

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENTS WITH
FOREIGN POSTAL OPERATORS

Docket Nos.
MC2010-34

COMPETITIVE PRODUCT PRICES
STRATEGIC BILATERAL AGREEMENT BETWEEN UNITED STATES
POSTAL SERVICE AND KONINKLIJKE TNT POST BV AND TNT
POST PAKKETSERVICE BENELUX BV (MC2010-34)
NEGOTIATED SERVICE AGREEMENT

CP2010-95

**REQUEST OF UNITED STATES POSTAL SERVICE TO ADD INBOUND
COMPETITIVE MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL
OPERATORS TO THE COMPETITIVE PRODUCT LIST, AND NOTICE OF FILING
(UNDER SEAL) OF ENABLING GOVERNORS' DECISION AND NEGOTIATED
SERVICE AGREEMENT**
(August 13, 2010)

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq., the United States Postal Service (Postal Service) hereby requests that Inbound Competitive Multi-Service Agreements with Foreign Postal Operators be added to the competitive product list within the Mail Classification Schedule (MCS). The Postal Service gives notice that the Governors of the Postal Service have established prices and classifications for competitive products not of general applicability for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators.¹ In addition, the Postal Service gives notice, pursuant to 39 U.S.C. § 3632(b)(3) and 39 C.F.R. § 3015.5, that the Postal Service has entered into one such agreement (hereinafter "TNT Agreement") with Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (hereinafter,

¹ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No. 10-3) is filed under seal. A redacted version is included as Attachment 2.

collectively, "TNT Post"). Accordingly, the Postal Service requests that the Postal Regulatory Commission (Commission) list the TNT Agreement, together with any subsequent functionally equivalent agreements, as one product on the competitive products list under the product heading for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1.

Governors' Decision No. 10-3, along with accompanying attachments and supporting financial documentation that establish compliance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7, are being filed separately under seal with the Commission. Attachment 1 to this Request is a Statement of Supporting Justification of Ms. Lea Emerson, Executive Director, International Postal Affairs, filed pursuant to 39 C.F.R. § 3020.32. Attachment 2 is a redacted copy of Governors' Decision 10-3, which includes proposed MCS language for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, the certified statement pertaining to the price formulas in the Governors' Decision required by 39 C.F.R. § 3015.5(c)(2), an analysis of the pricing formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, and a certification of the Governors' vote. Attachment 3 is a redacted copy of the TNT Agreement that is the subject of the competitive product filing in this proceeding. Attachment 4 is the certification for the TNT Agreement pursuant to 39 C.F.R. § 3015.5(c)(2), and Attachment 5 is an Application for Non-Public Treatment. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

I. Mail Classification Language

The TNT Agreement furnished in this filing serves as the first Inbound Competitive Multi-Service Agreement with Foreign Postal Operators. As provided in Attachment A to Governors' Decision No. 10-3, Inbound Competitive Multi-Service Agreements with Foreign Postal Operators establish rates for competitive inbound international mail exchanged between postal operators, to include traditional services such as inbound Air Parcel Post (Air CP), Surface Parcel Post (Surface CP), and Express Mail Service (EMS), along with any ancillary services that accompany such items. Size and weight limits would be those normally prescribed through the Universal Postal Union Acts, subject to any country-specific differences. Prices for such services are governed by price formulas set out in Attachment B to the Governors' Decision 10-3. As long as the combination of products offered under an Inbound Competitive Multi-Service Agreement with Foreign Postal Operators satisfies the criteria for pricing, any agreement's prices would in effect be established by virtue of the Governors' Decision after the agreement is added to the competitive products list in the MCS.

The classification language also accommodates nontraditional services exchanged among postal operators. These may include inbound direct entry, whereby mail items bear domestic postage and comply with domestic mail eligibility requirements. An agreement may also feature customized inbound services depending on the types of services that foreign postal operators wish to offer their customers for mail destined to the United States. In addition, the classification language covers other services that a foreign postal operator offers to its customers under terms other than those commonly used, but that nevertheless are processed and delivered in a similar

manner as an existing service within the United States Postal Service's network. For example, if the Canada Post agreement for inbound competitive services were being filed today, the Postal Service would consider Xpresspost from Canada, which bears a Canada Post trade name but is presented to and handled by the Postal Service like inbound Air Parcel Post or, soon, EMS, to be within the scope of the product grouping for Inbound Competitive Multi-Service Agreement with Foreign Postal Operators.²

The classification language also allows for the establishment of unique operating terms and conditions, delivery and scanning service performance targets and standards, specifications for mail product categories and formats, processes for indemnity, and shared transportation arrangements that modify the default arrangements under the Universal Postal Union Acts.

II. Identification of the TNT Agreement

The terms of the TNT Agreement fit within the new proposed MCS language. The competitive services offered to TNT include rates for inbound Air CP, Surface CP, and EMS. In keeping with the classification language, the agreement establishes performance metrics for late delivery, late information transmission, and missing delivery information, with associated penalties. This agreement spans two one-year periods, with different rates for the second period. In addition, other improvements under the TNT Agreement include the following aspects:

- Settlement and payment processes will be electronically-based to the extent practicable, with the objective being to make such processes

² Order No. 376, Order Concerning Bilateral Agreement with Canada Post for Inbound Competitive Services, Docket Nos. MC2010-14 and CP2010-13, December 30, 2009.

efficient, timely, and specific to each particular service or type of service;
and

- The parties are encouraged, but not required, to consider offering one another incentives for optional activities, such as sortation or separation changes.

The Postal Service and TNT Post intend for the agreement to commence on October 1, 2010, the beginning of the next Postal Service fiscal quarter.

III. Filing under Part 3020, Subpart B of the Rules of Practice and Procedure

The Statement of Supporting Justification of Ms. Lea Emerson, Executive Director, International Postal Affairs, is included as Attachment 1 in accordance with Part 3020, Subpart B of the Commission's Rules of Practice and Procedure. This Statement provides support for the addition of Inbound Competitive Multi-Service Agreements with Foreign Postal Operators to the competitive products list and addresses the criteria of 39 U.S.C. § 3642(b).

Under 39 U.S.C. § 3642(b), the only criteria for such review are whether the product grouping qualifies as market dominant, whether it is excluded from the postal monopoly, and whether the proposed classification reflects certain market considerations. Each of these criteria has been addressed in this case.

First, as for 39 U.S.C. § 3642(b)(1), the product grouping does not qualify as market dominant. The Postal Service does not exercise sufficient market power so that it can effectively set the price of foreign-origin Air CP, Surface CP, or EMS "substantially above costs, raise prices significantly, decrease quality, or decrease output without risk

of losing a significant level of business to other firms offering similar products.”³

Therefore, the Postal Service is proposing that the TNT Agreement be added to the competitive products list. Subsequently, other functionally equivalent contracts would be added to the list as price categories under the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 listing.

