

Public Comment

February 28, 2007

American Chamber of Commerce in Japan  
Coalition of Service Industries  
U.S.-Japan Business Council

Representative:  
David Hoover  
Chairman, Privatization Task Force  
American Chamber of Commerce in  
Japan  
Mesonic 39 MT Bldg., 10F  
2-4-5, Azabudai, Minato-ku  
Tokyo 106-0041  
Phone: 03-3433-8451  
Email: [myasuda@accj.or.jp](mailto:myasuda@accj.or.jp)

System Section, Postal Policy Planning Division  
Postal Services Policy Planning Bureau  
Ministry of Internal Affairs and Communications

Comments on Draft Ministerial Ordinance for Making Partial Amendments to  
Enforcement Regulations of the Postal Law

The American Chamber of Commerce in Japan, the Coalition of Service Industries, and the U.S.-Japan Business Council appreciate this opportunity to comment upon the draft ministerial ordinance for making partial amendments to enforcement regulations of the Postal Law. These regulations are critical for ensuring that the privatization of Japan Post is carried out in a manner that “ensures equivalent conditions of competition [between the privatized entities] and other companies engaged in like business operations,” as required by the Basic Principles set out in Article 2 of the Postal Privatization Law. This is especially true since Japan Post has publicly announced that it will improve its Express Mail Service (EMS) so it can compete against private express delivery service companies.

Japan Post’s EMS has already been improved significantly. Currently Japan Post offers time-certain EMS for China, Hong Kong, Singapore, Korea and Taiwan with guaranteed next-day delivery. EMS tracking is now available in some 90 countries, including those in which the service is being offered on a trial basis. Through EMS, Japan Post competes directly with private international express delivery services, yet Japan Post prices EMS at 50 to 65 percent less than private express delivery services as pointed out in Attachment 4 of “Issues Concerning Postal Services and Fair Competition Upon Enactment of the Law of the Privatization of the Postal Services” published by the Fair Trade Commission last year.

Given the current situation, our comments are intended to emphasize the need for

“measures to ensure equivalent conditions of competition [between the privatized entities] and other companies engaged in like business operations” and to ensure that the new amendments in the ministerial ordinance will not unfairly impair the interests of private express delivery service companies.

Our concerns are discussed in more detail below, but, in brief terms, they include the following:

<Executive summary>

- The restrictions on parcel sizes for international delivery should not be lifted because “equivalent conditions of competition” have not been established for international delivery services.
- EMS should not be categorized as a universal postal service, but, as long as it is, EMS rates should be subject to review by an independent body such as the Japan Fair Trade Commission to ensure fairness and to prevent anti-competitive effects.
- The financial disclosure requirements for the various privatized Japan Post entities should clearly distinguish between competitive and non-competitive products’ expenses, profits, cash flows and other financial data and should be transparent to ensure that the Postal Delivery Company is not using its monopoly on universal services to engage in anti-competitive practices in other service sectors, such as EMS.
- The Japanese government should ensure that the privatization process is transparent and open to the public and private companies. This includes making the implementing rules and regulations of the Postal Services Company Law available to the public and private companies for comment.

1) Restrictions on Parcel Sizes

In the draft ministerial ordinance to partially revise the Postal Regulations, the currently imposed restrictions on parcel sizes is deleted. This may be appropriate with regard to domestic delivery, since the proposed laws privatizing domestic delivery have attempted to “ensure equivalent conditions of competition” by making the same laws and regulations applicable to both Yu-Pack services and private delivery service companies. Therefore, the postal regulations do not need to include specific stipulations regarding Yu-Pack services.

However, “equivalent conditions of competition” have not been ensured with respect to international delivery. Therefore, restrictions on the maximum weight and size for international parcel post services ought to be clearly defined and stipulated. Such restrictions should apply to EMS, which the Ministry of Internal Affairs and Communications continues to define as a postal service even after privatization.

2) Notification of Rates

The revised Postal Regulations allow for making changes to postal rates by notifying the Ministry in accordance with Article 67, Paragraph 1 of the Postal Law instead of going through the current approval procedure. This might be reasonable if the proposed laws treated the Postal Delivery Company in the same manner as truly private enterprises. However, the laws continue to provide EMS with a variety of advantages while Japan Post

simultaneously endeavors to position EMS as a direct competitor to private express delivery firms. “Equivalent conditions of competition” can only exist if the regulations recognize that competitive, value-added services are different from the delivery of basic correspondence provided by universal postal services.

This recognition is the trend in other major economies. In Europe, a number of nations have eliminated EMS entirely, while others have begun regulating it in a manner identical to private express services. In the United States, a new postal service law enacted at the end of last year categorizes postal services into market dominant and competitive domains to which separate pricing regulations and accounting practices apply. And, having already opened up its market to private express letter couriers in 1995, Singapore recently announced that it will open up its market for “basic mail” service to foreign and domestic competition this year, ending Singapore Post’s monopoly on the delivery of letters and postcards on April 1.

