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***Case No COMP/M.3971 - DEUTSCHE POST / EXEL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/11/2005

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.11.2005

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.3971 – Deutsche Post / Exel**
**Notification of 17/10/2005 pursuant to Article 4 of Council Regulation No 139/2004[1]**

1. On 17 October 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 Deutsche Post AG ("DP", Germany) acquires within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004 sole control of the whole of the undertaking Exel plc ("Exel", UK).

2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise doubts as to its compatibility with the common market and the EEA agreement.

## I. THE PARTIES

3. DP is a public limited company incorporated under German law. DP's primary activity is the provision of the national postal service in Germany under an exclusive licence conferred under German law that will expire on 31 December 2007. DP has transformed its business through a series of acquisitions from a government managed agency into a multinational group offering a comprehensive range of mail, express, logistics (e.g. contract logistics and freight forwarding) and financial services.

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1 OJ L 24, 29.1.2004 p. 1.

4. Exel is a public company listed on the London Stock Exchange which is active in over 120 countries. Exel's principal activities are contract logistics and freight forwarding.

## II. THE OPERATION

5. The notified operation consists of an announced public offer by DP of 19 September 2005 for the entire issued and to be issued share capital of Exel, to be implemented by way of a scheme of arrangement. An Implementation Agreement was signed by the parties on the same date. The transaction has the support of Exel's board.

## III. CONCENTRATION

6. A successful offer will result in DP acquiring the entire issued share capital of Exel and acquiring sole control over Exel within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004.

## IV. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of the undertakings concerned is more than €5 billion (DP € 43 billion, Exel € 9 billion). The aggregate Community-wide turnover of each of the undertakings concerned is more than € 250 million (DP [...], Exel [...]). DP achieved more than two-thirds of its Community-wide turnover in 2004 in Germany. Exel did not achieve more than two-thirds of its Community-wide turnover in one and the same Member State. The operation has therefore a Community dimension.

## V. RELEVANT MARKETS

### A. Product markets

8. The parties are primarily active on the markets for freight forwarding, contract logistics, parcel and document delivery and mail. The principal areas of overlap between the parties concern the markets for international air freight forwarding and contract logistics. Outside these two key markets the parties have limited overlaps with combined market shares of more than 15% in the areas of sea freight, express parcel and document delivery, standard parcels and mail.

*Freight forwarding*

9. In previous decisions the Commission has defined freight forwarding as: "*the organisation of transportation of items (possibly including activities such as customs clearance, warehousing, ground services etc.) on behalf of customers according to their needs*"[2].

10. The freight forwarding market has been segmented by the Commission into domestic and international freight forwarding and freight forwarding by air, land and sea.

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[2] Cases M. 3603 UPS/Menlo, M. 3496 TNT Forwarding Holding/Wilson Logistics, M. 3155 Deutsche Post/Securicor, M. 2908 Deutsche Post/DHL, M. 1794 Deutsche Post/Air Express International.

The Commission did not rule out a further distinction between standard and express freight forwarding services in general[3].

11. The parties generally accept the Commission's views on the possible segmentation of the market. They submit that a possible further segmentation of freight forwarding into freight forwarding by land would not be meaningful in view of the absence of any significant overlap in the parties' activities in this area.

12. In relation to international air freight forwarding and sea freight forwarding segments the parties argue that there is no need for a distinction between "standard" and "express" forwarding services. Sea freight is a "standard" or "deferred" service by nature due to the relatively long shipping times. Conversely, the parties consider that the short transport times inherently imply that there is no distinct "express" product within international air freight forwarding. Although, most international air freight forwarders offer "standard" and "faster" grades of air freight forwarding services, the different treatment (in terms of handling, place of reception etc) does not imply the need for a separate infrastructure - as is the case for genuine "express" services in the field of documents and parcel delivery - from that used for ordinary international air freight forwarding. According to the parties full supply side substitution exists between the different grades of international air freight forwarding services, as there are no switching costs, nor associated costs involved.

13. The Commission's market investigation largely confirms the above segmentation of the freight forwarding market. With respect to a possible segmentation of the international air freight forwarding market, the market investigation confirmed that several grades, i.e. standard and faster, of air freight forwarding services, with different price and service levels, exist. However, these upgraded "faster" international air freight forwarding services were not necessarily considered to be part of a separate product market, as is the case with genuine "express" services (in the context of express documents and parcel delivery). For this reason, there is no need to further segment the market for international air freight forwarding.

