



**THE PROPOSED LEGAL FRAMEWORK FOR
LIBERALIZATION OF THAI POSTAL SERVICE**

BY

MISS CHANIKAN SUKKASERMSUK

**A THESIS SUBMITTED IN PARTIALFULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS**

BUSINESS LAWS (ENGLISH PROGRAM)

FACULTY OF LAW

THAMMASAT UNIVERSITY

ACADEMIC YEAR 2014

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ENTITLED

THE PROPOSED ON LEGAL FRAMEWORK FOR LIBERALIZATION
OF THAI POSTAL SERVICE

was approved as partial fulfillment of the requirements for
the degree of Master of Laws in Business Laws (English Program)

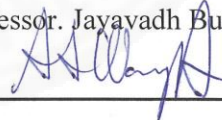
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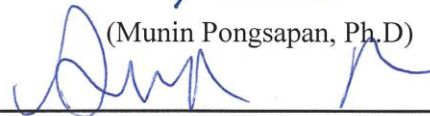
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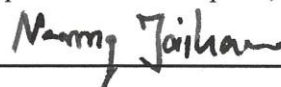
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ABSTRACT

This research aimed to explore the legal evolution concerning the postal regulation in Thailand, factors affecting the change, and legal limitations, as well as relevant laws of postal regulation in Thailand comparing to those in overseas. Postal related laws in Thailand were compared against those in selected countries including UK, USA, SWEDEN and JAPAN. Trends in the operation of postal business in overseas was examined. The investigation and analysis focused on legal problems on postal regulation; type, power and duty, and composition of Thai postal commission; concepts and theories of the establishment of independent agency; including recommendations for appropriate postal business regulation and model. Documentary study was conducted on relevant statutes in the forms of act, royal decree, announcements of various ministries and departments, including research, books, texts, articles, study reports, statistics, theses, documents of other forms, the internet and other data sources.

Results revealed that the establishment of postal business was generally aimed at providing public services, maintaining security of state, peace and order as well as social morality. Originally, postal business was set up as a government agency, i.e. a ministry or a department. However, this form of postal business had created a delay in operation, overlapping procedures, and the lack of business flow. Thailand had adopted this form in the beginning under the state operation by the Post and Telegraph Department under the Postal Act. Later in 1997, the Communication

Authority of Thailand was established as a state enterprise, and assigned to provide service of all operating segments as well as postal services from the Post and Telegraph Department. The Post and Telegraph Department was later on responsible for formulating policy and plan. In 1997, the government had developed the master plan for postal development and the National Economic and Social Development Plan, introducing the transformation of state enterprise into private company. Accordingly, the Communication authority of Thailand was separated into 2 companies, i.e. CAT Telecom Public Company Limited and Thailand Post Public Company Limited. Up until now, the government have focused on the development of and regulating the telecommunication business. However, there is no independent agency to regulate and oversee the postal operation. Rather, there is only the Postal Commission.

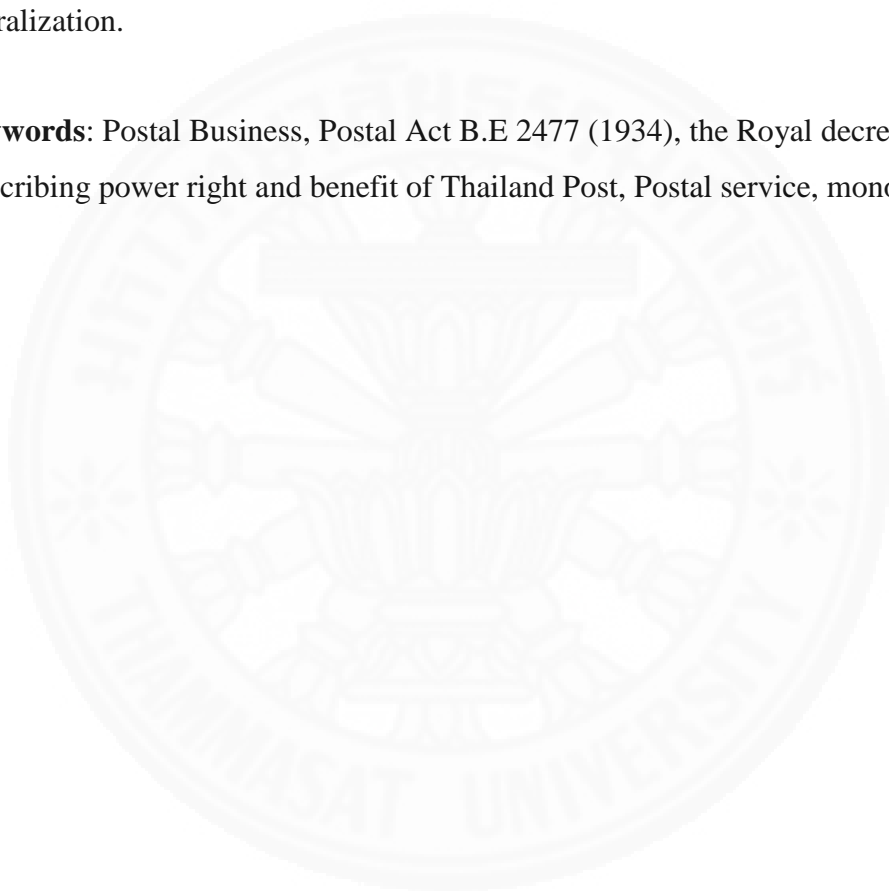
At present, postal business is found to be under control of the state authority. With the increase in advanced technologies, e-commerce business and electronic post, this has resulted in the decline of the letter delivery business. On the other hand, certain demand in some postal business such as logistic has created certain competition such as the transport business. Moreover, there is a need to reduce the government workload. As a result, there is a need to revise the laws that will enable free trade, allow independent operation, and promote fair competition. Postal business is thus affected by such legal revision. The author can conclude that there are 2 important problems, i.e. economic problem and legal structure problem.

The comparison of postal development in overseas indicated that the history of postal establishment and development in most of the foreign countries under study was similar to that of Thailand, however those countries tend to develop and direct towards liberalization. The key issues of postal development is to reduce state monopoly, establish independent agency as regulating agency separated from service operator, set up licensing system allowing for private operators, provide criteria for regulating service quality, and specify the qualification of postal commission in their knowledge and expertise on postal operation that will benefit postal business development.

Based on the analysis result, recommendations were provided. In order to support smooth postal business operation, promote neutrality, reduce power overlapping, and to encourage the private sector's engagement in postal service

competition, Thailand Post and the government should reorganize regulating agency as an independent agency and revise the authority of the postal commission, including its structure and qualification of commission members to facilitate the effectiveness of postal operation. In doing this, the power and duty of independent agency can be identified in similar to those of foreign countries. The power of service operator with legal benefit should be reduced, i.e. Thailand Post, the sole operator. Legal framework should be redefined to reduce the monopoly in postal business and stimulate the liberalization.

Keywords: Postal Business, Postal Act B.E 2477 (1934), the Royal decree of prescribing power right and benefit of Thailand Post, Postal service, monopoly



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LIST OF ABBREVIATIONS

Symbols/Abbreviations	Terms
APPU	Asian – pacific postal unions
AU	African Union
CAT	CAT Telecom public company limited
CA	The council of Administration
CEPT	The European conference of postal and telecommunication administration
CERP	European Committee for postal Regulation
Com – ITU	The committee for ITU
CPU	Caribbean postal union
CRASA	Communication regulators; association of southern africa
DHL	Deutsche post DHL group
EU	European Union
ERGP	European Regulators group for Postal services
EGA	Electronic Government Agency
ECC	Electronic Communication Committee
EMS	Express mail service
ESTI	European telecommunication standards institute
GATS	General agreement on trade in services
GAO	Government Accountability office
GLS	General logistic systems
IB	International Bureau
ITU	International telecommunication union
IPC	International Post Corporation

NESDP	National Economic and Social Development Plan
MICT	Ministry of Information and Communication Technology
NGA	National Government Authorities
NRA	National Regulatory Authorities
OECD	Organization for economic co-operation and development
Ofcom	Office of communication
POC	The postal operations council
PES	Private express service
PAPU	The Pan African Postal Union Communication regulation association of southern
PRC	Postal regulatory Commission
PTS	Swedish postal and telecom agency
PAEA	Postal Accountability and Enhancement Act
Postcomm	Postal service commission
Posten AB	PostNord Sverige
SIPA	Software Industry Promotion Agency
TOT	TOT public company limited
THP	Thailand Post company co., Ltd
Thailand Post company co., Ltd	Thailand Post
UNCTAD	United nations conference on trade and development
UPU	Universal postal Union
UPS	Universal postal service
USP	Universal service provider
USPS	United States Postal service

U.S	United States of America
U.K	United Kingdom
USO	Universal service obligation
TNT	TNT express
WTO	World Trade Organization



CHAPTER 1

INTRODUCTION

1.1 Background and Issue

The right of communication is the fundamental liberty which is provided to all people in a country in every constitution. The government accepts that the right of communication is the people's fundamental right and freedom of individual. And the government is obliged to respect the freedom of communication and provide thoroughly and fair public service for all citizens in country. Moreover, the government should beware of each individual message. The postal communication is the basic mechanism in fundamental communication¹. And being the public service called for reserved service provided by the government.

Historically, postal service was provided as the national monopolies. The government utilized this postal service to be the arm of public communication. Thai Postal communication began in the King Rama 4 which served only in postal service. In that period, postal service was one part of communication service operated by Post and Telegraph Department under the postal Act B.E 2477 regulation. Afterward, the government established state-owned enterprise called Communications Authority of Thailand in 2520, aiming to be the mechanism of government to compete with private sector in telecommunication market. This organization is responsible for 2 types of businesses; postal and telecommunication business with the absolute authority of government to operate the business.² Later, from the development of business environment such as economic, the reduction of mail delivery circumstance affected the telecommunication competition. Hence, in 2540, the government pushes forward

¹ มติคณะรัฐมนตรีเมื่อวันที่ 8 กรกฎาคม 2546 เรื่องการแปลงสภาพการสื่อสารแห่งประเทศไทยเป็นบริษัท กสท โทรคมนาคมจำกัด (มหาชน) และบริษัทไปรษณีย์ไทยจำกัด (The Cabinet Resolution on 8 July B.E. 2546 on the Privatization of the Communication Authority of Thailand (2003))

² ราชกิจจานุเบกษา, พระราชบัญญัติการสื่อสารแห่งประเทศไทย พ.ศ. 2519. เล่ม 93 ตอนที่ 115 หน้า 369 – 393 (2519). (The Government Gazette, 93 The Communication Authority of Thailand Act B.E 2519 at 369-393 (B.E. 2519).)

the master plans to develop the telecommunication business except postal business which is still vague.

This telecommunication's master plan created independent regulatory organization concept, to act as a regulator and also modernize the state enterprise to be the private operator. Hence, to apply this policy, the government aims to privatize the state enterprise to increase their operation's capacity and guarantee the private competition. One of privatized organization is **Communication Authority of Thailand (CAT)**. The government privatized by separating into two companies (CAT telecom Public Company Limited and Thailand Post company Limited) by virtue of the state enterprise's capital B.E 2542, section 28 and enacting the Royal Decree B.E. 2546 Determining the Authorities, Rights and Benefits of Thailand Post to set up the postal affair committee. From that time, Thailand Post Company Limited (Thailand Post) have responsibilities to provide postal service in Thailand.

Thai communication privatization in postal business has changed the government postal organization to the state enterprise status by the state enterprise capital act B.E 2542 section 23 and has entirely owned by the ministry of Finance. As a result of this privatization, the government still reserves the absolute power in mail, letter and postcard delivery under the policy of ministry of Information and Communication Technology and also enacted the Royal Decree B.E. 2546 Determining the Authorities, Rights and Benefits of Thailand Post Company to set up the postal committee. The committee has powers section 6 in the royal decree state that the power to analysis, make an international agreement, establish the postal directive etc

In 1992 – 1996, the government defined the seventh national economic and social development plan (NESD), which was to encourage the telecommunication liberalization and establish the independent regulatory authorities to support more competition. Later, in 1997, the government also enacted the telecommunication master plan which mainly stated about the liberalization of the telecommunication business the increasing role of private sector, and the structure of service rate for fair competition. However, the intention of this plan didn't clearly define the postal policy, operation and regulation. Rather, the plan only to focused on privatization the Post and Telegraph Department into the Thailand post Company.

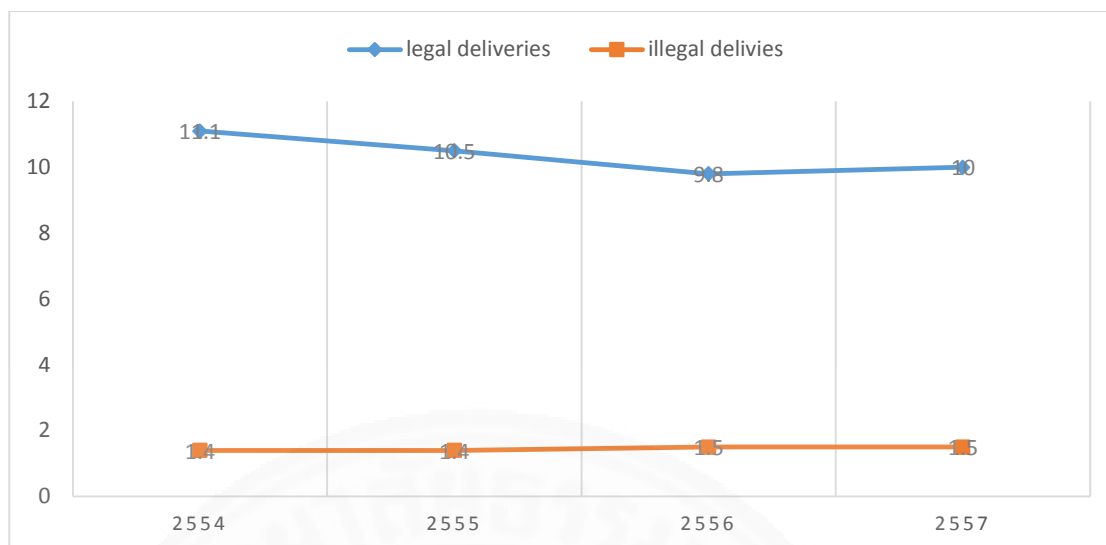
Nowadays, the postal service tends to change due to the two major impacts³. Firstly, the impact of communication technology development which affects the declining of the demand in letter, mail, postcard and magazine distribution. This is because people have alternative method to communicate such as email, phone etc. Secondly, the demand in parcel and express delivery under the competitive market is increasing due to the development of e –commerce and other business trends driven by the new technologies. This second trend is aligned with the global trend. As a result, the European market has created more trade liberalization. In 1992, the European countries has started to liberate the letter delivery service. However, this is limited to only certain types of services, for example, standard letter service or express mail and parcel service. Mostly, the government has setup an independent agency to oversee the operation of public utility service. The government has also separate between monopoly and competitive segment. However, this separation might differ from one country to an

For Thailand, according to section 5, the postal business should be operated solely by Thailand Post. In addition, other operators cannot perform the collecting and delivery service according to section 7. The wrongdoer under section 7 will be penalized according to the section 61, 62 and 63.

The following statistics in figure 1 illustrate the illegal activities conducted by the international couriers who conveyed, received, tendered or delivered letters or post - cards.

Figure 1.1 Comparison between inbound legal activities of international letters and post –cards and illegal activities by unauthorized courier companies.

³ European Commission, *Competition policy brief*.



Note: In million units

Source : Thailand Post Company

Although there are few violator of section 7, this might impact the market share of Thailand Post in the long run. When taking consumer security and consumer protection into consideration, there is a need for a proper oversight and monitoring.

In Thailand, there is a separation of service providers. Some services are under responsibility of the government, while some services are under responsibility of the private sector. However, such separation is not fully clear. In addition, there is no governing body to oversee and monitor the postal operators to enforce the same servicing standard among operators and protect the consumer right.

From the above analysis, the author thinks that the postal system should be enhanced to create fair trade and improve the service quality. This will also enable the operators to cope with the increase in the market competition and eliminate the recent postal service problem such as loss, delay and damaged in delivery which trigger inefficiency of product and service. However, the author notes that there are some legal obstacles that might prevent such development.

Therefore, the solution for such problems is that the postal service should be liberalized and do away with the monopoly, reduce the recent absolute power of Thailand Post Company, establish an independent regulatory authority, create a licensing system and set up the universal service obligation served by a designated operator. This will create level playing field for the private sector and the consumers

will receive good quality of service and a choice of product. This solution is also in accordance with the practice in other countries.

From my study, The author found some theses which offer similar topics on liberalization and monopoly system. However, my thesis is different. As other theses emphasize on the statistics, service satisfaction or privatization of telecommunication sector, my thesis emphasizes the legal aspects to support the postal liberalization by comparing effective international regulatory regime as an examples.

1.2 Hypothesis

THAILAND should liberalize the postal service system and set up a new legal framework by setting up a licensing system, establish an independent regulatory authority. This measure will create an efficient postal operation for better consumer protection.

1.3 Objectives of Study

- To examine the concept, functions and the development of the postal business and law in Thailand and foreign countries
- To study and focus on the weakness of the current Thai postal system including the relevant laws and regulations
- To analyze the current regulatory regime's problems related to the postal business in Thailand
- To study, analyze and compare the foreign laws and regulations which govern the postal marketing and the important duties of the foreign regulators
- To suggest whether it is compatible for Thailand to adopt the concept of regulatory system
- To propose legal measures to protect consumer rights in this market

1.4 Scope of Study

This thesis will study the issues of postal business and related problems mainly focusing on abolishing monopoly and also the role of independent regulators and operators in Thailand and in foreign countries. Moreover, the study will focus on the economic pros and cons of the monopoly market and also the concept of establishment of an independent organization or committee, including the appropriate roles of the services providers in Thailand by following examples foreign system. The thesis will compare postal rules, regulations and laws with the Postal Act B.E 2477 and

the Royal Decree B.E. 2546 Determining the Authorities, Rights and Benefits of Thailand Post Company. Furthermore, an analysis of the regulatory structure of the Thai postal system will also be made. The thesis will not focus on the enforcement scheme. Finally, in order to find appropriate solutions for postal marketing, this thesis will be based on a comparative study between United States laws, UK laws and Thai laws.

1.5 Methodology

This thesis will conduct a comparative study on legal control of postal business through “documentary research” method, using the texts and documents as source materials; for example, international and domestic related laws, journals, periodicals, articles, scholar’s opinions, information through the Internet and other relevant documents. In addition, the comments or suggestions from the related organizations are also be used in this thesis. The obtained information will be applied and analyzed in order to create appropriate and doable solutions.

1.6 Expected Result

1. Understand the types and evolution of Thai and foreign postal businesses in Thailand and selected foreign countries
2. Understand the regulations and legislation applicable to the postal business
3. Understand the form or organization including the authority of the regulatory
4. Propose a point of view from research analyzing comparing international laws for improving and updating the law or related rule also to regulate the policy.
5. Acknowledge the research method process serving as knowledge base for the preparation of papers in the future.

CHAPTER 2

THE OVERVIEW OF THAI POSTAL BUSINESS AND THE CONCEPT OF REGULATORY

2.1 Background and history of the postal business in Thailand

2.1.1 The general meaning of postal service

Postal⁴ relating to mail or to the public service for sending mail:

A full postal address, a signature, and a daytime telephone number are needed; a postal employee/official/worker; a postal delivery/strike; a postal facility/service/system

Postal service⁵: (1) Reference to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other related ancillary functions. (2) A product or service as defined in the Mail Classification Schedule.

The postal business or postal service is the basic communication service for people even in remote areas. This entails the provision of quality service for a reasonable and affordable price, even if the serving service causes an excess of money to be spent compared to the received income, contributing to the operator's loss. However, such cases are the obligation of the government to provide the fundamental service or public service related to telecommunications called public service obligation. In respect of postal affairs, such functions of the state was concretely determined in the Constitution of the Universal Postal Union (UPU) passed by the Beijing Congress in B.E. 2542 (1999), which states that all members should provide the basic service with quality, adequate and thoroughly at the price level. These basic postal services were called universal postal service which is the obligation of the designated postal operator⁶.

⁴ Cambridge Business English Dictionary, *Definition of postal* (cited 2015), <http://dictionary.cambridge.org/dictionary/business-english/postal> (last visited May 23, 2015).

⁵ United States Postal Service, *Glossary of postal terms* (cited 2015), http://about.usps.com/publications/pub32/pub32_terms.htm (last visited May 8, 2015)

⁶ ดิสทัต โทตระกิตย, การจัดทำและสาระสำคัญของร่างพระราชบัญญัติการประกอบกิจการไปรษณีย์พ.ศ. YEAR 3 (YEAR).

This is regarded as a complex social service by these service providers who reserve the right to provide certain types of mail based on the coordinates, weight, and rates as is defined in the so-called reserve service. In addition, they may have the right to receive certain benefits, such as money, allocated from the government fund which will be downgraded according to the order by the conditions of development of Postal Affairs.

2.1.2 The global postal evolution

In general, the evolution of the Thai and international postal business is similar. In the first postal period, liberalization was government-owned. In both Thailand and in the international arena, the postal service structure was set up as national monopolies in each country; prior to 1992, the main letter market was operated by a historical postal operator. After that period, all postal operators were permitted to provide the full range of services.⁷

On the other hand, the parcel and express delivery services have been in the competitive and liberalized market for a decade. In the same period, two economic trends, e-substitution and e-commerce, have had a direct impact on the postal service sector. Moreover, there are the entries of competing firms into the parcel and express delivery market such as DHL, UPS, and TNT⁸. The first impact of this economic trend by the acceleration of electronic communication was the decreasing of distribution of letters, newspapers, magazines, and other documents, and the demand of electronic communication also rose due to the development of e-commerce.

All of these developments including the declining mail volume, independent economic growth, and advances of electronic communications, have driven changes in business models⁹ and the liberalization created in the global

(Dhisatouch Hotarakitt, *The preparation and the essence of postal industry act's draft B.E. YEAR 3 (YEAR)*).

⁷ Christoph Hermann and Jörg Flecker (eds), "Competition policy brief, European commission issue," *The Project Identity*, June 2006 – May 2009 (36 months) 6.

⁸ Richard Pond, "Liberalization, privatization and regulation in the UK postal services sector," *The Project of Privatization of Public Services and the Impact on Quality, Employment and Productivity 2* (2006).

⁹ Consumer Postal Council, "Executive Summary", in *Universal Postal Service in Major Economies 1* (2013).

marketplace with new technologies and enhanced world-wide connectivity, influencing postal operators to adapt their businesses.

2.1.3 The characteristics of the postal business

Generally, most patterns of the services of the postal business start from a federal agency which is responsible for providing postal services also in international countries such as the countries in Europe, Asia, Australia, and Africa. Almost every country is a member of the Universal Postal Union (UPU), in which the State has a monopoly on the Postal Affairs' mission towards society. Afterward, Postal Affairs began to develop into the era of performance improvements (restructuring) to reduce the State's financial burden by modifying the model from the government provider to State enterprises or private companies. Moreover, the government would begin to reduce the monopoly system in postal providers and create more competitiveness to the private sector.

Hence, postal affairs development may be divided into 3 levels as follows:

- (1) Postal Affairs under the monopoly system;
- (2) Postal Affairs under partly under monopoly, at present, such as in Australia, France, the United States, Japan, the Republic of Singapore, the Federal Republic of Germany, etc.; and
- (3) Postal Affairs in a fair and free competition such as in New Zealand, England, Finland, Sweden, etc¹⁰.

2.1.3.1 The postal business in Thailand

- (1) Background of the postal system and business in Thailand¹¹

The development of the postal business was initiated in order to serve society's needs for communication. The primary communication is related to the delivery or sending

¹⁰*Supra note 3*

¹¹กระทรวงเทคโนโลยีสารสนเทศและการสื่อสาร,ฐานข้อมูลกิจการไปรษณีย์,วิวัฒนาการกิจการไปรษณีย์ไทย,สำนักนโยบายและยุทธศาสตร์กลุ่มงานกิจการไปรษณีย์กระทรวงเทคโนโลยีสารสนเทศและการสื่อสาร, *ข้ามขอบฟ้ากรรมไปรษณีย์โทรเลข*, <http://postact.mict.go.th/>. (The Ministry of Information and Communication Technology Postal Database, "The Revolution of Thai Postal Business, Office of Policy and Strategy, Postal Group, Ministry of Information and Communication Technology, *Across Skylines with Post & Telegraph Department*, available at <http://postact.mict.go.th>.)

of news, by using vehicles such as horses, elephants, lured by boat or raft, depending on the method used in each district.

Later on, with the development of communication, there are the trading business and friendly companionship with western countries. The priority of this development was in the era of King Rama IV with postcard and envelope communication. His Majesty brought the postal system into Thailand¹².

Under the end of the reign of King Rama IV¹³, the Thai British Consulate was the first agency to undertake international mail services. In that era, the Royal family is the leader in receiving and sending mail through which the postal system was started. The postal services progressed and an official “Post Department” was established on 4 August 1883. In this period, the postal business was extremely popular, so these businesses was extended widely from domestic services to foreign services, and also accelerated the standard of service to promote the international standard by participating in Universal Postal Union on 1 July 1885. Meanwhile, the advancement of the telegram service business was also developed under the responsibility of the Telegraph Department including the Telephone Department. Consequently, the Post Department and Telegraph Department were combined into the Post and Telegraph Department on 19 July 1868. The reason behind this move was to provide communication services and to demonstrate the vision of management, to enhance operational efficiency and to expand communication services in the country for serving the public with care and so on.

Subsequently, the government revised the postal regulations by enacting the Communication Act of 1976. This led to enormous changes in the Post and Telegraph Department. The intention was to further the direction and operation mission by setting up a new organization under the Ministry of Transport and Communications named the *Communications Authority of Thailand* on 25 February 1977, which operated independently as a State enterprise organization. Formerly, the duty of the Post and Telegraph Department was the agency which functioned as the executive director, implementing policies and planning, with academicians working on

¹²*Id.*,

¹³*Id.*,

organizing the communication administration for radio frequency and government affairs representatives in international communication. At the same time, the Communications Authority of Thailand had a major duty to give service and fulfill an international agreement including regulating or directing the domestic and international postal service fees by issuing the ministerial regulations.¹⁴

Afterwards, the government's policy imposed the regulation to transform the State enterprise organization to increase the operation's efficiency, becoming a private sector in an international level. The Communications Authority of Thailand was one of the government vehicles to do so on 8 July 2003; the cabinet decided on the privatization of the Communications Authority of Thailand under the Master Plan for Development of Telecommunication and Capital Act B.E 2542 (1999). This privatization divided the enterprise into 2 companies: CAT Telecom Public Company Limited and Thailand Post Company Limited. Thailand Post Company was officially registered to be a company on 14 August 2003 under State enterprise status under the Ministry of Information and Communication Technology. As a result of the State Enterprise Capital Act B.E 2542 (1999), the Royal Decree dissolved the Post and Telegraph Department, Ministry of Communication B.E 2545 (2002), and the Royal Decree B.E. 2546 Determining the Authorities, Rights and Benefits of Thailand Post B.E 2546 (2003)¹⁵, Section 6 gave the committee's authority as follows:

"Authorities to the diagnosis, authorization, and issuing of the Board of Directors of Communication of Thai authorities to the public a book of postal regulations, establishing an agreement with the Thai International Postal Affairs, and issuing any command of the Governor of the country's communication which is an administrative order. By virtue of the Postal Act BE 2477, this is the power of the Post Committee."

Nowadays, the business operations of Thailand Post Company (THP) include mail, transportation, and logistics. In Thailand, we also have private companies and public operated companies to operate postal businesses. For the public sector, THP is the sole operator which receives monopoly power under the Postal Act B.E 2477.

¹⁴*Id.*,

¹⁵*Id.*,

Hence, THP has the absolute power only in delivering mail, postcards, and parcel services by law under the ICT ministry's framework. On the other hand, for the private sector, there are various companies such as DHL or FedEx operating in the transportation and logistics business, which does not include the absolute right to deliver the mail and postcards under the Postal Act¹⁶.

In the past, the postal business under the Communications Authority of Thailand had a strong development by creating a constant service network serving all of areas in Thailand since 1977. The postal business is a service to the customer, and customer satisfaction may significantly affect operations. Nowadays, Thailand Post has a widely strong and competitive service system, which is the main factor to create competitiveness in Thailand's postal business which focuses on giving ideal service to the consumer and developing new services to respond to the client's needs.

2.1.3.2 The operation structure of postal business

(1) The structure of Thai postal business¹⁷

THP is under the Ministry of Information and Communications Technology regulated by Section 25 of the Act on Organization of Ministries, Sub-Ministries and Departments B.E.2545 which stipulates the duty and the operation of Ministries, and also defines the units under the Ministry's governance as follows;

- (1) TOT Public Company Limited
- (2) CAT Telecom Public Company limited
- (3) Thailand Post Company

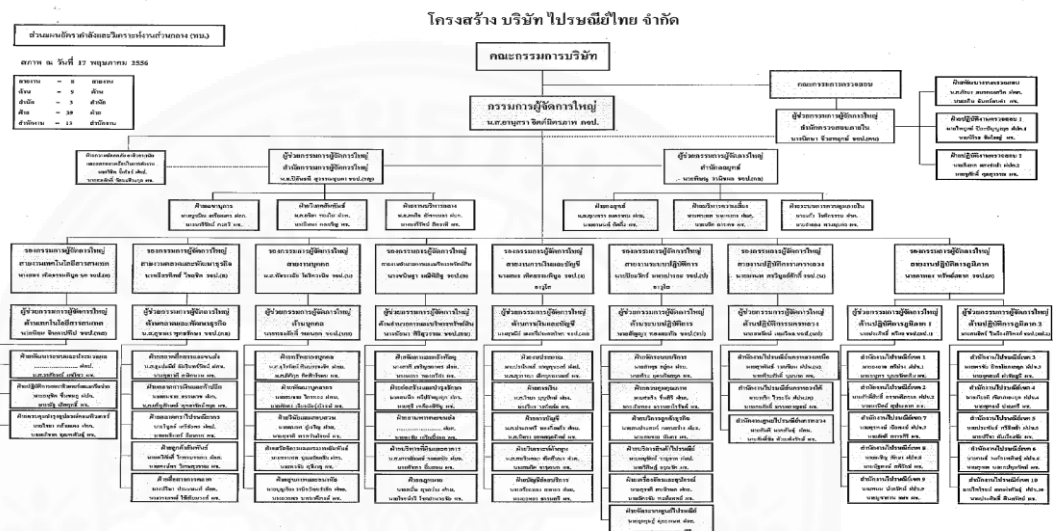
Hence, most Thailand Post policies and regulation shall come from the Ministry. The operation of the Thai postal business requires labor with labor intensive skills as it needs personnel for the delivery of parcels and other mail products. The postal law reserved the right to operate in the communication market under the Postal

¹⁶ มูลนิธิสถาบันวิจัยและพัฒนาองค์กรภาครัฐ, “ภาวะอุตสาหกรรม” ในรายงานการประเมินผลการดำเนินงานของรัฐวิสาหกิจบริษัทไปรษณีย์ไทยจำกัด 4 (2557). (Institute of Research and Development for Public Enterprise; “Industry Situation” in *Performance report of Thailand Post Company Limited 4* (B.E. 2557).

¹⁷ กระทรวงเทคโนโลยีสารสนเทศและการสื่อสาร, สำนักงานรัฐมนตรีกระทรวงเทคโนโลยีสารสนเทศและการสื่อสาร, <http://office.mict.go.th/office.html>. (The Ministry of Information and Communication Technology, Secretariat, The Ministry of Information and Communication Technology, available at <http://office.mict.go.th/office.html>.)

Act B.E 2477 (1934) for the Thailand postal unit referring to Thailand Post, who exclusively has the rights on the postal post sector such as letters and postcard. This means that Thailand Post Company won't have competitors in the postal business, but should still be aware of modern telecommunication developments such as mobile phones, and E-commerce businesses.

(2) The Thailand Post Company's management structure
Figure 2.1, Thailand Post established the Postal Board of Directors as follows;¹⁸



2.1.3.3 Types of postal service¹⁹

The postal business is focused on telecommunication services and also the transportation market. The telecommunication market concerns the highest amount in postal market with around 94 percent of all products including domestic and international transport, especially in letter and publication products.

Thailand Post Company has attempted to develop and add new postal services to meet consumers' demands and utilize the postal network to its maximum benefit. Nowadays, Thailand Post has adapted their services to accommodate high competition in all types of service. The postal business of Thailand Post is a high competitive market, especially regarding the transportation market, retail market and financial market.

