

***Case No COMP/M.5152 -
POSTEN AB / POST
DANMARK A/S***

Only the English text is available and authentic.

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

Article 6(1)b
in conjunction with Art 6(2)

Date: 21/04/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21/04/2009
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 IN
CONJUNCTION WITH
ARTICLE 6(2)

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.5152 - Posten AB/ Post Danmark AS
Notification of 26/02/2009 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 26 February 2009 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Posten AB ("Posten", Sweden), controlled by the Kingdom of Sweden, enters into a full merger within the meaning of Article 3(1)(a) of the Council Regulation with the undertaking Post Danmark A/S ("PDK", Denmark), controlled by the Kingdom of Denmark, by way of share swap.

I. THE PARTIES AND THE TRANSACTION

2. The Kingdom of Sweden and the Kingdom of Denmark are contemplating a merger between Posten and PDK (the "Transaction").
3. **Posten**, which is wholly-owned by the Kingdom of Sweden, is mainly active in Sweden in the field of: (i) postal services (mail and parcels) and related services as well as (ii) information logistics, notably mail preparation services² (through its subsidiary Strålfors).

¹ OJ L 24, 29.1.2004 p. 1.

² Mail preparation services consist in printing and enveloping of 'mail outs'. 'Mail outs' means a series of items of mail with the same format and weight, normally produced industrially using computer support (e.g. invoices).

4. **PDK** is owned by the Kingdom of Denmark (75%) and CVC (22%)³ while 3% is reserved for employees/incentive programs. PDK is mainly active in Denmark in the field of postal services (mail and parcels) and related services.
5. The transaction takes place through the creation of a new parent company named 'Orange'. Orange will be jointly controlled by the Swedish State and the Danish State through a new holding company ("HoldCo"), which will acquire 100% of the Parties' shares in Posten and PDK. HoldCo will be headquartered in Sweden. The Kingdom of Sweden will own 60.7% of HoldCo's capital, and the Kingdom of Denmark 39.3%.
6. Orange will be organized along specialized business divisions. The traditional mail business in both Sweden and Denmark will continue to be operated as national entities adhering to national regulations and using the same brands as today (i.e. 'Posten' and 'Post Danmark'). The respective logistics businesses⁴ of Posten and PDK will be joined in a separate division and under a brand of its own. The information logistics and graphical businesses of Posten and PDK will be joined under Posten's Strålfors brand. In addition, Orange will comprise group functions and one unit for shared services, such as IT services.

II. CONCENTRATION AND COMMUNITY DIMENSION

7. As indicated above, Orange will be controlled by a new holding company ("HoldCo"), incorporated in Sweden, which will acquire 100% of the notifying parties' shares in Posten and PDK. Following the completion of the transaction, the notifying parties will each hold 50% of the voting rights in HoldCo. According to the Shareholder agreement signed by PDK and Posten, each of them will appoint four out of a total of eight directors⁵. While the voting at the board of directors will be by simple majority, a series of key decisions will require the vote of at least one Director nominated by each of the notifying parties⁶. PDK and Posten will thus jointly control Orange.
8. The proposed operation thus constitutes a concentration within the meaning of Article 3(1)(a) of the Merger Regulation.
9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁷ (Posten: 3.395 M€ PDK: 2.208 M€, i.e. 5.603 M€ combined).

³ Initially, the operation would have resulted in the acquisition of joint control over the new company by the Kingdom of Sweden, the Kingdom of Denmark **and** CVC, a global private equity and investment advisory firm, headquartered in Luxembourg. After negotiations, CVC will eventually sell the stake it holds - through Post Invest SA - in PDK to the Kingdom of Denmark, and will thus not acquire joint control over the new entity. The transaction will not be implemented before the Kingdom of Denmark has acquired all the shares in Post Danmark currently owned by CVC via Post Invest.

⁴ Comprising parcels, freight and contract logistics.

⁵ See article 3.2 of HoldCo's shareholder agreement.

⁶ See article 3.2 of HoldCo's rules of procedure for the Board of Directors.

⁷ Turnover calculated in accordance with Article 5(1) of the Merger Regulation. The figure takes into account the divestment that intervened in September 2008 regarding the PDK subsidiary PNL. Moreover, it is pointed out that ECMR thresholds are met without including the turnover relating to

Each of them have a Community-wide turnover in excess of EUR 250 million (Posten: [...] M€, PDK: [...] M€), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified concentration therefore has a Community dimension.

10. The Commission notes that PDK is planning to divest its share in MIE Group SA ("MIE"), the indirect owner of 50% minus one share of the share capital in De Post/La Poste. Through its share in MIE, PDK jointly controls De Post/La Poste. The closing of this operation shall take place no later than June 2009. The transaction is however not a pre-condition for this divestment. In addition, irrespective of CVC's (holder of a share capital in La Poste/De Post) divestment in PDK, the merged entity will, through MIE Group, still jointly control La Poste/De Post, the Belgian incumbent postal operator. As a consequence all market shares of the merged entity include the relevant market shares relating to La Poste/De Post.

V. COMPETITIVE ASSESSMENT

11. Both Parties are mainly active in the following markets: mail, parcels, freight forwarding, and contract logistics. The following sections assess the horizontal and vertical issues raised by the transaction, as well as the conglomerate effect resulting from the simultaneous presence of the new entity in these markets.

V.1. HORIZONTAL AND VERTICAL ISSUES

V.1.1. MAIL

a. Relevant product market

12. In Sweden, the postal mail market has been fully liberalized since 1993.
13. In Denmark there is a legal monopoly of PDK for the distribution of letters up to 50 grams. All other parts of the sector are fully open to competition, and the letter monopoly will cease at the latest on 31 December 2010.⁹
14. The Commission has held in previous decisions that there are separate markets for domestic and international mail.¹⁰ It found notably that demand for mail services for international destinations cannot be satisfied by services for domestic destinations and

La Poste/De Post (aggregated 2007 worldwide turnover of PDK and Posten then being 5.017 M€) - see below.

⁸ The figure for PDK includes 25% of the turnover of Belgian La Poste/De Post (2.276 M€ in 2007). The 25% ratio stems from the fact that PDK holds 50% (joint control) in MIE, the latter holding 50% minus 1 share but joint control in La Poste/De Post. See case COMP/M.4022 –Belgian State / CVC/ Post Danmark / De Post-La Poste.

⁹ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21 January 1998, p. 14), as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 (OJ L 52, 27 February 2008, p.3).

¹⁰ Notably COMP/M.3971 – Deutsche Post / Exel, para 23-24.

that, from the supplier's perspective, international transportation involves different requirements from those of domestic transportation.

15. Other segmentations have also been considered, in particular distinguishing between
 - standard and express delivery services¹¹, as express delivery services are considered to be overall faster and more reliable than the basic postal services, as they provide additional value-added services, e.g. proof of delivery or track and trace, and their price is hence higher than that of the normal mail service; and
 - business mail and mail for private customers¹², as business customers usually require and receive different services compared to private customers, who have to buy a stamp at a post office on the basis of a set tariff and mail their letter through mailboxes or post offices. Business customers negotiate rebates and receive additional services on the basis of special agreements with postal operators and/or consolidators.
16. The Parties agree with the Commission's practice and add that the market may also be segmented into addressed and unaddressed mail.¹³ However, they are of the view that the question of whether addressed and unaddressed mail should form part of the same market may be left open as the Transaction will not impede competition under any definition.
17. The market investigation confirms both the distinctions considered by the Commission in previous cases (domestic and international, international inbound/international outbound¹⁴, standard/express, business mail/mail for private customers), and the additional distinction suggested by the Parties (addressed/unaddressed).
18. The market investigation also suggests further distinctions with respect to domestic mail into (i) single piece letter; and (ii) industrial mail, as well as a sub-segmentation of industrial (administrative) mail into (i) administrative mail (such as bank account statements and invoices); (ii) addressed magazines and periodicals; and (iii) addressed direct mail (such as mail order catalogues) in order to reflect more closely the market circumstances. Additional sub-segmentations for the Danish mail market for the distribution of letters below/above 50 grams are also evoked due to the current legal monopoly of PDK.
19. In any event, for the purpose of the present case, the exact market definition can be left open, as no competition concerns arise from the proposed transaction under any alternative market definition.

¹¹ Case M. 102 - TNT/Canada Post, DBP Postdienst, La Poste, PTT Post and Sweden Post, para 20.

¹² Case M. 1915- The Post Office/TPG/SPPL, para 35.

¹³ Addressed mail includes both the distribution of items of correspondence and the distribution of other matters, such as addressed magazines and newspapers. Unaddressed mail is unsolicited advertising material.

¹⁴ Case M. 1915- The Post Office/TPG/SPPL, para 34: Outbound cross-border mail services involve the collection of mail from customers, sorting of mail and its distribution to any destination country in the world. A segmentation of the market for international mail into in- and outgoing mail was made in the case COMP/C/38.170 - Reims II, para 71.

b. Relevant geographic market

20. The Commission has consistently considered that the domestic mail markets, including inbound international delivery, irrespective of segmentation, are national in scope.¹⁵ The provision of mail services indeed relies upon the network of postal operators which are national in scope. Moreover, the regulatory constraints applied to postal operators are also national in scope.
21. With respect to the provision of international outbound mail services, which is a distinct service, the Commission has 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.¹⁶
22. The vast majority of the respondents to the market investigation submit that they consider the mail markets to be national, and hence confirm the geographic scope considered previously by the Commission. Some respondents also indicate that these markets would be local, while others support a geographic scope including clusters of Nordic¹⁷ and/or other countries.
23. Although there were some indications in the initial market investigation that a Pan-Nordic international outbound mail market or a trend thereto might exist, a complementary investigation conducted with customers identified as potentially "pan-Nordic" has not confirmed the existence of any such mail market. Almost all customers responding to the complementary investigation indicate that they do not source mail services on a Pan-Nordic level, but that they conclude agreements on national levels with the respective national providers for each country in which they are active. They further consider that this is mainly due to the current situation of near monopolies on the mail markets. In addition, the respondents consider that there are also different market conditions for the provision of mail delivery services in the respective Nordic countries, mainly due to regulatory differences (e.g. with respect to VAT exemptions, reserved areas, taxation and licensing) leading to different levels of competition in these countries. While the mail markets in Sweden and Finland have been fully liberalised, Denmark and Norway have still retained reserved areas. These differences, and also differences in the geography of these countries have influence on the level of competition, of the provided services and their pricing in each of the Nordic countries.
24. Therefore, the Commission concludes that the geographic scope of the mail markets can be considered as national¹⁸ for the purpose of the present case.
25. Although the Commission cannot exclude that the national dimension of the geographic market may change in the future as a result of a possible trend towards a demand by customers for global accounts, this evolution has still to materialize.

c. Competitive assessment

¹⁵ COMP/M.1915 - The Post Office/TPG/SPPL, para 59 for outbound cross-border business mail; COMP/M.1410 - Deutsche Post/Danzas, para 6.

¹⁶ Notably COMP/M.3971 – Deutsche Post / Exel, para 33.

¹⁷ In the present case, Nordic countries include Denmark, Finland, Norway and Sweden.