Second, as for 39 U.S.C. § 3642(b)(2), and whether the product is excluded because it is subject to postal monopoly, items tendered as part of Inbound Competitive Multi-Service Agreements with Foreign Postal Operators consist principally of inbound Air CP, Surface CP, and EMS items that fall outside the scope of the Private Express Statutes. The shipping of merchandise using EMS and parcels is not subject to the Private Express Statutes. Furthermore, any “letters” as defined by 39 C.F.R. § 310.1(a) that are inserted in such items would likely fall within the suspensions or exceptions to the Private Express Statutes, such as the exception for cargo.⁴ Most items would be expected to exceed the 12.5-ounce cap on the letter monopoly in 39 U.S.C. § 601(b)(2). Moreover, all of the rates for Air CP, Surface CP, and EMS at issue here exceed the scope of the reserved area in 39 U.S.C. § 601(b)(1).

³ 39 U.S.C. 3642(b)(1).

⁴ As information, although Air CP and Surface CP parcels are now permitted to contain correspondence under Article 15 of the Universal Postal Convention (see Docket No. MC2010-10), it is expected that most would contain merchandise, which is not subject to the Private Express Statutes. See 39 CFR § 310.1 (defining a letter). To the extent international parcels contain any types of documents, such documents would be expected to include only invoices, receipts, or incidental advertising. With respect to any invoices or receipts accompanying merchandise in international parcels, the exception for cargo in 39 C.F.R. § 310.3(a) permits the inclusion of such matter because it both accompanies and relates “in all substantial respects to some part of the cargo or to the ordering, shipping or delivering of the cargo.” Incidental, non-addressed, non-personalized advertising enclosed in a parcel would also be within the scope of 39 CFR § 320.7. This suspension permits the private carriage of advertisements “enclosed with merchandise in parcels” to be carried privately, as long as the advertisements (i) are not marked with the names or addresses of intended recipients, and (ii) are incidental to the shipment of merchandise or periodicals.

Insofar as the competitive portion of the TNT Agreement concerns EMS, Air CP, and negotiated rates for Surface CP, the Postal Service notes that the Commission has already assigned all such services to the competitive category.⁵ Moreover, the Commission has already added to the competitive products list bilateral agreements for each type of service that could be included in an Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator.⁶ The instant classification would enhance the Postal Service's pricing flexibility and ease its and the Commission's administrative burden by creating a means for the Postal Service to negotiate agreements for multiple inbound competitive services at once, rather than parceling them out into separate instruments for regulatory purposes. The additional considerations listed in 39 U.S.C. § 3642(b)(3) are addressed by Ms. Emerson's Statement of Supporting Justification. Because all of section 3642's criteria for classification have been met, the Postal Service respectfully urges the Commission to act promptly by adding this product to the competitive products list as requested.

IV. Inbound vs. Outbound Service

In this docket, the Postal Service is presenting only an agreement to deliver inbound Air CP, Surface CP, and EMS in the United States for TNT Post. The rates paid by the Postal Service to TNT Post for outbound delivery of the Postal Service's competitive products in the Netherlands have not been presented to the Commission.

⁵ PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, Docket No. RM 2007-1, October 29, 2007, at 100, ¶ 4004 (assigning Inbound Expedited Services, Inbound Air Parcel Post, and Inbound Surface Parcel Post to the competitive products list).

⁶ *E.g.*, Order No. 218, Order Concerning Royal Mail Inbound Air Parcel Post Negotiated Service Agreement, Docket Nos. MC2009-24 and CP2009-28, May 29, 2009; Order No. 365, Order Adding Inbound International Expedited Services 3 to Competitive Products List, PRC Docket Nos. MC2010-13 and CP2010-12, December 22, 2009 (bilateral agreement with China Post Group for inbound EMS); PRC Order No. 376, Order Concerning Bilateral Agreement with Canada Post for Inbound Competitive Services, Docket Nos. MC2010-14 and CP2010-13, December 30, 2009.

Those rates represent supplier costs to the Postal Service, which are built into the prices that the Postal Service charges its shipping customers for outbound competitive products to be delivered in the Netherlands. An agreement concerning outbound competitive services with TNT Post would no more need to be classified as a product or otherwise subjected to prior Commission review than would an agreement to purchase trucking services from highway contractors or to purchase air transportation from air carriers.

V. Conclusion

For the reasons discussed, the Postal Service believes that Inbound Competitive Multi-Service Agreements with Foreign Postal Operators should be added to the competitive products list. The Postal Service asks that the Commission approve this Request.

As required by 39 U.S.C. § 3642(d)(1), a notice concerning this Request will be sent for publication in the *Federal Register*.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

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Chief Counsel, Global Business

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August 13, 2010

Attachment 1

Statement of Supporting Justification

I, Lea Emerson, Executive Director, International Postal Affairs, am sponsoring the Request that the Commission add Inbound Competitive Multi-Service Agreements with Foreign Postal Operators to the competitive products list for prices not of general applicability. The proposed Mail Classification Schedule (MCS) language for the Agreement describes the requirements for this agreement. My statement supports the Postal Service's Request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of chapter 36 of title 39 of the United States Code.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).*

Not applicable. The Postal Service is proposing that Inbound Competitive Multi-Service Agreements with Foreign Postal Operators be added to the competitive products list.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.*

Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators to the competitive product list is consistent with the Commission's determination in Order No. 43 that Inbound Surface Parcel Post at Non-UPU Rates, as well as EMS and Air Parcels, be considered as competitive products. Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators to the competitive product list will improve the Postal Service's competitive posture, while enabling the Commission to verify that each contract covers its attributable costs and makes a positive contribution to coverage of institutional costs. The TNT Agreement, along with each contract that is functionally equivalent to this instrument, will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs paid for by competitive products. Accordingly, no issue of subsidization of competitive products by market dominant products arises.

