

***Case No COMP/M.5462 -
THOMAS COOK GROUP
/ GOLD MEDAL
INTERNATIONAL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 30/03/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.3.2009

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5462 - Thomas Cook Group / Gold Medal International Notification of 23 February 2009 pursuant to Article 4 of Council Regulation No 139/2004¹

1. On 23 February 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("EC Merger Regulation") by which Thomas Cook Group plc. ("Thomas Cook", UK), which is controlled by Arcandor AG ("Arcandor", Germany), acquires within the meaning of Article 3(1)(b) of the EC Merger Regulation sole control of Gold Medal International Limited ("Gold Medal", UK) by way of purchase of shares.

I. THE PARTIES

2. Thomas Cook is one of the two major vertically integrated leisure tour operators active in the UK², offering a range of package holidays, flights, holiday accommodation and associated services through travel agencies (including both its own and third party agencies) and direct to consumers. Thomas Cook also operates its own charter airline.
3. Gold Medal is an independent leisure travel group specialising in the supply of long-haul travel as package holidays or independent holidays (offering in particular flights and hotel accommodation separately) to consumers in the UK either through independent travel agencies or directly to consumers via internet and telephone under

¹ OJ L 24, 29.1.2004 p. 1.

² Besides the UK, Thomas Cook is present in Germany, Ireland, France, Belgium, Luxembourg, the Netherlands, Austria, Hungary, Poland, Slovakia, Slovenia, Egypt, India and Canada.

the Netflights.co.uk brand. Gold Medal has started its business as flight consolidator³ Gold Medal does not operate own travel agencies nor airlines.

4. Both Thomas Cook and Gold Medal provide their services on the wholesale level to other travel agents (B2B), and on the retail level directly to final customers (B2C).

II. THE OPERATION AND CONCENTRATION

5. Thomas Cook has incorporated a new wholly-owned subsidiary, NewCo, to which it will transfer its FlightSavers⁴ business by way of assets sale, and which will acquire 100% of Gold Medal. For the purchase of Gold Medal NewCo will pay a cash contribution and issue [...] % of its ordinary shares to Kenneth Townsley, the current sole owner and founder of Gold Medal. As a result of the transaction, Thomas Cook will hold [more than 50] % of the ordinary shares of NewCo (and hence Gold Medal). The remaining shares will be held by Kenneth Townsley.⁵
6. Thomas Cook alone will exercise decisive influence over strategic commercial decisions of NewCo (and hence Gold Medal). Thomas Cook and Kenneth Townsley each appoint three members of NewCo's Board of Directors. Thomas Cook, as the majority shareholder, will be entitled to appoint the Chairman of the Board who holds the casting vote at Board meetings and therefore has decisive influence at Board level and at shareholder meetings. In view of the above, the operation constitutes a concentration pursuant to Article 3(1) (b) of the EC Merger Regulation.

III. COMMUNITY DIMENSION

7. The parties have a combined aggregate worldwide turnover in excess of EUR 5 000 million (Thomas Cook/Arcandor EUR 20 220 million and Gold Medal EUR 421 million). Each of the parties has a Community-wide turnover in excess of EUR 250 million (Thomas Cook/Arcandor EUR [...] million and Gold Medal EUR 421 million). Thomas Cook/Arcandor does not achieve more than two thirds of its Community-wide turnover in a single Member State. Therefore, the notified operation has a Community dimension pursuant to Article 1(2) of the EC Merger Regulation.

IV. RELEVANT MARKETS

8. Both Thomas Cook and Gold Medal are active in the leisure travel sector in the UK. Their activities overlap in the provision of "package holidays" (combining accommodation and other services in a given destination with return travel to and from it) and "independent holidays" (separate provision of in particular flights and

³ A flight consolidator usually supplies third party scheduled flights on wholesale level to travel agents. Besides Gold Medal, in particular, Travel 2, the Holiday Team, Jetset, JTA and Flightdesk are active in the UK market.

⁴ Flight Savers is a brand of Thomas Cook, which sells seats on scheduled airlines via Thomas Cook retail stores and directly to consumers, for use in package holidays and for sale on a seat only basis.

⁵ Thomas Cook and Kenneth Townsley will also enter in call and put option arrangements by which Thomas Cook will be able to acquire all of the shares of NewCo (and hence Gold Medal) after 31 March 2010. Kenneth Townsley will have a parallel put option exercisable after 31 March 2011.

accommodation). All these services are provided for short-haul and for long-haul destinations.

