



Commission for
Communications Regulation

Postal Levy

Submissions to Consultation 13/30

Submissions to Consultation

Reference: ComReg 13/50s

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Submissions Received from Respondents

Consultation:	13/30
Response to Consultation:	13/50

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1: An Post

**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**

COMREG DOCUMENT 13/30

**An Post Response – Non Confidential
24 April 2013**

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1. Introduction

An Post welcomes the opportunity to submit its views on ComReg's proposals in relation to the Postal Levy.

ComReg's Postal Strategy Statement 2012-2014¹ sets out the strategic context for the postal industry including the many challenges with which it is confronted. These are overwhelmingly due to the radical transformation to the economic landscape which has been witnessed in Ireland and the emergence of new technologies. In the five year period from 2008, core mail revenue has declined by almost 28%.

Table 1: Mail Revenue decline 2008-2012

	2008	2009	2010	2011	2012
Mail revenue decline	-2%	-10%	-7%	-7%	-5.2%
Cumulative	-2%	-11.8%	-18%	-23.5%	-27.7%

An Post is forecasting a further c.5% decline p.a. which means that by 2015, core mail revenue will have declined by 38% from the peak.

The Strategy Statement also sets out the action plan required as a result of the implementation of the Communications Regulation (Postal Services) Act, 2011 ('the Act').

Prior to answering the specific questions posed in the Consultation, An Post wishes to comment on:

- The current postal levy regime;
- The projected cost of ComReg's obligations to regulate the postal market over the next three years; and
- An appropriate methodology for recovering this expense without distorting competition,

1.1 Current postal levy regime

The current postal levy order is S.I. No 319 of 2005 Communications Regulation Act 2002 (Section 30) Postal Levy Order 2005.

At present An Post is charged 0.25% of its Universal Service turnover². The levy charged over the last three years was:

¹ ComReg document 12/116

² Until 1 January 2011, An Post was also charged €15k arising from the provision of services falling outside of the scope of the Universal Postal Service

Table 2: Levy charged 2011-2013 **[Confidential]**

	June 2011 €m	June 2012 €m	June 2013 €m (Estimate)
Levy charged	[X]	[X]	[X]

1.2 Projected Cost of Regulation

ComReg states³ that in drafting the proposed postal levy order, it has considered the likely cost of regulation. These costs are as follows:

Table 3: ComReg's estimate of regulatory costs for the postal sector

	June 2014 €m	June 2015 €m	June 2016 €m
Annual Costs	1.3	1.3	1.3
'Once-off' costs associated with ComReg's new statutory obligations arising under the Act	0.4 ⁴		
Total	1.7	1.3	1.3

The breakdown of the €1.7m expenditure is referred to by ComReg⁵. This is as follows:

Table 4: - ComReg's breakdown of postal regulatory costs

	€m	An Post comment
Staff costs	0.6	ComReg states that it has a postal team of 5 (some part time) although the postal team has use of accounting, legal and economic staff when required.
Technical advice	0.3	An Post believes that this may represent the Quality of Service monitoring costs
Outsourced services	0.5	An Post believes that this may represent the 'once-off' costs associated with ComReg's new statutory obligations arising under the Act
Other overheads	0.3	No breakdown available
Total	1.7	

There is no further breakdown of overheads or staff costs available although An Post notes that ComReg ensures that the level of expenditure is kept to a minimum with tight budgetary control⁶.

³ Paragraph 5 of the Consultation document

⁴ ComReg is proposing that this is charged over the three year period

⁵ Source: Footnote 20 of the Consultation document directs the reader to ComReg's Annual Financial Forecast for the year to 30 June 2013.

⁶ Paragraph 13 of the Consultation document

1.3 Appropriate methodology for charging the properly incurred administrative expenses without distorting competition

This Consultation is essentially about establishing a methodology to charge administrative expenses to postal service providers providing services within the scope of the Universal Service while having regard to the issues set out by ComReg in paragraph 9 of its Consultation document.

