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***Case No COMP/M.5996
- THOMAS COOK/
TRAVEL BUSINESS
OF CO-OPERATIVE
GROUP/ TRAVEL
BUSINESS OF
MIDLANDS CO-
OPERATIVE SOCIETY***

Only the English text is available and authentic.

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

Article 9 (3)(b)
Date: 06/01/2011



EUROPEAN COMMISSION

Brussels, 6.01.2011
C(2011) 85 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

COMMISSION DECISION

of 6.01.2011

**referring case No COMP/M.5996 – Thomas Cook/ Travel business of
Co-operative Group / Travel business of Midlands Co-operative Society
to the competent authorities of the United Kingdom,
pursuant to Article 9 of Regulation (EC) No 139/2004**

COMMISSION DECISION

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referring case No COMP/M.5996 – Thomas Cook / Travel business of Co-operative Group / Travel business of Midlands Co-operative Society to the competent authorities of the United Kingdom, pursuant to Article 9 of Regulation (EC) No 139/2004

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the "TFEU"),

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings¹ (the "Merger Regulation"), and in particular Article 9(3) thereof,

Having regard to the notification made by Thomas Cook Group plc on 9 November 2010, pursuant to article 4 of the said Regulation,

Having regard to the request of the Office of Fair Trading ("OFT") of the United Kingdom of 2 December 2010,

WHEREAS:

1. On 9 November 2010 the Commission received notification of a proposed concentration by which the undertaking Thomas Cook plc ("Thomas Cook", United Kingdom) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the travel business of Co-operative Group Limited ("CGL", United Kingdom) and of the travel business of Midlands Co-operative Society Limited ("Midlands", United Kingdom) by way of purchase of shares.
2. By letter dated 2 December 2010, the United Kingdom requested the referral to its competent authorities of the proposed concentration with a view to assessing it under the United Kingdom national competition law, pursuant to articles 9(2)(a) and 9(2)(b) of the Merger Regulation ("the request").
3. The referral request was transmitted to the notifying party on 3 December 2010 which sent its written comments on 8 December 2010 and presented them to the Commission in a conference call on 9 December 2010 and in a meeting on 10 December 2010.

¹ OJ L 24, 29.1.2004, p.1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

I THE PARTIES

4. Thomas Cook is active across Europe both as a leisure tour operator and a distributor of travel services (package holidays, flights, holiday accommodation and associated services) via its own and third party travel agencies. It is one of the two major vertically integrated leisure travel companies in the UK (the other being TUI Travel). Thomas Cook also operates its own charter airline.
5. Co-operative Group Limited is the United Kingdom's largest co-operative society. Its travel business is focused on the retail and online distribution of holiday products in the United Kingdom². Co-operative Group Limited operates the third largest network of high street travel agency outlets in the United Kingdom.
6. Midlands Co-operative Society Limited is a co-operative society operated independently from Co-operative Group Limited. Its travel business is focused on the retail and online distribution of holiday products, mainly in the Midlands regions in the centre of the United Kingdom.

II THE TRANSACTION

7. On 5 October 2010 Thomas Cook incorporated a new wholly owned subsidiary, TCCT Holdings Limited ("TCCT", Channel Islands), to which it will contribute its retail travel business in consideration for 66.5% of the issued ordinary share capital (as set out in the First Shareholder Sale Agreement)³. Co-operative Group Limited has agreed to sell its shares in Co-operative Group Travel Holdings Limited to TCCT in consideration for 30% of the issued ordinary share capital (as set out in the Second Shareholder Sale Agreement)⁴. Midlands Co-operative Society Limited has agreed to contribute its retail travel business to TCCT in consideration for 3.5% of the ordinary share capital (as set out in the Third Shareholder Sale Agreement). The accounting valuations for the retail travel businesses to be transferred to the joint venture are GBP [...], GBP [...] and GBP [...] for Thomas Cook, Co-operative Group Limited and Midlands Co-operative Society Limited, respectively.

² Co-operative Group Limited also owns a majority shareholding in the Freedom Travel Group, which is also transferred. Freedom Travel Group is a buying group of over 100 independent travel agents, which allows independently branded travel agents to benefit from increased buying strength.

³ The parts of Thomas Cook Retail Ltd which do not comprise a retail travel agency business (including central services, tour operations and the provision of insurance services) are not included in the transaction.

⁴ The Freedom Travel Group shall remain operational following completion of the proposed transaction. However, it does not have any right of management or other form of control over the operation of the businesses of its member, which remain independently owned.

III CONCENTRATION

8. With a majority of shares and votes, Thomas Cook alone will exercise decisive influence over strategic commercial decisions of TCCT. Certain board and shareholder decisions will require the approval of Co-operative Group Limited and Midlands Co-operative Society Limited, as minority shareholders, before they can be taken by TCCT. However, these veto rights⁵ do not go beyond minority shareholder protection rights and as such do not confer joint control.
9. The notifying party submits that the acquisition of control by Thomas Cook of CGL and Midlands constitutes a single concentration as these two transactions are unitary in nature.
10. As the Shareholder Sale Agreements between the parties foresee that the transfer of CGL to TCCT is conditional upon the transfer of Midlands to TCCT and vice versa, the proposed acquisition of sole control by Thomas Cook of CGL and Midlands constitutes a single concentration⁶ within the meaning of Article 3(1)(b) of the Merger Regulation.

IV EU DIMENSION

11. The undertakings concerned have a combined aggregate worldwide turnover in excess of EUR 5 000 million (for Thomas Cook EUR 10,621 million, for CGL EUR 277.5 million and for Midlands EUR 31 million). At least two of the undertakings concerned have an EU-wide turnover in excess of EUR 250 million (Thomas Cook EUR 9,875 million and CGL EUR 277.5 million). Thomas Cook does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. Therefore, the notified operation has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

V ASSESSMENT

12. The OFT requests the referral of the notified concentration for review to the UK authorities under both Article 9(2)(a) and Article 9(2)(b) of the Merger Regulation. The OFT considers that there is sufficient evidence to raise *prima facie* competition concerns that warrant closer consideration in order to reach a definitive view.
13. The request under Article 9(2)(a) of the Merger Regulation is based on concerns that the concentration threatens to significantly affect competition in the distribution of holidays via retail travel agency outlets in the UK and a number of affected UK regions. Moreover, the OFT considers that it is not in a position, without a fuller consideration, to assess the vertical effects of the concentration, nor the extent to which any vertical effects may have anti-competitive effects.

⁵ These veto rights for Co-operative Group Limited cover *inter alia* investments valued at more than GBP 5 million and the formation or acquisition of any subsidiary. All investment made over the past 5 years by Thomas Cook in relation to its retail business were well below the GBP 5 million threshold. As a consequence, this veto right appears to be insufficient in order to allow Co-operative Group Limited to block commercial decisions of TCCT. In addition, the veto rights accorded to Midlands Co-operative Society Limited are even more limited covering *inter alia* the raising of TCCT's indebtedness to both other shareholders and the purchase or redemption of any share capital.