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

When negotiating the Agreement, the Postal Service's bargaining position is constrained by the existence of other providers of similar services. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators concern the terms of exchange between the Postal Service and other postal operators for inbound competitive services. Such competitive services include primarily inbound EMS, Air CP, and Surface CP, all of which have been classified as competitive by virtue of their exclusion from the letter monopoly and the level of competition in the relevant

market. The Postal Service may not decrease quality or output without risking the loss of business to large competitors that offer similar international parcel delivery services to foreign postal operators. The relevant market also does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, relevant agreements are premised on prices that provide sufficient incentive for foreign postal operators and their shipping customers to tender parcel and expedited volume to the Postal Service rather than a competitor. If the Postal Service were to raise these prices, the Postal Service would risk losing inbound foreign-origin volume to a private competitor in the international shipping industry.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696 subject to the exceptions set forth in 39 U.S.C. § 601.*

Items tendered as part of Inbound Competitive Multi-Service Agreements with Foreign Postal Operators consist principally of inbound EMS, Air CP, and Surface CP, all of which fall outside the scope of the Private Express Statutes. The shipping of merchandise using EMS and parcels is not subject to the Private Express Statutes. Furthermore, any “letters” as defined by 39 C.F.R. § 310.1(a) that are inserted in such items would likely fall within the suspensions or exceptions to the Private Express Statutes, such as the exception for letters pertaining to cargo. Moreover, most items would be expected to exceed the 12.5-ounce cap on the letter monopoly in 39 U.S.C. § 601(b)(2). Moreover, all rates for Air CP, Surface CP, and EMS exceed the scope of the reserved area in 39 U.S.C. § 601(b)(1).

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Private consolidators, freight forwarders, and integrators also offer international shipping arrangements whereby they provide inbound parcel and expedited delivery services under similar conditions.

(g) *Provide any information available on the views of those who use the product on the appropriateness of the proposed modification.*

Foreign postal operators currently tender inbound parcels and expedited items to the Postal Service for delivery in the United States. Foreign postal operators are therefore free to enter into negotiated agreements for rates or service changes. Those that do so obviously desire to tender parcel and expedited volume to the Postal Service under the terms and conditions of a negotiated agreement with the Postal Service. The Postal Service has concluded bilateral agreements with many postal operators for competitive services in the past, such as China Post Group (Docket Nos. CP2008-6, CP2008-7, and MC2010-13, CP2010-12), Royal Mail Group Limited (Docket Nos. MC2009-24, CP2009-28), and Canada Post Corporation (Docket Nos. MC2009-8, CP2009-9, and MC2010-14, CP2010-13). This indicates that foreign postal operators, as well as their end users, find this type of product to be satisfactory, since foreign postal operators and their shipping customers are aware of the availability of competitive services from private enterprises. However, no specific data are available to the Postal Service on foreign postal operators' or their shipping customers' views regarding the regulatory classification of this agreement.

(h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for international expedited and parcel delivery services comparable to the services at issue in this proceeding is highly competitive. Therefore, addition of the product grouping for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators will likely have little, if any, negative impact upon small business concerns. By virtue of executing agreements conforming to the product description, the Postal Service is giving foreign postal operators' small business customers an additional option for shipping articles to the United States. Small businesses in the United States also benefit from the ability to receive shipments that they have ordered from foreign businesses. Thus, the net impact on small businesses is positive, because of the absence of negative impact on small business competitors and the positive impact on small businesses served by foreign postal operators and the Postal Service.

- (i) *Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

None.

"RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE"

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE
ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR INBOUND COMPETITIVE
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS
(GOVERNORS' DECISION NO. 10-3)**

August 6, 2010

STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices. This decision establishes prices by setting price floor and price ceiling formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators. The agreements to which these prices will apply are described in Attachment A.¹ The pricing formulas and management's analysis of the appropriateness of these formulas are specified in Attachment B. We have reviewed that analysis and have concluded that the prices and classification changes are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. Agreements that fall within the terms specified in Attachment A, and whose prices fall within the price ranges established by the price floor and price ceiling formulas specified in Attachment B, are hereby authorized.

The PAEA provides that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. We are satisfied that the prices established according to the formulas listed in Attachment B will enhance the Postal Service's ability to meet the applicable statutory and regulatory requirements. We accept and rely upon the certification in Attachment C that the correct cost inputs for the formulas have been identified. In addition, the price floor formulas should produce prices that allow each product to cover attributable costs and

¹ Because the Postal Service is creating a new grouping for Inbound Competitive Multi-Service Agreements with Foreign Postal Administrations, entirely new Mail Classification Schedule language is proposed.

"RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE"

Governors' Decision No. 10-3

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provide a contribution toward the Postal Service's institutional costs. The prices should thus prevent cross-subsidies from market dominant products. As noted in the certification in Attachment C, entry into agreements pursuant to this Decision should not impair the ability of competitive products as a whole to cover an appropriate share of institutional costs.

No agreement authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3).

ORDER

In accordance with the foregoing Decision of the Governors, the formulas set forth herein, which establish prices for the applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:



Louis J. Giuliano
Chairman

Attachment A

Description of Applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2614 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

2614.1 Description

- a. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators provide prices for acceptance, transportation within the United States, and delivery of any combination of Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and/or Inbound International Expedited Services (Express Mail Service) tendered by foreign postal operators. These constituent services may include other services that the relevant foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in a similar manner within the United States Postal Service's network. Such agreements may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.
- b. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators may set forth general operating terms and conditions, on-time delivery and scanning service performance targets and standards, specifications for mail product categories and formats, processes for indemnity, and shared transportation arrangements that modify the requirements generally applicable to the services covered by each agreement.
- c. Items tendered under Inbound Competitive Multi-Service Agreements with Foreign Postal Operators items are either sealed or not sealed against inspection, according to the general nature of each underlying service.

2614.2 Size and Weight Limitations

Size and weight requirements are the requirements for Inbound Air Parcel Post at UPU Rates, Inbound Surface Parcel Post (at UPU Rates), Inbound Direct Entry, and Inbound International Expedited Services (Express Mail Service), respectively, subject to any applicable country-specific modifications.

2614.3 Optional Features

The Postal Service may offer such optional features as may be mutually agreed with the relevant foreign postal operator.

