Official Journal
of the European Union

EN
L series

2024/3224

23.12.2024

COMMISSION IMPLEMENTING DECISION (EU) 2024/3224

of 29 November 2024

on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for activities related to the provision of certain postal services and other services than postal services in Slovakia

(notified under document C(2024) 8407)

(Only the Slovak text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC ([1]), and in particular Article 35(3) thereof,

After consulting the Advisory Committee for Public Contracts,

Whereas:

1. FACTS

1.1. The Request

(1) On 14 June 2024, Slovenská pošta, a.s. ('the applicant') submitted a request to the Commission pursuant to Article 35(1) of Directive 2014/25/EU ('the request'). The request complies with the formal requirements set out in Article 1(1) of Commission Implementing Decision (EU) 2016/1804 ([2]) and in Annex I to that Implementing Decision.

(2) The request concerns certain postal services as well as certain services other than postal services, as referred to in Article 13(1) of Directive 2014/25/EU, provided by the applicant in the territory of Slovakia. The services concerned are described as follows in the request:

Postal services:

(a) Domestic parcel delivery services consist of the clearance, sorting, transporting, and delivering of parcels on the domestic market.

(b) International standard parcel services consist of the clearance, sorting, transporting, and delivering of parcels with no added value on the international market.

(c) International express parcel delivery services consist of the clearance, sorting, transporting, and delivering of parcels with added value on the international market.

(d) Courier services consist of shipments that are collected from the sender and directly transported and delivered to the addressee without any collection, sorting or similar processing of the shipments. The shipment is under the supervision of the same person from receipt to delivery.

([1]) OJ L 94, 28.3.2014, p. 243.

([2]) Commission Implementing Decision (EU) 2016/1804 of 10 October 2016 on the detailed rules for the application of Articles 34 and 35 of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 275, 12.10.2016, p. 39).

Other services than postal services:

(e) Unaddressed mail delivery services which concern other services than postal services as referred to in Article 13(1)(b) of Directive 2014/25/EU. They allow mass and fast distribution of printed material on the domestic market, which consists of advertising, marketing, and publicity material ([3]).

(3) The request was not accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activity concerned, which thoroughly analyses the condition for the applicability of Article 34(1) of Directive 2014/25/EU to the activity concerned, in accordance with paragraphs 2 and 3 of that Article. In accordance with point 1(a) of Annex IV to Directive 2014/25/EU, considering that in the present case free access to the markets is presumed on the basis of Article 34(3), first subparagraph, of that Directive, the Commission is to adopt an Implementing Decision on the request within 105 working days.

(4) Following requests by the Commission on 2 and 8 July 2024, as well as on 20, 21, 22, 28 August 2024, 6, 9 and 10 September 2024, the applicant submitted additional information on 3, 11,12 July, on 22, 23, 27 August, and on 11, 11, 12 and 16 September 2024.

1.2. **The Applicant**

(5) The applicant is a postal service provider in Slovakia and a contracting entity within the meaning of Article 4(2) of Directive 2014/25/EU. The applicant is the only contracting entity in Slovakia providing postal services and other services than postal services within the meaning of Article 13(2), points (b) and (c) accordingly, of Directive 2014/25/EU ([4]).

2. **LEGAL FRAMEWORK**

(6) Directive 2014/25/EU applies to the award of contracts for the pursuit of activities related to postal services referred to in Article 13(2), point (b) of that Directive.

(7) Directive 2014/25/EU applies to the award of contracts for the pursuit of activities related to the provision of unaddressed mail service referred to in Article 13(2), point (c)(ii), of that Directive and within the meaning of other services than postal services referred to in Article 13(1), point (b), of that Directive, on condition that such services are provided by an entity which also provides postal services within the meaning of Article 13(2), point (b), of that Directive and provided that the conditions set out in Article 34(1) of that Directive are not satisfied in respect of those services.

(8) Pursuant to Article 34(1) of Directive 2014/25/EU, contracts intended to enable the performance of an activity to which that Directive applies are not to be subject to that Directive if, the relevant Member State or contracting entities can demonstrate that the activity is directly exposed to competition on markets to which access is not restricted in the Member State in which it is carried out.

