⁴⁷ OR Section nn of the 2011 Act	Section nn of the Communications Regulation (Postal Services) Act 2011 (2011 No. 21).
Section nn of the NNNN Act	Section nn of the specified Act.
S.I. 616 of 2002	European Communities (Postal Services) Regulations 2002, S.I. 616 of 2002 (revoked by the Communications Regulation (Postal Services) Act 2011)

⁴⁵ see Joined Cases C-180/98 to C-184/98 Pavlov and Others [2000] ECR I-6451

⁴⁶ see Case C-480/09 P AceaElectrabel Produzione SpA v Commission [2010] ECR paragraphs 47 to 55 and Case C-222/04 Ministero dell'Economia e delle Finanze v Cassa di Risparmio di Firenze SPA and Others [2006] ECR I-289, paragraph 112

⁴⁷ nn being a number e.g. 21

Term	Definition for the purpose of this document
The First Directive	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 ⁴⁸ .
The Second Directive	Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services ⁴⁹ .
The Third Directive	Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services ⁵⁰ .
The Postal Directive	Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 and Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008.

⁴⁸ OJ No. L15, 21.1.1998, p.14

⁴⁹ OJ No. L176, 5.7.2002, p.21

⁵⁰ OJ No. L52, 27.2.2008, p.3

Annex: 2 Proposed form of notification and declaration required by Section 38

The proposal is that undertakings should enter information into electronic forms on ComReg's website and when complete would print off the completed forms and send them by registered post to ComReg. The following is the detail that would need be submitted if these proposals are implemented following this consultation.

Section 1. Information about undertaking making Notification	
1.1 Name of undertaking * (Name of Legal or Natural Person, e.g Company's Registered Name)	
1.2 Trading Name(s) (if different to above)	
1.3 Postal Address *	
1.4 Undertaking's Telephone Number (inc dialling code)	
1.5 Website address	
1.6 Address of Registered Office (*in the case of a body corporate that is a company)	
1.7 Company registration Number (* in the case of a body corporate that is a company)	
1.8 Other legal or natural persons which are part of the undertaking	
1.9 Email Address (if available)	

* Indicates a mandatory field

Section 2. Information about Compliance Officers	
2.1 Name of Principal contact *	
2.2 Office Phone number *	
2.3 Mobile Phone Number	
2.4 Email address *	
2.5 Name of Deputy contact	
2.6 Office Phone number	
2.7 Mobile Phone Number	
2.8 Email address	

* Indicates a mandatory field

Section 3. Contacts Details for postal service users wishing to make a complaint	
3.1 Postal Address *	
3.2 Telephone Numbers (inc dialling code)	
3.2.1 Freephone number	
3.2.2 LoCall number	
3.2.3 Office Phone number *	
3.3 Website address	
3.4 Email Address	

* Indicates a mandatory field

Section 4. Details of Services provided and Declarations	
4.1 Number of postal services provided by undertaking and described on Schedules attached to this declaration (a separate Schedule must be completed for each service)	
4.2 Number of these Services which are within the scope of the universal postal service	
4.3 CONFIRMATION Do you confirm that you will comply with all obligations imposed by or under the Communications Regulation (Postal Services) Act 2011 in respect of the provision of postal services, and in particular those imposed by sections 11, 12, 39, 42, 43, 45, 47, 53 and 54?	1 Yes 2 No
4.4 Do you confirm that you are aware that it is a criminal offence to fail to make a notification or to make a notification or a declaration which is false or misleading in any material respect and on summary conviction any offender is liable to a “class A” fine, the largest fine permissible under the Fines Act 2010?	1 Yes 2 No
Signature	
Date	