⁶ Commission Consolidated Jurisdictional Notice, at paragraph 43, OJ C 95, 16.04.2008, p. 1-35.

14. The request under Article 9(2)(b) of the Merger Regulation is based on concerns that the concentration may result in a reduction in the number of travel agencies in a significant number of local areas in which the parties' activities overlap. The OFT considers that the degree of competitive constraint exerted by the parties on one another and by local independent retail outlets may differ significantly between areas and remains to be examined in detail.

A Market definition

1) Product market definition

15. Thomas Cook, CGL and Midlands are all active in the leisure travel sector. Their activities overlap in the retail and to a very small extent in the online distribution of holidays in the UK. As Thomas Cook is also active in the upstream market for the supply of holidays, there are also vertical relationships between the parties.
16. The notifying party submits that the relevant product market is the market for holiday distribution (including package holidays, flights, hotel and other accommodation bookings), encompassing all distribution channels, namely bricks-and-mortar travel agencies⁷, online distributors and call centres.⁸
17. Most travel agents distribute the travel products of a range of tour operators and other suppliers. They are generally remunerated by a commission (calculated as a percentage of the price of the tour package or other travel product sold) negotiated with the supplier of the service concerned. Integrated travel companies such as Thomas Cook distribute their own products as well as those of other tour operators.
18. In past decisions, the Commission made a distinction between markets for the distribution of package holidays and markets for the distribution of independent holidays (where the consumer purchases the various elements individually)⁹. These decisions noted that for certain customer groups a package holiday provides greater convenience as well as greater assurance than booking the different elements individually. A further difference between package holidays and independent holidays concerned the fact that the latter often do not provide the traveller with any protection against insolvency of the tour operator or travel service provider.
19. The notifying party submits that package holidays (including both traditional and dynamic packages) and independent holidays (including flights as well as hotel and other accommodation bookings) belong to the same overall holiday market. A dynamic package is a combination of flights and accommodation put together by the travel agent at the time of sale. Travel agents are able to supply such dynamic packages for their

⁷ In the present decision the terms bricks-and-mortar travel agencies, high street shops and retail outlets are used interchangeably.

⁸ As holiday distribution services are used only to a limited degree for domestic holidays in the UK, the focus of the analysis is the market for the distribution of overseas holidays.

⁹ Case COMP/M.1524 - Airtours/First Choice, paragraph 43; Case COMP/M.4601 - KarstadtQuelle/MyTravel, paragraphs 28 and following; and Case COMP/M.5462 - Thomas Cook Group/Gold Metal International, paragraphs 9 and following.

customers on the basis of the prices offered by flight and accommodation providers prevailing at the time of booking.

20. The Commission nevertheless considers that the evidence submitted by the notifying party is not sufficient to conclude that the distribution of package holidays would not constitute a separate market from the market for the distribution of independent holidays. Traditional tour operators sell a large share of their package holidays via high street travel agencies whereas airlines, hotels and other suppliers of independent holidays use to a larger extent online distribution channels. For instance, [...] of Thomas Cook's combined distribution revenues from the distribution of package holidays and [...] of Thomas Cook's combined distribution revenues from the distribution of dynamic packaging for the winter season 2008 and summer season 2009 are derived from sales via retail outlets, as opposed to [...] and [...] of Thomas Cook's combined distribution revenues from the distribution of flight-only and accommodation-only products, respectively. These figures show that personal advice in travel agencies is more important for package holidays than for other travel services. The market investigation showed diverging views on the question whether the distribution of other travel services (flights, hotels, etc.) should be part of the same product market as the distribution of package holidays.
21. In its past decisions, the Commission¹⁰ left open whether the market for holiday distribution via bricks-and-mortar travel agencies and the market for holiday distribution via agencies active online were distinct markets or were part of the same market.
22. The notifying party submits that the distribution of holidays in the UK has been transformed over recent years by the impact of the Internet and that a distinction between bookings made through a travel agent's retail outlet and other distribution channels (online and telephone sales) is no longer appropriate.
23. The notifying party claims that the Internet has become an integral part of the holiday research and booking process, as it provides customers with ready access to a wide range of flight and accommodation options, while enabling a quick, easy and low cost comparison between different distributors and holiday types. It refers to Consumer Commerce Barometer 2010 which shows that 80% of people in the UK either book online or research online before booking offline. Moreover, according to the notifying party there has been a 20 percentage point increase in the proportion of holidays booked via the Internet between 2005 and 2009.¹¹ Finally, a substantial majority of discounts by Thomas Cook's high street shops are given in order to match internet discount.

¹⁰ Case M.1812 Telefónica/Terra/Amadeus; Case M.2794 Amadeus/GGL/JV; Case M.4600 TUI/First Choice; and Case M.4601 KarstadtQuelle/MyTravel.

¹¹ According to Mintel (Holiday Booking Process, Leisure Intelligence, March 2010) the percentage of holidays booked via the Internet rose from 34% in 2005 to 54% in 2009. During that same period the share of holidays booked via a visit to a travel agent dropped from 31% to 22% while the share of sales via the telephone dropped from 30% to 15%.

24. The OFT considers that the evidence provided in support of a wider product market is insufficient, especially for package holidays. Moreover, the OFT considers that for the significant proportion of consumers that continue to use retail travel agency outlets, service levels and quality may be a crucial factor in the competitive offering, which would be a further argument for a distinct market for holiday distribution via retail outlets.
25. The market investigation showed diverging views amongst travel agents, tour operators and consumer organisations in response to the question whether the Internet should be considered as a credible alternative to the distribution of holiday products through high street outlets. The responses to the market investigation indicate that commission rates and prices are somewhat (around 5%) higher for sales via high street agencies than for online sales.
26. The respondents to the market investigation considered the competitive constraint of the Internet to be stronger for flight-only and accommodation-only bookings than for package holidays. This finding appears to be confirmed by the observation that Thomas Cook sells [...] of package holidays and [...] of dynamic packages via high street outlets, as opposed to only [...] and [...], respectively, via the Internet. Thomas Cook argues that these figures may not be representative for the UK market as a whole since the company is traditionally focused on distribution via high street outlets. However, it is not obvious why the structure of the distribution channels used by one of the two large tour operators in the country should not be indicative for the distribution structure of the sector. Moreover, nationwide data by Euromonitor show that in 2009 only 30% of package holidays in the UK were sold online, which is well below the 64% of flights and 55% of accommodations sold via the Internet.
27. As the Euromonitor data does not distinguish between different customer groups, the notifying party provided data from internal documents as well as external studies in that respect. According to Thomas Cook no conclusion can be drawn that a particular category of customer is more likely to book in high street travel agencies. However, data provided by the notifying party regarding the sale of their up-market products via the Thomas Cook brand Signature indicate that Internet sales are very low (around [...]) in this segment. Furthermore, the market investigation showed that travellers wanting to book more complex packages, tailor-made trips, multi-sector itineraries, cruise holidays and group holidays made a greater use of high street agencies.
28. In light of these arguments, the Commission considers that at this stage it cannot be concluded that the competitive constraint of online distribution is sufficiently strong to consider it part of the same market as the distribution via bricks-and-mortar travel agencies. In any event, the competitive constraint exerted by online distribution seems to be weaker for the distribution of package holidays than for other travel services.