(9) Direct exposure to competition is to be assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned ([5]). This assessment is, however, limited by the short deadlines applicable and by the need to rely on the information available to the Commission. That information originates either from already available sources or from the information obtained in the context of the request pursuant to Article 35 of Directive 2014/25/EU and cannot be supplemented by more time-consuming methods, including, in particular, public inquiries addressed to the economic operators concerned ([6]). The assessment of direct exposure to competition that can be carried out in the context of Directive 2014/25/EU is consequently without prejudice to the full-fledged application of competition law ([7]).

([3]) Request, page 3.
([4]) Request, page 4.
([5]) Directive 2014/25/EU, recital 44.
([6]) *Ibid.*
([7]) *Ibid.*

(10) Access to a market is deemed to be unrestricted if the Member State concerned has implemented and applied the relevant Union legal acts opening a given sector or a part of it. Those legal acts are listed in Annex III to Directive 2014/25/EU.

(11) Direct exposure to competition in a particular market should be evaluated on the basis of various criteria, none of which are by themselves decisive.

(12) For the purposes of assessing whether the relevant activities are subject to direct competition in the markets concerned by this decision, the market share of the main players and the number of market players is to be taken into account.

(13) This Decision is without prejudice to the application of the rules on competition and to other fields of Union law. In particular, the criteria and the methodology used to assess direct exposure to competition under Article 34 of Directive 2014/25/EU are not necessarily identical to those used to perform an assessment under Article 101 or 102 of the Treaty on the Functioning of the European Union or under Council Regulation (EC) No 139/2004 ([8]) as confirmed by the General Court ([9]).

(14) The aim of this Decision is to establish whether the services concerned by the request are exposed to such a level of competition (in markets to which access is not restricted within the meaning of Article 34 of Directive 2014/25/EU) which will ensure that, also in the absence of the discipline brought about by the detailed procurement rules set out in Directive 2014/25/EU, procurement for the pursuit of the activities concerned will be carried out in a transparent, non-discriminatory manner based on criteria allowing purchasers to identify the solution which overall is the economically most advantageous one.

3. **ASSESSMENT**

(15) This Decision is based on the legal and factual situation as of June 2024 and on the information submitted by the applicant and the information that is publicly available. It may be revised, should significant changes in the legal or factual situation mean that the conditions for the applicability of Article 34(1) of Directive 2014/25/EU are no longer met.

3.1. **Unrestricted access to the market**

(16) Access to a market is deemed to be unrestricted if the Member State concerned has implemented and applied the relevant Union legal acts opening a given sector or a part of it. Those legal acts are listed in Annex III to Directive 2014/25/EU, which includes, as regards postal services, Directive 97/67/EC of the European Parliament and of the Council ([10]).

(17) Slovakia has transposed ([11]) and applies Directive 97/67/EC. Consequently, access to the relevant market is deemed to be unrestricted in accordance with Article 34(3) of Directive 2014/25/EU.

([8]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

([9]) Judgment of 27 April 2016, *Österreichische Post AG v. Commission*, T-463/14, ECLI:EU:T:2016:243, paragraph 28. See also Directive 2014/25/EU, recital 44.

([10]) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).

([11]) The Directive is fully transposed into the Slovak national legislation by the Postal Law No 324/2011 on postal services and on amendments and supplements to certain acts of 23 November 2019.

3.2. **Competition assessment**

3.2.1. *Relevant product market definition*

Postal services

(18) The Commission has held in previous decisions ([12]) that the market for mail delivery services can be segmented into express and standard (also referred to as 'deferred') delivery services. This segmentation takes into account that express services are faster and more reliable than a standard service, that each of those services requires a different infrastructure and that express services comprise additional value-added service features, such as track and trace services, and are usually also more expensive.

(19) The applicant takes the view that it is not necessary to segment the domestic market for parcel delivery services into express and standard. According to the applicant, in the case of the domestic market in Slovakia, all services offered are very similar (i.e., substitutable) in terms of the specified criteria, including time in transit, price, and value-added services. Therefore, the applicant considers that the relevant market for the purpose of this request is the market for parcel delivery services (as a whole) ([13]).