2614.4

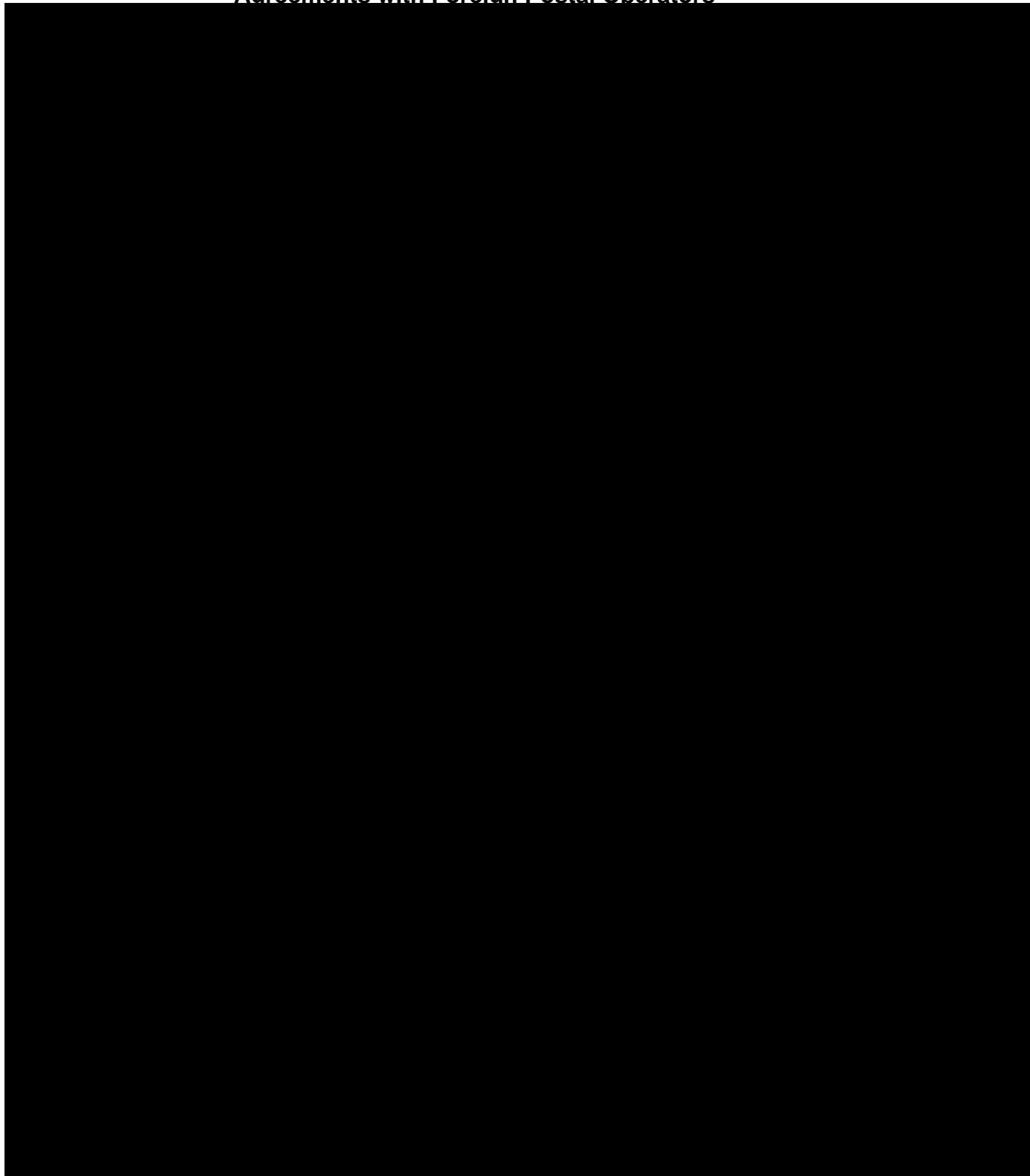
Products Included in Group (Agreements)

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-X, CP2010-X)

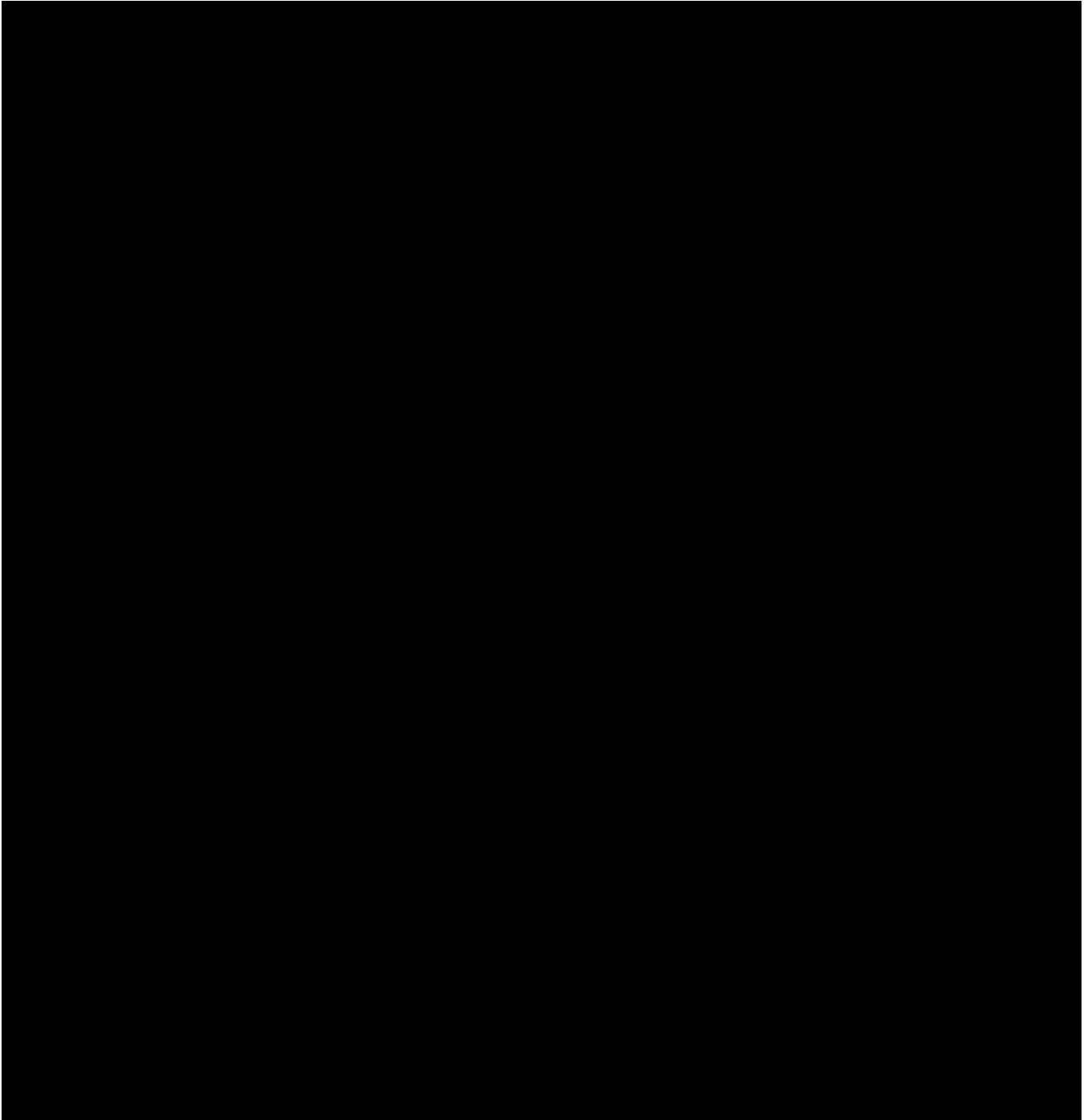
"Restricted and Sensitive Business Information - Do Not Disclose."

