AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

EFFECTS OF THE PROPOSED ARRANGEMENT BETWEEN DHL AND UPS ON COMPETITION, CUSTOMER SERVICE, AND EMPLOYMENT

(110–168)

HEARING

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

SEPTEMBER 16, 2008

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE

45–107 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

JAMES L. OBERSTAR, Minnesota, *Chairman*

NICK J. RAHALL, II, West Virginia, *Vice Chair*
PETER A. DEFAZIO, Oregon
JERRY F. COSTELLO, Illinois
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
BOB FILNER, California
EDDIE BERNICE JOHNSON, Texas
GENE TAYLOR, Mississippi
ELIJAH E. CUMMINGS, Maryland
ELLEN O. TAUSCHER, California
LEONARD L. BOSWELL, Iowa
TIM HOLDEN, Pennsylvania
BRIAN BAIRD, Washington
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
BRIAN HIGGINS, New York
RUSS CARNAHAN, Missouri
JOHN T. SALAZAR, Colorado
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
NICK LAMPSON, Texas
ZACHARY T. SPACE, Ohio
MAZIE K. HIRONO, Hawaii
BRUCE L. BRALEY, Iowa
JASON ALTMIRE, Pennsylvania
TIMOTHY J. WALZ, Minnesota
HEATH SHULER, North Carolina
MICHAEL A. ACURI, New York
HARRY E. MITCHELL, Arizona
CHRISTOPHER P. CARNEY, Pennsylvania
JOHN J. HALL, New York
STEVE KAGEN, Wisconsin
STEVE COHEN, Tennessee
JERRY MCNERNEY, California
LAURA A. RICHARDSON, California
ALBIO SIRES, New Jersey
DONNA F. EDWARDS, Maryland

JOHN L. MICA, Florida
DON YOUNG, Alaska
THOMAS E. PETRI, Wisconsin
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, JR., Tennessee
WAYNE T. GILCHREST, Maryland
VERNON J. EHLERS, Michigan
STEVEN C. LATOURETTE, Ohio
FRANK A. LOBIONDO, New Jersey
JERRY MORAN, Kansas
GARY G. MILLER, California
ROBIN HAYES, North Carolina
HENRY E. BROWN, JR., South Carolina
TIMOTHY V. JOHNSON, Illinois
TODD RUSSELL PLATTS, Pennsylvania
SAM GRAVES, Missouri
BILL SHUSTER, Pennsylvania
JOHN BOOZMAN, Arkansas
SHELLEY MOORE CAPITO, West Virginia
JIM GERLACH, Pennsylvania
MARIO DIAZ-BALART, Florida
CHARLES W. DENT, Pennsylvania
TED POE, Texas
DAVID G. REICHERT, Washington
CONNIE MACK, Florida
JOHN R. 'RANDY' KUHL, JR., New York
LYNN A WESTMORELAND, Georgia
CHARLES W. BOUSTANY, JR., Louisiana
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
THELMA D. DRAKE, Virginia
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida
ROBERT E. LATTA, Ohio

CONTENTS

Page

Summary of Subject Matter iv

TESTIMONY

Brown, Hon. Sherrod, a United States Senator from the State of Ohio 6
Fisher, Hon. Lee, Lieutenant Governor of the State of Ohio and Director of the Ohio Department of Development 15
Hammes, Gary, Senior Vice President and Chief Operating Officer, ASTAR Air Cargo, Inc. 35
Hete, Joseph C., President and Chief Executive Officer, ABX Air and Air Transport Services Group 35
Mullen, John P., CEO, DHL Express 35
Prater, Captain John, President, Air Line Pilots Association International 35
Raizk, Hon. David L., Mayor, City of Wilmington, Ohio 15
Ross, Captain David R., President, Airline Professional Association, Teamsters Local 1224 35
Simon, Samuel R., the American Antitrust Institute 35
Turner, Hon. Michael R., a Representative in Congress from the State of Ohio 7
Wallace, Burt, President of Corporate Transportation, United Parcel Service of America 35

PREPARED STATEMENTS SUBMITTED BY MEMBERS OF CONGRESS

Carnahan, Hon. Russ, of Missouri 79
Costello, Hon. Jerry F., of Illinois 80
Latta, Hon. Robert E., of Ohio 84
Mitchell, Hon. Harry E., of Arizona 88
Oberstar, Hon. James L., of Minnesota 89
Richardson, Hon. Laura A., of California 94

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Brown, Senator Sherrod 96
Hammes, Gary 99
Hete, Joseph C. 114
Mullen, John P. 129
Prater, Captain John 146
Raizk, Hon. David L. 159
Ross, Captain David R. 201
Simon, Samuel R. 218
Turner, Hon. Michael R. 228
Wallace, Burt 231

SUBMISSIONS FOR THE RECORD

Wallace, Burt, President of Corporate Transportation, United Parcel Service of America, supplemental statement 243

ADDITIONS TO THE RECORD

The Honorable Ted Strickland, Governor of the State of Ohio, written statement 248
The Honorable George V. Voinovich, a United States Senator from the State of Ohio 250

U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

Washington, DC 20515

September 15, 2008

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

SUMMARY OF SUBJECT MATTER

TO: Members of the Transportation and Infrastructure Committee

FROM: Subcommittee on Aviation Staff

SUBJECT: Hearing on the "Effects of the Proposed Arrangement Between DHL and UPS on Competition, Customer Service, and Employment."

PURPOSE OF HEARING

The Full Committee will meet on Tuesday, September 16 at 2:00 p.m. in room 2167 Rayburn House Office Building to receive testimony regarding the Effects of the Proposed Arrangement Between DHL and UPS on Competition, Customer Service, and Employment.

BACKGROUND

DHL Express (DHL)[1] and the United Parcel Service (UPS) are competitors in providing air express service, in which packages are generally picked up by trucks, moved by air, and then delivered to the ultimate destination by truck. For the past few years, DHL has contracted with other air carriers to provide the airlift portion of its service. On May 28, 2008, DHL and UPS announced that they intend to enter into an agreement for UPS to provide airlift transportation services for DHL's domestic express and international package volume in the United States, and between the United States, Mexico, and Canada. DHL states that this agreement is the only way that it can continue to maintain its presence in the U.S. market due to the economic losses that is has experienced. The proposal has drawn attention because DHL is trying to remain a competitor with UPS, while also handing over its airlift operations, which are now carried out by ASTAR and ABX airlines, to UPS. Moreover, the City of Wilmington, Ohio, where DHL's hub is located,

[1] The initials of last names of the original founders Adrian Dalsey, Larry Hillblom, and Robert Lynn represent the D, H, and L.

stands to lose thousands of jobs and revenue if this deal is consummated. To date, no agreement has been reached between DHL and UPS.[2]

I. The Air Cargo (Express) Industry

According to the Air Cargo Management Group (ACMG), in 2007 the revenue of the U.S. domestic air cargo and express market[3] combined was $32.8 billion. Of that, Federal Express (FedEx) claimed 43 percent ($14.02 billion) of the market, UPS 32 percent ($10.60 billion), DHL 8.5 percent ($2.8 billion), and the U.S. Postal Service (USPS) 2.9 percent ($950 million).[4] In terms of domestic air express volume in 2007, FedEx claimed 33 percent, UPS 26 percent, USPS 23 percent and DHL 12 percent of the market.[5] The daily package volume in the U.S. domestic express market is now at 6.644 million shipments per day, which is down about 1.8 percent from last year, and about 5 percent below its peak in 2000.[6] Industry insiders attribute the decline in air express package demand to the downturn in the economy, the use of the internet to transmit documents, and the increase in jet fuel prices. In addition, as it has become more expensive to ship a package express or overnight, consumers have shifted their demand to ground package delivery (i.e., 2-3 day service).

According to ACMG, both UPS and FedEx experienced a 2 to 3 percent decline in their domestic express shipment counts in the first quarter of 2008.[7] Between 2003 and 2007, UPS and FedEx experienced over 10 percent gains in traffic, while DHL experienced a decline in traffic of almost 27 percent. In combined market share today, FedEx and UPS represent nearly 90 percent of the U.S. domestic express market in RTMs (revenue ton-miles).[8]

II. Relationship Between DHL, ABX and ASTAR

DHL's roots began in San Francisco in 1969, when it primarily shuttled documents between the U.S. mainland and Hawaii. Over time, DHL became a global express carrier. In 1998, Deutsche Post World Net (DPWN)[9] – the German Post Office – acquired a 25 percent stake in DHL International, and expanded its ownership to 100 percent by the end of 2002. Prior to DPWN's

---

[2] Recent reports suggest that the timeframe has been pushed back to about November 2008, as opposed to August 2008 as originally slated. *Deutsche Post Faces Delays of U.S. Express Business Restructuring – Report*, German Business Digest (September 4, 2008).

[3] The air express package industry is defined as, "[T]he cargo carried by or for the integrated express operators that provide time-definite, door-to-door delivery service using closed-loop systems that include in-house (in the case of FedEx and UPS) controlled aircraft, dedicated sortation hubs and trucks/vans for pickup and delivery." Air Cargo Management Group (ACMG), *Development of the U.S. Air Express Market (2003-2007)* (Aug. 15, 2008), at 1. ACMG was engaged by APA Teamsters Local 1224 to research and describe the structure of and developments in the U.S. domestic express package industry between 2003 and 2007. ACMG was not engaged to issue its professional opinion of such developments or of their implications.

[4] *Id.* at 2. Note that the FedEx component includes an undisclosed amount paid by USPS to FedEx for it to carry Priority Mail. In January 2001, the USPS entered into an agreement with FedEx for it to provide airport-to-airport movement of large containers of its mail, and to drop off packages at FedEx drop boxes nationwide.

[5] *Airfreight and Surface Transportation Report*, Bear Stearns (January 2008). Note that much of USPS's overnight service is provided by FedEx.

[6] ACMG, *supra* note 3, at 6.

[7] *Id.* at 7.

[8] *Id.* at 10, 11.

[9] At the end of 2007, DPWN was 70 percent owned by institutional and private investors and 30 percent owned by the German government.

acquisition of DHL, the company's air operations were conducted by DHL Airways (a U.S. company). After DPWN's purchase, DHL Airways was sold to U.S. investors and renamed ASTAR.[10] DHL's ground delivery operations are conducted by DHL Express, a wholly owned subsidiary of DHL.

In 2003, DPWN acquired Airborne Express for just over $1 billion. Prior to the DPWN acquisition, Airborne Express operated its airlift services through its in-house airline, ABX Air. After the acquisition, ABX Air became a separate, publicly traded company. DHL, as part of its acquisition of Airborne Express, took ownership of the Wilmington Air Park, a privately-owned regional cargo facility in Wilmington, Ohio. In 2005, DHL closed its new Cincinnati hub and moved those operations to the Wilmington facility.[11] According to DHL, the integration of the Cincinnati hub into Wilmington did not go well, resulting in customer service issues and lost contracts.

DHL currently has Aircraft, Crew, Maintenance, and Insurance Service Agreements (ACMI) contracts with both ABX and ASTAR for airlift in the United States. DHL states that having two such ACMI contracts puts it at a competitive disadvantage to FedEx and UPS because it has no operational control over the airlift service.

In 2007, DHL acquired a minority stake in ASTAR, in the hopes that ASTAR would purchase ABX to form a single carrier so as to reduce operating costs. ASTAR subsequently issued an "expression of interest" to buy ABX for $7.75 a share, which ABX rejected.[12]

According to DHL, it has invested over $5 billion in its U.S. operations since 2003, and is projecting operating losses of $1.3 billion in 2008.[13] On May 28, 2008, DHL announced a restructuring plan for DHL Express in the United States consisting of two elements: 1) reorganization and consolidation of its domestic ground network; and 2) negotiation of an agreement with UPS to have UPS provide airlift service for DHL's air parcel and cargo. DHL states that it wants to reduce its U.S. losses by switching to one airline carrier (UPS), while maintaining a strong U.S. presence and continuing to offer comprehensive service to its customers.[14] DHL expects to pay UPS about $1 billion per year under the proposed 10-year contract. DHL's current airlift contracts with ABX and ASTAR would be terminated, and its sorting operation would be shifted from Wilmington to UPS's hub in Louisville, Kentucky. The agreement would effectively eliminate between 30 and 50 percent of DHL's network capacity.[15]

In addition, DHL is reducing its ground line-haul network 18 percent, which includes expanding its agreement with USPS to provide ground delivery service in rural areas. DHL will

---

[10] This occurred since U.S. law prohibits non-U.S. citizens from owning or controlling U.S. air carriers.
[11] *Joint Hearing of the Ohio Senate Finance and Ohio House State Government Committees*, Aug. 19, 2008 (statement of Joseph Hete, CEO of ABX Air).
[12] Letter from Joseph C. Hete, President and CEO, ABX Air, to John H. Dasburg, Chairman and CEO, ASTAR Air Cargo Holdings, LLC (July 24, 2007) (on file with Committee).
[13] Meeting with Wolfgang Pordzik, Executive Vice President of Corporate Public Policy for DHL, in Washington, D.C. (Sept. 4, 2008).
[14] Transcript, Deutsche Post AG, Deutsche Post AG to discuss the future of DHL U.S. Express business – Conference Call (May 28, 2008) (on file with Committee staff).
[15] *Deutsche Post Faces Delays of U.S. Express Business Restructuring – Report*, German Business Digest (September 4, 2008).

close 34 percent of its U.S. stations and pickup and delivery routes.[16] DPWN, DHL's parent company, estimates that the restructuring plan will cost $2 billion, including contract termination cost for ABX and ASTAR;[17] however, it predicts that its losses in North America would ultimately shrink to $300 million by 2011.

II. Impact of Proposed Agreement on ASTAR and ABX

Both ASTAR and ABX report that if the DHL-UPS agreement goes forward they will have to reevaluate their respective company structures and employment needs. ASTAR will likely be forced out of business since the majority of its business is from DHL.[18] ABX states that over 7,000 employees would lose their jobs. To survive in the industry, ABX states that it has three options: 1) operate a maintenance repair organization at the Wilmington Air Park; 2) modify its fleet of Boeing 767 freighters and operate as a standalone ACMI carrier; or 3) cease operating an airline and secure revenue by leasing B767s to other operators. In the last scenario, ABX Air would effectively cease to exist since less than 100 employees would be required to support that operation.[19]

Reports suggest that negative effects of the proposed agreement are occurring now including lost revenue and service for DHL, ASTAR and ABX. ABX disclosed that revenues are down 40 percent[20] and ASTAR estimates that DHL's volume has decreased 40 percent in the past 60-75 days.[21]

III. Impact on the State of Ohio

The anticipated affects of the agreement would potentially devastate the city of Wilmington and much of Ohio. The Wilmington Air Park is the largest employer in southwest Ohio. Approximately 9,000 jobs are expected to be lost in Ohio alone (1,200 DHL employees, 725 employees of ASTAR, and 7,000 ABX employees); one out of three households in Wilmington has an ABX employee.[22] ABX announced that 235 employees would be let go by October 24, 2008 since DHL is retiring 23 of its planes as part of the restructuring plan.[23] In February 2008, DHL cut 3 percent of its workforce in the United States, or 600 jobs, including 35 in its headquarters in Plantation, Florida.[24]

Ohio also predicts that its unemployment trust fund will be insolvent by the end of 2008 or early 2009. Small businesses in the area estimate they will see a 30 percent drop in revenue as well. The Ohio state government is working quickly with all stakeholders to assist employees involved

---

[16] ACMG, *supra* note 3, at 20, 21.
[17] Deutsche Post AG, *supra* note 14.
[18] Meeting with Gary Hammes, COO of ASTAR, Washington, D.C. (Sept. 8, 2008). Approximately 90 percent of ASTAR's revenues are drawn from its DHL airlift operations and the remainder (10 percent) is from military contracts.
[19] *Joint Hearing of the Ohio Senate Finance and Ohio House State Government Committees*, Aug. 19, 2008 (statement of Joseph Hete, CEO of ABX Air).
[20] Meeting with John Herron, Legislative Liaison, Airline Professionals Association, Teamsters Local 1224, Representing the ABX Air Flight Crewmembers, Washington, D.C. (September 2, 2008).
[21] Gary Hammes, *supra* note 18.
[22] See *supra* note 19 (statement of Lt. Governor Lee Fisher, Director, Ohio Department of Development).
[23] *First Wave of ABX Job Cuts to End Oct. 24*, Business First of Columbus (Aug. 28, 2008).
[24] *DHL to Slash 3 Percent of Workforce*, Miami Herald (February 13, 2008).

through job training and career resources, emergency grants, unemployment insurance and other assistance programs.

DHL states that it has committed to provide over $260 million in severance, retention and health benefits for the Wilmington Air Park employees.

IV. Competition Concerns

While the terms of the proposed UPS/DHL airlift agreement are unknown at this time, numerous concerns have been raised about competition in the express delivery market if the deal is consummated. Opponents of the proposed agreement have alleged that it potentially could violate antitrust statutes under both section 1 of the Sherman Act, which prohibits agreements that restrain competition, and section 5 of the Federal Trade Commission Act, which prohibits unfair competition.[25] Because this is not a merger or acquisition, it is not subject to the Hart-Scott-Rodino Act, and thus the parties are not required to file the agreement for pre-implementation review under the antitrust statutes. However, this does not prevent the Department of Justice (DOJ) from reviewing the agreement to determine if there are any anticompetitive effects. In April 2000, the Federal Trade Commission and the DOJ issued guidelines to explain how the agencies analyze certain antitrust issues raised by collaborations by competitors.[26] Some of the factors that DOJ/FTC review include: whether the agreement limits independent decision-making or combines/controls financial interests; competitive effects in relevant product and geographic markets; market concentration; likelihood of anticompetitive information sharing; duration of collaboration; ease of entry for new competitors; as well as procompetitive benefits.[27] These antitrust issues involve complex legal analysis and the Committee has invited an expert to testify on these items.

Opponents of the deal state that allowing DHL to outsource its airlift to UPS, one of its main competitors, would essentially leave DHL "captive" to UPS in terms of capacity, price, and customer service. Airlift services comprise about 60 percent of the cost of shipping a package overnight.[28] Therefore, because a significant percentage of DHL's costs will be tied to UPS, DHL could lose the ability to competitively price its services to compete with both UPS and FedEx (this is called "price squeezing") in the market. In other words, when a direct competitive rival (here, UPS) supplies a major input (air transport) to DHL, the rival is free to increase its rates to the point where DHL can no longer make a profit because it is paying so much for the necessary air transport that its prices must be higher than its competitor's. This means that DHL sales could be detrimentally affected, or, alternatively, if DHL's retail price to its customers is lower than UPS's, it could lose money on each sale that it makes. Either way, DHL could go out of business, leaving the market a duopoly. Moreover, because UPS will also control the capacity on its planes, if DHL is not guaranteed space, its ability to ensure on-time arrivals could be hampered, thus affecting customer service. These pricing and capacity issues raise the question of whether DHL can remain a viable competitor in the U.S. express industry.

---

[25] *See, e.g.*, Ohio Congressional Delegation Letter to Thomas O. Barnett, Assistant Attorney General, Antitrust Division, Department of Justice, and William E. Kovacic, Chairman, Federal Trade Commission (July 15, 2008).
[26] *See Antitrust Guidelines for Collaborations Among Competitors*, U.S. DOJ & FTC, April 2000, *available at* http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf.
[27] *Id.*
[28] Wolfgang Pordzik, *supra* note 13.

In addition, opponents are concerned that if the express industry is reduced to two major carriers, competition could be substantially reduced and prices could increase. When established carriers control markets, the tendency is for the carriers to follow each other's price changes so that prices are identical, and customer choice is limited. If DHL is effectively "neutered" in the marketplace, there would be incentives for UPS and FedEx to refrain from competing with each other, thereby increasing the price overall for express delivery packages.

Opponents have also expressed concern that UPS will have access to DHL's proprietary customer data because the packages that would be sorted at UPS's facility would contain either barcodes or labels that include information such as package contents, volume, name and address, and price. UPS would then have information necessary to not only undercut DHL on price, but also to persuade DHL customers to switch express delivery providers.

Last, opponents argue if DHL decided that it no longer wanted UPS to provide its airlift service, it would not have many other options, especially if ABX and ASTAR go out of business. FedEx may not be a viable option because it would present similar competitive issues that the proposed UPS deal raises. This could also limit DHL's ability to compete in the market.

DHL states that its restructuring plan will improve its financial condition and sustain it as a competitor in the U.S. market. The company continues to see the U.S. market as a crucial piece in maintaining its international network, with manageable losses. DHL notes that it expects to lose $1.3 billion in 2008 (in addition to restructuring costs); that is, approximately $5 million per day. Though the implementation cost of the proposed agreement will be about $2 billion, DHL's expected cost savings from the proposed deal would be approximately $1 billion annually. DHL also states that it will retain complete control over its ground delivery business, pricing strategies, and proprietary information, so as to retain its status as an independent competitor in the U.S. express delivery market. According to DHL, the proposed arrangement with UPS is merely a substitution of one vendor for its current two vendors, and "would not involve any merger, acquisition, or transfer of assets between DHL and UPS."[29] Moreover, DHL notes that similar vendor relationships are common in the transportation industry, stating that FedEx currently provides airlift services for USPS, and UPS claims that similar arrangements exist in trucking, rail and ocean carriage, as well as in the telecommunications industry.[30] DHL also argues that the UPS arrangement would bring substantial operating efficiencies, thus making it a viable competitor in the long term. Moreover, both DHL and UPS state that many of the anticompetitive concerns expressed regarding this agreement can be worked out through contract negotiations.

---

[29] *Competition in the Package Delivery Industry: Hearing before the U.S. House Committee on the Judiciary*, 110th Cong. (2008) (statement of John Mullen, CEO, DHL Express), at 8.

[30] *Id.* at 9. See also, *Effects of the Proposed Arrangement Between DHL and UPS on Competition, Customer Service and Employment: Hearing before the U.S. House Committee on Transportation and Infrastructure*, 110th Cong. (2008) (statement of Burt Wallace, President of Corporate Transportation, UPS), at 3.

WITNESSES

MEMBERS PANEL

The Honorable Sherrod Brown
United States Senate - Ohio

The Honorable Michael R. Turner
U.S. House of Representatives
3rd District, Ohio

PANEL I

The Honorable Lee Fisher
Lt. Governor of the State of Ohio and
Director of the Ohio Department of Development

The Honorable David L. Raizk
Mayor
Wilmington, Ohio

PANEL II

Mr. John P. Mullen
CEO
DHL Express

Mr. Burt Wallace
President of Corporate Transportation
United Parcel Service of America

Mr. Joseph C. Hete
President and Chief Executive Officer
ABX Air and Air Transport Services Group

Mr. Gary Hammes
Senior Vice President and
Chief Operating Officer
ASTAR Air Cargo, Inc.

Captain David R. Ross
President
Airline Professionals Association
Teamsters Local 1224
on behalf of ABX pilots

Captain John Prater
President
Air Line Pilots Association, International
on behalf of ASTAR pilots

Mr. Samuel R. Simon
Attorney
The American Antitrust Institute

HEARING ON THE EFFECTS OF THE PROPOSED ARRANGEMENT BETWEEN DHL AND UPS ON COMPETITION, CUSTOMER SERVICE AND EMPLOYMENT

Tuesday, September 16, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Committee met, pursuant to call, at 2:15 p.m., in Room 2167, Rayburn House Office Building, the Honorable James L. Oberstar [Chairman of the Committee] presiding.

Mr. OBERSTAR. The Committee on Transportation and Infrastructure will come to order.

I see we have a very lively interest and apparently a very long line of people outside. I hope there is accommodation for them in the Subcommittee hearing room to follow the proceedings.

In the interest of time, I will make an opening statement and frame the issue in its broadest strokes, then yield to the Ranking Member, Mr. LaTourette, and we will go directly to witnesses. I will ask Members to use their five-minute time to make their own usual comments.

In light of the late start, because of the length of the previous hearing, I want to get right to the subject matter on the effects of the proposed arrangement between DHL and UPS on competition, on customer service and on jobs.

DHL Express and UPS announced that they intend to enter into an agreement for UPS to provide airlift services for DHL's domestic express and international package volume in the U.S. and between the U.S. and Mexico, the U.S. and Canada.

The two are competitors in air express service. Packages are picked up by trucks, moved by air, delivered again by truck.

Over the past several years, DHL has contracted with other air carriers, ABX and ASTAR, to do the airlift portion of their service. DHL has said that this agreement is the only way it can continue to maintain its presence in the U.S. market in view of their losses, some $3 billion in losses since 2003.

But concerns have been raised about the anticompetitive effect that the proposed UPS/DHL deal would have in the air express market. Furthermore, Members of Congress from Ohio particularly and those in the Wilmington, Ohio, area where the DHL hub is located are concerned. Not only concerned, they are stunned by the loss of thousands of jobs and local revenue.

I understand that. We have had iron ore mining facilities close in my district. We have gone from 16,000 jobs in mining down to 1,800 in 18 months, and the devastation that produces on local economies is painful.

So far, there has been no concrete agreement between DHL and UPS, and it may not be consummated for yet another few weeks.

As you look at this proposition, it is probably the most complex operating and financial arrangement in the post-deregulation era of aviation. I will attempt to lay out just the highlights of the issue.

DHL is an important but not the largest competitor in the air express market. In 2007, that market was $32.8 billion. FedEx had 43 percent of the market; UPS, 32 percent; DHL, 8.5 percent; U.S. Postal Service, 2.8 percent.

But it has not been growing. The express market has stagnated or slipped. The daily package volume in the U.S. is now at 6.6 million shipments a day, and that is down just under 2 percent from last year and 5 percent below its 2000 peak.

Now that is attributable to downturn in the national economy, to the internet for transmission of documents, to jet fuel prices, a host of other business factors.

But if you look forward, if the agreement were consummated, clearly from what I have heard from my colleagues and then independent review, it would devastate the economy of the City of Wilmington. Air Park is the largest employer in southwest Ohio, 9,000 jobs alone: 725 employees of ASTAR, 1,200 DHL, 7,000 ABX employees.

Competition in the express delivery market may also be adversely affected if the deal is consummated. Various observers of the scene, those who are not directly affected, have said that it potentially could violate antitrust statutes that prohibit agreements that result in restraint of trade, but this is a different kind of an arrangement.

It is not a merger. It is not an acquisition. It is not subject to Hart-Scott-Rodino. So the parties are not required to file documents for pre-implementation review under the antitrust statute.

Therefore, the Ohio congressional delegation and the State of Ohio have been frustrated in their attempt to get a better understanding of or respond to the situation.

Now this doesn't mean that the Department of Justice cannot review the agreement to determine whether there are anticompetitive effects, but I think we have a somnolent Department of Justice.

Others have said if you allow DHL to outsource airlift to UPS, a competitor, DHL then would be captive to UPS in terms of capacity, price and customer service. Airlift is about 60 percent of the cost of shipping a package overnight. So, if you lose a significant percentage, then an important part of DHL's costs will be controlled by UPS.

DHL could lose the ability to price its services so as to compete realistically with both UPS and FedEx, a condition called price squeezing. Either way, DHL could well go out of business, leaving the market in a duopoly condition. UPS will control capacity on its aircraft, and if DHL is not guaranteed space its ability to ensure on-time arrivals will be hampered.

If the industry is reduced to two major express carriers, competition would be reduced, prices will go up.

When established carriers control markets, the tendency is for carriers to follow each other's pricing rather than really compete with each other. We have seen that in the passenger market. So, if DHL is neutered in the marketplace, then UPS and FedEx will have less incentive to compete with one another, increasing the price for express delivery packages.

I think those are the broad issues that frame this inquiry today.

With those remarks, I yield to the distinguished gentleman from Ohio, Mr. LaTourette, for a comment. Then I see the Ranking Member of the Aviation Subcommittee has arrived, and we will hear from him.

Mr. LATOURETTE. Thank you, Mr. Chairman, now that I am back in the cheap seats.

Mr. Chairman, I want to thank you for having this hearing and as a testament to the bipartisan nature in which you deal with any issue dealing with transportation in the United States of America. As I said on the day of your elevation to the Chairmanship, none of us on the Republican side would have chosen to be in the Minority, but if we had to we are glad that you are the Chairman of our Committee.

I also want to single out for praise my colleagues from Ohio, although Wilmington is a little bit south from northeastern Ohio. When this matter, which really is going to have catastrophic consequences to Wilmington, Ohio, came to the attention, two public figures—among others but also above others—Congressman Mike Turner of Dayton and our junior Senator, Sherrod Brown, really stepped into the fray and are attempting to move heaven and earth to find a resolution for those who are about to be displaced.

Credit also goes to our former colleague, Governor Strickland, and his Lieutenant Governor, Lee Fisher, who have been intimately involved and have looked at everything, I think, that they can possibly look at from the State side.

This is troubling issue. It is troubling because about 12,000 people have the potential to lose their job, but it also has to be considered in sort of a world view.

If you look at what has happened to the price of fuel, jet fuel being included, there is not a lot of money being made today in the air freight business. As a matter of fact, the United States Postal Service, which is also in the air freight business, is looking at closing a number of its air terminals because it has turned out to be not the moneymaker they thought that it, in fact, was going to be. And so, anything that we discuss has to be discussed in terms of where we are with the cost of fuel in this Country.

It is my understanding also and I think the Chairman rightly says that there is no agreement between DHL and UPS at this moment in time. So, therefore, it is tough to determine whether or not it runs afoul of something when we don't even know what it says.

Just from a business standpoint, I guess I understand UPS's position, and that is they have excess capacity at their facility in Kentucky and why wouldn't they want to use their assets to full capacity.

The difficulty that I have, I think, in this case is with DHL, the German almost owned, German-owned company, 100 percent owned by the Germans, in that it is my observation from just looking at the facts that they made a bet. They made a bet that somebody in the Congress was going to blink on the ownership of American Airlines, and when they didn't blink it thwarted their plans to go from a minority shareholder—and I get them confused, whether it is ASTAR or ABX—to actually taking control. That then has sort of led to a downward spiral.

But whatever the situation, wherever the fault lies, I think that is incumbent upon this Congress to join with the State of Ohio and do whatever we can to alleviate the suffering that is going to occur in Wilmington.

And, the reason I am glad it is here in this Committee is this is an issue that doesn't have anything to do with politics, Mr. Chairman, but I was down in southern Ohio two weekends ago for my nephew's wedding, and I saw an advertisement that somehow this business in Wilmington, Ohio, is John McCain's fault.

It is not John McCain's fault. It is not Barack Obama's fault. We will perhaps determine whose fault it is, but to suggest that it is the fault of one party or another to get somebody elected or not elected to become the next President of the United States, I think is disgusting.

Quite frankly, even though I don't come down on this side of the issue, if this Congress had accepted this Administration's recommendation on the foreign ownership of airlines, perhaps DHL wouldn't have made this decision and 10,000 people wouldn't be losing their jobs.

So I hope we take it out of politics and we put it back where it belongs, and that is let's make sure that we do whatever we can with whatever resources we have to help these folks that are looking at a very bleak feature.

I thank you, Mr. Chairman, and yield back.

Mr. OBERSTAR. I thank the gentleman.

I certainly concur. This is a business proposition that we need to examine from the standpoint of its effect on the economy and its effect on international aviation and trade in cargo.

Now the distinguished Chair of the Aviation Subcommittee, Mr. Costello.

Mr. COSTELLO. Mr. Chairman, thank you.

Mr. Chairman, in the interest of time so that we can get to our first panel, Senator Brown and Congressman Turner, let me be very brief. I will insert a statement in the record.

I, obviously, have some of the same concerns Mr. LaTourette and you share concerning the employees, what it does to the local economy, the competition in the industry, and in particular I am interested in hearing from Mr. Simon concerning the pros and cons of this proposed arrangement for both consumers and for the employees. So I look forward to hearing his testimony and the testimony of the other witnesses.

I thank you, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman.

Mr. Petri, the Ranking Member and Ranking Member of the Subcommittee on Aviation.

Mr. PETRI. Thank you very much, Mr. Chairman. I, too, am looking forward to the testimony of our witnesses today, and I thank you for holding this timely and important hearing.

It is essential that we focus on the financial issues facing the airline industry right now, not least of which is the unprecedented price of jet fuel over the last few months and its impacts on air carriers, both passenger and air cargo. These difficult financial times have pushed many air carriers to make difficult business decisions and to pursue cost-cutting and revenue-generating actions.

In fact, DHL has cited a decline in air express volume and increased operating costs, especially jet fuel expenses, as a reason that they are pursuing the significant steps that are the subject of today's hearing.

As part of their plan to address their ongoing losses, in May, DHL announced that it will work together with UPS toward an agreement to have UPS provide airlift to all of DHL's express, deferred and international package volume within the United States. DHL's airlift service has been and currently is provided by two small air carriers, ABX and ASTAR.

It is not surprising that since the proposed transaction was announced, aviation experts, labor groups, affected communities and other interested parties have commented both for and against this potential arrangement. Indeed, the proposed arrangement's impact on the marketplace competition, customer service and employment have been the subject of much speculation.

While the potential agreement between DHL and UPS is still being negotiated, it has generated great concern particularly among those who could be the most impacted: ABX, ASTAR and the communities such as Wilmington, Ohio, where many, many good jobs could be lost.

This concern is understandable and, given the potential impacts of this agreement, it is both important and necessary for this Committee to fully explore the proposed transaction.

At the same time, DHL has cited that the agreement and restructuring is necessary to address over $1 billion in annual losses. The future of DHL operations in the U.S. also must be considered.

Today, we have before us, representatives of the interested groups to testify about the proposed DHL and UPS agreement. I look forward particularly to hearing from my former colleague and now Senator, Sherrod Brown from Ohio and Representative Mike Turner and welcome them here today. I also look forward to the testimony of Lieutenant Governor Lee Fisher and Mayor David Raizk.

Finally, we will hear from all four of the air carriers involved—ASTAR, ABX, DHL and UPS—two pilot union representative from the American Antitrust Institute.

Again, I look forward to hearing the testimony of all those who are appearing today and thank you again, Mr. Chairman, for having this hearing.

Mr. OBERSTAR. I thank the gentleman.

And now, we will proceed with the testimony from our first panel, Senator Sherrod Brown, a former House colleague—he got good training over here in the House and went over to raise the

caliber of the United States Senate—and Congressman Mike Turner, Representative of the area most directly affected.

We thank both of you for your advocacy for this hearing and the concerns expressed so adroitly.

Senator Brown.

TESTIMONY OF THE HONORABLE SHERROD BROWN, A UNITED STATES SENATOR FROM THE STATE OF OHIO

Senator BROWN. Thank you, Mr. Chairman, and thank you. I concur with the words of my friend, Steve LaTourette, about your Chairmanship. Thank you for that.

And, Ranking Member Petri and Chairman Costello, thank you.

And, Steve LaTourette, thank you for your always support on transportation issues.

I would thank the Ohio Members especially here, Jean Schmidt and Zach Space and Bob Latta, for their work on this issue. I have seen just terrific support from both houses including my senior colleague, Senator Voinovich, and the entire delegation in both parties.

I especially thank Representative Turner who has absolutely led the charge on this issue and has really stepped up.

We both were sort of laughing—that may be the wrong word—with many of the pilots who are here in the room behind us today, that DHL did not expect this kind of community opposition and opposition from people who represent this community to this decision. It did sort of strain credibility, but it is pretty clear how important this is to all of us.

Also, a special thanks to the Governor and to Lieutenant Governor Fisher who have been in there every day on this issue and Mayor Raizk who has just always been on the phones, meeting with people, doing whatever he had to do to fight for these jobs, and the leadership of Teamster Local 1224, Captain Ross, and the Air Line Pilots Association, Captain John Prater and the other pilots that are here today.

Last week, Mr. Chairman, in the House Judiciary Committee, we learned that DHL voluntarily went before the Justice Department, which we appreciate. Yet it will not submit itself to a voluntary investigation and plans, it says, to consummate the deal regardless of the status of the investigation.

That makes it very difficult for the Justice Department to do its work, to examine the deal from the customer's perspective. I hope both companies will reconsider and allow the Justice Department to investigate and not consummate the agreement until the government completes that investigation.

I am particularly disturbed that DHL's confidentiality and exclusivity agreement with UPS to complete this contract limits it from alternative structures that can keep DHL competitive, that can benefit consumers and that can keep jobs in our State.

Specifically, DHL embarked on this proposal with UPS before really engaging the incumbent carriers, ABX and ASTAR, in an effort to reduce costs. ABX and ASTAR have ideas. They had plans. They had proposals. But DHL chose this course before talking with the Governor about ways the State might help DHL cut costs.

After not choosing to work with its partners, DHL went ahead and bound itself to a confidentiality and exclusivity agreement with UPS.

Considering the lengths the State of Ohio went some four years ago when DHL bought Airborne, the lengths the State went to and surrounding communities took to welcome DHL to Wilmington including some $400 million in direct and indirect incentives, DHL's behavior is hardly a model of corporate responsibility.

All of this raises several questions which I don't think have been answered:

How can DHL, under this proposal, lower prices or improve service?

How can DHL prevent UPS from manipulating costs and service?

How does DHL prevent UPS from obtaining sensitive information on customers and pricing?

Congress also needs to understand how DHL took Airborne Express, a company in southwest Ohio that was profitable, and in just four years generated staggering losses while DHL in Germany and Europe overall has been a very, very profitable company. As you know, it is owned by Deutsche Post, the former German privatized post office, a very profitable company in Europe—not so, supposedly, in the United States.

When DHL purchased Airborne Express in 2003, it had an 18 percent market share. By last year, its market share had dwindled to about 7 percent.

The ripple effects of this proposed deal, Mr. Chairman, if it goes forward would reach beyond, as Mr. LaTourette said, the financial hardship it would create in Ohio. The final result may leave a mark on how our government approaches something that I know you are so concerned about, Mr. Chairman, the next stage of the U.S./E.U. Open Skies Initiative which aims to loosen existing rules and regulations and restrictions on E.U. air carriers operating in our Country.

Its proponents claim that these negotiations ultimately will create thousands of U.S. jobs and benefit our Nation's economy enormously. Ohioans have heard this before five years ago.

So, Mr. Chairman, I will close with we certainly want DHL to stay in Ohio. We want them to be successful. We want to work with them. We want them competing in this market.

We want the 8,200 Ohioans, many of whom are represented here today, to continue working, continue being the productive employees they were, many of them, for Airborne prior to five years ago and all of them the productive employees they have been for DHL in the last year or two or three.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you, Senator.

Congressman Turner, welcome.

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

Mr. TURNER. Thank you, Mr. Chairman. I greatly appreciate your holding this hearing today and your great summary as we begin the discussion on this matter because you really laid out

some of the important issues that we need to address in this hearing.

I also want to thank Senator Brown for his hard work and leadership on this issue and Senator Voinovich who has submitted written testimony.

We also want to recognize the Ohio delegation Members—Space, Schmidt, LaTourette and Latta—and, of course, Congressman LaTourette's leadership post on this Committee.

And, Lieutenant Governor Fisher and Mayor Raizk, we appreciate their participation.

We even have the support of the two presidential candidates. Obama and McCain have both weighed in, indicating that this transaction deserves greater scrutiny.

Last week, we had a hearing before the Judiciary Committee. Chairman John Conyers, upon hearing testimony, said that he believed there were further questions that even his Committee wanted to look at, and he asked for the two parties to hold off on the transaction until his Committee could move forward.

We are certainly hopeful that as you all hear today this testimony, that additional questions that you might have could be addressed in the future.

This has been a bipartisan issue, and Mr. Chairman, I appreciate your elevating it before your Committee today.

Wilmington, Ohio is in my district, and I want to tell you a little bit about the people that are there. This facility is not closing because of the people that are there. They are hardworking, they are professional and they are committed.

This facility that is being subject to possible closure operated at a profit prior to DHL's acquisition and its operation.

Professions in this community 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. Families' farms and small businesses depend on the health insurance that is offered at this facility.

Additionally, non-profits and community service organizations will be impacted.

Mr. Chairman, I would ask that I would be able to submit written testimony from Mary Houghtaling, who is President and Co-Founder of Community Care Hospice in Clinton County, which speaks of the issue of the impact on small business and non-profits in the area.

Mr. OBERSTAR. Without objection, so ordered. The document will be received for the Committee record.

Mr. TURNER. Thank you, Mr. Chairman.

But today I wanted, with the others, to outline for you what is bad for the U.S. consumer and what is bad for the U.S. air cargo industry.

If you go back just four years ago and view this as a stepped transaction, you have a very different picture of the U.S. air cargo industry.

Four years ago, there would have been five major carriers that were operating. UPS acquired Emery which disappeared. DHL ac-

quired Airborne which operated at the facility that they are now attempting to close, which disappeared. And now with DHL and UPS looking to combine their operations, we are going to go down to with what was five to two operators in the U.S. market.

But don't just stop there. You also need to look at what is going on in the European market. The Atlanta Journal-Constitution reports that of the three major carriers in Europe—UPS, TNT and DHL—they say UPS and TNT, number three and number two, are in negotiations for a merger. That would mean that in Europe, where there were three major, they are going down to two.

But, in reality, it will be one because if you go to send a package in Europe to the United States and you go into a UPS office or a DHL office, you will in effect be dealing with the same company, the combined operations which we will see in our market.

So what else is bad for the U.S. economy if this occurs besides this consolidation? Well, there are huge barriers to entry in this market. What is an industry that grew slowly now is an industry that requires full integration and logistics throughout the Country.

No one else will be able to now enter the market where this consolidation has occurred. So we have consolidation and we have preventing further competition.

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

What are some of the things that we do know? Well, I met with DHL officials in my office, and here are some of the things that we do know about this:

Their computer systems will have to be integrated because they will have to talk to one another as they go through sending packages of their various volumes.

Their costs will have to be coordinated because DHL will basically become UPS plus.

I also asked them, the DHL representatives, is it possible that this strategic alliance that they are forming with UPS, could it involve also their Asian and European markets, and they indicated that it could.

So what do we need to know? We need to know:

Why would UPS and DHL agree to this?

How did DHL take Airborne, a prior business that was profitable, and generate losses?

What is the future relationship with DHL? Is this just the start?

And what does it mean for the 10,000 people who are Wilmington?

Is UPS in negotiations to acquire others? Is DHL?

I recently had a conversation with the German Ambassador to the United States and discussed with him the issue of the proposed or possible UPS acquisition of TNT, and he indicated to me that perhaps if UPS and DHL combined here that it would affect other approvals for UPS in Europe in the future. That is something UPS needs to consider.

Usually when something doesn't make sense to me, I think that something else must be going on. In this instance, I believe this is a de facto merger.

Why else would DHL hand its clients to UPS?

Why would DHL agree to a cost structure that will become basically UPS plus?

If DHL is going to share its information with UPS, why wouldn't UPS steal DHL's clients?

Why would anyone choose DHL when everyone would know that they are a front office then for UPS?

And why is there no deal for us to scrutinize? Why aren't they able to place before us the transaction?

Well, to me, if it doesn't sound right, it probably isn't right.

