

*Case No IV/M.785 -
Thomas Cook /
Sunworld*

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/08/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.08.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Registered letter with advice of delivery

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M. 785 - THOMAS COOK / SUNWORLD

Notification of 05.07.1996 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 05.07.1996, the Commission received a notification of a proposed concentration pursuant to Article 4 of a Council Regulation (EC) No. 4064/89 by which the undertaking Thomas Cook Group Limited (Thomas Cook), controlled by Westdeutsche Landesbank Girozentrale (WestLB), acquires, within the meaning of Article 3(1)(b) of the Council Regulation, control of the whole of the undertaking Sunworld Limited (Sunworld), by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope 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' ACTIVITIES AND THE OPERATION

3. Thomas Cook is a leading UK-based travel agent which is also active in the tour operating business and the provision of principally travel-related financial services (i.e. foreign exchange and issue of travellers' cheques). It is a wholly owned subsidiary of WestLB, a German state-owned bank which also has interests in some German travel companies.

4. Sunworld is a UK-based tour operator exclusively controlled by Ibertouring Holding BV (Ibertouring), which is a Dutch holding company belonging to the Spanish tour operating group Viajes Iberia SA (GVI). Sunworld controls several companies active in the travel industry (most of which are UK subsidiaries) and owns the charter airline company Airworld Aviation Limited.
5. The proposed operation consists in the acquisition by Thomas Cook of the entire issued share capital of Sunworld. The sale and purchase agreement also provides that Thomas Cook shall have a right of first refusal if Ibertouring decides to sell its 51% interest in Sunflight Holidays Inc., a company incorporated in Canada in 1995 for the purpose of operating charter based tours from Canada to North America and the Caribbean.

II. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5,000 million ECU. Each of them 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 (WestLB and Sunworld achieve more than two-thirds of their aggregate Community-wide turnover within Germany and the U.K. respectively). The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement.

III. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product markets

7. The businesses being acquired include the supply of leisure travel services, consisting largely of "packages" of accommodation and return travel supplied by tour operators, which is a business in which both Thomas Cook and Sunworld participate. The parties to the concentration state that within the tour operating business two distinct relevant product markets can be identified: (i) the long-haul market, including holiday packages with destinations outside Europe (characterized i.a. by higher prices, scheduled flights, higher grade accommodation facilities and greater flexibility in terms of time of departure and length of stay), and (ii) the short-haul market, including holiday packages with destinations within Europe as recognised by IATA's European flight route licences (characterized by lower prices, charter flights, cheaper accommodation and less consumer choice as to the length and timing of the holiday). Nonetheless, it is not necessary to further delineate the relevant product markets because, in all alternative markets considered, effective competition would not be significantly impeded in the EEA area or any substantial part of that area.

B. Relevant geographic markets

8. Within Europe the relevant geographic markets appear to be national, since tour operators in a particular Member State typically offer air-inclusive packages with points of departure in that Member State and market them to customers resident in that Member State. Furthermore, from the consumer's point of view the booking of a holiday package with a foreign tour operator would be subject to a number of practical difficulties,

including lack of information about available programmes, linguistic barriers, legal complications and additional travelling costs to reach the point of departure in another Member State. However, it is not necessary to further delineate the relevant geographic markets because, in all alternative geographic markets considered, effective competition would not be significantly impeded in the EEA area or any substantial part of that area.

C. Assessment

9. Thomas Cook has no tour operating activities outside the U.K., where also more than 90% of Sunworld's tour operating turnover is achieved. According to the information provided by the parties, their combined market share in the U.K. would be below 5% even if the long-haul and the short-haul businesses were to be considered as two distinct relevant product markets. Furthermore, some large competitors with significantly higher market shares (like Thomsons, Airtours PLC and First Choice Holidays PLC) are active in the same market and operate in both the long-haul and the short-haul businesses.
10. A vertical relationship exists between Thomas Cook and Sunworld, in that the former's main activities are in the downstream retail travel agency market. Besides that, Sunworld, like most of the leading tour operators in the UK, provides its holiday programmes using its own charter airline company (Airworld Aviation Limited). Thomas Cook's share of the U.K. retail travel agency market is about 13%, but Sunworld is not currently participating in this market, whereas the two largest U.K. tour operators (Thomsons and Airtours) are fully integrated vertically with the two major U.K. retail travel agents (Lunn Poly and Going Places, respectively). There are also a large number of other competitors in this market, which seems to be extremely competitive as pointed out in a 1994 study of the U.K. travel industry by the Office of Fair Trading.
11. In view of the market position of Thomas Cook and Sunworld and the presence of several other important suppliers, it appears that the notified operation will have a minimal impact on competition both in the UK and the European Union and, consequently, effective competition would not be significantly impeded in the EEA area or any substantial part of that area.

IV. ANCILLARY RESTRAINTS

12. The parties have asked for some provisions of the sale and purchase agreement to be declared ancillary to the concentration. They are basically non-competition clauses which prevent the seller from: (i) carrying on a business competing with Sunworld (or any of its subsidiaries) within the U.K. and Ireland for a period of five years from the date of the agreement; (ii) soliciting staff from Thomas Cook, Sunworld or its subsidiaries within the U.K. and Ireland for a period of five years from the date of the agreement; (iii) using in the U.K. and Ireland some specified trade names used by Sunworld in connection with its business, for a period of ten years from the date of the agreement. All of these provisions are directly related and necessary to the implementation of the concentration, since they are aimed at guaranteeing the transfer to the acquirer of the full value of the assets transferred, and they can therefore be declared ancillary to the transaction.
13. As part of the transaction, GVI and Thomas Cook have also entered into an agreement according to which, for a minimum [confidential - business secret] ten years period from the date of the agreement, GVI will keep providing, and Thomas Cook will take, the ground-handling services for incoming tourists (defined in the agreement as "Existing

Groundhandling Arrangements") which GVI previously provided on an informal intra-group basis to Sunworld for its tour operating destinations. These obligations can be declared ancillary to the transaction in that their legitimate aim is to preserve, for a transitional period, the previous procurement and supply links between the vendor and the acquired company, in order for the transaction to be implemented under reasonable conditions. As to their duration, however, the [confidential - business secret] period agreed upon by the parties is not objectively justified and contrasts with the transitional nature necessarily required in order for such a purchase and supply agreement to be considered as ancillary to the proposed concentration. Therefore the present decision will only cover the aforementioned obligations for a maximum period of [confidential - business secret].

V. CONCLUSION

14. 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