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***Case No IV/M.787 -
PTT POST / TNT - GD
NET***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 22/07/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.07.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.787 - PTT POST / TNT - GD NET
Notification of 19 June 1996 pursuant to Article 4 of Council Regulation
No 4064/89

- 1 On 19 June 1996 PTT Post NV (Netherlands) (PTT Post) and TNT Ltd (Australia) notified to the Commission their intended acquisition of joint control of GD Express Worldwide NV (GD Express) (Netherlands).
- 2 After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I THE PARTIES

- 3 PTT Post, which is owned by Koninklijke PTT Nederland, is the postal administration for the Netherlands. It is engaged mainly in the provision of postal services, [...] ⁽¹⁾. Since the Commission made its decision IV/M.102 -TNT/GD Net the Dutch state has reduced its shareholding in Koninklijke PTT to less than 45 per cent. TNT is an independent publicly quoted company. [...] ⁽¹⁾. The business of TNT includes also airlines, tourism and aircraft leasing.

⁽¹⁾ deleted for publication

II THE OPERATION

4 Introduction

The operation reverses in part the concentration approved by the Commission in IV/M.102 -TNT/GD Net (2 December 1991). The earlier operation involved the creation by, on the one hand, five national postal administrations (Canada Post Corporation, Deutsche Bundespost Postdienst (now Deutsche Post AG), La Poste (France), PTT Post and Sweden Post) and, on the other hand, TNT Ltd. (Australia) of GD Express, a concentrative joint venture to supply international express delivery and similar services. The postal administrations coordinate their participation in GD Express through a vehicle, GD Net BV (Netherlands), the structure of which requires them to act as a single unit. GD Net and TNT have equal powers in GD Express. GD Express is therefore at present jointly controlled by the five postal administrations and TNT.

- 5 Canada Post, Deutsche Post and La Poste will now sell their shares in GD Net to PTT Post Beheer BV, a subsidiary of PTT Post, and Nordic Postgroup BV, a subsidiary of Sweden Post. PTT Post will then control 54 per cent and Sweden Post 46 per cent of the shares in GD Net.

Autonomous economic entity

- 6 The resources of and the functions performed by GD Express will not change as a result of the operation. It will therefore continue to perform on a lasting basis all the functions of an autonomous economic entity, as the Commission concluded in IV/M.102 -TNT/GD Net.

Joint control

- 7 Under a new shareholders agreement for GD Net decisions will be taken by a normal majority. Although PTT Post and Sweden Post [...] ⁽²⁾ to reach a consensus on specified major decisions - eg the appointment of managing directors of GD Net - in the event of deadlock the wishes of PTT Post will prevail, Sweden Post having the right to sell its shares to PTT Post.
- 8 In other respects the agreements governing GD Express will be unchanged. Since therefore PTT Post will control GD Net, PTT Post and TNT will jointly control GD Express.

Absence of coordination

- 9 The conclusion reached by the Commission in IV/M.102 -TNT/GD Net that the possibility of coordination between the parents was likely to be negligible is unaffected by the present operation.

⁽²⁾ Deleted for publication
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Conclusion

- 10 The operation thus involves the transition from one form of joint control of GD Express (ie by on the one hand the five postal administrations and on the other hand TNT) to another form of joint control (ie by PTT Post and TNT). It accordingly leads to a significant change in the quality of control of GD Express and therefore constitutes a concentration within the meaning of article 3(1)b of the Regulation.

III CONCENTRATION OF COMMUNITY DIMENSION

- 11 Koninklijke PTT (MECU 9,550), TNT (MECU 3,770) and GD Express (MECU 1,180) have a combined aggregate worldwide turnover in excess of MECU 5000. Each of them (Koninklijke PTT - MECU 9,431, TNT - MECU 1,130 and GD Express - MECU 836) has a Community-wide turnover in excess of MECU 250. Koninklijke PTT alone achieves more than two-thirds of its aggregate Community-wide turnover within one member State (MECU 9,361 in the Netherlands).
- 12 The operation therefore has a Community dimension within the meaning of Article 3(1)(b) of the Regulation. It does not qualify as a cooperation case with the EFTA Surveillance Authority.

IV COMPATIBILITY WITH THE COMMON MARKET

a) Relevant product markets and geographical reference markets

- 13 In IV/M.102 -TNT/GD Net the Commission identified the following product markets - (1) international express delivery, (2) international express freight and (3) remail (international mail); for each it considered the market to be national. These definitions remain valid, and GD Express will continue to operate on each of these markets.

b) Competitive assessment

- 14 The present operation makes no change to the existing market structure. Since it is an operation by which three parties leave the joint venture, it cannot in any way increase the share of GD Express on any market. The possible effects of the operation can be only pro-competitive. In particular Deutsche Post and La Poste will re-enter markets in which GD Express is active, notably the international express delivery markets in Germany and France.

V RELATIONS BETWEEN PTT POST AND GD EXPRESS

- 15 At points 51, 52, 55 (footnote 1) of and the Annex to IV/M.102 -TNT/GD Net the Commission recorded statements by the four European postal administrations to the effect that any express delivery related services and mail and parcel services in the remail chain supplied by the postal administrations to GD Express would also be supplied by them to competitors of GD Express on equivalent terms, and that, in subcontracting to clear any international express delivery consignments through customs, the postal administrations would not claim or use the so-called postal privilege entailing relaxed customs procedures and formalities. PTT Post has confirmed that these statements will continue to apply to it following the operation.

VI CONCLUSION

- 16 For the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

- 17 For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,