

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

Before Commissioners:

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

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1
Canada Post Corporation – United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2016-4

ORDER APPROVING ADDITIONAL INBOUND MARKET DOMINANT MULTI-
SERVICE AGREEMENT WITH FOREIGN POSTAL OPERATORS 1 NEGOTIATED
SERVICE AGREEMENT WITH CANADA POST CORPORATION

(Issued January 12, 2016)

I. INTRODUCTION

On December 17, 2015, the Postal Service filed a Notice, pursuant to 39 C.F.R. § 3010.40-.44, of a Type 2 Rate Adjustment to set negotiated rates for inbound letter post and to improve default rates established under the Universal Postal Union (UPU) Acts.¹ The Postal Service seeks to include an Inbound Market Dominant Multi-Service Agreement (Agreement) with a Foreign Postal Operator (Canada Post Corporation, hereinafter “Canada Post”) within the Inbound Market Dominant Multi-Service

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, December 17, 2015, at 1 (Notice).

Agreements with Foreign Postal Operators 1 product in the market dominant product list of the Mail Classification Schedule. For the reasons set forth below, the Commission approves the Postal Service's request.

II. BACKGROUND

Product history. The Commission added the Inbound Market Dominant Multi-Service Agreements with 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 determined the baseline agreement for purposes of functional equivalency to be the Postal Service's agreement with Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement). The Commission has since approved the inclusion of additional agreements within the same product on grounds of functional equivalence, including the predecessor to the instant Agreement.³

Instant Notice. The Notice includes attachments consisting of an application for non-public treatment of materials filed under seal (Attachment 1), a redacted version of the unsigned agreement (Attachment 2), and a redacted version of the supporting financial documentation filed as a separate Excel workbook. The Notice also contains 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 8. The Postal Service filed the unredacted text of the unsigned agreement and unredacted supporting financial documentation under seal.⁴

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).

³ See Docket No. R2014-3, Order No. 1940, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Canada Post Corporation), December 31, 2013, at 8.

⁴ On December 22, 2015, the Postal Service filed a signed version of the Agreement to replace the unsigned version that it filed in its initial Notice. See Docket Nos. CP2016-57 and R2016-4, Notice of United States Postal Service of Filing Executed Agreement, December 22, 2015 (December 22 Notice).

The Agreement includes negotiated pricing and settlement for various inbound letter post products, including registered mail, International Business Reply Service (IBRS), and small packets with delivery confirmation. Notice at 4. These negotiated rates include financial penalties and bonuses based on the quality of service provided. December 22 Notice, Attachment 1 at 21.

The inbound market dominant portions of the Agreement are planned to take effect on February 1, 2016, and expire on December 31, 2017, unless terminated earlier or modified pursuant to the contract terms. Notice at 3; December 22 Notice, Attachment 1 at 8.

Initial Commission action. On December 23, 2015, the Commission issued Order No. 2918 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.⁵

III. POSTAL SERVICE POSITION

Functional equivalence. The Postal Service posits that the Agreement is functionally equivalent to the baseline agreement of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, the TNT Agreement. Notice at 2, 9-10. The Postal Service states that the terms of the Agreement fit within the Mail Classification Schedule for the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and, therefore, both agreements conform to a common description. *Id.* at 10. The Postal Service also asserts that both agreements share a common market, which is the market defined by foreign postal operators designated by their countries to fulfill the obligations of the UPU Acts; share cost characteristics; contain similar terms and conditions; and provide rates for letter post tendered to the Postal Service from the respective foreign postal

⁵ Notice and Order Concerning Type 2 Rate Adjustment and Filing Functionally Equivalent Agreement, December 23, 2015 (Order No. 2918).

operator's territory, along with ancillary services to accompany inbound letter post. *Id.* In addition, the financial model, Cost and Revenue Analysis, and methodology used to generate rates offered under the Agreement are similar to those used to generate the rates offered in the baseline agreement. *Id.*

The Postal Service also identifies differences that distinguish the Agreement from the baseline agreement.⁶ It asserts that, despite these differences, the Agreement is functionally equivalent to the baseline agreement. *Id.* at 13. It also states “[n]one of these differences have an effect on the similarity of market characteristics of the agreements, and most do not have an effect on similarity of the cost characteristics.” *Id.* at 11.

