

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

MARKET TEST OF EXPERIMENTAL PRODUCT
ALTERNATE POSTAGE PAYMENT METHOD
FOR GREETING CARDS

Docket No. MT2011-1

PUBLIC REPRESENTATIVE MOTION
FOR ISSUANCE OF INFORMATION REQUEST

(Nov. 24, 2010)

I. INTRODUCTION

The Public Representative files this Motion for Issuance of Information Request (Motion) under 39 CFR 3001.21(a) to ask that the Commission request from the Postal Service the information included as Attachment A to this Motion. This information is necessary to determine whether the Postal Service satisfies all criteria under 39 U.S.C. § 3641, which governs market tests of experimental products.

The Commission allows participants, including the Public Representative, to identify issues for Commission consideration that should be raised in a Chairman's or Commission Information Request.¹ Also, the Commission asked for supplemental information in the two prior cases involving market tests of experimental products.² The questions asked by the Commission in those cases are similar to the information sought by the Public Representative. It is particularly important for the Commission to obtain further support for this market test. The Postal Service, for the first time, is requesting an exemption from the \$10 million annual revenue limit. The proposed test also raises concerns about potential harm to interests of the general public.

¹ See, e.g., Docket No. RM2011-1, Public Representative Motion for Issuance of Information Request, Oct. 12, 2010, at 1.

² Docket No. MT2009-1, Notice and Order Concerning Market Test of Experimental Product, Apr. 7, 2009, at 3-4 (Order No. 199) (Collaborative Logistics); Docket No. MT2010-1, Chairman's Information Request No. 1, Apr. 9, 2010 (Samples Co-Op Box).

If the Commission grants this Motion and issues an Information Request, the Public Representative also asks the Commission to extend the deadline for comments to enable the Public Representative and other interested persons to address the Postal Service's response in their comments.

II. GROUNDS AND BASIS FOR INFORMATION REQUEST

A. The Notice lacks sufficient detail to properly evaluate the market test.

On November 8, 2010, the Postal Service filed notice of its intent to conduct a market test of an experimental market dominant product called "Alternate Postage Payment Method for Greeting Cards."³ The Postal Service, however, provides insufficient information in the Notice to facilitate a proper evaluation of the proposed market test. The Commission has previously noted that the Postal Service "has an affirmative duty to support how it satisfies the conditions of a market test under [39 U.S.C.] section 3641(b), not solely as a matter of form, but with sufficient substance to permit an informed finding on the record."⁴ This support must be based upon a reasonably comprehensive investigation of the characteristics of the product market. Order No. 211 at 6. The Postal Service must conduct its own due diligence to present a *prima facie* case of statutory compliance. *Id.*

While the Notice contains some support for how the product and market test meet the requirements of section 3641, it lacks sufficient substance to create a complete record that would inform a reasoned decision in this case. Specifically, the Postal Service should provide more information and support in the following areas:

Significantly different product. The Postal Service does not explain how the experimental product is significantly different from other products the Postal Service offered within the two years preceding the start of the test. See 39 U.S.C. § 3641(b)(1).

³ Notice of the United States Postal Service of Market Test of Experimental Product – Alternate Postage Payment Method for Greeting Cards, Nov. 8, 2010 (Notice).

⁴ Docket No. MT2009-1, Order Concerning Collaborative Logistics Market Test, May 7, 2009, at 6 (Order No. 211).

From the viewpoint of mail users, the experimental product appears to be the next iteration of Stamped Envelopes, Stamped Cards, Premium Stamped Stationery, and Premium Stamped Cards. These products, similar to the Alternate Postage Payment Method for Greeting Cards, all have imprinted or impressed First-Class Mail or Standard Mail postage and enable individuals to mail items without affixing postage.⁵ The Postal Service must demonstrate how the differences between these products qualify as “significant” from the viewpoint of the mail users.

Impact on small business concerns. The Postal Service provides some details about the impact of the market test on small businesses. Notice at 9-10. However, it does not address the impact on “small business concerns,” a term defined in section 3641(h). The Commission has not yet issued a definition for “small business concern” in its Rules of Practice and Procedure. However, the Commission, along with the Small Business Administration, has provided sufficient guidance on its meaning to enable the Postal Service to evaluate the impact of the market test on small business concerns. Attachment B to this Motion provides further details. The Postal Service should follow this guidance to supplement the Notice with further information on how the market test will affect small business concerns. See 39 U.S.C. § 3641(b)(2).

Rates. The Postal Service states that participating greeting card companies will pay postage in two stages based on the number of cards sold and mailed. Notice at 1, 6-7. However, it is unclear how the companies will recover the cost of the postage. Also, the Postal Service should address what would happen if rates increased for all market dominant products during the market test period. This information will help determine whether the product will cause undue market disruption and whether the product will likely benefit public. See 39 U.S.C. §§ 3641(b)(2), 3641(e)(2)(A) and (C).

