



Commission for  
**Communications Regulation**

## **Postal Levy:**

**Response to 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**

### **Response to Consultation and Levy Order**

**Reference:** ComReg 13/50 and D07/13

**Date:** 30 May 2013

**An Coimisiún um Rialáil Cumarsáide**

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# 1 Introduction

- 1 The Commission for Communications Regulation ('ComReg') in Document 13/30<sup>1</sup> consulted on a proposed levy structure for the purpose of meeting the expenses properly incurred by ComReg in the discharge of its functions relating to postal services, to be imposed on postal service providers providing postal services within the scope of the universal postal service. The requirement arises from the Communications Regulation Act 2002 as amended ("2002 Act").
- 2 The 2002 Act further requires that any such levy must be imposed in an objective, transparent, and proportionate manner which minimises additional administrative costs and attendant charges to ComReg<sup>2</sup>.
- 3 There are currently six authorised postal service providers<sup>3</sup> 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 Eirpost - a division of Nightline. Therefore, as a result of the 2011 Act, ComReg's scope to recover the cost of its regulation is confined to such cases.
- 4 There were three responses received to Consultation 13/30. The respondents are those postal service providers who are currently liable to pay the postal levy, given that the services they currently provide, or intend to provide, are either universal services, as set out by ComReg in its Decision 08/12, or are services which in the opinion of these postal service providers, fall within the scope of universal service.
- 5 ComReg gratefully acknowledges the time and effort given by all respondents in considering Consultation 13/30 and in preparing their responses. ComReg has given careful consideration to these responses in finalising its levy order.
- 6 In order to provide regulatory certainty, the levy order will commence on 1 July 2013, in line with ComReg's financial year, and should remain in place for at least three years.

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<sup>1</sup> <http://www.comreg.ie/fileupload/publications/ComReg1330.pdf>

<sup>2</sup> Section 30(11A)(a) of the 2002 Act

<sup>3</sup> A list of the authorised service providers is available on the ComReg website: [http://www.comreg.ie/postal/regulation\\_of\\_authorised\\_providers.545.html](http://www.comreg.ie/postal/regulation_of_authorised_providers.545.html)

## 2 Background

7 Arising from the 2002 Act, ComReg's functions in relation to the regulation of postal services are:

- To ensure the provision of a universal postal service that meets the reasonable needs of postal service users<sup>4</sup>.
- 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 service<sup>5</sup>.

8 Section 30(2) of the 2002 Act specifies that for the purpose of meeting expenses properly incurred by 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 service.

9 Furthermore, The Postal Directive<sup>6</sup> notes that 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. Also, section 11 of the 2002 Act states ComReg must be independent in the exercise of its functions which an appropriate levy to cover its properly incurred costs facilitates.

10 In making its levy order, ComReg should have regard to:

- Its objectives under section 12(1)(c) of the 2002 Act which include:
  - 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;
  - To promote the interests of postal service users within the Community;
  - 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.

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<sup>4</sup> Section 10(1)(ba) of the Communications Regulation Act 2002 as amended

<sup>5</sup> Section 10(1)(c) of the Communications Regulation Act 2002 as amended

<sup>6</sup> Recital 47 of Directive 2008/6/EC ("The Third Postal Directive")

- 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 service<sup>7</sup>. These are:

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

11 Arising from the above, ComReg issued a consultation<sup>8</sup> which proposed a levy for the purpose of meeting the expenses properly incurred by ComReg in the discharge of its functions relating to the regulation of postal services.

12 In its proposals for consultation, ComReg took due consideration of the likely cost of regulation of the postal sector, and the likely applicable turnover incurred by postal service providers providing services within the scope of the universal services.

13 ComReg received responses from each of the postal service providers liable to pay the postal levy, namely An Post, DX, and Eirpost – a division of Nightline. Each of these responses has been carefully considered in setting the Postal Levy Order.

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<sup>7</sup> See listing at [http://www.comreg.ie/postal/regulation\\_of\\_authorized\\_providers.545.html](http://www.comreg.ie/postal/regulation_of_authorized_providers.545.html)

<sup>8</sup> ComReg Consultation Document No. 13/30 dated 27 March 2013  
<http://www.comreg.ie/fileupload/publications/ComReg1330.pdf>

## 3 Respondents' views and ComReg's position

- 14 In accordance with ComReg's consultation procedures<sup>9</sup>, the purpose of public consultation is to provide information to the public on the topic being consulted on and to give interested parties an opportunity to make representations. This allows ComReg to consider the views of interested parties in reaching a decision. However, it should be noted that the consultation process is not equivalent to a voting exercise and ComReg alone forms the final decision having had regard to all relevant information before it.
- 15 In this section, ComReg sets out the key points raised by each respondent and ComReg's position in response to these.
- 16 In Consultation 13/30, ComReg sought the views of interested parties in relation to ComReg's proposed Postal Levy Order by asking the following question:

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?

