



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Review of Postal Universal Service Provider Designation

Consultation on Step 1 of review: Is there a need for postal universal service provider designation?

**Consultation and Draft
Decision**

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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All responses to this consultation should be clearly marked:

“Reference: Submission re ComReg 19/125”, and sent by post, e-mail or online at www.comreg.ie (current consultations) to arrive on or before 5.p.m, 29 January 2020 to:

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Please note ComReg will publish all respondents' submissions with the Response to this Consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24.

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1 Introduction

1. The Commission for Communications Regulation ("ComReg") is the national regulatory authority for postal services in the State and its functions and objectives are set out in the Communications Regulation Act 2002, as amended ("the 2002 Act").
2. Under the Communications Regulation (Postal Services) Act 2011 as amended ("the 2011 Act"), ComReg is mandated to ensure the provision of a universal postal service in the State that meets the reasonable needs of postal service users. The universal postal service obligation ("USO") consists of a basic but high quality postal service for all postal service users for the collection, sorting, transport and delivery of universal postal service postal packets, at affordable prices irrespective of where they are located in the State. The 2011 Act transposed the EU Postal Directive¹ for the State. The USO for postal services was prescribed for all EU Member States by the EU Postal Directive recognising that postal services are an essential instrument of communication and trade.
3. Section 17(1) of the 2011 Act designated An Post as the sole universal service provider ("USP") for postal services in the State, for a period of 12 years following the passing of the 2011 Act (i.e. from 2 August 2011 – 1 August 2023), subject to designation review/decision by ComReg after the expiry of 7 years (i.e. after 1 August 2018).²
4. As this 7 year period has now expired, section 17(2) of the 2011 Act requires ComReg to conduct a review of the USP designation and to make a USP designation decision³. In this review ComReg must consider whether a USP designation is required and if it is required, to consider whether ComReg should designate An Post or a different postal service provider⁴ ("PSP") as a USP, or whether ComReg should designate a combination of PSPs as USPs.
5. There are considerable benefits to being designated as the USP(s) for the State. For example the designated USP enjoys increased brand recognition which is particularly advantageous in the parcel business arising out of increased ecommerce trading. In addition, public postal services are VAT exempt⁵. There are, however, also some additional regulatory requirements on designated USPs

¹ The harmonised EU framework for the regulation of postal services under Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive No. 2002/39/EC, and Directive No. 2008/6/EC ("the EU Postal Directive"). The 2011 Act transposed the EU Postal Directive for the State.

² Prior to the 2011 Act, An Post was also designated as sole USP for the State under the previous regulations, the European Communities (Postal Services) Regulations, 2002 (S.I. No. 616 of 2002). Before that, the Postal and Telecommunications Services Act, 1983 (No. 24 of 1983) gave An Post exclusive privilege in respect of certain postal services in view of its primary purpose of providing a national postal service.

³ The phrase "USP designation decision" is used in this document to include any decision that no designation of USP is required, any decision to designate one PSP as USP or more than one PSP as USP, and any decision to continue the designation of An Post as USP until 2023.

⁴ Postal service provider means any person providing one or more than one postal service.

⁵ Directive 2006/112/EC (VAT Directive). ComReg has no remit in relation to taxation.

beyond those which authorised PSPs must comply with, for example with regard to universal postal service operations efficiency, service quality, affordability and access to the service, as well as the reporting of separated financial accounts. As such, this is a very important review and decision.

6. The 2011 Act⁶ provides that any such review must be conducted in accordance with procedures established and maintained by ComReg. Thus, in June 2019, following public consultation, ComReg published its Postal USP Designation Procedures⁷ (“the Procedures”) in accordance with the 2011 Act. The Procedures set out two main steps for USP designation reviews which are summarised as follows:
 - **Step 1 – Is there a requirement for a USP designation?** ComReg will gather information, assess the Irish market for the provision of postal services (“the market”) and make a decision as to whether a USP designation is required. Following this assessment, ComReg will either make a decision that no USP designation is required⁸ or make a decision that a USP designation is required⁹ (i.e. to proceed to Step 2 of the Procedures). ComReg will complete a consultation prior to any ComReg decision.
 - **Step 2 – Which Postal Service Provider(s) should be designated as USP(s)?** In this step ComReg will gather information, assess and decide on which PSP(s) should be designated as USP(s). In this step, ComReg may decide either to designate one USP or more than one USP⁸. For a section 17 review ComReg may also decide to continue the designation of An Post as USP until 2023⁹. ComReg will complete a consultation prior to any ComReg decision.
7. In Step 1, if ComReg is of the view that any part of the universal postal service would not be provided by the market without a designated USP, the 2011 Act requires ComReg to proceed to designate a USP (or USPs) so that the full universal postal service is provided for the entire State.
8. This consultation sets out ComReg’s assessment, preliminary conclusion and draft decision following its completion of Step 1 of the review. ComReg has formed the preliminary view that there is a real risk that the entire universal postal service would not be provided for the State by the market without a designated USP or USP(s), and therefore there is a continued need for USP designation(s) at this time. As such, ComReg is proposing to proceed to Step 2, to consider and decide on which PSP(s) should be designated as USP(s)³. In this consultation

