

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

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Market Test of Experimental Product-
Global eCommerce Marketplace (GeM)
Non-Published Rates

Docket No. MT2016-1

ORDER AUTHORIZING LIMITED EXTENSION OF GLOBAL ECOMMERCE
MARKETPLACE (GEM) MERCHANT MARKET TEST

(Issued October 12, 2017)

I. INTRODUCTION

On August 22, 2017, the Postal Service requested a limited extension of the Global eCommerce Marketplace (GeM) Merchant market test.¹ As discussed below, the Commission authorizes the Postal Service to satisfy 1-year customer agreements executed in the second year of the 2-year market test.

II. BACKGROUND

GeM Merchant is an end-to-end international shipping service that allows participating domestic online merchants to offer their international customers the ability,

¹ United States Postal Service Motion for Clarification of Order No. 3319, or, in the Alternative, for Extension of Market Test Time Period, August 22, 2017 (Motion).

at the time of purchase, to estimate and prepay duties and taxes that the foreign country's customs agency will assess when the item arrives in the foreign destination.² In Order No. 3319, the Commission authorized the Postal Service to proceed with a 2-year market test of an experimental product identified as GeM Merchant. See Order No. 3319. At the same time, the Commission found the Postal Service's request for a limited extension to satisfy 1-year customer agreements executed during the second year of the market test to be premature. *Id.* at 21.

III. PARTICIPANT'S FILINGS

The Postal Service states that the GeM Merchant market test began on June 27, 2016. Motion at 1-2. The Postal Service asserts that satisfying 1-year customer agreements executed in the second year of the 2-year market test is essential to the purpose of the market test—the evaluation of the experimental product. *Id.* at 2. The Postal Service states that it needs this additional time to assess the demand for GeM Merchant. *Id.* at 3. The Postal Service references the Commission's decision acknowledging the benefits of allowing the continuation of 1-year agreements executed in the second year of the International Merchandise Return Service – Non-Published Rates (IMRS-NPR) market test.³ The Postal Service also states that the requested extension is in the public interest by eliminating uncertainty for the Postal Service and its customers regarding the terms of agreements entered into during the second year of the market test. Motion at 3.

The Public Representative opposes the requested extension, stating that the Postal Service fails to justify its request.⁴ He suggests that the Commission consider whether the data collection reports show active participation in the test, the potential to

² Order Authorizing Market Test of Global eCommerce Marketplace (GeM) Merchant, May 25, 2016, at 2 (Order No. 3319).

³ *Id.* at 2 (quoting Docket No. MT2013-2, Order Authorizing Market Test to Proceed and Granting Extension, August 12, 2013, at 9 (Order No. 1806)).

⁴ Public Representative Comments, September 25, 2017, at 3 (PR Comments).

improve the economic position of the Postal Service, or some benefit to gathering additional data. PR Comments at 3.

IV. ADDITIONAL INFORMATION

On September 25, 2017, the Postal Service filed an amended model contract, stating that it revised the model contract to reflect clarification “resulting from the Postal Service’s relationship with a new supplier.”⁵ On September 26, 2017, Chairman’s Information Request No. 3 was issued to ascertain whether the market test would continue to comply with the applicable statutory and regulatory requirements during the requested extension.⁶ The Postal Service represents that it does not plan to make significant changes during the requested extension period.⁷ The Postal Service asserts that the market test will continue to comply with 39 U.S.C. § 3641(b)(2). See Response to CHIR No. 3, question 4. The Postal Service also provided the information required by 39 C.F.R. § 3035.11(b); some of this information was filed under seal. See *id.* questions 2 and 3.

V. COMMISSION ANALYSIS

The Commission has reviewed the record, including the materials filed under seal. Based on this review, the Commission finds that the extension is consistent with the applicable statutory and regulatory requirements.

