

ORDER NO. 3742

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

Before Commissioners:

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

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

Docket No. R2017-2

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

(Issued January 10, 2017)

I. INTRODUCTION

On December 22, 2016, 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 the Australian Postal Corporation (Australia Post).<sup>1</sup>

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<sup>1</sup> Notice of United States Postal Service of Type 2 Rate Adjustment, Notice of Filing Functionally Equivalent Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 22, 2016, at 1 (Notice).

The Postal Service seeks to include the Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (Foreign Postal Operators 1) product. Notice at 1. 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.<sup>2</sup> The Commission has since approved the inclusion of additional agreements within the same product on grounds of functional equivalence.<sup>3</sup>

*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, and public and non-public versions of supporting financial workpapers.<sup>4</sup>

In its Notice, the Postal Service states that the Agreement is functionally equivalent to the baseline agreement with China Post (China Post 2010 Agreement) filed in Docket No. R2010-6.<sup>5</sup> The Postal Service explains that 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 4.

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<sup>2</sup> 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 and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV.

<sup>3</sup> 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)

<sup>4</sup> Notice at 2. The Postal Service initially filed an unsigned version of the Agreement with its Notice. See *id.* Attachment A. On December 28, 2016, the Postal Service notified the Commission that it executed the Agreement and filed a copy of the signed Agreement. Notice of the United States Postal Service of Filing a Signed Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, December 28, 2016.

<sup>5</sup> *Id.* at 1-2; see also Docket Nos. MC2010-35, R2010-5, and R2010-6, Order No. 549.

The Agreement is intended to take effect on or after February 1, 2017.<sup>6</sup> 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 3. Such termination would take place on the last day of the month in which the 30-day notice expires. *Id.*

*Initial Commission action.* On December 27, 2016, the Commission issued Order No. 3707, 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.<sup>7</sup> The Commission later issued Chairman's Information Request No. 1 to clarify the Postal Service's request.<sup>8</sup> The Postal Service responded to CHIR No. 1 on January 4, 2017.<sup>9</sup>

### III. THE POSTAL SERVICE'S POSITION

*Functional equivalence.* The Postal Service posits that the Agreement is functionally equivalent to 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) language for the Foreign Postal Operators 1 product and therefore both agreements conform to a common description. *Id.* at 9. The Postal

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<sup>6</sup> *Id.* at 3. The Postal Service filed its Notice on December 22, 2016, 41 calendar days prior to the intended implementation date of February 1, 2017. The Postal Service is reminded that it is required to transmit notice to the Commission no later than 45 calendar days prior to the intended implementation date of a negotiated service agreement (NSA). See 39 C.F.R. § 3010.41.

<sup>7</sup> Notice and Order Concerning Type 2 Rate Adjustment and of Filing Functionally Equivalent Agreement, December 27, 2016 (Order No. 3707).

<sup>8</sup> Chairman's Information Request No. 1 and Notice of Filing Under Seal, December 29, 2016 (CHIR No. 1).

<sup>9</sup> Response of the United States Postal Service to Chairman's Information Request No. 1, with Portions Filed Under Seal, January 4, 2017 (Response to CHIR No. 1). The Postal Service also filed a motion for late acceptance of its response. Motion for Late Acceptance of Response of the United States Postal Service to Chairman's Information Request No. 1, with Portions Filed Under Seal, January 4, 2017 (Motion). The Motion is granted. The Postal Service also filed an errata concerning the financial workpapers. See Notice of the United States Postal Service of Filing Errata Concerning Financial Workpapers Included in Notice of United States Postal Service of Type 2 Rate Adjustment, Notice of Filing Functionally Equivalent Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, January 4, 2017.

Service also asserts that both agreements are constructed from a similar template; contain many similar terms and conditions; and provide rates for small packets with delivery scanning tendered to the Postal Service from each respective foreign postal operator's territory. *Id.* However, the Postal Service does identify material differences that distinguish the Agreement from the China Post 2010 Agreement.<sup>10</sup> 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.* at 9, 11.

*Statutory criteria.* The Postal Service asserts that the criteria for the Commission's review are whether the Agreement: (1) 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 7; see 39 U.S.C. § 3622(c)(10).

With respect to the first criterion, the Postal Service states that it provides information in its workpapers showing the expected financial improvements over UPU default rates. Notice at 4. 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. *Id.* at 4-5.

With respect to the second criterion, the Postal Service addresses several reasons why the Agreement will not result in unreasonable harm to the marketplace. *Id.* at 5-6. These reasons include Australia 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 Australia Post, as each serves as its respective country's designated operator for the exchange of mail. *Id.* In addition, the Postal Service states that because no other entities are

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<sup>10</sup> Differences include, among others, revisions to existing articles and annexes. *Id.* at 9-11.

subject to terminal dues rates with respect to inbound small packets with delivery scanning sent under UPU documentation to the United States from Australia, the market for the services offered under the Agreement is in essence limited to its parties. *Id.* at 6.