⁶ Section 19 of the 2011 Act.

⁷ ComReg Document 19/64a

⁸ For a section 17 review, following ComReg’s public consultation, it must seek the prior consent of the Minister for Communications, Climate Action & Environment (“the Minister”). Section 17(3) of the 2011 Act provides that the Minister has a 4 month period to notify ComReg of his or her decision made following consultation with such persons as the Minister considers appropriate having regard to the proposal concerned.

⁹ There is no requirement to seek the prior consent of the Minister for this decision.

ComReg is seeking the views of all stakeholders on its assessment, preliminary conclusion and draft decision for the purposes of Step 1.

9. Before commencing Step 2 (which commencement is subject to the responses to this consultation and ComReg's subsequent decision) ComReg will need to determine the appropriate upcoming USP designation period. Therefore, as part of this consultation ComReg is also seeking views from stakeholders on the appropriate duration of the proposed upcoming USP designation period¹⁰, which duration will only be decided on by ComReg if the outcome of this consultation is that there is a need for USP designation(s) at this time.

¹⁰ With the exception of where the final USP Designation decision is that An Post's designation under section 17(1) should be continued until 2023.

2 Categorisation of Postal Services

10. There are three categories of postal services¹¹ which are subject to regulation under the 2011 Act:

- i. The universal postal services as defined by section 16 of the 2011 Act and as specified by the Communications Regulation (Universal Postal Service) Regulations 2012¹² made by ComReg pursuant to section 16(9) of the 2011 Act (“USO Regulations”).
- ii. Postal services which are “*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) of the 2011 Act and by reference to ComReg’s published guidelines.
- iii. Other postal services; this being a residual category comprising postal services that are not part of the two previous categories.

11. For the purpose of Step 1 ComReg has considered postal services which fall within the first two categories which are explained in more detail below. ComReg does not consider that “other postal services” are directly relevant to an assessment for the purpose of a review of the universal postal service designation.

2.1 The universal postal services to be provided under the universal postal service obligation

12. The USO required by the 2011 Act means that on every working day, except in such circumstances or geographical conditions as ComReg considers exceptional, there is at least one clearance and one delivery to the home or premises of every person in the State.

13. The 2011 Act also requires that the following minimum set of universal postal services are provided for the State;

- i. the clearance, sorting, transport and distribution of postal packets¹³ up to 2 kilograms in weight;
- ii. the clearance, sorting, transport and distribution of parcels within the State up to 10kg in weight;

¹¹ “Postal services” are services involving the clearance, sorting, transport and distribution of postal packets. See ComReg Document 12/81 for ComReg’s interpretation of this term.

¹² S.I. 280 of 2012 as amended by S.I. No. 150 of 2019, S.I. No. 149 of 2019 and S.I. No. 534 of 2018.

¹³ “Postal packet” is defined by the 2011 Act 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.

- iii. the sorting, transport and distribution of parcels from other Member States up to 20 kilograms in weight;
- iv. a registered items service for all postal packets;
- v. an insured items service for all postal packets, within the State and to and from all UPU¹⁴ member countries;
- vi. postal services, free of charge, to blind and partially-sighted persons.

14. As required by the 2011 Act¹⁵ ComReg made the USO Regulations specifying the services to be provided by a USP relating to the provision of a universal postal service.

