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# COMPETITION IN THE PACKAGE DELIVERY INDUSTRY

## HEARING

BEFORE THE

## COMMITTEE ON THE JUDICIARY
## HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

SEPTEMBER 9, 2008

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# COMPETITION IN THE PACKAGE DELIVERY INDUSTRY

**TUESDAY, SEPTEMBER 9, 2008**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.*

The Committee met, pursuant to notice, at 2:12 p.m., in room 2141, Rayburn House Office Building, the Honorable Steve Cohen (acting Chairman of the Committee) presiding.

Present: Representatives Conyers, Delahunt, Cohen, Johnson, Sutton, Gutierrez, Sherman, Wasserman Schultz, Smith, Coble, Goodlatte, Chabot, Keller, Issa, Forbes, King, and Jordan.

Staff Present: Perry Apelbaum, Staff Director and Chief Counsel; Anant Raut, Majority Counsel; Brandon Johns, Majority Staff Assistant; Sean McLaughlin, Minority Chief of Staff and General Counsel; and Stewart Jeffries, Minority Counsel.

Mr. COHEN. This hearing of the Judiciary Committee will come to order.

The proposed agreement between the package delivery companies, UPS and DHL, whereby UPS would provide DHL with all air transport for DHL packages, raises a number of concerns. First, does this proposed agreement violate the Federal antitrust laws?

I fully expect the witnesses from DHL and UPS will tell us that there is no need to be concerned because nothing has been finalized yet. Each has huge teams of lawyers working on the language of their agreement, but we are worried about it. Any transaction in which one of the package delivery company's entire air service is provided by a competitor must be viewed with a heavy dose of skepticism. It is incumbent upon the contracting parties to satisfy us that it would not be anticompetitive. What specific terms are being incorporated into this agreement to allay our concerns?

Second, what will be the impact on Ohio workers? The City of Wilmington and the State of Ohio invested a considerable amount of time and resources in providing DHL with a first-class sorting facility. Since 2004, the State of Ohio has offered DHL approximately $400 billion in direct and indirect financial assistance and incentives, including tax credits and the construction of a highway bypass. Between the employees of DHL and its two carrier airlines, ASTAR and ABX, nearly 10,000 jobs across 41 counties are at stake. What is going to happen to these people if DHL decides to suddenly leave town? What kind of strain will this put on Ohio social services if 10,000 residents wake up tomorrow without a job?

Third, after this transaction, air transport in the package delivery industry will essentially be consolidated in the hands of two players, UPS and FedEx. When competition increases, consumers win. When competition decreases, consumers absolutely lose.

Right now, if you need express delivery of a package, you have four options—FedEx, UPS, DHL or the Postal Service. The Postal Service already outsources most of its air transport to FedEx. If DHL outsources its air transport to UPS, what is to stop UPS and FedEx from raising prices across the board for express delivery packages? Businesses that require high-volume shipping will be stuck.

New, nationwide package delivery services don't just appear overnight. And these costs will inevitably get passed along to consumers who in these times don't have a lot of extra cash lying around. With those remarks, which are also the remarks of Chairman Conyers, who, I notice, is here and who notices that I am here, I give proper accord to his positions.

And now I'd like to recognize the Ranking minority Member, Lamar Smith, for an opening statement.

Mr. SMITH. Mr. Chairman, thank you for calling this hearing today regarding the proposed deal between DHL and UPS for air transport. This is a second hearing in 2 months, the first being the agreement between Google and Yahoo about a nonmerger-related agreement between competitors; and I appreciate your willingness to assert the Committee's jurisdiction in these matters.

On May 28, 2008, DHL, which is a unit of Deutsche Post WorldNet, announced a restructuring of its U.S. express business. Deutsche Post, which had a minority ownership stake in DHL dating back to the late 1990's, reached 100 percent ownership in the company in 2002. Late that same year, DHL acquired its competitor, Airborne Express. Because a restriction was on the foreign ownership of U.S. airlines, DHL's air carriers, ABX, the former Airborne Express, and ASTAR, the former DHL, were created as separate companies with whom DHL had a contractual arrangement. The two airlines flew out of Wilmington, Ohio, a town of about 12,000 in southwest Ohio.

In the last couple of years, DHL's North American business and, in particular, its air transport business has suffered large losses, even though the parent company's worldwide profits were quite large. The reorganization announced in May 2008 involves DHL's outsourcing its entire airfreight business to its rival, UPS.

A DHL customer will still interact with a DHL driver at pickup. However, instead of going to Wilmington, Ohio, the DHL vans will now head to Louisville, Kentucky, where UPS operates its air hub. A UPS plane will then transport the package to its destination city, where a DHL van will deliver the package.

DHL estimates that this new arrangement will save the company as much as $1 billion annually. It will, however, result in the layoffs of almost 7,000 employees in Wilmington, Ohio. Conversely, UPS will receive as much as $1 billion in new revenue and will increase its presence in the Louisville area to compensate for the increased demand on its airline.

Other carriers, such as FedEx and the U.S. Postal Service, have agreements that allow for the transport of some packages on a

competitor's planes. However, this will likely be the first time that a major shipping company has outsourced its entire airfreight capacity to a rival.

As of today's hearing, UPS and DHL have not reached a formal agreement. Because this is not a merger, the companies are not required to receive approval of the arrangement from the Department of Justice or Federal Trade Commission. However, it is my understanding the companies will provide the agreement to the Department of Justice once the contract is finalized.

Unlike Google and Yahoo, it is my understanding that the parties will not delay implementation of the agreement until after DOJ has completed its review. Like Google and Yahoo, the question of whether this agreement harms competition will turn in large measure on the terms of the contract. Under that contract, will UPS have an incentive to discriminate against DHL's packages when it prioritizes items for delivery? Will UPS gain access to sensitive pricing or customer information that will give it an advantage over DHL?

The Department of Justice will also have to consider the likely fate of DHL as a stand-alone competitor in the United States absent this deal; that is, if this deal is all that prevents DHL from going out of business, then it may be worth allowing this deal to go through so as to preserve a strong third competitor against UPS and FedEx.

These are complicated factual questions and are unanswerable at this point because the parties have not finalized any agreements.

I am aware that this deal has been very controversial in Ohio and for good reason. The loss of 7,000 jobs would severely impact the town of Wilmington located in Congressman Michael Turner's district. To that end, I am happy that we will be hearing from so many distinguished members from the Ohio delegation today. And both Presidential candidates have discussed the issue on the campaign trail as well.

While the political ramifications of this agreement cannot be ignored, I hope this Committee will focus on the subject of its jurisdiction, namely the possible impact on consumers of such a transaction.

Mr. Chairman, I look forward to the hearing and hearing from our witnesses and thank you again for calling it on this subject.

Mr. CONYERS. [Presiding.] Thank you, Mr. Smith.

I am so delighted we have one, two, three, four, five Members of the Senate and the House here. And I notice Betty Sutton, our distinguished Member of the Committee, is with us. In addition, there is Michael Turner himself and, of course, my dear friend Marcy Kaptur, whose district is only 54 miles from ours. So she is in the Detroit Labor Day parade as much as I am. And, of course, Sherrod Brown, who has served us in the House for so many years before he was elevated to the Senate.

And we begin with the senior Senator from Ohio, the Honorable George Voinovich. Since 1999, he has served in the United States Senate with great distinction. And we are delighted you are all here. All your statements will be included in the record.

And might I invite the senior Senator to begin our discussion this afternoon. Welcome to the Judiciary Committee, sir.

Mr. VOINOVICH. Thank you, Mr. Chairman.

Mr. CONYERS. Press your button. We are high tech here. You have got to press the right buttons.

All right, we are low tech here. Where are the engineers? This is so embarrassing. Our visitors come from the other body and what do we do? I assure you this was an accident, ladies and gentlemen.

**TESTIMONY OF THE HONORABLE GEORGE V. VOINOVICH, A U.S. SENATOR FROM THE STATE OF OHIO**

Mr. VOINOVICH. Mr. Chairman, thanks for this opportunity, sir, for having this hearing. It will examine competition in the package delivery industry—here we go—including the competitive impacts of the proposed agreement between DHL Express U.S., its parent Deutsche Post WorldNet—collectively, DHL—and the United Parcel Service, Inc.

I am pleased that the Committee will spend time reviewing the competitive situation in this industry. I believe activities like this hearing, as well as what I anticipate will be a review of the proposed DHL-U.S.A. agreement by the Department of Justice Antitrust Division, will reveal why a DHL-UPS agreement is likely to result in consumer harm and an unnecessary loss of jobs and an uprooting in the lives of thousands of families in Ohio.

There is a saying that trying times bring out the best in people, and that has certainly been the case with the DHL situation. I have been very proud of the way Ohio's political leaders have worked together to bring attention to the DHL situation, which is evidenced by the presence of Senator Brown, Senator Turner—Congressmen Turner, Sutton and Kaptur. And our lieutenant governor is here today.

Each of us recognizes the devastating impact that the loss of 7,000 jobs will have on the Wilmington community. Families will struggle to pay their mortgages, save for their children's education and ensure their retirements. In news reports, DHL and UPS characterize their agreement as nothing more than a consumer-vendor agreement that raises no antitrust issues.

The proposed DHL-UPS agreement, however, is not a theoretical consumer-vendor agreement, nor is it a typical agreement. This agreement will result in DHL becoming heavily dependent on one of its closest competitors for a key component of its service, the airlift that moves overnight letters and packages around the country, and will result in DHL's sharing critical and competitively sensitive information with UPS when UPS handles DHL's packages.

The company has also claimed they have not yet entered into this agreement; thus, there is no need to worry about the competitive implications. Unfortunately, if DHL and UPS complete an agreement, which both companies agree does not require a review under the Hart-Scott-Rodino Antitrust Improvements Act, then any government antitrust review would occur after the agreement went into effect after ABX and ASTAR, the airlines that currently provide airlift service for DHL, significantly scale back their operations, shedding workers, planes and abandoning Wilmington, Ohio, from which they operate. If this occurs, it would be nearly impossible to return the market to the situation as it exists today.

I know the Committee is aware that the very purpose of the Hart-Scott-Rodino Act was to avoid situations where two parties enter into agreement without adequate review that would irreversibly harm competition. Because the DHL-UPS agreement does not require Hart-Scott-Rodino Act notification and review, there is a significant role for Congress and the Antitrust Division to act proactively to ensure that competition is protected.

Whenever there is a concerted effort between or among competitors, special caution must be taken to ensure that competition is maintained. Because the DHL and UPS agreement will require DHL to relinquish cost and quality control over its business to UPS and allow UPS to gain information about DHL customers, any DHL-UPS agreement raises significant antitrust issues under the Sherman Act.

As discussed in the Antitrust Division's and Federal Trade Commission's antitrust guidelines for collaborations among competitors, an agreement that limits the independent decision making or combines control over key assets is prone to result in situations that reduce the ability or incentive for competition and may increase the likelihood of an exercise of market power by facilitating explicit or tacit collusion. A DHL-UPS agreement will result in DHL's surrendering cost and quality control to UPS over a significant part of its U.S. operation, resulting in just the sort of competitive harm DOJ, FTC, JB guidelines raise. Moreover, if DHL adopts the UPS package tracking and labeling system, it appears UPS will gain competitive information about DHL's customers. As a result, such an agreement should be scrutinized closely by this Committee and other Committees and the Antitrust Division.

Mr. Chairman, thank you very much for allowing me to testify today.

[The prepared statement of Mr. Voinovich follows:]

PREPARED STATEMENT OF THE HONORABLE GEORGE V. VOINOVICH, A U.S. SENATOR FROM THE STATE OF OHIO

INTRODUCTION

Chairman Conyers, Ranking Member Smith, and Committee members, good afternoon and thank you for this opportunity to testify before you at this important hearing, which will examine competition in the package delivery industry, including the competitive impacts of the proposed agreement between DHL Express U.S., its parent Deutsche Post World Net (collectively "DHL"), and United Parcel Service, Inc. ("UPS"). I am pleased that the Committee will spend time reviewing the competitive situation in this industry. I believe activities like this hearing, as well as what I anticipate will be a review of the proposed DHL/UPS agreement by the Department of Justice Antitrust Division ("Antitrust Division"), will reveal why the DHL/UPS agreement is likely to result in consumer harm, an unnecessary loss of jobs, and uprooting the lives of thousands of families in Ohio.

Before I turn to the specific topic of this hearing, I would like to say a few words about the efforts of the Ohio delegation relating to the DHL/UPS situation. There is a saying that trying times bring out the best in people—and that has certainly been the case with the DHL situation and the Ohio Congressional delegation's reaction. I have been very proud of the way Ohio's community and public leaders have come together to ensure that competition in this industry is maintained and the Wilmington community is treated fairly. This unity is evidenced by the presence of Senator Brown, Mr. Turner, Ms. Sutton, Ms. Kaptur, Lieutenant Governor Fisher, and Wilmington Mayor Raisk at this hearing. We all recognize the devastating impact that the loss of roughly 8,000 jobs will have on the Wilmington community. Families will struggle to pay their mortgages, save for their children's education, and ensure their retirements.

THE DHL/UPS AGREEMENT

When DHL first announced that it intended to partner with UPS, I met with the head of DHL's North American Operations, John Mullen, and needless to say, I expressed my disappointment and concern about the transaction. Ohio and Wilmington made a commitment to DHL, and now DHL is not willing to work with the Ohio stakeholders to help the company solve its financial issues. Instead, DHL will try to resolve its financial issues by completing an agreement with one of its closest competitors.

In news reports, DHL and UPS characterize their agreement as nothing more than a customer-vendor supply agreement that raises no antitrust issues. The companies maintain there is nothing anticompetitive about such a customer-vendor agreement, and in the abstract, I would tend to agree. However, the proposed DHL-UPS agreement is not a theoretical customer-vendor agreement, nor is it a typical agreement. Rather, this agreement will result in DHL becoming heavily dependent on one of its closest competitors for a key component of its service—the airlift that moves overnight letters and packages around the country. In addition, the agreement will inevitably result in DHL sharing critical and competitively sensitive information with UPS when UPS handles DHL's packages.

The companies also claim that they have not yet entered into an agreement; thus, there is no need to worry about the competitive implications. Unfortunately, such logic does not hold up under scrutiny. If DHL and UPS complete an agreement, which both companies have agreed does not require review under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act"), then any government antitrust review would occur after the agreement went into effect and after the likely competitive harm has permanently changed the competitive landscape. The airlines that currently provide airlift service for DHL, ABX and ASTAR, will likely scale back quickly, shedding workers, planes, and abandoning the Wilmington, Ohio facility from which they operate. If this sort of change occurs and later the Antitrust Division finds competitive issues with the DHL/UPS agreement, then it would be nearly impossible to return the market to the situation as it exists today.

I know this Committee is aware that the very purpose of the HSR Act was to avoid situations where two parties enter into an agreement that would irreversibly harm competition. That is, the HSR Act was designed to avoid situations in which the egg cannot be unscrambled. The HSR Act, however, does not apply to every agreement that raises antitrust issues. Nevertheless, there is a significant role for Congress and the Antitrust Division to ensure that competition and consumers are protected against the harms that could ensue from agreements, such as the DHL/UPS agreement, that are not reported under the HSR Act.

ANY DHL/UPS AGREEMENT RAISES COMPETITIVE ISSUES

Section 1 of the Sherman Antitrust Act ("Sherman Act") makes contracts in restraint of trade unlawful. Whenever there is a concerted activity between or among competitors, special caution must be taken to ensure competition is maintained. Because the DHL/UPS agreement will require DHL to relinquish cost and quality control over its business to UPS and allow UPS to gain information about DHL's customers, any DHL/UPS agreement raises significant antitrust issues under the Sherman Act.

As discussed in the Antitrust Division and Federal Trade Commission's ("FTC") Antitrust Guidelines for Collaborations Among Competitors (the *"DOJ/FTC JV Guidelines"*), an agreement that limits the independent decision-making or combines control over key assets is prone to result in situations that "reduce the ability or incentive [for competitors] to compete independently" and "may increase the likelihood of an exercise of market power by facilitating explicit or tacit collusion."

A DHL/UPS agreement will likely result in DHL surrendering cost and quality control to UPS over a significant part of its U.S. operations resulting in just the sort of competitive harm the DOJ/FTC JV Guidelines anticipate. Moreover, if DHL adopts UPS's package tracking and labeling system, it appears UPS will gain competitive information about DHL's customers. As a result, such an agreement should be scrutinized closely to ensure that it does not lead to consumer harm in terms of increased costs or decreased services.

1CONCLUSION

Thank you for allowing me to testify today, and I look forward to continuing my work with the state of Ohio and my colleagues in the entire Ohio Congressional delegation. I want to thank this Committee for its willingness to provide the necessary oversight of the competitive environment in the package delivery industry.

Mr. CONYERS. Thank you for your opening comments, Senator Voinovich.

We are always glad to see Sherrod Brown, now a Member, as we say, of the other body, but we still remember him fondly for his work. Now he is an author and sometimes Members of the Committee; they wonder if we are—have you written a book lately, another book lately?

Mr. BROWN. No. A couple a while ago, but not——

Mr. CONYERS. Well, there are some Members——

Mr. BROWN. When I was in the minority in the House, I had a little more time.

Mr. CONYERS. We are happy to have you here. Welcome.

**TESTIMONY OF THE HONORABLE SHERROD BROWN, A U.S. SENATOR FROM THE STATE OF OHIO**

Mr. BROWN. Thank you, Mr. Chairman.

And Ranking Member Smith, nice to see you. Thank you very much.

And when I walked in and saw Mr. Cohen sitting in the chairman's seat, I just thought, 14 years in the House, I never got to sit there. I come back 2 years later, things have—I just don't understand that.

But thank you. And special thanks to the whole Committee, especially the chairman and the Ranking Member, and to all those in Ohio and around the country that have been so helpful in this issue.

I cite the work of my colleague, Senator Voinovich. I cite especially the work of Congressman Turner and what Mayor Raizk has done in Wilmington. I particularly thank Marcy Kaptur and Betty Sutton, sitting on the panel, and those Members, Steve Chabot and Jim Jordan, who have shown interest way beyond the confines of their districts. This is a southwest Ohio issue, but it is bigger than that, a State issue, and even bigger than that, obviously a national issue. I particularly also appreciate the work that Captain David Ross and the Teamsters have done; and the governor, Governor Strickland, and Lieutenant Governor Fisher, and more on that in a minute.

In addition to Ohio's congressional delegation and State leaders, Senators Herb Kohl and Orrin Hatch, the Chair and Ranking Member of the Antitrust Subcommittee, have asked the Justice Department to investigate the proposed transaction. Senator Voinovich and I are particularly appreciative of that.

This is a national issue, of course, as evidenced by both Senator McCain and Senator Obama's requesting an antitrust review and monitoring this situation. The proposed transaction between DHL Worldwide Express and United Parcel Service would result in DHL's becoming almost entirely dependent on its main competitor, UPS, to deliver its packages. It may cause serious harm to competition in the U.S. Air express package delivery market.

This DHL-UPS proposal, as we have heard, puts more than 8,000 jobs in Ohio at risk, forcing those Ohioans, their families, the communities in which they live to endure unrelenting financial uncertainty. The lack of competitive pricing will affect consumers all over the country. If the DHL-UPS deal breaks antitrust rules, we

need to know that, we need to know it quickly. If this deal is actually finalized, DHL will rely on its competitor for a critical element of its service, its airlift. That sounds simple enough, but what does that mean?

Well, it is a lot more than one set of planes or another. As Mr. Smith's opening statement put out questions that we need to answer, here are some others. Whose system do you use? Will there be DHL or UPS bar codes on the package? Will customer and pricing information be shielded from UPS? What prevents a price squeeze since UPS has control of DHL's wholesale operations? When the Christmas rush comes, whose packages will move first if cargo capacity is strained? And finally, what prevents UPS from using its control of DHL's airlift to marginalize DHL as a competitor?

Congress needs to better understand what this proposed deal would mean for free market competition. DHL will tell you its been losing a billion dollars a year. That justifies changes to the company, not to the market in which it functions. Competitive pricing, consumer choice are the hallmarks of a functioning market. They must be preserved.

This proposed deal teaches a lesson in corporate responsibility or the lack thereof. The final result may leave a mark on how our government regulates foreign investment when it comes to aviation. I am referring to the U.S.-EU Open Skies Initiative, which aims to loosen existing restrictions on EU air carriers operating in our great country. Its proponents claim that deal will create thousands of U.S. jobs and benefits our Nation's economy enormously.

Mr. Chairman, we have heard that before. When DHL moved to Ohio, it promised to boost competition in the air carrier market. It promised to create thousands of good-paying jobs. It promised, of course, to benefit Ohio's economy enormously. When DHL bought Airborne in 2003 and decided to headquarter its airlift operations in Wilmington, our State, of course, welcomed the deal. In fact, the city of Wilmington and Mayor Raizk, Clinton County, and the State of Ohio produced an incentive package including nearly $80 million in direct tax benefits for DHL and several infrastructure projects and up to $400 million in indirect benefits. Sales of yellow and red paint must have tripled as DHL's logo is everywhere throughout the region, and DHL's name from the All-Star Game to local billboards quickly became a source of pride throughout our State. But now Ohio stands to lose 8,000 jobs directly—thousands more, as Senator Voinovich said, if you count other jobs in the community.

I have done roundtables in Wilmington, listened to the mayor talk about what it means to police and fire, listened to hospital administrators talk about what it means to their ability to deliver medical care in this community in Highland County and Montgomery County and all over the region.

I am particularly disturbed by DHL's unwillingness to fully review alternative proposals that would prevent so many jobs from being eliminated. That justifies changes—again, DHL says it is losing a billion dollars in the U.S. market. That justifies changes to the structure, and Governor Strickland and Lieutenant Governor Fisher and our delegation have shown willingness to adapt. We

simply ask the company to give a fair opportunity to other proposals, including from ABX Air.

We have been willing to discuss creative solutions. We have been met with silence.

Mr. Chairman, the story does not have to end this way. I ask Mr. Mullen and Mr. Appel of Deutsche Post in Germany to negotiate in good faith an alternative structure that keeps as many jobs as possible in my State. It would take genuine courage for DHL to reconsider its plan with UPS and figure out a solution that works for the community as well as the company and its customers. Workers in Wilmington and throughout Ohio would applaud that courage.

Thank you for the opportunity to share my views.

[The prepared statement of Mr. Brown follows:]

PREPARED STATEMENT OF THE HONORABLE SHERROD BROWN, A U.S. SENATOR FROM THE STATE OF OHIO

Thank you, Chairman Conyers and Ranking Member Smith. I'd like to also acknowledge Mayor David Raizk of Wilmington who will testify today. Thank you for your leadership in handling this enormous issue.

Before I begin, I'd like to say a word about the efforts and coordination between local, county, state and federal officials. From the city council to the White House, our public officials have recognized the substantive and financial risks posed by this deal. I'm grateful for the unity in our delegation and the responsiveness from members of Congress in both chambers.

In addition to Ohio's congressional delegation and state leaders, Senator Herb Kohl and Senator Orrin Hatch, the Chair and Ranking Members of the Antitrust Subcommittee, have asked the Justice Department to investigate the proposed transaction.

Indeed, this is a national issue, as evidenced by both Democrat and Republican presidential candidates requesting an antitrust review and monitoring the situation.

The proposed transaction between DHL Worldwide Express and United Parcel Service (UPS) would result in DHL becoming almost entirely dependent on its main competitor—UPS—to deliver its packages. It may cause serious harm to competition in the U.S. air express package delivery market.

This DHL-UPS proposal puts more than 8,000 jobs in Ohio at risk, forcing those Ohioans, their families, and the communities in which they live to endure unrelenting financial uncertainty.

The lack of competitive pricing will affect consumers all around the country.

If the DHL-UPS deal breaks antitrust rules, we need to know that, and we need to know it quickly. If this deal is actually finalized, DHL will rely on its competitor, UPS, for a critical element of its service—its air lift.

That sounds simple enough, but what does that mean? Well, it's a lot more than one set of planes or another.

The sorting and tracking functions are highly automated. Whose system do you use? Will there be DHL or UPS bar codes on the package? Will customer and pricing information be shielded from UPS? What prevents a price squeeze since UPS has control of DHL's wholesale operations? When the Christmas rush comes, whose packages will move first if cargo capacity is strained?

I'm certainly not an expert on these topics, but what prevents UPS from using its control of DHL's airlift to marginalize DHL as a competitor? These are some of the questions that arise and probably just scratch the surface.

Congress needs to better understand what this proposed deal would mean for free market competition. In my view, it can only mean trouble.

DHL will tell you it has been losing $1 billion per year. That justifies changes to the company, not to the market in which it functions.

Competitive pricing and consumer choice are the hallmarks of a functioning market. They must be preserved.

The ripple effects of this proposed deal, if it goes forward, would reach beyond the financial hardship it will create in Ohio. This proposed deal may teach us a lesson in corporate responsibility, or the lack thereof. The final result may leave a mark on how our government regulates foreign investment when it comes to aviation.

I'm referring to the U.S.-EU Open Skies Initiative, which aims to loosen existing restrictions on EU air carriers operating in our country. Its proponents claim that

deal will create thousands of U.S. jobs, and benefit our nation's economy enormously.

Ohioans have heard this before, just five years ago. When DHL moved to Ohio, it was going to boost competition in the air carrier market, create thousands of good paying jobs, and benefit Ohio's economy enormously.

When DHL Express bought Airborne Express in 2003 and decided to headquarter its airlift operations in Wilmington, our state welcomed the deal. In fact, the City of Wilmington, Clinton County, and state of Ohio produced an incentive package including nearly $80 million in tax benefits for DHL and several infrastructure projects. Sales of yellow and red paint must have tripled as DHL's logo was everywhere throughout the region, and DHL's name quickly became a source of pride throughout our state.

Despite millions in financial incentives to DHL, the company has not gained market share. When DHL purchased Airborne Express in 2003, it had 18 percent market share. By 2007, DHL's market share dwindled to about 7 percent. Now, Ohio stands to lose 8,000 jobs directly—and thousands more if you count other jobs in the community.

I am particularly disturbed by DHL's unwillingness to fully review alternative proposals that would prevent so many Ohio jobs from being eliminated.

Again, DHL says it is losing $1 billion in the U.S. market. That justifies changes to the structure, and Governor Strickland, Lt. Governor Fisher and the Ohio congressional delegation have shown willingness to adapt. We have asked the company to give a fair opportunity to other proposals, including from ABX Air. We have been willing to discuss creative solutions. We have been met with silence.

The story does not have to end this way. I just ask Mr. Mullen, and Mr. Appel of Deutsche Post, to negotiate in good faith an alternative structure that keeps as many jobs as possible in Ohio.

It would take genuine courage for DHL to reconsider its plan with UPS, and figure out a solution that works for the community, as well as the company and its customers. Workers in Wilmington and throughout Ohio would honor that courage.

Thank you for the opportunity to share my views and for the Committee's commitment to examining this proposal. I look forward to continuing to work with the city of Wilmington, the state of Ohio and federal officials in fighting for these jobs.

Mr. CONYERS. Thank you, Senator Brown.

Congresswoman Marcy Kaptur has worked with this Committee and with its chairman across the years. We are neighbors, nearly contiguous districts, even in different States. And she has helped me become an infrequent visitor and lecturer at the Toledo School of Law.

And we are happy to have you here again today.

## TESTIMONY OF THE HONORABLE MARCY KAPTUR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Ms. KAPTUR. Thank you, Mr. Chairman, so very much for the opportunity to appear here with our colleagues.

And I want to thank you personally for your leadership to bring us together today with your Ranking Member, Mr. Smith, and Members of the full Committee; and also to say up front that we appreciate all the attention that you are giving to this devastating proposal that DHL, a German government-owned corporation and its competitor, UPS, are pursuing.

I want to thank our colleagues from Ohio, Congressmen Turner and Sutton, as well as Senators Brown and Voinovich and our lieutenant governor, Lee Fisher, who is with us today, as well as the mayor of Wilmington, David Raizk, who I know is in the audience and will likely be testifying as well. It is important that we shine light for the country on this issue and its expected harm to our economy, our State, and our country.

The question for the Committee is, should the United States allow this de facto merger between DHL and UPS to go forward

without scrutiny? More good Ohio jobs are likely to be lost, communities washed out, and consumers across our country, as well as world customers, subjected to higher prices because of reduced competition.

This deal is being constructed as an attempt to escape regulatory oversight, to expedite the consolidation of an already heavily consolidated industry.

Let me just place on the record: This is a package delivery industry that has been making money. In 2007, overall, 32.8 billion—that is with a "b"—billion dollars was taken in in annual revenues. Now, FedEx got about 42.7 percent of that, $14.02 billion. $14.02 billion is about as much as we spend in an annual year to fund NASA. The United Parcel Service earned 10.6 billion; they had about a 32 percent share of the market. DHL, 2.8 billion in revenues, about 8.5 percent, so they weren't one of the two big players, but they weren't insignificant with—2 billion is a lot more than most small businesses in my district make. And the Postal Service had 950 million, small kid on the block, with about 2.9 percent of the package delivery business. And then other competitors held about $4.45 billion. So we are talking about big fish in the ocean here.

In Ohio, I might just say—I am sure you already know it—we have lost hundreds of thousands of good-paying jobs with benefits, certainly since the implementation of lopsided trade agreements like NAFTA. But the UPS-DHL proposal is merely one more corporate dispossession of workers in communities that are the backbone of our economy.

If this arrangement goes through, it is estimated at least 8,000 Ohio jobs are on the short list for elimination and tens of thousands of supporting jobs in Wilmington, Ohio, and surrounding counties.

Wilmington itself is a town of 13,000 people. It may not survive the fatal blow of an abandoned facility that displaces such a vast workforce. Indeed, as we examine the recent history of UPS and DHL, we see that job losses and abandoned facilities are likely. When UPS acquired Emery Worldwide in 2004, operating at the Dayton airport, UPS left the facility vacant with 1,200 people unemployed without wages or health insurance. That is a huge job loss by anybody's calculation. And then when DHL acquired Airborne Express, DHL left the Cincinnati airport with unused facilities. I know that Congressman Chabot knows that story well.

If these two package giants merge air operations, we can expect that the Wilmington facility will suffer a similar fate, despite the hundreds of millions of dollars of taxpayer money that DHL asked the State of Ohio to invest in infrastructure to support its operations. Not only will the people of southwestern Ohio be hit hard, but also so will consumers nationwide and likely worldwide.

Eliminating DHL from the express overnight shipping market will leave just two companies, UPS and FedEx. This further reduces competition with likely higher prices for you, for me, and for everyone. Furthermore, the possibility that this alliance will extend to Asian and European operations is merely a step ahead.

I urge your Committee to investigate this proposal both in terms of its antitrust implications, but also the impact that it will have on Wilmington and the State of Ohio as a whole.

It is no secret that Senator Obama has visited Wilmington, as well as Senator McCain. We need to have this on everyone's radar. If we allow these types of megabusiness arrangements with little regulation or regard, we can expect other companies will feel comfortable abandoning communities all in the name of higher corporate profits. But at whose expense? When is big too big? And when does big become anticompetitive?

Since national corporations cannot be allowed to forgo their duties to fulfill promises such as those DHL made to the city of Wilmington and the State of Ohio—they promised to be a long-term presence and enhance competition, not detract from it—it appears that we can no longer count on corporations keeping their word or our ability to ensure a return on our State's investments.

Congress's most important responsibility is to represent our people, not just the interests of huge corporations. I am here to speak on behalf of workers who will be forced out of jobs and left without health care. I know that Captain David Ross is here, President of the Teamsters Local 1224 and representing the pilots of ABX Air. I hope they will be given an opportunity to testify as well. We speak on behalf of students and our schools that will be underfunded because of the potential loss of tax revenue, and communities who will be harmed by pending facility closures.

In closing, Mr. Chairman and Members, thank you for giving us the opportunity to bring to you and to the Committee's attention the plight of our people in communities who will be abandoned if DHL is allowed to break its commitment to the State of Ohio and to the people of Wilmington. And most of all, thank you for meeting the responsibilities of your Committee. Thank you.

[The prepared statement of Ms. Kaptur follows:]

PREPARED STATEMENT OF THE HONORABLE MARCY KAPTUR,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Kaptur Testimony 1

Chairman Conyers and Ranking Member Smith:

Thank you for giving me this opportunity to bring to you and the Committee's attention the devastating deal that DHL, a German government-owned corporation, and its competitor, UPS are hatching. I also thank my colleagues, Representatives Turner and Sutton and Senators Brown and Voinovich for continuing to shine light on this issue and the harm it might do.

Should the United States allow this de facto merger between DHL and UPS to go through without scrutiny -- more good Ohio jobs are likely to be lost, communities to be washed out, and consumers across the country, and potentially the world, subject to higher prices because of reduced competition. This deal is being constructed as an attempt to escape regulatory oversight to expedite the consolidation of an already heavily-consolidated industry.

Ohio has already lost hundreds of thousands of good paying jobs with benefits since the implementation of NAFTA and other such deals, all of which that corporate greed drove. The proposed UPS-DHL deal is merely one more corporate slap in the face to the workers and communities that are the backbone of the American economy.

If this deal goes through, at least 8,000 jobs are on the short list for elimination, but the deal is also putting tens of thousands of supporting jobs in Wilmington, Ohio and the surrounding counties at risk. Wilmington itself is a town of only about 13,000 people. It may not survive the fatal blow of an abandoned facility.

Indeed, as we examine the history of this deal, we see that job losses and abandoned facilities are likely. When UPS acquired Emery Worldwide operating at the Dayton airport, they left the facility vacant and 1,200 people unemployed, without wages or health insurance. When DHL acquired Airborne Express, they left Cincinnati Airport with unused facilities.

If these two package giants merge, we can expect that the Wilmington facility will suffer a similar fate, despite the hundreds of millions of taxpayer dollars DHL asked Ohio to invest.

In addition, not only will the good people of Southwestern Ohio be hit hard, but also so will consumers nationwide, and perhaps worldwide. Eliminating DHL from the express overnight shipping market leaves just two companies: UPS and FedEx. This reduces competition, resulting in higher prices for you, me and everyone. Furthermore, the possibility that this alliance will extend to Asian and European operations is possible, bringing an international perspective to this possibility.

I urge this committee to examine this deal both in terms of the anti-trust implications but also the impact it will have on Wilmington and the State of Ohio as a whole. If we allow these types of business arrangements, with little regulation or regard, we can expect that other companies will feel comfortable abandoning communities, all in the name of higher

corporate profits.

We must show executives of these and other transnational corporations that they cannot ignore their duties to fulfill promises, such as those DHL made to the City of Wilmington and the State of Ohio; they promised to be a long-term presence and enhance competition, not detract from it. Corporate deals like this make it more difficult for states like Ohio to attract businesses, especially when we can no longer count on corporations keeping their word or our ability to ensure a return on our investments. If we create this precedent, others will ask for the same -- the ultimate result will be a greatly diminished state and nation. Is that what we really want? I think not.

Congress's most important responsibility is to represent all Americans--not just those interests of major corporations like UPS but also those workers who will be forced out of jobs and left without healthcare, those students whose schools will be under-funded because of lost tax revenue, and those communities who will be harmed by facility closures.

I thank you again, Mr. Chairman, for giving me the opportunity to bring to your and the Committee's attention the plight of our people and communities who will be abandoned if DHL is allowed to break its commitments to the State of Ohio and to the people of Wilmington.

Thank You.

Mr. CONYERS. Thanks, Marcy Kaptur.

Now the former mayor of Dayton, Ohio, now serving several terms in the House of Representatives, the Honorable Michael Turner, who is a very active Member of this 110th Congress. Welcome to the House Judiciary Committee.

**TESTIMONY OF THE HONORABLE MICHAEL R. TURNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF 0HIO**

Mr. TURNER. Thank you, Mr. Chairman.

Thank you, Ranking Member Smith.

Mr. Chairman, I thank you for holding this hearing on what really is an important issue for the U.S. economy. And I thank the Members of the Committee for their attention and their scrutiny of this transaction, Senator Brown and Senator Voinovich, and I thank Congresswoman Kaptur and Sutton for coming together to support an issue that affects Ohio. This has been a bipartisan issue in our State, and we greatly appreciate your reviewing it today, Mr. Chairman.

Wilmington, Ohio, is in my district, the Third District of Ohio, so I want to speak a moment about the people of the Third District who will be impacted by this transaction.

This facility is not closing because of them. They are hardworking, professional, and committed. The facility that is subject to possible closure was operated prior to DHL's acquisition without a loss. However, the people will be impacted, professions will be lost, homes are at risk, dreams are at risk, the ability to send children to college is at risk. In a nine-county area around Wilmington, Ohio, people send family members to this facility in order to obtain health insurance. Family farms and small businesses that depend on that health insurance will be impacted. And, of course, the businesses that serve the people of the community will be impacted.

Well, today, I wanted to, with the others, outline why this is bad for the U.S., the U.S. consumer, and why I believe this is an antitrust violation.

If you go back just 4 years ago and view this as a stepped transaction, you see a very different picture in the shipping industry. Four years ago we would have had five major players—Emery, Airborne, Federal Express, DHL and UPS. UPS acquired Emery and one disappeared. DHL acquires Airborne and another disappears. Now DHL and UPS are intending to combine for taking what were five in the U.S. market down to two.

But we shouldn't just stop there. We should also look at what is going on in the European industry right now. The Atlanta Journal Constitution just reported that UPS is in negotiations to acquire the number two carrier in Europe. They report that there are three major carriers in Europe—UPS, TNT and DHL. Well, if UPS acquires TNT, the number two, they will be down to two. But in reality they will be down to one because we already know that between DHL and UPS, there will be this strategic alliance. So there really will be one where there were three. So if you go to Europe to send a package to the United States, whether you go into a DHL or UPS office, you will be dealing with, in effect, one company.

