

BEFORE THE
POSTAL REGULATORY COMMISSION

MARKET TEST OF EXPERIMENTAL :
PRODUCT GLOBAL ECOMMERCE :
MARKETPLACE (GEM) NON-PUBLISHED : Docket No. MT2016-1
RATES :

UNITED PARCEL SERVICE, INC.'S MOTION FOR ACCESS
(May 11, 2016)

United Parcel Service, Inc. ("UPS") respectfully submits this motion pursuant to Commission Rules 3001.21, 3007.40, and 3007.50, seeking access under protective conditions to non-public materials the United States Postal Service ("Postal Service") has filed with the Commission as part of its request to begin market tests for an experimental product known as GeM Merchant. These materials are relevant to assessing whether the proposed market test complies with the requirements of 39 U.S.C. § 364, which requires, among other things, that the proposed market test will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service. See 39 U.S.C. § 364.

In its initial comments, UPS objected, based on publicly available information, to the Postal Service's proposed market test on the grounds that GeM Merchant would unfairly disrupt competition. See Comments of United Parcel Service on Postal Service Notice of Global E-Commerce Marketplace Proposed Market Test at 4-10, Dkt. No. MT2016-1 (April 19, 2016). Specifically, UPS argued that GeM Merchant would negatively impact competition by permitting the Postal Service to trade on the benefits

conferred upon it as a UPU operator, which include its payment of below-market terminal dues rates. *See id.* at 7. The Public Representative similarly expressed concern about GeM Merchant's impact on the competitive landscape, noting that the "Postal Service has not compared or contrasted any of the potential competitors' services with the proposed GeM Market proposal" and suggesting "more information is needed to comprehensively evaluate any possible market disruptions." Public Representative Comments at 3-4, Dkt. No. MT2016-1 (April 19, 2016).

On April 29, 2016, the Commission issued a Commission Information Request to the Postal Service seeking additional, non-public information related to GeM Merchant and the impact it will have on competition. *See* Commission Information Request No. 1, Dkt. No. MT2016-1 (April 29, 2016).

On May 9, 2016, the Postal Service responded to the Commission Information Request by filing various information under seal. Given that this information will further assist UPS in determining and quantifying the extent of the market distortions caused by the introduction of GeM Merchant into the marketplace, UPS respectfully requests access to the Postal Service's Response to Commission Information Request No. 1. Additionally, the Postal Service noted in its Reply Comments that certain non-public information it filed in support of its requested market test may be relevant to the Commission's analysis under § 364. *See* United States Postal Service Response to the Comments of United Parcel Service at 1 ("Postal Service Reply Comments"), Dkt. No. MT2016-1 (April 28, 2016). As such, UPS also requests access to this information, as well as the other information the Postal Service submitted under seal or in a redacted form in this docket. This information would include:

1. Attachment 3 and Attachment 4 to the Notice of the United States Postal Service of Market Test of Experimental Product-Global Ecommerce Marketplace (GEM) Merchant Solution and Notice of Filing GeM Merchant Model Contract and Application for Non-Public treatment of Material Filed Under Seal.
2. Response of the United States Postal Service to Chairman's Information Request No. 1 – Responses to Questions 2(a), 2(b), 5(d).
3. Response of the United States Postal Service to Chairman's Information Request No. 2.

Indeed, throughout the Postal Service's Reply Comments, the Postal Service repeatedly suggested that the appropriate course of action for UPS to take in this docket is to file a motion for access to the sealed and redacted materials. See Postal Service Reply Comments at 1 (noting that the UPU terminal dues rates "were filed non-publicly" and that "UPS has not applied for access"); *id.* at 2 (claiming that "UPS wrongly assumes that the GeM Merchant Solution will use international postal services and UPU-based documentation"); *id.* at 3 (maintaining that "UPS can only speculate that rates set through the UPU system might be 'below market and often below cost'"); *id.* at 7, n.15 (referencing another docket in which the Commission directed UPS to the procedures for filing a motion for access to non-public materials). Yet, when UPS contacted the Postal Service to obtain its consent to this motion, the Postal Service stated that it was inclined to oppose UPS's request for access. The Postal Service should not be permitted to use UPS's lack of access to the information the Postal Service has filed under seal as a reason to discount UPS's comments, while at the same time

preventing UPS from accessing those filings. The Commission should, therefore, grant UPS access to the requested materials as a matter of basic fairness.

Additionally, as has been the case in other dockets in which UPS has participated, UPS's outside counsel and consultants will abide by the terms of the protective conditions attached hereto as Exhibit A.¹ Among other things, these protective conditions ensure that the data will not be used for any business or commercial purpose, and access will be limited to UPS's outside counsel and consultants only. For the foregoing reasons, UPS respectfully requests that this Motion be granted.

In addition, to the extent the Postal Service has not already provided the following information in its earlier sealed and redacted filings, UPS requests the Commission issue another Information Request seeking:

- The schedule of terminal dues by product type costs that are expected to be paid for delivery into each destination country involved in the GeM Merchant market test;
- The average total cost by product of all "estimated duties and taxes that will be assessed by the foreign country's customs agency" if such total costs include anything other than terminal dues;
- The costs associated with creating GeM Merchant and incorporating GeM Merchant into the Postal Service's pre-existing product lines; and

¹ In Orders 2756, 3033, and 3044, the Commission granted United Parcel Service, Inc.'s ("UPS") motions for access to non-public data. See Dkt. No. RM2016-2, Order No. 2756 (Oct. 15, 2015) (granting UPS's motion for continued access to ACR2014 and RM2015-7 non-public data); Dkt. No. ACR2015, Order No. 3033 (Jan. 15, 2016) (granting UPS's First Motion for Access); Dkt. No. ACR2015, Order No. 3044 (Jan. 22, 2016) (granting UPS's Revised Second Motion for Access).

- A complete list of countries in which the Postal Service intends to use third-party shippers (as opposed to using international posts) for delivery with GeM Merchant.

This information will also assist the Commission and participants in this docket in determining and quantifying the extent of the market distortions caused by GeM Merchant. Finally, UPS respectfully requests it be permitted to file sur-reply comments 14 days after it has had an opportunity to obtain and review the information requested in this Motion.

Respectfully submitted,

UNITED PARCEL SERVICE, INC.,

By: /s/ Steig D. Olson

Steig D. Olson
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
(212) 849-7152
steigolson@quinnemanuel.com

Attorney for UPS