



EUROPEAN COMMISSION

Competition DG

Directorate R

Unit R2 – COMP-MEETINGS

## **OPINION**

**of the ADVISORY COMMITTEE on MERGERS**

**given at its meeting of 18 January 2013**

**regarding a draft decision relating to**

**Rapporteur : AUSTRIA**

**CASE COMP/M. 6570 – UPS/TNT Express**

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1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The Advisory Committee agrees with the Commission that the notified transaction has a Union dimension pursuant to Article 1 of the Merger Regulation.
3. The Advisory Committee agrees with the Commission's definitions of the relevant product and geographic markets as stated in the draft decision.
4. In particular, the Advisory Committee agrees that there is a separate market for (international) intra-EEA express services which is national in scope.
5. The Advisory Committee agrees with the Commission's assessment that the notified concentration would not lead to a significant impediment of effective competition in the markets concerned in the areas of: (1) air cargo, (2) freight forwarding, and (3) contract logistics.
6. The Advisory Committee agrees with the Commission's assessment that the notified concentration, as originally proposed by the notifying parties, is likely to give rise to non-coordinated horizontal effects that would significantly impede effective competition on the market for intra-EEA express services in the following countries:
  - Bulgaria;
  - The Czech Republic;
  - Denmark;

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- Estonia;
  - Finland;
  - Hungary;
  - Latvia;
  - Lithuania;
  - Malta;
  - The Netherlands;
  - Poland;
  - Romania;
  - Slovakia;
  - Slovenia;
  - Sweden;

7. The Advisory Committee agrees with the Commission's analysis of efficiencies, in particular the netting off against the estimated price increase, and the conclusion that they are not of a nature to counteract the significant impediment to effective competition resulting from the notified transaction on the markets identified in the previous point.
8. The Advisory Committee agrees with the Commission that in view of the extremely limited number of potentially suitable purchasers for any divested business an upfront buyer or a fix-it-first solution was needed.
9. The Advisory Committee agrees with the Commission that the commitments offered by the notifying party on 29 November 2012, as modified on 16 December 2012 and 3 January 2013, do not address the competition concerns identified by the Commission and will not eliminate the significant impediment to effective competition resulting from the notified transaction.
10. The Advisory Committee agrees with the Commission that the notified transaction must therefore be declared incompatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(3) and 8(3) of the Merger Regulation and Article 57 of the EEA Agreement.

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