

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

COMPETITIVE PRODUCT PRICES  
EXPRESS MAIL INTERNATIONAL  
BILATERAL/MULTILATERAL AGREEMENTS

Docket No. CP2008-7

**UNITED STATES POSTAL SERVICE RESPONSE TO ORDER NO. 79 AND  
NOTICE OF FILING INFORMATION RESPONSIVE TO PART 3020 OF THE  
COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

(June 10, 2008)

On June 3, 2008, the Commission issued Order No. 79, giving notice of the following actions by the Postal Service: (i) the filing under seal of a Governors' decision setting forth price ranges for Inbound Express Mail Service (EMS) agreements and (ii) the filing under seal of an Inbound EMS agreement with China Post Group, a foreign postal administration (FPA).<sup>1</sup> The Commission considered the Governors' decision as establishing, in essence, a "shell classification" for functionally equivalent Inbound EMS bilateral and multilateral agreements.<sup>2</sup> The Commission directed the Postal Service to

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<sup>1</sup> While the Postal Service notice of the Governors' Inbound EMS decision cited 39 C.F.R. §§ 3015.5 (Regulation of Rates for Competitive Products, Rate or class not of general applicability) and 3020.90 (Requests Initiated by the Postal Service to Change the Mail Classification Schedule), its notice of the China Post Group Inbound EMS agreement cited only the former of these provisions. Order No. 78 concludes that the China Post Group agreement will be classified as a new product and consolidates the consideration of both notices under Docket No. CP2008-7. Order No. 78 determines that the Commission will consider the China Post Group agreement as if it had been filed pursuant to 39 C.F.R. 3020, Subpart B (Requests Initiated by the Postal Service to Modify Product Lists Described within the Mail Classification Schedule), making the Commission's review of the consolidated dockets pursuant to Rule 3020.34 (Review). Having exercised its discretion to consolidate the two proceedings and construe them collectively as supporting a request to modify product lists, the Commission invited the Postal Service to supplement the materials previously filed.

<sup>2</sup> In Order No. 43, the Commission acknowledged that it might be appropriate to group functionally equivalent NSAs as a single product. PRC Order No. 43, at 57-58, 64, 75. In Order No. 78, the Commission repeated this acknowledgement insofar as functionally equivalent NSAs exhibit similar cost and market characteristics. PRC Order No. 78, at 2-3. With their "shell classification" decision, the Governors have established a pricing formula that will reflect the costs of each agreement meeting a

explain in greater detail the rationale for maintaining confidentiality as to the names of foreign posts, the relevant mail products, and the expiration date for each international mail agreement.

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

At the Commission's invitation, the Postal Service is providing additional supporting materials under Part 3020, Subpart B of the Rules of Practice and Procedure. Attachment A is the supporting statement of Pranab Shah, Executive Director, Global Business Strategy and Technology, under Rule 3020.32. With this filing, the Postal Service provides information in support of a modification to the competitive products list for, as a product not of general applicability, the shell classification of Inbound EMS agreements described in language proposed by the Postal Service for inclusion in section 2115 of the MCS. The Shah statement also articulates, alternatively, the impact of adding the Inbound EMS Agreement filed in this docket to the competitive products list. If the Inbound EMS shell classification is added to the competitive products list, then the Inbound EMS agreement filed in this docket would fit its criteria and would belong to the functionally equivalent grouping defined thereby.<sup>3</sup>

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common description. All Inbound EMS agreements meeting the Governors' criteria will necessarily exhibit similar cost and market characteristics; therefore, all Inbound EMS agreements will be functionally equivalent and may be classified according to the general product description. In this case, as is anticipated in future cases, the certification that accompanies the filing of the China Post Group agreement effectively fits this agreement within the shell classification.

<sup>3</sup> In conformance with Rule 3020.31(b) and (f) of the Commission's Rules of Practice and Procedure, the Postal Service has provided copies of the relevant Governors' decision, under seal, and applicable MCS section, with proposed changes, in previous filings on this docket. Mr. Shah's statement, appended hereto as Attachment A, serves as the supporting justification required by Rule 3020.31(e).

