



Commission for
Communications Regulation

Postal Levy:

Consultation on proposed levy for the purpose of meeting the expenses properly incurred by ComReg in the discharge of its functions relating to postal services

Consultation and draft Levy Order

Reference: ComReg 13/30

Date: 27/03/2013

An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

Abbey Court Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

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1 Introduction

- 1 Arising from the Communications Regulation Act 2002 as amended (“2002 Act”), for the purposes of meeting expenses properly incurred by the Commission for Communications Regulation (“ComReg”) in the discharge of its functions relating to postal services, ComReg may make an order imposing a levy on postal service providers providing postal services within the scope of the universal postal service¹.
- 2 The 2002 Act requires that any such levy must be imposed in an objective, transparent, and proportionate manner which minimises additional administrative costs and attendant charges to ComReg².
- 3 Therefore, by way of this Consultation, ComReg is seeking the views of interested parties on the proposed postal levy set out in this document and whether the draft levy order is objective, transparent, and proportionate. ComReg will consider all responses to this Consultation before finalising its levy order.
- 4 In order to provide regulatory certainty, ComReg proposes that this levy order will commence on 1 July 2013, in line with ComReg’s financial year, and, subject to there being no material decline in applicable turnover on which the levy is based, should remain in place for at least three years.
- 5 Consequently, in drafting the proposed postal levy order, ComReg has considered both the likely cost of regulation, which will continue to be efficiently incurred³, and the likely applicable turnover from postal services within the scope of universal postal service over the next three years.

¹ Section 30(2) of the Communications Regulation Act 2002 as amended.

² Section 30(11A)(a) of the Communications Regulation Act 2002, as amended.

³ In this respect, ComReg notes it applies and will continue to apply a continuous and rigorous scrutiny of its costs. Also, ComReg’s staffing of its postal regulation team is low relative to other National Regulatory Authorities for postal regulation – see WiK Consult’s report to the European Commission.

2 Background

6 Arising from the 2002 Act, ComReg's functions are to :

- 6.1 To ensure the provision of a universal postal service that meets the reasonable needs of postal service users⁴
- 6.2 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 service⁵.

7 The Postal Directive notes⁶ that National Regulatory Authorities ("NRAs"), such as ComReg, should be provided with all necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks.

8 Arising from the 2002 Act (as amended by the Communications Regulation (Postal Services) Act 2011 ("2011 Act")), ComReg can make a levy order on postal service providers providing postal services within the scope of the universal postal service to meet its properly incurred expenses.

9 Also, as a result of the 2002 Act, in making this levy order, ComReg should have regard to:

- 9.1 Its objectives under section 12(1)(c) of the 2002 Act which include:
 - 9.1.1 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 postal service users;
 - 9.1.2 To promote the interests of postal service users within the Community;
 - 9.1.3 Subject to promoting the availability of a universal postal service, to facilitate the development of competition and innovation in the market for postal service provision.
- 9.2 The impact of the levy on the postal service providers providing postal services within the scope of the universal postal service. There are currently three postal service providers that have notified ComReg that they are providing or are intending to provide postal services within the scope of the universal postal service⁷. These are:

⁴ Section 10(1)(ba) of the Communications Regulation Act 2002 as amended.

⁵ Section 10(1)(c) of the Communications Regulation Act 2002 as amended.

⁶ Recital 47 of Directive 2008/6/EC ("The Third Postal Directive").

⁷ See listing at http://www.comreg.ie/postal/regulation_of_authorized_providers.545.html

- 9.2.1 **An Post** which provides both universal postal services and non-universal postal services within the scope of the universal postal service
 - 9.2.2 **Nightline** which intends to offer a postal service within the scope of universal postal service in the near future
 - 9.2.3 **DX** which offers one postal service within the scope of the universal postal service.
- 9.3 The need to minimise any distortion or restriction of competition in the market for the provision of the postal service concerned.