(20) While this approach is not in line with the Commission's previous practice, the Commission considers, in the present case, that the various set-ups of the postal services operators in Slovakia provide considerable scope for supply-side substitution ([14]). All postal services operators use the same network to ship both express and deferred products. Precisely, all postal items are distributed by the same trucks via the same network (regardless of whether this is a mail letter, standard parcel, express parcel or other services provided by the operators) ([15]). In this regard, all the key stages of the domestic parcel delivery chain such as collection, transportation between collection points and hubs, sorting, line haul transport, transportation from sorting hubs to aggregation and/or post offices, delivery are the same for express and standard services ([16]). In addition, the key market operators offer their customers a non-guaranteed delivery for all types of parcels within the next day delivery and the majority of them offer a guaranteed next day delivery, with an extra fee ([17]). According to the information submitted by the applicant, the next day delivery which is not guaranteed is the usual day of delivery and is perceived as such by the customers ([18]). Hence, it appears that express parcel services in the domestic Slovakian market offer similar delivery speed as standard parcel services in the same domestic market. The Commission also notes that additional value-added service features, such as track and trace services, available to consumers are rather the same for standard and express parcel delivery services ([19]). Therefore, the provision of value-added services cannot be deemed as a factor for concluding that there is a segmentation of the markets into standard and express in Slovakia. The afore-mentioned factors point towards a single overall market encompassing both express and standard services. Therefore, the Commission concludes that it is not necessary to distinguish between express and standard services.

([12]) Commission Implementing Decision (EU) 2023/1228 of 7 June 2023 on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to the award of contracts for the activity related to express parcel delivery services in Lithuania (OJ L 160, 26.6.2023, p. 33), Commission Implementing Decision (EU) 2020/737 of 27 May 2020 on the applicability of Article 34 of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for activities related to the provision of certain postal services in Denmark (OJ L 172, 3.6.2020, p. 23), Commission Implementing Decision (EU) 2019/1204 of 12 July 2019 concerning the applicability of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for certain activities related to the provision of certain postal services and other services than postal services in Croatia (OJ L 189, 15.7.2019, p. 75). See also Case COMP/M.5152 — Posten AB/Post Danmark A/S, of 21.4.2009, para 54.

([13]) Request, point 8.

([14]) In Case M.7630 FedEx/TNT Express, a detailed assessment was carried out to conclude on the distinction (or lack of distinction) between standard (deferred) and express delivery for international services, specifically for international intra-EEA services on the one hand and international extra-EEA services on the other hand. While there was no detailed assessment for domestic services, the assessment framework could apply to domestic services as well.

([15]) Request, point 14.

([16]) See, in this regard, additional information provided by the applicant on 3 July 2024.

([17]) Request, point 17 and Table 2 entitled 'Comparison of the time in transit across different postal companies' of the Request.

([18]) Additional information submitted on 11 September 2024.

([19]) Request, see Table 5 entitled 'Value-added services offered by the key postal operators on the Slovak market' of the Request where Slovenská pošta, a.s. compares different value-added service features that customers receive when purchasing standard parcels from Slovenská pošta, a.s. and express parcel services from key market operators.

(21) Narrower market definitions might be envisaged in certain cases (i.e. domestic parcel delivery services Consumer to consumer/business (C2X) and domestic parcel delivery services Business to consumer/business (B2X)). According to the applicant, all companies, including the applicant, use the same infrastructure to process parcels and to provide services to consumers (C2X) and services to businesses (B2X), in the case of domestic services in Slovakia ([20]). Based on the information submitted by the applicant, collection and pick-up points, line haul transport, sorting hubs and post offices are used for all parcels without differentiation into the narrow markets, so even business users can use the postal network to process parcels ([21]). Therefore, the Commission concludes that it is not necessary to distinguish between C2X and B2X.

(22) The Commission has also made in previous decisions ([22]) a distinction between domestic and international parcel delivery services. The Commission held that domestic parcel delivery services are provided by companies operating national distribution networks whereas international parcel delivery consists in collecting parcels to be transported and delivered abroad. The applicant's position is in line with Commission practice ([23]). As far as the international market is concerned, the applicant distinguishes further into international standard and international express parcel delivery market ([24]). This distinction stems from the fact that delivery time varies between international express and standard parcels delivery time ([25]). Also, unlike the market for international standard parcels delivery services, market operators in the international express parcel delivery market provide their customers with additional value-added features such as track and trace, guarantee of delivery time, insurance of the parcel or the possibility to change the place and time of delivery ([26]). The Commission agrees with the applicant's view.

