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## **Attorney: DOJ's Pursuit of Post Office's Competitors Continues History of Hypocrisy**

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July 12, 2016

The federal government's losing case against FedEx and a related settlement with UPS show that it holds the private sector to a higher standard than its own agencies, like the U.S. Postal Service, a free market advocate says.

Cory Andrews, senior litigation counsel at the Washington Legal Foundation, says it should be the other way around, though legal experts agree that the federal government is highly unlikely to pursue the U.S. Postal Service for its possible role in transporting illegal prescription drugs, as it did with FedEx and UPS.

Last month, federal prosecutors in California dropped the criminal case against FedEx after a judge found the company was "factually innocent." However, UPS had chosen a different route, opting to settle for \$40 million in 2013.

But going after the financially troubled Postal Service, which provides similar delivery services as FedEx and UPS, doesn't make sense – attacking its competitors does, Andrews said.

"The possibility that the USPS could be targeted is definitely greater than an agency like the U.S. Securities and Exchange Commission, for example," he said. "But I still don't think it's likely to happen — and not just because of the money factor.

"This administration has shown its reluctance to enforce rules against themselves that it seeks to impose on others."

Andrews said such indictments have become a tool frequently used by the government, and certain government agencies, to supplement their shrinking budgets.

"One of the questions out there is, why would the government go after FedEx when it so clearly didn't have a case? Many people would say it was a shakedown for money," he said.

"I think the government thought it could do what it did to UPS. It thought FedEx would just come to the settlement table."

But shaking down the Postal Service just doesn't make sense, he said.

"The Post Office has been operating in the red for several years now," Andrews explained, noting that the Postal Service is considered a quasi-government agency in that it doesn't receive tax dollars and is supposed to be self-supported through stamps, supplies and other services. "They're not solvent. They don't have deep coffers to go after."

Simply put, there's no money to be gained, Andrews said.

When *Legal Newsline* asked the DOJ why the Postal Service hasn't been similarly indicted, or why it hasn't been held to the same standard as UPS and FedEx, a department spokesman declined to comment.

"I think it's a very fair question," Andrews told *Legal Newsline*. "Sadly, I think there's a long history here of holding the private sector to one set of standards and the government to another."

Walter Olson, a senior fellow at the Cato Institute's Center for Constitutional Studies, says the federal government can't indict the Post Office because it can't indict itself.

"There's been a law enforcement push for years now to go after large, logistical 'middle men' over the commerce in internet pharmaceuticals and, in general, unlawful online trafficking," explained Olson, who founded and continues to run Overlawyered.com, considered the oldest blog on law as well as one of the most popular.

"The push has been to find ways for either the people involved in physically handling the stuff, or those search engines and websites, to be held accountable because 'they should've known.' Sometimes it's civil suits, sometimes criminal suits.

"The idea is to make them so sorry they won't do it again, and, in the process, raise a lot of money for various law enforcement agencies."

Last month, Judge Charles Breyer, of the U.S. District Court for the Northern District of California and brother to U.S. Supreme Court Justice Stephen Breyer, concluded FedEx was "factually innocent." The DOJ, in 2014, had charged the Memphis-based global courier with conspiring to transport illegal prescription drugs.

The bench trial, which began June 13, came to an abrupt end that Friday, June 17, following detailed opening statements by both the DOJ and FedEx.

The U.S. Attorney's Office moved to dismiss the indictment; Breyer granted the motion and dismissed. The DOJ remains mum on the reasons behind the dismissal.

FedEx attorney Ted Cassman, of Arguedas Cassman & Headley, said there was a possibility the company could have argued the Postal Service engaged in the same alleged criminal behavior but faced no prosecution.

“The judge was very interested in that aspect,” Cassman said.

Sadly, the defense team didn’t get a chance to pursue that angle, he said.

When *Legal Newsline* asked Cassman what his firm would have argued, given the chance, he declined to comment because it wasn’t developed at trial.

“No matter what, FedEx should be commended for not folding up,” Andrews said.

“I hope it serves as an example and inspires confidence in other companies that are the targets of completely frivolous lawsuits, and they stand on principle and go to court and litigate their rights, instead of paying some ransom.”

Olson agreed, saying FedEx’s approach was unusual, but admirable.

“Here, FedEx basically said, no, this is a matter of principle, we think they’re wrong, and we think we’ve taken the appropriate steps to protect our customers and help government enforcement,” he said.

“It’s one thing to resist civil suits, but it’s another to resist criminal prosecution because the consequences can be so devastating.”

But such “overcriminalization,” as Andrews calls it, can have other harmful consequences, particularly to the economy.

“What people fail to realize, when the government brings these types of suits against companies, is that they not only affect the companies themselves but everyday people who are forced to pay higher prices as a result,” he said.

“All of those enormous costs — of litigation, etc. — have to be passed on. So that means raising the cost of consumer goods or, in certain industries, insurance.”

Andrews said administrative proceedings or regulatory fines often would suffice.

“But nowadays, everything’s a federal criminal case,” he said. “And that’s not the way the law is supposed to work.

“It really makes the U.S. a very hostile place to do business.”