



Commission for
Communications Regulation

Guidelines

Communications Act 2002 Levy Order – Compliance Guidelines (Section 30) (Amendment Levy Order 2003)

- Compliance Guidelines

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Overview

The purpose of this document is to provide guidance to those providing electronic communications networks and services on the operation and procedures to be used for the collection of the levy. These procedures may be subject to amendment and updating and any changes will be notified to persons providing services. This document is issued for guidance only and is not a legal interpretation of the Levy Order. The Commission for Communications Regulation (“ComReg”) is not bound by this document and may amend it from time to time.

1 Introduction

The Communications Regulation Act, 2002 provided for the establishment of the Commission for Communications Regulation (ComReg). Section 30 of this Act provided for the imposition by ComReg of a Levy on providers of electronic communications services in order, inter alia to meet expenses properly incurred by ComReg in the discharge of its functions under the Act. The “Authorisation Regulations” (S.I. No. 306 of 2003) amended Section 30 of the Communications Regulation Act, 2002 to allow for the imposition of a levy on providers of electronic communications networks.

In 2002 the EU Commission published four Directives which detail how the new framework for the electronics communications sector will apply. This new regulatory framework was transposed into Irish law by means of four statutory instruments implemented by the Department of Communications, Marine and Natural Resources and came into effect on 25 July 2003. The most visible result is to change the legal basis under which networks and services may be provided. It is no longer necessary to apply for a licence (except in cases involving the use of radio spectrum, where a Wireless Telegraphy licence is required). Instead, there is a general entitlement to provide electronic networks and/or services subject to compliance with standard conditions, set down in respect of the General Authorisations.

Until now the Levy order has applied only to holders of a Telecommunications licence. Under the new framework Telecommunications licences are no longer required. Any person may provide an electronic communications network and/or service, provided they have notified ComReg in advance (unless the network or service concerned is exempt). There is, therefore, no longer a requirement to apply for a Telecommunications licence to provide an electronic communications network and/or service. Operators are free to commence the provision of networks and/or services once a notification is made, but operators are subject to the conditions set out in a General Authorisation and will continue to require a Wireless Telegraphy license if spectrum usage is involved.

The scope of the new Authorisations regime differs from that which previously applied to telecoms licensing. Previously “**Licensed Services**” was defined as “the establishment and/or operation of any Telecommunications Network and/or the provision of any services to the public consisting wholly or in part of the transmission and/or routing of signals on a Telecommunications Network.....” The new Authorisations regime on the other hand applies to *providers of electronic communications networks or services*. (For further details in relation to the Authorisations Regime see ComReg 03/83 “Guidance Note on General Authorisation”.) It was therefore necessary to draft a new Levy Order S.I. No. 346 of 2003 (which took effect from 25 July 2003) under Section 30 of the Communications Regulation Act, 2002 (as amended) to reflect such changes.

The scope of the Levy Order was extended by S.I. No. 392 of 2003 to include certain broadcast transmission networks and this document provides guidance on the operation of both SI No. 346 of 2003 and S.I. No. 392 of 2003.

ComReg has published a number of papers relating to the charges which would have to be borne by providers and operators of electronic communications networks (ECNs) and services (ECSs).

ComReg Document 03/78 – Consultation Paper; Future Regulation of Electronic Communications Networks and Services – Administrative Charges and WT Licence Fees Applicable to Broadcasting Networks and Services

ComReg Document 03/61 – Consultation Paper; Future Regulation of Electronic Communications Networks and Services - Arrangements for General Authorisations

ComReg Document 03/46 –Response to Consultation; Future Regulation of Electronic Communications Networks and Services – Fees for Authorisations and Rights of Use

ODTR Document 02/102 – Consultation Paper; Future Regulation of Electronic Communications Networks and Services Charging Principles for Authorisations and Rights of Use

2 Transitional Arrangements

2.1 Transitional Arrangements under Part 1 of Levy Order (S.I. No. 346 of 2003) as amended by (S.I. No. 392 of 2003)

The current levy is collected quarterly in arrears on the 31 March, 30 June, 30 September and 31 December. The levy is based on the relevant turnover of the financial year ending in the levy year. Thus for the levy year from 1 July 2002 to 30 June 2003 the levy is based on the relevant turnover for the licensees' financial year ending during the year ending 30 June 2003. For example, if a company has a financial year ending on 31 December, its levy liability for the levy year ending 30 June 2003 will be based on its relevant turnover in the financial year ended 31 December 2002 (i.e. the financial year ending during the Levy year).

