Summary of Commission Decision

of 8 January 2016

declaring a concentration compatible with the internal market and the functioning of the EEA Agreement

(Case M.7630 — FedEx/TNT Express)

(notified under document C(2015) 9826)

(Only the English text is authentic)

(Text with EEA relevance)

(2016/C 450/09)

On 8 January 2016 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1]*, and in particular Article 8(1) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html*

I. THE PARTIES

(1) FedEx Corporation ('FedEx', United States of America) provides customers and businesses worldwide with a broad portfolio of transportation, e-commerce and business services. FedEx EEA-network has its central air hub in Paris. TNT Express NV ('TNT', the Netherlands) is active in the small package delivery and freight transport sectors. TNT's European network has its central air hub in Liège, Belgium.

II. THE OPERATION AND EU DIMENSION

(2) On 7 April 2015, FedEx and TNT (the 'Parties' or the 'Merged Entity') announced their conditional agreement on a public offer by FedEx for all the issued and outstanding shares in the capital of TNT with the aim of FedEx acquiring control of TNT (the 'Transaction').

(3) The Transaction involves the acquisition of sole control of TNT by FedEx and constitutes a concentration within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004 ('the Merger Regulation'). It has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

III. PROCEDURE

(4) On 26 June 2015, the Transaction was formally notified to the Commission pursuant to Article 4 of the Merger Regulation.

(5) On 31 July 2015, the Commission found that the Transaction raised serious doubts as to its compatibility with the internal market and adopted a decision initiating proceedings pursuant to Article 6(1)(c) of the Merger Regulation ('the decision opening proceedings').

(6) The Parties submitted their written comments to the decision opening proceedings on 12 August 2015 and on the same day, at the Parties' request, the time limit for taking a final decision in this case was extended by 20 working days pursuant to the second subparagraph of Article 10(3) of the Merger Regulation.

(7) UPS was recognised as an interested third person pursuant to Article 18(4) of the Merger Regulation by a decision of the Hearing Officer dated 21 October 2015.

(8) The in-depth investigation allowed dispelling the competition concerns preliminarily identified in the decision opening proceedings. No statement of objections was adopted.

(9) The draft Decision was discussed with Member States during the Advisory Committee on Concentrations on 11 December 2015, which provided a favourable opinion. The Hearing Officer provided his favourable opinion on the proceedings in his report which was submitted on 18 December 2015.

(10) On 8 January 2016, the Commission adopted pursuant to Article 8(1) of the Merger Regulation a decision declaring the Merger compatible with the internal market and the EEA agreement (the 'Decision').

[1] OJ L 24, 29.1.2004, p. 1.

IV. COMPETITIVE ASSESSMENT

A. Introduction

(11) The Decision focuses on the market for small package delivery services. Any potential overlaps between the Parties' activities in the areas of cargo transport and freight forwarding do not give rise to affected markets.

(12) Both FedEx and TNT are providers of small package delivery services both inside the EEA and from the EEA to non-EEA destinations. They are both so-called integrators, meaning that they have full operational control over all transportation assets, a sufficient geographic coverage on a global level, a hub and spoke operating model, a proprietary IT network, and the reputation of reliably delivering small packages on time (so-called end-to-end credibility). The other two integrators are DHL and UPS.

B. The relevant markets

The relevant product markets

(13) In line with the Commission's previous decisional practice [1], the relevant market for small package delivery services includes consignments under 31,5 kg. The Commission makes a distinction as to whether the packages picked up in an EEA country are delivered within the same country (domestic markets), to a different EEA country (international intra-EEA markets) or to a country outside the EEA (extra-EEA services markets).

(14) In previous cases, notably when assessing international intra-EEA markets, the Commission also identified a market for express delivery services (with a next day delivery commitment) as separate from the market of deferred/standard delivery services (with a longer time frame commitment) [2]. These findings were based on, among others, the fact that the two types of services are provided by making use of different infrastructure, that a significant number of customers depends on express deliveries and that express delivery services are also considerably more expensive.

(15) In the case at hand, given the substantial overlaps between the Parties in the provision of extra-EEA services, the Commission undertook an extensive inquiry into these markets not assessed in detail previously.

