



REPUBLIC OF SINGAPORE

INFO-COMMUNICATIONS DEVELOPMENT AUTHORITY OF SINGAPORE

**POSTAL COMPETITION CODE 2008 AND
POSTAL SERVICES OPERATIONS CODE 2008**

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POSTAL COMPETITION CODE 2008 AND POSTAL SERVICES OPERATIONS CODE 2008

In exercise of the powers conferred by Sections 24 (1) and 26C of the Postal Services Act (Chapter 237A) (“**Act**”), the Info-communications Development Authority of Singapore (“**IDA**”) issues the Postal Competition Code 2008 (“**Competition Code**”), and the Postal Services Operations Code 2008 (“**Operations Code**”).

1 INTRODUCTION

1.1 On 20 September 2007, IDA invited the industry and public to provide comments on the legal frameworks and provisions set out in the proposed Competition Code and Operations Code (“**Consultation**”). The Consultation closed on 12 November 2007 with comments from AJ Couriers Pte. Ltd., Asian Mailing Association and Singapore Post Limited (“**SingPost**”) (collectively, the “**Respondents**”). This Cover Note provides IDA’s response to their comments. IDA thanks all Respondents for their participation in the Consultation. As a point of clarification, all words that are capitalised in this Cover Note will have the same meaning as in the Competition Code, Operations Code and the Act, where applicable.

2 POSTAL COMPETITION CODE 2008

2.1 Overview

2.1.1 The Competition Code will provide the framework to promote and maintain competition in the provision of Basic Letter Services. This framework sets forth rules to facilitate entry of new operators and prevent abuse by operators not yet subject to constraints of market forces, and puts in place an enforcement regime against actions that threaten competition.

2.1.2 The comments received by IDA through the Consultation largely reflected the different starting positions of the incumbent versus new entrants in a newly liberalised sector. One Respondent was largely concerned with the basis for classifying dominance, the impact of Dominant Licensee regulation on its ability to safeguard commercially sensitive information and maintain its competitive edge, and the Dominant Licensee and Mandated Licensee obligations. On the other hand, comments from the other Respondents reflected an underlying concern over the new entrant’s weaker market position, in terms of postal network coverage, reach to mail Recipients, and service efficiency, relative to the incumbent. IDA will be providing its views and decisions on the various issues raised.

Public Consultation Comments

2.2 Scope

2.2.1 The Competition Code shall apply to all Licensees providing a Basic Letter Service¹ in Singapore. One Respondent submitted that the revised definition of Letters and “non-letters” was “non-conducive to facilitate easy access for bulk mail customers who are looking for competitive alternatives”.

2.2.2 IDA clarifies that the definition of Letters in the Competition Code follows the definition adopted in the revised Act. As explained in IDA’s 5 February 2007 Decision and Explanatory Memorandum on the Framework for Further Liberalisation of the Postal Services Sector in Singapore (“**Decision**”), the revised definition of Letters and licensing scope in the Act seeks to minimise disruption to existing delivery operations which previously did not require a licence to operate. The provision of delivery services for “non-letters”, such as printed paper (which could include books, periodicals, and Direct Mail, etc.) and parcels, have long been liberalised and there are many operators providing such services today.² The revised definition of Letters and licensing scope, which will similarly carve out the delivery of addressed Letters weighing above 500 grams, unaddressed mail, Direct Mail, as well as books, catalogues, periodicals and newspapers,³ will therefore not bring these existing operators into the new licensing regime and subject them to unnecessary regulation.

2.3 Regulatory Principles

2.3.1 Section 1 sets out the goals of the Competition Code, its legal effects and IDA’s basic regulatory principles. One such principle is “proportionate regulation”, under which IDA will apply *ex ante* regulatory intervention to the extent that a Basic Letter Services market is not yet competitive. One

¹ “Basic Letter” is defined as a Letter, other than a Direct Mail or an Express Letter, of up to 500 grams in weight. Letter is defined as “any communication in written form on any kind of physical medium to be conveyed and delivered (otherwise than electronically) to a particular addressee or address indicated by the Sender on the Letter itself or on its wrapping, and includes a postal article containing such communication, but excludes any book, catalogue, newspaper or periodical”.

² The market for the delivery of parcels and printed papers has been fully liberalised since the 1970s.

³ See page 27 of IDA’s Decision. IDA had explained that (i) the 500 grams weight-step will cover the majority of Basic Letters delivered pre-liberalisation under the old definition of letters; (ii) the weight limit will help provide greater clarity on the types of services that would require a licence from IDA, especially for postal articles containing any written communication that fall within the revised definition of letters; and (iii) letters weighing above 500 grams tend to be more parcel-like, requiring face-to-face delivery. Therefore, the new definition and licensing scope should not significantly impact existing operators delivering printed papers and parcels.

Respondent was concerned that competition would be stifled without the ability to deliver to all letterboxes and that “IDA ought to adopt an *ex post* approach and address this vital operational issue”.

2.3.2 IDA believes that the meaning of the *ex ante* and *ex post* regulation may have been misunderstood. *Ex ante* regulation refers to “before the fact” anticipatory regulation, an example of which is to require a Dominant Licensee to perform certain duties to guard against anti-competitive conduct. *Ex post* refers to “after the fact” regulation, which prescribes rules to maintain competition and IDA enforces these rules to ensure the free function of the market. Under Section 1.4.4, IDA explains that it will adopt the principle of “proportionate regulation”, which means that where competition is lacking, IDA will impose more stringent *ex ante* regulatory requirements; conversely, where sufficient competition has developed, IDA will allow market forces to function and pare down its regulatory intervention. In this regard, it has been recognised that *ex ante* regulation is necessary when a market is transiting from a monopolistic market to a competitive one, to prevent abuse of dominant powers by the incumbent. *Ex post* regulation on the other hand works best when a market is fully competitive.

2.4 Classification of Licensees

2.4.1 Section 2 contains provisions for classifying Licensees as dominant or non-dominant. Dominant Licensees are subject to greater regulatory oversight, given that their conduct would be less constrained by competitive market forces. Section 2 also sets out the process through which the Dominant Licensees might be relieved of their dominant classification. At this point in time, IDA has proposed to classify SingPost as a Dominant Licensee in all Basic Letter Services markets.

