

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

ANNUAL COMPLIANCE REVIEW, 2017

Docket No. ACR2017

UNITED STATES POSTAL SERVICE NOTICE OF FILING NONPUBLIC FOLDER
USPS-FY17-NP40 AND APPLICATION FOR NONPUBLIC TREATMENT
(February 14, 2018)

The Postal Service hereby gives notice of filing of the material indicated below as part of the **Non-Public Annex** in this proceeding:

USPS-FY17-NP40 Nonpublic Material Provided in Response to
Chairman's Information Request No. 15

The requested information provided in the response to Chairman's Information Request No. 15 includes commercially sensitive information regarding revenue and markets for the Postal Service's inbound market dominant products,¹ and includes information that may be considered proprietary by third parties. The application for non-public treatment of Nonpublic Folder USPS-FY17-NP40 is attached to this notice.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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¹ This material is a subset of the material provided in Nonpublic Folder USPS-FY17-NP31 in response to Chairman's Information Request No. 1, Question 1, and shares similar bases for nonpublic treatment as the material submitted in that nonpublic folder. Accordingly, it is possible that the litigation of issues related to the material associated with Nonpublic Folder USPS-FY17-NP31 could impact the Commission's treatment of the materials contained in Nonpublic Folder USPS-FY17-NP40.

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NONPUBLIC 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 nonpublic treatment of Nonpublic Folder USPS-FY17-NP40, which contains commercially sensitive information provided in response to Chairman's Information Request No. 15. This commercially sensitive information includes disaggregated Inbound Letter Post revenue data for Fiscal Year 2016 separated by country group and shape format ("Requested Information"), and as described below, public disclosure of this information would cause significant harm to the Postal Service and at least one foreign postal operator.

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

Based on its longstanding and deep familiarity with the postal and communications businesses and markets generally, and its knowledge of many firms, including competitors, mailers, and suppliers, the Postal Service does not believe that any commercial enterprise would voluntarily publish information pertaining to the revenues and markets for its products that are subject to competition, as well as inbound market dominant products for which rates could be negotiated with other postal operators. In the Postal Service's view, this information would be exempt from

¹ Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1 (June 19, 2009).

mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).²

Although the Requested Information in Nonpublic Folder USPS-FY17-NP40 retains some level of aggregation, the disaggregation to country group reveals proprietary third party information, particularly with respect to Country Group [REDACTED] where [REDACTED] (the “FPO”) is responsible for [REDACTED] of the revenue attributable to E Format mail (untracked packets) for that country group. The Requested Information is commercially sensitive, and there is no publicly available information on Inbound Letter Post volumes by shape, even at an aggregated level.

The proprietary nature of the commercially sensitive information is not eliminated or reduced through the limitation of the information to shape, or the exclusion of mail exchanged pursuant to negotiated agreements. Not only are Inbound Letter Post packets (E Format) subject to considerable competition, but bulk international letter and flat mail (P and G Format) can be subject to competition as well. The Requested Information includes revenue for letters, flats, untracked letter post packets, and mixed format letter post, and excludes revenue from negotiated service agreements and add-on services, such as registry and tracking. This redefinition of the set of information provided previously in Nonpublic Folder USPS-FY17-NP31 does not result in an information set that is any less commercially sensitive.

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 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. 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.

Because it is only a subset of the information provided in Nonpublic Folder USPS-FY17-NP31, the Requested Information is necessarily more disaggregated than the NP31 information, and this response offers insights regarding the more discrete market for untracked packets containing merchandise, which is susceptible to competition. The Postal Service is just one of the participants operating in the competitive market for inbound international shipping, which includes inbound small packets containing merchandise. There are currently almost 200 Extraterritorial Offices of Exchange (ETOE) operating worldwide, about 40 of which are located in the United States.³ The operators of ETOEs compete for business in the same markets as the Postal Service and other foreign posts operating in their home territories, including letter post mail. In addition, there are a number of private-sector international mailing operators and integrators that compete with the Postal Service for certain portions of the inbound package market, offering products similar to inbound small packets.

