

ORDER NO. 2065

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

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Competitive Product Prices  
Inbound Competitive Multi-Service Agreements with  
Foreign Postal Operators 1 (MC2010-34)  
China Post Group

Docket No. CP2014-39

ORDER APPROVING ADDITIONAL INBOUND COMPETITIVE MULTI-SERVICE  
AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1  
NEGOTIATED SERVICE AGREEMENT

(Issued April 24, 2014)

I. INTRODUCTION

The Postal Service seeks to include an additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Postal Operators 1) agreement (Agreement) within the Foreign Postal Operators 1 product.<sup>1</sup> For the reasons discussed below, the Commission approves the Postal Service's request.

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<sup>1</sup> Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreements with a Foreign Postal Operator, April 10, 2014 (Notice).

## II. BACKGROUND

The Postal Service filed its Notice on April 10, 2014. The Agreement is intended to take effect May 1, 2014. Notice at 4. It is set to expire June 30, 2015. *Id.*

In Order No. 2045, the Commission provided public notice of the Postal Service's filing; established the instant docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations; appointed a Public Representative; and provided an opportunity to comment.<sup>2</sup> Chairman's Information Request No. 1 was issued April 16, 2014.<sup>3</sup> The Postal Service filed its response on April 21, 2014.<sup>4</sup>

## III. COMMENTS

The Public Representative filed comments on April 17, 2014.<sup>5</sup> No other comments were received.

Based upon a review of the Postal Service's filing, including the information filed under seal with the Commission, the Public Representative concludes that the Agreement appears likely to satisfy the requirements of 39 U.S.C. § 3633. Revised PR Comments at 2. The Public Representative makes two observations about cost coverage. One is that while the financial model indicates that the negotiated prices will generate sufficient revenue to cover costs, he nevertheless considers the projected cost coverage small, and states that there is little margin for error if unit costs, especially for

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<sup>2</sup> Notice and Order Concerning Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, April 11, 2014 (Order No. 2045).

<sup>3</sup> Chairman's Information Request No. 1, April 16, 2014 (CHIR No. 1).

<sup>4</sup> Response of the United States Postal Service to Chairman's Information Request No. 1, April 21, 2014 (Response to CHIR No. 1).

<sup>5</sup> Public Representative Comments on Postal Service Notice Concerning Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, April 17, 2014 (PR Comments). *See also* Public Representative Notice of Errata to Comments on Postal Service Notice of Filing Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, April 22, 2014, *and* Public Representative Comments on Postal Service Notice Concerning Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, April 22, 2014 (Revised PR Comments).

inbound Express Mail Service, are understated. *Id.* At the same time, the Public Representative acknowledges that the inclusion of cost contingency factors provides an additional element of security with respect to attaining a sufficient level of cost coverage. *Id.* The Public Representative's other point with respect to cost coverage is the appropriateness of including the yet-to-be-launched products in the cost coverage calculations. *Id.* at 3-4. His position is that it would be appropriate to include them in the projected cost coverage calculation if it could be known with any degree of certainty that these products would be launched during the pendency of the contract, but doing so would be "quite speculative" if they remain in their yet-to-be launched status. *Id.* at 4.

With respect to cost methodology, the Public Representative states that the estimated mail processing and delivery unit costs shown in the financial model for both yet-to-be-launched products "do not appear reasonable." *Id.* at 2. This conclusion is based on his identification of a difference in the Postal Service's approach to estimating the unit mail processing and delivery costs for each of the yet-to-be-launched products. *Id.* at 3. Moreover, the Public Representative also concludes that the mail processing and delivery unit costs for both yet-to-be-launched products are counter-intuitive because they are less expensive for products with additional services than those products would be without such services. *Id.* The Public Representative therefore suggests that the Commission request an explanation from the Postal Service for the counter-intuitive estimates. *Id.*

With respect to functional equivalence, the Public Representative reviews the Postal Service's assertions that the Agreement is substantially similar to the inbound portion of the China Post 2013 Agreement and that it fits within the parameters outlined by Governors' Decision No. 10-3. *Id.* at 4. He notes that there are differences between the instant Agreement and the China Post 2013 Agreement; states that the Postal Service does not consider the specified differences as affecting either the fundamental service the Postal Service is offering or the fundamental structure of the agreements; and expresses his agreement with the Postal Service's assertion of functional equivalence. *Id.* at 4-5.

#### IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

*Functional equivalence.* In Order No. 546, the Commission added the Foreign Postal Operators 1 product to the competitive product list and established a baseline agreement for assessing the functional equivalence of agreements proposed for inclusion within the Foreign Postal Operators 1 product.<sup>6</sup>

The Postal Service asserts that its filing demonstrates that the Agreement is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the Foreign Postal Operators 1 product.<sup>7</sup> Notice at 8. It asserts that the Agreement fits within the draft Mail Classification Schedule language for the Foreign Postal Operators 1 product. *Id.* at 4. The Postal Service also asserts that the Agreement and the baseline agreement incorporate the same cost attributes and methodology, so the relevant cost and market characteristics are similar, if not the same. *Id.* at 7. The Postal Service identifies numerous differences between the Agreement and the baseline agreement, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.<sup>8</sup>

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<sup>6</sup> 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, at 9 (Order No. 546). The agreement was the Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement). *Id.* at 1-2. *See also* Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, August 6, 2010 (Governors' Decision No.10-3).