2.4.2 One Respondent commented that classifying SingPost dominant by way of legacy would be an unfair competitive assessment and that SingPost does not possess Significant Market Power in the international mail market. Another Respondent submitted that in determining whether to remove a dominant classification, a necessary test would be “the Licensee’s ability to deliver into all letterboxes”.

2.4.3 As SingPost has enjoyed an exclusive right to provide Basic Letter Services, including the domestic delivery of international inbound and outbound Basic Letters, prior to 1 April 2007, IDA believes that it is reasonable for IDA to presume that SingPost has Significant Market Power in these markets and to classify SingPost as dominant in all Basic Letter Services markets from the outset. Nonetheless, IDA reiterates that the dominant classification is not

permanent and it would be removed if IDA determines that the Licensee no longer possesses Significant Market Power. Under Section 2.3, if a Dominant Licensee believes that it no longer possesses Significant Market Power, it can petition IDA for a reclassification. The Dominant Licensee must however provide verifiable data to support its request.

2.5 Quality of Service Standards

2.5.1 Section 3 specifies that Licensees have the duty to comply with minimum quality of service (“QoS”) standards imposed by IDA. Nonetheless, a Licensee and its Customer may agree to a lower service quality level, provided that the Customer is clearly informed that the Licensee’s service quality level is different from IDA’s minimum QoS standards.

2.5.2 Respondents sought clarification on whether IDA would be imposing more than one set of QoS standards. One Respondent also expressed concern that it would be punitive to make Licensees offering a lower service quality level “declare” themselves non-compliant with IDA’s minimum QoS standards. Another Respondent pointed out that the concept of a Licensee and its Customer agreeing to lower service quality levels would be “potentially unworkable” because the Licensee’s Customer is a Sender, while it is the Recipients who are affected and must be informed of any performance gap between the Licensee’s service quality level and IDA’s minimum QoS standards. This Respondent also suggested means through which a Licensee should inform Recipients of its service quality levels.

2.5.3 As set out in IDA’s earlier Decision,⁴ IDA clarifies again that IDA intends to impose minimum QoS standards on the Public Postal Licensees (“**PPLs**”) only, to provide assurance to the public on the quality of mail delivery in Singapore. At this time, IDA does not intend to impose QoS standards on new entrants. IDA will however monitor market development and IDA reserves the right to impose appropriate QoS standards on all Postal Service Operators (“**PSOs**”) should the need arise. IDA also clarifies that the intent behind allowing a Licensee and its Customer to agree to a lower service quality level is to provide the Licensee with flexibility to meet Customer needs and to commercially negotiate different service quality levels with their Customers. The purpose behind requiring the Licensee to clearly inform the Customer that the agreed service quality level may be different from IDA’s QoS standards (if applicable), is not to make the Licensee appear to fall short of any QoS standards, but to ensure that the Customer is able to make an informed choice in its selection of Licensees and to avoid disputes. Hence, IDA will

⁴ See page 41 of the Decision.

retain the obligation on Licensees to keep its Customers informed of their respective service quality levels. Accordingly, IDA has amended Section 3.2 to better reflect its intent.

2.6 Protection of Sender and Recipient Information

2.6.1 To safeguard the interests of individual parties using Basic Letter Services and/or Direct Mail Services, IDA has decided to insert in Section 3 a prohibition against the unauthorised use of Sender and Recipient information that a Licensee obtains in the course of collecting Basic Letters and/or Direct Mail from Senders and delivering them to Recipients. Sender and Recipient information may include the Sender's usage patterns, the source and frequency of Basic Letters and/or Direct Mail delivered to the Recipient and the Sender's/Recipient's name and address. Specifically, Licensees must ensure that, unless the Sender/Recipient has provided prior consent, Licensees do not (i) provide such information to third parties or (ii) use such information for any purpose, other than providing assistance to law enforcement, judicial or other government agencies.

2.7 Tariff Filing

2.7.1 Section 4 contains the duties that are imposed on Dominant Licensees, including the duty to file tariffs with IDA for approval. Once IDA assesses that the proposed tariff is just and reasonable and approves the tariff, the Dominant Licensee must publish the tariff on its website. Any party that believes that the tariffs are unjust, unreasonable or discriminatory may petition IDA to review them.

2.7.2 One Respondent was concerned that requiring the Dominant Licensee to file and publish its tariffs could result in the disclosure of commercially sensitive information, and weaken the Dominant Licensee's position in negotiating agreements with Customers or third parties. This Respondent also submitted that any party petitioning for a review of the Dominant Licensee's tariffs should be required to do so in good faith and provide persuasive evidence. In addition, the Respondent also sought clarification on whether IDA's tariff review criteria of wholesale Basic Letter Services took into consideration comparable services to "consolidators and requesting licensees."

2.7.3 IDA believes that the tariff approval and publication requirements are necessary to ensure that the Dominant Licensee provides Basic Letter Services on a just, reasonable and non-discriminatory basis. Nonetheless, IDA clarifies that it will only require the Dominant Licensee to publish the key terms and conditions of its approved tariffs, and not information deemed

commercially sensitive. The tariff publication need only be done after the Dominant Licensee has entered into an agreement with the Customer (but on or before it provides the tariffed services), and not prior to or during its commercial negotiations, which may put the Dominant Licensee at a competitive disadvantage. As for the point on parties petitioning for a review of the Dominant Licensee's tariffs, IDA will require the petitioners to provide well-supported reasons before accepting the petition. Finally, the review of tariffs of wholesale Basic Letter Services would take into account comparable services that the Dominant Licensee offers to its Customers, who would include "consolidators and requesting licensees".