The new regime came into force on 25 July 2003 and thereafter a levy payment will continue to be collected on a quarterly basis. As the current regime continues until 24 July 2003, a levy invoice was issued in late August 2003 for the period 1 July 2003 to 24 July 2003 and will be due for payment on 30 September 2003. The levy liability for the period from 1 July 2003 to 24 July 2003 will be calculated as 24/365ths of the levy liability for the levy year ended 30 June 2003.

Example: Telco Ltd had a relevant turnover for its financial year ended 31 December 2002 of €1m. The annual levy payable by Telco Ltd in respect of the levy year ended 30 June 2003 was 0.2% of €1m = €2,000. The Levy liability for the period 1 July to 24 July 2003 will be calculated as follows:

Levy Liability for year to 24 July 2003 = €2,000 X 24/365 = €131.51

Those companies that are not currently subject to the levy, but which become so under the new regime, will be required to submit an estimate of their turnover for their current financial year in August 2003. This estimate will be used to calculate the levy liability, in the manner described above. For those which currently pay the levy, their levy liability for the levy period to 25 July 2003 will be estimated based on their relevant turnover for the year to 30 June 2003. Once a Statement of Relevant Turnover has been received in respect of the levy year ended 30 June 2003, the actual liability will be calculated and an invoice issued immediately for any additional sums due.

2.2 Transitional Arrangements under Part 2 of Levy Order (S.I. No. 346 of 2003) as amended by (S.I. No. 392 of 2003)

Prior to the enactment of S.I. No. 392 of 2003 on 29 August 2003, operators who fall within the scope of Part 2 of the Levy Order, did not have a liability. In order to align such operators with the standard charging period, the initial payment sought will be for the period 29 August 2003 to 30 September 2003 (33 days). Thereafter a levy payment will be collected in arrears on a quarterly basis in respect of the administrative costs incurred by ComReg. Where applicable, Wireless Telegraphy licences also apply and a separate licence fee will continue to apply.

3 Levy under S30 Communications Regulation Act, 2002

3.1 Levy Order under S30 Communications Regulation Act 2002 in respect of ECNs and ECSs excluding Broadcasting Transmission Networks

The levy for the first year under the new regime will be based on the relevant turnover for the regulated entity's financial year ending during the year ending 30 June 2004. As under the current regime, if a Company has a 31 December financial year, its levy liability for the levy year ended 30 June 2004 will be based on its relevant turnover in the financial year ended 31 December 2003. However, as the first year under the new regime will only cover the period from 25 July 2003 to 30 June 2004, the relevant turnover will be reduced by 24/365ths, to reflect the shorter levy year.

Example: Assume Telco Ltd also had a relevant turnover for its financial year ended 31 December 2003 of €1m. The annual levy payable by Telco Ltd in respect of the levy year ended 30 June 2004 would be (assuming the levy was payable for a full financial year) 0.2% of €1m = €2,000. The Levy liability for the period 25 July to 30 June 2004 will be calculated as follows:

Levy Liability for full year to 30 June 2004	=	€2,000.00
Less reduction to reflect 'shorter' levy year		
	= €2,000 X 24/365	= <u>131.51</u>
Levy Liability		
for period from 25 July 2003 to 30 June 2004	=	€1,868.49

Those organisations that currently pay the levy and which are also subject to the new regime therefore received two levy invoices in late August, one for the period 1 July to 24 July and a second invoice for the period from 25 July to 30 September 2003, both of which will be payable on 30 September 2003.