Statutory criteria. Under 39 U.S.C. § 3622, as codified in 39 C.F.R. § 3010.40, the Postal Service asserts that the criteria for the Commission's review are whether the Agreement: (1) either improves the net financial position of the Postal Service or enhances the performance of operational functions; (2) does not cause unreasonable harm to the marketplace; and (3) is available on public and reasonable terms to similarly situated mailers. *Id.* at 8; see 39 U.S.C. § 3622(c)(10).

With respect to the first criterion, the Postal Service provides information in its financial workpapers showing the expected financial improvements over UPU default rates.⁷ Notice at 4-5. The Postal Service also identifies several improvements expected to enhance operational performance: continued development of settlement processes based on the exchange of electronic data from the pre-advice of dispatch; specific sortation and transportation to multiple exchange offices; initiatives designed to improve customer satisfaction that are related to operational and other improvements involving performance, processing, routing, data quality, accuracy, reporting, visibility,

⁶ Differences include, among others, the agreements are with different foreign postal operators; negotiated pricing for various inbound letter post products for registered mail and IBRS; the inclusion of new articles; and additional attachment changes. *Id.* at 11-13.

⁷ Notice at 4-5; see *id.*, Excel file “R2016-4 Canada_Bltrl_MD_Inbnd_pub.xls,” December 17, 2015.

and cost reduction; and consolidation of specific operational and dispatching schematics. *Id.* at 5.

With respect to the second criterion, the Postal Service addresses several reasons why the Agreement will not result in unreasonable harm to the marketplace, including Canada 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 Canada Post, as each serves as the respective country's designated operator for the exchange of mail. *Id.* at 6. According to the Postal Service, the U.S. Private Express Statutes also generally prohibit entities other than the Postal Service from carrying inbound international letters commercially after entry at a U.S. port, at least below certain price and weight thresholds. In addition, the Postal Service is unaware of any private entity that would be able to serve the U.S. market for inbound letter post from Canada on the terms and scale contemplated in this Agreement. Since there is no significant competition in the relevant market when the inbound letter post flows are considered in totality, the Postal Service submits that the Agreement, which in relevant terms is similar to its predecessor, is as unlikely as the predecessor agreements between the Postal Service and Canada Post to pose competitive harm to the marketplace. *Id.* at 7.

Finally, the Postal Service considers the third criterion inapplicable based on its assessment that there are no entities similarly situated to Canada Post in its ability to serve as designated operator for the exchange of relevant types of mail. *Id.* at 8-9. The Postal Service states that there are also no entities similarly situated to Canada Post in its ability to "tender the broad-based letter-post flows from Canada under similar operational conditions, nor any other entities that serve as a designated operator for letter-post originating in Canada [the subject of the inbound market dominant rates in the Agreement] under similar operational conditions." *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 8. 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.⁸

IV. COMMENTS

The Public Representative filed comments on January 6, 2016.⁹ No other comments were filed.

Functional equivalence. The Public Representative concludes, based on a review of the Postal Service's filing, that the Agreement is functionally equivalent to the baseline TNT Agreement. PR Comments at 3. In comparing the two agreements, she finds that the differences in the presentation of the financial models and the text of the agreements do not affect the basic methodology used in calculating financial results or affect the basic terms of the Agreement. *Id.* at 4.

Statutory criteria. The Public Representative also opines the Agreement is likely to improve the net financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service during the contract period. *Id.* at 3. She agrees with the Postal Service's argument that the Agreement will not cause unreasonable harm to the marketplace and that there are no mailers similarly situated to Canada Post. *Id.* at 4.

⁸ *Id.*; 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.

