

ORDER NO. 1461

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

Before Commissioners:

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

Competitive Product List
Transferring Outbound Single-Piece
First-Class Mail International Packages
and Rolls

Docket No. MC2012-44

ORDER APPROVING REQUEST FOR PRODUCT LIST TRANSFER

(Issued September 10, 2012)

I. INTRODUCTION

The Postal Service has filed a request with the Commission seeking modification of the market dominant and competitive product lists pursuant to 39 U.S.C. § 3642 and 39 CFR 3020.30 *et seq.*¹ The Request proposes to (1) remove Outbound Single-Piece First-Class Mail International Packages (Small Packets) and Rolls from the market dominant product list; and (2) add a nearly identical product, referred to as First-Class Package International Service™ (FCPIS), to the competitive product list. Under the

¹ Request of the United States Postal Service to Transfer Outbound Single-Piece First-Class Mail International Packages and Rolls to the Competitive Product List, August 10, 2012 (Request). The Request was authorized by Governors' Resolution No. 12-08. *Id.*, Attachment A.

proposal, Outbound Single-Piece First-Class Mail International Letters, Postcards, and Large Envelopes (flats) remain on the market dominant product list.

For the reasons set forth below, the Commission approves the Request.²

II. BACKGROUND

The Postal Service filed the instant Request, along with supporting documentation. The Request proposes complementary changes to the product lists for a discrete component of an existing market dominant product comprised of certain International letter post items.

One change removes Outbound Single-Piece First-Class Mail International Packages (Small Packets) and Rolls, currently part of Outbound Single-Piece First-Class Mail International, from the market dominant product list. The other change adds a nearly identical product, FCPIS, to the competitive product list. These changes, along with related conforming changes, are identified in revisions to the Mail Classification Schedule (MCS). Request, Attachment C.

On August 16, 2012, the Commission issued an order noticing the Request, appointing a Public Representative, and providing interested persons with an opportunity to submit initial and reply comments.³ The Public Representative filed comments on August 29, 2012.⁴ No other comments were received.

² On September 7, 2012, the Postal Service filed notice with the Commission indicating that, if its Request is approved, “the proposed effective date for FCPIS would coincide with the next upcoming published rate change.” Notice of the United States Postal Service Regarding the Effective Date of First-Class Package International Service, September 7, 2012, at 1. The Commission interprets this to mean coincident with the effective date of the Postal Service’s next competitive products price adjustment filing for rates of general applicability. Similarly, the effective date of the related Mail Classification Schedule changes approved herein will also coincide with the effective date of those rates.

³ Order No. 1435, Notice and Order on Request to Transfer Outbound Single-Piece First-Class Mail International Package and Rolls to Competitive Product List, August 16, 2012. See *also* 77 FR 50729 (August 22, 2012).

⁴ See Public Representative Comments on Postal Service Request to Transfer Outbound Single-Piece First-Class Mail International Package and Rolls to Competitive Product List, August 29, 2012 (PR Comments) and Motion of the Public Representative for Late Acceptance of Initial Comments, August 29, 2012. The Commission grants the Motion for Late Acceptance.

III. POSTAL SERVICE'S POSITION

The Postal Service asserts that First-Class Mail International Packages and Rolls are currently classified as part of the market dominant product list, but fulfill the criteria for classification as competitive products under section 3642. Request, Attachment B. In support of this assertion, it claims the Commission recognized, in Docket No. MC2012-13, the competitive nature of the parcel delivery market and identified UPS and FedEx as the dominant carriers. *Id.* at 2. It also states that market research shows that First-Class Mail International customers consider this product part of a broader international product portfolio. *Id.* Accordingly, it asserts that granting the instant Request would be consistent with the Commission's order in Docket No. MC2012-13.

The Postal Service asserts that Commission approval of the Request will recognize the competitive nature of the marketplace served by First-Class Mail International Packages and Rolls and grant the Postal Service the pricing and negotiation flexibility its competitors enjoy for comparable products.⁵

IV. PUBLIC REPRESENTATIVE'S POSITION

The Public Representative concludes that the Postal Service's Request to add FCPIS to the competitive product list satisfies the criteria set forth in 39 U.S.C. § 3642 and 39 CFR 3020.30 *et seq.* PR Comments at 2-3. In particular, he says the Postal Service's financial model confirms that for FY 2011, revenues for outbound letter post parcels (small packets) exceeded costs, and thereby provided "ample contribution" to institutional costs. *Id.* at 3.

