

ORDER NO. 1580

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Inbound Competitive Multi-Service Agreement
with Foreign Postal Operators
HongKong Post – United States Postal Service
Bilateral Agreement (MC2010-34)
Negotiated Service Agreement

Docket No. CP2013-22

ORDER APPROVING AN ADDITIONAL INBOUND
COMPETITIVE MULTI-SERVICE AGREEMENT WITH FOREIGN OPERATORS
NEGOTIATED SERVICE AGREEMENT
(WITH HONGKONG POST)

(Issued December 17, 2012)

I. INTRODUCTION

The Postal Service seeks to include the inbound portion of a bilateral agreement with Hongkong Post (Agreement) within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010-34) product.¹ For the reasons discussed below, the Commission approves the request.

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, November 28, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3015.5.

II. BACKGROUND

Product history. The Commission added Inbound Competitive Multi-Service Agreements with Foreign Operators 1 to the competitive product list by operation of Order No. 546, following consideration of a Postal Service request in Docket No. MC2010-34.² The request was based on Governors' Decision No. 10-3. *Id.* In Order No. 840, the Commission authorized the TNT Agreement as the baseline agreement for functional equivalency analyses of the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.³

The instant docket. The Agreement under consideration in this docket concerns delivery of inbound Air CP⁴ pursuant to a bilateral agreement with Hongkong Post. Notice at 1. The intended effective date is January 1, 2013, with a term of 1 year, unless terminated sooner. *Id.* at 4.

In Order No. 1557, the Commission provided public notice of the Postal Service's filing, established a docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations, appointed a Public Representative, and provided interested persons with an opportunity to comment.⁵

III. THE POSTAL SERVICE'S POSITION

The Postal Service asserts that the Agreement fits within applicable Mail Classification Schedule language. Notice at 3-4. It also asserts that the Agreement is functionally equivalent to the baseline agreement, given similarity of the products being

² Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

³ Docket No. CP2011-69, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011, at 5 (Order No. 840).

⁴ "CP" is an abbreviation used to identify or reference international parcel post (from the French phrase *colis postaux*, "postal package").

⁵ Notice and Order Concerning Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (with Hongkong Post), November 29, 2012 (Order No. 1557).

offered and cost characteristics. *Id.* at 5. The Postal Service identifies differences between the two contracts, such as the deletion of an article, the addition of an article, revisions to articles as a result of negotiations. *Id.* at 5-6. However, it asserts that because both the Agreement and the baseline agreement incorporate the same cost attributes and methodology and the relevant cost and market characteristics are similar, if not the same, the differences do not affect either the fundamental service the Postal Service is offering or the fundamental structure of the agreements. *Id.* at 6-7. The Postal Service therefore asserts that nothing detracts from the conclusion that these agreements are functionally equivalent in all pertinent respects. *Id.* at 7.

IV. COMMENTS

The Public Representative filed comments on December 10, 2012.⁶ No other comments were received.

The Public Representative concludes, based on her review of the Postal Service's filing, that the Agreement is functionally equivalent to the baseline agreement. PR Comments at 3. She states that the differences the Postal Service identifies do not impact any cost or market characteristics that would differentiate the two agreements at any substantive level. *Id.* at 3. The Public Representative also concludes that the Agreement meets the three criteria in 39 U.S.C. § 3622(a), as air parcels in the Agreement are not cross-subsidized by market dominant products; cover their attributable costs; and should also allow competitive products to contribute collectively to the Postal Service's institutional costs (or at least should not prevent an appropriate contribution to overhead). *Id.* at 4-5.

Notwithstanding these conclusions, the Public Representative expresses three concerns. One is the Agreement's exclusion of Guiding Principles contained in Article 2 of the baseline agreement, which relate to achieving service quality, exercising flexibility

⁶ Public Representative Comments on Postal Service Notice Concerning Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, December 10, 2012 (PR Comments).

to meet market and logistical conditions, minimizing costs, and using efficient settlement and payment practices. *Id.* at 3. She asserts that setting out these principles in bilateral agreements serves as “an important roadmap” for the objectives of such agreements, and considers their exclusion from the instant Agreement “somewhat disappointing.” *Id.* at 4. She observes that pay-for-performance provisions based on delivery within established delivery standards already have a proven track record of improving service quality for International Express Mail and letter post service that could also be applied to parcel post. *Id.*

The Public Representative’s other concerns relate to consistency with the statutory criteria. She asserts that the Agreement will “not provide any meaningful contribution” toward the Inbound Competitive Multi-Operator Agreements 1 product as a whole. *Id.* at 5. She also states that “even a modest upward shift in the average weight of a postal parcel from Hong Kong to the United States” during the contract period will impair the Postal Service’s ability to meet section 3633(a)(2)’s cost coverage requirement. *Id.*

V. COMMISSION ANALYSIS

The Commission’s responsibility is to review the Agreement to ensure that it is functionally equivalent to the baseline agreement and satisfies the requirements of 39 CFR 3015.5 and 3015.7, and 39 U.S.C. 3633.

Functional equivalence. The Agreement is similar to the baseline agreement, but differs in several respects due to revisions, additions, and deletions. One of the differences, as the Public Representative observes, is the exclusion of the Guiding Principles, which appeared in Article 2 of the baseline agreement. *Id.* at 3. The Public Representative does not assert that this exclusion alters the functional equivalence of the Agreement to the baseline agreement, but suggests, among other things, that the Guiding Principles provide an important roadmap for the objectives of these types of agreements. *Id.* at 4.

The Commission has considered the differences between the Agreement and the baseline agreement, and concludes that the Agreement may be included in the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. The Commission assumes that the exclusion of Guiding Principles does not signal a lack of interest in pursuing the objectives they reflect.

Cost considerations. The Commission has reviewed the Notice, financial analyses provided under seal, and comments filed by the Public Representative in this proceeding. The concerns expressed by the Public Representative are not unreasonable. As she points out, however, the Agreement satisfies the statutory requirements and includes a reasonable cost contingency provision. *Id.* at 5.

Based on the information provided, the Commission finds that the contract submitted should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)).

Other matters. As noted above, the parties intend for the Agreement to become effective January 1, 2013 and remain in effect for 1 year. Notice at 4. The Postal Service shall promptly notify the Commission of the effective date. The Postal Service also shall promptly notify the Commission if the Agreement terminates earlier than its proposed term. In addition, within 30 days of early termination or expiration, the Postal Service shall file costs, volumes, and revenues data associated with the Agreement.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2013-22 is included within the Inbound Competitive Multi-Service Agreements with Foreign Operators 1 product.
2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.

3. The Postal Service shall promptly notify the Commission upon termination of the Agreement by either party in accordance with the terms set out in the body of this Order.
4. Within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Agreement.

By the Commission.

Shoshana M. Grove
Secretary