

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

Before Commissioners:

Dan G. Blair, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Tony L. Hammond

Market Test of Experimental Product—
Collaborative Logistics

Docket No. MT2009-1

ORDER CONCERNING COLLABORATIVE LOGISTICS MARKET TEST

(Issued May 7, 2009)

On April 1, 2009, the Postal Service filed notice with the Commission of a proposed market test of an experimental competitive product, Collaborative Logistics, under 39 U.S.C. 3641.¹ The experiment represents the initial market test conducted by the Postal Service under the Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3218 (2006). In Order No. 199, the Commission noticed the filing and sought supplemental information on the proposal from the Postal Service. The Commission also gave interested persons an opportunity to submit comments on whether the Postal Service's filing is consistent with the policies of 39 U.S.C. 3641.²

¹ Notice of the United States Postal Service of Market Test of Experimental Product—Collaborative Logistics, April 1, 2009 (Notice).

² PRC Order No. 199, Notice and Order Concerning Market Test of Experimental Product, April 7, 2009 (Order No. 199).

Section 3641 authorizes the Postal Service to “conduct market tests of experimental products in accordance with this section.” A product may not be tested, however, unless it satisfies each of the following conditions:

- (1) The product is significantly different from all products offered by the Postal Service within the 2-year period preceding the start of the test (section 3641(b)(1));
- (2) The product will not result in undue market disruption, especially for small business concerns (section 3641(b)(2)); and
- (3) The product is correctly characterized as either market dominant or competitive (section 3641(b)(3)).

More generally, section 3641 expressly authorizes the Commission to prescribe procedures for market tests through regulation. See, e.g., section 3641(f) and (h).

I. SUPPLEMENTAL INFORMATION

The Commission’s questions sought additional details on the purpose, nature, and scope of the proposed market test. Order No. 199, at 3-4. In its response, filed on April 20, 2009, the Postal Service: clarifies that the market test will be conducted in “[a]ll markets in the contiguous 48 states”; identifies its plans to collect data; and submits that “two key components for success will be profitability and on-time performance.”³ The Response also tersely addresses the conditions that govern a market test.

Significantly different product. The Postal Service indicates that “[t]he market test product is not significantly different from the previous Collaborative Logistics offering that had been included in the Postal Service’s past reports of non-postal services.” Response, Question 5. It goes on to verify, however, that the prior offering has not been available for more than two years. *Id.* It intends to place its experimental

³ Response of the United States Postal Service to Order No. 199 Request for Supplemental Information, April 20, 2009, Question 2 (Response).

product, though offered on a space-available basis, in competition with “similar services, often called LTL (less-than-truckload) shipping” products. Notice at 3.

The Postal Service clarifies how it now views the product, Collaborative Logistics, as a postal service, stating:

[I]ike the typical provision of mail service, this product constitutes the physical carriage of a tangible object from Point A to Point B, with the difference being that those objects are larger than the normal mailpiece. Thus, this product simply constitutes a limited, experimental expansion of what is a ‘mailable package,’ to include materials (loaded on pallets) that are carried by the Postal Service under the terms of a Collaborative Logistics agreement.

Id., Question 4. This description partly explains the Postal Service’s initial product definition, namely, the “transportation of an article or multiple articles on a pallet or other unit load, on a space-available basis, in postal transportation.” Notice at 2.

Unlikely market disruption. The Postal Service indicates that the market for substitute services is mature and served by many enterprises. It submits that it “anticipates that most of the market demand, and operational ability to support LTL movements will be intermediate or longer haul in nature.” Response, Question 8. It also claims that “[g]enerally LTL providers are national or regional in nature, and therefore do not fall under the small business category.”⁴ *Id.*, Question 6(b). The Postal Service states it is “unaware of any inappropriate competitive advantage that it would have over those established providers in providing this market test.” *Id.*, Question 6(a).⁵

⁴ The Postal Service notes that “[t]here may be instances, however, in which there is some market demand for shorter-haul movements. In certain major metropolitan areas such movements may include Postal Vehicle Service trips for all or part of the transport required.” *Id.*, Question 8.