⁵ See Docket No. MC2010-23, Order Concerning Classification Change to Add Existing Shipping Charges for Stamped Envelopes to the Mail Classification Schedule, Attachment, June 18, 2010, at 1 (Order No. 475); Docket No. MC2006-7, Opinion and Recommended Decision on Stamped Stationery and Stamped Cards Classifications, Appendix Two, June 8, 2007, at 2.

B. The first-time request to exceed the \$10 million limit entails a higher level of scrutiny.

The Postal Service has previously filed notices to conduct market tests of experimental products under 39 U.S.C. § 3641.⁶ However, this docket represents the first case in which the Postal Service asks the Commission to exempt a market test from the \$10 million annual revenue limitation under section 3641(e)(2).⁷ The Commission would approve the Postal Service's application for exemption if the Commission determines that:

- Total revenues anticipated or received by the Postal Service do not exceed \$50 million in any year (subject to an adjustment for inflation);
- The product is likely to benefit the public and meet an expected demand;
- The product is likely to contribute to the financial stability of the Postal Service; and
- The product is unlikely to result in unfair or otherwise inappropriate competition.⁸

In other words, the Postal Service must show that the product meets the criteria above *in addition* to those listed in section 3641(b). The Notice, as written, raises issues that the Postal Service must address before the Commission can approve the request to exceed the \$10 million limit. The Postal Service must supplement its Notice in order to clearly demonstrate that it meets these additional requirements.

As noted above, it is unclear how participating greeting card companies will recover the cost of the postage. Some news sources speculate that participating card

⁶ Docket No. MT2009-1, Notice of the United States Postal Service of Market Test of Experimental Product – Collaborative Logistics, Apr. 1, 2009; Docket No. MT2010-1, Notice of the United States Postal Service of Market Test of Experimental Product – Samples Co-Op Box, Mar. 29, 2010.

⁷ Notice at 8. This docket is also the first case involving an experimental product categorized as market dominant.

⁸ 39 U.S.C. § 3641(e)(2).

companies would add the cost of the postage to the price of the card.⁹ If that is the case, then the experimental product may not, on balance, benefit the public if the product enables greeting card companies to charge hidden fees borne by the consumer. The Postal Service should provide more information to facilitate a determination in this area.

Also, the Postal Service states that it plans to test more than one postage rate during the second year of the test by adjusting the price for the product based upon the current results. Notice at 7. The public risks suffering from a significant price increase at this point in the test. The experimental product is categorized as a market dominant product, which means that the Postal Service exercises sufficient market power to effectively “raise prices significantly...without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). The Public Representative would like to know whether there are safeguards or limitations preventing the Postal Service from raising the price of the postage significantly above the rate proposed in the Notice. Again, this information would help evaluate the likely benefit to the public. See 39 U.S.C. § 3641(e)(2)(A).

The questions included in Attachment A are designed to explore the areas above, which will ensure that the Postal Service conducts its own due diligence and a reasonably comprehensive investigation of the greeting card market. Answers to these questions will help determine whether the experimental product meets all applicable requirements under section 3641.

III. CONCLUSION

For the reasons described above, the Public Representative asks that the Commission issue an Information Request directing the Postal Service to report to the

⁹ See Randolph E. Schmid, *Test Sought of Greeting Cards Including Postage*, WASHINGTON POST Nov. 11, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/11/AR2010111105897.html> (last visited Nov. 23, 2010).

Commission and the public its answers to the questions included as Attachment A to this Motion.

If the Commission grants this Motion and issues an Information Request, the Public Representative also asks the Commission to extend the deadline for comments to enable the Public Representative and other interested persons to address the Postal Service's response in their comments. An extended deadline would provide the Commission enough time to render a decision by the market test's expected start date of January 1, 2011. See Notice at 1.

More importantly, section 3641(e)(2) provides no specific deadline for the Commission to grant or deny the requested exemption from the \$10 million limit. Given the novel issues raised and the potential harm to the public, the Commission should seek further information from the Postal Service regarding the details of the proposed market test.

The Public Representative respectfully submits the preceding Motion for the Commission's consideration.

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INFORMATION REQUEST

General Information

1. Please describe the geographic market where the market test will be conducted.
2. Please describe the availability of the experimental product. Will they be available exclusively through the Postal Service, or can the cards be purchased at retail outlets as well?
3. Please describe the plan for monitoring the performance of the market test, including specific data items to be collected periodically. Please include any proposed procedures for collecting data on the prices charged by participating greeting card companies before, during, and after the test. Please especially highlight the procedure for isolating the experimental product's effect on greeting card prices.
4. Please describe the criteria to be used to evaluate the success of the test.

Participating Companies

5. The Postal Service states that during the market test, "cards can be sold by authorized greeting card companies to individual consumers or third party vendors." Notice at 1. How many authorized greeting card companies are participating in the market test?
6. What are the sizes of the participating companies in terms of the number of employees, annual revenue, and volume of greeting cards sold?

"Significantly different product"

7. Please describe how the experimental product is, from the viewpoint of the mail users, *significantly* different from Stamped Envelopes, Stamped Cards, Premium Stamped Stationery, and Premium Stamped Cards.

