



EUROPEAN COMMISSION
DG Competition

***Case M.9778 - TUI AG /
RCCL / HAPAG-LLOYD
CRUISES***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/06/2020

***In electronic form on the EUR-Lex website under document
number 32020M9778***



EUROPEAN COMMISSION

Brussels, 24.06.2020
C(2020) 4335 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

**Subject: Case M.9778 – TUI AG / RCCL / HAPAG-LLOYD CRUISES
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

Dear Sir or Madam,

- (1) On 15 May 2020, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which TUI AG (Germany) and Royal Caribbean Cruises Ltd ('RCCL', Liberia), through TUI Cruises GmbH ('TUI Cruises', Germany), intend to acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of Hapag-Lloyd Kreuzfahrten GmbH ('HLC', Germany) (the 'Transaction'). The concentration is accomplished by way of purchase of shares.³
- (2) TUI AG and RCCL are together referred to as the 'Notifying Parties'.

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 (the "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 1, 3.1.1994, p. 3 (the "EEA Agreement").

³ Publication in the Official Journal of the European Union No C 174, 25.5.2020, p. 6.

1. THE PARTIES

- (3) RCCL operates oceanic cruises under three wholly owned brands, Royal Caribbean International, Celebrity Cruises, and Azamara Club Cruises. It also owns a 66.7% stake of Silversea Cruises⁴, 50% of TUI Cruises, and 49% of Pullmantur Cruises. RCCL is the second largest cruise company globally with 63 ships (4 ships joining the fleet in 2020-21).
- (4) TUI AG is the ultimate parent company of the TUI Group, an integrated leisure tourism group operating through its various subsidiaries hotels, cruise ships, airlines, aircraft, travel agencies, tour operators and online portals. It offers to customers worldwide holiday experiences in 180 regions. TUI AG is active in the cruise business through the operation of Marella Cruises and HLC (TUI AG is currently the sole owner). TUI AG also jointly controls TUI Cruises with RCCL.
- (5) TUI Cruises GmbH is a 50:50 joint venture between TUI AG and RCCL (“TUI Cruises” or the “JV”).⁵ TUI Cruises offers contemporary cruises primarily targeting German-speaking customers.⁶
- (6) HLC operates two luxury cruise ships⁷ and three expedition-type cruise ships⁸ with which it targets customers from German-speaking countries. Cruises on two of the three expedition cruise ships are conducted in German only.

2. THE OPERATION AND CONCENTRATION

- (7) The concentration consists of the acquisition by RCCL of joint control over HLC through an expansion of TUI Cruises. This expansion will take place through the transfer, from its current owner TUI AG to TUI Cruises, of all shares in HLC as well as five cruise vessels and related rights and assets of HLC.
- (8) Following this transfer, the activities of TUI Cruises will extend into a new product market, as well as into new geographic markets which were not the object of the original JV. Indeed, so far TUI Cruises has been exclusively active in the market for contemporary oceanic cruises, while HLC has only focused on luxury/ultra-luxury and expedition oceanic cruises. Post-Transaction, TUI Cruises’ scope will therefore expand into this new market. As far as the geographic market is concerned, while TUI Cruises has so far primarily targeted German-speaking passengers, following the Transaction it will be in the position to also target non-German speaking passengers (for instance, Danish speaking ones).

⁴ RCCL acquired the 66.7% stake in Silversea Cruises in 2018.

⁵ Case M.5024 - TUI/Royal Caribbean Cruises/JV.

⁶ TUI Cruises operates seven Mein Schiff vessels, ranging in size from 77 302 gross tonnage (“GT”) to 111 500 GT. Gross tonnage is a function of the volume of all of a ship's enclosed spaces (from keel to funnel) measured to the outside of the hull framing.

⁷ The MS Europa and MS Europa 2 have a size of 28 890 GT and 42 830 GT, respectively, and accommodate up to 400 and 500 passengers, respectively.

⁸ [...] * The HANSEATIC class ships can accommodate 230 passengers (MS Bremen up to 155) and are 15 650 GT in size, while MS Bremen is only 6 752 GT. The HANSEATIC nature and HANSEATIC spirit are/will be German-speaking ships, with all cruises conducted in German only. * should read: The HANSEATIC nature, the HANSEATIC inspiration and the MS Bremen (to be replaced by the HANSEATIC spirit in 2021).

