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***Case No COMP/M.7052 - LLOYDS DEVELOPMENT  
CAPITAL/ POSTNL/ TNT POST UK***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 30/01/2014

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document number 32014M7052***



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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 30/01/2014  
C(2014) 571 final

PUBLIC VERSION

MERGER PROCEDURE

**To the notifying parties:**

Dear Sir/Madam,

**Subject: Case No COMP/M.7052 – Lloyds Development Capital/ PostNL/ TNT Post UK  
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup>**

- (1) On 16.12.2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Lloyds Development Capital (Holdings) Limited ("LDC") and PostNL NV ("PostNL") acquire joint control over TNT NN1 Limited ("TNT Post UK") by way of purchase of shares (LDC and PostNL are designated hereinafter as the 'notifying parties' or 'the Parties').<sup>1</sup>

**1. THE PARTIES**

- (2) LDC is a private equity fund active in a broad range of sectors in the United Kingdom, the Netherlands and China, although LDC has particular experience in construction and property, financial services, healthcare industrials, IT and software, leisure and media, retail and consumer, and support services. LDC is a wholly-owned subsidiary of Lloyds Banking Group plc ("Lloyds Banking Group").
- (3) PostNL provides mail, parcels and support services, both physical and digital, in its home market of the Netherlands, as well as in the United Kingdom, Germany, Italy, Luxembourg and Belgium. PostNL has a controlling interest in G3 Worldwide Mail

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<sup>1</sup> 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.

(UK) Ltd ("Spring"). Spring is active throughout the world as a provider of cross-border mail services to corporate customers.

- (4) **TNT Post UK** supplies postal services in the United Kingdom, focusing principally on mail delivery services for business customers. As stated above, TNT Post UK is solely controlled by PostNL prior to the contemplated transaction.

## **2. THE OPERATION AND CONCENTRATION**

- (5) Prior to the proposed transaction, TNT Post UK is solely owned and controlled by PostNL. Post-transaction, PostNL will retain approximately [...] % of the issued capital, LDC will own approximately [...] %, while members of TNT Post UK's management will own the remaining [...] % of the shareholding.
- (6) According to a Shareholder's Agreement entered into between the Parties, each of LDC and PostNL will have the ability to veto matters including the business plan, the budget and the appointment, removal or replacement of the chairman, CEO, CFO and other senior members of management of TNT Post UK. The proposed transaction therefore results in the acquisition of joint control by LDC and PostNL over TNT Post UK and constitutes a concentration under Article 3(1)(b) of the Merger Regulation. It is hereafter referred to as the Transaction.

## **3. EU DIMENSION**

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (EUR [...] million for LDC, EUR 4 317 million for PostNL and EUR [...] million for TNT Post UK). All of them have an EU-wide turnover in excess of EUR 250 million (EUR [...] million for LDC, EUR [...] million for PostNL and EUR [...] million for TNT Post UK). Lastly, PostNL does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.<sup>2</sup>

## **4. COMPETITIVE ASSESSMENT**

### **4.1. Market definition**

- (8) TNT Post UK operates in the UK postal services sector. This sector underwent a period of liberalisation since 2003, before which Royal Mail enjoyed a legal monopoly. Private operators in the UK can now compete in two ways, namely (i) the upstream competition relating to the collection and the sorting of customer's mail then being handed over to Royal Mail for the onward delivery to the final addressee, and (ii) the end-to-end competition relating to the collection, the sorting and the delivery of customer's mail.
- (9) TNT Post UK's core business is to offer mail delivery services in the United Kingdom. To a lesser extent, TNT Post UK provides third party logistics (3PL) in

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

the United Kingdom.<sup>3</sup> TNT Post UK mainly collects and sorts addressed mail from business customers which it then either delivers itself in the London area or hands over to Royal Mail for final delivery in the UK or to its sister company Spring for delivery outside the UK. Spring operates a depot in Southall (Middlesex, UK) from/to which it provides both inbound and outbound cross-border mail services. Spring offers its outbound services to postal companies but also to large companies. For its inbound cross-border mail entering the UK, Spring uses the services of Royal Mail or, to a minor extent, TNT Post UK for final delivery to the addressee.