(16) For the integrators, both extra-EEA express (that is, the fastest possible guaranteed delivery service) and deferred (slower but still highly reliable, day-definite) small package shipments essentially use the same network and supply chain steps (including sorting in air-hubs, long haul flights and customs clearance) on their journey to the various intercontinental destinations. Moreover, all integrators are directly competing for both types of services and there were indications that prices for express and deferred extra-EEA services move together, thereby not contradicting that express and deferred would belong to the same market. On this basis, the Commission considered express and deferred services as segments of the same extra-EEA market.

(17) From a destination perspective, while leaving the product market definition open, the Commission assessed the impact of the Transaction both on a worldwide as well as on a major trade lane basis (North America, Central and South America, Africa, Asia/Pacific, Middle East and the Rest of Europe).

The relevant geographic markets

(18) As regards the geographic market definition, that is to say, the origin of the delivery, in line with the decision in the UPS/TNT case, the Commission concluded that the international intra-EEA express market is national in scope. The assessment of the impact of the Transaction was carried out on a national level for the extra-EEA small package delivery services markets as well. However, in view of the network features of the industry and the crucial role of air networks for intercontinental deliveries, the competitive assessment on extra-EEA small package deliveries also included the EEA-level.

1. *Intra-EEA small package delivery services*

(19) The international intra-EEA express delivery of small packages within the EEA is a network industry, which requires a presence in all EEA countries. The required presence in turn entails investments in infrastructure all along the value chain (from pick-up, sorting, line-hauls, hubs, air network, planes and delivery). The integrators have the tightest control over their network and are the only ones with a seamless express network covering all EEA-countries. In assessing the competitive strengths of the various categories of the Parties' competitors in the international intra-EEA express markets, the Commission found, in line with the results of the market investigation, that non-integrated small package delivery providers generally exert a weak competitive constraint on the Parties.

[1] See, for instance, Commission Decision of 30 January 2013 in Case M.6570 — UPS/TNT Express, hereinafter ('UPS/TNT'), recital 164.
[2] See, inter alia, UPS/TNT, recital 219.

The Commission has therefore adopted a conservative approach and limited its competitive assessment of the effects of the Transaction on international intra-EEA express delivery services in the different EEA-countries on the competitive constraints that the four integrators exert on each other.

a) The Merged Entity's market position on international intra-EEA express delivery services markets would be moderate

(20) Given the inherent limitations of the market share data submitted by FedEx for the purpose of the competitive assessment in this case and in line with the Commission's approach in the UPS/TNT case, the Commission undertook a market reconstruction exercise. At EEA-level, the Merged Entity would have a market share below 30 %. It will still be the weakest of the three remaining integrators and thus the number three player after DHL and UPS. At country level, the Merged Entity would not have a market share exceeding 40 % based on 2014 revenue figures and would not become the number one player in any of the 30 national markets in the EEA investigated ([1]).

b) FedEx and TNT are not particularly close competitors regarding international intra-EEA express delivery services

(21) Even though both FedEx and TNT are integrators and therefore compete with each other in the field of international intra-EEA express delivery services in the 30 national markets in the EEA, the Commission concluded that the Parties are not particularly close competitors.

(22) On the one hand, FedEx's business focus is on customers with significant extra-EEA delivery needs. The majority of FedEx's international intra-EEA express revenues are derived from customers that have also purchased extra-EEA delivery services from it. FedEx's focus on international intra-EEA express customers with meaningful extra-EEA delivery requirements is driven by its limited ability to compete successfully for customers of stand-alone intra-European express services or customers that wish to source both international intra-EEA express and domestic/international intra-EEA deferred delivery services from the same provider. These limitations are due to FedEx's weaker EEA-wide network. This weaker network translates into FedEx's lower geographic coverage for the different express services, relative weakness in providing deferred and domestic services on a larger scale, and into a higher cost base resulting from lower economies of scale and density, which make FedEx significantly less competitive for international intra-EEA express deliveries. This in turn translates into a weak market position vis-à-vis TNT and the other two integrators and is consistent with FedEx's focus on extra-EEA deliveries.

(23) On the other hand, TNT's focus is on customers with standalone international intra-EEA and domestic/deferred delivery needs. Contrary to FedEx, TNT has a substantial European road-based and more efficient air network presence in the EEA and a higher proportion of sales in the domestic and deferred segments. A limited proportion of its revenues are derived from customers with extra-EEA delivery needs. TNT's sales data show that a large part of TNT's intra-EEA express revenues in Europe are generated with customers that also purchase domestic and/or international intra-EEA deferred delivery services from TNT. In contrast, TNT has been less successful at attracting international intra-EEA express customers that also require international extra-EEA delivery services.

