

***Case No IV/M.1341 -
WESTDEUTSCHE
LANDESBANK /
CARLSON / THOMAS
COOK***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION

Date: 08/03/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.03.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1341 - WESTDEUTSCHE LANDESBANK/CARLSON/THOMAS COOK

Notification of 5.02.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 5th February 1999, the Commission received a notification whereby the Thomas Cook Group Ltd. (U.K.), Thomas Cook Inc. (U.S.) and Carlson Leisure Group Ltd (U.K.), after being combined into a single entity Thomas Cook Holdings Ltd ("Thomas Cook"), are jointly acquired by Westdeutsche Landesbank ("West LB"), Carlson Companies Inc ("Carlson") and Preussag Aktiengesellschaft ("Preussag").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility within the common market and with the EEA agreement.

I. THE PARTIES AND THE OPERATION

3. The activities of the companies are as follows :

- West LB : a German bank and credit institution
- Carlson : a privately owned U.S. company active in the travel, marketing services and hotel sector
- Preussag : a German conglomerate active in the energy, technology, logistics and tourism sectors

Thomas Cook : a UK company active in the tour operating, travel agencies and charter airline sectors in the U.K., and as an issuer travellers' cheques and foreign exchange operator in the U.K. and elsewhere in the world

4. The concentration is the result of a series of agreements signed in December 1998 and January 1999, between West LB, Preussag and Carlson, which together have the following effect :

- The Thomas Cook Group Ltd (U.K.) and Thomas Cook Inc. (US) both wholly owned subsidiaries of West LB, are merged with Carlson Leisure Group Ltd (U.K.), wholly owned by Carlson, to form Thomas Cook. Although, as mentioned above, Thomas Cook will have travellers' cheques and foreign exchange activities in the EU and the rest of the world, Carlson is not an issuer of travellers' cheques, and the concentration's only competitive impact will be in the U.K. leisure travel sector, which is where Thomas Cook will be active in tour operating, travel agencies and charter flight services.
- The new combined entity Thomas Cook will be jointly controlled by Preussag, West LB and Carlson.

II CONCENTRATION

5. Preussag will be the majority shareholder (with 50.1% of existing shares), but Carlson and West LB, whilst minority shareholders, will enjoy veto rights over so-called "reserved matters" which go beyond normal minority protection [...]. Therefore, Thomas Cook will be jointly controlled by Preussag, West LB and Carlson.
6. Thomas Cook will have the resources (assets, staff, management and finance) necessary to perform on a lasting basis all the functions of an autonomous economic entity.
7. None of the parents will retain to any significant extent activities in the same market (U.K. leisure travel) as the joint venture Thomas Cook, nor in a market which is upstream or downstream from that of the joint venture. Thomas Cook will be active on the U.K. leisure travel market, which is geographically distinct (see further below). Carlson is contributing all its U.K. leisure travel activities to the joint venture, and West LB's and Preussag's leisure travel activities are outside the U.K., mainly in Germany.
8. In view of the above, the operation constitutes a concentration under the Merger Regulation.

III COMMUNITY DIMENSION ¹

9. West LB, Preussag and Carlson have a combined aggregate world-wide turnover in excess of EUR 5.000 million. Each of West LB and Preussag has a Community-wide turnover in excess of EUR 250 million but they do not both achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.23.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

State. The notified operation therefore has a Community dimension. It but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of the Agreement.

IV ASSESSMENT

A Relevant product markets

a) Tour operators

10. Tour operators assemble holidays and either sell them directly to the public, or sell them through travel agents. As a tour operator Thomas Cook will be engaged in the supply of foreign package holidays. Foreign package holidays may be defined as packages involving both transport between the country of origin and a foreign destination and accommodation outside the country of origin². The majority of foreign package holidays from the U.K. are to destinations within continental Europe. Such holidays usually involve travel by air predominantly using charter flights.

b) Travel agents

11. A travel agent generally acts as the agent of a tour operator principal. Thus, the travel agent acts on behalf of the tour operator to sell holidays to the customer and is remunerated by the tour operator paying commission on the price of the holidays sold. (Travel agencies also sell a number of other products, for example, scheduled flights only, hotel bookings, insurance and other travel related services).