- (9) The transfer of all shares in HLC and the five cruise vessels and related rights and assets of HLC, which will allow the expansion of the JV activities into new product and geographic markets, show that TUI AG and RCCL are the real players behind the extension of TUI Cruises' scope.⁹
- (10) TUI AG and RCCL initiated the agreements that govern the Transaction.¹⁰ RCCL engaged in multiple discussions with TUI AG regarding the acquisition of HLC over the past few years, with the most recent discussions beginning in [...]. Moreover, TUI AG, RCCL and TUI Cruises are party to the 'Share and Asset Purchase Agreement' ('SPA') dated 7 February 2020, pursuant to which TUI AG will transfer the HLC business (all shares, five cruise vessels, and related rights and assets) to TUI Cruises. In addition, TUI AG and RCCL are parties to the Restatement of the Joint Venture Agreement, which modifies the terms of the original Joint Venture Agreement between TUI AG and RCCL, which was executed on 17 December 2007 and governed the formation of the TUI Cruises JV. Finally, pursuant to the SPA, five business days prior to the scheduled main closing date, TUI AG and RCCL will make an equity contribution in an aggregate amount of EUR [...] into TUI Cruises pro rata (50:50).
- (11) In view of the foregoing, TUI AG and RCCL are regarded as undertakings concerned.
- (12) The rationale for the Transaction is to allow TUI Cruises to expand its offering to include luxury/ultra-luxury and expedition oceanic cruises, a segment in which TUI Cruises did not previously operate.¹¹ The Transaction will also generate a net cash consideration for the seller TUI AG of approximately EUR [...], given that HLC's value is EUR [...].¹²
- (13) In light of the above, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation.

3. UNION DIMENSION

- (14) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [TUI AG: EUR [...] million, RCCL: EUR [...] million]. Each of them has an EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension.¹³

4. MARKET DEFINITION

- (15) Oceanic cruises involve a journey on board a ship undertaken for leisure purposes in maritime waters. Oceanic cruises generally combine cabins, restaurants, bars,

⁹ Paragraph 107 of the Commission Consolidated Jurisdictional Notice.

¹⁰ Paragraph 147 of the Commission Consolidated Jurisdictional Notice.

¹¹ Form CO, paragraph 56.

¹² Form CO, paragraph 57.

¹³ Turnover calculated in accordance with Article 5 of the Merger Regulation.

casinos, swimming pools, spas, gyms, theatres, and shopping into a floating resort. Cruises typically embark from one port and then visit a number of destinations, either for a day or overnight, before returning to the same port or a different port to continue the journey.

- (16) Within the overall oceanic cruises market, it is possible to distinguish between contemporary, premium, luxury and expedition cruises.¹⁴ Contemporary cruise lines comprise the largest portion of the oceanic cruise operation industry and operate the largest cruise ships. This is the more mass-market end of the market typically serving families and couples of all ages. Premium cruises are somewhat smaller in size and target families seeking a more high-end experience, middle-aged and senior couples, and senior travellers. Luxury and expedition cruises typically offer instead longer, more exclusive and luxurious travel experiences including off-the-beaten track destinations such as the Arctic and Antarctic/South America.
- (17) RCCL and HLC are both involved in the provision of oceanic cruises. Their activities overlap in the operation of luxury/expedition cruises, although they target different customer groups. HLC offers luxury/expedition cruises primarily to German-speaking customers from German-speaking countries (Austria, Germany and Switzerland).¹⁵ RCCL, through its Silversea and Azamara brands, offers luxury and expedition cruises primarily targeting customers from North America and the United Kingdom.¹⁶

4.1. Relevant product market

4.1.1. The Notifying Parties' arguments

- (18) The Notifying Parties claim that land-based holidays and river cruises are, for at least some customers, substitutable for oceanic cruise holidays and exert competitive pressure on cruise operators. They nonetheless submit that the relevant product market within which to assess the Transaction is the market for oceanic cruises.¹⁷
- (19) The Notifying Parties further argue that it would not be appropriate to segment the oceanic cruise market into contemporary, premium, and luxury/expedition cruise offerings as there is not a bright line between these offerings from either a supply or demand perspective. Rather, they consider that there is a broad spectrum of oceanic cruise products, and different cruise lines compete more or less closely with others depending on a range of factors in addition to the level of service offering, including fleet, itineraries, departure and return ports, and availability of on-board entertainment and experiences.¹⁸ The same cruise line, or even the same vessel, can offer a range of experiences depending on the class of service booked.¹⁹
- (20) The Notifying Parties claim that even within a single vessel different passengers may have a more premium or less premium experience depending on the class of service or type of cabin booked. This is particularly true with respect to the “ship within a

¹⁴ Form CO, paragraph 76. Case M.2706 - Carnival Corporation/P&O Princess.

¹⁵ Form CO, paragraph 130.

¹⁶ Form CO, paragraph 133.

¹⁷ Form CO, paragraph 88.

¹⁸ Form CO, paragraph 94.

