

***Case No COMP/M.2002 -
PREUSSAG / THOMSON***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/07/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.07.2000
SG (2000) D/105405

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M.2002 – Preussag/Thomson

Notification of 08.06.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 08.06.2000, the Commission received a notification of a proposed operation by which the German company Preussag AG ('Preussag') acquires control of the whole of the U.K. company Thomson Travel Group plc ("TTG") by way of a public bid announced on 12.06.2000
2. In the course of the proceedings, Preussag submitted an undertaking in accordance with Article 6(2) of the Merger Regulation in order to resolve doubts as to the compatibility of the proposed concentration with the common market (see below under 'Assessment'). Preussag has undertaken to divest its interest in Thomas Cook Holdings Ltd. ('TC'), and also to acquire and subsequently dispose of the shares in TC currently held by Westdeutsche Landesbank ('WLB'). The Commission has concluded that, subject to full compliance with the divestment undertaking, the notified operation falls within the scope of Council Regulation No. 4064/89 as amended 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 TRANSACTION

3. Preussag is head of a group of undertakings active world-wide in various sectors, including leisure travel through its ownership of 99.6% of the shares of TUI Group GMBH ('TUI') and its 50.1% interest in TC; the joint acquisition of TC by Preussag,

WLB and the Carlson group ('Carlson') was cleared by the Commission under the Merger Regulation on 8th March 1999 (Case No. IV/M.1341). WLB is a major shareholder in Preussag. TTG is also active in leisure travel which is the only sector where overlaps occur. TUI, TC, and TTG are all vertically integrated tour operators, all three having activities in tour operating, travel agencies, and charter airlines (see below under 'Assessment').

II. CONCENTRATION

4. Preussag is acquiring control of the whole of TTG and therefore the operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

5. Preussag and TTG have a combined aggregate world-wide turnover of more than EUR 5 billion¹. Each has a Community-wide turnover in excess of EUR 250 million, 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. COMPETITIVE ASSESSMENT

Relevant markets

6. The notifying party basically uses the same market definitions as were used by the Commission in its Airtours / First Choice decision (Case No.M.1524 of 22nd September 1999), that is, national markets for short-haul foreign package holidays, travel agency services, and the supply to tour operators of seats on charter flights to short-haul destinations. The Commission's investigation in the present case has confirmed that these definitions remain valid.
7. The Commission has also investigated the impact of the proposed transaction as regards the combined buying power of TUI and TTG on the procurement markets for hotel accommodation in destination holiday resorts. It is not necessary to define these markets in the present case, as the transaction does not raise competition concerns on any possible market definition (see below).

Assessment

8. Preussag's subsidiary TUI is active in leisure travel in Germany, Austria, Belgium, the Netherlands and Spain. TUI is also active in this sector in the U.K. and Ireland through its interest in, and joint control of, TC. TTG is active in the leisure travel sector in the U.K., Ireland, Denmark, Sweden, Finland and Norway.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

9. Therefore, the U.K. and Ireland are the only national markets which are horizontally affected to a significant degree by the proposed concentration, as a result of the combination of TTG and TC in these markets. The Commission's investigation in the present case has indicated that the transaction as notified would have raised serious doubts as to the creation of a collective dominant position in the U.K. market for short-haul foreign package holidays, between the major vertically integrated tour operators, that is TTG, TC, Airtours and First Choice, in view of the fact that the market conditions remain substantially the same as those identified and investigated in the Commission's decision in the Airtours / First Choice case (No IV/M.1524 of 22nd September 1999). The transaction would therefore have required in-depth investigation. In order to resolve these doubts, in the course of the proceedings Preussag submitted an undertaking in accordance with Article 6(2) of the Merger Regulation. Preussag has undertaken to divest its interest in TC, and also to acquire and subsequently dispose of the shares in TC currently held by WLB. The disposal of WLB's shareholding in TC is necessary since WLB is a major shareholder in Preussag (see above), and retention of its shareholding in TC would have created a link, post-merger, between TC and TTG. After appropriate investigation, the Commission has concluded that, subject to full compliance with the divestment undertaking, the notified operation will not create a dominant position in the relevant market.
10. Further overlaps are in the German markets for charter airline seats and travel agency services; these are minor and do not raise competition concerns.
11. As far as procurement markets for accommodation are concerned, Preussag is vertically integrated into accommodation, primarily in Spain and Greece, whereas TTG's accommodation interests are marginal, mainly situated in the Canaries. It has been the Commission's general practice to exclude self-supply from the relevant market, and to assess the impact of a concentration on the 'third-party' or 'free' procurement market.
12. Preussag has supplied data from official independent sources on the combined post-merger accommodation buying power of TUI and TTG on the 'free' market (based on combined demand for bednights, in turn based on official data on tourist arrivals by air), and these data indicate that combined demand exceeds 30% in only one area (Fuerteventura). The Commission's investigation has not indicated the creation of significant dependency of hotel owners on the bedstock purchases of the merged entity. More generally, the Commission's investigation has revealed that, particularly in view of planning restrictions and lead times for construction, accommodation is a relatively scarce resource, the supply of which cannot be rapidly expanded in the short term at least, and for which the major tour operators, all of whom are active in all major destination areas, must compete.

