

STATUTORY INSTRUMENT

S.I. No. 346 of 2003

ORDER

entitled

Communications Regulation Act, 2002 (Section 30) Levy Order, 2003

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The Commission for Communications Regulation, in exercise of the powers conferred on it by section 30 (as amended by Regulation 19 of the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2003 (No. 306 of 2003)) of the Communications Regulation Act, 2002 (No. 20 of 2002) hereby makes the following order:

1. (1) This Order may be cited as the Communications Regulation Act, 2002 (Section 30) Levy Order, 2003.

(2) This Order shall come into operation on 25 July 2003.

2. (1) In this Order—

“the Authorisation Regulations” means the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2003 (No. 306 of 2003);

"the Act of 2002" means the Communications Regulation Act, 2002 (No. 20 of 2002);

"the Commission” means the Commission for Communications Regulation;

"levy year" means a financial year of the Commission commencing on 1 July and ending on the 30 June;

"provider of electronic communications services or networks" means a provider of electronic communications services or electronic communications networks to whom this Order applies;

"quarter" means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December;

"relevant financial year" means in relation to a provider of electronic communications services or networks, the financial year of the provider ending in the relevant levy year;

"relevant turnover" means in relation to a provider of electronic communications services or networks the gross revenue excluding value added tax paid or payable to the provider in respect

of such services or networks;

and any cognate words shall be construed accordingly.

(2) In this Order—

(a) a reference to an article or schedule is to an article of, or Schedule to, this Order unless it is indicated that reference to some other Order is intended;

(b) a reference to a sub-article is to the sub-article of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

3. This Order shall apply to the providers of electronic communications services or networks specified in the Schedule.

4. (1) A levy is imposed on each provider of electronic communications services or networks in respect of each levy year in which the provider is required to be authorised or deemed to be authorised as specified in the Schedule.

(2) Subject to article 6, the levy imposed by sub-article (1) shall be payable in equal quarterly instalments—

(a) (i) on the last day of the quarter in which this Order comes into operation, or

(ii) where the provider of electronic communications services or networks concerned is deemed to be authorised as specified in the Schedule after the coming into operation of this Order, on the last day of the quarter in which the provider is deemed to be authorised, or

(iii) where the provider commits an offence under paragraph (5) of Regulation 4 of the Authorisation Regulations in relation to failing to comply with paragraph (1) of Regulation 4 of the Authorisation Regulations, on the last day of the quarter in which the provider of electronic communications services or networks was required under paragraph (1) of Regulation 4 of the Authorisation Regulations to notify the Commission of his or her intention to provide such a network or service, and on the

last day of each subsequent quarter thereafter.

and

(b) on the last day of each subsequent quarter in a levy year in which an authorisation remains in force.

5. (1) Subject to sub-articles (2), the amount of the levy imposed on a provider of electronic communications services or networks in respect of any levy year in which the provider is required to be authorised or deemed to be authorised as specified in the Schedule shall, if the relevant turnover of the provider in the relevant financial year of the provider is €500,000 or more, be equivalent to 0.2 per cent of the relevant turnover.

(2)(a) Where a provider of electronic communications services or networks required to be authorised or deemed to be authorised as specified in the Schedule in part only of a levy year, including the levy year in which this Order comes into operation, the amount of the levy imposed on the provider in respect of that levy year shall if the appropriate proportion of the relevant turnover of the provider is equivalent to or more than the appropriate proportion of €500,000, be an amount equivalent to the appropriate proportion of 0.2 per cent of the relevant turnover.

(b) In this sub-article "appropriate proportion" means that proportion that the part of the levy year in which the provider holds the authorisation shall bear to the levy year concerned.

(3) Where, in respect of any levy year or part thereof, it is, by reason of the date in which the relevant financial year of the provider terminates, impractical for a provider of electronic communications services or networks to determine his or her liability under this article for the purpose of making payments under article 4 as they fall due, the provider may, subject to article 6, assess his or her liability on the basis of his or her relevant turnover in the financial year ending in the previous levy year and may make provisional payments under article 4 accordingly.

6. (1) Every provider of electronic communications services or networks shall, within 2 months of the end of each relevant financial year, submit to the Commission a statement, certified by a

person who is qualified under the Companies Acts, 1963 to 2001 for appointment as auditor of a company, of the relevant turnover of the provider in that financial year.

(2) Where the amount paid by a provider of electronic communications services or networks in accordance with articles 4 and 5 in respect of any levy year is less than the amount payable by reference to the said statement of relevant turnover, the provider concerned shall, within such time or times as may be specified by the Commission in a request in writing, pay to the Commission the balance of the levy so payable.

(3) Where the amount paid by a provider of electronic communications services or networks in accordance with articles 4 and 5 in respect of any levy year is more than the amount payable by reference to the said statement of relevant turnover, the Commission shall, as soon as may be after the end of the levy year, repay to the provider concerned the excess amount so paid.

7. Any surplus of levy income collected by the Commission under this Order over the expenses incurred by the Commission in the discharge of its functions relevant to this Order in a particular financial year shall:

- (a) where permitted be retained by the Commission to be offset against levy obligations for the subsequent year, or
- (b) shall, as soon as may be after the end of the levy year be refunded proportionately to the provider of electronic communications services or networks on whom the levy is imposed.

8. (1) A levy or portion thereof payable in accordance with the terms of this Order shall be paid in cash or by cheque, money order, postal order or electronic funds transfer to the Commission for Communications Regulation.

(2) A payment referred to in sub-article (1) and a statement referred to in article 6 may be delivered or (save in the case of a payment in cash or electronic funds transfer) sent by post to the Commission at Abbey Court, Irish Life Centre, Abbey Street, Dublin 1, or at such other address

as may from time to time be notified by the Commission to each provider of electronic communications services or networks at the last address of the provider. A payment made by electronic funds transfer can be made to a bank account specified by the Commission.

(3) A request or repayment by the Commission to a provider of electronic communications services or networks under this Order may be delivered or sent by post to the provider at the last address of the provider.

(4) In this article "last address" in relation to a provider of electronic communications services or networks means the last address of the provider notified to the Commission in accordance with paragraph (2) Regulation 4 of the Authorisation Regulations.

9. Subject to any levy fees owing to the Commission under the Telecommunications (Miscellaneous Provisions) Act, 1996 (Section 6) Levy Order, 1998 that Order is revoked.

SCHEDULE

Providers of electronic communications services and networks to which this Order applies.

Any person who is required to be authorised or deemed to be authorised pursuant to Regulation 4 of the Authorisation Regulations, to provide an electronic communications network or electronic communications service or both, other than a provider of radio and television terrestrial transmission networks as defined under the Radio and Television Act 1988 as amended and the Broadcasting Act 1960, UHF deflector television networks as defined under the Wireless Telegraphy (UHF Television Programme Retransmission) Regulations 1999 and the Wireless Telegraphy (Carrigaline UHF Television Programme Retransmission) Regulations 1999, wired broadcast relay systems, television programme retransmission systems as defined under the Wireless Telegraphy (Programme Services Distribution) Regulations, 1999 and satellite broadcast transmission networks insofar as those networks are used for the delivery of programme content.

GIVEN under the Official Seal of the Commission for Communications
Regulation, this 25th day of July, 2003.

**ETAIN DOYLE, Chairperson, on behalf of the Commission for
Communications Regulation**

EXPLANATORY NOTE

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

This Order provides for a levy on holders of, or persons required to hold, authorisations under Regulation 4 of the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2003, other than certain broadcast transmission networks for the purpose of meeting expenses incurred by the Commission for Communications Regulation in the discharge of its functions in relation to electronic communications.