2.8 Provision of Mandated Services

- 2.8.1 Section 5 requires the Mandated Licensee to provide Mandated Services to Competing Licensees for the delivery of Basic Letters and Direct Mail weighing 500 grams and below. The Mandated Licensee can provide the Mandated Services through two types of Network Access Agreements: (i) a RAO (a standard offer pre-approved by IDA); or (ii) an Individualised Access Agreement, a commercial agreement between the Mandated Licensee and the Requesting Licensee. For any Network Access Agreement entered into by a Mandated Licensee, the Mandated Licensee must publish on its website (or in such other manner as may be specified by IDA) a summary of the agreement or the entire Network Access Agreement.
- 2.8.2 Two of the Respondents opined that "first-mile access" to the incumbent's network is more important than "last-mile access", and proposed that the Mandated Licensee be required to provide "first-mile access", *i.e.*, access to the incumbent's network of posting boxes. One Respondent, in particular, commented that wasteful duplication of the incumbent's expensive infrastructure would occur at the "first-mile", and not the "last-mile", as the last-mile infrastructure is relatively straightforward for other Licensees to set up except for the letterbox access issue. It proposed an arrangement where non-bulk Licensees could purchase stamps from the Mandated Licensee to post mail into the Mandated Licensee's posting boxes, and have the Mandated Licensee deliver the mail at competitive rates.
- 2.8.3 IDA is surprised to find that the two Respondents find "first-mile access" to be more important than "last-mile access", and consider "last-mile access" to be straightforward to set up. On requiring the Mandated Licensee to offer "first-mile" access, IDA notes that there is no international precedent of such a regulatory practice. 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. The section of the postal network concerning access to

Senders is not known to be a “bottleneck” that is infeasible or sufficiently costly or difficult to replicate.⁵ New entrants need not try to duplicate the incumbent’s vast and wide reaching collection network, which is put in place as part of its Universal Service Obligation (“**USO**”). Rather, new entrants could set up collection points in strategic locations, e.g., areas where there is high human traffic, such as MRT stations and convenience stores, to collect the mail. If Licensees are keen to make use of the incumbent’s collection network, they are not prevented from commercially negotiating with the Mandated Licensee for access to its existing posting boxes. At this time, IDA considers that there is no justifiable reason to mandate access to the Mandated Licensee’s posting boxes. As for the proposal to have an arrangement where non-bulk Licensees can purchase stamps from the Mandated Licensee to post mail into the Mandated Licensee’s posting boxes, the Licensees can already do so under existing Postal Services. However, it would not be reasonable for IDA to require the Mandated Licensee to provide such a collection service at a lower rate to its competitors, and treat mail from its competitors differently from other *Senders*. Given the above considerations, IDA has decided not to require Mandated Licensees to provide “first-mile access” or make access to posting boxes a Mandated Service in the RAO.

2.8.4 As for the inclusion of “last-mile access” in the list of Mandated Services, IDA has decided to retain this as a requirement for now, even though two Respondents have downplayed its importance. IDA will monitor the use of these services over the next few years, and will remove it from the list if it becomes clear that there is no demand for this Mandated Service.

2.8.5 A third Respondent had a different set of concerns, namely:

- (i) The Mandated Licensee should have full discretion in deciding whether to withhold consent from a Licensee for the latter to assign its rights and obligations over Mandated Services under the RAO to another Licensee.

⁵ Under Section 5.6.2, IDA will require the Mandated Licensee to offer access to inputs as a Mandated Service where IDA concludes that:

- (i) the input is necessary for the provision of any Basic Letter Service and/or Direct Mail Service to Recipients in Singapore, including the domestic delivery of inbound international Basic Letters and/or Direct Mail; and
- (ii) providing the input is infeasible or sufficiently costly or difficult that requiring other Licensees to do so would create a significant barrier to the provision of any Basic Letter Service and/or Direct Mail Service to Recipients in Singapore by an efficient competitor.

- (ii) IDA should not have sole discretion over whether Network Access Agreements should be published in their entirety, as IDA may not be aware of the confidentiality of the information in such agreements.
- (iii) To provide certainty to Licensees regarding the enforcement of Network Access Agreements, IDA should specify in the Competition Code the instances in which IDA will not intervene.

2.8.6 On these concerns, IDA's views are as follows:

- (i) The Mandated Licensee may specify restrictions, including those governing the rights and obligations between the Mandated Licensee and Requesting Licensees, when it proposes the RAO for IDA's approval. IDA will consider the reasonableness of such restrictions in its review of the proposed RAO.
- (ii) On the publication of the Mandated Licensee's Network Access Agreements, the provisions in Section 5 already provide for the Mandated Licensee to request for proprietary or commercially sensitive information to be withheld from publication.
- (iii) It is not practical or realistic for IDA to list every instance in which it will not intervene. Nonetheless, IDA reiterates here that IDA will neither encourage nor facilitate the sending of outbound international mail through SingPost's network. SingPost may choose to decline to offer discounts for competing operators to send outbound international mail through SingPost's network, but cannot prevent, or discriminate against, them from doing so at SingPost's public postage rates. IDA will not intervene in cases of such disputes.

2.9 Acquisitions and Consolidations of Designated Postal Licensees

2.9.1 Section 8 addresses transactions where an Acquiring Party seeks to acquire Voting Shares or control of voting power in a Designated Postal Licensee. It sets out the details of the procedures IDA will adopt, including the procedure for notifying IDA or seeking IDA's approval of proposed changes in the shareholding arrangement of, and Consolidations with, Designated Postal Licensees, and the procedures by which IDA will seek to determine – based on actual market conditions – whether a proposed change is likely to substantially lessen competition. As mentioned in the Consultation's cover note, IDA has designated all PPLs, and intends to designate all PSOs, as Designated Postal Licensees.

2.9.2 IDA has further refined Section 8 for better clarity, in particular those parts concerning Consolidations.⁶ These include:

- (i) Refinements to Sections 8.4.5 and 8.5.5, to make it clear that for Consolidation Applications involving several Applicants, an Applicant may request to submit commercially sensitive or proprietary information to IDA separately, even though the Applicant is required to jointly submit the Consolidation Application with the other Applicants.
- (ii) Refinement to Section 8.10 to allow IDA to seek public comments, or comments from individuals or entities, where appropriate, on a Consolidation Application.