2) Geographic market definition

29. The notifying party submits that the market for the distribution of holidays is national in scope. It argues that the consumer's possibility to book online serves as an important competitive constraint on prices. Such a constraint would make market conditions sufficiently homogenous to consider the distribution market as national in scope. Even if there are certain customers which would only make purchases via high street outlets, the notifying party claims that there is no obvious way to identify and price discriminate

against that category of customers. According to the notifying party, the pricing of holidays sold through high street travel agencies is not driven by local market dynamics as the gross (pre-discount) selling price of a particular travel product is set nationally by the tour operator, airline or accommodation provider who also determines subsequent price adjustments during the season. According to the notifying party, the average level of discounts granted in Thomas Cook's travel agencies shows relatively little variation across regions in the United Kingdom and there appears to be no correlation between local concentration and the level of discounting in Thomas Cook's high street shops.

30. The OFT considers that the market for distribution of holidays is no wider than national, and may well be narrower in scope. It submits that there are aspects of competition that vary locally. In the referral request the OFT states: "Consumers shopping in retail outlets will likely do so locally within a given travel time from their place of residence or work, with the precise geographic size of these catchment areas varying according to the nature and frequency of the shopping trip, and accounting for wider constraints on this local competition."
31. In its comments to the OFT's referral request, the notifying party contests the OFT's argument that the retail travel market has local and regional characteristics as well as national characteristics. Thomas Cook refers to the Commission's findings in previous cases. This reference may only relate to the cases M.4600 TUI/First Choice and M.4601 KarstadtQuelle/Mytravel as distribution markets were not assessed in the two other Commission cases mentioned in the notifying party's comments.¹²
32. In its decisions in the cases M.4600 TUI/First Choice and M.4601 KarstadtQuelle/Mytravel, the Commission considered that the geographic market for the supply of travel agency services was national in scope. However, the decisions also referred to the outcome of the market investigations which identified some regional aspects in particular due to the fact that consumers are only prepared to travel a certain distance to reach a retail outlet and that retail agents compete by giving individual discounts.
33. The present transaction has some characteristics which were not present in the cases M.4600 and M.4601. First, the current transaction concerns the acquisition of two firms which are specialised in the distribution of holiday products, whereas the focus of cases M.4600 and M.4601 was on the supply of package holidays. Second, the 103 outlets of Midlands are confined to the East Midlands, West Midlands and Yorkshire regions and the concentration therefore has a relatively important competitive impact on the market structure in these regions. CGL is present nationwide (with 360 outlets) but its market share is relatively high in Yorkshire and the North and North West of England as well as in Northern Ireland and Wales. The impact of the proposed concentration is therefore particularly strong in those regions where Midlands is present and where CGL has a stronger footprint. This implies that the regional aspects of the present case deserve particular scrutiny.

¹² Case M.5462 Thomas Cook/Gold Medal International and Case M.5867 Thomas Cook/Öger Tours.

34. The market investigation in the present case provided diverging views on the geographic scope of the relevant market. Whilst the majority of travel agencies and tour operators considered the market as national in scope, consumer organisations have indicated that a possible market for the distribution of holidays via high street travel agencies would be regional in scope, reflecting the distance consumers are prepared to travel to book their holidays.
35. In spite of these different views on the geographic market definition, it is undisputed that the UK market for the distribution of holidays, irrespective of the exact product market definition, is not broader than national in scope.

B Assessment under Article 9(2)(a) of the Merger Regulation

36. The Commission has assessed whether the conditions for a referral on the basis of Article 9(2)(a) of the Merger Regulation were met, i.e. (i) whether the market presents all the characteristics of a distinct market within the United Kingdom and (ii) whether the concentration threatens to affect significantly competition in this market.
37. The OFT considers that these conditions are fulfilled for the retail market for travel agency services in the United Kingdom. If this is indeed the case, the Commission has discretion under Article 9(3) of the Merger Regulation whether or not to refer the notified concentration to the competent authorities of the United Kingdom.

1) Distinct market

38. The parties' activities overlap in the market for the distribution of holidays in the United Kingdom. The OFT considers that the market for the distribution of travel services, irrespective of the precise product market definition, is no wider than national and may well be regional or even local in scope due to the fact that consumers are only prepared to travel a certain distance to reach a retail outlet. The notifying party submits that the market for the distribution of holidays is national in scope. In their replies to the questions raised during the market investigation, a majority of tour operators and travel agencies considered the market for the distribution of holidays to be national in scope. Consumer organisations however expressed the view that the market for the distribution of holidays via high street travel agencies was regional rather than national in scope. In any event, irrespective whether the geographic scope of the market is UK-wide or narrower, the market for the distribution of holidays is a distinct geographic market within the meaning of Article 9 (2)(a) of the Merger Regulation.

2) Impact on Competition

39. The criterion of Article 9(2)(a) of the Merger Regulation that a concentration has to threaten to affect significantly competition is interpreted in paragraph 35 of the Commission Notice on Referrals¹³, according to which a Member State "is required to demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse impact on competition, and thus that it deserves close scrutiny".

¹³ Commission Notice on Case Referral, OJ, C 56, 05.03.2005, p. 2-23, paragraph 35.

40. According to the OFT, the proposed concentration threatens to affect significantly competition in the distribution of holidays via retail travel agency outlets in the United Kingdom and a number of affected regions due to horizontal overlaps between the parties and that there is sufficient evidence to raise *prima facie* competition concerns that warrant closer consideration of possible customer foreclosure effects associated with the activities of Thomas Cook in the upstream market for the supply of holidays.

a) Horizontal overlaps in the market for the distribution of holidays

Market structure

41. The notification presents market shares on a broad market for the distribution of overseas holidays in the United Kingdom, including the distribution of both package holidays (including both traditional and dynamic packages) and independent holidays (including flights as well as hotel and other accommodation bookings) via both high street outlets and other channels (Internet, telephone)¹⁴. Based on this broad market definition, the combined market share of the new entity would be approximately [10-20]%. According to the notifying party, the strongest competitors in this broad market for the distribution of overseas holidays in the United Kingdom are TUI Travel, Ryanair, Easyjet and British Airways/BA Holidays.