Finally, the Postal Service views the third criterion inapplicable based on its assessment that there are no entities similarly situated to Australia Post to which the Postal Service could make a similar agreement available. *Id.* at 8. The Postal Service states that there are no entities similarly situated to Australia Post in its ability to tender small packets with delivery scanning from Australia on the terms and scale contemplated in the Agreement. *Id.* The Postal Service also explains that there are no other entities that serve as a designated operator for letter post originating in Australia. *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 that no special data collection plan be created for the Agreement pursuant to 39 C.F.R. § 3010.43. *Id.* at 7. With respect to service performance measurement, the Postal Service requests that the Agreement be 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.<sup>11</sup>

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<sup>11</sup> *Id.* at 7; see Docket No. R2012-2, Order No. 996. In Order No. 996, the Commission held that NSAs 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 January 5, 2017.<sup>12</sup> 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. She explains that the Agreement shares similar cost and market characteristics with the China Post 2010 Agreement. *Id.* at 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. *Id.*

In addition, she finds that the negotiated rates in the Agreement improve the net financial position of the Postal Service in the first year. *Id.* The Public Representative notes that the Postal Service did not present a cost comparison of the cost coverage at UPU terminal dues rates and negotiated rates. *Id.* She also notes that the Postal Service's financial model addresses only the first year of the Agreement. *Id.* However, she explains that her analysis indicates that cost coverage at the negotiated rates exceeds the cost coverage at UPU terminal dues for the first year. *Id.* Moreover, she states that cost coverage of the Agreement indicates that revenue generated from the negotiated rates exceeds the attributable costs estimated for the first year of the Agreement. *Id.*

She explains that although the Postal Service did not provide analysis for subsequent years of the contract, it is unlikely that the Agreement would fail to meet the requirements of section 3622 in future years because of its cost coverage. *Id.* at 4-5.

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<sup>12</sup> Public Representative Comments on Postal Service Notice Concerning Australian Postal Corporation Bilateral Agreement, January 5, 2017 (PR Comments). The Public Representative filed an errata to the PR Comments correcting the docket number in the heading of the PR Comments filing. Public Representative Notice of Errata, January 6, 2017.

She notes that the Commission will have the opportunity to review the Agreement in its Annual Compliance Determination (ACD). *Id.* at 5.

Finally, the Public Representative states that she has reservations regarding the volume projection in the Postal Service's financial model. *Id.* She explains that the projection is questionable because the Postal Service cannot control the prices set by Australia Post for mailers in Australia. *Id.* She further states that even if the volume projections were based on reasonable assumptions, those assumptions were not shared with the Commission. *Id.*

## V. COMMISSION ANALYSIS

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

*Functional equivalence.* The Commission finds that the Agreement is functionally equivalent to the China Post 2010 Agreement. The agreements share similar cost and market characteristics. 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 finds that the negotiated rates in the Agreement will improve the net financial position of the Postal Service. 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. The Commission

concur with the Postal Service's assessment that there are no entities similarly situated to Australia Post.

The Public Representative notes that the Postal Service did not present a comparison of the cost coverage at UPU and negotiated rates. PR Comments at 4. Nonetheless, her analysis indicates that the cost coverage at the negotiated rates exceeds the cost coverage at the UPU terminal dues for the first year and that the negotiated rates improve the Postal Service's net financial position. *Id.* Notwithstanding the lack of a direct comparison between the cost coverage at UPU rates and the negotiated rates in this docket, the Commission finds that the Postal Service's filing demonstrates that the negotiated rates are an improvement over the UPU rates and improve the Postal Service's net financial position.

The Public Representative also expressed concern that the Postal Service's financial model addresses only the first year of the Agreement. *Id.* at 4-5. The Commission also agrees with the Public Representative that the Agreement is likely to cover its costs in the future and that the Commission will have the opportunity to review the Agreement annually through the ACD process.

Finally, the Public Representative raises reservations about the Postal Service's volume projection in its financial model. PR Comments at 5. In CHIR No. 1, the Commission asked the Postal Service to confirm that the source of the projected volume reflects the actual volume for inbound small packets from Australia in FY 2016.<sup>13</sup> The Commission is satisfied that the Postal Service's reply validates the reliability of the projected volume.

*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 7. Instead, it intends to report information under the Agreement through the ACR and provide information about mail flows from Australia Post within the course of the ACR review process. *Id.* The

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<sup>13</sup> See CHIR No. 1, question 3b.



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 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 Agreement is intended to take effect on or after February 1, 2017, and it is to remain in effect until either party serves the other with a 30-day advance written notice to terminate.<sup>14</sup> 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 or if the termination date is modified pursuant to the terms of the Agreement. In addition, should the Agreement be terminated, 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 Commission approves the Type 2 rate adjustment requested in the Postal Service's Notice, filed December 22, 2016, in this docket.
2. The Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.
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.

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<sup>14</sup> Notice at 3; *id.* Attachment 2 at 3.

4. The Postal Service shall notify the Commission if the Agreement terminates early.
5. Within 30 days of termination of the Agreement, the Postal Service shall file related costs, volumes, and revenues 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 established 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 Market Dominant Product List**

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#### **1600 Negotiated Service Agreements**

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#### **1602 International**

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

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#### **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*

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Australia Post Agreement, R2017-2, expires TBD

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