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**DAFFE/CLP/WP2/WD(99)12**

Organisation de Coopération et de Développement Economiques  
Organisation for Economic Co-operation and Development

**OLIS : 10-Feb-1999**

**Dist. : 11-Feb-1999**

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**English text only**

**DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS  
COMMITTEE ON COMPETITION LAW AND POLICY**

**Working Party No. 2 on Competition and Regulation**

**PROMOTING COMPETITION IN POSTAL SERVICES**

**-- United States --**

## PROMOTING COMPETITION IN POSTAL SERVICES

### United States

#### I. Government Institutions And Market Structure

##### A. Key Statutory Authority

1. The Postal Reorganization Act (PRA) of 1970<sup>1</sup> created the current system for the provision of postal services in the United States. Prior to its enactment, the Postmaster General was a member of the President's cabinet, and the Congress set postal rates. In addition, many postal officers and employees were selected through patronage. In 1970, however, Congress divested itself of the ratesetting and patronage processes and replaced the Post Office Department with two independent establishments within the executive branch of the Government of the United States: the Postal Service and the Postal Rate Commission (PRC). The Postal Service's basic obligation is to provide postal services to bind the nation together through the personal, educational, literary, and business correspondence of the people. The PRA gives the Postal Service more independence from political pressures and bureaucratic procedures and independence to manage its operations in a professional, businesslike manner. The PRC is responsible for evaluating proposals for changes in rates of postage and mail classifications and making recommendations to the Postal Service's Governors regarding rates and classifications.

##### B. Institutions

2. The Postal Service and the PRC are the two federal executive branch institutions with governmental responsibilities in the postal sector.

###### *1. Postal Service*

3. The Postal Service has characteristics of both a governmental agency and a business enterprise. The PRA confers upon the Postal Service authority to provide for the collection, handling, transportation, and delivery of mail matter.<sup>2</sup> The PRA gives the Postal Service broad authority to provide postal, "nonpostal," and philatelic services to the public. The Postal Service is directed by an eleven-member Board of Governors, consisting nine Presidentially-appointed Governors and two postal senior officers, the Postmaster General and the Deputy Postmaster General. Structurally, the Board of Governors is fairly analogous to a corporate board of directors, and the Postmaster General's functions are similar to those of a corporate chief executive. This structure is intended to insulate the Postal Service from political forces.

4. The Postal Service is a large enterprise, with revenues of \$60 billion. If the U.S. Postal Service were a private company, it would rank as the tenth largest in the country in terms of total revenue. It

automation, addressing, postal payment systems, philatelic offerings, stamp subjects, and purchasing. Some policies are developed and implemented independently by Postal Service management, although before instituting changes in policy, the Postal Service often solicits comments from the public through publication of official notices in legal publications. Other policies are implemented by the Postal Service pursuant to legislative or Presidential directives. Labor and human resources policies are set by a combination of sources, including postal management, applicable federal employment laws, and collective bargaining with postal labor unions. Those policies relating to rates and classifications are generally developed through a process that involves the Postal Service, the Presidentially appointed Governors, and the PRC. Briefly, in order to institute proposals for changes in rates and classifications, the Postal Service must first seek recommendations from the PRC, which provides opportunities for the public to participate in rate proceedings. The PRC conducts hearings and issues recommendations to the Governors, who then vote on the recommendations.<sup>3</sup>

## ***2. Postal Rate Commission***

6. Like the Postal Service, the PRC is also an independent establishment of the executive branch of the federal government.<sup>4</sup> The President appoints the five Commissioners and designates the Chairman. Commissioners are confirmed by the Senate for six-year terms. The PRC operates with a multi-disciplined staff trained in law, economics, statistics, and cost accounting.

7. The PRC has responsibility for evaluating proposals for changes in postal rates, fees and mail classifications proposed by the Postal Service. It issues recommended decisions to the Governors of the Postal Service. It also acts on postal patrons' appeals from Postal Service decisions to close or consolidate post offices. Further, the PRC investigates complaints of substantial national scope concerning postal rates and services. Complaints can be filed by interested persons, which in the past have included competitors, mailers, mailer associations, and individuals. The PRC also responds to requests of the Postal Service for advisory opinions for nationwide changes in service. Congress occasionally asks it to undertake special studies on postal issues.

