



EUROPEAN COMMISSION  
DG Competition

***CASE M.7630 - FEDEX / TNT  
EXPRESS***

(Only the English text is authentic)

**MERGER PROCEDURE  
REGULATION (EC) 139/2004**

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Article 8 (1) Regulation (EC) 139/2004

Date: 08/01/2016

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Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets.



EUROPEAN  
COMMISSION

Brussels, 8.1.2016  
C(2015) 9826 final

*Public Version*

**COMMISSION DECISION**

**of 8.1.2016**

**declaring a concentration to be compatible with the internal market  
and the functioning of the EEA Agreement  
(Case M.7630 FedEx/TNT Express)**

**(Text with EEA relevance)**

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# COMMISSION DECISION

of 8.1.2016

## declaring a concentration to be compatible with the internal market and the functioning of the EEA Agreement (Case M.7630 FedEx/TNT Express)

(Text with EEA relevance)

(Only the English version is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>1</sup>, and in particular Article 8(1) thereof,

Having regard to the Commission's decision of 31 July 2015 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations<sup>2</sup>,

Having regard to the final report of the Hearing Officer in this case<sup>3</sup>,

Whereas:

### 1. INTRODUCTION

- (1) On 26 June 2015, the Commission received a notification of a proposed concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ("the Merger Regulation"), by which the undertaking FedEx Corporation ("FedEx"), based in the United States of America intends to acquire sole control over TNT Express N.V. ("TNT"), based in the Netherlands, within the meaning of Article 3(1)(b) of the Merger Regulation by way of a public takeover under Dutch law ("the Transaction"). FedEx and TNT are hereafter also collectively referred to as "the Parties".
- (2) FedEx provides customers and businesses worldwide with a broad portfolio of transportation, e-commerce and business services. FedEx is listed on the New York Stock Exchange (NYSE) and is headquartered in Memphis, Tennessee. FedEx employs approximately 160,000 employees and has approximately 46,550 drop off locations, 673 aircraft and approximately 47,500 vehicles and trailers in its integrated global network. With a fleet of over 3,696 owned and contracted vehicles, and 50 aircraft, FedEx Europe serves approximately 127 countries and territories and 46 airports, and has approximately 198 depots. FedEx's EEA-based network has its

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ C 450, 02.12.2016, p. 9.

<sup>3</sup> OJ C 450, 02.12.2016, p. 10.

central air hub in France at the Paris Roissy-Charles de Gaulle airport. FedEx does not have any dedicated ground hubs.

- (3) TNT is active in the small packages delivery business and in the air and ground freight business. TNT serves more than 200 countries and employs over 58,000 people worldwide. TNT owns or leases 54 aircraft and has a delivery fleet consisting of around 26,000 vehicles. In Europe, TNT has its air hub in Liège, Belgium. TNT also has 20 ground hubs (or road transit hubs) that serve as dedicated transit points in its EEA-wide road network. The main ground hub of TNT is located in Arnhem, the Netherlands.

## **2. THE CONCENTRATION**

- (4) On 7 April 2015, the Parties announced their conditional agreement on an all-cash public offer under Dutch law by FedEx for all the issued and outstanding shares in the capital of TNT with the aim of FedEx acquiring 100% of TNT's shares. The total implied equity value of FedEx's offer is around EUR 4.4 billion. The project is supported by the supervisory and executive boards of TNT. After completion of the Transaction, TNT would become part of FedEx Corporation.
- (5) The Transaction involves the acquisition of sole control of TNT by FedEx and therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. UNION DIMENSION**

- (6) The Parties have a combined worldwide turnover of more than EUR 5 billion (FedEx: EUR 33.7 billion; TNT: EUR 6.76 billion). The aggregate Union-wide turnover of FedEx and TNT each exceeds EUR 250 million (FedEx: EUR [Confidential]; TNT: EUR [Confidential]), and they do not generate more than two-thirds of their turnover in any one Member State. The Transaction therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

## **4. THE PROCEDURE**

- (7) Based on a market investigation in the Phase I of the proceedings, the Commission initially raised serious doubts as to the compatibility of the Transaction with the internal market and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 31 July 2015 (the "Decision opening proceedings").
- (8) The Parties submitted their written comments to the Decision opening proceedings on 12 August 2015 (the "Response to the decision opening proceedings").
- (9) Following a request by FedEx, non-confidential versions of certain key submissions of third parties collected during the Phase I investigation were provided to FedEx on a rolling basis as of 17 August 2015.
- (10) On 12 August 2015, at the request of the Parties, the time limit for taking a final decision in this case was extended by 20 working days pursuant to the second subparagraph of Article 10(3) of the Merger Regulation.
- (11) During the Phase II of the proceedings, in addition to sending e-questionnaires to customers, competitors and small and medium-size enterprises, the Commission conducted a number of conference calls with various market participants, including customer associations, and sent out further requests for information (notably to UPS,

DHL and some of the non-integrators). Throughout the Phase II of the proceedings, the Commission continued to receive voluntary submissions from third parties, in particular UPS.

- (12) UPS was recognised as an interested third person pursuant to Article 18(4) of the Merger Regulation by a decision of the Hearing Officer dated 21 October 2015. In accordance with Article 16(1) of Regulation (EC) No 802/2004<sup>4</sup>, the European Commission's Directorate for Competition informed UPS on 27 October in writing of the nature and subject matter of the procedure, and set 4 November 2015 as the time limit by which UPS may make known its views in writing. UPS did so by letter of 4 November 2015, thereby exercising its right to be heard. The Commission also further heard UPS at a meeting on 18 November 2015.
- (13) The Advisory Committee discussed a draft of this Decision on 11 December 2015.

## **5. CARGO TRANSPORT AND FREIGHT FORWARDING**

### **5.1. Cargo transport**

#### *5.1.1. Market definition*

- (14) The freight market has historically been divided into cargo transport services, whereby cargo companies sell space on their assets (such as trucks or aircraft), and freight forwarders which construct a "virtual" network consisting of third party assets (transportation capacity) on the basis of customers' requirements. Within cargo, the Commission has historically distinguished between intra-European and intercontinental cargo.
- (15) Concerning the intra-European cargo market, the Commission has previously established that the relevant product market includes all modes of transport such as air, road and rail. Within intercontinental cargo, the Commission has left open whether the product market should include transport by both air and sea.<sup>5</sup>
- (16) For the purpose of this Decision, it is not necessary to decide whether the intercontinental transport of cargo by air and sea form part of the same product market, as the Transaction does not raise serious doubts even on the basis of the narrowest product market definition for the transport of cargo only by air.
- (17) Air cargo is typically transported by different types of carriers, namely cargo airlines with dedicated freighter planes, airlines with only belly hold space capacity, combination airlines with both dedicated freighter airplanes and belly space cargo capacity (e.g. Lufthansa) and integrators. The integrators, that is to say the Parties, DHL and UPS, generally combine cargo with small package volumes in their air network but can also operate dedicated aircraft for cargo services.<sup>6</sup>
- (18) With regard to the geographic market definition for intra-European cargo, the Commission considers in line with its previous decisional practice that this should be assessed on a EEA-wide basis.<sup>7</sup>
- (19) Concerning intercontinental air cargo transport, the Commission has held that, where there is sufficient infrastructure for the onward communication of goods (for

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<sup>4</sup> OJ L 133, 30.4.2004, p. 1.

<sup>5</sup> Commission's decision of 17 December 2008 in Case M.5141- KLM/Martinair, recital 29 and following.

<sup>6</sup> Commission's decision of 17 December 2008 in Case M.5141 - KLM/Martinair, recital 27.

<sup>7</sup> Commission's decision of 4 July 2005 in Case M.3770 – Lufthansa/Swiss, recital 19

example by road, rail or inland waterways) the relevant geographic market should be defined on a 'continent-to-continent' basis as this corresponds to the catchment area of the demand for the service. However, the Commission has also indicated that, for continents where infrastructural or regulatory conditions do not easily facilitate the onward transfer of goods, a further division on a continent-to-country or country-by-country basis may be necessary.<sup>8</sup> For the purpose of this Decision the market definition may be left open given that, irrespective of the precise geographic delineation, the Transaction does not lead to any affected market for intercontinental air transport of cargo.

#### 5.1.2. *Competitive assessment*

- (20) In this case, the activities of the Parties are limited to the intercontinental transport of cargo by air and the intra-European transport of cargo by air and by road. However, the Parties activities in this area are limited, as their primary focus lies on the shipment of small packages and they only provide air cargo services to fill any remaining available capacity in their aircraft.<sup>9</sup>
- (21) On a market for intra-European cargo, the Parties' combined market share is estimated at less than [0-5]%.<sup>10</sup> FedEx further submits that the Parties' combined market share would be below 20% on any plausible market for intercontinental air transport of cargo.<sup>11</sup>

#### 5.1.3. *Conclusion*

- (22) In light of the limited overlap of the Parties' activities on these markets, the Commission concludes that the Transaction will not significantly impede effective competition on markets for the transport of cargo.

### 5.2. **Freight Forwarding**

#### 5.2.1. *Market Definition*

- (23) In earlier decisions, the Commission has defined freight forwarding as "*the organisation of transportation of items [...] on behalf of customers according to their needs*".<sup>12</sup> Unlike the providers of cargo transport services, freight forwarders do not generally own any part of the network they use and normally hire transportation capacity from third parties.
- (24) In its previous decisions, the Commission took into consideration some possible subdivisions of the freight forwarding product market including between domestic and international<sup>13</sup> and between different modes of transportation (land, sea, air, rail).<sup>14</sup> Concerning the geographic scope, the Commission has considered in its previous decisional practice that the market could be national or EEA-wide.<sup>15</sup>

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<sup>8</sup> Commission's decision of 28 August 2009 in Case M.5440 – Lufthansa/Austrian Airlines, recital 30.

<sup>9</sup> Form CO, paragraph 257.

<sup>10</sup> Form CO, Annex 12D

<sup>11</sup> Form CO, paragraphs 256 and following.

<sup>12</sup> Commission's decision of 7 February 2000 in Case M.1794 - Deutsche Post/Air Express International, recital 8.

<sup>13</sup> Commission's decision of 21 April 2009 in Case M.5152 - Posten AB/Post Danmark AS, recital 108.

<sup>14</sup> Commission's decision of 7 February 2000 in Case M.1794 - Deutsche Post/Air Express International, recital 9.

<sup>15</sup> Commission's decision of 7 February 2000 in Case M.1794 – Deutsche Post/Air Express International, recitals 13 and 14 and Commission's decision of 2 August 2004 in Case M.3496 – TNT Forwarding Holding/Wilson Logistics, recital 9.

- (25) However, for the purpose of this assessment, the relevant market definition may be left open given that, irrespective of the precise product and geographic market definition, the Parties' activities in this area are insignificant.

#### 5.2.2. *Competitive assessment*

- (26) Both of the Parties are active in freight forwarding by sea and by air. FedEx submits that the Parties' combined market share would not exceed [0-5]% on the narrowest product markets for freight forwarding by sea for freight forwarding by air. In addition, FedEx submits that even if national markets for freight forwarding by sea and by air were to be considered, the Parties' combined market share would be below 20%.

#### 5.2.3. *Conclusion*

- (27) Therefore, the Transaction would not lead to a significant impediment to effective competition on any market for the provision of freight forwarding services.

## 6. **SMALL PACKAGE DELIVERY SERVICES – INDUSTRY OVERVIEW**

### 6.1. **Value Chain**

- (28) The following describes how small package delivery providers such as the Parties operate, particularly in express services.

- (29) The small package transport process starts with the pick-up operation. Pick-up is accomplished using vans or tractor trailers (also called "feeders") which collect packages from customer locations and bring them to a local sorting centre. The delivery operation at the other end of the process is carried out in the same way but in reverse: feeders move to centres, which dispatch packages to customers. Pick-up and delivery operations are commonly referred to in the business as Pick-Up and Delivery ("PUD"). PUD involves operating vehicles that transport parcels from local centres to and from customer (receiver/sender) locations as well as operating the local centres including final stage sorting facilities.

- (30) The (local) sorting centres accumulate a high number of packages, which are then scanned and sorted and channelled to gateways so that the packages can be flown to a central air hub in the late evening. On arrival, the small packages are again scanned and sorted and then dispatched from the air hub to be flown to other gateways around the EEA where the scanning, sorting and dispatching cycle is repeated so that the packages can be sent on for delivery to their final destination.

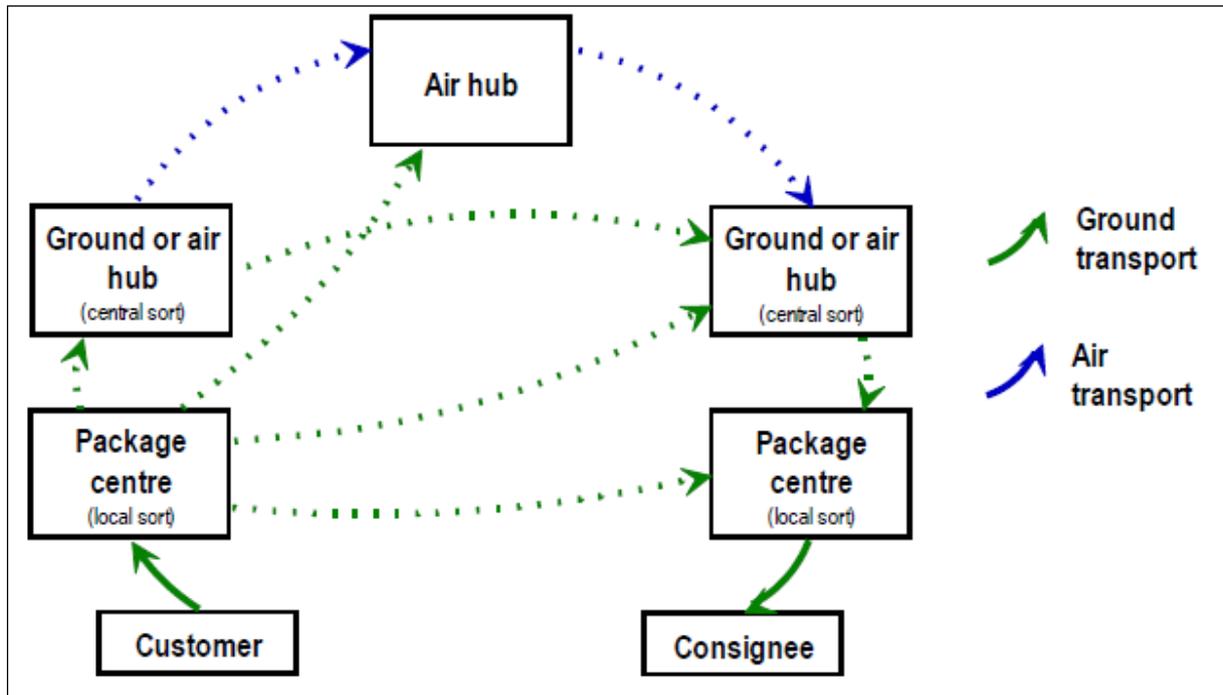
- (31) As noted in the most recent Commission decision concerning the sector<sup>16</sup>, when transporting a package from the consignor to the consignee, different shipments pass through a number of different "nodes" before reaching their final destination. There may be cases where a small package travels through multiple depots and hubs before reaching its final destination (particularly for long-distance deliveries within the EEA and extra-EEA destinations requiring air transport). Figure 1 provides an overview of the different logistical activities typically involved in transporting a package from a consignor to a consignee.<sup>17</sup>

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<sup>16</sup> See Commission's decision of 30 January 2013 in Case M.6570 - UPS/TNT Express, hereinafter ("*UPS/TNT*").

<sup>17</sup> See *UPS/TNT*, recital 44.

Figure 1 - Diagram of industry operating chain



- (32) The network is supported by the use of sophisticated IT infrastructure. During transit, small packages can be scanned up to approximately [10-20] times. Frequent scanning of small packages enables customers to follow their package virtually all the way from pick-up to delivery. With highly sophisticated IT systems and an integrated network, real-time tracking can be offered. This information is critical to providing the essential customer services and qualitative features that are required to compete in the highly competitive small package industry. FedEx stresses the importance of this feature also by quoting Mr. Frederick W. Smith (Chairman of FedEx) who once said, "*the information about a package is as important as the package itself*".<sup>18</sup>
- (33) Some functions of the operational structure can be outsourced to varying degrees, for instance PUD and transport between centres and hubs. That usually involves outside service providers ("OSPs"), also referred to as "subcontractors", and authorised service contractors ("ASCs"), also referred to as "agents/contractors".<sup>19</sup>
- (34) When utilised, OSPs generally perform pick-up, delivery and certain sorting functions for small package companies (often on a branded basis so that the customers are not even aware that the OSP is a subcontractor). An ASC is typically a small package company within a particular region usually a single country, that often enters into direct relationships with the customer of its own account in that country. An ASC may also be branded, in which case the vans and drivers usually carry the brand of the small package company on their trucks, papers and uniforms so the customer may not even be aware that the ASC is an independent company.
- (35) If ASCs and OSPs are used, they usually have to follow certain defined requirements of the small package company in order to guarantee the quality of the service.
- (36) FedEx has two principal ways in which it conducts its small packages delivery business around the world: it either directly serves a country with its fully owned

<sup>18</sup> Form CO, paragraph 90.

<sup>19</sup> See *UPS/TNT*, recital 47.

assets or cooperates with a so-called Global Service Participant (GSPs), which can be qualified as an ASC.<sup>20</sup> FedEx has GSP partners in eight EEA countries, namely Flying Cargo Bulgaria (Bulgaria), Schenker (Croatia), G.A.P. Vassilopoulos Ltd (Cyprus), Orbit Couriers (Greece), Iceltransport (Iceland), Airsped Express (Malta); Rangel Espresso SA (Portugal), International Romexpress (Romania) and Inspekta Slovakia (Slovakia).<sup>21</sup> FedEx also works with OSPs in directly-served countries.

- (37) TNT combines its own operations and operations via OSPs in all EEA Member States, except for three countries where it has agreements in place with ASCs. TNT's ASCs in the EEA are In-Time d.o.o. in Croatia, IslandsPostur Hf (Iceland Post Ltd) in Iceland and C&C Express Ltd in Malta.<sup>22</sup>
- (38) In addition, TNT works with a very large number of OSPs for local pick-up and delivery activities. For example, in a local depot with 50 pick-up rounds, it may well be that some 30 rounds will be performed by subcontractors, with each subcontractor generally having only one or two trucks. For the larger EEA countries, TNT will therefore work with hundreds or even thousands of OSPs/subcontractors for the performance of its PUD activity. Those small companies may work exclusively for TNT or they may have additional, independent activities as well. FedEx submitted TNT's PUD costs split by country into own fleet and subcontract fleet costs. From that information, it can be concluded that the vast majority ([Confidential]%) of PUD operations in the EEA are subcontracted to third parties.<sup>23</sup>
- (39) UPS, and to a more limited extent DHL, also use such local agents, albeit they may denominate them differently.<sup>24</sup>

## **6.2. Competitive Landscape**

### *6.2.1. Integrators*

- (40) In its previous practice, the Commission defined integrators by reference to five basic characteristics: first, ownership of or full operational control over all transportation assets, including an air network with scheduled flights, through which a large proportion of the volumes handled by the company is carried; second, a sufficient geographic coverage on a global level; third, a hub and spoke operating model; fourth, a proprietary IT network, such that all relevant data runs across one network; fifth, integrators have the reputation of reliably delivering parcels on time (so-called 'end-to-end' credibility).<sup>25</sup> In this regard, there are four integrators in the world, all of whom also operate within the EEA: FedEx, TNT, DHL and UPS.
- (41) The main differentiating factor of an integrator is that it has operational control over the logistical chain of small package delivery from origin to destination (including air transport) so that it can ensure delivery in accordance with a time commitment.

### *6.2.2. Non-integrators*

- (42) Apart from FedEx, TNT, DHL and UPS, a number of other companies offer small package delivery services in the EEA.

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<sup>20</sup> Form CO, paragraph 237.

<sup>21</sup> FedEx's response to question 12 of request for information QP12 of 19 August 2015.

<sup>22</sup> FedEx's response to question 12 of request for information QP12 of 19 August 2015.

<sup>23</sup> FedEx's response to question 13 of request for information QP12 of 19 August 2015.

<sup>24</sup> See *UPS/TNT*, recital 47; UPS's response to question 1 of the request for information of 1 September 2015; DHL's response to the request for information of 27 August 2015.

<sup>25</sup> See *UPS/TNT*, recital 62.

#### 6.2.2.1. Incumbent postal operators

- (43) In many EEA Member States, the incumbent postal operator is active in domestic and international small package delivery (express and deferred). Generally, declining mail volumes have forced domestic postal operators to develop new business areas such as logistics, and in particular small package delivery services. Several postal operators have over the last years changed their focus in recent years from traditional mail business to a small package, e-commerce and cross-border presence.<sup>26</sup>
- (44) National postal operators active in the area of small package delivery services own extensive domestic ground networks and in some cases international operations also. In particular, Royal Mail (GLS/Parcelforce) in the United Kingdom, La Poste (DPD/Chrono post/Geopost) in France, PostNL in the Netherlands, Austrian Post in Austria, and according to FedEx also PostNord in Denmark and Sweden and Posten Norge in Norway, all qualify as international network operators. Those operators have taken a strong foothold in the international segment by acquiring small package companies outside their home markets, which they subsequently integrated into a single network.<sup>27</sup> In addition, in response to rapidly growing e-commerce flows within the EEA and to/from Asia and the US, postal operators have been developing partnerships to cater for intra-EEA and extra-EEA deliveries.
- (45) Some national postal operators use their own post office network and assets for pick up. In the delivery country they then either sub-contract to a third party for final delivery or use their own operations. Those operators do not have their own air fleet network and offer international intra-EEA express delivery services based on road transportation for neighbouring countries as well as on air transportation that relies on commercial flights (belly space) or on integrators.

#### 6.2.2.2. National small package delivery companies and partner networks

- (46) National small package operators have a predominantly domestic small package business. Companies such as Bartolini in Italy, Yodl in the United Kingdom, Siodemka in Poland or Speedex in Greece primarily have a national footprint and compete with the Parties only at a national level. Those operators may form alliances and partner networks to offer EEA-wide small package services. Cooperative networks like Global Distribution Alliance (GDA), GO!, Logistics World Alliance, Net Express Europe, Eurodis and EuroExpress unite several regional companies for the delivery of cross-border packages. However, as noted in *UPS/TNT*, the market presence of these networks is very limited and their level of integration is far less developed compared to that of firms operating under a unified single control, in particular the integrators.<sup>28</sup>

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<sup>26</sup> For instance, operators such as Deutsche Post, Royal Mail, Post NL, Swiss Post, Estonian Post as well as Correos, Bpost, Austrian Post and Post Nord are upgrading their offer in order to meet requirements especially in the B2C segment, see Form CO, paragraph 149.

<sup>27</sup> FedEx lists as examples La Poste through the acquisition of DPD and by taking a majority share in SEUR in Spain (SEUR is the largest domestic parcel operator in Spain and has expanded significantly internationally in the last 5 years); Royal Mail, notably through its subsidiary General Logistics System (GLS); Austrian Post, through its subsidiary Trans-o-flex; PostNL, through its Pakketservice activities and its acquisition of the Dutch and Belgian activities of the Trans-o-flex Group; Bpost in Belgium, Poste Italia and the Scandinavian postal operators.

<sup>28</sup> See *UPS/TNT*, recital 86.

#### 6.2.2.3. Freight forwarders

- (47) Freight forwarders such as Kuehne+Nagel, DB Schenker, DSV, Geodis (Airfast and Airsave), Uti Worldwide and Panalpina focus on heavy consignments but are sometimes also active in the delivery of small packages. Freight forwarders can use small packages to increase load factors to reduce the cost of airlift per piece. Freight forwarders often outsource small package delivery services to third parties; typically after picking-up the small package at the client's premises they will send the package on via the third party's network.

#### 6.2.2.4. Others

- (48) Other competitors active on the market are mostly smaller companies which typically have a domestic ground PUD service in one or more countries. For instance, Hermes, which is part of the Otto Group, operates a ground transportation network from Germany, Austria, Italy and the UK. Hermes offers a number of additional services such as stocking, testing, packaging and supply of distribution chains specifically in the clothing industry.<sup>29</sup>

#### 6.2.2.5. Resellers

- (49) The reselling operating model allows a small package delivery provider, that is to say a freight forwarder, a local domestic package company selling international services or a parcel broker, to resell the services purchased from another small package company (often an integrator). In line with *UPS/TNT*, while resellers may be seen, from the end-customer perspective, as competing directly with that small package delivery operator, resellers do not have control over all parts of the value chain and in terms of pricing, quality of service and other parameters they are therefore dependent on the company actually transporting the shipment.

### 6.3. Small package delivery is a highly differentiated sector

- (50) The Commission has already noted in *UPS/TNT* that small package delivery providers are able to differentiate their service in numerous aspects. The parameters of differentiation can be grouped by: speed of delivery (ranging from early morning next day express services to two or more days' standard delivery); geography (ranging from domestic to extra-EEA services) and quality of service (such as reliability, security, late pick up time, comprehensive track and trace ability).<sup>30</sup>
- (51) Customers in the small package delivery sector are likely to have different needs depending on their location, the speed at which they want their packages delivered or the nature of the goods they need to have delivered.
- (52) In respect of transit time, each customer may have varying needs as to the speed at which its shipments need to reach their destination. The same customer may ship high value products with express services and low value products with deferred services. In principle, customers purchase rapid or slower delivery services from the small package delivery providers based on their specific needs. For instance, customers shipping spare parts, components used in production processes, medical or life science items such as blood samples, R&D samples or time-critical documents will use express services. The greater the importance of a shipment and the higher its value, the more likely it is that express services will be used.

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<sup>29</sup> Form CO, paragraph 207.

<sup>30</sup> See *UPS/TNT*, recital 57.

- (53) In respect of coverage, service at both the origin and destination are important. If a supplier has very broad coverage in the country of origin but limited coverage in the country of destination, then it will not be considered by a customer as a strong competitor in comparison with other companies that have extensive coverage at both ends. Of course, the same proposition holds true in reverse. For customers that need to deliver shipments across multiple lanes, wide geographic coverage constitutes an important differentiation factor. Improved scale (the overall size of operations, presence across the package product portfolio and the extent of service coverage across a country) and density (the volume of packages handled over a particular pick-up and delivery route) are highly important as these drive pick-up and delivery costs.<sup>31</sup>
- (54) Whilst all integrators (and to a lesser extent, the ground based operators and freight forwarders) provide services of a similar nature, there are perceived differences between the quality of the services provided by each of them. For instance, TNT has a more significant ground-based and air-based intra-EEA presence, including domestic and deferred business. FedEx, by contrast, has a more limited presence in the significant EEA domestic and deferred markets, and is primarily focused on the extra-EEA international express and US domestic markets.

#### **6.4. Network Industry and importance of economies of scale**

- (55) Small package delivery is subject to significant economies of density/scale in the same way as other network industries. Put simply, higher volumes across a greater area equate to a more efficient and cost effective operation. The larger the density of the network at the origin and destination, the lower the unit costs will be for the service provider.

##### *6.4.1. Effect of network density on pick-up and delivery costs*

- (56) A critical focus of any small package operator is to ensure the optimisation of its PUD activities. PUD costs represent an important part of the direct costs of a parcel service provider. Within the PUD operations, driver wages represent the largest cost factor. Therefore, small package operators try to maximise the number of pick-ups and deliveries a driver/vehicle can make in a day by increasing the number of vehicle's stops and the number of packages picked up or dropped off at each stop.
- (57) The number of packages a van handles in transit, the number of stops on its route, and the number of packages picked up or delivered at any one customer, all have a significant impact on decreasing the cost of the PUD operation. A greater network density allows the service provider to achieve a better use of the capacity of its vehicles and a rise in stops (drops) per route and to experience a significant fall in the total distance travelled per service provided.
- (58) A larger density network brings more clients per square kilometre which allows for a reduction of the distance between customers. Therefore single vehicle journeys will be shorter in distance and allow for a larger number of small packages to be picked-up and delivered per square kilometre. This lowers the variable costs per unit picked-up or delivered and is referred to as economies of density gains.
- (59) The increase in network density leads to a reduction of the catchment area of each PUD vehicle allowing a service provider to offer more reliable services (more accurate times of delivery and wider guaranteed services) and also later pick up and

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<sup>31</sup> Form CO, paragraphs 79-80.

earlier delivery options to customers. As the length of individual routes decreases, the frequency of pick-ups and deliveries can be increased, as the same vehicle can make the same route more times in any given day.

## **6.5. Buyers**

- (60) The customers for small package delivery services in the EEA range from individuals sending a single document, to large multinational companies sending hundreds of packages every day. The operators' customer base is therefore generally fragmented although large international customers also represent a significant share of revenues.<sup>32</sup> Whilst customers who use small package delivery services have a multitude of service needs which vary across different industries and business sectors, a number of common service requirements can be identified. Generally, for small package delivery customers in the EEA, particularly express delivery, the key characteristics for their shipping needs are: a) door-to-door transportation (typically from the customer's location to a specific address); b) assured transit time (the commitment that a package will be delivered on a particular day with a high level of certainty whether early in the morning or at end-of-day); c) track and trace capabilities (real-time package information systems are critical for customer service as they are directly linked to security, reliability and quality); d) reliability; e) security; and f) global or at least EEA-wide coverage.
- (61) In respect of transit time, each customer has varying needs as to the speed at which its shipments need to reach their destination. The same customer may ship high value products with express services and low value products with deferred services. In principle, customers purchase rapid or slower delivery services from the small package delivery providers based on their specific needs. The greater the importance of a shipment and the higher its value, the more likely it is that express services will be used. In respect of coverage, service at both origin and destination are important for customers. If a supplier has very broad coverage in the country of origin but limited coverage in the country of destination, then it will not be considered by a customer as a strong competitor in comparison with other companies that have comprehensive good coverage at both ends. Of course, the same proposition holds true in reverse. For customers that need to deliver shipments across multiple lanes, wide geographic coverage constitutes an important differentiation factor.<sup>33</sup>

## **6.6. Bundling and multi-sourcing**

- (62) Depending on their size, needs and preferences, small package delivery customers may prefer a one-stop shop, and so bundling may be important for them or they may multi-source. The 'full bundle' refers to the ability of the service provider to offer a suite of services across the full range of a customer's needs from domestic express, intra-EEA and extra-EEA express and deferred and other services (such as freight transportation, freight forwarding and contract logistics).
- (63) Regarding customers' purchasing behaviour, the majority of the Parties' main competitors consider that, regarding intra-EEA express small package delivery services, both large and small customers would generally have a preference for providers that are able to offer a wide range of services (including domestic and international deliveries).<sup>34</sup> However, competitors also consider that some customers

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<sup>32</sup> Form CO, paragraph 688.

<sup>33</sup> Form CO, paragraphs 78-80.

<sup>34</sup> See responses to question 33 of the questionnaire to competitors Q1 – Phase I.

may tend to split (issue different tenders for each product) in order to avoid a 'single point of failure' or if the price/service features offer adapts better to their needs.<sup>35</sup>

- (64) The results of the Phase II market investigation were inconclusive on customers' bundling behaviour. Some customers would appear to select providers offering small package deliveries to several destinations (domestic as well as international intra-EEA and extra-EEA) over providers specialising only in one area while other customers do not select on that basis. Bundling reduces the number of suppliers, leading to process optimisation and therefore lower administration and internal costs.<sup>36</sup>
- (65) However, when asked whether they select providers offering different types of small package deliveries (express and deferred/economy) over providers specialising only in one area, there was a clear majority of customers responding that this is not a relevant factor in their selection.<sup>37</sup>
- (66) As for the Parties' competitors who responded to the Phase II questionnaire, the majority considered that their customers multisource from different providers for different types of deliveries (for example for express, economy, palletised goods etc.) or for different destinations. Only a very small minority indicated that their customers usually work with only one provider.<sup>38</sup> One respondent indicated that: *"There is no general rule, some customers use only one provider, others use different providers for different type of deliveries or/and destinations"* while another said that: *"There are customers who work with only one provider but there are others who work with more than one, either for the same or different products or destinations."*<sup>39</sup>
- (67) The majority of the Parties' large customers responding to the Commission's market investigation in Phase I noted that they are multi-sourcing international intra-EEA express delivery services, extra-EEA express and deferred delivery services. Only one fifth of large customers replied that they are not multi-sourcing.<sup>40</sup> Also during the Phase II investigation, where questionnaires were sent to an even larger number of customers, the majority of large customers again responded that they are multi-sourcing for intra-EEA as well as extra-EEA deliveries.<sup>41</sup>
- (68) When asked for the reasons for their multi-sourcing strategy, large customers in Phase I replied that suppliers have different strengths in terms of price, capability and service level at certain origins and destination.<sup>42</sup> For instance, [Name of Parties' customer] noted: *"[w]e find that each courier has markets they excel in"*, and [Name of Parties' customer] stated that *"[w]e choose many of them because each one has better service and prices for some services and not for others."* Honeywell Corporation (France) explained that its multi-sourcing policy is based on the following four main reasons: *"[c]osts, service levels, Transit times, and Geographical coverage."* Other reasons for multi-sourcing provided are the reliability of service in some areas, differences in rates, capabilities and customer

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<sup>35</sup> Ibid.

<sup>36</sup> See responses to question 32 and 32.1 of the questionnaire to customers R2 - Phase II.

<sup>37</sup> See responses to question 33 of the questionnaire to customers R2 – Phase II.

<sup>38</sup> See responses to question 31 of the questionnaire to competitors R1 – Phase II.

<sup>39</sup> See responses of Schenker d.o.o and Rangel Expresso SA to question 31.1 of questionnaire to competitors R1 – Phase I.

<sup>40</sup> See responses to question 8 of questionnaire to customers Q3 – Phase I.

<sup>41</sup> See responses to question 24 of questionnaire to customers R2 – Phase II.

<sup>42</sup> See responses to question 8.2 of questionnaire to customers Q3 – Phase I.

service, specific requirements for shipments, different delivery and pick-up times, the need for brokerage services, etc.

- (69) Also, in their responses to the Phase II questionnaire, the larger customers indicated that factors such as prices, geographic coverage for each destination and the existence of a back-up service are among the main reasons for multi-sourcing.<sup>43</sup>
- (70) Regarding smaller customers, approximately half of the respondents to the Phase I investigation indicated that they have the same provider for all extra-EEA destinations while the other half indicated that they multi-source depending on the destination.<sup>44</sup>
- (71) There was a separate questionnaire to SMEs in Phase II of the investigation. A large majority of SMEs responding to the Phase II questionnaire indicated that they use more than one provider for their intra-EEA express deliveries as well as for their extra-EEA express deliveries.<sup>45</sup> Many respondents indicated that they choose the cheapest provider for each destination. The best coverage for each destination was an important consideration for many respondents as well.<sup>46</sup> A large number of those who multi-source use more than two providers for each destination (region/continent) to which they send small packages but the majority use several providers for all their extra-EEA deliveries.<sup>47</sup>
- (72) Regarding e-commerce, the overwhelming majority of SMEs active in this field responded that they use more than one provider for all their e-commerce deliveries.<sup>48</sup>

#### **6.7. Barriers to entry**

- (73) FedEx submits that for a new entrant to become active on the EEA markets for the provision of international express small package delivery services, the new entrant would have to set up a sophisticated IT infrastructure, sorting infrastructure all across the EEA and a broad network ensuring efficient air and road connections. In addition, the entry/expansion should occur at sufficient scale and achieve a sufficient density of the network. As the small package delivery business is a network industry, economies of scale and density are key. Therefore, for a new entrant to achieve the necessary scale and density, a significant amount of time would also be required. The use of outsourced air transport can, to a limited extent, lessen the need to own an integrated air and ground network for ground based operators and freight forwarders; this being particularly the case in relation to deferred deliveries.<sup>49</sup>
- (74) The Commission concluded that the market for small package delivery is characterised by high barriers to entry and rather low prospects of entry in the near future. This was further underpinned by the fact that since FedEx's re-entry in the intra-EEA markets in 1992, no new entry has taken place at the level of integrators, which are the only suppliers able to offer the full range of services.<sup>50</sup>
- (75) Responding to the market investigation, the majority of the Parties' competitors also indicated that there has been no entry in recent years in any of the international intra-

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<sup>43</sup> See responses to question 24.1, 25 and 25.1 of questionnaire to customers R2 – Phase II.

<sup>44</sup> See responses to questions 13 and 14 of questionnaire to customers Q4 – Phase I.

<sup>45</sup> See responses to question 6 of questionnaire to SMEs R3 - Phase II.

<sup>46</sup> See responses to question 7 of questionnaire to SMEs R3 - Phase II.

<sup>47</sup> See responses to question 10 of questionnaire to SMEs R3 - Phase II.

<sup>48</sup> See responses to question 8 of questionnaire to SMEs R3 - Phase II.

<sup>49</sup> Form CO, paragraphs 711-712.

<sup>50</sup> See *UPS/TNT*, recital 100.

EEA express, extra-EEA express and deferred markets and that they themselves would not consider entering or expanding their services if prices increased by 5-10% post-Transaction as such an increase would not be sufficient to justify the high costs of the investments required.<sup>51</sup> Moreover, the majority of respondents consider that owning a dense ground distribution network, as well as an air network, on both ends of the service is necessary to effectively compete on intra-EEA express and extra-EEA express and deferred markets; suppliers could however outsource such services in the case of intra-EEA deferred deliveries.<sup>52</sup> Furthermore, most respondents to the market investigation highlighted the importance of wide geographic international coverage in the provision of international intra-EEA express, extra-EEA express and deferred deliveries, as well as the significance of being able to offer a wide range of services in the domestic, international, express and deferred markets.<sup>53</sup>

(76) Accordingly, the Commission concludes that it would require significant time and investment for a new entrant to compete effectively with the Parties.

## **7. SMALL PACKAGE DELIVERY SERVICES – MARKET DEFINITION**

(77) The Parties both provide small package delivery services throughout the EEA<sup>54</sup> as well as from the EEA to non-EEA destinations. Consequently, having regard to the significant horizontal overlaps between the Parties' activities on a number of these markets, this decision ("the Decision will focus on the market for small package delivery services.

### **7.1. Relevant product markets**

#### *7.1.1. Small packages vs freight*

(78) In line with the Commission's decisional practice, FedEx submits that the relevant market should be that of small package delivery services including consignments under 31.5 kg.<sup>55</sup>

(79) In *UPS/TNT*, the Commission identified a relevant product market for small package delivery services, comprising consignments under 31.5 kg and distinguished it from the markets for freight forwarding and freight transportation.<sup>56</sup> Customers of small package delivery services have different requirements (in particular door-to-door transportation, assured transit time, track&trace) and expectations (reliability, security, global or at least EEA-wide coverage). As a result, carriers also handle the small package shipments differently. Heavier shipments typically require specific handling equipment (for example pallet jacks and forklifts) and special van/trucks for pick-up and delivery.

(80) Accordingly, and as no replies from the market investigation pointed to a different approach, for the purpose of this Decision, the market for small package delivery services is to be considered as a separate relevant product market from freight forwarding and freight transportation.

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<sup>51</sup> See responses to questions 34-40 of questionnaire to competitors Q1- Phase I and to question 18 of questionnaire to competitors Q2 – Phase I.

<sup>52</sup> See responses to questions 30 and 31 of questionnaire to competitors Q1– Phase I.

<sup>53</sup> See responses to questions 32 and 33 of questionnaire to competitors Q1 – Phase I.

<sup>54</sup> FedEx does not offer domestic small package delivery services in all EEA countries or offers such services only to a limited extent (except for France, Poland and the United Kingdom).

<sup>55</sup> 31.5 kg being the estimated weight that can be handled by a single person.

<sup>56</sup> See for example *UPS/TNT*, recital 164.

### 7.1.2. Domestic vs international

- (81) The Commission has in its previous decisional practice further segmented the relevant product market for small package delivery services, according to whether the packages are picked-up and delivered in the same country (domestic),<sup>57</sup> or in two different countries (namely international).<sup>58</sup>
- (82) In *UPS/TNT*, its most recent decision in the sector, the Commission found a lack of demand side substitutability between the customers' destination areas for their shipments as well as negligible supply-side substitutability given lengthy and costly switch from domestic small package delivery operations in an EEA country to international intra-EEA small package operations from the same EEA country. Both markets also exhibited differences in their market structures, with significantly more concentration on the international small package delivery markets (dominated mainly by the integrators) caused by higher demands on the offering of the services on a global scale.
- (83) The Parties agree with this approach. The responses collected during the market investigation confirmed these distinctions.
- (84) FedEx does not provide fully integrated domestic operations in the EEA<sup>59</sup>, except for having a limited presence in the Polish, French and the UK domestic markets<sup>60</sup> through recent acquisitions of domestic operators<sup>61</sup>. According to FedEx, the Parties' activities in the domestic small package delivery market segment do not lead to any affected markets in EEA domestic markets.<sup>62</sup> Therefore, the domestic EEA market segment will not be further analysed in the Decision.
- (85) Conversely, the Decision focuses on the Parties' activities on EEA markets for international small package delivery services, where there are significant overlaps between the Parties' activities on a number of markets.
- (86) As far as international services from EEA countries are concerned, the Commission has in its previous decisions established a further distinction between deliveries with a destination within the EEA (i.e. international intra-EEA) or outside the EEA (extra-EEA).<sup>63</sup>
- (87) FedEx agrees with this distinction. The respondents to the current market investigation also confirm the relevance of the market segmentation into international intra-EEA and extra-EEA services.

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<sup>57</sup> See also Commission's decision of 15 February 1999 in Case M.1405 TNT Post Group/Jet Services, recital 24; Commission's decision of 21 April 2009 in Case M.5152 Posten AB/Post Danmark AS, recitals 54-57.

<sup>58</sup> See also, *UPS/TNT*, recital 182; Commission's decision of 22 November 2005 in Case M.3971 - Deutsche Post/Exel, recitals 31-32.

<sup>59</sup> FedEx discontinued domestic operations in Europe in 1992 due to incurred losses.

<sup>60</sup> In 2014 FedEx's domestic volumes in France, the UK and Poland constituted [Confidential] % of FedEx's total domestic and international volume for that year in the EEA.

<sup>61</sup> In June 2012, FedEx Corporation acquired Opek Sp.z o.o, a domestic ground transport service provider in Poland; In May 2012, FedEx Corporation acquired TATEX SAS, a B2B transportation company based in France providing a wide range of small packages delivery services amongst others; In December 2006, FedEx acquired ANC Holdings Limited (now FedEx UK Limited), a UK based domestic transportation company [Confidential] however the acquisitions did not have any material impact on FedEx's market share on the UK domestic express market-leading to a market share of only [5-10]% in 2014 the UK.

<sup>62</sup> Form CO, paragraph 254.

<sup>63</sup> See also *UPS/TNT*, recital 187.

- (88) In previous Commission decisions this distinction was considered relevant for both express<sup>64</sup> and deferred<sup>65</sup> small package delivery services markets, a distinction which is addressed in each of the corresponding international intra-EEA and extra-EEA small package delivery services Sections below.
- (89) Finally, under the Commission's decisional practice, a further subdivision is considered, namely between B2B and B2C services.<sup>66</sup> In *UPS/TNT*, the Commission noted that a distinction between B2B and B2C was not relevant in the context of that particular investigation, "since very few express parcels are delivered to private consumers".<sup>67</sup> In the same vein, and given that FedEx has very little activity in the B2C segment, as confirmed by the respondents to the market investigation, B2C is not further analysed in this Decision.

### 7.1.3. *International intra-EEA small package delivery services*

- (90) In its recent decisional practice, notably in *UPS/TNT*, the Commission assessed in detail the international intra-EEA small package deliveries markets. In that context, it sub-segmented the relevant product market for small package delivery services on the basis of the speed of delivery: namely *express delivery services* (commonly understood as services with a next day delivery commitment) versus *deferred delivery services* (those services with a longer delivery time).<sup>68</sup> These findings were based on the fact that, as regards intra-EEA deliveries, the two services are provided by using different infrastructure, that a significant number of customers depend on express deliveries and that express delivery services are also considerably more expensive.
- (91) Specifically, the definition of intra-EEA small package delivery express services as a committed delivery by next day/end of day at the latest can be explained by the geography of the continent, whereby [*all main suppliers offer a morning delivery product [...], a mid-day delivery by 12.00 and end-of-day ("EOD") delivery*].<sup>69</sup> The intra-EEA express delivery before the end of the next is ensured by the use of intra-continental (night) flights for longer distances.
- (92) FedEx agrees with this delineation for the international intra-EEA small package delivery services market. Specifically, regarding intra-EEA services, FedEx considers that the one-day distinction fits well with the transit times of the "priority" and "economy" products, as all of the intra-EEA deliveries made within one day involve a "priority" product, whilst the vast majority of deliveries that are made within two days or more are associated with an "economy" service.<sup>70</sup>
- (93) From a demand-side perspective, the responses collected during the current market investigation confirmed that the majority of customers that responded to the market

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<sup>64</sup> Commission's decision of 15 February 1999 in Case M.1405 - TNT Post Group/Jet Services, recital 24.

<sup>65</sup> See for example Commission's decision of 21 April 2009 in Case M.5152 - Posten AB/Post Danmark AS, recitals 54-57 and Commission's decision of 21 October 2002 in Case M.2908 - Deutsche Post/DHL (II), recital 10.

<sup>66</sup> See Commission's decision of 21 April 2009 in Case M.5152 - *Posten/Post Danmark*.

<sup>67</sup> See *UPS/TNT*, recital 237.

<sup>68</sup> See, *inter alia*, *UPS/TNT*, recital 219.

<sup>69</sup> See *UPS/TNT*, recitals 188 and 220.

<sup>70</sup> See FedEx's submission "Economic response to the 6.1.c Decision", page 15.

investigation would not be ready to switch to a deferred service, even in the case of a relative price increase of 5-10% for the intra-EEA small package express service.<sup>71</sup>

- (94) From a supply-side perspective, the evidence collected during the current market investigation confirms the Commission's findings in *UPS/TNT*, namely that express and deferred networks are often organised differently.
- (95) For instance, according to DHL, whose Express Division operates both an air and a road network in the EEA, "*it makes sense to differentiate among flown parcels, which is a [time] definite express service (TDI), and trucked parcels, which is a still day definite, but deferred product (DDI).*"<sup>72</sup> For DHL, the networks used to ship express and deferred packages are different: a deferred package is trucked, so it has a separate road line haul and consequently a totally different cost structure. Despite certain assets being used for both deferred and express packages (for instance, deferred parcels are mixed with express deliveries for the pick-up and the last mile), air lift capabilities are imperative for the ability to offer comprehensive international express services, at least for shipments over a certain distance.<sup>73</sup> While some exceptions might arise for short-haul shipments, typically the express and deferred networks are separate.
- (96) Furthermore, as acknowledged by the Commission in *UPS/TNT*, the functioning of an express ground network is different from the functioning of a traditional deferred ground network, requiring the use of speedier ground transport (vans instead of lorries) and different line hauls allowing for parcels to be sorted faster in hubs or depots.<sup>74</sup>
- (97) Certain ground operators such as DPD and GLS have set up their own express networks to provide express services over limited distances intra-EEA in order to start offering express services.
- (98) Overall, the responses to e-questionnaires collected during the market investigation largely confirmed this distinction between express and deferred services intra-EEA.
- (99) According to the Parties' data, the Transaction does not lead to any affected international intra-EEA deferred markets. Therefore, these markets will not be further analysed in this Decision.<sup>75</sup>
- (100) As regards express shipments, the Commission previously considered that this market could be further segmented according to the specific time of delivery (for instance, by 9am, 10am, noon or close of business), based on the lack of demand-side substitutability.<sup>76</sup> Nevertheless, on the basis of the high degree of supply-side substitutability, it found that these services do not constitute a separate product markets but are segments within the broader express market and, consequently, considered the distinction between these different categories of express services in the competitive assessment as a distinguishing factor for evaluating the competitive strengths of the various players. The same approach will be retained for the purposes of this case.

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<sup>71</sup> See responses to question 17 of questionnaire to customers Q3 – Phase I and question 11 of questionnaire to customers Q4 – Phase I.

<sup>72</sup> See Minutes of call with DHL of 20 August 2015.

<sup>73</sup> See *UPS/TNT*, recital 212.

<sup>74</sup> See *UPS/TNT*, recital 218.

<sup>75</sup> FedEx's presence is limited in the markets for international intra-EEA deferred markets and a number of other suppliers (national postal operators, smaller courier companies, etc.) are also active in this market.

<sup>76</sup> See *UPS/TNT*, recitals 223-225.

(101) Finally, it should be noted that in *UPS/TNT*, the Commission did not find it justified to define separate product markets on the basis of quality criteria of the delivery service. The Commission considered that the fact that each customer has its own needs in terms of quality of service demonstrates that the small package delivery markets are differentiated along many different dimensions, including on destination, committed timeframe of delivery and quality of service. Absent contrary indications from the market investigation, there is no reason to depart from this approach in the case at hand.

(102) Consequently, and given that the overlap between the Parties' activities is mainly in the market for international intra-EEA express delivery services<sup>77</sup>, for the purpose of this Decision, the competitive assessment will focus on an international intra-EEA express delivery services market.

#### 7.1.4. *Extra-EEA small package delivery services*

(103) The Commission has not assessed the market for extra-EEA small package delivery services in previous cases. While it recognised the merit of defining an extra-EEA small package delivery market separate from the international intra-EEA market in *UPS/TNT*, the Commission did not raise concerns there in any of the possible extra-EEA markets.

(104) Given the substantial overlaps between the Parties in the provision of extra-EEA services, in the current case however, the Commission undertook an extensive inquiry into this area. Firstly, it has assessed the various service offerings available in the market (Section 7.1.4.1.). Second, it assessed whether express and deferred services constitute separate product markets (Section 7.1.4.2.). Third, it assessed whether any further narrowing down of the markets is warranted from a destination perspective and what would be the appropriate geographical level for such a sub-segmentation (Section 7.1.4.3.).

##### 7.1.4.1. Extra-EEA small package delivery services concern a variety of providers offering differentiated services

(105) FedEx offers outbound extra-EEA shipments for small packages up to 68 kg through three main services: FedEx International First® and FedEx International Priority® for more urgent shipments and FedEx International Economy® for less urgent shipments.<sup>78</sup> Besides transit time differences, the main characteristics of the services do not differ according to destination. Each of the FedEx' services provide door-to-door time-definite custom cleared services for which the track&trace feature is available. Shippers using these services also benefit from FedEx's Money-Back Guarantee thanks to which they can request a refund whenever delivery is delayed.<sup>79</sup>

(106) TNT offers two main products for extra-EEA shipments, the Express product and the Economy Express product. TNT's Express product is intended for documents and parcels that need to be imported and exported around the world quickly. TNT's Economy Express product is intended for the economical delivery of less urgent parcels and freight around the globe. Both products concern door-to-door day-definite custom cleared services for which the track&trace feature is available.<sup>80</sup>

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<sup>77</sup> On the intra-EEA deferred delivery services market, the Parties' activities do not give rise to any affected markets – see Form CO, paragraph 101.

<sup>78</sup> Form CO, paragraphs 656-660.

<sup>79</sup> FedEx's response to question 25 of the request for information QP12 of 19 August 2015.

<sup>80</sup> FedEx's response to question 25 of the request for information QP 12 of 19 August 2015.

- (107) UPS generally offers four types of extra-EEA small package delivery services, three of which are express with a money-back guarantee (Express, Express Plus and Express Saver), whereas the fourth (expedited) is an economy (or deferred) service. Not all four services are available to all overseas destinations.<sup>81</sup>
- (108) DHL offers one express extra-EEA services and two types of extra-EEA deferred services: economy select (a service operated by DHL Express and offered only in some non-connected regions, mainly in the EEA)<sup>82</sup> and Weltpaket (to some destination also called Europaket), a standard and premium service operated by PeP (Parcel Germany and Parcel EU, i.e. the legacy postal part of the business).<sup>83</sup>
- (109) Furthermore, in addition to purchasing the integrators' express or economy services, customers wishing to send small packages outside the EEA can contract other companies active in this area, (mainly freight forwarders but also ground-based operators like DPD, GLS, etc.), or get a shipment through postal operators and the Universal Postal Union network, including the Express Mail Service ("EMS").

#### 7.1.4.2. Express and deferred are sub segments of a wider extra-EEA market

##### 7.1.4.2.1. FedEx's view

- (110) FedEx firstly submits that compared to the intra-EEA services, there are no clear boundaries between express and deferred extra-EEA based on transit times.
- (111) In support of its view, FedEx provided the various transit times for each of TNT and its own extra-EEA services per type of service (notably express and economy express for TNT priority and economy for FedEx). The results are illustrated in Figure 2 and Figure 3.

#### **Figure 2: Transit time of TNT's extra-EEA services<sup>84</sup>**

[Confidential]

#### **Figure 3: Transit time of FedEx' extra-EEA services<sup>85</sup>**

[Confidential]

- (112) Based on the two charts, FedEx submits that the one-day boundary cannot be reasonably applied to define separate markets in the extra-EEA segment. Even more, FedEx submits that it is inherently difficult to establish any general time-definite rule on the basis of which "express" and "deferred" services can be distinguished from each other: whilst extra-EEA "priority" services are generally faster than "economy" services, both services are associated with the entire spectrum of possible transit times (from one to two days up to more than 10 days).
- (113) Second, and most importantly, FedEx submits that there is considerable scope for supply-side substitution between express and deferred services. According to FedEx, the infrastructure used by the integrators is largely the same for the two services,

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<sup>81</sup> See non-confidential version of the minutes of the meeting with UPS of 20 August 2015, paragraph 15; see also UPS's response to question 7 of the request for information of 1 September 2015.

<sup>82</sup> This DDI product is only available as a regional product mainly within the region Europe (business definition of Europe including countries such as Switzerland, Norway and Eastern European countries) and within the region Middle East. See DHL's response to question 8 of RFI of 27 August 2015, first part of response submitted on 4 September 2015.

<sup>83</sup> Offered mainly to and from Germany but also (for larger customers) from other countries.

<sup>84</sup> Source: FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision", page 16.

<sup>85</sup> Source: FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision", page 49.

which can be entirely explained by geography, whereby the distance involved on extra-EEA shipments requires long-haul airlift and, thus, passage through the integrator's hub located within the EEA.<sup>86</sup>

- (114) FedEx submits that extra-EEA traffic is essentially express-driven, with the same infrastructure being used to deliver both express and deferred extra-EEA shipments and therefore express and deferred extra-EEA small package delivery services should be part of the same market.
- (115) In this respect FedEx submits that, historically, deferred shipments were intended to make better use of the pre-existing express networks of integrators.
- (116) As explained by FedEx the "deferred" or "economy" service was introduced by FedEx after the 2009 crisis and positioned between express and air freight and sea freight. At the height of the economic crisis, many customers were forced to redesign their supply chains to drive down costs. As a result, the deferred offering was introduced and embraced by the market. Since then, deferred services have taken an increasing share of intercontinental revenue over the last five years and that share continues to grow. Nevertheless, the express segment is also growing.
- (117) As regards TNT, the extra-EEA deferred service was launched in the year 2000 as a high-end solution specifically to target air freight customers. FedEx explains that the one-stop-shop service and reliability of TNT was attractive compared to the offering of freight forwarders which at that time was still largely airport-to-airport rather than door-to-door. Due to the lower tariffs and proven reliability and continuity, the deferred service of TNT also started to appeal to express customers looking for a cheaper alternative.<sup>87 88</sup>
- (118) Furthermore, FedEx submits that prices for express and deferred extra-EEA services move [Confidential details on fedex's pricing patterns in relation to Extra-EEA services] therefore meaning express and deferred belong to the same market.
- (119) According to FedEx, since the time of the deferred introduction in 2009, with one single exception, it has only increased its list prices [Confidential].<sup>89</sup>
- (120) In FedEx's view, the evolution of its actual prices on extra-EEA express and deferred products also point to the same conclusion. As Figure 4 shows, the average actual prices obtained by FedEx for extra-EEA express and deferred services respectively exhibits [Confidential].

**Figure 4: Yield per lbs. generated by FedEx since 2011**

[Confidential]

Source: FedEx<sup>90</sup>

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<sup>86</sup> As the Commission's assessment focuses on the EEA rather than Europe as a whole, extra-EEA deliveries to the Rest of Europe can be an exception to this. For instance, deliveries to Switzerland can be done by truck and not necessarily via the air network for some EEA countries.

<sup>87</sup> At that time TNT already operated an extensive road network in Europe to provide intra-EEA deferred services. This network had been acquired through the acquisition of I.P.E.C. in 1983, owner of the Gelderse Overslag en Expeditiebedrijf in Duiven in 1979. In the Parties view, this can be considered the starting point of TNT's development of an extensive road network in Europe.

<sup>88</sup> FedEx response to question 28 of request for information QP12 of 19 August 2015.

<sup>89</sup> FedEx response to question 8 of request for information QP12 of 19 August 2015 - part II of response provided on 28 August 2015.

<sup>90</sup> Note: Figures since [...] when [Confidential information on fedex Extra-EEA deferred services].

- (121) TNT has also tried to mirror the trend analysis as provided by FedEx.<sup>91</sup> The comparison between the movements of deferred and express extra-EEA revenues collected by TNT are presented in Figure 5.

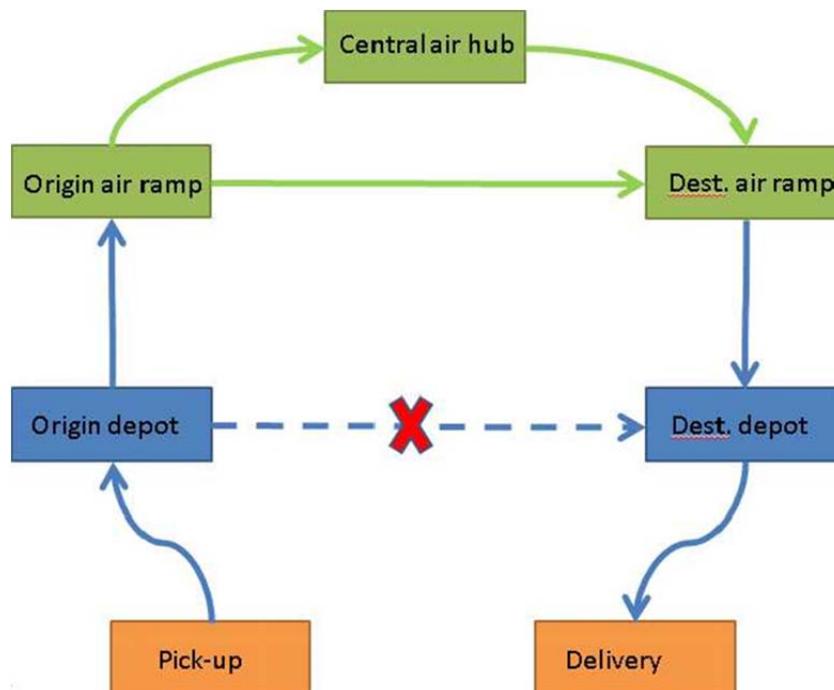
**Figure 5 – TNT price analysis graph**

[Confidential]

Source: TNT

- (122) Last, but not least, FedEx submits that such a supply-side overlap between the providers of those two services is purely operational: a supplier typically uses the same network to ship both express and deferred products. As presented in the chart provided by FedEx and reproduced in Figure 6, all the key stages of the extra-EEA delivery chain such as pick-up and delivery, line haul, sorting, ramp, and customs clearance are the same for the majority of express and deferred extra-EEA deliveries. To that end, FedEx submitted a number of internal documents and commissioned a test shipment as further proof of their claim.

**Figure 6: Extra-EEA small package delivery supply chain**



Source: FedEx

- (123) FedEx explains that the main reason why the same infrastructure is used for both extra-EEA express and deferred services is explained by geography: the distance involved demands long-haul airlift and thus passage through the integrator's hub.<sup>92</sup> Alternative modes of transportation (for example by road to Asia or by boat to the US) simply cannot offer a competitive transit time even for customers with deferred requirements or would be very costly.
- (124) For TNT, the last mile pick-up and delivery from the local depot is the same for express and deferred shipments. What further infrastructure is used for the shipment

<sup>91</sup> FedEx's Response to question 6 of request for information QP16 of 16 September 2015.

<sup>92</sup> Because of the Commission's focus on the EEA (rather than Europe as a whole), it is worth noting that extra-EEA deliveries to other European countries can be an exception to this.

of an express or deferred shipment depends on the available options. For an express shipment, TNT will use the fastest option to ship the package, which can be either by using TNT's own plane or by using capacity on third party plane. For a deferred shipment, TNT has more flexibility in choosing which intercontinental flight the package will travel on. It can be that a TNT express shipment and a TNT deferred shipment are transported on the same aircraft. In the country of destination, there can be an infrastructure difference between express and deferred shipments for TNT depending on the circumstances.

- (125) The cost structure of a particular shipment (express or deferred) will depend on the particular route and the available options to use capacity on that route. In general, the cost structure of offering deferred services may differ from that for express services because the former allows an operator to choose slower but cheaper ways of transportation. TNT's extra-EEA economy express parcels use the same depots (for pick-up and delivery) as express parcels. For the transportation from the depot onwards cheaper transport options can be selected where possible for the economy express service: road line haul to inter-continental gateway instead of airline haul; more consolidated day flight instead of more expensive first flight out; and cheap and early lodging (loading of aircraft) instead of express lodging.
- (126) FedEx submits that the cost of slowing the deferred package down would be trivial relative to all other costs associated with the shipment (for example: line haul, customs clearance and hub sort constituted [Confidential] of the total extra-EEA deferred expenses incurred by FedEx in 2014) and this is certainly not a key factor in FedEx's decision on whether to hold back on the package or not in order to create delays in transit time between express and deferred products. According to FedEx, PUD costs represent approximately [Confidential] of extra-EEA costs so therefore approximately [Confidential] of total costs are unlikely to be impacted by any slowing of the shipment. As a result, FedEx relies on the exact same network for the provision of both express and deferred services on extra-EEA shipments and this is true across all extra-EEA destinations. Furthermore, FedEx does not [Confidential information on FedEx's cost allocation].
- (127) First, in order to demonstrate that FedEx uses one and the same network for both express and deferred services, FedEx commissioned [Name of market research agency], an independent market research agency, to carry out a test shipment exercise to be conducted on its own network.<sup>93</sup> Based on this test, on all of the routes considered by this exercise, deferred packages were fully shipped through FedEx's express network (the information monitored includes the stations and depots where packages were sorted, the hubs and airline haul used, and which facility was responsible for the pick-up and delivery (namely a FedEx courier or an agent). More generally, the deferred and express packages were not only sent via the same network, but were in fact shipped largely over the same route, with only certain variations on the exact routing followed. Moreover, around [Confidential] of the deferred shipments made reached their destination before [Confidential] the quoted time, and roughly [Confidential] of them actually reached their destination on the very same day as the respective express shipment.

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<sup>93</sup> This first test comprised 60 shipments of 5kg packages - one express and one deferred shipment, on 30 selected extra-EEA routes (from the 2 EEA origins to 15 non-EEA destinations widely spread across the world, thereby covering the major trade lanes) during the first and second weeks of August 2015.

- (128) Second, FedEx relies on an additional test shipments exercise carried out by the same consultancy [name of market research agency] in order to compare the deferred services offered by the various players, including integrators and non-integrators. According to FedEx, the main finding of the exercise is that DHL is willing to give price discounts of (at least) 50% in order to sell its extra-EEA express service to a customer with modest extra-EEA deferred requirements, thereby effectively charging a price which is aligned with (and often below) that offered by rivals for their deferred products.
- (129) FedEx concludes that with the same network typically being used from start to end, the only difference between an extra- EEA express and a deferred service is therefore on the committed delivery time.

#### **7.1.4.2.2 Commission's assessment**

##### **A. No clear transit-time separator**

- (130) First, based on the information provided by the Parties<sup>94</sup> and on further information received from other market participants, the Commission finds that, contrary to what occurs in the intra-EEA market (see Section 7.1.3), the one-day boundary cannot be reasonably applied to define separate markets in the extra-EEA segment.
- (131) The Commission has analysed the various time-in-transit corresponding to the main offerings of the integrators (for both express and deferred extra-EEA small package delivery services)<sup>95</sup> and of other market participants.<sup>96</sup> Based on a number of destinations to selected countries<sup>97</sup>, only a very limited number of extra-EEA destinations can be serviced within the one-day time limit, even using the fastest possible delivery service. The minimum transit times for various destinations worldwide of the integrators are typically two or three days, depending on the destination. The only exceptions are destinations on the US East Coast such as New York, or countries bordering the EEA (for instance Switzerland, Turkey or Russia) for which the minimum time in transit is one day. The fact is explained by geography, whereby the distances for extra-EEA deliveries are significantly longer than those for intra-EEA deliveries. All consignments that travel intercontinentally need to pass via the air network of the integrators from the same single central EEA-air hub to the other continental destination hub and to spend additional time through customs clearance. Transit times of express and deferred services offered by the integrators for each of the major destination regions<sup>98</sup> also support this conclusion.
- (132) In its reply to the Commission's request for information including questions on the minimum time-in-transit for extra-EEA express and deferred services, UPS *"recommends that the Commission expand its coverage analysis to [Confidential] cities in order to gain a broader view of global commerce."* UPS considers that *"the [Confidential] cities in the original EC list represent only 17% of GDP and 5% of*

<sup>94</sup> See FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision", pages 14-16.

<sup>95</sup> See FedEx's response to questions 27 and 35 of request for information QP12 of 19 August 2015 (Part II of response) and corresponding Annex 12B; DHL's response to question 9 of the request for information of 1 September 2015 and corresponding Annex 4; UPS's response to questions 4 and 7 and of the request for information of 1 September 2015 and corresponding Annexes (3A and 3B).

<sup>96</sup> Response of UPS to RFI of 1 September 2015 response of DHL to RFI of 27 August 2015, other competitors response to questions 11 and 11.1 of questionnaire to competitors Q1, Q2 and R1.

<sup>97</sup> The Commission analysed a number of [Confidential] top-city destinations in [Confidential] countries on 5 out of 6 major trade lanes.

<sup>98</sup> FedEx's response to question 27 of request for information QP12 of 19 August 2015 and corresponding Annex 12A and 12B.

*the population*" and urges the Commission to expand its analysis. UPS submits that, based on the top cities ranked by GDP from Oxford Economics (excluding cities in Europe), there are many large cities that were overlooked by the Commission in its analysis of the transit times, such as [Confidential].<sup>99</sup> Therefore, UPS provided the data for a list of the top [Confidential] cities representing 25% of global GDP and 10% of the world's population.

- (133) In this respect, it is worth mentioning that the Commission selected those [Confidential] city destinations corresponding to the [Confidential] countries based on the first UPS submission concerning extra-EEA package delivery services.<sup>100</sup> According to this UPS submission, there are several large trade lanes where the Parties' combined revenue share exceeds 40% in the extra-EEA market. Based on the market shares provided by UPS in this first Logistics Capital & Strategy ("LCS") study, the Commission selected for further investigation those countries where the combined market share of the Parties exceeded 40% and where the increment which brought about the transaction was more than 5% for further investigation. In addition, USA was selected as well, given the strong position of FedEx in this country, despite an increment of less than 5% according to the first LCS Study.
- (134) In this context, the Commission considers that there is no need to increase the number of cities and respectively countries over the original selection mentioned in recital (131), as the further investigation of the extra-EEA small package delivery services was focused on the markets where the market position of the parties was significant. Furthermore, in particular as regards the market definition exercise, the Commission considers that the minimum time-in transit cannot be smaller for any destinations further from the country where the extra-EEA destination hub is located. Therefore, there is no need to increase the number of destinations based on GDP criteria as suggested by UPS. Moreover, the transit times provided by UPS for the additional cities do not contradict the Commission's findings according to which the one-day time limit is not appropriate for the definition of extra-EEA express services.
- (135) Second, it is inherently difficult to establish any general time-definite rule on the basis of which "express" and "economy" (or "deferred") services can be distinguished from each other: whilst extra-EEA "priority" services are generally faster than "economy" services, both services are associated with the entire spectrum of possible transit times (from one to two days up to more than 10 days). These findings are based on the Parties' time-in-transit data but there are no indications that the situation is any different for the other integrators.<sup>101</sup>
- (136) Third, the time difference between express and deferred extra-EEA delivery services is relatively small compared to the time difference between intra-EEA express and deferred delivery services.
- (137) This is explained mainly by the fact that for intercontinental shipments both express and deferred packages need to go through a long-haul air journey before reaching their destination (with the exception of extra-EEA shipments to the Rest of Europe).

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<sup>99</sup> UPS's response to question 4 and 7 of the request for information of 1 September 2015.

<sup>100</sup> Logistics Capital and Strategy Extra-EEA 2014 Market Share Assessment ("first LCS study") submitted by UPS on 10 July 2015, in particular pages 18-22.

<sup>101</sup> See, for instance, DHL's response to questions 10 and 11 of the request for information of 27 August 2015.

Furthermore, as DHL explains, extra-EEA always requires customs processes, which often requires one extra day of time-in-transit.<sup>102</sup>

- (138) This conclusion is also supported by the data provided by FedEx in the submission "Economic Response to the 6.1.c Decision" and presented in Table 1 for both Parties. Table 1 and 2 presents the express and deferred transit times for each of the Parties' services intra and extra-EEA. In relative terms, the transit time difference between "priority" and "economy" services is significantly smaller within extra-EEA routes (compared to intra-EEA routes), thereby further reducing the distinction between these two services.

**Table 1: Difference between average Express and Economy Express transit times for the Parties, intra- or extra-EEA services**

<b>TNT</b>	Express transit time (days)	Economy express transit time (days)	Absolute difference (days)	Relative difference (%)
Intra-EEA	[Confidential]	[Confidential]	[Confidential]	[Confidential]
Extra-EEA	[Confidential]	[Confidential]	[Confidential]	[Confidential]

Source: RBB Economics based on TNT's Global Transit Time

<b>FedEx</b>	Express transit time (days)	Economy express transit time (days)	Absolute difference (days)	Relative difference (%)
Intra-EEA	[Confidential]	[Confidential]	[Confidential]	[Confidential]
Extra-EEA	[Confidential]	[Confidential]	[Confidential]	[Confidential]

Source: RBB Economics based on FedEx's transit time data.<sup>103</sup>

- (139) The two data sets are not directly comparable firstly because the table above relating to FedEx's transit times is based on a different (and larger) selection of routes, and secondly because it does not take into account the time at which the delivery is made (all deliveries are assumed to be made by the end of the day), thereby "inflating" the average transit time associated with each service (and with the intra-EEA Express product most visibly). Nevertheless, they are both pointing to the fact that indeed, relative times between express and deferred small package deliveries are clearly smaller for extra-EEA services compared to intra-EEA services.

<sup>102</sup> See non-confidential version of DHL's letter "Extra-EEA Deferred Parcel Data" of 17 July 2015.

<sup>103</sup> The selection of routes has been made by taking the main two cities for every EEA origin country and every (EEA and non-EEA) destination country where FedEx is present (for intra-EEA and extra-EEA respectively). For those countries where FedEx only serves the main city, only such city has been selected.

- (140) In light of the reasons stated in this Section, the Commission finds that the distinction between express and deferred delivery services appears to be blurred for extra-EEA small package delivery services compared to intra-EEA delivery services, as no clear boundary on transit time can be established to separate between the two services.

### ***B. Demand-side substitutability***

- (141) The Commission has further analysed the demand-side substitutability between express and economy/deferred extra-EEA small package delivery services.
- (142) In terms of demand-side substitutability, a large number of customers attach great importance to the certainty that an extra-EEA small package will be delivered within a specific timeframe. Furthermore, the replies collected during the market investigation reveal that the competitive constraint that these express and deferred segments place on each other is asymmetrical. In the event of a relative price increase of the economy/deferred service, customers are more willing to switch from economy to express than vice-versa (a majority of respondents would not switch any of their current volumes from an express to a deferred extra-EEA small package delivery service; a large minority of respondents would not switch any of their volumes from a deferred to an express extra-EEA small package delivery service in case the event of a relative price increase).<sup>104</sup>
- (143) As noted by the Commission in *UPS/TNT*, the characteristics of the industry render a direct empirical implementation of the SSNIP test unsuitable.<sup>105</sup> In the small package industry, in the vast majority of cases the "price" that each customer pays is individually negotiated and, thus, for similar transactions, customers may pay different prices. The main consequence of this feature is that the willingness of certain customers to switch marginal volumes will have no implications on the prices paid by customers who would not switch (see recital (144)). In this context, attempting an empirical application of the SSNIP test does not appear to be suitable, while identifying product characteristics for which conditions of competition are homogeneous (that is to say, identifying groups of products for which a given set of suppliers are shown to be competitive alternatives for most customers) appears more appropriate.
- (144) As stated in the Horizontal Merger Guidelines<sup>106</sup>, the main purpose of market definition is to identify, in a systematic way, the immediate competitive constraints facing the merged entity. The Notice on market definition<sup>107</sup> further explains that the hypothetical monopolist test represents *one* way of assessing demand substitutability which can be viewed as a *speculative experiment*. Hence, while it remains a useful conceptual tool to focus the assessment on identifying the primary source of competition faced by two merging parties, it does not constitute a necessary test that the Commission should empirically implement for market definition purposes.
- (145) In view of the reasons stated in recitals (144) to (146), the Commission considers that there is no reason to deviate from this approach in this case.

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<sup>104</sup> See responses to questions 23-23.2 of the questionnaire to customers Q3 – Phase I, questions 15-15.2 of the questionnaire to customers Q4 – Phase I, responses to question 14 of questionnaire to customers R2 – Phase II.

<sup>105</sup> See *UPS/TNT*, recital 154.

<sup>106</sup> Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.02.2004), paragraph 10 ("Horizontal Merger Guidelines").

<sup>107</sup> Commission Notice on the definition of relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997), paragraph 15 ("Market Definition Notice").

- (146) In any event, even if demand side substitutability between express and deferred delivery services appears to be limited for a significant proportion of customers (see recital (144)), we note that a number of other elements point out towards a single market encompassing both express and deferred services, in particular supply-side substitutability. This aspect is further developed in recitals (149) – (181).

### ***C. Supply-side considerations***

- (147) All consignments that travel intercontinentally and that account for the vast majority of extra-EEA shipments need to pass through the air network of the integrators (save for those few non-EEA European countries that are easily reachable by road due to geographic proximity) from the same single central EEA-air hub, and through customs clearance, and are also under full control of the parcel provider throughout their entire journey with consequent well-defined transit times (for each origin-destination pair). This fact is entirely explained by geography, whereby the distance involved in extra-EEA shipments requires long-haul airlift and, thus, passage through the integrator's hub.
- (148) In its Market Definition Notice, the Commission highlights that even in those circumstances where demand-side substitution between two products is very limited, sufficient supply-side substitution between them may lead to a market definition comprising both products. More specifically, the Commission notes that: "*These situations typically arise when companies market a wide range of qualities or grades of one product; even if, for a given final customer or group of consumers, the different qualities are not substitutable, the different qualities will be grouped into one product market, provided that most of the suppliers are able to offer and sell the various qualities immediately and without the significant increases in costs [...]*".<sup>108</sup>
- (149) This consideration is particularly relevant in the case at hand for two reasons. First, for extra-EEA services, the "express" and "deferred" services constitute "*different qualities or grades of the same product*". Second, based on the information collected from market participants (both customers and competitors), all integrators provide extra-EEA express services and either provide deferred services or actively offer services that directly compete with the deferred services of the other integrators.

#### *Deferred shipments were devised to make use of express network*

- (150) The analysis of FedEx' internal documents reveals that FedEx started offering its deferred products in the beginning of 2009 in response to the financial crisis.<sup>109</sup> For instance, [Confidential information on Fedex internal presentation] to explain the rationale for launching intercontinental deferred services from EMEA (including the EEA)<sup>110</sup>, reveals that the objective of the launching of a deferred product, was to [Confidential information on Fedex internal presentation] The main benefits of this project included in particular the protection of [Confidential information on Fedex internal presentation] further demonstrates that the deferred product offering was launched on the assumption that the existing express network would be used for deferred deliveries.
- (151) FedEx states that it has never carried out a profile analysis of customers buying express and deferred services. However, an assessment of FedEx's sales data

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<sup>108</sup> Market Definition Notice, paragraph 21 (OJ C 372, 9.12.1997).

<sup>109</sup> FedEx response to question 28 of request for information QP12 of 19 August 2015.

<sup>110</sup> FedEx response to request for information QP12 of 19 August 2015, [Confidential information on Fedex internal presentation].

indicates that approximately [Confidential] of FedEx's extra-EEA deferred revenues are accounted for by customers that also purchase extra-EEA express services from FedEx. Furthermore, with respect to customers that purchase both extra-EEA express and deferred services from FedEx, [Confidential] of their overall expenditure on extra-EEA services sourced from FedEx. This points towards the existence of a large degree of overlap between customers purchasing these extra-EEA products from FedEx and therefore supports the argument that all extra-EEA services (including express and deferred) should be considered together in the same market definition (furthermore this also supports the conclusion that extra-EEA services should not be segmented by region or lane as discussed later in Section 7.1.4.3).<sup>111</sup>

- (152) TNT also submits that it has no internal documents on its commercial strategy that clearly distinguish between express and deferred products. Nevertheless, TNT does not believe that there is a difference in the profile of customers using express versus deferred services. Similarly to the FedEx data, an assessment of TNT's sales data indicates that approximately [Confidential] of TNT's extra-EEA deferred revenues are accounted for by customers who also purchase extra-EEA express. Further, with respect to customers that purchase both extra-EEA express and deferred services from TNT, [Confidential] of TNT's extra-EEA deferred revenues are generated by those customers for whom extra-EEA express services account for [Confidential] of their overall expenses on extra-EEA services sourced from TNT.<sup>112</sup>
- (153) The Parties submit that the deferred product appeals to express customers searching for a cheaper alternative (guaranteed delivery on a certain time or day, track&trace, etc.). It also appeals to freight forwarding customers looking for slightly more certainty (for instance guaranteed delivery on a defined time or day, track&trace, etc.). FedEx explains that as a response to the extra-EEA deferred service, most freight forwarders have also started offering a more high-end, door-to-door service in addition to their traditional airport-to-airport services. FedEx submits that extra-EEA traffic is essentially express-driven, with the same infrastructure being used to deliver both express and deferred extra-EEA shipments and that the difference between extra-EEA express and deferred is the price differential with deferred prices within a range below the express product. While the various decks submitted in response to Section 5(4) of the Form CO, do distinguish between International Priority ("IP" and International Economy ("IE"), FedEx explains that this split is only in the context of reporting revenue breakdown.
- (154) Certain internal documents validate the lack of differentiated strategy of FedEx, such as [Confidential details on the lack of differentiation between intercontinental express and deferred, and excerpts from FedEx's internal documents].<sup>113</sup>
- (155) The market investigation revealed that a majority of the customers that responded to the in-depth market investigation buy both express and deferred extra-EEA services.<sup>114</sup> A majority of customers also confirmed that they do not select providers offering different types of small package deliveries (express and deferred/economy, small package and freight, etc.) over providers specialising only in one type of

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<sup>111</sup> FedEx response to question 30 of request for information QP12 of 19 August 2015.

<sup>112</sup> FedEx's response to question 30 of request for information QP12 of 19 August 2015.

<sup>113</sup> FedEx's response to question 35 of QP12 of 19 August 2015, [Confidential information on FedEx's internal presentation].

<sup>114</sup> See responses to question 11 of questionnaire to customers R2 – Phase II and to questions 2, 15 and 16 of R3 – Phase II.

deliveries (for instance deferred).<sup>115</sup> Furthermore, a majority of those who negotiate discounts on basis of volumes confirmed that they do that on the basis of the total volume across destinations and services, and do not negotiate separately for express or deferred shipments.<sup>116</sup> Therefore entitlement to a discount based on thresholds of the value and volume of business does not restrict the discount by reference to whether the value and volume of business is achieved with express or deferred shipments. These findings confirm a large degree of overlap between customers purchasing express and deferred extra-EEA services. Furthermore, the large degree of overlap between customers purchasing both extra-EEA express and deferred products from each of the Parties is also consistent with FedEx's claim that it has no separate commercial strategy for the two types of products on an extra-EEA basis.<sup>117</sup>

*Pricing strategy of deferred and express*

- (156) FedEx claims that an additional reason why deferred and express belong to the same market is that [Confidential].<sup>118</sup>
- (157) FedEx internal documents shed light on how the prices for extra-EEA deferred services have been and remain linked to the prices of extra-EEA express services. For instance, [Confidential information on Fedex internal presentation]<sup>119 120</sup>
- (158) Another internal document of FedEx reveals that [Confidential details on the methodology used to set prices for extra-EEA deferred services, and excerpts from FedEx's internal documents]<sup>121</sup>
- (159) In conclusion, and as reflected in Figure 4 in recital (120), the information provided by FedEx on prices, as proven by its internal documents suggests that there is [Confidential details on Fedex's pricing patterns in relation to extra-eea services].
- (160) As regards TNT, the Commission notes that the price analysis upon which the results in Figure 5, in recital (121), are based is subject to a caveat stemming from the fact that it was based on both intra-EEA and extra-EEA volumes. In addition, the trend line presented in Figure 5 in recital (121), should be interpreted with caution for a number of reasons linked to the underlying assumptions of the model. First, the mix between invoicing countries is assumed to be fixed, while it is known that for example the Eastern European countries have become relatively more important in comparison to the Central and Nordic European countries. A key part of this difference can already be explained by the differences in GDP growth. Second, the analysis also assumes a constant mix of shipping profiles / traffic lanes. However, as long distance deliveries attract higher revenues than short distance deliveries, any

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<sup>115</sup> See responses to question 16 of questionnaire to customers R2 – Phase II and to questions 2, 15 and 16 of R3 – Phase II.

<sup>116</sup> See responses to question 18 of questionnaire to customers R2 – Phase II and to question 18 of R3 – Phase II.

<sup>117</sup> FedEx's response to questions 30 and 35 of request for information QP12 of 19 August 2015 (part II submitted on 28 August 2015)

<sup>118</sup> FedEx's response to question 8 of request for information QP12 of 19 August 2015 (part II submitted on 28 August 2015) and response to question 36 of request for information QP 12 of 19 August 2015 (part I submitted on 26 August 2015).

<sup>119</sup> FedEx's Response to question 36 of request for information QP12 of 19 August 2015 – [Confidential information on Fedex internal presentation].

<sup>120</sup> [Confidential details on the methodology used to set prices for extra-EEA deferred services, and excerpts from FedEx's internal documents].

<sup>121</sup> FedEx's response to question 28 of QP12 of 19 August 2015 [Confidential information on Fedex internal presentation].

change in the mix for TNT may have an impact on average revenue/kg. Third, both Express (9h00, 10h30 and 12h) and Deferred (12h) deliveries have morning delivery options. The analysis assumes that the mix of these options in TNT's sales is constant. Fourth, the revenue includes all options and surcharges, even though for example the price of fuel has not remained constant over the past 10 years. Based on all these factors, the price movements presented in Figure 5 for TNT cannot be considered as evidence to support the express/deferred pricing relationship.

- (161) The Commission notes that a similar argument with regard to prices is made by UPS. According to UPS, "[l]ist prices for express and deferred extra-EEA move together which speaks in favour of express and deferred extra-EEA services being segments of the same (integrators) market".<sup>122</sup>
- (162) Although the Commission considers that the [Confidential details on Fedex's pricing patterns in relation to extra-eea services] does not necessarily provide sound evidence that the products are in the same market, the absence of such [Confidential details on Fedex's pricing patterns in relation to extra-eea services] would have been indicative that the two products are not in the same market. In this respect, [Confidential details on Fedex's pricing patterns in relation to extra-eea services] and UPS's statement are consistent with the hypothesis that express and deferred belong to the same extra-EEA market.

