

***Case No IV/M.1347 -
DEUTSCHE POST /
SECURICOR***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION

Date: 23/02/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23-02-1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1347 – Deutsche Post/Securicor

Notification of 12.01.1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 12 January 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ ("ECMR") by which the undertaking Deutsche Post AG ('Deutsche Post') acquires within the meaning of Article 3(1) (b) of the Council Regulation joint control of the distribution business of the undertaking Securicor plc ("Securicor"). As a consequence of the transaction, the business concerned, which includes Securicor Group Limited and a number of other subsidiaries of Securicor, will become a joint venture between Deutsche Post and Securicor.
2. This notification has been declared incomplete on 5 January 1999. Subsequently, the notifying parties have provided the further information required, so that the notification was completed and became effective on 12 January 1999.
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

4. Deutsche Post's main business is to provide postal services within Germany. For the distribution of letters of a defined size it retains a legal monopoly. Deutsche Post is a public limited company since 1995 and owned 100% by the German government. Following its acquisition of a minority interest in DHL International Ltd. ('DHL') in June 1998,

¹ OJ No L 395 of 30.12.1989; Corrigendum: OJ No L 257 of 21.09.1990, p. 13.

Deutsche Post has joint control of DHL together with Deutsche Lufthansa AG and Japan Airlines Company Limited². DHL's principal activity is the express door-to-door delivery of documents and parcels through an integrated delivery network. In the recent past, Deutsche Post has acquired sole control of the Swiss group Danzas, which is active mainly in freight forwarding, express freight and logistics, as well as of the French company Ducros Services Rapides, a provider of parcel delivery services.

5. Securicor is a diversified group with activities in security, distribution and communications. Securicor's distribution division mainly provides services in the areas of delivery of parcels and documents, container and tank transport, freight forwarding and logistics.

II. THE OPERATION

6. According to the joint venture agreement, Securicor will carry out an internal reorganisation of the Securicor group to bring a number of subsidiaries under the control of Securicor Group Limited. Following the reorganisation, Deutsche Post will acquire shares representing 25% of the issued share capital of Securicor Group Limited by nominal value but which will have 49.99% of the economic rights and 50% of the shareholder rights in that company. By a side letter to the joint venture agreement, Deutsche Post will acquire joint control of certain subsidiaries of Securicor, the so-called "continental subsidiaries", which are those subsidiaries responsible for carrying out Securicor's business outside the UK and Ireland. The acquisition of joint control of Securicor Group Limited and of the continental subsidiaries (together "the joint venture"), although carried out separately, constitutes one single concentration, since they are legally and economically interdependent.

III. CONCENTRATION

7. The joint venture will be of unlimited duration and will continue to perform its business on a lasting basis. The fact that some of the joint venture's affiliates or branches could be wound-up to allow the integration of Deutsche Post and the joint venture's networks does not affect this conclusion, as such winding-up is of limited importance if compared to the bulk of the activity of the joint venture.
8. Deutsche Post and Securicor will each have 50% of the voting rights in the joint venture, and equal Board representation. They are bound by the joint venture agreement to jointly decide on major issues relating to the conduct of the joint venture, such as the approval of the budget and business plan and any major change to it, and other strategic decisions. In addition, they are obliged to approve jointly the removal of the Chief Executive Officer and the appointment of a new one, except the initial one whose nomination is provided by the joint venture agreement itself.
9. The assets and subsidiaries to be reorganised in the joint venture currently comprise Securicor's distribution division. This already has the characteristics of a full-function undertaking, namely dedicated management and the necessary resources to carry out its activities.

