

## 21. How much postal reform in Japanese postal privatization?\*

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### 1. INTRODUCTION

On 1 October 2007, the curtain came down on over 130 years of postal banking and insurance in Japan, as Japan Post Public Corporation was dissolved and its functions devolved to successor postal and financial corporations at the outset of a 10-year privatization process. Former Prime Minister Junichiro Koizumi, the strong-minded reform politician who had pushed through the decision to privatize, was there with corporate chiefs and other political leaders to cut the ribbon at the launch ceremony for the new Japan Post Group.

The privatization process thus launched was not, and is not, focused on revitalizing postal delivery services, for the overall stakes have always been much larger. Koizumi's key objective as prime minister was to achieve fiscal and political reform by unlocking the billions of dollars in banking and insurance assets held by the postal system and cutting off the flow of these assets into government spending. Postal reform as such was an afterthought. Enactment of the postal privatization package took many years of political struggle, a legislative stalemate, a snap election campaign focused on postal privatization, and a landslide victory for Koizumi after he campaigned against the recalcitrant within his own party. The political compromises he made along the way have influenced the design of privatization and will affect all of the Japan Post Group entities on a continuing basis.

Japan Post Bank, Japan's largest bank, and Japan Post Insurance, its largest insurance company, will continue to be financially intertwined with Japan's two regulated postal organizations, Japan Post Service and Japan Post Network, under the umbrella of their joint owner, Japan Post Holdings. Moreover, all of these organizations are expected to enhance their profitability by entering new business areas, such as international express mail, express parcel delivery, and logistics in the case of the new postal delivery company. It is not clear whether or how the government will prevent cross-subsidization between regulated activities and these new areas or cross-subsidization of new activities by the assets accumulated under public ownership.

Japan's postal reform package thus differs significantly from postal reform in other industrialized countries. Indeed, key elements in those reforms are not present in the Japanese scheme at all. Structural compromises in the Japanese approach also raise

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significant issues for postal policy, for fair competition in physical delivery and financial services in Japan, and for the government bodies that will supervise the package's implementation in years to come.

This chapter discusses the privatization package and its implementation in comparative perspective, combining analysis of postal regulatory issues and of the legal and policy background in Japan. It follows up on and updates the earlier study by Porges and Leong (2006).

## 2. POSTAL LAW AND DELIVERY SERVICES IN JAPAN

While the Japanese post office was established in 1871, the current Postal Law of Japan dates from 1947.<sup>1</sup> The 1947 law established the national post office, Japan Postal Services, as a department of the Ministry of Communications, providing five classes of letter mail plus parcel post.<sup>2</sup> By 1973, the fourth and fifth classes of mail had been consolidated.<sup>3</sup> This service mandate remained unchanged until the privatization laws of 2005.

In 2002, the Japan Post Law<sup>4</sup> transformed Japan Postal Services into Japan Post Public Corporation (Japan Post), a public corporation staffed by civil servants and specifically authorized to provide both the letter post and parcel post services regulated by the Postal Law. The same organization also provided postal banking services and postal life insurance services, activities which wound up holding a quarter of personal financial assets in Japan (Porges and Leong, 2006).

Although Japan Post was a separate public corporation, the Japan Post Law and the Postal Law gave the Ministry of Internal Affairs and Communications (MIC) broad authority to direct the provision of postal services. The MIC closely supervised postal operations, approving Japan Post's Postal Regulations and Operations Manual, approving changes in postage rates and determining matters such as maximum size of postal parcels, standards for ordinary mail, or methods of mail collection and delivery; the MIC could exempt charities from postage, exempt areas from nationwide delivery standards and provide for 'matters necessary to carry out this law other than those provided for in this law'.<sup>5</sup>

Japan also modified the postal monopoly in 2002. The Postal Law gave Japan Post a monopoly for the carriage of 'correspondence', defined as 'writings that express the intentions of the sender, or notify facts, to a specified recipient'.<sup>6</sup> In 2002, the Diet enacted a new Correspondence Delivery Law<sup>7</sup> permitting licensed private operators to deliver 'correspondence' as an exception to the postal monopoly set out in the Postal Law. The new law provided licenses for two types of correspondence delivery services: (i) general correspondence delivery with nationwide six-day-a-week collection and delivery, meeting service standards set by the MIC and charging MIC-regulated uniform rates, and (ii) special correspondence delivery of large-size or heavyweight correspondence, correspondence delivered within three hours, or correspondence for which the delivery fee exceeds ¥1,000 (\$9.95).<sup>8</sup>

The general correspondence delivery license was an empty promise. A licensee would have to duplicate the facilities of Japan Post and submit to MIC controls similar to those imposed on Japan Post. Since 2002, no company has applied for such a license. It has even been legally impossible to offer general correspondence delivery through a group of

providers or in collaboration with Japan Post. The special correspondence delivery license is more feasible, but it is still restrictive compared to other industrialized countries. The licensee must submit a business plan to the MIC, demonstrate its capacity to do business, comply with any conditions that the MIC attaches to the license, submit reports to the MIC, and accept such inspections as the MIC requires. As of March 2008, there were 253 special correspondence delivery licensees of which only 13 operated nationwide.<sup>9</sup> Parcel delivery companies have also competed in delivering non-monopoly items to individual customers, including catalogs, unaddressed direct mail, and parcels (Maruyama, 2006).