*Express and deferred largely use the same extra-EEA network*

- (163) As stated in recitals (114) to (115), FedEx submits that extra-EEA traffic is essentially express-driven.
- (164) Based on the information submitted by the Parties and additional information collected from the market, the Commission finds that both Parties each use one and the same network for the provision of both express and deferred services.
- (165) Specifically, on the basis of results of the test shipments undertaken by FedEx<sup>123</sup> and referred to in recital (127), it is clear that all the key stages of the extra-EEA delivery chain such as pick-up and delivery haul, sorting, ramp and customs clearance are the same for the majority of express and deferred extra-EEA deliveries. The test shipment exercise has also confirmed that there are indeed two main ways through which an integrator can delay a shipment to effectively "convert" it into a deferred service, namely storing the package and using a slightly different routing.
- (166) UPS also acknowledged to deliberately "slow down" the shipments but it eventually uses the same network for the provision of both their express and their expedited (deferred) product.
- (167) DHL also confirms that extra-EEA deferred delivery usually includes an air uplift to and from the EEA, hence the relative cost difference between express and deferred is much lower than intra-EEA, where deferred is completely road based.
- (168) For example, a package can be held back at the origin country or at the air hub when shipped on deferred services. An alternative way to differentiate between express and deferred services is for the deferred package to do more domestic line haul trucking than in the case of express services. That is to say, operators may substitute domestic "air" transportation by domestic "road" transportation when it comes to deferred

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<sup>122</sup> Minutes of Meeting with UPS of 20 August 2015.

<sup>123</sup> FedEx's submission "FedEx/TNT: further assessment of market definition issues involving extra-EEA services" of 31 August 2015, pages 9-11.

shipments to certain destinations. In particular, an express package being sent from the EEA to somewhere in the US may require a domestic flight after reaching the international hub of the operator in the US, whilst the operator could arrange for a deferred package to do the last leg of the route via road.<sup>124</sup>

- (169) In line with the FedEx claim, UPS and DHL also confirmed that for extra-EEA international shipments, it makes no sense to distinguish between express and deferred because the same infrastructure is used for all parcels.
- (170) UPS also uses the same network for all types of extra-EEA small package deliveries, however the routing may differ between express and deferred. All small extra-EEA packages are transported via UPS's air network closer to the destination and from there are transferred via the ground network. UPS operates 700 planes, 250 of which are owned. Out of the EEA, it operates three daily flights to the US and usually a single flight to other destinations across the world. Differences in the delivery-times may be due to loading on earlier planes, planes flying directly to the delivery-destination or priority handling rights; given the scale of its activity, UPS has some flexibility and can for example load less freight on a flight to have more capacity for express small packages. On the other hand, services can be slowed down since packages might be held back, for example the last leg may be done through the road network in the EEA, stored somewhere if delivery trucks have no more capacity or merely delayed at the hub closest to destination. Against this background, deferred extra-EEA services may at times be more costly than express. In any case, there is also a marketing component to the time in transit difference between express and deferred products, as UPS tries to preserve the premium charged on the express service.<sup>125</sup>
- (171) Specifically, concerning the distinction between extra-EEA express and deferred services, UPS explains that it seeks to price these services "according to their value and cost of provision. Preserving some degree of segmentation is an objective, meaning that UPS aims to avoid where possible supplying a premium service when an inferior service option has been selected and charged." UPS considers this as "more 'segregation' than 'segmentation' and explains that it is being achieved in multiple ways "ranging from different operational routing to simply aging packages in facilities or even on road."
- (172) According to UPS, "the distinction between economy and express is too small to consider them separate markets. Deferred products are segments within the integrators' market place."<sup>126</sup>
- (173) DHL initially submitted that in offering deferred services of the same quality as provided by the other integrators, different operational structures need to be put in place than for express services (trucking on the other end of the extra-EEA route), thereby suggesting that supply side substitutability would also be limited. Nevertheless, according to the [Name of market research agency] test shipment on behalf of FedEx, "when approached by a new customer, DHL is willing to give price discounts of (at least) 50% in order to sell its extra-EEA express service to a customer with small extra-EEA deferred requirements, thereby effectively charging a price which is aligned with (and often below) that offered by rivals for their deferred products." Following further RFIs during the in-depth investigation, DHL confirmed

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<sup>124</sup> [Confidential].

<sup>125</sup> See Minutes of meeting with UPS of 20 August 2015, paragraphs 16 and 17.

<sup>126</sup> See Minutes of meeting with UPS of 20 August 2015, paragraph 15 and 20.

that "[Confidential]." Finally, DHL confirmed that their express product competes with the deferred product of the other integrators, [Confidential].<sup>127</sup>

- (174) DHL believes there is no separate market for deferred extra-EEA shipments. Consequently, DHL only offers express services for extra-EEA shipments. A number of DHL's internal documents and investors' presentations validate DHL's strong focus on the express service.<sup>128</sup> As for the extra-EEA market, the express product is competing with the respective so-called "deferred" offerings and "a variety of customers, with many different profiles, use the express service for extra-EEA shipments".<sup>129</sup>
- (175) When shipping extra-EEA parcels, a majority of customers consulted during the market investigation confirmed that they are also looking for high quality features for deferred services (reliability, track&trace, customer service, customs clearance, etc.) and that generally, the main difference between an extra-EEA express and a deferred service is the committed delivery time and hence, the price.
- (176) Based on the various responses from the integrators, there are two main ways through which this time difference is created in the industry. The first way is by using the exact same network from beginning to end but storing the deferred package in one (or more) of the stages on the way to destination (for instance loading the package in a next flight when capacity is filled with express parcels).<sup>130</sup> The second way is for the deferred package to follow a slightly different routing, mainly at the later stages of the shipment delivery - when it comes to deferred shipments, instead of storing the package, the operator may feed the package through a slightly slower route combination (for example by using a different international hub), or substitute domestic air transportation by domestic road transportation.
- (177) The shipment test submitted by FedEx has revealed that [Confidential] of the deferred shipments considered reached their destination before [Confidential] the quoted time. Moreover, [Confidential] of the deferred shipments considered actually reached their destination on the very same day as the respective express shipment.
- (178) In the light of the reasons stated in recitals (166) to (179), the Commission concludes that the various set-ups of the integrators provide considerable scope for supply-side substitution. All integrators use the same network to ship both express and deferred products. All the key stages of the extra-EEA delivery chain such as pick-up and delivery, line haul, sorting, ramp, and customs clearance are the same for express and deferred extra-EEA deliveries (with some exceptions for the extra-EEA deliveries to the rest of Europe). This is a strong factor that militates for one overall extra-EEA market encompassing both express and deferred services. By contrast, the operational functioning behind intra-EEA express and deferred services differs considerably.

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<sup>127</sup> Minutes of call with DHL of 20 August 2015, paragraph 16.

<sup>128</sup> DHL's response to question 17 of RFI of 27 August 2015, first part of response submitted on 4 September; Annex 8 – "DHL Capital Markets Day 2014", Annex 9 – "DHL CMD 2012 Express".

<sup>129</sup> DHL's response to question 19 of the request for information of 27 August 2015, first part of response submitted on 4 September 2015.

<sup>130</sup> This does not necessarily have to be done "deliberately". For example, to the extent that there is no spare capacity on a given plane or truck (or there is capacity but it can be sold to other players), the operator may choose (time permitting) not to load the deferred package on that plane or truck and wait for it to be shipped in the next iteration.

- (179) Therefore, for the purpose of this case it is inappropriate to consider express and deferred extra-EEA services by integrators which operate end-to-end networks as separate markets.

#### **7.1.4.2.3. Conclusion**

- (180) In conclusion, the Commission considers that it is not necessary to distinguish here between express and deferred services. Consequently, this Decision will analyse the impact of the Transaction on a wider market for extra-EEA services encompassing both express and deferred small package delivery service with an origin in the EEA.

#### **7.1.4.3. Segmentation of extra-EEA small package delivery services by major destination lane**

- (181) The Commission has further considered whether the market for extra-EEA small package delivery services should be further segmented by major destination lane in line with the location of the players' major international air hubs, namely to North America, to South America, to the rest of Europe, to Africa, to the Middle East and to Asia/Pacific. Moreover, UPS has submitted an analysis of delivery services to a number of major country destinations, comprising the [Confidential: list of countries].

#### **7.1.4.3.1. FedEx's view**

- (182) FedEx argues that the markets for extra-EEA delivery services should not be further segmented into regions and that separate narrower markets should not be defined for a number of reasons.
- (183) According to FedEx, first, such an approach would be inconsistent with the approach taken in relation to intra-EEA markets, where no distinction is made as regards the specific lane or destination (such as for deliveries to Southern Europe, Northern Europe or to a specific country). Second, whilst it is true that from a demand-side perspective, customers require a service provider to offer services to a specific region or destination, most if not all operators are able to offer global shipping solutions, either directly or through partnerships or agreements with other service providers in the relevant region. Third, FedEx [Confidential details on the way Fedex manages its extra-EEA services business], which indicates that from an industry perspective such lanes should not be considered as separate markets. Finally, most of the Parties' extra-EEA activities are directed towards North America and to Asia. FedEx considers that the data submitted in the Form CO shows that the Transaction would not raise competition concerns in any hypothetical regional sub-segment. Accordingly, it would be inappropriate to further distinguish extra-EEA markets on a regional trade lane basis.
- (184) More specifically, FedEx argues that there is supply-side substitutability between the different lanes considered. Competitors provide a global service and the supply options available to customers do not differ across lanes. All integrators offer delivery services on the majority, if not all, extra-EEA routes and they do so at similar prices and quality conditions.
- (185) First, transit times offered by the integrators from Belgium to [Confidential] selected destinations in the Middle East, Australia, Latin America, North America and the rest

of Europe are essentially equivalent on the different extra-EEA routes.<sup>131</sup> Second, the integrators' official list prices posted online on a selection of routes to specific countries are broadly similar.<sup>132</sup> For example, despite the fact that DHL and TNT are somewhat less used for deliveries to the US, they offer similar list prices to those offered by FedEx and UPS. Third, as explained in the introductory part describing the extra-EEA delivery services, all integrators offer the same service features, for example insurance, track&trace, customs clearance. Consequently, both from a quality and a pricing perspective, there is ample room for supply-side substitution across extra-EEA lanes.

- (186) Moreover, expansion to offering additional extra-EEA lanes is easy. Both integrators and other players regularly use third party service providers where required to outsource operational structure. [Confidential details on TNT's inability to fully service outside the EEA with its own network assets and its reliance on commercial airlines and local partnerships]. Therefore, from a supply-side perspective, it is relatively easy for a competitor to expand its extra-EEA service offering to other non-EEA countries by entering into contractual arrangements with third party suppliers.
- (187) From a demand-side perspective, FedEx submits that customers do not have just one shipment. They ship multiple items to multiple destinations at the same time and throughout the course of the year.<sup>133</sup>
- (188) If a customer is purchasing extra-EEA services across lanes in a bundle together, it will take its purchasing decision based on the conditions (for example price) offered by suppliers regarding the entire set of lanes it requires, rather than on the conditions offered for one lane in particular. FedEx claims that, based on its sales data, the majority of its business opportunities were identified by FedEx's sales people as worldwide. Further, according to FedEx, the Parties' transaction data show that the large majority of extra-EEA express revenues of the parties are generated by customers who purchase from them on more than one lane. A proportion of revenue is associated with customers that purchase services on all of the six trade lanes. FedEx concludes that it is therefore important to make a distinction between the demand for a parcel delivery service for a given shipment and a customer's overall demand for extra-EEA parcel delivery services

#### **7.1.4.3.2. Commission's assessment**

- (189) The Commission found that the market investigation in Phase I was inconclusive as to whether extra-EEA delivery services should be further sub-segmented on the basis of destination. Some respondents suggested that the market should be defined as world-wide, whereas others believe that a distinction should indeed be made by continent, group of countries or in some cases, even individual countries (such as India or Brazil). As explained below, UPS went even further and even suggested an assessment even based on major city destinations.
- (190) In terms of demand-side substitutability, for a customer that wants to ship a small package to a specific region of the world, other regions cannot represent substitutable alternatives. Therefore, small package delivery services to the six main destination

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<sup>131</sup> FedEx's submission "*FedEx/TNT: further assessment of market definition issues involving extra-EEA services*" of 31 August 2015, Subsection 3.1.

<sup>132</sup> Ibid.

<sup>133</sup> See FedEx's Response to the Decision opening proceedings, page 11 and FedEx's submission "*FedEx/TNT: Economic Response to the 6(1)(c) Decision*", pages 19-21.

lanes of North America, South America, the rest of Europe, Africa, the Middle East and the Asia/Pacific region are not substitutes for each other from a demand-side perspective. Regarding FedEx's argument that customers do not have just one shipment and will take their purchasing decisions based on the offers for the entire set of lanes they require, the Parties' sales data<sup>134</sup> shows that around [Confidential] of FedEx's customers and [Confidential] of TNT's customers in the EEA [Confidential] ship small packages to one of the six destination lanes. Around [Confidential] of FedEx's and [Confidential] of TNT's customers respectively [Confidential] ship small packages to a maximum two of these destination lanes. [Confidential] of FedEx's and [Confidential] of TNT's customers ship small packages to all six destination lanes identified. Hence, the majority of the Parties' customers do not require services for the range of different destinations.

- (191) As far as FedEx's arguments relating to supply-side substitutability are concerned, first, all integrators are able to offer global shipping solutions either directly or through partnerships or agreements with other service providers in the relevant region. Irrespective of the destination of the delivery, the services offered by the integrators cover the same standards in terms of reliability, assured transit time, speed of delivery, door-to-door transportation, global coverage, customs clearance and provision of additional services such as track&trace capabilities, insurance and specialised services.
- (192) Second, a majority of small package companies participating in the Commission's market investigation consider that competition takes place on a global basis, and a global presence is necessary to compete, "*so there is one market for the whole world*".<sup>135</sup> A proportion of customers use one and the same small package delivery service provider for deliveries on several or all lanes.
- (193) Nevertheless, a certain degree of lane "specialisation" appears to exist in the market.
- (194) First, this is illustrated by the fact that the presence in terms of the revenue share of a given integrator on different destination lanes can differ considerably. For instance, based on the results of the market reconstruction, TNT had a 2014 revenue share of [0-5]% in North America, but a share of [10-20]% regarding delivery services to the Asia/Pacific region and a [10-20]% share regarding delivery services to the Middle East. DHL had a 2014 revenue share of [60-70]% to Africa and [20-30]% to North America.
- (195) Second, market participants confirm that the service provided by a small package company on one trade lane may be stronger compared to its competitors than the service provided on another lane. The large majority of customers replying to the Commission's market investigation stated that they multisource their extra-EEA delivery services.<sup>136</sup> For instance, [Name of Parties' customer] explains: "*We use mainly TNT, because their service level, price and customer service is currently best. But sometimes, we have to use UPS especially in USA, and occasionally in Asia, because they have better coverage there.*"<sup>137</sup> And [Name of Parties' customer] replies

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<sup>134</sup> FedEx' response to question 10 of request for information QP18 of 6 October 2015 and corresponding Confidential Annex 3.

<sup>135</sup> See responses to question 19 of questionnaire to competitors R1 – Phase II.

<sup>136</sup> See responses to question 24 of questionnaire to customers R2 - Phase II and responses to question 8 and 21 of questionnaire to customers Q3 - Phase I.

<sup>137</sup> See [Name of Parties' customer] non-confidential response to question 24 of questionnaire to customers R2 - Phase II.

that they multisource "[b]ecause all providers offer different prices for different weight and destination. So we are able to choose the cheapest one. The others are able to do certain countries better than others". Most respondents gave as a reason that their wish to pick the cheapest provider for each destination (region/continent) or the provider with the best coverage as a reason.<sup>138</sup> For instance, [Name of Parties' customer] explains that "[e]ach provider specialises on certain destination with positive effect on service and tariff",<sup>139</sup> [Name of Parties' customer] states that "we want to pick and choose the provider with the best lead times for each geography",<sup>140</sup> and [Name of Parties' customer] considers that "[c]ertain providers operate faster in other geographical areas so we use them there and others elsewhere."<sup>141</sup>

- (196) The majority of respondents to the market investigation replied that they have different service providers for extra-EEA delivery services depending on the destination of the small package.<sup>142</sup> Whilst UPS and FedEx are the respondents' preferred providers for deliveries to North America, DHL is the customers' favourite choice for deliveries to the Asia/Pacific region.<sup>143</sup> Customers with more than one extra-EEA delivery services provider indicated that they use one for each continent/region stating, for instance that they "use the best provider per destination, based on price, geographical coverage and reliability"<sup>144</sup>, "use for each region /continent the compatible provider"<sup>145</sup> or that they select their provider "based on best capability in destination country. e.g. local (inhouse) brokerage, own network vs. sub-contractors"<sup>146</sup>. [Name of Parties' customer] summarised its procurement policy as follows: "We use a single provider for each destination country and service level as we choose to work with only the best option (from a price, lead time, coverage and required services) so as to simplify the process."<sup>147</sup>
- (197) Third, the integrators' offers on the different lanes are not fully interchangeable. Speed of delivery is of considerable importance for the vast majority of customers<sup>148</sup> and transit times per extra-EEA destination differ between the integrators. For instance, the very location of the regional hub can offer an important advantage as to the speed of delivery (for both express and deferred services) for a particular trade lane. The closer the delivery origin/destination is to an integrator's regional hub, there will be less times in transit for that integrator for that particular trade lane. Furthermore, transit times may be longer when using third party capacity due to less

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<sup>138</sup> See responses to question 25 of questionnaire to customers R2 - Phase II.

<sup>139</sup> [Name of Parties' customer] non-confidential response to question 25.1 of questionnaire to customers R2 - Phase II.

<sup>140</sup> [Name of Parties' customer] non-confidential response to question 25.1 of questionnaire to customers R2 - Phase II.

<sup>141</sup> [Name of Parties' customer] non-confidential response to question 25.1 of questionnaire to customers R2 - Phase II.

<sup>142</sup> See responses to question 21 of questionnaire to customers Q3 – Phase I.

<sup>143</sup> See responses to question 21.1 of questionnaire to customers Q3- Phase I.

<sup>144</sup> [Name of Parties' customer] non-confidential response to question 27.1 of questionnaire to customers R2 - Phase II.

<sup>145</sup> [Name of Parties' customer] non-confidential response to question 27.1 of questionnaire to customers R2 - Phase II.

<sup>146</sup> [Name of Parties' customer] non-confidential response to question 27.1 of questionnaire to customers R2 - Phase II.

<sup>147</sup> [Name of Parties' customer] non-confidential response to question 27.1 of questionnaire to customers R2 - Phase II.

<sup>148</sup> See responses to question 13.1 of questionnaire to customers R2 - Phase II.

optimal connectivity.<sup>149</sup> Consequently, depending on the level of integration on a given origin-destination pair, the transit time an integrator can offer will be different. FedEx has submitted an overview of transit times offered by the integrators for extra-EEA deliveries from Belgium.<sup>150</sup> Out of the 38 destinations selected for further investigation (see recital (131)), express service transit times are only equal for all four integrators in seven of them, namely destinations in the Middle East (Dubai), Asia (Bangalore, New Delhi, Singapore), North America (New York) and Switzerland. Transit times of at least one integrator differ in most destinations, namely in North America (ten destinations), in South America (both destinations selected), in Asia (twelve destinations), Rest of Europe (four destinations), Australia (all three destinations selected). For the majority of the destinations listed, the difference in transit times for express services amount to one day. Differences in transit times between the integrators' offers are more pronounced as regards economy/deferred delivery services. This difference varies on average between one and three days, whereas the difference between the fastest offer and the slowest offer on a given lane can vary from one to five days.<sup>151</sup>

- (198) In any event, for the purpose of this Decision, it can be left open whether the relevant product market covers all extra-EEA deliveries irrespective of the destination, namely the world, or whether extra-EEA delivery services should be segmented according to the destination trade lane/continent since no competition concerns arise under any alternative market definition.
- (199) UPS submits that *"at least for certain very large countries, the relevant market should be that specific country rather than the region"*. In this respect, UPS indicates [Confidential] as countries where a significant domestic delivery network is required for a company to be competitive in the international market in that country.<sup>152</sup> Further to that, in a subsequent UPS submission, the lane share data was assembled by origin country and destination city (*"the markets to be tested are lane based, with the current set defined by 29 EEA origin countries and [Confidential] destination cities"*).<sup>153</sup>
- (200) The majority of competitors consulted during the in-depth investigation consider that, as regards extra-EEA delivery services, competition between the providers takes place on a global basis, in the sense that a global presence is necessary to compete for the provision of these services. A significant part (one-third) nevertheless sees competition more or less on a regional basis, whereby operators present in one of the six world regions compete for services in that region. Only a very small minority would consider geographic scope on the basis of a large country or group of

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<sup>149</sup> See slide deck submitted by FedEx as Annex 6 of the response to request for information QP16 of 16 September 2015 and response to question 7 of request for information QP 18 of 6 October 2015.

<sup>150</sup> See FedEx's submission, *"FedEx/TNT: further assessment of market definition issues involving extra-EEA"*, of 31 August 2015, Figure 4.

<sup>151</sup> FedEx's response to request for information QP 12 of 19 August 2015, Annex 12B. As an exception, the maximum transit time difference for the extra-EEA Rest of Europe is [Confidential], but that can be explained by geography, and the fact that deferred packages to non-EEA European countries are sent out by road. [Confidential].

<sup>152</sup> See UPS's submission *"Further Observations of UPS of 30 September 2015"*, paragraph 3.21.

<sup>153</sup> See UPS's submissions based on commissioned studies to Logistics Capital and Strategy consultancy – LCS – Extra-EEA Small Package Market Assessment Summary Report of 17 July 2015 and LCS-Extra-EEA Market Concentration and Price Analysis of 15 October 2015.

countries (such as [Confidential])<sup>154</sup>, as was argued by UPS in their various submissions.

- (201) The Commission considers that a more granular segmentation by major country destination is not appropriate, even less so by major city destination. In relation to extra-EEA delivery services, the determining factor enabling small package delivery service providers to comply with customers' demand for reliable and speedy delivery services is a functioning air infrastructure including an air lift network and air hubs in the different regions of the world, namely in Europe, in the Americas, in the Asia/Pacific region, in the Middle East and in Africa. Indeed, the Parties are not assessing their and competitors' performance and strategy regarding extra-EEA delivery services on a granular country-by-country basis but based on the location of these central air hubs. This is illustrated by internal documents submitted by the Parties as well as by UPS.<sup>155</sup> For instance, a TNT slide deck notes [Confidential details on TNT's transit time and service performance]<sup>156</sup>

#### **7.1.4.3.3. Conclusion**

- (202) Therefore, for the purpose of this Decision, the Commission will carry out its assessment of the extra-EEA deliveries with origin in one EEA country (see Section 7.2.2 on geographic market definition) on both levels, first in relation to all extra-EEA deliveries irrespective of the destination and secondly in relation to 6 destination continents or trade lanes.

#### **7.1.5. Conclusion on the relevant product markets**

- (203) In conclusion, for the purposes of this Decision, the Commission concludes that there is a separate product market for international intra-EEA express small package express delivery services as well as a separate product market for extra-EEA small package delivery services comprising both express and economy delivery services offered by the integrators. Furthermore, as regards extra-EEA small package delivery services, it can be left open whether the market needs to be separated into all extra-EEA deliveries irrespective of the destination (world) and in deliveries to six destination continents or trade lanes.

### **7.2. Relevant geographic markets**

- (204) FedEx initially submitted that *UPS/TNT* constitutes the general basis for its analysis of the market and that it did not contest the market definition therein. Subsequently, in reply to the Commissions' findings in the Decision opening proceedings, FedEx made a series of submissions with respect to the Extra-EEA small package delivery services. In the light of the different supply-side findings related to the relevant product markets for each of intra-EEA and extra-EEA small package delivery markets (see Sections 7.1.3 and 7.1.4), the relevant geographic markets will be discussed separately for each of these two international small package delivery services.

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<sup>154</sup> Responses to question 19 of questionnaire to competitors R1 – Phase II.

<sup>155</sup> See for example UPS's response to request for information dated 1 September 2015, Annexes 11 and 14.

<sup>156</sup> FedEx's response to request for information QP16 of 16 September 2015, Annex 6, slide 17.

## 7.2.1. International intra-EEA express small package delivery services

### 7.2.1.1. FedEx's view

(205) In *UPS/TNT*, the geographic scope of the markets for small package delivery services and any sub-segmentation thereof was considered national.<sup>157</sup> FedEx nevertheless noted that in *UPS/TNT*, "in view of the network feature of the industry and the presence of customers with needs that span across multiple countries an integrated EEA-wide competitive assessment was also carried out".<sup>158</sup>

### 7.2.1.2. Commission's assessment

(206) In its decisional practice, the Commission has consistently considered that the markets for the provision of small package delivery services are likely national, identifying however that there could be a tendency towards broader markets.<sup>159</sup>

(207) In *UPS/TNT*, the Commission assessed again the geographic delineation of this market, as well as its narrower segmentations, concluding that it should be considered national, because contracts are negotiated at a national level and a national presence (for example infrastructure, client contracts, sales force) is required in order to effectively compete for the provision of small package delivery services in a certain country.<sup>160</sup> However, as noted by FedEx, the Commission acknowledged the network effect of the market for the provision of international intra-EEA small package deliveries and assessed the impact of that transaction also on an EEA-wide level.

(208) The outcome of the Commission's market investigation also indicates that from a demand-side perspective, the markets for the provision of small package delivery services are of a national dimension, as customers responding to the market investigation point out that they are not likely to consider providers without a local presence when selecting their supplier.<sup>161</sup>

(209) FedEx argues that at least some customers are willing to enter into framework contracts covering all their small package deliveries, irrespective of their origin and destination and they are not focusing on the providers active in specific markets.<sup>162</sup> However, the Commission notes that even in the case of customers with international framework contracts who generally multisource extra-EEA small package delivery services (see recital (197)), the specific decision as to which provider to use is often

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<sup>157</sup> See for example *UPS/TNT*, recital 241; Commission's decision of 21 October 2002 in Case M.2908 - Deutsche Post/DHL (II), recital 20 and Commission's decision of 21 April 2009 in Case M.5152 - Posten AB/Post Danmark AS, recitals 64-74.

<sup>158</sup> *UPS/TNT*, recital 243.

<sup>159</sup> See, among others, Commission's decision of 13 March 2004 in Case M.1915 - The Post Office/TPG/SPPL, recitals 51 and following, Commission's decision of 22 November 2005 in Case M.3971- Deutsche Post/Exel, recital 31, Commission's decision of 21 April 2009 in Case M.5152 - Posten AB/Post Danmark AS, recital 21 and following.

<sup>160</sup> See *UPS/TNT*, recital 242.

<sup>161</sup> "GLS/Royal Mail and DPD/La Poste do not have a presence in Sweden and therefore we do not have experience with such providers." Response of [Name of Parties' customer] to Q3 – questionnaire to customers [ID 1087], "A cooperation with UPS was tried but discontinued. UPS does not give much attention to the Danish market (UPS has shut down its office in Denmark)", non-confidential minutes of the call with [Name of Parties' customer] [ID 4188].

<sup>162</sup> See FedEx's response to request for information QP16 of 16 September 2015 – "*Submission of FedEx Corporation Providing a Detailed Lane-by-Lane Analysis for Extra-EEA*", as well as FedEx's presentation given to the Commission during the State of Play meeting on 15 September 2015 (and provided in electronic copy by email on 16 September 2015).

made at the level of the national subsidiary concerned.<sup>163</sup> Consequently, many customers source small package delivery services at a national level irrespective of the type of shipment and its destination.

- (210) Therefore, from a demand-side perspective the market for the provision of small package delivery services appears likely to be national for intra-EEA express deliveries.
- (211) Those differences are further reflected in the significant differences among the integrators' market shares in the different EEA countries<sup>164</sup> and in the differences in prices, which are set at national level, taking into account the different pick-up and delivery costs in every country, the companies' commercial strategy in each country and the market conditions in that market.<sup>165</sup> First, for the provision of international intra-EEA express services, operators rely primarily on their ground network. The provision of small package delivery services requires a network enabling the provider to pick-up and deliver small packages in the destinations, in which it is active. Typically, this is achieved by setting up a hub-and-spoke system, consisting of local truck networks, sorting centres, depots, gateways, hubs and central regional and air hubs.
- (212) FedEx submits that establishing a ground network within a country may be done in different ways and is usually gradual. An operator willing to start offering services in a national market would in most instances first resell the services of a delivery company already active in that country, gradually develop a partnership with such a local company, integrate the partner, who would then bear the branding of the operator and ultimately, the operator may at some stage decide to take over the service.<sup>166</sup> Even though the time required for establishing own services depends on several factors and cannot be anticipated with certainty, FedEx submits that it would most probably take [Confidential] to [Confidential] years.<sup>167</sup>
- (213) Such networks are in principle set up on a national basis and in order to provide international services, operators use the national networks of both the country of origin and the country of destination. For the provision of international intra-EEA express deliveries, operators primarily use trucking and only include air transport in their service for long distances.<sup>168</sup> Providers therefore rely on their EEA ground and air network, consisting of delivery trucks, sorting centres, road hubs and depots and, in the case of the integrators also in aircraft, airports and one or more air hubs.<sup>169</sup>

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<sup>163</sup> See FedEx's response to question 2 of QP17 dated 17 September states: [Confidential details from FedEx submissions in the context of the merger control procedure]. Responses to question 30 of questionnaire to customers R2 - Phase II.

<sup>164</sup> In relation to intra-EEA express deliveries for example FedEx's market share ranges from [Confidential], TNT's share from [Confidential], UPS's from [Confidential] and DHL's from [Confidential], Intra-EEA Market Reconstruction.

<sup>165</sup> See FedEx's response to questions 3 and 4 of QP17 of 17 September 2015.

<sup>166</sup> See FedEx's response to question 29 of QP12 of 19 August 2015.

<sup>167</sup> See FedEx's response to question 2 of QP 16 of 16 September 2015.

<sup>168</sup> For deliveries of up to 500-1000 Km, operators would prioritise the use of their ground network for express intra-EEA deliveries, *UPS/TNT*, recital 227 and following.

<sup>169</sup> A small package shipped express from Denmark to Portugal for example, would be picked up at the customer's location in Denmark, brought to and processed at the end of the day at the local sorting centre, then channelled to a gateway and flown to the central air hub in the late evening. From there, the package would again be sorted and dispatched to a different gateway, shipped to the local sorting centre in Portugal and from there delivered again by truck to the final destination (Paragraph 87, Form CO).

- (214) Second, the national ground network infrastructure, density and coverage of a provider influences its ability to compete on a market for intra-EEA deliveries.<sup>170</sup> Indeed, not only is the ability to pick-up and deliver small parcels in a certain EEA country crucial for offering international intra-EEA express small package delivery services, but it is also directly related to the quality and cost of such services. Density enables the provider to offer later pick-up and delivery options to its customers, to make a more efficient use of their infrastructure, for example by allowing direct routes to run not only from hub-to-hub, but also from a hub directly to the package sorting centre or from one package sorting centre to another, reducing fuel costs and driver hours, etc.<sup>171</sup>
- (215) Network density at the origin and destination is also connected with the unit costs of the service provider, as higher density in the national network in the country of pick-up and the country of delivery equates to more efficient and cost effective intra-EEA express operations. FedEx submits that the cost of operating a ground network, namely the trucks that pick-up and deliver small packages to/from customers' locations and the local pick-up centres and depots, represents a significant part of the total cost of intra-EEA express deliveries, amounting to approximately [Confidential]% of the variable costs in any given country.<sup>172</sup> A more dense ground network is therefore crucial for a provider's ability to compete on price.
- (216) Third, the significance of the ground network for the provision of intra-EEA express deliveries is also reflected in the ability of non-integrators to provide such services. Non-integrators such as freight forwarders, postal operators and smaller courier companies only own ground networks in one or more EEA countries upon which they rely for the provision of most of their intra-EEA express services. When requested to offer intra-EEA express deliveries to destinations that cannot be reached through their ground network within the requested time, non-integrators subcontract their service either in its entirety or in part to integrators and in part to other cooperation partners (such as other postal operators, etc.).<sup>173</sup> Illustrative in this regard is the example of DPD, the overall largest non-integrator offering international intra-EEA express services, offering services in 18 EEA countries.<sup>174</sup> DPD has its own ground network in a number of EEA countries, between which it offers express services. For countries where the group does not have subsidiaries, DPD works with partners for the international linehaul operation, and/ or for the last-mile leg and in several instances does not offer intra-EEA express services at all.<sup>175</sup>
- (217) Consequently, the existence of a national ground network is crucial for the provision of intra-EEA express services from certain countries. On the one hand, from the demand-side, customers would only select among providers present in their country. On the other hand, from the supply-side, providers are only able to compete in a market if they can use a ground network that enables them to effectively organise small parcels' pick-up and delivery in that country.

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<sup>170</sup> Responses to question 32.1 of questionnaire to competitors Q1 – Phase I; Form CO, paragraph 110.

<sup>171</sup> Responses to question 30.1.1 of questionnaire to competitors Q1 – Phase I; Form CO, paragraph 98 and following.

<sup>172</sup> Form CO, paragraph 95.

<sup>173</sup> Responses to question 7 of questionnaire to competitors Q1 – Phase I.

<sup>174</sup> Market reconstruction; DPD's non-confidential response to question 1 of the request for information to DPD of 11 September 2015.

<sup>175</sup> See DPD's non-confidential response to question 3 of the request for information to DPD of 11 September 2015, Table 6 providing an overview of the countries from which DPD offers international intra-EEA express deliveries.

### 7.2.1.3. Conclusion

(218) For the purposes of this Decision, the Commission considers the markets for international intra-EEA express small package delivery services to be national in scope.

### 7.2.2. *Extra-EEA small package delivery services*

#### 7.2.2.1. FedEx's view

(219) As mentioned in recital (206), FedEx initially did not contest the market definition approach used by the Commission in *UPS/TNT*. Nevertheless, in a later submission,<sup>176</sup> FedEx took a different view as to the product scope and to the geographic scope of the market for extra-EEA deliveries.

(220) In those submissions, FedEx claims that there are justifiable grounds to consider that in relation to both the origin and the destination end of the deliveries, the relevant markets are worldwide, or at least EEA-wide and not limited to Member States of the Union.

(221) FedEx refers to the fact that integrators consolidate all their extra-EEA services in a single hub located in the EEA and from there ship them to the various destinations around the world, arguing that this demonstrates that integrators set up their extra-EEA services on the basis of a single EEA-wide network. FedEx argues that there is therefore a "*system-wide supply-side substitutability across all integrators*" at network level, as they all have the customer base, the global infrastructure and the ability to gain new customers and scale up and expand their presence to any more specific route within the broader market for extra-EEA deliveries.<sup>177</sup> Further, FedEx submits that an EEA-wide market is also consistent with the Commission's market definition in air cargo cases.<sup>178</sup>

#### 7.2.2.2. Commission's assessment

(222) From a demand-side, the market for the provision of small package delivery services appears to be national for both intra-EEA express and extra-EEA deliveries. Customers responding to the market investigation point out that they are not likely to consider providers without a local presence when selecting their supplier. Even in the case of customers with international framework contracts, the specific decision as to which provider to use is often made at the level of the subsidiary concerned.<sup>179</sup> Consequently, a large number of customers source small package delivery services at a national level, irrespective of the type of shipment and its destination. These

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<sup>176</sup> See FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, recitals 6-7.

<sup>177</sup> See FedEx's response to request for information QP16 of 16 September 2015 – Submission of FedEx Corporation Providing a Detailed Lane-by-Lane Analysis for Extra-EEA as well as FedEx's presentation given to the Commission during the State of Play meeting on 15 September 2015 (and provided in electronic copy by email on 16 September 2015).

<sup>178</sup> See FedEx's response to request for information QP16 of 16 September 2015 – "*Submission of FedEx Corporation Providing a Detailed Lane-by-Lane Analysis for Extra-EEA*", in particular Part D and footnote 2 referring to the Commission's decision of 11 February 2004 in Case M.3280 – Air France/KLM; Commission's decision of 4 July 2005 in Case M.3770 - Lufthansa/Swiss, Commission's decision of 6 August 2008 in Case M.5181 - Delta Airlines/Northwest Airlines, Commission's decision of 14 July 2010 in Case M.5747 - Iberia / British Airways, Commission's decision of 27 July 2010 in Case M. 5889 - United Airlines / Continental Airlines, Commission's decision of 30 March 2012 in Case M.6447 - IAG/BMI.

<sup>179</sup> See responses to question 30 of questionnaire to customers R2, FedEx's response to question 1 of request for information QP17 of 17 September 2015,

differences are further reflected in the significant differences among the integrators' market shares in the different EEA countries,<sup>180</sup> and on the differences in prices, which are set at national level, taking into account the different pick-up and delivery costs in every country, the companies' commercial strategy in each country and the market conditions on that market.<sup>181</sup>

- (223) From a supply-side however, there appear to be some differences as to the way small package delivery service providers compete for intra-EEA express and for extra-EEA services.
- (224) The provision of extra-EEA services does not only require the operation of ground networks in the countries of origin and destination, but also a global network, including an air network. All integrators have set up such global networks consisting of regional networks covering the main world regions and an air network that ensures connectivity among them.<sup>182</sup>
- (225) The different regional networks consist of the various national or local networks, including also a central regional hub, in which packages with an intercontinental destination are collected, sorted and usually loaded on to the respective aircraft. In relation to extra-EEA deliveries, Leipzig is the central regional hub of DHL, Cologne is the central regional hub of UPS, Charles de Gaulle airport is FedEx's main central regional hub, and Liege airport is TNT's central regional hub. In these central hubs, the integrators collect all small packages with an intercontinental destination from the various EEA countries, sort them and ship them by air to their various other regional air hubs in the continent of destination. From then on, the small packages enter the regional network of destination through which they are further distributed by road or by air to the hub of the country of destination and ultimately through the local ground network to the recipient. Therefore, irrespective of the exact origin of certain small packages, these packages are all treated jointly at the central air hub and shipped in parallel to the destination.
- (226) FedEx submits that the costs connected to the EEA ground network correspond to [Confidential]% of the total cost of an international intra-EEA delivery, but that they most likely amount to less than [Confidential]% of an extra-EEA delivery's cost.<sup>183</sup> In FedEx's opinion, the cost of air transport is what primarily impacts upon the total cost of extra-EEA delivery services and thus determines providers' ability to compete on price.
- (227) The Commission considers that providers must be able to organise the pick-up of small packages with an extra-EEA destination from a certain EEA country. Supply-side substitutability might be feasible once the small package gets to the central regional hub. Nevertheless, this does not necessarily hold for the initial leg to the central regional hub. The fact that the cost connected to the EEA pick-up network

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<sup>180</sup> Similarly, on markets for extra-EEA deliveries, the Parties' market shares would also vary among EEA countries, with FedEx's share ranging from [Confidential], TNT's from [Confidential], UPS's from [Confidential] and DHL's from [Confidential], extra-EEA Market Reconstruction.

<sup>181</sup> See FedEx's response to questions 3 and 4 of QP17 of 17 September 2015.

<sup>182</sup> FedEx's presentation to the European Commission of 15 September 2015, slide 16 and following.

<sup>183</sup> The Parties submit that the PUD costs in the case of extra-EEA deliveries correspond to approximately [Confidential]% of the total cost, see FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision", page 29. As however only the pick-up of the shipment takes place in the EEA in relation to extra-EEA deliveries, the cost corresponding to pick-up costs in the EEA and thus related to providers' EEA network is likely to amount to less than [Confidential]% of the total operating cost of the shipment.

amounts to a small portion of the total extra-EEA cost of delivery for intercontinental destinations does not remove the problem that the local pick-up costs may vary considerably from one provider to another, depending on the strength of the local network in the origin country.

#### 7.2.2.3. Conclusion

(228) In light of the reasons stated in Section 7.2.2.2, and for the purpose of this case, it is concluded that the market for extra-EEA small package delivery services can be considered national in scope. However, in light of the focus of the competitive assessment on extra-EEA small package deliveries, the network features of the industry and the crucial role of air networks for intercontinental deliveries, the competitive assessment will also include the EEA-wide level in addition to the national markets.

### 8. SMALL PACKAGE DELIVERY SERVICES – MARKET RECONSTRUCTION

(229) In order to determine the total size of the market for international intra- and extra-EEA express delivery services, FedEx has developed its own database that provides market data (total market size and market share estimates for FedEx and its competitors) for small package deliveries.

(230) More specifically, FedEx's approach to assess the size of the total market is based on two principles: "top down" and "bottom up".<sup>184</sup> In relation to the "top down" exercise, the overall market growth by individual country and product is calculated based on macro-economic indicators and their relationship to the small packages market (for example gross domestic product growth has a strong correlation with domestic small package delivery services growth, industrial production has a strong correlation with international small package delivery services growth, and the consumer price index is an indication of revenue per package growth).

(231) As far as the "bottom up" exercise is concerned, FedEx uses financial results published on a quarterly basis or annual accounts (some of FedEx's major competitors are listed on the Stock Exchange). More specifically, FedEx [Confidential details on FedEx's bottom up approach to assess the size of the total market].

(232) As competitors do not publish a break down of their results by market and products, FedEx applies its own internal methodology to split the total reported EEA revenue and volume of competitors by country and products using [Confidential details on FedEx's bottom up approach to assess the size of the total market].

(233) Given the inherent limitations of FedEx's market share determination methodology and hence the market share data submitted by FedEx for the purpose of the competitive assessment in this Decision, the Commission has undertaken a market reconstruction exercise as in *UPS/TNT*<sup>185</sup>. The Commission requested outbound shipper-based revenue data for 2012, 2013 and 2014 from FedEx, TNT, DHL and UPS. The shipper based approach means that the revenue for small package deliveries is allocated on the basis of the location where the shipper is based. In other words, this means that revenue is attributed "based on the shipment's country of origin".<sup>186</sup> The data was requested for international intra-EEA express small package

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<sup>184</sup> Form CO, paragraph 221 to 223.

<sup>185</sup> See *UPS/TNT*, recital 949 and following.

<sup>186</sup> Form CO, paragraph 220, footnote 121.

shipments from 30 national markets (that is to say all EEA countries except Liechtenstein) to destinations within the EEA and for extra-EEA small package shipments from these 30 national markets to 6 trade destination lanes (namely North America, South America, the Middle East, Asia/Pacific, Africa and the rest of Europe). The Commission has allocated the revenues generated by the integrators' local agents, that is to say Global Service Participants ("GSPs"), or Authorised Service Contractors ("ASCs") in transactions with local customers in the respective countries to the integrators.<sup>187</sup>

- (234) FedEx criticises the Commission's market reconstruction due to the limitation to integrators' revenues, the geographic revenue allocation and the treatment of revenues generated by the Parties' local agents.
- (235) First, the Commission has only taken the revenues of integrators into account for the purpose of this market reconstruction. As set out in more detail in Sections 9.2 and 10.2 below, this is due to the fact that non-integrated small package delivery service providers only exert a limited competitive constraint on the integrators in the market for international intra- and extra-EEA express services. The Commission has therefore adopted a conservative approach by limiting the revenue share comparison to FedEx, TNT, DHL and UPS.
- (236) Second, FedEx argues in its Response to the Decision opening proceedings<sup>188</sup> that an invoice-based approach would more adequately reflect its market strength. Based on such an approach, shipments from an EEA country which are invoiced outside the EEA are not taken into account for the determination of a player's revenue share in a given EEA country. According to FedEx, unlike the other integrators, its shipper-based data is very likely to overstate its position in the market reconstruction exercise. FedEx submits that it is a U.S. corporation with its primary business in North America, and unlike UPS, its presence in the EEA is less extensive. FedEx argues that its EEA service offering arises principally from its need to be able to cover Europe for the benefit of its North American customers (the bulk of its worldwide customer base being in North America - unlike the other integrators). According to FedEx, the shipper based revenue data for 2014 used by the Commission in its market reconstruction exercise materially overstates the position of FedEx in respect of extra-EEA services, and it is conceivable that this effect also impacts intra-EEA services in some countries. In a subsequent submission, FedEx argues that the use of shipper-view data has the effect of "blurring" the lines of the scope of the Commission's substantive competence. This is because shipper-view data is based merely on allocating volumes to the location of the consignor - regardless of whether he or she is the actual customer paying the invoice.<sup>189</sup> Consequently, FedEx considers an invoice-based approach to be more appropriate.

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<sup>187</sup> The exact revenues of the local agents are not known to the integrators. The Commission therefore requested from the four integrators estimates of the revenues generated by the GSP, based on the Gateway Driven Rates each GSP pays to the respective integrator. Further, each integrator was requested to add its estimated industry average mark-up in the respective country. These revenues do not include any fees paid by the respective integrator to the GSP for the services provided by the latter to the integrator for deliveries in their country. All revenues generated by direct customers of the respective integrator for deliveries from the country of the GSP are added to the revenue of the local agent.

<sup>188</sup> FedEx's Response to the Decision opening proceedings, paragraph 54, 55.

<sup>189</sup> FedEx's response to question 1 of request for information QP17 of 17 September 2015.

- (237) The Commission considers that both a shipper-based and an invoice-based revenue allocation have certain merits depending on the circumstances. However, the Commission is of the view that the shipper-based approach is a better proxy for the geographic allocation of revenues and that it is in line with the wording of the Commission's Consolidated Jurisdictional Notice<sup>190</sup>, according to which in cases concerning the transport of goods, "*the transport service is provided to the customer at its location.*"<sup>191</sup> The section on the transport of goods has to be read in conjunction with the general principle regarding the allocation of turnover in the Consolidated Jurisdictional Notice according to which "*the general rule is that turnover should be attributed to the place where the customer is located. The underlying principle is that turnover should be allocated to the location where competition with alternative suppliers takes place. This location is normally also the place where the characteristic action under the contract in question is to be performed (...)*"<sup>192</sup>.
- (238) The Commission considers, first, that in the case of a small package delivery service, "*competition with alternative suppliers*" takes place at the location of the shipper. Pricing, offer and choice of supplier are determined at the location of the shipper and not at the location of the person paying the invoice which is not necessarily located at the destination of the delivery but may be located in a third country that is entirely unrelated to the delivery service. Second, the "*characteristic action*" under a delivery service agreement is not the payment of the invoice but the shipment of the small package.<sup>193</sup>
- (239) Third, whilst FedEx has provided market share information including [Confidential]<sup>194</sup> revenue received from the GSPs/ASCs, it contests the attribution of GSPs' activities to the Parties.
- (240) FedEx argues, firstly, that GSPs are independent third parties which bear financial and commercial risks in respect of their own operations and customer bases in their respective countries. Secondly, the customer base belongs to the GSP and FedEx's role in a GSP country is limited to providing line-haul services from and to the GSP country. Thirdly, the fact that a GSP has the FedEx branding is entirely irrelevant. Fourth, the GSP pays FedEx [Confidential] for access to the FedEx global network, [Confidential details on FedEx's revenues]. Fifth, GSP contracts can be and are regularly terminated and changed, it is therefore too simplistic to attribute the activities of independent third parties in a given country to the integrators.<sup>195</sup>

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<sup>190</sup> Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C95 of 16.04.2008, ("Consolidated Jurisdictional Notice") page 1.

<sup>191</sup> Consolidated Jurisdictional Notice, paragraph 201.

<sup>192</sup> Consolidated Jurisdictional Notice, paragraph 196.

<sup>193</sup> The question whether a shipper- or an invoice-based approach is the more appropriate method for the geographic allocation of small package delivery service revenues can be left open as regards international intra-EEA express delivery services. Around [Confidential] of FedEx's and [Confidential] of TNT's international intra-EEA express shipments are paid by the shipper, see FedEx's response to request for information QP 12 of 19 August 2015, question 4, p.4. Moreover, [Confidential] of FedEx's international intra-EEA express revenues are paid by customers located outside the EEA, see FedEx's Response to the Decision opening proceedings, page 22. A reconciliation of market shares for selected countries has shown that an invoice-based market share calculation will have a limited effect on FedEx's market position as regards international intra-EEA express delivery services.

<sup>194</sup> The GSP pays FedEx [Confidential] for access to the FedEx global network, namely to transport a shipment from an agreed gateway (such as an airport hub) to the point of delivery via the FedEx network.

<sup>195</sup> FedEx's Response to the Decision opening proceedings, paragraphs 69 to 73.

- (241) The Commission considers that, firstly, the integrator that works with a GSP in a specific country has a very limited direct presence in this country and generally does not compete with the GSP for customers that ship from that country.<sup>196</sup> Secondly, GSPs carry the brand of the integrator and act like the integrator in the GSP country, that is to say that the customer is not necessarily aware that he is not dealing directly with the integrator. Thirdly, a GSP only represents one single integrator and is therefore fully dependent on this integrator. Fourthly, the GSP is fully integrated in the integrator's network. For these reasons, disregarding the activities of an integrator's GSP would not appropriately reflect the market structure in a given country, because the integrator using a GSP does effectively exert a competitive constraint on this market. Therefore, the Commission has asked the integrators to provide an industry mark-up based on their own best estimate in addition to the gateway driven rate as a proxy of the rates that the GSP in each EEA country charges its customers. The Commission has taken the estimated mark-up provided by each integrator into account in the context of the market reconstruction exercise. This constitutes a conservative approach and effectively over-represents the market share of FedEx as it relies more heavily on local agents than other integrators due to its intra-EEA business structure.<sup>197</sup>

## **9. INTRA-EEA EXPRESS DELIVERY SERVICES MARKETS**

### **9.1. Principles and introduction**

- (242) In making its competitive assessment on the 30 national markets for the provision of international intra-EEA express delivery services, the Commission applies the following principles laid down in the Horizontal Merger Guidelines.
- (243) A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power.<sup>198</sup>
- (244) The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. In addition, non-merging firms in the same market can also benefit from the reduction of competitive pressure resulting from the merger, since the merging firm's price increase may switch some demand to the rival firms, which in turn may find it profitable to increase their prices. The reduction in

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<sup>196</sup> FedEx may generate some bill consignee revenues (for example a customer based in a non-GSP/ASC country may request pick-up in a GSP/ASC country and agree to pay for the entire transportation cycle), or bill third party revenues (for example a third party may agree to pay for a shipment from a GSP/ASC country).

<sup>197</sup> See Form CO, paragraphs 240, 241. FedEx operates through GSPs in Bulgaria, Croatia, Cyprus, Greece, Iceland, Malta, Portugal, Romania, Slovakia. TNT only operates through GSPs in Iceland and Malta. DHL states in the non-confidential response to question 3 of the Commission's RFI dated 27 August 2015 that "DHL Express operates within all 29 EEA countries without the use of agents". Based on its website, UPS operates through local agents in Bulgaria, Cyprus, Croatia, Estonia, Iceland, Latvia, Lithuania, Malta and Slovakia. These are largely countries in which FedEx and to a lesser extent also TNT also operate through local agents. The only exceptions are Estonia, Latvia and Lithuania. A reduction of UPS's market share by the estimated industry mark-up provided by UPS would not materially change the market structure.

<sup>198</sup> Horizontal Merger Guidelines, paragraph 24.

these competitive constraints could lead to significant price increases in the relevant market.<sup>199</sup>

- (245) Mergers in oligopolistic markets involving the elimination of important competitive constraints that the merging parties previously exerted upon each other together with a reduction of the competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of oligopoly, result in a significant impediment to effective competition.<sup>200</sup>
- (246) It is possible that efficiencies brought about by a merger counteract the effects on competition and in particular the potential harm to consumers that it might otherwise have.<sup>201</sup> For the Commission to take account of efficiency claims in its assessment of the merger and be in a position to reach the conclusion that as a consequence of efficiencies there are no grounds for declaring the merger incompatible with the single market, the efficiencies have to benefit consumers, be merger-specific and be verifiable.<sup>202</sup>
- (247) Accordingly, the Commission has assessed whether the Transaction would remove an important competitive constraint that FedEx and TNT exerted upon each other and whether competitive pressure on the remaining competitors would be reduced. The Commission has made its assessment in the light of the following factors that are relevant in accordance with the Horizontal Merger Guidelines: (i) the market shares that would result from the Transaction (see Section 9.3), (ii) the closeness of competition between FedEx and TNT (see Section 9.4), (iii) the likelihood that the Transaction would remove an important competitive force (see Section 9.5), and (iv) the extent to which customers would be able to switch post-Transaction, enabling other providers to constrain FedEx and TNT post-Transaction (the "Merged Entity") (see Section 9.6). Further, the Commission has taken into account the result of its market investigation in Phase I and Phase II of the procedure (see Section 9.7) and carried out a price concentration analysis, which was, however, not conclusive (see Section 9.8). Lastly, the Commission has analysed whether any of the efficiency claims brought forward by FedEx could outweigh any harm caused by the Transaction (see Section 9.9).

## 9.2. Competitive constraint exercised by non-integrators

- (248) FedEx claims that both FedEx and TNT face competition from non-integrators as regards international intra-EEA express delivery services.<sup>203</sup> FedEx acknowledges however that non-integrators "*only exercise a competitive constraint on the integrators in limited circumstances and not across the board*".<sup>204</sup>

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<sup>199</sup> Horizontal Merger Guidelines, paragraph 24.

<sup>200</sup> Horizontal Merger Guidelines, paragraph 25.

<sup>201</sup> Merger Regulation, recital 29; Horizontal Merger Guidelines, paragraph 76.

<sup>202</sup> Horizontal Merger Guidelines, paragraph 78.

<sup>203</sup> See Form CO, paragraph 52. Naturally, given their different business models and infrastructure networks across Europe, the Parties have different perspectives in terms of whom they perceive as competitors in the relevant markets. FedEx has primarily remained focused on intercontinental express services, particularly to North America) whilst TNT has a stronger presence in domestic and deferred markets in the EEA (it namely has a much more ground-based and much less air-based network than FedEx). In this respect, TNT generally considers that it competes with a wider range of small package companies than FedEx does. As a result, TNT considers that it experiences stronger competitive pressure from non-integrators than FedEx. See FedEx's response to question 23 of request for information QP2 of 16 June 2015.

<sup>204</sup> Form CO, footnote 19.

- (249) FedEx argues that, based on a set of bidding data submitted to the Commission, ground based operators and freight forwarders do appear as competitors, albeit in a very small percentage of opportunities ([0-5]% and [5-10]% respectively).<sup>205</sup> As discussed in Section 9.4.2.5, the Commission considers that the bidding database results have to be interpreted with caution due to a number of data limitations.
- (250) The international intra-EEA express delivery of small packages within the EEA is a network industry, which requires a presence in all EEA countries.<sup>206</sup> The required presence in turn entails investments in infrastructure all along the value chain (including in particular pick-up, sorting, line-hauls, hubs, air network, planes and delivery).
- (251) The Commission considers that in order to offer an EEA-wide express service, a seamless EEA-wide network is necessary, which is offered only by the integrators.<sup>207</sup> Although these investments can be reduced through outsourcing parts of the value chain to third parties, outsourcing reduces control over the network and ultimately the quality of the services rendered as well as operational efficiency. By contrast, outsourcing is different from the type of agreement with a GSP/OSP, whereby the activities are operated by the GSP/OSP under the control of an integrator. An integrator's GSP/OSP carries the brand of the integrator and is fully integrated in its network. A GSP/OPS generally only represents a single integrator and is therefore fully dependent on it.<sup>208</sup> A relationship with a GSP/OSP has to be distinguished from a situation where a small package delivery service provider sub-contracts or outsources services to a third party, for instance by purchasing airline haul space from an integrator, cargo or passenger airline. Such agreements do not confer any operational control to the small package delivery provider.
- (252) With some exceptions, non-integrators do not offer "long-haul" international intra-EEA express services necessitating air transport without outsourcing this part of the service to third parties.
- (253) Given the distances spanned by European geography, it is clear that for express services (that is to say guaranteed time-definite next day delivery), there is a large number of origin and destination combinations (such as Brussels-Athens, Brussels-Lisbon, Brussels-Rome, etc.) for which non-integrators are a more distant constraint because they do not operate an integrated extensive air network. Whilst certain non-integrators may be able to offer services on such longer routes, generally by incorporating outsourced services from third parties (for example purchasing airline haul space from an integrator, cargo or passenger airline), such services were found in *UPS/TNT* to be a weaker competitive constraint.<sup>209</sup>
- (254) For some shorter origin and destination combinations, which do not require an air network (for example Brussels-Paris, Brussels-Cologne, Brussels-Amsterdam, etc.), non-integrators such as DPD and GLS can exert some competitive constraint on the integrators.<sup>210</sup> DPD, the largest non-integrator overall, offers international intra-EEA

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<sup>205</sup> FedEx's submission "*FedEx/TNT: Updated bidding data analysis*" of 18 June 2015, page 4.

<sup>206</sup> Form CO, footnote 42, paragraph 94; *UPS/TNT*, recital 244.

<sup>207</sup> See *UPS/TNT*, recital 244, 924.

<sup>208</sup> See also Section 8.

<sup>209</sup> See for instance *UPS/TNT*, recitals 296 and following, 452, 477.

<sup>210</sup> See also *UPS/TNT*, recital 310.

express services in 18 EEA countries.<sup>211</sup> DPD has its own ground network in a number of EEA countries, between which it offers express services. For countries where the group does not have subsidiaries, DPD works with partners for the international line haul operation or for the last-mile leg and on several lanes does not offer international intra-EEA express services at all.<sup>212</sup>

- (255) With this exception, non-integrators' role on the international intra-EEA express segment is generally limited to serving customers that mainly purchase road-based services and request deliveries necessitating air transport as a minor element of the bundle of services purchased from the non-integrated companies. Therefore, non-integrated small package delivery companies only compete marginally against integrators for "long-haul" international intra-EEA express services. This leads many customers to consider only integrators as possible suppliers of "long-haul" international intra-EEA express services.<sup>213</sup>
- (256) Those findings apply to national postal operators as well as local small package delivery companies, even those that offer international intra-EEA services through international cooperative networks. Such cooperative networks play a limited role in the international intra-EEA express markets and a cooperation of independent local operators does not lead to a comparable level of efficiency and reliability as single integrated companies.<sup>214</sup>
- (257) Freight forwarders do not exert a significant competitive constraint on the Parties in the international intra-EEA express markets either as they generally offer small package delivery services as part of a bundle of services requested by customers mainly purchasing their core freight forwarding services.<sup>215</sup> Therefore, they generally do not actively compete against the integrators in the small package delivery markets. Moreover, their freight-oriented infrastructures do not allow them to provide small package delivery services efficiently. As a result, when providing small package delivery services, freight forwarders usually outsource the whole, or at least a significant part, of the delivery process to small package delivery companies, in particular integrators, upon which they are heavily dependent and in relation to which they essentially act as resellers.<sup>216</sup> For instance, DB Schenker offers international intra-EEA express small package delivery services originating in Finland, Norway, Poland and Sweden. In these countries, DB Schenker uses its own network and truck fleet. For deliveries of shipments from these countries to other EEA countries, it either uses its own groupage network and truck fleet or, as the case may be, uses local parcel delivery operators as subcontractor (such as Tuffnells Parcels Express Limited in the UK).<sup>217</sup>
- (258) The Commission's market investigation confirmed the finding that non-integrated small package delivery services providers do not exert a strong competitive constraint on the Parties.

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<sup>211</sup> DPD's non-confidential response to question 3 of the request for information of 11 September 2015, Table 6, providing an overview of the countries from which DPD group offers international intra-EEA express deliveries.

<sup>212</sup> DPD's non-confidential response to question 2 of the request for information of 11 September 2015.

<sup>213</sup> See *UPS/TNT*, recitals 284, 295, Section 7.2.1.3.

<sup>214</sup> See *UPS/TNT*, recital 927.

<sup>215</sup> See responses to questions 1, 3 and 4 of the questionnaire to competitors Q5.

<sup>216</sup> See *UPS/TNT*, recital 928.

<sup>217</sup> See non-confidential e-mail of DB Schenker dated 27 July 2015 in response to Commissions questions of 24 July 2015.

- (259) When asked which service criteria are important when selecting their international intra-EEA express small package delivery service provider, a significant majority of the customers responding to the market investigation considers reliability of provider, customer service, track&trace facilities and speed of delivery to be either indispensable or very significant.<sup>218</sup> Moreover, a majority of customers would not switch to non-integrators even if the integrators' express service became relatively more expensive (by 5-10%).<sup>219</sup> A significant proportion of customers consider that non-integrators are more expensive for international intra-EEA express deliveries.<sup>220</sup>
- (260) There is, nevertheless, a minority of respondents who consider non-integrators as a viable alternative to integrators. In this context, DPD was identified as the closest alternative to integrators, mainly for reasons of speed of delivery, track and trace possibilities, reliability, price, followed by GLS, with a weaker network, country-specific coverage, and as a result slower services and higher prices in some countries.<sup>221</sup>
- (261) National postal operators are clearly viewed as a weak competitive constraint to the integrators by the majority of respondents to the market investigation. This is in particular due to slow delivery, inflexibility, dependency on integrators,<sup>222</sup> issues with geographic coverage, more limited customer service and reduced reliable tracking possibilities. This limited suitability for express delivery services precludes national postal operators from consideration for customers that need to ship time-sensitive items, such as spare parts, components used in production processes, medical or life science items such as blood samples, R&D samples or time-critical documents.<sup>223</sup>
- (262) Whilst freight forwarders are considered a more viable alternative than the national postal operators by a large minority, they are also far behind DPD and GLS, in particular because of slow delivery. The majority of respondents do consider that freight forwarders are not a viable alternative to the integrators for international intra-EEA express delivery services.<sup>224</sup> Their main drawbacks are higher prices compared to the integrators, and the fact that better prices are only available for bulk shipments, particularly heavy shipments, and are hence not suitable for express services within the scope of this Decision. Furthermore, freight forwarders do not match the quality of the express service provided by the integrators due to tracking issues and are disadvantaged due to their reliance on partners' air networks. When not acting as resellers for the integrators, their service has a lower quality in terms of reliability and time in transit.
- (263) Local couriers were sometimes cited as good alternatives by some customers. Nevertheless, they are only a valid choice locally, where they appear to offer an equally speedy service. Their main drawbacks are the higher prices for express services and, most importantly, by their definition, the fact that they offer limited geographic coverage. As a result, local couriers are not an option for customers

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<sup>218</sup> See responses to question 4 of the questionnaire to customers R2 – Phase II.

<sup>219</sup> See responses to question 6 of the questionnaire to customers R2 – Phase II.

<sup>220</sup> See responses to question 6 of the questionnaire to customers R2 – Phase II.

<sup>221</sup> See responses to question 6 of the questionnaire to customers R2 – Phase II.

<sup>222</sup> Many postal operators with express service offers resell integrators' services to their own customers. This has been confirmed by postal operators' responses to question 7 of the questionnaire to competitors Q1 – Phase I.

<sup>223</sup> See also *UPS/TNT*, recital 91.

<sup>224</sup> See responses to question 6 of the questionnaire to customers R2 – Phase II.

wishing to use a single pan-European provider rather than having to manage fragmented local couriers.

(264) In conclusion, the Commission finds, consistent with the results of the market investigation, that non-integrated small package delivery companies active in the international intra-EEA express service industry are generally weak competitors, notably with respect to geographic coverage and quality of service. Whilst non-integrated delivery service providers such as ground-based operators, postal operators, cooperative networks and freight forwarders can exert a certain competitive constraint on the integrators in the international intra-EEA express delivery services markets,<sup>225</sup> the Commission has adopted a conservative approach in the context of this case by taking into account only the competitive constraint exerted by integrators when assessing the impact of the Transaction on the intra-EEA markets.

### 9.3. The Merged Entity's market position on international intra-EEA express delivery services markets would be moderate

(265) According to the Horizontal Merger Guidelines, the larger the market share, the more likely a firm is to possess market power. Furthermore, the larger the addition of market share, the more likely it is that a merger will lead to a significant increase in market power. Although market shares and increments in market shares only provide first indications of market power and increases of market power, they are important factors in the assessment.<sup>226</sup>

#### 9.3.1. Market shares submitted by FedEx

(266) FedEx submitted market share estimates regarding the provision of outbound international intra-EEA express delivery services on a national basis for each EEA-country (except Liechtenstein). The market share estimates were provided, on the one hand, for the Parties and both integrators and non-integrators and, on the other hand, for the Parties and the other integrators only.<sup>227</sup>

(267) Applying the methodology used in *UPS/TNT*, the market share data provided by FedEx in the Form CO has been collated using a shipper based approach. Using this methodology, which as noted in Section 9.2, limits the assessment to integrators, FedEx's market share estimates are as follows:

**Table 2: Integrators' 2014 market shares for international intra-EEA express delivery services by country submitted by FedEx<sup>228</sup>**

Country	FedEx	TNT	Combined	UPS	DHL
EEA	[5-10]%	[10-20]%	<b>[20-30]%</b>	[20-30]%	[50-60]%
Austria	[5-10]%	[10-20]%	<b>[20-30]%</b>	[10-20]%	[60-70]%
Belgium	[10-20]%	[20-30]%	<b>[30-40]%</b>	[10-20]%	[10-20]%
Bulgaria	[0-5]%	[20-30]%	<b>[20-30]%</b>	[5-10]%	[60-70]%
Croatia	[0-5]%	[5-10]%	<b>[10-20]%</b>	[10-20]%	[70-80]%

<sup>225</sup> See *UPS/TNT*, paragraph 508 and following.

<sup>226</sup> Horizontal Merger Guidelines, paragraph 27.

<sup>227</sup> Form CO, paragraph 252.

<sup>228</sup> Market share estimates for Cyprus are based on volume for 2014, see the Form CO, paragraph 375; market share estimates for Iceland are based on value for 2013, see the Form CO, paragraph 473.

Country	FedEx	TNT	Combined	UPS	DHL
Cyprus	[10-20]%	[10-20]%	<b>[20-30]%</b>	[5-10]%	[60-70]%
Czech Rep.	[10-20]%	[20-30]%	<b>[30-40]%</b>	[10-20]%	50-60)%
Denmark	[0-5]%	[10-20]%	<b>[10-20]%</b>	[20-30]%	[50-60]%
Estonia	[0-5]%	[30-40]%	<b>[30-40]0%</b>	[5-10]%	[50-60]%
Finland	[0-5]%	[20-30]%	<b>[20-30]%</b>	[10-20]%	[50-60]%
France	[10-20]%	[5-10]%	<b>[20-30]%</b>	[10-20]%	[60-70]%
Germany	[5-10]%	[10-20]%	<b>[20-30]%</b>	[30-40]%	[40-50]%
Greece	[0-5]%	[10-20]%	<b>[10-20]%</b>	[10-20]%	[60-70]%
Hungary	[10-20]%	[10-20]%	<b>[30-40]%</b>	[10-20]%	[40-50]%
Iceland	[30-40]%	[10-20]%	<b>[40-50]%</b>	[10-20]%	[40-50]%
Ireland	[5-10]%	[5-10]%	<b>[10-20]%</b>	[30-40]%	[50-60]%
Italy	[5-10]%	[10-20]%	<b>[20-30]%</b>	[20-30]%	[50-60]%
Latvia	[0-5]%	[20-30]%	<b>[20-30]%</b>	[5-10]%	[60-70]%
Lithuania	[0-5]%	[30-40]%	<b>[30-40]%</b>	[10-20]%	[40-50]%
Luxembourg	[5-10]%	[20-30]%	<b>[30-40]%</b>	[20-30]%	[40-50]%
Malta	<[5-10]%	[10-20]%	<b>&lt;[20-30]%</b>	[10-20]%	>[40-50]%
Netherlands	[10-20]%	[20-30]%	<b>[30-40]%</b>	[10-20]%	[40-50]%
Norway	[0-5]%	[5-10]%	<b>[10-20]%</b>	[10-20]%	[70-80]%
Poland	[0-5]%	[20-30]%	<b>[20-30]%</b>	[5-8]%	[60-70]%
Portugal	[5-10]%	[10-20]%	<b>[20-30]%</b>	[10-20]%	[50-60]%
Romania	[0-5]%	[20-30]%	<b>[20-30]%</b>	[10-20]%	[60-70]%
Slovakia	[5-10]%	[20-30]%	<b>[20-30]%</b>	[10-20]%	[50-60]%
Slovenia	[0-5]%	[10-20]%	<b>[20-30]%</b>	[10-20]%	[60-70]%
Spain	[5-10]%	[10-20]%	<b>[10-20]%</b>	[30-40]%	[40-50]%
Sweden	[5-10]%	[20-30]%	<b>[20-30]%</b>	[20-30]%	[40-50]%
UK	[10-20]%	[5-10]%	<b>[20-30]%</b>	[20-30]%	[50-60]%

Source: [Confidential]

(268) Based on those estimates in Table 2, there would be one national market in which the Parties' combined market share would be above 40%, namely Iceland with [40-50]%<sup>229</sup>. The Merged Entity would be the number one integrator in Iceland post-Transaction. The market share increment would be below 5% in 13 of the 30 national markets and would only exceed 10% in six of them. Based on those market share estimates, DHL would remain the market leader in the EEA with the number one position in all national markets apart from Iceland. UPS would remain the number two player at an EEA-wide level and in nine of the 30 national markets.

<sup>229</sup> FedEx explains in the Form CO, paragraph 471, that "TNT's market share is very likely significantly [Confidential information of TNT's market share]."

9.3.2. Results of the Commission's market reconstruction exercise

(269) As explained in Section 8, given the inherent limitations of FedEx's market share determination methodology, the Commission has undertaken a market reconstruction exercise.

(270) Consistent with the approach outlined in Section 9.2, the Commission has only taken into consideration revenue data of the four integrators in its market reconstruction. While a number of non-integrated small package delivery companies such as national postal operators, freight forwarders and other local suppliers also provide delivery services in the 30 national markets in the EEA, as explained in Section 9.1, these suppliers exert a limited competitive constraint on the four integrators.<sup>230</sup> Accordingly, the market reconstruction results in market shares for FedEx and the other integrators which are slightly overstated and would therefore constitute an upper bound.<sup>231</sup> All four integrators' market shares would be lower if non-integrators active in the field of international intra-EEA express delivery services were included. However, as illustrated in Table 3, even based on this conservative approach, the market position of the Merged Entity would be moderate.

**Table 3: Integrators' 2012-2014 revenue shares for international intra-EEA express delivery services by country**

Integrator	All lanes														
	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Austria	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Belgium	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%
Bulgaria	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%
Croatia	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[70-80]%
Cyprus	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%
Czech Republic	[0-5]%	[20-30]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Denmark	[0-5]%	[10-20]%	[10-20]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%
Estonia	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%
Finland	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
France	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Germany	[0-5]%	[20-30]%	[20-30]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%
Greece	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[50-60]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Hungary	[10-20]%	[20-30]%	[40-50]%	[10-20]%	[30-40]%	[10-20]%	[20-30]%	[40-50]%	[10-20]%	[30-40]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Iceland	[0-5]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[0-5]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[0-5]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%
Ireland	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Italy	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Latvia	[5-10]%	[40-50]%	[50-60]%	[5-10]%	[30-40]%	[5-10]%	[40-50]%	[40-50]%	[10-20]%	[30-40]%	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%
Lithuania	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%
Luxembourg	[5-10]%	[20-30]%	[20-30]%	[5-10]%	[60-70]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[60-70]%	[5-10]%	[20-30]%	[20-30]%	[5-10]%	[60-70]%
Malta	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[40-50]%
Netherlands	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[10-20]%	[30-40]%	[40-50]%
Norway	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Poland	[0-5]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%	[0-5]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%	[5-10]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%
Portugal	[10-20]%	[10-20]%	[30-40]%	[30-40]%	[30-40]%	[10-20]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%
Romania	[0-5]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%	[0-5]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%
Slovakia	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%	[5-10]%	[30-40]%	[30-40]%	[10-20]%	[50-60]%	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%
Slovenia	[0-5]%	[5-10]%	[10-20]%	[20-30]%	[50-60]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Spain	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Sweden	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%
UK	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Total EEA	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%

Source: Commission's reconstruction of 2014 revenue shares based on revenue data submitted by FedEx, TNT, DHL and UPS

(271) The results of the Commission's market reconstruction regarding international intra-EEA express delivery services do not differ substantially from the market share estimates submitted by FedEx in the Form CO. At EEA-level, a comparison of the 2014 revenue shares of the four integrators illustrates that post-Transaction, the

<sup>230</sup> See also *UPS/TNT*, recitals 245 to 510.  
<sup>231</sup> See *UPS/TNT*, recital 949.

Merged Entity would have a market share below 30%. It would still be the weakest of the three remaining integrators and thus the number three player after DHL and UPS.

- (272) At country level, the Merged Entity would not have a market share exceeding [40-50]% based on 2014 revenue figures and would not become the number one player in any of the 30 national markets considered. Notably the Parties' combined revenue share in Iceland would remain considerably below the estimated market share of 47% projected by FedEx in the Form CO. The Merged Entity would be in the same or a lower revenue share range than the weaker of the other two players in 18 out of the 30 national markets. In addition, it should be noted that given FedEx's limited presence in a number of national markets, the Transaction would give rise to an increment of less than 5% in 10 of the 30 national markets. The Merged Entity would only have a market share exceeding 30% with an increment of 10% or more in three national markets, i.e., Cyprus, France and Hungary.
- (273) Based on the results of the Commission's market reconstruction for 2014, DHL would remain in the highest range or in the same range as UPS, in practically all national markets. An exception is Germany where UPS's revenue is in a higher range than DHL's. UPS would be in the same or a higher revenue share range than the Merged Entity in 18 of the 30 national markets. UPS has a revenue share below 10% in two national markets only, namely in Bulgaria and in Luxembourg. However, in the light of the various elements set out in Sections 9.4 to 9.9, the Commission concludes that the Transaction would not significantly impede effective competition in any national market including these two.
- (274) The Commission's market reconstruction has also shown that the Parties' revenue shares have not changed materially over the period assessed, i.e. from 2012 to 2014. In 2012 and 2013, the Merged Entity was in the same or a lower revenue share range than the weaker of the other two other players in 17 national markets respectively. The revenue share increment was less than 5% 14 and 12 national markets respectively. At an EEA-wide level, FedEx's market share has remained stable compared to 2012 and 2013, while TNT's share has even decreased by [0-5]% percentage points.

#### **9.4. Amongst integrators, FedEx and TNT are no close competitors regarding international intra-EEA express delivery services**

- (275) According to the Horizontal Merger Guidelines,<sup>232</sup> a merger between close competitors is more likely to have anticompetitive effects and lead to a significant increase in price. The higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly.<sup>233</sup> The purpose of assessing the closeness of competition between the Parties is therefore to determine whether they currently exert a significant competitive constraint on each other which would be removed post-Transaction and whether other suppliers would be able to sufficiently constrain the Merged Entity.<sup>234</sup>

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<sup>232</sup> Horizontal Merger Guidelines, paragraphs 28 and following.

<sup>233</sup> Horizontal Merger Guidelines, paragraph 28.

<sup>234</sup> See Commission's decision of 17 November 2010 in Case M. 5658 - Unilever/Sara Lee Body Care, recital 836.

#### 9.4.1. FedEx's views

- (276) FedEx submits that there is clear evidence that FedEx and TNT are not particularly close competitors.
- (277) Firstly, FedEx argues that the Parties' activities are largely complementary. FedEx has a limited presence in the significant EEA domestic and deferred markets and is primarily focused on the extra-EEA international express and US domestic markets. TNT, on the other hand, has a more significant ground-based and air-based intra-EEA presence, including domestic and deferred business. The very nature of the Parties' businesses are fundamentally different (hence the rationale of the Transaction) such that they cannot be considered to be particularly close competitors.<sup>235</sup>
- (278) Secondly, FedEx submits that its database of existing customers and sales opportunities clearly shows that it consistently competes more against DHL than against TNT. Specifically, DHL is identified as FedEx's main competitor in [30-40]% of opportunities for which FedEx has submitted a bid for international intra-EEA services, which is more than twice as often as TNT ([10-20]%). UPS is the second most identified competitor (recorded as FedEx's main competitor in [10-20]% of opportunities), with TNT coming in third place.
- (279) In addition, TNT's bidding data covering its top 250 customers shows that for the vast majority of opportunities in 2014, FedEx is only identified as TNT's competitor in a very small number of cases ([0-5]%) across all opportunities for which TNT submitted a bid in 2014. FedEx is also rarely (in [5-10]% of the cases) identified as TNT's competitor across opportunities for international intra-EEA express services. The limited competitive constraint between the merging parties is also demonstrated by an analysis of the incumbents on sales prospects for which TNT has submitted a bid. In particular, FedEx is rarely the incumbent in opportunities for which TNT bid.
- (280) FedEx submits that its view that the Parties are not particularly close competitors is supported by clear and compelling pre-existing evidence both within the FedEx and the TNT databases.<sup>236</sup>
- (281) FedEx concludes that, accordingly, the Parties are not particularly close rivals and there is not a higher degree of substitutability between their services than between FedEx and DHL or UPS. Rivalry between the Parties has therefore not been an important source of competition in the international intra-EEA express market. Given that DHL and UPS are closer substitutes to TNT in respect of international intra-EEA express services, they would be able to constrain the Merged Entity and defeat any hypothetical post-merger price increase if they were attempted.<sup>237</sup>

#### 9.4.2. The Commission's assessment

- (282) The analysis of closeness of competition between the Parties is helpful to determine which firms active on the international intra-EEA express delivery services markets offer products that are close substitutes to each other, and is informative about the level of competitive constraint that these firms currently exercise.
- (283) Whether the Parties exert a close competitive constraint on each other is particularly relevant in a differentiated sector like the small package delivery services industry.

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<sup>235</sup> Form CO, paragraph 278.

<sup>236</sup> Form CO, paragraphs 279 to 289.

<sup>237</sup> Form CO, paragraph 289.

One of the most important differentiating factors of the international intra-EEA express market is the coverage of origins and of destinations which are offered by a particular supplier, namely the EEA countries to and from which express small packages can be shipped and the extent of the coverage of geographic territories within these countries. Another important factor is the possibility of purchasing other types of high-quality delivery services from the provider, such as domestic, deferred or extra-EEA delivery services from the same provider. There are also other differentiating factors such as the qualitative features of the service (reliability, quality of track-and-trace, and the offering of specific services such as premium morning or noon deliveries or special handling).

- (284) The mix of various differentiating factors determines how close substitutes the various suppliers are when they compete for customers. The Commission has therefore not only analysed the Parties with regard to the key characteristics (such as coverage of their services and customer focus), but also assessed the degree of their substitutability from the customers' perspective on the basis of all available evidence, notably customers' evaluation from the market investigation and bidding analysis.
- (285) Even though both Parties are integrators and therefore compete with each other in the field of international intra-EEA express delivery services in the 30 national markets in the EEA, the Commission concludes that based on the results of the market investigation, the internal documents and data of the Parties and the bidding analysis submitted by the Parties, the Parties are no close competitors amongst integrators.

#### 9.4.2.1. FedEx's business focus is on customers with significant extra-EEA delivery needs

- (286) As further explained in this Section 9.4.2.1, FedEx is the integrator with the lowest market presence regarding international intra-EEA express delivery services and the majority of FedEx's revenues are generated from customers that require a substantial proportion of extra-EEA delivery services. This is due to FedEx's lack of significant presence in the domestic and international intra-EEA deferred segments in the EEA. This limited presence leads to a lower scale, density of operation and service coverage than the other integrators and thus, higher PUD costs. This hampers FedEx's ability to compete for customers of stand-alone international intra-EEA delivery services or customers of such services with a focus on domestic or of intra-EEA deferred services. It also affects FedEx's ability to offer a complete bundle of intra-EEA services to customers that wish to single-source their delivery needs.

#### ***9.4.2.1.1 FedEx derives the large majority of international intra-EEA express revenues from customers that also purchase extra-EEA services***

- (287) The evidence in the Commission's file shows that FedEx focuses on a different customer group than TNT, namely on those customers with a strong focus on extra-EEA deliveries. Conversely, FedEx is not successful at attracting customers that do not also source extra-EEA delivery services but only require stand-alone international intra-EEA express delivery services or who also wish to source domestic and international intra-EEA deferred services.
- (288) First, the majority of FedEx's international intra-EEA express delivery services revenues are linked to its strong position on extra-EEA delivery routes. Based on FedEx's sales data for 2014,<sup>238</sup> [Confidential]% of FedEx's international intra-EEA express revenues are derived from customers that have also purchased extra-EEA

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<sup>238</sup> FedEx's submission "*Further analysis on the competitive constraint between the Parties*" of 13 July 2015, page 5.

delivery services from FedEx. By contrast, based on TNT's sales data, [Confidential]% of TNT's international intra-EEA express revenues are derived from customers that have also purchased extra-EEA delivery services from TNT. Based on the same FedEx data, [Confidential]% of FedEx's international intra-EEA express customers also purchase extra-EEA services from FedEx. Based on the same TNT data, [Confidential]% of TNT's international intra-EEA express customers also purchase extra-EEA services from TNT.<sup>239</sup>

- (289) In this context, it is relevant to factor out international intra-EEA express services customers with one-off or sporadic purchases of extra-EEA delivery services as these may be less representative of the customer type that would choose FedEx as its international intra-EEA express delivery services provider. The Commission has therefore considered the proportion of FedEx's international intra-EEA express revenue represented by customers that also have a certain proportion of extra-EEA business:

**Figure 7: Share of FedEx's 2014 intra-EEA express revenues accounted for by customers for whom at least a given share of their business is extra-EEA**

[Confidential]

*Source: [Confidential].*

- (290) Focussing on those FedEx customers for whom at least a proportion of their business is extra-EEA, Figure 7 shows that [Confidential]% of FedEx's intra-EEA revenues are derived from customers whose extra-EEA deliveries account for [Confidential]% or more of their business with FedEx. [Confidential]% of FedEx's intra-EEA revenues are derived from customers whose requirements for extra-EEA deliveries account for [Confidential]% or more of their expenditure with FedEx.<sup>240</sup> By contrast, only [Confidential]% of TNT's intra-EEA revenues are derived from customers whose extra-EEA deliveries account for 20% or more of their expenditure with TNT and only [Confidential]% of TNT's intra-EEA revenues are derived from customers whose requirements for extra-EEA deliveries account for [Confidential]% or more of their expenditures with TNT.<sup>241</sup>
- (291) Table 4 compares FedEx's and TNT's intra-EEA express revenues accounted for by customers for whom at least 50% of their business with FedEx or TNT is intercontinental:

**Table 4 - Share of FedEx's and TNT's intra-EEA express revenues accounted for by customers for whom at least 50% of their business is intercontinental, 2014**

[Confidential]

*[Confidential]*

- (292) This overview clearly shows that FedEx's international intra-EEA express business is considerably more interlinked with its extra-EEA business than TNT's.
- (293) Second, the Parties' sales data show that FedEx has a particularly strong focus on international intra-EEA express customers requiring deliveries to the United States. [Confidential]% of FedEx's overall international intra-EEA express revenues are generated with customers that also purchase extra-EEA services to the United States

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<sup>239</sup> FedEx's response to question 4 of request for information QP21 of 6 November 2015.

<sup>240</sup> Submission by FedEx Corporation "Further analysis on the competitive constraint between the Parties", page 10.

<sup>241</sup> FedEx's response to question 5 of request for information QP21 of 6 November 2015.

from FedEx, accounting for [Confidential]% of FedEx's international intra-EEA express customers. By contrast, only [Confidential]% of TNT's international intra-EEA express customers purchase extra-EEA services to the United States from TNT, accounting for [Confidential]% of its international intra-EEA express revenues.