2.10 Enforcement

2.10.1 Section 9 sets out the administrative procedures that IDA would use to implement the Competition Code. They include enforcement mechanisms, time limits for compliance in respect of enforcement actions, means by which IDA can gather information, provision for parties to seek confidential treatment of information submitted to IDA and the channel of appeal to the Minister. One Respondent commented that the 15-day timeframes for (i) IDA to determine whether to accept a Request for Enforcement and (ii) the alleged contravening party to respond might be insufficient. The Respondent was also concerned with IDA's wide powers to request for information.

2.10.2 IDA would like to highlight that Section 9.2.1.7 already allows for a party to request for an extension of time of up to 7 days for making its submissions, if it can demonstrate good cause. In IDA's view, this should adequately address the Respondent's concern. IDA also believes that it is important for IDA to retain wide enough powers to request for information in order to ensure effective enforcement. Such powers are no broader than what is conferred on IDA under the Act. Nonetheless, IDA would like to assure the Respondent that IDA would use such powers reasonably and with due consideration.

2.11 Mandated Services under the RAO

2.11.1 The Appendix contains terms and conditions on which a Mandated Licensee must offer its Mandated Services through the RAO. Based on the comments received, IDA has:

⁶ Please refer to Section 8 for details of the revised version.

- (i) refined the pricing methodology for delivery of unsorted and heterogeneous domestic mail, to account for the extra costs of handling such mail; and
- (ii) modified the sortation requirement options, to include grouping addresses by postal sectors instead of selections.

However,

- (i) IDA sees no need to incorporate operational details on terms and conditions for the Mandated Services in the Appendix, which is meant to set out the broad framework for the RAO. The Mandated Licensee should specify such details in its proposed RAO for IDA's approval.
- (ii) IDA has also not amended the pricing methodology for delivering mail to Post Office Boxes; according to the methodology, any charges, if applicable, must be based on the incremental costs of providing such access. The reference to incremental costs would allow the Mandated Licensee to recover the costs of providing access to its various Post Office Boxes. Notwithstanding this, IDA would like to point out that the Mandated Licensee is free to propose the specific details of provisioning such access in its proposed RAO for IDA's consideration.

2.12 Summary of Key Provisions in the Competition Code

2.12.1 This Section summarises the key provisions of the Competition Code and is intended to assist the industry in understanding IDA's intent. However, it neither adds to, nor alters the requirements specified in the Competition Code.

2.12.2 **Section 1** sets out the goals, legal effect and regulatory principles of the Competition Code. The Competition Code shall apply to all Licensees providing a "Basic Letter Service," where "Basic Letter" is defined as a Letter, other than a Direct Mail or an Express Letter, of up to 500 grams in weight, and "Basic Letter Service" means a Postal Service for the conveyance of Basic Letters.

2.12.3 Section 1 also sets forth provisions for IDA to modify or remove, or for Licensees to petition IDA to modify or remove, provisions that cease to be necessary as competition develops. Finally, Section 1 contains a list of definitions of terms used in the Competition Code.

- 2.12.4 **Section 2** contains provisions for classifying Licensees as dominant or non-dominant. Non-dominant Licensees, whose conduct is constrained by market forces, will be subject to minimal regulation. By contrast, Dominant Licensees, who are not subject to effective competition, will be required to comply with more extensive regulatory requirements. Section 2 also contains the standards and procedures for IDA to remove a Dominant Licensee classification, and for IDA to exempt a Dominant Licensee from certain Dominant Licensee obligations.
- 2.12.5 As SingPost has enjoyed exclusive rights to provide Basic Letter Services in Singapore prior to 1 April 2007, IDA will classify SingPost as a Dominant Licensee in all the Basic Letter Services markets.
- 2.12.6 **Section 3** specifies the duties of Licensees to their Customers. All Licensees must disclose to its Customers in advance the prices, terms and conditions (including Quality of Service) of its Basic Letter Services. Section 3 also prohibits the unauthorised use of Sender and Recipient information that a Licensee obtains as a result of a Sender's use of its Basic Letter Services and/or Direct Mail Services and a Recipient's receipt of Basic Letters and/or Direct Mail.
- 2.12.7 **Section 4** contains the duties that would be imposed on a Dominant Licensee to ensure that it provides Basic Letter Services to Customers and other Licensees on just, reasonable and non-discriminatory prices, terms and conditions. These duties would include the duty to file tariffs with IDA for approval, and to publish key terms and conditions of the tariffs. A Dominant Licensee must also provide Basic Letter Services on a non-discriminatory basis and on an unbundled basis, *i.e.*, the services are priced and sold separately. Unless directed to do so by IDA, a Dominant Licensee would not be required to offer to other Licensees any wholesale Basic Letter Service, which these other Licensees would use as an input to in turn provide services to Customers. Nonetheless, if a Dominant Licensee chooses to provide such wholesale Basic Letter Services, it would have to offer them on just, reasonable and non-discriminatory prices, terms and conditions, and would neither be allowed to restrict the ability of another Licensee to use, nor require the Licensee to disclose that it is using, the Dominant Licensee's wholesale services as an input to provide another service.
- 2.12.8 **Section 5** sets out IDA's requirements of a Licensee that controls facilities which are costly or difficult to replicate, but are required for the delivery of Basic Letters and Direct Mail (weighing 500 grams and below) to Recipients in Singapore, including the domestic delivery of inbound international Basic

Letters and Direct Mail.⁷ IDA would designate such a Licensee as a Mandated Licensee and would require the Mandated Licensee to provide specified access services (“Mandated Services”) to Competing Licensees for the conveyance of Basic Letters and Direct Mail (weighing 500 grams and below).

