

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

Before Commissioners:

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

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1

Docket No. R2016-1

Korea Post - United States Postal Service
Multi-Product Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

ORDER APPROVING INBOUND MARKET DOMINANT MULTI-SERVICE AGREEMENT
WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT (WITH KOREA POST)

(Issued November 25, 2015)

I. INTRODUCTION

On November 13, 2015, the Postal Service filed Notice, pursuant to 39 C.F.R. § 3010.40 *et seq.*, of a Type 2 rate adjustment concerning the inbound portion of a bilateral agreement (Agreement) with Korea Post.¹

The Postal Service seeks to include the Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Postal

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 13, 2015, at 1 (Notice).

Operators 1) product. *Id.* For the reasons provided below, the Commission approves the Postal Service's request.

II. BACKGROUND

Product history. The Commission added the Foreign Postal Operators 1 product to the market dominant product list in Order No. 549, and concurrently included two agreements within that product.² The Commission has since approved the inclusion of additional agreements within the same product on grounds of functional equivalence.

Instant Notice. The Notice includes attachments consisting of an application for non-public treatment of materials filed under seal, a redacted version of the signed Agreement, public and non-public versions of supporting financial workpapers, and a request for exceptions to data collection and service performance reporting requirements in 39 C.F.R. §§ 3010.43 and 3055.3(a)(3), respectively. Notice at 2.

The Notice identifies the Agreement as the functional equivalent to the baseline agreement with China Post (China Post 2010 Agreement) filed in Docket No. R2010-6;³ and states the Agreement results in an improvement over default rates established under the Universal Postal Union (UPU) Acts for inbound letter post items; improves operational performance; and addresses other data and information requirements in Commission rules. Notice at 1, 3-4.

The Agreement is intended to take effect on January 1, 2016. *Id.* at 3. The Agreement is to remain in effect until either party serves the other with a 30 day advance written notice to terminate. Notice, Attachment 2 at 2. Such termination would take place on the last day of the month in which the 30-day notice expires. *Id.*

² See Docket Nos. MC2010-35, R2010-5, and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549). The two agreements within that product included an agreement between the Postal Service and China Post and an agreement between the Postal Service, Koninklijke TNT PostBV and TNT Post Pakketservice Benelux BV (TNT).

³ *Id.* at 1-2; see also Order No. 549.

Initial Commission action. On November 16, 2015, the Commission issued Order No. 2819, establishing a docket for consideration of matters raised in the Notice, inviting public comment, and appointing a Public Representative to represent the interests of the general public.⁴

III. THE POSTAL SERVICE'S POSITION

Functional equivalence. The Postal Service posits that the Agreement is functionally equivalent to the agreements previously included within the China Post 2010 Agreement. Notice at 1-2.

The Postal Service states that the terms of the Agreement fit within the Mail Classification Schedule (MCS) for the Foreign Postal Operators 1 product and therefore both agreements conform to a common description. *Id.* at 8. The Postal Service also asserts that both agreements are constructed from a similar template; contain many similar terms and conditions; and provide rates for small packet with delivery scanning tendered to the Postal Service from each respective foreign postal operator's territory. *Id.* The financial models used to project costs and revenues for the duration of the agreements are similar. *Id.* Also, both agreements are with foreign postal operators. *Id.*

⁴ Notice and Order Concerning Type 2 Rate Adjustment and of Filing Functionally Equivalent Agreement, November 16, 2015 (Order No. 2819).

However, the Postal Service does identify differences⁵ that distinguish the Agreement from the China Post 2010 Agreement. It asserts that, despite these differences, the Agreement is functionally equivalent to the China Post 2010 Agreement, and the differences do not affect the similarity of market or cost characteristics between the Agreement and the China Post 2010 Agreement. *Id.*

Statutory criteria. Under 39 U.S.C. § 3622, as codified in 39 CFR. § 3010.40, the Postal Service asserts that the criteria for the Commission's review are whether the Agreement: either improves the net financial position of the Postal Service or enhances the performance of operational functions; does not cause unreasonable harm to the marketplace; and is available on public and reasonable terms to similarly situated mailers. *Id.* at 7; see 39 U.S.C. § 3622(c)(10).

With respect to the first criterion, the Postal Service provides information in its workpapers showing the expected financial improvements over UPU default rates. Notice at 1; Korea_MD_IB_2015_FINAL_REDACTED.xls. The Postal Service also identifies improvements that are expected to enhance operational performance: revised rates and terms for small packets with delivery scanning; improvement to labels; use of Postal Service barcodes to facilitate sortation; and sortation recommendations. Notice at 4.

