EN

Case No COMP/M.6503 - LA POSTE/ SWISS POST/ JV

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 04/07/2012

In electronic form on the EUR-Lex website under document number 32012M6503

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

Brussels, 04.07.2012
C(2012) 4740

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Dear Sir/Madam,

Subject: Case No COMP/M.6503 – LA POSTE/ SWISS POST/ JV
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1]

1. On 11 May 2012, the European Commission received notification of a proposed creation of a full-function joint venture **("the JV")** between La Poste Global Mail SAS **("LPGM"),** a 100 % subsidiary of the group La Poste (**"La Poste",** France), and Swiss Post International Holding AG **("SPI"),** a 100% subsidiary of the group Swiss Post (**"Swiss Post",** Switzerland). La Poste and Swiss Post will contribute to the JV as its future core business all their current activities in the area of cross border mail services, excluding the inbound and outbound mail activities carried out by (i) La Poste in France and (ii) Swiss Post in Switzerland (most of which fall within the scope of universal service in accordance with French and Swiss postal regulations), as well as some other small scale mail activities.

I. THE PARTIES

2. La Poste and Swiss Post are the historic public postal operators of France and Switzerland.

[1] OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

3. Since 22 February 2011, La Poste has been jointly owned by the French State and by the *Caisse des Depôts et Consignations* ("CDC") holding 73.68% and 26.32% of the shares respectively. CDC is a French public entity ("*établissement public*") also owned by the French State.[2] La Poste's business consists of four main activities: mail, parcels, banking and the French retail network. At the international level, La Poste operates, through its subsidiary LPGM, in the areas of business mail services, express and parcel delivery services.

4. Swiss Post is an institution under Swiss public law and owned by the Swiss Confederation. Swiss Post provides universal services in Switzerland. At international level, all mail activities are under the responsibility of SPI, a 100% subsidiary of Swiss Post organised under the laws of Switzerland. The core business of SPI is the sale of international mail services. In addition to these traditional mail services, SPI has subsidiaries in the field of press marketing and kiosk distribution.

II. THE OPERATION AND THE CONCENTRATION

1. Jointly controlled JV

5. LPGM and SPI will each hold 50% of the shares in the JV which will be governed by a dual board system consisting of a board of directors and a management board.

6. The board of directors will be in charge of supervising the overall business strategy of the JV (including appointing the CEO and approving the business plan).[3] It will have six members elected by the shareholders from three nominees designated by each of LPGM and SPI. It will adopt its decisions by simple majority vote thus providing each of LPGM and SPI with a veto right.

7. In addition, the JV will have a Management Board which will be in charge of its day-to-day operations.[4] It will consist of six members: the Chief Executive Officer (CEO) (designated by the board of directors) who designates the five other members subject to prior approval by the Board of Directors (it being understood that LPGM and SPI shall be equally represented in the Management Board). A Deputy CEO will be designated amongst candidates suggested by the Party that has not named the candidate elected as CEO. Its decisions will be taken […], unless a member of the Management Board asks for a formal vote in which case decisions will be adopted by […].

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[2] The French competition authority approved the acquisition of this share in La Post in its Decision n°11-DCC-32 of February 22, 2011 and concluded that La Poste was jointly controlled by CDC and the French State.

[3] In particular, it will "supervise and approve the overall strategy", "designate the CEO and approve the members of the Management Board, upon proposal by the CEO", "supervise the actions of the Management Board", "set the remuneration of the members of the Management Board", "review the activities" of the JV "on a regular basis", "approve the consolidated annual budget", "approve amendments to the Business Plan or any new business plan", "conduct and conclude negotiations with significant strategic implications", approve projects or investments of a value in excess of […].

[4] It will be in charge of preparing the annual budget, proposing amendments to the business plan or a new business plan to the Board of Directors and approving important contracts […].

8. Based on the above information, the Commission concludes that the JV will be jointly controlled by the Parties.

2. Full function joint venture

9. First, the JV will have sufficient resources to operate independently on the market. The Parties will contribute to the JV their subsidiaries, LPGM and SPI respectively, which are active in the sector of international mail and which are currently fully active on the relevant markets identified in this decision and have the material, human and financial means to remain active on such markets. These subsidiaries are located in the USA, the United Kingdom, Germany, Italy, Austria, The Netherlands, Sweden, France, Belgium, Spain, Norway, Switzerland, Hong Kong and Singapore. In addition, the JV will have a management dedicated to its day-to-day operations and will employ more than a thousand employees throughout the world from the starting date of its operations.

10. Second, the activities of the JV will go beyond one specific function for the Parties. The Parties will contribute all their current activities in the area of cross-border mail services to the JV (excluding the outbound and inbound mail activities undertaken by La Poste in France and Swiss Post in Switzerland). The JV will operate as an independent undertaking and will have its own access to the markets for the provision of outbound mail services in accordance with the criteria set out in paragraphs 95–96 of the Commission's Consolidated Jurisdictional Notice (the "JN").[5]

11. Third, the JV will not have significant sale and purchase relationships with the Parties. The JV is intended to be market facing and will only have minor sales to the Parties. These relate to consulting services and account to […]% of the estimated turnover of the JV. In terms of purchase relationships, the JV will purchase a non-negligible amount of services from the Parties, however, according to the Parties, these will be made at arm's length, non-exclusive basis and without purchase commitments. These services are:

    (i) general overhead services like information technology services, general accountancy services, payroll services etc. which will account for […]% of the JV's turnover;

    (ii) inbound mail services in France and Switzerland which will account for approximately […]% of the JV's turnover;

    (iii) inbound mail services outside France and Switzerland from other postal operators, using the Parties as intermediaries,[6] which will account for […]% of the JV's turnover; and

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5 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.04.2008, p. 1.

