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

Transferring Bound Printed Matter Parcels
To the Competitive Product List | Docket No. MC2021-78

**COMMENTS OF THE ASSOCIATION FOR POSTAL COMMERCE AND MPA – THE ASSOCIATION OF MAGAZINE MEDIA**
(May 17, 2021)

Pursuant to Order No. 5880, the Association for Postal Commerce ("PostCom") and MPA – The Association of Magazine Media ("MPA") submit these comments in response to the Postal Service's request to transfer Bound Printed Matter Parcels ("BPM Parcels") to the competitive product list. The Postal Service's request does not provide sufficient support for the transfer, and the Commission should reject it.

## I. THE POSTAL SERVICE'S DEFINITION OF THE RELEVANT MARKET IN THIS CASE IS FLAWED

In general, the broader a relevant market is defined, the less likely any market participant will be able to exert sufficient power to raise prices. Thus, the Postal Service uses an overly broad definition of the market for BPM Parcels in its request, in an attempt to prove that it lacks effective market power.

The Postal Service claims that it primarily competes in the market for BPM Parcel sales against UPS and FedEx ground, as well as "other large, widely recognized competitors." *See* Request at 6-9. But this claim is undermined by the Postal Service's own acknowledgment of key competitive differences between BPM Parcels and UPS/FedEx ground packages with respect to content, weight restrictions, delivery times, and price. *Id.* at 6-7. Indeed, BPM Parcels have highly specific content and weight eligibility requirements[1], and – as the Postal Service recognizes - are only suitable for a subset of customers ("individuals and smaller businesses") with particular timing demands ("little urgency"). *See* Request at 6. Given these eligibility requirements, BPM Parcels are mostly comprised of books, other non-advertising publications, and larger catalogs, not packages of all kinds. *Id.* at 4-6.

Antitrust law recognizes the existence of narrow, well-defined submarkets based on "such practical indicia as industry or public recognition of the submarket as a separate economic entity, the product's peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors."[2] And the federal antitrust agencies explain that "narrowly defined markets are more likely to capture the relative competitive significance" of different products.[3]

BPM Parcels constitutes a unique and narrow relevant market over which the Postal Service exercises market power. Beyond BPM Parcels' stringent eligibility requirements (or "peculiar characteristics" in *Brown Shoe* parlance), the sheer number of comments submitted on behalf of the partners of Scholastic Books in the current docket is, in itself, evidence of industry or public recognition of a narrow submarket for BPM Parcels. The Postal Service indirectly acknowledges that BPM Parcels may serve multiple narrow markets, noting that "approximately two-thirds of BPM Parcel volume is shipped to consumers, while the other one-third is shipped to businesses." Request at 4.

In response to Chairman's Information Request ("CHIR") Number One, the Postal Service acknowledged that it cannot distinguish among BPM Parcels volumes with different

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[1] *See* DMM 263.2.1.
[2] *Brown Shoe Co. v. U.S.*, 370 U.S. 294, 325 (1962).
[3] FTC/DOJ Horizontal Merger Guidelines (2010) § 4.

characteristics. Unfortunately, the Postal Service does not appear to consider the possibility BPM Parcels shipped to businesses may be a separate market segment than BPM Parcels sent to individuals, or that educational multi-component bundles may be a separate market, or that it may exert differing levels of market power over possibly distinct markets.

## II. THE REQUESTED TRANSFER WOULD CREATE A PROBLEMATIC PRECEDENT

In recounting the history of BPM Parcels, the Postal Service describes how businesses adapted to a classification change to avail themselves of advantageous rates. Request at 2-3. Because the Postal Service operates a national network with unique characteristics, businesses have historically been encouraged to develop products based on features of the Postal Service's classification system. As a result, those products and businesses are unusually reliant on the Postal Service.

The BPM category was created during a different regulatory regime in which the Postal Rate Commission recommended rates. Since 2006, BPM Parcels users have been protected from sudden and unpredictable price increases by a CPI-based price cap. If the Postal Service were granted unlimited pricing authority over BPM Parcels, businesses that have been built over many years in response to postal rate signals would be exposed to considerable business risk, while the financial benefits to the Postal Service would be effectively trivial.

## III. EMPIRICAL RESULTS INDICATE THE POSTAL SERVICE'S INTENTIONS

While the Postal Service has not disclosed its plans regarding future price increases for BPM Parcels if the requested transfer is approved, the Postal Service's track record telegraphs its intention here. As shown in its response to CHIR No. 2, previous transfers of products to the competitive product list have resulted in real price increases without the concomitant loss of volume to other firms offering similar products that would be predicted in truly competitive markets.[4] The Postal Service acknowledges that its current estimate of the own-price elasticity is -0.516482, further indicating that the Postal Service exercises considerable power, even using the overly broad market definition applied by the Postal Service in this case (see above).

Because recently enacted regulations will allow the Postal Service to implement price increases on market dominant products that greatly exceed the rate of inflation, there is really no reason – with the possible exception of reduced transparency with regard to public reporting – for the Postal Service to request a transfer unless it perceives an ability to utilize market power to charge even higher prices.