Schedule number Details of Services Provided	nn of nn
Name of service	
Nature of items conveyed	1 Items of correspondence 2 Business documents 3 books 4 catalogues 5 newspapers 6 periodicals 7 Merchandise with or without commercial value 8 Other (please state)
Geographical scope (sender)	
Geographical scope (addressee)	
Advertised delivery standards	
Size limits	
Weight limits	
Access arrangements (Please select only one option)	1 Deposited at access point 2 Collected from senders' premises
Legal Basis for contract (Please select only one option)	1 Individually negotiated agreement 2 Standard Contract Terms and Conditions and individually negotiated discounts from Rate Card 3 Standard Contract Terms and Conditions and non-negotiable Tariff
The estimated date of commencement for the postal service concerned (if after []	

<p>Declaration Do you confirm that this service is <i>within the scope of the universal postal service</i> as defined in section 37(1) of the Communications Regulation (Postal Services) Act 2011?</p>	<p>1 Yes 2 No</p>
<p>Declaration Do you confirm that you aware that it is a criminal offence to fail to make a notification or to make a notification or a declaration which is false or misleading in any material respect and on summary conviction any offender is liable to a “class A” fine, the largest fine permissible under the Fines Act 2010?</p>	<p>1 Yes 2 No</p>
<p>Signature</p>	
<p>Date</p>	

Annex: 3 Advice by holder of postal service authorisation granted under S.I. 616 of 2002

Section 1. Information about holder of Postal Service Authorisation under Regulation 7 of S.I. 616 of 2002.	
1.1 Name of holder of Postal Service Authorisation	
1.2 Trading Name(s) (if different to above)	
1.3 Postal Address	
1.4 Telephone Number (inc dialling code)	
1.5 Website address	
1.6 Registered Office (if registered company)	
1.7 Company registration Number (if applicable)	
1.8 Email Address	
Declaration Do you confirm that the services provided under your authorisation are not <i>postal services</i> as defined in the Communications Regulation (Postal Services) Act 2011?	
Confirmation Do you confirm that you are aware that it is a criminal offence to fail to make a notification or to make a notification or a declaration which is false or misleading in any material respect and on summary conviction any offender is liable to a "class A" fine ⁵¹ , the largest fine permissible under the Fines Act 2010 following summary conviction?	
Signature	
Date	

Annex: 4 Principal features of “Bulk Mail” services currently provided by An Post at a nationwide range of access points

Service	Title	Minimum quantity	Price for 50g letter	Latest time for acceptance	Machine sortable	OCR readable address	Pre-sorted	Delivery Target*
A	Deferred Manual Processing before noon	350	48c	Before Noon	No	No	No	D+2
B	Deferred Automated Processing before noon	350	45c	Before Noon	Yes	No	No	D+2
9	Pre Sorted (152 sorts) before 5:30pm	2000	44c	5.30pm	No	No	Yes	D+1
10	Pre Sorted (152 sorts) before noon	2000	48c	Before Noon	No	No	Yes	D+1
11	Deferred Processing before noon	2000	43c	Before Noon	No	No	No	D+3
12	Deferred Processing before noon auto-processing	2000	45c	Before Noon	Yes	No	No	D+3

* = where D is day of posting and the “+n” = the number of working days after the day of post

Annex: 5 Draft Section 16(9) Regulation

STATUTORY INSTRUMENT

S.I. No. [] of 2012

COMMUNICATIONS REGULATION (UNIVERSAL POSTAL SERVICE) REGULATIONS 2012

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

1. Citation and Commencement

- 1) These Regulations may be cited as the Communications Regulation (Universal Postal Service) Regulations 2012.
- 2) These Regulations shall come into operation on [] 2012

2. Interpretation

- 1) In these Regulations -

“Act of 2011” means the Communications Regulation (Postal Services) Act 2011 (No. 21 of 2011);

"bulk mail" means a substantial number of similar, pre-sorted postal packets deposited with An Post by a single sender, at the same place and time, to be transported and distributed to the addressees as marked on each of the postal packets;

“certificate of posting” means a receipt issued by An Post in respect of a postal packet deposited at an access point;