3 Proposed Postal Levy

- 10 This chapter sets out ComReg's preliminary views on the proposed postal levy. In considering how to structure the new proposed postal levy, ComReg has reviewed the current postal levy order⁸ and previous consultations and decisions in relation to previous postal levy orders⁹.
- 11 Also as noted earlier, arising from the 2002 Act (as amended by the 2011 Act), there is a statutory obligation on ComReg, in making the postal levy, to minimise any distortion or restriction of competition. In this respect, there are two types of postal services that will be subject to the postal levy. The first are An Post's universal postal services. The second are non-universal postal services within the scope of universal postal service; these are currently offered by An Post, DX, and potentially Nightline¹⁰.
- 12 In proposing the structure of the postal levy, ComReg has considered the current standing of the postal market. As noted in ComReg's recent Postal Strategy Statement¹¹, the postal market has relatively few postal service providers in the market and these are of a relatively small scale. Furthermore, the market is nascent while the volumes of postal letters, which account for the majority of mail volumes, are in decline.
- 13 Furthermore, in setting the proposed levy, ComReg notes that it operates in an efficient manner; the level of expenditure is kept to a minimum and is subject to continual review with a tight budgetary control process to ensure we are achieving value for money including the use of a competitive tendering process where external services are required.

⁸ SI 319 of 2005 @ <http://www.comreg.ie/fileupload/publications/SI319of2005.pdf>

⁹ ComReg Documents 05/53, 04/07, 03/139r

¹⁰ According to its notification to ComReg, Nightline plans to offer a postal service within the scope of universal postal service. See http://www.comreg.ie/postal/regulation_of_authorised_providers.545.html for the notifications made to ComReg

¹¹ Document No. 12/116 dated 30 October 2012

3.1 Regulating universal postal services requires more resources than regulating non-universal postal services

14 As noted in ComReg Decision D22/03¹², ComReg maintains that the regulatory functions in respect of the universal postal services require significantly more resources than the more limited functions relating to the non-universal postal services within the scope of universal postal service. This is clear from the 2011 Act which places a significant number of obligations on ComReg in relation to universal postal services but a far fewer number of obligations in relation to non-universal postal services. Therefore, ComReg is of the preliminary view that, like the existing postal levy, the proposed postal levy should reflect the increased cost associated with regulating the universal postal services as compared to the cost of regulating the non-universal postal services within the scope of universal postal service. ComReg welcomes views from interested parties in this regard.

3.2 Levy to be based on applicable turnover subject to minimum charge

15 ComReg is of the preliminary view that, like the existing postal levy, the new proposed postal levy should be based on a percentage of applicable turnover subject to a minimum charge. This turnover based approach is in keeping with the thrust of the 2011 Act, which states that in order to facilitate ComReg in making a levy order, pursuant to section 39(2)(d)(i) of the 2011 Act, an authorisation to provide a postal service within the scope of the universal postal service is subject to providing ComReg with information relating to its turnover from the provision by it of services within the scope of the universal postal service. As with the previous postal levy order, ComReg is of the view that the relevant turnover figure excludes VAT and that a statement of applicable turnover should be certified by the postal service provider's auditor¹³. A draft of that statement is included at Annex 1 of this Consultation.

16 ComReg remains of the view that a percentage of turnover based levy (as is the case for the existing postal levy) is objective, transparent, proportionate and equitable as it reduces any distortion or restriction of competition in the market for the provision of postal services. It seems reasonable to assume that larger postal service providers with larger customer bases are likely to have a greater number of regulatory issues to be addressed by ComReg.

¹² Paragraph 4, page 24 of 'Regulation of Postal Services – Postal Service Authorisations, Reserved Area Controls & Levy' @

<http://www.comreg.ie/fileupload/publications/ComReg03139r.pdf>

¹³ See ComReg Document 04/07

17 Before preparing this consultation, ComReg sought an estimate of applicable turnover from the postal service providers that provide services within the scope of universal postal service. Based on this confidential information, ComReg proposes 0.4% of turnover from universal postal services and 0.12% of turnover from non-universal postal services within the scope of the universal postal service as being appropriate to recover its properly incurred costs which ComReg estimates to be c.€1.4m per annum (this is discussed further later in this chapter). These percentages of turnover are greater than those of the previous postal levy as the applicable turnover on which the percentage is calculated has declined due to the changing market and particularly as express and courier services are not within the scope of universal postal service¹⁴ and therefore do not contribute to the cost of regulation.

3.2.1 Issue of declining turnover

18 In proposing a turnover based approach, ComReg has considered that turnover applicable to postal services within the scope of universal postal services has, and is expected to continue to, decline over the period of the postal levy order. For information¹⁵, An Post's recent price application showed that it expects further volume declines of c.5% per annum.

