

Submission to the Canada Post Strategic Review

UPS Canada Ltd.

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Introduction

With over 12,000 employees in Canada serving thousands of customers at every address in Canada, a customer of Canada Post and a partner of postal administrations around the world including Canada Post's Purolator Courier as well as the USPS and Italy Post, UPS have a strong interest in the Canada Post Strategic Review.

Our comments are guided by an overarching principle to find ways to serve our Canadian customers more efficiently and more effectively. In terms of Canada Post's current mandate, UPS believes that there is a lot of common ground but we believe that the Panel has an opportunity to build even greater capacities for Canadian customers.

UPS synchronizes commerce. UPS leverages a significant technology infrastructure in combination with a global transportation network and tremendous human capital from around the world to help our customers get their products and supplies across Canada and around the world.

Since the last review of Canada Post's mandate in 1996, significant changes in global trade and technology have eroded the need for the protection of a government owned service to collect, transmit and deliver messages, information and funds within Canada and around the world. UPS supports aligning Canada Post's core public policy purpose with the needs of Canadians.

The demands of our Canadian customers are driven by their need to get products, packages and information moved reliably and efficiently. Those demands are not unique to UPS. We believe they extend to our competitors, suppliers and customers, including Canada Post.

UPS supports the purpose of the strategic review. Specifically, we think there's value in the Government examining the public policy objectives, financial sustainability and financial objectives of Canada Post and we welcome the opportunity to contribute to that process.

UPS believes that there are many options outside privatization to support in the execution of that public purpose including the significant opportunity for a private/public leveraging of infrastructures to deliver greater value to Canadians' capacity to compete globally.

To those ends, UPS believes that the role of the Universal Service Obligation is the primary issue for the Panel to consider.

Canada Post's Core Public Policy Purpose

UPS believes that Canada Post's core public purpose is to operate a letter mail service for Canadians. UPS supports that core public policy purpose.

With that said, it is important to acknowledge that the utility of letter mail for Canadians is changing. Advertising communications is increasingly a significant component of Letter mail volume. At the same time, the internet and mobile communications technology are overtaking letter mail as the primary means for Canadians to communicate with each other. The Canadian Internet Project reported in 2004 that 82% of all Canadians had used the internet and among them, e-mail was the primary purpose for 91%.¹

While over its history, Canada Post has always had to compete with alternatives to mail such as the telegraph and telephone, it seems unquestionable and irrefutable that the internet has more than eclipsed letter mail as a vehicle for communication – both personal and business among Canadians and more importantly that this trend seems certain to continue.

Apart from its core, there are ancillary public policy purposes for Canada Post. For example, its large retail infrastructure has frequently been highlighted as an important reminder of the Government's presence in communities across the country. Its role as an access point for Canadians to access broader Government services also highlights the role of Canada Post.

In addition, Canada Post is one of Canada's largest employers with over 74,000 dedicated and hardworking Canadians.

As important as these are however, UPS believes that Canada Post's primary public purpose is to provide a letter mail service. UPS believes that to the extent that the continuation of Canada Post's ancillary roles are deemed important by the Panel, the associated costs and benefits should be made more transparent to Canadians.

The Role of the Universal Service Obligation

In addition to the exclusive privilege, Canada Post has a "Universal Service Obligation" (USO) to provide the mail service in the context of, as the Panel's Chair has said, "financial balance, technological change, rural service and industrial relations".²

¹ Charles Zamaria, André H. Caron, Fred Fletcher Canada Online, Canada Online - A comparative analysis of Internet users and non-users in Canada and the world: Behaviour, attitudes and trends 2004 pp. 4-6, www.cipc.ca

² As Professor Campbell points out "The Canadian postal regime is a highly informal and unstructured one, relative to other postal regimes that we have examined. The separation of ownership and regulation is less clear in the Canadian regime than elsewhere, where EC

UPS believes that Canada Post's USO is ill defined and as such its public policy value is virtually impossible to assess.

