

***Case No IV/M.1513 -
DEUTSCHE POST /
DANZAS / NEDLLOYD***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/07/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 1.7.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Subject: Case No IV/M.1513 – Deutsche Post/Danzas/Nedlloyd

Notification of 31 May 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 31 May 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89 (Merger Regulation) by which the German undertaking Deutsche Post AG (Deutsche Post) acquires sole control of Nedlloyd's European transport, distribution and logistics division comprising four companies together referred to as Nedlloyd ETD.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) N° 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. The Parties and the Operation

3. The primary activity of Deutsche Post is the provision of the national postal service in Germany comprising mail, parcels and counter services. The company also provides value-added services in Germany such as international and domestic express delivery services, logistics as well as an international and domestic parcel delivery service in a number of other European countries. Deutsche Post is also active in freight forwarding and logistics throughout Europe, primarily through its recently acquired subsidiary, Danzas.
4. Nedlloyd ETD comprises the two holding companies Nedlloyd ETD Holding B.V. and Nedlloyd Deutschland Holding GmbH as well as Van Gend & Loos and Selektvracht. Nedlloyd ETD is active in freight forwarding, parcel services and logistics. Its main areas of activity are the Benelux countries and Germany.

5. Deutsche Post intends to acquire Nedlloyd ETD from Koninklijke Nedlloyd ETD N.V. After the acquisition the logistics and freight businesses of Nedlloyd will be incorporated in Deutsche Post's subsidiary, Danzas. Nedlloyd's ETD parcel businesses, at present operated by Van Gend & Loos and Selektvracht, will be directly held by Deutsche Post AG.

II. Concentration

6. Deutsche Post will acquire sole control of Nedlloyd ETD. Therefore, the proposed transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. Community Dimension

7. The combined aggregate world-wide turnover of the parties to the concentration exceeded EUR 5,000 million¹ in 1998 (Deutsche Post: EUR 14,590 million², Nedlloyd: EUR 1,461 million) and each of the undertakings concerned had a Community-wide turnover of more than EUR 250 million in 1998 (Deutsche Post: EUR [...] million³, Nedlloyd ETD: EUR [...] million). They did not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Hence, the notified operation has a Community dimension.

IV. Relevant Markets

A. Relevant Product Markets

8. The present operation involves the following sectors: mail and parcel services, expedited transport services, logistics and freight forwarding. The Deutsche Post group (including in particular DHL, Danzas and Securicor as well as a number of other subsidiaries of smaller dimensions) is extensively present throughout the various markets comprising these sectors. Nedlloyd ETD's activities focus mainly on various types of parcel services (via the subsidiaries Van Gend & Loos and Selektvracht) and on freight forwarding and logistics.
9. The Commission examined these sectors in a number of past cases, where it noticed a certain mobility of the boundaries between the various services (express, parcels, freight, etc.). In fact, different providers may design and offer special packages of services so as to meet the specific needs of certain types of clients (*e.g.* certain industries or certain clients with particular requirements as to timing or delivery points). These packages may take a form that includes various services to be classified under different product markets (for example parcels and groupage services to be offered as integrated solutions). The dynamic evolution of the services offered has an impact on the market

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

² Without DHL, Ducros, Danzas and MIT.

³ Without DHL, Ducros, Danzas and MIT.

definition, in that it tends to move the boundaries between different markets. Also, it creates the possibility that certain niche markets for specialised services develop.

10. In line with its past decisions⁴ concerning express and parcel services the Commission found a number of distinctions:

- between parcels and freight services, according to weight, format and the handling equipment needed (parcels services are to handle high volumes of items that must be of limited weight and standardised format, whereby handling and transport are standardised to achieve low unit costs);
- between express parcel (and document) delivery and standard parcel delivery, according to the time sensitivity of the shipment and the guarantee attached by the service provider (express services are "time certain" while standard services contain no time guarantee but a general indication of the time laps, e.g. 24 hours, for the delivery);
- between domestic and cross-border delivery, by reason of the national nature of the network infrastructure used for transport services (which leads to important differences as regards time of delivery and price), which still prevails on the internationalisation process led by large groups that are establishing their own networks throughout several countries/regions. In particular, several features distinguishing domestic from international services still persist, i.e. separate operational organization of suppliers and customers, the presence of many local and national suppliers for domestic deliveries, and product differentiation by customers.

