

EN

*Case No IV/M.229 -  
THOMAS COOK / LTU  
/ WEST LB*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 14.07.1992

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MERGER PROCEDURE  
ARTICLE 6(1)b DECISION

PUBLIC VERSION

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To the notifying parties

Dear Sirs,

Subject: Case No. IV/M229 - Thomas Cook/LTU/West LB  
Notification of 16.6.1992 pursuant to Article 4 of  
Council Regulation No. 4064/89

1. The above-mentioned operation concerns the acquisition of joint control by LTU Lufttransport ("LTU") and Westdeutsche Landesbank ("West LB") of The Thomas Cook Group Ltd. together with its US affiliate Thomas Cook Inc. ("Thomas Cook") by way of the purchase of the entire issued share capital of Thomas Cook from the Midland Bank Group. LTU will hold its shares in Thomas Cook through TBG Touristik Beteiligungs-GmbH und Co ("TBG"), a company specifically formed for that purpose.
2. 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.

#### THE PARTIES

3. Thomas Cook consists of the UK-based Thomas Cook Group Ltd., which is a wholly-owned subsidiary of Midland Bank PLC, and its US affiliate Thomas Cook Inc., a wholly-owned subsidiary of Midland Montagu Inc., which is in turn a wholly-owned subsidiary of Midland Bank PLC. Thomas Cook's principal activities include travel agencies, tour operating, travellers' cheques, and foreign exchange retailing.

4. LTU is a German travel group controlled by a general partnership, Conle und Co. OHG, through which the Conle family owns 60.6% of LTU shares. LTU's activities include air carrier services, tour operating, and hotel and catering operations.
5. West LB is a German bank, of which no undertaking or person has control, the largest shareholder being the state of North-Rhine Westphalia (43.2%). West LB's main activities are state banking operations, and clearing operations for savings banks, in North-Rhine Westphalia.

#### COMMUNITY DIMENSION

6. West LB alone has a worldwide turnover well in excess of 5,000 million ECU. All three enterprises concerned have Community-wide turnover in excess of 250 million ECU, but do not achieve more than two-thirds of this turnover in one and the same Member State. Thus the operation has a Community dimension.

#### CONCENTRATION

7. Contemporaneously with the sale and purchase agreement, West LB, LTU and TBG have entered into a shareholders agreement, the provisions of which take effect on completion and remain in force for so long as West LB and TBG are both shareholders in Thomas Cook, and West LB holds less than 50% of the issued share capital of Thomas Cook. The shareholders agreement provides for control of Thomas Cook to be vested jointly in West LB and TBG.
8. On completion West LB will hold 10% of the shares in Thomas Cook, with the remaining 90% being held by LTU through TBG. West LB will provide TBG with the funds necessary to enable it to acquire 76% of the shares and the remaining 14% will be acquired from LTU's own funds. These financing arrangements are reflected in the structure of the Thomas Cook board of directors which will consist of 10 members, 5 of whom will be nominated by West LB including the chairman who will have a casting vote. LTU will nominate two directors and the remaining three directors will be jointly nominated by the two shareholders. However various important strategic decisions require the consent of both shareholders; a detailed annual business plan, together with a "rolling" five-year corporate plan will be submitted each year by Thomas Cook for approval by LTU, TBG and West LB, who must all assent to any subsequent material deviation from the plans. In addition, Thomas Cook will supply monthly accounts and progress reports to LTU, TBG and West LB, who must also approve major proposals on financing, acquisitions and disposals, any material variation in the nature of the business of Thomas Cook, the engagement and dismissal of senior employees and the payment of dividends. Consequently Thomas Cook will be jointly controlled by its new shareholders.
9. Thomas Cook currently operates as an autonomous economic entity and will continue to do so under its new owners. There is no significant overlap between the activities of West LB on the one hand, and LTU and Thomas Cook on the other. LTU and Thomas Cook are both operating in the travel sector and in particular both have a substantial tour operating business. However LTU operates in Germany and has no activity in the United Kingdom and Thomas Cook has only a minor presence on the German travel

market. Consequently the degree of geographical overlap between the two undertakings is negligible.

10. It is unlikely that the markets for tour operators and travel agents will develop beyond their existing regional or national boundaries even with the implementation of the single market within the Community because many of the barriers separating the different geographic markets are of a cultural nature differences of language, and holiday preferences - or relate to the inconvenience and additional cost of travelling to another country to connect with a pre-arranged tour.
11. In view of what is said above, the notified operation constitutes a concentration within the meaning of Article 3(1)b of the Regulation.

#### COMPATIBILITY WITH THE COMMON MARKET

##### **Relevant product markets**

12. The joint venture, Thomas Cook, is a travel agent and tour operator offering leisure and business travel and is also involved in the issue and sale of travellers cheques, foreign exchange retailing and the wholesale trading and distribution of foreign currency. The only areas in which there is any overlap with the activities of the parent companies is in the travel sector. Several different markets can be identified in this sector. Demand for leisure travel is distinguishable from demand for business travel. Leisure travel consists largely of "packages" of accomodation and return travel (air, rail, coach, and cruises) supplied by tour operators. Business travel consists largely of hotel accomodation and air or rail travel, supplied separately by hotel, air, and rail companies. In both the leisure and business sectors consumers may purchase directly from suppliers, or through "travel agencies" who effectively act as retailers.

