EUROPEAN COMMISSION
DG Competition

Case M.10082 - CPPIB / TPG / THE TORSTEIN HAGEN INTEREST IN POSSESSION SETTLEMENT / VIKING

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 05/02/2021

In electronic form on the EUR-Lex website under document number 32021M10082

EUROPEAN COMMISSION

Brussels, 5.2.2021
C(2021) 893 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Canada Pension Plan Investment Board
One Queen Street East, Suite 2500
M5C 2W5 – Toronto, Ontario
Canada

TPG Partners VII, L.P.
301 Commerce Street, Suite 3300
76102 – Fort Worth, Texas
United States of America

The Torstein Hagen Interest in Possession Settlement
p/o Conyers Trust Company (Cayman) Limited
Cricket Square, Hutchins Drive, P O Box 2681
KY1-1111 – Grand Cayman
Cayman Islands

Subject: **Case M.10082 – CPPIB / TPG / THE TORSTEIN HAGEN INTEREST IN POSSESSION SETTLEMENT / VIKING**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] [2] and Article 57 of the Agreement on the European Economic Area[3]

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 ("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 For the purposes of this Decision, although the United Kingdom withdrew from the European Union as of 1 February 2020, according to Article 92 of the Agreement on the withdrawal of the United Kingdom of

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

Dear Sir or Madam,

(1) On 23 December 2020**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Canada Pension Plan Investment Board ("CPPIB", Canada), TPG Capital ("TPG", United States) and The Torstein Hagen Interest in Possession Settlement (the "Trust", Cayman Islands) intend to acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of Viking Holdings Ltd ("Viking", Bermuda) currently solely controlled by the Trust**.**[4] The concentration is accomplished by way of purchase of shares. CPPIB, TPG and The Torstein Hagen Interest in Possession Settlement are designated hereinafter as the "Notifying Parties."

1. THE PARTIES

(2) CPPIB is a global investment management organisation that invests the funds transferred to it by the Canada Pension Plan. It principally invests in public and private equities, real estate, infrastructure, credit investments and fixed income investments.

(3) TPG is a private investment firm that manages a family of funds that invest in a variety of companies through acquisitions and corporate restructurings.

(4) The Trust indirectly controls Viking and does not have any business activities that generate revenues other than those of Viking.

(5) Viking operates ocean and river cruises throughout the world, including Europe. Viking currently operates a fleet of 82 vessels, comprising 76 river vessels and 6 ocean vessels. In total, Viking provides passage to 455 destinations in 106 countries.

2. THE OPERATION

(6) Viking is currently solely controlled by the Trust, […]. The rest of the shares are equally owned by CPPIB and TPG.[5] Through a Subscription Agreement signed between the Notifying Parties on 5 November 2020, CPPIB and TPG will each increase their holding to […] of Viking's shares.[6]

Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7), the Commission continues to be competent to apply Union law as regards the United Kingdom for administrative procedures which were initiated before the end of the transition period

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

4 Publication in the Official Journal of the European Union No C 12, 12.01.2021 p. 4.

5 Form CO, paragraphs 57-58.

6 Form CO, paragraphs 68-69.

Joint Control

(7) Each of the Notifying Parties will have […].[7] Consequently, Viking will be jointly controlled by the Notifying Parties.[8]

Full functionality

(8) Post-Transaction Viking will continue to operate as an autonomous business, operating cruises with its own vessels, staff and capital. Viking is not intended to merely perform a specific function for its parents nor to have significant sale or purchase relationship with them.[9]

3. EU DIMENSION

(9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (the Trust: [EUR … million]; CPPIB: [EUR … million]; TPG: [EUR … million])[10]. Two of the undertakings concerned have each an EU-wide turnover in excess of EUR 250 million (CPPIB: [EUR … million]; TPG: [EUR … million]). The undertakings concerned do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.[11] The notified operation therefore has an EU dimension.

4. COMPETITIVE ASSESSMENT

(10) Viking operates oceanic and river cruises throughout the world. TPG is active in the operation of ocean cruises through Dream Cruises Holding Limited ("Dream Cruises") which it jointly controls with Genting Hong Kong Limited.[12] Dream Cruises operates cruise services across the Asia Pacific region.

