



# DETERMINATION OF MERGER NOTIFICATION M/17/024 – UPS/EIRPOST

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## Section 21 of the Competition Act 2002

**Proposed acquisition by United Parcel Service, Inc., through UPS Corporate Finance S.ár.l., of the entire issued share capital and thus sole control of Eirpost Group Unlimited Company.**

**Dated 14 June 2017**

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### Introduction

1. On 5 May 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed acquisition (“the Proposed Transaction”) whereby United Parcel Service, Inc. (“UPS Inc.”), through UPS Corporate Finance S.ár.l. (“UPSCF”) (collectively “the UPS Group”), would acquire the entire issued share capital and thus sole control of Eirpost Group Unlimited Company (“the Target”), from two individuals<sup>1</sup> (“the Vendors”).

### The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share purchase agreement (“the Agreement”) dated 2 May 2017 between the Vendors and UPSCF. Under the Agreement, UPSCF will purchase the entire issued share capital of the Target. Following implementation of the Proposed Transaction, the UPS Group would have sole control of the Target.

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<sup>1</sup> Messrs [...] and [...].



## The Undertakings Involved

### UPS Group

3. The ultimate parent of the UPS Group, UPS Inc., is incorporated in the State of Delaware, USA. It is a package delivery company operating globally and a provider of global supply chain management solutions. Its main subsidiary active in the State is United Parcel Service of Ireland Limited (“UPS Ireland”), providing global parcel delivery services. UPS Ireland is an Irish incorporated company having its registered office at 25/28, North Wall Quay, Dublin 1.<sup>2</sup>
4. The UPS Group has a number of other wholly-owned subsidiaries active in the State, as outlined below with details of their area of activity:
  - [...];
  - [...];
  - [...]; and
  - [...].
5. The UPS Group is global integrator<sup>3</sup> with an extensive worldwide delivery network. The UPS Group primarily offers an express service, mostly targeted at business-to-business. In 2016, the UPS Group delivered [...] packages in the State of which [...]% were to commercial addresses and [...]% to residential addresses.
6. For the financial year ended 31 December 2016, the UPS Group’s worldwide turnover was approximately €60.9 billion, of which approximately €[...] million was generated in the State. The turnover of UPS Ireland for the same period was approximately €[...] million, of which €[...] million was generated in the State.

### *The Target*

7. The Target is an Irish incorporated company having its registered office at Unit 5, Mygan Park, Jamestown Road, Finglas East, Dublin 11. It operates a packets and parcels delivery business in Ireland and the UK, principally the island of Ireland, through a

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<sup>2</sup> UPS Ireland is a wholly owned direct subsidiary of UPSCF, which in turn is controlled and owned by UPS Inc.

<sup>3</sup> Global integrators have a world-wide presence and provide time-defined delivery through their own integrated networks or occasionally through local business partners.



number of subsidiaries. These subsidiaries are Nightline Holdings Limited, Eirpost Holdings Unlimited and Nightline Logistics Group Unlimited Company (“NLG”).<sup>4</sup>

8. NLG currently operates the following active divisions:
  - Nightline-Delivers: An all-island (i.e., Ireland and Northern Ireland) next day distribution service that provides parcel delivery and collection;
  - Nightline Logistics: A supply chain management division that offers logistics services including “pick and pack” and goods warehousing services to business to business customers;
  - Nightline International: An international freight forwarding service that offers break bulk, pallet and part load and airfreight services to business to business importers and exporters; and
  - Parcel Motel: A national network of automated parcel terminals that facilitates an online delivery service and a “virtual address” service focused on the business to consumer channel.
9. The Target, through NLG, focuses on deliveries to and from customers (Business to Consumer and Business to Business) within the State and the UK (including Northern Ireland) and primarily next day delivery of track and traced items.
10. NLG estimates that deliveries to addresses in the State represent [...]% of its business. Of this [...]%, NLG estimates that [...]% of these deliveries are on behalf of customers based within the State, with [...]% of these deliveries on behalf of customers based in the UK.
11. [...]% of NLG’s business is represented by deliveries from customers within the State to UK addresses, with the final [...]% comprising deliveries from customers within the State to addresses outside the UK and the State.

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<sup>4</sup> The Target owns the entire issued share capital of Nightline Holdings Limited, which in turn is the beneficial holder of the entire issued share capital of Eirpost Holdings Unlimited. Nightline Holdings Limited and Eirpost Holdings Unlimited are both incorporated in the Isle of Man. Eirpost Holdings Unlimited is the beneficial holder of the entire issued share capital of Nightline Logistics Group Unlimited Company, which is an Irish incorporated company.



12. For the financial year ended 30 December 2016, the Target's worldwide turnover was approximately €[...] million, of which €[...] million was generated in the State.

#### **Rationale for the Proposed Transaction**

13. The parties state that:

*“UPS Inc. seeks to achieve a number of commercial objectives by the Proposed Transaction, some of which include greater efficiency, the improvement of ‘final mile’ profitability, the benefit of cross selling opportunities and the benefit of cost synergies in relation to increased stop density and route optimisation.”*

#### **Third Party Submissions**

14. The Commission received a submission from a competitor of the parties which alleged that the proposed transaction will lead to a loss of an important competitor, a reduction of choice and input and customer foreclosure concerns. The issues raised by this competitor were investigated as part of the review process.

#### **Competitive Analysis**

15. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise markets because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State.