8. The PRA does not intend that the PRC regulate the Postal Service. Rather, the PRA contemplates a system of checks and balances between two "partners."<sup>5</sup> As partners, each agency is to exercise its statutory and constitutional responsibilities without encroaching on the other's functions. As such, the PRC's role in ratemaking and classification cannot interfere with postal management's responsibility to run the Postal Service. Thus, the Governors have challenged PRC recommendations that they consider to intrude upon postal management's responsibilities.

## **C. Overview of Market Structure**

9. The Postal Service offers in excess of forty domestic product groupings known as "subclasses." Subclasses are distinguished by various characteristics, including service features provided, content, speed, reliability, elasticity of demand, and user and recipient characteristics. Each subclass is defined by a classification schedule. Most subclasses consist of multiple rate categories. Rate categories can account for different characteristics of mail within a subclass, such as shape, weight, distance, worksharing option, and point of entry. Revenues, volumes, and costs are usually reported at the subclass level, and contributions to cover overhead costs are proposed and recommended at this level.

10. The Postal Service offers three primary products, based on percentage of total revenue: First-Class Mail, Standard Mail (A), and Priority Mail. First-Class Mail, which makes up approximately 57 percent of revenue, includes personal correspondence, post cards, small parcels, and business transactions. Standard Mail (A), which makes up approximately 23 percent of revenue, includes bulk entry of advertising letters and flats and bulk small parcels weighing less than one pound (455 grams). Standard

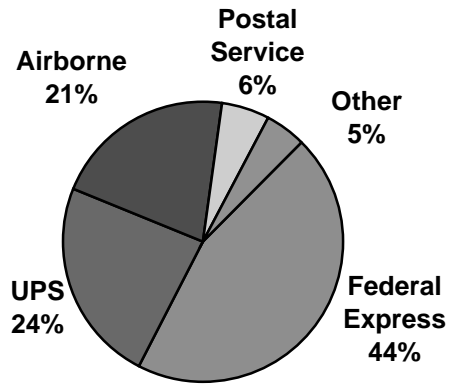
account generally cannot be sent via Standard Mail (A). Priority Mail, which makes up approximately 7 percent of postal revenues, provides two- to three-day delivery of documents and parcels. The remainder of postal revenues (approximately 14 percent) is derived from the following classes:

- Periodicals, including subscription magazines, newsletters, and newspapers;
- Standard Mail (B), which includes most standard parcels that travel principally by means of surface transportation;
- Express Mail, a guaranteed next- and second-day EMS service;
- international mail; and
- special services, such as post office box service, money orders, and registered, certified, return receipt, and insured mail services.

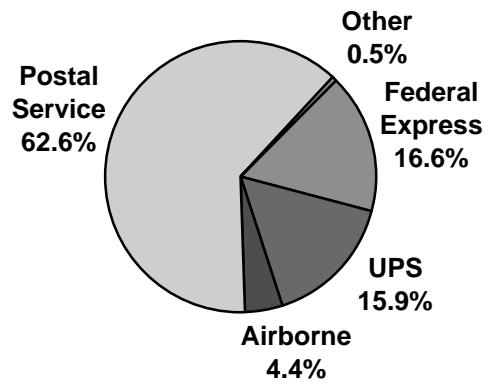
11. Summaries of revenues and volumes, along with rate schedules currently in effect, are available upon request.

12. Private sector firms offer alternatives to postal and nonpostal services provided by the Postal Service. It is difficult to determine the volume and revenue profile of other providers, because alternatives can take many forms. Letter mail, for example, is subject to diversion to other forms of communication,

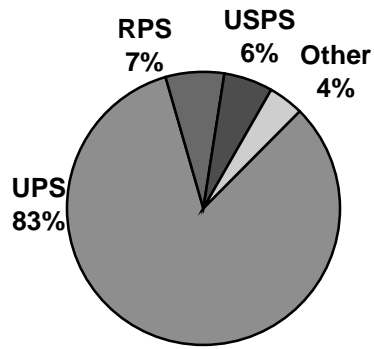
### Overnight Letters And Packages Market



### Second-Day And Three-Day Letters And Packages



**Commercial Carrier Ground Parcels And Parcel Post**



**II. Key Regulatory Issues**

**A. Private Express**

17. A combination of criminal and civil statutes and Postal Service implementing regulations address

enforcement. Criminal prosecutions and civil enforcement actions are rare. Rather, the Postal Service relies primarily upon voluntary compliance. The Postal Service attempts to raise awareness of the PES among mailers and carriers, and assists in bringing them into compliance.

