

***Case No COMP/M.3496 -
TNT FORWARDING
HOLDING / WILSON
LOGISTICS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 02/08/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02/08/2004

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3496 – TNT Forwarding Holding AB / Wilson Logistics Holding AB
Notification of 29.06.2004 pursuant to Article 4 of Council Regulation No 139/2004¹**

1. On 29 June 2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which TNT Forwarding Holding AB (“TNFT”) belonging to TPG N.V. (“TPG”) acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of Wilson Logistics Holding AB (“Wilson”), by way of purchase of shares.

I. THE PARTIES

2. TPG is a Dutch public company listed on the Amsterdam, Frankfurt, London and New York stock exchanges. It has a mail division providing universal services for postal services in the Netherlands (TPG Post), a “business to business” services division (TNT Express) and a logistic division (TNT Logistics). TNFT is a 100% indirect Swedish subsidiary of TPG and acts as an acquisition vehicle.

¹ OJ L 24, 29.1.2004 p. 1.

3. Wilson is a Swedish private company controlled by Nordic Capital, Fund III (with [...] % of the shares). The company is active in air and sea freight forwarding services and related IT and logistic solutions.

II. THE OPERATION

4. TNTF will acquire the shares from private equity fund Nordic Capital, Fund III. The seller undertakes to use its best endeavours to invoke its contractual rights to acquire the shares and warrants from the remaining minority shareholders, to ensure that TNTF may also purchase those shares and warrants at the date of closing.

III. CONCENTRATION

5. After implementing the notified operation, TNTF will hold more than 90% of the share capital of Wilson. TNTF will thus acquire sole control over Wilson within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of the parties to the concentration have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A. Relevant markets

7. The notifying party submits that the transaction is concerned with the markets for (i) freight forwarding services and (ii) general contract logistic services, as there are some horizontal overlaps between TPG and Wilson in these sectors. Moreover, TPG underlines that the market for (iii) business-to-business (B2B) documents and parcel services is also concerned due to its vertical links with logistic services.

(i) Freight forwarding

8. In previous decisions, the Commission has defined freight forwarding as “*the organisation of transportation of items (possibly including ancillary activities such as customs clearance, warehousing, ground services, etc.) on behalf of customers according to their needs*”³. In the past, the Commission made a distinction between domestic and cross border freight forwarding. A further delineation was suggested between land, air and sea freight forwarding. In the *Deutsche Post/Air Express International* decision⁴, the Commission did not rule out the possibility of a

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

³ E.g. Case No COMP/M. 1794 - *Deutsche Post/Air Express International*.

⁴ See footnote above

distinction between standard and express freight forwarding services; however the notifying party considers that the standard services already include express elements and hence there is no need to further subdivide the market. Notwithstanding, the final delineation of the relevant product market for freight forwarding services could be left open as the notified transaction would not raise serious doubts even if the market is further subdivided.

9. The notifying party agrees with the Commission's previous findings that the relevant geographic markets are national in scope. For the present decision, however, the delineation of the geographic market can be left open as the proposed transaction does not raise serious doubts for freight forwarding services, irrespective of the geographic definition considered.

(ii) General contract logistic services

10. The Commission has previously defined general contract logistics services as “*the part of the supply chain process that plans, implement and controls the efficient, effective flow and storage of goods, services and related information from the point of origin to the point of consumption in order to meet customers' requirements*”⁵. According to these decisions, general contract logistics services constitute a distinct market from express parcel delivery services, freight forwarding and financial management; as the focal point of logistic services is in the management of goods for customers. The notifying party considers that the know-how required from the demand side is more customer than sector specific and highlights that all major competitors serve a range of different sectors. It further submits that the IT systems are similar regardless the sector and some possible sector-specific requirements are often outsourced and/or available from third parties (e.g. handling, refrigerated trucks).
11. This view of the product market have been supported by many respondents to the Commission's market investigation. The Commission's investigation also shows that most contract logistic service providers are generally active in various sectors in many countries. However a limited number of responses indicate that certain sectors (e.g automobile) could require specific know-how and capacity that would justify a further segmentation of the market. In its *Autologic/TNT/Wallenius/CAT* decision⁶, the Commission has already defined a specific logistic market for finished vehicles logistic services, as opposed to a market for general logistic services. Notwithstanding, the final delineation of the relevant product market for contract logistics services could be left open as the notified transaction would not raise serious doubts even if this market is further subdivided by sectors.
12. The notifying party argues that, as a consequence of the globalisation in their supply chain, customers increasingly require contract logistics providers to be able to supply all range of services, including the traditionally outsourced second-tier functions such as warehousing and freight forwarding. These services are provided by lead logistic providers (LLPs), capable of managing the full supply chain from sourcing to

⁵ Case No COMP/M. 2411 *Autologic/TNT/Wallenius/CAT*, Case No IV/M. 1895 – *Ocean Group/EXEL* and Case No IV/M.1405 – *TNT Post Group/Jet Services*.

⁶ See footnote above.

consumption, providing consulting services, re-engineering the supply chain as well as executing operations. An LLP, as opposed to a 3PL (a traditional contract logistic service provider) would be a single point of contact for logistic services, as the LLP selects and manages the logistic services providers required to perform the necessary logistic services. The market investigation indicates that this trend might exist; however it also shows that the differences between LLPs and traditional 3PL are still blurred. Some responses even doubt that LLPs form a clear and distinct category from 3PL. Some respondents argue *inter alia* that no 3PL player has really become an LLP yet or that most 3PL could play the role of LLP on an *ad hoc* basis, depending on the specific requirements of a customer. The market investigation further shows that there is no consensus on what companies could be regarded as LLPs or any evidence indicating that these services are being offered to a significant extent. In the light of these considerations, the Commission considers that it is not necessary for the present decision to further sub-divide the product market based on a difference between LLPs and 3PLs.