¹⁹ Form CO, paragraph 76.

ship” concept that has recently been launched on a number of contemporary and premium cruise lines, where customers of VIP suites have access to private areas and amenities that are equivalent to the service level on a luxury or expedition vessel.²⁰ Hence, in response to growing demand for luxury services, the Notifying Parties’ view is that cruise operators can simply develop luxury offerings on contemporary and premium vessels.²¹

4.1.2. *Precedents*

- (21) In its previous decisions, the Commission has considered the market for the supply of oceanic cruises to be distinct from the market for the supply of coastal ferry or riverine cruises, and also separate from the market for the supply of other (land-based) holidays.²²
- (22) The Commission has also considered, whether luxury oceanic cruises constitute a distinct product market or are part of the wider oceanic cruises market but left open the market definition.²³

4.1.3. *The Commission’s assessment*

- (23) The market investigation has confirmed that cruises are typically classified by the type of cruise offering, for example, whether it is a contemporary, premium, and luxury and expedition cruise.²⁴ RCCL itself in its internal documents assesses the cruise market on the basis of these different segments.²⁵
- (24) A number of elements point to the possibility that luxury and expedition cruises could form part of the same relevant market distinct from the overall cruise market, although the boundaries around the edges of this possible cruise segment appear blurred.
- (25) The ship size differs according to the type of cruise. For example, contemporary cruise brands operate the largest vessels (from approximately 100 000 GT and above). Premium cruises operate vessels that are somewhat smaller between 40 000 GT and 120 000 GT. Luxury and expedition cruise operations have smaller cruise ships (between 5,000 GT – and 60 000 GT).²⁶
- (26) Luxury and expedition cruises usually operate on smaller cruise ships than contemporary and premium cruises which allows them to reach a larger number of ports and more remote locations.²⁷ As a result, they can offer passengers a wider variety of itineraries, avoiding the more crowded destinations and reaching less

²⁰ Form CO, paragraph 96.

²¹ Form CO, paragraph 98.

²² Case M.2706 - Carnival Corporation/P&O Princess; case M.3071 - Carnival Corporation/P&O Princess (II); case M.4600 - TUI/First Choice.

²³ Case M.2706 - Carnival Corporation/P&O Princess.

²⁴ Replies to 3, 5 and 6 of Q1 to competitors.

²⁵ RCCL’s internal documents, QP2, Annex 12.11, slide 11.

²⁶ Form CO, paragraph 80 and replies to 6 of Q1 to competitors.

²⁷ Replies to 7 of Q1 to competitors and 5 of Q2 to travel agents. Non-confidential version of the minutes of the call with a competitor of 2 June 2020.

travelled ports such as in the Arctic, Antarctica and South America.²⁸ Norwegian Cruise Line's ('NCL') luxury cruise brand Regent Seven Seas ('Regent') for instance reaches 450 destinations per year, whereas the larger ships of its contemporary and premium brands visit fewer destinations.²⁹

- (27) Consequently, luxury and expedition cruises are also typically longer than contemporary and premium cruises. While the duration of luxury and expedition cruises is on average 10-14 days, the average duration of a contemporary cruise is approximately 7 days.³⁰
- (28) Furthermore, luxury and expedition cruise ships guarantee a higher space/passenger ratio as well as a higher crew/passenger ratio than those of contemporary and premium cruise ships.³¹ While for instance on a premium or contemporary cruise the crew/passenger ratio is approximately 1/2-1/2.5, for a luxury and expedition cruise it is 1/1.6.³² As for the space/passenger ratio, on a luxury and expedition cruise this ranges between 50-66 GT per passenger, compared to the 30-41 GT of a contemporary cruise, and the 40-46 GT of a premium cruise.³³
- (29) The Commission acknowledges that premium and contemporary cruises can offer accommodation – such as the 'ship within the ship' concept accommodation – which target and appeal to luxury cruise passengers. An example of this, within RCCL's cruise offering, is the possibility for passengers that book Royal Suite Class accommodations – on a contemporary cruise – to receive unique amenities and services that offer a premium or luxury experience. These luxury services range from dedicated check-in and priority boarding to concierge service and exclusive activities.³⁴ A further example is the 'The Haven,' within NCL's fleet, which is an exclusive area at the top of a ship where passengers have exclusive access to luxury amenities. However, while the crew/passenger ratio, space/passenger ratio in these luxury areas is similar to those on luxury and expedition ships, this is only true for the luxury section of the ship. Once the passenger leaves the luxury section, the experience will be that of a premium or contemporary ship.³⁵ For these reasons, although part of the experience in such luxury areas is similar to that of a luxury/expedition cruise ship, it cannot be regarded as being a true alternative in the eyes of many luxury customers.³⁶
- (30) RCCL's internal documents support this conclusion when observing that, [...].³⁷ As a result, once a customer experiences a luxury cruise, they typically do not go back to less luxurious cruise experiences.³⁸

²⁸ Replies to 7 of Q1 to competitors and replies to 3.1 of Q2 to travel agents. Non-confidential version of the minutes of the call with a competitor of 2 June 2020.