21. There is no “licensing scheme” for private carriers as their operations relate to the PES. Carriers and mailers with questions of interpretation and administration of the PES may request advisory opinions from the Postal Service. If violations of the PES are brought to the Postal Service’s attention, the Postal Service may demand payment of postage for matter carried in violation of the PES. Theoretically, the Postal Service may temporarily revoke the suspensions of the PES for violations by specific mailers or carriers. Demands for postage and administrative suspensions may be enforced through proceedings conducted before an impartial administrative law judge. Neither revocations nor administrative enforcement proceedings have been used in practice.

22. Because the applicability of the PES depends upon the contents of each piece of mail, the Postal Service is unable to track the proportion of mail that is actually subject to the PES. Using shape of the mail (*i.e.*, letter, flat, and parcel) and class of service as proxies for content, it is estimated that the proportion of the Postal Service’s total domestic mail *volume* that is subject to the PES is between 85 and 90 percent. This accounts for approximately 80 percent of domestic *revenue*.

## **B. Access**

23. Access to the postal network can be analyzed in terms of access by carriers to delivery receptacles and partial private carriage between points of origin and destination. Each is addressed separately below.

### ***1. Access to Delivery Receptacles***

24. The mailbox rule restricts access by private competitors to mail delivery receptacles. As a practical matter, the mailbox rule prohibits private carriers from delivering matter to most types of mail receptacles installed at residences and businesses and post office boxes in Postal Service retail units. The mailbox rule applies regardless of whether the contents are covered by the PES. Despite the mailbox rule, private carriers can resort to alternative means to effect delivery. Private carriers can hang matter on doorknobs, place articles under doors, leave articles in doorways, use receptacles designated for receipt of newspapers or circulars, arrange to have the recipient retrieve articles at a designated retail location, or effect personal delivery on the recipient. In addition, the mailbox rule does not apply to matter addressed to privately-operated commercial receiving agencies that rent individual lock boxes to their customers.

### ***2. Partial Private Carriage***

25. One notable exception to the PES is the private carriage of letters conducted prior or subsequent

performing these activities are lower than the Postal Service's costs have an economic incentive to engage in destination entry. Destination entry discounts have evolved considerably over the past few years, and are now available for several categories of bulk mail, including advertising matter, periodicals, and surface parcels. Destination entry discounts vary directly with the depth of entry; thus, the discount is greatest at the delivery unit level, when that option is available. The discounts are established through the ratesetting process discussed in section II.C below. Eligibility requirements for destination entry discounts are generally promulgated by the Postal Service.

### **C. Ratesetting Procedures**

27. Prices for domestic *postal* services provided by the Postal Service are established according to a complex procedure specified by the PRA.<sup>13</sup> Every rate for each service denominated as a postal service, regardless of the level of competition, is subject to this process. U.S. courts have interpreted this



work that would otherwise be performed by the Postal Service. In general, worksharing discounts pass



Information Act, which gives the public access to many types of records in the Postal Service's custody, and the Privacy Act, which protects certain information about individuals from public disclosure. Postal employees are also subject to many of the laws that apply to other federal governmental employees. For example, Postal Service employees must observe federal governmental ethics requirements. Postal employees are also subject to a federal pay cap, which limits executive salaries to \$151,800.

44. There are few explicit legal restrictions on the types of business in which the Postal Service can engage, although some business and investment restrictions are specified in the PRA. For example, the Postal Service is prohibited from distributing lists of names or addresses of postal patrons.<sup>33</sup> In addition, the Postal Service cannot invest in securities, such as shares of publicly traded corporations, without first receiving the consent of the Department of Treasury.<sup>34</sup>

45. The PRA generally confers upon the Postal Service broad authority to provide postal and philatelic services to the public. In addition, the Postal Service is authorized to provide "nonpostal services" to the public. The limits of the authority to provide nonpostal services have not been definitively determined by the courts or the legislature. Examples of nonpostal offerings include passport application services, photocopy services, and sale of mailing containers and packaging supplies.

46. Another regulatory control is the PRA requirement that rates be set so that revenues cover total estimated costs. This provision has been interpreted to require that the Postal Service endeavor to break even over time. Over the past four years, a combination of factors, including improved management techniques, automation technology, and a healthy U.S. economy, has resulted in substantial net incomes. These net incomes have allowed the Postal Service to restore a large part of its negative equity from earlier losses.

