

***Case No COMP/M.4600 -
TUI / FIRST CHOICE***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 04/06/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04-VI-2007

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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) and 6(2)
DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.4600 - TUI/ First Choice
Notification of 4 April 2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 4 April 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking TUI AG ("TUI", Germany, or the "notifying party") acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control over First Choice Holidays PLC ("First Choice", United Kingdom). The travel activities of both groups will be combined in a new group, TUI Travel PLC ("TUI Travel", United Kingdom). TUI Travel will consist of TUI's Tourism division, excluding certain hotel assets and the German ocean cruise and other shipping activities, and First Choice.
2. On 8 May 2007, the notifying party submitted undertakings, which were subsequently refined on 29 May 2007. The proposed commitments were designed to eliminate the serious doubts identified by the Commission, in accordance with Article 6(2) of Council Regulation (EEC) No 139/2004. After examination of the notification and in the light of these undertakings, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

¹ OJ L 24, 29.1.2004 p. 1.

I. THE PARTIES

3. TUI is the parent of the TUI group, a tourism and travel company which offers services in tour operation, travel agency services, air-flights, hotels, car rental and shipping (including ocean cruises, container shipping, cargo and port services). It is present in 18 European countries, including Germany, UK, Ireland, France, Belgium, the Netherlands, Austria and Scandinavia.
4. First Choice is active in tourism as well, including tour operation, travel agency services, air-flights, car rental and cruise shipping, in a number of Member States, including the UK, Ireland, Austria, Germany, the Netherlands and France.

II. THE OPERATION

5. Pursuant to a merger agreement signed on 19 March 2007, TUI will contribute its global leisure travel business (excluding [...] hotels and its German ocean cruises business) to a new company, TUI Travel, by means of a scheme of arrangement under English company law. First Choice will contribute the whole of its business to TUI Travel, which is to be headquartered in the United Kingdom and listed on the London Stock Exchange. TUI will obtain 51% of the shares of TUI Travel whereas the remaining 49% of TUI Travel's shares will be held by First Choice's current institutional and individual shareholders.
6. TUI and First Choice have agreed to the terms of a Relationship Agreement which will regulate the relationship between TUI Travel and TUI as a shareholder in TUI Travel.

III. CONCENTRATION

7. TUI will be the largest shareholder in TUI Travel with a shareholding of 51%. The remaining 49% of shares will be dispersed among a number of First Choice's current shareholders. None of them will hold a level of shares sufficient to block any decisions individually. No voting or similar agreements currently exist between any of First Choice's existing shareholders and no such agreements will come into being as a result of the transaction on hand.
8. Therefore, it can be concluded that TUI will acquire sole control of First Choice's travel business within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion². Each of them has a Community-wide turnover in excess of EUR 250 million (TUI EUR [...] billion and First Choice EUR [...] billion). While First Choice achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State (the United Kingdom), there is no Member State in which the same applies to TUI. The notified operation therefore has a Community dimension in the sense of Article 1(2) of Council Regulation (EC) No 139/2004.

² 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, p. 25).

V. RELEVANT MARKETS

10. The parties' activities regarding the supply of leisure travel services to customers overlap in a number of Member States. In the UK, TUI and First Choice are vertically integrated, being active in the supply of package tours as well as in the downstream business of travel agency services and the upstream business of airline operation. In Ireland, TUI and First Choice are also vertically integrated but TUI does not have airline operations. In France, Austria, Germany and the Netherlands, TUI is vertically integrated, while First Choice is active only in tour operating and to a very limited extent in travel agencies in France.
11. TUI and First Choice also operate in Spain, Sweden, Denmark, Norway and Finland where their activities overlap only in the supply of package tours. However, the market share added by either TUI or First Choice's business in all of these countries is insignificant (<1%). Therefore, these markets will not be assessed further.

(1) Supply of package holidays

(a) Product market definition

12. Both TUI and First Choice are tour operators. Tour operators mainly supply "package holidays" combining accommodation and possibly other services in a given destination with return travel to and from it. Package holidays have previously been found by the Commission to constitute a separate market from holidays where the consumer purchases the various elements individually³.
13. In case M.1524 Airtours/First Choice (the "Airtours decision")⁴ the Commission considered that it could be difficult for consumers to make a direct comparison of prices between a package holiday and an independently composed holiday. It also referred to additional search and "transaction costs" (telephone calls, faxes, letters to the hotel and airline, arranging car hire etc) and risks in contracting separately by comparison with the "one stop" nature of the purchase of a package. As a result, the Commission considered, at the time, that a relatively small price rise in package holidays would not cause sufficient customers to shift to independent holidays to justify including independent holidays in the relevant product market.
14. The notifying party submits that contrary to the distinction made by the Commission in its Airtours Decision in 1999, there is no polarised choice between package holidays and independent holidays anymore and that customers can now choose from a differentiated product market comprising a spectrum of offers. The notifying party considers, therefore, that the relevant market should be the market for the retail of leisure travel services, comprising the activities of traditional and online tour operators, traditional and online travel agents, other online travel intermediaries, direct-selling airlines and direct selling accommodation providers ("dynamic approach").

³ Case M. 1524 Airtours/First Choice, paragraph 28.

⁴ Case M.1524 Airtours/First Choice, of 22 September 1999.

15. The notifying party bases this view in particular on the change of business model that tour operators and travel agents have undergone, both now offering to customers single components of what was formerly a holiday package, such as flights, accommodation and other holiday products. As to the demand side, the notifying party refers also to the growth of independent holidaymaking, with a significant increase in the ability and willingness of consumers independently to source flights, accommodation and the various other components of their holiday either as "self-package", by booking flights, accommodation and other holiday components independently through separate transactions, or as "dynamic package", by using a single website to book flights, accommodation, and possibly other components in a single booking.

United Kingdom

16. The Mintel report *Independent Travel, Leisure Intelligence* (September 2006) (the "Mintel report"⁵) observes that the UK holiday market has grown by 6% over the past five years⁶. The source of this growth has been the overseas market, which has risen by 14% in volume terms since 2001. This rise has been at the expense of the domestic market, which has contracted by 3% over the same period. This strong growth in the overseas market is closely connected to the transition within the sector from a predominantly package-based industry to one based primarily on independently booked travel.
17. Since 1996, the independent foreign holiday market has grown by 118% and by an annual average of almost 10% over the past five years. The package holiday industry grew by 25% since 1996⁷, but is showing a decline since 2002⁸. According to IPS data independent holidays have accounted in absolute terms for the majority of British trips abroad since 2003. By 2006, the independent holidaymaking sector was over 35% larger than the package tour sector.
18. The transformation from package holidays towards independent holidaymaking has been driven, according to the notifying party, by the expansion of the so-called "low cost" airlines. Whereas in 1996 there were a total of four low cost carriers operating from the UK, flying from 10 UK airports to 12 destinations in seven EU countries, by 2005 there were already 22 low cost carriers operating from about 35 UK airports and serving more than 150 international destinations. These destinations include many traditional sun and sea destinations in the Mediterranean where the charter airlines are most prominently present.
19. The British Civil Aviation Authority (CAA) concluded in its report *No-Frills Carriers: Revolution or Evolution* (November 2006) that overall the growth of low-cost airlines was primarily at the expense of charter airlines. While low cost traffic expanded at an average rate of 32% a year over the period 2000-2005, UK to the EU

⁵ The Mintel International Group Ltd is a supplier of consumer, media and market research. Mintel has published in 2005 and 2006 a number of independent reports related to the leisure industry.

⁶ The Mintel report p. 21.

⁷ The Mintel report, p. 27.

⁸ IPS data on UK residents' short-haul holidays abroad (all modes of travel) 1996-2006.

charter traffic declined at an average annual rate of 4%, whereas full service scheduled traffic contracted at a rate of over 2% a year. Further, the CAA report indicates that 80% of the customers of low cost carriers are leisure travellers and that a significant part thereof travels on the basis of an independent package holiday.⁹

20. The success of the low cost carriers in the UK, in turn, is according to the notifying party linked to the significant growth in internet usage and in particular to the rapid pick up of broadband internet access at home . The Mintel report finds that the Internet has provided the consumer with access to a spectrum of travel sites which encompass tour operators, third party intermediaries, direct suppliers of travel components, travel search engines and auction sites. It has created a global route for a large number of small to mid-scale suppliers of holiday products, which enables them to compete with larger branded players and empowered customers - who have become far more confident in the security of online booking – to become "their own travel agents".
21. The studies referred to above (see paragraphs 16 and 19) indicate that independent holidays exercise a certain competitive constraint on package holidays. In the market investigation, this view was shared by tour operators which focus on the sale of package holidays and by those who concentrate on independent holidays.
22. However, while the above mentioned statistics¹⁰ show that independent travel has managed to capture a growing part of the travel budget of UK consumers, they do not demonstrate conclusively that package holidays could not constitute a separate product market. On the one hand, the increase in individual travel could be linked to a demand that is unrelated to any changes in the prices for package holidays.¹¹ On the other hand, there still remain a number of differences between package holidays and independent holidays which may affect the substitutability of both types of holiday products, as it will be set out below. For certain customer groups it may be more convenient to book a traditional "sun and sea" package holiday than to use the newly created freedom to create an independent package holiday by collecting the individual elements from different suppliers. As a result, it can not be excluded that a hypothetical monopolist in the provision of package tours could profitably increase its price even though overall demand for this service is stagnant or decreasing.
23. The Mintel report confirms that especially in the age groups 35-44 (families with children) and 55 and over (senior citizens) the package holiday remains popular¹². The same applies to certain socio-economic groups. Customers which prefer a package holiday often also have a preference to book such a holiday via a traditional high street travel agent, which is perceived by many as more reassuring than a booking via the Internet. In addition, booking via the travel agent often offers the additional advantage to pay for the holiday in instalments, a possibility which often does not exist in relation to

⁹ Chapter 4, p.4 , 6 and 7 of the CAA report.

¹⁰ See in particular paragraphs 16, 17 and 19, read together.

¹¹ Consumers could for instance consider substituting a short city break for a non-travel expense while at the same time they would only spend their summer vacations on a package holiday.

¹² The Mintel report p.48.

independent packages¹³. A final difference between package holidays and independent holidays concerns the fact that the latter often do not provide the traveller with any protection against insolvency, as would be the case with package holidays which are covered by the ATOL (Air Travel Organisers Licensing Scheme) regime.¹⁴

Ireland

24. The holidays industry is also expanding in Ireland¹⁵. However, certain characteristics of the Irish market show that the development of dynamic packaging and other options offered by the internet for holidaymakers are still in their infancy compared to the UK situation.
25. In particular, Commission studies show that broadband access is still an issue of concern in Ireland where its availability is still below the EU-25 average (10% vs. 15.7%)¹⁶. Internet access, although developing, is still lagging behind the UK levels (41% vs. 54%)¹⁷. Moreover, some Irish respondents to the market investigation have indicated that, in particular, broadband access has not developed yet in Ireland and on-line selling has not reached the UK levels. The notifying party also acknowledges this point.
26. Moreover, contrary to the UK where in recent years an increasing number of ".com" suppliers have emerged, in Ireland companies such as Expedia and Lasminute.com are not so far advanced. In particular, Expedia does not have an Irish-branded site and only a very limited percentage of its turnover is realised in Ireland. Other ".com" suppliers such as Opodo are not active in Ireland.
27. The Commission also notes that, while TUI already engages in dynamic packaging in the UK market and offers its own as well as third party holiday products on its website, its Irish Budget Travel brand at the moment lacks a similar offering relying on supplying packages only. Similarly, First Choice has only begun to launch a new web platform in Ireland (FACE) which is supposed to offer dynamic packaging functionality.

¹³ The Mintel report p. 69.

¹⁴ Under The Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995 (SI 1995/1054) all tour operators and firms selling charter or discounted scheduled airline tickets on a flight-only basis must obtain an ATOL. In order to obtain the licence a tour operator must, in practice, satisfy the requirements of the Civil Aviation Authority which is the licensing authority under the Regulations. The operator must also, in practice, provide a bond.

¹⁵ According to the Central Statistics Office, overseas visits by Irish residents for holiday purposes has increased by 43% from 2002 to 2006.