(23) As far as the market for courier services is concerned, courier services consist of shipments that are received from the sender and directly transported and delivered to the addressee under the supervision of the same person without any collection, sorting or similar processing of the shipments in the domestic market ([27]). Instead, couriers pick up the items and deliver them directly to the recipient the same day ([28]). In Slovakia, courier services can be provided either under the Postal law or the Commercial Code ([29]), whereas the provision of courier services under the Commercial Code does not require obtaining a postal licence ([30]). The applicant provides the courier service on the domestic market in compliance with the Postal law, the so-called Express courier 60 concerning the delivery of parcels within 60 minutes. This service can be used only in certain areas for delivery of flowers, letters, gifts or goods. The parcel is dropped with the courier at the place of sender's choice and delivered to the recipient's address ([31]). Due to the specificities of that service (e.g. a 60-minute delivery commitment, a different organisation and more fragmented competitive landscape due to the absence of licensing obligation), the Commission agrees with applicant's view that local courier services constitute a separate product market.

Other services than postal services

(24) Unaddressed advertising mail is characterised by the absence of a specific destination address identifying the final addressee individually. It fulfils certain criteria such as uniform weight, format, contents and layout for distribution to a group of recipients. The Commission has previously held that the market for mail delivery services can be segmented in addressed mail markets and unaddressed mail markets ([32]). The applicant considers that the relevant product market in the case at hand is the market for unaddressed mail ([33]). Based on the information provided by the applicant and having in mind the existing practice of the Commission, the Commission concludes the relevant product market is the market for services related to the domestic unaddressed mail delivery.

([20]) Request, point 30.
([21]) Additional information submitted on 12 July 2024, page 1.
([22]) Implementing Decision (EU) 2023/1228, Implementing Decision (EU) 2020/737, Implementing Decision (EU) 2019/1204. See also Case COMP/M.5152 — Posten AB/Post Danmark A/S, of 21.4.2009, para 54.
([23]) Request, point 134.
([24]) Request, points 134 and 221.
([25]) For Slovenská pošta, a.s., delivery time for international express parcels is D+2, while for international standard parcels delivery time varies between D+4 and D+7. See in this regard, additional information provided by the applicant on 16 September 2024.
([26]) Request, Table 25, value-added services offered by the key postal operators on the Slovak market.
([27]) Request, point 303.
([28]) Request, point 346.
([29]) Law No 513/1991.
([30]) Request, point 304.
([31]) Request, point 304.
([32]) Implementing Decision (EU) 2019/1204. See also Case COMP/M.5152 — Posten AB/Post Danmark A/S, of 21.4.2009, paras 66 and 74.
([33]) Request, point 389.

3.2.2. *Relevant geographic market definition*

Postal services

(25) According to the applicant, the relevant geographic market for domestic parcel delivery services should be defined as national, comprising the territory of the Slovak Republic ([34]).

(26) In its previous practice ([35]), the Commission took the view that the markets for domestic and international parcel delivery services, and any segments thereof, irrespective of the difference between domestic and international, are national in scope. The applicant's position is in line with Commission practice.

(27) The applicant provides both domestic and international parcel delivery services in Slovakia.

(28) In the absence of any indication of a different scope of the geographic market, for the purposes of the assessment under this Decision and without prejudice to competition law, the geographic scope of the domestic and international parcel delivery services can be considered to cover the territory of Slovakia.

(29) As regards courier services, the applicant considers that the relevant geographic market for courier services should be defined as national ([36]), as there is a separate organisation of service suppliers in each country. Additionally, each national market is distinct in terms of specific competition conditions, differences in the service prices among countries and languages in which the service providers formulate their proposal for the customers ([37]). The applicant provides the services within the national territory of Slovakia. In view of the Commission's practice and in the absence of any indication of a different scope of the geographic market, for the purposes of the assessment under this Decision and without prejudice to competition law, the geographic scope of the courier services can be considered to cover the territory of Slovakia.