- 17 The key views raised by respondents and ComReg's corresponding response position are as follows:

### 3.1 Regulating universal postal services

- 18 In Consultation 13/30, ComReg noted 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 within the scope of universal postal service.

#### Views of respondents:

- 19 An Post recognised that there are additional and unique costs of regulating the Universal Postal Service Provider. An Post stated that as additional costs in regulating the Universal Service Provider are readily identifiable they should be managed on a cost-recovery basis.

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<sup>9</sup> ComReg Document 11/34 'Information Notice on ComReg Consultation Procedures' dated 6 May 2011

## **ComReg's position**

20 In accordance with the 2002 Act, the use of a postal levy is the only mechanism available to ComReg to recover its properly incurred costs. Furthermore, splitting out the cost associated with the regulation of the universal postal services (e.g. monitoring functions etc.) may be perceived to be undermining the independence of ComReg, which is also mandated by the 2002 Act, as the universal postal service provider would be paying directly for the regulation of its universal postal services. This is neither practical nor desirable given that, on occasion, ComReg's regulatory duties can include enforcement where the universal postal service provider is considered to be non-compliant with its obligations.

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

21 In Consultation 13/30, ComReg proposed 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 of its services within the scope of the universal postal service.

22 ComReg also stated in Consultation 13/30 that it considered it appropriate that there is a minimum applicable charge on the levy to ensure that the postal levy is objective, transparent, and proportionate. In Consultation 13/30, based on an 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 proposed that a minimum charge of €2,000 per annum for each postal service within the scope of universal postal service would be appropriate.

## **Views of respondents**

23 In relation to basing the levy on turnover, Eirpost and DX agreed with this approach. An Post considered that a combination of a fixed charge (to cover the cost of regulating universal postal service) and a levy on turnover (to cover the cost of regulating postal services within the scope of universal postal service) to be more appropriate.

- 24 Both DX and An Post raised the issue that the minimum charge, where applicable, should be applied to an applicable postal service provider as a whole rather than to each postal service within the scope of universal postal service that is being provided by that applicable postal service provider. DX also pointed out that under the scheme initially proposed by ComReg a start up business would have to pay €2,000 for each postal service within the scope of universal postal service provided despite having a low turnover for each. An Post recommended that the minimum charge be €10,000 per postal service provider as it considered this to be more equitable. An Post further noted that it will pay a significantly higher rate per service than other service providers.
- 25 It was also proposed by DX that there should be a lower threshold of turnover below which no postal service provider should have to pay the levy.
- 26 In relation the applicable turnover percentage for non- universal postal services within the scope of universal postal service, An Post stated that this should be consistent with the percentage applicable for universal postal services. DX noted that the turnover percentage on postal services within the scope of universal postal service meant that a postal service provider providing a single service would pay no more than €2,000 if its relevant turnover was up to €1.66 million.

### **ComReg's position**

- 27 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.
- 28 Therefore, as required by the Postal Levy Order and section 39(2)(d) of the Communications Regulation (Postal Services) Act 2011, each postal service provider providing postal services within the scope of universal postal service will be required to provide ComReg a statement of relevant turnover as set out in Annex 1.
- 29 In relation to An Post's view that the cost of regulating universal postal services should be recovered directly from An Post as the universal postal service provider directly, ComReg has provided its position on this matter at paragraph 20 above.



- 30 In relation to applying a minimum levy, ComReg remains of the view that it is appropriate to apply a minimum levy to ensure all applicable postal service providers contribute to the cost of regulation. ComReg maintains that it would not be equitable or proportionate for An Post alone to cover all or most of these costs. Therefore, the Postal Levy Order will include a minimum charge to ensure that there is some cost recovery for regulating non-universal 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.
- 31 Having considered the respective views of An Post and DX, ComReg agrees that it is more equitable to charge a minimum levy on a per postal service provider basis. As a result, a minimum levy of €5,000 will be charged on each postal service provider providing services within the scope of the universal service regardless of the number of those services provided. Having considered the total cost of postal regulation, 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 believes that €5,000 is a reasonable minimum levy to apply.
- 32 In relation to the applicable percentage on turnover for non-universal postal services within the scope of universal postal service, ComReg has considered the views of DX and An Post and has revised the Postal Levy Order. Accordingly, a levy percentage of 0.4% will be applied to both universal postal services<sup>10</sup> and non-universal postal services within the scope of the universal postal service. This will ensure a more consistent application of the levy between both universal services and non-universal postal services within the scope of universal postal service.

