

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

Competitive Product Prices  
International Merchandise Return Service Agreements  
With Foreign Postal Operators  
Non-Published Rates

Docket No. MC2015-68  
Docket No. CP2015-99

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD COMPETITIVE  
INTERNATIONAL MERCHANDISE RETURN SERVICE AGREEMENTS  
WITH FOREIGN POSTAL OPERATORS PRODUCT TO THE  
COMPETITIVE PRODUCTS LIST

(July 23, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2581.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Request filed pursuant to 39 U.S.C. §3642 and 39 CFR 3020.30 *et seq.*, to add the Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (IMRS-FPO) product to the Competitive Products List within the Mail Classification Schedule (MCS).<sup>2</sup> In addition, the Postal Service proposes that the IMRS-FPO product, together with any subsequently filed IMRS-FPO agreements, be reviewed by the Commission in the same manner as other Non-Published Rates (NPR) products, such as the Global Expedited Package Services—Non-Published Rates (GEPS-NPR) products. Request at 1 and 5.

Included as Attachment 1 to the Request is an application for non-public treatment of materials filed under seal. Attachment 2 is a public (redacted) copy of

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<sup>1</sup> Order No. 2581, Notice and Order Concerning Addition of Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (IMRS-FPO) to the Competitive Product List, July 14, 2015.

<sup>2</sup> Request of the United States Postal Service to Add Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (IMRS-FPO) Product to the Competitive Product List and Notice of Filing IMRS-FPO Model Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 10, 2015 (Request).

Governors' Decision No. 11-6 and related analysis. Attachment 3 is the Statement of Supporting Justification (Statement) required by 39 CFR 3020.32. Proposed changes to the MCS are presented in Attachment 4. Attachment 5 is a public version of the IMRS-FPO Model Agreement (Model Agreement) with Annex. A certification of compliance of the competitive product's prices with 39 U.S.C. §3633(a) is provided in Attachment 6. Attachment 7 is a public version of the management analysis of the methodology for determining the minimum and maximum settlement rates (Management Analysis). The Postal Service also filed under seal a non-public (unredacted) version of Governor's Decision No. 11-6, Management Analysis, Model Agreement, and a supporting financial model setting minimum and maximum rates and estimating costs.

On July 16, 2015, the Commission filed Chairman's Information Request (CHIR) No. 1, seeking to clarify issues raised by the Postal Service's Request. The Postal Service provided its response to CHIR No. 1 on July 21, 2015.

The IMRS-FPO product is designed to provide U.S. consumers with a convenient option to return merchandise purchased from companies operating abroad. *Id.*, Attachment 7 at 1. The merchandise is entered with and returned by the Postal Service using Air Parcel Service to a foreign postal operator, which pays negotiated rates established by agreement with the Postal Service. *Id.* The foreign postal operator then delivers the returned merchandise to companies located within the foreign postal operator's territory. *Id.*

By offering the IMRS-FPO product, the Postal Service seeks to enhance revenue and encourage the growth of cross-border eCommerce through the Postal Service, thereby increasing the overall value of the services it can offer customers. Request at 4. The Postal Service also observes that the Commission recently added a similar competitive IMRS product with the Royal Mail Group to the Competitive Product List.<sup>3</sup>

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<sup>3</sup> *Id.* See Order No. 2225, Order Adding Negotiated Service Agreement with Royal Mail Group Ltd. to the Competitive Product List, Docket No. CP2015-1.

## COMMENTS

The Public Representative has reviewed the Postal Service's Request and Statement of Supporting Justification, as well as the Model Agreement, Management Analysis and supporting financial model filed under seal with the Request. The Public Representative also reviewed the Postal Service's initial justification for, and the Commission's analysis approving, the GEPS-NPR 1 product in Docket Nos. MC2010-29 and CP2010-72.<sup>4</sup> For the reasons stated below, the Public Representative recommends that the Commission approve in part the Postal Service's Request. Specifically, the Commission should approve the addition of IMRS-FPO product to the Competitive Product List. However, the Commission should not adopt at this time the Postal Service's proposal that the IMRS-FPO product, together with any subsequently filed IMRS-FPO agreements, be reviewed by the Commission in the same manner as other NPR products.

