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Case No IV/M.662 - Leisure Plan

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.662 - LEISURE PLAN

Notification of **22.11.1995** pursuant to Article 4 of Council Regulation No 4064/89

On 22.11.1995 the Commission received a notification of an operation whereby Leisureplan (Pty) Ltd. ("Leisureplan"), the Thomas Cook Group Ltd. ("Thomas Cook"), and Philips Media Services B.V. ("Philips Media") establish a joint venture, to be named LPI Ltd ("LPI"), which will develop and market worldwide a multimedia travel information planning and booking system for professional providers of travel services.

After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES AND THE OPERATION

The business activities of the undertakings concerned are:

- Leisureplan: a South African company active in the development of multimedia software for travel planning.
- Thomas Cook: a U.K. company active in the travel services sector.
- Philips Media: a Dutch company active in the development of software in publishing and media applications.
- LPI.: a U.K. company active in the development of a multimedia travel information system for professional travel agents.

The joint venture involves the incorporation of a joint venture company, LPI, with its shares to be held in three equal proportions by Leisureplan, Thomas Cook and Philips Media. LPI will be active in the development and marketing worldwide of a multimedia

travel information planning and booking system which is a point-of-sale tool for professional providers of travel services such as travel agents.

Leisureplan was founded approximately three years ago in Cape Town South Africa to develop multimedia software to assist travel professionals in the selection and booking of travel products.

Leisureplan will contribute to the joint venture company all its travel related assets consisting primarily of software, a database, systems and processes for the operation of a multimedia travel information planning and booking system. Both Thomas Cook and Philips Media will contribute to the joint venture company a cash capital contribution.

II. CONCENTRATION

Joint control

The shares in LPI will be held in equal proportions of one third by each of Leisureplan, Thomas Cook and Philips Media. Each shareholder has the right to be represented on the Board of Directors of the joint venture company by appointing two of its members. Decisions of the board are to be made by consensus of Leisureplan, Thomas Cook and Philips Media. If consensus of the parties cannot be reached after ninety days it has been agreed that the resolution will be referred to an independent mediator who will, after hearing the parties, recommend a solution in the best interests of the company and the parties will adopt the mediator's recommendation as a resolution in accordance with the decision making rules on unanimity contained in the Agreement. The effect of this arrangement is that all decisions of the company will be taken by consensus of all the shareholders.

Concentration

LPI will be a concentrative joint venture. The parents will not operate in the same market as LPI. Thomas Cook operates downstream of LPI, and is expected to be a potential customer but not the major one. Similarly, Philips Media operates upstream of LPI, and will supply some hardware and software, but LPI will not be the main customer of Philips Media.

With the contribution to LPI by Leisureplan of all its travel related assets (software, database systems, copyrighted materials, fixed assets, and goodwill), and by the contribution to LPI by Thomas Cook and Philips Media of an appropriate amount of liquid capital, LPI will have the means to perform on a lasting basis all the functions of an autonomous economic entity.

III. COMMUNITY DIMENSION

The undertakings concerned have a combined aggregate worldwide turnover in excess of 5000 million ECU. Each of Thomas Cook and Philips Media has a Community-wide turnover in excess of 250 million ECU, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

Leisureplan (and hence LPI) does not as yet have any turnover in the EU.

The product to be marketed worldwide by LPI is the Leisureplan Multimedia Global Travel Information System (the "LP System"). This is a multimedia travel information, planning and booking system designed primarily as a "point of sale" tool for professional providers of travel services. The LP System is designed to assist consumers in the choice of travel products such as accommodation, tours, attractions and transportation and can facilitate bookings of these products. The database for the LP System will initially be offered on CD-ROM and as an on-line service via Computer Reservations Systems and the Internet. The LP System is a large global multimedia (combined image and text) database, covering hotel accommodations, tours, attractions, and transport facilities in all major travel destinations world-wide. The CD-ROM software has been designed to mirror a person's intuitive decision making process (identify preferences, compare among products, and decide between them), and guide the user through that process. Because all information is carefully captured, edited and presented in a standardised way, the user is able to compare products easily across categories.

Horizontal relationships

The LP System will be unmatched by any products currently on the market. Such products can be divided into those offered by Airline Computer Reservation Systems ("CRS") companies, and those developed and distributed by non-CRS companies.

As far as CRS companies are concerned, no product offers the degree of sophistication provided by the LP System. For instance, a US company called "Galileo" offers a multimedia hotel location mapping system in North America, but the product (called "Spectrum") does not offer video imaging. Again, non-CRS companies do not currently offer products which compete directly with the LP System. For example, Microsoft is developing a system of a similar nature, but does not provide multimedia hotel information or search and compare facilities. Hence LPI will in effect be creating a new market in the EU, with a product for which there are currently only imperfect substitutes.

Vertical relationships

As already stated, Philips Media operates upstream of LPI and will supply some hardware and software but LPI will not be the main customer of Philips Media.

Again, Thomas Cook operates downstream of LPI, and is expected to be a potential customer.

However, it is the intention that the LP System shall be marketed worldwide, and Thomas Cook will not be the major customer of LPI. In previous decisions⁽¹⁾ the Commission has defined the markets for travel services as national in scope. Thomas Cook's current share of the UK market is about [...] ⁽²⁾ for travel agency services and [...] ⁽³⁾ for the tour operations sector. Thus Thomas Cook will be only one of many

(1) IV/M.229 - Thomas Cook / LTU / West LB

(2) Business secret - less than 20%

(3) Business secret - less than 10%

organisations in the travel services sector which may benefit from any competitive advantages to be derived from the LP system, and Thomas Cook does not in any event have high market shares in any EU market in this sector.

V. ANCILLARY RESTRAINTS

The parties to the joint venture have agreed that for a period of two years following the implementation of the joint venture they will not take an interest in any business which competes with the joint venture. This non-compete agreement is directly related and necessary to the implementation of the concentration, in order to protect the value of the assets transferred.

CONCLUSION

It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,