The Public Representative also agrees that the market research indicates that the new FCPIS product will become another service offering in an international shipping

⁵ The instant Request is limited to the proposed classification changes. It does not include price changes. The Postal Service states that any changes to pricing, including any pricing incentives, will take place in the future. Request at 5, n.7.

market currently occupied by major competitors, including FedEx, UPS, and DHL. He says this suggests that the Postal Service will not be able to “exercise[] sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs; (2) raise prices significantly; (3) decrease quality; or (4) decrease output.” *Id.*

V. COMMISSION ANALYSIS

The Request must meet the requirements of 39 U.S.C. §§ 3642 and 3633 before the Commission can approve the proposed transfer. 39 U.S.C. § 3642 contains requirements for transferring a product from the market dominant to the competitive product list. 39 U.S.C. § 3633 lists provisions that must be complied with once a product is transferred to the competitive product list. The requirements of sections 3642 and 3633 are discussed below and applied to the Request.

A. Section 3642

39 U.S.C. § 3642(b)(1) provides that all Commission determinations on section 3642 requests must be in accordance with the statutory definitions of market dominant products and competitive products. Subsection (b)(2) provides when a proposal involves a transfer from the market dominant product list to the competitive product list, a product is ineligible for transfer if it is covered by the postal monopoly. Subsection (b)(3) requires the Commission to give due regard to three considerations: the availability and nature of private sector enterprises engaged in delivering the product; the views of those using the product; and the likely impact on small business concerns within the meaning of section 3641(h). 39 U.S.C. § 3642(b)(3).

For the reasons discussed below, the Commission finds that the Request satisfies the applicable section 3642 criteria.

1. Consistency with Statutory Product Classification Definitions

The Postal Accountability and Enhancement Act established two statutory product categories. The market dominant category consists of those products over which the Postal Service exercises sufficient market power that it can effectively set the price substantially above costs, raise prices significantly, decrease quality, or decrease output, without risking significant loss of business to other firms offering similar products. 39 U.S.C. § 3642(b)(1). The competitive category consists of all other products. *Id.*

In support of categorizing FCPIIS as a competitive product, the Postal Service presents the results of market research conducted by an external firm. It states the results show that customers consider the use of Outbound Single-Piece First-Class Mail International Packages (Small Packets) and Rolls in the context of a broader international product portfolio which includes competitive Postal Service products and private sector offerings. Request, Attachment B at 2. It also asserts the results show that of the commercial customers who ship packages using First-Class Mail International, a majority also use other postal offerings, including Global Express Guaranteed, Express Mail International, and Priority Mail International, as well as private offerings, such as FedEx, UPS, and DHL. *Id.* In addition, the Postal Service contends that the research suggests that a large portion of the customer base for Outbound Single-Piece First-Class Mail International Packages (Small Packets) and Rolls is commercial because a majority of First-Class Mail International is entered through non-retail channels. *Id.* at 3.

No commenter contends that FCPIIS is not properly categorized as competitive. The Public Representative concludes that the Postal Service lacks market power to, among other things, set prices substantially above costs, or to raise prices significantly. The Commission concurs. Shippers have several shipping alternatives, including UPS, FedEx and DHL.

2. Status of Product Relative to Postal Monopoly

A product may not be transferred from the market dominant product list if it is subject to the Private Express Statutes. 39 U.S.C. § 3642(b)(2). The Postal Service asserts that FCPIIS falls outside the scope of the letter monopoly because the letter monopoly was suspended in 1986 with respect to international letters. Request, Attachment B at 3.

The Commission finds that the proposed new product is not covered by the Private Express Statutes pursuant to 39 U.S.C. § 601(b)(3). Therefore, it is eligible for transfer to the competitive product list, assuming such transfer is consistent with other requirements.

3. Additional Statutory Considerations

The Commission also must consider the availability and nature of private sector enterprises engaged in the delivery of the product, the views of those using the product, and the likely impact on small business concerns. 39 U.S.C. § 3642(b)(3). Based on the record before it, the Commission concludes that the Postal Service adequately considered the impact on private sector competitors, customers, and small business concerns.

a. Availability and Nature of Private Sector Enterprises

The Postal Service states that three major private sector carriers, FedEx, UPS, and DHL, provide comparable products. Request, Attachment B at 4. It also references the discussion in the Supporting Statement that the market research demonstrates that customers' use of Outbound Single-Piece First-Class Mail International Packages (Small Packets) and Rolls occurs in the context of a broader international product portfolio which includes competitive Postal Service products and private sector offerings. *Id.* at 2. It asserts that significant competition can be found in the "vibrant parcel shipping market place." *Id.* at 4.

