

MALAYSIAN COMMUNICATIONS AND MULTIMEDIA COMMISSION
POLICY AND STRATEGIC STUDY OF THE MALAYSIAN POSTAL INDUSTRY

DISCUSSION PAPER

31 DECEMBER 2002

POLICY AND LEGISLATIVE RECOMMENDATIONS

The Malaysian Communications and Multimedia Commission (MCMC) launched, in August 2002, a policy and strategic study of the Malaysian Postal Industry. Spectrocan and the Canada Post International Limited (CPIL) Study Team were commissioned to carry it out.

As part of the consultative process, an Industry Workshop is planned for January 8, 2003.

The following sections provide an outline of **Issues and Recommended Changes, Recommended Changes to Legislation, and Policy and Strategic Recommendations.**

The Industry Workshop would focus on the following:

- Background and objectives of the study
- Key preliminary learnings of the CPIL study team
- CPIL study team recommendations: Changes to legislation, and policy and strategy
- The workshop would provide a process and forum for industry representatives to provide comments and feedback

1. SUMMARY OF ISSUES AND RECOMMENDED CHANGES

The findings and gaps identified in the strategic study are summarised in the following tables. A brief synopsis of the recommended changes is provided in the left column. More detail as to the recommended changes to the regulatory instruments are provided in the next section.

ISSUE / ELEMENT TO BE ADDRESSED	CURRENT REGULATORY INSTRUMENT OR PRACTICE	RECOMMENDED REGULATORY INSTRUMENT OR PRACTICE
<p>The principle of Universal Services related to postal services should be sufficiently defined in a public document such as the regulations in order to ensure transparency.</p>	<p>Postal Services Act does not define universal services or contain objects that state a purpose regarding universal services.</p> <p>USO gets specifically defined in the licence obligations of Pos Malaysia and the regulatory restrictions applied to its freedom to unilaterally undertake certain actions concerning the provision of services.</p>	<p>New Postal Act to define USO in terms of principles and purpose.</p> <p>Regulation would define the precise scope of Universal Services.</p> <p>Licence granted to USP would set out terms of USO by incorporating by reference the then current definition and requirements of Universal Services as set out in the regulations.</p>
<p>Universal Service Providers (USPs) and non-USPs need to be clearly distinguished from one another so as to apply an appropriate set of regulations to govern unique issues specific to USPs and another set to govern unique issues specific to non-USPs.</p>	<p>Postal Services Act refers to "licensee" and does not distinguish between USPs and non-USP.</p> <p>Rate regulation applies to licensees that produce stamps (<i>de facto</i>, the USP).</p> <p>Distinction rests in the licence granted to the postal operator which contains USO provisions.</p> <p>Differences with the functions and duties of the Commission as to regulation of USPs and non-USPs is not defined in the Act.</p>	<p>New Postal Act would distinguish between USP and non-USP business. Note that the USP could have non-USP postal business which would be subject to the same regulations that apply to other non-USP postal providers.</p> <p>Distinction would remain in the licence granted to the USP in that it would contain USO provision.</p>

ISSUE / ELEMENT TO BE ADDRESSED	CURRENT REGULATORY INSTRUMENT OR PRACTICE	RECOMMENDED REGULATORY INSTRUMENT OR PRACTICE
<p>The scope of products and services USPs are obligated to provide should be sufficiently defined and understood by providers and users of such products and services.</p>	<p>The licence of Pos Malaysia states an obligation to provide the delivery of postal articles within, to, and from Malaysia. Postal articles include anything transmittable by post.</p> <p>Virtually all products provided by the USP network are treated as universal according to legislation, though in practice there appear to be exemptions (e.g. Pos Ekspres, EMS).</p> <p>The Pos Malaysia licence states the obligation to provide counter financial services is subject to requirements specified by the Minister though, in practice, it is not clear whether this is considered a universal service.</p>	<p>Act to provide that these can be defined by regulation.</p> <p>Specific obligations to be set out in USP licence.</p>

ISSUE / ELEMENT TO BE ADDRESSED	CURRENT REGULATORY INSTRUMENT OR PRACTICE	RECOMMENDED REGULATORY INSTRUMENT OR PRACTICE
<p>Pricing conditions concerning the provision of universal services should be affordable to users and be sufficiently regulated to ensure continued affordability to users of such services.</p>	<p>Prices for most services provided by Pos Malaysia require approval from the Minister, even services that may not strictly be USO.</p> <p>Under the Act, functions and duties of the Commission specify the role of addressing “the interests of users” with respect to pricing of postal services.</p> <p>The Commission has regulatory authority over the setting of prices for all postal services (including postal financial services); however, there is some ambiguity to this authority as the licence agreement with Pos Malaysia does allow for the terms to be negotiated for postal financial services.</p>	<p>Act to provide that these are to be set out in regulation by specific tariff or by base tariff and amended by maximum price cap formula.</p>
<p>The quality of services provided by USPs should meet the needs of users of such services and should be sufficiently defined and understood by providers and users of such services.</p>	<p>Licensing conditions for Pos Malaysia include obligations to meet standards of performance conditions and addressing customer complaints through terms determined by the Commission.</p> <p>Licensing conditions for the USP related to quality of the postal network (as in the number of rural outlets, hours of service, number of letter boxes, delivery performance) are not specifically itemised as elements to be addressed in the provision of universal services except in the most general terms.</p>	<p>New Postal Act would define the quality requirements in terms of principles and purposes.</p> <p>Specific requirements to be set out in regulations.</p> <p>Licence to set out details as to how quality of services will be monitored.</p>