Attachment B

Formulas for Prices Under Applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators



"Restricted and Sensitive Business Information - Do Not Disclose."



Attachment C

Certification of Prices for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

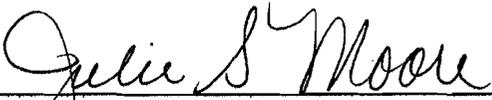
I, Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the price formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, which are set forth in Attachment B. I hereby certify that these formulas adequately represent all necessary cost elements. If the Postal Service were to enter into agreements and offer services that set prices above the price floors, the Postal Service would be in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The price floor formulas are designed to ensure that each agreement and service should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2009, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from Inbound Competitive Multi-Service Agreements with Foreign Postal Operators should be much smaller. Even if all such agreements are signed with prices at the price floor, they should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.



Joseph Moeller

**CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 10-3**

I hereby certify that the Governors voted on adopting Governors' Decision No. 10-3, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.



Julie S. Moore
Secretary of the Board of Governors

Date: 8-9-2010

STRATEGIC BILATERAL AGREEMENT

between

United States Postal Service

referred to as "USPS"

and

Koninklijke TNT Post B.V.

and

TNT Post Pakketservice Benelux B.V.

hereinafter jointly referred to as "TNT Post"

TNT POST – UNITED STATES POSTAL SERVICE
STRATEGIC BILATERAL AGREEMENT

This Agreement is between the United States Postal Service (“USPS”), an independent establishment of the executive branch of the Government of the United States, and TNT Post, a company registered in the Netherlands with a registered office at Amsterdam. The USPS and TNT Post may be referred to individually as a “Party” and together as the “Parties.”

INTRODUCTION

WHEREAS, the Parties desire to enter into a non-exclusive relationship whereby the Parties will provide each other certain products and/or services pursuant to the terms and conditions contained herein;

WHEREAS, the Parties acknowledge and understand that the commencement of performance under this Agreement is subject to the approval of and/or non-objection by various entities with oversight responsibilities, which may include but not be limited to the USPS management's executive committee, the USPS Governors, and/or the U.S. Postal Regulatory Commission. Accordingly, TNT Post acknowledges and understands that the ability of the USPS to perform under this Agreement may not occur, and in this respect the provisions of Article 3 and 4 shall apply;

WHEREAS, in light of the aforementioned acknowledgements, the Parties desire to be bound by the terms of this Agreement as well as the terms of Article 4 of this Agreement entitled “Conditions Precedent”;

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

Article 1: Purpose of the Agreement

The purposes of this Agreement are the following:

- 1 to foster the maintenance and further development of a mutually beneficial relationship on behalf of the Parties' respective customers;
- 2 to set out the principles and general terms and conditions that shall apply to the exchange of certain international products and services between the Parties; and
- 3 to set out the rates that will apply to that exchange of certain international products and services between the Parties.

Article 2: Guiding Principles of the Agreement

- 1 The Parties agree to work together to improve the quality of postal services between TNT Post and the United States in order to better serve the market. In particular, the Parties agree to provide access to each other's operating networks and services in such a way that for each service provided:
 - (i) excellence in quality of service performance will be attained and maintained;
 - (ii) the flexibility required to meet changing market and logistical conditions will be supported;
 - (iii) the costs to each Party of providing services will be minimized; and
 - (iv) settlement and payment processes will be electronically-based to the extent practicable, with the objective being to make such processes efficient, timely, and specific to each particular service or type of service.

- 2 In addition to the level of cooperation specifically outlined in this Agreement, the Parties intend to collaborate further on product development, enhancements to current products, and specified value-added services required to meet the ever-evolving needs of their customers.

Article 3: Oversight and Effective Date

The terms and pricing set forth under this Agreement require the approval from various entities that have oversight responsibilities for the USPS as set out in Article 4 below. Upon execution of this Agreement, the USPS shall seek such approval. This Agreement shall come into effect upon all such approvals having been obtained by the USPS and notification to TNT Post by the USPS that all such approvals have been obtained, and the date of notification shall be "the Effective Date," unless an alternative date is proposed in the USPS's notification and agreed to by TNT Post in a return communication, in which case that alternative date shall be the Effective Date. The Agreement will remain in effect from the Effective Date until terminated pursuant to Article 8.

Article 4: Conditions Precedent

The Parties acknowledge and understand that all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection by (hereinafter "Conditions Precedent") one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include but are not limited to: approvals or, if applicable, non-objection, from USPS management's executive committee, the Governors of the USPS, and the Postal Regulatory Commission. The Parties acknowledge that the Agreement might not be approved by such bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS or TNT Post and no benefit or rights granted through this Agreement shall inure to either Party unless and until the Effective Date occurs and upon such occurrence the Condition Precedents shall have been fulfilled.

Article 5: Limitation on Liability and Costs

In the event that the Conditions Precedent are not fulfilled, the USPS and TNT Post shall have no liability, which shall include no obligation to pay costs associated with any action taken by TNT Post prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement or the failure of any Condition Precedent, the USPS shall not be held liable for any damages including, without limitation, the following: actual damages; special damages; indirect damages; incidental damages; punitive damages; consequential damages; or any other damages, which shall include but not be limited to damages for loss of business profits; business interruption; any other loss; and/or any cost incurred by either Party attributable to such non-approval such as attorney's fees.

Article 6: Price Changes; No Effect on Service Terms

For each of the services with specific terms and conditions set forth in an attachment to this Agreement, any adjustments to the rates for the services shall be subject to the terms and conditions set forth in Attachment 1.

Article 7: Monetary Transactions

1. Each Party will bear the costs and retain the revenues for any work performed by itself and by agents or contractors on its behalf, unless the Parties agree to other arrangements to allocate costs or revenues and those arrangements are incorporated in an Amendment to this Agreement. Any such Amendment shall be governed by Article 18 below.
2. All taxes and duties are the sole responsibility of the Party to whom they are duly assessed and shall not be charged to any other Party in any form unless the Parties otherwise provide in an Amendment to this Agreement. Any such Amendment shall be governed by Article 18 below.

Article 8: Termination

Either Party may terminate this Agreement without cause upon 90 days advance written notice to the other Party. In the event of termination of the Agreement under this Article, the Parties shall be liable to make final settlement of all amounts owing as of the effective date of the termination. Each Party shall bear its own costs in the event of termination. In the event of termination, the Parties shall revert to the default rates applicable under the Universal Postal Union Convention effective at the time of such termination, and neither Party shall be liable to the others for any damages including, without limitation, actual, special, indirect, incidental, punitive, consequential or any other damages (including, without limitation, damages for loss of business profits, business interruption or any other loss) for any reason.