19 As discussed above, in setting an appropriate turnover percentage for ComReg's levy, ComReg sought a confidential estimate of turnover from postal service providers within the scope of the universal service provision. ComReg has considered these estimates in setting the proposed percentage applicable for the postal levy. Based on these confidential submissions, it is clear that the turnover on universal postal services account for the vast majority of the turnover of postal services within the scope of universal postal service and that turnover on universal postal services is expected to decline over the period of the postal levy order. Furthermore, ComReg notes the actual decline in turnover on universal postal services could be greater than the decline forecast by the universal postal service provider. Therefore, in order to be proportionate and to provide regulatory certainty by maximising the period of this postal levy order, ComReg is proposing an adjustment to the turnover percentage for universal postal services only, if actual revenue over the period of the postal levy order is materially different from the forecast estimates for turnover used to set the proposed postal levy.

Proposed adjustment for declining turnover on universal postal services

20 In order to ensure that the levy order is "future proofed" in case the decline on universal postal services revenue is greater than forecast, ComReg proposes an adjustment that will apply as follows for universal postal services only:

¹⁴ Section 37 of the 2011 Act

¹⁵ See Table 3 at ComReg Document 13/21 for further information

- If universal postal service revenue declines between 15% and up to 22% over the period of the postal levy order, ComReg reserves the right to increase the turnover based percentage for universal postal services from 0.4% to 0.45%
- If universal postal service revenue decline by 22% or more over the period of the postal levy order, ComReg reserves the right to increase the turnover based percentage for universal postal services from 0.4% to 0.5%
- If ComReg makes the proposed increase, ComReg proposes that the universal postal service provider will be made aware of any change to the percentage in writing and by way of an Information Notice.

21 For the avoidance of any doubt, the proposed increases in the percentage of turnover apply only as a result of declines in the applicable turnover used to calculate the levy.

22 ComReg welcomes views from interested parties on this proposal.

3.2.2 Appropriate minimum charge of €2,000 per postal service within the scope of universal postal service

23 ComReg considers that it is appropriate that there is a minimum applicable charge for each postal service within the scope of the universal postal service. Having considered the estimated turnover provided by postal service providers for their postal services within the scope of universal postal service and the previous minimum applicable charge in the previous postal levy, ComReg is of the preliminary view that a minimum charge of €2,000 per annum is appropriate for each postal service within the scope of universal postal service. It is considered that this approach ensures that the postal levy is objective, transparent, and proportionate. ComReg would welcome the views of respondents on this.

3.3 2011 Act confines the scope for recovering the cost of regulation

24 There are currently six authorised postal service providers¹⁶ subject to regulation. However, in accordance with the 2011 Act, ComReg can only recover the costs of regulation from postal services within the scope of the universal postal service which currently equates to three postal service providers. Furthermore, of those three postal service providers, An Post accounts for almost all of the postal services within the scope of universal postal service (35 postal services) compared to the one postal service offered by DX and the one prospective postal service to be offered by Nightline. Therefore, as a result of the 2011 Act, ComReg's scope to recover the cost of its regulation is confined to such cases.

3.4 Requirements of the 2011 Act have added to regulatory costs

25 ComReg operates in an efficient manner in relation to postal regulation and the level of expenditure is kept to a minimum. ComReg applies continuous and rigorous scrutiny of its costs and its financial statements are audited by the Comptroller and Auditor General.

26 ComReg is under a specific statutory duty¹⁷ in carrying out its functions to seek to ensure that measures taken by it are proportionate having regard to the objectives set out in section 12 of the 2002 Act.

¹⁶ A list of the authorised service providers is available on the ComReg website:

http://www.comreg.ie/postal/regulation_of_authorised_providers.545.html

¹⁷ Section 12(3) of the Communications Regulation Act 2002.