ISSUE / ELEMENT TO BE ADDRESSED	CURRENT REGULATORY INSTRUMENT OR PRACTICE	RECOMMENDED REGULATORY INSTRUMENT OR PRACTICE
<p>Universal services should be efficiently provided by USPs using the best available means of production.</p>	<p>The function and duties of the Commission as defined in the Act provide partial assurance that inefficient provision of universal services do not get passed on to users in terms of higher prices.</p> <p>USP may not be using the best available means of technology and production to deliver services.</p>	<p>The New Act would set out in its objects the requirement for the efficient provision of postal services.</p> <p>Regulations can set out the terms and conditions with respect to how efficiency will be ensured.</p>
<p>Universal Services should be provided in such a manner as to ensure a financial equilibrium of USPs.</p>	<p>Act and regulations are largely silent as to funding the USO. The exclusive privilege defined in the Act does not correspond to traditional definitions, as the USP does not have a legally determined reserved area.</p> <p>A broader reference to funding mechanisms (of which exclusive privilege could be a choice) is not defined in the Act.</p>	<p>The New Act needs to contemplate the funding of the USO, and give non-exhaustive examples of the forms of funding used.</p> <p>In addition, the New Act would need to contemplate regulations under which accounting standards would be prescribed if a Reserved Area were chosen.</p>
<p>Universal postal services should be adaptive to changes in the social, economic, and technological conditions of society.</p>	<p>Exclusive privilege is defined as the choice funding mechanism in the legislation.</p> <p>It is implied that "Government" is the USP.</p>	<p>New Act would set this out in its objects and provide that regulations may be enacted where such changes introduce the need to set out clarification to any aspect of the regulatory scheme.</p>

ISSUE / ELEMENT TO BE ADDRESSED	CURRENT REGULATORY INSTRUMENT OR PRACTICE	RECOMMENDED REGULATORY INSTRUMENT OR PRACTICE
<p>Universal Services to under-served areas</p>	<p>The Postal Services Act states the Commission's duties include the promotion and expansion of postal services with a view to the economic development of Malaysia.</p> <p>Licence contemplates the Minister may issue requirements for the provision of rural services.</p>	<p>There should be regulations under which certain exceptions to the frequency and other elements of USO be recognised.</p> <p>Under the USP licence conditions, the USP would be required to develop a plan for improvement of the network, particularly in the underserved areas. This plan would be submitted to the Commission for approval and follow-up progress monitoring.</p>
<p>Complaints with respect to universal service provision</p>	<p>The licence with Pos Malaysia contains a condition relating to the requirements and procedures required of the postal operator for handling of customer complaints.</p> <p>The Commission is excessively involved in managing customer issues that should be directly addressed by the USP.</p>	<p>New Act to set out that the role of the Commission is to ensure that each licensee has an acceptable complaints handling system and then to monitor that system as a system. Each licensee would have an obligation to submit its complaints handling system to the Commission for review and to implement it with the changes required by the Commission.</p>
<p>Having met all conditions required to meet universal service obligations, USPs should be allowed to operate as freely as other licensees, provided this does not compromise any element of universal service provision.</p>	<p>There is a significant amount of formal and informal regulatory oversight of USP activity not directly related to provision of universal services.</p>	<p>New Act should be based on the principle that only where there is a national policy objective warranting regulation of the market, will there be regulation.</p>

ISSUE / ELEMENT TO BE ADDRESSED	CURRENT REGULATORY INSTRUMENT OR PRACTICE	RECOMMENDED REGULATORY INSTRUMENT OR PRACTICE
UPU representation	The role and responsibility between the regulator and the USP with respect to UPU representation is not defined under any formal instrument.	New Act should provide that the regulator can delegate its responsibilities for UPU representation, either in whole or in part, by regulation. Where UPU representation is delegated to a licensee, the licence shall set out the details as to who is to bear the expenses associated with the delegated UPU representation.
There should be fair competition in the Postal Industry, with particular emphasis on competition between USPs and non-USPs.	There is no national legislation governing industrial competition in Malaysia. The Postal Services Act states the Commission's functions include the promotion of competition in the postal service.	New Act to include competition provisions prohibiting such activities as predatory pricing, tied selling, abuse of dominance, and collusive practices.
General terms and conditions related to the provision of postal services not materially necessary to the requirements of universal service need not be subject to excessive third-party regulation.	Post Office Rules 1947 contain too many details that need not be covered in legislation.	Those portions of the Post Office Rules that should be subject to regulation should be re-enacted as new regulations. The guidance as to which parts belong to regulation should be strictly related to elements of the universal service provision concerning types of services, quality of such services, access conditions to services, and pricing. All parts of the Post Office Rules that do not form part of the necessary elements related to universal services should be dealt with in the USP's General Terms and Conditions.

ISSUE / ELEMENT TO BE ADDRESSED	CURRENT REGULATORY INSTRUMENT OR PRACTICE	RECOMMENDED REGULATORY INSTRUMENT OR PRACTICE
Limitation of liability	The Postal Services Act Section 12 addresses limitation of liability for postal operators.	New Act should provide that the Commission can enact regulations with respect to limitations of liability. Licensees should also be able to limit their liability in their General Terms and Conditions.
Products that have both a universal service and commercial application should be appropriately regulated.	All authority governing the marketing, development, and issuance of philatelic products rests outside of the USP.	New Act to provide that the Commission can make regulations, including regulations under which all rights to choose and produce stamp issues can be delegated to one or more USPs.
Downstream access to USP by non-USPs	Act and regulations are silent with respect to possible interconnection obligations of the USP.	New Act to contemplate that Regulations can be made.
Responsibility for developing and maintaining postal codes		New Act to make this the responsibility of the Commission, which can enact regulations.
Security of the mail	Act and regulations.	New Act to set out principles; regulations to set out details.
Offences and Penalties	Act	New Act to set out offences not covered by more general legislation; regulations to set out penalties.
Trademark provisions	Act, s. 34	Certain rights such as the right to use "POS" in a trademark or trade name; to use the words "post office", etc. – to be reserved to USPs.

2. RECOMMENDED CHANGES TO LEGISLATION

Introduction

As the communications and the transportation/logistics markets continue to open up to competition, market demands and technological change will foster further development. This is particularly so in the communications market and has been recognised by the Malaysian government by the enactment of the *Communications and Multimedia Act 1998 (CMA)*.

The CMA only makes mention of such terms as “telecommunications” in the context of disabling previous legislation and funding mechanisms in order to bring such matters under a new, forward looking and flexible legislative framework that has been set up, *ab initio*, to address the increasingly convergent communications and multimedia industry and to contemplate future developments.

The Postal Industry, however, presents its own unique challenges in that it involves not only communications but also transportation and logistics.