² See Commission decision of 26.6.1998 in Case IV/M.1168 – Deutsche Post/DHL

10. The operation consists thus of the formation of a full-function joint venture within the meaning of Article 3(2) of the Merger Regulation.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³. Each of Deutsche Post and Securicor have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. RELEVANT MARKETS

A. Relevant Product Markets

12. The sector affected by the present operation is that comprising express parcel (and document) delivery, standard expedited parcel delivery, express freight delivery, and logistics, all of which services are mainly of a «business to business» nature, and have both a national and an international dimension.

a) Overlap of Parties' Activities

13. The parties have identified an overlap in the activities of DP and Securicor in the provision of the following services:
 - domestic express parcel (and document) delivery,
 - international express parcel (and document) delivery,
 - domestic express freight delivery,
 - international express freight delivery,
 - logistics.

b) Past Commission Decisions in the Sector

14. The services in this sector have been addressed in past Commission decisions. A distinction was drawn between express parcel (and document) delivery and express freight delivery, mainly on the grounds of: i) different product characteristics of the two types of service, i.e. limitations in size and weight (30 to 50kg.) for express parcel delivery, as opposed to no size limitations and a much higher weight allowance for express freight, ii) different handling equipment, iii) a comparatively slower delivery time, and iv) lower price levels for freight delivery.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

15. Furthermore, the Commission distinguished between domestic and international delivery for express parcels and express freight, based on both supply and demand-side considerations, as well as on the different product characteristics of these two types of services. With regard to supply side, marketing and operational differences were considered relevant, as well as the presence of different suppliers providing domestic, as opposed to international delivery, and the difference in the number of suppliers for these two geographic dimensions. With regard to demand-side, customers differentiated between domestic and international deliveries as a result of differences in price, destinations and regulatory considerations (i.e. customs for international).
16. More recently the Commission has recognized a certain blurring of the boundaries between express parcel and express freight delivery. This development has been attributed in part to a certain erosion of the lines of differentiation between these services in terms of speed and other conditions of delivery, and in part to the emergence of a process of integration of these different services in the product offering of individual suppliers, with the ensuing repercussions on the customers' perception of the exact scope of the service being supplied, in terms of seeing it as one overall service, as opposed to separate services.

c) Evolution of the Services

17. Through its market investigation among competitors and customers in the present case, the Commission has appreciated the extent and rate of the transformation which is taking place in the service offering in the sector. The said transformation is due to a combination of mutually re-inforcing demand and supply-side factors which sustain the trend of development. On the supply side, among the most important factors are: i) the virtual standardization of the use of technological means (i.e. what were in the past considered value-added services such as track and trace, proof of delivery), resulting in an upgraded standard expedited delivery service (see below), and ii) the development and establishment of the necessary infrastructure and delivery networks, both domestic and cross-border, through acquisitions or alliances/agreements.
18. On the demand side, the most relevant factors are: i) the significant increase in the demand of business customers in terms of number of destinations (coinciding with the removal of customs barriers within Europe), and ii) the trend towards the outsourcing by companies of their non-core business activities, in response to the growth in the number and quality of third party companies available to provide such services with an optimum mix in terms of speed, reliability and price.

d) New/Evolved Products

19. Thus the Commission has identified the presence in the sector of the following relatively new and growing products, which have evolved from the existing services:

Standard expedited parcel delivery services

20. Standard expedited parcel delivery services combine speed and reliability at a lower price than the express parcel (and document) delivery service. The main difference in the service offered is that of the time-lead of the (mainly) air-based express delivery, which is a next day/time-certain service, over the road-based expedited parcel service which generally takes from one to two days longer within Europe, depending on the distance involved, and which is (only) day-certain. However, it seems that both types of

delivery may sometimes operate within the same next day time frame for distances in Europe within the range of 500/600 kms., whether domestic or cross-border, with the difference of time-certainty for express delivery.

21. An upgraded standard expedited parcel service has existed in some member states as a domestic service for some years, while in others it is still at a development stage. As a pan-European service it is growing fast as a homogeneous service offering, against the backdrop of the process of liberalisation of the postal sector, due to the entry of strong national operators, either through pan-European alliances/partnerships (often with domestic express delivery operators), or through acquisitions. Overall this growth can be attributed to the demand from businesses for a relatively fast delivery, offering the same reliability as the express service but at a lower cost than the latter. It can thus be seen as bridging the gap for businesses between the traditional standard parcel delivery and the express parcel delivery in terms of speed, reliability and price.
22. The present joint venture will offer this type of service as part of its core activities, as it will constitute one of the partners to DP's « Europack » expedited parcel service partnership. Securicor itself provides similar services as part of its parcel delivery offering, both as a domestic service in the UK and Ireland and as a European service across several member states.