*Contract logistics*

14. In previous decisions the Commission has defined contract logistics as: "*the part of the supply chain process that plans, implements 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 customer's requirements*"[4]. The main elements of contract logistics are the provision of warehousing and transportation services. Traditionally, these functions have been performed by customers in-house, but over the last 20 years manufacturers and retailers have started outsourcing some of this activity in order to benefit from specialist expertise[5].

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3 Case M. 1794 Deutsche Post/ Air Express International.

4 Case M. 3496 TNT forwarding Holding AB/Wilson Logistics Holding AB

5 Case M. 3492 Exel /Tibbett & Britten

15. Contract logistics services constitute a separate market which is distinct from express delivery and freight forwarding[6]. In previous cases the Commission has considered whether this market should be segmented i) into cross-border and domestic logistics services, ii) by reference to the type of goods handled or the industry serviced or iii) into lead logistics providers ("LLPs"), that are capable of managing the full supply chain with a European or global infrastructure and traditional contract logistics service providers ("3PLs")[7]. In the end however, the Commission considered that a distinction of separate product markets did not seem warranted. The parties follow the Commission in this approach.

16. No significant differences were found in the essential characteristics of offering logistics services within or across national boundaries or in the applied technology to justify a distinction between cross border and domestic logistics services[8].

17. Furthermore, whereas it has been acknowledged that certain industry sectors and customers demand differing levels of value added expertise and that certain logistics services providers concentrate their activities on particular industry sectors, these circumstances were not considered sufficient to further segment the market by industry sector or type of goods handled, with the exception of finished vehicles logistics services[9]. By nature, contract logistics are regarded as more customer than sector specific services. They are tailored to meet the particular needs of the customer and the specifications that the customer has imposed, in whichever sector they operate. In addition, contract logistics are often awarded after a bidding process and competitors can easily adapt to the requirements of the tender before the contract is signed. This is facilitated by the fact that logistics providers do not need to own the relevant assets and systems concerned, since they are generally owned by the customer or can be leased from third parties.

18. As to the distinction between LLPs and 3PLs, the Commission acknowledged that there is a trend to differentiate between contract logistics services providers who are able and choose to operate globally and those who choose not to. At the same time, it noted that this does not necessarily take away the ability of 3PLs to act as LLPs[10] . It considered that with the help of subcontracting, it is also possible for the smaller providers to compete with the larger providers even regarding more complex customer requirements.

19. The Commission's market investigation confirmed that for the majority of customers and competitors the market for contract logistics does not need to be split up into separate product markets according to industry sectors/goods handled or the scope of the operations. This was different only for the segment of finished vehicles logistics

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6 Case M. 1895 Ocean Group/Exel

7 Case M. 1895 Ocean Group/Exel

8 Case M. 1895 Ocean Group/Exel

9 Cases M. 2411 Autologic /TNT/Wallenius/CAT and M. 1895 Ocean Group / Exel

10 Case M. 3492 Exel/ Tibbett

services, where the Commission's market investigation provided the strongest indications for a separate product market.

20. However, for the purposes of this decision, the precise scope of the relevant product market can be left open, as, on the basis of all alternative market definitions considered, the proposed concentration will not significantly impede effective competition in the common market or a substantial part of it.

*Parcel and document delivery*

21. In previous decisions the Commission has segmented the parcel and document delivery market into an express and a standard (also referred to as "deferred") parcel and document delivery services market[11] . This segmentation takes into account that express products are on the whole faster and more reliable than a standard service. Express delivery is typically overnight, time-certain and includes a number of the following value-added services: proof of delivery, track and trace, possibility of changing destination or address in transit, desk-to-desk delivery, flexible billing and pricing, insurance and money back guarantee.

22. In addition, the Commission has made a distinction between domestic and international parcel and document delivery services[12]. The national nature of infrastructure used for transport services sets national and international markets apart. From a supplier's perspective, the sales, marketing and operations of international and domestic express services are very different. International express services require a significantly higher number of destinations, specific and complex logistics, more qualified personnel and the ability to deal with additional regulatory requirements. Furthermore, even where the same players are operating on both markets, their businesses tend to be organised separately. The parties accept the market segmentation identified by the Commission.