Other services than postal services

(30) According to previous Commission practice, geographically unaddressed mail delivery is in principle national, as the delivery networks are organised at a national level, there are likely differences in pricing across different Member States and most of unaddressed mail items are advertising material, where the language is an important factor of targeted audience (= addressees) ([38]). The applicant's proposed definition is in line with the Commission's practice ([39]). Given that there are no reasons to assume a wider or a narrower scope of the market, for the purposes of this Decision, the geographical market for unaddressed mail services is national in scope.

3.2.3. *Market analysis*

3.2.3.1. Domestic parcel delivery services

(31) According to the applicant, there are 25 postal parcel delivery services providers active in Slovakia ([40]). Based on the information submitted by the applicant, there are 5 postal services providers holding more than 10 % each in the market of domestic parcel delivery services. According to available information, the market share of the applicant in this segment of the market was [20-25] % in 2020, [15-20] % in 2021 and [15-20] % in 2022 in terms of value ([41]). According to the data submitted by the applicant, it is expected that the applicant's market share will further decrease to [10-15] % in 2023 ([42]).

([34]) Request, point 37.
([35]) Implementing Decision (EU) 2019/1204. See also Case COMP/M.5152 — Posten AB/Post Danmark A/S, of 21.4.2009, paras 66 and 74.
([36]) Request, point 310.
([37]) Request, point 306.
([38]) Commission Implementing Decision (EU) 2016/1195 of 4 July 2016 exempting courier services and other services than postal services in Poland from the application of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 197, 22.7.2016, p. 4).
([39]) Request, point 393.
([40]) 17 out of 26 postal operators were registered in 2012 in the Register of postal enterprises. For FIEGE s.r.o., the licence was suspended as of 1.7.2013. Other 9 postal operators were registered in 2014, see Request, points 42 and 43.
([41]) Request, Figure 5 entitled 'Structure of the domestic parcel delivery market based on revenue values' provides data for 2020-2022 based on publicly available financial statements of postal operators and annexes to the financial statements.
([42]) Request, Figure 5. The market share for the year 2023 is based on unaudited preliminary results of the Slovenská pošta, a.s.

(32) The market shares of the competitors of the applicant are comparable to those of the applicant. The market shares of the biggest competitors in terms of value for the period between 2020 and 2022 are as follows: for the year 2020, SPS [20-25] %, DPD [15-20] %, DHL [15-20] %, GLS [10-15] % and Packeta [5-10] %; for the year 2021, SPS [20-25] %, DHL [15-20] %, GLS [15-20] %, DPD [10-15] % and Packeta [10-15] %; for the year 2022, SPS [20-25] %, Packeta [15-20] %, GLS [15-20] %, DHL [10-15] % and DPD [10-15] % ([43]). For the year 2023, the market shares for applicant's key competitors are as follows: Packeta [20-25] %, SPS [15-20] %, GLS [15-20] %, DHL [10-15] % and DPD [5-10] % ([44]).

(33) In terms of volume, the market share of applicant in this segment of the market was [25-30] % in 2020, [25-30] % in 2021 and [20-25] % in 2022 ([45]). As regards competitors' market shares, the second operator had [20-25] % in 2020, [20-25] % in 2021 and [20-25] % in 2022. The third operator had [20-25] % in 2020, [20-25] % in 2021 and [15-20] % in 2022. The fourth operator had [15-20] % in 2020, [15-20] % in 2021 and [15-20] % in 2022 ([46]). The competitors' market shares are therefore comparable to the applicant's.

(34) Based on the information submitted by the applicant, there are low barriers to market entry for the provision of domestic parcel delivery services. The only formal requirement to enter the market is the prior registration into the registry of postal operators ([47]). The registration of ™ INTERNATIONAL s. r. o. and of Nova Post SK s.r.o. in 2023 further confirms that there are no barriers (or at least no significant barriers) to entry ([48]).

(35) In light of the factors described in recitals 31, 32, 33 and 34, for the purposes of this Decision and without prejudice to competition law, the Commission finds that that the activity relating to the provision of domestic parcel delivery services in Slovakia is directly exposed to competition. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it can be concluded that Directive 2014/25/EU does not apply to contracts for the pursuit of the activity relating to domestic parcel delivery services in Slovakia.

