

***Case No COMP/M.5867 -
THOMAS COOK/ ÖGER
TOURS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 14/09/2010

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5867 – Thomas Cook/ Öger Tours
Notification of 10/08/2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 10 August 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertaking Thomas Cook Group plc ("Thomas Cook", UK) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of a part of the undertaking Öger Tours GmbH ("Öger Tours", Germany) by way of purchase of shares.

I. THE PARTIES

2. **Thomas Cook** is a large leisure travel group which sells package and independent holidays, flights, hotel accommodation and travel agency services. It operates across Europe, North America, India and Egypt. Thomas Cook AG is a wholly-owned subsidiary of Thomas Cook.

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.

² OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

3. **Öger Tours** is a German based tour operator which sells mainly package holidays in Germany, but also to a lesser extent in the Netherlands, Austria, Denmark and Switzerland, with a strong focus on holidays in Turkey. Öger Tours holds a wholly-owned subsidiary A.T.T. Touristik GmbH ("A.T.T."), as well as a [...] % share in Holiday Plan Turizm Isletmecilik ve Ticaret Anonim Sirketi ("Holiday Plan"), a Turkish company and a [...] % share (through A.T.T) in O&R Werbeagentur GmbH i.L. ("O&R").

II. THE OPERATION

4. On 11 July 2010, Thomas Cook AG and Mr. Vural Öger, the sole shareholder of Öger Tours, entered into a share purchase agreement pursuant to which Thomas Cook AG acquires 100% of the shares in Öger Tours from Mr. Öger. Holiday Plan and O&R's shareholdings will be transferred to Mr Öger upon closing of the transaction and will therefore not be acquired by Thomas Cook.
5. According to Thomas Cook the economic rationale of the operation is for Thomas Cook to broaden its product offerings by expanding its offering of package holidays in Turkey, and to achieve cost synergies.

III. CONCENTRATION

6. As a result of the operation, 100% of the share capital and voting rights in Öger Tours will be held by Thomas Cook AG and, thus, Öger Tours will become a wholly-owned subsidiary of Thomas Cook AG (and indirectly of Thomas Cook).
7. The operation is therefore an acquisition of sole control of a part of an undertaking within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ [Thomas Cook: EUR 10 621 million; Öger Tours: EUR [...]]. Each of them has an EU-wide turnover in excess of EUR 250 million [Thomas Cook: EUR 9 875 million; Öger Tours: EUR [...]], but none of them achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

V. RELEVANT MARKET

1. Leisure travel sector

9. Öger Tours achieves [90-100] % of its revenues in the segment of short haul destinations, more particularly in the sale of package holidays to Turkey. The notifying party considers that the relevant framework for the competitive assessment is the market for overall holidays, including both traditional packages and independent holidays, particularly for short-haul destinations.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p. 1).

10. In previous decisions however, the Commission has found that package holidays constitute a separate market from holidays where the consumer purchases the various elements individually (independent holidays).⁴⁵ In previous decisions the Commission has also made a distinction between package holidays to long haul destinations as opposed to short haul destinations⁶. This view was supported by the General Court in *Airtours v. Commission*⁷. "Long haul" destinations are defined as all overseas destinations involving a flight time substantially in excess of three hours: the Caribbean, the Americas and South/East Asia. "Short haul" destinations include all European (mainland and islands) as well as North African destinations. This includes Eastern Mediterranean destinations and the Canary Islands, despite the fact that flights to these destinations may take up to four hours. Although the Commission has not defined in its previous decisions separate markets based on the country of destination, it has considered the possibility of such segmentation⁸.
11. The Commission has considered in previous decisions that the markets within the EEA for the supply of foreign (long and short haul) package holidays are still essentially national in character⁹. The same conclusion can be reached for the supply of package holidays to a specific destination.
12. According to all respondents to the market investigation, package holidays and independent holidays belong to the same overall product market¹⁰. Most respondents also indicated that a number of destinations (notably Egypt, Morocco and Tunisia) compete with Turkey, be it in terms of price, of quality or of climate.
13. For the purposes of the present case, the exact definition of the relevant product and geographic market may be left open as the proposed transaction does not give rise to any competition concerns under any conceivable market definition.

⁴ COMP/M.1524 - *Airtours/First Choice*, 22 September 1999, para. 43; COMP/M.4601 - *KarstadtQuelle/MyTravel*, 4 May 2007, paras. 28 et seq; COMP/M.5462 - *Thomas Cook Group/ Gold Metal International*, 30 March 2009, paras 9 et seq.