Now, what else is bad for the U.S. besides the impact of the consolidation? We will be dismantling important infrastructure for the

operation of our economy. When these industries grew, they grew slowly in scope. Today, though, in order to be able to compete in the package systems industry, you have to have a nationwide system. That will be dismantled and will become a barrier to entry for others. So we will have consolidation and we will also have preventing further competition.

Once they have market control, what will happen? Well, they can limit the service and control pricing.

What are some of the things that we know? Well, I met with DHL officials in my office, and these are some of the things that we do know. Their computer systems will be integrated because the two companies will have to talk to one another. Their costs will have to be coordinated because UPS will be charging DHL. And we also know, because they reported this to me in my office, that this may expand—the strategic alliance may expand to European and Asian markets. So it is not merely just a strategic alliance between UPS and DHL here.

Now, what do we need to know? We need to know why would UPS and DHL agree to do this and how did DHL take Airborne, a prior business that was profitable, and generate losses? What is the future relationship between DHL? Is this just the start? And what does this mean for the almost 10,000 people in southwest Ohio that will have lost their jobs as a result of these consolidations with DHL and UPS?

Now, usually, for me, if something doesn't make sense, I assume something else is going on. And in this instance, I think something else is going on and that we do have here a de facto merger. Why would DHL hand its clients to UPS? Why would DHL cost structure—agree to a cost structure that would become higher than UPS, since they are basically going to become UPS-plus?

DHL is going to share its information with UPS. Why wouldn't UPS steal DHL's clients and why wouldn't that concern them? Why would anyone choose DHL when everyone will know that they are a front office for UPS and they can go direct?

Why wouldn't DHL seek cost cutting without abandoning their independent U.S. presence instead? And why is there no deal for us to scrutinize when they have been in negotiations and discussions for months? Why would DHL have exclusive negotiating rights with UPS and not agreed to negotiate with their own carriers, ASTAR and ABX? For me, if it doesn't sound right, it probably isn't right.

I would like to end with the last paragraph that I put in an op ed piece for the Cincinnati Enquirer. I think it sums up the issues that we have here. All of this should be unnecessary. If DHL lived up to its promises to Ohio and to the town of Wilmington, we all would be focusing on how to make DHL more successful.

Wilmington's past support for DHL should count for something. The surrounding community accepted DHL's vision of a global company operating in their backyards and understands that DHL must curtail its losses. However, usually when a company is losing money, they fire someone, they don't fire a whole town.

Well, I guess now we know that there is a difference with DHL. Maybe the letters for DHL stand for "Do Harm and Leave."

[The prepared statement of Mr. Turner follows:]

PREPARED STATEMENT OF THE HONORABLE MICHAEL R. TURNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Thank you Chairman Conyers, Ranking Member Smith and the other members of the Judiciary Committee for holding this important hearing today on the proposed DHL/UPS transaction that would shift DHL's air shipping from ABX and AStar to an exclusive contract with UPS.

I also want to thank my Ohio colleagues for their work on this important issue. Our delegation has truly worked together on a bipartisan basis to achieve the best possible outcome for Ohio, its workers and their families.

Mr. Chairman, from what we currently know of this proposal, DHL intends on ending their inter-US air shipping contracts with ABX and AStar, and contract exclusively with UPS. The result of this transaction would be the closure of the Wilmington Airpark, owned by DHL, as DHL's operations would presumably consolidate to a UPS facility. Additionally, as DHL is the largest customer of ABX and AStar, it is reported that this transaction will likely result in the drastic downsizing, if not full closure of these two domestic carriers. The total direct impact of the current proposed transaction will amount to over 8000 jobs in Ohio, most of which are in Clinton and Highland Counties.

The losses go beyond the direct impact of jobs. From schools, to churches, to non-profits, to small businesses, I would venture to say that there will not be a single entity in Wilmington that will not be detrimentally impacted by DHL's abandonment.

Mr. Chairman, unfortunately, since the announcement of the transaction, very few details have been released. Our community and its workers deserve answers. My community wants assurances that this transaction complies with federal law. That is what we hope to achieve here today.

Mr. Chairman, unfortunately, this is not the first time in recent history when UPS has negatively impacted my community of southwest Ohio. The transaction between UPS and DHL, which this committee will examine today, should be viewed in the context of UPS's recent history of consolidations in southern Ohio.

Prior to 2001, Emery Worldwide had been operating a successful air shipping business out of Dayton, Ohio. Emery was succeeded by Menlo Worldwide Forwarding, a global shipping company. Menlo operated their business out of the Dayton International Airport with gross revenues reported at $1.9 Billion in 2003. In 2004, UPS acquired Menlo and consolidated their operations to Louisville, Kentucky. This eliminated over 1500 Dayton-based jobs.

Similarly, until 2003, Airborne Express had been a leading domestic shipping company, operating out of Wilmington, Ohio. It was reported that at that time, Airborne maintained 19% of the overnight shipping market in the US. DHL operated a facility at the Cincinnati Airport. DHL acquired Airborne and subsequently consolidated their Cincinnati operations into the Wilmington, Ohio facility.

Mr. Chairman, I and the leaders of the Wilmington community were assured that the outcome would be favorable for the community and that no jobs would be lost. As a result, our federal, state and local leaders rallied to make DHL a success. DHL owns a state-of-the-art airpark and sorting facility in Wilmington. The State of Ohio, as well as local city and county governments, pledged nearly $450 Million dollars in investments toward ensuring DHL's success.

Now, UPS will become the benefactor of DHL's airlift operations; once again, consolidating the air cargo market, causing the demise of two additional domestic shipping companies (ABX and AStar), and causing the loss of over 8000 Ohio jobs.

If this transaction is allowed to proceed, the overall effect will be that UPS will have successfully consolidated over 10 thousand jobs from Ohio, and caused the closure of four domestic air cargo companies (Emery/Airborne/ABX/AStar).

This consolidation of the market will surely have a detrimental impact on American consumers. In fact, this transaction has the potential to affect international shipping, further consolidating markets, and consumer choice. The Atlanta Journal Constitution reported on August 22nd that UPS is rumored to be acquiring TNT, a European express shipping company. Reports indicate that this acquisition will add 15% market share to UPS's European express shipping business and will make them the number one express shipper in Europe.

These consolidations are just the beginning. In a meeting with DHL officials, I asked if they believed that the DHL/UPS strategic relationship would expand to include their European and Asian markets, and they indicated that it could.

Further, UPS and DHL report that they will continue to compete against each other. However, they intend to fully integrate their computer systems, customer lists, and transportation infrastructures. Dealing with DHL will really be dealing

with UPS. They will cease to operate as separate companies. This transaction should be viewed as if a merger between them was to occur.

If these transactions go forward, the US market with contract from what has been five major players—FedEx, UPS, DHL, Airborne, and Emery—to two players. FedEx and a combined DHL/UPS will be left. In Europe, the three major carriers will in effect become one, with a possible UPS/TNT acquisition and a strategic alliance between UPS and DHL.

Today the committee has the opportunity to shed much needed light on this proposal and to get answers to the questions which Wilmington and Ohioans are seeking.

Mr. Chairman, my community has brought forward a list of questions that I have provided to the Committee's membership. These are questions that employees, their families and friends have submitted to my office, and I encourage the Committee's membership to consider these inquiries when they have the opportunity to question today's panels.

Mr. Chairman, I'm sure you will hear today from UPS and DHL, and they will tell you that this transaction does not raise anti-trust issues. But when you consider the context of this transaction—that the proposed UPS/DHL transaction is the next phase in a stepped transaction which will result in the loss of four domestic carriers, it is obvious that American consumers will lose meaningful choice when they ship a package.

Mr. Chairman, I would like to close by reiterating what I said in an Op-Ed for the Cincinnati Enquirer. I would like to submit that Op-Ed for the record. In that piece, I said: ". . . all of this should be unnecessary. If DHL lived up to its promises to Ohio and to the town of Wilmington, we could all be focusing on how to make DHL more successful. Wilmington's past support for DHL should count for something. The surrounding community accepted DHL's vision of a global company operating in their backyards and understands that DHL must curtail its losses. However, usually when a company is losing money, they fire someone, not a whole town."

We now know that the letters "DHL" stand for "Do Harm and Leave".

Mr. CONYERS. Thank you so much.

I notice Attorney Betty Sutton, a Judiciary Committee Member from Ohio, who works with me closely on matters of antitrust, but none of the Senators or Members of Congress here have used the term "outsourcing agreement," and that is perhaps an oversight or maybe—I don't know what it is. Would you share some light on that area of this hearing with us, Attorney Betty Sutton?

## TESTIMONY OF THE HONORABLE BETTY SUTTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Ms. SUTTON. Thank you, Mr. Chairman. I do believe that that word is in my testimony.

Mr. Chairman, thank you so much for holding this hearing on this very important issue. And thank you to all the Members who are here today to hear about this, that is so crucial to working families in Ohio. I want to thank my colleagues both from the Senate and the House for coming forward; and we stand in solidarity to make our points.

As an Ohioan, I sincerely appreciate your efforts, Mr. Chairman, to closely examine this agreement between DHL and UPS. And I hope that the efforts here today will bring to light the very negative implications of this proposed agreement. This hearing is an important step in protecting American consumers and fighting for American jobs, and I commend your leadership on both.

This business contract affects not only the 8- to 10,000 jobs that are at risk in Ohio, but every American who receives and sends packages. And that is why today I would like to talk about the U.S. domestic air carrier market. Currently, the air carrier market, as has been noted, is dominated by three express carriers—FedEx,

DHL and UPS. Any person in this country can use one of these providers to have packages shipped throughout the country for door-to-door delivery. However, there are recent developments that affect these top competitors in the air carrier markets.

In May, Deutsche Post WorldNet, the parent company of DHL, announced that it was restructuring all of its North American operations. As part of this restructuring, DHL announced it would enter into a long-term contract with UPS in which UPS would provide air carrier services for DHL within North America. So that means that if a DHL customer sent a package that required air transportation, UPS would sort and deliver the package instead of DHL. In a sense, DHL is outsourcing its air carrier operations to UPS.

The contract between DHL and UPS is not a formal merger; however, given the close relationship between the two industries, it is a de facto merger. If UPS executes all of DHL's air carrier operations, it will require the sharing of sensitive information such as tracking numbers, customer information and pricing. And I believe it is safe to say that the sharing of this sensitive information puts the companies at risk of remaining independent competitors.

It is common sense. When a business agreement results in shared information that decreases competition, that raises serious concerns under section 1 of the Sherman Act.

Besides these very legitimate concerns, this business agreement, as has been stated here, would substantially diminish the competitive nature of the air carrier industry. If UPS and DHL are allowed to enter into this contract, then the domestic air carrier industry would only be comprised of FedEx and UPS. According to a report from the Air Cargo Management Group, without DHL as an independent competitor, UPS and FedEx would make up 96 percent of the domestic air delivery market. This raises a series of concerns.

First, with only two large competitors in the industry, it will make it difficult for smaller businesses to enter into the market. Second, there is less incentive to compete on price, which would negatively affect consumers. And lastly, since this agreement would lessen competition, it raises a potential violation of section 7 of the Clayton Act. The bottom line, Mr. Chairman, is that this agreement between DHL and UPS raises serious questions under the antitrust law and deserves careful examination.

What is perhaps the most concerning aspect of the issue, beyond the potential violation of the antitrust law, is the incredibly harmful effect this agreement will have on Ohio workers and families; and that can't be overlooked. There are 8,000 Ohio workers at risk of losing their jobs. This means more families without health insurance, more families struggling to put food on the table, and more families struggling to keep a roof over their heads.

Mr. Chairman, Ohio's working families are already suffering from the impact of harmful trade and economic policies that have caused much damage and that this Congress is working hard to reverse. According to the Ohio Department of Jobs and Family Services, in the month of July, the number of workers unemployed in Ohio was 430,000. Last year alone, Ohio lost nearly 100,000 jobs, contributing to an unemployment rate of 7.2 percent; and now we face a flawed business agreement that is threatening more Ohio

jobs. I, along with my colleagues, will continue to fight to make sure our working families have a voice in this matter and that we look at it very closely.

And what is perhaps even more alarming is that the potential job loss reaches far beyond Ohio. Deutsche Post WorldNet's new North American business plan also includes closing 34 percent of its U.S. operations.

Mr. Chairman and fellow Committee Members, I ask that you examine this issue with the utmost concern and scrutiny not only because of its antitrust implications, but because of the negative impact this agreement would have on our economy and our working families. With a 6.1 percent unemployment rate nationally, I do not think that any of our districts in Ohio or beyond can afford to lose more jobs, especially from a faulty business agreement.

And I yield back.

[The prepared statement of Ms. Sutton follows:]

PREPARED STATEMENT OF THE HONORABLE BETTY SUTTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Thank you Mr. Chairman for holding this important hearing on an issue that is so crucial to working families in my home state of Ohio.

As an Ohioan, I sincerely appreciate your efforts to closely examine this agreement between DHL and UPS and I hope that your efforts here today will bring to light the very possible negative implications of this proposed agreement.

This hearing is an important step in protecting American consumers and fighting for American jobs and I commend your leadership in both.

This business contract affects not only the 8,000 jobs that are at risk in Ohio, but every American who sends or receives packages.

And that is why today I would like to talk about the U.S. domestic air carrier market.

Currently, the air carrier market is dominated by three express carriers: FedEx, DHL and UPS.

Any person in this country can use one of these providers to have packages shipped throughout the country for timely, door to door delivery.

However, there are recent developments that affect these top competitors in the air carrier market.

In May, Deutsche Post World Net, the parent company of DHL, announced that it was restructuring all of its North American operations.

As part of this restructuring, DHL announced that it would enter into a long-term contract with UPS, in which UPS would provide air carrier services for DHL within North America.

This means that if a DHL customer sent a package that required air transportation, UPS would sort and deliver the package instead of DHL.

In a sense, DHL is outsourcing its air carrier operations to UPS.

The contract between DHL and UPS is not a formal merger.

However, given the close relationship between the two industries it is a de facto merger.

If UPS executes all of DHL's air carrier operations, it will require the sharing of sensitive information such as tracking numbers, customer information, and pricing.

I believe it is safe to say that the sharing of this sensitive information puts the companies at risk of remaining independent competitors.

When a business agreement results in shared information that decreases competition, this raises serious concerns under Section 1 of the Sherman Act.

Besides these very legitimate concerns, this business agreement would substantially diminish the competitive nature of the air carrier industry.

If UPS and DHL are allowed to enter in this contract, then the domestic air carrier industry would only be comprised of FedEx and UPS.

According to a report from the Air Cargo Management Group, without DHL as an independent competitor, UPS and FedEx would make up 96 percent of the domestic air delivery market.

This raises a series of concerns.

First, with only two large competitors in the industry, it will make it difficult for smaller businesses to enter into the market.

Second, there is less incentive to compete on price, which could negatively affect consumers.

And lastly, since this agreement would substantially lessen competition, it raises a potential violation of Section 7 of the Clayton Act.

The bottom line, Mr. Chairman, is that this agreement between DHL and UPS raises serious questions under Anti-Trust law and deserves careful examination.

What is perhaps the most concerning aspect of this issue beyond the potential violation of Anti-Trust law, is the incredibly harmful effect this agreement will have on Ohio workers and families.

There are 8,000 Ohio workers at risk of losing their jobs.

This means more families without health insurance, more families struggling to put food on the table and more families struggling to keep a roof over their heads.

Mr. Chairman, Ohio's working families are already suffering from the impact of harmful trade and economic policies that have caused much damage, and that this Congress is working hard to reverse.

According to the Ohio Department of Jobs and Family Services, in the month of July, the number of workers unemployed in Ohio was 430,000.

Last year alone, Ohio lost nearly 100,000 jobs contributing to an unemployment rate of 7.2 percent.

Now, we face a flawed business agreement that is threatening more Ohio jobs, and I will continue to fight, along with my colleagues, to make sure our working families have a voice in this matter.

And what is perhaps even more alarming, is that the potential job loss reaches far beyond Ohio.

Deutsche Post World Net's new North American business plan also includes closing 34 percent of its U.S. operations.

Mr. Chairman and fellow members of the Committee, I ask that you examine this issue with the utmost concern and scrutiny.

Not only because of its Anti-Trust implications, but because of the negative impact this agreement could have on our economy and our working families.

With a 6.1 percent unemployment rate nationally, I do not think that any of our districts can afford to loose more jobs, especially from a faulty business agreement.

Thank you, Mr. Chairman and I yield back.

Mr. CONYERS. Thank you.

There is a sense of urgency here. This could go into effect, like tomorrow; am I not correct? And further, this could reach, not just throughout Ohio, but it could reach Michigan and beyond; am I not correct?

And so as I thank the Senators for their appearance here today and close down our first panel.

I would like to caution our Members of the Committee to realize that there must be another side to this story here. With all due respect to the distinguished group of colleagues that are before the Judiciary Committee, there must be some other position not yet revealed to the Committee that makes this something—well, let's say, if we were in court, there would be a presumption of innocence, wouldn't there be, to start off with consideration of these matters?

Right now, we have received from the distinguished men and women that represent the State of Ohio and including another distinguished Member from Ohio on the Committee, as well as the one that is before us, there has been one picture here. And so I look forward to the second panel to hope that there may be some proportionality or redressing of the issue that makes us wonder how this could be going on, this so-called agreement of outsourcing that, in effect, is a merger. And where is our Antitrust Division of the Department of Justice?

There should be some good reasons forthcoming, and I thank this panel so much for their time and energy and resourcefulness. We

will expand this recess for the vote that is pending on the floor. Thank you all very much.

[Recess.]

[3:25 p.m.]

Mr. CONYERS. The Committee will come to order. And I thank the witnesses and our guests here today for their patience and cooperation.

We are so delighted that we are joined by Mr. David Balto, Captain Prater, Captain Ross, President Burt Wallace, CEO John Mullen, Mayor David Raizk. And, of course, we are honored to have the Lieutenant Governor of the State of Ohio, Lee Fisher, who has a long and distinguished career in Ohio politics. He has been not only a State representative but a State senator for quite a period of time and has a distinguished resume. He has also been Attorney General of the State of Ohio and was elected Lieutenant Governor in 2006.

Now, it is true that in panel one the testimony seemed to stack up all one way. We are hoping that with this panel there may be a development of some kind of balance that didn't seem to exist previously.

But all your statements will be included into the record. And we will now begin. And we welcome as our first witness Lieutenant Governor Lee Fisher.

**TESTIMONY OF DAVID LEE FISHER, LIEUTENANT GOVERNOR, STATE OF OHIO**

Mr. FISHER. Mr. Chairman, thanks very much for giving me and my colleagues today the opportunity to testify.

Although I have no doubt that you will hear some balance today, you are not going to hear it from me, because I share the views of all the members of the prior panel. And, in fact, Governor Strickland and I have worked very closely with Senator Brown and Senator Voinovich and Congressman Turner, Congressman Sutton, and, for that matter, every single Member of the House congressional delegation, including Congressman Jordan, who is here today as a member of your panel.

And I want to begin by saying to you that this is not one of those issues that has a partisan divide. This is an issue that both Presidential candidates have focused in on because it is an American issue dealing with jobs.

I have the responsibility in Ohio, Mr. Chairman, of serving not only as Lieutenant Governor but also as the director of the Ohio Department of Economic Development. So I am here today wearing both hats. And as you were nice to mention, I also, in a prior position, served as the Attorney General of Ohio. And during that time, I was the Chair of the National Association of Attorneys General Antitrust Committee. So I don't pretend to be as expert as some of members of this or other panels on antitrust law, but I do have some familiarity. And where antitrust laws intersect with economic development I suspect that I do have some experience, given the job that I hold today.

And in the time that I have been in public office in Ohio over the last 28 years, I have never seen a potential dislocation that will, if it goes forward, have the magnitude that it will have in

southwest Ohio. That is why Governor Strickland and I wake up every single morning and make this particular matter our single highest priority.

The Wilmington Air Park is the largest privately owned airport in the United States of America. This is no small part of real estate. It is a piece of real estate that actually has tremendous potential. And to the credit of DHL, they recognized that early on when they first made their decision to locate there.

ABX, a contractor with DHL, employs approximately 6,000 women and men; ASTAR, another contractor, employs approximately 1,200; and DHL itself employs 1,000. But that only begins to touch the surface. As Congressman Chabot knows, who just walked in, there are some 2,000 employees throughout southwest Ohio in 41 affected counties, including the congressional districts of many members of our Ohio delegation, that will be either directly or indirectly affected by this decision.

I want to recognize that because I deal with economic development every day. Neither Governor Strickland nor I are naive or ignorant of the changes that are going on in the global delivery market and, particularly, the pressures that are on those companies that are unusually oil-dependent. And until we all do a better job of reducing our dependence on foreign oil, whether it is our domestic automakers or whether it is DHL, they are going to have some challenges.

But what has been disappointing, at least so far, in this situation is that we have not been given the opportunity, as the seventh-largest State in the country, to be able to sit down with DHL and try to address their financial challenges.

While we might have some disagreement about the extent of those challenges, we might even have some disagreement about why they have their challenges, we don't have disagreement that they have them. Where we have disagreement is about how to solve them. We think that their proposed transaction with UPS is a solution that is unwise, unfair and unnecessary.

We have indicated, Mr. Chairman, on repeated occasions that we are prepared to meet with Deutsche Post and DHL anywhere, anytime, in the world to work with them as their risk-sharing collaborative partner, as we do with companies around the world every day, to try to address their financial challenges, to reduce their cost of doing business. But we have not been given that opportunity despite repeated requests since May 28th when the announcement was made.

You heard today very articulately from my colleagues, both Senators and Members of Congress, why we believe that this is, in fact, anticompetitive; and we do. We think this transaction is one step closer to a full merger between DHL and UPS. As this deal has been reported, customers will still place their orders with DHL, the branding would remain the yellow and red, but UPS would handle the package sorting and the delivery of those packages. In effect, DHL would be a $1-billion-a-year customer of UPS.

The question left unanswered—perhaps we will hear it today—is whether the customers of DHL Express would continue placing their orders with DHL when their packages are being sorted and

delivered by UPS. Or would DHL Express customers eliminate the middle man and contract with UPS directly?

Some analysts view the proposed transaction as an indication that DHL will not continue to compete for market share. Less competition could mean higher rates for the two industry giants, UPS and FedEx. Based on past experience with DHL, we are concerned that the Wilmington Air Park will be idled once most of DHL Express's domestic shipping and package-handling work is outsourced to UPS. As has been pointed out in prior testimony, this would be not the first time that Ohio has suffered a similar loss, although this will be the largest of them all.

One of my successors in the Ohio Attorney General's Office, the current Attorney General, Nancy Rogers, has met with Governor Strickland and me. And we have discussed that there is no higher legal priority to us than taking a look as to whether or not Ohio's antitrust statute, the Valentine Act, applies to this particular transaction.

I am pleased to say that the antitrust section of the Ohio Attorney General's Office has retained and is working closely with a nationally respected economist experienced in issues of competition in the transportation industry. And the Attorney General's Office has sought out, obtained and analyzed extensive data, conducted numerous interviews, and is engaged in statutorily authorized information-gathering at this point.

As you know, our United States Attorney General has also been asked to look at this by the entire congressional delegation. On July 10th, I traveled to Washington, DC, to meet with James O'Connell of the Antitrust Division and Julie Warren in the Intergovernmental Office. We talked about why it was Governor Strickland's and my belief that there were clear potential violations of the antitrust laws.

We have negotiated in good faith with DHL Express. And we were pleased to extend financial and other incentives to the company to locate their operations at Wilmington in 2004.

In April of 2008, representatives of DHL Express, including their chief legal counsel, who is here today, traveled to Columbus to discuss a taxation policy that has historically benefited the company. Unfortunately, during that meeting, when I directly asked the company representatives about the future of the DHL site in Wilmington, they did not indicate any plans to downsize DHL's Express operations in Ohio.

I want to make it clear that I know their chief counsel, and I am not suggesting in any way that he misled me. It is quite possible that he himself did not know at the time. But the point is not so much that we were misled but that we were not given the chance to sit down with DHL before they made this, we think, fateful and unwise decision.

During the questions and answers, Mr. Chairman, I would be more than happy to address my own personal views on the violation of the Sherman Act, the Clayton Act and Ohio's Valentine Act, but in the interest of time and because there is an antitrust expert at the other end of the table, that may not be necessary. And so I will defer those kinds of questions to later, if it is all right, Mr. Chairman.

[The prepared statement of Mr. Fisher follows:]

PREPARED STATEMENT OF DAVID LEE FISHER

**Ohio**

**Ted Strickland**, Governor
Lee Fisher, Lt. Governor

**Lt. Governor of Ohio Lee Fisher**
Testimony on behalf of the State of Ohio
to the U.S. House Judiciary Committee
**September 9, 2008**

Chairman Conyers, and Members of the United States House of Representatives Judiciary Committee, thank you for the opportunity to testify on behalf of Governor Ted Strickland and the State of Ohio regarding the proposed transaction between DHL Express and United Parcel Service (UPS). My name is Lee Fisher, and I am the Lt. Governor of the State of Ohio and have the dual honor and responsibility of serving as Director of the Ohio Department of Development under Governor Strickland. I previously served as Attorney General of the State of Ohio, and, during that time, I was Co-Chair of the National Association of Attorneys General (NAAG) Antitrust Committee.

As a former Attorney General and the current director of the State of Ohio's economic development efforts, I am troubled by this proposal, which will potentially eliminate as many as 10,000 jobs in Wilmington, Ohio, and further consolidate the domestic airlift industry in the United States. Governor Strickland and I believe that this proposed transaction, in addition to leading to devastating job losses in Ohio, will seriously undermine competition in the U.S. package shipping market.

The impact of this potential business deal is monumental for Ohio and the entire country, and the fact that we are participating in this hearing today reflects the magnitude of this decision. The Wilmington Air Park is the largest privately owned airport in the United States. It would be the third airport in the Southwest Ohio region to realize significant losses stemming from consolidations in the airlift and package delivery industry in less than five years.

Thousands of jobs are at stake as a result of this proposed transaction. ABX Air, a contractor with DHL Express, employs approximately 6,000 people at the air park; ASTAR Air Cargo, another contractor, employs about 1,200 people; and DHL employs approximately 1,000 individuals directly. In addition to the people employed at the airpark, nearly 2,000 employees working at facilities and businesses located at the Wilmington Air Park may lose their jobs if DHL Express leaves Wilmington.

The elimination of jobs at the Wilmington Air Park will devastate not only the small community of Wilmington, Ohio, but will also impact 41 Ohio counties that have residents who are employed at the airport. Thousands of families in Wilmington and thousands more in the surrounding region will be impacted when one or both household income earners loses their job. Likewise, the entire region will be impacted when a restaurant or retail store suffers because fewer people are shopping there; when the housing market crumbles because too many people cannot afford their mortgages; and when the health care system suffers because too many patients can't afford their care. Even the region's pets and livestock will suffer because their owners can no longer afford to care for them.

And finally, but perhaps most importantly, we believe that this proposed transaction has significant antitrust implications. Today we are asking this committee to evaluate these concerns, not only because of the devastating impact this transaction will have on Wilmington and Ohio, but because we believe the proposed DHL Express-UPS agreement will significantly limit competition in the domestic package shipping industry.

Our efforts to retain DHL Express at the Wilmington Air Park have been truly bipartisan. **U.S. Senators George Voinovich and Sherrod Brown, Congressmen Mike Turner, Dave Hobson, Zack Space,** three members of this committee, **Congressman Steve Chabot, Congressman Jim Jordan** and **Congresswoman Betty Sutton**, and all other members of the Ohio Congressional Delegation as well as many state legislators have joined with Governor Strickland and our administration, together with local public officials and community leaders throughout Southwest Ohio, to fight this proposed anti-competitive transaction.

On May 28, Governor Strickland and I were informed by company representatives that **DHL Express** was proposing an agreement with **United Parcel Service (UPS)** to outsource the domestic airlift service and parcel handling currently performed by the employees of **ABX Air** and **ASTAR Air Cargo** at DHL's important air-freight hub in Wilmington. As a result, all of DHL's domestic packages would be shipped by UPS and absorbed into UPS's operation in Louisville, Kentucky, thereby eliminating nearly 10,000 jobs at the Wilmington Air Park. DHL Express said at the time that they expected to lose $1.3 billion – nearly $5 million a month – in 2008 as a result of a decreasing share in the American delivery market. DHL Express has reported that it will spend an estimated $2 billion to eliminate operations and transition to the proposed UPS arrangement, but it is not yet clear how much of those funds will be committed to mitigate the costs incurred by Wilmington and other impacted communities.

We are not naïve or ignorant of the changes in the global delivery market; we understand that companies must make decisions about business efficiencies to stay competitive. In an interview with *The New York Times*, my co-panelist John P. Mullen, CEO of DHL Express, said that maintaining DHL aircraft is an expensive endeavor for the company and is now intensified by the skyrocketing costs of fuel prices.

However, we believe that this transaction is only one step removed from a direct merger between DHL Express and UPS. As this deal has been reported, customers would still place their orders with DHL Express, but UPS would handle everything in between, including the package sorting and shipping of those packages from one destination to another. In effect, DHL Express would become a $1 billion-a-year customer of UPS dependent on UPS to perform the core functions of package shipping. To make the service relationship efficient and cost-effective, operations will almost necessarily have to be integrated to an extent that DHL will cease to exist as an independent shipper in the U.S. market; DHL will be little more than an alternative label for UPS service. Industry consolidation should be expected to lead to higher prices for package delivery for businesses and citizens across the United States. We expect that this proposed transaction would give UPS extraordinary market power once DHL Express' current domestic partners are knocked out of the market by the inevitable contraction of service providers that will result.

This leads to the inevitable question of whether the customers of DHL Express will continue placing their orders with DHL when their packages are being sorted and delivered by UPS – why would DHL Express customers not simply eliminate the "middle man" and contract with UPS directly? And after DHL's current air carriers are forced by the loss of their DHL business to dismantle their own cargo fleets, what is to prevent UPS from taking advantage of its position by providing less favorable service to DHL Express packages than to packages shipped directly with UPS?

Some analysts view the proposed transaction as an indication that DHL will not continue to compete for market share; less competition could mean higher rates for the two industry giants UPS and FedEx, according to David Ross of Stifel Nicolaus financial firm, in an interview with Purchasing.com. The proposed DHL Express transaction should also be considered in the context of industry consolidations since 2000 that have left UPS, FedEx, and DHL Express as the only remaining options for consumers.

Based on past experience with DHL Express, we are concerned that the Wilmington Air Park will be idled once most of DHL Express' domestic shipping and package handling work is outsourced to UPS. In 2003, DHL Worldwide Express purchased Airborne Express, consolidated operations in Wilmington, Ohio, and vacated its facilities at the Cincinnati/Northern Kentucky Airport. While that was a short-term win for the Wilmington Air Park, it hampered growth at the larger regional airport. In 2005, after acquiring Emery Worldwide, UPS consolidated its operations in Louisville, Kentucky, resulting in the abandonment of the Emery Facility at the Dayton Airport and the loss of 1,200 jobs in Southwestern Ohio. The Emery Facility has been idle since June 2006, while UPS has continued to lease the 200,000 square-foot space, blocking any other potential customer from utilizing the hangar.

Further consolidation in the industry is almost certainly bad news for consumers. And it most certainly is devastating news for the men and women who make a living by working in airlift, package sorting and other related sectors. That is why Governor Strickland and I believe that the antitrust implications of this deal must be closely analyzed before this proposed deal is approved.

### Antitrust Actions

Upon hearing of the proposed transaction, Governor Strickland immediately asked his Chief Legal Counsel to lead an investigation into all possible legal remedies that would prevent this proposed agreement. Legal counsel from our administration and the Ohio Attorney General's Office are researching this proposal to ensure the competitiveness of the package delivery industry in the United States, as well as to protect the rights of the employees, and the interests of the government entities that provided financial incentives to attract and maintain DHL's operations in Wilmington.

In June, Governor Strickland and I told **Ohio Attorney General Nancy Rogers** that there was no greater legal priority to us than the proposed DHL-UPS transaction. Since then, the Antitrust Section of the Ohio Attorney General's Office has retained and is working closely with a nationally-respected economist experienced in issues of competition in the transportation industry. Further, the Attorney General's Office has sought out, obtained, and analyzed extensive data and research from industry sources; conducted numerous interviews of current and former industry participants in order to accurately analyze the competitive structure of the industry its situation if the proposed transaction closed; and engaged in statutorily authorized information-gathering, the details of which are subject to strict confidentiality provisions. Because of the confidentiality restrictions, and because any deal between DHL Express and UPS has not yet been finalized, the Attorney General's Office cannot elaborate further on those efforts.

In addition to the actions of the Ohio Attorney General, **United States Attorney General Michael Mukasey** is reportedly collecting information for a possible antitrust case. State leaders and Ohio's entire congressional delegation have asked Attorney General Mukasey to open an investigation into the proposed transaction between DHL and UPS, specifically the adverse impact on the nation's shipping market if UPS is permitted to absorb DHL's domestic shipping operations.

On July 10th, I met with **James O'Connell**, Deputy Assistant Attorney General for International, Policy and Appellate Matters at the U.S. Department of Justice, Antitrust Division, to specifically address the potential antitrust issues of this transaction. Joining us in the meeting was **Julie Warren**, Associate Director of the Justice Department's Office of Intergovernmental and Public Liaison. While the Justice Department cannot formally start an antitrust investigation unless and until an agreement has been reached between DHL and UPS, we were informed that the Justice Department is well aware of this issue and has started to gather information on the potential anticompetitive impact of this transaction.

The prospect of market-sharing arrangements by DHL Express and UPS is not necessarily limited to the United States. Both now compete in the global shipping market. If DHL Express bolsters UPS' volume in the U.S. market by ceding operations through a vendor arrangement, why wouldn't they consider similar arrangements in other parts of the world where collaboration could help ensure dominance for one? Because of the prospect for broader global implications of this transaction, **Ohio Attorney General Nancy Rogers** has written to competition authorities in the European Union, Canada and Mexico urging them to review the proposed DHL Express-UPS transaction from an antitrust perspective.

### State of Ohio's Response

From May 28, 2008 onward, we have taken actions each and every day to stop the proposed deal between DHL and UPS from moving forward and to protect the jobs and assets in Wilmington. On a separate but parallel track, we are planning for the possibility of redevelopment of the workforce and assets at the Wilmington Air Park.

Upon learning of DHL Express' intention to enter into a financial arrangement with UPS, Governor Strickland and I created an internal response team at the Ohio Department of Development to gather intelligence about the proposed transaction and to engage as many stakeholders as we could. Within the first 36 hours, our team spoke and met with elected officials from the 41 impacted counties, the legislative and congressional delegations, and the local unions.

Governor Strickland immediately requested a meeting in the Governor's Office with officials from DHL to discuss this potential agreement. On June 4th, Governor Strickland and I met with **John Mullen, CEO of DHL Express – Worldwide, Hans Hickler, CEO of DHL Express – US**, and **Wolfgang Pordzik, Senior Director of Public Policy for DHL**, along with leaders of the Ohio General Assembly. In our conversation, we explicitly stated our disappointment to the DHL executives that the state and community did not receive any advance notice of this announcement. We also emphasized that the Strickland/Fisher Administration and the General Assembly would work in tandem to oppose the transaction. Governor Strickland and I have been in regular communication with DHL and its German parent company, Deutsche Post World Net, as well as the affected communities, to ensure that, across state government, we are doing everything possible to address the immediate challenge of trying to preserve the thousands of jobs at risk.

The State of Ohio has negotiated in good faith with DHL Express. We were pleased to extend financial and other incentives to the company to locate their operations at the Wilmington Air Park in 2004. Specifically, the incentives offered to DHL in 2004 included:

- A Job Retention Tax Credit which would have provided an estimated tax benefit valued at $66 million based on the projected $295 million payroll over the term;
- A Job Creation Tax Credit which would have provided an estimated tax benefit valued at $13 million over a 10-year term;
- A Director's Contingency Fund or Rapid Outreach Grant of up to $2 million;
- An Ohio Investment in Training grant of up to $2 million;
- A Roadwork (629) Grant of $1 million; and
- A commitment to complete the Wilmington Bypass.

The Wilmington Bypass was initiated in 2006 to improve transportation and access to the Wilmington Air Park. Phase 1 of the project was completed by April 2008. Phase 2 (from US 68 to US 22) is scheduled for construction completion between August 2008 and October 2010. Phase 3 will complete the by-pass construction (from SR 73 – west of Mitchell Road – to US 68) and will begin in May 2009. The Wilmington Bypass is scheduled to be completed in October 2010. Current estimates of the cost for all three phases of the by-pass, including planning, engineering, and construction, exceed $99 million.

The state also provided financial incentives to two key service providers for DHL Express – ABX Air and ASTAR. ABX Air and ASTAR are cargo airlines that provide airlift services to move DHL Express packages. ABX Air also provides package handling services. The partnerships with these two companies are critical to DHL Express operations because United States law prohibits a foreign entity from owning a domestic airline. Dating back to the mid-1990s, the Department of Development provided incentives to ABX Air, although that assistance pre-dated the company's partnership with DHL Express.

More recently, the Department of Development offered financial incentives to ASTAR – with indirect benefits to DHL Express. Specifically, in 2005, the Department offered ASTAR an assistance package including:

- A Job Creation Tax Credit which would have provided an estimated tax benefit valued at $10 million over a 15-year term; and
- An Ohio Investment in Training grant of up to $300,000.

