

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Products Price Changes
Rates of General Applicability

Docket No. CP2009-23

PUBLIC REPRESENTATIVE COMMENTS

(February 24, 2008)

Pursuant to Commission Order No.179,¹ the Public Representative hereby submits comments on the Postal Service's notice of price changes for three types of competitive products.² These price changes are to take effect on May 11, 2009. For various reasons, these price changes were not included with the recent price changes for most competitive products that occurred in January, 2009.³

The first of the changes relates to three categories of Parcel Select (Origin BMC Presort, BMC Presort, and Barcoded Inter-BMC and Intra-BMC). The rates for those categories are based on market dominant Single-Piece Parcel Post prices being changed concurrently on May 11, 2009. Rates are also increasing for Premium Forwarding Service (PFS), a special service. The third type of competitive product price

¹ Notice and Order Concerning Changes in Rates of General Applicability for Competitive Products, February 11, 2009.

² Notice of the United States Postal Service of Changes in Rates of General Applicability for competitive Products Established in Governors' Decision No. 09-01, February 10, 2009.

³ Review of Notice Concerning Changes in Rates of General Applicability for Competitive Products, Order No. 146, Docket No. CP2009-8.

change relates to prices for International Priority Airmail (IPA) and International Surface Air Lift (ISAL) which are based on First-Class International prices scheduled to change on May 11, 2009. Prices for International Ancillary Services are also increasing and structural changes in international service were noticed in the Postal Service's filing.

The Public Representative has carefully reviewed the information submitted with the Notice. The classification changes appear to be reasonable and, as required by section 3633(a)(3), 39 U.S.C. 3633(a)(3), the information submitted pursuant to the Notice indicates that the price changes will allow a contribution toward a minimum of 5.5 percent of the Postal Service's total institutional costs.

However, the current filing suffers some of the same deficiencies cited by the Public Representative in the previous competitive product price change proceeding.⁴ These deficiencies hinder a firm conclusion that the new prices comply with the prohibition on subsidization of competitive products and cost coverage requirements in 39 U.S.C. §3633(a). The models underlying the volume and revenue numbers in the spreadsheets supplied in the non-public materials in USPS-CP2009-23-8/NP2 are hard coded and it cannot be determined how they were developed.⁵ For PFS, the volume reflects reshipments and does not adequately indicate the estimated number of customers using the service. The method of developing the anticipated impact of the

⁴ Public Representative Comments, Docket No. CP2009-8, December 1, 2008.

⁵ Response of the United States Postal Service to Chairman's Information Request No. 1, February 19, 2009. Notice of the United States Postal Service of Filing of USPS-CP2009-23/NP2, February 19, 2009.

PFS price increase on the number of reshipments as well as the number of customers using the service who pay the enrollment fee cannot be determined and verified.

Also, as discussed below, the timing of the significant price increase in PFS so soon after transferring to the competitive product list suggests the need to carefully monitor future price increases for PFS. Future rate increases resulting in price gouging of PFS users would indicate a lack of price competition in the PFS market. In that event, PFS should be moved back to the market dominant product list.

Premium Forwarding Service

As recently as just over eight months ago, the Postal Service filed a request with the Commission to transfer the Special Services Premium Forwarding Service from the market dominant product list to the competitive product list. In support, the Postal Service alleged that private alternative options to PFS are available and that “PFS is provided within a competitive market” so that “[t]he existence of these various alternatives constrains the Postal Service from exercising sufficient market power to raise prices, etc., without losing business.”⁶

The Public Representative’s responsive comments challenged the Postal Service’s assertions about the competitive nature of the market in which PFS operates. The Public Representative’s comments pointed out the extremely limited nature of the

⁶ Request of the United States Postal Service, Docket No. MC2008-4, Attachment B, May 30, 2008 at 3-5.

competition in the PFS market.⁷ Another comment noted, in addition, that all of the commercial services the Postal Service claimed to be competitors of PFS require utilization permanently rather than temporarily as PFS is designed.⁸ Consequently, those comments opposed the transfer of PFS to the competitive product list.

In response to the comments, the Postal Service agreed that while alternatives for forwarding mail may not be exactly the same as PFS, it argued that the alternatives are substantially similar to PFS and in competition with PFS.⁹ The transfer request was granted.¹⁰

Now, just seven months after successfully claiming that it has limited market power in the PFS market, the Postal Service's actions have all but confirmed a lack of competition in the PFS market and the Postal Service's market power in the forwarding service market. The Postal Service's notice of changes in its PFS rates includes a 50 percent increase in the enrollment fee for PFS from \$10 to \$15. Further, a rate increase of \$2.00 in the weekly PFS reshipment fee from \$11.95 to \$13.95 amounts to an additional 16.7 percent price increase for each weekly shipment. The Postal Services Notice acknowledges that overall PRS prices will increase 20.2 percent on May 11,

⁷ Public Representative Comments on Postal Service Request to Transfer Premium Forwarding Service to the Competitive Products Category, June 16, 2009.