¹⁸ Considering the size of the parties (and including De Post/La Poste), no competition concerns would arise from the proposed transaction considering an EEA-wide market.

26. The transaction concerns the two incumbent postal operators in Sweden and Denmark. It may also result in an overall increase in the volume of mail traded by the merged entity, no matter the geographic/product focus. The spill over effects on the competitive process that would result from such an increase in the volume of shipments, that is to say the corresponding economy of scales and commercial synergies have been taken into account for the purpose of the competitive analysis.

Actual Competition

27. In Sweden, Posten is dominant pre-transaction ([90-100]% in value of the addressed mail market, [70-80]% in value of the unaddressed mail segment). Its next competitor, Posten Norge¹⁹ - through its subsidiary CityMail - has a [5-10]% market share in value of the addressed mail market; it is mainly present in metropolitan areas and economy bulk mail. Notwithstanding the liberalisation of the mail markets since 1993, the development in the mail markets has so far not led to the establishment of a competitor comparable in size and coverage to Posten, and Posten remains by far the strongest market player in the mail markets.
28. In Denmark, due to the fact that the distribution of letters up to 50 grams is currently a legal monopoly,²⁰ only 17% of the total addressed mail market is fully open to competition. PDK ([90-100]% in value of the addressed mail market and [50-60]% in value of the unaddressed segment) is dominant. Competitors in the addressed mail market include Posten Norge (with a market share of [0-5]% on addressed mails) and Bladkompagniet²¹ (with a market share of [0-5]%). So far, the entry strategy of Posten Norge has been similar to that in Sweden, having entered prior to the full liberalisation of mail distribution. On the unaddressed mail market, the main competitor is Forbruger-Kontakt (the largest player next to PDK in the distribution of unaddressed items and local weeklies) with a market share of [40-50]%.
29. In both Member States, at present, an undertaking wishing to send addressed mail to the whole population cannot select a competitor of the incumbent postal operator as its sole postal distributor. It has the choice between selecting the incumbent postal operator only on the one hand, and the incumbent postal operator and a competitor (like Posten Norge) on the other hand.
30. Posten does not provide domestic mail services in Denmark²², and PDK does not provide domestic mail services in Sweden. Consequently, on geographic markets defined on a national basis, there is no actual competition between the Parties, irrespective of the precise delimitation of the product markets and hence the

¹⁹ Posten Norge, the Norwegian incumbent postal operator, is active on several affected markets. It uses various brand names (including Posten Norge, Bring, CityMail), depending on the geographical areas and the business activity. In general, the present decision refers to Posten Norge, independently of the relevant brand names.

²⁰ The Commission has taken into account for the competition analysis that liberalization will take place at the latest as of 1 January 2011.

²¹ Bladkompagniet is a distributor of professional papers, weekly magazines and customer magazines. The company covers more than 2 million households in Denmark.

²² Because PDK holds joint control of La Poste/De Post in Belgium, it is also noted that Posten does not provide mail services in Belgium.

proposed transaction does not give rise to any horizontally affected markets as regards mail.

31. The market investigation indicates that the vast majority of the responding customers are not concerned about the proposed transaction.
32. However, a majority of competitors express concern as to the consequences of the transaction, which would in their view strengthen the existing dominant positions of the merging parties, through elimination of actual and/or potential competition and the increase of barriers to entry. They notably consider that there are currently significant barriers to market entry into the Danish mail markets, in particular due to the legal monopoly of PDK with respect to letters below 50 grams. For Sweden, the respondents to the market investigation, and notably customers, indicate that barriers to entry would be lower than in Denmark.
33. The differences in the entry barriers to the mail markets in Sweden and in Denmark relate to different stages of market liberalisation. The legal monopoly for mail below 50 grams amounts to a significant entry barrier, which is however not merger-specific. It can be expected that the eventual mail market liberalisation will lower the entry barrier in this respect.
34. The Commission is of the view that mail markets present a specific competitive situation and that the proposed transaction will not alter the mail markets structure. The incumbent postal distributors indeed hold very strong positions in their respective national mail markets. There are currently also barriers to entry to these markets, e.g. the geography of the countries and the coverage requirements, or national regulations, which will continue to exist irrespective of the transaction, and are unlikely to be further increased. There are no reasons to believe that the merger would significantly alter the competitive advantages the incumbents benefit from already at this time.

Potential Competition

35. In the above context, the issue of potential competition has to be examined. According to the Commission's Horizontal Merger Guidelines²³, for a merger with a potential competitor to have significant anti-competitive effects, it is in principle necessary to show the following:
 - (i) A significant likelihood that the potential competitor would act currently as a significant competitive constraint or that, absent the merger, it would grow into an effective competitive force in the market at stake in the foreseeable future.
 - (ii) The absence of other potential competitors, having the potential for maintaining sufficient competitive pressure after the merger.
36. Moreover, the elimination of a significant potential competitor may represent a critical deterioration of the competitive market structure when certain factors are

²³ Guidelines on the assessment of horizontal mergers, OJ 2004, C 31, 05.02.2004, p. 5, para 60.

met, notably in relation to the degrees of market regulation, and of market strength of the market player.²⁴

37. These elements are assessed herein after.

(i) Posten and PDK are not potential competitors in each other's mail markets

38. First, neither Posten nor PDK currently act as competitive constraints on each other in their national mail markets. This is mainly due to the fact that the respective markets are national in scope, and an entry into each other's market would presuppose a strategic decision connected to a long-term commitment and requiring a significant investment for the entry. As explained below, neither of the Parties has favoured such option.

39. Secondly, based on the information available, it appears very unlikely that Posten would grow into an effective competitive force in the Danish mail markets, or that PDK would grow into an effective competitive force in the Swedish mail markets. Notably, the internal data collected from the Parties do not indicate that Posten and PDK have had projects to enter each other's mail markets for many years. Indeed PDK expresses its preference to expand on a contractual basis internationally instead of directly entering new geographic markets. Posten is even more unlikely to enter into the Danish mail markets now due to the recent entry of Posten Norge.

40. Thirdly, while two competitors (out of six) consider PDK as a potential entrant into the Swedish mail markets, and two competitors consider Posten as a potential entrant into the Danish mail markets, the vast majority of the responding customers which provided an opinion on this issue indicate that they would not consider PDK or Posten to be potential entrants in each other's markets.

41. Consequently, the Commission considers that there is no significant likelihood that Posten and PDK would act currently as a significant competitive constraint on each other, or that, absent the merger, would grow into an effective competitive force in the market at stake in the foreseeable future.

42. In light of the above, it cannot be concluded from the facts of the case that Posten and PDK would be significant potential competitors to each other, from which an entry into each other's markets could be expected more than from other undertakings active on the mail markets.

(ii) Other potential entries of third parties into Swedish and Danish mail markets

43. In the Swedish mail markets, which have been liberalised since 1993, the development of competition has not so far led to the establishment of a competitor comparable in size and coverage to Posten, and Posten remains by far the strongest market player in the mail markets, with Posten Norge as the only notable competitor, and several very small market players active only on local levels. Posten Norge entered the Swedish mail markets in 1991, i.e. prior to the liberalisation of the mail markets, in the delivery of pre-sorted non-priority (i.e. economy) bulk mail shipments. Posten Norge considered itself as a "new-thinker" in the market.²⁵ It

²⁴ COMP/M.2530 Südzucker/Saint Louis, para 82.

²⁵ <http://www.bring.se/5518.cms> as of 23 March 2009.

originally covered solely the Stockholm area, and has in the meantime expanded its distribution area to cover more than 54% of all Swedish households.²⁶

44. For the Danish mail markets, half of the respondents to the market investigation identify Posten Norge as (the only) recent entrant. So far, the entry strategy of Posten Norge appears to be similar to their strategy in Sweden, where they entered the mail markets prior to the postal liberalisation. Currently, Posten Norge covers the Copenhagen area for mail outside the legal monopoly of PDK. It appears likely that post-liberalisation, Posten Norge would expand into further mail markets in the Copenhagen area, and later also possibly in other areas in Denmark²⁷. It can be further expected that, similar to the development in the Swedish mail markets post-liberalisation, there will be entry by other operators into the Danish mail markets as well, albeit this entry might again be limited to certain mail product markets and/or geographic areas. This was also indicated in the market investigation.
45. A large competitor active in a neighbouring geographic market submits that the merger will not have any impact on its approach to internationalisation which includes a possible entry into Denmark and Sweden.
46. To conclude the Commission is of the view that other potential competitors, notably Posten Norge, have the potential for maintaining and even increasing competitive pressure after the merger on both the Swedish and Danish mail markets.

iii. Conclusion on potential competition

47. On the basis of the above, the Commission considers that the proposed transaction as notified would not lead to the removal of a potential competitor and that other operators than the merging parties can be considered as potential competitors that could exert competitive pressure on the merged entity following the transaction.

Conclusion

48. Consequently, subject to the analysis below on the conglomerate issue relating to printing and enveloping, the Commission concludes that the transaction does not raise serious doubts as to its compatibility with the Common market and the EEA Agreement in the mail markets in Denmark and Sweden.

²⁶ <http://www.bring.se/5420.cms> as of 23 March 2009.

²⁷ According to Posten Norge's 2007 annual report, Bring already covers 40% of the Danish population prior to full market opening. Moreover, according to the Danish postal regulator, Posten Norge has publicly announced that it will expand its activities in order to provide a nation-wide service upon full liberalization.

V.1.2. PARCELS

a. Relevant product market

Product market

49. The market for parcel delivery services can be segmented as follows:

Express and standard parcel delivery services

50. In previous decisions the Commission has segmented the parcel and document delivery market into express and standard (also referred to as 'deferred') parcel and document delivery service markets²⁸. This segmentation takes into account that express services are on the whole faster and more reliable than a standard service.

51. The parties consider this segmentation as relevant.

52. The market investigation confirmed that both services require a different infrastructure. In addition express delivery services comprise additional value added services such as track and trace services. The express delivery service is also more expensive.

53. The Commission therefore concludes that express and standard parcel delivery services are separate product markets.

Domestic and international outbound standard parcel delivery services

54. In previous decisions, the Commission has made a distinction between domestic and international parcel (and document) delivery services. Indeed, domestic parcel delivery services are provided by companies operating national distribution networks whereas international parcel delivery consist in collecting parcels to be transported and delivered abroad. The parties consider that this segmentation is relevant.

55. In the course of the market investigation, respondents have indicated that domestic parcel delivery services are provided by companies operating a distribution network at national level and that international outbound mail delivery involves the collection, international transportation and delivery of parcels through an entirely different distribution network. International outbound mail delivery normally engages two services providers: one in the collection country and another in the destination country. In the collection country, a company collects parcels for transport to several destination countries. The same or another company then distributes the parcel to its final destination in the destination country.

56. The market investigation confirms that it is a usual practice in the industry for one company to collect parcels for delivery to several destinations and then hand them over to a postal operator which owns a local network in the final destination country.

²⁸ Case No COMP/M.3971 Deutsche Post / Exel.

57. On the basis of the above, the Commission concludes that there is a separate market for domestic and international outbound parcel delivery services.

