

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

Before Commissioners:

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

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators 1 (MC2010-34)
Royal PostNL BV

Docket No. CP2015-18

ORDER APPROVING ADDITIONAL FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT

(Issued December 15, 2014)

I. INTRODUCTION

The Postal Service seeks to include an additional Foreign Postal Operators 1 agreement (Agreement) within the Foreign Postal Operators 1 product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

¹ United States Postal Service Notice of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Royal PostNL BV and Application for Non-Public Treatment of Materials Filed Under Seal, December 4, 2014 (Notice).

II. BACKGROUND

Agreements included within the Foreign Postal Operators 1 product offer negotiated prices for delivery in the United States of items entered by foreign postal operators as Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and Inbound Priority Mail Express International, as well as certain ancillary services used in conjunction with such services.

On December 4, 2014, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed its Notice, along with supporting documents. In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement for the Foreign Postal Operators 1 product and requests that the Agreement be added to the existing Foreign Postal Operators 1 product. Notice at 3-4. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the Foreign Postal Operators 1 product, the Agreement proposed to be added to the product, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that redacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. Notice, Attachment 4.

The Agreement is intended to take effect January 1, 2015. Notice at 3, 4. It is set to expire two years after its effective date. *Id.* at 4.

In Order No. 2275, 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.²

² Notice and Order Concerning Additional Foreign Postal Operators 1 Negotiated Service Agreement, December 5, 2014 (Order No. 2275).

III. COMMENTS

The Public Representative filed comments on December 12, 2014.³ 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 is functionally equivalent to the baseline agreement. *Id.* at 3. He also concludes that the negotiated inbound rates in the Agreement are likely to generate sufficient revenue to cover attributable costs. *Id.*

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement established for the Foreign Postal Operators 1 product; 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 baseline agreements for assessing the functional equivalence of agreements proposed for inclusion within the Foreign Postal Operators 1 product.⁴

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. Notice at 3-4. It asserts that

³ Public Representative Comments on Postal Service Notice Concerning Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Royal PostNL BV), December 12, 2014 (PR Comments).

⁴ 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 (Governors' Decision No.10-3), August 6, 2010.

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 possess similar cost and market characteristics and the same functional terms. *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.⁵

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 each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

⁵ Differences include, among others, revisions to existing articles the renumbering of several articles, and the inclusion of new articles. *Id.* at 5-7.

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. The addition of the Agreement to the Foreign Postal Operators 1 product will not cause cost coverage for the product to fall below 100 percent because, as the Commission found in the FY 2013 Annual Compliance Determination (ACD), the product as a whole covers its attributable costs.⁶ Consequently, the Commission finds that the addition of the Agreement to the Foreign Postal Operators 1 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the Agreement to the Foreign Postal Operators 1 product should allow the product to cover its attributable costs, the Commission finds that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the addition of the Agreement to the Foreign Postal Operators 1 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with section 3633(a). The Commission will review the Agreement's cost coverage, the cost coverage of the Foreign Postal Operators 1 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The contract is set to expire two years after the effective date. 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

⁶ Docket No. ACR2013, Annual Compliance Determination Report, March 27, 2014, at 86-91.

file costs, volumes, 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. CP2015-18 is included within the 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.
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.

By the Commission.

Shoshana M. Grove
Secretary

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 Products
2000 Competitive Product List

2500 **Negotiated Service Agreements**

2515 **Inbound International**

2515.10 **Inbound Competitive Multi-Service Agreement with Foreign Postal Operators**

2515.10.5 Products Included in Group (Agreements)

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

- 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

Royal PostNL BV, CP2015-18, expires TBD
