



EUROPEAN COMMISSION
DG Competition

PUBLIC VERSION

Case M.9421 - TRITON / CORENDON

Only the English text is available and authentic.

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

Article 9(3)
Date: 10/12/2019

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 Where possible the information omitted has been replaced by ranges of figures or a general description.



EUROPEAN
COMMISSION

Brussels, 10.12.2019
C(2019) 9132 final

COMMISSION DECISION

of 10.12.2019

**relating to Article 9 of Regulation (EC) No 139/2004
referring to case M.9421 – Triton/Corendon**

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relating to Article 9 of Regulation (EC) No 139/2004 referring to case M.9421 – Triton/Corendon

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the "TFEU")¹,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings² (the "Merger Regulation"), and in particular Article 9(3) thereof,

Having regard to the notification made by Triton Group ("Triton" or the "Notifying Party") on 21 October 2019, pursuant to article 4 of the said Regulation,

Having regard to the request of the Netherlands Authority for Consumers and Markets of 11 November 2019,

Whereas:

- (1) On 21 October 2019, the Commission received notification of a proposed concentration by which Triton acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Corendon Holding B.V. ("Corendon") by way of purchase of shares (the "Transaction"). Triton and Corendon are collectively referred to as the "Parties".
- (2) The Netherlands Authority for Consumers and Markets received a copy of the notification on 21 October 2019.
- (3) By letter dated 11 November 2019, the Netherlands, via the Netherlands Authority for Consumers and Markets, requested the referral to its competition authority of the proposed concentration with a view to assessing it under national competition law, pursuant to article 9(2)(a) of the Merger Regulation ("the Referral Request").

1. THE PARTIES

- (4) Triton is an investment firm that invests primarily in medium-sized businesses headquartered in Northern Europe, with particular focus on businesses in three core sectors: Business Services, Industrials and Consumer/Health. Triton indirectly owns

¹ OJ C115, 9.8.2008, P.47.

² OJ L 24, 29.1.2004, p.1. 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.

and controls Sunweb, which it acquired earlier this year.³ Sunweb is a European online tour operator, headquartered in Rotterdam, which provides packaged holidays primarily to sunshine destinations across Europe and the Mediterranean. Sunweb offers package holidays mainly from the Netherlands and Belgium and to a lesser extent also from Denmark, the United Kingdom, Sweden, Germany and France.

- (5) Corendon is a leisure services provider based in the Netherlands. It operates as a leisure tour operator via its own website and third party channels (high street travel agencies and online). Corendon provides package holidays to over 40 sun and beach destinations, mostly in the Mediterranean, but also has long haul and winter sun and beach destinations in its offering. Corendon also operates Corendon Dutch Airlines (“CND”), which currently operates three aircraft out of Amsterdam Airport Schiphol.

2. THE CONCENTRATION

- (6) On 29 May 2019, the Parties entered into a signing protocol, pursuant to which Sunweb will acquire 100% of the shares in Corendon, after consultation of the applicable Dutch works councils.
- (7) Post-Transaction, Corendon will become a wholly-owned subsidiary of Sunweb and therefore an indirectly wholly-owned and solely-controlled portfolio company managed by Triton.
- (8) It follows that the proposed concentration constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (9) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ in 2018 [Triton: EUR 12 593 million, Corendon: EUR 488 million]. The EU-wide turnover of each of the undertakings concerned is more than EUR 250 million [Triton: EUR [...] million, Corendon: EUR [...] million]. Not each of the Parties achieves more than two-thirds of their aggregate EU-wide turnover within the same Member State.⁵
- (10) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. THE ARTICLE 9 REFERRAL REQUEST

- (11) By letter dated 11 November 2019, the Netherlands Authority for Consumers and Markets, on behalf of the Netherlands, requested the Transaction to be partially referred to the Netherlands Authority for Consumers and Markets with a view to assessing the effects of the Transaction in the Netherlands under national competition law, pursuant to Article 9(2)(a) of the Merger Regulation.⁶

³ Case M.9249 - *Triton/Sunweb*, Commission decision under the simplified procedure of 6 February 2019.

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁵ While Corendon achieved more than two thirds of its EU-wide turnover in the Netherlands, Triton does not achieve more than two thirds of its EU-wide turnover in any single member state.