¹⁶ Commission Staff Working document (SEC(2007) 403) - Annex to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – European Electronic Communications Regulation and Markets 2006 (12th Report) 29 March 2007, page 124. This document provides a detailed analysis of electronic communications services markets, the regulatory environment and the consumer interest, together with an overview of the situation of the sector in the individual Member States.

¹⁷ Eurobarometer - E-Communications household survey April 2007, page 72 and following.

Other markets

28. In France, the respondents to the market investigation tend to consider that there are still price differences between package and dynamic holidays. This view has also been supported by respondents to the market investigations in Germany, Austria and the Netherlands in particular in view of the additional services included in package offers. Moreover, the absence of financial protection against insolvency when contracting independent holidays is perceived as an important factor taken into account by consumers when booking their holidays in most of the aforementioned countries.

Short-haul vs. long-haul foreign package holidays

29. In its *Airtours* decision the Commission considered that prices of domestic holidays do not constrain prices for foreign package holidays and should therefore be considered as a separate product market. The market investigation has confirmed that this distinction reflects the current market situation.¹⁸
30. Within the foreign package holiday market a number of distinctions would be possible. These would include distinguishing by holiday type, e.g. "sun and sea" holidays, "city breaks", or by destination. However, in previous decisions the Commission did not consider it necessary to make such a further distinction¹⁹.
31. The only further distinction made by the Commission in relation to foreign package holidays concerned the split between short-haul package holidays and long-haul package holidays. The long-haul sector is generally recognised as comprising all destinations that involve a flight time substantially in excess of three hours²⁰. Thus effectively all European (mainland and islands) and North African holiday destinations fall into the "short-haul" category, in contrast to those in, for example, the Caribbean, the Americas or South/East Asia. This distinction was upheld by the Court of First Instance²¹ and is confirmed by the market investigation in the present case.

Conclusion

32. For the purpose of this case, it can be left open whether the definition of the relevant holidays market on which the parties are active in the UK, France, The Netherlands, Germany and Austria is still valid, since in all alternative definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.

¹⁸ There is no overlap between the parties with regard to domestic package holidays, as only TUI supplies domestic package holidays to a limited extent in France, while First Choice does not offer this kind of holiday at all in any Member State.

¹⁹ See M. 1524 *Airtours/First Choice*, paragraphs 10 and 28 and M. 4601 *KarstadtQuelle/MyTravel*, paragraph 25.

²⁰ Although flights to the Eastern Mediterranean and the Canary Islands may take up to four hours they are included in the concept of "short-haul" destinations.

²¹ See Case T-342/99 *Airtours vs. Commission*.

33. With regard to the Irish market, for the reasons stated above (see paragraphs 24 to 27), it can be concluded that the relevant product market as regards tour operation is, for the purposes of the present case, that for the supply of short-haul foreign package holidays (as First Choice does not supply long-haul foreign package holidays in Ireland).

(b) Geographic market definition

United Kingdom, Ireland, France and the Netherlands

34. The notifying party submits that the geographic market for the supply of foreign package holidays in the United Kingdom, Ireland, France and the Netherlands is national in scope. The Commission has also found in previous decisions that the markets for the supply of foreign package holidays are still essentially national in character²². Tour operators, even those which sell holidays in several countries generally produce and market their packages on a national basis. This is largely confirmed by the market investigation.

Germany and Austria

35. For Germany and Austria, the notifying party considers it inappropriate to regard these countries as separate national markets for leisure travel. It suggests that the introduction of the Euro has further facilitated cross-border purchasing of holidays. Also, according to the notifying party, almost all of the major tour operators active in Germany and Austria no longer publish separate catalogues for these countries or are in the process of combining their catalogues. These combined catalogues offer package holidays departing from airports in Southern Germany (Munich, Friedrichshafen) as well as from Western Austria (Salzburg, Innsbruck, Linz). The notifying party estimates the catchment areas of said airports to include about 50% of the entire Austrian population.
36. In the past, the Commission has left it open whether Germany and Austria form one geographic market²³. It found, however, some indications suggesting that competitive conditions in both countries were converging, such as the lack of language barriers, similar customer preferences as regards package holidays and low price differences between Austria and Germany. Also, at the time of that decision, travel agents in Western Austria racked German brochures and offered to book from these catalogues for their Austrian customers.
37. The results of the market investigation in the present case are ambiguous. Some respondents saw Austria and Germany as one coherent market and identified slight differences mainly in school holidays and in advertising to cover the applicable legal provisions. It was stated that a number of German customers would switch to package holidays departing from Austrian airports and vice versa. On the other hand, other respondents considered both countries to constitute different markets, stating that customer preferences were different in Austria and Germany with regard to destinations, departure dates, accommodation and holiday seasons. These operators

²² See Case M. 1524 Airtours/First Choice, paragraph 43.

²³ Case M. 1898 - TUI Group/GTT Holding.

also charged different prices in Austria and Germany respectively. It was estimated that only 8% to 10% of Austrian customers might depart from German airports.

Conclusion

38. With regards to the United Kingdom, Ireland, France and the Netherlands for the purpose of this case, the market for the supply of foreign package holidays (short-haul and long-haul) can be considered national in scope.
39. For Austria and Germany, the exact geographic market definition can be left open, as under any alternative market definition the proposed transaction does not raise competition concerns.

(2) Travel agency services

(a) Product market definition

40. TUI and First Choice are both active in travel agency services in the UK and Ireland. In France, the parties' activities also overlap in this regard, but only to a minimum extent²⁴.
41. Travel agents are retailers, supplying various services to consumers and business travellers such as flights, hotel and other accommodation and other related services. Most travel agents offer the products of a range of tour operators and other suppliers. The major tour operators also distribute their products via their own outlets, telephone call centres and online activities. Tour operators operate mainly through high street travel agent outlets and call centres, although more and more they are also active online. In previous Commission decisions it was left open whether the online activities of travel agents are part of the same market for travel agent services²⁵.

United Kingdom and Ireland

42. The notifying party submits that, due to the developments in the UK and Irish travel market since 1999, there is no distinct product market for travel agency services anymore. Rather, as indicated in paragraph 14 above, it suggests the relevant market to be the retail of leisure travel services, including the sales of holiday products by traditional and online tour operators, traditional and online travel agents, other online travel intermediaries, direct-selling airlines and direct selling accommodation providers ("dynamic approach").
43. The Mintel report *Holiday Booking process Leisure Intelligence* (August 2006) observes that since 2001 there has been a general trend in the UK on the one hand to reduce the number of travel agency outlets, in particular by three of the four vertically integrated chains, and on the other hand to invest into the expansion of direct sales.²⁶

²⁴ TUI owns 214 outlets of the Nouvelle Frontières brand and has 110 franchised travel agencies (Havas), while First Choice has 11 retail outlets.

²⁵ Case M. 1812 Telefónica/ Terra/ Amadeus.

²⁶ MyTravel/Going Places reduced their number of outlets by 30% and TUI/Thomson by 6%. The only integrated chain to open up new outlets was First Choice who according to Mintel expanded its previously limited presence by 51% (see Mintel report of August 2006 p.19).

The report also shows that at the same time the proportion of package holidays sold via travel agents declined while the share of direct bookings of package holidays with the tour operator increased.

44. The market investigation confirms a general increase in phone and internet bookings, directly from tour operators or through agents. Distribution through retail outlets and distribution online and by phone are regarded as part of the same market since they offer the same products and act as price constraints upon each other because consumers are very price sensitive and use internet possibilities to collect information on the "best offer". While it was pointed out that there may be indeed groups of customers who would be reluctant to book online or by phone and need a travel agency's advice, it was also agreed that in view of the research facilities offered by internet, price discrimination of these consumers would hardly be feasible.
45. In Ireland, the market investigation has shown that, as stated above, Internet and broadband access is not as developed as in the UK and that online sales by tour operators of holidays products do not occur to the same extent as in the UK.
46. For the purposes of the present case, it can be left open whether the definition of the relevant holiday markets on which the parties are active in the UK is still valid, since in all alternative definitions considered, effective competition is not significantly impeded in the EEA or any substantial part of that area.
47. With regards to the Irish market, for the reasons stated above (see paragraphs 24 to 27 and 45), it can be concluded that the relevant product market is that for travel agency services.

France

48. With regard to France, the definition of the relevant product market can also be left open as both under the definition applied in the Airtours case and the one suggested by the notifying party, effective competition is not significantly impeded in the EEA or any substantial part of that area.

(b) Geographic market definition

49. In past decisions, the Commission has found that in general, travel agents market nationally²⁷. This view is also supported by the notifying party, who make reference to the growing importance of sales through online channels; this factor would, according to them, prevent any local travel agent from profitably imposing a unilateral price rise.
50. The market investigation has confirmed that the market should be considered as national, although with some regional aspects taking into account that consumers are only prepared to travel a certain distance to reach a retail outlet and that retail agents compete by giving individual discounts. It was considered by the respondents to the market investigation that a majority of consumers would be in a position to compare prices of local agents with offers in the internet and that a sufficient number would be

²⁷ See Case M. 1524 – Airtours / First Choice, paragraph 43 to 50; Case M. 1812 - Telefónica/Terra/Amadeus, paragraph 13; Case M. 4601 – KarstadtQuelle/MyTravel, paragraph 38.

willing to book online. These options are considered by most respondents as an important competitive constraint on prices. Such a constraint would make market conditions sufficiently homogenous to consider the distribution market as national.

51. For the purpose of this case, the market for the supply of travel agency services can be considered national in scope.

(3) Wholesale supply of airline seats

(a) Product market definition

52. TUI's and First Choice's activities with regard to airlines overlap only in the UK. TUI does not operate its own airline services in Ireland and uses third parties entirely. First Choice supplies airline services from Dublin to a limited extent and purchases around [...] % of its required capacity from third parties. TUI has airlines in Germany and Austria (TUIfly), France (Corsair) and the Netherlands (Arkefly); in these countries, First Choice is not active in the supply of airline seats.
53. Charter airlines sell block seats or entire flights to tour operators, who then integrate the flight into a package holiday. In previous decisions, the Commission has identified a separate product market for the supply of seats on charter flights to tour operators, indicating the possibility to distinguish between short haul foreign destinations and long haul foreign destinations²⁸ ("wholesale"). In its Airtours decision, the Commission excluded from the market definition the wholesale supply of seats to tour operators by scheduled airlines. According to the Commission, scheduled flights at that time were not a viable substitute for charter flights for package tours to most package holiday destinations²⁹.
54. The notifying party takes the view that this market definition can no longer be sustained and submit that a market now exists for the supply of short-haul airline services, without further distinction as to whether the airline involved is a charter or a scheduled airline. It argues that both charter and scheduled airlines have made changes to their business models, closely mimicking that of the low cost carriers. Further, it points out that there is convergence between seats purchased from a low cost carrier, seats on a scheduled airline and "seat only" purchases from a charter airline, as final customers looking for a flight to holiday destinations would largely be indifferent as to whether their flight technically is a "seat only" on a charter airline or on a low cost carrier and would often be unaware of the distinction.
55. According to the notifying party, low cost carriers based in the United Kingdom now serve key charter routes to "sun and sea" destinations and thus offer an alternative to scheduled and charter airlines to holidaymakers as well as to tour operators, to whom they also offer block allocations of seats. The notifying party further submits that the availability of slots at UK airports has attracted non-UK based airlines (such as Futura Airlines, Onur Air or Pegasus) to start new routes into the United Kingdom.

²⁸ See Case M. 1524 Airtours/First Choice, paragraph 42; Case M.157 AirFrance/Sabena, paragraph 25; see also Case M.1494 -Sair Group/AOM, paragraph 11, Case No COMP/M. 2186 Preussag/Nouvelles Frontières, paragraph 7 and Case No COMP/M.3770 Lufthansa/Swiss, paragraph 20.

²⁹ See Case M. 1524 Airtours/First Choice, paragraphs 34 to 50. Airtours did not challenge this market definition in the framework of the case T-342/99 Airtours v Commission.