- (294) Those FedEx customers of international intra-EEA express delivery services that also purchase extra-EEA delivery services from FedEx focus on different destination lanes than TNT's customers of international intra-EEA express delivery services that also purchase extra-EEA delivery services from TNT. Over [Confidential]% of FedEx's extra-EEA deliveries made by FedEx's intra-EEA express customers go to North America. By contrast, the proportion of extra-EEA deliveries made by TNT's intra-EEA express customers to North America is significantly smaller. Only [Confidential]% of the extra-EEA delivery services TNT provides to its international intra-EEA express customers are directed to North America. By contrast, [Confidential]% of deliveries of those customers are directed to Asia.<sup>242</sup> Accordingly, even those FedEx customers of international intra-EEA express services that also purchase extra-EEA services have a different profile than TNT's customers of the same types of services. Whilst the majority of FedEx's customers ship small packages to North America, Asia is the most frequent destination of the packages shipped by TNT's customers.
- (295) Accordingly, the international intra-EEA express services customers of each Party that also purchase extra-EEA services differ in profile. While the majority of FedEx's extra-EEA deliveries for its intra-EEA customers are to North America, only a small proportion of the deliveries of TNT's intra-EEA express customers with extra-EEA shipment needs are directed to North America.
- (296) Third, FedEx [Confidential] customers of international intra-EEA express services that require a substantial proportion of extra-EEA delivery services. [Confidential details on fedex's customer discount strategy and its discount strategy for discounts requests].<sup>243</sup> FedEx [Confidential] shows that FedEx is not competitive on prices for stand-alone intra-EEA express business.
- (297) In conclusion, the elements set out in this Section 9.4.2.1.1 show that FedEx's operational focus for its international intra-EEA delivery service clearly lies with customers that also require extra-EEA delivery services. Amongst this customer group, those that require shipments to North America represent the majority.

**9.4.2.1.2 FedEx's focus on international intra-EEA customers that are heavy users of extra-EEA services is due to the low scale and density of its operations in the EEA.**

- (298) Small package delivery is subject to significant economies of density/scale in the same way as other network industries. Small package delivery benefits from the effects of a larger degree of territorial coverage or density. The larger the scale and density of the network at the origin and destination end the lower the unit costs of the service provision for the provider. This gives an advantage to operators that have larger geographical coverage and densities.<sup>244</sup>
- (299) Compared to the other integrators, given its weaker ground-, air- and PUD network in the EEA, FedEx lacks a meaningful presence across the overall intra-EEA delivery

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<sup>242</sup> FedEx's response to question 5 of request for information QP21 of 6 November 2015.

<sup>243</sup> FedEx's submission "*Further analysis on the competitive constraint between the Parties*" of 13 July 2015, pages 7, 8.

<sup>244</sup> See *UPS/TNT*, recital 49. See also Form CO, paragraph 94.

service portfolio<sup>245</sup>, in particular in the domestic and intra-EEA deferred segments in the EEA. FedEx has [Confidential]. Accordingly, [Confidential] to serve customers of stand-alone international intra-EEA express delivery services or customers that wish to source their international intra-EEA express service needs and their domestic and deferred service needs from the same provider. FedEx cannot offer competitive prices to such customers. Equally, it is less attractive for customers that require such stand-alone international intra-EEA express delivery services or wish to source their international intra-EEA express service needs and their domestic and deferred service needs from the same provider, because FedEx has a lower coverage and smaller product portfolio in the EEA than the other integrators.

**A. *FedEx's low international intra-EEA express market presence in terms of revenue generated***

(300) First, FedEx has the lowest market presence in the international intra-EEA express markets. The results of the Commission's market share reconstruction in Table 3, in recital (272) illustrate that FedEx's 2014 revenue share for international intra-EEA express delivery services is distinctly lower than that of the three other integrators. FedEx's share does not exceed 5% in nine of the national markets considered. FedEx's share is above 10% in only nine of the national markets. FedEx is in the lowest revenue share range of all integrators in 19 national markets for international intra-EEA express delivery services. In another 10 national markets, is FedEx in the same revenue share range as the weakest of the other three integrators. Only in [Confidential], FedEx is in a higher revenue share range than the weakest of the other three integrators, namely TNT.

(301) FedEx's market position in terms of revenues generated with international intra-EEA express delivery services has not changed materially throughout the three-year period analysed by the Commission, i.e. from 2012 to 2014. In 2012 and 2013, FedEx's revenue share was below 5% in 13 respectively 11 national markets and was above 10% in only nine national markets respectively. FedEx was in the lowest revenue share range of all integrators in 17 national markets in 2012 and in 20 national markets in 2013. Accordingly, based on the integrators' actual revenue figures for the period 2012 to 2014, FedEx's market position has not changed materially.

**B. *FedEx's weak geographic coverage***

(302) The degree of territorial coverage subject to time commitment is one of the key indicators used to benchmark competitiveness in the small package delivery market.

(303) In order to constitute a credible option for a large number of potential customers, integrators must offer express coverage of their location for outbound and inbound parcels. The integrators must be able to collect the packages from the customers and, for a large proportion of international intra-EEA express deliveries, transfer them to a local flight point in time to be transported the same day by air to its European hub for overnight sorting. Finally, integrators need to have a dense ground PUD network in the country of destination.

(304) The percentage of business addresses offered by a market participant in any given country for express services, for example for a destination to be reached by the end

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<sup>245</sup> Namely including domestic and deferred services.

of the following business day, is an indicator that captures the relative reach of the network of each of the integrators in that particular country.<sup>246</sup>

- (305) In respect of coverage, service at both origin and destination are important. If a supplier has very broad coverage in the country of origin but limited coverage in the country of destination, it will not be considered by a customer as a strong competitor in comparison with other companies that have good coverage at both ends.<sup>247</sup>
- (306) In *UPS/TNT*, the Commission compared FedEx's coverage with the coverage of the other integrators and concluded that at the time of the decision, FedEx offered limited territorial coverage within the EEA in comparison to the other integrators as regards its international intra-EEA express delivery services subject to various time delivery commitments.<sup>248</sup>
- (307) The Commission considers that based on the integrators' updated postal code coverage data, the Parties' internal documents and the results of the Commission's market investigation, FedEx is still the weakest integrator in terms of geographic coverage.
- (308) First, the Commission analysed coverage data provided by the integrators concerning the percentage of postal codes covered for express services by origin country integrators.<sup>249</sup> An analysis of the data for end-of-day coverage provided in Table 5 shows that FedEx is the weakest of the four integrators.

**Table 5: Express end-of- day outbound postal code coverage of integrators by origin country<sup>250</sup>**

Country	FedEx	TNT	DHL	UPS
AT	[Confidential]	[Confidential]	[Confidential]	[Confidential]
BE	[Confidential]	[Confidential]	[Confidential]	[Confidential]
CZ	[Confidential]	[Confidential]	[Confidential]	[Confidential]
DE	[Confidential]	[Confidential]	[Confidential]	[Confidential]
DK	[Confidential]	[Confidential]	[Confidential]	[Confidential]
EE	[Confidential]	[Confidential]	[Confidential]	[Confidential]
ES	[Confidential]	[Confidential]	[Confidential]	[Confidential]
FI	[Confidential]	[Confidential]	[Confidential]	[Confidential]
FR	[Confidential]	[Confidential]	[Confidential]	[Confidential]
GB	[Confidential]	[Confidential]	[Confidential]	[Confidential]

<sup>246</sup> See *UPS/TNT*, recital 518-522.

<sup>247</sup> See *UPS/TNT*, recital 60.

<sup>248</sup> *UPS/TNT*, recital 527.

<sup>249</sup> See further description of the collected coverage data in Section 9.8.

<sup>250</sup> FedEx was unable to provide postcode-level coverage data for Bulgaria, Cyprus, Ireland and Malta.

Country	FedEx	TNT	DHL	UPS
GR	[Confidential]	[Confidential]	[Confidential]	[Confidential]
HR	[Confidential]	[Confidential]	[Confidential]	[Confidential]
HU	[Confidential]	[Confidential]	[Confidential]	[Confidential]
IS	[Confidential]	[Confidential]	[Confidential]	[Confidential]
IT	[Confidential]	[Confidential]	[Confidential]	[Confidential]
LT	[Confidential]	[Confidential]	[Confidential]	[Confidential]
LU	[Confidential]	[Confidential]	[Confidential]	[Confidential]
LV	[Confidential]	[Confidential]	[Confidential]	[Confidential]
NL	[Confidential]	[Confidential]	[Confidential]	[Confidential]
NO	[Confidential]	[Confidential]	[Confidential]	[Confidential]
PL	[Confidential]	[Confidential]	[Confidential]	[Confidential]
PT	[Confidential]	[Confidential]	[Confidential]	[Confidential]
RO	[Confidential]	[Confidential]	[Confidential]	[Confidential]
SE	[Confidential]	[Confidential]	[Confidential]	[Confidential]
SI	[Confidential]	[Confidential]	[Confidential]	[Confidential]
SK	[Confidential]	[Confidential]	[Confidential]	[Confidential]
Non-weighted average	[Confidential]	[Confidential]	[Confidential]	[Confidential]

- (309) Table 5 shows that FedEx still has the weakest coverage in several EEA countries, for instance in the Czech Republic, Estonia, Finland, Lithuania, Slovenia and Slovakia. The average coverage of FedEx is [Confidential]% compared to [Confidential]% for TNT, [Confidential]% for DHL and [Confidential]% for UPS.
- (310) This is also shown by Figure 8, which illustrates FedEx's coverage at country-level based on versions of FedEx's zip code database extracted in 2012 and 2014.<sup>251</sup>

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<sup>251</sup> Specifically, the coverage analysis illustrated in the figure relies on zip codes recorded by FedEx which are then weighed based on the number of marketable business as recorded in the Dun & Bradstreet database. It should be noted that, although the coverage figures are shown by origin country, both the origin (outbound) and destination (inbound) coverage are taken into consideration in the calculation.

**Figure 8 – FedEx proportion of business covered with international intra-EEA express services, by origin country**

[Confidential]

[Confidential].

- (311) Figure 8 shows that FedEx's coverage in the EEA [Confidential information on Fedex's investments which only led to a slight increase in overall coverage since 2012]. Therefore, when looking at origin-and-destination pairs, the Commission finds that FedEx's overall coverage only increased slightly, [Confidential information on Fedex's investments].<sup>252 253</sup>
- (312) Second, FedEx does not cover a significant part of the express delivery time slots offered by the other integrators. In the express delivery market, customers generally want the transit time to be as short as possible. However, many customers also value the possibility of having the package delivered at a specific time of the day. For instance, a customer may prefer a delivery "before 10:30" or a delivery "by noon". Unlike the other integrators, FedEx's does not offer early morning deliveries and FedEx is unable to offer more than one delivery time option for a given destination.
- (313) Therefore, in addition to the coverage analysis in Table 5, in recital (310) and Figure 8 in recital (312), the Commission has considered the conditions under which FedEx offers its intra-EEA express services, and how these conditions compare to those offered by the other three integrators. Table 6 uses FedEx's coverage data to compare the delivery times offered by each of the integrators for an intra-EEA express delivery and shows the proportion of Gross Domestic Product ("GDP")<sup>254</sup> (based on destination postcode) for which each of the integrators offers each of the four delivery services considered in EEA countries.

**Table 6 - Proportion of GDP covered by express delivery time slot for EEA countries<sup>255</sup>**

	<b>By 9:00</b>	<b>By 10:30</b>	<b>By noon</b>	<b>By end of business day</b>
<b>DHL</b>	[30-40]%	[0-5]%	[90-100]%	[90-100]%
<b>FedEx</b>	[0-5]%	[0-5]%	[60-70]%	[30-40]%
<b>TNT</b>	[30-40]%	[40-50]%	[60-70]%	[70-80]%
<b>UPS</b>	[60-70]%	[30-40]%	[50-60]%	[90-100]%

*Source: RBB Economics based on FedEx's coverage data*

<sup>252</sup> FedEx's response to question 1 of request for information QP15 of 16 September 2015.

<sup>253</sup> FedEx's response to question 1 of request for information QP15 of 16 September 2015.

<sup>254</sup> When referring to coverage of "GDP" FedEx uses its "business weight" measure which uses GDP, along with other indicators such as the number of companies in an area, to estimate demand for delivery services at an individual postcode level. The countries covered by the business weight measure are [Confidential]

<sup>255</sup> The coverage figures presented in **Table 6** do not reflect cumulative coverage through the day but rather the percentage of postcodes (based on GDP) to which a delivery with a particular time commitment is offered by each of the integrators. The table displays that FedEx's end of day coverage is [Confidential]. This is due to the fact that, unlike its rivals, FedEx [Confidential information of Fedex's delivery times].

- (314) Table 6 shows that FedEx's coverage is significantly weaker than that shown by the other integrators. More specifically, FedEx does not cover any EEA destination on an "early morning" delivery basis, whilst TNT, UPS and DHL cover a significant proportion of the territory with both by "by 9:00" and "by 10:30" deliveries. Regarding deliveries by noon, FedEx covers an area accounting for [60-70]% of EEA GDP but this is still well below the proportion covered by DHL ([90-100]%). Finally, as regards deliveries by close of business, FedEx's coverage is at a very low level ([30-40]%) compared to that of its rival integrators ([70-100]%). Those significant service coverage disadvantages prevent FedEx from meeting customers' specific pick-up and delivery requirements.
- (315) This weakness is mainly due to FedEx's [Confidential information on Fedex's air network]. Consequently, there will be many instances where, even though FedEx is nominally present as a competitor on a given lane, its presence does not materially constrain rival integrators.
- (316) The fact that FedEx does not cover a significant part of the express delivery time slots effectively prevents it from competing for certain customers. If an intra-EEA express customer needs to send packages to arrive by 10:30 the next-day, it simply cannot use FedEx's services.
- (317) Third, FedEx's continued weakness in terms of geographic coverage also emerges from the Parties' and UPS's internal documents. [Confidential information on TNT internal presentation].<sup>256</sup>
- (318) Last but not least, the market investigation confirms that FedEx is the weakest integrator in terms of coverage. The majority of customers responding to the market investigation consider geographic coverage a very significant or even indispensable criterion when selecting the integrators from which to purchase an international intra-EEA express delivery service.<sup>257</sup> The respondents clearly rank FedEx last when asked which integrator offered the best geographic coverage.<sup>258</sup>
- (319) In conclusion, the Commission considers that FedEx still offers a more limited territorial coverage in Europe than the other integrators as regards international intra-EEA express delivery services subject to the different time delivery commitments.

**C. FedEx's weak network in the EEA**

- (320) FedEx has a weaker network in Europe compared to the other integrators. The Commission found in *UPS/TNT* that FedEx has a relatively limited network in most EEA countries.<sup>259</sup> Based on the information submitted by FedEx, the Commission concludes that FedEx's position has not changed materially over the last three years despite some investments having been made.
- (321) First, FedEx currently has a limited domestic and international road network. This means that its sorting centres and hubs are generally not well connected with one another, apart from the main connections to the (air) hubs feeding international

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<sup>256</sup> FedEx's response to question 2 of request for information QP19 of 8 October 2015, Annex 37.

<sup>257</sup> See responses to question 4.6 of the questionnaire to customers R2 – Phase 2.

<sup>258</sup> See responses to question 5.1 of the questionnaire to customers R2 – Phase 2.

<sup>259</sup> *UPS/TNT*, recital 80.

traffic. FedEx has started domestic services in recent years, but these are still very limited except in the United Kingdom, France and Poland.<sup>260</sup>

- (322) Despite some expansion in recent years, FedEx's intra-EEA truck network is still more limited than that of the other integrators. FedEx estimates that it currently operates around [Confidential] vehicles in the EEA.<sup>261</sup> By way of comparison, TNT estimates that it operates approximately [Confidential] vehicles in the EEA,<sup>262</sup> of which [Confidential] are owned or leased and the large remainder, that is, almost [Confidential] are subcontracted. This explains why the number of truck routes for TNT is significantly higher compared to that of FedEx. DHL owns around 17 000 vehicles and UPS owns more than 9 000 vehicles.<sup>263</sup> Further, FedEx's intra-EEA truck network currently comprises [Confidential] truck routes<sup>264</sup> a week, that is, approximately [Confidential] per day, compared to [Confidential] per week / [Confidential] per day in 2012. TNT has a significantly broader EEA-wide ground network covering around [Confidential] routes per week between its [Confidential] transit hubs and around [Confidential] routes per day.<sup>265</sup> Whilst FedEx's intra-EEA road network comprises [Confidential] road hubs, TNT has [Confidential], DHL 97 and UPS 54 road hubs.<sup>266</sup> Whilst TNT connects [Confidential] countries via its road network, FedEx only connects [Confidential] countries.<sup>267</sup>
- (323) Second, FedEx has a smaller airline network than the other integrators. According to FedEx's estimates, it has [Confidential] flight points. By way of comparison, DHL has 72, TNT [Confidential] and UPS 49 flight points. The air network density has an impact on the number of destinations that can be reached and also on the speed (time-in transit) of reaching those destinations. FedEx has fewer flights that stop more frequently than its competitors, which means that FedEx parcels arrive later to their destination. Due to the lack of scale, FedEx still operates an air network with a significant proportion of feeder aircraft. In its intra-EEA operations, FedEx operates

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<sup>260</sup> Within the EEA, FedEx has a larger domestic presence in the United Kingdom, in France, where it acquired in 2012 the ground network operator Tatex, and in Poland, where it acquired in 2012 the ground network operator Opek.

<sup>261</sup> FedEx's fleet in the EEA is composed of [Confidential] vehicles owned by FedEx (compared to [Confidential] in 2012). In addition, according to FedEx's best estimate, the number of leased vehicles and subcontracted vehicles amounts to approximately [Confidential].

<sup>262</sup> TNT estimates that only [Confidential]% is owned driver & vehicle (including lease) and [Confidential]% is subcontractors. See in this respect FedEx's supplementary response to question 5 of request for information QP24, email dated 26 November 2015.

<sup>263</sup> Source of DHL and UPS information: FedEx's estimates based on publicly available information, see FedEx's response to question 1 of request for information QP22 of 13 November 2015.

<sup>264</sup> A route is a specific itinerary using an origin point to a destination point. The term does not relate to the number of trucks used to operate a certain truck route as multiple trucks could be operated on one route. Routes requiring more than one day and which are not operated daily would be taken into account in the weekly count but not in the daily count. In addition, the weekly count also has more routes compared to weekend operations, during which different long haul routes may be operated.

<sup>265</sup> TNT, as is the case for UPS and DHL, operates a trucking network within the EEA, whilst FedEx does not. This means that FedEx's routes tend to be origin point to destination point, whilst TNT's trucks are part of an entire network, which connects multiple origin points to one or more sorting centres, and those sorting centres to one or more destination points. Based on a multiple route count, namely taking into account all legs of a route, TNT would have around [Confidential] truck routes per week and [Confidential] truck routes per day.

<sup>266</sup> Source of DHL and UPS information: FedEx's estimates based on publicly available information, see FedEx's response to question 1 of request for information QP22 of 13 November 2015.

<sup>267</sup> FedEx's response to question 1 of request for information QP22 of 13 November 2015.

[Confidential] feeders and [Confidential] jets.<sup>268</sup> Feeder aircrafts have disadvantages compared to larger jets in terms of cost per kilo of operation, the capacity available per leg and speed.<sup>269</sup> In comparison, TNT operates [Confidential] DHL 63 and UPS 19 jet aircrafts.<sup>270</sup> UPS's fleet is composed of 18 Boeing 767 aircrafts, which has twice as much capacity than the Boeing 757 aircraft of which FedEx operates [Confidential].<sup>271</sup> As a result, UPS is capable to cover more destination cities and carry more capacity in each aircraft.<sup>272</sup>

- (324) Since 2012, FedEx's airline network has not changed materially. FedEx operates [Confidential] additional jet aircrafts and has [Confidential] additional flight points.
- (325) Third, FedEx's PUD network is less dense than the network of the other integrators. This is illustrated by the significantly lower coverage set out in detail in Table 5, in recital (310), despite FedEx's organic expansion efforts.
- (326) Fourth, in relation to pick-up and deliveries, FedEx relies more on outsourced services than the other integrators and hence has a lower degree of control over the network. FedEx serves around [Confidential]% of its customers in the EEA directly whilst TNT serves over [Confidential]% directly.
- (327) This weaker network translates into FedEx's lower geographic coverage for the different express services, relative weakness in providing deferred and domestic services on a larger scale, and a higher cost base resulting from lower economies of scale and density, which all together makes FedEx significantly less competitive for intra-EEA express deliveries. This in turn translates into a weak market position for the Parties and DHL and is consistent with FedEx focus on extra-EEA deliveries.

**D. FedEx's negligible presence in domestic and deferred markets.**

- (328) The domestic and deferred small package markets in the EEA are significantly larger in volume than the international express markets:

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<sup>268</sup> In addition, [Confidential], see FedEx's email dated 24 November 2015 in response to question 1 of request for information QP 22 of 13 November 2015.

<sup>269</sup> A jet centric network provides key benefits coming from (i) the increased speed of jet aircraft compared to feeder aircraft; (ii) the possibility of containerisation of loads (jet aircraft are typically larger and allow for containers to be loaded on them whereas feeder aircraft simply have cargo loaded in bulk), and (iii) the lower operating aircraft cost per unit (kilo) of load (given that jet aircraft have a higher payload capacity). For example, an Oporto (PT) – Paris (FR) route operated by a jet aircraft (B737) in comparison to a feeder aircraft (ATR42) would allow to depart from the Oporto origin more than 85 minutes later whilst keeping the same arrival time in Paris. In addition, the jet aircraft will have faster on/off-loading times for sorting at CDG (Paris) compared to the bulk volume from feeder aircrafts. Finally, the comparative cost per unit (kilo) of a fully loaded B737 aircraft would be approximately 25% lower than that of the ATR42

<sup>270</sup> Source of DHL and UPS information: FedEx's estimates based on publicly available information, see response to question 1 to request for information QP22 of 13 November 2015.

<sup>271</sup> An aircraft of the type Boeing 767 has a capacity of 55,558 lbs. whilst an aircraft of the type Boeing 757 has a capacity of 109,570. See FedEx's response to question 7 of request for information QP24 of 24 November 2015.

<sup>272</sup> In addition, FedEx has [Confidential] jet aircrafts of the type A 300 (maximum capacity per aircraft of 86,920 lbs.) and UPS has one aircraft of the type Boeing 757 (maximum capacity of 55,558 lbs.) in operation in the EEA. Accordingly, FedEx's jets in operation in the EEA have a total maximum capacity of [Confidential]. UPS's jets in operation in the EEA have a maximum capacity of 2,027,818, namely almost [Confidential] more than FedEx's jets.

**Table 7 - EEA-wide small package volumes and values in the various segments in 2014**

<b>Market Segment</b>	<b>% of total market in volume</b>	<b>% of total market in value</b>
<b>Total market</b>	[90-100]%	[90-100]%
<b>Domestic express</b>	[80-90]%	[60-70]%
<b>International intra-EEA deferred</b>	[5-10]%	[10-20]%
<b>International intra-EEA express</b>	[0-5]%	[10-20]%
<b>Extra-EEA express</b>	[0-5]%	[5-10]%
<b>Extra-EEA deferred</b>	[0-5]%	[0-5]%

Source: FedEx [Confidential] database<sup>273</sup> and TNT actuals

- (329) Table 7 illustrates that based on the Parties' estimates<sup>274</sup>, domestic and intra-EEA deferred delivery services represent around [90-100]% of small packages shipped in the EEA in 2014 and [70-80]% of revenue generated. Table 7 also shows that international intra EEA-express services only represent an estimated [0-5]% of the overall small package market volume and an estimated [10-20]% of the overall small package market value in the EEA. This illustrates the importance that domestic and deferred services have on an operator's scale of operations.
- (330) An operator with a large domestic or deferred package activity will have considerably larger pick-up and delivery operations in place. Greater density network allows the small package service provider to achieve a more efficient use of its infrastructure. Each increase in network density leads to a lowering of the cost of handling additional volume. A high density network brings more clients per square kilometre, which allows for a reduction of the distance between customers. Therefore, single vehicle journeys will be shorter in distance and will allow a larger number of small packages to be picked-up and delivered per square kilometre. This lowers the variable transportation and handling costs per unit. The economies of scale in the small package delivery services industry are therefore effectively driven by the domestic and deferred delivery services.
- (331) A limited presence regarding domestic and international intra-EEA deferred delivery services not only leads to cost disadvantages for international intra-EEA express services. FedEx's limited presence in the domestic and international intra-EEA deferred industry segments also hampers its ability to offer international intra-EEA express services in a bundle with domestic or international intra-EEA deferred delivery services.
- (332) In *UPS/TNT* the Commission noted that "*FedEx, which was already active in the domestic markets of France, Poland and the United Kingdom, has recently decided to further expand its domestic operations in Belgium, Denmark, Germany, Italy,*

<sup>273</sup>

[Confidential].

<sup>274</sup>

Form CO, paragraph 95, Figure 4 A.

*Luxembourg, and the Netherlands. In the respective domestic express markets in those six countries, FedEx aims to achieve less than [1]% market share in the long-term. Finally, FedEx plans to open domestic service in [fewer than ten additional countries].*<sup>275</sup> The market share estimates submitted by FedEx show that its market position regarding the provision of domestic small package delivery has not improved significantly since 2012.

- (333) FedEx has submitted market share estimates for domestic and international intra-EEA deferred delivery services on an EEA country level and on an EEA level.<sup>276</sup> In view of the fact that FedEx's market share estimates in relation to international intra-EEA express delivery services were not materially different from the results of the Commission's market reconstruction, the Commission has no reason to doubt the general accuracy of FedEx's estimates of the integrators' market shares on domestic and international intra-EEA deferred small package delivery markets. In any event, given that the market share estimates include actual TNT and FedEx revenue figures they provide direct evidence of the difference in the Parties' market presence.
- (334) Based on its market share estimates, FedEx's share in the provision of domestic small package delivery services is around [0-5]% at EEA level. More importantly, FedEx does not have a meaningful presence in terms of revenue in 27 of the 30 national markets in the EEA. FedEx only has a presence in three of the 30 national markets in the EEA, namely France, Poland and the UK where FedEx has a market share of [0-5]%, [0-5]% and [0-5]% respectively.<sup>277</sup> UPS, TNT and DHL on the other hand all have market shares between [5-10]% and [5-10]% at EEA level. DHL has a domestic presence in all but one, TNT in all but six and UPS in all but nine of the national markets in the EEA.
- (335) In relation to international intra-EEA deferred delivery services, FedEx estimates that it has an EEA-wide revenue share of [0-5]% whilst DHL and TNT each have a revenue share of [5-10]% and UPS a revenue share of [10-20]%. Whilst FedEx has a revenue share below [0-5]% in 14 of the 30 national markets in the EEA, TNT, DHL and UPS are active in all 30 national markets in the EEA. Even in the remaining 16 national markets, FedEx's estimated market shares do not exceed [0-5]% whereas TNT has market shares between [0-5]% and [10-20]% in the provision of international intra-EEA deferred delivery services.
- (336) The packages shipped by FedEx in 2014 in the context of domestic and international intra-EEA deferred services represent [0-5]% of the total market for such packages. Domestic and international intra-EEA deferred industry segments are mainly served through road networks and FedEx's small presence in these segments is largely due to its limited ground network.<sup>278</sup> Currently, FedEx is effectively forced to ship deferred packages via its air network which is inefficient.<sup>279</sup> In comparison, over the same period, TNT shipped more than twice as many packages in the context of domestic and international intra-EEA deferred services as FedEx.

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<sup>275</sup> See *UPS/TNT*, recital 547.

<sup>276</sup> Form CO, Annex 12A.

<sup>277</sup> Within the EEA, FedEx has a larger domestic presence only in the United Kingdom, in France, where it acquired in 2012 the ground network operator Tatex, and in Poland, where it recently acquired the ground network operator Opek.

<sup>278</sup> See recital 324.

<sup>279</sup> Form CO, paragraph 731.

- (337) FedEx's inferiority in terms of scale is also illustrated by FedEx's internal documents. For instance, [Confidential]:<sup>280</sup>

**Figure 9 – [Confidential]**

[Confidential]

- (338) In conclusion, FedEx has a considerably smaller presence in the domestic and deferred delivery segments in the EEA than the other three integrators.

**E. FedEx's limited ability to offer a bundle with other intra-EEA delivery services.**

- (339) A consequence of FedEx's marginal presence in the domestic and deferred segments in the EEA is the fact that FedEx cannot offer competitive bundles.
- (340) First, the Parties' transaction data shows that FedEx has been less successful than TNT at attracting customers that wish to source their international intra-EEA express services in a bundle with international intra-EEA deferred and with domestic services. Based on TNT's revenue data, [90-100]% of its intra-EEA express revenues are generated by customers that purchase bundles that combine intra-EEA express services with domestic and/or intra-EEA deferred services.<sup>281</sup> By contrast, only [60-70]% of FedEx's intra-EEA express revenues are generated by customers that also purchase domestic and/or intra-EEA deferred services from FedEx. Notably, just [10-20]% of FedEx's customers of international intra-EEA express delivery services also purchase domestic small package delivery services from FedEx.
- (341) In this context, it is also relevant to consider the relationship between the proportion of FedEx's revenue from a customer in respect of intra-EEA express services and the proportion of revenue from that customer for domestic and/or intra-EEA deferred delivery services:

**Figure 10: Share of FedEx's 2014 intra-EEA express revenues accounted for by customers for whom at least a given share of their intra-EEA business is domestic and/or intra-EEA deferred**

[Confidential]

*Source: [Confidential]*

- (342) Figure 10 illustrates that only [10-20]% of FedEx's intra-EEA express revenues are associated with customers for whom domestic and intra-EEA deferred delivery services account for 20% or more of their overall intra-EEA business with FedEx. Similarly, customers for whom domestic and intra-EEA deferred delivery services account for 30% or more of their overall intra-EEA business with FedEx only generate [10-20]% of FedEx's intra-EEA express revenues.
- (343) Second, the results of the Commission's market investigation show that there is a demand from customers for a range of services from the same provider. Slightly more than half of the respondents state that the ability to offer a range of delivery services (domestic, economy/deferred, extra-EEA) is an important criterion when selecting an intra-EEA delivery service provider.<sup>282</sup> About half of the respondents select providers offering services to all destinations (domestic as well as intra-EEA

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<sup>280</sup> FedEx's response to question 1 of request for information QP19 of 8 October 2015, Annex 14, [Confidential information on Fedex internal presentation].

<sup>281</sup> See FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015, page 9, 10. [Confidential].

<sup>282</sup> See responses to question 4.10 of the questionnaire to customers R2 – Phase II.

and extra-EEA) over providers specialising only in one area and almost half of the respondents select providers offering different types of small package delivery services (express and deferred) over providers that only specialise in one area.<sup>283</sup> Accordingly, whilst the possibility to bundle different types of services does not appear to be indispensable for the clear majority of customers, there is a considerable proportion of customers that prefers a provider with an express and deferred offering and an international and domestic offering over a provider that does not offer such bundles.

- (344) FedEx has provided evidence from its [Confidential] database to show that its inability to provide a bundled offer with domestic and deferred services limits its effectiveness as a competitor in Europe<sup>284</sup>. [Confidential].<sup>285</sup>

#### **Table 8: [Confidential]**

[Confidential]

- (345) The Commission concludes that due to its weaker presence on domestic and international intra-EEA deferred delivery service markets, FedEx is not able to offer international intra-EEA express services in a bundle with international intra-EEA deferred services and with domestic services. Given that such services are demanded by customers, the inability to provide an attractive offer further weakens FedEx's position on international intra-EEA express markets.

#### **F. FedEx's weak cost position**

- (346) FedEx's weaker presence on domestic and international intra-EEA deferred delivery service markets has implications for its cost position regarding international intra-EEA express services.
- (347) As explained in Section 6.4, PUD costs represent an important proportion of the direct costs of a parcel delivery service provider. This is particularly true in relation to international intra-EEA express services. PUD costs represent on average around [Confidential].<sup>286</sup> A critical focus of any small package operator is therefore to ensure the maximisation of its PUD activities.
- (348) The Commission found in *UPS/TNT*<sup>287</sup> on the basis of FedEx's internal databases that FedEx's intra-EEA PUD costs were several times higher than those of UPS and TNT as a result of its significantly smaller scale in Europe and its limited domestic and deferred services. The Commission found that this cost disadvantage impaired FedEx's ability to effectively compete with the other integrators, especially for contracts with a significant intra-EEA express delivery focus. Whilst the Commission did not conclude that FedEx was completely absent from the international intra-EEA express market, it found that due to this cost disadvantage, it

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<sup>283</sup> See responses to questions 32, 33 of the questionnaire to customers R2 – Phase II. The proportion of respondents selecting providers offering a range of delivery services (namely domestic, international intra-EEA and extra-EEA, express and deferred services) over providers specialising only in one area is slightly higher amongst TNT's customers.

<sup>284</sup> FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015, Annex A.2.

<sup>285</sup> [Confidential].

<sup>286</sup> Form CO, paragraph 95. [Confidential].

<sup>287</sup> *UPS/TNT*, recitals 534 and following.

was more likely to bid for contracts that on average have a large share of extra-EEA deliveries.<sup>288</sup>

- (349) The graph in Figure 11 illustrates the intra-EEA scale and resulting PUD cost position of the four integrators, along with an illustrative depiction of the cost curve that links increased volumes to lower costs.

**Figure 11 – [Confidential]**

[Confidential]

Source: [Confidential]

- (350) Figure 11 illustrates that FedEx is at a significant cost disadvantage with respect to its rivals, operating with PUD costs that are over [Confidential] times as high as those of the other integrators. The PUD cost positions of DHL and UPS displayed in the graph are based on FedEx's internal methodology and not on data provided by DHL and UPS. Nevertheless, the Commission considers that it appears correct to assume that the PUD cost positions of DHL and UPS are at least similar and possibly even lower than TNT's given that their EEA-wide operations are larger than TNT's in terms of scale and density.

- (351) [Confidential details on the parties' costs]<sup>289</sup>.

**Table 9: FedEx's intra-EEA PUD cost per pack over the last three financial years<sup>290</sup>**

Year	FedEx intra-EEA PUD costs
2012	EUR [Confidential] <sup>291</sup>
2013	EUR [Confidential] <sup>292</sup>
2014	EUR [Confidential] <sup>293</sup>

<sup>288</sup> UPS/TNT, recital 544.

<sup>289</sup> The average intra-EEA PUD cost per pack is calculated by adding the average pick-up cost incurred by FedEx in the EEA countries to the average delivery cost incurred by FedEx in the EU33 countries. Overall PUD costs are based on (i) the integrated domestic/international operations; and (ii) the scale of domestic presence across the EEA.

<sup>290</sup> [Confidential].

<sup>291</sup> Figures converted into EUR based on the average USD/EUR ECB exchange for the calendar year 2012, 1 = 0.7789.

<sup>292</sup> Figures converted into EUR based on the average USD/EUR ECB exchange for the calendar year 2013, 1 = 0.7532.

<sup>293</sup> Figures converted into EUR based on the average USD/EUR ECB exchange for the calendar year 2012 1 = 0.7539.

**Table 10: TNT's intra-EEA PUD cost per pack over the last three financial years**

Year	TNT intra-EEA PUD costs
2012	EUR [Confidential]
2013	EUR [Confidential]
2014	EUR [Confidential]

- (352) Tables 9 and 10 also illustrate that FedEx's PUD costs have not decreased materially in the last three years, [Confidential].<sup>294</sup>
- (353) [Confidential].<sup>295</sup>
- (354) FedEx's cost disadvantage is principally due to its limited scale, its limited presence on the domestic and intra-EEA deferred markets in the EEA and the fact that it does not have the volumes associated with such businesses. The scale of overall small package delivery operations is a major contributor to cost savings, especially for PUD costs. Given that those costs are shared between different services (express, domestic and deferred), the wider the scope of services offered, the larger the volumes and thus the greater the potential for cost savings.
- (355) FedEx's weak cost position in Europe also follows from the financial data and internal documents it submitted. [Confidential details on Fedex's costs]:

**Figure 12 – [Confidential]<sup>296</sup>**

**[Confidential]**

Source: [Confidential]

- (356) [Confidential details on FedEx's costs]<sup>297 298 299</sup>.
- (357) Based on those elements, the Commission concludes that FedEx continues to be at a cost disadvantage compared to the other three integrators as regards its international intra-EEA express operations. [Confidential]. Consequently, [Confidential], FedEx exerts a weaker competitive constraint than the other integrators.<sup>300</sup>

#### **9.4.2.1.3 Conclusion**

- (358) FedEx's focus on international intra-EEA express customers with substantial extra-EEA delivery requirements is driven by its limited ability to compete successfully for customers of stand-alone intra-EEA express services or customers that wish to source both international intra-EEA express and domestic or international intra-EEA deferred delivery services from the same provider.

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<sup>294</sup> [Confidential].

<sup>295</sup> [Confidential]

<sup>296</sup> Form CO, paragraph 124.

<sup>297</sup> FedEx's response to question 1 of request for information QP19 of 8 October 2015, [Confidential].

<sup>298</sup> Form CO, Annex 7.J, [Confidential].

<sup>299</sup> FedEx's response to question 1 of request for information QP19 of 8 October 2015, Annex 14, [Confidential].

<sup>300</sup> See also *UPS/TNT*, recital 717.

(359) Those limitations are due to FedEx's weaker EEA-wide network. This weaker network translates into FedEx's lower geographic coverage for the different express services, a relative weakness in providing deferred and domestic services on a larger scale, and a higher cost base resulting from lower economies of scale and density, which all together makes FedEx significantly less competitive for international intra-EEA express deliveries. This in turn translates into a weak market position for TNT and the other two integrators and is consistent with FedEx's focus on extra-EEA deliveries.

9.4.2.2. TNT's focus is on customers with standalone international intra-EEA and domestic/deferred delivery needs

(360) Compared to FedEx, TNT has a substantial ground-based and more efficient air network presence in the EEA, a higher proportion of sales from the domestic and deferred segments and a limited proportion of revenues derived from customers with extra-EEA delivery needs.

(361) First, TNT has a very extensive ground and air network in the EEA. TNT operates [Confidential] aircraft and approximately [Confidential] vehicles and trailers in its network.<sup>301</sup> It operates a combination of road and air networks within the EEA that connect its hubs and depots. In particular, TNT's EEA road network connects [Confidential] countries through [Confidential] road hubs and [Confidential] local depots. In the EEA, TNT has its air hub in Liège, Belgium. Its intra-EEA air network connects [Confidential] destinations.<sup>302</sup> TNT only operates jet aircraft in its fleet, which results in lower costs per kilogram of operation, more capacity available per leg and speed. By contrast, in its intra-EEA operations, FedEx operates [Confidential] feeders and only [Confidential] jet aircraft.<sup>303</sup>

(362) Second, TNT's sales data show that over [90-100]% of TNT's intra-EEA express revenues are generated by customers that also purchase domestic and/or international intra-EEA deferred delivery services from TNT:

**Figure 13 – [Confidential]<sup>304</sup>**

[Confidential]

*Source: [Confidential].*

(363) Figure 13 shows that only a small proportion of TNT's revenues are derived from customers of international intra-EEA express services that do not also purchase domestic or international intra-EEA express delivery services from TNT.

(364) Accordingly, contrary to FedEx, TNT's operations have the scale and density required to ensure a profitable cost position for its international intra-EEA express business, which translates into a PUD cost level which is [Confidential] lower than that of FedEx.<sup>305</sup>

(365) Third, in the bidding data analysis, FedEx also attempted to examine customers who purchase international intra-EEA express services together with a non-negligible

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<sup>301</sup> See FedEx's response to question 1 of request for information QP 22 of 13 November 2015.

<sup>302</sup> Form CO, paragraph 4, 5; FedEx's response to question 1 of request for information QP 22 of 13 November 2015.

<sup>303</sup> Form CO, paragraph 29. In addition, FedEx has one spare jet aircraft and two spare feeder aircrafts which are currently not operated, see FedEx's email dated 24 November 2015 in response to question 1 of request for information QP 22 of 13 November 2015.

<sup>304</sup> FedEx's response to question 17 of request for information QP16 of 16 September 2015.

<sup>305</sup> [Confidential].

volume of extra-EEA services<sup>306</sup>. FedEx provided evidence to show that whereas TNT is of a similar strength compared to UPS when considering all sales opportunities which include international intra-EEA express deliveries or when looking at standalone international intra-EEA express deliveries, TNT is much weaker than UPS when it comes to opportunities which include a large volume of extra-EEA deliveries. This analysis is discussed in more detail in Section 9.4.2.5.

(366) In conclusion, in particular due to its dense road and air network in the EEA, TNT's intra-EEA operations are focused on domestic and international intra-EEA deferred delivery services. By contrast, TNT has been less successful than FedEx at attracting international intra-EEA express customers that also require extra-EEA delivery services.<sup>307</sup>

9.4.2.3. The Parties do not view each other as close competitors

(367) In addition, the Parties' internal documents confirm that they do not view each other as close competitors.

**FedEx**

(368) Various internal documents submitted by FedEx illustrate that FedEx does not consider itself to be a close competitor of the other integrators as regard international intra-EEA express delivery services.

(369) For instance, a presentation entitled [Confidential]<sup>308</sup> :

**Figure 14 – Extract from an internal FedEx presentation [Confidential]**

	<b>Intra (priority)</b>	<b>Extra (priority)</b>
<b>TNT</b>	[80-90]%	[10-20]%
<b>DHL</b>	[50-60]%	[40-50]%
<b>UPS</b>	[50-60]%	[40-50]%
<b>FedEx</b>	[30-40]%	[60-70]%
<b>Market average</b>	<b>[50-60]%</b>	<b>[40-50]%</b>

(370) The overview in Figure 14 shows that FedEx's business focus is the opposite of that of the other integrators, in particular TNT, who has a clear focus on international intra-EEA express business.

(371) A FedEx internal presentation entitled [Confidential]<sup>309</sup>

(372) In a presentation [Confidential], FedEx provides a comparison of the portfolio of products offered by the four integrators:

<sup>306</sup> [Confidential].

<sup>307</sup> See in this respect Section 9.4.2.1.

<sup>308</sup> Form CO, Annex 7.G, [Confidential].

<sup>309</sup> Form CO, Annex 7H, [Confidential].

**Figure 15 – Extract from an internal FedEx presentation [Confidential]<sup>310</sup>**

[Confidential]

- (373) The slide in Figure 15 colour-codes the integrators' performance in the different small package delivery services segments. [Confidential details on FedEx's assessment of the competitive landscape and excerpts of FedEx's internal documents]. This slide clearly demonstrates that FedEx does not consider itself a close competitor of TNT on the international intra-EEA express and extra-EEA markets.

### **TNT**

- (374) TNT's internal documents also show that TNT does not consider FedEx to be a close competitor.
- (375) For example, TNT's Outlook presentation for the TNT Capital Markets Day 2015 that took place on 18 February 2015<sup>311</sup> illustrates which operators it considers as key competitors for each of the segments. (i) Domestic, (ii) International Europe, and (iii) Asia Middle East and Africa (AMEA).

**Figure 16 – Extract from an internal TNT presentation dated February 2015**



- (376) FedEx is only mentioned on the slide in Figure 16 in respect of the AMEA region. For International Europe (intra-EEA deliveries and extra-EEA deliveries invoiced in EEA), TNT considers that the main competitive pressure comes from DHL, followed by UPS, DPD and GLS. FedEx is not mentioned. For the AMEA division (international shipments invoiced outside EEA, mainly in Asia), TNT considers DHL to be the main competitor, followed by UPS and then by FedEx. Accordingly, TNT does not consider FedEx to be a close or relevant competitor.
- (377) [Confidential excerpt from TNT internal document].<sup>312</sup>

<sup>310</sup> FedEx's response to question 2 of request for information QP19 of 12 October 2015, Annex 30, [Confidential].

<sup>311</sup> FedEx's response to question 2 of request for information QP19 of 8 October 2015, Annex 36, TNT presentation "Capital Markets Day" of 18 February 2015, slide 7; [http://www.tnt.com/content/dam/corporate/pdfs/Archive/Investors/2015/CMD/20150218\\_TNT\\_CMD\\_Outlook.pdf](http://www.tnt.com/content/dam/corporate/pdfs/Archive/Investors/2015/CMD/20150218_TNT_CMD_Outlook.pdf)

<sup>312</sup> FedEx's response to question 2 of request for information QP19 of 8 October 2015, Annex 37.

- (378) Lastly, a presentation entitled "*International Europe - Time to Deliver*" dated 18 February 2015<sup>313</sup> contains further evidence that TNT does not view FedEx as a close competitor. The presentation compares the product position of TNT and its competitors regarding the time commitment segments "*Same day*", "*Next day Express*", "*Economy Express*" and "*Deferred*". FedEx does not appear at all on the slide from the presentation, which illustrates the positioning of TNT, UPS, DHL and DPD.

**Figure 17 – Extract from an internal TNT presentation dated 18 February 2015**



- (379) These internal documents described show that FedEx and TNT themselves do not consider each other to be close competitors.

#### 9.4.2.4. Customers do not see the Parties as close competitors

- (380) In the context of its market investigation, the Commission asked market participants to name and rank the closest competitors of each of the Parties (for example in terms of pricing, range and quality of services, reliability, geographical reach, track and trace etc.) as regards international intra-EEA express delivery services.
- (381) The clear majority of customers and competitors identified DHL as the closest competitor of both FedEx and TNT as regards international intra-EEA express delivery services. In the case of FedEx, overall, respondents did not significantly differentiate between UPS and TNT as to who is the second closest competitor in the international intra-EEA express markets. Regarding TNT, DHL is again identified as the closest competitor on all market segments, this time however UPS is clearly acknowledged as TNT's second closest and FedEx as TNT's third closest competitor.<sup>314</sup>

<sup>313</sup> Form CO, Annex 7T, TNT's "*International Europe - Time to Deliver*" dated 18 February 2015, slide 5; [http://www.tnt.com/content/dam/corporate/pdfs/Archive/Investors/2015/CMD/20150218\\_TNT\\_CMD\\_International\\_Europe.pdf](http://www.tnt.com/content/dam/corporate/pdfs/Archive/Investors/2015/CMD/20150218_TNT_CMD_International_Europe.pdf)

<sup>314</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

- (382) Customers were also asked whether they consider that there would be sufficient alternatives to the Merged Entity post-Transaction as regards international intra-EEA express services. A clear majority of customers felt comfortable that there would be enough alternative small package delivery service providers that they could switch to after the Transaction.<sup>315</sup>
- (383) Moreover, customers view FedEx as weaker than the other three integrators in the markets for international intra-EEA express delivery services. First, market participants responding to the Commission's market investigation have clearly identified FedEx as the least favoured option for international intra-EEA delivery services. The Commission asked customers to indicate whether all integrators offer equally good services for international intra-EEA express delivery services in terms of geographic coverage, offering and specialised services. A clear majority considered FedEx to be the lowest performing integrator<sup>316</sup> Customers also considered that FedEx is the weakest integrator in terms of the ability to offer time-definite / day-definite deliveries and the ability to also offer other kinds of services such as domestic, economy/deferred services.<sup>317</sup>
- (384) In conclusion, the results of the market investigation confirm that amongst integrators, FedEx and TNT are not considered to be close competitors by their customers.
- 9.4.2.5. The bidding analysis submitted by the Parties confirms the finding that amongst integrators, the Parties are not close competitors
- (385) On 18 June 2015, FedEx submitted a bidding data analysis<sup>318</sup> based on its own bidding data to argue that DHL is its closest competitor and that UPS is a closer competitor than TNT. The report also included an analysis of TNT's bidding data, indicating that TNT's closest competitor is DHL, followed by UPS and that FedEx is a much more distant competitor, even falling behind freight forwarders.
- (386) The Commission analysed the submitted bidding data analysis. The analysis is based on three different databases: [Confidential].
- (387) The Commission considers that an analysis from FedEx's perspective is of less relevance for international intra-EEA express delivery services because from FedEx's perspective, the other three integrators are all strong players in the international intra-EEA express markets. The more interesting analysis is from TNT's perspective in order to see whether FedEx is indeed a weak competitor.

*FedEx's [Confidential]*

- (388) For each sales opportunity, [Confidential].
- (389) FedEx conducted a participation analysis by reporting how often each competitor (or competitor category) is reported as FedEx's main competitor. The main focus of the analysis is on the [Confidential] sales opportunities for "international intra-EMEA express services" for which FedEx bid during the period 2012 to 2014. FedEx concluded that DHL is identified as FedEx's main competitor in [30-40]% of

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<sup>315</sup> See responses to question 29.1 of the questionnaire to customers Q3 – Phase I; responses to question 20.1 of the questionnaire to customers Q4 – Phase I.

<sup>316</sup> Responses to question 5.1 of the questionnaire to customers R2 – Phase II; see also responses to question 30.1 of the questionnaire to customers Q3 – Phase I; responses to question 7.1. of the questionnaire to customers Q4 – Phase I;

<sup>317</sup> See responses to question 5.2 and 5.5 of the questionnaire to customers R2 – Phase II.

<sup>318</sup> FedEx's submission "FedEx/TNT: Updated bidding data analysis" of 18 June 2015.

opportunities for which FedEx has submitted a bid for international intra-EEA services, which is more than two times as often as TNT ([10-20]%). UPS is the second most identified competitor (recorded as FedEx's main competitor in [10-20]% of opportunities), with TNT coming in third place. These results are presented in Table 11.<sup>319</sup>

**Table 11: Participation analysis – Competitors for sales opportunities, 2012-2014<sup>320</sup>**

	<b>Number of opportunities</b>	<b>Percentage</b>
<b>DHL</b>	[Confidential]	[Confidential]
<b>UPS</b>	[Confidential]	[Confidential]
<b>TNT</b>	[Confidential]	[Confidential]
<b>Freight forwarders</b>	[Confidential]	[Confidential]
<b>European-wide ground-based operators</b>	[Confidential]	[Confidential]
<b>Postal operators</b>	[Confidential]	[Confidential]
<b>Local ground-based operators</b>	[Confidential]	[Confidential]
<b>Others</b>	[Confidential]	[Confidential]
<b>Total</b>	[Confidential]	[Confidential]

*Source: [Confidential]*

- (390) FedEx also reported the results broken down into different categories of contract characteristics (standalone international intra-EEA express contracts, mixed contracts with a large share of international intra-EEA express services and mixed contracts with a large share of extra-EEA express services) and concludes that DHL imposes the biggest constraint on FedEx across all categories of contracts.
- (391) This analysis by contract-type shows that whereas TNT is of similar strength compared to UPS when considering all sales opportunities which include international intra-EEA express deliveries or when looking at stand alone international intra-EEA express deliveries (see Table 12 in recital (394)), TNT is much weaker than UPS when it comes to opportunities which include a large volume of extra-EEA deliveries (see Table 13 in recital (394)) or standalone extra-EEA contracts.

<sup>319</sup> FedEx's submission "FedEx/TNT: Updated bidding data analysis" of 18 June 2015, page 2. [Confidential].

<sup>320</sup> FedEx's submission "FedEx/TNT: Updated bidding data analysis" of 18 June 2015, table 1.

(392) The Commission observes that the number of standalone international intra-EEA express sales opportunities for which FedEx made a bid ([Confidential] opportunities) is much smaller than the number of stand alone international intra-EEA express sales opportunities ([Confidential] opportunities).

**Table 12: Participation analysis – Competitors for standalone intra-EEA sales opportunities, 2012-2014<sup>321</sup>**

	Number of opportunities	Percentage
DHL	[Confidential]	[Confidential]
TNT	[Confidential]	[Confidential]
UPS	[Confidential]	[Confidential]
Freight forwarders	[Confidential]	[Confidential]
European-wide ground-based operators	[Confidential]	[Confidential]
Postal operators	[Confidential]	[Confidential]
Local ground-based operators	[Confidential]	[Confidential]
Others	[Confidential]	[Confidential]
Total	[Confidential]	[Confidential]

**Table 13: Participation analysis – Competitors for small intra-EEA/large extra-EEA sales opportunities, 2012-2014<sup>322</sup>**

	Number of opportunities	Percentage
DHL	[Confidential]	[Confidential]
UPS	[Confidential]	[Confidential]
TNT	[Confidential]	[Confidential]
Freight forwarders	[Confidential]	[Confidential]
European-wide ground-based operators	[Confidential]	[Confidential]
Others	[Confidential]	[Confidential]
Total	[Confidential]	[Confidential]

<sup>321</sup> FedEx's submission "FedEx/TNT: Updated bidding data analysis" of 18 June 2015, chart 4.

<sup>322</sup> FedEx's submission "FedEx/TNT: Updated bidding data analysis" of 18 June 2015, table 6.

**Table 14: Participation Analysis – extra-EEA express and deferred, 2012-2014<sup>323</sup>**

Competitor	Number of Opportunities	Percentage of Opportunities
DHL	[Confidential]	[Confidential]
UPS	[Confidential]	[Confidential]
TNT	[Confidential]	[Confidential]
Non-Integrators	[Confidential]	[Confidential]
Total	[Confidential]	[Confidential]

- (393) In the Decision opening proceedings, the Commission noted a number of reservations regarding the database and the analysis.
- (394) First, the Commission noticed that a large number of opportunities were dropped (before ending up with [Confidential] opportunities, upon which the participation analysis is based) because no competitor information was provided or because there was no competitor classification assigned. When a dataset has a large number of missing observations, one has to carefully assess whether any bias may be introduced in the analysis. FedEx did not elaborate further on that issue but simply dropped the observations for which information on the main competitor was missing.
- (395) Second, , FedEx explains that the analysis relies on "origin region = EMEA" and "destination region = EMEA" because the "origin country" and "destination country" variables are not properly filled in.<sup>324</sup> In fact, "origin country" is recorded for all opportunities and is recorded as being an EEA country for [Confidential]% of opportunities ([Confidential] opportunities). The variable "destination country" is unknown or reflected as "ANY EMEA COUNTRY" for [Confidential]%, and respectively [Confidential]%, of the opportunities where origin country is an EEA country ([Confidential] opportunities) and it is reported to be a non-EEA country for [Confidential]% of opportunities ([Confidential] opportunities). When opportunities involving known non-EEA origin and destination countries are excluded, TNT was identified as the main competitor of FedEx slightly more often than UPS ([Confidential]%). FedEx's conclusion that UPS is the second most identified competitor with TNT coming in third place does therefore not hold in those circumstances.
- (396) Third, when assessing the annual revenue data associated with those opportunities, the Commission observes that [Confidential] opportunities account for more than [Confidential]% ([Confidential]) of the total annual revenue for all opportunities where the origin and destination countries are identified as EEA countries. Furthermore, the opportunity for the second largest associated annual revenue ([Confidential]) relates to the lane from [Confidential]. This raises doubts about the completeness of the [Confidential] as one would expect lanes involving the five top-performing EEA economies either as the origin or as the destination. FedEx explained<sup>325</sup> that there are two reasons for the large revenues associated with those opportunities, namely that those opportunities relate to large multinational customers and that [Confidential]. If such patterns hold across the database, namely that a small number of high value transactions counts for the total annual revenues documented

<sup>323</sup> Data provided in response to question 5 of request for information QP15 of 16 September 2015.

<sup>324</sup> FedEx's submission "FedEx/TNT: Updated bidding data analysis" of 18 June 2015, footnote 4.

<sup>325</sup> FedEx's response to question 3a of request for information QP5 of 30 June 2015.

in the database, the relative importance of TNT as a competitor across all transactions, in comparison to DHL and in particular UPS, becomes increasingly difficult to evaluate.

- (397) Fourth, the dataset only provides information on the main competitor and not on all the actual or perceived rival participants. It may be the case that in most bids where DHL was identified as the main competitor, TNT was actually the second and sole other competitor.
- (398) Fifth, whilst it is true that DHL was identified most often as the main competitor, UPS and TNT were both also identified by the FedEx sales teams as the main competitor in a large number of sales opportunities. The Commission notes that TNT does not have to be the "closest" competitor of FedEx for it to be likely that price increases would occur following the Transaction.<sup>326</sup>
- (399) Finally, the analysis of FedEx's [Confidential] only provides a general picture of FedEx's main competitors at EEA-level but it does not offer any insights into the main competitor at the national level. For a number of origin countries where there is an adequate number of opportunities, the Commission assessed whether FedEx's findings at EEA-level also held for the individual countries. For instance, the Commission finds that in [Confidential], TNT is identified as main competitor almost as frequently as DHL ([Confidential] of the total number of opportunities respectively where the origin country is [Confidential] when opportunities with identified non-EEA destination countries are excluded) and that [Confidential] TNT is identified as the main competitor much more frequently than the EEA-level average ([Confidential] of the total number of opportunities respectively related to those origin countries and destination countries not identified as non-EEA).
- (400) In FedEx's Response to the Decision opening proceedings, FedEx explained that there is no good reason to suspect that the data limitations identified by the Commission would cause any bias that would cast doubt on the results of the analyses.
- (401) First, in response to the Commission's observation that a bias may be introduced because a large number of opportunities were dropped from the sample on which the analysis is based because no competitor information was provided, FedEx notes that of the opportunities dropped, [Confidential]% refer to observations in which it is indicated that there was no competitor to FedEx.<sup>327</sup> These observations are irrelevant for this analysis and the removal of those observations cannot therefore introduce any bias. Of the remaining opportunities dropped from the analysis, [Confidential]% refer to sales opportunities recorded in the earlier years (2012-2013); this is likely to be explained by FedEx's salespeople increasing the recording of competitor information over time. Accordingly, if anything, the sample ultimately used for the analysis is focused on more recent observations. More generally though, it is important to emphasise that FedEx is of the view that there are no systematic differences between opportunities for which competitor information is recorded and those opportunities where competitor information is missing.
- (402) Second, in response to the Commission's observation that of the [Confidential] observations used for the analysis, a specific EEA origin country is listed in

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<sup>326</sup> The Horizontal Merger Guidelines refer to "close competitors" (headline of paragraph 28) and not to the "closest competitors".

<sup>327</sup> A small number of observations in which the competitor is listed as "FedEx" were also removed.

[Confidential] of opportunities, FedEx notes that both the origin and destination country is known to be an EEA country in only [Confidential] of opportunities. Given that the majority of FedEx's EMEA international express business is indeed EEA-driven, and that the sample was restricted to opportunities logged by sales people based in the EEA (thus minimising the number of non-EEA opportunities in an analysis done on an EMEA basis), an analysis done on the basis of origin and destination region variables (rather than origin and destination country variables) would still be likely to accurately reflect FedEx's EEA business. This would have the advantage of allowing for a larger number of observations to be included in the analysis.

- (403) Third, the Commission found that FedEx's conclusion that UPS is the second most identified competitor with TNT coming in third place no longer holds when observations with a known non-EEA origin or destination country are removed from the analysis. FedEx notes that, by removing known non-EEA origin or destination countries, rather than keeping known EEA origin or destination countries, this sample is still likely to include at least a small number of opportunities which relate to countries that are not within the EEA. Besides, FedEx points out that in both participation analyses (that is to say FedEx's analysis and the adjusted analysis by the Commission), the difference between the number of opportunities in which UPS and TNT are listed as the main competitor is trivial. As a result, the overall conclusion to be taken away from both analyses remains the same. Moreover, and most importantly, according to FedEx, the Commission's participation analysis does not detract from FedEx's primary conclusion, namely that DHL appears most often, and significantly more often than TNT and UPS, and that the Merged Entity would remain sufficiently constraint by both DHL and UPS.
- (404) Fourth, in response to the Commission's questions about the completeness of the ([Confidential]) because [Confidential] opportunities account for [Confidential] of the observed revenues for which the origin and destination countries are identified as specific EEA countries), FedEx notes that these outlier opportunities with large revenues are entirely driven by [Confidential]. Put simply, the analysis focuses on the number of opportunities and not on revenues, and it cannot therefore be skewed by the [Confidential] opportunities in question.
- (405) Fifth, FedEx responds to the Commission's doubts over the quality of information in the [Confidential] because only the main competitor is identified. FedEx confirms that the [Confidential] only records the 'main' competitor and that this does limit the identification of other competitors. Any attempt to consider possible patterns on the presence of other competitors in sales opportunities pursued by FedEx, however, is purely speculative. There is no reason whatsoever to believe that TNT is the "second and sole other competitor" in most bids in which DHL is identified as the main competitor.
- (406) Finally, FedEx acknowledges the limitations of the existing data for the purpose of an analysis at a country level. FedEx notes that the limited number of observations available at country level does limit the extent to which firm conclusions could be drawn from an assessment on that basis.
- (407) Overall, the Commission concludes that notwithstanding the limitations identified, the analysis of FedEx's bidding data provides some further limited confirmation that amongst integrators, the Parties are no close competitors because DHL, in particular, and UPS constrain FedEx. This is particularly true for sales opportunities including extra-EEA deliveries.

*TNT's [Confidential]*

- (408) TNT's [Confidential] tracks global sales opportunities for TNT's largest [Confidential] customers and records the winner of the bid and the incumbent provider. The time period covered by the dataset assessed by FedEx's economic consultants is 2014.
- (409) FedEx's economic consultants examined how often each competitor (or competitor category) is reported as a competitor to TNT (i) across all sales opportunities and also for international intra-EEA express shipments only. For the purposes of this exercise, FedEx's economic consultants identified those rivals that have won bids in which TNT has participated as "competitors". FedEx's economic consultants find that "FedEx is only identified as TNT's competitor in a very small number of cases ([5-10]%) across all opportunities. FedEx is also rarely identified as TNT's competitor across opportunities involving international intra-EEA express services (only [0-5]%)"<sup>328</sup>. The results in the latter are presented in Table 15.

**Table 15: TNT's competitors across all sales opportunities for international intra-EEA express services, 2014**

	Number of opportunities	Percentage
DHL	[Confidential]	[Confidential]
UPS	[Confidential]	[Confidential]
Freight forwarders	[Confidential]	[Confidential]
European-wide ground-based operators	[Confidential]	[Confidential]
FedEx	[Confidential]	[Confidential]
Others	[Confidential]	[Confidential]
Total	[Confidential]	[Confidential]

- (410) In addition, FedEx's economic consultants analysed how often each of TNT's rivals was the incumbent provider(s) in those sales opportunities for which TNT has submitted a bid. FedEx's economic consultants conclude that "FedEx is only rarely identified as the incumbent across opportunities TNT has bid for. These results provide further evidence of FedEx's limited presence thus supporting the conclusion that the Transaction is highly unlikely to raise anti-competitive concerns".<sup>329</sup>
- (411) In the Decision opening proceedings, the Commission identified a number of shortcomings as regards the data and the analysis of that data.
- (412) First, the dataset only provides information on the winner of the bid and the incumbent provider, but not on all the actual or perceived rival participants. FedEx's economic consultants explained that the system scarcely captures any significant competitor information. The nature and number of competitors have been made

<sup>328</sup> FedEx's submission "FedEx/TNT: Updated bidding data analysis" of 18 June 2015, page 11.

<sup>329</sup> FedEx's submission "FedEx/TNT: Updated bidding data analysis" of 18 June 2015, page 13.

available only through account managers' input gathered for the purpose of this analysis<sup>330</sup>.

- (413) Second, the assessment is based on a small number of opportunities related only to strategic accounts belonging to the [Confidential] largest customers of TNT in 2014<sup>331</sup>. The analysis of the winner of the bid across all sales opportunities is based on [Confidential] opportunities and the analysis across sales opportunities for international intra-EEA express services is based on only [Confidential] opportunities. The analysis of the incumbent provider is based on [Confidential] sales opportunities and [Confidential] international intra-EEA express opportunities. FedEx's economic consultants explained that information on TNT's rival(s) for each tender is not available for 2013. The analysis cannot, therefore, be carried out for this period.
- (414) Third, many observations were dropped because no information on rivals is available for those observations. Out of a total of approximately [Confidential] observations originally recorded in the [Confidential], TNT was able to retrieve information on rivals in [Confidential] of them. In certain cases where the account managers provided additional information, the information provided indicates that the rivals are "unknown" or "not disclosed" which resulted in those observations also being dropped from the analysis due to lack of competitor information<sup>332</sup>.
- (415) Finally, whereas the Commission agrees that FedEx appears to be a weaker competitive force overall at EEA-level, it is impossible to say whether this also holds true for each national market. The dataset does not allow for an assessment at country-level as no information is provided about the origin and destination country. Therefore, there are no assurances that the finding that FedEx appears to be a weaker competitive force overall at EEA-level could be extended to all intra-EEA opportunities.
- (416) In FedEx's Response to the Decision opening proceedings, FedEx in general explained that there is no good reason to suspect that the data limitations identified by the Commission could cause any bias that could cast doubt on the results of the analyses. However, FedEx has not addressed any of the specific weaknesses pointed out by the Commission with regard to TNT's [Confidential].
- (417) Overall, the Commission concludes that given the number of limitations identified, the analysis of TNT's [Confidential] can only provide limited insights. It can be concluded that the analysis does not contradict the finding that amongst integrators, FedEx is not a close competitor of TNT. It is worth noticing that this finding is even more persuasive when looking at international intra-EEA express sales opportunities rather than at all sales opportunities.

*TNT's [Confidential]*

- (418) TNT's [Confidential] covers major customer accounts (accounts with a minimum level of revenues which require a tailor-made approach involving more than offering prices from a standard price list) and records the current provider (the incumbent of the relevant bid).

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<sup>330</sup> FedEx's response to question 17 of request for information QP4 of 19 June 2015.

<sup>331</sup> These customers generated a total turnover of approximately EUR [Confidential] million, accounting for [Confidential]% of the total annual revenue for the International Europe segment. See response to question 10 of the Commission's Request for Information of 19 June 2015.

<sup>332</sup> Paper "FedEx/TNT: Updated bidding data analysis", RBB Economics, 18 June 2015, footnote 16.

- (419) FedEx's economic consultants assessed how often a rival has been identified as a rival to TNT for the bids in which TNT has participated over the time period 2012 to 2014 and considers that the results "clearly illustrate that other integrators, DHL in particular, impose a much stronger constraint than FedEx on TNT's business. Further, the categories freight forwarders and EEA-wide ground-based operators are reported more often as competitors than FedEx in those opportunities for which TNT bid"<sup>333</sup>. FedEx's economic consultants' report that FedEx is only recorded as TNT's competitor in [0-5]% of all sales opportunities and in [5-10]% of sales opportunities involving international intra-EEA express services. Those latter results are presented in Table 16.

**Table 16: TNT's competitors across all sales opportunities involving international intra-EEA express services, 2012-2014**

	Number of opportunities	Percentage
<b>DHL</b>	[Confidentia ]	[Confidentia ]
<b>UPS</b>	[Confidentia ]	[Confidentia ]
<b>Freight forwarders</b>	[Confidentia ]	[Confidentia ]
<b>European-wide ground-based operators</b>	[Confidentia ]	[Confidentia ]
<b>FedEx</b>	[Confidentia ]	[Confidentia ]
<b>Postal operators</b>	[Confidential]	[Confidentia ]
<b>Others</b>	[Confidentia ]	[Confidentia ]
<b>Total</b>	[Confidentia ]	[Confidentia ]

- (420) In the Decision opening proceedings, the Commission observed some limitations in the data and the data analysis.
- (421) First, the database only provides the identity of the current provider(s) to the sales opportunity in question. As such, the total number of competitors can only be inferred from that variable. It may be the case that DHL was the current provider, but that FedEx also participated in the bid. This would not be observed from the data.
- (422) Second, whether the contract covers intra-EEA or extra-EEA express services is only identified in a small subset of cases ([Confidential] are identified as international intra-EEA express, [Confidential] as extra-EEA express and [Confidential] are unidentified). FedEx's economic consultants also carried out the participation analysis on sales opportunities for international intra-EEA express services. That analysis is based only on [Confidential] opportunities across the EEA. Given the small number of opportunities related to extra-EEA express services, it is impossible to conclude whether the results also hold true for extra-EEA contracts.
- (423) Third, the database does not allow for the perfect identification of freight and parcel deliveries and therefore the analysis covers both types of services. FedEx's economic consultants reported that TNT would expect to observe a ratio parcel/freight in line

<sup>333</sup> Paper "FedEx/TNT: Updated bidding data analysis", RBB Economics, 18 June 2015, page 16.

with the total turnover split of TNT's EEA business between these two segments which in 2014 would be [Confidential] parcels and [Confidential] freight respectively.<sup>334</sup> The Commission identified that [Confidential] sales opportunities originated from an EEA-country were identified as "International express", "National express" and "Time critical services". All this suggests that it may well be that the opportunities where a freight forwarder is reported as the current provider are opportunities related to freight services (or contracts with a large focus on freight services compared to parcels).

- (424) Fourth, the Commission considered that while this analysis sheds some light on FedEx being on average a weaker competitor in the EEA, it is difficult to extend this analysis to individual countries.<sup>335</sup>
- (425) Finally, the Commission noted that, in any event, as both the [Confidential] and the [Confidential] only focus on large or major customer accounts, the data analysis, the Commission cannot conclude whether TNT and FedEx are close competitors from the viewpoint of small and medium-sized enterprise ("SME") customers.
- (426) In FedEx's Response to the Decision opening proceedings, FedEx argues that, although it agrees that limitations in the data prevent a meaningful analysis at national level, FedEx is of the view that the analysis goes beyond simply "shedding some light" on the weak competitive constraint imposed by FedEx relative to other integrators. In this regard, FedEx notes that the results of the analysis appear to be very similar to those obtained by the Commission in the *UPS/TNT* where the Commission noted that "FedEx is hardly ever mentioned as a major constraint",<sup>336</sup> and that "FedEx appears as a much weaker competitive constraint to TNT than either DHL or UPS".<sup>337</sup>
- (427) Overall, the Commission concludes that notwithstanding the limitations identified, the analysis of TNT's [Confidential] provides further confirmation that FedEx is a weaker competitor for TNT than DHL and UPS at least on average in the EEA for large customers. The fact that the findings of this bidding data analysis based on recent data are consistent with the results of the bidding data analysis in *UPS/TNT* gives further comfort about the reliability of the findings.

#### 9.4.3. Conclusion on closeness of competition

- (428) In the light of the evidence presented in this Section 9.4, the Commission concludes that amongst integrators, FedEx and TNT are not close competitors in the 30 national international intra-EEA express markets analysed.
- (429) The Parties concentrate on different customers with different profiles. FedEx's focus is on customers who require international intra-EEA delivery services as an adjunct to their principal requirements for extra-EEA delivery services. This focus is due to FedEx's small presence in domestic and deferred delivery services, the limited scale and coverage of its intra-EEA network and the resulting high pick-up and delivery costs. Those weaknesses make engaging with customers with purely intra-EEA delivery needs [Confidential] for FedEx. TNT, on the other hand, has a more considerable [Confidential details on TNT's ground and air network] intra-EEA presence, including domestic and deferred business. Customers of international intra-

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<sup>334</sup> FedEx's response to question 22 of request for information QP4 of 19 June 2015.

<sup>335</sup> [Confidential].

<sup>336</sup> See *UPS/TNT*, recital 593.

<sup>337</sup> See *UPS/TNT*, recital 594.

EEA delivery services with strong extra-EEA delivery needs are therefore not a particular focus for TNT.

- (430) Furthermore, the Parties' internal documents demonstrate that each of them does not consider the other party a close competitor, which is corroborated by the bidding analysis submitted by the Parties and confirmed by the results of the market investigation.
- (431) Accordingly, the Parties' small package delivery services are currently not close substitutes and hence, they do not exert a particular competitive constraint on one another.

#### **9.5. The Transaction would not remove an important competitive force**

- (432) The Horizontal Merger Guidelines specify that one of the factors that may influence whether significant non-coordinated effects are likely to result from a merger relates to the elimination of an important competitive force. This involves a situation where *"some firms have more of an influence than their market shares or similar measures would suggest. A merger involving such a firm may change the competitive dynamics in a significant anti-competitive way, in particular when the market is already concentrated."*<sup>338</sup>
- (433) DHL and UPS have made a number of submissions in the course of the procedure, arguing that TNT is a significant constraining force in the international intra-EEA express delivery market. DHL and UPS have expressed the view that TNT is a particular constraining force as regards SME customers and that SMEs would be particularly affected by the Transaction, because they lack bargaining power.<sup>339</sup>
- (434) The Commission has thoroughly investigated these arguments submitted by UPS and DHL both generally and having regard to the alleged focus of TNT on SMEs in the context of the market investigation, in the context of targeted phone calls with SMEs and by analysing the Parties' internal data and documents.
- (435) As set out in Section 12, the Commission does not consider TNT to be such an important competitive force that its removal from the market would change the competitive dynamics in the international intra-EEA express delivery market for SMEs in a significantly anti-competitive way.
- (436) Further, the Commission has analysed whether generally, TNT, should be considered a significant constraining force in the international intra-EEA express small package delivery markets. The Commission considers, for the reasons set out in recitals (439) to (442) that TNT does not have the specific qualities that enable it to exert significant competitive pressure on the other integrators which would result in a lessening of competition post-Transaction.
- (437) First, TNT's international intra-EEA express cost position is not more advantageous than the cost position of DHL and UPS. As explained in recital (349), of the overall costs of a small package delivery service provider, PUD costs represent on average approximately [Confidential]% of domestic costs and approximately [Confidential]%

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<sup>338</sup> Horizontal Merger Guidelines, paragraph 37.

<sup>339</sup> See for instance non-confidential version of DHL's response to question 66 of the questionnaire to competitors Q1 – Phase I; UPS's non-confidential response to question 19 of request for information of 1 September 2015, page 10,11; non-confidential version of UPS's submission "Further Observations of UPS" of 30 September 2015, page 4, 6; non-confidential version of Letter by DHL of 19 June 2015, p. 3 to 5.

of variable costs in any given country.<sup>340</sup> TNT's PUD cost position is comparable to that of DHL and UPS. Based on financial year 2011 data, FedEx estimates that DHL has a PUD cost level of around USD [Confidential], UPS a PUD cost level of USD [Confidential] compared to a TNT PUD cost level of USD [Confidential].<sup>341</sup> In view of the continuous network improvements made by the integrators, the Commission considers that it can be assumed that UPS's and DHL's PUD cost per pack have not increased materially since 2011, given that TNT's PUD costs per pack have not changed materially in the period from 2012 to 2014, increasing slightly from EUR [Confidential] per pack in 2012 to EUR [Confidential] per pack in 2013 and decreasing slightly to EUR [Confidential] per pack in 2014.<sup>342</sup> In terms of air network costs, [Confidential]

- (438) Second, in comparing TNT's revenues with the revenues of the other integrators, it becomes apparent that TNT has not exerted any particular competitive pressure on its competitors in recent years. The Commission's market reconstruction has shown that TNT's EEA-wide revenue share in relation to international intra-EEA express delivery services has decreased by [1-5]% in the period from 2012 to 2014. On a national basis, TNT's revenue share has decreased in [Confidential] out of the 30 EEA countries in the period from 2012 to 2014. This would seem to be at odds with the claim that TNT is an aggressive low price supplier, as such a claim would rather be associated with market share gains.
- (439) Third, it has been empirically confirmed that TNT cannot be considered an aggressive price setter in the international intra-EEA express market. The Commission requested a comprehensive set of transaction data from the Parties and compared FedEx's and TNT's average prices for the period 2012 to 2014. As a result, although prices for international intra-EEA express delivery services are affected by a multiplicity of factors, the data allow the conclusion that TNT cannot be considered a low-price player regarding international intra-EEA express delivery services.
- (440) Fourth, TNT's focus in recent years was not on investing significantly in its network. Its internal documents show that since 2013, TNT has focused on consolidating its services, increasing productivity by merging depots and hubs and reducing indirect costs in order to save EUR [Confidential] million by 2015.<sup>343</sup> Consequently, TNT cannot be said to have been an innovator in terms of network expansion in recent years.
- (441) Accordingly, the Commission concludes that TNT is not an important competitive force, within the meaning of the Horizontal Merger Guidelines, on the international intra-EEA express market. Consequently, its removal from the market would not change the competitive dynamics in a significant anti-competitive way.

## **9.6. DHL and UPS would be in a position to constrain the Merged Entity**

- (442) According to the Horizontal Merger Guidelines, some of the other factors that may lead to a finding that significant non-coordinated effects are likely to result from a merger are whether customers have limited possibilities in switching supplier or

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<sup>340</sup> Form CO, paragraph 95.

<sup>341</sup> Form CO, paragraph 111.

<sup>342</sup> Form CO, paragraph 114.

<sup>343</sup> Form CO, Annex 10, [Confidential]; Form CO, [Confidential].

whether competitors are unlikely to increase their supply if prices increase post-merger.<sup>344</sup>

- (443) The Commission has investigated whether the Parties' competitors could defeat a price increase by the Merged Entity, in the absence of any likely entry of new rivals into the small package delivery services industry in the short or medium term. Despite the fact that non-integrators would exert a certain competitive constraint on the Merged Entity depending on the national market, as with other elements of its assessment, the Commission has taken a conservative approach and limited its analysis to DHL and UPS in assessing whether the Merged Entity's competitors would have a constraining effect on prices.
- (444) First, the Merged Entity would be faced with two strong and capable competitors.
- (445) Based on the results of the Commission's market reconstruction for 2014, DHL would remain the number one integrator, respectively in the same range as UPS, in practically all national markets. An exception is Germany where UPS's revenue is in a higher range than DHL's. UPS would be in the same or a higher revenue share range than the Merged Entity in 18 of the 30 national markets. At EEA-wide level, the Merged Entity's revenue share would lower than UPS's and DHL would be the clear market leader with a revenue share of [40-50]%.<sup>345</sup>
- (446) Whilst in *UPS/TNT*, the Commission considered that there are "customers for whom the merger will reduce the number of alternatives from 3 to 2",<sup>345</sup> as a result of this Transaction the Merged Entity would be faced with two strong and capable competitors.
- (447) As explained in detail in recitals (300) to (361), FedEx is currently a weak competitor in the international intra-EEA express delivery services markets. Post-Transaction, customers would have the choice between three integrators fully capable of offering all services in terms of the type of service and coverage. All three integrators would be able to offer customers stand-alone international intra-EEA express delivery services, combinations with domestic or international intra-EEA deferred services or combinations with extra-EEA delivery services.
- (448) This was confirmed in the Commission's market investigation. When asked whether there would be sufficient viable alternatives for their international intra-EEA express delivery needs post-Transaction, the vast majority of customers responded that this would be the case.<sup>346</sup> In reply to the question which small package delivery service providers would be viable alternatives to the Merged Entity, both UPS and DHL were indicated as viable alternatives to the Merged Entity post-Transaction.<sup>347</sup>
- (449) Second, customers can protect themselves against a hypothetical post-Transaction price increase by the Merged Entity by switching parts or all of their requirements to another provider.
- (450) In response to the Commission's market investigation, the clear majority of customers replied that they are multi-sourcing.<sup>348</sup> This is in line with the view of

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<sup>344</sup> Horizontal Merger Guidelines, paragraphs 31, 32.

<sup>345</sup> See *UPS/TNT*, recital 718.

<sup>346</sup> See responses to question 29.1 of the questionnaire to customers Q3 – Phase I; responses to question 20.1 of the questionnaire to customers Q4 – Phase I.

<sup>347</sup> See responses to question 29.1.1 of the questionnaire to customers Q3 – Phase I; responses to question 20.1.1 of the questionnaire to customers Q4 – Phase I.

<sup>348</sup> See responses to question 24 of the questionnaire to customers R2 - Phase II.

providers of small package delivery services, both integrators and non-integrators, responding to the market investigation. The vast majority of providers estimate that customers multi-source.<sup>349</sup> Asked why they multisource, customers replied that they pick the cheapest provider by destination, the one with the best coverage by destination, for back-up or to foster competition between providers.<sup>350</sup> The results of the market investigation do not indicate that security of supply and risk management are important considerations for customers' multi-sourcing strategies regarding international intra-EEA express delivery services.

- (451) Partial or complete switching from one provider to the other is easy in the small package delivery services sector. The Commission has requested FedEx to provide its annual churn rate for the period 2012 to 2014.

**Table 17 – FedEx international intra-EEA express annual churn rate<sup>351</sup>**

	2012	2013	2014
<b>Revenue</b>	[Confidential]	[Confidential]	[Confidential]
<b>Number of customers</b>	[Confidential]	[Confidential]	[Confidential]

- (452) Table 17 shows which proportion of customers have not made any shipments with FedEx for six months in the respective year and what proportion of revenues this corresponds to. The overview does not reflect partial losses of business and large changes in customers' annual volumes. For instance, in 2014, [Confidential] sourced [Confidential]% more from FedEx on the lane Netherlands to Germany than in 2013. Conversely, [Confidential] sourced [Confidential]% less on the lane France to Italy in 2014 than in 2013.<sup>352</sup>
- (453) Moreover, whilst the majority of customers have framework contracts with several providers in place, there are no exclusivity clauses which would prevent customers from choosing the most advantageous offer at any given time. No material switching cost would prevent a customer from choosing another provider for any given shipment. Only a small part of the revenues is generated through list prices, most customers individually negotiate discounts or organise a tender.<sup>353</sup> Discounts are tailored to each customer upfront during the annual negotiations or tender procedure. The fact that customers multisource is a strong indication that discounts are not the decisive factor in deciding which integrator to use. Discounts and rebates would therefore not stop customers from switching. This illustrates that the international intra-EEA delivery markets are highly contestable. Customers are readily switching provider in the event of a more competitive offer and can therefore easily protect themselves against price increases by the Merged Entity. UPS and DHL have the capability and incentive to satisfy this demand in order to optimise their own network by improving scale and density.

<sup>349</sup> See responses to question 31 of the questionnaire to competitors R1 – Phase II.

<sup>350</sup> See responses to question 25 of the questionnaire to competitors R2 – Phase II.

<sup>351</sup> FedEx's response to question 1 of request for information QP18 of 6 October 2015, Confidential Annex 1.

<sup>352</sup> FedEx's response to question 17 of request for information QP20 of 19 October 2015.

<sup>353</sup> FedEx's response to question 12 of request for information QP12 of 19 August 2015.

- (454) Third, DHL and UPS are easily able to increase their service supply in the event of a hypothetical post-Transaction price increase by the Merged Entity and thereby cater for additional demand without incurring additional material costs.
- (455) Increasing capacity on any national market for the provision of international intra-EEA express delivery services is easy for integrators that already have an established network and a customer base in the respective country. Should demand increase, DHL and UPS could easily increase the number of small packages picked up and handled in their sorting centres and expand or reallocate some of their air network resources to accommodate it.
- (456) Given that switching deliveries from one integrator to the next is easy, integrators are used to handling fluctuations in demand.
- (457) In the event of a very large customer account being won, which may require the need for further infrastructure, this can be readily deployed. Even though customers do switch between service providers, it is almost never an immediate switch for large capacity demands. Such customers will, in practice, transition in a phased manner (typically six to eight months) to avoid any disruptions. This allows the integrator the time to plan the required infrastructure deployment in order to ensure the best transition for the customer and gives sufficient time to allocate additional vehicles, routes, personnel and even feeders. New customer operating plans can be worked up carefully, and put in place to ensure the orderly transition of the customer.
- (458) FedEx provides the example of a large multinational customer account that is won, with on average 1,000 packages a day begin sent from its head office in Antwerp.<sup>354</sup> In such a case, FedEx will dispatch additional vehicles and staff to handle those volumes so that they can be delivered, for example, to the air gateway in Brussels. In the event that that these volumes would in turn require additional airlift capacity from the Brussels air gateway to the hub in CDG, this could also be readily acquired in the market from third parties (for example on the Brussels Airlines flight), or where it could be demonstrated that the volumes were sufficient and the business was sustainable, FedEx could deploy an additional aircraft on the route to accommodate the increase in volumes.
- (459) Furthermore, demand peaks are inherent to the industry especially during holiday periods, such as Christmas. The integrators are able plan for such peak periods. Typically, FedEx adds additional flights called "Extra-Sections" in order to handle the higher demand during peak seasons. TNT, on the other hand, reserves spare capacity on its flights. Therefore, in medium/long term capacity planning (choosing the type and number of aircraft for a specific lane), TNT will generally reserve some [Confidential]% of the capacity to be able to meet peak demand for express small packages and express freight.<sup>355</sup>
- (460) In conclusion, customers could protect themselves against a hypothetical post-Transaction price increase by the Merged Entity by switching to another provider. DHL and UPS are strong and capable alternative suppliers who are able to easily increase their service supply in the event of a hypothetical post-Transaction price increase by the Merged Entity.

