



6309 Beachway Drive
Falls Church, Virginia 22044
703.998.7121
703.998.7123 (f)
www.expressassociation.org

**Submission by the Express Delivery & Logistics Association
To The Postal Regulatory Commission Regarding Its
Proposed Rule to Implement a New Postal Ratemaking System**

Docket No. RM2007-1; Order Nos. 26 and 27

September 24, 2007

This paper provides the comments of the Express Delivery & Logistics Association (XLA) regarding the proposed rule published by the Postal Regulatory Commission (PRC) in the *Federal Register* of September 4, 2007 (72 Fed. Reg. 50743). XLA is the trade association representing the express delivery services industry; our members include large firms with global delivery networks, such as DHL, FedEx, Purolator, TNT and UPS, as well as smaller businesses with strong regional delivery networks, such as International Bonded Couriers and Midnite Express. Together, our members employ approximately 700,000 American workers. Worldwide, XLA members have operations in over 200 countries and territories; move more than 20 million packages each day; employ more than 1 million people; operate 1,200 aircraft; and earn revenues in excess of \$80 billion annually.

The PRC's proposed rule would implement various aspects of the Postal Accountability and Enhancement Act of 2006 (PAEA). XLA's comments focus on one specific section of the proposed rule: the PRC's initial finding, detailed on pages 50757-50760, that all inbound postal products are market dominant. For the reasons outlined below, XLA urges the PRC to reconsider this finding.

1. Shippers in foreign countries choose from a range of options, including the postal venue. As a practical matter, international postal products such as Express Mail Service/EMS and Global Express Guaranteed compete with the products of private companies for the business of shippers.

In the reply comments submitted by the U.S. Postal Service (USPS) to the Postal Regulatory Commission (PRC) on May 7, 2007, in connection with the PRC's ongoing assessment of PAEA implementation issues, USPS proposes a structure for delineating competitive and market dominant products. As outlined in the table on page 33 of the USPS statement, market dominant products would comprise single-piece letters less than

12.5 ounces, LC postcards, matter for the blind, international reply coupons, and special services (a la carte). Competitive products would comprise single piece letters equal to or greater than 12.5 ounces, EMS/express international, GXG, Air CP/Priority International, International Priority Airmail (IPA), International Surface Air Lift (ISAL), bulk letters (via air and surface modes), bulk packages (via air and surface modes), commercial direct entry (bulk letters and packages), m-bags, outbound publishers' periodicals, outbound other articles (AO), special services relating to the previous categories, and international money orders.

As noted in the White Paper submitted by XLA to the PRC on July 20, 2007, we agree that this structure presents a reasonable classification of the product lines falling within the market dominant and competitive categories *for both inbound and outbound postal products*. The PRC's finding that inbound postal products are not competitive overlooks the realities of the marketplace. A shipper - whether an individual or a business - considers the entire range of shipping options available and evaluates them based on factors such as price, reliability and timing. Just as an American shipper would look at postal and private options in conducting such a review, so too do foreign shippers in assessing how best to get a shipment to the United States. In the marketplace, the postal network serves as a viable alternative for a wide range of shippers and directly competes with private companies for the business of shipping items to the United States. The fact that the shipment is not technically tendered to the U.S. Postal Service (as noted by the PRC) does not eliminate this direct competition, as the global postal network ensures that the shipment can be made from the foreign shipper to the destination in the United States. This process is analogous to a private express company accepting a package at its office in London, transporting it to a gateway city in the United States, and then transferring it to an agent to complete the U.S. delivery.

Furthermore, there is no distinction between the types of packages carried by posts and those by private companies. One could pull 100 inbound packages at random out of the inbound postal stream and 100 from an inbound express company stream, strip all markings from them, and have very similar looking packages that contain similar products. Again, the reality of the marketplace is that postal products compete with private company products for the business of international shippers.

2. The practical impact of the PRC's finding, if maintained in a final rule, would likely be to eliminate the common application of customs and other border-related requirements to postal shipments, maintaining a competitive advantage for those products and thwarting the will of Congress.

Section 405 of the PAEA amends 39 USC 407 to create a new subsection 407(e)(2), which reads:

"With respect to shipments of international mail that are competitive products within the meaning of section 3621 that are exported or imported by the Postal Service, the Customs Service [now the Bureau of Customs and Border Protection] and other appropriate Federal agencies shall apply

the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies."

Section 405 explicitly references shipments of USPS competitive products that are "exported or imported" and also states that "the Customs Service and other appropriate Federal agencies shall apply the customs laws of the United States *and all other laws relating to the importation or exportation* of such shipments in the same manner to both shipments by the Postal Service and similar shipments by private companies" (emphasis added). This language leaves no room for doubt: the rules and regulations applying to *imports and exports* of private company shipments of products similar to USPS' competitive products are to be applied, in a similar manner, to *imports and exports* of USPS' competitive products.

A finding that all inbound postal products are market dominant could lead to the conclusion that *none* of the laws relating to the importation of products apply to postal shipments. This clearly was not the intent of Congress, nor could it possibly be in the interests of the American public, who have supported the many new security and safety related border requirements that have been placed on all other types of shipments since September 11.

3. The PRC finding would likely maintain significant current competitive advantages enjoyed by postal products.

The PRC maintains that "it is not apparent that classifying any inbound international mail as a competitive product has the same significance it does for outbound mail" (page 50760). In fact, such a classification would preserve a significant competitive advantage that postal shipments have long enjoyed vis-a-vis those by private companies, one that is quite significant in the U.S. market. As detailed by a February 2000 study by Wirthlin Worldwide, there are major disparities in the processing by U.S. Customs and Border Protection of private versus postal inbound shipments. Wirthlin arranged for the international express shipment, from 10 different countries, to the United States of virtually identical packages all of which contained goods subject to duties and fees. It sent one half of the packages via private express operators and the other half via the express mail service provided by foreign postal administrations (the delivery for which was completed by USPS). Wirthlin found that "[o]ver 94% of all shipments that require the payment of duties and fees through the USPS do not result in the filing of a Customs entry...[meaning] that Customs cannot collect duties and fees" - whereas such entries were filed (and the duties and fees paid) in 89% of private express shipments. (Wirthlin Worldwide, *A Study of the Absence of United States Postal Service Parity with the Express Carrier Industry*, February 2000, p. 2)

Furthermore, in the aftermath of September 11, the Trade Act of 2002 was enacted, mandating that private operators provide CBP with advance electronic data prior to a shipment's arrival in the United States. CBP conducts risk assessment based on this data

and uses this assessment to help determine whether a shipment should be inspected. The Trade Act's mandate has been applied to all modes - *except for postal shipments*. Consequently, private operators have had to invest millions of dollars in new technology and training.

This disequilibrium in the handling of inbound shipments provides postal products with a considerable competitive advantage. Duties, taxes and other fees are frequently not collected on postal shipments - and, because postal shipments are currently exempt from CBP's requirement that all shipments be preceded by advance electronic data, posts do not need to make the investment in automation required of all private providers. If postal shipments do not pose a risk that mandates such additional scrutiny, private providers should have access to similar procedures for similar types of shipments.

XLA believes that, because of these factors, classifying all inbound international mail as market dominant has considerably more significance than it would on the outbound side. Such a classification would preserve highly significant competitive advantages for postal shipments, to the detriment of the private companies that compete with these postal products.

Conclusion

For the reasons outlined herein, XLA strongly believes that the same postal products that are determined to be competitive for outbound shipments should also be found to be competitive for inbound traffic. XLA urges the PRC to reconsider its initial finding in this regard, and to include in its final rule a determination affirming that these inbound products are competitive.