3.2.3.2. International standard parcel delivery services

(36) Based on the information submitted by the applicant, there are 5 postal parcel delivery services providers in the market for international standard parcel delivery services ([49]). In addition, according to the applicant there are low barriers to entry market entry for the provision of international standard parcel delivery services ([50]). The only formal requirement to enter the market is the prior registration into the registry of postal operators ([51]). The registration of postal operators, such as Fusion trans s.r.o. in 2019 and ™ INTERNATIONAL s.r.o. and Nova Post SK s.r.o. in 2023 further confirms that there are no barriers (or at least no significant barriers) to market entry ([52]).

(37) According to the information submitted by the applicant ([53]), the market share of the applicant, in terms of value, in this segment of the market was [20-25] % in 2022 and [25-30] % in 2023.

([43]) Request, Figure 5 entitled 'Structure of the domestic parcel delivery market based on revenue values'.

([44]) Request, Figure 5 entitled 'Structure of the domestic parcel delivery market based on revenue values'. The market shares for the year 2023 are based on unaudited preliminary results of the Slovenská pošta, a.s. using the revenue average annual growth rate for the years 2020 to 2022.

([45]) Request, Figure 7 entitled 'Structure of the domestic parcel delivery market based between 2020-2022 on volumes' provides data for 2020-2022 based on the reports of the Slovak Regulatory Authority for Electronic Communications and Postal Services (hereinafter 'NRA'). NRA publishes anonymous data about market share of individual postal operators between 2020 and 2022, where the market shares are indicated for merged percentage of express and standard parcels. The market share of Slovenska pošta, a.s. is calculated based on a compulsory questionnaire that the postal operator sends to the NRA annually, where they present delivery volumes.

([46]) Request, Figure 7 entitled 'Structure of the domestic parcel delivery market based between 2020-2022'. It should be noted that the order of individual operators may differ each year, meaning that operator who qualified second in 2020 could be a different operator in 2022.

([47]) Article 19 of the Postal law No 324/2011 on postal services and on amendments and supplements to certain acts of 23 November 2019.

([48]) Request, point 108.

([49]) See in this regard, additional information provided by the applicant on 12 September 2024.

([50]) Request, point 143.

([51]) Article 19 of the Postal Law No 324/2011 on postal services and on amendments and supplements to certain acts of 23 November 2019.

([52]) Request, point 188.

([53]) Request, Figure 14 entitled 'Structure of the international standard parcels market based on revenue values in 2020-2023'. The estimate market structure for years 2020-2022 is based on the revenues of the key market players active in Slovakia, which hold the licence for the provision of universal service, interchangeable services or other services (i.e., Slovenská pošta, a.s., Mediaprint — Kapa Pressegrosso, a.s., 123Kurier and UPS Slovakia). The data is based on publicly available financial statements and annexes to the financial statements. The forecasted structure of the market based on revenue values in the year 2023 is based on unaudited preliminary results of the Slovenská pošta, a.s.; the results of key competitors are projected using the revenue average annual growth rate for the years 2020 — 2022. The estimation for 123Kurier is based on the revenue average annual growth rate on the market.

(38) The market shares of the biggest competitors, in terms of value, for year 2022 were as follows: UPS Slovakia [45-50] %, 123kurier [25-30] %, Mediaprint — Kapa Pressegrosso, a.s. [0-5] %. For year 2023, the market shares are as follows: UPS Slovakia [40-45] %, 123kurier [25-30] %, Mediaprint — Kapa Pressegrosso, a.s. [0-5] %. The applicant's market share is comparable to the market share of 123kurier while it is lower than the market share of UPS Slovakia. In terms of volume, the market shares of the applicant and of its key competitors essentially would correspond to the ones indicated in terms of value ([54]).

(39) It is expected that the entry of Nova Post SK s.r.o. into the market in 2023 will further increase competition in this segment of the market ([55]).

(40) In light of the factors described in recitals 36, 37, 38 and 39, for the purposes of this Decision and without prejudice to competition law, the Commission finds that the activity relating to the provision of international standard parcel delivery services in Slovakia is directly exposed to competition. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it can be concluded that Directive 2014/25/EU does not apply to contracts for the pursuit of the aforesaid activity.

3.2.3.3. International express parcel delivery services

(41) Based on the information submitted by the applicant, there are 10 postal parcel delivery services providers in the market for international express parcel delivery services ([56]). In addition, there are low barriers to market entry for the provision of international express parcel delivery services. The only formal requirement to enter the market is the prior registration into the registry of postal operators ([57]).