6 The JV will however not be restricted in its choice of provider in the country of destination of the mail. For example the JV may choose for a client wishing to send mail from Italy to Germany: (i) to purchase inbound mail services of Deutsche Post in Germany via La Poste's arrangements with Deutsche Post (the so called REIMS system), (ii) to purchase the inbound mail services of Deutsche Post directly from

(iv) other services which will however not account for more than […]% of the JV's turnover and which will be in any event secondary services.[7]

12. In light of the above, the purchase of these services will not be such as to call into question the full-function nature of the JV.

13. Lastly, pursuant to Article 13.1 of the Shareholder Agreement, the operation is intended to last for an indefinite period of time, thus satisfying the full functionality criterion laid down under paragraphs 103–105 of the JN.

14. Based on the above information, the Commission concludes that the JV will perform on a lasting basis all the functions of an autonomous entity within the meaning of Article 3(4) of the EU Merger Regulation. Therefore it satisfies the criteria for full functionality as set out in the JN.

III. EU DIMENSION

15. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million.[8] Each of them has an EU-wide turnover in excess of EUR 250 million. La Poste achieves more than two-thirds of its aggregate EU-wide turnover within one Member State (France) while this is not the case for Swiss Post. Therefore, the notified operation has an EU dimension under Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

16. The Joint Venture will mainly provide cross-border mail delivery services throughout the world and in the EEA in the following countries: Germany, Italy, Austria, the Netherlands, Denmark, Sweden, the United Kingdom, France, Belgium, Norway, Spain, Poland, Luxemburg, the Czech Republic and Portugal.

17. As a secondary activity, and *inter alia*,[9] the JV will also provide Business-to-Customers (B2C) cross-border standard parcel delivery services in Spain and in the Netherlands.

Deutsche Post (so called "direct injection") or (iii) to purchase the inbound mail services in Germany from an alternative distributor.

7 For example parcel delivery services or digital printing of electronic mail.

8 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.04.2008, p. 1).

9 The JV will also provide the following services to a limited extent: (i) mail preparation services in the United Kingdom and, to a lesser extent, Austria; (ii) kiosk distribution and press marketing services mainly in Switzerland and, to a lesser extent, also in a certain number of other European countries; (iii) logistics services in Italy; (iv) freight forwarding services in the United Kingdom; and (v) international parcel and express delivery services in the UK.

STANDARD OUTBOUND CROSS-BORDER ADDRESSED MAIL DELIVERY SERVICES OFFERED TO BUSINESS CUSTOMERS

1. Market definition

1.1. Product market

18. The Commission has generally segmented the mail delivery services markets as follows:

- Standard and express mail delivery services;[10]
- Domestic and cross-border mail;[11]
- Business mail and mail for private customers;[12]
- Addressed and unaddressed mail;[13] and
- Inbound cross-border mail services and outbound cross-border mail services.[14]

19. The parties concur with the Commission's previous analysis of the market. The market investigation conducted in the present case confirmed the Commission's prior assessment.

20. *Standard and express mail delivery services.* A large majority of competitors and consumers have confirmed that express mail services provide additional value and are overall faster and more reliable than the basic postal services and that their price is hence higher than that of the normal mail service. Competitors also mentioned that standard mail delivery services differed from express mail in terms of the applicable regulatory requirements and network logistics.

21. *Domestic and cross-border mail.* A large majority of competitors and consumers confirmed that the demand for mail services for international destinations could not be satisfied by services for domestic destinations. Differences between domestic and cross-border mail concerned pricing, providers, regulatory regimes and logistics.

22. *Business mail and mail for private customers.* A large majority of competitors and a clear majority of customers considered that business mail services were different from mail services to private customers. They were of the opinion that business customers

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[10] See case COMP/M.102 – *TNT/Canada Post, DBP Postdienst, LaPoste, PTT Post and Sweden Post*, paragraph 20.

[11] See case COMP/M.3971 – *Deutsche Post/Excel*, paragraphs 23 and 24.

[12] See case COMP/M.5121 – *Posten AB/ Post Danmark A/S*, paragraphs 15–17.

[13] See case COMP/M.5121 – *Posten AB/ Post Danmark A/S*, paragraphs 16–17.

[14] See case COMP/M.1915 *The Post Office/TPG/SPPL*, paragraph 34, COMP/ 38170 *Reims II*, paragraph 70.

usually required and received different services (*e.g.*, high quantity posted, pre-sortation/preparation of the items, different collection offers) at different prices compared to private customers (*e.g.*, usually individual postings covered by universal service obligation).