⁶ By a letter dated 12 November 2019, the Belgian Competition Authority, on behalf of Belgium, requested the Transaction to be partially referred to Belgium with a view to assessing the effects of the

- (12) In its preliminary assessment, the Netherlands Authority for Consumers and Markets has identified that the Transaction threatens to significantly affect competition in the Netherlands in the market for the supply of package holidays, which presents all the characteristics of a distinct market.
- (13) The Netherlands Authority for Consumers and Markets further submits that it would be the best placed authority to review the effects of the Transaction in the Netherlands, given that (i) the potential significant impact of the proposed concentration on competition relates to one or more markets that are national in scope, (ii) the Netherlands Authority for Consumers and Markets has substantial case experience through leisure travel-related mergers and (iii) it is not unlikely that the approval of the proposed concentration would be subject to conditions, which will be better monitored by the Netherlands Authority for Consumers and Markets, since these conditions will be likely to have a country specific nature.

5. RELEVANT MARKETS

- (14) The Parties' activities overlap in the supply of package holidays by tour operators. In addition, the Transaction gives rise to a vertical relationship in relation to Corendon's activities, through Corendon Dutch Airlines, in the supply of airline seats to tour operators (upstream market) and the supply of package holidays by tour operators (downstream market), where both Parties are active. Given that the Transaction mainly relates to the supply of package holidays, the Commission will focus on the market for the supply of package holidays by tour operators and the horizontal overlaps raised by the Transaction for the purpose of this decision.⁷

5.1. Product market definition – Package holidays supplied by tour operators

5.1.1. Distinction between package holidays, dynamic packages and independent holidays

5.1.1.1. Introduction

- (15) Customers may purchase their package holidays with different modalities: (i) traditional package holidays;⁸ (ii) dynamic packages; and (iii) independent travel options.
- (16) Traditional package holiday suppliers obtain hotel rooms and airline seats under annual block bookings with hotel owners and airlines (and sometimes take a part of the risk of filling these hotel rooms and airline seats). A traditional package holiday

Transaction in Belgium under national competition law, pursuant to Article 9(2)(a) of the Merger Regulation.

⁷ In its decisional practice (see among others. case M.8046 – *TUI/Transat France*, paragraph 88, M.4600 – *TUI/First Choice*, paragraph 59, M.4601 – *KarstadtQuelle/My Travel*, paragraph 44), the Commission considered that the upstream market for the wholesale supply of airline seats to tour operators was national in scope. The market investigation confirmed the Commission's practice. Therefore, the market for the wholesale supply of airline seats also presents the characteristics of a distinct market in which the Transaction threatens to affect competition, given that the Parties' shares exceed 30% under some market delineations in the supply of package holidays.

⁸ The term "package holidays" for the purpose of this decision is distinct from the notion of "package travel" under Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC ("the new Package Travel Directive") and without prejudice to the autonomous interpretation of "package travel" contained therein.

supplier offers a package including a flight and a hotel room to customers from this inventory.

- (17) A dynamic package includes a flight and hotel booked by a customer in a single transaction, based on the best available flight and hotel option at the time of booking. Dynamic package holiday suppliers do not pre-arrange block bookings of hotel rooms or airline seats, they secure these bookings in real time.
- (18) Independent travel options refer to flight and hotel bookings made in separate transactions. Independent travel options are also described as “self-packaged” holidays. This would include “click-through bookings”, where a traveller books a flight from one supplier and is then invited to book a hotel with another supplier (or vice versa).
- (19) Both Sunweb and Corendon are traditional package holiday suppliers. However, in order to respond to competition from dynamic package suppliers, they are considering offering some dynamic packages.
- (20) For the purpose of this decision and in line with the Commission’s decisional practice,⁹ traditional package holidays would indifferently be referred to as package holidays or traditional package holidays.