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<sup>354</sup> FedEx's response to question 8 of request for information QP20 of 19 October 2015, page 8.

<sup>355</sup> FedEx's response to question 8 of request for information QP20 of 19 October 2015, page 8.

## 9.7. A clear majority of customers have not expressed any concerns about the Transaction

- (461) Finally, the Commission conducted extensive Phase I and Phase II market investigations in order to obtain the views of the relevant market participants concerning the impact of the Transaction on the market for small package delivery services. Customers and participants responding to the market investigation in Phase I and Phase II of the procedure were asked to assess the possible impact of the Transaction on competition on international intra-EEA express markets.
- (462) Respondents stress the complementary nature of the Transaction. Customers state for example that they "*cannot see any negative impact because both networks have different strength and are a perfect fit*"<sup>356</sup> or expect "*that this transaction will have no or limited impact given that the activities of FEDEX and TNT are largely complementary in terms of geographical coverage*"<sup>357</sup>. Another customer is of the view that "*[n]ow, the new planned merge with FedEx is very good for the competition; without the FedEx merge, TNT will disappear from the market sooner or later and we will have almost a monopoly from DHL then. FedEx does not happen in the business here in Europe, their operation here is mostly the delivery service for shipments ex North America. They are no competitor at all for any Express company within Europe. With the TNT deal, it would be the perfect complement for them and the market; a good alternative to the almost-monopol of DHL, much better service from and to North America / Europe with the nice side effect that TNT will keep alive on the Intra-EU market....*"<sup>358</sup>.
- (463) As for the overall impact of the Transaction on the provision of international intra-EEA express delivery services, the vast majority of the customers who have responded to the Commission's Phase I and Phase II market investigation express a neutral or even a positive view about the overall effects of the Transaction on the market for international intra-EEA express small package delivery services within the EEA.<sup>359</sup> The relative majority of respondents consider that it would be positive, followed by those believing it would be neutral. Only a small minority of replying customers voice a negative opinion on the impact of the Transaction.
- (464) During the Phase II investigation, customers were asked to also assess the likely impact of the Transaction on the prices for international intra-EEA express delivery services, on available product offers and on service levels.<sup>360</sup>
- (465) As regards the Transaction's most likely impact on prices, most respondents consider that the impact would be positive or neutral.<sup>361</sup> Only a small minority states that the Transaction would have a negative impact. Customers consider, for instance, "*for*

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<sup>356</sup> Non-confidential response of [Name of Parties' customer] to question 45 of the questionnaire to customers Q3 – Phase I.

<sup>357</sup> Non-confidential response of [Name of Parties' customer] to question 46 of the questionnaire to large customers Q3 – Phase I.

<sup>358</sup> Non-confidential response of [Name of Parties' customer] to question 46 of the questionnaire to customers Q3 – Phase I.

<sup>359</sup> See responses to question 40 of questionnaire to Large customers Q3 – Phase I; responses to question 21 of the questionnaire to customers Q4 – Phase I; responses to questions 34, 37, 38 and 39 of the questionnaire to customers R2 – Phase II; responses to questions 24 and 25 of the questionnaire to SMEs R3 – Phase II.

<sup>360</sup> See responses to questions 37, 38 and 39 of the questionnaire to customers R2 – Phase II ; responses to questions 24 and 25 of the questionnaire to SMEs R3 – Phase II.

<sup>361</sup> See responses to question 37 of the questionnaire to customers R2 – Phase II; responses to question 25 of the questionnaire to SMEs R3.

*intra-EEA, we hope for scale economy. So, I could negotiate better rates. Competition keeps strong enough*<sup>362</sup> or "[t]here are many operators in this market and the merger of two of them will not significantly reduce choice or be likely to affect pricing"<sup>363</sup>.

- (466) When asked about the possible impact of the Transaction on the available international intra-EEA product offers, the majority of respondents expect that the impact of the Transaction would be positive, followed by those believing it would be neutral.<sup>364</sup> Only a small minority considers that the Transaction would most likely have a negative impact on prices. Customers state for example that "*FedEx will benefit of TNT road network*"<sup>365</sup> and that "*European distribution is having positive effects on this side*"<sup>366</sup>.
- (467) Lastly, in relation to the likely impact of the Transaction on service levels, the majority of respondents expect that the impact of the Transaction would be positive, followed by those believing it would be neutral.<sup>367</sup> Customers consider that the Transaction would result in "*larger fleet offers better coverage and faster deliveries*"<sup>368</sup>, and that the Transaction would result in "*[i]ncreased services being offered by FedEx complementing the TNT services with services and building a stronger network in Europe*"<sup>369</sup>.

## **9.8. The price concentration analysis was inconclusive**

### *9.8.1. The Commission's price concentration analysis in UPS/TNT*

- (468) One of the elements of the evidence used in the assessment of the proposed UPS/TNT transaction in 2012-2013 was a price concentration analysis, assessing the possible relationship between market concentration and prices.<sup>370</sup> It linked the transaction prices for international intra-EEA express delivery services on a given lane to the number of competitors on the same lane, where the presence of competitors was weighted by their coverage of business addresses in the origin and destination country.<sup>371,372</sup> This allowed for an assessment of the expected impact on

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<sup>362</sup> Non-confidential response of [Name of Parties' customer] to question 37.1 of the questionnaire to customers R2 – Phase II.

<sup>363</sup> Non-confidential response of [Name of Parties' customer] to question 25.1 of the questionnaire to SMEs R3 – Phase II.

<sup>364</sup> See responses to questions 38 of the questionnaire to customers R2 – Phase II; responses to question 25 of questionnaire to SMEs R3 – Phase II.

<sup>365</sup> Non-confidential response of [Name of Parties' customer] to question 38.1 of questionnaire to customers R2 – Phase II.

<sup>366</sup> Non-confidential response of [Name of Parties' customer] to question 38.1 of the questionnaire to customers R2 – Phase II.

<sup>367</sup> See responses to question 39 of the questionnaire to customers R2 – Phase II; responses to question 25 of the questionnaire to SMEs R3 – Phase II.

<sup>368</sup> Non-confidential response of [Name of Parties' customer ] to question 39.1 of questionnaire to customers R2 – Phase II.

<sup>369</sup> Non-confidential response of [Name of Parties' customer] to question 34.1 of the questionnaire to customers R2 – Phase II.

<sup>370</sup> *UPS/TNT*, section 7.5.2.2.

<sup>371</sup> The coverage of a competitor in a country (origin or destination) was in fact defined as a relative coverage and was calculated as the ratio between the number of business addresses covered by this company and the number of business addresses covered by the company covering the most business addresses in that country. In turn, coverage of a company over a lane was defined as the product of the relative coverage at the origin and destination. Furthermore, the number of competitors on a lane that was weighted by the coverage of these competitors was obtained as the sum of individual company coverages. For example, if the 3 competing integrators of a fourth integrator cover a share of 0.78, 0.90

prices of the proposed UPS/TNT transaction, as a merger is equivalent to a reduction in the number of competitors (weighted by their coverage) for most lanes.<sup>373</sup>

- (469) The relationship between the price and the number of competitors was estimated by using a regression model. The regression model also controlled for other explanatory factors which may potentially affecting prices, such as costs, the distance between the origin and destination country, size of customer (as measured by the total number of consignments of the client across all lanes) and fixed effects for each origin and destination country.
- (470) The regression model had many specifications. In some specifications, the post-merger price response did not depend on the pre-merger number of competitors on a given lane (linear model), while in other specifications the post-merger price response did depend on the pre-merger number of competitors on a given lane (non-linear model).<sup>374,375</sup> In the final decision, the Commission relied on the non-linear model and used it to provide evidence on the anticipated post-merger price increases. This choice by the Commission was motivated by the fact that the estimation of the non-linear specification indicated that the linear specification was too restrictive for that particular case, namely that the post-merger price response did depend on the pre-merger number of competitors on a given lane.<sup>376</sup>

#### 9.8.2. *Price concentration analysis submitted by UPS in the course of this proceeding*

- (471) On 30 June 2015 and 24 September 2015, UPS submitted two price concentration studies (the "first UPS concentration study" and the "second UPS price concentration study", together the "UPS price concentration studies") to assess the impact of the Transaction on UPS prices.<sup>377,378</sup> The UPS price concentration studies followed the

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and 0.92 of business addresses in the origin country and a share of 0.66, 0.91 and 0.84 of businesses in the destination country then their relative coverages in the origin country are 0.85, 0.98 and 1.00 (0.78/0.92, 0.90/0.92 and 0.92/0.92) and their relative coverages in the destination country are 0.73, 1.00 and 0.92 (0.66/0.91, 0.91/0.91, 0.84/0.91), leading to the lane-level coverage levels of 0.62, 0.98 and 0.92 (0.85×0.73, 0.98×1.00 and 1.00×0.92). Summing up these numbers gives 2.52 as the coverage of competitors on that particular lane. It can also be seen that the coverage of competitors can take any real values in the [0; 3] interval. Finally, a dummy variable is attached to each coverage of competitors real value depending on its position in the [0; 3] interval.

<sup>372</sup> The figures used for the coverage of competitors in various countries were UPS' estimates based on third party data from Dun & Bradstreet on the percentage of business addresses covered by each integrator in each country.

<sup>373</sup> If one of the merging parties is not present on a lane, the Transaction will not change the coverage on the lane and is expected not to have an impact on prices.

<sup>374</sup> See *UPS/TNT*, recital 728.

<sup>375</sup> Other model specifications included non-integrators as competitors and/or information on own coverage.

<sup>376</sup> The non-linear specification is more flexible and encompasses the more restricted linear model. This means that if the price impact of going from 3 to 2 competitors is the same as that of 4 to 3 competitors (and, hence, the linear model is correctly specified for the data), the non-linear model is also able to detect this and gives similar price predictions to those of the linear model. If, however, the price impact of going from 3 to 2 competitors is different from going from 4 to 3 competitors (and, hence, the linear model is inapposite), the non-linear model will still be able to correctly detect this case. In this latter case, the two specifications might give different price predictions, especially on a disaggregated, lane or origin level (but also on average, across the lanes). Hence, the non-linear specification is more reasonable as it gives the econometric estimation procedure a better opportunity to use the content of the data to explain the market facts. In other words, it is better able to capture differences between lanes/countries than the linear model.

<sup>377</sup> See UPS's submission "A Report for UPS – Analysis of the likely effects on prices of the FedEx/TNT transaction" of 30 June 2015 and "Updated analysis of the likely price effects of a FedEx/TNT transaction" of 24 September 2015.

methodology of the price concentration analysis used by the Commission in *UPS/TNT*, subject however to one significant methodological difference, namely that UPS used the linear specification of the price concentration regression model.<sup>379</sup>

- (472) The two UPS price concentration studies produced for this Decision use the same specifications for the price concentration regression model the only difference being that the second UPS price concentration study (submitted on 24 September 2015) works with an extended set of countries with updated coverage data. The UPS price concentration studies relies on an updated coverage data for a large fraction of lanes, the same (2011) transaction level UPS prices as in *UPS/TNT* and the Commission's estimates of the impact of changes in competitors' coverage on UPS prices in the linear model<sup>380</sup> as defined in *UPS/TNT*.<sup>381</sup>
- (473) In particular, the first UPS price concentration study (submitted on 30 June 2015) bases its analysis on two different coverage datasets. First, when analysing the 2011 UPS transaction prices and UPS' estimated coverage of the four integrators in 2012, it finds an expected volume weighted average gross (namely net of efficiencies) price increase of [0-5]% across all international intra-EEA express delivery services markets for the Merged Entity. Second, a price concentration analysis based on the same 2011 UPS transaction prices but using updated (2015) estimated coverage data for 10 EEA countries and the original (2012) coverage data for the remaining EEA countries results in an expected volume weighted average gross price increase of [0-5]% across all international intra-EEA express delivery service markets for the Merged Entity.<sup>382</sup> In turn, the second UPS price concentration study is an update of the first UPS price concentration study and it extends the number of EEA countries with updated (2015) estimated coverage information from 10 to 21. The second UPS price concentration study finds the same expected average gross price increase of [0-5]% across all international intra-EEA lanes for the Transaction as the first UPS price concentration study.<sup>383</sup> In terms of estimated average price effects by the origin country, the second UPS price concentration study submitted in September 2015 finds 16 countries where the estimated average price effect exceeds [0-5]%.

#### 9.8.2.1. FedEx's criticism of the UPS price concentration studies

- (474) On 14 July 2015, FedEx commented on the non-confidential version of the first UPS price concentration study and argued against the relevance of the price concentration analysis for the Transaction on two main grounds.<sup>384</sup>

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<sup>378</sup> UPS submitted a third, less technical note supporting the case of a price concentration analysis for the current case. See UPS's submission "Need for a price concentration analysis" of 10 July 2015.

<sup>379</sup> See, paragraphs (468)-(470).

<sup>380</sup> In its footnote 5, the UPS price concentration study of 30 June 2015 argues that UPS firmly believes that the linear model is the most appropriate approach for the case at hand.

<sup>381</sup> In particular, UPS uses the estimated coefficient [-0.2-0] of the third model in Table 5 of the Annex of *UPS/TNT* to assess the impact of the Transaction on its own prices.

<sup>382</sup> UPS's updated estimates of the country-level coverage of its competitors are based on the updated data from Dun & Bradstreet on the percentage of business addresses covered by each integrator in each country.

<sup>383</sup> As the second UPS price concentration study is in fact an update of the first UPS price concentration study, its insights regarding the expected price impact of the proposed transaction should be viewed as reflecting UPS's settled views.

<sup>384</sup> In addition, FedEx's submission argues that the UPS analysis substantially understates efficiencies from the Transaction as it does not give enough weight to the large competitive disadvantage that FedEx has because its high PUD costs compared to the same costs of the other integrators. The efficiency claims made by FedEx will be assessed in section 9.9.

- (475) First, it emphasised that the model applied by UPS was not appropriate for the assessment of the Transaction as it does not take the identity of the various integrators into account, assuming that on a given lane, the competitive constraint exerted by each of the integrators on UPS is identical. FedEx argues that this is in contrast with the fact that FedEx, contrary to what the coverage data may suggest, exerts a weaker competitive pressure on its competitors than the other integrators in the international intra-EEA express delivery services market. This is because (i) FedEx has a [Confidential] cost disadvantage with respect to competing integrators and [Confidential information on Fedex's likelihood of offering competitive prices ], (ii) it cannot offer a bundle of services as it does not provide international intra-EEA deferred or domestic express delivery services in the EEA, and (iii) it does not cover [Confidential] part of the express delivery time slots, [Confidential information on Fedex's coverage]. As a result, FedEx argues that its geographical coverage does not fully reflect its relative weaknesses.<sup>385</sup>
- (476) Second, FedEx argues that the results of UPS's price concentration analysis are inconsistent with other evidence. In particular, it argues that (i) its market shares are low ([5-10%]-[10-20]%) in the three Benelux countries where the UPS price concentration studies predict price increases above 5%; (ii) its competitive strength in these countries is hampered by its high PUD costs; (iii) it does not cover a significant part of the express delivery time slots in countries where the UPS price concentration studies predict price increases above 5%, and (iv) its bidding data confirms that it is a weak competitor in [Confidential]. Furthermore, FedEx cites the Commission's assessment in the statement of objections and decision in *UPS/TNT*, where the Commission acknowledged the weakness of UPS's price concentration analysis in the Benelux countries.
- (477) Based on those arguments, FedEx argues that the UPS price concentration studies overestimate the price impact of a merger involving FedEx as the studies presume the elimination of a competitor that is much stronger in relation to the other integrators than FedEx actually is.

#### 9.8.2.2. The Commission's assessment of the UPS price concentration studies

- (478) The Commission evaluated the UPS price concentration studies and questions their relevance for the assessment of the Transaction on three grounds.
- (479) First, the UPS price concentration studies use the linear specification of the price concentration model (see recital (471)), which is different from the Commission's preferred non-linear specification of the price concentration regression equation that is based on the (weighted) number of competitors.<sup>386</sup> Switching to the more flexible non-linear model, and using the otherwise the same methodology as in the first UPS price concentration study (that is to say, evaluating the Commission's model used in *UPS/TNT* for the Transaction but based on 2011 UPS transaction data and 2012 integrator coverage data) results in substantially lower price predictions under the UPS price concentration study (using its 2011 transaction prices as a basis) than

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<sup>385</sup> FedEx makes reference to the bidding data to support the argument that overall coverage is a very poor proxy for the competitive constraint exerted by FedEx.

<sup>386</sup> Paragraph (470) describes that the estimation of the non-linear specification by the Commission indicated that the linear model was too restrictive for that environment as the estimates of the non-linear specification indicate a different price impact of a merger depending on the pre-merger number of competitors in the market (a model not being to grasp this difference is too restrictive and may lead to biased estimates).

those predicted by the first UPS price concentration study. In fact, the predicted price increases drop by more than half (in the range of [0-5]%) compared to those of the linear model.

(480) Second, the UPS price concentration studies rely on 2011 transaction data as opposed to 2014 transaction data, which is closer in time to the notification of this Transaction and which was also available to UPS when it submitted its price concentration studies.

(481) Third, the Commission shares FedEx's concern that, in the present proceeding, the use of a price concentration study along the lines as the one undertaken by UPS in its UPS price concentration studies would not lead to reliable estimates of the impact of the Transaction because it does not fully take differences across integrators into account. In particular, such a price concentration analysis overestimates the impact of competition from companies with a weak market position since it only looks at the coverage of each integrator, but not at other measures of market competitiveness (for example the level of costs, and the success of each integrator in making sales in the market). This weakness in UPS's methodology is likely to lead to an overestimation of the competitive constraint exerted by companies with a weak market position;<sup>387</sup> it would thus likely overestimate the impact on TNT of the disappearance of FedEx from the market.<sup>388</sup> This limitation of this price concentration analysis was of little concern in *UPS/TNT* where the proposed merger would have eliminated a strong competitor for both UPS and TNT, implying that this price concentration analysis would have actually underestimated the price impact of a merger given that one of the remaining competitors (FedEx) was weaker.

(482) The Commission therefore concludes that the UPS price concentration studies are not a reliable means to assess the anticipated price effects of the Transaction.

### 9.8.3. *The Commission's own price concentration analysis*

(483) Although the Commission questions, in general, the relevance of a price concentration analysis for the assessment of the Transaction (see recitals (481) to (483)), it undertook such an exercise, with updated transaction data (2013/2014) and coverage data (2015), in order to ensure the complete consistency with the quantitative analysis developed in *UPS/TNT*.<sup>389</sup> To this end, the Commission sent out a data request to the Parties on 23 June 2015 and to its competitors on 4 August 2015. The main objective of that exercise was the assessment of the potential impact of the Transaction on FedEx's prices, as the Transaction implied the removal of a competitor of similar strength as the other competitors in the market. For completeness, the Commission also ran a price concentration analysis of TNT's prices.

#### 9.8.3.1. Data

(484) The Commission's data request to the Parties included data on (i) transaction data, that is to say net transaction prices (in €/kg), defined as prices net of VAT/duties and discounts but including ancillary services and fuel surcharges for a given lane, (ii)

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<sup>387</sup> See also *UPS/TNT*, recital 729.

<sup>388</sup> This is because the Transaction will lead to the disappearance of a weak competitor, which would decrease competition in the market less than in the case of the disappearance of a competitor which is of similar strength to all the other key players in the market.

<sup>389</sup> Paragraph (470) discusses why the concerns formulated in relation to the Transaction do not hold for the UPS/TNT merger proposed in 2012.

coverage data, that is to say country level coverage both outbound and inbound, defined as the percentage of business addresses covered in the origin and destination country, (iii) the identity of customers, the time of the transaction, the quantity (total volume of parcels shipped, in kg), the number of consignments per transaction, the package type (parcel or documents), the currency of the transaction, the exchange rate used to convert non-euro prices into euro, the distance between the origin and destination country, the market size (total estimated revenues generated from the service by the four integrators in the origin and destination country), and (iv) variable costs per transaction.<sup>390</sup> The data request covered the 2011-2014 period. The Commission also requested data from competitors (including, information about their country level coverage, both inbound and outbound) in order to rely on actual coverage data (as reported by individual companies).

- (485) On 9 September 2015, the Commission received the responses to the data requested from various players in the market.<sup>391</sup> The transaction data included the period of May 2013 – October 2014 for FedEx and January 2013 – December 2014 for TNT. The coverage data collected from the various parties referred to 2015. The postcode-level inbound and outbound service availability reported by the integrators for each country was merged with the country-level lists of business address that included the postcode of those businesses. The actual inbound and outbound coverage figures for each integrator are shown in Table 18.<sup>392</sup>

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<sup>390</sup> These definitions were in line with the definitions of the data submitted by UPS for its price concentration analysis in *UPS/TNT*.

<sup>391</sup> The requested data were submitted through the following steps.

FedEx submitted the requested data on 10 July 2015. As regards coverage, due to the non-availability of the coverage information in the form requested by the Commission, FedEx submitted information on the availability of inbound and outbound services for all the postal codes for which it had this information in each country. FedEx also provided information on the GDP-weight of individual postcodes defined as the percentage of the country's overall GDP associated with those postcodes. The reason for providing this information was to differentiate the various levels of economic importance of certain postcodes.

Subsequently, the Commission sent out a coverage data request to the other integrators and to non-integrators. The coverage data in these requests were defined according to the responses by FedEx, namely on the basis of information on the availability of inbound and outbound services for all the postcodes for which it was available.

After a preliminary assessment of the coverage data submitted by all four integrators, the Commission found that there was information missing from at least one integrator for quite a large number of postal codes in many countries. This raised doubts over the usability of the collected coverage data.

In its consultation with FedEx and its competitors, the Commission found out that the database by Dun & Bradstreet, also used to derive coverage data for UPS in *UPS/TNT* (see footnote 372) contained information on the postal codes of each of the business addresses on its records. This, in turn, allowed linking postal code level presence information with the number and percentage of businesses covered. This could be used to merge postal code availability information by the integrators with the percentage of businesses covered by the same integrator in each country, both for inbound and outbound services.

Therefore, the Commission launched a supplementary data request on 26 August 2015, focusing on the correspondence between postal codes and the number of businesses active in those postal codes. This could be used to attach a weight to each postal code.

FedEx submitted the requested information on 28 August 2015, along with additional postal codes for each country. Subsequently, its competitors also updated the data they submitted on the postal code-level express service availability information.

<sup>392</sup> The Commission also requested coverage data from non-integrators. Non-integrator coverage data was submitted by GLS and DPD. Both non-integrators claimed outbound and inbound availability for a number of countries but did not provide within-country postal code-level figures.

**Table 18: Integrator country coverage (in % for 2015)**

Origin					Destination				
Country	FedEx	TNT	DHL	UPS	Country	FedEx	TNT	DHL	UPS
AT	[...]	[...]	[...]	[...]	AT	[...]	[...]	[...]	[...]
BE	[...]	[...]	[...]	[...]	BE	[...]	[...]	[...]	[...]
CZ	[...]	[...]	[...]	[...]	CZ	[...]	[...]	[...]	[...]
DE	[...]	[...]	[...]	[...]	DE	[...]	[...]	[...]	[...]
DK	[...]	[...]	[...]	[...]	DK	[...]	[...]	[...]	[...]
EE	[...]	[...]	[...]	[...]	ES	[...]	[...]	[...]	[...]
ES	[...]	[...]	[...]	[...]	FI	[...]	[...]	[...]	[...]
FI	[...]	[...]	[...]	[...]	FR	[...]	[...]	[...]	[...]
FR	[...]	[...]	[...]	[...]	GB	[...]	[...]	[...]	[...]
GB	[...]	[...]	[...]	[...]	HU	[...]	[...]	[...]	[...]
GR	[...]	[...]	[...]	[...]	IT	[...]	[...]	[...]	[...]
HR	[...]	[...]	[...]	[...]	LU	[...]	[...]	[...]	[...]
HU	[...]	[...]	[...]	[...]	NL	[...]	[...]	[...]	[...]
IS	[...]	[...]	[...]	[...]	NO	[...]	[...]	[...]	[...]
IT	[...]	[...]	[...]	[...]	PL	[...]	[...]	[...]	[...]
LT	[...]	[...]	[...]	[...]	PT	[...]	[...]	[...]	[...]
LU	[...]	[...]	[...]	[...]	RO	[...]	[...]	[...]	[...]
LV	[...]	[...]	[...]	[...]	SE	[...]	[...]	[...]	[...]
NL	[...]	[...]	[...]	[...]	SK	[...]	[...]	[...]	[...]
NO	[...]	[...]	[...]	[...]					
PL	[...]	[...]	[...]	[...]					
PT	[...]	[...]	[...]	[...]					
RO	[...]	[...]	[...]	[...]					
SE	[...]	[...]	[...]	[...]					
SI	[...]	[...]	[...]	[...]					
SK	[...]	[...]	[...]	[...]					

(486) Table 18 shows that complete outbound coverage information is available for 26 countries and complete inbound information is available for 19 countries.<sup>393</sup> This indicates that for each of the Parties the cumulative coverage by its competitors (referred to as "coverage" if non-ambiguous) can be computed on 475 lanes, and accordingly, the price concentration analysis can be run on as many lanes.<sup>394</sup>

(487) As the Commission found in *UPS/TNT*, the estimation of a price concentration regression model linking prices to coverage would suffer from reliability problems as coverage may be strongly correlated with origin and destination fixed effect dummy variables. This technical problem can be mitigated by using discrete proxies for the continuous lane-level coverage values as these discrete proxies are less strongly correlated with the origin and destination fixed effect dummy variables.<sup>395</sup> Such proxies can be created by assigning dummy variables to the various ranges that

<sup>393</sup> The missing countries were excluded due to a large extent to [Confidential fedex information].

<sup>394</sup> [Confidential].

<sup>395</sup> See *UPS/TNT*, recital 735.

coverage can take. The Commission used this approach and defined three dummy variables to denote the position of FedEx's competitors' coverage on the real line. In particular, a first dummy variable (*npcov\_1*) was used to identify all low-coverage or weakly competitive lanes, lanes where FedEx's competitors' cumulative coverage variable was lower than 2.0, a second dummy variable (*npcov\_2*) was used to identify all medium-coverage or medium-competitive lanes, lanes with the competitor coverage value being larger than 2.0 but smaller than 2.7, and a third dummy variable (*npcov\_3*) was used to identify all the high-coverage or strongly competitive lanes, i.e. lanes with the competitor coverage value being larger than 2.7.<sup>396,397</sup>

### 9.8.3.2. Results

- (488) The Commission used the collected data and the constructed discretised coverage dummy variables (*npcov\_2* and *npcov\_3*) and estimated the non-linear specification of the price concentration regression.<sup>398</sup> Furthermore, the Commission used two techniques to estimate the standard errors of the main estimates: lane-level clustering and a robust standard error estimation<sup>399</sup>
- (489) The use of lane-level clustering allows for arbitrary correlation among the error terms relating to transactions on the same lane. For example, it allows for the correlation of error terms due to common shocks on the same lane. This lane-level clustering reflects well on the structure of the transaction information (individual transactions in the data are identified at the lane level). The robust standard error estimation allows for the variance of the error terms of the regression to vary across transactions but assumes independence of error terms belonging to transactions within the same lane.
- (490) The estimated parameters of the regression model assuming non-linear relationship between the discretised coverage variable and the prices and using lane-level clustered estimation of standard errors can be seen in the Table 19.

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<sup>396</sup> This segmentation of the competitor coverage value base [0; 3] interval was done by depicting the density function showing the share of all transactions linked to lanes with particular coverage values and identifying the coverage value with the smallest shares of transactions attached. This is in line with the approach used in the price concentration analysis in *UPS/TNT*.

<sup>397</sup> This could be interpreted that the *npcov\_1* takes value 1 if coverage is low on a certain lane, namely the competitive pressure (as proxied by coverage) exerted by the competitors is weak. In turn, *npcov\_2* takes the value 1 if the competitor coverage variable is of medium magnitude, namely the competitive pressure exerted by the competitors is of medium strength, and *npcov\_3* takes the value 1 if the competitor coverage variable is of high magnitude, namely the competitive pressure exerted by the competitors is strong.

<sup>398</sup> The coverage variable *npcov\_1* was left out from the regression equation due to the multi-collinearity issue related to the use of dummy variables.

<sup>399</sup> The two ways to estimate standard errors has an impact on the estimates of the standard errors but not on the parameter estimates of the explanatory variables.

**Table 19: Commission’s FedEx price concentration estimates**

lprice	
npcov_2	[Confidential]
npcov_3	[Confidential]
lcost	[Confidential]
ldist	[Confidential]
lconsig_total	[Confidential]
_cons	[Confidential]
<hr/>	
Number of observations	[Confidential]
R2 adjusted	[Confidential]
<b>price_impact</b>	<b>[Confidential]</b>

\*\*\* denotes statistical significance at the 1% level

- (491) The figures in Table 19 indicate negative values for the estimated coverage parameters *npcov\_2* and *npcov\_3*. These parameters denote the price discount as compared to the prices paid on those lanes for which the dummy variable *npcov\_1* (not included in the regression because of multi-collinearity reasons) takes value 1 indicating that competition on the lane is weak and implying that *npcov\_2* and *npcov\_3* both take value 0. The estimated coefficient of [Confidential] for *npcov\_2* indicates the magnitude [Confidential]% of the price discount for transactions on medium-competitive lanes as compared to transactions on weakly competitive lanes (i.e. for which *npcov\_1* is equal to 1). Similarly, the estimated coefficient [Confidential] for *npcov\_3* indicates that there is a [Confidential]% price discount for transactions on highly competitive lanes as compared to transactions on weakly competitive lanes (*npcov\_1* is equal to 1). This also implies that for a transaction on a highly competitive lane (*npcov\_3* is equal to 1) there is an additional price discount of [Confidential]% as compared to a transaction on a medium-competitive lane (*npcov\_3* is equal to 1).<sup>400</sup> Table 19 also indicates a positive coefficient for the variable costs, which could be interpreted as a pass through rate.<sup>401</sup> Finally, the last row of Table 19 indicates a total expected price impact of the Transaction being [0-5]% on average for all lanes for FedEx’s transactions.<sup>402</sup>
- (492) The figures in the square brackets below the estimated coefficient values in Table 19 denote *t*-values for the estimated parameters, providing an indication as to whether the estimated parameter is statistically different from zero. It can be seen (from the absence of stars next to *npcov\_2* and *npcov\_3*) that the estimated parameters of the

<sup>400</sup> This is in fact the non-linear feature of the model introduced in paragraph (470).

<sup>401</sup> Table 19 also indicates a positive coefficient for distance and a negative coefficient for the number of consignments, indicating that customers sending a larger number of consignments on a given lane receive a price discount.

<sup>402</sup> The origin country level expected price impact of the Transaction for FedEx’s transactions varies between [0-5]% and [5-10]%.

coverage dummy variables are statistically not significantly different from zero. Accordingly, the value [0-5]% of the estimated price impact of the Transaction cannot be taken to be statistically significant either as it was computed based on the non-significant estimated parameters of the concentration variables.<sup>403</sup>

- (493) In line with the approach that was adopted in *UPS/TNT*, the Commission also estimated robust standard errors (instead of lane-level clustering). The robust standard error estimation indicated statistically significant parameters for the coverage dummy variables *npcov\_2* and *npcov\_3*.<sup>404</sup>
- (494) The difference in the statistical significance of the estimates between the robust and lane-clustered standard error estimation suggests that the statistical significance of the estimated parameters for the coverage dummy variables and, in turn, that of the price impact of the Transaction on FedEx's transaction prices is unstable. Therefore, the results of the price concentration analysis cannot be used in a reliable way as evidence in the context of the competitive assessment of the Transaction.
- (495) While the Commission considers that a price concentration analysis using the methodology as described in recitals (470) to (472) would overstate the impact of the Transaction on TNT's prices (because it would eliminate a weak competitor and would keep the two strong competitors), it still carried out the same analysis for TNT. This analysis led to non-significant estimated parameters for the coverage variables under the lane-clustered standard error estimation and a mix of significant and non-significant estimated parameters under the robust standard error estimation. The derived impact of the Transaction on TNT's prices was in any event negligible ([0-1]% on average for all lanes for TNT's transactions).<sup>405,406</sup> Therefore, the Commission concludes that the statistical significance of the price impact of the Transaction on TNT's prices is unstable and therefore, the results of the price concentration analysis cannot be used in a reliable way as evidence in the context of the competitive assessment of the Transaction.
- (496) In any case, the Commission also undertook an assessment of the potential efficiencies to which the Transaction could give rise (see Section 9.9) and compared those to the estimated, albeit statistically non-significant, impact of the Transaction on FedEx's prices, as presented in this Section.

#### 9.8.4. *The Commission's conclusion on the price concentration analysis for the assessment of the price impact of the Transaction*

- (497) The Commission comprehensively explored the possibilities offered by a price concentration analysis for evaluating the possible price impact of the Transaction on FedEx's prices and, in turn, on TNT's prices. The Commission found that the statistical significance of the price impact of the Transaction on the Parties' prices is

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<sup>403</sup> In order to calculate a price impact, the dummy coverage variables need to be retransformed into continuous variables as there is no guarantee that the Transaction will cause lanes to move across the ranges represented by the three dummy variables. This technique was used in the assessment of the *UPS/TNT* case as well.

<sup>404</sup> For further consistency with *UPS/TNT*, the Commission also estimated the model that included non-integrator coverage (by DPD and GLS) as an explanatory variable. The inclusion of non-integrators did not change the estimated parameters for the coverage variables and in turn, the insights obtained from the two estimations (lane-clustered and robust).

<sup>405</sup> The lower expected price impact for TNT is consistent with FedEx's lower coverage as the Transaction would result in a smaller change in the weighted coverage of competitors for TNT than for FedEx.

<sup>406</sup> The origin country level expected price impact of the Transaction for TNT's transactions varies between [0-5]% and [0-5].

unstable and, therefore, the results of the price concentration analysis cannot be used in a reliable way as evidence in the context of the competitive assessment of the Transaction. In any event, the Commission considers that the result of the price concentration analysis would overestimate the impact of the Transaction on TNT's prices and that the estimated price increases for FedEx, in case they had been statistically significant, would be outweighed by efficiencies in the event that they had been statistically significant (see Section 9.9.).

## 9.9. Efficiencies

### 9.9.1. Principles and introduction

- (498) FedEx submits that the Transaction is expected to give rise to significant efficiencies through the combination of the Parties' businesses.
- (499) According to recital 29 of the Merger Regulation, "*in order to determine the impact of a concentration on competition in the common market, it is appropriate to take account of any substantiated and likely efficiencies put forward by the undertaking concerned*".<sup>407</sup> Moreover, it is "*possible that the efficiencies brought about by the concentration counteract the effects on competition, and in particular the potential harm to consumers, that it might otherwise have and that, as a consequence, the concentration would not significantly impede effective competition*".<sup>408</sup>
- (500) Therefore, the Commission takes substantiated efficiencies submitted by FedEx into account and may, in line with the Horizontal Merger Guidelines, decide on that basis "*that there are no grounds for declaring the merger incompatible with the common market pursuant to Article 2(3) of the Merger Regulation. This will be the case when the Commission is in a position to conclude on the basis of sufficient evidence that the efficiencies generated by the merger are likely to enhance the ability and incentive of the merged entity to act pro-competitively for the benefit of consumers, thereby counteracting the adverse effects on competition which the merger might otherwise have*".<sup>409</sup>
- (501) The Horizontal Merger Guidelines establish a cumulative set of requirements to take efficiencies into consideration. Efficiencies have to benefit consumers, be merger-specific and be verifiable.<sup>410</sup>
- (502) First, the "relevant benchmark" in the assessment of efficiency claims is that consumers should be no worse off as a result of the merger. For that purpose, efficiencies have to be substantial and timely, and should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur.<sup>411</sup>
- (503) In general, efficiencies that lead to reductions in variable or marginal costs are more likely to be relevant for the assessment of efficiencies than reductions in fixed costs as they are more inclined to result in lower prices for consumers. Cost reductions which merely result from anti-competitive reductions in output cannot be considered as efficiencies benefiting consumers.<sup>412</sup>

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<sup>407</sup> See also Case T-342/07 *Ryanair Holdings v Commission* ECLI:EU:T:2010:280, paragraph 386 and following; Case T-175/12 *Deutsche Börse v Commission* ECLI:EU:T:2015:148, paragraph 236.

<sup>408</sup> Case T-175/12 *Deutsche Börse v Commission* ECLI:EU:T:2015:148, paragraph 238.

<sup>409</sup> Horizontal Merger Guidelines, paragraph 77.

<sup>410</sup> Horizontal Merger Guidelines, paragraph 78.

<sup>411</sup> Horizontal Merger Guidelines, paragraph 79.

<sup>412</sup> Horizontal Merger Guidelines, paragraph 80.

- (504) Any efficiency gains should be passed on to consumers. The scope for pass-on is often linked to the existence of competitive pressure from the remaining firms in the market and from potential entry. The greater the possible negative effects on competition, the more certain the Commission has to be that the claimed efficiencies are substantial, likely to be realised, and to be passed on, to a sufficient degree, to consumers.<sup>413</sup>
- (505) Second, efficiencies should be merger-specific and it should not be possible for those efficiencies to be achieved to a similar extent by less anticompetitive alternatives.<sup>414</sup>
- (506) Third, the efficiencies should be verifiable so that the Commission can be reasonably certain that the efficiencies are likely to materialise, and be substantial enough to counteract a merger's potential harm to consumers.<sup>415</sup>
- (507) It is incumbent upon FedEx to provide the Commission in due time with all the relevant information necessary to demonstrate that the claimed efficiencies are merger-specific and likely to be realised and that the efficiencies are likely to counteract any adverse effects on competition that might otherwise result from the Transaction, and that the claimed efficiencies therefore benefit consumers.<sup>416</sup>

#### 9.9.2. *The efficiency claims made by FedEx*

- (508) While the Form CO included only a short section on claimed efficiencies deriving from the Transaction, providing only a high-level statement supporting the existence of those efficiencies, FedEx added to those initial statements in its Response to the Decision opening proceedings and provided additional responses to the Commission's requests for information on the efficiency submissions.<sup>417</sup> Those submissions provided further underlying economic reasoning and data and elaborated on the claimed efficiencies.
- (509) FedEx argues that significant efficiencies would arise from the Transaction, in particular from the integration of FedEx's relatively inefficient intra-EEA operations into TNT's network. According to FedEx, this is expected to result in a number of substantial cost savings in the markets for international intra-EEA express delivery services.<sup>418</sup>
- (510) First, FedEx submits that the PUD costs for international intra-EEA express delivery services that the Merged Entity would incur would be significantly reduced. FedEx explains that, following the Transaction, FedEx's current international intra-EEA express delivery volumes would be delivered through TNT's more efficient international intra-EEA network.<sup>419</sup> Specifically, as a result of its limited coverage and limited scale of operation in the EEA, FedEx suffers from a substantial cost disadvantage with respect to the other integrators. With FedEx's PUD costs currently several times higher than TNT's, FedEx argues that the Transaction would be

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<sup>413</sup> Horizontal Merger Guidelines, paragraph 84.

<sup>414</sup> Horizontal Merger Guidelines, paragraph 85.

<sup>415</sup> Horizontal Merger Guidelines, paragraph 86.

<sup>416</sup> Horizontal Merger Guidelines, paragraph 87.

<sup>417</sup> FedEx's responses to requests for information QP12 of 19 August 2015, QP13 of 25 August 2015, QP14 of 3 September 2015, QP15 of 16 September 2015, QP18 of 6 October 2015, QP20 of 19 October 2015 and QP21 of 6 November 2015.

<sup>418</sup> Cost savings related to extra-EEA delivery services will be discussed in Section 10.9.

<sup>419</sup> Form CO, paragraph 729.

expected to result in significant savings.<sup>420, 421</sup> FedEx has estimated the magnitude of those cost savings for each EEA country and finds that the total estimated PUD cost savings for the EEA as a whole would total EUR [Confidential] following the Transaction<sup>422</sup>. The PUD cost savings will be assessed in Section 9.9.3.1.1.

- (511) Second, FedEx considers that cost savings would be generated with respect to the current air networks of the Parties.<sup>423</sup> As far as international intra-EEA traffic is concerned, the combination of the Parties' volumes would allow the Merged Entity to reduce the number of planes travelling to the same destination (or replace existing planes with fewer, larger aircraft), thereby increasing the capacity utilisation of each flight and (if a larger plane is used) its speed.<sup>424</sup> For estimating air network cost savings, FedEx relied on an internally developed cost curve. This cost model predicts that there would be cost savings of EUR [Confidential] following the Transaction<sup>425, 426</sup>. Those air network cost savings will be assessed in Section 9.9.3.1.2.
- (512) Third, FedEx explains that, because of its limited ground network intra-EEA, it is currently effectively forced to ship deferred packages via its air network, which is not efficient. Following the Transaction, FedEx submits that it would be able to rely on TNT's extensive ground network to deliver such packages in the EEA<sup>427</sup>. Moreover, as TNT is a much larger ground operator within the EEA than FedEx, it attains the required (critical) scale to be able to serve several intra-EEA routes in a point-to-point manner. Following the Transaction, FedEx's packages would benefit from this capability and would be expected to be delivered to a significant extent through these point-to-point channels<sup>428</sup>. However, FedEx submits that ground network savings are restricted to international intra-EEA deferred shipments. FedEx argues that, since international intra-EEA deferred services were not subject to further investigation, any detailed investigation of ground network savings did not seem to be appropriate in the context of the assessment of the Transaction.<sup>429</sup> Those cost savings will therefore not be assessed.
- (513) Fourth, whilst FedEx currently has limited information regarding the functioning of TNT's hub in Liège, it expects that several operational efficiencies (for example more efficient handling of the packages to be delivered to the various EEA destinations) would be generated with the coordination between that hub and FedEx's hub in Paris.<sup>430</sup> In addition, a considerable number of FedEx's packages would be

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<sup>420</sup> FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015, page 28 and following.

<sup>421</sup> FedEx argues that the transfer from FedEx's network to TNT's cheaper network is just one source of PUD cost savings. The Merged Entity is likely to be able to achieve further PUD cost savings by re-optimising its network in order to fully take advantage of the increased scale it will be operating at. [Confidential information on further PUD cost savings]. FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015, footnote 45. These further savings were, however, not quantified.

<sup>422</sup> FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015, page 28 and following.

<sup>423</sup> Form CO, paragraph 730.

<sup>424</sup> [Confidential].

<sup>425</sup> FedEx's response to question 39 of request for information QP12 of 19 August 2015.

<sup>426</sup> In addition, FedEx expects the Transaction to generate ground handling savings. However, these have not been quantified.

<sup>427</sup> Form CO, paragraph 731.

<sup>428</sup> Form CO, paragraph 731.

<sup>429</sup> FedEx's response to questions 22 and 24 of request for information QP15 of 16 September 2015.

<sup>430</sup> Form CO, paragraph 732.

shipped through TNT's point-to-point routes post-Transaction which would reduce the costs currently incurred by FedEx at a hub level. FedEx did not provide any detail or quantification of those cost savings. Therefore, there will be no further assessment of those savings.

- (514) Fifth, FedEx submits that given its small scale within the EEA, the overhead costs it incurs are (in proportion) considerably high. In the long run, FedEx expects that the overall overhead costs of the Merged Entity would be lower than the sum of the overhead costs currently being incurred by each of the Parties.<sup>431</sup> FedEx did not provide any further detail on those cost savings which appear to relate to fixed costs and would therefore unlikely benefit consumers. Those savings will not be further assessed.

### 9.9.3. Assessment of efficiencies

- (515) This Section assesses the extent to which the claimed efficiencies can be deemed verifiable, merger-specific and to the benefit of consumers. It also quantifies the level of cost savings to which the claimed efficiency gains give rise.

#### 9.9.3.1. Verifiability

##### 9.9.3.1.1 PUD cost savings

- (516) In *UPS/TNT*, the Commission "*acknowledged that PUD efficiencies may be achieved by the merger in the light of a larger customer base due to the network nature of the industry and the importance of economies of scale and density for PUD*".<sup>432</sup> However, the Commission could not use the submitted calculations as an acceptable standard for verifying UPS's efficiency claims because the calculations were based on outdated information and calculated only for a number of countries, whereas for all the other countries, only a broad estimate was provided at an aggregate level.<sup>433</sup>
- (517) In particular, the Commission stated, in relation to PUD savings, that "*the data should be collected in a bottom-up approach starting at the country levels, and it is not correct to derive them from allocating an aggregated figure to individual countries*".<sup>434</sup> Also, the Commission found that synergies were "*estimated without full access to TNT's data*".<sup>435</sup> Moreover, the Commission explained that the "*current estimates for 2011 simply constitute downwards revisions*" whereas "*UPS has not provided any supporting document to explain on which grounds these reductions were decided*".<sup>436</sup>
- (518) In the current proceedings, FedEx's economists collected country-level 2014 data for both FedEx and TNT to calculate the expected cost savings for each EEA country.
- (519) Moreover, the proposed merger between UPS and TNT concerned two international intra-EEA express networks of similar size. UPS and TNT faced similar levels of PUD costs. Therefore, the Commission could not simply apply the PUD costs of one of the two parties (i.e. the largest party) to infer the PUD costs of the Merged Entity. The Transaction is different in that the merger between FedEx and TNT would bring together two parties with very different international intra-EEA express network sizes.

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<sup>431</sup> Form CO, paragraph 733.

<sup>432</sup> See *UPS/TNT*, recital 851.

<sup>433</sup> See *UPS/TNT*, recitals 853-855.

<sup>434</sup> See *UPS/TNT*, recital 853.

<sup>435</sup> See *UPS/TNT*, recital 818.

<sup>436</sup> See *UPS/TNT*, recital 854.

- (520) In these proceedings, FedEx did not rely on any assumptions on the optimisation of the network, but simply calculated the difference in PUD costs between FedEx and TNT for each EEA country because following the Transaction, FedEx's current international intra-EEA express delivery volumes would be delivered through TNT's more efficient international intra-EEA network.
- (521) The analysis of FedEx's internal documents [Confidential details on the transfer of Fedex's volumes to TNT's network].<sup>437</sup>

**Figure 18: Internal Document of FedEx on PUD cost saving<sup>438</sup>**

[Confidential]

- (522) The Commission requested the underlying data and verified the methodology used for estimating the claimed cost savings for each EEA country.
- (523) PUD costs underlying the efficiency calculations are based on actual PUD costs incurred by the Parties. Those actual PUD cost figures were extracted directly from the Parties' internal costing systems. In the case of FedEx, the PUD cost figures used in the efficiency calculations were taken directly from FedEx's GPLP financial reporting system. For TNT, PUD costs were extracted from TNT's internal cost engine.<sup>439</sup> The applied methodology can be summarised as follows.<sup>440</sup>
- (524) First, unit savings in pick-up costs were calculated. Those savings are equal to the difference in the Parties' pick-up costs per package in each of the relevant EEA origin countries.
- (525) Second, unit savings in average delivery costs were calculated. For packages shipped from country A to countries B and C, average delivery costs from country A are calculated as a weighted average of the cost of delivering in countries B and C, where the volumes shipped by FedEx to each of the two countries are used as weights. Following that logic, FedEx calculated average delivery cost savings for packages currently sent by FedEx from each of the relevant countries to any EEA country by comparing average delivery costs for FedEx and TNT. The average delivery cost is calculated on the basis of the delivery cost incurred by each of the Parties in each destination country, weighted by the volume of FedEx's deliveries made to each destination country.
- (526) Third, unit savings on overall PUD costs are calculated by combining savings on pick-up costs with savings on average delivery costs for each relevant country. According to that methodology, for each country of origin A, the Merged Entity would benefit from cost savings generated from the migration to TNT's network both at the origin and the destination countries to which packages are shipped from country A.
- (527) The results of this analysis can be found in Table 20 for each EEA country.<sup>441</sup>

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<sup>437</sup> Form CO, Annex 7.Q, FedEx's slide deck [Confidential].

<sup>438</sup> Form CO, Annex 7.Q, FedEx's slide deck [Confidential].

<sup>439</sup> FedEx's response to question 7 of request for information QP15 of 16 September 2015.

<sup>440</sup> FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015, page 28 and following.

<sup>441</sup> [Confidential].

**Table 20<sup>442</sup>: Estimated international intra-EEA express PUD cost saving by EEA country (in EUR/per package)**

[Confidential]

(528) By multiplying the estimated PUD cost saving per package by the number of international intra-EEA express packages shipped in 2014 by FedEx from each country, a yearly PUD efficiency saving can be estimated for each country.<sup>443</sup> Those estimated PUD cost savings by EEA country are displayed in Table 21.

**Table 21<sup>444</sup>: Estimated international intra-EEA express PUD cost saving by EEA country (in EUR) per year**

Country	PUD Cost Saving per Pack	Number of Packages shipped by FedEx (2014)	Estimated PUD Saving
AT	[Confidential]	[Confidential]	[Confidential]
BE	[Confidential]	[Confidential]	[Confidential]
BG	[Confidential]	[Confidential]	[Confidential]
CY	[Confidential]	[Confidential]	[Confidential]
CZ	[Confidential]	[Confidential]	[Confidential]
DE	[Confidential]	[Confidential]	[Confidential]
DK	[Confidential]	[Confidential]	[Confidential]
EE	[Confidential]	[Confidential]	[Confidential]
ES	[Confidential]	[Confidential]	[Confidential]
FI	[Confidential]	[Confidential]	[Confidential]
FR	[Confidential]	[Confidential]	[Confidential]
GB	[Confidential]	[Confidential]	[Confidential]
GR	[Confidential]	[Confidential]	[Confidential]
HR	[Confidential]	[Confidential]	[Confidential]
HU	[Confidential]	[Confidential]	[Confidential]
IE	[Confidential]	[Confidential]	[Confidential]
IS	[Confidential]	[Confidential]	[Confidential]
IT	[Confidential]	[Confidential]	[Confidential]
LT	[Confidential]	[Confidential]	[Confidential]
LU	[Confidential]	[Confidential]	[Confidential]
LV	[Confidential]	[Confidential]	[Confidential]

<sup>442</sup> Data output submitted together with FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015, table 11.

<sup>443</sup> [Confidential].

<sup>444</sup> Data output submitted with the FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015", table 15.

Country	PUD Cost Saving per Pack	Number of Packages shipped by FedEx (2014)	Estimated PUD Saving
MT	[Confidential]	[Confidential]	[Confidential]
NL	[Confidential]	[Confidential]	[Confidential]
NO	[Confidential]	[Confidential]	[Confidential]
PL	[Confidential]	[Confidential]	[Confidential]
PT	[Confidential]	[Confidential]	[Confidential]
RO	[Confidential]	[Confidential]	[Confidential]
SE	[Confidential]	[Confidential]	[Confidential]
SI	[Confidential]	[Confidential]	[Confidential]
SK	[Confidential]	[Confidential]	[Confidential]
EEA total			[Confidential]

- (529) Based on the data submitted by FedEx, the Commission considers that total estimated annual PUD cost saving for the EEA as a whole could be estimated at EUR [Confidential] million. This is lower than the EUR [Confidential] million calculated by FedEx because the Commission only considers the international intra-EEA express volume, whereas FedEx took the total international intra-EEA volume (including international intra-EEA deferred packages).
- (530) The Commission questioned whether TNT's network would be able to accommodate FedEx's volumes without increasing PUD costs per package. FedEx explained that PUD costs involve operating vehicles (vans, trucks) that transport small packages between local sorting centres/depots and customer locations, as well as operating the local sorting centres/depots. The addition of FedEx's volume to TNT's network may actually reduce PUD costs per unit as a result of gains in scale and density.<sup>445</sup>
- (531) Hence, in the light of these elements, the Commission recognises the efficiency gains with regard to PUD costs, as set out in Tables 20 and 21, as verifiable.

#### 9.9.3.1.2 Air network cost savings

- (532) In *UPS/TNT*, intra-EEA air network cost savings were acknowledged as verifiable by the Commission.<sup>446</sup> In that case, UPS used up-to-date data and applied a methodology following UPS's normal optimisation process to calculate EEA-wide savings.<sup>447</sup>
- (533) In this proceeding, FedEx has also estimated the magnitude of air network cost savings on an aggregated EEA-wide basis. The methodology behind the expected international intra-EEA express cost savings results from a cost curve developed by FedEx's engineering department following multiple iterations of air network design and associated costs done in the past years. Specifically, according to the cost model

<sup>445</sup> FedEx's response to question 1 of request for information QP14 of 3 September 2015.

<sup>446</sup> See *UPS/TNT*, recitals 911-912.

<sup>447</sup> See *UPS/TNT*, recital 871.

developed by FedEx, cost/lbs are determined by the following cost curve:  
[Confidential]

- (534) On the basis of FedEx's volumes and TNT's volumes and further adjustments for inflation and exchange rate fluctuations expected in the [Confidential] years following the Transaction, this cost model could yield an expected EUR [Confidential].<sup>448 449</sup>
- (535) Conceptually, the Commission considers that such air network cost savings are plausible as they derive from economies of scale. Moreover, they were calculated by FedEx based on recent data and internal research tools which are supported by internal documents.
- (536) The Commission has verified how this cost curve was developed by FedEx's engineering department. In response to the Commission's comments regarding the verifiability of the claimed efficiencies, FedEx provided a more detailed description of the methodology and all underlying calculations.
- (537) The cost curve has been derived using the output of several studies undertaken by FedEx to optimise the intra-EEA air network using different levels of volume (in lbs). Specifically, FedEx relied upon its operational research tools to produce the most optimal schedules based on a given volume and a certain set of operational constraints and assumptions. FedEx's operations research tool and the most optimal network for a given volume forecast are described in internal documents provided by FedEx.<sup>450</sup>
- (538) FedEx explained that the four latest iterations of schedules were used to develop the cost curve which underlies the air network cost saving calculations and provided the fitting of the curve to the four observations (see Figure 19). The cost curve shows how costs vary with volume and the formula can be used to estimate costs for any given volume. In order to evaluate efficiency gains, FedEx calculated the costs relating to the volume of the Merged Entity (combined volume of the Parties) and compared them to the costs relating to the volume of the Parties in the standalone pre-Transaction situation.

**Figure 19 – FedEx air network cost curve<sup>451</sup>**

[Confidential]

- (539) The Commission requested the full underlying calculations and the evidence supporting each of the assumptions used in the calculation.
- (540) The Commission noticed that the air network cost savings claimed by FedEx on international intra-EEA shipments are estimated on the basis of [Confidential] of small package shipments expected in financial year [Confidential] and a small proportion of volume ([Confidential]) associated with approximately [Confidential] of freight shipment as of financial year [Confidential]. The Commission adjusted the volume to exclude the freight shipments from the calculations which would result in expected savings of EUR [Confidential] following the Transaction rather than EUR [Confidential] as calculated by FedEx.

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<sup>448</sup> FedEx's response to question 39 of request for information QP12 of 19 August 2015.

<sup>449</sup> In addition, FedEx expects the Transaction to generate ground handling savings. However, these have not been quantified.

<sup>450</sup> FedEx's response to question 11 of request for information QP15 of 16 September 2015, Annex [Confidential].

<sup>451</sup> FedEx's response to question 11 of request for information QP15 of 16 September 2015.

- (541) FedEx made an adjustment to its air network cost savings estimates to take into account the fact that FedEx expects to achieve certain air network savings through the implementation of an internal programme aimed at cost reduction which is unrelated to the Transaction. Specifically, [Confidential], the overall efficiencies calculated by FedEx are reduced accordingly by subtracting the savings that would equally be expected absent the Transaction on the basis of FedEx's internal cost saving programme.
- (542) Given that the nature of air network cost savings is of an EEA-wide nature and does not rely on significant country-specific factors (contrary to what is the case for PUD cost savings), the Commission could accept the provision by FedEx of an aggregate projection of air network cost savings for the entire EEA of EUR [Confidential] following the Transaction. The Commission allocated those cost savings on a country by country level based on the proportion of total weight shipped on international intra-EEA express services accounted for by each origin country in the EEA. This is consistent with FedEx's internal approach to cost allocation. FedEx provided the Commission with data on the total weight shipped in international intra-EEA express by country that could be used for that allocation of efficiencies to individual countries as presented in Table 22.

**Table 22: Estimated annual international intra-EEA express air network cost saving by EEA country (in EUR) based on 2014 volume**

Country	Intra-EEA Express (Lbs '000)	% of total Intra-EEA Express	Cost saving (EUR)
Austria	[Confidential]	[Confidential]	[Confidential]
Belgium	[Confidential]	[Confidential]	[Confidential]
Bulgaria	[Confidential]	[Confidential]	[Confidential]
Cyprus	[Confidential]	[Confidential]	[Confidential]
Croatia	[Confidential]	[Confidential]	[Confidential]
Czech Republic	[Confidential]	[Confidential]	[Confidential]
Denmark	[Confidential]	[Confidential]	[Confidential]
Estonia	[Confidential]	[Confidential]	[Confidential]
Finland	[Confidential]	[Confidential]	[Confidential]
France	[Confidential]	[Confidential]	[Confidential]
Germany	[Confidential]	[Confidential]	[Confidential]
Greece	[Confidential]	[Confidential]	[Confidential]
Hungary	[Confidential]	[Confidential]	[Confidential]
Iceland	[Confidential]	[Confidential]	[Confidential]
Ireland	[Confidential]	[Confidential]	[Confidential]
Italy	[Confidential]	[Confidential]	[Confidential]
Latvia	[Confidential]	[Confidential]	[Confidential]
Lithuania	[Confidential]	[Confidential]	[Confidential]
Luxembourg	[Confidential]	[Confidential]	[Confidential]
Malta	[Confidential]	[Confidential]	[Confidential]
Netherlands	[Confidential]	[Confidential]	[Confidential]
Norway	[Confidential]	[Confidential]	[Confidential]
Poland	[Confidential]	[Confidential]	[Confidential]
Portugal	[Confidential]	[Confidential]	[Confidential]
Romania	[Confidential]	[Confidential]	[Confidential]

Country	Intra-EEA Express (Lbs '000)	% of total Intra-EEA Express	Cost saving (EUR)
Slovakia	[Confidential]	[Confidential]	[Confidential]
Slovenia	[Confidential]	[Confidential]	[Confidential]
Spain	[Confidential]	[Confidential]	[Confidential]
Sweden	[Confidential]	[Confidential]	[Confidential]
UK	[Confidential]	[Confidential]	[Confidential]
<b>Total EEA</b>	[Confidential]	[Confidential]	[Confidential]

(543) Based on all those elements, the Commission recognises the efficiency gains with regard to air network cost savings, as set out in Table 22, as verifiable.

#### 9.9.3.2. Merger specificity

(544) The Commission has assessed whether the PUD cost savings and air network cost savings described in Section 9.9.3.1 could also be attained to a similar extent by less anticompetitive alternatives, notably an outsourcing agreement between the Parties or between FedEx and another competitor (for instance, UPS or DHL). Such an outsourcing agreement would mean that one party (the facilitator) would agree to carry the small packages of another party (the outsourcer) in its small package delivery network.

(545) FedEx takes the view that there is no realistic and less restrictive alternative to the Transaction that would allow FedEx to obtain the significant scale and density benefits that would arise from the acquisition of TNT.<sup>452</sup> In particular, FedEx explains that outsourcing agreements are not commercially realistic and would not be capable of generating similar benefits expected to arise from the Transaction. Moreover, internal reorganisation measures could not attain such benefits either.

(546) The Commission agrees with FedEx's view. First, in *UPS/TNT*, the Commission recognised UPS's arguments regarding the complexity of network integration and agreed that no outsourcing agreements of this scale seemed to exist in practice, that is to say where one small package provider outsources the pick-up, delivery and air transport of all its packages to another provider. Moreover, the Commission acknowledged that such arrangements could bring significant additional costs, less flexibility and more risk as compared with the Merged Entity.<sup>453</sup>

(547) Second, the Commission recognises that there is little commercial incentive for two competing integrators to enter into an outsourcing agreement. It is commercially unrealistic to suggest that TNT would agree to carry FedEx's shipments - thereby decreasing FedEx's PUD costs and allowing it to compete more effectively against TNT and the other integrators - at the expense of its own market share (which would likely be eroded by a more competitive FedEx). Similarly, it is commercially unrealistic to suggest that FedEx would want to provide visibility on its customers to TNT (the details of which are readily available in the provision of IT and Airwaybill data for making shipments possible across the two systems). On balance, the incremental income for facilitating FedEx shipments is unlikely to outweigh the overall cost to TNT. Other issues relating to, for example, brand dilution, ensuring

<sup>452</sup> FedEx's response to question 10 of Commission's request for information QP15 of 16 September 2015.

<sup>453</sup> See *UPS/TNT*, recital 910.

service levels, observing standards, and protecting reputations from harm also arise from those outsourcing arrangements.

- (548) Third, the Commission further understands that such agreements have a track record of failure in the industry. FedEx referred to a paper it submitted to the Commission in the context of *UPS/TNT* on 10 July 2012 entitled "On Postal Operators and Ground Based Operators in Europe". The paper explains in detail why FedEx's prior alliance agreements ([Confidential] failed).<sup>454</sup>
- (549) Fourth, the Commission considers that FedEx has attempted to achieve the desired increase in scale internally [Confidential].
- (550) On the basis of the foregoing recitals (546) to (551), the Commission considers that the PUD cost savings and air network cost savings are merger-specific as they cannot be achieved to a similar extent by less anticompetitive alternatives.

### 9.9.3.3. Consumer benefits

#### **9.9.3.3.1 Pass-through to consumers**

- (551) As indicated in Section 9.9.1., the Commission is more likely to consider efficiencies that lead to reductions in variable or marginal costs as relevant as opposed to reductions in fixed costs given that variable or marginal cost reductions are more likely to result in lower prices for consumers. In this Section, the Commission's analysis aims to identify whether PUD costs and air network costs are variable in nature, how savings on PUD costs and air network costs would benefit consumers and the applicable pass-through rate.
- (552) In *UPS/TNT*, the Commission did not assess whether PUD costs are variable costs because it was concluded that the claimed PUD savings did not meet the verifiability test. The Commission concluded, however, that the claimed air network cost savings would lead to consumer benefits.<sup>455</sup>
- (553) In the current proceedings, FedEx argued that both PUD costs and air network costs are to a significant extent variable.<sup>456</sup>
- (554) First, FedEx explained that PUD involves operating vehicles that transport small packages from local sorting centres to and from customer locations, as well as operating the local sorting centres and depots. The cost of those activities varies with the number of packages.
- (555) Second, FedEx submitted that by combining the Parties' volumes, the Merged Entity would achieve enough volume in the EEA to convert its existing fleet to larger aircraft. In particular, the reduction in fuel consumption which is associated with the Merged Entity's more efficient network are crucial variable cost elements for the expected air network savings on international intra-EEA express shipments.
- (556) The Commission agrees that both PUD costs and air network costs are to a large extent variable costs as there are economies of scale to be achieved (namely a larger density of the network lowers the unit costs for the service provider as discussed in Section 6.4.). The Commission therefore recognises that savings related to PUD and air network costs may affect the price setting behaviour of the Merged Entity.

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<sup>454</sup> FedEx's response to question 10 of Commission's request for information QP15 of 16 September 2015.

<sup>455</sup> See *UPS/TNT*, recital 922.

<sup>456</sup> FedEx's response to question 37 of request for information QP12 of 19 August 2015 and question 16 of request for information QP21 of 6 November 2015.

- (557) As a next step, the Commission assessed how customers would benefit from the recognised PUD and air network cost savings and which types of customers would benefit.<sup>457</sup>
- (558) First, the Commission notes that the calculated PUD cost saving figures rely on FedEx's international intra-EEA express volumes as of 2014 and therefore relate to FedEx's current international intra-EEA express customers. As explained in Section 9.4.2.1.2, FedEx currently operates at a significant cost disadvantage with PUD costs which are several times higher than those of rival integrators. That cost disadvantage hinders FedEx's ability to compete effectively for international intra-EEA express customers as confirmed by the fact that FedEx's international intra-EEA express revenues are largely driven by customers with extra-EEA shipment requirements. As discussed in Section 9.4.2.1.1, [Confidential]% of FedEx's international intra-EEA express revenues are derived from customers that have also purchased extra-EEA delivery services from it. The small proportion of customers who nevertheless purchase standalone international intra-EEA delivery services from FedEx must have a clear preference for FedEx's offering regardless of its ability to compete aggressively on prices.<sup>458</sup> That type of customer would benefit from the Transaction because the Merged Entity would be able to offer the differentiating features currently offered by FedEx, but at a lower cost.
- (559) In order to win international intra-EEA express business as part of a bundle with extra-EEA services, FedEx must price that element of the bundle having regard to the prices charged by the other integrators for international intra-EEA express delivery services, who have lower costs. FedEx therefore [Confidential].<sup>459</sup> The Commission questioned the likelihood that prices for international intra-EEA express services would decrease post-Transaction as a result of the claimed PUD cost savings given that FedEx today already prices in line with its competitors for the international intra-EEA express component of a bundle with extra-EEA services.
- (560) When asked for clarifications by the Commission, FedEx argued that [Confidential details on Fedex's incentives to pass efficiencies onto consumers]. .
- (561) The Commission agrees that, as regards the question of pass-on of benefits to customers, it is indeed appropriate to look at the profit margin before the inclusion of fixed costs. If such a profit margin is positive, any cost saving reducing variable costs would influence the price setting behaviour of the Merged Entity. In addition, the PUD cost savings would affect the Merged Entity's variable cost of the bundle and would therefore influence the price-setting behaviour of the Merged Entity for bundles of international intra-EEA express and extra-EEA delivery services. Customers currently purchasing international intra-EEA express services from FedEx as part of a bundle with extra-EEA services would benefit from the Transaction as the Merged Entity would face lower variable costs in providing the bundle, which would influence the Merged Entity's price setting behaviour as regards such bundles.

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<sup>457</sup> FedEx noted that the claimed efficiency gains do not take into account any volume growth forecasted by FedEx post-Transaction. Additional customers may benefit post-Transaction from FedEx's product offer having a lower cost per package. FedEx's response to question 9 of request for information QP15 of 16 September 2015.

<sup>458</sup> There are no indications that the other integrators are capacity constrained, see Section 9.6. discussing the integrators' ability to expand.

<sup>459</sup> [Confidential].

- (562) The recognised PUD cost savings can therefore be attributed to customers with a pre-Transaction preference for FedEx's service offering of bundles of international intra-EEA express and extra-EEA delivery services.
- (563) Second, the Commission finds that the air network cost savings relate to efficiency gains which would benefit the entire international intra-EEA express network of the Merged Entity. Those savings would result from the fact that the Merged Entity transports larger volumes of packages by air than each of the Parties individually, which would allow the Merged Entity to use more efficient aircraft to achieve a lower cost per unit on package transportation. As the air network cost savings would affect the Merged Entity's variable cost of international intra-EEA express delivery services, the Commission considers that such cost saving would influence the price-setting behaviour of the Merged Entity for all international intra-EEA express delivery services. The recognised air network savings could therefore be attributed to all international intra-EEA express delivery services and would benefit all international intra-EEA express customers of the Merged Entity.
- (564) As a final step, the Commission assessed what pass-through rate would apply to the cost savings.
- (565) In *UPS/TNT*, the Commission considered that “[i]t is extremely rare to have precise estimates of the variable proportion of certain categories of costs or of the actual pass-through of such costs”.<sup>460</sup> The Commission initially looked at some internal estimates of the share of costs that UPS and TNT considered as variable. However, the Commission ultimately relied on the total average cost pass-through coefficient estimated in the price concentration studies and applied an average total cost pass-through elasticity of 60% to 70%<sup>461</sup>. This approach was favourable to UPS.
- (566) In this case, neither FedEx nor TNT have internal studies which would provide additional insights into the applicable pass-through rate for cost savings expected from the Transaction. The cost pass-through coefficient estimated in the Commission's own price concentration analysis (see Section 9.8.3) is 87%<sup>462</sup>. This coefficient is related to a cost measure in between average total cost and average variable cost because several fixed costs are not included, for instance operations and hub management costs, office occupancy costs, IT management costs, marketing and sales and finance and accounting costs, country management costs and head office (both central and regional) allocation costs.
- (567) In the absence of further information on the applicable pass-through rate, the Commission applies a pass-through rate of 50%. The 50% pass-through assumption corresponds to the expected pass-through applicable to a (residual) monopolist facing a price-elastic linear demand. Given the finding in the Commission's own price concentration analysis of a cost pass-through coefficient of 87%, this is a conservative approach which is likely to understate the actual pass-through rate.

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<sup>460</sup> See *UPS/TNT*, recital 893.

<sup>461</sup> See *UPS/TNT*, recital 918.

<sup>462</sup> In the Commission's price concentration analysis discussed in section 9.8, the Commission included “cost” as an explanatory variable to verify whether differences in prices can be to some extent explained by differences in costs and found a statistically significant coefficient of 87% for the cost variable. The 87% is an estimation outcome of the regression model. In particular, an estimated coefficient for the cost variable of 87% indicates that the regression model predicts that a 1% decrease in cost would decrease price by 0.87%.

### 9.9.3.3.2 Time horizon

- (568) FedEx estimates that the entirety of PUD cost savings would be realised within [Confidential] years post-Transaction. FedEx provided the Commission with a PUD efficiencies implementation time-frame showing that [Confidential] of the PUD efficiency gains would be expected to be implemented by [Confidential] following the Transaction, [Confidential] by [Confidential] following the Transaction and [Confidential] by [Confidential] following the Transaction.<sup>463</sup>
- (569) The Commission requested further information to understand whether the implementation plan for achieving the efficiencies within the stated timetable is credible.
- (570) FedEx explained that it intends to implement the transfer of its volumes into TNT's PUD network as part of a plan which allows for network integration in different phases and includes the following steps:<sup>464</sup>
- (571) [Confidential details on the parties network integration process];
- (572) [Confidential details on the parties network integration process];
- (573) [Confidential details on the parties network integration process];
- (574) [Confidential details on the parties network integration process].
- (575) [Confidential details on the parties network integration process].<sup>465</sup>
- (576) FedEx pointed out that, in the context of *UPS/TNT*, the quoted period for integration and realisation of full efficiencies was year [Confidential]. Given the limited scale of FedEx's intra-EEA operations, the integration of FedEx's operations into TNT's network would be a less complex exercise than that envisaged for UPS and TNT, thereby making the planned [Confidential] year timeline to realise full efficiencies credible [Confidential details on the parties network integration process].<sup>466</sup>
- (577) Based on the explanations presented in recitals (572) to (578), the Commission considers that the integration plan to realise [Confidential] of PUD efficiencies within three years of the completion of the Transaction and [Confidential] within four years is indeed credible.
- (578) As regards the air network cost savings, FedEx expects that the entirety of those savings would be realised within [Confidential] of the consummation of the Transaction. FedEx provided the Commission with an air network cost savings implementation time-frame showing that [Confidential] of the air network efficiency gains would be expected to be implemented by [Confidential] following the Transaction, [Confidential] by [Confidential] following the Transaction, [Confidential] by [Confidential] following the Transaction and [Confidential] by [Confidential] following the Transaction.<sup>467</sup> FedEx explained that [Confidential].<sup>468</sup>
- (579) The Commission considers that the timeliness of efficiencies constitutes an important condition for two reasons. First, efficiencies expected to materialise in the more

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<sup>463</sup> FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015, page 37, table 18.

<sup>464</sup> FedEx's response to question 1a of request for information QP25 of 30 November 2015.

<sup>465</sup> FedEx's response to question 1b of request for information QP25 of 30 November 2015.

<sup>466</sup> FedEx's response to question 1b of request for information QP25 of 30 November 2015.

<sup>467</sup> FedEx's response to question 6 of request for information QP14 of 3 September 2015, page 6, table 1.

<sup>468</sup> FedEx's response to question 6 of request for information QP14 of 3 September 2015, page 6.

distant future are less likely to outweigh anti-competitive effects which are expected to arise in the short-term and second, more distant efficiencies carry more uncertainty as to their realisations as market circumstances are more difficult to predict in the longer run and could substantially affect their quantification. For those reasons, the Commission tends to give more weight to estimates of efficiencies expected to arise in the short to medium term. However, it should also be recognised that, in some industries, the process of integration may take longer.

- (580) In *UPS/TNT*, the Commission took into account cost savings achieved by the end of year 3 following the Transaction. The focus on efficiencies expected to materialise in year 3 satisfied the timeliness condition in that the analysis took into account the necessary time to integrate in a complex setting but also the need to attribute less weight to efficiencies that are more distant in the future.<sup>469</sup>
- (581) In this Decision, the Commission followed the same approach, thereby, taking into account the [Confidential] of the total expected PUD cost savings and the [Confidential] of the total expected air network cost savings.

#### 9.9.3.4. Quantification of the likely effect of the efficiency gains

- (582) In Section 9.9.3.1., the Commission concluded that the total annual PUD cost saving for the EEA as a whole can be estimated at EUR [Confidential]. By [Confidential] following the Transaction, [Confidential] of these cost savings are expected to be realised resulting into EUR [Confidential]. Applying a pass-through rate of 50% leads to PUD cost savings of EUR [Confidential].
- (583) The Commission also expressed the PUD cost savings as percentage price reductions in order to compare them to the (non-statistically significant) price increases estimated in Section 9.8.
- (584) Table 23 presents, for each EEA country, the PUD cost savings in year 3 following the Transaction, the cost saving per package and the relative cost saving as percentage of FedEx's average price per parcel after applying a pass-through rate of 50%. The final two columns of Table 23 show the (statistically insignificant) price increases estimated for FedEx by the Commission's price concentration analysis in Section 9.8. and the net price reductions for each EEA country. For each EEA country, the net price reduction is found to be positive.

**Table 23: Estimated international intra-EEA express price reductions from PUD cost savings for FedEx customers by EEA country realised in year 3 considering 50% pass-through**

Country	PUD cost saving (Y3)	Number of packages shipped by FedEx (2014)	FedEx revenue (2014)	Price / package	Cost saving / package	% of average price	Price reduction after 50% pass-through	Estimated price increases absent efficiencies	Net price reduction
Austria	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Belgium	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Bulgaria	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Cyprus	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Croatia	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Czech Republic	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Denmark	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

<sup>469</sup> See *UPS/TNT*, recital 906.

Country	PUD cost saving (Y3)	Number of packages shipped by FedEx (2014)	FedEx revenue (2014)	Price / package	Cost saving / package	% of average price	Price reduction after 50% pass-through	Estimated price increases absent efficiencies	Net price reduction
Estonia	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Finland	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
France	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Germany	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Greece	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Hungary	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Iceland	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Ireland	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Italy	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Latvia	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Lithuania	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Luxembourg	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Malta	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Netherlands	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Norway	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Poland	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Portugal	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Romania	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Slovakia	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Slovenia	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Spain	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Sweden	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
UK	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<b>Total EEA</b>	[...]	[...]	[...]						

(585) Table 22 in Section 9.9.3.1. presented air network cost savings for the entire EEA of EUR [Confidential]. By [Confidential] following the Transaction, [Confidential] of those savings would be expected to be realised resulting in savings of EUR [Confidential]. Applying a pass-through rate of 50% leads to a final estimation that EUR [Confidential] of the claimed air network cost savings would benefit the international intra-EEA express customers of the Merged Entity in [Confidential] following the Transaction after pass-through.

#### 9.9.4. Conclusion

(586) Overall, the Commission concludes that EUR [Confidential] of claimed PUD and EUR [Confidential] of claimed air network cost savings (after pass-through) qualify as relevant efficiencies under the three-pronged test set out in the Horizontal Merger Guidelines, for the relevant international intra-EEA express markets affected by the Transaction. The total amount of EUR [Confidential] reflects around [Confidential] of the Merged Entity's revenues in the international intra-EEA express markets.

(587) The Commission reached the conclusion in Section 9.4. and 9.5. that the Transaction would not lead to the elimination of a close or important competitive force in any national market for international intra-EEA express delivery services. Moreover, the Commission concluded in Section 9.8. that the price effects of the Transaction estimated through the price concentration analysis not statistically significant. In any event, the Commission notes that the recognised efficiencies would be sufficient to offset any hypothetical harm associated with the Transaction on the international intra-EEA express delivery markets.

(588) Even if the results of the Commission's price concentration analysis had been significant, the Commission finds that the PUD efficiencies associated with the Transaction that are likely to benefit customers with a pre-Transaction preference for FedEx's (bundled) offer would more than offset the price increases estimated for FedEx customers as a result of the Transaction in any of the national markets for international intra-EEA express delivery services. The pass-through rate sufficient to outweigh the hypothetical harm in each country is [Confidential], below the 50% standard assumption for linear demand.

#### **9.10. Conclusion on international intra-EEA express delivery services**

(589) The Transaction would not result in the elimination of important competitive constraints that Parties previously exerted upon each other in any of the national markets for the provision of international intra-EEA express delivery services and competitive pressure on UPS and DHL would not be reduced post-Transaction.

(590) The Merged Entity's combined market position in the relevant international intra-EEA express delivery services markets would be moderate, in particular in the light of FedEx's smaller presence across the EEA. Amongst integrators, FedEx and TNT are not close competitors regarding international intra-EEA express delivery services. Due to the small scale and density of its intra-EEA operations, FedEx's business focus in the EEA is on customers with considerable requirements for extra-EEA delivery services. TNT, by contrast, given the higher scale and density of its operations in the EEA, focuses more on customers with stand-alone international intra-EEA express delivery service needs and customers that also require domestic and deferred services. DHL and UPS are strong competitors that would be in a position to constrain the Merged Entity post-Transaction. A clear majority of customers, when asked about the impact of the Transaction on international intra-EEA express delivery services, were positive or neutral. Finally, the Transaction would give rise to merger-specific efficiencies which would outweigh any potential competitive harm brought about by the Transaction.

(591) The Commission therefore concludes that the Transaction would not significantly impede effective competition in any of the 30 national markets for the provision of international intra-EEA express delivery services.

### **10. EXTRA-EEA SMALL PACKAGE DELIVERY SERVICES MARKETS - GENERAL ASSESSMENT**

#### **10.1. Principles and introduction**

(592) On the basis of the principles set out in Section 9.1 of this Decision, and given the substantial activities of each of both Parties in the extra-EEA markets, the Commission will analyse the possible impact of the Transaction on various markets for the provision of extra-EEA small package delivery services encompassing both express and deferred integrators' services.

#### **10.2. Non-integrators exert a weak competitive constraint on the Parties**

##### *10.2.1. FedEx's view*

(593) FedEx submits that the extra-EEA small package delivery market is highly fragmented and that there is an "*active and large fringe of other players in these markets with a relatively sizeable share across the board*" (approximately [5-10]%)

on express<sup>470</sup> and approximately [30-40]% on deferred segments on average in the EEA)<sup>471</sup> FedEx submits that this fringe made out of ground-based operators, public postal operators, cooperative networks and freight forwarders forms a clear competitive constraint on DHL, UPS and the Parties, especially for deferred products (for which time-certain delivery is less important).<sup>472</sup>

- (594) In particular, FedEx claims that for deferred delivery services, the freight forwarders are also a significant competitive constraint, offering "*comparable services in terms of weight, additional services and transit times*".<sup>473</sup> According to FedEx, freight forwarders compete on extra-EEA markets through own networks with product attributes (as the integrators) or hybrid networks constructions leveraging a combination of own and third party assets.<sup>474</sup> FedEx considers that freight forwarding companies like Kuehne+Nagel, DB Schenker, DSV, Geodis (Airfast and Airsave), UTi Worldwide and Panalpina are competing with the Parties on the small package delivery markets,<sup>475</sup> without differentiating between intra-EEA and extra-EEA markets.
- (595) FedEx has done test shipments with selected non-integrators to demonstrate that non-integrators are also able to provide a service on nearly all possible extra-EEA routes, and that the conditions they offer are also similar to those that apply to the extra-EEA deferred services of the integrators.<sup>476</sup> More specifically, FedEx submits that the test shipment exercise conducted on its behalf shows that when compared to the deferred offering of the integrators, non-integrators also offer all of the important service quality features (door-to-door service, Track&Trace, delivery time commitment, and customs clearance), comparable transit times, and a price which is broadly in line (and often below) that charged by the integrators.<sup>477</sup>

#### 10.2.2. Commission's assessment

- (596) On the basis of the suppliers' revenue data collected during the market investigation, on an overall market for extra-EEA delivery services the revenue share of non-integrators would be less than 20%<sup>478</sup> and fragmented amongst many players.
- (597) As regards extra-EEA small package delivery services, there are strong indications from the market investigation that the international Express Mail Service ("EMS") offered by postal operators as members of the Universal Postal Union ("UPU") differs considerably from the express services of the integrators. The same holds for the non-express services of the national postal operators (also provided via the UPU network) compared to the economy/deferred service of the integrators.

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<sup>470</sup> Form CO, paragraph 55.

<sup>471</sup> Form CO, paragraph 58.

<sup>472</sup> Ibid.

<sup>473</sup> Form CO, paragraph 49.c.

<sup>474</sup> Form CO, paragraph 202 to 204.

<sup>475</sup> Form CO, paragraph 201.

<sup>476</sup> See RBB note on extra-EEA market definition, page 1 Subsection 1 and Subsection 3.3. The test was designed to include the deferred services of a number of selected non-integrators, such as freight-forwarders (DSV, Kühne&Nagel), local players (Viva Express, Ziegler) and national postal operators (BPost, La Poste) to a number of overseas destinations (Brazil, China, Japan, Mexico, South Africa, UAE, US Norridge, US Vancouver).

<sup>477</sup> FedEx's submission "FedEx/TNT: further assessment of market definition issues involving extra-EEA services" of 31 August 2015, page 4.

