

BREDIN PRAT
Avocats à la Cour Associés

M.6570 - UPS/TNT

Global Competition Law Center, 64th Lunch Talk

4th April 2013

Presentation By Pierre Honoré

Bredin Prat

OVERVIEW

- A. Market definition**
- B. Competitive assessment**
- C. Remedies**

A. MARKET DEFINITION

☐ **Small package delivery**

- **Integrators**(DHL, UPS, TNT and Fedex)
 - Air network
 - Sophisticated IT systems
 - Quality of service (track & trace, etc.)
- **Road based operators** (Geopost, Royal Mail)
 - Dense ground network
- **Others** : small transport and freight companies

☐ **Market definition:**

- Criteria
 - Domestic / Intra-EEA / Extra-EEA deliveries
 - Express (next day) / deferred deliveries
- National markets for Intra-EEA express deliveries
- Further segmentation ?
 - Time segments (before 10,00 am, before 12,00 am, etc.)
 - Segmentation between short-distance and long distance (approx. 800 km)
 - Not decisive if duly taken into account in the competitive assessment

B. COMPETITIVE ASSESSMENT

Limited competitive pressure exerted by road-based operators on the intra-EEA express market

- Reliance on third parties for air transport : competitive disadvantage
 - Airlines
 - Schedules not suited for next day delivery (no night flights)
 - Limited capacity
 - Integrators
 - Capacity constraints
 - Peak periods (November-December, Monday/Tuesday)
 - Refusal to deal, differential treatment

Fedex

- Not on par with UPS, TNT and DHL

Conclusion : « 4 to 3 merger » or « 3 to 2 »

B. COMPETITIVE ASSESSMENT

□ Economic evidence

- **Notifying parties : price concentration analysis**
 - « *This analysis predicted that prices would increase in 29 EEA countries »*
- **Commission : price concentration analysis**
 - « *The Commission performed its own price concentration analysis, which confirmed this outcome but forecasted higher prices increases than UPS' model »*
- **US market precedent**
 - US market : UPS, Fedex, DHL
 - DHL withdrew from the US market in 2007-2008
 - Significant price increase

C. REMEDIES

☐ **Commission Notice on remedies**

- Divestiture of a viable and competitive business to a suitable purchaser
 - Viable business : all assets
- Suitable purchaser
 - Independent from the parties
 - Financial resources, expertise, incentives and ability to compete
 - Must not raise distinct competition problems

C. REMEDIES

- ❑ **Divestment of TNT express business units**
 - 15 countries (Eastern and Central Europe)
 - Plus : Spain and Portugal
 - All assets, all activities : Domestic/International, deferred/express ;

- ❑ **Access to UPS air transport network for 5 years**
 - Non-discriminatory access
 - Control over routing, schedules, back up solutions, guarantees

C. REMEDIES

☐ Commission's concerns

- **Lack of strategy to maintain and expand intra-EEA operations**
 - GeoPost already has a significant air express activity from France and Spain
- **Lack of adequate air transport solution**
 - No need to own aircraft fleet
 - Expertise in buying space from integrators
 - Third party solutions for a long duration after the 5 years period
- **Lack of incentive to invest in air + ground network (volumes)**
 - Possibility to generate volumes in intra-EEA express services from deferred/ domestic services in the divestment countries

THANK YOU FOR YOUR ATTENTION



130, rue du Faubourg Saint-Honoré
75008 Paris
T : +33 (0)1 44 35 35 35
F : +33 (0)1 42 89 10 73

40, Square de Meeûs
1000 Brussels
T : +32 (0)2 639 27 10
F : +32 (0)2 646 03 11

www.bredinprat.com

Association d'Avocats à Responsabilité Professionnelle Individuelle