*Compliance with Section 3642 and 39 CFR 3020.30 et seq.* Section 3642 establishes criteria for all Commission determinations with respect to adding a new product to a product list, or removing an existing product from, or transferring such a product between, product lists. 39 U.S.C. 3642(b). The test established in section 3642(b)(1) for determining whether a product is market dominant is whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products."

The Postal Service states that the IMRS-FPO product does not qualify as market dominant since the Postal Service does not exercise sufficient market power in the market for international return shipping services. *Id.* at 4-5. In this regard, the Postal Service asserts that significant competition can be found in the return shipping marketplace, citing return shipping services offered by FedEx, UPS and DHL as part of a "closed, end-to end network." [Citation omitted] *Id.*, Attachment 3 at 2.

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<sup>4</sup> See Order No. 593, Order Approving Postal Service Request to Add Global Expedited Package Services—Non-Published Rates 1 to the Competitive Product List, Docket Nos. MC2010-29 and CP2010-72, November 22, 2010.

When considering a request to add new products to the MCS, section 3642(b)(3) requires the Commission to give due regard to three “additional considerations.” As required by 39 CFR 3020.32, the Postal Service provides a Statement of Supporting Justification (Attachment 3 to the Request) to address those considerations. Among other required information, Attachment 3 describes the availability and nature of enterprises in the private sector engaged in the delivery of the product. The Postal Service notes that many shipping service companies facilitate the process of making returns by creating merchant-addressed mailing labels and distributing such labels in preprinted form or by email to customers for their use in the event of a return. *Id.* at 3. The Postal Service also identifies by reference FedEx, UPS and DHL as enterprises in the private sector currently offering return shipping services. *Id.*

Attachment 3 further describes the likely impact of the modification on small business concerns. The Postal Service states that addition of the IMRS-FPO product will have little, if any, impact upon small business concerns given the highly competitive market for international return services comparable to the IMRS-FPO service. *Id.* at 4. Moreover, it anticipates that introduction of the IMRS-FPO product will provide small businesses with an additional option for their international shipping needs. *Id.*

Attachment 3 provides no information on the views of those who use the product on the appropriateness of the modification. The Postal Service states that as a new product offering, the proposed IMRS-FPO product is not used by any current customer. *Id.*

As required by 39 CFR 3020.32(c), Attachment 3 also addresses whether the competitive IMRS-FPO product complies with 39.U.S.C §3633(a). Based upon the financial model, the Postal Service maintains that the IMRS-FPO product, if approved, should generate sufficient revenue to cover costs, and therefore will not adversely affect the Postal Service’s ability to make an appropriate contribution to institutional costs. *Id.*, at 2. As a result, the competitive IMTS-FPO product will not be subsidized by market dominant products. *Id.*

The Public Representative concludes that the Postal Service's Request and the Statement of Supporting Justification are consistent with 39 U.S.C. 3642 and the Commission's Rules. The Public Representative therefore recommends that the IMRS-FPO product be added to the Competitive Product List.

*Proposal to Review the IMRS-FPO Product as an NPR Product.* The Postal Service proposes that the Commission list the IMRS-FPO product, together with any subsequently filed IMRS-FPO agreements, "as one product on the competitive product list, similar to the Commission's treatment of the GEPS-NPR product." *Id.*, Attachment 7 at 4. In the case of the GEPS-NPR 1 product, that "treatment" required Postal Service use of a model agreement (or a contract template) and a financial model that generated a specific set of rates from within a minimum and maximum range based upon three options selected by the mailer: a postage payment method (permit or PC Postage), an entry point (at an ISC, near an ISC, or nationwide), and a revenue commitment (within one of eight tiers). Order No. 593 at 4. There was no postal management discretion to select the rates offered the mailer. *Id.* Establishment of the GEPS-NPR 1 product also involved the Commission authorizing the Postal Service to enter into mailer agreements drawn from the template that featured rates generated by the financial model—without prior Commission review. *Id.* at 16.