(42) According to the information submitted by the applicant, the market share of the applicant in this segment of the market was [0-5] % in 2020, [0-5] % in 2021 and [0-5] % in 2022 both in terms of value and volume ([58]). According to the data of the applicant, it is expected that the applicant's market share will decrease to [0-5] % in 2023 ([59]).

(43) Almost 90 % of the international express parcel market in Slovakia is covered by four postal operators with market shares above 10 % both in terms of value and volume. The applicant does not belong among the biggest postal service providers in this market ([60]). Therefore, in light of the market share of the applicant, those competitors exert a competitive pressure on the applicant. Moreover, it must be noted that these competitors, unlike the applicant, are not subject to the public procurement rules, which would give them a further competitive advantage over the applicant.

(44) It is also expected that the entry of Nova Post SK s.r.o. into the market in 2023 will further increase competition in this segment of the market ([61]).

(45) For the purposes of this Decision and without prejudice to competition law, the factors described in recitals 41, 42, 43 and 44 should be taken as an indication of direct exposure to competition of the applicant which is covered by the procurement law provisions. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it can be concluded that Directive 2014/25/EU does not apply to contracts for the pursuit of the aforesaid activity.

3.2.3.4. Domestic courier services

(46) Based on the information submitted by the applicant, there are several postal operators operating within Slovakia, each having its own network ([62]).

([54]) See in this regard, additional information provided by the applicant to the Commission on 22 August 2024. The applicant provides its estimates for the market shares of applicant's key competitors, on the basis of the volumes on the international markets (standard and express). For splitting the total market volume value among the key competitors, the applicant used as a proxy the market shares of applicant's key competitors calculated based on revenues. In this regard, the applicant took into consideration the total market volume published by the NRA and extrapolated the market shares of applicant's key competitors based on revenues.
([55]) Request, point 189.
([56]) See in this regard, additional information provided by the applicant to the Commission on 12 September 2024.
([57]) Request, point 228.
([58]) Request, Figure 22 entitled 'Structure of the international express parcels market based on revenue values' provides data for 2020-2022 based on publicly available financial statements of postal operators and annexes to the financial statements.
([59]) Request, Figure 22. The market share for the year 2023 is based on unaudited preliminary results of the Slovenská pošta, a.s.
([60]) See in this regard, additional information provided by the applicant to the Commission on 22 August 2024 concerning the structure of the market for international express parcel delivery services.
([61]) Request, point 189.
([62]) Request, point 369.

(47) The activity on the relevant courier services market can be performed without entering into the registry of postal operators ([63]). In this regard, there is no need to prove professional competence for the execution of such activity. Therefore, there are no formal requirements limiting the entry on the relevant market for courier services entry ([64]).

(48) The applicant holds an extremely small market share in this market. Precisely, the applicant held a market share of [0-5] % in 2020, [0-5] % in 2021 and [0-5] % in 2022 both in terms of value ([65]) and volume ([66]). According to the applicant, it is expected that the applicant's market share will remain at 0,02 % in 2023.

(49) The market shares of applicant's key competitors in terms of value ([67]) and volume ([68]) for the period between 2020 and 2022 are as follows: for the year 2020, KOLOS [55-60] %, DER KURIER Slovakia spol. [20-25] %, GO4 [15-20] % and DHL Express (Slovakia), spol. [0-5] %; for the year 2021, KOLOS [50-55] %, DER KURIER Slovakia spol. [25-30] %, GO4 [15-20] % and DHL Express (Slovakia), spol. [0-5] %; for the year 2022, KOLOS [40-45] %, DER KURIER Slovakia spol. [30-35] %, GO4 [20-25] % and DHL Express (Slovakia), spol. [0-5] %. For the year 2023, the market shares for applicant's key competitors are as follows: KOLOS [35-40] %, DER KURIER Slovakia spol. [35-40] %, GO4 [20-25] % and DHL Express (Slovakia), spol. [0-5] %.