A. Relevant product markets

Package holidays vs. independent holidays

9. In previous decisions the Commission found that package holidays constitute a separate market from holidays where the consumer purchases the various elements individually (independent holidays)⁶.
10. In the Airtours/First Choice case (the "Airtours decision") the Commission considered that it could be difficult for consumers to make a direct comparison of prices between a package holiday and an independently composed holiday. It also referred to additional search and "transaction costs" (telephone calls, faxes, letters to the hotel and airline, arranging car hire etc) and risks in contracting separately by comparison with the "one stop" nature of the purchase of a package.
11. In the more recent decisions KardstadtQuelle/My Travel and TUI/First Choice the Commission noted that certain changes in the market had occurred since the Airtours decision, notably the significant growth in Internet usage and in particular the rapid pick up of broad band internet access at home. While these changes indicated that independent holidays could exercise a certain competitive constraint on package holidays, the Commission nevertheless considered that these elements were not enough to demonstrate conclusively that package holidays would not constitute a separate holiday market. In particular there still remained a number of differences between package holidays and independent holidays. For certain customer groups these decisions noted that a package holiday provided greater convenience as well as greater assurance than booking via the Internet. Other elements distinguishing package holidays included the fact that booking via the travel agent often offered the additional advantage to pay for the holiday in instalments, a possibility which often did not exist in relation to independent holidays. 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.
12. The notifying party submits that the relevant product market in this case should include both package holidays and independent holidays. It argues in particular that the distinction between independent and package holidays is not relevant any longer and that the competitive interplay between the two types of leisure travel is consistent with the two forming part of the same market. It also submits that there has been a huge increase of independent holidays relative to package holidays, mainly due to the widespread use of internet booking and the emergence of online intermediaries. Furthermore, the notifying party explains that package holiday operators have been adjusting their business models allowing for greater flexibility in the product offering: integrated tour operators, like Thomas Cook, continue to have a focus in the supply of package holidays, but have extended their activities to provide also independent holidays.
13. The market investigation has not provided a conclusive answer on a possible inclusion of independent holidays and package holidays into the same product market. However,

⁶ Case M. 1524 Airtours/First Choice, case M. 4601 KarstadtQuelle/MyTravel paragraph 28 et seq, and case M. 4600 TUI/First Choice paragraph 31.

for the purpose of the present case it is not necessary to decide on the exact delineation of the relevant product market in that respect as the proposed concentration would not lead to serious doubts under any of the product market definitions considered.

Short-haul vs. long-haul foreign package holidays

14. In previous decisions the Commission found that in the UK prices of domestic holidays did not constrain prices for foreign package holidays and that these should therefore be considered as separate product markets⁷.
15. In relation to foreign package holidays the Commission has in previous cases made a distinction between short-haul foreign package holidays and long-haul foreign package holidays. The long-haul sector is generally recognised as comprising all destinations that involve a flight time (from the UK) substantially in excess of three hours⁸. Thus effectively all European (mainland and islands) and North African holiday destinations fall into the "short-haul" category, in contrast to those in, for example, the Caribbean, the Americas or South/East Asia. This distinction has been largely confirmed by the market investigation in the present case.

Conclusion

16. For the purpose of this case, the definition of the relevant product market on which the parties are active can be left open, since in all alternative definitions considered, the transaction does not raise any competition concerns.

B. Relevant geographic market

17. The Commission has found in previous decisions that the markets for the supply of foreign package holidays are still essentially national in character⁹. The notifying party's submission is in line with previous Commission decisions with respect to the supply of foreign package holidays. Tour operators generally produce and market their packages on a national basis. This was largely confirmed by the market investigation. The notifying party further submits that the national scope will apply also to the overall market including package holidays and independent holidays.
18. For the purpose of this case, the above listed possible markets are therefore considered to be national in scope.

⁷ See case M.4601 KarstadtQuelle/MyTravel, paragraph 24 and case M. 4600 TUI/First Choice, paragraph 29.

⁸ Although flights to the Eastern Mediterranean and the Canary Islands may take up to four hours they are included in the concept of "short-haul" destinations.

⁹ See Case M. 1524 Airtours/First Choice, paragraph 43 and case M. 4601 KarstadtQuelle/MyTravel, paragraph 28 et seq.

V. COMPETITIVE ASSESSMENT

A. Horizontal effects

19. The activities of Thomas Cook and Gold Medal are largely complementary: Thomas Cook is predominantly active in short-haul destinations with a focus on foreign package holidays, while Gold Medal focuses on long-haul destinations and sales of third parties' scheduled flights. On the basis of the market data provided in the notification, there are only two horizontally affected markets, namely the markets for short-haul and long-haul foreign package holidays.
20. Depending on the data source¹⁰, on the markets for the supply of short- and long-haul foreign package holidays in the UK the merged entity's market share would be at most [30-40]% for short-haul and [20-30]% for long-haul, as can be seen from Table 1 and Table 2 below:

Table 1

UK foreign package holidays	Short-haul	Long-haul
Thomas Cook	[20-30]%	[10-20]%
Gold Medal	[0-5]%	[0-5]%
Combined	[20-30]%	[10-20]%

* Source: IPS data for W07/S08.