23. *Addressed and unaddressed mail.* A large majority of competitors and customers believed it was necessary to distinguish between addressed and unaddressed mail services. The respondents agreed with the Commission's definition that these services differed from a demand-side perspective: addressed mail delivery is a service required by customers who request delivery of the mail to a precise location, while unaddressed mail is unsolicited marketing mail sent by certain companies for advertising purposes. One respondent also explained that from a supply-side point of view unaddressed mail also faced much lower barriers to entry since local distribution networks or even inserts in free newspapers could be used to meet the objective of advertising to a wide un-named audience and that there were also distinctions in how the addressed or unaddressed mail was handled in the conveyance process.

24. *Outbound cross-border mail services and inbound cross-border mail services markets.* A large majority of competitors and customers located in France considered that a distinction between inbound and outbound cross-border mail services is still valid.[15]

25. In light of the above distinctions made by the Commission in previous cases, a clear majority of respondents confirmed that standard outbound cross-border addressed mail delivery services offered to business customers could be distinguished from other mail services.

26. Therefore, the standard outbound cross-border addressed mail delivery services offered to business customers will be considered as the relevant product market for the purposes of the case at hand.

1.2. Geographic market

27. The Commission has found in previous decisions that the market for mail delivery services is national in scope, irrespective of its precise segmentation.[16] The Parties agree with this view which has likewise been confirmed by a substantial majority of competitors and customers in the market investigation.

28. Therefore, the national market for standard outbound cross-border addressed mail delivery services offered to business customers will be considered as one of the relevant markets for the purposes of the case at hand.

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[15] Inbound cross-border mail services are services offered by a postal operator located in France e.g. to another postal operator located in Austria e.g. by which the French operator distributes the mail received from the Austrian operator in France. Outbound cross-border mail delivery services are offered to the sender of the mail for a postage fee. The service consists in collecting mails e.g. in Austria with the view to deliver them e.g. in France on a stand-alone basis, *i.e.*, through a distribution network established in the country where the mail is eventually to be delivered or with a business partner which owns a distribution network in the country of delivery.

[16] See footnotes 10 et seqq.

2. Competitive assessment

29. The Parties provided the Commission with the following overview of their market shares on the national markets for standard outbound cross-border addressed mail delivery services offered to business customers:

Country	Parties' Total Market Share in %
Austria	[5-10]%
Belgium	[0-5]%
Denmark	[5-10]%
France	**[70-80]%**
Germany	[5-10]%
Italy	[5-10]%
The Netherlands	[5-10]%
Poland	[0-5]%
Spain	[5-10]%
Sweden	[10-20]%
United Kingdom	[10-20]%

Source: Form CO

30. As can be seen, the creation of the JV leads to only one horizontally affected market – namely the market for standard outbound cross-border addressed mail delivery services offered to business customers in France. This was confirmed by the market investigation.

2.1. Horizontally affected market: the French market for standard outbound cross-border addressed mail delivery services offered to business customers

Market shares

31. The market investigation largely confirmed the respective market shares of the Parties and their competitors on the French market for standard outbound cross-border addressed mail delivery services offered to business customers, which are as follows:

Market Shares	2011	2010
In Value		
La Poste	[70-80]%	[70-80]%
Swiss Post	[0-5]%	[0-5]%
Combined	**[70-80]%**	**[70-80]%**
IMX	[5–10]%	[5–10]%
DP Global Mail	[5–10]%	[5–10]%

Spring Global Mail	[0–5]%	[0–5]%
BPI	[0–5]%	[0–5]%
Austrian Post	[0–5]%	[0–5]%
Total	100%	100%

Source: Market Investigation and Form CO

32. As can be seen from the above table, La Poste accounts for [70-80%] of the market; Swiss Post's French subsidiary has about [0-5]% of the market. Through the proposed transaction, La Poste would therefore gain direct and indirect control of nearly [80-90]% of the market in terms of value.

Parties' arguments

33. The Parties have argued that the creation of the JV will not raise serious doubts on this market for various reasons:

    (i) the Parties will contribute only one of their two French outbound mail activities to the JV (*i.e.,* the French subsidiary of Swiss Post). La Poste will continue to be active on this market on its own. The Parties want to ensure that the JV will be managed independently from the Parties by setting up "Chinese walls" between the JV and the Parties;

    (ii) the French subsidiary of Swiss Post is a minor player on the French outbound mail market. The creation of the JV would therefore not lead to substantial changes in the competitive structure of the market;

    (iii) the French subsidiary of Swiss Post specifically targets high value clients; therefore there is significant competition for these clients in order to offer an alternative to the incumbent La Poste;

    (iv) customers do not face any switching costs on the French market; and lastly

    (v) barriers to entry are low on this market.[17]

Assessment

34. Based on the results of the market investigation and general legal considerations, the Commission, however, does not agree with this reasoning. First, based on previous practice, the Commission disagrees with the Parties assertion that because the JV will be managed independently La Poste and the JV will be looked at as independent market operators. La Poste would have control over both its own business and, indirectly, the JV's and could therefore at any time align the strategic conduct of the two entities.