Logistics Services

23. In past cases in this sector logistics has been contemplated in the context of the value-added services associated with express delivery (e.g. track and trace, proof of delivery, destination change in transit). However, logistics, as it is more generally understood nowadays in the sector, is a product which comprises the planning, implementation and control of the flow and storage of goods, and as such it constitutes a distinct service offering.
24. The logistics offering includes a combination of different services such as ware-housing, inventory control, just-in-time management and financial management, and has evolved in response to a very distinct customer demand, arising from the growing trend by companies to outsource certain non-core activities, as already mentioned further above. In this form, logistics has several characteristics that distinguish it as a product from standard express parcel and freight delivery services, i.e. a different service offering (thus not price comparable), a distinct group of suppliers and a distinct array of customers, despite a certain overlap in these. Furthermore, it appears that contracts for logistics services are managed in a very different way to those for express parcel and freight delivery services.

e) Relevant Product Market Definition

Separate products v. integrated product

25. As discussed further above, the Commission has in the past considered that express parcel (and document) delivery and express freight delivery could be clearly distinguished from each other on several grounds. In recent decisions the Commission has recognized a certain blurring of the boundary lines and a growing tendency for these services to converge in one integrated service. However, it would appear from the market enquiry in the present case that the distinguishing elements are still valid, i.e. differences in product characteristics, prices, suppliers, handling equipment, and, for the

most part, different infrastructure and networks. This is notwithstanding the fact that a certain process of product integration appears to be on-going, mainly as a result of the current proliferation of concentrations and partnerships/alliances which are restructuring the sector.

Product Trends

26. On the other hand, the market enquiry has revealed a growing trend towards product segregation on the basis of time-frame concepts, as illustrated in the case of the distinction drawn further above between express and standard expedited parcel services in terms of time-certain as opposed to day-certain delivery. Similarly, within time-certain services, different delivery times (e.g. in-night before 8 a.m., before 9 a.m., before 10 a.m.) can be distinguished in some offerings. Furthermore, it is expected that time-lead requirements will become shorter due to the growing policy of stock reduction of businesses. Such time-frame factors distinguish these products from each other both on the supply side and on the demand side and, have repercussions on levels of pricing, due to the influence of the mode of transport used (road v. air) on the cost of the particular service.

Domestic v. international scope of services

27. The Commission, as discussed further above, has distinguished in the past between the domestic and international delivery of both express parcel (and documents) and freight. Still, the market inquiry in the present case has confirmed the growth in cross-border and pan-European express delivery services, following the disappearance of customs constraints and coinciding with the process of liberalisation of the sector. It has, likewise, confirmed the trend towards centralization of contracts by pan-European customers, and the increase in the number of pan-European suppliers. However, despite these trends, it appears that the main features distinguishing domestic from international services still persist, i.e. separate operational organization of suppliers and customers, the presence of many local and national suppliers for domestic deliveries, and product differentiation by customers.

Conclusion

28. As the competitive assessment of the present operation, presented further below, does not result in any concerns with regard to the different services affected, whether taken individually or together, it is not considered necessary to define the relevant product markets more precisely in the present case. For the same reasons it is not necessary to decide whether the newer services of expedited parcel delivery or logistics constitute separate product markets or not.

B. Relevant Geographic Markets

a) The Parties' View

29. The parties contend that the relevant geographic market for all the services concerned by the present operation is national. In support of this they emphasize the importance of the fact that customers are essentially based within national boundaries and tend to seek out national service providers, even for trans-border services. The parties point out that multinational corporate customers may be an exception to this general tendency but that

this type of international or indeed European demand remains very limited for the moment.

