

Form of order sought

The applicant claims that the General Court should:

- annul notice of open competition EPSO/AD/248/13 — Administrators (AD 6), in the buildings sector, and
- order the European Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those raised in Case T-148/13 *Kingdom of Spain v Commission*.

Action brought on 5 April 2013 — United Parcel Service v Commission

(Case T-194/13)

(2013/C 147/54)

Language of the case: English

Parties

Applicant: United Parcel Service, Inc. (Atlanta, United States) (represented by: A. Ryan, B. Graham, Solicitors, W. Knibbeler and P. Stamou, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Annul in its entirety the Decision of the European Commission of 30 January 2013, C(2013) 431 (Comp/M.6570 — UPS/TNT Express), prohibiting the proposed acquisition by UPS of TNT Express N.V., in so far as it prohibits the concentration; and

- Order the defendant to pay the costs of the present proceedings, including those of any potential intervener.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law.

1. First plea in law, alleging that the Commission committed an error of law and a manifest error of assessment when examining the likely price effects of the concentration. Further, the Commission breached its obligation to state reasons and infringed UPS' rights of defence by substantially modifying the econometric model submitted by UPS without hearing UPS or explaining adequately the modifications made.
2. Second plea in law, alleging that by setting an arbitrary standard for verifiability of efficiencies, the Commission erred in law and diverged from the standard set by the case law. Further, the Commission erred in law and committed a manifest error of assessment in assigning insufficient or zero weight to efficiencies that it accepted in principle. Finally the Commission breached UPS' rights of defence by basing its rejection of efficiencies on objections that UPS had not been confronted with previously.
3. Third plea in law, alleging that the Commission erred in law and committed a manifest error of assessment by misapplying the concept of closeness of competition. It equally erred in concluding, without substantive evidence, that the merged entity's potential price increases would be accommodated by the rival to the merged entity.
4. Fourth plea in law, alleging that the Commission breached UPS' rights of defence by denying it access to relevant and exculpatory evidence. Moreover, the Commission failed to state reasons, erred in law and in fact and committed a manifest error of assessment when it concluded that competitors who are not close competitors could not expand to constrain effectively the merged entity in the foreseeable future.
5. Fifth plea in law, alleging that the Commission erred in law and committed a manifest error of assessment in analyzing customers' ability to restrain the merged entity.