35. Second, despite Swiss Post's limited market position, the concentration would lead to the disappearance of the […] player in terms of market shares and of one out of the only

[17] According to the Parties, upfront capital investments are close to zero, as they would essentially concern the establishment of a local sales force. The collection, transportation and distribution of the mail would be outsourced to third parties and such (variable) cost would be integrated in the price of the service.

five credible alternatives to La Poste in this market which has been fully liberalised only in 2003. Indeed, Swiss Post has been able to increase its sales and gain market shares over the last three years, whereas La Poste's sales have been decreasing year after year. This illustrates the competitive constraints operators such as Swiss Post exercise on the dominant player, La Poste.

36. In addition, the merger concerns a market where new entrants are likely not to be expected given the current economic climate and shrinking volumes. In the course of the market investigation, market participants confirmed that the mail market in general was indeed shrinking due to the economic crisis and the dematerialisation of correspondence (e-substitution). Therefore, once the French subsidiary of Swiss Post becomes part to the JV and thus indirectly under the control of La Poste, it is to be expected that the market will lose a viable competitor with no prospects of being replaced by new entrant leading to less choice and possibly higher prices for customers.

37. This has been confirmed by market participants. Several customers in the French market expressed strong concerns and considered that prices would rise after the merger. One customer for instance stated the following: "*C'est évident. La Poste Suisse est le seul acteur alternatif réellement actif sur ce marché. La Poste belge s'est débarrassé de nous en augmentant considérablement ses tarifs parce que nos courriers n'allaient pas dans les zones les plus profitables*". In addition, another customer stressed that the operation would lead to the disappearance of another player on the market which does not have many players to start with.

38. Most of the Parties' competitors also raised serious concerns with regard to the proposed transaction. According to those competitors, the proposed concentration would most likely strengthen La Poste's already dominant position on the French market. Another competitor added that by combining their cross-border mail capabilities and networks, La Poste and Swiss Post would reinforce their competitive position in the international mail market. As concerns switching costs, the market investigation has partially undermined the Parties' claims. Some of the customers have expressed that the switching costs are rather high.

39. As to the barriers to entry, a slight majority of competitors stated that significant barriers to entry or to expansion on the market for standard outbound cross-border addressed mail delivery services offered to business customers are not very significant. However, several competitors identified specific elements which would make entry not as easy as the parties claim. In particular entry "*requires a local presence with a dedicated sales force, as well as the integration with an international distribution network*";[18] another one supports this view by stating that "*entry into the mail market generally requires investments in infrastructures in order to establish a network for collection of mail*".[19] Also the presence of an established, well-known brand or trademark seems to be important in this business and would be another barrier to entry: the market investigation has highlighted that the brands of traditional postal operators are associated with high reliability which is an important element of choice for customers.

[18] A competitor answer to question 25.1 to the Questionnaire to Competitors Mail France.

[19] A competitor answer to question 25.1 to the Questionnaire to Competitors Mail France.

40. In light of these arguments and against the background of a continuously shrinking market with no new entry in the last ten years, the Commission therefore concludes that barriers to entry are not insignificant.

Conclusion

41. In light of the results of the market investigation the Commission considers that the proposed transaction raises serious doubts as to its compatibility with the internal market in relation to the French market for standard outbound cross-border addressed mail delivery services offered to business customers.

2.2. Vertical Relationships: French market for inbound cross-border delivery mail services

42. La Poste is the sole provider of inbound cross-border mail services in France, a market which is downstream of the market for outbound cross-border addressed mail services offered by La Poste or other postal operator to business customers in other Member States. The creation of the JV therefore leads to a vertically affected market in France.

43. The Parties argue that this vertical relationship should not raise serious doubts as to the compatibility of the JV with the internal market because La Poste will neither have (i) the ability nor (ii) the incentive to foreclose.

44. In the market investigation some competitors raised concerns as to La Poste's ability to foreclose the market following the implementation of the JV. However, these concerns were rather unsubstantiated and related more to La Poste's already dominant position on the French inbound mail market than to the impact of the JV. The Commission considers that foreclosure of the French inbound mail market is rather unlikely for the following reasons.

2.2.1. Ability to Foreclose

45. The conditions for the provision of most of the inbound mail distribution services in France are regulated (cross-border universal postal service). Conditions of service (including quality levels) are provided for in a detailed fashion by the "Reims" Agreements and, to a limited extent and notably for mail from third countries, within the framework of the Universal Postal Union (UPU).

46. As a UPU designated operator, La Poste is obliged to accept and deliver the cross-border mail it receives. Under the "Reims V" agreement, which La Poste signed on 20 December 2011, terminal dues paid for the delivery of inbound mail are a fixed percentage of the receiving operators' domestic tariffs, linked to the actually achieved quality of service. The "Reims V" agreement is open to any UPU designated operator that wishes to sign it, but the "Reims V" rates are also applied to non-designated postal operators which compete with "Reims" operators.

47. Article 13 of Directive 97/67/EC[20] as amended by Directive 2002/39/EC[21] and Directive 2008/6/EC[22] (hereafter: the Postal Directive) provides that "terminal dues shall be fixed in relation to the costs of processing and delivering incoming cross-border mail, levels of remuneration shall be related to the quality of service achieved and terminal dues shall be transparent and non-discriminatory". As a result, La Poste cannot give preferential conditions to the JV. The tariffs for domestic mail distribution in France, on which terminal dues are based, are set under the supervision of the French postal regulator ARCEP, which is bound by the principles set out in the Postal Directive.