It is important that the Postal Industry keep in step with changes taking place in the communication and multimedia fields, in order for it to maintain and further develop its role as a key, technologically advanced, delivery service industry and in order that it can interface and compete with other forms of communication. It is also important that the Postal Industry maintain the role it plays in the economic, cultural and social development, and cohesion of Malaysia by expanding services, in order to reduce the isolation of the Malaysian people living in remote areas.

A New Postal Act

From a legislative point of view, any delivery service provider that is charged with the obligation of providing certain specified basic services throughout Malaysia, on the government’s behalf, must be given the necessary flexibility to respond to the technical, economic and social environment and needs of users. As the market develops and becomes more competitive, service providers must take advantage of any advances in technology. This includes the use of new technologies that may not, at this point in time, even be at the embryo stage. In this regard, it is also essential that the definition of basic universal services be defined both (1) in terms of principles and purpose, and (2) be given a current definition which can easily be amended from time to time, setting out the details of the precise services that qualify as basic universal services at that point in time.

It is **recommended** that a new Postal Act be enacted with its objects to include those set out in the *Communications and Multimedia Act*, with any necessary changes, and that it also contain provisions that emphasise the role and future of the Postal Industry. In this regard certain postal specific and international treaty compliance points will be considered and reviewed in light of the national policy objectives already expressed in the *Communications and Multimedia Act*, — there being no compelling reason to deviate from the expression already developed for the purposes of that Act.

Accordingly, it is **recommended** that Section 3(1) of the *Communications and Multimedia Act* be repeated in the new Postal Act, with the necessary changes, so as to read in its entirety as follows:

- (1) The objects of this Act are —
- (a) to promote national policy objectives for the Postal Industry;
 - (b) to establish a licensing and regulatory framework in support of national policy objectives for the Postal Industry;
 - (c) to establish the powers and functions for the Malaysian Communications and Multimedia Commission.

It is further **recommended** that Section 3(2) of the new Postal Act would set out at least the following as national policy objectives for the Postal Industry:

- i. To establish Malaysia as a major global centre and hub for postal services.
- ii. To ensure the provision of efficient, effective and timely universal postal services for the collection, sortation and delivery of messages, information, funds and goods both within Malaysia and between Malaysia and places outside Malaysia.
- iii. To ensure that the Postal Industry keeps in step with changes taking place in other convergence industries in order for it to compete and develop its role as a key, technologically advanced, delivery service industry, and in order that it can interface and compete with other forms of communication.
- iv. To safeguard the interests of senders and receivers of postal items, that is, of messages, information, funds and goods whether sent by physical, electronic, optical or other means or any combination thereof.
- v. To respond to the technical, economic and social environment and needs of users.
- vi. To open up the Postal Industry to competition, under objective, transparent and non-discriminatory conditions and in a gradual and controlled manner, taking into account the need to ensure the financial equilibrium of the Universal Service Provider in order to ensure the provision of a permanent, reliable, universal postal service encompassing a minimum range of services of specified quality at an affordable price, for the benefit of all users throughout Malaysia.
- vii. To reduce the isolation of the Malaysian people living in remote areas by providing the infrastructure necessary to promote communication and commercial exchange.
- viii. To provide residents with a means of efficiently communicating with the Government, and for the Government to efficiently communicate with, and provide services to, the residents of Malaysia.

Question : Would the recommended national policy objectives be sufficient to chart the future direction of the postal industry?

Question : Should national policy objectives determine the need to regulate non USO services?

Basic Universal Services

It is **recommended** that the new Postal Act define basic universal services in terms of principles and purpose, and that the Act provide that the Minister may, on the recommendation of the Commission, make regulations defining the precise scope of services that qualify as basic universal services. In this way, if any amendments are required to the definition of basic universal services, whether due to changes in the competitive, technology, economic or social environment, the needs of users or any other reason, they can be quickly and easily made in order to respond to the ever changing industry.

Universal Service Obligation

It is **recommended** that, under the new Postal Act, the Commission be mandated to ensure that universal services are available to all residents of Malaysia and can be accessed within a reasonable distance from their residences and businesses by a sufficient density of access points.

Although the present Universal Service Provider has been licensed as such up until July 23, 2035, in order to ensure that the new postal legislation will be as forward looking as the *Communications and Multimedia Act*, it is **recommended** that the possible appointment of more than one Universal Service Provider be allowed for, as there may be a time in the future when there are good business, competition or social policy reasons for appointing more than one. This is recommended in spite of the fact that the Study Team, during the course of the Strategic Study, did not identify any other party that currently had any interest in carrying out the Universal Service Obligation.

It is **recommended** the new Postal Act provide that the Minister may, on the recommendation of the Commission, charge one or more parties with carrying out a Universal Service Obligation, i.e. the obligation of providing Basic Universal Services either throughout the whole or part of Malaysia. As recommended earlier, a regulation would then define the precise scope of the Basic Universal Services. The licence granted to the party charged with the obligation would then incorporate by reference the then current requirements of Basic Universal Services as set out in the regulation.

Question : Should there be more than one USP in Malaysia?

Question : How should migration issues be dealt with? Should there be different categories of non-USP licensees? How do you license someone who is providing both USP and non USP activities?

Question : Would the concept of self-regulation be feasible in non USO areas?

The licence granted to the Universal Service Provider shall set out the terms and conditions of the Universal Service Obligation that it is to carry out. However, in this regard, it is **recommended** that the Universal Service Provider be given maximum flexibility as to how it carries out this obligation and how it leverages its network in order to ensure that it is responsive to the needs of customers and has the flexibility to respond quickly to changes in the market.

It is **anticipated** that the Universal Service Obligation shall include the requirement “to establish and operate a postal service for the collection, transmission and delivery of messages, information, funds and goods both within Malaysia and between Malaysia and places outside Malaysia”, quality of service targets, points of access requirements, etc.

However, it is also **recommended** that the licence clearly state that the Universal Service Provider be permitted:

(a) To manufacture and provide such products and to provide such services as are, in the opinion of the Universal Service Provider, necessary or incidental to the postal services provided by the Universal Service Provider,

(b) To provide services that, in the opinion of the Universal Service Provider, are capable of being conveniently provided in the course of carrying out the other aspects of the Universal Service Provider’s mandate; such services may be provided to or on behalf of departments and agencies of, and corporations owned, controlled or operated by, the Government of Malaysia or any regional or municipal government in Malaysia or to or on behalf of any person, and

(c) Without limiting the generality of the foregoing, the Universal Service Provider shall be permitted to:

- (i) Expand and update its products and services in order to remain competitive in light of developments in the communications field, and
- (ii) Enter into contracts with third parties with respect to the carrying out of the Universal Service Obligation, but the entering into of such contracts shall not relieve the Universal Service Provider of its obligation to ensure that the Universal Service Obligation is carried out in accordance with the requirements of the licence.