"D + n" is a formula in relation to the transit time of postal packets, where "D" represents the "day of posting" of a postal packet and "n" represents the number of working days after the "day of posting" after which the postal packet will be delivered to the addressee in due course of post, and in respect of delivery to addresses within the State "n" is to be replaced by "one", in respect of delivery to other addresses within the European Union "n" is to be replaced by "three", and in respect of delivery to all other Foreign addresses "n" is to be replaced by "up to nine";

"day of posting" means the specific day of the week on which a postal packet is deposited at an access point by a sender for transmission by post;

"designated operator" has the meaning assigned to it by Article 1.8 of the Universal Postal Convention;

"foreign" refers to any postal packet deposited at an access point in the State for transmission by post to an address outside the State;

"franking Impression" means the postal mark printed upon a postal packet, produced by a postal franking machine and setting out the postage paid and the date and place of posting;

"girth" means twice the combined depth and width of a postal packet;

"insurance" means a service insuring a postal packet in the event of loss, theft or damage up to the value declared by the sender of the postal packet;

"large envelope" means a postal packet other than a letter of minimum dimension 90 millimetre ("mm") x 140mm x 0.18mm (with a tolerance of 2mm) and maximum dimension 300mm x 400mm x 25mm, and with a maximum weight of 500 grams;

"letter" means a postal packet of minimum dimension 90mm x 140mm x 0.18mm (with a tolerance of 2 mm) and a maximum dimension of 235mm x 162mm x 5mm, and with a maximum weight of 100 grams, and includes a postcard;

"Office of Exchange" has the meaning assigned to it by Article 169 of the Letter Post regulations adopted by the Universal Postal Union;

"packet" means a postal packet other than a Letter or Large Envelope of minimum dimension 70mm x 100mm x 25mm and a maximum dimension of length, width and depth combined of 900mm, with a tolerance 2 mm, with the greatest dimension not exceeding 600mm and with a tolerance of 2mm with a tolerance of 2 mm and a maximum weight of 2 kilograms except in the case of a packet for transmission by post to an address outside the State containing books and pamphlets where a maximum weight of 5 kilograms will apply; when the packet is in the shape of a roll the length and twice the diameter shall not exceed 1040 mm and the greatest dimension shall not exceed 900 mm;

"parcel" means a postal packet other than a letter, large envelope or packet with of maximum length 1.5 metres provided that the combined length and girth does not exceed 3 metres and the weight does not exceed 20 kilograms;"postcard" means a card of minimum dimension 90mm x 140mm x 0.18mm and maximum dimensions of 235mm x 162mm x 5mm, with a tolerance of 2mm provided it is sufficiently stiff to withstand processing without difficulties and the length is at least equal to the width multiplied by $\sqrt{2}$ (approximate value 1.4).;

“postage stamp” includes a label produced at a post office or at a sender’s premises;

“postal franking machine” means a machine of any type designed and used to denote, by means of a franking impression, the payment of postage or any other sum payable to a postal service provider, and includes any meter used in a postal franking machine;

“postal packets for the blind” means letters, large envelopes, packets and parcels (excluding foreign parcels) weighing no more than 7kg and containing material for the use of blind and partially-sighted persons;

“re-direction” involves the delivery of a postal packet to its addressee at an address other than that shown on the postal packet;

“registration” means a postal service providing the sender with proof of the handing in of the postal packet and/or of its delivery to the addressee, for which an amount determined by An Post is payable by An Post to the sender or addressee in the event of theft or loss of or damage to it in the course of its transmission by post;

“single piece service” means a postal service involving the transmission of individual postal packets to addressees where the postage paid by the senders is not subject to any discounts based upon —

- (a) the number of postal packets sent;
- (b) the substance, formatting or positioning of the address;
- (c) the use of markings to facilitate sorting by machines;
- (d) pre-sorting into geographical areas for delivery; or
- (e) an obligation to purchase of any other postal service; and

“track and trace” means a facility enabling a postal service user to monitor the progress of a postal packet through the postal network.

