

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Dan G. Blair, Chairman;
Mark Acton, Vice Chairman;
Ruth Y. Goldway;
Tony L. Hammond; and
Nanci E. Langley

Competitive Product Prices
Inbound Direct Entry Contracts
With Foreign Postal Administrations

Docket No. MC2008-6

Competitive Product Prices
Inbound Direct Entry Contracts (MC2008-6)
China Post Group

Docket No. CP2008-14

Competitive Product Prices
Inbound Direct Entry Contracts (MC2008-6)
Hong Kong Post

Docket No. CP2008-15

ORDER CONCERNING PRICES
UNDER INBOUND DIRECT ENTRY CONTRACTS
WITH CERTAIN FOREIGN POSTAL ADMINISTRATIONS

(Issued September 4, 2008)

In these dockets, the Postal Service requests that the Commission add a new product to the competitive product list and add two new contracts to that competitive product. For the reasons discussed below, the Commission grants the Postal Service's requests.

I. BACKGROUND

On August 5, 2008, the Postal Service filed three requests announcing prices and classification changes for competitive products not of general applicability. The requests incorporate notices, pursuant to 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.* The request in Docket No. MC2008-6 informs the Commission that “the Governors have established prices and classifications not of general applicability for Inbound Direct Entry Contracts with Foreign Postal Administrations,” and attaches a redacted copy of the Governors’ Decision.¹ See Request, Attachment 1. The Postal Service also provides a revision of the draft Mail Classification Schedule (MCS) (section 2612) concerning Inbound Direct Entry Contracts with Foreign Postal Administrations to the Request.² See Request, Attachment 1, Attachment A.

In support of these dockets, the Postal Service provides a Statement of Supporting Justification of Pranab Shah. See Request, Attachment 2. The Postal Service also provides materials under seal, including the unredacted Governors’ Decision in Docket No. MC2008-6. The Postal Service claims that “[p]rices and other contract terms relating to the foreign posts’ processes and procedures are highly confidential in the business world ... [and that its] ability ... to negotiate individual contracts would be severely compromised if prices ... [for] these types of agreements were publicly disclosed.” Request at 2-3.

Docket Nos. CP2008-14 and CP2008-15 announce specific Inbound Direct Entry Contracts that the Postal Service has entered into with the individual Foreign Postal

¹ Request of United States Postal Service to Add Inbound Direct Entry Contracts with Foreign Postal Administrations to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors’ Decision and Two Functionally Equivalent Contracts with Foreign Posts, August 5, 2008 (Request).

² The draft MCS remains under review. The Commission anticipates providing interested persons an opportunity to comment on the draft MCS in the near future.

Administrations, namely China Post Group and Hong Kong Post, respectively.³ *Id.* at 2. In support of these dockets, the Postal Service also provides materials, including the contracts and supporting certifications, under seal.⁴

The Postal Service's filings in these dockets are related. Docket No. MC2008-6 establishes, in essence, a shell classification, while Docket Nos. CP2008-14 and CP2008-15 are specific agreements negotiated pursuant to the conditions of the shell classification. Given this interrelationship, the Commission reviews these proceedings together in this Order.

In Order No. 43, the Commission issued regulations establishing a modern system of rate regulation, including a list of competitive products. Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, Appendix A. Among other things, the Commission determined that each negotiated service agreement would initially be classified as a separate product. The Commission also acknowledged the possibility of grouping substantially equivalent agreements as a single product if they exhibit similar cost and market characteristics. *Id.*, ¶¶ 2177 and 3001. In its filings, the Postal Service contends that these two agreements are premised on similar cost and market characteristics and provides arguments to support this claim. Request at 5-6. The Postal Service requests that the Commission classify the two agreements filed in Docket Nos. CP2008-14 and CP2008-15 as part of the same product.

³ The Commission characterizes the Governors' Decision and associated materials filed in Docket No. MC2008-6 as material that supports the specific negotiated service agreements filed in Docket Nos. CP2008-14 and CP2008-15.

⁴ See PRC Order No. 95, August 11, 2008, at 2 regarding the filing of certifications under seal. The Postal Service is directed to follow the practice established in Docket Nos. CP2008-11, CP2008-12, and CP2008-13 regarding the filing of redacted versions of certifications for the above-captioned "CP" cases.

II. COMMENTS

Comments were filed by the Public Representative.⁵ These comments discuss (1) confidentiality; (2) the Governors' Decision; (3) pricing, cost coverage, and contribution; (4) functional equivalency; (5) whether the contracts belong on the competitive or market dominant products list; and (6) practical considerations. *Id.* The Public Representative finds that the Postal Service adequately justifies its under seal submissions, has confidence in the Governors' Decision, and acknowledges that the pricing, cost coverage, and contribution comport with the provisions of title 39. *Id.* at 3-5. The Public Representative believes that the Postal Service persuasively reasons that the proposed contracts are functionally equivalent. *Id.* at 5-6. With respect to whether the product should be classified as market dominant or competitive, the Public Representative believes that Inbound Direct Entry contracts are hybrids⁶ because they include mostly competitive products but also include inbound First-Class Mail, a market dominant product. *Id.* at 6-10. Due to practical considerations and the fact that the Inbound Direct Entry contracts are predominantly comprised of competitive products, the Public Representative contends that classifying the product as competitive is appropriate. *Id.* at 10-12.

III. COMMISSION ANALYSIS

A. Statutory Requirements

The statutory responsibility of the Commission, in this instance, is to assign new products to either the market dominant list or the competitive product list. 39 U.S.C. 3642. As part of this responsibility, the Commission also will preliminarily review the

⁵ Public Representative Comments in Response to United States Postal Service Request to Add Inbound Direct Entry Contracts with Foreign Postal Administrations to the Competitive Products List, August 25, 2008 (Public Representative Comments).