Letter mail in Japan has been declining absolutely since FY 2001, when it peaked at 26.7 billion items. Per capita use of letter post (178 items per year in 2005) is well below levels in other large industrialized countries such as the United States (714), the United Kingdom (334), France (291), and Germany (218), although comparable to the European Union (EU) as a whole (197) (Japan Post, 2005). By FY 2006, mail volume had declined to 24.7 billion items due to electronic diversion and competition from domestic delivery providers, and it was predicted to continue (Japan Post, 2007). Japan Post Holdings predicts that this decline will continue (Japan Post Holdings, 2007a). In recent years, Japan Post has made up some of the decrease in letter-post volume through efforts to recapture its share of the parcels market. (Mizutani and Uranishi, 2003).

International letter post is small and declining more rapidly than domestic mail overall. Outbound international mail, 75.7 million items in FY 2006, is only 0.3 percent of domestic mail volume. Inbound international mail is about three times as much as outbound. In FY 2006, letter-post items were about 86 percent of outbound international mail, parcels were 2 percent, and International Express Mail Service (EMS) was 12 percent. Outbound international letter post peaked in FY 1991 at 125 million items and has been declining ever since, due in part to the activities of the international express companies. In FY 2006, outbound international letter post amounted to only 64 million items, 51 percent of the 1991 level. In the last decade, Japan Post's most successful international product has been International EMS. International EMS began in 1982 and reached 10 million items in FY 2006 (Japan Post, 2007).

The Japanese market is also served by large parcel companies that offer nationwide door-to-door services for parcels, luggage, and other goods. Yamato Transport started this *takkyubin* service in the 1970s and remains the market leader. Other major companies include Sagawa Express and Nippon Express (Nittsu). The international express companies DHL and TNT began service in Japan in the 1970s, and were later joined by the two other major global express operators, FedEx and United Parcel Service. The parcel and express companies are all regulated under domestic trucking statutes.

### 3. POSTAL PRIVATIZATION: THE CONTINUING STORY

The postal privatization package of 2005 was composed of six laws<sup>10</sup> that provided for actions to take place during and before a 10-year transition period starting on 1 October 2007 and made consequential amendments to existing law. The Postal Privatization Law establishes the basic structure, procedures, and goals of the process, and provides for incorporation of the new Japan Post Bank Corporation and Japan Post Insurance

Corporation. Four special laws charter other entities to succeed Japan Post and specify their objectives and business scope: the Japan Post Holdings Corporation Law, the Japan Post Service Corporation Law, the Japan Post Network Corporation Law, and the Law on the Independent Administrative Entity (a government corporation which will manage legacy postal savings and life insurance assets and liabilities). Finally, the Law on Adjustments amends the Postal Law and other existing laws referencing Japan Post to reflect changes in organizational structures and Japan Post's dissolution.

On 23 January 2006, the MIC incorporated Japan Post Holdings as a shell corporation to begin the process. The government owns all of the stock of Japan Post Holdings and is required to list and sell off up to two-thirds of these shares as soon as possible during the transition period. On 1 October 2007, Japan Post was dissolved and its operations, assets, liabilities, and employees were split among (i) Japan Post Holdings, the parent company; (ii) Japan Post Holdings' subsidiaries Japan Post Bank, Japan Post Insurance, Japan Post Services and Japan Post Network, and (iii) the Independent Administrative Entity.

Japan Post Holdings will initially hold all stock in its four subsidiaries. Japan Post Bank and Japan Post Insurance will be created under normal company law. They will not have government guarantees for their deposits or policies and will be required to pay taxes, pay into client security funds, and comply with applicable financial regulations and standards for capital adequacy.<sup>11</sup> During the transition period, Japan Post Holdings is required to list their shares and sell them all. As for the two postal subsidiaries, Japan Post Service inherits the postal monopoly from Japan Post, and Japan Post Network provides counter services for the other Japan Post Group companies. Japan Post Service and Japan Post Network are 'special companies' (*tokushu gaisha*) created by statute, not under normal company law. Although Japan Post Holdings' statutory charter requires it to hold all of the shares of Japan Post Service and Japan Post Network, as noted above up to two-thirds of the shares of the parent company are to be sold to the public during the transition period.<sup>12</sup>

The Postal Privatization Law set out basic principles designed to cement into place the Koizumi reform program for the postal-financial complex. It endorsed 'fair and free competition' and the need to 'ensure equal conditions for competition with business operators that carry on the same type of service as the services of the new corporations' – regardless of whether those services are financial or postal in nature. It also endorsed the idea that leaving to the private sector as much as possible those matters it can do will contribute to achieving a freer and more vital economy and society.