Organisations whose 'relevant turnover' is less than €500,000 in any levy year will not be subject to the levy. However once the 'relevant turnover' exceeds €500,000 they will be required to pay the levy.

Example: Assume Smallco Ltd has a relevant turnover for its financial year ended 31 December 2004 of €0.4m. The annual levy payable by Telco Ltd in respect of the levy year ended 30 June 2005 will be Nil as its relevant turnover will be less than €500,000. If its turnover for the financial year ended 31 December 2004 was €0.6m its levy liability for the year ended 30 June 2005 would be €1,200 (€0.6m @ 0.2% = €1,200).

3.2 Levy Order under S30 Communications Regulation Act 2002 in respect of Broadcasting Transmission Networks

The levy for the first year under the new regime will be based on either the relevant number of subscribers connected to the network or the number of transmitters operated in the levy year ended 30 June 2004. The criteria upon which the levy shall be calculated will depend on the type of network in question. The levy will be

subscriber based for Pay TV Services and on a per transmitter basis for operators of FTA and terrestrial networks. The initial levy year will run from 29 August 2003 to 30 June 2004. The normal levy year will be from 1 July to 30 June of the relevant year, with payments due on 31 March, 30 June, 30 September and 31 December.

ComReg will prepare invoices for the period 29 August 2003 to 30 September 2003 based on an estimate of the number of subscribers or transmitters as appropriate. This estimate will be reviewed following the submission of the certified statement, referred to below. Shortly, operators will be formally requested to arrange for the provision of such statements.

All operators providing Electronic Communications Networks (ECNs) in the broadcasting sector, who are required to pay a levy, will be obliged to submit a certified statement of either the number of subscribers connected to their network or number of transmitters operated at 29 August 2003. This will be used to calculate the levy liability, in the manner described below. Once a Statement of Subscribers Connected or Transmitters Operated has been received in respect of the levy year ended 30 June 2004, the actual liability will be calculated and an invoice issued immediately for any additional sums due, if appropriate. Operators, who are also providers of an Electronic Communications Services (ECSs), will additionally be required to pay 0.2% of relevant turnover as set out in Part 1 of S.I. 346 of 2003.

Example 1: Broadcast Ltd had 150,000 subscribers connected to its network at 1 September 2003. The annual levy payable by Broadcast Ltd in respect of the levy year ended 30 June 2004 is $150,000 * €0.50 = €75,000$, which in a ‘normal’ year would be payable in quarterly instalments i.e. €18,750 per quarter.

However the Levy liability for the period from 29 August to 30 September 2003 (33 days) will be calculated as follows:

$$150,000 * €0.50 = €75,000 \times 33/365 = €6,781$$

The Levy liability for the period 1 October to 31 December 2003 (estimated on an annual basis) will be calculated as follows:

$$150,000 * €0.50 = €75,000/4 = €18,750$$

Operators will therefore receive two levy invoices during 2003, one in early October 2003 for the period of 29 August to 30 September 2003. The second invoice relating to the period from 1 October to 31 December 2003 will be payable on 31 December 2003.

Operators which have a levy liability of less than €1,000 in any full levy year will not be subject to the levy. However once the ‘administrative levy’ exceeds €1,000 they will be required to pay the levy.

Example 2: Assume SmallCo. Ltd has a 900 subscribers connected to its network at 1 September 2003 and 30 June 2004. The annual levy payable by SmallCo., in respect of the levy year ended 30 June 2004 will be Nil as its levy ($900 \times €0.50 = €450$) will

be less than €1,000. If SmallCo. had 2,100 subscribers connected to its network at 1 September 2003 and 30 June 2004 its levy liability for the year ended 30 June 2005 would be $2,100 * €0.50 = €1,050$.