V. CONCLUSION

13. For the above reasons, and on condition that the undertakings described in the annex to the present decision are fully complied with, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA agreement. This decision is adopted in application of Articles 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission,
Mario MONTI,
Member of the Commission

PREUSSAG

Disposal Undertaking

Whereas on 8 June 2000 Preussag AG (hereinafter Preussag which shall also include subsidiaries of Preussag AG) notified the proposed acquisition of Thomson Travel Group plc.

Whereas Preussag wishes to submit commitments in order to resolve the competitive concerns which are likely to be raised by the Commission of the European Communities (hereinafter the Commission) with respect to the effects of the proposed concentration in the United Kingdom and Ireland and in order to achieve clearance pursuant to a decision under Article 6(1)(b) of Council Regulation (EEC) No. 4064/89 (as amended) (hereinafter the Regulation) of its acquisition of Thomson Travel Group plc. (hereinafter the Transaction).

Therefore Preussag offers these undertakings which shall be subject to the issuance of a decision pursuant to Article 6(1)(b) of the Regulation declaring the Transaction compatible with the common market and which shall take effect upon the date of this decision.

1. Without prejudice to paragraph 7, Preussag undertakes to enter into a binding agreement to dispose of its own shareholding and interest (which shall also include any shareholding and interest which Preussag may acquire after the date of this undertaking) in Thomas Cook Holdings Limited (hereinafter Thomas Cook) and of Westdeutsche Landesbank Girozentrale's (hereinafter WestLB which shall also include subsidiaries of Westdeutsche Landesbank Girozentrale) shareholding and interest in Thomas Cook (hereinafter the Combined Holding) by **[deleted]**. The purchaser shall be an undertaking independent of and unconnected to Preussag and WestLB and able to ensure that Thomas Cook shall be a viable company with the financial resources to continue its businesses. The purchaser shall have the ability to procure that Thomas Cook shall contribute to effective competition in the market and must reasonably be expected to obtain all other necessary approvals from the relevant competition and other regulatory authorities for the acquisition of the Combined Holding so as to permit the implementation of this undertaking within the time limits which are set out in paragraph 7 below. Preussag declares that it has an option to acquire WestLB's present shareholding and interest in Thomas Cook which will enable Preussag to fulfil its obligations arising from this undertaking.

2. Preussag, within the period of time set out in the first sentence of paragraph 1 above or, thereafter, the Trustee, referred to in paragraph 4 below, shall indicate to the Commission whether it believes that a purchaser with which it is proposed to sign a letter of intent or a contract fulfils the description of a suitable purchaser set out in paragraph 1 above, and if it considers that negotiations with such a purchaser should continue. In doing so, Preussag or, alternatively, the Trustee shall provide the Commission with a fully documented and reasoned proposal enabling the Commission to assess:
 - (a) whether the prospective purchaser satisfies the relevant purchaser criteria pursuant to the provisions of paragraph 1 above;
 - (b) the envisaged time of completion of the divestiture; and

(c) whether the purchaser has, or reasonably can be expected to obtain, all necessary approvals from the competent regulatory bodies.

Prior to approval, the Commission may request to meet the prospective purchaser and, if deemed necessary, ask for additional information.

