

## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed operational agreements for 2014 and 2015 for improvement of international postal services, particularly express, packages and logistic services, among members of the Kahala Posts Group (KPG).<sup>1</sup> The Postal Service is transmitting these agreements to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). A redacted version of each of these agreements is enclosed with this transmittal. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

### **(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment

---

<sup>1</sup> Members of the KPG at the time of these agreements include: The Postal Service, Australian Postal Corporation, China Post Group, Correos y Telégrafos SAE, Hongkong Post, Japan Post Service Co., Ltd., Korea Post, Groupe La Poste, Singapore Post Limited, and Royal Mail Group, Ltd.

competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>2</sup> Because the portions of materials filed non-publicly fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

In the case of agreements such as the ones transmitted here, the Postal Service believes that the postal operators that are parties to these agreements are the only third parties with a proprietary interest in the materials. The Postal Service identifies as an appropriate contact person Vincent Mougey, Executive Director, KPG, Jubilee Center 9/F #905, 18 Fenwick Street, Wan Chai, Hong Kong, Hong Kong. Mr. Mougey's phone number is +852 2528 6716, and his e-mail address is vincent.j.mougey@usps.gov. The Postal Service has already informed the member posts of KPG, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

---

<sup>2</sup> The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

As required by 39 U.S.C. § 407(d), the Postal Service is transmitting two similar agreements with foreign postal operators, certain of which are agencies of a foreign government.

The agreements include information concerning the measurement of Service Objectives, Targets, and Levels of Achievement for Standard (EMS) items, a target and level of achievement for dispatch and delivery of Standard (EMS) items, a target and level of achievement for End-to-End Standard (EMS) Service, a target for electronic data interchange (EDI) events transmissions, and targets for End-to-End Economy (Air Parcels) Service. The agreements also include information concerning KPG management team financing and expenses; information technology support, maintenance and enhancement, and their financing; KPG network expansion strategy financing; market research financing; and the administration of receipts and payments. The Postal Service maintains that the redacted portions of the document should remain confidential.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Competitors, which might include foreign postal operators as well as integrators, could use the targets and levels of achievement and financing information described in (3) above to assess any possible comparative vulnerabilities and to

focus sales and marketing efforts on those areas, to the detriment of the Postal Service and the foreign postal operators that signed the agreements.

Additionally, foreign postal operators or other potential customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The agreements include specific information concerning targets and levels of achievement and financing. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors, and the competitors of the other postal operators that signed the agreements, would have the advantage of being able to assess the Kahala Post Group's targets and levels of achievement. Competitors would be able to take advantage of the information when setting their own targets and levels of achievement. Additionally, foreign postal operators or other potential customers could use such information to their advantage in negotiating the terms of their own agreements with the Postal Service. Eventually, this could freeze the Postal Service out of the expedited and parcels market.

Information in the agreements also consists of sensitive commercial information of foreign postal operators that are members of KPG. Disclosure of such information could be used by competitors of those postal operators to develop a benchmark for the development of a competitive alternative.

Finally, information about the financing of the organization and its activities is withheld on grounds that disclosure could provide insight by competing postal operators and integrators on the collective cost of maintaining a similar type of association and funding activities such as market research. Disclosure of such information would enable competitors to gain valuable intelligence to mimic a similar type of arrangement, or deduce the priorities and future strategies of the Postal Service.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Harm: Public disclosure of performance metrics in the enclosed agreements would provide foreign postal operators that did not sign the agreements transmitted with extraordinary negotiating power in negotiations with the Postal Service.

Hypothetical: The agreements are disclosed publicly on the Commission's website. A postal operator that did not sign the agreements sees the information and uses the publicly available information concerning targets and levels of achievement to the Postal Service's detriment in negotiations with the Postal Service over bilateral expedited and parcel services.,

Harm: Public disclosure of information in the agreements, including information concerning KPG's strategic initiatives, would be used by the Postal Service's competitors, as well as competitors of the foreign postal operators that signed the agreements.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the agreements from the Postal Regulatory Commission's website. The competitor analyzes the agreements to assess the foreign postal operator's and the Postal Service's targets and levels of achievement, as well as KPG's strategic initiatives. The competitor uses that information as a baseline to develop competitive alternatives.

Harm: Competitors would use performance thresholds to assess vulnerabilities and focus sales and marketing efforts to the detriment of the Postal Service and the other postal operators that signed the agreements.

Hypothetical: The information about targets and levels of achievement thresholds in the agreements is released to the public. Another delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses this information as a concrete comparison point, advertising itself to potential customers as offering performance better than the Postal Service's or another postal operator that signed the agreements.

Harm: Competitors could use the information in the agreement to create competing associations that mimic the structure, funding, and activities of the association or they might deduce from the prioritization what longer term strategies are pursued by the parties to the agreements.

Hypothetical: Information about the financing of the organization and its activities is released on the Commission's website. Through disclosure of the costs of funding the organization and its activities, competing postal operators or integrators can assess whether the expenses needed to create a competing organization or association would be worthwhile. If so, a competing postal operator or integrator would use the information in the agreements as a template to create a model for a competing association. Further, competitors could gain valuable intelligence to assess the costs borne by the KPG operators on the administration of the association and their efforts targeted at the markets which serve as the focus of KPG activities. Finally, the competitors could use the information made available to them to deduce from the relative prioritization of KPG activities what are the long term strategies for product development and use that information to anticipate and create competitive substitutes.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant markets for international expedited and parcels products (including postal operators and private sector integrators), as well as their consultants and attorneys. Additionally, the Postal Service believes that, except for foreign postal operators that already have access to this information, actual or potential customers of the Postal Service for parcels and expedited services or similar products should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide, at this time, that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30

**(8) Any other factors or reasons relevant to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.