- 2.12.9 Section 5 also applies to both the delivery of Basic Letters and Direct Mail weighing 500 grams and below. The Mandated Licensee is required to similarly provide Mandated Services to Competing Licensees of Basic Letter Services for delivery of Direct Mail weighing 500 grams and below. IDA recognises that the inputs required for delivery of Direct Mail are not significantly different from the delivery of Basic Letters addressed to a Recipient. To ensure Recipients continue to receive Direct Mail delivered by Competing Licensees, IDA believes that it is reasonable to require the Mandated Licensee to similarly provide Mandated Services to Competing Licensees for the delivery of Direct Mail weighing 500 grams and below, notwithstanding that IDA will not be licensing the conveyance of Direct Mail to ensure minimal disruption to previously unlicensed services. On the other hand, IDA considers Letters weighing above 500 grams to be more Parcel-like that typically require face-to-face delivery and may require different types of inputs. Therefore, it is not necessary to require the Mandated Licensee to provide Mandated Services for such Postal Articles.
- 2.12.10 To effectively facilitate access by Competing Licensees to Mandated Services, Section 5 requires the Mandated Licensee to develop a Reference Access Offer (“**RAO**”) that contains the prices, terms and conditions, which would be approved by IDA, on which Competing Licensees could obtain such access. The Competition Code also sets out the standards on which the prices for Mandated Services should be derived.
- 2.12.11 Notwithstanding the presence of a RAO, a new entrant could, if it prefers, commercially negotiate with the Mandated Licensee for individualised prices, terms and conditions to better meet its service requirements and needs, especially if the RAO does not meet the entrant’s unique requirements. If both Licensees fail to voluntarily reach agreement within 90 days of formal negotiations, either Licensee could request IDA to resolve the dispute. Once IDA issues its decision on the appropriate resolution, the Licensees would either have to submit to IDA an agreement that complies with IDA’s decision, or inform IDA that they will no longer enter into an agreement. IDA

⁷ As stated in the Decision, IDA will neither facilitate nor encourage the domestic delivery of outbound international mail.

requires the Mandated Licensee to at least publish on its website the key prices, terms and conditions of all Network Access Agreements offered by the Mandated Licensee.

- 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.
- 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.
- 2.12.14 IDA may designate other Licensees as Mandated Licensees in the future if such Licensees control facilities that are sufficiently infeasible, difficult or costly to replicate such that requiring other Licensees to do so would create a significant barrier to entry by an efficient competitor. IDA may also revise the list of Mandated Services from time to time. In each instance, IDA will consult the industry before adopting any revision.
- 2.12.15 In **Section 6**, IDA sets out the competition rules that would prohibit a Licensee with Significant Market Power from abusing its market position. These rules are based on competition law principles adopted internationally and in the Competition Act (Chapter 50B) ("Competition Act"). In particular, a Licensee with Significant Market Power may not engage in pricing abuses, such as predatory pricing, price squeeze, anti-competitive cross-subsidisation and discrimination. Section 6 also prohibits Licensees from engaging in unfair methods of competition. Licensees are prohibited from leveraging their Affiliates' market power to unreasonably restrict competition in any Basic Letter Services market in Singapore. Licensees are also prohibited from degrading the availability or quality of other Licensees' Basic Letter Services, and improperly using information regarding Competing Licensees' Customers.

2.12.16 **Section 7** prohibits Licensees from entering into agreements with other Licensees that unreasonably restrict competition. These prohibitions are based on competition law principles adopted internationally and in the Competition Act. This section sets out an analytical framework by which IDA will assess the permissibility of such agreements. Licensees are prohibited absolutely from entering into certain types of agreements, such as price fixing arrangements or output restrictions. The permissibility of Licensees entering into other agreements, such as joint research or marketing ventures, would be assessed based on their actual or likely impact on competition. IDA reserves the right to impose penalties on Licensees that violate these restrictions.

2.12.17 **Section 8** addresses situations where an Acquiring Party seeks to acquire Voting Shares or control of voting power in, or otherwise enters into a Consolidation with, a Designated Postal Licensee. In general, such acquisitions and Consolidations can have pro-competitive effects, such as creating economies of scale and scope. However, in certain cases, they can have an adverse impact by reducing competition. For example, where two Competing Licensees consolidate to create or entrench market power, or facilitate concerted anti-competitive conduct. Such acquisitions or Consolidations between entities at different levels of the supply chain, where at least one entity possesses Significant Market Power or participates in a concentrated market, can also adversely affect competition by eliminating a potential competitor or by creating market distortions through leveraging Significant Market Power. This section establishes a procedure for notifying and seeking the approval of IDA for proposed acquisitions of Voting Shares and control of voting power of Licensees, as well as Consolidations, and sets forth the procedures by which IDA will seek to determine – based on actual market conditions – whether the acquisition or Consolidation is likely to substantially lessen competition. This section makes clear that IDA will not approve any acquisition or Consolidation where IDA determines that it is likely to result in a substantial lessening of competition in any Basic Letter Services market, or it is in the public interest to do so.

2.12.18 At the outset, IDA has designated Public Postal Licensees such as SingPost as Designated Postal Licensees. In addition, IDA will designate all other Postal Services Operators as Designated Postal Licensees as changes in control to either class of Licensees could potentially raise competition concerns in any Basic Letter Services market and public interest concerns.

2.12.19 Section 8 sets out the details and procedures IDA will adopt for approval. Specifically:

- (i) Acquisitions of Voting Shares or control of voting power of less than 5% need not be disclosed to nor approved by IDA, given IDA's presumption that such acquisitions are unlikely to raise competition or regulatory concerns.
- (ii) Acquisitions of Voting Shares or control of voting power of at least 5% but less than 12% would have to be disclosed, through a written notification to IDA within 5 Working Days of the Designated Postal Licensee becoming aware of it. Although IDA presumes that such acquisitions are unlikely to raise competition concerns, post-acquisition notification is still appropriate given that the acquisition could be the first step in the Acquiring Party's effort to acquire more Voting Shares or control of voting power over the Designated Postal Licensee that may potentially raise competition or regulatory concerns.
- (iii) Acquisitions of Voting Shares or control of voting power of at least 12% but less than 30% must be approved in advance by IDA, given IDA's presumption that, while the Acquiring Party may be unlikely to exercise Effective Control over the Designated Postal Licensee, it may still have the ability to use its Voting Shares or control of voting power to substantially lessen competition or harm public interest.
- (iv) Acquisitions of Voting Shares or control of voting power of 30% or more, where the Acquiring Party acquires the business of the Designated Postal Licensee as a going concern, where the Acquiring Party obtains Effective Control over the Designated Postal Licensee or certain prescribed transactions, would have to be approved in advance by IDA. Such situations will give rise to a Consolidation.