<sup>478</sup> Extra-EEA market reconstruction – All lanes – Integrators and non-integrators

- (598) From a supply-side perspective, the Commission notes that when packages are delivered via the integrators' network, the control they exercise over each and every part of the whole supply chain renders their services highly reliable, thus achieving the "end-to-end credibility". However, when small packages are delivered in the framework of the UPU, EPG and bilateral agreements, the situation is different. For instance, according to DPD, by contrast to the express service of the integrators, for non-integrators *"the delivery times are longer, the track-and-trace mechanisms are not complete and do not include proof of delivery, and the customer service is not the same."*<sup>479</sup>
- (599) According to DHL's experience outside the DHL Express business as a national postal operator, the national postal operator can only control one part of the package's itinerary.<sup>480</sup> Specifically, *"[w]hen the package enters in the destination country, the country's NPO or another third party with its own operations (which acts on behalf of multiple parties, not just [DP]DHL), which is usually the other party to these agreements takes over. Local NPOs may however be slower, which depends on the NPO's capabilities. In addition, shipments then have to "change" IT systems and operations standards may be different, so that tracking events might not be provided to [DP]DHL in real time, or other features of the product might be diminished or not possible. Regardless of the agreement, quality is not in [DP]DHL's control once the parcel is handed over."*
- (600) In addition to this, both express and deferred parcel services of the integrators are always executed under commercial transport agreements between origin and destination countries and national post offices are never involved. Although deferred parcels take slightly longer than express parcels, they are still transported with a well-defined transit time (for each origin-destination pair) and that is because the parcel provider has control over the parcel during its entire journey, and because expedited customs arrangements are in place. DHL stresses that an integrators' deferred parcel is very different from a parcel which is sent from a post office counter within the EEA to a destination outside the EEA. A major difference between the two is that at the origin post office counter, the sender will only be told that the parcel will reach the destination within a certain time range (for example, between approximately 7 to 14 days) as opposed to a specific time period as it is the case for a deferred service of an integrator.<sup>481</sup>
- (601) As stated in recital (597), an early finding from the shipment test is that *"all freight forwarders and postal players considered in the exercise offered the key features [...] on all of their deliveries"*. FedEx interprets this result as evidence that *"[i]n other words, on all of the deliveries they made, all non-integrators offered a door-to-door service, a track-and-trace facility, a specific delivery time commitment, and a customs clearance service."*
- (602) In this respect, the Commission notes that although such key features are attached to extra-EEA services of the non-integrators, one must also assess to what extent those key features are important to customers and, just as important, to what extent quality of the key features of the non-integrators' services matches or that of the integrators'

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<sup>479</sup> Minutes of call with DPD of 19 August 2015. Specifically, within the EMS network, each postal operator offers different services. Extra-EEA deliveries usually require between 7-14 days. The exact transit times are usually public for deliveries to big cities, but they vary for deliveries to the rest of the respective countries.

<sup>480</sup> See Minutes of call with DHL of 20 August 2015, paragraph 6.

<sup>481</sup> DHL's Letter of 17 July 2015.

offerings. When asked which service criteria are important when selecting their extra-EEA express small package delivery service provider 90-100% of the customers consulted during to the market investigation consider the reliability of provider, customer service, track&trace and customs clearance as either indispensable or very significant, whereas more than 75% consider the speed of delivery, geographic coverage and ability to deliver to several destinations and pick-up as indispensable or very significant.<sup>482</sup> Moreover, a majority of customers would not switch to non-integrators even if the integrators' service became relatively more expensive (by 5-10%).<sup>483</sup>

- (603) Competitors also consider that apart from the price, competition for extra-EEA small package delivery services mainly takes place based on such parameters as the speed of delivery, quality of services and reliability of the provider.<sup>484</sup>
- (604) From a demand-side perspective, according to the customers' replies collected during the market investigation, non-integrators' extra-EEA small package delivery services do not constitute an acceptable substitute to the integrators' express and deferred services mainly because of the longer delivery times and the qualitative elements that are either missing from their offerings or do not reach the same quality level as integrators (comprehensive track&trace capabilities, reliability, pick-up service, customer service and, in particular for the extra-EEA delivery services, worldwide geographic coverage).<sup>485</sup>
- (605) Several postal operators explain that their standard international parcel service is not<sup>486</sup> time-or day-definite. For instance, Eesti Post notes that *"in EMS courier service we give customers approximate delivery day, but it is usually not a specific day, but a range of days"* and that *"even EMS delivery times can be up to 7 days"*<sup>487</sup>. Poste Italiane/SDA explains that *"[t]he network of Postal Operators differs from the one owned by Integrators due to the lack of control of the air network. Hence Postal Operators are not able to manage the end to end process, with negative effects on the possibility to offer time and day definite services"*. UKMail *"do[es]not offer own products, only those offered by partners"*. Similar differences are also mentioned with respect to other postal operators. For instance, Hermes, which started a pilot project for extra-EEA small package delivery services, states that, when compared to integrators, their *"main difference is no time guarantee"*.<sup>488</sup> The vast majority of respondents consider the national postal operators extra-EEA services are not viable alternatives to the integrators express or deferred services, mainly due to reliability, track&trace and geographic coverage, but also due to customer service and the ability to provide all types of delivery services. In turn, the ground based operators DPD and GSL do not have a homogeneous worldwide network, hence are considered less reliable, lack of coverage, customs clearance and ability to offer all types of delivery services. As regards local courier companies, their main drawback is related

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<sup>482</sup> See response to question 20 of the questionnaire to customers R2 – Phase II.

<sup>483</sup> See response to question 20 of the questionnaire to customers R2 – Phase II.

<sup>484</sup> See response to question 20 of the questionnaire to customers R2 – Phase II.

<sup>485</sup> See responses to question 23 in connection with question 20 of the questionnaire to customers R2 – Phase II.

<sup>486</sup> See responses to question 11.2 of the questionnaire to competitors R1 – Phase II.

<sup>487</sup> See responses to questions 11.2 and 12.2 of the questionnaire to competitors R1 – Phase II.

<sup>488</sup> See responses to question 12 of the questionnaire to competitors R1 – Phase II.

to the geographic coverage or price (as they would rely on the integrators for extra-EEA service).<sup>489</sup>

- (606) In the light of the elements stated in this Section, extra-EEA small package delivery services of the national postal operators can only marginally compete with the extra-EEA express and deferred delivery services offered by the integrators. The same conclusion holds for the freight forwarders, in particular as the quality of their extra-EEA delivery cannot be ensured to all destinations unless the shipment passes through the integrators' network, in which case freight forwarders only act as resellers.
- (607) Second, FedEx submits that, according to the results of the same shipment test, the transit times offered by non-integrators are similar to those offered by the services of the integrators. On the one hand, some freight forwarders and postal operators seem to require longer transit times to deliver. On the other hand, the transit times of some non-integrators are shorter than those of the integrators (for example, DSV and DB Schenker deliver faster their deferred product than UPS's deferred product on almost all routes).
- (608) These results must be put into context, however. An important aspect revealed by the shipment exercise is that most shipments managed by freight forwarders made use of the integrators' network. In particular, as the test revealed, "DSV and DB Schenker used UPS's network, Viva Xpress used DHL's network, and Kuehne & Nagel used FedEx's network". Further, freight forwarders relied on the express services of integrators when offering their own deferred services to the customer. When it comes to small packages, the focus of freight forwarders tends to be on shipments of a larger consignment value (that is to say on sending multiple small packages to a given geographic area), where they can often be more "creative" in how they arrange the shipment in question, trying to use even cheaper transport capacity (such as "belly space" of commercial airlines) and arranging their own customs clearance.
- (609) For shipments of a small consignment value such as the ones for the test, freight forwarders typically have two options: either trying to arrange the routing themselves as they often do with larger shipments or making use of the network of one of the integrators. When they take the former option, because the value of the operation is very small, the freight forwarder is unlikely to move the package as quickly and the associated transit times are likely to be larger<sup>490</sup>. When freight forwarders use the network of the integrators, shipments are likely to move more quickly. This was the case for DB Schenker, DSV, Kuhne & Nagel, and Viva Xpress in the FedEx test.
- (610) As FedEx notes, freight forwarders can "*effectively use an integrator's express service whilst the integrator itself is offering its deferred service to the customer.*" For example, in the context of that test shipment exercise, DSV and DB Schenker used UPS's Express Saver, whilst UPS put forward its UPS Expedited service. This would explain the surprising result that the freight forwarders were able to offer a faster service than the integrators themselves.
- (611) FedEx also notes that with one exception (Ziegler), freight forwarders offered a price broadly in line and often below that offered by the integrators on their deferred offering. For instance, the price that DSV and DB Schenker charged was lower than

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<sup>489</sup> See responses to question 20 of questionnaire to customers R2 – Phase II, questions 32, 37-39 of questionnaire to customers Q3 and question 9 of questionnaire to customers Q4.

<sup>490</sup> Postal operators used the postal network and EMS linehaul.

the price that UPS charged, while both have made use of the UPS network for the deliveries subject to the shipment exercise. Furthermore, FedEx explains that in the case of postal operators, despite the longer transit times often involved in their deliveries, their use of postal networks and commercial linehaul allows them to keep costs low and therefore to ultimately charge a lower price. While the findings from the shipment test submitted by FedEx confirms that freight forwarders are able to access, and do access, the integrators' networks used for the delivery of express and deferred shipments when operating in their capacity as resellers, that is not in itself sufficient to consider them as a strong competitive constraint to the Parties.<sup>491</sup>

- (612) Freight forwarders often act as resellers or aggregators and collect small packages from several customers which enable them to get discounts not available to the customers individually. Aggregation of that type can bring prices down but may lead to longer transit times, as they need to consolidate parcels and hand them over into the integrators' networks, which results in a slower service.<sup>492</sup>
- (613) In addition to this, when freight forwarders act as resellers, they do not exert full control over the shipment throughout each and every step of the supply chain. As acknowledged in *UPS/TNT*, resellers may be seen, from the end-customer perspective, as competing directly with the small package delivery operator. Nevertheless, as confirmed by the responses collected during the market investigation in this Decision, resellers are, to a large extent, dependent on the integrators,<sup>493</sup> and the vast majority of extra-EEA shipments is contracted by clients directly from the integrators themselves.
- (614) Moreover, the majority of freight forwarders consulted during the market investigation confirmed that they themselves do not consider their small package delivery service to directly compete with either the integrators express or deferred small package delivery service.<sup>494</sup> Despite being mentioned by the Parties as competitors for extra-EEA small package delivery services, important freight forwarders such as Rhenus, DB Schenker Logistics, Panalpina, Damco (Maersk), and Artoni are not active in those markets. Rhenus explains that "*it does not have the distribution network required for small package delivery services. The delivery of small parcels to end customers is not part of our commercial service portfolio*".<sup>495</sup>
- (615) Furthermore, freight forwarders that are offering small package delivery services do it only as an add-on service to customers that are already purchasing other services from the respective freight forwarder.<sup>496</sup> For instance, as DB Schenker explains, in its freight forwarding business it "*may also organize the shipment of smaller packages and parcels via air freight. Such services are, however, neither marketed nor recorded as small package delivery services, but are a part of the groupage air*

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<sup>491</sup> See response to question 14 of request for information QP16 of 16 September 2015. As for any customer, FedEx and TNT will each determine the pricing of a reseller primarily on the basis of the volumes shipped with this reseller. The larger the volume, the higher the discounts the reseller will receive off of the list price. In addition, FedEx and TNT each may consider business through a reseller to be a very efficient way of getting access to a specific market/segment, simply because neither is active there yet or can get access due to geographical coverage. Each may therefore stimulate such business through more attractive prices.

<sup>492</sup> Responses to question 12.2 of questionnaire to competitors Q2 – Phase I.

<sup>493</sup> Responses to questionnaire to competitors Q1, Q2 and Q5 – Phase I.

<sup>494</sup> Responses to questionnaire to competitors Q1 and Q5 – Phase I, R1 – Phase II.

<sup>495</sup> Responses to question 2 of questionnaire to competitors R1 – Phase II.

<sup>496</sup> Responses to question 1 of questionnaire to competitors R1 – Phase II.

*cargo business where shipments from one or more shippers are consolidated.*"<sup>497</sup> DSV notes that its customers "expect a big service portfolio offering them a certain choice and flexibility. Therefore we also offer small parcel deliveries in order to cope with our customers' demand. While offering these services, we also feed-in parcel into our partners' networks." "In general, these services offered are part of Supply Chain Solutions as our existing customers request a certain service variety and flexibility".<sup>498</sup> Therefore, contrary to the Parties' claim, freight forwarders are not in direct competition with the integrators' extra-EEA small package delivery services. At best, they exert only a weak competitive constraint on them.

- (616) When asked whether a 5-10% increase in the price of small package delivery services offered by the integrators would be sufficient for them to start offering equivalent services, the vast majority of competitors gave negative replies, whereas one quarter of respondents did not know. Only one single affirmative reply was given.<sup>499</sup>
- (617) Last but not least, in UPS's view, "*express and deferred [are] different segments of the same (integrators) market*"<sup>500</sup>, further indicating that integrators are not considered as competing on par with the integrators on the extra-EEA delivery markets.
- (618) Based on the replies to the market investigation, only a small minority of customers consider non-integrators as suitable alternatives for their extra-EEA small package delivery needs.<sup>501</sup> Amongst the non-integrators, freight forwarders are the closest alternative for the extra-EEA delivery services, as stated by 20% of the respondents to the market investigation, leaving DPD followed by GSL lagging far behind. National postal operators are considered a viable option only by a very small minority of customers who express a view during the market investigation.
- (619) From the customers' point of view, the main disadvantages of non-integrators compared to the integrators' offerings relate to their geographic coverage and reliability, followed by the customs clearance and the ability to provide all types of delivery services. Amongst various types of non-integrators, freight forwarders are mentioned as a suitable alternative by the largest minority of respondents (20%), although they are in particular valued for palletised goods rather than for small package deliveries. Often they are only resellers of the integrators. In the customers' view, freight forwarders' main drawbacks are linked to relatively high prices and slower delivery, tracking issues and relying on partnerships.<sup>502</sup>
- (620) Overall, non-integrators are often considered less reliable, more expensive and offer a slower service than the integrators.
- (621) Therefore, in the light of the considerations in this Section and the other available evidence, the Commission concludes that non-integrators exert a weak competitive constraint on the integrators' express and deferred offerings for the extra-EEA small package delivery services.

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<sup>497</sup> DB Schenker's response to question 1 of questionnaire to competitors R1 – Phase II and e-mail of DB Schenker dated 27 September in response to Commissions questions of 24 September 2015.

<sup>498</sup> DSV response to question 11 of questionnaire to competitors R1 – Phase II.

<sup>499</sup> Competitors responses to question 16 of questionnaire to competitors R1 – Phase II.

<sup>500</sup> Minutes of meeting with UPS of 20 August 2015

<sup>501</sup> See customers responses to question 20 of questionnaire to customers R2 – Phase II.

<sup>502</sup> See customers responses to question 20 of questionnaire to customers R2 – Phase II, questions 32, 34-36 of questionnaire to customers Q3 and question 9 of questionnaire to customers Q4.

### 10.2.3. Conclusion

- (622) Accordingly, it is evident that the markets for extra-EEA deliveries are dominated by the four integrators. By assessing the impact of the Transaction on a market for integrators-only, the Commission is likely to overestimate such impact, as it does not take into account the competitive pressure exerted by non-integrators.
- (623) Therefore, the Commission will assess the impact of the Transaction on the most conservative basis, taking into account only the competitive constraint exercised by the other integrators on the various extra-EEA markets for small package delivery services.

## 10.3. Market position of the Merged Entity on the markets for extra-EEA deliveries

### 10.3.1. FedEx's views

- (624) FedEx argues that the Parties' combined market share is below 40% in almost all markets for extra-EEA delivery services and that the increment of TNT is consistently insignificant or at least very modest. Further, it submits that UPS and DHL are very strong competitors, often with materially higher market shares than the Merged Entity, and that an active fringe of other players has a sizeable share across markets.<sup>503</sup>

### 10.3.2. Commission's assessment

#### 10.3.2.1. Extra-EEA market reconstruction

- (625) As indicated in Section 8, the Commission undertook a market reconstruction exercise for the purpose of this Decision. That market reconstruction is based on the revenue data of small package delivery service providers for extra-EEA deliveries from the 30 national markets to destinations outside the EEA.
- (626) Based on the revenue data provided by the four integrators, the Commission assessed their relative strength on the following plausible markets:
- (a) the 30 national markets for extra-EEA deliveries from an EEA country to the world; and
  - (b) the national markets for extra-EEA deliveries from each of the 30 EEA countries to each of the six main world trade lanes.
- (627) The outcome of the market reconstruction as to the integrators' relative strength in these markets segments may be found in Tables 24 to 30:

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<sup>503</sup> Form CO, paragraph 55 and following and paragraphs 274-275; FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" of 23 September 2015.

**Table 24: Integrators' 2012-2014 revenue shares for extra-EEA delivery services to all lanes (the world)**

Integrator	All lanes														
	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Austria	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Belgium	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Bulgaria	[20-30]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Croatia	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%
Cyprus	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Czech Republic	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Denmark	[20-30]%	[5-10]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[5-10]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[5-10]%	[30-40]%	[30-40]%	[30-40]%
Estonia	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[40-50]%	[10-20]%	[40-50]%
Finland	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%
France	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%
Germany	[20-30]%	[5-10]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[30-40]%	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%
Greece	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%
Hungary	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%
Iceland	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%
Ireland	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%	[30-40]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%
Italy	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[50-60]%
Latvia	[10-20]%	[20-30]%	[40-50]%	[10-20]%	[30-40]%	[10-20]%	[20-30]%	[40-50]%	[10-20]%	[30-40]%	[10-20]%	[20-30]%	[40-50]%	[10-20]%	[40-50]%
Lithuania	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Luxembourg	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Malta	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[5-10]%	[10-20]%	[10-20]%	[50-60]%	[20-30]%
Netherlands	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Norway	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%
Poland	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Portugal	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%
Romania	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Slovakia	[20-30]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%
Slovenia	[5-10]%	[10-20]%	[10-20]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%	[50-60]%
Spain	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[40-50]%
Sweden	[10-20]%	[5-10]%	[20-30]%	[30-40]%	[30-40]%	[10-20]%	[5-10]%	[20-30]%	[30-40]%	[30-40]%	[10-20]%	[5-10]%	[20-30]%	[30-40]%	[30-40]%
UK	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[5-10]%	[20-30]%	[20-30]%	[40-50]%
Total EEA	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%

Source: Commission's reconstruction of revenue shares based on revenue data submitted by FedEx, TNT, DHL and UPS

**Table 25: Integrators' 2012-2014 revenue shares for extra-EEA delivery services to North America**

Integrator	Towards North America														
	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Austria	[20-30]%	[0-5]%	[30-40]%	[40-50]%	[20-30]%	[20-30]%	[0-5]%	[30-40]%	[40-50]%	[20-30]%	[20-30]%	[0-5]%	[30-40]%	[30-40]%	[20-30]%
Belgium	[40-50]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%	[40-50]%	[5-10]%	[40-50]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[40-50]%	[30-40]%	[10-20]%
Bulgaria	[40-50]%	[5-10]%	[50-60]%	[10-20]%	[30-40]%	[30-40]%	[5-10]%	[40-50]%	[20-30]%	[30-40]%	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%
Croatia	[20-30]%	[0-5]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[0-5]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[0-5]%	[20-30]%	[20-30]%	[40-50]%
Cyprus	[20-30]%	[10-20]%	[40-50]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Czech Republic	[40-50]%	[0-5]%	[50-60]%	[10-20]%	[30-40]%	[40-50]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%	[30-40]%	[0-5]%	[40-50]%	[10-20]%	[40-50]%
Denmark	[20-30]%	[0-5]%	[30-40]%	[50-60]%	[10-20]%	[30-40]%	[0-5]%	[30-40]%	[40-50]%	[10-20]%	[30-40]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%
Estonia	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[50-60]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[50-60]%	[10-20]%	[20-30]%
Finland	[10-20]%	[0-5]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[0-5]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[0-5]%	[20-30]%	[40-50]%	[30-40]%
France	[40-50]%	[0-5]%	[40-50]%	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[40-50]%	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[40-50]%	[20-30]%	[20-30]%
Germany	[40-50]%	[0-5]%	[40-50]%	[10-20]%	[40-50]%	[10-20]%	[0-5]%	[40-50]%	[30-40]%	[30-40]%	[10-20]%	[0-5]%	[40-50]%	[30-40]%	[10-20]%
Greece	[10-20]%	[5-10]%	[20-30]%	[40-50]%	[30-40]%	[10-20]%	[5-10]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[5-10]%	[20-30]%	[50-60]%	[20-30]%
Hungary	[50-60]%	[0-5]%	[50-60]%	[10-20]%	[20-30]%	[50-60]%	[0-5]%	[50-60]%	[10-20]%	[20-30]%	[50-60]%	[0-5]%	[50-60]%	[10-20]%	[20-30]%
Iceland	[30-40]%	[0-5]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[0-5]%	[20-30]%	[10-20]%	[50-60]%	[20-30]%	[0-5]%	[20-30]%	[10-20]%	[50-60]%
Ireland	[40-50]%	[0-5]%	[40-50]%	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[40-50]%	[20-30]%	[30-40]%	[40-50]%	[0-5]%	[40-50]%	[20-30]%	[20-30]%
Italy	[20-30]%	[0-5]%	[30-40]%	[40-50]%	[20-30]%	[30-40]%	[0-5]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[0-5]%	[30-40]%	[30-40]%	[30-40]%
Latvia	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[50-60]%	[10-20]%	[20-30]%
Lithuania	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[30-40]%	[10-20]%	[5-10]%	[20-30]%	[30-40]%	[30-40]%
Luxembourg	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Malta	[40-50]%	[10-20]%	[50-60]%	[10-20]%	[20-30]%	[40-50]%	[5-10]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[30-40]%
Netherlands	[30-40]%	[5-10]%	[40-50]%	[30-40]%	[20-30]%	[30-40]%	[5-10]%	[40-50]%	[30-40]%	[20-30]%	[30-40]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%
Norway	[10-20]%	[5-10]%	[20-30]%	[30-40]%	[40-50]%	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[50-60]%
Poland	[30-40]%	[5-10]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[5-10]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[5-10]%	[30-40]%	[20-30]%	[30-40]%
Portugal	[40-50]%	[0-5]%	[40-50]%	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[40-50]%	[30-40]%	[10-20]%	[30-40]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%
Romania	[40-50]%	[5-10]%	[40-50]%	[20-30]%	[20-30]%	[30-40]%	[0-5]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%	[0-5]%	[20-30]%	[40-50]%	[20-30]%
Slovakia	[30-40]%	[0-5]%	[40-50]%	[10-20]%	[40-50]%	[30-40]%	[0-5]%	[30-40]%	[20-30]%	[40-50]%	[30-40]%	[0-5]%	[30-40]%	[20-30]%	[40-50]%
Slovenia	[10-20]%	[0-5]%	[20-30]%	[30-40]%	[40-50]%	[10-20]%	[0-5]%	[10-20]%	[40-50]%	[30-40]%	[10-20]%	[0-5]%	[20-30]%	[40-50]%	[30-40]%
Spain	[30-40]%	[0-5]%	[30-40]%	[40-50]%	[20-30]%	[30-40]%	[0-5]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[0-5]%	[30-40]%	[30-40]%	[30-40]%
Sweden	[10-20]%	[0-5]%	[20-30]%	[60-70]%	[10-20]%	[20-30]%	[0-5]%	[20-30]%	[50-60]%	[10-20]%	[20-30]%	[0-5]%	[20-30]%	[50-60]%	[20-30]%
UK	[40-50]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%	[30-40]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%	[30-40]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%
Total EEA	[30-40]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%	[30-40]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%	[30-40]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%

Source: Commission's reconstruction of revenue shares based on revenue data submitted by FedEx, TNT, DHL and UPS

**Table 26: Integrators' 2012-2014 revenue shares for extra-EEA delivery services to Central and South America**

Integrator	Towards Central America and South America														
	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Austria	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%
Belgium	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Bulgaria	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[40-50]%	[20-30]%	[10-20]%	[40-50]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%
Croatia	[5-10]%	[0-5]%	[10-20]%	[5-10]%	[80-90]%	[10-20]%	[0-5]%	[10-20]%	[5-10]%	[70-80]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[70-80]%
Cyprus	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[50-60]%	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%
Czech Republic	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Denmark	[20-30]%	[10-20]%	[30-40]%	[0-5]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Estonia	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Finland	[5-10]%	[10-20]%	[20-30]%	[0-5]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%	[50-60]%
France	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Germany	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Greece	[0-5]%	[5-10]%	[10-20]%	[40-50]%	[40-50]%	[0-5]%	[5-10]%	[10-20]%	[30-40]%	[50-60]%	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[50-60]%
Hungary	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%
Iceland	[5-10]%	[0-5]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[0-5]%	[10-20]%	[0-5]%	[80-90]%	[5-10]%	[0-5]%	[10-20]%	[5-10]%	[80-90]%
Ireland	[20-30]%	[5-10]%	[30-40]%	[5-10]%	[60-70]%	[20-30]%	[0-5]%	[20-30]%	[5-10]%	[60-70]%	[20-30]%	[0-5]%	[20-30]%	[5-10]%	[60-70]%
Italy	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[60-70]%
Latvia	[20-30]%	[10-20]%	[40-50]%	[40-50]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[30-40]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[20-30]%	[30-40]%
Lithuania	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[5-10]%	[20-30]%	[20-30]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%
Luxembourg	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Malta	[5-10]%	[5-10]%	[10-20]%	[60-70]%	[20-30]%	[10-20]%	[20-30]%	[40-50]%	[20-30]%	[30-40]%	[0-5]%	[5-10]%	[10-20]%	[70-80]%	[10-20]%
Netherlands	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Norway	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%
Poland	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Portugal	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Romania	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%
Slovakia	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%
Slovenia	[0-5]%	[5-10]%	[10-20]%	[20-30]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Spain	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Sweden	[10-20]%	[10-20]%	[20-30]%	[0-5]%	[70-80]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[50-60]%
UK	[20-30]%	[5-10]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[50-60]%	[20-30]%	[5-10]%	[20-30]%	[10-20]%	[50-60]%
Total EEA	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[50-60]%

Source: Commission's reconstruction of revenue shares based on revenue data submitted by FedEx, TNT, DHL and UPS

**Table 27: Integrators' 2012-2014 revenue shares for extra-EEA delivery services to Asia / Pacific**

Integrator	Towards Asia/Pacific														
	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Austria	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Belgium	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Bulgaria	[20-30]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[0-5]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Croatia	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[20-30]%	[5-10]%	[60-70]%
Cyprus	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[60-70]%
Czech Republic	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[30-40]%	[0-5]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Denmark	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Estonia	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%
Finland	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
France	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Germany	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Greece	[0-5]%	[10-20]%	[10-20]%	[30-40]%	[40-50]%	[0-5]%	[10-20]%	[10-20]%	[30-40]%	[50-60]%	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[50-60]%
Hungary	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Iceland	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%
Ireland	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[50-60]%
Italy	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Latvia	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[40-50]%	[20-30]%	[30-40]%
Lithuania	[5-10]%	[30-40]%	[40-50]%	[10-20]%	[40-50]%	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[5-10]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%
Luxembourg	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%
Malta	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[10-20]%	[10-20]%	[40-50]%	[30-40]%
Netherlands	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Norway	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[70-80]%
Poland	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Portugal	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Romania	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Slovakia	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Slovenia	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%	[60-70]%
Spain	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Sweden	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%
UK	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[50-60]%
Total EEA	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%

Source: Commission's reconstruction of revenue shares based on revenue data submitted by FedEx, TNT, DHL and UPS

**Table 28: Integrators' 2012-2014 revenue shares for extra-EEA delivery services to the Middle East**

Integrator	Towards Middle-East														
	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Austria	[10-20]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Belgium	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Bulgaria	[10-20]%	[20-30]%	[40-50]%	[5-10]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%
Croatia	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%
Cyprus	[10-20]%	[20-30]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%
Czech Republic	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Denmark	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Estonia	[0-5]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[5-10]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%	[5-10]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%
Finland	[5-10]%	[10-20]%	[20-30]%	[0-5]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
France	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Germany	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Greece	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Hungary	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Iceland	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[0-5]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[70-80]%
Ireland	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[50-60]%
Italy	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%
Latvia	[5-10]%	[30-40]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[40-50]%	[60-70]%	[10-20]%	[20-30]%	[10-20]%	[30-40]%	[50-60]%	[10-20]%	[30-40]%
Lithuania	[5-10]%	[30-40]%	[40-50]%	[10-20]%	[40-50]%	[5-10]%	[30-40]%	[40-50]%	[5-10]%	[40-50]%	[5-10]%	[30-40]%	[40-50]%	[10-20]%	[40-50]%
Luxembourg	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Malta	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[10-20]%	[10-20]%	[60-70]%	[20-30]%
Netherlands	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Norway	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[70-80]%
Poland	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%
Portugal	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Romania	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[50-60]%
Slovakia	[20-30]%	[10-20]%	[40-50]%	[5-10]%	[50-60]%	[20-30]%	[10-20]%	[40-50]%	[0-5]%	[50-60]%	[10-20]%	[20-30]%	[40-50]%	[0-5]%	[50-60]%
Slovenia	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[50-60]%
Spain	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Sweden	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
UK	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[50-60]%
Total EEA	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%

Source: Commission's reconstruction of revenue shares based on revenue data submitted by FedEx, TNT, DHL and UPS

**Table 29: Integrators' 2012-2014 revenue shares for extra-EEA delivery services to Africa**

Integrator	Towards Africa														
	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Austria	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Belgium	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%
Bulgaria	[0-5]%	[20-30]%	[20-30]%	[5-10]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Croatia	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[70-80]%	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[80-90]%	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[70-80]%
Cyprus	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[50-60]%
Czech Republic	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%
Denmark	[5-10]%	[10-20]%	[20-30]%	[0-5]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%	[50-60]%
Estonia	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[30-40]%	[30-40]%	[20-30]%	[40-50]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%
Finland	[5-10]%	[10-20]%	[20-30]%	[0-5]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
France	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Germany	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Greece	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Hungary	[10-20]%	[0-5]%	[10-20]%	[5-10]%	[70-80]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[50-60]%
Iceland	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[80-90]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[90-100]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[90-100]%
Ireland	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%
Italy	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[70-80]%
Latvia	[20-30]%	[30-40]%	[50-60]%	[10-20]%	[20-30]%	[20-30]%	[30-40]%	[50-60]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Lithuania	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%
Luxembourg	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%
Malta	[0-5]%	[5-10]%	[5-10]%	[40-50]%	[40-50]%	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[0-5]%	[0-5]%	[5-10]%	[70-80]%	[20-30]%
Netherlands	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[20-30]%	[60-70]%
Norway	[5-10]%	[10-20]%	[20-30]%	[0-5]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[70-80]%
Poland	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Portugal	[10-20]%	[5-10]%	[20-30]%	[5-10]%	[60-70]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[60-70]%
Romania	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[80-90]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Slovakia	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[20-30]%	[30-40]%	[0-5]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[0-5]%	[50-60]%
Slovenia	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[20-30]%	[60-70]%
Spain	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%
Sweden	[5-10]%	[10-20]%	[10-20]%	[0-5]%	[80-90]%	[0-5]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%
UK	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%
Total EEA	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%

Source: Commission's reconstruction of revenue shares based on revenue data submitted by FedEx, TNT, DHL and UPS

**Table 30: Integrators' 2012-2014 revenue shares for extra-EEA delivery services to the Rest of Europe**

Integrator	Towards Rest of europe														
	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Austria	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Belgium	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%
Bulgaria	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[60-70]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%	[0-5]%	[20-30]%	[30-40]%	[5-10]%	[60-70]%
Croatia	[5-10]%	[0-5]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[0-5]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%
Cyprus	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%
Czech Republic	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Denmark	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%
Estonia	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[60-70]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%
Finland	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[0-5]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%
France	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Germany	[5-10]%	[10-20]%	[10-20]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[10-20]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[10-20]%	[30-40]%	[40-50]%
Greece	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[40-50]%
Hungary	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Iceland	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[5-10]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[5-10]%	[10-20]%	[5-10]%	[70-80]%
Ireland	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Italy	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Latvia	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%
Lithuania	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%
Luxembourg	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%
Malta	[0-5]%	[20-30]%	[20-30]%	[30-40]%	[30-40]%	[0-5]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[10-20]%	[10-20]%	[40-50]%	[30-40]%
Netherlands	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%
Norway	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Poland	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Portugal	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%
Romania	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[50-60]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[50-60]%
Slovakia	[5-10]%	[30-40]%	[40-50]%	[10-20]%	[40-50]%	[5-10]%	[40-50]%	[40-50]%	[10-20]%	[40-50]%	[0-5]%	[40-50]%	[40-50]%	[10-20]%	[40-50]%
Slovenia	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Spain	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Sweden	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%
UK	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[5-10]%	[10-20]%	[20-30]%	[50-60]%
Total EEA	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%

Source: Commission's reconstruction of revenue shares based on revenue data submitted by FedEx, TNT, DHL and UPS

- (628) UPS submits, mainly by means of two economic studies,<sup>504</sup> that the Merged Entity would have a rather high share of the revenues for extra-EEA deliveries on specific country pairs, connecting EEA countries to countries on the various world lanes. As analysed in Section 7.1.4.3 however, such country pairs do not constitute a relevant market. Therefore, the Commission's market reconstruction and the assessment of the impact of the Transaction focus on national markets for deliveries to the world and to the major world lanes.
- (629) In addition, as stated in Section 7.2.2.3, the Commission's competitive assessment will also cover an analysis of the impact of the Transaction on all EEA national markets in an aggregated way.

<sup>504</sup> UPS's submission "Extra-EEA Small Package Market Assessment Summary Report" of 17 July 2015, and UPS's Study "Extra-EEA Market Concentration and Price Analysis" of 15 October 2015.

#### 10.3.2.2.Extra-EEA deliveries to the world from the EEA

- (630) Looking at all 30 national markets for extra-EEA deliveries to the world in an aggregated way, the Parties' combined market share is rather moderate on most plausible markets for extra-EEA delivery services.
- (631) More concretely, the Parties' combined market share is below 40% on an EEA-wide market for extra-EEA deliveries to the world and the increment to be brought about by the Transaction is modest, ranging between [5-10]%. DHL is the market leader with a share of [40-50]%. UPS is a sizeable further competitor with a share of [20-30]%.

#### 10.3.2.3.Extra-EEA deliveries to the six major destination lanes from the EEA

- (632) Looking at all narrower EEA markets for extra-EEA deliveries with a destination to each of the six main world trade lanes in an aggregated way, the Parties' combined market share is below 40% on five of the six markets. On an EEA market for delivery services to North America, the Parties' combined market share exceeds 40%; TNT however has a limited share of less than 5%. Therefore, the Transaction would not result in the creation of a significantly stronger provider on a market for extra-EEA deliveries to North America, since the market position of the Merged Entity would be very similar to FedEx's current position on that market.
- (633) DHL would remain the clear market leader on five of the EEA markets to the major world lanes with a share ranging from [40-50]% for deliveries to the Rest of Europe, to [50-60]% for deliveries to the Middle East, to Asia / Pacific and to Central and South America, and to [60-70]% for extra-EEA deliveries to Africa. On a market for deliveries to North America DHL is not the market leader, but still is a sizeable competitor with a share of [20-30]%.
- (634) UPS is also present in all of the markets reflected in Tables 24 to 30. As well as being the market leader together with FedEx on a market for deliveries to North America, with a share of [30-40]%, UPS has a share of [20-30]% on a market for deliveries to Asia / Pacific and of [10-20]% on the markets for extra-EEA deliveries to Central and South America, to the Middle East and to Africa. On a market for extra-EEA deliveries to the Rest of Europe, UPS's market share is [30-40]%. On all EEA-wide markets for deliveries to the major world lanes, UPS's share is greater than the increment brought about by the Transaction.
- (635) Therefore, post-Transaction, the relative position of the Merged Entity on EEA-wide markets to the major world lanes would be moderate.

#### 10.3.2.4.National markets for extra-EEA deliveries to the world

- (636) The Commission finds that post-Transaction, the relative position of the Merged Entity on most 30 national markets for extra-EEA deliveries to the world would be rather moderate. Only in Estonia, Hungary and Latvia would the Merged Entity have a combined market share of more than 40% and the increment of the Transaction would exceed 5%. The national markets of Estonia, Hungary and Latvia for extra-EEA deliveries to the world will be analysed in more detail in Section 11 of the Decision.
- (637) DHL would be the market leader on 29 national markets with market shares ranging from [20-30]% on a market for extra-EEA deliveries to the world from Malta, to market shares of [60-70]% in Croatia, Cyprus, Iceland, Luxembourg and Norway.
- (638) UPS is also present with a market share exceeding 10% on all national markets for extra-EEA deliveries to the world, with the exception of Cyprus and Luxembourg, where it has a share of [5-10]%. UPS's share either exceeds or is comparable to the

increment that would be brought about by the Transaction on all 30 national markets for deliveries to the world.

- (639) The Commission will also further assess in Section 11 the markets for extra-EEA deliveries to the world from Belgium, Bulgaria, the Czech Republic, Ireland and Slovakia, where UPS's share is below 20%, and the Merged Entity's market share would exceed 30%. Similarly, the Commission will further assess the markets for deliveries for extra-EEA deliveries to the world from Cyprus and Luxembourg, where the share of UPS is below 10% and that of the Merged Entity would be ranging between [20-30]%.

#### 10.3.2.5. National markets for extra-EEA deliveries to the six major destination lanes

- (640) Based on national markets for extra-EEA deliveries originating from an EEA country to each of the six different trade lanes, the Parties' combined market share would exceed 40% and the increment of the Transaction would be above 5% on 10 markets in total. Those 10 markets correspond to extra-EEA deliveries from seven different EEA countries, namely Belgium, Bulgaria, Estonia, Latvia, Lithuania, Malta and Slovakia. In the case of Belgium, Bulgaria, Estonia and Malta, those markets would be for extra-EEA deliveries to North America, in the case of Latvia it would be the markets for deliveries to North America, to Central and South America, to the Middle East and to Asia/Pacific; in the case of Lithuania and Slovakia the markets for deliveries to the Middle East.
- (641) Those ten national markets will be analysed in more detail in Section 11.
- (642) Overall, TNT has a market share of less than 10% on 26 national markets for extra-EEA deliveries to North America. The other three integrators have a presence with a market share of at least 10% and alternate as leaders on all national markets. A more detailed analysis of the market for deliveries from Luxembourg to North America will be made in Section 11, as on that market, the Merged Entity would have a market share of less than 40%, UPS however is below 20%.
- (643) On national markets for extra-EEA deliveries to Central and South America DHL is the clear leader with the exception of Malta, where UPS has a share of [70-80]%. With the exception of UPS on the Maltese market, UPS and the Parties are present in all 30 markets with market shares of up to 30%. UPS's market share exceeds or is similar (i.e. within the same range) to the increment brought about by the Transaction on 26 national markets. A more detailed analysis of the markets for extra-EEA deliveries to Central and South America from Belgium, Bulgaria, Cyprus, the Czech Republic, France, Hungary, Luxembourg, Poland and Slovakia will follow in Section 11. On those markets, the Merged Entity would have a market share of less than 40%, UPS however is below 20%.
- (644) DHL is also the clear market leader on 29 national markets for extra-EEA deliveries to Asia/Pacific with UPS being the provider with the highest share on the Maltese market with a share of [40-50]%. Other than DHL, the other three integrators are present in all 30 markets with comparable market shares; UPS with shares ranging from 10% to 50%, TNT with shares between 5% and 30% and FedEx with shares between 0 and 30%. UPS's share exceeds or is comparable to the increment which would be brought about by the Transaction on 26 national markets. A more detailed analysis of the markets for extra-EEA deliveries to Asia/Pacific from Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Hungary, Ireland and Slovakia will follow in Section 11. On those markets, the Merged Entity would have a market share of less than 40%; UPS's share however, is below 20%.

- (645) With the exception of Malta, where UPS has a share of [60-70]%, DHL is the leader on all national markets for extra-EEA deliveries to the Middle East. UPS and the Parties are present on all 30 markets with shares of up to 40%. The share of UPS is higher or similar to the increment which would be brought about by the Transaction on all national markets with the exception of Slovakia, which will be analysed in more detail in Section 11. A more detailed analysis of the markets for extra-EEA deliveries to the Middle East from Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, France, Hungary, Luxembourg and Poland will also follow in Section 11. On these markets, the Merged Entity would have a market share of less than 40%; UPS's share however is below 20%.
- (646) With the exception of Malta, where UPS has a share of [70-80]%, DHL is the clear leader on all national markets for extra-EEA deliveries to Africa. The other three integrators are present on all 30 markets with shares of up to 30% in the case of UPS and TNT and up to 20% for FedEx. UPS's share is higher than or similar to the increment that would be brought about by the Transaction on 28 markets. A more detailed analysis of the markets for extra-EEA deliveries to Africa from Cyprus, Hungary and Slovakia will follow in Section 11. On these markets, the Merged Entity would have a market share of less than 40%; UPS's share however is below 20%.
- (647) With the exception of Denmark and Malta, where UPS has a share of [40-50]%, DHL is leading on all national markets for extra-EEA deliveries to the Rest of Europe. UPS and TNT also have established market presence with market shares between 5% and 40% on all national EEA markets. FedEx is the weakest integrator with a share below 10% on 26 national markets and a share of [10-20]% on the French, Hungarian and Irish and Portuguese markets. According to the market reconstruction, there are no EEA markets for deliveries to the Rest of Europe, in which the Merged Entity would have a market share of less than 40%, whereas the third competitor has a market share below 20%.

### 10.3.3. Conclusion

- (648) In the light of the available evidence and the considerations set out in this Section, the Commission concludes that the Merged Entity would overall have a moderate market position among integrators, whereas DHL and UPS also have an established presence on all markets for extra-EEA delivery services.

## 10.4. Among integrators, the Parties are not particularly close competitors on markets for the provision of extra-EEA small package delivery services

### 10.4.1. FedEx's views

- (649) FedEx submits that the Parties' activities are largely complementary in relation to extra-EEA delivery services, as FedEx is primarily focused on the extra-EEA international express and USA domestic markets, whereas TNT has a more significant ground-based and air based intra-EEA presence, including domestic and deferred business. FedEx's win/loss bidding analysis also demonstrates that the Parties cannot be considered close competitors regarding extra-EEA delivery services. Rivalry between the Parties has therefore not been an important source of competition on extra-EEA markets and UPS, DHL and other providers will continue to constrain the Merged Entity post-Transaction.
- (650) FedEx further submits that neither TNT nor FedEx can be seen as an important source of expansion or a "maverick" on the extra-EEA markets. Conversely, TNT's market shares are overall smaller than those of the other integrators on the extra-EEA

markets and have been decreasing in recent years, whereas TNT's restructuring efforts have not translated into material growth on the extra-EEA markets.<sup>505</sup>

#### 10.4.2. Commission's assessment

- (651) As already analysed in Section 9.4, concerns may arise from a concentration between particularly close competitors.<sup>506</sup> While the Parties are both integrators, the closeness of competition between them is indicative of the constraint they currently exert on each other. In a differentiated industry, as is the provision of small package delivery services, the degree of competitive constraint the Parties exert on each other is particularly relevant for assessing the likely impact of the Transaction. Elements such as the integrators' geographic coverage around the world, their network, their service offers and the qualitative features of the service can be of relevance in this assessment.
- (652) In its assessment, the Commission analysed the Parties' extra-EEA networks, coverage and overall strategic priorities. Further, it assessed the degree of their substitutability from the customers' perspective on the basis of competitors' and customers' evaluation from the market investigation and an analysis of the Parties' bidding data.
- (653) Even though the Parties compete with each other as integrators on the provision of extra-EEA express delivery services from the 30 EEA national markets to the world and the six major world lanes, the Commission considers that they are not particularly close competitors on the basis of the results of the market investigation, the Parties' internal documents and data, the bidding analysis submitted by the Parties and all the other available evidence.

##### 10.4.2.1. TNT is weaker than the other integrators on extra-EEA deliveries

- (654) First, Table 24 in recital (631) shows that TNT's position is overall significantly lower than that of the other integrators on extra-EEA delivery services' markets. TNT generates revenues amounting to 5-10% of the total revenues generated by extra-EEA delivery services from all EEA countries, whereas the revenues of FedEx and UPS amount to 20-30% and the revenue of DHL amounts to 40-50%. Looking at the integrators' relative positions on the various EEA markets for small package deliveries, TNT ranks overall third, is second on domestic and international intra-EEA express and deferred services, but appears only fourth on both express and deferred extra-EEA markets.<sup>507</sup>
- (655) Second, as indicated in Sections 9.4.2.1 and 9.4.2.2, the Parties have a different focus of activities; as unlike FedEx, TNT has a focus on customers with significant international intra-EEA express and deferred, as well as domestic purchases.
- (656) This discrepancy is further reflected by the fact that the revenues TNT generated through extra-EEA sales correspond to only [Confidential]% of its total Europe revenues.<sup>508</sup>

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<sup>505</sup> Form CO, paragraphs 278, 298 and following and 309 and following.

<sup>506</sup> Horizontal Merger Guidelines, paragraph 28.

<sup>507</sup> Form CO, Annex 7.O, FedEx's "TNT profile" of November 2014, page 12; FedEx's response to the request for information QP20 of 19 October 2015, Annex 2 "Process Report – Background materials – Final, Project Orient" of May 2015, page 17-18.

<sup>508</sup> TNT's total EEA revenues include domestic, international intra-EEA express and deferred, extra-EEA express and deferred and freight services. Revenue split estimated on the basis of TNT reports and

**Figure 20 – Extract from a FedEx slide deck dated August 2013<sup>509</sup>**

	<b>Intra (priority)</b>	<b>Extra (priority)</b>
<b>TNT</b>	[Confidential]%	[Confidential]%
<b>DHL</b>	[Confidential]%	[Confidential]%
<b>UPS</b>	[Confidential]%	[Confidential]%
<b>FedEx</b>	[Confidential]%	[Confidential]%
<b>Market average</b>	[Confidential]%	[Confidential]%

- (657) Similarly, as illustrated in Figure 20, only [Confidential]% of TNT's total revenues generated through international express delivery services in 2012 corresponds to extra-EEA deliveries and the remaining [Confidential]% correspond to international intra-EEA express services. For UPS and DHL the share of extra-EEA deliveries is estimated at approximately [Confidential]% of their total express revenues and [Confidential]% for FedEx. Considering that extra-EEA express delivery services generate [Confidential]% of the overall revenues that integrators generate through the provision of international intra-EEA and extra-EEA express delivery services, FedEx identifies a significant imbalance for TNT on that market. TNT's share of extra-EEA revenues is only [Confidential]% of its total international intra-EEA and extra-EEA express sales. Similarly, on a market for international intra-EEA and extra-EEA deferred deliveries, TNT's extra-EEA sales would result in an imbalance of [Confidential]%, since TNT's extra-EEA deferred sales represent [Confidential]% of TNT's total deferred sales, whereas extra-EEA deferred deliveries represent [Confidential]% of the total deferred market.<sup>510</sup>
- (658) The difference as to the significance of extra-EEA deliveries for TNT's business in comparison to FedEx and more generally to the other integrators is a result of the fact that, unlike its competitors, TNT constitutes and sees itself as a "Europe-focused company" and not as a global provider.<sup>511</sup> [Confidential]% of TNT's revenues are generated through the provision of delivery services within Europe or from/to Europe and its non-Europe related activities represent a mere [Confidential]% of its business. Conversely, in the case of the other three integrators that constitute global players, the Europe-related part of their activity represents a much smaller part of their

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FedEx's [Confidential] database in 2013, Form CO, Annex 7.O, FedEx's "TNT profile" of November 2014, page 12.

<sup>509</sup> Figure 20 is a repetition of Figure 14 in recital (371).

<sup>510</sup> Market share estimations resulting from FedEx's database [Confidential] in calendar year 2011, Form CO, Annex 7.G, FedEx's [Confidential]. A similar comparison of the integrators' international intra-EEA express and extra-EEA express deliveries on the basis of FedEx's estimation of the four integrators' 2014 market share would lead to the same conclusion, namely that TNT appears to again have a much more significant imbalance than the other integrators, FedEx's response to question 3 of the request for information QP25 of 30 November 2015.

<sup>511</sup> FedEx's response to the request for information QP20 of 19 October 2015, Annex 1, "Process Report – final – Project [Confidential]" of May 2015, page 5; FedEx response to question 1 of the request for information QP20 of 19 October 2015.

overall business (namely [Confidential]% for DHL, [Confidential]% for UPS and notably in the case of FedEx [Confidential]% in 2012).<sup>512</sup>

- (659) In addition, TNT is significantly smaller than the other integrators in terms of company size. Based on total revenues, DHL is more than eight times, UPS more than six times and FedEx more than five times larger than TNT.<sup>513</sup> The fact that TNT is a strong competitor on European markets, despite its overall smaller size, shows that it is comparatively much weaker than the other integrators on non-European markets. Extra-EEA deliveries combine an EEA-leg, on which TNT is likely to have a strong position, and a non-EEA leg, on which TNT will probably be a smaller player than its competitors. That weak position on one part of the service impacts TNT's competitiveness on markets for extra-EEA deliveries.
- (660) A specialised analysis of the small package delivery market of 2014, which was submitted by DHL, made a comparison among the different providers of logistics services. When globally comparing TNT and the other integrators, TNT is the only one lagging behind on its ability to offer same day delivery services, e-commerce and industry specific services.<sup>514</sup>
- (661) TNT's focus on intra-EEA activities is also consistent with its strategic planning. [Confidential information on TNT's strategic planning] the operating income decrease it faced in the period between 2012 and 2014.<sup>515</sup> TNT's ongoing outlook strategy and its preceding Deliver! Strategy adopted in 2013 foresees a shift in the company's focus from "Global" to "Europe+", aiming at becoming the "best network in Europe with good connections to Rest of the World".<sup>516</sup> To that end, TNT sold its domestic business in India in 2011 and in China in 2013 and also considered divesting its Brazil domestic business, until it became profitable again in 2017.<sup>517</sup>
- (662) In addition, the Parties' internal documents confirm that they do not perceive each other as particularly close competitors.
- (663) In its comparison of the portfolio of products offered by the four integrators, illustrated in Figure 15 in recital (374), FedEx identifies TNT as the only integrator that is not strong, but merely present in the extra-EEA sector.

**Figure 21 – Extract from a FedEx slide deck dated November 2014**

[Confidential details on TNT's portfolio in Europe]

10.4.2.2. TNT owns a limited extra-EEA air network

- (664) One of integrators' determining features is the ownership or full operational control over all transportation assets, including an air network with scheduled flights, as

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<sup>512</sup> Estimations based on UPS, DHL and TNT reported 2012 revenues, Form CO, Annex 7.I, FedEx's presentation [Confidential].

<sup>513</sup> FedEx's presentation to the European Commission of 15 September 2015, page 29.

<sup>514</sup> Transport Intelligence, "Global Express and Small Parcels 2014 – A comprehensive overview of the global express and small parcels industry including its developments and prospects" of May 2014, page 69.

<sup>515</sup> FedEx's response to question 1 of the request for information QP19 of 8 October 2015, Annex 15 "TNT's Annual Report 2014", page 5.

<sup>516</sup> Form CO, Annex 11B, TNT's "Capital Markets Day" of 18 February 2015, pages 5, 12 and 21; Form CO, Annex 7.O, FedEx's "TNT profile" of November 2014, page 15 and following.

<sup>517</sup> FedEx's response to question 6 of the request for information QP18 of 6 October 2015; Form CO, Annex 10, TNT's "TNT Deliver! Programme" of 25 March 2013, page 7 and following; Form CO, Annex 7.O, FedEx, "TNT profile" of November 2014, p.16.

already explained in Section 6.2.1. Unlike FedEx and the other integrators however, TNT's extra-EEA air network is rather limited in scope.

- (665) Section 9.4 illustrates that overall, TNT relies primarily on its road and air network in the EEA. Conversely, FedEx is significantly weaker in that segment and thus also has access to a much more limited intra-EEA network in comparison.
- (666) This difference between the set-up of the Parties extra-EEA services, is also prominent in relation to their extra-EEA air network. TNT has an air fleet of [50-60] aircraft, mainly used for its international intra-EEA express services.<sup>518</sup> FedEx on the contrary has an air fleet of [600-700], UPS 649 and DHL 250 dedicated aircraft in total.<sup>519</sup>
- (667) For its extra-EEA delivery services, TNT uses four aircraft connecting its EEA regional hub of Liege to New York, Dubai, Hong-Kong, Singapore and Shanghai. For deliveries to the Rest of Europe, TNT employs its more extensive intra-EEA network. FedEx conversely, uses a network of 17 owned aircraft for its extra-EEA delivery services flying from its Charles de Gaulle hub and in some instances from smaller secondary hubs too, such as Cologne. More specifically, FedEx has 10 different connections to North America operating 36 weekly flights from the EEA. For deliveries to Asia/Pacific and the Middle East, FedEx deploys seven aircraft, operating 16 weekly flights. FedEx serves Africa, Central and South America and the Rest of Europe by purchasing commercial capacity.<sup>520</sup> For all other countries and cities to which it has an air connection, TNT relies on air capacity purchased by third parties, consisting either of belly space on combination planes that also carry passengers or in capacity in freighter planes.<sup>521</sup>[Confidential details on TNT's contracts with third parties to purchase air capacity].<sup>522</sup>
- (668) TNT has selected the destinations of the flights it operates based on its volumes. Therefore, even if its own long haul operations represent only [Confidential]% of its total services, they correspond to [Confidential]% of the total kilograms it shipped itself and to [Confidential]% of its operating costs.<sup>523</sup>
- (669) TNT explains that it uses its own aircraft when [Confidential details on TNT's use of its aircraft].<sup>524 525 526</sup>

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<sup>518</sup> [40-50] of TNT's aircraft are used for the provision of international intra-EEA services and for connections to some extra-EEA destinations close to the EEA, such as Morocco, Algeria, Tunisia, Israel, Turkey, Moldova, Ukraine, Belarus, Russia and Switzerland, FedEx's response to the request for information QP12 of 19 August 2015, question 31.

<sup>519</sup> Form CO, paragraphs 18, 142 and 147.

<sup>520</sup> FedEx's response to the request for information QP12, Annex 14.

<sup>521</sup> TNT's extra-EEA fleet consists of two B747 and 2 B777 planes, operating the following services: Liège-New York-Liège – 5 times per week; Liège-Dubai-Hong Kong-Dubai-Liège – 7 times per week; Liège-Singapore-Shanghai-Liège – 3 times per week; and Liège-Shanghai-Liège – 2 times per week, see FedEx's response to question 31 of the request for information QP12 of 19 August 2015, Annex 12.

<sup>522</sup> FedEx's response to question 20 of request for information QP16 of 16 September 2015.

<sup>523</sup> FedEx's response to question 5 of the request for information QP16 of 16 September 2015 and Annex 6, TNT's presentation "Longhaul Strategy Proposal 2015-2018" of 21 April 2015, page 6.

<sup>524</sup> FedEx's response to question 5 of the request for information QP16 of 16 September 2015 and Annex 6, TNT's presentation "Longhaul Strategy Proposal 2015-2018" of 21<sup>st</sup> April 2015, page 13. Conversely, FedEx estimates that its small packages account for [Confidential]% of its total extra-EEA aircraft volumes sold; FedEx's response to question 3.2. of the request for information QP7 of 7 July 2015,

<sup>525</sup> FedEx's response to question 7 of the request for information QP16 of 16 September 2015.

<sup>526</sup> Form CO, Annex 10, TNT's presentation "Deliver! Programme" of 25 March 2013, p.17; Form CO, Annex 7O, FedEx's presentation "TNT Profile" of November 2014, page 15.

- (670) Even though all integrators use commercial capacity for part of their extra-EEA services and are in the position of offering high quality services to their customers while doing so, owning an air network provides significant advantages.<sup>527</sup>
- (671) First, it results in better service performance, as it allows for seamless connectivity, less movements of the small package and less handling points. If for example TNT ships a small package to a non-EEA destination through its own air network, this would be flown from Liege directly to the destination, otherwise it would have to be first shipped from Liege to the EEA airport from which the commercial flight would depart and then continue on to the destination. Therefore, the package would have to change custody several times during transit, which is likely to raise additional security issues and perhaps even create mistrust or reluctance in customers. The fact that a different provider will also have to be involved entails relying on a different track&trace system, which would have to be coordinated with that of TNT.
- (672) Second, owning an air network provides transit time benefits that are not attainable through the use of commercial capacity. TNT estimates that its connectivity to several destinations would be significantly shorter. It would for example be able to offer 1-day services to the USA, or serve Asia/Pacific destinations in one day less than it currently does by not serving them through its own network.
- (673) Third, the cost of serving an extra-EEA destination by purchasing commercial capacity is higher than when relying on own air network. TNT estimates that the unit cost is [Confidential]% lower in its own aircraft. The same conclusion is reached by comparing the operating costs of FedEx using its own aircraft and TNT renting airspace. For flights from the EEA to USA, FedEx estimates that its average cost per kilogram is USD [Confidential], whereas TNT cooperating with commercial airlines has an average cost per kilogram of USD [Confidential]. The lack of a regional air network in North America further increases the cost for TNT, as it pays on average USD [Confidential] and FedEx using its intra-US network, pays merely [Confidential] per kilogram.
- (674) This different cost structure is linked to the subscale of TNT's network. Besides impeding TNT from operating an air network as extensive as the other integrators and requiring that TNT purchases airspace capacity from other providers in order to serve most world destinations, TNT's smaller scale on extra-EEA markets also results in lower capacity utilisation of its own aircraft than that of its competitors. Therefore, TNT is faced with higher costs than other integrators when operating its own air network, as well as when purchasing capacity from third parties, which is usually more costly. Last, given its limited scale, even when purchasing capacity from third parties, TNT is offered higher rates than the other integrators.<sup>528</sup>
- (675) Fourth, owning an air network allows integrators to adjust their internal schedules according to demand or to externalities, such as a technical failure, bad weather, etc. When operating their own network, integrators can more easily reallocate their

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<sup>527</sup> FedEx's response to question 5 of the request for information QP16 of 16 September 2015, Annex 6 and to QP18 of 6 October 2015, Annex 2 and to questions 2 and 3 of the request for information QP20 of 19 October.

<sup>528</sup> FedEx's response to the request for information QP18 of 6 October 2015. Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, paragraph 3.15.

planes, slots and crew between different routes in response to changes in relative demand or profitability, without incurring significant additional costs or risks.<sup>529</sup>

- (676) Fifth, the operation of one's own air network provides greater certainty as to the available capacity and cost structure. The integrator operating the network is ensured that there will be available capacity even at peak times, when scarcity may occur on commercial airlines prioritising their passengers. This was also confirmed by DHL which stated that "*for passenger airlines, [...] passenger luggage always has priority; capacity is therefore not always guaranteed*".<sup>530</sup> Further, the pricing mechanism of the commercial airspace market is not aligned with the integrators' pricing. As a result, a provider relying on commercial capacity has a greater risk exposure, as it cannot estimate its operating revenues and expenses as well as it could if it were using its own aircraft.
- (677) The limited scope of TNT's extra-EEA air network is both a reflection of its relative weakness on markets for extra-EEA deliveries in comparison to the other three integrators and a restriction on its ability to compete on equal terms with them. This indicates that TNT and FedEx are not close competitors among integrators as far as their extra-EEA activities are concerned.

#### 10.4.2.3. TNT rarely appears as FedEx's main competitor

- (678) As explained in Section 9.4.2.5, FedEx submitted a bidding data analysis based on its own and TNT's bidding data.<sup>531</sup> Only the FedEx's [Confidential] database allowed FedEx's economic consultants to meaningfully identify opportunities related to extra-EEA deliveries.
- (679) The Commission notes that, in any event, an analysis from TNT's perspective is of less relevance for extra-EEA delivery services as from TNT's perspective the other three integrators are all strong players in the extra-EEA express markets. The more relevant analysis is from FedEx's perspective to see whether TNT is indeed a weak competitor for extra-EEA sales opportunities.
- (680) The participation analysis based on FedEx's [Confidential] database discussed in Section 9.4.2.5 is also extended to stand-alone extra-EEA sales opportunities. FedEx finds that DHL is identified as FedEx's main competitor in [Confidential]% of opportunities, which is more than three times as often as TNT ([Confidential]%). UPS is the second most identified competitor ([Confidential]%), thus appearing nearly twice as often as TNT. Those results are presented in Table 31.

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<sup>529</sup> This was also confirmed by DHL which explains that "*for passenger airlines, their schedules might not fit DHL's needs*", Non-confidential minutes of the call with DHL of 20 August 2015, paragraph 25.

<sup>530</sup> This was also confirmed by DHL which explains that "*for passenger airlines, [...] passenger luggage always has priority; capacity is therefore not always guaranteed*", Non-confidential minutes of the call with DHL of 20 August 2015, paragraph 25.

<sup>531</sup> FedEx's submission "*FedEx/TNT: Updated bidding data analysis*", [Confidential], 18 June 2015.

**Table 31: Participation Analysis – extra-EEA express and deferred, 2012-2014<sup>532</sup>**

Competitor	Number of opportunities	Percentage of Opportunities
DHL	[Confidential]	[Confidential]
UPS	[Confidential]	[Confidential]
TNT	[Confidential]	[Confidential]
Non-integrators	[Confidential]	[Confidential]
Total	[Confidential]	[Confidential]

(681) This complementary analysis is subject to similar limitations as the ones formulated in relation to the international intra-EEA express opportunities discussed in Section 9.4.2.5. Therefore, the Commission considers that the insights given are limited to providing some further confirmation that TNT is a weaker competitor of FedEx for extra-EEA sales opportunities.

#### 10.4.2.4. Market participants do not see the Parties as close competitors among integrators

(682) When asked about FedEx's closest competitors in the provision of extra-EEA services, respondents to the market investigation clearly identified DHL as the closest, UPS as the second closest and TNT only as third closest. This was clearly different to the responses of market participants in relation to international intra-EEA express services, where they again prioritised DHL as the closest competitor but did not, however, differentiate between UPS and TNT as the second closest to FedEx. The market investigation thus shows that, unlike on international intra-EEA express markets, market participants consider the extra-EEA service offer of TNT clearly different to that of the other three integrators.<sup>533</sup>

(683) When asked about the closest competitor of TNT on extra-EEA deliveries, customers and competitors again identified DHL as the closest, UPS as the second closest and FedEx as the third closest, further confirming that the Parties are not perceived as each other's closest competitor on extra-EEA markets.

(684) Customers' perception of TNT as weaker in terms of world-wide coverage is also reflected in customer surveys, quoted by TNT.<sup>534</sup> According to those statistics, even though TNT is evaluated as comparably good if not better than other integrators on a number of features, it is significantly lagging behind in relation to worldwide presence. Indeed, in relation to geographic coverage, TNT is evaluated as being closer to other parcel players than to the other integrators by customers purchasing integrated freight and parcels.

(685) That view was further reflected in customers' assessment of TNT's presence during the Commission's market investigation. When asked about TNT's presence outside the EEA, a customer stated that "*[TNT's] size is relatively smaller than the other three integrators. However TNT's service intra-EEA is very original and second to*

<sup>532</sup> Data provided in response to question 5 of the request for information QP15 of 16 September 2015.

<sup>533</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>534</sup> Form CO, Annex 10, TNT's presentation "Deliver! Programme" of 25 March 2013, page 17; results of customer surveys conducted in 2011 by [Name of research agency].

*none*",<sup>535</sup> thus demonstrating that TNT's extra-EEA sales may be related to its strong position on intra-EEA markets. Also, when asked to rank integrators according to their extra-EEA geographic coverage, FedEx's and TNT's customers ranked TNT third, whereas in relation to almost all other features, such as reliability, customer service, ability to offer specialised services, etc., they ranked it first.<sup>536</sup>

- (686) Similarly, TNT's competitors also acknowledge its weaker position on markets for extra-EEA deliveries. In its internal documents, FedEx recognises this weaker position of TNT, by evaluating all other integrators as "strong" on intercontinental express services and TNT as only "present".<sup>537</sup> DHL also considers that *"integrators try to cover the world, while TNT is more focused on Europe"*<sup>538</sup> and estimates TNT's share as significantly lower than that of the other integrators on a market for Asia/Pacific, as non-existent on a market for deliveries to the Americas and only comparable or higher to its competitors in Europe and the broader region including Europe, Middle East and Africa.<sup>539</sup> DSV claims that *"about TNT's strength outside the EEA, [...] its size and performance is lower than the other integrators on both express and deferred. However TNT's service intra-EEA is good and they have a strong road network in Europe. In DSV's view, TNT has recently lost on image and performance, due to cost cutting programmes (e.g. regional concentration of service departments) as it has been 'burning money' in markets like Brazil and China"*.<sup>540</sup>

#### 10.4.3. Conclusion

- (687) In the light of the considerations set out in this Section, among integrators, TNT is a weaker competitor on extra-EEA markets.
- (688) That conclusion applies to an overall market for extra-EEA deliveries from the EEA to the world, as well as to all plausible narrower markets. Indeed, TNT's limited market position, its lack of air network and its Europe-centric strategy and overall reputation do not apply to a particular national market or for deliveries to a specific world region, but rather reflect TNT's position across the board in comparison to the other integrators regarding extra-EEA deliveries.
- (689) Therefore, the Commission concludes that, being weaker on the various markets for extra-EEA deliveries, among integrators, TNT cannot be considered a close competitor of FedEx on those markets.

### 10.5. The Transaction would not remove an important competitive force

#### 10.5.1. FedEx's views

- (690) FedEx submits that TNT's business plan and organisational structure is not significantly different from that of other integrators. Therefore, it operates on the basis of a similar business model and has a comparable cost curve to its competitors. Further, FedEx notes that considering TNT a "maverick" player on the markets for extra-EEA small package delivery services is not credible, given that TNT's market share has been reduced in the course of the last two years on those markets. Finally, as TNT has a cost curve comparable to its competitors, it is not in a position to

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<sup>535</sup> Final non-confidential minutes of call with [Name of parties customer] of 17 August 2015.

<sup>536</sup> Responses to question 16 of the questionnaire to customers R2– Phase II.

<sup>537</sup> See Figure 15 in recital (374).

<sup>538</sup> Non-confidential minutes of the call with DHL of 20 August 2015, paragraphs 20 and 30.

<sup>539</sup> Non-confidential version of DHL's response to Commission's request for information of 27 August 2015, Annex 9, page 10.

<sup>540</sup> Non-confidential minutes of the call with DSV of 17 August 2015, Section IV.

consistently charge significantly lower prices than its fellow integrators. According to FedEx, not only can TNT not be considered a price-setter; DHL and UPS are also much more aggressive in their pricing strategy.

- (691) FedEx also notes that even though the Commission concluded that the acquisition of TNT by UPS would result in a significant impediment to effective competition on a number of markets, this conclusion was not based on the elimination of a significant constraining force, but rather on the expected price increases and the fact that the DHL would be the only other competitor able to constrain the Merged Entity on several markets. As the market conditions have not changed significantly since the time of that assessment, FedEx submits that TNT cannot be now seen as constituting a significant competitive force.<sup>541</sup>

#### 10.5.2. Commission's assessment

- (692) As analysed in Section 9.5, the elimination of an important competitive force through the Transaction is likely to influence its impact on the market.<sup>542</sup> On the various markets for extra-EEA deliveries, the Commission does not consider TNT to have qualities that enable it to exert such an important competitive pressure. Instead, TNT is overall the weakest of the four integrators with respect to extra-EEA deliveries and constitutes neither the low price supplier, nor more generally a sort of maverick due to its business model.
- (693) First, the fact that TNT has not exerted any particular competitive pressure on its competitors in recent years emerges from a comparison of its market share and its evolution in the last years. TNT, however, was not able to increase its market share in recent years. As illustrated from Tables 24 to 30, TNT has a smaller market share than the other integrators on most markets for extra-EEA deliveries. Furthermore, TNT's market share has been stable or has even marginally shrunk over the last three years.
- (694) TNT's share of the total revenues generated by deliveries from the EEA to North America has also not increased in the course of the last three years. Similarly, looking into the 30 potential national markets for extra-EEA deliveries to North America, TNT's share has remained the same in 15 of them, slightly decreased in 10 and marginally increased in only five of them. Those five markets are all rather limited in size and in several of them integrators do not operate directly, but through GSPs.<sup>543</sup>
- (695) As far as markets for extra-EEA deliveries to Asia/Pacific are concerned the situation is comparable. Overall on deliveries from the EEA, the position of TNT has slightly weakened since 2012, whereas on the national markets for extra-EEA deliveries to Asia/Pacific, its market share has remained the same in five of them, decreased in 17 and slightly increased in eight. In those eight markets the increase does not exceed 2%, except for the Croatian and Icelandic markets. Given the limited size of those two markets, such a fluctuation of the market share is likely to be the result of the win/loss of one or two contracts and is therefore rather incidental.<sup>544</sup>
- (696) Looking into deliveries to the other four lanes (namely Central and South America, Middle East, Africa and the Rest of Europe), TNT's share on the EEA-wide markets

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<sup>541</sup> FedEx's response to question 5a of the request for information, QP18 of 6 October 2015.

<sup>542</sup> Horizontal Merger Guidelines, paragraph 37.

<sup>543</sup> Commission's market reconstruction, based on the revenue data submitted by the four integrators.

<sup>544</sup> Commission's market reconstruction, based on the revenue data submitted by the four integrators.

marginally decreased on each of those lanes during the last two years. When analysing the evolution of TNT's market share on the various national markets for extra-EEA deliveries to those four lanes no significant increase can be identified. In most cases TNT's share was stable and even when there were slight fluctuations, those fluctuations were either limited or on very small markets and thus likely to be caused by a few contracts having a significant impact on market shares.<sup>545</sup>

- (697) This lack of a significant evolution of TNT's share indicates that it has not been able to aggressively compete with a view to strengthening its position on extra-EEA markets, akin to a maverick player. This is further reflected in FedEx's [Confidential] data, according to which, as indicated in Section 10.4.2.3, TNT has been identified as FedEx's main competitor in only [Confidential]% of possible opportunities. As a result, TNT does not appear to have adopted a commercial strategy that has significantly increased its ability to compete for extra-EEA services.
- (698) In addition, TNT operates on the basis of a business model similar to that of its competitors. Indeed, TNT also relies on its intra-EEA network for the pick-up and uses air transport for the deliveries at destination, where it directly or through subcontractors undertakes the last leg of the service. In a differentiated industry, the services offered by TNT may differ to that those of its competitor on the various service features; those services, however, do not render TNT an important competitive force on extra-EEA markets. Key features of TNT's services that differ may in some instances be advantageous to its customers, as for example the fact that TNT is more flexible in offering deliveries of large as well as small packages or that TNT has good customer service. In other instances, however, TNT's services lag behind in comparison to those of other integrators. TNT, for example, only offers next-day deliveries to most destinations in North America, whereas UPS, DHL and FedEx also offer same-day deliveries.<sup>546</sup>
- (699) Furthermore, TNT does not charge lower net prices than the other integrators on the markets for extra-EEA small package delivery services.
- (700) UPS argued in a submission of 15 October on "Extra-EEA Market Concentration and Price Analysis"<sup>547</sup> that "*TNT is the low-price competitor on many lanes*". That conclusion was based on pricing data collected from the integrators' websites and relied on integrators' list prices for the provision of extra-EEA express services. More concretely, UPS considers that TNT's prices are the lowest on [Confidential]% of all destinations and in particular on a majority of extra-EEA destinations from Italy and the UK. As far as specific lanes are concerned, UPS considers that TNT offers the lowest prices on [Confidential]% of the extra-EEA services to North America and on [Confidential]% of the services to Asia Pacific.<sup>548</sup>
- (701) First, as already explained in Section 9.6, contracts for small package delivery services are in principle the result of tendering procedures or bilateral negotiations, during which integrators offer significant discounts to potential customers, based on their service requirements, their total volumes, the overall market conditions and the provider's relative strength and commercial strategy on the served routes. As a result, FedEx submits that only [Confidential]% of its EEA revenues derive from customers

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<sup>545</sup> Commission's market reconstruction, based on the revenue data submitted by the four integrators.

<sup>546</sup> Comparison of integrators' responses on delivery times by destination.

<sup>547</sup> UPS's submission "Extra-EEA Market Concentration and Price Analysis" of 15 October 2015.

<sup>548</sup> UPS's submission "Extra-EEA Market Concentration and Price Analysis" of 15 October 2015, page 11-13.

paying the list prices. For TNT this percentage is even lower amounting to only [Confidential]% of the total EEA revenues.<sup>549</sup>

- (702) The discounts offered during the tendering or negotiating process may be very significant. UPS for example offers discounts of 63% to the members of the German SMEs association, an offer which is not available to all other customers in Germany.<sup>550</sup> Another example is DHL's discounts on its extra-EEA express services towards customers interested in deferred/economy services, with a view to not losing them to integrators who also provide deferred services.<sup>551</sup>
- (703) The fact that prices are set subject to a sophisticated discount system and depend on the volumes shipped, the services required, and often the outcome of a negotiation with the customer, further shows that there is no uniformity among the prices actually paid for shipments on a given lane and that the offered discounts do not follow the list prices in a proportionate way. As a result, list prices are not reliable, because even if prices are much higher on one route compared to another, a customer with substantive volumes on the first route may pay less for a shipment on that route than for one on the second. List prices are therefore merely indicative and cannot be relied upon for drawing inferences as to the integrators' actual pricing. Even if based on a comparison of certain list prices TNT would appear to be charging lower rates than other integrators, this cannot provide a reliable basis from which it may be concluded that TNT actually charges the lowest prices or that TNT is consistently the lowest-price provider of extra-EEA delivery services.
- (704) Second, TNT's cost position on the provision of extra-EEA services is not more advantageous than the cost position of the other integrators. On the first part of an extra-EEA delivery, namely the pick-up from an EEA country, TNT's cost position is comparable to that of DHL and UPS.<sup>552</sup> For the air transport of the extra-EEA small packages, TNT is most likely on a higher cost position of the other integrators due to its very limited own air network. Last, for the destination integrators' delivery costs fluctuate depending on their volumes, scale and network; for deliveries to North America for example, TNT's delivery costs are significantly higher than those of FedEx and the other two integrators.
- (705) TNT also points out that [Confidential information on TNT's future strategy].<sup>553 554</sup>
- (706) Third, the other three integrators do not confirm UPS's view that TNT is a low cost provider.

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<sup>549</sup> Percentage of customers not having received any discount, according to FedEx's reporting system and TNT's financial system, Form CO, paragraph 677; FedEx's response question 7 of the request for information QP12 of 19 August 2015; FedEx's response to question 2 of the request for information QP25 of 30 November 2015.

<sup>550</sup> TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers", of 9 October 2015, Annex 5 "Focus SME", p.14.

<sup>551</sup> Non-confidential minutes of call with DHL of 20 August 2015, paragraph 16; FedEx's submission "FedEx/TNT: further assessment of market definition issues involving extra-EEA services" of 31 August 2015, page 12 and following.

<sup>552</sup> FedEx has higher pick-up costs in the EEA, as explained in Section 9.4. An overview of the PUD costs of the four integrators in the EEA is provided in Figure 11 in recital (351).

<sup>553</sup> Form CO, Annex 10, TNT "Deliver! Programme" of 25 March 2013; Form CO, Annex 70, FedEx' presentation "TNT Profile" of November 2014, page 17 and following.

<sup>554</sup> FedEx's response to the request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

- (707) FedEx submits that following research based simply on list prices of all integrators, the list prices of TNT are comparable to, and in certain routes higher than, those charged by the other integrators. FedEx compared the list prices of the four integrators for the express shipment of a 10kg package to 13 destinations on all six extra-EEA lanes. The results of this research are available in Figure 22. Further to this comparison, FedEx also compared list prices to the same destinations for the deferred shipment of 10kg packages and the express and deferred shipment of 30kg packages. All comparisons indicate that TNT is not an overall low price provider on the markets for extra-EEA deliveries.<sup>555</sup> Even if FedEx's study suffers from the shortcoming of relying on list prices and thus not reflecting the actual prices paid by customers, it shows that TNT is not the lowest cost operator on all extra-EEA markets.

**Figure 22: FedEx's submission on list prices offered by the integrators on extra-EEA routes (EUR/10 kg package)**

[Confidential details on list prices]

- (708) [Confidential details on TNT's pricing].<sup>556 557</sup>

- (709) [Confidential details on TNT's pricing].<sup>558</sup>

- (710) In addition, DHL appears to be perceived by its customers as competing more aggressively on prices. Evaluating its performance based on customer interaction, DHL was considered as having shared leadership on "value for money" and "prices and conditions" in 2012, according to its internal documents.<sup>559</sup>

- (711) Fourth, even if there were a price difference among integrators, the responses to the market investigation show that the majority of TNT's customers do not choose their provider strictly based on price, but instead consider several service features. Customers of TNT on extra-EEA markets explain that they chose TNT because of "*price, quality, reliability, systems integration*",<sup>560</sup> "*the best delivery times, reliability, the best geographic coverage across all destinations, good customer service, good prices*",<sup>561</sup> "*they can transport hazardous items which are a problem for other carriers*",<sup>562</sup> "*perfect service level, best prices for economy service, better*

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<sup>555</sup> FedEx's submission "FedEx/TNT: further assessment of market definition issues involving extra-EEA services" of 31 August 2015, Figure 5 and Annex A.3, price comparison for extra-EEA deliveries from the UK; FedEx's response to question 4 of the request for information QP25 of 30 November 2015.

<sup>556</sup> FedEx's response to the request for information QP18 of 6 October 2015. Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 1.

<sup>557</sup> FedEx's response to the request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 1; FedEx's response to the request for information QP22 of 13 November 2015, Annex 3; FedEx's response to question 6 of the request for information QP22 of 18 November 2015 and supplementary annexes requested on 20 November 2015.

<sup>558</sup> Form CO, Annex 10, TNT "Deliver! Programme" of 25 March 2013, page 17.

<sup>559</sup> TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 3, DHL's presentation "Capital Markets Tutorial Workshop" of September 2013, page 15.

<sup>560</sup> Non confidential response of [Name of Parties' customer] to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

<sup>561</sup> Non confidential response of [Name of Parties' customer] to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

<sup>562</sup> Non confidential response of [Name of Parties' customer] to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

*customs clearance service, good customer care and claims solving, faster POD provision",<sup>563</sup> "the final decision is a combination of delivery times, pricing, service capabilities and relationship".<sup>564</sup>*

- (712) Similarly, other providers appear to be equally competitive in terms of price. Customers explain in relation for example to North America that they cooperate with DHL because "*they have the most advantage[ous] price for that area in terms of priority services (even cheaper than FedEx economy services)*",<sup>565</sup> and "*DHL offers the best price to us*"<sup>566</sup>; with FedEx because "*FedEx has the best customer service, prices and contacts*",<sup>567</sup> "*accurate delivery record, competitive pricing, and their overall footprint in Europe*";<sup>568</sup> and with UPS because they have "*global coverage and service at a competitive price*",<sup>569</sup> "*have been selected due to their capabilities, their promise to fulfil the service request and the rates we have agreed with them*".<sup>570</sup>
- (713) Therefore, even if some customers chose TNT on the basis of the prices it offers, others select it for different features of its service or consider the other integrators as more cost efficient.
- (714) In the light of the considerations set out in this Section, the Commission concludes that UPS's claim that TNT is a low cost provider on extra-EEA markets based on its list prices is not reliable. TNT is not pricing its extra-EEA services materially lower than the other integrators and is not viewed as a low cost integrator by neither its competitors, nor its customers. Therefore, the Commission considers that TNT does not appear to constitute a price maverick on markets for extra-EEA deliveries.

### 10.5.3. Conclusion

- (715) In the light of the considerations set out in this Section, the Commission concludes that the Transaction would not eliminate an important competitive force on any extra-EEA market.

## 10.6. The Merged Entity would be constrained by its competitors post-Transaction

### 10.6.1. FedEx's views

- (716) FedEx submits that the Merged Entity faces and would also continue to face post-Transaction competition from DHL, UPS and non-integrators that also provide extra-EEA services.
- (717) FedEx argues that all four integrators, as well as a number of non-integrators, are already active in all extra-EEA markets and offer extra-EEA services of very similar

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<sup>563</sup> Non confidential response of [Name of Parties' customer] to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

<sup>564</sup> Non confidential response of [Name of Parties' customer]to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

<sup>565</sup> Non confidential response of [Name of Parties' customer]to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

<sup>566</sup> Non confidential response of [Name of Parties' customer] to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

<sup>567</sup> Non confidential response of [Name of Parties' customer] to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

<sup>568</sup> Non confidential response of [Name of Parties' customer] to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

<sup>569</sup> Non confidential response of [Name of Parties' customer] to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

<sup>570</sup> Non confidential response of [Name of Parties' customer] to question 9.1.2 of the questionnaire to customers R2-10MS – Phase II.

quality, both in terms of transit time and of price. All integrators and certain non-integrators thus have the necessary customer base and international networks that enable them to operate on all major world lanes. According to FedEx, providers' ability to compete on extra-EEA markets already demonstrates that they would exert competitive pressure on the Merged Entity post-Transaction. Competitors' ability to scale up and expand their presence on any given extra-EEA market within short notice would suffice, according to FedEx, in order to discipline the Merged Entity post-Transaction.<sup>571</sup>

#### 10.6.2. Commission's assessment

- (718) The Commission assessed whether competitors would have the ability to discipline the Merged Entity in case of price increase or other anti-competitive behaviour post-Transaction.<sup>572</sup>
- (719) Non-integrators also provide extra-EEA delivery services. Those providers are usually unable to offer extra-EEA express services through their own network and therefore resell the services of the integrators in this segment, often at competitive prices as they group the volumes of several customers and thus achieve better rates than individual customers would. Non-integrators, however, provide extra-EEA deferred services, through the UPU network, through relationships with other freight forwarders at the country of destination, etc. For the air transport of such services, non-integrators purchase air space capacity from commercial providers.
- (720) Non-integrators aim at offering extra-EEA services as seamless as those of the four integrators. Even if not all service features are comparable, for many price-sensitive customers the offer of the non-integrators may constitute an alternative. The Commission's market reconstruction showed that non-integrators volumes correspond to approximately 9% of the total market for extra-EEA deliveries to the world. Further, FedEx's bidding data analysis shows that in [Confidential]% of its extra-EEA opportunities the main competitor was a non-integrator.<sup>573</sup>
- (721) In its assessment of whether there would be sufficient alternatives to the Merged Entity for customers post-Transaction however, the Commission only focused on DHL and UPS, for the reasons analysed in Section 10.2. Since for the majority of customers non-integrators do not offer comparable products, the Commission adopted the more conservative approach of limiting its competitive analysis of extra-EEA markets to the four integrators.

##### 10.6.2.1. DHL and UPS are active on all extra-EEA markets

- (722) Like the Parties, DHL and UPS also engage in the provision of extra-EEA small package delivery services from all EEA countries to all major world regions.
- (723) In particular, the Commission's market reconstruction demonstrates that DHL is the world leader on all extra-EEA markets to the world and on most extra-EEA markets to the six major world lanes. On the remaining markets, in which it does not have a leading position, DHL is still a competitor with market shares of at least 10%. UPS is also a competitor with established market presence on all extra-EEA markets. UPS's

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<sup>571</sup> FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" of 23 September 2015, page 4-6;

<sup>572</sup> Horizontal Merger Guidelines, paragraphs 31, 32.

