



Office of the Director of
**Telecommunications
Regulation**

RESPONSE TO CONSULTATION

Levy on Providers of Postal Services

Document No: ODTR 01/79

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Oifig an Stiúrthóra Rialála Teileachumarsáide

Office of the Director of Telecommunications Regulation

Abbey Court, Irish Life Centre

Lower Abbey Street, Dublin 1, Ireland

Tel. +353 1 804 9600 Fax. +353 1 804 9680 E-mail info@odtr.ie

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. The Director is currently consulting on the key issues that will form the framework of postal regulation in Ireland.

2 BACKGROUND

In July 2001, the Director launched a consultation on a levy on providers of Postal Services. The process involved the publication of a consultation document (ODTR 01/55) which looked at the issue under the following headings:

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

Only one party, An Post, responded to the consultation document by the closing date of 17 August. The Director wishes to express her thanks to An Post for its submission. 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 LEGISLATION

The EU Postal Directive (No.97/67/EC) was transposed into Irish 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 providers for the purposes of meeting expenses properly incurred by the Director in the discharge of her functions in respect of postal services.

4 FORMAT OF THIS DOCUMENT

The format of this document is as follows: -

- A summary of the consultation topic
- A summary of the response
- The Director's views on the issues

5 Levy on Providers of Postal Services – consultation issues

5.1 Operation of the Levy

5.1.1 Summary of the consultation topic

The Director proposed to make a levy order for the period commencing on or after 30 June 2001. She considered that the levy amount should be that amount necessary for the purposes of meeting expenses properly incurred by her in the discharge of her functions in respect of postal services. The levy proposed was to be expressed as a percentage of the relevant turnover which was 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. For the period to 31 December 2001 the proposed amount of the levy to be imposed on the universal service provider was 0.2% per annum of the relevant turnover and for the period commencing on or after 31 December 2001 the amount in any levy year in which the universal service provider is designated as such, was 0.5% of the relevant turnover. The levy percentage to be reviewed as necessary and where appropriate, a revised levy order would be issued.

5.1.2 Views of the respondent

In its response An Post raised a number of general matters which have been covered in the Quality of Service Decision Notice [ODTR 01/73] and Regulation of Universal Postal Services – Accounting Separation & Costing Methodology – proposed direction to An Post [ODTR 01/74,] which was issued on 20 September. Accordingly these matters are not being dealt with in this document. An Post felt that the amount of the levy was onerous and that the Director must have regard to the financial constraints under which An Post must operate and that procedures should minimise expense.

5.1.3 *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 the absolute minimum 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 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 provider as outlined in the consultation document, and will proceed on that basis.

5.2 **Persons and Organisations liable to the levy**

5.2.1 *Summary of consultation topic*

Under the terms of section 6 (3)(a) of the Regulations, An Post is designated as a universal service provider by the Minister of Public Enterprise. The Director proposed that it would be liable to pay the levy.

5.2.2 *View of the Respondent*

An Post questioned the basis of the levy scheme and consider it wholly inappropriate and unnecessary where there is only one entity liable to pay.

5.2.3 *Position of the Director*

The Director is satisfied that her proposal is in compliance with the legislation which applies to her Office. The Regulations provide for the imposition of a levy on universal service providers. An Post is the only designated universal service provider at present.

5.3 **Information to be supplied annually by Universal Service Provider**

5.3.1 *Summary of consultation topic*

In the consultation paper the Director proposed that the universal service provider would be required to submit a Statement of Relevant Turnover certified by their auditors within 4 months of its financial year end together with a copy of its annual report and accounts disclosing the turnover of postal services in accordance with SSAP 25 and /or IAS 14.

5.3.2 *View of the respondent*

An Post feel that if the levy were to be applied on the basis of turnover, the relevant turnover should be the USO turnover as disclosed in the regulatory accounts. It stated

that no financial data in relation to an annual reporting cycle, can be finalised and released until the Board of Directors have approved the financial statements at the Company's AGM normally held at the end of April.

5.3.3 Position of the Director

The Director has reviewed the point made by An Post in relation to the relevant base figure for the levy. Section 6 (1) of the Telecommunications (Miscellaneous Provisions) Act, 1996, as amended by the Regulations, does not support An Post's position.

She 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 post services as reported in the financial statements for the most recent accounting year of the universal service provider.

The Director acknowledges An Post's indication that it normally finalises its accounts in April for publication and feels that a further month should be sufficient to produce the turnover figure required. In the circumstances, she has decided to extend the reporting period for submission of the Statement of Relevant Turnover certified by An Post's Auditors from 4 months to 21 weeks. Further detail of accounting requirements can be found in ODTR document 01/74 section 4 - Reporting and Transparency.

5.4 Adjustments to the amount to be levied

5.4.1 Summary of consultation topic

The Director proposes that in the event of the amount collected by way of the levy order in a particular year, differing from the amount required to meet the expenses incurred by her in carrying out her functions in respect of postal services, any such difference would be credited to or collected from the levy payer(s).

5.4.2 Views of the respondent

An Post considered that a levy scheme is not appropriate. It argued that if a levy were to be implemented it should be on the basis of a fixed sum annually.

5.4.3 Position of the Director

The Director's position in relation to the introduction of a levy and the basis on which the levy is to be operated is set out previously in this document. It is intended that any differences between the amount of the levy collected and the expenses incurred will be credited to or collected from the universal service providers annually.

6 Next Step

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