2.2.2. Incentive to Foreclose

48. Apart from the regulatory environment which serves as a strong containment to the ability of La Poste to foreclose there are also several reasons why La Poste would not have the incentive to foreclose.

49. First, La Poste's loss of revenues caused by giving preferential tariffs to the JV would have to be fully financed by La Poste, despite the fact that it will hold only 50% of the JV's shares. Any gains that the JV might realise as a result of such a preferential treatment would have to be shared with Swiss Post, the other shareholder of the JV.

50. Second, in a context of decreasing mail volumes and the use of Internet as an alternative to mail, La Poste has little to no incentive to risk losing any business by favouring the comparatively small activities of the JV in other Member States to the detriment of other postal operators in those countries. Postal operators outside France account for a substantial turnover of La Poste inbound revenue financing its distribution infrastructure in France. Terminal dues collected by La Poste from other UPU designated operators account, according to La Poste, for approximately […]% of its inbound mail revenues.

51. Lastly, La Poste's customers for inbound business mail in France are mainly large foreign postal operators. They are the operators on which La Poste relies in order to distribute its outgoing business mail from France in other countries and which are crucial for the distribution of La Poste's mail abroad. If La Poste were to discriminate against other postal operators in favour of the JV, these operators would retaliate by discriminating against La Poste in their inbound mail markets.

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[20] 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.

[21] Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ L 176, 5.7.2002, p. 21.

[22] Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52, 27.2.2008, p. 3.

Conclusion

52. In light of these arguments, the Commission considers it unlikely that, following the creation of the JV, La Poste will have the ability and the incentive to foreclose access to its inbound mail services in France.

2.3. B2C cross-border standard parcel delivery services

53. As regards the Commission's practice[23] in defining the relevant markets of parcel delivery services, the Commission has previously made a distinction between:

    (i) domestic and cross-border delivery services;

    (ii) express and standard delivery services; as well as

    (iii) parcel delivery services to businesses and to consumers with a further possible sub-segmentation between business-to-business (B2B) parcel delivery services and business-to-consumers (B2C) parcel delivery services.

54. As to the geographic scope of the market, the Commission found it to be national.

55. The Parties agree with this view. Since the JV will only have small to moderate market shares with small increments in these markets, the Commission did not further investigate the issue of market definition in the market investigation.

56. Therefore, the national market for B2C cross-border standard parcel delivery services will be considered as one of the relevant markets for the purposes of the case at hand.

2.4. Cross-border standard parcel delivery services in Spain and the Netherlands

57. The concentration would lead to two other horizontally affected markets, namely the Spanish and Dutch markets of B2C cross-border standard parcel delivery services.

58. The Table below shows the position of the Parties on the respective markets:

Sales of B2C cross-border standard parcel delivery services (market shares 2011)			
Country	*La Poste*	*Swiss Post*	*Joint Venture (i.e., share of Swiss Post which will be contributed to the JV)*
The Netherlands	[10-20]%	[0-5]%	[0-5]%
Spain	[20-30]%	[0-5]%	[0-5]%

Source: Form CO

23 See case COMP/M.5152 – *Posten AB/Post Danmark A/S;* case COMP/M.2908 – *Deutsche Post/DHL.*

Assessment

59. The Parties argue that the creation of the JV is unproblematic in this area as La Poste will not contribute its activities to the JV and the Swiss Post activities which will be contributed are minimal (reaching market shares of below [0-5]% in the Netherlands and below [0-5]% in Spain).

60. None of the customers raised any concern as to the impact of the operation on the Spanish or the Dutch market. Also, the market investigation confirmed that on both markets, the JV would face the former incumbent operators (namely *PostNL* in The Netherlands and *Correos* in Spain) as well as other strong market players in both countries (such as DHL on the Dutch market and SEUR and TNT on the Spanish market).

61. In view of the above, the Commission concludes that the transaction does not raise serious doubt as to its compatibility with the internal market as concerns the Spanish and Dutch markets of B2C cross-border standard parcel delivery services.

2.5. Other Markets

62. The JV will also provide the following services to a limited extent:

(i) mail preparation services in the United Kingdom and, to a lesser extent, Austria;[24]

(ii) kiosk distribution and press marketing services mainly in Switzerland and, to a lesser extent, also in a certain number of other European countries;[25]

(iii) logistics services in Italy;[26]

(iv) freight forwarding services in the United Kingdom.[27]

63. In most cases only one of the two Parties has been active so far, the creation of the JV does not lead to any horizontal overlap. For the market, where there would be an overlap, *i.e.*, mail preparation services in the United Kingdom, the market investigation broadly confirmed that the operation would not raise any concerns.

64. Finally, with regard to potential coordinated effects in relation to other markets on which the Parties' activities overlap and which will not be contributed to the JV (*i.e.*, on the French markets for mail preparation and document and data management), the market investigation did not indicate any possible competition concerns.

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24 Both La Poste and Swiss Post will contribute their activities to the JV in the UK. Only Swiss Post will contribute its activities in Austria – La Poste is not present on this market in Austria.

25 Only Swiss Post will contribute a certain number of their activities to the JV and there are no overlaps between these activities and La Poste's activities.

