POSTAL REGULATORY COMMISSION

[Docket Nos. PI2018–1; Order No. 4708]

Classification of the Inbound Letter Post Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a public inquiry regarding Postal Service's claim that the Inbound Letter Post product is subject to competition. This notice informs the public of this proceeding, invites public comment, and takes other administrative steps.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Claims of Competition and Commission Action
IV. Ordering Paragraphs

I. Introduction

In recent proceedings, the Postal Service claimed that the Inbound Letter Post product [1] is subject to competition. The Commission establishes this docket to examine these and related claims.

II. Background

A. The Universal Postal Union

The Universal Postal Union (UPU) is a United Nations specialized agency comprising 192 member countries, including the United States.[2] Member countries negotiate international agreements governing the exchange of international mail, including applicable rates for the delivery of international mail. The UPU identifies three types of international mail: Letter Post, Parcel Post, and Express Mail Service (EMS).[3]

UPU Letter Post mailpieces consist of letters, postcards, printed papers, and small packets weighing up to 2 kilograms.[4] The UPU divides UPU Letter Post mail into three shapes: Letters and cards (format P); large letters or ''flats'' (format G); and bulky letters and small packets (format E). In January 2018, the Universal Postal Convention (UPU Convention) began differentiating UPU Letter Post mail by content in addition to shape.[5] The UPU Convention limits the contents of cards, letters, flats, and bulky letters to documents. UPU Convention, Article 17.2. Small packets are UPU Letter Post mailpieces containing goods. *Id.* Article 17.3.

B. Statutory Framework

In 2006, the Postal Accountability and Enhancement Act (PAEA) [6] was enacted. The PAEA separated postal products into two distinct classifications: Market dominant and competitive.[7] Pursuant to 39 U.S.C. 3642(b), market dominant products are those products over which ''the Postal Service exercises sufficient market power that it can effectively set the price of such product[s] 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.'' [8] Competitive products ''consist of all other products.'' [9]

Section 3642 of title 39 governs the addition of products to, removal of products from, or transfer of products (or components of a product) between the market dominant and competitive product lists.[10] The Commission may consider a change to a product's market dominant or competitive classification upon request of the Postal Service, users of the mail, or upon its own initiative. 39 U.S.C. 3642(a). The criteria for assigning a product to either the market dominant or competitive product list is described in 39 U.S.C. 3642(b). When transferring products between product lists, there is nothing to prevent transfer of only part of a product. 39 U.S.C. 3642(c).

The criteria for assigning a product to either the market dominant or competitive product list are based on a measure of the Postal Service's market power; whether or not the product is covered by the postal monopoly; and the concerns of the private sector, users of the product, and small businesses. 39 U.S.C. 3642(b).

The market power criteria are specified in 39 U.S.C. 3642(b)(1) as follows:

[The text of 39 U.S.C. 3642(b)(1) was removed to comply with the **Federal Register** Document Drafting Handbook, section 2.6. *See* 39 U.S.C. 3642(b)(1).].

The postal monopoly criteria are specified in 39 U.S.C. 3642(b)(2) as follows:

[The text of 39 U.S.C. 3642(b)(2) was removed to comply with the **Federal Register** Document Drafting Handbook, section 2.6. *See* 39 U.S.C. 3642(b)(2).].

The private sector, users of the product, and small businesses criteria are specified in 39 U.S.C. 3642(b)(3) as follows:

[The text of 39 U.S.C. 3642(b)(3) was removed to comply with the **Federal Register** Document Drafting Handbook, section 2.6. *See* 39 U.S.C. 3642(b)(3).].

When including products on the competitive product list, the product must also meet the financial requirements of 39 U.S.C. 3633(a), which:

[The text of 39 U.S.C. 3633(a) was removed to comply with the **Federal Register** Document Drafting Handbook, section 2.6. *See* 39 U.S.C. 3633(a).].

C. Classification of Inbound Letter Post

Sections 3621 and 3631 of title 39 listed the products preliminarily classified as market dominant and competitive, respectively. The PAEA preliminarily classified single-piece international mail as market dominant and bulk international mail as competitive. 39 U.S.C. 3621(a)(10) and 3631(a)(4). When the Commission requested comments related to the classification of inbound international mail in its initial rulemaking pursuant to the requirements of PAEA, the Postal Service argued that the Commission should not classify inbound

[1] As defined in section 1130 of the Mail Classification Schedule (MCS).

[2] The full list of UPU member countries is available at *http://www.upu.int/en/the-upu/member-countries.html.*

[3] EMS mail is an express service for documents and merchandise, which member countries have the option of providing. MCS Section 2515.6.1. EMS prices are set through bilateral or multilateral negotiations. *Id.* Sections 2515.6.4., 2515.6.6.

[4] UPU Convention, Article 17. UPU Letter Post mail also consists of literature for the blind weighing up to 7 kilograms and M-bags weighing up to 30 kilograms. *Id.* M-bags are special bags containing newspapers, periodicals, books, and similar matter mailed to a single address. *Id.*

[5] *See* International Mailing Services: Proposed Product and Price Change—CPI, 82 FR 49160, 49161 (October 24, 2017); Docket No. R2018–1, Notice of Market Dominant Price Adjustment, October 6, 2017, at 10.

[6] Public Law 109–435, 120 Stat. 3198 (2006).

[7] 39 U.S.C. 3621, 3631, 3642. The PAEA exempted experimental products from the requirement that they be classified as market dominant or competitive products. 39 U.S.C. 3641(a)(2).

[8] 39 U.S.C. 3642(b)(1). Examples of market dominant products include products in the First-Class Mail, USPS Marketing Mail, and Periodicals classes.