3. If the Commission has not within ten (10) working days following receipt of a fully documented proposal for a prospective purchaser expressed in writing its disagreement, negotiations with such party as a suitable purchaser shall be free to proceed. If the Commission requests additional information, the receipt of such information shall constitute the starting point for the ten (10) working days referred to above. Provided the offers concerned have been received from purchasers recognised as suitable according to the procedure laid down in paragraph 2, Preussag alone or, alternatively, the Trustee shall be free to accept any offer or to select the offer it considers best in case of a plurality of offers.
4. Preussag shall nominate at least one Trustee in accordance with the provisions of this paragraph 4 to exercise the functions set out in paragraphs 6 and 7 below by 3 August 2000. The Trustee shall be an investment bank, bank or accountancy firm of international standing and a EU national.
 - (a) Preussag shall propose to the Commission the names of at least two institutions, independent from Preussag, WestLB and Thomson Travel Group plc, and either of whom Preussag considers appropriate to be appointed as Trustee.
 - (b) The Commission shall have the discretion to approve or reject the names submitted. If only one name is approved, Preussag shall appoint the institution concerned as Trustee. If more than one name is approved, Preussag shall be free to choose the Trustee to be appointed from among the names approved.
5. As soon as the Commission has given approval to one or more names submitted, Preussag shall appoint the Trustee concerned within seven (7) working days thereafter.
6. In order to ensure that
 - Thomas Cook is held separate from Preussag and WestLB and managed as a distinct, viable and saleable entity with its own management accounts;
 - Thomas Cook is independent from Preussag and WestLB and will have its own management, separate and distinct from that of Preussag and WestLB
 - Thomas Cook's management will, under the guidance and control of the Trustee and Carlson Companies Inc., manage Thomas Cook on an independent basis with the aim to continue its viability, to maximise its profitability and to enhance its market value and long term shareholder value;
 - all relevant assets (tangible and intangible) of Thomas Cook are maintained pursuant to good business practice and in the ordinary course of business;

the Trustee shall exercise the following functions and its mandate shall include these functions:

- (a) to hold, subject to regulatory approvals which may be required as a result of the financial services business of Thomas Cook (which is concentrated in The Thomas Cook Group Ltd., Thomas Cook Overseas Ltd., Thomas Cook Inc. and their respective subsidiaries), the Combined Holding on trust for Preussag and WestLB (for each in relation of their respective interest) so that neither Preussag nor WestLB will be involved in any way in the management of Thomas Cook and, without prejudice to paragraphs 10, 11 and 12 1, neither will be entitled to receive confidential business information regarding the travel business of Thomas Cook. In order to fulfil this task, the Trustee will in particular
- (i) exercise the voting rights of Preussag and WestLB which exist in relation to the Combined Holding in the best interest of Thomas Cook; reference in this subparagraph (a) and in the subparagraph (b) below to the rights in relation to the Combined Holding is a reference to the rights exercisable by Preussag and WestLB, taking into account also the arrangements between the Thomas Cook shareholders and is not limited to the rights attaching to the Combined Holding by virtue only of the statutes of Thomas Cook;
 - (ii) exercise the rights of Preussag and WestLB which exist in relation to the Combined Holding concerning the appointment and removal of Thomas Cook's Board and senior management;
 - (iii) agree to elect one of the directors of Thomas Cook who is in the employ of Carlson Companies Inc. as Chairman of the board and to consider all matters brought before the board by any director representing the interests of Carlson Companies Inc. or otherwise in the employ of Carlson Companies Inc.
 - (iv) exercise any other control rights of Preussag and WestLB in relation to the Combined Holding which the Commission regards as conferring or contributing to decisive influence over Thomas Cook;
- (b) pending the satisfaction of the regulatory requirements concerning the financial services business of Thomas Cook, to hold an irrevocable proxy to exercise all voting and other rights in relation to the Combined Holding with regard to all decisions relating to the travel business of Thomas Cook without any instruction from Preussag and/or WestLB and without any other restriction; this proxy will not extend to decisions relating to the financial services business of Thomas Cook and, in particular, the financial services business operated by Thomas Cook Inc. and its subsidiaries.
- (c) to monitor the satisfactory discharge by Preussag of the obligations entered into by Preussag in this undertaking;
- (d) to provide written reports (hereinafter the Trustee reports) to the Commission on progress with the discharge of the Trustee's mandate, identifying any respects in which the Trustee has been unable to discharge his mandate. Such reports shall be provided at regular monthly intervals commencing one month after the date of his appointment, or at such other time(s) or time periods as the Commission may specify.