(11) CPPIB jointly controls ABP with Borealis Infrastructure and GICSI.[13] ABP, through its direct and indirect subsidiaries, owns and operates a number of United Kingdom ports and undertakes United Kingdom port operations and the provision of related services. ABP operates several cruise terminals in the United Kingdom, most notably in the port of Southampton.

4.1. Market definition

4.1.1. Provision of oceanic cruises

4.1.1.1. Relevant product market

(12) 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

---

7 Form CO, paragraphs 77-78.

8 See, the Commission's Consolidated Jurisdictional Notice, pp. 18-19.

9 Form CO, paragraphs 62-67.

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

11 Form CO, annexes CO.4, CO.5 and CO.6.

12 See Commission decision in Case M.9515 – TPG Asia / Genting Hong Kong / Dream Cruises.

13 See Commission decision in Case M.7626 – CPPIB / Borealis / GICSI / ABP.

riverine cruises, and also separate from the market for the supply of other (land-based) holidays.[14]

(13) The Commission considered that within the overall oceanic cruises market, it is possible to distinguish between contemporary, premium, luxury and expedition cruises. 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 offered on smaller vessels and target families seeking a more high-end experience, middle-aged and senior couples, and senior travellers. Luxury and expedition cruises typically offer longer, more exclusive and luxurious travel experiences including off-the-beaten track destinations such as the Arctic and Antarctic/South America.[15] The majority of respondents to the Commission's market investigation in this case confirmed this approach[16] and the Notifying Parties agree with it.[17]

(14) For the purpose of this decision, it is not necessary to conclude on whether an overall market for oceanic cruises has to be considered or whether the market should be segmented into different product markets according to cruise types, as under any of these plausible segmentations, the Transaction would not raise serious doubts as to its compatibility with the internal market.

4.1.1.2. Relevant geographic market

(15) In its previous decisions, the Commission has concluded that the markets for the supply of oceanic cruises should be considered as national in scope because marketing channels are predominantly country specific.[18] This conclusion was supported by respondents to the Commission's market investigation in this case.[19] The Notifying Parties do not contest this approach.[20]

(16) Therefore, in line with the precedents, for the purposes of the present case, the Commission considers the relevant geographic markets to be national for the overall market for oceanic cruises and each of its segments.

4.1.2. Provision of cruise terminal services

4.1.2.1. Relevant product market

(17) In a previous decision, the Commission considered that terminal services for cruise and ferry vessels, requiring dedicated passenger facilities, might belong to a distinct

14 Case M.2706 – Carnival Corporation/P&O Princess; Case M.3071 – Carnival Corporation/P&O Princess (II); Case M.4600 – TUI/First Choice; Case M.9778 – TUI AG/RCCL/Hapag-Lloyd Cruises.

15 Case M.2706 – Carnival Corporation/P&O Princess; Case M.9778 – TUI AG/RCCL/Hapag-Lloyd Cruises.

16 Minutes of calls with market participants: ID103, paragraph 2; ID118, paragraph 4; ID136, paragraph 2; ID142, paragraph 2.

17 Form CO, paragraph 98.

18 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; Case M.9778 – TUI AG/RCCL/Hapag-Lloyd Cruises.

19 Minutes of calls with market participants: ID103, paragraph 7; ID118, paragraph 8; ID136, paragraph 4; ID139, paragraph 4; ID142, paragraph 4.