²⁹ Non-confidential version of the minutes of the call with a competitor of 2 June 2020.

³⁰ Replies to 6 and 7 of Q1 to competitors.

³¹ Reply to 5 of Q2 to travel agents.

³² Replies to 6.1 of Q1 to competitors.

³³ Replies to 6 of Q1 to competitors.

³⁴ Form CO, paragraph 96.

³⁵ Non-confidential version of the minutes of the call with a competitor of 2 June 2020.

³⁶ Non-confidential version of the minutes of the call with a competitor of 2 June 2020.

³⁷ RCCL's internal documents, Annex 12.11, slide 30.

- (31) Further evidence pointing to luxury and expedition cruises as a distinct product market is that, were prices to increase on a permanent basis by 5-10%, most luxury cruise passengers would accept such a price increase. One competitor noted that most luxury cruise passengers would accept such a price increase as a “*general cost increase*”.³⁹ Few passengers would consider turning to a top-cabin category of a premium vessel and the market investigation indicated that this “*phenomenon [the trade down to a more affordable premium option] would likely be the exception rather than the rule*”.⁴⁰
- (32) Additional factors relating to quality and service further distinguish luxury and expedition cruises.⁴¹ For example, they often include pre-and-post luxury options such as high-end hotel stays and flight arrangements.⁴² Luxury cruises also provide more exclusive shore excursions in terms of access and smaller size of tours. This is also supported by RCCL’s internal documents, which observe that [...].⁴³
- (33) Some differences also appear to exist between the way luxury and expedition cruises and other types of cruises are booked. Compared to other types of cruise holidays, a lower number of luxury and expedition cruises are booked online and there is a higher recourse to travel agents.⁴⁴ Not all luxury cruises can be booked online⁴⁵ and even if they can, there is still a preference for travel agents. This is because luxury and expedition cruise passengers value and require a higher and more personalised level of service where travel agents explain in detail the products offered, guiding customer choices and make special travel arrangements.⁴⁶ RCCL’s internal documents [...].⁴⁷
- (34) In terms of prices, the market investigation has highlighted that there is no clear dividing line between the contemporary, premium, and luxury and expedition cruise segments, with the prices for luxury and expedition cruises being the highest.⁴⁸ Average prices per night per passenger on a contemporary cruise range from EUR 90 to EUR 250,⁴⁹ average prices on a premium cruise from EUR 250 to EUR 500.⁵⁰ Average prices on luxury and expedition cruises are EUR 500-600 per day but can be as high as EUR 2 000.⁵¹

³⁸ Non-confidential version of the minutes of the call with a competitor of 2 June 2020. Competitor’s reply to 4 of Q1 to competitors.

³⁹ Reply to 4 of Q1 to competitors.

⁴⁰ Competitors’ reply to 4 of Q1 to competitors.

⁴¹ Replies to 9 of Q1 to competitors.

⁴² Replies to 9 of Q1 to competitors.

⁴³ RCCL’s internal documents, QP2, Annex 12.11, slide 23.

⁴⁴ From CO, paragraph 84. Replies to questions 8 and 8.1 of Q1 to competitors.

⁴⁵ Replies to 6.1 of Q2 to travel agents.

⁴⁶ Replies to questions 8 and 8.1 of Q1 to competitors and to questions 6 and 6.1 of Q2 to travel agents. Form CO, paragraph 84.

⁴⁷ RCCL’s internal documents, Annex 12.11, slide 24.

⁴⁸ Replies to 5 of Q1 to competitors.

⁴⁹ Form CO, paragraph 80.

⁵⁰ Form CO, paragraph 80.

⁵¹ Form CO, paragraph 80. Replies to 5 of Q1 to competitors.

4.1.4. Conclusion

- (35) For the purposes of this decision, it is not necessary to conclude on whether luxury/expedition cruises constitute a separate product market, as in any event the Transaction would not raise serious doubts as to its compatibility with the internal market.
- (36) The Commission will therefore assess the effects of the Transaction on the following product markets: the overall market for the provision of oceanic cruises; and the possible distinct market for the provision of luxury/expedition cruises.