One of ComReg’s main objectives in setting the levy is to ensure that maximum possible transparency is provided in relation to the costs of regulating the postal industry. This industry is characterised by declining volumes together with high fixed costs. It is therefore critical for all operators that a transparent levy is implemented.

ComReg’s proposal is set out in section 3.2 of the Consultation paper and may be summarised as follows:

Table 5: ComReg’s proposal as drafted

Operator	Basis for Levy charge
An Post	<ul style="list-style-type: none"> • 0.4% of relevant turnover from the provision of Universal Services plus • 0.12% of relevant turnover from the provision of services falling within the scope of the Universal Service • 0.4% above subject to adjustment mechanism if turnover declines by certain levels
Other Operators	<ul style="list-style-type: none"> • 0.12% of relevant turnover from the provision of services falling within the scope of the Universal Service • Subject to a minimum of €2,000 per service

ComReg believes that this is what is required to recover €1.4m p.a.

Paragraph 14 requests views on whether the proposed levy should reflect the higher costs associated with regulating Universal Services rather than non Universal Services within the scope of the Universal Service. ComReg is proposing that different percentage rates should apply to these two categories with An Post as the Universal Service Provider paying a higher percentage of turnover to reflect these additional costs.

An Post recognises that there are additional and unique costs of regulating the Universal Service Provider. However, the key components of these costs are readily identifiable and could be charged to An Post in their entirety on a

cost recovery basis. The remaining general costs should then be charged to all postal service providers providing services within the scope of the Universal Service on an equal and non discriminatory basis. This is much more likely to achieve the objective of ensuring that the levy does not distort competition as required by Section 44 (c) of the Act. Otherwise the regime envisaged would offer operators competing with An Post the potential advantage of lower rates on an increased market share captured from An Post.

ComReg has also sought views⁷ on ‘future proofing’ the levy to ensure that if volumes decline by more than An Post has forecast, then an adjustment can apply in order to ensure that the monetary value charged remains at the same level over the three year period. An Post has serious concerns about this proposal, namely:

- A precipitous decline would be more problematic for An Post than for ComReg. An Post fully accepts that ComReg has statutory responsibilities which must be undertaken. But the fact is that if turnover declines by a larger amount than An Post estimates (this would in fact be a decline from the peak of greater than the 38% envisaged), An Post will have to further drive down its costs while also undertaking its statutory responsibility to deliver the Universal Service. ComReg cannot remain immune from cost cutting measures as a result of larger than forecast volume decline and should not attempt to exempt itself from this requirement;
- The mechanism for ‘future proofing’ the levy as presented is unclear. For example, would ComReg wait until the end of the three year period to determine if the adjustment mechanism is required? If so, as presently drafted the proposal provides An Post with no certainty over the next three years. Furthermore to be totally equitable it would be necessary to have postal operators, whose market share increases at An Post’s expense, contribute proportionately more over the three year period; and
- An Post’s proposal above reduces the requirement for the mechanism as many of the direct costs will be charged on a cost recovery basis.

ComReg has also sought views on the minimum charge for other postal service providers⁸. An Post is of the opinion that €2,000 per service appears very low given that the proposal for An Post is c. €40,000 per service. An Post’s view that a larger minimum should be charged and that this should apply per operator rather than on a per service basis as currently proposed by ComReg. An Post suggests a minimum of €10,000 per operator who provides these services within the scope of the Universal Service.

⁷ Paragraph 22 of the Consultation paper

⁸ Paragraph 23 of the Consultation paper

An Post's proposal could be demonstrated with the following example. Assume that the clearly identifiable cost of regulating Universal Services is €0.5m. On this basis, the additional expenses could be levied on both An Post and other operators providing services within the scope of the Universal Service at the same percentage of the relevant turnover, possibly 0.25%. This approach can be summarised as follows:

Table 6: An Post's proposal

Operator	Basis for Levy charge
An Post	<ul style="list-style-type: none"> • €0.5m (clearly identifiable cost of regulating Universal Services) plus • 0.25% of relevant turnover from the provision of Universal Services and services falling within the scope of the Universal Service • No adjustment mechanism required
Other Operators	<ul style="list-style-type: none"> • 0.25% of relevant turnover from the provision of services falling within the scope of the Universal Service • Subject to a minimum of €10,000 per operator

This should generate €1.4m but, in the opinion of An Post, offers several advantages compared with ComReg's proposal.

