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Swiss Post International Singapore Pte Ltd

Comments on Singapore Post Limited's Proposed Reference Access Offer

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Executive Summary

Pursuant to Subsection 4.4.2.3 (d) and Subsection 5.6.6 (a) of the Postal Competition Code 2008, as a PSO License holder we have been presented with the proposed Reference Access Offer (RAO) as filed by the Mandated and Dominant party, SingPost. This document represents our comments on the proposed RAO.

We, Swiss Post International Singapore, fully support the goals of the competition code as set out in sub-section 1.2 of the competition code. Therefore, in our comments we will follow the afore mentioned code as our main guideline. Ultimately, we believe that the proposed RAO offer should be facilitating the goals of the code.

We contend that the proposed RAO offer is violating the postal competition code in several aspects. In our comments, we explain with supporting arguments these violations.

The violations relate to the following points:

1. Timing of New Bulk Mail Rates and Introduction of proposed RAO offer.
2. Pricing Methodology used in proposed RAO.
3. Duty to Provide Services at just and reasonable prices, terms and conditions.
4. Price Abuse in the form of Price Squeeze.
5. Services on a Non-Discriminatory Basis.

Furthermore, we discuss several main arguments that might be used by the dominant licensee to justify the proposed RAO:

1. Increasing Cost Pressures Argument.
2. Cream Skimming Argument.

Subsequently, we argue that the offer is in fact a further deterrent to entry for potential credible competitors.

We also discuss and argue that the proposed RAO does not meet IDA's goal of mandating network access.

Our penultimate contention discusses the interpretation of sub-section 2.1.2 (a) of the appendix to the code relating to the pricing methodology.

Lastly, we discuss the mandated and non-mandated options for entering into a network access agreement.

RESPONSE TO CONSULATION REQUEST ON PROPOSED RAO RATES FILE BY SINGPOST

Pursuant to Subsection 4.4.2.3 (d) and Subsection 5.6.6 (a) of the code, as a PSO License holder we have been presented with the proposed RAO rates as filed by the Mandated and Dominant party, SingPost. We are requested to comment on the proposed RAO rate by June 25th before noon latest.

1. Our Objective

We, Swiss Post International Singapore, fully support the goals of the competition code as in sub-section 1.2 of the competition code. Therefore, in our comments we will follow afore mentioned code as our main guideline.

In line with Section 4 of the code, more specifically on the RAO offer, our objective is to have just, reasonable and non-discriminatory prices, terms and conditions.

We are aware that the liberalization of the postal market should be in line with the goals of the code.

2. Outline of our comments:

We contend that the proposed RAO offer is violating the postal competition code on several points; we will try to explain these violations in the next paragraphs with supporting arguments.

Ultimately, we believe that the proposed RAO offer should be facilitating the goals of the competition code.

3. Timing of New Bulk Mail Rates and Introduction of proposed RAO

The competition code came into operation on 2nd May 2008 after a lengthy consultation period which started on 20 September 2007. The proposed consultation competition code can be found at:
http://www.ida.gov.sg/doc/Policies%20and%20Regulation/Policies_and_Regulation_Level2/20070920113721/PostalCC.pdf

The proposed code and the final code have the same unchanged subsection 2.1.2 (a) of the Appendix.

At the time of consultation and at the time of coming into operation of the competition code the Bulk Mail rates included a lodger's incentive of up to 7%. Although even this does not represent a non-discriminatory price/cost, it was taken into the final competition code. The new bulk mail rates seem lower than the old rates but when we take into account the lodger incentive it is more or less the same. In fact, it is potentially more expensive since the difference between the old and new rates are lower than the 7% discounts possible under the old bulk mail rates.

Very surprisingly on May 21st 2008, SingPost introduced a drastic change to the Bulk Mail Rates by withdrawing the lodger incentive and thereby effectively increasing the "net" bulk mail rates. Net meaning the rates paid after deduction of the lodger incentive.

This last minute change in fact is anti-competitive conduct since during the consultation
phase the reference point for the consultation was the existing bulk mail rates which 1
have been in effect for several years already.

Furthermore, this last minute change can be considered as a violation of section 4.8 of the competition code. Subsection 4.8.1 (a) clearly states:

(a) All existing effective tariffs filed by any Dominant Licensee before the date this code comes into effect will remain in effect until such time as the Dominant Licensee modifies or withdraws the tariff, or IDA directs[…] in accordance with the requirements of this Code.

We would further like to refer to subsection 4.4.1 (b):

(b) Obtain IDA's written approval prior to withdrawing the Basic Letter Service that it provides pursuant to an effective tariff.