It is **recommended** that the new Act provide that the Minister may, on recommendation of the Commission, enact regulations under which certain exceptions to the frequency and other aspects of the quality of universal services in the underserved areas can be recognised. These exceptions would be reviewed on a periodic basis with the goal of progressively reducing the number of exceptions and the number of underserved areas over time.

In this regard, it is also **suggested** that the Universal Service Provider be actively involved in achieving this goal by requiring it, under the terms of its licence, to develop, on a periodic basis, a plan setting out the steps the Universal Service Provider proposes to take to set up, maintain and improve the network throughout Malaysia, including the steps it will take in the underserved areas. The plan would deal generally with the

number and location of access points with a view to adjusting them to the needs, number and location of users and the social policy objectives. Each such plan would then be subject to the approval of the Commission.

After approval of the plan by the Commission, the Universal Service Provider would then, under its licence, be obligated to review with the Commission, on at least an annual basis, the progress made in implementing the plan and any remedial action that may need to be taken and any other variations to the plan.

Both the Commission and the Universal Service Provider should be obligated to keep abreast of new developments in technology and communications in order to extend the standard to the remote areas when the circumstances are appropriate. It is **recommended** that this obligation be set out in the new Postal Act and, in the case of a Universal Service Provider, also in its licence.

It is **recommended** that maximum rates to be charged for each of the universal services be determined in an objective, transparent and non-discriminatory manner and that the costs of effectively and efficiently providing the universal service be taken into consideration in determining the rates.

Funding Universal Services

It is **recommended** that the Act provide that the Minister, on the recommendation of the Commission, may make regulations with respect to the funding of the Universal Service Obligation. This would provide flexibility in that the funding spelled out in the regulations could be in the form of a Reserved Area or in another form as described elsewhere in this report. If the form chosen becomes unsuitable in the future, the regulation can be amended to provide for the form that, at that point in time, is the most suitable for whatever reason. However, it is **recommended** that forms of funding be given as non-exclusive examples under the Act. In addition, it is **recommended** that the Act also provide that the Commission may make regulations with respect to the accounting and economic criteria standards concerning the form of funding.

If, specifically, the mechanism chosen for funding the Universal Service Obligation is that of setting up a compensation fund, it is **recommended** that two alternate options be fully considered.

The **first option** would be to set up a fund to which all providers of a non-basic mail service in Malaysia whose gross income exceeds a threshold to be specified by the Commission, would be required to contribute. The funds in the compensation fund would then be used solely for the purpose of compensating the Universal Service Provider for any unfair financial burden arising from the obligation imposed on the Universal Service Provider to set up and maintain the network and provide the universal services throughout Malaysia.

The **second option** would be to expand the Universal Service Provision Fund that was set up under Section 204 of the *Communications and Multimedia Act* so that it is truly a “communications” fund. It would be contributed to by all parties operating in the communications field, including those in the Postal Industry, to compensate both the parties that have been licensed as Universal Service Providers under the *Communications and Multimedia Act* as well as the party

currently licensed as the Universal Service Provider under the *Postal Services Act*. Selection of this second option would be consistent with Malaysia's recognition of the need to respond to convergence in the communications industry. However, in the postal legislation reforms, it should be possible to still recognise that the Postal Industry falls both within the communications market and, where the delivery of a tangible item is involved, within the transportation and logistics markets.

Question : What would be the preferred option for funding USO?

Question : Should reserved area be used as a funding mechanism and if yes, how should the reserve area be defined, geographical area, postage rates or others?

With respect to the Universal Service Obligation, it is **recommended** the new Act include some language to the effect that the Commission will ensure fair compensation to the Universal Service Provider but at the same time charge the Commission with the responsibility of ensuring that the Universal Service Provider provides the Universal Services in an efficient manner. The Commission can then, in the licence granted to the Universal Service Provider, deal with the issue of both cost and operational efficiency.

It is **recommended** that the funding be sufficient to provide the Universal Service Provider with the funding necessary:

- To provide the universal services throughout Malaysia
- To expand and improve the network
- To invest in new technology to continue to improve the universal services and respond to the technical, economic and social environment and needs of users.

To address more immediate needs, it is **recommended** that a costing and efficiency study be carried out for the current USP, Pos Malaysia, to determine if the current regulated tariffs for services are sufficient and appropriate to provide the universal service, to improve the network and invest in new technology to continue to improve the services, and to respond to the technical, economic and social environment and needs of users. If not, it is **recommended** that the rates be appropriately adjusted.

Once the Commission is satisfied that rates meet the above conditions, then it is **recommended** that future rate adjustments follow a more predictable path of review and adjustment. For the most basic of universal services, such as letters under 20g, the regulations may set out the maximum allowable rate increase linked to the appropriate Malaysian consumer price index, with an appropriate reduction factor to encourage the

Universal Service Provider to improve the efficiency of its operations both with respect to productivity and cost reduction.¹

For rates for any universal services that are not put under the rate increase formula described above but that are still to be regulated, it is **recommended** that the Universal Service Provider be required to submit a supporting business case to the Commission along with the proposed maximum rates for approval. If the Commission approves any rate increase in response to the submission, the Universal Service Provider, and any other licensee subsequently charged with the obligation of providing universal services, may provide the universal services to which the approved rates apply, within the scope of their respective licences, provided that the rates charged for each such service do not exceed the maximum rate approved by Commission for the service in question.

It is **recommended** that the Commission be required to publish the maximum rates approved for any such universal services in the Gazette at least 30 days prior to the date on which any increases in the maximum rates are to become effective. However, it is also **recommended** that the Commission first obtain information from the Universal Service Provider as to the actual amount that the rates will be increased and ensure that this is published in the same issue of the Gazette immediately following the statement respecting the maximum rates.