I would like to conclude with a paragraph that I put in an op-ed piece that I had in the Cincinnati Inquirer:

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 back yards 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.

Now, in this instance, DHL is going to come forward and they are going to tell you that they are losing a lot of money.

I have to tell you that I believe that bad management is never an excuse to allow market consolidation. DHL has an opportunity to put its house in order without doing harm to the U.S. economy and the U.S. shipping industry.

I guess now that we know that maybe there is a difference with DHL. Perhaps the letters of DHL stand for Do Harm and Leave.

Thank you, sir.

Mr. OBERSTAR. That was very powerful testimony from both the witnesses.

Is there any set of circumstances that either of you can conceive of under which, with a contractual arrangement, where the air services of DHL could remain competitive in Wilmington?

Mr. TURNER. Yes. DHL acquired Airborne. As you recall, DHL was operating its own facility down in Cincinnati, and Airborne was operating there in Wilmington.

When they acquired them, Airborne was profitable and had not generated the losses that DHL had. Certainly, DHL would have an ability to manage its resources so that it does not have these losses.

Now they have mentioned frequently that their inability to own their own airline may contribute to their losses. But even so, they have publicly estimated that of the $1.3 billion that perhaps they lost from bad business decisions, only $300 million may be attributable to not actually owning their own airline.

While this deal has been going forward with UPS, contractually UPS and DHL have entered into an exclusivity agreement prohibiting their current carriers from even making proposals to them. So we don't have the ability to give scrutiny to what their other options are because those negotiations have been thwarted.

Senator BROWN. I would add two things, Mr. Chairman, where I agree with Congressman Turner.

One is that my conversations early in this process with ABX and ASTAR is that they have in fact made approaches. Because of the agreement that Congressman Turner mentioned, they have been rebuffed.

Second, we know that DHL has been a very profitable company in Europe. We are not so sure. We have not been able yet to determine if they have moved profits and losses on paper across the ocean, one to the other, but there is some evidence that when a flight goes from the United States to Europe they may, in fact, credit some of the losses to the U.S. division and the gains to the European part of DHL. We are looking into that.

To run up those kinds of losses after the profit that they enjoyed, that Airborne enjoyed just five years ago certainly raises some questions.

Mr. OBERSTAR. Thank you.

Mr. LaTourette.

Mr. LATOURETTE. I don't have any questions.

Mr. OBERSTAR. No questions. Any questions?

Congressman Space.

Mr. SPACE. Thank you, Mr. Chairman.

I would like to thank Chairman Oberstar and Ranking Member Mica along with Subcommittee Chairman Costello and Subcommittee Ranking Member Petri for facilitating this important hearing today. It means a lot to me. It means a lot to the other Members of the Ohio delegation, and it means a lot to the people of Ohio.

I would like to thank Lieutenant Governor Fisher, Senator Brown, Representative Turner, Mayor Raizk and others for testifying today.

I certainly thank Governor Strickland in his absence for his interest in this issue.

I think their participation in this hearing and their actions so far have demonstrated the commitment that the people of Ohio have to handling the various problems caused by this transaction.

I am hoping that this hearing will shed some light on this merger that will harm not only thousands of families in Ohio but also millions of business and individuals that ship packages every year.

If this deal goes through, the loss of jobs to Ohio are enormous. Southern Ohio's economy is already much worse than most areas of the Country, and this decision will exacerbate an already very difficult economic situation, difficult in a number of senses.

We have seen a steady evaporation of our manufacturing base in Ohio. We have faced numerous infrastructural challenges. We have a glaring lack of access to health care, education and technology.

Our wage scales have become stagnant. Our unemployment is rising much faster than the national rate, and poverty is running rampant, poverty that exceeds 30 percent in some of the counties of my district, poverty in all of its manifestations which include hunger and homelessness and addiction, crime and even the breakdown of the traditional family unit.

It is precisely because of these conditions and these challenges in Ohio that this company was offered such an attractive incentive package just a few years ago. Well, we don't know the full extent

of that incentive package today, but it ranges between 100 and 400 million dollars.

And now, DHL is, in a sense, closing its doors under a veil of secrecy and in the dead of night.

Using what they refer to as a confidentiality agreement, they are refusing the State of Ohio's offer to come in and provide assistance and any means necessary or, at the very least, mitigate the effects of this action on those thousands of employees whose lives will be affected. I find that action both offensive and insulting.

We need to get to the bottom of why DHL has turned its back on Ohio, whether DHL has done anything improper and how this transaction will affect American consumers, the cargo industry and the State of Ohio. Ultimately, I hope DHL will reconsider alternatives to its plans with UPS.

Thank you, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman.

Congresswoman Schmidt.

Mrs. SCHMIDT. Thank you, Mr. Chairman. I do want to thank you for holding this hearing. I will echo Mr. LaTourette. I am glad, since we are not in the Majority, that you are at the helm. You are really guiding the ship in a very fair and nonpartisan way.

I also want to thank Senator Brown for coming forward on behalf of the citizens of Ohio and, of course, my dear colleague, Congressman Turner, who is majorly affected by this.

My district is also affected. About 750 jobs are affected if DHL pulls out.

But really my concern here is something that Congressman Turner echoed too, and I would like him to explain it a little bit more carefully for everyone to fully understand what I think is going on here.

Like, Congressman Turner, when it doesn't smell, it is not right. It is like when you open up milk, and it is all curdled at the top, that is not necessarily cream.

I don't think this is cream here. I think there is something else afoul, and I really think that what DHL wants to do is to force this into a duopoly situation, jacking up the prices and making this unfair for not just the consumers here in the United States but the consumers across the globe as well.

That is where the Department of Justice really needs to enter the situation.

But, Congressman Turner talked about UPS's intention with TNT, and I would like you to kind of explain that a little bit more fully to all of us because it is something I wasn't aware of until you brought it forward just a few minutes ago.

Mr. TURNER. Well, the Atlantic Journal-Constitution reported that UPS is in these negotiations to acquire TNT.

Mrs. SCHMIDT. TNT stands for?

Mr. TURNER. I am not certain, but they listed it as number two in the carrier service industry for Europe. They listed UPS as number three and DHL as number one.

What I think the whole point of that is, is this will not be the end of consolidations. So that if you view this as these two companies are, in effect, merging, what will be the evolution in this in-

dustry where we go down to what will be two in the United States and perhaps two or one in Europe?

You have to look at it as a stepped transaction to see what the total impact will be on the market.

The concerns for the market are, obviously, their ability to affect service, their ability to affect price because once people get control over a market they have ability to say: Your town is too small; we are not going to serve you. Your area is not profitable; we are not going to serve you.

Or, the ability to discriminate through price and to affect other competitors.

What we are seeing is that through this consolidation they will gain that ability, and that is what our concern needs to be.

The human story of the 8,000 jobs that are being lost in southwest Ohio certainly tells the compelling nature of the immediacy of the need for review, but the most underlying important issue is that this is bad for the U.S. economy, bad for the U.S. consumer and bad for this industry to see this level of consolidation.

Mrs. SCHMIDT. May I have a follow-up?

Also, Congressman Turner, I believe it was in your testimony, you talked about the fact that if DHL has this arrangement with UPS, there is not going to be able to be a firewall between the two of them regarding price.

Maybe you could expand a little bit on what happens when the bar code label is put on a package and how that bar code may be expanded when it goes through the processing center so that whoever is processing it can make sure that the proper price is being paid for the actual shipment of it, which what I believe then—correct me if I am wrong—is it makes it painfully aware to UPS exactly what DHL is charging so that they can know what price point is there.

Mr. TURNER. That is an interesting point because DHL and UPS allege that they are going to continue to compete with each other as independent companies.

But in order to consolidate their logistics of the airlift, so to speak, their computers system are going to have to be linked because if I send a package through DHL and they drop it off at UPS and I want to know where it is, it is not just going to go in this black hole of nothingness. UPS is going to be communicating to DHL. DHL won't just say to me, call UPS.

In a way, that shows that the data between the two companies will be shared. UPS will know volume, destination, perhaps pricing. They certainly will know cost.

Those are all the elements necessary to know what your competitor is doing. They are the types of things that you would get in a merger.

Mrs. SCHMIDT. Thank you. I have no more questions.

Mr. OBERSTAR. Do others have questions?

Mr. Arcuri.

Mr. ARCURI. Thank you, Mr. Chairman. I have a question.

You indicated that Airborne was running at a profit. It was profitable five years ago. Is that correct, Senator?

Is there any indication as to why changes in the market or is there any identifiable reason why DHL is now no longer making a profit at that facility, anything?

Senator BROWN. As I mentioned in my testimony, they have lost a significant amount of market share, and I think from Congressman Turner's discussion earlier that that is a question of management in many ways.

I think at the same time they have continued. He may know more precisely, other factors, but at the same time they have been immensely profitable in Europe.

We haven't really seen the question answered: Are they moving profits and losses from one continent to another in part to perhaps deflect some criticism of this merger?

Mr. TURNER. I don't specifically. It will be a great question for DHL as to how they take a company that was profitable and generate $1.3 billion in losses.

There are a number of reports in industry magazines that indicate poor service, overspending, expansion of infrastructure that did not justify based on customer base and loss of customers.

One other thing, by the way, Congresswoman Schmidt asked what TNT stands for. I am told it is Thomas Nationwide Transport.

Mrs. SCHMIDT. Thank you.

Mr. ARCURI. Thank you very much.

Senator BROWN. I would add too, if I could, Mr. Chairman and Mike, after DHL bought Airborne, they also got significant government help. They still had those kinds of losses in spite of the help they got from particularly the State of Ohio but also some local communities.

Mr. ARCURI. So they received a package to stay, they bought the company, and then they are still showing losses.

Senator BROWN. To stay. They promised more jobs. They have, within half a decade, made this kind of a decision.

Mr. ARCURI. I have nothing further. Thank you, Mr. Chairman.

Mr. OBERSTAR. Ms. Hirono.

Ms. HIRONO. Thank you, Mr. Chairman.

This potential agreement raises a lot of issues, not to mention the antitrust concerns, anticompetitive concerns. Is the Department of Justice going to be reviewing this potential agreement in any way, shape or form?

Mr. TURNER. The Senator was just saying we are certainly hopeful. We have no communication from them that they are. We have requested it.

Both presidential candidates have indicated that it would be a worthwhile review to occur. I know a number of other Members of Congress have stepped forward and said that they believe the Justice Department should also.

Senator BROWN. And the Administration has. We don't have commitment yet on that, but the Administration has been helpful. When I asked them for a point person, someone who had the President's ear and the President's Chief of Staff's ear directly, they gave us someone who has been very helpful to coordinate any response from Justice, Department of Labor, Department of Transportation, other Federal Agencies.

So we are hopeful, but we don't know yet.

Ms. HIRONO. So would it be appropriate for Congress to request that the Department of Justice undergo a thorough review of this agreement, potential agreement?

Senator BROWN. We have made that. I don't know if Congress as a body ever does that. I certainly wouldn't object to that. Many of us have done it directly and personally.

Ms. HIRONO. Okay. Thank you very much.

Senator BROWN. Thanks for the suggestion.

Mr. OBERSTAR. Other Members have questions, comments?

If not, we thank you very much for your presentation, very enlightening on the subject at hand.

Both are welcome to remain here. Although under Committee rules non-Committee Members are not allowed to ask questions, but you are certainly welcome to remain as part of the Committee to hear the rest of the testimony.

Our next panel consists of the Lieutenant Governor of the State of Ohio, who is also Director of the Ohio Department of Development, the Honorable Lee Fisher and the Mayor of Wilmington, Ohio, the Honorable David L. Raizk.

Lieutenant Governor Fisher, thank you for being here.

Our thanks to our former colleague, Governor Strickland. I had the opportunity of traveling in his then congressional district in the Port of Columbiana and meeting with local development interests on very important transportation and intermodal issues that they presented. This was several years ago.

I understand the devastation from weather effects that have left two million people without power, that the Governor felt he needed to stay and sent you in his stead.

So, please proceed.

TESTIMONY OF THE HONORABLE LEE FISHER, LIEUTENANT GOVERNOR OF THE STATE OF OHIO AND DIRECTOR OF THE OHIO DEPARTMENT OF DEVELOPMENT AND THE HONORABLE DAVID L. RAIZK, MAYOR, CITY OF WILMINGTON, OHIO

Mr. FISHER. Mr. Chairman, thank you very much for giving me the opportunity to appear before you today.

As you indicated, Governor Strickland wanted to be here, was actually scheduled to be here, but we have had a weather crisis in the State of Ohio. The aftereffects of Hurricane Ike have hit Ohio quite hard. More than two million Ohioans are out of power. Four hundred and fifty school districts have been closed

Governor Strickland is doing what, of course, he always does in these situations, and that is feet on the ground, touring the areas and working to identify what we can do to deal with this emergency, including the possibility and the likelihood of seeking Federal help.

But I will tell you, Mr. Chairman, that Governor Strickland and I discussed you in particular, and he has the greatest admiration and respect for you and wanted me to convey that today.

I want to thank you, Mr. Chairman, and all the Members of the Committee, particularly my colleagues from Ohio, all of whom I know quite well.

I want to begin by repeating what Senator Brown and Congressman Turner said, that this has been a remarkably bipartisan ef-

fort. Congresswoman Schmidt, Congressman Space, Congressman Latta, Congressman LaTourette and many other Members of this delegation, in fact, all the Members of the delegation have joined us in this effort.

I am the Lieutenant Governor of Ohio, and I also have the dual honor and responsibility of serving as the Director of the Ohio Department of Economic Development. I previously served as Attorney General of the State of Ohio, and during that time I was the Co-Chair of the National Association of Attorney Generals Antitrust Committee.

As a former attorney general and the current director of our economic development efforts in Ohio, I am very troubled by the proposal which will potentially eliminate more than 8,000 jobs in Wilmington. Governor Strickland and I believe that this proposed transaction, in addition to leading to devastating job losses, will seriously undermine competition in the United States package market.

But the human cost is what we really focus on. We speak in terms of 10,000 jobs at stake, but that is 10,000 families. It is 10,000 homes and far, far more than 10,000 lives literally turned upside down.

The Wilmington Air Park is the largest privately owned airport in the United States. It is the single largest employer for the residents of six Ohio counties. Every lost job will be felt time and again when these hardworking women and men stop shopping in the stores, eating in the restaurants and buying the houses.

Even as the first round of layoffs has already begun and with the imminent threat of closure dangling over them, the hardworking men and women of ASTAR and ABX and other facilities in the Air Park show up every day, and they give all to their jobs.

DHL has taken the position that this is not necessarily a matter worth of their attention.

Mr. Chairman, attention must be made.

In a free market, businesses can fail, jobs can be lost. I see that every day. We lament the ups and downs of the business cycle, and we make preparations for a better day.

But I would submit to you this is not a free market transaction that we are discussing. It is, in fact, an anticompetitive deal.

After this billion dollar a year deal is in place, a deal that hands over the actual—do you hear that sound?

[Remarks off microphone.]

Mr. FISHER. Okay. I wondered if that was your way of saying I should stop. Okay.

[Laughter.]

Mr. OBERSTAR. The gentleman from Florida will not do that.

Mr. FISHER. Okay. Thank you, Mr. Chairman.

After this billion dollar a year deal is in place, a deal that hands over the actual shipping process to DHL's main rival, the company assures us that DHL and UPS will remain competitors, and I expect that you will hear that today from DHL. In fact, DHL has recently said in the New York Times that DHL is trying to make life as difficult as possible for UPS.

Well, if I were going to make life difficult for someone, Mr. Chairman, I could think of a few things I would try before giving them a billion dollars.

DHL insists that this deal keeps DHL and UPS full-tilt competitors.

I am a Cleveland Browns fan, and the Cleveland Browns will travel to Baltimore this Sunday to play the Ravens. If one of the Ravens fumbles, there is a reason why no one on the Cleveland Browns will pick up the ball and politely hand it back.

It is because competitors are not partners. They have never been, will never be. You are either one or the other.

This deal is a merger in everything but name. If you hand the essential functions of your business to a competitor, that is a merger. If you discard the planes and the people that make your business possible, that is a merger.

It would be one thing for a company that makes refrigerators or pencils to outsource their shipping services, but DHL doesn't make products. It ships them. If you business is shipping and you outsource the shipping, that is a merger.

There is a very real threat to the consumer here. When UPS essentially controls DHL's costs and operations, then UPS controls DHL's pricing. When that happens, there will be effectively only two shipping companies to serve the North American market.

I think it is Economics 101 that if you create a duopoly, you diminish consumers' choices and you raise consumers' costs.

Governor Strickland and I believe that the U.S. Department of Transportation has jurisdiction to investigate this financial agreement. DHL is a common carrier under Federal law, and the U.S. Department of Transportation has authority under the Federal Transportation Code to regulate carriers' business practices and the terms on which they hold out service to the public.

We asked Secretary Peters to exercise her jurisdiction in this matter, and she has respectfully declined, saying that she does not believe that she has authority to investigate.

We are asking this Committee to review Secretary Peters' statements and to encourage the DOT to examine the economic impact of this transaction as is their authority under law and in a way, of course, that would not interfere with the review of the transaction by the U.S. Attorney General's Office or the investigation of the Ohio Attorney General's Office.

Let me add, Mr. Chairman, that the creation of this duopoly would undercut the ability of ABX and ASTAR to continue operating. These pilots you see before us are wonderful professionals. It is their jobs, their families, their livelihood that is on the line which is why they are spending every single day doing everything they can, including being here.

I was here last week, testifying before Congressman Conyers and the Judiciary Committee, and they were here in full force, and I expect they will always be here in full force as long as these proceedings occur in the United States Congress.

It would force off the stage the two major players in an industry, ABX and ASTAR, with incredibly high barriers to entry.

If this were truly a competitive free market transaction, why weren't DHL's existing service providers, ASTAR and ABX, not to

mention the State of Ohio, given a chance to actually present clear alternatives to this transaction and, in the case of ABX and ASTAR, to submit a bid for the work?

Why wasn't our State given a chance to respond before the deal had been decided upon?

I think it is important to point out that Senator Brown made an important statement. He said that we want DHL to succeed, and that is correct. We do. We want them to succeed, but we also want them to live up to their commitments.

And, Mr. Chairman, we are prepared and we have said this repeatedly to work with DHL to deal with their losses, to work with them on an economic development transaction that can be a win-win—a win for DHL, a win for ABX and ASTAR, a win for Ohio but most importantly a win for the men and women whose jobs are seriously at risk.

When this issue first arose, we immediately assembled a DHL Regional Economic Task Force co-chaired by Mayor Raizk, who you will hear from in a minute, and myself and all the Members of the congressional delegation.

Last week, we learned from DHL and UPS during another congressional hearing that they have a memorandum of understanding prohibiting them from talking with other parties, including the State of Ohio, while their negotiations are ongoing.

In this hearing room today, I join Senator Brown and Congressman Turner in publicly requesting that both DHL and UPS discard this arrangement so that our administration and other parties involved can present good faith alternatives to the transaction with UPS. DHL made $6 billion in profit last year, and we have no doubt their Ohio operation could contribute to that bottom line.

I want to thank the Members again of the Ohio congressional delegation and you, Mr. Chairman. The Federal Government once helped to facilitate DHL's acquisition of Airborne Express, and now we need the Federal Government's help to facilitate DHL's continued existence in Wilmington, Ohio, as a real service-providing company.

Thank you, sir.

Mr. OBERSTAR. Thank you very much, Governor Fisher. I greatly appreciate your testimony and elaborating on the arrangement between the State and DHL.

Mayor Raizk. I pronounce it Raizk.

Mr. RAIZK. Raizk.

Mr. OBERSTAR. But I earlier pronounced it Raizk. That is the way we would say it in Slovenian. That must be Polish, though.

[Laughter]

Mr. RAIZK. No, it is not. Senator Voinovich says the same thing, but actually my background is Lebanese. It is an Ellis Island spelling.

Mr. OBERSTAR. Oh, okay. Well, it is a good ethnic name anyway.

Mr. RAIZK. It is a good ethnic name, absolutely.

Mr. OBERSTAR. Very much at home in my part of the world.

Mr. RAIZK. Absolutely.

Mr. OBERSTAR. Yes. All right.

Mr. RAIZK. Thank you very much, Mr. Chairman, and I sincerely appreciate the opportunity you have given us by holding this hearing and to hear our story in Wilmington, Ohio.

First of all, I said after last week's hearing that I was never prouder to be an Ohioan than I was on that day. For everyone to see the total bipartisan effort of all the Ohio delegation in coming to the aid of Wilmington has been truly amazing.

I can't thank enough Senator Brown and Congressman Mike turner. They have been with me almost every step of the way.

Also, Senator Voinovich and all the Ohio delegation, I appreciate all of your efforts, and certainly Governor Ted Strickland and this gentleman to my right, Lieutenant Governor Lee Fisher. Since three days after the announcement we have been together, and he has supported me in everything that I have done.

I am also honored to represent the community that I serve, my home town, Wilmington, Ohio. Wilmington in Clinton County is a wonderful place to live, work and raise your family. But since May 28th, a storm has been hanging over Wilmington, and it won't go away.

On May 28th, DHL—Wilmington's and Clinton County's largest employer and 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, effectively ceasing operations at the Wilmington DHL airport.

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

Given the current economic climate that has been going on and continues, we knew that some restructuring was in the works and some job losses would be coming primarily as a result of the standing down of the DC-9 portion of their business.

But there was reason for optimism concerning the Wilmington Air Park. In February, I hosted a conference call in my office with Governor 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 assured the Governor that although there would be some job cuts coming, they were committed to the Wilmington Air Park.

In April, in discussion 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 Steinmeier, the keynote speaker at the hub opening, mentioned Wilmington, Ohio in his address.

Imagine my shock two days later when I received the news firsthand that DHL was seeking a deal with UPS.

CEO John Mullen of DHL, whom you will hear from later today, was very gracious in granting me an audience after that announcement.

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 located in and around the Air Park with direct or indirect relationships with the operations there would be almost 10,000. The annual payroll for ABX Air, DHL and ASTAR Air Cargo alone is $257 million. Health care benefits provided for their employees are another $63 million.

These employees of these three companies provide 9 percent of the revenue to our local hospital. Losing that would result in a loss of seven to eight million dollars in revenue plus the resulting increase in charity care when these benefits cease. It would put them out of business.

This transaction would bankrupt the State's unemployment insurance fund. The impact to schools, city and county government, non-profits and local businesses would be devastating. Our data analysis indicates that one in five small businesses will fail in the region.

If I sound alarmist, it is because we are facing an economic catastrophe of unparalleled proportion.

We are not trying to save old technology jobs that have failed to keep pace with the new economy. These are 21st century jobs: pilots and crew members, supply chain and logistics professionals, airframe and aircraft mechanics, conveyor engineers.

And, this isn't Rust Belt versus the Sun Belt. These jobs 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 Wilmington. Many husbands and wives both work at the Air Park.

Many family farms are saved because part-time work at the Air Park provided the health care that they needed for their families.

Students at Wilmington College, many the first in their families to go to college, reduced their indebtedness at graduation by working with ABX.

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 proposed transaction would literally rip the fabric of our town.

Now I don't know about antitrust, and I don't know the definitions and what your criteria are. 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. How can you be a player without a hub?

FedEx has a hub. UPS has a hub. DHL will no longer have a hub if this goes through.

Financial Times Deutschland, this past week, recently reported that CEO Frank Appel of Deutsche Post World Net said that they are going to, instead of reducing their footprint in the United States 30 percent, they are going to move it to 50 percent and, in

doing so, may contract with UPS to handle some of their ground transport instead of the United States Postal Service for that last mile.

Again, if we are losing air and ground, 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. There is something more going on here.

In Wilmington, a foreign-owned company with huge assistance from the State and local governments took over ownership and operations of the largest private airport in the United States, a state of the art facility. In a little over three short years, if they complete this transaction, they will have taken two American companies that had significant market share off the board. In the process, they will displace almost 10,000 American jobs.

If this is what unfettered globalization means to America, then to paraphrase Senator Sherrod Brown, we are indeed in a race to the bottom.

For, at the end of the day, this is about people. These folks are not just numbers on a page. They are our friends and our neighbors, our families. We go to church with them. We attend PTA meetings together. We go and watch our kids play ball.

How will they pay their mortgage? How will they feed and clothe their kids? How will they educate their children?

Please think about these hardworking Americans as you consider these issues.

Thank you very much for the opportunity to speak, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mayor, for painting a picture in the very stark and real and personal way that you did.

Lieutenant Governor Fisher, you were formerly Attorney General. How can there be real competition in ground service if UPS is going to handle all the air service?

They say this is a contractual arrangement for the air service, that the ground service of DHL will remain or will survive the agreement. If UPS provides the feed, then how can there be a real competition?

Mr. FISHER. Mr. Chairman, I think first, as you have heard Mayor Raizk say, the ground transportation actually may be next, that this may be the next step.

The combination of UPS's and DHL's overnight shipment business would give UPS total control of more than half of the small packages that are shipped for overnight delivery in the United States.

That high market share is magnified by the fact that it is highly unlikely that any new competitor would be able to enter the relevant market following the consolidation because the industry, Mr. Chairman, already has high barriers to entry in the form of significant up-front capital investments, marketing costs, important name recognition requirements, a large number of exclusive contracts, and the competition that has been represented by DHL has served as an important constraint on UPS's pricing and forced continual improvement of quality of service. That is what happens when you have competition.

I think FedEx, with all due respect to it, unlike DHL, does not have the incentive to be a price maverick like DHL has been.

And so, I think the bottom line result here is that, as has been said many times, it is in fact, we think, a de facto merger.

Mr. OBERSTAR. Thank you for that response.

The State of Ohio, you spelled out, gave $400 million in incentives.

We have been through something similar in Minnesota with Northwest Airlines when they were at the edge of bankruptcy, and the State Government, actually it was the airport authority, provided bridge funding for Northwest Airlines to convert their high cost, short-term debt to lower-cost long-term debt in the aftermath of the Checchi-Wilson buy-out that loaded the company with a huge amount of debt.

But there were caveats. Not caveats, there were agreements in that funding that made certain obligations upon Northwest: Maintain their headquarters in Minnesota. Maintain a Minneapolis-St. Paul hub. Maintain a certain level of employment.

Over time, those agreements have been modified, eroded because of market conditions.

Were there similar commitments made by DHL in exchange for the funding provided and the financial incentives for them to locate and are they enforceable?

Mr. FISHER. Chairman Oberstar, the answer is yes. With every economic development transaction in which we provide tax credits, grants and/or loans comes a corresponding commitment by the company with regard to the retention and/or creation of certain job levels over a period of time.

In this particular case, in 2004, a job retention tax credit based upon a $295 million payroll was offered with an estimated credit value of about $66 million, a job creation tax credit at 90 percent for 5 years with an estimated credit value of about $13 million, direct grants called Rapid Outreach Grants of $2 million, workforce training grants up to $2 million, a roadwork grant of $1 million, and a commitment to build a new route called the Wilmington Bypass.

Now, in fairness, DHL has not received at this point all of those commitments. It has received some, particularly the outright grants.

We have callback provisions in all of our agreements. If this transaction does in fact go through and in fact they do abandon southwest Ohio, we will aggressively seek back all those commitments that we are lawfully allowed to do.

Mr. OBERSTAR. Of course, you really want the jobs. You don't want the callbacks.

Mr. FISHER. That is exactly right.

Mr. OBERSTAR. Mr. LaTourette.

Mr. LATOURETTE. Thank you, Mr. Chairman.

Actually, Mr. Chairman, our Lieutenant Governor is hiding his light under a bushel basket. When he was elected to be the Attorney General, we used to call him Landslide Lee because he won by 1,234 votes and anytime you went to one of his speeches he would say his favorite numbers are 1,2,3,4.

Mr. FISHER. That is right.

Mr. LATOURETTE. And just the last note on your statement, Lieutenant Governor, if the Browns recover a fumble after watching them play the Cowboys and the Steelers, I will be shocked.

[Laughter.]

Mr. FISHER. You said that. I didn't, sir.

Mr. LATOURETTE. Lieutenant Governor Fisher, you have outlined the incentives that the State of Ohio has offered or is prepared to offer DHL, and I thank you for that.

In your observations, you talked about an MOU, a memorandum of understanding. I don't find anything sinister in the fact that two parties that are discussing. I think it is pretty boilerplate that they would have a clause that you are not going to talk about what it is you are talking about and also competitors.

But the question I would ask you is have you or the Governor or Senator Brown or Congressman Turner made the request of DHL and UPS that they release that last piece?

I mean I don't think it is unreasonable that two businesses talking about whatever it is they are talking about don't have to tell you what it is they are talking about.

I think that for them, for DHL, well, I guess they don't have shareholders because they are owned by the German Government. I think for DHL to make a business decision as to whether or not this is a good deal with UPS or not, I think it would be incumbent upon them to see what else is out there.

Have you all made that request of the two companies and, if so, have you received a response?

Mr. FISHER. Mr. Chairman and Congressman LaTourette, the answer is yes, we have. I have had two phone conversations with Frank Appel who is the CEO of Deutsche Post World Net in Bonn, Germany and, to him and also to Mr. Mullen, we have made the request that they consider alternatives both from the State of Ohio, ABX and ASTAR and give us the opportunity to meet with them any time, any place including in Germany.

The Governor and I both have offered actually to travel to Germany on a moment's notice if we believe that they would seriously consider an offer by the State.

They have indicated that they do not believe there is any alternative that is viable, and they have also recently indicated that the provision of their agreement with UPS bars them from actually engaging in that discussion.

We have asked them both privately and publicly to, in fact, set aside that portion. I think you are right. We are not asking for the details, at this point anyway, of their transaction with UPS. We will see that eventually if, in fact, it goes through in a written agreement.

What we are asking is that before they actually sign on the dotted line and consummate such agreement, it seems to me it is only good business sense beyond the interest of fairness, good business sense to explore every viable alternative.

Now they, I think, would say to you they have looked at alternatives, but I think that that would be disingenuous because the State of Ohio obviously has resources available to it that could be offered to DHL under the appropriate circumstances. They have

never asked us for that, and we have never been given the opportunity to offer them.

Mr. LATOURETTE. We are going to see their representatives on the next panel, and I will ask them that question.

Mayor, in your testimony, you talked about a meeting where everybody said, we love Wilmington. Then you had another meeting. Everything is going great. Even though with the way the economy is going, you expected some job losses.

Then they have you over to Leipzig, apparently to a big party, and they sort of lowered the boom. I hope you had your ticket paid for on the way back.

What happened? I mean were they just lying to you? Did they hose you?

What happened between those happy meetings and when they gave you the news in Germany?

Mr. RAIZK. I really don't know. As I said, before I left, we vetted it out very carefully that there was going to be some announcement in Germany on the 28th.

But in consultation with the Department of Development and Lieutenant Governor Fisher's office, in consultation with both ASTAR Air Cargo and ABX officials before I went, everybody felt comfortable with the idea that there were going to be some cuts coming. They were looking at restructuring.

We had this conversation back in February, as I said, with the Governor on a conference call in my office. The Governor was very specific in his request of DHL officials, that okay, we know that things are going to have to happen and you have some losses, but are you committed to the Wilmington Air Park? And the answer to that was an unqualified yes.

Then I can only and the Lieutenant Governor can verify with the conversations that he had in April, still prior to my going.

So you can understand that looking at those, if I took the history of those conversations and also even the day before I left, what we felt might comprise the announcement on the 28th.

It was certainly a blow because it was just out of left field that we were going to not cut jobs necessarily or restructure how we are operating, but we are going to turn it over to UPS, which was completely a rout.

In fairness, no one said on May 28th in the announcement to their shareholders that they were abandoning Wilmington, the Air Park. But what they said, if they handed their airlift to UPS, UPS's hub is in Louisville, 125 miles from Wilmington. It doesn't take a lot of math to figure out that Wilmington was done and the freight was going to go to Louisville.

So, no, I don't know. Frankly, I believe that this decision was at a very, very high level amongst Deutsche Post and DHL officials. I do not believe that very, very few people in America even knew of this decision or of this, and I think that has been borne out subsequently.

Mr. LATOURETTE. Mayor, thank you. We are going to see that same bunch in the next panel. I will ask them.

Mr. RAIZK. You can ask them.

Mr. LATOURETTE. I will ask them.

Thank you, Mr. Chair.

Mr. RAIZK. Thank you, Congressman.

Mr. OBERSTAR. Other Members wish to be heard?

Ms. Johnson. Thank you, Mr. Chairman.

I am trying to determine as I listen whether this is an acquisition or a contract. Is the business closing?

Mr. FISHER. Congresswoman, I think that it is fair to say that it is named one thing but is another. It is being termed a transaction or an agreement, but we think it has all the effects and the results of an actual merger.

The result of that transaction or merger, whatever you call it, will be the loss of some 10,000 jobs in southwest Ohio because they will either be eliminated entirely or moved, as Mayor Raizk just said, 125 miles south to Louisville, Kentucky, where UPS has its hub, because UPS will now be the provider of DHL's air services.

Ms. JOHNSON. What is the motivation for this happening? Are they losing money?

Mr. FISHER. Congresswoman, yes, the answer is that their motivation, as has been explained to us, is that they are losing money.

Our response is I am not at this point disputing whether or not they are losing money. I don't have enough information to be able to say that is true or not true. But I do think even if we accept that as fact, what is important is that they explore every viable alternative before engaging in a de facto merger that would have the result of the loss of 10,000 jobs.

One of those alternatives would be sitting down with the State and the two carriers that they currently contract with, which are called ASTAR and ABX, and either separately or preferably together see if we could work out ways to deal with their cost issues and challenges, at the same time, saving the jobs in Wilmington.

Ms. JOHNSON. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. I would like to observe for the record that Senator Voinovich has talked to me about this situation, and we will keep the record open for a statement that he may submit, but he is very deeply concerned.

He and I worked together on a great many issues of economic development over the years, going back to when he was Mayor of Cleveland.

Congressman Mack? No questions.

Congresswoman Schmidt.

Mrs. SCHMIDT. Thank you, Mr. Mayor. Don't ever let anyone say that a mayor doesn't have a big job because you certainly do, especially in this situation.

In your written testimony, you indicated that the losses to the Wilmington community, should DHL reach an agreement with UPS and decide to shut down the Wilmington Air Park, will be enormous.

Everyone has been focused on job loss, but as a former local government official I know that the underpinnings of that can be far more devastating than just the actual loss itself. Could you please elaborate to this Committee what you believe will be the underpinnings of that pullout?

Mr. RAIZK. Thank you, Congresswoman Schmidt.

First of all, it is not just Wilmington, and I think it is important for the Committee to understand the regional nature of the employment at the Air Park. As you indicated, in your area, there is a significant number of jobs of folks who work there. It is the six surrounding counties that are affected.

So, as we look at this, for instance, just the uncertainty alone, sales tax receipts are down in our county. Even though there has not been a significant job loss, there has been some, over a million dollars in the last month because people are scared, and they are not purchasing or buying or doing those things that they would normally do, because they don't know if they are going to have a job or not.

I think the biggest thing is not just the employment, but it will be the concept of retraining, and that is going to be difficult. There is going to have to be huge resources for retraining.

And it is real interesting. As I have said, these are 21st Century jobs. How do you retrain folks who have the skills for the 21st Century? What do we retrain them to?

The impact on small business, as you know, Ohio's number one employers are small businesses all over the State. Although we still have agriculture in our area, the impact on the small business is just going to be huge. We have determined through some data analysis that one in five will fail, and that is not just in Wilmington. That is throughout the region.

Then there is the resultant more job loss that are not reflected in those 10,000 because most people work for small business in Ohio.

So I think the health care system is going to just get a terrible situation of how they are going to survive because they are going through rough times as it is.

Education, I am really concerned about the schools. For instance, the Wilmington City School District is supported by a 1 percent income tax. If these jobs go away, they will have a devastating effect to their school system.

Mrs. SCHMIDT. Mr. Mayor, I would like to continue along that line. You said that the Wilmington schools have an income tax that feeds their schools, and so a loss of jobs is a loss of income to them. But what about the City of Wilmington as well?

I am sure you have a fire department, a police department. You have a road department. How many employees do you have? What is your budget?

How much of that budget is dependent upon DHL's presence and, with a DHL pullout, what does that do to the City of Wilmington directly?

I mean you have talked about the indirect effect, and I think that speaks miles that you are looking out for everyone around you, but I also want to hear what the effects are going to be for the City of Wilmington directly.

Mr. RAIZK. Well, it is funny you should ask that because the City of Wilmington has always supported the Air Park through infrastructure, through the impact that its citizens have put up with. We are a community of about 12,000 that basically during the day supports a community of about 30,000 because we provide water

and sewer and the road structure. Everything comes through the town, the freight, the fuel trucks.

But until January of this year, the Air Park was not a part of the City. We did just recently annex the Air Park with the anticipation that we would receive, because we do have a 1 percent income tax as you know, about $2.5 million a year that we have been looking sorely forward to because for the last 30 years the citizens have been supporting the Air Park and that infrastructure out of their own pockets without receiving any revenue.

So, while we have geared up to take care of all of those things, it was time to get the citizens paid back for their contributions to the economic engine out there. Unfortunately, just as we are starting to get the receipts in, now we are under the threat that they are going to take them away.

We have about 160 employees in the City of Wilmington. We are very unique. We operate our own fully permitted EPA landfill. We have our own water. We have our own sewer. We have our own full-time fire department and police departments.

Certainly, we have geared up with anticipation of taking care of this additional acreage and those folks who work out there. Now we are looking at probably having to retrench if we can't have that income.

Mrs. SCHMIDT. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Congressman Space.

Mr. SPACE. Thank you, Mr. Chairman.

Mr. Mayor, I just want to commend you for the very able representation on behalf of your constituents that you have rendered today.

Mr. RAIZK. Thank you.

Mr. SPACE. Lieutenant Governor Fisher, I have had the pleasure of working with you and your staff on a number of projects in southeastern Ohio in the past, and I have found that you and your staff have repeatedly bent over backwards to help those existing businesses as well as prospective businesses that we are trying to draw. It has been nothing but positive at every turn in dealing in very difficult circumstances.

I just want to make sure I understand your testimony correctly. It sounds to me, from what you have indicated, that you have reached out to DHL in an effort to provide them with information and specifics on what kind of incentives the State of Ohio may be willing to offer in an effort to keep them in their status quo or something like it and that they have rejected that offer, that extension of an offer for help on the basis that they can't about it due a confidentiality agreement that they have signed.

Is that a correct representation?

Mr. FISHER. Congressman Space, let me back up and just say a few things. First of all, thank you for what you said.

First to amplify on what Mayor Raizk said, prior to May 28th, we had several conversations with DHL on a variety of different matters in which, although it was not necessarily the subject at hand, we specifically asked the question: What was the future of the Wilmington air hub? And I think it is fair to say the answer was that they were experiencing some financial challenges but led

us to believe that the future was still good, solid and bright despite those financial challenges.

Now I do want to say that I think Mayor Raizk is probably right, that those with whom we were speaking at the time probably did not have knowledge that superiors in Germany were thinking something else.

In other words, I want to give them the benefit of the doubt that they were not purposely misleading us. I have no reason to believe they were misleading us. I do have reason to believe that they had an opportunity to give us information that the company itself clearly had even if the individuals with whom we were speaking did not.

The second point I would want to make is that repeatedly after May 28th, in meetings with senior executives of DHL and in two conversations with Frank Appel, we have indicated that we would like the opportunity to sit down with him and find ways where the State could be a risk-sharing, collaborative financial partner with them.

Now, no specific offer of a specific amount of tax credits, grants or loans has been offered nor could it be until we were actually in such discussions. But the point is we want to have such discussions, and we have been rebuffed in our request to have such discussions.

Mr. SPACE. Has that refusal to sit down been ostensibly based upon the statement or the position that they can't talk about it due to confidentiality provisions within an agreement between them and UPS?

Mr. FISHER. Congressman, initially, no. Initially, the response was simply that they believe that internally they have already examined all their alternatives and do not believe that there is any information that we, ABX or ASTAR could present to them that they don't already have.

Later on, as the weeks went by, we learned that there was apparently a confidentiality or exclusivity agreement with UPS. That was confirmed publicly, I believe, by Mr. Mullen in his testimony before the House Judiciary Committee last week.

I think it is fair to say that that is now an additional reason that has been offered, but that was initially not the reason that was offered, that was given to us why they wouldn't consider the alternative.

Mr. SPACE. Okay. Thank you, Lee.

I yield back.

Mr. LATOURETTE. This is what they call a bloodless coup.

[Laughter.]

Mr. PETRI. Congratulations, Mr. Chairman.

Mr. OBERSTAR. There will not be a coup. This is going to be a long hearing. I need more coffee.

[Laughter.]

Mr. OBERSTAR. Now let's see. The gentleman from Ohio has completed his questions. So, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman. I really just have one question as kind of background for this and how it fits in with the State of Ohio.

I wonder if you could, Governor Fisher, comment about the state of the unemployment fund for people in Ohio and how this, if it goes through, could affect that fund?

Mr. FISHER. Congressman, I think it is fair to say that it puts it at serious risk. As the Mayor has indicated, we already are facing some serious problems with regard to our unemployment fund, and this would only exacerbate them.

I can't give you specific figures today, but I don't think there is any question that in all my years in and out of public service, which totals 28 in Ohio, I have never seen this kind of job loss in one fell swoop like this. So it only goes to say as a result, logically, that it is likely to have a very significant negative effect on our unemployment compensation fund.

Mr. OBERSTAR. Ms. Hirono.

Ms. HIRONO. I note in the Mayor's testimony that, Lieutenant Governor, you have confirmed that the Attorney General of Ohio is looking at this proposal.

Does the State's antitrust laws mirror the Federal antitrust laws?

Mr. FISHER. Yes, Congresswoman, it does. Ohio has an antitrust law known as the Valentine Act which has very similar provisions to the Sherman and Clayton Acts on the Federal level.

And so, the answer is that the Ohio Attorney General, Nancy Rogers, is currently conducting her own independent information gathering. She is in a position really similar to the U.S. Justice Department, and that is until there is an agreement, if there is one, until there is an agreement with UPS, they have nothing they can actually analyze.

The good news, however, is that both the Ohio Attorney General and the U.S. Attorney General, at our urging, are collecting facts. So they will be able to hit the ground running if and when there is an agreement between UPS and DHL to determine whether either a State and/or Federal investigation are appropriate.

And, they are not dependent on each other. For example, if the Federal government decides that they are not going to pursue it, that would prevent or prohibit the State from conducting its own antitrust enforcement action or an investigation.

Ms. HIRONO. So does that mean that if this agreement, once there is something to look at and analyze, if the agreement were to contravene the State antitrust laws, that Ohio could prevent this agreement from going through?

Mr. FISHER. It is my belief that it could. Under Ohio's antitrust laws, yes, I believe that is possible. It remains to be seen whether that will be happening, but the answer is yes.

Ms. HIRONO. Thank you.

Mr. OBERSTAR. Mr. Duncan, the gentleman from Tennessee.

