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September 18, 2008

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

Dear Assistant Attorney General Barnett:

The threatened contract between DHL Express US and United Parcel Service, Inc. (UPS), which was first publicized in May of this year, would make UPS, for the next ten years, the exclusive provider of airlift services for DHL's North American operations. Such an agreement raises troubling competition issues that should be investigated carefully by the Department of Justice.

DHL has the third largest market share in domestic overnight delivery services. UPS has the second largest share, and Federal Express is first. If UPS is permitted effectively to provide the DHL service for a decade, we cannot see how DHL can be said to compete against UPS, one of its two marketplace competitors now. UPS, it seems, would be in a position to control the way in which DHL packages would be shipped, the priority that those packages would receive in handling, and the technologies used to track and complete those shipments. Should this agreement be consummated, it appears that DHL would effectively cease to be a competitor to UPS, and instead would become a captive customer. In short, many of the concerns about a merger by which the number of genuine competitors in the marketplace would be reduced from three to two are also present in this situation. The peripheral effects on the airlines that are currently providing services to DHL, which would be displaced by UPS if this agreement is finalized, are also worrisome. ABX Air and ASTAR, both based in southern Ohio, present legitimate and troubling questions about the competitive impact of this agreement.

Both the Committee on Transportation and Infrastructure and the Committee on the Judiciary in the House of Representatives have held hearings on this agreement. We do not in any way want to interfere with the functions of the Antitrust Division, but we would be remiss were we not to raise these concerns with you. We thank you for your consideration of this matter, and look forward to hearing from you about the progress of the investigation.

Sincerely,


PATRICK LEAHY
Chairman


SHERROD BROWN
United States Senator