20 Form CO, paragraph 103.

product market.[21] The Notifying Parties consider that cruise terminal services belong to a separate product market than ferry terminal services because *"[…]unlike ferry terminals, cruise terminal infrastructure is instead designed to accommodate long-term parking, comfortable waiting areas and passenger entertainment, in order to deliver the customers of cruise operators a comfortable experience onshore when they begin or end cruises at that terminal."*[22]

(18) For the purposes of this decision, it is not necessary to conclude on the exact product market definition, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.1.2.2. Relevant geographic market

(19) The Commission did not have yet the opportunity to examine the relevant geographic market of cruise terminal services. The Notifying Parties argue that the geographic market definition should be at least EEA-wide. According to the Notifying Parties, cruise operators can choose cruise terminals from a wide geographic area because cruise passengers can travel to and from the ports of origin and destination, as do about half of cruise passengers from the United Kingdom.[23]

(20) Respondents to the Commission's market investigation confirmed that some passengers, most notably in the premium and luxury / expedition segments, do not mind travelling to and from the ports of origin and destination, allowing cruise operators flexibility in the choice of terminals. However, as is evident in the figures adduced by the Notifying Parties, respondents also explained that a significant proportion of passengers, mostly in the contemporary segment, prefers not to travel long distances to the cruise terminals. It is essential to offer these passengers cruises that start and terminate in their home countries.[24]

(21) For the purposes of this decision, it is not necessary to conclude on the exact geographic market definition, as the Transaction would not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.2. Horizontal overlaps

(22) As explained above, TPG jointly controls the cruise operator Dream Cruises. According to the Notifying Parties, Dream Cruises operates cruises in the Asia Pacific region, […] and is not active in the EEA.[25] Respondents to the Commission market investigation confirmed the view of the Notifying Parties. Respondents also added that Dream Cruises is operating contemporary cruises and is not active in the premium and expedition segments in which Viking is active.[26]

---

[21] Case M.6305 – DFDS / C.RO Ports / Älvsborg.

[22] From CO, paragraph 110.

[23] The Notifying Parties explain, for example, that many cruise passengers from the United Kingdom fly to (and then back from) Barcelona or Civitavecchia (Rome) which are home ports for many Mediterranean cruises. Form CO, paragraphs 121-124.

[24] Minutes of calls with market participants: ID103, paragraph 8-9; ID118, paragraph 10; ID136, paragraphs 5-6; ID139, paragraph 8; ID142, paragraph 6-7.

[25] Form CO, paragraphs 54 and 95.

[26] Minutes of calls with market participants: ID103, paragraph 5; ID118, paragraph 7; ID139, paragraph 7; ID142, paragraph 4.

(23) Consequently, the Transaction does not give rise to reportable markets in the provision of oceanic cruises.

4.3. Vertical overlaps

4.3.1. Legal framework

(24) The Commission will examine whether the Transaction is likely to result in foreclosure in any of the markets that are vertically affected by the Transaction.

(25) According to the Non-Horizontal Merger Guidelines,[27] foreclosure occurs when actual or potential rivals' access to markets is hampered, thereby reducing those companies' ability and/or incentive to compete.[28] Such foreclosure can take two forms: (i) input foreclosure, when access of downstream rivals to supplies is hampered;[29] and (ii) customer foreclosure, when access of upstream rivals to a sufficient customer base is hampered.[30]

(26) For input or customer foreclosure to be a concern, three conditions need to be met post-transaction: (i) the merged entity needs to have the ability to foreclose its rivals; (ii) the merged entity needs to have the incentive to foreclose its rivals; and (iii) the foreclosure strategy needs to have a significant detrimental effect on competition on the downstream market (input foreclosure) or on customers (customer foreclosure).[31] In practice, these factors are often examined together since they are closely intertwined.

4.3.2. Vertically affected markets: the market for the provision of cruise terminal services and the markets for oceanic cruises.

(27) The Transaction gives rise to vertically affected markets between the upstream market for the provision of cruise terminal services in the United Kingdom and oceanic cruise operations downstream.

(28) CPPIB jointly controls ABP, an undertaking that operates several cruise terminals in the United Kingdom, most notably in the port of Southampton. According to the Notifying Parties, the port of Southampton accounted for about [10-20]% of the EEA cruise passengers in 2018[32] and [80-90]% of cruise passengers in the United Kingdom in 2018 and 2019 respectively.[33]

(29) Viking operates premium (or "upper premium" according to some market participants) cruises and plans to launch expedition cruises.[34] The Notifying Parties estimate that in 2019 Viking's activities accounted for [0-5]% of oceanic cruise

---

27 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 7.