From a customer relations point of view, the Universal Service Provider should also, on its own initiative, communicate with its large volume mailers to advise them of any upcoming rate increases in order that they can forecast their mailing costs accurately. However, it is **recommended** that this not be legislated in any way. This is the freedom that the Universal Service Provider requires in order to develop optimally, and maximise its potential as a customer sensitive, commercially competitive service provider.

Question : Should there be different tariffs for USO and non USO areas? If so, what would be the way to implement it?

Post Office Rules 1947

It is **recommended** that, in Phase II, after it has been determined what should be regulated under the Act, those portions of the Post Office Rules that are to be the subject of regulation be rewritten as regulations. The remainder would be the responsibility of the Universal Service Provider to incorporate into its General Terms and Conditions, as described later.

Philately

It is **recommended** that the Act provide that the Minister, on the recommendation of the Commission, may grant a Universal Service Provider the right to issue postage stamps and other postage values bearing the identification "Malaysia". It is **recommended** that

¹ The reason it is recommended that it be the maximum is that a customer sensitive, commercially competitive service provider may have good business reasons for not wanting to increase the price in a particular year or for increasing it but by an amount less than the maximum allowed.

the process be for the Universal Service Provider to develop the annual plan and then submit it to the Commission for approval. It is **recommended** that such process be set out in the licence granted to the Universal Service Provider.

Question : What role should the Commission play with regard to the annual thematic plan?

UPU Representation

With respect to participation in Universal Postal Union meetings, it is **recommended** that the Commission participate, on Malaysia's behalf, with respect to policy/regulatory issues and that the Universal Service Provider participate, on Malaysia's behalf, with respect to operational issues. With respect to how these matters should be dealt with in the new Postal Legislation, which is quite separate from how Malaysia communicates this arrangement to the UPU, it is **recommended** that these matters be dealt with in regulations rather than in the Act itself. This is due to the fact that the current Universal Service Provider has a licence that is limited in duration, and to the possibility that future business, competition or social policy reasons may justify, and indeed weigh the balance in favour of, changing the *status quo*.

It is **recommended** that the right of the Universal Service Provider to participate at in UPU meetings with respect to operational issues, as well as its obligation to report to the Commission on such matters, all be set out in the licence. The details, as to who should pay for the Universal Service Provider to so represent Malaysia, should also be set out in the licence.

Express Mail / Courier Regulation

With respect to the component of the industry that will be regulated in order to achieve national policy objectives, it is **recommended** that the new Postal Act require all delivery service providers who fall within that component to be licensed under the Act. Only in this way can the Commission monitor the development of the industry, the extent to which the national policy objectives are being met, and the extent to which the competitive market is meeting the needs of the Malaysian people. With respect to the latter, to the extent that the competitive market develops to the point of providing a permanent service of quality with a sufficient density of access points in order to meet the social and commercial needs of the Malaysian people, the Commission may want to, from time to time, **amend** the definition of Basic Universal Services.

Small Operators – Class Licences

The Study Team noted that there were issues raised regarding small operators operating without licences. However, given that it would appear that there is an enforcement issue here and that the Malaysian environment may be such that it would not be appropriate for the Commission to devote time and resources to putting these small entrepreneurs out of business, it is **recommended** that the new Postal Act provide for the granting of class licences for this segment of the industry. The fact that these

operators exist would indicate that they are meeting a need in the Malaysian market. The Study Team did not hear any complaints from the current Universal Service Provider that they are of any great concern.

If the decision is to require these small operators to be licensed under a class licence, it is also **recommended** that the Minister, on recommendation of the Commission, could prescribe a registration fee. However, one would anticipate that this would be a nominal fee which would serve as a contribution to the costs to the Commission of administering the licensing scheme. In this way, these small operators could legitimise their delivery service business by applying to be registered under a class licence, which in itself should give them some credibility in return for the registration fee. In return the Commission would also benefit as it would gain information on the role played by these small operators in the overall Postal Industry.

With respect to licensing, the Study Team was advised by one of the courier companies we interviewed that being able to say that one is licensed gives credibility to the business and customers prefer to deal with a licensed operator rather than an unlicensed one. The same should hold true regardless of the size of the operator.

Question : Should there be a separate category of licence for small operators? Would revenue be the indicia or would it be geographic areas of operation, areas of business operation i.e.post type or logistics type etc. If it is revenue, what would be the appropriate method of assessment and how does the regulator ensure that the pegged level of revenue remains relevant ?

General Terms and Conditions

It is **recommended** that it be a term of each licence, including that of the Universal Service Provider, that the licensee be required to develop standard terms and conditions that it will publish as its standing offer to provide services to other parties (its "General Terms and Conditions"). For example, in the Universal Service Provider's General Terms and Conditions, it could prescribe details that are currently in the Post Office Rules 1947 - such as the minimum and maximum dimensions for postal items, addressing standards, rates for non-regulated services, etc. It is **recommended** that the Act provide that regulations may be enacted with respect to particular aspects of a licensee's General Terms and Conditions that are to be submitted to the Commission for review. It is **recommended** that the Act then require the Commission to register the approved aspects in a public register. The new Act **would also provide** that compliance with the registered aspects would be a complete defence to any action taken against the licensee and that the registered aspects, along with the rest of the licensee's General Terms and Conditions, would govern the relationship between the licensee and each of its customers.

Question : Should downstream access to the USP network by non USP be regulated or left to commercial arrangements?

Complaints against Licensees

The **role of the Commission** with respect to customer complaints that are brought against licensees should be limited to ensuring that each licensee, under its General Terms and Conditions, has an acceptable complaints handling process. If the Commission were to get involved in individual complaints and other such matters, which by themselves are not matters that should be regulated, the Commission could end up devoting a great deal of time and resources to a peripheral activity. Accordingly, it is **recommended** that the Commission's role be limited to monitoring the licensee's compliance with its complaints handling process as opposed to getting involved in individual complaints.

Competition

The Study Team was advised that there is no competition legislation other than the General Competition Practices set out in Chapter 2 of Part VI of *the Communications and Multimedia Act 1998*. Given this, it is **recommended** that competition provisions be included in the new Postal Act. In this way, if any complaints are brought under WTO in which discriminatory treatment is alleged, and assuming the competition provisions meet generally accepted standards and are consistently enforced, Malaysia should stand on good ground to withstand any challenge in so far as the Postal Industry is concerned.