The Panel's Chair has pointed out that "(t)he hazy, qualitative expectations that were set out in the (Canada Post Corporation Act) have not been formalized, implemented or quantified to any extent."³

On the basis of the current USO no fair minded assessment can definitively conclude that Canadians are either being well served and/or that there is continued public utility underlying the USO.

This situation is of no benefit to Canada Post, the Government as shareholder or Canadians.

Therefore, a key strategic issue for the Panel to consider is what the USO should be.

The USO in Canada is notoriously ill-defined in comparison with other OECD member countries.

The 1996 Canada Post Mandate Review Report highlighted the poor definition of the USO and recommended that any future revisions to the CPCA would need to include "the obligation to provide universal service at a uniform rate for letter mail and be explicitly included as part of the corporations mandate."⁴

It was also confirmed in the TD Securities Report that, despite being governed by numerous laws of general application, laws with respect to Crown corporations, and the CPCA, these governing laws "... do not address specific financial targets, operating efficiency or service standard targets."⁵ The 2005 Crown Corporations Review has also acknowledged that, with respect to all Crown corporations, the relationship with the government is highly unstructured.⁶

The TD Securities report then goes on to recommend that the Government consider a "specific target framework that will provide more transparency and certainty for Government, for CPC and for members of the public."⁷ In other words, TD Securities Report found that there is uncertainty and ambiguity about the scope and the extent of the USO undertaken by Canada Post.

directives and informed debate and discussion have made a significant impact." Campbell, page 286.

³ Campbell, page 287.

⁴ Mandate Review Report, para. 7.1. Recommendation #2.

⁵ TD Securities Report, page 36.

⁶ 2005 Crown Corporations Review at 18: The Review acknowledges that the present use of tools for policy guidance, such as the use of mandate reviews, directives, and reviews of corporate plans, "typically reflects the style of a particular Minister and does not support a consistent, structured approach to the provision of policy guidance."

⁷ TD Securities Report, Appendix D "Key Policy Issues and Choices" at 2.

In 2005 the Crown Corporations Review undertook an encouraging first step in addressing this situation by recommending that an annual “statement of priorities and accountabilities” must be provided by the responsible Minister to every Crown Corporation. This annual “statement” is intended to:

- “- confirm the Corporation’s mandate and business lines;
- inform the Corporation of government priorities;
- achieve consistency between The Government and the Corporation regarding The Government’s priorities, policy objectives and performance expectations for a fixed period; and
- serve as a key driver in the development of the Crown Corporation’s corporate and/ or strategic plans, annual reports and financial forecasts.”⁸

However, although such a statement includes the essential basic elements for improving accountability, in the case of a postal operator operating under a USO, such a statement would be inadequate.⁹

Using the model of the EU Postal Directive, a clearer definition of the scope of the USO and required standards should be included in a revised CPCA, regulations or part of a new framework agreement. For the most part, the CPCA and regulations provide minimal flesh to the body of Canada’s USO. The type of detailed requirements we now see in EU member states is determined solely by Canada Post within its own discretion. In the EU context, authority to make decisions concerning the scope of the USO resides with Parliament, the relevant government department or Minister, or with an independent regulatory agency. In no case does the postal operator, as is the case with Canada, have the authority to determine USO specifics or quality standards.

The categories of minimum standards that a revised Canada Post governance regime could include:

- the exclusive privilege (reserve area);
- minimum levels of delivery frequency (i.e.: 5 days a week delivery);
- requirement of nationwide coverage;
- assured access to universal service (i.e.: availability of access points such mailboxes and postal outlets);
- quality of service standards and monitoring by an independent body (i.e.: transit time to deliver postal item after collected); and
- complaints and redress procedures (i.e.: by an independent entity).

⁸ 2005 Crown Corporations Review at 18-19.

⁹ Moreover, the 2005 Crown Corporations Review has recommended that such a statement would not be legally binding. However, Canada does acknowledge that each statement will be “...tailored to the specific operating circumstances of each Crown Corporation”, so flexibility is clearly intended 2005 Crown Corporations Review at 19.