(50) In light of the factors described in recitals 46, 47, 48 and 49, for the purposes of this Decision and without prejudice to competition law, the Commission finds that the activity relating to the provision of domestic courier services in Slovakia is directly exposed to competition. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it can be concluded that Directive 2014/25/EU does not apply to contracts intended to enable the pursuit of the aforesaid activity.

3.2.3.5. Domestic unaddressed mail delivery services

(51) Based on the information submitted by the applicant, the activity on the relevant unaddressed mail delivery market can be performed without entering into the registry of postal operators. There are no formal requirements limiting the entry on the relevant unaddressed mail market ([69]).

(52) The applicant holds relatively a small market share in this market. Precisely, the applicant held a market share of [0-5] % in 2020, [0-5] % in 2021 and [0-5] % in 2022 in terms of value. According to the applicant, it is expected that the applicant's market share will be close to [0-5] % in 2023 ([70]). In terms of volume, the applicant held a market share of [5-10] % in 2020, [5-10] % in 2021 and [5-10] % in 2022 ([71]). It is expected that the applicant's market share will slightly increase to [5-10] % in 2023 ([72]).

(53) There are more than 10 services providers operating in this market which, together, hold more than 90 % of the market ([73]). Moreover, it must be noted that these competitors, unlike the applicant, are not subject to the public procurement rules, which would give them a further competitive advantage over the applicant.

([63]) Request, point 313.
([64]) Request, point 313.
([65]) See in this regard, additional information submitted by the applicant to the Commission on 23 August 2024. The applicant submitted its estimates of the market, in terms of value, based on the annual statements of relevant companies. The revenues of DHL company on the courier services market were estimated based on the percentage of items of courier services on the total postal services in the domestic market and DHL's revenue in the domestic market.
([66]) See in this regard, additional information submitted by the applicant on 23 August 2024. The estimates of the market shares, in terms of volume, were based on the total market volume, as published by NRA. The applicant extrapolated the market share of each postal operator calculated based on revenues.
([67]) See in this regard, additional information submitted by the applicant on 23 August 2024.
([68]) See in this regard, additional information submitted by the applicant on 23 August 2024.
([69]) Request, point 396.
([70]) See in this regard, additional information submitted by the applicant on 27 August 2024. The applicant's estimates are based on the annual statements of selected companies. In this regard, the applicant considered revenues from activities that could be related to unaddressed mail delivery.
([71]) Request, Figure 34 is entitled 'Shares of Slovenská pošta, a.s. on the domestic market of unaddressed mail between 2020 — 2023 based on volumes'. This data is based on the report that Slovenská pošta, a.s. provides to the NRA annually within the standard data collection process for all postal operators active in the postal market of the Slovak Republic.
([72]) Request, Figure 34. The market share for the year 2023 is based on unaudited preliminary results of the Slovenská pošta, a.s.
([73]) See in this regard, additional information submitted by the applicant on 1 September 2024.

(54) For the purposes of this Decision and without prejudice to competition law, the factors described in recitals 51, 52 and 53 should be taken as an indication of direct exposure to competition of the applicant which is covered by the procurement law provisions. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it can be concluded that Directive 2014/25/EU does not apply to contracts intended to enable the pursuit of the aforesaid activity.

4. **CONCLUSION**

(55) In view of the factors examined in recitals 6 to 54, the condition of direct exposure to competition laid down in Article 34(1) of Directive 2014/25/EU should be considered to be met in Slovakia in respect of the activity related to domestic parcel delivery services, international standard parcel delivery services, international express parcel delivery services, domestic courier services, and domestic unaddressed mail delivery services.

(56) Since the condition of unrestricted access to the market is deemed to be met, Directive 2014/25/EU should not apply when contracting entities award contracts intended to enable the activities referred to in recital 55 of this Decision to be carried out in Slovakia, nor when design contests are organised for the pursuit of such an activity in that geographic area,

HAS ADOPTED THIS DECISION:

Article 1

Directive 2014/25/EU shall not apply to the award of contracts by contracting entities and intended to enable the following activities to be carried out in Slovakia:

— Domestic parcel delivery services

— International standard parcel services

— International express parcel delivery services

— Domestic courier services

— Domestic unaddressed mail delivery services

Article 2

This Decision is addressed to the Slovak Republic.

Done at Brussels, 29 November 2024.

For the Commission
Margrethe VESTAGER
Executive Vice-President