

## **Memorandum of Comments of EICI to Draft Postal Bill**

We most welcome the opportunity to file this Memorandum containing the public comment on the proposed legislation to amend the Indian Post Office Act. Transparency in the drafting of this rulemaking is truly in the public interest.

We write to you to express our concerns, seek clarifications and make suggestions to the Indian Post Office (Amendment) Bill 2006. Indeed, we respectfully submit the Department of Post address our concerns in a public dialogue before this becomes an Act.

We recognize the Act dates to 1898 and welcome the move to amend the Act to keep pace with the changing needs of the emerging global environment. However, we respectfully submit that the Bill in its present form is detrimental to India's global competitiveness. This is because the Bill will erode significantly the technological and communications efficiency, as well as the competitive gains that have been attained by the customers of the Indian Express Operators and other Courier Operators

Indeed, provisions of this Bill could have a chilling effect in India's ability to increase its foreign direct investment, thereby limiting India's growth potential. The proposal would also eliminate competition in a service segment, which supports trade and commerce, and would result in increases in costs of doing business in India while decreasing service standards. The bill should, we submit, be analyzed from this macro-economic perspective and not only from the perspective of the postal sector, as the move to limit the operations of the courier and express business would have a far-reaching negative impact on the Indian economy as speed, efficiency, productivity and fair competition will be compromised.

### **Highlights of the Main Issues of Concern**

- **The draft contains a new restriction, which appears to limit foreign ownership to 49% in the express services sector.**

Today, there is no limit to foreign ownership of entities in the courier and express services sector. Indeed, the Government of India has approved numerous investments by foreign entities in the express industry. If this Bill is enacted, it will not only restrict further foreign investment in the industry, it could be construed as requiring already existing foreign direct investment in India to be disposed. This will send a message to other global companies in all industries that any level of investment in India could be changed arbitrarily.

Restricting existing foreign investment in the express services sector is contrary to the global norm of opening express services to foreign investment. For example, beginning in 2004, China permits wholly owned foreign enterprises in the express services sector. India will be going backward if this section is implemented, and is contrary to the Indian Governments announced efforts to open the Indian economy to foreign investment.

With regard to the proposal, a logical reading of the definition of “person” would result in the international EICI members being excluded from the term “person”. This definition, read with Section 4B which mandates registration of all “persons” would seem to suggest either: (a) that international members do not have a registration requirement as they will not qualify as a “person” as defined in the Bill and can therefore continue to operate without any registration requirement or (b) that they will not be permitted to be registered as a registered service provider as the company does not have the requisite number of Indian shareholders i.e. a minimum of 51%, and thus are unable to participate in the express industry.

Thus the wording of clause 3 (v) (iii) of the draft Bill must be changed to read:  
“(iii) A company that is registered in India”

- **The postal monopoly would be expanded to all letters 300 grams and below.**

EICI recognizes the necessity for India Post to have a monopoly; however, this monopoly must recognize the distinction between express services and mail delivery. For the monopoly, the express services industry advocates a price multiple on the lowest weight slab, which recognizes that express services are separate and distinct from postal services.

The Bill proposes to insert a definition of the term “letter” in Section 2 of the Act, which seems to be so wide in scope that it includes all documents, which would adversely impact the credibility of document-communications in India. The proposed amendment infringes upon the right of choice of the consumers such as banks, lawyers; companies who generally use this mode to express deliver time sensitive documents. In today’s highly competitive global trading environment time is of essence and competition is driven by high consumer expectations of express and on time delivery of shipments to keep pace with the challenges and competition in the global market place, the same would go against the spirit of competition and free trade.

Our submission is that in determining the scope of the postal monopoly, the Government of India should maintain the principle that the only reason to create a monopoly or reserved area is to ensure provision of basic and essential universal postal service. Many countries have reduced or eliminated their universal service monopolies, and have discovered that their post offices can survive and thrive in a competitive environment, and that overall communications and transportation services available to their citizens has improved.

In addition, as drafted, the bill would even prohibit the pick-up and delivery of international express shipments within India. Thus, any company doing business in or with India would be prohibited from using international express service providers for any document 300 grams or less.