*Mail*

23. The Commission has held in previous decisions that there are separate markets for domestic and international mail[13]. It noted that demand for mail services for international destinations cannot be satisfied by services for domestic destinations and that, from the supplier's perspective, international transportation involves different requirements from those of domestic transportation.

24. Further distinctions made by the Commission concern the segmentation of the market for international mail into in- and outgoing mail[14], standard and express delivery

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[11] Cases M. 3155 Deutsche Post/Securicor and M. 102 TNT/Canada Post , DBP Postdienst, La Poste, PTT Post & Sweden Post

[12] Case M. 3155 Deutsche Post/Securicor and M. 102 TNT/Canada Post , DBP Postdienst, La Poste, PTT Post & Sweden Post

[13] Case COMP/C/38.170 Reims II

[14] Case COMP/C/38.170 Reims II

services[15] and business mail and mail for private customers[16].The parties accept the market segmentation identified by the Commission.

B. Geographic markets

*Freight forwarding*

25. According to the parties, the market for freight forwarding and any segments thereof is no longer national, but at least EEA-wide. They submit that the main freight forwarders are active internationally, either through branches or by marketing their services cross-border through a network of agents. Smaller players achieve the same by referral arrangements or via agents. The parties argue that many customers manage relationships with freight forwarders on a regional or global basis, not at a national level, whereas tenders organised by multi-national customers generally comprise trade lines between many different cities.

26. The Commission has previously left open whether the relevant geographic market for freight forwarding including any segments thereof was national or EEA-wide[17]. The market investigation produced strong indications that the earlier identified trend towards further internationalisation has progressed to such an extent that by now it would be justified to consider the geographical market as EEA-wide. This conclusion was shared by both customers and competitors.

27. However, for the purposes of this decision, the precise scope of the relevant geographic market can be left open, as, on the basis of all alternative market definitions considered, the proposed concentration will not significantly impede effective competition in the common market or a substantial part of it.

*Contract logistics*

28. The Commission has held so far that the geographic market for contract logistics and any segments thereof is still national in scope[18]. It took into account that logistics service providers have a local presence in the countries in which they operate and that the identity of the players and their market shares still vary according to the country and that customers generally turn to logistics suppliers located in their own country. At the same time, the Commission acknowledged that there is an increasing demand for cross-border logistics on a pan-European or international level in cases where the location of the provider is less important. The latter view is supported by the parties who claim that the market has become at least EEA-wide.

29. The outcome of the Commission's market investigation provides support for the definition of an EEA-wide market for contract logistics. Reference was made, amongst others to the continuing globalisation and the recent enlargement of the EU, which increases the need for

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15 Case M.102 TNT/ Canada Post, DBP Postdienst, La Poste, PTT Post and Sweden Post

16 Case M. 1915 The Post Office/ TPG/SPPL

17 Case M. 1794 Deutsche Post / Air Express International

18 Cases M. 1500 TPG/Technologista and M. 1895 Ocean Group/Exel

cross border logistics operations. Moreover, many customers for contract logistics services have international suppliers and operate on international markets and therefore prefer to operate with a single contracts logistics partner rather than with several national partners.

30. However, for the purposes of this decision the precise scope of the relevant geographic market can be left open as on the basis of all alternative market definitions considered the proposed concentration will not significantly impede effective competition in the common market or substantial part of it.

*Parcel and document delivery*

31. The Commission has previously held that the market for parcel and document delivery and any segments thereof to be national in scope. Nonetheless, in particular with respect to international parcel and document delivery, it took note of the fact that the dynamics of competition in this sector are increasingly leading towards international markets for delivery services in place of the traditional national markets[19].

32. However, for the purposes of this decision the precise scope of the relevant geographic market can be left open as on the basis of all alternative market definitions considered the proposed concentration will not significantly impede effective competition in the common market or substantial part of it.

*Mail*

33. In the past the Commission considered that the mail market and any segments thereof could be characterised as national[20]. However, with respect to international mail 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[21].

34. It is not necessary to further delineate the relevant geographic market because, in all alternative geographic market definitions considered effective competition would not be significantly impeded.