<sup>573</sup> The bidding database of TNT does not enable an analysis for extra-EEA opportunities specifically; overall TNT's closest competitor was a non-integrator on [Confidential] % of its EEA-related activities, FedEx's Presentation to the European Commission of 15 September 2015, page 28.

market share ranges between [10-20]% and [50-60]% on the various national markets for extra-EEA deliveries to the world. On an aggregated EEA-wide market for extra-EEA deliveries to the six major world lanes UPS's market share ranges between [10-20]% and [30-40]%, as it does on most national markets.<sup>574</sup>

- (724) Even if integrators' relative position differs between extra-EEA markets, their presence on all of them indicates that they have a customer base requesting extra-EEA services. Further, all four integrators are able to organise the pick-up of small packages on all EEA countries of origin and the delivery to all six world lanes of destination.<sup>575</sup>
- (725) The first leg of an extra-EEA small package delivery consists of the pick-up of the package from the shipper, the transport to the depot of the EEA country of origin and from there to the regional air hub of the integrator. All those services are provided through the integrators' intra-EEA networks and thus ultimately fall within the scope of integrators' intra-EEA express activities. As analysed in Section 9.3.2, all integrators are active and compete on the markets for the provision of intra-EEA express delivery services. In particular, DHL's average coverage in the EEA exceeds that of the Parties, whereas UPS's average coverage is higher than that of FedEx and similar to that of TNT.<sup>576</sup> Therefore, DHL and UPS would be able to organise the pick-up of extra-EEA small packages in the EEA at least to the same extent as the Merged Entity post-Transaction.
- (726) For the air transport, all integrators have set up an air network consisting of own aircraft, as well as purchased airspace capacity on commercial or cargo airlines. Other than TNT, which relies to a great extent on commercial capacity, the other three integrators have an extensive extra-EEA air network that enables them to reach the main destination countries; for the remaining shipments, they also purchase capacity on an ad hoc basis by cargo or commercial airlines.<sup>577</sup>
- (727) DHL's network not only connects Europe to the major world regions such as the Middle East, Asia/Pacific, Africa, North America, but also the various other world regions to each other (for example Asia/Pacific to North America, North America to the Middle East, etc.), which further illustrates the global scope of its activities.<sup>578</sup> DHL operates [Confidential].<sup>579</sup> DHL uses commercial uplift on routes with fewer volumes, by purchasing commercial capacity from third parties.<sup>580</sup>
- (728) Similarly, UPS has an air network of 649 aircraft operating 1 015 daily international flights, 92 of which originate from Europe.<sup>581</sup> For its extra-EEA services, UPS has six aircraft connections to North America and four to Asia/Pacific and the Middle East with five weekly flights each.<sup>582</sup> The delivery end of the service refers to the

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<sup>574</sup> Extra-EEA market reconstruction.

<sup>575</sup> According to UPS *"all integrators offer world-wide services. Even if there are some differences in coverage, this is less significant, as all integrators are active in all destinations"*, Non-confidential minutes of UPS's meeting with the Commission on 20 August 2015, paragraph 22.

<sup>576</sup> See Table 5 in recital (310).

<sup>577</sup> Non-confidential response of DHL to question 12 of the request for information of 27 August 2015.

<sup>578</sup> Non-confidential response of DHL to the request for information of 27 August 2015, Annex 9, page 15; FedEx's presentation to the European Commission of 15 September 2015, page 18-21.

<sup>579</sup> DHL's response to the request for information of 27 August 2015, Annex 12.

<sup>580</sup> Non-confidential response of DHL to question 12 of the request for information of 27 August 2015.

<sup>581</sup> <https://www.ups.com/content/gr/en/about/facts/worldwide.html> and <https://www.ups.com/content/gr/en/about/facts/europe.html?WT.svl=SubNav>; FedEx's presentation to the European Commission of 15 September 2015, page 21-25.

<sup>582</sup> FedEx's response to question 3 of the request for information QP23 of 23 November 2015.

various world destinations, where all integrators have established regional networks around one or sometimes more central regional hubs. Through those networks, integrators are able to deliver, either directly or through agents or cooperation partners, small packages to the different countries of the major world lanes. In particular, DHL explains that it is present in more than 220 countries and territories around the world, in some of which with agents using the DHL brand, IT-system and global network. Only in some rural areas DHL uses third party contractors for the performance of the services, but not for sales.<sup>583</sup> Similarly, UPS also states that it serves more than 220 countries and territories around the world either directly or through agents.<sup>584</sup>

- (729) Therefore, the Commission concludes that DHL and UPS are active and have an established market presence in the provision of extra-EEA small package delivery services on all 30 EEA countries and to destinations on all six major world lanes.

10.6.2.2.A limited market position on a particular extra-EEA market is not indicative of a weakness to compete

- (730) The fact that an integrator's market share is limited to a specific extra-EEA market does not in itself indicate an inherent weakness of that integrator in offering extra-EEA deliveries from a specific EEA country of origin or to a certain destination lane.

- (731) The Commission's market reconstruction shows that there are significant differences among integrators' relative positions on the different national markets for extra-EEA deliveries to a specific lane. This demonstrates that even if an integrator is weaker than others in one or more EEA countries, all integrators are capable of offering the same or similar delivery services at destination.

- (732) DHL for example has a share of [10-20]% on the Belgian market for extra-EEA deliveries to North America. On a market for deliveries from Belgium to Central and South America however, DHL has a market share of [50-60]%. This shows that DHL has the capability of offering extra-EEA services from Belgium, namely organising the pick-up of small packages from the country, sorting them and transporting them to its regional EEA hub.

- (733) Furthermore, on the market for extra-EEA deliveries from Norway to North America DHL has a share of [50-60]%. This shows that the smaller market share of DHL on the Belgian market is not indicative of DHL's weakness in offering small package deliveries to North America, for example due to limited network at destination. Rather, DHL is very efficient in offering such delivery services to North America from other EEA countries, such as Norway and thus has the capability of transporting small packages from its regional hub in the EEA to North America.

- (734) Similar examples may be found for all EEA countries and all integrators, for example in Ireland, FedEx has a market share of [5-10]% for deliveries to Africa and a market share of [40-50]% for deliveries to North America; in Slovakia TNT has a market share of [0-5]% on a market for deliveries to North America and a market share of [40-50]% on a market for deliveries to the Rest of Europe; in Austria UPS has a market share of [10-20]% on a market for deliveries to Asia/Pacific and a market share of [30-40]% on a market for deliveries to North America. These

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<sup>583</sup> Non-confidential response of DHL to question 13 of the request for information of 27 August 2015, Annex 9, page 9.

<sup>584</sup> Non-confidential response of UPS to question 6 of the request for information of 1 September 2015; <https://www.ups.com/content/gr/en/about/facts/worldwide.html>.

integrators' ability to organise the first stage of an extra-EEA delivery, namely the pick-up from the sender, the sorting and the delivery to their EEA hub to be flown to another continent, is therefore ensured.

- (735) Furthermore, the ability to organise the next stages of an extra-EEA delivery to the six major world lanes is established not only for DHL, but for all integrators. For example FedEx has a share of [0-5]% on the Greek and [20-30]% on the Bulgarian market for deliveries to Central and South America; UPS has a share of [5-10]% on the Cypriot and [40-50]% on the Maltese market for deliveries to Asia/Pacific; FedEx has a share of [0-5]% on the Maltese and [20-30]% on the Hungarian market for deliveries to the Middle East; UPS has a share of [0-5]% on the Icelandic and [70-80]% on the Maltese market for deliveries to Africa; TNT has a share of [5-10]% on the UK and [40-50]% on the Slovakian market for deliveries to the Rest of Europe.<sup>585</sup>
- (736) This shows that DHL and UPS have sufficient capabilities at the destination of those extra-EEA lanes to be able to effectively compete on the relevant extra-EEA market.
- (737) Furthermore, as already mentioned DHL and UPS have established air connections from Europe to North America, Asia/Pacific and the Middle East. Beyond their own network, DHL and UPS also have access to commercial capacity for serving extra-EEA destinations. Finally, concerning the delivery of extra-EEA shipments at the destination lanes, DHL and UPS explain that they serve more than 220 countries and territories. Therefore, DHL and UPS are able to either directly or through agents and subcontractors deliver small packages to all six major world lanes.
- (738) The same reasoning applies to the origination of an extra-EEA service. When comparing the integrators' market shares from a specific country of origin to the various world lanes, it becomes evident that the relatively weaker position of an integrator in one particular EEA country for deliveries to certain lane is not representative of an overall inability of said integrator to provide extra-EEA services from that EEA country. Indicatively, FedEx has a share of [50-60]% on the Hungarian market for deliveries to North America, but only [10-20]% for deliveries to the Rest of Europe. Its lower share for deliveries to the Rest of Europe does not show an inability of FedEx to provide extra-EEA services from Hungary, because it successfully does so for the largest part of the Hungarian market for deliveries to North America. In other words, the integrator in questions has a pick-up network in Hungary which is capable of collecting parcels, in principle, to any extra-EEA destination. DHL in Germany has a share of [10-20]% for deliveries to North America and [50-60]% for deliveries to Africa; TNT in Slovakia has a share of [40-50]% on a market for deliveries to the Rest of Europe and [0-5]% for deliveries to North America. UPS in Finland has a share of [10-20]% on the markets for deliveries to Africa and the Middle East and [40-50]% for deliveries to North America.<sup>586</sup> Furthermore, as already analysed in Section 9.3.2, all integrators are able to offer intra-EEA services on all 30 EEA countries. Since the organisation of the extra-EEA small packages pick-up is done by the integrators intra-EEA network, all four integrators can also provide extra-EEA services from all EEA countries.
- (739) In addition to the market share evidence, the fact that DHL and UPS have a higher average coverage in the EEA than FedEx, and in the case of DHL also than TNT,

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<sup>585</sup> Extra-EEA market reconstruction.

<sup>586</sup> Extra-EEA market reconstruction.

also demonstrates that they would be in the position of offering extra-EEA services to all 30 EEA countries post-Transaction.<sup>587</sup>

#### 10.6.2.3. Integrators can easily increase capacity on their extra-EEA services

- (740) For a provider that has already established such a world network, accommodating new customers is rather easy, as all integrators have sufficient capacity that allows them to accommodate an increase in demand on the market.<sup>588</sup> Integrators regularly reassess the effectiveness of their network with a view to ensuring the best possible use of their assets and resources and make investments, redeployments or other adjustments that would increase their efficiency.<sup>589</sup>
- (741) Furthermore, as already analysed in Section 9.6, integrators are often confronted with significant fluctuations of demand, for example when they acquire a large new customer, or during peak times such as Christmas, etc. In such instances, integrators usually have sufficient spare capacity on their sorting centres and air network to accommodate the increase.<sup>590</sup> Should there be a need to increase their capacity even further, integrators can purchase more airspace from third parties or prioritise the most time-sensitive shipments deferring non-express small packages so as to maximise overall capacity.<sup>591</sup> Ultimately, if a very large account is won integrators could easily redeploy capacity to accommodate it, by dispatching additional vehicles and staff to the routes in question and even deploying additional aircraft.<sup>592</sup>
- (742) In addition to the market share evidence, the fact that DHL and UPS have an average coverage in the EEA of [Confidential]% and [Confidential]% respectively, whereas FedEx has an average coverage of [Confidential] % and TNT of [Confidential] %, also demonstrates that they would be well placed to offer extra-EEA services to all 30 EEA countries post-Transaction.<sup>593</sup>

#### 10.6.2.4. Customers can easily switch supplier

- (743) Furthermore, as already analysed in Sections 6.5 and 9.6, customers are able to switch their supplier quite easily. As the majority of customers also multisource in relation to their extra-EEA shipments and allocate part of their volumes to several integrators (see Section 6.6),<sup>594</sup> they could easily revisit this allocation to decrease the volumes shipped with one provider and accordingly increase the volumes shipped through the others. As customers' contracts do not include exclusivity clauses, such changes are easy to implement without cancelling their ongoing contracts.

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<sup>587</sup> See Table 5 in recital (310).

<sup>588</sup> Non-confidential minutes of the meeting with UPS of 20 August 2015, paragraph 21; non-confidential minutes of the conference call with DHL of 20 August 2015, paragraph 24; FedEx's response to question 4 of the request for information of 16 September 2015; FedEx's response to questions 8 and 9 of the request for information QP20 of 19 October 2015.

<sup>589</sup> FedEx's response to question 5 of the request for information QP16 of 16 September 2015; non-confidential minutes of UPS's meeting with the Commission on 20 August 2015, paragraph 21.

<sup>590</sup> TNT for example always [Confidential information on TNT's capacity] to be able to meet peaks in demand. Similarly, FedEx [Confidential information on FedEx's capacity] to handle the higher demand in peak seasons, FedEx's response to question 8 of the request for information QP20 of 19 October 2015.

<sup>591</sup> Non-confidential minutes of the meeting with UPS of 20 August 2015 of 19 October 2015, paragraph 17.

<sup>592</sup> FedEx's response to question 8 of the request for information QP20 of 19 October 2015.

<sup>593</sup> See Table 5 in recital (310).

<sup>594</sup> Responses to questions 6, 10 and 13 of the questionnaire to SMEs R3 – Phase II; responses to question 27 of the questionnaires to customers R2-10MS and R2-20MS – Phase II; responses to question 31 of the questionnaire to competitors R1 – Phase II.

- (744) FedEx's churn rate on extra-EEA services was [Confidential] % in 2014 in terms of revenues. TNT's churn rate for all its intra-EEA operations was [Confidential] % in 2014. Churn rates, however, only capture FedEx's and TNT's customers who have entirely ceased shipping with those companies. On a market where, as analysed in Section 6.6, the vast majority of customers multisource and supply from many different providers on each market, the volumes they ship with each provider may also significantly change over time. Those fluctuations in the volumes shipped with a provider over a longer period of time may be very significant, thus resulting in a de facto switching of supplier. [Name of Parties' customers] , for example, increased the [Confidential] to [Confidential] volumes it ships with FedEx by [Confidential] % in 2014, whereas [Name of Parties' customers] reduced the volumes it ships from [Confidential] to [Confidential] with FedEx by [Confidential] %. Similarly, [Name of Parties' customers] increased its [Confidential] to [Confidential] volumes by [Confidential] %, whereas [Name of Parties' customers] reduced its [Confidential] to [Confidential] volumes by [Confidential] %.<sup>595</sup>
- (745) This was also reflected in the results of the market investigation. Asked whether there would be sufficient alternatives to the Merged Entity post-Transaction for the provision of extra-EEA small package delivery services, the majority of customers providing a response indicated that this would indeed be the case.<sup>596</sup> Customers explain that "*They remain bound by UPS/DHL and other competition*",<sup>597</sup> that "*there is [sic] still other players in the market, if service is not according to expectation customers have the choice to change*"<sup>598</sup> and that "*in general we are positive against [sic] the takeover of TNT by FedEx. We believe without a take-over or merger, TNT will not survive the upcoming year which puts us at great risk for business continuity. The acquisition by FedEx will leave a fair level playground [sic] for the three major/global integrators DHL, UPS and FedEx and will have limited effect on price*".<sup>599</sup>

### 10.6.3. Conclusion

- (746) In the light of the available evidence and the considerations set out in this Section, the Commission concludes that DHL and UPS would exert competitive pressure post-Transaction on all extra-EEA markets. On the one hand DHL and UPS would adjust their service offer to better meet demand at all EEA countries of origin and to all world lanes of destination and on the other hand, customers of the Merged Entity would be able to easily switch their volumes to DHL and UPS post-Transaction.

## 10.7. A clear majority of customers have not expressed any concerns

- (747) Customers and participants participating in the Commission's market investigation in both Phase I and Phase II of the procedure were asked to assess the possible impact of the Transaction on competition on extra-EEA markets.

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<sup>595</sup> FedEx's response to question 17 of the request for information QP20 of 19 October 2015.

<sup>596</sup> Responses to questions 29.2 and 29.3 of the questionnaire to customers Q3– Phase I; responses to questions 20.2 and 20.3 of the questionnaire to customers Q4– Phase I; Responses to questions 12.2 and 12.3 of the questionnaire to freight forwarders Q5– Phase I.

<sup>597</sup> Non-confidential response of [Name of Parties' customers] to question 35.1 of the questionnaire R2-10MS – Phase II.

<sup>598</sup> Non-confidential response of [Name of Parties' customers] to question 39.1 of the questionnaire R2-10MS– Phase II.

<sup>599</sup> Non-confidential response of [Name of Parties' customers] to question 40 of the questionnaire R2-10MS– Phase II.

- (748) The vast majority of respondents were of the view that the Transaction would bring together the complementary strengths of the Parties, in particular improving their service offer. Customers consider that *"TNT has very good coverage in EU, whereas not very good worldwide. With FedEx, it is sort of the other way round. Also, TNT is not able to provide several special services (dangerous goods shipments, payments by 3<sup>rd</sup> party, neutralisation of documents) so this is something they can learn from FedEx with benefit to our company"*.<sup>600</sup> Another customer stated *"There will be a big benefit for TNT with deliveries to the locations where FedEx is dominating now. It can bring a big competition between TNT and DHL on some routes, especially between Europe and USA"*.<sup>601</sup>
- (749) As to the overall impact of the Transaction on the provision of extra-EEA services, the relative majority of customers and competitors expressing an opinion consider that the Transaction would have a positive impact, closely followed by those who think its impact would be neutral on extra-EEA markets.<sup>602</sup>
- (750) Asked about the likely impact of the Transaction regarding extra-EEA services to North America, the relative majority of the customers expressing an opinion consider the impact of the Transaction positive, followed by those assessing it as neutral. Customers explain that *"time and prices for deliveries from European countries will be reduced"*,<sup>603</sup> that *"in special [sic] to US, there will be more choice of products"*<sup>604</sup> or even that they are *"looking forward to the acquisition!"*<sup>605</sup>
- (751) Respondents made the same comments also in relation to delivery services to the Rest of Europe.
- (752) Concerning delivery services to Central and South America, the relative majority of the respondents expressing an opinion consider that the Transaction would have a neutral impact, followed by those expecting it to be positive.
- (753) Similarly for delivery services to Asia/Pacific, to Africa and to the Middle East, a large majority of customers expressing an opinion consider that the Transaction

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<sup>600</sup> Non-confidential response of [Name of Parties' customers] to question 35.1 of the questionnaire R2-10MS– Phase II.

<sup>601</sup> Non-confidential response of [Name of Parties' customers] to question 35.1 of the questionnaire R2-10MS– Phase II.

<sup>602</sup> See responses to questions 63 and 64 of the questionnaire to competitors Q1 – Phase I; responses to questions 22 and 23 of the questionnaire to competitors Q2 – Phase I; responses to questions 41 and 43 of the questionnaire to customers Q3 – Phase I; responses to questions 22 and 24 of the questionnaire to customers Q4 – Phase I; responses to questions 26 and 27 of the questionnaire to freight forwarders Q5 – Phase I; responses to question 35 of the questionnaire to customers R2-10MS – Phase II; responses to question 35 of the questionnaire to customers R2-10MS – Phase II; responses to question 26 of the questionnaire to SMEs R3 – Phase II.

<sup>603</sup> *"fuer Europäische Länder wird es bessere Preise bei Sendungen nach Nordamerika heissen"; "die TNT-Kunden werden aber kuerzere Lieferzeiten haben aufgrund FedEx-Netz in USA"*, non-confidential response of [Name of Parties' customers] in to questions 35.1 and 37.1 of the questionnaire to customers R2-10MS – Phase II.

<sup>604</sup> Non-confidential response of [Name of Parties' customers] to question 38.1 of the questionnaire to customers R2-10MS – Phase II.

<sup>605</sup> Non-confidential response of [Name of Parties' customers] to question 40 of the questionnaire to customers R2-10MS – Phase II.

would have a positive or neutral effect.<sup>606</sup> Customers submit that the Transaction would lead to *"better services in Asia"*.<sup>607</sup>

- (754) During the Phase II investigation, the Commission asked customers to also comment on the likely impact of the Transaction on the prices of extra-EEA delivery services. The relative majority of respondents considered that it would be positive, followed by those believing it would be neutral. Customers consider that the Transaction *"could only be good on the price and the region cause FedEx till now was not very competitive for extra EEA express services"*,<sup>608</sup> and that there would be cost reductions because of synergy effects.<sup>609</sup>
- (755) When asked about the possible impact of the Transaction on the offer of extra-EEA delivery services, most respondents said it would be positive, followed by those considering it neutral. Customers state that the Transaction would result in an *"extension of service"*,<sup>610</sup> that *"TNT will get the benefit of the better out of Europe FedEx network"*,<sup>611</sup> and that *"FedEx will now go in direct competition with UPS regarding the B2B market which they could not in the past"*.<sup>612</sup>
- (756) Last, in relation to the likely impact of the Transaction on service levels, the majority of respondents expects that the impact of the Transaction would be neutral, followed by those believing it would be positive.<sup>613</sup> Customers consider that the Transaction would result in *"one pick-up, one contract, simpler process"*,<sup>614</sup> that *"FedEx would become more flexible by adding a road network and become a true competitor in Europe"*,<sup>615</sup> that *"the fact that TNT becomes part of one of the biggest specialists in small package deliveries can only have a positive effect on the service level"*<sup>616</sup> and that there is an *"attraction in dealing with one party instead of two in terms of service offering"*<sup>617</sup> and that the Merged Entity *"will be able to offer better solutions, better coverage, better background, better prices due to the Transaction"*.<sup>618</sup>

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<sup>606</sup> Responses to questions 42.1, 42.2, 42.3, 44.1, 44.2 and 44.3 of the questionnaire to customers Q3 – Phase I; responses to questions 2 3.1, 23.2, 23.3, 25.1, 25.2 and 25.3 of the questionnaire to customers Q4 – Phase I; responses to questions 36.3, 36.4 and 36.5 of the questionnaire to customers R2– Phase II.

<sup>607</sup> Non-confidential response of [Name of Parties' customers] in question 38.1 of the questionnaire to customers R2-10MS – Phase II.

<sup>608</sup> Non-confidential response of [Name of Parties' customers] in questionnaire R2-10MS, question 35.1 of the questionnaire to customers R2-10MS – Phase II.

<sup>609</sup> *"Ich glaube es könnte Kostensenkungen durch Synergieeffekte geben"*, non-confidential response of [Name of Parties' customers] to question 3.1 of the questionnaire to customers R2-10MS – Phase II.

<sup>610</sup> Non-confidential response of [Name of Parties' customers] in question 35.1 of the questionnaire to customers R2-10MS – Phase II.

<sup>611</sup> Non-confidential response of [Name of Parties' customers] in question 35.1 of the questionnaire to customers R2-10MS – Phase II.

<sup>612</sup> Non-confidential response of [Name of Parties' customers] in question 38.1 of the questionnaire to customers R2-10MS – Phase II.

<sup>613</sup> Responses to question 39 of the questionnaire to customers R2 – Phase II.

<sup>614</sup> Non-confidential response of [Name of Parties' customers] to question 35.1 of the questionnaire to customers R2-10MS – Phase II.

<sup>615</sup> Non-confidential response of [Name of Parties' customers] to questions 34.1, 35.1 and 38.1 of questionnaire R2-10MS – Phase II.

<sup>616</sup> Non-confidential response of [Name of Parties' customers] to question 40 of questionnaire R2-10MS – Phase II.

<sup>617</sup> Non-confidential response of [Name of Parties' customers] to question 38.1 of questionnaire R2-10MS – Phase II.

<sup>618</sup> Non-confidential response of [Name of Parties' customers]. To question 40 of questionnaire R2-10MS – Phase II.

(757) Therefore, the Commission concludes on the basis of the market investigation that the majority of the customers and competitors of the Parties do not consider that the Transaction would have a negative impact on the markets for extra-EEA deliveries.

#### **10.8. The claims made by UPS's market concentration and price analysis study are unreliable**

(758) In its submission of 5 October 2015 mentioned in Section 10.5,<sup>619</sup> UPS aims to establish whether there is a correlation between market concentration and price levels on extra-EEA markets in order to assess the potential impact of the Transaction on prices of extra-EEA shipments.

(759) The report presents the following key findings:

- (a) Preliminary estimations of market shares show that a combination of FedEx and TNT would result in substantial increases in market concentration, as measured by the Herfindahl-Hirschman Index (HHI);
- (b) Analysis of competitors' pricing shows that TNT is the low-price competitor in many lanes and its exit will leave only significantly higher priced options in many lanes;
- (c) Various regression analyses show a statistically relevant correlation between market concentration and price levels;
- (d) The results suggest that extra-EEA express parcel rates at the 10kg to 30kg weight break would on average rise by [5-10]% if market concentrations were to increase as modelled, following the Transaction.

(760) The Commission has carefully assessed the submission and considers that there are a large number of shortcomings in the analysis which make the claims made unreliable.

(761) First, the analysis that the report is based on country-to-city express markets. The report, for instance, considers that small parcel express delivery services from the UK to New York form a separate relevant market. The Commission has concluded on the basis of its market investigation, however, that the relevant market for extra-EEA small parcel deliveries is either country or continent-to-continent or the world (see Section 7.1.4.3). Furthermore, the Commission concluded that the market for extra-EEA deliveries should not be further sub-segmented between a market for express and a market for deferred delivery services (see Section 7.1.4.2). Therefore, the Commission considers that the analysis in the LCS report is made on the basis of an irrelevant market definition.

(762) Second, the explanatory variable "market concentration" is measured in the report by the HHI level, i.e. a variable based on markets shares. In the price concentration analysis for intra-EEA express deliveries conducted in *UPS/TNT*, the degree of competition on a given lane was measured by the number of competitors in order to focus on the capability of rival integrators to compete on the given lane rather than focusing on historic market shares. This approach was suggested by UPS in *UPS/TNT*. As explained in Section 10.6.2.2, the Commission considers, however, that market shares on a particular lane are not indicative of an integrators' ability to compete on that lane.

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<sup>619</sup> Logistics, Capital & Strategy "Extra-EEA Market Concentration and Price Analysis" of 15 October 2015.

- (763) Third, the HHI levels are based on market shares which rely on integrators' revenues as reported in investor relation presentations and annual reports. The market shares used in the study differ significantly from the actual market shares calculated by the Commission based on revenue data provided directly by the integrators and used in the Commission's market reconstruction exercise discussed in Section 8.
- (764) Fourth, the prices used in the report are list prices collected from the websites of the integrators. As discussed in Sections 9.6 and 10.6.2.4, very few customers pay list prices and most customers individually negotiate discounts. The Commission considers that net prices are the variable of interest when assessing the potential impact of the Transaction. The price concentration analysis conducted in *UPS/TNT* for intra-EEA express services was also based on actual transaction prices after discounts.
- (765) In order to pre-empt this type of critique, LCS argues in the report that discounts are generally applied uniformly across the rate card without providing evidence for this argument.
- (766) FedEx provided observations on a non-confidential version of the LCS report.<sup>620</sup> FedEx argues that it does not generally apply discounts uniformly across their full book list prices.<sup>621</sup> It explains that customers receive discounts which are based on various considerations, in particular expected volumes generated by the customer, market circumstances (such as changes in demand), and TNT's and FedEx's internal cost structure, capacity and pricing policy. These considerations are likely to differ across lanes. For example, a customer may indicate that it expects large volumes on the US or China lane and asks for a particularly attractive rate on this lane when negotiating its overall shipping requirements with the Parties. The personalised rate card offered may then show a substantial discount on the US or China lane compared to the full book rate, while not showing substantial discounts on other lanes on which the customer also ships with FedEx or TNT. The setting of customer rate cards is much more tailored and complicated than simply offering a uniform discount percentage off the full book rates.
- (767) The Commission considers it likely that an integrator will offer higher discounts to customers for extra-EEA services on certain lanes than on other lanes depending on capacity or profitability on specific lanes. Therefore, the Commission concludes that an analysis based on list prices is of limited relevance.
- (768) Fifth, prices are defined per kilogram per kilometre. This, together with the country-to-city level market definition leads to some inconsistent price-HHI patterns. For example, market share data at the destination country level implies the same HHI figures for the UK – New York and UK – Los Angeles lanes. While list prices (per kilogram) are the same for those two lanes, the "per kilogram per kilometre" prices used in the LCS study differ for those two lanes simply because the distance UK – Los Angeles is greater than the distance UK – New York. That results in different (per kilogram per kilometre) prices for the same HHI-levels. This is also a concern for all other (large) countries where cities located far away from each other were included in the sample.
- (769) Sixth, the conclusions in the report as regards the impact of the Transaction on extra-EEA delivery prices are based on simply looking at the correlation between prices

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<sup>620</sup> FedEx's response to question 5 of the request for information QP20 of 19 October 2015.

<sup>621</sup> FedEx's response to question 4 of the request for information QP20 of 19 October 2015.

and HHI levels, without taking into consideration other variables that may explain the difference in prices across lanes with different HHI levels or that may simultaneously drive changes in both prices and HHI levels. For example, when regressing the price (per kilogram per kilometre) for a given lane on the HHI of that lane, UPS's LCS study does not include any control for distance (or cost) whereas the variability in prices is likely largely explained by variations in the distance (or cost).

(770) In the light of the considerations set out in this Section, the Commission concludes that UPS's LCS study suffers from various weaknesses. The estimated price increases of [5-10]% are therefore unreliable estimations and cannot be relied upon as an input into the Commission's overall assessment of the extra-EEA small parcel delivery market. The Commission did not conduct a quantitative analysis for extra-EEA markets, in particular because of data availability limitations.<sup>622,623</sup>

## **10.9. The Transaction would give rise to efficiencies**

### *10.9.1. Principles and introduction*

(771) FedEx submits that significant efficiencies would arise from the Transaction on the markets for extra-EEA delivery services. As set out in Section 9.9., in order to take efficiencies into consideration, efficiencies have to benefit consumers to a sufficient degree, be merger-specific and be verifiable.

### *10.9.2. The efficiency claims made by FedEx*

(772) First, FedEx submits that the PUD costs that the Merged Entity would incur would be significantly reduced. FedEx claims that the same logic can be applied to calculate PUD cost savings for extra-EEA deliveries as for international intra-EEA express deliveries. Pick-up cost savings in the EEA countries can be calculated as the difference between the Parties' pick-up costs in each EEA country, similar to the exercise undertaken for international intra-EEA express deliveries. The estimated pick-up cost savings for the EEA as a whole amount to [Confidential] EUR by year 4 following the Transaction.<sup>624</sup> As regards delivery costs, FedEx argues that extra-EEA cost savings would come about by transferring the delivery of the volumes of the Party with higher delivery costs in a given extra-EEA country to the network of the other Party.<sup>625</sup> FedEx provided the Parties' delivery costs and the delivery cost savings per pack in a sample of thirteen extra-EEA countries to quantify approximately [Confidential] million EUR extra-EEA delivery cost savings by year 4 following the Transaction. FedEx considers this is a conservative estimate, given that only a very small subset of extra-EEA countries is considered. The PUD cost savings will be assessed in detail in Section 10.9.3.

(773) Second, FedEx submits that efficiencies are expected to arise on intercontinental air network costs. While FedEx currently operates [Confidential] daily planes to the USA, TNT only operates [Confidential]. By [Confidential information on the parties'

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<sup>622</sup> FedEx's response to question 3 of the request for information QP9, which explains that there is no "readily accessible comprehensive database on ZIP-code coverage for non-EEA countries".

<sup>623</sup> Pursuant to the established case law, there is no hierarchy between the types of evidence used by the Commission in merger cases as the Commission has the duty to make an overall assessment of the case, and that the Commission has a certain discretion, especially with respect to assessments of an economic nature. In Ryanair/Aer Lingus, the Court accepted that quantitative analysis could be useful but specified that it is by no means mandatory. See also, *Deutsche Boerse/NYSE Euronext*, recital 246.

<sup>624</sup> FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015, Section 4.1.3.

<sup>625</sup> FedEx's response to question 12 of the request for information QP18 of 6 October 2015.

intercontinental air network] . On the basis of FedEx's estimates of costs per aircraft and overall aircraft requirements pre and post-Transaction, overall savings of [Confidential] million EUR are expected in Year 5. Those cost savings will be assessed in Section 10.9.3.

- (774) [Confidential]. However, FedEx has not provided further detail or quantification of these savings. Therefore, these savings will not be assessed further.
- (775) FedEx argues that synergies are also likely to be achieved on other routes, but those synergies have not been quantified. Post-Transaction, FedEx envisages a re-optimisation of the Merged Entity's air network which is expected to generate efficiencies. [Confidential information on future Fedex routes] However, FedEx explains that it is still in the process of considering various potential scenarios regarding reoptimisation of existing flights post-Transaction and has not provided further details on those savings. Those cost savings are therefore not assessed further.

### 10.9.3. Assessment of efficiencies

- (776) This Section assesses the extent to which the claimed efficiencies can be deemed verifiable, merger-specific and to the benefit of consumers. It also quantifies the level of cost savings to which the claimed efficiency gains give rise.

#### 10.9.3.1. Verifiability

##### *PUD cost savings*

- (777) For extra-EEA deliveries, pick-up cost savings and delivery cost savings have been calculated separately.
- (778) The Commission requested the underlying data and verified the methodology used for estimating the claimed cost savings for each EEA country.
- (779) Unit savings in pick-up costs are calculated having regard to the difference in the Parties' actual 2014 pick-up costs per package in each of the relevant EEA origin countries, similar to the exercise undertaken for international intra-EEA express deliveries.
- (780) The Commission noticed that for certain countries the pick-up costs reported for TNT were slightly different than those provided for international intra-EEA express services and asked for explanations. FedEx's economic consultants explained that as an intra-EEA package is picked-up in the same way and with the same assets as an extra-EEA package, the pick-up costs for both types of packages do not differ due to its intra-EEA or extra-EEA destination. The cost allocation is done on a consignment basis and the approach is the same regardless of the destination of the shipment (that is to say whether intra-EEA or extra-EEA).<sup>626</sup> However, the figures provided by TNT are averages of the actual costs incurred and, since the averages were calculated separately for intra-EEA and extra-EEA shipments, the small differences observed are artificially driven by the mix of packs in each consignment considered. In particular, to calculate the total pick-up costs for all shipments in a given country, parameters are used such as weight, the number of parcels per shipment, and the number of shipments per stop, etc. To the extent that those parameters differ for intra-EEA and extra-EEA consignments, this leads to differences in the average pick-up costs calculated across intra-EEA shipments and extra-EEA shipments. The different overall characteristics of intra-EEA shipments versus extra-EEA shipments

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<sup>626</sup> FedEx's response to question 38 of request for information QP12 of 19 August 2015.

account for the rather small difference between the costs reported for intra-EEA and extra-EEA shipments.

- (781) By multiplying the estimated pick-up cost saving per package by the number of extra-EEA packages shipped by FedEx in 2014 from each country, a yearly pick-up efficiency saving can be estimated for each origin country.<sup>627</sup> These estimated pick-up cost savings by EEA country are displayed in Table 32.

**Table 32 – Estimated Total PU Cost savings (EUR)**

Country	FedEx PU cost per Pack	TNT PU cost per Pack	Estimated PU Saving per Pack	Number of Packs (Total Express and Deferred)	Estimated Total PU Saving
AT	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
BE	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
BG	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
CY	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
CZ	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
DE	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
DK	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
EE	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
ES	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
FI	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
FR	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
GB	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
GR	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
HR	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
HU	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
IE	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
IS	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
IT	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
LT	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
LU	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
LV	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
MT	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
NL	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]

<sup>627</sup> FedEx explained that certain costs may be incurred in order to enable the Merged Entity to achieve these PUD efficiencies. FedEx considered two scenarios in which compliance expenses are assumed to account for [Confidential]% and [Confidential]% of PUD savings. The Commission considers that these are one-off fixed expenses related to the migration to TNT's network which should not be taken into consideration as they do not impact the variable cost of international intra-EEA express services for the Merged Entity.

Country	FedEx PU cost per Pack	TNT PU cost per Pack	Estimated PU Saving per Pack	Number of Packs (Total Express and Deferred)	Estimated Total PU Saving
NO	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
PL	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
PT	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
RO	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
SE	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
SI	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
SK	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
Total EEA					[Confidential]

(782) In line with estimated pick-up cost savings, delivery cost savings are expected to be achieved post-Transaction by migrating packages from FedEx's network to TNT's network, or vice-versa, depending on the delivery costs currently incurred by each of the Parties in each delivery country outside the EEA. To illustrate the savings that are expected to be achieved post Transaction, Table 33 presents the Parties' delivery costs and the delivery cost savings per pack in a sample of thirteen extra-EEA countries.<sup>628</sup>

**Table 33: Parties' delivery costs and delivery cost saving per pack, 2014<sup>629</sup>**

Destination Country	FedEx Delivery Cost Per Pack (EUR)	TNT Delivery Cost Per Pack (EUR)	Delivery Cost Saving Per Pack (EUR)
AE	[Confidential]	[Confidential]	[Confidential]
AU	[Confidential]	[Confidential]	[Confidential]
BR	[Confidential]	[Confidential]	[Confidential]
CA	[Confidential]	[Confidential]	[Confidential]
CH	[Confidential]	[Confidential]	[Confidential]
CN	[Confidential]	[Confidential]	[Confidential]
IN	[Confidential]	[Confidential]	[Confidential]
JP	[Confidential]	[Confidential]	[Confidential]
KR	[Confidential]	[Confidential]	[Confidential]
RU	[Confidential]	[Confidential]	[Confidential]
SG	[Confidential]	[Confidential]	[Confidential]
TR	[Confidential]	[Confidential]	[Confidential]
US	[Confidential]	[Confidential]	[Confidential]

<sup>628</sup> FedEx explained that these figures rely on a sample of 13 extra-EEA countries previously identified by the Commission and are therefore not meant to fully reflect savings on delivery costs expected to be achieved post-Transaction.

<sup>629</sup> FedEx's response to question 12 of the request for information QP18 of 6 October 2015.

- (783) Specifically, post-Transaction, extra-EEA delivery cost savings would come about by transferring the delivery of the volumes of the Party with higher delivery costs in a given extra-EEA country to the network of the other Party. For example, in the U.S., FedEx's delivery cost is [Confidential] EUR lower than TNT's delivery cost; as such, post-Transaction, TNT volumes are expected to be transferred into FedEx's delivery network to take advantage of the lower costs achieved by FedEx in the country. Similarly, in Switzerland TNT's delivery cost is [Confidential] EUR lower than FedEx's delivery cost; as a result FedEx volumes are expected to be transferred into TNT's delivery network.
- (784) In line with the estimates provided for pick-up costs, an estimate of annual delivery cost savings can be obtained by multiplying the estimated delivery cost savings per pack within each extra-EEA delivery country by the 2014 volumes of the Party with higher delivery cost in the specific country. This is presented in Table 34 for the same sample of 13 countries.

**Table 34: Estimated annual delivery cost savings on extra-EEA shipments, 2014 volumes**<sup>630</sup>

Destination Country	Delivery Cost Saving Per Pack (EUR)	Number of Extra-EEA Packs	Estimated Delivery cost saving
AE	[Confidential]	[Confidential]	[Confidential]
AU	[Confidential]	[Confidential]	[Confidential]
BR	[Confidential]	[Confidential]	[Confidential]
CA	[Confidential]	[Confidential]	[Confidential]
CH	[Confidential]	[Confidential]	[Confidential]
CN	[Confidential]	[Confidential]	[Confidential]
IN	[Confidential]	[Confidential]	[Confidential]
JP	[Confidential]	[Confidential]	[Confidential]
KR	[Confidential]	[Confidential]	[Confidential]
RU	[Confidential]	[Confidential]	[Confidential]
SG	[Confidential]	[Confidential]	[Confidential]
TR	[Confidential]	[Confidential]	[Confidential]
US	[Confidential]	[Confidential]	[Confidential]

- (785) It should be noted that the third column of Table 34 shows the 2014 volume of the Party with higher delivery cost per pack in the specific delivery country and therefore represents the volume to be transferred into the opposite Party's less costly delivery network. In the US, for example, TNT's [Confidential] packs are expected to be transferred to FedEx's existing network.
- (786) Table 34 shows that, in those 13 extra-EEA countries and on the basis of the Parties' 2014 extra-EEA shipments, delivery cost savings amount to approximately EUR [Confidential] million. This can be considered a conservative estimate, given that only a very small subset of extra-EEA countries is considered.
- (787) Given that the delivery cost savings do not rely on significant origin country-specific factors (such as in the case of pick-up costs), the Commission accepts a pan-EEA

<sup>630</sup> FedEx's response to question 12 of the request for information QP18 of 6 October 2015.

aggregate figure. If the market for extra-EEA delivery services is considered EEA-wide then there is no need to allocate further. In the event that the market for extra-EEA delivery services is considered to be national in scope, the Commission allocates those cost savings to origin countries by calculating a weighted average delivery cost saving per pack across the thirteen destination countries using the volume of the Party with higher delivery cost shipped from the relevant EEA origin to each delivery country as weights.

- (788) To further explain the allocation of delivery costs to EEA origin countries, consider the following illustrative example. Both Parties deliver shipments from Country A inside the EEA to Country X and Country Y, both outside the EEA. FedEx has a lower delivery cost than TNT in Country X, while TNT has a lower delivery cost than FedEx in Country Y. Post-Transaction, FedEx's volumes would be transferred to TNT's delivery network in Country Y and TNT's volumes would be transferred to FedEx's delivery network in Country X.
- (789) As explained in Section 9.9, the Commission questioned whether the low cost network would be able to accommodate the volumes of the high cost network without increasing PUD costs per package. FedEx explained that the addition of volume to a network may actually reduce PUD costs per unit as a result of gains in scale and density. The Commission agrees that a larger density of the network lowers the unit costs for the service provider (as discussed in Section 6.4).
- (790) FedEx provided the Commission with the relevant data by country to calculate the allocation of efficiencies to individual countries as presented in Table 35.

**Table 35: Estimated international intra-EEA express air network cost saving by EEA country (in EUR)**

<b>Origin Country</b>	<b>Average Delivery Cost Saving per Pack (EUR)</b>	<b>Number of Extra-EEA packs</b>	<b>Estimated Delivery Saving on Extra-EEA Packs (EUR)</b>
AT	[Confidential]	[Confidential]	[Confidential]
BE	[Confidential]	[Confidential]	[Confidential]
BG	[Confidential]	[Confidential]	[Confidential]
CY	[Confidential]	[Confidential]	[Confidential]
CZ	[Confidential]	[Confidential]	[Confidential]
DE	[Confidential]	[Confidential]	[Confidential]
DK	[Confidential]	[Confidential]	[Confidential]
EE	[Confidential]	[Confidential]	[Confidential]
ES	[Confidential]	[Confidential]	[Confidential]
FI	[Confidential]	[Confidential]	[Confidential]
FR	[Confidential]	[Confidential]	[Confidential]
GB	[Confidential]	[Confidential]	[Confidential]
GR	[Confidential]	[Confidential]	[Confidential]
HR	[Confidential]	[Confidential]	[Confidential]
HU	[Confidential]	[Confidential]	[Confidential]
IE	[Confidential]	[Confidential]	[Confidential]
IS	[Confidential]	[Confidential]	[Confidential]
IT	[Confidential]	[Confidential]	[Confidential]
LI	[Confidential]	[Confidential]	[Confidential]
LT	[Confidential]	[Confidential]	[Confidential]

Origin Country	Average Delivery Cost Saving per Pack (EUR)	Number of Extra-EEA packs	Estimated Delivery Saving on Extra-EEA Packs (EUR)
LU	[Confidential]	[Confidential]	[Confidential]
LV	[Confidential]	[Confidential]	[Confidential]
MT	[Confidential]	[Confidential]	[Confidential]
NL	[Confidential]	[Confidential]	[Confidential]
NO	[Confidential]	[Confidential]	[Confidential]
PL	[Confidential]	[Confidential]	[Confidential]
PT	[Confidential]	[Confidential]	[Confidential]
RO	[Confidential]	[Confidential]	[Confidential]
SE	[Confidential]	[Confidential]	[Confidential]
SI	[Confidential]	[Confidential]	[Confidential]
SK	[Confidential]	[Confidential]	[Confidential]
			[Confidential]

(791) Hence, in the light of the elements described in this Section, the Commission recognises the efficiency gains with regard to PUD costs, as set out in Tables 32 and 35, as verifiable.

*Air network cost savings*

(792) FedEx estimated the air network cost savings based on FedEx's estimates of costs per aircraft and overall aircraft requirements pre and post-Transaction.<sup>631</sup>

(793) The Commission requested the full underlying calculations and the evidence supporting each of the assumptions used in the calculation.<sup>632</sup>

(794) FedEx argued that FedEx's flights between Europe and the US would be able to accommodate TNT's volume post-Transaction.<sup>633</sup> The Commission requested further detail in order to verify this statement. FedEx currently operates [Confidential] daily flights to the US. Accordingly, FedEx's overall flight capacity on a daily basis is approximately [Confidential] lbs<sup>634</sup>. By contrast, TNT only operates [Confidential] daily flight. Further, during the period January – August 2015, TNT utilised, on average, [Confidential] lbs in its LGG-JFK flights and [Confidential] lbs in its JFK-LGG flights. Therefore, TNT's shipments account for a small proportion of FedEx's overall flight capacity in Europe-US routes: [Confidential]% of FedEx's capacity based on TNT's utilisation on EU-US flights and [Confidential]% of FedEx's capacity based on TNT's utilisation on US-EU routes. Accordingly, FedEx is of the view that the packages transported to the US by TNT can be easily accommodated within the flights that FedEx currently operates, in particular since the core load factor of FedEx on EU-US flights is approximately [Confidential]%.

(795) The Commission questioned whether FedEx would incur an opportunity cost as FedEx would no longer be able to sell the space required for TNT's packages to third parties. FedEx explained that the core load factor of [Confidential]% corresponds to

<sup>631</sup> FedEx's response to question 39 of the request for information QP12 of 19 August 2015.

<sup>632</sup> FedEx's response to question 9 of the request for information QP12 of 19 August 2015.

<sup>633</sup> FedEx's response to question 10 of the request for information QP14 of 3 September 2015.

<sup>634</sup> Based on a B777 optimally loaded at 122,700 lbs.

FedEx's own express shipments and that those are the shipments which take priority on FedEx's network since deferred shipments can be easily transported on commercial belly space. FedEx's overall capacity utilisation on EU-US flights is around [Confidential]% including all shipments transported on FedEx's network. With TNT's shipments only accounting for a small proportion of FedEx's overall flight capacity in EU-US routes (only [Confidential]% of FedEx's capacity based on TNT's utilisation on EU-US flights and [Confidential]% of FedEx's capacity based on TNT's utilisation on US-EU routes), the level of spare capacity is therefore sufficient to accommodate both TNT's additional volumes and current third party volumes occasionally shipped on FedEx's network.<sup>635</sup> Based on those explanations, the Commission concludes that FedEx has capacity to accommodate TNT's packages without incurring an opportunity cost.

(796) Air network savings are of a EEA-wide nature and do not rely on country-specific factors. Accordingly, air network savings on extra-EEA services are estimated on an aggregated basis. The Commission allocates those savings to individual countries by applying the proportion of total weight shipped which is accounted for by each origin country in the EEA. This is consistent with FedEx's internal approach to cost allocation. FedEx provided data on the total weight shipped by EEA country to North-America that could be used for this allocation of efficiencies to individual countries as presented in Table 36.

**Table 36: Estimated Intra-EEA express air network cost saving by EEA country (in EUR)**

Country	Extra-EEA to North America (Lbs '000)	% of EEA total to North America	Cost saving (EUR)
Austria	[Confidential]	[Confidential]	[Confidential]
Belgium	[Confidential]	[Confidential]	[Confidential]
Bulgaria	[Confidential]	[Confidential]	[Confidential]
Cyprus	[Confidential]	[Confidential]	[Confidential]
Croatia	[Confidential]	[Confidential]	[Confidential]
Czech Republic	[Confidential]	[Confidential]	[Confidential]
Denmark	[Confidential]	[Confidential]	[Confidential]
Estonia	[Confidential]	[Confidential]	[Confidential]
Finland	[Confidential]	[Confidential]	[Confidential]
France	[Confidential]	[Confidential]	[Confidential]
Germany	[Confidential]	[Confidential]	[Confidential]
Greece	[Confidential]	[Confidential]	[Confidential]
Hungary	[Confidential]	[Confidential]	[Confidential]
Iceland	[Confidential]	[Confidential]	[Confidential]
Ireland	[Confidential]	[Confidential]	[Confidential]
Italy	[Confidential]	[Confidential]	[Confidential]
Latvia	[Confidential]	[Confidential]	[Confidential]
Lithuania	[Confidential]	[Confidential]	[Confidential]
Luxembourg	[Confidential]	[Confidential]	[Confidential]
Malta	[Confidential]	[Confidential]	[Confidential]

<sup>635</sup> FedEx's response to question 18 of the request for information QP15 of 16 September 2015.

Country	Extra-EEA to North America (Lbs '000)	% of EEA total to North America	Cost saving (EUR)
Netherlands	[Confidential]	[Confidential]	[Confidential]
Norway	[Confidential]	[Confidential]	[Confidential]
Poland	[Confidential]	[Confidential]	[Confidential]
Portugal	[Confidential]	[Confidential]	[Confidential]
Romania	[Confidential]	[Confidential]	[Confidential]
Slovakia	[Confidential]	[Confidential]	[Confidential]
Slovenia	[Confidential]	[Confidential]	[Confidential]
Spain	[Confidential]	[Confidential]	[Confidential]
Sweden	[Confidential]	[Confidential]	[Confidential]
UK	[Confidential]	[Confidential]	[Confidential]
<b>Total EEA</b>	[Confidential]	[Confidential]	[Confidential]

(797) Based on all the elements described in this Section, the Commission recognises the efficiency gains with regard to air network cost savings, as set out in Table 36, as verifiable.

#### 10.9.3.2. Merger specificity

(798) Based on the elements described in Section 9.9.3. for international intra-EEA express deliveries, the Commission considers that the PUD cost savings and air network cost savings on extra-EEA delivery markets are merger-specific as they cannot be achieved to a similar extent by less anti-competitive alternatives.

#### 10.9.3.3. Consumer benefits

##### *Pass-through to consumers*

(799) The reasons that PUD costs are to a large extent variable costs is similar to the discussion provided in Section 9.9.3. As regards air network savings, the air network cost savings estimated by FedEx on extra-EEA services are driven by the migration of TNT's volumes in the EU-US routes into FedEx's existing air network. [Confidential] and the combination of the Parties' volumes would improve asset utilisation leading to key variable costs savings associated with lower fuel consumption as well as a reduction in airport charges (such as landing/parking fees) and maintenance charges.

(800) Similar to the reasoning provided in Section 9.9.3. on international intra-EEA express delivery markets, in the absence of further information on the applicable pass-through rate, the Commission applies a pass-through rate of 50%.

##### *Time horizon*

(801) Similar to international intra-EEA express delivery markets, FedEx estimates that the entirety of PUD cost savings would come about within four years of the Transaction. FedEx provided the Commission with a PUD efficiencies implementation time-frame showing that [Confidential]% is expected to be implemented by year 1 following the

Transaction, [Confidential]% by year 2 following the Transaction and [Confidential]% by year 3 following the Transaction.<sup>636</sup>

- (802) As regards the air network cost savings, FedEx expects that the entirety of the savings would come about within five years of the Transaction. FedEx provided the Commission with an air network synergies implementation time-frame showing that [Confidential]% is expected to be implemented by year 1 following the Transaction, [Confidential]% by year 2 following the Transaction, [Confidential]% by year 3 following the Transaction and [Confidential] % by year 4 following the Transaction.<sup>637</sup>

#### 10.9.3.4. Quantification of expected cost savings

- (803) Table 37 presents, for each EEA country, the total extra-EEA cost savings (PUD and air network cost savings) in year 3 after applying a pass-through rate of 50%.

**Table 37: Total estimated extra-EEA cost savings by EEA country realised in year 3 considering 50% pass-through**

Country	Estimated Total PU Saving Y3	Estimated Delivery Saving on Extra-EEA Packs Y3	Estimated Air Network Cost Saving Y3	Total Estimated Cost Saving Y3	Total Estimated Cost Saving Y3 (after pass-through)
AT	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
BE	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
BG	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
CY	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
CZ	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
DE	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
DK	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
EE	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
ES	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
FI	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
FR	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
GB	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
GR	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
HR	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
HU	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
IE	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
IS	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
IT	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
LT	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
LU	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
LV	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
MT	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
NL	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
NO	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]

<sup>636</sup> FedEx's submission "FedEx/TNT: Economic response to the Article 6.1.c decision" of 13 August 2015, Table 18.

<sup>637</sup> FedEx's response to question 9 of the request for information QP14 of 3 September 2015.

Country	Estimated Total PU Saving Y3	Estimated Delivery Saving on Extra-EEA Packs Y3	Estimated Air Network Cost Saving Y3	Total Estimated Cost Saving Y3	Total Estimated Cost Saving Y3 (after pass-through)
PL	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
PT	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
RO	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
SE	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
SI	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
SK	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]
<b>Total EEA</b>	[Confidential]	[Confidential]	[Confidential]	[Confidential]	[Confidential]

#### 10.9.4. Conclusion

(804) Overall, the Commission concludes that nearly EUR [Confidential] million of claimed PUD and air network cost savings (after pass-through) qualify as relevant efficiencies under the three-pronged test set out in the Horizontal Merger Guidelines for the relevant extra-EEA markets affected by the Transaction. This reflects around [Confidential]% of the Merged Entity's revenues in the extra-EEA markets.

#### 10.10. Conclusion

(805) In the light of considerations set out in this Section, the Transaction would not lead to a significant impediment to effective competition on any of the 30 national markets for extra-EEA small package deliveries to the world or any of the national markets for extra-EEA deliveries to the six major world lanes.

### 11. EFFECTS OF THE TRANSACTION ON EXTRA-EEA DELIVERY SERVICES MARKETS – COUNTRY-BY-COUNTRY ASSESSMENT

(806) As indicated in Section 10.3, the Merged Entity would have a combined market share of more than 40% and the Transaction would lead to an increment of more than 5% on the markets for extra-EEA deliveries to the world from Estonia, Latvia and Hungary, for extra-EEA deliveries from Belgium, Bulgaria, Estonia and Malta to North America, from Lithuania and Slovakia to the Middle East and from Latvia to North America, Central and South America, the Middle East and Asia/Pacific. Those markets represent less than 6% of all possible national markets for extra-EEA deliveries to the major world lanes.

(807) In addition, the Commission analysed more closely markets where the Merged Entity would have a market share of less than 40%, but where the third competitor post-Transaction would have a market share below 20%. Finally, markets in which the share of the third competitor would be smaller than the increment that the Transaction would bring about are also reviewed in more detail.

(808) The likely impact of the Transaction on each of those 52 markets is analysed individually. As stated in recitals (640) to (651), these markets are:

- (a) a market for extra-EEA deliveries from Austria to the Middle East, analysed in Section 11.1;
- (b) markets for extra-EEA deliveries from Belgium to the world and to North America, to Central and South America, to Asia/Pacific and to the Middle East, analysed in Section 11.2;

- (c) markets for extra-EEA deliveries from Bulgaria to the world and to North America, to Central and South America, to Asia/Pacific and to the Middle East, analysed in Section 11.3;
- (d) a market for extra-EEA deliveries from Croatia to Asia/Pacific, analysed in Section 11.4;
- (e) markets for extra-EEA deliveries from Cyprus to the world and to Central and South America, to Asia/Pacific, to the Middle East and to Africa, analysed in Section 11.5;
- (f) markets for extra-EEA deliveries from the Czech Republic to the world and to Central and South America, to Asia/Pacific and to the Middle East, analysed in Section 11.6;
- (g) markets for extra-EEA deliveries from Estonia to the world, to North America and to Asia/Pacific, analysed in Section 11.7;
- (h) markets for extra-EEA deliveries from France to Central and South America, to Asia/Pacific and to the Middle East, analysed in Section 11.8;
- (i) markets for extra-EEA deliveries from Hungary to the world and to Central and South America, to Asia/Pacific, to the Middle East and to Africa, analysed in Section 11.9;
- (j) markets for extra-EEA deliveries from Ireland to the world and to Asia/Pacific, analysed in Section 11.10;
- (k) markets for extra-EEA deliveries from Latvia to the world and to North America, to Central and South America, to Asia/Pacific and to the Middle East, analysed in Section 11.11;
- (l) markets for extra-EEA deliveries from Lithuania to the Middle East, analysed in Section 11.12;
- (m) markets for extra-EEA deliveries from Luxembourg to the world and to North America, to Central and South America and to the Middle East, analysed in Section 11.13;
- (n) market for extra-EEA deliveries from Malta to North America, analysed in Section 11.14;
- (o) markets for extra-EEA deliveries from Poland to Central and South America and to the Middle East, analysed in Section 11.15; and
- (p) markets for extra-EEA deliveries from Slovakia to the world and to Central and South America, to Asia/Pacific, to the Middle East and to Africa, analysed in Section 11.16.

## **11.1. Market for extra-EEA small package delivery services from Austria to the Middle East**

### *11.1.1. FedEx views*

- (809) FedEx submits that DHL is the leader on all markets for extra-EEA deliveries from Austria, with the exception of that for deliveries to North America. DHL also has a leading position on the market for deliveries from Austria to the Middle East. Given its position on Austrian markets, DHL would therefore constrain the Merged Entity also post-Transaction. Similarly, UPS is also active and generates substantive revenues on the markets for extra-EEA deliveries to the world and to the major world lanes. As customers can easily switch among integrators and DHL and UPS do not

face any structural weakness regarding the provision of extra-EEA services from Austria, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>638</sup>

### 11.1.2. Commission's assessment

(810) The Commission considers that, on the basis of the available evidence and the considerations in Sections 10 and 11, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Austria.

**Table 38: Extra-EEA market reconstruction for Austrian markets**

Austria	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Integrator															
To all lanes	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Towards North America	[20-30]%	[0-5]%	[30-40]%	[40-50]%	[20-30]%	[20-30]%	[0-5]%	[30-40]%	[40-50]%	[20-30]%	[20-30]%	[0-5]%	[30-40]%	[30-40]%	[20-30]%
Towards Central and South America	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%
Towards Asia / Pacific	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Towards Middle East	[10-20]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Towards Africa	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Towards Rest of Europe	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%

#### 11.1.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Austria

(811) Based on the Commission's market reconstruction on a market for extra-EEA deliveries from Austria to the Middle East, the Merged Entity would have a market share of [30-40]%, with FedEx accounting for [10-20]%. TNT's market share has decreased from [20-30]% in 2012, to [10-20]% in 2014.

(812) On all other markets for extra-EEA deliveries from Austria, with the exception of that to North America, the market share of the Merged Entity would be below 30% following the market leader DHL. UPS is also present on all of these markets with market shares of at least 10%. On the market to North America, the increment of the Transaction would be marginal, not exceeding 5%, while UPS and DHL have higher market shares. These markets will thus not be further analysed in more detail in this Decision.

(813) Therefore, all four integrators are already active and have an established market presence on all markets for extra-EEA deliveries from Austria.

#### 11.1.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries from Austria

(814) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the market for extra-EEA deliveries from Austria to the Middle East, as TNT is still a Europe-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers. Conversely, FedEx is a global provider connecting all major world lanes to each other.

(815) First, as already set out in Section 9.4.2, the Parties have a different focus on their extra-EEA activities. The Parties' sales data show that customers of FedEx and of TNT have a different profile, the first being mainly interested in deliveries to FedEx's

<sup>638</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, page 4 and following.

home market of North America,<sup>639</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

- (816) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive EEA road network to organise pick-up services in Austria, where it has [Confidential]% coverage. As noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>640</sup>
- (817) FedEx has lower coverage of [Confidential]% in Austria and generally operates a smaller and costlier intra-EEA road network.<sup>641</sup> FedEx's extra-EEA air network however is much more extensive than that of TNT and consists of 10 aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East.<sup>642</sup>
- (818) Third, when asked about FedEx's closest competitor in the provision of extra-EEA delivery services from Austria (irrespective of destination), respondents to the market investigation identified DHL as FedEx's closest competitor, followed by UPS and TNT. When asked about the closest competitor of TNT, customers and competitors responding to the market investigation identified DHL and FedEx as closest, followed by UPS as third.<sup>643</sup> Moreover, although some customers and competitors did identify FedEx as a close competitor to TNT, they also identified DHL, implying that DHL constrains FedEx and thus the Merged Entity. Also, as analysed in this Section, other facts show that the Transaction would not lead to a significant impediment to competition on the extra-EEA markets from Austria.
- (819) Therefore, in the light of the considerations in Section 10 and this Section and the available evidence, the Commission concludes that on balance, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Austria.

#### 11.1.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Austria

- (820) As illustrated in Table 38, TNT's market share on the market for extra-EEA deliveries from Austria to the Middle East is [10-20]%. Further, as analysed in this Section, TNT does not constitute a low price supplier nor more generally a maverick, because it uses a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>644</sup>

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<sup>639</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT strategy] Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95.

<sup>640</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>641</sup> See Table 5 in recital (310).

<sup>642</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>643</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>644</sup> Horizontal Merger Guidelines, paragraph 37.

- (821) From a comparison of the evolution of its market share in recent years, TNT does not seem to have exerted particular competitive pressure on the market for extra-EEA deliveries from Austria to the Middle East or strengthened its market position in recent years. Conversely, TNT's market share on this market decreased in the course of the last three years.
- (822) Further, TNT is not a pricing maverick on a market for extra-EEA deliveries from Austria to the Middle East.
- (823) First, TNT's overall cost position on the markets for extra-EEA delivery services from Austria is not more advantageous than that of its competitors. It has overall pick-up costs of EUR [Confidential] per pack in Austria, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>645</sup> The pick-up costs of UPS, DHL and TNT in Austria are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11, in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) UPS and DHL have [Confidential]% coverage in Austria; and iii) based on their overall market shares on the markets for intra-EEA and extra-EEA deliveries from Austria, the scale of UPS and DHL is larger than that of TNT. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in Austria.
- (824) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network.
- (825) [Confidential information on TNT's strategy planning].<sup>646</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of supplier.<sup>647</sup> Customers do not always identify TNT as the lowest cost provider of extra-EEA services from Austria, but often consider other integrators as more cost efficient.<sup>648</sup>
- (826) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the market for extra-EEA deliveries from Austria to the Middle East.

#### 11.1.2.4. DHL and UPS would be able to effectively compete for extra-EEA delivery services from Austria post-Transaction

- (827) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (828) First, as illustrated in Table 38, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Austria. DHL is the clear market leader with market shares of at least 40% on all markets from Austria, except for

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<sup>645</sup> See Table 32 in recital (785).

<sup>646</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015 Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>647</sup> See, for instance, non-confidential response of the [Name of parties' customers] to question 17.1 of questionnaire to SMEs R3 – Phase II.

<sup>648</sup> See, for instance, responses to question 19.3 of questionnaire to SMEs R3 – Phase II.

deliveries to North America. DHL thus clearly has the capacity to compete effectively for shipments that originate from Austria.

- (829) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Austria, as well as [Confidential]% coverage. UPS thus has a customer base for extra-EEA deliveries in Austria, as well as a network that allows it to pick-up extra-EEA small packages from the country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to the Middle East, where it is often higher than in the case of Austria, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries also on this lane.
- (830) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to effectively compete on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from Austria also post-Transaction.
- (831) Second, the majority of customers from Austria responding to the market investigation considered there would be sufficient alternatives to the Merged Entity on the Austrian markets for extra-EEA deliveries post-Transaction.<sup>649</sup>
- (832) Moreover, the majority of customers responding to the market investigation from Austria also indicate that as they multisource in relation to their extra-EEA services,<sup>650</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Furthermore, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (833) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market.<sup>651</sup> Indeed, FedEx's top ten customers generate [Confidential]% of its total revenues on the market for deliveries to the Middle East, the top three accounting for [Confidential]%.<sup>652</sup>
- (834) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the market for extra-EEA deliveries from Austria to the Middle East. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short term and can always redeploy assets or even increase their network, should there be a sustained increase in demand.
- (835) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

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<sup>649</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 – Phase I.

<sup>650</sup> See responses to questions 8, 21 and 22 of questionnaire to customers Q3 – Phase I; responses to questions 13 and 14 of questionnaire to customers Q4 – Phase I; responses to question 24 of questionnaire to customers R2 - Phase II; responses to question 6 of questionnaire to SMEs R3- Phase II.

<sup>651</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

<sup>652</sup> FedEx's response to the request for information QP24 of 24 November 2015.

11.1.2.5. A majority of customers on the market for extra-EEA deliveries from Austria to the Middle East have not expressed any concerns

(836) On a market for extra-EEA deliveries from Austria to the Middle East, the majority of customers considered that the impact of the Transaction would be neutral<sup>653</sup> The majority of the customers from Austria responding to the market investigation considered that the impact of the Transaction would be neutral on a market for extra-EEA deliveries to the world.<sup>654</sup>

(837) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the market for extra-EEA deliveries from Austria.

### 11.1.3. Conclusion

(838) In the light of the available evidence and the considerations in Section 10 and this Section, the Commission concludes that Transaction would not lead to a significant impediment to effective competition in any market for extra-EEA deliveries from Austria.

## 11.2. Market for extra-EEA small package delivery services from Belgium to the world, to North America, to Central and South America, to Asia/Pacific and to the Middle East

### 11.2.1. FedEx views

(839) FedEx submits that DHL is the leader on a market for deliveries from Belgium to the whole world and on five of the six narrower markets for deliveries to the major world lanes. It would therefore also constrain the Merged Entity post-Transaction. On the remaining market for deliveries to North America, FedEx submits that TNT's position is de minimis on all markets for deliveries to North America and in any event weaker than that of DHL and UPS. Similarly, UPS is also active and already generates substantive revenues on a market for extra-EEA deliveries to the world and to the major world lanes. As customers can easily switch between integrators and DHL and UPS do not face any structural weakness regarding the provision of extra-EEA services from Belgium, DHL and UPS would be able to constrain the Merged Entity effectively post-Transaction.<sup>655</sup>

### 11.2.2. The Commission's assessment

(840) The Commission considers that, on the basis of the available evidence and the considerations in section 10 and this section, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Belgium.

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<sup>653</sup> See responses to questions 42 and 44 of questionnaire to customers Q3 – Phase I; responses to questions 23 and 25 of questionnaire to customers Q4 – Phase I; responses to question 36 of questionnaire to customers R2 – Phase II.

<sup>654</sup> See responses to questions 41 and 43 of questionnaire to customers Q3- Phase I; responses to questions 22 and 24 of questionnaire to customers Q4 – Phase I; responses to question 35 of questionnaire to customers R2– Phase II and responses to question 26 of questionnaire to SMEs R3 – Phase II.

<sup>655</sup> FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" and "Lane-by-lane analysis for Extra-EEA services" of 23 September, 2015.

**Table 39: Extra-EEA market reconstruction for Belgian markets**

Belgium	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Integrator															
To all lanes	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Towards North America	[40-50]%	[0-5]%	[40-50]%	[30-40]%	[20-30]%	[40-50]%	[5-10]%	[40-50]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[40-50]%	[30-40]%	[10-20]%
Towards Central and South America	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Towards Asia / Pacific	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Towards Middle East	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Towards Africa	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%
Towards Rest of Europe	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%

11.2.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Belgium,

- (841) Based on the Commission's market reconstruction, the Parties' combined share on a market for extra-EEA deliveries from Belgium to the world would not exceed 40%, with FedEx accounting for [20-30]% and TNT for [10-20]% of the total revenues. DHL is the market leader with a share of more than 50% and UPS has [10-20]%.
- (842) In the market for extra-EEA deliveries from Belgium to North America, the Merged Entity would have a share of more than 40%, whereas the increment brought about by the Transaction would be below 10%. UPS will have a market share of [30-40]% post-Transaction and DHL a smaller market share of [10-20]%.
- (843) On the markets for extra-EEA deliveries from Belgium to Central and South America, Asia/Pacific and the Middle East, DHL would be the market leader post-Transaction with shares of at least 40%. The Merged Entity would have a share of [30-40]%, with the increment of TNT being [10-20]%. UPS, the third competitor post-Transaction would have a share of [10-20]%.
- (844) On the two remaining markets for extra-EEA deliveries from Belgium to Africa and to the Rest of Europe, the share of the Merged Entity would be below 30%. DHL has higher market shares in both those markets than the Merged Entity, whereas UPS's market would be in the same range as that of the Merged Entity. Therefore, the impact of the Transaction on those markets would be limited and the two markets will not be further discussed in this analysis.
- (845) Therefore, on all seven markets for extra-EEA deliveries from Belgium to the trade lanes, DHL and UPS are already active and have an established market position.

11.2.2.2. Among integrators the Parties are not close competitors on the Belgian markets for extra-EEA deliveries

- (846) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from Belgium to the world and to the major world lanes, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.
- (847) First, as already set out in Section 9.4.2, the Parties have a different focus for their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in

deliveries to FedEx's home market of North America,<sup>656</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

- (848) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive road network to organise pick-up services in Belgium. As noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>657</sup> Conversely, even though FedEx has full coverage in Belgium, as do all integrators, it has smaller density and scale. However, its extra-EEA air network is much more extensive than that of TNT consisting of [Confidential] aircraft, [Confidential] of which connect Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx, nor TNT have direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to this destination.<sup>658</sup>
- (849) Third, when asked about FedEx's closest competitor in the provision of extra-EEA delivery services from Belgium, respondents to the market investigation identified UPS as FedEx's closest competitor, followed closely by DHL, while TNT was identified only as a distant third. Similarly, when asked about the closest competitor of TNT, customers and competitors responding to the market investigation identified DHL as the closest, followed by UPS and FedEx.<sup>659</sup>
- (850) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Belgium.

#### 11.2.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Belgium

- (851) As set out in Table 39, TNT is the weakest integrator on the market for extra-EEA deliveries from Belgium to North America and among the weakest on the markets for deliveries to Central and South America, Asia/Pacific, Middle East and the world. Further, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick due to a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>660</sup>
- (852) From a comparison of its market share and the evolution thereof in recent years with that of its competitors, TNT does not seem to have exerted particular competitive pressure. Conversely, TNT has not significantly strengthened its market position in recent years.

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<sup>656</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7. O., FedEx's [Confidential] of November 2014, page 95.

<sup>657</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>658</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annexes 14 and 16.

<sup>659</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>660</sup> Horizontal Merger Guidelines, paragraph 37.

- (853) Further, TNT is not a pricing maverick on the Belgian extra-EEA markets.
- (854) First, TNT's overall cost position on the Belgian markets for extra-EEA delivery services is not more advantageous than that of its competitors. It has overall pick-up costs of EUR [Confidential] per pack in Belgium, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL. The pick-up costs of UPS, DHL and TNT in Belgium are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11, in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) all integrators have [Confidential]% coverage in Belgium; and iii) based on their market shares on the Belgian intra-EEA and extra-EEA markets, the scale of UPS and DHL is similar or larger to that of TNT in Belgium. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in Belgium.
- (855) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>661</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of supplier. Also, customers do not always identify TNT as the lowest cost provider of extra-EEA services from Belgium, but often consider other integrators as more cost efficient.<sup>662</sup>
- (856) Customers from Belgium explain that they use DHL for their extra-EEA deliveries from Belgium to North America, because *"they have the most advantage price for that area in terms of priority services (even cheaper than FedEx economy services)"*.<sup>663</sup> Customers also explain that they multisource between TNT *"for their economy [deferred] services"* and FedEx *"for the delivery transit and their efficiency in customs process"*,<sup>664</sup> or between TNT and UPS because *"they [UPS and TNT] have the best delivery times, they are the most reliable, they have the best geographic coverage across all destinations, they have better customer service"*<sup>665</sup> and that they choose TNT because of *"price, quality, reliability, customs integration"* and freight forwarders for their hazardous goods.<sup>666</sup>
- (857) Similarly, on a market for extra-EEA deliveries to Central and South America, some customers indicate that they chose *"DHL priority cause it is the cheapest for that area and from 4kg on FedEx economy service cause time does not really play an important role for them"*<sup>667</sup>; UPS and TNT because *"they have the best delivery*

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<sup>661</sup> FedEx's response to request for information QP18 of 6 October 2015 Annex 2, TNT' submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>662</sup> See responses to question 16.3 of questionnaire to customers R2 – Phase II.

<sup>663</sup> Non-confidential Response of [Name of the parties' customers] to question 9.1 of questionnaire to customers R2-10MS – Phase II.

<sup>664</sup> Non-confidential response of [Name of the parties' customers] equipment to question 9.1 of questionnaire to customers R2-10MS – Phase II.

<sup>665</sup> Non-confidential response of [Name of the parties' customers] to question 9.1 of questionnaire to customers R2-10MS – Phase II.

<sup>666</sup> Non-confidential response of [Name of the parties' customers]. to question 9.1 of questionnaire to customers R2-10MS – Phase II.

<sup>667</sup> Non-confidential response of [Name of the parties' customers] to question 9.2 of questionnaire to customers R2-10MS – Phase II.

*times, they are the most reliable, they have the best geographic coverage across all destinations, they have better customer service",<sup>668</sup> or FedEx, because it "offers the best price/leading time"<sup>669</sup>.*

- (858) On the market for extra-EEA deliveries from Belgium to Asia/Pacific, customers explain that "DHL priority is the best deal for them",<sup>670</sup> that UPS offers a "combination of best service and best geographical coverage"<sup>671</sup> that "for Japan FedEx offers best price/leading time",<sup>672</sup> or that they select TNT because of its "price, quality, reliability, systems integration".<sup>673</sup>
- (859) On the market for extra-EEA deliveries to the Middle East, customers again select different providers, on the basis of several criteria. Customers select DHL, because it is the preference of their customer in the Middle East,<sup>674</sup> UPS because it offers "a combination of the best service and best geographic coverage",<sup>675</sup> UPS and TNT for their overall service features.<sup>676</sup>
- (860) Therefore, different customers identify different providers as more cost efficient for extra-EEA deliveries from Belgium. Moreover, customers of TNT do not select it purely based on price, but take into consideration various service features when choosing their provider.
- (861) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Belgium to the world and to the major world lanes.

#### 11.2.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Belgium post-Transaction

- (862) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (863) First, as illustrated in Table 39, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Belgium. The Commission considers that DHL and UPS would compete with the Merged Entity also post-Transaction. DHL has a market share of [10-20]% on the market from Belgium to North America, however, on all other markets for extra-EEA deliveries from

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<sup>668</sup> Non-confidential response of [Name of the parties' customers] to question 9.2 of questionnaire to customers R2-10MS – Phase II.

<sup>669</sup> Non-confidential response of [Name of the parties' customers] to question 9.2. of questionnaire to customers R2-10MS – Phase II.

<sup>670</sup> Non-confidential response of [Name of the parties' customers] to question 9.3 of questionnaire to customers R2-10MS – Phase II.

<sup>671</sup> Non-confidential response of [Name of the parties' customers] to question 9.3 of questionnaire to customers R2-10MS – Phase II.

<sup>672</sup> Non-confidential response of [Name of the parties' customers] to question 9.3. of questionnaire to customers R2-10MS – Phase II.

<sup>673</sup> Non-confidential response of [Name of the parties' customers] to question 9.3. of questionnaire to customers R2-10MS – Phase II.

<sup>674</sup> Non-confidential response of [Name of the parties' customers] to question 9.4. of questionnaire to customers R2-10MS – Phase II.

<sup>675</sup> Non-confidential response of [Name of the parties' customers] to question [9.4. of questionnaire to customers R2-10MS – Phase II.

<sup>676</sup> Non-confidential response of [Name of the parties' customers] to question 9.4 of questionnaire to customers R2-10MS – Phase II.

Belgium its share is higher, namely [50-60]% on the markets for deliveries to Central and South America or to the Middle East and [70-80]% on the market from Belgium to Africa. This means that DHL clearly has the capacity to compete effectively for shipments that originate in Belgium. This is further demonstrated by the fact that DHL's coverage in Belgium is [Confidential]%; it can therefore organise the pick-up of small packages from addresses in the entire country.

- (864) As to the delivery end of the shipment, DHL has a share of [40-50]% on many markets for deliveries to North America from for example Bulgaria, Croatia, the Czech Republic and other EEA countries. It is therefore evident that DHL has the ability to deliver small packages from the EEA to North America through its road and air network and to then organise their distribution within North America at the final destination. Similarly, DHL has higher market shares on several markets for deliveries from EEA countries to Central and South America, Asia/Pacific and the Middle East. Therefore, the same conclusion as for deliveries from the EEA to North America can be drawn in relation to DHL's capability to provide extra-EEA delivery services to the other world lanes.
- (865) Consequently, DHL has the required infrastructure to organise the pick-up of small parcels in Belgium, the land and air network to transfer them from the EEA to the various world lanes and the required infrastructure for their delivery at the final destination within each of the lanes. Therefore, DHL has the capability to compete effectively for extra-EEA shipments from Belgium to North America, Central and South America, Asia/Pacific and the Middle East.
- (866) Moreover, UPS also has an established market position on all markets for extra-EEA deliveries from Belgium. UPS also has [Confidential]% coverage of the Belgian territory. UPS therefore has the required customer base and network in place that allows for it to pick up extra-EEA small packages from the entire country.
- (867) Similarly, UPS also has a proven ability to organise the delivery of small packages at all major world lanes. UPS indicates that it can do so in more than 220 countries and territories either directly or through more or less integrated subcontractors. Looking at UPS's market share on other national markets for deliveries to North America, Central and South America, Asia/Pacific and the Middle East, where its share is often higher than it is on the markets for deliveries from Belgium, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.
- (868) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular lane is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity also post-Transaction.
- (869) Second, respondents to the market investigation from Belgium also share this view, as the majority of customers from Belgium responding to the market investigation consider that there would be sufficient alternatives to the Merged Entity for their extra-EEA small package delivery needs.<sup>677</sup>
- (870) Moreover, a significant minority of customers responding to the market investigation from Belgium also indicate that they multisource in relation to their extra-EEA

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<sup>677</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 – Phase I and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 – Phase I.

services,<sup>678</sup> they can therefore very easily change the volume of small packages they ship with each of their providers. Further, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.

- (871) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. FedEx submits that [Confidential] of its overall revenues on the market for extra-EEA services to North America derive from its top 10 customers and a significant [Confidential]% from only the top three.<sup>679</sup> Similarly, FedEx's top ten customers generate [Confidential]% and the top three [Confidential]% of its total revenues on the market for deliveries to Central and South America; the top ten customers generate [Confidential]% and the top three [Confidential]% of FedEx's total revenues on the market for deliveries to Asia/Pacific and the top ten customers generate [Confidential]% and the top three [Confidential]% of FedEx's total revenues on the market for extra-EEA deliveries to the Middle East.<sup>680</sup> Therefore, if one or more of those customers decide to move its volumes to one of the other providers post-Transaction, the market share of the Merged Entity would be significantly reduced.
- (872) DHL and UPS could readily accommodate any customers of the Merged Entity on the Belgian extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.
- (873) Market shares are therefore driven by a small number of customers on this market and, given the presence of several competitors on these markets, market shares are highly contestable.

#### 11.2.2.5. Respondents to the market investigation have not raised concerns as to the impact of the Transaction on markets for extra-EEA deliveries from Belgium

- (874) The results of the market investigation show that when asked about the impact of the Transaction on the trade lane from Belgium to North America, the majority of Belgian customers who expressed their views in Phase I<sup>681</sup> and in Phase II of the Commission's investigation<sup>682</sup>, considered that the Transaction would have a positive impact, whilst the remaining minority considered that the Transaction have a neutral impact on the given lane. Consequently, none of the Belgian-based customers expressed a negative view on the Transaction's effect on the lane to North America.

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<sup>678</sup> See responses to questions 8, 21 and 22 of questionnaire to customers Q3– Phase I; responses to questions 13 and 14 of questionnaire to customers Q4– Phase I; responses to question 24 of questionnaire to customers R2 – Phase II; responses to question 6 of questionnaire to SMEs R3 – Phase II.

<sup>679</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

<sup>680</sup> FedEx's response to the request for information QP24 of 24 November 2015.

<sup>681</sup> See responses to questions 42 (42.4 for the lane to North America) and 44 (44.4 for the lane to North America) of the questionnaire to customers Q3; responses to questions 23 (23.4 for the lane to North America) and 25 (25.4 for the lane to North America) of the questionnaire to customers Q4 – Phase I.

<sup>682</sup> See responses to question 36 (36.1 for the lane to North America) of the questionnaire to customers R2–Phase II.

- (875) Similarly, in relation to the market for deliveries from Belgium to Central and South America, Asia/Pacific and the Middle East, the majority of customers considered that the impact of the Transaction would be neutral.<sup>683</sup>
- (876) Last, on the broader market for extra-EEA deliveries to the world, the majority of customers from Belgium to the Phase I and Phase II market investigation considered that the impact of the Transaction would be positive or neutral.<sup>684</sup>
- (877) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the markets for extra-EEA deliveries from Belgium.

#### *11.2.3. Conclusion*

- (878) In the light of the available evidence and the considerations in Section 10 and this Section, the Transaction would not lead to a significant impediment to effective competition in any market for extra-EEA deliveries from Belgium.

### **11.3. Market for extra-EEA small package delivery services from Bulgaria to the world and to North America, Central and South America, Asia/Pacific and the Middle East**

#### *11.3.1. FedEx's views*

- (879) FedEx submits that the economic significance of the markets for extra-EEA delivery services in Bulgaria is limited, as the total size of the market for deliveries to the world amounts to EUR [Confidential] million. DHL is the leader on all markets for extra-EEA deliveries from Bulgaria, whether to the world or any of the major world lanes. It would therefore certainly compete with the Merged Entity post-Transaction. Furthermore, UPS also competes on all markets for extra-EEA services from Bulgaria and is able to effectively constrain the Merged Entity as well.

#### *11.3.2. Commission's assessment*

- (880) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and this section, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Bulgaria.

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<sup>683</sup> See responses to questions 42 and 44 of questionnaire to customers Q3 – Phase I; responses to questions 23 and 25 of questionnaire to customers Q4 – Phase I; responses to question 36 of questionnaire to customers R2 -Phase II.

<sup>684</sup> See responses to questions 41 and 43 of questionnaire to customers Q3 - Phase I; responses to questions 22 and 24 of questionnaire to customers Q4 – Phase I; responses to question 35 of questionnaire to customers R2 -Phase II and responses to question 26 of questionnaire to SMEs R3 - Phase II.

### 11.3.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Bulgaria

**Table 40: Extra-EEA market reconstruction for Bulgarian markets**

Bulgaria	2012					2013					2014				
Integrator	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
To all lanes	[20-30]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Towards North America	[40-50]%	[5-10]%	[50-60]%	[10-20]%	[30-40]%	[30-40]%	[5-10]%	[40-50]%	[20-30]%	[30-40]%	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%
Towards Central and South America	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[40-50]%	[20-30]%	[10-20]%	[40-50]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%
Towards Asia / Pacific	[20-30]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[0-5]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Towards Middle East	[10-20]%	[20-30]%	[40-50]%	[5-10]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%
Towards Africa	[0-5]%	[20-30]%	[20-30]%	[5-10]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Towards Rest of Europe	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[60-70]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%	[0-5]%	[20-30]%	[30-40]%	[5-10]%	[60-70]%

- (881) Based on the Commission's market reconstruction, the Parties' combined share on a market for extra-EEA deliveries from Bulgaria to the world will not exceed 40%, with both Parties accounting for [10-20]% of the total revenues. DHL is the market leader with a share of more than 50% and UPS has a market position of [10-20]%.
- (882) On the narrower markets for extra-EEA deliveries to North America, Central and South America, Asia/Pacific and the Middle East, the Parties' market shares range between [20-30]% and [40-50]%. On the market for deliveries to North America, where the Merged Entity would have the highest share of [40-50]%, FedEx's market share has decreased in the last three years from [40-50]% to [30-40]%. Furthermore, the increment brought about by the Transaction is [5-10]%. Similarly, on the market for deliveries from Bulgaria to Central and South America, the market share of TNT has decreased from [20-30]% in 2012 to [10-20]% in 2014.
- (883) DHL is the market leader on these four narrower markets for extra-EEA deliveries from Bulgaria, with market shares exceeding 40%. UPS has a market presence on all those markets, with a market share of [10-20]% on the market for deliveries to the world, to North America and to the Middle East and a smaller market share of [5-10]% on the markets for deliveries to Central and South America and to the Middle East. Further, UPS's market share has increased on the markets for extra-EEA deliveries to the world, to the Middle East and to Africa in the course of the last three years, thus showing that it does not face any systemic weakness impeding it from expanding on the Bulgarian markets.
- (884) The Merged Entity would also have a market share of [30-40]% on the market for deliveries from Bulgaria to the Rest of Europe. As the market position of FedEx is below 5%, however, the increment of the Transaction on that market would be very modest. Therefore, the Bulgarian market for deliveries to the Rest of Europe is not be analysed in more detail. Similarly, on the market for extra-EEA deliveries to Africa, the Merged Entity would have a market share of [20-30]%, whereas DHL and UPS will have market shares of [50-60]% and [10-20]% respectively. Post-Transaction DHL and UPS would thus continue to compete with the Merged Entity, which has a market share of less than 30% on that market. Those two markets will therefore not be analysed further in this Decision.
- (885) Therefore, in all markets for extra-EEA deliveries from Bulgaria, DHL and UPS are already active and have an established market presence.