As part of the creation of a “specific target framework” agreement, the TD Securities Report recommended that such a framework could include measures that would help to assess the “relative efficiencies of CPC”, including:

- a) financial performance - comparison of profit targets and cost reduction targets with other industries or similar companies and other postal administrations to determine financially self-sustaining levels;
- b) quality of service indicators - these include end-to-end delivery performance and perceived customer satisfaction;
- c) productivity measures; and
- d) control over basic letter mail rate increases.¹⁰

The scope of the definition of the USO is a matter which has been the subject of great debate amongst various EU members. In the United Kingdom, the UK NRA, PostComm, has recently adopted a USO definition based on extensive public consultation with postal users. Apparently, this was the first time the USO has been defined by actually assessing the needs of postal users.¹¹

It can be argued that an improved definition of the USO is entirely consistent with Canada Post’s various policy positions since Canada’s response to the Mandate Review Report in 1997 and the TD Securities Report. An argument can be made that Canada is not regulating Canada Post in a manner consistent with the policy objective of ensuring the protection of the USO. For example, the simple fact that Canada Post is largely unsupervised does not permit the government as shareholder to keep Canada Post accountable with respect to the quality of the postal service or its financial performance.

The first step for any reform of the governance of Canada Post, as has been carried out with respect to every other major post office in the world, is to better define the USO in a manner that is responsive to the needs of consumers.¹²

¹⁰ TD Securities Report, Appendix D “Key Policy Issues and Choices” at 2-4.

¹¹ WIK - Consult Final Report “Main Developments in the European Postal Sector” - Study for the European Commission, DG International Market (Bad Honnef, July 2004) (“WIK”), page 35.

¹² See Campbell, cited above. Campbell discusses the international trend of using open contracts or agreements between Posts and their Governments to set defined, quantified policy objectives. Such agreements, he notes, “go a long way to defining the nature and character of the country’s universal system which, of course, can be discussed and/or altered in the process” (page 424). Campbell opines that, although it appears to have been created in the same spirit, the 1999 Framework Agreement between Canada and Canada Post is “a tentative, incomplete, and insubstantial document” which “presents a confused postal environment” (page 413). It is “the least public-service or contractual agreement of any examined” in his book (page 312). Furthermore, “it does not include targets, objectives, or evaluation processes whatsoever with respect to postal services, and it does not connect well to the larger postal picture” (page 328). In contrast to New Zealand’s Deed of Understanding and Statement of Corporate Intent, the Framework Agreement “looks like a set of preliminary or rough notes” (page 425). Campbell recommends that Canada develop a Service Charter that could include, among many things, “changing universal-service obligations” (page 425).

Establishment of a “National Regulatory Agency” (NRA)

The accepted view in the world of postal reform is that an independent regulator is required to protect the USO and to ensure fair competition in the postal services market. This was also the conclusion of the TD Securities Report.

Canada is unique amongst all industrialized countries, in that it has not recognized the need for some form of independent postal regulation. Although Canada accepted the recommendation of the TD Securities Report to continue to permit Canada Post to operate in competitive markets, Canada did not accept the need for some form of independent regulation. As stated in the Report:

“The main purpose of supervision or regulation is to provide a substitute for competition where entry into the market by competitors is slow, unsustainable or inefficient. It aims therefore to protect the consumer from poor service and monopoly pricing while ensuring the financial viability of the supervised firm; allocative and productive efficiency are its ultimate goals.”

The main difference between Canada and other jurisdictions is that the minimum USO standards set out above are not subject to public review or monitoring by an independent and credible entity separate from Canada Post. Separation of the “regulated” from the “regulator” is a key principle of transparency and accountability which has not been fully recognized by the Government with respect to Canada Post. In Canada, Canada Post actually takes on both roles in many cases. Because there is effectively no separation of these functions in Canada, the governance regime of Canada Post can never be considered truly transparent and accountable.

The idea of an independent postal regulator in Canada has been suggested numerous times since the creation of Canada Post in 1981 and was nearly implemented in the late 1980’s. The time is now ripe for the creation of such an entity.