Table 1: Distribution of overseas holidays in the United Kingdom

Company	Number of passengers (x1000) W08/S09 ¹⁵	As a percentage of total number of passengers
Thomas Cook	[...]	[10-20]%
CGL	[...]	[0-5]%
Midlands	[...]	[0-5]%
Combined	[...]	[10-20]%
Freedom Travel Group + other managed services	[...]	[0-5]%
TUI Travel		[10-20]%
Ryanair		[10-20]%
Easyjet		[10-20]%
British Airways/BA Holidays		[5-10]%
Total	[...]	100%

Source: Thomas Cook, CGL, Midlands; total market on the basis of IPS data¹⁶

42. If the distribution of overseas holidays via bricks-and-mortar travel agencies (selling both package and independent holidays) were to be considered as a separate product market, the combined market share of the parties as measured by the number of travel outlets would be [30-40]%¹⁷.

¹⁴ Market shares are based on the number of individual passenger trips abroad (calculated as the sum of the number of package and flight-only passengers) provided by the International Passenger Survey (IPS).

¹⁵ W08/S09 stands for winter season 2008/09 and summer season 2009.

¹⁶ According to Thomas Cook the relevant data have been filtered so that they only cover holidays and excludes travel for the purposes of visiting friends and relatives, business and other miscellaneous trips.

¹⁷ Here and throughout this decision the combined market shares do not include CGL's shareholding in the Freedom Travel Group, which is also transferred. The Freedom Travel Group is a buying group that provides services to its members, which are independent travel agents. Members benefit from e.g., improved commissions, lower bank charges as well as front and back-office technology systems.

Table 2: Distribution of overseas holidays via bricks and mortar travel agencies

Company	Number of outlets	As a percentage of total number of outlets
Thomas Cook	[...]	[20-30]%
CGL	[...]	[5-10]%
Midlands	[...]	[0-5]%
Combined	[...]	[30-40]%
Freedom Travel Group + other managed services	[...]	[0-5]%
TUI	[...]	[20-30]%
Hays	[...]	[0-5]%
Flight centre	[...]	[0-5]%
Other registered outlets	[...]	[30-40]%
Total	[...]	100%

Source: Thomas Cook, CGL, Midlands; third party figures are calculated on the basis of ABTA data

43. In a possible market for the distribution of overseas package holidays through high street and other channels (Internet, telephone) the combined market share of the parties would reach [20-30]% (on the basis of IPS data) and [30-40]% (on the basis of LTM data¹⁸).

Table 3: Distribution of overseas package holidays in the United Kingdom

Company	As a percentage of total number of passengers W08/S09	
	<i>IPS data</i>	<i>LTM data</i>
Thomas Cook	[10-20]%	[20-30]%
CGL	[5-10]%	[5-10]%
Midlands	[0-5]%	[0-5]%
Combined	[20-30]%	[30-40]%
Freedom Travel Group + other managed services	[0-5]%	[0-5]%
TUI UK	[20-30]%	
Expedia	[5-10]%	
Hays Travel	[0-5]%	
Total	100%	100%

Source: Thomas Cook, CGL, Midlands; total market on the basis of IPS and LTM data

44. In a possible market comprising overseas package holidays distributed via high street travel agencies only, the parties' combined national market share would be [40-50]%, with an [5-10]% increment due to CGL and a [0-5]% increment due to Midlands (data based on the number of passengers). Based on revenue estimations, the parties would have a combined market share of [30-40]%, with increments of [5-10]% and [0-5]% due to CGL and Midlands, respectively.
45. Based on the estimations provided by the notifying party for the regional level, the combined market shares of the parties (in terms of both the number of passengers and revenue) would be higher than [40-50]% in 6 out of 12 regions, exceeding [70-80]% in Northern Ireland and being close to [50-60]% in East Midlands, the North West and Yorkshire. The market position of Thomas Cook in the North-West, Northern Ireland

¹⁸ GfK Ascent created the Leisure Travel Monitor (LTM), replicating the AC Nielsen methodology. AC Nielsen ceased to supply data in the travel sector in November 2006. LTM was used in the past by the Commission as an alternative data source for the analysis of the UK package holiday sector (Case M.5462 Thomas Cook Group/Gold Medal International). The parties do not consider that the AC Nielsen/LTM data provide the most accurate market share data for the package holiday sector, since according to the notifying party these data exclude in particular direct to consumer bookings of tour operators other than TUI and Thomas Cook.

and Yorkshire is considerably reinforced by the acquisition of CGL (with an increment of more than [10-20]%) and in East Midlands by the acquisition of Midlands (with an increment of more than [20-30]%).

Table 4: Regional distribution of package holidays via high street agencies

Standard region	Thomas Cook (Pax)	Thomas Cook (Revenue)	CGL (Pax)	CGL (Revenue)	Midlands (Pax)	Midlands (Revenue)	Total (Pax)	Total (Revenue)
East Anglia	[30-40]%	[30-40]%	[5-10]%	[5-10]%	-	-	[40-50]%	[30-40]%
East Midlands	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[20-30]%	[20-30]%	[40-50]%	[40-50]%
Greater London	[20-30]%	[20-30]%	[0-5]%	[0-5]%	-	-	[20-30]%	[20-30]%
North	[30-40]%	[30-40]%	[5-10]%	[5-10]%	-	-	[40-50]%	[40-50]%
North West	[30-40]%	[30-40]%	[10-20]%	[10-20]%	-	-	[50-60]%	[40-50]%
Northern Ireland	[40-50]%	[40-50]%	[20-30]%	[20-30]%	-	-	[70-80]%	[60-70]%
Scotland	[40-50]%	[30-40]%	[0-5]%	[0-5]%	-	-	[40-50]%	[40-50]%
South East	[30-40]%	[20-30]%	[0-5]%	[0-5]%	-	-	[30-40]%	[30-40]%
South West	[20-30]%	[20-30]%	[0-5]%	[0-5]%	-	-	[30-40]%	[20-30]%
Wales	[20-30]%	[20-30]%	[5-10]%	[5-10]%	-	-	[30-40]%	[30-40]%
West Midlands	[20-30]%	[20-30]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[30-40]%	[30-40]%
Yorkshire	[30-40]%	[30-40]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[50-60]%	[40-50]%
Total	[30-40]%	[20-30]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[40-50]%	[30-40]%

Source: CGL, Midlands; Thomas Cook and total market size figures are based on LTM data

Arguments of the OFT

46. Given the existing horizontal overlaps between the parties, the OFT considers the notified transaction raises significant *prima facie* competition concerns in the United Kingdom market for the distribution of holiday products for several reasons. First, on a national basis, the transaction would bring together the first and third largest networks of high street travel agencies, with a combined market share of [30-40]%. Moreover, the merger would remove the largest remaining "independent", i.e. apart from the two large vertically integrated groups TUI and Thomas Cook, group of retail travel agents in the United Kingdom. The OFT considers that this represents a significant structural change to the United Kingdom travel agency market.
47. Second, according to the OFT, apart from TUI with a [20-30]% market share, the remaining competitors are significantly dispersed as no other competitor would have a market share greater than 4%. The vast majority of remaining competitors would be independent travel agencies, with varying degrees of scale and scope. In particular, the OFT is wondering whether the market share estimates provided by the parties do not underestimate the pre-merger competitive constraint that CGL and Midlands have imposed on Thomas Cook. The distribution of holidays through fragmented independent travel agents would not be strong enough to replace the constraints of CGL with its nationwide network of outlets and Midlands with its strength in certain regions. The OFT considers that a fuller consideration needs to be made of the closeness of competition between the parties and the competitive constraint that they exert on each other.