11. As regards freight forwarding services and in particular land transport the Commission had found in previous decisions⁵ that international and domestic forwarding (transport) services by land were separate relevant product markets, but did not find it necessary to decide upon any further segmentation (*e.g.* between rail and road transport). The market investigation in the present case suggested an even further segmentation according to categories such as groupage, less than truckload or full truckload transportation.

12. As for logistic services⁶, in past cases they have been understood to comprise the integrated management (planning, implementation and control) of the flow and storage of goods in the supply chain. Logistics may thus include a combination of different services such as ware-housing, transport organisation, inventory control, just-in-time management and financial management, possibly supplemented by a number of industry specific value added services.

13. The Commission's inquiry in the present case has generally confirmed the relevance of the above factors for the purpose of market definition. Accordingly, the Commission has examined the competitive impact of the concentration in respect of express delivery of documents, parcels and freight, standard parcel services, freight forwarding and logistic

⁴ See in particular cases no. IV/M.1347 – Deutsche Post/Securicor and no. IV/M.1405 – TNT/Jet Service.

⁵ See cases no. IV/M. 1056 - Stinnes/BTL and no. IV/M.1170 - Dan Transport/Inter Forward.

⁶ See case no. IV/M.1500 – TPG/Tecnologica

services. In its analysis, the Commission has furthermore distinguished between domestic and cross-border services.

14. The Commission finds it not necessary in the present case to delineate the relevant product markets beyond the definitions outlined above. Although, as explained above, the intrinsic characteristics and the dynamics of this sector might suggest further segmentations, the market inquiry conducted by the Commission in the present case has provided no indications that the merged entity would become dominant on any particular market.

B. Relevant geographic markets

15. The parties contend that the relevant geographic market for all the services concerned by the present operation, *i.e.* freight forwarding, logistics, express services and parcel delivery service is wider than national. They claim that especially the Benelux countries have grown together so as to form effectively one geographic area with homogeneous conditions and integrated networks. According to the parties, at least in those three countries there would be no real distinction in terms of product characteristics, infrastructure, price or delivery time so as to distinguish infra-Benelux deliveries from purely domestic deliveries.
16. The Commission considered in the past that the relevant geographic market for logistics⁷ as well as for all the express services and parcel delivery services, including both national and international services⁸, could be characterised as largely national in scope. This consideration was based on the following factors: i) the perception of customers of it as a local service, ii) the national nature of both pick-up and delivery, iii) different pricing levels (particularly due to difference in labour and fuel costs), iv) different marketing in different countries, v) variations in market share distribution of the main suppliers across the different member states, and vi) the different stages of product development from country to country.
17. However, the Commission also considered that the national dimension of the geographic market could be expected to change as a result of a possible trend towards a demand by customers for global accounts. This general trend is reflected by the increasing efforts of providers active on the different services markets in this sector to set-up an international network or alliances in order to better meet this demand. Even though traditionally national companies are expanding their European activities through acquisitions or alliances/partnerships, leading to an increase in the number of pan-European operators, the array of service providers still differs across the different member states. This is also true for the Benelux countries where the position of service providers – according even to the estimates of the parties - is different in each of the three countries. Thus, the presence and importance of national providers is still an important factor to be taken into account.

⁷ Case N° IV/M.1500 – TPG/Technologica.

⁸ Case N° IV/M.1347 – Deutsche Post/Securicor.

18. As regards freight forwarding, the Commission considered in the past⁹ that the relevant geographic market in international land based forwarding services could be appropriately defined by considering routes or bundles of routes that are substitutable, e.g. routes between Sweden and Germany or even narrower areas such as Benelux ports and Southern Sweden. The definition of the relevant geographic market was however left open in that case. The Commission finds that there is no need to define the market further for the present case either.
19. The parties submitted the relevant data at a national as well as at a Benelux level. According to these data, their combined market position would be weaker at the wider Benelux level. As the operation does not raise any concerns in the context of the analysis required under the Merger Regulation with regard to the different services concerned, whether assessed at a national, Benelux or European level, it is not necessary to define the scope of the relevant geographic market more precisely in the present case.