Parcel delivery services for consumers and businesses

58. In its practice, the Commission has not defined separate parcel delivery markets for business customers and private customers. The issue was left open in case COMP/M1915 The Post Office/TPG/SPPL.

59. In the notification, the parties take the view that it is not necessary to further delineate the relevant product markets in this case because effective competition would not be significantly impeded whatever the market definition considered. The parties nevertheless deem it appropriate, in order to provide the Commission with a comprehensive view, to segment the parcel markets into C2X (consumers to business and consumers to consumers), B2B (business to business) and B2C (business to customer) segments. This segmentation is consistent with previous Commission decisions exempting from public procurement certain postal services²⁹.

60. The majority of respondents to the market investigation confirms that the provision of services to consumers (C2X) and the provision of services to businesses ((B2B) and (B2C)) require a different infrastructure (and in particular a network of post offices available to private consumers).

61. As regards standard parcel delivery service for businesses, in the course of the market investigation, the majority of respondents indicated that B2B and B2C deliveries are not substitutable (on the supply side) since B2C delivery requires a denser network to reach private consignees. Indeed, business consignees are often located in dense clusters. Consequently the distance between business consignees is shorter than the distance between consumers. The consequences in terms of network coverage and costs are very significant, differentiating clearly B2B and B2C markets.

62. On the basis of the above, a distinction has to be made depending on whether the parcels are to be delivered to businesses (B2B) or to consumers (B2C).

63. As a conclusion, standard parcel delivery services to consumers (C2X) and businesses (B2X, i.e. B2B and B2C) constitute distinct product markets. In addition, the provisions of parcel delivery services to businesses (B2B) and to consumers (B2C) constitute separate product markets.

²⁹ Decision 2009/46/CE of 19 December 2008 exempting certain services in the postal sector in Sweden from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. See also Decision 2007/564/CE of 6 August 2007 exempting certain services in the postal sector in Finland, excluding the Åland Islands, from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

b. Relevant geographic market

64. In its practice, the Commission has taken the view that the markets for domestic parcel delivery services and any segments thereof are national in scope³⁰. This segmentation is mainly based on the fact that such services are provided at national level.
65. The parties also take the view that the geographic markets for both domestic and international delivery services are national in scope.
66. The market investigation confirms that these services are, to a significant extent, provided at a national level by market players which operate national distribution networks. Moreover, the behaviours of customers vary between countries. For instance, in Denmark, consumers are used to parcel deliveries at their door step whereas Swedish consumers appear more accustomed to picking up their deliveries at the post office/shop with post service.
67. Denmark is also more densely populated than Sweden. As a consequence, the price for providing parcel services is lower in Denmark than in Sweden.
68. As regards the markets for international parcel delivery, in previous decisions, the Commission has held that this market is national in scope. The Commission took however note of the fact that the dynamics of competition in this sector are increasingly leading towards international markets³¹.
69. Several competitors point to an increasing trend as regards international outbound parcel delivery service providers to collect parcels in a given location for distribution to several Nordic destinations; they also indicate that certain B2B and B2C customers have single warehouses in one of the Nordic countries from which parcels are sent to all countries in the Nordic area. Accordingly, it appears that there is a trend on the side of customers to increasingly make use of international parcel delivery services.
70. On a Pan Nordic market, the services would consist in providing a whole-in-one service solution, by which, through one single contract, the supplier would not only deliver but also collect parcels throughout the Nordic area (Norway, Sweden, Finland, and Denmark). Such market would, by nature, target important customers.
71. The notifying parties reject the idea that such a market would exist. None of the merging parties has so far engaged into a contract for the provision of services with collection in several countries of the Nordic area.
72. In the course of its investigation, the Commission addressed specific questions to some parcel service providers and customers in order to complement its analysis of the geographic dimension of the market. The additional information collected through this supplementary investigation does not support the existence of a pan

³⁰ Case No COMP/M.3971 Deutsche Post / Exel, Case M.3155 Deutsche Post/Securicor and M.102 TNT/Canada Post, DBP Postdienst, La Poste, PTT Post & Sweden Post.

³¹ Case No COMP/M.3971 Deutsche Post / Exel.

nordic market. Overall, the majority of respondents indicates that international outbound mail services are negotiated at a national level even if the contract involves distribution in several countries within the Nordic area.

73. Furthermore, the market investigation and the notification of the parties confirm that companies providing international outbound delivery services have fairly different market shares in each country of the Nordic area³².
74. Consequently, the Commission concludes that the geographic market for international parcel delivery services has a national dimension.

c. Competitive assessment

75. The transaction concerns the two incumbent postal operators in Sweden and Denmark. For these reasons, as further explained, although the transaction is likely to have differentiated effects according to the relevant markets, it may also result in an overall increase in the volume of parcels traded by the new entity, no matter the geographic/product focus. The spill over effects on the competitive process, that is to say the corresponding economy of scales and commercial synergies, that would result from such an increase in volume of shipments are taken into account for the purpose of the competitive analysis.
76. Without prejudice to the market-by-market analysis, the Commission notes that the merged entity would combine the assets and commercial strength of companies representing jointly pre merger a market share of [20-30]% in volume at Nordic level.
77. In Sweden, following the divestment of its share in PNL³³ in 2008, PDK is no longer active in the provision of parcel delivery services and there is thus no affected market.
78. In Denmark, the proposed transaction will combine the Parties' activities in the B2X standard parcels delivery services. It does not raise competitive concerns with regard to express markets, both domestic and international, as well as with regard to the C2X markets, as there are no overlaps between the parties' activities.

The Danish market for business to business standard parcels delivery services (B2B)

79. The transaction leads to a significant overlap on the B2B domestic standard parcel delivery market in Denmark, where PDK already enjoys a very strong position.
80. The merged entity would achieve a market share of [50-60]% in volume (PDK: [40-50]%; Posten: [5-10]%, through its subsidiary DPD). It would face competitors with

³² According to the notification, the market shares for international standard delivery in Denmark are: Posten: [10-20]%, Post Danmark: [20-30]%, DHL [20-30]%, GLS [5-10]%. In Sweden, these market shares are: Posten: [20-30]%, PNL (Post Norway): [5-10]%, Schenker [10-20]%, DHL: [5-10]%.

³³ PDK was until September 2008 present in Sweden through its share in PNL, a joint venture with Posten Norge/Bring. Since the divestiture of its share in the joint venture, PDK is no longer present in Sweden. PNL is now controlled by Posten Norge.

significantly lower market shares: GLS (which is a subsidiary of Royal Mail): [10-20]%, Danske Fragtmænd "DF"³⁴: [5-10]%, DHL: [5-10]%³⁵.

81. Due to the very important market shares it would enjoy post-merger, the widening of the gap between itself and its closest competitors, as well as its in depth historical knowledge of its home market which gives it a natural advantage, PDK's already very strong position would be further strengthened by the transaction.
82. Against this background, concerns have been expressed during the market investigation as regards the possible anticompetitive effects that may result from the transaction.
83. First, with regard to the competition drivers, most of the respondents, both on the supply and demand sides, confirm that DPD is one of the two closest competitors of PDK in Denmark, together with GLS.
84. Secondly, a more specific concern has been raised regarding prices: respondents to the market investigation, both on the supply and on the demand sides, stress the aggressive pricing policy implemented by DPD in recent years. The transaction would thus lead to the disappearance of a competitor that has been exerting particular pressure with regard to prices.
85. Thirdly, the domestic parcels delivery industry, no matter the type of services provided, is characterized by substantial barriers to entry/expansion, which mainly result from the high fixed costs which have to be dedicated to the establishment of a collect/delivery network and/or difficulties to build up economically competitive solutions for suppliers that decide to rest upon competitor's networks for the purpose of delivery.
86. Overall, for these reasons, the transaction raises serious doubts as to its compatibility with the Common market and the EEA Agreement with regard to the Danish B2B standard parcels delivery services market.

The Danish market for business to consumers standard parcels delivery services (B2C)

87. Regarding the Danish market for B2C standard parcels delivery services, while PDK is dominant ([70-80]% market share), the transaction leads to an overlap of only [0-5]% (through Posten's subsidiary DPD)³⁶. This [0-5]% market share held by Posten is calculated on the basis of an estimate made by the parties of a proportion of B2B, which would be in fact B2C. However, Posten does not actively market domestic B2C standard parcels delivery services in Denmark.

³⁴ Danske Fragtmænd is a Danish parcel delivery company, providing parcels delivery services and logistics solutions, in particular in the field of freight.

³⁵ The strength of the competitors may however have been over estimated. One competitor responding to the market investigation stated that it seldom provides parcels delivery services as such, but would rather bundle parcel delivery services with other services such as logistics services.

³⁶ Posten's so-called "B2C" standard services in Denmark actually corresponded to services of a value of [...] €in 2007.

88. Competitors to the merged entity for B2C standard parcels delivery services are GLS ([10-20]%), DF ([5-10]%), and DHL ([5-10]%). GLS and DHL have significant financial resources.
89. While a few respondents to the market investigation consider that Posten could potentially become a stronger competitor on the Danish B2C market, it does not already exert a significant constraining influence on PDK. There is no evidence that Posten would grow into an effective competitive force. Thus the removal of Posten is unlikely to significantly change the market structure and to lead to any anti competitive effects on the market.
90. Based on the above, the transaction does not raise serious doubts with regard to the Danish market for domestic B2C standard parcels delivery services.
91. The VAT issue raised by some competitors – see below - does not change this assessment.

The effects of the transaction on the two above connected markets: the Danish market for domestic business to business standard parcels delivery services and the Danish market for domestic business to consumers standard parcels delivery services

92. The market investigation has pointed at synergies that may result from the transaction as a consequence of adding up B2C and B2B networks as well as customers basis. Some respondents consider that these synergies would raise barriers to entry on both markets.
93. On the supply side the market investigation has raised concerns with regard to the consequences a higher volume of shipping may have on competition. In addition, most competitors stress that entry into this market would be made more difficult by the necessity, for suppliers, to rely upon a dense network. The Commission has indeed come to the conclusion that the main barrier to entry within this market lies in the financial ability to settle such a network and/or to contract with a local player.
94. However, taking into account (i) the limited increment brought about by Posten (which will be removed by the remedies) in the field of B2B, (ii) its marginal presence in the field of B2C, (iii) the presence on the market of competitors (even if they ship lower volumes than PDK), any significant impact on the barriers to entry that may result from the addition of Posten's activities both on B2B ([5-10]%) and B2C (less than [0-5]%) can be dispelled.
95. Some competitors allege that the merged entity, essentially Posten, would cross-subsidize some of its parcels activities in one country with the revenues collected in its parcels businesses at national level markets. It is acknowledged, though, that this situation is not merger specific. Moreover, since these activities are carried out in a competitive environment, any cross-subsidisation would likely be limited.
96. In addition to that, potential cross-subsidization from the reserved area to the competitive area can be also dismissed. Indeed, Posten does not take advantage of any reserved area and no State aids have been granted to Posten in relation to mail and parcels activities. In Denmark, prices of services belonging to the reserved area

are regulated, and for mail services, they should be geared to cost³⁷. Therefore, cross-subsidies, if any, do not have anti-competitive effects.