48. Third, according to the OFT the high regional shares of supply in certain areas of the United Kingdom are by themselves sufficient to raise *prima facie* competition concerns. The OFT considers it possible that the degree of competitive constraint from retail competitors and from different distribution channels may vary by region.
49. Fourth, while direct sales have become very important for certain holiday components, such as flights and accommodation, the OFT considers that the high street remains an important sales route for 'all in one' package holidays, as they continue to account for around [...] % of Thomas Cook's package holiday sales. In the area of distribution of package holidays via retail outlets, the parties' combined shares of supply in certain regions exceed 40%.

Arguments of the notifying party

50. In response to these considerations of the OFT and in particular the argument that the merger would remove the largest independent chain of travel agents, the notifying party submits that, first, such argument ignores the constraints of online and direct bookings. In order to illustrate the relative importance of the competitive constraint of the Internet, the notifying party has provided additional evidence showing that 71% of price matching discounts provided by Thomas Cook's shops are to match prices posted on the Internet. Only around 20% of price matching discounts are offered in response to lower prices in other high street retail outlets.
51. Second, the notifying party considers that the OFT underestimates the large number of remaining independent travel agents, many of whom are members of networks under the umbrella of buying consortia such as those managed by the Advantage Travel Centre, TTA World Choice and the Global Travel Group. According to the notifying party, these consortia allow independent travel agents to compete on an equal footing with the larger travel agents by taking advantage of the improved buying power of the consortia when negotiating commission fees on behalf of members.
52. Third, the notifying party submits that the increased popularity of dynamic packaging has strengthened the competitive constraint of independent high street travel agents. Dynamic packaging allows independent travel agents to offer products at a competitive price. At the same time, most customers would not be able to distinguish between a traditional package of, for example, tour operators such as Thomas Cook and TUI Travel, on the one hand, and a dynamic package, on the other hand.
53. Fourth, the notifying party considers that the OFT overestimates the competitive constraint that CGL and Midlands have exerted on Thomas Cook. On the basis of an analysis by Thomas Cook of the discounts offered in its travel agencies the notifying party argues that there would be no discernible pattern between the level of discounting in Thomas Cook's high street shops and the regional concentration of CGL and Midlands stores. Moreover, on 17 December 2010, the notifying party submitted a note describing the impact that opening and closures of CGL and Midlands travel agencies have had on discounts given by neighbouring Thomas Cook travel agency outlets. Underlying data were not provided with the note. Based on simple before and after comparison as well as a difference-in-differences analysis, the note suggests that the impact of opening of CGL stores and of closures of CGL and Midlands stores on the discount provided by Thomas Cook stores is not statistically significant at the 5%-level.

Furthermore, based on the results of a telephone survey¹⁹, which the notifying party submitted on 22 December 2010, Thomas Cook argues that CGL and Midlands travel agency retail stores would not be close competitors of Thomas Cook stores.

54. Fifth, the notifying party questions the validity of the LTM data used as a basis for the estimation of regional market shares in the distribution of package holidays via high street agencies. According to the notifying party the LTM data do not capture all direct to consumer (i.e. through telephone or on-line) sales by tour operators, in particular not those direct to consumer sales by tour operators other than the two largest tour operators TUI and Thomas Cook. As an alternative the notifying party provides Thomas Cook's management estimates of the parties' combined regional shares for the supply of package holidays through retail outlets, including dynamic packaging and non-air packages. According to these estimates, the combined market share of the parties in Great Britain varies between [20-30]% in London and [30-40]% in the North West. The estimated market share in Northern Ireland is [50-60]%.

Assessment

55. The Commission has carefully assessed the arguments made by the OFT and the notifying party. The Commission observes that the proposed concentration undisputedly results in the absorption of the third largest travel agents group and in the creation of the largest travel agents group in the United Kingdom.²⁰
56. In response to the various arguments made by the OFT and the notifying party, the Commission first considers that the online distribution of holidays exerts some competitive constraints on high street travel agencies. However, these competitive constraints appear not sufficient to conclude that holiday distribution via bricks-and-mortar travel agencies and online holiday distribution are part of a single market for holiday distribution. In addition, online distribution seems to exert considerably less competitive constraints on the distribution of package holidays than on the booking of individual travel services such as flights or accommodation. Furthermore, in previous decisions the Commission has neither concluded whether the distribution of package holidays and the distribution of independent holidays are part of the same relevant market nor whether distribution through high street travel agencies and via the Internet are part of the same relevant market. Therefore, the broad market definition proposed by the notifying party on the basis of which the combined market share of Thomas Cook, CGL and Midlands would be approximately [10-20]% in the United Kingdom, does not appear to be the appropriate market definition for the assessment of the present transaction. Under all other possible market definitions presented above, the combined market share of the parties is considerable (between [20-30]% and [70-80]%, depending on the market).

¹⁹ The telephone survey was carried out in three regions in the United Kingdom (North West, Yorkshire, and Northern Ireland). In these three regions the merged entity achieves a high concentration. However, Midlands is not active in the North West and Northern Ireland and it has only a small presence in Yorkshire. The survey interviews 300 Thomas Cook retail stores customers that purchased a package holiday in the past three months, inquiring about their package holiday purchasing behaviour and their likely reaction to the closure of their Thomas Cook shop.

²⁰ Whereas the OFT submits that Thomas Cook is currently already the largest travel agent in the UK, the data provided by the notifying party rather suggest that TUI is currently slightly larger than Thomas Cook.