4 Statement Required from Operators

4.1 Statement of Relevant Turnover as required under Part 1 Article 6 of Levy Order (S.I. No. 392 of 2003)

In order for ComReg to calculate the correct amount due from providers of communications networks and services those organisations will be required to submit a Statement of Relevant Turnover to ComReg within 2 months of the end of their financial year. It will be a requirement that the Statement will also include a reconciliation of the 'relevant turnover' to the turnover per the financial statements. A sample statement is shown in Appendix A for the guidance of providers and their auditors.

The 'relevant turnover' for the purpose of determining the levy payment will be the turnover excluding VAT in respect of the provision of electronic communications services or networks. Turnover which is clearly not related to the provision of electronic communications networks or services, e.g. revenue generated from consultancy services etc, will not be subject to the levy.

Revenue generated from other providers required to be authorised or deemed to be authorised is relevant turnover and is not deductible. In addition revenue generated from the provision of electronic communications services or networks supplied to subsidiaries or other connected undertakings are not deductible from relevant turnover.

As revenue generated from electronic communications services or networks services in Ireland forms the bulk of the revenue generated by most providers, the ComReg expects that relevant turnover for most providers will not differ from total turnover as disclosed in the financial statements.

Turnover generated by providers which is clearly not related to electronic communications services or networks, may be deducted from total revenue. Examples of such revenue might be revenue generated from non-communications related business e.g. consultancy services, bank interest etc. For foreign resident licensees relevant turnover includes all revenue from electronic communications services or networks generated by their Irish operation.

If a provider's relevant turnover differs from its total turnover precise details and the nature of any non-relevant turnover deducted from total turnover must be given in a statement certified by their auditors, as noted in the sample statement in Appendix A. Such deductions from total turnover will be reviewed on a case by case basis.

In certain cases, particularly when a provider has recently changed status, its financial year-end may change, resulting in a financial year that is either longer or shorter than 12 months. The intention of the Levy Order is for it to be applied based on annual turnover. In such cases ComReg will use a pro-rata estimate of 12 months relevant turnover for calculating the levy due.

4.2 Statement of Subscribers Connected as required under Part 2 Article 15 of Levy Order (S.I. No. 392 of 2003)

In order for ComReg to calculate the correct amount due from providers of Pay TV Services those operators will be required to submit a statement of subscribers connected to the relevant network. This should be provided to ComReg within 2 months of the end of the levy year. A sample statement is shown in Appendix B for the guidance of providers and their auditors.

The numbers of subscribers provided on the “Statement of Subscribers Connected”, shall be the number of subscribers, connected to the network on the final day of the levy year. ComReg will calculate the levy for the coming year based on the certified subscriber numbers connected to the network at the beginning and the end of the previous levy year. An adjustment will be made at the end of the levy year to take account of the certified subscriber numbers at the end of the current year.

Upon the provision of actual subscriber figures as submitted to ComReg at the end of the levy year ended 30 June 2005 an adjustment would be made to reflect the subscriber numbers at June 2004 and 30th June 2005 and the difference would be either returned to or requested from the provider.

Example 1: Assume that CableCo. has 100,000 subscribers connected to its network at 30 June 2004. The annual levy payable by CableCo. in respect of the year ended 30 June 2005 would therefore be €50,000 (based initially on the number of subscribers as at 30 June 2004). However, if at 30 June 2005, CableCo.’s actual number of subscribers is 110,000, the levy liability will therefore be based on $(100,000 + 110,000)/2 = 105,000$. The actual levy liability will therefore be €52,500. In such a case the difference of €2,500 would be required from the operator.

Should the average subscriber numbers reduce during the levy year, instead of a supplementary levy payment being required as outlined above, a refund of moneys paid would arise.

4.3 Statement of Transmitters Operated as required under Part 2 Article 15 of Levy Order (S.I. No. 392 of 2003)

In order for ComReg to calculate the correct amount due from providers of FTA and other terrestrial services, network operators will be required to submit a statement of the number of transmitters operated. This will be provided to ComReg within 2 months of the end of the levy year. Sample Statements are shown in Appendix C and D for the guidance of providers and their auditors.