## VI. ASSESSMENT

35. The horizontally affected markets in this case are the international air freight forwarding markets in the EEA or in several Members States, and the contract logistics services markets in the EEA or in Sweden and the UK.

A. International Air freight forwarding services

36. The parties base their market share information in the air freight forwarding markets on turnover figures collected by IATA[22]. On this basis, the combined EEA-wide market

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19 Case M. 1168 DHL/Deutsche Post

20 Cases M. 1915 The Post Office/TPG/SPPL and M. 1410 Deutsche Post/ Danzas

21 Case M. 1915 The Post Office/TPG/SPPL

22 International Air Transport Association.

share of the parties in 2004 was 18%. The main competitors had the following market shares: Schenker 6%, Kühne & Nagel 6%, Panalpina 5%, SDV Group 3%, UPS Menlo 3%, Union Trans/ UTI 2%, TNT, 2%, Nippon 2% and others 52%[23].

37. When considering national markets for international air freight forwarding, the combined market shares of the parties in 2004 based on IATA data were above 15% in the following countries:

| **Country** | **Market share DP** | **Market share Exel** | **Combined** |
|---|---|---|---|
| Austria | 17 | 5 | 22 |
| Belgium | 22 | 2 | 24 |
| Czech Republic | 16 | 5 | 21 |
| Denmark | 17 | 10 | 27 |
| Finland | 34 | 18 | 52 |
| Hungary | 28 | 24 | 52 |
| Ireland | 13 | 11 | 24 |
| Netherlands | 9 | 14 | 23 |
| Norway | 47 | 1 | 48 |
| Poland | 26 | 6 | 32 |
| Sweden | 20 | 17 | 37 |
| UK | 11 | 10 | 21 |
| EEA | 11 | 7 | 18 |

38. The parties emphasize that the IATA data overstates their relative market position and therefore constitutes a "worst case scenario". Not all air freight forwarders and carriers which are registered with IATA actually submit their turnover data. Further, in the new EU Member States there are many air freight forwarding companies which are not registered with IATA and therefore do not submit turnover data. The parties argue that in Poland the IATA data over 2004 only represents [25-35%] of the national market. For Hungary it is argued that the total market should be increased by [15-25%]. Finally, the IATA data does not account for revenues relating to i) the ground transportation of the goods (to and from the airport) and related services (e.g. customs related services) and to ii) inbound shipments or from so-called cross-trade shipments where both the origin and destination of the shipment are different from the sender's location. To account for these deficiencies the parties submitted additional, corrected, IATA data. According to

23 International air freight forwarding is a fragmented market with a high number of regional players.

these corrected IATA figures, the combined EEA-wide market share of the parties would decrease to [10-20%]. Some national market shares would fall considerably[24].

39. In addition, market shares tend to be volatile given that many providers of international air freight forwarding services obtain a significant part of their turnover from a limited number of customers only, and given that many contracts (of often limited duration) are awarded by means of a bidding process.

40. The parties submit that market shares below 30% normally do not give rise to competition concerns, in particular in situations like the present one where a number of powerful competitors are active on the markets (e.g. TNT, UPS, Fedex, Kühne & Nagel,) with important financial resources and an international presence similar to that of the parties.

41. The Commission's market investigation confirmed that both competitors and customers consider that customers on this market possess a considerable degree of buyer power in relation to their suppliers. They referred in this respect, inter alia, to the effect of offering large volumes for transport and the presence of readily available alternatives to their existing supplier. The possibility to switch suppliers is facilitated by the fact that many contracts have a maximum duration of 1 year, and do not provide for minimum or fixed volumes to be transported. In addition, most contracts are non-exclusive, which allows the customers to apply a dual supplier policy. The application of such a policy has as a consequence the possibility that customers who previously solely dealt with DP and Exel, will now look for an alternative supplier to continue their dual supplier policy. Both competitors and customers estimated that there would be sufficient capacity with competitors to absorb new customers.

42. In three national air freight forwarding markets the combined market shares of the parties are relatively high[25]. These markets will be discussed separately. In none of the other national markets did the combined market shares of the parties exceed 35% in the period 2002-2004.

*Finland*

43. On the Finnish market the parties have a combined market share in 2004 (DP 34% and Exel 18%). These figures would decrease to a combined market share of [45-55%] (DP [25-35%], Exel [15-25%]) if one applies the corrected IATA data suggested by the parties.

