

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES GLOBAL PLUS 2 NEGOTIATED SERVICE AGREEMENTS	Docket No. MC2008-7
COMPETITIVE PRODUCT PRICES GLOBAL PLUS 2 CONTRACT (MC2008-7) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2008-16
COMPETITIVE PRODUCT PRICES GLOBAL PLUS 2 CONTRACT (MC2008-7) NEGOTIATED SERVICE AGREEMENT	Docket No. CP2008-17

**REPLY OF UNITED STATES POSTAL SERVICE TO PUBLIC REPRESENTATIVE
COMMENTS IN RESPONSE TO UNITED STATES POSTAL SERVICE REQUEST TO
ADD GLOBAL PLUS 2 NEGOTIATED SERVICE AGREEMENTS TO THE
COMPETITIVE PRODUCTS LIST**
(August 29, 2008)

The United States Postal Service (Postal Service) hereby replies to Comments recently filed by the Public Representative concerning the appropriate classification for the Global Plus 2 Negotiated Service Agreements (NSAs) that the Postal Service had requested be added to the competitive products list.¹ The Public Representative questions whether the Global Plus 2 contracts are “hybrid” products with both market dominant and competitive elements because the Global Direct service offered under the contracts “appears to be a service that provides shipments of First Class Mail to a

¹ See Public Representative Comments in Response to United States Postal Service Request to Add Global Plus 2 Negotiated Service Agreements to the Competitive Products List, August 27, 2008 (“Public Representative Comments”); Request of United States Postal Service to Add Global Plus 2 Negotiated Service Agreements to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors’ Decision and Two Functionally Equivalent Agreements, August 8, 2008.

destination country,” and single piece outbound First-Class Mail International has been classified as market dominant.² The Postal Service believes that these contracts are competitive for a number of reasons and wishes to clarify how these contracts work in order to support this conclusion, as explained below.

Global Plus 2 Contracts: Competitive International Products

While the Postal Accountability and Enhancement Act of 2006 clearly requires that international mail be classified as either market dominant or competitive depending upon whether it is “single-piece” or “bulk,” it does not further define those terms or seek to provide guidance on what existing and future international mail categories are intended to be encompassed within them.³ The Postal Regulatory Commission (“Commission”), after considering comments from interested parties, undertook to classify postal products as either market dominant or competitive.⁴ In doing so, the PRC stated that it proposed “to define bulk international mail by reference to bulk commercial services, which may be satisfied by volume commitments or other types of annual guarantees.”⁵ Included among the products classified as “bulk” were ICMs, and each ICM was further initially defined as an individual product.⁶

Here, the Global Plus 2 contracts are tied to the revenue commitments in the Global Plus 1 contracts, thus appearing to satisfy the Commission’s determination that an annual revenue guarantee would suffice to define a product as “bulk.” Thus, even if pieces under the contract were mailed individually, that should not change the fact that the annual revenue guarantee ensures that this is a “bulk” product. Moreover, since the

² Public Representative Comments at 4-5.

³ 39 U.S.C. §§ 3621 and 3631.

⁴ See Order No. 26, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007.

⁵ *Id.* at 54.

⁶ *Id.* The terms “ICM” and “NSA” have been used interchangeably.

Commission views the contract as the product, as opposed to the individual services available under the contract, which include both Global Direct and Global Bulk Economy services, then it would seem that even assuming that a piece of Global Direct mail were sent individually, that likewise should not convert a “bulk” product into a “single-piece” product.

Moreover, as a practical matter, Global Direct is not a single-piece service and each mailing involving Global Bulk Economy and Global Direct is, in fact, a bulk mailing. Global Direct service has only been available through customized agreements. A customer cannot walk into a post office and deposit a single piece bearing foreign indicia; a retail Global Direct service does not exist. In addition, both Global Plus 2 contracts provide that postage payments are to be made by permit imprint. For Global Bulk Economy mailings, dedicated permits must be used. For Global Direct mailings, permits subject to the terms of DMM 604.5 must be used. Under DMM section 604.5, each permit mailing, with certain exceptions not applicable here, must contain at least 200 pieces or 50 pounds.

While it is theoretically possible that a mailer could tender a mailing of 200 pieces consisting of 199 pieces of another type of mail not covered under the contract on one postage statement and one piece of Global Direct mail on another postage statement, the mailing itself would still be a bulk mailing, albeit consisting of pieces covered under the contract and pieces not covered. In actuality, however, this hypothetical example does not reflect routine mailer behavior. These customers are large volume, Postal Qualified Wholesalers who are required under the terms of the contract to deposit their Global Direct Mail at specific locations designated by the Postal Service and who also

must comply with the foreign postal administration's preparation requirements. It is more than likely that any one mailing will contain multiple Global Direct pieces. In fact, the Postal Service does not recall ever seeing a postage statement containing only one piece of Global Direct mail.

Global Plus 2 Contracts: Competitive Market Characteristics

Certain items sent using Global Direct services, including under Global Plus 2 contracts, are "letters" within the meaning of 39 C.F.R. § 310.1(a).⁷ The Postal Service carries Global Direct items out of the United States for entry into another country's mailstream. Private entities are entitled to offer comparable services under the Private Express Statutes suspension for outbound letters "to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States".⁸ With the Postal Accountability and Enhancement Act of 2006, Congress codified this suspension as a statutory exception to the so-called letter monopoly.⁹ In the twenty years since the advent of the suspension, competition has flourished in the outbound letter market, with a variety of entities providing services comparable to the Postal Service's. In addition to competing providers, the Postal Service must also contend with mailers' prerogative to carry their own letters out of the United States and deposit them in the destination country's mailstream. For reasons described more fully in the Statement of Supporting Justification filed in these dockets,¹⁰ the Postal Service operates within competitive constraints in offering Global Plus 2 contracts, including

⁷ This provision defines a letter generally as "a message directed to a specific person or address and recorded in or on a tangible object." Publications, for example, are not considered "letters." 39 C.F.R. § 310.1(a)(7)(iv).

⁸ 39 C.F.R. § 320.8.

⁹ 39 U.S.C. § 601(b)(3) (as amended).

¹⁰ USPS Request, Attachment 2.

their Global Direct components, rather than possessing a position of market dominance. Under the descriptive criteria set forth in 39 U.S.C. § 3642(b) and 39 C.F.R. § 3020.32, these contracts should be construed as competitive products.¹¹

Conclusion

For the foregoing reasons, the Postal Service believes that the Global Plus 2 contracts are not "hybrid" products, but rather should be classified as competitive.

Respectfully submitted,

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¹¹ It should be noted that Global Direct services do not involve First-Class Mail International items. Rather, Global Direct items bear the relevant foreign postal administration's postage and indicia. Global Direct items must conform to that postal administration's preparation requirements and other obligations, which may not be analogous to requirements applicable to postal products in the United States.