2) A word or expression that is used in the Regulations and in the Act of 2011 has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Act of 2011

3) In these Regulations, unless otherwise indicated —

(a) a reference to a Regulation or a Schedule is a reference to a Regulation of, or a Schedule to, these Regulations, and

(b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs.

3. The universal postal service

1) The Commission, pursuant to section 16(9) of the Act of 2002, hereby specifies the following services to be provided by An Post relating to the provision of the universal postal service —

- (i) A single piece service involving the clearance, sorting, transport and distribution of letters which —
 - (a) has a transit time objective of $D + n$;
 - (b) provides for the purchase of postage by postage stamp, postal franking machine, or other reasonable methods;
 - (c) provides for the provision of a certificate of posting on request where the postal packet is deposited at a post office; and
 - (d) does not include any “value added” feature.
- (ii) A single piece service involving the clearance, sorting, transport and distribution of large envelopes which—
 - (a) has a transit time objective of $D + n$;
 - (b) provides for the purchase of postage by postage stamp, postal franking machine, or other reasonable methods;
 - (c) provides for the provision of a certificate of posting on request where the postal packet is deposited at a post office; and
 - (d) does not include any “value added” feature.
- (iii) A single piece service involving the clearance, sorting, transport and distribution of packets which—
 - (a) has a transit time objective of $D + n$;
 - (b) provides for the purchase of postage by postage stamp, postal franking machine, or other reasonable methods;
 - (c) provides for the provision of a certificate of posting on request where the postal packet is deposited at a post office; and
 - (d) does not include any “value added” feature.
- (iv) A single piece service for the clearance, sorting, transport and distribution of parcels which —
 - (a) has a transit time objective of $D + n$;

- (b) provides for the purchase of postage by postage stamp, postal franking machine, or other reasonable methods;
 - (c) provides for the provision of a certificate of posting on request where the postal packet is deposited at a post office; and
 - (d) does not include any “value added” feature.
- (v) A single piece service for the registration of postal packets tendered to An Post for transmission under any of the services listed at nos. (i) – (iv) inclusive, which—
 - (a) provides for the purchase of postage by postage stamp, postal franking machine, or other reasonable methods; and
 - (b) does not include provision of a track and trace facility or any other “value added” feature.
- (vi) A single piece service for the insurance of postal packets tendered to An Post for transmission under any of the services listed at nos. (i) – (v) inclusive, provides for the purchase of postage by postage stamp, postal franking machine, or other reasonable methods.
- (vii) A single piece service provided free of charge to the postal service user for the transmission of “postal packets for the blind”.
- (viii) A service for the clearance, transport and distribution of bulk mail deposited at any one of the access points designated for the purposes of this service by the Commission under a direction given to An Post pursuant to section 16(10) of the Act of 2011.
- (ix) A service for the sorting, transport and distribution of postal packets deposited with An Post at an Office of Exchange within the State by the designated operator of a signatory to the Universal Postal Convention, acting as such, providing that:
 - (a) the senders of the postal packets concerned are present in the territory of the relevant signatory to the Universal Postal Convention when the postal packets are deposited at an access point of the Designated Operator for transmission by post; and
 - (b) when the signatory to the Universal Postal Convention is also a member State of the EU subject to compliance with section 29(1) of the Communications Regulation (Postal Services) Act 2011.
- (x) The following special facilities for the delivery of postal packets at the request of the addressee (provided that no abbreviated form of address, such as “PO Box NN”, shall be used without such additional information as to enable the sender to ascertain the location of the premises of the addressee) —