c) Charter airlines

12. Charter airlines exist primarily to serve tour operators, particularly in the most popular sectors of the foreign holiday market. Charter airlines operate between the country of origin and the airports closest to major holiday destinations. The choice of routes and the frequency of flights is dictated by demand from tour operators. Charter airlines will change flying patterns to reflect changes in demand for foreign package holidays to particular destinations. Charter airlines generally expect a tour operator to buy blocks of seats for at least a holiday season.
13. As described below, the major tour operators in the U.K. travel market are vertically integrated, each with its own charter airline. Therefore, when assessing the charter airline market, it has to be borne in mind that self-supply of charter airline services is not part of the market, which latter consists of sales to third-parties, in turn consisting of two customer segments, that is those other tour operators having their own integrated charter airline capacity, and those other operators (so called "independents") who have no such in-house capacity

² See Thomas Cook/LTU/West LB (IV/M.229) 14.7.1992.

B Relevant geographic markets

14. The Commission has accepted in previous decisions that the markets within Europe for the supply of foreign package holidays are still essentially national in character³. Tour operators in a Member State sell packages with a point of departure in that member state and market them to residents of that member state. Travel agents in turn market nationally within their Member States. Charter airline services can also be regarded as national in character, as they fly out of and return to their country of origin and licensing. There are a number of practical obstacles which would make it difficult for a traveller resident in Member State A to book a package holiday with a tour operator or travel agent resident in Member State B. Quite apart from the lack of information about what is available (i.e. access to brochures of foreign tour operators and travel agents), linguistic differences can cause problems in terms of understanding exactly what is included in the price. In addition, there are legal complications due to the fact that the contract would normally be governed by the law of the residence of the foreign tour operator or travel agent, thus making it difficult for the traveller to seek redress in the event of a complaint. A further inconvenience arises from the fact that the traveller would have to make his or her own arrangements to the point of departure in the territory of the foreign tour operator or travel agent.

C Assessment

15. In an assessment of the competitive structure of the U.K. leisure travel sector, it is important to note that the sector is characterised by a degree of vertical integration, whereby the major operators are each active in all three of the above mentioned markets, that is, tour operating, travel agencies and charter airline services. Thus a single operator will produce leisure travel packages, operating on in-house charter flight capacity, and sold through in-house travel agencies to members of the public.
16. Such vertical integration confers some commercial advantages on the major tour operators; it allows them to control costs and quality and have a measure of guaranteed retail distribution and charter transport capacity throughout the holiday seasons. However, such operators have substantial purchase and sales relations with major competitors on all three markets. Thus a particular operator will sell some of his own packages through competitors' travel agencies, will conversely sell competitors' packages through his own agencies and will buy capacity from, and sell capacity to, competitors' charter airline subsidiaries according to his varying needs over time. These transactions between operators allow each of them the possibility of balancing sales volumes, in the face of fluctuating demand, and the availability of adequate retail and transport capacity; too little capacity would result in unsold holidays and loss of agency commission from lost sales of other operators' holidays, whilst too much capacity would entail excessive costs.

³ For example Havas Voyage/American Express (IV/M.564), TCG/LTU/West LB (IV/M.229), West LB/TCG (IV/M/350) and Wagons-Lits/Carlson (IV/M.867)

a) Horizontal aspects

17. Market share data is based on annual statistics produced by the British National Travel Survey, "BNTS", also used by the U.K. Merger and Monopolies Commission, "MMC", report on U.K. Foreign Package holidays⁴.

(i) Tour operators

18. The 1997 U.K. market shares of the major operators were as follows :

Thomson Travel Group Ltd	20%
Airtours	13%
First Choice Ltd	9%
Thomas Cook Group Ltd	9%
Carlson Leisure U.K.	1%
Others (maximum 1% each)	48%

	100%

The new combined entity, Thomas Cook, would have 10% of the market.

(ii) Travel agencies

19. The 1998 U.K. market shares, by number of agency outlets, of the major operators were as follows :

Thomson Group Ltd	15.9%
Airtours	16.6%
Thomas Cook Group Ltd	7.8%
Carlson Leisure U.K.	7.8%
Others	51.9%

	100.0%

20. With regard to the above market share breakdown, it may be noted that Carlson licences its "Worldchoice" travel agency brand to an association named "ARTAC", which consists of about 690 small independent travel agents, with a view to obtaining high rates of sales commission from tour operators; however, ARTAC's members remain independently owned and managed and are not subject to commercial control by ARTAC or Carlson.