## **II. Confidentiality**

In Order No. 79, the Commission directed the Postal Service to address in greater detail on the rationale for maintaining confidentiality as to the names of foreign posts, the relevant mail products, and the expiration date for each international mail agreement. The Postal Service has no objection to the listing of expiration dates for such agreements, because it does not regard this information, considered in isolation, to be commercially sensitive. Nor, upon further discussion and reflection, does the Postal Service object to the identification of foreign posts with whom the Postal Service has concluded international mail agreements or the products covered by those agreements, since the disclosure of this information is consistent with the Postal Service's approach in the proposed draft MCS.<sup>4</sup>

## **III. Inbound vs. Outbound EMS Service**

In Order No. 79, the Commission declined to reach a determination as to whether the outbound portion of the Postal Service's EMS agreement with China Post Group is subject to the Commission's review. In this docket, the Postal Service is presenting only an agreement to deliver inbound EMS in the United States for China Post Group, which for contractual purposes could be analogized to a "customer" relationship with the Postal Service. The rates paid by the Postal Service to China Post Group for outbound EMS delivery in China have not been presented to the Commission. 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 EMS to be delivered in China. An outbound EMS agreement with China Post Group would no more need to be

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<sup>4</sup> See United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43 (Nov. 20, 2007), at 12.

classified as a product or otherwise subjected to Commission review than would an agreement to purchase trucking services from highway contractors or to purchase air transportation from air carriers.

Respectfully submitted,

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### Statement of Supporting Justification

I, Pranab Shah, Executive Director, Global Business Strategy and Technology, am sponsoring this request that the Commission add the shell classification for bilateral and multilateral Inbound Express Mail Service (Inbound EMS) Agreements, filed as Docket No. CP2008-6, or the Inbound EMS Agreement with China Post Group, filed as Docket No. CP2008-7, to the competitive products list for prices not of general applicability. This 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 the Act.*

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 the shell classification for Inbound EMS Agreements be added to the competitive products list or, alternatively, that the Inbound EMS Agreement filed as CP2008-7 and offered in accordance with that shell classification 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 the shell classification for Inbound EMS Agreements to the competitive product list will improve the Postal Service's competitive posture, while enabling the Commission to verify that each agreement covers its attributable costs and makes a positive contribution to coverage of institutional costs. In turn, each successive agreement under the shell classification will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises. The alternative proposal – that the agreement with China Post Group be approved itself as a competitive product – would also improve the Postal Service's competitive posture, but to a lesser degree.

- (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 Inbound EMS Agreements, the Postal Service's bargaining position is constrained by the existence of other shippers who can provide services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. Inbound EMS Agreements concern the terms of exchange between the Postal Service and foreign postal administrations (FPAs) for Express Mail Service (EMS), which has been classified as competitive by virtue of its 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 international express delivery services. The relevant market also does not allow the Postal Service to raise prices or offer prices substantially above costs: rather, the contracts are premised on the offering of prices at a level that provides sufficient incentive for FPAs and their shipping customers to tender EMS volume to the Postal Service rather than a competitor. If the Postal Service were to raise these prices, it risks losing this 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.*

Because EMS falls outside of the prohibition on private carriage of letters over post routes by virtue of the exceptions to the Private Express Statutes, neither are the Inbound EMS Agreements subject to that prohibition. See part (d) above.

- (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 and freight forwarders also may offer international shipping arrangements whereby they provide inbound express delivery services under similar conditions.

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

China Post Group, the counter-party to the Inbound EMS Agreement presented in Docket No. CP2008-7, is an FPA that plans to tender EMS volume to the Postal Service under the terms and conditions it has negotiated with the Postal Service. China Post Group and its shipping customers are aware that competitive services are provided by private enterprises. However, no specific data are available to the Postal Service on China Post Group's, other FPAs', or other customers' views regarding the regulatory classification of Inbound EMS Agreements as market dominant or competitive.

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

The market for international express delivery services comparable to inbound EMS is highly competitive. Therefore, a shell classification for Inbound EMS Agreements will likely have little, if any, impact upon small business concerns. Large shipping companies serve this market, particularly with respect to the volumes represented by this and other Inbound EMS Agreements; the Postal Service is unaware of any small business concerns that could offer comparable service for these volumes. By offering the prices in this Inbound EMS Agreement, the Postal Service is giving China Post Group's small business customers an additional option for shipping articles to the United States, as against the services offered by private industry competitors. Small businesses in the United States also benefit from the ability to receive shipments from Chinese 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 China Post Group and the Postal Service.

- (i) *Include such other information, 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.*

The rates paid by the Postal Service to China Post Group have not been presented to the Commission because they are not relevant to the product description or prices for inbound EMS. These rates represent supplier costs to the Postal Service, which are built into the prices that the Postal Service charges its customers for outbound EMS.