To keep implementation on track, the Postal Privatization Law created a five-member Postal Privatization Committee (PPC), appointed by the prime minister and reporting to a cabinet-level Postal Privatization Headquarters overseeing privatization. The law also required Japan Post Holdings, working with Japan Post, to submit a Basic Plan (issued on 25 January 2006) and a detailed Implementation Plan (issued on 27 April 2007), setting out the division of assets, business projections and business plans for the successor entities (MIC, 2007c).

After passage of the privatization laws, Koizumi appointed Heizo Takenaka, the economist who had led Koizumi's postal legislation effort, as the MIC Minister and Minister for Postal Privatization. He also appointed as PPC chairman Naoki Tanaka, a think-tank economist who had been deeply engaged on financial and postal reform since 2001. To

forestall later slippage, Takenaka had Japan Post Holdings issue the Framework of the Implementation Plan on 31 July 2006 (Japan Post Holdings, 2006), and the Koizumi administration chose the leadership of the successor entities (Takenaka, 2006, pp. 239–41). The PPC must report on privatization at three-year intervals and has stated that it intends to issue interim reports as well. The PPC must also deliberate and issue opinions on applications by Japan Post or its successor entities for licenses to enter into new lines of business and on applications for MIC approval of its business plans. In June 2007, the PPC issued its evaluation of Japan Post Holdings' implementation plan.<sup>13</sup>

#### 4. POSTAL REFORM IN JAPAN IN PERSPECTIVE

The EU, the United States, Australia, and New Zealand have all enacted major postal reform legislation in the last dozen years. Each has taken its own path to postal reform, but for all the basic public policy issues have been essentially the same. In each jurisdiction, the post office is regarded as important both as a key element of the communications infrastructure and as a large employer. As in most countries, before practical alternatives to the postal service existed, government tolerated inefficiency, which yielded the political bonus of extra jobs, and encouraged services which were popular with voters even if not cost-justified.

At the end of the twentieth century, conditions changed, and all were confronted with the same basic question: given the decline in the postal letter business and increasing competition from other delivery services, how can the national post office be equipped for commercial survival and avoid a future of increasing public subsidies? All four jurisdictions have concluded that postal reform must include four elements: (i) conversion of the post office into a more commercial organization; (ii) repeal of the postal monopoly after a reasonable transition; (iii) definition of universal service; and (iv) creation of an independent regulator to discharge specific government functions (if any). In this section we consider how the postal elements of the Japanese privatization package compare with the trend in these four.

##### 4.1 Commercialization of the Post Office

To adapt to changing, and increasingly competitive, markets, governments have concluded that the post office must be structured more like other commercial undertakings. In most cases, the first step is to reorganize the post office as a corporation subject to normal company law. Although governments initially own all shares of the resulting entity, increasingly governments are concluding that ownership must be transferred to private shareholders as well. In addition, commercialization implies that, except for specifically defined rights and obligations, the national post office will, on the one hand, have the same freedom to manage its activities as a private company and, on the other, be subject to the same commercial rules as a private company, including rules to ensure fair competition in the marketplace.

In the EU, corporatization of the public postal operator has become the rule rather than the exception, and privatization appears likely to follow. Nineteen of the 27 EU member states have reorganized their public postal operators under normal company law.

Six EU public postal operators are at least partially privatized as well, with all of the shares of TNT (the Netherlands public postal operator) and a majority of the shares of Deutsche Post (Germany) in private hands (WIK 2006, p. 43).

In the United States, the Postal Service remains a government agency, but it was insulated from political control by the Postal Reorganization Act of 1970. The Postal Accountability and Enhancement Act of 2006 further separated operational from political and regulatory controls.

In New Zealand and Australia, the public postal operator has long been corporatized, although still government owned. New Zealand's post office department was transformed into a corporation under the companies act in 1987 and is in fact operated very much as a private corporation. Australia Post became a government corporation in 1994.<sup>14</sup>

Japan moved only part way down this path and then stopped. In 2002 Japan Post was re-established as a government corporation with separate accounting, but it was not subject to company law, continued to be staffed by civil servants, and remained closely supervised by the MIC. The statutes that establish Japan Post Holdings, Japan Post Service, and Japan Post Network, and define their scope and governance, also endow the government with continuing control or a veto. The MIC had veto power over the original articles of incorporation of these companies. Since Japan Post Holdings holds all of the shares of Japan Post Service and Japan Post Network, and the government is required to hold at least one-third of Japan Post Holdings forever, the Postal Privatization Law effectively ensures that the government will have veto power over changes in these articles or other key corporate decisions. The MIC and the prime minister (whose office includes the Financial Services Agency, Japan's financial services regulator) jointly established the Basic Plan of succession which was the blueprint for the Implementation Plan, and their approval was also required for the Implementation Plan.<sup>15</sup>

The MIC will continue to exercise more direct supervisory authority as well. It has the right to approve the social contribution services plan (which funds certain deficit services of Japan Post Service); the company's annual business plan; any change in its articles of incorporation; any transfer of important assets; and Japan Post Service's postal regulations and Management Guidelines. The MIC will also have the power to order changes needed to enforce the law. While the MIC will no longer have discretionary authority to approve rates for letters and cards (other than the standard 25-gram letter), it gains new authority to approve Japan Post Service's subcontracts as well as its entry into new businesses. The MIC will receive the accounts of Japan Post Service, will supervise its compliance with the law, and may order inspections and reports as it deems necessary.<sup>16</sup> It has comparable supervisory authority over Japan Post Network.<sup>17</sup> In short, the independence of the national post office remains largely a formality.

