

M. 6570 UPS / TNT





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- The views expressed are those of the author and cannot be regarded as stating an official position of the European Commission
- These slides are part of a presentation and cannot be fully understood separately from that presentation. Ideas presented here are intended to promote further discussion and analysis. They may not represent a complete or well articulated picture of the author 's view.

Three issues of wider interest

- Gap case
- The role of economic analysis
 - Price concentration analysis
 - Efficiencies
- Remedies: When an upfront buyer is not on offer and fix-it-first fails

The small package industry

- Small package: < 31.5kg, can be handled by a single person without specific equipment
- A growing industry
- A network industry
- An industry with extensive ramifications all across the economy, SMEs and big business alike

The relevant markets

➤ Product Market

- Domestic vs intra-EEA vs extra-EEA
- Express vs deferred

➤ Geographic Market

- National in scope
- national intra-EEA express small package delivery market



Dual structure of the competitive assessment

- Network industry: Features common to the intra-EEA express small package delivery service market across the EEA presented in a general section
- Specific assessment of the situation in the 15 MS where concerns were identified

General: The four integrators

1.



2.



3.



4.



General: The non-integrators



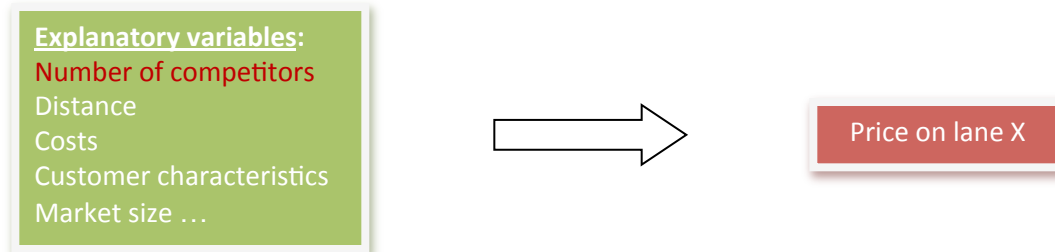


Anti-competitive effects Intra-EEA express

- Highly differentiated product market
- Integrators represent high end of the market in terms of product offering and service quality
- Elimination of a close competitor
- FedEx distant fourth
- 4:3, in many countries 3:2 merger

Anti-competitive effects

Price concentration analysis



The Commission & The Parties' Consultant

- Commission and consultants used the same data
- agreed on the effect: price increases in all 29 EEA countries
- disagreed on the magnitude of the effect

Countervailing factors

- No sufficient buyer power
- High barriers to entry
 - Need for a sophisticated IT system
 - Need to be present across the EEA
 - Need to have operational control over air lift capacity
- Efficiencies?



Efficiencies

- Communicated to the investment community:
EUR 400-550 million
- Three types:
 - Administrative
 - Operational (economies of density and scale)
 - Air lift (economies of scale)
- Operational and Air accepted in principle
- Problems with verifiability for operational



Net effects

In many Member States (including DE, FR, UK, ES):

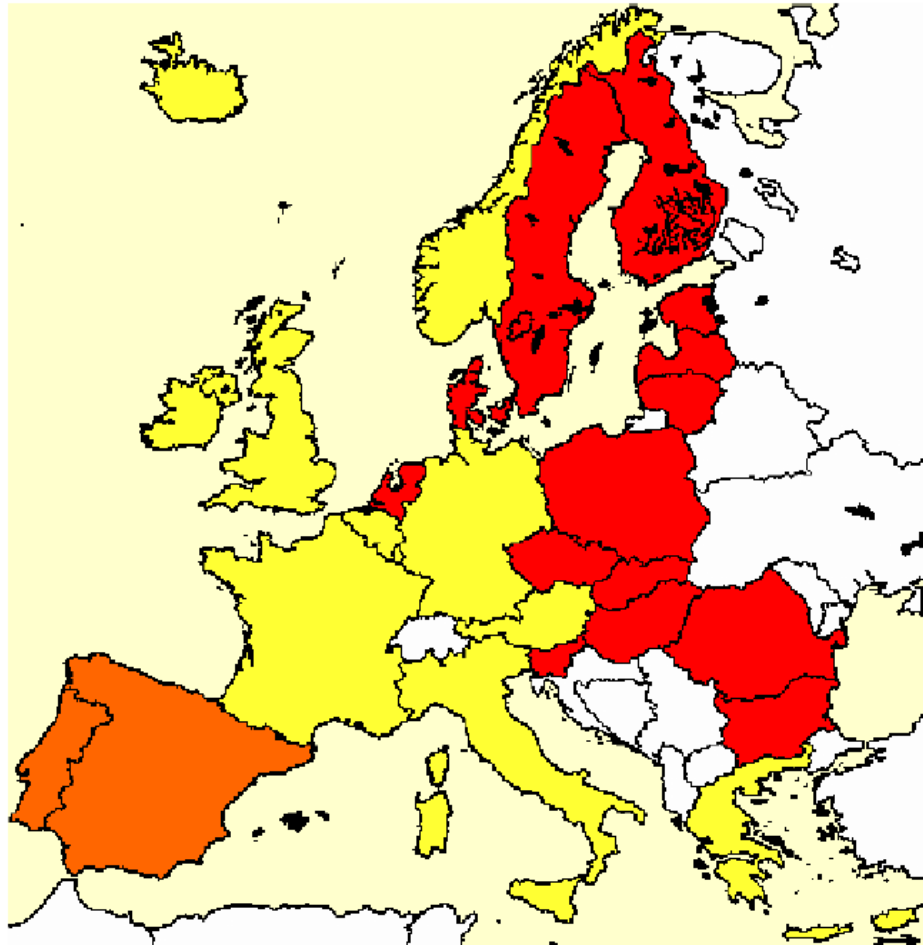
Efficiencies > Price increase

However, assessment based on a mix of qualitative and quantitative criteria (e.g. market shares, FedEx presence and expansion plans, bidding data, efficiencies...)

Conclusion:

SIEC in 15 MS (Eastern Europe, Baltics, Scandinavia, NL)

Remedies offered by UPS



Divestment of TNT's subsidiaries
in the 15 "SIEC countries"



+ in Spain and Portugal (unless
the buyer is FedEx or DHL)



+ 5-year access to UPS' intra
EEA air network from / to
"Remedy Countries" (unless the
buyer is FedEx or DHL)

Remedies - Main issues

➤ Air transport: temporary access remedy instead of a structural remedy

—→ **What would happen in five years?**

➤ Need to have suitable ground networks (or partnerships) in "non-Remedy countries" for "gateway-to-door" transport

—→ **Only few non-integrators would be suitable**

Need for an "upfront buyer" or "fix-it-first remedy"

- Standard divestment remedy: suitable if "*a number of purchasers can be envisaged for a viable business*" and "*no specific issues complicate or stand in the way of the divestiture*" (§52 Remedies Notice)
- **Fix-it-first:** legally-binding agreement signed with a purchaser before the Commission clears the case
- **Upfront buyer:** legally-binding agreement signed before the merger is implemented