With respect to the non-Universal Services that the Universal Service Provider is involved in providing and in order to ensure a "level playing field", it is important that it be treated no more, but also no less, favourably than any other party involved in providing non-Universal Services. The role of the Commission in overseeing the activities of those involved in providing competitive services should be to ensure that the services are provided fairly and efficiently. In this regard, it is **recommended** that the new Postal Act expressly prohibit such activities as predatory pricing, tied selling, abuse of dominance, and collusive practices. It is further **recommended** that the Commission have the power to subpoena witnesses and evidence in order to properly carry out its role.

In this regard, it is **recommended** that the competition provisions of the *Communications and Multimedia Act* be reviewed and adapted to the Postal Industry and included in the new Postal Act. In addition to the adapted provisions of the *Communications and Multimedia Act*, it is also **recommended** that the new Postal Act include a provision under which the Commission may issue guidelines with respect to the accounts to be kept by any licensee charged with a Universal Service Obligation who has also been granted a Reserved Area. The reason the issuance of guidelines is recommended is due to the fact that there is much debate as to how accounts should be kept. It is to be noted that the EU Directive requires a system of fully distributed costing. However, the system of accounting used by both the United States Postal Service and Canada Post is one of long run incremental costing. Also, a recent decision of the

European Commission² in fact endorses an accounting standard based on additional or “incremental” costs. Accordingly, the jury is still out on this matter. Therefore it is **recommended** that the appropriate standard be prescribed in a regulation rather than in the Act, given that in the future there may be a need for amendments.

² European Commission’s March 20, 2001 decision arising from United Parcel Service’s complaint, lodged in 1994, alleging that Deutsche Post “*was using revenues from its profitable letter-mail monopoly to finance a strategy of below-cost selling in business parcel services, which are open to competition*”.

3. POLICY AND STRATEGIC RECOMMENDATIONS

The Study Team presents the following findings and forward-looking recommendations to address the policy and strategic dimensions of the Malaysian Postal Industry:

A considerable amount of focus of this study related to the statutory and regulatory structure affecting the postal industry in Malaysia. The gaps in those structures and the recommended changes to specific instruments will largely address the governance issues that form the foundation for effective development of the Postal Industry. However, once authority issues are established, there remains the significant task of determining what actions need to be taken by stakeholders including universal service providers, courier operators, the regulator, and government. In its review of the issues facing the Postal Industry in Malaysia, the team has drawn some additional findings and conclusions that decision-makers should consider in charting a course forward.

Differences Between the Communications and Multimedia, and Postal Objectives

The CMA has been excellently crafted to address the fundamental objectives of providing greater access for Malaysians to an ever changing, and in many cases, converging communications technology. Some of the recommendations, set out earlier in this report for specific legislative changes under a new Postal Services Act embrace some of the key objectives from the CMA related to communication. While there is no doubt that what belongs in the category of “communication” has become blurred, the Postal Industry will continue to have unique differences compared to telecommunications, broadcasting, and on-line services.

Products and Services

In a sense, the idea of convergence has long existed in the postal service. The products and services provided by the postal network could be considered as divergent as services described under telecommunications. The following table shows, by way of example, the scope of communication needs provided solely by letter mail:

Communication Need	Type of message	Letter Content	Alternate Media
Few to many	Unique message	Bank Statement	Internet
Few to many	General Message	Direct Marketing	Radio, Television
Many to few	Unique message	Bill Payment	Phone, Internet
Many to many	Unique message	Social Letter	Phone, Internet
Few to few	Unique message	B2B mail	Phone, EDI

In addition, the postal network also handles the physical delivery of goods, for which no option exists in the “wired” world. One could argue that the Postal Industry has always provided “one-stop” shopping for users in terms of the types of the communication needs it can accommodate on the backbone of its network — a goal that convergence of alternate media has yet to achieve.

Solutions to the development of the Postal Industry need to recognise this broadly defined scope of services. Moreover, priorities need to be addressed, as they are not necessarily universal across various stakeholders. The interests of large volume direct marketers will not be the same as consumers sending birthday greetings. Individuals who only use the post office to pay their bills may have little interest in the quality of service of letter delivery.

Markets

Another major difference between the Postal Industry and the multi-media sector relates to the cost and revenue structures that define their respective business profiles. Foremost is the fact that in the Postal Industry, the recipient of mail does not pay any direct cost for delivery as all the expense is borne by the sender. This is somewhat different to the telecom model, where the recipient user pays for access to the network and the recipient user payments form a considerable share of sector revenue. Relative to the telecom sector, the Postal Industry tends to create more of a cross-subsidy from net-senders of communications to net-receivers of communications as the fixed cost of access of the receiver must be covered by the postage revenue paid by the sender. Given the nature of the postal enterprise this usually implies a cross-subsidy from business users, and mainly large volume users, to consumers.

In terms of where each sector derives its revenue, about 70 to 80 percent of the Postal Industry revenue is from business users. The telecom and multi-media sector will be deriving most of its revenue from the consumer segment. To this point, it is worth noting that current statistics listed by the Commission indicate that the average revenue per user of Network Facility and Service providers range between RM70 and RM110 per month compared to the Study Team's approximate estimate for postal services of around RM22 per household *per year!*

As opposed to changes in the multi-media sector, decisions regarding the current products and services the postal service provides will largely affect business users, and particularly large volume business users, and less-so consumers.

Universal Service

Much of the effort in the telecom sector is access to services — namely market penetration. Today, market penetration in the mobile and fixed line network is approximately 30 and 20 percent respectively, hence the goals related to improvement of access. This contrasts to the postal service, which, with the exception of a few remote areas, has penetration of almost 100 percent.

From the Study Team's review, it became apparent that while there may be some issues to access, the consensus is overwhelming that Pos Malaysia provides a universal service. Moreover, to users it appears to be an affordable universal service. This fundamentally changes the goals relative to telecom where user-affordability with universal access will continue to be a challenge in Malaysia. Focus for the postal service will not be about whether delivery services are provided, or whether a postal counter is located, in town, but rather the quality of that delivery or of that postal counter. The focus of social goals becomes more about content and quality and less-so about network access and user affordability.