¹⁸ Thailand Post Company, *The Organization's Structure* (2015), available at <http://www.thailandpost.com> (last visited May 2015).
¹⁹ *Supra* note 16

(1) The types of Thailand Post's services are divided into 4 types as follows²⁰;

(1.1) The communication market is the delivery of information or paper services to specific and multiple receivers. It combines all services as follows;

- Airmail is the international delivery letter or any goods by air. It is a pliable letter paper with a postage stamp which is easier to immediately send to foreign countries.
- Publication is one kind of parcel post with a picture, message or artificial mark on paper cardboard or general material. It can be duplicated with mechanical or photographic processes relating to original model. There are two kinds of publication; first, domestic publication meaning the publication address from a domestic sender to domestic receiver, and international publication meaning the publication address from a domestic sender to an international receiver or from an international sender to a domestic receiver.
- Postcard is a card for delivering messages which produced by Thailand Post or other organization under some conditions.
- EMS SUPER SPEED is a service that provides delivery within the sending day not over 20:30. Domestic EMS service is the same service as EMS SUPER SPEED.
- Domestic EMS is a service provided for all customers.
- EMS World is a service for international delivery within an emergency delivery in document and package form by transportation which is specific only to EMS WORLD service. It can be duplicated with mechanical or photographic processes relating to the original model.

(1.2) The transportation market is the transportation of goods or parcels by indicating the receiver address²¹.

²⁰ Thailand Post, available at www.thailandpost.com (last visited Jul. 30, 2015).

²¹ *Id.*,

- Logispost is a service for a massive volume of delivery or other special features. This service is suitable for transporting heavy goods or large packages from 20 kg to 200 kg with a Track & Trace system for checking or tracking the parcel or letter through the Thailand Post website (www.thailandpost.com).
- Logispost World is similar to Logispost but serves for international destinations. Both of these services can be traced and checked through the Track & Trace system on www.thailandpost.co.th. Moreover, there is Logispost Plus which is an optional service of Logispost facilitating the large deliveries to the destination more rapidly than other services.
- Parcel post is a service for sending parcel packages in domestic and international at a low cost.
- International small parcel is a service to deliver small packages to international destinations.

(1.3) The retail market is a one-way service as a service agent or seller with a network covering all areas. The consumer can be an agent selling Thailand Post's goods. All of Thailand Post's counters provide the postal service and dispatch goods such as cosmetics, food package or sacred objects²².

(1.4) The financial service market provides financial services including receiving and sending money transfers, also helping the consumer and the retailer to access this service more conveniently²³.

International money transfer service (Western Union) provides the sending or receiving of money under the cooperation between Thailand Post and Western Union which is a service provider connecting via modern computer network. In addition, there is another financial service called online money order which is for emergency and convenient financial services to the receiver. The receiver and the sender do not need to have a bank account, and can simply use an ID card to use this service²⁴.

²² *Id.*,

²³ *Id.*,

²⁴ *Id.*,

(2) The competitor of postal service sector

The following chart is the comparable information of direct or indirect postal competitors in postal market as follows; ²⁵

Table 2.1 : Type of service

Service group	The major service of Thailand Post	The main competitor
Communication Market	Letters / post cards /registered publications	Courier services, postal services, such as phone, fax replacement
Transportation Market	Parcel post EMS post Bill postal parcel destination	Shipping Company Ltd. Thai Airways International co., Ltd. Private distribution/shipping companies Courier companies
Retail Market	Cumulative and postage Postage stamps and postal history items Consignment services & products	Shops/malls/convenience store
Financial Market	Money order Post Bill of Exchange. Western Union money order Payment service provider	Commercial banks Counter Service

The private sector are strong competitors for Thailand Post Company because they have a more flexible operation and great potential in investment in this sector, which can distract the consumer from using Thailand Post Company's service.

2.1.3.4 Related postal business organizations in Thailand (including regulators, operators and policy makers) are as follows²⁶;

Firstly, the Ministry of Information and Communication Technology have the authority on planning promotions, business development in operation on information and communications technology and also meteorology and other official statistics, in accordance with the law to be the authority of the Ministry of Information

²⁵ *Supra* note 16, page 67 – 69

²⁶ *Supra* note 17

and Communication Technology. Under the Ministry's operation, there are 4 public organizations or state enterprises;

1. TOT Public Company Limited (Thailand)
2. CAT Telecom Public Company Limited (Thailand)
3. Thailand Post Company
4. Software Industry Promotion Agency (Public Organization) or SIPA
5. Electronic Government Agency (Public Organization) or EGA
6. Electronic Transactions Development Agency (Public Organization)

Secondly, Thailand Post Company (THP)²⁷ was established in 14 August B.E 2546 from the privatization of the Communications Authority of Thailand followed by the public policy to increase the potential of State enterprise operations. This intended to create equal and fair competition with the private sector. THP is a state enterprise under the Ministry of Information and Communication Technology and Ministry of Finance. THP operates under the Postal Board of Directors with the approval of the relevant authorities.

The objective of Thailand Post company operations²⁸:

- 1) To provide quality services according to international standards and seek opportunities in related business operations both in Thailand and abroad
- 2) To achieve good management at all levels in the organization with transparent and verified operations

THP's policy in the postal business operation:

- THP aims to provide service with good quality, fast, on time, in an appropriate service charge rate
- For Marketing, THP Focus on proactive marketing to build customer satisfaction at all levels
- Financial and investment to expand further business in the future.
- In terms of administration and management, THP aims to further develop postal business

²⁷Thailand Post Company, Vision of Thailand Post Company, <http://www.thailandpost.co.th/vision.php#3> (last visited 2015).

²⁸ *Supra* note 20

Third, the Ministry of Finance²⁹, whose function under the Act on Organization of Ministries, Sub-ministries and Department B.E 2545, Section 10 states that the MOF has authority regarding the financial, property assessment, government parcel management, collecting the State revenue and also the management and development of State enterprises and other State and Government securities. Moreover, there is the State enterprise policy office under this Ministry which is responsible for suggesting the financial accounting policy and determining the performance of State enterprises including evaluation systems, operations and corporate governance systems, and processing state enterprises; the latter of which is under the Postal Committee by the Royal Decree prescribing the Power, Rights and Benefits of Thailand Post Company B.E 2477.

As approved by the Cabinet on July 8, 2546, the draft of the Royal Decree prescribes the powers, rights and interests of the company. This Royal Decree defines the structure and powers of the Postal Commission. Their power authorizes the diagnoses and regulations of the Communications Authority of Thailand Board of Directors, including the power to prepare the postal directive and the agreements with foreign countries under the Postal Act B.E. 2477 by virtue of the powers of the Commission. The structure of the committee is combined with Permanent Secretary of Information and Communication Technology Ministry, Ministry of Secretary General of the Council of State, and Secretary of the Treasury Expert Representatives of the Ministry of Information and Technology.

2.2 Policies on postal business of the government sector

2.2.1 Policies in line with the Master Plan in Postal Affairs

Development of postal affairs began in 1995 as approved by the Cabinet on 28 March 2538³⁰ as agreed in the Master Plan for Development of the

²⁹ Ministry of Finance, Overview of Ministry of Finance, http://www.mof.go.th/home/overall_1.html (Last visited 2015).

³⁰สำนักเลขาธิการคณะรัฐมนตรี, มติคณะรัฐมนตรีที่ คค 0100/906 เรื่องแผนแม่บทการพัฒนากิจการโทรคมนาคม, 24 มีนาคม 2538. (The Secretariat of the Cabinet, The Cabinet Resolution of 0100/906 of the Master Plan of Telecommunication Development, 24 March 1995).

Telecommunications Sector proposed by the Ministry of Transport. Soon after, the Ministry of Transportation and Communications moved to propose the revision of the Telecommunication Master Plan ³¹ for developing new telecommunications ventures. The framework of telecommunication development aimed to focus on the modification of telecommunications with an emphasis on altering the telecommunication operations from a governmental monopoly system to a free trade system. This was followed by a subsequent Cabinet resolution in 1997.

It can be stated that there is no explicit master plan in relation to postal businesses in Thailand since postal affairs and communication affairs were both merged together as telecommunications affairs. The Cabinet agreed and approved the Master Plan for the Development of Telecommunications Affairs implemented by the Ministry of Transportations and Communications. This master plan is in line with the government's communications policy declared to the Parliament in December 1996. The plan was aimed at changing the operation of communications business from a state monopoly regime to a free trade regime through privatization in 2006 pursuant to the policy introduced by WTO as Thailand is one of its members.

The origin of this master plan follows the statement of policy by then Prime Minister, General Chavalit Yongchaiyudh, to the Parliament on 11 December 1996. One of its essential matters on policy concerning transportations and communications was to precipitate the Master Plan for the Development of Telecommunications Affairs and the revision of relevant laws accordingly. Therefore, the Ministry of Transportations and Communications at that time carried out the formulation of this Master Plan for the Development of Telecommunication Affairs with an aim to identify various key issues about the operation of telecommunications affairs as described below³²:

- Privatization of the state monopoly on telecommunications business operations and collaboration between government and private sectors

³¹สำนักงานเลขาธิการคณะรัฐมนตรี,มติคณะรัฐมนตรีที่ คค 0208.1/7443 เรื่องแผนแม่บทการพัฒนากิจการโทรคมนาคม,25 กรกฎาคม 2540 (The Secretariat of the Cabinet, The Cabinet Resolution No. 0208.1/7443 The Master Plan of Telecommunication Development, 25 July 1997)

³² *Id.*,

towards the competitive liberalization of telecommunication business operations domestically and internationally

- Roles of various organizations in implementing this policy
- Regulatory rules for the liberalization of telecommunication businesses in Thailand including the privatization of State enterprises to private sector
- Providing adequate services and consumer protection
- Human resources development, relevant laws, direct investigation and research on communication technologies and for supporting information and computer technologies
- Initiation of Thai telecommunication industry development towards the production of equipment using Thai technologies
- Thailand development and adaptation to become a regional telecommunication hub in response to globalizing competition internationally

(1) The purpose of the master plan³³ is as follows:

- To bring the government's policy to define the principle and goal in postal operation
- To provide telecommunications development consistent with the policy of the government and the National Economic and Social Development Plan, especially regarding manpower and society development
- To lay the foundation for telecommunications technology development and also in information and computer technology.

(2) The main policy in telecommunications development³⁴

in order to achieve the goal of the Telecommunications Development Plan and fixing the weaknesses of current Thai telecommunications business should provide some strong policies as follows;

³³ *Id.*,

³⁴ *Id.*,

- Telecommunications industry liberalization policies by the abolishing the State monopoly
- Private sector role policy
- Clearly separating the role of service organizations and independent regulatory organizations' policies for free competition in telecommunications business
- The privatization of the Telephone Organization of Thailand and Communication Authority of Thailand's policy
- Separation of postal affairs from the Communications Authority of Thailand's policy

As such, the criteria and policies were separate, with its own the policymakers, regulators, and operators, including the establishment of a regulatory committee. The National Telecommunications Commission liberalized the postal market to ensure the free competition in the telecommunications business by removing the monopoly system, and advanced telecommunications operations by liberalizing the telecommunications sector since B.E. 2542m harmonizing with the World Trade Organization's obligations.

Major policies on telecommunications development³⁵

For the Telecommunication Business Development Plan to achieve its goal on rectifying the weaknesses of the current telecommunication operations in Thailand and strengthening its future operation, the following 12 major policies were identified:

1. Policy to liberalize telecommunication business by abolishing state monopoly
2. Policy to increase the role of the private sector
3. Policy to clearly separate the roles of regulatory bodies and service agencies for liberalized competition of telecommunications business operations
4. Policy to transform the Telephone Organization of Thailand (TOT) and the Communications Authority of Thailand (CAT)

³⁵*Id.*, p. 9

5. Policy to separate postal affairs from telecommunication affairs under CAT
6. Etc.

The policies related to postal affairs according to this Master Plan aimed to separate postal affairs from telecommunications affairs.³⁶ This is because postal affairs at that time were suffering significant losses due to their offering of services charging reduced costs for the welfare of low income citizens. Hence, improvements were required to enable their administration in a private business scheme, and enhance their capability and ability to develop postal business for better efficiency and self-reliance. Therefore, the policy to separate postal affairs from telecommunication affairs was introduced to establish a distinct structure as a company with an effective private business scheme facilitating an extended operation of other affairs.

As demonstrated above, the Telecommunications Master Plan attempted to converge postal businesses, but only focused on the transition and separation of postal affairs from telecommunication affairs. However, the plan did not address the competitive liberalization of the postal business as found in communications business.

2.2.2 Policy in line with the National Economic and Social Development Plan (NESDP)³⁷

In the NESDP, a specific policy on postal affairs was not explicitly mentioned but included in the part of economic development addressing telecommunications affairs. Postal affairs was mentioned in terms of postal and telegraph affairs since the 1st NESDP regarding the expansion of postal office spaces, speeding up and expanding the postal and telegraph services. Until the 7th NESDP, it is explicitly mentioned in the development of fundamental services including the guidelines for development in particular fields. In the communications field, it focuses on improvement in 6 areas, emphasizing on the revision of rules and regulations on

³⁶ *Id.*, p. 19

³⁷ สำนักงานคณะกรรมการพัฒนาการเศรษฐกิจและสังคมแห่งชาติ, แผนพัฒนาเศรษฐกิจและสังคมแห่งชาติฉบับที่ 1 ระยะที่ 2 พ.ศ 2504 - 2506, 118 – 119. (The Office of the National Economic and Social Development Board, *The Seventh National Economic and Social Development Plan 1992-1996*, 118 - 119.

communication that facilitate the increased role of private sector and enable improved operational efficiency. It specified an establishment of a central independent agency at a high level with a supportive law, including the revision of an appropriate price structure.

This show that the government support to change the telecommunication sector not postal. However, there are some internal and external factors which encourage the postal development as follows :

2.2.3 Reasons and needs to transform and develop the postal business

Policies on postal business development tend to focus more on the changes and development towards a private scheme. In addition, the trends in overseas countries are moving towards competitive liberalization. There are both internal and external key factors as follows:

2.2.3.1 Internal factors

Postal affairs is a public utility under the monopoly regime according to the Postal Act operated by government agencies. The shift towards such changes and development of the postal business into a private scheme is a factor contributing to the formulation of the Telecommunications Master Plan in line with the 7th NESDP B.E. 2535 – 2539 as influenced by the commitment as a member of WTO.

2.2.3.2 External factors

In view of the current international laws and policies, engagement in global community, and development trends in the information age of global society with service network connection, cultural exchange, and economic cooperation with competitive liberalization, European countries and even Japan in Asia have gone through the privatization of postal affairs, a trend to change from monopoly to liberalization with increased involvement from the private sector.

At present, Thai postal business circumstance is not dramatically changed even in the private sector because the government still have a full authorities to govern the business (monopoly) even affected from the technologies development, the popularities of new trend's business. Meanwhile, in foreign countries is affected from the technologies development and cause to change into the liberalization system

2.2.3.3 Changes in postal affairs in Thailand

In the operation of postal affairs in the initial period following the Postal Act B.E.2477, the Thailand Post Company Limited under the Ministry of Information and Communication Technology (MICT) laid out the policy and direction in the operation of the company in accordance with this Act. Section 5 of this Act prescribed that the company shall have the sole right to handle the collection, delivery post items of letters and postcards. The company has operated the delivery of letters and postcards as a communication service for its major revenue up to present. In 1995, the NESDP did not specify any policy to liberalize competition on postal affairs. This may be due to the number of competitors and the postal networks widely available throughout the country. Therefore, the government at that time did not try to push for the liberalization the postal affairs. Because of the changing global situation, particularly in the European region where dramatic changes occurred such as in information and communication technological development, there was a trend to liberalize the postal affairs from state monopolies to competitive liberalization by the private sector.

Due to postal service is one kind of public service so the author will study concept of public service and the regulatory of public

2.3 The concept of public service regulatory

2.3.1 The meaning of public service³⁸

Public service means the activities for the public interest providing by some organization under public law or the person who under the private law relating to public person and under the specific law.

There are many opinions on the issue according to different views as follows;

³⁸ มหาวิทยาลัยหอการค้าไทย, “บทที่ 9 การกำหนดราคาและผลผลิตในตลาดแข่งขันไม่สมบูรณ์” (University of the Thai Chamber of Commerce, “Chapter 9 Imperfect Competition,” <http://elearning2.utcc.ac.th/officialtcu/econtent/ec922/doc9.pdf> (last visited 15 May 2015)).

Jean Rivro³⁹ stated that the definition of public service is to satisfy society and individual needs from the public preparation, not the private sector or State enterprises. Prof. Dr. Nantawat Boramanand⁴⁰ explains, “The concepts and principles of French’s Public Service concluded that public service shall be consisted of 2 conditions. First, the public service activity should deal with the public organization and second, that activity shall have the purpose to public interest and satisfy the needs of people.”

In most cases, the State will have a duty to provide a public service which is necessary and important to the well-being of the people across the country. For example, in the Republic of France, in the decentralization to local governments in 1982, the government organized public service into 3 categories as follows⁴¹:

- (1) Administrative public services including the justice system, security, national education, social cultural public services which are reserved for all people in the country;
- (2) Industry and commerce public services concerning economic services familiar with the State enterprise operation;
- (3) Social and culture public service is the public service which needs the freedom and flexibility to operate without any profit such as sport, research, etc.

2.3.2 The tool of government in providing public service⁴²

When the Government party has established public service, they need to prepare or supervise the preparation of the public services in a good result according to the intention of the public services’ establishment it. In order to prepare or supervise the public service, Administrative Division has a "Tools" to provide the public service:

³⁹ ชาญชัย แสงศักดิ์, คำอธิบายกฎหมายปกครอง 73 (สำนักพิมพ์วิญญูชน 2551). (Charnchai Sawangsagdi, *Administrative Law Explanation 73* (Wiyuchon Publishing B.E. 2551).)

⁴⁰ *Id.*, p. 23

⁴¹ *Id.*, p. 73 – 77

⁴² นันทวัฒน์ บรมานันท์, สัญญาทางปกครอง: เครื่องมือในการจัดทำบริการสาธารณะ, <http://pub-law.net/publaw/view.aspx?ID=693>. (Nuntawat Boramanand, *Administrative contract: the tool of public service management*, <http://pub-law.net/publaw/view.aspx?ID=693>) (last visited, May 23, 2015).

2.4.2.1 Law measure, the administration has 3 types of law measure to provide the public service.

- (1) General Administrative Contract (*les actes réglementaires*) or namely unilateral administrative rules that affect other people in general. This type of administrative contract is the administrative law (*réglementaires*).
- (2) Individual Administrative contract (*des actes individuels*) including the effect of a single person and legal matters, such as the restrained order, approved order, permission, withdrawing of licenses. This type of administrative acts must be made by the person in authority.
- (3) Administrative Contract (*contrat administratif*) is an important tool of the government in order to deliver public services under their authority, which is private operation, and also prepares the supplies for public use services. In most cases, the public services which deliver to the private sector are industrial and commercial services. However, in some cases, administrative contracts can be used to perform public services that are administrative, such as conducting research or research in science, in which they will hire universities or institutions under an administrative contract agreement.

2.4.2.2 Human Resource (*function publique*)⁴³ includes all personnel working for the government. This is an important mechanism to provide public services. There are many types of government human resources including government officer or "Officer" (agent).

2.4.2.3 Property to establish public services⁴⁴. To provide the public service requires both movable property (*meubles*) and property (*immeubles*). In general, the Administrative Department can obtain all the assets through two ways: the acquisition of property under the civil law, and the special acquisition of property.

2.3.3 The general regulatory process of public service

Due to the fact that the postal service falls under the public service category, it is appropriate in this case to adapt the concept of public service to the postal service. However, the writer emphasizes that the public service regulatory must act as the independent regulatory organization model. This mean Thailand does not study on the regulatory of postal service. In addition, formerly, the public service regulatory was directed by the state or government, but at present, the regulatory of independent regulatory organization is put in place to serve the public services including in other types of public service business, such as energy and transportation. Mainly, the author study the concept of telecommunication's regulatory body for adapting to postal service regulatory. The concept will be separated with the operated organization and the regulatory which can be summarized as follows:

Table 2.2 :The standard organization structure of a developed country⁴⁵

<i>The duty</i>	<i>The responsibility organization</i>
<i>The developed policy</i>	<i>Executive branch or the ministry</i>
<i>The regulatory</i>	<i>Separate regulatory authority</i>
<i>Network and service operation</i>	<i>Privately or commercially operated: PTOs</i>

⁴³ *Id.*,

⁴⁴ *Id.*,

⁴⁵สำนักงานคณะกรรมการกิจการโทรคมนาคมแห่งชาติ, *ความรู้ทั่วไปเกี่ยวกับการกำกับดูแลกิจการโทรคมนาคมและการออกใบอนุญาตประกอบกิจการโทรคมนาคม* หน้า 8 (พิมพ์ครั้งที่ 1 บริษัทเอ็ปป้าพรินต์ติ้งกรุ๊ปจำกัด 2552). (Office of the National Broadcasting and Telecommunication Commission, *Information on Telecommunication Regulatory and Telecommunication Licensing* 8 (1st edition APPA Printing Group Company B.E. 2552), page 8)

Hence, the structure independence was mentioned in the WTO reference paper. It requires countries to establish a regulator separate from the operator, which formerly was the government. Moreover, many countries encourage establishing a structurally independent regulator that separates the functions of regulating from the supplying services. Providing this structural independence reduces the possibility of political or industry.

In summary, there are 3 categories about the public service regulatory organization form as follows;⁴⁶

1. National Government Authorities (NGA) role

In many countries, there is only one ministry or organization to operate the telecom services. This is the policymaker, service provider and network owner. At this stage, there is no need to have a separate regulatory organization because the state agency will design the policy to operate and also function as the operator.

2. The National Regulatory Authority: NRA

Many governments modify the regulatory organization structure including separating the national regulatory authority by developing the establishment and the operation of a *Regulatory* organization. The 5 key factors to establish a *Regulatory* organization are;

- Independence of the regulatory authority
- Support the corporate governance budget
- Single regulator and collegial commissions
- Multi-sector regulators
- The personnel structure in regulatory authority organization

3. International agencies⁴⁷

An international agency is a type of international corporate governance agency, which stems from international integration. There are some international agencies regulating the telecommunication business which be subsequently further clarified. Telecommunications reformation, which leads to the segregation of policymaker duties regulatory and also the entry of new entrepreneurs, is an important

⁴⁶ Colin Blackman and Lara Srivastava (eds.), *Telecommunications regulation handbook* 19-27 (Tenth Anniversary Edition 2011).

⁴⁷ *Supra* note 45

factor to increase independent regulatory organizations. The regulatory agencies will act as a "Committee" to control and take care of problems between existing and new operators⁴⁸.

When the independent regulatory organization regulator is established, it is important to define the regulator's institutional design and also the relationship with the government, industry, and the public. Hence, the institutional design of the regulator affects the structure of the regulator, including leadership, management organization and administrative structure. There are 4 main institutional design options:

- *Single – sector regulator*
- *Converged regulator*
- *Multi – sector regulator*
- *No specific regulatory authority per se*

Moreover, in terms of a successful institutional structure, there are the following criteria;

- *Regulator must be perceived by industry to be independent*
- *Regulator should have the expertise to assess and make sound judgment on both technical and industry – specific issues*
- *Regulator should have an internal structure with sufficiently flexible to respond to market realities.*

The principle to decide the regulatory as follows;

- Transparency
- Objectivity
- Professionalism
- Efficiency
- Independence

The principle in effective regulatory is applicable to all public service sector including telecommunication and postal. Due to the difference of structure and telecommunication development in each country affect to the effective regulatory system, there are some fundamental effective principles applicable to telecommunication regulatory⁴⁹;

⁴⁸ *Supra* note 45

⁴⁹ *Id.*,

1. Reduce the intervention of the regulatory after establishing a competitive market⁵⁰

The regulatory system should function in a low scale, especially in the competitive market. The concept of the free competitive market responds to the consumer's requirements better than a state-controlled market. The scope of the regulatory should compromise with the level of market development. However, the absolute regulatory intervention in the free competitive market always occurs to encourage and improve more effective competition. The clear decision to avoid the obstacle will encourage competition and flexible regulations. Furthermore, in an open market, the regulation should focus on existing entrepreneurs to encourage networking for the benefit of newcomers.

2. Setting the same global and regional regulatory standard⁵¹

The regulatory authority concentrates on domestic telecommunication competition competency considering the international regulatory trend.

3. Encouraging the competition⁵²

The competition in telecommunication services and other services is more advantageous. Nowadays, telecommunication market is open to competition on a different level. In the past of decade, European countries and Organization for Economic Co-operation and Development (OECD) countries have developed the free telecommunication market. Earlier on in the decade, most of Europe telecommunication services were in a monopoly form. At the end of the decade, more than 96 percent of the telecommunication market in OECD countries was openly competitive.

4. The principal regulatory⁵³

The regulatory authority tends to establish the regulation and avoid operational intervention as, in some cases, the regulatory authority lacks the resources or suggestions from experts which are necessary to regulate. Moreover, the decision to regulate should operate with transparency and invite participation of public. This will create confidence in the regulatory process.

⁵⁰ *Id.*, p.43

⁵¹ *Id.*, p.45

⁵² *Id.*, p.47

⁵³ *Id.*, p.49

5. The effectiveness in operation⁵⁴

The experience sharing between each regulatory authority will bring the further effectiveness in operations. Currently, the regulatory system can function more effectively through the use of internet utilities such as establishing an efficient and transparent online electronic system for filing a complaint.

6. Strategy for effective governing for developing countries⁵⁵

The regulatory organization in developing countries with economic reform should provide a proper, practical, and simple governing principle due to the limitation of resources between developed and developing countries. Most regulatory authorities utilize multiple processes to govern the telecom business. There are a various regulatory instruments depending on the structure or formation of each country, such as regulations decisions, orders, decrees, rules, policies, notices, and resolutions. In general, the result of regulatory instrument utilization is a decision governed by the regulatory policy, dispute resolution, and problem-solving within the regulatory scope.

In Thailand, in B.E. 2540⁵⁶, the government launches the master plan to privatize state enterprise and push forward to have an independent regulatory organization to regulate State enterprise operations. The purpose is to increase the competency of competition in the private sector. The telecommunication sector was affected by the privatization of the Communications Authority of Thailand and the establishment of the Office of National Telecommunications Commission to regulate telecommunication services. For the postal sector, the result of the state enterprise privatization master plan provided the policy to separate the postal business from the telecommunications business in order to develop postal operations in private businesses, increasing the capacity and self-efficiency. The policy also aims to establish a company organization and improve administrative structures. However, the postal regulatory structure is unclear on the regulatory body as the government has no intention to set up an independent regulatory organization in the postal sector as is established for the telecommunication sector.

⁵⁴ *Id.*, p.50

⁵⁵ *Id.*, p.50

⁵⁶ *Supra* note 31

For searching a suitable postal service, the author will study on the following concept related to the economic theories.

2.4 The concept of Monopoly ⁵⁷

Addressing the liberalization for trade competition requires the investigation of the market and competition. It is believed that competition in marketing system provides social benefits as it allows for the effective operation of the marketing mechanism as well as reflection of actual demands and production cost, including effective use of other capitals and resources. In addition, the competitive market will serve as a tool to stimulate the search and production of new goods and services, and help lower costs in the long run. It also promotes better equitable share of revenue and offers increased and diverse choices of goods and services for consumers.

The monopoly concept⁵⁸

The trade competition has a various levels including the perfect competition or the monopoly. The monopoly system is a type of imperfect competition market. The monopoly market dramatically differs from the perfect competition market. The categories of monopoly markets are;

1. One seller
2. The goods are unique and cannot be substituted with other merchandise
3. No direct competitors
4. Determine own prices

However, the advantage of the monopoly market will affect the monopoly authority because without competition, they will set a price and conditions with the

⁵⁷ ศุภลักษณ์ ลาภทวีโชค, บทที่ 2 เรื่อง ปัญหาความคาบเกี่ยวระหว่างกฎหมายสิทธิบัตรและกฎหมายป้องกันการผูกขาด. นิติศาสตร์มหาบัณฑิต, มหาวิทยาลัยธรรมศาสตร์ 32-33 (2533). (Supaluck Labtaweechok. *Chapter 2 the related problem between the patent law and antitrust law*, Master's thesis, Thammasat University 32-33 (B.E. 2533).

⁵⁸ ณัฐญา สวัสดิ์พูน, มาตรการทางกฎหมายในการควบคุมการแข่งขันทางการค้าศึกษาเฉพาะกรณีการบังคับใช้พฤติกรรมการผูกขาดและลดการแข่งขัน, นิติศาสตรบัณฑิตวิทยาลัย คณะนิติศาสตร์ มหาวิทยาลัยธุรกิจบัณฑิต 13 (2544) (Nuttaya Sawatpoon, *Measure of the trade competition law: a study of behavior toward monopoly and restraint of trade*, Master's thesis, Faculty of Law, Dhurakijpundit University 13 (B.E. 2544).

personal interest of gaining as much profit as possible. On the other hand, the disadvantage affects businesses which lose the opportunity to develop product effectiveness. This contributes to price distortion from the real capital and creates the an inefficient use of resource.

In general, competitive marketing structures are separated into 5 categories⁵⁹ as follows:

1. Pure competitive market refers to the market with perfect competition. It is however an ideal but non-existing market. Its main characteristics include: the products being sold are identical; free competition without any advantage over one another among suppliers; the mobility of resources in the economic system to other production sites is possible where needed; and importantly, no barrier influencing the change of price in any particular direction upon the requirements of such barrier.

2. Perfect competitive market means a market consisting of a large number of suppliers and hence it is not possible to be collusive for price fixing or reducing prices as desired. Producers must accept the price set by the market. Producers have freedom to enter and exit. Consumers have the knowledge of where to buy the cheapest products. If any producer sets a higher price than those of others, it would be difficult to sell, and hence, ultimately would have to lower the price to equal their competitors. The market of this type does not exist in reality due to many factors such as market dominant factor, expectation dominant factor, and abuse market dominance or restrictive business practice.⁶⁰

3. Oligopoly market is characterized as a market dominated by few suppliers, and the products being sold might be identical or different. The reason is that large scale operations require reduced production costs, and the market is not big enough to allow competition of many manufacturers and sellers; it thus needs to limit the number of sellers and manufacturers. There are restrictions and barriers that limit the number of new entrants to compete in particular business or industry. In this type of market, given few suppliers, each of them is not free to determine the price but must

⁵⁹ *Id.*, p. 34-38

⁶⁰ ลาวัญย์ ถนัดศีลปะกุล, การค้ากับสิ่งแวดล้อมและการพัฒนาอย่างยั่งยืน, Powerpoint, หน้า 7-8 (2558). (Ladawan Tanusilapakul, *Trade with environment and sustainable development*, Powerpoint presentation 7-8 (B.E. 2558).

always consider the action of others when changing their price and product. Once a supplier raises the price, others will follow by also raising their prices in order to increase profits since reducing prices is not advantageous to any party. Eventually, there will be an agreement in such businesses to give up price competition and confer to determine the price at a proximate level, or they may abide with a particular supplier to take the lead in setting the price, depending on the extent the market is dominated by that supplier.

4. Monopolistic competition market⁶¹ is a market characterized by a large number of suppliers similar to the complete or pure competition market. In this type of market, suppliers have pricing influence and power. A supplier may set the price slightly higher than others without losing all its customers because of the consumers' preference in the product of that particular supplier, which differs from others in looks and quality to the extent that satisfies consumers who are willing to pay a higher price. If the price is too high, the number of products sold will reduce as customers will turn to the cheaper products of other suppliers. This depends on individual suppliers and how much they can differentiate their product from those of others.

5. Monopoly market⁶² is a market undesirable in the liberal economic system. It is characterized by having only a single supplier with the capability of offering products and services to satisfy consumers. Pricing in the market relies on the price system, and changing in price level is forced by the purchaser and supplier. In a monopoly market, the supplier determines the price of product due to the absence of competitors and products of other suppliers to substitute the product of this supplier. The monopoly market is caused by rules and regulations that favor a particular good manufacturer to automatically become the monopolist by such as granting patent and concession to any particular private operator. The effects of monopoly on the country's

⁶¹นายวรวัฒน์ กุลกลางกูรวัฒน์, ปัญหากฎหมายป้องกันการผูกขาด: ศึกษาเฉพาะกรณีการจำกัดการแข่งขันทางการค้าในแนวตั้ง, วิทยานิพนธ์ ปริญญาโท นิติศาสตร์บัณฑิต มหาวิทยาลัยธุรกิจบัณฑิต 7-8 (2536). (Vorawat Kusalangkunwat, *Legal problems concerning anti – monopoly: case study in term of vertical restraint of trade*, Master's thesis, Dhurakij bundit university 7-8 (B.E. 2536).

⁶² *Id*, p. 35

economics include the use of the country's resources in a way which does not yield maximum benefits because the monopolist will limit the amount of production to maintain a high price. It also hinders equal distribution of income. Moreover, in any monopoly market, it is likely to set the most profitable price of the same product in each market.

The concept of the monopoly theory stems from the theory on determination of price under an imperfect competition market. **Imperfect competition**⁶³ is a condition where each seller or buyer has influence over the price of goods or services in an imperfect competition market. The level of imperfect competition varies from monopolistic competition, oligopoly, to monopoly market. A monopoly market is characterized by a single supplier, and the goods and services cannot be substituted or totally substituted by any other goods or services, hence, the price and amount of goods or services is determined by that single supplier. In a monopoly market, the price of goods or services is likely to be higher, or the amount of goods or services is likely to be lower than those in a perfect market.

