

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

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators
PostNL–United States Postal Service Bilateral
Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2015-3

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING
TYPE 2 RATE ADJUSTMENT AND ROYAL POSTNL BV
NEGOTIATED SERVICE AGREEMENT

(December 2, 2014)

The Public Representative hereby provides comments pursuant to Order No. 2251.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice of a Type 2 rate adjustment in conjunction with a new market dominant international negotiated service agreement (NSA).²

The Notice concerns the inbound portion of a bilateral NSA with Royal PostNL BV (PostNL) to be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Multi-Service Agreements) product. The inbound portion of the NSA with PostNL (PostNL 2014 Agreement) establishes negotiated rates for inbound letterpost in the form of letters, flats, small packets, bags, and International Registered Mail service for inbound letterpost. Notice at 4.

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, and included the

¹ PRC Order No. 2251, Notice and Order Concerning Type 2 Rate Adjustment and Royal PostNL BV Negotiated Service Agreement, November 17, 2014.

² United States Postal Service Notice of Type 2 Rate Adjustment, Notice of Filing Functionally Equivalent Agreement and Application for Nonpublic Treatment, November 14, 2014 (Notice).

Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) and the China Post Group—United States Postal Service Letter Post Bilateral Agreement (China Post 2010 Agreement) within the product.³ Subsequently, the Commission determined that bilateral agreements with HongKong Post, Singapore Post Limited, the Australian Postal Corporation, the Canada Post Corporation, the China Post Group, Korea Post, and the Netherlands Royal PostNL BV should be included within the Multi-Service Agreements product.⁴

The PostNL 2014 Agreement is the successor to an existing bilateral agreement with Royal PostNL BV (PostNL 2013 Agreement), which expires December 31, 2014.⁵ The Postal Service states that the proposed Effective Date for the PostNL 2014 Agreement is January 1, 2015. Notice at 2 and 3. The PostNL 2014 Agreement is to remain in effect for two years after the Effective Date, unless terminated sooner. *Id.*, Attachment 2 at 10.

The Postal Service states that the negotiated rates in the PostNL 2014 Agreement will result in an “improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound Letter Post items.” *Id.* at 1. The Postal Service also identifies three components of the PostNL 2014 Agreement that it states “should enhance the performance of mail preparation, processing, transportation and other functions related to the delivery services” provided for inbound letterpost under the agreement. *Id.* at 5.

Pursuant to Order No. 2148, the Postal Service designates the TNT Agreement as the baseline agreement for functional equivalence comparisons.⁶ In this regard, the Postal Service maintains that the PostNL 2014 Agreement is “functionally equivalent to

³ See PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreement, Docket Nos. MC2010-35, R2010-5 and R2010-6, September 30, 2010.

⁴ <http://www.prc.gov/prc-pages/library/mail-classification-schedule/default.aspx?view=mail>, (Draft) Mail Classification Schedule, January 27, 2014 (with revisions through: November 25, 2014), Section 1602.3, for a list of market dominant multi-service agreements currently in effect.

⁵ Notice at 2, f. 2., citing PRC Order No. 1602.

⁶ PRC Order No. 2148, Order Granting, In Part, Motion for Partial Reconsideration of Order No. 1864 and Modifying, In Part, Order No. 1864, Docket No. 2013-9, August 11, 2014.

the TNT Agreement filed in Docket No. R2010-5.” *Id.* at 9. Therefore, the Postal Service requests that the PostNL 2014 Agreement be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35) product. *Id.* at 2 and 12.

COMMENTS

The Public Representative has reviewed the Postal Service’s Notice, and the PostNL 2014 Agreement and supporting financial model for the PostNL 2014 Agreement filed under seal with the Notice. The Public Representative also reviewed the financial model for the TNT Agreement filed under seal in Docket Nos. MC2010-35 and R2010-5. The Public Representative concludes that the PostNL 2014 Agreement is functionally equivalent to the baseline TNT Agreement. However, the Public Representative finds that because the supporting financial model is not correctly specified, the PostNL 2014 Agreement is unlikely to improve the net financial position of the Postal Service. Nor has the Postal Service discussed the expected impact of the identified operational changes with respect to enhancing the performance of Postal Service operations during the term of the Agreement.