4.2. Relevant geographic market

4.2.1. The Notifying Parties' arguments

- (37) The Notifying Parties submit that there are factors indicating that the geographic market for oceanic cruises is broader than national and is likely to be at least EEA-wide.⁵² They claim that since the Commission's decision in M.2706 - Carnival Corporation/P&O Princess, a significant portion of customers now book online.⁵³ As far as prices are concerned, they also state that [...].⁵⁴
- (38) They nonetheless recognise that market penetration of individual cruise operators and of cruise holidays in general differs from one Member State to another.⁵⁵ They further point to the following factors to claim the existence of a Germanic market comprising at least Germany and Austria: the language; on-board service preferences; similar level of penetration; [...].⁵⁶

4.2.2. Precedents

- (39) In its previous decisions, the Commission has concluded that the markets for the supply of oceanic cruises should be considered as national in scope.⁵⁷ In case M. 2706 - *Carnival Corporation/P&O Princess*,⁵⁸ the Commission based itself on a number of elements to conclude that the relevant geographic markets for oceanic cruises were national. These elements included: the fact that the market presence of cruise operators and the penetration of the cruise holiday were different from one Member State to another; specialised cruise agencies and general travel agents operated on a predominantly national level and only a small amount of sales were made via the Internet; marketing and promotions were usually run at national level; and pricing strategies and price levels were different in each Member State.⁵⁹

⁵² Form CO, paragraph 104.

⁵³ Form CO, paragraph 105.

⁵⁴ Form CO, paragraph 106.

⁵⁵ Form CO, paragraphs 107-108.

⁵⁶ Form CO, paragraph 109.

⁵⁷ Case M.334 - *Costa Crociere/Chargeurs/Accor*; case M.2706 - *Carnival Corporation/P&O Princess*; case M.3071 - *Carnival Corporation/P&O Princess (II)*; case M.4600 - *TUI/First Choice*.

⁵⁸ Case M.2706 - *Carnival Corporation/P&O Princess*.

⁵⁹ Case M.2706 - *Carnival Corporation/P&O Princess*.

4.2.3. *The Commission's assessment*

- (40) The market investigation in this case has not produced evidence indicating that the Commission should depart from the approach taken in its previous decisions concluding the existence of national markets.
- (41) The vast majority of cruise operators responding to the market investigation have confirmed that specialised cruise agencies and/or general travel agents predominantly operate at national level.⁶⁰ In this respect, a competitor has for instance explained that travel agencies rarely sell across borders due to regulatory hurdles.⁶¹
- (42) Cruise operators have also confirmed that when selling cruise packages via the Internet, their websites target national markets and that marketing strategies and communications appear to be customised depending on the targeted country.⁶²
- (43) The majority of cruise operators have further indicated that prices for cruise holidays having the same destination differ depending on the Member State in which they are marketed. In this regard, a competitor has indicated that a destination can be more appealing and more accessible (in terms of port of embarkation) from one country to another, which, in turn, could have an effect on the price offering.⁶³
- (44) A minority of respondents provided responses indicating that the relevant geographic market could be seen as comprising a cluster of German-speaking countries (i.e. Austria and Germany).⁶⁴ However, since there is limited recourse to online booking when booking a luxury/expedition cruise, with customers tending to book through travel agents, which predominantly operate at national level,⁶⁵ the Commission considers that there is not sufficient evidence to depart from the conclusion reached in its previous decisions that cruise markets are national.

4.2.4. *Conclusion*

- (45) Therefore, in line with the precedents, for the purposes of the present case, the Commission considers the relevant geographic markets to be national for both the overall market for oceanic cruises and luxury/expedition cruises.

4.3. **Conclusion on market definition**

- (46) The Commission will therefore assess the effects of the Transaction on the markets for the supply of oceanic cruises and for luxury/expedition cruises at national level.

⁶⁰ Replies to 12 of Q1 to competitors.

⁶¹ Competitor's reply to 12 of Q1 to competitors.

⁶² Replies to 13 and 14 of Q1 to competitors.

⁶³ Replies to 15 of Q1 to competitors.

⁶⁴ Replies to 10 of Q2 to travel agents.

⁶⁵ See recital 41 of this decision.

5. COMPETITIVE ASSESSMENT

- (47) The transaction gives rise to a change from sole to joint control over the business of HLC. Therefore, the competitive assessment will focus on the extent to which RCCL competes with HLC, on the basis that HLC is currently solely controlled by TUI AG.
- (48) RCCL is a global cruise operator and is active in the EEA through its brands Royal Caribbean International, Celebrity Cruises, Azamara Club Cruises, Silversea Cruises and Pullmantur Cruises. Silversea Cruises and Azamara Club Cruises are the RCCL brands, which address the luxury/expedition cruise market. HLC is a luxury/expedition cruise operator which primarily targets German-speaking customers.

5.1. Market structure

- (49) The Transaction gives rise to horizontal affected markets in Germany and Austria in the overall oceanic cruise market. As set out in Tables 1 and 2 below, the Transaction gives rise to combined market shares of [20-30]% in Germany and [20-30]% in Austria. In the overall oceanic cruise market, the increment brought about the Transaction is low, [0-5]% in Germany and [0-5]% in Austria.