Causes of monopoly⁶⁴

Monopoly can arise from the following reasons:

1. The manufacturer has exclusive ownership of manufacturing input.
2. The manufacturer registered for ownership of product by law, preventing others to compete in production.
3. The government granted a single operator a concession for economic and social benefit, which is considered natural monopoly.

⁶³ สมเกียรติ ตังจิกวานิชย์, ธาราธร รัตนนฤมิตศร, เศรษฐศาสตร์โทรคมนาคม, http://thaitelecomkm.org/TTE/topic/attach/Telecommunication_Economics/index.php (Somkiat Tangkitvanich and Taratorn Narumitsorn, *Telecommunication Economics*, http://thaitelecomkm.org/TTE/topic/attach/Telecommunication_Economics/index.php (last visited 20 May 2015)).

⁶⁴ *Supra* note 38.

4. The production requires a large amount of capital for effective manufacturing and economies of scale, hence new entrants of small scale and lower capital are unable to compete.
5. Manufacturers are in collusion as a monopoly, but in practice collusion is difficult.

The characteristics and significance of monopoly⁶⁵ are as follows:

1. New producers are unable to enter the market due to barriers of entry
 - 1.1 Single ownership of resources with no close substitutes
 - 1.2 Legal monopoly: concession, patent, copyright, or franchise is granted
 - 1.3 Natural monopoly or industry that offers economies of scale
2. Only single producer or seller or pure monopoly
 - 2.1 Price maker
 - 2.2 Difficulty to find substitutes for the product
 - 2.3 Monopoly power

The concept of monopoly may be due to legal restrictions that limit the competition for reasons other than economic reasons. The reasons are that these concepts have drawbacks and prevent the development of the economy in the country in persistent cases; some types of businesses, it is not necessary to have a monopoly. The competition will lead to the allocation of resources with maximum efficiency. In contrast, the monopoly is not effective because operators don't need to try hard to compete in the market. There is also the cause of corruption. Hence, the development of the law should forbid a monopoly, or else such behavior may lead to unfair trade monopoly prices.

2.5 Concept and policy on liberalization of postal affairs overseas

⁶⁵ภูรี สิริสุนทร, หลักเศรษฐศาสตร์จุลภาค, Powerpoint (2558) (Phuri Sirisuntorn, *Microeconomics*, Powerpoint presentation (B.E. 2558)).

2.5.1 Concept of trade liberalization⁶⁶

Based on the concept of economic liberalization, the theory of economics and international trade suggested that trade liberalization refers to the removal or reducing of trade barriers of either tariff or non-tariff to allow the free flow of trade across global territories as well as effective operation of the market based on the theory of economics. It focuses on promoting the functions of market mechanisms, reducing trade, investment, and service barriers, allowing the free flow of inputs, reducing or relaxing barriers of the free flow of inputs, to enable the determination of the price of goods and administrative costs of goods and service production, as well as the determination of price based on demand and supply.

Therefore, liberalization and reduction of trade and investment barriers would support the operators' access to natural and land resources, as well as capital, labor, and technological resources, including operation skills. These will enable the management of limited existing resources for production and service efficacy, while reducing barriers and allowing for free competition. The aim is to acquire the production of goods and services with higher quality, low cost, and more diversity, offering consumers the best advantages and free choices in the purchase of goods and services at desirable price.

The concept of liberalization was defined by the Faculty of Economics, Chiangmai University⁶⁷ as, “The concept or policy that allows for free operation of various activities particularly the production and free trade in absence of monopoly by any particular person. Domestic liberalization is to abolish the monopoly regime and promote full competition, while international liberalization is to promote free trade, reduce or remove trade impediments or barriers in the forms of tariff and non-tariff.”

Liberalization is also defined by other organizations or agencies as follows;

⁶⁶ *Supra* note 60

⁶⁷มหาวิทยาลัยเชียงใหม่, คำศัพท์ทางเศรษฐศาสตร์ (Chiangmai University, *Economic vocabulary*, http://library.cmu.ac.th/faculty/econ/index.php?option=com_content&task=view&id=311&Itemid=521 (last visited May 15, 2015).)

Liberalization⁶⁸ is a process through which some restrictions, mainly on economic or social policy, of the former government can be relaxed. Liberalization can bring about democracy in a country. By the term liberalization, we often mean economic liberalization or trade liberalization. Liberalization also plays a significant role in the economic reform of many countries.

Economic liberalization is the liberalization by privatization. The government permits the privatization, partially or fully, of its properties and assets by low corporate tax rates, less restriction on foreign and domestic capital, and labor market flexibility. Most of economic liberalization in the developing countries focus more on opening their market to the foreign or national big investors to achieve sustained economic and financial growth. Other underdeveloped countries also currently have no choice but to open their market to foreign investors.

Trade Liberalization or external liberalization means the removal or relaxation of some restrictions, e.g. import - export tariffs, legislation barriers and quotas. Additional investigation revealed that the objectives of liberalization vary from country to country as outlined below.⁶⁹

- Attracting new investment
- Upgrading national infrastructure
- Creating jobs
- Contributing to improving universal access
- Improving services, pricing and choice for the end-user community
- Encouraging innovation

2.5.2 Concept and factors of liberalization of postal affairs overseas

Based on the investigation of the situation overseas, the main factor for liberalizing postal affairs is the decreased trend in the demand for mailing letters and documents as influenced by the development of technology and communications, including the increased demand for parcel business due to the development of e-

⁶⁸Finance map world, *Liberalization*, <http://finance.mapsofworld.com/economy-reform/elements/liberalization.html> (last visited May 27 2015)

⁶⁹ International Chamber of Commerce (ICC), *Tool for E-Business, Telecom Liberalization, an International Business Guide for Policymakers* 11 (1st edition 2004).

commerce business, as well as the focus on diversifying services for consumers' choices.

2.5.2.1 Changes in postal affairs in overseas countries

Overall, the operation of the postal business is mostly run by government agencies which provide all forms of services and are supported by government sector. In later periods, as a result of the above-mentioned factor, the government sector initiated the liberalization of postal affairs to diversify its services and offer alternatives to consumers. An independent agency was set up to function in supervising and overseeing service standards, price, and service coverage. However, it is mainly the government that formulated the policy and designated a particular government agency to provide basic postal services in support of the demand of the general people. A framework or criteria was established for so called universal service as a minimum standard. Moreover, such liberalization led to a new system called the licensing regime in which conditions and rules were set forth by an independent body or a committee, in accordance with the concept and policy of telecommunication liberalization including the liberalization of postal services.

2.5.3 The international liberalization policy⁷⁰

In the act of trade liberalization, there are things to be considered such as definitions, criteria, or requirements of international trade liberalization under GATS for WTO member countries. In the liberalization of trade in services under the legal framework of GATS according to article 1 and 28 of GATS, the scope of “trade in services” was defined with key elements that the trade of service or the supply of service shall not be commercial in the territory under the authority of government of one state, but shall be a trade of service across territories or an international trade of service. Article 1 of GATS defined “trade of services” as the supply of a service which includes the production, distribution, marketing, sales, and delivery of service to service the consumer. The service supplier means any person that supplies a service.

⁷⁰ อนุรักษ์พงศ์ ทองภักดี, ความตกลงทั่วไปว่าด้วยการค้าบริการและอุตสาหกรรมโทรคมนาคมของไทย สถาบันวิจัยเพื่อการพัฒนาประเทศไทย, หน้า 1 -10, ตุลาคม 2539 (Nuttaporn Tongpadee, *Thailand Development Research Institute Foundation, (general agreement on Trade in services – GATS, page 1 -10 , October 1996*

Liberalization of trade in services means a member opens for other members of WTO to sell a service or supply a service to the people in its territory without restriction or limitation in relation to the number of ordinary persons required for business operation, types of the agency supplying the service, and percentage of shareholding or investment of that foreign person who supplies the service. In fulfilling the objectives of trade liberalization, GATS thus provides the rules for trade in services by prescribing principles and regulations to enforce the trade of services. In this respect, Members shall disclose any rules and regulations held by Members in the trade of services in order to facilitate the clarity and transparency of the trade of services. Each Member shall accord immediately and unconditionally to services and service suppliers of any other Member upon the most-favored-nation treatment.

When liberalization is initiated, the state shall have to support the trade competition policy with a common purpose in each country, i.e. aiming at liberalizing trade competition, promote and support competition process, with the goal to attain economic efficacy, growth, and development as well as consumer welfare.⁷¹

Policies and regulations for general trade competition focus on 4 key issues of trade restriction⁷² as follows:

1. Collusive practice or agreement between business groups for restriction of trade competition
2. Abuse of dominant position or monopolization
3. Merger
4. Unfair trade practice

Thailand's trade competition contains key policies and regulations to be considered in general which are similar to those other countries where trade competition policies are in place. It is noted in Thailand's trade competition policy as provided in the Trade Competition Act B.E.1999 of Thailand that this Act applies to all business operation except state-own enterprises and co-operative groups. The competition law

⁷¹ กรมเจรจาการค้าระหว่างประเทศ, บทที่ 7 นโยบายการแข่งขันทางการค้า หน้า 1-2. (Department of Trade Negotiation, *Chapter 7 competition policy*, http://www.thaifita.com/trade/as36/as36_book3ch7.pdf 1-2 (Last visited May 26, 2015).

⁷² *Id.*,

in Thailand therefore focuses on preventing and rectifying the legislative violation, preventing actions of monopolizing, reducing, or restricting competition in business operation in a systematic manner; however, it does not place much emphasis on promoting competition among the private sector.

Regarding the liberalization policy, based on the European commission's international trade policy on postal affairs, it was found that the concept of liberalization of postal affairs to allow free competition conforms to the EU commission's policy.

2.5.3.1 European Union regulation (EU)⁷³ is the economic and political union combined with the 28 member countries most of which are located in Europe. EU competition policy and supporting the liberalization of the postal service was initiated in 1995 by the European Commission.

The influencing factor in the liberalization policy of EU is technology and communication development. Moreover, they realized the importance of an internal market for postal services and to ensure through an appropriate regulatory framework that it would be of high quality and reliable. Therefore, the EU Commission enacted the EU postal legislation called Directive 97/67/EC amended by state about the development of the internal market of community postal services and the improvement of quality of service. In chapter 1, objective and scope, article 1 concerning the provision of a universal postal service, the service was reserved for a universal service provider and was also intended to set the quality standards for universal service provision, especially in creating independent national regulatory authorities. Later, this postal directive was amended by Directive 2002/39/EC⁷⁴ and Directive 2008/6/EC⁷⁵ by defining the process of gradual and controlled market opening and limiting the service sectors that can be reserved. In 2010, the EU Commission decided to establish the European Regulators Group for postal services (2010/c 217/07), the Third Postal Directive as a final step in the process of gradual market opening and defining the

⁷³European Union, *Goal of the EU*, http://europa.eu/about-eu/basic-information/goals-of-the-eu/index_en.htm (last visited August 1, 2015).

⁷⁴ European Commission, *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* (2008).

⁷⁵ *Id.*,

suitable composition and responsibilities of independent national regulatory authorities including their tasks and structure.

From this commission decision, the EU established the European Regulators Group for Postal Services (ERGP) on 10 august 2010. **ERGP**⁷⁶ is the group which serves as a body for reflection, discussing and advice to the commission in the postal service's field. The intentions of the ERGP are to facilitating consultation, coordination and cooperation between the independent national regulatory authorities in the Member States, and also between those authorities and the Commission for consolidating the internal market for postal services and ensuring the consistent application of the Postal Services Directive. **The ERGP's Mission** obliges Member States to designate one or more postal independent National Regulatory Authorities (NRA) and closely promotes cooperation between NRAs, in order to assure the harmonized application of the postal *acquis* in a fully liberalized market.⁷⁷

ERGP⁷⁸ was designated to function in formulating policies or regulations concerning postal affairs aiming to complete the internal market for postal services and to ensure the high quality of universal postal service for business and consumer also improve the quality of service such as delivery. Moreover, the ERGP provides a policy framework, i.e. EU Directive on Development of Postal Services Markets from 1997, imposing its members to regulate postal affairs markets, prepare for basic service, while at the same time support liberalization under regulation, and ensure primary protection for basic service users. In this respect, the implementation follows the provisions intended for member countries to designate national regulatory authorities (NRAs) for postal affairs. Hence, as mentioned above, the council and the European Parliament adopted the Third Postal Directive. It clearly stated the deadline of full market opening by 31st December 2010 for the most EU members such as Germany, France, Italy or Spain and by 31st December 2012 for the other member states⁷⁹. This directive is the

⁷⁶ European Commission, *Post service*, http://ec.europa.eu/growth/single-market/services/post/ergp/index_en.htm (last visited May 19, 2015).

⁷⁷ *Id.*,

⁷⁸ *Supra* not 73

⁷⁹ OLjaJovicis, *Role of the regulation in liberalized postal market service* 186, <http://postel.sf.bg.ac.rs/downloads/simpozijumi/POSTEL2011/RADOVI%20PDF/Pos>

third postal directive providing a legal basis for the accomplishment of the internal market for postal services and supporting the competition and contribution of higher quality and more customer oriented services⁸⁰.

2.5.4 Disputes on monopoly and liberalization of postal business

The study of relevant theories on monopoly and liberalization in Chapter 2 provides some concepts applicable to postal business on whether or not liberalization should be adopted. The investigator looked into the advantages and disadvantages of either system in both economic and legal terms. In this respect, a relevant previous thesis provided a study on this topic, but in the sector of the telecommunication business. However, the investigator viewed that since the postal business was originally incorporated into telecommunication operation, it is possible to correlate the two as summarized in the next section.

The problems of monopoly⁸¹:

1. Monopoly deprives competition of service for people since the government is the sole provider.
2. Monopoly prevents consumers from other alternative choices.
3. Monopoly causes high service charge that burdens the consumer.
4. Monopoly makes it difficult to evaluate the performance of government-own service operators due to absence of a benchmark.
5. Monopoly deprives economic development and operational improvement compared to countries that eliminated the monopoly system.

Advantages of monopoly

The basic concept of monopoly has the following advantages:

[tanski%20saobracaj,%20mreze%20i%20servisi/9.%20Jovicic.pdf](#). (last visited 2 August 2015)

⁸⁰ Supra note 76

⁸¹ สิริพันธ์ ปิยะนนทลี, *การเปลี่ยนแปลงนโยบายการสื่อสารโทรคมนาคมของประเทศไทยจากการผูกขาดเข้าสู่การเปิดแข่งขันเสรี*, วิทยานิพนธ์ปริญญาโท คณะวารสารศาสตร์และสื่อสารมวลชน มหาวิทยาลัยธรรมศาสตร์ หน้า 81-86 (2537). (Sirin Piyanontasi, *The transition of telecommunications policy in Thailand from monopoly to liberalization* Master's thesis, Thammasat University 81 – 86 (B.E. 2537).)

1. Some types of goods or services are useful but offer less profit, hence are unattractive to the private sector.
2. The government sector strictly controls certain types of goods and services.
3. Monopoly promotes research and development, resulting in innovative changes in industry sector.

Disadvantages of liberalization of the monopolized segment in the postal business:

1. Increased competition may lead to the loss of market shares, and if practiced without proper control, may cause exploitation of consumers in terms of service price and quality
2. If there are too few private operators, a monopolized market may emerge.
3. Private operators would rather choose only the profitable areas than intend to provide universal services as regulated by the government.

Advantages of liberalization

From the European Commission analysis study, the advantages of liberalization⁸² are:

1. The consumer can choose from wide variety of alternative service providers and products.
2. Liberalization allows the consumer to benefit from lower prices and new services in an effective way
3. Liberalization helps to create a more competitive economy.

In addition, UNTAD research emphasized the liberalization of service by reforming regulations that limit trade, stating that liberalization will increase competition, especially international competition, lower prices and improve the quality of services by adding more service suppliers to contribute more choices of services for consumers and businesses⁸³. Hence, this is the government's responsibility to balance

⁸² European Commission, *Competition*, http://ec.europa.eu/competition/liberalisation/overview_en.html.

⁸³Greg McGuire, *Trade in Services – Market Access Opportunities and the Benefits of Liberalization for Developing Economies* 27 (1st edition 2002).

the benefit of liberalization and providing appropriate assistance to those adversely affected⁸⁴.

It can be concluded from the comparison of the advantages and disadvantages of both systems that the application of either one of these concepts for Thailand should take into account the suitability in the Thai context. There should be neither over-monopoly nor liberalizing of non-standard operations of the private sector that would eventually lead to monopoly in particular goods or services. Liberalization would also improve the economic capacity and facilitates trade in goods.⁸⁵

2.6 The establishment of independent regulatory authority's theory

2.6.1 The concept of established independent regulatory authority's theory

The establishment of an independent regulatory agency is based on 2 concepts. The first is the concept of social regulatory which involves 2 approaches of public service and universal service. The other is the concept of economic regulation.⁸⁶ The cabinet in its resolution on 19th October 1999⁸⁷ approved the guideline for establishment of an independent regulatory agency as a framework for establishing a sectoral independent regulatory agency. The developing guideline for establishing independent regulatory agency is to promote, compete, and increase the role of the private sector in public utilities affairs under a natural monopoly; to impose proper regulations in order to protect consumers' interests in terms of service price, quality, standard, and safety; to ensure investors the fair investment and available mechanism to support the government's objectives in social, economic, and environmental aspects of the country as a whole; to provide and disseminate accurate information; and to provide consultation to the cabinet.

⁸⁴ *Id.*, page 28

⁸⁵ *Id.*,

⁸⁶ *Supra note 45*, page 8 -12

⁸⁷ สำนักเลขาธิการคณะรัฐมนตรี, มติคณะรัฐมนตรีที่ นร 0205/ว(ล) 17570 เรื่องแนวทางการจัดตั้งองค์กรกำกับดูแลอิสระ(2542). (The Secretariat of the Cabinet, *The Cabinet Resolution of นร0205/ว(ล) 17570 the Establishment of Independent Regulatory Authority 1* (1999).

According to the master plan on state-enterprise reform, regulation is carried out by the independent agency with the following 5 key characteristics⁸⁸: 1) definite role and duty; 2) independent implementation; 3) consistency in regulating every operator in every field on an equal basis; 4) accountability; and 5) sufficient resources in personnel and budget. The main objective is to regulate public service operators to comply with the government policy, protect consumers by regulating operators not to conduct any action of exploitation, and establish fair competition for small scale operators.

The division of duties in policy formulation and regulation is based on the following practical guidelines⁸⁹. The responsible minister proposes the policy upon approval of the cabinet and concerned organizations, including the regulatory agency. Such policy has to be the policy under the policy framework explicitly defined in the law on the establishment of the regulatory agency. The administration of the independent regulatory agency is carried out in the form of a committee comprising 3 - 5 members as deemed appropriate in each field. The chairman or secretary of the executive board may be assigned to work full time depending on the suitability of each individual field. The committee consists of specialists with experience in related professions useful for regulatory work. Restricted qualifications are specified for the committee to be trustworthy. For example, committee members must not be a political officer, must not be involved with a business operator, must not be a government official except being appointed as a member by current position. Generally, committee members are appointed by the cabinet's nomination of chairman and members to be approved by the parliament. The tenure of committee members is 5 years without extension to allow them enough time to work for tangible results.

Power and duty of the independent regulatory agency⁹⁰:

- Grant approval for operations and regulations in accord with the requirements of approval
- Control the service rate and service rate structure
- Specify service quality

⁸⁸ *Id.*, page 2

⁸⁹ *Supra* note 87

⁹⁰ *Id.*, p.5

- Promote competitive liberalization and prevent monopoly
- Protect consumers by setting up a unit and advisory committee in the agency to receive complaints, investigate, settle and manage dispute, and submit to the regulatory committee to consider and pose a penalty for the operator following the regulations and requirements of approval

To monitor the committee's implementation⁹¹ for its transparency and accountability, there should be a monitoring procedure such as preparing an annual report to be submitted to the parliament and publicized, and auditing.

2.6.2 The international postal regulatory organization

The public service study found that recently, postal regulatory organizations are in the Committee or independent regulatory organization types. Consequently, the international postal independent regulatory organizations are as follows:

2.6.2.1 Universal postal union (UPU) ⁹²

Recently, most of International Postal Law is created by an international postal organization called "UPU" or the Universal Postal Union, established in 1874, with its headquarters in the Swiss capital Berne. It is the second oldest international organization worldwide with its 192 member countries. The UPU is the primary forum for cooperation between postal sector players. It helps to ensure a truly universal network of up-to-date products and services.

The UPU bodies consists of;

- The Congress
- The Council of Administration (CA)⁹³ who will ensure that the UPU is able to react quickly to changes in the postal environment. Moreover, the CA has the power to approve proposals by the Postal Operations Council for the adoption of regulations or new procedures until the next Congress. Furthermore, the CA can also take necessary measures to resolve urgent issues. It also approves and updates the

⁹¹ *Id.*, p.8

⁹² Universal Postal Union, *The UPU*, <http://www.upu.int/en/the-upu/the-upu.html> (last visited July 27, 2015).

⁹³ Universal postal union, About CA, <http://www.upu.int/en/the-upu/council-of-administration/about-ca.html>, (last visited July 20, 2015).

UPU's biennial budget and accounts on the UPU's strategy. The Council is responsible for promoting and coordinating all aspects of technical assistance among member countries.

- The Postal Operations Council (POC)⁹⁴ is the technical and operational mind of the UPU and consists of 40 member countries, elected during Congress. The POC's work program attempts to help Posts modernize and upgrade their postal products and services dealing with the operational, economic and commercial aspects of the postal business.

- The International Bureau (IB)⁹⁵, the UPU's headquarters fulfilling a secretariat function is located in Berne, Switzerland. It has a staff of about 250 employees drawn from about 50 different countries providing logistical and technical support to the UPU's bodies. The function of IB serves as an office of liaison, information and consultation, and promotes technical cooperation among Union members.

UPU aims to establish the rules for an international mail exchange operating under the law framework called Constitution of the Universal Postal Union adopted at the 1964 at the Vienna Congress. This organization was founded by the institution and set up at Berne by the Treaty on 9 October 1874. It was originally called "General Postal Union". Many countries joined it after 1874, and in 1878, the Paris Congress changed its title to "Universal Postal Union"⁹⁶.

The objective of this constitution

The purpose is to develop communications between people by the efficient operation of the postal services, and to contribute to the accomplishment of the international collaboration in the cultural, social and economic fields.

⁹⁴ Universal Postal Union, *About POC*, <http://www.upu.int/en/the-upu/postal-operations-council/about-poc.html> (last visited July 22, 2015).

⁹⁵ Universal Postal Union, *About IB*, <http://www.upu.int/en/the-upu/international-bureau/about-ib.html> (last visited July 22, 2015).

⁹⁶ Universal Postal Union, *About Acts*, <http://www.upu.int/en/the-upu/acts/about-acts.html> (last visited May 23, 2015).

The mission of UPU is to encourage the lasting development of efficient and accessible to universal postal services and quality of facilitating communication between the inhabitants of the world by⁹⁷:

- Guaranteeing the free circulation of postal items over a single postal territory composed of interconnected networks
- Encouraging the adoption of fair common standards and the use of technology
- Ensuring cooperation and interaction among stakeholders
- Promoting an effective technical cooperation
- Ensuring the satisfaction of customers' changing needs

UPU has the authority to enact the convention and its regulation to be applicable to the international postal service and the provision concerning the letter – post and parcel – post services. The Regulations of the Convention are an agreement enacted by the members of Postal Operation Council who has the authority to amend the Regulations at its annual sessions. The Convention and its Regulations are binding in all member countries. On the other hand, the Postal Payment Services Agreement and its Regulations are binding only in the countries that are member parties to the Agreement.

In applying the convention or regulation, the Act should be considered in the four volumes including postal payment service parcel post and letter post which are the manuals for operating a postal business concluded by the member countries elected by the Congress to the Postal Operations Council (POC). The POC has the authority to amend the Regulations at its annual sessions. It is the fundamental standard for the designated operator to manage their business. The final meeting at Doha also enacted the last version of constitution of UPU, creating the Regulations and Final Protocol including Postal Payment Services Regulations and Final Protocol, Parcel Post Regulations and Final Protocol, and Letter Post Regulations and Final Protocol. The following are the common rules applicable to the international postal service:

⁹⁷ International Bureau of the Universal Postal Union, “Constitution general regulations, rules of procedure legal status,” *Constitution of the Universal Postal Union* – Preamble 50.

First, the Letter Post Regulations and Final Protocol have 18 chapters mainly focused on the operation of standard postal services, for example, the general provision, types of postal services and quality, service charge, air surcharge and exemption from charges, liability of designated operators, etc. This is stated together with the Letter Post Manual designed to give immediate access to all the information⁹⁸ including:

- The provisions of the Universal Postal Convention, indicated by Article...
- The provisions of the Regulations, indicated by Article RL...
- The provisions of the Final Protocol, given after the article concerned and indicated by Prot Article ... or Prot Article RL...
- The commentary by the International Bureau following the provisions to which it refers

This manual consists of Section A - G rules which are applicable in common throughout the international postal service. Most of the manual direction includes rules applicable in common throughout the international postal service, security and violations, basic service or charges, surcharges, exemption from postal charges and method of denoting prepayment, etc.

The Parcel Post Regulations and Final Protocol are also stated together with the Parcel Post Regulations Manual. The writer considers this in two parts; **first**, the Parcel Post Regulation and Final Protocol; and **secondly** the Postal Payment Services Agreement and its Regulations which are binding only in the countries that are parties to the Agreement.

In this way, the organization fulfills an advisory, mediating and liaison role, and provides technical assistance where needed. It sets the rules for international mail exchanges and makes recommendations to stimulate growth in mail, parcel and financial services volumes and improve the quality of service for customers⁹⁹. This rule is the fundamental postal standard to provide proper service in ratified member countries.

⁹⁸ International Bureau of the Universal Postal Union, *Letter post manual* page III.

⁹⁹ *Supra* note 92

2.6.2.2 Other international independent regulators of postal regulatory apart from the UPU are as follows;

- (1) The European Conference of Postal and Telecommunications Administrations (CEPT)¹⁰⁰ was established in 1959 with an initial 19 countries becoming 26 during its first ten years. The original members were the monopoly-holding postal and telecommunications administrations. CEPT's activities include co-operation on commercial, operational, regulatory and technical standardization issues. Today, there are 48 member countries of CEPT.
- (2) Electronic Communication Committee (ECC)¹⁰¹ whose role is responsible for radio communication and telecommunication.
- (3) European Committee for postal Regulation (CERP)¹⁰² is an organization under the CEPT operation in October 1992. The CERP's Mission statement in postal service is:
 - First, to examine postal regulatory affairs in a European context, taking into account the changes in the borderlines between regulatory aspects and operational aspects in this domain.
 - Second, to assess the influence of international regulatory policies in all CEPT countries and to establish the necessary contacts with the European Union.
 - Third, to establish and maintain relations with representatives of relevant bodies and associations concerned with postal regulation issues.
 - Finally, to develop proposals where appropriate, based on the results achieved by the Working Groups.
- (4) The committee for ITU Policy (Com – ITU) has a role in the cooperation between CEPT and ITU to manage the postal affairs and

¹⁰⁰ European Conference of Postal and Telecommunications Administrations , *About CEPT*, <http://www.cept.org/cept/about-cept>. (last visited 1 August 2015)

¹⁰¹ European Conference of Postal and Telecommunications Administrations , *What We Do*, <http://www.cept.org/ecc/who-we-are/what-we-do>. (last visited 2 August 2015)

¹⁰² European Conference of Postal and Telecommunications Administrations, *About CERP* (last modified Jan. 13, 2013), <http://www.cept.org/cerp/news/about-cerp> (last visited May 23, 2015).

telecommunications for establishing global standardization. COM –ITU also prepares the course of the ITU activities of the council, plenipotentiary conference, WTAC, WTSA, and other meetings as appropriate ¹⁰³ . Moreover, the organization will set up the rules for participation of observers to the plenary meeting of COM-ITU and its project teams and correspondence groups. ¹⁰⁴

- (5) The European Telecommunications Standards Institute (ETSI)¹⁰⁵ is a non-profit organization established by the European Commission for the Management of Post and Telecommunications since 1988, with more than 800 member organizations from 64 countries. Its role is to provide standards for information technology equipment including wired communications and mobile GSM.
- (6) International Post Corporation (IPC)¹⁰⁶ is the postal industry’s partner company that provides leadership by driving service quality, interoperability and business-critical intelligence, and gives its members an authoritative, independent and collective voice. “IPC Shareholding Members are allocated a minimum number of shares based on their total addressed mail volumes such as total letter mail handled and delivered inside and outside the organization’s home country, excluding unaddressed mail and newspapers but including magazines). All IPC members must belong to the Universal Postal Union and have a universal service obligation for the provision of mail services.”

¹⁰³ European Conference of Postal and Telecommunications Administrations, *About Com – ITU* (last modified Oct. 22, 2013) <http://www.cept.org/com-itu/about-com-itu> (last visited May 23, 2015).

¹⁰⁴ European Conference of Postal & Telecommunications Administrations, *Rules for the Participation of Observers to the Meetings of Com-ITU and Its Project Teams and Correspondence Groups* (2009), <http://www.cept.org/files/1048/Com-ITU-%20Participation%20of%20observers%20-%20July%202009.pdf> (last visited Aug. 11, 2015).

¹⁰⁵ European Telecommunications Standards Institute, *About, IPR, ISG, SME*, <http://www.etsi.org/about> (last visited 4 August 2015).

¹⁰⁶IPC member organization, *Members*, <http://www.ipc.be/en/aboutIPC/corporate-structure/members> (last visited May 23, 2015).

- (7) Asian – Pacific Postal Union (APPU)¹⁰⁷. This organization aims to extend, facilitate and improve postal relations between member countries and to promote cooperation in the field of postal services. Moreover, APPU also supports the interests of smaller and lower income members through representation at Universal Postal Union meetings. Its in-house college provides training in a range of business and postal competencies that aims to educate, inspire, and motivate delegates from around the region.
- (8) Caribbean Postal Union (CPU)¹⁰⁸ was initiated in 1969 but the idea took shape in 1977 repeatedly discussed at UPU meeting and also held on several occasions such as in Jamaica and the Bahamas. At these meetings regional postal issues were addressed including the need to set up a restricted union. Their mission is;
- To improve the response to customers' requirements for postal facilities of all kinds;
 - To facilitate the improvement and security of postal services;
 - To coordinate postal training arrangements and postal operational services; and
 - To promote international postal cooperation in the spirit and observance of the Acts of the Universal Postal Union.
- (9) The Pan African Postal Union (PAPU)¹⁰⁹ is a specialized agency of the African Union (AU). It was founded in 1980 on the 8th to 18th January in Arusha, the United Republic of Tanzania. The purpose of forming the Union was to be the frontline of postal service development. PAPU's mission is to support the reform in the development of physical, electronic and financial postal network in all member countries while also improving the quality of service, mail circulation and security of the postal network, etc.

¹⁰⁷ Asian-Pacific Postal Union, *About APPU*, available at <http://appu-bureau.org>.

¹⁰⁸ Caribbean Postal Union, *About*, <http://caribbeanpostalunion.org/about.htm> (last visited Aug. 5, 2015).

¹⁰⁹ Pan African Postal Union, *Brief history of PAPU and the mission of PAPU*, <http://upap-papu.org/en/a-propos/breve-historique-de-lupap/> (last visited May 23, 2015).

- (10) PostEurop is the trade association that has been representing European public postal operators since 1993. There are 52 members in 49 countries and territories collectively operate 175,000 retail counters. The intention is to promote greater cooperation, sustainable growth and continuous postal innovation. It is governed by a Management Board, which is responsible for supervising and monitoring the implementation of the Association's strategy at the operational level. In terms of its operation, the PostEurop Headquarters is based in Brussels, and is in charge of the daily management of the association, promoting industry results and performance, and implementing strategic activities and projects to stimulate cooperation and innovation.¹¹⁰
- (11) Communication Regulations Association of Southern Africa (CRASA)¹¹¹ have a vision of assisting the region to achieve sustainable and competitive postal market and Harmonization of the Postal and Information Communications and Technologies (ICT) regulatory environment in the South African Development Community (SADC) in order to improve the Postal and ICT business environment and investment climate in SADC. Their objectives focus on the development of an appropriate model for ICT and Postal regulatory frameworks and tools, facilitating their implementation by Member Countries, and also promoting and coordinating implementation of key regional ICT and postal regulations, standards and equipment type approval to improve the business environment and investment climate in the region.
- (12) The Regional Commonwealth in the field of Communications (RCC)¹¹² is an organization to carry out cooperation between new independent states in the telecommunication field and postal communication based on their free will, principles of mutual respect, and sovereignty. Their structure consists of the Board of The RCC, communications administration heads, and coordination council of the CIS member states for information attached to RCC.

¹¹⁰ PostEurop, *About us*, <http://www.posteurop.org/About-Us> (last visited May 23, 2015).

¹¹¹ Communication Regulations Association of Southern Africa, *About CRASA*, <http://www.crasa.org/crasa-content/id/16/about-crasa/> (last visited May 21, 2015)

¹¹² Regional Commonwealth in the field of Communications, *About RCC*, <http://www.en.rcc.org.ru/index.php/rcc/about-rcc> (last visited Aug. 4, 2015).