15. For the purpose of this review, ComReg has grouped together¹⁶ and set out in the table below the required universal postal services under the 2011 Act and the USO Regulations, and has separated domestic and international services;

Table 1 – Current Universal Postal Services

Universal postal services required under section 16 of the 2011 Act and the USO Regulations		Transit Objective (“D+n”) ¹⁷	Time
Domestic Single Service¹⁸ for Letters and Large Envelopes	Letters up to 100g Large Envelopes (Flats) up to 500g	<i>D+1 for deliveries</i>	<i>Domestic</i>
Domestic Single Service for Packets and Parcels	Packets up to 2kg Parcels up to 10kg.	<i>D+1 for deliveries</i>	<i>Domestic</i>
Domestic Single Registered/Proof of Delivery Service	A registered service with “proof of delivery facility” for single piece letters, large envelopes, packets and parcels.	<i>D+1 for deliveries</i>	<i>Domestic</i>

¹⁴ Universal Postal Union

¹⁵ Section 16(9) of the 2011 Act

¹⁶ ComReg considers that the provision of Letters and Large Envelopes are provided by different networks to the provision of Packets and Parcels.

¹⁷ Where “D” represents the “day of posting” 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.

¹⁸ Single Piece Service means a postal service involving 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; (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 any other postal service.

Domestic Single Piece Insured Service	An insured service for single piece letters, large envelopes, packets and parcels.	<i>D+1 for Domestic deliveries</i>
Free of Charge Postal Services for the Blind and Partially Sighted	A service provided free of charge for the transmission of “postal packets for the blind” up to 7kg.	<i>D+1 for Domestic deliveries</i>
Bulk Mail Services – Domestic and International	<p>Domestic Bulk Mail Services for</p> <ul style="list-style-type: none"> ▪ “Delivery only” – which refers to a D+1 service with the prescribed minimum requirements. ▪ “Deferred Delivery” – which refers to a D+2 service with the prescribed minimum requirements. <p>International Bulk Mail Service for items deposited in bulk pre-sorted by country of destination.</p>	<i>For domestic Bulk Mail Services as per the service description.</i>
International Inbound Service	<ul style="list-style-type: none"> ▪ A service for postal packets deposited at an Office of Exchange within the State by a designated operator member of the UPU¹⁹. ▪ Parcels from other EU Member States up to 20kg. 	<i>D+1 from arrival in the State to delivery</i>
International Outbound Service	A service for all single piece and bulk mail universal postal service postal packets posted in the State to all countries which are signatories to the UPU.	<i>D+3 for EU deliveries D+ up to 9 for all other foreign deliveries</i>
Free Certificate of Posting on request	Certificate of posting on request where the postal packet is deposited at a post office.	<i>N/A</i>
Special Facilities for Delivery of Postal Packets at the Request of the Addressee	Business Reply	<i>D+1 for Domestic deliveries</i>
	Freepost	
	Redirection	
	MailMinder	
	Private boxes and bags (PO Box) ²⁰	
	Poste Restante ²⁰	

¹⁹ Terminal dues rates are paid by postal operators to each other for delivery of international inbound mail items. The rules are mainly governed by the Universal Postal Convention of the Universal Postal Union.

²⁰ Private boxes and bags and Poste Restante services have a D+1 transit time for domestic delivery to the collection point, where not delivered to the addressee’s address.

2.2 Postal services within the scope of the universal postal service

16. Only the designated USP has a legal obligation to provide the universal postal services as described above. However, the 2011 Act envisages that there may be postal services which are not universal postal services but are “*within the scope of the universal postal service*” and section 37(1) of the 2011 Act states that a postal service is within this scope if;

- a) the service is within the description of the universal postal service set out in section 16 of the 2011 Act,
- b) the service would be within the description of the universal postal service in section 16 of the 2011 Act 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) of the 2011 Act,
 - 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) of the 2011 Act, 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 of the 2011 Act,

but does not include a document exchange²¹ or express or courier services.

²¹ In section 37(4) of the 2011 Act “document exchange” is defined 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.*”

3 Information Gathering

17. Under section 38 of the 2011 Act there is an obligation on all PSPs in the State to ensure to be authorised by ComReg and when becoming authorised they must declare for each postal service provided whether it is, or is not, “*within the scope of the universal postal service*”.

