

BEFORE THE
POSTAL REGULATORY COMMISSION

Annual Compliance Report, 2017

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Docket No. ACR2017

REPLY COMMENTS OF UNITED PARCEL SERVICE, INC. ON
UNITED STATES POSTAL SERVICE MOTION FOR
RECONSIDERATION OF ORDER NO. 4551
(April 13, 2018)

United Parcel Service, Inc. (“UPS”) respectfully submits these reply comments in response to the Postal Service’s Motion for Reconsideration of Order No. 4551.¹ The Postal Service seeks reconsideration of the Commission’s decision requiring the Postal Service to unseal inbound letter post revenue data filed in the Postal Service’s response to Chairman’s Information Request (“CHIR”) No. 15.² The arguments made by the Postal Service offer no new rationale for the Commission to reconsider its original decision on February 16, 2018 (“Order No. 4409”), and appear to simply delay an already elongated process. The Postal Service continues its efforts to keep the terminal dues program shrouded in secrecy by claiming competitive harm and commercial sensitivity. Accordingly, UPS asks that the Commission deny the Postal Service’s

¹ United States Postal Service Motion For Reconsideration of Order No. 4451, Dkt. No. ACR2017 (Apr. 6, 2018) (“Motion for Reconsideration”), at 1. As the Postal Service filed its motion on April 6, 2018, the rules permit UPS, as a “participant to the proceeding,” to file and serve an answer within seven days (*i.e.*, April 13, 2018). See 39 C.F.R. § 3001.21(b).

² The Commission previously reaffirmed its preliminary determination and directs the Postal Service to re-file its Response to CHIR No. 15 in a public library reference. See Determination to Unseal the Postal Service’s Response to Chairman’s Information Request No. 15, Dkt. No. ACR2017 (Mar. 28, 2018) (“Order No. 4451”), at 2.

Motion for Reconsideration and affirm that the information be unsealed in accordance with Order No. 4451.

I. THE COMMISSION APPROPRIATELY FOCUSES ITS PUBLIC INTEREST ANALYSIS ON THE MARKET-DOMINANT CLASSIFICATION OF INBOUND INTERNATIONAL LETTER POST.

The Postal Service disapproves of what it calls a public interest analysis that is “improperly based on a formalistic reliance on the market-dominant classification of inbound international letter post,” on the grounds that inbound letter post is “subject to substantial competition.”³ But the assertions that the Commission’s public interest analysis should view inbound international mail for characteristics that are similar to competitive products, as opposed to market-dominant products, is inappropriate and unlawful. The Commission has written that “*the PAEA requires international mail to be classified as either market dominant or competitive,*”⁴ therefore, it ought to classify inbound international letter post in accordance with that understanding.

Here, the Commission clearly intended to classify inbound international letter post as market-dominant, and analyzing these products as such is not “formalistic,” but rather quite appropriate. This is the second time in less than two months that the Postal Service has attempted to partially redefine the classification of inbound international letter post. Less than two months ago, the Postal Service argued that the Commission’s proposed price cap on market-dominant products should not apply to

³ Motion for Reconsideration at 4.

⁴ Order No. 43, Dkt. No. RM2007-1 (Nov. 9, 2007), at 78 (available at 72 Fed. Reg. 63,683).

inbound international letter post, implying that inbound letter post should be somehow exempt.⁵

The Postal Service's argument here does not work because if the products in question were actually treated more like competitive products, then the public interest analysis would steer not toward favoring nondisclosure, but rather toward disfavoring the legality of terminal dues altogether. In the case of competitive products, current law imposes a clear limitation on the Secretary of State, denying his authority to enter into treaties that would, "***with respect to any competitive product***, grant an undue or unreasonable preference to the Postal Service, a private provider of international postal or delivery services, or any other person."⁶ The Commenters in this docket have repeatedly explained that terminal dues by their nature create unreasonable preferences for members of the UPU, over others outside the UPU.

If the Postal Service believes that the Commission should move inbound international products to the competitive category, then the Postal Service should petition for such a transfer under 39 U.S.C. § 3642. However, these products would run head-long into the statutory provision that disfavors discriminatory treatment among users of the mail.⁷ The Postal Service cannot have it both ways in their public policy analysis—arguing that these products face sufficient competition to warrant protection from the disclosures normally asked of market-dominant products, but not facing

⁵ Initial Comments of the United States Postal Service in Response to Order No. 4258, Dkt. No. RM2017-3 (Mar. 1, 2018), at 158.

⁶ 39 U.S.C. § 407(b)(1) (emphasis added).

⁷ 39 U.S.C. § 403(c) ("[T]he Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.").

sufficient competition to trigger the statutory prohibitions on discriminatory preferences for competitive products.

II. THE POSTAL SERVICE’S CLAIM THAT PARTIES MUST SHOW A “TANGIBLE BENEFIT” FOR MAKING INFORMATION PUBLIC IS WITHOUT MERIT.

The Postal Service suggests that participants have a burden to demonstrate a “tangible benefit” as a prerequisite of making the data public.⁸ But the statute requires no such showing: It states that the Commission needs to “balance 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 competing in commercial markets.”⁹ Given this, participants do not face any additional obligation to point in advance to any pending policy proposal, or to show an ultimate purpose that (in the Postal Service’s words) can “reasonably be expected to improve the condition of the Postal Service or its service to the public at large.”¹⁰ It is enough that the participants in this docket seek transparency into the terminal dues program and accountability from this federal agency. They are alarmed that this Postal Service program is hurting American business while subsidizing foreign competitors, and that the Postal Service is losing significant amounts of money on the program. Transparency is a fundamental objective of the Commission’s ratemaking for market-dominant products,¹¹ and should also be a fundamental objective of the Postal Service, as a regulated monopoly that competes against the private sector.

⁸ Motion for Reconsideration at 25.

⁹ 39 U.S.C. § 504(g)(3)(A).

¹⁰ Motion for Reconsideration at 25.

¹¹ 39 U.S.C. § 3622 (a)(6).

CONCLUSION

The Commission should reject the Postal Service's Motion for Reconsideration and direct the Postal Service to unseal the aggregated inbound letter post revenue data filed in the Postal Service's response to CHIR No. 15, including data by country group, as a public library reference as soon as possible.

Respectfully submitted,

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