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<sup>10</sup> Before any adjustment (if required) as set out in section 3.2.1 of this paper

### 3.2.1 Adjustment for declining turnover on universal postal services

33 As noted in Consultation 13/30, 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, 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, to minimise additional administrative costs and attendant charges to ComReg, and to provide regulatory certainty by maximising the period of this postal levy order, ComReg in Consultation 13/30 proposed 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 universal postal service turnover provided by the universal postal service provider which were used to set the applicable turnover percentage for universal postal services in the Postal Levy Order.

#### Views of respondents

- 34 Eirpost noted that the levy is to be subject to a volume threshold and noted that it is anxious that it does not penalise them as a growing operator.
- 35 An Post noted that it had serious concerns about the proposed adjustment mechanism and believed no mechanism is required. An Post maintained that with respect to the proposed adjustment mechanism, ComReg should not attempt to exempt itself from the need to cut costs in the event that a larger than forecast decline in volumes occurs. An Post requested clarity on the mechanism to be applied as in order to ensure equitable application of the levy, it would be necessary to have other providers, whose market share might increase at An Post's expense, to contribute proportionately more over the three year duration of the levy.
- 36 An Post claimed that in applying the proposed adjustment mechanism, ComReg has assumed that any An Post losses will be attributable to e-substitution. Where these losses are attributable to gains made by other postal service providers, An Post further claimed that those service providers should be obliged to pay a higher percentage in proportion to the business that has switched. An Post added that the likelihood of a progressive increase to the levy represents a handicap to An Post and a distortion to competition.

## ComReg's position

- 37 In response to Eirpost, ComReg notes that the levy adjustment mechanism only applies to turnover on universal postal services. Therefore, it is only An Post, as universal postal service provider, that could be potentially affected by the adjustment mechanism.
- 38 In response to An Post's comments, ComReg agrees with An Post that it is in the mutual interest of ComReg and An Post that the new levy formula is demonstrably fair and is both financially feasible and sustainable over the three year period.
- 39 ComReg is tasked by the 2011 Act to carry out certain functions. These tasks cannot be reduced or removed as there is a legislative obligation on ComReg to carry them out. It has already been established that ComReg operates in an efficient manner and that in fact ComReg's staffing of its postal regulation team is low relative to other NRAs responsible for postal regulation<sup>11</sup>. ComReg applies, and will continue to apply, a continuous and rigorous scrutiny of its costs<sup>12</sup>.
- 40 As a result of the 2011 Act, ComReg can only recover its regulatory costs from postal service providers providing postal services within the scope of universal postal service. An Post accounts for the majority of these postal services, 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. An Post has visibility of its own rate of decline in universal postal service turnover in advance and therefore will have prior knowledge itself if the mechanism will apply or not. Due to information asymmetry, ComReg will not have advance oversight of this. The adjustment mechanism only applies where the applicable universal postal service turnover, as it has decreased significantly, will no longer be sufficient to cover ComReg's properly incurred costs as the levy is calculated by reference to applicable turnover. Consequently, though the levy % for universal postal services may increase, the total levy to be paid by An Post should remain relatively the same with no progressive increase to the total levy cost payable by An Post as a result.

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<sup>11</sup> At section 6.2.3 of WiK Consult's study for the European Commission 'The Role of Regulators in a More Competitive Postal Market' dated September 2009

<sup>12</sup> Further detail on this was provided in paragraphs 25 – 29 of Consultation Document No. 13/30

- 41 Also, as required by the 2002 Act, ComReg cannot profit from the postal levy as 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. This is also set out in the Postal Levy Order. Furthermore, the adjustment mechanism will minimise additional administrative costs and attendant charges to ComReg by ensuring that the Postal Levy Order is “future proofed”.
- 42 Regarding volume losses made by An Post to other postal service providers, under the Levy Order, other postal service providers will pay more levy as their relevant turnover increases. Therefore, all postal service providers will contribute to the levy fund at a proportionate rate which represents the level of regulation necessary in each case.

### **3.3 Comments on the draft Regulatory Impact Assessment (RIA)**

- 43 In Consultation 13/30, ComReg asked the following question:

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.

#### **Views of respondents**

- 44 Eirpost agreed with the RIA.
- 45 In its response, An Post made a number of observations in relation to the draft RIA which reflect its comments made in its response to the consultation.