⁶ The term "hybrid" here means has characteristics of both market dominant and competitive products. See Public Representative Comments at 9.

proposals for compliance with the requirements of the Postal Accountability and Enhancement Act (PAEA) of 2006. For proposed competitive products, this includes a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

The Postal Service explains that adding the Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6) product will allow Foreign Postal Administrations the ability to prepare individual items from their customers for shipment, print USPS mail labels and permit imprints, package the items in receptacles, and dispatch these items to Postal Service incoming acceptance points. See Request, Attachment 2, at 2-3. The fees to be charged identified in the Postal Service's Request would cover the sack handling activities upon arrival of the dispatches from the foreign posts. *Id.* The Postal Service believes that adding these agreements to the competitive product list will improve the Postal Service's competitive posture and that the contracts cover their attributable costs, make a positive contribution to coverage of institutional costs, and do not result in subsidization of competitive products by market dominant products. *Id.* at 2.

The Commission has reviewed the financial analyses provided under seal that accompanies the two agreements as well as the comments filed by interested persons. A preliminary review of the proposed Inbound Direct Entry Contract with Foreign China Post Group and the proposed Inbound Direct Entry Contract with Hong Kong Post indicate that they both comport with the provisions applicable to rates for competitive products. Based on the information provided, the Commission finds that the proposed contracts submitted should cover their individual attributable costs (39 U.S.C. 3633(a)(2)); each agreement should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and each should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)).

In determining whether to assign the Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6) product to the market dominant product list or the competitive product list the Commission must consider whether

[T]he Postal Service exercises sufficient market power that it can effectively set the price of such product 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.

39 U.S.C. 3642(b)(1). If this is the case, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those that use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services. Thus, the market precludes the Postal Service from taking unilateral action to increase prices without the risk of losing volume to private companies. The Postal Service states that large private consolidators and freight forwarders also may offer international shipping arrangements whereby they provide inbound direct entry services under similar conditions using their own networks or the Postal Service's domestic mail network for domestic delivery. Request, Attachment 2, at 3-4. The Postal Service also contends that the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* at 4. The Postal Service believes the classification will have little, if any, impact upon small business concerns, and it is unaware of any small businesses that could offer comparable services. *Id.* Finally, it states that it does not have any data on whether the users/contract partners prefer to have the contracts placed on either the list of competitive or market dominant products. *Id.* at 6.

No commenter opposes the proposed regulatory classification of the Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6) as competitive and no late-filed comments were received,⁷ although the Public Representative does raise an issue with respect to the proper classification of the contracts. Having considered the statutory requirements, the argument put forth by the Postal Service, and the public comments, the Commission finds that the contracts are appropriately classified and should be added to the list of competitive products. The product/contracts are for the provision of the service of accepting sacks of certain types of mail and entering the parcels contained in the sacks into the domestic mailstream at published domestic rates. See Request at 5. For the provision of these services, the Postal Service charges a sack handling fee, regardless of the actual type of mail that is contained in the sacks. Since the types of mail contained in the sacks do not receive discounted postage, the Commission does not view these contracts as “hybrid” products.⁸

B. Substantially Equivalent Agreements

The Postal Service has filed two agreements with foreign postal administrations that it believes are substantially similar, and accordingly should be grouped under one product. Request at 6. It argues these contracts share the same cost and market characteristics, in particular, they both cover the same underlying services and similar preparation requirements. *Id.* at 5-6.

The Postal Service also identifies differences between the two proposed new contracts. *Id.* It notes the following differences: (1) different account types are authorized in order to make payments, and (2) different dispute resolution procedures are allowed.

⁷ See Public Representative Comments at 2.

⁸ This finding is preliminary and does not preclude the Commission from revisiting this issue at a future date if circumstances warrant. See 39 U.S.C. 3642.

The Commission has reviewed the contracts in Docket Nos. CP2008-14 and CP2008-15 and finds those agreements to be substantially equivalent in all pertinent respects. The contracts will be classified as one product within the competitive product list.

The revisions to the competitive product list are shown below the signature of this Order, and shall become effective upon publication in the *Federal Register*.

C. Updating the Mail Classification Schedule

The agreements contain provisions for early termination and automatic renewal. The Postal Service shall promptly notify the Commission of an early termination no later than the actual termination date. The Commission then will remove the contract from the Mail Classification Schedule at the earliest possible opportunity. The Postal Service also shall notify the Commission of an automatic renewal of the agreement 15 days prior to its occurrence. Otherwise, the Commission will assume that the contract has lapsed and remove the agreement from the Mail Classification Schedule without notice.

It is Ordered:

1. The China Post Group contract submitted in Docket No. CP2008-14 and the Hong Kong Post contract submitted in Docket No. CP2008-15 will be added to the competitive product list as one product under Negotiated Service Agreements as Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6).
2. The Postal Service is directed to file redacted versions of the certifications for the above-captioned cases as discussed in the body of this Order.

Docket Nos. MC2008-5
CP2008-14
CP2008-15

– 9 –

3. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary

Docket Nos. MC2008-5
CP2008-14
CP2008-15

– 10 –

**CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST**

The following material represents changes to the Product List codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2008-6, CP2008-14, and CP2008-15. The underlined text signifies that the text is new, and shall appear in addition to all other Mail Classification Schedule text.

PART B—COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

* * * * *

Negotiated Service Agreements

* * * * *

Domestic

Express Mail Contract 1 (MC2008-5)

Outbound International

Global Expedited Package Services (GEPS) Contracts

GEPS 1 (CP2008-5, CP2008-11, CP2008-12, and CP2008-13)

Global Plus Contracts

Global Plus 1 (CP2008-9 and CP2008-10)

Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6)

* * * * *