(24) Also the Parties' internal documents confirmed that they do not perceive each other as particularly close competitors. Moreover, a clear majority of the Parties' customers does not see the Parties as particularly close competitors either (e.g. in terms of pricing, range and quality of services, reliability, geographical reach, track and trace etc.). Moreover, customers view FedEx as weaker than the other three integrators in the markets for international intra-EEA express delivery services.

(25) Last, notwithstanding a number of limitations identified, the bidding analysis submitted by the Parties provided further confirmation that FedEx is a weaker competitor for TNT than DHL and UPS.

c) The merger would not remove an important competitive force

(26) The Commission considered that TNT does not have specific qualities that enable it to exert significant competitive pressure on the other integrators which would result in a lessening of competition post-Transaction. First, TNT's international intra-EEA express cost position is not more advantageous than the cost position of DHL and UPS. Second, TNT has not been able to expand its market position to the detriment of the other integrators in recent years. Third, the Commission could empirically verify that TNT cannot be considered an aggressive price setter in the international intra-EEA express market. Fourth, TNT's focus in recent years was not on investing significantly in its network but rather on consolidating its services. Consequently, it cannot be said to have been an innovator in terms of network expansion in recent years.

([1]) There are 31 EEA countries. The Parties could, however, not provide data for Liechtenstein.

d) DHL and UPS would be in a position to constrain the Merged Entity post-Transaction

(27) Despite the fact that non-integrators, in particular road-based operators with a large network such as DPD and GLS, would exert a certain competitive constraint on the Merged Entity depending on the national market, the Commission took a conservative approach and limited its analysis of whether the Merged Entity's competitors will have a constraining effect on prices to DHL and UPS.

(28) First, the Merged Entity will face two strong and capable competitors. Based on the results of the Commission's market reconstruction, DHL will remain the market leader, followed by UPS. When asked whether post-Transaction there would be sufficient viable alternatives for their international intra-EEA express delivery needs, the vast majority of customers responded that this was the case. Both UPS and DHL were indicated as viable alternatives to the Merged Entity post-Transaction.

(29) Second, customers can protect themselves against a hypothetical post-merger price increase by the Merged Entity by switching to another provider. The clear majority of customers of international intra-EEA express delivery services are multi-sourcing, and switching between providers is easy.

(30) Third, DHL and UPS could easily increase their service supply in case of a hypothetical post-Transaction price increase by the Merged Entity and thereby cater for additional demand without incurring material additional cost.

e) A clear majority of customers has not expressed any concerns about the Transaction

(31) The vast majority of the customers who have responded to the Commission's first and second phase market investigation expressed a neutral or even a positive view about the overall effects of the Transaction on the market for international intra-EEA express small package delivery services.

f) The price concentration analysis was inconclusive

(32) In order to ensure full consistency with the quantitative analysis carried out in the UPS/TNT case, the Commission applied a price concentration analysis to evaluate the possible price impact of the proposed Transaction on FedEx's prices and, in turn, on TNT's prices. The Commission found that the price increases estimated by the model were not statistically significant. Therefore, the results of the price concentration analysis could not be used in a reliable way as evidence towards or against establishing a significant impediment of effective competition.

g) The merger will give rise to efficiencies

(33) FedEx argues that significant efficiencies would arise from the Transaction, in particular from the integration of FedEx's relatively inefficient European operations into TNT's network. The main categories of efficiencies affecting the express intra-EEA services were pick-up and delivery (PUD) cost savings and air network cost savings. Based on the information provided to it, the Commission concluded that a part of the claimed PUD cost savings and a part of the claimed air network cost savings (after pass-through) qualify as relevant merger specific efficiencies which could not be achieved to a similar extent by less anti-competitive alternatives. The time window for the realisation of the identified efficiencies was estimated to be 3 years. Even if the results of the Commission's price concentration analysis had been statistically significant, the PUD efficiencies associated with the Transaction would have more than offset the price increases estimated for FedEx customers in any of the national markets for international intra-EEA express delivery services.

h) Conclusion

(34) Therefore, the Commission concluded that the Transaction would not significantly impede effective competition in any of the 30 national markets for the provision of international intra-EEA express delivery services.