b) Past Commission Decisions

30. The Commission considered in the past that the relevant geographic market for international express delivery services, both for parcels (and documents) and for freight, could be characterized as national. This consideration was based on the following main factors: i) the perception of customers of it as a local service, ii) the national nature of both pick-up and delivery, iii) different pricing levels (particularly due to difference in labour and fuel costs), iv) different marketing in different countries, v) variations in market share distribution of the main suppliers across the different member states, and vi) the different stages of product development from country to country.
31. However, the Commission also considered that the national dimension of the geographic market could be expected to change as a result of a possible trend towards a demand by customers for global accounts. Nonetheless, the Commission in more recent decisions, while recognizing a certain internationalization, has also recognized that national market characteristics such as national distribution networks and national pricing were still in place, even though some suppliers might have global accounts for the provision of the different delivery services.

c) Relevant Geographic Market Definition

32. The market enquiry in the present case has confirmed that all the elements which led the Commission to consider the relevant geographic market as national in the past are still valid, to a greater or lesser degree, for all the different services in the sector, including both national and international services.
33. Furthermore, even though traditionally national companies are expanding their European activities through acquisitions or alliances/partnerships, leading to an increase in the number of pan-European operators, the array of service providers still differs across the different member states, and the presence and importance of national providers is still an important factor to be taken into account.
34. Moreover, despite the trend towards global accounts for pan-European customers and tendering procedures for the award of their contracts, it seems that the practice of contract negotiation between customers and suppliers at a national level is still in place to a significant degree. Moreover, pan-European customers only constitute part of the demand.

d) Conclusion

35. As the operation does not raise any competition concerns with regard to the different services concerned, whether assessed at a national or European level, it is not necessary to define the scope of the relevant geographic market more precisely in the present case.

VI. COMPETITIVE ASSESSMENT

36. Securicor offers a range of services including express document and parcel delivery and freight. They focus principally on domestic traffic within the UK and Ireland and, to a

lesser extent, on inbound and outbound traffic to and from the UK and Ireland. The various services provided by the joint venture can be distinguished according to the degree of additional services provided, that is time or day certain delivery, door-to-door services, track and trace and proof of delivery. As regards parcels, they may therefore be viewed as either express delivery services or, according to the definition made above, standard expedited parcel delivery services. However, as the following analysis will demonstrate, there is no need to establish a precise distinction of this kind.

37. If, as submitted by the parties, the joint venture's services are viewed as express delivery services, then the integration of the joint venture within the Deutsche Post group will produce an overlap between the international delivery and freight services of the joint venture and those of DHL and Danzas. In fact, Deutsche Post 's activities carried out directly include express delivery or freight services only on a domestic basis in Germany, that is on a market where the joint venture is not active.
38. On the international express delivery market, the joint venture's activities will only represent a minor increase if added to those of DHL. DHL is the market leader at EEA level with 44%⁴ of the market and also in most EEA countries including the UK, Ireland, Germany, Belgium and the Netherlands, with market shares ranging between 45% and 55%. The joint venture's shares in the same markets, by contrast, never exceed 3%. This relatively minor increase will not substantially change the competitive situation in these markets, where other strong competitors have important shares (TPG between 11% and 27%, UPS between 6% and 22% and Fedex between 3% and 10% in the above mentioned countries).
39. On international freight, the joint venture, Danzas and DHL's combined market share at EEA level will not exceed 15%. The only significant overlap at national level will be in the UK, where the combined entities (Danzas, DHL and the joint venture) will have a market share of around 25%, 20% being the share added by the joint venture. Competitors on this market include Kühne & Nagel (20%), TPG (10%), Franz Maas and DFDS (both 5%).
40. Deutsche Post has indicated that the present operation will enable it to extend its European parcel network ("Europack") to the UK and Ireland, at the same time giving the joint venture improved access to the continental European markets. Hence, it is important to take into account possible consequences arising from the combination of the activities of the joint venture in express parcel delivery with Deutsche Post's existing activity in the parcel business.
41. In this respect, even if the activities of the joint venture are taken into account as "Europack" type, there are no indications that combining them with Deutsche Post's parcel activities could lead to serious concerns for competition. Apart from the differences in quality, the services offered by the joint venture and by Deutsche Post are clearly complementary from the geographical viewpoint, since they are carried out in the UK and Germany respectively. (In addition Ducros, which also offers similar services, operates at a lower scale and only in France and Spain.) Moreover, despite the fact that

⁴ All market shares refer to year 1997. They are generally based on estimates provided by the parties. The market inquiry carried out by the Commission has not given any indication that would substantially contradict them.

both Securicor and (in particular) Deutsche Post are important players in their home countries, they both face substantial competitors in the parcel business. The main competitors are Deutsche Paket Dienst, UPS and German Parcel in Germany, and Parcelforce Worldwide (a division of the British Post Office), UPS, Parceline and Lynx in the UK. Securicor has also an important position in Ireland, where however AN Post leads the market. Hence, there is no serious risk that the combination will dominate the cross-border traffic for any specific services between the UK/Ireland and Germany.