44. The parties argue that such a market share is not an indication of market power, since a significant part of the turnover of the parties in Finland is derived from a single customer with considerable buyer power. Nokia alone is estimated to account for [25-35%] of the entire air freight demand in the country and represents […] of the turnover of DP and […] of the turnover of Exel in Finland.

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24 E.g., it follows from the amended IATA data that the combined market shares on the Polish market would decrease to [5-15%] (DP [less than 10%], Exel [less than 10%]).

25 In Norway, the combined market position of the parties is significant, however the increment is very small.

45. The main competitors of the parties on the Finnish market are Kühne & Nagel (8%), UPS (5%), Nystroem (5%), Kauohuolinta (4%), World Air Cargo (3%), TNT (3%), DFDS (3%) and Schenker (3%). The parties claim that these competitors compete head to head with the parties for business, notwithstanding their current smaller market share on a national basis.

46. The parties argue that any effect the transaction may have on the Finnish market will be reduced by the fact that Nokia applies a dual supplier policy. According to such a policy, Nokia would have to transfer part of its current international air freight forwarding business to third parties. The Commission's market investigation confirmed that this is indeed likely. As a result, the post merger combined market share of the parties will probably be lower than the sum of the parties' current market shares.

*Hungary*

47. On the Hungarian market the parties have a combined market share in 2004 of 52% (DP 28% and Exel 24%). These figures would decrease to a combined market share of [30-40%] (DP [5-15%], Exel [20-30%]) if one applies the corrected IATA data suggested by the parties.

48. For similar reasons as explained with respect to the Finnish market the parties argue that such a market share is not an indication of market power. Nokia alone is estimated to account for [25-35%] of the entire air freight demand in Hungary and represents […] of the turnover of DP and […] of the turnover of Exel in Hungary. In view of its dual supplier policy, Nokia will transfer part of its business away from the new entity, which will diminish the combined market shares of the parties on the Hungarian market.

49. The main competitors of the parties on the Hungarian market are Kühne & Nagel (4%), Panalpina (4%), Cargo Partner (10%), Bax Global (8%), Expeditors (7%), Schenker (9%) and Nippon (3%). The parties argue that they are also facing new entry by companies which currently have limited or no activities in Hungary.

*Sweden*

50. On the Swedish market the parties have a combined market share in 2004 of 37% (DP 20%, Exel 17%). This market share would decrease to a combined market share of [30-40%] (DP [15-25%], Exel [15-25%]) if one applies the corrected IATA data.

51. On the Swedish market the parties refer to the presence of Ericsson, which accounts for [10-20%] of all air freight forwarding in that country. Ericsson accounts for […] of Exel's turnover and […] of DP‘s turnover in air freight forwarding in that country. According to the parties, Eriksson's' bargaining position is strengthened by its global purchasing strategy. Ericsson currently operates with three suppliers.

52. The main competitors of the parties on the Swedish market are TNT (22%), Kühne & Nagel (5%), Panalpina (9%), DFDS (5%), Bax Global (2%), Expeditors (2%) and Schenker (4%). According to the parties, competition with TNT has been fierce in the past and DP has lost important contracts to TNT, which considers Sweden as its home market.

53. The Commission's market investigation confirmed that Ericsson will react to the transaction by transferring part of the business granted to DP and Exel to a third party. This implies that for the Swedish market as well, the combined market share of the parties will actually be lower than the sum of their present market shares.

*Conclusion*

54. It follows from the above analysis of the international air freight forwarding market that the transaction will not significantly impede effective competition on the market, irrespective whether such a market is defined on an EEA-wide basis or on the basis of a (hypothetical) national basis. In spite of the fact that DP will strengthen its position as market leader on the EEA market and that a significant difference in market shares will exist with the number two on the market, the combined market position of the parties is not of such a nature as to significantly impede effective competition.

55. On most of the markets within the EEA financially strong global competitors are active and barriers to entry are low. Any market power DP may have after completion of the transaction seems to be effectively counterbalanced by the presence of strong customers. The bigger customers generally consider that they are capable of negotiating favourable terms for their agreements, in view of, amongst others, the volumes they can offer for transport. In addition, many customers apply a dual supplier policy and have global or EEA-wide contracts that leave them a maximum of flexibility in changing suppliers, or reallocating volumes to different suppliers.