28 Non-Horizontal Merger Guidelines, paragraphs 20-29.

29 Non-Horizontal Merger Guidelines, paragraph 31.

30 Non-Horizontal Merger Guidelines, paragraph 58.

31 Non-Horizontal Merger Guidelines, paragraphs 32 and 59.

32 Form CO, table 4.

33 Form CO, table 5. ABP also operates several other cruise terminals (Ayr, Cardiff, Hull, Plymouth, Troon). These are small terminals that account for insignificant number of passengers compared to Southampton; response of the Notifying Parties to RFI-1, question 2.

34 Form CO, paragraph 28, 47 and 149; Minutes of calls with market participants: ID103, paragraph 4; ID118, paragraph 6; ID136, paragraph 3; ID139, paragraph 6; ID142, paragraph 3.

passengers in the United Kingdom (all segments included)[35] and [0-5]% of premium cruise passengers.[36]

(30) Considering that Viking represents a negligible share of demand for cruise terminal services in the United Kingdom, the Notifying Parties would not have the ability to engage in customer foreclosure, that is, switching Viking's business away from terminal operators that compete with ABP and such conduct would have very limited effect. In addition, as Viking is jointly controlled by CPPIB, TPG and the Trust, the Notifying Parties are not likely to have an incentive to engage in customer foreclosure that would benefit only one of them, that is CPPIB.

(31) The Commission will therefore concentrate its analysis on input foreclosure.

4.3.3. Input foreclosure

4.3.3.1. The Notifying Parties' views

(32) The Notifying Parties submit that the Transaction does not give rise to concerns of input foreclosure, that is, restricting the access of cruise operators that compete with Viking to ABP's terminals. According to the Notifying Parties, Viking's rivals have other options to Southampton and ABP's other cruise terminals;[37] CCPIB jointly controls ABP with two other shareholders who are unlikely to agree to engage in input foreclosure;[38] ABP is required by law to offer fair and equal access to its terminals;[39] and ABP has long contracts with its customers and will not be able to foreclose them.[40]

4.3.3.2. Ability to foreclose

(33) Input foreclose may raise competition problems only if it concerns an important input for the downstream product. This is the case, for example, when the input concerned represents a significant cost factor relative to the price of the downstream product. Irrespective of its costs, an input may also be sufficiently important for other reasons. For instance, the input may be a critical component without which the downstream product could not be manufactured or effectively sold on the market, or it may represent a significant source of product differentiation for the downstream product. It may also be that the cost of switching to alternative inputs is relatively high.[41] For input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of power in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.[42]

(34) Although port fees represent a modest share of the total cost of a cruise,[43] access to cruise terminal services is an essential input for the operation of cruise vessels.

---

35 Form CO, Table 6.
36 Response of the Notifying Parties to RFI-2, paragraph 2.
37 Form CO, paragraphs 149-160.
38 Form CO, paragraphs 161-167.
39 Form CO, paragraphs 168-171.
40 Form CO, paragraph 172-174.
41 Non-Horizontal Merger Guidelines, paragraph 34.
42 Non-Horizontal Merger Guidelines, paragraph 35.
43 Form CO, paragraph 159; Minutes of calls with market participants: ID103, paragraph 11; ID118, paragraph 13; ID136, paragraph 10; ID139, paragraph 12; ID142, paragraph 9.

Specifically, the port of Southampton is very important for cruise operations in the United Kingdom. The port of Southampton is the only port that can comfortably accommodate the large cruise vessels in terms of berth size and passenger terminal facilities.[44] In addition, the port of Southampton is easily accessible for the passengers.[45]

(35) Nevertheless, the Notifying Parties are unlikely to be able to engage in input foreclose post-Transaction. First, as explained by the Notifying Parties and confirmed by respondents to the Commission market investigation,[46] ABP has long-term contracts with its major customers that will remain in force for a considerable number of years post-Transaction and which ABP is legally bound to respect. Such contracts are related to significant investments made by ABP in its Southampton terminals in order to accommodate the large cruise vessels. A respondent also confirmed that the port authorities in the United Kingdom would ensure respect of fair and equal access rights to the terminals.[47]