The plan also leaves important parameters undefined for some make-or-break issues affecting any potential competitor, service consumers, and the extent of efficiency benefits to the Japanese economy. Consider a basic problem presented by postal reform in all industrialized countries: the proper allocation and future use of the assets amassed by the postal administration using public funds during the period before reform. Issues of this nature led to long-standing contention regarding Deutsche Post's purchase of DHL with funds from sales of legacy real estate and other legacy assets. Although the European Commission approved Deutsche Post's purchase of DHL without addressing this contention directly, it imposed several conditions on the operation of Deutsche Post to ensure

fair competition.<sup>18</sup> The United States has gone further. A recent postal reform law requires the Treasury and the Postal Regulatory Commission (PRC) to develop an independent and impartial plan to divide the assets of the Postal Service between a fund for market dominant products and a fund for competitive products, and prohibits the Postal Service from subsidizing competitive products with revenues from market-dominant products.<sup>19</sup>

The Postal Privatization Law calls on the government to take measures, including imposing limitations on the successor entities, to ensure 'equal conditions for competition' with private businesses in the same service areas (Articles 2–3, 8). Although the law provides for an independent Appraisal Committee to value the assets (Article 165), the law provides no clear standard for fair division of assets.

Japan Post Service or Japan Post Network could also potentially draw directly or indirectly on the vast pool of assets represented by the shares of Japan Post Bank and Japan Post Insurance. A hint appears in the Implementation Plan Framework of July 2006, which, in a discussion of the assets of Japan Post Service, states that 'Although its net assets are projected to be ¥200 billion, Japan Post Service will be a wholly-owned subsidiary of Japan Post Holdings, and *since Japan Post Holdings will have sufficient net assets, after privatization an increase in capital should be possible*' (Japan Post Holdings, 2006, p. 18, emphasis added). The implication is that Japan Post Holdings will dip into the financial resources it has as owner of the financial subsidiaries, if Japan Post Service needs more capital to compete more effectively.

Moreover, the Implementation Plan contemplates that initially 99 percent of the operating income of Japan Post Network will come from fees for counter services paid by Japan Post Bank and Japan Post Insurance (both of which will also have independent sales offices) and fees from Japan Post Service (Japan Post Holdings, 2007b, p. 83). These fees are to be provided for under long-term contracts concluded when the successor entities separate on 1 October 2007. The fees provide an obvious and non-transparent opportunity for cross-subsidization and questionable transfer pricing.

The PPC's comments on the Implementation Plan point to all of these issues. The PPC stresses generally that 'safeguarding equal conditions of competition is essential' (PPC, 2007, p. 2). It urges the MIC and the Financial Services Agency to keep certain specific issues in mind when considering whether to approve the Implementation Plan and supervising the successor entities. The PPC notes that the division of public assets acquired with government funds is a critical issue for these enterprises and that it must be fair; the PPC states that consistent and rigorous accounting and disclosure is necessary before and after the division of assets (*ibid.*, p. 3). Moreover, the PPC urges that because the circumstances are abnormal, the regulators must verify market prices, require cost accounting, and ensure that the long-term contracts with Japan Post Network are at arm's-length prices, both immediately and on a continuing basis (*ibid.*, p. 4).

Any uncertainty regarding the disposition of the two financial entities will cloud the entire privatization process. The Implementation Plan now calls for the listing and sale of shares in the financial subsidiaries and the parent Japan Post Holdings at the same time, in FY 2010 if possible (Japan Post Holdings, 2007b, p. 6). Since roughly 91 percent of Japan Post Holdings' value consists of its shareholdings in the two financial firms, if Japan Post Holdings' shares are sold first, buyers' evaluation of their potential gains from the sale of Japan Post Bank and Japan Post Insurance will determine the market value of

Japan Post Holdings' shares. Unless the financial entities are sold first, the uncertain valuation of future sales of the financial entities will likely complicate the sale of Japan Post Holdings' stock.

Even after the financial entities have been sold and Japan Post Holdings reverts to the role of holding company for Japan Post Network and Japan Post Service, it may be difficult to offer shares of Japan Post Holdings given the extent of government control over the management of Japan Post Holdings, Japan Post Service, and Japan Post Network under their organic statutes and the Postal Law. Wise investors may be reluctant to purchase shares in a commercial venture when they will have little or no power to determine its commercial success.

## **4.2 Definition of Universal Service**

A clear definition of the postal operator's 'universal service obligation' or USO is another key element for privatization. The concept of an explicit USO is a recent development in postal law, resulting from the increased emphasis on commercialization and competition. If the public postal operator is to be given commercial freedom, it must be allowed to decide for itself which business opportunities and markets to pursue. At the same time, to satisfy voters dependent on traditional postal services, government must define specifically which postal services it will continue to guarantee to all citizens, either by imposing requirements on the public postal operator or by regulating the delivery services market generally.

