

***Case No COMP/M.1794 -  
DEUTSCHE POST / AIR  
EXPRESS  
INTERNATIONAL***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 07/02/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.02.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

**Subject: Case No COMP/M. 1794 Deutsche Post/Air Express International (DP/AEI)**

Notification of 6 January 2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 6 January 2000, Deutsche Post AG (DPAG) submitted a notification concerning the acquisition, of the shares of the US freight forwarding company Air Express International Corp. (AEI).

**I THE PARTIES**

2. 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 domestic and international freight forwarding throughout Europe primarily through its recently acquired subsidiary Danzas DP. It is the intention of Deutsche Post to combine AEI with Danzas to form 'Danzas-AEI' and hence strengthen its transportation and logistics services on a world-wide basis.
3. AEI is a stock corporation and one of the leading US based international freight forwarders. It has a network covering some 135 countries. Its activities comprise air, ocean and, to a lesser extent, ground transportation services, but also include services ancillary to freight forwarding, such as customs brokerage, dedicated warehousing and distribution. AIE is active in Europe for international air and sea freight forwarding.

## **II THE OPERATION**

4. The notified transaction involves the acquisition of a majority stake of up to 100% in AEI through Deutsche Post AG's fully owned subsidiary DP Acquisition Corporation, by way of purchase of shares. The acquisition shall be effected through a public offer that was made on 19 November 1999 pursuant to a Tender Offer and Merger Agreement. Currently, more than 90% of the shares of AEI are held by a large number of (corporate) shareholders, none of which own more than 5.05% of the shares. It is further envisaged that after the acquisition has been completed AEI will be serving as a subsidiary of DP within Danzas group. DP will be entitled to appoint a majority of the members of the Board of Directors of AEI.
5. The operation accordingly constitutes a concentration within the meaning of article 3(1)(b) of the Merger regulation.

## **III COMMUNITY DIMENSION**

6. The aggregate world-wide turnover of DP group is EURO 24 615 million and that of AEI is EURO 1499. The combined aggregate turnover of the parties therefore exceeds EURO 5000 million. DP group has an aggregate Community- wide turnover of EURO [...] million and AEI a Community wide turnover of EURO [...] million. Each of them therefore has a Community wide turnover in excess of EURO 250 million. They do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State.
7. The operation therefore has a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

## **IV COMPATIBILITY WITH THE COMMON MARKET AND THE FUNCTIONING OF THE EEA AGREEMENT**

### **A. Relevant product markets**

8. Freight forwarding can be defined as the organisation of transportation of items (possibly including ancillary activities such as customs clearance, warehousing, ground services etc.), on behalf of customers according to their needs. Air and sea freight forwarding services include land transportation to/from the port/airport<sup>1</sup> when required by customers. The freight forwarder often does not own the assets (ship, aeroplanes or other) necessary for the transportation (nor does it perform the actual transportation) but, generally, hires transportation capacity from third parties.
9. In its investigation the Commission found that a number of distinctions as regards relevant product markets can be made:
  - between domestic and cross border freight forwarding, whereby domestic freight forwarding means the provision of services within one country and international freight forwarding means the provision of freight forwarding services from one country to any other country in the world. Given the special skills required for the organisation of cross-border freight forwarding, many undertakings only provide domestic freight forwarding or concentrate their business in cross border freight forwarding, domestic transport being

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<sup>1</sup> Often subcontracted.

generally handled separately. Forwarder skills linked to cross border freight forwarding are related to customs brokerage know-how, capacity to create an international network of agencies etc. As regards cross-border freight forwarding, the investigation confirmed that freight forwarders generally can and do serve all destinations requested by their clients (either through their own network or through local agents). Therefore, in spite of the fact that certain freight forwarders have a strong presence on particular trade routes a distinction of the (product) market along particular routes is not indicated for freight forwarding.