56. Most respondents to the Commission's market investigation foresaw no or limited negative effects on the international air freight forwarding market. Some respondents even expected better services from the new entity, as it will effectively become a global full service provider. Some doubts were expressed about whether the new entity would be able to monopolise the uplift capacity from air carriers on certain routes within the EEA. However, the parties showed that in case of temporary shortage of capacity on specific routes, it is a widespread practice for air freight forwarders to effectively overcome these problems by transporting the goods via a stop-over in other airports, or by transporting the goods by truck to a different airport.

B. Contract Logistics

57. If the contract logistics market was defined as EEA-wide, the parties would have a combined market share in 2004 of [5-15%] (DP [less than 10%], Exel [less than 10%]). The principal competitors of the parties would have the following market position: TNT [less than 10%], Wincanton [less than 10%], Thiel [less than 10%], Fiege [less than 10%], ACR [less than 10%], Salvesen [less than 10%] and others [70-80%][26]. These competitors include large, sophisticated companies that have access to important financial resources.

58. When considering national markets, the parties submit that the only geographically affected markets for contract logistics (without further sub-segmentation) are Sweden and the UK, with combined market shares in 2004 of [20-30%] in Sweden (DP [15-25%], Exel [less than 5%]) and [20-30%] for the UK (DP [less than 5%], Exel [20-30%]). The increments in both cases are minimal. There is therefore no significant change in market structure as a result of the transaction. Moreover, in both countries there are a number of significant competitors. In the UK it concerns Wincanton, Christian Salvesen, ACR Logistics, TNT Logistics and TDG. In Sweden it concerns Schenker, Green Cargo, TNT/Wilson, and DSV/DFDS.

26 This is a highly fragmented market with a high number of regional players

The parties submit that even if the market for contract logistics would be split up by industry segments, based on national market definitions, their combined market shares would not give rise to competition concerns.

The only segments where the combined market shares of the parties would exceed 15% are *consumer goods, pharmaceuticals* and *finished vehicles* [should read: automotive] *logistics*.

59. In the *consumer* segment affected markets would exist in Austria ([30-40%]: DP [5-15%], Exel [20-30%]), Czech Republic ([30-40%]: DP [15-25%], Exel [10-20%]), Portugal ([15-25%]: DP [5-15%], Exel [5-15%]), Spain ([20-30%]: DP [15-25%], Exel [less than 10%]) and UK ([30-40%]: DP [less than 10%], Exel [30-40%]). According to the parties, most customers in the *consumer* segment are large regional or global businesses, which are particularly price sensitive and ready to switch supplier for relatively small cost savings. In addition, all the major contract logistics companies are active in this segment. The parties put forward that any general contract logistics provider is able, due to the existing supply side substitutability, to provide an equivalent service to that offered by the parties in this segment.

60. In the *pharmaceuticals* segment affected markets would exist in Belgium ([30-40%]: DP [less than 10%], Exel [30-40%]) and The Netherlands ([25-35%]: DP [less than 10%], Exel [20-30%]). Although the transportation of pharmaceutical products requires specialist licenses, the parties point out that in this segment they compete with a large number of other logistics providers. An additional competitive constraint would be exerted by large pharmaceutical wholesalers which also provide logistics services.

61. In the *finished vehicles* [should read: automotive] *logistics* segment, […], the only country where the combined market shares of the parties in 2004 exceeds 15% is Sweden ([30-40%]: DP [20-30%], Exel [5-15%]). […]. The parties argue that car manufactures are very price sensitive and many wholly or partly handle their logistics in-house. Contracts are regularly put out for tender and run only for periods of 12 to 18 months. […] The parties therefore consider that no significant competition concerns could arise. In this respect it can still be added that the combined market shares of the parties in the finished vehicles [should read: automotive] logistics segment at EEA level are significantly lower.