## IV. THE POSTAL SERVICE HAS NOT DEMONSTRATED THAT IT LACKS MARKET POWER OVER BPM PARCELS

A product is market dominant if the Postal Service "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."[5] Even if Postal Service competitors were offering similar products, the Postal Service has not demonstrated these product offerings would prevent it from raising the price of BPM Parcels "significantly" or "substantially above costs." The evidence as a whole, and the Postal Service's own analysis, indicate that the higher the Postal Service raises rates on BPM Parcels, the more profitable the product will be. That is the definition of market power.

Importantly, the Postal Service does not provide any serious analysis of how high it can raise prices or what the market effects of its price increases would be. The Postal Service admits that it did not quantify what a "significant" price increase would be when claiming that "close to two-thirds of the Postal Service's BPM Parcel volume is at risk for immediate diversion should

[4] *See* USPS Response to CHIR No. 2. Question 1.d. (displaying average price increases consistently above inflation for all previously transferred products, including multiple increases over 20%).

[5] 39 U.S.C. § 3642(b)(1).

BPM Parcels see either a significant rate increase or significant degradation in service."[6] Instead, the Postal Service claims "it was stating a conclusion in terms of the applicable market power test and the definition of a Market Dominant product in 39 U.S.C. § 3642(b)(1)."[7] Conclusory speculation without evidence cannot justify the requested transfer here.

The above-quoted statement is particularly instructive in this regard. The conclusion that "close to two-thirds of the Postal Service's BPM Parcel volume is at risk for immediate diversion" is founded solely on the fact that "62.7 percent of BPM Parcels volume in FY 2020 was entered by entities with robust logistics networks that provide for all legs of delivery from origin through last mile." Request at 10. These entities are *customers* of the Postal Service and are providing the Postal Service with BPM Parcels volume *despite* their "robust logistics networks." Thus, we know that these entities cannot compete with the Postal Service's offerings at current price and service levels—if they could, they would ship the products themselves. The question the Commission must answer is how high would the Postal Service be able to raise its rates for BPM Parcels before these customers would stop using the Postal Service and turn to their own networks in numbers large enough to make those price increases unprofitable. If the Postal Service can raise its rates "significantly" before this shift occurs, it has market power. But the Postal Service has not identified what price level would induce this response, how high above the product's costs the price would be at this price level, how many customers would switch providers at this price level, or whether the loss of these customers would cause the price increase to be unprofitable. Its conclusion rests on nothing more than an assumption that there is some limit to the price increases it can impose. The Postal Service has not identified that limit,

[6] USPS Response to CHIR No. 2, Question 3.a.
[7] *Id*.

and the evidence in the record suggests price increases on BPM Parcels well above existing levels would be profitable.

## V. THE CHANGING COMPOSITION OF POSTAL REVENUES MAY REQUIRE A DIFFERENT APPROACH

Through the first half of the current fiscal year, competitive products accounted for 44.6% of the Postal Service's revenues.[8] . The COVID pandemic has accelerated a trend that has been going on for some time, as an increasing share of the Postal Service's volume and revenue comes from products on the competitive product list. Those products are subject to less stringent reporting requirements with regard to volume, revenue, and service performance.

The Postal Service is a Government agency that should be answerable to the public. It does not have shareholders. Users of the Postal Service depend on the Commission to ensure transparency and accountability regarding the Postal Service's performance. Any transfer of a market dominant product to the competitive product list will have the effect of reducing transparency under existing reporting requirements. Not only should the Commission carefully scrutinize any transfer request, the changing composition of postal revenues should prompt a reconsideration of how the Postal Service reports on the performance of its competitive products.

The Commission has applied more rigorous standards in evaluating transfers in the past and, given the changes in the industry, should be taking an even harder look at transfer requests. Specifically, the Commission should focus on the likely price increases products can sustain after the transfer and assess whether the ability to impose such increases provides evidence of the ability to exercise market power. In doing so, the Commission should not assume the Postal Service is raising prices to the competitive level. In a market with as few players as this, the market price level may not be synonymous with the competitive price level;

[8] USPS RPW, FY2021 Q2.

in fact, the regulated rate level may be a better approximation of the rate that would prevail in a competitive market.[9] Certainly, in times of low inflation, one would not expect to see the kinds of price increases the Postal Service has been able to sustain in its "competitive" products in recent years if it was operating in a fully competitive environment.

## VI. SUMMARY

The request to transfer BPM Parcels to the competitive product list is founded on a flawed market definition, and the Postal Service has not demonstrated that it cannot profitably impose significant price increases on this product. If the Commission approves this transfer, the Postal Service would be able to exercise undue market power to inflict significant economic harm on customers who have no viable alternative. Conversely, the impact on the Postal Service's finances of the Commission's Order in this case will be trivial. The interests of the public and of the postal system would be best served by the Commission rejecting the Postal Service's request.

Respectfully submitted,

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[9] *See, e.g.*, *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 961 (D.C. Cir. 2007) (recognizing that regulated cost-based rates are intended to simulate the outcome of a competitive market).

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