Article 9: Dispute Resolution

1. The Parties intend to resolve all controversies under this Agreement informally through correspondence, oral communications, and informal meetings.
2. If the methods described in the above paragraph prove insufficient to resolve a controversy, the Parties agree to refer that controversy to mediation, which shall consist of an informal, nonbinding conference or conferences between the Parties and the mediator, which shall perform mediation responsibilities in the English language. The mediator will be selected as mutually agreed by the Parties.
3. With the exception of controversies concerning cost or revenue liability, mediation will provide the sole means for addressing controversies related to this Agreement. If mediation does not resolve such a controversy, the Parties may exercise their right to terminate.
4. For controversies related to cost or revenue liability, TNT Post and the USPS will first refer the matter to mediation as discussed in the above paragraph. If mediation does not resolve such a controversy, an action relating to cost or revenue liability may be instituted and maintained only in the United States District Court for the District of Columbia. The parties each irrevocably submit to the exclusive personal jurisdiction of the United States District Court for the District of Columbia and waive any objection to the laying of venue in that court, to the convenience of that forum, and to that court's personal jurisdiction over the Parties.
5. Notwithstanding the provisions of this Article, and without prejudice to Article 11.1, in the event of conflict or inconsistency between the provisions of this Article and Article 11.1, the provisions of Article 11.1 shall prevail.

Article 10: Construction

Except as otherwise provided in this Agreement, this Agreement shall be governed by and construed in accordance with the federal law of the United States.

Article 11: Indemnification and Liability

1. The Parties acknowledge that aspects of liability or indemnification (including, but not limited to registered mail and air parcels) not expressly governed by this Agreement or its regulations are subject to the appropriate provisions of the Acts of the Universal Postal Union or the EPG agreement.
2. Except for liability and indemnification as described in the above paragraph and final settlement under Article 8, no Party to this Agreement shall be liable to the others for any damages including, without limitation, actual, special, indirect, incidental, punitive, consequential or any other damages (including, without limitation, damages for loss of business profits, business interruption or any other loss) for any reason, including, but not limited to, breach of any term of this Agreement or negligence.
3. Nothing in this Agreement shall be construed as an acknowledgment or concession regarding the validity of any claim or the entitlement of any Party to any amount of damages.

Article 12: Language

The official version of this Agreement, including all supporting documentation and correspondence, shall be in English. The English language shall be the controlling language for the purpose of interpreting this Agreement, and all correspondence between the Parties pertaining to this Agreement shall be in the English language. In the event of inconsistency between any terms of this Agreement, including its supporting documentation and correspondence, and any translation into another language, the English language meaning shall control.

Article 13: Confidentiality Requirements

1. The Parties consider the rate information included in this Agreement to be commercially sensitive information and agree that it should not be disclosed to third parties except as required by law. TNT Post will treat as confidential and not disclose to third parties, absent express written consent by the USPS, any information related to this Agreement that is treated as non-public by the U.S. Postal Regulatory Commission.
2. TNT Post acknowledges that as part of securing approval of this Agreement and in other subsequent regulatory filings, the Agreement and supporting documentation will be filed with the U.S. Postal Regulatory Commission ("Commission") in a docketed proceeding. TNT Post authorizes the USPS to determine the scope of information that must be made publicly available in any Commission proceeding. TNT Post further understands that any unredacted portion of the Agreement or supporting information will be available on the Commission's public website, www.prc.gov. In addition, the Postal Service may file information in connection with this instrument (including revenue, cost, or volume data) in other Commission dockets. TNT Post has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. At the request of TNT Post, the USPS will notify the TNT Post of the docket number of the Commission proceeding to establish the rates in this instrument under U.S. law, once that docket number has been assigned.

Article 14: Severability

If any of the provisions of this Agreement shall be held void or unenforceable, the other provisions shall survive and remain in full force and effect, subject only to either Party's unilateral right to terminate the Agreement.

Article 15: Notices

Any notice or other document to be given under this Agreement will be in writing and addressed as set out below. Notices may be delivered by hand, email, or Express Mail.

To the USPS:

Executive Director, International Postal Affairs
United States Postal Service
475 L'Enfant Plaza SW, Room 1P906
Washington, DC 20260-0906
UNITED STATES OF AMERICA
Lea.Emerson@usps.gov

To TNT Post:

TNT Post International Mail
Director International Relations
Mr Jan Sertons
PO Box 30259
2500 GG DEN HAAG
THE NETHERLANDS
jan.sertons@tntpost.nl

Article 16: Force Majeure

Neither party shall be liable for its failure to perform under the terms of this Agreement due to any contingency beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid, court orders, whether valid or invalid, inability to obtain material, equipment, or transportation, and any other similar or different contingency.

Article 17: Legal Status of this Agreement

This Agreement constitutes a legally binding agreement on the part of each signatory hereto and does not bind the Parties' respective governments. The Parties acknowledge that this Agreement sets out the terms and conditions of a negotiated contractual arrangement between the Parties and is not an agreement entered into or subject to international law. This Agreement does not involve the creation of a wholly-owned subsidiary of any Party or a joint venture company or partnership funded in any ratio by the Parties. The Parties do not intend that any agency or partnership relationship be created between any of them by this Agreement.

Article 18: Amendment

This Agreement may be amended or extended only by mutual written agreement signed by authorized representatives of TNT Post and USPS. Neither a Party's acquiescence in any performance at variance to this Agreement nor a Party's failure to exercise any right or enforce any obligation shall be deemed an amendment to this instrument. The Amendment may be contingent upon any and all necessary approvals by USPS management, the USPS Board of Governors, and/or the U.S. Postal Regulatory Commission. If such approvals are required, the Amendment will not become effective until such time as all necessary approvals are obtained.

Article 19: Assignment

This Agreement may not be assigned in whole or in part by any Party without the prior written consent of the other parties. Each Party may, however, delegate certain of its responsibilities under this Agreement to a subsidiary or other affiliate entity within its organizational structure without the need for consent by the other Parties so long as such subsidiary or entity would be bound by this Agreement.

Article 20: Applicability of Other Laws

1. The Parties acknowledge that this Agreement does not involve the USPS's acquisition of property or services and is not subject to the Contract Disputes Act (41 U.S.C. § 601 et seq.).
2. The Parties recognize that performance under this Agreement may be subject to laws enacted or enforced by governmental entities and is contingent on each Party obtaining all consents, authorizations, orders, or approvals required under applicable law or policy to effectuate the Agreement.
3. The Parties understand that USPS may be required to provide copies of this Agreement to the U.S. Department of State and the U.S. Postal Regulatory Commission. The entire Agreement, or portions thereof as the USPS determines to be appropriate, will be filed with the U.S. Postal Regulatory Commission with a notice to add it to the competitive and/or market dominant products list.