⁵ In the most recent decisions, the Commission noted that certain changes had occurred in the market, such as the significant growth in Internet usage, which meant that independent holidays could exercise a certain competitive constraint on package holidays. However, the Commission did not consider these elements to be sufficient to conclude that package holidays and independent holidays are part of the same market.

⁶ COMP/M.1524 - *Airtours/First Choice*, 22 September 1999, para. 28; COMP/M.4601 - *KarstadtQuelle/MyTravel*, 4 May 2007; COMP/M.4600 - *TUI/First Choice*, 4 June 2007, para. 31.

⁷ Case T-342/99 - *Airtours v. Commission*, 6 June 2002, paras. 21-44.

⁸ COMP/M.4601 - *KarstadtQuelle/MyTravel*, 4 May 2007, para. 25.

⁹ COMP/M.1524 - *Airtours/First Choice*, 22 September 1999, para. 43 and COMP/M.4601 - *KarstadtQuelle/MyTravel*, 4 May 2007, para. 28 et seq.

¹⁰ 7 out of 7 respondents have considered that package holidays and independent holidays are the same product markets.

2. Wholesale supply of airlines seats

14. Through its airline company Condor, Thomas Cook is a supplier of individual seats, block seats or entire flights to tour operators which integrate them into package holiday offerings. Öger Tours does not operate its own airlines but still supplies seats on a flights-only basis to customers both directly to end-consumers and to travel agencies. Öger Tours' flight-only sales relate almost entirely (to [90-100]%) to short-haul destinations.
15. In its previous decisions, the Commission has defined a separate product market for the supply of seats on charter flights to tour operators (i.e. excluding seats supplied to tour operators by scheduled airlines). This product market has also been further subdivided between short haul destinations and long haul destinations. The Commission has also found in previous decision that the market for the wholesale supply of airline seats to tour operators was national in scope.¹¹
16. For the purposes of the present case, the exact definition of the relevant product and geographic market may be left open as the proposed transaction does not give rise to any competition concerns under any conceivable market definition.

3. Purchase of hotel accommodations

17. The Commission has defined in previous decisions a global market for the purchase of hotel accommodations in destination holidays resorts.¹² Nevertheless, for the present case, the Commission has considered the possibility of a narrower segmentation. As it cannot be excluded that from the perspective of German consumers, the supply of package holidays to Turkey is a relevant product market within the overall market for package holidays to short-haul destinations, the purchase of hotel accommodations in Turkey for incorporation into a package holidays sold to German customers could be considered.
18. The notifying party however argues that German tour operators compete with foreign tour operators for the purchase of hotel accommodation in Turkey. This argument has been confirmed by the market investigation¹³.
19. For the purposes of the present case, the exact definition of the relevant product and geographic market may be left open as the proposed transaction does not give rise to any competition concerns under any conceivable market definition.

VI. COMPETITIVE ASSESSMENT

20. Since Thomas Cook and Öger Tours are both active as tour operators, the operation gives rise to horizontal overlaps in the leisure travel sector, in particular in Germany¹⁴. While

¹¹ COMP/M.4601 - KarstadtQuelle/MyTravel, 4 May 2007, paras. 44-45.

¹² COMP/M.4601 - KarstadtQuelle/MyTravel, 4 May 2007, paras. 46-47.

¹³ 5 out of 7 respondents consider that German tour operators compete with non-German tour operators for the procurement of hotel accommodations in Turkey.

¹⁴ This also includes the procurement of hotel accommodation in Turkey.

there are also overlaps in other Member States (the Netherlands, Austria and Denmark), these are *de minimis*¹⁵. As Öger Tours sells only package holidays, the competitive assessment focuses on package holidays.

21. The operation also gives rise to vertical overlaps, mainly upstream of the market for the supply of holiday products since Thomas Cook is a provider of airlines seats to tour operators, including (potentially) Öger Tours.