- (10) In its practice, the Commission has segmented the mail delivery services markets according to the distinctions between (i) standard and express mail delivery services (ii) domestic and cross-border mail (iii) business mail and mail for private customers (iv) addressed and unaddressed mail and (v) inbound cross-border mail services and outbound cross-border mail services.<sup>4</sup> In *La Poste/Swiss Post/JV*, the Commission based its assessment on a market for standard outbound cross-border addressed mail services for business customers.<sup>5</sup>
- (11) The Commission has found in the past that the markets for mail delivery services are national in scope.<sup>6</sup>
- (12) The Parties follow this approach. The Transaction would maintain a horizontal overlap on a market for outbound cross-border addressed mail delivery services for business customers in the UK. In addition, according to the Parties, there is a vertical link brought about by the fact that TNT Post UK uses among others Spring's services for final delivery of outbound standard addressed mail for business customers, and Spring, on the other hand, uses TNT Post UK for final delivery of its UK-inbound standard addressed mail services for business customers. On that basis, the Transaction maintains a vertical relationship between the following two markets: the market for standard addressed mail delivery services for business customers in the UK and the UK-market for standard in- and outbound cross-border addressed mail delivery services for business customers.

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<sup>3</sup> For sake of completeness, one company within the Lloyds Banking Group portfolio (namely [...] purchases 3PL services from TNT Post UK. [...] is a purchaser and multi-channel retailer of replay DCs, DVDs and games. The Parties explain that 3PL services are not a critical input for [...] and that they account for very limited share of the purchaser's costs and do not enable any product differentiation. In addition, 3PL stands for a [...] portion of TNT Post UK's activity, representing less than [...]% of its total turnover. In any case, 3PL is not an important input to [...] and hence the actual seller/purchaser relationship between the parties is not to be regarded as a vertical relationship and needs no further assessment in the present case (see footnote 6 of Annex II or the Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings).

<sup>4</sup> See decisions of the European Commission n°COMP/M.6503 – *La Poste/Swiss Post/JV*, recital 18 to 26, M.5152 – *Posten AB/Post Danmark AS*, recital 14 and subsequent, COMP/M.3971 – *Deutsche Post/Exel*, recital 23 and 24.

<sup>5</sup> See decision of the European Commission n°COMP/M.6503 – *La Poste/Swiss Post/JV*, recital 26.

<sup>6</sup> See decisions of the European Commission n°COMP/M.6503 – *La Poste/Swiss Post/JV*, recital 27 and 28, M.5152 – *Posten AB/Post Danmark AS*, recital 20 to 24, COMP/M.3971 – *Deutsche Post/Exel*, recital 33

- (13) For the purpose of this notification, it is however not necessary to reach a precise market definition since the Transaction raises no competition concern under any plausible market definition.

#### **4.2. Competitive assessment**

- (14) The Transaction maintains one insignificant horizontal overlap in the market for outbound cross-border addressed mail delivery services for business customers in the UK and two vertically affected markets out of the activities of PostNL's cross border services via its subsidiaries Spring and TNT Post UK.<sup>7</sup>

##### *HORIZONTAL OVERLAPS*

- (15) Both TNT Post UK and Spring provide outbound cross-border addressed mail delivery services for business customers in the UK. TNT Post UK's market share is, according to the Parties, [0-5]%, while Spring accounts for less than [0-5]%. Market leaders are Royal Mail ([30-40]%) and DHL ([20-30]%). In light of the very minor combined market share and the existence of strong competitors, the proposed transaction does not raise competition concerns.

##### *VERTICALLY AFFECTED MARKETS*

###### *Outbound cross-border mail services*

- (16) According to the Parties, TNT Post UK has a market share of [20-30]% on the market for standard addressed mail delivery services in the UK and [20-30]% on the business segment thereof. Spring's estimated market share on a market for outbound cross-border delivery of addressed mail from UK to other countries reaches [0-5]%. These markets are vertically related.
- (17) However, these low to moderate market shares of Spring and TNT Post UK do not allow for foreclosure strategies, in particular in light of the strong competition provided by Royal Mail as the market leader in the UK for standard addressed mail delivery services to business customers, and several strong competitors for outbound mail, such as Royal Mail, DHL and Air Business which all account for higher market shares than Spring.
- (18) In any event, this vertical relationship predates the Transaction and thereby the acquisition of joint control by LDC alongside the current parent of TNT Post UK, PostNL does not change the market structure on any of these mail delivery markets.