And even though mail exchanged under negotiated agreements is omitted from the Requested Information, public disclosure of the Requested Information would still cause commercial harm to both the Postal Service and the FPO with respect to the mail exchanged under negotiated agreements. Through a comparison of the Requested Information (which excludes mail exchanged under negotiated agreements) and the revenue information provided in Nonpublic Folder USPS-FY17-NP31 (which includes both the volume associated with the Requested Information and volume exchanged under negotiated agreements) a party could gain even more indications of the total inbound volume exchanged between the Postal Service and the FPO under negotiated

³ See UPU, International Mail Processing Centres, 108b_IMPC-Open_offices.xlsx, available at <http://www.upu.int/en/activities/standards/impcs.html>.

agreements and would be able to separate the packet data based on market segment (e.g., tracked and untracked), thereby providing yet even more insight into the market for merchandise shipments.

The Postal Service and at least one third party foreign postal operator will suffer harm from public disclosure of the Requested Information and the resulting competitive advantage obtained by competitors and potential competitors of the Postal Service and the FPO.

(2) Identification, including name, phone number, and email 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;

The Postal Service believes that at least one third party, the FPO, has a proprietary interest in the Requested Information. Because the Postal Service maintains that (i) the identity of the FPO identified above is commercially sensitive and should not be publicly disclosed,⁴ and (ii) language and cultural barriers may make it difficult for those seeking access to nonpublic information to provide proper notice to the applicable third parties, the Postal Service employee who will be responsible for providing notice to this specific third party is James M. Mecone, United States Postal Service Attorney, who can be contacted at (202) 268-6858 or James.M.Mecone@usps.gov.

⁴ Due to the commercial sensitivity of the identified foreign postal operator and country group, the Postal Service has redacted this information from the application for nonpublic treatment. Disclosure of this information, even in this application, would provide information that could increase the commercial harm by expanding the universe of competitors and potential competitors that could obtain a competitive advantage from the disclosure of the Requested Information. For example, disclosure of this information could enable parties to obtain a competitive advantage over the Postal Service and the identified foreign postal operator if the Requested Information were ever disclosed publicly.

(3) A description of the materials claimed to be nonpublic 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 nonpublic;

The materials in Nonpublic Folder USPS-FY17-NP40 provide disaggregated inbound revenue information for letter post mail, separated by one of four country groups and shape format (i.e., E, P/G, and X) for Fiscal Year 2016. Because this information constitutes commercially sensitive information and should not be publicly disclosed, the Postal Service is placing all such information in Nonpublic Folder USPS-FY17-NP40, and filing it under seal.

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

If the Requested Information were to be disclosed publicly, the Postal Service considers it quite likely that it and at least one third party foreign postal operator would suffer commercial harm. The Requested Information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practice. In this regard, the Postal Service is not aware of any business with which it competes (or in any other commercial enterprise), either within industries engaged in the carriage and delivery of materials and hard copy messages, or those engaged in communications generally, that would disclose publicly information and data of comparable nature and detail.

The Requested Information provides valuable information regarding business opportunities in certain markets, and can be used by competitors and potential competitors in the shipping and delivery industries to make decisions regarding entry into new markets or enhancement of current operations in existing markets, and disclosure of this information would increase the likelihood that such decisions would

lead to loss of revenue and market share of the Postal Service and the FPO. The Postal Service believes that this information would lead to competitive harm, if publicly disclosed.

If the Requested Information were available publicly, then competitors could target locations with relatively higher revenue and could focus sales and marketing efforts in those locations to the Postal Service's detriment. Armed with detailed revenue and product information, competitors would be able to better identify and understand areas where they could adapt their own operations to be more competitive with postal products and better assess how and where to market their own products in such a way as to target the markets with the greatest opportunities. This would lead to erosion of the Postal Service's revenue attributable to these products through lost sales and/or the need to lower prices to remain competitive. It is highly likely that, if the Requested Information were made public, the Postal Service's competitors and suppliers would take advantage of it immediately.