The EU Postal Directive, for instance, requires member states to adopt measures to ensure a broad level of universal service. National definitions of the USO are typically quite detailed. In many cases, the USO applies to letters, direct mail, newspapers and periodicals and similar items weighing up to 2 kilograms and to parcels weighing up to 20 kilograms. The USO also specifies access (number or density of post offices, postal agencies, and public collection boxes), quality of service (number of collections and deliveries per week and percentage of mail to be delivered within given timeframes for different classes of service) and users' rights (procedures and remedies for complaints by mailers and addressees) (WIK, 2004, pp. 34–44). Australia fixes its USO by regulation, and limits it essentially to monopoly services.<sup>20</sup> New Zealand sets out its USO through a Deed of Understanding between the government as owner and New Zealand Post, providing for service quality, access and uniform maximum fees.<sup>21</sup> In the United States, the Postal Regulatory Commission is now developing for Congress a proposal for a modern definition of the USO.<sup>22</sup>

In Japan, since 1 October 2007, universal postal service has been provided by Japan Post Service (which also inherits the postal monopoly) based on a mandate in Article 1 of the Postal Law to 'promote public welfare by provision of postal services at the lowest possible charges, on a nation-wide scale and in a manner fair to all'. The range of universal services includes the four classes of domestic mail (in accordance with size and weight limitations specified by the Postal Law), plus international mail (ordinary, small packet and EMS), and certain types of special handling mail such as registered mail. Parcels are outside the USO. Mail collection must include nationwide provision of mailboxes and post offices. Postage rates must be uniform nationwide and for mail under 25 grams must not exceed ¥80 (about US\$0.75). In general, delivery must be provided at least

daily from Monday to Saturday, within three days from dispatch, to each household nationwide. These standards derive partly from direct requirements in the Postal Law and partly from the legal requirement that the MIC must approve postal service management guidelines (*Yūbin gyōmu kanri kitei*) drawn up by Japan Post Holding and applied as from 1 October 2007 (MIC, 2007b, and 2007d).

The Japanese USO thus falls somewhere between a pre-modernization general statement of mission for a governmental department and a post-modernization definition of specific public service obligations for a commercial entity. If the MIC is considered the ultimate manager of the national post office, then the definition of universal service does not provide external guidance to the sector, as it should in a modern postal law; rather the USO remains a set of internal instructions issued to a postal operator by superiors in the ministry. There is no clear distinction between what postal management must do as a public servant and what it may do as a commercial enterprise. There is no definite way to calculate the cost of the public service that the USO requires.

In this connection as well, the PPC's recent comments on the Implementation Plan point to an important issue for the future of privatization. Noting that package services are no longer within the USO, the PPC argues that equality of competitive conditions between Japan Post Service and its private competitors will increase the convenience and utility of the system for Japanese consumers. The PPC urges that when the MIC considers an application from Japan Post Service for a license to enter any of the new business areas listed in the Implementation Plan – such as new direct mail products, domestic third-party logistics or the international freight business – the MIC require transparent and public separation of income from USO postal services and other services, in order to avoid improper cross-subsidization (PPC, 2007, p. 3).

### **4.3 Repeal of the Postal Monopoly**

Industrialized countries generally recognize that the objective of making the public postal operator more efficient and competitive implies repeal of the postal monopoly. The postal monopoly, or 'reserved area', invites poor service and induces inefficiency by insulating the public postal operator from choices of customers and the threat of competition.

In the EU, the Postal Directive of 1997 committed member states to a program of 'gradual and controlled liberalisation of the market'. Member states were authorized to continue postal monopolies but only to 'the extent necessary to ensure the maintenance of universal service'.<sup>23</sup> Sweden, Finland, the United Kingdom, and Germany have already repealed their reserved areas. Overall more than half of the letter-post service in the EU is now offered without monopoly protection. In February 2008, EU amended the Postal Directive to require repeal of most postal monopoly laws by 1 January 2011 and all by 1 January 2013.<sup>24</sup>

Outside the EU, New Zealand repealed its postal monopoly in 1998.<sup>25</sup> Australia retains a postal monopoly but has adopted numerous exemptions, including intra-corporate mail and letters priced at more than four times the price of a basic postage stamp.<sup>26</sup> In the United States, a recent law requires the PRC to review the history and future of the postal monopoly and report to Congress by 2008.<sup>27</sup>

In Japan, as noted above, the 2002 Correspondence Delivery Law provided that private companies could be licensed to provide postal services within the postal monopoly area

but made conditions so stringent that no private company has ever applied for a license. In 2005–06, the MIC established a ‘Study Group on the Reserved Area and Competition Policies in Postal Services’ to review the Correspondence Delivery Law, but in June 2006, the Study Group recommended only minor changes, citing the need to protect universal postal service.<sup>28</sup>

In February 2007, the MIC again set up a ‘Study Group on Re-examining the Postal and Correspondence Delivery System’. This group is scheduled to report in 2008 with proposals to modify the postal monopoly. The group is examining both the system in Japan and postal liberalization in other countries. The future of the postal monopoly might be in doubt. The same political forces that prevented earlier liberalization remain, though as of 2008, the immediate uncertainties about execution of the October 2007 privatization have been resolved.<sup>29</sup>

#### **4.4 Independent Regulation**

Transformation of a public postal operator into a more commercial and competitive organization also requires an independent regulator. In modern postal laws, there are typically two related objectives to regulation: (i) to ensure the fairness and quality of universal service and (ii) to prevent the public postal operator from competing unfairly against private companies.