Article 21: Entire Agreement

1. This Agreement shall constitute the entire agreement between the Parties concerning the exchange of international mail described herein. Except as otherwise indicated in this agreement, any prior agreement, understanding, or representation of any kind preceding the date of this Agreement shall not be binding upon either Party.
2. The Parties shall be bound by their commitments under the E-Parcel Group Agreement for the Delivery of Day-Certain Cross-Border Parcels—Core Agreement and Sub-

Agreement B to the Agreement for the Delivery of Day-Certain Cross-Border Parcels (collectively, "EPG Agreements"), if applicable, but only to the extent consistent with this agreement. In particular, rates and penalties established under the EPG Agreements shall not apply to mail tendered under this Agreement. In the event of any inconsistency between this Agreement and a commitment under the EPG Agreements, then this Agreement shall prevail over any such inconsistent terms.

3. The Parties acknowledge that the provisions of the Universal Postal Convention and applicable regulations apply except to the extent inconsistent with this Agreement. In particular, Quality of Service bonuses established or permitted under the Universal Postal Convention and applicable regulations shall not apply to mail tendered under this Agreement.

Article 22: Term

The USPS will notify TNT Post of the Effective Date of the Agreement within thirty (30) days after receiving the approval of the entities that have oversight responsibilities for the USPS. USPS shall have no obligation to notify TNT Post of the status of the approval process or of potential fulfillment of the approval process. The Agreement will remain in effect for two years after the Effective Date unless terminated sooner pursuant to Article 8. Upon the expiration of this two-year period, the Agreement shall be automatically renewed unless the Parties agree otherwise or either Party advises the other Party that it is unable to continue the Agreement for any reason.

IN WITNESS WHEREOF, the Parties agree to be bound as of the latest date of signature to the terms and conditions of this Agreement.

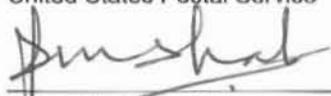
TNT Post

Harry Koorstra
Group Managing Director Mail

Date

16-07-2010

United States Postal Service



Pranab Shah
Managing Director, Global Business,
and Vice President

Date

July 22, 2010

Attachment 1

Terminal dues rates listed in the tables included below are product stream rates per item and per kilogram stated in Special Drawing Rights (SDRs) unless noted otherwise. The rates are set on the conditions that current work-sharing arrangements are substantially maintained. Any changes to current work-sharing (i.e. sortation and preparation) arrangements will be subject to negotiations and mutual written agreement, including, but not limited to, agreement as to any impact on pricing.

Period 1 is until September 30, 2011 and Period 2 is from October 1, 2011 until September 30, 2012.

Additionally, each Party is encouraged, but not required, to consider offering to the other Party incentives for optional activities, such as sortation or separation changes.

Rates					
The Netherlands to USA					
Stream	Service Description	Proposed Settlement Charges Period 1 (SDR/Piece)	Proposed Settlement Charges Period 1 (SDR/Kg)	Proposed Settlement Charges Period 2 (SDR/Piece)	Proposed Settlement Charges Period 2 (SDR/Kg)
A,UL,IL-P	PRIORITY LETTER TRAY				
A,UL,IL-G	PRIORITY FLAT TRAY				
A,UN,BG	PRIORITY BAG				
A,UN,PC or CN	PRIORITY BULK CONTAINER				
A,UZ,BG	PRIORITY IPA				
A,UR,BG	PRIORITY REGISTERED MAIL BAG				
B,UL,IL-P	SAL LETTER TRAY				
B,UL,IL-G	SAL FLAT TRAY				
B,UN,BG	SAL BAG				
B,UN,PC or CN	SAL BULK CONTAINER				
B,UM,BG	SAL M-BAG				
C, UN, BG	SURFACE BAG				
C, UM, BG	SURFACE M-BAG				
C,UN,PC	SURFACE BULK CONTAINER				
C,UL,IL	SURFACE LETTER TRAY				
A,EM,BG	EMS				
A,CE,BG	Air Parcels**				
C,CN,BG	Surface Parcels				
TBD	Global Confirmation Under 2 lbs				
TBD	Global Confirmation Over 2 lbs				
USA to The Netherlands					
Stream	Service Description	Period 1 Proposed Settlement Charges (SDR/Piece)	Period 1 Proposed Settlement Charges (SDR/Kg)	Period 2 Proposed Settlement Charges (SDR/Piece)	Period 2 Proposed Settlement Charges (SDR/Kg)
A,UL,IL-P non-IPA	Priority Letter Tray non-IPA				
A,UL,IL-G- non-IPA	Priority Flat Tray- non-IPA				
A,UN,BG- non-IPA	Priority Bag non-IPA				
A,UZ,PU or GU or BG	IPA - Letters, Flats, Packets				
A,UM,BG-non-IPA and IPA	Priority M-Bag				

A,UR,BG	Priority Registered Mail Bag
B,UA,BG	ISAL
B,UM,BG	SAL M-Bag
C,UA,CN	Surface Receptacle
A,ED,BG and A,EM,BG	Express Mail Service**
A,CE,CN or BG	Air Parcels**
TBD	Global Confirmation Under 2 lbs
TBD	Global Confirmation Over 2 lbs



Performance level threshold

Netherlands to USA	Late delivery	Late information transmission	Missing delivery information
Air parcels			
Express Mail Service			
USA to Netherlands			
Air parcels			
Express Mail Service			

For items above the performance level threshold, the rate will be reduced by [redacted]

* Rates for letter post streams listed above incorporate provisional 2010 quality linked rates, but are subject to adjustment at year end settlement based on the final rates for each calendar year.



Specifications of Mail Product Categories and Formats

The rates for the stream categories above shall be based upon the following format and product definitions:

Letters

- Any piece which has:
- a length less than or equal to 292 mm (11 1/2 inches) and
 - a width less than or equal to 155 mm (6 1/8 inches) and
 - a thickness equal to or less than 6 mm (1/4 inch)
 - and which has a weight of less than or equal to 2 kilograms

Flats

- Any piece exceeding any maximum limit for a Letter and which has:
- a length less than or equal to 381 mm (15 inches) and
 - a width less than or equal to 292 mm (11 1/2 inches) and
 - a thickness less than or equal to 20 mm (3/4 inch)
 - and which has a weight of less than or equal to 2 kilograms

Packets

Any piece exceeding any of the maximum size limits for a Flat, but within the maximum size limits as set forth in the Universal Postal Union Letter Post Regulations Article RL 122 and which has a weight of less than or equal to 2 kilograms

M-Bags

Printed matter in a direct sack to a single foreign address, subject to the Reservations of the United States of America in Universal Postal Union Protocol Article RL II and V, which has a weight less than or equal to 31.5 kilograms

Registered Mail

Any piece that meets the size and weight dimensions of Letters, Flats, or Packets and bears a Registered label on the mail piece

Parcels

Any piece corresponding to size limits as set forth in the Universal Postal Union Parcel Post Regulations Article RC 115 and which has a weight of less than or equal to 31.5 kilograms

Express Mail Service (EMS)

"EMS items" means mail items as defined by Article 14 of the Universal Postal Union Convention (Geneva 2008). An EMS item may contain documents or merchandise or both.