56. The market investigation does not seem to support the notifying party's suggested definition for market for the supply of short-haul airline services. However, it has largely confirmed the notifying party's views that scheduled airlines and non-UK carriers (especially charters) provide airline capacity for short-haul and long-haul destinations. In particular, the market investigation shows that, to a certain extent, some non-UK based charters, low cost and full service scheduled airlines also represent a source of supply of seats to tour operators.
57. For the purpose of the present case, it is not necessary to conclude on the precise scope of the relevant product markets as, under any alternative market definition, the proposed operation does not give rise to competition concerns.

(b) Geographic market definition

58. The Commission has accepted in previous decisions that the market for charter airline services can be regarded as national in character as they fly out and return to their country of origin and licensing and the demand for these services mainly arises from customers resident in the country of origin³⁰. The notifying party does not oppose this delineation of the geographic market.
59. For the purpose of this case, the market for the supply of airline services under all hypothetical product market definitions described above (see paragraphs 52 to 57) can be considered national in scope.

(4) Cruises

60. Both parties have overlapping activities in ocean cruises in the UK and Ireland. The Commission has previously considered the supply of ocean cruises as distinct from the supply of coastal, ferry or river cruises.³¹ This distinction is being supported by the notifying party.
61. As to the geographic scope for the supply of ocean cruises, the Commission concluded previously³² that the markets should be considered as national.
62. For the purposes of the present case, the relevant markets are those for the supply of ocean cruises in the UK and Ireland.

(5) Purchase of hotel accommodation

63. The Commission has also investigated the impact of the proposed transaction as regards the combined buying power of TUI and First Choice on the procurement markets for hotel accommodation in destination holiday resorts.
64. The notifying party has indicated however that it does not consider individual destinations to be the relevant geographic market for the purposes of assessing the

³⁰ See Case M. 1524 Airtours/First Choice, paragraph 43 and Case No COMP/M.2691 TUI/Nouvelles Frontières, paragraph 8.

³¹ Case M. 2706 Carnival Corporation/P&O Princess

³² Case M. 2706 Carnival Corporation/P&O Princess

impact of the concentration on accommodation purchasing. According to the notifying party, all destinations compete fiercely with each other for customers' leisure time and expenditure and customers will readily switch between different resorts in response to changes in price. Therefore, the notifying party considers that the relevant markets are the markets for hotel accommodation in short-haul and long-haul destinations.

65. It is not necessary to define these markets product or geographic wise in the present case, as the transaction does not raise competition concerns on any possible market definition.

VI. COMPETITIVE ASSESSMENT

66. Prior to the notification of the present concentration, the Commission received on 26 March 2007 a notification of a prior transaction³³ by KarstadtQuelle AG ("KarstadtQuelle" Germany) and MyTravel Group PLC ("MyTravel", UK) (Case M. 4601 KarstadtQuelle/MyTravel). This prior transaction partly covers the same markets (i.e. tour operating business in UK and Ireland) as the markets on which TUI and First Choice are active.
67. That transaction was assessed independently from the present transaction which was agreed upon and notified subsequently. In this respect, the Commission observed that it is inherent in the system of the Merger Regulation that a party that is the first to notify a concentration that, assessed on its own merits, would not significantly impede effective competition in the common market or in a substantial part thereof, is entitled to have its operation declared compatible with the common market within the applicable time limits (see Case No COMP/M.4601 KarstadtQuelle/MyTravel, paragraphs 49 and 50).
68. On 4 May 2007, the Commission authorised the KarstadtQuelle/MyTravel concentration pursuant to Article 6(1)(b) of Council Regulation (EC) No 139/2004. The present merger will, consequently, be assessed in the light of the competitive situation that is likely to prevail in view of the Commission's decision on the first merger.

(1) The United Kingdom

(a) Non-coordinated effects

– Short- and long-haul foreign package holidays in the UK

69. After the implementation of the merger between Thomas Cook and MyTravel (Case M. 4601) the UK market for foreign package holidays will be characterised by the presence of three major vertically integrated tour operators - Thomas Cook/MyTravel, TUI and

³³ The merger agreement KarstadtQuelle/MyTravel was concluded and announced on 12 February 2007 whereas the merger agreement between TUI and First Choice was concluded and announced on 19 March 2007. The KarstadtQuelle/MyTravel concentration was notified on 26 March 2007 whereas the TUI/First Choice concentration was notified on 4 April 2007.

First Choice - and by a large number of smaller independent tour operators for short- and long-haul as well as some medium-sized operators like Virgin Holidays and Kuoni for long-haul.

70. On the markets for the supply of short- and long-haul foreign package holidays in the UK the market situation would be as follows:

Table 1³⁴

UK - Foreign package holidays	Short-haul	Long-haul
TUI	[20%-30%]	[10%-20%]
First Choice	[10%-20%]	[10%-20%]
<i>Combined</i>	[40%-50%]	[30%-40%]
Thomas Cook/MyTravel	[30%-40%]	[30%-40%]
Others	[20%-30%]	[10%-20%]

71. After the transaction, TUI and First Choice will continue to experience significant competition not only from the merged entity of Thomas Cook/MyTravel, who will be vertically integrated and active on the same markets on which the activities of the parties overlap. Moreover, both vertically integrated players will face competition from numerous small tour operators which are active on the package holiday markets, including for short-haul Olympic/Odyssey, Kosmar, Libra, Goldtrail, Cosmos. For long-haul, the merged entity will face competition from Thomas Cook/MyTravel and a large number of smaller, non-integrated tour operators, but also from medium-sized competitors with a relatively important market share (e.g. Virgin Holidays [5%-15%] and Kuoni [0%-10%]).
72. In addition there is no evidence that TUI and First Choice are each others' closest competitors. The market investigation confirmed that all three large tour operators are relatively similar in relation to their competitive positioning, in particular in the short-haul package holiday market. They all offer an extensive range of destinations and a wide choice of accommodation. In exercising this choice, consumers can and do shop around to find the best deal for a package holiday. This is facilitated by the presence of a large number of web based search engines which allow consumers to compare prices and availability within seconds. In addition, consumers show little brand loyalty and engage in high levels of switching in a market place where the competitive offering changes almost daily. Moreover, First Choice differs to a certain extent by focussing recently more on mid- and long-haul destinations, specialized programs and value-added services.
73. Further, even if one limits the assessment to a narrowly defined product market (i.e. only including foreign package holidays), the market developments which have taken place since 1999 should be taken into account, as they exert a degree of competitive constraint on the tour operators which are active on the markets for package holidays. These developments include the significant growth in the number of independent holidays and the blurring of the distinction between tour operators and on- and offline travel agents, who offer more and more dynamic packages, similar to tour operators.

³⁴ Based on number of passengers according to AC Nielsen data for W05/S06 and estimates by the notifying party for Kuoni and Virgin.

These developments, together with the presence of the actual competitors, would allow final consumers to defeat any attempt by the merging parties to unilaterally increase prices.

74. On a hypothetical market for the sale of leisure travel services as proposed by the notifying party, which would include all package and independent holidays sold through all retail channels by tour operators, travel agents, airlines and accommodation providers online and offline ("dynamic approach", see above paragraph 14), their combined market share of [10%-20%] ([10%-20%] for short-haul, [10%-20%] for long-haul)³⁵, would not be indicative of competition concerns.
75. In view of the above it is considered that the concentration does not create a risk of relevant price increases as a result of non-coordinated effects on the UK foreign package holidays markets. This would also be the case if one did not take into account the mitigating effects of the market developments described above. The market investigation has confirmed that consumers, in particular for short-haul package tours, are very price-sensitive. Attempts by the merged entity to increase prices would most likely be unsuccessful as they would simply allow Thomas Cook/MyTravel and the smaller tour operators to increase their sales at the expense of the merged entity.

– **Travel agency services**

76. Both parties sell package tours and other holiday components directly (via the internet and call centres) as well as through their own travel agencies and third party intermediaries. On the basis of the information submitted by the notifying party, the merged entity would have the following market shares on the hypothetical market for travel agency services with regard to high street distribution in the UK:

³⁵ Based on the number of packages and independent holidays sold on the retail level.

Table 2³⁶

UK W2005/S2006	Number of outlets	Market shares based on number of outlets
TUI	[...]	[10%-20%]
First Choice	[...]	[0%-10%]
<i>Combined</i>	[...]	<i>[10%-20%]</i>
Thomas Cook/MyTravel	[...]	[10%-20%]
Co-op's	[...]	[0%-10%]
Others	[...]	[50%-60%]

77. In view of the parties' rather small combined share of all outlets in the UK ([10%-20%]) and the fact that at least [60%-70%] of the other outlets are independent from the major vertically integrated tour operators, it is unlikely that the transaction would lead to horizontal concerns in relation to the hypothetical market for travel agencies services in the UK.³⁷
78. The market investigation has confirmed that in general pricing strategies are decided and applied on a national level and that the need to match online prices would prevent price increases on a national as well as on a local level. While some respondents raised the point that the parties' agents might become more reluctant to give competitive discounts to consumers in areas where they have a strong market presence, it was also confirmed that consumers are in general well informed about prices and the majority search for alternatives and are prepared to book by phone or online. It therefore seems likely that the availability of online price comparisons would act as sufficient constraint to prevent possible price increases.
79. On a hypothetical market where all online (and phone) distribution of all types of intermediaries as well as direct distribution are included ("dynamic approach", see above paragraph 42) the merged entity would have a combined market share of [10%-20%]. On this basis there would be no reasons for horizontal concerns.

Access of independent tour operators to high street distribution

80. In the course of the market investigation some concerns were raised in relation to the access of independent tour operators to high street distribution by the parties (customer foreclosure). On the basis of total sales of package holidays through high-street outlets, the merged entity would have market shares of [20%-30%] for short-haul packages (TUI

³⁶ Notifying party's estimates are based on ABTA (Association of British Travel Agents) figures according to Mintel report, "Holiday Booking Process Leisure Intelligence" of August 2006 with a total number of 6,025. The notifying party submits that in line in line with Case M. 4601, also those travel agencies which are not members of ABTA should be included in the total number of outlets and estimate that ABTA covers 80-90% of outlets.

³⁷ Similarly in the Airtours decision of 1999 the Commission had concluded that a market share of 15 % of travel agency outlets would not raise concerns of a dominant position, irrespective of whether online and phone bookings were included or not (Case M. 1524 Airtours/First Choice, paragraph 32). This has been confirmed by the CFI (T-342/99 Airtours v Commission paragraph 256).

[10%-20%], First Choice [0%-10%]³⁸ and [40%-50%] for long-haul packages (TUI [20%-30%] and First Choice [15%-25%])³⁹ Independent tour operators consider the access to high street distribution as particularly important for their ability to compete on the market, given that many customers take home catalogues before they make their final choice. Some respondents voiced concerns that they could be discriminated against by their vertically integrated competitors with higher commission fees and 'directional' (i.e. preferential) selling of the parties' own products.⁴⁰

81. However, while respondents to the market investigation argued that access to retail outlets continues to be important in particular to create sufficient awareness of their products, they also acknowledged that the developments in online distribution have facilitated access to the market for independent tour operators by offering more opportunities for direct distribution and distribution through new specialized online-intermediaries. It can thereby be concluded that the dependency of independent tour operators on high street sales has decreased in view of these increased possibilities of direct sales and online-intermediaries.
82. Furthermore, it has to be noted that the parties account for only [10%-20%] of travel agency outlets while more than [75%-85%] of outlets would remain independent from the parties. Even if the merged entity chooses to reduce access to its own travel agents outlets or to provide access on less favourable conditions, their share of travel agency outlets is rather small. Market access for independent tour operators would remain via Thomas Cook/MyTravel ([10%-20%]) as well as via a large number of independent travel agents (around [60%-70%] of all outlets, including ABTA and non-ABTA)⁴¹. Although the higher share in sales seems to better reflect the perceived importance of the parties in the market, it has to be noted that these sales include an important percentage of self-distribution. Moreover, given consumers' expectations to find products from different tour operators even in integrated agencies and in view of the need to maximise income, the merged entity would not be able nor have the incentive to completely refrain from offering the smaller tour operators' products. A certain proportion of the parties' package holiday sales are indeed third party package holidays, in particular for long-haul package holidays ([10%-20%] for TUI short-haul, [40%-50%] for TUI long-haul and [30%-40%] for First Choice short-haul, [40%-50%] for First Choice long-haul). In view of the merged entity's incentive to reduce costs, in particular in view of the large retail net in the UK, it is unlikely that it would refrain from selling third party's products or lower the conditions to an extent as to make them unattractive.
83. In view of the foregoing, it can be concluded that the transaction does not lead to concerns of customer foreclosure by reducing access of independent tour operators to the merged entity's high street retail distribution.