Table 1: Shares of oceanic cruises by passenger cruise days (“PCDs”), Germany (2016-2018)⁶⁶

Cruise Operator	2018		2017		2016	
	PCDs	Shares	PCDs	Shares	PCDs	Shares
RCCL (excl. TUI Cruises)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TUI AG (excl. TUI Cruises and HLC)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
HLC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TUI Cruises	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Combined	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Other	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Parties' best estimates

⁶⁶ Market shares for the oceanic cruises market have been calculated on the basis of both the number of actual transported passengers per country and the passenger cruise days (PCD), the latter obtained by multiplying the market for passengers by the specific average cruise duration (available through the Cruise Lines International Association – “CLIA”). To determine the annual number of passengers from each country, the Notifying Parties have used data from CLIA. While their estimates for competitors' market shares in 2018 rely on information from CLIA regarding the number of passengers from Germany and Austria, for 2019, CLIA has not yet released its report.

Table 2: Shares of oceanic cruises by passenger cruise days, Austria (2016–2018)

Cruise Operator	2018		2017		2016	
	PCDs	Shares	PCDs	Shares	PCDs	Shares
RCCL (excl. TUI Cruises)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TUI AG (excl. TUI Cruises and HLC)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
HLC	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
TUI Cruises	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%
Other	[...]	[70-80]%	[...]	[70-80]%	[...]	[80-90]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Parties' best estimates

- (50) The Transaction also gives rise to affected markets in the luxury/expedition cruise market in Germany and Austria.
- (51) As set out in Tables 3 and 4 below, the Transaction gives rise to combined market shares of [40-50]% in Germany and [40-50]% in Austria, when looking at data for the luxury/expedition market. In both markets, HLC is the leading player, with shares of [30-40]% in Germany and [30-40]% in Austria. The second and third largest players are the global cruise operators Carnival and NCL respectively, who are active through their brands Seabourn and Cunard (for Carnival) and Regent (NCL). As can be seen by the market share data in Tables 3 and 4, Hurtigruten is the fourth largest competitor in Germany and Austria. RCCL is the sixth and fifth largest player with relatively low market shares of [5-10]% in Germany and [10-20]% in Austria.
- (52) The JV, TUI Cruises, is active only in contemporary and premium cruise markets and is not present in the luxury/expedition cruise market.

Table 3: Shares of luxury/expedition oceanic cruises by number of passengers,⁶⁷ Germany (2016–2018)

Cruise Operator	2018		2017		2016	
	Passengers	Shares	Passengers	Shares	Passengers	Shares
RCCL (excl. TUI Cruises)	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
TUI AG (excl. TUI Cruises and HLC)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
HLC	[...]	[30-40]%	[...]	[30-40]%	[...]	[40-50]%
TUI Cruises	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Combined	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%
Carnival	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Norwegian	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Hurtigruten	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Viking Ocean Cruises	[...]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%
Other	[...]	[5-10]%	[...]	[5-10]%	[...]	[10-20]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Parties' best estimates

Table 4: Shares of luxury/expedition oceanic cruises by number of passengers, Austria (2016–2018)

Cruise Operator	2018		2017		2016	
	Passengers	Shares	Passengers	Shares	Passengers	Shares
RCCL (excl. TUI Cruises)	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
TUI AG (excl. TUI Cruises and HLC)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
HLC	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
TUI Cruises	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Combined	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%
Carnival	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Norwegian	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%
Hurtigruten	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Viking Ocean Cruises	[...]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%
Other	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Total	[...]	100.0%	[...]	100.0%	[...]	100.0%

Source: Parties' best estimates

5.2. The Notifying Parties' arguments

- (53) The Notifying Parties submit that the Transaction will not give rise to a significant impediment to effective competition on any market.
- (54) First, they argue that their market shares are low. When looking at market shares in the overall oceanic cruises market, they have a combined market share of [20-30]%

⁶⁷ The Notifying Parties have only been able to provide market shares based on passenger numbers for the luxury/expedition cruise market. Form CO, paragraphs 124-125.

at EEA level, and if looking at national market shares, [20-30]% in Germany and [20-30]% in Austria, the only two affected markets, based on the market shares calculated on the basis of passenger cruise days.⁶⁸ Should the product market be subdivided according to the level of the passenger experience, the combined market shares would be higher in luxury/expedition cruises, reaching [40-50]% in Germany and [40-50]% in Austria (shares at EEA level are [10-20]%).