⁸ Initial Comments of David Popkin, Docket No. MC2008-4, June 16, 2008 at 2.

⁹ Motion of the United States Postal Service for Acceptance of Reply Comments, June 20, 2008 (Postal Service Reply Comments).

¹⁰ Order Granting Postal Service's Request to Transfer Premium Forwarding Service to the Competitive Product List, July 16, 2008.

2009.¹¹ The derivation of the claimed 20.2 percent increase is not provided. The Commission should request the calculations underlying this conclusion.¹²

Inasmuch as PFS rates are comprised of two fees, the magnitude of the rate increase applicable to any individual customer's service depends upon the number of weeks of reshipments. For instance, PFS is available for as short a period as two weeks, in which case the price increase amounts to a whopping 26.6 percent (\$9/\$33.90). The Postal Service calculates an overall 20.2 percent rate increase. The Postal Service does not indicate the number of weeks, on average, that this assumes. Even a full one year of PFS would result in a lower, but nevertheless significant, rate increase of 17.5 percent.¹³

These PFS price increases as high as 26.6 percent appear to be significant. They are much higher than the estimated increases in other competitive rates recently changed on January 18, 2009. In that case, rates increased by the following average percentages: Express Mail-5.7 percent; Priority Mail-3.9 percent; Parcel Select-5.9 percent; Parcel Return Service-5.3 percent; GXG International-11.2 percent; Priority Mail International (PMI)-8.5 percent; and M-Bags-8.0 percent. The PFS increase above

¹¹ Decision of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Certain Competitive Products (Governors' Decision No. 09-01) at 2.

¹² The Commission filed a similar request in Docket No. CP2009-8 for the weights used to derive the overall average percentage price increase for each product. See Chairman's Information Request No. 2, December 3, 2008, question 2.

¹³ The Postal Service is raising IPA prices by 20.8 percent but that is driven by "new cost information for noncontractual volumes." Attachment A to Governors' Decision 09-01 at 2. The Postal Service does not assert that costs drive its PFS rate increase proposal. Other price increases for international services are no greater than 6.7 percent. *Id.*

20 percent at least raises a *prima facie* possibility that the Postal Service exercises sufficient market power that it is market dominant in the PFS market.

These planned rate increases belie the Postal Service's recent claims to the Commission in Docket No. MC2008-4 that competition exists in the PFS market and that an important test required by the Commission rules in subsection 39 C.F.R. 3020.32 (implementing 39 U.S.C. § 3642) are met. In order to justify transfer of a product to the competitive products lists, the Commission's Rules require the Postal Service to, "Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: ... (2) raise prices significantly...." 3020.32(d). The PFS rate increase and the supporting documents indicate the Postal Service at least assumes it has sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products, "raise prices significantly."¹⁴ However, as noted above, the Postal Service has not provided the sources for its conclusions in the non-public spreadsheets to support its estimates. Although, in light of the circumstances regarding this relatively new service, these significant price increases are not unreasonable,¹⁵ future PFS increases should be measured against the Commission's admonition in Order No. 88.

¹⁴ The estimated after rate volumes for this service are not adjusted significantly.

¹⁵ The Postal Service points out that PFS commenced in 2005 and that there has not been a price increase since that time. Attachment A to Governors' Decision 09-01 at 1.

There, the Commission Order granting transfer of PFS to the competitive product list stated:

The Commission notes that a transfer of a product between product lists is not necessarily permanent. If circumstances should warrant in the future, for example, if the Postal Service appeared to be price gouging users of this service, the Commission under section 3642 and its own rules can initiate a transfer of PFS from the competitive product list back to the market dominant product list. Moreover, users of the mail also can request such a transfer. See 39 U.S.C. 3642 and 39 CFR 3020.30 *et. seq.* (Order No. 88 at 8.)

Although each of the increases in the overall fees to PFS customers are high, the Public Representative does *not* believe the Commission should take action for failure to meet 3633(a) and reject the proposed PFS price increases or even enter into a proceeding to consider further the price increase at this time. However, the Public Representative urges that future pricing increases of PFS should be closely monitored to insure against price gouging of PFS customers and to insure that the PFS properly belongs in the competitive product list.

It would be useful for the Commission to interpret the meaning of the two phrases in section 3642(b)(1): “raise prices significantly” and “without risk of losing a significant level of business.” Using this interpretation as a guideline, if the Postal Service could raise prices by a percentage as high as the guideline without losing a significant level of business (as defined), that would be *prima facie* evidence the product is market dominant. The absence of a sufficiently competitive market for a particular product would prevent its transfer to the competitive product list or, conversely, justify its return to the market dominant list of products.

Respectfully submitted,

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