Access of third party agencies to the merged entity's products

³⁸ Notifying party' estimates, based on AC Nielsen. It has to be noted that these figures include self-supply ([...] % for TUI and [...] % for First Choice).

³⁹ Notifying party' estimates, based on AC Nielsen. These figures include an important percentage of self-distribution ([...] % for TUI and [...] % for First Choice).

⁴⁰ See also Case M. 1524 Airtours/First Choice, paragraphs 81 and 82.

⁴¹ See also T-342/99 Airtours v Commission paragraphs 256 to 260.

84. Another concern which has been raised by some respondents to the market investigation is that the merged entity might reduce access of travel agents to the products of the merged entity and/or offer lower commission rates for independent travel agencies and worsen trading conditions (input foreclosure).
85. In this regard, it has to be noted that the market investigation has also confirmed a general trend by integrated tour operators to reduce commissions to third parties. However, according to the notifying party, this trend is not merger-specific, but is due mainly to an increase in the parties' own direct sales and to their consequent decreased dependency on independent travel agents. In W05/S06 TUI sold [...] % of its package holidays through own distribution channels, i.e. directly through call centres and internet or via its own integrated outlets⁴² while First Choice sold [...] % of packages through its own distribution channels.⁴³
86. The notifying party submits that the growth of internet bookings means that non-integrated operators do not depend on retail travel agents as much as they used to do, commission rate reductions are not merger specific and travel agents can compensate commission rate cuts with revenues from dynamic packaging.
87. Although the parties' distribution policy as well as the market investigation illustrate the development that for the parties as well as for other competitors the direct route to market has improved and that they tend to increase direct and integrated sales, in the UK both parties still rely to a certain extent on sales through third party outlets. Taking into account the merged entity's interest to maximise sales it seems unlikely that such entity would completely refrain from selling through third parties or lower its conditions to the extent as to make such sales unattractive for third party agents.
88. Even if the transaction may enhance the trend to lower commissions by enlarging the leverage of the merged entity, the parties still represent no more than [40%-50%] of the short-haul and [30%-40%] of the long-haul package market. In addition to the remaining more than [...] and [...] respectively of the package holiday market, third party travel agents would still have access to other travel products and could offer "dynamic packaging" of accommodation and air travel.

– **Wholesale supply of airline seats**

⁴² Subdivided by distribution channel and split up for short-haul and long-haul packages TUI sold [...] % of its short-haul package holidays through own retail agencies, [...] % via third party agencies ([...] % vertically integrated and [...] % independent), [...] % through call centres and [...] % via its own web site. For long-haul these percentages were [...] % for own retail agencies, [...] % via third party agencies ([...] % vertically integrated and [...] % independent), [...] % through call centres and [...] % via its own web site.

⁴³ First Choice sold [...] % of its short-haul package holidays through own retail agencies, [...] % via third party agencies ([...] % vertically integrated and [...] % independent), [...] % through call centres and [...] % via its own web site. For long-haul these percentages were [...] % for own retail agencies, [...] % via third party agencies ([...] % vertically integrated and [...] % independent), [...] % through call centres and [...] % via its own web site.

89. Both parties operate their own charter airlines in the UK, which are primarily intended for use with their own packages, though some of their seats are also supplied to third party tour operators⁴⁴. Both parties also buy seats from other airlines mainly for incorporation into their own packages. Additionally, the parties supply a certain amount of seats-only to end consumers.
90. On the narrowly defined market for the wholesale supply of airline seats in charter flights to tour operators and on the basis of the figures provided by the notifying party, the parties would have a combined market share of around [20%-30%] for short-haul destinations in summer 2006 (First Choice [10%-20%] and TUI[0%-10%])⁴⁵. First Choice does not supply airline seats to long-haul destinations, so that the market for the supply of long-haul airline seats to tour operators in the UK is not affected⁴⁶. According to the notifying party's estimates, competitors in short-haul destinations include Thomas Cook/MyTravel ([10%-20%]), Monarch ([20%-30%]), Astraeus ([10%-20%]) and XL Airways ([20%-30%])⁴⁷.
91. Moreover, the market investigation has largely confirmed that scheduled airlines and non-UK carriers (especially charters) also provide airline capacity for short-haul destinations. On a broader market for the wholesale supply of airline seats to tour operators the notifying party indicates to have a combined market share of [10%-20%] in short-haul destinations in summer 2006⁴⁸. Major competitors include Thomas Cook/MyTravel ([5%-15%]), Monarch ([10%-20%]) and XL Airways ([10%-20%]). According to the notifying party, non-UK based carriers would represent [25%-35%] of the supplies.
92. On the hypothetical market suggested by the notifying party for the supply of airline services to short-haul destinations, comprising charter, scheduled and low cost airline services to tour operators and end-customers, the merged entity's market share would be[10%-20%].
93. The market investigation has voiced some concerns regarding the vertical effects of the proposed operation and in particular, the impact that the merger could have on the non-vertically integrated tour operators' ability to source flight capacity for short-haul destinations. It has been stated that the vertically integrated tour operators own most of the charter capacity and the merger could lead to a reduction of capacity available to independent tour operators. A long haul tour operator has also raised concerns

⁴⁴ In W05/S06, only [...] %of TUI's capacity and [...] % of First Choice's capacity was supplied to third parties for short-haul destinations.

⁴⁵ In line with the Commission past decisions, self-supply is not regarded as forming part of the relevant market (see case M.1524 Airtours/First Choice, paragraph 41).

⁴⁶ First Choice has contracted to sell [...] seats to tour operators in long-haul destinations in W07/08 ([...] % of its capacity).

⁴⁷ According to the Commission's internal calculations based on the notifying party' estimates and on the figures provided by charter carriers responding to the market investigation, the parties' combined market shares would be lower.

⁴⁸ In line with the Commission past decisions, self-supply is not regarded as forming part of the relevant market (see case M.1524 Airtours/First Choice, paragraph 41). See also in this respect the CFI judgment in case T-342/99 Airtours vs. Commission, paragraph 231.

regarding the wholesale supply of airline seats to tour operators for long-haul destinations. In particular, it has indicated that low cost carriers do currently not fly to long haul destinations and full scheduled airlines do not serve certain destinations (e.g., Cancun, Dominican Republic).

94. First, as explained above, First Choice does not currently supply airline seats to tour operators for long-haul destinations⁴⁹. The merger will therefore not lead to the creation of market power in favour of the merged entity in respect of the hypothetical UK market for the supply of airline seats to tour operators for long-haul destinations.
95. Moreover, as discussed in the section on relevant markets, tour operators source or could potentially source their flight requirements not only from charter airlines but also from scheduled airlines (including low costs). Consequently, to the extent that the merged entity would try to foreclose independent tour operators from accessing airlines seats, these tour operators could start purchasing airlines seats from both the remaining charter competitors and scheduled airlines.
96. Furthermore, two UK charters and three non-UK based charters have replied affirmatively when asked whether they intended to expand their activities with respect to the wholesale supply of airline seats to tour operators in the near future.

(b) Co-ordinated effects

97. In view of the Commissions clearance decision on the concentration between Thomas Cook/MyTravel the current transaction would lead to a further reduction of the number of major tour operators in the UK from three to two. While the merged entity will have markets shares of [40%-50%] for short-haul and [30%-40%] for long-haul package holidays, Thomas Cook/MyTravel will have combined shares of [30%-40%] and [30%-40%] respectively. A large number of smaller independent tour operators, especially for short-haul, control the remaining market share.
98. Prima facie, the combined market shares of the two merged entities, i.e. Thomas Cook/MyTravel and TUI/First Choice - on the narrow market as defined in the Airtours decision - in combination with the reduction of the number of major competitors on the UK markets from three to two, would seem to raise concerns. These concerns would exist in particular in relation to the markets for short and long-haul package holidays in the UK with combined shares of Thomas Cook/MyTravel and TUI/First Choice of [70%-80%] for short-haul packages and [60%-70%] for long-haul packages. The number of major players which would need to coordinate will be reduced from three to two and the two remaining players will be more symmetric than before which in general is being considered as making it easier for competitors to reach a common understanding.⁵⁰
99. In case of wider product markets, which would include independent packaging, an assessment of coordinated effects would not be necessary, given the resulting lower

⁴⁹ In line with the Commission past decisions, self-supply is not regarded as forming part of the relevant market (see case M.1524 Airtours/First Choice, paragraph 41). See also in this respect the CFI judgment in case T-342/99 Airtours vs. Commission, paragraph 231.

⁵⁰ Guidelines on the assessment of horizontal mergers under the council Regulation on the control of concentrations between undertakings, paragraph 48.

market shares and the enlarged number of competitors which reduce the risk of coordination.

100. However, even in relation to the narrow product markets for foreign package holidays the Commission concluded in its decision in Case M. 4601 that a number of characteristics of the package holiday market in the UK and recent developments in the leisure industry complicate reaching terms of and sustain coordination between the leading players in these markets.⁵¹

Reaching terms of coordination

101. Generally, the less complex and the more stable the economic environment, the easier it is for companies to reach a common understanding on the terms of coordination. It is easier to coordinate when demand and supply conditions are relatively stable. In this context volatile demand, substantial internal growth by some firms in the market or frequent entry by new firms may indicate that the situation is not sufficiently stable to make coordination likely.
102. Certain characteristics of the package holiday market in the UK indicate that this market is rather stable and could make coordination likely. In particular (i) the market shares of the four major vertically integrated tour operators on the UK markets for foreign short- and long-haul package holidays have remained stable in the last three years (i.e. only changed by less than 3%); (ii) no major market entry has happened in recent years in package holidays; and (iii) demand growth for package holidays is low⁵².
103. However, the tour operating market is characterised by its wide array of products on offer, which differ in terms of destination, hotel, and departures. Over time, the increased availability of independent packages and the supply of flights and accommodation have further increased the pallet of products on offer. The sheer number and variety of the available options on the UK market significantly reduce market transparency and complicate price coordination.
104. As regards possible coordination of capacity setting, it should be noted that the complex and detailed "bottom up" approach⁵³ to capacity planning which is characteristic for the tour operating market is likely to constitute a major obstacle to coordination between the two large vertically-integrated tour operators after the merger. In this respect no significant differences exist between short- and long-haul holidays.
105. The capacity planning processes of the major vertically integrated tour operators begins approximately 18 months in advance of the season. The crux of the planning

⁵¹ Case M. 4601 KarstadtQuelle/Mytravel, paragraphs 92 and following.

⁵² According to IPS data, demand for traditional package holidays has stagnated since 2000. Over that period, passengers on inclusive tours have declined by 1.1% (compound annual rate).

⁵³ The "bottom up" approach refers to a process whereby existing product offerings will be analysed and changes that have taken place or are forecast to take place will be considered in the capacity planning process for the next season.

process is to attempt to predict how demand will develop on both a macro-economic and micro-economic level.

106. The market investigation has revealed that TUI's, First Choice's, Thomas Cook's and MyTravel's planning process is equally complex. The market investigation also indicates that while for smaller tour operators and more specialist businesses the capacity process tends to be more flexible and to start on average only 12 months before the season, it is also a relatively complex process.
107. Moreover, demand for short- and long-haul foreign holidays seems to be not only volatile in absolute terms, but also in relation to specific holiday destinations. Natural disasters, political instability and rapid and unpredictable changes in consumer preferences may result in significant changes in demand from year to year. As example, the notifying party refers to January 2006, when demand for holidays to Turkey was severely affected by the bird flu outbreak and First Choice had to replace the flights to Turkey by flights to another destination.
108. Finally, recent developments in the market and, in particular, the independent holidays phenomenon (see section on relevant markets) should be taken into account as a destabilisation factor in reaching terms of coordination in the package holidays market.
109. In light of the foregoing it can be concluded that, although the markets for the supply of package holidays in the UK (short-haul and long-haul) present certain characteristics which might appear at first sight conducive to coordination, other factors such as the complexity of the capacity planning process, the demand volatility and the independent holidays phenomenon, would render reaching terms of coordination particularly difficult and thus unlikely.
110. Furthermore, for coordination to be sustainable, all three conditions as set out in the Airtours judgment and incorporated in the Commissions' Guidelines on the assessment of horizontal mergers⁵⁴ would have to be fulfilled. First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Second, discipline requires that there is some form of credible deterrent mechanism that can be activated if deviation is detected. Finally, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination.
111. In the following paragraphs, it will be analysed if these three cumulative conditions necessary for coordination are met.