5.1.1.2. The Notifying Party’s views

- (21) In the Form CO, the Notifying Party argues that from the customer perspective, there is no difference between dynamic travel packages and traditional travel packages created by tour operators from pre-acquired content. Traditional and dynamic packages compete directly on value for money, and consumers search, compare and book these travel packages in the same way online.¹⁰
- (22) The Notifying Party also argues that independent or “self-packaged” travel options are a direct substitute for traditional travel packages. Indeed, it argues that consumers are able to book individual holiday components online directly with travel services providers (e.g., airlines, hotels and tour operators) or through OTAs, MSS and online marketplaces.¹¹

5.1.1.3. Commission’s assessment

- (23) In its decisional practice, the Commission has generally distinguished between package holidays and independent holidays.¹² In its recent precedent, TUI/Transat France,¹³ the Commission considered, but ultimately left open, whether package holidays constitute a distinct market from independent holidays. It did not consider, however, the market role of dynamic package holidays.
- (24) The results of the market investigation are inconclusive as to whether traditional package holidays, dynamic package holidays and independent holidays belong to the same market for leisure travel services. Some respondents, among them tour operators, have indicated that customers do not notice the difference between

⁹ Case M.5867, *Thomas Cook/Öger Tours*; Case M.1524, *Airtours/First Choice*, paragraphs 5 *et seq.*; Case M.4601, *KarstadtQuelle/MyTravel*, footnote 63.

¹⁰ Form CO, paragraph 246.

¹¹ Form CO, paragraph 292 *et seq.*

¹² Case M.5867, *Thomas Cook/Öger Tours*, paragraph 10. Other, less recent cases include Case M.1524, *Airtours/First Choice*, paragraph 43; Case M.4601, *KarstadtQuelle/MyTravel*, paragraph 28 *et seq.*; Case M.5462, *Thomas Cook Group/Gold Metal International*, paragraph 9 *et seq.*

¹³ Case M.8046 – *TUI/Transat France*, paragraph 27.

traditional and dynamic package holidays.¹⁴ Others noted that dynamic package holidays could not compete with traditional package holiday, in cases where tour operators include in the package items to which they have exclusive access.¹⁵ Also, the question whether price differences exist between traditional and dynamic package holidays and between the former and independent bookings has triggered mixed replies, as prices generally depend on a number of variables and different arrangements at both provider and customer levels.¹⁶ It can, however, be observed that prices between the three types of package holidays differ substantially at times and do not follow each other consistently over the year.

- (25) Moreover, the Parties' internal documents provide support for a distinct market for the supply of traditional package holidays within the potential broader market for leisure travel services. According to a document about market dynamics, [...].¹⁷ In addition, online travel agents [...].^{18,19}

5.1.1.4. Conclusion

- (26) In light of the above, the Commission considers that, for the purpose of this decision and without prejudice to further investigation by the Netherlands Authority for Consumers and Markets, the question whether traditional package holidays constitute a distinct market from dynamic packages and independent holidays can be left open. The criteria of Article 9(2)(a) of the Merger Regulation are met, since, as explained in Section 6 below, the Transaction threatens to significantly affect competition in the markets for package holidays to all short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain sunshine destination countries (e.g. Turkey) supplied in the Netherlands, which present all the characteristics of distinct markets, as explained in Section 5.2 below.

5.1.2. *Distinction of package holidays by holiday type*

5.1.2.1. Introduction

- (27) The Commission has considered in some of its prior decisions in the sector the possibility to further distinguish markets by holiday types, such as “sun and sea” holidays, “beach holidays” (or holidays to “sunshine destinations”), “skiing” and “city breaks”, but ultimately left open the precise scope of this segmentation.²⁰
- (28) In its decision in case M.8046 - TUI/Transat France,²¹ the Commission considered a distinction recognised by the trade union of French tour operators (the Syndicat des entreprises du Tour Operating – SETO), which recognises five different types of package holidays: (i) package holidays à la carte, (ii) tour package holidays, (iii) tour package holidays in clubs, (iv) package holiday stays and (v) group package

¹⁴ Q1, replies of De Jong and Der Touristik to question 11.1.

¹⁵ Q1, replies of EasyJet Holiday to question 11.1; Q3, reply of Travelclub to question 10.1, “*Big Touroperators like Corendon or Sunweb buy hotels or sell them in the market on an exclusive basis. These hotels can only be booked with them. No alternatives*”.

¹⁶ Q1, replies to questions 12.1 and 13.1; Q2, replies to questions 18, 18.1, 19 and 19.1; Q3, replies to question 11, 11.1, 12 and 12.1.

¹⁷ Form CO, Annex 22A, Triton 5.4 Doc #30, [...] p.119.

¹⁸ Form CO, Annex 22A, Triton 5.4 Doc #30, [...] p.135.

¹⁹ The AVNR is the Dutch Association of Travel Agents and Tour Operators.