57. Regarding Thomas Cook's internal survey which suggests that the discounts given by Thomas Cook retail outlets were given mainly in response to Internet discounts, it needs to be noted that this purely internal survey does not allow to determine the importance of the competitive constraint. Even though the importance of online distribution has increased during the past years, [...] % of package holidays distributed by Thomas Cook are sold in high street travel agencies. This suggests that Thomas Cook's customers prefer purchasing package holidays in high street travel agencies even if discounts were higher for online booking.
58. Second, the notifying party's response seems to suggest that small independent travel agencies which are members of buying consortia can be considered as strong competitors as they would be part of larger entities. However, buying consortia do not have a corporate structure comparable to that of co-operative societies such as CGL and Midlands. Consequently, they cannot be considered as a single entity. The undertakings managing the buying consortia appear to be rather service providers for travel agents which continue to be independent. Moreover, the notification itself does in the description of the market structure not consider these consortia as an aggregate of a number of independent travel agencies.
59. Third, regarding the notifying party's submission that the increasing popularity of dynamic package holidays has strengthened the competitive position of independent travel agencies, this observation is also valid for CGL and Midlands, strengthening the argument that independent travel agencies such as CGL and Midlands exert an important competitive constraint on Thomas Cook.
60. Fourth, as to the notifying party's argument that CGL and Midlands would not have exerted strong competitive constraints on Thomas Cook, it is noteworthy that CGL is the third largest holiday distributor in the market and therefore necessarily exercises some competitive constraint on Thomas Cook and that Midlands has a strong footprint in some regions. The internal study submitted by Thomas Cook does not appear conclusive in showing that there is no link between the local concentration of travel agency outlets (including those of CGL and Midlands) and the level of discounts offered by Thomas Cook agencies. The regional variation in the levels of discounts (ranging from [...] % in Greater London to [...] % in the North West) may be explained by a number of factors, which merits further analysis. In this respect, it appears that the discounts offered by Thomas Cook are highest in a region where CGL is very strong. Moreover, the low level of discounts provided in the Greater London area would seem to be inconsistent with the argument that the competitive constraint of the Internet is predominant, as a more intensive Internet use would be expected in this area. With respect to the note submitted by the notifying party on 17 December 2010, the following remarks can be made. First, the simple before and after comparison shows an increase in discounts given in Thomas Cook stores following the opening of a neighbouring CGL store. Second, the difference-in-differences analyses show no statistically significant results at all, which may be attributed to a small sample size (13 relevant openings of CGL stores and 25 relevant closures of CGL and Midlands stores). Regarding the results of the telephone survey that were submitted on 22 December 2010, it is important to note that Thomas Cook customers are very loyal to the Thomas Cook brand. Half of the interviewed Thomas Cook customers booked their previous holiday with Thomas Cook as well. Of those customers that booked their holidays in a high street travel agency other than Thomas Cook one in six booked with CGL. If their Thomas Cook shop were to be permanently closed one in five customers would switch

to CGL.²¹ Both figures show a non negligible competitive constraint that would require some further investigation.

61. Fifth, as regards alternative estimates of regional market shares, the Commission at this stage is not convinced that data of an independent market intelligence service organisation should be less reliable than the estimate of the notifying party's management. Nevertheless, even on the basis of Thomas Cook's management estimates, regional market shares are high and reach [30-40]% in the North West, or [50-60]% in Northern Ireland.
62. Therefore, the Commission considers that the market definition proposed by the notifying party comprising the distribution of both package holidays and independent holidays via high street outlets or through other channels (Internet, telephone) appears to be too broad for the assessment of the present case. First of all, all three parties are mainly active in the distribution of package holidays via high street outlets. Therefore, the reciprocal competitive constraints amongst these high street travel agencies appear to be stronger than those exerted by online distribution, and in particular stronger than those exerted by online distribution of flights and accommodation only which seem to have different distribution patterns than package holidays.
63. Moreover, contrary to what is the case for flight-only and accommodation-only bookings, following Council Directive 90/314/EEC²² consumers are protected under the ATOL financial protection scheme in case of insolvency of the tour operator when they buy package holidays. Finally, there are significant differences (e.g. in terms of the level of online purchases) between the distribution of leisure flights and the distribution of package holidays. Such differences are indicative of the personalised advice that consumers expect when selecting a package holiday and its components. In this regard, it needs to be noted that the level of service differs between different distribution activities. For package holidays, and even more for dynamic packages, more advanced and personalised services are necessary to adapt the packages to individual customer needs, resulting in less competitive constraint by online distributors.
64. In the light of these considerations, in a possible market comprising package holidays distributed via high street travel agencies only, the parties' combined national market share would reach up to [40-50]%. Even if the distribution of overseas package holidays through all distribution channels were to be considered as a separate product market, the combined market share of the parties would still reach [20-30]% to [30-40]% (depending on the data source used). If the distribution of holidays (packages and individual) via high street travel agency outlets were to be considered as a separate product market, the combined market share of the parties would be [30-40]%.

²¹ According to the telephone survey 43% of the interviewed Thomas Cook customers that have booked package holidays in retail stores carry out research on the Internet. 21% would consider booking their holidays through the Internet if a retail store in the proximity would close.

²² Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p. 59–64.

65. If regional characteristics are taken into account, as submitted by the OFT and consumer organisations, the parties have an even stronger market position. On regional markets for the distribution of holidays via high street travel agencies their combined market shares are close to or above 50% in several regions with considerable increments of up to 20%.
66. The proposed transaction will create the largest distributor of holidays in the United Kingdom and lead to high market shares of the new entity under all plausible market definitions. Moreover, it will lead to the removal of the third largest competitor and of a strong regional player from the market. It will be very difficult for any other player to achieve a market presence that would enable it to replace the competitive constraint so far exerted by CGL and Midlands.
67. Therefore, the Commission considers that the OFT has demonstrated that, based on a preliminary analysis, there is a real risk that the proposed transaction may have a significant adverse impact on competition in the market for the distribution of holidays, and thus that it deserves close scrutiny. In the Commission's view the proposed concentration thus threatens to affect significantly competition in a distinct market, namely the United Kingdom or a part of it.

b) Vertical relationships

68. Thomas Cook is also active in the upstream market for the supply of holidays, including package holidays, flights, holiday accommodations and associated services. In the supply of short haul package holidays in the United Kingdom, according to estimates of the notifying party, Thomas Cook has a market share of [20-30]% (in the supply of long haul packages [10-20]%).

Arguments of the OFT

69. The OFT considers that there is evidence showing that the transaction may significantly increase Thomas Cook's ability and incentive to foreclose customers and to impair the ability of upstream tour operators to compete.
70. Regarding ability to foreclose, the OFT believes that CGL and Midlands are stronger competitors than their shares of supply by outlets suggest. While a significant number of retail outlets will remain in the market, according to the OFT, the transaction brings together the largest and third largest competing chain of retail outlets in the United Kingdom. The remaining outlets are smaller multiples or independent retail groups, which may not provide so effective and significant a network of outlets, with a good coverage across the country. CGL and Midlands may therefore represent an especially important route to market for independent third party tour operators.
71. The OFT further notes that the parties' shares of supply at a regional level may be higher than they are at national level. In addition, during their consultation, the OFT received indications that there may be a strong consumer preference in package holidays to fly from a nearby airport. As such, the absence of a strong independent distribution network at a regional level could potentially lead to foreclosure of tour operators at that level.

72. Regarding the incentives to foreclose, the OFT explains that, at this stage, not sufficient information is available to conduct a detailed examination of the likely effects on profitability and thus the incentives to foreclose. However, as currently CGL and Midlands primarily retail third party products, the OFT considers that following the transaction the incentives of the parties may be altered sufficiently in a way that more Thomas Cook products are stored, impairing access to market for third party tour operators.

