

***Case No COMP/M.3925 -
UPS / LYNX***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/09/2005

***In electronic form on the EUR-Lex website under document
number 32005M3925***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.09.2005

SG-Greffe(2005) D/205217

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.3925 – UPS/LYNX
Notification of 23 August 2005 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 23 August 2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking UPS (UK Holding) Limited, (“UPS UK”, United Kingdom) belonging to the group United Parcel Service Inc (“UPS”, USA) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Lynx Express Limited (“Lynx”, United Kingdom) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EC) No 139/2004 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. UPS UK provides for its customers in the United Kingdom package delivery services, including domestic and international standard and expedited parcels and documents services, as well as freight services and logistics. The company belongs to the worldwide operating UPS group thereby benefiting from the group’s comprehensive service portfolio

¹ OJ L 24, 29.1.2004 p. 1.

and freight network. UPS provides package delivery, transportation services for air and ground cargo on a worldwide basis, airfreight, ocean freight, brokerage services and supply chain services of complex nature.

4. Lynx provides domestic and international delivery services, road and airfreight forwarding services and to a small degree mail services and spare part services. The company carries out its business mainly in the UK, and it has small operations in the Netherlands and Germany.

II. CONCENTRATION

5. UPS UK, as part of the UPS group, will acquire sole control of Lynx by way of purchase of shares. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The parties have a combined world-wide turnover of more than € 5.000 million (€ 29.409 million for UPS, € 257 million for Lynx; all figures relate to turnover achieved in 2004). The aggregate Community-wide turnover of each of at least two of the undertakings exceeds € 250 million ([..]; € 257 million for Lynx). Only Lynx has achieved more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The concentration therefore has a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant product market

7. The sector affected by the present operation comprises:
 - (a) Domestic standard and expedited services for the delivery of parcels;
 - (b) International standard and expedited services for the delivery of parcels;
 - (c) Domestic express services for the delivery of parcels;
 - (d) International express services for the delivery of parcels;
 - (e) Domestic freight services;
 - (f) International freight services;
 - (g) Logistics services;
 - (h) International mail services.
8. All of these services are mainly of a “business to business” nature. The parties identify overlaps in the activities of UPS and Lynx. Furthermore, they submit that these activities each would constitute separate product markets.
9. A number of past Commission’s decisions addressed the services in this sector². They confirm largely the parties’ view. However, it can be left open for the purpose of the present case whether or not the above-mentioned activities each constitute separate

² Cases IV/M.1405 – TNT Post Group/Jet Services, COMP/M.1915 – Post Office/TPG/SPPL, IV/M.1347 – Deutsche Post/Securicor, IV/M.1549 – Deutsche Post/ASG, COMP/M.1895 – Ocean Group/Exel, COMP/M.2831 – DSV/TNT Logistics/DSV Logistics, IV/M.1794 – Deutsche Post/Air Express International, COMP/M.1915 – Post Office/TPG/SPPL, IV/M.1500 – TPG/Technologica, IV/M.1513 – Deutsche Post/Danzas/Nedlloyd.

product markets because even at the level of separate product markets the proposed transaction would give no raise to competition concern.

B. Relevant geographic market

10. With respect to the geographic scope, the parties submit that the relevant geographic market of each of these services is national. In previous decisions, the Commission has taken the view that these markets are largely of national nature although tendency towards a wider geographic scope appears to evolve.
11. However, the precise definition of the geographic scope can be left open for the purpose of the present case as to whether the markets are national or wider since even at national level the proposed transaction would raise no competition concern.

C. Assessment

12. Lynx carries out its operations largely in the United Kingdom. To serve their internationally active customers, the company has a presence of a negligible nature in a few other countries, namely in the Netherlands and Germany. Hence, the proposed transaction would lead to overlaps in the various UK markets and it would increase UPS' market share to a negligible extent in the Netherlands and Germany.

Horizontal overlaps without leading to affected markets

13. Table 1 below provides an overview on market shares of the parties and that of their major competitors in the sectors in which the parties have overlapping activities but their combined market share is below 15%.

Table 1: Market shares of markets with overlaps below 15%

Relevant product market	UPS	LYNX	UPS + LYNX	Comp. 1	Comp. 2	Comp. 3	Comp. 4	Comp. 5
Domestic standard and expedited parcel services, United Kingdom	[<5]%	[5-10]%	[5-15]%	[10-20]%(Royal Mail)	[10-20]%(DPWN ³)	[5-15]%(La Poste)	[5-15]%(TNT)	[5-15]%(City Link)
Domestic express parcel services, United Kingdom	[<5]%	[<5]%	[5-10]%	[25-35]%(TNT)	[15-25]%(DPWN)	[10-20]%(Royal Mail)	[5-15]%(La Poste)	[20-30]%(all other comp.s)
International standard and expedited parcels services, United Kingdom	[5-15]%	[<5]%	[10-20]%	[15-25]%(TNT)	[10-20]%(Royal Mail)	[5-15]%(DPWN)	[5-15]%(La Poste)	[30-40]%(all other comp.s)
International standard and expedited parcels services, Germany	[10-20]%	[<1]%	[10-20]%	[10-20]%(DPWN)	[5-15]%(DPD)	[<5]%(TNT)	[<5]%(GLS)	[45-55]%(all other comp.s)

³ Deutsche Post WorldNet ("DPWN"); market share of DHL, a subsidiary of DPWN, is included in that of DPWN.