A. Necessary to Determine the Feasibility or Desirability of GeM Merchant

Generally, a market test may not exceed 24 months. 39 U.S.C. § 3641(d)(1); 39 C.F.R. § 3035.10. However, the Postal Service may ask the Commission to extend

⁵ United States Postal Service Notice of Filing Revised GeM Merchant Model Contract, September 25, 2017, at 1 (footnote omitted).

⁶ Chairman’s Information Request No. 3, September 26, 2017.

⁷ Response of the United States Postal Service to Chairman’s Information Request No. 3, October 3, 2017, question 1.a (Response to CHIR No. 3).

a market test by up to 12 months. 39 U.S.C. § 3641(d)(2). The Commission may authorize an extension “[i]f necessary to determine the feasibility or desirability of a product being tested under [section 3641].” *Id.*

In its sealed filing, the Postal Service describes how and why it expects the requested extension period should provide additional beneficial data, including its expectations for merchant participation during the requested extension period. See Response to CHIR No. 3, question 2. Consistent with the Commission’s finding in Order No. 1806, this type of limited extension should assist the Postal Service to assess the demand for GeM Merchant. For these reasons, the Commission finds that the extension is “necessary in order to determine the feasibility or desirability” of GeM Merchant as required by 39 U.S.C. § 3641(d)(2).

B. Continued Compliance with 39 U.S.C. § 3641(b)

The Commission must also find whether the extension is consistent or inconsistent with section 3641. 39 C.F.R §§ 3035.11(c)(1)-(3). The continued offering of an experimental product must continue to comply with the three requirements appearing in 39 U.S.C. § 3641(b)(1)-(3).⁸ When it authorized the market test to begin, the Commission found that the introduction of GeM Merchant met all three requirements of section 3641(b). Order No. 3319 at 11. Because the Postal Service does not plan to significantly change GeM Merchant during the requested extension period, the requested extension does not affect compliance with 39 U.S.C. §§ 3641(b)(1) and (3). See Response to CHIR No. 3, question 1.a.

The Commission must determine whether the continued offering of the GeM Merchant during the requested extension period will create market disruption, which is defined as “an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns.” 39 U.S.C.

⁸ Docket No. MT2014-1, Order No. 3543, Order Authorizing Extension of Customized Delivery Market Test and Updating Data Collection Plan, September 28, 2016, at 6.

§ 3641(b)(2); see *also* Order No. 3319 at 12. The Commission uses a four-step framework for analyzing market disruption. Order No. 3319 at 12.

First, the Commission identifies the relevant market by examining the description of GeM Merchant and the geographic areas where the Postal Service intends to offer GeM Merchant during the requested extension period. See *id.* at 13. In Order No. 3319, the Commission found that the relevant market for GeM Merchant is the end-to-end international parcel market with services offered to domestic online retailers. *Id.* This finding remains unaffected by the requested extension. See Response to CHIR No. 3, question 1.

Second, the Commission identifies the businesses offering similar products or services in that relevant market. Order No. 3319 at 13. Upon request, the Postal Service identified four end-to-end international parcel service providers offering products similar to GeM Merchant: Pitney Bowes (Borderfree), FedEx (Cross Border), UPS (i-Parcel), and DHL (iCart). *Id.* These four providers continue to offer these competing products.

Third, the Commission “evaluate[s] whether the introduction or continued offering of [GeM Merchant] will create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer.... with regard to the service providers identified in step 2.” *Id.* (internal quotation marks omitted). In Order No. 3319, the Commission considered the estimated size of the end-to-end international parcel service market and found that “it appears that the market is already large and is expected to grow in future years.” *Id.* at 15. Over 1 year after the effective date of the market test, this finding remains unaffected. FedEx recently projected that “[b]y 2020 it is expected that some 94 million online shoppers will spend almost \$1 trillion on cross-border eCommerce transactions.”⁹ The limited nature of requested extension, satisfying 1-year customer agreements executed in the second year of the 2-year market test, does not appear likely to create market disruption. Also, the Postal Service’s sealed

⁹ FedEx Partners with BlueSnap to Cross More Borders, May 23, 2017, *available at* <http://www.prweb.com/releases/2017/05/prweb14354881.htm>.

expectations concerning the level of merchant participation and revenue projections do not suggest that market disruption is likely to occur during the requested extension period. See Response to CHIR No. 3, question 3.c.