CHAPTER 3

LAW AND REGULATION OF THAI AND INTERNATIONAL POSTAL BUSINESS

3.1 The regulatory overview of Thai postal business

3.1.1 The related postal law and regulation

3.1.1.1 The postal Act B.E 2477 (1934)

Postal service in Thailand was firstly introduced during King Rama 5 reign to improve Thailand communication service by drafting a new law call “Thai Postal Service Act of Thai minor era 1248” in 2428 B.E. Later on, in 2440 B.E., the government was enacted the royal postal enactment in Bangkok era 116 by abolishing the first act. Then, it was revised as "the postal Act B.E 2477 "(Currently the Minister of information and communication technology is a person in charge of this Act). Under section 5 and 6, it has given the absolute authority over the postal service to the postal government agency. Furthermore, under section 7, the law also prohibits other operators beside a designated authority to deliver, accept, collect and dispatch any postal items, which are letter, postcard, post parcels and EMS through postal route. Moreover, the act also imposes a punishment for those who violate section 6, section 7, section 61, section 62 and section 63. As a result, according to the current Postal Act, it has made Thailand Post, which is the only designated government agency to provide a postal service throughout the country, an absolute monopoly body with the power to control over a postal service in Thailand since 1934.¹¹³

3.1.1.2 The Royal Decree B.E. 2546 Determining the Authorities, Rights and Benefits of Thailand Post (The Royal Decree)

During the privatization of Communications Authority of Thailand by State Enterprise Capital Act B.E 2542, section 26, the postal service and communication service has been separated into two independent bodies, which are Thailand Post and CAT Telecom Public Company Limited (CAT). The whole postal affairs has been transferred to Thailand Post and the remaining communication

¹¹³ *Supra* note 11

operation has been transfer to CAT. In order to maintain a continuation operation without disruption, the power and authorities has been transferred to Thailand Post since Thailand Post is the only organization that has a global postal network and capabilities to operate a postal service in Thailand. Hence, the government enacts the Royal Decree B.E. 2546 determining the authorities, rights and benefit of Thailand Post. This Royal Decree is consisted of 14 sections which specific the duties of the Postal Affairs Committee, the committee qualification and Thailand post duty and authority,

The law defined the powers and duties of Thailand Post to operate postal business according to section 5 of the Postal Act B.E. 2477. In section 4 of the decree¹¹⁴ stated *that in the operation of postal business and other postal related businesses including businesses that are linked, similar or beneficial to postal business, Thailand Post is empowered, has a privileged or protected by the law on postal business, law on Communication Authority of Thailand (CAT), or other law enacted for CAT except as stipulated in section 6, section 12, and section, 13.*

The law also defines the composition of the Postal Commission in section 5. The Postal Commission members are qualified by positions, which comprises of:

- Permanent Secretary, Ministry of Information and Communication Technology, as chairperson
- Permanent Secretary, Ministry of Finance, as member
- Secretary-General, the Council of State, as member
- Persons appointed by Minister of Information communication and Technology who has shown expertise, experience, and understanding in business affairs or professional areas which is beneficial to postal business, as members.
- Representatives of Ministry of Information and Communication Technology, as member and secretary

The powers and duties of the Postal Commission as appeared in section 6, which give the commission power to approve, consider, issue rules and regulations,

¹¹⁴ The Royal Decree B.E 2546 Determining the Authorities, Rights and Benefits of Thailand Post, Section 6

prepare the postal directive, make agreements with foreign countries in postal business, issue any orders to CAT president regarding governance orders by virtue of the Postal Act B.E. 2477 as the power of the Postal Commission.¹¹⁵

3.1.1.3 The postal directive B.E 2557

Postal directive is a collection of rules, regulation, orders or announcements related to the provisions of postal service that generally uphold by the postal act B.E. 2477 and the act of the universal postal union by which the UPU member countries shall abide. The amendment of this directive will follow by the decision made by the UPU congress which is held every 4 years. This directive is focused on the postal and postal money order services which consist of 9 part as follows¹¹⁶;

Part 1: General Provision

Part 2: Dispatch of Postal Items

Part 3: Postage Stamps

Part 4: Payment of Service Charges

Part 5: Packing and Addressing of Postal Items

Part 6: Postal Operation

Part 7: Postal Service

Part 8: Postal Money Order Service

Part 9: Inquiries and Payment of Indemnity

Drafting the regulations in the Postal Directive is the authority of the Postal Commission as stipulated in section 6 and should be complied with the present UPU Acts (the 25th UPU congress, Doha, 24 September – 15 October 2012).

Moreover, in the Royal Decree section 11, it gives the Postal Affair Commission power to appoint a sub-committee to consider or take any particular action as assigned by the Commission. Therefore, two sub-committees were appointed, which are the Sub-committee on Operation and the Sub-Committee on Legal Affair.

The primary objective of the Sub-committee on Operation is to formulate the postal directive along with other duty which is related to the postal business. The composition of this sub-committee is appointed by the Ministry of Information and

¹¹⁵ *Id.*,

¹¹⁶ *Id.*, p.1-4

Communication Technology, which comprises of representatives from several agencies, thus a representative from Thailand Post is also one of the sub-committee members. However; in practice, even though the sub-committee should formulate the directive by itself, most of the work is carrying out by Thailand Post. This practice itself has a hefty conflict with Thailand Post role.

3.1.2 The regulatory of postal business in Thailand

3.1.2.1 The purpose of regulatory function

In the early day, postal service was provided by the government agency whose intended to provide a thoroughly and equally public service. However; technology advancement and industry liberalization in telecommunication sector has changed the regulatory and market condition accordingly. Hence, to regulate and increase the capabilities and efficiency of postal operation, it is necessary to establish the independent regulatory body.

The objectives of regulatory body in postal business are¹¹⁷ ;

- Promote competition
- Establish quality of service standard
- Regulate prices
- Ensure the designated operator providing the universal service following the universal service obligation

It has been shown that the State enterprises privatization's master plan¹¹⁸ does not include the independent regulatory organizations in a postal business. Even though, there is The Postal Committee, but it does not have any duty to supervise or regulate the postal business. Therefore, the regulatory body in postal business is not acting like an actual regulatory body. In order to further investigate the postal regulatory scheme, the telecommunication regulatory purpose will be used as a base since postal business could be consider as part of the telecommunication sector. Hence, the intention to regulate this sector may be applicable to the postal sector. Moreover, nowadays the international telecommunication market tendency has been

¹¹⁷ Working Lives Research Institute, *Liberalization, privatization and regulation in UK postal services sector* 8 (2006).

¹¹⁸ National Economic and Social Development Board Office of the Prime Minister Bangkok, Thailand, *The Seventh National Economic and Social Development Plan* (1992-1996).

greatly improved by new technology which extend the effectiveness of service network to the consumer and create more competition. Therefore, the Postal sector was also affected by the same factor.

Firstly, this report will investigate the objective of regulating the telecommunication sector as following¹¹⁹;

- support the consumer to reach the fundamental telecom service.
- promote competition in the telecommunication market to ensure an good, effective and up-to-date development of telecom service with a reasonable price.
- protect consumer from the abuse of dominant power.
- encourage people's confidence in the transparency of corporate governance in the licensing process and ensure equity of public service.
- protect the consumer rights and private rights.

The other purposes of postal regulatory system include supporting a postal service to have high and effectiveness quality of service and also meet the needs of people, government and private sector, reduce the government budget in postal business and support the competition between the postal business operators under the same level of playing field¹²⁰

3.1.2.2 The structure of postal regulatory organization

From the privatization of the organization under the communications authority of Thailand in B.E. 2546, Thailand Post still maintain an authority to deliver letter, post card and other postal items under the Postal Act B.E. 2477 and the Royal Decree on Determination of Rights, Powers, and Benefits of Thailand Post Co. Ltd. B.E. 2546. Therefore, it could be assumed that Thai postal operation is mostly carried by Thailand Post especially letter and postcard except some services such as express mail service under section of Post Act B.E. 2477, which is operated by other private companies. Therefore, the structure of postal operation in Thailand could be separated into 3 categories: (1) the policy maker, the Ministry of ICT who framed the policy and direction of operation. (2) the post Commission under the royal decree as a regulatory

¹¹⁹ Ministry of Information and Communication Technology, Master Plan (B.E. 2540)

¹²⁰ Ministry of Information and Communication Technology, Master Plan (B.E. 2540)

commission or regulator. (3) For the management, Thailand Post has board of directors. Their duty are to complied with the policy framework, which is to has a good profit margin, and pass on the policy framework to Thailand Post's executive.

3.1.2.3 The measurement of postal regulatory Postal Items and Thailand Post right to operate

The regulatory guidelines in postal service remains unclear and there is no provision in regulating postal services called universal service. Due to the nature of the services provided by government agencies, so the legal framework of postal service has been assigned to a single public organization. The Postal Act has defined Postal service as delivery, dispatching, registering, guaranteeing of letter Postcard, Parcel, money order etc., which most service are cooperated by Thailand Post. Consequently, it could be stated that Thailand Post is the only organization who is only responsible in letter and postcard service provider under the postal act B.E 2477¹²¹. In this act, even though it does not specific about regulatory postal service, but it states the legal framework in regulatory postal service which mainly divided as follow;

- the absolute power as monopoly system reserved for the postal operator, which is now Thailand Post (Section 5)¹²²

- the standard of postal delivery such as the prohibition and exception of postal delivery also prohibited person to deliver the postal items because the law has stated that “No person who is not authorized under this Act or other laws, to make a deposit in order to deliver them to the people to submission or other actions on mail delivery Postcard or by other means except by mail”.

- The principle of receiving and dispatching of postal items in part 5 of the Postal Act B.E. 2477 which states the period of delivery of postal items, from inserting the postal items into mailbox. Moreover, the law also state about some prohibited items which are not allow to deliver by post.

- The principle of registered and guaranteed such as damaged, loss of registered mail and guaranteed mail and no delivery of postal items¹²³.

¹²¹ The Postal Act. B.E. 2477, Section 5

¹²²The Postal Act B.E 2477, Section 5, Subsection 1 (“The government has the monopoly to establish posts and post office with the Kingdom”)

¹²³The State Enterprise Capital B.E. 2542

- The privileged of postal delivery service in part 9 of the Postal Act B.E. 2477

- Other postal services include marine deliver mail bag service in part 8 and money order service in part 10 of the postal act B.E 2477 which state about the receiving and dispatching the items.

For other regulation, the Royal Decree is prescribing the power, rights and benefits of Thailand Post, the postal committee composition and liability, but the regulatory power is not founded in the royal degree. Section 6 of the royal decree states that the postal committee role and duty is to analyze, pass the order or regulation and make an international agreement. Moreover, there are postal directives which are the collection of rules, regulation, orders or announcement relating to the provisions of postal service that generally upholds the Postal Act B.E. 2477 or the Acts of the universal postal union (UPU) by which the UPU member countries shall abide, thus it could be stated that the postal directive defines the postal service definition and the method to its service relating to the regulatory postal service as follows;

In part 7¹²⁴ postal service include a definition of postal service and their classification

- Basic service comprising letter –post items (namely letters, postcard, printed matter, small packets and items for the blind) and postal parcel
- Express mail service
- Special service, categorized into 2 types, i.e. supplementary services used in parallel with basic services and supplementary services provided to enhance convenience for customers.

Since the postal law did not state about a specific postal service regulatory system, but in the postal directive, it has classifies some related postal service mainly in part 2 “dispatch of postal items” and in part 6 “postal operation”.

part 2 embrace¹²⁵;

- Type of postal items which consist of 3 types i.e. letter-post items (namely letter, postcard, printed matters, small packets and items for the blind), postal parcels and EMS.

¹²⁴ Postal directive B.E 2557, page 8

¹²⁵ Postal directive B.E 2557, page 2

- Specific provisions in dispatching of postal items exclusively to Thailand Post according to the postal act B.E. 2477, i.e. letters and postcards and the exempted cases where letters and postcards are dispatched by any others means beside postal routes.
- Prohibitions of enclosing several letters or postcards in one envelope /packets, unless the postal act B.E. 2477 is exempted otherwise.
- Prohibited items and Thailand post's persecution for items posted against the postal act B.E 2477's rules and penalty measurements
- Items with special acceptance conditions, i.e. valuable, dutiable or confiscated items in the country of destination, etc. shall be admitted only when complied with Thailand Post's regulations and conditions in Part 6 postal operation;

This part entails various operation processes which include acceptance, dispatch and delivery, definition of receiver, and treatment of undeliverable items. Hence, it could be concluded that currently there is a solely organization to operate postal service in monopoly system which is not creating the competitive environment, as a result a service standard is still questionable. . On the other hand, the other types of postal services which is not categorized as postal items are provided by the private sector. Moreover, due to postal law did not cover the operation of private limited company, even though in practice private sector still operates the business under section 5 of the postal act B.E 2477. It means that private company is actually prohibited to operate a reserved service such as letter – post service and postcard under section 5¹²⁶ in Thailand.

Consumer Protection

Furthermore, the Postal Act B.E. 2477 state about the regulatory of price which divide into three categories according to the related postal law namely the price of postage (postage charges), postage stamp and other postal fees. It is mainly the authorities of the Minister who has the care and charge of this Act and announce in the government gazette in final. This regulatory of postal service include the Consumer Protection which can be classified under postal act B.E. 2477, section 8 states that

¹²⁶ Postal Act B.E 2477

“The Department is not liable for the postal articles in the process of mail delivery which loss, error in delivery, delivery delays, and damage except in special cases where there is a law, rule or regulation stated for the indemnity”

This section intention is to give consumers basic care and liable to access the postal service. However; Thailand Post still has responsibility for payment of indemnity for lost/damaged registered postal items caused by postal administration, not force majeure or sender and receiver mistake. In postal directive, it has determined consumer protection guidelines according to postal business environment, which emphasizes on customer satisfactions in particular¹²⁷. On the consumer’s protection in Chapter 9, it is also stated about inquiries and payment of indemnity¹²⁸.

This part includes;

Rule applicable to inquire postal items and postal money order service, rightful claimants and period of making inquiries which is limited to 6 months from the day after items is posted, except inquiries of EMS which has to be made within 4 months. It is as followed as;

- The condition to investigate postal items and money order service (article186), the rightful claimant condition under article 187
- The rightful claimant is not eligible to be charged to carry out the investigation (Article 188) and in article 189 about the period of investigation.

Moreover, in case of lost or damaged postal items, it has been stated in part 9 about the conditions, rules applicable to liability and payment of indemnity for lost/damaged postal items and postal money order caused by the postal administrations¹²⁹ which are followed;

- Thailand Post has the responsibilities to the lost/damaged postal items. The compensations are under the condition and price rate of Thailand Post (article 192 to 196)¹³⁰.

¹²⁷ *Id.*, p. 4

¹²⁸ *Id.*, p. 8-9

¹²⁹ *Id.*, p. 56 -57

¹³⁰ *Id.*, p. 56 – 59

- The rightful claimant will be compensated for lost/damaged postal items based on the type of service which are postal items, parcel postal items, EMS postal items and money order (article 197)¹³¹
- Furthermore, there are rules applicable to non – liabilities in different cases as well as a prohibition of taking the indirect damaged, moral damage, consequential losses or loss of profits due to loss, damage or delay into account to claim for indemnity (article 201 – 206)¹³²

In conclusion, the case of lost and damaged postal items such as mail, parcel, express mail service or postal items with guarantee and money orders must be inquire under the process and condition of investigation under the Article 186. Making inquiries for postal items and money order investigation could be requested in cases of suspected of lost, damaged, delay between mail delivery, a postal items which the sender did not receive a response in a particular time, other postal delivery circumstances including the money order service, in case of the recipients did not receive the money order or submitted incomplete cash deposit or wrong recipient payments or delayed during delivery periods. Under article 187 it has stated that individual who meet certain condition could ask for an investigation. In case of postal delivery (article 187.1), individual need to be sender, receiver or proxy who has received authorization from the sender or recipient and in the case of money order service (article 187.2), individual also need to be sender, recipient of money order or proxy from the sender or recipient or money order to be able to ask for an investigation. For determination of damage rate is based on the purchase price in the local market, or the determination of Thailand Post.

In article 187.2¹³³ for Money order service means the sender or recipient of money order or proxy from the sender or recipient or money order. For determination of damage rate is based on the purchase price in the local market, or the determination of Thailand Post.

¹³¹ *Id.*, p. 58

¹³² Postal directive B.E 2557, page 59 - 61

¹³³ Postal directive B.E 2557, page 55

3.2 The authorities and privileges of Thailand Post Company

Thailand Post is the leading postal service provider in Thailand because it has an existing postal network located throughout the country. The postal service was introduced and operated since king Rama 5 reign. The postal service originally operates as the regulatory government organization and service providers at once. Later on during 2000s, Thailand Post has been corporatized into company, which the government owns the whole share instead of the traditional government agency, in order to promote efficiency and effectiveness. At the same time, the postal committee was established under the royal degree to act as a regulator. However, even though Thailand post has been corporatized into the private company, it still maintain the status of government agency that has certain government power and privilege. The rational behind this is because at that time Thailand Post is the only agency who has capabilities and competency to operate the postal business at that time so it is necessary to transfer postal operational power to Thailand Post¹³⁴

The privileges or certain advantage of Thailand Post over other service providers are appeared in other related Acts, laws and regulations which is in some cases limit the liberty and right of people to communicate. According to section 78¹³⁵ of the Postal Act B.E. 2477, it has empowered postal officers to search, arrest, or detain any individual who conducts a violation against postal law or there are doubtful causes of violation such law as it is contrary to the constitution law. Furthermore, Thailand Post's privileged power is also determined under the Postal Directive. Such power is defined in every part of obligation or indemnity especially in part 3 on postage stamps. Thailand Post can issue regulations, conditions as well as other details in relation to the exemption of service fee as specified by the company. It also appears in other section that the power is vested to Thailand Post in formulating regulations or conditions that may be considered inappropriate as it is meant to be the general guide to enforce every

¹³⁴ *Supra* note 144

¹³⁵ Section 78 states that “whoever violates or being reasonably suspected of violating the provision of this act concerning the monopoly of the government, may be searched, arrested or detained by the officer authorized by writing by the director – general with the approval of the minister for a reasonable time for the purpose of execution of this act”

postal service provider in Thailand. It also fails to comply with the UPU's common rules intention, which is applicable to the international postal service and provisions concerning the letter-post and parcel-post services given in the Convention and its Regulations. All of the Regulations except the Postal Payment Services Agreement are binding on all member countries.

It could be concluded that Thailand Post has privileged over other private providers in the same type of service. Such power should belong to an independent regulatory organization as a central agency to regulate, establish service standards, and provides consumer protection.

3.3 The overview of postal law and regulations in operation in foreign countries and international organizations

At present, though postal operations are different in each country, postal affairs are similar. This similarity is largely due to similarities in the postal systems' evolutionary background. Thailand is no exception. In most countries, postal affairs were initiated by the government and then developed to private sector operation via privatization policy. The transition restructured the operation standard from a government-based system to a system run by a state-owned enterprise. The transition also reduced the power of government by repealing the monopoly system and supporting the liberalization and fair competition system. Most countries now employ a regulatory system to control the independent regulatory organization of the postal system, with public organizations and the government as the policymakers.

3.3.1 The international postal regulation and organization

Naturally, the postal organization support postal liberalization, but the Universal Postal Union (UPU) 's postal regulatory act doesn't directly address postal liberalization at all. However, their Constitution, which contains general regulations, rules of procedure and legal statutes of the UPU, with commentary by the UPU International Bureau, clearly states the intention of UPU for postal operations in, article 1, Section 1 regarding organic provision, chapter 1, general¹³⁶. The scope and objective

¹³⁶Article 1: Scope and Objectives of the Union

of the Union to support a single postal territory and freedom of letter transit allow the UPU's members to improve their postal service, which is one of the Union's main priorities across the globe. The objective is to support the development and improvement of the worldwide postal network through the development of infrastructure, products and services, and through the use of information and communication technologies.

That the UPU shall emphasize quality of service means that it should concern itself with quality testing through the Global Monitoring System, which measures actual performance in order to calculate terminal dues remuneration among other things. Moreover, the quality regulation is another important aspect that enables designated operators to improve both their planning and their operational procedures. The UPU is able to lend its assistance to designated operators in the field in order to strengthen their capacity in terms of modern technology, evaluation systems and quality of service competencies so that they may receive the certification from UPU, assuming that they meet the organizational and quality management criteria set forth.

The other international policy of privatization and liberalization in public service was set by European Commission called EU policy. the purpose of EU policy intend to affordable high – quality public service in European social model with the open and competitive internal market. Therefore, the commission set the policy area of liberalization to include the postal service since it provides vital communication throughout the EU market. Hence, the European Commission enacted the EU law that consists of three postal directives: Directive 97/67/EC of 1997, as amended by Directive 2002/39 and Directive 2008/6/EC. The scope and background of this postal directive is to gradually liberalize postal services and to make clear to citizens that the postal

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1. The countries adopting this Constitution shall comprise, under the title of the Universal Postal Union, a single postal territory for the reciprocal exchange of letter-post items. Freedom of transit shall be guaranteed throughout the entire territory of the Union.
 2. The aim of the Union shall be to secure the organization and improvement of the postal services and to promote in this sphere the development of international collaboration.
 3. The Union shall take part, as far as possible, in postal technical assistance sought by its member countries.

services would remain accessible everywhere and to everyone¹³⁷ under the same conditions as the universal service with high quality and low price provided by both the incumbent and alternative postal operators.

3.3.2 The foreign postal regulatory law and regulation

3.3.2.1 United States of America

(1) The history and background of postal evolution¹³⁸

The United States Postal Service has operated on a single, great principle: that every person in the United States has the right to secure, efficient, and affordable mail service. Their mission is to bind together a far-reaching nation. July 26, 1775 marks the birth of the Post Office Department, and Benjamin Franklin, as a member of the Second Continental Congress, was appointed the first Postmaster General. Since then, the Postal Service™ has grown and changed with America, embracing new technologies to better serve a growing population. Franklin's survey post road and post office introduced a simple accounting method for postmasters to come and had riders carrying mail both day and night.

Since 1775, when the Second Continental Congress called for 'a line of posts, from Falmouth in New England to Savannah in Georgia,' the United States Postal Service has delivered for America, reaching further as the nation has grown and moving faster as technology has developed¹³⁹. Thereafter, Postmaster General Ebenezer Hazard created routes from the east to the west as the population expanded westward, including a route to serve the frontier town of Pittsburgh from 1782 to 1789. He also contracted with stagecoach companies to carry mail on heavily travelled routes. Moreover, at Hazard's suggestion, Congress passed an ordinance on October 18, 1782 revising and codifying postal laws and regulations. The ordinance gave the federal government a monopoly on mail, restricted censorship to times of war or when specifically ordered by the Postmaster General or Congress, and allowed post riders to carry newspapers at moderate rates. In June 1788, the ninth state ratified the US Constitution, which gave

¹³⁷ European Commission, *Overview of postal service*, http://ec.europa.eu/competition/sectors/postal_services/overview_en.html (Last visited Jun. 4, 2015).

¹³⁸ The United States Postal Service, *The United States Postal Service: An American History 1775 – 2006* 7-11 (2012).

¹³⁹*Id.*,

Congress the power ‘To establish Post Offices and post roads(roads on which mail travels)’ a year later; of September 22, 1789 ,the government continued the post office and made the Postmaster General subject to the direction of the president.

From the rapid growth of the United States and the post office department, which has helped bind the nation together, new services have developed that have lasted into the 21st century. Between 1789, when the federal government began its operation, and the break out of civil war in 1861, the territory of the United States expanded dramatically along with the post office department—the number of post offices increased from 75 in 1790 to 28,498 in 1860. Post roads increased from 59,473 miles at the beginning of 1819 to 84,860 by the end of 1823. This is a challenge to the post office department to carry more routes and offer faster delivery. As the growth of the new states and territories continued, The post office department requested that Congress find more routes, provide more services and subsidize routes that did not generate enough revenue to pay for themselves. Therefore, Congress developed the charging rate based on the number of sheets in a letter and the distance said letter travelled to reach its destination. The development of technology has had a great influence on the US Postal Service. Due to these developments, section 508 of The Rehabilitation Act requires federal agencies, including the Postal Service, to procure European Institute of innovation & Technology (EIT) that is accessible to persons with disabilities.

The law requires that EIT equipment and systems procured on or after June 21, 2001, comply with standards written by the Architectural and Transportation Barriers Compliance Board (Access Board). These standards were published December 21, 2000 in the Federal Register. EIT includes technology such as web pages, software applications, computers, self-contained kiosks, copiers, multimedia, and telecommunications systems. These standards are intended to make these technology products more accessible to individuals with disabilities¹⁴⁰.

Now, the US postal organization was developed and became the US Postal Service or USPS, which is the enormous postal service provider formerly known as the US Post office department. USPS is an independent organization of the United States

¹⁴⁰ The United States Postal Service, *Section 508*, <https://about.usps.com/who-we-are/legal/section-508/welcome.htm>.

federal government responsible for providing the postal service in the United States¹⁴¹. USPS is operated by the board of governors appointed by the president with the advice and consent of the Senate. The Postmaster General and the Executive Leadership Team are thus appointed by the Governors¹⁴². Formerly, US postal service organization was operated under the post rehabilitation Act of 1970 passed by the United States congress. The law transformed the US Post office department to the US postal service, which is an independent agency with a monopoly on the delivery of mail. The postal rate commission was created under this act as well. Because of the financial challenges of the USPS, pursuit of further reform began during the 104th Congress. On December 9, 2006, Congress enacted H.R. 6407: the Postal Accountability and Enhancement Act (PAEA). President George W. Bush signed it into law on December 20, 2006.

The use of First Class mail steadily declined as customers began using electronic alternatives, such as e-mail and online bill paying, rather than hard-copy letters. This combined with an increase new addressees, which rose to 2 million, created the rise in USPS costs—about 76 per cent of which were labour-related. In addition, the USPS, its board of governors, the Government Accountability Office (GAO), mailers' organizations, postal labour unions, and most recently a presidential commission comment all agree that the Postal Reorganization Act of 1970 no longer provided a viable business model. Moreover, critics argue that the rate-setting process was preventing the USPS from responding quickly to an increasingly competitive marketplace and long-standing political and statutory restrictions impeded efforts to modernize the mail-processing network and get rid of unneeded facilities. Hence, Congress enacted the PAEA, the more significant alterations of which include defining the term 'postal service,' restricting the USPS's authority to provide non-postal services and replacing the USPS's regulator—the Postal Rate Commission—with the more powerful Postal Regulatory Commission.

¹⁴¹ TITLE 39 - POSTAL SERVICE, PART I – GENERAL, CHAPTER 1 - POSTAL POLICY AND DEFINITIONS § 101. Postal policy (a) The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. ...”

¹⁴² The United States Postal Service, *Board of governors*, <http://about.usps.com/who-we-are/leadership/board-governors.htm> (last visited Jun. 3, 2015).

(2) The related regulations of privatization

Historically, the postal business operated as a government agency until recently. The US postal business was established in 1775 with the appointment of Benjamin Franklin as first Postmaster General within the postal office department by the Continental Congress. By the mid 1960s, this post office department was confronted with many problems, such as financial neglect and fragmented control in the areas of facilities, insufficient equipment and wages, and management efficiency¹⁴³. The Congress, the President, and the Post Office Department tried to improve this situation through reformation. In 1967, President Lyndon B. Johnson appointed a Commission on Postal Reorganization and recommended the elimination of patronage, instead setting the rate by a board of directors. On April 16, 1970, after the continuing negotiation, the department and union leader announced agreement on a reorganization plan. The plan included four necessary provisions¹⁴⁴ as follows: adequate financing authority, removal of political involvement to assure continuity of management, collective bargaining and setting of the rates by the postal service.

On August 3, 1970, the Postal Reorganization Act was enacted with the approval of the Senate and of President Nixon, who signed it into law. This marked the privatization of the post office department into the United States Postal Service (USPS). Later, in 1971, as an independent establishment of the executive branch of the government of the United States, the USPS began postal operations under the arm of a government agency. It was clearly defined as universal service provider, harmonizing with title 39 of U.S code, which states that:

The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities.

This postal service has an authority to issue public bonds in order to finance postal building and to direct collective bargaining between representatives of

¹⁴³ *Supra* note page 40

¹⁴⁴ *Id.*, p. 39

management and the unions. The act also established an independent postal rate commission, which is constituted of five members—appointed by the US president with the advice and consent of the US Senate—who recommend postal rates and mail classification for adoption by the postal service governors. After the privatization, the government develop the postal service and its operation with a business plan under USPS operation In 1991, and the fifteen years prior, the development of technology and an increase in express and parcel competition had caused the amount of postal delivery to decline, though it made a slight increase in the year later by the effect of the government policy

However, in 2001, the number of postal deliveries started declining continually through the year of 2002. The amount of letters delivered declined to 202.8 pieces from approximately 5 billion pieces. Thus, in the opening years of 21st century, the postal competition was caused by the development of telecommunication technology, which created various choices to the consumer for contact besides letters or postcards and the like. . However, in 2006¹⁴⁵, the postal service confronted many postal problems such as inflation costs and reduced revenue; thus, most postal rates and fees increased by about 5.4 per cent. On December 9, 2006, Congress passed the Postal Accountability and Enhancement Act, which separated postal products into market-dominant and competitive categories. Moreover, the act established the postal regulatory commission (PRC) instead of the postal rate commission and increased the PRC's regulatory powers.

(3) The postal law and regulation

In the US, there are two regulations related to the postal operation, which are key to the development of effective US postal business.

First, the Postal Accountability and Enhancement Act of 2006 (PAEA) addresses postal regulation and the role of postal regulator, revising some sections in US code relating to the postal service and its products as follows:

- title II, section 201 – 202 of PAEA, amended the US code addressing the class of postal product, market-dominant product and competitive product “the market-

¹⁴⁵ *Id.*, p 58 -59

dominant”, is the products and services in the monopoly system that the USPS need not compete with the private sector to provide including

- (1) First-class mail letters and sealed parcels
- (2) First-class mail cards
- (3) Periodicals,
- (4) standard mail,
- (5) single-piece parcel post,
- (6) media mail,
- (7) bound printed matter,
- (8) library mail,
- (9) special services,
- (10) single-piece international mail and “the competitive” classes, are the

products in a competitive market exists including

- (1) priority mail,
- (2) expedited mail,
- (3) bulk parcel post,
- (4) bulk international mail, and
- (5) mail grams.

Moreover, the changing of the law includes the rate-setting and reform of international mail regulation.

The US code mainly addresses the postal regulation in the United States, and the regulation of PAEA is also addressed under this US code. The major postal regulation and organization are as follows:

- Title 39 postal service, part 1 general in chapter 1, in section 101 (a)¹⁴⁶, postal policy states that *USPS is the nation postal service provider with the fundamental*

¹⁴⁶ Chapter 1 – Postal Policy and definition, section 101 states:

(a) The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and

standard called universal service obligation. This standard is in section 101 (a), (b), (d) to (g)¹⁴⁷. Hence, USPS acts as the postal service provider with privileged authority in some areas of service, except in competitive market, despite that it still operates under the universal service obligation regulated by the postal regulatory commission. Moreover, some types of market dominant product and reserved services were revised (monopoly) by PAEA as follows:

maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

¹⁴⁷ *Section 101 states that*

(b) The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

(c) As an employer, the Postal Service shall achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector of the economy of the United States. It shall place particular emphasis upon the opportunities for career advancements of all officers and employees and the achievement of worthwhile and satisfying careers in the service of the United States.

(d) Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.

(e) In determining all policies for postal services, the Postal Service shall give the highest consideration to the requirements for the most expeditious collection, transportation, and delivery of important letter mail.

(f) In selecting modes of transportation, the Postal Service shall give highest consideration to the prompt and economical delivery of all mail. Modern methods of transporting mail by containerization and programs designed to achieve overnight transportation to the destination of important letter mail to all parts of the Nation shall be a primary goal of postal operations.

(g) In planning and building new postal facilities, the Postal Service shall emphasize the need for facilities and equipment designed to create desirable working conditions for its officers and employees, a maximum degree of convenience for efficient postal services, proper access to existing and future air and surface transportation facilities, and control of costs to the Postal Service.

- title 39, part IV chapter 36 under section 3621 – 3634 state the provision related to the postal service on the market dominant product revised by PAEA as I mentioned above and also the competitive product...

To emphasize the national protection of universal service in the United States, the government created the private express statutes (PES), which are groups of US federal and civil laws placing various restrictions on the carriage and delivery of letters by all organizations other than USPS under title 18 U.S, Chapter 83, section 1693-1699 and title 39 U.S.C, section 601-606. The law prohibits the carriage and delivery of letter mail by private organizations, thus granting the power to designated operator for sending or carrying letters over post routes for competition.