²⁰ Case M.4601, *KarstadtQuelle/MyTravel*, paragraph 25; Case M.4600, *TUI/First Choice*, paragraph 30; Case M.1524, *Airtours/First Choice*, paragraph 10.

²¹ Case M.8046 – *TUI/Transat France*, paragraph 30 *et seq.*

holidays. However, the Commission concluded that the question whether the market for package holidays should be further segmented by type could be left open.²²

- (29) Package holidays à la carte are tailor-made packages of holiday products labelled as “à la carte” or “sur mesure” by the tour operator, irrespective of the specific type and scope of the service sold. Tour package holidays (“circuits”) refer to itinerant journeys, which typically include travel, accommodation and guided tours to multiple destinations. Package holidays in clubs (“clubs”) imply the provision of dedicated services in addition to accommodation, such as animation, activities, sports, baby-sitting, etc. by the tour operator. Package holiday stays (“séjours”) are defined as consisting of the provision of travel and accommodation services in a single destination. Stays may also sometimes include additional services or activities, which are not offered directly by the tour operator, but rather by the operator of the hotel. Lastly, group package holidays (“groupes”) are any package holidays sold in the framework of a collective agreement. Group package holidays notably include holiday services to work councils. However, in TUI/Transat France, the Commission concluded that this type of package holidays should not be treated as a distinct product market as this was confirmed by the market investigation conducted then and since it is predominantly a commercial categorisation of package holidays rather than a generic category.²³

5.1.2.2. The Notifying Party’s views

- (30) In the Form CO,²⁴ the Notifying Party does not contest a possible distinction between package holidays to sunshine destinations, “city break” package holidays or wellness package holidays, but argues that the distinction outlined in TUI/Transat France is not generally recognised in the industry outside France, in particular by the Parties, the Dutch Association of Travel Agents and Tour Operators (the “ANVR”) and the Association of Belgian Travel Organisers (the “ABTO”).
- (31) The Notifying Party also explains that, if the Parties were to designate their activities as principally falling within one of the holiday types outlined by SETO in the context of the French market, they would say that they offer package holiday stays. Nevertheless, the Notifying Party adds that such package holiday stays are not recognised as a specific holiday type in the Netherlands and Belgium.
- (32) Lastly, as the overlap in the present case arises due to the Parties’ activities in the supply of sun and sea holidays, the Notifying Party provided its analysis in relation to the supply of package holidays to sunshine destinations.

5.1.2.3. Commission’s assessment

- (33) The market investigation was inconclusive as to whether the market participants segment their package holiday offering by type of holiday. The majority of tour operators and online travel agents having expressed a view segment their package holiday offering by type of holiday and distinguish package holidays to sunshine destinations from city breaks or ski trips. However, the majority of the travel agents replied that they do not segment their package holiday offer by type of holiday.²⁵

²² Case M.8046 – *TUI/Transat France*, paragraph 39.

²³ Case M.8046 – *TUI/Transat France*, paragraph 31.

²⁴ Form CO, paragraph 344 *et seq.*

²⁵ See replies to Q3 – Questionnaire to travel agents, question 14.

- (34) Indeed, the majority of tour operators supplying package holidays in the Netherlands and having responded to the market investigation, including TUI, Alltours, DER Touristik and easyJet Holidays, indicated that they segment their package holiday offering in the Netherlands by holiday type and the majority of tour operators indicated that package holidays to “sun and sea” destinations are offered as a distinct product.²⁶ For example, a tour operator indicated that it distinguishes within its package holiday offering between “sun and sea, city breaks, holidays by car, skiing holidays and long haul destinations”.²⁷
- (35) Similarly, some of the online travel agents responding to the market investigation (e.g. De Vakantie Discounter, D-rt Groep B.V.) responded that they segment their package holiday offering in the Netherlands by product type, including sun and beach package holidays.²⁸
- (36) As a result, overall, it appears that the majority of market respondents to the market investigation, and especially the tour operators, distinguish between package holidays to sunshine destinations, ski trips package holidays and city breaks package holidays in the Netherlands. Any further distinction between package holidays à la carte, tour package holidays, package holidays in clubs, package holiday stays would not change the assessment whether to refer to the Netherlands since, as explained in Section 6 below, the Transaction threatens to significantly affect competition in the markets for package holidays to all short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain destination countries supplied in the Netherlands. In addition, the Parties only provide package holiday stays.
- (37) Therefore, in line with the Commission’s precedents, the Commission considers that the question whether package holidays can be further segmented by holiday type can be left open, since, as explained in Section 6 below, the Transaction threatens to significantly affect competition in the markets for package holidays to all short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain destination countries (e.g. Turkey) supplied in the Netherlands, which present all the characteristics of distinct markets, as explained in Section 5.2 below.