The numbers of transmitters provided on the “Statement of Transmitters Operated”, shall be the number of transmitters, operated on the final day of the levy year. ComReg shall base the levy on the simple average of this figure and of the figure for the final day of the previous levy year.

Example 1: Assume T-Vision Ltd operates 150 transmitters on its network at 30 June 2004 and 30 June 2005. The annual levy payable by T-Vision in respect to the year ended 30 June 2005 would, initially be based on the number of transmitters as at 30 June 2005 and therefore be $(150 * €100) = €15,000$.

Upon the provision of actual number of transmitters, as submitted to ComReg at the end of the levy year, if there are additional/less transmitters operated, an adjustment shall be made accordingly to reflect the difference. This difference will be either returned or requested from the provider.

Example 2: Assume that T-Vision operates 150 transmitters on its network at 30 June 2004. The annual levy payable by T-Vision in respect of the year ended 30 June 2005 would therefore be €15,000 (based initially on the number of transmitters as at 30 June 2004). However, if at 30 June 2005, T-Vision's actual number of transmitters is 134, the levy liability will therefore be based on $(150 + 134)/2 = 142$ transmitters. The actual levy liability will therefore be €142,000. In such a case the difference of €8,000 would be returned to the operator.

5 Procedures for quarterly payments

The following procedures will be used, for the time being, for collection of the levy.

Approximately one month prior to the quarterly payment date providers will be written to requesting payment of the levy due on that date. In addition, where appropriate they will be requested to supply a certified statement of the either relevant turnover, number of subscribers connected or transmitters operated for the levy year (1 July to 30 June for any relevant year). If a provider has already supplied such a statement the provider will be written to requesting payment of the actual levy due.

A reminder will be sent one week prior to the payment date if payment has not been received.

Once providers, who have already made payments on the basis of estimates, have supplied ComReg with a appropriate certified statement (as outlined above), the actual levy due for the year will be reconciled with the amounts already paid, and appropriate requests for payment will be made, or credit given, at the next payment date.

It is a breach of the conditions relating to the General Authorisation, not to pay the levy.

Payments by electronic funds transfer may be made to the ComReg bank account as detailed below:

Bank Sort Code:	90 00 33
Account Number:	17806887
Bank:	Bank of Ireland 6 Lower O'Connell Street, Dublin 1, Ireland

The provider should notify the Commission of such payments in order that they can be identified.

Appendix A - Sample Statement of Relevant Turnover

Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

31 May 2005

Dear Sir or Madam

Electro ComNet Ltd

Accountants' Report pursuant to Section 30 of the Communications Regulation Act, 2002, Levy Order, 2003 (S.I. 392 of 2003)

1. On the 30 May 2005 we reported as auditors Electro ComNet Ltd, to the members on the company's financial statements for the year ended 31 March 2005 to be laid before its general meeting. Our report was as follows:-

“We have audited the financial statements of Electro ComNet Ltd for the year ended 31 March 2005 which comprise the Profit and Loss Account, the Company Balance Sheet, the Statement of Accounting Policies and the related notes 1 to 14. These financial statements have been prepared under the accounting policies set out in the Statement of Accounting Policies.

Respective responsibilities of directors and auditors

The directors are responsible for preparing the Annual Report, including as set out in the Statement of Directors' Responsibilities, the preparation of the financial statements in accordance with applicable Irish Law and accounting standards. Our responsibility is to audit the financial statements in accordance with Auditing Standards issued by the Auditing Practices Board applicable in Ireland.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with Irish statute comprising the Companies Acts, 1963 to 2001. We also report to you whether in our opinion: proper books of account have been kept by the company; whether, at the balance sheet date, there exists a financial situation requiring the convening of an extraordinary general meeting of the company: and whether the information given in

the directors' report is consistent with the financial statements. In addition, we state whether we have obtained all information and explanations necessary for the purposes of our audit and whether the company's balance sheet is in agreement with the books of the account.

We also report to you if, in our opinion, any information specified by law regarding director's remuneration and director's transactions is not disclosed.

