

***Case No COMP/M.3603 -
UPS / Menlo***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 10/12/2004

***In electronic form on the EUR-Lex website under document
number 32004M3603***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10/12/2004

SG-Greffe(2004) D/205727

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

PUBLIC VERSION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3603 – UPS / Menlo
Notification of 09/11/2004 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 09/11/04, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking United Parcel Service Inc. ('UPS', USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Menlo Worldwide Forwarding Inc. ('MWF', USA) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EC) No 139/2004 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES AND THE OPERATION

3. UPS is the ultimate parent company of the UPS group of companies. The UPS group is active in the field of worldwide package delivery as well as providing worldwide air and ground cargo transportation services, ocean freight brokerage services and complex supply chain services (including, in some cases, freight forwarding services).
4. MWF is a wholly owned subsidiary of CNF Inc, a USA based company involved in global supply chain services with businesses in regional trucking, airfreight, ocean freight, customs brokerage, global logistics management and trailer manufacturing. MWF is a worldwide provider of freight forwarding services, ground cargo transportation services and supply chain services.

II. CONCENTRATION

5. UPS will acquire the freight forwarding operations of MWF by way of the purchase of shares. Pursuant to the Sale and Purchase Agreement, UPS will acquire only CNF's freight forwarding business, all of which will be transferred to MWF prior to the sale to UPS. At the same time MWF will transfer all business not connected to freight forwarding to CNF. The transaction will result in UPS having sole control of MWF.

III. COMMUNITY DIMENSION

6. UPS and MWF have a combined aggregate world-wide turnover of more than EUR 5 billion² (UPS, EUR 26.7 billion and MWF, EUR 1.9 billion). Each of the undertakings have a Community-wide turnover in excess of EUR 250 million (UPS, EUR [...] and MWF, EUR [...]), 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.

IV. COMPETITIVE ASSESSMENT

(a) Relevant Product Market

7. The transaction involves the acquisition of MWF and specifically the freight forwarding business. The international air freight forwarding sector accounts for approximately [...] % of MWF's total revenue in Europe. UPS is mainly active in the field of worldwide package delivery but is also active to a limited extent on the international air freight forwarding sector (included in the supply chain services which form a part of UPS's operations). In previous decisions³ the Commission has defined freight forwarding services as a distinct product market from mail and parcel delivery. The notifying party submits that the present transaction concerns freight forwarding services including global air and ocean freight forwarding and emergency and expedited shipments.

² 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.

³ Case No COMP/M.2908 –*Deutsche Post/ DHL (II)*, Case No COMP/M.3155 – *Deutsche Post/ Securicor*

8. In previous decisions, the Commission has defined freight forwarding as “the organisation of transportation of items (possibly including ancillary activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs”⁴. In the past, the Commission made a distinction between domestic and cross border freight forwarding. A further delineation was suggested between land, air and sea freight forwarding. In the Deutsche Post/Air Express International decision⁵, the Commission did not rule out the possibility of a distinction between standard and express freight forwarding services.
9. Notwithstanding the above, the final delineation of the relevant product market for freight forwarding services could be left open as the notified transaction would not raise serious doubts even if the market is further subdivided.
10. The notifying party submits that the geographic market for freight forwarding may be European-wide in view of the continued and increased trend towards internationalisation. The Commission has in the past left open the question as to whether freight forwarding should be considered national or wider⁶ and in this case the geographic scope can remain open as even at a national level the transaction would not raise any competition concerns

(b) Competitive Assessment

11. The transaction will result in limited horizontal overlap of the parties’ activities in the freight forwarding sector in the EEA. In the air freight forwarding sector the parties have a combined market share of much less than 15% in all national markets. In the sea freight forwarding sector the parties have a combined market share of less than 1% in all national markets. The combined market share for land freight forwarding and air express freight forwarding are minimal and estimated to be less than 1% in all national markets.
12. The notifying party submits that freight forwarding is a separate market that is not an upstream or downstream market to the parcel delivery service. MWF operates as an “asset light” company which means that it purchases air freight transport capacity from third parties rather than own the assets. As such it would not be in a position to offer plane transport to the parcel delivery service of UPS. UPS uses its own planes and third party planes for its parcel delivery service and its limited air freight services. It therefore has limited capacity to offer to third parties and in addition, there are many players on the market who could offer this capacity. The notified transaction is unlikely to result in vertical overlap of activities in respect of the parcel delivery service and the freight forwarding activities of MWF.
13. The Commission has found in the past that there is a potential vertical relationship between the market for international express documents and parcel services as input

⁴ Case No COMP/M. 1794 - *Deutsche Post/Air Express International*.

⁵ Case No COMP/M. 1794 - *Deutsche Post/Air Express International*.

⁶ Case No COMP/M. 1794 - *Deutsche Post/Air Express International*.

for the general logistics market⁷. In this case there is no overlap as MWF does not offer contract logistics services.

V. CONCLUSION

14. 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 (EC) No 139/2004.

For the Commission

signed
Neelie KROES
Member of the Commission

⁷ Case No COMP/M. 2831 – *DSV/ TNT Logistics/ DSV Logistics*