- 27 The 2010 Government Statement on Economic Regulation emphasises the need for efficiency as well as effectiveness in the business of regulation. This is a responsibility that ComReg takes very seriously.
- 28 ComReg's postal team is 5 persons (some part-time) working solely on postal issues with additional use of accounting, legal, and economic staff where required. ComReg considers this level of staffing to be low relative to other National Regulatory Authorities (NRAs).
- 29 Furthermore, ComReg notes that, regardless of population size, ComReg has to conduct the same regulatory tasks as other NRAs such as Ofcom, for example setting a price cap. ComReg requires appropriate staffing and expertise to do this. For this reason, ComReg utilises expert assistance where required so that ComReg can ramp up and down resources as required. ComReg's views in this respect would appear to be supported by WiK Consult¹⁸ in its report to the European Commission which noted that "...a NRA requires a basic minimum level of resources to do its job, including, on average, a staff of about 9 to 10 persons. The relatively low level of resources available to NRAs in some medium to small postal markets, and even more in very small markets, suggests that these NRAs may lack the minimum tools needed to regulate postal markets effectively."
- 30 ComReg's estimates¹⁹ its postal regulatory costs at c.€1.7m²⁰ in the current operating year.

3.4.1 Additional costs due to implementation of 2011 Act

- 31 This projected cost of €1.7m in the current operating year includes provision of c.€0.4m associated with new statutory obligations placed on ComReg as a result of the 2011 Act. These new statutory obligations include the setting of a price cap which is to apply for a period of 5 years and setting the methodology for the calculation of any net cost associated with providing the Universal Service Obligation ("USO"). Therefore, the 2011 Act and the new obligations placed on ComReg has added to our regulatory costs without which the cost of postal regulation would have remained largely static when compared with previous years reflecting ComReg's continuous cost containment initiatives.

¹⁸ At page viii of WiK Consult's study for the European Commission 'The Role of Regulators in a More Competitive Postal Market' dated September 2009

¹⁹ Estimate made in June 2012 as part of annual budget process

²⁰ See

http://www.comreg.ie/_fileupload/Annual%20Financial%20Forecast%20ye%20300613%20for%20Publication.pdf

32 In relation to these additional costs associated with the new statutory obligations imposed on ComReg by the 2011 Act, the majority of this costs will be incurred in the current and next operating year. ComReg is of the preliminary view that it would be appropriate to seek to recover these costs over the life of these projects, therefore, ComReg has calculated the postal levy to recover an annual cost of c.€1.4m. ComReg would welcome views on this approach.

3.4.2 Certain non-recurring costs

33 ComReg's annual costs do not include non-recurring costs, for example, the cost of resolving disputes associated with access sought to the postal network of the universal postal service provider or other legal costs.

34 In relation to the cost of resolving disputes associated with access sought to the postal network of the universal postal service provider, as noted in the dispute procedures established for these²¹, ComReg does not expect that access to a universal postal service provider's postal network will be unreasonably withheld; therefore, ComReg expects that the dispute procedures will be sparingly used. However, any such costs are recoverable by way of the postal levy.

3.5 ComReg cannot profit from the postal levy

35 As was the case for the previous postal levy order, and in accordance with section 30(5) of the 2002 Act, there is no scope for ComReg to profit from the postal levy. As set out in the draft Postal Levy Order²² where the income generated from the levy exceeds the actual costs of regulation, any surplus will be set against the amount due for the following period or can be refunded to the applicable postal service providers in proportion to their contribution to the postal levy.

3.6 Proposed structure of levy

36 ComReg proposes to structure the postal levy order as follows:

- The levy amount is the amount necessary for the purposes of meeting expenses properly incurred by ComReg in the discharge of its functions in respect of postal services.
- The levy year is defined as the financial year of the Commission for Communications Regulation i.e. 1 July – 30 June.

²¹ ComReg Document No. 12/111 dated 12 October 2012

²² See Chapter 5

- The levy amount is expressed as a percentage of the Relevant Turnover. Relevant Turnover is defined as the gross revenue, excluding value-added tax, of the postal service provider in respect of postal services within the scope of universal postal service as reported in the financial statements for the most recent financial year of the postal service provider. In the case of the universal postal service provider, this Relevant Turnover is split between turnover from universal postal services and turnover from non-universal postal services within the scope of the universal postal service.
- The levy percentages to be applied to Relevant Turnover are as follows:
 - (a) For universal postal services: 0.4% of turnover
 - (b) For non-universal postal services within the scope of universal postal service: 0.12% of turnover subject to a minimum charge of €2,000 per postal service within the scope of universal postal service
- In order to ensure the levy order is “future proofed” in case the decline on universal postal services revenue is even greater than forecast, ComReg proposes an adjustment mechanism that will apply as follows:
 - If universal postal service revenue declines between 15% and up to 22% over the period of the postal levy order, ComReg reserves the right to increase the turnover based percentage for universal postal services from 0.4% to 0.45%
 - If universal postal service revenue declines by 22% or more over the period of the postal levy order, ComReg reserves the right to increase the turnover based percentage for universal postal services to 0.5%
 - In the case of any increase to the turnover based percentage for universal postal services, ComReg will make the universal postal service provider aware of any change to the percentage in writing and by way of an Information Notice.
- The levy percentage will be reviewed as necessary and where appropriate, a revised levy order would be issued.
- The levy will be payable in equal instalments on or before the last day of each quarter of the levy year.
- The levy will be applied pro rata for providers whose service(s) falls within the scope of the universal service provision and who notify ComReg of this pursuant to section 38 of the 2011 Act mid-month, mid-quarter or mid-year. Therefore, the first quarterly payment would be calculated from the date of notification to ComReg to the end of the next quarter of the levy year and from there, it would be payable in equal instalments for the other remaining quarters of the levy year.