26 Only Swiss Post will contribute its activities, La Poste is not active on this market in Italy.

27 Only Swiss Post will contribute its activities, La Poste is not active on this market in the UK.

V. COMMITMENTS

65. As set out in the Commission Notice on remedies,[28] the Commission assesses the compatibility of a notified concentration with the internal market on the basis of its effect on the structure of competition in the European Union. Where a concentration raises serious doubts which could lead to a significant impediment to effective competition, the parties may seek to modify the concentration so as to resolve the serious doubts identified by the Commission with a view to having the merger cleared.

1. Procedure

66. In order to address the serious doubts raised by the transaction on the French market for standard outbound cross-border addressed mail delivery services offered to business customers, the parties submitted a first proposal of commitments on 13 June 2012 (the "Commitments"). On 14 June 2012, the Commission launched a market test in order to gather the opinion of market participants (see below).

67. The main aspects of this Commitment Proposal are summarised below.

2. Description of the Initial Commitments Proposal

68. Following the communication of serious doubts, the Parties initially proposed to divest, or procure the divestiture of Swiss Post International France SAS ("SPI France") (the "Divestment Business").

69. SPI France is the subsidiary of SPI through which Swiss Post group is currently active in France in the field of cross-border outbound business mail. Its divestment will have the effect of transferring to a third party the assets and contracts that are essential to the current activities of SPI France, its postal licence, […] employees and the use of the operational site of SPI France located in Chassieu (Lyon).

70. SPI would also grant SPI France access to its network of multilateral agreements with postal operators for a period of […] years after the divestment […] and, in any event, […].

71. The Divested business would further be granted a licence for a period of […] months to use all trademarks that are currently used by SPI France for the provision of outbound cross-border mail services to business customers in order to ease the transition period.

3. Results of the market test

72. While the market investigation confirmed the overall suitability of the proposed commitments to remedy the competition concerns identified above, some competitors voiced their worries with regard to certain aspects of the proposed package. Most doubts expressed however related again to the already very dominant position of La Poste in France.

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[28] OJ C 267, 22.10.2008, p. 1.

73. In particular, most responding customers saw SPI France as a viable business that could be sold as a going concern and considered the remedy package as rather complete. Competitors were more critical. Several considered access to SPI's network of multilateral agreements with other operators to be of particular importance to the success of SPI France and suggested that access to these agreements be granted for a longer time frame than only […] years. One competitor stressed the fact that the customers divested with SPI France were only valuable for a purchaser if the underlying conditions with other postal operators could be maintained.[29]

74. However, some respondents distinguished between the needs of different possible purchasers.[30] One alternative operator for instance replied that for any non-postal service provider acquiring the Divestment Business it was essential to have access to a network of multilateral agreements with other postal operators.[31] Another independent operator said that the access prolongation to at least […] years was necessary to allow a non-postal operator a sustainable entry.[32]

75. Some competitors also raised the issue that it was not clear from the remedy package, as described by the Parties, whether SPI France would be divested including existing contracts with customers or only with a data base of customers without contractual attachment.

76. A large majority of competitors considered the brand of SPI an asset that was important from the point of view of customers in the market for standard outbound cross-border addressed mail delivery services offered to business customers. One competitor differentiated again: "*This depends on the brand of the entity that acquires the business. If this is a company with a similar strong brand value in the sector, e.g. […], then the name Swiss Post does not add much. However, if the entity that acquires the business is not known at all or not known in the sector, e.g. […] then a name like Swiss Post that is a well-known reliable service provider in this sector does add substantial value*."[33] Another competitor highlighted the possibility to use the "Swiss Post" trademark as positive since "*the service provider in question has a good reputation in terms of reliability, quality of service*"[34]. Several competitors also remarked that […] months was too short a time frame for the purchaser of the Di-

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29 Answer of a competitor to question 2 of the Questionnaire on remedies to Competitors Mail France of 14 June 2012.

30 A competitor considered that the adequacy of the time frame depends on the type of Purchaser – see answer to question 6.1 of the Questionnaire on remedies to Competitors Mail France of 14 June 2012; another gave the same indication in its answer to question 6.1 of the Questionnaire on remedies to Competitors Mail France of 14 June 2012.

31 Answer of a competitor to question 4 of the Questionnaire on remedies to Competitors Mail France of 14 June 2012.

32 Answer of a competitor to question 4 of the Questionnaire on remedies to Competitors Mail France of 14 June 2012.

33 Answer of a competitor to question 2 of the Questionnaire on remedies to Competitors Mail France of 14 June 2012.

34 Answer of a competitor to question 5 of the Questionnaire quoted above.

vestment Business to rebrand. Customers however were of the opinion that the brand, as such, played a minor role in their choice of the supplier compared to other elements such as price, quality of the service and terms of delivery.[35]

4. Revised Commitments Proposal

77. In response to the above results of the market test, the Parties, on 25 June 2012, submitted a revised version which differed from the initial proposal in three points.

78. First, the Parties clarified that they intended to transfer the customer relationships of SPI France as specified in Annex 2 to the Commitments as a part of the Divestment Business.

79. Second, on request of the purchaser, SPI will grant SPI France access to its network of multilateral agreements with postal operators for a period of up to […] years after the divestment […] and, […].