18. In October 2019 ComReg wrote to all authorised PSPs to request that they review the details of their notifications for authorisation to provide a postal service pursuant to section 38 of the 2011 Act. ComReg also published an information notice²² to ensure that all PSPs operating in the State were aware of their obligation to be authorised. Following receipt of responses from PSPs, ComReg updated the register of authorised PSPs in the State which is published on ComReg’s website²³. ComReg therefore considers that the register of authorised PSPs lists all PSPs for the State.

19. On the basis of the updated information on the register of PSPs, ComReg has identified that there are currently ten PSPs operating in the State, Table 2 below lists the current PSPs and summarises the postal services provided by each.

Table 2 - Current PSPs and summary of postal services provided

PSPs	Number of postal services	Number of postal services “within the scope of the universal postal service”
An Post	28	25
Victacom Ltd t/a Budget Parcel	4	0
Michael Corrigan t/a Corrigan Business Services	1	0
Prewril Ltd t/a DCK/ DC Kavanagh	1	0
DX Network Services Ireland t/a DX Ireland	6	1
A&G Couriers Ltd t/a Fastway Couriers	10	0
Lettershop Postal	3	0

²² See ComReg Document 19/95 published 23 October 2019.

²³ The Register of Authorised Postal Service Providers in the State is published at: <https://www.comreg.ie/industry/postal-regulation/authorised-postal-providers/authorised-postal-providers-register/>

Post-it Direct Ltd. t/a Persona	1	0
Sooner than Later Solutions Ltd.	3	0
TICo Mail Works Ltd.	4	0

20. ComReg has recently commissioned various pieces of research into the reasonable needs of postal service users, namely the reports prepared for ComReg by Frontier Economics in 2016²⁴ and 2018²⁵. These reports were commissioned in the context of the specification of the universal postal service. ComReg considers it appropriate to rely upon the information contained in these reports in this review as these reports were recently completed by experts in the field and nothing material has changed in the market since their completion.

²⁴ 'Research on Postal Users' Needs' Frontier Economics Report (ComReg Document 16/107)

²⁵ 'Research and Recommendations on the Universal Postal Service Specification' Frontier Economics Report (ComReg Document 18/66a)

4 Assessment

21. ComReg considered the information gathered. ComReg's assessment of the PSPs and the services which they provide was based upon the services "*within the scope of the universal postal service*".
22. ComReg considered the information which it gathered relating to the reasonable needs of postal service users. ComReg is of the view that if the universal postal service as specified is being provided by the market then it is meeting the reasonable needs of postal service users. As such, ComReg also considered what universal postal services are being provided by the market.
23. ComReg reviewed and assessed whether each of the universal postal services required by section 16 of the 2011 Act, and the USO Regulations would be provided by the market without a USP designation. In order to ascertain the markets' capability to provide the universal postal service for the entire State without USP designation(s) ComReg first assessed whether each of the universal postal services were being provided by more than one PSP²⁶.
24. ComReg then went on to consider whether each of the universal postal services were being provided throughout the entire State by more than one PSP. The result of ComReg's assessment is set out in the following table:

²⁶ Depending on just one PSP to provide the entire universal postal service nationwide without significant competition and without a USP designation is considered by ComReg to be inconsistent with ensuring the sustainability of the provision of the universal postal service.

Table 3 - Assessment of the postal market's provision of universal postal services

Required Universal Postal Services	PSPs providing postal services within the scope of the universal postal service	Is there more than one PSP providing the service?	Are the services provided throughout the entire State by more than one PSP?						
Domestic Basic Single Piece Service for Letters and for Large Envelopes (up to 2kg)	An Post DX Ireland	✓	✗						
Domestic Basic Single Piece Service for Packets (up to 2kg) and Parcels (up to 10kg)	An Post DX Ireland	✓	✗						
Domestic Single Piece Registered/Proof of Delivery service	An Post	✗	✗						
Domestic Single Piece Insured service	An Post	✗	✗						
Domestic Free of Charge Services for the Blind and Partially Sighted	An Post	✗	✗						
Bulk Mail Services - Domestic and International	An Post	✗	✗						
International Inbound Service (including parcels from other Member States up to 20kg)	An Post	✗	✗						
International Outbound Service	An Post	✗	✗						
Free Certificate of Posting on Request	An Post	✗	✗						
Special Facilities for Delivery of Postal Packets at the Request of the Addressee <table border="1" data-bbox="172 1713 547 1921"> <tr><td>Business Reply</td></tr> <tr><td>Freepost</td></tr> <tr><td>Redirection</td></tr> <tr><td>Mailminder</td></tr> <tr><td>Private Box and Bag</td></tr> <tr><td>Poste Restante</td></tr> </table>	Business Reply	Freepost	Redirection	Mailminder	Private Box and Bag	Poste Restante	An Post	✗	✗
Business Reply									
Freepost									
Redirection									
Mailminder									
Private Box and Bag									
Poste Restante									