- Postal service providers that provide a service which is within the scope of the universal service provision will be required to submit a Statement of Relevant Turnover certified by its auditor within 21 weeks of its financial year end.
- A draft Postal Levy Order is set out at Chapter 5 of this document.

Q. 1 Do you agree that the levy structure as proposed in this Consultation and in the draft Postal Levy Order is objective, transparent and proportionate?

4 Draft Regulatory Impact Assessment

- 37 ComReg's published RIA Guidelines²³ (Doc 07/56a), in accordance with a policy direction to ComReg²⁴, state that ComReg will conduct a RIA in any process that may result in the imposition of a regulatory obligation, or the amendment of an existing obligation to a significant degree, or which may otherwise significantly impact on any relevant market or any stakeholders or consumers. However, the Guidelines also note that in certain instances it may not be appropriate to conduct a RIA and, in particular, that a RIA is only considered mandatory or necessary in advance of a decision that could result in the imposition of an actual regulatory measure or obligation, and that where ComReg is merely charged with implementing a statutory obligation then it will assess each case individually and will determine whether a RIA is necessary and justified.
- 38 In this Consultation, ComReg considers that it is not imposing a new regulatory obligation but is acting under a statutory obligation imposed on it by the 2002 Act (as amended) which provides that in order for ComReg to recover its properly incurred expenses incurred in the discharge of its functions relating to postal services ComReg may make an order imposing a levy on postal service providers providing postal services within the scope of the universal postal service. In any case similar levies have been in place since the previous postal levy order came into operation on 1 July 2005²⁵. Therefore, a RIA is not required for ComReg acting under a statutory obligation imposed on it to make an order to recover its properly incurred expenses incurred in the discharge of its functions relating to postal services.
- 39 However, ComReg has formed certain preliminary views on the proposed structure of the proposed postal levy. Therefore, ComReg has prepared a draft RIA in respect of these preliminary views as there were options open to ComReg in forming these preliminary views.
- 40 ComReg invites interested parties to review this draft RIA and to submit any comments or information which they believe ComReg has not considered and should consider in finalising its Postal Levy Order. Subject to respondents' views and consideration of any other evidence, this draft RIA will be finalised in ComReg's consultation response which is expected to be issued at the end of May and which will in turn inform its decision.

²³ Which have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009

²⁴ Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003

²⁵ See SI No.319 of 2005, the Communications Regulation Act 2002 (Section 30) Postal Levy Order 2005.

4.1 Steps involved

41 In assessing the available regulatory options, ComReg's approach to RIA follows five steps as follows:

Step 1: describe the policy issue and identify the objectives

Step 2: identify and describe the regulatory options

Step 3: determine the impacts on stakeholders

Step 4: determine the impacts on competition

Step 5: assess the impacts and choose the best option

Step 1: Describe the policy issue and identify the objectives

42 As required by the 2002 Act, for the purposes of meeting expenses properly incurred by ComReg in the discharge of its functions relating to postal services, in making an order imposing a levy on postal service providers providing postal services within the scope of the universal postal service, ComReg must ensure that such a levy is imposed in an objective, transparent, and proportionate manner which minimises additional administrative costs and attendant charges to ComReg.