21. The new combined entity, Thomas Cook, would therefore have 15.6% of the number of outlets. Not all holidays are booked through agency outlets, about one third being booked directly with the tour operator or by other means, in the U.K. in 1997, according to BNTS data. If this is taken into account, Thomas Cook's agencies share of total holidays sold might be estimated to be below 15%.

⁴ CM 3813, December 1997

(iii) Charter Airlines

22. The joint venture will have 100% of the shares in two charter airline companies, “Flying Colours”⁵, currently owned by Thomas Cook Group Ltd, and “Caledonian” in which Carlson currently owns a minority stake.
23. Charter aircraft are normally leased by charter airline companies; leases may vary in length of time, may be financial or operating leases (in the latter, residual aircraft value remains with the lessor), and may or may not include provision of aircraft crew.
24. Charter airlines acquire takeoff or landing “slots” at particular airports by applying to approved agencies. Under EU regulations, an airline has the right to continue to use an assigned slot provided the slot has been regularly used the previous year (“grandfather rights”). New entrants are given second priority after carriers with “grandfather rights”, but should get 50% of any new airport capacity.
25. The shares of U.K. charter airline capacity in 1997 are as follows :

Thomson (“Britannia”)	27.6%
First choice (“Air 2000”)	21.3%
Going Places (“Airtours”)	18.5%
Cosmos (“Monarch”)	15.5%
Carlson (“Caledonian”)	8.2%
Thomas Cook (“Flying Colours”)	4.0%
British World	1.0%
Sabre	1.0%
Others	2.9%

	100.0%

The new combined entity Thomas Cook would thus have 12.2% of U.K. charter airline capacity.

26. As described above under “Market definition”, a significant proportion of this capacity will be used for self-supply and does not therefore constitute part of the market. Non-vertically integrated tour operators, so-called “independents”, are entirely dependent on outside sources for their supply of charter airline seats. On the basis of sales of seats on flights departing from the two major U.K. airports Gatwick and Manchester for the 1998 season, Carlson (Caledonian) had [between 20-40] % of the sales to independents, and Thomas Cook Group Ltd (Flying Colours and Airworld) [less than 2] % (source : U.K. Office of Fair Trading). Therefore, the combined entity Thomas Cook would not dominate the sale of charter airline seats to independents, since it would have less than one-third of such sales. As far as sales to other vertically integrated tour operators are concerned, the Commission’s investigation has revealed that Carlson and the Thomas Cook Group combined have had less than 20% of such sales in 1998, and therefore the combined entity would not dominate sales to integrated operators either.
27. It seems a reasonable supposition that the “grandfather rights” over U.K. slots enjoyed by the combined entity will be in line with its charter flight capacity. Moreover, the slot

⁵ Flying Colours includes Airworld Aviation Ltd., acquired in 1996

availability at, at least, some of the airports in U.K. is still relatively unconstrained for new airline entrants, or existing airlines seeking new slots.

(iv) Conclusion

28. On the basis of the data supplied by the parties, the horizontal overlaps resulting from the transaction will not lead to the creation or strengthening of a dominant position.

b) Vertical aspects

29. The extent of vertical integration within a U.K. leisure travel group can be assessed by :

- the proportion of a tour operator’s package holidays sold through its in-house agency and conversely the proportion of the in-house agency’s sales that is accounted for by the integrated tour operator’s package holidays. (Recent evidence concerning the U.K. travel agency sector indicates increased “directional selling” by all major U.K. integrated companies, that is, an increased tendency to promote sales of holiday packages supplied by the “in-house” tour operator rather than those of rival operators).
- the relative proportions of a tour operator’s package holidays which use the in-house charter airline and those which use other charter airlines, and the relative proportions of the in-house charter airline’s seats which are used by the integrated tour operator and those sold to other tour operators.