⁹ Public Representative Comments on Postal Service Notice Concerning Rate Adjustment for Canada Post Negotiated Service Agreement, January 6, 2016 (PR Comments). The Public Representative filed a motion for late acceptance of the comments. Motion of Public Representative for Late Acceptance of Comments, January 6, 2016 (Motion). The Motion is granted.

The Public Representative commends the Postal Service for using actual 2014 volume data, even though the workpapers indicate that the volumes were estimated based on a Postal Service pricing decision using a volume projection study. *Id.* at 5. She notes the importance of using actual volumes whenever possible and states that inaccurate volume forecasts can “make an agreement appear to improve the net financial position of the Postal Service if low cost coverage categories are weighted down and high cost coverage categories are weighted up.” *Id.*

V. COMMISSION ANALYSIS

The Commission has reviewed the Notice, Agreement, and financial analyses provided under seal, the Postal Service’s application for non-public treatment of materials, and the Public Representative’s comments. The Commission concludes that the Agreement is functionally equivalent to the baseline TNT Agreement, meets the requisite statutory criteria, and should be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

Functional equivalence. The Commission finds that the Agreement is functionally equivalent to the baseline TNT Agreement. Differences between the Agreement and the baseline TNT Agreement do not foreclose the Commission’s finding that the agreements are functionally equivalent. The Public Representative supports this finding. The Commission 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. 39 C.F.R. § 3010.40(c).

The Commission finds that the rates in the Agreement will improve the net financial position of the Postal Service as the negotiated rates will generate higher revenues, contribution, and cost coverage than terminal dues rates established under the UPU Acts. Specifically, the Commission finds the Agreement improves the net financial position of the Postal Service by increasing, *i.e.*, reducing the negative contribution to, institutional costs under the rates set by the UPU Acts.¹⁰

The Commission also finds the Agreement will not cause unreasonable harm to the marketplace, given the contracting parties' status as designated postal operators in the market. Canada Post is the only entity in Canada that has the ability to avail itself of an agreement with the Postal Service of this type and scope, and in the U.S. entities other than the Postal Service are prohibited from carrying inbound international letter post commercially (at least those below certain price and weight thresholds) after entry at a U.S. port. See Notice at 6. The Commission also concurs with the Postal Service's assessment that there are no entities similarly situated to Canada Post and as such finds that the third criterion is inapplicable.

Reporting exceptions. The Postal Service proposes that no special data collection plan be created for the Agreement, essentially seeking a waiver of 39 C.F.R. § 3010.43 data collection reporting requirements. *Id.* at 8. Instead, it intends to report information under the Agreement through the ACR and provide information about mail flows from Canada Post within the course of the ACR review process. *Id.* The Commission finds the Postal Service's request is reasonable and grants the exception. The Commission also approves the Postal Service's invocation of Order No. 996 in support of an exception from separate service performance reporting under 39 C.F.R.

¹⁰ There is insufficient evidence and analysis to support the assertion that the Agreement will enhance the performance of various Postal Service operational functions. However, since the Postal Service need only demonstrate that the Agreement will "either improve the net financial position of the Postal Service" or "enhance the performance" of various operational functions, a showing that the properly applied rates improve the net financial position of the Postal Service is sufficient to satisfy the first prong of 39 U.S.C. § 3622(c)(10).

§ 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 the termination date is modified pursuant to the terms of the Agreement. In addition, within 30 days of the Agreement's expiration date, or early termination, the Postal Service shall file costs, volumes, penalties, 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 Commission approves the Type 2 Rate Adjustment requested in the Postal Service's Notice filed on December 17, 2015, in this proceeding.
2. The Agreement filed in this docket on December 22, 2015, is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product, effective February 1, 2016.
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 revenue data, including any financial penalties.
6. The Postal Service's request for an exception to the data collection plan requirements under 39 C.F.R. § 3010.43 is granted.
7. The standing exception in Order No. 996 applies 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

~~Canada Post 2014 Agreement, R2014-3, expires December 31, 2015~~
Canada Post Agreement, R2016-4, expires December 31, 2017