Step 2: Identify and describe the regulatory options

43 In proposing the draft Postal Levy Order of this consultation, a number of options were open to ComReg; these were:

- Option: Whether the levy should be based on percentage of relevant turnover or not
- Option: Whether to apply a higher turnover percentage to universal postal services or not
- Option: Whether to apply a minimum charge of €2,000 per postal service within the scope of universal postal service or not
- Option: Whether to apply or not to apply an adjustment mechanism to increase the turnover percentage on universal postal services where there is a decline in that turnover beyond the forecast used to set the postal levy.

Steps 3, 4 and 5: Determine and assess the impacts on stakeholders and competition and choose the best option

Option: Whether the levy should be based on percentage of relevant turnover or not

- 44 In relation to this option, using a turnover based approach is consistent with the existing Postal Levy Order and with the thrust of the 2011 Act which states that in order to facilitate ComReg in making a Postal Levy Order, postal service providers providing postal services within the scope of universal postal service must provide to ComReg information relating to their turnover from the provision of such postal services. Also, it seems reasonable to assume that larger postal service providers with larger customer bases are likely to have a greater number of regulatory issues to be addressed by ComReg.
- 45 Instead of using a turnover based approach, ComReg could have applied a fixed rate charge per postal service notified as being within the scope of universal postal service. However, it is considered that such an approach would not be consistent with the thrust of the 2011 Act and may result in disproportionate charging to other postal service providers offering postal services within the scope of universal postal service.
- 46 Therefore, having determined and assessed the impacts, it is considered that the option of setting the levy on percentage of relevant turnover is the best option as it is objective, transparent, and proportionate.

Option: Whether to apply a higher turnover percentage to universal postal services or not

- 47 In relation to this option, the existing Postal Levy Order applied a higher turnover calculation on the universal postal service provider. Also, it is clear from the 2011 Act that ComReg has more functions to discharge in relation to the regulation of universal postal services than the regulation of postal services generally. Furthermore, based on information provided in confidence to ComReg, the turnover from providing universal postal services is much greater than the turnover from providing non-universal postal services within the scope of universal postal service.
- 48 If ComReg did not apply a higher turnover percentage to universal postal services, the outcome could be disproportionate on other postal service providers offering postal services within the scope of universal postal service as their respective turnovers on these services is much lower than An Post's.

49 Therefore, based on these reasons, it would objective, proportionate and objective to set the levy by applying a higher turnover percentage on universal postal services.

Option: Whether to apply a minimum charge of €2,000 per postal service within the scope of universal postal service or not

50 In relation to this option, it is clear from confidential information provided to ComReg by the postal service providers providing postal services within the scope of universal postal service that An Post accounts for the majority of postal services within the scope of universal postal service, both by number and by applicable turnover. Therefore, An Post will contribute to the majority of ComReg's properly incurred expenses in the discharge of its functions relating to postal services.

51 However, it is considered that it would not be equitable or proportionate for An Post alone to cover all or most of these costs. Therefore, ComReg proposes a minimum charge to ensure that there is some cost recovery for regulating postal services within the scope of universal postal services while ensuring that such a minimum charge is appropriate relative to the turnover on those postal services.

52 Therefore, having determined and assessed the impacts, it is considered that the option of applying a minimum charge of €2,000 per postal service within the scope of universal postal service is the best option as it is objective, transparent, and proportionate.

Option: Whether to apply or not to apply an adjustment mechanism to increase the turnover percentage on universal postal services where there is a decline in that turnover beyond the forecast used to set the postal levy

53 In relation to this option, it is clear from confidential information provided to ComReg by An Post that its turnover on universal postal services will decline over the proposed period of the proposed Postal Levy Order. When using a turnover based approach to set the levy, this means that there is a risk that the levy may not cover in full the costs properly incurred by ComReg in the discharge of its functions relating to postal services as the turnover on which the levy is applied has declined.

54 The options here are to:

54.1 Set a new Postal Levy Order when the turnover for universal postal services declines such that ComReg's properly incurred costs are no longer covered. This could be annually with additional administrative costs and attendant charges to ComReg.

54.2 Set the proposed Postal Levy Order with an adjustment mechanism that takes account of likely future declines on turnover for universal postal services. This option would provide regulatory certainty by maximising the period of the proposed Postal Levy Order and minimise the administrative and attendant costs on ComReg in setting a Postal Levy Order.

55 Therefore, having determined and assessed the impacts, it is considered that the option of applying an adjustment mechanism to increase the turnover percentage on universal postal services where there is a decline in that turnover beyond the forecast used to set the postal levy is the best option as it is objective, transparent, and proportionate.