42. Finally, if one takes into account an integrated European market comprising domestic and international express delivery, freight and parcels in the business to business segment (that is the whole expedited transport industry), then the present operation will allow the Deutsche Post group (including all recent acquisitions, i.e. Securicor, DHL, Danzas, Ducros) to achieve a market share which can be estimated at between 20% and 25%. Deutsche Post will thus consolidate its leading market position at European level, in addition to having by far the market leadership in Germany (the largest market in Europe). In addition, Deutsche Post will have the possibility to enlarge substantially the range of services offered as well as the geographic areas covered by its services.
43. However, even this very substantial overall position of the group is not such as to entail any serious risk of dominance. As regards the enlarged range of products and the possibility to offer one-stop-shop solutions to customers (which many competitors stressed as an important competitive advantage of Deutsche Post), customers indicated to the Commission that they considered a one-stop shop to be convenient, but that they might well keep several suppliers if the price differences justified it. Hence, Deutsche Post's ability to offer in packages a broad range of services would not allow tie-in practices to the detriment of competitors. As to possible network effects triggered by an enlarged geographic coverage and customer base, they do not appear likely to cause any serious concerns at the present stage. Other competitors, such as TPG and UPS are able to offer services on a comparable scale to Deutsche Post and in addition a large share of services in this field is still directed to customers whose requirements in terms of geographic coverage is limited to local, national or regional levels.

VII. COMMENTS FROM INTERESTED PARTIES

44. Several interested parties expressed to the Commission their concerns that the acquisition by Deutsche Post of a share of the joint venture's capital has been possible only as a result of Deutsche Post's revenues from its exclusive mail concession in Germany or from other forms of State financing. In addition, they argued that Deutsche Post cross-subsidises the development of its activities in the commercial field through revenues from its letter monopoly. However, it shall be noted that the present decision, based on the Merger Regulation, can only deal with the effects of the concentration on the market.
45. Furthermore, the Commission notes that Deutsche Post has submitted an undertaking, similar to that submitted in the context of the procedure in the Deutsche Post/DHL case, to keep separate accounts for reserved and non-reserved services and publish the basic financial data relating thereto in its annual reports. In addition, Deutsche Post has submitted that the purchase of its interest in the joint venture is being financed by the

sale of real estate that was the capital endowment for Deutsche Post when it was made into a company.

VIII. ANCILLARY RESTRAINTS

46. The joint venture agreement provides restrictions on both parents, which prevent them from competing with the business of the joint venture in the UK and Ireland. In particular the parties are prevented, for as long as they remain shareholders in the joint venture, from engaging in activities competing with the joint venture either directly or acquiring shareholdings in competing companies (unless they do not exceed 3% and are for investment purposes). In addition, the parties are prevented from soliciting or enticing employees away from the joint venture for as long as they remain shareholders in the joint venture and for 12 months thereafter.
47. These restrictions are considered as directly related and necessary to the concentration to the extent that:
- they are limited to the period in which the shareholders will have joint control over the joint venture;
 - they do not prevent the shareholders from acquiring shareholdings above 3% in competing companies if they are for investment purposes only and do not confer any management function or material influence on those companies;
 - they are limited to the services that form the economic activity of the joint venture and to the geographic areas where the business contributed to the joint venture offered these services prior to its establishment.
48. Within the above limitations, the non-compete restrictions are considered to be in line with the Commission notice regarding restrictions ancillary to concentrations, in particular since they express the lasting withdrawal of the parents from the market assigned to the joint venture.

IX. CONCLUSION

49. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,