25. ComReg has a statutory function to ensure the provision of a universal postal service which meets the reasonable needs of postal service users. Therefore, if ComReg is of the view that any part of the universal postal service would not be provided by the market without a designated USP, ComReg is required²⁷ to proceed to designate a USP (or USPs)³ to ensure that the full universal postal service is provided for the entire State.
26. ComReg notes that only the current designated USP (An Post) and one other PSP (DX Ireland) have indicated that they are providing postal services “*within the scope of the universal postal service*”. However, DX Ireland provides only one service within the scope of the universal postal service (i.e. “DX Exchange to the Door” which covers postal packets up to 25kg) and this is provided for County Cork only.
27. ComReg’s assessment as set out in table 3 above demonstrates that the majority of universal postal services have only one PSP, the current USP (An Post), providing the service. In ComReg’s view this represents a real risk that without a USP designation, the provision of the universal postal service would not be ensured. Without a USP designation and without significant competition An Post could fail to provide a universal postal service or fail to provide it in accordance with the affordability, service quality and service access requirements, or for commercial reasons decide to discontinue a universal postal service or to limit a universal postal service to certain regions. None of the universal postal services are currently being provided throughout the entire State by more than one PSP.
28. On the basis of the above assessment, ComReg considers that it is not necessary to conduct a more detailed assessment of the markets’ capability to provide each of the universal postal services in accordance with the affordability, service quality and service access USO requirements or to conduct an assessment of any potential negative impacts on the market if there was to be no designated USP in place for the State.

Preliminary Conclusion

29. On the basis of the above, it is clear that, absent a USP designation, there is a real risk that ComReg would not be fulfilling its statutory obligation to ensure the provision of the universal postal service that meets the reasonable needs of postal service users. ComReg’s preliminary conclusion therefore is that there is a continued need for USP designation at this time in order to safeguard and ensure the provision of the full universal postal service for the entire State. ComReg therefore proposes to make the decision as set out at Annex 1 and to proceed to Step 2 of the review to decide which PSP(s) should be designated to provide the universal postal service in the State.

²⁷ by section 17(2)(b) of the 2011 Act

Q. 1 Do you agree or disagree with ComReg's assessment and preliminary conclusion as set out above and ComReg's draft decision as set out at Annex 1 of this document? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data where appropriate to support your view.

5 Proposed Upcoming Designation Period

30. Before commencing Step 2 (which is subject to ComReg's review of the responses to this consultation) ComReg needs to set the appropriate upcoming USP designation period. Therefore, as part of this consultation ComReg is also seeking views from stakeholders on the appropriate period for the proposed upcoming USP designation if the outcome of this consultation should be that there is a need for USP designation(s).
31. The Procedures state that the USP designation period can be somewhere between 2 and 7 years. ComReg is proposing for a section 17(2)(a)(ii) USP designation decision that the designation period should be set at 5 years²⁸. ComReg considers that this period is of sufficient duration for the return on investments.
32. On the other hand, ComReg considers that a 5 year designation period would be short enough so as to take into account the fast changing nature of the market. The EU Commission is beginning to review²⁹ the EU Postal Directive and any amendments will in turn be transposed into national legislation, where required. This may impact on the USO and the universal postal services obligations on designated USP(s). It would seem to ComReg that a 5 year period would be sufficiently short to take account of any potential future legislative changes.
33. However, if sufficient evidence is provided that a different designation period (between 2 – 7 years) would be more efficient and appropriate ComReg will consider these proposals.
34. ComReg proposes that in the event that the final USP designation decision is that more than one PSP is designated, the same designation period will be applied to all designated USPs, including An Post. However, if the final USP designation decision is that the designation of An Post as a USP should be continued, ComReg will continue this designation pursuant to section 17(2)(a)(i), and the duration of this designation will be until 2023.

Q. 2 Do you agree or disagree with ComReg's proposal for the appropriate USP designation period as set out above? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data where appropriate to support your view.