- (55) However, in all of these scenarios, the Notifying Parties argue that the increment produced by the Transaction is rather low ([0-5]% in Germany and Austria when looking at overall oceanic cruises and when looking at a potential luxury/expedition cruise market, [5-10]% in Germany and [10-20]% in Austria). The Notifying Parties also argue that the overall passenger numbers in the luxury/expedition segment are low, accounting for only around [...] passengers in Germany and around [...] passengers in Austria.
- (56) Second, the Notifying Parties argue that the Transaction does not change the competitive interaction between them. To the extent that the Commission considers a narrow sub-segment for luxury cruises, TUI Cruises and HLC will continue to operate, under the terms of the JV agreement, autonomously and fully separately from RCCL's cruise business. These brands operate English-language cruise ships that are not targeted or marketed to customers in Germany or Austria. HLC, to the contrary, is a luxury cruise brand that is highly targeted to German-speaking customers.
- (57) Third, the Notifying Parties argue that HLC competes mostly closely with other German-language cruise offerings (regardless of whether they have luxury offerings), than other luxury brands.
- (58) Fourth, the Notifying Parties argue that the luxury segment is growing significantly, and there are a number of other luxury brands that do constrain, and will continue to constrain post-Transaction, RCCL's luxury cruise brands and HLC. Indeed, there are currently three players Carnival, NCL and Hurtigruten that are active in the luxury segment in Germany and Austria and have a market share higher than RCCL. They also refer to a number of possible new entrants in this area such as MSC, one of the global cruise operators, which is expected to launch a new luxury brand in 2023 offering German-language cruises targeted at German, Austrian and Swiss customers.

5.3. The Commission's assessment

- (59) HLC is active in the luxury/expedition market. RCCL also operates luxury/expedition cruises. The Commission's competitive assessment has focussed on the extent to which RCCL and HCL compete in the luxury/expedition market, and the extent to which such competition would be eliminated following the Transaction.

⁶⁸ The oceanic cruises market share data is based on PCD because this better represents the revenue generated by passengers. The Notifying Parties have also provided market shares based on passenger numbers. The market shares for oceanic cruises based on passenger numbers are [20-30]% (Germany) and [10-20]% (Austria).

- (60) As the market share data in Tables 3 and 4 above show, there are several cruise operators active in the luxury/expedition cruise market. The existence of multiple players active in the luxury/expedition market is also evident from RCCL's internal documents. The document distinguishes between the "true luxury" brands and "high end" brands. For example, Figure 1 below shows that in the "true luxury" segment, in addition to Silversea and HLC, other luxury cruise brands include Seabourn (Carnival), Regent (NCL), Crystal Cruises (Genting), Paul Gaugin (Compagnie du Ponant), SeaDream and Ritz Carlton Yacht Collection.⁶⁹ According to Figure 1 "high end" brands include Hurtigruten, Cunard (Carnival), Viking Cruises, Oceania Cruises (NCL) and RCCL's brands Azamara and Celebrity Cruises. Both Silversea and HLC are also active in the expedition cruise segment, an area in which additional competitors are also active, including Lindblad Expeditions and Hurtigruten.

Figure 1 – RCCL's internal document showing cruise operators active in luxury/expedition cruises

[...]

Source: RCCL's internal documents, QP2, Annex 12.10, slide 3

- (61) When looking at the affected markets of Germany and Austria, it is clear that HLC is the leading player in luxury/expedition cruises, with market shares of [30-40]% in Germany and [30-40]% in Austria.⁷⁰ The second largest player in these markets is Carnival, with significantly lower market shares of [10-20]% (Germany) and [10-20]% (Austria). These market shares indicate that HLC stands somewhat apart from the other players active in the market. This is confirmed by the market investigation and HLC's own internal documents. For example, one travel agent commented for that, "*I would suggest that the Hapag Lloyd fleet is something of a stand alone player, as the only German language luxury cruise product.*"⁷¹ HLC in its internal documents [...] ⁷² Travel agents also indicated that, for German-speaking passengers, it was important for them to be able to speak German on-board cruise ships.⁷³
- (62) The Commission investigated the Notifying Parties' claim that HLC competes most closely with other German cruise brands, rather than other luxury cruise brands (see recital (57) above). This does not however appear to be supported by the market investigation [...]. The market investigation indicated that the next best alternatives to HLC from a passenger perspective, or the closest competing brands from a competitor perspective, were other luxury/expedition cruise brands such as Hurtigruten, or other international luxury/expedition brands such as Regent,

⁶⁹ Ritz Carlton Yacht collection was due to start operating cruises during the course of 2020 (Form CO, paragraph 142).

⁷⁰ Form CO, paragraph 114. The Notifying Parties consider that the markets shares in luxury/expedition overstates RCCL's and HLC's market position because the data is incomplete since the Notifying Parties were not able to obtain market share data for smaller operators e.g. Ritz Carlton Yacht Collection, Zegrahm Expeditions, Abercrombie & Kent, Lindblad Expeditions/National Geographic, Alaskan Dream Cruises, Quark Expeditions, Aqua Expeditions, and UnCruise Adventures.