97. Therefore, the proposed transaction as notified does not raise serious doubts as to its compatibility with the Common market and EEA Agreement also when considering possible effects from the combination of activities in the Danish standard domestic parcels delivery services markets in B2B and B2C.

Competitive concerns at pan-Nordic level

98. Even if a pan-Nordic market would exist (*quod non*), the transaction would not bring about foreclosure effects on such a market and/or on international inbound/outbound markets within the Nordic area, and therefore does not lead to anti-competitive effects³⁸.

99. The market investigation confirms that the merged entity would post transaction have the most important delivery services network within the Nordic area. Moreover, several respondents indicate that Posten is the only postal operator controlling a distribution network in every Nordic country, which in their view could lead to potential foreclosure effects insofar as competitors of the parties rely on their distribution infrastructures. These competitors would be unable to offer international outbound services without access to the domestic networks necessary to deliver their parcels.

100. The Commission considers that no such risks of foreclosure will arise.

101. Firstly, the notifying parties indicate that neither of them has contracts with customers covering a pick-up of parcels in more than one Nordic country; PDK has no distribution assets of its own outside Denmark.

102. Secondly, the new entity would face very strong competitors, such as DHL or Schenker (a subsidiary of Deutsche Bahn), which are present in several Nordic countries on B2C and/or B2B parcels markets. These competitors rely upon significant financial resources and recognized brands, thus exerting post merger considerable competitive pressure should the new entity raise prices or seek to restrict access. Furthermore, in countries where they do not operate their own network, competitors of the merged entity in the markets for international outbound parcel delivery services rely on the domestic delivery services as an input (competitors then have to enter into agreements with the local incumbent) and the market investigation did not provide evidence to support the view that the merged entity would likely enter into any foreclosure strategy in this respect.

³⁷ Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14), as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 (OJ L 52, 27 February 2008, p.3).

³⁸ At EEA level, according to the parties, the market shares of the merged entity are low, less than [0-5]% for the overall parcels market and [0-5]% on the B2B domestic standard parcels market

103. Thirdly, customers did not express concerns in this respect.
104. Fourthly, both Posten and the PDK, which provide the universal postal service in their respective countries, are obliged by law to provide parcel delivery services for parcels below 20 kg on a non discriminatory basis.

The VAT issue

105. A few competitors address a tax issue: the possibility for the merged entity to take advantage of the differences in the VAT schemes applicable to Posten in Sweden (where the "public postal operator" is subject to VAT) and PDK in Denmark (where the Danish Post is exempted from VAT).
106. The merged entity would indeed be able to conduct tax planning³⁹. However, an infringement procedure is ongoing against Sweden because it subjects all Posten activities to VAT (in contradiction to the 6th VAT Directive) and it is incumbent on the tax administration of the relevant countries to combat abuses. As acknowledged by competitors, possible advantage benefiting the merged entity would mostly relate to X2C markets, and not be merger specific.

Conclusion on parcels

107. For the above reasons, the proposed transaction raises serious doubts as to its compatibility with the Common market and the EEA Agreement regarding the Danish domestic standard B2B delivery services markets.

V.1.3. FREIGHT FORWARDING

a. Relevant product and geographic market

108. Freight forwarding has been defined in previous Commission decisions 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 needs⁴⁰. The Commission has considered a further sub-segmentation of freight forwarding services according to the type of operations into domestic and international freight forwarding⁴¹ as well as according to the type of forwarding

³⁹ There are differences between Member States' VAT legislation also in other sectors than the postal sector. This is primarily due to the fact that the Community VAT system is based on a Directive (Council Directive 2006/112/EC, the VAT Directive) and thus needs to be implemented in the Member States. It is also due to the fact the VAT Directive contains certain options for Member States. For example, Annex X of the VAT Directive contains a list of transactions which Member States *may* continue to tax and other transactions that they *may* continue to exempt. These differences inherited in the common VAT system sometimes provide cost advantages to the beneficiaries

⁴⁰ COMP/M.1794 – Deutsche Post/Air Express International, par. 8.

⁴¹ COMP/M.1794 – Deutsche Post/Air Express International, par. 8 ff.; COMP/M.4045 - Deutsche Bahn/Bax Global, par. 7 and 8 (left open); COMP/M.3971 – Deutsche Post/Exel, par. 9 and 10.

means into freight forwarding by air, land (road) and sea. Furthermore, the Commission has noted that freight forwarding by land can be sub-segmented into freight forwarding by rail and by road⁴². The Parties agree with the market definitions considered in previous Commission decisions.

109. The Commission has considered the freight forwarding markets as national, but has so far left open whether the relevant geographic market is national or EEA-wide although it was noticed that there may be a tendency towards internationalisation⁴³. The Parties consider that freight forwarding markets are either national or wider (Nordic, EEA-wide), and provide the respective market share data for the three mentioned geographic scopes.
110. However, the precise delineation of the product and geographic market can be left open, as the combined entity would have market shares below 15% under any alternative market definition.

b. Competitive assessment

111. Posten and PDK overlap in the provision of freight forwarding services by land in Denmark.⁴⁴ Posten uses its freight capacity mainly for internal haulage between sorting terminals and depots. PDK is active in land freight forwarding through its subsidiary Transportgruppen. The combined market share of the Parties is below 15% under any geographic market definition, and the increments are marginal. The markets are fragmented, with various strong competitors on the national and the Nordic levels, many of them active internationally. In Denmark, the market leader would be DF, followed by DHL, Schenker and DSV.
112. On the basis of the above, the Commission considers that the proposed transaction does not raise serious doubts in the freight forwarding markets.

V.1.4. CONTRACT LOGISTICS MARKETS

a. Relevant product and geographic market

113. The Commission has previously considered general contract logistics services as a distinct market, but the final market definition was left open.⁴⁵ Contract logistics

⁴² COMP/M.4746 - Deutsche Bahn/EWS, par. 23; COMP/M.4786 - Deutsche Bahn/Transfesa, par. 11. (In both decisions the final market definition was left open.)

⁴³ COMP/M.3971 – Deutsche Post/Exel, par. 26 and 27 (tendency towards internationalisation); COMP/M.3496 – TNT Forwarding Holding/Wilson Logistics, par. 9; COMP/M.1794 – Deutsche Post/Air Express International, par. 14; and COMP/M.4045 – Deutsche Bahn/Bax Global; par. 9 and 10.

⁴⁴ Posten is active to a very limited extent on the markets for freight forwarding by air and for freight forwarding by sea, and uses almost entirely its free capacity for internal haulage between sorting terminals and depots. Irrespective of the geographic market definition, Posten's market share is de minimis. PDK is not active in these markets.

⁴⁵ COMP/M.1895 – Ocean Group/Exel (NFC), par. 7 and 8; COMP/M.2411 – Autologic/TNT/Wallenius/CAT JV, par. 15; COMP/M.3496 - TNT Forwarding Holding/Wilson Logistics, par. 10 ff.; COMP/M.3971 – Deutsche Post/Exel, par. 20.

services can be characterised 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*"⁴⁶. The main elements of contract logistics are the provision of warehousing and transportation services. Third party logistics (3PL) comprises an arrangement in which a company with a long and varied supply chain outsources its logistical operations to one or several specialised companies (3PL providers). Fourth party logistics (4PL) comprises an arrangement in which a company contracts out its logistical operations to more than one specialised company (3PL providers) and hires another specialised company (a 4PL provider) to co-ordinate the activities of the 3PL providers. The parties' proposed market definition is in line with previous Commission decisions.

114. With respect to the geographic market definition, the Commission has previously found that the market for contract logistics services would be national in scope, but the exact market definition was left open.⁴⁷ It has also indicated that the geographic scope may be wider than national. The parties agree with previous Commission decisions, and submit that the exact geographic market definition (national, Nordic, or EEA-wide) can be left open.
115. The exact market definitions can be left open in the case as the proposed transaction does not give rise to any horizontal or vertical competition concerns under any alternative market definition.

b. Competitive assessment

116. Posten is active in Sweden in the market for contract logistics, mainly on the 3PL segment. Based on the warehouse capacity, the estimated market share in Sweden would be around [5-10]%. PDK is active in contract logistics in Denmark via its subsidiary Transportgruppen. The market share estimate amounts to approximately [0-5]%. On the national basis, there are no horizontal or vertical overlaps between the Parties on the market for contract logistics. Should a Nordic or EEA-wide market be considered, the combined market shares of the Parties would be well below [10-20]% on such markets.
117. On the basis of the above, the Commission considers that the proposed transaction does not raise serious doubts in the contract logistics markets.

⁴⁶ COMP/M.2411 – Autologic/TNT/Wallenius/CAT JV, par. 15.

⁴⁷ COMP/M.1895 – Ocean Group/Exel (NFC), par. 10; COMP/M.2411 – Autologic/TNT/Wallenius/CAT JV, par. 19; COMP/M.3496 - TNT Forwarding Holding/Wilson Logistics, par. 13; COMP/M.3971 – Deutsche Post/Exel, par. 30.

V.2. CONGLOMERATE ISSUES

V.2.1. PRINTING / ENVELOPING AND MAIL DISTRIBUTION

118. Through its subsidiary Strålfors, Posten provides services for printing and enveloping mail items. PDK has only very limited activities in this market, but holds a dominant position in the neighbouring market for mail distribution in Denmark.

a. Relevant product market

119. The market for printing and enveloping has never been defined by the Commission in previous decisions.

120. The Parties submit that the market for printing and enveloping should be defined as encompassing the printing and enveloping of administrative mail and addressed direct marketing items ('ADM', e.g. catalogues and brochures). According to the Parties, there is no difference between printing and enveloping of administrative mail and ADM. For instance, from a production perspective, it is irrelevant whether the item to be printed and enveloped is, for example, an invoice or ADM, as the technology and machinery are similar.

121. Printing and enveloping of newspapers and magazines, however, would be excluded from the market, as this requires printing techniques and equipment different than those used to produce administrative mail and ADM. Customer requirements also differ. Customers, for example, would not typically demand magazines be printed in the same time frame, or under the same confidentiality restrictions typically imposed on administrative mail. Strålfors is not active in the printing and enveloping of newspapers and magazines.

122. During the market investigation, customers and most competitors generally confirm the market definition proposed by the Parties.

123. However, in a previous case, the Swedish national competition authority considered sub-segmentation of the printing and enveloping market into the above mentioned categories: administrative mail, ADM, and newspapers and magazines,⁴⁸ as well as according to the size of the customers/volume and speed. For the reasons detailed below, the market investigation does not confirm the need for such narrower market definition.

124. First, although the ability of printing and enveloping service providers to prepare postal items within a short time frame and to handle large quantities appears important to a majority of the customers, the latter are also of the opinion that all providers are capable of meeting such requirements. Therefore, it is not appropriate to segment the market according to volume and speed of delivery.