Arguments of the notifying party

73. The notifying party submits that the merged entity has neither the ability nor the incentive to foreclose independent tour operators, even if the share of Thomas Cook products sold via CGL and Midlands outlets will likely rise. It claims that there is no evidence to suggest that other independent retail outlets do not provide a suitable alternative to the CGL and Midlands stores. In this regard, the notifying party argues that independent travel agents can and do compete on equal footing by joining buying consortia. These buying consortia would allow the independent tour operators to agree distribution and promotion arrangements with a substantial number of retail outlets based on a single negotiation with a buying group. By naming those buying consortia and showing the number of outlets and their geographic distribution²³, the notifying party claims that independent travel agents provide an equally effective route to market for independent tour operators.²⁴
74. Furthermore, the notifying party argues that there are a substantial number of alternative distribution channels to the markets, including via Internet sites, call centres and other retail travel agents (alternative chains of high street outlets present at national and/or regional level include TUI, Oasis Travel, Hays Travel, Althams, Wallace Arnold, Millingtons Travel, STA etc).
75. Moreover, on 22 December 2010, the notifying party submitted a note assessing the possibility of customer foreclosure. The note focuses on the ability to foreclose and analyses alternative routes to markets and economies of scale in the upstream market. Based on a number of assumptions, the notifying party claims that the merging parties only have a very limited ability to foreclose access to customers to third-party tour operators and that even if some foreclosure would take place any significant impact on competition would not appear likely.
76. In response to the submission by the OFT that tour operators offering package holidays from regional airports need access to a strong chain of regional shops and that the parties could therefore foreclose them in regions where they have a high concentration of shops, the notifying party indicates that agreements with tour operators as well as decisions for promotions are made on a national basis. Thomas Cook, CGL and Midlands have national systems and it would be impossible (and not profitable) to

²³ Advantage Travel Centres network (701 outlets), TTA World Choice (497 outlets), Global Travel Group (363 outlets).

²⁴ The notifying party further submitted a statement by the Association of Independent Tour Operators (AITO) that its members are not concerned about the proposed merger. However, it is estimated that around 80% of all 140 AITO tour operators only sell direct to customers (either online or by telephone) and therefore do not make use of high street shops.

refuse to stock third party tour operator holidays in a particular region. In that respect the notifying party provided an analysis for the East Midlands region, where the parties have a high concentration of stores. For the East Midlands airport, Thomas Cook estimated that less than 50% of all package holidays departing from there were sold via high street shops.²⁵ According to Thomas Cook, this would indicate that a significant number of customers book on the Internet or directly with the tour operator, and that therefore there would not be a regional customer foreclosure issue.

77. Regarding the profitability of a possible customer foreclosure strategy, the notifying party states that it is in the parties' interests to sell third party holidays. Currently, Thomas Cook distributes holiday products of 100 independent tour operators because it is profitable to do so and because customers often demand a broad range of brands/products. As a result of restricting access of these independent tour operators to its distribution network, Thomas Cook would forego all commission revenues corresponding to these sales and it would be unlikely that this could be compensated by additional sales of Thomas Cook products.²⁶ To underline the intention not to change the policy of stocking third party tour operator products, Thomas Cook wrote an open letter to the travel trade.

Assessment

78. The Commission observes that Thomas Cook has a [20-30]% market share on the upstream market for the supply of short-haul package holidays in the United Kingdom and that it will considerably strengthen its position on the downstream distribution market. A possible customer foreclosure scenario as described by the OFT is therefore, on the basis of the available information, not implausible.
79. At this stage, the Commission is not convinced that small independent travel agents, even if they are members of buying consortia, constitute an equally effective route to market for third party tour operators as the large retail outlet networks of CGL and Midlands. As indicated in paragraph 58, buying consortia appear to act solely as service provider for their independent members.²⁷ Even if buying consortia negotiate single framework purchase agreements on behalf of their members, the independent tour operators, and thereby reduce transaction costs, it is not guaranteed that the products of these tour operators are actually distributed via all the members of the consortia. The members are individual businesses that decide independently about the product range

²⁵ Estimation based on IPS and LTM market data for W08/S09 season.

²⁶ As an example, the notifying party submitted a recent sales promotion in Thomas Cook stores, which promoted ski holidays including a number of offers by third party tour operators. Following the promotion sales were up both for Thomas Cook and the third party tour operators involved.

²⁷ For example, the Global Travel Group provides the backup, support, licences, training and experience to help the independent agents to grow their business.

they offer. In view of its strong position on the distribution market, in particular for package holidays, the new entity may indeed have market power.²⁸

80. The note that was submitted by the notifying party on 22 December 2010 focuses on the ability to foreclose customers and explains that due to unavailability of the required information at the present time, an analysis of the merging parties' incentives to foreclose has not yet been undertaken. In terms of the abilities the note mainly summarises the information already provided earlier.²⁹
81. Furthermore, during the market investigation, several tour operators expressed concerns about the proposed acquisition of CGL and Midland by Thomas Cook. They fear a reduction in the number of distribution channels, the increase of commissions, and more directional selling in favour of Thomas Cook tour operations. Indeed, today the proportion of Thomas Cook holiday products distributed via Thomas Cook travel agencies measured in passenger numbers makes up two thirds of all holiday products distributed via these agencies. It is to be expected that in spite of the public announcement of Thomas Cook that it will continue to sell third party products, the current shares of Thomas Cook package holiday products in CGL and Midlands sales ([...]% and [...]%, respectively) will increase, while the shares in CGL and Midlands sales of package holidays supplied other tour operators will decrease. The question whether and to what extent the new entity would have an incentive to foreclose partly or totally other tour operators deserves close scrutiny.
82. At this stage the Commission considers that the submission by the OFT that tour operators offering package holidays from regional airports need access to a strong chain of regional shops requires a more detailed investigation. Moreover, it is not clear why less than 50% of all package holidays departing from the East Midlands Airport were sold by high street shops, whereas nationwide [...] % of Thomas Cook package holidays are sold via high street travel agencies. In addition, the notifying party has not provided information regarding the shares of other high street travel agencies in the sales of package holidays in the surroundings of the East Midlands Airport where the new entity would have a particularly strong presence.
83. Given the vertical link between the markets for the supply and distribution of holidays and the high market shares of Thomas Cook, particularly in the markets for the supply and distribution of travel packages, and the results from the market investigation, the Commission considers that the OFT has demonstrated that there is a real risk that the transaction might increase the likelihood of a possible total or partial customer foreclosure of independent tour operators by virtue of their reduced access to distribution through CGL and Midlands. The transaction thus deserves close scrutiny.

²⁸ Paragraph 61 of the Commission Guidelines on the assessment of non-horizontal mergers (OJ C265 of 18.10.2008, 6-25) states that "for customer foreclosure to be a concern, it must be the case that the vertical merger involves a company which is an important customer with a significant degree of market power in the downstream market".

