

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT OF GAMEFLY, INC.)
)
) Docket No. C2009-1R

COMPETITIVE PRODUCT LIST)
ADDING ROUND-TRIP MAILER)
) Docket No. MC2013-57

COMPETITIVE PRODUCT LIST)
ADDING ROUND-TRIP MAILER)
(MC2013-57)) Docket No. CP2013-75

DECLARATION OF SANDER GLICK
(August 15, 2013)

1. My name is Sander Glick. I am Vice President of SLS Consulting, Inc., with offices at 1920 N Street, N.W., Suite 200, Washington, DC 20036. I have testified before as a cost witness for GameFly, Inc., in Docket No. C2009-1.

2. The purpose of this declaration is to comment on the material that the Postal Service submitted under seal on August 5, 2013, as Library Reference USPS-MC2013-57/NP1, *Nonpublic Material Provided in Response to Commission Order No.*

1794. The sealed material provides estimates of the Postal Service's unit attributable costs of handling DVD mail for Netflix and GameFly.

3. GameFly has filed comments today showing that the DVD Round Trip Mailer product should be classified as a market-dominant, not a competitive, product. If the Commission agrees, the Commission need not consider the cost estimates in Library Reference USPS-MC2013-57/NP1 to assess compliance with 39 U.S.C. 3633(a). Nor should the Commission give weight to the cost data for any other purpose. I urge the Commission to state explicitly that it has not relied on these cost data in its ruling on the Postal Service's request, and is not endorsing or adopting the data for any other reason.

4. Furthermore, giving any weight to these cost data would effectively deny GameFly and other participants a fair opportunity to analyze and comment on the data. Unlike the cost data submitted in previous stages of Docket No. C2009-1, GameFly has had only seven days to review the material, and no opportunity at all to engage in discovery or cross-examination concerning it. As a result, the data necessarily remain largely untested.

5. The main problem with the cost estimates is that, other than the Permit Reply Mail (PRM) cost estimate used as a "lower-bound estimate" of the mail processing cost of letter-shaped DVD mail, the Postal Service has used generic cost data for mail of the same shape and, in some instances, machinability as proxies for the actual attributes and costs of DVD mailers. In the present context, this pervasive reliance on system-average data instead of DVD-specific data is inappropriate. One thing upon which all parties to this proceeding should be able to agree is that the mail

flow for DVD mailers is unique, and thus the costs of other mail of the same shape are generally uninformative.

6. For Netflix DVD mail, the use of generic proxy data is clearly inappropriate. Although the Postal Service's use of a nonmachinable letter cost proxy as an "upper-bound estimate" of the mail processing cost of letter-shaped DVD Round Trip Mailers may have a superficial appeal, the process used to handle Netflix mailers differs greatly from the typical nonmachinable letter flow. While nonmachinable letters are generally sorted in manual cases, the Commission specifically found in Order No. 718 that Netflix DVD mailers receive very different processing. Order No. 718 at ¶¶ 4162-4166. This finding was amply supported by the record. See *id.* at ¶ 4127; GameFly Post-Hearing (November 8, 2010) at 22 (the processing of Netflix return DVD mailers includes "(1) culling by collectors, (2) culling by Associated Offices and Stations, (3) culling before and after dual pass/rough cull, (4) culling by AFCS operators, (5) exclusive use of EMM trays (special trays that are deeper than ordinary trays), (6) sleeving of the EMM trays as a matter of practice, (7) exclusive use of shelved all-purpose containers ("APCs"); and (8) placing the EMM trays in the APCs in bricklaid orientation."); GameFly Reply Post-Hearing Brief (November 18, 2010) at 48-67 (citing record).

7. The Postal Service proxies overstate the cost of flat-shaped DVD mailers in several ways. First, the Postal Service has not adjusted the cost of weight- and cube-related costs—e.g., allied mail processing, vehicle service drivers (VSD) and transportation costs—to reflect the fact that flat-shaped DVD mailers (at least those

mailed by GameFly) weigh about half that of the average First-Class Mail flat. GFL-T-1, Table A-5 and FY 2012 USPS Revenue, Pieces, and Weight Report.

8. Second, the Postal Service has not adjusted transportation costs to reflect the fact that flat-shaped DVD mailers (at least those mailed by GameFly) are generally sent from regional distribution facilities and thus generally avoid air transportation.

9. Third, the Postal Service appears to have used a nonmachinable flat proxy to estimate VSD/transportation costs for inbound flat-shaped DVD mailers. Footnotes 7(c) and 8(c) of DVD-RT FY14 CC Forecast.xlsx. This is inappropriate because whether a piece is machinable or not should have no effect on VSD/transportation costs.

10. Fourth, the Postal Service used First-Class Mail Presort Flats costs as a proxy for the cost of GameFly outbound pieces despite the substantial and unresolved issues raised by Pitney Bowes in Docket No. RM2011-3 regarding the reliability of First-Class Mail Presort Flats cost data. In that proceeding, Pitney Bowes showed that some of the costs of Presort Letters were likely being misattributed to Presort Flats. Docket No. RM2011-3, Comments of Pitney Bowes Inc. (February 18, 2011).

11. I also have concerns about the accuracy of the IOCS estimate of Permit Reply Mail ("PRM") mail processing costs incorporated in the August 5 cost estimates. As thoroughly described in GameFly's November 26, 2010 Motion to Strike (at 3-7), numerous questions have been raised about the accuracy of IOCS cost estimates for smaller groupings of mail. I have found that IOCS cost estimates for types of mail, such

as PRM, that comprise only a small percentage of mail volume within a particular class, are particularly prone to error. For example:

- IOCS has been found to attribute costs of Standard Mail flats to Standard Mail parcels. Docket No. R2005-1, Direct Testimony of Marc A. Smith (USPS-T-13) (April 8, 2005) at 5 and 61; Docket No. R2006-1, Direct Testimony of Marc A. Smith (USPS-T-13) (September 1, 2006) at 4 and 34.
- As noted above, IOCS has been alleged to attribute costs of Presort First-Class Mail letters to Presort First-Class Mail flats. Docket No. RM2011-3, Comments of Pitney Bowes Inc. (February 18, 2011).

12. Finally, the Postal Service appears to assume that PRM includes only inbound letter-shaped DVD mailer. While this may be true, I am not aware of any evidence that this is the case.

13. Further declarant sayeth not.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 15, 2013.

A handwritten signature in blue ink that reads "Sander Glick". The signature is written in a cursive style with a horizontal line underneath it.

Sander Glick