²⁸ Note that in the case where the final USP designation decision is made under section 17(2)(a)(i) that An Post's designation should be continued, this will be until 2023.

²⁹ The EU Commission has held a number of public stakeholder workshops on its study on user needs in the postal sector and the evaluation of the postal services directive, the most recent of which was held in September 2019.

Annex: 1 Draft Decision Instrument for Step 1

PART I – DEFINITIONS AND INTERPRETATION

1. Terms that are used in this Decision Instrument shall have the same meaning as when they are used in the Communications Regulation (Postal Services) Act 2011 (“**the 2011 Act**”), unless the context otherwise admits or requires.
2. Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.

PART II – STATUTORY FUNCTIONS AND POWERS GIVING RISE TO DECISION

3. This decision by the Commission is made;
 - a. having had regard to its statutory functions and objectives in relation to postal services, as set out in sections 10 and 12 of the Principal Act;
 - b. having followed the procedures established and published by the Commission pursuant to section 19 of the 2011 Act (ComReg 19/64a) “**the Procedures**”;
 - c. having conducted a public consultation;
 - d. having had regard to the assessment and reasoning set out in Consultation Document No. XXX/XX; and
 - e. having taken account of the representations of interested parties submitted in response to Consultation Document No. XXX/XX as set out in Response to Consultation Document No. XX/XXX.

PART III – DECISION

4. The Commission decides:
 - a. that there is a continued requirement for universal postal service provider designation(s) at this time, and
 - b. that ComReg will proceed to Step 2 as described in the Procedures.

GARRETT BLANEY
CHAIRPERSON
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE DAY OF 2019

Annex: 2 Legal Basis

ComReg's functions and objectives relating to the postal sector

A 1.1 ComReg's statutory functions in relation to the postal sector are set out in section 10(1) of the Communications Regulation Act 2002, as amended, ("the 2002 Act") and are as follows:

"(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."

A 1.2 ComReg's statutory objectives, in exercising the above functions, are set out in section 12(1)(c) of the 2002 Act, and are as follows:

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

(ii) to promote the 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".

A 1.3 The European Postal Directive³⁰ and national legislation have set down the requirements for a "universal service" which guarantees, one clearance and one delivery to the home or premises of every natural or legal person every working day, even in remote or sparsely populated areas.

Designation of An Post as USP

A 1.4 Section 17 "Designation of An Post as universal postal service provider." provides:

"(1) Subject to subsection (2), An Post is designated as the universal postal service provider for a period of 12 years beginning on the passing of this Act.

³⁰ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service as amended by Directive No. 2002/39/EC of 10 June, 2002, and Directive No. 2008/6/EC of 20 February, 2008, of the European Parliament and of the Council.

(2) After the expiration of 7 years after the passing of this Act, and following a review under section 19 by the Commission of the designation of An Post under subsection (1), the Commission may—

(a) decide to—

(i) continue the designation of An Post as a universal postal service provider for the duration of the unexpired period of the designation specified in subsection (1), or

(ii) with the prior consent of the Minister, designate one or more than one postal service provider as a universal postal service provider for such period, subject to section 18 (4), as the Commission considers appropriate,

or

(b) with the prior consent of the Minister, decide that no such designation is required.

(3) Where the Commission proposes to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the Minister, following consultation with such persons as he or she considers appropriate having regard to the proposal concerned, shall give notice in writing to the Commission of his or her decision to consent, or to refuse consent, within 4 months of the date on which the Commission seeks consent.

(4) When giving or refusing consent in relation to a proposal by the Commission to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the Minister shall require to be satisfied as to whether or not the Commission's proposal ensures the provision of a universal postal service.

(5) Where the Minister refuses consent to a proposal by the Commission to make a decision under subsection (2)(a)(ii) or (b), as the case may be, the designation of An Post shall continue for the duration of the unexpired period of the designation specified in subsection (1).

(6) Where, with the prior consent of the Minister, the Commission makes a decision under subsection (2)(a)(ii), the designation of An Post under subsection (1) shall cease to have effect on the date on which that decision takes effect.

(7) Where, with the prior consent of the Minister, the Commission makes a decision under subsection (2)(b), the designation of An Post under subsection (1) shall cease to have effect on the date of that decision."