⁵ Its Notice also reflects that “[i]n negotiating prices and terms of service with individual customers, the Postal Service’s bargaining position will be constrained by the existence of other providers of LTL services. Accordingly, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service, quality, or output.” See Notice at 3.

Correct categorization. The Postal Service maintains that its entry into the product market for transportation of one or more larger “mailable packages,” as palletized loads shipped under negotiated agreements, will face rival service providers in the marketplace. It adds that “LTL shipping is widely available from both well-known and less well known private firms at both published and negotiated prices.” Response, Question 6(a). The Postal Service predicts “that it would accordingly be unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing business to other firms in the LTL shipping market.” Notice at 3.⁶

II. COMMENTS

Two sets of comments were filed. One set was submitted by the Public Representative and another by Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc.⁷

The Public Representative recommends approval of the market test.⁸ Among other things, he notes that the experimental product has the potential to serve several key public interests, including generating additional revenue to aid in maintaining the Postal Service’s universal service obligation, increasing economic efficiency, and providing environmental benefits. *Id.* at 3. The Public Representative also observes that “[t]he products covered by this market test offer the potential to benefit three additional public interests: increased competition in the marketplace, increased economic efficiency and environmental benefits.” *Id.* at 4.

⁶ Its Response expressly refers to conclusory remarks in its Notice that also contend that “the existence of these established providers will constrain the Postal Service’s ability to fill the excess capacity in its transportation network.” *Id.*

⁷ Public Representative Comments in Response to Commission Order No. 199, April 20, 2009 (Public Representative Comments); and Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. Comments Regarding Market Test of Experimental Product—Collaborative Logistics, April 27, 2009 (Valpak Comments).

⁸ On April 14, 2009, the Public Representative submitted several questions to the Postal Service. Subsequently, these questions were withdrawn. See Public Representative Comments at 1.

These benefits aside, the Public Representative also raises several issues regarding the proposal. *Id.* at 2, 7-10. He expresses concern about the scope of the market test and urges the Commission to ensure that the test is conducted in a reasonable fashion. *Id.* at 7. The Public Representative asserts that, under the PAEA, the Postal Service is obliged to provide the Commission with pertinent market test data and that adequate and detailed information about the results must be made public. *Id.* at 7-8. He notes that if Collaborative Logistics becomes a regular postal service, developing accurate cost estimates related to that service may be particularly challenging. *Id.* at 9-10.

Valpak takes no position on whether the proposal is consistent with section 3641. It indicates, however, that the attempt to generate additional revenues “would appear to benefit all mailers.” Valpak Comments at 3.

Valpak advocates the need for a “pre-implementation review” to ensure compliance with 39 U.S.C. 3641(b), (d) and (e). *Id.* at 2-3. It also generally discusses the Commission’s authority to monitor the market test details. *Id.* at 3.⁹ Noting the absence of rules for Commission review under section 3641 and the possible precedential effects of this instant market test, Valpak contends that, to ensure compliance with section 3641 and the PAEA’s transparency and accountability directives, the Postal Service should provide aggregated cost, volume, and revenue data about each market test to the public and the Commission. *Id.* at 4-5.

III. COMMISSION ANALYSIS

Collaborative Logistics is the first experimental product offered by the Postal Service under the PAEA. The Commission concludes that the proposed market test appears to satisfy section 3641. First, it is significantly different from any product

⁹ The Public Representative makes a similar point: “[t]he phrase ‘continued offering’ [at section 3641(b)(2)] as well as 3641(f) specifies a continuing oversight role for the Commission to ensure that the Postal Service does not create undue harm.” Public Representative Comments at 7, n.12.