2. *Extra-EEA small package delivery services: General assessment*

(35) A number of operators provide extra-EEA services, among which the four integrators, national postal operators, freight forwarders and other courier companies. Similarly to intra-EEA express, extra-EEA express is also a network industry entailing infrastructure investments all along the value chain and requiring operators to ensure a presence in all EEA countries and all major world lanes, namely North America, Central and South America, Africa, Asia/Pacific, the Middle East and the Rest of Europe. As the integrators have the tightest control over their network and are the only ones with a seamless express network covering all EEA countries, the non-integrated players only exert a limited competitive constraint on integrators. The Commission has therefore, similarly to intra-EEA express,

assessed the impact of the Transaction on the most conservative basis, taking into account only the competitive constraint exerted on the Merged Entity by the other integrators on the various possible markets for extra-EEA deliveries. In light of the considerations set out below, the Commission concluded that the Transaction would not lead to a significant impediment to effective competition on any of the 30 national markets for extra-EEA small package deliveries to the world or any of the national markets for extra-EEA deliveries to the six major world lanes.

a) The market position of the Merged Entity would be moderate on markets for extra-EEA delivery services

(36) The Commission undertook a market reconstruction exercise based on revenue data provided by the four integrators, in view of assessing their relative market power on (i) the 30 national markets for international extra-EEA deliveries from an EEA country to the world; and (ii) the national markets for international extra-EEA deliveries from each of the 30 EEA countries to each of the six main world trade lanes. The Commission also analysed the impact of the Transaction on all EEA national markets in an aggregated way, that is to say, for extra-EEA deliveries to the world and to the six major destination lanes from the EEA.

(37) Looking at all 30 national markets for extra-EEA deliveries to the world and to the six major destination lanes, the Parties' combined market share is rather moderate on most plausible markets for extra-EEA delivery services. Looking at national markets for extra-EEA deliveries to the world, the Commission found that post-Transaction the relative position of the Merged Entity on most 30 national markets for extra-EEA deliveries to the world would be rather moderate. The Parties' combined market share would exceed 40 % and the increment of the Transaction would be over 5 % only on three national markets, that is Hungary, Estonia and Latvia. Last, on national markets for extra-EEA deliveries to the major world lanes, the Parties would have a combined market share of more than 40 % and the increment would be over 5 % on ten national markets.

b) Among integrators, the Parties are not particularly close competitors on markets for extra-EEA delivery services

(38) The Parties are not particularly close competitors for several reasons. First, the relative position of TNT is weaker among integrators on the total market for extra-EEA deliveries and on most possible sub-segmentations thereof. This results from the fact that TNT is mainly focused on Europe, unlike the other three integrators that are global players. A large part of TNT's revenues is generated through the provision of delivery services within Europe or from/to Europe while for the other three integrators, the Europe-related part of their activity represents a much smaller part of their overall business. This is especially the case for FedEx. A much smaller percentage of its total revenues is generated from services not from/to Europe, whereas this percentage is estimated higher for the other integrators. Also, within TNT's Europe-generated revenues, only a small percentage relates to the provision of extra-EEA services.

(39) Second, TNT owns a very limited air network in comparison to the other integrators. Unlike the other three integrators that use an extensive owned air network for their extra-EEA deliveries, TNT only uses four aircraft and purchases capacity from commercial or cargo airlines for all its other shipments. FedEx, on the other hand, uses a network of 17 owned aircraft for its extra-EEA delivery services. Using an owned air network offers significant advantages for an integrator, including, for instance, greater certainty as to the available capacity and cost structure as well as better service performance as it allows seamless connectivity, less movements of the small package and fewer handling points. The limited scope of TNT's extra-EEA air network is both a reflection of its relative weakness on markets for extra-EEA deliveries in comparison to the other three integrators and a restriction on its ability to compete on equal terms with them.

(40) Third, analysing the Parties' bidding data and in particular those of FedEx on extra-EEA deliveries, the Commission identified that TNT appeared as a weaker competitor of FedEx for extra-EEA opportunities than DHL and UPS. DHL appeared as FedEx's main competitor, with UPS coming second and TNT third. More specifically, DHL appeared as FedEx's competitor more than three times as often as TNT.

(41) Fourth, the Commission's market investigation confirmed that the Parties are not each other's closest competitors.