#### **Horizontal Overlap**

16. Both the UPS Group (through its ultimate ownership of UPS Ireland) and the Target (through its ultimate ownership of NLG, which is the operating company) provide packets and parcels delivery services to customers in the State, Northern Ireland, the UK and internationally. A Frontier Economics Report prepared for ComReg in May 2015 entitled *“The packets and parcels Sector in Ireland”* (hereafter referred to as the “ComReg Report”) outlines that market operators do not generally distinguish between packets and parcels when providing delivery services. For the purposes of analysing the competitive effects of the Proposed Transaction, the Commission has considered the potential market for the provision of packets and parcels delivery services in the State.



17. Features of the potential market for packets and parcels delivery services include:<sup>5</sup>
- speed of delivery which is generally separated into express delivery (providing certainty regarding the time or day of delivery) and standard delivery (generally providing for next day delivery but with no guaranteed time of delivery);<sup>6</sup>
  - delivery options which relates to days of the week and whether operators offer weekend delivery and also alternate delivery or collection points;
  - value added services which relates to track and trace service, proof of delivery, returns service, returned items service, fraud prevention and time windows; and
  - delivery destination which relates to the offer of an international service, whether through partners or the operator's own network.
18. The estimated shares by volume and by value of undertakings active in the packets and parcels delivery services sector in the State are presented in Table 1 and 2 below as per the ComReg Report<sup>7</sup>.

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<sup>5</sup> *The ComReg Report, pp.14 -17.*

<sup>6</sup> *Although the ComReg Report states that the traditional division into express and standard delivery markets does not adequately reflect the current complexities of the sector, p.7.*

<sup>7</sup> As part of the review process the Commission contacted ComReg and their view was that the number of players and dynamics of the market had not changed drastically since the publication of the ComReg Report. ComReg did not raise any concerns in relation to the Proposed Transaction



**Table 1: Estimated Share of the Parcel and Packet Sector in Ireland by Volume by Operator in 2013**

	Operator	Percentage Share
1	An Post	30% - 40%
2	NLG	10% - 15%
3	DPD	10% - 15%
4	GLS	10% - 15%
5	Fastway	5% - 10%
6	DHL	5% - 10%
7	UPS Ireland	0% - 5%
8	TNT <sup>8</sup>	0% - 5%
9	DX Network Services	0% - 5%
10	Other	5% - 10%

**Table 2: Estimated Share of the Parcel and Packet Sector in Ireland by Value by Operator in 2013**

	Operator	Percentage Share
1	An Post	20% - 30%
2	DHL	10% - 15%
3	UPS Ireland	10% - 15%
4	NLG	5% - 10%
5	DPD	5% - 10%
6	GLS	5% - 10%
7	TNT	5% - 10%
8	Fastway	5% - 10%
9	DX Network Services	0% - 5%
10	Other	5% - 10%

<sup>8</sup> TNT was subsequently acquired by FedEx in 2016 – see European Commission decision M.7630 - FedEx / TNT Express at [http://ec.europa.eu/competition/mergers/cases/decisions/m7630\\_4582\\_4.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/m7630_4582_4.pdf)



19. Tables 1 and 2 indicate that An Post has the largest market share, both in terms of volume and value. Post-transaction, the merged entity will become the second largest provider of packets and parcels delivery services in the State. The merged entity will continue to face competitive constraints from significant players such as An Post and DHL. Additionally, there will remain a number of competitors with at least a 5% market share who will continue to provide competitive constraints on the merged entity.
20. The ComReg Report also found that one in four SMEs has switched its main packets and parcels delivery service provider in the past three years, which suggests a significant degree of churn in the market. The ComReg Report makes a number of references to the competitive nature of the market, including for example:

*“We found that, while the level of services provided has increased, prices have generally remained fairly stable over the last three years. This is seemingly due to a highly competitive market and, in particular, the increasing power of senders with growing sales.”*

*“Given the competitive nature of the sector, there is very little public transparency in relation to prices, or how they are set.”*

*“We asked large senders of mail in our in-depth interviews about how they negotiate their prices with operators. All of the respondents advised that they negotiate their parcel delivery contracts every year with their operators. The recent volatility in transport costs (especially falling oil prices) means that they are unwilling to lock themselves into multi-year contracts, especially also given the intense competition and jockeying between service operators.”*

21. The Commission considers that, post-transaction, the fact that the merged entity will become the second largest player in the potential market does not of itself, in the particular circumstances of this case, give rise to competition concerns. There is evidence of a large and varied (in size) number of competitors in the potential market for the provision of packets and parcels delivery services within the State, who will continue to provide a competitive constraint on the merged entity (UPS Group and the Target), post transaction. Additionally, customers are able to switch service providers.



22. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in packets and parcels delivery services in the State.

#### **Vertical Relationship**

23. There is no vertical relationship between the parties. The Commission's market enquiries indicate that the Proposed Transaction does not raise vertical competition concerns, such as input or customer foreclosure. There will remain a sufficient number of competitors and consumers in all markets in which both the UPS Group and the Target compete in. Therefore the proposed transaction does not raise any vertical competition concerns.

#### **Conclusion**

24. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

#### **Ancillary Restraints**

25. The Agreement contains restrictive covenants on the Vendors, in particular non-compete and non-solicitation obligations [...]. The duration of these restrictive covenants does not exceed the maximum duration acceptable to the Commission. The Commission considers that these restraints are directly related and necessary to the implementation of the Proposed Transaction<sup>9</sup>.

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<sup>9</sup> In this respect, the CCPC follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2002). For more information see

[http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)





### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby United Parcel Service, Inc., through UPS Corporate Finance S.ár.l., would acquire the entire issued share capital and thus sole control of Eirpost Group Unlimited Company, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Patrick Kenny**  
**Member**  
**Competition and Consumer Protection Commission**