1. Non-coordinated effects

Supply of holidays in Germany

22. On the overall holiday market (package holidays and independent holidays) for short haul destinations in Germany, the parties' combined market share will not exceed [10-20]% (Thomas Cook: [10-20]%; Öger Tours: [0-5]%). Furthermore, the new entity will still face numerous significant competitors: TUI [20-30]%, REWE [5-10]%, Alltours [5-10]% or FTI [5-10]%).
23. On a narrower market of package holidays for short haul destinations in Germany, the parties' combined market share will not exceed [10-20]% (Thomas Cook: [10-20]%; Öger Tours: [0-5]%). The new entity will still face numerous significant competitors: TUI [20-30]%, REWE [10-20]%, Alltours [5-10]% or FTI [5-10]%).
24. On each of these markets, the increment resulting from the proposed transaction is limited <[0-5]%. Given the limited market shares of the parties and the presence of other important competitors, the operation would not significantly impede effective competition in the common market or a substantial part thereof.
25. Should this market be further segmented on the basis of the country of destination, the parties' combined market share would be [20-30]% (Thomas Cook: [10-20]%; Öger Tours: [10-20]%) for the supply of package holidays to Turkey in Germany. The new entity would however still face numerous significant competitors: TUI [20-30]%, Alltours [10-20]%, REWE [10-20]% and FTI [5-10]%).
26. Travel agents who responded to the market investigation largely confirmed that the new entity will still face significant competition in Germany, primarily from GTI, TUI and REWE¹⁶.
27. For the above reasons, the operation does not give rise to any non-co-ordinated effects on any concerned markets of the supply of holidays in Germany.

Procurement of hotel accommodations

28. Both Thomas Cook and Öger Tours purchase hotel accommodations for their holiday products. As indicated above, the only destination at which Öger Tours has a significant business [90-100]% is Turkey.

¹⁵ In each of these Member States, the estimated market shares of Öger Tours are far below [0-5]% whereas Thomas Cook's market shares do not exceed [10-20]%).

¹⁶ 5 out of 5 respondents have indicated that Thomas Cook would continue to face significant competitors for the offer of package holidays to Turkey in Germany after the merger.

29. The notifying party has indicated that Thomas Cook and Öger Tours account only for a moderate share of the overall demand for hotel accommodations in Turkey below [10-20]%. They consider that they compete with other tour operators offering holidays in Turkey for German customers such as, e.g., TUI, 1-2-FLY, Schauinsland, Alltours, JAHN Reisen, Tjaereborg, FTI and IT Reisen. They consider that they also compete for the same accommodations with tour operators selling holidays in Turkey for other nationalities (especially from Russia).
30. Regarding the purchase of hotel accommodations for German customers in Turkey, the parties' combined market share would be [20-30]% (Thomas Cook: [10-20]%; Öger Tours: [10-20]%. The new entity will still face numerous significant competitors: TUI [20-30]%, Alltours [10-20]%, REWE [10-20]%, and FTI [5-10]%
31. A market investigation was conducted amongst several hotel operators in Turkey. Although the response rate was low, there was no indication that the transaction was problematic for the hotel operators in Turkey. It seems that, even if the new entity may increase its bargaining power, the hotel operators will still have the ability to get offers from other tour operators. The market investigation was inconclusive on the question whether German tour operators compete with non-German tour operators for the procurement of hotel accommodation in Turkey.
32. For the above reasons, the operation does not give rise to any non-co-ordinated effects on any concerned markets of the procurement of hotel accommodations.

2. Coordinated effects

33. On both the supply of package holidays to Turkey in Germany and the purchase of hotel accommodations for German customers in Turkey, the new entity will face competitors with quite similar market shares (in particular TUI). Moreover, one competitor has alleged during the investigation that the transaction will lead to co-ordinated effects.
34. The above situation justifies an assessment as to whether the concentration may give rise to concerns of coordinated effects in these narrowly defined markets. In case of wider product markets, which would include independent packaging, such an assessment would not be necessary, given the resulting lower market shares which reduces the risk of coordinated effects.
35. In line with paragraphs 39 to 57 of the Horizontal Merger Guidelines, there are four main conditions for a situation of collective dominance to arise. As a result of the merger, first, competitors can easily reach a common understanding on the terms of coordination. Second, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Third, there is some form of credible deterrent mechanism that can be activated if deviation is detected. Fourth, 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.
36. In the present case, first, the two markets considered are not highly concentrated. On the hypothetical German market for short-haul package holidays in Turkey, the share of the three largest tour operators (Thomas Cook/Öger Tours, TUI and Alltours) is estimated at [60-70]%, leaving a competitive fringe of almost [30-40]% including significant players. On the hypothetical market for the purchase of hotel accommodation in Turkey for German customers, the share of the three largest tour operators (Thomas Cook/Öger

Tours, TUI and Alltours) is estimated at [60-70]%, leaving a competitive fringe of almost [30-40]% including significant players. Moreover, these hypothetical markets are highly differentiated which makes coordination more difficult. The Commission acknowledged in a prior case that certain developments in the leisure industry seem to complicate reaching terms of coordination¹⁷.