Fourth, the Commission evaluates the market test's impact on "small business concerns" in the relevant market. Order No. 3319 at 16. The Postal Service represents that this analysis is also unaffected by the requested extension. See Response to CHIR No. 3, question 4. No new information has been introduced in the record that would dispute this representation.

Based on the record, the Commission concludes that the extension appears consistent with 39 U.S.C. § 3641. During the extension, if the Commission determines that the test no longer complies with the statute and rules, the Commission may cancel the test or take other action that it deems appropriate. 39 U.S.C. § 3641(f); 39 C.F.R. § 3035.12.

C. Other Statutory and Regulatory Requirements

The timing of the Motion is appropriate. The Postal Service filed the Motion well in advance of the statutory deadline. 39 U.S.C. § 3641(d)(2); 39 C.F.R. § 3035.11(a). The Motion also complied with Order No. 3319, which determined that an extension request would become timely after May 10, 2017. This timeliness of this request aids the Commission's determination of whether the test will comply with the applicable statutory and regulatory requirements during the requested extension period.

Upon request, the Postal Service provided the information required by 39 C.F.R. § 3035.11(b). See Response to CHIR No. 3, questions 2 and 3. The Postal Service should have included all necessary information in the Motion to circumvent the need for issuing a Chairman's Information Request to obtain this information. However, the Commission also acknowledges that the record was complete before the statutory deadline and no party requested additional time to review the record. As a result, no party was prejudiced by the delays in this proceeding.

Total revenue anticipated or received by the Postal Service from the GeM Merchant market test must not exceed \$10 million in any fiscal year.¹⁰ The Commission may exempt a market test from this revenue limitation if certain requirements are met. 39 U.S.C. § 3641(e)(2); 39 C.F.R. § 3035.16. If the Postal Service expects total revenue to exceed this limitation in FY 2018 or FY 2019, it should apply for an exemption at least 45 days before it expects total revenue to exceed the limitation. See 39 C.F.R. § 3035.16(e). The Postal Service should file the application in accordance with the requirements of 39 U.S.C. § 3641(e)(2) and 39 C.F.R. § 3035.16.

The Commission further acknowledges that the Postal Service filed the revised model contract containing mostly editorial revisions as well as some revisions to clarify the operationalization of GeM Merchant. The amended model contract does not alter the basic nature of the original model contract.

VI. ORDERING PARAGRAPHS

It is ordered:

1. Based on the record before it, the Commission finds that extending the GeM Merchant market test is consistent with the requirements of 39 U.S.C. § 3641.
2. The Commission authorizes the extension of the GeM Merchant market test, to satisfy 1-year customer agreements executed in the second year of the 2-year market test, for an additional 12 months. The market test will expire on June 26, 2019, unless the market test is cancelled in accordance with 39 C.F.R. § 3035.12(a).

¹⁰ 39 U.S.C. § 3641(e)(1); 39 C.F.R. § 3035.15(b). The \$10 million revenue limitation is adjusted annually for inflation. 39 U.S.C. § 3641(g); 39 C.F.R. § 3035.15(c).

3. If the Postal Service expects to exceed the \$10 million annual limitation, it must file a written exemption request at least 45 days before it expects to exceed the \$10 million annual limitation.
4. Revisions to the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

By the Commission.

Stacy L. Ruble
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

2800

Market Tests

2804

Global eCommerce Marketplace (GeM)

Reference

Docket No. MT2016-1

PRC Order No. 3319, May 25, 2016

Expires

~~June 27, 2018~~ June 26, 2019