With respect to the second criterion, the Postal Service addresses several reasons why the Agreement will not result in unreasonable harm to the marketplace. These include Korea Post's status as the only entity in a position to avail itself of an agreement of this type and the role of the Postal Service and Korea Post, as each serves as its respective country's designated operator for the exchange of mail. *Id.*

Finally, the Postal Service considers the third criterion inapplicable based on its assessment that there are no entities similarly situated to Korea Post in its ability to serve as designated operator for the exchange of relevant types of mail. *Id.* There are no entities similarly situated to Korea Post in its ability to serve the United States market

⁵ Differences include, among others, revisions to existing articles and annexes. *Id.* at 9.

for small packets with delivery scanning from Korea on the terms and scale contemplated in the Agreement.⁶ Nor are there any other entities that serve as a designated operator for cross-border exchange of letter post originating in the Republic of Korea. *Id.*

Data collection plan and service performance reporting. The Postal Service intends to report information on the Agreement through the Annual Compliance Report (ACR), and therefore proposes no special data collection plan for the Agreement pursuant to 39 C.F.R. § 3010.43. *Id.* at 6. The Postal Service notes, with respect to service performance measurement, that the Agreement is excepted from separate reporting under 39 C.F.R. § 3055.3(a)(3) by virtue of Order No. 996, which established a standing exception for all agreements filed in the Foreign Postal Operators 1 product.⁷

⁶ *Id.* The Notice reads, “Korea Post is the only entity in a position to avail itself of an agreement with the Postal Service of this type and scope. The Postal Service is unaware of any private entity that would be able to serve the United States market for small packets with delivery scanning from China [*sic*] on the terms and scale contemplated in this agreement.” *Id.* Given the context and substance of the first sentence quoted, substance of the Notice, and substance of the Agreement, the Commission understands “China” to mean “Korea” in this instance.

⁷ *Id.* at 6; see Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011 (Order No. 996). In Order No. 996, the Commission held that negotiated service agreements with substantially all components of the agreement included in the measurement of other products may be granted an exception from reporting pursuant to 39 C.F.R. § 3055.3(a)(3). Order No. 996 at 7. The Commission further held that functionally equivalent agreements would qualify for the section 3055.3(a)(3) exception. *Id.* Therefore, agreements that fall within the parameters of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product are excepted from the performance reporting requirements of 39 C.F.R. 3055.3(a)(3). *Id.* at 7, 8-9.

IV. COMMENTS

The Public Representative filed comments on November 23, 2015.⁸ No other comments were received.

Functional equivalence. The Public Representative concludes, based on a review of the Postal Service's filing, that the Agreement is functionally equivalent to the China Post 2010 Agreement. PR Comments at 3-4.

Statutory criteria. The Public Representative states that the Postal Service makes reasonable arguments that the criteria relating to unreasonable harm to the marketplace and availability on public and reasonable terms to similarly situated mailers are not implicated by the Agreement. PR Comments at 5.

The Public Representative states the cost coverage at the Agreement's negotiated prices is an improvement over the cost coverage resulting when the 2016 base terminal dues rates are applied. *Id.* He notes:

In its financial model, however, the Postal Service should have used the 2016 provisional quality of service linked terminal dues rates applicable to inbound letter post exchanged between designated operators in the target system as of 2010 and 2012, and operators in the target system prior to 2010.

[Nevertheless,] the Postal Service's use of the 2016 base terminal dues to develop the cost coverage at the default rates for purposes of comparison with the cost coverage at the negotiated rates does not change the conclusion that the negotiated rates in the Korea Post 2016 Agreement improve the net financial position of the Postal Service.

Id. at 6. The Public Representative requests the Commission direct the Postal Service to develop its comparison of the cost coverage at the default rates using the UPU terminal dues rates that would otherwise be paid by the foreign postal operators during the term of the proffered agreements. *Id.* at 7.

Finally, the Public Representative opines that the Postal Service's claim, pursuant to 39 C.F.R. § 3010.42(g), that the Agreement should enhance the performance of mail preparation, processing, transportation, or other functions, is not

⁸ Public Representative Comments on Postal Service Notice Concerning Type 2 Rate Adjustment and Korea Post Negotiated Service Agreement, November 23, 2015 (PR Comments).

supported by discussion or analysis. *Id.* He concludes the Postal Service fails to demonstrate the Agreement meets the requirements of 39 U.S.C. § 3622(c)(10)(A)(ii) by failing to provide any discussion or analysis of the nature and impact of each purported enhancement. *Id.* at 7-8.

V. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Agreement, the financial analyses provided under seal, and the Public Representative comments.

Functional equivalence. The Commission finds that the Agreement is functionally equivalent to the China Post 2010 Agreement. Differences between the Agreement and the China Post 2010 Agreement do not foreclose a finding that the agreements are functionally equivalent. The Public Representative supports this finding. The Commission, therefore, concludes that the Agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

Statutory responsibilities. Under the statutory and regulatory provisions of 39 U.S.C. § 3622(c)(10) and 39 C.F.R. § 3010.40(a), the Commission's approval requires a finding that the agreement either improves the net financial position of the Postal Service or enhances the performance of various operational functions and does not cause unreasonable harm to the marketplace. The agreement also must be available on public and reasonable terms to similarly situated mailers.