125. As regards a potential segmentation between administrative mail and ADM, the market investigation indicates that it appears to be uncomplicated from a supply side perspective to switch between these segments in the market as many companies have recently expanded their business from exclusively administrative mail to also include

⁴⁸ See Konkurrensverket's decision of 12 May 2006 regarding Posten AB's acquisition of Strålfors AB, JO 251/2006.

ADM. However, even if the market were to be further sub-segmented according to the type of products, the competitive assessment would not differ in any material way as Strålfors, according to the Parties, is likely to have in Denmark a similar market position in relation to printing and enveloping of administrative mail on the one hand, and ADM on the other.

126. The issue of the segmentation between administrative mail and ADM for printing and enveloping can therefore be left open in the present case as the proposed transaction would not give rise to competition concerns under any of the alternative market definitions.

b. Relevant geographic market

127. The Parties submit that the market for printing and enveloping is national in scope. The market investigation is not conclusive as to whether the market was national, Nordic or even EEA-wide in scope, although only a few respondents consider the market as broad as EEA-wide.
128. A number of barriers to procuring the services outside Denmark were emphasized, in particular customer requirements for speed (turnaround time) and the cost/time associated with printing and enveloping in one country, and delivering to another country.
129. For the purpose of the present case, the exact scope of the geographic market can be left open as the proposed transaction would not give rise to competition concerns irrespective of the geographic market considered.

c. Competitive assessment

130. Posten is active in the market for printing and enveloping through its subsidiary, Strålfors. Strålfors provides printing and enveloping services in several countries in Europe (including Denmark and Sweden). PDK has very limited activities as a provider of printing and enveloping services.⁴⁹ Therefore, the transaction does not give rise to a horizontally affected market.
131. The market for printing and enveloping is, however, closely related to the market for mail distribution where PDK is dominant (with a market share of [90-100]%).

Concerns raised

132. Competitors to PDK and Strålfors are concerned that they would be foreclosed as a result of the proposed transaction due to the integration of both firms. This foreclosure could take place in two ways:
- Some competitors to Strålfors in the Danish printing and enveloping market are concerned that they would become foreclosed, as the merged entity would be able to apply discounts (e.g. integration rebates) that would reduce the price of

⁴⁹ PDK's activities through Data Scanning relate to "input management", which covers the scanning of documents. PDK's service centre for related services arranges for printing and enveloping services but does not offer these services itself, except for a very minor production (less than EUR [...]).

printing/enveloping and mail distribution below the aggregate price of the services sold separately (mixed bundling)⁵⁰. Competitors also believe that PDK could discriminate against them, for instance, by requiring special formatting, special barcodes and by imposing restricted time frames for the delivery of mail to PDK.

- Some competitors to PDK in the Danish mail distribution market are concerned that they would become foreclosed, as it would be unlikely that mail printed and enveloped by Strålfors would be distributed by anyone other than PDK. They contend that customers would be unwilling or unable to use an alternative mail distributor, such as Posten Norge, because of superior pricing or because of tying and bundling.

Context of the analysis

133. As a preliminary remark, it is acknowledged that conglomerate mergers in the majority of circumstances will not lead to competition problems⁵¹. However, in certain specific cases, there may be harm to competition. The main concern in the context of conglomerate mergers is that of foreclosure in case the new combined entity will have the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices.

134. In conglomerate mergers, the Commission carries out an analysis in three stages. First, it must be assessed whether the combined entity would have the ability to foreclose its rivals. Second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition. In practice, these factors are often examined together as they are closely intertwined.⁵²

Market shares

135. PDK possesses a dominant market share, and thus can exercise market power, in the mail distribution market in Denmark. In addition, PDK holds the legal monopoly for letters below 50g until 31 December 2010, which constitute the vast majority of mail-outs prepared by printing and enveloping service providers. Thus, the existence of PDK's market power in the Danish mail distribution market is not a disputed issue. However, possessing market power in the mail distribution market alone is unlikely to be sufficient to permit the merged entity to anti-competitively foreclose its competitors.

⁵⁰ No complainant refers to the possibility for the merged entity to make only the package available and not making each individual service separately available to customers. Indeed, the Commission considers that full refusal to supply is a very unlikely strategy, taking into account the regulatory environment of the postal sector and notably the universal postal service. Also, experience from Sweden where Posten acquired Strålfors in 2006 shows that refusal to supply has not been an issue following the transaction.

⁵¹ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2008/C 265/07), paragraph 92.

⁵² Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2008/C 265/07), paragraph 94.

136. According to the Parties, Strålfors holds a market share of [20-30]% on the market for printing and enveloping in Denmark:

Table 1: the market for printing and enveloping – Denmark, 2007

	Volume ¹ (million items)	Volume Share (%)
Strålfors	[...]	[20-30]%
KMD	[...]	[10-20]%
Itella	[...]	[0-5]%
Others	[...]	[50-60]%
Total	[...]	100%

Source: Parties' best estimates

¹ The market shares based on value are similar to those based on volume.

137. It should be noted that Table 1 does not include in-house production, which represents around 100 million items in Denmark in 2008.

138. The market shares presented in table 1 have been contested by a number of competitors to Strålfors, which claim that Strålfors' market share is significantly higher, approaching [50-60] %. However, data gathered during the market investigation show that while competitors corroborate the Parties' estimate of the overall size of the market, they consistently overestimate the volumes printed and enveloped by Strålfors in Denmark. On the basis of data gathered from competitors and the Parties regarding their own production, the market shares in table 1 are broadly confirmed. Thus, Strålfors' market share of [20-30]% is entirely consistent with information gathered during the market investigation.

139. If the market were to be defined as Nordic instead of national, the competitive assessment would not differ in any material way as Strålfors would hold a market share of [20-30]% on a Nordic level, a value lower than its market share in Denmark. In a potential EEA-wide market, Strålfors would hold a market share of [0-5]%.

140. As can be seen from table 1, the printing and enveloping market is highly fragmented. Indeed, aside from a few large suppliers, a large number of small competitors are present in the market. One explanation for the existence of such a large number of small suppliers is that the printing and enveloping business is not the core activity of many of the printing and enveloping service providers.⁵³

⁵³ For instance, even for a large supplier like KMD, printing and enveloping is not the main activity; its core activity is providing IT-solutions to the public sector.

Barriers to entry

141. Although it is not in dispute that barriers to entry into the Danish mail distribution market are high (see above), even after the full liberalization of the mail market is achieved (as of 31 December 2010), this does not appear to be the case in the Danish mail printing and enveloping market.
142. Indeed, it appears that the most significant barrier to entry is investment in printing and enveloping equipment (high speed printers, enveloping machines, etc.) and software. The estimate of the investment costs for software and hardware provided by competitors amounts to around EUR 5 to 10 million. Furthermore, it appears that there are few obstacles to switching between different segments in the market (see above).
143. Indeed, the fact that a high number of small firms currently compete in the printing and enveloping market is indicative of the absence of high barriers to entry.

Switching

144. Switching between printing and enveloping suppliers does not appear to be a significant problem for customers. Although competitors claim that switching could take months and would be very costly, this has not been confirmed by customers themselves. Contracts in the printing and enveloping market do not appear to be of long duration (typically from just a few months to 3 years) and most customers do not have exclusive contracts with their mail printing and enveloping service providers. All responding customers have stated that they would have no problem switching between providers of printing and enveloping services at reasonably short notice. Even large customers, who some competitors have claimed would only be able to procure services from Strålfors and KMD, have listed several alternative suppliers to these two suppliers.⁵⁴

Foreclosure in the printing and enveloping market

145. The most significant factor which might enable the merged entity to foreclose rivals on the market for printing and enveloping would be the significant market power PDK possesses in the Danish mail distribution market. The concern would be that PDK could use this market power to hamper or eliminate the access of Strålfors' competitors to the market for printing and enveloping. This could, in turn, lead to consumer harm if PDK as a result could raise its prices.
146. However, given the market conditions in the Danish printing and enveloping market, including the number and scope of competitors, the relative ease of entry, and low customer switching costs, it is unlikely that the merged entity would be able to successfully eliminate its competition and subsequently impose a price increase on consumers.
147. First, Strålfors only has a market share of [20-30]% in the Danish printing and enveloping market. Indeed, the market investigation has shown that Strålfors faces a

⁵⁴ For instance, a large customer lists Itella, Strålfors, KMD and Lettershop as potential suppliers and affirms that these suppliers are clearly able to fulfil its requirements.

range of competitors that are highly capable of printing and enveloping mail items. Some of these competitors, such as KMD and Itella, are large companies, active in several markets, and with significant financial resources. Thus, the breadth of competition Strålfors faces, from both large and small competitors, would impede its ability to significantly disadvantage or foreclose competitors from competing in the market.

148. Second, as discussed above, there appear to be relatively low barriers to entry (or re-entry) and expansion in the printing and enveloping market. Thus, it would be difficult for Strålfors to sustain supracompetitive prices in the event of a successful foreclosure strategy, for fear of inducing new entry, thereby decreasing Strålfors' ability to engage in any post-merger foreclosure strategy in the first place.

149. Third, customers have uniformly stated that there are low switching costs among printing and enveloping service suppliers, making it easy to switch from Strålfors to one of its numerous competitors. In-house production, which today represents around 100 million items in Denmark, is also a possible alternative for some customers. These factors impede Strålfors' ability to engage in strategies, such as foreclosure, that could lead to higher prices, as they increase the risk that Strålfors would ultimately lose customers to competitors, in-house production, or new entrants.

150. Finally, there are strong incentives among Strålfors' competitors to combine their efforts with mail distribution suppliers other than PDK, such as Posten Norge, as an alternative to the merged entity⁵⁵. The coming liberalization of the postal market should further facilitate the use of alternative suppliers of mail distribution services. Indeed, Posten Norge already has commercial relationships for mail distribution with many of Strålfors' competitors and also with Strålfors in Denmark⁵⁶. Moreover, printing and enveloping suppliers play an active role in arranging mail distribution services and pool their small customers' requirements to take advantage of better prices offered by bulk mail distribution suppliers for higher volumes (as is also done in Sweden).⁵⁷ Therefore, there is a general understanding in the market of the mutual benefits of cooperation between these bulk mail distribution and printing and enveloping suppliers. It is likely that this will lead to bundled offers in Denmark, particularly if the merged entity were to engage in such offers itself.

⁵⁵ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2008/C 265/07), paragraph 103.

⁵⁶ For limited volumes, as Strålfors is not active in the printing and enveloping of magazines and periodicals, and therefore has little service overlap with the type of items (over 50g) currently distributed by Posten Norge in Denmark.

⁵⁷ The websites of some printing and enveloping service providers indicate their ability to offer combined services and internalize pricing efficiencies by making use of discounts from the mail distributors.