Changing the original reference points after the effective date of the IDA, we deem as being anti-competitive.

4. <u>Pricing Methodology used in Proposed RAO Offer</u>

The pricing in the RAO offer "seems" to be in line with sub-section 2.1.2 (a) of the Appendix to the code: for delivering […]no less favourable than the discounted charges offered by the Mandated Licensee to existing bulk mailers: the proposed RAO offer pricing is equal to and non less favourable than the "surprisingly" newly introduced Bulk Mail Rates. Surprising for the reasons as argued earlier.

We use the word "seems" since although it is in line with the above mention section of the code, it is not in line with other sections such as section 4 and section 6.

5. <u>Duty to Provide Services at just and reasonable prices, terms and conditions</u>

Referring to section 4.2.1: "Duty to Provide Services at just and reasonable prices, terms and conditions," the proposed RAO rates <u>*are not just and are not reasonably priced and are anti-competitive*</u>. The rates do not allow for a licensee to profitably sell the services to potential clients in the market.

We understand that the mandated licensee has taken per se the subsection 2.1.2 (a) of the appendix to the code as their main guideline without regards to other parts of the competition code.

Compared to prevailing public postage rates (inclusive of prevailing GST) the proposed RAO rates are indeed factually lower. However, the comparison should be focused not on the prevailing postages rates but on another rate that is *widely accessible to the mail customers in Singapore via a PPI offer*: the same bulk mail rates as referred to in sub-section 2.1.2 (a) of the appendix to the code. Please note especially the statement: widely accessible to the mail customers in Singapore. These are the same customers for which both the dominant licensee and PSO license holders compete. Put simply our cost for downstream access is equal to the market selling rate of the dominant licensee offered to the mail customer (PPI holders).

To support our point please refer to
http://www.singpost.com/singpost_02_01_03ppi.htm :

"Having to post more than 300 pieces of mail per posting, of the same size and weight at least once a month?

What is Postage Paid Impression?
Postage Paid Impression is the solution for bulk mailing of homogeneous local and international mail to be posted out regularly.

Why use Postage Paid Impression?
It allows you to send regular bulk mail to domestic and overseas destinations. It is particularly useful for regular sending of bills, letters and others. All you need to do is apply for the permit to use the PPI service and lodge your mail directly to us and we'll take care of it. You may want to check out our security print-to-post solution and let us take charge of your mail from source to destination." (reference: SingPost website)

As such we as a PSO licensee will not be able to sell profitably the services to potential clients in the market. Moreover, we would in fact be selling below our cost price since our incremental cost of managing and servicing a client cannot be charged to potential customers in the market. The potential customer would rightfully not be willing to pay more than they would pay to the dominant licensee.

6. Price Abuse in the form of Price Squeeze

Referring to section 6.2.2.1.2 Price Squeeze and 6.2.2.1 Pricing Abuse
Based on above the mandated/dominant licensee's charges for the service is so high that the other licensee, its affiliate, or a reasonably efficient non-affiliated licensee could not profitably sell its Basic Letter services in Singapore.

Referring to section 6.2.2.1 of the code based on above, the RAO constitutes pricing abuse.

7. Services on a Non-Discriminatory Basis

Referring to section 4.2.2 Duty to Provide Services on a Non-Discriminatory Basis.
The proposed RAO pricing is discriminatory in favor of the dominant licensee itself. For a very simple and basic reason: the cost base for the dominant party is lower than our cost base, which is basically the RAO rate plus our own operational costs.

The network access charge should be equal to the existing postage rate less the dominant licensee's per unit incremental cost of all non-delivery functions. Under non-discriminatory access pricing the dominant licensee should pay the same rate for downstream access as any other PSO licensee.

As shown earlier in our comments the proposed RAO rates are directly offered to mail service customers in the Singapore market in the form of the bulk mail rates. These bulk mail rates include the dominant licensee's per unit incremental cost of all non-delivery functions plus a profit margin. Since the RAO offer is the same, PSO licensee are also charged for all non-delivery cost and the profit margin.

Based on the proposed RAO pricing outline, we understand that the dominant licensee might argue that the per unit incremental cost of all non-delivery function can be discounted according to volume and quality of mails. However, the same discounts are also directly offered to mail service customers, the same customers for which we would be competing as a PSO licensee. This creates a non level playing field.

As a counter argument to the above the dominant licensee might argue that mail service customers do not have the same level of mail expertise and knowledge as a PSO license holder to take advantage of these discounts. However, in the market there are several (security) printers including one in particular affiliated to the dominant licensee, DataPost, which can provide a one stop shop solution for data printing and mail processing in accordance with the quality mail stipulations of SingPost. Please refer to www.datapost.com.sg . This makes complete sense since during printing the quality stipulations can be easily applied. Therefore, as a PSO license holder we cannot differentiate and take any advantages/discounts based on knowledge and ability on quality mail preparation/processing.