Mr. DUNCAN. Governor Fisher, three of my dad's sisters moved to Cincinnati when they were young, two of his brothers to Dayton. A cousin on my mother's side is a car dealer in Cleveland Heights. Our best friends in Knoxville are from Cambridge. I think I have more connections to Ohio than any State other than Tennessee.

Mr. FISHER. Wow.

Mr. DUNCAN. No Member on either side wants to see anybody lose their jobs and especially a job loss of this magnitude.

Mr. Mayor, I will tell you I haven't voted for a lot of this what some people have called globaloney. I heard you mention the globalization.

But having said that, I haven't studied this to the extent that you all have. I was told that DHL is losing a billion dollars a year or perhaps even more. Common sense would tell you, you can't force a company to keep losing money. They have to, at some point, pull out or let people off or something.

I notice, Governor, that you said you don't know whether they have really lost this money or not, but that assuming they had you don't feel like they have looked at all the reasonable alternatives.

What I am wondering about is what are the alternatives as you see them?

What could they do if, as you said, assuming they are losing this horrendous amount of money? What alternatives do they have?

Mr. FISHER. Congressman Duncan, first let me just say that I know lieutenant governors love to be called governor, but I don't like being governor.

Mr. DUNCAN. Well, Lieutenant.

Mr. FISHER. We only have one governor.

Mr. DUNCAN. Okay.

Mr. FISHER. So Lieutenant Governor or LG or something like that.

Mr. DUNCAN. All right. All right.

Mr. FISHER. The thing that I would say, Congressman, is that every day we are working with companies that are facing losses. That is not unusual.

What is unusual is that a company with whom we have ongoing communication and, frankly, a good relationship, all of which certainly typifies what we had with DHL, goes ahead and makes a decision without discussing it with the State to see if the State would be able to help them deal with their financial challenges and makes a decision which has a seriously negative effect on employment and Ohio's economy. That is unusual.

It is not unusual for us to sit down with a company and try to work out their financial issues. Do we think the State, by and of itself, can solve them? Of course not.

However, one of the things we specialize in is bringing together resources from a variety of different sectors: the Federal Government, the local government, the county government, private equity, private sector, non-profit. That is what we do every day in our department.

Do we always succeed? Of course not.

But are we given the chance almost 99 percent of the time? Absolutely. We got no chance here.

I cannot tell you positively that had we been given the chance or that if we were to be given the chance, that we could address most or all of their challenge. But I know that given our record of success, that DHL owes it to the people of Ohio to give us a chance to see if we can.

Mr. DUNCAN. Do you have anything to indicate to you? I mean if a company is losing a billion dollars a year here in the U.S., do you have anything to indicate to you that they haven't on their own explored every reasonable alternative?

When you say that you do this every day, have you ever been able to save a company that is facing losses of this magnitude?

Mr. FISHER. Congressman, I think.

Mr. DUNCAN. I am not arguing with you. I am really asking.

Mr. FISHER. No. I know what you are asking.

Mr. DUNCAN. I don't really know.

Mr. FISHER. No. That is a fair question. I think it is fair to say that it is rare, and I can't think of a precedent right now where a company said they were losing as much as DHL was losing. So I think that is a fair point.

But I would also tell you that let's take one possible solution here. There was a point of time, I believe in the not so recent past, where DHL wanted to deal with just one local carrier as opposed to two. There are two today, ABX and ASTAR.

It is my understanding—and there are people sitting behind me who know more about this than I do—that DHL, which has a 49 percent ownership share of ASTAR, attempted to purchase ABX. It is my understanding that the primary motive for that was it would make sense for them, apparently from a cost standpoint, to be able to deal with one carrier as opposed to two.

That transaction was not consummated for a variety of reasons that are known better by people sitting behind me than me, but I think it is fair to say that there are people who know both companies and know DHL who believe that if that had happened, if ASTAR had purchased ABX, that we might not be here today.

I don't know that to be the fact. I am just telling you that there are people who are knowledgeable about the facts, who tell me they believe that to be the case. So that in and of itself points out that there might have been a solution in the not so recent past that might have prevented us from being here.

So, therefore, exploring a similar solution in the not so distant future might also lead us to believe that perhaps there is an alternative.

They have done their own internal analysis that they have not shared with us and come to a different conclusion, but any analysis that does not include the State of Ohio as a partner is an incomplete analysis on their part.

Mr. DUNCAN. All right. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman. Are there other Members who wish to be recognized?

Mr. Westmoreland had his hand up.

Mr. WESTMORELAND. Thank you, Mr. Chairman.

Governor, have you met with ABX and/or ASTAR to ask them what the failure was when they could not get together for a merger or buy-out or whatever? Did you work with them to see if there were any details you could work out in that relationship?

Mr. FISHER. Congressman Westmoreland, yes, I have had a number of conversations with senior executives with both ASTAR and ABX. There are some commonalities, but there are also different perspectives, frankly, on what happened. There is, I think, an agreement to disagree on why that transaction was not consummated.

I do believe that given the circumstances today, I have reason to believe that both ABX and ASTAR would be more than willing to come to the table and explore every possible alternative.

Mr. WESTMORELAND. I can believe that. I can believe that now.

Mr. FISHER. Yes, right. All I am saying is whatever reason it didn't happen in the past, I think it would not happen in the future in some way.

Mr. WESTMORELAND. Yes, sir. Do you know what the total employment of DHL is and is the 8,000 jobs just in the south Ohio area or are there actually more jobs than that in that area?

Mr. FISHER. I can only speak to the employment in southwest Ohio. ABX, I believe, employs approximately 6,000 people at the Air Park. I believe that ASTAR employs approximately 1,200 and that DHL employs approximately 1,000.

But there are representatives here today from DHL, ABX and ASTAR that can correct me if I am wrong, but I believe those are the numbers.

Mr. WESTMORELAND. Okay. But from what you are saying and what I hear the Mayor saying, I am assuming the Mayor, the City and the State would sit down together with these companies and try to work something out.

It seems to me as if $2 billion a year roughly, that would be a hard nut to crack. I know this is a similar question to what you have already been asked, but do you have experience in doing this?

And, from the breaks that I heard you give, it totaled to about $88 million in tax incentives, the employment credit and so forth and so on, and this is a one-shot deal, right, the $88 million.

In just reading some of the testimony here, it has been almost a $6 billion loss, I believe, over the last 5 years. That is a lot of money for a State or a city to try to absorb, and that would also be a lot of money for these two airlines to try to absorb. Do you have any idea how you could go about even trying to do that and is that even something that the State of Ohio would want to do?

Mr. FISHER. Mr. Chairman and Congressman Westmoreland, first, I have to say to you that we are not in a position to accept the premise of the amount of the loss. In other words, the first thing we would do as part of our due diligence is work with the company, so we have a comfort.

In other words, when a company says to us, we are losing X amount of money, we don't take that at face value. We can't. We owe it to the taxpayers of Ohio to actually independently verify that. So let's also focus on the fact that we don't know whether that loss is, in fact, true.

I am not suggesting it is not. I am simply telling you that we have no information that has been given us to allow us to verify that. That is number one.

Number two is that I am not suggesting to you that we can meet all those losses. Government should not be in the business, I believe, of literally saying to a company, we are going to deal with all your losses.

Our business is to be a risk-sharing collaborative partner, and that means that the business is going to have to continue to find some of their own internal ways to deal with those losses, but we will help them.

So there is no time that we ever completely fill the gap, whether it is $100,000 loss or a $1 billion loss. What we do is we try to meet them in a sense, halfway—sometimes more than halfway, sometimes less, but we are a partner.

Mr. WESTMORELAND. Governor, you or Mayor, either one, has the State of Ohio or the City ever entered into any of these agreements with any company before now that has been able to save them from actually moving or relocating?

Mr. FISHER. To be honest, Congressman, we do it all the time ranging from small and medium-size businesses to large businesses that are saying to us, we are considering leaving, folding, going out of business.

Do we always succeed? No.

But I can tell you our track record of success in helping companies deal with their financial challenges—which often by the way involves job retention, not job expansion—has been quite successful. We believe that every job retention deal is a future job creation deal and job expansion deal because you have to hold what you got first and then focus on expanding later.

So the answer is yes.

Mr. WESTMORELAND. Well, Mr. Chairman, I appreciate the opportunity to ask the questions.

I think that sometimes we go down a real slippery slope when we start trying to get government too involved with private enterprise and different business deals that come about, but I certainly appreciate the position you are in and what the State of Ohio is in and what the Mayor of the City is in as far as these job losses.

UPS happens to be a good Georgia company, and they are good folks. So I appreciate there is nothing devious that is coming out of this transaction that they are trying to do with DHL.

Thank you, sir, and I yield back.

Mr. FISHER. Thank you.

Mr. OBERSTAR. I thank the gentleman.

Mrs. Drake.

Mrs. DRAKE. Thank you, Mr. Chairman.

Certainly, I am from Virginia, so I am not familiar much with the problem. But in listening to you talk, my question would be it sounds like the deal with UPS is not finished, that there have been these negotiations, but it is not complete yet.

I would make the assumption that any business owner has looked at all the options and is trying to figure out how to best support his business.

So the question that comes to mind is what if they come to there is no deal with UPS? I wonder what your comments on that would be.

The second thought would be if this does happen and this cargo goes out of Louisville, would there also be the opportunity of additional jobs in that area? Is this something where people could be?

I don't even know the distance between the locations. I think you said 125 miles. But would UPS logically need additional employees to take on this work that has been done by two airlines?

So I just wonder if any of that could be absorbed out.

Mr. RAIZK. I think to answer your question and also the other, it is important to understand a little bit of history here.

The two airlines that we are talking about, ABX Air and ASTAR Air Cargo, were created because DHL, which was the former ASTAR Air Cargo, was acquired by Deutsche Post World Net. They could not own an airline, so they had to spin the airline off. So, essentially, they created this partner.

Then DHL acquired Airborne Express, the same situation happened. They, because of their foreign ownership, could not own the airline or have the certificate as I understand it and had to create ABX Air. So the contractors were of the parent company's own making to be able to do, to take their market share.

Realize that the two American companies, prior to acquisition, had 21 percent together of the air express market. That is a significant market share. That market share is now significantly reduced.

So these two companies were once very profitable and have only recently become unprofitable.

When we look at those losses, it appears to me and I am no expert, but I am just like you. I pick up the paper and read that every day. It appears to me that how can we go from a profitable situation to an unprofitable situation in such a short period of time?

Mrs. DRAKE. Do you think it could be the price of jet fuel?

Mr. RAIZK. Absolutely. I mean $4 plus of jet fuel certainly is going to create a problem for everybody, and I mean there is no getting around that.

But at the same time, have we looked at totally the management of taking two profitable companies and then making them all of a sudden unprofitable? I think there needs to be a look at that in terms of that, but certainly jet fuel is a problem and has created a lot of our problems.

If there weren't this increase in jet fuel, would we be here today? Probably not. I doubt it, but maybe so. I don't know.

Mrs. DRAKE. But one thing that could happen is there could be no deal. I mean DHL could say we can't make the U.S. profitable and leave. I mean that could happen.

Mr. RAIZK. They could say that. They would be abandoning.

Mrs. DRAKE. Is one of the goals to have a better conversation with DHL with the State of Ohio?

Mr. RAIZK. Absolutely.

Mrs. DRAKE. From this hearing today?

Mr. RAIZK. Absolutely.

Mr. FISHER. Yes, Congresswoman, I would say that, absolutely. Our relationship and our conversations with DHL prior to May 28th, I would consider to be very, very good and very positive, very professional.

They continue to be professional, but they do not continue to be productive.

Mrs. DRAKE. Thank you, Mr. Chairman. I will yield back.

Mr. OBERSTAR. I thank the gentlewoman for her questions and the panel for their responses. Thank you very, very much for all that you have invested, yourselves, in this issue and for the continuing effort.

The Committee will continue to follow these matters very closely, and you are dismissed.

Mr. FISHER. Thank you.

Mr. RAIZK. Thank you, Mr. Chairman.

Mr. OBERSTAR. We are in the midst of a vote, the first of four votes on the House floor, but I would like to invite Panel Three to be available. I think we will recess.

Let me get the names of the panelists there, and everybody can take a little break while we vote, and then we will resume within five minutes after the last vote.

Our next panel consists of Mr. John Mullen, CEO of DHL; Burt Wallace, President of Corporate Transportation for UPS; Mr. Joseph Hete of ABX Air, President; and Mr. Gary Hammes, Senior Vice President of ASTAR Air Cargo; Captain David Ross, Airline Professionals Association, he is the President of Teamsters Local 1224; Captain John Prater, President of the Air Line Pilots Association; and Mr. Samuel Simon, the American Antitrust Institute.

I think we will have a very interesting session with the next panel.

The Committee will stand in recess, pending the four votes.

[Recess.]

Mr. OBERSTAR. The Committee will resume its sitting.

The Chair has already announced the next panel, the current panel, and we will begin with Mr. Mullen.

TESTIMONY OF JOHN P. MULLEN, CEO, DHL EXPRESS; BURT WALLACE, PRESIDENT OF CORPORATE TRANSPORTATION, UNITED PARCEL SERVICE OF AMERICA; JOSEPH C. HETE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ABX AIR AND AIR TRANSPORT SERVICES GROUP; GARY HAMMES, SENIOR VICE PRESIDENT AND CHIEF OPERATING OFFICER, ASTAR AIR CARGO, INC.; CAPTAIN DAVID R. ROSS, PRESIDENT, AIRLINE PROFESSIONAL ASSOCIATION, TEAMSTERS LOCAL 1224; CAPTAIN JOHN PRATER, PRESIDENT, AIR LINE PILOTS ASSOCIATION INTERNATIONAL; AND SAMUEL R. SIMON, THE AMERICAN ANTITRUST INSTITUTE

Mr. MULLEN. Thank you very much. Chairman Oberstar, Ranking Member LaTourette, distinguished Members of the Committee, I thank you very much for the opportunity to come to talk to you today about the DHL situation in the United States and about the proposed contract with UPS.

You will have received my written testimony already. I hope that you have had a chance to read it.

Mr. OBERSTAR. Your entire testimony will appear in the record as submitted, and the gentleman is welcome to summarize the substance of the statement.

Mr. MULLEN. Thank you. I will paraphrase it as quickly as I can.

Firstly, DHL is in a very difficult situation here in the United States. For over five years, we have battled to break into this market and be successful here. By the end of this year, we will have spent some $6 billion doing that.

We have made a huge amount of progress which we are very proud of. We have built a strong brand. We have built out a quality infrastructure. But the reality is it has come at a very high price, and today we are losing some $5 million a day or a projected $1.3 billion loss this year.

We are in a narrow express market that has been shrinking since the late 1990s, and there is intense compensation for the declining volume that remains. Now, on top of that, we are facing a worsening economy and very high jet fuel costs as well. We are a large company, but no company can lose this amount of money and survive.

We are under intense pressure from shareholders, from analysts, financial markets and others to address these losses which have been going on for some time. There is considerable criticism that we have not done this earlier. So we simply have to take action and, with volumes declining, that simply means taking out costs.

We have exhaustively examined all the options that we can see open to us from various restructuring proposals, discussions with private equity and other players, partnerships, even through to closing this business altogether in the United States.

From that analysis, on May the 28th, we announced a restructuring plan for our U.S. business that had two key parts. The first was a major restructure of our ground operations from closure of some stations, reduction in trucking network and other measures. The second was the intention to enter into this contract with UPS to replace two existing aviation subcontractors with UPS itself.

The goal of that is to save $1 billion per annum. Of all of the options we have studied, we believe that this represents by far the best chance that we have to remain a viable competitor in the U.S., thereby preserving competition.

I would just like to quickly highlight a few points in respect to this contract. Firstly, it is not a merger. It is not a joint venture. It is not an alliance. It is not a transfer of assets.

We are simply replacing two existing third party subcontractors with a different subcontractor for one part of our business.

DHL remains as independent afterwards as it was before. Our pickup and delivery fleets, our billing systems, our customer service, our telephone routing, all of these things remain as they were previously.

Customers will not see any difference. A package moving from New York to Los Angeles, the customer today doesn't know whether we use ABX, whether we use ASTAR, whether we use DHL aircraft, whether we use UPS aircraft. It will be picked up by a DHL courier and delivered by a DHL courier.

There is no need for us to and we will not share confidential customer information. Some of the suggestions that UPS will have access to pricing and things like that are just simply not true. The only data that we will make available to UPS is sufficient data for them to sort and transport those packages. There is no IT link being envisaged as might have been suggested.

Now this type of solution, we believe, is common in high capital equipment business: in the airlines where there is code-sharing amongst passenger airlines, in the shipping industry where shipping companies for many years have carried each other cargo, through telecoms where the last mile carriage on fixed copper lines is one carrier provides for many and so on.

And, in our own industry here in the United States, there is an exact parallel where the United States Postal Service some years

ago closed its hub and outsourced their aviation lift to FedEx, a very similar parallel to what we are discussing today.

Now, obviously, all of that said, 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 many, many individuals.

It is absolutely not a decision that has been taken lightly. We have agonized over this. We have been hugely criticized for taking as long as we have for making a decisive move. However, we believe we absolutely have to do this.

So we formed a team which is putting a huge effort now into mitigating the impact of these changes. We realize, of course, that there is nothing we can do to entirely mitigate the impact on individuals and working families, but we are working to put in place a plan that we believe goes well beyond what is usual in this type of situation and well beyond what our contractual and legal obligations might be.

What does that mean in practice? Well, we have allocated some $260 million in severance, retention and health benefits. Of that $260 million, only $35 million are actually contractual obligations. The other $225 million or nearly a quarter of a billion dollars are benefits over and above that we are paying, and I might add mainly to the employees of other companies, those of our subcontractors, not actually DHL employees themselves.

In addition, we are working with local, State and community officials to try to help in as many other ways as we can, including we are discussing the possible donation of the Air Park to the local community.

So, in conclusion, Mr. Chairman, may I just summarize again?

This has been an exceptionally difficult decision. We are losing $1.3 billion in a declining market, and we have no option but to cut these costs.

We have considered every option that we think is available to us, and we have talked to every party we think can help, and we now plan to implement a solution that addresses the situation.

Such a plan will obviously not be liked by those affected, of course, but it is not a merger. It is not anticompetitive. It is common in many industries, and it exists here in the U.S. in our own industry.

Hopefully, this leaves us as a viable competitor and will preserve competition in the U.S. market.

Last, but most importantly of all, we are doing our very best to mitigate the impact by going well beyond our contractual and legal obligations as well as well beyond comparable benchmarks.

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.

Mr. OBERSTAR. Thank you for your testimony.

Mr. Wallace.

Mr. WALLACE. Chairman Oberstar 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 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 of DHL's packages.

DHL has stated very publicly and clearly that it would not be able to compete effectively or perhaps remain in the U.S. without restructuring its operations and costs. The company has reported 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 a joint venture. It is not an acquisition. It is not a consolidation.

UPS and DHL continue to compete independently, and we will each price and market our 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 United States Postal Service.

This type of arrangement, where one company provides services 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 pickup 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.

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 of Wilmington, Ohio. 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 358,000 UPS employees in the United States.

I should note that in 2003 UPS employed 317,000 people in the U.S. 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 UPS 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 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, which makes us a more efficient competitor and allows us to create and provide career stability for our employees.

In short, the proposed agreement represents a wise and efficient use of our assets, helps to protect the jobs 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 an agreement that helps to strengthen a U.S. company that provides career opportunities to hundreds of thousands of people.

I hope the facts 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.

Mr. OBERSTAR. Thank you very much, Mr. Wallace.

Mr. Hete.

Mr. HETE. Chairman Oberstar and Members of the Committee, I am privileged to serve as the CEO of ABX Air and President and CEO of Air Transport Services Group, the parent company of ABX Air. Thank you for the opportunity to tell you about our work to help DHL compete more effectively in the U.S. market.

Senior management of DHL and its parent company, Deutsche Post World Net, have asserted their only economically viable alternatives in the United States are an alliance with UPS or a complete withdrawal from the U.S. market.

Like many in our industry, we believe that there are other alternatives. These other alternatives will ensure competition in the express delivery market and preserve American jobs.

My remarks focus on the events during the past year that demonstrate how ABX Air has been very eager to help DHL overcome its structural inefficiencies and reduce its losses in the United States and, second, that ABX Air can provide DHL better value than UPS. If this is of interest to the Committee, I would be happy to expand on my remarks afterwards.

We knew that DHL had not been meeting its business objectives in the United States for some time, but ABX Air leadership became

especially concerned about DHL's situation over a year ago. Seeing their losses in the U.S., a softening economy and rising fuel prices, it was clear to us that DHL had to change and quickly.

Because DHL is our largest customer providing 92 percent of our business and because we are their largest vendor, we brought our concerns to their attention and offered our help.

In August, 2007, we had our first discussions with senior DHL Express management. We asked how ABX Air could help DHL cut costs in their U.S. network. In our discussions with senior DHL leaders, we offered to change every element of our agreements if we could help DHL stem its losses.

DHL leaders offered us no information on what changes we might make to help them save money.

By November of 2007, we had conducted several conversations with senior DHL leaders about our concerns, each time offering to help DHL lower its domestic costs, asking for specific ways we could help and asking about their plans for the future.

Each time, DHL leaders thanked us for our willingness to help and told us they were still studying the situation.

Though DHL has never shared its internal concerns or plans with us, when we saw their 2007 losses in the U.S., we knew something had to change. We built our own plan to dramatically cut DHL's domestic costs.

Airborne Express had run a business similar to DHL's domestic one for over 23 years and, with the exception of the impact of September 11th, 2001, Airborne Express had never sustained an annual loss.

We felt we understood something of DHL's issues. On March 31st, well in advance of the May 28th announcement, I traveled to Bonn, Germany, and presented a proposal to John Mullen, DHL Express' global CEO.

Our proposal provided DHL's network with over 250 million in annual savings based on the DHL domestic network then in place. Given how DHL has reduced its domestic network since then, we believe our plan would save DHL even more money now.

After DHL's May 28th announcement regarding cuts from its domestic network, ABX Air went back again to DHL with a revised proposal. That proposal was very close in cost to what DHL intended to spend with UPS but provided DHL and its customers considerably higher value.

DHL reported that it will pay UPS over a billion dollars a year to handle its freight. Our plan came in less than $100 million above that but provided DHL the flexibility of maintaining its own sort and airline capacity in the U.S.

Since we made that proposal, Deutsche Post World Net has declined to meet with us.

The deal we have presented to DHL is so close in cost to what we understand DHL and UPS are discussing, so superior in value and so far less damaging to Ohio, that it invites discussion. We respectfully request that you strongly encourage DHL to negotiate with ABX Air to determine whether we can offer a solution. We urge you to do this before DHL and UPS take steps that will have an irrevocable effect on competition in the United States express delivery market as well as an unprecedented job loss impact.

With more information about DHL's needs and cooperation from our organized employees, ABX Air can provide an alternative to the DHL/UPS agreement that sustains DHL as a true competitor with a proprietary network.

As business people, we prefer solutions achieved through direct discussions with our customers. In the absence of that, we understand that government intervention may be required to produce an outcome that supports the viability of a principal air carrier in the express delivery market and provides long-term stability to southwest Ohio, the State and the Nation.

Finally, Mr. Chairman, I want to acknowledge the contributions of more than 10,000 ABX Air employees, the majority of whom directly serve DHL in the U.S. Their professionalism and strong work ethic has sustained DHL's reputation for high quality service over the years.

In spite of the layoffs we are now making across our DHL system, our people have delivered 99 percent plus on-time reliability since DHL's restructuring announcement in May.

As John Mullen himself acknowledged in his Judiciary Committee testimony last week, the cooperation DHL has received has been, to echo his words, simply outstanding. We appreciate that he shares our view, that the issues we are discussing here today are in no way a reflection on the commitment and dedication of the fine people who support DHL every day.

On behalf of the employees and shareholders of ABX Air, please accept our sincere appreciation for the opportunity to testify before the Committee.

We recognize that your responsibility in part is to monitor and promote a healthy U.S. airline industry and review the potential impacts of any consolidations on consumer choice and American jobs. ABX Air urges you to exercise your oversight role in seeking to promote strong, viable carriers as well as the American jobs that they represent in the express delivery market.

Thank you, Mr. Chairman, and I stand ready to answer any questions of the Committee.

Mr. OBERSTAR. Thank you very much for your testimony. We greatly appreciate it.

Mr. Hammes.

Mr. HAMMES. Thank you, Mr. Chairman and Members of the Committee.

My name is Gary Hammes, and I am the Chief Operating Officer of ASTAR Air Cargo.

Thank you for inviting ASTAR to this hearing today and giving us the opportunity to explain why the DHL/UPS joint venture is not in the best interest of competition, customer service or employment. I would also like to explain that we believe there are alternatives to the UPS deal that could meet DHL's legitimate business needs to reduce its costs without producing the adverse effects I have identified in my prepared remarks.

Although our primary focus is the welfare of ASTAR's 1,000 employees, including over 300 military veterans, the ramifications of the DHL/UPS deal go far beyond our company to include the entire industry and its many millions of parcel customers.

If DHL is permitted to outsource its primary and most important business and operational functions to UPS, it will compromise DHL's ability to remain an independent competitor, creating a UPS/FedEx, two-company marketplace. With only FedEx and UPS providing overnight package express services, those companies will be able to control pricing.

One thousand good jobs at ASTAR Air Cargo will have been lost. Many thousands of jobs at ABX Air will have also been lost. Almost 10,000 of these jobs will be located in the Wilmington, Ohio area. That community will be devastated.

DHL's overnight package delivery business, from pickup to delivery, is a tightly integrated system that relies on proprietary systems that are unique to DHL. The real-time tracking of packages and providing the tracking data to customers is a critical business function and a point of differentiation between corporations.

DHL cannot hire UPS to transport its air transport and hub sorting without inserting a major competitor into the middle of its tracking system. By turning over this key differentiating activity to a competitor, DHL will have compromised its ability to continue to aggressively compete as an independent corporation.

If linked to UPS, DHL's ability to continue to compete will diminish. DHL will find it more difficult to offer later pickups or earlier deliveries than UPS unless it can convince UPS to adjust its flight schedules to accommodate DHL's business requirements.

UPS may well be reluctant to add capacity or tailor schedules to accommodate the unique needs of DHL customers particularly if DHL is seeking to take the business away from UPS. Indeed, just the act of conducting advance schedule discussions with UPS will tip off UPS to DHL's business strategies.

UPS's first and controlling responsibility is to get its own packages to their destinations on time and to outperform its rivals, one of whom is DHL. Thus, if DHL contracts with UPS to transport its packages, UPS will have an inherent conflict of interest between meeting DHL's legitimate business requirements and meeting its own business requirements which include outperforming DHL.

There is concrete evidence that UPS has embarked on an aggressive campaign to steal DHL customers based on the announced DHL/UPS joint venture. A UPS salesperson recently made a sales call on ASTAR, trying to convince ASTAR to switch its business from DHL to UPS.

[Laughter.]

Mr. HAMMES. In this call, the UPS salesperson argued that once integrated into UPS's operation, DHL's service would be substandard.

We have seen other evidence that UPS is aggressively making such calls on other DHL customers.

DHL claims it needs the UPS deal to lower its costs. We agree fully that DHL should explore every opportunity to reduce its costs, but we also believe there are alternatives that DHL could pursue without compromising its competitiveness.

When DHL purchased 49 percent of ASTAR last year, ASTAR committed to DHL that it would aggressively pursue every opportunity to control its own costs and pursue other strategies to help

DHL control its overall air transportation costs. We have already made significant strides in this regard.

For example, the new four-year collective bargaining agreement with ASTAR and ALPA signed last February specifically was structured to ensure that ASTAR crew costs would remain lower than that of UPS, and they are.

In addition, last year, ASTAR approached ABX Air with an expression of interest to purchase that company with the intent of consolidating all of DHL's North American air transport functions into one company, thereby achieving significant efficiencies and cost savings to DHL. ABX Air rejected ASTAR's expression of interest, but DHL recognized then and I believe continues to recognize that this transaction would have made significant inroads in addressing DHL's efforts to contain and reduce its costs.

ASTAR would be interested in renewing an effort to acquire the DHL-related portions of ABX Air if DHL were to advise that it would join ASTAR and ABX Air in such an effort.

Thank you, Mr. Chairman. I would be happy to answer any questions you or other Members of the Committee may have.

Mr. OBERSTAR. Very interesting testimony. I wonder how that transaction turned out or proposal turned out. We will find out.

[Remarks off microphone.]

Mr. OBERSTAR. I think you are right.

Captain Ross.

Captain ROSS. Mr. Chairman, Mr. LaTourette, Members of the Committee, thank you for holding this hearing. You are performing a truly important service for thousands of workers and small businesses in America and for America's vital transportation industry.

The proposed anticompetitive transaction between DHL and UPS rocketed to the top of the 2008 Presidential Campaign. I have had the privilege of personally briefing both Senator Obama and Senator McCain. I have heard them express their concerns about job losses and reduction in services to the customers and harmful impacts this de facto merger will have on our Nation's transportation sector.

Mr. Chairman, I respectfully request that this Committee:

One, oppose this proposed deal as destructive to U.S. aviation policy to promote competition;

Two, request that the Justice Department immediately initiate an antitrust investigation;

Three, request that the parties refrain from implementing the proposed alliance until the Justice Department concludes its investigation; and,

Four, oppose any attempt to grant DHL a waiver of the citizenship laws that keep this Nation safe.

I represent almost 700 pilots who fly for ABX Air, but I am also here to support more than 10,000 hardworking Americans who, like our pilots, will lose their jobs, lose their health insurance and their ability to support their families if this transaction is not stopped.

Despite assertions by DHL and UPS to the contrary, the proposed deal will effectively reduce competition in the air express market from three to two. DHL, the firm with the smallest market

share and the greatest incentive to compete on service and price, will be neutered as a legitimate competitor.

Why? First, if this transaction is consummated, DHL will be forced to rely on its supposed competitor for its most crucial operations: air transport, package sorting and tracking.

Second, a key element of the express delivery business is package tracking. It is the backbone of the service process. By combining efforts in this process, whether they admit it or not, DHL will be transferring highly sensitive proprietary commercial information about its customers and about its markets to UPS.

Having watched express packages go through the sort for 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.

It makes no sense to rely on a major competitor for key elements of your service, especially in a highly consolidated marketplace. Indeed, there is every incentive for DHL's proprietary information to be disseminated through the sales and corporate organization of UPS to the competitive detriment of DHL.

Perhaps DHL will insist that UPS construct a Chinese wall, maybe in the form of confidentiality agreements, to limit that dissemination. Unfortunately, Chinese walls leak and confidentiality agreements are breached.

DHL CEO John Mullen testified last week before the House Judiciary Committee that it was UPS that approached DHL about merging their services.

While I understand DHL's financial predicament and am actively trying to help them resolve it, I do not understand UPS's incentive. Why would UPS help the competitor in the only market in the world where that competitor is not number one?

Mr. Wallace, why don't you waive the confidentiality agreements you have with DHL, so I can talk to them about saving jobs in Ohio?

Our national transportation policy calls for placing maximum reliance on competitive market forces and on actual and potential competition to prevent unfair, deceptive, predatory or anticompetitive practices in air transportation. Regardless of how they label their deal, this transaction between DHL and UPS would clearly violate the letter and the spirit of that well-conceived national transportation policy.

Through mismanagement of its North American operation, DHL is losing money. Rather than fix the underlying problem of poor management, DHL somehow would rather further undermine its position in the American market by essentially turning over its book of business to one of its competitors.

Just last week, the Financial Times reported that DHL plans to further erode their business prospects in the American market by further reducing service. It was reported, DHL now plans to reduce their delivery capacity by half and also have UPS cover part of their ground deliveries as well.

Mr. Chairman, we need your help to save them from themselves. DHL's proposed solution is a recipe for even greater failure. It is a potential death spiral.

We, the employees of ABX, stand ready to help DHL fix their revenue and cost problems by working with them to increase efficiencies, improve service and move toward profitability. We stand ready to help them reverse their dim prospects instead of going forward with a self-destructive strategy that would improve the business prospects of their major competitor, UPS.

Mr. Chairman, according to DHL's own web site, if you were to send an overnight package to each of your district offices today, the package to your district office in Duluth wouldn't get there until 5:00 p.m. tomorrow. For Chisholm, it wouldn't get there until 5:00 p.m. on Thursday. And for your Brainerd district office, I am sorry to say, sir, it won't get there until next Tuesday by 5:00 p.m. All of these arrival times are listed under DHL's next day 12:00 p.m. services.

There are other Members of this Committee who have the same loss of service.

On behalf of the tens of thousands of workers in Ohio and around America who will be dramatically harmed by this transaction and on behalf of all American small businesses and consumers, I urge this Committee to stop this potential violation of our vital national air transportation policy.

Thank you very much for this opportunity, sir, and I am pleased to answer any questions you may have.

Mr. OBERSTAR. Thank you very much, Captain Ross.

I am rather surprised and impressed that you got these figured out, the shipping times to my various district offices. You probably can do the same for the rest of the Members of the Committee. It is very intriguing.

Captain Prater.

Captain PRATER. Good afternoon, Chairman Oberstar. Thank you for allowing us to testify on behalf of our 53,000 airline pilots and especially the 500 pilots who fly for ASTAR Air Cargo, many of which have shared the afternoon with the Committee.

For more than 30 years, these men and women have worked to make their company one of the most reliable cargo airlines in the world. Sadly, it appears that a corporate decision made in an office building in Germany could shut down ASTAR forever.

What Deutsche Post, the owner of DHL, is saying is that your job does not depend upon your performance. It depends on the whims of a corporate bean counter who treats workers as just another expense to be cut in the name of restructuring.

In fact, we heard from DHL that they don't even know what to call this. They sure have said what it is not to be called.

What it will be: It will lead to more industry concentration, higher costs for consumers and more good jobs lost.

I would like to take just a moment to thank the delegation from Ohio which has given so much effort to investigating this issue, and certainly this Committee as well as the Judiciary Committee, but the truly bipartisan effort from the Ohio delegation and the Governor's office as certainly been noted by our union.

This proposal, there seems to be an assumption here that DHL is somehow addressing its problems through this arrangement with UPS. But where is the proof?

What we are seeing out on the line is that DHL is actually already losing more business because of the uncertainty of what type of business they are going to run here in the United States.

Second, there seems to be misunderstanding. While people throw out big numbers like a billion dollars a year—and I could certainly say if I was losing a billion dollars a year, that would be significant—is this arrangement going to cut all that billion dollars a year?

Of course not. In fact, by what little public information is out there, we may be talking about a difference of $200 million a year of savings.

Certainly, we have committed to DHL to looking at any which way we can, along with our friends and brothers at ABX, to find the solutions to keep the business as is.

What we are seeing is an awful lot of secret and double backstabbing dealing. While we are in negotiations with ASTAR, which is of course owned 49 percent by DHL, we are negotiating to protect our jobs. That happens to be the function of the union. At the same time that we are signing agreements with the company to protect our members' jobs, they are dealing with UPS to actually kill our jobs.

In fact, what DHL is proposing me reminds me an awful lot like the defendant who shoots both of his parents and then cries for lenience for being an orphan.

Well, in this case, we have a German company that buys two U.S. companies, wants to put a bullet in their head and then go on about their business. That just shouldn't be. We have men and women, communities that are deeply affected by these decisions that are being made.

We have heard certainly from Congressman Westmoreland that he was proud of the corporate citizen of UPS. I guess maybe it is because I am married to somebody from Missouri, but I say: Prove it. Show me. Where are the jobs that come along with this?

We are not seeing or hearing from UPS about any jobs for the displaced thousands of workers if this deal goes through.

We have asked this Committee and the Justice Department to insist on reviewing these supposed firewalls that they are talking so much about.

Last week, the Financial Times over in Germany made it clear that the deterioration in DHL's situation has actually accelerated since May.

As to the failure for DHL to think and constructively deal above board, the facts are clear. We have made our effort and our commitment to finding a solution to their problems well known, but again they don't want to deal with us. They prefer to deal in secret with UPS.

DHL's solution will ensure that the two companies, both of which were viable competitors when purchased by DHL, are put out of business.

Mr. Chairman, there has to be more to this than meets the eye. After all, both ASTAR and ABX have met all performance targets set by DHL and provide 99 percent on-time performance.

The pilots at both carriers, while reasonably compensated—and you won't hear a union leader say this very often—make less than

the pilots at UPS or FedEx. We are efficient, and we are safe, and we have been reliable, and that should go into the thinking here.

The bottom line is that DHL's problem in North America is not the cost or the effectiveness of its air operations. Its problem is that it cannot compete with UPS and FedEx on the ground. They can't restructure their way out or call it something else other than that.

What they need to do is work with their current suppliers and their employees to prevent customer flights away from their business.

For all these reasons—I will summarize, Mr. Chairman—the transfer of DHL's lift to UPS requires, at the very least, careful scrutiny by this Committee, the Judiciary Committee and the Department of Justice. Further, as suggested by Chairman Conyers last week, this deal should be delayed, pending such scrutiny.

And, given the stakes for workers and competition, any confidentiality restrictions entered into by the parties should be voided. Let's put it on the table. If DHL and UPS won't operate in the open, we ask you to step in and restructure their thinking.

Thank you for your interest in this important matter, and we would be glad to answer any questions.

Mr. OBERSTAR. Thank you, Captain Prater.

As we began to put this hearing together and listen to the concerns expressed by the Members of the Ohio delegation and others affected by the transaction, I wasn't convinced there was a very solid case. But as the testimony has been submitted and as the testimony has unfolded, it appears to me there are some very serious antitrust implications. That is why we invited Mr. Simon, our next witness, to address these issues.

Mr. SIMON. Good afternoon, Mr. Chairman and Members of the Subcommittee.

My name is Samuel Simon, and I am a private attorney in Philadelphia at the National Securities and Antitrust Bar. These are courses that I also teach at Rutgers Law School as an adjunct professor.

I am here today speaking for the American Antitrust Institute which, as many of you know, is an independent research, education and advocacy organization founded in 1998 that frequently comments on developments relating to antitrust laws and to competition policy in general.

Our analysis and concerns relating to the proposed strategic alliance between DHL and UPS are set forth in detail in our written comments.

In connection with my appearance before you today, I would like to stress the following crucial points:

Let me take one second and talk about what antitrust law is. Antitrust law can be summarized very simply as dealing with the power of market participants to distort the competitive process. The Supreme Court has often described the antitrust laws as the Magna Carta of the free enterprise system.

Now the single most important component of the antitrust laws is that competitors must compete.

The converse of that is equally applicable and equally opposite. Competitors must not agree not to compete. The less competition in the market, the less price and service quality customers receive.

Now the air express package delivery market, in effect, has only three competitors: DHL, UPS and FedEx. Because of this lack of significant competition, this tight little grouping can easily lead to cartel behavior in the best of times. By cartel, I mean simply a small group of competitors acting as a single unified entity.

The strategic alliance that has been talked about this afternoon would mean that DHL uses UPS's air transport. This means that DHL would have a large part of its costs somewhere perhaps around 60 percent, controlled by its direct competitor, UPS.

Now we can postulate two scenarios:

Number one, DHL ultimately intends to exit the market. Under this case, the strategic alliance reduces DHL's ability to set its own competitive retail price because DHL would have no ability, none, to reduce pricing on its air linkage component, again about 60 percent of its total costs.

The strategic alliance simultaneously increases—increases—UPS's ability to charge itself increasingly lower internal prices for its own air transport costs. This, by definition, would permit UPS to undercut DHL in its retail pricing until DHL has to exit the marketplace. Once that happens, you have an effective duopoly.

Under either version, reduction or increase or some synergistic combination of both, two of three competitors would have essentially agreed to cease competing against each other. And, as Mr. Hammes discussed a few minutes ago, there is always the possibility of a service squeeze, not just a price squeeze.

Now let's take the other scenario, DHL intends to remain in the market. Under these circumstances, DHL will benefit from the higher prices in the market because it is far easier for two rivals to tacitly collude on prices than three rivals.

Mr. Mullen, a few moments ago, said, well, this only substitutes one vendor for another.

Respectfully, I suggest to you, Mr. Chairman and the Committee Members, that this is categorically contrary to the United States antitrust laws. It is the exact opposite to what the antitrust laws say. You cannot substitute one competitor for another.

Now what are legal remedies?

DHL, if it is dissatisfied with what is going on, can bring a breach of contract suit against UPS. But you know they build court houses, and in the courts of law there is often great difficulty in showing an actual contractual breach, and the harm that DHL is talking about may be impossible to measure or to quantify.

The other possibility we see is that DHL brings an antitrust suit against UPS. This is even more cumbersome and more enervating. Moreover, UPS is not a monopoly in the fact it doesn't even have 50 percent of the market share. So a Federal judge is likely to toss any such suit right from the beginning, saying there is no monopolization and there is no attempt to monopolize.

So, in our opinion, the best approach would be for the Federal Trade Commission, for the Federal Trade Commission to seek an injunction against this deal going forward under Section 5 of the Federal Trade Commission Act, charging unfair methods of competition.

And, let me quite clear. The unfair method of competition would be an allegation that the strategic alliance constitutes what is

called a facilitating practice, making it easier, making it simpler for firms in an oligopoly to coordinate their prices.

Now, if the Federal Trade Commission won't do it, perhaps the Ohio State Attorney General's Office can do it, but that would be our thought as to where this matter should be proceeding.

This concludes the oral portion of our testimony, and I respectfully refer you to our written submission for a detailed discussion and an explanation of matters from our perspective.

Thank you, Mr. Chairman, for permitting me to testify on behalf of the American Antitrust Institute and for your time and attention this afternoon.

Mr. OBERSTAR. Thank you very much.

Your entire testimony and the testimony of all the witnesses will appear in full in the record.

We have had several statements about the effect of this transaction to be to reduce competition.

Let me ask you, Mr. Simon, supposing DHL waited to the point of bankruptcy. No longer could they continue their operation. The next step is bankruptcy, and they seek the protection of bankruptcy court, and then they disappear from the marketplace, say, Chapter 7, liquidation bankruptcy.

Would that have changed the market effective of the situation?

Mr. SIMON. It would certainly change the litigation posture. If you are talking, sir, Section 7 and not Section 11, the reorganization, once a company files for bankruptcy, Section 362(A), the Bankruptcy Act, prohibits it from being sued or from suing. So the judicial approach would no longer be applicable.

Mr. OBERSTAR. But would it change the market structure?

That is their business then could be picked up by anybody else. It would leave then only two major competitors in the market place.

Mr. SIMON. That is right. It would become an effective duopoly.

There is a number of witnesses who said, Mr. Chairman, there are pretty high entry barriers here. The average Joe Schmoe simply can't go in and start this business because you have an enormous amount of work to do on the land linkage side and the air linkage side, enormous sunk costs and a great deal of effort.

So you would have an effective duopoly if they went bankrupt, did not reorganize and eventually disappeared.

Mr. OBERSTAR. Since this is not a classic case of acquisition or merger but a contractual relationship, to rise to the level of antitrust concern, does the air transportation portion of the delivery have to rise to a level or percent of the cost of package delivery to quality as violation of antitrust?