EMS is a competitive product and its pricing should be determined by market and actual cost. Therefore, like domestic parcel post, EMS should be treated as one of the services offered in the competitive domain instead of positioning it in the same framework as international postal services that are mandated by the Universal Postal Union treaty. While the service content of EMS is specified by the Universal Postal Union treaty, it does not mandate the provision of the service.

However, as long as EMS is inaccurately categorized as a universal postal service, its rate structure should be assessed for fairness by an independent organization similar to the United States’ Postal Regulatory Commission, which is to be established as a result of the revised U.S. postal service law, instead of an agency like Japan’s Ministry of Internal Affairs and Communications. Since the Japan Fair Trade Commission (JFTC) is the only entity organized as an independent government body under the National Administrative Organization Law, Article 21 of the proposed regulations should require Japan Post to obtain JFTC approval of rates for EMS and other similarly competitive products, and should require the JFTC to assess such rates for fairness and for potential anti-competitive effects.

### 3) Reporting and Disclosure of Financial Statements

The privatization law’s admonition to “ensure equivalent conditions of competition” clearly recognized that Japan Post’s competitive products, such as EMS, might enjoy a variety of anti-competitive subsidies unless the new regulations – and the regulators – are vigilant in preventing them. The only way that the public can monitor if such subsidies are occurring is if financial statements of the Postal Delivery Corporation, and the Japan Postal Services Company, clearly distinguish between competitive and non-competitive products’ expenses, profits, cash flows and other financial data.

Reporting of financial statements for postal services should be done within three months after the end of each fiscal year as stipulated in the Postal Services Company Law. Financial statements should be highly transparent and disclosed for a period of five years rather than a period of one fiscal year. Under Article 440 of the Company Law, private companies are required to disclose their financial statements for a period of five years.

In accounting practices EMS, which is regarded as a competing service among international postal services, should be treated separately. It should not receive any direct or indirect subsidy from other departments within the postal services company nor from the proceeds of other related postal companies. The revised Postal Regulations should specify that such flow of funds to, from, or relating to EMS be clearly indicated in financial statements. For instance:

- Any costs incurred for using the infrastructure of the postal network such as collection and transport in the provision of EMS services must be based on fair and reasonable market value and disclosed in an itemized form.
- Any EMS customs clearance costs should be disclosed for both imports and exports.
- Use of capital gains which have been acquired and used for exclusive services such as the letter delivery service before postal service privatization was completed should be clearly stated and such capital gains should not be redistributed to EMS and other areas of operation in the competitive domain.
- Rates for domestic letter and postcard delivery services in Japan are double those of the U.S. postal service. Cash flows of revenues from exclusive services such as the letter delivery service should be clearly stated and such revenues should not be used for operations in the competitive domain such as EMS.
- To the extent that any equipment, vehicles or capital is used for both competitive and non-competitive services, the financial statements should clearly indicate: (i) what fees, depreciation, costs, revenue or other financial data are allocated to EMS and other competitive services, and (ii) the basis for such allocation.

#### 4) Transparency in Privatization Process

The Japanese government offered an opportunity for public comments on the amendments to the enforcement regulations of the Postal Law, but it appears that the Japanese government has no plan to offer a similar public comment opportunity for enforcement regulations implementing the Postal Services Company Law. In fact, we understand that these regulations will soon be considered and finalized, and we understand that the Japanese government's rationale for not providing an opportunity for public comment is that the Postal Services Company will be 100% owned by the Japan Postal Services Corporation.

However, the Postal Service Company Law's implementing regulations are just as critical to ensuring "equivalent conditions of competition" as those of the Postal Law. The regulatory scheme governing the Postal Service Company has a potential competitive impact on competing private firms. Moreover, Article 11 of the Postal Services Company Law contains a requirement for financial reporting based upon business category, and we would have the same concerns about those financial reporting procedures as are expressed above.

Considering the interests of the general public in the postal privatization process, along with those of the domestic and international businesses that serve the public and compete with the postal companies, we urge the Japanese government to ensure ongoing transparency in the privatization process, including an opportunity for public comments on the implementing rules and regulations of the Postal Services Company Law. To do

otherwise would be inconsistent with the spirit of Article 2's requirement to "ensure equivalent conditions of competition."

### Summary

The Japanese government will continue to own over a third of total shares in the Japan Post Corp. after the 10-year transition period. After the transition period Japan Post Corp., which sells shares of Yucho Bank and Kampo Life Insurance, will become a holding company owning 100% of the shares of a mail delivery firm and an over-the-counter services firm. While a competing service like EMS is still defined as part of the postal services for which universal provision is mandated, EMS continues to be placed under the supervision of the Ministry of Internal Affairs and Communications even after the privatization of postal services. However, it is obvious that EMS is competing in the same market against private express delivery companies. The revised Postal Regulations should serve as a framework for preventing unfair competition. In the near future EMS should be placed under the supervision of the same regulatory authority that supervises competition among private express delivery companies.