In any case, we as a license holder will not be able to profitably sell the service in the market. We even would be forced to sell the service at a loss since managing and operating an account on our side will have incremental cost which cannot be earned back by discount scheme in proposed RAO pricing.

Furthermore, under our PSO license we are required to pay a license fee. Please refer to: "LICENCE TO PROVIDE POSTAL SERVICES GRANTED BY THE INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE TO SWISS POST INTERNATIONAL SINGAPORE PTE LTD UNDER SECTION 6 OF THEPOSTAL SERVICES ACT (ACT 237A OF 2007)ISSUED ON 1 DECEMBER 2007." To be found at:
http://www.ida.gov.sg/doc/Policies%20and%20Regulation/Policies_and_Regulation_Level3/20071004163139/SwissPostPSOLic.pdf

Sub-section 2.1 of the license reads as follows:

The Licensee shall pay to IDA an annual licence fee which is 0.4% of the annual audited gross turnover ("AGTO") based on the provision of the Services during the Licensee's financial year, subject to a minimum of $4,000.

In fact the proposed RAO pricing does not even leave room to recover the cost of the license fee since our cost for network access is equal to the selling price of the dominant licensee in the Singapore market.

8. Increasing Cost Pressures Argument

The dominant licensee might argue that even under increasing cost pressures the rates for delivery of mails have not been increased. However, we would like to note that this is not a valid argument to justify price squeeze.

9. Cream Skimming Argument

The dominant licensee might also argue that due to their universal service obligation and due to having to offer one single network access pricing for the entire geographical area of Singapore, the new entrants might apply the strategy of cream skimming. Cream skimming would mean that a new entrant would only set up competing delivery network in high dense areas where the per unit cost is low and would use the dominant postal's delivery network for destination where the per unit cost is higher than the offered single network access rate for the delivery of mails.

The geographical nature of the Republic of Singapore is such that the differences in the incremental unit cost of delivery of mail between different regions would be marginal. Thus, the threat of cream skimming is not as relevant as in other countries such as the UK where the differences in cost are significant. As a side note we would like to state that we also agree that a situation as in the UK whereby the incumbent is mandated to offer pricing below actual cost to licensees is not wanted or needed.

Absence of potential credible competitors for domestic delivery of mails due to deterrent to entry related to masterdoor keys

10. Deterrents to Entry

The IDA states the following in "IDA's Cover Note on the Postal Competition Code 2008 and Postal Services Operations Code 2008", subsection 3.6.6:

"Nevertheless, IDA understands the concerns of Competing Licensees of being able to compete effectively against SingPost, and has taken an approach that IDA believes strike a balance between the interests of all parties. While Competing Licensees will not have the same degree of access to the letterboxes as SingPost, this does not mean that there will not be competition in mail delivery. The 2-way access letterboxes only represent about one third of all letterboxes. That means Competing Licensees will still be able to deliver directly to the open-aperture letterboxes and to the 3-way access letterboxes which together account for two-thirds of all the letterboxes. Competing Licensees can directly approach the Town Councils or, in the case of condominiums, the Management Committees to obtain the Aperture Masterdoor Keys."

Three important elements which create a powerful deterrent for new entrants can be explained as follows:

1. Ratio Pigeon hole Masterdoor Keys to Aperture Masterdoor Keys : 1/3 to 2/3. In an open market where efficiency and effectiveness is key, this ratio effectively means that a new entrant cannot possibly achieve the same efficiency and effectiveness for the delivery of domestic mails. This factually puts the dominant licensee at an unfair privileged competitive cost advantage.

2. Directly approaching the Town Councils or the Management Committees to obtain the Aperture Masterdoor Keys puts a potential new entrant again at an unfair disadvantage compared to the dominant licensee which is has the assigned 'right.'

3. One last element very little discussed, if at all, relates to the creation of name and reputation for reliability and credibility in the market especially for the delivery of letters. This requires high cost in management/overhead (sunk cost) and does not come overnight. Having already been put at an unfair competitive cost disadvantage, the outlook of this last element is an additional powerful deterrent for new entrants.

The absence of credible competition will not create any incentive in practicing open market conduct by the dominant licensee.

Considering the above, further weight is given to the following statement by the IDA under sub-section 2.8 of the IDA's decision truly holds ground: "Most jurisdictions focus on facilitating access to *Recipients*, as that is usually where most of the operation cost lies and it is not feasible to duplicate."