- (a) Private boxes and bags: providing at specified An Post post offices for private boxes or bags into which postal packets may be placed, where such private a box or bags may be called for by the addressee of such postal packets as are contained therein, or his or her agent, and further providing for the delivery of such private bags to addressees by officers of An Post;
- (b) Redirection: providing, during a specified period of time, that all postal packets bearing a specified address shall be delivered to a specified alternative address (“the redirection address”) at which the addressee is resident;
- (c) Poste restante: providing free of charge a facility for the address of any specified post office in the State to be used as an addressee’s postal address for three months, and for postal packets for that addressee to be held at that post office for three months for collection by the addressee, provided, in relation to any post office, that it is reasonable for the post office concerned to be used to provide the service;
- (d) Mailminder: a facility for the retention of postal packets during the pre-notified absence of the addressee from his home or premises and subsequently the delivery on his return.
- (e) Business Reply: the provision of a facility for an addressee to supply pre-printed envelopes or labels of a design specified by An Post in its terms and conditions so that senders may deposit postal packets for transmission by services (i) to (vi) without pre-payment of postage subject to confirmation by the addressee that he will pay the postage due thereon on delivery.
- (f) Freepost: the provision of a facility for an addressee to authorise the inclusion of the word "FREEPOST" in his address so that senders may deposit postal packets for transmission by services (i) to (vi) without pre-payment of postage subject to subject to confirmation by the addressee that he will pay the postage due thereon on delivery.

GIVEN under the Official Seal of the Commission for Communications Regulation,

[],

[],

Chairperson

On behalf of the Commission of Communications Regulation

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations specify the services that An Post, as the universal postal service provider designated by section 17 of the Communications Regulation (Postal Services) Act 2011 is obliged to provide. The Commission for Communications Regulation is making these Regulations under the powers conferred upon it by section 16(9) of the Communications Regulation (Postal Services) Act 2011.

Annex: 6 Draft Direction to An Post concerning publication of its Terms and Conditions for universal postal service provision

COMMUNICATIONS REGULATION (POSTAL SERVICES) DIRECTION No.1, 2012

1. Statutory and legal powers

This Direction is made by the Commission for Communications Regulation (“ComReg”):

Having had regard to sections 22(1)b, 24(2) and 24(5) of the Communications Regulation (Postal Services) Act 2011;

Having regard to the reasoning and analysis set out in ComReg Document No.12/38 where relevant and the responses thereto.

Definitions

In this Direction, unless the context otherwise suggests:

“**Act**” means the Communications Regulation (Postal Services) Act 2011;

“**An Post**” means An Post and its subsidiaries, and any Undertaking which it owns or controls, and any Undertaking which owns or controls An Post and its successors and assigns;

“**Charges**” means the charges made by An Post in respect of *universal postal service* provision and published by An Post under section 22 or 23 of the Act as the case may be;

“**Iris Oifigiúil**” is the official Irish State gazette;

“**Terms and conditions**” has the meaning set out in section 24 of the Act;

“**Undertaking**” means an entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. Two separate legal entities may be considered to form one economic unit and therefore to be a single undertaking. In this respect the [European] Court of Justice looks at the existence of a controlling share or functional, economic and organic links;

“**Universal postal service**” means the postal services as specified in the Communications Regulation (Postal Services) Regulations 2012 SI No XX of 2012 made under section 16(9) of the Act.

Scope and application

This Direction applies to An Post.

This Direction is binding upon An Post and An Post shall comply with it in all respects.

Publication of terms and conditions for universal postal service provision

An Post is directed to publish the terms and conditions of its *universal postal service* provision and the charges made by it in respect of the *universal postal service* provision in the following manner:

- (i) on the An Post website, as required by 22(b) of the Act
- (ii) by making printed copies of a booklet containing the current terms and conditions and the applicable charges available to postal service users on request and at every place where postage stamps are sold
- (c) To publish the terms and conditions and the applicable charges in *Iris Oifigiúil* and to re-publish in *Iris Oifigiúil* when an amendment to the terms and conditions and the applicable charges is made by An Post.