Functional Equivalence. In support of its claim as to functional equivalence, the Postal Service asserts that the terms of the PostNL 2014 Agreement fit within the proposed Mail Classification Schedule (MCS) language for Inbound Market-Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* The Postal Service also states that the PostNL 2014 Agreement and the TNT Agreement are constructed from a similar template and contain many similar terms and conditions. *Id.* More importantly, the Postal Service states that the two agreements provide rates for inbound letterpost tendered to the Postal Service from the territory of the identified foreign postal operators, along with ancillary services to accompany inbound letterpost. *Id.*

A review of the supporting financial models for the PostNL 2014 Agreement and the TNT Agreement reveal that the PostNL 2014 Agreement and the TNT Agreement share similar cost and market characteristics. In terms of market characteristics, both

agreements establish negotiated rates for inbound letterpost items in the form of letters, flats, small packets, and bags, and International Registered Mail service for such items, tendered by the designated foreign postal operators of the Netherlands.⁷ In terms of cost characteristics, both financial models develop unit costs for mail processing, delivery, domestic transportation, and domestic other costs associated with inbound letterpost items.⁸ The Public Representative therefore concludes that the PostNL 2014 Agreement is functionally equivalent to the TNT Agreement.

Statutory Criteria. Under 39 U.S.C. § 3622(c)(10), the criteria for Commission review are whether a Postal Service agreement (1) will be available on public and reasonable terms to similarly situated mailers, (2) either improves the net financial position of the Postal Service or enhances the performance of operational functions, and (3) will not cause unreasonable harm to the marketplace. With respect to criteria (1) and (3), the Postal Service makes reasonable arguments that such criteria are not implicated by the PostNL 2014 Agreement. *Id.* at 5-6, and 8.

With respect to criterion (2), the negotiated rates for inbound letterpost under the PostNL 2014 Agreement do not represent an improvement compared to the default terminal dues rates established by the UPU for CY2015. In its financial model for the PostNL 2014 Agreement, the Postal Service does not use the provisional 2015 quality of service linked terminal dues rates applicable to mail flows between designated operators in the target system prior to 2010.⁹ Instead, the Postal Service uses estimated rates as an alternative to the provisional 2015 terminal dues rates.¹⁰ The

⁷ Compare the Service Descriptions and Stream codes in the TNT Agreement financial model, Excel file (Non-Public) Netherlands_MD_IB_2010.08.09, worksheet tab 12_Pieces-Wgt & TDues_Rates, columns B and C to the Service Descriptions and Stream codes in the PostNL 2014 Agreement financial model, Excel file (Non-Public) Copy of Netherlands_MD_IB_2014_FINAL, worksheet tab 12_Pieces-Wgt & TDues_Rates, columns B and C.

⁸ Compare the cost characteristics in the TNT Agreement financial model, Excel file (Non-Public) Netherlands_MD_IB_2010.08.09, worksheet tab 03_Dom_Tran_Inputs and 07_Stream_Unit_Cost_Inputs to the cost characteristics in the PostNL 2014 Agreement financial model, Excel file (Non-Public) Copy of Netherlands_MD_IB_2014_FINAL, worksheet tab 03_Dom_Tran_Inputs and 07_Stream_Unit_Cost_Inputs.

⁹ Both the Postal Service and PostNL became target system designated operators prior to 2010.