80. Third, on request of the purchaser, the Divestment Business will be granted a licence for a period of up to […] months to use all trademarks that are currently used by SPI France for the provision of outbound cross-border mail services to business customers in order to ease the transition period.

5. Assessment of the proposed Commitments

81. In assessing whether or not the remedies will restore effective competition, the Commission considers inter alia the type, scale and scope of the remedies by reference to the structure and the particular characteristics of the market in which these serious doubts arise. According to the European Union Courts' case law, commitments must be likely to eliminate competition concerns identified and ensure competitive market structures. In particular, contrary to those entered into during the phase II procedure, commitments offered in Phase I are intended not to prevent the creation or strengthening of a dominant position but rather to clearly dispel all serious doubts in that regard. The Commission enjoys a broad discretion in assessing whether these remedies constitute a direct and sufficient response capable of dispelling any such doubts.[36]

82. The Commission has concluded that the Commitments, as submitted by the Parties on 25 June 2012 dispel all serious doubts identified in the course of the procedure.

83. The divestiture of SPI France will lead to the elimination of any overlap between the Parties on the French market for standard outbound cross-border addressed mail delivery services offered to business customers.

84. SPI France is an established competitor which will be sold as a going concern. The commitments, especially the access right to Swiss Post's network of multinational agreements, ascertain that SPI France will remain in a position to operate successfully on a sustainable basis. There will therefore be no discrimination between pur-

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[35] See one customer's reply to question 4 of the Questionnaire on remedies to Customers of 14 June 2012.

[36] Case T-177/04 easyJet v Commission [2006] ECR II-1931, paras. 128 ff.

chasers that are historic postal operators having access to international postal agreements and alternative operators which do not. The right to refer to the Divestment Business as the former business of SPI will further facilitate the establishment of the purchaser as a credible competitor in the French market for outbound cross-border business mail.[37]

85. The commitments also ensure that the notified concentration will not strengthen the very strong position of the incumbent postal operator La Poste in a market that has been liberalised not so long ago and in which no entrants are to be expected in the medium term.

86. For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.

6. Conditions and Obligations

87. 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 internal market.

88. The achievement 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 internal 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 8(6) 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.

89. The commitments in sections B to E of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

VI. CONCLUSION

37 Cf. case COMP/M.1915 - *The Post Office/TPG/SPPL*.

90. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in sections B to E of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments and the documents attached to it. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President

CASE NO. COMP/M.6503 – LA POSTE / SWISS POST / JV

Commitments to the European Commission

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 as amended (the "**Merger Regulation**"), La Poste Global Mail SAS ("**La Poste**") and Swiss Post International Holding AG ("**SPI**"), hereby provide the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the creation of a full-function joint venture between La Poste Global Mail SAS and Swiss Post International Holding AG (the "**JV**") 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, including the JV, 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 […].

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] 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.

La Poste: La Poste Global Mail SAS incorporated under the laws of France, with its registered office at 111 Boulevard Brune, 75014 Paris, France and registered with the Commercial Register of Paris under number 493 373 880.

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: La Poste and SPI together, as well as, once it is created, the JV.

Personnel: all personnel currently employed by the Divestment Business as listed in the Schedule.

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

Retained Business: the Parties and all Affiliated Undertakings that do not form part of the Divestment Business.

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

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period within which the Divestiture Trustee shall have the irrevocable and exclusive mandate from the Parties to sell the Divestiture Business if a binding agreement is not yet concluded at the end of the First Divestiture Period.

SPI: Swiss Post International Holding AG, incorporated under the laws of Switzerland, with its registered office at Mingerstrasse 12, 3030 Berne, Switzerland and registered with the Commercial Register of the Canton of Berne under number CH-035.3.005.209-4.

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 […] 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 […] 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 Swiss Post International France SAS (“**SPI France**”). SPI France is a wholly owned subsidiary of SPI with its registered office at 34, Avenue des Frères Montgolfier, 69680 Chassieu, France. SPI France was founded in 1997 and is mainly active in the French outbound business mail market where it generated revenues of […] in 2010. SPI France’s strategy has been focusing on niche markets and high-value clients i.e. companies with significant volumes of international mail sent out of France. 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) the benefit, for a transitional period as specified under 2(h) in the Schedule, after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which the Parties or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. 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

6. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any Retained Business and vice versa. The Parties shall also ensure that the Personnel does not report to any individual outside the Divestment Business.

7. 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 Retained Business. 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 Retained Business.

8. To ensure that the Divestment Business is held and managed as a separate entity, the Monitoring Trustee shall exercise the Parties’ rights as shareholder in the Divestment Business (except for its rights for dividends that are due before Closing), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Parties’ obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, the Parties shall resign as member of the boards or shall cause such members of the boards to resign.

Ring-fencing

9. 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 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

10. The Parties undertake, subject to customary limitations, not to solicit, and to procure that their Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of three years after Closing.

Due Diligence

11. 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

12. 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).

13. 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

14. 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) 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**").

15. 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

16. 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.

17. 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

18. 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 proposes 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

19. 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

20. 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

21. 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

22. 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

23. 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 Retained Business, 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 does 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 date 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

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell […] 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 […] in the Trustee Divestiture Period.

