



Office of the Director of
**Telecommunications
Regulation**

RESPONSE TO CONSULTATION

Levy on Providers of Postal Services

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1 INTRODUCTION

The Director of Telecommunications Regulation (“the Director”) and her Office (“the ODTR”) are responsible for the regulation of Universal Postal Services in Ireland in accordance with National and EU legislation. The Director is the National Regulatory Authority (“NRA”) for the purposes of that legislation.

In carrying out her functions under the legislation, the Director is obliged to take into account the views of interested parties.

1.1 LEGISLATION

The EU Postal Directive¹ was transposed into National Legislation by the European Communities (Postal Services) Regulations 2000 (SI No. 310 of 2000), ‘The Regulations’.

Section 6 of the Telecommunications (Miscellaneous Provisions) Act 1996 (the “Act”), as amended by the Regulations, empowers the Director to make an order (“levy order”) imposing a levy on universal service providers² for the purposes of meeting expenses properly incurred by the Director in the discharge of her functions in respect of postal services.

1.2 BACKGROUND

1.2.1 *Current Levy*

In response to last years consultation paper ‘Levy on Providers of Postal Services, ODTR No. 01/55’ the Director made a Levy Order (S.I. No. 474 of 2001) under section 6 of the Telecommunications (Miscellaneous Provisions) Act 1996 (the ‘Act’), as amended by the Regulations.

At that time estimates of postal regulation expenditure amounted to €2.5m and incorporated an amount of approximately €1.3m per annum to meet the cost of placing a Contract to Monitor Quality of Service. The Levy therefore was set at 0.5% of relevant turnover of the universal service provider.

A Contract was entered into with TNS MRBI in August 2002 to monitor An Post’s Quality of Service for delivery of single piece priority mail, in accordance with the European Standard, EN 13850. The value of the contract placed will not exceed €250,000 per annum.

¹ 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

² The Regulations have designated An Post as a universal service provider and the Minister for Communications, Marine and Natural Resources may designate one or more additional postal service providers as a universal service provider having an obligation to provide all or part of the Universal Service.

1.2.2 *Need for new Levy*

As a consequence to letting the Contract the cost of postal regulation has been reviewed and it is now estimated that the overall cost of postal regulation for the year July 2002 – June 2003 will be approximately €1.1m.

The current Postal Levy Order (No. 2) needs to be amended to reflect the revised cost of postal regulation. The Director proposes to make a new levy order to cover the levy year July 2002 – June 2003, and for subsequent levy years, so that the provisions of such an order will accurately reflect the currently estimated cost of regulating postal services.

Last month, October 2002, the Director published a consultation paper entitled ‘Levy on Providers of Postal Services’ ODTR No. 02/93, which addressed the issue under the following headings:

- Operation of the Levy
- Persons and Organisations liable to the Levy
- Information to be supplied annually by the Universal Service Providers
- Adjustments to the amount to be levied
- Penalties

Two responses were received by the closing date, 20 November 2002. The Director wishes to express her thanks to An Post and the IAIEC³ for their submissions. With the exception of material marked as confidential, the written comments of respondents are available for inspection at the ODTR’s office in Dublin.

³ International Association for Irish Express Carriers

2 LEVY ON PROVIDERS OF POSTAL SERVICES - Consultation Issues

2.1 Operation of the Levy

2.1.1 Summary of the Consultation Topic

The Director proposed to make a revised levy order before the end of 2002 to cover the period July 2002 – June 2003 and subsequent levy years and it will be structured as follows:

- The levy amount shall be that amount necessary for the purposes of meeting expenses properly incurred by the Director in the discharge of her functions in respect of postal services.
- The levy year shall be the financial year of the office of the Director of Telecommunications Regulation/Commission for Communications Regulation.
- The levy amount shall be expressed as a percentage of the relevant turnover of a universal service provider.
- Relevant turnover will be the gross revenue, excluding value-added tax, of the universal service provider in respect of postal services as reported in the financial statements for the most recent financial year of the universal service provider.

The Postal Levy Order (SI No. 474 of 2001) shall apply for the period to 30 June 2002. For periods commencing on or after 1 July 2002 the amount of the levy imposed on a universal service provider in respect of any levy year in which the universal service provider is designated as such shall be 0.25% of the relevant turnover.

This levy percentage will be reviewed as necessary and where appropriate, a revised levy order issued. The levy will be payable in equal instalments on or before the last day of each quarter.

2.1.2 Views of Respondents

Amongst other general comments An Post reiterated its view that the Director needs to have regard to the financial constraints under which it operates and she should also consider the point that, whatever levy is imposed, it will ultimately impact on the end user, An Posts customers.

While An Post welcomes the Directors decision to reduce the levy to 0.25%, it contends that changes in An Post's turnover should not impact the level of regulatory activity carried out by the ODTR. An Post contends further that the ODTR must recognise that there is only one Universal Service Provider (USP) in Ireland at the moment and believes there is little likelihood that this will change in the near future. An Post argues therefore that a simple Levy Order should be made stating the total amount due to the ODTR on a quarterly basis.