[9] *Id.* Examples of competitive products include Priority Mail, Priority Mail Express, and First-Class Package Service.

[10] 39 U.S.C. 3642. The implementing regulations for this section appear in 39 CFR part 3020.

international mail as market dominant or competitive.[11]

The Commission found the Postal Service's arguments for exceptional treatment of inbound international mail as neither market dominant nor competitive unpersuasive and inconsistent with section 3642.[12] The Commission concluded, ''[h]ad Congress intended to exempt inbound international mail from the requirement that all products be categorized as either market dominant or competitive, it would have done so explicitly, as it did by specifically exempting experimental products from the requirements of section 3642.'' Order No. 43 at 78 (footnote omitted). The Commission found that the PAEA unambiguously requires the Commission to classify inbound international mail products as either market dominant or competitive. *Id.* Consistent with section 3621, the Commission classified Inbound Letter Post as a market dominant product. *Id.* at 85.

III. Claims of Competition and Commission Action

In Docket Nos. R2018–1 and Docket ACR2017, the Postal Service repeatedly claimed that Inbound Letter Post is subject to ''considerable,'' ''substantial,'' and ''intense'' competition, especially Inbound Letter Post small packets.[13] However, the Postal Service filed documents in support of its claims of competition for the first time when it filed its Motion for Reconsideration. Motion for Reconsideration, Attachments 1–4. Despite these claims of competition, the Postal Service acknowledged that the Inbound Letter Post product is on the market dominant product list and that it has not requested to transfer all or part of the Inbound Letter Post product to the competitive product list. Motion for Reconsideration at 6.

In its Motion for Reconsideration, the Postal Service stated that it explored the potential transfer of Inbound Letter Post small packets from the market dominant to the competitive products list. *Id.* However, the Postal Service stated that one obstacle to transferring all or part of the Inbound Letter Post product from the market dominant product list to the competitive product list relates to the ''inability to separate Inbound Letter Post that is subject to the Private Express Statutes [(PES)] from Inbound Letter Post that is not subject to the PES.'' *Id.*

These claims raised the question of whether Inbound Letter Post should be wholly or partially transferred from the market dominant product list to the competitive product list. Rather than attempt to address these issues in Docket No. ACR2017, the Commission concluded that the best course of action is to initiate a separate proceeding to evaluate these issues, including the non-public attachments the Postal Service provided with its Motion for Reconsideration.

Accordingly, the Commission establishes the instant proceeding to examine the classification of the Inbound Letter Post product. The Commission is issuing a Commission Information Request (CIR) concurrently with this Order. Once a sufficient record has been developed, the Commission will issue a procedural schedule inviting comment.

Pursuant to 39 U.S.C. 505, James Waclawski is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

Additional information may be accessed via the Commission's website at *http://www.prc.gov.*

IV. Ordering Paragraphs

It is ordered:

1. The Commission hereby establishes Docket No. PI2018–1 to review issues related to the classification of the Inbound Letter Post product and parts thereof.

2. Pursuant to 39 U.S.C. 505, James Waclawski is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–15284 Filed 7–17–18; 8:45 am]

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[11] Docket No. RM2007–1, Initial Comments of the United States Postal Service in Response to Order No. 26, September 24, 2007, at 13–22.

[12] Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 78 (Order No. 43).

[13] *See* Docket No. ACR2017, United States Postal Service Motion for Reconsideration of Order No. 4451, April 6, 2018, at 4 (Motion for Reconsideration) (''Inbound Letter Post is subject to substantial competition.''); *id.* at 8–9 (cited filings in other Commission proceedings that allege the private sector competes in the Inbound Letter Post market); *id.*at 10 (''the vast majority of Inbound Letter Post mail faces substantial competition''); *id.* at 12–13 (''existing market research regarding inbound package volume, which is included in Nonpublic Attachment 1, illustrates the intense competition for Inbound Letter Post faced by the Postal Service and foreign postal operators.'' (footnote omitted)); Docket No. ACR2017, Response of the United States Postal Service to Order No. 4409, February 23, 2018, at 5 (small packets ''already face considerable competition today.'' (footnote omitted)); *id.* at 6 (''the Postal Service operates in a competitive market for inbound international shipping, which includes inbound small packets containing merchandise.'' (footnote omitted)); *id.* at 6 n.13 (''Not only are Inbound Letter Post packets subject to considerable competition, but bulk international letter and flat mail can be subject to competition as well.''); Docket No. ACR2017, United States Postal Service Notice of Filing Nonpublic Folder USPS–FY17–NP40 and Application for Nonpublic Treatment, February 14, 2018, Attachment at 2 (CHIR No. 15 Application for Non-Public Treatment) (''Not only are Inbound Letter Post packets (E Format) subject to considerable competition, but bulk international letter and flat mail (P and G Format) can be subject to competition as well.''); *id.* at 3 (''The Postal Service is just one of the participants operating in the competitive market for inbound international shipping, which includes inbound small packets containing merchandise.''); Docket No. R2018–1, United States Postal Service Answer in Opposition to U.S. Chamber of Commerce Motion to Unseal Library Reference and Motion to Request Issuance of Information Request, October 23, 2017, at 4 ('''inbound letter post . . . face[s] significant competition from private sector competitors and Extraterritorial Offices of Exchange[.]' The competitive nature of the international market, particularly with respect to . . . inbound letter post packets weighing 4.4 pounds or less, is well established.'' (footnote omitted)).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83623; File No. SR–NASDAQ–2018–051]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend The Nasdaq Options Market LLC (''NOM'') Rules and Adopt a Zero Bid Options Rule

July 12, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC (''NOM'') Rules at Chapter V, Section 3, entitled ''Trading Halts'' and Chapter VI, Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.