14. In any of the above-mentioned product markets, the market share of the new entity remains below 15%. In all of these sectors, the parties face competition from strong, internationally active, players like TNT, Deutsche Post WorldNet, La Poste but also from strong domestic players like Royal Mail with respect to the UK markets. In any event, customers of such services would continue to have a wide choice for such services from a sufficiently large number of service providers.

Horizontal overlaps from negligible activities or absence of overlapping activities

15. The parties have negligible activities in the sectors of freight forwarding services, logistics services and mail services. In any of these activities, the parties achieve small revenues that would translate into individual market shares of far less than 1%; hence their combined market shares would also amount to less than 1%. Due to that small scale of these activities, from which no competition concern would arise, the assessment will no longer take them into consideration.
16. UPS has also activities in the sector of international express parcels services in the UK. Lynx does not provide such services in the UK; hence, the assessment will not consider this sector further.

Horizontal overlaps leading to affected markets

17. Table 2 below provides an overview on market shares of the parties and that of their major competitors in the sectors in which the parties have overlapping activities leading to a combined market share exceeding 15%.

Table 2: Market shares of markets with overlaps exceeding 15%

Relevant product market	UPS	LYNX	UPS + LYNX	Comp. 1	Comp. 2	Comp. 3	Comp. 4	Comp. 5
International express parcel services, Germany	[15-25]%	[<1]%	[15-25]%	[15-25]%(DPWN)	[10-20]%(TNT)	[5-15]%(FedEx)	[<5]%(GO)	[40-50]%(all other comp.s)
International standard and expedited parcels services, the Netherlands	[15-25]%	[<5]%	[15-25]%	[5-15]%(TNT)	[5-15]%(DPWN)	[5-15]%(DPD)	[<5]%(GLS)	[50-60]%(all other comp.s)
International express parcels services, the Netherland	[25-35]%	[<1]%	[25-35]%	[25-35]%(DPWN)	[10-20]%(TNT)	[5-15]%(FedEx)	-	[15-25]%(all other comp.s)

18. While in the above sectors the combined market share exceeds 15%, the increment in market share contributed by Lynx is very small. Except for international standard and expedited parcels services in the Dutch market, where the increment is [<5]%, Lynx' activities represent a market share of less than [<5]%. On both markets, i.e. international express parcel services in Germany and that in the Netherlands, the new entity would face strong competition from established, world-wide active competitors like TNT, DPWN, DPD, FedEx.
19. With respect to the market international standard and expedited parcel services in the Netherlands, the combined market share amounts to approximately [15-25]%. On that market, UPS/Lynx would face strong, internationally active, competitors like TNT,

DPWN, and DPD. Moreover, more than half of the market is served by other competitors some of whom are internationally active or carried out by strong domestic players.

20. Service providers in these sectors serve customers, of which many are multi-national companies and of large size that are active across a broad range of industries, e.g. electronics, consumer goods and retail, mail order, mechanical engineering. Since these customers are typically price sensitive with respect to these services, were prices to rise they would be able to switch their supplier at very short notice because hardly any long-term contracts between service providers and customers exist in these sectors. Moreover, many large customers maintain relationships with more than one service provider. It can therefore be concluded that customers would be able to exercise sufficient countervailing power on service providers.

Absence of vertical or conglomerate effects

21. According to the parties, no vertical relationships exist between parcel delivery and freight and logistics services since they are activities that are neither upstream nor downstream to UPS' existing parcel delivery business. Even if a vertical relationship were to exist between parcel delivery and freight and logistics services, however, the proposed transaction would not change the present situation because Lynx' activities in the freight and logistics markets in the UK, the Netherlands and Germany are of a very small scale.
22. With respect to possible conglomerate effects arising from the proposed transaction, UPS as a parcel delivery company enjoys a market share of less than 25% in the EEA, which applies to all services markets in which UPS has activities as described above. The exception is the Netherlands and Belgium, where UPS' market shares exceeds 25% in international express parcel services in each of these countries. However, UPS is one of several suppliers of parcel delivery services in Europe, apart from other strong players like Deutsche Post/WorldNet, which includes DHL, TNT, FedEx, but also strong domestic players like La Poste and Royal Mail. The acquisition of Lynx is unlikely to contribute to a substantial increase of the utility of UPS' parcel delivery network, since UPS already operates its own network that is of large scale compared to that of Lynx' small scale network, and in particular focussed in the UK market only in which UPS has a smaller presence. Therefore, the proposed transaction would give no raise to competition concern with respect to vertical or conglomerate effects.

V. CONCLUSION

23. 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)
Louis Michel
Member of the Commission