*Conclusion*

62. The transaction is not considered to significantly impede effective competition on the market for contract logistics, or any possible segments thereof. The combined market position of the parties on an EEA-wide, or nationally defined contract logistics markets are not of such a nature as to raise competition concerns. If one looks at the contract logistics market split by sector of industry there are only a few segments where the combined market shares of the parties exceed 15%. In each of those segments, there are a large number of financially strong competitors active. Moreover, the barriers to entry are generally low, as the provision of contract logistics services does not require significant investments into infrastructure or equipment. In addition, the possibility of customers to return previously outsourced logistics needs to in-house provision constitutes a significant competitive constraint on contract logistics providers.

63. Most of the respondents to the Commission's market investigation foresaw no or limited negative effects of the transaction. Some customers even expected better services, lower prices and the possibility to obtain complex logistics services on a global scale, which are currently not available.

C. Other markets

64. On a number of other markets the parties' combined market share in 2004 exceeded 15%, but the increments are relatively small. It concerns the international sea freight forwarding market in Finland (combined market share of [10-20%], increment of [less than 5%]), the international express parcel and document delivery market in France (combined market share of [35-45%], increment [less than 5%]), Belgium (combined market share [40-50%], increment [less than 5%]) Italy (combined market share [40-50%], [less than 5%]), Sweden (combined market share [25-35%], increment [less than 5%]), UK (combined market share [25-35%], increment [less than 5%]) and at EEA level (combined market shares of [30-40%], increment [less than 5%]), the international standard parcel market in the EEA (combined market shares of [10-20%], increment [less than 5%]) and the international outbound business mail market in the Netherlands and at EEA level (combined market shares of [10-20%] and [15-25%] with increments of respectively [less than 5%] and [less than 5%]). On these markets, the transaction does therefore not give rise to competition concerns.

D. Vertical Impact of the transaction

65. The parties submit that in this case a vertical relationship could exist in four areas: i) freight forwarding/domestic express document & parcel delivery, ii) contract logistics/express document & parcel delivery, iii) freight forwarding/uplift capacity and iv) freight forwarding/contract logistics.

*Freight forwarding / domestic express document & parcel*

66. Exel uses DHL[27] and other express suppliers as input to carry out the "last mile" services in the context of its freight forwarding business. The work which Exel subcontracts to DHL is a domestic express document and parcel delivery service. According to the parties it represents a limited amount ([…] in 2004) and constitutes only a small part of the total market for domestic express document and parcel delivery services.

67. The parties submit that in view of their market shares on either market, there is no vertically affected market in any member state. In any event, the Commission's market investigation confirmed that most providers of air freight forwarding services which currently use DP's domestic express document and parcel delivery services, could easily switch, if necessary, to other suppliers of such services, such as UPS, TNT, Fedex and local players.

[27] DHL is the part of DP which specialises in express delivery for documents and parcels. See also cases M 1168 DHL Deutsche Post and M. 2908 Deutsche Post/ DHL (II)

*Contract logistics / international express documents & parcel*

68. In a previous decision the Commission considered that there is a potential vertical relationship between international express document and parcel delivery services and the general logistics market[28]. Although there are a number of vertically affected national markets in this case, the parties submit that their vertical relations could not raise competition concerns in view of Exel's very limited expenditure on international express and standard parcel service providers ([…] with the main express providers, DHL, UPS, FedEx and TNT), which concerns less than [5%] of Exel's contract logistics turnover in the EEA.

69. The Commission's market investigation confirmed that competitors in contract logistics who currently use DHL's international express document and parcel delivery services did not foresee any competition problem, since there are a large number of companies which could provide similar express document and parcel delivery services to the ones provided by DHL.

*Freight forwarding / uplift capacity*

70. As many providers of freight forwarding services purchase their requirements for aircraft uplift from third parties, the market for air freight uplift capacity could be regarded as upstream to the market for freight forwarding.

71. Both DP and Exel's freight forwarding business purchase aircraft uplift capacity from a number of third parties. The principal suppliers of uplift capacity are passenger airlines and cargo airlines. The parties use to a significant lesser extent the services of DHL. DHL operates its own fleet of aircraft primarily for use in the express document and parcel operations and only has limited spare capacity that can be employed elsewhere. In addition, uplift capacity on cargo planes or on passenger planes is cheaper than spare capacity on dedicated DHL (express) night flights. For these reasons, the parties only purchase a very limited part of their requirements for uplift capacity from DHL (e.g. in the case of DP, less than [5%] of all its needs for uplift capacity). The parties submit that in view of the incidental character of DHL's supply of uplift capacity to freight forwarders, its market share must on any basis be negligible, so that no vertically affected market exists.