Primarily, these advantages are that this alternative proposal is

- manifestly more equitable;
- does not discriminate; and
- provides more flexibility for ComReg if any changes were required to the specific regulation of An Post as the Universal Service Provider. If the directly identifiable costs are larger the percentage element can be reduced accordingly.

2. Response to consultation questions

Q1. Do you agree that the levy structure as proposed in this Consultation and in the draft Postal Levy Order is objective, transparent and proportionate?

An Post proposes amendments as set out in Section 1 of this response which it believes will be more transparent, objective and proportionate. These are:

- The percentage of turnover should be the same for all operators excluding directly identifiable costs related to the regulation of Universal Services, which should be charged to An Post as the Universal Service Provider on a cost recovery basis.
- The minimum charge for postal service providers providing services within the scope of the Universal Service should be €10,000 per operator (rather than by service)
- No adjustment mechanism is required

An Post has no issue with the invoicing of the levy on a quarterly basis or the requirement to submit a Statement of relevant turnover.

Q2 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.

ComReg in its Regulatory Impact Assessment ('RIA') exercise considers the options with which it was confronted and its preliminary determination made in respect of each:

Option # 1: Whether the levy should be based on percentage of relevant turnover or not

ComReg have set out the options available which are either defined as being based on a percentage of turnover or on a fixed charge basis. However, An Post believes that a combination of approaches should be considered. This approach would mean that clearly identifiable costs associated with the regulatory oversight of the Universal Service Provider could be charged on a cost recovery basis and other costs associated with the regulation of the postal market as a whole could then be charged on a percentage of turnover basis. This percentage should not discriminate between operators.

Option # 2: Whether to apply a higher turnover percentage to universal postal services or not

ComReg advances a number of arguments in favour of a higher turnover percentage for universal postal services. ComReg first contends that this is because it is faced with more obligations in relation to these services. While this is obviously the case it does not logically follow that the task of overseeing Universal Postal Services is over 3 times more costly in terms of labour hours. An Post believes that by charging the clearly identifiable charges in regulating the Universal Service Provider directly, there is no requirement to make an arbitrary assessment such as the assessment made by ComReg in the Consultation paper on this matter.

Option # 3: Whether to apply a minimum charge of €2,000 per postal service within the scope of universal postal service or not

An Post does not agree with ComReg's opinion that a minimum charge of €2,000 per service should apply particularly as it is not 'proportionate'. Adoption of a minimum threshold of €10,000 per operator, rather than on a per service basis, is in An Post's opinion, a fairer basis on which to levy charges.

Option # 4: 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.

The 'future proofed' mechanism will present An Post with regulatory uncertainty as to its liabilities and to when adjustments to them will be made. Furthermore, it assumes that An Post's revenue losses are accounted for solely by electronic substitution. However, it is possible that some of the business lost will be attributed to gains made by competitors at An Post's expense. In such circumstances, other operators should pay a contribution at a higher percentage in proportion to business that has switched. Ignoring this aspect would be an unfair outcome for An Post.

3. Conclusion

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. An Post must therefore not be compelled to fund the Commission's administrative expenses (other than those clearly identifiable as being related to the regulation of Universal Services) at a higher rate than that imposed on other market players. This, coupled with the likelihood that the fee will increase progressively over the period, will potentially act as a serious handicap on An Post and distort competition. It therefore urges ComReg to construct a regime that offers a level playing field for all. By effectively ring fencing direct expenses attributable to ComReg's oversight of An Post, an industry wide flat rate applicable to services within the scope of the Universal Service can be easily applied, subject to a minimum of €10,000 per operator. This constitutes a more robust approach to "future proofing" and will enable An Post's competitors with growing market share to contribute in a more equitable and transparent manner.