²⁹ The note of 22 December 2010 provides some additional information on the average size of tour operators offered at Thomas Cook and CGL stores, which shows a bias towards larger tour operators.

Conclusion

84. The transaction results in the by far largest travel agents group in the United Kingdom and market leader for the distribution of holiday products. It leads to high combined market shares of the parties, both at the national level and even more at the regional level. Furthermore, it removes the most important independent distributor for holiday products in the United Kingdom. Against this background and in light of the outcome of the market investigation, it is concluded that in line with the Commission Notice on Case Referral³⁰, the United Kingdom has on the basis of a preliminary analysis sufficiently demonstrated that there is a real risk that the transaction may have a significant adverse impact on competition. In this regard it is recalled that such preliminary analysis may be in the nature of *prima facie* evidence, and is without prejudice to the outcome of a full investigation. It is therefore concluded that the requirements of Article 9(2)(a) are met.

C Discretion under Article 9(2)(a) of the Merger Regulation

85. The Commission, under Article 9(2)(a) of the Merger Regulation, has discretion whether or not to refer the case to the competent authorities of the United Kingdom.
86. According to the Commission Notice on Case Referral³¹, in exercising its discretion the Commission determines whether the competition authority requesting the referral is more appropriate for dealing with the merger.
87. First, the operation is entirely located in the United Kingdom. Indeed, the concentration does not have any impact on competition on markets in other Member States, since both CGL's and Midlands's activities are located within the United Kingdom only and since the overlaps between the parties following the operation are limited to the United Kingdom.
88. Second, the OFT has a thorough knowledge of the United Kingdom market. In this regard, the OFT is particularly aware of the current market conditions in distribution markets, as well as of the specificities in relation with regional aspects.³² Such aspects deserve particular attention in the present case because of the regional concentration of the activities of the combined entity in the Midlands, northern England, Scotland and Northern Ireland.
89. The notifying party considers the Commission to be the more appropriate authority due to its particular experience in the travel sector and the fact that the Commission has dealt with a considerably larger number of merger cases in the travel industry in recent years than the OFT.

³⁰ Commission Notice on Case Referral, paragraph 35.

³¹ Commission Notice on Case Referral, paragraph 37.

³² See case CWS/United Co-operatives (OFT, July 2007), case Co-operative Group/Somerfield (OFT, October 2008), case Home Retail Group/27 stores from Focus (OFT, April 2008).

90. As the notifying party acknowledges the OFT has recently dealt with one case in the travel industry and therefore has some recent experience in this industry. Moreover, the Commission considers that the OFT has a much better knowledge of local and regional markets in the United Kingdom which would be relevant for possible regional and local aspects, and of the dynamics of retail distribution markets in the United Kingdom.
91. Moreover, the notifying party referring to the principle of legal certainty³³ explained that it had no reason to expect that the Commission's primary jurisdiction would be displaced, in particular as previously two purely national cases were dealt with by the Commission.³⁴ However, these two cases concerned the market for the supply (and not the distribution) of holiday products and there was no request for referral by the Member State concerned.
92. The notifying party further submits that the additional delay involved by a referral would overlap with the peak period of business activity in the sector (January to March). In this regard, the Commission underlines that the notifying party was encouraged very early during the pre-notification phase (i.e. in early October 2010) to consider a referral under Article 4(4) of the Merger Regulation in view of the case's locus in the United Kingdom. Soon thereafter it was informed about the interest of the OFT in the case in view of a possible referral request under Article 9 of the Merger Regulation.
93. The Commission considers that, given the locus of the competitive effects of the transaction in the United Kingdom together with the experience of the OFT, the OFT is better placed to carry out a thorough investigation of the whole case.

D Assessment under Article 9(2)(b) of the Merger Regulation

94. The Commission has also assessed whether the conditions for a referral according to Article 9(2)(b) of the Merger Regulation are met i.e. whether the concentration affects competition in a market within the United Kingdom, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the internal market.
95. The OFT considers that these conditions under Article 9(2)(b) of the Merger Regulation are fulfilled for the United Kingdom.

Impact on competition in distinct market which does not constitute a substantial part of the internal market

96. While the notifying party argues that the geographic market for the distribution of holidays is national in scope, the OFT considers that there are aspects of competition that vary locally. Consumers shopping in retail outlets would likely do so locally within a given travel time from their place of residence or work, with the precise geographic size of these catchment areas varying according to the nature and frequency of the shopping trip.

³³ See paragraph 13 of the Notice on Case Referrals.

³⁴ Case M.5462 Thomas Cook Group/Gold Metal International and Case M.5867 Thomas Cook/Öger Tours.

97. More in particular, the OFT considers that the notified concentration may result in the reduction in the number of travel agency retail outlets, particularly in local areas where the parties' retail outlets overlap. According to the OFT, the reduction in the number of outlets may be significant enough as to raise competition concerns in some local areas. In light of the degree of competitive constraint exerted by the parties on one another in certain local areas, the OFT considers that there is sufficient evidence to raise *prima facie* competition concerns on a local basis.
98. The notifying party submits that it is not appropriate to consider the distribution of holidays (or package holidays) via retail travel agency outlets in isolation from other distribution channels, since a high proportion of customers use alternative national channels to research and book their holidays. The notifying party also contests that the pricing and service quality in retail outlets is driven by local dynamics, arguing that the level of discounting offered by the high street travel agencies is unrelated to local concentration.
99. On the basis of the information submitted by the OFT, it cannot be concluded whether the concentration affects competition in a distinct market which does not constitute a substantial part of the internal market. In particular, there is not sufficient evidence to conclude whether the local areas where competition concerns may be identified could form together areas of a sufficient size in order to constitute a substantial part of the internal market. However, as the conditions for a referral under Article 9(2)(a) of the Merger Regulation are met, it is not necessary for the Commission to take a position with respect to the referral request under Article 9(2)(b) of the Merger Regulation.

VI CONCLUSION

100. It follows from the above that the conditions for a referral under Article 9(2)(a) of the Merger Regulation are met. The Commission also considers that, given the geographical scope of the markets affected by the transaction and the locus in the United Kingdom of any impact on competition resulting from the merger, the competent authorities of the United Kingdom are better placed to carry out a thorough investigation of the whole case, and that it is therefore appropriate for the Commission to exercise its discretion under Article 9(3)(b) of the Merger Regulation so as to grant the referral of the entire case.
101. As the conditions for a referral under Article 9(2)(a) are met, it is not necessary to take a position with respect to the referral request under Article 9(2)(b) of the Merger Regulation.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration resulting in the acquisition of control of the travel business of Co-operative Group and the travel business of Midlands Co-operative Society is referred in its entirety to the competent authority of the United Kingdom, pursuant to Article 9(3)(b) of Council Regulation (EC) No 139/2004.

Article 2

This decision is addressed to the United Kingdom.

Done at Brussels, 6.01.2011

*For the Commission
(signed)
Joaquín ALMUNIA
Vice-President*