Global Confirmation

Global Confirmation may be offered upon further development by the U.S. Postal Service and TNT Post. As currently envisioned, this service would offer delivery scanning for Letter Post items that exceed the maximum size limits for a Letter, and delivery scanning in lieu of signature for Parcels. This agreement may be modified to contain the specifications and rates for Global Confirmation in advance of its implementation.

**Certification of Prices for the Inbound Competitive Multi-Service Agreement with
TNT Post**

I, Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the prices for the Inbound Competitive Multi-Service Agreement with TNT Post. The prices contained in this agreement were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreement, issued August 6, 2010 (Governors' Decision No. 10-3)

I hereby certify that the cost coverage for the agreement with TNT Post has been appropriately determined and represents the best available information. The prices are in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The prices demonstrate that the agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2009, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from this agreement should be much smaller. The agreement with TNT Post should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.


Joseph Moeller

ATTACHMENT 5

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The Strategic Bilateral Agreement between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (hereinafter “the Agreement”), enabling Governors’ Decision, and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission. Redacted copies of the Governors’ Decision and the Agreement are filed with the Request as Attachments 2 and 3, respectively. In addition, a redacted version of the supporting financial documentation is included with this public filing as a separate Excel file.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practice. In the Postal Service’s view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).² Because the portions of the

¹ PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

² In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government

materials that the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of the instant Agreement, the Postal Service believes that the only third party with a proprietary interest in the materials is the foreign postal operator with whom the Agreement is made. Through text in the Agreement, the Postal Service has already informed the postal operator, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and the operator's ability to address its confidentiality concerns directly with the Commission. Due to language and cultural differences as well as the sensitive nature of the Postal Service's rate relationship with the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operator. The Postal Service identifies as an appropriate contact person Mr. Bruce Marsh, Program Manager, Terminal Dues, International Postal Affairs. Mr. Marsh's phone number is (703) 292-3570, and his email address is bruce.r.marsh@usps.gov.³

establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

³ The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

In connection with its Request filed in this proceeding, the Postal Service included an Agreement, the enabling Governors' Decision, and financial work papers. These materials were filed under seal, with redacted copies filed publicly, after notice to the affected foreign postal operator. The Postal Service maintains that the redacted portions of the Agreement, Governors' Decision, and related financial information should remain confidential.

The redactions to the Governors' Decision cover pricing formulas and management analysis about pricing factors. With regard to the Agreements filed in this docket, the redactions withhold the actual prices being offered between the parties under the Agreement, as well as certain negotiated terms. The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, negotiated pricing, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the work papers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b).

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the portions of the Agreement that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Information about negotiated pricing is commercially sensitive, and

requests a waiver that would allow it to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.

the Postal Service does not believe that it would be disclosed under good business practices. Competitors could use the information to assess the offers made by the Postal Service to foreign postal operators or other customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. Additionally, foreign postal operators or other potential customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial work papers include specific information such as costs, assumptions used in pricing decisions, the negotiated prices themselves, projections of variables, and contingency rates included to account for market fluctuations and exchange risks. The redactions to the Governors' Decision cover pricing formulas and management's pricing analysis. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing. Unlike its competitors, the Postal Service is required to demonstrate that each negotiated agreement covers its attributable costs. Furthermore, the Postal Service's Governors have required that the Agreement be submitted to the Commission with a notice that complies with 39 U.S.C. § 3632(b)(3).⁴ Thus, competitors would be able to take advantage of the information to offer lower pricing to postal customers, while subsidizing any losses with profits from other customers. Eventually, this could

⁴ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No. 10-3), August 6, 2010, at 2.

freeze the Postal Service out of the relevant inbound delivery services markets. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the Agreement or from the information in the work papers and Governors' Decision whether additional margin for net profit exists between the Agreement being filed and the contribution that the Agreement must make. Moreover, charges between the Postal Service and the foreign postal operator constitute costs underlying the postal services offered to each postal operator's customers, and disclosure of this cost basis would upset the balance of Postal Service negotiations with contract customers by allowing them to negotiate, rightly or wrongly, on the basis of the Postal Service's perceived supplier costs. From this information, each foreign postal operator or customer could attempt to negotiate ever-decreasing prices, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the foreign postal operator involved in this Agreement could use the information in the work papers in an attempt to renegotiate its own rates by threatening to terminate its current agreement.

Price information in the Agreement and financial spreadsheets also consists of sensitive commercial information of a foreign postal operator. Disclosure of such information could be used by competitors of the postal operator to assess the operators' underlying costs, and thereby develop a benchmark for the development of a competitive alternative. The foreign postal operator would also be exposed to the same risks as the Postal Service in customer negotiations based on the revelation of its supplier costs.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the price charts in the Agreement, as well as any negotiated terms, would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: The foreign postal operator's negotiated prices are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the price and determines that there may be some additional profit margin between the rates provided to the foreign postal operator and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. The other postal operator, which was offered rates identical to those published in the Agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered it, or it will not use the Postal Service for its inbound delivery needs.

Harm: Competitors could use performance information to assess vulnerabilities and focus sales and marketing efforts to the Postal Service's and the foreign postal operator's detriment.

Hypothetical: The delivery standards information in the Agreement is released to the public. Another delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses the Postal Service's and/or foreign postal operator's performance targets as a concrete comparison point, advertising itself to potential customers as offering performance better than the Postal Service's and/or the foreign postal operator's.

Harm: Public disclosure of information in the financial work papers and pricing information in the Governors' Decision would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service obtains a copy of the unredacted version of the financial work papers from the Postal Regulatory Commission's website. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers below that threshold and markets its purported ability to beat the Postal Service on price for international delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of one or more relevant international delivery markets. Even if the competing providers do not manage wholly to freeze out the Postal Service, they will significantly cut into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the financial work papers would be used by the foreign postal operator's competitors to its detriment.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial work papers from the Postal Regulatory Commission's website. The competitor analyzes the work papers to assess the foreign postal operator's underlying costs for its corresponding products. The competitor uses that information as a baseline to negotiate with U.S. customs brokers and freight companies to develop lower-cost alternatives.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international expedited and parcels products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including other postal operators) should not be provided access to the non-public materials. This includes the counter-party of this Agreement with respect to all materials filed under seal except for the Agreement, to which that party already has access.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.