2.12.20 The application for approval must be made jointly by all the Acquiring parties and the Designated Postal Licensee. If the application for approval is not made, or if IDA deems any acquisition or Consolidation as likely to substantially lessen competition or likely to harm public interest, the Act gives IDA the powers to make certain directions, including but not limited to the following:

- (i) the Acquiring Party to divest all or part of the Voting Shares which it may have acquired in the Designated Postal Licensee; or
- (ii) the Designated Postal Licensee to restrict the voting rights or dividend rights that the Acquiring Party has obtained through the acquisition or Consolidation.

2.12.21 **Section 9** sets out the administrative procedures that IDA would use to implement the Competition Code. They include enforcement mechanisms, time limits for compliance in respect of enforcement actions, means by which IDA can gather information, provision for parties to seek confidential treatment of information submitted to IDA and the channel of appeal to the Minister.

3 POSTAL SERVICES OPERATIONS CODE 2008

3.1 Overview

3.1.1 The objective of the Operations Code is to promote the welfare of consumers of Basic Letter Services and promote the efficient conduct and interoperability between Licensees so as to ensure that Basic Letters are delivered in a timely and efficient manner, and to safeguard the integrity of Basic Letters delivered. IDA notes that the Respondents are largely in agreement with the objective and the proposals in the Operations Code.

Public Consultation Comments

3.2 Scope

3.2.1 One Respondent proposed that the Operations Code should explicitly allow Licensees to negotiate commercially on applying the arrangements set out in the Operations Code to non-regulated mail items.

3.2.2 IDA would like to point out that the Operations Code is meant to apply to Basic Letter Services. Accordingly, Licensees are not prevented from negotiating commercially other arrangements for the provision of non-regulated mail services.

3.3 Identifier Marks

3.3.1 Respondents had differing views on Section 3 of the Operations Code.

3.3.2 One Respondent highlighted that in cases where Licensees utilised SingPost's downstream access for the delivery of Letters, the obligations contained within this section would result in two different Identifier Marks on each Letter delivered. This would result in confusion among consumers and would be counterproductive for competition development. The Respondent proposed that the current personalised logo of each Licensee should instead be used as an alternative to multiple identifiers.

3.3.3 Another Respondent agreed with IDA's proposal on Identifier Marks, highlighting that such an obligation will promote accountability by ensuring that each Licensee handles or processes the mail promptly; and facilitate prompt response to any enquiries, thereby instilling Customer confidence in the postal system.

- 3.3.4 IDA believes that having multiple Identifier Marks will not create confusion among consumers, but will instead promote accountability amongst Licensees and allow consumers to trace the progress of their mail delivery. IDA would also like to point out that Licensees are obliged to include a date stamp alongside their respective Identifier Marks and they cannot tamper with another Licensee's Identifier Mark.
- 3.3.5 IDA would highlight that Licensees are not prevented from collaborating with other Licensees to produce a joint Identifier Mark. For instance, in situations where a Licensee is using SingPost's delivery network, that Licensee could produce an Identifier Mark that represents both itself and SingPost, instead of having separate Identifier Marks.

3.4 Letter Redirection Services

- 3.4.1 With respect to Section 4, one Respondent proposed that the sharing of Redirection Information should be "*within a reasonable time*" rather than "*in a timely manner*". IDA is of the opinion that there is no significant difference between the two phrases, and will therefore retain the current wording.
- 3.4.2 The Respondent also requested for the removal of the obligation "*not to charge other Licensees for the Redirection Information*", stating that this obligation is inconsistent with the latter obligation that Licensees "*may only recover costs from Recipients who request for the Letter Redirection Service*".
- 3.4.3 IDA clarifies that there is no inconsistency as the former sentence refers to the obligation for Licensees not to charge other *Licensees* for Redirection Information, while the latter sentence states that the Licensee may recover charges from the *Licensee's own Customers* or the *Recipients*, who had subscribed to the Letter Redirection Service.
- 3.4.4 The Respondent further requested that, if a Licensee develops software which facilitates the sharing of Redirection Information with other Licensees, it should be allowed to offer a chargeable subscription service providing the Redirection Information on either a regular or an *ad hoc* basis, to allow the Licensee to recover the cost of developing the software.
- 3.4.5 Since this software has not yet been developed, it is premature for IDA to assess the need for a Licensee to charge other Licensees to recover the cost of software development. However, IDA considers that there should be no need for a Licensee to charge other Licensees for the sharing of Letter Redirection Information since the Licensee already impose charges on its own Customers (the Recipients) when they subscribe to the Redirection Service.

Furthermore, as the sharing of Redirection Information will be on a reciprocal basis among Licensees and such information is to be shared only upon reasonable request, IDA does not think it is necessary for Licensees to charge each other for the sharing of Redirection Information.

3.5 Handling of Misdirected, Misposted, Miscollected, and Misdelivered Letters

- 3.5.1 One Respondent proposed that Licensees be allowed to conduct periodic reviews on the “reasonable return quantity” of Misposted Letters they receive, and be allowed to mutually agree on the commercial terms for charging a fee for any quantity above the “reasonable” threshold. The Respondent commented that the public would most likely return all mail, including other Licensees’ mail, into the incumbent’s extensive, island-wide street posting boxes and return letterboxes. In this case, the incumbent would have to handle relatively higher volumes of Misposted Letters, and it should be allowed to charge the other Licensees a fee if the volume is too high.
- 3.5.2 While IDA notes the Respondent’s concern, given that the market has only just been fully liberalised, IDA would prefer to monitor the market developments before considering this proposal. Nonetheless, IDA agrees in principle that if the volume of Misposted Letters is significant, a Licensee should be allowed to recover some of the cost of returning the Misposted Letters. IDA will monitor the situation and review this when necessary.
- 3.5.3 The Respondents also questioned how the following situation would be addressed under the Operations Code: “Licensee A goes to his Customer’s premises and correctly collects a mailbag belonging to Licensee A. However, the Customer had erroneously placed mail items intended for Licensee B in Licensee A’s mailbag. In such a situation, Licensee A would not be at fault and should not be penalised by having to deliver the Miscollected Letters at its own costs and in a timely and non-discriminatory manner”.
- 3.5.4 IDA clarifies that the scenario is covered under Section 6 on Misposted Letters, as it was the Customer’s mistake to have left Letters intended for Licensee B in Licensee’s A’s mailbag. IDA had noted that such mistakes could inadvertently occur to any Licensee, therefore IDA had prescribed that Licensees should handle this on a reciprocal basis. Here, Licensee A would bear the costs of returning the Letters to Licensee B and *vice versa* if the reverse should occur.