offered by the Postal Service in the preceding 24 months. See 39 U.S.C. 3641(b)(1).¹⁰ Second, there has been no showing that the introduction of the experimental product will create an unfair or otherwise inappropriate competitive advantage for the Postal Service. See 39 U.S.C. 3641(b)(2). The Commission notes that, although not dispositive, no opposition to the market test has been expressed. Third, the experimental product appears to be correctly characterized as competitive. See 39 U.S.C. 3641(b)(3).¹¹

While the Commission approves the initial experimental market test, it concludes that the Postal Service has not prepared a model filing. The Postal Service has an affirmative duty to support how it satisfies the conditions of a market test under section 3641(b), not solely as a matter of form, but with sufficient substance to permit an informed finding on the record. Support for a market test will ordinarily need to be based upon reasonably comprehensive investigation of the characteristics of the product market.

While the Commission has taken administrative notice of certain factors provisionally, the Postal Service must conduct its own due diligence to present a *prima facie* case of statutory compliance, including more rigorous analysis of the risks of market disruption.¹² The Commission recognizes that this is a case of first impression. For the limited purposes of this case, the Commission finds the Postal Service's filings

¹⁰ A similar product was previously offered, but the Postal Service has not reported any revenue for Collaborative Logistics since FY 2005. Response, Question 5.

¹¹ These preliminary determinations are, necessarily, subject to change. "[E]ven the Postal Service's categorization of the market test as a competitive product needs to be tested by the public and the Commission." See Valpak Comments at 5.

¹² After years of debate over whether it was sound policy to substitute regulation for competition in the motor carrier industry, Congress decided to eliminate many of the regulatory barriers to free entry and individual ratemaking. Even before the 1990s, Congress had allowed regulators to exempt motor *contract* carriers from the requirement that they adhere to the published tariff. The present regime appears to be essentially one of free competition, with low barriers of entry and exit. The propensity for vendor substitution during a market test appears to be low as between conventional long-haul services and proposed ones that are subject to space-available constraints, with their associated risks of delay. Most of the short-haul volume is likely to be too dependent on time sensitivities to properly complement long-haul shipments by relying on space-available offerings.

adequate for purposes of its preliminary determination on the proposed market test. The Commission expects, however, that future market tests will be accompanied by more compelling presentations to satisfy section 3641.

Proposed rules on market tests are under consideration and will be issued in the near term. The proposed rules will address the materials needed to adequately support market tests. Interested persons will have an opportunity to comment on the proposed rules.

Both the Public Representative and Valpak comment on the need for the Postal Service to report data associated with the market test. In response to Order No. 199, the Postal Service identified the types of information it plans to collect regarding the market test as follows:

- Revenue generated;
- Pallet positions available for sale;
- Pallet positions offered for sale;
- Pallet positions sold;
- Pallet positions per day of week;
- Pallet positions by route lane and by miles transported;
- Service performance by route lane performance;
- Rate of deviations by time and mileage;
- Cost of deviations;
- Cost of any exceptional expenses, such as load/unload time (shipper or Postal Service) or delays en route;
- Service performance;
- Loss and damage: amount, instances, causes, safety issues; and
- Effects on postal operations.

Response, Question 2. For purposes of this market test, the Postal Service shall, beginning with the last quarter of FY 2009, provide the foregoing data within 30 days of the end of each fiscal year quarter.

The Postal Service shall report quarterly the rates or range of rates, as applicable, for each type of contract (e.g., long haul, short haul, partial pallet load, etc.) provided. Such rate information shall reflect all discounts and surcharges. All

agreements shall be retained by the Postal Service for at least one year following the end of the market test.

It is Ordered:

1. Based on the record before it, the Commission finds that the proposed Collaborative Logistics market test has not been shown to be inconsistent with 39 U.S.C. 3641.
2. As set forth in the body of this Order, the Postal Service shall, beginning with the last quarter of FY 2009, provide the data requested within 30 days of the end of each fiscal year quarter. The Postal Service shall report data as set forth in the body of this Order.

By the Commission.

Steven W. Williams
Secretary