37. Second, transparency on both markets is affected by the volatility of demand tastes. In particular, demand for package holiday or accommodation in Turkey is very sensitive to political tensions, natural disasters and exchange rates. Consequently, the internal capacity planning process applied by a tour operator before the selling season is the result of a complex subjective assessment which makes it non-transparent to other market participants. Moreover, irrespective of whether or not other destinations are in the same market, pricing and capacity decisions that tour operators take with respect to other short-haul destinations affect the attractiveness of Turkey relatively to other destinations. Therefore, in order to successfully coordinate even just with respect to Turkey, tour operators would have to monitor their respective strategies and behaviour with respect to many other destinations. In addition, Thomas Cook and TUI are offering package holidays and accommodation in Turkey to customers from all Member States, which adds another level of complexity to a potential coordination.
38. Third, there does not seem to be effective retaliation mechanism that can be activated for deviating firms. Over one season, unless the total number of holidays offered is increased in parallel, lowering prices would simply be detrimental to the punishing firms. Moreover, the punishing firm might well face additional marketing costs (e.g., the costs of additional 'late' brochures), as well as the possibility of causing customer dissatisfaction amongst early bookers of similar products who see fellow travellers booking an equivalent holiday at a much lower price. Retaliation over several seasons is less likely to offset the benefits from deviating considering the significant time lag between the deviation and the retaliation¹⁸.
39. Fourth, there seem to be significant competitive constraints present on these markets which would destabilise any coordination attempt. On the hypothetical German market for short-haul package holidays in Turkey, major tour operators face effective competition from smaller independent traditional short haul tour operators offering Turkish destinations (such as FTI, GTI, Schauinsland, Phönix-Reisen and V-Tours), from the growing independent/dynamic packaging offerings, that allow travellers to combine flight and accommodation options of their choice and from the other offerings to short-haul and long-haul destinations. On the hypothetical market for the purchase of hotel accommodation in Turkey for German customers, major tour operators face effective competition from smaller independent traditional short haul tour operators offering Turkish destinations, from tour operators selling holidays in Turkey to holidaymakers in other countries inside and outside the EU, from other sales channels for hotel capacity (including bed banks, internet portals, etc.).
40. The market investigation confirmed to a large extent most of these elements. It confirmed the existence of alternative players on those markets with a respondent

¹⁷ COMP/M.4601 - KarstadtQuelle/MyTravel, 4 May 2007, para. 95.

¹⁸ See paragraph 53 of the Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings.

indicating that around 120 companies would be active on the markets at stake in Germany. Moreover, as already mentioned, the market investigation indicated that Turkey competes with a number of other destinations.

41. Accordingly, the merger is unlikely to have coordinated effects on (i) the supply of package holidays to Turkey in Germany and (ii) the purchase of hotel accommodations for German customers in Turkey.

3. Vertical relationship

42. On the wholesale supply of airlines seats to tour operators for short-haul destinations in Germany, Thomas Cook's market share is around [10-20]%. On broader markets, Thomas Cook's market shares are below this threshold. Moreover, its market share remains the same in case a narrower market for travels to Turkey is defined.
43. On this market, Thomas Cook faces two main competitors (Air Berlin – [30-40]%; Tuifly – [10-20]%), as well as numerous smaller actors (SunExpress – [0-5]%, Germanwings – [0-5]%, HHI – [0-5]%).
44. As seen above, the combined market shares of the parties are relatively limited on the downstream markets of the supply of holidays products (their highest market share is [20-30]% - on the supply of package holidays to Turkey in Germany, but with the presence of significant competitors). On the market for the supply of package holidays for short-haul destinations in Germany, the combined market share of the parties is below [10-20]%.
45. Such low market shares levels are sufficient to exclude any vertical foreclosure concerns on any of the concerned markets. Moreover, the market investigation confirmed that Öger Tours' position with regard to the purchase of flight seats to be incorporated into package holidays to Turkey in Germany has no specific strength or weakness¹⁹.
46. Therefore, no vertical concerns are likely to arise as a result of the relationship between the parties.

¹⁹ 5 out of 7 respondents consider that Öger Tours has not any specific strengths/weaknesses for the purchase of flight seats to be incorporated into package holidays to Turkey in Germany.

VI. CONCLUSION

47. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the European Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European
Commission