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<sup>7</sup> For sake of completeness, several companies within the Lloyds Banking Group portfolio purchase mail services in the United Kingdom. As the Parties explain, this input cannot be considered as critical to any of them, insofar as it does not relate to their core activities, pertains to limited costs and does not enable any product differentiation. In addition, an increasing portion of mail can be substituted by internet services. Therefore, this potential seller/purchaser relationship is not regarded as a vertical relationship in nature for the purpose of this case.

*Inbound cross-border mail services*

- (19) Based on the Parties' best estimates, TNT Post UK's market share on the segment of inbound cross-border addressed mail is around [5-10]%.<sup>8</sup> Spring accounts for [30-40]% of the total volume of outbound addressed mail services coming into the UK. While market shares per country of origin may vary, this volume is a good measure of Spring's market position in the supply chain of cross-border mail and corresponds to the sorted cross-border addressed mail into the UK which Spring then hands over to other postal companies, such as Royal Mail or TNT Post UK. According to the Parties, [...] % of this volume is collected by Spring under an agency agreement (the "Agency Agreement") with Royal Mail. [...] Moreover, the Parties claim that there are several strong competitors as many major cross-border services providers such as DHL, Asendia and bpost are all active in this area.
- (20) [Commission's assessment of the Agency Agreement].<sup>9</sup>
- (21) [Commission's assessment of the Agency Agreement].
- (22) [Commission's assessment of the Agency Agreement].
- (23) In any case, the question of whether Spring is to be considered an agent of Royal Mail or not can be left open, as even with a [30-40]% share of the market, the Transaction would not cause serious doubts as to its compatibility with the internal market.
- (24) First, the low market share on the downstream market segment of inbound cross-border mail where TNT Post UK is active does not enable TNT Post UK to engage in a customer foreclosure strategy. Second, it is also unlikely that the Parties could successfully engage in an input foreclosure strategy in light of Spring's moderate market shares on the upstream market and the existence of strong competitors such as DHL or others. Moreover, [...] % of Spring's volume is handed over to Royal Mail and it is unlikely that that would significantly change post transaction. [...]. While there is no technological or legal barrier to Spring redirecting all or part of this volume currently going directly to Royal Mail to another provider, doing so would [...]. Moreover, in almost every area of the UK (except those few in which TNT Post UK's pilot end-to-end programme is currently in operation) Royal Mail is the only provider capable of final mile delivery. TNT Post UK will not be able to match Royal Mail's footprint [...] in the foreseeable future. Therefore, even if Spring were to redirect all of its mail to TNT Post UK, Royal Mail would still benefit from delivering almost all of those volumes, albeit under the terms of the upstream access agreement between TNT Post UK and Royal Mail rather than via the Agency Agreement. In light of the above, the Commission considers that the Parties have little ability and no incentive to enter in an input foreclosure strategy.

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<sup>8</sup> As the Parties explain, TNT Post UK is, with the exception of its very limited delivery network, only active in the intermediate phases between receiving cross-border mail which has been brought into the UK, and its final delivery. Spring brings cross-border mail into the UK, but does not deliver it. It is Royal Mail that brings cross-border mail into the UK or receives it from other national postal operators or customers, and delivers it.

<sup>9</sup> [...].

- (25) In any event, this vertical relationship between TNT Post UK and Spring predates the Transaction and therefore the acquisition of joint control by LDC over TNT Post UK does not change the market structure on any of these mail delivery markets.
- (26) The Commission therefore considers that none of these vertical relationships is likely to raise competition concerns.

**5. CONCLUSION**

- (27) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission  
(signed)  
Joaquín ALMUNIA  
Vice-President*