The Commission concurs with the Postal Service's assessment that there are no entities similarly situated to Korea Post. The Commission finds that the negotiated rates in the Agreement will improve the net financial position of the Postal Service, as they will generate higher revenues, contribution, and cost coverage than terminal dues rates established by the UPU. Specifically, the Commission finds the Agreement improves the net financial position of the Postal Service by reducing the negative contribution to institutional costs under the UPU rates.

The Commission also finds the Agreement will not cause unreasonable harm to the marketplace given the impact of the contracting parties' status as designated operators in the market.

Although the Commission finds that the Agreement will improve the net financial position of the Postal Service, the Commission agrees with the Public Representative that the Postal Service should have used the 2016 UPU provisional quality of service linked terminal dues rates as the default rates to determine the cost coverage. For future submissions, in Order Nos. 2717 and 2731, the Commission directed the Postal Service to ensure that the default rates used to demonstrate improved net financial position under an agreement are, in fact, the rates that would otherwise, in the absence of an agreement, be paid by the foreign postal operator during the agreement's term.⁹ For this Agreement, in the absence of a bilateral agreement with Korea Post, the default rates for letter post exchanges would be the provisional UPU terminal dues rates for CY 2016 that are linked to quality of service, not the UPU base rates that have no link to quality of service. The Commission, therefore, reiterates that the Postal Service should use the provisional UPU terminal dues rates as the default rates for purposes of comparison to bilateral rates, even if the bilateral agreement does not contain a quality of service provision.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the Agreement, essentially seeking a waiver of section 3010.43 data collection reporting requirements. Notice at 6. Instead, it intends to report information under the Agreement through the ACR and provide information about mail flows from Korea Post within the course of the ACR review process. *Id.* The Commission finds the Postal Service's request reasonable and grants the exception. The Commission also approves the Postal Service's invocation of Order No. 996 in

⁹ Docket No. R2015-5, Order Approving Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Hongkong Post), September 17, 2015, at 8, 9 (Order No. 2717); Docket No. R2015-6, Order Approving Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with China Post Group), September 28, 2015, at 11, 13 (Order No. 2731).

support of an exception from separate service performance reporting under 39 C.F.R. § 3055.3(a)(3) on the basis that the standing exception in Order No. 996 continues to apply.

Follow-up submissions. The Postal Service shall promptly notify the Commission if the effective date of the Agreement differs from the intended effective date. The Postal Service shall also promptly notify the Commission if the Agreement terminates earlier than intended or if the termination date is modified pursuant to the terms of the Agreement. In addition, within 30 days of the Agreement's expiration date, or in the event of early termination, the Postal Service shall file costs, volumes, and revenues associated with the Agreement.

Conclusion. The Commission finds that the Agreement satisfies relevant statutory criteria and approves its inclusion within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.
2. The Commission approves the Type 2 rate adjustment requested in the Postal Service's Notice filed November 13, 2015, in this docket.
3. The Postal Service shall notify the Commission if the effective date of the Agreement differs from the expected effective date identified in the Notice.
4. The Postal Service shall notify the Commission if the Agreement terminates early.

5. Within 30 days of expiration, or upon early termination of the Agreement, the Postal Service shall file related costs, volumes, and revenues data, including any financial penalties.
6. The Postal Service shall, in future submissions with financial models that support a finding of improved net financial position, use default rates that reflect the rates that would otherwise, in the absence of an agreement, be paid during the agreement's term by the foreign postal operator. More specifically, in the case of a bilateral agreement to which Universal Postal Union (UPU) quality of service provisions would not apply, the default rates would be the provisional UPU terminal dues rates for the applicable year
7. The Postal Service's request for an exception to the data collection plan requirements under 39 C.F.R. § 3010.43 is granted.
8. The Mail Classification language is not effective until January 1, 2016, as it replaces a current agreement that has yet to expire.
9. The standing exception in Order No. 996 continues to apply with respect to reporting on service performance pursuant to 39 C.F.R. § 3055.3(a)(3).

By the Commission.

Stacy L. Ruble
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

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

Part A—Market Dominant Products

1000 Competitive Product List

1600 Negotiated Service Agreements

1602 International

1602.3 Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

1602.3.5 Products Included in Group (Agreements)

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

- Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-35, R2010-5 and R2010-6

PRC Order No. 549, September 30, 2010

Included Agreements

Korea Post Agreement, ~~R2013-9 and R2015-4~~R2016-1, expires ~~December 31, 2015~~TBD
