



February 22, 2011

Honorable Shoshana Grove
Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Ms. Grove:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service (Postal Service) is providing a copy of the VN Post Express Joint Stock Company—United States Postal Service Strategic Bilateral Agreement for international products and services. The Postal Service has marked the non-public version of the document as "Confidential" and "Non-Public" because the document contains information considered confidential and commercially sensitive by the affected postal operator and the Postal Service.

The Postal Service considers certain portions of the document to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the document contains the commercial information of the affected postal operator, and as such, certain portions of the instrument are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of the document under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the document becomes subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operator.

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Alverno".

for
Anthony Alverno
Chief Counsel
Global Business

Enclosures

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

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed VN Post Express Joint Stock Company—United States Postal Service Strategic Bilateral Agreement (Agreement), which is a commercial, operational agreement with an agency of a foreign government. The Postal Service is transmitting the Agreement to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). The unredacted Agreement is being filed under seal, while a redacted copy is included as an enclosure to the instant transmittal. 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);

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3) and (4). 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).¹ Because the portions of materials filed non-publicly 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 agreements such as the one transmitted here, the Postal Service believes that the postal operator that has signed the document is the only third party with a proprietary interest in the materials. Due to language differences, cultural sensitivities, and the intricacies of the Postal Service's relationship with the affected foreign postal operators, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operator.² The Postal Service identifies as an appropriate contact person Kang Zhang, Director of Global Business Solutions. Mr. Zhang's phone number is (202) 268-8918, and his email address is Kang.Zhang@usps.gov. The Postal Service has already informed the

¹ 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.

² 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 response might be construed as beyond the scope of this exception, the Postal Service respectfully requests a waiver that would allow it to designate a Postal Service employee as the contact person under these circumstances, in light of the practical considerations outlined herein.

postal operator, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

(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;

As required by 39 U.S.C. § 407(d), the Postal Service is transmitting a contract with a foreign postal operator that is an agency of a foreign government. The Agreement defines the terms on which the Postal Service and the relevant operator exchange Air Parcel Post items, including rate information for Air Parcel Post items tendered by the Postal Service to VN Post Express for delivery in Vietnam. The Postal Service maintains that the redacted portions of the document should remain confidential.

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

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Competitors could use the information to assess costs to the Postal Service or the foreign postal operator of providing international Parcel Post 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 or the foreign postal operator. The Postal Service

considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

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

Harm: Public disclosure of price information in the enclosed contract would provide foreign postal operators or other potential customers extraordinary negotiating power to extract more advantageous rates from the Postal Service and the foreign postal operator that is a party to the instant contract.

Hypothetical: A foreign postal operator's negotiated Parcel Post pricing information is disclosed publicly on the Commission's website. Another postal operator sees the information and uses the publicly available rate information to the Postal Service's or foreign postal operator's detriment in pricing negotiations, in an effort to extract the payment of comparable rates for delivery of Parcel Post items.

Harm: Public disclosure of information in the contract would be used by the Postal Service's competitors, as well as competitors of the foreign postal operator with which Parcel Post items are exchanged.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the contract from the Postal Regulatory Commission's website. The competitor analyzes the contract to assess the foreign postal operator's prices and/or the Postal Service's underlying foreign delivery costs. The competitor uses that information as a baseline 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 private sector integrators and other foreign postal operators), as well as their consultants and attorneys, except for the foreign postal operator that is a party to the agreement and that therefore already has access to this information. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for parcel and expedited products or similar products should not be provided access to the non-public materials.

(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.

VN POST EXPRESS JOINT STOCK COMPANY – UNITED STATES POSTAL SERVICE STRATEGIC BILATERAL AGREEMENT

This Agreement (“Agreement”) is between the United States Postal Service (“USPS”), an independent establishment of the Executive Branch of the Government of the United States with offices at 475 L’Enfant Plaza SW, Washington, DC 20260, and VN Post Express Joint Stock Company (“VN Post Express”), a Vietnamese corporation established by the Vietnam Post and Telecommunication (VNPT) with offices at No 1 Tan Xuan, Xuan Dinh, Tu Liem, Hanoi, Vietnam. The USPS and VN Post Express may be referred to individually as a “Party” and together as the “Parties.”

Article 1: Purpose of the Agreement

The purpose of this Agreement is to set out the rates that will apply to Air Parcel Post items tendered to VN Post Express by the USPS for delivery in Vietnam.

Article 2: Term

The Agreement will take effect on February 1, 2011 (“the Effective Date”). The Agreement will remain in effect for two years after the Effective Date unless terminated sooner pursuant to Article 5. Upon the expiration of this two-year period, the Agreement shall be re-evaluated by both Parties on whether to extend or modify the Agreement.

Article 3: Service and Rates

1. As used in this agreement, “Air Parcel Post” means any piece corresponding to size limits as set forth in the Universal Postal Union Parcel Post Regulations Article RC 115, having a weight of less than or equal to 31.5 kilograms, and transported to Vietnam on air transportation.
2. As of the Effective Date, the USPS will pay VN Post Express a rate of [REDACTED] SDR per item and [REDACTED] SDR per kilogram for Air Parcel Post items tendered by the USPS to VN Post Express for delivery in Vietnam. This rate is subject to change on an annual basis, and VN Post Express will give the USPS at least 60 days advance notice before any change in rate.
3. The Parties also acknowledge that the procedures for the exchange and settlement of Air CP items are set forth in the Universal Postal Union’s Parcel Post Manual. In the event of any conflict with the provisions of this Agreement, this Agreement shall prevail.

