

Deutsche Post rivals to seek scrutiny of Exel bid financing in EU Merger review

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IN BRIEF

Use of state aid, access to its home market and Deutsche Post's own sector definitions are likely to come under scrutiny from European Commission antitrust regulators when they examine the German postal giant's bid for Exel. Still, the low degree of concentration in Europe's logistics market means regulators haven't encountered serious merger control problems in previous deals.

By Robert McLeod

Brussels -- Deutsche Post's rivals will seek a detailed review of the source of financing for its bid for Exel in light of past European Commission decisions against the company that have found misuse of state aid and restrictions on access to its domestic market.

The company may also find its own broad market definitions challenged as commission regulators use analyses from previous decisions which provide much more tightly defined markets.

Deutsche Post hasn't been generating as much work for antitrust regulators following a drop-off in the number of complaints received against it for breaches of antitrust or state aid rules over the past couple of years. The launch of a bid for Exel of the U.K. will give rivals and regulators a chance to dust off their concerns.

The company, which is appealing a number of decisions in the Luxembourg courts relating to improper use of state aid and abuse of antitrust rules, has riled private sector operators in the past who have questioned both access to the German's company's own market and the way it has funded its forays into the private sector. Both these issues will be raised during the commission's investigation.

A Deutsche Post spokeswoman said that "At this juncture, we don't see any insurmountable issues."

The Free and Fair Post Initiative (FFPI), which groups private sector competitors as well as major users of postal services, will ask the commission to "undertake the necessary investigations to examine the source of the funds used for the planned acquisition" to examine whether the resources used for the acquisition are the result of abusive practices by Deutsche Post World Net in its monopoly letter market.

"In view of the fact that DPWN has been fined by the EC Commission for abuse of dominant position and other breaches of the EC market rules and that similar complaints are pending against the company, the FFPI takes the view that the Commission under the present circumstances should extend the assessment of the bid to include the source of DPWN's financing of the proposed merger."

"Since excessive profits from protected mail services are prohibited, postal operators should not be allowed to acquire companies by using such resources," said FFPI President, Philippe Bodson. "That would amount to a serious distortion of competition and a misuse of the confidence of citizens. I hope that the Commission will be able to analyse future acquisitions made by postal operators applying these criteria stringently."

Deutsche Post expects to have to seek antitrust approval in Europe, the U.S. and Canada and may well find itself filing in any number of smaller jurisdictions. The same or similar issues are likely to be raised by the company's rivals in those markets as well. United Parcel Service of America, for example, has been one of Deutsche Post's most active and vocal critics.

In an appeal lodged by UPS against the commission decision to approve Deutsche Post's acquisition of DHL, the Court of First Instance in Luxembourg ruled that profits from monopoly businesses could be used to fund acquisitions, providing they didn't come from excessive profits.

The reduction to four or five in the number of major global players in the business and their market shares shouldn't worry regulators, though attention may be paid to whether the other major companies, and the smaller players who make up the remaining three quarters to two-thirds of the business, are able to compete across all market segments.

The company's publicised market shares; 8.4 percent of the ocean freight market, 11.1 percent of air freight and 5.4 percent of contract logistics, don't immediately send competition danger signals, where the commission normally looks for levels in excess of 40 percent or even 25 percent. However the market definitions used by the commission may be far more precise.

In previous decisions in the sector, including its Deutsche Post-Securicor decision of 1999, the commission distinguished between express and deferred parcel and freight delivery and domestic and international services. It also examined supply and demand side considerations and the issue of whether customs procedures were relevant, an issue for intra-EU and extra-EU services.

With Deutsche Bahn's purchase of Stinnes in 2002, the commission also broke down the logistics market into separate sectors. Even then, the Commission's one-month investigation of the logistics markets in the various EU countries showed a "relatively low degree of concentration" and "a number of large providers with comprehensive European networks and complex logistics services at international level."

No date has been set for notification of the acquisition to the commission.

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