3.6 Letterbox Masterdoor Keys

- 3.6.1 The issues of letterbox design and access to letterbox masterdoor keys were previously discussed and addressed in IDA's Decision.⁸ To recap, there are two main types of letterbox designs. The older 2-way design that has only one masterdoor that reveals all the pigeonholes when unlocked by a particular type of key (*i.e.*, "**Pigeonhole Masterdoor Keys**"), and a newer 3-way version with another masterdoor that reveals only a second set of apertures when unlocked with another type of key (*i.e.* "**Aperture Masterdoor Keys**").
- 3.6.2 In Part 5 of IDA's Decision, IDA had stated that "*SingPost, as the designated PPL, will be given the letterbox masterdoor keys to facilitate its performance of the USO. Other than designated PPLs...other Licensees will not be given these masterdoor keys but IDA will facilitate their access to SingPost's delivery network...*" For the avoidance of doubt, IDA clarifies that the reference to "keys" in the Decision refers to "Pigeonhole Masterdoor Keys".
- 3.6.3 IDA notes that two of the Respondents view IDA's position on the access to letterbox masterdoor key as being counter-competitive. One of the Respondents proposed that the lockable apertures or anti-junkmail device for all 2-way access letterboxes be disabled, to allow delivery-only-access to 3-way access letterboxes for all Licensees, and to prohibit content-access letterbox designs. The Respondent also claimed that the letterbox designs with lockable apertures are in breach of IDA's Letterbox Guidelines.⁹
- 3.6.4 IDA has already explained the rationale for its position on the letterbox design and access to Pigeonhole Masterdoor Keys. To reiterate, IDA's position was taken after extensive consideration balancing the policy objectives with the interests of various stakeholders. These include the Recipients and their representatives (such as the Town Councils), the Senders, the Government's interest to ensure no drop in quality of public Postal Services, mail security and integrity; and the need to promote and facilitate competition in the postal sector to enhance consumer welfare. The current letterbox design with lockable apertures was introduced in many public and private housing estates in Singapore in the 1990s to help residents keep out unwanted mail and to reduce the problem of littering around the letterboxes created by such unwanted mail. It is a design that is welcomed by residents as it provides them with the option of locking the apertures. The residents will not welcome the move to revert to the old open-aperture design. IDA is also not prepared

⁸ See IDA's Public Consultation on Further Liberalisation of the Postal Services Sector in Singapore (page40-43); and IDA's Decision and Explanatory Memorandum on the Framework for Further Liberalisation of the Postal Services Sector in Singapore (page 16-17).

⁹ SingPost's Letterboxes Guidelines and General Information, as approved by IDA on March 2005.

to remove this option for residents nor to force residents to leave their letterbox apertures open, just so that other operators, both licensed and unlicensed, can have unfettered access to their letterboxes. The interest of consumers and residents must be taken into due consideration in this matter. IDA clarifies that the letterbox design with lockable apertures is not in breach of the Letterbox Guidelines. The requirement in the Letterbox Guidelines is meant to ensure that building developers and owners provide for an aperture in their letterbox designs for delivery of mail, which they have done.

3.6.5 As for denying SingPost access to the Pigeonhole Masterdoor Keys, IDA does not believe this is a practical suggestion as it does not serve the public interest. First, it would have the same effect as forcing residents using the 2-way access letterboxes to leave their letterbox apertures open in order to receive mail from SingPost, and therefore negating the benefits of the anti-junkmail device provided by the lockable apertures. As mentioned above, the interest of the residents must be given primary consideration in this matter. Competition is a means to achieving the policy objectives for liberalisation, one of these being enhanced consumer welfare. If the consumers end up being more inconvenienced, or receiving more junk mail, or having mail integrity and security compromised, then the policy goals of market liberalisation would be negated. In this case, IDA will therefore not deny SingPost access to the Pigeonhole Masterdoor Keys, so as to enable it to perform its USO. IDA has also required SingPost to give Competing Licensees access to its delivery network at regulated prices, terms and conditions in its RAO.

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.

3.6.7 Going forward, as a longer-term solution, IDA will consider requiring new letterboxes to be fitted with 3-way access masterdoors and will subsequently consider relaxing the framework to allow other licensed postal operators to

obtain letterbox masterdoor keys when all letterboxes are replaced with 3-way access in the future.

3.6.8 One Respondent suggested that to maintain mail integrity and security, no Licensee should be allowed to “retrieve” the contents of the letterboxes. Instead, all Licensees should be granted letterbox masterdoor keys that allow delivery of mail only, as such keys do not grant access to contents of the letterboxes.

3.6.9 IDA believes the Respondent could have misunderstood Section 9.1. In Section 9.1, IDA had proposed that: *“All Licensees shall be prohibited from using masterdoor keys or any other methods which allow full access to the pigeonholes of letterboxes for the deposit and retrieval of mail, unless permitted to do so by IDA”*. IDA clarifies that the phrase *“deposit and retrieval of mail”* was included merely to describe the characteristics of the pigeonholes. IDA will not allow any Licensee to retrieve mail from the letterboxes under any situation. For greater clarity, IDA has amended Section 9.1 as follows:

“All Licensees shall be prohibited from using masterdoor keys or any other methods which allow full access to the pigeonholes of letterboxes ~~for the deposit and retrieval of mail, unless permitted to do so by IDA”~~”.

3.7 Summary of Key Provisions in the Operations Code

3.7.1 This Section summarises the key provisions of the Operations Code and is intended to assist the industry in understanding IDA’s intent. However, it neither adds to, nor alters the requirements specified in the Operations Code.

