

***Case No IV/M.1405 -
TNT POST GROUP /
JET SERVICES***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

Date: 15/02/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.02.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party

Dear Sirs,

Subject: Case No IV/M.1405 TNT Post Group / Jet Services

Notification of 14.01.1999 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 14.01.1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking TNT Post Group N.V. ("TPG") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking, Jet Services SA ("Jet Services"), by way of purchase of shares.
2. Following examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. The core of the French company Jet Services' activities is the provision of domestic express delivery services in France, in the business-to-business delivery of parcels (including documents). Jet Services also offers international express services and logistics. Apart from France, Jet Services is also present in other European countries. With the acquisition of NVS in 1998, Jet Services obtained a presence in Germany. In the Benelux, the United Kingdom and Hungary, Jet Services has a marginal presence,

¹ OJ L 395, 30.12.89 p.1; corrigendum OJ L 257 of 21.09.90, p.13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 09.07.97, p.1, corrigendum OJ L 40, 13.02.98, p.17).

offering domestic and some international express services. Jet Services is also involved in aircraft leasing activities.

4. The core activities of TPG (which results from the merger between the Dutch Post KPN and the TNT Express Group) are the provision of mail, express and logistics services world-wide. These services involve the collection, transport, storage, sorting and distribution of a wide variety of items for its customers. The State of the Netherlands is the holder of a Special Share in TPG which gives it the right to approve certain actions of the company.

TPG is also involved in aircraft sales and leasing activities through a 50/50 joint venture, Ansett Worldwide Aviation Services, with the News Corporation.

II. THE OPERATION

5. TPG intends to acquire sole control of Jet Services. The seller is Mr. Caille, a private person, who owns 88 % of the shares of Financière Jet Services, the rest being owned at present by nine institutional investors.

TNT Holdings B.V. has established a new French group of two wholly-owned subsidiaries, one SARL and one SA. It is anticipated that the new SA will, at closing of the acquisition, acquire all the shares in Financière Jet Services. Thus, the current French domestic and international TNT operations on the one hand, and the Jet Services operations on the other hand, will each be held through a separate corporate holding structure.

6. Therefore, the proposed operation will constitute a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
7. With this operation TPG intends to strengthen its presence in the French domestic express service, and thus to offer a more attractive range of domestic and international services.

III. COMMUNITY DIMENSION

8. TPG and Jet Services have a combined aggregate worldwide turnover in excess of EUR 5,000 million (TPG, EUR 6.906 million; and Jet Services, EUR 377 million). Each of them has a Community-wide turnover in excess of EUR 250 million (TPG, EUR 5.855 million; and Jet Services, EUR 377 million). Jet Services achieves more than two-thirds of its turnover in France (76 %) but TPG does not. The case does not qualify for co-operation with the EFTA surveillance Authority pursuant to Protocol 24 of the EEA Agreement.

IV. RELEVANT MARKETS

A. Relevant Product Markets

9. As regards aircraft leasing services, TPG leases large jets such as Boeing 737 for the international carriage of passengers and goods. Jet Services operates for its domestic express services 3 small jets, which it uses at night. It leases these jets for day use with a crew to companies for charter passenger flights. The aircraft business of TPG differs from that of Jet Services in respect of the sort and the size of the jets to be leased, as well as the purpose and the content of the lease. It is not necessary to further delineate

the relevant product markets because, in all alternative market definitions considered, there won't be any overlap between the aircraft leasing activities of the parties.

10. The sector affected by the present operation comprises express and expedited delivery of parcels (and document) services, express freight delivery services, and logistics services, all of which are mainly of a «business to business» nature. The parties have identified an overlap in the activities of TPG and Jet in domestic express parcel (and document) delivery, international express parcel (and document) delivery, and logistics. However, the parties contend that the whole sector of express and expedited delivery services (including parcels, documents, and freight) for both domestic and international services should be considered to constitute one relevant product market.

a) Past Commission Decisions in the Sector

11. 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.
12. 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 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).
13. 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.

b) Evolution of the Services

14. 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 of 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.
15. 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.

c) New/Evolved Products

16. 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 listed further above:

Standard expedited parcel delivery services

17. 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.
18. 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.

Logistics Services

19. 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.
20. 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.

d) Relevant Product Market Definition

Separate products v. integrated product

21. 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 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

22. 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. 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) in the cost of the particular service.
23. Some third parties have submitted that a specific market for in-night services (delivery before 8 a.m.) might be defined. Indeed the market enquiry of the Commission has

identified certain features which distinguish this type of service, such as the use of special night lockers for pick-up and delivery, customers from particular industrial sectors (e.g. banking, automobile and electronics). However, it has also identified important features which this service has in common with other express services, i.e. performance on contractually agreed dates within strict time frames, the use of the same network by some providers. Furthermore, price information has revealed that the prices differences for different express delivery times (i.e. before 8 a.m., before 9 a.m., before 10 a.m.) are comparable in importance. Thus the Commission considers that in-night delivery forms part of express delivery services.

Domestic v. international scope of services

24. 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

25. 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

26. The parties contend that all the services in the sector constitute one product market for which they consider the relevant geographic market to be European if not global. They consider this to be particularly true in the case of international deliveries, whether for parcels (and documents) or freight. In support they point out the presence of international suppliers in most member states and customers' preference for this type of supplier due to their integrated service offering.

b) Past Commission Decisions

27. 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.