Mr. SIMON. Well, I would answer that your question really, sir, has two parts.

There is no acquisition of assets. So the standard classic tool for stopping this sort of things in their incipiency, Section 7 of the Clayton Act, simply does not apply.

The other part of your question, I would say that there is no threshold formulation because injunctions are often designed to stop impending antitrust conduct from occurring shortly before the time that they are going to incur.

If I own a house and somebody is going to run a bulldozer through it wrongly, I can get a court injunction stopping them from doing so before the bulldozer rips out my house.

So I would suggest to you that my personal opinion, personally, you don't need any particular threshold of dollars or percentage in order to seek an injunction from the appropriate governmental agency, which I would suggest to you is much more likely to be the Federal Trade Commission which more and more has shown itself independent from, as someone said earlier today, a somnolent Department of Justice.

Mr. OBERSTAR. Yes, that was my comment. I think we can apply the same term to the Federal Trade Commission.

[Laughter.]

Mr. OBERSTAR. Mr. Mullen, earlier, the Lieutenant Governor of Ohio said, we were never given the opportunity to offer good faith alternatives.

What alternatives could the State offer that would dissuade DHL from this transaction or make it attractive for DHL to remain independent and without a contractual arrangement with UPS?

Mr. MULLEN. Mr. Chairman, we would have liked nothing more than to find a solution that kept the status quo of Wilmington and the people affected by these changes. We spoke to numerous parties.

I, personally, spent a lot of time in the U.S. and elsewhere, speaking to as many parties as I could to try to find a solution to our situation. I have spoken to competitors. I have spoken to private equity players. I have spoken to third parties.

Now, several people are saying, well, we would have liked the time to discuss and we can find alternatives, et cetera.

With the greatest of respect, we had discussions with those people at the time. We had discussions with the two major airline subcontractors at the time, and we were not able to reach any agreement.

We facilitated an offer from ASTAR for ABX and $7.75 a share. I point out I think the share price today is 95 cents or something. We were prepared to back that, to allow the two airlines to come together to make, as others have said, substantial savings.

But that was rejected at the time for reasons you will obviously have to ask them. It was rejected, and they weren't even willing to discuss.

So we then moved on, and we have found another solution that is a very solid solution to the problem that we have.

Now, obviously, I can understand people's angst and disappointment about it. But to come back now and say, if only we had time or if only we had allowed to have this discussion or that discussion, we did speak to every party that we could see could offer any sort of solution.

Now, in fairness to the Lieutenant Governor, we did not go to the government of Ohio because we simply felt that it was unrealistic to expect that taxpayers' money would be used to subsidize private company losses of this magnitude.

If our problem had been $20 million or $50 million, I am sure that we might have been able to find something. But a $1.3 billion problem every year, year in, year out, we felt was beyond a credible

expectation that taxpayers' money would be used for that. So we did not, in all fairness, discuss with them, but we did discuss at length with all the other parties.

Mr. OBERSTAR. Thank you very much, Mr. Mullen.

I now yield to the distinguished gentleman from Ohio, our very keen legal analyst on this Committee.

Mr. LATOURETTE. Well, I don't know about that, but thank you, Mr. Chairman.

For the members of the panel, I chatted with the Chairman that because there are seven of you I don't want anybody to be neglected. He has indicated that if time permits, we may come around again. So, if I don't get to you now, it is not because I don't like you. I will get back to you.

I want to begin, Mr. Hete, with you on Mr. Mullen's last point.

A couple of people, and I know the Lieutenant Governor said it. Maybe somebody else talked about this attempt by ASTAR to make an offer to purchase ABX. Mr. Mullen just said $7.75 a share. First of all, is that accurate?

Did ASTAR offer to buy ABX at $7.75 a share?

Mr. HETE. It was not an offer. It was an indication of interest at $7.75.

Mr. LATOURETTE. Okay. ABX is a publicly traded company, is it not?

Mr. HETE. That is correct.

Mr. LATOURETTE. And you trade on NASDAQ?

Mr. HETE. Yes.

Mr. LATOURETTE. Did you know when that interest was made, when they made that intention?

Mr. HETE. Yes. It actually occurred June 19th of 2007. I received a call from John Dasburg, the CEO of ASTAR, and this was basically a week after DHL had made their investment in ASTAR, acquiring 49 percent of the ownership and 24.9 percent of the voting shares of ASTAR.

I received a call from John Dasburg that said he wanted to start a discussion in regards to the potential acquisition of ABX.

I have to digress a little bit because the initial attempt to put the two air carriers together was initiated by ABX back in the fourth quarter of 2006. We had approached John Dasburg and asked if he would be interested in having ABX acquire ASTAR to consolidate the two airlines under ABX.

We spent probably four or five months working on that deal, and the offer that we put on the table was rejected by ASTAR.

So about three months went by when ASTAR turned the tables and said, we would like to acquire ABX. The actual indication of interest occurred on June 26th when John Dasburg went public with that indication of interest which was a little bit surprising because he and I had set a private meeting for a couple of days after that, June 28th, to have a discussion about the viability of that potential acquisition.

So, you see, we viewed it as a potential hostile takeover. We employed the services of Goldman Sachs to assist us in the analysis of the ASTAR indication.

As a result of the analysis looking at the potential synergies that would be gained by DHL who, as Mr. Mullen already testified, they

would be funding that acquisition. Based on the synergies that would be gained by DHL, we did not feel and advised ASTAR Cargo that the offer or the indication of $7.75 did not represent adequate value for our shareholders.

The following day, ASTAR said, well, they will pursue other alternatives then, and that was the end of any discussions.

Mr. LATOURETTE. Do you know on that date in June what ABX stock was trading at?

Mr. HETE. At the time they made the indication of interest at $7.75, the $7.75 was about a 15 percent premium to the average price for ABX in the previous 30 days and it was about a 6 percent premium over what the price was on the date that ASTAR had made the announcement that DHL had made the investment in them. So it wasn't much of a premium compared to what the market price was prior to that indication.

Mr. LATOURETTE. But since that time, the fortunes at least of the stock price have declined. The last date that I have is May the 12th, 2008, and I have ABX stock trading at $2.44.

Mr. HETE. No. Today, it is actually less than a dollar. It is 90-some cents.

Mr. LATOURETTE. Mr. Mullen, to you just a question on behalf of the folks in Wilmington. You all own the Wilmington Air Park, and regardless of what happens here it is my understanding that that ownership presents an obstacle to the efforts by the community to move ahead with redevelopment proposals if this is the ultimate decision.

The question is can you offer us some insight relative from your perspective as to your plans to relinquish the facility as part of a settlement with Wilmington and Clinton County?

Mr. MULLEN. Yes. We have continually maintained from the outset that as and when this transaction is concluded, we would very willingly sit down with the community, with the State and discuss the future of the Air Park, including the possible donation of the Air Park to the community.AFTER 6:00 PM

Mr. LATOURETTE. Okay. To you, Mr. Mullen and to you, Mr. Wallace, well, this one is just to you, Mr. Mullen.

I have been trying to think of the movie—and sadly the only movie that comes to my mind is Tommy Boy and I know that is not it—where they invite the big guys to town and they have the big party and the brass bands playing and everything else.

The Mayor here, you know was in Leipzig, he claims.

First of all, I would ask you if his testimony was not accurate, that there were meetings in February and April. Then he is over in Leipzig to see the grand opening of this new thing, and then on May the 28th you sort of said: Oh, we are restructuring. Although we didn't know it at the time, it is where we are today

Can you just from a company's perspective, just like when I was talking to Mr. Hete about not taking 7.75, what happened?

How did you go from welcoming the Mayor to Leipzig to I can't think of the word that I can use on the record but sort of not being so welcoming?

[Laughter.]

Mr. LATOURETTE. What happened?

Mr. MULLEN. Well, firstly, I would like to say that everybody involved, from employees to the pilots to the Mayor to the State, I mean we have had wonderful support throughout. There are no criticisms of any form from us. This is purely economics, I am afraid.

But in that particular instances, there were several references to meetings I think in Ohio where people made various statements about our ongoing future, et cetera. At that time, those individuals did not know of the decisions being discussed at a board level about the future of our U.S. business. So they acted in good faith.

Mr. LATOURETTE. Well, let me just be clear, and I will let you finish the answer because that is an answer.

So you don't dispute that the Mayor and our Governor were on the telephone with people at your company who said: Don't worry about it. We are in for the long haul. We are staying there. We have great employment.

The problem, as I understood your answer, is that the people who were having those conversations didn't know that other things were going on within the company. They weren't in a position to know.

Mr. MULLEN. Obviously, a decision like this is an extremely sensitive decision for all the people involved. We are a publicly quoted company, a stock market quoted company. So, obviously, the sensitivity is huge.

We kept a fairly tight circle of those people involved. So I am not sure of every single conversation or who said what to whom, but certainly on the DHL side the people talking at that time were not aware.

Mr. LATOURETTE. Okay. I thank you for that.

Now to Mr. Mullen and Mr. Wallace. And, Mr. Wallace, let me just say that this is my 14th year in the Congress. I don't know if UPS has a bigger defender when it came to postal reform, when it came to your dust-up with FedEx. I think you are a great company that has great employees, and you do a great job.

But I have been handed a sheet, and I don't know who. I think Mr. Hammes was talking about how somebody from UPS came in to pitch ASTAR on switching to UPS.

I have been handed a little card that apparently I don't know if it is handed out to your drivers or not. Are you familiar with this?

Mr. WALLACE. I am not familiar with that.

Mr. LATOURETTE. Okay. I would ask the staff to make a copy of it and provide it to you. I don't want to sandbag you, Mr. Wallace.

But I think it answers the professor's concern. It doesn't demonstrate to me that you are rolling over and not wanting to compete with DHL. It indicates something else.

Let me ask, before I ask you about that, to this MOU, the memorandum of understanding. I think that in these cases and where I would take our Lieutenant Governor to task is I think it is boilerplate for a memorandum of understanding to say that you are not going to discuss what it is you are discussing as you try and finalize a deal.

I also think it is boilerplate that you don't talk to other people and competitors when you are in serious negotiations. I don't think there is anything sinister about that.

But having said that, I think that the other witnesses have indicated to us that DHL's answer now is, well, we can't talk to you because of the MOU that we have with UPS.

Maybe the professor can chime in on the antitrust or the Federal Trade Commission implications of this.

I would tell you that what is the matter with DHL receiving 100 different offers because at the end of the day if it is going to come down to?

I would think the answer would be what Mr. Mullen is trying to say here today, and that is it is the only thing we could do, but I don't know that you can say that unless you have listened to everybody.

I have to tell you, I have been in this business 20 years. When I want to steer something to my friends, I invite 100 people. And guess what, my friend still wins, but I have listened to 100 different people.

[Laughter.]

Mr. LATOURETTE. The question I have is I think your company, which is a wonderful company, and I said in my opening statement that I know why you are doing this. You have excess capacity at Louisville.

So sadly, Captains, for the people who are talking about job transfers, I don't think there are going to be job transfers because you have excess capacity and this is a boon to your business. I get why you are doing it.

But what is the danger when 10,000 or 12,000 people are losing their jobs in southwest Ohio? Let the Lieutenant Governor come in and pitch Mr. Mullen. Let whoever come in and pitch Mr. Mullen—say, here is the package and what do you think?

Do you think we can get there, Mr. Wallace?

Mr. WALLACE. Well, I can't speak for DHL in that regard.

First of all, thanks for the compliments regarding UPS. I thank you for that.

Mr. LATOURETTE. Oh, you are a great company.

Mr. WALLACE. I can't speak for DHL.

Our position on this proposed agreement is to pursue it vigorously, to get the agreement done as quickly as possible. We believe it is in the best interest of UPS. We believe it is in the best interest of competition and good for our people and good for our future.

The provisions that we have with DHL in regards to the referenced exclusivity discussion that was made earlier, we believe these are typical commercial provisions, and it remains in our best interest at UPS to stay focused on completing the transaction and keeping those in place.

We have invested resources as part of this negotiating process and time, and we believe it is in our best interest to continue to maintain that relationship.

Mr. LATOURETTE. And I get it. That is why I called it boilerplate. I think your shareholders would probably shoot you if you didn't have this in the agreement.

I guess what I am asking is in light of this isn't just a swap of something where nobody is affected. I mean you are going to turn a town, not you, but this deal will turn a town into a ghost town.

I just would ask for you to go back to the lawyers and see if you can permit in just that section, not to talk about the details of your deal, but just that section of the MOU that would let DHL receive Lee Fisher to come in and offer a million dollars or whatever he wants to do or this person comes in, that you consider that.

I bet that your lawyers, if they hooked up with Professor Simon over here, might say, you know what, that puts you in a better posture when they come flying at you with antitrust and anticompetitive provisions. So I would ask you to consider that.

Now do you have this little card that I was talking about?

Mr. WALLACE. Yes.

Mr. LATOURETTE. Okay. On the issue, I guess I just want to express disappointment because this clearly—well, first of all, have you ever seen it before?

Mr. WALLACE. No.

Mr. LATOURETTE. Okay. It has been represented to me that this is, and I don't know if the guy that came to pay the call on ASTAR had this card, but it looks like it is titled Turning DHL Restructuring Into UPS Opportunity.

It looks to me like it is a document that is given to UPS employees when they are calling on customers. To me, if this was just a deal to help DHL out, I mean I think that this card instructs people making customer calls to tell them to dump DHL because of potential rate fluctuations, pickup and delivery time issues, single carrier responsibilities and customer service.

So I really think that that blows the professor's argument that you are not still competing with DHL out of the water. But it looks to me like with one hand you are making a deal to do the air side of DHL's business, and on the other side you are trying to kill them.

Mr. WALLACE. Yes, I think that this is an example of likely some of our local people, who are always trying to compete and grow our business, doing that. This is not something that is sanctioned by us at the higher level.

But I do think it is an example of the fact that we are competitors, and our people continue to attempt to gain business wherever they see the opportunity to do so.

Mr. LATOURETTE. Fine. I think you are exactly right. I don't think this is a competitive business thing. I think you want to club these guys like a baby seal and get them out of the business, which makes me wonder why they are giving you their air business, but I will leave that as it may.

I yield back, and maybe we can come back again, and I thank you, Mr. Space.

Mr. SPACE. [Presiding.] Thank you, Mr. LaTourette.

Now I would like to follow that same line if I might.

Mr. Mullen, in your testimony, one of the first things you emphasized was that this was not a merger. Rather, you indicated this was simply an act of replacing two separate independent contractors with one.

Apart from the concerns that Professor Simon has registered regarding the very propriety of that conduct, I just beg to differ with you. I think this is something far greater than simply replacing two independent contractors with another independent contractor.

We are dealing with replacing two independent contractors, that are not competitors and with whom DHL has had a long and intimate and storied history, with a direct competitor who this documentation clearly reveals is involved in a very intense competitive race. That, to me, speaks loudly and causes me some concern over the fact that you have dismissed almost out of hand.

The agreement that forms the basis of all of this, the transactional agreement, the thing that is not a merger, I am not quite sure what it is. My understanding is it is a 10-year contract with UPS under which your company will pay UPS about a billion dollars a year. Is that correct?

I know it is a very general statement. Is that a correct assertion?

Mr. MULLEN. That is correct in broad terms.

I must stress, though, one of the great attractions of this solution. We would much rather be successful in the United States and not have to do a deal with anybody. That would be our first choice, of course.

We compete vigorously in 220 countries in the globe, and we have a big problem in this Country. We need to find a solution, which is what has led to this.

But one of the key aspects of this arrangement for us is that it is not just a price issue. There are two other major factors.

One is that it takes a fixed cost that we have today of aviation and turns it into a variable one.

One of the problems of this market has been declining now since 1998. We look back at the volumes of Airborne before we acquired it. Their air volumes were declining before we even bought it, and the market has continued to decline since that time. We have less volumes today than we had in 2000 as an industry.

Whatever structure wherein we place ourselves, even were to adopt one of these other solutions, we would still have a fixed cost.

Mr. SPACE. I understand.

Mr. MULLEN. If volume continues to fall, we can't reduce the cost. In this proposal with UPS, we can. So that billion, if our volume drops, comes down.

Mr. SPACE. Sure. The reasons as to why you have lost so much volume share in four or five years are matters that are probably outside the ambit of this hearing and aren't directly related.

But my question is this: You have entered into an agreement with a competitor to essentially provide a significant percentage of market share, and I am curious as to what consideration was flowing in the other direction. What did you get out of the deal?

Mr. MULLEN. We are not giving up any market share. We are contracting one piece of our operation, the flying of airplanes, to another company. It has nothing to do with market share.

Mr. SPACE. Right. Well, you are giving up the air cargo portion of your business to one of your most serious competitors or your biggest competitor.

Mr. MULLEN. We are giving up air carriage between key cities, yes.

Mr. SPACE. Right. For that, was there any consideration flowing in your direction apart from just getting this nightmare that is causing a loss of money at epic proportions off of your hands?

Mr. MULLEN. We get three things back in return: The first is we save a considerable amount of money.

The second is we take a fixed cost and turn it into a variable.

The third is we have some 100 plus aging aircraft in the United States, all of which will have to be replaced in due course with a huge capital expenditure requirement ahead of us in a business where we are already losing billions, that we are facing further investment to maintain those air fleets, further investment to maintain the hub, and we can replace that with an outsource contract to UPS where we do not have to meet any of that further capital expenditure.

So there are three aspects: saves us money, turns a cost variable and eliminates a very significant billions of dollars of additional cap ex.

Mr. SPACE. You heard the testimony of Professor Simon. Are you at all concerned about the implications of now essentially being at the mercy of a competitor who appears to be gaining in strength and has a stronger position on the market than you?

Mr. MULLEN. Obviously, as I said, we would much rather not have had to make any arrangements with anybody.

That said, we don't feel that we are at the mercy of UPS. We spend a lot of time, what is still ongoing at the moment, in the negotiations to protect ourselves as fully as we possibly can from any such threat.

Mr. SPACE. Now we have heard some testimony from some of the other gentlemen at the table that would seem to indicate that they have attempted to present concessions and a package that would have cost about $1.1 billion as opposed to $1 billion per year you are paying with UPS. Do you refute that?

Mr. MULLEN. Yes. We have not seen this final proposal.

What has happened is, yes, there has been a backwards and forwards between two subcontractors over which we do not have direct control.

I take it on good faith from what Mr. Hete says that he maybe first approached ASTAR. Then ASTAR approached him. Then subsequently in March, we had another meeting where they proposed to take over ASTAR again or first eliminate ASTAR, the same deal back in reverse.

But at the end of it all, our $5 million a day is still taking over, and they have not reached agreement between them, and we had to take other action.

Mr. SPACE. The confidentiality agreement that has been discussed at length during this hearing today, is that something that you felt prohibited you from entering into discussions with ABX or ASTAR regarding these proposed concessions?

Mr. MULLEN. We have had, let me repeat myself, extensive discussions with both ABX and ASTAR. We do not see any solution that solves our problem in the United States.

Subsequent to that, we have now entered into a transaction that we believe will help, and that includes the normal exclusivity provisions that go with any contract like that once you get into the final stages of negotiation. So right now, yes, we are bound by that, but we have already in our view exhausted the discussions that we have had with the other two companies concerned.

Mr. SPACE. Where are you in terms of the agreement with UPS? What stage of negotiations are you in?

Have you got a signed, sealed and delivered contract or are you continuing to negotiate?

Mr. MULLEN. We are continuing to negotiate final terms and conditions of that contract.

Mr. SPACE. Mr. Wallace, the question was raised earlier by one of the gentlemen concerning a lack of any testimony concerning the number of jobs that may be created as a part of all this transaction at UPS. Do you have any assessments that you can offer us with respect to that?

Mr. WALLACE. We are still in negotiations. So it is very difficult to estimate the number of jobs that could be created or even the type of jobs that could be created at this point, although generally an increase in our volume in our system, in our network does give us the opportunity to create new jobs. Just at this point, I can't give you an estimate on that number of jobs.

Mr. SPACE. Okay. That is all the questions I have.

At this point, I would recognize the gentlelady from Ohio, Jean Schmidt.

Mrs. SCHMIDT. Thank you, Congressman Space.

I have so many questions and so little time. I may put them in writing and ask the gentlemen at the table to answer them.

But before I begin, one of the things that was stated by Mr. Mullen, he compared this to the U.S. Postal Service. That is an unfair comparison because the U.S. Postal Service is a government monopoly, and books on this sort of subject will say that you really can't use the Postal Service when you are talking about a free market because it is not a free market for reasons I could go into for a long time.

The second thing that I have a problem with your testimony is that you are pretty some subjective remarks into it when you say that you have looked at every option we think is available, but I am not sure that you have looked at every option that is available.

The third is that you haven't seen the final proposal from the players in Wilmington, but in actuality you are not willing to see their final proposal.

So I have some problems with your testimony, and I have to be really honest with you with it.

Mr. Wallace, I don't blame you for going full force on this. I think this is a great deal for you, and I have seen that card. Before I even saw that card, I kind of figured that your sales force was going to be out there trying to undercut the competition.

I did door to door sales a long, long time ago. I know what it is like. It is a cut-throat business, and I applaud your folks for doing that.

But it concerns me about what is going to happen with DHL, and the thing that really concerns me is I really think we are creating a duopoly here.

Beyond that, I do have some questions that I would like to ask you, Mr. Mullen. There are a lot of other assumptions that you have made in your testimony. One of those is that you are assuming that when you have this contract with at UPS, that at the time

it is concluded, that you are going to continue to be able to opt in or out at your will, I believe.

I haven't seen your contract. But if I were you, that is the kind of contract I would want, an opt in or opt out on your terms.

But UPS is going to have to have that same agreement, that after 10 years there is going to be an opt in or an opt out with them because what if they can no longer carry and they can only carry their goods.

So what is your fallback position if after 10 years UPS pulls the rug out from under you?

Mr. MULLEN. Yes, you are absolutely right in presuming that is part of the negotiations at the moment. Both sides need a considerable amount of warning towards the end of that contract as to what the next step is. Is it renewed or do we go our separate ways again?

We are building provisions of ample warning, two years or more out, to allow were we not to continue to ask to put alternative lift back in place.

Mrs. SCHMIDT. A follow-up to that, we have heard a great deal of testimony from just virtually everybody on this panel and the folks before that the barriers that are in place right now, if you don't get a fallback position, a guarantee for the next 100 years with UPS, if they shut the door on you, you are really going to be out of business because it is going to be very difficult for you to find another player in the market and especially in 10 years when we don't even know where this market is going to be.

Mr. MULLEN. We don't think so, no.

We believe that we can build in enough security that eight years or more down the track from today, were that to be the case for some reason we don't renew. I guess we would hope that we would renew, but if we were not able to we are confident that we will be able to put alternative arrangements in place on time.

Mrs. SCHMIDT. Another question for you, sir, I understand that DHL also owns 49 percent of Polar Air Cargo and has an agreement with Polar for air services in and out of the United States. Can we expect DHL to try to get out of that contract and switch volume to UPS as well? Is that part of your deal?

Mr. MULLEN. No, that is not part of any deal with UPS.

Mrs. SCHMIDT. A follow-up, are you going to continue working with Polar Air Cargo or are we going to sit here and have another hearing when you want to switch gears out of Polar Air Cargo? I think we have a right here to know that.

Mr. MULLEN. At this stage, we have no intention of changing the relationship that we have with Polar Air Cargo.

Mrs. SCHMIDT. Okay. Another question for you, sir, I understand that cost of doing business is a very sensitive subject. When you can own most of your resources, generally, you can control most of your costs, but you are going to take 60 percent of your business and give it to your competitor.

So when your competitor has to raise their costs, what is your reaction going to be?

Mr. MULLEN. Well, firstly, it is not 60 percent. It is sort of in the 25 to 30 percent area.

But, secondly, the contract will build in price protection. So there is only CPI type increases. UPS is not able just to raise its costs at will. We have certainty of our cost position for the duration of the contract.

Mrs. SCHMIDT. Okay. Another question for you, sir, folks have been coming through my door, as you can tell, and telling me how this operation works and that you have this bar code situation that is put on the packages that shows where the logistics of the packages are going to go, what the price was paid for the package because some of these folks have computer-generated software that they can actually put the packages at their own business and not have to go to you to pay for the packages up front.

But in that capacity, when it goes onto the airplane, before it gets onto the airplane, there is a scanner that actually relooks at those to make sure that everything is correct, including the price point of it. It appears that you are going to have to take that function and give it to Mr. Wallace because you are no longer going to be able to be in control of that package.

What are you going to do to stop UPS from getting that sensitive information and, in addition to the card that I have also seen, having their sales force go right out and undercut DHL?

Mr. MULLEN. With respect, this keeps getting repeated, but it is just a falsehood. We are not going to make pricing information available to UPS.

All the data that they will receive is sufficient data to be able to move it from Airport A to Airport B. Yes, they will know the customer name. They will know where it was picked up, and they will know where it is delivered to.

But they know that now. Our sales force, as you can see, are in the street every day. They know which our accounts are. So that won't change, but they will not get access to any data that gives them competitive advantage with that information.

Mrs. SCHMIDT. A follow-up, so they won't have any opportunity to know any of your costs involved, either hard, soft or whatever in this arrangement?

Mr. MULLEN. Well, they will know what the cost is because they will be charging us the cost, but they will not have access to any of the rest of our cost base or any pricing information with that customer.

Mrs. SCHMIDT. And, sir, with that cost, they are going to know what the cost is. You are going to know what their cost is to you. You don't think that that is going to build you into a disadvantage because they are going to be charging more than it is going to cost them to move their own goods?

I mean that just make sense. If I am using a taxi to get across town instead of using my own car to get across town, it costs me more to get across town.

If I am using UPS to carry my goods across the United States, it is going to cost me more because they are going to charge me just as a taxi charges me to sit in the back seat of the car. They are going to charge me more than what the base cost would be.

That is the part that I am not understanding, and I know you are going to come back and say, but your overhead is so much larger and therefore you are going to cut that cost. I am not sure that

really works. I think school systems are seeing that in renting buses versus owning their own buses.

So I have real problems with how. I am concerned how you are going to create an opportunity into the future to remain competitive with UPS and FedEx.

Sir, what I don't want to have happen is a duopoly because nobody wins in a duopoly. This is beyond the cost to Wilmington and devastating that town and the almost 1,000 jobs that devastate my district because my district is impacted as well.

This is beyond that. This is what is it going to do to the moms and pops across the United States that are trying to make ends meet now and want to have a package delivered to their son or daughter across the ocean or across the United States and suddenly they see that price continue to go up and up and up.

Mr. SPACE. The gentlelady's time is expired.

At this time, the Chair recognizes the gentlelady from Hawaii, Ms. Hirono.

Ms. HIRONO. Thank you, Mr. Chairman.

Mr. Mullen, you said that one of the pluses of this arrangement would be that you would turn a fixed cost into a variable. Can you explain to me what is the fixed cost just so I am very clear?

Mr. MULLEN. Yes, indeed, Congresswoman. That ties actually exactly into the discussion I was just having with Congresswoman Schmidt.

When we fly our own aircraft, those aircraft fly every day whether we have 1 package on them or whether we have 1,000 packages on them, and the cost is pretty well the same.

Ms. HIRONO. Okay.

Mr. MULLEN. Obviously, you know in a falling volume environment, that continually increases the impact to us.

In a variable cost situation, if we pay UPS X dollars per package, if we don't have the package, we don't have the cost.

Ms. HIRONO. But right now, you are paying ABX and ASTAR for that portion of your business. So that, you consider a fixed cost?

Mr. MULLEN. Yes, because we pay them for the full cost of flying that airplane whether we put any packages in them or not.

Ms. HIRONO. But with the arrangement that you are going to have with UPS, it is dependent on the number of packages. That is what you are saying?

Mr. MULLEN. Yes. It is basically a per piece charge.

Ms. HIRONO. I appreciate your position that you said that you have exhausted all of your discussions with ASTAR and ABX, but clearly the fact that they are here testifying as well as the State of Ohio, they do not believe that the discussions are exhausted.

I can only suggest that having heard all the testimony, sitting here, that I hope that you will enter into discussions with them because they obviously don't agree with you that they have exhausted all possibilities. Also, the State of Ohio has a tremendous interest in this.

Mr. Simon, you noted that you thought that this agreement, on its face, raised certain antitrust concerns, and your suggestion is that an injunction be pursued. Now it is not that easy to get an injunction, and were an injunction to be pursued I would expect

that DHL and UPS would raise some kind of irreparable harm argument.

Would you say that based on what you say is the facial appearance of this agreement, that an injunctive action would prevail?

Mr. SIMON. Well, I would answer the question this way, Congresswoman, when one seeks an injunction, the first thing that happens is if you can prove your case you can get what is called a preliminary injunction halting the arrangement for a reasonably short period of time until the parties can gather their data and their evidence and their testimony and present a full panoply of witnesses and evidence to the tribunal, a commission or a court, whatever tribunal is hearing it.

At that time, the ordinary standards of full, permanent injunctive relief have to be satisfied, which are not so easy to get but which depend on a case by case basis, applying the standard law of what injunctive relief is to the facts as developed in an expedited discovery program.

So I would not feel comfortable being put in the position of saying could the full, permanent injunction prevail, but a temporary hold entered by a tribunal or a competent court would give the parties time to gather the facts, data and evidence that they need to make a full presentation and a full adjudication before a neutral fact finder. That is why court houses are built.

Ms. HIRONO. So, based on what you already know about the circumstances of the situation, you feel, you believe that a temporary injunction could be obtained?

Mr. SIMON. By a government agency?

Ms. HIRONO. Yes.

Mr. SIMON. Absolutely, yes. I would add two points to that very briefly if I might.

We have heard a number of very avuncular homilies today such as such and such may completely dissipate a certain argument. But the core of this hearing is what happens when one competitor agrees not to compete with another competitor, and no turning around and no pleasant talk can alleviate that.

Companies acquire competitors all the time. They purchase competitors all the time, and they do it in secrecy. There is a nice cloak of darkness there.

But when one competitor agrees to take an essential facility that it needs to keep in business and give it over to another competitor in an oligopoly situation where there are only three competitors to begin with, it raises some very significant antitrust concerns as a matter of substantive jurisprudence going back to the year 1890.

Ms. HIRONO. You are saying that this horizontal collusion situation that could be set up, it is not just on the basis of price because Mr. Mullen mentioned that it is not as though UPS can totally control the prices. They have to do it within a certain limited range, perhaps CPI indexes.

So does that assuage some concerns you have, antitrust concerns you have about the horizontal collusion?

Mr. SIMON. No. With great respect, it does not because if there is anything that is prohibited in the antitrust laws, it is a flat-out prohibition against competitors agreeing not to compete head-on with each other at all facets and aspects of their business.

If you say, well, we are going to adjust at this percentage or that percentage and with a contractual arrangement, that doesn't answer the question that has been a substantive part of American jurisprudence since the year dot, and that is competitors have to go all out and compete against each other.

If this were another carrier, not UPS, there would be far fewer concerns. But even putting aside the service squeeze concerns that Mr. Hammes discussed, the price concerns in a tightly integrated, little marketplace—only three essential carriers now with a strong possibility that it might whittle down to two—is what raises the concerns of the Antitrust Institute and my personal concerns.

Ms. HIRONO. I think it is important, what you are pointing out, because although Mr. Mullen says this is a solid solution, how solid can it be if it raises all kinds of antitrust and competitive concerns?

Mr. SIMON. But look, we are a neutral agency. We don't take positions to help or hurt one party or another, and we have substantial concerns that there are serious antitrust problems here.

If I could add one very quick point, a lot of talk has been mentioned about losing stratospheric, catastrophic amounts of money. When you lose money in an organization, you have to juxtapose the revenues you are getting in against the costs that you are incurring.

Now continental systems of accountancy may and probably do allocate costs differently across the spectrum than American systems. So I would suggest that people here take a good hard look at which system of accountancy is being used.

I am not a CPA, but I have litigated dozens and dozens of these cases across the Country.

Which system of cost allocation is being used and is that allocation appropriate and proper under the laws that govern the conduct in our Country?

Ms. HIRONO. Mr. Mullen and Mr. Wallace, I have to assume that you have talked with your lawyers extensively about the antitrust issues. So all I can say is that based on the testimony that we have heard, that those are very, very serious concerns that should definitely concern you as you move forward with further discussions regarding this agreement.

That is not a question. That is a statement.

Mr. MULLEN. Indeed, Congresswoman, we have taken extensive antitrust advice from some very highly qualified, a range of highly qualified antitrust lawyers, and our advice is different.

Ms. HIRONO. Thank you, Mr. Chairman.

Mr. SPACE. The Chair now recognizes the gentleman from New York, Mr. Kuhl.

Mr. KUHL. Thank you, Mr. Chairman.

It is a very interesting conversation that we have heard all day, but I am still a little bit confused about some of the issues. One of the issues has to do with the actual negotiation between Mr. Hete, your group and certainly Mr. Hammes.

Nobody has really given you the opportunity to kind of, I think, give your viewpoint as to how these discussions have either been just neglected. I am talking about the discussion that you had offered to Mr. Mullen and certainly his group.

I would be interested in your perspective, and I am not trying to get to an issue of fault. I just want to get to what a number of my colleagues have mentioned, and that is there seems to be one side an inconclusive determination as to whether or not the negotiations from your side of it have concluded or whether they have been concluded because of some agreement between UPS and Mr. Mullen's organization.

So I would just give you a couple of minutes, and I don't want you to take all my time because I have a couple other questions I would like to address to Mr. Mullen.

If you could, gentlemen, just kind of tell me from your perspective actually where the negotiations fell apart if they did. I am also interested in the last offer that you put together as to how that actually equates with the offer for cost savings that Mr. Mullen is looking to actually be able to have his business survive and be successful.

Mr. HETE. If I would, Congressman, I think after the ASTAR indication of interest in which we said it wasn't sufficient and they determined to take an alternative course, from that point forward, the ABX team had put together numerous proposals up to and including the one that I had presented to Mr. Mullen in Bonn, Germany, on March 31st.

October 31st of 2007, we presented to them some proposals to get to a single carrier.

We did that again in February of 2008. We presented them another set of alternatives that would get them to a single carrier.

Now the single carrier concept was one that should have been initiated right from the get-go with the merger between Airborne and DHL, and unfortunately it didn't start off that way. I first proposed that opportunity to Mr. Mullen back in January of 2005 to get to a single carrier, and ABX would have been the surviving carrier at that point.

We spent approximately 15 months and probably spent eight to twelve million dollars in terms of putting aircraft back in service in order to be able to facilitate that move towards a single carrier. Unfortunately, after 15 months of work, DHL elected not to go for that option. Of course, by that point in time, we are in the second quarter of 2006.

So we fast forward into 2007 or late 2006. We attempted to acquire ASTAR. That offer was rejected by ASTAR.

ASTAR came back in 2007 and attempted to acquire ABX, and then we went through those various options in October of 2007 and February of 2008.

With the presentation we gave to Mr. Mullen on March 31st of 2008, it was quite a detailed presentation. As I mentioned earlier in my testimony, we presented on the 31st of March, and on May 28th we got the word from DHL that they were going to transition that piece of business to UPS.

Not once during that roughly two-month period was there any inquiries, questions, suggestions or recommendations in regard to that March 31st proposal. So, essentially, it sat there to the best of our knowledge.

We do good work at ABX, but I am not sure we are quite that good that someone wouldn't have had a few questions or possible

tweaks. I think the key element there is that the presentation we gave to them protected the network that they had in place.

It was implied by Captain Ross earlier, things like Congressman Oberstar's, Chairman Oberstar's packages to him in some of his offices still would have been on an overnight basis as opposed to taking two, three, four or five days.

The last proposal that we initiated, once we heard about the potential deal between UPS and DHL, we got within roughly $100 million of the $1 billion that they said they would be paying UPS. At that point in time, we had presented that to Ken Allen, the CEO of DHL U.S., to take to the folks in Germany which he said he would do, but then the word came back that they weren't in a position where they could review that proposal in total.

The difference between that and the March 31st proposal, and it was a couple hundred million dollars less I believe, was that we cranked into that wage and benefit cuts for employees, for example, a reduction in the network coverage somewhat, trying to figure out exactly what markets DHL was going to pull back from because the less markets you service via air the lower your cost is going to be. But we have never had one single discussion in regards to that alternative proposal.

Mr. KUHL. Okay. Thank you.

Mr. Mullen, I would like to just kind of understand your restructuring agreement if you would. I thought I heard you say in your initial testimony that you have been facing, at least in the last year, roughly $1.3 billion in losses in your operation in the United States. Was that number correct or did I misunderstand you?

Mr. MULLEN. No. That number is correct. That is our estimate for this year. It hasn't been as high as that.

It was still a huge amount, around $900 million last year. This year has been exacerbated by customer losses from all of the speculation and media coverage and other interest in what we are doing.

Mr. KUHL. Now does that mean that with the restructuring, that you are actually cutting your costs by a billion dollars or am I confusing numbers here, so that you still will be operating in a deficit of about $300 million?

Mr. MULLEN. That is correct.

Mr. KUHL. So you plan to move forward with a company reorganization, immediately facing a significant loss in revenue.

Mr. MULLEN. Yes. We are prepared to pay a price for maintaining our business in the United States. Three hundred million is still a very large sum of money, and obviously we hope ultimately to eradicate that altogether.

But the immediate objectives over the next two and a half years of this program will be to get the loss down from the 1.3 of this year to around 300 which is at least manageable in the interim.

Mr. KUHL. Did you ever look at the offer that came from Mr. Hete relative to his last offer that was, as he said, close to $100 million difference?

I am just wondering. If you are still looking at a $300 million loss on an annual basis, what is the difference between $300 million and $400 million if you plan to balance it out over the next several years?

Mr. MULLEN. I do have to beg to differ with Mr. Hete. That proposal of March 31st was extensively analyzed. I have two documented detailed meetings between his teams and our teams going through that proposal.

By this stage we had the UPS alternative. We actually delayed our negotiations with UPS in order to give full time to study that opportunity.

As Mr. Hete said, it saved some $250 million was the proposal, which was a lot of money. But it was not sufficient together with the other factors that I pointed out of capital expenditure avoidance and variability of costs, and it was considerably less in actual savings. For those reasons, we declined to go that way.

Mr. KUHL. Mr. Chairman, if I might, I just have one further area.

I am also interested in what I heard from my colleagues from Ohio about the tremendous devastation if this whole proposal goes through as to the impact from a personal standpoint, from a human side standpoint.

I heard just very briefly in the testimony I heard today very little consideration about the employees that are going to lose their jobs. Can you tell me what you are going to do?

Are there going to be, if the proposal goes through, severance pay packages? Are there going to be retirement pay packages kept intact?

Are there going to be all the kinds of things when you are looking at seven, eight, nine, ten, twelve thousand people who are going to be terminated?

It is a human suffering of really dramatic kinds of proportions. It is not the kind of thing that we are used to seeing when you see transfers of operations, and I am just curious as to what.

I know that you will probably set some form of a program in place to find new jobs, but how about for those people who don't have new jobs?

They are in a position. Maybe they are like I am at 65. They don't want to retire. They are still healthy and things like that, but at the same point they don't have the economic wherewithal to retire, and they are going to have a very difficult time relocating. Have you thought about that?

Have you started to put packages together for those employees?

Mr. MULLEN. Of course, Congressman. You know this is an extremely difficult thing. I am an employee too.

Mr. KUHL. But Mr. Mullen, you are going to have a job after this. This is several thousand people who are not going to have a job. You are not looking at termination like they are.

Mr. MULLEN. Of course.

Mr. KUHL. So you have a little different perspective. You are looking at a $300 million loss and carrying that forward.

Mr. MULLEN. Indeed.

Mr. KUHL. These people don't have a dollar to carry forward.

Mr. MULLEN. Indeed, but I would not wish it to be suggested or intimated that we do not care about the human side of it. We do very much.

As I put in my written testimony and also in my opening verbal statement, we are going well beyond what we have benchmarked

as a standard in these sort of circumstances and well beyond what our contractual and legal obligations are.

Mr. KUHL. Can you quantify that for me so I understand?

Mr. MULLEN. Yes. We are putting forward a package of $260 million. Our contractual and legal obligation is $35 million. So the other 225, we are voluntarily contributing for exactly the reasons that you say. We are extremely mindful of the impact that this has on the community.

And I would add, as I said earlier, that the majority of that is actually not even going to DHL employees. It is going to the employees of subcontractors and others who are impacted by it, for whom we have no contractual obligation to make that payment. Our subcontractor companies have that obligation.

Mr. KUHL. If I was a pilot for one of these subcontractors and looking at having my job terminated, what would I be looking at under that package?

Mr. MULLEN. Every single person employed by ourselves or employed by one of the subcontractors who is impacted by this is entitled to some of that severance entitlement. Now it obviously varies between part-time and full-time and pilots, et cetera. I couldn't give you an individual amount per person, but every single person is covered by that, what we believe is an extremely generous settlement.

Mr. KUHL. And insurance covers for any period of time?

Mr. MULLEN. Yes, health care benefits and similar factors.

Mr. KUHL. Retirement benefits of any sort?

Mr. MULLEN. I would have to come back to you, sir, with the specific details on each of those.

Mr. KUHL. Could you do that because I would really be interested in that?

Mr. MULLEN. Yes, very happy to do that.

Mr. KUHL. Okay. Fine.

Thank you, Mr. Chairman. I yield back.

Mr. OBERSTAR. [Presiding.] The gentleman's line of inquiry is one of great importance to all those who are directly affected by this proposed transaction. I think they would all rather have their jobs rather than their benefits.

Mr. LaTourette, a second round of questions.

Mr. LATOURETTE. Thank you, Mr. Chairman.

Mr. Mullen, I asked Mr. Hete about his stock, and now I am going to ask you about yours.

You testified last week that the decision was based upon the best interests of your stockholders which is, of course, a company's fiduciary responsibility. Since the May 28th announcement, how has your stock price reacted to that announcement?

Mr. MULLEN. Our stock price has been I can't say exactly from that announcement because we have had so much turmoil in financial markets and some other major transactions that our company has done, including selling the bank which has been a huge overhang in the stock. But what I can say is in line with all the other transports, the major transport stocks, we are materially down from where we were six or nine months ago.

Mr. LATOURETTE. All right. Let me just close the loop on this offer to Mr. Hete and ABX. If ASTAR had been successful in ac-

quiring ABX for $7.75 a share, is it your opinion we would be here anyway?

Mr. MULLEN. That is a very difficult question, but I think it is likely not, no. I think that would have been a solution at the time.

Mr. LATOURETTE. And likely not because you would have achieved the savings that you are hoping your deal with UPS is now going to achieve for the company?

Mr. MULLEN. No. We would not have saved the savings that we are now going to save. But at that time, of course, we didn't know about the UPS opportunity. It wasn't there on the table, and we would have had to make a business judgment at the time.

I would also say that our business has deteriorated sharply in the last year because of the ongoing speculation as to the future, publicity, media, political inquiry and others which is now exacerbating the problem that we already had.