According to the Postal Service, the stated purpose of the GEPS-NPR 1 product was "to streamline the 'process for approving GEPS agreements.'" [Citation omitted] *Id.* at 3. That process had involved substantial transaction costs to the Postal Service for developing individual price schedules for each mailer and separately filing numerous GEPS agreements with the Commission each year. *Id.* This process also affected Commission resources, as both the Commission staff and a Public Representative initially reviewed each GEPS agreement and its prices for compliance. *Id.*

The Public Representative submits that for several reasons, the Postal Service proposal seeking Commission review of the IMRS-FPO product and subsequent agreements in a manner similar to the treatment of the GEPS-NPR 1 product is inappropriate and not warranted at this time, and should not be adopted by the Commission.

The Postal Service provides no justification for establishing the IMRS-FPO product as an NPR product. As a new service offering, there are no existing individually negotiated IMRS-FPO agreements the Postal Service is seeking to include in a streamlined process for approving such agreements. In fact, the Postal Service gives no indication as to the number of IMRS-FPO agreements that might be concluded in the next year or subsequent years that would warrant treatment as an NPR product. Moreover, if the Postal Service's recent experience in negotiating agreements with FPOs is any guide, there are unlikely to be more than ten IMRS-FPO agreements.<sup>5</sup>

As presented in the Request, the IMRS-FPO product appears similar in form to the GEPS-NPR 1 product. That said, it is not similar in use and therefore is inappropriate for treatment as a NPR product. Unlike the financial model in the GEPS-NPR 1 product, which generated specific rates offered to each mailer, the IMRS-FPO financial model simply establishes a minimum and maximum range of rates which may or may not be used to negotiate an IMRS-FPO agreement. Request, Attachment 7 at 2. The Postal Service makes clear that when rate ranges are updated, presumably on an annual basis, the Postal Service will renegotiate the rates in each agreement because it or a FPO wishes to renegotiate the rates "in any event," whether or not the rates fall outside the minimum and maximum range. Request at 5.

The Postal Service's expectation that rates will be renegotiated "in any event" indicates that the IMRS-FPO Model Agreement is not intended as a template to generate specific rates and streamline the approval process. In the GEPS-NPR 1 product, the model agreement limited mailer choices to three options, which were used to generate specific rates. Mailers who wanted other options or alternative rates to those generated by the financial model could negotiate an individual GEPS agreement. In the case of the IMRS-FPO product, the Model Agreement does not include a limited set of options that determines the rates offered to a FPO. Moreover, unlike the GEPS-NPR 1 product, the Postal Service cannot effectively impose the terms of the IMRS-

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<sup>5</sup> Library Reference PRC-LR-ACR2014-NP2, Excel file PRC-LR-ACR2014-NP2 BOOKED ICRA.xls, Docket No. ACR2014. The Excel file shows that for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, the Postal Service has concluded 12 agreements with 7 FPOs.

FPO Model Agreement on a FPO. As a result, rates and terms for each IMRS-FPO agreement must be individually negotiated by the Postal Service and reviewed by the Commission.

Notably, the Postal Service does not indicate in the product name that the IMRS-FPO product is intended to be an NPR product, perhaps because of the many differences from the GEPS-NPR 1 product discussed above.

## **CONCLUSIONS**

The Public Representative concludes that the Postal Service's Request is consistent with 39 U.S.C. § 3642(b) and 39 CFR 3020.30 *et seq.*, and therefore the Commission should add the IMRS-FPO product to the Competitive Product List. However, the Commission should not adopt at this time the Postal Service's proposal that the IMRS-FPO product, together with any subsequently filed IMRS-FPO agreements, be reviewed by the Commission in the same manner as other NPR products. Such a "split" decision will not create additional burden for the Commission. To the extent experience indicates that the Postal Service is negotiating a large number of IMRS-FPO agreements, treatment as a NPR product may be warranted and the Postal Service could request such treatment at that time. In the alternative, if the Commission adopts the proposal, it will not result in a streamlined the approval process, *i.e.*, minimize Postal Service negotiations and reduce Commission reviews, because the Postal Service anticipates that it will individually negotiate IMRS-FPO agreements that must be presented to the Commission for review in any event.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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