(42) Therefore, on markets for extra-EEA delivery services, the Commission concluded that TNT cannot be considered a particularly close competitor of FedEx.

c) The Transaction would not remove an important competitive force

(43) TNT is clearly the weakest of the four integrators with respect to extra-EEA deliveries and cannot be seen as an important competitive force that will be removed by the Transaction. Moreover, TNT's market share has not significantly increased in the course of the recent years as a result of some aggressive strategy. In addition, TNT follows a business model very similar to that of the other integrators on its provision of extra-EEA services, its services and prices are therefore comparable to those of its rivals. Also, TNT does not appear to be charging significantly lower prices than the other integrators and does not focus on it being a low-cost provider in its business plan and marketing; instead it prioritises its reliability, customer service quality and flexibility.

d) The Merged Entity would be constrained by its competitors also post-Transaction

(44) First, all four integrators already have a global footprint, offering small package delivery services to more than 220 countries in the world. They all have therefore already access to a customer base requiring extra-EEA services. Further, all integrators have the ability to organise either directly or by contracting third parties, the pick-up of small packages on all EEA countries, to arrange the air transfer of small packages at the destination lane and from there on, the delivery at destination.

(45) Second, in light of the above, even if an integrator has a somewhat lower share on a specific market for extra-EEA deliveries, this is not indicative of an inherent weakness to offer the service from that market. Indeed, in all instances, in which the share of a given integrator is limited on a specific product market/destination, but much higher on other product markets/destinations for deliveries from the same EEA origin country, this integrator is therefore in the position of providing extra-EEA services from that country of origin. Similarly, in all instances, in which an integrator has a limited share on a specific extra-EEA market, but has much higher shares for deliveries to that destination from other EEA countries of origin, this very integrator is thus able to provide extra-EEA delivery services to that destination.

(46) Third, there is no capacity restriction on extra-EEA services. All integrators are experienced in dealing with fluctuations in demand and tend to operate with a margin that enables them to take up additional volumes. They also can easily increase their airlift capacity or road network should there be a need and have in the past done so, in order to accommodate new large customers.

(47) Fourth, customers can easily switch supplier of extra-EEA small package delivery services. Most of them already multisource among integrators or other providers and their contracts do not contain exclusivity clauses. Customers' ability to increase the volumes they ship with UPS and DHL would, therefore, constrain the Merged Entity also post-Transaction.

(48) Last, non-integrators also exert some competitive pressure, in particular in relation to extra-EEA deferred services.

e) A clear majority of customers and competitors has not expressed any concerns

(49) The vast majority of the respondents to the Commission's market investigation were of the view that the Transaction will bring together the complementary strengths of FedEx, on the markets for extra-EEA, and of TNT, on the markets for intra-EEA delivery services. Specifically on extra-EEA markets, the relative majority of respondents considered that the impact of the Transaction will be positive, followed by those who considered it will be neutral.

f) The Transaction would give rise to efficiencies

(50) The Transaction would also give rise to significant efficiencies on markets for extra-EEA delivery services. These would be primarily generated by the Merged Entity's cost savings, resulting from the integration of all its volumes on the lower cost network of either FedEx or TNT. As a result, all volumes would be transported through TNT's cheaper intra-EEA network at origin and delivered through the lower cost network of either FedEx or TNT at destination. It is expected that further synergies will be realised, as the inter-continental flying moves to FedEx over time. Similarly to its approach for intra-EEA, the Commission assessed the verifiability of these efficiencies, their merger specificity and ability to be used to consumers' benefit and concluded that the Transaction would result in relevant efficiencies under the three-pronged test set out in the Horizontal Merger Guidelines.

3. *Extra-EEA small package delivery services: Country-by-country analysis*

(51) Pursuant to the results of the Commission's market reconstruction, the Merged Entity would have a combined market share of more than 40 % and the Transaction would lead to an increment of more than 5 % on 13 potential lanes for extra-EEA deliveries. Those markets correspond to extra-EEA deliveries from seven different EEA countries, namely Belgium, Bulgaria, Estonia, Latvia, Lithuania, Malta and Slovakia. For Belgium, Bulgaria, Estonia and Malta, those markets would be for extra-EEA deliveries to North America. For Latvia, it would be the markets for deliveries to North America, to Central and South America, to the Middle East and to Asia/Pacific. In the case of Lithuania and Slovakia, it would be the markets for deliveries to the Middle East. Finally, for Estonia, Hungary and Latvia it would also be for extra-EEA deliveries to the world. In addition, the Commission analysed in more detail the markets where the Merged Entity would have a moderate market share of less than 40 % and where the third competitor would, post-Transaction, have a market share below 20 %. Last, it also analysed in more detail the markets where the share of the third competitor would be smaller than the increment that the Transaction would bring about. Overall, on the basis of these criteria, 52 markets were analysed in more detail individually for the following countries.