#### **ComReg’s position**

- 46 ComReg has considered the views of An Post in finalising its views and its supporting RIA. In particular, ComReg has revised its views on the levy for non-universal postal services within the scope of universal postal service by amending the minimum charge to a per postal service provider basis and by matching the applicable turnover percentage to that for universal postal services<sup>13</sup>.

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<sup>13</sup> Before any adjustment (if required) as set out in section 3.2.1 of this paper

## 4 Regulatory Impact Assessment

- 47 ComReg's published RIA Guidelines<sup>14</sup> (Doc 07/56a), in accordance with a policy direction to ComReg<sup>15</sup>, 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.
- 48 In making the Postal Levy Order, 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 2005<sup>16</sup>. 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.
- 49 However, in making this Postal Levy Order, ComReg has made decisions on the structure of the postal levy and therefore this RIA examines the options open to ComReg in relation to the structure of the postal levy.
- 50 In Consultation 13/30, ComReg had prepared a draft RIA, formed from preliminary views on the proposed structure of the proposed postal levy, and had invited interested parties to submit any comments or information which they believe ComReg should consider in finalising its Postal Levy Order. As a result of these comments and inputs, ComReg has now finalised its positions and RIA as outlined below.

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<sup>14</sup> Which have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009

<sup>15</sup> Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003

<sup>16</sup> See SI No.319 of 2005, the Communications Regulation Act 2002 (Section 30) Postal Levy Order 2005.

## 4.1 Steps involved

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

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**

52 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**

53 In proposing the Postal Levy Order, 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 €5,000 per postal service provider 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 turnover percentage on universal postal services for 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**

- 54 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 and a resultant larger applicable turnover are likely to have a greater number of regulatory issues to be addressed by ComReg.
- 55 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.
- 56 Also, ComReg could have applied a combination of fixed rate charge to cover the cost of regulating the universal postal services and a turnover based approach for the non-universal postal services within the scope of universal postal service. However, it is considered that such an approach could not be allowed as the 2002 Act requires ComReg's costs to be recovered by a levy alone. Furthermore, such an approach would not be consistent with the thrust of both the 2002 Act, as amended, and the 2011 Act. In particular, the 2002 Act (amended) requires the regulator to be independent and this may be perceived to be not the case if the Universal Postal Service Provider was directly paying for the cost of regulating its universal postal services which on occasion can include enforcement action where it is found that the Universal Postal Service Provider is not compliant with its obligations.
- 57 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, proportionate and consistent with the legislation.



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

- 58 In relation to this option, the existing Postal Levy Order applied a higher turnover calculation on the universal postal service provider. Furthermore, based on information provided in confidence to ComReg, the turnover from providing universal postal services is much greater than the turnover from providing postal services within the scope of universal postal service.
- 59 However, in order to maintain consistency between the regulation of universal postal services and non-universal postal services within the scope of universal postal service it has been decided that the same percentage of turnover (0.4%) shall be applied. This will ensure equitable application of the order whilst also ensuring that the Universal Postal Service Provider will continue to pay more towards the cost of regulation, as is appropriate, due to the higher turnover achieved in providing the universal postal services.

**Option: Whether to apply a minimum charge of €5,000 per postal service provider or not**

- 60 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.
- 61 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 non-universal 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.
- 62 Therefore, having determined and assessed the impacts and in particular having considered the responses provided to ComReg's Consultation Document No. 13/30, it is considered that the option of applying a minimum charge of €5,000 per postal service provider that provides any 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 turnover percentage on universal postal services for the postal levy**

63 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 likely decline over the period of the 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.

64 The options open to ComReg are to:

64.1 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 arise annually with additional administrative costs and attendant charges to ComReg and ultimately the industry that it regulates.

64.2 Set the 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 Postal Levy Order and minimise the administrative and attendant costs on ComReg in setting a Postal Levy Order.

65 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, proportionate, and minimises the administrative and attendant costs on ComReg.

# 5 Postal Levy Order

**S.I. No. 181 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 as provided under Article 6(1) of this Order;

“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 1 July 2013.

(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.

### **Amount of the levy**

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) 0.4 per cent of the relevant turnover, for the relevant financial year, of that applicable undertaking arising from the provision of its non-universal 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 0.4 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 €5,000 per postal service provider providing postal services 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.

### **Statement of relevant turnover**

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 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.

### **Surplus of levy income**

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.

**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  
29 May 2013

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Kevin O'Brien,

Commissioner.

on behalf of the Commission for Communications Regulation

# 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]