5.1.2.4. Conclusion

- (38) In light of the above, the Commission considers that, for the purpose of this decision and without prejudice to further investigation by the Netherlands Authority for Consumers and Markets, the question whether the market for package holidays should be further segmented by type of holidays can be left open. The criteria of Article 9(2)(a) of the Merger Regulation are met, since, as explained in Section 6 below, the Transaction threatens to significantly affect competition in the markets for package holidays to all short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain destination countries (e.g. Turkey) supplied in the Netherlands, which present all the characteristics of distinct markets, as explained in Section 5.2 below.

²⁶ See replies to Q1 – Questionnaire to tour operators, question 15.

²⁷ See reply of a tour operator to Q1 – Questionnaire to tour operators, question 15.1.

²⁸ See replies to Q2 – Questionnaire to online travel agents, questions 21 and 21.1.

5.1.3. Distinction of package holidays by destination

5.1.3.1. Introduction

- (39) The Commission considered in its previous decisional practice a further distinction within the market for package holidays between domestic and foreign holidays and, within package holidays to foreign destinations, between short/medium haul and long haul destinations (defined as package holidays involving flights that substantially exceed three hours) but ultimately left the question open.²⁹
- (40) The Commission also left open whether the market for package holidays should be segmented by destination country or by group of destination countries.³⁰

5.1.3.2. The Notifying Party's views

- (41) The Notifying Party does not contest the Commission's decisional practice with respect to the segmentation of the market for package holidays between domestic and foreign holidays and, within package holidays to foreign destinations, between short/medium haul and long haul destinations.³¹
- (42) However, with respect to the plausible segmentation by destination country or by group of destination countries, the Notifying Party submits that the markets for package holidays should not be segmented by individual country of destination. Instead, the potential relevant product market would comprise all short/medium haul sunshine destinations.³²
- (43) The Notifying Party argues that when choosing an annual summer holiday, customers in Northern Europe, notably in Belgium and the Netherlands, are primarily interested in securing a holiday which they consider to be good value for money – including a hotel with appropriate facilities, food and drink options, a high likelihood of sunny weather, and a mix of other features not determined by the specific destination country.³³
- (44) In that respect, the Notifying Party considers that the conditions of competition are very similar across all sunshine destinations. According to the Parties, their marketing materials would provide support for this argument: the images representing the hotels offered by the Parties in Bulgaria, Egypt, Greece, Italy, Portugal, Spain and Turkey would present the same key features, namely blue skies, a swimming pool, leisure facilities, bars and restaurants.³⁴
- (45) Sunweb and Corendon each observed that the majority of their repeat customers (i.e. customers who purchased more than one package holiday to a sunshine destination) [...].³⁵ According to the Notifying Party, this [...] would support the argument against a segmentation of package holidays by country of destination.³⁶
- (46) Besides, the Notifying Party submits that customers would switch between sunshine destinations in response to geo-political events.³⁷ For instance, the Notifying Party

²⁹ Case M.8046 – *TUI/Transat France*, paragraph 59.

³⁰ Case M.8046 – *TUI/Transat France*, paragraph 59.

³¹ Form CO, paragraphs 349-351.

³² Form CO, paragraph 77.

³³ Form CO, paragraph 169.

³⁴ Form CO, paragraphs 174-175.

³⁵ Form CO, paragraph 181 *et seq.*

³⁶ Form CO, paragraph 186 *et seq.*

³⁷ Form CO, paragraph 192 *et seq.*

considers that the decrease in the number of tourists in Turkey from the Netherlands in 2015 and 2016 is likely due to the rising political tensions there at the time. This drop in travel to Turkey is likely to have caused switching to other sunshine destinations such as Greece, Portugal and Spain, which saw increases in travellers from the Netherlands in 2017.³⁸