(52) *Austria*: The Commission analysed in more detail the market for extra-EEA deliveries from Austria to the Middle East, where the Merged Entity would have a market share of [30-40] %, behind the clear market leader DHL [50-60] %. The third competitor (UPS) would, post-Transaction, have a market share of [10-20] %.

(53) *Belgium*: The Commission analysed in more detail the markets for extra-EEA deliveries from Belgium to North America, where the Merged Entity would become the market leader with a market share of [40-50] % and an increment of [5-10] %, followed by UPS with [30-40] % and DHL with [10-20] %. It also analysed in more detail the markets for extra-EEA deliveries from Belgium to the world, to Central and South America, to Asia/Pacific and to the Middle East, where the Merged Entity would have a market share of [30-40] % and the third competitor (UPS) would, post-Transaction, have a market share of [10-20] %. In all these four markets, DHL would remain the market leader with [40-50] %, [50-60] %, [40-50] % and [50-60] % respectively.

(54) *Bulgaria*: The Commission analysed in more detail the markets for extra-EEA deliveries from Bulgaria to North America, where the Merged Entity would have a market share of [40-50] % with an increment of [5-10] %. DHL would also have a share of [40-50] % while UPS would be third with a market share of [10-20] %. The Commission also analysed in more detail the markets for extra-EEA deliveries from Bulgaria to the world, to Central and South America and to the Middle East, where the Merged Entity would have a market share of [30-40] %, behind the clear market leader DHL with [50-60] % in all three markets. The third competitor (UPS) would, post-Transaction, have a market share of [10-20] %, [5-10] % and [10-20] % respectively. Finally, the Commission also analysed in more detail the market for extra-EEA deliveries from Bulgaria to Asia/Pacific where the Merged Entity would have a market share of [20-30] %, behind the clear market leader DHL with [60-70] %. The share of the third competitor (UPS) would be [5-10] %.

(55) *Croatia*: The Commission analysed in more detail the markets for extra-EEA deliveries from Croatia to Asia/Pacific, where the Merged Entity would have a market share of [20-30] % with an increment of [5-10] %, behind the clear market leader DHL with [60-70] %. UPS would, post-Transaction, have a market share of [5-10] %.

(56) *Cyprus*: The Commission analysed in more detail the markets for extra-EEA deliveries from Cyprus to Central and South America, to Asia/Pacific, to the Middle East and to Africa, where the Merged Entity would have a market share of [30-40] % with an increment of [5-10] %. In all these markets, DHL would remain the market leader with market shares of [60-70] %, [60-70] %, [50-60] % and [50-60] % respectively. The third competitor (UPS) would, post-Transaction, have a market share of [0-5] % in the markets to Central and South America as well as to Africa and [5-10] % in the markets to Asia/Pacific and to the Middle East. The Commission also analysed in more detail the market for extra-EEA deliveries from Cyprus to the world where the Merged Entity would have a market share of [20-30] % with an increment of [5-10] % behind the clear market leader DHL with [60-70] %. UPS would have a market share of [5-10] %.

(57) *Czech Republic*: The Commission analysed in more detail the markets for extra-EEA deliveries from the Czech Republic to the world and to the Middle East where the Merged Entity would have a market share of [30-40] %, behind the clear market leader DHL with [50-60] % in both markets. The third competitor (UPS) would, post-Transaction, have a market share of [10-20] %. The Commission also analysed in more detail the markets for extra-EEA deliveries from the Czech Republic to Central and South America and to Asia/Pacific where the Merged Entity would have a market share of [20-30] % behind the clear market leader DHL with [60-70] % in both markets. UPS would have a market share of [5-10] %.

(58) *Estonia*: The Commission analysed in more detail the markets for extra-EEA deliveries from Estonia to the world and to North America where the Merged Entity would have a market share of [40-50] % and [50-60] % respectively with an increment of [10-20] % and [5-10] % respectively. DHL's share for the market from Estonia to the

world would also be [40-50] % and it would be [20-30] % for North America. UPS would be third with a market share of [10-20] % in both these markets. The Commission also analysed in more detail the market for extra-EEA deliveries from Estonia to Asia/Pacific where the Merged Entity would have a market share of [30-40] % behind the clear market leader DHL with [50-60] %. The third competitor (UPS) would have a market share of [5-10] %.