Monitoring of deviations

112. Firstly, only the credible threat of timely and sufficient retaliation keeps companies away from deviating from terms of coordination. This requires that markets are sufficiently transparent to allow coordinating companies to monitor to a sufficient

⁵⁴ Guidelines on the assessment of horizontal mergers under the council Regulation on the control of concentrations between undertakings (OJ C 31 of 5 February 2005, p. 5).

degree whether companies are deviating. Although the present concentration might appear to facilitate monitoring the major competitors' behaviour in so far as it reduces their number from three to two, the complexity of the capacity planning process applied by tour operators prior to the selling season in combination with the growth in independent holidays and flights- and accommodation-only products as well as the willingness of customers to switch between the independent and package alternatives, would continue to make it difficult to effectively monitor competitors' behaviour and detect deviations from the common policy.

113. As explained in the previous section, the internal capacity planning processes applied by tour operators on the UK markets prior to the selling season are not public and they are the result of a complex exercise. During these internal planning processes most decisions on capacity and pricing are made. It is therefore only at a relatively late stage, at the selling season, that competitors become aware of the decisions taken by their competitors. At such a stage, the scope for retaliation is however limited, as only limited changes to planned capacity can be introduced. The market investigation has confirmed that the capacity planning procedures of tour operators lack transparency, at least until the brochures and programmes are published.
114. Moreover, the growth in independent holidays and accommodation-only products coupled with the willingness of customers to switch between the independent and package alternatives, would add considerable "noise" to the package holidays market which would make it even more difficult to detect deviations from the common policy and hence sustain a coordinated outcome.
115. Considering the characteristics of the relevant markets, and in particular, the limited degree of transparency further reduced by the independent holidays phenomenon, it would be difficult for the three large vertically-integrated tour operators to monitor any potential deviation from planned coordinated action on the UK package holidays markets.

Deterrent mechanisms

116. Secondly, coordination is not sustainable unless the consequences of deviation are sufficiently severe to convince coordinating companies that it is in their best interest to adhere to the terms of the coordination.
117. Among the possible deterrent mechanisms which the merged entity could consider applying (e.g. lowering prices, increasing capacity), the threat of increasing capacity appears to be the most likely one. Such an increase of capacity could either take place during the selling season, or, in case there would be insufficient free capacity in the short term, in next years selling season.
118. According to the notifying party, detection of deviation from agreed coordinated behaviour is only likely during the selling season, due to the non public character of the internal planning process.
119. Immediate retaliation through simply cutting prices in the same selling season would, according to the notifying party, be ineffective unless capacity is also expanded. Lowering prices would simply bring forward the punishing firm's bookings within the selling season and push back those of the company being punished, unless it increases the total number of holidays it offers. The notifying party argues that capacity changes within the same selling season are relatively difficult to make as the range of flight

dates, times, destinations and hotel accommodation still available will become increasingly limited as the departure date approaches. This was confirmed by the market investigation.

120. As the Commission Guidelines on the assessment of horizontal mergers point out⁵⁵, retaliation that manifests itself after some significant time lag, or is not certain to be activated, is less likely to be sufficient to offset the benefits from deviating.
121. It appears from the above, that the likelihood of retaliation by means of capacity increase is relatively limited, considering the reduced possibilities to significantly increase capacity during the selling season, while capacity increases in next years selling season may come too late to obtain the desired result.

Reactions of outsiders

122. Finally, for coordination to be successful, the actions of non-coordinating companies and potential competitors, as well as customers, should not be able to jeopardise the outcome expected from coordination. If coordination aimed at reducing overall capacity in the market, this would only hurt consumers if non-coordinating companies are unable or have no incentive to respond to this decrease by increasing their own capacity sufficiently to prevent a net decrease in capacity, or at least to render the coordinated capacity decrease unprofitable.
123. In the present case there would seem to be significant competitive constraints present on the market which would destabilise any attempt at coordination. These constraints would in particular stem from effective competition from smaller independent short haul tour operators, medium independent long haul tour operators, and the competition from the independent holiday alternative. The market investigation has confirmed that consumers of package holidays are very price sensitive. Therefore, any attempt by the major tour operators to increase prices would lead consumers to switch either to smaller tour operators or, in view of the developments in the industry, to independently source the components of their holidays. Consumers tend to make extensive comparisons before purchasing a holiday, searching for better prices from smaller tour operators, travel agencies doing dynamic packing or simply self-packaging.
124. Considering the above and the fact that the criteria that have to be fulfilled in order to show coordinated effects are of a cumulative nature, the merger is unlikely to have coordinated effects on the UK markets for the supply of short-haul and long-haul foreign package holidays.

(2) Ireland

– Short-haul foreign package holidays and travel agency services

⁵⁵ See Horizontal Guidelines, point 53.

125. In Ireland, the proposed transaction would result in the merger of the number 1 and 2 tour operators in the market for the supply of short-haul packages with a combined market share of [50%-60%]. First Choice does not supply long-haul foreign package holidays in Ireland. In this market, TUI and First Choice mainly trade under the Budget and Falcon brands respectively. First Choice is the only fully integrated tour operator in the Irish market, i.e. it has its own Irish-based aircraft and an outlet distribution network. TUI has also its own outlet distribution network but it does not operate its own airline.

Table 3

W05/S06	Short-haul
TUI (Budget)	[30%-40%]
FC (Falcon)	[10%-20%]
Combined	[50%-60%]
Thomas Cook/MyTravel ^o	[20%-30%]
Slattery's	[5%-15%]
Sunway	[0%-10%]

*Source: notifying party's estimates

126. The notifying party's estimated combined market share under their proposed "dynamic approach" (see above paragraphs 14 and 42) would be [10%-20%].
127. In Ireland, both parties sell package holidays directly (via the Internet and call centres) as well as through their own travel agencies. First Choice packages are also distributed via third party intermediaries⁵⁶ whereas TUI/Budget products are distributed only "in-house" since January 2006. On the basis of the information submitted by the notifying party, the merged entity would have the following market shares in Ireland:

Table 4

2005/06	Number of outlets (owned outlets + franchised outlets)	Market share
TUI (Budget)	[...] ([...])	[5-15%] ([10%-20%])
FC (Falcon)	[...] ([...])	[0%-10%] ([10%-20%])
<i>Combined</i>	[...] ([...])	[10%-20%] ([20%-30%])
Each of the other competitors		<[0%-10%]

*Source: notifying party' estimates. The number of franchised outlets and the parties' combined market share taking them into account are indicated in brackets.

128. In Ireland, contrary to the UK market, no other tour operator owns more than 8 outlets or has a nationwide coverage as large as the parties', all other travel agencies have less than [0%-10%] of the share of total outlets and the distribution of package holidays relies to a larger extent on high street outlets. Moreover, post-merger, TUI and First Choice would have, by far, the largest distribution network in this country⁵⁷. In particular, in W05/S06, the parties' network accounted for [30%-40%] of all short-haul package holidays distributed via high street outlets whereas if all distribution channels are taken into account

⁵⁶ In W05/S06 First Choice sold [...] packages via third party travel agents ([...] % of its total packages).

⁵⁷ Thomas Cook only owns 2 outlets and MyTravel has none.

(i.e. outlets, on-line distribution and others), the parties' distribution activities represented [40%-50%] of the total package holidays distributed in Ireland⁵⁸.

129. As stated above, [...] Budget packages and [...] % of First Choice packages were distributed in-house in 2006. However, Budget and Falcon outlets do not distribute exclusively the Falcon and Budget brands and therefore, represent an important channel for independent tour operators to place their package holidays on the market. In this respect, it should be noted that the market investigation has indicated that the parties' main competitors (i.e. Thomas Cook, MyTravel, Sunway and Slattery's) still distribute more than 50% of their package holidays via high street outlets.
130. The market investigation has raised strong concerns regarding the effects of the proposed merger in Ireland. As indicated above, contrary to the Thomas Cook/MyTravel merger, the present operation would create a number one tour operator owning more than half of the market for the supply of short-haul package holidays with an extensive distribution network which would allow the merged entity to distribute [40%-50%] of the total short-haul package holidays in Ireland. The distance to the number two operator Thomas Cook/MyTravel would be significant (i.e. [20%-30%] vs. [50%-60%]).
131. The respondents to the market investigation have indicated that the dominant position of the merged entity in short-haul package holidays combined with the strong retail network could lead them to marginalise competing short-haul package holidays from access to the outlet distribution market, therefore pushing them out of the market with a subsequent reduction in consumer's choice and price increases. Moreover, travel agents are concerned that following the transaction First Choice products may also be sold exclusively via the merged entity's network, with the consequence that, in addition to the Budget products, [...] % of the short-haul package holidays would be excluded from the distribution market.
132. The notifying party argues however that their combined market share of above 50% is not representative of market power since the Commission should take into account the presence of effective competitors, the low barriers to entry, the price sensitivity of consumers and the transparency of prices and the independent holidays phenomenon which exerts a high competitive constraint on the package market in Ireland. Moreover, the notifying party considers that the proposed merger would not lead to competition concerns in the distribution market because tour operators are selling their products more and more online and by telephone and that in any event, post-merger, tour operators could still distribute their products via the remaining travel agencies.
133. The notifying party's arguments, however, do not fully dismiss the serious competition concerns that the proposed merger raises in Ireland for the reasons described below. The merged entity's large portion of the short-haul holiday package market combined with their extensive retail network could indeed significantly impede effective competition in Ireland and offer scope for higher prices than would be the case without the transaction.

⁵⁸ It has to be noted that these figures include self-distribution. In W05/S06, [...] % of the packages sold via Budget outlets were self-distributed packages; for First Choice the percentage is [...] %.

134. Contrary to the notifying party's arguments, it cannot be concluded that post-merger competing tour operators could exert effective competition in the supply of short-haul foreign package holidays market in Ireland. First, according to the notifying party's estimates, market shares of small tour operators have decreased in the past three years (Sunway from [0%-10%] to [0%-10%] and Stein/Slattery's from [10%-20%] to [5%-15%]) while TUI has increased by [...] points its market share ([30%-40%]). Secondly, the distribution of package holidays in Ireland relies to a large extent on high street outlets. While in the UK, the main tour operators responding to the market investigation sell on average around 61% of their packages via outlets, in Ireland the average seems to be 8 points higher (around 69%); in the UK, the Internet represents in average around 20% of the packages sold, while in Ireland the average is around 15%⁵⁹. Finally, TUI has increased its number of outlets in Ireland since 2004 whereas in the UK the number decreased.⁶⁰
135. Additionally, it is not clear to what extent dynamic packaging could exert a sufficient competitive constraint on the merged entity preventing the new group from unilaterally increasing prices or keep them at a higher level than would be the case without the merger taking place. While it is true that independent holidays are growing in Ireland, certain characteristics of the Irish market point towards a lesser degree of effective development of dynamic packaging compared to the UK situation.
136. First, as stated in paragraph 25, broadband access is less developed than in the UK and Internet access, although developing, is still lagging behind. Moreover, some Irish respondents to the market investigation have indicated that broadband access has not developed in all areas of Ireland and on-line selling has not reached the UK levels. The notifying party also acknowledges this point.
137. Second, as the notifying party itself acknowledges, major ".com" companies such as Expedia and Lasminute.com are not so far advanced in Ireland.
138. Finally, TUI's business strategies in the UK and in Ireland present two main differences. On the one hand, in the UK TUI is already offering separate components of the holidays to its customers so they can self-package them; Budget has not developed yet its web-site in Ireland to do dynamic packaging. On the other hand, TUI's recent marketing strategy in the UK is marketing to all consumers, whether they may prefer to book a complete package or only elements of it to organise their own holiday; in Ireland Budget ads only market Budget packages.
139. In view of the specific characteristics of the Irish market, the merged entity's market share of [50%-60%] in the supply of short-haul foreign package holidays combined

⁵⁹ If only the top 4 tour operators are taken into account, the percentages would be as follow (i) distribution via outlets [66%] in the UK vs. [77%] in Ireland; (ii) distribution on-line [19%] in the UK and [14%] in Ireland.