Table 2

UK foreign package holidays	Short-haul	Long-haul
Thomas Cook	[30-40]%	[20-30]%
Gold Medal	[0-5]%	[0-5]%
Combined	[30-40]%	[20-30]%

* Source: LTM data for W07/S08.

21. The increment brought about by the acquisition of Gold Medal is, on the basis of both alternative data sources, very limited on both markets. Moreover, Thomas Cook and Gold Medal do not appear to be each others' closest competitors. In fact their activities are largely complementary since Thomas Cook is predominantly active in short-haul destinations while Gold Medal specialises in long-haul. This has been confirmed by the respondents to the market investigation.
22. After the transaction, the merged entity will continue to experience significant competition from the other major vertically integrated tour operator, TUI, which has an estimated [20-30]% market share on short-haul foreign package holidays and estimated [20-30]% market share on long-haul foreign package holidays market. In addition, there are numerous small tour operators which are active on the foreign package holidays markets. The most significant smaller tour operators for short-haul foreign package holidays include Olympic/Odyssey ([0-5]% market share), Expedia ([0-5]% market share), Cosmos ([0-5]% market share), Inghams ([0-5]% market share),

¹⁰ In the past, the Commission used AC Nielsen data to analyse the UK package holiday sector. However, AC Nielsen ceased to supply data in the travel sector in November 2006. A new data provider created the Leisure Travel Monitor (LTM), replicating the AC Nielsen methodology. The parties do not consider that the AC Nielsen / LTM data provide the most accurate market share data for the package holiday sector, since these data do not capture all "direct to consumer" bookings (i.e. telephone or on-line).

Lastminute ([0-5]% market share).¹¹ For long-haul foreign package holidays where Gold Medal is stronger than on the short-haul foreign package holidays market, the merged entity will face competition from several medium-sized competitors with a relatively important market share: Virgin ([10-20]% market share), Trailfinders ([10-20]% market share), Stella Travel Group (Travel 2, Travelbag; [5-10]% market share) and Kuoni ([5-10]% market share).

23. On the basis of a broader product market as suggested by the notifying party and which would encompass both package holidays and independent holidays, the merged entity's combined market share would be even lower as shown in Table 3 below:

Table 3

UK - Foreign package holidays + independent holidays	Short-haul	Long-haul
Thomas Cook	[10-20]%	[5-10]%
Gold Medal	[0-5]%	[5-10]%
Combined	[10-20]%	[10-20]%

* Source: IPS data for total market size and parties' internal data for package and flight-only for W07/S08.

24. Also for this proposed overall holiday market, after the transaction, the merged entity would continue to experience significant competition, mainly from TUI ([10-20]% market share both for short-haul and long-haul). For short-haul holidays the main competitors would be Ryanair ([10-20]% market share), easyJet ([5-10]-[10-20]% market share), British Airways ([0-5]-[5-10]% market share) as well as Monarch airlines and Expedia (each [0-5]% market share). For long-haul holidays the main competitors would be British Airways ([10-20]% market share), Expedia and Virgin (each [5-10]-[10-20]% market share), Trailfinders ([5-10]-[10-20]% market share) and Stella Travel Group ([5-10]% market share).¹²
25. In view of the above, the concentration does not raise serious doubts as to its compatibility with the common market due to horizontal overlaps on any of the above possible markets.

B. Vertical effects

26. A vertical link exists between Gold Medal's "wholesale" (B2B) supply of services, in particular of airline tickets and accommodation to travel agents, and Thomas Cook's travel agency business. The notifying party argues that the merged entity would have neither the ability nor the incentive to foreclose travel agents.
27. The market investigation confirmed that there are alternative "consolidators" supplying airline tickets and accommodation to travel agents. The market investigation further showed that there are no significant barriers to enter the market as a consolidator. In addition, there are other channels for travel agents to procure airline tickets, in

¹¹ Market share estimates provided in the notification.

¹² Market share estimates provided in the notification.

particular via global distribution systems (GDS)¹³. Gold Medal thus accounts only for a small share of all flight tickets purchased by UK travel agents. Therefore the merged entity would not have the ability to foreclose travel agents and the concentration does not raise serious doubts as to its compatibility with the common market on the basis of vertical effects.

C. Conclusion

28. In light of the foregoing, the Commission considers that the proposed concentration does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

VI. CONCLUSION

29. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the EC Merger Regulation.

For the Commission

(signed)

Günter VERHEUGEN
Vice-President of the Commission

¹³ GDS is a two-sided platform through which upstream providers (e.g. airlines) make their content (e.g. flight tickets) available to downstream travel agents for search, comparison and booking purposes. Examples of GDS are Amadeus, Sabre, and Galileo.