4. Proposed Amendments to the draft Postal Levy Order

Please find below a revised wording for the Postal Levy Order which incorporates An Post's proposals outlined above.

Key to proposed amendments:

- Items in **Bold** are proposed insertions.
- Items with strikethrough are proposed deletions.

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~~ **directly identifiable costs properly incurred by the Commission** arising from the **regulation of the applicable undertaking in the** provision of the universal postal service; and

(b) ~~0.12~~ **0.25** 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~~ **0.25** 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~~ **€10,000** per postal service **provider** 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

2: DX



DELIVERED EXACTLY

www.thedx.ie

36-37 North Park
North Road
Finglas
Dublin 11

T 01 879 1700
F 01 842 1056
DX DX 1 Dublin
E info@thedx.ie

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

22 April 2013

Reference: ComReg 13/30 Consultation and Draft Levy Order

Dear Ms Mangan,

Thank you for the opportunity to contribute to ComReg's thinking about the proposed levy for meeting its expenses.

DX Ireland agrees with the basic principle that postal operators providing services within the scope of the universal service should contribute to ComReg's costs, although we believe there should be an exemption for very low levels of activity. However, the proposal for a minimum charge of €2,000 per service is disproportionate and unobjective and needs to be changed.

ComReg has proposed that "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".

ComReg should reconsider this proposal for three reasons:

1. As proposed, an operator providing several services within the scope of the universal postal service would have to pay at least €2,000 for each service. Therefore, an operator providing four distinct services would have to pay at least €8,000.
2. An operator providing a single service would only pay more than €2,000 if its relevant turnover exceeded €1.66m. This means that all lower levels of activity would incur the same flat rate levy of €2,000. It means that a start-up business would have to pay €2,000 **for each service it provides**, despite having very low turnover for each service. This is clearly disproportionate.
3. As currently proposed, the levy would apply to all operators without regard to their level of activity. This presents ComReg with a practical problem policing the activity of small operators who might occasionally carry very small volumes of mail within the scope of the universal service and ensuring they pay the levy.



DX believes that ComReg should consider several options that would be more proportionate and objective than the current proposal:

1. References to a minimum charge per postal service should be removed from the Levy Order, which should be redrafted so that it is clear that the minimum charge is instead applied to each service provider providing services within the scope of the universal postal service regardless of the number of services provided.
2. There should be a lower threshold below which no operator should have to pay the levy. It would be reasonable to set this threshold at €50,000 total for all relevant services. Above €50,000 but below €1.66m total revenue the levy should be €1,000 and the levy should be 0.12 per cent of relevant turnover above €1.66m.

If you would like to discuss these points in greater depth please don't hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Galligan'. The signature is written in a cursive style with a large initial 'K'.

Kevin Galligan

Regional Director - Ireland

3: Eirpost – a division of Nightline

Response by Nightline to Consultation and Draft Levy Order

ComReg Document 13/30

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

24 April 2013

Eirpost, a division of Nightline Logistics Group is pleased to submit this response.

Nightline Logistics Group has paid the levy under the current 2005 Levy Order, and we will ensure to comply with future requirements.

Please see below our responses to the specific questions you pose.

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?

Nightline believes that the proposal at 0.4% for Universal Services and 0.12% for non-universal services within the scope of universal services (subject to a minimum charge of €2000) is relatively similar in structure to the current postal levy, and hence the structure seems workable. We also agree that a three year timeframe seems reasonable.

However, we note that the levy is now subject to a volume threshold, which increases with declining volumes – up to 0.5%. This is of concern to us, with recent reported declines in An Post volumes of c.5% as your consultation points out. We are anxious that this does not penalise a growing operator.

As you know, we are pleased to share details of our plans with you in the interests of growing the postal and wider logistics market.

Q 2: Do you have any views on this draft Regulatory Impact Assessment and are there any 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

We agree with the Regulatory Impact Assessment (RIA) as presented.