Q. 2 Do you have any views on this draft Regulatory Impact Assessment and are there other factors ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any factors that should be considered by ComReg.

5 Draft Postal Levy Order

S.I. No. [-] of 2013

COMMUNICATIONS REGULATION ACT 2002 (SECTION 30) POSTAL LEVY ORDER 2013

The Commission for Communications Regulation, in exercise of the powers conferred on it by section 30(2) of the Communications Regulation Act 2002 (No. 20 of 2002), as amended by section 44 of the Communications Regulation (Postal Services) Act 2011 (No.21 of 2011), hereby makes the following order:

Citation

1. This Order may be cited as the Communications Regulation Act 2002 (Section 30) Postal Levy Order 2013.

Interpretation / Definitions

2. (1) In this Order:

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

"Act of 2011" means the Communications Regulation (Postal Services) Act 2011 (No.21 of 2011);

"applicable undertaking" means a postal service provider providing a postal service within the scope of the universal postal service;

"appropriate proportion" for the purposes of Article 5(3) means that proportion of the levy period for which the applicable undertaking is liable to pay the levy, to the levy period as a whole;

"Commission" means the Commission for Communications Regulation, established by Part 2 of the Act of 2002;

"levy period" means a period of 12 months commencing on 1 July and ending on 30 June;

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

"relevant financial year" means, in relation to an applicable undertaking, the financial year of the applicable undertaking ending in a levy period;

"relevant turnover" means, in relation to an applicable undertaking, the gross revenue, excluding value added tax, paid or payable, of the applicable undertaking in respect of the provision of postal services in the State;

"universal postal service" has the meaning set out in section 6(1) of the Act of 2011;

“universal postal service provider” has the meaning set out in section 6(1) of the Act of 2011.

Applicability

3. This Order applies to applicable undertakings.

Terms and provisions

4. (1) A levy is imposed on every applicable undertaking, in the amounts specified in Article 5, in respect of each levy period commencing on or after [-].

(2) The levy imposed by paragraph (1) shall, subject to Article 5, be payable to the Commission, by each applicable undertaking, in four separate instalments, with one such instalment payable at the end of each quarter of the levy period in question.

5. (1) The amount of the levy imposed on an applicable undertaking that is the universal postal service provider, in respect of each levy period, is the aggregate of:

(a) 0.4 per cent of the relevant turnover, for the relevant financial year, of that applicable undertaking arising from the provision of the universal postal service; and

(b) 0.12 per cent of the relevant turnover, for the relevant financial year, of that applicable undertaking arising from the provision of its postal services falling within the scope of the universal postal service.

(2) The amount of the levy imposed on each applicable undertaking, other than the universal postal service provider, in respect of each levy period, is 0.12 per cent of the relevant turnover, for the relevant financial year, of that applicable undertaking arising from the provision of its postal services falling within the scope of the universal postal service subject to a minimum charge of €2,000 per postal service within the scope of the universal postal service.

(3) Where an applicable undertaking is liable to pay the levy for part only of a levy period, the amount of the levy imposed on the applicable undertaking in respect of the levy period shall be the appropriate proportion of the amount specified in paragraph (1) or (2) of this Article, as appropriate.

(4) Where, in respect of the levy period or part thereof, it is, by reason of the date on which the relevant financial year of an applicable undertaking terminates, impractical for an applicable undertaking to determine its liability under this Article for the purpose of making payments under Article 4 as they fall due, the applicable undertaking may, subject to Article 6, assess its liability on the basis of its relevant turnover in its financial year ending in the previous levy period, and may make provisional payments under Article 4 accordingly.

(5) Where the relevant turnover arising from the provision of the universal postal service declines between 15 per cent and 22 per cent over the period of this Order, the Commission may increase the turnover percentage referred to in Article 5(1)(a) to 0.45 per cent.

(6) Where the relevant turnover arising from the provision of the universal postal service revenue declines by more than 22 per cent over the period of this Order, the Commission may increase the turnover percentage referred to in Article 5(1)(a) to 0.5 per cent.

(7) The Commission will issue an Information Notice in relation to any increase in turnover percentage under paragraphs (5) and (6), and will inform the universal postal service provider in writing.