(i) Tour operator/travel agency integration

30. The following table indicates the proportion of Thomas Cook Group Ltd and Carlson Leisure Group Ltd (U.K.) package holidays sold via different travel agencies in the summer 1998 season :

TRAVEL AGENCY (RETAILER)	Thomas Cook Group Ltd (Package holidays)	Carlson Leisure U.K. (Package holidays)
	Total %	Total %
Thomas Cook	[between 15-25]	[between 3-7]
Thomson	[...]	[...]
Airtours	[...]	[...]
Carlson Leisure UK	[between 3-7]	[between 25-35]
Co-op	[...]	[...]
Other retailers	[...]	[...]
TOTAL (Package holidays)	100.0	100.0

31. It is clear from the above table that the combined entity Thomas Cook would sell no more than about one-third of its own packages through its own agencies, and would depend on agencies owned by competitors such as Thomson and Airtours to a significant extent.
32. The following table indicates the proportion of Thomas Cook Group Ltd and Carlson Leisure U.K. Ltd travel agency sales which were accounted for by different tour operators in the 1997/1998 summer seasons :

TOUR OPERATOR (Package holiday provider)	Thomas Cook Group Ltd (Travel agencies)	Carlson Leisure U.K. (Travel agencies)
	Total %	Total %
Thomas Cook	[less than 40]	[between 5-10]
Thomson	[...]	[...]
First Choice	[...]	[...]
Airtours	[...]	[...]
Carlson Leisure UK	[less than 1]	[between 5-10]
Cosmos	[...]	[...]
Unijet	[...]	[...]
Other	[...]	[...]
TOTAL (Agency sales)	100.0	100.0

33. It can be seen that package holidays provided by the main competitors of the new entity Thomas Cook, that is Thomson, First Choice and Airtours, represented [...] % and [...] % of holidays sold by Thomas Cook Group Ltd and Carlson Leisure U.K. (respectively). In view of this, the concentration will not create any significant foreclosure effects on this market.

(ii) Tour operator/charter airline integration

34. Both Thomas Cook Group Ltd and Carlson Leisure U.K. Ltd buy seats from third-party airlines, including those owned by major competitors, for their tour operations. In the 1997/1998 season, the breakdown for those subsidiaries of Thomas Cook Group Ltd and Carlson Leisure U.K. which operate mass market package holidays was as follows:

	<u>Airline</u>	<u>Total %</u>
Thomas Cook Group Ltd	Flying Colours (in-house)	[between 25-40]
	Caledonian (Carlson)	[less than 10]
	Cosmos	[...]
	First Choice	[...]
	Others	[...]
	-----	100
Carlson UK	Caledonian (in-house)	[between 40-60]
	Flying Colours (Thomas Cook)	[less than 7]
	Cosmos	[...]
	Others	[...]
	-----	100

35. It is clear that the combined entity Thomas Cook would depend on other charter airlines to meet its seat requirements, including airlines owned by major vertically integrated competitors.
36. Both Thomas Cook Group Ltd (Flying Colours) and Carlson U.K. (Caledonian) sell seats to third party tour operators. In the 1997/1998 seasons the proportions have been about [between 11-17] % for Flying Colours and about [between 55-65] % for Caledonian. It seems likely therefore that the combined entity Thomas Cook will continue to sell a significant proportion of in-house charter flight capacity to third parties. For the summer 1999, season both Flying Colours and Caledonian have each contracted to sell seats to over twenty other tour operators. To the extent that the combined entity Thomas Cook might re-orientate its strategy towards using in-house charter airline capacity (e.g. that available from Caledonian) rather than purchase capacity from third parties, this would liberate that capacity from third parties and render it available to customers who have hitherto purchased from Flying Colours or Caledonian. Moreover, the total demand of the merged entity for charter flight capacity (whether sourced “in-house” or from third parties) will in any event be a function of, and limited by, the volume of its tour operating activities, which, as stated above, currently represent only 10% of the total U.K. market.

iii) Conclusion

37. The vertical integration of the combined entity would not create significant foreclosure effects.

V ANCILLARY RESTRAINTS

38. The parties have asked for some provisions of the Merger Agreement to be declared ancillary to the concentration. In particular, each of Carlson West LB and Preussag undertakes with the others not to compete with the leisure travel activities of Thomas Cook in the U.K., and not to solicit staff from Thomas Cook. These provisions are directly related and necessary to the implementation of the concentration, since they are aimed at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture.

VI CONCLUSION

39. In view of the above, the Commission has concluded that the operation will not result in the creation or reinforcement of a dominant position.
40. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,