<sup>7</sup> For purposes of functional equivalence, the Postal Service compares the Agreement to the China Post 2013 Agreement.

<sup>8</sup> Differences include, among others, revisions to existing articles, revisions to several Annexes (including replacement of rates in Annex 1), and the addition of two new annexes (Annexes 7 and 8). *Id.* at 6-7.

The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product; and comports with 39 U.S.C. § 3633 and applicable Commission rules. It also has considered the Public Representative's comments. The Commission concludes that the Agreement is substantially similar to the baseline agreement and that the differences between them do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the Agreement. The Commission therefore finds that the Agreement may be included within the Foreign Postal Operators 1 product.

*Cost considerations.* The Commission reviews competitive products to ensure they meet the applicable requirements of 39 U.S.C. § 3633 and 39 C.F.R. §§ 3015.5 and 3015.7. The Postal Service asserts that its filing demonstrates that the Agreement complies with the requirements of 39 U.S.C. § 3633. Notice at 3. The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments. Based on this review, the Commission finds that the Agreement should cover its attributable costs. 39 U.S.C. § 3633(a)(2). Additionally, it finds that the Agreement should not result in competitive products being subsidized by market dominant products, satisfying the requirements of 39 U.S.C. § 3633(a)(1). It also finds the Agreement should have a positive effect on the contribution of competitive products to institutional costs, in furtherance of 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with the section 3633(a) provisions applicable to rates for competitive products.

*Other considerations.* The Postal Service's Response to CHIR No. 1, question 2(b), which was filed after the PR Comments were submitted, addresses and resolves the Public Representative's concern about the reasonableness of the estimated mail

processing and delivery unit costs for the yet-to-be-launched products.<sup>9</sup> Response to CHIR No. 1, question 2(b). Additionally, Order No. 1752 resolved the Public Representative's issue of including costs for the yet-to-be-launched products in the overall cost coverage calculation, as the Commission approved rates for an amended China Post 2013 Agreement, including related annexes governing the implementation of the products.<sup>10</sup> Furthermore, as the Public Representative observes, the inclusion or exclusion of the costs for the two yet-to-be-launched products does not impair a finding that the instant Agreement satisfies section 3633(a). However, based on the Postal Service's representation about the status of the two products, the Commission directs the Postal Service to promptly file notice with the Commission when it launches either or both of the two products and, if the launch of either or both products does not occur within six months of the issuance of this Order, to file a status report with the Commission at that point in this docket. With respect to the suggestion that the Commission direct the Postal Service to provide two source files for the yet-to-be-launched products, no action is required because these files were submitted in Docket No. ACR2013, Library Reference USPS-FY13-NP26.<sup>11</sup> The contract is set to expire June 30, 2015, unless terminated sooner. Notice at 4. The Postal Service shall promptly notify the Commission of the effective date of the Agreement. Upon termination of the Agreement by either party, the Postal Service shall promptly inform the Commission of this development and the date of termination. In addition, within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes,

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<sup>9</sup> With its Response, the Postal Service provides revised financial workpapers correcting the mail processing and delivery unit cost inputs for the Agreement.

<sup>10</sup> See Docket No. CP2013-23, Order Approving Modification of China Post 2013 Agreement, June 18, 2013 (Order No. 1752).

<sup>11</sup> Additionally, in its Response to CHIR No. 1, question 2(b), the Postal Service's revised financial workpapers update the footnotes describing these source files to clearly indicate that the new data was filed with its FY2013 Annual Compliance Report. Response to CHIR No. 1, question 2(b).

and revenues associated with the Agreement, disaggregated by weight and country group.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. The Agreement filed in Docket No. CP2014-39 is included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective immediately.
2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement if it differs from the date identified in the Postal Service's Notice.
3. The Postal Service shall promptly notify the Commission of the date of termination if the Agreement is terminated early by either party.
4. Within 30 days of the termination of the Agreement, the Postal Service shall file costs, volumes, and revenues, disaggregated by weight and country group.
5. The Postal Service shall promptly file notice with the Commission of the launch date of either or both products referred to in its Notice and, if either or both products are not launched within six months of the issuance date of this Order, shall file a status report with the Commission at that point in this docket.

By the Commission.

Shoshana M. Grove  
Secretary

## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

### **PART B—COMPETITIVE PRODUCT LIST**

2500 Negotiated Service Agreements

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2515 Inbound International

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2515.10 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

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2515.10.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

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- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

*Baseline Reference*

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

*Included Agreements*

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China Post ~~Agreement Group, CP2013-23~~ CP2014-39, expires ~~April 30, 2014~~ June 30, 2015

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