Statutory powers not affected

Nothing in this Direction shall operate to limit ComReg in the exercise and performance of its statutory functions, powers and duties under any primary or secondary legislation (in force prior to or after the effective date of this Direction) from time to time as the occasion may require.

Maintenance of obligations

If any section, clause or provision or portion thereof contained in this Direction is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this Direction and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this Direction, and shall not in any way affect the validity or enforcement of this Direction.

Effective Date

This Direction shall be effective from the date of this decision.

[]

Chairperson
The Commission for Communications Regulation
THE [] DAY OF [] 2012

Annex: 7 Draft of Guidelines to be issued under Section 37 of the 2011 Act

Section 37(2) of the Communications Regulation (Postal Services) Act 2011 – ComReg guidelines concerning “postal services within the scope of the universal postal service” to which persons shall have regard when making a notification under section 38.

The Communications Regulation (Postal Services) Act 2011 (“2011 Act”) provides, amongst other things, for the regulation by the Commission for Communications Regulation (“ComReg”) of “*postal services*” generally and for ensuring the provision of the “*universal postal service*” by An Post, the designated “*universal postal service provider*”. The scope of the universal postal service is largely set out in section 16(1) of the 2011 Act while section 16(9) provides that ComReg shall, following a public consultation, make regulations specifying the services to be provided by An Post relating to the provision of the universal postal service.

ComReg has the specific statutory function to ensure the provision of a universal postal service that meets the reasonable needs of postal service users while it also has the statutory objective, in the performance of that function, to promote the availability of a universal postal service within, to and from the State at an affordable price of the benefit of all postal service users. This function includes ensuring the proper financing of the universal postal service and Chapter 5 of the 2011 Act (sections 35 and 36) sets out provisions relating to same.

Section 35(1) provides that if An Post seeks funding for the net costs (if any) of providing the universal postal service then it may submit a request in writing to ComReg. On receipt of such a request and all required information in support of it, ComReg shall determine whether the universal postal service does represent a net cost and an unfair financial burden on An Post, in the period to which the request relates.

Section 36(1) provides that if ComReg determines that the net cost of the universal postal service does represent an unfair financial burden on An Post then it shall apportion that net cost amongst “providers of postal services within the scope of the universal postal service”. Such providers shall be required to make a contribution for the purposes of meeting An Post’s burden, in accordance with the cost apportioned to each of them. The assessment, apportionment, collection and distribution of any such contributions shall be carried out under a “sharing mechanism” established under regulations made by ComReg, with such contributions paid into a common fund.

In addition, section 44 of the 2011 Act amends section 30 of the Communications Regulation Act 2002 (the “Principal Act”) by insertion of the following text: “for the purpose of meeting expenses properly incurred by [ComReg] in the discharge of its functions relating to postal services [ComReg] may make an order imposing a levy on postal service providers providing postal services within the scope of the universal postal service.”

From the above provisions in sections 35, 36, and 44 of the 2011 Act, it is clear that there are potential financial consequences to being deemed to be a provider of a “*postal service within the scope of the universal postal service*”. Any such provider shall be required to pay such levy to ComReg as may be imposed, and may also be required in time to make contribute to the net cost of the universal postal service provided by An Post.

Section 38 of the 2011 Act sets out the provisions for obtaining an authorisation to provide a “*postal service*”. A person who intends to provide a postal service is required to notify ComReg before doing so, providing the information set out in section 38(3). Section 38(6) provides that any such person must include with his or her notification a declaration stating whether the postal service concerned is, or is not, within the scope of the universal postal service, while section 38(7)(b) provides that a person who makes a notification or a declaration which is to his or her knowledge false or misleading in any material respect commits an offence and is liable on summary conviction to a class A fine.

A “*postal service provider*” must therefore have some means of assessing whether the postal service concerned is, or is not, within the scope of the universal postal service. In this regard, Section 38(1) provides that a person who makes a notification shall have regard to the guidelines published by ComReg under section 37.