Moreover, there is the mailbox rule¹⁴⁸, also known as the postal rule or the deposited acceptance rule, which is an exception to the general rule (The principle of this rule is that the mail acceptance will be in effect when the letter is posted. This rule, stated in US code under title 18, section 1725, defines the mailbox rule as the restriction on private carriage through limiting the access of the private entities to mail delivery receptacles. The postal rules are as follows: an offer made by post/letter is not effective until received by the offeree, acceptance is effective as soon as it is posted and for revocation to be effective, it must be received by the offeree before they post their letter of acceptance.

(4) The service provider status and types of products and services

In modern times, the main postal service provider in the United States is the USPS, which is defined by the government as a government agency that provides universal postal service. It is operated by nine people on the board of governors, who are appointed by the president with the advice and consent of the Senate. These nine governors will select the postmaster general, who will become a member of board, and these 10 members will then select the deputy postmaster general. The term of each member is seven years under US code section 202 (b), which was amended by the postal accountability and enhancement act in 2006. The act also states their duties to be as representatives of the public interest. Moreover, they also have duties to the Postal

¹⁴⁸ Cornell University Law School, *Mailbox rule*, https://www.law.cornell.edu/wex/mailbox_rule (last visited June 2015).

Service, including directing and controlling its expenditures, reviewing its practices, conducting long-range planning and setting policies on all postal matters. Meanwhile, the postmaster general is required to serve at the pleasure of the governors for an indefinite term¹⁴⁹.

The type of postal service business in the United States

There are many organizations operating the postal business but the major organization serving the US postal service is the USPS.

They are at the core of the postal service as a more than \$1 trillion mailing industry that employs more than 8 million people. There are four types of services that create the major income to the postal service in the US, which totalled around 67.3 billion in revenue in 2013¹⁵⁰: First-Class Mail (\$28.2 billion), Advertising Mail (\$16.9 billion), Shipping and Package Services (\$12.5 billion) and Periodicals (\$1.7 billion).

This is before taking the other kinds of service offered by the USPS, such as priority mail, mail express, first class packages, etc., into account. PAEA 2006, as mentioned above, urges the division of the types of postal service into two: market dominant product¹⁵¹ consist of first class mail, standard mail, periodicals mail and package service mail, and competitive products¹⁵² include priority mail express, First-Class package service, standard post mail, priority mail, parcel select mail, packet return mail and international mail.

(5)The postal regulator in the United States

In the US regulatory postal service, there is no independent regulatory organization as InfoDev/ ITU ICT Regulation Toolkit's concept. However, there is the government organization called postal regulatory commission (PRC)—formerly the postal rate commission—the independent agency of the executive branch that has exercised regulatory power over the postal service since the initiation of postal

¹⁴⁹ The United States Postal Service, *Leadership*, <http://about.usps.com/who-we-are/leadership/board-governors.htm> (last visited July 2015).

¹⁵⁰ The United States Postal Service, *Postal Facts 2014*, <http://about.usps.com/who-we-are/postal-facts/size-scope.htm> (last visited May 25, 2015).

¹⁵¹ The United States Postal Service, *Market dominant products preliminary revenue, pieces and weight by classes of mail and special services for quarter 2 fiscal year 2015*, <http://about.usps.com/who-we-are/financials/quarterly-statistics-reports/fy2015-q2.pdf> (last visited June 2015).

¹⁵² *Id.*,

reorganization act of 1970. Their responsibilities were expanded under the postal accountability and enhancement act of 2006.

In the US, there are three branches of government as stated in the Constitution so that there might be a system of checks and balances through a separation of power. These branches are the legislative, judicial and executive. The executive branch consists of three parts:¹⁵³ the President, who leads the country and acts as Commander-in-Chief of the US Armed Forces for no more than two four-year terms; the Vice President, who acts as the President's right hand man and the president of the Senate; and the Cabinet members, who serve as advisors to the President. The Cabinet includes the Vice President and heads of executive departments. They are nominated by the President and approved by the Senate.¹⁵⁴

PRC is the independent agency intended to keep the government and economy operating, and is governed by the executive department. Some of them are regulatory groups, while others provide special services¹⁵⁵

Their mission and responsibilities are in the US code and PAEA as follows:

- section 501, title 39 states that *The Postal Regulatory Commission is an independent establishment of the executive branch of the Government of the United States.*

This commission is an independent agency that has exercised regulatory oversight over the postal service. It was created by the Postal Reorganization Act of 1970, and gained power under the postal accountability and enhancement act of 2006 (PAEA). The commission combined with five (5) committees appointed by the president, with the advice and consent of the Senate in a period of six (6) years.¹⁵⁶ The commission is organized into four operating offices, as follows: Accountability and compliance, General counsel, Public affairs and government relations and Secretary.

¹⁵³ United States Government, *Branches of Government*,
<https://www.usa.gov/branches-of-government>.

¹⁵⁴ *Id.*,

¹⁵⁵ University of Groningen - Humanities Computing, *The Independent Agencies*,
<http://www.let.rug.nl/usa/outlines/government-1991/the-executive-branch-powers-of-the-presidency/the-independent-agencies.php>

¹⁵⁶ Postal Regulatory Commission, *About the postal regulatory commission*,
<http://www.prc.gov/about> (last visited Jun. 5, 2015).

The mission of the commission is to ‘ensure transparency and accountability of the United States Postal service and foster a vital and efficient universal mail system’¹⁵⁷, and also communicate to the U.S. Congress, and other stakeholders, concerning Commission operations through a series of annual and periodic reports such as the Annual Report to the President and the Congress, which reports on the universal postal service and the postal monopoly in the United States as well as the postal rate¹⁵⁸.

Hence, the postal regulatory commission (PRC) defines the postal policy under US code, title 39 sections 101:(d) *Postal rates shall be established to share out the costs of all postal operations to all users of the mail on a fair and equitable basis.*

The Postal Regulatory Commission’s power is subject to chapters 5 and 7 of title 5 in section 501 – 505 in the US code, which states that they may promulgate rules and regulations, establish procedures, take any other action they deem necessary and proper to carry out their functions and obligations to the Government of the United States and the people as set under this title. Such rules, regulations, procedures, and actions shall not be subject to any change or supervision by the Postal Service. However, the mission of PRC was not stated in US code directly; it was enhanced by the regulatory commission authority in PAEA, title VI section 601 – 606, which determined the power of the committee to develop and maintain regulation for modern system of rate regulation and consult with the postal service on delivery standard and performance measures. This was also mentioned in title VII in section 701 of PAEA.

In addition, PRC has other authorities such as to direct the Postal Service to adjust rates and to take other remedial actions, including levying fines in cases of deliberate noncompliance with applicable postal laws under PAEA. Thus, the commission shall develop and maintain regulations for a modern system of rate regulation and **consumer protection stated** under US code, in title 39, section 403: the general duties (c) in providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor

¹⁵⁷ Postal Regulatory Commission, *Mission, Vision, Guiding Principles, and Strategy*, <http://www.prc.gov/mission> (last visited May 29, 2015).

¹⁵⁸*Id.*,

shall it grant any undue or unreasonable preferences to any such user¹⁵⁹. Besides, the consumer protection is also in PAEA, title 39,¹⁶⁰

¹⁵⁹ Legal Information Institute, Cornell University Law School, 39 U.S. Code § 403 - General duties, <https://www.law.cornell.edu/uscode/text/39/403>

¹⁶⁰section 3662¹⁶⁰ – Rate and service complaint state that

(a) *In General.*— Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections [101 \(d\)](#), [401 \(2\)](#), [403 \(c\)](#), [404a](#), or [601](#), or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

(b) *Prompt Response Required.*—

(1) *In general.* — The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)

(A) *Either*

(i) *Upon a finding that such complaint raises material issues of fact or law, begin proceedings on such complaint; or*

(ii) *Issue an order dismissing the complaint; and*

(B) *With respect to any action taken under subparagraph (A)(i) or (ii), issue a written statement setting forth the bases of its determination.*

(2) *Treatment of complaints not timely acted on— For purposes of section [3663](#), any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed pursuant to an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).*

(c) *Action Required if Complaint Found To Be Justified— If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance (such as ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, or requiring the Postal Service to make up for revenue shortfalls in competitive products).*

(d) *Authority To Order Fines in Cases of Deliberate Noncompliance—In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid from the Competitive Products Fund established in section [2011](#). All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.*

It show that the consumers have the rights to complaint and request for compensation under some conditions of section [101 \(d\)](#), [401 \(2\)](#), [403 \(c\)](#), [404a](#), or [601](#), such as the rate of product, among other things.

(6) The exclusive privilege of postal service provider

USPS as a federal regulatory organization still has some exclusive privilege to provide postal service. The outstanding privilege is the monopoly power under Private Express Statutes (PES), the mailbox access rule and financial supporting. This demonstrates the privilege above the private operation. Moreover, there are some exclusive privileges; USPS also receives some privileges from the government as follows: vehicles licensing requirement, sales taxes, local property taxes, exclusive right over non-urgent letters and delivery mail on Saturday.

In any case, USPS has received compensation for assuming the expense that arose from the implementation of government policies or provision of special services due to the organization as a provider of infrastructure across the country

3.3.2.2 United Kingdom

(1) History and overview of the postal business¹⁶¹

The UK postal business was established in 1635, when the British government began to provide the service to the public. After that year, the postal business in Britain was greatly developed. Developments included the establishment of the general post office and uniformed postmen. In 1861, the Post Office Saving Bank was established, and at the end of the same year the government created a parcel delivery service. The post office maintained a monopoly, including one over the telegraph service, until 1969, when the business circumstance became a nationalised industry. In 1981, the telecommunication division was spilt off from the post office to create British telecommunication.¹⁶² Shortly after, in 1986, the government further restricted the post office, reorganizing the industry into five divisions: Royal Mail, Parcelforce Worldwide, post office counters, Girobank (formerly the Post Office

¹⁶¹ Constantina Bichta, *Regulation of UK postal services 2002*, Thesis, University of Bath 16 (2002).

¹⁶² Supra note 8 page 1

Saving Bank), and subscription services. The government changed the name of the Post Office to *Consignia plc.* in 2001¹⁶³ and then to *Royal Mail Group plc.* in 2002.

Regarding regulation, in 2000 the Postal Services Act was enacted. This act began the process of market liberalisation and, along with the Postal Services Regulations 1999, ensured that the United Kingdom complied with European law on postal services.¹⁶⁴ There are in rapid expansion and development in letter delivery and new technology

UK postal business has been served by Royal Mail for a decade and protected, by government, without free market competition. Technological advances, as well as globalisation and liberalisation trends, however, increased customer demand for Internet-based products. This demand has influenced the UK postal service sector, triggering reformation of a nationalised monopoly industry.

Afterwards, in 1999, there came the amendment of postal service regulation, which led to the Postal Services Act 2000. This act initiated the new system of licensing and regulation for postal service operators, which brought them in line with the European Union's (EU) liberalisation initiatives. Moreover, the law gave the established independent regulator, the Postal Services Commission (Postcomm), new powers and duties to protect the interests of postal service patrons.

The Postal Services Act 2000 constituted the main legal framework introduced by the government to reform the UK post office. The act neither privatised the post office nor removed its existing monopoly. It did, however, attempt to reform the post office in line with the European Union's liberalisation initiatives.

The act introduced a new system of licensing and regulation for postal service operators and gave the established independent regulator, Postcomm, new powers and duties to protect the interests of users of postal services. At the time of this writing, the reforms proposed by the act have started materializing, i.e. the licensing regime for new postal operators has been finalised, the dates for opening the UK market to competition have been agreed upon, and the postal market in the United Kingdom

¹⁶³ The Telegraph, "The Royal Mail: a history of the British postal service" <http://www.telegraph.co.uk/news/uknews/royal-mail/7814591/The-Royal-Mail-a-history-of-the-British-postal-service.html>.

¹⁶⁴ *Supra* note 162

has been fully open to competition since 2006. This was unlike other European Union member states that did not fully liberalise their postal services market until 31 December 2011, the last possible date allowed under European law.

Moreover, the development of a legal system showed a huge turnaround in the postal service structure, which changed from a monopoly system to a licensing system. This triggered a fully competitive market. For example, numerous mail providers have been allowed to operate in the United Kingdom () and compete with Royal Mail's services. later, the government was changed The United Kingdom's government postal operator into Consigniaplc. This post office group dominated the UK postal service market since the 1960s until the adoption of the Postal Services Act 2000. The post office group was renamed Consignia plc. and became a government-owned company. Presently, it serves customers through three brands: Royal Mail, Parcelforce Worldwide, and post office branches.

Royal Mail is the United Kingdom's designated universal postal service provider, supporting customers, businesses, and communities across the country. Royal Mail also has a duty to carry out at least one collection daily from each letterbox. Its capability is to deliver a 'one-price-goes-anywhere'¹⁶⁵, six-days-a-week service for a range of letters and parcels to more than 29 million addresses across the United Kingdom. The customers of Royal Mail are local residents, businesses, local and national governments, and public services. a European parcels business, operates one of the largest ground-based, deferred parcel delivery networks in Europe.

Royal Mail plays an important part to serve and deliver to all UK addresses all types of mail six days a week, even when there is some other organization delivering. Other operators can choose to deliver only certain types of mail to certain geographic areas that are easy to serve, and they can choose to do so only a few days a week.¹⁶⁶

¹⁶⁵ Royal Mail Group, *Who We Are*, <http://www.royalmailgroup.com/cy/node/4667>. (last visited 28 July 2015)

¹⁶⁶ Royal Mail Group, *open postal market*, <http://www.royalmailgroup.com/regulation/how-were-regulated/open-postal-market#sthash.44NM627j.dpuf> (last visited Jan. 18, 2015).

Consignia plc. operates an express parcel and courier service by providing access to the world's delivery network. Under the name of Parcel Force Worldwide.

Regarding post office branches, Consignia plc. was wholly owned by Post Office Ltd., an operator of a network of 17,500 post office branches¹⁶⁷. The other postal operator came from a short-term licence, which was issued by the regulator, Postcomm, and included Hays, TNT, Deya, etc. Furthermore, there have been international market players such as FedEx, DHL, and United Parcel Service (UPS). In comparing international market players, Deutsche Post AG is the biggest of these companies, given the number of employees.

In addition, in 2000, the government enacted the post service act 2000 this act created Postcomm as a new and fully independent regulator and replaced the body..

There were regulatory reforms in 2011. The government passed the Postal Services Act 2011, declaring a major change in the regulatory framework that governs the one-price-goes-anywhere, six-days-a-week universal service. It went into effect 1 October 2011, becoming a major development in early 2012.

Moreover, as per part of the 2011 act, POSTCOMM was incorporated as the communications regulator, the Office of Communications (OFCOM), on 1 October 2011. A new, simplified set of regulations for the postal service went into effect on 27 March 2012. Ofcom has reformed the regulatory framework, including price control¹⁶⁸. Hence, Ofcom was the committee that developed from Postcomm, created by the Postal Services Act 2011. In this act was enacted the duties and responsibilities of Ofcom's focus on protecting the United Kingdom's Universal Service¹⁶⁹. Ofcom made the Royal Mail regulation free to set the price, for example, by considering the need for a universal service provider.

(2) Laws related to privatisation into a private company and its effects

As described earlier in the history of postal business changes in the United Kingdom since 1635 to the present, the service started as a government agency and then

¹⁶⁷ Supra note 161 page 12

¹⁶⁸ Royal Mail Group, *Price Control*,
http://www.royalmailgroup.com/glossary/letter_p#Price_control.

¹⁶⁹ Royal Mail Group, *Universal Service*,
http://www.royalmailgroup.com/glossary/letter_u#Universal_Service.

transformed into a private company and later entered the stock exchanges in 2013. Therefore, there have been many laws related to such changes, as listed below.

According to the history of the UK postal service, there have been regulatory laws defined by the Parliamentary Act. These have included the Post Office Act 1969 and the British Telecommunications Act 1981, which allowed for the split in telecommunications and postal services. In the Postal Services Regulations Act 1999, the government intended to use this law to ensure the development of domestic postal services as well as business customers with alternatives, good quality, and reduced prices. The law prescribed regulations in line with the European Union's Directive 97/67/EC concerning postal services and the establishment of Postcomm. Finally, the Postal Services Act 2000 either repealed or redrafted relevant sections of the earlier acts. It aimed to modernise and simplify the legal framework for application by postal companies and other licensees and provided regulations in line with the EU directive.

Relevant to those investigated laws mentioned above, the starting point of UK postal business restructuring followed the British Telecommunications Act 1981 up until 1999. That was when the government launched the white paper¹⁷⁰ to propose the reform of the post office through satisfying consumer need, integrating technology, and allowing new commercial freedom.¹⁷¹

Accordingly, the UK postal business was completely reformed in 2000 under the Postal Services Act 2000. This act offered new commercial freedom, postal services in the form of companies, a new system of licensing, and regulation for postal operations as a monopoly called the reserved or licenced area. This act also gave birth

¹⁷⁰ The paper identified five areas which favoured particular reform in the Post Office, including;

- To improve postal services for business and residential customers;
- The post office to maintain a universal service of postal delivery throughout the UK at a uniform tariff;
- The establishment of accountable relationships between the government, the Post Office, the regulator, and Post Office Users' National Council (POUNC);
- To equip the Post Office to meet the challenges of the changing postal market both domestically and internationally;
- To support the Post Offices network in order to ensure nationwide access to a range of public and private sector services.

¹⁷¹ *Supra* note 161

to an independent regulatory agency, i.e. Postcomm, which acts to promote competition and strengthen consumer representation.¹⁷²

(3) Effects of the reform of service provider Royal Mail

In the case of the United Kingdom, I decided to look into the situation at pre- and post-entry to stock exchanges, as summarised below.

Pre-entry to liberalization system

The above-mentioned legal changes resulted in the change of UK postal business for greater freedom. The service agency had been changed from a government agency into a company called Royal Mail Group, according to the Postal Services Act 2000, Royal Mail has lose the monopoly on the postal service by creating the licensing system under the postal law however, Royal Mail still the important postal operator at that period. the United Kingdom, the universal service provides for deliveries of letters six-days-per-week across the national network at uniform affordable prices'.¹⁷³

The Postal Services Act 2000 thus explicitly established regulations and the framework of duty for related agencies by responsible bodies.¹⁷⁴ Government's responsibilities included laying down the regulatory framework followed by the postal commission, setting the universal service obligation (USO) and the framework of a uniform tariff, appointing the post office chairman, and approving the appointment of a board.of director

As for the secretary of state's responsibilities under the Postal Services Act 2000, section 8 modified the reserved areas at the recommendation of Postcomm. Under section 6, subsections (2)–(5), a person may be prosecuted if he or she conveyed a letter without licence or breaking the licence condition. The subsections also suspend the licensing regime and its operation in reserved areas if doing so would be in the national interest.

the result of Postal Service Act 2000 established the independent regulator called Postcomm mainly has duties to maintain and ensure the provision of a universal service by issuing licences, regulating prices, furthering the interests of postal service

¹⁷² *Supra* note 161, page 18

¹⁷³ Authority of the House of Commons London, *Postal service bill (Explanation notes)* 1 (2010).

¹⁷⁴ *Supra* note 161, page 25

users, promoting efficiency and economy on the part of postal operators, and improving the standard of service and control price.¹⁷⁵ Furthermore, Postcomm also has duties to promote competition between postal operators and licensing holders and allow the private licensing holders to operate in reserved areas. They can only operate in reserved areas when conveying a letter weighing less than 350 grams or with a value of less than a one pound. Postcomm also ensures that the post office can provide a universal service at a uniform price.¹⁷⁶

Postcomm announced it would grant licences to all operators starting from 1 January 2006. This shows that the UK postal business started to become liberalised in 2006.

Post-entry to privatisation or liberalization

The UK postal business has been completely liberalised since 2006 with the operation of Royal Mail. In 2013, Royal Mail was fully transformed into a complete business company entering the stock exchanges along with the distribution of shares. The UK postal business was thus considered to be in competitive liberalisation in the form of private companies. From the beginning, Royal Mail retained its status as a government agency up until 2013, when it was fully transformed into a private company. Moreover, the government also the

In 2013, Royal Mail became a listed company with UK employees holding shares in the company. This privatisation of Royal Mail for continuing investment was done to avoid burdening the government financially. Even though the company was privatised, it still standardised its services, such as universal postal obligation and quality of service, which was a key driver of success.

(4) Organisational status and types of goods and services

Royal Mail mainly operated the UK postal business with Ofcom as a regulatory agency. This suggests a definite separation between regulator and operator, i.e. Ofcom is the regulator and Royal Mail is the operator. Their statuses are described below.

¹⁷⁵ *Id.*, Page 26

¹⁷⁶ *Supra* note 8, page 8

Royal Mail has held the status of private company entering the stock exchanges and distributing its shares since 2013,. Royal Mail has operated the business through two core functions: UK parcels, international, and letters (UKPIL) and general logistics systems (GLS).

Ofcom as the regulator functions to supervise the current postal service. It is an independent regulator and authority over competition for the UK communications industries. The main legal duty in the postal business is to provide the universal service obligation on postal services, as protected in the United Kingdom. Recently, Ofcom consisted of nine people on a board who are postal business experts and are appointed by the secretary of state.¹⁷⁷

The United Kingdom's postal service business, as stated in section 27 of Postal Service Act 2011, is as follows:

1. Postal services means

- a. the service of conveying postal packets from one place to another by post,*
- b. the incidental services of receiving, collecting, sorting, and delivering postal packets, and*
- c. any other service which relates to, and is provided in conjunction with, any service within paragraph a. or b.*

2. Postal packet means a letter, parcel, packet, or other article transmittable by post.

3. Postal operator means a person who provides

- a. the service of conveying postal packets from one place to another by post or*
- b. any of the incidental services of receiving, collecting, sorting, and delivering postal packets.*

¹⁷⁷ House of Commons, "Section A-who are we and what we do," *The Office of Communications Annual Report and Account* (1 April 2013 to 31 March 2014).

- 4. A person is not to be regarded as a postal operator merely as a result of receiving postal packets in the course of acting as an agent for, or otherwise on behalf of, another.*
- 5. The secretary of state may make regulations prescribing circumstances in which subsection 4 is not to apply.*
- 6. Regulations under subsection 5 are subject to an affirmative resolution procedure.*

As for products and services associated with the postal service, there is no current or agreed-upon standard on what may be a postal service, but customer demands for postal services has led to the development of a wide range of postal products. Three types of traditional postal services in the UK postal market can be distinguished.

First, mail services are described as mail, parcel, and counter services. Currently, from the development of hybrid and electronic mail services, they are divided into two kinds: traditional and new mail services.

Table 3.1 Different types of mail service¹⁷⁸

Service	Definition
Letter	Postal item containing written communication with a specific weight, which should not be more than 350 grams.
Parcel	Postal item of 31.25 kg or less of non-standard size.
Overseas	Parcel and mail transported by air.
Direct	Communication consisting solely of advertising, marketing, or publicity material and comprising an identical message.
Document Exchange	Mutual exchange of postal items between users subscribing to this service.
Express	Service with greater speed and reliability in the collection, distribution, and delivery of items.
Hybrid	Service providing electronic access to traditional mail services by delivering mail directly from computers for physical delivery.
Internal	Mail-related activities in which mail is sent via a to-and-from undertaking with no third-party involvement.
Pre-sorted	Mail, such as a post card, chosen before being delivered to a postal operator's value chain.
Bulk	A large volume of mail within one mailing.

In terms of mail letters, the UK post office offers two services regarding letter delivery: first- and second-class. The first-class letter guarantees that the time for the letter delivery is approximately one working day. Second-class letters are delivered within approximately three working days.

Moreover, on 27 March 2012, Ofcom published its decision on the new regulatory framework for postal services for granting the pricing flexibility to survive the financial problem of Royal Mail. This was so Ofcom could set the cap on the price in the standard letter of a second-class stamp at fifty-five pence. On the other hand, Royal Mail has the freedom to determine the cost of a first-class stamp.¹⁷⁹

¹⁷⁸ *Supra* note 161, page 3 – 5

¹⁷⁹ House of Commons Library, *Postal service: the postal service act 2011 and recent development* 11.

Second, parcel services are postal items of 31.25 kg or less of non-standard size. The UK post office first launched the parcel service in 1883. Today, a variety of parcel services are available, all of which are summarised in table 2.

Table 3.2 Different types of parcel service

Service	Definition
Courier	Parcel must be hand delivered by courier.
Express	Guaranteed service with greater speed and reliability in collection and delivery.
Special Delivery	Service for urgent or valuable items guaranteeing safe, next-working-day delivery and requiring a signature upon delivery.
Premium Evening Delivery	Service for home shopping customers who can accept deliveries up to 9pm.
Door-to-door Distribution	Service operates via General Parcel's European network and gives control of supply chain to customer by moving goods easily and cost effectively between different European locations.

The last one is counter service, which includes buying stamps and stationery, bill payments, and banking services. Table 3 lists the counter services currently available at UK post office branches.

Table 3.3 Services available at UK post office branches¹⁸⁰

Service	Examples
Banking	Branch transactions for Alliance and Leicester Girobank, co-op bank, Lloyds TSB, Barclays, national savings.
Cash Management for Businesses	Deposits, cash provisions, third-party cheques.
Billing	Payments, bureau de change, postal orders.
Payments	Pensions, other benefits.
Licenses	Car tax, TV, fishing.
Lottery	Tickets for national drawing.
Mail and Distribution	Stamps, parcels, redirection, track and trace, special delivery.
Applications	Passport renewal.
Phone and Cable	Bill payment, pre-pay mobile phone vouchers.

The postal service that has been continuously operating in the United Kingdom is Royal Mail, which the government has protected from free market competition. Eventually, due to technological advancement, increased customer demand for Internet-based products, globalisation and liberalisation trends have caught up with the UK postal service sector, paving the way for the reform of a nationalised monopoly industry.

(5) Business and related regulation

Under the Postal Services Act 2011, the duties of the postal service regulator's commission, Ofcom, have been enforced on different types of postal operators. The act has also replaced the previous licensing regime with a general authorization regime. The commission's intention was to direct the postal service provider to serve all postal services to all UK citizens. It also has the power to designate postal operators as universal service providers.¹⁸¹

¹⁸⁰ *Supra* note 161, Page 4

¹⁸¹ Postal service act 2011, Section 35 **Designation of universal service providers**

(1) OFCOM may designate one or more postal operators as universal service providers.

Ofcom, as the communications regulator, operates under several acts of Parliament and other legislation, including the Communications Act 2003, the Wireless Telegraphy Act 2006, the Broadcasting Act 1990 and 1996, the Digital Economy Act 2010, and the Postal Services Act 2011. The main related legislation, however, is as follows:

(5.1) Postal Services Act 2011 determines various regulations relating to postal business

(2) But there are only two cases in which there may be more than one postal operator designated as a universal service provider.

(3) The first case is where—

(a) OFCOM have made a procurement determination under section 45 (fairness of bearing burden of universal service obligations), and

(b) in the light of that determination, OFCOM consider it appropriate for the number of postal operators designated as universal service providers to be greater than one.

(4) The second case is where—

(a) a postal administration order has been made under Part 4, and

(b) OFCOM consider it appropriate for the number of postal operators designated as universal service providers to be greater than one for, or in connection with, achieving the objective of the postal administration.

(5) OFCOM must publish each designation in such way as they consider appropriate for bringing it to the attention of members of the public.

(6) The procedure to be followed for the making of a designation under this section must be provided for in regulations made by OFCOM.

(7) OFCOM may—

(a) review the designations for the time being in force, and

(b) consider what (if any) designated USP conditions should continue to apply to each of the universal service providers.

(8) The procedure to be followed on a review must be provided for in regulations made by OFCOM.

(9) Regulations made by OFCOM must provide for a postal operator's designation to cease to have effect where, in any case described in the regulations, the operator is no longer subject to any universal service obligations.

(10) Both the procedure for designations and the procedure for the conduct of review of designations provided for by regulations under this section must be one appearing to OFCOM—

(a) to be efficient, objective, proportionate and transparent, and

(b) not to involve, or to tend to give rise to, any undue discrimination against any person or description of persons.

(11) OFCOM must notify the European Commission of the designations and of any case where a designation ceases to have effect (and the notification must identify the postal operator designated or ceasing to be designated).

Under section 28 of the Postal Services Act 2011, the authorities to govern the postal operator

‘General authorization to provide postal services

1. Persons may provide postal services without the need for any licences or authorisations, but the provision of those services by postal operators may be subject to regulatory conditions that Ofcom may impose on them under this part’.

This means that all recent postal operators no longer need to receive licensing from Ofcom, but still attempt to meet the USO, the standard of a qualified postal operator.

Under section 30, the minimum postal service standard is as follows:

The universal postal service

(1) OFCOM must by order (a “universal postal service order”) set out—

(a) a description of the services that they consider should be provided in the United Kingdom as a universal postal service, and

(b) the standards with which those services are to comply.

(2) A universal postal service must, as a minimum, include each of the services set out in section 31 (as read with sections 32 and 33).

...

(6) OFCOM must notify the European Commission of—

(a) the universal postal service order, and

(b) any modifications of the order.

In section 31,¹⁸² the minimum requirements of universal service are

¹⁸² Section 31 state that this section sets out the services that must, as a minimum, be included in a universal postal service.

Requirement 1: delivery of letters or other postal packets

(1) At least one delivery of letters every Monday to Saturday—

(a) to the home or premises of every individual or other person in the United Kingdom, or

(b) to such identifiable points for the delivery of postal packets as OFCOM may approve.

(2) At least one delivery of other postal packets every Monday to Friday to the places within paragraph (1)(a) or (b).

(3) The references in this requirement to the delivery of letters or other postal packets include the delivery of packets posted outside the United Kingdom.

Requirement 2: collection of letters or other postal packets

1. the delivery of letters or postal packets including those posted outside the United Kingdom, which includes at least one delivery of letters every Monday to Saturday to every address in the United Kingdom and at least one delivery of other postal packets every Monday to Friday;
2. the collection of letter or postal packets, including those for onward transmission outside the United Kingdom, with at least one collection of letters every Monday to Saturday and at least one collection of other postal packets every Monday to Friday;
3. a service of conveying postal packets from one place to another by post at affordable and geographically uniform prices throughout the United Kingdom; and

(1) At least one collection of letters every Monday to Saturday from every access point in the United Kingdom used for the purpose of receiving postal packets, or any class of them, for onwards transmission in connection with the provision of a universal postal service.

(2) At least one collection of other postal packets every Monday to Friday from every access point in the United Kingdom used for that purpose.

(3) The references in this requirement to the onwards transmission of letters or other postal packets include their onwards transmission to places outside the United Kingdom.

Requirement 3: service at affordable prices in accordance with uniform public tariff

(1) A service of conveying postal packets from one place to another by post (including the incidental services of receiving, collecting, sorting and delivering them) at affordable prices determined in accordance with a public tariff which is uniform throughout the United Kingdom.

(2) The reference in this requirement to conveying postal packets from one place to another includes conveying them to places outside the United Kingdom.

Requirement 4: registered items service

A registered items service at affordable prices determined in accordance with a public tariff which is uniform throughout the United Kingdom.

Requirement 5: insured items service

An insured items service at affordable prices determined in accordance with a public tariff which is uniform throughout the United Kingdom.

Requirement 6: services to blind or partially sighted

The provision free of charge of such postal services as are specified in the universal postal service order to such descriptions of blind or partially sighted persons as are so specified.

Requirement 7: legislative petitions and addresses

A service of conveying free of charge qualifying legislative petitions and addresses.

4. a registered item service at affordable, geographically uniform prices throughout the United Kingdom.

I will therefore conclude with the changing of Ofcom's duties¹⁸³ by comparing them to the former regulator, Postcomm, as seen in table 6.

Table 3.4 The differences in duties between Postcomm and Ofcom

Postcomm	Ofcom
Interfered with the price regulation on Universal Service Obligation ¹⁸⁴ and non-Universal Service Obligation products and services.	No price cap on the majority of products and services. On the other hand, there is a 'safe-guard' price cap in second-class standard letters, second-class large letters, and standard packages up to 2 kg.
More than 80 per cent of Royal Mail's revenue was subject to direct price regulation.	Royal Mail is now free to set prices.
Royal Mail's rivals had potential access to any part of Royal Mail's universal service network and an explicit price advantage through prescriptive price control.	Access is mandated to a limited part of Royal Mail, but Royal Mail is free to set fair and reasonable commercial terms and set access prices that give a reasonable commercial return. It will be monitored under a 'margin control' test.
Royal Mail was generally obliged to provide three months' notice when changing prices or terms and conditions for products. These restrictions limited innovation.	Royal Mail is now able to change prices and terms of service with no regulatory notice period for non-Universal Service products and 30 days' notice for Universal Service Obligation services.

¹⁸³ *Supra* note 161, p. 59

¹⁸⁴ Royal Mail Group, *Universal Service Obligation*,

http://www.royalmailgroup.com/glossary/letter_u - Universal_service_obligation

Postcomm	Ofcom
Royal Mail's competitors were able to take substantial volumes of business mail from its end-to-end letters business under a regulatory, licenced regime with the difference of price between upstream and downstream mail activities.	Competitors will have to provide notice to Ofcom if they decide to introduce or expand any part of its letters business along the end-to-end delivery route. It also has the ability to impose regulatory conditions on operators offering services
Not require the lawful statutory to regulate the need for the Universal Service Provider ¹⁸⁵ to make a commercial rate of return on its Universal Service Obligation activities.	Must now have regard for the need for the Universal Service Provider to make a 'reasonable commercial rate of return' on its Universal Service activities.