72. The Commission's market investigation confirmed that for air freight forwarders, which currently use the uplift capacity of DHL, there are sufficient alternatives present on the market, such as TNT, UPS and Fedex.

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28 Case M. 2831 DSV/TNT Logistics

*Contract logistics / freight forwarding*

73. Both DP and Exel have significant activities in both freight forwarding and contract logistics. Therefore their contract logistics businesses are currently able to source freight forwarding services internally. This is in particular the case with DP. Exel's contract logistics business sources its freight forwarding requirements primarily from DHL, UPS, TNT, Schenker, Fedex, Expeditors, Kühne & Nagel and Panalpina[29]. The amounts spent by Exel's freight forwarding services are however limited ([…]) and represent less than [5%] of the European freight forwarding market.

74. The Commission's market investigation confirmed that there are no apparent foreclosure issues arising in this case. The only technically affected markets that could be identified concern Hungary and Poland where DP has a market share of more than 25% in international air freight forwarding[30]. However, in view of the presence of a large number of strong freight forwarding companies on the market, which could offer their services to contract logistics providers, no competition concerns arise.

*Conclusion*

75. It appears from the above that the vertical relationships which can be distinguished in this case are not of such a nature as to significantly impede effective competition.

E. Concerns expressed by third parties

76. It has been alleged by some competitors that DP is the beneficiary of illegal state aid and that DP uses excessive revenues deriving from its postal monopoly in Germany to cross-subsidise activities open to competition, or to finance acquisitions in those areas.

77. Similar arguments have also been raised in previous cases[31]. In this respect the Commission considered that, whilst under Article 2(1)(b) of Regulation (EC) No 139/2004, economic and financial power are important criteria for the appraisal of whether a concentration is compatible with the common market, in the absence of other indicators, financial strength as such will not be sufficient to lead to a situation where effective competition will be significantly impeded[32].

78. In the present case, the analysis of the parties' combined position on the respective markets, as set out above, shows that the transaction is not likely to significantly impede effective competition.

79. It is however necessary to examine whether DP, as a result of the merger and by means of its financial power, will be able to increase its market position by systematically undercutting competitors' prices in such a way that its existing or potential competitors are marginalised.

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29 Exel's contract logistics division tends to purchase freight forwarding services from others rather than from its own freight forwarding division.

30 See also under VI A.

31 Case M. 2908 Deutsche Post DHL (II)

32 Case M. 2908 Deutsche Post / DHL (II)

80. Although the merged entity will have considerable financial strength, the position of its main competitors (e.g. Fedex, UPS, TNT, Schenker and Panalpina) is not significantly inferior[33]. In any event, the Commission considers that DP's main competitors have sufficient financial strength to be able to counteract any possible attempts by DP to force them out of the market by means of predatory pricing strategies.

81. It can therefore be excluded that the financial power the merged entity has – including the power DP may bring to that merged entity as a result of possible state aid and/or the possibility of cross-subsidisation from its reserved area[34] - should lead to a situation where effective competition is significantly impeded in the markets which are affected by the proposed transaction.

82. Under these circumstances, the mere fact that a merging company may have access to financial means that it is not lawfully entitled to, and that it may use such means to finance the acquisition of control in another company, does not as such lead to the conclusion that the resulting acquisition of control is incompatible with the common market under Regulation (EC) No 139/2004 [35].

*Conclusion*

83. It follows from the above that the Commission's investigation has not revealed any indication that, taking into account the relevant factors listed in Article 2(1) of Regulation (EC) No 139/2004, the present concentration might significantly impede effective competition on the market.

## VII. CONCLUSION

84. 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
Charlie MCCREEVY
Signed
Member of the Commission

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33 See also Case M. 2908 Deutsche Post / DHL (II). Updated figures have been made available by the parties to the Commission. The financial strength of the competitors concerned is in particular reflected by their overall group turnover and by other financial indicators such as EBT, EBT margin, EBITDA, EBITDA margin, total assets, equity and equity ratio.

34 See also Case T-156/98, RJB Mining/Commission of 31 January 2001

35 See also Case M. 2908 Deutsche Post / DHL (II)