Mr. LATOURETTE. To both you and to Mr. Wallace, the announcement on May 28th was the announcement that you are going to work with UPS on domestic shipping and sorting of your packages.

When did the UPS opportunity present itself and when did your two companies begin discussions?

Mr. MULLEN. The first contact was on February the 13th, from memory, when I met with my opposite number in New York.

Mr. LATOURETTE. Was that February the 13th of 2008?

Mr. MULLEN. Yes, correct.

Mr. LATOURETTE. Did you initiate the contact or did UPS?

Mr. MULLEN. No. The contact came from UPS through a phone call to our Chief Financial Officer, and then I followed up with a call back which led to a meeting on the 13th.

Mr. LATOURETTE. Following the meeting on February the 13th, well, that meeting, I assume that was: Are you interested? Yes, I am interested.

So when did it get down to discussions?

Mr. MULLEN. Well, we signed a confidentiality agreement at that meeting to start exchanging data, and from there on it started to gather pace as it became clearly of interest to both sides to go further.

Mr. LATOURETTE. Obviously, the exchange of data is important. When you looked at their stuff, they looked at your stuff, when do you think, if you can give me just an approximate time frame that you all sat down and started to talk turkey?

Mr. MULLEN. Well, we really started from that meeting. Obviously, as we got further and further into the operational capabilities, UPS, I can't speak for them. I am sure Mr. Wallace would.

They had to work out whether they could move the volume, what sort of operational changes they would need to make. We had to do the same on our side. Gradually, the working groups were formed to develop the process and the proposal into something concrete.

Mr. LATOURETTE. Let me ask you this. Have you ever entered another confidentiality? The memorandum of understanding that we have been talking about here for the last couple of hours, is that the confidentiality agreement we are talking about?

Mr. MULLEN. No. Well, there are lots of documents being talked about.

We signed a basic confidentiality agreement at the beginning. We ended up signing, effectively, a letter of intent or memorandum of understanding which was what we announced on May the 28th as a result of all of those discussions

Mr. LATOURETTE. The confidentiality agreement that you signed, that was entered into on February the 13th, one, I assume that it prevented you from talking about the details of your discussions. Did it also prevent you from talking to people like the State of Ohio or anybody else that wanted to present alternative offers to you?

Mr. MULLEN. No. That only came into place with the letter on intent on May the 28th.

Mr. LATOURETTE. I don't know if it was in your testimony or whether I got it some place else, but I have a note that according to DHL the integration of the Cincinnati hub into Wilmington did not go well, resulting in customer service issues and lost contracts. Is that DHL's position and, if so, could you describe what happened?

Mr. MULLEN. Yes. We had the original DHL business in the United States had a hub in Cincinnati. When Airborne was acquired, we then ended up with a second hub being the one in Wilmington, and we had to make a decision to consolidate into one or the other location.

After a lot of discussion, it was decided to do that in Wilmington. We then went through a long period of significant capital investment where we upgraded the facilities.

Then finally in September, we moved the business from Cincinnati across which was a very, very major move. I think we had some 180 massive trucks carrying all the equipment, and we literally had to switch off on a Friday and start on a Monday with everything integrated in one location.

It was a very difficult period. I would pay tribute to Mr. Hete and his team, and everybody worked long, long, long hours, night and day to make that thing a success, and we did. We eventually got on top of it.

But it was like any move of that size. It was a massive logistical exercise, and it took some time to get it right. During that period, of course, we suffered service delays which affected our customers.

Mr. LATOURETTE. Mr. Hete, did you work for Airborne Express?

Mr. HETE. Yes. I have always worked for ABX Air, the subsidiary, but it was a wholly owned subsidiary of Airborne Express prior to the sale to DHL.

Mr. LATOURETTE. Again, my notes say with the lone exception of 2001, Airborne Express was profitable for the entire time it was in business prior to the acquisition of DHL. Is that accurate?

Mr. HETE. That is correct.

Mr. LATOURETTE. Can you tell me what business practices you changed after the acquisition which caused DHL to lose $1.3 billion?

Mr. HETE. Well, I certainly can't attest to all of the business practices that changed, but those that did that impacted ABX, for example, were things like the ground business, the traditional UPS stronghold.

For example, we had 11 Airborne/ABX. We had 11 regional facilities that we had in place in order to cover the areas of the Country

that we thought we could make money off by servicing a limited scope, not matching every zip code across the U.S. that UPS services.

In 2004, DHL expanded that network by 7 additional facilities and pretty much did it all in the fourth quarter. Of course, the cost of expanding a network comes immediately, and then you are hoping that the revenue will follow soon in order to support those costs. I think that was one key element was rapid expansion of the ground network.

In addition to that, one other key change was that throughout its lifetime Airborne always focused on trying to wring out all the nickels of cost that they could, especially when you talk about the fixed costs, as Mr. Mullen referred to earlier, in terms of an air network because it is a fixed cost.

So if that airplane is flying with one package on it or a thousand packages on it, the cost is roughly the same. There is a little bit more fuel burned when you are carrying extra weight.

When you are servicing things like a deferred product or something that would normally move via truck, from the Airborne perspective, we always focused on maximizing the sunk costs of the air network as opposed to adding an incremental truck.

DHL did a radical shift in that they wanted to cleanse the air operation of any potential ground shipments, and so what that precipitated was a marked increase in trucking costs to support that ground network.

I think those are probably the two key elements.

The other piece was that from a fleet perspective the ABX fleet, for the most part, consisted of two-engine, two-man cockpit aircraft. They, well, we have the backbone of the fleet is a 767.

We have heard a lot of comments about an aging fleet, but the 767 in the ABX fleet, the predominance of which service the DHL network, is the same type of aircraft that is a key part of the UPS network. It may not be the 300 series. It is a smaller series. It is a dash 200. But essentially it is just about as fuel efficient as anything that UPS will have of comparable size in its network.

The balance of the fleet consisted of the DC-9 which is probably the smallest aircraft out of the combined fleets between ABX and ASTAR. But the advantage it had is it is a two-engine aircraft, of course, at a point in time when you have fuel prices between three and four dollars a gallon.

If you have 1 more engine back there, it is costing you probably $1,500 to $2,000 an hour for every hour of flight that you fly, having a 3-engine aircraft like a 727 versus a 2-engine like a DC-9.

The primary focus for that in the DHL network is that they want to focus on the standard industry cargo container, what is referred to as the A container. The aircraft has a large cargo door.

The Airborne system was unique in that it was built around the small package, and so the DC-9 fleet was primarily operated with its own unique container system that went through the passenger door.

Now you could carry a chair, for example, in one of the C containers as part of the legacy Airborne network, but if you wanted to carry something the size of this table you would have to have the standard industry A container. So going to that type aircraft

was focused on a three-engine aircraft because you want the accessibility of that larger container size versus a DC-9 which doesn't have that and only two engines.

You are going to have a cost increase. Unless you can fill up that airframe to offset that additional cost, you are just basically pouring more money out the tail pipe.

Mr. LATOURETTE. I thank you for that.

One of the problems that I had with the United State Postal Service, and I concede Mrs. Schmidt's observation it is a governmental entity.

But one of the, I think, legitimate criticisms that I think people had with the sole-source contract that was given to Federal Express was the fact that the Postal Service was paying for the airplane whether there was 1 package on it or 150 packages on it, and that didn't seem to be a good use of the Post Office's money.

Mr. Mullen, my last question, I am going to give you a shot, I guess. Well, my last question for you, and I do have a question for the professor.

I have heard you say you lost $1.3 billion and you are losing $5 million a day. Most companies sort of break out when they are losing money and say: Okay, this division is doing okay. This one is not doing okay.

One, is Mr. Hete's observation correct that some of the loss you have suffered is because of capital expenditures to ramp up that revenues didn't catch up, one?

Two, did Airborne Express/ABX, your subcontractor, go from profitable? In other words, did you lose money on the air side here with ABX or were you losing money on the ground side, capital expenditures and other things?

Did, all of a sudden, this fleet that had profitably performed all of a sudden become a drain on your system?

Mr. MULLEN. Yes. The answer is a complicated one, of course. There is no one single reason as to why DHL is in this situation.

We started with too sub-scale and either at best break even, if not loss-making, businesses. We had an existing DHL business that was loss-making, and Airborne, with the greatest respect, was very close to not being able to compete any further in the United States.

It was in the segment of the market that has been declining, in the small package area. It didn't have a ground network. We had to compete with a bundled product offerings of UPS and later FedEx, and it was very under-invested.

So we took a major strategic decision that would combine these two businesses. We would invest in a ground network, and we would try to compete head for head with Federal Express and UPS. Obviously, now with hindsight, we realize that we haven't been successful in doing that which is why we are all sitting here today.

Airborne had a low quality service and therefore lower pricing. So, today, we do not command the same level of pricing with all of that legacy book of business as our competitors do. It was also very oriented towards major customers who always demand very, very low pricing.

The lack of DHL brand strength meant that we had a very small share of the full tariff small shipper because when they think of

a name for shipping in the United States, they don't think DHL. They think Federal Express or UPS first.

So there are many, many factors. Basically, we don't have enough revenue, and we too high costs, and we don't have the volume to be able to get the productivity on the costs that obviously an organization like UPS will do.

A UPS driver, virtually, I am paraphrasing your business. A UPS driver will stop at Number one, Number Three and Number Five down one side of the street and the same in reverse.

Our lack of volume means that we have a driver stopping here on this street and then going two blocks over there, and we just don't have the productivity that our major competitors do.

Mr. LATOURETTE. I asked before about if Mr. Hete's operation had accepted the $7.75 for the stock offer, then maybe we wouldn't be here.

Let me ask you this. You own, you being DHL own 49 percent of ASTAR, the stock of ASTAR. People have indicated to me that the reason you only own 49 percent is we have a rule against foreign ownership of airlines, but I assume you are aware that the Bush Administration had offered up new regulations that would have permitted that in some situations.

Was DHL waiting or hoping that the rules would change relative to the ownership of airlines and, if they had and DHL was able to become the majority of ASTAR, would we be here today? I mean was that part of your plan?

Mr. MULLEN. Well, we have always hoped that foreign ownership rules would be restricted because we think it would be good for the business, for industry and for the consumer in the end. However, we never worked towards a belief that that was going to happen. So we have always had to run our business on the assumption that would not be the case.

Mr. LATOURETTE. Thank you for your indulgence, Mr. Chairman.

Professor, in the dozens and dozens of cases that you have litigated, are you on both sides of those or are you always advocating a problem?

Mr. SIMON. I would say approximately two-thirds to three-quarters of my work over the many years I have been doing this has been plaintiff side, and the remainder, about 30 percent, has been strictly defense work. So the answer in one word is yes.

Mr. LATOURETTE. Okay. Perfect. You gave me more than one word.

Mr. SIMON. Sir, if I could add one quick point.

Mr. LATOURETTE. Whatever you want.

Mr. SIMON. My apologies. You said earlier that you believe that corporations have fiduciary duties to shareholders.

Mr. LATOURETTE. Right.

Mr. SIMON. There is a very substantial body of law that says that corporations owe duty to shareholders which are not fiduciary in nature. They are not fiduciary duties at all. They are simply duties imposed by Federal law and occasionally by State law. They don't rise to the level of a fiduciary obligation.

Mr. LATOURETTE. I got you. I wasn't attempting to be exclusive. I was trying to indicate that they had that responsibility as one of their many responsibilities.

Mr. SIMON. Right, but not up to a fiduciary nature which is the strongest duty possible in the law. I don't mean to sound like Dr. Pedagogic at all. I just picked up on the point that you made.

Mr. LATOURETTE. I had a lot of professors like you in law school. [Laughter.]

Mr. LATOURETTE. But let me see. When I first looked at this and Congressman Turner came and so forth and so on and your whole discussion about price squeezing and so forth and so on, I thought I heard you say because UPS doesn't have the lion's share of the market it is not a monopoly. Some of that price squeezing analysis sort of falls by the wayside.

This isn't a great antitrust case. This is a better restraint of trade case perhaps.

Mr. SIMON. I agree with that. The bottom line is yes, because unless you are in a monopoly position or threatening to get a monopoly position, then your customer who is also a competitor can simply go somewhere else.

Mr. LATOURETTE. Right.

Mr. SIMON. But if you are in a monopoly position, that is where the classic price squeeze comes along.

So, yes, I would say it is more likely to be a restraint of trade case, an unfair trade practice as a facilitating practice permitting the very few companies in a small, tight, little oligopoly to facilitate the possibility of collusion or price fixing.

Mr. LATOURETTE. Right. So if you were retained and were advising people to believe that they were aggrieved by this situation, you would recommend some petition to the Federal Trade Commission.

Mr. SIMON. Or the Attorney General of Ohio if they have the statutory or common law obligation or responsibility to do that, yes.

Mr. LATOURETTE. I thank you for those answers.

Mr. Wallace, again, nobody knows how a case would turn out. I am sure you all have wonderful lawyers that are as gifted as Professor Simon.

Just sitting here at 10,000 feet, giving the people the opportunity that are about to lose their livelihood, the chance to just make a presentation, I don't think costs anybody anything. I would hope that you would think about that and chat with your lawyers.

So, thanks so much.

Mr. OBERSTAR. I thank the gentleman for his very thoughtful and persistent questioning and opening up some avenues of thought.

Mrs. Schmidt, do you have any further questions?

Mrs. SCHMIDT. Thank you, Mr. Chairman. I want to shift gears to Professor Simon.

You have heard a lot of dialogue today. You also talked about and you brought up a point that I didn't even consider, that different countries look at the bottom line in a different way. I think that is what you were trying to say.

So you are not always comparing apples to apples when you look at the bottom line cost, say, of doing business in Europe versus doing business in the United States. But we have an obligation in the United States to only look at it from our bottom line, and I

think that is where trade agreements across the ocean get us into trouble sometimes.

Could you please elaborate a little bit on that for me?

I really want to understand why DHL would look at this as a good deal when I feel that we are going to be either, in a few years, talking about the fact that we have a collapse and now we have a duopoly, that we only have two players in the system.

Mr. SIMON. Sure. Now look, I am not a CPA, Congresswoman, and I haven't been trained to be an accountant, but I have litigated enough cases to know that when you have a loss situation or a profit situation, you get that bottom number only by juxtaposing all your costs against all your revenues.

The way you allocate costs, particularly when an operation has multiple components—ground, air, ground intermediary points—can vary widely from one accounting system to another, particularly from the United States accounting system to systems that are more commonly employed in foreign countries.

Where you allocate the costs can go an enormously long way to determining whether you are at a major loss situation, a small loss situation or an actual profit situation.

That would be more or less the extent of how I can help you. The rest, you would need CPAs highly competent in the field of allocating costs and where they go on the different lines of a company's balance sheet to determine whether a profit really was a loss or whether a loss really was a profit.

Mrs. SCHMIDT. Okay. I have one last question, and this is for both Mr. Mullen and Mr. Wallace.

You have heard Congressman LaTourette say, can we just open it up and allow these folks in Wilmington to give it their best shot?

I am asking you, would you please let the folks from Wilmington give it their best shot and, Mr. Wallace, would you agree to let that happen?

We are talking about a lot of lives here and a lot of jobs, and there is a human component. Not everything in a bean counter can be about the beans. It has to be about the folks behind the beans.

I am just asking you as one of those people that has to worry about, in my past life, making ends meet. I am just asking both of you if you would be willing to let these folks, with a sincere heart, and the State of Ohio helping them give it our best shot?

Mr. WALLACE. Well, I think I have already responded to that question.

I just want to once again emphasize the fact that, first of all, from a UPS perspective we are always concerned about job loss. Also, part of our responsibility is to protect our current employees and grow our business to provide job security for those employees.

In terms of consideration, we will certainly have that discussion within our organization and be able to respond.

But at this point, we feel strongly that the transaction and the proposed transaction negotiations should be allowed to move forward. We have been open with the Department of Justice, keeping it informed of the status of our transaction.

We believe that it is in the best interest of our organization and competition in general to allow us to move forward, but we will have further discussions on it.

Mrs. SCHMIDT. Before Mr. Mullen answers, look, I get why you don't want to open the discussions. This is a great deal for UPS, and if I were you and I held the ball, as Lieutenant Governor Lee Fisher said, I wouldn't want to give that ball up.

But I am just asking you to put a human face on that ball because there are between eight and ten thousand folks that are going to be in serious problems.

When you look at where this region is in Ohio, this is not a place where growth occurs naturally. It has to really be cultivated, and it is just so hard to get a job once a job is lost. I am just asking you to put a human face on it.

Mr. Mullen, what about you? Are you going to take one for the Ohio team and let negotiations reoccur with Mr. Hete and Mr. Hammes and Captain Ross? I am just asking you.

Mr. MULLEN. Could I just very quickly answer the first part of your question as well, just respond on that?

We are a publicly traded company. Accounts are audited by PricewaterhouseCoopers. We follow the International Accounting Standard or IFRS which is also followed by many American corporations, and the U.S. is actually moving in the future to that standard as well.

I would love to think there was some magical bookkeeping change that would eliminate our $1.3 billion and turn it into a profit. I am afraid I don't think that exists.

To answer your other point, I just echo what my colleague says here. We are bound by that agreement. It is a legally binding agreement, but certainly we will discuss it with them, and we will get back to you.

Mrs. SCHMIDT. Thank you. Just because it is a legally binding agreement, you know you always have a chance to change agreements. That is the great thing about the United States.

Thank you.

Mr. OBERSTAR. I thank the gentlewoman for inquiry and the witness for his response.

I ask unanimous consent to include in the record the statement of Congressman Robert Latta. Without objection, so ordered.

Captain ROSS. Mr. Chairman?

Mr. OBERSTAR. Yes.

Captain ROSS. Sorry to interrupt you. I know it is getting late. I would just like to address a couple things before we finish, given the broad scope of the Committee if I have a chance.

Mr. OBERSTAR. We are not concluded yet.

Captain Ross and Captain Prater, in your analysis and you have great resources. Especially ALPA has staff analysis and resources to review these and other agreements that you have testified on over the years.

Where do you think the failure occurred? Let's call it that or the loss of market share. On the air side or on the ground side of the DHL equation?

Captain ROSS. Sir, I think on the air side, we lost a lot.

When we first started, when DHL came and made the move to Wilmington, they had run an outstanding ad campaign. It was a great ad campaign. Everyone loved it, and they picked up a large portion of new customers.

During that sort change, when bringing the entire sort from Cincinnati up to Wilmington overnight, our on-time performance dropped from over 99 percent down to 70 percent, and it took months to recover that. We lost a large portion of those customers.

The new customers were all gone, and then a large chunk—I think it was 25 to 27 percent—of the current book was gone following the Wilmington event as we will call it. I think a large chunk came out of that one move right there.

Mr. OBERSTAR. And on the ground side, do you think there were shortcomings there?

Captain ROSS. Sir, I can't really address that. I am not that familiar with the ground. So I am not sure if Captain Prater is.

Captain PRATER. Obviously, not as much because we track the air side quite a bit, but it does come down to the fact that these companies, both companies, were operating well until the takeover by Deutsche Post.

What happened then, I don't think they need any more ownership rules when they can kill a company. With just owning 49 percent of it and 24.9 percent control, having a member sitting on the board of directors, and yet they can still kill these two U.S. competitors, clearing the way for the duopoly that we have talked about.

We have heard many, many reports that maybe management should be looking at itself for the way they have tried to run the business since taking it over.

We fly the airplanes, and we deliver a good product, both my members and Captain Ross' members and yet all to naught. We can't make up for management decisions to destroy a business so that they can then give it away to another customer, in this case, UPS.

Mr. OBERSTAR. Well, I concur about the foreign ownership issue, and I think that is kind of a red herring here.

You heard the Lieutenant Governor earlier say, we were never given an opportunity to offer good faith alternatives were his words.

What good faith alternatives do you think could be presented at this point to save DHL from losing the billion dollars a year that they are losing?

Captain PRATER. Well, in negotiations, we indicated our support for a combination of ASTAR and ABX so that there would be efficiencies there.

Obviously, we don't control the management of those two companies, but in both day to day labor negotiations, our contract negotiations, we indicated our full support for it a year ago. We have continued to indicate that we are more than willing to try to make that work so that there would be an efficiency, and it would result in the continuation of a third strong carrier in this Country.

What we have to realize is that there are two points: DHL is losing customers every day since they have announced this business plan because their customers aren't willing to pay DHL for UPS service.

The second one is I have heard lots and lots of different numbers. The numbers that we have seen are the transfer of air operations to UPS will save DHL some two, maybe three hundred million dol-

lars a year. That is not going to make up for their stated $1.3 billion or $900 million annual loss. So some of these numbers are not just adding it up.

And with the revenue that DHL is losing by proposing this transaction, they are not going to be any better off. They are just going to trash two airlines.

Captain ROSS. Mr. Chairman, also, on the loss of $1.3 billion, understand that this company made 3.2 billion Euros last year, 3.8 billion Euros the year before. The reason that Mr. Mullen and DHL are willing to absorb a $300 million loss per year in the United States is because they are making all that revenue in Asia shipping to the United States, the revenue in Europe shipping to the United States.

So what is lost in this number of $1.3 billion is how much revenue they are making around the world because they support the U.S. network. That is why they are willing to take a $300 million.

I support Captain Prater. We are talking about a $300 million difference, and I think Mr. Mullen has testified to the same.

We have never shut the door in working with ASTAR. We are willing to work together with UPS, to give them the flexibility they need. I'm sorry. UPS, where did that come from?

With DHL to give them the flexibility they need. We don't shut the doors. We like flying for DHL.

Airborne Express was a great company, a lot of niche stuff. DHL could be a great company. Our doors are open for talk, sir.

Mr. OBERSTAR. There are significant differences between the DHL service and the UPS service, correct?

That was spelled out in earlier testimony, the type of service that DHL offers and that of UPS. By combining the two, you lose essentially what DHL offers in the marketplace.

Captain ROSS. Yes, sir. Part of Airborne Express, we had a lot of neat little stuff we do.

There is a company called Lab Corp in Kansas City, Missouri. They do drug testing, urine testing. We have a separate airplane that flies there every morning by 4:30 in the morning to get that lab test. Those lab tests, they can be out by noon that day.

There is a cancer treatment company in Nashville, Tennessee. The life of the drug they create is 24 hours. We take a separate aircraft as late as we can out of that city to accommodate those.

It is that little thing that was neat with Airborne Express. It was neat with ABX Air. It is neat with DHL.

That now DHL is going to hand that off to UPS, UPS is not going to put an airplane where we ask them to put it. We are going to get space on UPS's aircraft.

That is why the market suffers like that. You lose the niche ability that comes with DHL, that came with the Airborne Express before. That is the fun part of the flying, when you are doing something special like that.

Captain PRATER. As well as we will lose another civilian craft service provider to the military, with ASTAR being put out of business, one less supplier/vendor airline for our military.

Mr. OBERSTAR. That is a very significant factor. Thank you for that.

Captain ROSS. Sir, in a 50 metric ton line haul, there are 34 aircraft between these two airlines, actually 17 aircraft apiece, that are at risk for losing CRAF.

Another point I wanted to bring up and I am sorry I interrupted before, we have to look at what if our brothers at UPS go out on strike or our ground delivery people at UPS go out on strike. You effectively shut down two of the three competitors in the overnight market.

I mean there are a lot of outside and small things. It is craft.

What if there is a strike? What does that do to the Nation's economy to shut down two of the three overnight providers? I think it is things like that this Committee needs to look at, sir.

Mr. OBERSTAR. Should this go forward, you would have FedEx with 43 percent of the market. If you simply add the numbers, you would have UPS with 40.5 percent market share and a little bit left over for the U.S. Postal Service. That is not a healthy competitive market in the deregulated era of aviation trade.

Mr. Simon, does it make a difference in consideration of restraint of trade whether the problem is on the air side or the ground side?

Mr. SIMON. Actually, no. As a matter of pure analysis under the antitrust laws, if you and I are competitors and I give away a portion of my business to you and say, please do it for me, when our soul goal in life is to compete with each other, it doesn't make a difference which aspect of my business I have asked you to assume.

It can be air. It can be ground. It can be intermediate steps, handling, for examples, sorting. It doesn't make any difference from an antitrust perspective.

And if I could add one sentence to an answer I gave earlier to Congressman LaTourette, I tried to make it very plain and I want to do so now.

When you spoke about unfair methods of competition, the concept would be an injunction action under Section 5 of the Federal Trade Commission Act which prohibits unfair methods of competition.

This particular unfair method of competition, as a classic antitrust restraint, it is a classic facilitating practice that permits two direct competitors in a tight, little oligopoly to collude to facilitate price increases.

Mr. OBERSTAR. Thank you very much. I want to thank all of the panelists for their presentation.

Having listened to this testimony all through the afternoon and read over much of it previously, I think there is a prima facie case made for restraint of trade, and I think the Committee in consultation with the Minority and Majority should consider a formal referral to the Federal Trade Commission for action.

Mr. LaTourette, what do you think?

Mr. LATOURETTE. Thank you.

Mr. OBERSTAR. With that, the Committee stands adjourned.

[Whereupon, at 7:23 p.m., the Committee was adjourned.]

OPENING STATEMENT OF THE
HONORABLE RUSS CARNAHAN (MO-3)
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

Hearing on
Effects of the Proposed Arrangement Between DHL and UPS on Competition, Customer Service, and Employment
September 16, 2008

#####

Thank you Chairman Oberstar and Ranking Member Mica for holding this hearing on the potential effects of the proposed arrangement between DHL Express and United Parcel Service (UPS) on competition, customer service, and employment.

I share the concern of my colleagues from Ohio who are concerned about the effect this proposed arrangement, which may not be called a merger but certainly is a merger in nature, would have not only on DHL employees at the Wilmington Air Park, but also ABX Air, ASTAR Air Cargo, and many other companies in and around the air park that have direct or indirect relationships with operations at Wilmington Air Park. Cumulatively this arrangement will affect almost 10,000 jobs putting a great burden on Ohio's unemployment insurance fund at a time when there is already a great strain.

Secondly, I have concerns about competition in the express delivery market if the deal between DHL and UPS goes through. Specifically, I am concerned that by DHL outsourcing its airlift to UPS, DHL will be captive to UPS in terms of capacity, price, and customer service. As airlift services comprise approximately sixty percent of the cost of shipping a package by shifting airlift services to UPS, DHL could lose the ability to competitively price its services. This would greatly inhibit their ability to compete with their major competitors in the United States, UPS and FedEx.

In closing, I would like to thank our witnesses for joining us today especially Senator Brown and Congressman Turner who will be ale to share their concerns about the impact of this arrangement on the communities they represent.

#####

STATEMENT OF
THE HONORABLE JERRY F. COSTELLO
EFFECTS OF THE PROPOSED ARRANGEMENT BETWEEN DHL AND UPS ON COMPETITION, CUSTOMER SERVICE, AND EMPLOYMENT
SEPTEMBER 16, 2008

- Thank you, Mr. Chairman for holding today's hearing on the effects of the proposed arrangement between DHL and UPS on competition, customer service, and employment within the express package industry.

- As Chairman Oberstar stated, on May 28, 2008, DHL and UPS announced a proposed agreement whereby UPS would provide airlift for DHL Express in the United States, claiming that such a move would generate more than $1 billion in additional annual revenue for UPS and create cost savings for DHL from more effective aircraft and improved operational efficiency.

- This proposed arrangement has increased speculation that this is the first step toward merging. The long term implications of this contractual agreement and any merger could have a major effect on the future of the package delivery industry. I firmly believe we must preserve American jobs and competition so customers get the best service possible.

- The relationship between DHL, ABX, and ASTAR is long and convoluted. In the past, there have been attempts to consolidate and it is no secret that DHL has been losing considerable money in the US market. Analysts have long stated that DHL's business model was flawed from the start.

- While some change is understandable, it is surprising and questionable why DHL would choose one of its biggest competitors, UPS, to provide critical airlift service.

- I look forward to hearing how this new proposed contractual agreement will affect the employees at DHL, ASTAR, ABX, and UPS. I understand over 8000 jobs will be lost in Wilmington, Ohio and the surrounding area because of this new deal and I want to know what options are being provided to those employees.

- Further, I am interested in hearing from Samuel Simon from the American Antitrust Institute regarding the pros and cons of this new proposed arrangement for both consumers and employees, and also its affect on the express mail industry in the future.

- While there is no doubt this move by DHL to partner with UPS will negatively impact the local and state economies in Ohio, such a move has larger implications on the US express mail market – in particular the potential for anticompetitive practices. Like with passenger airline mergers, we must make sure that consumers and employees do not end up paying a hefty price for consolidation or contractual arrangements.

- With that, I want to again thank Chairman Oberstar for holding today's hearing and look forward to the witnesses' testimony.

For the record
9/16/08

Statement by Congressman Robert E. Latta

"Effects of the Proposed Arrangement Between DHL and UPS on Competition, Customer Service, and Employment"
Transportation & Infrastructure Committee
September 16, 2008

Good afternoon Chairman Oberstar, Ranking Member Mica and members of the committee. The proposal by DHL to change its current practice in utilizing its Wilmington air hub and allowing UPS to operate its domestic shipping will have a negative impact on the state of Ohio. While I do not represent the area where this facility is located, the severity of this proposal will have a devastating, rippling affect throughout Ohio and will continue throughout the country. Since DHL's announcement at the end of May about its intentions, the Ohio delegation, along with state and local officials, have worked together to encourage DHL to examine its options and remain in Wilmington, Ohio. This proposal will have a crippling effect on Ohio workers, and it is my hope that DHL will continue to keep these employees in mind as they examine all business options.

I share similar concerns as my colleagues that this arrangement will hinder the U.S. package delivery service and limit consumer choice in regards to price and service. With this scenario, not only are the employees in Wilmington, Ohio being hurt from this agreement, but it will have far reaching affects to the consumers in this country. The Ohio delegation has sent letters to several entities involved in this process, including the U.S. Department of Justice and the German Chancellor Merkel. I realize that the transportation element is an important part of this issue, and that the air transportation aspect of the business has a major impact on price and quality of service in relation to the customer. Allowing UPS to provide the transportation of DHL packages seems to eliminate a key aspect of control for DHL in determining price for its customers. In this regard, DHL will no longer have control over a very important piece in the transaction, and my fear is that it will raise costs that will ultimately be passed on to the customer. Consequently, customers will no longer have a choice of using DHL to provide all of their package transporting

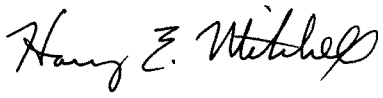
needs, including the air transportation which will now be eliminated, as air transportation services will be provided by UPS. This eliminates the choice for consumers, as now their choice will be very limited within the market.

In addition to the market concerns I have with this transaction, the state of Ohio, Clinton County and the city of Wilmington have made substantial investments, of over $400 million, into the Wilmington facility. If DHL must move forward with this arrangement, every effort should be made to give the stakeholders in Ohio the opportunity to work together to come up with a viable option for the Wilmington facility. The city of Wilmington, and the state of Ohio, simply cannot endure this magnitude of job loss. There must be continued deliberation amongst all involved parties to reach a solution that protects the interests of Ohio.

I hope that DHL will reconsider their decision. If DHL cannot reach a different decision, I sincerely hope that they will make every effort to preserve the use of the Wilmington facility

and strive to make the job loss for the Wilmington community as minimal as possible.

Thank you, I yield back.



Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Aviation
9/16/08

--Thank you Mr. Chairman.

--Today we will examine the impact a proposed agreement between DHL and United Parcel Service ("UPS") will have on competition and customer service.

--Specifically, DHL is seeking to hand over its airlift operations to UPS, while remaining one of UPS's chief competitors.

--One of the reasons this agreement is drawing such close scrutiny is the limited number of competitors in the market. According to the Air Cargo Management Group in 2007, Federal Express claimed 43 percent of market revenue, UPS claimed 32 percent, DHL claimed 8.5 percent and the United States Post Office claimed 2.9 percent.

--The agreement raises a number of questions, and I am glad we have the opportunity to address some of them here today. I look forward to hearing from our witnesses.

-- I yield back.

OPENING STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
THE EFFECTS OF THE PROPOSED ARRANGEMENT BETWEEN DHL AND UPS ON COMPETITION, CUSTOMER SERVICE AND EMPLOYMENT

SEPTEMBER 16, 2008

I want to welcome everyone to this Full Committee hearing on the *Effects of the Proposed Arrangement between DHL and UPS on Competition, Customer Service, and Employment.*

On May 28, 2008, DHL Express and UPS announced that they intend to enter into an agreement for UPS to provide airlift transportation services for DHL's domestic express and international package volume in the U.S., and between the U.S., Mexico, and Canada. DHL and the UPS are competitors in providing air express service, in which packages are generally picked up by trucks, moved by air, and then delivered to the ultimate destination by truck.

For the past few years, DHL has contracted with other air carriers (ABX and ASTAR) to provide the airlift portion of its service. DHL states that this agreement is the only way that it can continue to maintain its presence in the U.S. market in view of the $ 3 billion in operating losses it has experienced since 2003. Concerns have been raised about the anticompetitive impact that this deal may have in the air express market. Moreover, the City of Wilmington, Ohio, where DHL's hub is located, stands to lose thousands of jobs and revenue if this deal is consummated.

To date, no agreement has been reached between DHL and UPS, and may not for another few weeks according to recent reports.

Although DHL is not the largest express carrier, it is an important competitor. In 2007, the revenue of the U.S. domestic air cargo and express market combined was $32.8 billion. Of that, Federal Express (FedEx) claimed 43 percent ($14.02 billion) of the market, UPS 32 percent ($10.60 billion), DHL 8.5 percent ($2.8 billion), and the U.S. Postal Service (USPS) 2.9 percent ($950 million).

The express market has not been growing in recent years. In terms of domestic air express volume in 2007, FedEx claimed 33 percent, UPS 26 percent, USPS 23 percent and DHL 12 percent of the market. The daily package volume in the U.S. domestic express market is now at 6.644 million shipments per day, which is down about 1.8 percent from last year, and about 5 percent below its peak in 2000. The decline in air express package demand is attributable to the downturn in the economy, internet use to transmit documents, and jet fuel price increases.

If a DHL-UPS agreement is consummated, it would potentially devastate the city of Wilmington and have significant economic effects on the entire state of Ohio. The Wilmington Air Park is the largest employer in southwest Ohio. Approximately 9,000 jobs are expected to be lost in Ohio alone (1,200 DHL employees, 725

employees of ASTAR, and 7,000 ABX employees); in Wilmington, one out of three households has an ABX employee. I want to welcome the testimony of Lt. Governor Fisher and Mayor Raizk on the economic impact of the proposed agreement on the State of Ohio.

Competition in the express delivery market may also suffer if this deal is consummated. Opponents of the proposed agreement have alleged that it potentially could violate antitrust statutes, which prohibit agreements that restrain competition. Because this is not a merger or acquisition, it is not subject to the Hart-Scott-Rodino Act, and thus the parties are not required to file the agreement for pre-implementation review under the antitrust statutes. However, this does not prevent the Department of Justice (DOJ) from reviewing the agreement to determine if there are any anticompetitive effects.

Opponents of the deal state that allowing DHL to outsource its airlift to UPS, one of its main competitors, would essentially leave DHL "captive" to UPS in terms of capacity, price, and customer service. Airlift services comprise about 60 percent of the cost of shipping a package overnight. Therefore, because a significant percentage of DHL's costs will be controlled by UPS, DHL could lose the ability to competitively price its services to compete with both UPS and FedEx (this is called "price squeezing"), thereby forcing DHL to sell its services at a higher price, or, undercut

prices and lose money. Either way, DHL could go out of business, leaving the mark a duopoly. In addition, UPS will control the capacity on its planes; if DHL is not guaranteed space, its ability to ensure on-time arrivals could be hampered.

If the express industry is reduced to two major carriers, competition could be substantially reduced and prices could increase. When established carriers control markets, the tendency is for the carriers to follow each other's price changes so that prices are identical, and customer choice is limited. If DHL is effectively "neutered" in the marketplace, there would be incentives for UPS and FedEx to refrain from competing with each other, thereby increasing the price overall for express delivery packages.

Concerns have also been expressed that UPS may have access to DHL's proprietary customer data because the packages that would be sorted at UPS' facility would contain either barcodes or labels that include information such as package contents, volume, name and address, and price. UPS would then have information necessary to not only undercut DHL on price, but also to persuade DHL customers to switch express delivery providers.

These pricing and capacity issues raise the question of whether DHL can remain a viable competitor in the express industry.

I look forward to the views of all of the witnesses today on how we can preserve competition in the express delivery industry, as well as the jobs that are sure to be lost if this deal is consummated.

Congresswoman Laura Richardson
Statement at Full Committee on Transportation and Infrastructure
Hearing on
"Effects of the Proposed Arrangement Between DHL and UPS on Competition, Customer Service, and Employment"
Tuesday, September 16, 2008
2167 Rayburn House Office Building-2:00 P.M.

Mr. Chairman, I am pleased to join you, Ranking Member Mica, and the rest of my colleagues today as we examine the proposed arrangement between two international shipping companies.

I am pleased that we are here to discuss this "proposed arrangement" and it's effects on Competition, Customer Service, and Employment.

While I do understand that this is not a merger of DHL and UPS, I look forward to further clarification of how one company benefits from using the services of another company, particularly if the other company is a competitor. I am interested in knowing how the benefit of this arrangement justifies the potential job loss especially in the state of this nation's economy.

I look forward to hearing the testimonies of the representatives of these two companies and the testimony of the representatives from the State of Ohio.

Thank you Mr. Chairman.

Testimony of Senator Sherrod Brown
Effects of Proposed Arrangement Between DHL and UPS on
Competition, Customer Service, and Employment
House Transportation and Infrastructure Committee
September 16, 2008

Thank you, Chairman Oberstar, Ranking Member Mica, and members of the committee.

The entire Ohio delegation is grateful for the time and attention you and your staffs have dedicated to the proposed transaction between DHL Worldwide Express and United Parcel Service, the effect it could have on communities throughout southern Ohio, and the implications it holds for our national package delivery system.

Mr. Chairman, before I begin, I'd like to say a word about the efforts and coordination between local, county, state and federal officials.

Members of the community have pulled together, from the city council all the way to the White House. Both Senator Barack Obama and Senator John McCain have recognized the substantive and financial risks posed by this deal, and are following the situation closely.

I cite especially the work of Mayor Raizk of Wilmington, Congressman Turner, Governor Strickland and Lt. Governor Fisher here today.

I also want to thank committee members LaTourette, Space, Schmidt, and Latta who have shown dedication beyond the confines of their districts.

I also appreciate the tireless work of Teamsters Local 1224 (Capt. Dave Ross) and the Air Line Pilots Association (Capt. John Prater).

The last three and a half months have been difficult for thousands of families in Ohio. Their futures are at stake. If this deal goes through, jobs will be lost, homes will be lost, and communities will face even more challenges.

With more than 8,000 jobs in the balance, the proposed UPS-DHL deal is an economic disaster.

If the DHL-UPS deal breaks antitrust rules, we need to know that, and we need to know it quickly.

Last week in the House Judiciary Committee hearing on this proposal, we learned that DHL voluntarily went before the Justice Department, which we appreciate. Yet it will not submit itself to a voluntary investigation, and it plans to consummate the deal regardless of the status of the investigation.

That makes it very difficult for the Justice Department to examine the deal from the customer's perspective. I hope both companies will reconsider, and allow the Justice Department to investigate and not consummate the agreement until the government completes its investigation.

I am particularly disturbed that DHL's confidentiality and exclusivity agreement with UPS to complete this contract limits it from alternative structures that can keep DHL competitive, benefit consumers, and keep jobs in Ohio.

Specifically, DHL embarked on this proposal with UPS before really engaging the incumbent carriers, ABX Air and ASTAR, in an effort to reduce costs. DHL chose this course before talking with Governor Strickland about ways the state might help DHL cut costs.

After not choosing to work with its partners, DHL went ahead and bound itself to a confidentiality and exclusivity agreement with UPS.

Considering the lengths the state of Ohio and surrounding communities took to welcome DHL to Wilmington, including more than $400 million in direct and indirect incentives, DHL's behavior is hardly a model of corporate responsibility.

Contrary to what both companies state, the DHL-UPS proposal is not a traditional agreement. It raises several questions that, so far, have not been answered.

Under this proposal, how can DHL lower prices or improve service? How can DHL prevent UPS from manipulating costs and service? How does DHL prevent UPS from obtaining sensitive information on customers and pricing?

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

Congress also needs to understand how DHL took Airborne Express, a company that was profitable, and in just four years generated staggering losses.

When DHL purchased Airborne Express in 2003, it had an 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.

Clearly DHL's performance justifies changes to the company, but 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. The final result may leave a mark on how our government approaches the next stage of 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.

Now, it plans to walk away from the community.

The story does not have to end this way.

We want DHL in Ohio and to be successful. We want them competing in the market.

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.

Statement of

Gary Hammes

Senior Vice President and Chief Operating Officer

ASTAR Air Cargo, Inc.

before the

Committee on Transportation and Infrastructure

United States House of Representatives

concerning

Effects of proposed arrangement between DHL and UPS on competition, customer service, and employment

September 16, 2008

Mr. Chairman and Members of the Committee:

My name is Gary Hammes, Senior Vice President and Chief Operating Officer of ASTAR Air Cargo, Inc. I am pleased to present this statement to the Committee on behalf of the 1000 ASTAR employees who are frightened and concerned that their livelihoods, homes and communities will be destroyed should the announced DHL-UPS joint venture become a reality.

It is crucial that this Committee carefully review the anti-competitive implications of the proposed transaction. Although the welfare of ASTAR and its employees is foremost in the minds of ASTAR's senior management team, the negative ramifications go far beyond our company to include the entire industry and its many millions of parcel customers. If DHL is permitted to outsource its primary and most important business and operational functions to UPS, its fierce rival in the overnight express package business, it will result in the functional elimination of DHL as an independent competitor in the market, creating a UPS-FedEx two company market, giving those companies the incentive and power to raise prices above competitive levels. This is something that every American should be very concerned about in this age of rising transportation costs and the emergence of overnight express as a cornerstone of the "just in time" business model for the United States.

I. ASTAR Air Cargo.

ASTAR Air Cargo previously was known as DHL Airways. It commenced operations in 1979 as a wholly owned subsidiary of DHL Express, an air freight forwarder founded in 1969 by three young American entrepreneurs – Adrian Dalsey, Larry Hillbloom and Robert Lynn. The first

initials of their last names now are emblazoned on thousands of DHL trucks and planes around the world.

DHL created DHL Airways to transport overnight express packages and freight within the United States and between the United States and Europe. In 1998, Deutsche Post made an initial investment in DHL, purchasing a minority stake in the company, and in 2002, Deutsche Post acquired the remaining DHL shares. U.S. aviation laws prohibit a foreign entity such as Deutsche Post from owning or controlling a U.S. air carrier, thus requiring DHL to spin off its controlling interest in DHL Airways to a U.S. investor, who subsequently arranged for the sale of DHL Airways' to its present majority ownership group led by John Dasburg, the former President and CEO of Northwest Airlines. Mr. Dasburg became Chairman, President and CEO and, upon completing the 2003 acquisition, renamed the company ASTAR Air Cargo.