Since 1997, over twenty EU member states have designated a NRA as required under the EU Postal Directive.

The TD Securities Report recognizes that there are a number of ways of fulfilling this function, whether through an independent regulator, a separate government department or an independent ombudsman. The Report envisioned that a number of functions could be undertaken by such an entity including:

- (a) quality of service levels;
- (b) financial performance targets; and
- (c) the development of future framework agreements with CPC.

One further key advantage identified by the TD Securities Report for appointing a regulator is that "... there is a considerable political advantage in that the regulator would effectively deflect much of the criticism which presently goes to the Minister if CPC service is substandard."

In the United States, the President's Commission on the United States Postal Service undertook a wide-ranging public consultation process to examine the future of the postal service in the United States. Although the United States Postal Service ("USPS") is presently subject to the rate review mechanisms of the USPRC, the President's Commission recommended that the PRC should be transformed into a new independent regulatory body called the "Postal Regulatory Board" ("PRB"). The President's Commission recommended as follows:

The new Postal Regulatory Board should have authority to:

- (a) Review and refine the scope of the Postal Service's universal service obligation;
- (b) Clarify and refine the scope of the postal monopoly;
- (c) Regulate rates for non-competitive products and services;
- (d) Establish limits on the accumulation of retained earnings by the Postal Service;
- (e) Ensure financial transparency;
- (f) Obtain information from the Postal Service, if need be, through the use of new subpoena power; and
- (g) Review and act on complaints filed by those who believe the Postal Service has exceeded its authority.

In the Canadian context, the basic mandate of a NRA would be the oversight of Canada Post as set out in a revised Canada Post Corporation Act and regulations, or a more comprehensive Framework Agreement (i.e.: some form equivalent to the EU Postal Directive). A new Canadian NRA could be created based on a number of models. The USPRC is one model if rate-setting is believed to be the primary objective, and the EU member states provide a number of other models of regulators with broader authority. In particular, the UK PostComm is an entirely stand alone independent regulator, while other EU members combine postal regulation with telecommunications regulation (such as Germany). There are a couple of examples of some EU regulators that are closely tied to the Government ministry in charge of postal affairs whose independence from the postal operator may be unsure, but this is the exception rather than the rule.

A truly independent and effective NRA would accordingly have some of the following characteristics:

- (a) The authority to oversee application of all elements of the CPCA or framework agreement (including oversight of a more detailed USO), including the power to:
- (i) Oversee Canada Post’s competitive behaviour with complimentary monitoring versus the Competition Bureau;
 - (ii) Oversee and establish financial framework (in particular with respect to the Annual Cost Study);
 - (iii) Assess and pass judgment on rate changes;
 - (iv) Monitor quality of service;
 - (v) Examine proposed involvement in new services; and
 - (vi) Assess whether specific activities are consistent with USO mandate.
- (b) Be vested with sufficient authority to collect data and enforce judgments (this would address the main weaknesses of the 1988 Postal Services Review Committee headed by Alan Marchment). For example, the NRA should have the authority to:
- (i) Require disclosure of information;
 - (ii) Require the production of studies;
 - (iii) Require accounts be maintained in a manner determined by the NRA; and
 - (iv) Levy fines and seek judicial remedies for failure to produce information.

The Panel has a unique opportunity to build a clear foundation for Canada Post’s future by focusing on clarifying Canada Post’s core public purpose – providing letter mail service and enhancing the transparency and accountability of the Universal Service Obligation.

In addition to the above, the following examples are concrete measures that should not require major new legislative or regulatory changes, and could be undertaken by the Government as immediate policy “baby-steps” toward greater clarity in the governance of Canada Post:

Assign the Annual Cost Allocation Study to the Auditor General (“AG”).

The Annual Cost Study and cross-subsidization audit opinion should be subject to review and scrutiny by the AG.