Despite offering approximately $400 million in direct and indirect financial assistance and incentives to DHL Express, the company has not gained market share against UPS and FedEx in the last five years [Source: **Wall Street Journal**, *DHL Parent's Chief Defends UPS Deal*, August 14, 2008]. In May 2008, representatives from DHL Express, including their Chief Legal Counsel, traveled to Columbus to discuss a taxation policy that has historically benefited the company. During that meeting, I directly asked the company representatives about the future of the DHL site in Wilmington, and they responded that there were no plans to downsize DHL Express' operations in Ohio.

### Planning for the Future

Our administration is pursuing all options to maintain the DHL jobs in Wilmington. However, in addition to our retention efforts, we are operating on a concurrent track to prepare the workforce for different opportunities and prepare for possible site redevelopment of the Wilmington Air Park.

### Site Review and Analysis

On June 25, staff from the Ohio Department of Development accompanied two nationally-recognized site selection and engineering firms to review the Wilmington Air Park's site attributes. As part of the Department's Job Ready Sites Program, we have contracted with both The Austin Company, based in Cleveland, and SSOE, Inc., based in Toledo, to perform technical reviews and evaluations of sites that are funded under that infrastructure grant program. Recognizing the need to have experts evaluate the Air Park facilities, we chose to spend some of our funds – otherwise reserved for analyzing site improvement activities under the Department of Development's Job Ready Sites Program - to begin the process of evaluating the Wilmington site for potential redevelopment opportunities. In fact, one of the firms sent an aviation facilities expert from Atlanta to participate in the site visit. Ohio Department of Development staff gathered information that could be used in any future re-marketing of the site for post-DHL development.

The Ohio Valley Regional Development Council, in conjunction with the Governor's Office of Appalachia, Clinton, Fayette, and Highland Counties, and the City of Wilmington, has applied to the U.S. Department of Commerce's Economic Development Administration for a $200,000 "Economic Recovery Grant." This grant will allow the affected communities to conduct comprehensive economic development analyses and create thorough, long-term, recovery strategies for mitigating the affects of the loss of jobs at the Wilmington Air Park.

The Economic Development Task Force has met with economic development experts from around the region and country, including Robert Sawyer, the U.S. Economic Development Administration's Regional Administrator.

In conjunction with Dr. Mark Brooker, we are working with The Ohio State University and Dr. Greg Davis to conduct a detailed analysis of the indirect and induced job losses and economic impacts. This analysis will assist us in the creation of a database of affected companies which will be utilized in our recovery and redevelopment strategies.

### Rapid Response

A $1,050,000 Rapid Response grant has been awarded by the **Ohio Department of Job and Family Services**, to be administered to the local area in quarterly phases. The Department's Rapid Response unit has been working in coordination with our local partners to prepare for the possibility of a mass lay off. Employment services at the Wilmington Air Park will be provided by Workforce Services Unlimited, working through the 'Five Star' program for Clinton, Fayette, Greene, Highland, and Montgomery Counties, as well as other one-stop centers in the region. Director Keith Hyde is leading the efforts in Southwest Ohio; Hyde ran the workforce committee of the Task Force on the Base Closure in response to the 2005 Base Realignment and Closure process. Hyde has been in constant contact with the ABX Air and ASTAR Human Relations departments.

ABX Air has provided a 10,000 square foot transition center and is staffing the center with 17 human resources professionals. Classes will be available at the Transition Center on such topics as résumé preparation, job search, and networking. Beginner computer classes on keyboarding, Microsoft Word, and Excel will be available as will a GED preparation course. Peer support training commenced in August 2008 and will continue to be offered at the work site.

### National Emergency Grant

The Ohio Department of Job and Family Services has submitted an application for a Federal National Emergency Grant to the U.S. Department of Labor requesting $6.7 million. The requested grant funds will support services ranging from job matching and placement, résumé writing and interviewing techniques, as well as needs-related payments and training. Additional grants may be requested in the coming months, if and when the need arises. All counties with more than 10 impacted workers in southwest Ohio – which includes 17 counties, stretching from Cincinnati to Dayton and over to Columbus – are included as project operators in the initial grant. Under a worst case scenario, this designation as project operators puts all of these counties in a position to receive and administer federal emergency funds. We appreciate the support for the State of Ohio's application from Ohio's entire Congressional Delegation and White House Advisor Karl Zinsmeister.

### Workforce Retraining

Workforce Investment Boards across the region are collaborating to make services and assistance available for affected workers. Currently, the workforce is being surveyed for information about their training needs and desires.

In August, Chancellor Eric Fingerhut of the Ohio Board of Regents convened regional education and training providers in Wilmington to discuss the response of Ohio's colleges and universities, adult career-technical programs, and Adult Basic and Literacy Education (ABLE) providers to the potential dislocation of ABX, ASTAR, DHL, and related workers.

Chancellor Fingerhut, in collaboration with the Governor's Office, the Ohio Department of Development, and the Ohio Department of Job and Family Services, will work to identify the needs of area businesses, including their workforce needs, and will coordinate with Ohio educational institutions to develop appropriate curriculum. Dislocated workers will be steered into these programs and retrained for new jobs as part of our ongoing effort to meet the needs of area businesses and help dislocated workers get back to work.

Family and Community Assistance
While we are working each and every day with our local, state, and federal partners to ensure the best case scenario outcome, we must, at the same time, prepare for the worst case scenario. In addition to the community forum held in July, we have created a website called www.airparkhelp.com to inform area residents and ABX Air, ASTAR Air Cargo, and DHL employees about services available to them from the State of Ohio, should they need assistance. The categories of available assistance include a wide variety of services, including:

- Credit Counseling
- Fraud Protection
- Foreclosure Prevention/ Mortgage Assistance
- Utility Assistance (HEAP/ PIPP)
- Small Business Resources
- Mental Health Assistance
- Ohio Benefit Bank
- Education and Training

### Insurance Coverage

The Ohio Department of Insurance, led by Commissioner Mary Jo Hudson, is leading an effort to ensure that individuals who may lose their benefits can obtain health insurance. The Consumer Services Division is available to assist, educate and counsel the consumers of Ohio on matters relating to health, life and other insurance related products. The division has specialists available Monday through Friday from 8 a.m. to 5 p.m. at their toll-free hotline – (800) 686-1526 – to help customers understand their health insurance options. There are also links to helpful consumer tips via the web at www.ohioinsurance.gov.

### Conclusion

Despite all our efforts to be prepared should the DHL Express and UPS deal go forward, it is our strong preference that this deal not transpire. We believe, based on independent meetings with DHL Express' current air carriers, that efficiencies could be achieved that would allow DHL to continue to operate as an independent shipper at costs comparable to those reported for the proposed UPS arrangement. Governor Strickland and I have repeated our offers to assist DHL Express and its air carriers to facilitate such discussions.

Thank you for your attention to this important matter facing Wilmington and the State of Ohio. The impact of the proposed agreement between DHL Express and UPS demands the scrutiny of this committee before it is allowed to proceed.

I am pleased to answer any questions you may have.

Mr. CONYERS. Thank you, Lieutenant Governor Fisher, for getting this second panel off to a very fine start. Your information and insight and, I would say, considerable experience in antitrust issues will be very helpful as we sort our way through this very intriguing and, in some ways, mysterious problem that confronts the Committee on Judiciary today.

Mayor David Raizk, a lifelong resident of Wilmington, is our next witness. He went to school there, he went to college there, he worked his entire life there. He was the director of public safety and then 16 years as the president of the Wilmington City Council. And the last 8 years, he has been its mayor and begins his third term.

And we welcome you here for your insight on the subject matter for which we have come.

**TESTIMONY OF THE HONORABLE DAVID L. RAIZK, MAYOR, WILMINGTON, OH**

Mr. RAIZK. Thank you, Mr. Chairman.

First of all, I want to say thank you to you and to all the Members of the Committee for giving me the opportunity to testify here today. I am always honored to represent the community that I serve, my hometown, Wilmington, Ohio. Wilmington and Clinton County is a wonderful place to live, work and raise your family.

I also want to thank Lieutenant Governor Lee Fisher, Governor Ted Strickland, Senators Brown and Voinovich, Congressman Mike Turner, Congresswoman Betty Sutton, Mr. Chabot and all the members of the Ohio delegation for coming to our aid. We have created one of the perfect scenarios of bipartisan support in support of those citizens of southwestern Ohio. If anybody is disaffected with government today, they ought to look at what is happening in Wilmington, Ohio, and they can renew their hope in government.

Since May 28th, a storm has descended on Wilmington, Ohio, and it won't go away. On May 28th, DHL, Wilmington and Clinton County's largest employer and also the largest employer in the five surrounding counties, announced that they were seeking a deal with UPS, their biggest competitor, to handle their airlift operations in the United States. This effectively would cease operations at the Wilmington Air Park.

This was especially difficult for me, as I received this news firsthand in Germany at DHL and Deutsche Post World Net headquarters. I was in Germany as a guest of DHL, representing the City of Wilmington and the Wilmington Air Park, the largest hub in the DHL network, at the grand opening of their new hub in Leipzig.

While given the economic climate, we knew some restructuring was in the works and some job loss would be coming, primarily as a result of the standing down of the DC-9 portion of the business of DHL, ABX and ASTAR. But there was reason for optimism concerning the Wilmington Air Park.

In February, I hosted a conference call in my office with Governor Ted Strickland, representatives of ASTAR Air Cargo and ABX Air, DHL's partners for airlift and sorting operations in the United States, and representatives of DHL. At that time, DHL as-

sured the Governor that, although there would be some job cuts coming, they were committed to the Wilmington Air Park. In April, as the Lieutenant Governor testified, in discussions with DHL on possible assistance from the State of Ohio, Lieutenant Governor Lee Fisher was also assured of DHL's commitment to the Wilmington Air Park.

So it was with some comfort level that I went to Germany to represent Wilmington. That comfort was further enhanced when German Foreign Minister Steinmeyer, the keynote speaker at the hub opening, mentioned Wilmington, Ohio, in his address.

Imagine my shock 2 days later when I received the news firsthand that DHL was seeking a deal with UPS. Those of you who have played football and have had the wind knocked out of you know exactly how I felt.

What will be the result of this proposed transaction? What will be the impact?

The job loss alone, which includes DHL, ABX Air, ASTAR Air Cargo, and 18 companies we have identified located in and around the air park with direct or indirect relationships with the operations there would be almost 10,000—9,786.

The annual payroll for just the three companies is over $257 million. Health-care benefits provided for the workers total $63 million. The local hospital that these employees provide with their health-care coverage almost 8 percent of their total revenue, that would incur a loss to the local hospital of $7 million to $8 million, plus the increase in charity care when these benefits would cease. It would put them out of business.

This transaction would also bankrupt the State of Ohio's unemployment insurance fund. The impact to the schools, to city and county government, nonprofits and local business would be devastating. Our data analysis indicates that one in five small businesses will fail if this transaction goes through.

If I sound alarmist, it is because we are facing an economic catastrophe of unparalleled proportion. We are not trying to save jobs of the old technology that have failed to keep pace with competition and the new economy. These are 21st-century jobs: pilots and crew members, supply chain and logistics professionals, aircraft and airframe mechanics, conveyer engineers. And this is not a case of the Rust Belt versus the Sun Belt. These jobs will simply disappear.

In 2004, we welcomed DHL and ASTAR Air Cargo into the Wilmington family. ABX Air and its predecessor, Airborne Express, accounting for over 6,000 of these jobs, have been with us for 30 years. They are part of the fabric of our community. There is an air park employee in one of every three households in the city of Wilmington. Many husbands and wives work there together. Many family farms were saved because of part-time work at the air park that provided the health care that they needed to continue. Students at Wilmington College, many the first in family to go to college, work at the air park to reduce their indebtedness upon graduation. In short, these jobs just didn't appear in 2004. Over the last 30 years, the community has grown with the growth of the air park. This proposal would rip the fabric of our community.

Now, I don't know what the criteria or the definition for "antitrust" is. I am a simple mayor from a small town in southwestern

Ohio. DHL and UPS say this is a contractor-vendor relationship. But to abandon your largest hub and deliver the freight to your number-one competitor, then I say it is a de facto merger.

Given the recent history of acquisitions of smaller air carriers by both companies and the significant antitrust waivers embedded in the Open Skies agreements, a picture starts to form. In Wilmington, a foreign-owned company, with huge assistance from the State and local government, took over ownership and operation of the largest private airport in the United States, a state-of-the-art facility. In a little over 3 short years, if they complete this transaction, they will have taken two American companies off the board, both of which had significant market share. In the process, they will displace almost 10,000 American jobs.

You know, at the end of the day, this is about people. These are not just numbers; they are our friends, our neighbors, our families. How will they pay their mortgage? How will they feed and clothe their kids? How will they educate their children? Please think about these hard-working Americans as you consider these issues.

Thank you so much for the opportunity to testify.

[Material submitted by Mr. Raizk follows:]

MATERIAL SUBMITTED BY THE HONORABLE DAVID L. RAIZK

# Testimony of the Honorable David L. Raizk Mayor of the City of Wilmington, Ohio

## Before the House Judiciary Committee

## September 9, 2008

*Briefing regarding the situation at the DHL/Wilmington Airpark*
*August 8, 2008*

On May 28, 2008, DHL announced it is negotiating with its competitor United Parcel Service (UPS) to have UPS replace DHL's U.S. airlift and hub operations based in Wilmington, Ohio. If it goes through, this deal will economically devastate Wilmington and seven southwest Ohio counties through the direct loss of at least 8,200 jobs and many more indirectly.

**History and Current Operations**

The Wilmington Air Park has been a regional cargo freight hub and the area's largest employer since 1980, when Airborne Express bought the former Clinton County Air Force Base, creating the largest privately owned airport in the U.S. The air park has two landing strips with the capability to handle simultaneous incoming and outgoing flights, making it ideal for air cargo operations.

In 2003, DHL acquired Airborne and, with it, ownership of the Wilmington Air Park. Soon afterward, DHL received $422 million in incentives from the State of Ohio and local governments based on its commitment to maintain and expand jobs.

Currently, DHL contracts with ABX Air, Inc. ("ABX Air") to perform its national cargo sorting and air freight operations. ABX Air, which was created during the Airborne acquisition, is a cargo airline that operates out of Wilmington. It is a subsidiary of Air Transport Services Group, Inc. (NASDAQ: ATSG). More information is available at www.atsginc.com and www.abxair.com.

ABX Air has two contracts with DHL. The Aircraft, Crew Maintenance and Insurance (ACMI) contract covers air cargo flights and associated operations. Under a separate Hub Services contract, ABX handles DHL's package-sorting operations at Wilmington and in 15 hubs around the country.

DHL also contracts with another airline, ASTAR, to carry a portion of its air cargo. Formerly known as DHL Airways, ASTAR is headquartered in Miami, Florida. DHL owns 49 percent of ASTAR. More information is available at www.astaraircargo.com.

**Economic Impact**

Based upon 2006 data, the DHL Air Park is the largest employer in a seven-county southwestern Ohio area that includes Clinton, Fayette, Highland, Brown, Ross, Greene and Adams counties. Air park employees come from 45 of Ohio's 88 counties.

A DHL-UPS contract would result in the direct loss of 8,000 area jobs – with nearly 2,000 more indirect job losses. The economic impact from salary loss for ABX alone, in a worst case scenario, would be follows [jobs numbers in brackets]:

Clinton County* – $80.81 million [2,311]
Highland County* – $54.25 million [1,549]
Fayette County* – $12.28 million [351]
Brown County* – $5.5 million [158]
Adams County* – $5.4 million [184]

Other counties with significant potential job loss numbers include:

Montgomery -- 443
Greene* -- 573
Warren* -- 316
Ross County* – 102

*DHL/ABX/ASTAR is the largest employer group for this County

The economic impact on **Clinton County** alone would be as follows:

| Loss | Description | Annual Amount Lost |
|---|---|---|
| Payroll | ABX Air, DHL, ASTAR, US Customers and other air park | $257,100,000 |
| City of Wilmington | 1% income tax | $2,571,000 |
| Clinton County | Sales tax revenue | $1,600,000 |
| Wilmington Public Schools | 1% income tax | $562,500 |
| Local Business | Includes area business impact | $160,000,000 |
| Employee health coverage | Estimate based upon | $63,000.000 |
| TOTAL (APPROXIMATELY, ESTIMATED) | | $421,896,500 |

The deal would have far-reaching implications for Ohio's logistics industry as a whole. Ohio currently is a U.S. logistics leader, and DHL's national sort facility in Wilmington is a key asset in a logistics management network that encompasses the entire spectrum of the industry. Ohio's central location and transportation strengths, including DHL, means that companies located in Ohio are within one day's drive of 62 percent of U.S. manufacturing facilities and within 500 miles of 59.5 percent of the U.S. population. DHL is crucial to maintaining Ohio's edge in the logistics industry.

**Efforts Underway to Address the Issue**

Ohio's elected officials are spearheading efforts to avert the potential economic disaster that could follow if DHL is successful in negotiating a deal with UPS.

On June 6, 2008, Mayor David Raizk, with the support of Ohio Lt. Gov. Lee Fisher, formed a broad-based task force created to preserve jobs and craft economically feasible solutions stemming from the potential deal. Since the announcement in May, the task force has convened every other week to report progress. Individual committee meetings have been held weekly.

The Ohio Attorney General has put DHL and UPS on notice that they will be looking closely at this transaction for compliance with the state's antitrust law.

State Senator John Carey (R- Wellston) and State Representative David Daniels (R- Greenfield) have called for a joint meeting of the House State Government & Elections Committee and the Senate Finance and Financial Institutions Committee, to be held in Wilmington, to hear testimony on the issue and address ways the state of Ohio can help in the matter. The meeting

will be held on **Tuesday, August 19, 2008 at 1 p.m. in Building 2 of the ABX Airpark facility.**

The U.S. Department of Labor and Commerce is also aware of the situation. Robert Hickey, a representative from the U.S. Department of Commerce Economic Development, visited Clinton County and discussed federal Economic Development Assistance grants with city and county officials.

White House Chief of Staff Joshua B. Bolten has been appointed as the White House liaison for this issue.

# Congress of the United States

Washington, DC 20510

July 15, 2008

Thomas O. Barnett
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

William E. Kovacic
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Assistant Attorney General Barnett and Chairman Kovacic:

We are writing to draw your attention to a May 28 announcement by Deutsche Post World Net and its wholly-owned U.S. subsidiary, DHL Express U.S. (collectively "DHL"). According to a press release issued by the company, DHL intends to enter into a contract with one of its principal competitors, United Parcel Service, Inc. ("UPS"). We believe that any DHL/UPS agreement raises substantial antitrust issues under Section 1 of the Sherman Act and Section 7 of the Clayton Act. As a result, before DHL and UPS complete contract negotiations, we strongly believe the Department of Justice, Antitrust Division ("DOJ") and the Federal Trade Commission ("FTC") must examine any agreement, giving close scrutiny to the contract's harm to competition and consumers.

In its press release, DHL announced a plan to restructure its U.S. business "by working with UPS." Based on various press reports, as well as discussions with DHL and UPS, it appears that DHL and UPS will enter into a long-term contract under which UPS will provide air transportation services for DHL within North America. In sum, this agreement will allow for UPS and DHL to integrate key strategic assets.

We understand that the air transportation segment is a key component in the delivery of packages within the United States market. In addition, we also understand that the air transportation segment of the package delivery service appreciably impacts the cost and quality of the service.[1] If a final agreement is reached, DHL will surrender control over cost and service quality to one of its chief competitors, UPS, one of the two largest package delivery companies in the U.S. market. Consequently, we are concerned that if DHL ceases to control such a significant segment of its U.S. business operations, consumers will suffer in terms of the cost and the quality of the service provided.

[1] Attached as Exhibit 1 is a document that we understand was generated by UPS. In the document, UPS states that "Single carrier handling of shipments – from pickup to delivery" is a competitive strength to be used to its advantage.

**Sherman Act Section One Issues**

Based on the *Antitrust Guidelines for Collaborations Among Competitors* (the "DOJ/FTC JV Guidelines"), your agencies' guidance indicates that an agreement that limits the independent decision making or combines control over key assets is prone to result in situations that "reduce the ability or incentive [for competitors] to compete independently." In addition, the DOJ/FTC JV Guidelines also note that competitor collaboration "may increase the likelihood of an exercise of market power by facilitating explicit or tacit collusion."

We are very concerned that any agreement between DHL and UPS in such a concentrated market increases the likelihood of anticompetitive collusion in that market. Our concern arises because it is inevitable that any agreement between DHL and UPS will require the sharing of competitively sensitive information. In addition, if DHL and UPS agree to an air transportation services agreement, DHL will surrender cost and quality control to UPS over a significant part of its U.S. operation. Outside of any cooperative agreement such as the DHL/UPS contract, we do not believe these competitors would share such information, nor would a company cede operational control over such an important part of its business.

While the DOJ/FTC JV Guidelines point out that information sharing is often reasonably necessary to implement agreements, the guidelines also note that in some cases in which the participants are actual or potential competitors, sharing information increases "the likelihood of collusion on matters such as price, output, or other competitively sensitive variables." As a result, such an agreement should be scrutinized closely to ensure that it does not lead to consumer harm in terms of increased costs or decreased services. Finally, although neither UPS nor DHL has been publicly implicated, the DOJ's investigation into criminal antitrust activities by certain global freight carriers evidences the need for the antitrust authorities to scrutinize any agreement between competitors.

**Clayton Act Section Seven Issues**

While we recognize that Section 7 is generally applied to mergers and acquisitions that substantially lessen competition, Section 7 has also been applied to the formation of joint ventures and other business combinations. We believe the application of Section 7 to this transaction is appropriate. If a DHL/UPS agreement is consummated, then the two companies will combine air transportation assets. These assets are a key element of package delivery services. In our opinion, this agreement will result in the de facto merger of the companies, resulting in the elimination of a significant competitor in the market for package delivery services. The DOJ and FTC must ensure that any DHL/UPS combination does not harm consumers, particularly given the limited number of competitors in the relevant market and the significant barriers to entry for potential new competitors.

**Conclusion**

As the nation's antitrust enforcement agencies, the DOJ and the FTC should immediately open an investigation into the proposed agreement between DHL and UPS to ensure that consumers are protected from any actual or potential anticompetitive harm. We welcome the opportunity to

provide additional assistance and request that you respond to this letter with all deliberate speed in light of the parties' stated plans to complete an agreement quickly.

Respectfully,

George V. Voinovich
United States Senator

Sherrod Brown
United States Senator

Michael R. Turner
Member of Congress

Ralph Regula
Member of Congress

Tim Ryan
Member of Congress

Robert Latta
Member of Congress

David Hobson
Member of Congress

Patrick J. Tiberi
Member of Congress

Betty Sutton
Member of Congress

Charlie Wilson
Member of Congress

Jim Jordan
Member of Congress

Jean Schmidt
Member of Congress

Steven C. LaTourette
Member of Congress

Steve Chabot
Member of Congress

Zack Space
Member of Congress

John A. Boehner
Member of Congress

Marcy Kaptur
Member of Congress

cc: Honorable Michael Mukasey, United States Attorney General
Neelie Kroes, European Commissioner for Competition
Dr. Bernhard Heitzer, President of the German Federal Cartel Office

Exhibit 1

UPS [illegible] UPS

**GOAL:** Help customers understand the impact the DHL changes will have upon their business

**Potential impact areas that DHL customers may be experiencing:**

- Potential rate fluctuations
- Potential pickup and delivery time issues
- Single carrier responsibility
- Customer service

**Changes DHL is making:**

- Closing more than 34% of its operating centers in the US
- Eliminating more than 17% of its pickup and delivery routes
- Utilizing UPS to fly their air packages

**Focus on UPS Strengths:**

- Consistent, competitive rates
- Reliable pickup and delivery times
- Single carrier handling of shipments – from pickup to delivery
- Customer service support that is recognized as the best in the industry
- Industry leading technology for easy shipment processing

JOHN McCAIN
ARIZONA

COMMITTEE ON ARMED SERVICES
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
COMMITTEE ON INDIAN AFFAIRS

United States Senate

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August 12, 2008

The Honorable Herb Kohl, Chairman
The Honorable Orrin Hatch, Ranking Member
Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights
United States Senate
Washington, DC 20510

Dear Subcommittee Chairman Kohl and Ranking Member Hatch:

I am writing to request your Subcommittee hold an oversight hearing on the proposed contractual agreement between DHL Express US (DHL) and United Parcel Service, Inc. (UPS), whereby, according to press reports and concerned citizens, UPS would become the exclusive provider of air transportation for DHL's North American package delivery service for a 10 year period.

While I am in no way passing judgment on the legal merits of the proposed transaction, I do support your call for the agreement to be subject to a thorough federal antitrust review by the Department of Justice. Further, I believe that it is appropriate for the Congress to consider the antitrust issues surrounding this matter and its impact on consumers' costs and quality in services, and urge your Subcommittee to conduct such a review as soon as possible.

Thank you for your time and consideration of this request.

Sincerely,

John McCain
United States Senator

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**Congress of the United States**
Washington, DC 20515

August 12, 2008

Dr. Frank Appel, Chairman
Deutsche Post World Net
Charles-de-Gaulle-Str. 20
53113 Bonn
Germany

Dear Dr. Appel:

We are writing in regard to the proposed contractual agreement between DHL Express US (DHL) and United Parcel Service, Inc. (UPS), whereby, according to press reports and concerned citizens, UPS would become the exclusive provider of air transportation for DHL's North American package delivery service for a ten year period.

Recently, we had the opportunity to hold a meeting that was attended by many citizens from Wilmington, Ohio, and learned about a wide-range of concerns surrounding this proposal, including the potential loss of thousands of jobs in the local area. While we are in no way passing judgment on the merits of the proposal, we do urge you to visit Wilmington, Ohio, in the very near future and take the opportunity to hear first-hand the many important issues of concern to the affected community.

Thank you for your time and consideration of this request.

Sincerely,

John McCain
United States Senator

Mike Turner
United States Congressman

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Deutsche Post World Net
MAIL EXPRESS LOGISTICS FINANCE

Frank Appel
Chief Executive Officer
Deutsche Post

Senator John McCain
United States Senate
241 Russell Senate Ofc. Bldg
Washington, DC 20510
Fax + 1 202 228 2862

18. August 2008

Dear Senator McCain, Dear Congressman Turner,

Thank you very much for your letter dated August 12, 2008. I appreciate your concern with regards to the proposed contractual agreement between DHL Express US and UPS.

The proposal currently on the table is by nature a pure commercial outsourcing contract for services between two separate companies, limited to DHL's airlift in America, and would not diminish the competitive situation between DHL and UPS in the U.S. in any way. I can assure you that all other options had been thoroughly reviewed before the decision as it stands today was made. I am very aware that the plan will have significant impact on the people working at the air hub in Wilmington. However, there is no alternative to taking this drastic measure. DHL Express U.S. currently incurs annual losses of $1.3 billion. This leaves me no other choice than to proceed as planned, also considering my overall responsibility as Chief Executive Officer of a global company and to safeguard as many jobs as possible in the U.S.

DHL top management has in the past months had extensive contact with decision-makers on the local and national level concerning this issue. I have personally held detailed phone conversations with Ohio Lt. Governor Lee Fisher and U.S. Ambassador William R. Timken, Jr. in June, John Mullen (DPWN management board member and DHL Express CEO) and his team met on two instances in early June with U.S. Senators Sherrod Brown and George Voinovich; Congressman Michael Turner, Governor Ted Strickland, Lt. Gov. Lee Fisher and several Ohio State Legislators. Follow-up communications took place between our team and officials in Ohio.

...

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DHL has already committed to fund a triple-digit million-dollar amount on planned severance, retention, and health-benefits for the workforce in Wilmington – that includes ABX, ASTAR and DHL employees – and other U.S. locations. I have a dedicated team with senior members from across the company acting on my behalf to ensure the proper implementation of these mitigation efforts in direct conversations with representatives of the community. All details regarding the mitigation review process will be brought to my personal attention and I will continue to be personally involved in the process. I want to give the team time to determine the effectiveness of the ongoing mitigation efforts and other initiatives, if any, that may be appropriate for DHL to help in Wilmington. Once that plan is established, I plan at the appropriate time to travel to the U.S. to discuss how we can implement it in close cooperation and in open dialogue with local authorities and other stakeholders. I will be happy to keep you informed on progress.

Again, the DHL family and I personally deeply regret that this unavoidable and irreversible decision will cause severe hardships to many families in Wilmington and Ohio. My colleagues and I will do our best to be of help.

Sincerely

Frank Appel

BARACK OBAMA
ILLINOIS

COMMITTEES:
HEALTH, EDUCATION, LABOR AND PENSIONS
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
FOREIGN RELATIONS
VETERANS' AFFAIRS

United States Senate
WASHINGTON, DC 20510

July 29, 2008

Karl Zinsmeister
Director of the Domestic Policy Council
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. Zinsmeister:

During my recent travels, I visited with the mayor of Wilmington, Ohio and workers who would be affected by a proposed DHL-UPS agreement for services that would lead to the closing of the DHL facility in Wilmington.

I write to you in my capacity as a U.S. Senator because I believe that the Administration must act now on two fronts: first, the Department of Justice should examine the transaction to ensure that it is not in violation of antitrust laws and second, if it is not, then the government must work to ensure that these workers and this community are not left without assistance in finding new work for its people and new use for the existing infrastructure. I am pleased that you and Assistant Secretary of Commerce Sandy Baruah have been tasked with coordinating the government response to the situation and wish to offer any assistance I or my staff can provide.

As a matter of antitrust law, the proposed consolidation of DHL's domestic airlift operations under a competitor, UPS, raises concern. At the very least, the DOJ should examine whether having two competitors in a fairly concentrated market act as partners would have anti-competitive effects.

If the deal proceeds, Governor Strickland and Senator Brown have both told me that the DHL facility in Wilmington would likely cease operating. That would eliminate at least 8,000 jobs in Ohio and impact an estimated 41 counties. That level of concentrated job loss strongly weighs in favor of the government assisting them through the difficult time that will follow.

I understand that you are working with the Department of Labor and the Department of Commerce to coordinate a rapid response to what could be a crisis for the communities involved. As a Senator on the committee of jurisdiction over the Department of Labor, I would appreciate additional detail on your efforts and how responding to this situation could serve as a model for other communities where concentrated job loss is occurring due to plants moving overseas or increasingly consolidating markets.

Sincerely,

Barack Obama
United States Senator

Cc: Sandy Baruah, Assistant Secretary of Commerce for Economic Development

THE WHITE HOUSE

WASHINGTON

August 14, 2008

Dear Senator Obama:

Thank you for your interest in the possible closure of the DHL facility in Wilmington, Ohio that could lead to significant layoffs.

Since early June, the Administration has been working with Senators Brown and Voinovich and Congressman Turner on a coordinated effort in the event this proposed consolidation is completed and assistance is needed. Representatives from the Departments of Labor and Commerce plus the Small Business Administration visited the area on June 29 to brief community leaders on federal assistance capabilities.

The Department of Labor and Ohio's Rapid Response team have laid the groundwork for Rapid Response services to DHL workers in the event of a shutdown. The Department has also worked closely with the state of Ohio to prepare a National Emergency Grant application that would fund special services for affected workers. These preparations will allow a brisk response if layoffs occur.

Simultaneously, the Economic Development Administration at the Department of Commerce has begun to formulate mid- and long-term recovery plans. The agency is hiring a full-time recovery coordinator for Clinton County (Wilmington), who will work from the offices of the Ohio Valley Regional Development Commission for up to three years, collaborating with officials in a three-county area on an economic development plan for the affected region.

One of EDA's immediate goals is to bring to Clinton County community leaders from other areas of the country who have experienced similar economic dislocations, so they can brief local officials on lessons learned on the recovery path. Should layoffs occur, EDA will fund projects ranging from strategic planning to paying for certain public-works investments.

In addition, Small Business Administration senior officials have toured the region and are preparing to aid displaced workers with technical assistance and access to capital to start businesses. SBA regional and field offices have briefed local leaders on SBA's program tools.

As you are aware, on antitrust matters the decision of whether to initiate an investigation must rest wholly with the Department of Justice. Assistant Attorney

General Thomas Barnett has recently assured Members of Congress concerned with this case that "whenever a proposed transaction raises significant competition issues, the Antitrust Division conducts a thorough investigation. If the Department determines that a proposed transaction would substantially lessen competition in violation of the antitrust laws, we take appropriate enforcement action."

The action agencies are the Federal leads in all of this. My role is to break logjams and share information, while making it clear to all Federal partners that this large potential dislocation is a serious concern to President Bush.

Please let me know if you'd like additional details from the agencies overseeing this important effort. I'm copying several of your Congressional colleagues who share our interest in the economic future of the Wilmington area.

Sincerely,

Karl Zinsmeister

Assistant to the President for Domestic Policy
Director, Domestic Policy Council

CC: Senators Brown and Voinovich, Representative Turner

**Congress of the United States**
**Washington, DC 20515**

August 13, 2008

Her Excellency
Dr. Angela Merkel
Chancellor of the Federal Republic of Germany
Willy-Brandt-Straße 1
10557 Berlin
Germany

Chancellor Merkel:

We are writing to bring a very serious situation involving Deutsche Post World Net and its U.S. subsidiary DHL Express U.S. (collectively "DHL") to your attention. On May 28, DHL announced it intended to cease its business relationship with ABX Air and ASTAR Air Cargo. Instead, DHL announced it intends to enter into a 10-year agreement with United Parcel Service, Inc. ("UPS") for air transportation services, which if consummated, will result in DHL abandoning a hub in Wilmington, Ohio, resulting in the loss of over 8000 direct jobs and tens of thousands of indirect jobs.

DHL's announcement to partner with UPS is problematic for a number of reasons. First, we believe the contemplated business relationship between DHL and UPS raises significant and troubling competition issues. Indeed, we find it very troubling as to why a company in a concentrated market would turn to one of its chief competitors to find cost savings. As a consequence, we are deeply concerned about the potential for anticompetitive conduct to occur, and we have raised these issues with both U.S. and EU competition authorities.

Second, we are concerned that DHL's decision to abandon the Wilmington facility and the surrounding communities will have consequences in the United States beyond the immediate devastating impact to the Wilmington area. Americans are starting to rethink their views on the benefits of global investment and the interconnected global economic system. If DHL's actions towards Wilmington are indicative, continued erosion in public support for international investment and the global economy is the likely result.

You should note that during meetings with government officials, DHL's senior management indicated that the state of Ohio, the Wilmington-area workers, ABX Air, and ASTAR Air Cargo were all high-quality partners in the operation of the Wilmington facility. The stakeholder commitment to DHL also entailed a significant financial component. The state of Ohio, city of Wilmington, and Clinton County have invested over $400 million into the Wilmington area in support of this hub. In spite of all of the substantial stakeholder commitments to DHL, the company plans to abandon Ohio without giving the stakeholders the opportunity to work as trusted partners to help DHL to succeed.

Moreover, DHL's treatment of the stakeholders in recent months can be described as nothing less than appalling considering the long and friendly relationship between our two nations and the businesses that operate in both countries. For example, in what can charitably be described

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as a major error in protocol, DHL made its announcement about the Wilmington facility while it was hosting the Mayor of Wilmington in Germany. When it made this announcement, DHL gave no advanced notice to Wilmington's Mayor or other Ohio political and business leaders.

We raise this issue with you not only out of concern for the Ohio workers that will be impacted by this decision, but also because we are concerned that such dismissive treatment by such a significant German company will not be easily forgotten in the United States. The situation and DHL's indifference could easily undermine U.S. views on matters such as completing the next stage of the Open Skies, how foreign investment into the United States is viewed, and general U.S.-German trade relations. The attention the DHL proposal has drawn from both Presidential campaigns serves to confirm the urgency of this situation.

We understand that there is some surprise about the opposition to this transaction. Our reaction should not come as a surprise. In fact, we understand a similar situation arose in Germany related to the closing of a mobile phone manufacturing facility and the loss of German jobs, and the reaction was equally as strong. At a minimum, in the worst-case scenario, we believe DHL has a social obligation to provide substantial assistance with regard to severance packages, health care coverage, and the redevelopment of the Wilmington facility. DHL owns the Wilmington air facility, and we believe it entirely appropriate for DHL to return the airport to the community, provide the requisite assistance for the city to redevelop this important asset, and allow the community to mitigate this devastating loss should DHL decide not to reconsider its decision.

As a result of the concerns we describe above, we believe it is important that you are aware of this situation. We hope that DHL will reconsider this decision and work with its American partners. We would appreciate your bringing to DHL's attention the international aspect of the decision and would be more than happy to work with your designee if you believe it would be helpful.

Sincerely,

George V. Voinovich
United States Senator

Sherrod Brown
United States Senator

John A. Boehner
Member of Congress

David Hobson
Member of Congress

Jean Schmidt
Member of Congress

Tim Ryan
Member of Congress

Betty Sutton
Member of Congress

Zach Space
Member of Congress

Patrick J. Tiberi
Member of Congress

Charlie Wilson
Member of Congress

Jim Jordan
Member of Congress

Steve Chabot
Member of Congress

Michael Turner
Member of Congress

Robert E. Latta
Member of Congress

cc: Ambassador Klaus Scharioth
Ambassador William R. Timken, Jr.

**OFFICE OF U.S. SENATOR SHERROD BROWN**
For Immediate Release
Thursday, August 14, 2008
Contact: Meghan Dubyak
(202) 224-3978

# BROWN CALLS ON BUSH ADMINISTRATION TO CONSIDER PROPOSED DHL DEAL WHEN NEGOTIATING OPEN SKIES

WASHINGTON, DC—U.S. Senator Sherrod Brown (D-OH) today called on the Bush administration to take into account DHL's recent actions as the administration negotiates Stage II of the Open Skies agreement with the European Union. In a letter to Secretary of State Condoleezza Rice and Transportation Secretary Mary Peters, Brown urged that they consider DHL's proposal to outsource air cargo services to major competitor UPS when negotiating Open Skies.