⁶⁰ In Ireland, TUI increased the number of its outlets from 28 to 32 (+ 14 franchised); First Choice decreased from 21 to 20 (+ 24 franchised); in the UK, TUI decreased the number of its outlets from 864 to 759; First Choice from 312 to 310. MyTravel does not have outlets in Ireland and Thomas Cook only has 2. In a recent press article, Budget Travel marketing director declared that Budget Travel's network of 46 high street shops was an essential part of its business, while ITAA chief executive considered that "there is still a very substantial amount of trips being booked through traditional travel agents" (Irish Examiner, 1 March 2007).

with its strong presence in retail distribution lead to the conclusion that there are serious doubts that the proposed merger would significantly impede effective competition in the Irish market.

– **Wholesale supply of airline seats**

140. On the upstream market for the supply of short-haul airline seats to Irish tour operators there is no overlap of activities. First Choice is active to a limited extent in the supply of short-haul airline seats to Irish tour operators⁶¹. However, TUI is not active in airline services in Ireland and relies entirely on third party carriers (mainly foreign-based carriers⁶²).

(3) France

141. In France, TUI is vertically integrated with tour operating mainly via Nouvelle Frontières brand ("NF"), a charter airline (Corsair/Jet4You), a chain of travel agency outlets and a hotel chain ("Paladien"⁶³). First Choice is active as a tour operator (Marmara brand for short-haul packages and Aventuria and Tourinter brands for long-haul packages) and has few travel agency outlets distributing its Aventuria brand.

142. On the market for the supply of package holidays in France the merged entity would have a market share of [30%-40%] in short-haul (TUI [10%-20%], First Choice [15%-25%]). In long-haul, the market share would be [30%-40%] (TUI [25%-35%], First Choice [0%-10%]). The French package holidays market is rather fragmented and the parties would face competition from well-established tour operators such as Fram ([5%-15%]), Club Med ([0%-10%]) and Jet Tours ([0%-10%]) in short-haul. In long-haul, the increment is rather small and the merged entity will face competition from, inter alia, Vac Air Transat ([10%-20%]), Club Med ([0%-10%]), Marsans ([0%-10%]) and Kuoni ([0%-10%]).

143. The parties' combined market share under their proposed "dynamic" approach in France would be [0%-10%] (short-haul) and [10%-20%] (long-haul).⁶⁴

144. The parties' activities also overlap in the market for the supply of travel agency services. However, their combined market share is rather low ([0%-10%], which represents 214 NF and 11 Aventuria outlets and [0%-10%] if TUI's Havas franchised agencies are included). Other competitors such as Club Med, Fram and Thomas Cook also have their own outlets network. Additionally, NF and Aventuria outlets exclusively distribute the in-house products.

⁶¹ In summer 06, First Choice supplied a total amount of [...] seats, [...].

⁶² Primarily Futura, Air Europa, Iberworld, Eurocypria Airlines and Pegasus. TUI has not contracted any seats from First Choice for W06/07 and Summer 07.

⁶³ TUI leases two Paladien hotels in Morocco. There are Paladien hotels in Turkey (2) and Tunisia (1) but they are independent hotels, merely using the Paladien brand.

⁶⁴ Market shares calculated on the basis of the number of package holiday seats or seat-only sales sold by the parties' tour operations.

145. During the market investigation, some respondents raised concerns regarding the possible privileged access of Havas and NF to Marmara and TUI products. However, NF products and outlets are out of the free market (NF is exclusively distributed via NF outlets which sell NF products only). The only vertical link created by the proposed concentration therefore regards Havas franchised outlets and First Choice products. However, Havas outlets will act to a large extent independently from the merged entity⁶⁵ and its outlets only represent [$< 5\%$] of the total outlets in France.
146. The parties do not overlap in the market for the supply of airline seats to tour operators where only TUI is active. In particular, TUI (via Corsair) serves two short-haul destinations and a number of long-haul destinations. The parties estimate Corsair's market share to be [$0\%-10\%$] for the supply of airline seats to tour operators in short-haul destinations and [$20\%-30\%$] for long-haul destinations in 2006.
147. During the market investigation some respondents also raised concerns regarding tour operators' access to airlines seats in certain long-haul destinations. Post-merger, First Choice (Tourinter and Aventuria brands) could have privileged access to Corsair seats. However, it is unlikely that the concentration will create competition concerns considering that First Choice's long-haul destinations (via Aventuria and Tourinter) only overlap to a limited extent with the destinations served by Corsair⁶⁶. Moreover, even if First Choice would start purchasing Corsair seats for all its Aventuria and Tourinter customers flying to Corsair destinations in 2006, this would only represent a limited part of Corsair's total capacity for long-haul destinations ([...] %). Finally, it should be underlined that in the French market, scheduled airlines are a major source of supply of airline seats to tour operators for long-haul destinations (especially Air France)⁶⁷.
148. For the foregoing reasons, the Commission considers that competition concerns are unlikely to arise in the French markets.

(4) Austria and Germany

149. The parties' activities in Austria and Germany overlap in relation to the supply of short-haul foreign package holidays. While TUI is vertically integrated in Germany and Austria, operating a charter airline and a travel agency chain in addition to its tour operating business, First Choice is active only as a tour operator, supplying short-haul package holidays⁶⁸.

⁶⁵ According to the franchise contract, Havas agencies are required only to attempt to sell TUI-branded package holidays for up to approximately [...] % of their total turnover. In 2006, only [...] % of Havas total turnover was generated by the sale of TUI-branded package holidays.

⁶⁶ For instance, in 2005/2006, Tourinter purchased a limited number of seats from Corsair (i.e. [...]) and Aventuria [...].

⁶⁷ For instance, [...] % of First Choice's long-haul passengers flew with scheduled airlines.

⁶⁸ First Choice sells a limited number of unused seats from its initially purchased capacity to other tour operators. It does not have any retail travel agency outlets in Austria or Germany.

150. On the market for short-haul foreign package holidays, the parties' joint market shares are [35%-45%] for Austria (TUI [30%-40%] and First Choice [0%-10%])⁶⁹ and [20%-30%] for Germany (TUI [20%-30%] and [0%-10%] First Choice)⁷⁰. According to the parties' estimates, other major competitors on the Austrian market are Thomas Cook ([10%-20%]), Rewe ([0%-10%]), Alltours ([0%-10%]) and Bentour ([0%-10%], not active in Germany). In Germany, Thomas Cook has a market share of [10%-20%], Rewe of [10%-20%], Alltours of [0%-10%] and Öger of [0%-10%] (not active in Austria).
151. Despite the parties' post-merger market share of [35%-45%] in Austria, it seems unlikely that the transaction would lead to unilateral concerns. The merged entity would still face competition from the two bigger and a number of smaller tour operators in Austria on the market for the supply of short-haul foreign package holidays. Three of these smaller tour operators (Alltours, Bentour and Vasco) have entered the market in the last five years, showing that barriers to entry are relatively low. This is particularly the case for tour operators already active in Germany, who represent an important competitive constraint on the Austrian market. Considering that the increment added to TUI's market share by First Choice is relatively low ([0%-10%]), it is unlikely that the merger would enable TUI/First Choice to behave independently of its competitors or of its customers to a considerable extent.
152. On the German market as well as on a wider geographic market including Austria and Germany the increment for the supply of short-haul foreign package holidays would be marginal and not raise any competition concerns. Following the "dynamic approach" suggested by the parties, Germany and Austria would not be affected markets at all.⁷¹
153. On the downstream market for travel agency services the parties' activities do not overlap. However, in the course of the market investigation, some respondents have voiced concerns that the merged entity may be able to foreclose access to their distribution network for independent tour operators in Austria.
154. Nevertheless, the market position of the parties' in retail distribution would not support the likelihood of any foreclosure concerns. In Austria, TUI has 48 own retail outlets, 45 franchisees and cooperation agreements with another 258 agencies. If all of these agencies are included, TUI would have a market share of [10%-20%]⁷² while including only the agencies owned by TUI would lead to a market share of [0%-10%]. Even if TUI may increase self-supply by including First Choice's products after the merger in some kind of preferential or directional selling, independent tour operators would still be able turn to a wide choice of other travel agencies (more than [75%-85%]) selling their products.

⁶⁹ Notifying party' estimates, based on the number of passengers.

⁷⁰ Notifying party' estimates, based on the number of passengers.

⁷¹ Germany <15%, no overlap in Austria where First Choice is not active in retail or online distribution.

⁷² Total market: 2,239 travel agency outlets, as submitted by the notifying party and confirmed by publicly available data from Wirtschaftskammer Österreich (Austrian Economic Chamber), www.wko.at.

155. Similarly, should TUI/First Choice opt for a strategy of exclusive distribution through their own channels of distribution, [55%-65%] of short-haul package holidays, would remain open for third party distribution. Given that short-haul package holidays represent only one group of products and services being sold by travel agents, it can be excluded that the transaction will significantly impede competition on the market for travel agency services as a result of input foreclosure.

(5) The Netherlands

156. In the Netherlands the transaction only leads to an overlap of the parties activities on the markets for short-haul (combined [20%-30%]: TUI [20%-30%], FC [0%-10%]) and long-haul (combined [20%-30%]: TUI [20%-30%], FC [0%-10%]) foreign package holidays. On these markets, however, the parties are facing strong competition from a number of competitors. On the short-haul foreign package holidays market the main competitors of the parties are Thomas Cook ([10%-20%]), Sunweb ([10%-20%]), Corendon ([0%-10%]) and OAD Reizen ([0%-10%]). On the long-haul foreign package holidays market the main competitors of the parties are Thomas Cook ([10%-20%]), Kuoni ([10%-20%]), OAD Reizen ([0%-10%]) and Quality International Reizen ([0%-10%]).

157. Only TUI is active upstream with an own charter company, Arkefly, with market shares of [0%-10%] and [30%-40%], respectively, on the markets for the supply of seats to tour operators for short-haul and long-haul package holidays. The main providers of seats to tour operators on the Dutch market for short haul holidays are Transavia ([55%-65%]) and Martinair ([10%-20%]), and for long haul Martinair ([30%-40%]) and scheduled airlines (KLM and low costs). Downstream, at the distribution level, only TUI is active with a market share of [10%-20%] of all high street travel agency outlets.

158. Considering the limited overlaps (increments of up to [0%-10%]) which result from the transaction, the presence of a number of strong competitors, and the absence of a realistic foreclosure scenario regarding access to hotel accommodation, it is unlikely that the transaction would significantly impede effective competition on the common market.

(6) Hotel accommodation

159. Both TUI and First Choice purchase accommodation in destination holiday resorts. Moreover, TUI is vertically integrated into accommodation, primarily in Spain, Portugal, Greece and Italy⁷³. First Choice owns very little accommodation of its own⁷⁴. It has been

⁷³ TUI's hotel portfolio comprises 276 hotels (75,203 rooms) in 2007. It includes the following brands Atlantica Hotels, Dorffhotel, Gran Resort Hotels, Grecotel, Grupotel, Iberotel, Maig Life der Club, Paladien, Riu, Robinson, Sol y Mar and Sonstige.