(36) Respondents to the market investigation also explained that cruise operators in the segments directly competing with Viking, that is premium and luxury / expedition cruises, operate smaller vessels. Consequently, they have sufficient choice of alternative cruise terminals. Among the alternatives to Southampton and ABP's other terminals, respondents mentioned the ports of Dover, Tilbury, Brighton, Portsmouth, Tower Bridge and Greenwich.[48]

4.3.3.3. Incentive to foreclose

(37) The incentive to foreclose depends on the degree to which foreclosure would be profitable. The vertically integrated firm will take into account how its supplies of inputs to competitors downstream will affect not only the profits of its upstream division, but also of its downstream division. Essentially, the merged entity faces a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers.[49] The incentive for the integrated firm to raise rivals' costs further depends on the extent to which downstream demand is likely to be diverted away from the foreclosed rivals.[50]

(38) The merged entity is unlikely to have the incentive to engage in input foreclosure. As explained above, the cruise operations of Viking represent a negligible demand for cruise terminal services compared to the demand supplied by ABP. Viking would not be able to compensate for the loss of activity that input foreclosure would represent for ABP.[51]

---

44 Large cruise vessels are used for contemporary cruises that account for the majority of passengers.

45 Minutes of calls with market participants: ID103, paragraphs 10 and 11; ID118, paragraph 11; ID136, paragraph 8; ID139, paragraph 9; ID142, paragraph 8.

46 Minutes of calls with market participants: ID103, paragraph 13; ID136, paragraph 9; ID139, paragraph 11.

47 Minutes of a call with a market participant, ID118, paragraph 14.

48 Minutes of calls with market participants: ID103, paragraphs 11 and 12; ID118, paragraphs 11 and 12; ID139, paragraph 10; ID142, paragraph 8 and 11.

49 Non-Horizontal Merger Guidelines, paragraph 40.

50 Non-Horizontal Merger Guidelines, paragraph 41.

51 Minutes of calls with market participants: ID103, paragraph 13; ID142, paragraph 11.

(39) The Notifying Parties are unlikely to have the incentive to engage in input foreclosure even if they targeted the smaller demand represented by Vikings' direct competitor for premium and luxury / expedition cruises. First, several of these competitors are brands belonging to ABP's major customers with whom it has long-term relationships.[52] Second, in addition to CPPIB, ABP is controlled by two other shareholders, that are not likely to have an interest in supporting input foreclosure from which only CPPIB could benefit.

(40) The majority of respondents to the market investigation opined that the Transaction is financial in nature, aiming at supporting Viking through the COVID-19 crisis. In their view, CPPIB and TPG as financial investors are unlikely to be involved with the commercial direction of Viking.[53]

4.3.3.4. Overall effect of foreclosure

(41) In general, a merger will raise competition concerns because of input foreclosure when it would lead to increased prices in the downstream market thereby significantly impeding effective competition.[54]

(42) As noted above, port fees represent a modest share of the total cost of a cruise and Vikings' direct competitors operating premium and luxury / expedition cruises would have other terminal options in the United Kingdom. Input foreclosure is therefore unlikely to impede significantly competition.

4.3.3.5. Conclusions

(43) Based on the considerations above and all evidence available to it, the Commission concludes that an input foreclosure strategy post-Transaction by the Notifying Parties in order to exclude third party customers of cruise terminal services is unlikely. This conclusion is supported by the majority of respondents to the market investigation that stated that they are not concerned by the Transaction.[55] None of the respondents raised specific concerns regarding the conduct of the Notifying Parties post-Transaction.

5. CONCLUSION

(44) 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

52 Form CO, tables 6 and 10.

53 Minutes of calls with market participants: ID103, paragraphs 14; ID118, paragraphs 15; ID139, paragraph 13; ID142, paragraph 8 and 10.

54 Non-Horizontal Merger Guidelines, paragraph 47.

55 Minutes of calls with market participants: ID103, paragraphs 14; ID118, paragraphs 15; ID139, paragraph 13; ID142, paragraph 8 and 12.