(59) *France*: The Commission analysed in more detail the markets for extra-EEA deliveries from France to Central and South America, to Asia/Pacific and to the Middle East where the Merged Entity would have a market share of [30-40] %, behind the clear market leader DHL with [50-60] %, [40-50] % and [50-60] % respectively. The third competitor (UPS) would, post-Transaction, have a market share of [10-20] % in all these markets.

(60) *Hungary*: The Commission analysed in more detail the markets for extra-EEA deliveries from Hungary to the world where the Merged Entity would have a market share of [40-50] % with an increment of [5-10] %. DHL's share would also be [40-50] % and UPS would have a market share of [10-20] %. The Commission also analysed in more detail the markets for extra-EEA deliveries from Hungary to Central and South America, to Asia/Pacific, to the Middle East and to Africa where the Merged Entity would have a market share of [30-40] %, behind the clear market leader DHL with a market share of [40-50] %, [50-60] %, [40-50] % and [50-60] % respectively. The third competitor (UPS) would, post-Transaction, have a market share of [10-20] % in all these markets.

(61) *Ireland*: The Commission analysed in more detail the markets for extra-EEA deliveries from Ireland to the world and to Asia/Pacific where the Merged Entity would have a market share of [30-40] % with a small increment of [5-10] % in both markets and would be behind the clear market leader DHL with [40-50] % and [50-60] % respectively. The third competitor (UPS) would, post-Transaction, have a market share of [10-20] %.

(62) *Latvia*: The Commission analysed in more detail the markets for extra-EEA deliveries from Latvia to the world, to North America, to Central and South America, to Asia/Pacific and to the Middle East where the Merged Entity would have a market share of [40-50] %, [50-60] %, [40-50] %, [40-50] % and [50-60] % respectively. In these markets, DHL would have a market share of [40-50] %, [20-30] %, [30-40] %, [30-40] %, [30-40] % respectively and UPS would be third with [10-20] %, [10-20] %, [20-30] %, [20-30] %, [10-20] % respectively.

(63) *Lithuania*: The Commission analysed in more detail the market for extra-EEA deliveries from Lithuania to the Middle East where the Merged Entity would have, post-Transaction, a market share of [40-50] % with an increment of [5-10] %. DHL would also have a market share of [40-50] % and UPS would be third with a market share of [10-20] %.

(64) *Luxembourg*: The Commission analysed in more detail the markets for extra-EEA deliveries from Luxembourg to the world, to Central and South America and to the Middle East where the Merged Entity would have a market share of [20-30] % with a small increment of [5-10] %, behind the clear market leader DHL with [60-70] % in all three markets. The share of the third competitor (UPS) would be [5-10] % in all three markets. The Commission also analysed in more detail the market for extra-EEA deliveries from Luxembourg to North America where the Merged Entity would have a market share of [30-40] % behind the clear market leader DHL with [50-60] %. The third competitor (UPS) would, post-Transaction, have a market share of [10-20] %.

(65) *Malta*: The Commission analysed in more detail the market for extra-EEA deliveries from Malta to North America where the Merged Entity would become a market leader with a market share of [40-50] % and an increment of [10-20] % followed by DHL with [30-40] % and UPS with [20-30] %.

(66) *Poland*: The Commission analysed in more detail the markets for extra-EEA deliveries from Poland to Central and South America and to the Middle East where the Merged Entity would have a market share of [30-40] %, behind the clear market leader DHL with a market share of [40-50] % in both markets. The third competitor (UPS) would, post-Transaction, have a market share of [10-20] %.

(67) *Slovakia*: The Commission analysed in more detail the markets for extra-EEA deliveries from Slovakia to the Middle East where the Merged Entity would have a market share of [40-50] % behind the market leader DHL with [50-60] %. UPS would have a market share of [0-5] % in this market. The Commission also analysed in more detail the markets for extra-EEA deliveries from Slovakia to the world, to Central and South America and to Africa where the Merged Entity would have a market share of [30-40] % behind the clear market leader DHL with [50-60] % in all three markets. The third competitor (UPS) would, post-Transaction, have a market share of [10-20] %, [5-10] % and [0-5] % respectively. The Commission also analysed in more detail the market for extra-EEA deliveries from Slovakia to Asia/Pacific where the Merged Entity would have a market share of [20-30] % behind the clear market leader DHL with [60-70] %. UPS would have a market share of [5-10] %.