11.3.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries in Bulgaria

- (886) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also to the markets for extra-EEA deliveries from Bulgaria to the world and to the major world lanes, as TNT is still a Europe-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.
- (887) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in deliveries to FedEx's home market of North America,<sup>685</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.
- (888) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive road network to organise pick-up services in Bulgaria. As noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>686</sup>
- (889) Conversely FedEx is GSP facilitated in Bulgaria, that is to say FedEx does not directly serve Bulgaria, but is represented instead by a local player, whose infrastructure FedEx uses for deliveries in Bulgaria.<sup>687</sup> However, once picked up by the GSP, small packages enter FedEx's extra-EEA air network, which is much more extensive than that of TNT consisting of ten aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx, nor TNT have direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to this destination.<sup>688</sup>
- (890) Third, when asked about FedEx's closest competitor on Bulgarian extra-EEA markets, respondents to the market investigation identified DHL as FedEx's closest competitor, followed by UPS and TNT. When the Parties' competitors and customers in Bulgaria were asked about the closest competitor of TNT on the markets for extra-EEA deliveries, those responding to the market investigation identified DHL as TNT's closest competitor, followed by UPS and FedEx.<sup>689</sup>
- (891) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Bulgaria.

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<sup>685</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95.

<sup>686</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>687</sup> FedEx's Response to the Decision opening proceedings dated 31 July 2015 of 12 August 2015

<sup>688</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>689</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to small competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

11.3.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Bulgaria

- (892) As set out in Table 40, TNT is the weakest integrator on the market for extra-EEA deliveries from Bulgaria to North America and among the weakest on the markets for deliveries to the world. Furthermore, for the reasons set out in this Section, TNT does not constitute a low price supplier, nor more generally a maverick, because it uses for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>690</sup>
- (893) Even though TNT has a direct presence in Bulgaria, unlike FedEx and UPS, this has not enabled it to strengthen its market position in the last three years. With the exception of marginal growth on the markets for deliveries to North America and to the Rest of Europe, for deliveries to which it uses its strong intra-EEA road and air network, the market position of TNT on extra-EEA market from Bulgaria is stable. Therefore, TNT does not seem to have exerted particular competitive pressure on its competitor on the Bulgarian extra-EEA markets. Further, TNT is not a pricing maverick on the Bulgarian extra-EEA markets.
- (894) First, TNT's overall cost position on the Bulgarian markets for extra-EEA delivery services is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in Bulgaria, which are lower than FedEx's [Confidential] per pack, but comparable to at least those of DHL. As reflected by the PUD curve in Figure 11, in recital (351), UPS and DHL are overall more cost efficient than TNT in the EEA in relation to their pick-up costs. Specifically for Bulgaria, unlike FedEx and UPS that operate through GSPs, both TNT and DHL have direct presence in the country. FedEx was not able to provide information on its coverage in Bulgaria, the Commission thus exempted Bulgaria from its coverage data analysis ; DHL however has significantly greater scale. As the pick-up costs depend on the provider's coverage and scale on a given market, DHL and TNT appear likely to have similar pick-up costs in Bulgaria.
- (895) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>691</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of supplier. Also, customers do not always identify TNT as the lowest cost provider of extra-EEA services from Bulgaria, but often consider other integrators as equally cost efficient.<sup>692</sup>
- (896) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the

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<sup>690</sup> Horizontal Merger Guidelines, paragraph 37.

<sup>691</sup> FedEx's response to the request for information QP18 of 6 October 2015 Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>692</sup> See responses to question 16.3 of questionnaire to customers R2 – Phase II and question 19.3 of questionnaire to SMEs R3 – Phase II. For instance, only a small minority of the respondents to questionnaire R3 considered TNT to be the most –cost efficient.

markets for extra-EEA deliveries from Bulgaria to the world and to the major world lanes.

#### 11.3.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Bulgaria post-Transaction

- (897) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (898) First, as derives from Table 40, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Bulgaria. DHL is the clear market leader with market shares of at least 40% on all markets and on the market from Bulgaria to Asia/Pacific and the Rest of Europe, it even holds a share of [60-70]%. This means that DHL clearly has the capacity to compete effectively for shipments that originate in Bulgaria.
- (899) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Bulgaria with an overall market share on the market for deliveries to the world of [10-20]%. UPS thus has a customer base for extra-EEA deliveries in Bulgaria, as well as a cooperation agreement with a local operator in place that enables it to pick-up extra-EEA parcels and then ship them through its own extra-EEA network. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to North America, Central and South America, Asia/Pacific and the Middle East, where its market share is often higher than in the case of Bulgaria, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.
- (900) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular lane is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity also post-Transaction.
- (901) Moreover, around half of the customers responding to the market investigation from Bulgaria also indicate that as they multisource in relation to their extra-EEA services,<sup>693</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Further, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (902) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. FedEx submits that significantly, [Confidential] of its overall revenues on the market for extra-EEA services to North America derive from its top three customers and a [Confidential] from the top 10. Similarly, for deliveries to Central and South America, [Confidential] of FedEx's total sales derive from 10 customers and [Confidential] from the top three. For deliveries to the Middle East, [Confidential] of FedEx's sales are generated by the top 10 customers and

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<sup>693</sup> See responses to questions 8, 21 and 22 of questionnaire to customers Q3 – Phase I; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 – Phase II; responses to question 6 of questionnaire to SMEs R3 – Phase II.

[Confidential] from the top three.<sup>694</sup> For deliveries to Asia/Pacific, [Confidential] of FedEx's total sales derive from its top three customers and [Confidential] from its top 10.<sup>695</sup>

- (903) DHL and UPS could accommodate any customers of the Merged Entity on the Bulgarian extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are accustomed to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.
- (904) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

11.3.2.5. Respondents to the market investigation have not raised concerns as to the impact of the Transaction on markets for extra-EEA deliveries from Bulgaria

- (905) Overall, the majority of the customers from Bulgaria responding to the market investigation considered that the impact of the Transaction would be positive on a market for extra-EEA deliveries to the world.<sup>696</sup>
- (906) Furthermore, on the markets for extra-EEA deliveries from Bulgaria to the lanes of North America, Central and South America, Asia/Pacific, Middle East, Africa and Rest of Europe, the majority of customers considered that the impact of the Transaction would be positive.<sup>697</sup>
- (907) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the markets for extra-EEA deliveries from Bulgaria.

### 11.3.3. Conclusion

- (908) In the light of the available evidence and the considerations in Section 10 and this Section, the Commission concludes that the Transaction would not significantly impede effective competition in any markets for extra-EEA deliveries from Bulgaria.

## 11.4. Market for extra-EEA small package delivery services from Croatia to Asia/Pacific

### 11.4.1. FedEx's views

- (909) FedEx submits that DHL is the leader on a market for deliveries from Croatia to the whole world and on five of the six narrower markets for deliveries to the major world lanes. It would therefore constrain the Merged Entity also post-Transaction. Similarly, UPS is also active and already generates revenues on the markets for extra-EEA deliveries to the world and to the major world lanes. As customers can easily switch among integrators and DHL and UPS do not face any structural

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<sup>694</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

<sup>695</sup> FedEx's response to the request for information QP24 of 24 November 2015.

<sup>696</sup> See responses to questions 41 and 43 of questionnaire to customers Q3 – Phase I; responses to questions 22 and 24 of questionnaire to customers Q4 - Phase I; responses to question 35 of questionnaire to customers R2 - Phase II and responses to question 26 of questionnaire to SMEs R3 - Phase II.

<sup>697</sup> See responses to questions 42 and 44 of questionnaire Q3 to customers; responses to questions 23 and 25 of questionnaire to customers Q4 - Phase I; responses to question 36 of questionnaire to customers R2 - Phase II .

weakness in providing extra-EEA services from Croatia, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>698</sup>

#### 11.4.2. Commission's assessment

(910) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Croatia.

##### 11.4.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Croatia

**Table 41: Extra-EEA market reconstruction for Croatian markets**

Croatia	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
To all lanes	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%
Towards North America	[20-30]%	[0-5]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[0-5]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[0-5]%	[20-30]%	[20-30]%	[40-50]%
Towards Central and South America	[5-10]%	[0-5]%	[10-20]%	[5-10]%	[80-90]%	[10-20]%	[0-5]%	[10-20]%	[5-10]%	[70-80]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[70-80]%
Towards Asia / Pacific	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[20-30]%	[5-10]%	[60-70]%
Towards Middle East	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[60-70]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%
Towards Africa	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[70-80]%	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[80-90]%	[0-5]%	[0-5]%	[5-10]%	[10-20]%	[70-80]%
Towards Rest of Europe	[5-10]%	[0-5]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[0-5]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%

(911) First, based on the Commission's market reconstruction on a market for extra-EEA deliveries from Croatia to Asia/Pacific, the Merged Entity would have a market share of [20-30]%, with both FedEx and TNT accounting for [10-20]%. DHL is the clear leader on that market [60-70]%. UPS is also present, with a share of [5-10]%.  
(912) On the broader market for deliveries to the world, the Merged Entity, as well as UPS, would have a market share of less than 20%. DHL is the clear leader with a share of more than 60%. On all other narrower markets for deliveries to the lanes, the market share of the Merged Entity would be below 30% and the increment of the Transaction would not exceed 10%. DHL is present on all markets with shares of up to [70-80]%. UPS also has an established presence on all of these markets with a share of [10-20]%. These markets will therefore not be analysed further in this Decision.

(913) Therefore, all four integrators are already active and have an established market presence on all markets for extra-EEA deliveries from Croatia.

11.4.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries in Croatia

(914) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from Croatia to the world and to the major world lanes, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.

(915) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in

<sup>698</sup> FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" and "Lane-by-lane analysis for Extra-EEA services" of 23 September, 2015.

deliveries to FedEx's home market of North America,<sup>699</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

- (916) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive road network to organise pick-up services in the EEA; Croatia however is one of the three EEA countries that TNT does not serve directly, but rather through a GSP (the other two are Iceland and Malta). Through its GSP, TNT has [Confidential]% coverage in Croatia. As noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>700</sup>
- (917) Overall, FedEx has a much more limited and costlier road network in the EEA. In the case of Croatia, FedEx has coverage of [Confidential]%.<sup>701</sup> FedEx is also represented in Croatia through a GSP, as it is in eight more EEA countries. However, FedEx's extra-EEA air network is much more extensive than that of TNT and consists in [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx nor TNT has direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to this destination.<sup>702</sup>
- (918) Third, when asked about FedEx's closest competitor on Croatian extra-EEA markets, respondents to the market investigation identified DHL as closest, followed by UPS and TNT. When the Parties' competitors and customers were asked about the closest competitor of TNT, they also clearly identified DHL as closest, followed by UPS and FedEx as a clear third.<sup>703</sup>
- (919) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Croatia.

#### 11.4.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Croatia

- (920) As illustrated in Table 41, TNT is the weakest integrator on the markets for extra-EEA deliveries from Croatia to Asia/Pacific. Furthermore, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick, because it uses for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>704</sup>
- (921) From a comparison of its market share and its evolution in the last years with that of its competitors, TNT does not seem to have exerted particular competitive pressure on the Croatian markets for extra-EEA deliveries or strengthened its market position

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<sup>699</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95.

<sup>700</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>701</sup> See Table 5 in recital (310).

<sup>702</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>703</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>704</sup> Horizontal Merger Guidelines, paragraph 37.

in recent years. Conversely, TNT's market share on the market for deliveries to Asia/Pacific has overall been rather stable in the course of the last three years.

- (922) Further, TNT is not a pricing maverick on the Croatian extra-EEA markets.
- (923) First, TNT's overall cost position on the Croatian markets for extra-EEA delivery services is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in Croatia, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>705</sup> The pick-up costs of UPS, DHL and TNT in Croatia are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11, in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) DHL has significantly higher coverage than TNT of [Confidential]%, UPS has a coverage of [Confidential]%; and iii) based on their market shares on the Croatian intra-EEA and extra-EEA markets, the scale of UPS is overall similar to that of TNT in Croatia, whereas that of DHL much larger. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in Croatia.
- (924) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network and scale. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>706</sup> Customers responding to the market investigation also indicate that price is not necessarily the only factor determining their selection of supplier. For instance, for the lane from Croatia to Asia/Pacific, one customer explained that they chose their provider because "*they have the best geographic coverage across all destinations, they have better customer service*".<sup>707</sup> Also, customers do not always identify TNT as the lowest cost provider of extra-EEA services from Croatia, but often consider other integrators as more cost efficient.<sup>708</sup>
- (925) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Croatia to the world and the major world lanes.

#### 11.4.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Croatia post-Transaction

- (926) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (927) First, as derives from Table 41, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Croatia. DHL is the clear market leader with market shares of at least 40% on all markets from Croatia. DHL thus

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<sup>705</sup> See Table 32 in recital (785).

<sup>706</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015 Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>707</sup> See non-confidential response of [Name of parties' customers] to question 9.3.1 of questionnaire to customers R2 - Phase II.

<sup>708</sup> See responses to question 16.3 of questionnaire to customers R2 - Phase II.

clearly has the capacity to compete effectively for shipments that originate from Croatia.

- (928) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Croatia with an overall market share of [10-20]% for deliveries to the world. UPS thus has a customer base for extra-EEA deliveries in Croatia, as well as a network that allows it to pick-up extra-EEA small packages from virtually the entire country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to Asia/Pacific, where its market share is often higher than in the Croatian, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.
- (929) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from Croatia also post-Transaction.
- (930) Moreover, the relative majority of customers responding to the market investigation from Croatia also indicate that as they multisource in relation to their extra-EEA services,<sup>709</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Further, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (931) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. For deliveries to Asia/Pacific, [Confidential]% of FedEx's total sales derive from its top three customers and [Confidential] % from its top ten.<sup>710</sup>
- (932) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the Croatian extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.
- (933) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

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<sup>709</sup> See responses to questions 8, 21 and 22 of questionnaire Q3 to customers; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire R2 - Phase II to customers. There were no responses to questionnaire To SMEs R3 - Phase II.

<sup>710</sup> FedEx's response to the request for information QP24 of 24 November 2015. These sales include the sales to the GSP, which corresponds to the aggregated extra-EEA deliveries purchased in Croatia. As the GSP manages the customer relationships in Croatia, FedEx has no information as to the size of the different contracts.

11.4.2.5. Respondents to the market investigation have not raised concerns as to the impact of the Transaction on markets for extra-EEA deliveries from Croatia

(934) On the market for extra-EEA deliveries from Croatia to the world, those customers expressing a view considered that the impact of the Transaction would be positive or neutral.<sup>711</sup>

(935) As for the lane from Croatia to Asia/Pacific, those customers expressing a view considered that the impact of the Transaction would be positive or neutral.<sup>712</sup>

(936) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on extra-EEA delivery markets from Croatia.

#### 11.4.3. Conclusion

(937) In the light of the available evidence and the considerations laid down in Section 10 and this Section, the Commission concludes that the Transaction would not significantly impede effective competition in any markets for extra-EEA deliveries from Croatia.

### 11.5. Market for extra-EEA small package delivery services from Cyprus to the world and to Central and South America, to Asia/Pacific, to the Middle East and to Africa

#### 11.5.1. FedEx's views

(938) FedEx submits that the economic significance of the markets for extra-EEA delivery services in Cyprus is limited, as the total size of the market for deliveries to the world amounts to EUR [Confidential] million. DHL is the leader on all markets for extra-EEA deliveries from Cyprus, whether to the world or any of the major world lanes. It would therefore certainly compete with the Merged Entity also post-Transaction. Further, UPS also has a presence on all markets for extra-EEA and could therefore effectively constrain the Merged Entity post-Transaction.

#### 11.5.2. Commission's assessment

(939) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Cyprus.

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<sup>711</sup> See responses to questions 41 & 43 of the questionnaire to customers Q3 – Phase I and responses to questions 22 and 24 of the questionnaire to customers Q4 - Phase I; responses to question 35 of the questionnaire to customers R2 - Phase II.

<sup>712</sup> See responses to questions 42 and 44 of the questionnaire to customers Q3 – Phase I; responses to questions 23 and 25 of the questionnaire to customers Q4 - Phase I; responses to question 36.3 of the questionnaire to customers R2 - Phase II.

### 11.5.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Cyprus

**Table 42: Extra-EEA market reconstruction for Cypriot markets**

Cyprus	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Integrator															
To all lanes	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Towards North America	[20-30]%	[10-20]%	[40-50]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Towards Central and South America	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[50-60]%	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%
Towards Asia / Pacific	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[60-70]%
Towards Middle East	[10-20]%	[20-30]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%
Towards Africa	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[60-70]%	[5-10]%	[20-30]%	[30-40]%	[0-5]%	[50-60]%
Towards Rest of Europe	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%

(940) Based on the Commission's market reconstruction, the Parties' combined share on a market for extra-EEA deliveries from Cyprus would range between 20% and 30% for deliveries to the world and not exceed 40% on any narrower market for deliveries to the major world lanes. FedEx is smaller than TNT on the markets for extra-EEA deliveries from Cyprus, accounting for [5-10]% of all markets, with the exception of the market for deliveries to North America, where it has a market share of [10-20]% and of the market for deliveries to the Rest of Europe, where its market share is below 5%.

(941) DHL is the market leader with a significantly higher market share than its competitors. DHL's market share exceeds 40% on all markets, reaching [70-80]% on the market for deliveries to the Rest of Europe. With the exception of the market for deliveries to North America, where its market share is [10-20]%, UPS has market shares below 10% on the other lanes. UPS's market share has however increased on the markets for extra-EEA deliveries to North America and to Asia/Pacific in the course of the last three years, thus showing that it does not face any systemic weakness preventing its expansion on extra-EEA markets from Cyprus.

(942) On the market for deliveries to North America, the Merged Entity would have a market share of [30-40]% post-Transaction, whereas its two rivals will also have market shares of at least 20%. This market will therefore not be analysed further in this Decision. In addition, on the market for extra-EEA deliveries to the Rest of Europe, the Merged Entity would have a market share of [10-20]% post-Transaction, with an increment of less than 5%. This market, clearly led by DHL, will also not be analysed further in this Decision.

(943) Therefore, on all seven markets for extra-EEA deliveries from Cyprus, DHL and UPS are already active and have an established market presence.

### 11.5.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries in Cyprus

(944) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from Cyprus to the world and to the major world lanes, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.

(945) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of

TNT have a different profile, with FedEx's customers being mainly interested in deliveries to FedEx's home market of North America,<sup>713</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

- (946) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive road network to organise the pick-up services in Bulgaria, as noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>714</sup>
- (947) Conversely FedEx does not directly serve Cyprus, but is represented instead by a local GSP, whose infrastructure it uses for deliveries in that country. However, once picked up by the GSP, small packages enter FedEx's extra-EEA air network, which is much more extensive than that of TNT consisting of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx, nor TNT have direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to this destination.<sup>715</sup>
- (948) Third, when asked about FedEx's closest competitor on extra-EEA markets from Cyprus, the majority of respondents to the market investigation identified DHL as FedEx's closest competitor, followed by UPS and TNT. Similarly, when the Parties' competitors and customers in Cyprus were asked about the closest competitor of TNT on the market for extra-EEA deliveries, those responding to the market investigation identified DHL as TNT's closest competitor, followed by UPS and FedEx.<sup>716</sup>
- (949) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Cyprus.

#### 11.5.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Cyprus

- (950) As set out in Table 42, TNT's market shares are not particularly high on the markets for extra-EEA deliveries from Cyprus, not exceeding 20% on the broader market for extra-EEA deliveries to the world. Further, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick, for example by using a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>717</sup>
- (951) Even though TNT has a direct presence in Cyprus, unlike FedEx and UPS, this has not enabled it to strengthen its market position materially in the last three years.

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<sup>713</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95.

<sup>714</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>715</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>716</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to small competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>717</sup> Horizontal Merger Guidelines, paragraph 37.

Therefore, TNT does not seem to have exerted particular competitive pressure on its competitor on the Cypriot extra-EEA markets.

- (952) Further, TNT is not a pricing maverick on the Cypriot extra-EEA markets.
- (953) First, TNT's overall cost position on the markets for extra-EEA delivery services in Cyprus is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack, which is comparable to its pick-up costs in other EEA countries.<sup>718</sup> As reflected by the PUD curve in Figure 11 in recital (351), UPS and DHL are overall more cost efficient than TNT in the EEA in relation to their pick-up costs. Specifically for Cyprus, unlike FedEx and UPS that operate through GSPs, both TNT and DHL have direct presence in the country. FedEx was not able to provide information on its coverage in Cyprus, the Commission thus exempted Cyprus from its coverage data analysis. DHL however has significantly greater scale. As the pick-up costs depend on the provider's coverage and scale on a given market, DHL and TNT appear likely to have similar pick-up costs in Cyprus.
- (954) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>719</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of supplier. For instance, the quality of the service was indicated as the most important criterion for concluding a framework contract by the SMEs from Cyprus responding to the Commission's questionnaire.<sup>720</sup> Also, while customers identify TNT as the lowest cost provider of extra-EEA services from Cyprus, DHL appears as a very close second.<sup>721</sup>
- (955) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Cyprus to the world and to the major world lanes.

#### 11.5.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Cyprus post-Transaction

- (956) For the reasons set out below, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (957) First, as illustrated in Table 42, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Cyprus. DHL is the clear market leader with market shares of at least 40% on all markets and a market share of [60-70]% on the markets for extra-EEA deliveries to Central and South America and to Asia/Pacific. This means that DHL clearly has the capacity to compete effectively for shipments that originate in Cyprus.

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<sup>718</sup> As indicated in Table 5 in recital (310), FedEx was not in the position to estimate pick-up costs in Cyprus.

<sup>719</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>720</sup> See response to question 17 of questionnaire to SMEs R3 - Phase II.

<sup>721</sup> See responses to question 16.3 of questionnaire to customers R2 - Phase II and responses to question 19.3 of questionnaire to SMEs R3 - Phase II.

- (958) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Cyprus with an overall market share on the market for deliveries to the world of [5-10]%. UPS thus has a customer base for extra-EEA deliveries to all lanes in Cyprus, as well as a cooperation with a local operator in place that enables it to pick-up extra-EEA parcels and then ship them through its own extra-EEA network. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to Central and South America, Asia/Pacific, the Middle East and Africa, where its market share is often higher than in the case of Cyprus, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.
- (959) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular lane is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity also post-Transaction.
- (960) Moreover, the majority of customers from Cyprus responding to the market investigation considered that there would be sufficient viable alternatives for their extra-EEA international small package delivery needs post-Transaction.<sup>722</sup>
- (961) In addition, a relative majority of customers responding to the market investigation from Cyprus also indicate that as they multisource in relation to their extra-EEA services,<sup>723</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Further, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (962) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market.<sup>724</sup> For deliveries to Central and South America, [Confidential]% of FedEx's total sales derive from its top three customers and [Confidential]% from its top ten. For deliveries to Asia/Pacific, [Confidential]% of FedEx's total sales derive from its top three customers and [Confidential]% from its top ten. For deliveries to the Middle East, [Confidential]% of FedEx's total sales derive from its top three customers and [Confidential]% from its top ten. For deliveries to Africa, [Confidential]% of FedEx's total sales derive from its top three customers and [Confidential]% from its top ten.<sup>725</sup>
- (963) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the Cypriot extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can

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<sup>722</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I.

<sup>723</sup> See responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 - Phase II; responses to question 6 of questionnaire to SMEs R3 - Phase II. There were no responses to question 21 and 22 of questionnaire to customers Q3 - Phase I.

<sup>724</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

<sup>725</sup> FedEx's response to the request for information QP24 of 24 November 2015.

always redeploy assets or even increase their network, should there be a sustained increase in demand.

- (964) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

11.5.2.5. The Parties' customers have not raised concerns as to the impact of the Transaction on markets for extra-EEA deliveries from Cyprus

- (965) The majority of customers from Cyprus expressing a view to the market investigation considered that the impact of the Transaction would be positive on a market for extra-EEA deliveries to the world.<sup>726</sup>

- (966) On the markets for extra-EEA deliveries from Cyprus to the lanes of Central and South America, Asia/Pacific, the Middle East and Africa, the majority of customers considered that the impact of the Transaction would be positive or neutral.<sup>727</sup>

- (967) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the markets for extra-EEA deliveries from Cyprus.

11.5.3. *Conclusion*

- (968) In the light of the available evidence and the considerations in Section 10 and this Section, the Commission concludes that the Transaction would not significantly impede effective competition in any markets for extra-EEA deliveries from Cyprus.

## 11.6. **Market for extra-EEA small package delivery services from the Czech Republic to the world, to Central and South America, to the Middle East and to Asia/Pacific**

11.6.1. *FedEx's views*

- (969) FedEx submits that DHL is the leader on a market for deliveries from the Czech Republic to the whole world and on all six narrower markets for deliveries to the major world lanes. It would therefore constrain the Merged Entity also post-Transaction. Similarly, UPS is also active and already generates revenues on a market for extra-EEA deliveries to the world and to the major world lanes. As customers can easily switch among integrators and DHL and UPS do not face any structural weakness in providing extra-EEA services from the Czech Republic, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>728</sup>

11.6.2. *Commission's assessment*

- (970) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from the Czech Republic.

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<sup>726</sup> See responses to questions 22 and 24 of questionnaire to customers Q4 - Phase I; responses to question 35 of questionnaire R2 - Phase II to customers; responses to question 26 of questionnaire to SMEs R3 - Phase II.

<sup>727</sup> See responses questions 23 and 25 of the questionnaire to customers Q4 - Phase I; responses to question 36 of the questionnaire to customers R2 - Phase II.

<sup>728</sup> FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" and "Lane-by-lane analysis for Extra-EEA services" of 23 September, 2015.

### 11.6.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from the Czech Republic

**Table 43: Extra-EEA market reconstruction for Czech markets**

Czech Republic	2012					2013					2014				
Integrator	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
To all lanes	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Towards North America	[40-50]%	[0-5]%	[50-60]%	[10-20]%	[30-40]%	[40-50]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%	[30-40]%	[0-5]%	[40-50]%	[10-20]%	[40-50]%
Towards Central and South America	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Towards Asia / Pacific	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[30-40]%	[0-5]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Towards Middle East	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Towards Africa	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%
Towards Rest of Europe	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%

(971) Based on the Commission's market reconstruction, the Parties' combined share on a market for extra-EEA deliveries from the Czech Republic to the world would only exceed 40% on a market for deliveries to North America, where however the increment brought about by the Transaction would be marginal. Also, the Merged Entity would have a market share of [10-20]% on the market for deliveries to Africa and of [20-30]%, within the same range to the market share of UPS, on the market for deliveries to the Rest of Europe. These three markets will therefore not be discussed further in this Decision.

(972) On all other markets both FedEx and TNT account for [10-20]% of the total revenues, the Merged Entity would thus have a share of [20-30]% on the markets for deliveries to Central and South America and to Asia/Pacific and of [30-40]% on the markets for deliveries to the world and the Middle East.

(973) DHL is the market leader with a share of more than 50% on all four markets and UPS a market position of [5-10]% for deliveries to Central and South America and Asia/Pacific and of [10-20]% for deliveries to the world and the Middle East. UPS's market share however has somewhat fluctuated on the markets for extra-EEA deliveries to Central and South America and to the Middle East in the course of the last three years, thus showing that UPS does not face any systemic weakness impeding it to expand on extra-EEA markets in the Czech Republic.

(974) Therefore, on all seven markets for extra-EEA deliveries from the Czech Republic, DHL and UPS are already active and have an established market presence.

### 11.6.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries in the Czech Republic

(975) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from the Czech Republic to the world and to the major world lanes, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.

(976) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in

deliveries to FedEx's home market of North America,<sup>729</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

- (977) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive road network to organise the pick-up services in the Czech Republic, in which it has coverage of [Confidential]%; as noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>730</sup>
- (978) Conversely FedEx has a lower coverage of [Confidential]% in the Czech Republic, indicative of its smaller road network in the country.<sup>731</sup> However, FedEx's extra-EEA air network is much more extensive than that of TNT and consists of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx, nor TNT have direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to that destination.<sup>732</sup>
- (979) Third, when asked about FedEx's closest competitor on Czech extra-EEA markets, respondents to the market investigation identified DHL as FedEx's closest, followed by TNT and UPS. When the Parties' competitors and customers in the Czech Republic were asked about the closest competitor of TNT, they clearly identified DHL as closest, followed by FedEx and UPS.<sup>733</sup>
- (980) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from the Czech Republic.

#### 11.6.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in the Czech Republic

- (981) As illustrated in Table 43, TNT's market shares are not particularly high on the markets for extra-EEA deliveries from the Czech Republic to the world and the various world lanes. Furthermore, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick, because it uses for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>734</sup>
- (982) From a comparison of its market share and its evolution in recent years with that of its competitors, TNT does not seem to have exerted particular competitive pressure on the Czech markets for extra-EEA deliveries or strengthened its market position

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<sup>729</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95.

<sup>730</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015,.

<sup>731</sup> See Table 5 in recital (310).

<sup>732</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>733</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to small competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>734</sup> Horizontal Merger Guidelines, paragraph 37.

share in recent years. Conversely, TNT's market shares on these markets have been stable in the course of the last three years.

- (983) Further, TNT is not a pricing maverick on the Czech extra-EEA markets.
- (984) First, TNT's overall cost position on the Czech markets for extra-EEA delivery services is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in the Czech Republic, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>735</sup> The pick-up costs of UPS, DHL and TNT in the Czech Republic are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11 in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) all of TNT, UPS and DHL have a [Confidential]% coverage in the Czech Republic; and iii) based on their market shares on the Czech intra-EEA and extra-EEA markets, the scale of UPS is similar to that of TNT in the Czech Republic, whereas that of DHL much larger. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in the Czech Republic.
- (985) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>736</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of supplier. Also, customers from the Czech Republic often consider other integrators (such as DHL or FedEx) as equally cost efficient as TNT for extra-EEA services.<sup>737</sup>
- (986) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from the Czech Republic to the world and to the major world lanes.

#### 11.6.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from the Czech Republic post-Transaction

- (987) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (988) First, as illustrates in Table 43, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in the Czech Republic. DHL is the clear market leader with market shares of at least 40% on all markets from the Czech Republic. DHL thus clearly has the capacity to compete effectively for shipments that originate in the Czech Republic.
- (989) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from the Czech Republic with an overall market share on the market for deliveries to the

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<sup>735</sup> See Table 32 in recital (785).

<sup>736</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>737</sup> See responses to question 16.3 of questionnaire to customers R2 - Phase II and question 19.3 of questionnaire to SMEs R3 - Phase II.

world of [10-20]%. Moreover, UPS has [Confidential]% coverage on the Czech territory. UPS thus has a customer base for extra-EEA deliveries in the Czech Republic, as well as a network that allows it to pick-up extra-EEA small packages from the entire country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to Central and South America, Asia/Pacific and the Middle East, where its market share is often higher than in the case of the Czech Republic, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.

- (990) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from the Czech Republic also post-Transaction.
- (991) Second, respondents to the market investigation from the Czech Republic also share this view, as their majority considers that there would be sufficient alternatives to the Merged Entity on a market for extra-EEA deliveries.<sup>738</sup>
- (992) Moreover, the majority of customers responding to the market investigation from the Czech Republic also indicate that as they multisource in relation to their extra-EEA services,<sup>739</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Furthermore, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (993) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. FedEx submits that the revenues generated from its top ten customers correspond on the markets for extra-EEA deliveries to Central and South America and to Asia/Pacific to [Confidential]% and [Confidential]% respectively of its total revenues on these markets.<sup>740</sup> For deliveries to the Middle East, [Confidential]% of FedEx's total sales derive from its top ten customers.<sup>741</sup>
- (994) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the Czech extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.
- (995) Market shares are therefore highly contestable on the markets for extra-EEA deliveries from the Czech Republic, in which all four integrators are already active.

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<sup>738</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 – Phase I and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I

<sup>739</sup> See responses to questions 21 and 22 of questionnaire to customers Q3; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 - Phase II; responses to question 6 of questionnaire to SMEs R3 - Phase II.

<sup>740</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

<sup>741</sup> FedEx's response to the request for information QP24 of 24 November 2015.

11.6.2.5. The Parties' customers have not raised concerns as to the impact of the Transaction on markets for extra-EEA deliveries from the Czech Republic

(996) The majority of respondents from the Czech Republic to the Phase I and Phase II market investigation considered that the impact of the Transaction would be positive on a market for extra-EEA deliveries to the world.<sup>742</sup>

(997) On a market for extra-EEA deliveries from the Czech Republic to the lanes of Asia/Pacific and to Central and South America, the majority of respondents submitted that the impact of the Transaction would be neutral while for the lane to Middle East they considered that the Transaction would have a positive impact.<sup>743</sup>

(998) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the markets for extra-EEA deliveries from the Czech Republic.

### 11.6.3. Conclusion

(999) In the light of the available evidence and the considerations laid down in Section 10 and this Section, the Commission concludes that the Transaction would not significantly impede effective competition in any markets for extra-EEA deliveries from the Czech Republic.

## 11.7. Market for extra-EEA small package delivery services from Estonia to the world, to North America and to Asia/Pacific

### 11.7.1. FedEx's views

(1000) FedEx submits that DHL is the leader on a market for deliveries from Estonia to the whole world and on five of the six narrower markets for deliveries to the major world lanes. It would therefore constrain the Merged Entity also post-Transaction. Similarly, UPS is also active and already generates revenues on the markets for extra-EEA deliveries to the world and to the major world lanes. As customers can easily switch among integrators and DHL and UPS do not face any structural weakness in providing extra-EEA services from Estonia, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>744</sup>

### 11.7.2. Commission's assessment

(1001) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Estonia.

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<sup>742</sup> See responses to questions 41 and 43 of the questionnaire Q3 to the customers; responses to questions 22 and 24 of the questionnaire to customers Q4 - Phase I; responses to question 35 of the questionnaire to customers R2 - Phase II.

<sup>743</sup> See responses to questions 42 and 44 of the questionnaire to customers Q3; responses to questions 23 and 25 of the questionnaire to customers Q4 - Phase I; responses to question 36 of the questionnaire to customers R2 - Phase II.

<sup>744</sup> FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" and "Lane-by-lane analysis for Extra-EEA services" of 23 September, 2015. .

### 11.7.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Estonia

**Table 44: Extra-EEA market reconstruction for Estonian markets**

Estonia	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Integrator															
To all lanes	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[40-50]%	[10-20]%	[40-50]%
Towards North America	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[50-60]%	[20-30]%	[20-30]%	[50-60]%	[5-10]%	[50-60]%	[10-20]%	[20-30]%
Towards Central and South America	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Towards Asia / Pacific	[5-10]%	[20-30]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%
Towards Middle East	[0-5]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[5-10]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%	[5-10]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%
Towards Africa	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[30-40]%	[30-40]%	[20-30]%	[40-50]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%
Towards Rest of Europe	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[60-70]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%

- (1002) First, based on the Commission's market reconstruction on a market for extra-EEA deliveries from Estonia to the world, the Merged Entity would have a market share of over 40%, with FedEx accounting for [20-30]% and TNT for [10-20].
- (1003) On the market for deliveries to North America, the Parties' combined market share would reach [50-60]%, with FedEx accounting for [50-60]% and TNT for [5-10]%. Even though post-Transaction the Merged Entity would have a rather strong position on this market, this results primarily from FedEx's significant position of [50-60]% on that market, on which the Transaction would bring about a very modest increment. Both DHL and UPS are also present on this market, amounting to market shares of [20-30]% and [10-20]% respectively.
- (1004) For deliveries to Asia/Pacific, the Merged Entity would have a share of [30-40]%, less than the leading operator DHL, with a market share of [50-60]%. UPS is also active on this lane with a market share of [5-10].
- (1005) On the remaining four markets for deliveries from Estonia to Central and South America, the Middle East, Africa and the Rest of Europe, the Merged Entity would have a market share of [30-40]% on the two first and of [20-30]% on the latter. DHL has a leading position on all four markets and the shares of UPS range between [10-20]% and [20-30]%. Three sizeable competitors would thus be active on those markets, which would therefore not be further analysed in this Decision.
- (1006) Therefore, all four integrators are already active and have an established market presence on all markets for extra-EEA deliveries from Estonia.

### 11.7.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries in Estonia

- (1007) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from Estonia to the world and to the major world lanes, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.
- (1008) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in

deliveries to FedEx's home market of North America,<sup>745</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

- (1009) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its road network to organise the pick-up services in Estonia, in which it has coverage of [Confidential]; as noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. DHL and UPS both have significantly higher coverage in Estonia, amounting to [Confidential]% and [Confidential]% respectively.<sup>746</sup> At destination, TNT is able to organise the delivery of small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>747</sup>
- (1010) Conversely FedEx has a somewhat lower coverage of [Confidential]% in Estonia, indicative of its smaller road network in the country.<sup>748</sup> However, FedEx's extra-EEA air network is much more extensive than that of TNT and consists of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx, nor TNT have direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to this destination.<sup>749</sup>
- (1011) Third, when asked about FedEx's closest competitor on Estonian extra-EEA markets, respondents to the market investigation identified DHL as closest, followed by UPS and TNT. When the Parties' competitors and customers were asked about the closest competitor of TNT, they also clearly identified DHL as closest, followed by UPS, with FedEx as a clear third.<sup>750</sup>
- (1012) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Estonia.
- 11.7.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Estonia
- (1013) As illustrated in Table 44, TNT's market shares are not particularly high on the markets for extra-EEA deliveries from Estonia to the world, to North America and to Asia/Pacific. Furthermore, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick, because it uses for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>751</sup>
- (1014) From a comparison of its market share and its evolution in the last years with that of its competitors, TNT does not seem to have exerted particular competitive pressure on the Estonian markets for extra-EEA deliveries or strengthened its market position

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<sup>745</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95."

<sup>746</sup> See Table 5 in recital (310).

<sup>747</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>748</sup> See Table 5 in recital (310).

<sup>749</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>750</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>751</sup> Horizontal Merger Guidelines, paragraph 37.

share in recent years. Conversely, TNT's market shares on both the market for deliveries to North America and to Asia/Pacific have been reduced in the course of the last three years.

- (1015) Further, TNT is not a pricing maverick on the Estonian extra-EEA markets.
- (1016) First, TNT's overall cost position on the Estonian markets for extra-EEA delivery services is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in Estonia, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>752</sup> The pick-up costs of UPS, DHL and TNT in Estonia are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11 in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) UPS and DHL have much higher coverage than TNT in Estonia, of [Confidential]% and [Confidential]% respectively; and iii) based on their market shares on the Estonian intra-EEA and extra-EEA markets, the scale of UPS is overall similar to that of TNT in Estonia, whereas that of DHL much larger. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in Estonia.
- (1017) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>753</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of supplier. For instance, customers from Estonia explain that they use FedEx for their extra-EEA deliveries to North America, because 'FedEx has the best customer service, prices and contacts' while another customer uses DHL and considers it 'overall best solution for us'.<sup>754</sup>
- (1018) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Estonia to the world and the major world lanes.

#### 11.7.2.4. DHL and UPS would be able to effectively compete for extra-EEA delivery services from Estonia post-Transaction

- (1019) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (1020) First, as illustrated in Table 44, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Estonia. DHL is the clear market leader with market shares of at least 40% on all markets from Estonia, except that for deliveries to North America, where it still has a market share of [20-30]%. DHL thus

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<sup>752</sup> See Table 32 in recital (785).

<sup>753</sup> FedEx's response to the request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>754</sup> See non-confidential responses of [Name of the parties' customers] and [Name of the parties' customers] to question 9.1.2 of questionnaire to customers R2 - Phase II.

clearly has the capacity to compete effectively for shipments that originate from Estonia.

- (1021) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Estonia with an overall market share of [10-20]% for deliveries to the world. Moreover, UPS has [Confidential]% coverage on the Estonian territory. UPS thus has a customer base for extra-EEA deliveries in Estonia, as well as a network that allows it to pick-up extra-EEA small packages from virtually the entire country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to North America and Asia/Pacific, where its market share is often higher than for Estonia, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.
- (1022) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from Estonia also post-Transaction.
- (1023) Moreover, half of the customers responding to the market investigation from Estonia indicated that there would be sufficient viable alternatives to the Merged Entity for their extra-EEA international small package delivery needs post-Transaction.
- (1024) Moreover, a strong minority of customers responding to the market investigation from Estonia also indicate that they multisource in relation to their extra-EEA services,<sup>755</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Furthermore, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (1025) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. FedEx further submits that the Estonian market is very concentrated. FedEx's top ten customers account for [Confidential]% and its top three for [Confidential]% of the total revenues it generated on the market for deliveries to North America. Similarly, on the market for deliveries to Asia/Pacific, FedEx's top three customers account for [Confidential]% of the total revenues and the top ten for [Confidential]%.<sup>756</sup>
- (1026) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the Estonian extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.

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<sup>755</sup> See responses to question 8, 21 and 22 of questionnaire to customers Q3; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 - Phase II; responses to question 6 of questionnaire to SMEs R3 - Phase II.

<sup>756</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

(1027) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

11.7.2.5. Respondents to the market investigation have not raised concerns as to the impact of the Transaction on markets for extra-EEA deliveries from Estonia

(1028) On a market for extra-EEA deliveries from Estonia to the world, an overwhelming majority of the customers expressed a positive view, followed by those considering that the impact of the Transaction would be neutral.<sup>757</sup>

(1029) An overwhelming majority of the customers responding to the market investigation from Estonia<sup>758</sup> considered the impact of the Transaction on the lane to North America to be positive, followed by those considering that the impact would be neutral.

(1030) As for the lane from Estonia to Asia/Pacific, the overwhelming majority of respondents to the market investigation were either positive or neutral about the Transaction's impact on this market.<sup>759</sup>

(1031) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the markets for extra-EEA deliveries from Estonia.

### 11.7.3. Conclusion

(1032) In the light of the available evidence and the considerations in Section 10 and this Section, the Commission concludes that the Transaction would not significantly impede effective competition in any markets for extra-EEA deliveries from Estonia.

## 11.8. Market for extra-EEA small package delivery services from France to Central and South America, to Asia/Pacific and to the Middle East

### 11.8.1. FedEx's views

(1033) FedEx submits that DHL is the leader on a market for deliveries from France to the whole world and on five of the six narrower markets for deliveries to the major world lanes. It would therefore constrain the Merged Entity also post-Transaction. Similarly, UPS is also active and already generates revenues on the markets for extra-EEA deliveries to the world and to the major world lanes. As customers can easily switch among integrators and DHL and UPS do not face any structural weakness in providing extra-EEA services from France, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>760</sup>

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<sup>757</sup> See responses to questions 41 and 43 of the questionnaire Q3 to the customers and responses to questions 22 and 24 of the questionnaire to customers Q4 - Phase I; responses to question 35 of the questionnaire to customers R2 - Phase II .

<sup>758</sup> See responses to questions 42 (42.4 for the lane to North America) and 44 (44.4 for the lane to North America) of the questionnaire to customers Q3 – Phase I and responses to questions 23 (23.4 for the lane to North America) and 25 (25.4 for the lane to North America) of the questionnaire to customers Q4 - Phase I; responses to question 36 (36.1 for the lane to North America) of the questionnaire to customers R2 - Phase II.

<sup>759</sup> See responses to questions 42 and 44 of the questionnaire to customers Q3 - Phase I; responses to questions 23 and 25 of the questionnaire to customers Q4 - Phase I; responses to question 36 of the questionnaire to customers R2 - Phase II.

<sup>760</sup> FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" and "Lane-by-lane analysis for Extra-EEA services" of 23 September, 2015.

### 11.8.2. Commission's assessment

(1034) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from France.

#### 11.8.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from France

**Table 45: Extra-EEA market reconstruction for French markets**

France	2012					2013					2014				
Integrator	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
To all lanes	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[20-30]%	[40-50]%
Towards North America	[40-50]%	[0-5]%	[40-50]%	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[40-50]%	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[40-50]%	[20-30]%	[20-30]%
Towards Central and South America	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Towards Asia / Pacific	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Towards Middle East	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Towards Africa	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[60-70]%
Towards Rest of Europe	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%

(1035) First, based on the Commission's market reconstruction on a market for extra-EEA deliveries from France to the world, the Merged Entity would have a market share of [30-40]%, with FedEx accounting for [20-30]% and TNT for [5-10]%.

(1036) On the market for deliveries to Central and South America, Asia/Pacific and the Middle East, the Parties' combined market share is [30-40]%, with FedEx accounting for [20-30]% and TNT for [10-20]%. Both DHL and UPS are also present on this market; DHL with a market share of [50-60]% or [40-50]% for deliveries to Asia/Pacific and UPS with a market share of [5-10]%.

(1037) On all three remaining markets for deliveries from France to North America, Africa and the Rest of Europe, the Merged Entity would face two established competitors with comparable market shares; therefore those markets will not be further analysed in this Decision.

(1038) Therefore, all four integrators are already active and have an established market presence on all markets for extra-EEA deliveries from France.

#### 11.8.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries from France

(1039) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from France to the world and to the major world lanes, as TNT is still a Europe-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.

(1040) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in

deliveries to FedEx's home market of North America,<sup>761</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

- (1041) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive road network to organise the pick-up services in France, in which it has coverage of [Confidential]%; its own extra-EEA air network is however limited, as noted in Section 10.4.2.2. At destination, TNT is able to organise the delivery of small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>762</sup>
- (1042) Even though FedEx has a higher coverage level of [Confidential]% in France, its very high pick-up costs make its road network less competitive.<sup>763</sup> Conversely, FedEx's strength on extra-EEA markets lies on its extra-EEA air network, which is much more extensive than that of TNT and consists of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx, nor TNT have direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to this destination.<sup>764</sup>
- (1043) Third, when asked about FedEx's closest competitor on the French extra-EEA markets, respondents to the market investigation identified DHL as closest, followed by UPS and TNT. When the Parties' competitors and customers were asked about the closest competitor of TNT in France, they identified UPS closely followed by DHL and FedEx as a clear third.<sup>765</sup>
- (1044) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from France.

#### 11.8.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in France

- (1045) As evidenced in Table 45, TNT is the weakest integrator on the markets for extra-EEA deliveries from France to Central and South America, to Asia/Pacific and to the Middle East. Furthermore, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick, because it uses for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>766</sup>
- (1046) From a comparison of its market share and its evolution in the last years with that of its competitors, TNT does not seem to have exerted particular competitive pressure on the French markets for extra-EEA deliveries or strengthened its market position in

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<sup>761</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95.

<sup>762</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>763</sup> See Table 5 in recital (310).

<sup>764</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>765</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>766</sup> Horizontal Merger Guidelines, paragraph 37.

recent years. Conversely, TNT's market shares on all three markets mentioned above have remained stable in the course of the last three years.

- (1047) Further, TNT is not a pricing maverick on the French extra-EEA markets.
- (1048) First, TNT's overall cost position on the French markets for extra-EEA delivery services is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in France, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>767</sup> The pick-up costs of UPS, DHL and TNT in France are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11 in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) UPS and DHL have higher coverage than TNT in France, of [Confidential]% and [Confidential]% respectively; and iii) based on their market shares on the French intra-EEA and extra-EEA markets, the scale of both UPS and DHL is larger than that of TNT in France. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in France.
- (1049) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>768</sup> Some customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of supplier. For instance, a customer indicated that, when concluding a framework contract, the quality of the service is the most important criterion because the 'aviation industry need reliability and speed in the delivery of parts'.<sup>769</sup> Also, customers do not always identify TNT as the lowest cost provider of extra-EEA services from France, but often consider other integrators as more cost efficient.<sup>770</sup>
- (1050) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from France to the world and the major world lanes.

#### 11.8.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from France post-Transaction

- (1051) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (1052) First, as illustrated in Table 45, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in France. DHL is the clear market leader with market shares of at least 40% on the three markets for deliveries from

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<sup>767</sup> See Table 32 in recital (785).

<sup>768</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>769</sup> See non-confidential reply of [Name of parties' customers] to question 17.1 of questionnaire to SMEs R3 - Phase II.

<sup>770</sup> See replies to question 16.3 of questionnaire to customers R2 - Phase II and question 19.3 of questionnaire to SMEs R3 - Phase II.

France to Central and South America, Asia/Pacific and the Middle East. DHL thus clearly has the capacity to compete effectively for shipments that originate from France.

- (1053) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from France with a market share of [10-20]% or [20-30]%. Moreover, UPS has [Confidential]% coverage on the French territory. UPS thus has a customer base for extra-EEA deliveries in France, as well as a network that allows it to pick-up extra-EEA small packages from the largest part of the country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to Central and South America, Asia/Pacific and the Middle East, where its market share is often higher than in the case of France, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.
- (1054) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from France also post-Transaction.
- (1055) Moreover, the majority of customers responding to the market investigation from France also indicate that as they multisource in relation to their extra-EEA services,<sup>771</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Furthermore, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (1056) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. Specifically for France, FedEx submits that its top 10 of its customers generated [Confidential]% of its total revenues on the market for extra-EEA deliveries from France to Asia/Pacific.<sup>772</sup> For deliveries to Central and South America, [Confidential]% of FedEx's total sales derive from its top 10 customers and for deliveries to Africa, FedEx's top 10 customers generate [Confidential]% of the total revenues.<sup>773</sup>
- (1057) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the French extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.
- (1058) Market shares are therefore highly contestable on the markets for extra-EEA deliveries from France, in which all four integrators are present.

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<sup>771</sup> See responses to question 8, 21 and 22 of questionnaire to customers Q3 – Phase I; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 - Phase II; responses to question 6 of questionnaire to SMEs R3 – Phase II.

<sup>772</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

<sup>773</sup> FedEx's response to the request for information QP24 of 24 November 2015.

11.8.2.5. Respondents to the market investigation have not raised concerns as to the impact of the Transaction on markets for extra-EEA deliveries from France

(1059) The majority of customers from France responding to the market investigation considered that the impact of the Transaction would be either positive or neutral on a market for extra-EEA deliveries to the world.<sup>774</sup>

(1060) On a market for extra-EEA deliveries from France to the lane of Asia/Pacific the majority of customers were positive about the impact of the Transaction. Regarding the lane to the Middle East, the relative majority of customers considered that the impact of the Transaction would be positive while for the lane to Central and South America most customers did not express an opinion. Among those who did, most were either positive or neutral and there was a single customer who considered that the impact of the Transaction would be negative.<sup>775</sup>

(1061) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the markets for extra-EEA deliveries from France.

### 11.8.3. Conclusion

(1062) In the light of the available evidence and the considerations laid down in Section 10 and this Section, the Commission concludes that the Transaction would not significantly impede effective competition in any markets for extra-EEA deliveries from France .

## 11.9. Market for extra-EEA small package delivery services from Hungary to the world, to Central and South America, to Asia/Pacific, to the Middle East and to Africa

### 11.9.1. FedEx's views

(1063) FedEx submits that the economic significance of the Hungarian markets for extra-EEA delivery services is rather limited, as the total revenues generated by extra-EEA deliveries from Hungary do not exceed EUR [Confidential] million. Moreover, DHL is the leader on all these markets with the exception of the market for deliveries to North America, where FedEx has a leading position. UPS also has a share of more than 10% on all markets from Hungary. As customers can easily switch among integrators, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>776</sup>

### 11.9.2. Commission's assessment

(1064) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Hungary.

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<sup>774</sup> See responses to questions 41 and 43 of questionnaire to customers Q3 - Phase I; responses to questions 22 and 24 of questionnaire to customers Q4 - Phase I; responses to question 35 of questionnaire to customers R2 - Phase II and responses to question 26 of questionnaire to SMEs R3 - Phase II.

<sup>775</sup> See responses to questions 42 and 44 of questionnaire to customers Q3 - Phase I; responses to questions 23 and 25 of questionnaire to customers Q4 - Phase I; responses to question 36 of questionnaire to customers R2 - Phase II.

<sup>776</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, page 5 and following.

### 11.9.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Hungary

**Table 46: Extra-EEA market reconstruction for Hungarian markets**

Hungary	2012					2013					2014				
Integrator	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
To all lanes	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%
Towards North America	[50-60]%	[0-5]%	[50-60]%	[10-20]%	[20-30]%	[50-60]%	[0-5]%	[50-60]%	[10-20]%	[20-30]%	[50-60]%	[0-5]%	[50-60]%	[10-20]%	[20-30]%
Towards Central and South America	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%
Towards Asia / Pacific	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Towards Middle East	[30-40]%	[5-10]%	[40-50]%	[10-20]%	[40-50]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Towards Africa	[10-20]%	[0-5]%	[10-20]%	[5-10]%	[70-80]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[50-60]%
Towards Rest of Europe	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%

- (1065) Based on the Commission's market reconstruction, the Parties' combined market share on a market for extra-EEA deliveries from Hungary to the world would be [40-50]%, with an increment of [5-10]% brought about by the Transaction. DHL is the current market leader and will post-Transaction have a share comparable to that of the Merged Entity of [40-50]%. UPS has a share of [10-20]%, constituting a third competitor with a substantive market share.<sup>777</sup>
- (1066) On the markets for extra-EEA deliveries to Central and South America, to Asia Pacific, to the Middle East and to Africa the Merged Entity would have a combined share of [30-40]%, with FedEx accounting for [20-30]% and TNT for [5-10]% or [10-20]%. DHL holds a leading position on all these markets with a market share of at least 40% and UPS is also present with a market share of [10-20]%.
- (1067) On the market for deliveries to North America, the Parties' combined market share would reach [50-60]%, the increment of the Transaction however amounts to less than 5%. The Merged Entity's market position would thus primarily result from FedEx's current position on that market, to which the Transaction would bring about a limited addition. Further, as analysed in Section 11.9.2.4 DHL and UPS would also constrain the Merged Entity post-Transaction with market shares of [20-30]% and [10-20]% respectively.
- (1068) On the market for deliveries to the Rest of Europe, the Merged Entity would have a market share of [20-30]%. Both DHL and UPS are also present on those two markets. Those two markets will therefore not be analysed further in this Decision.
- (1069) Therefore, all four integrators are already active and have an established market presence on all markets for extra-EEA deliveries from Hungary.

### 11.9.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries in Hungary

- (1070) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from Hungary to the world and to the major world lanes, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.
- (1071) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of

<sup>777</sup> Commission's market reconstruction.

TNT have a different profile, with FedEx's customers being mainly interested in deliveries to FedEx's home market of North America,<sup>778</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

- (1072) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive road network to organise the pick-up services in Hungary, in which it has full coverage. As noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>779</sup>
- (1073) Even though FedEx also has full coverage in Hungary, its very high pick-up costs make its road network less competitive.<sup>780</sup> Conversely, FedEx's extra-EEA air network is much more extensive than that of TNT and consists of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx, nor TNT have direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to this destination.<sup>781</sup>
- (1074) Third, when asked about FedEx's closest competitor on the Hungarian extra-EEA markets, respondents to the market investigation identified DHL as closest, followed by UPS and TNT as a clear third. When the Parties' competitors and customers were asked about the closest competitor of TNT, they also clearly identified DHL as closest, followed by UPS and FedEx.<sup>782</sup>
- (1075) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Hungary.

#### 11.9.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Hungary

- (1076) As evidenced in Table 46, TNT is the weakest integrator on the markets for extra-EEA deliveries from Hungary to the world, to Central and South America, Asia/Pacific, the Middle East and Africa. Furthermore, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick, because it uses for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>783</sup>
- (1077) From a comparison of its market share and its evolution in recent years with that of its competitors, TNT does not seem to have exerted particular competitive pressure on the Hungarian markets for extra-EEA deliveries or strengthened its market position share over the last years. Conversely, TNT's market shares on both the

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<sup>778</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95

<sup>779</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>780</sup> See Table 5 in recital (310) and Section 9.4.2.

<sup>781</sup> FedEx's presentation for the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>782</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>783</sup> Horizontal Merger Guidelines, paragraph 37.

market for deliveries to Central and South America, Asia/Pacific and the Middle East have remained stable in the course of the last three years; only on the market for extra-EEA deliveries from Hungary to Africa did TNT marginally increase its market share.

- (1078) Further, TNT is not a pricing maverick on the Hungarian extra-EEA markets.
- (1079) First, TNT's overall cost position on the Hungarian markets for extra-EEA delivery services is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in Hungary, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>784</sup> The pick-up costs of UPS, DHL and TNT in Hungary are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11 in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) UPS and DHL also have [Confidential]% coverage in Hungary; and iii) based on their market shares on the Hungarian intra-EEA and extra-EEA markets, the scale of UPS is similar to that of TNT in Hungary, whereas that of DHL much larger. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in Hungary.
- (1080) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>785</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the most important factor determining their selection of supplier. The quality of the service is, for instance, the most important criterion for some<sup>786</sup> while one customer indicated that 'a complexity (sic) of criteria including price, ability, lead time, package handling determines the relevant provider'.<sup>787</sup> Also, customers do not always identify TNT as the lowest cost provider of extra-EEA services from Hungary, but often consider other integrators as equally cost efficient.<sup>788</sup>
- (1081) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Hungary to the world and the major world lanes.

#### 11.9.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Hungary post-Transaction

- (1082) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.

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<sup>784</sup> See Table 32 in recital (785).

<sup>785</sup> FedEx's response to the request for information QP18. of 6 October 2015 Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>786</sup> See replies to question 17 of questionnaire to SMEs R3 - Phase II.

<sup>787</sup> See non-confidential reply of [Name of parties' customers] to question 17.1 of questionnaire to SMEs R3 - Phase II.

<sup>788</sup> See replies to question 16.3 of questionnaire to customers R2 - Phase II and question 19.3 of questionnaire to SMEs R3 - Phase II.

- (1083) First, as illustrated in Table 46, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Hungary. DHL is the clear market leader with market shares of at least 40% on all markets from Hungary, except the one for deliveries to North America, where it still has a market share of [20-30]%. DHL thus clearly has the capacity to compete effectively for shipments that originate from Hungary.
- (1084) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Hungary with an overall market share of [10-20]% on all plausible markets. Moreover, UPS has [Confidential]% coverage on the Hungarian territory. UPS thus has a customer base for extra-EEA deliveries in Hungary, as well as a network that allows it to pick-up extra-EEA small packages from the entire country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to Central and South America, Asia/Pacific, the Middle East and Africa, where its market share is often higher than in the case of Hungary, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.
- (1085) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from Hungary also post-Transaction.
- (1086) Second, respondents to the market investigation from Hungary also share this view, as all the responding customers consider that there would be sufficient alternatives to the Merged Entity on a market for extra-EEA deliveries.<sup>789</sup>
- (1087) Moreover, around half of the customers responding to the market investigation from Hungary also indicate that as they multisource in relation to their extra-EEA services,<sup>790</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Furthermore, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (1088) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. Of the total revenues it generated on a market for deliveries to Central and South America, its top ten customers account for [Confidential]% and its top three for [Confidential]%. Similarly, on the market for deliveries to Asia/Pacific, FedEx's top three customers account for [Confidential]% of the total revenues and the top ten for [Confidential]%. On the market for deliveries to the Middle East, the top ten customers account for [Confidential]% and the top three for [Confidential]% of FedEx's total revenues and on the market for deliveries to

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<sup>789</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 - Phase I and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I.

<sup>790</sup> See responses to question 8, 21 and 22 of questionnaire to customers Q3 - Phase I; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 - Phase II; responses to question 6 of questionnaire to SMEs R3 - Phase II.

Africa, the top ten customers generate [Confidential]% and the top three [Confidential]% of the total revenues.<sup>791</sup>

- (1089) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the Hungarian extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.
- (1090) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

11.9.2.5. Respondents to the market investigation have not raised concerns as to the impact of the Transaction on markets for extra-EEA deliveries from Hungary

- (1091) The results of the market investigation show that when asked about the impact of the Transaction on a market for extra-EEA deliveries from Hungary, the majority of customers responding from Hungary expressed a positive view of the Transaction's impact on a market for deliveries to the world, followed by those considering that the impact of the Transaction would be neutral.<sup>792</sup>
- (1092) On the markets for extra-EEA deliveries from Hungary to Central and South America and Africa, the majority of customers considered that the impact of the Transaction would be neutral. For the lanes to Asia/Pacific and the Middle East, the majority of respondents considered that the impact would be positive.<sup>793</sup>
- (1093) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the markets for extra-EEA deliveries from Hungary.

### 11.9.3. Conclusion

- (1094) In the light of the available evidence and the considerations laid down in Section 10 and this Section, the Commission concludes that the Transaction would not significantly impede effective competition in any markets for extra-EEA deliveries from Hungary.

## 11.10. Markets for extra-EEA small package delivery services from Ireland to the world and to Asia/Pacific

### 11.10.1. FedEx's views

- (1095) FedEx submits that DHL is the leader on a market for deliveries from Ireland to the whole world and on five of the six narrower markets for deliveries to the major world lanes. It would therefore constrain the Merged Entity also post-Transaction. Similarly, UPS is also active and generates revenues on the markets for extra-EEA deliveries to the world and to the major world lanes. As customers can easily switch among integrators and DHL and UPS do not face any structural weakness in

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<sup>791</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

<sup>792</sup> See responses to questions 41 and 43 of questionnaire to customers Q3 - Phase I; responses to questions 22 and 24 of questionnaire to customers Q4 - Phase I; responses to question 35 of questionnaire to customers R2 - Phase II; responses to question 26 of questionnaire to SMEs R3 - Phase II.

<sup>793</sup> See responses to questions 42 and 44 of the questionnaire to customers Q3 - Phase I; responses to questions 23 and 25 of the questionnaire to customers Q4 - Phase I; responses to question 36 of the questionnaire to customers R2 - Phase II.

providing extra-EEA services from Ireland, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>794</sup>

### 11.10.2. Commission's assessment

(1096) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Ireland.

#### 11.10.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Ireland

**Table 47: Extra-EEA market reconstruction for Irish markets**

Ireland	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Integrator															
To all lanes	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%	[30-40]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%
Towards North America	[40-50]%	[0-5]%	[40-50]%	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[40-50]%	[20-30]%	[30-40]%	[40-50]%	[0-5]%	[40-50]%	[20-30]%	[20-30]%
Towards Central and South America	[20-30]%	[5-10]%	[30-40]%	[5-10]%	[60-70]%	[20-30]%	[0-5]%	[20-30]%	[5-10]%	[60-70]%	[20-30]%	[0-5]%	[20-30]%	[5-10]%	[60-70]%
Towards Asia / Pacific	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[5-10]%	[30-40]%	[10-20]%	[50-60]%
Towards Middle East	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[50-60]%
Towards Africa	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[70-80]%
Towards Rest of Europe	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%

(1097) Based on the Commission's market reconstruction on a market for extra-EEA deliveries from Ireland to the world, the Merged Entity would have a market share of [30-40]%, with FedEx accounting for [30-40]% and TNT for [5-10]%. On the market for deliveries to Asia/Pacific, the Parties' combined market share would again be [30-40]%, with FedEx accounting for [20-30]% and TNT for [5-10]%.  
(1098) Both DHL and UPS are also present on these markets; DHL with a leading position of [40-50]% for deliveries to the world and of [50-60]% for deliveries to Asia/Pacific. UPS has on both markets a market share of [10-20]%.  
(1099) On all five remaining markets for deliveries from Ireland to North America, Central and South America, the Middle East, Africa and the Rest of Europe, either the Merged Entity would have a moderate market share and face two sizeable competitors or the increment of the Transaction would be marginal; therefore those markets will not be further analysed in this Decision.

(1100) Therefore, all four integrators are already active and have an established market presence on all markets for extra-EEA deliveries from Ireland.

11.10.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries in Ireland

(1101) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from Ireland to the world and to the major world lanes, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.

(1102) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of

<sup>794</sup> FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" and "Lane-by-lane analysis for Extra-EEA services" of 23 September, 2015.

TNT have a different profile, with FedEx's customers being mainly interested in deliveries to FedEx's home market of North America,<sup>795</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

- (1103) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive road network to organise the pick-up services in Ireland. As noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>796</sup>
- (1104) Conversely FedEx has a smaller intra-EEA road network,<sup>797</sup> its extra-EEA air network however is much more extensive than that of TNT and consists of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx, nor TNT have direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to this destination.<sup>798</sup>
- (1105) Third, when asked about FedEx's closest competitor on extra-EEA markets in Ireland, respondents to the market investigation identified DHL as closest, followed by TNT and UPS. When the Parties' competitors and customers were asked about the closest competitor of TNT, they also clearly identified DHL as closest, followed by UPS and FedEx as a clear third.<sup>799</sup>
- (1106) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Ireland.

11.10.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Ireland

- (1107) As illustrated in Table 47, TNT is the weakest integrator on the markets for extra-EEA deliveries from Ireland to the world and to Asia/Pacific. Furthermore, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick, because it uses for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>800</sup>
- (1108) From a comparison of its market share and its evolution in the last years with that of its competitors, TNT does not seem to have exerted particular competitive pressure on the markets for extra-EEA deliveries from Ireland or strengthened its market position share in recent years. Conversely, TNT's market shares on both the market

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<sup>795</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95

<sup>796</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>797</sup> See Table 5 in recital (310) and Section 9.4.2.

<sup>798</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>799</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>800</sup> Horizontal Merger Guidelines, paragraph 37.

for deliveries to the world and to Asia/Pacific have remained stable in the course of the last three years.

- (1109) Furthermore, TNT is not a pricing maverick on the Irish extra-EEA markets.
- (1110) First, TNT's overall cost position on the markets for extra-EEA delivery services from Ireland is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in Ireland, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>801</sup> The pick-up costs of UPS, DHL and TNT in Ireland are expected to be comparable. First, according to the PUD curve in Figure 11 in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA. [Confidential], the Commission thus exempted Ireland from its coverage data analysis. Based on their market shares on the markets for intra-EEA and extra-EEA deliveries from Ireland, the scale of both UPS and DHL however is larger than that of TNT. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in Ireland.
- (1111) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT strategic planning].<sup>802</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of provider. One customer, for instance, indicated 'price, customer request, provider level of support to our business' as factors determining their choice of provider.<sup>803</sup> Also, customers do not always identify TNT as the lowest cost provider of extra-EEA services from Ireland, but often consider other integrators as more cost efficient.<sup>804</sup>
- (1112) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Ireland to the world and the major world lanes.

11.10.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Ireland post-Transaction

- (1113) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (1114) First, as derives from Table 47, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Ireland. DHL is the clear market leader with market shares of at least 40% on all markets from Ireland, except to North America, where it still has a market share of [20-30]%. DHL thus clearly has the capacity to compete effectively for shipments that originate from Ireland.

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<sup>801</sup> See Table 32 in recital (785).

<sup>802</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015 Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>803</sup> See non-confidential response of [Name of parties' customers] to question 13.14 of questionnaire to customers R2 - Phase II.

<sup>804</sup> See responses to question 16.3 of questionnaire to customers R2 – Phase II.

- (1115) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Ireland with an overall market share of at least 10% on all markets, but the one for deliveries to Central and South America. UPS thus has a customer base for extra-EEA deliveries in Ireland, as well as a network that allows it to pick-up extra-EEA small packages from the entire country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to Asia/Pacific, where its market share is often higher than in the case of Ireland, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.
- (1116) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it would also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from Ireland also post-Transaction.
- (1117) Second, respondents to the market investigation from Ireland also share this view, as their overwhelming majority considers that there would be sufficient alternatives to the Merged Entity for their extra-EEA international small package delivery needs post-Transaction.<sup>805</sup>
- (1118) Moreover, the relative majority of customers responding to the market investigation from Ireland also indicate that as they multisource in relation to their extra-EEA services,<sup>806</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Further, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (1119) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. FedEx further submits that the Irish market is very concentrated. Of the total revenues it generated on a market for deliveries to Asia/Pacific, FedEx's top three customers account for [Confidential]% of the total revenues and the top ten for [Confidential]%.<sup>807</sup>
- (1120) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the Irish extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.
- (1121) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

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<sup>805</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 - Phase I and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I.

<sup>806</sup> See responses to question 8, 21 and 22 of questionnaire to customers Q3 - Phase I; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 – Phase II. There were no responses to question 6 of questionnaire to SMEs R3 - Phase II.

<sup>807</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

11.10.2.5. Respondents to the market investigation have not raised concerns as to the impact of the Transaction on markets for extra-EEA deliveries from Ireland

(1122) When customers were asked about the impact of the Transaction on a market for extra-EEA deliveries from Ireland to the world, the results of the market investigation were inconclusive. Most customers expressing an opinion during the Phase I market investigation considered that the impact of the Transaction would be negative. However, overall the majority of customers did not express any opinion at all. Opinions were rather split during the Phase II market investigation, however, the majority of customers responding considered that the impact of the Transaction would be neutral.<sup>808</sup> For instance, one customer explained that: "*we do not expect a change in our services provided or our service costs due to the Transaction*".<sup>809</sup>

(1123) On a market for extra-EEA deliveries from Ireland to the lane of Asia/Pacific the majority of customers expressing a view during the market investigation considered that the impact of the Transaction would be neutral.<sup>810</sup>

(1124) Moreover, the majority of customers from Ireland responding to the market investigation considered that there would be sufficient viable alternatives for their extra-EEA international small package delivery needs post-Transaction.<sup>811</sup>

(1125) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the markets for extra-EEA deliveries from Ireland.

### 11.10.3. Conclusion

(1126) In the light of the available evidence and the considerations laid down in Section 10 and this Section, the Commission concludes that the Transaction would not significantly impede effective competition in any markets for extra-EEA deliveries from Ireland.

## 11.11. Markets for extra-EEA small package delivery services from Latvia to the world, to North America, to Central and South America, to Asia/Pacific, to the Middle East

### 11.11.1. FedEx's views

(1127) FedEx submits that the economic significance of the Latvian market for extra-EEA delivery services to the world is limited, as its total size amounts to EUR [Confidential] million. Moreover, DHL is the leader on a market for deliveries to the whole world and on four of the six narrower markets for deliveries to the major world lanes; on the remaining two, it still has an established market presence. Similarly, UPS is also present on the markets for extra-EEA deliveries to the world and to the major world lanes from Latvia. As customers can easily switch among

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<sup>808</sup> See replies to questions 41 and 43 of questionnaire to customers Q3 - Phase I; replies to questions 22 and 24 of questionnaire to customers Q4 - Phase I; replies to question 35 of questionnaire to customers R2 - Phase II.

<sup>809</sup> See non-confidential response of [Name of parties' customers] to question 35.1 of questionnaire to customers R2 - Phase II.

<sup>810</sup> See responses to questions 42 and 44 of questionnaire to customers Q3 - Phase I; responses to questions 23 and 25 of questionnaire to customers Q4 - Phase I; responses to question 36 of questionnaire to customers R2 - Phase II.

<sup>811</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 - Phase I and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I.

integrators, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>812</sup>

#### 11.11.2. Commission's assessment

(1128) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Latvia.

11.11.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Latvia

**Table 48: Extra-EEA market reconstruction for Latvian markets**

Latvia	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
To all lanes	[10-20]%	[20-30]%	[40-50]%	[10-20]%	[30-40]%	[10-20]%	[20-30]%	[40-50]%	[10-20]%	[30-40]%	[10-20]%	[20-30]%	[40-50]%	[10-20]%	[40-50]%
Towards North America	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[50-60]%	[10-20]%	[20-30]%
Towards Central and South America	[20-30]%	[10-20]%	[40-50]%	[40-50]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[30-40]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[20-30]%	[30-40]%
Towards Asia / Pacific	[20-30]%	[20-30]%	[50-60]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[40-50]%	[20-30]%	[30-40]%
Towards Middle East	[5-10]%	[30-40]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[40-50]%	[60-70]%	[10-20]%	[20-30]%	[10-20]%	[30-40]%	[50-60]%	[10-20]%	[30-40]%
Towards Africa	[20-30]%	[30-40]%	[50-60]%	[10-20]%	[20-30]%	[20-30]%	[30-40]%	[50-60]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Towards Rest of Europe	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[30-40]%	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%

(1129) Based on the Commission's market reconstruction, the Parties' combined share on a market for extra-EEA deliveries from Latvia to the world would exceed 40%, with FedEx accounting for [10-20]% and TNT for [20-30]%. DHL is the market leader with a share of more than 40% and UPS also has a substantial market position of [10-20]%.

(1130) Similarly, on the four narrower markets for extra-EEA deliveries to the major world lanes, DHL will consistently be the market leader with shares up to [50-60]% and the Merged Entity a market share exceeding 40%. UPS, which would be the third competitor post-Transaction is also present on all markets for extra-EEA deliveries from Latvia, with a market share of [10-20]% or [20-30]%.

(1131) The Merged Entity would have a market share of [30-40]% also on the market for deliveries from Latvia to the Rest of Europe. As however the market position of FedEx is below 5%, the increment of the Transaction on this market would be very modest. Therefore, the Latvian market for deliveries to the Rest of Europe will not be analysed in more detail. Similarly, on the market for extra-EEA deliveries to Africa, the Merged Entity would have a market share of [30-40]%, whereas DHL and UPS will have market shares of [40-50]% and [20-30]% respectively. Therefore, it is evident that post-Transaction DHL and UPS would continue to compete with the Merged Entity. These two markets would therefore not be analysed further in this Decision.

(1132) Therefore, on all six markets, DHL and UPS are already active and have established a market position.

<sup>812</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, page 5 and following.

11.11.2.2. Among integrators the Parties are not close competitors on the Latvian markets for extra-EEA deliveries

- (1133) As already analysed in Section 10.4, the Parties are not particularly close competitors on markets for extra-EEA deliveries, among integrators. This applies also on the markets for extra-EEA deliveries from Latvia to the world and to the major world lanes, as TNT is still an intra-EEA-focussed integrator with limited extra-EEA air network, primarily offering extra-EEA delivery services to its intra-EEA customers..
- (1134) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties' sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being in their majority interested in deliveries to FedEx's home market of North America,<sup>813</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.
- (1135) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive road network to organise the pick-up services in Latvia, in which it has coverage of [Confidential]%. As noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>814</sup>
- (1136) Conversely, FedEx has a lower coverage of only [Confidential]% in Latvia, indicative of its significantly smaller road network in the country, which it uses for the pick-up of extra-EEA small packages. However, FedEx's extra-EEA air network is much more extensive than that of TNT consisting of [Confidential] aircraft, [Confidential] of which connecting Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx nor TNT have direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to this destination.<sup>815</sup>
- (1137) Third, when asked about FedEx's closest competitor on the provision of extra-EEA delivery services from Latvia, respondents to the market investigation identified DHL as FedEx's closest competitor, followed by UPS and TNT. Similarly, when asked about the closest competitor of TNT on Latvian extra-EEA markets, customers and competitors responding to the market investigation identified FedEx and DHL as closest, followed by UPS.<sup>816</sup>
- (1138) Therefore, the Transaction would not result in anticompetitive effects due to the removal of a particularly close competitor of FedEx on extra-EEA markets from Latvia.

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<sup>813</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95.

<sup>814</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>815</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>816</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

- 11.11.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Latvia
- (1139) The Commission considers that the Transaction would not result in the elimination of an important competitive force on the markets for extra-EEA deliveries from Latvia. TNT is not the strongest competitor on any of the markets for extra-EEA deliveries from Latvia, it does not constitute a lowest-price supplier and more generally is not akin to a maverick due to its different service offer or business model.
- (1140) Even though the market share of TNT has been fluctuating on markets for extra-EEA deliveries from Latvia, it has both increased and decreased in the course of the last three years and on different markets. Therefore, TNT has not achieved a significant growth overall due to an aggressive strategy of attracting customers from its competitors. This is further demonstrated by the fact that on the market for extra-EEA deliveries to the world, the market share of TNT has even marginally decreased.
- (1141) Further, TNT is not a pricing maverick on the Latvian extra-EEA markets.
- (1142) First, TNT's overall cost position on the Latvian markets for extra-EEA delivery services is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in Latvia, which are lower than FedEx's EUR [Confidential], but comparable to those of UPS and DHL.<sup>817</sup> The pick-up costs of UPS, DHL and TNT in Latvia are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11 in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) DHL and UPS have higher coverage than TNT in Latvia of [Confidential]%; and iii) based on their market shares on the Latvian markets, the scale of DHL is larger than that of TNT in Latvia. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, the pick-up costs in Latvia of DHL appear likely to be similar to those of TNT.
- (1143) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>818</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of supplier.<sup>819</sup> Also, customers do not always identify TNT as the lowest cost provider of extra-EEA services from Latvia, but often consider other integrators as more cost efficient.<sup>820</sup>
- (1144) Several participants to the market investigation indicate that they select FedEx for deliveries to North America because it offers "*best coverage and prices*",<sup>821</sup> that "*both DHL and FedEx have good delivery timing, they are reliable, have good*

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<sup>817</sup> See Figure 10 in recital (351), integrators' PUD cost curve.

<sup>818</sup> FedEx's response to the request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>819</sup> See for instance response to question 17 of questionnaire to SMEs R3 - Phase II.

<sup>820</sup> See response to question 16.3 of questionnaire to customers R2 - Phase II and question 19.3 of questionnaire to SMEs R3 - Phase II.

<sup>821</sup> Non-confidential Response of [Name of parties' customers] to question 9.1 of R2-10MS.

*geographic coverage, FedEx is offering better price though*",<sup>822</sup> and that FedEx offers "good price for delivery".<sup>823</sup>

- (1145) Similarly, on the market for extra-EEA deliveries to Central and South America, some customers indicate that TNT offers low prices,<sup>824</sup> others however claim the same in relation to FedEx.<sup>825</sup> Further, customers of TNT indicate that they selected their provider based on more service features than just the pricing, by explaining that they use TNT "because of the best delivery times, reliability, the best geographic coverage across all destinations, good customer service, good prices"<sup>826</sup> or TNT and DHL "because their services are used in urgent delivery matters".<sup>827</sup>
- (1146) On the market for extra-EEA deliveries from Latvia to Asia/Pacific, customers explain that they select providers also based on price, they however contract with and identify as lower cost providers different integrators, among which all of DHL, FedEx and TNT.<sup>828</sup>
- (1147) On the market for extra-EEA deliveries to the Middle East, customers again select different providers, on the basis of several criteria. Customers select DHL because it offers "best delivery time, reliable delivery, simplified custom clearance process",<sup>829</sup> DHL and FedEx because they "have good delivery timing, they are reliable, have good geographic coverage, FedEx is offering better price though",<sup>830</sup> "TNT because of the best delivery times, reliability, the best geographic coverage across all destinations, good customer service, good prices",<sup>831</sup> or because TNT "offer the best prices and have the best delivery times"<sup>832</sup>, FedEx because of the "good prices"<sup>833</sup> or use the services of TNT and DHL "for urgent matters".<sup>834</sup>
- (1148) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Latvia to the world and to the major world lanes.

#### 11.11.2.4. DHL, UPS and other integrators would constrain the Merged Entity also post-Transaction

- (1149) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (1150) First, as illustrated in Table 48 both DHL and UPS have an established presence on all markets for extra-EEA deliveries in Latvia. More concretely, DHL has a market share of [30-40]% on all extra-EEA markets from Latvia, with the exception of that for deliveries to North America, where its share is [20-30]%. Also, on the broader market for extra-EEA deliveries to the world, DHL has a market share of [40-50]%. Further, DHL's coverage in Latvia is [Confidential]%. Therefore, DHL clearly has

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<sup>822</sup> Non-confidential Response of [Name of parties' customers] to question 9.1 of R2-10MS.  
<sup>823</sup> Non-confidential Response of [Name of parties' customers] to question 9.1 of R2-10MS.  
<sup>824</sup> Non-confidential Response of [Name of parties' customers] to question 9.2 of R2-10MS.  
<sup>825</sup> Non-confidential Responses of [Name of parties' customers] to question 9.2 of R2-10MS.  
<sup>826</sup> Non-confidential Response of [Name of parties' customers] to question 9.2 of R2-10MS.  
<sup>827</sup> Non-confidential Response of [Name of parties' customers] to question 9.2 of R2-10MS.  
<sup>828</sup> Non-confidential Responses of customers from Latvia to question 9.3 of R2-10MS.  
<sup>829</sup> Non-confidential Response of [Name of parties' customers] to question 9.4 of R2-10MS.  
<sup>830</sup> Non-confidential Response of [Name of parties' customers] to question 9.4 of R2-10MS.  
<sup>831</sup> Non-confidential Response of [Name of parties' customers] to question 9.4 of R2-10MS.  
<sup>832</sup> Non-confidential Response of [Name of parties' customers] to question 9.4 of R2-10MS.  
<sup>833</sup> Non-confidential Response of [Name of parties' customers] to question 9.4 of R2-10MS.  
<sup>834</sup> Non-confidential Response of [Name of parties' customers] to question 9.4 of R2-10MS.

the ability and required customer base to compete effectively for extra-EEA shipments from Latvia. Likewise, DHL has higher market shares on several other national markets for extra-EEA deliveries to North America, Central and South America, Asia/Pacific and the Middle East. Therefore, DHL has the capability to provide extra-EEA delivery services on these world lanes.

- (1151) Moreover, UPS also has a market share of at least 10% on all markets for extra-EEA deliveries from Latvia. Moreover, UPS also has [Confidential]% coverage of the Latvian territory. UPS therefore has a customer base interested in extra-EEA deliveries and the network that allows it to pick up extra-EEA small packages from all of Latvia. Similarly, UPS has a proven ability to also organise the delivery of small packages at all major world lanes. UPS indicates that it can do so in more than 220 countries and territories either directly or through more or less integrated subcontractors. Looking at UPS's market share on other national markets for deliveries to North America, Central and South America, Asia/Pacific and the Middle East, where its share is often significantly higher than on the respective Latvian markets, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.
- (1152) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it would also have the capability to compete effectively on the lane in question, even if its current share on that particular lane is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity also post-Transaction.
- (1153) Second, respondents to the market investigation also consider that they would have sufficient alternatives to the Merged Entity post-Transaction, as the assessment of the majority of respondents from Latvia was that there would be sufficient alternatives to the Merged Entity for their extra-EEA international small package delivery needs post-Transaction.<sup>835</sup>
- (1154) Moreover, the majority of customers responding to the market investigation from Latvia also indicate that as they multisource in relation to their extra-EEA services,<sup>836</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Further, as already analysed in Section 10.6.2.4, there are no exclusivity clauses in customers' contracts, customers can thus easily switch their supplier of extra-EEA delivery services.
- (1155) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. On the market for extra-EEA deliveries to North America [Confidential]% of its total revenues are generated by its top three customers and [Confidential]% by its top ten. On the market for deliveries to Central and South America, the sales of the top three customers correspond to [Confidential]% of the total FedEx's revenues. On the market for deliveries to Asia/Pacific, FedEx's top three customers account for [Confidential]% of its total sales and the top ten for [Confidential]%. Last, on the market for deliveries to the

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<sup>835</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 - Phase I and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I.

<sup>836</sup> See responses to question 8, 21 and 22 of questionnaire to customers Q3 - Phase I; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 - Phase II; responses to question 6 of questionnaire to SMEs R3 - Phase II.

Middle East, FedEx's top three customers generate [Confidential]% of its total revenues.<sup>837</sup>

- (1156) Moreover, post-Transaction DHL and UPS could accommodate any customers of the Merged Entity willing to switch on Latvian extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.
- (1157) Market shares are therefore driven by a small number of customers on this market and, given the presence of several competitors on these markets, market shares are highly contestable.<sup>838</sup> As a result, DHL and UPS would continue to constrain the Merged Entity also post-Transaction.