ASTAR has a contract to provide DHL with aircraft, crew, maintenance and insurance ("ACMI") airline services. This contract, most recently modified and reaffirmed in May 2007, extends through 2019. The contract is the source of 90% of ASTAR's revenues.

Today, ASTAR operates a fleet of 44 aircraft, including Boeing 727s, Douglas DC-8s and Airbus A300s. As of May 28 of this year, the date DHL announced its intention to establish a joint venture with UPS, ASTAR employed 1007 employees. Our airline has provided air cargo transport for DHL's packages in the United States for 29 years and has structured its organization to provide highly reliable and safe services for DHL. ASTAR's work force averages 46 years old with 11 years' seniority. Most ASTAR employees were hired at a time when DHL and the airline were part of an integrated business entity. Because of their long association with DHL, ASTAR's employees understand what DHL requires in the way of all

cargo services, and they have dedicated their lives to providing DHL with superior service. Last year, ASTAR completed on-time 98.7% of its flights for DHL, a performance that the large passenger airlines can only dream of.

ASTAR has excellent employee relations, as exemplified by the fact that ASTAR and ALPA were able to agree this past February to a new four year collective bargaining agreement, pursuant to which ASTAR was able to maintain lower crew costs than UPS. ASTAR's pilots made this agreement to help ASTAR and DHL maintain an advantageous cost structure in a highly competitive environment. At the time the contract was signed, neither ASTAR nor ALPA was aware that DHL had been negotiating with UPS to move its business from ASTAR to UPS.

II. Adverse Effects of UPS-DHL Transaction.

A. Adverse Effects on Competition.

I come before this Committee, not as an antitrust scholar or even a lawyer. My background exclusively is in airline operations. Prior to becoming Chief Operating Officer of ASTAR Air Cargo in 2003, I served as ASTAR's Senior Director of aircraft maintenance and engineering. In my 16 years in the industry prior to joining ASTAR in 2002, I held management positions with Northwest Airlines, where I was the Director of Component Maintenance, United Air Lines, where I was 737 Fleet Operations Manager, and Evergreen International Aviation, where I was Director of Maintenance/Business Services. I am here today to offer my opinion, based on my long experience of how airlines operate, that: (1) DHL will lose its operational and commercial independence if it hires UPS to transport and sort its packages; and (2) as a direct result of DHL losing its operational and commercial independence, the overnight express business will become a FedEx-UPS a two-company market.

Before discussing the specific operational factors that form the basis for my opinion, I would like to take a few minutes to provide a broad overview of what it takes to move a package from A to B on DHL while providing the high quality of services demanded by its customers. Understanding the operational specifics of package movement is critical to a realistic assessment of whether DHL will retain the ability to compete in the United States if its proposed joint venture agreement with UPS is consummated.

A shipment begins with the customer creating a unique DHL bar coded label, and arranging for pick up with a DHL van or dropping the package at a DHL drop location. The pick-up driver scans the bar code, creating the first of several real-time records that customers can access to track their package. The driver takes the package to its first sort facility, where it is scanned and put in a container for loading on an ASTAR (or ABX Air) aircraft. ASTAR flies the package to Wilmington, Ohio where DHL employees unload the package, scan it, and enter it into the DHL owned and managed sort facility. An information system uniquely designed for the DHL worldwide network reads the bar codes and directs the sorted packages to waiting ASTAR and ABX Air aircraft destined for the destination cities. ASTAR and ABX Air pilots fly the packages to the destination city, where DHL employees off load the aircraft, scan the bar codes, and place the shipments on DHL vans for delivery to their final address. When delivered, the driver once again scans the bar code creating the final record of a real time transit and delivery process.

As is clear from this brief description, the entire transportation process, from pick-up to delivery is a tightly integrated system that relies on proprietary systems that are unique to DHL. The real-time tracking of packages and providing the tracking data to customers is a critical business function and point of differentiation between companies. DHL cannot hire UPS to do its air transport and hub sorting without inserting a major competitor in the middle of its tracking

system. By turning over this key differentiating activity to a competitor, DHL will have eliminated itself as an independent company and an effective competitor.

1. DHL's scheduling will be compromised.

Currently, DHL and ASTAR collaborate daily on flight schedules, flight plans, flight loads and anticipated volumes of packages to ensure that the right aircraft are assigned to the proper routes. Such collaboration is critical for DHL because DHL depends on knowing precisely how much capacity it has available to serve its existing customers and to seek new customers. Such collaboration will be difficult if not impossible for DHL if it contracts with UPS to carry its packages.

Under the current arrangement between DHL and ASTAR, DHL is free to seek new business from large shippers, knowing that if it needs additional capacity to service the new account, ASTAR will be able to supply the additional lift. DHL seeks such business on a variety of bases, including better price, earlier delivery, later pick up and guaranteed capacity. DHL, in particular, has been very aggressive at using these competitive tools to attract large new accounts.

If linked to UPS, however, DHL will no longer be able to compete effectively for major customers. DHL will not be able to offer later pick-ups or earlier deliveries than UPS unless it can convince UPS to adjust its flight schedules to accommodate DHL's business requirements. And, UPS is not likely to be willing or able to do so. Nor is UPS likely to be willing or able to add capacity to accommodate a new DHL customer – particularly if DHL's intent is to take the business from UPS. Finally, FedEx, UPS and DHL all recognize the importance of understanding their competitors' sales strategies. It will not only become simpler for UPS to discern DHL's sales strategies, such sales strategies will become transparent to UPS because

DHL will not be able to offer customized service or capacity to a new customer without pre-arranging flight operations with UPS thus making its sales strategy totally clear to UPS. When DHL approaches UPS to add capacity to a particular city, it will tip-off UPS to its new business opportunity, giving UPS the opportunity to solicit DHL's prospective customer while DHL remains mired in negotiations with UPS to increase capacity.

UPS's strangle hold on the capacity DHL will have available to sell directly will impact its ability to compete. One of the most frequently used bases for price discounting is offering quantity discounts, especially for large volume shippers. Using UPS, however, DHL will not be able confidently to offer volume discounts, because it will be unable to assure prospective customers that it will have sufficient capacity to handle substantial increases in volume.

Scheduling flexibility on a routine daily basis also is critical to providing quality service. Today, ASTAR maintains an agreed number of spare aircraft to insure that ASTAR is in a position, at a moment's notice, to add capacity to a particular route to meet unusually heavy demand by DHL customers. The spares also serve a back-up function in case of a cancellation for mechanical or other reasons. The result is that ASTAR rarely leaves behind a package it cannot accommodate for weight or volume reasons. DHL's customers are assured that the packages that DHL asks us to fly will get where they belong on time because ASTAR and DHL work as a unified team with the uncompromised mission of getting DHL's customers their packages on time, every time. DHL and ASTAR have created a seamless cooperative working environment that insures maximum flexibility and reliability. We can do this because we are business partners, not business rivals. The opposite would be true if DHL were to move its air transportation and sort functions from ASTAR and Wilmington to UPS and Louisville.

Finally, ASTAR coordinates closely with DHL regarding a host of other scheduling matters. For example, like all airlines, ASTAR performs heavy maintenance "C" and "D" checks on its aircraft in accordance with FAA maintenance guidelines and standards. ASTAR discusses and coordinates these out of service maintenance issues with DHL to ensure that ASTAR and DHL can make alternative arrangements for providing capacity during heavy maintenance down time. It is not likely that UPS would be willing or able to similarly coordinate with DHL.

UPS will not be able or willing to provide DHL with the flexibility and reliability provided by ASTAR. DHL is ASTAR's most important customer. We actively collaborate with DHL to ensure that we meet its needs. That is our corporate mission. UPS will have no such corporate mission. In fact, DHL's success directly works against UPS' self-interest. UPS has a powerful commercial incentive to undermine DHL's commercial success, not to advance it. UPS' first and controlling responsibility is to get its own packages to their destinations on time, and to out-perform its rivals, one of whom is DHL. UPS can hardly be expected to make adjustments to its schedule to meet DHL's needs if such adjustment would compromise UPS' ability to meet its own needs.

Thus, if DHL contracts with UPS to transport its packages, UPS will have an inherent and unavoidable conflict of interest between meeting DHL's legitimate business requirements and meeting its own business requirements, which include out-performing DHL, out-earning DHL and beating DHL competitively any way it can. Given the operational complexity of the express overnight package business, there will be innumerable ways for UPS employees to disadvantage DHL customers, virtually all of which would be beyond DHL contractual oversight.

2. DHL's tracking and sorting will be compromised.

The proposed joint venture between DHL and UPS will dramatically degrade the quality of its service and make it difficult for DHL to be an effective competitor in the express overnight package business. That is because switching its sort function from its own facilities and organization to that of UPS will undermine DHL's ability efficiently and accurately to sort its customers' packages.

The central nervous system of the overnight express package business is the sort process that occurs at the hub. Every night at the Wilmington Air Park hub, ASTAR aircraft arrive within 90 minutes of each other, and take off 2 to 3 hours later. In that five hour period, a million packages are removed from their in-bound flights, funneled through a computerized sort process and then placed on outbound aircraft for final flight and delivery. Managing the "sort" is a delicate, complex and competitively sensitive process that must be done perfectly every day to insure that when customers' packages are removed from incoming aircraft, they are transferred to the proper outbound aircraft.

DHL cannot continue to compete against FedEx and UPS if its sort capability degrades, since that would compromise DHL's ability to provide its core service: prompt and reliable overnight package delivery.

To ensure that DHL maintains a high quality sort, DHL has established at the Wilmington Air Park its Network Control Group that manages, supervises and controls the operation of the DHL sort. The sort is totally dependent on DHL's proprietary bar code system which allows DHL to identify which packages are destined for which cities and efficiently facilitates the transfer and loading of each and every package onto the correct aircraft.

The quality and efficiency of DHL's sort will be compromised if it surrenders its direct management and control of this function and turns it over to its competitor, UPS. Moreover, DHL and UPS have their own unique bar code software programs. DHL's bar code system operates on DHL's worldwide network, not just in North America. Shippers in North America use DHL's bar code system to ship packages regardless of whether they are shipping to Asia, South America or Europe. Since the DHL-UPS joint venture does not include using UPS aircraft in international markets, it seems clear that DHL must retain its own bar code system to retain seamless transfer compatibility between North America and the rest of the world.

The UPS and DHL bar code systems do not communicate with each other. This lack of compatibility presents a staggering logistical and operational hurdle to the integration of DHL and UPS operations. To put it simply, DHL will not be able to enter DHL bar-coded packages into the UPS sort system. It would take years, enormous expense and great risk for UPS to attempt to reconfigure its current sort system to accommodate DHL's packages. We have no idea how DHL intends to address this hurdle, but I am confident that any "work around" that DHL might elect to employ will leave it with an inferior sorting capability, one that would be far less efficient than the one it has today in Wilmington, and one that inevitably will degrade significantly DHL's product.

The sort function presents other challenges for DHL operating at UPS' sort facility. Every night, there are hundreds of operational decisions that must be made by DHL employees to insure that it provides the highest level of service to the largest number of customers.

For example, one of the toughest decisions faced every night is when to commence the sort. To be sure, the sort is scheduled to start at a pre-arranged time, but it is frequently the case that an

arriving aircraft is behind schedule due to unavoidable weather or ATC events. In such events, DHL must carefully consider whether to delay the sort until the delayed aircraft arrives or whether to commence the sort without the delayed aircraft's packages. Only DHL's operations' managers have in their possession the myriad of facts necessary to make decisions that maximize customer satisfaction. How many packages are on the delayed aircraft? How late will it be? How long of a delay will be required? To what extent will a delay degrade deliveries and in which markets? How many packages will be delayed on the outbound legs? DHL will be placing these critical decisions into UPS's hands, but UPS will conduct the sort to accommodate its own packages, not DHL's. UPS will not be able or willing to make real time adjustments to its enormous – and enormously complicated – sorting operation merely to accommodate DHL's packages or the special needs of DHL's key high volume customers.

Sometimes, after completion of the sort and load functions, packages must be left behind due to insufficient capacity on the out bound aircraft. When such events occur, as they inevitably will, one has to assume that UPS will make sure that its own packages make it onto the aircraft first, and if there are any packages to be left behind, they will be DHL's. To make matters worse for DHL, UPS now will be in possession of names and addresses of disappointed DHL customers, providing UPS with a golden opportunity to poach DHL's customers. It is not hard to imagine UPS sort personnel turning over this highly sensitive information to UPS salespeople for solicitation.

In fact, we already have seen concrete evidence that UPS has embarked on an aggressive campaign to steal DHL's customers based on the announced DHL-UPS joint venture. A UPS salesperson recently made a sales call on ASTAR (in its capacity as a customer of DHL's overnight express services) trying to convince ASTAR to switch its business from DHL to UPS.

In this call, the UPS salesperson argued that once integrated into UPS' operation, DHL's service would be substandard. We have seen other evidence that UPS is aggressively making such calls on other DHL customers. It is our belief that these sales calls are working and that DHL's package volumes have fallen significantly since the May 28 joint venture announcement.

This last point highlights one of the most puzzling aspects of DHL's decision to substitute a competitor for a dedicated vendor to transport, track and sort its packages. ASTAR believes that the fundamental cause for DHL's poor business performance in North America has not been costs that are higher than UPS' (and FedEx's) costs, both of which actually are higher than those of ASTAR. The largest controllable expense of any airline is labor (we all pay about the same for jet fuel and aircraft) and as I mentioned before, ASTAR's flight crew labor rates are superior to those of UPS. We are hard pressed to reconcile DHL's statements that the DHL-UPS joint venture is designed to lower its costs, when UPS' labor costs are higher than ASTAR's. Presumably, UPS is negotiating a contract price with DHL that will allow it to recover its costs and earn a profit, which means that DHL's costs are likely to increase if it moves from ASTAR to UPS.

Moreover, because DHL purchased 49% of the economic interest in ASTAR last year, it shares in 49% of ASTAR's profits, which is a further cost benefit from continuing to use ASTAR that DHL will lose if it moves from ASTAR to UPS. We are sure that UPS has no intention of sharing with DHL half the profit it expects to earn from DHL's business.

Thus, we believe that DHL's fundamental problem is not high costs, but rather poor unit revenue arising from the fact that when it purchased Airborne in 2003, Airborne was a distant third in the marketplace, unable to provide the same high levels of service that FedEx and UPS provided.

Thus Airborne was forced to heavily discount its rates and concentrate on a relatively small number of large bulk shippers.

For DHL to improve on Airborne's market position, it needed to invest in product quality rather than concentrate on cost cutting, which actually tends to degrade quality, rather than enhance it.

DHL has had only modest success in improving its quality and now is embarking on a misguided venture that is sure to destroy the quality of its product completely.

B. Adverse Effects on the Military and the CRAF Program.

ASTAR is a proud and specialized participant in the Civil Reserve Air Fleet (CRAF) program pursuant to which US certificated air carriers commit to supply the Department of Defense with aircraft capacity in times of national emergency. Of the 44 total aircraft in ASTAR's fleet, ASTAR has committed 17 aircraft to the CRAF program, which at 38% of its entire fleet makes ASTAR one of the largest (by percentage) participants in the program.

Of greatest importance is the percentage of certain mission critical aircraft that ASTAR contributes to the CRAF program. The DOD requires a wide variety of aircraft, both in terms of payload and range, to fulfill its worldwide responsibilities. The DC-8-71/73F series aircraft, eight of which ASTAR provides to the CRAF program, fills a unique role in DOD's airlift requirements. Indeed, ASTAR provides almost 50% of CRAF Stage III DC-8-71/73F aircraft. DOD's access to these mission critical aircraft types could be severely degraded as a result of the proposed DHL-UPS joint venture.

CRAF is not the only way in which ASTAR and its employees contribute, and have contributed to our national defense. One-third of ASTAR's employees are veterans. ASTAR and its pilots

and other staff have volunteered to fly into hostile zones and other hazardous locations in the service of our nation and American troops. They have received more than 100 DOD awards in recognition of their dedicated work.

C. Adverse effects on ASTAR and its employees.

As of May 28 of this year, the date DHL announced its intention to create a joint venture with UPS, ASTAR had a total of 1007 employees, including 506 pilots represented by the Air Line Pilots Association, 208 mechanics, and 12 dispatchers (represented by the International Brotherhood of Teamsters. Many uprooted their lives and families to move to the Wilmington area three years ago at the request of DHL which decided to shutter its former operational hub at Cincinnati's airport and combine ASTAR's hub with ABX's hub at Wilmington. The employees made this move, and the sacrifices that come with relocation, in reliance on the promise of stable jobs that were a by-product of the long term ACMI contract between ASTAR and DHL.

If DHL completes its joint venture with UPS, all ASTAR employees will lose their jobs. Their work skills are not readily transferable outside of the airline industry, especially if they are pilots and mechanics. Few airlines are hiring today. Indeed, most airlines are completing a round of lay-offs resulting from high jet fuel prices. The employees who moved to, and live in the Wilmington area will find themselves trapped by collapsing house prices, resulting from so many people being thrown out of work in the same community at the same time.

In short, the proposed DHL-UPS joint venture will inflict enormous damage on ASTAR's employees, decimate the community, and negatively impact the high quality and low-cost services provided to millions of customers by an industry that currently benefits from vigorous three-firm competition.

Thank you for giving me the opportunity to present the views of ASTAR Air Cargo. I would be pleased to answer any questions.

Statement of Mr. Joseph C. Hete
Chief Executive Officer of ABX Air and Air Transport Services Group
Before the Committee on Transportation and Infrastructure

United States House of Representatives
110th Congress, 2nd Session

September 16, 2008

Chairman Oberstar, Ranking Member Mica, and Members of the Committee,

I am privileged to serve as the CEO of ABX Air and President and CEO of Air Transport Services Group, the parent company of ABX Air. Thank you for the opportunity to tell you about the May 28, 2008 announcement by Deutsche Post World Net, the German parent company of DHL Express (DHL), that DHL plans to replace services provided by ABX Air and ASTAR Air Cargo with services provided by DHL's competitor, United Parcel Service. This written testimony complements my oral testimony before the committee.

The deal contemplated by DHL and UPS creates a crisis unprecedented in the rural United States, much less in rural Ohio. Never have so many jobs left such a rural region in so short a period of time. If the DHL UPS deal goes through, it is predicted that 10,000 jobs will be eliminated in the region by the middle of next year. Given the public information about the costs DHL is willing to pay for the services it is asking UPS to provide, it is also clear that ABX Air can provide DHL a better economic, strategic and competitive value. In so doing, we can save the economic viability of an entire region of Ohio. We need your help to get that done.

To provide better understanding of the situation we face, my testimony outlines the following:

1. The history of ABX Air's relationship with DHL in the context of overall consolidation within the overnight express delivery market.
2. The likely and foreseeable affects of an agreement between UPS and DHL, respectively the number two and three players in this market, on customer choice and price.

3. ABX Air's efforts to help DHL cut its costs and create a new domestic business model.
4. The devastating impact DHL's plan will have on ABX Air, its employees and the community of Wilmington, Ohio.
5. Our pursuit of strategies to restructure our business and preserve jobs, should DHL and UPS reach an agreement.
6. Why the Wilmington Air Park is an invaluable asset to Ohio and the nation and why it needs to remain open for commerce.

History and Trends in U.S. Overnight Express Delivery Market

To understand the significance of the potential agreement between DHL and UPS, we must first examine the history of the domestic overnight express delivery industry, ABX Air and its partnership with DHL.

In 2003, a consumer shipping a package in the United States could choose the United States Postal Service (USPS) or one of five major airfreight express delivery services: Federal Express (FedEx), United Parcel Service (UPS), Airborne Express, Emery Worldwide, or DHL Express. According to the Air Cargo Management Group, in 2003, the major carriers in the domestic air express business had the following market shares:

- FedEx, 42.5%
- UPS, 35.1%
- Airborne Express (including DHL), 17.4%
- U.S. Postal Service, 3.3%
- DHL, 0.9%
- Emery and other vendors, 0.8%.

Although FedEx and UPS dominated the market, consumers had lower-cost options, primarily Airborne Express. Operating since 1980 from its hub in Wilmington, Ohio, Airborne Express had built a strong business based on

personal contact, efficient use of assets, strict cost controls and top-notch service.

Within two years, two of these choices were eliminated. In 2003, DHL announced its intention to purchase the book of business of Airborne Express for a little over $1 billion. Late in 2004, UPS acquired Emery/Menlo Worldwide, closing its operating base in 2005 and laying off its Ohio workforce. According to the Air Cargo Management Group, in 2007, the domestic air express market share looked like this:

- FedEx, 42.0%
- UPS, 38.5%
- DHL, 15.5%
- U.S. Postal Service, 3.2%
- All others, 0.8%.

When it announced the Airborne Express merger, DHL said that the transaction would increase market share and profitability for both partners, creating a sound company to compete in the U.S. market against dominating players FedEx and UPS. DHL had a strong international market presence, while Airborne Express had a solid foothold in the domestic market. The combination of the two companies offered great promise for consumers, shareholders, employees, the Wilmington community and the State of Ohio.

DHL had good reason to believe in the value of its new venture. When it bought Airborne Express, it bought a profitable and successful company. At the time, Airborne Express held about an 18% market share and had grown its ground delivery business to about two percent of the market. DHL's purchase included all of Airborne's strengths; its book of business, the pickup and delivery system, and the Wilmington Air Park, the largest privately owned airport in the U.S., including Airborne Express's sort facility.

ABX Air, which was at that time a wholly owned subsidiary of, and the airline for, Airborne Express, was spun off as an independent publicly traded company owned by Airborne Express's existing stockholders due to U.S. laws prohibiting foreign control of a U.S. air carrier. Please also see the attached exhibit which

respect to DHL's acquisition of Airborne Express and the spin off of ABX Air as an independent, publicly traded company.

As a condition of DHL's acquisition of Airborne Express, ABX Air was required to consummate two commercial agreements with DHL to perform DHL's national cargo sorting and airfreight operations – an Aircraft, Crew, Maintenance and Insurance (ACMI) agreement and a hub services agreement. ABX Air performs air cargo flights and associated operations for DHL under the ACMI agreement and package-sorting operations at Wilmington and in 15 hubs around the country for DHL under the hub services agreement.

The contracts allowed ABX Air to continue what it had been doing for Airborne Express – fly well-maintained aircraft on time and sort packages with attention to detail and customer needs.

Since DHL's acquisition of Airborne Express in 2003, ABX Air, the Wilmington community, county and state have done everything possible to support DHL's success. ABX Air has built an incredible knowledge base of package sort processes and, contrary to what has been claimed, flies a fuel-efficient and well-maintained fleet of aircraft. ABX Air put aside its need to brand the newly independent company and painted its aircraft in DHL livery. To date, the State of Ohio, City of Wilmington and Clinton County have committed more than $400 million into the Wilmington area in support of the DHL Hub. In addition, the state fast-tracked construction of a $99 million Wilmington bypass highway project to accommodate DHL's hub operations.

Effects on Consumer Choice and Price

To compete with FedEx and UPS, the industry's dominant players, DHL has offered a cost competitive and flexible menu of services. Many legacy and new customers have chosen DHL based on its ability to provide a customized level of service at a lower cost. In the world of package delivery, the combination of price and service are a valuable commodity. Many businesses have built their supply chains around DHL and its customized services.

For example, ABX Air has flown a number of Boeing 767 and Douglas DC-9 aircraft with a "C" container configuration. C containers are shipping containers that are about one-sixth the size of industry-standard "A" containers. Airborne Express and ABX had patented its C containers, and built a strong market

around the innovative, smaller container and the new capabilities it brought to the marketplace. ABX used its C container fleet to support customized services for DHL's large shippers, including medical testing labs that required early-morning deliveries. ABX had several designated "red dog" flights dispatched as early as 3 a.m. to support deliveries for DHL's customers at dawn or even earlier. This allowed medical labs to rapidly return test results to physicians and their patients so they were available by the time they opened their offices the next day. The C container configuration allows DHL to load containers with freight directly on the docks of DHL's high-volume customers, providing these shippers with the flexibility to have the very latest pickups. C containers allow DHL's high-volume customers' freight to go to the head of the line, directly onto a departing aircraft, at the very last moment. Companies such as Dell, IBM and Kodak have built their parts distribution strategy on this level of service. They are likely to experience major disruptions in their parts distribution if they are forced to adjust to UPS's standard pickup and delivery schedules.

In addition, a number of businesses store inventory at the Wilmington Air Park and the DHL Commerce Park in nearby Columbus, Ohio. These DHL Customers maintain those expensive inventories at the locations because it provides quick response times for their customers. They can get their freight onto DHL's aircraft at the last possible moment; allowing late night sales. If DHL's sort and airfreight operations no longer fly out of Wilmington, these companies will have to either relocate their warehouses or truck their goods hours away to the UPS hub in Louisville, Kentucky. In either case, these DHL customers face expensive disruptions in their businesses.

Industry analysts have noted that DHL's presence has exerted a cost-control effect on the U.S. markets. If DHL contracts with UPS for its U.S. sort and airfreight operations, then it must be assumed that UPS will dictate both DHL's costs and service delivery capability within the U.S., for the air transport and sort elements of DHL's business. These two components are typically 40% of the costs in providing express delivery service. Since DHL will no longer be able to affect pricing in the overall market, it follows logically that consumer prices will go up. Given the dependence of many businesses on express delivery services, it must be assumed that these businesses will pass these costs on to their customers, exacerbating overall inflationary pressures as many consumers pay more.

Customer information is closely guarded by package delivery companies because customers demand confidentiality and because access to customer data provides an edge in this highly competitive industry. As each DHL package transits the UPS sort, UPS will necessarily have access to key elements of DHL's customer data, including;

- Name of the shipper
- Name of the addressee
- Parcel origin
- Parcel destination
- Parcel weight
- Parcel size
- Whether the parcel requires special handling
- Whether the parcel contains hazardous material
- Whether the parcel contains certain high-value contents
- Class of service paid for by the DHL customer

We believe that consumer expectations with respect to the protection of proprietary information will not be met under the DHL arrangement with UPS, and that this will most certainly have an impact on DHL's ability to retain its customer base in the U.S.

Run this scenario forward a year or two, and it is not hard to understand the growing concerns of United States' legislators that the U.S. market will ultimately be dominated by a duopoly of FedEx and UPS.

DHL has tried to allay those concerns by defining this deal as a capacity sharing arrangement similar to a passenger airline's codeshare agreement, or as a shipping company's sharing of transport capacity. We would respectfully offer a different perspective. In a codeshare between airlines, both entities share their services and excess capacity *with each other*. Should conditions change, should a relationship sour, or the competitive landscape change, either

carrier's withdrawal doesn't keep the other from functioning in the marketplace. That is not the case with DHL and UPS. While there is much we do not know regarding the proposed structure of the deal, we do know that DHL will not share airlift or sort capacity domestically with UPS. DHL won't have a domestic airline, and it won't have a domestic sort. And if at some point in the future, UPS no longer provides those services to DHL, DHL will no longer be able to provide those services to the U.S. consumer. Similarly, DHL isn't sharing shipping capacity. Of UPS and DHL, UPS is the only domestic provider of airlift or sort capacity in this arrangement. Now it may be that, as part of this deal, UPS and DHL intend to share services outside of the U.S. It may be that they intend to combine parts of their respective systems elsewhere as part of the deal they are working on in the United States. Were that true, perhaps this could be called a codeshare arrangement, a sharing of capacity. However, were that true, it would also signal another step in this industry's global consolidation – a step neither company has made public.

ABX Air's Efforts to Provide DHL with Quality Service at a Competitive Price

ABX Air leadership became concerned about DHL's situation in the U.S. over a year ago. In this regard, DHL reported that its U.S. business operations lost about $900 million in 2007. Seeing their losses, a softening economy and rising fuel prices, it was clear to us that something had to change for DHL, and quickly. Because DHL is our largest customer, providing 92% of our business, and because we are their largest vendor, we thought it important to bring our concerns to their attention, and to offer them our help. In August 2007, we had our first discussions with senior DHL Express management about DHL's losses. We asked DHL how ABX Air could help it cut costs. We asked DHL for specific concerns they wanted us to address, and we offered to change every element of those long-term agreements if we could help DHL stem its losses. Senior DHL leaders offered us no information on what changes we might make to help them save money. They indicated that they were studying their situation, that it was very complex, and that it would be some time before they formed a plan of action.

By November of 2007, we had conducted several conversations with senior DHL leaders about our concerns, each time offering to help DHL lower its domestic costs, each time asking for specific ways we could help, each time

asking about their plans for the future. Each time, DHL leaders thanked us for our willingness to help, and told us they were still studying the situation.
Though DHL has never shared its internal concerns or plans with us, when we saw their 2007 losses in the U.S., we again put together our own plan to dramatically cut DHL's domestic costs. Airborne Express had run a business similar to DHL's domestic one for over 23 years, and with the exception of the impact of September 11, 2001, Airborne Express had never sustained an annual loss. We felt we understood something of DHL's issues. On March 31, well in advance of the May 28 announcement, I presented to John Mullen, DHL's CEO, in Bonn, Germany, a proposal that would have provided their air network with over $250 million in annual savings. Our plan was based on the DHL domestic network then in place. We believe our plan would save DHL even more money when we account for DHL's revised domestic network.

With DHL's May 28, 2008 announcement, we saw for the first time how much DHL intended to cut from its domestic network. Given that information, ABX Air went back to DHL with a revised proposal. That proposal was very close in cost to what DHL intended to spend with UPS – but provided DHL considerably higher value. DHL reported that it will pay UPS $1 billion a year to handle its freight. Our plan came in less than $100 million above that, but provided DHL the flexibility of maintaining its own sort and airline capacity in the U.S. Since making that proposal, DHL's parent company, Deutsche Post World Net, has declined to meet with us.

The deal we have presented DHL is so close in costs to the DHL-UPS agreement, so superior in value, and so far less damaging to Ohio, that it invites discussion. Before DHL and UPS take steps that will have an unprecedented job-loss impact, we continue to respectfully request that ABX Air be allowed to negotiate to support DHL's worldwide success story.

With more information about DHL's needs, and cooperation from our organized employees, ABX AIR may still be able to provide an alternative to a DHL-UPS agreement that sustains DHL as a legitimate proprietary-network competitor. We remain convinced that DHL, its customers and the American consumer, would all be better served by our dedicated, efficient and customized air network in the U.S.

Maintaining DHL's operations at the Wilmington Air Park would keep thousands

employed. It would keep DHL operating as an independent delivery choice in the U.S. market. It would maintain DHL's flexibility and control, allowing it to stand by its customer-focused service standard. And it would maintain a true alternative to UPS and FedEx for customers in the express delivery market.

Economic Impact of DHL's Plan

If DHL contracts with UPS to provide DHL's airlift and sort capability in the U.S., it will dramatically alter ABX Air, the Wilmington community and Ohio. The plan would eliminate the jobs of at least 6,000 of ABX Air's 8,000 Ohio-based employees and may affect ABX Air's other employees across the country. Nearly 20 percent of these ABX Air people have been with the company more than 15 years.

The proposed deal also eliminates 1,200 jobs with ASTAR Air Cargo, 1,000 with DHL itself, and at least 1,800 in the surrounding community, ultimately costing 10,000 Ohioans their jobs and benefits.

ABX Air alone has an Ohio payroll of over $250 million a year. Because ABX Air provides healthcare benefits to all of its full-time and part-time employees, we spend over $44 million in annual healthcare benefits. The effects of losing this base of pay and benefits would begin in Clinton County, and then ripple throughout southwest Ohio and the entire state. Based upon 2006 data, ABX Air is the largest employer in each of six southwestern Ohio counties: Clinton, Fayette, Highland, Brown, Ross and Adams. However, ABX Air draws employees from more than half of Ohio's 88 counties.

DHL indicated in its earlier congressional testimony that its transition to UPS would be complete by mid 2009. Given the magnitude of these jobs losses and the short time frame in which they would occur, we believe it is of paramount importance that DHL assume responsibility for severance packages and other employee and community costs if DHL chooses to abandon Wilmington and Ohio.

ABX Air Business Restructuring Strategies

Serving as its CEO, I have a duty to ensure that ABX Air meets its obligations to its shareholders, employees, customers, and the communities in which we operate. Since the announcement, our executive management team has been holding frequent strategic planning meetings to look for viable alternatives to

DHL. This is a sizeable undertaking, as DHL currently accounts for 92% of ABX Air's revenues and 73% of its parent ATSG's revenues. While ABX Air's margins under its agreements with DHL are quite small, approximating 2.5% of revenues, the loss of the cash flows generated from DHL's business will be significant.

We have forged ahead to create a new business model should DHL and UPS sign a contract. We believe ABX Air has three primary options to consider in rebuilding our company: rapidly expanding our Aircraft, Crew, Maintenance & Insurance (ACMI) charter operations, establishing an aircraft Maintenance, Repair and Overhaul (MRO) business, and becoming an aircraft lessor. Our first option is to modify a portion of our fleet of 767 freighters so that we can be a strong standalone charter airline – an ACMI carrier. We've already invested more than $1 million in the engineering work to modify our non-standard freighter aircraft with a standard cargo door, and will invest over $150 million in modifications. We will have a significant portion of our fleet converted by August 2010. Our 767 fleet and our excellent reputation in the industry position us for a solid future as an ACMI carrier. That is good news for our shareholders and for our employees who would retain their jobs. But the fact of the matter is that ABX Air, as an ACMI charter airline without DHL, would not employee 500 people. Operating for DHL allows us to employ 8,000.

As we work to establish our ACMI charter airline, we are concurrently analyzing expanding our Maintenance, Repair and Overhaul (MRO) business. If we have continued access to the aircraft hangars at the DHL Air Park in Wilmington, ABX Air could operate a maintenance and repair organization for outside customer's aircraft and aircraft parts. ABX Air has FAA authorization to do this work, and has a good reputation in the industry. We may be able to lever our capabilities to create a solid business in this very competitive field. Establishing an MRO business allows ABX Air to employ many of the skilled aircraft maintenance technicians and support personnel who live in southwestern Ohio. The tooling is here. Our technicians have the skills. ABX Air has the reputation to bring in customers.

In our third option, we would not operate an airline at all. In this business configuration, we would secure a revenue stream by leasing our 767 aircraft to other operators. Our aircraft are in demand in the marketplace. Leasing them provides us with a reliable income stream while avoiding the risks associated

with having to go to the marketplace ourselves and placing aircraft with customers. Though leasing companies typically generate higher returns for lower risks, in this option, ABX Air essentially ceases to exist. We would have fewer than 100 employees supporting the aircraft themselves, although we could still run a MRO that would employ considerably more people.

As an aside, both ABX Air and ASTAR Air Cargo participate in the Department of Defense Civil Reserve Air Fleet (CRAF) program. In the event DHL implements its U.S. restructuring plan and ABX Air is not successful in restructuring itself as an ACMI carrier, this would result in the loss of two carriers under the program, constituting two of the four carriers operating 45-ton lift capacity for CRAF.

Though some of these options are better than others, it is clear to see that in any non-DHL option, ABX Air shrinks from a southwestern Ohio business 10,000-strong, to one with an employee base of no more than a few 100.

Future of the Wilmington Air Park

When DHL bought Airborne Express in 2003, the purchase included the largest privately owned airport in the U.S.; the Air Park that Airborne Express and ABX Air built on the site of the former Clinton County Air Force Base.

The Air Park has two all-weather runways with the capability to handle simultaneous arrivals and departures, making it ideal for air cargo operations. The facility covers more than 2,200 acres, 310 of which are surfaced. It contains more than 50 buildings and facilities. The Air Park serves as home to the ABX Air fleet, the largest fleet of Boeing 767-200 freighter aircraft in the world.

The Wilmington Air Park is a strategic asset for ABX Air. We require unrestricted access to the Air Park if we are to continue operating out of Wilmington and to establish a MRO business. Like our Ohio state officials, we have asked DHL about its plans for the Air Park, but have yet to hear their intentions.

Conclusion

In conclusion, it is clear to us that this DHL and UPS deal creates a crisis unprecedented in the rural United States, much less in rural Ohio. The impact of this deal on the people of Ohio will be felt for generations. Given the public information about the costs DHL is willing to pay for the services it is asking UPS to provide, it is also clear that ABX Air can provide DHL better economic, strategic and competitive value.

What is not clear, is why DHL and its parent company, Deutsche Post, cannot, in spite of repeated requests, evaluate the alternative ABX Air provides. Given the immediacy of the crisis and our inability to have meaningful discussions with DHL, we believe that Congressional action and review are the only ways to an outcome that provides long-term stability to southwest Ohio, the state and the nation.

We are in an accelerating race against time, and both the government and ABX Air need to continuously strive to save jobs. We are committed to an aggressive response to both the needs of DHL, and the needs of ABX Air. But if we do not act quickly, it is entirely likely we will see thousands of families without employment in an already depressed economy. Senator George Voinovich has

publicly called this job loss "unprecedented". Even when we examine large plant or base closures, no situation equals Wilmington's in terms of the concentrated impact on such a rural region.

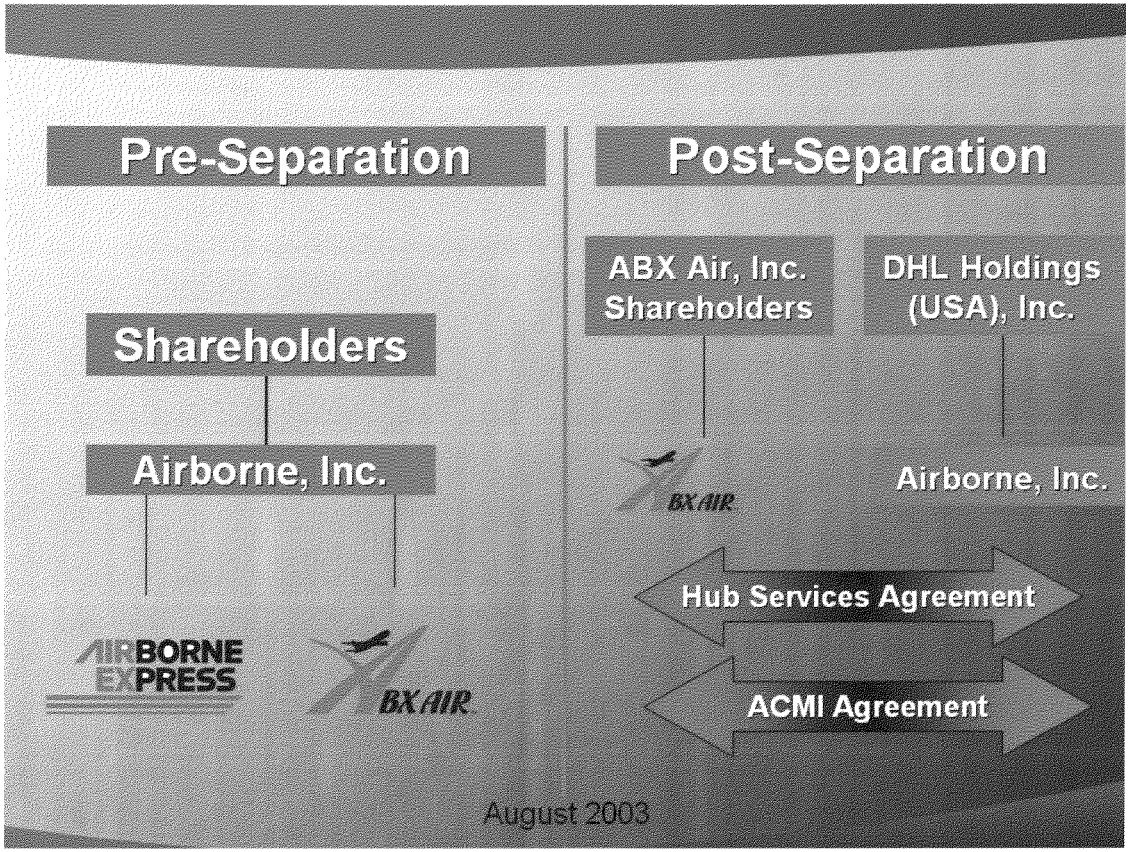
Should ABX Air ultimately prove unsuccessful in reaching an alternative arrangement with DHL, we are committed to the difficult process of rebuilding our company. We have taken proactive steps to build on earlier successes. We can continue our success and stabilize some jobs. However, there are other steps that ABX Air respectfully suggests Congress consider to protect our company, employees, community, state and national economy.

We need our federal government to ensure that DHL and UPS do not violate the law with this deal. The express delivery business is a complex, sophisticated one. It is not easy to understand the products valued by the marketplace. Government officials must take the time to completely understand the nuances of our business. We believe it is entirely possible that it will become clear, when the complexities of the deal are understood, that DHL can no longer compete in the marketplace once it gives UPS control over pricing and sensitive consumer information.

On the surface, DHL's elimination of 10,000 Ohio jobs, while saving little if any money, makes no sense to us. Regardless of whether there is a violation of the law in this matter, given the magnitude of the economic impact on Ohio, Wilmington, and ABX Air, we ask that the United States government induce if possible, or compel if necessary, DHL to fully evaluate in good faith all alternatives to abandoning the people of Ohio, Wilmington, and ABX Air. The economics DHL needs are available in Ohio. ABX Air can provide them. And finally, should the DHL UPS deal come to pass, ABX Air requests federal help in assuring the Wilmington Air Park pass from DHL back to the people of Ohio. And we ask that our federal government provide the broadest possible support to the people of our state, communities and our company. We will need that help, and we will need it for years to come.

On behalf of the employees and shareholders of ABX Air, please accept our sincere appreciation for the opportunity to testify before the committee. Our collective desire is to clarify the importance of continued consumer choice in the express delivery market and the security of American jobs in support of global delivery networks.

I stand ready to answer any questions of the committee at any time and can be reached at my office in Wilmington, Ohio at (937) 366-2320.


Pre-Separation
Post-Separation
Shareholders
Airborne, Inc.
AIRBORNE EXPRESS
BX AIR
ABX Air, Inc. Shareholders
DHL Holdings (USA), Inc.
BX AIR
Airborne, Inc.
Hub Services Agreement
ACMI Agreement
August 2003

WRITTEN TESTIMONY OF JOHN MULLEN
CEO OF DHL EXPRESS

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

"EFFECTS OF THE PROPOSED ARRANGEMENT BETWEEN DHL AND UPS ON COMPETITION, CUSTOMER SERVICE, AND EMPLOYMENT"

SEPTEMBER 16, 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 United States.

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 was 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. According to the testimony of Wilmington's Mayor last week, this is more than the $257 million annual payroll for all the

workers in Clinton County for DHL, ASTAR, ABX and the other eighteen companies at the Air Park. 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. The fact that the majority of these expenditures will benefit individuals who are not even employed by DHL indicates DHL's commitment to helping the Wilmington community through this transition.