(68) On the basis of the Commission's analysis of the Parties' submissions, the Parties' internal documents and the results of the market investigation, the Commission arrived at the following conclusions on the abovementioned markets for extra-EEA deliveries to the world and the major trade lanes: the Merged Entity will in most markets only have moderate market shares; FedEx and TNT are not close competitors; TNT does not constitute an important competitive force on these markets; DHL and UPS will have the required capabilities to effectively constrain the Merged Entity also post-Transaction; a large proportion of FedEx market share on these lanes actually derives from a few big customers of the Parties who can easily switch, resulting in the market shares of the Merged Entity remaining highly contestable; and the market investigation results were predominantly positive or neutral as to the impact of the Transaction. In addition, efficiencies were found to be generated on these markets.

(69) Consequently, in light of this assessment, the Commission concluded that the Transaction would not significantly impede effective competition in any of the above mentioned national markets for extra-EEA small package delivery services to the world or the world major trade lanes.

4. *Impact of the Transaction on SMEs*

(70) Certain participants to the market investigation suggested that the Transaction is likely to have a greater impact on SMEs, in particular in the form of price increases. Allegedly, TNT currently offers lower prices than all other integrators, and is therefore the provider of choice of SMEs engaging in e-commerce activities. According to these market participants, SMEs are generally likely to single source, they rely on integrators due to their need for different types of services and lack bargaining power so they 'pay the most' as they pay list prices. As a result of the Transaction, two close competitors would merge and the Merged Entity would be unlikely to have an incentive anymore to be the 'maverick integrator' towards SMEs.

(71) The Commission was of the view that this is not the case for a number of reasons. First, the Commission investigated the issue of SMEs in detail during the in-depth investigation. The replies to a questionnaire addressed to SMEs showed that, similarly to the view of all customers, the majority of SMEs had a positive or neutral view of the Transaction overall, as well as of its impact on service offer and quality. Moreover, the market investigation did not confirm the concern that SMEs single-source or pay list prices. SMEs responding to the market investigation, including those active in e-commerce, indicated that they generally multi-source their intra-EEA and extra-EEA express deliveries. The vast majority of the responding SMEs also indicated that they negotiate volume discounts; only few respondents do not negotiate any discounts at all.

(72) Second, the Commission considered that TNT could not be said to be a 'maverick' or a market leader in the SME sector for a number of reasons. TNT's customers, like those of other operators, will negotiate fixed discounted rates with TNT in advance, to be able to factor in transport costs. Therefore, TNT will not be able to apply fluctuating prices to its customers depending on the expected capacity utilisation of the relevant aircraft on a particular day. Moreover, the short term price elasticity of the express delivery services is very low. Therefore, if TNT foresees that its flight on a particular lane will be largely empty, giving discounts to existing or potential customers could not suddenly create a higher demand to ship items on that day and lane. This is also confirmed by the market investigation where the majority of SMEs indicated that they enter into framework contracts for a longer period of time instead of making ad hoc purchases when a need arises.

(73) Third, while TNT has had occasional campaigns also targeting SMEs, this is not reflective of a structurally different market position but can be considered as part of normal competitive behaviour to attract customers. TNT cannot be said to apply excessively low prices, on a structural basis and as part of a distinct business model to SMEs and is not a price setter in the market. Moreover, TNT has not aggressively expanded its market position in the SME segment.

(74) Fourth, the Commission further considered, as already indicated above, that the Parties were not particularly close competitors. They also do not appear to provide any differentiated product specifically to a particular group of SMEs or to have a focus on these customers which other integrators could not or do not also provide. Both DHL and UPS are already providing tailored service offerings on their websites for SMEs. The vast majority of responding competitors confirmed that the requirements of SMEs in relation to small package deliveries are no different from other businesses and that services to SMEs would not require any extra assets or resources.

(75) Consequently, in light of all of the above, the Commission concluded that the Transaction would not impede effective competition also in relation to services to SMEs.

V. **CONCLUSION**

(76) For the reasons mentioned above, the Decision concludes that the Transaction will not significantly impede effective competition in the internal market or in a substantial part of it.

(77) Consequently, the concentration is declared compatible with the internal market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(1) of the Merger Regulation and Article 57 of the EEA Agreement.