Section 37 is the key provision in relation to the concept of “postal services within the scope of the universal postal service” and so it is set out in full below:

(1) A postal service is within the scope of the universal postal service (in this Part referred to as a “postal service within the scope of the universal postal service”) if –

the service is within the description of the universal postal service set out in section 16,

the service would be within the description of the universal postal service set out in section 16 but for the fact that—

(i) in the case of a service consisting of the clearance and delivery of postal packets, the clearance or delivery is not made on every working day as required by section 16

(1) (a),

(ii) the service is not provided throughout the State, or

(iii) the service is not provided at an affordable price in accordance with a uniform tariff applicable throughout the State pursuant to section 28 (2),

or

(c) the postal service is of a kind that, having regard to postal service users, could reasonably be said to be interchangeable with a service of a description set out in section 16 ,

but does not include a document exchange or express or courier services.

(2) The Commission shall, not later than 3 months after the passing of this Act, publish guidelines concerning postal services within the scope of the universal postal service to which persons shall have regard when making a notification under section 38 , in particular concerning —

whether a postal service has the characteristics set out in section 16(1) or would have these characteristics if it were offered on the days specified in section 16(1)(a) throughout the State,

whether a postal service has characteristics that postal service users may reasonably perceive it to be interchangeable with a service of a description set out in section 16 , and

the characteristics of the postal service itself, including the value added features, intended use and price.

(3) In this section a reference to a postal service includes a part of a postal service.

(4) In this section “document exchange” means provision of means, including the supply of premises specifically for that purpose and transportation by a third party, allowing self-delivery by mutual exchange of postal packets between persons subscribing to this service.

It should be noted that in order to publish these guidelines it was first necessary for ComReg to make Regulations, under section 16(9) of the 2011 Act, specifying the services which An Post shall provide as the designated universal postal service provider. It was only after having set the scope of the universal postal service in this manner that ComReg could then move onto considering which postal services fall within the scope of the universal postal service.

Having regard to the provisions of section 37(1), it is apparent that the central issue is one of substitutability of services. If a postal service matches the description of the universal postal service in section 16 then it is a postal service within the scope of the universal postal service, but even if it does not fully match that description then it may still be a the postal service within the scope of the universal postal service. If the service does not involve a clearance or delivery on every working day, or if it is not provided throughout the State, or if is not provided at an affordable price or at a uniform tariff, then it still maybe a postal service within the scope of the universal postal service.

Section 37(1)(c) makes it clear that the key determinant is an economic assessment of demand-side substitutability – i.e. whether a “postal service user” would view a particular postal service as being “*reasonably interchangeable*” with a service provided by An Post as part of its universal postal service. If the two services are “*reasonably interchangeable*” then it is proper to conclude that the postal service falls “*within the scope of the universal postal service*”. If the two services are not “*reasonably interchangeable*” then one may only conclude that the postal service does not fall “*within the scope of the universal postal service*”.

In determining whether the service is “*reasonably interchangeable*”, a postal service provider should consider whether his or her service is interchangeable for any of the “*universal postal services*” which An Post is required to provide. This can be done by comparing and directly assessing the characteristics and similarities of the respective services. In this respect, this may include consideration of the following characteristics and similarities. The postal service provider may consider the likely reaction of users of its service if it decided to increase the charges for that service. That is, considering if it increased its charge for its postal service by a small but non-transitory amount (in the range of 5 - 10 %) could its customers switch with relative ease to the universal postal service provided by An Post? This may also involve consideration as to whether if your service was not provided at all would your customers be able to use An Post's universal postal service to meet their needs.

For the avoidance of doubt, the above only serve as guidelines. It is for each postal service provider to determine, having due consideration for these guidelines and other relevant evidence, whether any of their postal services fall “within the scope of the universal postal service” and therefore require notification to ComReg under section 38 of the 2011 Act.

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