

Testimony of Senator Sherrod Brown  
Before the  
House of Representatives  
Committee on the Judiciary  
“Competition in the Package Delivery Industry”  
September 9, 2008

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I'm referring to the U.S.-EU Open Skies Initiative, which aims to loosen existing restrictions on EU air carriers operating in our country. Its proponents claim that deal will create thousands of U.S. jobs, and benefit our nation's economy enormously.

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

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

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

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

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

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

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

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