



Press and Information

General Court of the European Union
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Judgment in Case T-194/13
United Parcel Service, Inc. v Commission

The General Court annuls, on the ground of a procedural irregularity, the decision by which the Commission refused to authorise the merger between UPS and TNT in the express small package delivery services sector

The Commission infringed UPS' rights of defence by relying on an econometric analysis which had not been discussed in its final form during the administrative procedure

The United States company United Parcel Service ('UPS') and the Netherlands company TNT Express ('TNT') operate on a global level in the specialist transport and logistics services sector. In the European Economic Area (EEA), UPS and TNT – as well as the United States company FedEx and the German company DHL – are present on the international express small package delivery markets (services involving an undertaking by the service provider to deliver small packages to another country in one day).

In 2012, UPS notified the European Commission of its proposed acquisition of TNT under the Merger Regulation.¹ By decision of 30 January 2013,² the Commission prohibited the proposed acquisition of TNT by UPS. In essence, it considered that that take-over would have restricted competition in 15 Member States as regards the express delivery of small packages to other European countries. In those Member States, the acquisition would have reduced the number of significant players in that market to only three, or even two, sometimes leaving DHL as the only alternative to UPS. The merger would therefore, according to the Commission, have likely harmed customers by causing price increases.

UPS brought an action before the General Court seeking the annulment of the Commission's decision.

By today's judgment, **the General Court** upholds the action and **annuls the Commission's decision**.

The Court notes that observance of the rights of the defence and, in particular, the right to a fair hearing requires that the undertaking concerned must have been afforded the opportunity, during the administrative procedure, to make known its views on the truth and relevance of the facts and circumstances alleged, and on the documents used by the Commission to support its claims.

The Court finds that the **econometric analysis** used by the Commission in its decision of 30 January 2013 **was based on an econometric model different from that which had been the subject of an exchange of views and arguments during the administrative procedure**. The Commission made non-negligible changes to the analyses previously discussed with UPS. In view of those changes, the Commission was required to communicate the final econometric analysis model to UPS before adopting the contested decision. By failing to do so, **the Commission infringed UPS' rights of defence**.

¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1), as implemented by Commission Regulation (EC) No 802/2004 of 21 April 2004 (OJ 2004 L 133, p. 1).

² Decision C(2013) 431 of 30 January 2013 declaring a concentration incompatible with the internal market and the functioning of the EEA Agreement (Case COMP/M.6570 — UPS/TNT Express).

Taking the view that, during the administrative procedure, UPS might have been better able to defend itself if it had had at its disposal, before the adoption of the contested decision, the final version of the econometric model chosen by the Commission, **the Court annuls the decision of 30 January 2013 in its entirety, without examining the other pleas in law put forward by UPS.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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