Production Inputs

While technology and capital investment largely drive the cost of the provision of services in the electronic media, the Postal Industry continues to be a labour intensive business. For Pos Malaysia, with over 14,000 employees, approximately 60 percent of its costs are related to labour. As opposed to telecom, new technology will not always be the answer to addressing the efficiency and effectiveness of postal services. While the importance of capital and technology investment should not be discounted, efficiency and effectiveness of Pos Malaysia — as is the case with all postal operators — will continue to be largely driven by human resource issues. On this matter, the Study Team noted that the labour relations climate in Pos Malaysia is highly favourable, particularly when compared to that faced by postal operators elsewhere. In developing new products and services, and reconfiguring its network, Pos Malaysia must continue to manage this partnership with labour.

Providing Sustainable Universal Services

An overall assessment of the Postal Industry in Malaysia suggests that, for the foreseeable future, Pos Malaysia will be the only provider of core postal services. Even if a competitive opportunity to provide core letter services develops in the sector it is expected that this would only occur in the most lucrative parts of the market (such as the Klang Valley area) and would be limited to large volume commercial business. As such, both consumers and business will likely be relying on the services provided by Pos Malaysia for many years to come.

On a comparative level the postal market for core letters is relatively small in Malaysia. The table below provides some comparative figures of the size of the postal market. As the Malaysian economy develops further, particularly in the service sector, there is likely to be growth in the postal market. Increases in the number of letters per capita are a critical component to providing profitable growth to a largely fixed postal infrastructure.

Country	PPP Adjusted GDP per Capita (\$US)	Service Sector as % of GDP	Letter Post items per capita
Malaysia	9,068	40%	42
Philippines	3,971	54%	2
Thailand	6,402	49%	19
Singapore	23,356	66%	171
New Zealand	20,070	67%	200
Canada	27,840	65%	217
Source: UPU, World Bank, OECD			

The direct-marketing application of lettermail appears to be under-developed in Malaysia. Upwards of 30 percent of domestic letter business in developed countries are driven by Direct Mail volumes. It is critical for Pos Malaysia to understand the potential opportunity to develop this market as it is currently the largest source of growth in the Postal Industry. Singapore Post claims to have grown its Direct Mail business by 10 percent annually for the past few years.³ It is hoped that the recommendations regarding the regulatory process concerning product development and pricing will result in Pos Malaysia being given the opportunity to develop this market.

Additionally, the marketing and development of philatelic products presents a further opportunity. While it is important that national and cultural symbols continue to embody philatelic programmes in Malaysia, as is practised in most other countries, it is equally important not to ignore the commercial opportunities presented. Stamp collection remains the most popular hobby globally. Successful postal administrations in the philatelic realm have long recognised that protecting the cultural and national character associated with stamps need not be in conflict with good business practices. The recommended changes to the regulatory management of stamps attempts to address this issue.

All postal operators currently face similar challenges as Pos Malaysia with respect to the provision of postal counter services. Of particular note is that counter financial transactions, most notably bill payments, are the most likely reason for an individual to enter a post office in Malaysia. What is of greater concern with respect to these types of transactions is that in many instances consumers will make a withdrawal from a nearby bank automatic teller machine (ATM) so as to have the cash to complete the bill payment with the counter clerk. It is assumed that at the end of the day, once all the balances are accounted, Pos Malaysia makes an electronic transfer to the agency's bank.

The reason given as to why the transactions stated do not happen directly through the bank's network is that, in general, banks do not offer this convenience, or if they do, it is not free to the consumer as it is with Pos Malaysia. This situation raises several concerns. First, it appears to be very inefficient moving transfers in so many steps:

1. electronic debit from bank to cash (ATM withdrawal)
2. cash to counter clerk
3. counter clerk transfer to agency's bank

Where such situations arise there should be a mechanism to remove step 2 in the above process. Second, such transactions compete for counter time for other postal services. Consumers have already raised the concern that long queues are a source of inconvenience. Third, and most important, Pos Malaysia claims that it does not make sufficient margins on its commissions to support this activity.

While we do not recommend that bill payment be removed from counter services, it needs to be designed in an efficient and effective way. In addition, we strongly believe that if the retail-banking sector is not able to offer these services on a competitive basis that it needs to be considered a universal service if Pos Malaysia is required to provide it

³ SingPost Annual Report, 2001/02

at a loss. However, it is the Study Team's opinion that this may present an opportunity for Pos Malaysia. It is **recommended** that a dialogue be initiated with the retail banking sector, the agencies for which service is provided, and the regulator to find an equitable solution including the expansion of retail banking services through Pos Malaysia in partnership with the retail banking sector.

What is common with all of these challenges to funding and provision of universal services is that the solutions can be of a commercial nature and not necessarily compromise any of the key objectives of universal service. It is the Study Team's **recommendation** that approaching the funding of universal services with this principle in mind would yield the most efficient and equitable results.

Postal Industry Development

It is critical that the Malaysian Communications and Multimedia Commission play a significant role in implementing and promoting the Government's national policy objectives for the Postal Industry.

The development of the Postal Industry needs to:

- Begin with an assessment of the current state of the business in terms of: products and services, price of products and services, and quality of services.
- Be followed by the development and implementation of a strategy and plan to improve the current operation and business environment.

Building the Basic Infrastructure

1. Establish quality of service benchmark for postal and courier service

In the previous section, it was established that, although the scope of the "Universal Services" is not clearly defined, consumers are not disaffected by the basic provision of the postal services. Instead, quality of service provision appeared to be the largest source of concern expressed by consumers.

The Commission can work with the service providers to:

- Determine quality of service measurements and indexes.
- Determine the methodology for conducting studies and tests on quality of service.
- Establish quality of service goals and their progression.
- Carry out regular studies and quality of service tests to ensure a high quality of service and consumer satisfaction.

2. Conduct studies on modernising and improving postal service

Generally studies on modernising and improving postal services could include the following:

- Review current operational process and network and provide recommendations for:
 - customer access and contact (density and location of points of contact, efficiency);
 - collection (network, efficiency);
 - processing (capability, postal, efficiency);
 - delivery (network, efficiency);
 - service network coverage (urban, under serviced areas); and
 - meeting quality of service goals.