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 transport services in the United States. DHL was founded in the United States in 1969 by three entrepreneurs. We expanded over time to become a global air express service provider. DHL's operations inside the United States were conducted by one company, DHL Airways (which was owned and controlled by U.S. citizens), while our operations outside the United States 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 its 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 publicly traded company, became an investor in DHL International. DPWN acquired all of the company in 2002.

With full acquisition, however, came new hurdles. U.S. law prohibits non-U.S. citizens from fully owning and controlling a U.S. air carrier. Prior to 2001, DHL Airways operated an integrated air and ground network in the United States, much as UPS and FedEx do today. Because of the restrictions on DHL's ownership of an air carrier, DHL could not maintain the same efficiencies that our competitors enjoy. Consequently, in May 2001, DHL underwent a major restructuring that separated DHL's air and ground operations. This strategic decision was made in the hope that it would allow the company to expand its presence and improve its operating platform in the United States, 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.

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 United States, 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 United States 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. Again 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 United States.

In order to provide an integrated express delivery service in the U.S., DHL Express needed airlift providers, so we entered into ACMI agreements (Airplane, Crew, Maintenance, Insurance) with ASTAR and ABX. These ACMI arrangements, which require DHL to pay the full cost of the services these carriers operate for it, including both companies' allocated overhead, and an operating margin ensuring that both companies' services for DHL are highly profitable – 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 large part because of these "cost plus" arrangements, ABX and ASTAR have been profitable during their relationship with DHL Express, while we have continued to lose money.

Unfortunately, the existing ACMI structure has serious limitations. Under our "cost plus" agreements with ASTAR and ABX, we have to pay for the entire flight operation unless we can sell some of the unutilized space. This means that DHL has to fill the aircraft or take the financial loss for flying it only partially full. Under the proposed agreement with UPS, by contrast, we would place our shipments into the UPS network and would not be responsible for the entire cost of the flight. In the current operating environment, continuing to maintain "cost plus" ACMI agreements with two different U.S. air carriers – which cannot match the economies of scale or scope and accompanying cost efficiencies achievable by combining DHL's volumes with UPS's – would place DHL at a severe and untenable competitive disadvantage.

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, including the air express delivery sector. 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 shed thousands of jobs in the process. From 2001 to 2005, US airlines lost 100,000 jobs and $30 billion, and this trend continues today. Some carriers have ceased operations entirely.

At the same time, the air cargo market has experienced increasing levels of excess air lift capacity, the impact of which has been substantially exacerbated by record increases in fuel prices. These record fuel prices, combined with a significant slowdown in the U.S. economy have hit the domestic air express sector particularly hard. For example, FedEx recently stated in its annual report that its U.S. domestic express shipping volumes fell to pre-2000 levels in its fiscal fourth quarter. UPS likewise recently reported a 6.1% decline in domestic next-day air express shipments for is fiscal second quarter. DHL has similarly experienced a steady decline in overnight air volumes since 2000.

During this time, DHL's (including former Airborne) total overnight air shipments, which included a greater percentage of documents as opposed to parcels shipments than our main U.S. competitors, shrunk at an even faster rate than the overall market. Furthermore, as overnight air costs have increased, shippers have moved increasingly to less expensive ground

delivery products, a segment in which DHL and former Airborne were not nearly as well equipped to compete with larger U.S. rivals FedEx, UPS and the U.S. Postal Service. So, the combination of declining air volumes, including even sharper declines in documents compared to parcels, rapidly increasing costs and the shift from air to ground products has created a triple threat to DHL Express in the U.S.

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 acquired a minority stake in ASTAR in 2007 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 United States 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 United States.

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 United States. The stock value of DPWN has remained flat, and the pressure of the financial markets to "fix" our problem in the United States has increased.

In this context, some have asserted that DPWN is government-controlled. It is not. We are a publicly traded company that must be responsible to our shareholders and consider how best to respond to their calls for change. Nearly 70 percent of our stock is owned by retail and institutional investors, and US institutional investors constitute roughly 25 percent of the total ownership of the company. KfW Banking Group, a trustee of German funds, owns the remaining 31 percent of our stock, but it has no special voting interest.

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 our employees. Decisive action is now required.

On May 28, therefore, we announced a restructuring plan for DHL Express in the United States, 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 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 provide air lift services for nearly all of DHL U.S. 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 and maintain our own IT systems, as we do today. There would be no sharing of sensitive or proprietary customer information beyond the operational data necessary for transportation between the appropriate airports. 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, alliance, or transfer of assets between DHL and UPS. It would be a commercial vendor contract for services negotiated at arm's length between two independent companies, limited to the air transport of DHL's packages 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 United States. 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. FedEx and UPS provide airlift for the U.S. Postal Service. 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 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. Appel personally committed to Lieutenant Governor 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.

To put this in perspective, we lose in a day and a half the entire amount of benefits DHL has realized from the State of Ohio's 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 United States, and I firmly believe that the decision to restructure DHL's U.S. operations was necessary to achieve that objective.

Mr. Chairman and 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 Development (412) Grant	2,000,000	2,000,000	
Volume Cap Allocation 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 Investment in Training Program	2,000,000	2,000,000	
Employment Pre-screening Test and Recruitment 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.

STATEMENT OF

CAPTAIN JOHN PRATER, PRESIDENT
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC

September 16, 2008

"Effects of Proposed Arrangement Between DHL and UPS on Competition, Customer Service, and Employment"

Air Line Pilots Association, International
1625 Massachusetts Avenue, NW
Washington, DC 20036
(202) 797-4033

STATEMENT OF
CAPTAIN JOHN PRATER
PRESIDENT
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES
ON
EFFECTS OF PROPOSED ARRANGEMENT BETWEEN DHL AND UPS ON COMPETITION, CUSTOMER SERVICE, AND EMPLOYMENT

September 16, 2008

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 am pleased that this panel has the assistance of a bipartisan group of legislators from the state of Ohio, as well as the Governor, in carefully examining both the origins and ramifications of this proposed transfer of lift and work. ALPA wishes to specifically thank Senators Voinovich and Brown, Representatives Turner, Sutton, and Kaptur, Governor Strickland, and Lieutenant Governor Fisher and all the members of the Ohio delegation who have participated in these Congressional hearings and for their leadership on this issue.

The officials from Ohio have made a number of significant points, but there is one matter they have brought up which we would like to stress from the outset -- DHL approached and fashioned the "solution" to its problems in North America unilaterally, and chose to bypass, not only the companies and employees who have supplied its lift with great effectiveness for many years, but also the state of Ohio. This process, which denied the parties most affected by the decision any opportunity to construct alternatives or protect themselves, has produced an extraordinarily flawed "solution" which will inevitably cause DHL to lose market share and further consolidate the express package industry in ways which unquestionably violate U.S. antitrust laws.

Aside from this, ALPA's distinct concern is well known and is directly related to the above. On May 28, 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 -- as well as the fact that it had entered into a fourteen year agreement for supply of its lift with ASTAR in the summer of 2007-- it did not inform either ASTAR or its employees that it had been in negotiations with UPS for the previous six months until that press

conference. If the transaction announced 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 protect 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). (See attached **Table 2.**)

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 a far greater share of revenue than in 2003. (See attached **Tables 3-6**.)

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 point is often inadequately understood. DHL has stated that it is simply switching to another contractor for its lift. Aside from the fact that there was no opportunity for either ASTAR or ABX to compete with the UPS bid because it was made and negotiated in secret, neither ASTAR nor ABX can legitimately be thought of as outside contractors with respect to DHL. As made clear above, prior to Deutsche Post coming on to the scene, both DHL's and Airborne's air operations had each been part of the same corporation as and were integral to its ground operations. What is now DHL Ground (the result of the merger between DHL and Airborne) was built by ASTAR and ABX Air. These air operations were originally built to service DHL and Airborne, were restructured by Deutsche Post to support the merged DHL ground operation, and the rendition of service by both carriers was strictly controlled by Deutsche Post. In that both carriers were built and modified to DHL's needs, there is virtually no chance either will survive once their relationship to DHL is terminated. In short, two carriers which were viable competitors before Deutsche Post came on the scene have been deprived of the product they were built to transport and are being thrown under the bus along with their employees and communities.

This is an unconscionable result simply based on its 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 the United States and ASTAR, not DHL. Therefore, DHL will not be able to remedy the gap in available lift for our military which will be created by the cessation of ASTAR's operations. This is a bitter result for our ASTAR members, close to forty percent of whom have served in our nation's armed forces, and who have been recognized by the United States government for their enthusiastic and courageous participation in CRAF.

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. (See attached Table 6.)

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 inevitable 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. No amount of "firewalls" or restrictions on information or product sharing will prevent this result and, in any case, the Department of Justice's own antitrust guidelines make clear that such arrangements are not favored and are rarely sufficient to remedy competitive concerns

Conclusion

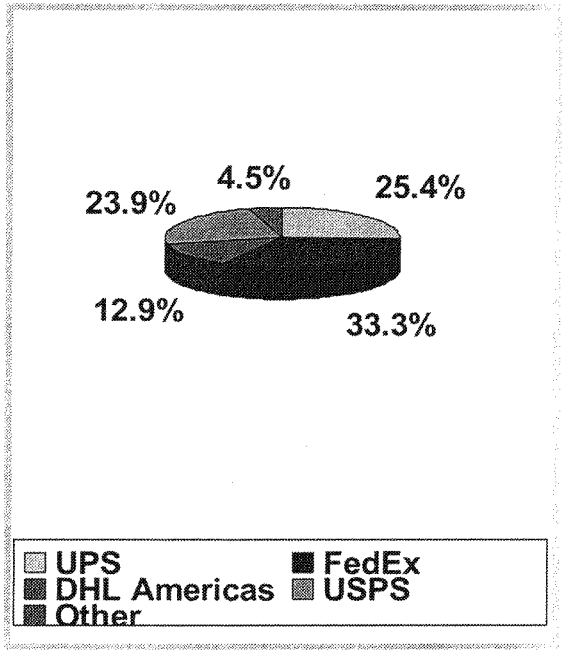
As pointed out earlier, the discussions between UPS and Deutsche Post occurred in secret and neither the providers of lift nor public officials in Ohio were told anything about it until the May 28, 2008 press conference. The reason for this seems obvious: the company officials promoting this arrangement 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, the Judiciary Committee, and the Department of Justice, before any deal is consummated. Further, as suggested by Chairman Conyers of the Judiciary Committee at last week's hearing, we would urge this deal be held in abeyance pending such scrutiny and, given the significant public interest both with respect to employment in Ohio and preservation of competition in the express package industry, we believe any confidentiality restrictions entered into by the parties should be waived or voided.

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

Total Domestic U.S. Parcel Air Express Volume Market Share 2003

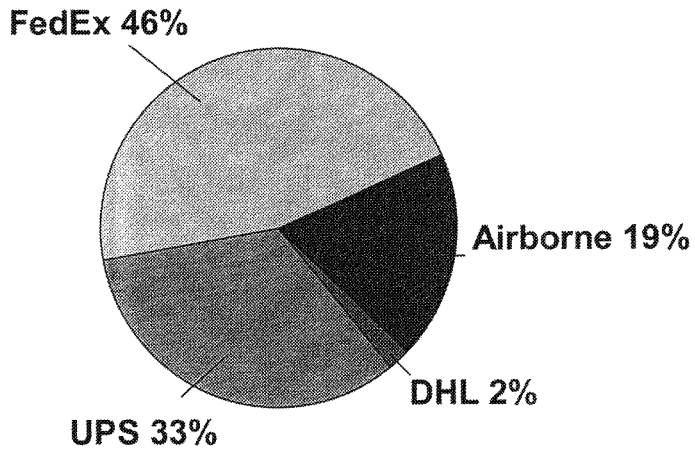


Source: Bears Stearns, Airfreight & Surface Transportation report January 2008

Table 1

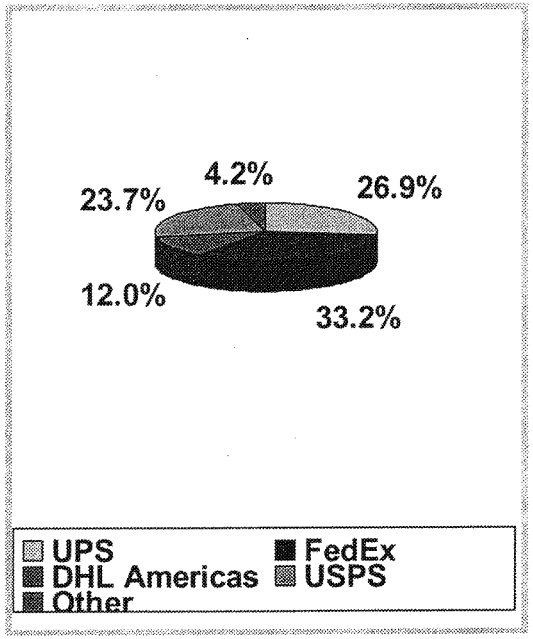
2003 DHL Airborne Express Transaction Info

"The UPS/FedEx duopoly today (2003) has a 79% share of the US airexpress delivery market versus Airborne & DHL's combined 21% market share."



Source: DHL Airborne Express Transaction Information, July 14, 2003
Table 2

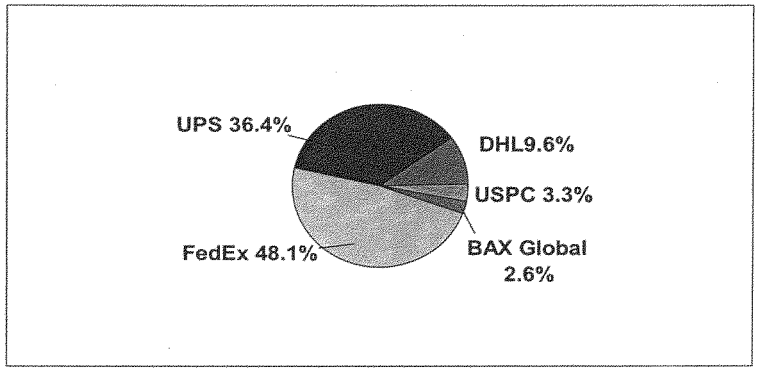
Total Domestic U.S. Parcel Air Express Volume 2007E



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

Table 3

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: ACMG's U.S. Domestic Air Freight & Express Industry Performance Analysis 2008

Table 4

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 5

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 6

WRITTEN STATEMENT by Mayor David L. Raizk, City of Wilmington, Ohio

FOR THE HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

HEARING on Sept. 16, 2008, 2 p.m. on Effects of Proposed Arrangement Between DHL and UPS on Competition, Customer Service, and Employment

Greetings:

I sincerely appreciate the opportunity you have given me today to testify before this important committee. 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.

But since May 28, a storm has been hanging over Wilmington. On May 28, DHL, Wilmington and Clinton County's largest employer in the five surrounding counties, announced they were seeking a deal with UPS, their biggest competitor, to handle their airlift operations in the United States, effectively ceasing operations at the Wilmington DHL airport. This was particularly difficult for me as I received this news firsthand in Germany at DHL/Deutsch Poste World Net headquarters. I was in Germany as a guest of DHL, representing the City of Wilmington and the Wilmington Airport, the largest hub in the DHL network, at the Grand Opening of their new hub in Leipzig.

Given the current economic climate, we knew that some restructuring was in the works, and some job loss would be coming, primarily as a result of the standing down of the DC9 portion of the business. But there was reason for optimism concerning the Wilmington Airpark. 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 U.S, and representatives of DHL. At that time, DHL assured the Governor that although there would be some job cuts coming, they were committed to the Wilmington Airpark. In April, in discussions with DHL on possible assistance from the State of Ohio, Lt. Governor Lee Fisher was also assured of DHL's commitment to the Wilmington Airpark.

So it was with some comfort level that I went to Germany to represent Wilmington. That comfort was further enhanced when German Foreign Minister Steinmeier, the keynote speaker at the hub opening, mentioned Wilmington, Ohio! Imagine my shock two 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 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 located in and around the airpark with direct or indirect relationships with the operations there would be almost 10,000 (9,786.) The annual payroll is over $257 million. Healthcare benefits provided are another $63 million. These employees provide 9% of revenue to our local hospital or a loss of $7-8 million, plus the resulting increase in charity care when these benefits cease. It would put them out of business.

This transaction would bankrupt the state's unemployment insurance fund. The impact to the schools, city and county government, non-profits, and local business would be devastating. Our data analysis

indicates that one in five small businesses will fail. If I sound alarmist, it is because we are facing an economic catastrophe of unparalleled proportion. We are not trying to save old technology jobs that have failed to keep pace with the new economy. These are 21st century jobs, supply chain and logistics, airframe and aircraft mechanics, and conveyor engineers. This isn't rust belt vs. sun belt; these jobs 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 airpark employee in one of every three houses in Wilmington. Many husbands and wives both work at the airpark. Many family farms are saved because part-time work at the airpark provided the healthcare they needed. Students at Wilmington College (many the first in their family to go to college) can reduce their indebtedness by working at ABX. In short, these jobs just didn't appear in 2004. Over the last 30 years the community has grown with the growth of the airpark. This proposed transaction literally rips the fabric of our town.

Now I don't know what the definition or criteria is for antitrust. I am a simple mayor from a small town in southwestern Ohio. DHL and UPS say this is a contractor/vendor relationship. If the freight is collected, sorted and the UPS planes stop in Wilmington to pick it up, then maybe, maybe you could make the case for contractor/vendor. But to abandon your largest hub, and deliver the freight to your #1 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 anti-trust 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 operations of the largest private airport in the United States, a state-of-the-art facility. In a little over three short years, if they complete this transaction, they will have taken two American companies that had significant market share off the board. In the process, they will displace almost 10,000 American jobs. For at the end of the day, this is about people. These are not just numbers; these are our friends and 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 hardworking Americans as you consider these issues.

Thank you.

David L. Raizk, Mayor
69 N. South Street
Wilmington, Ohio 45177

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

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)

Aug-13-08 09:25 From-Wilmington Mayors Office 937 382 0931 T-841 P.002/002 F-462

WITNESS INFORMATION FORM

PLEASE COMPLETE THE WITNESS INFORMATION FORM BEFORE TESTIFYING

NAME: Mayor David Raizk DATE OF HEARING: Aug. 19, 2008

MAILING ADDRESS: 69 N. South St., Wilmington, OH 45177

CITY/STATE: _____ ZIP: _____ TELEPHONE: 937-382-5458

ARE YOU REPRESENTING: YOURSELF_____ YOUR ORGANIZATION X (SEE BELOW)

ORGANIZATION: City of Wilmington

ADDRESS: 69 N. South St., Wilmington, OH 45177

POSITION/TITLE: Mayor

PLEASE GIVE A BRIEF STATEMENT OF THE GROUNDS ON WHICH YOU PLAN TO TESTIFY: THe effect of the proposed DHL-UPS deal on the regional and local economy, on the people in in this community. Request that the State provide transition and redevelopment assistance if needed.

WILL YOU HAVE A WRITTEN STATEMENT, VISUAL AIDS, OR OTHER MATERIAL TO DISTRIBUTE?
YES X NO____
(IF YES, PLEASE PROVIDE COPIES TO THE CHAIRMAN OR SECRETARY)

HOW MUCH TIME WILL YOUR TESTIMONY REQUIRE? 10 minutes

The City of Wilmington, Ohio

69 North South Street, Wilmington, Ohio 45177
Telephone: 937-382-5458 Fax: 937-382-0931
Email: mayor@ci.wilmington.oh.us

August 18, 2008

John A. Carey, Jr.
State Senator
Ohio 17th Senate District
State House
Columbus, OH 43215

David T. Daniels
State Representative
Ohio's 86th House District
State House
Columbus, OH 43215

Mayor
David L. Raizk
(937) 382-5458

Director of Law
Kathryn Hapner
(937) 383-2067

City Auditor
David Hollingsworth
(937) 382-6604

City Treasurer
Geoffrey A. Phillips
(937) 382-6515

President of Council
Fred S. Ertel
(937) 382-5458

Members of Council
Rob Jaehnig
Mark W. McKay
Sandra Mongold
Cindy Peterson
Leilani H. Popp
Mike Wallace
Donald E. Wells

Clerk of Council
Laura A. Curliss

Director of Public Service
Lawrence D. Reinsmith
(937) 382-6509

Director of Public Safety
C. Nick Babb
(937) 382-6509

Re: House State Government and Elections Committee and Senate Finance and Financial Institutions Committee Hearing, Tuesday, August 19, 2008l, at 1:00 p.m. at Building 2, ABX Air Park Facility, Wilmington, OH.

Dear Sen. Carey and Rep. Daniels,

In order to provide your committees with as much relevant information as possible, I am enclosing a briefing paper regarding the potential consequences of a DHL-UPS contract and the closure of much of the business DHL now conducts at the Wilmington Airpark.

I am also including all of the official letters that I am aware of that have been written related to the DHL-UPS announcement. These letters will provide you with a great deal of background on the current situation.

Finally, as co-convener along with the Lt. Governor, I am enclosing the list of members of our bipartisan, regional and diverse Economic Task Force for the DHL hub. The Economic Task Force was formed shortly after the May 28, 2008 announcement by DHL of an expected contract with UPS and the Task Force has been working diligently since then. They do their work through the following committees: Retention, Redevelopment, Economic Impact and Data, Workforce and Outreach. To date, the committees have been focusing on retention while preparing for other possible outcomes.

I will be testifying before you tomorrow and at that time will provide a written copy of the remarks I plan to make. Thank you for inviting me to provide this important information to your committees.

Sincerely yours,

David L. Raizk

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 [redacted] 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 lapses
- 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

241 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-0303
(202) 224-2235

5353 NORTH 16TH STREET
SUITE 105
PHOENIX, AZ 85016
(602) 952-2410

4703 SOUTH LAKESHORE DRIVE
SUITE 1
TEMPE, AZ 85282
(480) 897-6289

407 WEST CONGRESS STREET
SUITE 103
TUCSON, AZ 85701
(520) 670-6334

TELEPHONE FOR HEARING IMPAIRED
(602) 952-0170

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

PRINTED ON RECYCLED PAPER

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

PRINTED ON RECYCLED PAPER

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.

...

Postal address
Deutsche Post AG
Headquarters
53250 Bonn, GERMANY

Business address
Deutsche Post AG
Headquarters
Charles-de-Gaulle-Straße 20
53113 Bonn, GERMANY

Visitors' address
Deutsche Post AG
Headquarters
Platz der Deutschen Post
53113 Bonn, GERMANY

Phone +49 228 182-9000
Fax +49 228 182-7060

www.deutschepost.de

Deutsche Post World Net
MAIL EXPRESS LOGISTICS FINANCE

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.

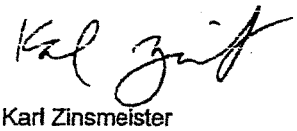
As you are aware, on antitrust matters the decision of whether to initiate an investigation must rest wholly with the Department of Justice. Assistant Attorney

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

PRINTED ON RECYCLED PAPER

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

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.

PRINTED ON RECYCLED PAPER

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 underly 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

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.

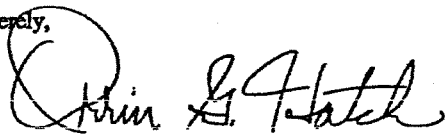
It has been reported that the parties are close to finalizing this agreement. The prospect of a quick ratification is equally disconcerting since the proposed contract will have a devastating financial impact on DHL's current air transport providers, ABX Air and ASTAR and these airlines' base of operations,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

PRINTER-FRIENDLY FORMAT SPONSORED BY

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.

DAVID L. RAIZK
1088 Xenia Avenue
Wilmington, OH 45177
937-382-4715 Home
937-382-5458 Office

- Lifelong resident of Wilmington
- Educated by the Wilmington City Schools and Wilmington College
- Worked his entire adult life in the Wilmington business community, the last 29 years at Bill Marine Ford
- Served the city as Director of Public Safety, 16 years as President of City Council, the last 8 years as the city's mayor and began his 3rd term as mayor January 2008

Mayorial Accomplishments

See attached pages

Active in Church and Community

Member of the Wilmington Friends Meeting
Chairman of the Board of the Mental Health and Recovery Center of Clinton County
Former Member of the Board of Trustees of Wilmington College (16 years)
Director of the Wilmington Community Improvement Corporation

Personal

He and his wife, Mary Ann, have two daughters, Lauren and Leyla

ACCOMPLISHMENTS DURING MAYOR RAIZK'S TERMS

- **New Four Million Gallon Water Treatment Plant** placed in full operation in 2000
- **Repaired and improved downtown waterline and fire suppression** – summer 2007
- **Water Line Constructed on US 68, N.**, extending our service territory. This proactive move will accommodate future growth
- **S.R. 68 "loop" waterline project approved for completion in 2007/2008** to improve water service to businesses and residents on the south side of town.
- **Completion of New Cell at Landfill** that afforded an additional 15 years of service; planning an additional 12 year expansion to delay need to open a new cell.
- **State Urban Repaving Program** – $1 million grant paved 4.16 miles of state highway within the city limits
- **Completed lease/purchase for new $400,000 compactor** for more efficient landfill operations.
- **Purchase approved for two snow plough trucks to replace aging fleet** for road safety in winter; dump capacity can be used for general street work in the summer months (delivery in fall 2007).
- **Traffic Light and Roadway Improvements** at Wayne Rd. (SR 73, W.) and Nelson Avenue; new light to be installed at Vine and South (summer 2007) for improved safety
- **Rehab of Traffic Islands and Roadway Improvements** along Wayne Road and Main Street
- **US 68 and SR 134** – The turn lane and new railroad crossing with safety gates completed in 2002.
- **New 19,000 sq. ft. Taxi Facility Opened in 2002** – accomplished with $1.4 million in state funding; continually replenishing fleet with new vehicles as older ones go out of service.
- **Over forty New Handicapped Ramps at Intersections Throughout the City** - Community Block Grant funds utilized
- **Ohio Main Street Community** - Wilmington's designation as a certified "Main Street Community" is a major step in accomplishing downtown revitalization and qualifying the City for revitalization grant funds.
- **2003 Community Housing Improvement Program Grant** - $500,000
- **2004 CDBG Downtown Revitalization Tier II Grant** - $400,000. Money used to assist downtown property owners w/improving their buildings and city infrastructure projects, including new windows for the Murphy Theater, a new roof for the General Denver Hotel and many other façade and code improvements to downtown buildings.
- **2005 Community Housing Improvement Program Grant** - $500,000

- **2000-2007 CDBG Formula Grants – over $300,000 obtained.**
- **2007 CDBG Tier III Grant ($50,000)** for the revitalization of the "Little Giant" diner in downtown Wilmington
- **Main Street Market Mural** – worked with building owner Jim Burnett, an anonymous donor, mural artist Jason Morgan and the mural committee to complete the Main Street Market Mural in downtown Wilmington
- **Lowes Drive** – (the city's first north/south connector since Wall Street) completed in July, 2003.
- **Farquhar Avenue Widened and Rebuilt** for safer access to the hospital by emergency vehicles. This was accomplished in partnership with the CMH Regional Health System, the Ohio Public Works Commission and State Issue II funding,
- **New Kroger Store** - Working with the city, developers relocated and built a 69,000 square foot Kroger store and revitalized and rehabilitated Wilmington's first shopping center.
- **Homeless Shelter Grants** every year
- **Revitalization of and Preservation of Property Values** through property maintenance code actions and demolition of substandard properties
- **Acquisition of 128 acre Lytle Creek Nature Preserve** on S.R. 134, S., the city's first nature preserve devoted to passive recreational activities, purchased through a Clean Ohio Grant ($1,149,390) and partial donation by the landowners
- **Luther Warren Peace Path** (1.2 mile paved surface) dedicated in 1999
- **4-C Bicentennial Trail** (1.3 miles paved surface) dedicated July 2005
- **Urban Bike Route** signed in 2005 to connect the Luther Warren Peace Path & the 4-C Bicentennial Trail creating 3.5 miles of continuous trail for recreational & transportation purposes
- **Judy Gano Trail** (1.0 mile paved surface) dedication expected 2008; will connect the 4-C Bicentennial Trail and Rombach Avenue
- **Established the Eastside Fire Substation** – Station 2 (through the purchase and renovation of the Vectren building (former DP&L building.) The downtown station – designated as Station 1 - was also renovated.
- **Updated Firefighting and Rescue Fleet and Equipment** – Three (3) new engines, the first aerial platform in the history of the department, new rescue boat, trailer, and ice rescue equipment, and a new EMS ambulance added

- **Additional safety services improvements** -- Fully-staffed police department (24 FT officers); re-instituted bicycle patrol; updated tornado sirens and all fire communications (changed away from low-band system to high frequency signal, plus added back-up system).

- **Annexations accomplished** - Worked with property owners and City Council to complete annexation of residential, commercial and industrial property to the City of Wilmington – over 1600 acres, including the DHL Air Park

- **Extension of Davids Drive** -- a landmark cooperative effort between city, county, the CIC and R&L Transport; ribbon-cutting expected September 2007.

- **Commercial development on Rombach Avenue and new Davids Drive extention** – worked with developer to accomplish site development for location of a major clothing and household goods retailer (to be announced)

AIRLINE PROFESSIONALS ASSOCIATION
Teamsters Union Local 1224
Affiliated with International Brotherhood of Teamsters
2754 Old State Route 73 Wilmington, Ohio 45177
(937) 383-2500 Fax (937) 383-0902

STATEMENT

OF

DAVID R. ROSS
PRESIDENT,
AIRLINE PROFESSIONALS ASSOCIATION, TEAMSTERS LOCAL 1224

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

ENTITLED

"EFFECTS OF PROPOSED ARRANGEMENT BETWEEN DHL AND UPS ON COMPETITION, CUSTOMER SERVICE, AND EMPLOYMENT"

PRESENTED ON

SEPTEMBER 16, 2008

David R. Ross
President
Airline Professionals Association, Teamsters Local 1224
2754 Old State Route 73
Wilmington, Ohio 45177
(800)294-1224

STATEMENT OF
DAVID R. ROSS
PRESIDENT,
AIRLINE PROFESSIONALS ASSOCIATION, TEAMSTERS LOCAL 1224
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES
SEPTEMBER 16, 2008

Mr. Chairman, Ranking Member Mica, 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, around the country, and in our transportation industry. 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 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 concentrated job losses associated with and the anticompetitive nature of this deal. At a hearing last week before the House Judiciary Committee, Chairman John Conyers, Jr. concluded more hearings were required to properly address the antitrust implications of this proposed deal and the impact on competition in the air shipping industry.

Mr. Chairman, I respectfully request that this Committee (1) oppose the deal between DHL and UPS as an affront to U.S. aviation policy, which seeks to promote competition in the air transportation industry and discourage excessive market domination;[1] (2) request that this Justice Department initiate an investigation and enforce

[1] See 49 U.S.C. §§ 40101(a)(6), (9), (10), (b), and (f).

the antitrust laws of this country in defense of America's aviation industry; and (3) resist any attempts to grant DHL a waiver of the citizenship laws that keep our country safe and ensure the fair application of our labor laws.

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 about the strategic global alliance between two dominant air express carriers – DHL and UPS. This deal, if allowed, would have serious negative effects on service, costs, consumer choice and jobs.

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 support of the International Brotherhood of Teamsters, I testify before you on their behalf. Also, I am here 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. Through mismanagement, DHL is losing money in the U.S. Their proposed deal with UPS violates antitrust laws and is an affront to U.S. aviation policy. Rather than fix their management problems, DHL is now trying to circumvent our antitrust laws and undermine our aviation policies. Mismanagement of

the business is no excuse to violate our antitrust laws and undermine our aviation policies.

Airborne Express was acquired by and then greatly controlled by DHL

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 County 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 rightfully praised the complimentary service portfolios of the two airlines and Airborne's broad ground network. By every measure, this was an acquisition that should have increased competition thereby benefiting consumers and creating jobs.

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 was attended by the Mayor of Wilmington, Ohio. That was two days before DHL's announcement that devastated Wilmington, Ohio.

As this Committee is surely aware, DHL's entry into the U.S. market triggered a lengthy proceeding before the Department of Transportation because of well-established citizenship laws for U.S. air carriers. In 2003, Administrative Law Judge Burton S. Kolko declared DHL Airways a U.S. citizen in DOT Docket Proceeding Number OST-2002-13089-594. Around that time, the two airlines carrying 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 away at the Cincinnati/Kentucky International Airport. There was an attempt to relax the citizenship and control laws in a Notice of Proposed Rulemaking and a Supplemental Notice of Proposed Rulemaking (Docket Number OST-2003-15759), which was withdrawn after Congress rejected it in a bipartisan manner.

DHL, however, exercised great control over ABX and Astar 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 in the form of 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.

Through the considerable 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.

DHL's declining market share in a growing market

In the air express business, on-time-performance is everything. 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. Accordingly, 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 failure 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[2] 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 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. They created havoc resulting in a revenue problem caused by mismanagement through the control they exercised, resulting in a loss of market share. DHL lost market share in a growing market that, last year, set an industry revenue record at $32.81 billion.[3]

Fuel-efficient Boeing 767's, but dysfunctional corporate relationship

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

[2] "Development of the U.S. Air Express Market (2003-2007)", Air Cargo Management Group (Aug. 15, 2008) (ACMG Report), at 13 and 14.

[3] ACMG Report, at 1, 6, 13, and 14.

aircraft are equipped to handle packages in "C" containers rather than "A" containers.[4] 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

[4] While "A" containers are shaped like the letter "A" and fill the width of an aircraft fuselage, "C" containers are shaped like the letter "C" and fill about half the width of an aircraft fuselage. Both have their advantages and disadvantages.

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 as 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?

Service reductions and job losses

DHL sorts a significant amount of their express delivery packages at regional sort hubs, in cities such as Erie, Pennsylvania; Chehalis, Washington; Waco, Texas; and Memphis, Tennessee. There are more than five hundred jobs at risk in these areas. Also, small businesses who conveniently locate themselves near these regional sort hubs will suffer when DHL withdraws service at these areas, which they surely will. Five hundred jobs are at risk in Riverside, California where DHL operates at March Air Reserve Base. March GlobalPort was formed to coordinate companies that conveniently operate nearby, an area where federal funds were granted to facilitate business. The impacts of this proposed deal extend far beyond Ohio. DHL's withdrawal from these regional sort facilities, which will inevitably occur if this merging of services is allowed, will adversely affect businesses that have set up their infrastructure for supply and delivery of products that depend on a competitive and responsive domestic express delivery business. Service also suffered.

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 fastest DHL now offers "DHL Next Day" service is one week. The earliest DHL can deliver an express package from D.C. to a district office in Duluth, Minnesota is 5 pm. For Chisholm, that "express" package will take two days to arrive. For Brainerd, it will take almost a week. DHL is no longer competitive in West Virginia either. The earliest DHL can deliver an express package from D.C. to a district office in Bluefield, West Virginia is 5 pm. For Beckley, that "express" package will take almost a week to arrive. 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 comprised of 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.

Antitrust concerns and our national transportation policy

The anti-competitive nature of this strategic alliance was addressed at length last week. Antitrust expert David Bolto reviewed the circumstances of this deal and testified:

> 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.

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 the 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.[5]

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 final delivery. Having watched express packages go through the sort for sixteen years, and being in constant contact with the people doing the sorting,

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

I am here to tell you – 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. A Chinese wall as a self-regulatory safeguard can hardly be sufficient to secure competitively sensitive information. It would require constant monitoring and the threat of enforcement action, it would have to ensure pertinent information was shared, and it would destroy the very efficiency the strategic alliance was designed to generate.

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. Unfortunately, DHL and UPS announced this far-ranging deal even though the terms of the deal were not yet 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%.[6] 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

[6] ACMG Report, Figs 4-2 and 5-1.

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 if this deal goes through.

These two global giants will no longer compete in the U.S., and even if they do compete internationally, it will be of no benefit to American consumers. It seems these global giants are already colluding in their denials, with one saying "there are no grounds for the candidates' demands for an antitrust investigation"[7], and the other saying "[i]t's a little surprising that anybody could realistically look at this and argue that it raises antitrust issues."[8] The antitrust and competition issues raised by the proposed deal between DHL and UPS are not politics, but real, as shown by the letter from Senators Kohl and Hatch.

Beyond traditional antitrust requirements, our national transportation policy calls for "avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation."[9] Our stated national policy further calls for "placing maximum reliance on competitive market forces and on actual and potential

---

[7] Dr. Frank Appel, CEO of Deutsche Post AG (Wall Street Journal, Aug. 14, 2008).

[8] Norman Black, UPS spokesman (Wall Street Journal, Aug. 8, 2008).

[9] 49 U.S.C. § 40101(a)(10).

competition"[10] and "preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation."[11]

Something else going on?

One justification given by this extremely profitable global corporation for their restructuring is the foreign ownership restrictions in the U.S. I would stress to you it is doubtful Deutsche Post and DHL Express would have done anything differently if they had 51.1% or greater ownership interest in Astar rather than the 49% ownership interest they have. The ACMI agreements give DHL everything it needs to run a profitable express package delivery airline – control of routes, schedules, on-time performance criteria, third-party services, any changes of ownership.

Moreover, the foreign ownership or nationality requirements play a crucial role in America's security and other national interests. I feel particularly compelled to mention this in light of a suggestion last week that DHL be granted a waiver of these requirements. As became tragically apparent in 2001, after fanatics decided to use airplanes as their weapon of choice, the airline business is different from other industries when it comes to national security. The airline industry also has unique labor concerns because of the mobile labor dynamic involved. The nationality requirements allow our labor laws to be properly applied, and are therefore an important part of carrying out our stated policy goal of "encouraging fair wages and working conditions."[12] Nationality laws further ensure our passenger and cargo airlines are fully available to the Civil

[10] 49 U.S.C. § 40101(a)(6).

[11] 49 U.S.C. §40101(a)(9).

[12] 49 U.S.C. § 40101(a)(5).

Reserve Air Fleet (CRAF) to fulfill the unique interrelationship between civil and military flying.

As a result of the DHL Airways Citizenship proceeding in 2003, a foreign entity was granted more control over a U.S. air carrier than had ever been granted before. Indeed, through changing Airborne Express to ABX Air, corporate shell games, acquisitions, holding restructurings, and other corporate machinations, the result is the slow cessation of a third competitor in the domestic express delivery market, that previously, had never had a losing year.

Air transportation negotiators from the U.S. State Department mention job growth promised from an academic analysis, by the European Commission and performed by Booz Allen Hamilton, to support greater liberalization in air transport agreements.[13] This Report calls for the creation of an Open Aviation Area. Specific to DHL operations in the U.S., this report suggests DHL should be allowed to operate its own cabotage services that would allow fleet efficiencies and economies of scale, thus reducing costs. DHL's losses in the U.S. market were self-inflicted because they mismanaged the business and lost revenue even though it continues to enjoy profits internationally. But while the Booz Allen Hamilton Report makes an excuse for DHL's financial hardships, citing U.S. citizenship rules, it views the UPS hub at Cologne-Bonn favorably.

The Europeans want access to the American market, either directly through cabotage or indirectly through control. The argument by some that they perceive asymmetrical access is not reality. U.S. air carriers cannot fly passengers from London to Edinburgh just as

[13] Booz Allen Hamilton Report, at http:/ec.europa.eu/transport/air_portal/international/pillars/global_partners/doc/us/final_report_bah.pdf

Europeans carriers cannot fly passengers from LA to NY. Wilmington should not be used as a pawn in global aeropolitics and a "cargo first" policy should not be pursued.

Along the same lines, I would draw this Committee's attention to the upcoming U.S.-EU Air Transport negotiations, the next meeting of which is later this month. John Byerly, Deputy Assistant Secretary for Transportation Affairs and Chief Negotiator for the U.S. has stated that "sweeping away" nationality requirements is a goal of Stage Two negotiations.[14] For the reasons I've already stated, this Committee should do everything within its power to prevent the inclusion of such a provision in any agreement resulting from Stage Two U.S.-EU Air Transport negotiations.

Give Wilmington a chance

UPS and DHL collusively assert this is just politics. But the restructuring proposed by Deutsche Post, if allowed, will be a real 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.

---

[14] John R. Byerly, Remarks to the European Aviation Club, Brussels, Belgium, May 13, 2008. http://www.state.gov/e/eeb/rls/rm/2008/104651.htm.

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 hand-outs 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 oppose the deal between DHL and UPS as an affront to U.S. aviation policy, which seeks to promote competition in the air transportation industry and discourage excessive market domination. We ask that you request that this Justice Department initiate an investigation and enforce the antitrust laws of this country in defense of America's aviation industry, and resist any attempts to grant DHL a waiver of the foreign ownership restrictions that keep our country safe and ensure the fair application of our labor laws.

The American Antitrust Institute

Written Statement of Samuel R. Simon

on Behalf of the American Antitrust Institute

for the House Committee on Transportation and Infrastructure

Regarding the Strategic Alliance Between UPS and DHL

September 16, 2008

I am Samuel R. Simon, a private attorney from Philadelphia, Pennsylvania, speaking for the American Antitrust Institute ("AAI"), an independent research, education, and advocacy organization founded in 1998 that frequently comments on developments relating to the antitrust laws and competition policy.[1]

I. Overview of the Proposed Transaction

There are three principal competitors in the U.S. market for air express package delivery, FedEx and UPS being the largest and DHL being a much smaller third player.[2] DHL is a substantially larger player in Asia and Europe and though it is lagging in its North American market share, it is not alleged to be a failing company here or elsewhere. Indeed, according to its website, "DHL is the global market leader of the international express and logistics industry."[3] DHL, owned by Deutsche Post, had entered the U.S. market by purchasing Airborne.[4] Changing the name to DHL, the company became a trucking entity (therefore not subject to foreign ownership limitations that apply to air carriers) by ending its integrated air operations and outsourcing to two independent air carriers, ABX Air and ASTAR, as the providers of the air linkage in the DHL delivery system. In the proposed transaction, DHL would switch the sourcing of its critical air linkage input from ABX Air and ASTAR to UPS.

---

[1] For further information on the AAI, please visit www.antitrustinstitute.org.

[2] There is also a fringe of very small competitors. The U.S. Postal Service is not considered a competitor in this market for just-in-time deliveries, although it offers second-day delivery. In fact, it has an alliance with FedEx for express deliveries.

[3] See http://www.dhl-usa.com/Company/CompanyInfo.asp?nav=companyInfo.

[4] For background, see Albert A. Foer, "Airborne and DHL, Some Policy Considerations, 5-12-2003" at http://www.antitrustinstitute.org/Archives/245.ashx.

2919 ELLICOTT ST, NW • WASHINGTON, DC 20008
PHONE: 202-276-6002 • FAX: 202-966-8711 • BFoer@antitrustinstitute.org
www.antitrustinstitute.org

II. Antitrust Concerns

Consumers of air express delivery services are likely to be benefited the most by prices, service quality, and choice that are determined by more--rather than fewer--independently controlled suppliers in the market. The principal concern of consumers should therefore be whether DHL will remain a viable and independent competitor if it replaces air linkage service provided by independent air carriers with one of its two major rivals, UPS.