Finally, as explained in greater detail below, disclosure of the Requested Information would expose at least one foreign postal operator to the same competitive harms.

The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the Requested Information.

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

The following section describes the harms discussed above and presents at least one hypothetical situation illustrating the consequences of disclosure.

Harm: Competitors could use revenue information, disaggregated by shape and country group, to gain knowledge and insights about the relative strengths and weaknesses of the Postal Service's business related to Inbound Letter Post mail with certain shapes in particular country groups. That refined understanding would, in turn, give competitors advantages in seeking to divert business from the Postal Service and to gain new business for which the Postal Service might compete, and in allocating resources in a more efficient manner. As a result, the Postal Service and at least one foreign postal operator would experience losses of existing and new business, and erosion of contributions and margins.

Hypothetical: The Requested Information is disclosed publicly. Participants in the shipping and delivery industries, particularly those that offer or are considering offering services between the markets where the FPO operates and the United States, review this information. These participants reasonably assume that the FPO [REDACTED]

[REDACTED]. With this industry knowledge and commercially sensitive information, participants would be able to gauge the Postal Service's market share in the relevant market, and the total market size, quite easily with a small range of error. Operators of ETOEs worldwide and private companies could use this information to focus their sales efforts in the relevant market, resulting in competitive harm to the Postal Service and the FPO.

Hypothetical: Because in at least one country group a single group member is responsible for a significant percentage of the revenue in the country group, the revenue attributable to a single foreign postal operator could be derived from the Requested Information. Hypothetically, this information is made public. Competitors use it to gain a refined understanding of the revenue opportunities for products with certain shapes, in certain foreign markets. Financial analysts for the competitors relay their assessments to colleagues in the competitors' marketing and investment divisions.

This information provides a better foundation to enable competing firms to make decisions regarding investments and product design in their own product lines. Based on such assessments, for example, firms that have a minimal or no presence in certain markets determine that they have potential for competitive gain against the Postal Service and other foreign posts in these areas and, accordingly, decide to allocate investments in improved operations, supplier arrangements, and technologies to improve their competitive positions in those markets. To the extent that these decisions actually make the firms more competitive, the Postal Service loses existing or new business.

Hypothetical: The Requested Information is released to the public and becomes available to a competitor. The competitor, which could be a foreign postal operator, assesses the financial performance of products with a certain shape based on the information released. The competitor then targets its advertising and sales efforts at actual or potential customers in market segments associated with certain-shaped products where the Postal Service has substantial revenue, thereby hindering the Postal Service's ability to keep this business.

Hypothetical: The Requested Information is released to the public and becomes available to a supplier of transportation or other services. From this information, suppliers determine approximate volume and contribution by product in certain markets, and are better able to assess the economic opportunities for transportation between certain markets. With this information, suppliers decide to increase the rates they charge the Postal Service or foreign postal operators to provide transportation and/or

other services between certain markets, or become more resistant to negotiating favorable prices for their goods and services.

Harm: Public disclosure of information contained in Nonpublic Folder USPS-FY17-NP40 associated with international delivery services provided in partnership with specific third parties would be used by those parties' competitors to their detriment.

Hypothetical: A competitor of the FPO, such as a competing international delivery service, obtains the Requested Information. The competitor analyzes the information to assess the average per-piece and per-pound revenue for Inbound Letter Post mail which corresponds to the FPO's average per-piece and per-pound cost for U.S. delivery of its pertinent products. The competitor uses that information to assess the market potential and, as a baseline, to negotiate with U.S. customs brokers and freight companies to develop lower-cost alternatives and undermine the FPO's market offerings.

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

The Postal Service maintains that the portions of the materials filed nonpublicly should be withheld from persons involved in competitive decision-making in the relevant markets for competitive delivery products (including 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 these or similar products should not be provided access to the nonpublic materials.

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

The Commission's regulations provide that nonpublic materials shall lose nonpublic 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 nonpublic treatment of Nonpublic Folder USPS-FY17-NP40.