- Review management and organisation issues and provide recommendations for:
 - business planning (services, budget, objectives);
 - organisation structure and accountability (performance and financial);
 - staffing and training issues; and
 - image and branding issues.

3. For Universal Services, it is **recommended** that:

- A costing study be carried out to determine if those tariffs are sufficient to provide the Universal Service Provider with the funding necessary not only to sustain operations but also to invest in new technology, in order that it can improve its operations and be commercially competitive.

- MCMC take an active role in monitoring and reviewing the process and results of the costing study, since it has the authority to approve or reject the findings of the costing study for rate adjustment.

Growing Postal Business

Besides operational efficiency, the right product and service offering is a key factor in meeting market demand and in terms of generating revenue/profit for the service provider.

Universal Postal Service

Pos Malaysia has developed a plan for improving profitability through:

- Review of its current product and service offering.
- Growing potential business.
- E-commerce services and products.
- Logistics and supply chain management.

Courier Service

For this type of Non-Universal Service, it is **recommended** that:

- The Postal Industry be regulated in order to achieve national policy objectives as set by the Malaysian Communications and Multimedia Commission.
- At the same time, couriers be allowed to operate in a competitive market environment, meeting the needs of Malaysia's businesses and people.

New services

It is important to promote, plan and develop the Postal Industry as an integral part of the Malaysian government's national policy objectives on e-commerce and e-government, including through:

- A national network for accessibility.
- Convergence of electronic and physical products and services.
- Information based services to provide the basis for continuing enhancements to quality of work and life.

Making the Malaysian Postal Industry a Regional and Global Power

It is evident that Malaysia will play an important role in terms of its relative contribution to the economy in Southeast Asia. Global free trade is developing at an accelerated pace and is now entering the regional market. An example of this is Singapore's recent free-trade agreement with the United States. It is clearly evident that all countries in the region will be deriving much of their growth in economic activity from the international flow of goods and services. This will create further demands in the related support services of transportation and logistics.

In globalising markets, competitive advantage relies on having networks of sufficient reach, capable of delivering services efficiently, and more importantly — seamlessly to the user. A single player in a global or regional market seldom meets such capability. As such, growth in the global and regional markets has mostly been achieved through alliances, mergers, and acquisitions of an international scale.

International alliances build on the relative advantages each partner brings to the end-to-end service requirements of the market. Malaysia's appeal in this market will rest in clearly establishing its relative strength as a partner of choice in the region.

It is important that such a strategy establish Malaysia as a major regional and global centre for postal, logistic and e-commerce services, through:

- Quality service and an efficient network, covering every corner of Malaysia and connecting to the world.
- Efficient allocation of resources (skilled human resources, capital, knowledge, cultural diversity, and national assets), to allow the development of capabilities and skills to serve the needs of the international community.

Specific International Issues

There are some important specific issues on which action will be needed in the coming months:

Terminal Dues

Terminal dues already significantly impact the Malaysian Postal Industry, and this impact is likely to increase in future. Terminal dues are the main “fee for service” payments relating to international letter-post items.

The critical points are that Pos Malaysia:

- Will face significant terminal dues payment increases.
- Would need to recover a major portion of these increased payments.
- Could otherwise incur significant losses in its international business, and thus jeopardise its future international business growth.

Given that Pos Malaysia is the licensed USP, terminal dues can have a significant negative financial effect on the Government of Malaysia, as Pos Malaysia’s largest shareholder.

MCMC can play an important role on the terminal dues issue. It can help ensure, from a regulatory perspective, that any future UPU terminal dues increases meet appropriate and transparent tests – linked to objective measures, based on internationally recognised standards – to justify such increases.

World Trade Organisation (WTO)

In the past, few WTO members had made commitments relating to courier and postal services. In the current round of negotiations, the situation is evolving as follows:

- Revisions to the classification of postal and courier services are under active consideration. Positions diverge at the moment. Some WTO members - such as those of the European Union - are seeking to put in place a single classification system for the different types of postal and courier services. It would have courier services as a sub-set. Other WTO members, such as the USA, are seeking to put in place separate classifications for postal services and for courier services.
- Some WTO members are actively seeking commitments respecting courier and postal services. Their main emphasis has been on opening up the courier and express segments.
- One of the Postal Industry issues raised in the context of WTO commitments is that of UPU terminal dues, i.e. the compatibility of the current system with the WTO most-favoured nation (MFN) principle. This question is under active study within the UPU (i.e. by its Council of Administration WTO-UPU Relations Project Team and its Terminal Dues Action Group). It has been the subject of numerous informal - and some formal - contacts between the two organisations. The

direction planned for UPU terminal dues is to ensure full compatibility with the WTO MFN principle.

- One focus in the current WTO negotiation process relating to the Postal Industry is national treatment. New Zealand is one of the WTO members that are particularly active in seeking additional commitments from WTO members that relate to the Postal Industry.

The courier/express side of the Postal Industry should be the one to feel the main effects of WTO obligations in the medium term, but even this is unlikely to be immediate or dramatic in the short-term.

It is **recommended** that MCMC take the lead in putting in place a multiple stakeholder process to deal with WTO issues specific to the Postal Industry.

Universal Postal Union (UPU)

The Universal Postal Union (UPU) is the United Nations Specialised Agency responsible for the Post. It has a significant bearing on the Malaysian Postal Industry.

The Study Team **recommends** that there be consideration of the following suggested actions by Malaysia within the context of UPU:

- Foster Malaysian Postal Industry awareness of the UPU's present and future impact.
- More clearly define roles and responsibilities within Malaysia as regards UPU bodies and issues.
- Develop, where possible, common Malaysian positions on the key UPU issues relevant to multiple Malaysian Postal Industry stakeholders. This process would involve active consultation and co-ordination.

Periodic Review

The pace of change in the overall Postal Industry Environment and in the Malaysian Postal Industry itself – as well as other sectors of activity in Malaysia – is expected to be rapid in the next few years.

The Study Team believes that it is **reasonable to expect** that some form of review regarding the Malaysian Postal Industry will again be advisable in five to seven year's time.

General Issues to Consider

Should Quality of Service (QOS) standards only apply to the USP? Should issues relating to QOS for non USP be regulated?

To what extent should security be regulated?