- between land, air and sea freight forwarding, mainly because forwarders tend operationally to split their departments to focus on each element of transport and because of speed and tariff structures of the services concerned.
  - between “express” freight forwarding and standard freight forwarding services. Although standard freight forwarding services already (often) include a time certain element according to customer’s needs (e.g. a guaranteed day of delivery), the notifying parties, competitors and clients distinguish “express” services in view of their different (more speedy) handling and pricing that surrounds these “express” services as opposed to standard freight forwarding. (For example, for express, generally the money is reimbursed to the client in case of arrival of the item after the indicated time).
10. The investigation pointed out that for freight forwarding, the weight or format of a consignment is not relevant for delineating markets. In its past decisions concerning parcel delivery services<sup>2</sup>, the Commission did distinguish parcels from freight based on the specific (maximum) weight, format and handling equipment needed (parcel services require the handling of high volumes of items that must be of limited weight and standardised format, whereby handling and transport are standardised to achieve low unit costs). The present case, however, concerns freight forwarding services. In the investigation it appeared that although the basic distinction between parcels and freight was not put into question, a clear distinction based on a certain (minimum) weight for consignments shipped did not exist for freight forwarding. Freight forwarders can and do accept small shipments. The reason that relatively few smaller consignments are dealt with by freight forwarders has to do with the tariff structure of freight forwarders, which makes it economically more attractive for customers to use a parcel service company for small consignments.
11. The Commission’s also considered whether a further segmentation of the above markets would be necessary, for example by type of transported items (e.g. freight forwarding services for perishable goods, valuables etc.) However, in the present case the market investigation has shown that these segments should not be considered as separate product markets. The principal reason is that freight forwarders are generally able to serve all type of customers without distinguishing them according to the types of goods transported.
12. AEI’s and DP’s activities overlap in international sea and air freight forwarding, accordingly the Commission has examined the competitive impact of the concentration in respect of these two markets. DP is active in these sectors through its subsidiaries Danzas, ITG and ASG for both international air and sea freight forwarding and Nedlloyd ETD for air freight forwarding.

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<sup>2</sup> e.g. Case IV/M. 1513 Deutsche Post/Danzas/ Nedlloyd.

## **B. Geographic aspects**

13. The parties have submitted that for international air and sea freight forwarding the markets concerned are larger than national, and are at least European-wide in view of the trend towards internationalisation.
14. The Commission's enquiry, however, has pointed out that the geographic scope of the air and sea freight forwarding markets should be considered as national, because of the fact that customers perceive it as a local or national service and generally turn to companies established in their own country, because of the fact that international companies involved have a network of local agencies established in the different countries where the services are required and because of the price differences that exist per country. However, the question of whether markets larger than national may exist can be left open, given that the merger does not raise competition concerns even in case of an assessment based on national markets, as further explained below. The exact definition of the geographic scope of the market can therefore be left open in this case.

## **C Competitive assessment**

### **Air freight forwarding**

15. Given the lack of reliable figures the parties have calculated market sizes and market shares in the different countries on the basis of IATA figures (which only include transportation services provided by IATA members). IATA figures have been adjusted for differences in declared volumes (net/gross), transportation services provided by non members of IATA and ancillary services directly related to freight forwarding as mentioned in paragraph 8 above. Generally, the methodology developed was considered appropriate by competitors.
16. The data show that Deutsche Post will become market leader in a number of countries within the EEA<sup>3</sup>, but will not achieve a market share of 25% or more (with the exception of Finland, where it is expected a market share of [between 30-40%] ([between 25-35%] DP + [less than 10%] AEI)). However, in Finland (as well as in all other countries) significant competitors are present, some with market shares of 10% or more, such as the international freight forwarders MSAS, Kühne&Nagel, Wilson, etc. Therefore, it is considered that the merger will not give rise to the creation or strengthening of a dominant position.

### **Sea freight forwarding**

17. As regards national markets for international sea freight forwarding, there are no indications that any dominant position will be created or strengthened. The parties have only been able to submit estimates of national market shares, given that, as stated by the parties and confirmed by the Commission's inquiry, no reliable public data are available. Generally, the methodology developed by the parties to arrive at their estimates was considered appropriate by competitors. The estimates show that the highest market share of the parties after the concentration would be in France with [between 5-15%] (DP [less than 10%] + AEI [less than 10%]) and lower than that in all other EEA countries. These figures do not indicate that a dominant position will be created or strengthened.

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<sup>3</sup> These are the markets for international air freight forwarding in Belgium, Denmark, Ireland, Sweden, the UK, Spain, Italy, the Netherlands and Norway.

### **Comments from interested parties**

18. Several interested parties expressed to the Commission their concerns with regard to alleged state aid in favour of DP. It has been argued that DP cross-subsidises the development of its activities in the commercial field through revenues from its national postal monopoly. However, it should be noted that the present decision, based on the Merger Regulation, can only deal with any potential market dominance resulting from the concentration.<sup>4</sup>

### **VI CONCLUSION**

19. For the foregoing reasons the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation N/ 4064/89.

For the Commission,

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<sup>4</sup> State aid related aspects are currently being investigated in case C 61/99, OJ C 306 of 23.10.1999.