Basis of audit opinion

We conducted our audit in accordance with the auditing standards issued by the Auditing Practices Board and generally accepted in Ireland. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements and of whether the accounting policies are appropriate to the circumstances of the company, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we evaluated the overall adequacy of the presentation of information in the financial statements.

Opinion

In our opinion the financial statements give a true and fair view of the state of the affairs of the company and the group as at 31 March 2005 and of the profit of the group for the year then ended and have been properly prepared in accordance with the Companies Acts, 1963 to 2001.

We have obtained all the information and explanations we considered necessary for the purpose of our audit. In our opinion proper books of account have been kept by the company. The company's balance sheet is in agreement with the books of account.

In our opinion the information given in the directors' report is consistent with the financial statements.

The net assets of the company, as stated in the balance sheet of the company are more than half the amount of its called-up share capital and, in our opinion, on that basis there did not exist at 31 March 2002 a financial situation which, under section 40 (1) of the Companies (Amendment) Act, 1983, would require the convening of an extraordinary general meeting of the company.

Bloggs and Bloggs
Chartered Accountants and Registered Auditors

Dublin
30 May 2005

2. In our opinion the total of the relevant and non relevant turnover for the period from 1 April 2004 to 31 March 2005 amounting to €20,000,000 has been properly extracted from the books and records of the company with which the audited financial statements are in agreement. Non Relevant Turnover comprised:

	€
Consultancy Services	800,000
Interest Income	<u>200,000</u>
Total	1,000,000

Relevant Turnover as defined in Section 30 Communications Regulation Act, 2002 Levy Order, 2003 amounted to €19,000,000.

Bloggs and Bloggs
Chartered Accountants and Registered Auditors
Dublin
31 May 2005

Appendix B - Sample Statement of Subscribers Connected

Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

30 August 2005

Dear Sir or Madam

CableCo. Ltd

Accountants' Report pursuant to Section 30 of the Communications Regulation Act, 2002, Levy Order, 2003 (S.I. 392 of 2003)

We are persons qualified in accordance with Irish statute comprising the Companies Acts, 1963 to 2001. We hereby certify that:

“We have inspected the records of CableCo. Ltd as at ended 30 June 2005 and confirm that the number of subscribers connected to the CableCo. Ltd network as at 30 June 2005 is XXXXX.

Dated at this day of...

Bloggs and Bloggs
Chartered Accountants and Registered Auditors
Dublin

Appendix C - Sample Statement of Transmitters Operated

Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

30 August 2005

Dear Sir or Madam

TransCo. Ltd

**Accountants' Report pursuant to Section 30 of the Communications Regulation Act,
2002, Levy Order, 2003 (S.I. 392 of 2003)**

We are persons qualified in accordance with Irish statute comprising the Companies Acts, 1963 to 2001. We hereby certify that:

“We have inspected the records of TransCo.Ltd as at 30 June 2005 and confirm that the number of transmitters operated by TransCo. Ltd at 30 June 2005 is XXXXX.

Dated at this day of...

Bloggs and Bloggs
Chartered Accountants and Registered Auditors
Dublin

**Appendix D - Sample Statement of Transmitters Operated
(B.C.I.)**

Commission for Communications Regulation
Abbey Court
Irish Life Centre
Lower Abbey Street
Dublin 1

30 August 2005

Dear Sir or Madam

Broadcasting Commission of Ireland (BCI)

**Accountants' Report pursuant to Section 30 of the Communications Regulation Act,
2002, Levy Order, 2003 (S.I. 392 of 2003)**

We are persons qualified in accordance with Irish statute comprising the Companies Acts, 1963 to 2001. We hereby certify that:

“We have inspected the records of the BCI as at 30 June 2005 and confirm that the number of transmitters operated by independent radio and television broadcasters at 30 June 2005 is XXXXX.

Dated at this day of...

Bloggs and Bloggs
Chartered Accountants and Registered Auditors
Dublin