To ensure good-quality universal service, the regulator controls the prices and services of the public postal operator and perhaps other providers of universal services. Regulation may also involve ordering or contracting for universal services in areas not adequately served. To prevent unfair competition, the regulator controls ‘cross-subsidy’ by the public postal operator, that is, using revenues earned in markets where the public postal operator has a monopoly or market-dominant position to underwrite costs incurred in competitive markets. Cross-subsidy is considered unfair to both the competing operator’s and to the public postal operator’s customers in non-competitive markets. A commercially minded public postal operator – whether organized as a government ministry, independent agency, or normal corporation – cannot be entrusted with regulating itself. Hence, the regulator must be institutionally independent of these stakeholders.

The EU Postal Directive provides that ‘Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators’.<sup>30</sup> In some cases, the Commission has gone so far as to initiate infringement procedures against member states to ensure the independence of the regulator. For example, in 2001, the Commission condemned France for failing to establish ‘any institutional arrangement ensuring, thanks to a proper separation of duties, that the tasks of economic and financial monitoring, on the one hand, and of supervision of La Poste, on the other, are carried out completely independently one of the other’.<sup>31</sup>

Other industrialized countries have adopted different strategies for regulation of the post office. Australia assigns regulation of the public postal operator to the Australian Competition and Consumer Commission (ACCC), whose first job is enforcement of the competition laws. The ACCC is responsible for (i) overseeing prices of Australia Post’s reserved services; (ii) resolving disputes about the terms and conditions for Australia Post’s bulk-mail services; and (iii) monitoring for cross-subsidy between

reserved and non-reserved services. Significantly, the ACCC may also require Australia Post to keep necessary records. In 2004, government strengthened these regulatory powers in response to complaints about unfair competitive practices.<sup>32</sup> In the United States, the PRC is structurally independent from both government and the Postal Service and exercises substantial supervisory authority over postal practices.<sup>33</sup>

In Japan, there is no independent and permanent regulator for postal services equivalent to those established in most other industrialized countries. The only institutionally independent entities that will provide oversight of the postal services provided by Japan Post Holdings, Japan Post Service and Japan Post Network are the Postal Privatization Commission and the Japanese Fair Trade Commission (JFTC). The PPC has demonstrated itself to be knowledgeable and attentive to market competition issues, yet as an advisory committee, its ability to act will depend entirely on the priority that the prime minister places on postal privatization. Moreover, the PPC is only temporary. The Postal Privatization Law created it, and the cabinet-level Postal Privatization Headquarters to which it reports, only for the duration of the transition to privatization, and both organizations will cease to exist in October 2017. By that time, the two financial entities, Japan Post Bank and Japan Post Insurance, will have been privatized and will be subject to the normal regulation applicable to like banks and insurance companies. But the statutory scheme does not contemplate any complete privatization of Japan Post Service and Japan Post Network or true separation from government, and as of October 2017, there will be no organization charged with ensuring that the postal entities compete fairly and that their activities benefit the public.

The JFTC might help fill this gap. It is the enforcer of Japan's Anti-Monopoly Law and other competition laws, and these laws apply fully to all of the successor entities.<sup>34</sup> Amendments to the Anti-Monopoly Law in April 2005, with increases in staff and resources, have substantially increased the JFTC's ability to vigorously enforce the laws and to apply competition policy to new areas. On 21 July 2006, the JFTC issued a lengthy report on competition issues raised by postal privatization.<sup>35</sup> The report examined the economics of the postal business and the competition policy problems posed by growing competition between Japan Post and private operators. The report discusses in detail the implications of laws and judicial decisions from the EU and other postal reform countries. The report also identifies examples of Japanese governmental intervention in favor of Japan Post, including vehicular traffic regulations, access to change of address databases, and customs procedures. In broad terms, the report concludes that the concept of 'equal footing' is critical to the success of postal privatization and that the JFTC should maintain a watchful eye over the process. In the end, however, the capacity of the JFTC to control Japan Post Holdings and its ministry without an explicit legal mandate is unproven.

In addition, the MIC will supervise the postal entities on a continuing basis under the postal laws and the Postal Privatization Law. For instance, since 1 October 2007, parcel service has no longer been regulated under the Postal Law and is excluded from the scope of regulated mail; only letter post is still regulated.<sup>36</sup> Thus, in theory, Japan Post Service's parcel delivery operations are on an equal footing with domestic parcel companies, and both are regulated by the trucking laws. The Japan Post Service's authorizing statute permits Japan Post Service to provide 'postal delivery service provided under the provisions in the Postal Law',<sup>37</sup> but requires MIC approval before Japan Post Service can

provide any ‘other services’.<sup>38</sup> As the PPC has observed, the MIC can attach conditions to this approval so as to require transparent accounting and separation of USO and non-USO services. But the MIC is not an independent regulator. As the agency with jurisdiction responsible for supervising Japan Post Holdings, Japan Post Service and Japan Post Network, it has a stake in their success and cannot be truly impartial.

