

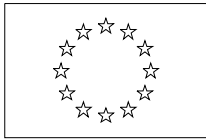
***Case No COMP/M.2691 -
TUI / NOUVELLES
FRONTIERES***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/08/2002

*Also available in the CELEX database
Document No 302M2691*



COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 26.08.2002
SG (2002) D/231400

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2691-TUI/Nouvelles Frontières
Notification of 25.07.2002 pursuant to Article 4 of Council Regulation No 4064/89¹**

1. On 25.07.2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which the undertaking TUI AG ("TUI") formerly Preussag AG of Germany, acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Nouvelles Frontières International ("NF") of France, the holding company controlling the NF Group of companies, by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. TUI is the head of a group of undertakings active world-wide in various sectors, including the field of leisure travel through numerous single brands of the TUI group. Through its brands, TUI is active in the entire leisure travel market: tour operators, charter airlines, distribution, hotels and cruises.
4. NF is active in tour operating, charter airlines, distribution, hotels, cruises, and car rental. Its business is focused mainly on markets in France, though it is active in Belgium, Italy, Luxembourg, Spain and several other countries outside Europe.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p.1, corrigendum OJ L 40, 13.2.1998, p. 17).

² OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p.1, corrigendum OJ L 40, 13.2.1998, p. 17).

II. CONCENTRATION

5. The background to the proposed transaction is that on 14/11/2000³, the Commission approved the acquisition of joint control by TUI of NF. In 2001, TUI and NF concluded a revised Shareholders' Agreement and a revised Share Acquisition Agreement without, however, changing the nature of TUI's control in NF. TUI currently holds [...] % of NF's capital and voting rights, while Mr. Jacques Maillot, the founder of NF, holds [...] %. The remainder of the shares in NF are held by a number of minority shareholders.
6. TUI now intends to acquire sole control of NF by exercising option rights conferred to it in the revised Share Acquisition Agreement of 22 October 2001. Pursuant to this agreement, Mr. Jacques Maillot granted TUI an irrevocable exclusive option on the remainder of his shares in NF, exercisable at any time between [...] and [...]. As a result of the exercise of the option, TUI will hold 100% of NF's shares. The proposed operation therefore, changes the nature of TUI's control in NF from joint control to sole control. The notified operation therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

7. The combined aggregate world-wide turnover of TUI (EUR 22,415 million) and NF (EUR [...] million) was in excess of EUR 5 billion⁴. The aggregate Community-wide turnover of each party was also in excess of EUR 250 million (TUI EUR [...] million, NF EUR [...] million). TUI did not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State, although NF did so within France. The notified operation therefore has a Community dimension.

IV. RELEVANT MARKETS

8. The Parties essentially use the same relevant market definitions as were used by the Commission in its decisions *Airtours/First Choice*⁵ and *Costa Crociere/ Chargeurs/ Accor*⁶, namely, the national markets for short-haul and long-haul foreign package holidays, travel agency services, the supply to tour operators of seats on charter flights to short-haul and long-haul destinations and the supply of sea cruises. In the present case, there are no indications that the market definitions in the above-mentioned cases do not remain valid.

V. COMPETITIVE ASSESSMENT

9. The Commission recently considered the effect on the Belgian market for foreign package holidays of the acquisition of joint control by Preussag over NF in its decision of 14.11.2000 in Case M.2186 *Preussag/Nouvelles Frontières*. The Commission concluded that the transaction would not materially affect the structure of the Belgian

³ Case M.2186 *Preussag/Nouvelles Frontières* of 14.11.2000.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, 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.

⁵ Case IV/M.1524 of 22.09.2002.

⁶ Case No M.334 of 19.07.1993.

market or the degree of competition since Preussag's share of the markets for short-haul and long-haul foreign package holidays would increase by less than two per cent. In addition, Preussag and NUR Touristic Benelux would face competition from First Choice, via Bosphorous and Club Mediterranee as well as a large number of tour operators with a market share similar to that of NF. In August 2001 the Commission cleared a change from joint control to sole control of TUI in TUI Belgium and Jet Air on the basis that the change would not lead to any marked changes on the market in Belgium.⁷

10. TUI offers short-haul and long-haul foreign package holidays in Belgium, the Netherlands, Austria, Germany, Switzerland, Italy, Spain and Poland through various subsidiaries and different brands. TUI, via its subsidiary TNE, offers short-haul and long-haul foreign package holidays in the UK, Ireland, Sweden, Norway, Denmark and Finland under different brands. NF is active in France, Belgium, Luxembourg and Portugal. NF stopped selling foreign package holidays in the UK and will shortly stop selling them in Ireland. Therefore, the Parties' activities in foreign package holiday markets only overlap in Belgium.
11. According to the Parties, TUI has a market share of [35-45]% of short-haul and [30-40]% of long-haul foreign package holidays in Belgium. NF does not have a significant presence on any of these markets, with market shares of [0-5]% of short-haul and [0-5]% of long-haul foreign package holidays in Belgium. Therefore, the proposed transaction gives rise to some minimal horizontal overlaps in short-haul and long-haul foreign package holidays in Belgium. However, in none of the relevant markets does the proposed operation lead to a significant increase in market share. The previous transaction pursuant to which Preussag acquired joint control of NF gave TUI a strong foothold in France via NF. TUI has obtained its current position on the Belgian market through the acquisition of sole control of TUI Belgium and Jet Air in 2001. The proposed transaction does not alter this.

VI. CONCLUSION

12. 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
David BYRNE
Member of the Commission

⁷ Case No. M.2456 of 02.08.2001.