Foreclosure in the mail distribution market

151. It also seems unlikely that the merged entity would be able to foreclose PDK's competitor in the mail distribution market, Posten Norge/City Mail. Currently, Posten Norge/City Mail does very little business with Strålfors (see footnote 58). Currently, and until the Danish postal market is fully liberalized, Posten Norge will not be able to deliver mail items below 50 grams (to which category the clear majority of all printed and enveloped items belong). Therefore, the integration of Post Danmark and Strålfors will not significantly affect the market position of Posten Norge. Also, even after full liberalisation it seems difficult to argue that Strålfors' [20-30]% of the mail printing and enveloping market would allow the merged entity to foreclose City Mail in the mail distribution market. Any possible effect of the merger would thus be limited to Posten Norge/CityMail, after liberalisation, finding it harder to attract customers using the combination of Strålfors and PDK, rather than Posten Norge/CityMail losing current business going through Strålfors. The Commission notes also that PDK's rivals' are not restrained by Universal Service Obligations and therefore have the ability to focus on lower cost and better margin segments of mail distribution.
152. In its Tetra Laval judgment⁵⁸, the ECJ concluded that the Commission's analysis of the effects of a conglomerate-type concentration must comprise a comprehensive examination of the probability of the adoption of anti-competitive conduct capable of resulting in leveraging, that is to say, it must take into account both the incentives to adopt such conduct and the factors liable to reduce, or even eliminate, those incentives, including the possibility that such conduct is unlawful⁵⁹.
153. In the present case, the conditions imposed by the postal regulation in Denmark are likely to limit the merged firm's ability to offer bundled services with a discount. Currently, PDK has a regulated legal monopoly for the distribution of letters up to 50 grams, and a universal service obligation for items up to 2kg. Pursuant to the Postal Directive, the regulatory and competition framework in Denmark obliges PDK to offer its services on non-discriminatory terms.⁶⁰ Consequently, PDK has a standardised pricing structure that applies equally to all its customers.⁶¹
154. Moreover, PDK's compliance with its regulatory obligation is monitored by the Transport Safety Authority which can act on the basis of a complaint addressed to the Minister of Post and Transport.

⁵⁸ Case C-13/03 P. – Commission of the European Communities v Tetra Laval BV, 15 February 2005.

⁵⁹ See also Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2008/C 265/07), paragraph 71.

⁶⁰ See Article 12 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and improvement of quality of service as amended.

⁶¹ This scheme includes cost saving based rebate schemes which reward volume or certain customer behaviour (such as delivering mail by a certain hour). Any customer satisfying the requirements can in principle earn the rebate.

155. Non-compliance with PDK's regulatory obligations could also entail an infringement of Article 82 of the EC Treaty. In such a case, PDK could face an investigation and possible enforcement action by the Danish Competition Authority or the European Commission on the basis of Article 82 of the EC Treaty. Both have investigative powers and could therefore verify that the conditions applied by PDK to Strålfors' competitors are not discriminatory.⁶²
156. Legally PDK cannot bundle or tie its mail delivery services with Strålfors' mail preparation services, since PDK cannot refuse to deliver mail prepared by Strålfors' competitors. PDK also cannot discriminate against other mail preparation firms and other competitors in relation to the prices for the services⁶³ or the quality of the service⁶⁴.
157. Any foreclosure strategy put into practice by the merged entity would likely constitute a violation of these regulations.
158. Some of Strålfors' competitors have nevertheless argued that Strålfors and PDK, as a single-entity, could "mixed bundle" printing and enveloping and mail delivery services by offering "integration rebates" to customers that use both services.⁶⁵
159. In Sweden, where Strålfors and Posten offer an integration rebate applied in relation to the eBrev solution, the integration rebate has been assessed by the Swedish Competition Authority and it was found that this rebate did not have an anti-competitive effect on consumers and competition, such that no objections were raised to it (so-called negative clearance). Despite the rebate, according to the

⁶² Indeed, PDK has been subject to two decisions for abusive practices from the Danish Competition Authority. See Danish Competition Authority decisions of 29 September 2004 and 30 August 2007.

<http://www.ks.dk/konkurrenceomraadet/afgoerelser/afgoerelser-1998-2008/afgoerelser-2004/3/2004-09-29-forbruger-kontakts-klage-over-post-danmark/>

<http://www.ks.dk/konkurrenceomraadet/afgoerelser/afgoerelser-1998-2008/afgoerelser-2007/konkurrenceraadets-moede-den-30-august-2007/2007-08-30-forbruger-kontakts-klage-over-post-danmarks-priser-og-vilkaar-for-magasinpst/>

⁶³ The Postal Regulatory Authority has confirmed that PDK, which is the provider of the postal universal service in Denmark, has the obligation to provide postal services to all the customers, on a non-discriminatory basis, and at a regulated price. The prices are publicly available. Although the discussions concerning the implementation of the new Postal Directive into Danish law are still ongoing, no element seems to indicate that this obligation will be alleviated following full market opening on 1st January 2011. PDK is also subject to quality of service requirements.

⁶⁴ Article 3 of section 2 of the Ministerial Decree on the concession of the Danish Post.

⁶⁵ According to Infolog 1 – 2008 (Strålfors' information letter), the merged entity will be able to offer to their customers a better price for printing, enveloping and mail distribution through an integration rebate. However, according to the Parties, this rebate is solely related to Strålfors' eBrev (electronic letter) service in Sweden. According to information from the notifying parties, Strålfors does not have any plans for a future eBrev service in Denmark. The e-Brev service consists of the customer sending an electronic file which is then printed, enveloped and delivered by the Posten group of companies in the form of a physical mail item. In Sweden where such integration rebates have been offered to customers that use the eBrev services provided by Strålfors and the distribution services of Posten, such rebates are cost-based in that they are linked to achieved efficiencies when producing the eBrev.

parties, the eBrev bundled service has lost around [...] % of its volumes since 2003 (over a period during which Strålfors's individual service has grown). The Commission also notes that there are no available studies for cost savings arising from integration of services in Denmark. However, in Sweden Posten has calculated the cost savings from its integrated offer eBrev to be less than [...] SEK for First Class eBrev, which costs on average [...] SEK to produce. It is unlikely that this ratio would be significantly higher in Denmark. PDK appears to have an efficient sorting system, and therefore the potential savings from having mail already sorted within Strålfors' printing and enveloping process are small.

160. The competitors also argue that the merged entity could discriminate against them in delivery times or with respect to technical requirements such as formats, special barcodes etc.
161. The Commission acknowledges the fact that Strålfors is not subject to postal universal service obligations and could offer such rebates⁶⁶ or even a fully integrated service (i.e. the provision of both printing, enveloping and delivery services through a single contract). Still, PDK would have the obligation to provide a non-discriminatory offer to Strålfors' competitors so that they can also offer a fully integrated service.
162. The combination of Strålfors and PDK, competitors argue, could enable Strålfors to price below costs for a limited period of time in an attempt to squeeze competitors out of the market for mail preparation services⁶⁷. However, it would constitute an infringement to Article 82 EC, if, by way of pricing, market dominance in one market (mail distribution) is used to extend market power into another market (printing and enveloping). Given the fact that Strålfors is a separate legal entity with separate accounts, and that PDK's prices are regulated and publicly available, the Danish Competition Authority could take appropriate action to ensure that reasonably efficient competitors can profitably replicate the price structure of the merged entity.
163. Therefore the Commission concludes that the universal services obligations currently imposed on PDK are sufficient to remove any incentive to foreclose the market.

Conclusion

164. Based on the above, it is unlikely that the integration following the concentration will have any anti-competitive effects. Actually, the merger may benefit customers through lower prices and enhanced services.⁶⁸ The integration of Strålfors with PDK

⁶⁶ Such a conduct might constitute an infringement to Article 82 EC if it is likely to have a market distorting foreclosure effect on the market where the merged entity is not dominant (see C-333/94 P Tetra Pak II).

⁶⁷ Case T-203/01 *Michelin v Commission (Michelin II)* [2003] ECR II-4071. See also Commission Decision of 04.07.2007 relating to a proceeding under Article 82 of the EC Treaty (Case COMP/38.784 – Wanadoo España vs. Telefónica) and Commission Decision of 20 March 2001 relating to a proceeding under Article 82 of the EC Treaty (Case COMP/35.141 — Deutsche Post AG).

⁶⁸ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2008/C 265/07), paragraph 116-118.

would indeed create efficiencies (e.g. one-stop-shopping benefits) and could create the ability and the incentive for the merged entity to offer reduced prices and potentially enhanced services to customers, already in the relative near future.⁶⁹

165. It is likely to be difficult for the merged entity to increase prices or reduce output to customers because as discussed above, it is doubtful that the merged entity would be capable of eliminating competitors whether in printing and enveloping or in mail delivery from the market, or significantly increasing barriers to entry in the printing and enveloping market. In the medium term, the full liberalization of the postal market will add to the potential competitive pressure on PDK on the mail distribution market.

166. On the basis of the above, the Commission considers that it is unlikely that post merger the merged entity will have the ability and incentive to leverage its market position on the Danish mail markets to the market for printing and enveloping and vice versa by means of tying or bundling or other exclusionary practices.

Previous Decision of the Swedish Competition Authority

167. It should be noted that when Posten acquired Strålfors in 2006, the Swedish Competition Authority raised concerns regarding the links between printing and enveloping and mail distribution in Sweden and cleared the transaction subject to a commitment. There are a number of factors, however, that distinguish the present transaction from the Swedish case. First, the Swedish case concerned a horizontal merger of two of the three most significant printing and enveloping firms in the market, resulting in a market share of approximately 30%. The present case leads to no horizontal overlap, and Strålfors only possesses a market share of approximately [20-30]%. Second, the investigation by the Swedish Competition Authority concluded that customer switching was difficult (due in part to long-term contracts), high barriers to entry existed, and that certain large customers could only use Strålfors. As discussed previously, the market investigation in the present case has reached a contrary conclusion with respect to all of these issues.

V.2.2. OTHER CONGLOMERATE ISSUES

168. Some respondents to the market investigation point at the existence of conglomerate effects that would result from the simultaneous presence of the merged entity in the (i) mail markets, (ii) parcels markets, (iii) freight and logistics markets⁷⁰.

169. Firstly, such concerns focus on the competitive advantages that may be gained by the merging parties, resulting from the ability to offer integrated solutions to customers. However, although some customers express interest in integrated

⁶⁹ Many customers recognize the potential benefits from the transaction, such as the "increased quality of service and low pricing", and increased "flexibility/full service".

⁷⁰ In addition to its presence in the mail and parcels markets, the merged entity will be present in (i) freight forwarding ([10-20]% market share in Sweden, [5-10]% in Denmark) and (ii) contract logistics ([5-10]% market share in Sweden, [0-5]% in Denmark).

solutions, the market investigation confirms that sourcing each service from a different supplier is common practice on the demand side.

170. Secondly, competitors point to the advantages that may result from the shipping of an increasing volume of goods, which would make room for synergies in an industry where profitability very much relies upon size effects. Some competitors specifically point towards (i) the increase in the customer base, (ii) the ability for the merged entity to cross subsidize its activities. Although the transaction is likely to result in gains in this regard, the market investigation has not revealed facts that would suggest that these gains would go beyond common economies of scale/rationalization effects resulting from the merger of two important undertakings. In addition, the trend in the industry does not support the view that integration of these activities would be a key success factor. Indeed, the Commission considers that whilst synergies between the different activities often exist, such synergies are not so significant that progressive integration is perceived as a must.

