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David Balto Testifies to the House Judiciary Committee on the proposed DHL-UPS Merger



UPS is seeking to carry air cargo for rival DHL. David Balto asks whether the merger would facilitate collusion between UPS and chief rival FedEx.

SOURCE: AP Photo/Paul Sakuma/Frank Augstein

By **David Balto** | September 9, 2008

CAPAF's David Balto testifies before the House Judiciary Committee on the proposed merger between DHL and UPS. [Read the full testimony.](#)

Competitive problems may arise from DHL's proposed alliance with UPS. As detailed in my testimony, this alliance will raise serious competitive concerns and could potentially lead to significantly higher prices for the millions of consumers and businesses (large and small) that use express package delivery services every day. Thus, the alliance should be thoroughly investigated by the antitrust authorities before it is consummated.

I make the following points in my testimony:

- It is unlikely a UPS/DHL merger would be approved by the agencies or the courts.

- The proposed UPS/DHL arrangement will raise significant competitive concerns and diminish DHL's ability and incentive to compete.
- DHL's weakened financial status does not justify the arrangement.
- The Department of Justice or Federal Trade Commission should immediately open an investigation and the parties should agree not to consummate that arrangement until the investigation is completed

My testimony today is based on my experience of over a quarter-century as an antitrust practitioner, the majority of which was spent as a trial attorney in the Antitrust Division of the Department of Justice, and in several senior management positions, including policy director at the Federal Trade Commission. I regularly practice before both the agencies, and frequently represent consumer groups raising concerns about mergers under investigation by the Antitrust Division or the FTC.

I am here with a simple message for this committee. Although the parties have asserted that “there are no grounds for the [presidential] candidates' demands for an antitrust investigation” or “it's a little surprising that anybody could realistically look at this and argue that it raises antitrust issues,” they are simply wrong. Dressing up this arrangement as a so-called alliance does not diminish its substantial potential anticompetitive effects. Having DHL depend on UPS for its most critical functions will extinguish rivalry and greatly enhance the likelihood of higher prices and weaker service. Millions of consumers will suffer.

This so-called alliance is not subject to the filing requirements of the Hart-Scott-Rodino Act. Thus, the parties can consummate their arrangement the day it is announced, irretrievably changing the market environment and placing thousands of workers out of work. Once the alliance is consummated, the “eggs will be scrambled” and should DOJ or the FTC determine at a later date that the alliance harms competition, it will be almost impossible to restore competition.

I have a simple request for the committee and the parties. This committee should request that parties delay consummating their arrangement until DOJ or the FTC conducts a full investigation of the arrangement. I recommend that the parties agree to permit the agency to conduct a full investigation, similar to a merger “Second Request” investigation, before consummating their arrangement. As such the agency should be able to use compulsory process to evaluate the parties' assertions and competitive effects of the alliance. As in a merger investigation, the arrangement should only be consummated after the federal agency determines that it will not harm competition.

Read the full testimony (CAPAF)

To speak with our experts on this topic, please contact:

Print: Katie Peters (economy, education, and health care)

202.741.6285 or kpeters1@americanprogress.org

Print: Christina DiPasquale (foreign policy and security, energy)

202.481.8181 or cdipasquale@americanprogress.org

Print: Laura Pereyra (ethnic media, immigration)

202.741.6258 or lpereyra@americanprogress.org

Radio: Anne Shoup

202.481.7146 or ashoup@americanprogress.org

TV: Andrea Purse

202.741.6250 or apurse@americanprogress.org