"It is important that U.S. negotiators take into account the lessons learned from DHL's actions [when negotiating the Open Skies agreement]," Brown wrote today in a letter to Rice and Peters. "Before the Administration agrees to weaker oversight and regulation over foreign stakeholders who already exert extraordinary influence over U.S. markets and our economy, it is essential that you have adequately assessed the likely impact, both positive and negative, of your actions.

The Bush administration is currently negotiating Stage II of the Open Skies agreement with the European Union, an agreement that would ease restrictions on international air transportation. This includes passenger, cargo, and chartered flights.

Today, Brown called on Rice and Peters to evaluate the effects of the DHL proposal when negotiating the Open Skies agreement. On May 28, DHL's parent company, German-based Deutsche Post World Net (DPWN), announced a proposal to outsource the aviation services currently provided by ABX Air and ASTAR to its competitor UPS.

Brown, along with federal, state, and local officials, is working to save more than 8,000 area jobs that would be lost if DPWN finalizes a deal with UPS. Last month, Brown convened a meeting with Sandy Baruah, Assistant Secretary of Commerce for Economic Development, on the DHL proposal. In the meeting, Brown and Senator George Voinovich stressed the magnitude of the situation and ways to prevent job loss. They also raised the anti-trust implications of the DHL proposal and requested that the Economic Development Agency assign staff to work on-the-ground in Wilmington. Baruah committed to assigning a full-time employee to work in Wilmington.

Also in July, Brown delivered more than 9,000 petitions to the DHL Director of Hub Operations for Wilmington and unveiled a new DHL page on his Senate Web site. This page serves as a news and information source for families affected by the possible DHL deal. The Web page, on Brown's Senate Web site www.brown.senate.gov, allows visitors to read stories and news about the issue and to submit their own stories. Brown will use the stories to educate his colleagues and continue to raise awareness.

A full copy of Brown's letter to Rice and Peters is below:

*August 14, 2008*

*The Honorable Condoleezza Rice*
*Secretary of State*
*State Department*
*2201 C Street NW*
*Washington, DC 20520*

*The Honorable Mary Peters*
*Secretary*
*Department of Transportation*
*1200 New Jersey Avenue SE*
*Washington, DC 20590*

*Dear Secretary Rice and Secretary Peters:*

*As negotiators from the State Department and the Department of Transportation (DOT) plan Stage II of the U.S.-European Union Air Transport Agreement ("Open Skies"), please take into account recent actions by Deutsche Post World Net (DPWN), the German-based parent company of DHL Express U.S. On May 28, DPWN announced that it planned to terminate long-term contracts with U.S.-based express package delivery airlines ABX Air and ASTAR, and to outsource the aviation services provided by those airlines to competitor United Parcel Service (UPS).*

*The proposed agreement with UPS, if completed, will mean the direct loss of more than 8,000 Ohio jobs and potentially thousands more downstream jobs in the region. Adding insult to injury, the city of Wilmington and the state of Ohio extended more than $400 million in tax incentives to DPWN to solidify the establishment of DHL operations there.*

*I raise these impending layoffs in Ohio in the context of the next stage of Open Skies talks because it is important that U.S. negotiators take into account the lessons learned from DHL's actions. In 2003, when DHL purchased Airborne Express, DHL said the transaction would: 1) increase profitability and market share for both companies; and 2) enhance free market competition by creating a new entrant into an express delivery market dominated by two major carriers: UPS and FedEx.*

*Unfortunately, that has not been the experience of DHL in the U.S. market.*

*Before the Administration agrees to weaker oversight and regulation over foreign stakeholders who already exert extraordinary influence over U.S. markets and our*

*economy, it is essential that you have adequately assessed the likely impact, both positive and negative, of your actions.*

*U.S. negotiators have cited an analysis conducted by Booz Allen Hamilton to project the creation of 80,000 new jobs in both Europe and the United States through the treaty. That same report cites many other likely economic benefits of Open Skies, but does not highlight a single negative impact, potential or assured, of the Open Skies Initiative. I am confident the Administration is not relying on this single report, prepared not for the U.S. but for the European Commission, to assess the economic implications of this initiative. I request that you provide the other analyses that underlie your pursuit of the Open Skies Initiative.*

*It may well be that an additional stage of Open Skies with Europe would be a beneficial step for our country, but with DHL threatening to devastate Ohio's economy and reduce competition in the U.S. express carrier market, it is clearly crucial for our nation to enter Open Skies fully informed and with our eyes wide open.*

*My staff will follow up with you to determine how to minimize the burden on your offices as you convey the analytical information I have requested in this letter. I have appreciated the willingness of the Bush Administration to work with the Ohio delegation on matters surrounding the proposed DHL-UPS deal, and I thank you in advance for your cooperation.*

*Sincerely,*

*Sherrod Brown*
*United States Senator*

SHERROD BROWN
OHIO

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
BANKING, HOUSING, AND URBAN AFFAIRS
HEALTH, EDUCATION, LABOR, AND PENSIONS
VETERANS' AFFAIRS

United States Senate
WASHINGTON, DC 20510

August 14, 2008

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Secretary of State
State Department
2201 C Street NW
Washington, DC 20520

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Department of Transportation
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Washington, DC 20590

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Sincerely,

Sherrod Brown
United States Senator

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

August 4, 2008

The Honorable Thomas Barnett
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable William E. Kovacic
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Assistant Attorney General Barnett and Chairman Kovacic:

On May 28, 2008, DHL Express US ("DHL") and United Parcel Service, Inc. ("UPS") announced their intention to enter into a contract where UPS will become, for ten years, the exclusive provider of air transportation for DHL's North American package delivery service. As the Chairman and Ranking Republican Member of the Senate Antitrust Subcommittee, we believe that this proposed agreement raises important antitrust and competition issues that should be examined carefully by the Department of Justice ("Department") or the Federal Trade Commission ("Commission").

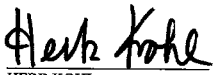
UPS and DHL are, respectively, the second and third largest overnight package delivery services in the United States. Therefore, if consummated, DHL will become reliant for air transportation on one of its two major competitors. This raises the question if DHL will still be able to effectively compete against UPS, since UPS will now have a large role in determining the cost and quality of DHL's services. In addition, we presume that such a relationship would also require DHL to adopt UPS's package tracking, labeling and hub distribution systems. Whether, and how, DHL packages will receive priority should UPS planes fill to capacity is another concern raised by this deal. As a result, some critics of the proposed agreement contend that DHL will become a captive of UPS, rather than an independent competitor. Further, having only two airlines providing national airlift capacity for overnight package delivery could raise the risk of serious economic disruption should service on one of these two airlines be reduced due to unforeseen difficulties, such as a strike, maintenance issues, weather disruptions or other similar disruptive events.

It has been reported that the parties are close to finalizing this agreement. The prospect of a quick ratification is equally disconcerting since the proposed contract will have a devastating financial impact on DHL's current air transport providers, ABX Air and ASTAR and these airlines' base of operations, southern Ohio.

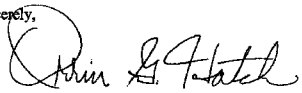
It should be noted that we have not reached a conclusion as to the legality of this proffered transaction under the antitrust laws. However, due to the issues raised above and urgency of this matter, we respectfully request that the antitrust agencies initiate an investigation into this arrangement immediately.

Thank you for your consideration of this matter.

Sincerely,



HERB KOHL
Chairman, Subcommittee on
Antitrust, Competition Policy
and Consumer Rights



ORRIN G. HATCH
Ranking Member, Subcommittee on
Antitrust, Competition Policy, and
Consumer Rights

The New York Times
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August 16, 2008

SATURDAY INTERVIEW

# For Deliveries, Speed Not Quite of the Essence

By ELIZABETH OLSON

HIGH fuel prices and a sluggish economy have taken a toll on overnight delivery services, forcing some significant shifts in how the biggest operators do business. DHL Express, the country's third-biggest overnight deliverer, recently hired a rival, United Parcel Service, to handle its air cargo operations in the United States.

While its global business is profitable, the American segment of DHL, acquired in 2002 by Deutsche Post of Germany, is expected to lose $1.3 billion this year.

In an interview from DHL's American headquarters in Plantation, Fla., its chief executive, John P. Mullen, discussed the deal with U.P.S.

Q. What factors drove you to make a deal with U.P.S.?

A. The cost of maintaining our network in the United States has been very painful to us, and it's been exacerbated by the increasing fuel costs. Under the arrangement with U.P.S., if our volume should continue to fall, our costs fall with it. And we have 110 aircraft in the United States, a lot of which are quite old and will need replacement in the coming years. So we avoid that capital expenditure.

Q. What kind of impact have fuel costs had?

A. Very considerable. First, the straight cost burden, and our fuel surcharge does not cover all of it. But more importantly, it starts changing a customer's behavior. When you say there's a surcharge of 5 percent or 10 percent, they read the newspapers and they know fuel is going up. But when you start talking 30 percent and up, which is what we've got at the moment, the customer starts saying: "Well, do I really need the package there tomorrow morning at 10:30?"

Q. Has that translated into less demand for air service?

A. We're seeing that customers are downgrading their service expectations, from air to ground. And once customers change, it's pretty hard to get them to come back again. And even if fuel prices were to come down significantly, we're not sure customers would revert to urgent air express. Our whole industry is going to have to adjust because, while it may not be tomorrow, we're going to see huge amounts of our revenue migrate to ground and other forms of transport.

Q. By outsourcing your air cargo services to a rival, where does that leave the company? What is the business model now — more ground and less air?

A. Our business model hasn't changed. We're still picking up the package, we're still delivering it. But instead of giving it to one operator who is flying just for us, we're giving it to U.P.S., which, although it is a competitor, is just a service provider. The customers wouldn't actually know whether we used U.P.S. or someone else for the air segment.

Q. What was the price of this deal?

A. U.P.S. will charge us about a billion dollars a year to move our material. Our savings, taking into account other restructuring, including closing 30 percent of our ground stations in the United States, will save us about a billion dollars a year.

Q. How many jobs will you be cutting?

A. We're cutting 1,500 to 1,800 of our own employees, including some at our air hub in Wilmington, Ohio. And these changes will have an impact on our suppliers, which will mean several thousand more jobs will be affected. Our cuts will come in smaller towns, and we'll close stations where there are several in the same area.

Q. What percentage of your business will be affected by these changes?

A. We're estimating that these changes, while they sound fairly large, will only have an impact on about 4 percent of our shipments. In other words, 4 percent of our shipments will go from early morning delivery to maybe afternoon delivery. We'll still be delivering them, but they will be slightly slower than before, but only a small percent.

Q. How does this affect the general landscape in the United States for deliveries?

A. It shouldn't make any appreciable difference, and while the deal should make us both more productive, we remain full-tilt competitors. In the rest of the world, in Europe, Asia and emerging economies -- where we are in a much stronger position -- we are trying to make life as difficult as possible for them.

Q. How much of a decline in daily package volume have you seen because of the economy slumping?

A. Some customers are not sending altogether. But most are trying to find a cheaper way, such as sending it by ground. We've got the double impact right now of fuel costs and the economic recession because we carry an awful lot of mortgage documents, contracts and so on, and that side of our business is very significantly under pressure. Air express overnight volumes in the industry are down anywhere from 5 percent to 15 percent from this time last year.

Q. When will the new arrangement go into effect?

A. We hope to have a completed agreement with U.P.S. in a couple of months, and we would start to migrate volume across. We would like to see it all in place by mid- to late 2009. But at the end of the year, our busiest season since stores and other parts of industry are ramping up, we will slacken off and try not to make too many changes until the new year.

**CHRONOLOGY OF EVENTS**

- **March 26, 2003:** DHL buys Airborne Express ground assets for $1.05B; ABX Air is spun off due to US foreign ownership of US airlines restrictions. (20)

- **August 2003:** DHL opens new $220M sort facility at Cincinnati/Northern Kentucky Airport. DHL had received $17M from the state of Kentucky to help build ramp space and de-icing pads when it built this facility. Also, the state legislature agreed to cap the state jet fuel tax collected from airlines to $1M per year per carrier, down from $4M a year. (13)

- **December 19, 2003:** Department of Transportation Administrative Law Judge (ALJ) in a formal "citizenship test" decides foreign ownership status (DHL ownership interest) of Astar Air Cargo (successor to DHL Airways) based on several indicia of control. Based on application of several ownership indicators to the new ACMI agreement between DHL and Astar, the ALJ determines that Astar is a US citizen. (DOT Docket No. OST-2002-13089)

- **June 25, 2004:** DHL announces that it will consolidate its domestic sort operations in Wilmington, Ohio, effectively closing its Cincinnati facility just completed the prior August. More than 1800 jobs were affected. (13)

- **October 5, 2004:** UPS announces the purchase of Menlo Worldwide Forwarding Inc., a subsidiary of CNF, for $150M in cash and the assumption of $110M in long term debt. Menlo was the successor company to Emery Worldwide, an air cargo company which had its sort facility at the Dayton International Airport in Dayton Ohio. This purchase adds heavy air freight capabilities to UPS capabilities. At the time Bob Stoffel, UPS senior vice president stated: "Menlo Worldwide Forwarding is a well-established global air freight forwarder, with international trade capabilities, all of which compliment UPS's existing operations". (17)

- **February 26, 2005:** UPS announces plans to spend $82.5M to expand its air hub in Louisville. The 700,000 square foot facility is to be used as its main heavy airline-freight sorting site. UPS also announces that they will close their Dayton, Ohio sort facility (acquired in the Menlo deal) in 2006 eliminating 1,400 jobs. (18)

- **Sept, 2005:** DHL completes expansion of Wilmington sort operations and consolidation of operations previously located in Cincinnati.

- **Nov 7, 2005:** The U.S. Department of Transportation (DOT) issues a notice of proposed rulemaking (NPRM) that would liberalize the current law that forbids foreign ownership of U.S. airlines.

- **May 17, 2006:** UPS announces another much larger expansion to its Louisville Hub adding more than 5,000 new jobs. The $1B investment is to add 1,284 full-time and 3,787 part-time positions. The project includes adding more than one million square feet to its existing facility with 334,000 square feet to be renovated with new technology and equipment. Several ramps will be built or altered adding over 1,500,000 feet in an airfield expansion. Expansion to be completed by 2010. (19)

- **July 20, 2006:** Congress acts to prevent DOT from implementing the NPRM. (11,12)

**CHRONOLOGY OF EVENTS**

- **August 21, 2006:** Audit of Astar landings at San Francisco International Airport by the San Francisco Airport Commission for the period Nov 1, 2003 through June 30, 2005 indicated that: DHL incorrectly included 405 landings of **Ameriflight** aircraft as landings of Astar and paid the related landing fees of $44,145. It was noted also that Astar contracts with DHL to pay its (Astar's) landing fees which amounted to $835,943 for this same time period. (15)

- **April 2, 2007:** UAS Transervices, Inc. sells its ownership interest in **Ameriflight,** LLC (www.ameriflight.com) to Gary Richards, the former president of Ameriflight. As a Part 135 operator of about 180 feeder type aircraft a large portion of **Ameriflight**'s daily activity provides small package feeder aircraft for overnight parcel carriers. (14)

- **March 8, 2007**: DHL (www.dhl.com) announces that it is buying six Boeing 767-300 extended range freighters valued at $894M which, according to DHL Express CEO, John Mullen, were likely to be dedicated to US routes. This order followed another larger order valued at $3.9B for 27 767's placed by UPS. (9)

- **April 10, 2007**: **Kalitta Air** (www.kalittaair.com) which operates approximately 16 +/- Boeing 747 aircraft announces that Kalitta, in cooperation with DHL, provides mail transportation, security and all terminal handling services to the DHL Bahrain hub as well as other Defense Department locations throughout Iraq, Afghanistan and Kuwait. (1)

- **April 30, 2007**: The United States and European Union sign Stage One of the Open Skies Agreement creating a single transatlantic Open Aviation Area in place of the existing individual bi lateral agreements between 27 EU members and the US. (2) This agreement includes among other foreign US airline ownership guidelines that: "ownership by nationals of a Member State or States (EU) of 50% or more of the total equity of a US airline shall not be presumed to constitute control of that airline. Such ownership shall be considered on a case by case basis."

- **May 2, 2007**: DHL consolidates all local Louisville operations in a newly opened $2.7M service center near the Louisville International Airport. (9)

- **May 23, 2007**: US State Dept. Deputy Secretary for Transportation Affairs, John Byerly, announces that the second round of Open Skies negotiations (Stage Two) will focus on easing foreign control restrictions. (10) As of August 2008, these Stage Two negotiations are underway. According to the Stage One agreement, the agenda for Stage Two discussions is to include: further liberalization of traffic rights and additional foreign investment opportunities among other issues.

- **June 8, 2007**: DHL acquires 24.9% voting interest and 49% minority interest in **Astar** and extends ACMI agreement to 2019. (www.astaraircargo.com)

- **June 25, 2007**: DHL acquires a 24.9% voting interest and 49% equity interest **in Polar Air Cargo Worldwide,** a subsidiary of Atlas Air Worldwide. (www.atlasair.com)

- **June 28, 2007**: Astar offers to purchase all outstanding shares of ABX Air for $7.75/ share.

- **July 16, 2007**: Atlas Air Worldwide announces that former DHL Express executive, Randy Clark, was named Chief Operating Officer for Polar Air. Olivier Alexandroff, the former

**CHRONOLOGY OF EVENTS**

president of Controlling for DHL Express U.S. was named Chief Financial Officer for Polar Air. (16)

- **July 25, 2007**: Astar withdraws ABX purchase offer.

- **August 8, 2007**: Astar purchases two DC8-73 aircraft that it had been previously leasing from Boeing Capital. A year earlier, Astar purchased 20 Boeing 727-200A freighters.

- **Sept. 14, 2007**: Astar announces that it has secured an Indefinite Duration Indefinite Quantity (IDIQ) with the Department of Defense. (Allows Astar to compete with eight other air cargo carriers for DoD business, initial award to Astar was $2,500.)

- **Sept .19, 2007:** DHL claims that ABX Air's third party revenue (that generated from customers other than DHL) exceeded 10% of its overall revenue and therefore certain professional fees incurred by ABX were not recoverable under the ACMI agreement.

- **Nov. 3, 2007**: ABX announces that it intended to buy Cargo Holdings (www.cargoholdings.com), Inc.

- **Nov. 5, 2007**: DHL withholds $8.8M in amounts due ABX under the ACMI agreement due to disagreement with ABX over third party revenue issues previously surfaced.

- **Jan. 14, 2008**: DHL demands full payment of amounts due DHL under the DHL Note valued at $92.5M. Note originally came into existence when DHL merged with Airborne Express and ABX Air was spun off. DHL claimed at the time that the note was now due because of certain "change of control" events relating to ABX purchase of Cargo Holdings.

- **Jan. 31, 2008:** The National Foreign Trade Council (NFTC) (www.nftc.org) appoints John Mullen, chief executive officer for the Express division of Deutsche Post World Net (parent of DHL), its new chairman. The NFTC is a business organization founded in 1914 by a group of American companies which advocates a rules-based world economy and supports an open-world trading system. It currently has more than 300 member companies. (8)

- **Mar. 17, 2008**: DHL Express validated for the Customs-Trade-Partnership Against Terrorism (C-TPAT) which is a joint government-business initiative designed to protect the physical security of the USA supply chain. DHL Express originally validated in 2003.(3)

- **Mar 30, 2008:** The Open Skies Agreement, Stage One becomes effective.

- **May 28, 2008:** DHL announces that it plans to partner with UPS (www.ups.com) for North American air shipments and announces that it is removing 39 ABX dedicated DC-9 aircraft from its airlift operations.

- **June 10, 2008: Airnet Systems**, (www.airnet.com) based in Columbus, Ohio, completes a $34M deal resulting in its being acquired by **HIG Capital** (www.higcapital.com) (Bayside Capital) ,(www.bayside.com) a Miami based private equity firm. Airnet uses a fleet of approximately 90 smaller feeder-type aircraft in providing bank and express services. Airnet ceased to be a publicly traded corporation at this time. In its Preliminary Proxy Statement

**CHRONOLOGY OF EVENTS**

(Schedule 14A) filed with the Securities and Exchange Commission announcing its acquisition, Airnet also announced that it "is implementing growth plans to expand its express, dedicated and on-demand cargo charter services for customers in niche markets requiring high control, rapid delivery and non-conforming delivery times and for large integrated express packages carriers such as DHL and United Parcel Services."(4)

- In addition to Gemini Air Cargo, listed below, HIG Capital also has an ownership interest in a third US air cargo airline, **Amerijet International**. (www.amerijet.com) Amerijet is a privately held worldwide, multi-modal cargo solutions provider, offering worldwide transportation via land, sea (ITN - Amerijet sister Company) and air as well logistics services. Amerijet operates a fleet of all-cargo Boeing 727-200c aircraft.

- **July 16, 2008**: FedEx Corporation reports Net Income after taxes of $1.125B for the fiscal year ended May 31, 2008. This compares with after tax net income of $2.016B for the year ended May 31, 2007; a decrease of about 45%. (16)

- **June 18, 2008: Gemini Air Cargo** (www.geminiaircargo.com) files for Chapter 11 bankruptcy protection. Gemini provided airport-to-airport air freight services primarily under renewable long term contracts. It had originally filed for Chapter 11 in 2006 emerging that same August having reached an agreement with its largest lender, Bayside Capital.(5)

- **July 21, 2008: Kittyhawk Airlines'** (www.kha.com) Chapter 11 liquidation plan becomes effective, grounding all its aircraft. Kittyhawk provided overnight and second morning air and ground freight services for various customers. (6)

- **July 25, 2008: Tradewinds Airlines** (www.tradewinds-airlines.com) files for Chapter 11 bankruptcy protection in Miami, Florida. The freight airline had operated 6 A300 and an undisclosed number of 747 aircraft with major operations in Puerto Rico and Miami International Airport.(7)

*Fact Sheet*
Wilmington Economic Task Force
August 27, 2008

On May 28, 2008, DHL announced it is negotiating with its competitor United Parcel Service (UPS) to have UPS replace DHL's U.S. airlift and hub operations based in Wilmington, Ohio. If it goes through, this deal will economically devastate the economy in Wilmington and seven southwest Ohio counties through the loss of at least direct 8,200 jobs and many more indirectly. Of the 8200 jobs, 6000 ABX, 1200ASTAR Air Cargo and 1000 DHL employees could be affected. According to one economic model 9,736 jobs will be lost, directly and indirectly, by a complete DHL closure of business at the Wilmington hub.

**History and Current Operations**

A former World War II Air Force Base, the Wilmington Airpark is now the largest privately-owned airport with a category 3 radar in the United States. The Airpark has two landing strips with the capability to handle simultaneous incoming and outgoing flights, making it ideal for air cargo operations. In the early 1970's when the based was closed by the United States government, a group of local businessmen who formed a statutory Community Improvement Corporation purchased it for $1.2 million. The CIC began selling parcels for economic development shortly thereafter.

The Wilmington Airpark has been a regional cargo freight hub and the area's largest employer since the mid-1970's when Midwest Air Charter purchased a large amount of the real estate at the Wilmington Airpark. Midwest Air Charter operated out of the Airpark until it was acquired in 1980 by Airborne Express.

In 2003, DHL acquired the real property holdings of Airborne Express and, with it, ownership of the Wilmington Air Park. ABX Air was "spun off" from Airborne Express as an air service provider because DHL, being partly German-owned, could not own an American airline. ABX Air is a subsidiary of Air Transport Services Group, Inc. (NASDAQ: ATSG). More information is available at www.atsginc.com and www.abxair.com. Currently, DHL contracts with ABX Air, Inc. ("ABX Air") to perform its air lift and cargo sorting operations.

ABX Air has two contracts with DHL. The Aircraft, Crew Maintenance and Insurance (ACMI) contract covers air cargo flights and associated operations. Under a separate Hub Services contract, ABX handles DHL's package-sorting operations at Wilmington and in 15 hubs around the country.

DHL also contracts with another airline, ASTAR, to carry a portion of its air cargo. Formerly known as DHL Airways, ASTAR is headquartered in Miami, Florida. DHL owns 49 percent of ASTAR. More information is available at www.astaraircargo.com.

In 2004, in order to encourage DHL to relocate its hub from CVG to Wilmington, the State of

Ohio offered $422 million in incentives to DHL based on its commitment to maintain and expand jobs. One of the incentives was the construction of a 6.1 mile bypass around Wilmington known as the relocation of S.R. 73 at a cost of $100 million.

**Economic Impact**

Based upon 2006 data, the DHL Air Park is the largest employer in a six-county southwestern Ohio area that includes Clinton, Fayette, Highland, Brown, Ross, Greene and Adams counties. Air park employees come from 45 of Ohio's 88 counties.

A DHL-UPS contract would result in the direct loss of 8,000 area jobs – with nearly 2,000 more indirect job losses. The economic impact from salary loss for ABX alone, in a worst case scenario, would be follows [jobs numbers in brackets]:

Clinton County* – $80.81 million [2,311]
Highland County* – $54.25 million [1,549]
Fayette County* – $12.28 million [351]
Brown County* – $5.5 million [158]
Adams County* – $5.4 million [184]

Other counties with significant potential job loss numbers include:

Montgomery -- 443
Greene -- 573
Warren -- 316
Ross County* – 102

*DHL/ABX/ASTAR is the largest employer group for this County

The economic impact on **Clinton County** alone would be as follows:

| Loss | Description | Annual Amount Lost |
|---|---|---|
| Payroll | ABX Air, DHL, ASTAR, US Customers and other air park | $257,100,000 |
| City of Wilmington | 1% income tax | $2,571,000 |
| Clinton County | Sales tax revenue | $1,600,000 |
| Wilmington Public Schools | 1% income tax | $562,500 |
| Local Business | Includes area business impact | $160,000,000 |
| Employee health coverage | Estimate based upon | $63,000.000 |
| TOTAL (APPROXIMATE, ESTIMATED) | | $421,896,500 |

The sales tax revenue losses to the various counties is also expected to be significant. For Clinton County and the State of Ohio along the loss figure is:

| | Sales Tax Loss Yearly | |
|---|---|---|
| Clinton County | $ 945,278 | |
| State of Ohio | $8,372,760 | |

The deal would have far-reaching implications for Ohio's logistics industry as a whole. Ohio currently is a U.S. logistics leader, and DHL's national sort facility in Wilmington is a key asset in a logistics management network that encompasses the entire spectrum of the industry. Ohio's central location and transportation strengths, including DHL, means that companies located in Ohio are within one day's drive of 62 percent of U.S. manufacturing facilities and within 500 miles of 59.5 percent of the U.S. population. DHL is crucial to maintaining Ohio's edge in the logistics industry.

**The Wilmington Economic Task Force**

Ohio's elected officials are spearheading efforts to avert the potential economic disaster that could follow if DHL is successful in negotiating a deal with UPS. On June 6, 2008, Mayor David Raizk, with the support of Ohio Lt. Gov. Lee Fisher, formed a broad-based task force spearheaded by Mayor Raizk created to preserve jobs and craft economically feasible solutions stemming from the potential deal.

Since the announcement in May, the task force has convened every other week to report progress. Individual committee meetings have been held weekly.

Lt. Gov. Lee Fisher recently confirmed that the Ohio Attorney General has put DHL and UPS on notice that they will be looking closely at this transaction for compliance with the state's antitrust law.

The U.S. Department of Labor and Commerce is also aware of the situation. Robert Sawyer, Regional Director and Robert Hickey, a local representative from the U.S. Department of Commerce Economic Development, visited Clinton County and discussed federal Economic Development Assistance grants with city and county officials.

U.S. Sen. Sherrod Brown has emphasized the importance of the issue in communications with White House Advisor Karl Zinsmeister and has set up a Web site for affected families to share their stories at http://brown.senate.gov/ohio/constituent_services/wilmington_families/.

On July 28, 2008, Sen. George Voinovich visited Clinton County to meet with members of the Economic Task Force Steering Committee to update them on his activities in Washington on this matter and to hear from community leaders.

Several public meetings have been held where workers, residents, business owners and others in the affected region have expressed their concerns to Cong. Mike Turner, Sen. Sherrod Brown, Lt. Governor Lee Fisher and Governor Ted Strickland, Sen. Barack Obama (July 11, 2008) and Sen. John McCain (Aug. 7, 2008). Presidential candidate Ralph Nader is also expected to visit Wilmington on Sept. 8 to talk with affected workers.

The Ohio Department of Development has set up a website, too, at www.AirParkHelp.org. Save Ohio Jobs, a union-backed effort to raise awareness about this issue has also established a website, www.SaveOhioJobs.com.

State Rep. Dave Daniels and State Sen. John Carey held an informal hearing at the Wilmington Airpark on August 19, 2008 to inform the Ohio Senate Finance and Financial Institutions

Committee and the House State Government Committee to discuss the potential impact to the area and possible solutions should DHL end its contract with ABX and ASTAR Air Cargo.

On August 25, 2008, the first WARN notice was issued by ABX Air for 235 employees, mainly those affected by the retirement of the DC-9 fleet, an expected adjustment in ABX operation. Severance for these workers is expected to be two weeks pay (at least 1 yr ) then an additional week for each year worked after one year. Health insurance would be carried through the severance period. Persons working at ABX less than one year do not receive severance.

The United States House Representatives Judiciary Committee, Anti-Trust Task Force, and the House Transportation Committee will hold hearings on September 9 and 16, 2008, respectively on anti-trust and transportation policy issues raised by this proposed transaction between DHL and UPS.

The State of Ohio, through the work of the ODOD and the Economic Task Force, has applied for a phased National Emergency Grant for workerforce transition expenses. 1st phase = $6.7 million. The State has asked that each person who left after the announcement on May 28 would be considered a displaced worker.

Submitted by Mayor David L. Raizk
Co-convener, Wilmington Airpark Economic Task Force

Mr. CONYERS. Thank you, Mayor. We are impressed by your international knowledge of the circumstances that bring us here today and also of your deep devotion to the city of Wilmington, which you clearly love so much.

Well, Members of the Committee, we now turn to the chief executive officer of DHL, Mr. John Mullen, who is, as well, a member of the management board of DHL's parent company. He is an experienced person in this area of cargo transportation. He has served on the boards of Telstra Corporation, Embarq Corporation, as well as a member of the International Swimming Hall of Fame. He is an all-around person, carrying a rather large responsibility at this hearing because so many issues have been raised, so many questions unanswered, that, in all fairness, we might feel obligated to give you as much time as everybody else before you has had, but obviously that is not possible. I regret it.

But nevertheless, it is very interesting that this company, founded in 1969 by Adrian Dalsey, Larry Hillblom and Robert Lynn as an express delivery service between San Francisco and Honolulu, has grown, was purchased, indeed, by the German Government. And because of Federal laws prohibiting foreign control of domestic air carriers, DHL's U.S.-based air carrier was sold off, eventually becoming ASTAR Air Cargo. And, in 2003, DHL acquired Airborne Express and, due to those same prohibitions of foreign ownership of domestic air carriers, sold off Airborne Express air carrier, as what eventually became ABX Air.

And so this international commercial activity, still located in little old Wilmington, is something that brings us all here to anxiously await your comments and explanation and anything else you would like to contribute to this hearing. And we are very pleased that you could come, Mr. Mullen.

**TESTIMONY OF JOHN P. MULLEN, CEO, DHL EXPRESS**

Mr. MULLEN. Thank you very much, Mr. Chairman.

Chairman Conyers, distinguished Members of the Committee, I thank you very much for the opportunity to be here today and to explain to you a little bit about the situation that DHL is in on the proposed contract between ourselves and UPS.

You will have received my written testimony. I hope you have had a chance to read it. In the interest of time, because I know it is pressing, I will try to paraphrase that as quickly as I can.

Mr. Chairman, DHL is in a very difficult situation. For over 5 years, we have battled to break into the U.S. market, and we have spent over $6 billion doing this. We have made a lot of progress, and we are very proud of that progress. But the reality is it has come at a huge cost, and today we are losing some $5 million a day or close to $1.3 billion a year. The air express market that we are operating in is shrinking, and there is intense competition for declining volume. On top of that, we are now facing a rapidly worsening economy and the impact of rising jet fuel, as well.

Now, we are a large company, but no company can lose this amount of money and survive. We are under intense pressure from our shareholders, from analysts and other external parties, and we simply have to take action. And with volumes declining as they are, this means, of course, we have to take out cost.

Now, we have exhaustively examined all of the options that we think are open to us, from a number of restructuring options to potential partnerships, even to closing down altogether in this country.

And on May 28, as a result of all of that analysis, we announced a restructuring plan for the U.S. business of DHL Express, which is in two parts: Firstly, we aim to restructure some of our ground operations, largely closing some of the stations in remote areas. But secondly, we announced the intention to enter into a contract with UPS to replace existing two subcontractors that provide airline haul for us with one, being UPS. Our goal here is to save around $1 billion per annum.

Now, no solution is ideal, and in the situation that we find ourselves in there is no silver bullet, there is no simple solution. But we think that this is the best possible outcome for us, for our company and our shareholders. And it is the only option that will allow us to remain a viable competitor, and thereby preserving competition here.

I would like to highlight, if I may, a few key points in respect to the proposed contract with UPS.

Firstly, it is not a merger, it is not an alliance, it is not a joint venture, it is not a transfer of assets. We are simply replacing two existing subcontractors with one new one in one part of our business, which is the air carriage of our parcels. DHL remains as independent afterwards as it was before. All of our other operations—our pick-up and delivery, our billing, our customer service, our information technology, et cetera—all of those remain exactly as before. Indeed, the customer himself will not see any difference. If we are moving a package from New York to Los Angeles, the customer doesn't know now on what aircraft that travels; does it go on an ASTAR, an ABX, a DHL or UPS?

Furthermore, this is, in our view, a very common solution. In industries where a large amount of capital is tied up in fixed assets, capacity-sharing is common. In the passenger airline industry, code-sharing has existed for quite some time. In the marine industry, shipping lines have collated and used each other's space for a long time. And in our own industry, here in the United States, some years ago, United States Parcel Service, with their competitive parcel product, did exactly the same thing: They closed the hub and outsourced that lift to FedEx, to Federal Express.

Now, those are things that we had to do, and we recognize, of course, that no such change comes without an impact. We are hugely sensitive to the impact that this decision will have on Wilmington, on the local community, on our subcontractors and all the individuals that will be touched by it. And it is not a decision that has been taken lightly. We have absolutely agonized over this, I can assure you.

We formed a team that is putting a huge effort into mitigating this impact. We realize, of course, that there is nothing that we can do that will entirely mitigate the impact on those directly affected. But we are working to put in place a plan which we believe goes well beyond any contractual or legal obligation that we have and well beyond the normal course of action that a company would take in this situation.

There are three components to that plan. Firstly, we expect to allocate $260 million in severance, pension and health benefits. Of that $260 million, only $35 million represents our contractual and legal obligation. The remaining $225 million are benefits over and above that we are willingly paying, not only to our own employees, but to the employees of subcontractor companies. Secondly, we are working with local State and community officials to try to help families and local businesses affected by these plans. And thirdly, the local community has asked us of our intentions with the air park, and we have expressed great willingness to sit down and discuss the future of that air park and if that can be useful to the community going forward.

So, in conclusion, Mr. Chairman, may I summarize again, this has been a terribly difficult decisions for us. We are losing $1.3 billion in a declining market, and we have no option but to cut costs. We have considered every option, and now we plan to implement a solution that addresses this situation.

Such a plan will obviously not be liked by those effected, but it is not a merger and it is not anticompetitive. It is common in industry generally, and it is common in our industry, where it has existed here in our industry in the United States.

We believe that this will leave us as a viable competitor, thereby preserving competition in the U.S. marketplace. And last but most importantly of all, we are doing our very, very best to try to mitigate the impact that this decision will have.

Mr. Chairman, distinguished Members of the Committee, thank you very much for your attention, and I look forward to responding to any questions that you may have.

[The prepared statement of Mr. Mullen follows:]

PREPARED STATEMENT OF JOHN P. MULLEN

**WRITTEN TESTIMONY OF JOHN MULLEN**
**CEO OF DHL EXPRESS**

**HOUSE COMMITTEE ON THE JUDICIARY**

**COMPETITION IN THE PACKAGE DELIVERY INDUSTRY**

**SEPTEMBER 9, 2008**

## INTRODUCTION

Mr. Chairman, Ranking Member and distinguished members of the Committee, thank you for providing me the opportunity to discuss the topic of competition in the package delivery industry and the potential services agreement between DHL and UPS.

On May 28th, DHL announced a major restructuring of our express business in the United States, including the widely publicized vendor services agreement with UPS that the companies are considering. This restructuring, if completed, would address significant on-going losses in the U.S market, and, hopefully, allow DHL to remain a viable competitor in the U.S. air express business and to continue providing future employment opportunities in the U.S.

I welcome this opportunity to explain the reasons why this restructuring is necessary, but first want to stress that we have not taken this action lightly. Since 2003, DHL has invested over $5 billion building our presence in the U.S. market. This investment consists of $3 billion in operating losses, $0.9 billion in capital expenditures (including substantial improvements and expansion of our main U.S. air cargo and hub sorting facilities at Wilmington, Ohio), and $1.1 billion in strategic investments, including the acquisition of Airborne Express in 2003. With

projected operating losses of $1.3 billion in 2008, DHL's total expenditure for U.S. operations from 2003 through 2008 will exceed $6 billion.

Despite our heavy investment and determined efforts to build credibility in the U.S. market, our air express volumes have declined over this period, due in part to the generally deteriorating market conditions in the U.S. overnight air sector. Meanwhile, our operating costs, especially jet fuel expenses, have increased dramatically. Losses of this magnitude are unsustainable, and with our volumes continuing to decline, we have no choice but to undertake the significant steps I am describing today to address the on-going losses.