171. Thirdly, some competitors stress that the barriers between freight and parcels delivery are becoming blurred. Indeed, logistics activities are moving in a direction where the same delivery might include parcels and heavier goods. In this regard, competitors submit that the strength of the merged entity in the field of parcels would necessarily have spill over effects on the neighbouring market of freight forwarding. However, such concerns are neither substantiated nor supported from a demand side perspective. In addition, the competitors that have drawn the Commission's attention to this question do not express strong concerns with regard to the transaction.

172. The Commission therefore considers that the transaction does not raise serious doubts as to its compatibility with the Common market and the EEA Agreement resulting from the simultaneous presence of the new entity in mails, parcels and freight forwarding.

VI. REMEDIES

VI.1. PROCEDURE

173. In order to address the competition concerns identified by the Commission, the Parties submitted two sets of commitments on 26 March 2009.

174. The first set of commitments aimed at addressing the potential concerns raised by the simultaneous presence of the merged entity in printing/enveloping and the distribution of mails. As the further investigation led to the conclusion that the transaction does not raise serious doubts in this regard, the Commission informed the Parties that such commitments were no longer necessary. The Parties therefore withdrew this set of commitments on 14 April 2009.

175. The second set of commitments aims at addressing the serious doubts that arise from the strengthening of PDK's dominant position in the Danish standard B2B parcels delivery services market. It mainly consists in the divestment of assets, personal and customer contracts in Denmark.

176. The Commission has assessed the commitments and concluded that they remove the serious doubts which have been identified in this decision.

VI.2. DESCRIPTION OF THE INITIAL COMMITMENT

177. Initially, the Parties proposed the divestment of a range of assets from the existing DPD/Posten and PDK businesses, specifically:

- Two terminals [owned by the Parties] in Denmark and which together are able to sort up to around [...] parcels per day, thus covering [some of the Parties'] Danish volumes in relation to all parcels markets.
- Four additional [of the Parties'] depots in Denmark ([some owned and some leased]).
- Sub-contracted vehicles used for delivery.
- The staff, parcel sorting/processing equipment etc. associated with these assets.
- Contracts representing [5-10%]% of the total Danish standard B2B parcels delivery services market.

VI.3. RESULTS OF THE MARKET TEST

178. While the market test of the initial set of commitments was positive overall, a minority of competitors, without necessarily excluding to purchase the divested assets, nevertheless questioned the viability of the remedy package, from an operational and a commercial point of view.

179. Regarding the operational framework, some respondents insisted on the necessity for the divestment to encompass all necessary IT assets.

180. From a commercial point of view, during the market test, respondents emphasized on the necessity for the divested business to be acquired by a purchaser with established knowledge of the market and a customer basis, present at international level, thus ensuring that the purchaser could immediately substitute DPD/Posten on the market.

181. In addition, some respondents considered that the volume of divested contracts would not be sufficient to ensure viability.

VI.4. IMPROVED COMMITMENTS

182. Against the background of these concerns, the Parties submitted significantly improved commitments on 14 April 2009:

- Regarding the Purchaser, the Parties committed that it would "have a proven expertise in the field of parcels, recognized brand in the field of parcels as well as an international presence in the field of parcels";
- The divestment of contracts is increased to [10-20...]% of the total Danish standard B2B parcels delivery services market;
- The divestment will take place through a share deal by which the transferred contracts will be located in a legal structure to be acquired by the Purchaser;

- The Parties have committed to divest customer contracts according to a list of objective criteria (in particular regarding profitability);
- The viability of the IT system is being guaranteed : (i) [management of IT support]; (ii) the Parties committed to provided assistance securing full operationality of the IT system as of Closing, and assistance to the Purchaser should the later need support to implement migration to its own IT system.

VI.5. ASSESSMENT

183. As established in the Commission notice on remedies, the Commission assesses whether the commitments submitted by the Parties resolve the competition concerns raised by the Commission. In assessing whether or not the commitments will restore effective competition, the Commission considers the type, scale and scope of the commitments by reference to the structure of and particular characteristics of the market in which competition concerns arise.

184. Where a proposed concentration threatens to significantly impede effective competition, a divestiture may be an effective way to restore effective competition. The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete with the new entity and others on a lasting basis.

Independence, viability and competitiveness of the divestment assets

185. As the divested activities do not relate to a pre-existing business, the Commission has put a specific emphasis in its assessment on the viability aspect.

186. The tangible assets (and notably the two terminals) are well functioning and in good condition.

187. With regard to IT, the Parties have included the commitment to divest any IT production system owned and controlled by [the Parties]. They also commit to [make any necessary IT arrangements], on behalf of the purchaser should it request so., thus guaranteeing that the IT system will be fully operational from the Closing of the transaction. Should the Purchaser decide to substitute its own IT system, the notifying parties commit in addition to assist the Purchaser in the implementation phase, up to a period of [...], under supervision of the Trustee, for both software and hardware. The Purchaser will be able to utilize the existing IT system from day one, and obtain assistance from the new entity if necessary. For these reasons, any risk regarding the functioning of the IT system from the Closing can be dispelled.

188. Moreover, [management of customer support and sales] will also be divested according to the improved commitments. This applies in particular to the [description of personnel]. Such measure increases the likelihood that these customers will remain with the purchaser and enhances the purchaser's ability to obtain additional business in Denmark. This helps to ensure the viability of the divested activities.

189. In addition, the divested customer contracts, the overall value of which has been significantly increased from [5-10]% to [10-20]% in order to address the concerns expressed during the market investigation with regard to the initial submission of the parties, will cover a range of customers from [the Parties]. Their selection has been based on a series of objective criteria (size, geographic coverage, duration,

profitability) aiming at dismissing any risk of "cherry picking", under supervision of the Trustee. The Parties more specifically commit to divest customer contracts with established profitability, i.e. contracts having at least [an average profitability] of the merging parties in the field of B2B standard domestic parcels.

190. In addition, the requirement for the Purchaser to have an established presence in the international markets for delivery of parcels, and the de facto inclusion of some divested international B2B contracts will guarantee that the Purchaser benefits from synergies between activities in the B2B domestic standard market and B2B international markets.
191. The magnitude and scope of the divested customer contracts are also important elements to ensure the viability of the divested activities, as identified by the market test.
192. Finally, the notifying parties commit in the improved package to perform the divestment of the customer contracts through a share deal, that is to say that the transferred contracts will be located in a legal structure, to be acquired by the Purchaser, thus guaranteeing that the contractual link to the customers will remain unaltered as a result of the divestment. The new Purchaser will thus become the contractual party to the customer contract replacing [the Parties]. This will strengthen its position and ensure its viability as a competitor to the merged entity
193. In any event, the Parties commit in the improved package to sell the divested assets to a company with a proven expertise in the field of parcels delivery, a recognised brand as well as an international presence in parcels delivery, thus eliminating any risk with regard to viability, both from an IT and a commercial perspective.
194. Overall, although the divested activities do not consist in a pre-existing business, the Commission concludes that the improved commitment package includes all the elements to create an independent, viable and competitive entity.

Effectiveness of the commitment in removing the competition concerns

195. The set of commitments entirely eliminates the overlap between the merging companies as it represents a divestiture of a market share equivalent to [10-20]% of the market. This figure correspond to the overlap ([5-10] percentage points) plus [50-60]%, which sufficiently takes account of the risk that some divested contracts may be terminated by customers and addresses the concerns expressed during the market testing of the first set of commitments.
196. The Commission considers that the commitments will lead to the entry or strengthening of a competitor beyond the mere Danish B2B standard domestic parcels delivery services market because of the characteristics the Purchaser has to meet. The parties will be confronted with significantly increased competition also on the market for Danish B2B standard international parcels delivery services and more broadly as regards activities relating to B2X parcels delivery services, taking into account any possible spill over effects from the B2B market into the B2C market, and conversely.
197. In light of the foregoing, the Commission considers that the Commitment package is suitable for remedying the serious doubts as to the compatibility of the

concentration with the Common Market and the EEA Agreement which have been established in the previous sections of this Decision.

VI.6. CONDITIONS AND OBLIGATIONS

198. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.
199. The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
200. In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with the requirements set out in paragraphs 1 – 3 of the Commitments submitted by the Parties on 14 April 2009 (conditions), whereas the other Sections of the Commitments constitute obligations on the Parties.

VII. CONCLUSION

201. The Commission has concluded that the remedies submitted by the Parties are sufficient to remove the serious doubts raised by the concentration. Accordingly, subject to the full compliance with the conditions set out in paragraphs 1 – 3 of the Commitments submitted by the Parties on 14 April 2009 and with the obligations set out in the other Sections of the Commitments, 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) and Article 6(2) of Council Regulation (EC) No 139/2004.
202. Also, the Commission considers that this first merger by postal incumbent operators in Europe does not increase barriers to entry for new entrants to any significant extent so that there is no risk to liberalisation.
203. The detailed text of the commitments is annexed to this decision. The full text of the annexed commitments forms an integral part to this decision.

For the Commission
(signed)
Neelie KROES
Member of the Commission

By hand and by fax: 00 32 2 296 4301
European Commission – Merger Task Force
DG Competition

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14 April 2009

Case COMP/M.5152 – Posten/Post Danmark

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 as amended (the “**Merger Regulation**”), *Posten AB (publ) org. nr 556128-8556 and Post Danmark A/S, org. nr. 699703-1437* (the “**Parties**”) hereby provide the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the merger between the Parties compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “**Decision**”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EC) No 139/2004.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the business as defined in Section B and the Schedule that the Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by the Parties and who has received from the Parties the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] months from the Effective Date.

Hold Separate Manager: the person appointed by the Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by *the Parties* and who has the duty to monitor the Parties compliance with the conditions and obligations attached to the Decision.

Parties: *Posten AB (publ) org. nr 556128-8556 and Post Danmark A/S, org. nr. 699703-1437* and any and all legal entities directly or indirectly controlled by Posten AB or Post Danmark.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] months from the end of the First Divestiture Period.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, the Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, the Parties commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Parties have not entered into such an agreement at the end of the First Divestiture Period, the Parties shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. *The Parties* shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, *the Parties* have entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding [...] months after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment business consists of [two] Danish terminals (one is located outside of Copenhagen [...] on Sjælland and the other is located in [...] in Jylland), including any and all equipment used at these terminals, (ii) personnel [...], (iii) subcontracting arrangements with the Parties (see further in Schedule), (iv) transitional arrangements in order to ensure an easy transfer of the Divestment Business to the Purchaser (see further in Schedule). The Divestment Business also includes four (4) depots, [some of which are owned and some of which are leased]. Depending on the Purchaser's preferences, the depots could be offered either through a lease assignment or through a subcontracting arrangement. The Parties also offer a Purchaser customer contracts in the field of B2B Standard Parcels Domestic in Denmark with an annual turnover of approximately [...] MEUR. These customer contracts consist of a combination of customer contracts from Post Danmark and DPD Danmark.

5. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes
 - (a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as “*Assets*”);
 - (d) the Personnel; and
 - (e) transitional arrangements as agreed between the Parties and the Purchaser and as set out in the Schedule.

