



# Ohio

Ted Strickland, Governor  
Lee Fisher, Lt. Governor

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



Ohio



## Antitrust Actions

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

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

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

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

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

## State of Ohio's Response

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

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



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

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

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

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

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

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

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

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



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## Planning for the Future

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

## Site Review and Analysis

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

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

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

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

## Rapid Response

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

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



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## **National Emergency Grant**

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

## **Workforce Retraining**

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

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

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

### **Family and Community Assistance**

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

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



**Ohio**



## **Insurance Coverage**

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

## **Conclusion**

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

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

I am pleased to answer any questions you may have.



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Dear Mr. [Name],

I have received your letter of the 15th and am sorry that I cannot give you a more definite answer at this time. The matter is being reviewed and I will contact you again as soon as a final decision has been reached.

Very truly yours,  
[Signature]

[Signature]