11.11.2.5. A majority of customers on the Latvian markets for extra-EEA deliveries have not expressed any concerns

- (1158) The majority of respondents from Latvia to the Phase I and Phase II market investigation considered that the impact of the Transaction would be positive or neutral on a market for extra-EEA deliveries to the world.<sup>839</sup>
- (1159) On the markets for extra-EEA deliveries from Latvia to the lanes of North America, Central and South America, Asia/Pacific and the Middle East, the majority of respondents submitted that the impact of the Transaction would be neutral.<sup>840</sup>
- (1160) Therefore, no concerns were raised during the market investigation on the markets for extra-EEA small package delivery services from Latvia.
- (1161) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the markets for extra-EEA deliveries from Latvia.

### 11.11.3. Conclusion

- (1162) In the light of the available evidence and the considerations in Section 10 and this Section, the Commission concludes that the Transaction would not lead to a significant impediment to effective competition in any markets for extra-EEA small package delivery services from Latvia.

## 11.12. Market for extra-EEA small package delivery services from Lithuania to the Middle East

### 11.12.1. FedEx's views

- (1163) FedEx submits that the economic significance of the Lithuanian market for extra-EEA delivery services to the Middle East is negligible, given that the size of the market for extra-EEA deliveries from Lithuania to the world does not exceed EUR

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<sup>837</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, page 5 and following.

<sup>838</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015.

<sup>839</sup> See responses to questions 41 and 43 of questionnaire to customers Q3 - Phase I; responses to questions 22 and 24 of questionnaire to customers Q4 - Phase I; responses to question 35 of questionnaire to customers R2- Phase II and responses to question 26 of questionnaire to SMEs R3 - Phase II.

<sup>840</sup> See responses to questions 42 and 44 of the questionnaire to customers Q3 - Phase I; responses to questions 23 and 25 of the questionnaire to customers Q4 - Phase I; responses to question 36 of the questionnaire to customers R2- Phase II.

[Confidential] million. In any case, DHL would be by far the market leader on a market for deliveries from Lithuania to the whole world and across all the six narrower markets for deliveries to the major world lanes post-Transaction. Similarly, UPS's market shares on the market for extra-EEA deliveries to the world and to the major world lanes are not negligible and in any case, UPS faces no structural weakness in the country given that it has the necessary infrastructure for organising both the pick-up and the delivery. As customers can easily switch among integrators, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>841</sup>

#### 11.12.2. Commission's assessment

(1164) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Lithuania.

11.12.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Lithuania

**Table 49: Extra-EEA market reconstruction for Lithuanian markets**

Lithuania	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
Integrator															
To all lanes	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%
Towards North America	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[20-30]%	[10-20]%	[30-40]%	[20-30]%	[30-40]%	[10-20]%	[5-10]%	[20-30]%	[30-40]%	[30-40]%
Towards Central and South America	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[5-10]%	[20-30]%	[20-30]%	[10-20]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%
Towards Asia / Pacific	[5-10]%	[30-40]%	[40-50]%	[10-20]%	[40-50]%	[5-10]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[5-10]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%
Towards Middle East	[5-10]%	[30-40]%	[40-50]%	[10-20]%	[40-50]%	[5-10]%	[30-40]%	[40-50]%	[5-10]%	[40-50]%	[5-10]%	[30-40]%	[40-50]%	[10-20]%	[40-50]%
Towards Africa	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%
Towards Rest of Europe	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%	[0-5]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%

(1165) First, based on the Commission's market reconstruction, the Parties' combined market share on a market for extra-EEA deliveries from Lithuania to the Middle East would be [40-50]%, whilst TNT's market share is [30-40]% on this lane and FedEx's only [5-10]%. DHL with a market share of [40-50]% would remain post-Transaction on par with the Merged Entity. UPS is a third competitor with a market share of [10-20].<sup>842</sup>

(1166) On all other lanes, as well as on a market for deliveries to the world from Lithuania, the Merged Entity would have a share of less than 40% and the increment of the Transaction would never exceed 10%. DHL is the market leader on all of those markets and UPS also has a market share of more than 10%, with the exception of Africa, where it has [5-10]%. Therefore, those markets will not be analysed in greater detail in this Decision.

(1167) Consequently, all four integrators are already active and have an established market presence on all markets for extra-EEA deliveries from Lithuania. FedEx's

11.12.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries from Lithuania

(1168) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the

<sup>841</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, page 16 and following.

<sup>842</sup> Commission's market reconstruction.

markets for extra-EEA deliveries from Lithuania to the Middle East, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.

- (1169) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in deliveries to FedEx's home market of North America,<sup>843</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.
- (1170) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive EEA road network to organise the pick-up services in Lithuania, where it has [Confidential]% coverage. As noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>844</sup>
- (1171) FedEx has a much lower coverage of only [Confidential]% in Lithuania and operates a smaller and costlier intra-EEA road network.<sup>845</sup> FedEx's extra-EEA air network however is much more extensive than that of TNT and consists of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East.<sup>846</sup>
- (1172) Third, when asked about FedEx's closest competitor on extra-EEA markets in Lithuania, respondents to the market investigation identified DHL and TNT as closest, closely followed by UPS. When the Parties' competitors and customers were asked about the closest competitor of TNT, they clearly identified DHL as closest, followed by UPS and FedEx as a distant third.<sup>847</sup> Moreover, even though some customers and competitors did identify TNT as one of the closest competitors to FedEx, they also identified DHL as such, implying its competitively restraining force on TNT and the Merged Entity. Also, as will be explained in this Section, other facts show that the Transaction would not lead to a significant impediment to competition on the plausible markets from Lithuania analysed in this Section.
- (1173) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Lithuania.

11.12.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Lithuania

- (1174) As illustrated in Table 49, TNT is not leading on the market for extra-EEA deliveries from Lithuania to the Middle East and has lower market shares on all other extra-EEA markets from Lithuania. Further, for the reasons set out in this Section, TNT

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<sup>843</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning].

<sup>844</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>845</sup> See Table 5 in recital (310) and Section 9.4.2.

<sup>846</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>847</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

does not constitute a low price supplier nor more generally a maverick, because it uses for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>848</sup>

- (1175) From a comparison of its market share and its evolution in the last years with that of its competitors, TNT does not seem to have exerted particular competitive pressure on the markets for extra-EEA deliveries from Lithuania or strengthened its market position share in recent years. TNT's market shares on the market for extra-EEA deliveries to the Middle East has remained stable, on other markets from extra-EEA deliveries from Lithuania however, such as the market for deliveries to the world, to North America or to Asia/Pacific, TNT's market shares have dropped in the last three years.
- (1176) Further, TNT is not a pricing maverick on a market for extra-EEA deliveries from Lithuania to the Middle East.
- (1177) First, TNT's overall cost position on the markets for extra-EEA delivery services from Lithuania is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in Lithuania, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>849</sup> The pick-up costs of UPS, DHL and TNT in Lithuania are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11 in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) UPS and DHL have higher coverage of [Confidential]% and [Confidential]% than TNT in Lithuania; and iii) based on their market shares on the markets for deliveries from Lithuania, the scale of UPS is overall similar to that of TNT, whereas that of DHL much larger. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in Lithuania.
- (1178) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>850</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of supplier. For instance, reliability of the provider, geographic coverage and customer service were considered by the responding customers as very significant service criteria when selecting their extra-EEA small package delivery service provider.<sup>851</sup> Also, customers do not always identify TNT as the lowest cost provider of extra-EEA services from Lithuania to the Middle East, but often consider other integrators as equally or more cost effective.<sup>852</sup>
- (1179) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the

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<sup>848</sup> Horizontal Merger Guidelines, paragraph 37.

<sup>849</sup> See Table 32 in recital (785).

<sup>850</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015 Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers, of 9 October 2015, Annex 2.

<sup>851</sup> See responses to questions 13.4, 13.6 and 13.10 of questionnaire to customers R2 - Phase II.

<sup>852</sup> See responses to question 16.3 of questionnaire to customers R2 and question 19.3 of questionnaire to SMEs R3 - Phase II .

elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Lithuania to the world and the major world lanes.

11.12.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Lithuania post-Transaction

- (1180) For the reasons set out below, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (1181) First, as illustrated in Table 49, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Lithuania. DHL is the clear market leader with market shares of at least 40% on all markets from Lithuania, with the exception of the market for deliveries to North America, where both DHL and UPS have a share of [30-40]%. DHL thus clearly has the capacity to compete effectively for shipments that originate from Lithuania.
- (1182) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Lithuania, as well as [Confidential]% coverage. UPS thus has a customer base for extra-EEA deliveries in Lithuania, as well as a network that allows it to pick-up extra-EEA small packages from the country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to the Middle East, where its market share is often higher than in the case of Lithuania, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries also on this lane.
- (1183) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from Lithuania also post-Transaction.
- (1184) Second, respondents to the market investigation from Lithuania also share this view, as the overwhelming majority considers that there would be sufficient alternatives to the Merged Entity for their extra-EEA small package delivery needs post-Transaction.<sup>853</sup>
- (1185) Moreover, the relative majority of customers responding to the market investigation from Lithuania also indicate that as they multisource in relation to their extra-EEA services,<sup>854</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Furthermore, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (1186) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. Of the total revenues FedEx generated on the market

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<sup>853</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 - Phase I and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I.

<sup>854</sup> See responses to question 8, 21 and 22 of questionnaire to customers Q3 - Phase I; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire R2 to customers; responses to question 6 of questionnaire to SMEs R3 - Phase II.

for deliveries to the Middle East, its top three customers account for [Confidential]% of the total revenues and the top ten for [Confidential]%.<sup>855</sup>

(1187) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the market for extra-EEA deliveries from Lithuania to the Middle East. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.

(1188) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

11.12.2.5. A majority of customers on the market for extra-EEA deliveries from Lithuania to the Middle East has not expressed any concerns

(1189) The majority of customers from Lithuania responding to the market investigation considered that the Transaction would have a neutral impact on extra-EEA deliveries overall.<sup>856</sup> Regarding the lane from Lithuania to the Middle East, an overwhelming majority of customers responding to the Phase I<sup>857</sup> and to the Phase II<sup>858</sup> market investigation considered the Transaction would have a neutral impact and the remaining minority considered the Transaction to have a positive impact on the given lane.

(1190) In addition, as analysed in Section 10.9, the Transaction is likely to give rise to efficiencies on the markets for extra-EEA deliveries from Lithuania.

### *11.12.3. Conclusion*

(1191) In the light of the available evidence and the considerations laid down in Section 10 and this Section, the Commission concludes that the Transaction would not lead to a significant impediment to effective competition on a market for extra-EEA deliveries from Lithuania.

## **11.13. Market for extra-EEA small package delivery services from Luxembourg to the world and to North America, to Central and South America and to the Middle East**

### *11.13.1. FedEx's views*

(1192) FedEx argues that the economic significance of the market for extra-EEA delivery services from Luxembourg to North America is rather limited, as the total revenues generated by extra-EEA deliveries from Luxembourg do not exceed EUR [Confidential] million. Moreover DHL and UPS are also present on these markets and would continue to compete with the Merged Entity post-Transaction. In

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<sup>855</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

<sup>856</sup> See responses to questions 41 and 43 of questionnaire to customers Q3 - Phase I; responses to questions 22 and 24 of questionnaire to customers Q4 - Phase I; responses to question 35 of questionnaire to customers R2 – Phase II and responses to question 26 of questionnaire to SMEs R3 - Phase II.

<sup>857</sup> See responses to questions 42 (42.2 for the lane to the Middle East) and 44 (44.2 for the lane to the Middle East) of the questionnaire to customers Q3 - Phase I and responses to questions 23 (23.2 for the lane to the Middle East) and 25 (25.2 for the lane to the Middle East) of the questionnaire to customers Q4 - Phase I

<sup>858</sup> See responses to question 36 (36.5 for the lane to the Middle East) of the questionnaire to customers R2– Phase II.

particular, as customers can easily switch among integrators, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>859</sup>

### 11.13.2. Commission's assessment

(1193) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Luxembourg.

#### 11.13.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Luxembourg

**Table 50: Extra-EEA market reconstruction for Luxembourgish markets**

Luxembourg	2012					2013					2014				
Integrator	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
To all lanes	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Towards North America	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%
Towards Central and South America	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Towards Asia / Pacific	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%
Towards Middle East	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[5-10]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Towards Africa	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[10-20]%	[5-10]%	[70-80]%
Towards Rest of Europe	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%

(1194) Based on the Commission's market reconstruction on a market for extra-EEA deliveries from Luxembourg to the world, the Merged Entity would have a market share of [20-30]% following the market leader DHL with [60-70]%. UPS is also present on this market, with a market share of [5-10]%.

(1195) On the narrower markets for deliveries to North America, to Central and South America and to the Middle East, the Merged Entity would have a market share of [30-40]% for deliveries to North America and of [20-30]% on the other two markets. FedEx currently accounts for [20-30]% on the market for deliveries to North America and has a lower share of [5-10]% on the markets for deliveries to Central and South America and to the Middle East. DHL is the clear market leader on all markets for extra-EEA deliveries from Luxembourg. UPS is also active on all markets, its market share being [10-20]% on the market for deliveries to North America and [5-10]% on the markets for deliveries to Central and South America and to the Middle East.

(1196) On all other markets for extra-EEA deliveries from Luxembourg the market share of the Merged Entity is below 30% and both DHL and UPS have an established market presence. Therefore, those markets will not be further analysed in more detail in this Decision.

(1197) Therefore, all four integrators are already active and have an established market presence on all markets for extra-EEA deliveries from Luxembourg.

<sup>859</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, page 5 and following.

11.13.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries from Luxembourg

(1198) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the market for extra-EEA deliveries from Luxembourg, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.

(1199) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in deliveries to FedEx's home market of North America,<sup>860</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

(1200) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive EEA road network to organise the pick-up services in Luxembourg, where it has [Confidential]% coverage. As noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>861</sup>

(1201) Even though FedEx also has [Confidential]% coverage, it has a smaller and costlier intra-EEA road network.<sup>862</sup> FedEx's extra-EEA air network however is much more extensive than that of TNT and consists of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East.<sup>863</sup>

(1202) Third, when asked about FedEx's closest competitor on extra-EEA markets in Luxembourg, respondents to the market investigation identified DHL as closest, followed by UPS and TNT. When the Parties' competitors and customers were asked about the closest competitor of TNT, they also clearly identified DHL as closest, followed by UPS and FedEx as a clear third.<sup>864</sup>

(1203) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Luxembourg.

11.13.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Luxembourg

(1204) As illustrated in Table 50, TNT's market shares are not particularly high on the markets for extra-EEA deliveries from Luxembourg. Further, for the reasons set out below, TNT does not constitute a low price supplier nor more generally a maverick,

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<sup>860</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95.

<sup>861</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>862</sup> See Table 5 in recital (310) and Section 9.4.2.

<sup>863</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>864</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

because of using for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>865</sup>

- (1205) From a comparison of its market share and its evolution in the last years with that of its competitors, TNT does not seem to have exerted particular competitive pressure on the markets for extra-EEA deliveries from Luxembourg or strengthened its market position share in recent years. Conversely, TNT's market shares on all markets for extra-EEA deliveries from Luxembourg have remained stable in the course of the last three years.
- (1206) Further, TNT is not a pricing maverick on the markets for extra-EEA deliveries from Luxembourg.
- (1207) First, TNT's overall cost position on the markets for extra-EEA delivery services from Luxembourg is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in Luxembourg, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>866</sup> The pick-up costs of UPS, DHL and TNT in Luxembourg are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11 in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) all of TNT, UPS and DHL have [Confidential]% coverage in Luxembourg; and iii) based on their market shares on the markets for intra-EEA and extra-EEA deliveries from Luxembourg, the scale of DHL is much larger than that of TNT. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in Luxembourg.
- (1208) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>867</sup> Indeed, customers responding to the market investigation do not always identify TNT as the lowest cost provider of extra-EEA services from Luxembourg, but often consider other integrators as more cost efficient.<sup>868</sup>
- (1209) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Luxembourg to the world and the major world lanes.

#### 11.13.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Luxembourg post-Transaction

- (1210) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (1211) First, as illustrated in Table 50, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Luxembourg. DHL is the clear

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<sup>865</sup> Horizontal Merger Guidelines, paragraph 37.

<sup>866</sup> See Table 32 in recital (785).

<sup>867</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015 Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>868</sup> See, for instance, responses to question 19.3 of questionnaire to SMEs R3 - Phase II.

market leader with market shares of at least 50% on all markets from Luxembourg. DHL thus clearly has the capacity to compete effectively for shipments that originate from Luxembourg.

- (1212) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Luxembourg, as well as [Confidential]% coverage. UPS thus has a customer base for extra-EEA deliveries in Luxembourg, as well as a network that allows it to pick-up extra-EEA small packages from the country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to North America, Central and South America and the Middle East, where its market share is often higher than in the case of Luxembourg, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries also on this lane.
- (1213) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from Luxembourg also post-Transaction.
- (1214) Second, respondents to the market investigation from Luxembourg also share this view, as the overwhelming majority considers that there would be sufficient alternatives to the Merged Entity for their extra-EEA small package delivery needs post-Transaction.<sup>869</sup>
- (1215) Moreover, approximately half of the customers responding to the market investigation from Luxembourg also indicate that as they multisource in relation to their extra-EEA services,<sup>870</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Furthermore, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (1216) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market.<sup>871</sup> For deliveries to North America, [Confidential]% of FedEx's total sales derive from its top three customers and [Confidential]% from its top ten. For deliveries to Central and South America, [Confidential]% of FedEx's total sales derive from its top three customers and [Confidential]% from its top ten. For deliveries to the Middle East, [Confidential]% of FedEx's total sales derive from its top three customers and [Confidential]% from its top ten.<sup>872</sup>

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<sup>869</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 - Phase I and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I.

<sup>870</sup> See responses to question 8, 21 and 22 of questionnaire to customers Q3 - Phase I; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 – Phase II; responses to question 6 of questionnaire to SMEs R3 – Phase II.

<sup>871</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

<sup>872</sup> FedEx's response to the request for information QP24 of 24 November 2015. These sales include the sales to the GSP, which corresponds to the aggregated extra-EEA deliveries purchased in Croatia. As the GSP manages the customer relationships in Croatia, FedEx has no information as to the size of the different contracts.

(1217) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the market for extra-EEA deliveries from Luxembourg to North America. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.

(1218) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

11.13.2.5. A majority of customers on the market for extra-EEA deliveries from Luxembourg have not expressed any concerns

(1219) On the markets for extra-EEA deliveries from Luxembourg to the world as well as to the lanes to North America, Central and South America and to the Middle East those respondents expressing a view considered that the impact of the Transaction would be positive.<sup>873</sup>

(1220) In addition, as shown in Section 10.9, the Transaction is likely to give rise to efficiencies on extra-EEA delivery markets from Luxembourg.

#### *11.13.3. Conclusion*

(1221) In the light of the available evidence and the considerations laid down in Section 10 and this Section, the Commission concludes that the Transaction would not lead to a significant impediment to effective competition in any markets for extra-EEA small package delivery services from Luxembourg.

### **11.14. Market for extra-EEA small package delivery services from Malta to North America**

#### *11.14.1. FedEx's views*

(1222) FedEx argues that the position of TNT on all markets for extra-EEA deliveries to North America is "de minimis" and that the other integrators would remain competitive also post-Transaction. Moreover, FedEx submits that none of the integrators faces structural weaknesses regarding the provision of extra-EEA delivery services from Malta or to North America that would prevent it from effectively constraining the Parties.<sup>874</sup>

#### *11.14.2. Commission's assessment*

(1223) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Malta.

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<sup>873</sup> See responses to questions 42 and 44 of questionnaire to customers Q3 - Phase I; responses to questions 23 and 25 of questionnaire to customers Q4 - Phase I; responses to question 36 of questionnaire to customers R2 - Phase II and responses to question 26 of questionnaire to SMEs R3 - Phase II.

<sup>874</sup> FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" of 23 September, 2015, page 99 and following.

11.14.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Malta

**Table 51: Extra-EEA market reconstruction for Maltese markets**

Malta	2012					2013					2014				
Integrator	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
To all lanes	[10-20]%	[10-20]%	[20-30]%	[30-40]%	[30-40]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[5-10]%	[10-20]%	[10-20]%	[50-60]%	[20-30]%
Towards North America	[40-50]%	[10-20]%	[50-60]%	[10-20]%	[20-30]%	[40-50]%	[5-10]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[30-40]%
Towards Central and South America	[5-10]%	[5-10]%	[10-20]%	[60-70]%	[20-30]%	[10-20]%	[20-30]%	[40-50]%	[20-30]%	[30-40]%	[0-5]%	[5-10]%	[10-20]%	[70-80]%	[10-20]%
Towards Asia / Pacific	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[10-20]%	[10-20]%	[40-50]%	[30-40]%
Towards Middle East	[5-10]%	[10-20]%	[20-30]%	[40-50]%	[30-40]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[10-20]%	[10-20]%	[60-70]%	[20-30]%
Towards Africa	[0-5]%	[5-10]%	[5-10]%	[40-50]%	[40-50]%	[0-5]%	[10-20]%	[20-30]%	[5-10]%	[70-80]%	[0-5]%	[0-5]%	[5-10]%	[70-80]%	[20-30]%
Towards Rest of Europe	[0-5]%	[20-30]%	[20-30]%	[30-40]%	[30-40]%	[0-5]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[10-20]%	[10-20]%	[40-50]%	[30-40]%

(1224) Based on the Commission's market reconstruction, the Parties' combined market share would be [40-50]% on the market for deliveries to North America, with FedEx alone accounting for [30-40]% and TNT for [10-20]%. In the recent years, FedEx's market share has decreased from [40-50]% in 2012 to [30-40]%. UPS has a market share of [20-30]% and DHL of [30-40]% on this market.

(1225) On all other markets for extra-EEA deliveries from Malta, the Merged Entity would be the smallest integrator post-Transaction, with market shares not exceeding 20%, following DHL and the market leader UPS. Those markets will therefore not be analysed in more detail in this Decision.

(1226) Therefore, on all six markets, DHL and UPS are already active and have an established market presence.

11.14.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries from Malta

(1227) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from Malta to North America, as TNT is still a Europe-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.

(1228) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in deliveries to FedEx's home market of North America,<sup>875</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

(1229) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive EEA road network to organise pick-up services in the EEA; Malta, however, is one of the three EEA countries that TNT does not serve directly, but where it operates through a GSP (the other two being Iceland and Croatia). As noted in Section 10.4.2.2, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not

<sup>875</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95.

own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>876</sup>

- (1230) Overall, FedEx has a much more limited and costlier road network in the EEA. In the case of Malta, as well as in eight more EEA countries it operates through a GSP and does not serve the country directly.<sup>877</sup> FedEx's extra-EEA air network however is much more extensive than that of TNT and consists of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East.<sup>878</sup>
- (1231) Third, when asked about FedEx's closest competitor on Maltese extra-EEA markets, respondents to the market investigation clearly identified DHL as FedEx's closest competitor, followed by UPS and TNT. Similarly, when asked about the closest competitor of TNT on Maltese markets for extra-EEA deliveries, customers and competitors responding to the market investigation identified DHL as closest, followed by UPS and FedEx.<sup>879</sup>
- (1232) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Malta.

#### 11.14.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Malta

- (1233) As illustrated in Table 51, TNT's market shares is not particularly high on the market for extra-EEA deliveries from Malta to North America. Further, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick, because it uses for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>880</sup>
- (1234) From a comparison of its market share and its evolution in the last years with that of its competitors, TNT does not seem to have exerted particular competitive pressure on the markets for extra-EEA deliveries from Malta or strengthened its market position share in recent years. TNT's market shares have not increased on markets for extra-EEA deliveries from Malta, instead, they have in some cases, such as the market for deliveries to Africa even slightly decreased.
- (1235) Further, TNT is not a pricing maverick on a market for extra-EEA deliveries from Malta to North America.
- (1236) First, TNT's overall cost position on the markets for extra-EEA delivery services from Malta is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>881</sup> As reflected by the PUD curve in Figure 11 in recital (351), UPS and DHL are overall more cost efficient than TNT in the EEA in relation to their pick-up costs. All of TNT, UPS and DHL are present in Malta, UPS and TNT, however, through GSPs. Even though

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<sup>876</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>877</sup> See Table 5 in recital (310) and Section 9.4.2.

<sup>878</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>879</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>880</sup> Horizontal Merger Guidelines, paragraph 37.

<sup>881</sup> See Table 32 in recital (785).

FedEx could not provide information on their coverage in Malta, the scale of DHL and especially of UPS is much larger than that of TNT. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have comparable pick-up costs in Malta.

- (1237) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>882</sup>
- (1238) As very few customers from Malta responded to Phase I of the market investigation and none during Phase II of the market investigation, it is very difficult to draw conclusions as to whether price is the only factor in determining their selection of supplier or whether they consider TNT as the lowest cost provider of extra-EEA services from Malta. However, the Commission notes that, when asked whether they consider all four integrators as being capable of providing an equally good alternative for the extra-EEA express deliveries, the majority said that they do.<sup>883</sup>
- (1239) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Malta to the world and the major world lanes.

11.14.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Malta post-Transaction

- (1240) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (1241) First, as derives from Table 51, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Malta. UPS is the clear market leader with market shares of at least 50% on all markets from Malta, with the exception of the one to North America, where FedEx is leading. UPS thus clearly has the capacity to compete effectively for shipments that originate from Malta, even though it is active on that market through a GSP.
- (1242) Moreover, DHL also has a presence on all markets for extra-EEA deliveries from Malta. DHL thus has a customer base for extra-EEA deliveries in Malta, as well as a network that allows it to pick-up extra-EEA small packages from the country. Similarly, DHL has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at DHL's market share on other national markets for deliveries to North America, where its market share is often higher than in the case of Malta, it becomes evident that DHL has the capabilities enabling it to undertake small package deliveries also on this lane.
- (1243) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively

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<sup>882</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015 Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers, of 9 October 2015, Annex 2.

<sup>883</sup> See response to question 8 and question 9 of questionnaire to customers Q4 - Phase I.

low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from Malta also post-Transaction.

- (1244) Second, respondents to the market investigation from Malta also share this view, as the responding customers consider that there would be sufficient alternatives to the Merged Entity for their extra-EEA small package delivery needs.<sup>884</sup>
- (1245) Moreover, the majority of customers responding to the market investigation from Malta also indicate that as they multisource in relation to their extra-EEA services,<sup>885</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Furthermore, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (1246) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market.<sup>886</sup> In particular in the case of the market for deliveries from Malta to North America, the overall size of the market is significantly below EUR [Confidential] million. The Parties submit that [Confidential]% of FedEx's revenues on a market for deliveries from Malta to North America are generated through its top three customers.<sup>887</sup>
- (1247) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the market for extra-EEA deliveries from Malta to North America. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.
- (1248) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

11.14.2.5. A majority of customers on the market for extra-EEA deliveries from Malta to North America have not expressed any concerns

- (1249) As very few customers from Malta responded to Phase I of the market investigation and none during Phase II of the market investigation, it is very difficult to draw conclusions on the competitive conditions of the market for extra-EEA deliveries from Malta to North America on the basis of these results.
- (1250) In addition, as shown in Section 10.9, the Transaction is likely to give rise to efficiencies on extra-EEA delivery markets from Malta.

### 11.14.3. Conclusion

- (1251) In the light of the available evidence and the considerations in Section 10 and this Section, the Commission concludes that the Transaction would not significantly

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<sup>884</sup> See responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I.

<sup>885</sup> See responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I.

<sup>886</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 1.4.

<sup>887</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, page 16 and following; FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" 23 September 2015, page 71 and following. These percentages include however FedEx's GSP. As FedEx does not have direct presence in Malta, purchases of deliveries to North America from the country are aggregated by the GSP, to the customer base of which FedEx has no access.

impede effective competition on a market for extra-EEA small package deliveries from Malta.

### 11.15. Market for extra-EEA small package delivery services from Poland to Central and South America and to the Middle East

#### 11.15.1. FedEx's views

(1252) FedEx argues that the Merged Entity would have a moderate share and that the other integrators would remain competitive also post-Transaction. As customers can easily switch among integrators, DHL and UPS would be able to effectively constrain the Merged Entity post-Transaction.<sup>888</sup>

#### 11.15.2. Commission's assessment

(1253) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Poland.

11.15.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Poland

**Table 52: Extra-EEA market reconstruction for Polish markets**

Poland	2012					2013					2014				
Integrator	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
To all lanes	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%	[40-50]%
Towards North America	[30-40]%	[5-10]%	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[5-10]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[5-10]%	[30-40]%	[20-30]%	[30-40]%
Towards Central and South America	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[20-30]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%
Towards Asia / Pacific	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%
Towards Middle East	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%	[10-20]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[40-50]%
Towards Africa	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[50-60]%	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[40-50]%	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%
Towards Rest of Europe	[0-5]%	[20-30]%	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[10-20]%	[20-30]%	[20-30]%	[50-60]%

(1254) Based on the Commission's market reconstruction on a market for extra-EEA deliveries from Poland to Central and South America and to the Middle East, the Merged Entity would have a market share of [30-40]%, with FedEx accounting for [10-20]% and TNT for [10-20] and [20-30]% on these two markets respectively. Furthermore, in the recent years, TNT's market share on a market for deliveries to Central and South America has decreased from [20-30]% in 2012 to [10-20]% in 2014.

(1255) On all other markets for extra-EEA deliveries from Poland either the market share of the Merged Entity would be below 30% or both DHL and UPS would have a market share of more than 20%. Therefore, those markets will not be analysed in more detail in this Decision.

(1256) Therefore, all four integrators are already active and have an established market presence on all markets for extra-EEA deliveries from Poland.

<sup>888</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, page 5 and following.

11.15.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries from Poland

(1257) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from Poland to Central and South America and from Poland to the Middle East, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.

(1258) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in deliveries to FedEx's home market of North America,<sup>889</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.

(1259) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive EEA road network to organise pick-up services in Poland, where it has [Confidential]% coverage. As noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>890</sup>

(1260) FedEx has [Confidential]% coverage in Poland and operates an overall smaller and costlier intra-EEA road network.<sup>891</sup> FedEx's extra-EEA air network however is much more extensive than that of TNT and consists of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East.<sup>892</sup>

(1261) Third, when asked about FedEx's closest competitor on extra-EEA markets in Poland, respondents to the market investigation identified DHL as closest, followed by UPS and TNT. When the Parties' competitors and customers were asked about the closest competitor of TNT, they clearly identified DHL as closest, followed by UPS and FedEx.<sup>893</sup>

(1262) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Poland.

11.15.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in Poland.

(1263) As illustrated in Table 52, TNT's market shares are not particularly high on the markets for extra-EEA deliveries from Poland to Central and South America and the Middle East. Further, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick, because it uses for example a

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<sup>889</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95

<sup>890</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>891</sup> See Table 5 in recital (310) and Section 9.4.2.

<sup>892</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>893</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>894</sup>

- (1264) From a comparison of its market share and its evolution in the last years with that of its competitors, TNT does not seem to have exerted particular competitive pressure on the markets for extra-EEA deliveries from Poland or strengthened its market position share in recent years. Conversely, TNT's market shares on all markets for extra-EEA deliveries from Poland have remained stable in the course of the last three years.
- (1265) Further, TNT is not a pricing maverick on a market for extra-EEA deliveries from Poland.
- (1266) First, TNT's overall cost position on the markets for extra-EEA delivery services from Poland is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in Poland, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>895</sup> The pick-up costs of particularly UPS and probably also of DHL are comparable to those of TNT in Poland in the light of the three following elements: i) according to the PUD curve in Figure 11 in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) UPS has a coverage of [Confidential]% in Poland, DHL however has a lower coverage rate of [Confidential]%; and iii) based on their market shares on the markets for intra-EEA and extra-EEA deliveries from Poland, the scale of UPS is similar or larger than that of TNT, whereas that of DHL significantly larger. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in Poland.
- (1267) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>896</sup> Customers responding to the market investigation also indicate that, even though they take it into account, price is not necessarily the only factor determining their selection of supplier. For instance, one customer indicated they chose their provider because "delivery time is short, the courier respond quickly for all questions".<sup>897</sup> Also, customers do not always identify TNT as the lowest cost provider of extra-EEA services from Poland, but often consider other integrators as equally or more cost efficient.<sup>898</sup>
- (1268) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Poland to the world and the major world lanes.

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<sup>894</sup> Horizontal Merger Guidelines, paragraph 37.

<sup>895</sup> See Table 32 in recital (785).

<sup>896</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers, of 9 October 2015, Annex 2.

<sup>897</sup> See non-confidential response of [Name of parties' customers] to question 9.2.2 of questionnaire R2 to customers.

<sup>898</sup> See responses to question 16.3 of questionnaire to customers R2 – Phase II and question 19.3 of questionnaire to SMEs R3 - Phase II.

11.15.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Poland post-Transaction

- (1269) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (1270) First, as illustrated in Table 52, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Poland. DHL is the clear market leader with market shares of at least 40%, with the exception of the market for deliveries to North America, where DHL has a share of [30-40]%. DHL thus clearly has the capacity to compete effectively for shipments that originate from Poland.
- (1271) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Poland, as well as [Confidential]% coverage. UPS thus has a customer base for extra-EEA deliveries in Poland, as well as a network that allows it to pick-up extra-EEA small packages from the country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to Central and South America and to the Middle East, where its market share is often higher than in the case of Poland, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries also on this lane.
- (1272) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it will also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from Poland also post-Transaction.
- (1273) Second, respondents to the market investigation from Poland also share this view, as the majority consider that there would be sufficient alternatives to the Merged Entity for their extra-EEA small package delivery needs post-Transaction.<sup>899</sup>
- (1274) Moreover, a significant minority of customers responding to the market investigation from Poland also indicate that as they multisource in relation to their extra-EEA services,<sup>900</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Furthermore, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (1275) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market.<sup>901</sup> For deliveries to Central and South America, [Confidential]% of FedEx's total sales derive from its top ten customers and for deliveries to the Middle East, its top ten customers generate [Confidential]% of FedEx's total revenues.<sup>902</sup>

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<sup>899</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 - Phase I and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I.

<sup>900</sup> See responses to question 8, 21 and 22 of questionnaire to customers Q3 - Phase I; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 - Phase II; responses to question 6 of questionnaire to SMEs R3 - Phase II.

<sup>901</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

<sup>902</sup> FedEx's response to the request for information QP24 of 24 November 2015. These sales include the sales to the GSP, which corresponds to the aggregated extra-EEA deliveries purchased in Croatia. As

(1276) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the market for extra-EEA deliveries from Poland to Central and South America. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.

(1277) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

11.15.2.5. A majority of customers on the market for extra-EEA deliveries from Poland to North America has not expressed any concerns

(1278) The customers from Poland expressing a view during the market investigation were either positive or neutral about the effect of the Transaction on extra-EEA deliveries overall.<sup>903</sup>

(1279) On the markets for extra-EEA deliveries from Poland to the lanes of Central and South America and the Middle East, half of the respondents expressing an opinion during the Phase I market investigation, were positive about the impact of the Transaction on these lanes while the majority of the respondents in the Phase II investigation considered that the impact of the Transaction on these lanes would be neutral.<sup>904</sup>

(1280) In addition, as shown in Section 10.9, the Transaction is likely to give rise to efficiencies on extra-EEA delivery markets from Poland.

### 11.15.3. Conclusion

(1281) In the light of the available evidence and the considerations laid down in Section 10 and this Section, the Commission concludes that the Transaction would not significantly impede effective competition on a market for extra-EEA small package deliveries from Poland.

## 11.16. Market for extra-EEA small package delivery services from Slovakia to the world, to Central and South America, Asia/Pacific, the Middle East and Africa

### 11.16.1. FedEx's views

(1282) FedEx submits that the economic significance of the Slovak market for extra-EEA delivery services to the world is limited, as the total market size amounts to approximately EUR [Confidential] million. Further, DHL would remain the clear market leader on all markets for extra-EEA deliveries from Slovakia. Similarly, UPS's market shares on the market for extra-EEA deliveries to the world and to the major world lanes are not negligible and in any case, UPS faces no structural weakness in the country. UPS has the necessary infrastructure to organise both the pick-up and the delivery of extra-EEA small packages from Slovakia. As customers

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the GSP manages the customer relationships in Croatia, FedEx has no information as to the size of the different contracts.

<sup>903</sup> See responses to questions 41 and 43 of questionnaire to customers Q3 - Phase I; responses to questions 22 and 24 of questionnaire to customers Q4 - Phase I; responses to question 35 of questionnaire to customer R2 - Phase II and responses to question 26 of questionnaire to SMEs R3 - Phase II.

<sup>904</sup> See responses to questions 42 and 44 of the questionnaire to customers Q3 - Phase I; responses to questions 23 and 25 of the questionnaire to customers Q4 - Phase I; responses to question 36 of the questionnaire to customers R2 - Phase II.

can easily switch among integrators, UPS would be able to together with DHL effectively constrain the Merged Entity post-Transaction.<sup>905</sup>

#### 11.16.2. Commission's assessment

(1283) The Commission considers that, on the basis of the available evidence and the considerations in Section 10 and below, the Transaction would not significantly impede effective competition in any market for extra-EEA deliveries from Slovakia.

##### 11.16.2.1. Market position of the Merged Entity on the markets for extra-EEA deliveries from Slovakia

**Table 53: Extra-EEA market reconstruction for Slovakian markets**

Slovakia	2012					2013					2014				
	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL	FedEx	TNT	Combined	UPS	DHL
To all lanes	[20-30]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[10-20]%	[50-60]%
Towards North America	[30-40]%	[0-5]%	[40-50]%	[10-20]%	[40-50]%	[30-40]%	[0-5]%	[30-40]%	[20-30]%	[40-50]%	[30-40]%	[0-5]%	[30-40]%	[20-30]%	[40-50]%
Towards Central and South America	[20-30]%	[10-20]%	[30-40]%	[10-20]%	[40-50]%	[20-30]%	[20-30]%	[40-50]%	[10-20]%	[40-50]%	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[50-60]%
Towards Asia / Pacific	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%	[10-20]%	[10-20]%	[20-30]%	[5-10]%	[60-70]%
Towards Middle East	[20-30]%	[10-20]%	[40-50]%	[5-10]%	[50-60]%	[20-30]%	[10-20]%	[40-50]%	[0-5]%	[50-60]%	[10-20]%	[20-30]%	[40-50]%	[0-5]%	[50-60]%
Towards Africa	[10-20]%	[10-20]%	[30-40]%	[5-10]%	[60-70]%	[10-20]%	[20-30]%	[30-40]%	[0-5]%	[50-60]%	[10-20]%	[20-30]%	[30-40]%	[0-5]%	[50-60]%
Towards Rest of Europe	[5-10]%	[30-40]%	[40-50]%	[10-20]%	[40-50]%	[5-10]%	[40-50]%	[40-50]%	[10-20]%	[40-50]%	[0-5]%	[40-50]%	[40-50]%	[10-20]%	[40-50]%

(1284) First, based on the Commission's market reconstruction on a market for extra-EEA deliveries from Slovakia to the world, the Merged Entity would have a market share below 40%, with FedEx accounting for [10-20]% and TNT for [20-30]%. Both of DHL and UPS also offer extra-EEA services from Slovakia, DHL being the clear market leader with a share of [50-60]% and UPS having a share of [10-20]%.

(1285) On the four narrower markets for deliveries to Central and South America, Asia/Pacific, the Middle East and Africa, FedEx has a market share of [10-20]% on all markets and TNT of [10-20]% or [20-30]%. DHL has a leading position with market shares of more than 50% on all of these markets, whereas UPS also has established a market presence.

(1286) On the remaining two markets for deliveries to North America and to the Rest of Europe, the increment of the Transaction would be smaller than the market share of both DHL and UPS; these two markets will therefore not be analysed further in this Section.

(1287) Therefore, all four integrators are already active and have an established market presence on all markets for extra-EEA deliveries from Slovakia.

##### 11.16.2.2. Among integrators, the Parties are not close competitors on the markets for extra-EEA deliveries in Slovakia

(1288) As already analysed in Section 10.4, the Parties are not close competitors on markets for extra-EEA deliveries among integrators. This conclusion applies also on the markets for extra-EEA deliveries from Slovakia to the world and to the major world lanes, as TNT is still an intra-EEA-focussed integrator, essentially offering extra-EEA services to its intra-EEA customers.

<sup>905</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, page 16 and following; FedEx's submission "FedEx/TNT: Further assessment of competition on extra-EEA lanes" of 23 September 2015, page 71 and following.

- (1289) First, as already set out in Section 9.4, the Parties have a different focus on their extra-EEA activities. The Parties sales data show that customers of FedEx and of TNT have a different profile, with FedEx's customers being mainly interested in deliveries to FedEx's home market of North America,<sup>906</sup> whereas for TNT's customers Asia/Pacific is the most frequent destination.
- (1290) Second, the Parties organise their extra-EEA services on the basis of differentiated networks. TNT relies on its extensive road network to organise pick-up services in Slovakia, in which it has coverage of [Confidential]%; as noted in Section 10.4.2.2 however, TNT owns a limited extra-EEA air network. At destination, TNT is able to organise the delivery of the small packages, often however using subcontractors. Notably in the case of North America, TNT does not own a local air or road network and thus subcontracts the largest part of its volumes to other providers.<sup>907</sup>
- (1291) Conversely FedEx has a lower coverage of [Confidential]% in Slovakia, indicative of its smaller road network in the country.<sup>908</sup> However, FedEx's extra-EEA air network is much more extensive than that of TNT and consists of [Confidential] aircraft connecting Europe to North America and seven to Asia/Pacific and the Middle East. Neither FedEx, nor TNT has direct connections between Europe and Central and South America; instead both companies purchase ad hoc airlift capacity given the limited volumes shipped to this destination.<sup>909</sup>
- (1292) Third, when asked about FedEx's closest competitor on Slovakian extra-EEA markets, respondents to the market investigation identified DHL as closest, followed by UPS and TNT. When the Parties' competitors and customers were asked about the closest competitor of TNT, they also clearly identified DHL as closest, followed by UPS and FedEx as a clear third.<sup>910</sup>
- (1293) Therefore, among integrators, the Transaction would not remove a close competitor of FedEx on extra-EEA markets from Slovakia.

#### 11.16.2.3. TNT does not constitute an important competitive force on the markets for extra-EEA deliveries in the Slovakia

- (1294) As illustrated in Table 53, TNT's market shares are not particularly high on the markets for extra-EEA deliveries from Slovakia to the world, to Central and South America, Asia/Pacific, the Middle East and Africa. Further, for the reasons set out in this Section, TNT does not constitute a low price supplier nor more generally a maverick, because of using for example a different business model. The Transaction would therefore not lead to the elimination of an important competitive force.<sup>911</sup>
- (1295) TNT's market share has increased on some markets for extra-EEA deliveries from Slovakia in the course of the last three years, whereas in others it has remained

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<sup>906</sup> For extra-EEA deliveries to North America, FedEx also points out in its internal documents that [Confidential information on TNT's strategic planning], Form CO, Annex 7.O., FedEx's [Confidential] of November 2014, page 95.

<sup>907</sup> FedEx's response to question 9 of the request for information QP21 of 6 November 2015.

<sup>908</sup> See Table 5 in recital (310) and Section 9.4.2.

<sup>909</sup> FedEx's presentation to the European Commission of 15 September 2015; FedEx's response to the request for information QP12 of 19 August 2015, Annex 14.

<sup>910</sup> See responses to question 29 of the questionnaire to competitors Q1 – Phase I; responses to question 14 of the questionnaire to competitors Q2 – Phase I; responses to question 28 of the questionnaire to customers Q3 – Phase I; responses to question 19 of the questionnaire to customers Q4 – Phase I; responses to question 11 of the questionnaire to freight forwarders Q5 – Phase I.

<sup>911</sup> Horizontal Merger Guidelines, paragraph 37.

stable. This increase however is likely the result of a few customers switching from UPS to TNT on this rather limited market. Indeed, TNT does not appear to constitute a maverick on Slovakian markets for extra-EEA deliveries.

- (1296) First, TNT's overall cost position on the Slovakian markets for extra-EEA delivery services is not more advantageous than that of its competitors. It overall has pick-up costs of EUR [Confidential] per pack in Slovakia, which are lower than FedEx's [Confidential] per pack, but comparable to those of UPS and DHL.<sup>912</sup> The pick-up costs of UPS, DHL and TNT in Slovakia are comparable in the light of the three following elements: i) according to the PUD curve in Figure 11 in recital (351), UPS and DHL are slightly more cost efficient than TNT in the EEA; ii) UPS and DHL have a coverage of [Confidential]% in Slovakia and [Confidential]% respectively; and iii) based on their market shares on the Slovakian markets, the scale of UPS is similar to that of TNT in the country, whereas that of DHL much larger. Therefore, as the pick-up costs depend on the provider's coverage and scale on a given market, UPS, DHL and TNT appear likely to have similar pick-up costs in Slovakia.
- (1297) Further, as analysed in Section 10.4.2.2, TNT is likely confronted with higher costs for the air transport of its extra-EEA small packages than the other integrators due to its smaller extra-EEA air network. For the delivery at the end destination of the service, integrators' costs fluctuate depending on their volumes, scale and network. [Confidential information on TNT's strategic planning].<sup>913</sup> Customers responding to the market investigation also indicate that price is not necessarily the only factor determining their selection of supplier. For instance, one customer indicated that they choose their provider on the basis of the geographic coverage and the delivery times they offer.<sup>914</sup>
- (1298) In the light of the considerations set out in this Section, the Commission concludes that TNT cannot be considered as constituting an important competitive force, the elimination of which would lead to a significant reduction of competition on the markets for extra-EEA deliveries from Slovakia to the world and the major world lanes.

11.16.2.4. DHL and UPS would be able to compete effectively for extra-EEA delivery services from Slovakia post-Transaction

- (1299) For the reasons set out in this Section, the Commission considers that UPS and DHL would constrain the Merged Entity post-Transaction.
- (1300) First, as derives from Table 53, both DHL and UPS already have an established presence on all markets for extra-EEA deliveries in Slovakia. DHL is the clear market leader with market shares of at least 40% on all markets from Slovakia. DHL thus clearly has the capacity to compete effectively for shipments that originate from Slovakia.
- (1301) Moreover, UPS also has a presence on all markets for extra-EEA deliveries from Slovakia. Moreover, UPS has [Confidential]% coverage on the Slovakian territory. UPS thus has a customer base for extra-EEA deliveries in the Slovakia, as well as a

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<sup>912</sup> See Table 32 in recital (785).

<sup>913</sup> FedEx's response to Commission's request for information QP18 of 6 October 2015 [Confidential]Annex 2, TNT's submission "Additional evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers" of 9 October 2015, Annex 2.

<sup>914</sup> See non-confidential response of [Name of parties' customers] to question 9.2.2 and 9.3.2 of questionnaire to customers R2 – Phase II.

network that allows it to pick-up extra-EEA small packages from virtually the entire country. Similarly, UPS has a proven ability to organise the delivery of small packages at all major world lanes and in more than 220 countries and territories directly or through subcontractors. Looking at UPS's market share on other national markets for deliveries to Central and South America, Asia/Pacific, the Middle East and Africa, where its market share is often higher than in the case of Slovakia, it becomes evident that UPS has the capabilities enabling it to undertake small package deliveries to these four lanes.

- (1302) If an integrator is generally able to compete effectively at both the origin and the destination end of a given lane, it would also have the capability to compete effectively on the lane in question, even if its current share on that particular market is relatively low. Therefore, DHL and UPS would be able to compete with the Merged Entity on extra-EEA markets from Slovakia also post-Transaction.
- (1303) Second, respondents to the market investigation from Slovakia also share this view, as the majority consider that there would be sufficient alternatives to the Merged Entity for their extra-EEA small package delivery needs post-Transaction.<sup>915</sup>
- (1304) Moreover, the majority of customers responding to the market investigation from Slovakia also indicate that as they multisource in relation to their extra-EEA services,<sup>916</sup> they can therefore very easily change the amount of small packages they ship with each of their providers. Furthermore, as already analysed in Section 10.6.2.4, customers can easily switch supplier of extra-EEA deliveries.
- (1305) FedEx further submits that the markets for small package deliveries are quite concentrated and that the contracts of a few customers may correspond to a significant part of the market. Of the total revenues it generated on the market for deliveries to Central and South America, FedEx's top 10 customers account for [Confidential] and its top three for [Confidential]. Similarly, on the market for deliveries to Asia/Pacific, FedEx's top three customers account for [Confidential] of the total revenues and the top 10 for [Confidential]. On the market for deliveries to the Middle East, the top ten customers of FedEx generated [Confidential] and the top three [Confidential] of the total. Last, on the market for deliveries to Africa, the top ten customers generated [Confidential] and the top three [Confidential] of the total revenues.<sup>917</sup>
- (1306) Moreover, post-Transaction DHL and UPS would be able to accommodate any customers of the Merged Entity on the Slovakian extra-EEA markets. As explained in Section 10.6.2.3, integrators do not face significant capacity restrictions. Instead, they are used to making the necessary adjustments in their network and operations that would allow them to accommodate additional volumes in short terms and can always redeploy assets or even increase their network, should there be a sustained increase in demand.

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<sup>915</sup> See responses to questions 29.2 and 29.3 of questionnaire to customers Q3 - Phase I and responses to questions 20.2 and 20.3 of questionnaire to customers Q4 - Phase I.

<sup>916</sup> See responses to question 8, 21 and 22 of questionnaire to customers Q3 - Phase I; responses to questions 13 and 14 of questionnaire to customers Q4 - Phase I; responses to question 24 of questionnaire to customers R2 – Phase II. There were no responses to question 6 of questionnaire to SMEs R3 - Phase II.

<sup>917</sup> FedEx's submission "Submission of FedEx Corporation providing a detailed lane-by-lane analysis for Extra-EEA services" of September 23, 2015, Figures 4, 6 and 14.

(1307) Market shares are therefore driven by a limited number of customers on this market and, given the presence of all integrators, market shares are highly contestable.

11.16.2.5. Respondents to the market investigation have not raised concerns as to the impact of the Transaction on markets for extra-EEA deliveries from Slovakia

(1308) An overwhelming majority of Slovak customers responding to the Phase I<sup>918</sup> and Phase II<sup>919</sup> market investigation were neutral as to the Transaction's impact on the extra-EEA deliveries from Slovakia to the Middle East. The remaining minority was predominantly positive or predicted no impact. The overwhelming majority of respondents indicated that the impact of the Transaction on markets for deliveries from Slovakia to Central and South America, Asia/Pacific and Africa.<sup>920</sup>

(1309) Moreover, the majority of respondents from Slovakia to the market investigation considered that the impact of the Transaction would be neutral on a broader market for extra-EEA deliveries to the world.<sup>921</sup>

(1310) In addition, as shown in Section 10.9, the Transaction is likely to give rise to efficiencies on extra-EEA delivery markets from Slovakia.

### 11.16.3. Conclusion

(1311) In the light of the available evidence and the considerations in Section 10 and this Section, the Commission concludes that the Transaction would not significantly impede effective competition in any markets for extra-EEA deliveries from Slovakia.

## 11.17. Conclusion

(1312) Consequently, in the light of the available evidence and the considerations set out in Sections 10 and 11, the Commission concludes that the Transaction would not significantly impede competition on any market for extra-EEA deliveries to the world or any of the major world lanes.

## 12. IMPACT OF THE TRANSACTION ON SMES

(1313) A number of participants to the market investigation suggested that the Transaction is likely to have a greater impact on SMEs, in particular in the form of price increases. Allegedly, TNT currently offers lower prices than all other integrators and is therefore the provider of choice for SMEs engaging in e-commerce activities. According to those market participants, SMEs are generally likely to single source, they rely on integrators due to their need for different types of services and they lack bargaining power so they 'pay the most' as they pay list prices.<sup>922</sup>

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<sup>918</sup> See responses to questions 42 (42.2 for the lane to the Middle East) and 44 (44.2 for the lane to the Middle East) of the questionnaire to customers Q3 - Phase I and responses to questions 23 (23.2 for the lane to the Middle East) and 25 (25.2 for the lane to the Middle East) of the questionnaire to customers Q4 - Phase I.

<sup>919</sup> See responses to question 36 (36.5 for the lane to the Middle East) of the questionnaire to customers R2- Phase II.

<sup>920</sup> See responses to questions 42 and 44 of questionnaire to customers Q3 - Phase I; responses to questions 23 and 25 of questionnaire to customers Q4 - Phase I; responses to question 36 of questionnaire to customers R2- Phase II.

<sup>921</sup> See responses to questions 41 and 43 of questionnaire to customers Q3 - Phase I; responses to questions 22 and 24 of questionnaire to customers Q4 - Phase I; responses to question 35 of questionnaire to customers R2 - Phase II.

<sup>922</sup> See for instance, DHL's submission of 19th June 2015, page 3 and 5; DHL's submission of 24th June 2015, page 2 and 3; letter from UEAPME of 12 June 2015.

(1314) According to UPS, the Transaction would have a particular impact on the most vulnerable Micro (0 to 9 employees) and Small (10 to 49 employees) segments (as defined per the prevailing Union classification of businesses) which are more dependent on cross-border and intercontinental services as they have insufficient scale to use multiple production sites or regional distribution centres.<sup>923</sup> Moreover, according to DHL, TNT currently has extensive excess core capacity in the area of 'night flight capacity' and this excess capacity incentivises it to be an aggressive player, particularly towards SMEs.<sup>924</sup> Post-Transaction the Merged Entity would be unlikely to have an incentive anymore to be the "maverick integrator" towards SMEs, and those SMEs would thereby be deprived of the current lower rates offered by TNT.<sup>925</sup> According to those market participants, TNT, the market leader in serving SMEs, would be merging with one of its close competitors and there would be insufficient competitive pressure from the remaining two integrators.<sup>926</sup> For instance, UPS claims that it would not exert a competitive constraint on the Merged Entity. According to UPS, this is demonstrated by its own share of the segment which it estimates to be lower than TNT's share. Consequently, according to UPS, DHL and FedEx would be the only significant integrators to provide services to SMEs and UPS would be a distant third.<sup>927</sup>

### 12.1. The Parties' views

(1315) TNT submits that it does not charge excessively low prices for its core product to fill its aircraft, [Confidential information on TNT's pricing policy]. Furthermore, TNT submits that it does not have a pricing policy directly targeting SMEs that deviates from normal industry practice, [Confidential information on TNT's pricing policy].<sup>928</sup>

(1316) Instead, TNT maintains that it has been [Confidential information on TNT's pricing policy] and its in general not outperforming the general growth of the SMEs market. This is reflected in TNT's market shares, [Confidential information on TNT's market position].<sup>929</sup>

(1317) TNT further explains that price elasticity for small package delivery services is rather low, as the demand depends on factors related to the market of the goods purchased, rather than the price of the delivery. Therefore, [Confidential information on TNT's business strategies for SMES].<sup>930</sup> The operational functioning of the express market for instance does not allow for additional business to be attracted through adhoc and last minute discounts. Moreover, [Confidential information on TNT's business strategies for SMES] <sup>931</sup>

(1318) Regarding Micro and Small enterprises, neither TNT nor FedEx offer any dedicated services offering to them, nor do they specifically compete in the Micro and Small

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<sup>923</sup> Non-confidential version of UPS's submission "Further Observations of UPS" of 30 September 2015, page 6 and non-confidential version of UPS's response to question 19 of the request for information dated 1 September 2015.

<sup>924</sup> DHL's submission of 24th June 2015, page 3.

<sup>925</sup> See, for instance, Letter of 13 July 2015 of the Romanian General Confederation of Industrial Employers (UGIR 1903) and DHL's submission of 19 June 2015.

<sup>926</sup> UPS' submission "Further Observations of UPS" of 30 September 2015, page 1 and 6.

<sup>927</sup> Non-confidential version of UPS' response to question 19 of the request for information dated 1 September 2015.

<sup>928</sup> FedEx's response to question 3.1 of the request for information QP 7 of 7 July 2015.

<sup>929</sup> FedEx's response to question 3.1 of the request for information QP 7 of 7 July 2015.

<sup>930</sup> Comments of FedEx Corporation on the key documents provided by the Commission on 17 August 2015, page 8.

<sup>931</sup> FedEx's response to question 3.1 of the request for information QP 7 of 7 July 2015.

enterprises segments. FedEx does not have any sales practice or product specifically aimed at SMEs, including Micro and Small enterprises, nor does it apply any specific Micro or Small enterprises pricing. Moreover, there are no specific sales structures (dedicated teams or others) or products set up to target Micro and Small enterprises. Due to FedEx's weak presence in the EEA and its lack of a complete product portfolio in the EEA (it has a weak presence in high volume products like domestic and intra-EEA deferred delivery services), FedEx considers that it is currently effectively not an option for Micro and Small customers looking for service providers who offer a complete portfolio of products in the EEA (namely, domestic, international intra-EEA express, international intra-EEA deferred etc).<sup>932</sup>

- (1319) TNT also submits that given the competitive conditions in the industry, the Merged Entity would still be incentivised to compete fiercely for all customers and SMEs as well post-Transaction, as otherwise SMEs would switch to one of the Parties' competitors. Furthermore, FedEx considers that the Transaction is highly likely to benefit SMEs, including Micro and Small enterprises, given that it creates a stronger competitor, particularly in the B2C space, with the scale and density to rival in particular DHL, UPS, GLS and DPD thereby enhancing customer choice and ensuring competitive pricing for those customers.<sup>933</sup>
- (1320) Furthermore, any reduction of aircraft space post-Transaction would affect the currently under-utilised capacity, particularly in the case of TNT, which on average uses approximately [Confidential]% of its airspace capacity for its own operations (small package and freight delivery) and the use of suboptimal aircraft, particularly in the FedEx network.<sup>934</sup> Regarding TNT, it is under constant pressure to reduce its costs in order to rationalise its network. [Confidential details on TNT's air network]. Rationalisation of TNT's air network would occur in any event. The Transaction enables the Parties to carry out this rationalisation without reducing the scope of their offering. In the absence of the Transaction, TNT would be marginalised further.<sup>935</sup>
- (1321) The Parties also state that they have the smallest air fleets in the EEA, far behind those of DHL and UPS. TNT presently operates less than [Confidential] aircraft on its European short-haul network comprising mainly of B737 and BAe146 aircraft. It is a relatively small player in the overall air cargo market within the EEA, and in fact relies more than any other integrator on third parties for the purchase of air transportation (approximately [Confidential] of its operating expenditure, which is [Confidential] more than the [Confidential], [Confidential] and [Confidential] of total operating expenditure that UPS, FedEx and DHL respectively are estimated to spend on purchasing third party air transport). This is because approximately [Confidential] of the TNT short-haul network is outsourced to third parties.
- (1322) Moreover, TNT is not a major source of capacity in any space spot sales to third parties as alleged primarily by DHL. In fact, [Confidential] of TNT Airway's total revenues (EUR [Confidential] in 2014) is generated from TNT-related activities ([Confidential] of which is generated on the short-haul network), whilst ACS and block space agreements account for only approximately [Confidential] of TNT Airway's total revenues (namely roughly only EUR [Confidential]) and over half of

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<sup>932</sup> FedEx's response to question 14 of the request for information QP 21 of 6 November 2015.

<sup>933</sup> Comments of FedEx Corporation on the key documents provided by the Commission on 17 August 2015, page 9; FedEx's response to question 24 of the request for information QP 12 of 19 August 2015.

<sup>934</sup> FedEx's response to question 1.2 of the request for information QP 5 of 30 June 2015.

<sup>935</sup> Comments of FedEx Corporation on the key documents provided by the Commission on 17 August 2015, page 8.

this amount relates to two block space agreements in place with Emirates and Qatar Airways on long-haul routes. Accordingly, the Parties argue that TNT is not a major operator in the sale of short-haul space sales within the EEA. Furthermore, FedEx notes that there are many other large players in the air cargo market within the EEA, ranging from the large flag-carrier airlines such as Lufthansa, Air France-KLM and IAG as well as dedicated cargo airlines such as Cargolux and smaller cargo charter and ACMI airlines such as ASL, Jet Time, Swiftair, Mistralair, Star Air and others.

## 12.2. The Commission's assessment

- (1323) In its previous practice, the Commission did not identify different relevant markets for small package delivery according to the types of shippers and consignees. Regarding a further sub-segmentation of the market for B2B deliveries and B2C deliveries, the latter being a segment in which SMEs engaging in e-commerce would primarily be present, the Commission notes that the market investigation in this case was inconclusive<sup>936</sup> and that, as mentioned in Section 12.1 and is further discussed in this Section, FedEx has very little activity in the B2C segment.<sup>937</sup> However, when assessing the effects of the Transaction on the various markets as defined in this Decision, the Commission has also specifically analysed the impact on SMEs. As a preliminary remark, the Commission notes that the overwhelming majority of SMEs have confirmed that they do not have specific requirements from their small package delivery provider for services related to their e-commerce activities.<sup>938</sup>
- (1324) The Commission investigated the issue of SMEs in detail in Phase II of the investigation through, inter alia, a specific questionnaire targeted at SMEs<sup>939</sup> as well as targeted conference calls with a number of SMEs and associations representing them.<sup>940</sup> Analysing the results of the Phase II market investigation and having particular regard to the replies to the SMEs questionnaires, only a minority of SMEs considered that the Transaction would have a negative impact on international intra- and extra-EEA markets, similar to the opinion of customers. The majority of SMEs had a positive or neutral view of the Transaction overall, as well as of its impact on service offer and quality. A slightly higher minority appeared concerned about prices, especially on intra-EEA express market.<sup>941</sup>
- (1325) As regards their sourcing/purchasing behaviour, the results of the Phase II market investigation did not confirm the view and concerns raised by the market investigation participants that SMEs single source. The majority of SMEs responding to the Phase II questionnaire indicated that they multi-source their intra-EEA express as well as their extra-EEA express deliveries.<sup>942</sup> A large number of those who multi-source use more than two providers for each destination (region/continent) to which they send small packages but the majority uses several providers for all their extra-

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<sup>936</sup> See responses to questions 18-25 of questionnaire to competitors Q1– Phase I; responses to question 24 of questionnaire to customers Q3 – Phase I. The majority of respondents considered a B2B's market entry into B2C easy and timely. At the same time, however, the majority of competitors consider that B2C services require additional assets/features as opposed to B2B, denser network and more extensive marketing investments.

<sup>937</sup> See also Section 7.1.2.

<sup>938</sup> See responses to question 3.2 of questionnaire to SMEs R3 - Phase II.

<sup>939</sup> The companies targeted during Phase II of the market investigation were SMEs under the Commission's definition of SMEs (Under EU Recommendation 2003/362, the main factors determining whether a company is an SME are the number of employees and either turnover or balance sheet total).

<sup>940</sup> For instance, Minutes of conference call with UEAPME of 15 September 2015.

<sup>941</sup> See responses to questions 24, 25 and 26 of questionnaire to SMEs R3 - Phase II.

<sup>942</sup> See responses to question 6 of questionnaire to SMEs R3 - Phase II.

EEA deliveries.<sup>943</sup> Many respondents indicated that they multi-source to choose the cheapest provider for each destination. The best coverage for each destination was an important consideration for many respondents as well. Very few customers multi-source for security of supply and risk management.<sup>944</sup> Even with regard to e-commerce, the concern based on single-sourcing was not confirmed. The overwhelming majority of SMEs active in e-commerce responded that they use more than one provider for all their e-commerce deliveries.<sup>945</sup>

- (1326) Moreover, the majority of respondents to the SMEs questionnaire indicated that when selecting a provider, is not a relevant factor for them whether those providers offer services to several destinations (domestic as well as international intra-EEA and extra-EEA) or whether they offer different types of small package deliveries.<sup>946</sup> When entering framework contracts, the majority of respondents contract with several providers for all services while fewer contract with a single provider for all services.<sup>947</sup> Price is the most important criterion for the majority of respondents when concluding a framework contract, followed by the quality of the service; the provider's ability to offer all the types of services the SMEs need is important for only a small number of respondents.<sup>948</sup> Regarding prices, the majority of respondents indicated that the prices offered by other providers are comparable to those of the integrators.<sup>949</sup> Moreover, the vast majority of the responding SMEs stated in response to the market investigation that they actually negotiate volume discounts; few respondents do not negotiate any discounts at all.<sup>950</sup> Similarly to SMEs, also the vast majority of the Parties' small customers responded in the Phase I market investigation that they negotiate the price or discount and do not pay list prices.<sup>951</sup>
- (1327) Therefore based on the results of that market investigation, the Commission considers that the concerns expressed mainly by DHL and UPS on SMEs single sourcing, paying list prices and relying on integrators due to their need for different types of services have not been confirmed.
- (1328) The Commission considers that the theory of harm is unlikely to materialise post-Transaction in light of the fact that the analysis carried out by the Commission in relation to the effects of the Transaction both for the intra and extra-EEA markets in Sections 9, 10 and 11 is also relevant and applicable to SMEs. Moreover, the Commission notes that the theory of harm is not likely to materialise also because the Parties do not appear to specifically provide any differentiated product to a particular group of SMEs or to have a focus on those customers which other integrators do not or could not provide. As already discussed in, for instance, Section 9.4.2.1, FedEx has a weak presence in domestic and intra-EEA deferred delivery services. FedEx does not have a B2C focus in the EEA and it estimates an upper bound of SME B2C

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<sup>943</sup> See responses to question 10 of questionnaire to SMEs R3 - Phase II.

<sup>944</sup> See responses to question 7 of questionnaire to SMEs R3 - Phase II.

<sup>945</sup> See responses to question 8 of questionnaire to SMEs R3 - Phase II.

<sup>946</sup> See responses to questions 15 and 16 of questionnaire to SMEs R3 - Phase II.

<sup>947</sup> See responses to question 13 of questionnaire to SMEs R3 - Phase II.

<sup>948</sup> See responses to question 17 of questionnaire to SMEs R3 - Phase II.

<sup>949</sup> See responses to question 22 of questionnaire to SMEs R3 - Phase II.

<sup>950</sup> See responses to question 18 of questionnaire to SMEs R3 - Phase II.

<sup>951</sup> See responses to question 6 of questionnaire to customers Q4 -Phase I. This questionnaire was addressed to what the Parties indicated as their small customers, as opposed to their large customers, in terms of revenue.

share of approximately [Confidential] in 2014.<sup>952</sup> Moreover, in its internal documents, FedEx also considers that TNT does not have a B2C focus.<sup>953</sup> The view that FedEx and TNT do not have a strong B2C focus is shared by other market participants as well. For instance, UPS indicated that *'FedEx and TNT have a more significant market position and compete more strongly in intra-EEA and extra-EEA B2C, both express and deferred, but are traditionally B2B players that have not focused on B2C as much as UPS and DHL, the latter being the clear market leader in international B2C and UPS being 2<sup>nd</sup>'*.<sup>954</sup> The Commission notes that the vast majority of responding competitors confirmed during the market investigation that the requirements of SMEs in relation to small package deliveries are no different from other businesses and that, in any case, services to SMEs would not require any extra assets or resources.<sup>955</sup> Moreover, as already mentioned at the beginning of Section 12.2, the overwhelming majority of SMEs involved in e-commerce responding to the Phase II questionnaire also confirmed that they do not have specific requirements from their small package delivery provider for services related to their e-commerce activities.<sup>956</sup>

- (1329) Moreover, similarly to its overall assessment in Sections 9.5 and 10.5, the Commission considers that TNT cannot be considered to be a 'maverick' or a market leader in the SME sector for the following reasons:
- (1330) In order for customers, be they customers of TNT or of other integrators, to be able to factor transport costs into their planning, those customers will negotiate fixed, discounted rates with TNT in advance. Therefore, TNT will not apply fluctuating prices to its customers depending on the expected capacity utilisation of the relevant aircraft on that particular day.
- (1331) Moreover, the nature of the product and the market is such that the extent to which the demand for express delivery services exists will not depend on the short term pricing of the service namely the short term price elasticity of the express delivery services is very low. Therefore, if TNT anticipates that its flight on a particular lane will be largely empty, giving discounts to existing or potential customers will not all of a sudden create a higher demand to ship items on that day and on that lane. As noted in Section 12.1, the operational functioning of the express market does not generally allow for additional business to be attracted through ad hoc and last minute discounts. The application of last-minute discounts in such an event would be impossible, because TNT will only realise that the capacity on a particular flight will be under-utilised after finishing the afternoon pick-up of shipments. The network of small package delivery providers for intra-EEA shipments, for instance, is based on packages being picked up in the afternoon, shipped to another hub during the night and delivered the next morning.
- (1332) SMEs which regularly ship parcels will in all likelihood often have a longer-term contract with an integrator or small package delivery provider and will have already informed that provider of their needs for that day in advance in order to ensure that there will be enough space for their delivery to be processed. Indeed, the market

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<sup>952</sup> See response of FedEx to question 14 of the request for information QP12 of 19 August 2015. [Confidential information on FedEx's B2C revenue]

<sup>953</sup> See, for instance, [Confidential internal Fedex document] , slide 9.

<sup>954</sup> Non-confidential version of UPS's response to question 17 of the request for information dated 1 September 2015.

<sup>955</sup> See responses to questions 27, 28 and 29 of questionnaire to competitors R1 - Phase II.

<sup>956</sup> See responses to question 3.2 of questionnaire to SMEs R3 - Phase II.

investigation has shown that the majority of SMEs generally enter into framework contracts for a longer time period instead of making ad hoc purchases when a need arises.<sup>957</sup> Framework contracts would appear to, inter alia, allow better rates for the companies such as discounts on the standard prices.<sup>958</sup>

- (1333) The Commission therefore considers that a TNT pricing strategy based on offering ad hoc and last minute discounts in order to optimise aircraft capacity is not realistic and sustainable in the long term. Even if they multi-source and potentially have a contract with TNT as well, it appears unrealistic to expect customers to be able to immediately turn to TNT because of such a last-minute incidental offer: by the time TNT would be able to inform customers of the availability of such discounts, the customers would, in principle, have already arranged the shipment of their small packages.
- (1334) While TNT has had occasional campaigns targeting SMEs, this could not be said to be reflective of a structurally different market position. Rather, it is part of normal competitive behaviour to attract new customers. SMEs do not constitute a separate market segment or a significantly different group of customers; rather they are the largest part of integrators' customer base. For instance, UPS submits that "the S in SMEs is very big, representing 68% of the market place [in terms of revenues]".<sup>959</sup> Moreover, SMEs are estimated to account for more than 98% of all enterprises in the EU.<sup>960</sup> TNT estimates, however that only approximately [40-50]% of its customers are SMEs (as also seen in Figures 22 and 23 below), also in terms of revenues.<sup>961</sup> In light of that estimate, TNT identified an imbalance in its sales to SMEs, compared to the total market and decided to target this group more actively through marketing campaigns.
- (1335) TNT cannot, however, be said to apply particularly low prices, on a structural basis and as part of a distinct business model to SMEs, it is not a price setter in the market. Instead, it would appear also from internal documents that [Confidential information on TNT's and its competitors' pricing strategy including TNT's strategy to match competition].<sup>962</sup>
- (1336) Moreover, in terms of air network costs, in particular long-haul, TNT faces higher costs and a clear competitive disadvantage compared to its competitors due to: i) the subscale size of its extra-EEA air network; ii) the low capacity utilisation of its own aircraft; iii) higher costs of purchasing capacity with third party carriers compared to the operating costs of using one's own fleet (which DHL and UPS can do profitably on more extra-EEA routes); and iv) less attractive rates for TNT when purchasing third party capacity because of lower volumes compared to those of DHL and UPS. Moreover, TNT is not marketing itself as a low cost operator and instead puts an

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<sup>957</sup> See responses to question 11 of questionnaire to SMEs R3 - Phase II.

<sup>958</sup> See responses to question 11.1 of questionnaire to SMEs R3 - Phase II.

<sup>959</sup> See non-confidential minutes of the meeting with UPS of 20 August 2015.

<sup>960</sup> See, for instance, European Commission Press Release of 15 October 2012, 'SMEs in Europe at the crossroads: further policy boost needed to help in recovery'; 2013 European Parliament Study 'SMEs Participation under Horizon 2020' p. 8 and European Commission 2008 edition 'Putting Small Businesses First: Europe is good for SMEs, SMEs are good for Europe' p. 5.

<sup>961</sup> FedEx's response to request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional Evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers", page 13.

<sup>962</sup> FedEx's response to request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional Evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers", page 4.

emphasis on a better quality of service through a more personal (and hence more expensive) approach. TNT is striving for 'operational excellence' and further improving quality and customer service, rather than undercutting competitors on price. That approach was also confirmed during the market investigation, where for instance one of TNT's customers noted that '...An advantage of TNT is that they come every day to pick up shipments and that they take care of every kind of packaging'.<sup>963</sup>

- (1337) Moreover, TNT cannot be said to have aggressively expanded its market position in the SME segment. The historical development of the customer base of TNT in the period Q1 2013 to Q3 2015 shows that the relative size of the SME segment for intra-EEA shipments has decreased from [30-40]% to [30-40]% (see Figure 23) while for extra-EEA shipments it has decreased from [40-50]% to [30-40]% (see Figure 24).<sup>964</sup>

**Figure 23: Historic development of the customer base of TNT (Q12013-Q3 2015), intra-EEA**

[Confidential]

**Figure 24: Historic development of the customer base of TNT (Q1 2013-Q3 2015), extra-EEA**

[Confidential]

- (1338) In its Q2 2015 results, TNT had indicated that it has had 'a higher service performance and revenues from SMEs year-on-year' and that its underlying growth for the period is considered driven by the continued growth of revenues from SMEs.<sup>965</sup> Despite this, the growth achieved in the Q2 2015 was only temporary as in Q3 2015, TNT's sales to SME customers (both for intra-EEA and extra-EEA shipments) declined to their lowest level since at least Q1 2013. This is also demonstrated by the figures on TNT's SME intra-EEA and extra-EEA revenues in Figures 25 and 26 below. Figure 26 on extra-EEA revenues shows that TNT's extra-EEA revenue for SME customers has decreased in Q3 2015 to EUR [Confidential] million from EUR [Confidential] million in Q1 2013, a decline of almost [Confidential] in two and a half years. A similar decline can be seen for the intra-EEA revenues as well in Figure 25.

**Figure 25: Historic development of the SME intra-EEA revenues of TNT (Q12013-Q32015)**

[Confidential]

**Figure 26: Historic development of the SME extra-EEA revenues of TNT (Q12013-Q3 2015)**

[Confidential]

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<sup>963</sup> Non-confidential minutes of the conference call with [Name of Parties' customer] held on 13 August 2015.

<sup>964</sup> FedEx's response to request for information QP18 of 6 October 2015, Annex 2, TNT's submission "Additional Evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers", page 10; FedEx's response to request for information QP 23 of 22 November 2015, page 1.

<sup>965</sup> Press release of 27 July 2015, TNT reports second quarter results.

- (1339) As seen in Figures 25 and 26,<sup>966</sup> TNT's revenues have continued to decline since Q1 2013, yet the overall express market has been growing at an average rate of 7% annually in the past five years. At the same time, DHL has consistently reported growth in the SME and e-commerce segments since 2013. For instance, DHL's 2014 annual report states: *"Market leadership in international express business extended: we succeeded again in extending our leading market position in the international Express business: at 34% (previous year: 33%), we were well ahead of the competition in 2013. In financial year 2014, the international express business continued to benefit from e-commerce and the growing importance of small and medium-sized enterprises in international trade."*<sup>967</sup>
- (1340) Both DHL and UPS appear to be already providing tailored service offerings on their websites for SMEs.<sup>968</sup> DHL appears to follow a strategy to offer 'much more competitive rates to smaller customers' leading to a perception by its own customers, as far back as 2012, that it was a player on prices.<sup>969</sup> In its 2014 Annual Report, DHL indicates that *"...for the express division...using global campaigns, we specifically target small and medium-sized businesses, which could benefit the most from increasing export..."*<sup>970</sup> and that *"...online, we provide the MyDHL portal as well as the Small Business Solutions Section of our website. These portals make it easier for, above all, small and medium-sized business customers to send their shipments. They also receive comprehensive information on the topic of shipping..."*<sup>971</sup> UPS has also had ongoing campaigns in a large number of Union markets offering 30% discounts to SMEs until December 2015 while it offers automatic discounting to members of SME trade associations which can, in some cases, be as much as 63% (for example in Germany). Furthermore, it would appear that UPS further aims to grow its SME business by investing in new IT technology, specific SME and e-commerce solutions and additional network capacity. There has been a USD 200 million investment in the expansion of UPS's air hub facilities at Cologne/Bonn Airport in Germany.<sup>972</sup> Moreover, UPS has launched the UPS Export Toolkit; a UPS managing director explained that "For any SME owner, the first port of call for free exporting advice should be to visit the ups.com website and then discuss options with an adviser. There is a UPS sales team dedicated to helping SMEs".<sup>973</sup>
- (1341) The Commission notes that SMEs, when asked with whom they ship, also included DHL and UPS in their response.<sup>974</sup> DHL and UPS also provide services to SMEs, have regular campaigns targeting SMEs and even employ dedicated sales forces and

<sup>966</sup> FedEx's response to request for information QP18 of 6 October 2015, Annex 2, TNT's submission - "Additional Evidence of TNT Express N.V. confirming that TNT is not a maverick player focussing on SME customers", page 10; FedEx's response to request for information QP 23 of 22 November 2015, page 2.

<sup>967</sup> DHL 2014 annual report, page 26.

<sup>968</sup> For instance, DHL offers the 'DHL Small business solutions' and UPS markets distinct solutions for small business and e-commerce customers on its website, including online tools for simpler shipping and tracking. See for example [http://www.dhl.be/en/express/small\\_business\\_solutions.html](http://www.dhl.be/en/express/small_business_solutions.html) and <https://www.dhl.de/en/express/kleine-mittlere-unternehmen.html>.

See [http://www.ups.com/content/gb/en/bussol/browse/cat/small\\_bus.html?WT.svl=SolHeader](http://www.ups.com/content/gb/en/bussol/browse/cat/small_bus.html?WT.svl=SolHeader).

<sup>969</sup> See the September 2013 DHL Express 'Capital Markets Tutorial Workshop', pages 3 and 15.

<sup>970</sup> DHL 2014 annual report, page 33.

<sup>971</sup> DHL 2014 annual report, page 82-83.

<sup>972</sup> See [https://www.ups.com/content/ru/en/about/news/press\\_releases/20140402\\_expansion.html](https://www.ups.com/content/ru/en/about/news/press_releases/20140402_expansion.html)

<sup>973</sup> See interview with George Willis on [www.director.co.uk](http://www.director.co.uk), "From package handler to managing director, meet George Willis of UPS", 1 June 2015.

<sup>974</sup> See responses to Q.2.1 to 2.5 of questionnaire to SMEs R3 - Phase II and responses to Q.4.1 to Q.4.3 of questionnaire to customers Q4 - Phase I.

the vast majority of responding competitors confirmed that the requirements of SMEs in relation to small package deliveries are no different from other businesses and that, in any case, services to SMEs would not require any extra assets or resources.<sup>975</sup> This was also confirmed by the overwhelming majority of SMEs involved in e-commerce. In light of these observations, the Commission considers that there is no reason to assume that the Merged Entity would not have an incentive to retain those SME customers by offering a compelling price and service offering. Otherwise, such customers, who form a large part of the market,<sup>976</sup> could easily switch to the other players in the event that the Merged Entity attempted to impose an increase in price post-Transaction.

- (1342) For the reasons already explained in Sections 9.4 and 10.4, the Commission does not consider that the Parties can be said to be close competitors amongst integrators as alleged by some market participants. In general, FedEx has a weak presence in the EEA and lacks a complete product portfolio (that it to say it has a weak presence in high volume products like domestic and intra-EEA deferred delivery services). TNT, on the other hand, has a more developed network intra-EEA, with a road-based service offering and a weaker presence extra-EEA, therefore distinguishing it from FedEx. The Commission considers that, also in view of this complementarity, the Transaction would have a positive overall effect on SMEs, including those involved in e-commerce as well as Micro and Small enterprises potentially looking for service providers who can offer a complete portfolio of products in Europe (namely, domestic, international intra-EEA deferred etc), which FedEx was not able to provide until now. Therefore, also in light of the Commission's Roadmap for completing the single market for parcel delivery,<sup>977</sup> the Commission considers that the Transaction would have a positive impact and is likely to increase SME's access to parcel delivery services.
- (1343) Finally, the Commission also asked competitors' and customers' views on air capacity post-Transaction during the market investigation. Overall, the results of the market investigation did not raise concerns regarding this issue. The overwhelming majority of small competitors consider that post-Transaction a sufficient number of viable sellers of air transport services will remain.<sup>978</sup> The same is true for the responses from freight forwarders. The overwhelming majority considers that post-Transaction a sufficient number of viable sellers of air transport services will remain.<sup>979</sup> Moreover, the Parties' large competitors indicated overwhelmingly that they would not change their strategy with regard to air capacity acquisition nor would they consider a reshuffling of their air transport providers if the Transaction goes through.<sup>980</sup> For instance, one respondent indicated that *"there is a large range of airlines offering airlifting capacity, we do not heavily rely on the integrators"*<sup>981</sup> while another said that *"Most likely the transaction will result in an increase of the*

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<sup>975</sup> See responses to questions 27, 28 and 29 of questionnaire to competitors R1 - Phase II.

<sup>976</sup> As indicated in recital (1336), 98% of all EU businesses are estimated to be SMEs and most of the growth in the express market in the future is expected to come from SME customers, the e-commerce sector and B2C shipment flows.

<sup>977</sup> Communication from the Commission 'A roadmap for completing the single market for parcel delivery, Build trust in delivery services and encourage online sales' COM (2013) 866 final.

<sup>978</sup> See responses to question 20 of questionnaire to competitors Q2 – Phase I.

<sup>979</sup> See responses to question 19 of questionnaire to freight forwarders Q5 – Phase I.

<sup>980</sup> See response to questions 57 and 60 of questionnaire to competitors Q1 – Phase I.

<sup>981</sup> See non-confidential response of Panalpina (Hungary) to question 23.1.1 of the questionnaire to competitors R1 - Phase II.

*intra EEA scope of the network of the merged entity. On some lanes, through the combination of activities, a reduction of total capacity might be the result. On the other hand, in the light of the increased size and financial resources of the merged entity, it is likely that investments in new lanes will occur post-transaction resulting in an increase of total air capacity. Because the Fedex intra EEA network is much smaller compared to the TNT intra EEA network the effects are expected to be relatively small or neglectable. Further Fedex will sell the TNT airline company to a third party, and this party is expected to decide independently how it would manage the fleet of aircraft and its capacity.*"<sup>982</sup>

### **12.3. Conclusion**

(1344) In the light of the available evidence and all the reasons given in this Section therefore, the Commission considers that, similarly to its overall assessment in this case, the Transaction would not remove an important competitive force and that DHL and UPS would continue to provide a competitive constraint on the Merged Entity post-Transaction also regarding services to SMEs. Therefore, the Commission concludes that the Transaction is unlikely to impede competition also in relation to services to SMEs.

### **13. CONCLUSION**

(1345) The Commission concludes that the Transaction would not significantly impede effective competition in the internal market or a substantial part thereof.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The notified operation whereby FedEx Corporation acquires sole control of TNT Express N.V. within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the EEA Agreement.

#### *Article 2*

This Decision is addressed to:

FedEx Corporation  
1209 Orange Street  
Wilmington DE 198801  
United States of America

Done at Brussels, 8.1.2016

*For the Commission  
(signed)  
Margrethe VESTAGER  
Member of the Commission*

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<sup>982</sup> See non-confidential response of PostNL-Netherlands to question 23.1.1 of the questionnaire to competitors R1 – Phase II.