As I mentioned above, Royal Mail is a unique organisation called a designated postal operator in the United Kingdom because it is the only enormous universal postal service provider. Hence, Royal Mail may have a duty to serve basic postal services, including delivery to any address throughout the United Kingdom six times per week with the provision of a network of letterboxes and post offices followed by the Postal Services Act 2011. These universal services specified in the act are known as minimum requirements.

Furthermore, the commission will designate the types of regulatory conditions under the act,¹⁸⁶ which consist of designated universal service provider (DUSP) conditions (as found in sections 36–37 of the act), universal service provider (USP) access conditions (section 38 schedule 3), universal service provider accounting conditions (section 39), notification conditions (section 41), general universal service conditions (GUSC) (section 42), essential conditions (section 49), general access conditions (section 50 schedule 3), and consumer protection conditions (sections 51–52).

¹⁸⁵ Royal Mail Group, *Universal Service Provider*, http://www.royalmailgroup.com/glossary/letter_u - Universal_service_provider.

¹⁸⁶ OFCOM, *Condition imposed by OFCOM, Regulatory conditions*, <http://stakeholders.ofcom.org.uk/post/conditions/> (last visited Jun. 5, 2015).

Hence, under the act, Ofcom may impose a designated USP condition on a universal service provider, according to section 36. This designated USP condition requires the provider to provide a universal postal service, or part of a universal postal service, throughout the United Kingdom, according to section 36(2)(a); provide or make arrangements for the provision of access points for the purpose of a USP, according to section 36(2)(b); provide specified information, as seen in section 36(2)(c); and do anything else that Ofcom would consider appropriate for the purposes of the obligations imposed under paragraphs (a)–(c), according to section 36(2)(d).

From the legal consideration, the postal service provider shall be under the USP of Ofcom regulation. Ofcom will designate postal service conditions without the licence regime under the Office of Communications Act 2002. The commission will determine the characteristics of the postal service for serving the fundamental basic services, so it can designate Royal Mail to be the designated operator because of its wide postal networking. Other operators that entered into the postal service sector shall serve the postal service under section 38 of USP access conditions which is the condition requiring the provider to do either or both the following: give access to postal network to other postal operator and maintain a separation for accounting ¹⁸⁷.

In conclusion, regulating postal service providers is the duty of Ofcom by repealing the licence system of Postcomm, but the USO has been set up instead. Ofcom is the postal service provider under section 50,¹⁸⁸ which concluded that Ofcom may impose a general access condition on particular postal operators, requiring them to give access to other postal operators or users of postal services, to the operator's postal

¹⁸⁷ *Id.*,

¹⁸⁸ Section **50 General access conditions**

(1) OFCOM may impose a general access condition on a particular postal operator (or operators).

(2) A general access condition is a condition requiring the operator to do either or both of the following—

(a) to give access to other postal operators, or users of postal services, to the operator's postal infrastructure or any service within the scope of the universal postal service which it provides, and

(b) to maintain a separation for accounting purposes between such different matters relating to access of a kind within paragraph (a) (including proposed or potential access of that kind) as OFCOM may direct.

infrastructure or any service within the scope of the universal postal service that it provides.

Concurrently or not with section 50, Ofcom must maintain a separation for accounting purposes between its retail and access operations, as directed by Ofcom. Furthermore, the regulation of service providers includes a USP accounting condition on a universal service provider to maintain a separation for accounting purposes between different matters, as directed by Ofcom; comply with cost identification and orientation rules made by Ofcom; comply with rules set by Ofcom about the use of cost accounting systems; and secure that its compliance with those systems is audited annually by an independent auditor.

These conditions covered accounting separation, cost methodologies, and reporting under section 39 of the Postal Services Act 2011. In addition, Ofcom has also imposed regulatory accounting guidelines (RAG). Moreover, Ofcom has the duty to regulate the price of postal service and consumer protection. Ofcom also has the duty to determine and set the postal price rate at an affordable price under section 36.

Section 36's designated USP conditions¹⁸⁹ are as follows:

(4) A designated USP condition may make provision as to the tariffs to be used for determining prices in accordance with which a universal postal service, or part of a universal postal service is provided.

(5) In exercising the power conferred by subsection (4), OFCOM must seek to ensure that—

(a) the prices are affordable,

(b) the prices take account of the costs of providing the service or part of a service, and

(c) the prices provide incentives to provide the service or part of a service efficiently.

For consumer protection, the postal regulatory commission enacted fair regulations to protect consumers. Consumer protection conditions under section 51¹⁹⁰ impose that a consumer protection condition on postal operators, or postal

¹⁸⁹ *Supra* note 186

¹⁹⁰ **U.S code section 51 Consumer protection conditions**

(1) OFCOM may impose a consumer protection condition on—

operators of a specified description, require them to do one or more of the following: assume liability in relation to specified loss of or damage to certain postal packets; establish and maintain procedures, standards, and policies with respect to consumer protection matters; and make payments relating to qualifying consumer expenses of Citizens Advice and Citizens Advice Scotland.

(5.2) The Office of Communications Act 2002 established the functions and the regulation of Ofcom. The act stated the element of Ofcom's board, which consists of a non-executive chairman; an executive director, including the chief executive; and non-executive directors.¹⁹¹ Ofcom's membership, therefore, should be comprised of a chairman appointed by the secretary of state, the executive member, and other members appointed by the secretary of state under section 1(2)¹⁹² and should consist of such a number of members as the secretary of state would deem appropriate. The secretary may determine Ofcom membership as no less than three or no more than six.

(5.3) For the duties and powers of Ofcom, as defined in the Communications Act 2003, the act provided the principal duties for Ofcom to carry out its postal functions and further the interests of citizens in relation to communication matters, as well as the consumer in relevant markets by promoting the competition.¹⁹³

Hence, the duties of Ofcom in the postal business, as stated in section 3(1),¹⁹⁴ are as follows:

-
- (a) every postal operator, or
 - (b) every postal operator of a specified description.

(2) A consumer protection condition is a condition requiring the operator to do one or more of the following—

- (a) to assume specified liability in respect of specified loss of or damage to specified postal packets,
- (b) to establish and maintain procedures, standards and policies with respect to consumer protection matters, and
- (c) to make payments relating to qualifying consumer expenses of the National Consumer Council or the Office of Fair Trading.

¹⁹¹ Office of Communication, *how Ofcom is run*,

<http://www.ofcom.org.uk/about/how-ofcom-is-run/>, last visited Jun. 2015).

¹⁹² The Office of Communication Act 2002

¹⁹³ *Supra* note 179, page 9

¹⁹⁴ The Communication Act 2003

1. to further the interests of citizens in relation to communications matters and
2. to further the interests of consumers in relevant markets, where appropriate, by promoting competition.

But Ofcom duties and responsibilities are set out in a Ofcom Members' Code of Conduct, and a Ofcom Register of Members' Interests is maintained. The purpose of applying this code of conduct is to ensure little interfering with the exercising of the board's judgment. The board, consisting of the non-executive members, should be independent of management and free of any business or other relationships. A person must have a wide range of experience to be a member of the Ofcom.

(6) Exclusive privilege of the postal service provider

Formerly, the UK postal service provider is divided into two types, as follows: (1) The government designated Royal Mail as a designated operator for providing the universal postal service regulated by Postcomm. The post office required a universal service at an affordable flat rate covering priority and non-priority letters and packages, non-priority service for parcels weighing up to 20 kg, etc. Hence, the independent regulator Postcomm at that time had to issue licences to postal operators, including Royal Mail.¹⁹⁵ (2) Postal operators are the private companies that need to receive licences from the regulator, Postcomm. Licences are issued for a rolling ten-year period¹⁹⁶.

Since Royal Mail operates the UK postal business, a designated operator as a company remains the government's tool for universal service needs to compete with other private operators. Originally, Royal Mail received certain privileges on Value Added Tax (VAT) or VAT exemption, controlled by Her Majesty HM Revenues and Customs (HMRC). It is for core postal service delivery products. This exemption was provided for universal postal service under the European VAT directive.¹⁹⁷ The other privilege is traffic regulation, but after the revision of the Postal Services Act 2000.

¹⁹⁵ *Supra* note 161, p. 9

¹⁹⁶ *Supra* note 161, p. 9

¹⁹⁷ Royal Mail Group, *Privatization*, <http://www.royalmailgroup.com/about-us/privatization> (last visited Jul. 10, 2015).

these exemptions have no longer applied specifically to Royal Mail vehicles but will apply to all USPs.

Presently, Royal Mail accesses certain privileges in connection with its operation that are posted to the armed forces. On the other hand, the postal provider needs to provide free postal services for the blind, the minimum requirement for all postal operators in the United Kingdom, not only Royal Mail.¹⁹⁸ Moreover, Royal Mail also receives other exclusive privileges. Royal Mail is under legal obligation to the deliver mail bags by ship and aircraft to geographically remote areas. It needs to fulfill its universal service obligation so it can enter into commercial negotiations to secure mail transportation to areas not accessible by road.

It can be said that postal exclusive rights were granted to all kinds of postal service providers, whether Royal Mail or postal operators. They are entitled to provide equal service, but only Royal Mail may be protected in some respects for flexibility in operating universal postal service, which does not cause the loss of such operations.

3.3.2.3 SWEDEN

(1) The history and evolution of the Swedish postal business

The Swedish postal system operates in one of the most liberalized mail markets in the world¹⁹⁹. The postal business in Sweden was established as The Royal Postal Agency in 1636 by the Swedish dynasty. The business was operated as a government agency into the 1990s. It was then transformed into a government-owned limited company. In 1993, the national post, called Posten at the time, lost its monopoly privileges on letter mail²⁰⁰ and began to transform into a private corporation²⁰¹. In 1994, the government officially privatized the business, and Posten became a new entity called Posten AB. This entity remains entirely owned by the Swedish government as of 2015²⁰². Moreover, this transformation triggered the liberalization of the postal market.

¹⁹⁸ *Id.*,

¹⁹⁹ Consumer Postal Council, *index of postal freedom, 2012, Sweden 2*, www.postalconsumers.org/PFI.

²⁰⁰ *Id.*,

²⁰¹ *Id.*,

²⁰² *Id.*,

After the transformation, the national Telecom Agency was given responsibility for postal matters and became the Swedish Post and Telecom Authority (PTS)²⁰³.

The most outstanding change to Posten AB's operations was a decision in 2000 to replace numerous post offices with a franchise net of postal services, which were operated by grocery shops and petrol stations. Postal service centres, run by Posten, were maintained for business clients only. The largest service for Posten AB distributors was regular mail, but it was under increasing competition from private companies. On 24 June 2009, Posten AB merged with Post Danmark and became a new holding company called PostNord AB. PostNord is owned by the Swedish (60 per cent) and Danish (40 per cent) governments.

Currently, the postal business in the European zone is regulated by PostNord AB. In Sweden, there are presently 30 such postal operators, but the clearly dominant player is Posten Sverige AB, a subsidiary of PostNord AB.²⁰⁴ PostNord AB is the largest postal and logistic operator in Sweden, offering communications and logistics solutions to, from, and within the Nordic region. Their mission is to connect people and businesses reliably, efficiently, and on time. Hence, in Sweden, the designated operator of postal business is Posten Sverige AB. Its units are responsible for optimizing marketing and sales activities, production structure and organization across all business areas²⁰⁵.

Sweden has The Swedish Post and Telecom Authority (PTS) as its regulator. PTS is a public authority which monitors the electronic communications and postal sectors in Sweden and reports to the Ministry of Enterprise, Energy and Communications. PTS is managed by a board appointed by the government. PTS works within four primary areas²⁰⁶: focusing on consumer interests, sustainable competition, the efficient utilization of resources and securing communications.

²⁰³Swedish Post and Telecom Authority (PTS), *PTS's postal sector activities 1-2*, http://www.pts.se/upload/Faktablad/En/2014/Faktablad-post-2014_ENG.pdf (last visited Jun. 3, 2015).

²⁰⁴ *Id.*

²⁰⁵PostNord, *Organization*, <http://www.postnord.com/en/about-us/organisation/> (last visited May 28, 2015).

²⁰⁶ Swedish Post and Telecom Authority (PTS), *Operation* <http://www.pts.se/en-GB/About-PTS/Operations/> (last visited Jun. 7 2015).

As an independent agency according to the Swedish public authority model, PTS monitors the compliance of market players to with postal legislation, verifies that missing letters are returned to senders, and ensures secure access to basic payment services. Meanwhile, the government is not allowed in any case to govern how PTS should apply an act or decide in a particular matter relating to the exercise of official power.

PTS's funding comes from operator charges and licensing fees. Meanwhile, PTS has numerous tools available to govern the communication market, but should not intervene if the market functions properly. On the other hand, if the market for various reasons does not function, PTS may use the minimum intervention tool necessary to achieve the desired result.

PTS's tools can be compared to the steps on a staircase as follows:

First, the lower steps on the staircase are the lowest intervention measure, such as describing or providing information about a problem.

Second, if these measures are insufficient, PTS will use a more extensive intervention such as supervision, decisions on obligations, or the issuing secondary legislation.

(2) The law related to privatization and operations

In 1636, Posten AB was operated as a government agency company; all shares were owned by the states. Later, in 1993, the letter monopoly was abolished and the postal market became fully liberalized. In 1993, the Swedish government passed a new postal services act to set up a licensing system and ensure a quality postal and payment service. Operating under this act, the privatization of Posten AB from a public commercial enterprise to a Limited Liabilities Company was started on 1 march 1994. The terms and conditions of licenses issued by the regulatory authority focus on Post AB providing the services. The intention is for everyone to have access and for postal services to be reasonable priced²⁰⁷.

Posten AB has gradually progressed from a public commercial enterprise into a modern customer business. In 2000, a business plan was developed in order to achieve 3 mains goals: profitability, customer satisfaction, and satisfied personnel. The

²⁰⁷ United States Postal Union, *Status and structure of postal entities of Sweden 2*.

post office was replaced by a franchise net of postal service points run by grocery shops and petrol stations. These service points maintained postal service for Posten AB's business clients. However, during that period, the competition was increasing from private postal companies. The largest competitor was Citymail. In 2001, the legislation was revised and enforced on 1 January 2002. The law sets the standards for the basic cashier services and included a universal service obligation. The universal postal service includes letter posting of items up to 2 kg; parcels up to 20 kg; books, newspapers, and periodicals; and supplementary services such as insured or recorded delivery.

Sweden's postal operations started under governmental control and continually changed in structure until 1992, when the government established the Independent Regulatory Organization under the Postal Act of 1993. Sweden's Postal Affairs completed liberalization in 2001 without the monopoly regime. On 24 June 2009, Posten AB merged with Post Denmark to form the new holding company PostNord AB, owned by the Swedish (60 per cent) and Danish (40 per cent) governments.

Incurrent postal operations, Posten AB contracts another party to assist in providing services licensed by the PTS. Services are completed under two separated conditions (Posten AB and postal operator) and Posten AB ensures that the services are performed in accordance with the Postal Services Act, the Postal Services Ordinance, regulations issued under the Postal Services Act and also under the licensing conditions of PTS.

The related Postal Affairs operations laws in Sweden make the postal service subject to the act (2010: 1045), and determine postal service operations through the Postal Services Ordinance (2010: 1049).

The author conclude that all postal operators must receive a license from Posten AB acting as the licensing authority to provide postal services. Under Chapter 2, sections 2 and 4 of the Postal Services Act and the Postal Services Ordinance (2010:1049)

The licensing conditions under the Postal Services Act and the Postal Services Ordinance are as follows:

1. Provisions of the universal postal service include

- 1.1. An obligation to provide universal postal service (chapter 3, sections 1, 2 and 6 of the Postal Services Ordinance) means that Posten AB is designated to be the postal service provider in universal postal service under the condition of chapter 2, section 4, item 2 of the Postal Services Act which states that “a license to conduct postal operations may be issued subject to conditions concerning the obligations of the license holder to provide the entire or parts of the universal postal service in accordance with chapter 3, section 1
- 1.2. Clearance and delivery: Posten AB as the universal service provider shall ensure the weight of postal items, up to and including 20 kg, is cleared and delivered every Monday to Friday. In this context, weekends and public holidays also include Midsummer Christmas and New Year’s Eve. The density of points of contact and access points shall take account of the needs of users. Even the universal service or postal provider should have the same scope and should assure all users a service of the same quality as to date indicated by Government Bill 2009/10:216, p. 42 ff.
- 1.3. Routing time: It is indicated that at least 97 per cent of letters shall have been distributed within three working days and at least 85 percent of letters deposited for overnight delivery before the latest point in time for deposit and for which the sender has paid the price applicable²⁰⁸.

²⁰⁸ (Postal Service Act, Chapter 2 **Postal operations**, Section 4, item 2 state

“2. provide the entire or parts of the universal postal service in accordance with Chapter 3, Section 1 and to satisfy in a particular manner that prescribed there and by Chapter 3, Section 2,” and Chapter 3, Section 1, item 3 state

3. the provisions concerning routing times, issued by the Government or by the authority appointed by the Government, are complied with,”

Section 6 of the Postal Services Ordinance state

“The universal postal service should fulfil, in addition to the provisions of Chapter 3, Section 1 of the Postal Services Act (2010:1045), the requirement that at least 85 per cent of those letters that have been deposited for overnight delivery before the stated latest point in time for deposit shall, irrespective of where in Sweden they have been deposited, have been distributed within Sweden on the following working day. At least 97 per cent of the letters shall have been distributed within three following working days.

The Swedish Post and Telecom Agency shall check annually that the requirements of the first paragraph are satisfied and annually publish results concerning this check.

The Swedish Post and Telecom Agency may issue regulations concerning the latest point in time for deposit and further regulations concerning requirements on

- 1.4. Price: Posten AB has the duty to provide the universal postal service at reasonable²⁰⁹, transparent, non-discriminatory²¹⁰ and cost-oriented prices.²¹¹
 - 1.5. Transparency relating to prices and other conditions: Posten AB should make available to the public the general conditions for those services included in the universal postal service so the prices or any conditions shall be offered to anyone and should be publicly available. Moreover, any user who requests the price information has the right to receive this information in writing or by request.
 - 1.6. Discounts and other special conditions, etc.
2. Reliability (privacy and security)
- Posten AB shall ensure that
- 2.1. Addressed mail items shall not be damaged through external impact during handling or by the weather and wind.
 - 2.2. Mail items are handled observing established distribution procedures so that they are unnecessarily exposed to unauthorized persons or left unattended in a way that entails risk from the perspective of privacy.
 - 2.3. Adequate relevant knowledge is provided to staff to protect the senders and recipients' privacy and the rules relating to the duty of confidentiality and the protection of privacy contained in chapter 4, section 8 of the Swedish Penal Code.
 - 2.4. The premises where addressed mail items are handled deal with those items with care and meet reasonable requirements in respect of security. Reasons:

routing times under Chapter 3, Section 1, second paragraph of the Postal Services Act.”

²⁰⁹ Chapter 1 Section 2 of the Postal Services Act. ‘Reasonable prices’ means that the prices should not be onerous.

²¹⁰ Chapter 3, Section 2 of the Postal Services Act in 2010 The meaning of this is shown by Government Bill 2009/10:216, p. 55 state that ‘Non-discriminatory pricing’ means that prices and other conditions shall be applied equally in relation to the various parties to the contract, both actual and potential parties. Such parties to the contract may, for example, be corporate customers, consolidators of mail for various users and other postal operators. Discounts and other special conditions shall thus be offered to all users on the same terms.

²¹¹ In the same government Bill state The term ‘cost-oriented prices’ is defined in p. 58 ff of the same Government Bill.

These conditions entail a clarification of chapter 2, section 6 of the Postal Services Act (chapter 2, section 4, item 1 of the Postal Services Act).

3. Dealing with complaints (publishing complaints): Posten AB has a duty to publish information about the number of complaints and how to deal with those complaints.²¹²
4. Disclosure requirement
 - 4.1. Reporting changes to the organization, amended condition, operational disruptions, etc.
 - 4.2. Reporting service points etc.
 - 4.3. Reporting exemptions from the ‘5-day rule’

The universal service means that a distribution shall take place on every working day and at least five days a week for recipients, but an exemption was granted strictly depending on special circumstances or geographical conditions to protect the quality of the universal service.²¹³
5. Postal services for persons with functional impairments
6. Costing and reporting
7. Total defence requirement especially for the license holder, who shall perform emergency response measures for the Swedish Total Defense following an order from PTS and in return for cost-oriented compensation.
8. The term of the license conditions
9. Reservations

Moreover, under the Swedish postal licensing system, PTS appoints Posten AB as the provider of “universal postal services”. As the service provider, Posten AB must operate under the licensing conditions as mentioned above, which include a

²¹² Postal Services Act, Chapter 2, Section 4, item 3 states:

“3. publish information annually about the number of complaints and how complaints have been dealt with,”

Chapter 4, section 12 states

“The Government, or the authority appointed by the Government, may issue regulations concerning the dealing with complaints and the publication of details about complaints as referred to in Sections 10 and 11.”

²¹³ *Id.*, 32

requirement that the company shall manage and distribute mail to everyone in Sweden five days a week.

Posten AB must also have a national network of service centres – currently in the form of business service centres, partner outlets, and stamp outlets– that responds to the needs of users. Hence, Sweden’s postal service provider is divided into two types. Firstly, Posten AB is the designated operator under the Postal Service Act and Postal Service Ordinance to serve the universal postal service. Secondly, there are private postal providers called license holders under the licensing conditions.

The licensing conditions in Sweden are separated into two types: licensing conditions for Posten AB, and licensing conditions for postal operations license holders (2010:1045). The licensing conditions for Posten AB consist of (1) Provisions of the universal postal service (2) reliability (3) dealing with complaints (4) disclosure requirements (5) postal services for persons with functional impairment (6) costing and operating (7) total defence requirements (8) the terms of the licensing conditions and (9) reservations. The licensing conditions for postal operations (license holders) under chapter 2, section 4 of the postal services act (2010:1045) are as follows:

1. Quality requirement: The license holder shall be able to conduct the postal operation reliably and in a way that maintains the protection of the senders’ and recipients’ items.²¹⁴

1.1. Undeliverable letters: The license holder has a duty to return these letters to the sender. If this is impossible, the letter shall be sent to PTS in case of unknown senders.

1.2. Postal Infrastructure:

Handling post to box addresses: This obligation of the license holder refers to postal items weighing up to and including 2 kg, as well as items conveyed by other licensed holders. License holders must demonstrate that their post with box addresses

²¹⁴ Chapter 2, Section 6 of the Postal Services Act states

“Postal operations shall be conducted under circumstances that satisfy reasonable demands for reliability and so that the protection of the personal integrity of senders and recipients is maintained.”

has been handled reliably²¹⁵. One requirement for a properly functioning postal service is that all postal operators must reach all addresses within their area of distribution.

Redirection services allow that postal items weighing up to and including 2 kg be redirected to addresses located outside a license holder's area of distribution.

2. Dealing with complaints: The license holder shall establish routines to ensure that complaints from users are received with transparency and fairness. However, the complaints procedure shall be rapid and handling costs shall be reasonable²¹⁶. PTS requires the license holder to provide documents of complaint, and that the means of complaint be transparent, simple, and inexpensive. In addition to satisfying the PTS's requirement, the license holder should apply the complaint procedures drawn up by the Independent Postal Operators Association.
3. Disclosure requirement, etc.
4. Winding up a postal operation
5. The terms of the licensing conditions

²¹⁵ Chapter 4, Section 5 of the Postal Services Act states

“A license holder is obliged to make it possible for postal items, weighing at most 2 kg, which have been conveyed by other license holders to reach the facilities for mail delivery to recipients of which the first-mentioned license holder is in possession. The conditions for this shall be reasonable and competition neutral and also non-discriminatory with respect to the professional activities of the license holder.”

²¹⁶ Chapter 4, Section 10 of the Postal Services Act states

“The licence holder shall lay down procedures to deal with the users' complaints. These procedures should be transparent and aimed at establishing fairness and also be rapid and entail reasonable processing costs.”

Article 19 of the Postal Services Directive of Commission of the European communities state that

“In order to determine which undertakings may be required to contribute to a compensation fund, Member States should consider whether the services provided by such undertakings may, from a user's perspective, be regarded as substitutable to universal services, taking into account the characteristics of the services, including added value features, and their intended use. In order to be considered substitutable, the services do not necessarily have to cover all the features of the universal service, such as daily delivery or complete national coverage. In order to comply with the proportionality principle when determining the contribution to the costs of the provision of universal service in a Member State asked from these undertakings, Member States should use transparent and non discriminatory criteria such as the share of these undertakings in the activities falling within the scope of the universal service in this Member State”

6. Reservation

PTS as an independent authority must also verify any tariff changes according to the price–cap, and be sure that such prices are suitable for the universal service in accordance with the regulatory framework and the consumer protection. Under the licensing conditions, Posten AB and other license holders have a responsibility to protect consumer interests. The PTS licensing requirements in 1.4 direct Posten AB to provide universal service at a reasonable price that is transparent and non-discriminatory. Moreover, PTS is responsible for identifying the mailers of undelivered letters in order to return them.

(3) The postal service provider status and types of products and services

In 2007, Swedish private postal operators had approximately 33 licensed operators and one designated operator called Posten AB. The most important competitor was Citymail because the company had a potential to expand their business operation into central Sweden²¹⁷. The responsibilities (before the merge) were to provide universal postal service. As of 2015, Posten AB has merged with the Denmark postal operator to become PostNord AB. This is a Swedish public limited company owned 60 per cent by the Swedish state and 40 per cent by the Danish State. The company offers communication and logistic solutions within the Nordic region and mail delivery in Sweden and Denmark.

The company is operated by the board of directors, which consists of members of the board, employee representatives, and alternatives from the PostNord executive team. The company's visions are as follows: to deliver world-class communication and logistics solutions to satisfied customers; to develop strong, profitable international logistics and information logistics operations through ownership, partnership and collaboration; to maintain an attractive, stimulating workplace with committed, motivated employees; and to remain an environmentally sound choice for its customers.

²¹⁷ Consumer Postal Council, *Index of postal freedom, Sweden*, http://www.postalconsumers.org/postal_freedom_index/Sweden-_Posten.shtml (last visited Jun. 2015).

Types of goods and services include mail and communications, logistics, and e-commerce.²¹⁸ Mail and communications ensure that customers receive their mail smoothly and efficiently. In Logistics, the company offers parcel services; express and courier services; group age; air and ocean delivery, etc. In the area of e-commerce, the company helps European e-retailers to set up, and helps national e-commerce players to expand in the Nordic region.

Hence, PostNord AB operates in the market of distribution of goods and (physical and electronic) messages. It contains two divisions: marketing and sales, and production and logistics. The former is responsible for service centres and partner shops. The latter deals with the delivery and collection of letters²¹⁹.

(4) The regulatory body and related regulations

As the author mentioned above, the Swedish National Post and Telecom Agency (PTS) regulates the postal business in Sweden. PTS is the independent national government agency and licensing authority reporting to the Ministry of Enterprise, Energy and Communication. Its duty is to ensure that all postal operators provide services according to the licensing conditions²²⁰It does not regulate parcel and bulk mail delivery. The PTS is controlled by a board appointed by the government and managed by the Director General. Its duties have four primary areas:²²¹focusing on consumer interests, sustainable competition, the efficient utilization of resources, and secure communications.

Posten Sverige AB provides these services through the wholly-owned subsidiary company Svensk Kassaservice AB. The universal postal service includes the following services: letter-post items up to 2 kg; books, newspapers, periodicals; parcels up to 20 kg; insured and recorded delivery.²²²

PTS is funded through operator charges and licensing fees.

²¹⁸ PostNord Group, *Mail and communication*, <http://www.postnord.com/en/services/mail-communication/> (last visited Jul. 2015).

²¹⁹ Universal Postal Union (UPU), *Status and structure of postal entities of Sweden 1 - 2*. (last visited 2 August 2015)

²²⁰ *Id.*,

²²¹ The Swedish Post and Telecom Authority, *Operation* <http://www.pts.se/en-GB/About-PTS/Operations/> (last visited Jun. 2015).

²²² *Id.*,

(5) The exclusive privileges of postal service operators

Posten AB has the authority to set up service prices and it must comply with the legislation on fair competition, which is supervised by the National Competition Authority. PTS is responsible for verifying that the tariffs comply with the price-cap and remain within the regulatory framework. The prices should be uniform, reasonable, and based on actual costs. However, The Postal Services Ordinance and the licensing conditions also include a price-cap for individual domestic letters up to 500 grams. The maximum allowed increase is the change in the retail price index.²²³

3.3.2.4 JAPAN

(1) The history and evolution of Japan Postal business²²⁴

Japan's postal service was started in 1871 by Hisoka Maejima and the post boxes were set up while the service was made available to the public. Maejima also proposed related postal businesses including postal money orders and postal savings services. Postal money orders and postal savings services were launched in 1875. Starting in 1878 and before the Second World War, postal savings were used for social capital throughout Japan, and this became widely known among the Japanese people. The reason for this is that not only is postal savings the safest way of depositing money, but it is also a way of contributing to the development of both the local communities and the nation. After the Second World War, the Ministry of Post and Telecommunication was established in 1949, and the postal savings system was relaunched. In 2001, as a result of the Japanese government's reorganization of its ministries and agencies, the new Postal Services Agency was established to expand the independent investment of postal savings. In 2003 the agency was reorganized as Japan Post under the ownership of the government. The Ministry of Public Management, Home Affairs, Post and Telecommunication (MPHPT) operated under the Japan Post law²²⁵. The government also released the "basic policy on the privatization of the postal

²²³ Universal Postal Union (UPU), *Status and structure of postal entities of Japan* 3.

²²⁴ Japan Post Bank, *Annual report, year ended March 31, 2013* 2 -3 (2013), <https://www.japanpost.jp/en/group/disclosure/2013/>.

²²⁵ Economic research office, General Policy Division, Information and Communications Policy Bureau, "Development of Postal Service Administration," *White paper 2007* 68 (2007), <http://www.soumu.go.jp/johotsusintokei/whitepaper/eng/WP2007/chapter3-7.pdf>

services” in September 2004. The basic policy imposed that Japan Post would be privatized in 2007 after a transitional period based on the following five principles on advancing the privatization of postal services: ²²⁶ revitalization, consistency, convenience, resource utilization, and consideration.

To fulfil the interest of the people over-the-counter services, postal services, postal savings, and postal life insurance were to remain available at a high quality and low price. Also, funds from the public sector were to flow into the private sector.

In 2005, the Postal Service Privatization Act was enacted by Japanese government. In 2006, Japan Post Holdings Co., Ltd was founded to plan for the privatization of postal services. In 2007, Japan Post’s businesses were separated into four companies (a mail delivery company, an over-the-counter services network firm, a postal saving company, and an insurance services company)²²⁷ called Japan Post Network Co., Ltd, Japan Post Service Co., Ltd, Japan Post, Bank Co., Ltd and Japan Post Insurance Co., Ltd With the 100 per cent shareholder of Japan Post Holdings²²⁸ but it requires the JAPAN POST HOLDING as the parent company to list and sell the mail shares but during the transition period, the share are to be sold up to two – thirds of the shares of the parent company²²⁹. However, JAPAN POST BANK and JAPAN POST INSURANCE would operate under normal company law, without the government’s guarantees for their deposits or policies. Japan Post Bank and Japan Post Insurance would also be responsible the payment of taxes and client security funds. On the other hand, JAPAN POST SERVICE would continue to operate the postal monopoly of JAPAN POST, and JAPAN POST NETWORK would also provide a counter services network which was created by statute. On 8 May 2012, the “Act for Partial Revision of the Postal Service Privatization Act and others” was promulgated, with the merger of JAPAN POST SERVICE Co., Ltd and JAPAN POST NETWORK

²²⁶ *Id.*, p. 67.