If the vendor services agreement with UPS is consummated, DHL will lose some of the benefit of the large investments we have made in the U.S. market, particularly our investments at the Wilmington facility. DHL would not be pursuing this course unless it were necessary.

We are sensitive to the impact this decision will have on our employees, on the employees of our current air services vendors ABX Air. Inc.("ABX") and ASTAR Air Cargo, Inc. ("ASTAR") and on the southwest Ohio communities in the Wilmington area. We are committed to working with state and community officials there to assist employees and their families who will be affected by this necessary restructuring. DHL already has committed to provide in excess of $260 million in severance, retention, and health-benefits for the workforce in Wilmington, including funding the severance and benefits programs of the ABX and ASTAR employees who will be affected by the proposed plan. A portion of this commitment (approximately $35 million) is being made pursuant to contractual or benefit plan obligations of

DHL, while the balance (approximately $225 million) represents our effort to go beyond what would otherwise be required.

Finally, DHL has commenced initial discussions with local officials regarding disposition of the Wilmington Air Park in the event a vendor services agreement with UPS is consummated. DHL will work to consider transition plans for the Air Park which could reduce the impact of our terminating operations at that location.

**BRIEF HISTORY OF DHL IN THE U.S.**

DHL's current structure and business model are the products, in part, of regulatory constraints on non-U.S. companies engaged in air express delivery service. DHL was founded in the U.S. in 1969 by three U.S. entrepreneurs. We expanded over time to become a global air express service provider. DHL's operations inside the U.S. were conducted by one company, DHL Airways (which was owned and controlled by U.S. citizens), while our operations outside the U.S. were conducted by a different company, DHL International (which for more than a decade has been owned and controlled by foreign entities). Because U.S. law limits foreign ownership of U.S. air carriers to a 49% equity interest and a 25% voting interest, DHL International could not operate the U.S. domestic airlift component of the integrated air express delivery service. The two companies, however, were able to provide integrated, global air express service through a variety of contractual arrangements, though with higher costs than a single company would have. In 1998, Deutsche Post World Net ("DPWN"), a public company, became an investor in DHL International; DPWN acquired all of the company in 2002.

Prior to 2001, DHL Airways operated an integrated air and ground network in the U.S., much as UPS and FedEx do today. In 2001, a strategic decision was made to restructure the DHL operations in order to allow the company to expand our presence and improve our operating platform in the U.S., the largest and most vital market in the world for the air express industry. DHL's objective was to offer to the business customer an alternative shipping option to the extensive domestic services offered by UPS and FedEx, which are the leaders in the U.S. domestic air express business.

In May 2001, therefore, DHL underwent a major restructuring that separated DHL's air and ground operations. Three U.S. investors ultimately acquired the air operation and changed its name to ASTAR, while the ground operations were conducted by a company called DHL Express, which was acquired by DHL International as part of the restructuring. A prime motivation for the restructuring was to facilitate investment in the ground service operator – DHL Express – consistent with U.S. legal limitations on foreign investment in U.S. air carriers. The objective was to make DHL a more meaningful participant in the domestic air express sector.

In 2002, Airborne Express, which operated an integrated air and ground express delivery network in the U.S., expressed an interest in possibly being acquired by DHL. Airborne had the converse of DHL's strategic problem; it operated its own services only in the U.S. and relied on third parties to deliver its few international shipments. When it approached DHL about a possible acquisition, Airborne was facing a rapid decline in its operating results – it had reported either operating losses or breakeven operations starting in the 2nd quarter of 2000 through the 3rd

quarter of 2001 – and was losing business. Airborne lacked the financial resources to expand its network and keep pace with the competitive challenges it was facing from its larger rivals. Absent an acquisition by DHL, it faced a difficult and very uncertain future. At the same time, DHL saw in Airborne an opportunity to expand its domestic network and customer base significantly. In August 2003, DHL acquired Airborne and began the arduous task of integrating the ground operations of the two companies. In order to comply with U.S. law, DHL was required to divest Airborne's air operations (ABX), leaving DHL Express to operate ground operations only in the U.S.

In order to provide an integrated express delivery service in the U.S., DHL Express needed airlift providers, so we entered into ACMI agreements (**A**irplane, **C**rew, **M**aintenance, **I**nsurance) with ASTAR and ABX. These ACMI arrangements have put DHL at a substantial competitive disadvantage, because they afford the company no operational control over the airlift component of our overall service and materially increase operating costs for DHL relative to the costs of operating our own airline, as FedEx and UPS do.

In the five years since acquiring Airborne, DHL has made a prodigious effort to integrate the massive ground operations of former DHL and Airborne, including complex IT networks and workforces, into a single air express provider. Through 2004 and 2005, DHL completely re-branded these operations with our new trademark and launched an aggressive sales plan and a national marketing and advertising campaign to win customers from long-time incumbents including FedEx and UPS. DHL's massive investment in infrastructure paid off with marked improvements in domestic overnight and ground delivery services. But DHL's efforts have been

severely hampered by an unsustainable cost structure. DHL's inability to grow our volume has led to underutilized aircraft capacity and other underutilized fixed-cost infrastructure. The resulting inefficiencies and increasing cost structure have severely impeded DHL's ability to compete. Deteriorating revenues exacerbated by cost increases have resulted in devastating losses that DHL cannot continue to incur.

This is a particularly difficult time in the history of the aviation industry overall, and DHL Express has been no exception. In recent years, many major U.S. passenger and cargo airlines have sought the protections of bankruptcy, reduced their overall operations, including reduced flights and suspended service to entire airports, and have shed thousands of jobs in the process. Some carriers have ceased operations entirely. At the same time, the air cargo market has experienced increasing levels of un-utilized or under-utilized capacity, the expense of which has been substantially exacerbated by record increases in fuel prices.

To be sure, DHL made strategic and operating mistakes in the integration of the DHL and Airborne businesses. The 2005 integration of our two main U.S. air cargo and hub sorting operations (of former Airborne and DHL) into a single facility at Wilmington, Ohio did not go well, impacting service to our customers and costing us a number of accounts. Other aspects of the integration of Airborne and DHL gave rise to unanticipated service issues, which also eroded our customer base and market share.

In addition, DHL has not been as successful as we had contemplated at reducing our substantial airlift costs, in particular the high fixed-cost structure of our two current providers,

ABX and ASTAR. In an effort to reduce costs through a possible merger of ABX and ASTAR, DHL, in 2007, acquired a minority stake in ASTAR and agreed to support the acquisition of ABX by ASTAR financially by offering a long-term operating contract to the surviving carrier. Such a transaction would have created a single carrier vendor for DHL in the U.S. and would have reduced redundant overhead and multiple fleet costs which DHL fully bore through our ACMI agreements. However, ABX rejected ASTAR's offer to purchase ABX. Other options, including ABX proposals to reduce costs to DHL for services provided by ABX, were thoroughly analyzed by DHL. Unfortunately, ABX's proposals simply would not have delivered enough cost reductions to the DHL Express operations in the U.S.

Subsequently, DHL was approached by UPS regarding the airlift services contract currently under negotiation. This agreement, if consummated, has the potential to provide greater long-term costs savings and efficiencies than the combination of ABX and ASTAR that DHL had tried to promote earlier or other proposals by ABX.

For some years now, financial analysts on Wall Street and elsewhere, have criticized us for "not stopping the bleeding" in the U.S. The stock value of DPWN has remained flat, and the pressure of the financial markets to "fix" our problem in the U.S. has increased. Even though we have taken a long-term view of our U.S. business, we cannot ignore the fact that these operating losses – about $5 million per day - are simply unsustainable for the company, our shareholders and for our employees. Decisive action is now required.

On May 28, therefore, we announced a restructuring plan for DHL Express in the U.S., consisting of two main elements: (1) the reorganization and consolidation of our domestic (ground) network, and (2) a possible shift of our domestic airlift and attendant sorting activity from our two current providers (ABX and ASTAR) to one single provider, UPS. Our ground network restructuring is well underway; and our contract negotiations with UPS are ongoing.

Finally, and though certainly not a motivation for the agreement with UPS, one other result of our plans worth noting is that by eliminating duplicate air systems the contract with UPS would reduce carbon emissions (since there would be 50,000 fewer aircraft take-off and landing operations per year) and contribute to energy conservation by saving over 150,000,000 gallons of jet fuel annually.

**THE PENDING DHL-UPS SERVICES AGREEMENT**

Although discussions between DHL and UPS are ongoing and details about the proposed arrangements and the timing of a final agreement are still subject to negotiation and confidentiality requirements, the proposed vendor services agreement, as announced by DPWN Chairman and CEO, Dr. Frank Appel, and myself, calls for UPS to provided air lift services for nearly all of DHL US package volumes and for UPS to provide main hub package sorting services at UPS's hub in Louisville, Kentucky. DHL would retain complete control over the rest of our business and remain an independent competitor in the U.S. air express delivery sector. We would continue to provide all pick-up and delivery and certain sorting services under the proposed arrangement, retain and manage our own sales force, develop and pursue our own commercial strategies, maintain our own back office services, set our own pricing and product offerings, etc. DHL would retain full control over our ground operations, as we do today. In

sum, the proposed contract is essentially the substitution of a single vendor – UPS – for our two existing vendors – ABX and ASTAR – in the provision of airlift and package sorting services. The proposed contract contemplates no greater outsourcing of services by DHL than our current operating model.

The proposed agreement, if consummated, would not involve any merger, acquisition or transfer of assets between DHL and UPS. It would be a commercial vendor contract for services between two separate companies, limited to DHL's airlift delivery and certain sorting services in North America. The proposed agreement, in connection with the other cost savings and operating efficiency initiatives announced by DHL on May 28, 2008, could make DHL a more viable long-term competitor in the U.S. It would provide DHL with greater stability and align the costs that DHL pays for the airlift component of our U.S. operating platform much more closely with the variable costs involved in providing those services.

Similar vendor arrangements involving competitors are common in the transportation industry. For example, FedEx and UPS provide airlift for the U.S. Postal Service, and most commercial airlines carry packages for express delivery companies, freight forwarders and other businesses. In the maritime world, the mutual utilization of cargo space has been common among competing shipping lines for many years. Additionally, passenger airlines have code-share arrangements with each other for carrying passengers. This has been common practice in the airline industry for years. Such arrangements are common in the transportation sector, which is characterized by very high fixed costs of transport networks, because they bring very substantial efficiencies to participating companies. Those efficiencies in turn enhance

competition and benefit consumers through lower prices and better service. Carriers cannot efficiently bear the long-term expense of operating their networks at partial capacity. Our proposed agreement would be designed to provide DHL (as well as UPS) just the sort of pro-competitive efficiencies that companies in the transportation sector have long enjoyed from similar arrangements. This is particularly important given the dramatic fuel price increases already mentioned.

For these reasons, among others, we believe the agreement would be fully consistent with U.S. antitrust laws. If and when the agreement is concluded, we will provide a copy to the Department of Justice and will cooperate fully with any review of the contract that the Department chooses to undertake.

**IMPACTS ON THE STATE OF OHIO**

As I said at the outset, we are most mindful of the impact that our proposed transfer of services from Ohio-based companies ABX and ASTAR, to Kentucky-based UPS, will have on the local Ohio economy and the many dedicated DHL, ABX and ASTAR employees who work in Wilmington. As indicated above, DHL has already agreed to fund an estimated $260 million or more in severance, retention, and health-benefit arrangements for the workforce in Wilmington – including approximately $225 million over and above what our contractual or legal obligations would otherwise require. This includes agreements with ABX and ASTAR to fund certain severance and benefits programs being provided to ABX and ASTAR employees who would be affected by the proposed agreement, if consummated. DHL has gone beyond our mere contractual obligations and industry benchmarks in agreeing to fund these benefit

programs. Under the plans funded by DHL, all pilots, mechanics, sort employees and non-executive personnel will be eligible for one or more of the benefits programs of DHL, ABX and/or ASTAR.

Until an agreement is consummated, we cannot put in place other measures to address its impact, but we are mindful of the need to address such concerns. Immediately following the announcement on May 28, DHL held discussions with key officials to address the potential impact of our announcement on the local community. On June 4, I met with Ohio Governor Ted Strickland, Ohio Lieutenant Governor Lee Fisher, and several State legislators to explain our decision. I have also been in touch with concerned Members of Congress, and I have very much appreciated hearing their views.

On June 25, Dr. Frank Appel (Chairman and CEO of DPWN), personally committed to Ohio Lieutenant Governor Lee Fisher that DHL would consider measures to mitigate the economic impact on the employees and the community of Wilmington. Indeed, we have selected a dedicated team of senior executives of the company to review all options regarding mitigation efforts, and have engaged with community leaders in respect of the potential disposition of the Wilmington Air Park and other potential avenues of mitigation. As noted, the potential agreement with UPS is not finalized, and the timing and extent of impacts of our future actions is not presently known. In the event DHL and UPS reach agreement, DHL will work with state and local officials on mitigation plans.

Finally, I want to say a word about the misinformation that has been widely publicized concerning the incentives DHL received from the State of Ohio and local jurisdictions in relation

to the 2004-2005 consolidation of our air cargo and hub sorting operations at the Wilmington Air Park. DHL was induced to consolidate those operations at the Air Park, rather than in Northern Kentucky, in part by the offer of incentives that the State has valued in excess of $400 million. As shown in attached Exhibit I, however, DHL has received less than $6 million in incentives. The vast majority of the $400 million -- the Volume Cap Allocation for Tax Exempt Financing for improvements at the Air Park, valued by the State at up to $300 million -- was of no value whatsoever to DHL because it was not required for the type of tax-exempt financing available to DHL. Moreover, DHL is fully liable for all principle and interest related to the $270 million in bonds issued for the Air Park improvements. No governmental entity is liable for payment of any amount of the $270 million because it is solely DHL's obligation. Thus, the notion that DHL is abandoning the Wilmington Air Park facility after accepting more than $400 million in incentive benefits from the State is false.

**CONCLUSION**

In conclusion, I want to emphasize that the DPWN Board has not taken lightly the decision to reorganize DHL Express in the U.S. We deeply regret the resulting economic hardship, and we will work conscientiously to mitigate adverse effects. As CEO, I am responsible for protecting the viability of our business in the U.S., and I firmly believe that the decision to restructure DHL's U.S. operations was necessary to achieve that objective.

Mr. Chairman, distinguished Members of this Committee, I thank you very much for your attention. I look forward to your questions.

# Exhibit I

## DHL EXPRESS (USA), INC.: WILMINGTON AIR PARK EXPANSION AND IMPROVEMENT: STATE OF OHIO AND LOCAL INCENTIVES

| Incentive | Offered by the State | Realized by DHL | Comments |
|---|---|---|---|
| | | | |
| Ohio Job Creation Tax Credit | $ 13,000,000* | $ -0- | Agreement has not been executed. If the vendor services contract is consummated, DHL is not expected to realize any benefit. |
| Ohio Job Retention Tax Credit | 66,000,000* | -0- | Agreement is understood to have been submitted to ABX; status is unknown. If the vendor services contract is consummated, DHL is not expected to realize any benefit. |
| Business Develop-ment (412) Grant | 2,000,000 | 2,000,000 | |
| Volume Cap Alloca-tion for Tax-Exempt Financing | 300,000,000* | -0- | Volume Cap was not required for the type of tax-exempt financing available to DHL, and neither the Dayton-Montgomery County Port Authority nor DHL applied for or received any volume cap for the bonds issued by the Dayton Port. DHL is obligated to pay rent sufficient to pay all of the debt charges on the bonds issued by the Dayton Port. No governmental entity is liable for payment of this debt from its own resources. |
| Ohio Invest-ment in Training Program | 2,000,000 | 2,000,000 | |
| Employment Pre-screening Test and Recruit-ment Services | 729,760 | | Such benefit, if any, that DHL received by virtue of the State's reimbursement to local government agencies for these costs was indirect and the value realized is not capable of precise measurement. The amount expended by the State for this purpose is not known. |

* Estimated value per State of Ohio incentives offer letter dated June 15, 2004.

| | | | |
|---|---|---|---|
| Community Reinvest -ment Area | 17,000,000* | 600,000 | For tax year 2007, DHL received an estimated $600,000 abatement on real property taxes. |
| Ohio Enter-prise Zone Program | 9,660,000* | 1,000,000 | For various reasons, including changes in State law, DHL does not expect to realize more than $1,000,000 in personal property tax savings. |
| Roadwork Develop-ment (629) Account | 1,000,000 | -0- | Received by the City of Wilmington for public improvements. |
| Runway Fee Savings | 7,000,000 | | The savings on landing fees that DHL realized by choosing in 2004 to consolidate operations at the Wilmington Air Park, rather than at the Cincinnati/Northern Kentucky Airport in Covington, Kentucky, was a function of DHL's acquisition, expansion and improvement of, and consolidation of operations at, the Air Park. The State of Ohio did not provide to DHL either cash or any credit against any payments that would otherwise be owing to the State. |
| OWDA Local Econom-ic Develop-ment Loan | 4,000,000 | -0- | Received by the City of Wilmington for public improvements. |
| **TOTAL** | $422,389,760** | $5,600,000 | |

* Estimated value per State of Ohio incentives offer letter dated June 15, 2004.

** The State also offered to DHL in the letter setting forth the incentives package that it would expedite commencement and completion of construction of a bypass around the City of Wilmington. Planning for and scheduling of construction of the bypass is understood to have commenced before DHL ever became involved with the Air Park. Further, the bypass is a public improvement that should be of benefit generally to the traveling public and Wilmington area residents.

Mr. CONYERS. Thank you, Mr. Mullen. We appreciate that introduction into understanding the other side of this problem that brings us here today.

The other part of this outsourcing merger agreement, as it is called more correctly by you—or outsourcing agreement, not a merger, is the distinction you impressed the Committee with—the other part of this is UPS. And the president of corporate transportation for UPS is Mr. Burt Wallace.

In 1980, he started as a package handler in UPS's Atlantic District, and over the next three decades, through hard work and skill and intense preparation, he worked his way up to the executive suite and is now the president of corporate transportation for UPS since 2005.

We have your testimony. Mr. Wallace, we welcome you here for your comments.

**TESTIMONY OF BURT WALLACE, SENIOR VICE PRESIDENT OF CORPORATE TRANSPORTATION, UPS**

Mr. WALLACE. Thank you, Mr. Chairman.

Chairman Conyers and Members of the Committee, UPS welcomes the opportunity to appear before you today to present as clearly as possible the facts regarding UPS's proposed agreement with DHL.

On May 28th, 2008, UPS and DHL announced that the companies were working toward an agreement for UPS to provide airlift of DHL's express, deferred and international package volume within the United States and to and from Canada and Mexico. We are still negotiating this agreement.

The proposed agreement is part of a larger restructuring by DHL designed to reduce its cost and to help the company to remain competitive in the U.S. It has been widely reported that this restructuring has several elements, including engaging the U.S. Postal Service to provide "last-mile" delivery of some of DHL's packages.

DHL has stated very publicly and clearly that it will not be able to compete effectively or perhaps remain in the U.S. without restructuring its operations and cost. The company has reported that it expects to lose $1.3 billion in the U.S. this year.

Mr. Chairman and Members of the Committee, let me state as clearly as I can: The anticipated agreement between UPS and DHL is not a merger or joint venture, it is not an acquisition, it is not a consolidation. UPS and DHL continue to compete independently. We will each price and market our own brands and services. We will not share profits, cost, or information about pricing of services to each other's customers.

Under the proposed agreement, UPS will act as a vendor to DHL, providing contractual services in the same way that carriers in our industry, including UPS and Federal Express, provide services to the United States Postal Service. This type of arrangement, where one company provides service to a competitor, is found throughout the transportation industry, including the trucking, rail and ocean carriage. It is also found in other industries, such as natural gas and telecommunications.

UPS will not provide pick-up or delivery of packages to DHL customers. DHL will deliver packages to UPS airport locations for

movement through UPS's air network to destination airports. DHL will then pick up the packages from the destination airports for final delivery to its customers. This is the same service currently being provided to DHL by two vendors, ABX and ASTAR.

The anticipated agreement, in short, is simply an airlift contract, one part of the restructuring that DHL has concluded will significantly reduce its cost in the United States.

There has been a great deal of discussion about the impact of DHL's restructuring on the job market in the Wilmington, Ohio, region. UPS is a company that has a long history of providing good jobs and benefits for employees. We understand the importance communities place on attracting and retaining employment opportunities for their residents.

It is very important to note in this regard that the expected result of DHL's restructuring will be to preserve approximately 40,000 DHL-related jobs in the U.S. that would otherwise be as risk. Further, the agreement with DHL will help to bring additional job security to more than 14,000 UPS employees in Ohio and 358,000 UPS employees in the United States.

I should note that, in 2003, UPS employed 317,000 people in the U.S., and since then we have added more than 41,000 employees to our payroll, which is 14,300 more people than the average total number of employees among the Fortune 500.

It is our hope that growing our business will allow UPS to continue to increase the number of jobs throughout Ohio, the country and the world. Any suggestion that UPS could somehow manipulate the way in which DHL packages move through our system to gain a competitive advantage is simply untrue and gives DHL far too little credit for being able to protect itself. Let me assure you that DHL is a tough negotiator, fully able to protect its interest. UPS will continue to compete vigorously with DHL and others in the U.S. And around the world, and we fully expect DHL to compete vigorously as well.

DHL's restructuring, including its agreement with UPS, actually preserves competition in the package delivery business in the U.S. Now, you might ask, why would UPS want to do something that helps a competitor remain in the market? For UPS, our goal is to find profitable opportunities such as this to better utilize our existing capacity, make us a more efficient competitor, and allow us to create and provide career stability for our employees. In short, this proposed agreement represents a wise and efficient use of our assets. It helps protect the job of 358,000 UPS employees in the U.S. And if we didn't pursue this agreement, one of our competitors would have.

Mr. Chairman, thank you for the opportunity to share UPS's perspective on the agreement that helps to strengthen a UPS company that provides career opportunities to hundreds of thousands of people. I hope the facts that I have outlined today address the questions and concerns of the Committee. I stand ready to answer any further questions that you and the Committee may have. Thank you.

[The prepared statement of Mr. Wallace follows:]

PREPARED STATEMENT OF BURT WALLACE

**Statement of**
**Burt Wallace, President of Corporate Transportation, UPS**
**Before the Committee on the Judiciary**
**U.S. House of Representatives**
**September 9, 2008, 2:00 PM**
**"Competition in the Package Delivery Industry"**

Chairman Conyers, Ranking Member Smith and members of the committee, UPS welcomes the opportunity to appear before you today to clarify the nature of our anticipated agreement with DHL and to explain how the agreement, if completed, will work in practice.

My goal today is to present to you as clearly as possible the facts regarding this transaction.

On May 28, 2008, UPS and DHL announced that the companies were working toward an agreement for UPS to provide airlift of DHL's express, deferred and international package volume within the United States and to and from Canada and Mexico. We are still negotiating this agreement.

The proposed agreement is part of a larger restructuring by DHL designed to reduce its costs and to help the company to remain competitive in the U.S. It has been widely reported that this restructuring has several elements, including engaging the U.S. Postal Service to provide "last-mile" delivery of some DHL packages.

DHL has stated very publicly and clearly that it will not be able to compete effectively – or perhaps remain in the U.S. – without restructuring its operations and costs. DHL, for reasons it can best explain, determined that it could not even cover its costs in the United States using the business model it adopted in 2003. The company has reported that it expects to lose $1.3 billion in the U.S. this year.

Mr. Chairman and members of the Committee, let me state as clearly as I can: The anticipated agreement between UPS and DHL is **not a merger or joint venture**; it is **not an acquisition**; it is **not a consolidation**. UPS and DHL continue to compete independently – we will each price and market our own brands and services. We will not share profits, costs or information about pricing of services to each other's customers.

Under the proposed agreement, UPS will act as a **vendor** to DHL, providing contractual services in the same way that carriers in our industry – including UPS and Federal Express – provide services to the U.S. Postal Service. This type of arrangement – where one company provides service to a competitor – is found throughout the transportation industry, including in trucking, rail and ocean carriage. It is also found in other industries such as natural gas and telecommunications.

UPS will **not** provide pick-up or delivery of packages to DHL customers. DHL will deliver packages to UPS's airport locations for movement through UPS's air network to destination airports. DHL will then pick up the packages from the destination airports for final delivery to its customers. This is the same service currently being provided to DHL by two vendors – ABX and ASTAR.

Under the proposed agreement, UPS will also provide airlift to and from the U.S. for DHL international packages moving between the U.S., Canada and Mexico. For international locations beyond Canada and Mexico, DHL will rely on other carriers to provide airlift to and from UPS's U.S. air hubs.

The anticipated agreement, in short, is simply an airlift contract; one part of a restructuring that DHL has concluded will significantly reduce its costs in the United States.

There has been a great deal of discussion about the impact of DHL's restructuring on the job market in the Wilmington, Ohio region. UPS is a company that has a long history of providing good jobs and benefits for employees. We understand the importance communities place on attracting and retaining employment opportunities for their residents.

It is very important to note, in this regard, that the expected result of DHL's restructuring will be to **preserve** approximately 40,000 DHL-related jobs in the U.S. that would otherwise be at risk.

Further, the agreement with DHL will help to bring additional job security to more than 14,000 UPS employees in Ohio, and the 358,000 UPS employees in the U.S.

I should note that in 2003, UPS employed 317,000 people in the U.S. Since then, we've added more than 41,000 employees to our payroll, which is 14,300 more people than the average total number of employees among the Fortune 500.

It is our hope that growing our business will allow UPS to continue to increase the number of UPS jobs and careers throughout Ohio, the country and the world.

Some have expressed concerns about the effect of this proposed agreement on service, costs and consumer choice, and have suggested that it might in some way reduce competition between UPS and DHL in providing package delivery services.

Any suggestion that UPS could somehow manipulate the way in which DHL packages move through our system to gain a competitive advantage is simply untrue, and gives DHL far too little credit for being able to protect itself. Let me assure you that DHL is a tough negotiator, fully able to protect its own interests.

UPS will continue to compete vigorously with DHL and others in the U.S. and around the world, and we fully expect DHL to compete vigorously as well. DHL's restructuring – including its agreement with UPS – actually **preserves** competition in the package delivery business in the U.S.

Now, you might ask, why would UPS want to do something that helps a competitor remain in the market?

For UPS, our goal is to find profitable opportunities such as this to better utilize our existing capacity, make us a more efficient competitor, and allow us to create and provide career stability for our employees.

When it became clear to us that DHL had decided to stay in the U.S. package delivery business by restructuring its operations, we were left with two options:

- Do nothing and allow a profitable business opportunity to go to a competitor, or
- Pursue an agreement with DHL that is similar to what we currently have with the U.S. Postal Service.

The potential gain for UPS is a contract that strengthens our company in an increasingly competitive global marketplace.

In short, this proposed agreement represents a wise and efficient use of our assets, provides a new and profitable revenue stream, and helps to protect the jobs and careers of 358,000 UPS employees in the U.S.

Mr. Chairman, thank you again for the opportunity to share UPS's perspective on an agreement that helps to strengthen a U.S. company that provides jobs and career opportunities to hundreds of thousands of people.

I hope the facts I've outlined today addressed the questions and concerns of the Committee.

I stand ready to answer any further questions that you and the Committee may have.

Thank you.

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Mr. CONYERS. Thanks for your presentation. It is beginning to introduce, between you and Mr. Mullen, the other side of this economic challenge that we have here. We begin to get a little balance in. It does not answer all the questions by a long shot. Well, it hasn't answered any of the questions. But stay tuned.

Captain Ross, David Ross, president of Teamsters Local 1224. A former Air Force pilot, earned all kinds of distinguished military honors and awards and commendations. Served in Operation Desert Storm and others.

We welcome you to the hearing and are delighted to share your perspective on the problem that confronts us.

**TESTIMONY OF DAVID ROSS, PRESIDENT, TEAMSTERS LOCAL 224, ON BEHALF OF THE PILOTS OF ABX AIR**

Mr. ROSS. Thank you, sir.

Mr. Chairman, Congressman Chabot, distinguished Members of the Committee, I am grateful you have called this hearing because this issue is so terribly important to our national economy and so many workers, not just in Ohio but across the country.

Proof of that is that you have called the hearing. Further proof of that is that I have had the distinct privilege of personally briefing both Presidential candidates in the election, Senator John McCain and Senator Barack Obama. I personally heard them express their concerns about the antitrust issues and job losses generated by this anticompetitive deal between DHL and DHS.

As you know, Mr. Chairman——

Mr. CONYERS. I notice that you mentioned Senator McCain's name first. Can we read anything into that?

Mr. ROSS. Sir, I have got Senator Obama's name first in my notes, sir. I am not sure how that happened.

Mr. CONYERS. Oh, okay.

Mr. ROSS. But I will get back to Senator Obama.

Mr. CONYERS. Freudian slip, I dare say. All right. Thank you very much.

Mr. CHABOT. Mr. Chairman, I am sure it was just alphabetical order.

Mr. CONYERS. Oh, all right.

Mr. ROSS. There we go. Thank you, Mr. Chabot.

Mr. CONYERS. More than likely.

Mr. ROSS. As you know, Mr. Chairman, Senator Obama wrote the White House and Senator McCain wrote the Senate and Antitrust Committee, both expressing their concerns about the anticompetitive effects of this deal.

Senator Obama had requested an additional meeting with me this morning in Ohio. I couldn't jeopardize my testimony here, so the Chairman of my governmental affairs committee is pinch-hitting for me. However, Senator Obama's continuing interest demonstrates how important this issue is.

Also this morning, Senator McCain was in Lebanon, Ohio, a neighboring town of Wilmington.

Mr. Chairman, the effect of this proposed transaction will be to reduce the competition in the air express market from three to two. DHL, with the smallest market share and the greatest incentive to

compete on price and service, is being neutered as a legitimate competitor.

Why do I say this? First, if this transaction is consummated, DHL will have to rely on its supposed competitor, UPS, for its most vital operations: air transport, tracking and sorting.

Second, a key element of the express delivery business is in package tracking. It is the backbone of the service process. By combining efforts in this process, DHL will be transferring highly sensitive proprietary commercial information about its customers and about its market to UPS. A critical element of the express package delivery is scanning the bar code. Once the bar code is scanned, an incredible amount of proprietary commercial information is exchanged between the different segments of service, from pick-up to final delivery.

We, the employees of ABX Air who sort, transport and track DHL packages, have 5 years of detailed knowledge of the information DHL transfers through ABX necessary for those functions. We know firsthand what information will have to be passed from DHL to UPS in order for UPS to perform the functions currently done by ABX Air. Having watched express packages go through the sort for over 16 years and being in constant contact with the people doing the sorting, I can tell you there is no way UPS can transport, sort and track DHL packages without material and proprietary commercial information being transmitted by DHL to UPS.

From a notional view, it makes no sense to rely on a major competitor for key elements of your service, especially in such a consolidated marketplace. Indeed, there is every incentive for DHL propriety information to be disseminated throughout the sales and corporate organizations of UPS to the competitive detriment of DHL.

Perhaps DHL will seek to construct a Chinese wall, perhaps in the form of confidentiality agreements, that limit the dissemination. Unfortunately, Chinese walls leak and confidentiality agreements are breached. A deal like this would leave the UPS-DHL strategic alliance with 54 percent of the express delivery market and FedEx with 43 percent of the market, resulting in a monster duopoly and a combined market share of 96 percent. This will eliminate the competition in this consolidated industry that supports thousands of small businesses and millions of consumers across America perhaps forever.

DHL says they must pursue this agreement because they have a cost problem, but not once have they approached me for labor concessions either directly or indirectly. As a labor leader, I am honored to represent the hardworking and professional pilots of ABX Air and the workers of the community of Wilmington, Ohio. They don't want handouts and false promises; they want jobs. They are loyal and committed employees who consistently perform just as well, if not better, as anybody in the industry. Give them a chance.

Mr. Chairman, you and this Committee can help give them that chance. We respectfully request that you ask the Antitrust Division of the Justice Department to review this transaction. I was pleased this morning to hear that they are, in fact, going to voluntarily go in front of the Department once the deal is done. I would ask them

to take one further step and, once the deal is done, go in front of Justice Department and do not implement the deal until it has been cleared by the Justice Department.

I look forward to answering your questions about our capabilities and past performances, our discussions with DHL and air express operations. Thank you very much for the opportunity, sir.

[The prepared statement of Mr. Ross follows:]

PREPARED STATEMENT OF DAVID ROSS

Mr. Chairman and Members of the Committee, I am grateful you have called this hearing because this issue is so terribly important to our national economy and so many workers in Ohio. Proof of that, is you have called this hearing. Further proof of that, is I have had the distinct privilege of personally briefing both Presidential candidates in this election, Senator Barack Obama and Senator John McCain. I have personally heard them express their concerns about the antitrust issues raised and job losses generated by this anticompetitive deal between UPS and DHL. As you know, Mr. Chairman, Senator Obama wrote the White House and Senator McCain wrote the Antitrust Subcommittee in the United States Senate, both expressing their concerns about the anti-competitive effects of this deal. We are grateful this issue has raised such an important and necessary policy discussion as it impacts the workers I am honored to represent. Mr. Chairman, I respectfully request that this Committee demand that this Justice Department initiate an investigation and enforce the antitrust laws of this country.

My name is Dave Ross, and I am a Captain with ABX Air. I am also the President of Teamsters Local 1224 that represents pilots who fly for ABX Air. I graduated from the United States Air Force Academy in 1983, I flew as an instructor and an evaluator in the T-37 and B-52, and I flew in Desert Storm where I was awarded two Air Medals and the Distinguished Flying Cross. I only mention my military credentials because I want to emphasize that I am proud of my service and defense of our American way of life. Mr. Chairman and members of the Committee, thank you for inviting me to testify before you on the elimination of competition in the domestic air express market brought about by a proposed transaction between two dominant air express carriers—DHL and UPS. DHL's restructuring announcement threatens the careers of our members and their ability to provide for their families. As the President of Teamsters Local 1224, with the backing of the International Brotherhood of Teamsters, I testify before you on their behalf. Also, I am hear to speak about a potential economic crisis that threatens a small town in Ohio called Wilmington. This pending economic crisis was brought about by two global corporate giants who seek to merge their services and destroy competition as we know it in the air express market.

You probably remember our airline as Airborne Express. Airborne Express entered the express delivery business in the forties, delivering tropical flowers from Hawaii. Airborne rapidly expanded with a domestic focus while serving the shipping needs of business customers and specialty services. Airborne purchased Clinton Country Air Force Base in 1980, and developed it as the Wilmington Air Park. While enjoying a relatively low cost structure, Airborne was a consistent third competitor in the domestic express delivery market that offered a lower priced alternative to consumers and small businesses.

Airborne Express and DHL had reciprocal strengths. While Airborne established itself as a strong competitor in the U.S., DHL dominated the international market. DHL began in California, and even though they were strong internationally, they represented only a small share of the U.S. market. Deutsche Post World Net invested in DHL, and gradually increased their investment until gaining 100% ownership in 2002. Soon thereafter, DHL purchased Airborne Express promising to increase market shares and profitability of both partners, improve services for consumers, and increase competition. At the time of the purchase, Deutsche Post praised the complimentary service portfolios of the two airlines and Airborne's broad ground network.

After the purchase, DHL operated two airlines in the U.S.—Airborne Express and DHL Airways. In Europe, DHL operates two airlines—European Air Transport based in Brussels and DHL Air UK based in East Midlands. Accordingly, any suggestion they can't operate successfully in the U.S. with two airlines is contradicted by their operations elsewhere. DHL also operates DHL Middle East based at Bahrain and DHL Latin American based in Panama City. More recently, DHL announced plans to forge an alliance—a joint venture—between it and Lufthansa

Cargo called AeroLogic, with each having a fifty percent share and flying cargo from a new sort hub at Leipzig/Halle airport. The opening ceremony for that hub was on May 26th, and attended by the Mayor of Wilmington, Ohio. That was two days before DHL's announcement that will devastate Wilmington, Ohio.

DHL's entry into the U.S. market triggered a proceeding before the Department of Transportation because of well-established citizenship laws for U.S. air carriers, and the airlines that carry express packages for DHL were renamed. Airborne Express became ABX while operating at the Wilmington Airport, and DHL Airways become Astar while operating sixty miles southwest at the Cincinnati/Kentucky International Airport. DHL effectively controlled these two express cargo airlines through two separate long-term contracts called ACMI Agreements, whereby the airlines provide services for aircraft, crew, maintenance and insurance. Through these ACMI Agreements, DHL controlled the routes, the on-time performance criteria, third party services, and any changes of ownership (changes of control). The two airlines provided express delivery service on a cost plus basis, with ABX reimbursed for all expenses plus a base markup of 1.75% of revenues and an incentive for performance which could increase the markup to 2.5%. ABX also has a Hub Services contract with DHL to operate the sort center in Wilmington and other regional sort hubs in cities like Roanoke, Virginia.

Through the control exercised by DHL, service declined and market share suffered. While DHL proposes this alliance with UPS because of cost problems, the reality is they've created a revenue problem because they mismanaged the business of express delivery service.

In the air express business, on-time-performance is critical to customer service. At the time DHL purchased Airborne Express, Airborne had an 18.4% share of the market. From 2003 to 2007, with DHL in control, rather than realizing the synergies and complimentary strengths of Airborne and DHL International, service declined and package volumes declined. Market share at DHL/Airborne declined more than 25%, while FedEx and UPS gained 10.3% and 11.2% respectively. A catastrophic service collapse occurred in September 2005, when DHL mismanaged combining the two sort facilities into one at the Wilmington Air Park. Rather than integrate the sort facilities over time, they tried to do it in one night. In a service industry like this, where on-time-performance is measured in tenths of percentage points, on-time-performance dropped below 70% and did not recover for months because of decisions made by DHL managers and the effective control they exercised through contractual Agreements.