7. If Preussag fails to enter into a binding agreement with a purchaser by **[deleted]**, the Trustee shall carry out the following additional functions, and the Trustee's mandate shall be deemed to be extended accordingly. The same shall apply if Preussag fails to complete the sale to a purchaser within **[deleted]** from the date of such agreement or within such a longer period of time as may be agreed between the Commission and Preussag in response to a request from Preussag. The Trustee shall ensure the proper sale of the Combined Holding for account of the owners in conformity with fair dealing by **[deleted]** (or by a later date provided that such

prolongation has been granted by the Commission upon request of Preussag) and shall give priority to the discharge of these additional functions. For the sale of the Combined Holding by the Trustee the provisions in paragraph 1 sentences 2 and 3, paragraph 2 and paragraph 3 above shall apply *mutatis mutandis*. For the purpose of fulfilling the functions set forth in this paragraph 7, the Trustee shall not be bound by instructions of Preussag or WestLB or be bound to a minimum price level.

8. The Trustee shall perform the functions which are set out in paragraph 6 and 7 above subject to the statutory obligations and to the contractual shareholding arrangements between Preussag, WestLB and Carlson Companies Inc. concerning Thomas Cook.
9. The Trustee's functions as set out above shall not be extended or varied in any way by Preussag and/or WestLB, save with the express written consent of the Commission. Preussag undertakes not to give and to procure that WestLB will not give any instruction or request to the Trustee which conflicts with the Trustee's functions as set out above.
10. Subject to paragraph 11 and 12 below, Preussag shall procure that the Trustee undertakes not to disclose any confidential business information relating to the travel business of Thomas Cook to Preussag or WestLB, except for
 - (i) information that will be required to honour Preussag's or WestLB's regular reporting obligations;
 - (ii) information that will be required to achieve the regulatory approvals mentioned in paragraph 6(a);
 - (iii) information that is reasonably required for the purposes of the disposal of the Combined Holding.

Preussag undertakes that it will not use any confidential information relating to the travel business of Thomas Cook (whether such information has come into possession of Preussag prior to, at or after the date of this undertaking), save that it may use any information obtained solely for the purposes set out in paragraph 11. The Trustee has the right and the duty to disclose confidential business information relating to the financial services business of Thomas Cook to Preussag and WestLB, if Preussag and/or WestLB have a legitimate interest in the receipt of such information and this information would have been disclosed to Preussag and/or WestLB in the normal course of business prior to this undertaking.

- 11 a) If Preussag or WestLB require any confidential business information relating to the travel business of Thomas Cook for the purpose of the disposal of the Combined Holding or to honour their regular reporting obligations, the Trustee will supply that information directly to Preussag's or WestLB's legal accounting or banking advisers on condition that the information is not communicated to Preussag or WestLB. If this is not practicable, then the Trustee will make alternative proposals to the European Commission. The Commission shall have the discretion to reject these proposals within ten (10) working days after receipt. The Trustee will act in accordance with those proposals only if they are not rejected by the Commission within this period.
 - b) Information relating to the travel business of Thomas Cook that will be required to achieve regulatory approval of the trusteeship and information which Preussag or WestLB require pursuant to paragraph 10 above, last sentence, shall be supplied directly to Preussag or WestLB.
 - c) Preussag shall not pass to Thomas Cook any confidential information relating to Preussag (including for the avoidance of doubt Thomson Travel Group plc), except for information that will be required to honour Thomas Cook's regular reporting obligations or is required for the purposes of the disposal of the Combined Holding.
12. The provisions in paragraphs 10 and 11 above do not affect the existing arrangements under which WestLB is provided with confidential business information of Thomas Cook in order to enable WestLB to comply with the legal requirements as grantor of credit to and/or guarantees in favour of Thomas Cook.
 13. Preussag undertakes to provide the Trustee with all such assistance and information, including copies of all relevant documents, as he may require in carrying out his mandate, and to pay reasonable remuneration for his services.
 14. Preussag may request the Commission at any time to review or adjust this undertaking, in particular in the light of substantial changes in market conditions or other significant changes of circumstances.

Executed in Hannover on 3rd July 2000

PREUSSAG Aktiengesellschaft

(Dr. Frenzel)

(Feuerhake)