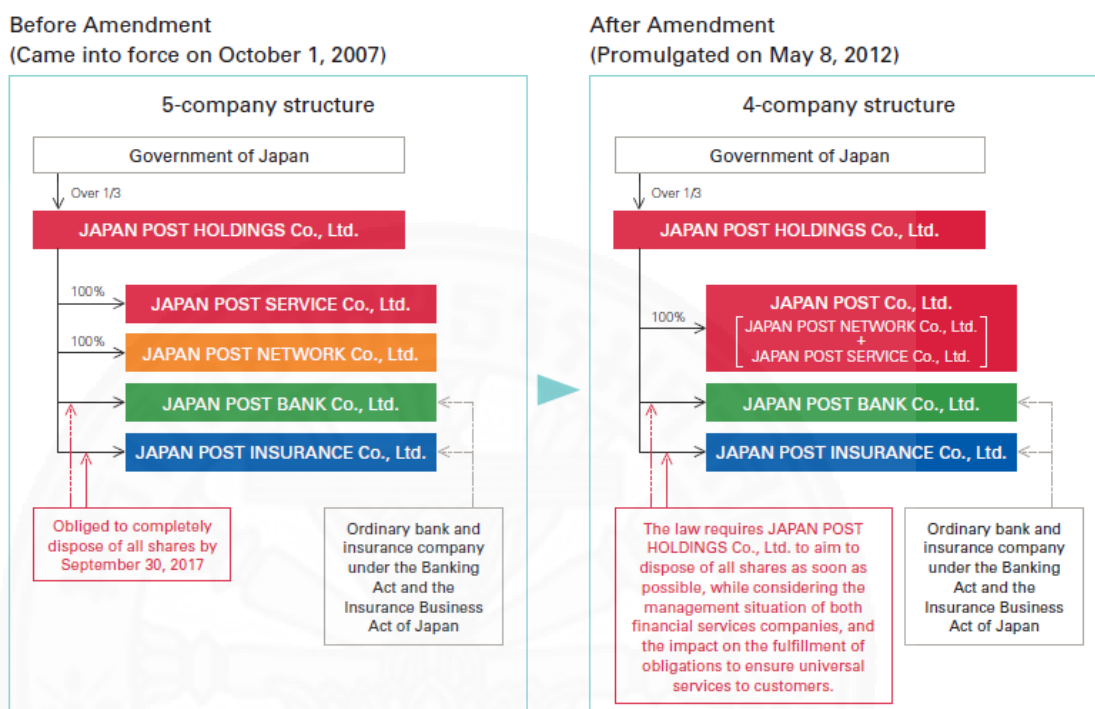
²²⁷ *Supra* note 225

²²⁸ *Id.*,

²²⁹ James I. Campbell Jr. and Amelia Porges, “How Much Postal Reform in Japanese Postal Privatization” *Handbook of Worldwide Postal Reform* (MPG Books Ltd 2008).

Co., Ltd into JAPAN POST Co., Ltd . This resulted in the restructuring of JAPAN POST GROUP from five companies to four companies²³⁰.

Figure 3.1²³¹ Japan Post Group, Pre-Merger and Post-Merger



Accordingly, the JAPAN POST GROUP would continue to provide customers with better postal, basic banking and insurance services at post offices nationwide. The act also required JAPAN POST HOLDING Co., Ltd to dispose of all shares of JAPAN POST BANK Co., Ltd and JAPAN POST INSURANCE Co., Ltd as soon as possible. Following the earthquake at the end of 2012, the Japanese government disclosed the plan to dilute the shares of the JAPAN POST HOLDING Co., Ltd within three years.

(2) The related laws of privatization

The privatization of the postal business in Japan started in 2003 when the Postal Service Agency was established and later reorganized as JAPAN POST with the government as the shareholder by law. In 2005 the Japanese government enacted the Postal Service Privatization Act. In 2007, the JAPAN POST HOLDING CO., LTD was

²³⁰Supra note 224, p. 25

²³¹ *Id.*,

founded, and it divided its operation into four types of companies. The postal affairs in Japan were under the 5 companies, namely, JAPAN POST HOLDINGS Co., Ltd, JAPAN POST NETWORK Co., Ltd, JAPAN POST SERVICE Co., Ltd, JAPAN POST BANK Co., Ltd and JAPAN POST INSURANCE Co., Ltd. For these companies, the government policies in 2012 on the merger of companies aimed to resolve the problems of duplication in management and some wasteful operation, and to secure integrated operation²³². The Act of Partial Revision of the Postal Service Privatization Act and others created a merger of JAPAN POST SERVICE Co., Ltd and JAPAN POST NETWORK Co., Ltd. The law also required that the JAPAN POST HOLDING CO., LTD dispose all shares of both companies as soon as possible based on the management situation of both companies and the impact on the fulfilment of obligations.²³³

In summary, laws related to the privatization of Japanese postal affairs include the following:

1. The Postal Service Privatization Act defined the basic structure, procedures, and the intention of process. The Law of the Privatization of the Postal Services (promulgated on 21 October 2005) states that, “measures should be taken to ensure fair competitive conditions for operators engaged in the same type of business.” Moreover, the Japan Fair Trade Commission considered its responsibility to review such issues from the viewpoint of Competition Policy.

2. Another law related to postal business following the merger was the Act for Partial Revision of the Postal Service Privatization Act others, the amended legislation promulgated on 8 May 2012. The scope of enforcement in this act is listed below²³⁴ :

- The government will permanently retain at least one-third of the shares in JAPAN POST HOLDING.
- The government will shift the authorization system to the notification system.

²³² UNI Liaison Council Japan (UNI-LC Japan), *Revised Postal Privatization Reform Law Established New Japan Post started from October 2012* page 2 (2013).

²³³ *Supra* note 224

²³⁴ The Life Insurance Association of Japan, *Chairman's Statement on Enforcement of Act for Partial Revision of the Postal Service Privatization Act (2012)* <http://www.seiho.or.jp/english/news/2012/0427.html> (last visited Jun. 15, 2015).

- The government shall oblige JAPAN POST HOLDING and JAPAN POST SERVICE to provide a universal service and shall take “required measures” to ensure the universal service.

(2.1) Regulatory laws after the privatization

Following the privatization of postal affairs, the postal privatization law imposed fair and free competition to ensure equal conditions for competition with business operators who carry on the same type of services. It also reinforced the idea of leaving the business to the private sector as much as possible.²³⁵

Furthermore, there are four specific laws to determine the postal companies’ objectives and business scopes: the Japan Post Holding Corporation law, the Japan Post Service Corporation law, the Japan Post Service Network Corporation law, and the law on the independent administrative entity. The law on adjustment amends the postal law and other existing laws.

The postal privatization law designated a committee consisting of five members, i.e. the Postal Privatization Committee (PPC). The PPC was to be appointed by the Prime Minister and report to the cabinet level postal privatization headquarters overseeing privatization. The law required that the Japan Post Holding define the implementation plan for postal business. The Japan Post Holding was also required to provide an opinion regarding the restrictions of the Japan Post law and licensees who would operate the new businesses. As described above, for postal business, the JAPAN POST Co., Ltd operated under the JAPAN POST ACT Law no. 100 issued on October 21, 2005 for regulating postal affairs. After its privatization, the Japanese government enacted the Act for Partial Revision of the Postal Service Privatization Act and others which resulted in the merger of JAPAN POST NETWORK CO., LTD and JAPAN POST SERVICE CO., LTD into JAPAN POST CO., LTD with JAPAN POST HOLDING CO., LTD as the 100 per cent shareholder. Moreover, the law required the JAPAN POST HOLDING Co., Ltd to dispose all shares of JAPAN POST BANKING and JAPAN POST INSURANCE as soon as possible, aiming to ensure management efficiency and guarantee universal basic services to the people. As of 2015, JAPAN POST HOLDING CO., LTD remains its 100 per cent shareholder status.

²³⁵ *Supra* note 229, p. 376 – 377

(2.2) Postal operation after the privatization of postal affairs

The Japanese postal business is operated by the four companies within JAPAN POST GROUP with the government as the sole shareholder and JAPAN POST HOLDING CO., LTD as the shareholder in other related businesses for two-thirds of all shares. Postal business in Japan thus remains under a government agency, however the government maintains the policy to distribute the shares to the private sector. As of 2015, the government has put the distribution of shares and the company preparation process on hold. Currently, JAPAN POST HOLDING Co., Ltd and JAPAN POST GROUP operate under the Ministry of Internal Affairs and Communications (MIC), a government institution responsible for matters concerning the administration of the postal service and postal financial services. The MIC also oversees general UPU matters such as organization, budget and the Acts of the UPU.²³⁶This ministry was changed from the previous Ministry of Public Management, Home Affairs, Posts and Telecommunication (MPHPT)

The group's new structure aims to provide postal, basic banking and insurance services to all customers while continuing to take steps toward enhanced corporate value. The separated mission of each company is outlined below.

- JAPAN POST HOLDING aims to manage group companies.
- JAPAN POST BANK Co., Ltd handles banking related business.
- JAPAN POST INSURANCE Co., Ltd runs the life insurance business.
- JAPAN POST GROUP focuses on the postal business and includes banking counter operation, insurance counter operation, sales of documentary stamps, operation consigned by local government entities, domestic distribution and delivery business, international cargo transport and agency services, as well as logistics.

The law pertaining to universal postal services specified basic services and prescribed that postal services should be provided at the lowest possible expense, on a nationwide scale, and in manner fair to all. The universal postal services as scoped by

²³⁶ Universal Postal Union, *Status and structure of postal entities of Japan* (last visited June 2015).

the postal legislation include the acceptance, conveyance and delivery of postal items (domestic and international) to include

- letter-post items up to 500 grams
- books, newspapers, periodicals, and
- parcels up to 30 kg.

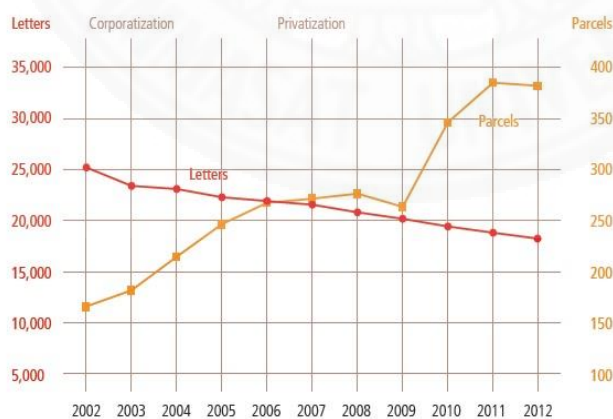
Registered and express services are also included.

In 2014, JAPAN POST Co., Ltd had a total of 11 subsidiaries such as Japan Post Network Trading Co., Ltd, Japan Post Building Management Co., Ltd, Japan Post Delivery Co., Ltd, with the coverage of postal offices in 1,741 provinces, providing basic services related to postal, monetary, and insurance businesses. The company will maintain the universal services for postal business and create a network that connects people, corporation and society. The company intends to provide communication with through secure and quick logistics functions²³⁷.

Regarding the current postal situation in Japan, the mail volume as a product of Japan Post Group Companies has declined by about 14 percent from 2002 to 2011, while the parcel product has increased as describe in Figure 4.

Figure 3.2 Decline in letters and increase in parcel (2002-2012)²³⁸

Decline in Letters and Increase in Parcels (2002-2012)



²³⁷Japan Post Holding Co., Ltd., “Overview of privatization”, *Annual report 2007.9 24* (2007).

²³⁸ *Supra* note 232

It conforms to the trend of nationwide services of letters delivery with an obvious decline in volume by the UPU statistics.

(3) The postal regulations and type of goods and services

The author will specifically explore the regulations of JAPAN POST Co., Ltd pertaining to the operation of its postal related businesses. Japan Post Co., Ltd is under the administration of the Board of Directors, which includes the president, senior executive vice president, executive vice president, and corporate auditor. The Board of Directors is also under the regulation of the relevant ministry of the government sector. Japan Post Co., Ltd aims to maintain universal postal services and create a network that connects people, corporation and society by providing secure communications through reliable logistics. To satisfy the customers' need, the company, with its business strategy, will engage in new growth fields of postal business such as domestic or international logistics.

(3.1) Postal business types and measures

Postal business types include²³⁹ postcards and regular and special stamps. Standard mail services are as follows:²⁴⁰ First class mail includes letters, i.e. standard size items of a certain size and weight, nonstandard size items, and mini letters. Second class mail includes postcards, i.e. standard postcards and reply-paid postcards. Third class mail includes newspapers, magazines and other periodicals issued at least four times annually and approved by JAPAN POST. This includes newspapers published three or more times monthly at a discounted rate. Fourth class mail is a free postage category for material associated with public service or welfare.

Yu-pack, Yu-mail and other services are available for domestic delivery of parcels. Major supplementary services such as express mail and special express mail are offered. Services also include mail forwarding and requests for alterations of address. International mail includes express mail services (EMS), international letter post mail, and ordinary, small packets. Logistics services are also available.

In reference to the postal regulatory agency and its power and duty, postal business in Japan is operated by four companies within the JAPAN POST GROUP

²³⁹ *Id.*, p. 31-32

²⁴⁰ *Supra* note 237

including JAPAN POST HOLDINGS CO., LTD, JAPAN POST CO., LTD, JAPAN POST BANK CO., LTD, and JAPAN POST INSURANCE CO., LTD. These companies are currently under the supervision of The Ministry of Internal Affairs and Communications (MIC) and they retain the status of government agencies in the form of private companies as of 2015.

In relation to postal business operation, MIC prohibits the power over the original articles of incorporation of these companies resulting from the government policy to hold at least one-third of JAPAN POST HOLDINGS. This ensures that the government have the right to veto.²⁴¹

MIC continually exercises more direct supervisory authority such as approval of the social contribution service plan, the company's annual business plan, and Japan Post service's postal regulation and management guidelines.

The ministry also supervises the Japan Post service on its compliance with law and may order inspections, reports, or changes needed for law enforcement. MIC and the Prime Minister establish the basic plan of succession.

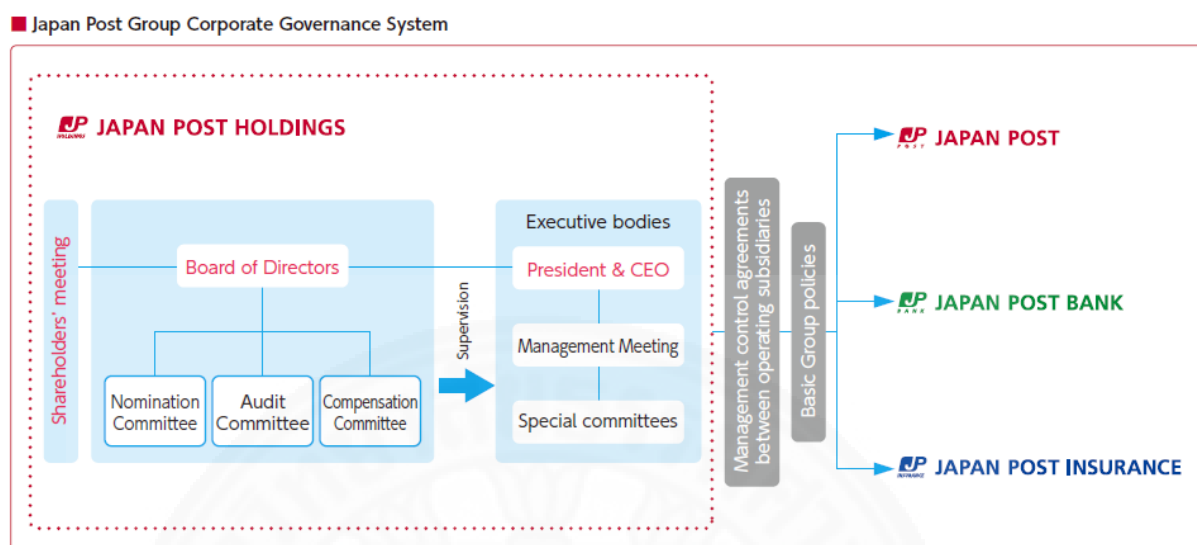
Considering the operational structure of JAPAN POST HOLDINGS²⁴², it is an agency functioning to regulate postal business under the implementation plan concerning the business succession of JAPAN POST, which was approved by the government on 10 September 2007.²⁴³ JAPAN POST HOLDING implements its business plan through the Board of Directors. The Board of Directors comprises a nomination committee, an audit committee, and a compensation committee. The Board defines basic policy for the subsidiaries to comply, designates a chairman and executive officers, specifies business strategies to support investment as a holding company, and supports the new form of implementation after privatization. There are management meetings and special committees. The company regulates all three subsidiaries as shown in figure 4.

²⁴¹ Supra note 229

²⁴² Supra note 237, p. 23

²⁴³ Supra note 237, p. 23

Figure 3.3 Operational and regulatory structure of JAPAN POST HOLDING Co., Ltd²⁴⁴



(4) The exclusive privilege of the postal service operator

The postal services monopoly was originally designated to the government postal agency. However, with later postal privatization and operation by the JAPAN POST Co., Ltd, the company has become the sole provider of basic postal services. The postal law gave JAPAN POST a monopoly for the carriage of correspondence defined as “writing that expresses the intention of the sender, or notifies facts to a specified recipient.”²⁴⁵ In 2003 however, the government enacted a law concerning correspondence delivery provided by private sector operators called the Correspondence Delivery law. The Correspondence Deliver law permits private sector operators to engage in general correspondence delivery services which were previously monopolized by the state.²⁴⁶ Accordingly, the law provides licenses for two types of correspondence delivery services: (1) general correspondence delivery with nationwide six days a week collection and delivery standardized by the Ministry of Internal Affairs and Communications, and (2) special correspondence delivery of large-size or heavyweight correspondence, correspondence delivered within three hours, or

²⁴⁴Japan Post Group, “Japan Post Group Corporate Governance System,” *Annual report 2014* 85 (2014).

²⁴⁵ *Supra* note 229

²⁴⁶ *Supra* note 225, Chapter 3, p. 68

correspondence for which the delivery fee exceeds 1,000 yen. By this law, the private sector may operate in the segment of correspondence letters, but the provider must acquire a license from the Ministry of Internal Affairs and Communications.

Confidentiality protection of the correspondence is an example of correspondence delivery business.²⁴⁷ Since 1 April 2005, there have been no businesses in the private sector to operate general correspondence delivery services.²⁴⁸ Measures taken in the postal management of JAPAN POST Co., Ltd include the determination of price in postal services with advanced notification to MIC. This excludes the goods and services that require an approval of price setting, such as periodicals or printed matters for those with visual impairment.

(4.1) Effects of postal privatization

(4.1.1) Legal effect

The legal effect of the first privatization in 2007 is the liberalization from the monopoly power given to the Japan Post Company by the government. Due to this privatization, the law liberalized the reserved area of postal services to the private operator under strict conditions. The law also defined the applying conditions. This privatization was effected to create the public company called Japan Post Holding co., Ltd, and also set up the rule and period of time required for the release of all shares of the postal bank and insurance. In 2012, the government enacted the legislation to merge the two companies. The legal result of this legislation is that is now no time limit to release the banking and insurance company shares. Moreover, the approval power of the government concerning new mail services business was reduced.

(4.1.2) Business effect

The company has a clear objective in formulating its business plan to fulfill the needs of customers and provide basic services. Importantly, the company is currently preparing to enter into new growth fields in domestic and international logistics. In the domestic logistics field, the company will propose measures for more efficient logistics operations and offer logistics services. In the international logistic

²⁴⁷ *Id.*,

²⁴⁸ *Supra* note 223

field, the company will develop an international express business that will focus on the Asian region and expand.

Considering the growing trends and popularity of these types of businesses, they have the potential to generate revenue to compensate for the decline in income from other businesses and also provide business alternatives for the company.

3.3.2.5 Comparison with overseas countries on the policies in postal affairs

In reviewing the postal affairs in overseas countries, I found that most of them were initially operated by the government and later developed, improved, and changed into private sector operations. An independent agency is typically established to act as a regulatory body on service standard, price, consumer protection, and on the establishment of a fair and free competitive condition for consumer services. Any rules prescribed are typically in line with the government policies by which the policies and direction of business operation are identified. The evolution, role, and duty of concerned organizations in postal affairs are summarized as follows:

Table 3.5: Comparison of international postal system

	US	UK	SWEDEN	JAPAN
Law	US Code and Postal Accountability and Enhancement Act 2006	Postal Services Act 2000 and Postal Services Act 2011 etc.	Postal Service act 2010 and Postal Service Ordinance 2010	The Act for Partial Revision of the Postal Service Privatization Act and others, the amended legislation, the Postal Service Privatization Act, and the Law Concerning Correspondence Delivery provided by Private Sector Operator
Government	US Department of State Bureau of International Organization Affairs.	Secretary of State for Culture, Media and Sport	Ministry of Enterprise, Energy, and Telecommunications	The Ministry of Internal Affairs and Communications (MIC)
Regulatory	Government regulatory commission	OFCOM (formerly Postcomm)	Swedish national post and telecom agency (Post-och telestyrelsen, PTS)	No independent regulatory organization (governed by MIC for

	(Postal Regulatory Commission)			policies and JP holding for operation)
Designated operator	USPS	Royal Mail Ltd under Part 1 Section 2 (6) ²⁴⁹	Posten Sverige AB	Japan Post Group
Monopoly/reserved services	There is a postal monopoly under the Private Express Statutes (PES) and the mailbox rule	Full competitive market in 2006	None of the postal services are protected by a monopoly	There is a monopoly in correspondence, but it has been liberalized
License system	License system	Without license system in the postal sector under the Postal Service Act 2011	License system in private postal operator	License system

The table shows that postal principles are similar, even though some postal services are operated as government agencies while others operate with a public company structure. It depends on the development of technology, entry into the postal competition environment, the expansion of new business like e-commerce and also the continual decline of letter and post card delivery. Besides, the framework set by the European Commission states that postal operation should reduce monopoly power, and it encourages the revision of regulations to support competition. However, universal postal service still exists in all governments which designates an operator and sets up a universal service obligation. In most countries the government attempts to define the standards of private and public postal operation by creating licensing systems and independent regulatory authorities, as is the case in the United Kingdom and Sweden.

²⁴⁹(6) In this Part “Royal Mail company” means a company that—

- (a) provides a universal postal service, and
- (b) is or has at any time been in the same group as—
 - (i) the original holding company, or
 - (ii) another company that is or has at any time been a Royal Mail company.

The postal system in Japan, however, is directly controlled by the government as the shareholder of Japan Post Holding co., Ltd.

In the US system, the government establishes an independent regulatory committee with the aim of postal services being directed only to the USPS. Private postal companies are not covered, and the composition of the regulatory committee is set up by the president, which gives easy access to political intervention. All imposed systems aim to determine the service standard for either a designated operator or postal service providers, contribute to levelling the playing field for fair competition with the private sector, and reduce the state monopoly while but still providing a universal postal service.

Table 3.6: The comparison of international postal systems and the Thai system

	Thai	US	UK	SWEDEN	JAPAN
Government (policymaker)	√	√	√	√	√
Regulatory	-	√	√	√	-
Designated operator	√	√	√	√	√
Universal service obligation and provider		√	√	√	√
License system	-	√	- (All postal operators need to meet the universal postal obligation.)	√	√
Monopoly /reserved services	√	√ (limited products for state security)	-	-	-
More competitors	-	√	√	√	√
The separation of regulatory body and operator	-	√	√	√	√

CHAPTER 4

AN ANALYSIS OF POSTAL BUSINESS LAW PROBLEMS IN THAILAND

The current situation

The author described in previous chapter about the characteristics of Thailand postal organization which was previously undergone privatization. The organization was transformed from the Post and Telegraph Department to Thailand Post Co. Ltd. However, considering that the government is the sole shareholder of Thailand Post Co. Ltd (Thailand Post), it is implied that this business is still under monopoly of the government. The government monopoly is easily noticeable in many ways, especially in basic service of letters and post cards collection and delivery. In the author's view, such policy does not conform to the rapid change in the contexts of economics, trade, and communication of the present society.

The author thinks that the current postal policy in Thailand gives rise to major 2 problems, i.e. monopolized service under Thailand Post; and legal structure in relation to Thai postal affairs.

4.1. Problem of monopolized service of Thailand Post

At present, the operation of postal services involves a number of agencies under the government and private sectors which include Thailand Post, DHL, FEDEX, and travel agencies that lawfully and unlawfully provide delivery service. However, the letters and postcards delivery business is under the sole operation of Thailand Post. Theoretically, monopoly is a crucial problem in economics.

4.1.1 Economic problems

According to economic theory, it is acceptable for the government take control over certain businesses, especially those in relation to public utility or national security. In addition, the government has the responsibility to interfere with the unreasonable monopoly business or business experiencing financial loss. For example,

the Express Transportation Organization of Thailand, a state-enterprise, had been discontinued due to the initiation of free competition in goods and parcels transportation business coupled with effective operation of the private sector in such business. In economic theory, this type of monopoly business of Thailand post will result negatively on postal service in the following aspects.

4.1.1.1 Impact on operators

Thailand Post is a sole service operator of letters delivery in Thailand, without marketing competition in this market. As a consequence, development in the operation of this segment is rather slow due to the lack of motive to improve the product design or increase service efficiency to compete with competitors.

4.1.1.2 Impact on consumers

Monopoly provides a direct impact on postal service consumers due to no other available alternative choices. This differs from the market with a large number of providers where consumers can turn to other providers if they are not satisfied with the service of a provider.

Another important impact on consumers is that they may have to use a range of services at more expensive or higher price because monopolized operation prevents the functioning of pricing mechanism as in liberalized market. As a result, consumers have no choices because the sole provider can set the price without other competitors. Although consumers do not perceive unfair pricing at the moment due to the price fixing by the government, the current price does not reflect the real cost. This pricing system might cause problem to Thailand Post in the long run.

4.1.2 Impact on Thailand Post

Despite the reform of Thailand postal service provider at present as a result of policy on state enterprise reform, Thailand Post remains a state enterprise in which the government is a sole shareholder. And a number of problems rise accordingly. Regarding service aspect, for example, to the business operation system is bureaucratic to some extent especially the office hours of collection and delivery service. Office hours of Thailand Post follows the government office hours with additional half-day service on Saturday. The postal service is closed at 4.30 pm. daily and during festive

holidays. This sometimes can cause the problem to some consumers who are inconvenient to use the service during such limited office hours.

4.2. Problem in legal structure

The current postal service experiences several problems in terms of legal structure. This is because the government policy in the past have imposed postal affairs under monopoly system. In this respect, several problems occur in relation to existing postal laws. The author's investigation pointed out many problems regarding legal structure.

4.2.1 Irrelevance of existing laws to the current postal situation

Postal related law has long been in force but it appears to be in accordance with the change in postal affairs at present (as already discussed in Chapter 3). Improvement of postal service designs has been improved than the past such as logistics business that is not defined in the Postal Act. Logistics is important in business operation today and has a tendency to be liberalized in the late 2015, while the volume of letters delivery or use of service for letters and post cards decline gradually. The decline is due to the increased preference of advanced communication technologies in this globalization era, which offers more choices and convenience to the consumers.

4.2.2 Postal regulatory structure

Having studied related postal law, I noted that there is no governance structure of Thailand Post, as found in foreign countries (as previously discussed in Chapter 3).

(1) There is Postal Affairs Committee, which is designated in accordance with the Decree. However, the roles and responsibilities of this Committee is ambiguous. In addition, there is no clear qualification for each Committee members, and also Committee structure. Furthermore, the governance power among Thailand Post, Postal Affairs Committee and Ministry of Information and Communication Technology is still overlapping.

For example, there is no designated organization to oversee Thailand Post. Although, there is Postal Regulatory Committee, established under the decree, this Committee does not have authority. The committee members comprise regular officers

who already bear high workload and only 1 specialist from postal field. This is not adequate for the Committee to obtain diverse information and opinion on postal affairs.

(2) Current laws and regulations allows Thailand Post in possession of too much power and privileges (as previously discussed in Chapter 2). Instead, some of the power and privileges should be given to the service operators, for example, the power to make arrest or detain. There is also power overlapping of Thailand Post to formulate the policy and supervise the operation, while Thailand Post still provide service as an operator. These excessive privileges given to Thailand Post may prevent equal competition.

The problems in relation to legal structure described above is important to postal service development in Thailand. If without effective and fair regulation, operators are likely to operate the business without focusing on customer benefit. Additionally, this can create a damage to the government that cannot oversight and solve problems.

4.3 Analysis of problem solving approach.

Based on the problematic situation as discussed above, monopoly and existing legal provision may cause several potential impacts and damages. The author thus presents the problem analysis and solution as follows.

4.3.1 Government should liberalize the service of letters collection and delivery

The author has analyzed the disputes over the liberalization of postal services in Thailand, by exploring the needs, advantages and disadvantages of liberalization, Based on this analysis, the author thinks that the government should liberalize the service of letters collection and delivery, with supporting reasons as below.

4.3.1.1 Economics perspective

Liberalization should be initiated in order to prevent monopoly in postal market. Thai postal service was initially under state monopoly, hence failed to satisfy the needs of consumers. The service quality is under standard, and consumers cannot turn to other alternative providers due to very few service providers. Service price also does not correspond to actual service cost, which might create negative impact to the service operators in the future. Generally, monopolized service system is beneficial to

the economic system, in case (1) the particular goods or services have massive impact to society or (2) particular goods or services is necessary to the society but has low incentives that is not attractive for private investment

The disadvantages of liberalization are as follows;

(1) There is no competition in the service provided for people since it is under state monopoly.

(2) Monopoly offers no alternative choices to consumers. Even though there is new entrants in the market, the service charges can be higher than the existing service providers due to barriers or marketing exclusion (Barrier to Entry).

(3) Monopoly makes it difficult to evaluate performance since there is no competitor or benchmark. Hence ineffective management follows.

4.3.1.2 Comparison of postal evolution overseas

As discussed in chapter 2 about the evolution and change in postal affairs and monopolized service in foreign countries, it is obvious that each country tends to evolve towards liberalization. The author thinks that Thai postal policy should be changed to align with those of other countries where postal business is in great development and progress. These countries have more transparent governing bodies, better service operation and have many numbers of private service providers. With the above 2 reasons, the author suggests that the government should liberalize the service of letters collection and delivery, with the proposed guidelines as follows.

(1) Privatization of the business under licensing regime

The authors takes examples from the United States, the United Kingdom, Sweden and Japan. Considering from the examples drawn from European countries like Sweden, it was found that the execution of licensing system is assigned to the independent agency by imposing respective license condition for ensuring that all postal operators provide an appropriate postal service. The procedure or system in the UK offers too much liberty. According to the Postal Service Act 2011, part 3 – Regulation of postal service, section 28 stated that (1) “person may provide postal service without the need for any license or authorization, but the provision of those services by postal operations may be subject to regulatory conditions that OFCOM may impose on them under this part”. It implies that the operation of postal service requires

no application for licensing approval but postal operator has to comply with the imposed rules and regulations. The law stated clearly that the Royal Mail as a government agency is responsible for basic service operation. In the US, systematic management system for postal affairs is in place, allowing the private sector to partially engage in the competition of postal business, as part of the services are under monopoly by USPS under designated Postal Regulatory Commission (PRC). However, the committee functions to regulate U.S Postal service only and also fosters a vital and efficient universal mail system. In the US, the committee structure is appointed by the government. This might not be suitable for Thailand as it allows government intervention.

(1.1) Regulation by an independent committee

Once the private sector enters the business, the government has to set regulatory guidelines for effective operation of the private sector to ensure that the people will receive better services.

(1.2) Change of role of Thailand Post

Given greater number of competitors, Thailand Post may need to change its role for equal competition.

4.3.2 Revision of relevant legal provisions

To solve the problem in relation to legal structure and to support the concept of postal liberalization, the author presents the analysis of guideline for revising legal provision as in the followings.

4.3.2.1 Abolishment of laws imposing monopoly and establishment of Universal Service Obligation (USO)

It is suggested to abolish existing law particularly the Postal Act under section 5 that confers sole authority to Thailand Post which gives rise to several problems discussed earlier.

4.3.2.2 Establishment of regulatory agency to oversight domestic postal business

This agency should be intended to regulate postal business and provide definite operational direction in line with the government policies, and to set the standard criteria for client protection. As suggested by the investigation of the way in which an independent agency was set up in a standard characteristics in the UK, the

operational structure of such agency is implemented by an independent commission under the law that specifies its qualifications and guideline for practice. In addition, the composition of this commission includes postal specialists independent of the government sector and has the authority encompassing the service rules, price control, as well as consumer protection. In comparison, the US's model as in the earlier example takes the form of commission as an independent government agency which is similar to that of Thailand. However, this might affect the continuity and flow of the operation potentially due to the policy intervention by the government sector. Nevertheless, Thailand and the US differ in legal context and legal enforcement regarding penalties. This type may be contradictory to the principle of good regulatory agency based on the guideline of infoDev/ITU ICT Regulatory Toolkit (as discussed in Chapter2). In summary, the elements for an effective regulator should be as follow.

(1) establishing for effective regulator; structural independence, financial independence, functionality. The effectiveness of regulator need the structure and financial independent. The structural independence is to guarantee the maintaining an arm – length of regulator relate to the private industry and other branches of the government

- (2) institutional design options
- (3) administrative structure
- (4) legal status of regulatory authorities
- (5) Ethic rules and conflict of interest
- (6) accountability of regulators and judicial review

According to the study by Worlds Trade Organization (WTO) in telecommunication sector, there should be special rules of basic telecommunication services.

Following WTO agreement on Basic Telecoms, the special rules within broader GATS obligation should focus on the following²⁵⁰ ;

- Non – discriminatory market access
- licensing must not be used as a barrier to trade

²⁵⁰ Franco Papangrea, *WTO Telecommunications Reference Paper*, University of Canberra 3 (Powerpoint presentation).

- All requirements for entry of foreign operator in telecommunications markets must be published

- comply with any additional commitments

WTO Telecommunications Reference Paper aim to²⁵¹

-special treatment of basic telecoms within GATS regime

- restrain anti – competitive use of market power

- promote competitive market – like outcomes

- ensure equitable regulatory policy and rules that are transparent, objective and non – discriminatory

In addition, the study above shows that the element of effective independent regulatory authority should cover 6 areas²⁵² as below.