While Deutsche Post spoke of increased competition and expanded service when they purchased Airborne Express, the reality is service declined and they now propose to no longer compete. As a result, competition itself is threatened in the express package delivery business. When on-time-performance declined, market share declined. Market share for the dominant players, one brown and the other purple, increased commensurately. While problems arose with the consolidation, DHL continued their managerial pursuits with unswerving determination but with negative results. They operated two airlines, with two divergent CEO's, two middle management structures, two airline support structures, and two very different aircraft fleets.

At ABX, we fly more than forty fuel-efficient Boeing 767 aircraft that have Category II and III capability which allows us to land in nearly all weather conditions. ABX has an established history of delivering high margin express packages for the lowest cost with impeccable reliability. DHL has expressed concern that some of our aircraft are equipped to handle packages in "C" containers rather than "A" containers. First and foremost, express delivery customers are concerned with consistent on-time-performance. Second, some customers specifically request "C" container handling to ensure security of high-value shipments. Third, FedEx recently deployed a "Micro A" container which is essentially six "C"-like containers that are fastened together before loading to realize the benefits of the "C" container. Our system benefited in through-sort capability by using the smaller container, and provided more security and breakage protection.

Friction between senior management at DHL and ABX publicly surfaced when DHL withheld a pre-payment of about $9 million to ABX under the ACMI Agreement because they believed ABX was exceeding a 10% revenue threshold from non-DHL customers and demanded reallocation of overhead expenses related to non-DHL business. ABX declared DHL in default. Before that, Astar CEO John Dasburg attempted to acquire ABX for $7.75 per share in August 2007, but ABX CEO Joe Hete rejected the offer without a counter-offer and with minimal, if any, rationale. On the last day of 2007, ABX acquired two airlines made up largely of old and fuel-inefficient aircraft for $332 million and created a holding company, Air Transport Services Group, of which ABX is now under. DHL demanded full repayment for a

$90 million note because of a change of control at ABX. Today, ATSG stock is valued at a small fraction of its worth at the time DHL purchased Airborne Express and ABX shareholders have suffered. The relationship between DHL, ABX and Astar involves conflicting corporate egos, clashing cultures, and inconceivable blunders that have brought great pain to employees and surrounding communities. Yet, nobody has taken responsibility for the failures that have occurred. Airborne Express was a profitable company that never had a losing year and only one losing quarter. How can a thriving global corporation such a Deutsche Post World Net turn such a consistently competitive company into a venture they now claim stands to lose more than 1 billion dollars a year, while themselves, made pre-tax profit of more than 3.2 billion euros last year and more than 3.8 billion euros the year before that?

If this third competitor in the air express market is lost, competition in the air express industry will be gone forever and the express package delivery market will be permanently changed. Antitrust laws exist to ensure competition in the free market system. They prohibit anticompetitive behavior, monopolies, and unfair business practices. As an operator in express delivery business for more than sixteen years, there are two important things I have observed. First, impeccable on-time-performance is nearly everything in this business. Second, competition in this business is good. FedEx and UPS are fierce competitors, and without a reliable third consumer choice they would no longer have to contend with pricing pressure. The total revenue for the U.S. air freight and express industry was more than $32 billion last year, an industry record. The two industry giants, FedEx and UPS, continue to advertise strongly for express delivery customers. In a letter to the U.S. Justice Department, the Chair and Ranking Member of the Senate Judiciary Subcommittee on Antitrust, neither of whom are from Ohio, have said there may be antitrust issues raised by the proposed deal between DHL and UPS, and we agree. According to Mergers & Acquisitions Report, FedEx backed out of a deal with Deutsche Post earlier this year because of antitrust concerns.[1]

A key element of the express delivery business is package tracking. It is the backbone of this service process. By combining efforts in this process, DHL and UPS will be sharing highly sensitive proprietary information that would normally be closely guarded by real competitors. Even if barriers to information sharing could be erected, the temptation for collusion would be too risky for consumers. A critical element of express package delivery is scanning the bar code. Once the bar code is scanned, an incredible amount of secret proprietary information is exchanged between the different segments of service—from pick-up, to transit, to sort, to transit, and to final delivery. Having watched express packages go through the sort for sixteen years, and being in constant contact with the people doing the sorting, there is no way UPS can sort and deliver DHL packages without material commercial proprietary information being transmitted to UPS. True competitors erect every guard possible against exposing such sensitive proprietary information from the public, and now DHL proposes to make it freely available to a supposed competitor. While a technological "Chinese wall" may be developed to guard against information sharing, the same technology may be used to look over, around, or through that wall. Consistent customer service and real pricing pressure will come only from true competition.

From a notional view, it makes no sense to rely on a major competitor for a key element of your service, especially in such a consolidated marketplace. It makes no sense to announce a deal like this before the terms of the deal are agreed upon. It defies belief that a competitive choice will be available, even to DHL, when the ten year proposed contract with UPS ends. A deal like this would leave the UPS-DHL strategic alliance with 54% of the express delivery market and FedEx with 42% of the market; resulting in a monster duopoly having a combined market share of 96%. This will eliminate competition in this consolidated industry that supports thousands of small business and millions of consumers across America—perhaps forever. When considering the size and ferocity of the competition, and the long-term capital investment required for an airline, the FAA and other licensing requirements, and many other barriers to entry, stopping this anticompetitive deal is the last chance for three competitors in the U.S. air express market. Another potential harm is to the Civil Reserve Air Fleet. ABX has seventeen fuel-efficient Boeing 767's dedicated to the Civil Reserve Air Fleet, and Astar has another seventeen aircraft so dedicated, which could be lost.

Since their restructuring announcement, according to the dhl-usa web-site, the earliest DHL can deliver express packages at many locations is 5 pm. For more remote areas, the earliest DHL can deliver "DHL Next Day" service is one week. The

[1] "FedEx Eyeing Deal to Buy DHL", Ken MacFadyen, *Mergers & Acquisitions Report*, Feb. 4, 2008.

earliest DHL can deliver an express package from D.C. to a district office in Lorain, Ohio is noon. The earliest they can deliver an express package from D.C. to La Crosse or Ladysmith, Wisconsin is 5 pm, but still listed as "DHL Next Day 12 pm". The earliest they can deliver from D.C. to Harrisonburg or Staunton, Virginia is 5 pm. For Big Stone Gap or Pulaski, Virginia, as well, the earliest they deliver is 5 pm. The type of service DHL offers since their restructuring announcement is no longer competitive in the air express market and consumers are responding appropriately. If this trend continues, consumers and small businesses will be left with only two viable choices since the market will be 96% dominated by a duopoly with FedEx and a constructively merged UPS-DHL. Specialty services, such as a very late pick-up for a cancer treatment drug maker who shipped out of Nashville and a very early delivery for a drug testing company in Kansas City, are being lost. Wal-Mart announced they ended their agreement with DHL from their jewelry division because DHL changed their flight route patterns.

A justification given by this profitable global corporation for their restructuring decision is the foreign ownership restrictions in the U.S. The citizenship rules for U.S. airlines are well-established. As became apparent in 2001, after fanatics decided to use airplanes as their weapon of choice, the airline business is different than other businesses. Our citizenship laws ensure close oversight of U.S. air carriers to ensure the highest level of safety and security for the traveling public and the people living below America's airspace. The airline industry has unique labor concerns because of the mobile labor dynamic involved, and the citizenship laws allow our labor laws to be properly applied. Finally, our citizenship laws ensure our passenger and cargo airlines are fully available to the Civil Reserve Air Fleet (CRAF) to fulfill the unique interrelationship between civil and military use. Furthermore, it is doubtful Deutsche Post and DHL Express would have done anything differently if they had a 51.1% or greater ownership interest in Astar rather than the 49% ownership interest they have.

The restructuring proposed by Deutsche Post, if allowed, will be an economic disaster for Wilmington, Ohio. More than 8,200 jobs will be unnecessarily destroyed in a small town of about 13,000 people. Many of the maintenance workers and sorters have worked at the DHL Air Park, formerly the Airborne Air Park, for decades. Many work through the night while living on their family farms in rural Ohio. Their jobs provide health insurance that has allowed them to work those farms in addition to earning a paycheck. The tax base will be devastated, medical and school funding will suffer, and small businesses will suffer. The psychological impact on families, with layoffs of this scale, will be long-term. For wage earners who support their families, there will be trauma when they are no longer able to provide for their children. For many, this will be the most traumatic event in their lives.

DHL says they have a cost problem, but not once have they approached me for labor concessions, directly or indirectly. As a labor leader, I am honored to represent the hard-working and professional pilots of ABX Air and the community of Wilmington, Ohio. These are Ohioans. These are Americans. Even after DHL's devastating announcement, they continue to provide impeccable performance. They show up every day, holding onto hope that DHL will change its mind. They hope that their willingness to work hard will be recognized, and that DHL will do the right thing. They work hard. They keep performing. They don't want meager handouts and false promises, they want jobs. They are loyal and committed employees that can perform just as well, if not better, than anybody else in this business. Give them a chance.

Mr. Chairman, you and this Committee can help give them that chance. We respectfully request you ask the Antitrust Division of the Justice Department to review this transaction. And Mr. Mullen, if you are so confident of your position, why don't you voluntarily submit to a Department of Justice review and silence your critics.

Mr. CONYERS. Thank you, Captain Ross.

The international president of the Air Line Pilots Association is Captain John Prater, a 29-year veteran in his association and also a member of the executive council of the AFL-CIO.

We welcome you here today, sir.

## TESTIMONY OF JOHN PRATER, PRESIDENT, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

Mr. PRATER. Thank you, Mr. Chairman.

Chairman Conyers, Members of the Committee, the remarks reminded me of a story. I met Larry Hillblom, one of the founders of DHL, over a labor issue. The labor issue was that they were going to change the deal that they had in Guam. I flew to Guam, I met with Larry Hillblom and the Governor, and in 1 day we had saved the jobs, we had protected the entity and the community that was in our home, Hagatna, Guam. It can be done. There are solutions. But they have to be willing to talk.

On behalf of the 53,000 ALPA pilots in the United States and Canada, I am certainly honored to testify on their behalf today. I am here specifically to speak on behalf of 500 pilots that ALPA represents, but we are concerned about all of the workers in the communities that will be affected by this transaction.

I am reminded that the last time I was before the chairman we were talking about bankruptcy and its impact on workers and communities. Here we have today another transaction. They can't quite find the name for that transaction, but I haven't heard any level or any balance. What I do know is this is one bad deal. It is bad for my members, it is bad for ASTAR, it is bad for Air Express competition, it is bad for southwestern Ohio, and it is bad for American workers. For that reason, it is important that Congress look carefully at the proposed arrangement and ensure that it is thoroughly reviewed by antitrust authorities before it is consummated.

The overall impact of the transfer of all DHL flying from the ASTAR and ABX hub operations in Wilmington will be enormous: a loss of more than 10,000 jobs and a dramatic reduction in the economic activities in southwestern Ohio.

I want to thank all of the elected officials from Ohio, from both sides of the aisle, that have given this so much interest. But I would especially like to thank Senator Brown, who spent a lot of time with me trying to seek and find a solution.

My written testimony contains a detailed roadmap through a confusing set of corporate decisions that lead to one destination: disaster. That map includes secret discussions between UPS and Deutsche Post which they hid from affected companies, employees and public officials. In ALPA's case, the secrecy was clearly intended to deprive us of the chance to protect our members' jobs, both in bargaining and litigation. Neither the result nor the procedure used to achieve it is in the interest of the U.S. economy.

Our first clue came on May 28th of this year when Deutsche Post, the German-based parent company of DHL, announced that it was negotiating to transfer all North American flying presently performed by ASTAR and ABX to its competitor, UPS. We were surprised for several reasons.

First, Deutsche Post has a 49 percent ownership stake in ASTAR and representatives serve on its board of directors. Despite those close ties, the company utterly failed to inform either ASTAR or its employees that it had been negotiating with UPS for 6 months. While Deutsche Post was cutting its deal with UPS, ASTAR was negotiating a collective bargaining agreement with ALPA that was potentially paving the way to raid our pilots of their jobs.

In 2003, Deutsche Post sought to expand its North American operations to become a bona fide competitor to FedEx and UPS by

purchasing Airborne, merging its ground operations into DHL's and spinning off its air operations as ABX Air. But once Deutsche Post, or DHL, entered into the same sort of commercial arrangement with ABX as it had with ASTAR, they renounced any obligation to adhere to the collective bargaining agreement with my union. This led to several years of litigation.

Meanwhile, negotiations over a new contract between ASTAR and ALPA began in 2005 and continued through the beginning of this year. The central issue in these negotiations was no great surprise; it was job security. What we did not realize—and this was one very important detail—was that DHL and its parent, Deutsche Post, were negotiating to hand over all flying to UPS.

Meanwhile, DHL was making demands for revisions in the job security provisions of the tentative agreement between ASTAR and ALPA, including settlement of our litigation, which we see now was designed to clear the way for this secret arrangement with UPS.

As I said, one bad deal.

I will close by reminding the Committee what DHL, which had been acquired by Deutsche Post, said in justifying that acquisition back in 2003 prospectus. And I quote, "The UPS-FedEx duopoly today has a 79 percent share of the U.S. air express delivery market verses Airborne and DHL's combined 21 percent market share. The Airborne-DHL combination will act as stronger third competitor in the expedited door-to-door delivery of small packages and documents, and will have the ability to bring reduced prices and better service to small- and medium-sized businesses."

No aspect of this prediction turned out to be true. Deutsche Post managed to take two niche competitors with a portfolio of premium business customers and likely survivors in the industry, consolidate and restructure them to its needs, and then run them into the ground. Now, after stripping both carriers of their ground operations, it proposes to leave the airlines and our workers for dead. It is hard to see how the proposed DHL-UPS alliance will benefit consumers. As I said, this is one bad deal.

We ask the Committee to ask the parties not to implement their deal until it has been reviewed by either the Department of Justice or the Federal Trade Commission.

I thank you and look forward to answering any questions the Committee may have.

[The prepared statement of Mr. Prater follows:]

PREPARED STATEMENT OF JOHN PRATER

Good afternoon. I am Captain John Prater and I am President of the Air Line Pilots Association, International (ALPA) representing some 53,000 pilots in the United States and Canada. I am testifying today on behalf of the 500 pilots ALPA represents at ASTAR Air Cargo, a group of pilots which has flown packages and cargo for DHL for over twenty years, on the proposed arrangement between Deutsche Post, (recently renamed DPWN) and United Parcel Service to provide all lift for DHL's air overnight service.

I believe our concern is well known. On May 28th, 2008, Deutsche Post, the German-based parent Company of DHL, announced that it was negotiating to transfer all North American flying presently performed in its service by ASTAR—as well as that performed by ABX—to United Parcel Service. Despite the fact that Deutsche Post had, and continues to have, a 49% ownership stake in ASTAR and representatives on its Board of Directors, it did not inform either ASTAR or its employees that it had been in negotiations with UPS for the previous six months to arrange to have it perform all of ASTAR's services until that press conference. If the transaction an-

nounced on May 28th is consummated and the government chooses to ignore the obvious anticompetitive impact of the deal, ASTAR will cease to exist and every one of our members at this carrier will be on the street. However, ALPA represented pilots and other ASTAR employees will obviously not be the only affected group. The state of Ohio has estimated that the immediate impact of the transfer of all DHL flying from the ASTAR and ABX hub of operations in Wilmington, Ohio will be a loss of over 10,000 jobs and a dramatic reduction in economic activity in Southwestern Ohio. In short, the impact on both our membership and on their friends and neighbors in the region will be catastrophic, and for that reason alone it is important that Congress and the Department of Justice look carefully into this matter.

BACKGROUND

Three U.S. entrepreneurs established DHL in the late 1970s as a provider of freight forwarding and courier services. It established air operations to support its delivery service in the 1980s and, by the end of that decade, had sorting operations and a hub in the Greater Cincinnati/Northern Kentucky Airport. DHL, along with Airborne Express, became competitors to FedEx and United Parcel Service in the domestic express package industry. In 1990 the DHL pilots voted to be represented by the Air Line Pilots Association and, since that time, ALPA has negotiated four collective bargaining agreements with DHL and its successors, culminating in the 2008 Agreement.

In 2001 Deutsche Post purchased DHL and spun off its airline subsidiary, DHL Airways, which was later renamed ASTAR Air Cargo. Based on the requirements of the 1998 collective bargaining agreement it signed with ALPA, DHL was still bound to assign its flying to ALPA represented pilots on the ASTAR seniority list and it continued to do so pursuant to what is known as an Aircraft, Crew, Maintenance, and Insurance (ACMI) Agreement with ASTAR. Under that agreement DHL reimbursed ASTAR for the costs of the collective bargaining agreement with ALPA, and the labor contract was incorporated by reference into the ACMI Agreement. In addition, pursuant to federal aviation statutes, majority ownership in ASTAR was transferred to American citizens and eventually ended up in the control of former Northwest Airlines CEO John Dasburg and his investor colleagues.

However, in 2003 Deutsche Post, seeking to expand its North American operations in order to become a bona fide competitor to FedEx and UPS, purchased Airborne Express, merged its ground operations into DHL's, and spun off its air operations, which became ABX Air. It entered into the same sort of commercial arrangement with ABX as it had with ASTAR, and then renounced any obligation to adhere to the requirements in the collective bargaining agreement it had signed with ALPA's ASTAR pilots. This lead to several years of litigation based on an absurd ruling from the National Labor Relations Board barring ALPA from taking its contractual claim against DHL to a neutral arbitrator—a ruling which was eventually reversed by a unanimous Court of Appeals in 2008.

While this dispute was working its way through the NLRB and the courts, negotiations over a new collective bargaining agreement between ASTAR and ALPA began in 2005 and continued through the beginning of 2008. The central issue in these negotiations was, not surprisingly, job security and the extent to which our members could continue to perform the flying they had performed throughout the history of DHL. What we did not realize as we reached the crucial stage of this negotiation in January of 2008 was that DHL and its parent, Deutsche Post—which in the summer of 2007 had extended its ACMI agreement with ASTAR through 2019 and, at the same time, also took a 49% ownership interest in ASTAR and placed representatives on its Board of Directors—were in negotiations with United Parcel Service to have UPS perform all of ASTAR's flying operations. DHL not only withheld knowledge of these negotiations from both ASTAR and ALPA, it also made demands for revisions in the job security provisions of the tentative collective bargaining agreement between ASTAR and ALPA—including settlement of litigation between ALPA and DHL—that in retrospect were obviously designed to clear the way for its secret arrangement with UPS.

The misrepresentations and material omissions made by DHL to ASTAR and ALPA in order to influence our negotiations is now the subject of litigation and we, of course, understand that these issues are not the subject of this hearing. However, in reviewing the competitive impact of the proposed arrangement between DHL and UPS, as well as its impact on the southern Ohio communities which have depended on the employment provided by both ASTAR and ABX for several decades, the fact that this deal was made in secret without the opportunity for competitive bidding, and with the clear intent of depriving the affected parties of an opportunity to pro-

tect themselves or respond, is obviously relevant in assessing the legitimacy of what Deutsche Post is doing.

*THE IMPACT OF THE ARRANGEMENT*

Prior to the acquisition and integration of DHL and Airborne Express in 2003 by Deutsche Post there were four major private sector players in the U.S. express package industry: FedEx, UPS, Airborne Express, and DHL. The United States Postal Service also supplied a competitive service, the fate of which will be discussed later in our testimony. As can be seen from attached Table 1, at that time FedEx and UPS were the major providers of service, but each of the other competitors had established niches.

When DHL, which had already been acquired by Deutsche Post, further consolidated the industry by purchasing Airborne it made the following representations justifying the decision in a 2003 prospectus:

*The UPS/FedEx duopoly today has a 79% share of the U.S. air express delivery market (versus Airborne and DHL's combined 21% market share).*

*The Airborne/DHL combination will act as a stronger third competitor in the expedited door to door delivery of small packages and documents and will have the ability to bring reduced prices and better service to small and medium-sized businesses.*

*In the markets Airborne competes in today, made up primarily of large, corporate accounts, its price levels are substantially lower than its competitors. The expanded DHL company will have the capital and resources to leverage this value into the small to mid-sized marketplace.*

No aspect of this prediction turned out to be true. The air express market is more concentrated than ever, with what DHL described as the FedEx/UPS "duopoly" in control of an even greater share of express package volume and revenue than in 2003. (See attached **Tables 2–4**.)

As can also be seen, the consolidation of DHL and Airborne has diminished, not enhanced, the market share of the combined entity, which now controls less than 10% of express package revenue. The bottom line of this is clear—Deutsche Post managed to take two niche competitors with a portfolio of premium business customers, both of which were likely survivors in the industry, consolidate and restructure them to its needs, and then run them into the ground. Now, after stripping both carriers of their ground operations, it proposes to leave the airlines for dead.

This is an unconscionable result simply based on it's ramifications for affected employees and consumers. However, we also note ASTAR provides major support for the Civil Reserve Air Fleet (CRAF), and if this deal is allowed to go through, our government will be denied access to a substantial part of the lift it is counting on and, in fact is using on routine basis. This Committee should understand that the CRAF contract in place is between United States and ASTAR, not DHL.

Why has this happened? Both ASTAR and ABX have met all performance targets set for them by DHL and have provided 99% on time performance. The pilot workforces at both carriers, while reasonably compensated, are not as well compensated as pilots at UPS or FedEx. DHL's problem in North America is not the cost or effectiveness of its air operations. Its problem has been providing effective enough service on the ground to take market share from UPS or FedEx. This problem will not be solved by switching to another provider of lift, much less by transferring this responsibility to DHL's principle competitor. To put it simply, DHL's difficulties in North America are not due to the cost or effectiveness of its lift, but rather with its inability to effectively implement the ambitious business strategy it announced in 2003.

In this respect, Deutsche Post has pointed to the contract for lift between the United States Postal Service and FedEx as an example of and precedent for what it is trying to do. This precedent is inapplicable. To begin with, the USPS is not even covered by US antitrust laws and the cost and rendition of its service is carefully regulated. More important, less than one percent of the USPS' volume is express or expedited delivery. Hence, the Postal Service only competes with FedEx in a very narrow portion of its product line. By contrast, UPS offers a competing product for virtually every DHL offering. Finally, as can be seen in the tables we have presented, while FedEx has supplied excellent service to the USPS, the USPS/FedEx contract has not been an effective formula for preserving market share for the Postal Service's express mail product.

In this matter, it strikes us as obvious that relying on your principle competitor for your primary mode of transportation and giving it close to perfect information on your pricing strategy is not a good way to maintain, much less enhance, a corporation's market share. Indeed, the erosion of DHL's market share is probably already occurring. Many DHL customers have been targeted by UPS and have been told that DHL's service is now dependent on UPS and pointing out the comparable

services provided by UPS. DHL has not yet provided investors with a tally of the impact of the announcement of the DHL/UPS deal on reduced volume run through DHL's Wilmington hub, but the feedback we are getting from flight crews and sort personnel is that the negative impact of this announcement has been significant and volume has been appreciably diminished. It is obvious that DHL products will lose market share, and the so-called "duopoly" that Deutsche Post claimed that it wished to address will become more entrenched as the result of this arrangement.

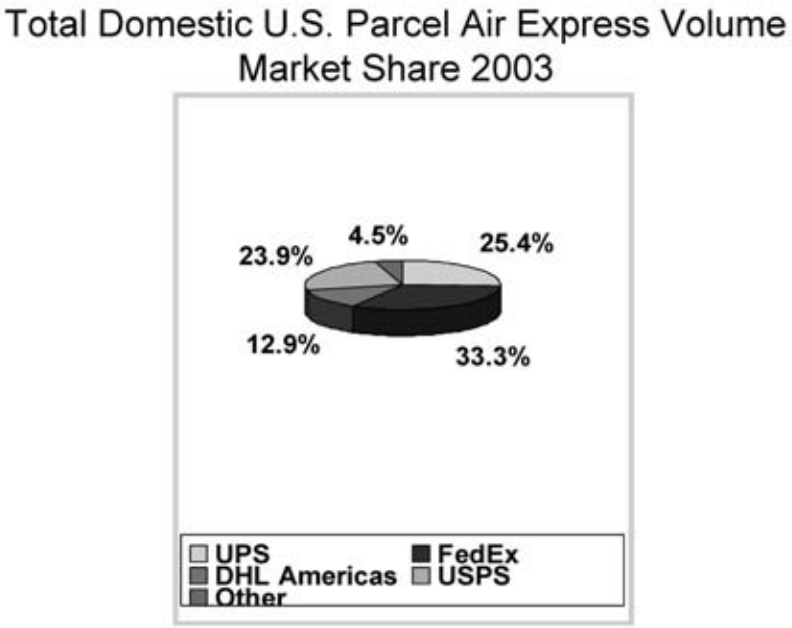
CONCLUSION

As pointed out earlier, the discussions between UPS and Deutsche Post occurred in secret and neither the providers of lift nor public officials in Ohio were told anything about it until the May 28, 2008 press conference. The reason for this seems obvious: the company officials promoting this arrangement did not want to provide adversely impacted parties or citizens with an opportunity to point out the flaws in the plan or develop alternatives. Indeed, the flaws in the announced plan are so obvious that we suggest DPWN may have additional components to the strategy which it has not yet made public.

In ALPA's case, the secrecy was clearly intended to deprive us of the chance to attempt to protect ourselves both in bargaining and by continuing litigation that we undoubtedly would have maintained had we known of DHL's true plans. In short, we have an arrangement which will inevitably eliminate competition and employment, cooked up in secret in order to bypass affected companies and US citizens. Neither the result nor the procedure used to achieve it are good or in the interest of the US economy. For these reasons, we believe the transfer of DHL's lift to UPS requires, at the very least, careful scrutiny by this Committee and the agency it oversees, the Department of Justice, before the deal is consummated.

Thank you for your time and interest in this important matter. I will be happy to answer any questions.

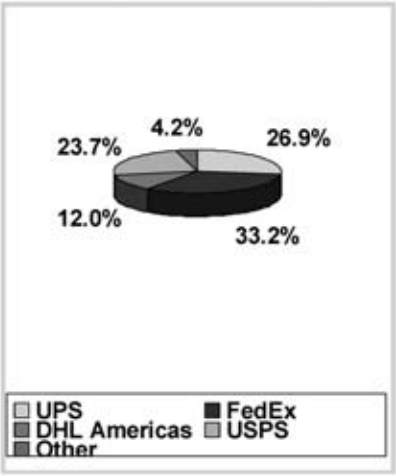
**ATTACHMENT**




Source: Bears Stearns, Airfreight & Surface Transportation report January 2008

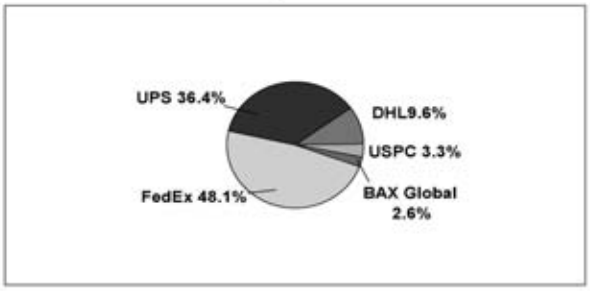
**Table 1**

Total Domestic U.S. Parcel Air Express Volume
2007E




Source: Bears Stearns, Airfreight & Surface Transportation report January 2008
**Table 2**

## U.S. Domestic Express Revenue 2007




**US Domestic Express Revenue in 2007 ($millions)**

| | | | |
|---|---|---|---|
| Express | FedEX (FY08 including USPS) | $ 14,020 | 48.1% |
| | UPS | $ 10,600 | 36.4% |
| | DHL | $ 2,800 | 9.6% |
| | USPS Express Mail | $ 950 | 3.3% |
| | BAX Global | $ 750 | 2.6% |
| | Express total | **$ 29,120** | **100.0%** |

Source: ACMGs U.S. Domestic Air Freight & Express Industry Performance Analysis 2008

**Table 3**

## U.S. Domestic Air Freight & Express Revenue 2007

**US Domestic Air Freight & Express Revenue in 2007 ($millions)**

| | | | | |
|---|---|---|---|---|
| Express | FedEX (FY08 including USPS) | $ | 14,020 | 42.7% |
| | UPS | $ | 10,600 | 32.3% |
| | DHL | $ | 2,800 | 8.5% |
| | USPS Express Mail | $ | 950 | 2.9% |
| | BAX Global | $ | 750 | 2.3% |
| | Express Subtotal | **$** | **29,120** | **88.7%** |
| Freight | Combination Carrier Freight | $ | 1,300 | 4.0% |
| | All-Cargo Carrier Freight | $ | 1,100 | 3.4% |
| | Freight Forwarders | $ | 1,030 | 3.1% |
| | Freight Subtotal | **$** | **3,430** | **10.5%** |
| Mail | Combination Carrier Mail | $ | 210 | 0.6% |
| | All-Cargo Carrier Mail | $ | 55 | 0.2% |
| | Mail Subtotal | **$** | **265** | **0.8%** |
| **Grand Total** | | **$** | **32,815** | **100.0%** |

Source: ACMGs U.S. Domestic Air Freight & Express Industry Performance Analysis 2008

**Table 4**

## Total Domestic U.S. Parcel Air Express Volume Market Share 2000 – 2010E

**Market Share**

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007E | 2008E | 2009E | 2010E |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **UPS Air Service** | 21.1% | 22.8% | 23.4% | 25.4% | 25.5% | 25.7% | 26.6% | 26.9% | 26.8% | 27.2% | 27.6% |
| **FedEx Express** | 30.7% | 31.3% | 32.2% | 33.3% | 33.6% | 33.6% | 32.8% | 33.2% | 33.3% | 34.0% | 34.3% |
| **DHL Americas** | 13.1% | 13.2% | 13.0% | 12.9% | 12.6% | 12.1% | 11.3% | 12.0% | 12.2% | 12.3% | 12.5% |
| **USPS** | 28.6% | 27.9% | 26.9% | 23.9% | 23.8% | 24.3% | 25.0% | 23.7% | 23.5% | 22.4% | 21.6% |
| **Other** | 6.5% | 4.8% | 4.6% | 4.5% | 4.5% | 4.3% | 4.3% | 4.2% | 4.2% | 4.0% | 3.9% |
| Total Volume | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |

Source: Bears Stearns, Airfreight & Surface Transportation report January 2008

**Table 5**

Mr. CONYERS. Thank you so much, Captain Prater.

Mr. CONYERS. Attorney David Balto is one of our leading independent antitrust experts. For more than 20 years, he has been an attorney of antitrust law in the private sector. He has worked in the Department of Justice. He has plied his trade in the Federal Trade Commission and currently he is a senior fellow at the Center for American progress. We have your statement and we welcome you to this hearing.

**TESTIMONY OF DAVID A. BALTO, ATTORNEY AT LAW**

Mr. BALTO. Thank you, Mr. Chairman and other distinguished Members of the Committee, for the privilege of testifying before you today. I am here representing consumers and the Consumer Federation of America and, as detailed in my testimony, I am here testifying because this alliance raises serious competitive concerns that could potentially lead to significantly higher prices for millions of consumers, businesses—large and small—that use express delivery package services. I base my testimony on my 19 years of experience as a trial attorney at the Antitrust Division and a senior antitrust enforcer at the Department of Justice.

Let me be clear about this. If this was a merger, this hearing wouldn't occur today. Why? Because these parties would be in court right now with the Justice Department, because this merger would be clearly anti-competitive. It reduces the number of competitors from 3 to 2. You don't have to be a Ph.D. economist to realize that the easiest way to dance the waltz of collusion is when there are only two partners on the dance floor. That is why in 100 years of Clayton Act jurisprudence, no court has approved a merger to duopoly except where entry was easy, and entry ain't easy in this case.

So is the alliance they have formed a big enough difference to justify this under the antitrust laws? I don't think so. First of all, they suggest that alliances between competitors are somehow not immune from the antitrust laws. Anytime that UPS and DHL enter into any kind of agreement, either tacit or explicit, it is scrutinized under section 1 of the Sherman Act. The critical question is how that impacts the incentive and ability of those two firms to compete.

In this case, those questions are clearly answered in the negative. First, DHL will be dependent on UPS for its entire air transportation services. As the Ohio delegation has observed through this arrangement, DHL will surrender control over cost and service quality to one of its chief competitors. We are not talking about buying a few seats on an airplane. We are talking about the heart and arteries of these two firms' businesses. In this setting, it is hard to imagine how DHL will have the ability to challenge UPS and FedEx by lowering prices or improving service. In response, UPS can easily discipline DHL by mismanaging delivery, increasing costs, or reducing services.

Second, as Captain Ross has testified, through this arrangement UPS can gather a wealth of competitively sensitive information about DHL's customers' pricing and competitive initiatives. With this information, UPS can selectively target DHL customers, offering them special discounts and other services.

The parties may say there are firewalls. I give you an example in my testimony of a situation where a judge rejected a promise of a firewall to approve an otherwise anti competitive merger.

Third, through this arrangement UPS can engage in price squeezes, basically lowering prices to its customers, raising the cost to DHL, diminishing its ability to compete.

I understand the parties say this deal is not problematic because the Postal Service entered into a deal with FedEx, I think that proves the point. How has the Postal Service done since that deal? Rather poorly. They are becoming competitively inconsequential.

Why should this Committee, why should the Antitrust Division assume that there should be anything different from an UPS-DHL agreement? My testimony goes into great detail about why the weakened financial status of DHL cannot justify this merger as an antitrust enforcer. That is an argument I heard over and over again.

I wrote a law review article, looking back at cases where that argument was made. And you know what, Mr. Chairman? In every case those companies survived. They found better managers, better financing, they kept competing.

Finally, I am concerned that the Antitrust Division has not opened an investigation of this merger. I could be wrong, but if they haven't, it is a mistake. This deal can be consummated the moment that agreement is signed. The moment that agreement is signed, this market will be changed irretrievably. The time to secure information about the potential effects of this arrangement is now, not after DHL becomes a captive passenger on the UPS railroad. Once that deal is consummated, it is going to be extraordinarily difficult to unscramble the eggs. Once that deal is consummated, it is going to be really hard for the antitrust agencies to get customers to give an independent view and to complain about the merger.

What these parties should do is they should enter into a voluntary agreement to have the Justice Department investigate, and not consummate that agreement until the government completes their investigation.

You might think that is unusual. It actually is not that unusual. Google and Yahoo are doing it right now with the Justice Department. What with Google and Yahoo, no one is going to lose their job if that agreement gets reached. With Google and Yahoo, no one is going to lose their health care if that agreement is reached.

If DHL and UPS believe in their obligations as corporate citizens, they should go and enter that agreement to give the Justice Department a chance, a fair chance to make a full evaluation of the competitive effects. That is what the purpose of the antitrust laws are. That is why consumers need an investigation. Thank you.

[The prepared statement of Mr. Balto follows:]

PREPARED STATEMENT OF DAVID A. BALTO

**Testimony of David A. Balto, Senior Fellow,**
**Center for American Progress Action Fund[1]**

**To the Committee on the Judiciary**
**United States House of Representatives**
**Regarding "Competition in the Package Delivery Industry"**

**Tuesday, September 9, 2008**

## Introduction

Mr. Chairman, Ranking Member Smith, and other distinguished members of the House Judiciary Committee, I want to thank you for giving me the opportunity today to speak about the competitive problems that 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; and
- The DOJ or FTC should immediately open an investigation and the parties should agree not to consummate that arrangement until the investigation is completed.

[1] I am also testifying on behalf of the Consumer Federation of America. CFA is the nation's largest consumer advocacy group, composed of over 280 state and local affiliates representing consumer, senior citizen, low income, labor, farm, public power and cooperative organizations, with more than 50 million individual members.

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 ("FTC"). 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"[2] or "it's a little surprising that anybody could realistically look at this and argue that it raises antitrust issues,"[3] 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 the 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.

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[2] Dr. Frank Appel, Deutsche Post CEO (WSJ, Aug. 14, 2008). The parties may suggest there are no antitrust concerns because this is simply a supply agreement. They are mistaken. Any arrangement between competitors can be challenged under the Sherman Act including supply agreements.
[3] Norman Black, UPS spokesman (WSJ, Aug. 8, 2008).

**It is Unlikely that a Merger Between DHL and UPS would be Approved by the Courts or the Agencies**

The facts surrounding the express package delivery service market are straightforward. There are three major competitors: Federal Express, UPS and DHL, which together control over 90% of the market. (The U.S. Postal Service also participates in the market but its market share is small and diminishing). Their respective market shares are: Federal Express 44%, UPS 42%, and DHL 7%. DHL's market share has decreased from about 20% is 2003. Currently DHL has significant excess capacity. There has been no successful entry in the express package delivery service for years, and the number of competitors has decreased significantly.

A merger between DHL and UPS would effectively turn the express package delivery market into a duopoly, with two firms with over a 90% market share. You do not have to be a Ph.D. economist or an antitrust scholar to recognize that a duopoly presents the most fertile environment for collusion. Simply, it is far easier to dance the waltz of collusion when there are only two partners on the dance floor instead of three. *See American Hospital Supply Corp. v. Hospital Products Limited*, 780 F.2d 589, 602 (7th Cir. 1986) ("it is easier for two firms to collude without being detected than for three to do so"). *See also FTC v. Heinz*, 246 F.3d 708, 725 (D.C. Cir. 2001)("The creation of a durable duopoly afford both the opportunity and incentive for both firms to coordinate to increase prices."); *United States v. Ivaco*, 704 F. Supp. 1409, 1428 n.18 (W.D. Mich. 1989) ("with only two firms in the market, the firms would be able to police cheating, or non-collusive pricing by their competitor."). <u>In almost 100 years of Clayton Act litigation, no court has ever permitted a merger-to duopoly, except where entry barriers were insubstantial</u>.

