



## PRESS RELEASE No 210/23

Luxembourg, 21 December 2023

Judgment of the Court in Case C-297/22 P | United Parcel Service v Commission

### **Termination of the UPS-TNT merger agreement: the irregularity committed by the Commission is not the determining cause of UPS' alleged loss of profit and therefore cannot justify a compensation payment**

*By deciding not to go ahead with acquiring TNT as soon as the decision at issue was announced, UPS broke the causal link between the Commission's infringement and the alleged damage*

In 2013 <sup>1</sup>, the Commission declared a notified concentration between UPS and TNT, two undertakings specialising in the express delivery of small packages, to be incompatible with the internal market. While announcing publicly that it would not go ahead with that concentration, UPS brought an action before the General Court seeking the annulment of the Commission decision. By judgment of 7 March 2017 <sup>2</sup>, the General Court upheld that action and, by judgment of 16 January 2019 <sup>3</sup>, the Court of Justice dismissed the appeal brought by the Commission against the General Court judgment. In the meantime, the Commission declared a concentration between TNT and FedEx, a competitor of UPS, to be compatible with the internal market <sup>4</sup>.

In late 2017, UPS brought an action for damages against the Commission seeking compensation for the economic losses allegedly suffered due to the unlawfulness of the incompatibility decision adopted in 2013. Those losses included the costs associated with its participation in the procedure for the control of the concentration between FedEx and TNT, the payment to TNT of a contractual termination fee following the cancellation of the merger agreement concluded with TNT, and loss of profit resulting from the fact that it was impossible to implement that merger agreement. The General Court dismissed that action in February 2022 <sup>5</sup>.

UPS requests that the Court of Justice set aside the 2022 judgment of the General Court.

By its judgment delivered today, **the Court of Justice dismisses UPS' appeal.**

First, the Court of Justice observes that, by disputing the circumstances in which the merger agreement concluded with TNT was terminated, UPS does not call into question the General Court's legal reasoning, but rather the factual assessment made by that court. However, unless the facts have been distorted, which has **not been demonstrated in the present case**, the appeal procedure does not allow the facts as established by the General Court to be disputed.

Second, the Court of Justice confirms that the payment of the termination fee stemmed from a contractual obligation which was included in the merger agreement. In so doing, the parties to the agreement **together took on the risk** that the proposed transaction would not obtain prior approval from the Commission. However, the harmful consequences of contractual commitments freely consented to by the addressee of a Commission decision cannot constitute the determining cause of the damage suffered as a result of illegalities vitiating that decision.

Lastly, the Court of Justice finds that the General Court correctly established that there was **no causal link** in relation to the three separate types of damage alleged; therefore, UPS' action for damages, which is required to

demonstrate the existence of such a link, cannot in any way succeed.

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text and, as the case may be, the abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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<sup>1</sup> Commission 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); see also Commission press release [IP/13/68](#).

<sup>2</sup> Judgment of the General Court of 7 March 2017, *United Parcel Service v Commission*, [T-194/13](#) (see also [CP No 23/17](#)).

<sup>3</sup> Judgment of the Court of Justice of 16 January 2019, *Commission v United Parcel Service*, [C-265/17 P](#) (see also [CP No 3/19](#)).

<sup>4</sup> [Decision of 8 January 2016](#) declaring a concentration compatible with the internal market and the functioning of the EEA Agreement (Case M.7630 – FedEx/TNT Express), a summary of which has been published in the *Official Journal of the European Union*.

<sup>5</sup> Judgment of the General Court of 23 February 2022, *United Parcel Service v Commission*, [T-834/17](#) (see also [CP No 34/22](#)).