¹⁰ Compare Excel file (Non-Public) Copy of Netherlands_MD_IB_2014_FINAL, worksheet tab 17_Proj_Cost & Revenue, [Am] to [Bn] to UPU IB Circular 112, June 30, 2014, Table 1.1. For the United States, the default rates can be found in the columns for items and kilograms headed: "Provisional QS linked TD rates in SDR for 2015."

provisional 2015 quality of service linked terminal dues rates are the default rates that would be paid for inbound letterpost tendered to the Postal Service by PostNL in the absence of the PostNL 2014 Agreement. Using the provisional 2015 quality of service linked terminal dues rates in the financial model results in a cost coverage that is greater, albeit by a small amount, than the cost coverage based upon the negotiated rates in PostNL 2014 Agreement.¹¹ Thus, the Postal Service does not demonstrate that the negotiated rates in PostNL 2014 Agreement “improve the net financial position of the Postal Service.” 39 U.S.C. § 3622(c)(10)(A)(i).

The Public Representative files separately with these comments a nonpublic library reference, PR-LR-R2015-3/NP1, showing all calculations on which the conclusions above are based. As stated above, the calculations use the known provisional 2015 quality of service linked terminal dues default rates as published in IB Circular 112, unlike the Postal Service. The library reference also calculates cost coverages at the default rates and the negotiated rates only for CY 2015. In contrast, the Postal Service’s supporting financial model calculates its comparative cost coverages based upon financial results for CY 2015 and CY 2016—the two-year period of the PostNL 2014 Agreement. The library reference excludes financial results for CY 2016 for purposes of calculating the comparative cost coverages because the provisional 2016 quality of service linked terminal dues rates are not known as they have not been published by the UPU.¹²

To satisfy criterion (2), the Postal Service also identifies, pursuant to 39 C.F.R. § 3010.42(g), three components of the PostNL 2014 Agreement that it expects will

¹¹ See Public Representative library reference (nonpublic) PR-LR-R2015-3/NP1, discussed below.

¹² Excluding financial results for the second year of a two-year agreement for purposes of calculating cost coverages at the default rates and the negotiated rates is also consistent with the Commission’s instructions to the Postal Service concerning the use of UPU default rates in the cost coverage test. PRC Order No. 1931, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Australian Postal Corporation, Docket No. R2014-2, December 30, 2013, at 9 (The Commission notes that UPU default rates (for use in the cost coverage test) have been published for Calendar Year (CY) 2014, but not for CY 2015, which constitutes the second year of the Agreement’s term. Once the UPU default rates for CY 2015 become available, the Postal Service shall promptly supplement its filing in this case to confirm that cost coverage under the negotiated rates for CY 2015 exceed cost coverage under UPU default rates.)

enhance the performance of mail preparation, processing, transportation or other functions. Those identified components are:¹³

- The Parties have agreed to work together to revise the Accounting Business Rules between the Parties so that the rules include changes in settlement related to the PostNL Agreement;
- The Parties are encouraged, but not required, to consider offering one another incentives for optional activities, such as sortation or separation changes; and
- Annex 3 provides suggested Office of Exchange Routing details, and information about the Offices of Exchange where Registered Mail can be accepted.

Commission rule 3010.42(g) further requires "a discussion of the nature and expected impact of each enhancement." The Postal Service provides no discussion of the nature and expect impact of each enhancement for the identified components.

More significantly, the identified components are neither currently functional nor mandated operational changes of the PostNL 2014 Agreement. For example, the first component (bullet) states that the parties "have agreed to work together to revise" rules; however, there are no such revised rules binding on the Postal Service or PostNL. Similarly, the second and third components (bullets) are either "not required," or are "suggested." As a result, the identified components are not at this time enhancements to the performance of mail preparation, processing, transportation or other functions of the Postal Service. Therefore, the identified components cannot be used to satisfy the requirements of 39 U.S.C. § 3622(c)(10)(A)(ii).

¹³ Notice at 5.

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

James F. Callow
Public Representative

901 New York Ave. NW
Washington, DC 20268-0001
202-789-6839
callowjf@prc.gov