6. (1) Every applicable undertaking, shall, within 21 weeks of the end of its relevant financial year, submit to the Commission a statement, certified by a person who is qualified under the Companies Acts 1963 to 2012 for appointment as an auditor of a company, of the relevant turnover of the applicable undertaking in question, in the relevant financial year. The statement of an applicable undertaking that is a universal postal service provider shall distinguish between postal services provided within the scope of the universal postal service and postal services provided outside the scope of the universal postal service.

(2) Where the amount paid by an applicable undertaking in accordance with Articles 4 and 5 in respect of the levy period is less than the amount payable by reference to the statement of relevant turnover provided to the Commission in accordance with paragraph (1), the applicable undertaking concerned shall, within such time or times as may be specified by the Commission, pay to the Commission the balance of the levy so payable.

7. Any surplus of levy income over the expenses incurred by the Commission in the discharge of its functions relevant to this levy in the levy period will either

(a) be retained by the Commission to be offset against levy obligations for the subsequent year, or

(b) be refunded proportionately to the applicable undertakings on whom the levy is imposed.

Payment terms

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.

(2) A payment referred to in paragraph (1) (save in the case of a payment in cash or electronic funds transfer) and a statement of relevant turnover referred to in Article 6, may be delivered or 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 applicable undertaking.

(3) A request or repayment by the Commission to an applicable undertaking under this Order may be delivered or sent by post to the applicable undertaking at the last address of the applicable undertaking.

(4) In this Article "last address" in relation to an applicable undertaking means the last address notified to the Commission for the purposes of this Order or the Regulations.

Revocations

9. The Communications Regulation Act 2002 (Section 30) Postal Levy Order 2005 is hereby revoked.

GIVEN under the Official Seal of the Commission for Communications Regulation this
[-] 2013

Kevin O'Brien,

Commissioner.

on behalf of the Commission for Communications Regulation

6 Submitting Comments

- 56 The consultation period will run until 5pm on 24th April 2013, during which time ComReg welcomes written comments on any of the issues raised in this Consultation. It is requested that comments be referenced to the relevant question numbers and/or paragraph numbers from this document. Where views are provided, please provide a supporting rationale for your comments, including if possible, an indication on the broader impact of any changes proposed.
- 57 As it is ComReg's policy to publish all responses in order to make them available for inspection, responses to consultations should be provided as non-confidential documents, with any information for which confidentiality is claimed (e.g. commercially sensitive information) supplied in a separate annex. In this respect, please refer to ComReg's Consultation Procedures - ComReg Document No. 11/34 and ComReg's guidelines on the Treatment of Confidential Information - ComReg Document No. 05/24.
- 58 We request that electronic submissions be submitted in an unprotected format so that they can be appended into the ComReg submissions document for publishing electronically.
- 59 All responses to this consultation should be clearly marked:- "Reference: Consultation 13/30" as indicated above, and sent by post, facsimile or e-mail to arrive on or before 5pm, 24th April 2013 to:

Ms. Eavan Mangan
Commission for Communications Regulation
Abbey Court, Block DEF
Lower Abbey Street
Freepost
Dublin 1
Ireland

Ph: +353-1-804 9600 Fax: +353-1-804 9680

Email: marketframeworkconsult@comreg.ie

Question

Section

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- Q. 1 Do you agree that the levy structure as proposed in this Consultation and in the draft Postal Levy Order is objective, transparent and proportionate? 15
- Q. 2 Do you have any views on this draft Regulatory Impact Assessment and are there other factors ComReg should consider in completing its Regulatory Impact Assessment? Please explain your response and provide details of any factors that should be considered by ComReg. 20

Annex 1: Statement of relevant turnover

Commission for Communications Regulation
Abbey Court
Block DEF
Lower Abbey Street
Dublin 1

[DATE]

[POSTAL SERVICE PROVIDER]
Statement of Relevant Turnover pursuant to section 39(2)(d) of the
Communications Regulation (Postal Services) Act, 2011

In our opinion the total of the relevant turnover for the period from [] to [] amounted to €[].

[IN THE CASE OF THE UNIVERSAL POSTAL SERVICE PROVIDER ONLY: This consisted of €[] relevant turnover from the provision of non-universal postal services within the scope of universal postal service and €[] relevant turnover from the provision of universal postal services.]

This relevant turnover has been properly extracted from the books and records of the [postal service provider] with which the audited financial statements are in agreement.

[]
Accountants and Registered Auditors
[DATE]