Designation of USPs - General

A 1.5 Section 18 "Designation of universal postal service providers – general provisions." provides:

“(1) Before the end of the period for which the designation of An Post is continued under subsection (2)(a)(i) or (5) of section 17 or, as the case may be, before the end of the period for which a universal postal service provider is designated under subsection (2)(a)(ii) of that section or, in a case where a universal postal service provider is designated under this section, before the end of the period for which the provider is so designated, the Commission—

(a) shall conduct a review of the designation, and

(b) may with effect from the expiry of that period—

(i) decide to designate one or more than one postal service provider as a universal postal service provider for such period, subject to subsection (4), as the Commission considers appropriate, or

(ii) decide that no such designation is required.

(2) Where the Commission makes a decision—

(a) with the prior consent of the Minister, under section 17 (2)(b), or

(b) under subsection (1)(b)(ii),

it shall, at such intervals as it considers appropriate, conduct a review under section 19 for the purpose of deciding whether a designation of one or more than one postal service provider as a universal postal service provider is required and may decide that—

(i) no such designation is required for the time being, or

(ii) such designation is required for such period, subject to subsection (4), as the Commission considers appropriate,

and this section applies to a decision made under subparagraph (i) or (ii), as the case may be, as it applies to a decision made under subparagraph (i) or (ii) of subsection (1)(b).

(3) The Commission may determine that different universal postal service providers, the subject of a designation made by the Commission under section 17 (2)(a)(ii) or this section, shall provide different parts of the universal postal service or provide that service in respect of all or any part or parts of the State, or both, having regard to the need to ensure that there is no duplication of the obligations imposed on each universal postal service provider so designated.

(4) The designation of a universal postal service provider by the Commission under section 17 (2)(a)(ii) or this section—

(a) shall be for such period as the Commission considers appropriate, having regard to the need to ensure that the designation is of sufficient duration for the return on investments,

(b) shall take effect 14 days after the date on which notice of approval of the terms and conditions of its universal postal service provision is published under section 23 (2)(a), and

(c) shall cease to have effect—

(i) on the date on which the designation of a universal postal service provider takes effect under paragraph (b), or

(ii) on the date on which the Commission decides that no such designation is required.”

USP Designation Reviews

A 1.6 Section 19 “Review by Commission” provides:

“(1) A review by the Commission for the purposes of section 17 or 18 shall, subject to subsection (2), be conducted in accordance with such procedures as may be established and maintained by the Commission having regard to its functions and objectives under the Communications Regulation Acts 2002 to 2011 relating to postal services, in particular the need to ensure the provision of a universal postal service and compliance with the requirements specified in section 18.

(2) The procedures referred to in subsection (1) shall—

(a) make provision for the carrying out of an assessment of the extent to which the market for the provision of postal services in the State is meeting the reasonable needs of postal service users,

(b) be such as the Commission considers to be efficient, objective, transparent, non-discriminatory and proportionate, and

(c) be published by the Commission.”

Notification of USP Designation

A 1.7 Section 20 “Notification of designation” provides:

“(1) The continuance of the designation of An Post under subsection (2)(a)(i) or (5) of section 17 or, as the case may be, the designation of a universal postal service provider under subsection (2)(a)(ii) of that section, or the designation of a universal postal service provider under section 18, shall be in writing, and the Commission shall—

(a) publish notice of the such continuance or designation in Iris Oifigiúil and in such other manner as it considers appropriate, and

(b) notify in writing—

(i) the European Commission of such continuance or the identity of any universal postal service provider so designated, and

(ii) the Minister of the identity of any universal postal service provider so designated.

(2) Where the Commission makes a decision under section 17 (2)(b) or subsection (1)(b)(ii) or (2)(i) of section 18, as the case may be, that no designation is required, it shall—

(a) publish notice of such a decision in Iris Oifigiúil and in such other manner as it considers appropriate, and

(b) notify in writing the Minister and the European Commission.”

Questions

Section

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- Q. 1 Do you agree or disagree with ComReg's assessment and preliminary conclusion as set out above and ComReg's draft decision as set out at Annex 1 of this document? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data where appropriate to support your view. 17
- Q. 2 Do you agree or disagree with ComReg's proposal for the appropriate USP designation period as set out above? Please document clearly what part(s) you are in agreement or disagreement with by providing a detailed response with supporting information / data where appropriate to support your view..... 18