#### **F. Powers, Privileges, and Immunities**

47. Because of its status as a federal governmental entity, the Postal Service has certain powers, privileges, and immunities that are not shared by other private sector firms. The Postal Service is not subject to federal or state income taxation, and revenue and gross receipts taxes are not imposed upon the operations of the Postal Service. Postal Service procurements of goods and services are not subject to state and local sales taxes. Postal employees are generally immune from state and local sales taxes when they travel on official business. Items sold through postal outlets are not subject to sales taxes. In general, the



### **III. Key Competition Issues**

#### **A. Application and Enforcement of Competition Law**

54. The Postal Service is a federal institution, and federal antitrust laws that apply to private sector businesses are not applicable to the Postal Service. The U.S. legislature is currently considering a proposal to extend the antitrust laws to the Postal Service. For the moment, however, competition authorities have expressed their views on postal competition topics in formal proceedings before the PRC and elsewhere. In particular, the Antitrust Division of the Department of Justice and the Federal Trade Commission have

- recommendations that the USPS consider the competitive impact of its regulations and repeal regulations treating “data processing materials” as within the scope of the term “letter” (1979); and
- issuance of a DOJ report in 1977 questioning the statutory monopoly, noting there is no evidence of a natural monopoly and suggesting that repeal of the Private Express Statutes would have positive procompetitive effects, similar to those achieved with the liberalization of telecommunications and of fixed commissions on the New York Stock Exchange.

55. Competition law concepts are applied in the postal ratemaking context. For example, the PRA directs the PRC to recommend rates that equal or exceed attributable costs. The effect of this requirement

accordingly determined to defer the matter for a reasonable limited time in order to give the Postal Service the opportunity to complete an analysis of parcel costs and market characteristics. The Postal Service accordingly undertook to prepare detailed cost information confirming that the cost of processing small parcels was higher than the revenues received. The Postal Service then developed a rate proposal to address this revenue and cost imbalance. In 1997, the Postal Service filed a request with the PRC asking that it recommend a surcharge on these parcels. Although the proposal was opposed by users of the service, the PRC recommended the proposed surcharge,<sup>42</sup> which the Governors of the Postal Service recently accepted and implemented.

60. Competitors have also turned to the federal courts to challenge Postal Service marketing practices. In 1993, UPS filed suit against the Postal Service challenging the Postal Service's International Customized Mail (ICM) service, which was introduced in July 1992.<sup>43</sup> The ICM service was designed for high-volume international mailers. The Postal Service and customers of the ICM service negotiated individualized service agreements to establish the kind of services to be provided and the rate of postage. In 1993, UPS sought to obtain a court order directing the Postal Service to stop offering the service. The basis of UPS's objection was that the Postal Service was engaging in marketing practices that were inconsistent with, and not authorized by, the PRA. A lower court agreed with UPS, but this decision was reversed by an appellate court in 1995. The appellate court ruled that the Postal Service's ICM service was consistent with the PRA.

#### **D. Other Competition Enforcement Issues**

61. As explained above, the USPS is not subject to the U.S. antitrust laws. As such, there are no antitrust law enforcement issues that relate directly to conduct by the USPS. Moreover, firms operating under the exceptions to the statutory monopoly (e.g., urgent-mail delivery firms) have not been the subjects

with a communication device, such as a modem or a local area network, to download postage value from a remote computer. Both will print sophisticated postage indicia that will improve the USPS's counterfeit meter detection abilities, improve mail processing, and offer customers value-added services. The USPS will complete a public rulemaking procedure to define the exact requirements of the postage indicia.

65. The introduction of software-based postage meters might significantly increase the size of the postage meter market. Traditionally, the meter has been too costly to lease for some mailers. Some such mailers might turn to the software-based variety. Although introduction of this new technology may create opportunities for new firms to enter, existing patents in meter technology, along with USPS certification standards, may make entry difficult.

66. The U.S. antitrust authorities are monitoring the implementation of the two USPS initiatives. They will scrutinize any future horizontal or vertical agreements between players in these markets.