In short, although there exists some level of independent scrutiny of the national postal operator in Japan, no institution wields the independent legal authority of postal regulators in the EU, the United States, and other industrialized countries.

## 5. CONCLUSION

Japan’s postal privatization package has embarked upon privatization, but only for the financial entities that were the principal targets of Koizumi and his fiscal reformers. The package opens a new era in fiscal and political reform – but not (yet) for postal services. The postal successors to Japan Post are not truly corporatized, are not commercial entities operating separately from government, and are not on any credible path toward true privatization. The vast assets of the postal banking and insurance companies are not effectively separated from the operation of the national post office; there is no clear, independent definition of universal service; and there is no plan (yet) to phase out the postal monopoly. Most fundamentally, there is no prospect for truly independent regulation of the public postal operator unless the authority of the PPC can be strengthened and made permanent or the JFTC can exercise broad regulatory authority without benefit of a specific regulatory mandate. While ‘postal privatization’ began formally in Japan in October 2007, modern postal reform still needs to be addressed.

## NOTES

\* Views expressed in this article are solely the personal views of the authors.

1. Postal Law (*Yūbin hō*), Law No. 165 of December 12, 1947.
2. Postal Law at § 16.
3. See Japan Ministry of Posts and Telecommunications, *Postal Law and Regulations of Japan*, Postal Law § 16 (1973).
4. Japan Post Law (*Nihon Yūbin Kōsha Hō*), Law No. 97 of 2002.
5. Postal Law (before entry into force of 2005 amendment) §§ 17(4) (postal parcels); 19–2 and 20 (charities); 32(1) (postage methods); 56 (collection boxes); 75–2 (postage rates, publication of accounts); 75–3 (Postal Agreement); 75–4 (public disclosure of rates, etc.); 75–5 (order changes in rates); 75–6 (Operations Manual, delivery standards); and 75–9 (general supervisory authority).
6. *Ibid.*, Art. 5(2).
7. Law Concerning Correspondence Delivery by Private Sector Operators, Law No. 99 of 2002.
8. Yen–dollar exchange rates are as of 17 March 2008 (US\$1.00 = JPY 96.88).
9. *Ibid.* at Arts. 2(7) (minimum charges); 31 (capacity to do business); 34 (conditions); and 36 (reports and inspections); data on licensees from MIC (2007).
10. Laws No. 97 to 102 of 2005, respectively.
11. Time deposits and life insurance contracts entered into before 1 October 2007 still retain government guarantees, but have been transferred to the Independent Administrative Entity.
12. Japan Post Holdings Corporation Law, Law No. 98 of 2005, Art. 5.
13. PPC opinions at <http://www.yuseimineika.go.jp/iinkai/iken.html>, including opinion of 12 April 2006 (agreeing to authorization by the MIC of Japan Post’s investment with ANA in a new cargo airline, JP Express Co., Ltd.); two opinions of 5 July 2006 (on implementing regulations for the Postal Privatization