The market research illustrates the Postal Service's representations about the private sector's role. The Commission concludes that the availability and nature of private sector enterprises engaged in the delivery of similar products has been adequately considered.

b. Product Users' Views

The Postal Service states that since service standards will remain the same after the proposed transfer, the major concern of FCPIS customers would likely be the effect of the modification on prices. *Id.* at 4. It indicates that there may be some opposition to the classification change because of the Postal Service's ability to raise prices beyond the market dominant price cap for products on the competitive product list, but considers this would hold true for any customer of a product transferred from a market dominant classification to a competitive one. *Id.* at 4-5. Moreover, the Postal Service states that First-Class Mail International customers ship in a broad competitive environment and currently shop the marketplace for prices and services comparable to their needs. It therefore maintains that customers should not have major price concerns. *Id.* at 4.

No comments, other than the Public Representative's, were received. While not dispositive, the absence of opposition from these users suggests that they find the proposal unobjectionable or have alternatives available to satisfy their needs. The Commission finds that the views of those using the product have been adequately considered.

c. Impact on Small Business Concerns

The Postal Service states the proposed transfer is unlikely to have a significant impact on small business concerns, but acknowledges — as it did in its discussion of product users' views — the possibility of some opposition to the classification change because the Postal Service is able to raise prices for competitive products beyond the market dominant price cap. However, it indicates it expects this to be true for any

transfer of this type. *Id.* at 4-5. The Postal Service also asserts that First-Class Mail International customers ship in a broad competitive environment and currently shop the marketplace for prices and services comparable to their needs. *Id.* at 5. It indicates that in upcoming rate cycles, it plans to offer additional pricing incentives for this product aimed at larger volume customers. The Postal Service states that these options will allow commercial customers, which may include small businesses, to receive discounted rates. *Id.*

The likely impact of the proposed transfer on small business concerns has been adequately considered. No small business concern filed comments in this docket. This suggests both a lack of opposition to the transfer as well as acknowledgement of several private carrier alternatives. The available information supports the Postal Service's contention that the proposed transfer is unlikely to have a material impact on small business concerns.

B. Section 3633(a)

The Postal Service must explain why the Request will not result in the violation of any of the standards of 39 U.S.C. § 3633(a). See 39 CFR 3020.32(c). The referenced standards require the Postal Service to demonstrate that the transfer will not cause market dominant products to subsidize competitive products; that the product will cover costs attributable; and that the product will contribute to institutional costs. See 39 U.S.C. § 3633(a)(1) through (3).

The Postal Service maintains that in FY 2011, Outbound Single-Piece First-Class Mail International Packages (Small Packets) and Rolls "had a healthy cost coverage and provided an ample contribution toward institutional costs, thereby demonstrating that the proposed product covers its attributable costs." Request, Attachment B at 2 (footnote omitted). The Postal Service asserts that the supporting nonpublic financial data shows that the transfer will not adversely affect the Postal Service's ability to cover its total institutional costs, so there will be no subsidization of this competitive product by market dominant products. *Id.* The Public Representative agrees. PR Comments at 3.

The Commission's review of the financial workpapers indicates that FCPIS covers its attributable costs and makes a significant contribution to institutional costs. Therefore, the proposed transfer satisfies section 3633(a).

VI. CONCLUSION

The Commission approves the product list modifications identified in the instant Request. The proposed MCS revisions are accepted for purposes of the draft MCS, subject to revision, as appropriate, for consistency with the MCS as adopted.⁶

VII. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the product list modifications identified in Request of the United States Postal Service to Transfer Outbound Single-Piece First-Class Mail International Packages and Rolls to the Competitive Product List, filed August 10, 2012, consisting of: (1) removing Outbound Single-Piece First-Class International Packages (Small Packets) and Rolls from the market dominant product list, and (2) adding First-Class Package International Service™ to the competitive product list as a new product. These changes are effective as set forth in the body of this Order.
2. Outbound Single-Piece First-Class Mail International Letters, Postcards, and Large Envelopes (flats) remain on the market dominant product list.
3. The Commission accepts the revisions to the draft Mail Classification Schedule presented in the Attachment to this Order, subject to the need for revision for consistency with the Mail Classification Schedule as adopted. These changes are effective as set forth in the body of this Order.

⁶ The MCS revisions appear in Request, Attachment C.

4. The Commission directs the Secretary to arrange for publication in the *Federal Register* in the next periodic update.

By the Commission.

Shoshana M. Grove
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product lists codified in Appendix A to 39 CFR part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket No. MC2012-44. The Commission uses two main conventions when making changes to the product lists. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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First-Class Package International Service (FCPIS)

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