Impact on "small business concerns"

8. Of the authorized greeting card companies participating, how many of them qualify as "small business concerns"? A greeting card company qualifies as a small business concern if it is a business entity organized for profit that meets the following criteria:

- a. Has a place of business located in the United States;
 - b. Operates primarily within the United States or makes a significant contribution to the United States economy by paying taxes or using American products, materials, or labor;
 - c. Is independently owned and operated;
 - d. Is not dominant in its field of operation; and
 - e. Has no more than 500 employees.¹⁰
9. The Notice states, “Only a small portion of greeting cards are produced by small businesses.” Notice at 10. The Greeting Card Association notes that “[t]here are more than 3,000 greeting card publishers in the United States, ranging from individual studios and small family-run companies to major corporations.”¹¹ Approximately how many of all U.S. greeting card publishers qualify as “small business concerns” under the definition provided in Question 8, above?
10. For each of the geographic areas where the market test will take place, describe the impact of the market test on small business concerns. In particular, please include:
- a. The estimated number of small business concerns that the market test will affect in each relevant market;
 - b. Projections of how the market test will affect these concerns; and
 - c. Steps the Postal Service will take to minimize the impact on these concerns or, alternatively, reasons why the Postal Service need not take such steps.

¹⁰ See Docket No. MC2010-20, Order Approving Request to Transfer Selected Post Office Box Service Locations to the Competitive Product List, June 17, 2010, at 13 n.24 (Order No. 473) (citations omitted) (defining “small business concern”); 13 CFR 121.201 (describing SBA size standards). For a detailed analysis of how a greeting card company would qualify as a small business concern, please see Attachment B to this Motion.

¹¹ The Greeting Card Association, About the Industry, <http://www.greetingcard.org/AbouttheIndustry/tabid/58/Default.aspx> (last visited Nov. 23, 2010).

Rates

11. The Notice states that authorized greeting card companies will pay postage based upon sales information they report to the Postal Service. Notice at 4.
 - a. Please specify all likely methods the authorized greeting card companies may use to recover the costs of the postage.
 - b. The Notice states that participating companies may “charge an extra amount for the card should it wish.” Notice at 9. Would this “extra amount,” at a minimum, equal the cost of the postage itself? Approximately how many greeting card companies will charge an “extra amount” that *exceeds* the cost of the postage? How much would that “extra amount” exceed the cost of the postage? Are there any caps on this “extra amount” a greeting card company may charge?
12. Under the market test, participating companies will pay at least 50 percent of the postage due in advance to the Postal Service. Notice at 6. The Postal Service states that “[t]his payment *generally* will be retained by the Postal Service regardless of whether the cards that were sold were also mailed.” *Id.* (emphasis added). Under what circumstances would the Postal Service *not* retain the postage paid in advance?
13. The Postal Service plans to charge 48 cents in postage for cards and envelopes with a combined weight of no more than one ounce. Notice at 6. What happens if rates for market dominant products increase during the market test period? Will cards that have not yet been mailed require additional postage? If so, who is responsible for paying the extra cost?
14. The Postal Service states that it plans to test more than one postage rate during the second year of the test by adjusting the price for the product to reflect market conditions and changes in the single-piece price. Notice at 7. Does the Postal Service propose any limits for increasing the price of the postage? What safeguards, if any, are there to protect the public from a significant increase in price?

“SMALL BUSINESS CONCERN”

The Commission has the authority to establish criteria for defining “small business concerns” or otherwise categorizing businesses as such. See 39 U.S.C. § 3641(h). In Order No. 473, the Commission defined “small business concern” as follows:

The term “small business concern,” as used in 39 U.S.C. 3641(h), is a business entity organized for profit that: (1) Has a place of business located in the United States; (2) operates primarily within the United States or makes a significant contribution to the United States economy by paying taxes or using American products, materials, or labor; (3) is independently owned and operated; (4) is not dominant in its field of operation; and (5) falls within the Small Business Administration’s size standards.¹²

In other words, for a greeting card company to qualify as a “small business concern,” it must meet the criteria listed above. It must also qualify as “small” under SBA size standards, which are located in 13 CFR 121.201. The SBA established criteria and size standards for each type of business based on the maximum number of employees or annual receipts that a business must have to qualify as small. See 13 CFR 121.201. The SBA organizes the businesses by industry category (“sector”) and type of activity or service (“subsector”).

In general, the SBA’s criteria and size standards correspond to those developed by the North American Industry Classification System (NAICS). According to the NAICS, greeting card companies are considered Commercial Lithographic Printing companies (NAICS Code 323110).¹³ SBA regulations state that a company falling under this NAICS code qualifies as a small if it has no more than 500 employees. See 13 CFR § 121.201.

¹² Order No. 473 at 13 n.24.

¹³ NAICS Association, 323110 Commercial Lithographic Printing, <http://www.naics.com/censusfiles/ND323110.HTM> (last visited Nov. 23, 2010).