##### Relevant geographic markets

13. The markets within Europe for the supply of travel services are still essentially national in character. In the leisure sector, for example, tour operators in a particular Member State typically sell packages with a point of departure in that Member State, and market them to residents of that Member State.
14. From the consumer's view-point there are a number of practical obstacles which would make it difficult for a traveller resident in one Member State to book a package holiday with a tour operator or travel agent resident in another Member State. Quite apart from the lack of information about what is available (i.e. access to brochures of foreign tour operators and travel agents), linguistic differences can cause problems in terms of understanding exactly what is included in the price. In addition, there are legal complications due to the fact that the contract would normally be governed by the law of the country of residence of the foreign tour operator or travel agent, thus making it difficult for the traveller to seek redress in the event of a complaint. A further inconvenience and additional cost arises from the fact that the traveller would have to make his own arrangements to travel to the point of departure in the territory of the foreign tour operator. Customers in neighbouring Member States may be prepared to

cross borders in order to purchase package holidays, but it is highly unlikely that such cross-border interpenetration will occur between two widely separate geographic markets, such as Germany and the United Kingdom, and there is no evidence to suggest that this occurs.

15. On the supply side, the national character of European markets is reflected in differences in the prices of package holidays, and in tour operators' costs and profit margins. These differences are particularly marked between the United Kingdom and other EC Member States. A 1988 study<sup>1)</sup> indicated average prices in the UK to be between 20 and 40 per cent lower than in other EC countries. The higher prices in other countries reflect higher profit margins and higher costs, in turn due to factors such as more regulated charter airline operations, lower levels of capacity utilisation on individual flights, and less success in obtaining advantageous terms from hotel owners. Cross-border entry by EC tour operators has so far been extremely limited in both extent and success.

#### Assessment

16. There is a degree of overlap between the activities of Thomas Cook and LTU in the markets for travel services, but these markets are still essentially national in character, and the only Member State in which both Thomas Cook and LTU operate is Germany. LTU acts as a tour operator and a charter airline (with a limited quantity of scheduled services). It is the third largest tour operator in Germany and the largest German charter airline. By contrast, Thomas Cook which has a relatively minor presence on the German travel market, acts primarily as a travel agent in Germany catering largely for business customers. Thomas Cook and LTU have, respectively, market shares in Germany of about [ ]<sup>2)</sup> and [ ]<sup>3)</sup> in the tour operating sector; in the travel agency sector both undertakings have less than [ ]<sup>4)</sup> market share. Consequently the increase in market share brought about by the concentration is very small.
17. LTU as a tour operator markets its products through annual agreements with independent travel agencies. Thomas Cook in Germany acts as a travel agency for a wide variety of tour operators, based on agreements subject to 3-6 months' notice.
18. In view of the above, the market shares involved are so small as to preclude concern about either horizontal or vertical links in the travel market.
19. As far as financial services are concerned, there is no overlap between the undertakings concerned. LTU has no activities in the financial sector. West LB's main activities are state banking operations, and clearing operations for savings banks, in North-Rhine Westphalia. West LB's retail banking activities are limited to the provision of banking services to the employees of the bank and a small number of high net worth individuals.

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1) Package Holiday Prices 1988 - Bureau Européen des Unions de Consommateurs

2) Deletion of business secret; the deleted figure is negligible.

3) The deleted figure is less than 25%.

4) The deleted figure is below 5%.

20. Therefore, the concentration will not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

#### ANCILLARY AGREEMENTS

21. The parties have entered into a number of ancillary agreements which are intended to regulate the relationship between Thomas Cook and Midland Bank. The agreements fall into two categories. Firstly there are those which are intended to preserve the value of The Thomas Cook business in the hands of its new owners by ensuring that Thomas Cook will continue to benefit from Midland Bank as a distribution channel. These agreements relate to the Thomas Cook implants in Midland Bank branches in the UK, and the wholesale and retail supply of foreign exchange and the supply of travellers cheques.
22. The second category of agreements comprises those which are intended to put on an arm's length basis, arrangements which have existed on an intra-group basis between Midland Bank and Thomas Cook. A variety of services have been provided by Midland Bank to Thomas Cook, such as network services to access tour operators and IT services.
23. The agreements are all directly related to the concentration and necessary for its implementation. However, most of the agreements are of an indefinite duration with a minimum period of five years. The Commission does not consider that there is an objective need for agreements of potentially indefinite duration and therefore the period necessary for the replacement of the relationship of dependency by autonomy in the market should be limited to five years. Consequently all the notified agreements are covered by the present decision for a maximum period of five years.
24. For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)b of Council Regulation 4064/89.

For the Commission