6. The Parties shall sell the Divestment Business to one single Suitable Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

7. From the Effective Date until Closing, the Parties shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Parties undertake:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Parties

8. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses they are retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. The Parties shall also ensure that the Personnel do not report to any individual outside the Divestment Business.
9. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. The Parties shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

10. The Parties shall implement all necessary measures to ensure that they do not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain information relating to the

5

Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to the Parties is required by law.

Non-solicitation clause

11. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] months after Closing.

Due Diligence

12. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

- (a) provide to potential purchasers sufficient information as regards the Divestment Business;
- (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

13. The Parties shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

14. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

15. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:

- (a) be independent of and unconnected to the Parties;
- (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
- (c) have a proven expertise in the field of parcels, recognised brand in the field of parcels as well as an international presence in the field of parcels;
- (d) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “**Purchaser Requirements**”).

16. The final binding sale and purchase agreement shall be conditional on the Commission’s approval. When the Parties have reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

17. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If the Parties have not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Parties at that time or thereafter, the Parties shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
18. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

19. No later than one week after the Effective Date, the Parties shall submit a list of one or more persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, the Parties shall submit a list of one or more persons whom the Parties propose to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

20. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

21. If all the proposed Trustees are rejected, the Parties shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 19.

Trustee nominated by the Commission

22. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

23. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Parties give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

24. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;

- (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
 - (c) (i) in consultation with the Parties, determine all necessary measures to ensure that the Parties do not after the effective date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Parties or Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
 - (iv) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
 - (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
 - (vi) provide to the Commission, sending the Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending the Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Parties is failing to comply with these Commitments;
 - (vii) within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

25. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

26. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

III. Duties and obligations of the Parties

27. The Parties shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

28. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Parties shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

29. The Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to

achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.

30. The Parties shall indemnify the Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Parties for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
31. At the expense of the Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Parties approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Parties refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served *the Parties* during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

32. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Trustee, require the Parties to replace the Trustee; or
 - (b) the Parties, with the prior approval of the Commission, may replace the Trustee.

32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

34. The Commission may, where appropriate, in response to a request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee:
- (i) Grant an extension of the time periods foreseen in the Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where *the Parties* seek an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall *the Parties* be entitled to request an extension within the last month of any period.

Karen Dyekjær duly authorised for
and on behalf of Post Danmark A/S

Johan Carle duly authorised for and
on behalf of Posten AB

SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure: the assets (terminals, depots, relevant personnel etc) and the customer contracts referred to below shall be divested of via one or more companies (or other legal entities) controlled by the Parties. Hence, the shares in these companies shall be divested of by the Parties to the Suitable Purchaser. One way of doing this would be for the Parties to transfer the B2B Standard International parcel services within [one of the Parties] to another Danish subsidiary of [one of the Parties], although other legal structures to the same effect may be used depending on issues such as tax, goodwill etc. The Divestment Business is the [business] handling B2B Standard Domestic parcel services. The Divestment Business consists of (i) [two] Danish terminals (one is located outside of Copenhagen ([...]) on Sjælland and the other is located in [...] in Jylland), including any and all equipment used at these terminals, (ii) personnel [...], (iii) subcontracting arrangements with the Parties as set out below (iv) transitional arrangements in order to ensure an easy transfer of the Divestment Business to the Purchaser and as set out below. The Divestment Business also includes four (4) depots, [some of which are owned and some of which are leased]. Depending on the Purchaser preferences, the depots could be offered either through a lease assignment or through a sub-contracting arrangement. Each of the two terminals and the four (4) depots within the Divestment Business has its own management headed by a site manager or a supervisor. The Parties shall also offer a Purchaser customer contracts in the field of B2B Standard Parcels Domestic in Denmark with a turnover of approximately [...] MEUR. These customer contracts consist of a combination of customer contracts from Post Danmark and from DPD Danmark.
2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:
 - (a) the following main tangible assets:

The terminal sites in Copenhagen ([on Sjælland]) and [in Jylland] consist of fixed assets including the building, the real estate, the parcel sorting machinery and all production systems related thereto owned by [the Parties], located in the terminals and Depots shall be offered as well as equipment on the site, see enclosed Annex X.

Four (4) depots (including some equipment) [some of which are owned and some of which are leased], see enclosed Annex X.
 - (b) the following main intangible assets:

Software:

The Parties offer to divest of any IT-production system owned and controlled by [one of the Parties] (listed in the table below). If the Suitable Purchaser should request additional IT-production systems in order to run the Divestment Business, the Parties shall [make suitable arrangements], all of this assuming that the Suitable Purchaser would accept responsibility for [these arrangements]. Please refer to (h) below regarding transitional IT-arrangements also being offered to the Suitable Purchaser as an option.

The above paragraph entails the Parties [making suitable arrangements], all of this assuming that the Suitable Purchaser would accept responsibility for [these arrangements]. Hence, an IT system can be up and running from Closing.

The IT-production system owned and controlled by [one of the Parties] are the following:

[The table describes different systems used for accounting, document handling, sales and CRM]

Application Name	Brief Description
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]

As for all the licenses above, an approval must be obtained from the licensor, in order for the licenses to be transferred to the Suitable Purchaser. Such approval will be easily obtained by any Suitable Purchaser, and the products are anyway commodities.

Hardware:

The hardware necessary to operate the above IT-production system is standard hardware with no technical peculiarities. If the Suitable Purchaser should request hardware in order to run the Divestment Business, the Parties shall [make suitable arrangements], all of this assuming that the Suitable Purchaser would accept responsibility for [these arrangements]. Such hardware could be standard windows servers.

- (c) the following main licences, permits and authorisations:

The [Divestment] business does not have any traffic permits as of today and does not need any permits since the transportation is handled by sub-contractors.

- If the Suitable Purchaser decides to run the Divestment Business using its own drivers and vehicles, the Suitable Purchaser will need to have a traffic permit.

- (d) the following main contracts, agreements, leases, commitments and understandings

Lease agreements regarding two (2) depots, see enclosed Annex X.

Support Agreement regarding the sorting machinery.

Please also refer to Annex X.

- (e) the following customer, credit and other records: N/A

(f) The following personnel shall be offered to the Suitable Purchaser:

[...][...][...][...]

In addition, the Suitable Purchaser shall be offered the following personnel by the Parties:

[...][...][...]

(g) *The Key Personnel*

the following Key Personnel: The [...] and [...] might be considered to be Key personnel depending on the Purchaser wishes;

[...]All of the personnel in the [...] shall be [...] [composition of personnel].

[...]

(h) Undertakings for a transitional period of up to [...]years after Closing may include arrangements regarding depots and transport services.

Production systems

It can be expected that the Suitable Purchaser wants to run the Divestment Business using his own IT-systems as quickly as possible. However if the Suitable Purchaser needs the Parties to carry out tasks for him in a certain period of time [period description] the Parties shall conduct such tasks. Therefore the Divestment Business shall include the option, during a transitional period to use defined IT deliverables such as [facility systems].

In addition, the Parties undertake to assist the Suitable Purchaser in the implementation phase regarding the IT-systems for a period of [...], subject to control of the Monitoring Trustee.

The above applies to software as well as hardware.

Transport services

The Parties shall offer transitional services by means of (i)[one of the Parties making arrangements...]. Subject to the approval of the haulage contractors, these contracts may be transferred to a Suitable Purchaser, although the Parties do not expect a Suitable Purchaser to request the transfer of these; (ii) alternatively, the Parties shall [make suitable arrangements], all of this assuming that the Suitable Purchaser would accept responsibility for [these arrangements]; (iii) another alternative is for the Purchaser to subcontract for a period the distribution to Post Danmark under a standard subcontract arrangement.

Customer services

The Suitable Purchaser may need support with customer services for the divested contracts, refer to (i) customer contracts below, from both DPD Danmark and Post Danmark. If so,

the Parties shall offer such customer services for a transitional period as a back-office function.

(i) Customer Contracts

The Parties undertake to divest of customer contracts with an annual turnover of [...] MEUR via one or more companies (or other legal entities) controlled by the Parties. The Parties undertake to divest of the customer contracts by means of transferring the customer contracts to a company controlled by the Parties and thereafter transferring the shares of this company to the Suitable Purchaser at Closing.

It follows from the above that the Parties shall divest of customer contracts corresponding to a market share of [10-20]% of the total Danish B2B Standard Parcels Domestic market corresponding to a annual turnover of [...] MEUR. Please note that this entails (i) a divestment of a market share which is [50-60]% higher than [the overlapping increase in the market share], in addition, (ii) may entail the divestment of contracts covering inter alia B2B Standard International Parcels as some of the contracts to be divested do not only cover B2B Standard Domestic Parcels.

The Parties have compiled a list of customer contracts to be divested according to objective criteria securing an approximate proportionate representation of the Parties' current B2B Standard Domestic Parcels contracts in Denmark. The objective criteria refer to:

- (i) the customer contracts covering mainly B2B Standard Domestic Parcels,
- (ii) size,
- (iii) geographic coverage,
- (iv) the customer 's line of business, and
- (v) average profitability per parcel
- (vi) average duration of the contracts

More specifically the objective criteria are the following:

B2B Standard domestic parcels: Most of DPD A/S' contracts contain domestic as well as international volumes. Since the concerns of the Commission relate to the domestic market the Parties have tried, as far as possible, to avoid to include in the commitments contracts that contain international volumes.

Geographically: [...].A representative customer group from the major regions in Denmark, i.e. Northern and Mid Jutland (ZIP code 7xxx-9xxx), West and South Jutland (ZIP code 6xxx), Funen (ZIP-code 5xxx), Greater Copenhagen and North Zealand (ZIP code 1xxx-3xxx but not 37xx) and Zealand and Islands (ZIP code 4xxx + 37xx).

Size wise: [A representative group of both large ([...]domestic B2B Standard parcels a year), medium ([...]domestic B2B Standard parcels a year) and small ([...] domestic B2B Standard parcels a year) customer contracts.]..

Line of business (industry sector): [A representative group of customers from all main lines of business].

Average profitability per parcel: [Customer contracts which, taken as a whole, have at least an equivalent average profitability per parcel as the average profitability of the Parties].

Average duration of the contracts: [The customer contracts to be divested shall have a normal duration on average ...].

The fulfilment of the stated criteria shall be verified independently by the Trustee.

3. The Divestment Business shall not include:

The Divestment business in Denmark will [not include]:

- [“– The customer agreements that are not divested
- [...]
- CEO (1 person)
- Administration, finance and, IT, both in-house and outsourced (appr. [...] persons)
- Sales and Marketing ([...] persons)
- Customer service ([...] persons)
- Overall operations ([...] persons)
 - Production and Warehouse staff (approx. [...] persons)

The organisation of [one of the Parties']s business after a divesture is outlined in Annex X.

1. ANNEX X

1. - List of Assets to be divested
 - [...]
 - o [...]
 - o Assets and agreements

[please refer to Annex X:1]

2. List of customer agreements to be divested
 - o [the parties]

[please refer to Annex X:2]

3. List of other type of contracts to be divested

[please refer to Annex X:3]

Annex X [...]

Annex X1 [...]

Annex X2 [...]

Annex X3 [...]