V. Competitive Assessment

20. Nedlloyd ETD is one of the main European transport companies with activities ranging from freight forwarding to logistics, express and parcel services. Its direct network coverage extends to the whole of central Europe, but its activities are mainly within the Benelux countries and Germany. Nedlloyd ETD thus complements and reinforces the networks of Danzas, the other major freight and logistics company recently acquired by Deutsche Post, and the European parcel network of Deutsche Post itself.
21. The present decision is based on the parties' claim that Trans-o-flex is not part of the Deutsche Post group.
22. In the area of freight forwarding, although Nedlloyd and Danzas are both amongst the largest European operators, their combination would not give rise to serious concerns for competition. According to the parties, there are no markets where the new entity would have a market share in excess of 15%. The national markets in which both the Deutsche Post group and Nedlloyd are active, are still competitive with some other large operator like e.g. BTL-Schenker and Kühne & Nagel as well as a high number of small and medium sized operators. The market inquiry has confirmed this overall picture.
23. As regards logistic services, the parties submitted that the main impact of the operation would be felt in the Benelux countries and in particular in the Netherlands, where the merged entity would have about [15-25%] of the market. However, the presence of other important players such as Hays, Frans Maas, Intexo, TPG with market shares ranging from 19% to 4% would provide sufficient constraints to the competitive behaviour of the merged entity. The market inquiry has confirmed this conclusion.
24. The market situation is different in the area of parcel and express activities. Due to the importance of scale efficiency in these business (which also raise entry barriers) as well as to the traditional presence of national postal monopolies and of international large "integrators" (DHL, UPS, TNT), these markets feature a higher degree of concentration¹⁰.

⁹ case IV/M.1056 - Stinnes/BTL

¹⁰ see the recent case Deutsche Post/trans-o-flex.

25. Nedlloyd ETD (via its subsidiary Van Gend & Loos) has in the Benelux a leading position as parcel service providers. According to the parties, Nedlloyd ETD's market shares in Belgium and the Netherlands would be between 25% and 35%, and other important competitors would be present, including TPG and ABX, being the main competitors in the Netherlands and in Belgium respectively, as well as UPS and DPD. The table below shows the parties' estimates of their own market shares and of those of their competitors on the markets for international parcels in Belgium and the Netherlands, i.e. those markets in which the parties consider to be affected by the present operation.

Companies	Market share B	Market share NL
ABX	20-25%	[<5%]
Trans-o-flex group	[5-10%]	[<5%]
TPG	10-15%	[25-35%]
Deutsche Post/Nedlloyd	[25-35%]	[25-35%]
UPS	10-15%	[<5%]
NPD		[5-10%]
DPD	5-10%	[<5%]
TAT	[5-10%]	

26. The Commission investigation has shown the difficulty to obtain reliable figures on market size and market shares for this sector, due to the lack of market data. However, the investigation has provided no indications that parties' and competitors' market shares would differ from the ones above to such an extent as to raise competition concerns under the Merger Regulation. In line with this conclusion, customers have generally confirmed that they consider having sufficient alternative providers of parcel services.

27. On the other hand, business partners of Van Gend & Loos within the EuroExpress alliance have submitted the view that no other operators would be in a position to offer the same combination and quality of services as those offered by Van Gend & Loos. Consequently, Van Gend & Loos could not be replaced as the member of the alliance responsible for pick-up and delivery of shipments from and to the Benelux countries. This would foreclose the members of the alliance in other than the Benelux countries from offering their cross-border services to the Benelux countries, leaving the Deutsche Post group as the only provider for these services. The investigation of the Commission has not confirmed the above view. Van Gend & Loos's offer under the EuroExpress brand matches the standards of the EuroExpress alliance (i.e. in particular a combination of parcel and groupage services). It appears however that other operators in the parcel area, alone or in combination with groupage systems, could adapt their services to meet the EuroExpress standards and thus offer alternative delivery services to the Benelux countries. These include important groups such as TPG and DPD and or smaller or more specialised operators such as WegTransport or ExpressPartners.

28. Finally, in the express area, there appear to be no material overlap between the services offered by Van Gend & Loos and those of DHL. One competitor has claimed that Nedlloyd through its "Expresser" service, would be active on the same market as DHL. However, the Commission investigation confirmed that the "Expresser" time-definite service offered by Van Gend & Loos in the Benelux countries is not regarded by customers as an alternative to DHL's international express service, and in fact its price for comparable shipments is substantially lower (between 40% and 50%).

VI. Ancillary Restraints

29. Article 14 of the Share Purchase Agreement provides that the seller shall not compete for a period of four years after the closing date directly or indirectly with the current business of Nedlloyd ETD. The Commission considers that this clause ensures the transfer of the full value of Nedlloyd ETD to Deutsche Post. However, given the nature of the business transferred and in particular the degree of goodwill and know-how involved, it considers that the non-compete restriction is only necessary for a period of three years.

VII. Conclusion

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

For the Commission,