Article 4: Monetary Transactions

1. On a quarterly basis, the Parties will conduct billing, account settlement, and payment for Air Parcel Post items subject to this Agreement.
2. 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 15 below.
3. 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 15 below.

Article 5: Termination

1. Either Party may terminate this Agreement without cause upon 30 days advance written notice to be served on the other Party, with such termination effective as of the end of the calendar month in which the 30-day notice period expires. The right to terminate the Agreement for good cause remains unaffected.
2. 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. All further rights and remedies shall remain unaffected.

3. In the event of termination, and as of the effective date 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 other 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 incurred as a result to the change of rates after termination.

Article 6: Dispute Resolution

1. The Parties intend to resolve all controversies under this Agreement informally through correspondence, oral communications, and informal meetings.
2. If the method described in the above paragraph proves insufficient to resolve a controversy, the Parties agree that the signatories to this agreement, or their replacement, shall be given a written description of the controversy by each Party and a suggested outcome. They will review the information provided and shall attempt in good faith to come to an agreement on the issue through correspondence, oral communications, or informal meetings.
3. 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.
4. 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.
5. For controversies related to cost or revenue liability, VN Post Express 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.
6. Notwithstanding the provisions of this Article 6, and without prejudice to Article 8, paragraph 1, in the event of conflict or inconsistency between the provisions of this Article 6 and Article 8, paragraph 1, the provisions of Article 8, paragraph 1 shall prevail.

Article 7: Construction

Except as otherwise provided in this Agreement, this Agreement shall be governed by and construed in accordance with U.S. Federal law.

Article 8: 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 and any reservations the Parties have taken to those instruments.
2. In the event that an entity not party to this Agreement asserts claims against VN Post Express or USPS that are attributable to the actions of the other Party to this Agreement, the latter Party shall indemnify the defending Party for, and hold the defending Party harmless from, any losses, damages or liabilities suffered by the defending Party as a result. In that instance, the indemnifying Party shall also reimburse the defending Party for all reasonable expenses incurred in connection with investigating, preparing for, or defending any such claim, whether in an administrative, regulatory or judicial proceeding, and whether or not the indemnified Party is named in the proceeding.

3. Except for liability and indemnification as described in Article 8, paragraphs 1 and 2, and final settlement under Article 5, no Party to this Agreement shall be liable to the other 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, unless required by applicable mandatory law.
4. 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 9: 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 10: 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. VN Post Express 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. VN Post Express acknowledges that United States law may require that this Agreement be filed with the U.S. Postal Regulatory Commission (Commission) and the U.S. Department of State. VN Post Express authorizes the USPS to determine the scope of information that must be made publicly available under the Commission's rules. VN Post Express further understands that any unredacted portion of this document may be posted on the Commission's public website, www.prc.gov. VN Post Express has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22, on the Commission's website: www.prc.gov/Docs/63/63467/Order225.pdf. At VN Post Express's request, the U.S. Postal Service will notify VN Post Express of the docket number of the Commission proceeding, if any, used in connection with this Agreement.

Article 11: 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 12: 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:

Director, Global Business Solutions
United States Postal Service
475 L'Enfant Plaza SW, Room 1140
Washington, DC 20260-1140
kang.zhang@usps.gov

To VN Post Express:

Deputy Manager, Sales and Marketing Department
VN Post Express JSC
No 1 Tan Xuan, Xuan Dinh, Tu Liem
Hanoi, Vietnam
ngocdh@ems.com.vn

Article 13: 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 14: 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 15: Amendment

This Agreement may be amended or extended only by mutual written agreement signed by authorized representatives of VN Post Express 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 Governors, 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 16: 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.

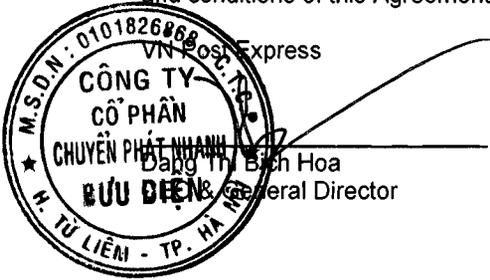
Article 17: Entire Agreement

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 pertaining to the subject matter of this Agreement and preceding the date of this Agreement shall not be binding upon either Party.
2. The Parties acknowledge that the provisions of the Universal Postal Convention and applicable regulations apply except to the extent inconsistent with this Agreement.

Article 18: Survival

The provisions of Articles 2, 5, 6, 7, 8, 9, 10, 11, 12, and 17 shall survive the conclusion or termination of this agreement, as well as any other terms insofar as they apply to the Parties' continuing obligations to one another under the articles listed above.

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



10/2/2011
Date

United States Postal Service

P. Shah

Pranab Shah
Managing Director, Global Business,
and Vice President

FEB 22, 2011
Date