Why does reducing the number of competitors matter? Because as former Judge Bork instructed, "[w]here rivals are few, firms will be able to coordinate their behavior, either by overt collusion or implicit understanding, in order to restrict output and achieve profits above competitive levels." *FTC v. PPG*, 798 F.2d, 1500 1503 (D.C. Cir. 1986). As the D.C. Circuit Court observed in its seminal decision in *Heinz*: "The combination of a concentrated market and barriers to entry is a recipe for price coordination." 246 F.3d at 724. It is settled law that "significant market concentration makes it 'easier for firms in the market to collude,

expressly or tacitly, and thereby force price above or farther above the competitive level.'" *FTC v. University Health*, 938 F.2d 1206, 1218 n.24 (11th Cir. 1991). As concentration increases the "greater is the likelihood that parallel policies of mutual advantage not competition will emerge." *United States v. Aluminum Co. of America*, 377 U.S. 271, 280 (1964). Further, as Justice Kennedy has observed, the threat is that "firms in a concentrated market might in effect share monopoly power, setting their shared economic interests and their interdependence with respect to price and output decisions." *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993).

There are significant reasons for competitive concerns in the express package delivery service market. There are few competitors, homogeneous products, in a market with high entry barriers. The market is quite similar to air cargo market in which the Justice Department has secured almost $1.3 billion in fines to date against several airlines for fixing the cargo rates charged to customers for international air shipments. This cartel has cost consumers billions of dollars in higher prices.

I am not suggesting that after a DHL/UPS merger UPS and Federal Express would explicitly collude – they would not need to. Simply, by removing DHL from the competitive playing field, UPS and Federal Express will not have to compete as aggressively and may be able to follow each other's lead in raising prices and reducing service. A merger is illegal under Section 7 of the Clayton Act if the remaining firms will be more likely to engage in conduct that may result in higher prices, even if that conduct, in itself, would be lawful.

A potential merger, or more likely this alliance, raises the very competitive problem – a tightening of oligopoly market conditions – that lies at the heart of Section 7. As the D.C. Circuit recently observed in condemning a merger that reduced the number of competitors from three to two, potential tacit coordination:

> is feared by antitrust policy even more than express collusion, for tacit coordination, even when observed, cannot easily be controlled directly by the antitrust laws. It is a central object of merger policy to obstruct the creation or reinforcement by merger of such oligopolistic market structures in which tacit coordination can occur.

*Heinz* 246 F.3d at 725;quoting 4 Phillip E. Areeda, Herbert Hovenkamp & John L. Solow, *Antitrust Law* P 901b2, at 9 (rev. ed. 1998).

Let me give you an example of this, the DOJ's successful challenge to UPM Kymmene's proposed acquisition of a rival labelstock firm, Morgan Adhesives Company (MACtac).[4] UPM and MACtac were the second and third largest North American producers of pressure sensitive labelstock, the base material used for shipping and supermarket scale labels, and the merger would have increased UPM's market share from 12% to 19%. A major rationale for the merger was the weakened financial condition of MACtac which had suffered several years of significant losses and faced a very uncertain future. The merger reduced the number of competitors from 5 to 4, but the merged firm, along with the largest firm, Avery, would have controlled about 70% of the label stock market. The DOJ challenged the merger because it would facilitate price coordination between the merged firm and Avery.

The Court enjoined the merger holding that the merger would enhance the potential for coordination because MACtac had excess capacity that served as a disruptive force in the market. Moreover, coordination between Avery and UPM was more likely because Avery was a significant customer of UPM. The transaction would have facilitated tacit cooperation by eliminating the acquired firm's threat of competition due to its excess capacity.

UPM testified that its U.S. subsidiary had every intention of competing vigorously with Avery. The CEO of UPM impressed the court as a tough competitive leader who would try to "annihilate" Avery. The court also noted that UPM had built a Chinese wall to isolate UPM's business with Avery from its U.S. subsidiary's competition with Avery. But even that sincere intent to compete aggressively and the firewall were insufficient to permit the merger. Eliminating the potential disruptive force of MACtac would enhance collusion. As a result, the court enjoined the merger concluding that the merged entity, along with Avery, could maintain a 5-10% increase in price, at least for a year or two.

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4. *United States v. UPM-Kymmene*, 2003 U.S. Dist. LEXIS 12820 (N.D. Ill. July 25, 2003), available at http://www.usdoj.gov/atr/cases/f201100/201196.htm. I was one of the attorneys who defended UPM.

**Even an Arrangement Short of a Merger will Raise Substantial Competitive Concerns**

The parties obviously have been counseled well enough not to propose a merger that the agencies and courts would return as a "dead letter." Instead they have suggested an arrangement short of a merger in which UPS will handle all of the transportation services for DHL except local delivery. Although the parties have not reached a final agreement the envisioned arrangement raises serious competitive concerns that should be thoroughly investigated by antitrust enforcers before the arrangement takes effect.

Alliances between competitors are not immune from antitrust scrutiny, as suggested by the parties. Rather, they can be challenged under Section 1 of the Sherman Act as an unreasonable restraint of trade. For decades the courts have enjoined a wide variety of arrangements among competitors including the type of joint service agreement proposed by the parties in this case.

Let me be clear, a wide variety of joint ventures, strategic alliances, and supply and purchase agreements among competitors are permissible under the antitrust laws. One of the crucial innovations in antitrust law in the past generation is the increasing recognition of the need for such arrangements in fostering rivalry and competition. To provide greater flexibility was one of the reasons Congress passed the National Cooperative Research Act in 1984 and amended the Act (the National Cooperative Research and Production Act ("NCRPA")) in 1993 to include production joint ventures.

However, the essential inquiry under both the Sherman Act and the NCRPA is whether the firms retain the <u>incentive and ability</u> to fully compete after the arrangement. If the arrangement diminishes either the <u>incentive</u> or <u>ability</u> to compete, serious competitive concerns may be raised. Those concerns are most significant in a market like this one with high entry barriers and less than a handful of competitors.

What will be the impact of the so-called "supply arrangement" on DHL's role as an independent competitor and its <u>incentive and ability</u> to compete?

- DHL will be dependent on UPS for all of its entire air transportation services. This is not a supply agreement for a minor input such as boxes, trucks, or local transport in some locations. Rather air transport is the most critical cost component in the delivery of express packages. Through this arrangement DHL will be wholly dependent on UPS for its most critical cost component. As the Ohio delegation has observed, through this arrangement "DHL will surrender control over cost and service quality to one of its chief competitors."[5] In this setting, it is hard to imagine how DHL will have the ability to challenge UPS and Federal Express by lowering prices or improving service. In response, UPS can easily "discipline" DHL by mismanaging deliveries, increasing costs, or reducing service.

- Through this arrangement UPS can gather a wealth of competitively sensitive information about DHL's customers, pricing, and competitive initiatives. With this information UPS can selectively target DHL customers offering them special discounts and other services. After all these are extremely sophisticated firms, that gather vast amounts of competitive information. The parties may suggest that firewalls may prevent this conduct, but recall that proposed firewalls were insufficient in the UPM case which posed far less significant competitive concerns. In any case, DHL will quickly recognize UPS' power to steal customers and retaliate and this will dampen both DHL's incentive and ability to compete.

- Through this arrangement UPS will be able to engage in a price squeeze, by raising DHL's costs while reducing prices to UPS customers. Express package delivery services are an important cost center for cost-conscious businesses, which will switch for a savings of less than a penny per package. It is difficult to imagine how DHL could successfully respond to such as strategy which clearly would raise DHL's costs and diminish its ability to compete.

[5] Letter from Ohio Delegation to Thomas O. Barnett and William E. Kovacic (July 15, 2008).

Not surprisingly, one major industry expert concluded "The loss of DHL from the competitive landscape over time is going to result in higher prices for shippers. For all intents this eliminates from the marketplace the low-priced competitor."[6]

Some may argue that there is no precedent that a supply agreement can enhance the likelihood of collusion. They are mistaken. Take the UPM example. As the DOJ observed in its complaint the UPM/Avery supply arrangement "provides UPM and [Avery] with the motivations, opportunities, and means to coordinate on price, monitor adherence, punish cheating, and engage in side payments" that enhanced the ability and incentive to collude. UPM's supply arrangement with Avery appeared to diminish the incentive to compete – after all why would you steal sales from one of your major customers? Indeed, there was evidence of collusion in the paper labelstock market that was cited in the DOJ merger case; it eventually led to an EU antitrust investigation, a U.S. criminal investigation, and several private antitrust suits that are pending.

I could envision that UPS and DHL may make commitments similar to those made in the UPM/MACtac merger to compete aggressively and to firewall competitively sensitive issues. Those commitments should be carefully investigated by the antitrust enforcers. As the UPM case instructs those commitments may not be sufficient to eliminate competitive concerns. And the UPM case was in a far less concentrated market than this one.

I understand the parties suggest this arrangement is not problematic because the US Postal Service has a similar arrangement with Federal Express. I am not sure that the fact that the Justice Department has chosen not to sue the U.S. Postal Service means much, since U.S. taxpayers probably do not want their tax dollars spent on different federal agencies suing each other. In any case, the arrangement actually demonstrates that competitive concerns are likely: since the Postal Service entered into the arrangement its market share has decreased significantly. Why should we expect anything different from a UPS/DHL arrangement?

Let me provide a simple example that may illustrate the competitive concerns. Assume there are only three commercial airlines in the United

[6] "Priced to Move" Trafficworld Online (June 16, 2008) (quoting Gerald Hempstead).

States, with market shares similar to those in this market. The second largest airline proposes to enter into an arrangement in which it provides all the airplanes and flight services for the smaller third firm. Even if the third airline continues to have ticket agents, does its own advertising, and "sets" its own prices, would we conclude that competition would not be harmed and consumers pay more? Of course not.

That is why this "alliance" must be fully investigated by the antitrust agencies before it goes forward.

**DHL's Weakened Financial Status does not Justify the Arrangement**

I can envision that the parties will argue that the merger is justified by DHL's significant losses and weakened competitive condition. The antitrust laws and the Merger Guidelines permit the approval of an otherwise anticompetitive merger in certain limited conditions: basically where the firm is on the verge of going bankrupt and there is no less anticompetitive purchaser. This is an extremely stringent defense, and there have been less than a handful of cases permitting mergers on this basis. Indeed, the courts have called it one of the weakest of antitrust defenses.[7]

The stringent attitude toward financial weakness as a defense has a sound basis. Firms should not be given a "pass" from antitrust scrutiny just because costs increase, a firm is badly managed, or the market diminishes. After all a "merger is forever" and any of those factors can change. Moreover, market conditions can improve for any of a number of reasons.

Let's return to the UPM case for an illustration. The defendants argued that the merger was not anticompetitive because the acquired firm, MACtac, had suffered significant losses and was not a viable future competitor. The court rejected the "weakened-competitor" argument, because a merger does not become permissible merely because the entity to be merged is competing poorly. Indeed, the Court held the weakened competitor argument, of itself "certainly cannot be the primary basis for

[7] *Ivaco*, 704 F. Supp. at 1424 ("financial weakness, while perhaps relevant in some cases, is probably the weakest ground of all for justifying a merger.") (citing *Kaiser Aluminum & Chem Corp. v. FTC*, 652 F.2d 1324, 1338 (7th Cir. 1981).

permitting a merger."[8] Indeed, the defendants' predictions of demise were mistaken and MACtac continues to compete in the market to this day.

The claim that "but for" a merger a firm will go out of business or cease to be a significant competitor is frequently made and rarely born out in history. Several years ago I authored a law review article which reviewed mergers that the FTC successfully challenged in which the parties suggested that "but for" the merger the acquired firm would go out of business or cease to be competitive. In each case that prediction, like the prediction of Mark Twain's death, was mistaken. In some cases the firm reorganized or found new financial support; in other cases the firm was acquired by an alternative purchaser that did not pose competitive problems. In each, case consumers benefitted by rejecting an otherwise anticompetitive merger.

**The Antitrust Agencies Should Immediately Open an Investigation of the Potential Arrangement**

I believe that in spite of concerns raised about the alliance in June and July by both of the Presidential candidates, Senators Kohl and Hatch, and several members of the Ohio delegation in letters to the Assistant Attorney General of the Antitrust Division and the Chairman of the Federal Trade Commission, neither agency has opened an investigation. Since the existence of an investigation is non-public, I may be mistaken. <u>But if the agencies have not begun to investigate that is a mistake.</u>

As I noted before, since this arrangement is not reportable under the Hart-Scott-Rodino Act, the parties can consummate the arrangement immediately after the agreement is reached. Once the agreement is reached the market will be irretrievably changed. Moreover, once the agreement takes effect customers may be reluctant to cooperate with the agencies and complain about the arrangement, fearing retaliation from UPS. The time to secure information about the potential effects of this arrangement is now, not after DHL becomes a captive passenger on the UPS railroad.

As a former antitrust enforcer, I can understand the reluctance of investigating before all the details of the arrangement are announced. But even in this preliminary period the agencies can secure information on a

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[8] *UPM-Kymmene*, 2003 U.S. Dist. LEXIS 12820,. at *29, citing *Kaiser Aluminum & Chem Corp. v. FTC*, 652 F.2d 1324, 1341 (7th Cir. 1981).

wide range of critical issues, including the alternatives of customers, the potential for entry, the likelihood of collusion and past competitive initiatives by DHL and UPS.

Finally, I must observe for this Committee, which has jurisdiction over the enforcement of the antitrust laws that the current level of merger enforcement is substantially below that of previous administrations. A recent article published by the former chief economists of the Federal Trade Commission and the Antitrust Division of the Department of Justice strongly substantiates that merger enforcement appears to be significantly more lax than in the prior administrations. They found "with no change in the underlying statute, the Clayton Act, the weight given to market concentration by the federal courts and by the federal antitrust agencies has declined dramatically."[9] Indeed, the Antitrust Division of the Justice Department has not been to court seeking to enjoin a merger in over 4 years, an unprecedented period of merger nonlitigation.

Let me raise a final concern. This "arrangement" was announced over 90 days ago. While this arrangement is being considered one can imagine that competition between DHL and UPS is significantly dampened. Indeed, while the transaction is considered DHL's incentives to compete are diminished and both consumers and employees suffer from the uncertainty, while DHL withers on the vine. Indeed, DHL has already cut back on service in several markets. Thus, the Committee should ask the parties to be precise about their plans to reach this agreement and their obligations to preserve competition while the agreement is being negotiated.

[9] Jonathan B. Baker and Carl Shapiro, "Reinvigorating Horizontal Merger Enforcement" (Oct. 2007).

Mr. CONYERS. Thank you, Attorney Balto.

I notice in our guests here today there are a lot of white shirts and epaulets. Would all the pilots and those connected with the airlines please stand up? Are you here to exercise your first amendment rights or intimidate the Committee? Please sit down. Thank you for coming.

Before I turn this over to Steve Chabot, our distinguished colleague from Cincinnati, I would like to invite Mr. Mullen and Mr. Wallace in this conversation we are having today to make a few comments that they may choose to make about anything they have heard or wanted to add to their own testimony.

Mr. WALLACE. Yes. Thank you for the opportunity. Just a couple of observations. You know, there have been comments made regarding the sharing of information and how that could be detrimental as an example. We are still negotiating our potential agreement with DHL, but we understand the importance of competition and we have talked a lot about making sure that customer information, as an example, is not shared between the organizations, that the only information that would be shared would be information that is necessary to physically transport and sort the package safely and efficiently.

In terms of our information technology systems, again with the proposed agreement, we would maintain independent information technology systems and only pass back and forth, again, that information that would be required for the safe and efficient transportation of the package, and would be limited information. It would not include a customer-specific detail.

That is one thing I wanted to spend a minute on and get some additional clarification on. In regards to the thought of a merger, it is our intention to continue to compete vigorously with DHL. I believe that is Mr. Mullen's intention as well, to continue to compete vigorously with UPS. UPS will be providing one portion of the transportation services that are necessary to accommodate the package delivery business. DHL will maintain control of their customer relationship, their pricing, their ground network, the pickup and delivery of their packages to their customers, and rely on UPS for the air transportation part. We will not have access to each other's cost structures as part of this proposed agreement. We will simply act as a service provider for DHL, which presumably will reduce their cost and allow them to remain competitive in the industry going forward.

Mr. MULLEN. Thank you, Mr. Chairman. I would echo what my colleague to my left has just said. Our two companies are very strong competitors all around the world. We operate in over 200 countries. We are fierce competitors in all of those. This is one capacity sharing arrangement in one country albeit, obviously, a very significant and important one.

We have heard a number of things today that I would respectfully like to try to correct. I have heard that it is a merger, an alliance. It is in no way a merger or an alliance. It is purely a capacity sharing operational outsourcing agreement. We have heard that UPS will perform deliveries on our behalf, effectively taking over all of DHL's deliveries. That has never, ever been part of this arrangement. This is purely a line hold sharing arrangement.

We have heard that UPS will have access to our proprietary information such as pricing, such as details about customers, about our costs, et cetera. None of that is true either. We will only make available what information is necessary for UPS to perform its contractual commitment to move our packages in their aircraft. That does not include anything to do with pricing or sensitive customer data. So even without a Chinese firewall, even if that wasn't there, we won't simply be providing enough information for that to be an issue in the first place. So we are very confident that we can structure an agreement. We are still working on it. But all of the risks to us in terms of the diminution of our competitiveness in the U.S. market are addressed. We haven't finalized that yet, but we are very confident we will be able to achieve that.

Mr. CONYERS. Thank you very much. I am now going to turn this over to the distinguished gentleman from Ohio, Cincinnati, Steve Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. And thank you for holding this very important hearing. I want to thank all the witnesses for taking the time to testify. I know many people, members—I know Mike Turner in particular has been very involved in this because it is in his district, but many other members as well, and obviously our Senators and, Mr. Fisher, we certainly do appreciate your interest and your insight in this.

You know, at a time when the national unemployment rate is over 6 percent and the State of Ohio's is over 7 percent, something like this really couldn't come at a worse time, especially for a relatively small community like Wilmington where the impact could be up to almost 10,000 jobs, as the mayor indicated, and the impact that that will have on so many people's lives.

So I think it is important that we are taking this with the utmost seriousness. And although there is not a clear solution and we haven't, obviously, resolved anything today, getting all facts out and leaving no stone unturned in considering what impact this will have and how we can lessen that impact on real people's lives I think is important.

I would commend the Chairman for taking the time in doing this and making this effort because it really is important.

Just a couple of questions. Mr. Mullen, first of all, the airport is privately owned by DHL, and given the immense loss of jobs expected as a result of this decision and the significant antitrust implications of your pending agreement with UPS, would DHL consider relinquishing ownership of the airport as part of a settlement with the city and the State so the facility could be redeveloped?

And in addition to that, is the sale of the air park an option that could be pursued, given your financial state and the benefit it could bring to Wilmington, and it would seem like that would be a win-win. Could you comment on that?

And, finally, does the contract with UPS involve exclusive dealings—and wouldn't a nonexclusive agreement so you could negotiate, say, with, for example, ASTAR or ABX, wouldn't that seem to help to come to a reasonable solution here?

Mr. MULLEN. The first part of your question, sir, about the airport, we have consistently expressed complete willingness to discuss the future of the local airport with the local community. I per-

sonally at the time flew to Columbus and met with the Governor to offer—that would be very much on the table. And so I think the working group that is now interacting between the two sides have that as one of the issues for discussion. If we can help mitigate the impact by either ceding that airport or being involved in some form of sale, as you have said, we will willingly do that.

Mr. CHABOT. As to the exclusivity and——

Mr. MULLEN. The second part of your question, yes, we do have a commitment to complete this negotiation with UPS at the moment.

Mr. CHABOT. Thank you. And to anyone who would like to comment on this, why shouldn't the agreement be met with skepticism, especially since it is an agreement between two of the industry's dominant companies, and in many ways isn't it just an act of industry consolidation? I know that Mr. Mullen objects to the term "merger," so I will call it industry consolidation. How does this agreement differ from other agreements that are in place in the industry, for example, contracts with the United States Post Office, for example? Do the benefits of this agreement outweigh the negative impact that this agreement will have on the Wilmington community and the State of Ohio? Or is it clear that the negative impacts would outweigh the agreement?

And I would be happy to hear from any of the members of the panel who might like to comment. Mr. Mullen, and then Captain Ross.

Mr. ROSS. Yes, sir. Just a little bit—we have talked the outsourcing—we will call it a vendor relationship, and I would like to differ. We are a vendor for DHL as ABX Air. The product we vend is the transport, sorting, and delivery of that package. In order to do that, we have got the addresses, we have got the names, we have got the businesses, we have got the book of business of DHL. We are a vendor.

We also provide as a vendor some very interesting things. Tracking—some DHL packages are tracked as many as 12 different locations as they travel from one location in the country to the other. Without the information of who that customer is and what the contact is for that customer, that customer cannot update that package tracking. So I guess if they want to contract with UPS and not provide all the customer information, they can get rid of the tracking portion of the DHL package.

Something else we do in the sort is called dimming. As a package goes through the sort—because now we can send a package from home, we can print our own labels—there has got to be a check on that package and what was paid for that package. In the sort, those packages are dimmed. It is resized and it is checked to see what was paid for that package. In addition to that, you have to know the service level of that package. So all those packages are dimmed as they go through the sort.

Currently at ABX Air, the dimming of packages saves DHL $1 million per week, $52 million a year by dimming those packages. But to dim the packages you have to know where that package came from, who shipped it, what the service level was. We can give up that too, I guess, if we go to just a bland label with UPS. I don't think that it is good business.

I think to provide the level of service the customers demand in today's market and to protect the company, DHL, I think we need those two capabilities of tracking and dimming.

As far as the USPS portion of this goes, I had an opportunity to talk to the gentleman that helped structure the movement of the Postal Service to Federal Express. Most of the packaging that goes for USPS is through sort. It goes containerized from aircraft to aircraft. There a small amount of actual individual package sorting, and that is done with a blander label; we are going from San Francisco to Seattle. They do a small portion of that.

And also the USPS, it is a mom-and-pop, it is an occasional shipper, and I don't really think it is a target of—something that UPS or FedEx would want to go after. And as said by the gentleman down at the end, Mr. Balto, UPS has suffered and lost significant business since Federal Express took over the sorting of that package.

Mr. CHABOT. Thank you. Captain Prater.

Mr. PRATER. I will be very brief. DHL purchased two U.S. companies, drove them into the ground, walked away from them, walked away from the communities and the workers that were employed there to provide those services. I have no way of knowing the full extent of the DHL holdings, but I do know they own a significant portion, 49 percent of another air transport U.S.-based company flying between the U.S. and Japan and China. So where does this all go? I think we need to get our hands wrapped around it.

Mr. CHABOT. Mr. Mullen.

Mr. MULLEN. When addressing the question of the value of this, I would just like to stress one thing again respectfully, that we face an extremely serious situation here as a company. While this type of capacity sharing is common in many industries, it is a first for us. We would not be doing this unless there was considerable value, obviously, to our company, and that main value is that we wish to stay in business in the United States. With losses at 1.3 billion a year, clearly it is completely unsustainable.

While obviously the impact on the community directly affected is huge, we also have many tens of thousands of other employees in this country to worry about. And, you know, one of the very disagreeable parts of the role of an executive in a company is to make these sorts of decisions, that we are jeopardizing the future of nearly 40,000 DHL employees in the United States unless we can reach an acceptable resolution of our loss situation. We are not even seeking to eliminate the loss.

The proposal that we have here, the combination of the restructuring of our ground operations as well as the outsourcing with UPS, will save about a billion. That is still going to leave us in a loss situation of several hundred million dollars a year, which is a lot of money by anyone's standards. But we are prepared to continue to bear that level of loss because we wish to maintain a global network, we wish to maintain our business in the United States. But we cannot go on losing over a billion. It is simply unsupportable for a company of any size.

Mr. CHABOT. Yes, sir, Mr. Balto.

Mr. BALTO. Look, there is always a temptation to go and try to tailor arrangements to let the businesses do what they want. And,

you know, I think that would be a real mistake in this case. No one has asked the question of these folks yet: Why won't they enter into a voluntary agreement not to consummate the deal? There is irretrievable harm that will occur if they consummate the deal and it is anticompetitive. If you can't trust them to go and do that, how can you trust them to live up to any of the commitments that they are willing to make in terms of not sharing information, not abusing rights, you know, UPS not abusing DHL. I don't know what the answer to that question is.

Mr. CHABOT. Any other panel members that would like to comment? Okay. If not—yes, Mr. Fisher.

Mr. FISHER. Mr. Chairman, Congressman Chabot, just a point that I think is worth making. That is, as I said in my testimony, with all due respect to what Mr. Mullen said, that they looked at all different alternatives, they did not look at all different alternatives. Because if they had looked at the different alternatives they would have sat down with the State of Ohio. We engage in these kinds of discussions with companies as large as DHL on a regular basis.

I am not suggesting that we would have had a magic solution, but I am suggesting that we were prepared, and remain prepared even to this moment, to sit down with them.

It is my understanding and I have not yet had this confirmed, Congressman, that the agreement between UPS and DHL prohibits them from talking to the State of Ohio or anyone else about any alternative. And if I may ask you to ask them about that, unless I am allowed to ask them from sitting here, I would be interested to know if that is the case, because I think that would be unfortunate because it really means that they are not really exploring all different alternatives before pursuing this transaction.

Mr. CHABOT. Thank you. Mr. Mullen or Mr. Ross, would you want to respond to that?

Mr. MULLEN. Prior to the final negotiations with UPS, we explored every opportunity that we could see was conceivably possible of delivering a saving of the scale that we were looking for in the United States. Now we are in our final negotiations with UPS. We do have an obligation for confidentiality and exclusivity until that contract is either signed or is not signed. So currently we are bound by that.

Mr. CHABOT. Mr. Fisher, let me just ask one final question. It is my understanding that the State of Ohio responded when this initially happened a number of years ago, and I think DHL had invested about 1.2 billion in the infrastructure, and the State I think gave around $400 million in tax credits and incentives. And it was in doing that, I think, everybody thought of this as a long-term venture that was going to be a long relationship that was going benefit the community for many years to come. And obviously at this point it hasn't come to that. But is that—was that the State's investment, approximately, in this?

Mr. FISHER. Yes. That is true. That was our offer and I think that all parties had every expectation that this would be a long-term relationship. And although DHL did not actually accept and receive all of the incentives that were offered—we did offer close to $400 million—it is not unusual that a company will not accept

over a certain period of time all those incentives. I believe that if DHL were not to pursue this transaction with UPS and were to reconsider for whatever reason, DHL, if it were to remain, would probably end up accepting many of the incentives that we have offered. But at least as of this point, they have accepted some, but not all.

Mr. CHABOT. Thank you. And then finally before I yield back my time, Mr. Chairman, Mayor Raizk, did you want to comment?

Mr. RAIZK. Well, a couple of things, Congressman Chabot. I think it is important to note that I have heard it mentioned several times here today that DHL is contracting now with two contractors, but they created those contractors by their acquisitions of DHL Express and Airborne Express. The two air carrier contractors were created because of the law that says that a foreign-owned company cannot hold a flying certificate and operate an airline. So it is different in that respect because these two contractors were separate independent companies at one point in time. And so by their acquisition, these were created.

So I don't think it is the same relationship between UPS and DHL as it is between DHL and ASTAR Air Cargo and ABX Air, Inc.

Secondly, you asked the question about the air park and I would like to thank Mr. Mullen because I explained to you about receiving the news on the 28th and he did graciously—and I want to thank him—give me an audience with him after that announcement. And we did discuss at that time the possible transfer of the air park. And the community is very interested in that. Even if we retain all or part of these jobs, we still would like to have that piece because we can then redevelop and diversify our economy in the Wilmington area.

This air park came from the Federal Government to the citizens of Wilmington, and I think it should return there. Thank you.

Mr. CHABOT. Thank you very much. Mr. Chairman. I yield back the balance of my time.

Mr. CONYERS. The Chair recognizes Steve Cohen from Memphis, Tennessee.

Mr. COHEN. Thank you, Mr. Chairman. Captain Prater, you made some kind of statement, it really was a question, but I guess it was your begging a question statement about the world and a company that they have a relationship with. Would you explain what you were kind of alluding to, kind of rhetorical?

Mr. PRATER. I believe you're asking about the 49 percent investment that DHL has made into Polar Worldwide Air Cargo, which is a 747 operator flying air cargo for DHL out of this country to Japan and China.

Mr. COHEN. What is your concern about that?

Mr. PRATER. The concern is when you watch DHL run two of their companies into the ground and put their workers on the scrap heap, where are they going to go with the next one? I am certainly concerned about it. I am not saying it is the same kind of system. It is international versus domestic. But the fact is they've shown themselves for what they are here. They want to get rid of companies they bought, get rid of them out of the marketplace completely. There will no longer be an ASTAR or ABX who can supply

transportation small package services. They will be gone. They will be gone and there will not be any competitors.

Mr. COHEN. The only competitor—FedEx would still be a competitor, would they not?

Mr. PRATER. If you call working that close as a competitor. Now, I know UPS is, obviously from some of their own literature, trying to take advantage of the situation that their new partner DHL is trying to do and say. DHL customers, you can't trust DHL because they are undergoing these big problems. They may have potential rate fluctuations, potential pickup and delivery. They are no longer a single carrier responsibility. Maybe question their customer service.

On the one hand they are trying to show they are competing with them or driving them into the ground. And on the other hand they are cutting deals with them. So who are you going to believe? What side of—you know, what side of this deal is good for anyone, except we have heard DHL. They don't want to take care of anybody else but their company. They do have a responsibility. They have been doing business in this country as a U.S. company, and yet they want to walk away from certain responsibilities.

Mr. COHEN. Mr. Wallace, you heard what Captain Prater said. I guess it is really Mr. Mullen. DHL owns 40 percent of Polar; is that correct?

Mr. MULLEN. That is correct.

Mr. COHEN. Is there any grain of a truth to what he is saying, that maybe all would kind of not—kind of continue Polar?

Mr. MULLEN. Obviously we don't buy companies to try to drive them into the ground. We regret more than anybody the difficulties that we have had here in the United States. The Polar case, we previously used Northwest Airlines for carriage across the Pacific. Northwest Airlines itself has gone into financial difficulties, as you probably know. That started to put intense pressure on the service levels and the security of our lift to and from the United States and Asia. As a result, we made a strategic decision to invest in Polar in order to have some more security over that lift, without which we felt that any time Northwest could go into the final stages of bankruptcy or other things could happen and we would be left with no capabilities whatsoever between the Pacific and the United States. That is why we invested in Polar.

Mr. COHEN. Do you have any intentions, or do you think it might be that you want to switch from Polar and switch your business to UPS?

Mr. MULLEN. We have not had any discussion with UPS about any of that type of intercontinental lift. Polar, we have a long-term arrangement with the aircraft. We have committed to a very large fixed commitment and we have no such intention at the current time.

Mr. COHEN. So is Polar a successful venture for you?

Mr. MULLEN. Polar was a general cargo carrier when we acquired it. The purpose of acquiring it, as I said, is to transform it into an express timetable in order to support our express business. We will continue to offer some general cargo services, but we will change the nature of the company so that it supports our intercontinental express business.

Mr. COHEN. Did you ever consider the same kind of agreement that you want to enter into with UPS and considered looking at FedEx to do it?

Mr. MULLEN. We have talked off and on with almost every player in the United States, trying to find a solution to this.

Mr. COHEN. And "every player" means FedEx and UPS? Is there a third?

Mr. MULLEN. FedEx, UPS, the United States Postal Service and others.

Mr. COHEN. Okay. Thank you, Mr. Chairman.

Mr. CONYERS. Bob Goodlatte of Virginia.

Mr. ISSA. Mr. Chairman, with Mr. Goodlatte's permission, I will be going next.

Mr. CONYERS. All right. We are delighted to recognize the gentleman from California, who has served this Committee with such distinction.

Mr. ISSA. I thank the gentleman from Michigan, my colleague. And as a former Ohioan and a Member of Congress who represents, at least to the south, March Air Force Base, a major gate, a DHL facility, I find myself with the same problem that the first panel had, portions of the second panel had, and many Members on the dais. We are as conflicted as a Congress in this situation as any of you at the table. And I say that because I would like to be able to say, oh, isn't this going to be great? We are going to gain huge efficiency for people who get packages delivered, we are going to save money. We are talking about our economy and we are not going to lose 13,000 jobs here, many jobs north of San Diego and my district at March Air Force Base. It is all going to be perfect.

I don't think it is going to be perfect. So let me walk through a couple of things that appear to be here because we are looking at this as an antitrust task force, but we are obviously all looking at it parochially. It seems like Wilmington really wants their air base back. They would like to keep the job, but they would like to have the alternate opportunity and it seems like DHL is willing to participate in that in a very aggressive way.

For DHL you are a global giant, a postal company, a postal government company, as I understand it as a parent, and you operate, as you said, in 200 nations. If you continue to lose $5 million a day, how long before you would have to evacuate—and this is for Mr. Mullen—how long before you would have to evacuate the United States in some way, shape, or form if you don't do something?

Mr. MULLEN. We obviously haven't made a specific decision on a date or on any particular scenario.

Mr. ISSA. But your pockets do have limits to their depth?

Mr. MULLEN. They most definitely do. And that is the point I was trying to make before. Unless we find a way of reducing our current level of losses to a manageable level, then we would have to take far more radical action. I can't say what that would be, but it would obviously be——

Mr. ISSA. And we are all operating in veiled "what ifs." But I am concerned for the U.S. economy, but I am also concerned for competitiveness, which is the primary thing here. If you are able to stem your losses with this alliance, does this in general bolster your global ability to compete against FedEx and UPS because the

rest of the system is comparatively less of a problem or at least, let's just say, this makes this portion not as much of a problem as it has been; is that correct?

Mr. MULLEN. That is correct. We have a——

Mr. ISSA. And you are going to save approximately how much, would you guess, not including one-time charges on this conversion?

Mr. MULLEN. The UPS arrangement is part of quite a complicated restructuring plan with quite a number of other components to it, including restructuring ground operations and other things. But the total of all of that, we aim to save $1 billion a year.

Mr. ISSA. Okay. That is $3 million a day, plus or minus. It could add up to real money even here in Washington. That is supposed to be an applause line, but it is awfully old.

Mr. Wallace, are you going to make money on this? Is that UPS's intention, to make a pretty good chunk of money on carrying this vast amount of packages?

Mr. WALLACE. It is our intention to be profitable with this, yes.

Mr. ISSA. And the only way for you to do that is in fact to increase efficiencies, because you are saving somebody over their current level of efficiency, right?

Mr. WALLACE. That is correct. We would be utilizing our existing air networking facilities.

Mr. ISSA. And you will add less jobs than are taken away, but you will add jobs in this transaction?

Mr. WALLACE. We are still working through the——

Mr. ISSA. There has to be a pilot or two somewhere there.

Mr. WALLACE. We are still working through the details of the agreement. So it is difficult at this point for me to estimate the number of jobs that could be created.

Mr. ISSA. Right. I am not asking for that. But those jobs presumably would be in Ontario, California, Louisville, Kentucky. They would be throughout the United States, maybe Georgia, wherever you have an operation related to their backbone; is that correct?

Mr. WALLACE. That is correct.

Mr. ISSA. So on a net basis, America should be more competitive because DHL will be buying a product for less than it presently does it itself. You will be making a product that will be an efficiency, but jobs will be lost on a net basis if you two achieve what you are trying to achieve?

Mr. WALLACE. I can't speak to the total job loss, but deficiencies will certainly be improved.

Mr. ISSA. And I am used to efficiencies meaning job losses. And Ms. Kaptur looks at that as a bad thing. I am a native Clevelander and I also realize that we can't compete if we can't be as competitive as the rest of the world in the total number of jobs.

So, since my time is going to expire, with the indulgence of the Chairman, very quickly, the question that I really have is at the present time between the two parties, conceivably, is DHL as a result of this arrangement going to be not a global competitor of UPS's? And that is—my real question is, is there anything in this arrangement—we realize it is domestic at this point. Is there anything that would make your two companies not global competitors?

Mr. WALLACE. No, there is not anything I am aware of. We will be vigorously competing in the global market.

Mr. ISSA. I am going to tell you in closing, and I will ask the others to comment because I don't want to leave them out, March Air Force Base is a major commitment of DHL and I expect we will lose it to Ontario, if I understand corporate restructuring the way it is probably going to happen.

So after Wilmington, probably Temecula and Paris are the next areas that are going to see job losses. So I am not happy about that as a parochial matter. What I want to know is—from the others—if we look at this based on their assurances, is there any reason today that we believe that DHL will not be a global competitor of UPS?

And the reason I ask this for the other people on the panel is proprietary information has been batted around, and I am very concerned about that. But as long as you are global competitors, I am going to assume that your two companies are going to make sure that you have that so-called Chinese firewall.

So if the Chairman will indulge me to allow the others—I don't want to shut them out, because to be honest, in a perfect world, I would rather your side win than the other side. I just don't see that as likely at this moment. Yes, sir.

Mr. ROSS. Sir, if I may. We do a lot of flying out of Riverside and we appreciate what you have done for that facility there. So thank you very much. I know Mr. Mullen has mentioned this is the first of the coloading as he refers to, globally. So I guess the question would be: Are we going to coload with UPS in Europe, UPS in Asia, is it going to be TNT? I guess if this is a start of a global coloading, who is the rest of the world going to be coloaded with, with DHL?

Mr. ISSA. Yes, sir.