An Post states that the ODTR should, after appropriate consultation, prepare a detailed budget for the year, detailing all activities concerning postal regulation. Based on the budget an invoice should be raised and issued to An Post for payment every three months. All invoices raised should include a detailed itemised bill.

The IAIEC represents the major providers of international express services in Ireland and recognises that its members are not directly affected by the operation of a levy for which An Post is liable as the currently designated USP. However, it realises that there is legislative provision for the designation of additional USP's and maintains that should this arise, then the operation of the levy would have to be reviewed by way of public consultation.

The IAIEC stresses in particular that the formula used to calculate the actual levy on any new USP should be reviewed so as to establish what new operators relevant turnover should be for the purpose of calculating their liability. It observes the proposed structure for the collection of the levy as set out above to be a reasonable and cost based approach.

2.1.3 Position of the Director

The Director notes the concerns expressed by An Post and offers her assurance that she will keep the size of any levy she imposes under the terms of Section 6 of the Telecommunications (Miscellaneous Provisions) Act, 1996 (No.34 of 1996) to a level consistent with the duties and responsibilities imposed upon her. The ODTR will keep separated accounts for the office relevant to expenses incurred under postal services. The Director also notes that ODTR Accounts are subject to independent audit by the Comptroller and Auditor General.

The Director notes that under the terms of the Regulations the Minister may designate one or more additional universal service providers and in the circumstances is satisfied that the levy amount should be expressed as a percentage of the relevant turnover of the universal service providers as outlined in the consultation document, and will proceed on that basis.

2.2 Persons and Organisations liable to the Levy

2.2.1 Summary of the Consultation Topic

An Post is designated as a Universal Service Provider by the Minister for Communications, Marine and Natural Resources and as such will be liable to pay the levy.

2.2.2 Views of Respondents

An Post considers it inappropriate and unnecessary that the levy scheme should be based on a percentage of turnover where there is only one entity liable to pay it.

2.2.3 *Position of the Director*

The Director is satisfied that her proposal complies fully with the legislation which applies to her Office. The Regulations provide for the imposition of a levy on universal service providers and while An Post is the only designated USP at present, this position may alter. Should this position be altered and other postal operators receive USP status, a revised levy order will be issued after public consultation.

2.3 **Information to be supplied annually**

2.3.1 *Summary of the Consultation Topic*

Universal Service Providers will be required to submit a Statement of Relevant Turnover certified by their auditors within 21 weeks of their financial year end together with a copy of their annual report and accounts disclosing the turnover for postal services in accordance with SSAP 25 and/or IAS 14.

2.3.2 *Views of Respondents*

An Post contends that turnover should only relate to revenues for services within the reserved and/or universal service obligation (USO) areas as competitors are operating within the non reserved USO area and are not subject to regulation. If An Post must use turnover which includes revenues from non reserved USO then other operators should also be liable to a levy.

As An Post is currently the only designated USP all costs of regulation will be levied on it and, therefore, An Post maintain that it should not be necessary for it to prepare a statement of relevant turnover nor should it be certified by an auditor. An Post also dispute the implication that the International Accounting Standard IAS 14 should be complied with and feel that the requirement is unnecessary in the context of determining a mechanism for the advance collection of a levy.

2.3.3 *Position of the Director*

The Director notes the points made by An Post in relation to the relevant base figure for the levy. An Post does not disclose turnover in respect of USO, either reserved or non reserved services in its published Annual Accounts and it is not required to do so. SSAP 25 requires An Post to disclose turnover for Postal Services and An Post comply with this requirement in its published Annual Accounts.

It is important to note also that the Communications Regulation Act 2002, which comes into force on 1 December 2002, also requires that the levy is to be paid by all providers of Postal Services.

It must also be noted that the levy is designed specifically to raise the cost of postal regulation which is currently estimated at €1.1m per annum. Should the turnover base be reduced then the percentage to be applied will increase so that the cost of postal regulation is met.

As such the Director is satisfied that the relevant turnover figure on which the levy should be based is the gross revenue, excluding value-added tax, of the universal service provider in respect of postal services as reported in the financial statements for the most recent accounting year of the universal service provider.

2.4 Adjustments to the amount levied

2.4.1 Summary of the Consultation Topic

Should that the amounts collected by way of the levy order in a particular year differ from the amounts required to meet the purposes described at 4.1.1 above, the Director shall as soon as may be after the end of the levy year, repay to each universal service provider the amount by which the payments were deemed to be excessive.

2.4.2 Views of Respondents

An Post states that once the ODTR's annual report is published, the amount paid by the USP should be adjusted in accordance with the level of expenditure incurred during the year under report and a balancing payment should be made or an amount should be debited or credited against the next quarter.

The IAIEC comments that it would seem very fair and appropriate that a provision is included to repay any amounts in excess of what is required by the ODTR.

2.4.3 Position of the Director

It is intended that any differences between the amount of the levy collected and postal expenses incurred will be credited to or collected from the universal service providers annually.

3 NEXT STEPS

The Director intends to proceed to make an order as set out in the consultation paper and in this response document.