This option was actually recommended by the Canada Post Mandate Review Report in 1996, but the Government chose the least intrusive form of an internal audit mechanism.¹³ In the context of commercial corporate governance, it could be suggested that today the Annual Cost Study process does not meet stricter audit standards expected in many quarters. Under section 33 of the CPCA, the appointment of the Canada Post auditor is made by the Government through the cabinet process. This power of appointment is also confirmed under the *Financial Administration Act* (“FAA”) subsection 134(1). Accordingly, no major legislative or regulatory changes would be required to carry this out.

As a result of the Crown Corporation Review, the Government has extended the Auditor General’s role to take on the auditing role with respect to all Crown corporations.¹⁴ This is certainly a positive step. However, this power has yet to be extended to the Annual Cost Study and audit. As part of her mandate, the Auditor General will clearly be in a position to accept outside submissions from interested parties. The Auditor General’s annual review will provide a new and positive mechanism for the clarity of Canada Post with respect to financial matters.

Revision of the 1999 Canada Post Framework Agreement.

The 1999 Framework Agreement is viewed by postal policy analysts as being a weak reflection of similar agreements between postal operators and their political masters in other jurisdictions. Created with public input and expert assistance from other jurisdictions, this could be a neutral option for the Government to generate the necessary momentum for the larger task of creating a more robust postal reform policy environment in Canada.

Task a separate government department to oversee implementation of a revised Framework Agreement.

Although the creation of an independent national regulatory agency may not be immediately possible, a simple option that would generate momentum in that direction is for the formal appointment of an existing department to play the oversight role concerning the consultation and implementation of a new framework agreement. The

¹³ Mandate Review Report, Recommendation #30.

¹⁴ 2005 Crown Corporations Review at 38-39, “Measure #26”: “The government will amend the relevant legislation in order to allow for the appointment of the Auditor General of Canada as the external or joint auditor for all Crown corporations.”

Auditor General has made similar recommendations in her review report of Crown Corporations.¹⁵

At this point in time, the Minister of Transport is the “Minister Responsible for Canada Post” under the terms of the CPCA, while the Treasury Board and the Department of Finance play lesser oversight roles. The Minister “responsible” for a Crown Corporation has been confirmed as playing the shareholder function in the recent Crown Corporations Review.¹⁶

Ideally, it would be preferable to have a separate Minister or department designated as the “watch-dog” of Canada Post, as distinct from the “shareholder”, and be provided with the necessary resources to carry out such a mandate. In particular, the re-creation of a special postal policy unit would be a clear first step for the Government to indicate its willingness to address postal reform issues.

To some extent, the recommended powers for a notional “watch-dog” are already at the disposal of the Government under the terms of the FAA (see: ss. 89, 94(2) and 114(3), 153; also, see: s. 22 of the CPCA) but which the Government has not been prepared to exercise in the past. Also, the Government has always had the right to make demands for documents and information from Canada Post. Again, the Minister has never seen fit to exert him or herself in that regard (likely because of the hands-off manner in which past governments have treated Canada Post).

Also, Canada Post is presently required to submit its annual budget and corporate plan to the Government for the approval of Treasury Board (see: FAA s. 123). As also recommended by the Auditor General, it would also be possible to increase the level of scrutiny in this process with no revisions to legislation being necessary.

Although these “baby-steps” are within the present authority of the Government, a commitment to a more formal relationship between the Government and Canada Post would still require a significant amount of discussion and decisions at the Cabinet level of the Government. A general commitment to a fundamental change in the relationship will be necessary. Although the above steps may seem basic, it is this change of relationship that will require fundamental acceptance by the key decision makers in the Government.

¹⁵ 2005 Auditor General Report at para. 7.59. The Auditor General has noted the breakdown in the relationship between the government and its Crown corporations when the report notes that: “There is still no formal process for setting out high-level expectations of the responsible minister before the corporate plan is developed... A process to ensure that expectations are clear could help the board and the minister establish a mutual understanding of the corporation’s mandate, the related performance expectations, public policy issues and the shareholder’s strategic priorities.”

¹⁶ Crown Corporations Review at 16, “Measure #2”.