From our perspective, the deal appears on its face to set DHL up to be squeezed on prices and services by a principal competitor. We believe that by becoming entirely reliant on one of its two major competitors for one of its most crucial in-puts (air delivery of its parcels), DHL will at best lose its independence as a competitor, and at worst will ultimately deteriorate to the point that it is no longer a factor in a market that will have gone from three to two competitors.

As a result of this proposed transaction, it would appear that a large part of DHL's costs will be controlled by a competitor, reducing DHL's ability to price its overall services competitively by reducing the pricing on the air linkage services component. Moreover, in an industry in which timely delivery is of the very essence, DHL will be in a position where its competitor can give itself an advantage by discriminating in small and perhaps hard-to-detect ways against DHL.

Even if UPS refrains from actually squeezing DHL, the clear potential of this will overhang the relationship as a form of discipline that should be considered as effectively neutering DHL. The transaction should be viewed by the public as if it were a three-to-two merger; and even though a third company will be left on the ground (quite literally), its ability to influence its two primary competitors will have disappeared. Two of three competitors would essentially be agreeing to cease competing.

If DHL does not intend to depart the U.S. market, then perhaps its objective is to facilitate horizontal collusion, whereby it would benefit from higher prices within a less competitive market in which only two players need to make pricing decisions. It is usually easier for two similar rivals than for three more diverse rivals to tacitly collude.

III. Legal Implications

Express air parcel delivery requires a closely coordinated linkage of air and ground transportation systems. These can be vertically integrated within the same company or can be integrated through outsourcing contracts. UPS and FedEx are vertically integrated. DHL purchases the air transport element in the marketplace and handles the coordination function internally. There is normally no competition problem with either method of organizing a firm's functions, but a problem can arise when DHL becomes locked into purchasing a critical input from a vertically integrated competitor.

The competitive problem can arise either if UPS internally charges itself a lower price for its own air services than it charges to DHL, so that it can set a retail price that cannot practically be equaled by DHL, or if UPS provides a more efficient, higher quality service to its own retail customers than it does to DHL's customers. In other words, the vertical integration sets up the possibility of discrimination in a way that can undermine DHL's appeal to customers who must choose between DHL and UPS. In theory, this can lead to a reduction in DHL's profit margin as it reduces its retail prices in order to offset the wholesale cost disadvantage, to the crippling of DHL as a competitor, as it recognizes UPS's ability to take retributive actions if DHL reduces its prices to customers below UPS's prices or fails to follow a UPS price increase, and to the ultimate departure of DHL from the U.S. market.

Let us ask whether the law of contract or the law of antitrust would be likely to save DHL in the face of a price or service squeeze by UPS.

A. Contract

Presumably DHL is fully aware of the competitive risks imposed by the proposed agreement with UPS. Perhaps DHL can adequately protect itself from these negative possibilities by an iron-clad and highly detailed contract or the threat of an antitrust case. Generally, we wouldn't care if a company makes an independent but unwise decision. But if DHL enters a contract that fails to protect it against a price squeeze or a service squeeze (or both), or otherwise fails to protect its competitive independence, the result will be to reduce what is already a highly concentrated market to an effective duopoly, a matter that would be of public concern.

However, can a contract really be iron-clad when so much of the information about whether it is being followed is likely to be ambiguous and difficult to prove in a court? Keep in mind that whether there is price discrimination against DHL will depend on what part of its multitudinous accounting lines UPS allocates to the wholesale price and that intentional degradation of services can occur without a paper trail or other evidence that is more than merely circumstantial. What disadvantage would DHL be at during the pendency of disagreements over whether a price squeeze or service squeeze, or both, were occurring? Negotiations could drag out, while DHL's business diminishes. An actual breach of contract suit could drag on for years longer.

B. Antitrust

1. Section 2 of the Sherman Act

An antitrust case would likely take even longer than a breach of contract case. It is, in any event, doubtful that DHL could depend on a private antitrust action to bail it out after a price squeeze under Section 2 of the Sherman Act, which protects against monopolization and attempted monopolization. Putting aside the possibility of a Supreme Court decision in *linkLine* (described in the Appendix) that undermines any antitrust liability for price squeeze conduct, there is a question of whether UPS would be considered a monopolist (or attempted monopolist) within the tradition of

the price squeeze literature. It would still have at least one competitor, FedEx, and control less than half of the overall market.

Suppose DHL became convinced that its dependence on UPS was misplaced. Aside from the fact that by this time its customer base and credibility would have been eroded, what switching choices would it realistically have several years from now? Presumably, FedEx would not be an alternative, because its vertically integrated structure would present the very same structural problems as UPS. Would both ABX Air and ASTAR (or either) likely be available to pick up DHL's air transport requirements? Will they survive being cut off from DHL? Are there any other alternatives to which DHL could smoothly switch? Congress and the DOJ should be asking these questions.

2. Section 1 of the Sherman Act

While the foregoing considerations make it unlikely that a successful Section 2 case could be prosecuted by DHL in the future, the overhang of disciplinary discrimination by UPS makes it appropriate to examine whether the transaction should be blocked today as a Section 1 agreement that is likely unreasonably to restrain competition.

The argument here is straightforward. DHL and UPS, direct competitors in a highly concentrated market, are agreeing to eliminate one of the principal dimensions of competition that currently exists between them, in a context that makes it unlikely that DHL will be able to compete aggressively. DHL will no longer control the air component of its service and it will know that its much larger competitor and supplier of this component will be able to impose discipline if it competes in ways that UPS dislikes. This will leave UPS and FedEx, both of which strongly opposed DHL's acquisition of Airborne five years ago, in a position where they need not worry about an independent third competitor, but can key off of each other much more predictably in setting prices and other terms of trade.

The agreement might therefore be considered a "facilitating practice" that makes it easier for firms in an oligopoly to coordinate their pricing.[5] Such a practice can be enjoined.

3. Section 7 of the Clayton Act

Section 7 of the Clayton Act, which declares unlawful mergers or acquisitions where the effect "may be substantially to lessen competition," applies to acquisitions of assets, but here there is no acquisition by UPS, merely an agreement with DHL.

---

[5] See Hay, "Oligopoly, Shared Monopoly, and Antitrust Law, 67 Cornell L. Rev. 439 (1982). According to Sullivan & Grimes, The Law of Antitrust: An Integrated Handbook (2d ed., 2006), "Use by oligopolists of a facilitating practice that enables the participants to coordinate prices should be vulnerable under Section 1 even if they are using it interdependently, rather than by explicit agreement...And, where oligopolists do not avoid but interdependently embrace such conduct, there is an available judicial remedy: their conduct can be enjoined." (198-99.)

Nonetheless, the analogy is useful in demonstrating the general intent of the antitrust law to stop anticompetitive agreements in their incipiency.

4. Section 5 of the Federal Trade Commission Act

If the Department of Justice (DOJ) is uncomfortable bringing an injunctive action against the DHL/UPS transaction as a violation of Section 1, it should, rather than close its investigation, refer the matter to the Federal Trade Commission (FTC) for investigation under the standard of Section 5 of the Federal Trade Commission Act, which outlaws "unfair methods of competition." On its face the proposed transaction would appear to qualify, even if not technically violating the other antitrust statutes, because of its likely negative impact on the competitive process.

APPENDIX

History and Background on Price Squeeze

I. Price Squeeze in Fully Unregulated Industries

Many companies simultaneously sell the same product at the retail and wholesale levels; that is, they sell directly to customers while simultaneously selling to their non-integrated competitors, who in turn sell the product to their own customers. The economic phenomenon known as a "price squeeze" (sometimes known as a "price-cost squeeze") occurs when such a vertically integrated company, having monopoly power, sets its prices at the first level (often called the "upstream" or "wholesale" level) so high that its wholesale customers cannot compete with it in the second-level ("downstream" or "retail") market because their profit margin is non-existent. The integrated company has imposed a "squeeze" between the wholesale and the retail price that disables the non-integrated company, which is both a competitor -- and by happenstance a customer -- from selling the product. If the competitor goes out of business, the integrated company is free to take over the departed company's customers as its own. In any event, the squeeze can reduce the competitor's appeal to customers, thereby leading to less market share and profitability and subjecting the competitor to discipline for what the integrated company sees as undesirable aggressiveness.

The courts have long condemned the concept of price squeeze as violative of the monopolization clause of Section 2 of the Sherman Act and, where joint action has been proven, under Section 1. As early as 1910, a federal court of appeals upheld the validity of a Sherman Act complaint by a New York anthracite coal dealer against a railroad that had conspired with other railroad companies who controlled large tracks of Pennsylvania coal lands to increase the price of anthracite coal at the mines to 65% of the New York retail price, and then to charge an additional 40% of that price for transportation to New York, thus inflicting a ruinous price squeeze on the plaintiff and forcing it from the New York market, which was defendants' goal. *Meeker v. Lehigh Valley R.R.*, 183 F. 548 (2d Cir. 1910). Six years later, Judge Learned Hand, confronting a government antitrust suit against an integrated manufacturer of raw glucose and glucose syrup, determined that the defendant had engaged in unlawful "maintenance of substantial equality of price between glucose and syrup," thereby destroying the profit margins of the non-integrated syrup mixers in violation of the Sherman Act. *United States v. Corn Products Refining Co.*, 234 F. 964 (S.D.N.Y. 1916).

Although neither *Meeker* nor *Corn Product Refining* used the term "price squeeze," those decisions accurately described -- and condemned -- the "pincer" phenomenon (high wholesale price; low retail price) as violative of the antitrust laws. Thus, by the time the court of appeals had occasion to revisit the question in 1945 in the famous *Alcoa* case (*United States v. Aluminum Co. of America*, 148 F.2d 416 (2d Cir. 1945)), the price squeeze by a company with monopoly power was a well-known and universally condemned method of inflicting antitrust injury because it made it

impossible for competitors of a vertically integrated manufacturer with monopoly power to remain in the marketplace by the mere happenstance that the competitors' monopolistic commercial rival happened to be their source of an indispensable raw ingredient.[6]

Numerous decisions since *Alcoa* have found a price squeeze in violation of the Sherman Act in situations where the vertically integrated defendant (a) enjoyed monopoly power in the relevant product at the first level, (b) sold the product to its competitors-customers at a high, monopoly price, and (c) priced the product it directly sold to customers at the retail level in a way that made it impossible for its retail competitors to remain in business, thus engaging in unlawful monopolization of, or attempt to monopolize the downstream market in violation of Section 2. One court of appeals put the proposition as follows:

> If a competitor is also a customer his relationship to the monopolist is not only a competitive one. The monopoly supplier who retaliates against customers who have the temerity to compete with him, by cutting such customers off, is severing a collateral relationship in order to discourage competition.

Olympia Equipment Leasing Co. v. Western Union Telegraph Co., 797 F.2d 370, 376-77 (7th Cir. 1986).

The DHL/UPS transaction takes place in an unregulated environment, but to provide a full background of the antitrust potential, we must go on to discuss regulated and partially regulated industries.

II. Price Squeeze in Regulated Industries

Regulated industries are those where a company's prices are imposed or approved by the government. They include electric utilities, natural gas companies, and telephone companies -- i.e., regulated utilities. Such companies not infrequently sell their product at two levels of distribution, i.e., the retail level (sales directly to consumers), and the wholesale level (sales to the company's competitors, who seek to sell to the same consumers). An example would be a large publicly regulated electric utility company that (a) sells electric power directly to retail customers; and (b) simultaneously sells the same electric power to municipal utilities, who in turn sell it to their own retail customers within their more limited geographic area.

Government control over such utilities' wholesale and retail prices introduces new

---

[6] Alcoa possessed monopoly power in the production of aluminum ingot. The company sold its ingot to independent fabricators, who turned the ingot into sheet aluminum. Alcoa also fabricated sheet aluminum itself. It was thus in direct competition with its wholesale customers for sales of aluminum sheet. Alcoa set its ingot price higher than a "fair price," and simultaneously set its price for sheet so low that its competitors, who had no other place to buy the ingot they needed to make sheet, could not match Alcoa's price and still make a "living profit." On these facts the court of appeals held that Alcoa had violated Section 2 of the Sherman Act. 148 F.2d 416, 437-38 (2d Cir. 1945).

elements into the courts' analysis of the price squeeze theory, and has led to rulings that a price squeeze in a *fully regulated* industry does *not* violate the antitrust laws because the prices were imposed from without. For example, in *Town of Concord v. Boston Edison, Co.*, 915 F.2d 17(1st Cir. 1990), the court of appeals held that where a monopolist (there, an electric utility company) sells at two levels, and its wholesale price to municipal utility companies is too high while its retail price to individual rate paying customers is too low, so that its municipal utility competitors could not compete with it at the retail level, that "pincer" does not constitute an unlawful price squeeze because both prices were regulated by the government. *Concord*, 915 F.2d at 22. Accord, *City of Anaheim v. Southern Cal. Edison Co.* 955 F.2d 1373 (9th Cir. 1992); *City of Mishawaka v. American Electric Power Co., Inc.*, 616 F.2d 976 (7th Cir. 1980).

Under these circumstances, the courts of appeals have generally required that an antitrust plaintiff show a "specific intent to monopolize" (an element of an attempted monopolization claim), which generally cannot be proven because (a) regulators "try to set prices that reflect costs" (*Concord*, 915 F.2d at 25), and (b) regulated prices are designed to provide the utility's investors with a reasonable rate of return. See, e.g., *Anaheim*, 955 F.2d at 1378-79; *Mishawaka*, 616 F.2d at 985; *City of Groton v. Connecticut Light & Power Co.*, 662 F.2d 921, 931-32 (2d Cir. 1981).

III. Price Squeeze in Partially Regulated Industries

Concord, an opinion that carries much weight because it was written by then-Judge (now Justice) Breyer, is pellucid that its reasoning and conclusions are confined to fully regulated industries. The decision has no application to industries where prices are regulated at only a single level (typically the wholesale or upstream level):

> [O]ur reasoning applies with full force only when the monopolist who engages in the squeeze is regulated at both industry levels. . . .We recognize that a special problem is posed by a monopolist, regulated at only one level, who seeks to dominate a second, unregulated level, in order to earn at that second level the very profits that regulation forbids at the first.

Concord, 915 F.2d at 29. Where, as in *Olympia*, supra, 797 F.2d at 376-77, a competitor has no choice but to buy its output (or, as in *Alcoa*, an indispensable ingredient of its output, which is the same thing) from a monopolist whose upstream rates happen to be regulated while its downstream rates are not, the antitrust law's century-long prohibition against price squeeze remains the only way to protect the competitor from being caught in the pincers and eliminated from the industry as a competitive force.

A price squeeze by a company with monopoly power in an industry that is less than completely regulated, i.e., a industry where one level of prices is not set by the

government, may be unlawful under an unbroken line of precedents extending back to 1910.

IV. The linkLine Case: A Preview

The Supreme Court has itself never directly spoken on the price squeeze theory, although it has been part of the nation's jurisprudence since 1910. (*Alcoa*, the 1945 court of appeals decision, is often treated as equivalent to a Supreme Court precedent because it was the court of last resort.) This Term the U.S. Supreme Court will decide an antitrust case that presents it with an opportunity to decide the scope, contours, and continued viability of the price squeeze doctrine. In *Pacific Bell Telephone Co. v. linkLine Communications, Inc.*, No. 07-512 (*linkLine*), the Court confronts a challenge to the concept of price squeeze in the partially regulated telecommunications industry, in which some rates are set by government regulation while others are set by the companies themselves.

The case presents a situation in which a dominant regional telephone company (Pacific Bell) also provides digital subscriber line (DSL) Internet service to retail consumers over its infrastructure and facilities. Pursuant to the pro-competitive duties and obligations that Federal Communications Commission (FCC) regulations imposed on such dominant telephone companies as the quid pro quo for permitting them to enter the long distance telephone market previously reserved for AT&T, Pacific Bell, when providing DSL internet service to own retail customers, was required to supply new entrants such as linkLine with DSL access to its network and facilities so that the entrants can connect to Pacific Bell's facilities (the only ones available) and sell DSL internet service to their own retail customers, thus "jump-starting" competition in the DSL internet access market. Thus, as in the normal price squeeze case, linkLine is simultaneously a competitor and a customer of Pacific Bell; moreover, as in the ordinary price squeeze case, linkLine is compelled to be Pacific Bell's customer because Pacific Bell's monopoly position in the relevant market leaves linkLine with nowhere else to turn.

LinkLine sued Pacific Bell, claiming that it was the victim of a price squeeze and other antitrust violations because the juxtaposition of Pacific Bell's high (and regulated) wholesale rates governing the provision of DSL transport, on the one hand, and its low (and unregulated) retail rates in providing DSL internet access, on the other, made it impossible for linkLine to compete in the provision of DSL Internet services to its customers. The district court and the court of appeals sustained the price squeeze allegations against Pacific Bell's contention that two intervening Supreme Court decisions had effectively abolished or severely limited the price squeeze doctrine. Pacific Bell, joined by the dissenting opinion in the court of appeals, argued that the Supreme Court's decision in the *Trinko* case, 540 U.S. 398 (2004), established the proposition that except for peculiar circumstances not present here a competitor has no antitrust duty to assist its rivals, and that the Court's earlier decision in the *Brooke* case, 509 U.S. 209 (1993), held that only a "predatory" price (i.e, a price below some measure of defendant's costs, which the

linkLine complaint does not allege) is subject to antitrust scrutiny lest vigorous but above-cost price-cutting be deemed unlawful.

The DOJ, but not the FTC, urged that the Supreme Court reverse the court of appeals lest companies such as Pacific Bell, which must offer wholesale services to its competitors by statute, cease to offer low retail prices to its own retail customers. The DOJ thus took the position of a "vertical integration apologist," echoing the Chicago School of Economics approach that there should be no antitrust barriers preventing a vertically integrated monopolist that supplies its competitors with an essential raw ingredient obtainable nowhere else from compelling them to leave the market by imposing a price-cost squeeze on them.

At stake in *linkLine* is whether the venerable concept of price squeeze will, at least as currently understood, continue to be part of the fabric of antitrust jurisprudence to protect from extinction or, at least anticompetitive discipline, companies who are compelled to purchase an indispensable ingredient of their end product from a monopolistic commercial rival. While a decision against the plaintiff could be limited to situations in which there is regulation, thereby making it easy to distinguish from the DHL/UPS transaction, the tenor of the opinion could conceivably end the antitrust life of the price squeeze. This possibility demands a watchful Congress.

Congressman Michael R. Turner
Representing Ohio's Third Congressional District
Testimony before the House Transportation and Infrastructure Committee
Hearing on Competition in the Air Shipping Industry
September 16, 2008

Thank you Chairman Oberstar, Ranking Member Mica and the other members of the Transportation and Infrastructure 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. I have attached and request to submit for the record the written statement of Mary Houghtaling, Mary is the President and Co-founder of Community Care Hospice in Clinton County. Mary's statement details the detrimental impact that this transaction will have on the non-profit, small business, and community service community.

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".

STATEMENT OF

BURT WALLACE, PRESIDENT OF CORPORATE TRANSPORTATION, UPS

BEFORE THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2008, 2:00 PM

"EFFECTS OF THE PROPOSED ARRANGEMENT BETWEEN DHL AND UPS ON COMPETITION, CUSTOMER SERVICE AND EMPLOYMENT"

Statement of
Burt Wallace, President of Corporate Transportation, UPS
Before the Committee on Transportation and Infrastructure
U.S. House of Representatives
September 16, 2008, 2:00 PM
"Effects of the Proposed Arrangement between DHL and UPS on Competition, Customer Service and Employment"

Chairman Oberstar, Ranking Member Mica 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.

###

STATEMENT OF

MARY HOUGHTALING
PRESIDENT/COFOUNDER,
COMMUNITY CARE HOSPICE

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

ENTITLED

"EFFECTS OF PROPOSED ARRANGEMENT BETWEEN DHL AND UPS
ON COMPETITION, CUSTOMER SERVICE, AND EMPLOYMENT

PRESENTED ON

SEPTEMBER 16, 2008, 2:00 PM

STATEMENT OF
MARY HOUGHTALING
PRESIDENT/COFOUNDER,
COMMUNITY CARE HOSPICE
BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES
SEPTEMBER 16, 2008

Mr. Chairman and Members of the Committee, I am grateful to have the opportunity to share my concerns for the nonprofits and small businesses in the Southwest Ohio area that will be directly affected by the proposed arrangement between DHL and UPS. My name is Mary Houghtaling. I am the President and Cofounder of Community Care Hospice in Wilmington, Ohio. I am also a member of the Board of Director's of the Wilmington Clinton County Chamber of Commerce. We established our Hospice 4 years ago and have served over 660 Patients and their families. We are also the only small nonprofit Hospice in the State of Ohio that accepts pediatric patients. We currently employee 45 health care professionals and care for approximately 40 patients a day.

I have had the privilege of personally relaying my concerns to Governor Ted Strickland and Lt. Governor Lee Fisher, both of Ohio, in a private meeting with Senator John McCain, and to testify at the Field Hearings of the Ohio House State Government and the Ohio Senate Finance Committees. Senator McCain remarked that I put a "human face" to the issue, as this is a very complex situation, we can all understand the needs of our hungry, homeless neighbors. Indeed, no one can predict how devastating the pending agreement of DHL/UPS will be on the employees and citizens in the 6 Counties where ABX Air/ASTAR Air Cargo and DHL is the largest employer.

I would like to expound on the incredible value of the nonprofits in our community. I would also like to expose their vulnerabilities, in the event that the 3 companies are no longer here.

The time and talents their executives lend to our boards is invaluable. The volunteers that help run our fundraisers are irreplaceable. The direct and indirect dollars donated from these companies and their employees help keep us solvent. The loss will be incalculable. It is truly one of the unknowns. Those same people who wrote the all important 25.00 donation checks may be unemployed and in need of our services themselves. This leads me directly to the programs that will not only lose those donations, but their need is going to be magnified. Agencies in Clinton County alone that come to mind immediately are:

Services for the Homeless projects they will provide 11,375 shelter nights, serve 34,125 meals, and will give out 4,000 food baskets in the next year to anyone in need. Many times they have to turn people away, and their demands will surely increase.

Sugartree Ministries encompasses a food pantry, 12 step programs, temporary housing, supplies clothing, gives out 7,000 canned goods a month, and provides nearly 1,500 meals a week to the needy. They have already seen their numbers multiply.

Domestic Violence currently serves 1,600 people annually in Clinton and Highland Counties. They deal with spousal and child abuse every day, in fact, they have already seen a 10% increase in request for services.

Agencies that will also immediately be impacted are:

The United Way funds a percentage of 39 programs in 30 agencies. They will lose a minimum of 55,000 dollars, which represents 17% of their overall budget. In fact, some of the programs they fund will not survive.

The Wilmington Clinton County Chamber of Commerce has over 300 members comprised of 20,000 employees, of which 8,600 are employed at the Airpark. The Chamber will lose over 12,000 dollars in direct membership dues. One of benefits at risk is the Bureau of Workers Compensation group discount program, which totals over 1.5 million dollars in savings to members. With the uncertainty of other business retention and new business attraction their very survival is in question. This would lead to direct hardships on other nonprofits such as mine.

Community Care Hospice thanks to our membership in the Chamber, being enrolled in the Workers Compensation program, we save over 45,000 dollars a year in premiums, which represents the majority of the salary of a Registered Nurse. In fact the day after the DHL announcement we were to meet with architects to begin the planning stages of a desperately needed inpatient unit. Even with a 2.5 million dollar budget, due to Medicare and Private Insurance reimbursements, our program will survive, although we may have to scale back, and will not be able to expand our services or build a unit.

Clinton County Leadership Institute provides leadership education and training to

over 100 adults and youth per year, of which from the adult program approximately one quarter are employed with the 3 companies. Without them, the program will surely come to an end after more than 20 years. Combined the alumni donate 75,000 service hours to more than 300 agencies annually at a value of over 1 million dollars.

This is but a fraction of the 33 nonprofits in Clinton County that have a budget of over 7 million dollars. The next two most affected Counties - Fayette and Highland have very similar agencies with the same needs. The 3 less affected Counties also will have the same issues of loss of revenue/donations and see their needs rise.

Indeed, without these programs some of our neighbors would go hungry and homeless without hope, continuing to live with addictions and fear. Many of our clients would not feel safe or uplifted. Children would not learn, or be cared for. Patients would die alone or in pain. The leaders of tomorrow would not learn the importance of good business practices. Families would not find peace sheltered from violence. There wouldn't be a place to share talents and creativity. The feeling of hopelessness would prevail.

Running a nonprofit is like managing a business with a double bottom-line. If you're only concerned with a single measure of success, you can do whatever it takes to achieve it—cut personnel or move your plant—but if you're a community-based venture you can't move out of town and you have to assume that the problems in the community are your problems. It's a very different game.

If this deal is allowed to go forward, it is inconceivable to think about losing 8,600 jobs in the first wave, and the estimates run in the 30,000 range as the wave continues. The small businesses stand to be decimated. The estimates run as high as 2 or 3 of every 5 shutting their doors. As Dan Stewart from our local Book Store said, "this is not a ripple effect, this is a flash flood". It is people like Dan and his wife Marla, and Molly and Mark Dullea who returned the 2nd oldest Hotel in Ohio to the glory of its' heyday, that may lose everything they have worked for. The real estate businesses will be devastated with the downward spiral of home values, and countless foreclosures, along with the banks and other lenders. It is estimated that there are 18 businesses that will be directly affected in the second wave such as family owned and operated Sewell Trucking, and businesses like Technicolor that fill the air park facilities, and are in Wilmington primarily because of the airport. The schools within the area are going to lose an untold amount of tax revenue. Services to retired folks will be in jeopardy. The ability to provide basic human services such as Fire, EMS, and Police will be in question. Our county Hospitals will not be able to survive with thousands of people losing their health care benefits.

There are countless couples who work for ABX, DHL and ASTAR that will lose all of their household income. People like Bruce McKee, who has given nearly 25 years of his life helping Airborne Express build a thriving business raising 5 kids with 2 in college who may not be able to provide for his family.

There will be another 1,100 Pilots out of work in an era when flying jobs are few and far between, including my husband after being at Airborne Express/ ABX Air for over 20 years and ending his 35 year flying career wondering where to go from here.

There is an estimate of over 1,000 employees who don't have their GED at the Air Park, what in the world will they do? With the prospect of employment in our surrounding large cities dwindling and gas costs soaring, commuting will be questionable at best.

I think the question begs to be asked "how did the world's largest cargo company take over a successful American cargo company that once had 16% of the market and over the course of less than 5 years lose over 50% of their business? Were there options on the table that could have prevented this from happening? I will let others here today, and those of you who choose to, look into them and address those issues.

There are many disasters that people survive every day in this country, natural disasters such as floods, fires, hurricanes, and tornados. Their choices are uncomplicated, stay and rebuild or move on. This is a manmade disaster that should not and does not have to happen. If it does, it will leave us with very few choices.

On behalf of the nonprofits and small businesses who have no representation, and who's voices have yet to be heard, I ask you to consider the ramifications of the DHL/UPS agreement.

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Supplemental Statement of
Burt Wallace, President of Corporate Transportation, UPS
October 2, 2008

"Effect of Proposed Arrangement Between DHL and UPS on Competition, Customer Service, and Employment"

In his September 16, 2008 testimony before this Committee regarding the potential airlift agreement between DHL and UPS, Samuel R. Simon, on behalf of the American Antitrust Institute, asserted that the proposed arrangement would result in a "price squeeze" leading to "the ultimate departure of DHL from the U.S. market."

I asked the law firm of Morrison & Foerster LLP to review and comment on Mr. Simon's testimony. Their report, which I submit for the record, reveals that Mr. Simon's conclusions are unfounded; his arguments are based on erroneous assumptions, flawed analytics, and incorrect legal analysis.

MORRISON | FOERSTER

2000 PENNSYLVANIA AVE., NW
WASHINGTON, D.C.
20006-1888

TELEPHONE 202.887.1500
FACSIMILE 202.887.0763

WWW.MOFO.COM

MORRISON & FOERSTER LLP
NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.
DENVER, NORTHERN VIRGINIA,
ORANGE COUNTY, SACRAMENTO,
WALNUT CREEK, CENTURY CITY
TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

October 2, 2008

Honorable James L. Oberstar
Chair, Committee on Transportation and Infrastructure
United States House of Representative
2365 Rayburn House Office Building
Washington, D.C. 20515

Honorable John Mica
Ranking Member, Committee on Transportation and Infrastructure
United States House of Representatives
2313 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Oberstar and Ranking Member Mica:

At the request of Mr. Burt Wallace, President of Corporate Transportation, UPS, we reviewed the September 16, 2008 testimony of Samuel R. Simon on behalf of the American Antitrust Institute regarding the competitive effects of the proposed airlift agreement between DHL and UPS. Mr. Simon's principal argument – that DHL will voluntarily or inadvertently negotiate an agreement that enables UPS to drive it out of business through a "price squeeze" – defies business logic. It also rests on a series of factual, legal and analytical mistakes, the most important of which are:

- The testimony wrongly assumes that DHL would continue with its current business model in the U.S. absent the proposed agreement.
- The testimony wrongly assumes that DHL will not protect its own business interests in negotiating the proposed agreement with UPS.
- The testimony wrongly concludes that the proposed agreement is subject to Section 5 of the FTC Act.

We address each of these points, and its implications for a proper antitrust analysis of the proposed agreement.

1. The Proposed DHL/UPS Agreement Will Not Result In A "Price Squeeze"

Mr. Simon's testimony argues that DHL plans to enter into a contract that would enable UPS to raise DHL's costs, "crippling DHL as a competitor" and leading "to the ultimate departure of DHL from the U.S. market." *Simon Testimony* at 3. If DHL does not enter into such a contract, the testimony assumes, it will be able to continue to run its business as it has in the past. Neither of these points is supported by the record.

a. DHL Will Not Continue With Its Current Business Model in the U.S.

Under Section 1 of the Sherman Act, an agreement between competitors is lawful unless it "unreasonably restrains trade." In assessing whether an agreement will have this effect, the antitrust courts and agencies "focus[] on the state of competition with, as compared to without, the relevant agreement." Federal Trade Commission and U.S. Department of Justice, *Antitrust Guidelines for Collaborations Among Competitors* at 7 (April 2000). Mr. Simon's testimony implicitly assumes that the alternative to the proposed transaction is for DHL to maintain the status quo, keep its current high-cost airlift vendors, preserve the Wilmington hub and the jobs it provides, and continue to lose more than a billion dollars a year. The antitrust laws do not require DHL to pursue such a self-destructive course, a course that would result in substantially less, rather than more, competition in the package delivery business relative to a world with the proposed agreement.

John Mullen, CEO of DHL Express, testified before this Committee that DHL will not continue to operate in the U.S. as it has in the past. Mr. Mullen stated that the company's current "operating losses -- about $5 million per day -- are simply unsustainable for the company, our shareholders and our employees." *Mullen Testimony* at 9. In addition, he testified that "[o]ther 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 United States." Id. at 8-9

In sum, the question under the antitrust laws is whether the proposed agreement with UPS would result in less competition *than would otherwise exist without that agreement*. It is clear that the proposed UPS agreement will create more, rather than less, competition in the U.S. than would be the case absent the agreement.

b. UPS Will Not "Control" DHL's Costs or Service

Mr. Mullen testified that the proposed agreement will result in lower costs and greater competition than would otherwise exist. That being so, Mr. Simon's assertion that the proposed agreement will empower UPS to raise DHL's costs and execute a "price-squeeze" (*Simon Testimony* at 2) is not supported by the facts. DHL has publicly stated, and Mr. Mullen testified, that the UPS contract will do quite the opposite — *lower* its costs of package delivery in the United States, and substantially so. Mr. Mullen further testified before this Committee that the contemplated contract would establish the prices UPS may charge DHL, and limit increases to an agreed-upon inflation adjustment. The substantial cost savings DHL projects it will realize as a result of the proposed agreement, compared to both its current airlift agreements and all of the other alternatives it considered, will enhance its ability to compete in the U.S.

Mr. Simon's testimony is also wrong in asserting that UPS will "control" DHL's costs or service quality. The services DHL receives and the price it pays for those services will be defined in detail in the proposed agreement, which is being freely negotiated by the parties. The testimony's assumption that DHL, faced with the losses it has already sustained, would negotiate a contract that allows UPS to exercise such control is fundamentally inconsistent with business reality. DHL has alternatives to an airlift agreement with UPS, and can and will protect itself through the contracting process. This is why antitrust courts and agencies have consistently found that the terms and conditions of long term contracts are the product of competitive forces, and a party's decision to enter such a contract does not

suggest an antitrust violation. *Cf. Ticketmaster Corp. v. Tickets.com, Inc.*, 2003-1 Trade Cases (CCH) ¶ 74,013, 2003 WL 21397701 (C.D. Cal. Mar. 7, 2003) (long term contract, signed after vigorous competition from other ticketing agencies, was a "mutually desired reasonable business practice from which no antitrust inferences may be drawn"); *Discon Inc. v. NYNEX Corp.*, 86 F. Supp 2d 154, 160-61 (W.D.N.Y. 2000). Indeed, business observers have noted that the kind of contract DHL proposes to enter into with UPS, which involves "the sharing of resources among competitors -- has a successful track record in dozens of industries, from shipping to financial services to telecommunications."[1]

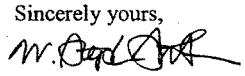
2. The Proposed DHL/UPS Agreement Is Not Subject To The FTC Act

In his testimony, Mr. Simon argued that the proposed agreement is unlawful under Section 5 of the FTC Act, and urged the House Transportation and Infrastructure Committee to "refer the matter to the Federal Trade Commission (FTC) for investigation" under this statute. *Simon Testimony* at 5.

By its own terms, however, Section 5 of the FTC Act *does not apply* to a number of specified industries, including "common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of Title 49." 15 U.S.C. § 45(a)(2). Both UPS and DHL come squarely within the terms of this exclusion. Thus, Section 5 of the FTC Act has no application to the proposed transaction.

Thank you for giving us the opportunity to provide this response this Committee.

Sincerely yours,



W. Stephen Smith
Roger W. Fones

[1] "The Analysis: DHL Saves Face," *BusinessWeek Online*, June 11, 2008, available at http://www.businessweek.com/managing/content/jun2008/ca20080611_101915_page_2.htm.

Statement of The Honorable Ted Strickland
Governor of the State of Ohio
Before the U.S. House of Representatives
Committee on Transportation & Infrastructure
September 16, 2008

"Effects of Proposed Arrangement Between DHL and UPS on Competition, Customer Service, and Employment"

Chairman Oberstar, Ranking Member Mica, and members of the Transportation and Infrastructure Committee, thank you for the opportunity to testify on behalf of the State of Ohio regarding the proposed transaction between DHL Express and United Parcel Service.

The human cost of this proposed deal is simply enormous. We speak in terms of 10,000 jobs at stake. But that's 10,000 families. 10,000 homes. And far, far more than 10,000 lives turned upside down.

The Wilmington Air Park is the largest privately-owned airport in the U.S. It's the single largest employer for the residents of six Ohio counties. Every lost job will be felt, time and again when these hard working men and women stop shopping in the stores, eating in the restaurants, buying the houses.

Even as the first round of layoffs has already begun, and with the imminent threat of closure dangling over them, the hardworking men and women of ASTAR and ABX and other facilities in the air park show up each day and give their all to their jobs.

DHL has taken the position that this is not a matter worthy of our attention. Mr. Chairman, attention must be paid.

In a free market, businesses can fail. Jobs can be lost. We lament the ups and downs of the business cycle, and make preparations for a better day. But this is not a free market transaction we're discussing. This is an anti-competitive deal.

After this billion dollar-a-year deal is in place, a deal that hands over the actual shipping process to DHL's main rival, the company assures us that DHL and UPS will remain competitors. In fact, John Mullen, the CEO of DHL Express Global, told the *New York Times* in August that DHL is, and I quote, "trying to make life as difficult as possible for" UPS.

You know, if I were going to make life difficult for someone, I could think of a few things I would try before giving them a billion dollars.

Mr. Mullen insists that this deal keeps DHL and UPS quote "full-tilt competitors." The Cleveland Browns will travel to Baltimore this Sunday to play the Ravens. And if one of the Ravens fumbles, there's a reason why no one on the Browns will pick up the ball and

politely hand it back. It's because competitors are not partners. Have never been. Will never be. You are either one or the other.

This deal is a merger in everything but name. If you hand the essential functions of your business to a competitor, that's a merger. If you discard the planes and the people that make your business possible, that's a merger.

It would be one thing for a company that makes refrigerators or pencils to outsource their shipping services. But DHL doesn't make products, it ships them. If your business is shipping and you outsource shipping, that's a merger. There is a very real threat to the consumer here.

When UPS essentially controls DHL's costs and operations, then UPS controls DHL's pricing. And when that happens, there will effectively be only two shipping companies to serve the North American market. It's Economics 101. If you create a duopoly, you diminish consumers' choices and raise consumers' costs.

Let me add that the creation of this duopoly could undercut the ability of ABX and ASTAR to continue operating. It could force off the stage two major players in an industry with incredibly high barriers to entry.

If this were truly a competitive, free market transaction, why weren't DHL's existing service providers ASTAR and ABX given a chance to submit a bid for this work? Why wasn't the state of Ohio given a chance to respond before the deal had been decided upon?

When this issue first arose we immediately assembled a DHL Regional Economic Task Force of local, regional, and state government officials, member of our Congressional delegation, and business leaders. We believe there's a better alternative for DHL, but we need a chance to be heard.

Last week, we learned from DHL and UPS during another congressional hearing that they have a memorandum of understanding prohibiting them from talking with other parties—including the State of Ohio—while their negotiations are ongoing. In this hearing room today, I would publicly request that both DHL and UPS discard this arrangement so that my Administration, and other parties involved, can present alternatives in good faith. DHL made $6 billion in profit last year – and we have no doubt their Ohio operations can contribute to their bottom line.

I want to thank the members of the Ohio congressional delegation, who have come together in a bi-partisan fashion and worked each day to protect these jobs since this secret deal was revealed.

The federal government once helped facilitate DHL's acquisition of Airborne Express, and now we need the federal government's help to facilitate DHL's continued existence in Wilmington, Ohio, as a real, service-providing company.

Statement of Senator George V. Voinovich
Before the
House of Representatives
Transportation and Infrastructure Committee
"Effects of Proposed Arrangement Between DHL and UPS on Competition, Customer Service, and Employment"
September 16, 2008

Introduction

Chairman Oberstar, Ranking Member Mica, and Committee members, good afternoon and thank you for this opportunity to testify before you at this important hearing, which will examine the competitive effects 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 this proposed agreement. I believe activities like this hearing, the House Judiciary Committee hearing that was held last week, as well as what I anticipate will be a review of the proposed 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 Ohio families.

Before I turn to the specific topic of this hearing, I would like to say a few words about the efforts of the Ohio Congressional delegation relating to the DHL 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 am 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 Lieutenant Governor Fisher and Wilmington Mayor Raisk at this hearing. I know that Governor Strickland is very concerned about this issue and planned to testify at today's hearing; unfortunately, I understand he needed to remain in the state to lead recovery efforts resulting from the weekend storms in Ohio. Ohio's Congressional delegation continues to work together as a team bringing attention to the potentially devastating impacts of this transaction for

thousands of Ohio families. Each of us recognizes the devastating impact that the loss of roughly 8,000 to 10,000 jobs will have on the Wilmington community. Quite simply, the cost of Deutsche Post World Net's decision will be catastrophic. Families will struggle to pay their mortgages, provide healthcare for their families, save for their children's education, and ensure their retirements.

The interest in the impact of Deutsche Post World Net's decision has not been limited to Ohio. Senators Kohl and Hatch, Chairman and Ranking Member of the Senate Judiciary Committee's Antitrust Subcommittee, asked the Antitrust Division to review this transaction. Last week, House Judiciary Committee Chairman Conyers and Ranking Member Smith presided over an important hearing about the antitrust implications of this transaction. Both Senators McCain and Obama have expressed concerns about the transaction, and President Bush has asked one of his senior policy advisors, Karl Zinsmeister, to serve as the Administration's liaison to assist on the matter.

Background and History

Soon after DHL first announced that it intended to partner with UPS, I met with the head of DHL's North American Operations, John Mullen. Needless to say, I expressed my disappointment and concern about the DHL/UPS transaction. Ohio and Wilmington made a commitment to DHL. Unfortunately, DHL, and it parent Deutsche Post World Net, decided that the relationship with Ohio was not worth saving. Repeatedly, Deutsche Post World Net CEO Frank Appel has stated that he is not willing to work with the Ohio stakeholders to help the company solve its financial issues. Instead, Mr. Appel and DHL charge ahead to complete an agreement with UPS, one of its closest competitors.

During our meeting, Mr. Mullen indicated that if the two airlines that serve DHL in Wilmington, ABX and ATAR, had merged a year ago, DHL would not be in negotiations with UPS. DHL has yet to explain why a merger or some other arrangement does not remain a viable alternative today. I would encourage this Committee to press Mr. Mullen to explain why Deutsche Post World Net remains unwilling to work with ABX, ATAR, and the thousands of workers related to these companies to find a solution to its financial problems.

The DHL/UPS Agreement

DHL and UPS characterize their agreement as nothing more than a customer-vendor supply agreement, claiming such an agreement raises no antitrust issues. The companies maintain there is nothing inherently anticompetitive about a customer-vendor agreement. In the abstract, I would agree that a customer-vendor agreement raises no antitrust issues. However, the proposed DHL/UPS agreement is not a theoretical or abstract customer-vendor agreement, nor is it a typical agreement.

The DHL/UPS 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 DHL/UPS agreement will inevitably result in DHL sharing critical and competitively sensitive information with UPS when UPS handles DHL's packages. DHL and UPS continue to answer questions about the competitive impacts with vague assertions about how this is simply a customer-vendor arrangement, similar to the current relationship DHL enjoys with ABX and ASTAR. This ignores the obvious fact that ABX and ASTAR do not compete with DHL in the package and letter delivery business. It is as if by continuing to assert that

the DHL/UPS agreement is a customer-vendor agreement, somehow no one will notice that the agreement is between two close competitors in a market with only a few companies.

DHL and UPS also claim that they have not yet entered into an agreement; thus, there is no need to worry about the competitive impact of the agreement. 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 a 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 these airlines substantially alter their businesses and the Antitrust Division later finds competitive issues with the DHL/UPS agreement, it would be nearly impossible to return the market to the situation as it exists today. The very purpose of the HSR Act was to avoid situations where two parties enter into an agreement that would irreversibly harm competition. In the absence of a pre-transaction notification, Congress and the Antitrust Division must ask tough questions about this transaction.

Any DHL/UPS Agreement Raises Competitive Issues

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. These are only a few of the many questions about the impact the DHL/UPS agreement will have on competition, and I applaud this Committee's efforts to find the answers to those questions.

Conclusion

Thank you for allowing me to testify today. I appreciate this Committee's willingness to provide the necessary oversight over the competitive environment in the package delivery industry. I look forward to continuing my work on this issue with the State of Ohio, my colleagues in Ohio's Congressional delegation, and this Committee.

○