#### **IV. Postal Reform**

67. Since 1996, the U.S. Congress has been considering a comprehensive revision of the PRA. If enacted, this proposed legislation would result in fundamental changes that relate to ratesetting and



72. With respect to competition, the proposed legislation would extend the application of antitrust laws both to competitive and noncompetitive products not covered by the postal monopoly, and would apply federal prohibitions against fraudulent business practices and trademark infringement to all postal products. The proposed legislation would also amend the PES to provide that a “letter” may be carried out of the mails under the criteria of existing law, or when the amount paid for private carriage is at least six times the price of the single-piece first-ounce (28.4 grams) regular First-Class rate, or when the letter weighs more than 12 ½ ounces (355 grams).

NOTES

- 1 Pub. L. 91-375, 84 Stat. 719 (1970), as amended. The Act has been codified in Title 39, United States Code, 39 U.S.C. §§ 101 *et seq.*
- 2 39 U.S.C. §§ 101, 401, 403, 404.
- 3 39 U.S.C. § 3625. The Governors' authority to make changes to the Commission's recommendations is significantly restricted.
- 4 39 U.S.C. §§ 3601 *et seq.*
- 5 *See, e.g., Governors of USPS v. United States Postal Rate Comm'n*, 654 F.2d 108, 114-15 (D.C. Cir. 1981).
- 6 18 U.S.C. §§ 1693-1699; 39 U.S.C. §§ 601-606.
- 7 Letters are defined as messages directed to a specific person or address and recorded in or on a tangible object. Tangible objects include items such as paper, recording disks, and magnetic tapes.
- 8 Post routes include public roads, highways, railroads, water routes, air routes and letter-carrier routes within the territorial boundaries of the United States on which mail is carried by the Postal Service.
- 9 18 U.S.C. § 1725.
- 10 39 C.F.R. § 320.6.
- 11 39 C.F.R. § 320.8.
- 12 *See American Postal Workers Union v. React Postal Services, Inc.*, 771 F.2d 1375 (10th Cir. 1985).
- 13 39 U.S.C. §§ 3621 *et seq.*
- 14 *UPS v. U.S. Postal Service*, 455 F. Supp. 857 (E.D. Pa. 1978), *aff'd*, 604 F.2d 1370 (3d Cir. 1979), *cert. denied*, 446 U.S. 957 (1980); *Associated Third Class Mail Users v. U.S. Postal Service*, 405 F. Supp. 1109, 1115-118 (D.D.C. 1975), *aff'd*, *National Assoc. of Greeting Card Publishers v. U.S. Postal Serv.*, 569 F.2d 570, 595-598 (D.C. Cir. 1976), *vacated on other grounds, U.S. Postal Service v. Associated Third Class Mail Users*, 434 U.S. 884 (1977).
- 15 39 U.S.C. § 3621.
- 16 39 U.S.C. § 3625.
- 17 39 U.S.C. § 403(c).
- 18 PRC Op. R90-1 at V-388.

- 19 *UPS Worldwide Forwarding v. United States Postal Serv.*, 66 F.3d 621 (3d Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996).
- 20 This includes the requirement that rates must be established “to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis.” In addition, the Postal Service must avoid undue and unreasonable discrimination and not confer undue or unreasonable preferences on mail users in the international context. See 39 U.S.C. §§ 101, 403.
- 21 See 39 C.F.R. § 3001.68.
- 22 39 U.S.C. § 101(a).
- 23 39 U.S.C. § 403(a).
- 24 39 U.S.C. § 101(b).
- 25 39 U.S.C. § 404(b).
- 26 39 U.S.C. § 3623(d).
- 27 39 U.S.C. § 3621.
- 28 39 U.S.C. §§ 3626, 3683.
- 29 39 U.S.C. §§ 3401, 3403.
- 30 39 U.S.C. § 3622.
- 31 39 U.S.C. § 414.
- 32 39 U.S.C. § 3622(b)(3).
- 33 39 U.S.C. § 412.
- 34 39 U.S.C. § 2003.
- 35 28 U.S.C. § 2680.
- 36 *E.g., Portmann v. United States*, 674 F.2d 1155 (7th Cir. 1982) (holding the Postal Service to commercial standards for equitable estoppel for claim related to Express Mail).
- 37 39 U.S.C. § 407.
- 38 *UPS Worldwide Forwarding v. United States Postal Serv.*, 66 F.3d 621 (3d Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996).
- 39 39 U.S.C. § 407(a).
- 40 PES Op. No. 89-4; PES Op. No. 85-4.
- 41 PRC Op. MC95-1.