3.7.2 **Section 1** sets out the goals of the Operations Code and contains a list of definitions of the terms used in the Operations Code. Section 1 makes clear that the Operations Code applies to only Licensees in respect of their provision of Basic Letter Services. Given that IDA does not license the conveyance of Direct Mail, the Operations Code will not address inter-operator issues in relation to this segment. However, Licensees are free to apply the same principles prescribed in the Operations Code to address inter-operator issues in relation to the conveyance of Direct Mail on their own accord. Section 1 further explains how a Licensee can seek exemptions from all or any provisions of the Operations Code. It also reserves IDA’s authority to modify the Operations Code.

3.7.3 Section 1 further specifies that upon notification by IDA, SingPost must propose a Reference Offer (“**RO**”) to share postal code information and to establish reciprocal arrangements with other Licensees to address the

common inter-operator requirements specified in the Operations Code. SingPost must publish its RO, once approved by IDA.

- 3.7.4 **Section 2** specifies that each Licensee would have to register with IDA an Identifier Mark that could be used to easily identify the Licensee. Section 2 further provides that, in the chain of conveyance, each Licensee which handles a Basic Letter is required to place their Identifier Mark together with a date stamp on the Letter. This is to ensure that there is accountability during the entire chain of conveyance, and it would enable both Licensees and Recipients to trace and identify the Licensees tasked with handling the Basic Letters.
- 3.7.5 **Section 3** specifies that SingPost, as the administrator designated by IDA to establish, maintain and administer the Singapore postal code, must offer to share the use of the Singapore postal code with other Licensees on just, reasonable and non-discriminatory terms. IDA will require SingPost to share the use at rates that are no worse-off than that offered to its retail Customers.
- 3.7.6 **Section 4** specifies that any Licensee offering Letter Redirection Services must make available, at no cost, to other Licensees, information on the redirected addresses of its Customers upon request, provided that consent has been given by the Customer to share such information. As Licensees offering Letter Redirection Services would already be recovering their costs directly from their Customers, IDA considers that there is no basis to impose any additional charge for sharing the information with other Licensees. To educate consumers, any Licensee that wishes to offer Letter Redirection Services should also clarify to their Customers the limitations of the service, *i.e.*, it does not guarantee that Basic Letters delivered by other Licensees would also be redirected to the new address.
- 3.7.7 Sections 5 to 8 specify the procedures that Licensees would adopt, in various situations, where they come into possession of Basic Letters for which they are not the intended Licensee for delivery (in the case of Section 8, where they have received Basic Letters misdelivered by another Licensee).
- 3.7.8 **Section 5** specifies that when a Licensee receives Misdirected Letters (*i.e.*, Basic Letters that have been conveyed in error by another Licensee or an overseas postal operator ("**Sender Operator**") to the wrong delivering Licensee), the Licensee must make available the Misdirected Letters for collection by that Licensee or Sender Operator, at a minimum, twice a week. IDA believes that this would not place any unreasonable burden on the Licensee that receives the Misdirected Letters, and would also help to minimise any undue delay in delivery as a consequence of the misdirection.

- 3.7.9 In the situation where the Misdirected Letters have entered the sorting facility of the Licensee such that it is not reasonably practical to return the Misdirected Letters to that Licensee or Sender Operator, IDA will require the Licensee to deliver the Misdirected Letters. In such circumstances, IDA would allow the Licensee to recover any reasonable cost from that Licensee or Sender Operator for delivering the Misdirected Letters. IDA believes that such an approach balances the need to ensure public confidence in the postal system for timely delivery of Basic Letters and the burden to Licensees in handling Misdirected Letters intended for delivery by other Licensees.
- 3.7.10 **Section 6** specifies that when a Licensee receives Mispasted Letters (*i.e.*, Basic Letters which due to a Sender error have entered the postal facility of a Licensee other than the intended Licensee), the Licensee should make available the Mispasted Letters for collection by the intended Licensee, at a minimum, twice a week. The same considerations and approach adopted in Section 5 to deal with Misdirected Letters apply to Mispasted Letters.
- 3.7.11 **Section 7** sets out procedures for handling Miscollected Letters (*i.e.*, Basic Letters that have been collected in error by a Licensee which is not the intended Licensee). In this situation, as the fault lies with the Miscollecting Licensee, IDA considers it reasonable that the Miscollecting Licensee be made to bear all the costs of returning the Miscollected Letters to the intended Licensee by the next Working Day, or at the latest, on the next Working Day the mistake was discovered; or, if returning is not practical because the Miscollected Letters have entered its sorting facility, to deliver the Miscollected Letters, at its own cost, in a timely and non-discriminatory manner.
- 3.7.12 **Section 8** sets out procedures for handling Misdelivered Letters (*i.e.*, Basic Letters which are delivered to the wrong address by a Licensee). In such a case, since the intended Licensee has already collected the fees for the delivery, IDA will only require the Licensee that receives the Misdelivered Letters to inform the intended Licensee and make those Misdelivered Letters available for collection by the intended Licensee, at a minimum, twice a week. IDA believes that this will not place any unreasonable burden on the Licensee that receives the Misdelivered Letters, and it will help to minimise any undue delay in redelivering the previously Misdelivered Letter. IDA also considers it reasonable that all Licensees bear their own costs of handling Misdelivered Letters, as this is an issue that arises from a multi-operator environment and which affects every Licensee equally.

3.7.13 **Section 9** specifies that all Licensees, unless as permitted by IDA, are prohibited from using masterdoor keys or any other methods which allow full access to the pigeonholes of the letterboxes.

3.7.14 IDA believes that allowing only IDA-permitted Licensees to have full access to letterbox pigeonholes will preserve mail security and integrity in the public postal system and safeguard consumers' interests.

3.7.15 **Section 10** sets out procedures and the measures that IDA would use to enforce the Operations Code , as well as the standards IDA will use to impose sanctions on Licensees found to have contravened the Operations Code. This section also specifies that Licensees can request IDA to assist in resolving any dispute which may arise in relation to the Operations Code.