Mr. BALTO. Yes. I just wanted to make, you know, one point. The concern from an antitrust perspective is solely that of American consumers. And your constituents in San Diego are ultimately going to pay more for the—you know, having express delivery services. This is not just a problem that can be solved just through a Chinese firewall. These two firms will now be contented in a symbiotic fashion, unlike the way they are now. Are you really going to try to steal sales from your supplier? That is highly unlikely if you are very dependent on them and if they are sort of in the catbird seat of being able to discipline you. My experience as a trial attorney in the Antitrust Division, when we uncovered cartel arrangements, there often was that element of firms being in the supply relationship. That is how they were able to enforce the cartel. That is why you have to be very concerned about any kind of supply arrangement like this.

Mr. ISSA. Thank you. Thank you, Mr. Chairman, and I look forward to looking at the Yahoo situation in the same light, as these are important issues.

On the reauthorization tomorrow, Mr. Chairman, I will obviously support the good work that this task force has done. I yield back.

Mr. CONYERS. I thank you, Darrell Issa, for your contributions this afternoon. The Chair recognizes Bill Delahunt of Massachusetts, a Member of this Committee, as well as a very effective Member on the Foreign Affairs Committee.

Mr. DELAHUNT. I thank you, Mr. Conyers. Mr. Balto, I hear what you are saying about the concerns and I agree with that. But I think what I have noted since I have been here six terms, almost 12 years, is there has to be an effective monitoring post for any merger that requires the resources in the Antitrust Division of the Department of Justice that simply doesn't exist today. And if you'd care to comment on that.

I am just going to follow up with one other question and it deals with this Chinese firewall. But I have always been concerned that in Justice there is not sufficient resources to adequately reveal the potential or real negative consequences for the American consumer. There are just not enough bodies. Would you care to comment on that?

Mr. BALTO. That is correct. The Antitrust Division is not a regulator. That is why, as a general matter, they strongly prefer structural remedies rather than behavioral remedies. If given a choice, we prefer—the antitrust agencies would prefer firms not to merge if the condition that is necessary is some kind of regulatory relief.

Mr. DELAHUNT. There are mergers that do occur and for all intents and purposes are free from any oversight, free from any scrutiny thereafter.

Mr. BALTO. Yes, lots of mergers are procompetitive and pose no anticompetitive issues.

Mr. DELAHUNT. So I think in terms of this particular task force, that is an issue that ought to be looked at. In terms of the firewall and the relationship between UPS and DHL—and I guess I would direct this to either Mr. Wallace or Mr. Mullen. In terms of the sensitive information that is out there about pricing and other—I don't know if it is a correct term, but "proprietary" information, how do you construct that firewall? How do you maintain that competition, given an alliance between yourselves that would create a whole different relationship?

Mr. MULLEN. Well, the first thing I would say to that is we don't intend to provide sensitive information such as pricing at all. So there is no need for a—it just simply won't occur. The only data that will be provided is operational data that is required by UPS to allow them to physically move the package. They don't need access to details on pricing or particular customer arrangements or any of those matters that have been raised.

Mr. DELAHUNT. Mr. Wallace.

Mr. WALLACE. I agree with that. And the only additional comment is——

Mr. DELAHUNT. How can we be reassured that that is not going to happen, I guess, is what I am saying.

Mr. WALLACE. Well, first of all, in the proposed contract that we——

Mr. DELAHUNT. Particularly given what I noted earlier about the lack of resources available in terms of ensuring compliance with that kind of an alliance, that kind of a contract.

Mr. WALLACE. Well, UPS structures its business deals to ensure that anticompetition is not an issue. I am sure that the proposed contract will also address that competitive sensitive information very specifically in the contract. We are competitors, as we talked about, and even today we are trying to compete for additional ex-

press business while we are in negotiations on this other transaction. Our IT people have spent a lot of time looking at what they can do technically and mechanically to create that firewall and have spoken with confidence that is achievable. The only information that we will pass between our organization is the information necessary, as Mr. Mullen said, to transport the package and move it through our network.

Mr. DELAHUNT. Okay. Mr. Conyers, I thank you for the time. I have to run to another hearing and I yield back. Thank you.

Mr. CONYERS. Thank you very much. The Chair recognizes Hank Johnson, an attorney from Georgia, a magistrate in Atlanta, and a very valued Member of this Committee.

Mr. JOHNSON. Thank you, Mr. Chairman. How many employees are at the Wilmington facility, Mr. Mullen? How many employees does DHL employ at the Wilmington facility?

Mr. MULLEN. We employ just over 1,000 ourselves directly. All of the other employees belong to subcontractors of——

Mr. JOHNSON. I see. So including the subcontractors, how many jobs would there be at risk in Wilmington should that facility close?

Mr. MULLEN. I obviously don't have all of the details of those two companies, but I would answer approximately 10,000.

Mr. JOHNSON. And that would take place over what period of time?

Mr. MULLEN. We are still discussing that as part of the implementation phasing that is being negotiated as part of the contract at the moment. But most likely by the middle of next year.

Mr. JOHNSON. Does anyone dispute the assertion that DHL's expected loss of $1.3 billion in 2008 is accurate? Does anybody dispute that?

Mr. FISHER. We don't dispute that is a loss. We don't have any basis for determining whether or not that amount is accurate.

Mr. JOHNSON. Nor have any reason to doubt that it is accurate, do you?

Mr. FISHER. I think that is as far as I will go. We just have no way to verify one way or the other.

Mr. JOHNSON. Let me ask, how has the price of jet fuel impacted the package delivery industry?

Mr. MULLEN. It has impacted us very significantly. It has impacted us in a number of different ways as well. Firstly, obviously, it increases your cost quite materially. Our whole industry, much of the passenger airline, industry was built around oil prices of sort of 20, $30 a barrel. We survived the passage up to the eighties and nineties. And once it got into—over the 100's, as we are seeing now, it is a complete shift of business model for our industry. So it is putting huge pressure on us from an operational cost point of view.

The other thing it is doing, which is equally significant and potentially more significant in the long run, that it is changing our customers buying behavior. So in a market, particularly an integrated market like the United States, one of the main reasons why the air market has been shrinking and continues to shrink is because customers migrate from more expensive air products to deferred ground products. They simply can't afford the cost of the express transport any more.

Furthermore, we see on the global scale that that is starting to affect even supply chains of some of our customers. So one byproduct of this may well be that you see companies who outsource capacity production to the Far East, to China, may start to bring that back closer to home, either to her market itself, or in the case of the United States maybe Central America or whatever. In Europe we see our customers shifting capacity production back to eastern Europe and other closer locations. So it is having a pretty dramatic effect on our industry aboard.

Mr. JOHNSON. Mr. Fisher and Mr. Raizk, even though there may be some reluctance to accept this $1.3 billion loss assertion, assuming that it is true that the company is losing $1.3 billion a year, would the State or local government be able to offer any economic incentives that would cancel out that loss on a yearly basis?

Mr. FISHER. Congressman Johnson, I think that when we face situations like this, it is not so much that the State says we will cancel your losses out, it says that we will partner with you to address your losses. A combination of loans, grants, tax credits, processes that we can offer to the company free of charge with regard to distribution and logistics, additional ways that we can help facilitate transactions like the one that they pursued several years ago, where I believe ASTAR attempted to purchase ABX, so that they would have one carrier they could deal with as opposed to two.

Those are all roles that we could, and frankly want to, play in trying to address these transactions. So the answer is I don't know whether we could cancel out, as you say, all of their losses. What I do know is that we could help address those losses, alleviate them both short term and long term in a partnership arrangement. It wouldn't be the first time that our State has done something like that.

Mr. JOHNSON. Well, I tell you, 10,000 jobs over the next 9 or 10 months is certainly a devastating blow to any State's economy. How can DHL and UPS work together to accomplish your objective, but at the same time save jobs in Ohio? And I have just got to believe there is some way for you all to do that. How could it be done?

Mr. MULLEN. Congressman Johnson, the leverage that this arrangement has is the utilization of capacity that exists in the existing UPS network. Were we simply to transfer all of the jobs from one party to the other, we would not obviously be addressing the ongoing loss that we have been talking about. And the reason that UPS can offer us an arrangement like this is they have some spare capacity which we want to obviously avail ourselves of.

So it is very hard. Their hub is in a different location than our hub. Their operation runs different from ours. And I am not privy, obviously, to how they manage the details of that operation, but it is not simply a question of being able to transfer the jobs with the work, I regret.

Mr. JOHNSON. Any response from UPS?

Mr. WALLACE. Any loss of jobs in the U.S. Is very unfortunate. And, as Mr. Mullen spoke to, our capabilities and our network at UPS are designed as such that we have the capability through our regional air hub network to add more volume into that system. By adding that volume into those strategic locations, we will eventually create jobs. At this time, we don't know what the number of

jobs will be or exactly what the jobs will consist of. But clearly we will create jobs in those locations. Our primary air hub location, Louisville, Kentucky, which is not that far from Wilmington, Ohio, but there would be no opportunity for us to leverage the Wilmington, Ohio facility in our network.

Mr. JOHNSON. Thank you. Mr. Chairman, I yield back.

Mr. CONYERS. Thank you. Attorney Congresswoman Betty Sutton, distinguished Member of the Rules Committee and Judiciary.

Ms. SUTTON. Thank you, Mr. Chairman. And thank you all for being here to testify, Lieutenant Governor Fisher, Mayor, all of you. I appreciate this information coming to light.

Mr. Mullen, I have heard you on that—about how there were no options but to cut costs, and we have heard the extent of that need as you express it. And that you looked at every alternative before you proceeded down this path. But we have also heard testimony from people on the panel, and Lieutenant Governor, talking about how they never had the opportunity, the State of Ohio really didn't have the opportunity, you didn't go to them to talk about how there might be another path.

We also heard from Captain Ross and Captain Prater. We heard from Captain Ross that he was never approached about reducing costs. And Captain Prater in his written testimony talked about during the negotiations between UPS and Deutsche Post, they were entered into in secret and that neither ABX or ASTAR were given a chance to make competitive bids.

So if the ultimate goal was cost savings on all of this, please respond to those lapses in effort. Because why didn't DHL, for example, negotiate with all parties to obtain the best deal possible? Why didn't DHL, after all the State of Ohio has done to try to be a partner, go back to the State of Ohio and talk to them about what might be able to be done? Why didn't DHL talk to Labor about how to potentially cut costs?

And now if I understand correctly, and I would like you to address this too, after all of that and the failure to even bother to do any of those things, you have now bound yourself with the confidentiality agreement that will protect you from having to answer a lot of these questions. Could you just respond to that?

Mr. MULLEN. Of course I can, Congresswoman Sutton.

Firstly, with respect to the State of Ohio, we looked at all of the options that we felt could realistically deliver the scale of savings that we needed. We are talking here about hundreds and hundreds of millions of dollars. Yes, we did not go and sit down with the representatives of the State of Ohio and say, can you save us a billion dollars? We generally thought that was pretty unlikely, and given confidentiality, our customer base, employees, et cetera, we ruled that out as a likely alternative.

With respect to our other subcontractors, that is not the case; we had extensive discussions with ABX and ASTAR trying to find a solution to this. There was one solution that would have offered considerable savings, which is where ASTAR would have acquired ABX; we would have put the two businesses under ASTAR's management combined, would have been combined. That would have saved quite a lot of money. That option was not driven directly by us, because ASTAR, obviously, is an independent company. They

launched public takeover bid for ABX that was rejected by ABX directors. That opportunity was closed off.

We subsequently had a reverse type discussion where ABX came to us with a proposal. I personally met with some of the senior management of the company in Germany. We followed that up with several discussions here in the United States. And while that was an attractive offer, it came nowhere near as close to the level of scale of savings that we think we can generate from the combined proposal that we now are looking at. So we really did talk to all of the other parties.

We didn't talk directly to labor. The gentlemen on my left are not employed by DHL; they are employed by our subcontractors. It's not our prerogative to directly go to the labor directly. We do talk to the direct employers about how we can generate such savings.

I think we exhausted every option that we could see that had a material leverage in solving this problem.

Ms. SUTTON. Okay, I tend to disagree, but I appreciate your response.

Since your competitor at UPS is going to sort the packages, isn't it the case that you will then have to shutdown many of your sort facilities across the country under the restructuring?

Mr. MULLEN. We only have two real air hubs in the United States. One is in Wilmington. The other one is Riverside in California.

Ms. SUTTON. Okay, let me just ask this question a different way. How many jobs, direct DHL jobs and otherwise, will be affected by this in terms of loss? Can you give this Committee a complete list of the jobs that could be affected by this restructuring plan?

Mr. MULLEN. I can't give you a precise number because the process is that we terminate a contract with our subcontractor, and that subcontractor in turn then decides how many redundancies it makes amongst its workforce. For instance, in ABX's case, I can't speak for them clearly, but I am aware that they intend to continue in business. They intend to continue employing pilots and other employees. So we are working with them. I think I mentioned in my statement, on the mitigation package, although we are not contractually obliged in ABX's case, for instance, with air crew to offer severance payments—that is the responsibility of the subcontractor ABX—we are more than willing to offer that as part of the mitigation.

I realize you want some numbers. My best understanding of the impact is somewhere in the 8,000 to 10,000 jobs that are at risk across our own direct employees and the majority being employees of other subcontractors, but you would have to speak to each of those directly to get a precise number.

Ms. SUTTON. You are talking about Wilmington only?

Mr. MULLEN. Well, we are doing a whole number of things. We have been closing some of our ground stations in remoter areas in the country, restructuring pick up and delivery routes and consolidating stations. In some cities, we maybe have three stations and are consolidating that down to two. And we are replacing the two airline subcontractors with one being UPS. So it is a number of different components.

Ms. SUTTON. Since no one responded to Mr. Balto's question about voluntarily entering into an investigation under DOJ, will you answer it for me? You said you are very confident it is not a merger, very confident. So why don't you enter into a voluntary investigation with DOJ?

Mr. MULLEN. Well, firstly, we obviously got extensive advice when this idea was first mooted and have been informed very comprehensively there is not an antitrust issue. Despite that we voluntarily did go to the Department of Justice and informed them about this. But up until we are told we cannot complete it or are prevented from doing so, there is no reason for us not to. The Department is aware.

Obviously, from our perspective, the counterbalance is that employees and customers and other stakeholders are very unsettled by all of this, and it behoves us to complete the transaction as fast as we can. Should the Department see otherwise, then of course we would cooperate fully in whatever investigation they chose to launch.

Ms. SUTTON. Since, sort of in your answer there, I heard a hint of you weren't really—you weren't really asked. Let me ask you directly, will you enter into a voluntary investigation with DOJ?

Mr. MULLEN. Well——

Ms. SUTTON. Are you willing to?

Mr. MULLEN. We have already spoken to——

Ms. SUTTON. I understand.

Mr. MULLEN. We can't launch an investigation on ourselves. We have provided all the information. Anything that they wish to know about the transaction, we will provide of course, voluntarily.

Ms. SUTTON. So you don't really object to the idea of undergoing a voluntary investigation? You don't object to that?

Mr. MULLEN. No. We obviously have to follow the rule of the law.

Ms. SUTTON. I understand.

Mr. MULLEN. Whatever the Department of Justice requires us to do, we will obviously do. Until such time as they rule one way or another or oblige us to do something, we will continue as we are.

Ms. SUTTON. I understood your answer.

Would anybody else like to respond?

Mr. BALTO. I just hope it is clear from Mr. Mullen's answer. You know, what companies frequently do is they enter into an agreement with the agencies not to consummate the deal until the agency has completed its investigation, is that what you are promising to do?

Mr. MULLEN. Mr. Chairman, should I respond? No, if I can try to be more precise. We are and will continue to cooperate with the Department of Justice in any shape or form or any way that the Department requires. We will provide any information. We will cooperate with any request that they place upon us.

To date, they have not asked us to do anything other than continue with—that would prevent us from continuing with this transaction. As and when they do so, then of course, we would respect that. But failing that, we will continue to try to conclude as fast as we can.

Ms. SUTTON. I thank the chairman for the time. And I would just encourage the consideration of this Committee to do all that it can

do to get the Department of Justice to look into this de facto merger, and obviously, they are willing to undergo it if we can get the Department of Justice to take on the responsibility that is its responsibility.

Thank you.

Mr. CONYERS. Well, it occurred to us, Congresswoman Sutton, that there might be an agreement between them to have a temporary suspension because the work of this Committee cannot be considered concluded at the end of this hearing.

Congressman Brad Sherman has come in. I am going to recognize him in a few minutes.

But the fact of the matter is, we need to go, quite frankly, a lot deeper into this than we have. There are some documents that occur to our lawyers on the staff and there are—there's some additional testimony that it seems that I—that we would feel more comfortable with in trying to determine what happens.

If we had another hearing and brought in further authorities involved in the kinds of questions that have been presented here today, we want to go through this transcript with great care. And so it occurs to me, piggybacking off your solution, if we could hold all this in abeyance, I think there is a lot of discussion that could be entered into between the seven parties that constitute the witnesses, not to mention the five other legislators from Ohio. I mean, we would like nothing better than to get you all in a room with appropriate refreshments and John Coltrane in the background, and let's just sit down and put this on the table.

You don't have to read your testimony, which is very brilliantly contrived and will go into the record. But, I mean, let's get down on the ground with this, because I think, I mean, there has been some very strong expressions from the Lieutenant Governor representing the State of Ohio, the mayor and from all of you.

We can all leave here saying we got a little bit off our chest, which is always therapeutic, but that doesn't change the nature of what brought us here in the first place. And I think, in view of the fact that we have got to have more hearings, I would like to try to see if there could be some consensus about holding this in abeyance until such time as we at least have one more hearing.

Now we have yet to hear from the Department of Justice, the Antitrust Division. There are a number of other people that could help us see where we are here. Now this is a real crisis that attacks many other areas of our country just in a different form. It is not the same kind of business or anything, but the whole country, many parts of our Nation, are under the same stress.

Now, that being the case, I would like to hope that we could, without being formal about it, get you parties before the Judiciary Committee. We made an excellent start at sitting around the table today, and I applaud you. There has been no personality problems or vindictiveness. There are clearly distinct differences of opinion, but that is what brings us here. That is what the legislature is for. If there were any differences of opinion, there would be no hearing. If there were a lot of no hearings, there would be no Judiciary Committee. I mean, that is what we do.

So I would recommend that all of the parties that have honored us with their presence today give that some thought.

And I thank the Congresswoman from Ohio for putting that on the table.

And I would like to turn now to our distinguished colleague from California, Brad Sherman.

Mr. SHERMAN. Thank you.

Mr. Mullen, perhaps you could describe for me a little bit your hub in Riverside, California. Is it served by the Ontario airport, and is it that close to the airport, and how many jobs you got there?

Mr. MULLEN. I don't have all the details about Riverside to hand. I can provide you those afterwards in writing if you would like. But what I can tell you is that it is our West Coast aviation hub. It has about seven or eight aircraft that service deliveries that are made between the States west of the Rockies, so as to avoid packages to move from, say, San Francisco all the way back to Wilmington and then back again to Los Angeles. That is the purpose that it fulfills.

Mr. SHERMAN. Is it your tendency to have your sorting hubs within a mile of a major airport, because Riverside is not all that close to a major airport?

Mr. MULLEN. No, it is on March Air Force Base, and we have our sorting facility on the airport itself.

Mr. SHERMAN. So your planes land at the Air Force Base.

Mr. MULLEN. It used to be an Air Force Base. I don't know——

Mr. SHERMAN. So there is a lesser known airport that is—and your facility in Ohio, is that located close to Wilmington——

Mr. MULLEN. The facility in Wilmington, Ohio, is our main sort center. That is where we own the airport ourselves, and it solely operates for our two subcontractors.

Mr. SHERMAN. We have focused on the 8,000 or so jobs that are in the transportation industry to the delegation of Ohio. And because that has been covered so much, I want to focus not on the jobs in the transportation industry but the jobs and the economic effect on your customers, because there are a lot of businesses that have located near your hub because their business plan required them to be at a major transportation hub. These folks may be in the warehousing business. These folks may operate repair facilities, and so people have to ship stuff that is broken, and obviously they need it back as quickly as possible; they want it repaired as quickly as possible. What effect would this non-merger agreement have on your customers in the greater Wilmington area? How—would either the amount you charge them be affected because they are no longer at your hub, or how much lower would their service be?

Mr. MULLEN. Firstly, in that context, what is so really difficult and distressing about this whole situation is that all of the stakeholder groups, from customers to the community and to the employee groups, have been outstanding supporters and partners. I could not have asked any more from the State and from the local community. And we couldn't ask for better cooperation than we have with Captain Ross and some of his colleagues there who have been simply outstanding employees. That makes it, as you can imagine, extremely, extremely difficult.

In the case of customers, it is exactly the same. We have some very long-standing and good customers who will be affected by this. We are negotiating individually with the customers that will be di-

rectly impacted around the airpark. For some, it shouldn't be too much of a problem because they will be able to truck to Louisville in time, but for others, it will be a major problem, and they are going to have to make decisions——

Mr. SHERMAN. Well, let's say somebody used to truck from your facility in Wilmington, and that was a 1 or 2 mile truck to transportation, and now they are trucking from Lexington. Not only is that a delay, but let's focus on the cost. Are they going to end up being out-of-pocket for the transportation cost from Lexington to the greater Wilmington area?

Mr. MULLEN. Well, clearly, I don't know what new arrangements those companies will have to make, but I think it is safe to say it is unlikely to be favorable.

Mr. SHERMAN. So you're not—obviously, if somebody happens to be in Lexington already and for some reason wants to use DHL—they might have used UPS in the past, and of course UPS is creating more competition for themselves in the Lexington area—they are going to get the fastest and cheapest DHL transportation because they are right there at your hub. People who located their businesses or built their businesses around the Wilmington area, you are not prepared to say that you are going to do anything for them other than negotiate at arm's length.

Mr. MULLEN. Well, as part of the total mitigation plan that we are working on, there are three components. I think I mentioned, one is to be as generous as we can in terms of severance.

Mr. SHERMAN. And that you have quantified in the quarter billion dollar range.

Mr. MULLEN. The second component is to try to work with local community and businesses that are affected by this decision. Individual cases is different, and we haven't yet made any——

Mr. SHERMAN. So you have quantified what you are going to do for the employees and the employees of your subcontractors, but you have given me only the vaguest comments as to what you are going to do for your customers, other than of course negotiate with them at arm's length. Can you quantify your reassurance, other than the fact that you love and respect your customers and want to help them in every way possible?

Mr. MULLEN. Obviously, we would like to keep the customers where we can. And we will do everything in our power to do that. If we can help them reorganize the supply chain sources or manufacture elsewhere or whatever it is. Every one is different, so there is no blanket answer to that. Some will undoubtedly——

Mr. SHERMAN. Have you—you have budgeted a quarter billion dollars for the employees of yourself and your subcontractors. How much have you budgeted to help to cut costs for, to give cost breaks to, to provide free trucking transportation to or whatever? Is there anything in your budget to mitigate the effect this has on your customers?

Mr. MULLEN. We have not budgeted any specific amount.

Mr. SHERMAN. We have a quarter billion for the employees and 0.0 for the affected businesses. I hope you revise this budget. You know, you are transportation, you have a huge ripple effect, and you cannot draw a line in your mitigation and say, well, our employees, the employees of our subcontractors are affected, but the

businesses and the employees of the businesses of our customers who have built their business around the fact that you have got a hub there. You have invited them there. You have given them lower transportation costs and faster transportation to be there. That is why they are there. And you have got a budget that, as far as I can tell, is 0.0 but includes warm words to help those customers who have been your customers, your partners, whatever, who have built their businesses in this area. And it sounds like they are going to have to move—we are not talking 8,000 jobs; they are going to have to move 80,000 jobs to Lexington or to the hub of yourself or one of your competitors in order to enjoy the transportation speed and the transportation cost that they are used to. What can you do to quantify for me what you are going to do for your customers?

Mr. MULLEN. As I said, we have to sit down with those directly affected around the airpark.

Mr. SHERMAN. I assume there will be Coltrane music at those meetings as well, and maybe the Chairman can suggest other ambiance enhancing aspects at the meeting. You will sit down with them.

Other than that, can you quantify? I see the Lieutenant Governor here, and I know he's focused on the 8,000 jobs, and maybe it is 10, maybe it is 12, maybe it is 15, in the transportation industry, but you have got the warehousing industry. You have got the repair industry. You may be talking about a much bigger economic impact. And I realize these companies, the transportation jobs, they are going to go if this thing goes forward. The warehousing jobs, et cetera, everything is just going to be under strain. The transportation costs of these other businesses will go up 5, 10, 20 percent. And maybe they will survive and be able to stay where they are; maybe they won't. But I would sure feel an awful lot better if, in designing your mitigation plan, you had more in it for these customers of yours who are located at your hub and did so because you are there than, we are going to sit down with them, and there will be Coltrane music.

Mr. MULLEN. We have quantified the direct impact on labor and on the contractual obligations we have with our subcontractors, that is why I am able to quote a number. We have not quantified the impact on other parts of the community, like local businesses, et cetera, et cetera. We are working on that, but I am not able as a result to give you——

Mr. SHERMAN. What can DHL afford to do to mitigate? I mean, you are under some economic strain here. You are able to afford a quarter billion dollars for the employees in the transportation industry. What can you afford to do for your hub adjacent customers?

Mr. MULLEN. I generally don't know, sir. We will have to find out exactly the scale of and who and how much people are affected.

Mr. SHERMAN. I am not asking you what the effect is or what they deserve. It could be you calculate it all, and the trucks are moving fast and cheap from Lexington, and the total cost is a million bucks and why is Sherman even talking about it. Putting aside what the cost is to your customers, how much mitigation could you afford for them, assuming that their needs for mitigation tend to be pretty high?

Mr. CONYERS. Could the gentleman yield to the gentlelady from Ohio for one final question?

Mr. SHERMAN. I would be thrilled to yield to the gentlelady from Ohio.

Ms. SUTTON. Thank you.

Thank you, Mr. Sherman.

Mr. Chairman, this discussion, as I said, has been extraordinarily enlightening, and I would just like because we have sort of talked about the complexities, the far-reaching implications; some of the things that have been explored but that there are many things that may have not been explored by way of solutions. And I really just want to ask our Lieutenant Governor, who we are so grateful to have here today, whether in light of all this, are there any solutions that we may not have talked about that you might want to bring forward?

Mr. FISHER. Mr. Chairman, Congresswoman Sutton, I do think there is one solution that has not been yet discussed today that is worth putting on the table. I think it is fair to say that those of us who believe that there are antitrust implications of this really have two objectives, not one. We don't stop at our legal objective, because that, frankly, would not be particularly effective. We are trying to do two things; we are trying preserve and enhance competition in this market, and we are trying to preserve and enhance the jobs in southwest Ohio.

There may be a way to do both, and that would go back to what DHL originally tried to do several years ago when it tried to have a single airline serving DHL from their hub. It is understandable that when DHL cannot own its own airline because of Federal law and it has to contract with two different airlines, ABX and ASTAR, that does cause some efficiency problems for DHL and some cost problems. And DHL, I think, by its own admission at least at one point in time had come to the conclusion that the way to solve their financial problems was to have ASTAR, in which they have a 49 percent interest, to acquire ABX and thereby having one air carrier to deal with.

So it seems to me that there are two potential solutions here that only DHL themselves can really speak to, but this is from my standpoint. The one is to go back to the original kind of transaction that DHL at one time felt could solve its problems and explore whether or not a similar such transaction at this point in time could address, if not all of their challenges, many of them. Because one of the things that DHL consistently said to us and others is that they have substantial overhead costs that UPS and FedEx do not have, because UPS and FedEx own their own airlines.

The second issue is well above my pay grade, but I throw it up here anyway and that is re-exploring or re-examining the whole issue about whether DHL should be able to get some sort of narrow waiver so that they could own their own airlines and be able to truly compete with UPS and FedEx. I don't know how UPS and FedEx would feel about it, but my guess is that they would oppose it. And if they did, that would be proof that it would promote competition. So I would suggest that might be one way to solve this problem. We keep the jobs in Ohio. DHL would not have one hand tied behind its back, maybe even two hands because of a Federal

law that I don't think they are happy about, and we could carve out an exception and save 13,000 jobs and in the process enhance competition in the market for now and in the future.

Mr. CONYERS. You know, we have enjoyed the Lieutenant Governor so much, I hope you bring back our own colleague from the House, Governor Strickland.

Mr. FISHER. I think I can arrange that.

Mr. CONYERS. I think you can. For our next hearing. So I want to thank everyone for their participation. I hope that you will carefully examine the thoughts that have been exchanged, and we look forward to you, if not being on the panel next time, that you would follow these hearings as closely and as much as you have contributed to them today.

Ms. JACKSON LEE. Mr. Chairman.

Mr. CHABOT. I would ask unanimous consent that the Members of the Committee have the requisite number of days put in the record either opening statements or other documents.

Mr. CONYERS. Without objection, so ordered.

Ms. JACKSON LEE. Mr. Chairman.

Mr. CONYERS. The gentlelady from Texas, Sheila Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, I will simply put a very brief statement on the record. I know you are closing and just to acknowledge that I just came from chairing a hearing on transportation security, so I want to emphasize to the witnesses that I will submit questions for the record, but I do want to emphasize inasmuch as I have a sizable component of UPS in my constituency, that the reason for being for this Committee is they are all committed to oppose anti-competitive actions. I want these jobs to be kept in Ohio. And if it takes your solution, Mr. Lieutenant Governor, I will work with you and your esteemed Members of this Committee, but if it takes a Department of Justice investigation, I will likewise support that because we must support jobs, and we must void the monopolistic, if you will, sense of this particular industry. And I know DHL wants to work through this as well.

Mr. Chairman, I yield back, put my statement in the record and my questions. Thank you.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, thank you for your leadership in convening today's very legislative hearing on competition in the package delivery industry. Welcome to our distinguished panelists.

The purpose of this hearing is to examine the state of competition in the domestic package delivery industry. The package delivery industry (the domestic market for the transportation and delivery of packages, parcels, and certain types of mail) has both an air and ground transportation component. Virtually all air transportation falls within the segment of the industry known as "express delivery," in which 1- or 2-day package delivery is guaranteed.

Since 2000, the package delivery market has become increasingly concentrated. As a result of the acquisition of Emery Worldwide by UPS and Airborne Express by DHL, the number of market participants has dwindled from 6 to 4: FedEx, UPS, U.S. Postal Service (USPS), and DHL. Currently, USPS outsources "lift" (airport to airport air transportation) for its express delivery service to FedEx, UPS, and ABX.

Recently, DHL announced plans to enter into a 10-year deal to outsource all of its lift to UPS. This would result in the critical component of DHL's most lucrative business segment being controlled by one of its competitors. In addition, the pro-

posed agreement would concentrate lift for the express delivery segment of the package delivery industry into the hands of two companies: FedEx and UPS.

The package delivery industry refers to the domestic market for the pick-up, transportation, and delivery of packages, parcels, and certain types of mail. Within the package delivery market are two components: ground transport and air transport, also known as "lift." A subset of the package delivery market is the "express delivery" market, encompassing those delivery services requiring lift. Those services typically include guaranteed next-day and two-day delivery. Historically, the express delivery market has represented between 60 and 65% of the package delivery market. It should be noted that although USPS has a virtual monopoly in the mail market, it is also a competitor in the express delivery market.

By 2000, the domestic package delivery market was divided among six companies: USPS, FedEx, UPS, Emery Worldwide, DHL, and Airborne Express. DHL acquired Airborne Express in 2003 and UPS acquired Emery Worldwide in 2004. After the UPS-Emery Worldwide deal, there were only four major competitors left: USPS, FedEx, UPS, and DHL.

As of 2007, the domestic package delivery industry earned annual revenues of $32.8 billion for an average volume of 6.644 million shipments per day. For 2007, the domestic package delivery market was divided as follows, by market share and revenue:

FedEx—42.7% ($14.02 billion)

UPS—32.3% ($10.60 billion)

DHL—8.5% ($2.8 billion)

USPS—2.9% ($950 million)

Other—13.5% ($4.45 billion)

The express delivery segment of the market was even more concentrated in 2007, with FedEx and UPS combined controlling 81 percent and DHL controlling another 15 percent. Between 2003 and 2007, FedEx's share of the express delivery segment grew by 10.3% and UPS' share grew by 11.2%, while DHL's traffic fell by almost 27%.

In 2000, the package delivery industry was divided among six competitors: USPS, FedEx, UPS, DHL, Emery Worldwide, and Airborne Express.

In 2003, DHL acquired Airborne Express, and with it, ownership of the Wilmington Air Park, a regional cargo freight hub located in Wilmington, Ohio. In 2004, DHL announced its intention to invest more than $300 million in expanding the Wilmington facility. Also that year, Emery Worldwide's successor company, Menlo Worldwide Forwarding, was acquired by UPS.

In 2007, Germany's Deutsche Post AG, the owner of DHL, posted a $1 billion loss in DHL's U.S. business, DHL Express. In an interview with the New York Times, DHL Express' CEO, John Mullen, cited rising fuel costs and attendant fuel surcharges as factors in depressing the demand for the more lucrative express delivery service and pushing more volume to ground delivery. He further speculated that this consumer shift may be permanent. Deutsche Post AG projected a loss of $1.3 billion in DHL Express' operations for 2008. However, Deutsche Post continued to maintain that the U.S. market was a "vital" part of DHL's U.S. operations and that "pullout [was] not an option."

On May 28, 2008, Deutsche Post announced a reorganization plan for DHL Express. As part of the plan, DHL Express would terminate its lift contracts with ABX and ASTAR and move its air transportation requirements to competitor UPS for all domestic shipments.

The contract would have a duration of 10 years, at a cost of approximately $1 billion per annum. Sorting operations for air transportation would be moved from the Wilmington, OH hub, to UPS' Louisville, KY hub. In public statements, management for DHL and Deutsche Post AG anticipated that the overall restructuring plan, of which outsourcing to UPS is a major component, would result in approximately $1 billion in annual savings. By some estimates, however, shuttering the Wilmington facility would eliminate more than 8,000 local jobs.

Although management for DHL hopes to have the agreement in effect sometime in 2009, there is currently no agreement in place.

It is against this backdrop that we invite today's witnesses to discuss anticompetitive practice in the package delivery industry. I look forward to the insightful testimony of the witnesses and welcome their testimony.

Thank you, Mr. Chairman, I yield the balance of my time.

Mr. CONYERS. Thank you very much, Madam. We will also add the statement of Senator Barack Obama, who has submitted a

statement for the record for this hearing. With that, we close the hearing and thank everybody very, very deeply for their attendance.

[The prepared statement of Mr. Obama follows:]

PREPARED STATEMENT OF THE HONORABLE BARACK OBAMA, A U.S. SENATOR FROM THE STATE OF ILLINOIS

**FOR IMMEDIATE RELEASE**
**Tuesday, September 9, 2008**

**CONTACT:**
**Michael Ortiz, 202 228 5566**

## Statement of Senator Barack Obama on the House Judiciary Committee Hearing on the Proposed DHL-UPS Deal

**WASHINGTON, D.C.** – U.S. Senator Barack Obama today released the following statement on the House Judiciary Committee's hearing on the proposed deal between DHL and UPS. In July, Senator Obama called on the Bush Administration to carefully examine the consolidation of DHL air operations under UPS, which could result in the loss of 8,000 jobs throughout Ohio:

"I commend the House Judiciary Committee for holding a hearing today on the implications of the proposed deal between DHL and UPS, which would allow UPS to assume DHL's air transport services. I have called for a hearing on the same subject in the Senate.

"Several years ago, DHL purchased Airborne's trucks and hired much of its personnel. However, DHL was unable to buy the entire company, which included air transport services, because of federal rules preventing foreign firms from owning domestic airlines. ABX was then established in Wilmington, Ohio, to take control of Airborne's air transport operations, which DHL uses as its primary contractor for that service. Today, DHL wants to terminate that contract and instead contract with UPS, a primary competitor, for those services.

"This proposed deal creates two problems. First, as a matter of consumer policy, it threatens competition to allow two direct competitors to act as partners. Second, it would eliminate 8,000 jobs in Wilmington as well as other jobs that depend on DHL workers, and it would abandon the infrastructure they currently use. Because UPS will use its existing infrastructure and employees to handle DHL's delivery needs, this deal is unlikely to create new jobs.

"While these companies are not proposing a merger, DHL and UPS intend to partner to have UPS provide a key component of the delivery service DHL sells. I have asked the Department of Justice to examine the proposed deal because I believe that it would be bad for consumers and competition, and may possibly violate antitrust laws. This deal would result in DHL becoming almost entirely dependent on its main competitor - UPS - to deliver packages for DHL, and therefore may very well cause serious harm to competition in the express package delivery market. The Justice Department should oppose any deal that would substantially reduce competition and consumer choice in this vital market.

"If the antitrust scrutiny concludes that the deal is legal and it moves forward, the federal government has a real responsibility to step in and help all of those that will be unemployed. Unfortunately, this situation would not qualify these workers for trade adjustment assistance since the jobs are not being shifted overseas; nor are they the result of a free trade agreement. Instead these jobs are being lost in the context of a global market and competition among multinational firms.

"If we know in advance that a deal like this will disrupt a community, then the government should have a strong rapid response strategy that combines federal and state resources and lets people know we will not abandon them. We have reached out to the Administration on this issue, and to its credit, the Administration has a team working on it.

"After everything the people of Ohio did to attract DHL's business, DHL owes it to them to try to negotiate, in good faith, an alternative structure or a new contract to save these 8,000 jobs. Congress was responsive and open to DHL when high-priced Washington lobbyists represented its interests in purchasing Airborne years ago. Now, Congress owes it to the hardworking people of Ohio and American consumers the same level of access, deference, and responsiveness that DHL received."

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[Whereupon, at 5:51 p.m., the Committee was adjourned.]

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