To stimulate economic efficiency and increase consumer choice by promoting healthy competition, the postal monopoly should, we submit, be defined in the narrowest possible way. The global standard and one EICI advocates is that it be based on a reasonable and clear combination of price and weight thresholds for letters, with a view to exclude all

value-added services, such as express delivery services, from the postal monopoly. Thus, whatever the monopoly, there should be a price multiple above which delivery of that letter is permitted.

- **The draft calls for the creation of a regulator, which would be chaired by a former postal official.**

The Bill aims at creating a regulatory framework for registering all couriers domestic and international based on the presumption that courier companies are not regulated or controlled.

The authorities pertaining to the underlying activities of the industry however already regulate the express service industry. For example, the Ministry of Surface Transport regulates road transportation activities; the Ministry of Finance has several regulations including the Courier Imports and Exports Clearance Regulations, 1998 (Courier Regulations) which have been amended from time to time keeping in tune with the requirements of trade and industry to address express customs clearance issues; express operators are registered under Company's act; quite a few of them are listed on the Stock Exchanges; and the Ministry of Finance has a specific category for couriers under the Service Tax.

The industry is also subject to general laws of India, such as employment laws, health and safety, and business licensing regulations. Accordingly, there is no need for the Government to create an additional layer of bureaucracy, which will only reinforce a 'license Raj' mentality, which the Government is currently trying to eliminate. The sector has functioned in India for decades with no specific regulator, and indeed, the Post Office itself has been a player in the express industry (Speed Post) under the same circumstances.

Finally, it is essential to understand that the "courier" mode is not just meant for transmission of letters as is generally perceived, but is also an important mode of India's domestic and foreign trade. Imports and Exports of high value items such as gems and jewelry and domestic movement of high value items such as computers ancillaries and auto ancillaries etc are regularly transmitted through this mode. In any event, the general transportation and express industries, both domestic and international, being separate and distinct industries from the universal postal service, should remain outside the authority of the postal regulator, and accordingly, any regulatory regime should be within the domain of general transportation authorities.

- **The draft could have the Department of Posts regulating unnecessarily multiple sectors.**

The requirement for registration is for not only carriers of "letters" but also for those carrying anything falling under the definition of the term "postal article" which includes every article or thing transmissible by post or by any person or body authorized to carry such article under the provisions of the Act thereby requiring registration of logistics companies and cargo companies as well.

The proposed text of Section 4 B of the Bill appears to require mandatory registration of companies carrying anything falling under the category of “postal article” which has been defined to include anything “transmissible by post”. Hence the requirement for registration not only extends to courier companies but also may extend to any entity, which carries a postal article or anything transmissible by post. In theory the Postal Department can carry anything weighing up to 50 kgs or even more. Hence an express transportation company, a logistics company, a trucking company or even an airline which all carry goods which are capable of being transmissible by post would require to be registered with the DoP.

- **The bill requires that registered service providers shall deposit ten per cent of their annual turnover as USO.**

The purpose of the monopoly is to enable the post to meet its universal service obligation, so there should be no need for an additional tax, since the USO is meant, by definition, to provide the mechanism by which the Post office will fund its entire network. Second, express carriers are not in the postal segment. The express companies should not be required to pay taxes beyond those required of other businesses as it relates to India Post. Paying for India Post’s universal service obligation would entail double taxation on express service providers.

In addition, this 10% tax would impact the services provided to the users of express services, including manufacturing companies, a sector which India is not courting for investment. If this 10% tax were levied on express carriers, it would make the cost of doing business in India more expensive, and thus would make India a less attractive place to invest, especially for those companies interested in using India as a global hub.

## **CONCLUSION**

The Express industry thrives on four pillars: Door-to-door services; custodial control through the entire chain; guaranteed, time-definite delivery, and the use of technology such as track-and trace and release of document upon signature. The express industry provides value-added services to individual consumers and corporate houses by charging a premium for it. The services provided by the DoP are different from those of the courier and express industry. The proposed Bill ignores the fact that Courier and Express industry plays a key infrastructural role in attracting investments in the export sector thus boosting trade and commerce. It is important to point out here that across countries like the USA, European Union and other countries, which despite having monopoly of the Universal Service Provider in carrying letters, provide a window to private couriers and Express companies to carry letters by charging a higher fee than the Universal Service Provider thereby ensuring a protection for the Universal Service Provider whilst allowing the Courier and Express companies to operate as well.

**We request that the Indian Post Office (Amendment) Bill 2006 will take into account our concerns enumerated above.**