1. safeguard to prevent anti – competitive practices by major supplier : the method is to guarantee a fair competition in the supply of services by preventing the major supplier from engaging in or continue anti – competitive practices such as using information obtained from competitor with anti – competitive results ²⁵³

2. interconnection ²⁵⁴with major supplier; interconnection is an important to telecommunication services competition. It must be transparent, non – discriminatory and adequately to exclude payment for unnecessary elements or facilities. The public procedures needed to establish interconnection right because to ensure established supplier provide interconnection to competitors, facilitate negotiation and reduce disputes and avoid anti – competitive to all operators and provide the same basis of dispute settlement. For interconnection charges should approximate to control in competitive market which mean the price of products or services naturally tend towards marginal cost. WTO require cost – oriented rate but not define a particular methodology by calculating from the judicious consideration and careful choice.

3. universal service²⁵⁵; for accessing in telecommunication service is necessary and important to social and economic development so the primary purpose

²⁵¹ *Id.*, p. 4

²⁵² *Id.*, p. 5

²⁵³ *Id.*, p. 6

²⁵⁴ *Id.*, p. 7 -10

²⁵⁵ *Id.*, p. 12 -13

of universal service policies is to provide basic telecom services at affordable prices to everyone. WTO's universal service obligation (USO) provision state that to define the kind of universal service is the right of the country which to maintain. USO is a set of measure aiming to grant permanently all users in all point of sufficient level of service²⁵⁶. USO consist of three elements²⁵⁷:

1. Coverage refer to the geographical dimension because the postal service is to be accessible in the entire country

2. Pricing is typically required to be non- discrimination

3. Quality

For USO obligation is not considered as anticompetitive but it is transparent, non – discriminatory, competitively neutral, achieved the defined universal service.

4. transparency in licensing; the licensing is for promotion industry development and regulatory administration and must transparent, fair and not in the purpose to use for anti – competitive including in license revocation and suspension procedures. The elements of licensing should be covered²⁵⁸;

- all the licensing criteria

- the period of time normally to reach a decision on the allocation of license

- the terms and conditions of individual license

- the reason for the denial of a license

5. independent regulator; the concept of independent regulator in WTO reference paper is separate from and not accountable to any supplier of basic telecommunications, government or legislature for the performance. The independent regulator need to avoid conflict of interest between the regulator and operator (including government – owned operator)

²⁵⁶ Xavier Ambrosini, et al., *Universal service obligation in the postal sector: Economic learning from Cross – Country Comparisons* 24.

²⁵⁷ Patrick F.E Beschorner, *liberalization of the postal service market in Europe: entry with universal service and partial coverage* 5, <ftp://ftp.zew.de/pub/zew-docs/dp/dp08122.pdf>.

²⁵⁸ *Id.*, p. 15

For independent regulatory process²⁵⁹ must be objective, independent, transparent and efficient because operators should not have doubt about their rights and obligations with the publicly of all decision, rules procedures and notices. Moreover, it should have independent appeal and dispute resolution arrangement. The principles of Regulatory decision are;

- decision are consisted with the regulator's mandate making in good faith, proper purposes, reasonable and based on factual evidence
- apply the government policy
- public of the reason of a decision
- influence parties have a right to appeal regulatory decisions to a court or tribunal and the right to respond to evidence before a decision

6. allocation and use of scarce resources; the procedure must be objective, transparent, non – discriminatory and timely. In each countries may define their own allocation policies for scarce resources

Regarding postal business in Japan, there is no independent regulatory agency at present. But the postal business remains under the control of the government sector by Ministry of internal affairs and Communications (MIC), previously known as the Ministry of Public Management, Home Affairs, and Posts and Telecommunications (MPHPT) to oversee the policy regulation. Originally, postal business was operated by the government under the authority of Post Office and later on under the Post Office Agency, and Japan Post in 2003. Up until 2007 that the agency was transformed into the Japan Post Group comprising Japan Post Holding Co., Ltd, Japan Post Service Co., Ltd, Japan Post Network Co., Ltd, Japan Post Insurance Co., Ltd and Japan Post Banking Co., Ltd. Later in 2012 following the Postal Service Privatization Act, there was a merger between Japan Post Service Co., Ltd, and Japan Post Network Co., Ltd into Japan Post Co., Ltd. Accordingly, the current postal business and related businesses are managed by 4 agencies, with Japan Post Holding Co., Ltd as the regulator, and the government as the shareholder.

Japan Post Co., Ltd operates under the policy regulation by Japan Post Holding Co., Ltd., under which each of its subsidiaries is separated definitely in its

²⁵⁹ *Id.*, p. 17 -18

operational structure and the Board as described in chapter 3. Therefore, it can be considered that Japan postal business is regulated by the government sector through the status of shareholder of Japan Post Holding Co., Ltd which is executed by the Board under the control of shareholders among which is the government. Its operation is managed by sets of committee, i.e. management committee and special committee.

The last model of regulatory agency to be investigated is that of Sweden. Based on the history, Sweden is at the forefront in Europe that introduced postal liberalization²⁶⁰ and established independent agency. Initially, Swedish postal service was all along operated under the government agency as a company as discussed in chapter 3. It was privatized from a government agency to a government – owned limited company called Posten AB. Until 1993, the government passed new legislation to transform Posten AB into a private corporation and became a state – owned enterprise in 1994 and abolished the monopoly system in light letters, under the regulation of an independent agency, i.e. the Swedish Post and Telecom Authority (PTS) established in 1992. For the current postal business, Posten AB was merged with Posten Denmark into PostNord as a postal holding company between Sweden government and Denmark government and PostNord still serve the postal service by providing the universal postal service both in Sweden and Denmark.²⁶¹ However, to regulate the postal service differ between countries, in Swedish postal business, the PTS is still an independent agency.

The implementation of PTS is overseen by a government-designated committee with the powers and duties detailed in chapter 3. PTS also acts in laying down service standards and requirements in applying for an approval. This allows for freedom and competitive atmosphere. In particular the merger of companies into the PostNord had led to the development of other business segments and resulted in goods and services improvement, and potentially reduced cost of the governments in either countries. Moreover, the expansion of business and services to other countries is

²⁶⁰ Consumer Postal Council, *Index of postal freedom, Sweden*, http://www.postalconsumers.org/postal_freedom_index/Sweden_-_Posten.shtml (last visited Jul. 10, 2015).

²⁶¹ PostNord's Group Office, *PostNord AB*, http://www.postnord.com/globalassets/global/english/document/about-us/postnord_kortversion_en_web.pdf (last visited Jul. 9. 2015).

possible particularly logistics, solutions and other communications from and within the Nordic region.

4.3.2.3 Revision of law in relation to the power and privilege of Thailand Post

Postal related law empowers Thailand Post to impose fine penalty to other private parties and even to grant free of charge for postal. In addition, Thailand Post as a state enterprise has to operate in the same manner as private sector. To promote equal competition, Thailand Post should not be under the regulations and rules of the Trade Competition Act B.E.2542 since this law does not apply to state-enterprise as stipulated in section 4 (2).

4.3.2.4 Prescribing rules and regulations in support of liberalization

Licensing system should be established to engage interested private operators with sufficient capability to invest in postal business. This is to create competitive atmosphere and bring in the quality of goods and services based on the *theory of competitive liberalization*. Universal service should be adopted despite the government's support for liberalized postal service. This is because postal service is the basic communication channel that should be accessible by the public.

4.3.3 Analysis of suitable model for Thailand postal business

As suggested by earlier investigation, postal businesses in overseas countries vary upon their context and changing situation or economic development. The author will consider in separated aspects as follows.

Part I Revision of liberalization law

The current postal business in Thailand is operated by Thailand Post Co. Ltd. as authorized by the government under section 5 of the Postal Act B.E.2477. Since postal business has been carried out by the government from the beginning to now with Thailand Post as a sole operator, it has long been under monopolized system. Based on this study, postal business today is facing a lot of changing situations involving advanced technologies and preference of new businesses such as e – commerce which affected postal business. The trend in those countries under this study including others in Europe mostly directs toward the revision of laws to support postal liberalization, along with identifying definite service areas and requirements in order to establish

service standards and promote competition in postal business. A concrete example is found in Japan where postal operation is still under the government, however, the laws and this business likely to promote increased engagement of private service operators by liberalizing postal services. It aimed to lessen financial burden of the government and increase capacity of domestic postal business.

Part 2 Establishment of independent agency

Establishment of independent agency adopted the concept of neutrality and standards of regulation upon separate operations between the government, providers and clients. The concept to support these ways of practice was introduced in international bodies such as EU and World trade organization. Most of the foreign countries being studied followed this concept but some of them such as the US did not employ an established regulatory agency but a government-designated Commission with the duty to provide the transparency and accountability of the United States Postal Service and support the universal mail system. The Commission also establishes and maintains an effective system of rate and product regulation. In the UK or Sweden, unlike the US, their postal development progresses through a complete independent agency on their own operational structure and program. The agency's Commission comprises knowledgeable and expert members from the private sector who were appointed by the minister of relevant ministry. Its role and duties are to oversee postal business, set the standards for services and business operation, define the scope and requirements for granting license, and to promote competitive atmosphere in postal business.

Part 3 Establishment of licensing system

To establish licensing system, the regulator formulated rules and regulations to apply for a license as standard criteria to be fulfilled by all service operators for their license application. According to the country models examined in chapter 4, Sweden displayed an authentic licensing system in which standards were set for private operators who require license and PTS was assigned to determine licensing rules. Sweden distinguished licensing rules and regulation between private operators and basic services operator, with clear standards for determining the license. At present, there are as many as private operators showing their interest to engage in postal

business. This has led to competitive standards, while people can access to quality service and coverage.

Licensing system is also in place in the UK but does not apply to postal business, rather only with a presence of regulatory condition in section 28 (1) and (2) under the Postal Service Act 2011. Those who want to proceed postal business are required to observe the standards and apply for an approval from Ofcom. Ofcom assigned a particular operator to provide basic services for people. Such licensing system is deemed facilitating and independent but depending on the determination and judgment of the one who grant the license whether particular operator is qualified according to the standards set in the law. In the author's opinion, such a licensing system does not differ from those in other countries as it is subject to the determination and approval by the regulator.

On the contrary, postal services in the USA is run by the government except for certain services that allow for private operation competitors of foreign corporates settling in USA. The investigation suggested that postal licensing is subject to an approval to use USPS's logo, hence irrelevant to licensing system. Therefore, it does not appear to have licensing system of postal service in USA. Similarly, Japan postal service is the responsibility of government sector according to the Postal Law 2001 in which 2 types of services were under the sole operation of government, namely:

1. General correspondence delivery
2. Special correspondence delivery

In 2002, the government issued a new correspondence delivery law 2002, allowing the private sector to operate the service segment under the previous licensing system, with MIC to set standards and grant license. MIC also take care of the standards and license for special correspondence delivery, however, due to certain requirements, not many private operators engaged in this segment.

Part 4 Establishment of Universal Service Obligation (USO)

The concept of universal service obligation came from the intention to serve the universal service. The framework of universal postal service is in "EU Directive 97/67/EC" which set up a new EU framework for the regulation of postal service. The provision was defined to ensure the universal postal service in each member state. This defined the minimum characteristics of this universal service as:

- one collection from appropriate access points every working day
- one delivery to all addresses every working day
- to include postal items and packages up to 20 kilograms; plus
- a service for registered items and insured items

this provision aim to all UPU's member countries to guarantee that the customers will enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory at affordable prices'.

In the Postal Service Act 2011, section 35 and section 36 prescribed conditional standards to be complied by basic services operator as the standards of services provided for people all over the country. In the UK, there are two types of service operators, i.e. designated universal service provider and universal service provider, with Ofcom stipulating the codes of service for basic service provider or USO as designated operator, i.e. the current ROYAL MAIL. Whereas universal service provider has to observe section 35 and 36 for standard postal business. In USA, postal services remain under the government. The government allows some service segments to be carried out by the private sector by assigning a particular agency called universal service provider to provide basic service under their requirements. Other than that, private operators are permitted to engage in service competition. It is similar to Japan where the government laid down requirements and codes. The last country under this study is Sweden, with a regulatory independent agency provided service standards called universal service obligation for basic service, and also determined designated operator as in other countries.

Table 4.1 comparative analysis on the provisions under the universal postal obligation among these countries.

	License obligation	Universal postal obligation
US	Private carrier will deliver the item excluding items from the monopoly system such as merchandise, newspapers, and periodicals and also except that, under "the mailbox rule", delivery must be made by	uniform prices, quality of service, access to services, and six-day delivery to every part of the country (applying only in market nominated price)

	License obligation	Universal postal obligation
	means that do not involve access to mailboxes or post office boxes in U.S. Postal	
UK	General universal service obligation in section 42 ²⁶²	Minimum requirement under section 35 and 36 ²⁶³ such as At least one delivery of

²⁶² Section 42 **General universal service conditions in Postal service act 2011**

“ (1) OFCOM may impose a general universal service condition on—

(a) every postal operator providing a service within the scope of the universal postal service, or

(b) every postal operator providing a service within the scope of the universal postal service of a description specified in the condition.

(2) A general universal service condition is—

(a) a condition containing such obligations as OFCOM consider necessary to impose for, or in connection with, securing the provision of a universal postal service in accordance with the standards set out in the universal postal service order, or

(b) a condition containing such obligations as OFCOM consider necessary to impose for the purposes of section 46.

(3) A general universal service condition may require a person—

(a) to make contributions in accordance with any scheme established under section 46, and

(b) to take such steps as may be required by any such scheme as regards contributions made by users of services within the scope of the universal postal service.

(4) At any time when there is a universal service provider, nothing in subsection

(2) (a) is to be read as authorizing the imposition of a condition requiring a person—

(a) to deliver or collect letters or other postal packets as mentioned in section 31,

(b) to provide a service throughout the United Kingdom, or

(c) to provide a service at an affordable price in accordance with a public tariff which is uniform throughout the United Kingdom.”

²⁶³ Section 36 Designated USP conditions Postal service act 2011

(1) OFCOM may impose a designated USP condition on a universal service provider.

(2) A designated USP condition is a condition requiring the provider to do one or more of the following—

(a) to provide a universal postal service, or part of a universal postal service, throughout the United Kingdom, or in a specified area of the United Kingdom, in accordance with the standards set out in the universal postal service order,

(b) to provide, or make arrangements for the provision of, access points for the purposes of a universal postal service,

(c) to provide specified information (at such times and in such manner as OFCOM may direct) to other postal operators and users of postal services about the services within paragraph (a) that it is required to provide, and

(d) to do anything else that OFCOM consider appropriate for the purposes of, or in consequence of, the obligations imposed under any of paragraphs (a) to (c).

In this subsection “specified” means specified in the condition.

	License obligation	Universal postal obligation
		letters every Monday to Saturday to every address in the UK, at least to collect the letters every Monday to Saturday from every access point in the UK that is used to receive letters and postal packets for onward transmission ²⁶⁴ or called Designated universal postal obligation
SWEDEN	The license holder should follow the license condition under Chapter 2, Section 4 of the Postal Services Act (2010:1045) The license condition are;	under the postal law define the universal postal service includes the following services: i letter-post items up to 2 kg; ii books, newspapers, periodicals; also postcard,

(3) OFCOM may impose a designated USP condition only if they consider it is necessary to do so in order to secure the provision of a service of a description set out in the universal postal service order in accordance with the standards set out there.

(4) A designated USP condition may make provision as to the tariffs to be used for determining prices in accordance with which a universal postal service, or part of a universal postal service, is provided.

(5) In exercising the power conferred by subsection (4), OFCOM must seek to ensure that—

(a) the prices are affordable,

(b) the prices take account of the costs of providing the service or part of a service, and

(c) the prices provide incentives to provide the service or part of a service efficiently.

(6) A designated USP condition may impose performance targets.

(7) If there are two or more universal service providers—

(a) OFCOM must secure that there is no overlap in the universal service obligations imposed on the providers, and

(b) designated USP conditions may require the providers to make arrangements for securing that a universal postal service operates uniformly and effectively throughout the United Kingdom.

(8) In this Part “universal service obligations”, in relation to a universal service provider, means the obligations imposed on the provider by any designated USP condition.

²⁶⁴ Royal Mail Group, *Universal Service Obligation*,

<http://www.royalmailgroup.com/about-us/regulation/how-wereregulated/universal-service-obligation>.

	License obligation	Universal postal obligation
	<ul style="list-style-type: none"> - quality requirement - dealing with complaint - disclosure requirement - winding up a postal operation - the term of the license conditions - reservation 	individually addressed, magazines, catalogues. ²⁶⁵ iii parcels up to 20 kg; iv Supplementary services: insured, recorded delivery".
JAPAN	<p>In 1997, private company entry in to the non – correspondence items. In 2003, the government was enacted the "Law Concerning Correspondence Delivery provided by Private Sector Operators" to allow private sector operators to engage in general correspondence delivery services²⁶⁶. It divide into 2 types;</p> <ul style="list-style-type: none"> - restricted correspondence delivery - general correspondence delivery, to apply in this service, the private operator should submit a business plan including the delivery guarantee, delivery of correspondence. 	<p>in the postal law define the universal postal service in article 1²⁶⁷;</p> <ul style="list-style-type: none"> - 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. - Delivery must provide at least daily from Monday to Saturday within three days from dispatch, to each household nationwide. <p>and also include the following obligation;</p> <ul style="list-style-type: none"> i acceptance, conveyance and delivery of postal items (domestic and international) as follows: <ul style="list-style-type: none"> – letter-post items up to 500 grammes;

²⁶⁵ The Postal Services Act 2010

²⁶⁶ *Supra* note 236

²⁶⁷ *Supra* note 229, p. 8-9

	License obligation	Universal postal obligation
		<ul style="list-style-type: none"> – books, newspapers, periodicals; – parcels up to 30 kg; ii supplementary services: registered, express services.

Part 5 Determination of the composition and qualifications of the commission

Exploring each country's model indicated two types of postal commission. One is the commission in a service agency which is mostly appointed by and with the qualifications specified by the government or under the mechanism of shareholders meeting. Another is the commission in the regulatory agency (regulator) designated by the authority of government sector. The composition, qualifications, and acquisition of the commission may vary. In Sweden, the regulatory commission in PTS was appointed by the government through the laws called Regulation Letters. PTS is responsible to oversee both the postal and telecommunication operations. In the UK, the regulatory commission in Ofcom is appointed by the Secretary of State as authorized by the office of communication law, and required those of diverse qualifications from both the government sector and external individuals. Differently, rather than being an independent agency, the regulatory commission (PRC) in USA consisted of all members from the government sector, with the qualifications and requirements of President's appointment and the senate approval. PRC can be called independent agency of the United States government which is the department outside of the federal executive department. It comprises executive agencies consisting of single director, administrator, or secretary appointed by the president of the United States. And independent agency always have commission, board, or similar collegial body combining with 5 to 7 members. In Japan, there appears no independent regulatory commission, but regulation is under the government through its holding of one-thirds of all shares in Japan Post Holding Plc. The commission comprises individuals from both the government and private sectors.

The comparison on the differences in qualifications or the composition of commission suggested slight differences and most are designated by an authority of government sector. There are differences in the number and source of commission

members, and regulatory laws. In the UK, for example, the regulatory commission works under a separate, specific law for overseeing the conduct of the commission based on neutrality, support of competition, and consumer protection. It should be noted here that the designation of commission is the power of the government authority, i.e. the Secretary of State, and a problem may rise if any commission members are from such authorized body as in the case of Thailand, or with the misuse of power by the chairman who is empowered to appoint non – executive members. However, taking the UK as an example, the author views that with another specific law to oversee the commission’s conduct based on neutrality, it can offer counterbalance of the commission, that is, they have to observe the code of conduct, which is regulatory framework designated by EU Directive.

Part 6 Determination of designated operator

Determining designated operator in every country previously discussed followed the provisions for USO. Service operators in this type are required to meet the standards set forth by the government to ensure people’s access to universal basic services. Each country determines designated operator as the tool for the government to provide basic postal services. In some countries, the law stated clearly to confer privileges upon this type of operator such as in providing services in reserved area or being the sole operator of monopoly.

In conclusion, the author also has an opinion that liberalization will be benefit to the overall development despite an addressing issue about the impact on national security. There is no such evidence reported in foreign countries. The government sector can set the standards or scope of service in certain areas or certain services in response to the need of people in remote areas.

CHAPTER 5

CONCLUSION AND RECOMMENDATION

5.1 Conclusions from the study

Based on the analysis in previous sections, Thai postal operation in the past was the responsibility of a government agency called “ Post and Telegraph Department”. Under the Postal Act B.E. 2477, section 5, section 1 and 2, stating that postal affair is under the authority of the government by which Post and Telegraph Department at that time is empowered to run postal business. It was in the later period that a postal service agency was developed as a private company, i.e. Thailand Post Co. Ltd. As a result of the reform of the Communication Authority of Thailand according to the Capital of State Enterprise Act B.E.2543. Accordingly, the Royal Decree on Determination of Rights, Powers, and Benefits of Thailand Post Co. Ltd. B.E.2546 was enacted and the Postal Commission was designated with the powers and duties to grant approval, consider, and issue the postal Directive, including making agreements with foreign countries etc. The current operation of Thailand Post remains under section 5 of the Postal Act B.E.2477, and Thailand Post was authorized to run postal business transferred from the government, i.e. the Post and Telegraph Department that was transformed into the Communication Authority of Thailand. Today it does not appear that the government sector grants such absolute right and power to any other service operators. Thailand Post thus has the monopoly power since it is the sole operator to accept, collect, send, distribute, and dispatch postal items under section 5 of such Act. At present, Thailand tends to develop towards an industrial and information society where information system is applied in a number of industries for convenience, speed, and accuracy. The trend for transportation industry or logistics transport from one consumer to another to be liberalized by the late 2015 has resulted in the decline of delivery service of letters and postcards. Due to the advanced technological development, people turn to electronic services for convenience, accuracy, and speed. The current basic postal services operated by responsible agencies is found defective in terms of quality that affects the agency’s image, partly because of the monopoly system in which competitors are absent to provoke service and product development. The

established Postal Commission, which is supposed to act as a regulatory body, does not demonstrate the concrete execution of power, as same as the independent agencies in other countries

Such influences has resulted to the decline in postal delivery under the monopoly system. The current enforcing laws or handbooks were noted with the problems of interpretation and impartiality because of the composition of the Postal Commission with members who fail to know and understand clearly on postal business. In 1992 the government had introduced the telecommunication master plan and the National Economic and Social Development Plan (1992 – 1996) which was in accordance with the liberalization concept in developing telecommunication business, to provide fast, efficient, and quality services. The trend to have an independent regulatory agency as in foreign countries should provide efficiency and promote competition that will bring about quality and suitable services. However, Thailand did not identify the direction of postal business towards competition in the same way as communication area but only focused on the merger of postal business as part of the plan. This suggested that Thailand is in the lack of clear and concrete policy that supports postal liberalization. Either plans identified and promoted changes in the role of government sector from service provider to regulator by establishing an independent agency separated from government sector. At present, the services under monopoly concept is facing with the problem of service quality and operational efficiency, while there is none of benchmark in this service. With sole service provider in Thailand, there is no force to improve efficiency. Despite under monopoly system, it is found today that some private operators run postal business unlawfully against section 5, and sections 61 – 63, which is providing letter delivery service outside of Thailand Post delivery route Although they fix higher service charge, they provide more convenient and faster services than Thailand Post. This may affect the market share and hence there is a need to focus first on implementing legal solution.

Hence, it can be concluded that the present postal affairs remain under the government's monopoly policy with the presence of overlapping power between postal regulator and operator. In this respect, the problems raised involved 2 parts, i.e. economic problem which conclude that the economic concept for the state involvement in certain affairs rather than allowing for the operation of private sector particularly

those in relation to basic public services or national security. At the same time, the government has to control and solve the problems related to the business applying monopoly system without reasons or necessities or likeliness to experience the loss in operation. It creates 2 impacts first, impact on operator and next is consumer. The last one is legal structure problem because the current postal service experiences several problems in terms of legal structure. This is because the government policy in the past imposed postal affairs under monopoly system. In this respect, several problems occur in relation to existing postal laws that place postal affairs under the operation of government agency by monopoly regime. The author's investigation pointed out many problems regarding legal structure.

A comparison was made on postal business in foreign countries regarding international factors that influenced their postal operation as a major reinforcement for postal liberalization and reduced monopoly. The trend towards information age and engaging in global community or international membership such as WTO with organizing on an emphasis of free trade economic system had impacted on the declining trend in utilizing delivery services for letters and postcards, while focusing more on transportation segment. Because of the influences of e-commerce and liberalization that focuses on logistics business, the postal affairs in overseas especially in the 4 countries under this study, i.e. USA, UK, Sweden, and Japan all tend to change from the monopoly regime to liberalization regime, although some countries still impose monopoly over certain types of services. Such reform was carried out under the regulations and requirements of basic service delivery and an established independent regulatory body. After the reform, it was found productive to overall development.

The followings are key principles of such change in foreign countries in overall. 1) Liberalization in every service and establishment of licensing system. 2) Prescription of rules and requirements for engagement in postal business to support good and quality services. 3) Identification of service scope of government agency or assigning particular organization to provide universal basic services to respond the need of people throughout the country. 4) establishment of independent agency to supervise and control service quality and price, and as a channel for consumer protection. 5) Establishment of or setting financial system as a channel to support financially the basic service agency and for competition with private sector.

Similarly to Thailand, postal business in foreign countries was initially operated by government sector but later influenced by international factors that forced it to change. In particular of European countries, they are thus likely to change from monopoly to liberalization in all types of services by allowing legitimate operation by private sector, setting up licensing system, establishing an independent regulatory body to oversee the provision of service, price, and quality, and also provide a channel for consumer protection. Moreover, postal administration in foreign countries typically take the form of designated Commission in an independent agency as a separate structure from the government agency, and functions in regulation and administration by postal specialists or committees comprising representatives of government sector. Licensing system is also set up with certain requirements for granting or withdrawal a license. There may be some differences in the type of responsible body in some countries, for example, as a government agency in USA or as a public company in the UK for better flow of implementation. Other differences may involve the composition of the Commission, administrative independence, and the role of service providers on an equal basis. These countries are common in the provision basic services by a particular assigned agency so that the communication means can be accessible by public.

Based on the above investigation, Postal operation in Thailand should carry out some operational improvements to support potential changes in the future for increased capacity and efficiency by learning from and comparing with several models in overseas and choosing to apply them that suit Thailand's context.

5.2 Recommendations for policy change in Thai postal business

The investigator proposed a concept for policy change in Thai postal affairs that focuses on abolishment of monopoly and opening for liberalization, by providing the following recommendations.

5.2.1 Legal proceeding should be introduced to abolish state monopoly in the service segment of letters and post cards collection and delivery operated under section 5 of the Postal B.E.2477. Based on the monopoly theory, monopoly provides disadvantages and barriers to postal service development. Liberalization on the contrary, allows for private sector's active involvement in developing telecommunication affairs, resulting in overall productive development.

5.2.2 A revision should be made regarding the Royal Decree Determining Authority, Rights, and Benefits of Thailand Post Company B.E.2546.

It is recommended to abolish this law and revise the composition of the committee, and issue the Act as part of its execution as an independent body. The committee should be a working group of experts and professional in this field and other related fields, including those from the government/private sectors, and service users. The committee should possess visions and expertise, and work with transparency, impartiality, and independency, and emphasize on business-oriented operation with clear action plan.

5.2.3 Following the abolished monopoly, liberalization is to be introduced to allow for greater competition and optimize the clients' benefit.

Liberalizing is merely to remove improper regulations and barriers for free operation. Hence, an independent agency should be established as a regulatory body to supervise and lay down competition rules that promote fairness and free competition, as well as service standard, price, and quality in response to public needs. The regulatory body also functions to protect consumers' interests and maintain balanced interests between service providers and clients. It takes responsibility to implement in accord with the objectives and principles stipulated in other laws, judgments and decisions.

Moreover, the regulatory body has to carry out their duties independent of operating agency so as to keep the discriminating equilibrium and offer opportunities for increased engagement of the private sector. The regulator functions in identifying criteria, rules and regulations as well as requirements for operation on a fair basis, for example, set up rules and regulations for fair competition of service delivery, protection of consumers' right, or in relation to price, payment.

In line with the liberalization guidelines in overseas countries, the regulatory body will provides criteria for universal services to facilitate the universal basic service for people. In the opinion of investigator, this independent regulatory

body should be neutral and should not be a government agency, with its officers performing regular functions and responsibility, in the same manner of the postal committee.

From the study of international concept, as analyzed in Chapter 4, and to comply with the international liberalization concept. The author indicated that the independent regulatory Organization should be independent regulatory unit that does not have a central Government come involved mostly. However, the necessary of government regulating is existed for policymaker and directing the good performance. Furthermore, the officer should not be responsible for routine like in the form of Thai Postal Affairs Committee because they will lack of continuity in management due to a large number of responsibilities and some of them may lack understanding the context of the business.

In the author's opinion, the Thailand context should be considered when establishing an independent regulatory authorities. From the study, I found that the qualification of independent regulatory committee in other countries share the same concept in terms of knowledgeable specialist in postal business. On the other hand, the difference among independent regulatory committee in each country is the appointing authorities due to the different political regime. For example, in the United States. Postal regulatory commission was appointed by the President and approved by Parliament. This shows that it is determined by a single consideration but still counterbalance by the Parliament. The way that is implemented by the United States might not be applicable to Thailand due to the difference in the political system.

In UK and Swedish, independent regulatory Committee has been appointed by the Cabinet, not by single opinion's nomination. However, there is no counter balance of power by the Cabinet, as in the United States. In Japan, there is no independent regulatory authorities in particular. Rather, the postal operation scheme come from the ministry policy. Therefore, the form of the independent regulatory organization, including the board composition in each country will be different due to the difference in the background, and the national regime. As a result, it will be difficult to apply those concepts to Thailand. The authors therefore see that the elements in the establishment of an independent regulatory authorities should be followed what was

already discussed in chapter 2. Nevertheless, the appointed authorities should depend on the court regime.

5.2.4 Once the independent agency is established, its roles and responsibilities may include the implementation of licensing system as in foreign countries, which should be fair, transparent, and indiscriminating. By implementing such licensing system, it should promote the competitive environment, which should lead to an offering of products and services with better quality. The agency should impose certain standards for the operators to follow as same as the practice in the United Kingdom. With such license, the operators are allowed to determine service fees as deemed appropriate.

Additionally, the study shows that the license conditions of most countries are similar to one another. The license practice in Sweden is slightly different. The license condition are clearly divided into the License conditions for postal operations and License conditions for POSTEN AB (corporate ID no. 556128). It is clear and standardized to the postal license system. Meanwhile in the UK, the postal services guidelines in business does not appear to be licensed. The guidelines set a standard, which has two levels: the minimum requirement and universal postal service. It means that service providers must comply with all the minimum requirement, a minimum standard of service. This type of service is called designated universal service provider condition. When comparing to the licensing system in Sweden, there is a clear separation between private service provider and designated operator. Sweden laws has specified clearly on who provide the fundamental services. Nevertheless, the forms of both countries are still within the licensing system, but are different in terms of the detail format only.

We have to consider which form is more suitable for Thailand, a postal operator or a universal service provider. Therefore, from my consideration, the appropriate postal model for Thai's postal context is a country of Sweden. This is because the licensing system is clear and continue to provide the universal postal service to all peoples in country. Meanwhile in England, even though there is a permission, it's not in the form of licensing system. Rather, it's replaced by the general authorization regime, which may include excessive independence. As a result, it is not appropriate for the operation context of Thailand. However, to define any licensing

condition, it should be possible to achieve the public service through the consumer protection standards.

5.2.5 The review of guidelines in overseas countries suggested that the government sector and concerned organizations work in formulating explicit policies and competitive rules on a fair basis, including the plan of action for abolishing monopoly and opening for liberalization.

5.2.6 The author view is that for the fairness of liberalization and equality of rights, benefits, and privileges among operators, it requires the revision of relevant law, i.e. the Trade Competition Act BE. 2542. Since the current status of particular operators is state-enterprise that is not under the enforcement of this law, they may take some operational advantages. For this reason, this law should be revised.

The author also has an opinion that liberalization will be benefit to the overall development despite with an address about the impact on national security. There is no such evidence reported in foreign countries. The government sector can set the standards or scope of service in certain areas or certain services in response to the need of people in remote areas.

5.3 Other recommendations

Other than the recommendations above, the author would like to suggest other recommendations relating to improving the postal service as followed;

1. revising the trade competition act B.E 2542 section 4 subsection 2 state to except (2) State enterprises under the law on budgetary procedure. This is contrary to the spirit of the law that needs to promote their business to ensure free and fair, as well as anti-monopoly, reduce or restrict competition in the business, hence, to support level of the playing field with a good standard. Author will suggest to revise this section to be in line with the liberalization concept. Alternatively, the Thailand Post should be privatized to encourage the improvement in the operation process in terms of both effectiveness and efficiency and to increase the capability to compete fairly with private sectors.

2. The Government should give priority to the development of Postal Affairs which is a basic public communication channels, and should set a clear operational policy, a regulatory standard form to support the competition with the private sector and trends of development in the digital age.



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