13. The Commission has in previous decisions found that the relevant geographic market for contract logistic services is national in scope⁷. This view is also shared by the notifying party and respondents to the Commission's investigations, although some replies to the market investigation has shown that there is a tendency towards internationalisation. However, given the absence of competition concerns regardless of the definition of the relevant market, the geographic scope of the market can be left open.

(iii) International express mail services /B2B services

14. In its decisions concerning mail services, the Commission has traditionally made a distinction between domestic and international standard services, express services, mail orders and express freight services⁸. The Commission has found in the past that there is a potential "vertical relationship" between the market for international express documents and parcels services as input for the general logistics markets⁹.
15. The notifying party however argues that, given the improvement of the quality of parcel services in general, the added value features offered to customers, such as tracking and tracing, and the short time-limits, it is reasonable to consider the entire market for B2B as one market. This B2B market is different from mail orders, also known as business-to-consumers (B2C) services, and from standard consumer-to-consumer (C2C) services. The notifying party further submits that the B2B service market should therefore be considered as being vertically related to general logistic services, instead of the "traditional" express documents and parcel service market. The market investigation however does not seem to support the approach suggested by the notifying party. However, it is not necessary for the purpose of the present decision to conclude on this issue given that irrespective of the market definition, the notified transaction does not raise serious doubts.

⁷ Case No IV/M. 1513 –*Deutsche Post/Danzas/Nedlloyd* and Case No IV/M. 1500 – *TPG/Technologica*.

⁸ For further decisions on mail services, see for instance Case No IV/M. 1915 – *The Post Office/TPG/SPPL* and Case No IV/M. 1168 – *Deutsche Post/DHL*.

⁹ Case No COMP/M.2831 – *DSV/TNT Logistics/DSV Logistics*.

16. In previous decisions, the Commission has considered that the geographic market for mail services is national in scope. The notifying party accepts that the relevant geographic markets for B2B services or express document and parcel services for the present transaction are national. However, for the reasons indicated in the previous paragraph, the definition of the relevant geographic market can be left open.

B. Competitive assessment

(i) Horizontal impact of the transaction

- Freight forwarding services

17. Wilson is only active as a provider of cross-border air and sea freight forwarding, whereas TPG is mainly present in land freight forwarding and has only marginal activities in air and sea freight forwarding markets, where Wilson is active. There are however *de minimis* overlaps in Belgium, France, Germany, the Netherlands, the UK, Denmark, Finland, Norway and Sweden.
18. The notifying party submits that for cross-border air freight forwarding, the combined market shares of the parties will not exceed 15% in any of the above-mentioned countries except Sweden ([10-20]%), the only market affected by the notified transaction. The addition of market shares does not exceed 2% in any of these markets (less than [<2]% in Sweden). In Sweden, there are important competitors such as DHL Danzas ([20-30]%), Exel Freight ([10-20]%) and, below 10%, Panalpina, Schenker and Kuhne & Nagle.
19. In the markets for cross border sea freight forwarding, the combined markets shares would not exceed 10% in any country except Sweden ([10-20]%), again the only affected market, and the addition of market shares would not exceed [<2]%. The main competitors in Sweden would be DHL Danzas [10-20]%, Maersk Logistics, Sverige AB, DFDS Transport, Schenker Int and Kuhne & Nagel (all with a market share of circa [5-10]%).
20. The existence of strong competitors, which are all able to offer a wide range of services in different sectors (including express services) leads the Commission to conclude that, irrespective of the market definition defined, the notified transaction would not raise competition concerns in the market for freight forwarding.

- Contract logistics services

21. Wilson does not have a significant presence in the general contract logistics sector. The parties' activities will only marginally overlap in Belgium, France, Germany, the Netherlands, the UK, Denmark, Finland, Norway and Sweden. The combined market shares of the parties in these countries will be less than [<10]% with increases of less than 2%. In all the countries where both parties overlap, there are other important players. They could thus exert enough *post* merger competitive constraint to TPG.
22. The parties have provided information on possible subdivision of these markets per sectors (e.g. automotive, fast-moving consumer goods, hi-tech and electronics, publishing and media, pharmaceutical). None of the parties to the concentration is specialised in a specific sector and both cover a large variety of these sectors, in which TPG will face competition from other important players. Further, Wilson has *de minimis* activities in many of these sectors. The subdivision of the market would not

therefore change the situation described in the general contract logistic services market.

(ii) Vertical impact of the transaction

23. As regards the relation between B2B/express mail services and logistic services, the presence of TPG is only significant in the Netherlands if one considers the B2B market (around [10-20]%) or the “traditional” express document and parcel services market ([10-20]%). However, the presence of Wilson in the logistic market is marginal (e.g. [<2]% in the Netherlands) and the notified transaction is unlikely to have any significant impact on the vertical relationship between this market and B2B or express services.
24. Given the relatively low market shares of the parties in any of the markets (in no event do they exceed 20%), the complementarities between the two merging companies (which translates in non-significant overlaps) and the presence of sufficient alternatives for competitors, customers or suppliers, the same conclusion is applicable for all other possible vertically related markets (e.g. B2B/express services and freight forwarding services, contract logistic services and freight forwarding services).

VI. CONCLUSION

25. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

(Signed)

Frits BOLKESTEIN
Member of the Commission