We believe that the IDA understands and is sensitive to the above points and has other non-economic/competition reasons for denying access to PSO licensee. The IDA states in subsection 3.6.5 in its above mentioned decision: IDA has also required SingPost to give Competing Licensees access to its delivery network at regulated prices, terms and conditions in its RAO.

In addition to all above arguments, having access at the proposed RAO rates does not 5
solve the issue and in fact forms an additional barrier to facilitating access to downstream delivery services.

The absence of credible competition will not create any incentive in practicing open market conduct by the dominant licensee.

11. <u>Proposed rao offer not meeting ida's goal of mandating network access</u>

Further referring to IDA's decision sub-section 2.12.12:

"IDA will designate SingPost as a Mandated Licensee, and require SingPost to provide the Mandated Services, in recognition of the significant economies of scale and scope

SingPost enjoys along all parts of the postal value chain, especially in its large-scale automated sorting facility and its nation-wide delivery network. These advantages inherited by SingPost as a result of its historical monopoly are likely to become a barrier to entry for new players in a liberalised market. Access to SingPost's delivery network is necessary especially since other Licensees will not have access to the masterdoor keys of certain letterboxes. This will facilitate other Licensees' delivery of mail to Recipients in Singapore, including the delivery of inbound international mail to letterboxes in Singapore.";

and to subsection 2.12.13:

"IDA believes that the requirement for SingPost to offer the Mandated Services will avoid delays in commercial negotiations between Competing Licensees and SingPost, thereby facilitating market entry by Competing Licensees."

We would argue that although with the RAO SingPost provides network access, it does so with a powerful market entry deterrent/obstacle; thereby defeating the purpose of mandating network access. The deterrent is in the form of price squeeze: a PSO license holder cannot profitably sell the service. In fact the PSO license holder would be providing service at a loss since there is no room to recover the cost incurred for offering the service. This can also be seen as creating artificial inefficiencies in the market.

12. <u>Interpretation of sub-section 2.1.2 (a) of the appendix to the code</u>

"for delivering […]no less favourable than the discounted charges offered by the Mandated Licensee to existing bulk mailers"

Taken into account that providing exactly the same pricing in the RAO as to bulk mailers/direct customers would result in price squeeze and would mean that the rates would be above average incremental cost, we would argue that the Dominant Licensee's literal and per se interpretation of the requirement is incomplete and defeats the object of the competition code. When determining the proposed RAO pricing other elements as set out in the code should be taken into account.

13. <u>Options for entering into a network access agreement</u>

In our comments up to this point we have focused only on the proposed RAO per se. However, we believe that it is important to put the RAO in perspective of all available options and determine if it suits the purpose of creating a just, fair and efficient market.

Referring to section 5.5 and section 4.3 of the code, we understand that there are three options:

- Option 1: Section 5.5.1 of the code: Network Access Pursuant to an Approved Reference Access Offer (Mandated)

- Option 2: Section 5.5.2 of the code: Network Access Pursuant to an Individualised Access Agreement (Mandated)

- Option 3: Section 4.3 of the Code: Wholesale Services. (Non-Mandated)

<u>Differences between the 3 options</u>

Option 1: Reference Access Offer:

Referring to the appendix to the code section 2.1.2:

Unless IDA mandates or allows the use of a different methodology, a Mandated Licensee must offer to provide "downstream delivery services" using the following pricing methodology:
(a) for delivering homogeneous and/or pre-sorted domestic mail, the access prices for new entrants shall be <u>no less favourable than the discounted charges offered by the Mandated Licensee to **existing bulk mailers;**</u>

Option 2: Individualised Access Agreement

Referring to sub-section 5.7 of the code: Network Access Pursuant to an Individualised Access Agreement:

A Requesting Licensee may seek to enter into an Individualised Access Agreement with a Mandated Licensee through the parties' voluntary negotiations, and if unable to do so, via the dispute resolution process specified in sections 5.7.2 through 5.7.2.3. Licensees are free to enter into an Individualised Access Agreement on any mutually agreeable prices,terms and conditions, <u>provided that they do not unreasonably discriminate against any other Licensee.</u>

Option 3: Wholesale Services

Referring to section 4.3 of the code:

In the case of a tariff for a wholesale Basic Letter Service offered under section 4.3, IDA will seek to determine whether the prices, terms and conditions are <u>no less favourable than the prices, terms and conditions on which the Dominant Licensee offers any comparable service to ***its Customers.***</u>

We would request the IDA to clarify if Option 3 would allow the dominant licensee to offer network access/delivery services to customers at a lower rate than the RAO rates or IAA rates.