⁷⁴ First Choice owns, manages or leases [...] hotels in France (mainly in the French Alps), [...] hotels in Morocco, [...] hotel in Egypt, [...] hotels in Tunisia and [...] hotels in Turkey.

the Commission's general practice to exclude self-supply from the relevant market, and to assess the impact of a concentration on the third-party procurement market.⁷⁵

160. TUI does not have a single purchasing entity or arrangement for the whole of its EU tour operating business. Separate purchasing is carried out by the UK and Scandinavian operations, by Budget Travel of Ireland and from Germany for central Europe. TUI France, and the Netherlands conclude separate accommodation contracts with hotels. First Choice's UK mainstream business contracts accommodation for both the UK and Irish mainstream businesses but there are not centralised arrangements for contracting accommodation for First Choice's other European businesses⁷⁶.
161. The market investigation voiced some general concerns that the merger might lead to enhanced purchasing power of the parties and their ability to foreclose other tour operators from access to certain destinations.
162. However, the parties' combined market position does not seem to support these views. According to the parties' estimates their combined group market shares tend to be below 25% in any short-haul or long-haul destination, with the exception of Corfu where their combined market share would be [20%-30%]. Both TUI and First Choice have reduced in recent years the amount of their commitments in accommodation in order to enjoy greater flexibility. For instance, TUI has reduced over [...] % its financial commitment to accommodation and First Choice has reduced it by [...] % (representing a reduction of [...] % in the number of bed nights contracted on a committed basis).
163. Additionally, the market investigation shows that most of the hotels diversify their supply of rooms to more than one tour operator offering their capacity EEA-wide and contract are generally concluded for no more than a year of duration. Moreover, hotels access to the market is facilitated through modern distribution channels (e.g. B2C and B2B bedbanks).

(7) Cruises

164. The parties' activities in the cruises market only overlap in the UK and Ireland. TUI's cruise activities trade under the Thomson Cruises brand. First Choice supplies cruise holidays under the "Island Cruises" brand.
165. On the national markets for ocean cruises, the parties estimate to have a combined market share of [20%-30%] in the UK (major competitor is Carnival with [40%-50%]) and [10%-20%] in Ireland. They submit that these markets which are currently rather small in total numbers (1.17 million passengers in the UK⁷⁷ and 30,000 passengers only in Ireland) are expanding as new capacity is being introduced and successful market entry has recently occurred.

⁷⁵ Case No COMP/M.2002 Preussag/Thomson, paragraph 12 and Case No COMP/M.4601 KarstadtQuelle/MyTravel, paragraph 81.

⁷⁶ The only exception relates to [...] hotels in Turkey in which First Choice has invested and are exclusive to First Choice.

⁷⁷ Total market size according to Passenger Shipping Association data.

166. On the basis of the foregoing, it is unlikely that the transaction would raise competition concerns in the UK and Irish cruise market.

VII. COMMITMENTS OFFERED BY THE PARTIES

167. In order to address the serious doubts raised by the proposed concentration in Ireland, TUI proposed remedies pursuant to Article 6(2) of Council Regulation (EC) No 139/2004. The submission of these commitments on 8 May 2007, refined on 29 May 2007, extended the legal deadline for the Commission's decision to 4 June 2007.

(1) Description of the remedies

168. The proposed commitments consist in the divestiture of TUI Irish tour operating and travel agency business. In particular, TUI commits to divest its entire travel/tourism business in Ireland, run by Budget Travel, including both Budget's tour operating activities and its chain of 32 retail outlets providing leisure travel agency services.

169. The business of Budget Travel does not include the Irish activities of Specialist Holiday Group ("SHG"). SHG is the Irish arm of SHG UK which is part of TUI UK. SHG is not a self-standing business in Ireland and supplies specialist holidays as opposed to mainstream summer sun holidays. SHG has no links with Budget Travel. The transaction would therefore result in a marginal overlap (i.e. 1.4%) between the activities of First Choice and SHG.

(2) Assessment of the remedies

170. The market test of the remedies has confirmed that the competition concerns created by the proposed concentration in Ireland will be eliminated as a result of the proposed sale of Budget.

171. However, some respondents to the market test have raised concerns. On the one hand, it was put into question the viability of Budget as standalone business insofar Budget could be dependent on financial support from other Group companies for the bonding necessary to obtain the licenses to trade as a tour operator and as a retail agent⁷⁸ and could benefit from being part of a larger leisure travel group in order to procure key inputs (e.g. airline seats and accommodation). On the other hand, some difficulties were perceived in finding an interested purchaser in view of the losses recorded by Budget in 2006⁷⁹ and the necessary financial resources and business expertise which a

⁷⁸ In Ireland, tour operators must lodge a bond of 10% of their projected turnover with the Commission for Aviation before they are granted a licence to trade and retail agents have to bond 4% of their projected turnover. Banks charge a fee for issuing a bond. TUI currently provides a guarantee to Budget in order to reduce the percentage level of this fee (0.35% of the bond amount per year).

⁷⁹ Budget Travel recorded a turnover in 2006 of EUR [...] million and an EBITDA of EUR ([...]) million. Budget Travel has forecasted an EBITDA of EUR [...] million in 2007 and EUR [...] million in 2008.

potential purchaser would need to run the business on a lasting basis. Two respondents have further considered the necessity to require an up-front buyer.

172. As to the first concern, it should be noted that in Ireland, licences for both travel agents and tour operators are renewed on an annual basis. Tour operators must lodge a bond of 10% of their projected turnover with the Commission for Aviation before they are granted a licence to trade and retail agents have to bond 4% of their projected turnover. Banks charge a fee for issuing a bond. TUI Northern Europe Ltd currently provides a guarantee to Budget in order to reduce the percentage level of this fee. Although the cost of the bond (i.e. the bank fee) is likely to increase absent TUI's guarantee⁸⁰, any potential purchaser could substitute its own guarantee for that provided by TUI.
173. Additionally, Budget Travel is not operationally dependent on TUI companies for access to key inputs. All contracts for airline capacity are concluded between Budget Travel and the relevant airline. As noted above, TUI does not operate an airline in Ireland. For accommodation contracts, Budget Travel directly deals with the hotelier and relies to a very limited extent in TUI owned/associated hotels⁸¹. It can therefore be concluded that Budget will not have problems in procuring key inputs for its business.
174. With regards to the losses recorded by Budget Travel in 2006, it should be noted that these losses were limited and profits are forecasted for 2007 and 2008.
175. Finally, it should be noted that other respondents to the market investigation have pointed out to the strength behind the brand and its longstanding good reputation. The Budget Travel business indeed started up in Ireland already in 1975 and was successively bought by Granada (1985) and by Thomson Travel Group (1996). In 1999 TUI acquired Thomson Travel Group. Budget Travel has always traded under the Budget brand in Ireland.
176. In light of the above, the Commission is therefore of the opinion that the Commitments as submitted by the Parties on 8 May 2007 are effective and sufficient to remove the Commission's serious doubts as to the compatibility of the transaction with the Common Market and the EEA Agreement.
177. In order to ensure that TUI complies with these commitments, the Commission attaches conditions and obligations to this decision. The commitments set out in Section B of the text of the commitments and the Schedule to the commitments annexed to the present decision constitute conditions, since only by fulfilling them may the structural change on the relevant markets be achieved so as to eliminate the serious doubts identified by the Commission. The other parts of the commitments constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended to eliminate the serious doubts identified by the Commission.

⁸⁰ Currently Budget Travel has secured a rate of [...] % of the value of the bond (annual fee of EUR [...]) with its bond on the basis of the guarantee put in place by TUI. Absent the parent company guarantee, Budget Travel estimates that the rate would increase to [...] % to [...] % of the value of the bond (annual fee of EUR [...] – [...])

⁸¹ All accommodation contracts are between Budget Travel and the accommodation supplier with the exception of some units or beds contracted [...] which only represent, respectively, [...] % and [...] % of Budget contracted units. [...] However, this represents only [...] % of Budget contracted units.

VIII. CONCLUSION

178. The Commission has concluded that the remedies submitted by the Parties are sufficient to remove the serious doubts raised by the concentration. Accordingly, subject to the full compliance with the commitments submitted by the notifying party, 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) and Article 6(2) of Council Regulation (EC) No 139/2004.

179. The detailed text of the commitments is annexed to this decision. The full text of the annexed commitments forms an integral part to this decision.

For the Commission
(Signed)
Neelie KROES
Member of the Commission

**By hand to Merger Registry (fao Dr Joachim Lücking)
and by email (to M.4600 case team members)**

European Commission – Merger Task Force
DG Competition
Rue Joseph II 70 Jozef-II straat
B-1000 BRUSSELS

Case M.4600 – TUI/First Choice

COMMITMENTS TO THE EUROPEAN COMMISSION⁸²

Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 the “*Merger Regulation*”, TUI AG (“*TUI*”) hereby provides the following commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare *the acquisition of First Choice Holidays PLC (“First Choice”)* compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation of the Merger Regulation (the “*Decision*”). *TUI and First Choice* are referred to, together, as *the Parties*.

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

⁸² These Commitments are a revised version of the original Commitments submitted to the European Commission on 8 May 2007 on behalf of TUI AG, incorporating amendments proposed by the Commission on 16 May 2007.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:
Affiliated Undertakings: undertakings controlled by the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration within the meaning of Council Regulation (EC) No 139/2004.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the business or businesses as defined in Section B and the Schedule that TUI commits to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by TUI and who has received from TUI the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [●] months from the Effective Date.

Hold Separate Manager: the person appointed by TUI to manage the day-to-day business of the Divestment Business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is (are) approved by the Commission and appointed by TUI, and who has the duty to monitor TUI's compliance with the conditions and obligations attached to the Decision.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee or either / both of them.

Trustee Divestiture Period: the period of [●] months from the end of the First Divestiture Period.

TUI incorporated under the laws of Germany.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, TUI commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, TUI commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If TUI has not entered into such an agreement at the end of the First Divestiture Period, TUI shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.

2. TUI shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, TUI has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding [●] after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of [●] after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition

4. The Divestment Business consists of *TUI's tour operating and travel agency business in Ireland, Budget Travel, as a going concern*. The present legal and functional structure of the Divestment Business as operated to date is described in the schedule. The Divestment Business, described in more detail in the Schedule, includes
 - (a) all tangible and intangible assets (including intellectual property rights and goodwill), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (b) all existing contracts, agreements, commitments and understandings between the Divestment Business and its suppliers and franchisees. TUI confirms that the transfer of these existing agreements, commitments and understandings with third parties is not subject to their acceptance;
 - (c) licences, permits and authorisations issued by any governmental or regulatory organisation for the benefit of the Divestment Business;
 - (d) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(d) hereinafter collectively referred to as “*Assets*”);
 - (e) the Personnel.
 - (f) the benefit, for a transitional period of up to [●] after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which TUI or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, TUI shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular TUI undertakes:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans

- (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Parties

6. TUI commits, from the Effective Date until Closing, to keep the Divestment Business separate from the combined TUI/First Choice group businesses and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business of the TUI/First Choice group and vice versa. TUI shall also ensure that the Personnel does not report to any individual outside the Divestment Business.
7. Until Closing, TUI shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. TUI shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.
8. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise TUI's rights as shareholder in the Divestment Business (except for its rights for dividends that are due before Closing), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling TUI's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of TUI. Upon request of the Monitoring Trustee, TUI shall resign as member of the boards or shall cause such members of the boards to resign.

Ring-fencing

9. TUI shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. TUI may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to TUI is required by law.

Non-solicitation clause

10. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [●] after Closing.

Due Diligence

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, TUI shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - a) provide to potential purchasers sufficient information as regards the Divestment Business;
 - b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

12. TUI shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
13. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

14. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

(the before-mentioned criteria for the purchaser hereafter the "***Purchaser Requirements***").

15. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When TUI has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. TUI must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

16. TUI shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If TUI has not entered into a binding sales and purchase agreement one (1) month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by TUI at that time or thereafter, TUI shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period provided that no valid agreement for the sale and purchase of the Divestment has been concluded.
17. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a

success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

18. No later than one week after the Effective Date, TUI shall submit a list of one or more persons whom TUI proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, TUI shall submit a list of one or more persons whom TUI proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfill its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfill its obligations. If only one name is approved, TUI shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, TUI shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by TUI

20. If all the proposed Trustees are rejected, TUI shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 19.

Trustee nominated by the Commission

21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom TUI shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

22. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or TUI, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

23. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by TUI with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
 - (c) (i) in consultation with TUI, determine all necessary measures to ensure that TUI does not after the effective date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to TUI as the disclosure is reasonably necessary to allow TUI to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and TUI or Affiliated Undertakings;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to TUI such measures as the Monitoring Trustee considers necessary to ensure TUI's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;
- (vi) provide to the Commission, sending TUI a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending TUI a non-confidential copy at the same time, if it concludes on reasonable grounds that TUI is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the

Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of TUI, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
25. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

III. Duties and obligations of the Parties

26. TUI shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of TUI's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and TUI and the Divestment Business shall provide the Trustee upon request with copies of any document. TUI and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
27. TUI shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. TUI, shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. TUI shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
28. TUI shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, TUI shall cause the documents required for effecting the sale and the Closing to be duly executed.
29. TUI shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an

Indemnified Party shall have no liability to TUI for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

30. At the expense of TUI, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to TUI's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should TUI refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard TUI. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served TUI during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

31. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require TUI to replace the Trustee; or
 - (b) TUI, with the prior approval of the Commission, may replace the Trustee.
32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

34. cause and accompanied by a report from the Monitoring Trustee:
- (i) Grant an extension of the time periods foreseen in the Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where TUI seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall TUI be entitled to request an extension within the last month of any period. The Commission may, where appropriate, in response to a request from TUI showing good

Place and date: 29 May 2007

Signature: [Signed by John Cook on behalf of TUI AG]

John Cook

O'Melveny & Myers LLP

Brussels

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duly authorised for and on behalf of the notifying party,

TUI AG

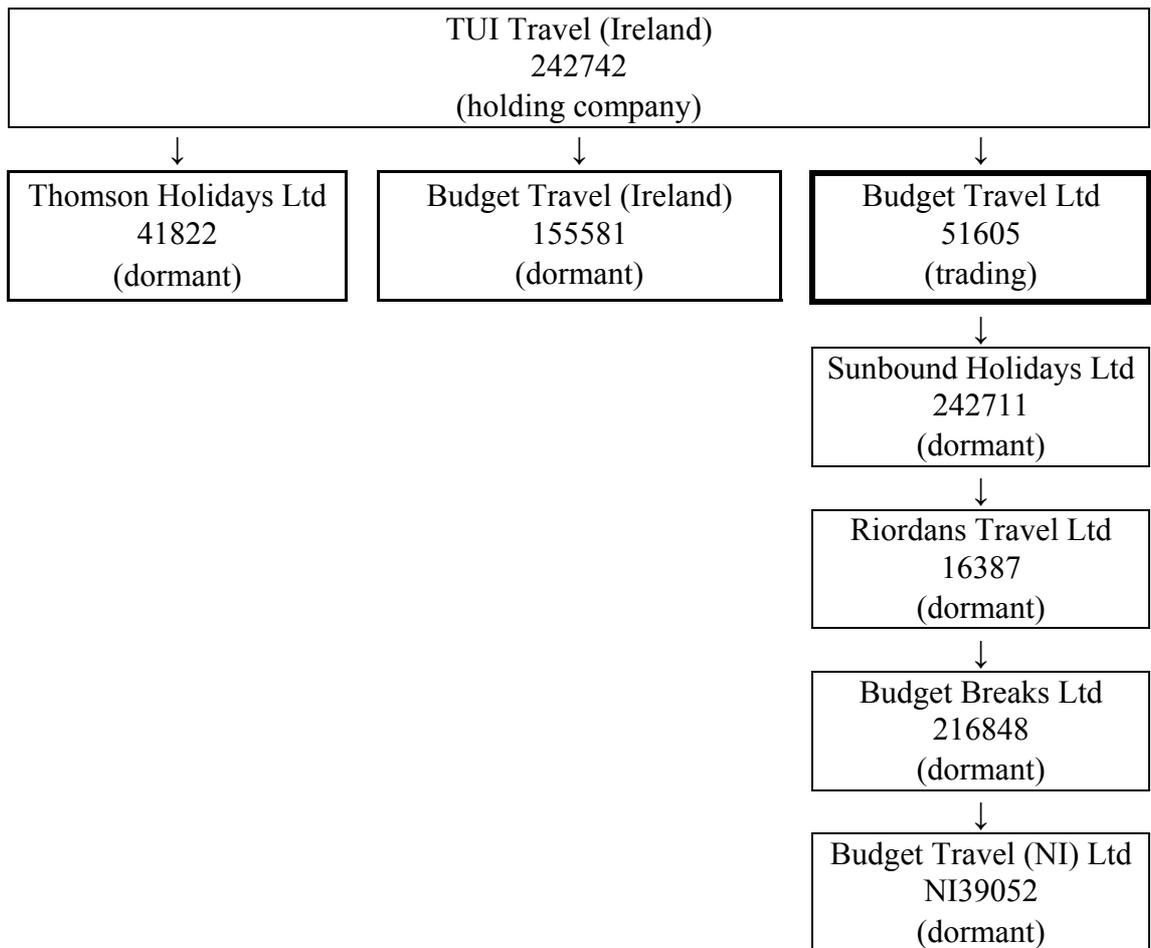
CASE COMP/M.4600 TUI/First Choice

**SCHEDULE
TO
COMMITMENTS TO THE EUROPEAN COMMISSION**

1. **The Divestment Business as operated to date has the following legal and functional structure:**

The Divestment Business consists of the assets and personnel employed in the sale of package holidays and individual holiday products as well as with the provision of leisure travel agency services in Ireland.

Its structure can be shown as follows:



The Commission will note that Budget Travel (NI) Ltd is a dormant company which has never traded and that Budget Travel's activities are confined to Ireland.

Budget Travel Ltd is the only company in the group which is active and all the functions of Budget Travel's business are carried on by and within that legal entity, which is a subsidiary of the Irish holding company, TUI Travel (Ireland) Ltd.

2. **Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:**

(a) **the following main tangible assets:**

- Leases of 32 retail outlets (Budget Travelshops), as listed in **Annex 1**
- Lease of Budget Travel headquarters, 134 Lower Baggot St, Dublin
- Lease of 38 Dawson Street, Dublin (Budget Travel's training centre)
- IT systems and software including
 - MPLS data network (leased from BT)
 - FSS reservation system
 - Travelcat Retail point of sale and back office system
 - 300 PCs
 - Novell GroupWise email server
 - Sage MMS accounting system
 - Networked phone system with call centre capabilities
 - Ulysses Customer Service Package
 - San hard disk drives storing Budget Travel's accounting and other data

(b) **the following main intangible assets:**

- Intellectual property rights in the Budget Travel brand:
 - Budget Travel the Low Prices Holiday Company, registered as a trade mark in Ireland, registration No 233312
 - Budget Travel, name registered in Ireland, registration No 229007

(c) **the following main licences, permits and authorisations:**

- The annual Travel Agent and Tour Operator Licences granted to Budget Travel by the Commission for Aviation Regulation will be unaffected by a change in the ultimate ownership of the Business but will need to be renewed in the usual way.

(d) **the following main contracts, agreements, leases, commitments and understandings:**

- Cooperation agreements with the following independent travel agents:

Name	Address	City / County
Portlaoise Travel	66 Leinster Street	Athy, Co. Kildare
Getaway Travel	The Square	Ballincollig, Co. Cork
Blackpool Travel	Blackpool Shopping Centre	Blackpool, Co. Cork
Carlow Travel	206 Barrack St	Carlow
Douglas Travel	Douglas Court Shopping Centre	Douglas, Co. Cork.
Slattery Travel	10 Pearse Square	Fermoy, Co. Cork
Kilkenny Travel	30 Rose Inn Street	Kilkenny
East Cork Travel	Church Lane	Middleton, Co. Cork
Portlaoise Travel	Dunamais House	Portlaoise, Co. Laoise
LSA Travel	Lower Main Street	Portlaoise, Co. Laoise.
Brodricks Travel	O'Connell St Arcade, O'Connell St	Sligo
Travelbound	The Mall	Thurles, Co. Tipperary
Kilbride Travel	Main Street	Tullamore, Co. Offaly
Tullamore Travel	Patrick Street	Tullamore, Co. Offaly

- Supply agreements with:
 - destination services agents
 - accommodation suppliers
 - airlines

(e) **the following customer, credit and other records:**

- Customer database (web and Travelshop)
- Web subscriber database
- Customer surveys
- Internal statistics
- Management accounts
- Design materials (brochure, logo)

(f) **the following Personnel:**

See Annex 2

(g) **the following Key Personnel:**

Name	Function
Eugene Corcoran	Managing Director
Derek Crookes	Operations Director
Fiona Foster	Director of Sales Retail
Jackie Herssens	Operations Manager
Liz Herssens	Chief Operating Officer
Eileen O'Sullivan	Financial Director
Clem Walshe	Head of Marketing

(h) **the arrangements for the supply with the following products or services by third parties or Affiliated Undertakings for a transitional period after Closing:**

As explained, Budget Travel is not dependent on any such arrangements and no transitional arrangements will be necessary.

3. **The Divestment Business shall not include:**

(i) The Irish activities of Specialist Holiday Group (SHG):

SHG is not part of Budget Travel: it is the Irish arm of SHG UK which is part of TUI UK. SHG is not a self-standing business in Ireland and supplies specialist holidays, not mainstream summer sun holidays. SHG has no corporate links with Budget Travel. SHG does, however, occupy its Dublin offices in Duke Street under a lease from Thomson Holidays Ltd, which is a subsidiary of TUI Travel (Ireland).

(ii) Any activities outside of Ireland (Republic):

Budget Travel has no activities outside of Ireland (Republic). Its holiday products are sold by Thomson retail outlets in Northern Ireland. In 2006, [●] Budget Travel holidays were sold to residents of Northern Ireland. This

intra-group arrangement will cease on a disposal of Budget Travel outside the TUI group, but there is no reason why Budget Travel could not negotiate commercial terms with Thomson, or other retailers in Northern Ireland to sell its products.

(iii) Services provided to Budget Travel by TUI group:

- Bank guarantee for Budget Travel's tour operator bond
- Treasury services
- Group purchase of certain insurances
These insurance policies (relating to [CONFIDENTIAL]) are written by the captive insurance company within the TUI group and then reinsured in the Lloyds market. The group insurance company is able to provide insurance to majority-owned subsidiaries within the TUI group. However, [CONFIDENTIAL]. In any event similar insurance is readily available at equivalent rates to Budget Travel to cover the risks listed above.
- Coordination of health and safety inspections of holiday properties (by outside consultants)

* * *

Case COMP/M.4600 TUI/First Choice

Commitments Schedule

Annex 1

List of Budget Travelshops

Address	City / County
Unit 21 Golden Island Shopping Centre	Athlone, Co. Westmeath
134 Lr Baggot St	Dublin 2
Unit 164 Blanchardstown Shopping Centre	Dublin 15
33 Main Street	Bray, Co. Wicklow
Unit B7 Market Square Shopping Centre	Clonmel, Co. Tipperary
80 Oliver Plunkett St.	Cork
71 Main North St.	Cork
Unit 67 Donaghmede Shopping Centre	Dublin 13
89 West St.	Drogheda, Co. Louth
Unit 123 Dun Laoghaire Shopping Centre	Dun Laoghaire, Co. Dublin
Unit 11 Carroll Village	Dundalk
Unit 7 Dunnes Stores Shopping Centre	Ennis, Co. Clare
63 Main St, Finglas	Dublin 11
Unit 5 Galway Shopping Centre, Headford Road	Galway
8 Eglinton Street	Galway
5 Coffee House Lane, Market Cross Shopping Centre	Kilkenny

1 Lower Liffey St.	Dublin 1
Unit 35 Liffey Valley Shopping Centre	Dublin 22
2 Sarsfield St.	Limerick
Unit 32 Crescent Shopping Centre	Limerick
Harbour Place Shopping Centre	Mullingar, Co. Westmeath
Unit 12 Navan Shopping Centre	Navan, Co. Meath
Unit 5 Whitewater Shopping Centre	Newbridge, Co. Kildare
Unit 20 Northside Shopping Centre	Dublin 17
Unit 13a Nutgrove Shopping Centre	Dublin 14
6 O'Connell St.	Dublin 1
Unit G15 The Pavilions	Swords, Co. Dublin
201A The Square, Tallaght	Dublin 24
47A Ashe Street	Tralee
Ashleaf Shopping Centre Crumlin Cross, Walkinstown	Dublin 12
6 Barronstrand St.	Waterford
7B Redmond Square	Wexford

Case COMP/M.4600 TUI/First Choice

Commitments Schedule

Annex 2

List of Budget Travel Personnel

[BUSINESS SECRETS]