28. 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

29. 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.
30. 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.
31. 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

32. 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.

V COMPETITIVE ASSESSMENT

33. The notifying parties claim that on the bases of their market definition (one relevant market for both domestic and international services offered to business customers for the express or expedited delivery of goods, including parcels, documents and freight), there are no horizontally or vertically affected markets within the meaning of Form CO.
34. Both JS and TPG offer a broad range of services, all of which have distinct features as to time guarantee and other value-added services. While it may sometimes be difficult to classify with precision the individual services, as discussed under Relevant Product Markets, the transferred business focuses principally on express parcel services.
35. As the Commission considers that there may be distinct product markets for the domestic and for the international express delivery of parcels (and documents) and freight, as well as for logistics, and that these would be more national than European, the international express delivery parcels (and documents) in France and Germany

would be affected. The parties claim that, even on this basis, the transaction does not raise any competitive concerns in either France or Germany.

36. Considering logistics services separately, they would not constitute an affected market since the only overlap is in France where both parties have a [0-10] % market share. Similarly, no concerns have arisen from the market investigation as to the impact of the operation on competition on the eventual market for standard expedited parcel delivery services. Consequently, the analysis will concentrate on the following markets :

International express delivery

37. Concerning international express delivery of parcels (and documents), there is no real overlap in Belgium, the Netherlands and the UK, as Jet Services only has less than [0-10] % market share. In Germany, the situation is similar as Jet Services only has a [0-10] % market share (TPG has [15-25] %). In France, where Jet Services supplies [0-10] % of this services, the new entity will have a [25-35] % market share. The combined share in the Netherlands will be some [20-30] % but the increment brought by Jet Services will be less than [0-10] %.

Thus the level of the combined market shares (and the small increments) which result from the operation are not sufficiently large to cause the creation or the strengthening of a dominant position.

38. Concerning international express delivery of freight, the previous competition structure has not been modified by the operation since Jet Services does not provide this type of service, except in Germany with less than [0-10] % market share (and [5-15] % for TPG).
39. The parties claim this operation will increase competitive pressures, notably for express delivery products in France. According to them, TPG had, prior to the transaction, insufficient presence in France because it did not offer a domestic express service. By the acquisition of Jet Services, TPG has a more attractive range of services for customers in France and will, therefore, be able to compete more effectively with major operators there (the La Poste group, DHL/Deutsche Post AG group and the SNCF SERNAM group).
40. The new entity will face competition mainly from DHL ([30-40] % market share in Germany, [30-40] % in France and [25-35] % in the Netherlands), and from many other smaller operators: in Germany, mainly UPS, Trans-o-flex and FedEx with respectively [25-35], [10-20] and [5-15] % market shares; in France, mainly FedEx, Calberson and UPS with respectively [10-20], [5-15] and [5-15] % market shares; in the Netherlands, UPS and FedEx both with respectively [5-15] and [0-10] % market shares.

Domestic express delivery

41. The parties consider there is no affected market with regard to domestic express delivery because there is no member state in which both parties have a noticeable market presence.
42. Concerning domestic express delivery of parcels (including documents), TPG is scarcely present (less than [0-10] % market share) on the French market where Jet Services has a [20-30] % market share, and the same is true for Jet Services in Italy and the

Netherlands (in each case clearly less than [0-10] % market share and no dedicated sales infrastructure or offerings). The only strong position would be in the Netherlands ([40-50] % combined market share), but only due to the historical position of TPG in this country.

43. Concerning domestic express delivery of freight, the previous competition structure has not been modified by the operation since Jet Services does not provide this type of service, except in Germany with less than [0-10] % market share (and [5-15] % for TPG).
44. On the basis of a segment for in-night services, TPG does not offer in-night express in France with the exception of FIAT (subcontracted to TAT express, subsidiary of La Poste). After the merger TPG will provide [35-45] % of the in-night services in Germany and will strengthen its distribution on this segment. According to the parties, TPG's 100 % subsidiary company, NET Nachtexpress Termindienst GmbH ("NET"), provides [20-30] % of the in-night services in Germany. Jet Service Deutschland NVS GmbH, acquired in 1998, provides [15-25] %.

Range of products

45. The possibility afforded to the parties to offer a complete range of services to business customers (reinforced especially in France and southern-Europe) doesn't appear to provide them with a substantial competitive advantage over their competitors in the short term. While, on the one hand, many competitors of the two companies stressed the importance of being able to offer all the range of delivery services, in what they often referred to as an increasingly competitive market place (many of these competitors being themselves involved in the same kind of operations seeking geographical or product strengthening), on the other hand, customers indicated that they considered a one-stop shop to be convenient, but that they were able and ready to keep several suppliers if the price differences justified it.
46. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. COMMENTS OF INTERESTED PARTIES

47. Several interested parties expressed to the Commission their concerns that the acquisition of Jet Services by TPG has been possible only as a result of TPG's revenues from its exclusive mail concession in the Netherlands, and that TPG cross-subsidises the development of its express activities through 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.

VI. ANCILLARY RESTRICTIONS

48. The notified agreement provides for a three-year non-compete clause to protect the purchaser of the business acquired. As the operation involves the transfer of goodwill and limited know-how, the Commission considers this clause to be ancillary to the transaction.

VI. 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,