- (47) Furthermore, the Notifying Party considers that customers are mostly interested in sunshine, not the specific destination country.³⁹ In that respect, it submits that during the heatwave of Summer 2018, the number of bookings for package holidays to sunshine destinations fell because the excellent weather in Northern Europe deterred many customers from booking trips to sunshine destinations, who instead stayed in their home country. According to the Notifying Party, this provides further support for the view that passengers are very willing to switch between countries for their holidays.⁴⁰

5.1.3.3. Commission's assessment

Distinction between package holidays to domestic destinations and package holidays to foreign destinations

- (48) The market investigation seems to indicate that package holidays to domestic destinations and package holidays to foreign destinations are not close substitutes.⁴¹ In that respect, a tour operator indicated that “Domestic trips are generally without flights given that the Netherlands and Belgium are small countries, and therefore significantly different from foreign packages”.⁴² However, the substitutability between package holidays to domestic destinations and package holidays to foreign destinations would depend on several factors, including the weather conditions, the budget and personal preferences. For instance, a travel agent indicated that the substitutability between foreign and domestic destinations “depends strongly on the national weather”⁴³ and a tour operator explained that it “mainly depends on domestic economic conditions. A slow economy results in a higher propensity for domestic travel”.⁴⁴

- (49) The Commission considers that the question whether package holidays to domestic destinations and package holidays to foreign destinations belong to the same product market can be left open, since, as explained in Section 6 below, the Transaction threatens to significantly affect competition in the markets for package holidays to all short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain destination countries (e.g. Turkey) supplied in the Netherlands, which present all the characteristics of distinct markets, as explained in Section 5.2 below.

Distinction between package holidays to short/medium haul destinations and package holidays to long haul destinations

³⁸ Form CO, paragraphs 192-193.

³⁹ Form CO, paragraph 198 *et seq.*

⁴⁰ Form CO, paragraphs 201-203.

⁴¹ Replies to Q1 – Questionnaire to Tour Operators, question 16; Q2 – Questionnaire to Online Travel Agents, question 22; Q3 – Questionnaire to Travel Agents, question 15.

⁴² Reply to Q1 – Questionnaire to Tour Operators, question 16.1.

⁴³ Reply to Q3 – Questionnaire to Travel Agents, question 15.1.

⁴⁴ Reply to Q1 – Questionnaire to Tour Operators, question 16.1.

- (50) The market investigation is inconclusive as to whether package holidays to short/medium haul destinations are substitutable with package holidays to long haul destinations. On the one hand, several respondents indicated that the price difference between packages to short/medium haul destinations and packages to long haul destinations is usually significant and would therefore provide support for considering them as not substitutable.⁴⁵ On the other hand, as indicated by travel agents, “depending on the price the customer decides for short/medium haul or long-haul destination”.⁴⁶
- (51) In line with its previous decisional practice, the Commission considers that the question whether package holidays to short/medium haul destinations and package holidays to long haul destinations belong to the same product market can be left open, since, as explained in Section 6 below, the Transaction threatens to significantly affect competition in the markets for package holidays to all short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain destination countries (e.g. Turkey) supplied in the Netherlands, which present all the characteristics of distinct markets, as explained in Section 5.2 below.

Distinction of package holidays by destination countries or group of destination countries

- (52) From the demand-side, the majority of respondents to the market investigation indicated that, for package holidays to sunshine destinations purchased in the Netherlands, the country of destination is not one of the five most important factors that influence the decision on destination of a customer.⁴⁷ A travel agent indicated “as long as it is cheap [sic], sunny and welcome to guests, most of our customers are OK with any region or country”.⁴⁸ Nevertheless, respondents to the market investigation indicated that for package holidays to certain sunshine destination countries (notably Greece and Portugal), the country itself appears to be one of the three most important factors in the customer’s purchase decision.⁴⁹ A tour operator indicated that “customers usually have a clear idea of their destination when book, and of their budget. Sometimes, customers are more looking for an experience or for specific activities. Therefore, it is not always easy for a customer to switch its destination choice for another one”.⁵⁰
- (53) Furthermore, in case of a permanent price increase of 5 to 10% of the package holiday to a given country, the majority of respondents to the market investigation indicated that the majority of customers who initially wanted to travel there would still choose a package holiday to this country of destination, despite the price increase.⁵¹ A travel agent noted that “Overall, a client remains faithful to one

⁴⁵ Replies to Q1 – Questionnaire to Tour Operators, question 17; Q2 – Questionnaire to Online Travel Agents, question 25; Q3 – Questionnaire to Travel Agents, question 18.

