

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

Competitive Product Prices
Inbound Competitive Multi Service Agreements
With Foreign Postal Operators
Australian Postal Corporation—United States Postal Service
Bilateral Agreement (MC2010-34)
Negotiated Service Agreement

Docket No. CP2014-12

PUBLIC REPRESENTATIVE COMMENTS

(December 24, 2013)

The Public Representative hereby provides comments pursuant to Order No. 1905.¹ As discussed below, the Public Representative supports approval of the germane agreement. The Public Representative also notes the significant time lag between when the agreement was signed and when the Postal Service provided notice.

In Order No.1905, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's notice of its renewal of an Inbound Competitive Multi-Service Agreement with a foreign postal operator.² The Notice concerns the inbound portion of a bilateral agreement with the Australian Postal Corporation (Australia Post) to be included within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. Notice at 1.

The Australia Post Agreement establishes rates and classifications for the delivery of inbound Air Parcel Post (Air CP) and Express Mail Service (EMS). *Id.* at 4. The Agreement is intended to become effective January 1, 2014, and remain in effect for two years unless terminated sooner. *Id.*

¹ PRC Order No. 1905, Notice and Order Concerning Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (With Australian Postal Corporation), December 13, 2013.

² Notice of United States Postal Service of Filing Functionally Equivalent Inbound competitive Multi-Service Agreement with a Foreign Postal Operator (Australian Postal Corporation), December 11, 2013 (herein "Notice").

Previously, in Order No. 546, the Commission approved the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product, and the addition of an agreement with Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement), which serves as the baseline agreement for purposes of determining whether future agreements are functionally equivalent.³ Subsequently, the Commission determined that the original agreement with the Australia Post should be included within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.⁴

In Order No. 1864, the Commission requested that the Postal Service put forth a proposal for identification of the appropriate baseline for comparison of agreements for functional equivalency purposes.⁵ In its “Motion for Partial Reconsideration of Order No. 1864,” the Postal Service stated “it seems appropriate to the Postal Service to use the currently existing agreement with a foreign postal operator as the baseline for comparisons of agreements that are meant to continue the basic conditions of the existing agreement for a new term.” See Motion at 4. Consistent with the approach proposed in its Motion, in this docket the Postal Service states that the original Docket No. CP2012-1 agreement should be considered the baseline agreement for analysis of functional equivalence.

COMMENTS

The Public Representative has reviewed the Australia Post Agreement and the supporting financial model filed under seal that accompanies the Postal Service’s Notice. Based upon that review, the Public Representative concludes that the Australia Post Agreement is sufficiently similar to the Postal Service’s proposed baseline

³ PRC Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

⁴ See PRC Order No. 956, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2012-1, November 9, 2011.

⁵ Docket No. R2013-9, Order No. 1864, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Korea Post), October 30, 2013. In response, the Postal Service filed a motion for partial reconsideration. See Docket No. R2013-9, Motion of Partial Reconsideration of Order No. 1864, November 6, 2013.

Australia Post Agreement. It also appears the Australia Post Agreement should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633.

Functional Equivalence. The Postal Service states that the Australia Post Agreement “fits within the parameters outlined by Governors’ Decision No. 10-3,” which established the rates and classification for Inbound Competitive Multi-Service Agreement with Foreign Postal Operators.⁶

The Postal Service identifies a number of differences between the Australia Post Agreement as compared to the predecessor Agreement. Notice at 5-7. These include minor changes to the name of the representative of the foreign postal operator and dates in the Agreement. Additional changes include expansion of Article 7, Customs Inspection, slight revisions to Article 22, Terms & Renewal, and some edits for clarity. Notably, Article 1 includes “two new purposes for the agreement.”

The Postal Service asserts that these differences do not amount to a fundamental change in the structure of the agreement. The Public Representative agrees. The Commission found the predecessor agreement functionally equivalent to the TNT baseline agreement. The differences between the current agreement and the predecessor agreement are minor. As such, the renewal can be found functionally equivalent.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service must demonstrate that the Australia Post Agreement covers its attributable costs, and thereby precludes the subsidization of competitive products by market dominant products. The financial model (under seal) included with the Postal Service’s Notice incorporates the negotiated rates from Annex 1 of the Australia Post Agreement. The financial model shows that the Australia Post Agreement should generate sufficient revenues to cover costs and thereby satisfy the requirements of section 3633(a).

⁶ *Id.*; see also Request of United States Postal Service to Add Inbound Competitive Multi-Service Agreements With Foreign Postal Operators to the Competitive Product List, and Notice of Filing (Under Seal) of Enabling Governors’ Decision and Negotiated Service Agreement, Docket Nos. MC2010-34 and CP2010-95, August 13, 2010, Attachment 2 (Governors’ Decision No. 10-3, Attachment B).

The Public Representative considers the estimated cost coverage of the sections of the agreement under review in this docket to be compliant with section 3633(a). The nature of the Commission's limited review of Inbound Competitive Multi Service Agreements shows that cost coverage should not be an issue. Both the Postal Service and Australia Post have agreed to new prices, presumably an improvement over the UPU prices. Further, the Commission is only reviewing a small portion of a larger set of prices.

The Postal Service elucidates:

The rates paid by the Postal Service to Australia Post for outbound delivery of the Postal Service's competitive products in Australia 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 competitive products to be delivered in Australia. Because it is similar to an agreement to purchase trucking services from highway contractors or to purchase air transportation from air carriers, obligations concerning Commission review or product classification do not apply to an agreement concerning outbound competitive services with Australia Post. Additionally, services offered through a market test of the International Merchandise Return Service, PRC Docket No. MT2013-2, are not addressed by this notice and request to add the agreement to the competitive products list.
Notice at 4

The items that could be deleterious to the ability of the Postal Service to improve its net financial position from this agreement are not included in the review in this docket.⁷

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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⁷ The Public Representative acknowledges that the section 3633(a) standard is overall cost coverage, not net financial improvement.