⁷¹ Replies to 16 of Q2 questionnaire to travel agents.

⁷² HLC's internal documents, QP2, Annex 12.5, slide 14 [...]

⁷³ Replies to 14 of Q2 to travel agents.

Seabourn, Compagnie du Ponant, or Silversea (RCCL).⁷⁴ Hurtigruten also considered that HLC was its closest competitor, and in particular in Germany, its most important market.⁷⁵ The majority of market respondents also indicated that the closest competing brands to Silversea were typically the other international luxury cruise brands such as Regent, Seabourn or Crystal Cruises. Therefore, while the market investigation indicated that Silversea can be considered to be a competitor to HLC, it does not compete closely and a number of market respondents indicated that Silversea was merely one of a number of competing brands.⁷⁶

- (63) Further, based on the market share data in Germany and Austria, Carnival and Norwegian's luxury brands would appear to compete more closely with HLC than Silversea in these markets. The Commission notes that Regent (NCL) and Seabourn (Carnival) are important cruise luxury brands in their own right and are owned by two of the largest global cruise operators (Carnival is the largest cruise operator and NCL is the third largest operator globally).⁷⁷ The Commission also observes that while at least one market participant considered Silversea to be "*the most European*"⁷⁸ of the international luxury/expedition cruise brands, Silversea does not actively target German-speaking passengers and that in the future, any targeting of German-speaking passengers would continue to be done through HLC and TUI Cruises, rather than RCCL's other cruise brands.⁷⁹
- (64) RCCL's and HLC's internal documents confirm that [...]. For example, RCCL distinguishes HLC as [...] ⁸⁰ and [...]. In expedition cruises, RCCL considers [...] to be the closest competitors to Silversea since they offered the most luxurious experiences.⁸¹ HLC in its internal documents also notes that [...].⁸²
- (65) The luxury/expedition cruise market is also the fastest growing in the cruise industry, with RCCL noting in one internal document that, [...] ⁸³ In this context, and as noted by the Notifying Parties, a number of new entrants are expected to start operating new luxury and expedition cruises in the coming years and existing players are to expand their fleets.⁸⁴ For example, MSC, one of the global cruise operators not currently active in the luxury/expedition cruise market, announced that it will launch a new luxury cruise brand in 2023. It will be an international brand, but will offer multiple languages, including German, on-board.⁸⁵
- (66) In addition, Hurtigruten, the expedition cruise operator, whose ships all operate as bilingual English and German, has recently launched two new vessels which are

⁷⁴ Replies to 16 of Q1 to competitors and 12 of Q2 to travel agents.

⁷⁵ Competitor's reply to 16.1 of Q1 to competitors, "*In expedition cruising, Hapag-Lloyd Cruises is Hurtigruten's closest competitor, especially in the German market.*"

⁷⁶ Replies to 16 of Q1 to competitors and 12 of Q2 to travel agents.

⁷⁷ Form CO, paragraph 132.

⁷⁸ Non-confidential version of minutes of the conference call with a competitor of 2 June 2020.

⁷⁹ Form CO, paragraphs 56, 133-134.

⁸⁰ RCCL's internal documents, QP2, Annex 12.9.

⁸¹ RCCL's internal documents, QP2, Annex 12.10 slide 36.

⁸² HLC's internal documents, QP2, Annex 12.5, slide 14.

⁸³ RCCL's internal documents, QP2, Annex 12.11, slide 11.

⁸⁴ Form CO, paragraphs 142-143.

⁸⁵ Press release dated 18 October 2018 <https://www.msccruises.com/en-gl/About-MS-Cruises/News/MS-C-Luxury-Cruise-Ships.aspx> and RFI 1 to MSC of 5 June 2020.

intended to continue to serve the German cruise market, its most important market. From 2021, Hurtigruten will also offer more cruises from Hamburg targeted specifically at German-speaking guests.⁸⁶

- (67) A majority of respondents in the market investigation did not raise concerns regarding the impact of the Transaction.⁸⁷ For example, one travel agent highlighted the differences between RCCL's and HLC's businesses, when commenting on the Transaction that, "*We do not see any impact here, as products are completely different, customer flows do not overlap...*".⁸⁸
- (68) In view of the above, and in particular the absence of close competition between RCCL and HCL and the existence of a number of alternative and close competitors to them, the Commission considers it unlikely that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition in the market for the overall provision of oceanic cruises, or in the possible distinct market for the provision of luxury/expedition cruises, in Germany or Austria. Therefore, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement irrespective of the precise market definition.

6. CONCLUSION

- (69) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

⁸⁶ Competitor's reply to 19.1 of Q1 to competitors.

⁸⁷ Replies to 16 of Q2 to travel agents.

⁸⁸ Customer's reply to 15 of Q2 to travel agents.