- Law); opinion of 8 June 2007 (on Japan Post Holdings' April 2007 Implementation Plan); opinions of 5 July, 6 September and 10 September 2007 (on Cabinet Orders and ministerial orders implementing the Postal Privatization Law); opinion of 5 November 2007 (on freeing business operations of Japan Post Bank and Japan Post Insurance); opinion of 23 January 2008 (approving entry into advertising-related businesses by Japan Post Services); and opinions of 22 February 2008 (approving offerings of credit cards and mortgage loans by Japan Post Bank and offerings of variable annuities by Japan Post Insurance; approving entry by Japan Post Service into new businesses in parcel delivery, gasoline retailing and auto repair). The PPC can and does ask for public comment and can demand documents, explanations, and other cooperation from all governmental officials and agencies, including the postal successor companies and private persons.
14. In the United States, the Postal Service is established as a federal agency which is independent of government because ultimate management authority is vested in nine governors appointed by the President for fixed 7-year terms. Although the US Postal Service has not been corporatized, an official review of the future institutional form of the Postal Service is to be completed by 2011.
  15. See Postal Privatization Law Arts. 36 (incorporation); 70(2) (articles of Japan Post Service); 161 (Basic Plan); and 163 (Implementation Plan); Japan Post Holdings Law Art. 11 (changes in articles).
  16. Postal Law, as amended effective 1 October 2007, Arts. 67 (scope of accounts to be published); 68 (Postal Regulations); 70 (Management Guidelines); 71 (authority to order 'changes to postal charges, Postal Regulations, or Postal Service Management Guidelines if such orders are determined as necessary for the enforcement of this law'); 73 (subcontracts); 75 (Ministerial Ordinance); Japan Post Service Law Arts. 3 (entry into non-traditional businesses); 4 (social services); 7 (business plan); 8 (transfer of assets); 9 (charge in articles); 10 (financial statements); 11 (form of public accounts); 12 (supervision); and 13 (reports and inspection).
  17. Japan Post Network Law Art. 6 (social services); 9 (business plan); 10 (transfer of assets); 11 (charge in articles); 12 (financial statements); 13 (supervision); and 14 (reports and inspection).
  18. European Commission, Case No IV/M.1168 – DHL / Deutsche Post (26 June 1998).
  19. Postal Accountability and Enhancement Act, Pub. L. 109-435, § 401, adding 39 U.S.C. 2011 (2007).
  20. Australia, Australia Postal Corporation (Performance Standards) Regulation 1998, as amended. The universal service obligation placed on Australia Post is relatively light compared to that of other post offices.
  21. According to this document, NZ Post promises, *inter alia*: (i) to provide a 6-day-per-week delivery service to more than 95 percent of delivery points; (ii) to maintain the stamp price below NZ\$0.45 (US\$0.31); (iii) not to introduce a rural service fee; and (iv) to maintain a specified number of post offices (some operated by NZ Post and some franchised to others). The government has authorized that NZ Post shall be the sole designated postal operator representative at the Universal Postal Union for five years.
  22. See Postal Accountability and Enhancement Act, Pub. L. 109-435, § 702. This provision requires the Commission to conduct a two-year study of the history and future of universal service and the postal monopoly in the United States and to recommend appropriate changes. Its report is to be submitted to Congress and the President not later than December 21, 2008.
  23. European Union, Directive 1997/67/EC, Recital 8 and § 7.
  24. Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52, 27 February 2008, p.3.
  25. Postal Services Act 1998, New Zealand.
  26. Australian Postal Corporation Act 1989.
  27. Postal Accountability and Enhancement Act, P.L. 109-435, §702.
  28. Ministry of Internal Affairs and Communications, 'Information and Communications in Japan', (White Paper 2006, pp. 60-61).
  29. MIC press release, "Yūbin – Shinshōbin Seido no Minaoshi ni Kansuru Chōsa Kenkyūkai" no Kaisai' (Convening of Investigation and Study Group on Reexamining the Postal and Correspondence Delivery System), February 2, 2007, text at [http://www.soumu.go.jp/s-news/2007/070206\\_2.html](http://www.soumu.go.jp/s-news/2007/070206_2.html); all documents and minutes for this study group are available at [http://www.soumu.go.jp/yusei/seido\\_minaoshi/index.html](http://www.soumu.go.jp/yusei/seido_minaoshi/index.html).
  30. European Union, Directive 1997/67/EC, OJ L15, 21 January 1998, p. 14, § 22.
  31. European Union, Commission, Decision 2002/344/EC of 23 October 2001, OJ L 120, 7 May 2002, p. 19, para. 29. The activities to be monitored involved setting volume thresholds and tariffs for pre-sorted mail.
  32. Australia, Postal Services Legislation Amendment Act 2004, No. 69 (2004).
  33. New Zealand, Postal Services Act 1998, as amended. The New Zealand postal law essentially treats the postal services market as an ordinary business regulated in the same manner as other commercial activities. The postal law imposes consumer protection obligations on delivery services conveying letters. The only special supervision of the public postal operator is found in disclosure regulations imposed on the public postal operator which are designed to deter anticompetitive behavior. In particular, New Zealand Post is required to disclose the number of bulk-mail contracts at each discount level and the justification

- for such discounts. Periodic strengthening of disclosure requirements imposed on New Zealand Post since 1990 suggests that the government initially underestimated the competitive problems posed by deregulation. New Zealand, Postal Services Act 1998, as amended, § 61.
34. Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Law No. 54 of 1947).
  35. Concerning the Postal Business and Competition Policy Issues Related to Implementation of the Postal Privatization Law: Responding to Anti-Competitive Acts that Utilize the Monopoly Area (July 21, 2006). This report drew in part from Singham (2006).
  36. Article 16 of the Postal Law prior to amendment by the Postal Privatization Law. After amendment, the mail classification provision of the Postal Law, renumbered as Article 14, provides, 'Postal items shall consist of 1st, 2nd, 3rd and 4th Class Mail'. There is no reference to parcels in the entire revised Postal Law.
  37. Postal Delivery Corporation Law § 3(1). In addition, Japan Post Service is authorized to provide 'sales of stamps as delegated by the government' and 'services pertaining to' postal services and sale of stamps.
  38. Postal Delivery Corporation Law § 3(3); in this connection, the MIC is specifically required to 'take care not to cause any unreasonable harm to the profits of business operators that carry on the same type of service'. Postal Privatization Law § 77. Postal Privatization Law § 74(1) gave Japan Post Service a six-month grace period to allow it to obtain the trucking license from the Ministry of Land, Infrastructure, and Transport (MLIT) that is required for delivery of parcels.

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# Handbook of Worldwide Postal Reform

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ADVANCES IN REGULATORY ECONOMICS

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