25. 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

26. 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 the 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.

27. 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.

28. The Parties shall grant or procure its 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.

29. 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.

30. 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

31. 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 which 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.

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duly authorised for and on behalf of:

Swiss Post International Holding AG **La Poste Global Mail SAS**

Schedule

1. The Divestment Business consists of

Legal Structure: Please see Section B above.

Functional Structure: […]

2. Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

(a) the following main tangible assets:

(i) the operational facility located in Chassieu (Lyon);

(ii) the existing inventory of the Divestment Business;

(b) the following main intangible assets:

(i) the following operational software: […], which is a salary administration software, […], […]. This software is currently owned by SPI France;

(ii) all technical files, product specifications, validation documentation and regulatory records in relation to the Divestment Business.

(iii) any and all current proprietary advertising and promotional materials designed for France and used in connection with the Divestment Business, save that any parts thereof that do not relate predominantly to the Divestment Business may be removed from such documents (only copies will be provided to the extent that these assets are reasonably needed for the operation of the Retained Business).

(iv) any and all proprietary market research reports, marketing plans and other marketing-related information and materials that are used in connection with the Divestment Business and designed for France, save that any parts thereof that do not relate predominantly to the Divestment Business may be removed from such documents (only copies will be provided to the extent that these assets are reasonably needed for the operation of the Retained Business).

(v) any and all training programmes, save that any parts thereof that do not relate predominantly to the Divestment Business may be removed from such copies (only copies will be provided to the extent that these assets are reasonably needed for the operation of the Retained Business).

(vi) any copyrights in the Divestment Business' marketing materials and support documents exclusively used in connection with the Divestment Business;

(c) all existing licences, permits and authorisations that are indispensable to run the Divestiture Business. In particular:

(i) Decision n°2006-0873 of the French authority for the regulation of electronic communication and post of 7 September 2006 authorising SPI France to carry out the provision of non-reserved postal services regarding outbound mail from France;

(d) the following main contracts, agreements, leases, commitments and understandings for which the Parties will use reasonable best efforts to obtain the other parties' consents to transfer these contracts, agreements, leases, commitments and understandings:

(i) the existing contracts with SPI France's main suppliers as listed in Annex 1.

(e) the following customer, credit and other records:

(i) the customer list relating to the Divestment Business as in Annex 2, with the objective to transfer the customer relationships refered to in the list as a part of the Divestment Business.

(ii) customer credit and other customer records relating to the Divestment Business, provided, however, that the Parties may continue to use such records to the extent they are needed to operate the Retained Business and provided further, that any parts of such customer records that do not relate to the Divestment Business may be redacted from the lists delivered to the Purchaser. To the extent that the Parties are obliged to retain copies of such documents in support of legal obligations the Parties shall be entitled to do so.

(iii) all books, ledgers and other business records to the extent that they relate exclusively to the Divestment Business and copies thereof to the extent that they relate predominantly to the Divestment Business, save that any parts thereof that do not relate to the Divestment Business may be redacted from such copies.

(f) the following Personnel:

Employee
[…]
[…]

Employee
[...]
[…]
[…]
[…]
[…]
[…]
[…]
[…]
[…]
[…]
[…]
[…]
[…]

(g) the following Key Personnel:

(i) […];

(ii) […];

(iii) […];

(iv) […];

(v) […];

(h) the arrangements for the supply with the following services by SPI or Affiliated Undertakings for a transitional period indicated below after Closing:

(i) access for a period of up to […] years to a network of multilateral agreements between Swiss Post and other postal operators […] and, […]. Swiss Post is party to two multilateral agreements – the first relates to the Terminal Dues agreement between Swiss Post and postal operators that are members of the Universal Postal Union ("**UPU**")[38] and the second relates to the agreement between Swiss Post and postal operators that are signatories to the REIMS agreement[39];

(ii) licence for a period of up to […] to use the […] which is the informatics tool used for the management of the access to […];

(iii) license for […] to use the […] (financial software);

(iv) access for the purposes of fiscal inspection only to the following software: […], […] and […] (all belonging to SPI/Swiss Post).[40] This access may be granted for a period of […]; and

(v) licence for a period of […] months to use all trademarks that are currently used by SPI France for the provision of outbound cross-border mail services to business customers provided that (i) the Purchaser makes reasonably clear that Swiss Post no longer owns this business and (ii) undertakes reasonable steps that aim to a transitioning to another brand as soon as possible over the course of […].

3. The Divestment Business will include SPI France as well as all related assets, personnel and infrastructure. For avoidance of doubt, the Divestment Business shall not include the accesses and licences listed under 2(h)(i) to 2(h)(v) except for the transitional period provided above as well as assets, personnel, infrastructure or otherwise that are unrelated to the Divestment Business.

4. The Parties reserve the right to add one or several other businesses to the Divestment Business, in view of their divestiture to the Purchaser, in particular in order to remedy any competition concerns that the Swiss Competition Commission may have in connection with the notified transaction.

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38 Please see link for complete list of UPU members: http://www.upu.int/en/the-upu/member-countries.html

39 Please see link for complete list of REIMS signatories: http://www.ipc.be/en/About/Membership/Members.aspx

40 […]