⁴⁶ Reply to Q3 – Questionnaire to Travel Agents, question 18.1.

⁴⁷ Replies to Q1 – Questionnaire to Tour Operators, question 19; Q2 – Questionnaire to Online Travel Agents, question 25; Q3 – Questionnaire to Travel Agents, question 16.

⁴⁸ Reply to Q3 – Questionnaire to Travel Agents, question 21.

⁴⁹ Replies to Q1 – Questionnaire to Tour Operators, question 20; Q2 – Questionnaire to Online Travel Agents, question 26; Q3 – Questionnaire to Travel Agents, question 19.

⁵⁰ See agreed non-confidential minutes of a conference call of 26 August 2019 with a tour operator, paragraph 8.

⁵¹ Replies to Q1 – Questionnaire to Tour Operators, question 21; Q2 – Questionnaire to Online Travel Agents, question 27; Q3 – Questionnaire to Travel Agents, question 20.

particular destination and will only explore alternatives once the increase of his holidays reaches 20%”.⁵²

- (54) From the supply-side, the majority of tour operators indicated that it is not easy to start offering package holidays to other destination countries swiftly because the entry to a new destination country implies significant costs and risks. In that respect, a tour operator indicated that entering a new destination country involves “to go through a full set of set up tasks until a satisfactory level of service can be provided to customers”. Another tour operator explained that “there is a lot of analysis being done in-house prior to offering new destinations. The reaction of the market is always an uncertain factor. Starting new destinations is going hand in hand with additional costs on several levels”.⁵³
- (55) In addition, the Parties⁵⁴ and the majority of tour operators having responded to the market investigation monitor their competitors’ prices at destination country level and/or at hotel level.⁵⁵
- (56) When asked specifically whether package holidays to sunshine destinations should be segmented by group of countries, respondents to the market investigation did not always delineate the various groups of destination countries in the same way. Some considered that Southern Europe should be distinguished from Northern Africa, while others considered that there should be a distinction between Eastern Mediterranean countries on the one hand and mainland Spain and mainland Portugal on the other hand.⁵⁶
- (57) While, in light of the above, there are indications that destination matters and the country of destination does play an important role for many travellers when booking their holidays, it can be left open whether the market for package holidays should be segmented by destination country or group of countries, since, as explained in Section 6 below, the Transaction threatens to significantly affect competition in the markets for package holidays to all short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain destination countries (e.g. Turkey) supplied in the Netherlands, which present all the characteristics of distinct markets, as explained in Section 5.2 below.

5.1.3.4. Conclusion

- (58) In light of the above, the Commission considers that, for the purpose of this decision and without prejudice to further investigation by the Netherlands Authority for Consumers and Markets, the question whether the supply of package holidays should be segmented by destination (namely, between domestic or foreign destination; short/medium haul or long haul destination; by country of destination or group of countries of destination) can be left open. The criteria of Article 9(2)(a) of the Merger Regulation are met, since, as explained in Section 6 below, the Transaction threatens to significantly affect competition in the markets for package holidays to all short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain sunshine destination countries (e.g. Turkey) supplied in the

⁵² Reply to Q3 – Questionnaire to Travel Agents, question 20.1.

⁵³ Replies to Q1 – Questionnaire to Tour Operators, question 23.

⁵⁴ See for instance Form CO, Annex 22A, Triton 5.4 Doc #17, [...] p.11.

⁵⁵ Replies to Q1 – Questionnaire to Tour Operators, question 24.

⁵⁶ Replies to Q1 – Questionnaire to Tour Operators, question 22; Q2 – Questionnaire to Online Travel Agents, question 28; Q3 – Questionnaire to Travel Agents, question 21.

Netherlands, which present all the characteristics of distinct markets, as explained in Section 5.2 below.

5.1.4. *Conclusion on product market definition*

- (59) In light of the above, the Commission considers that, for the purpose of this decision and without prejudice to further investigation by the Netherlands Authority for Consumers and Markets, the question whether traditional package holidays constitute a distinct market from dynamic packages and independent holidays can be left open. Within traditional package holidays, the question whether traditional package holidays should be further segmented by holiday type or by destination (namely, between domestic or foreign destination; short/medium haul or long haul destination; by country of destination or group of countries of destination) can be left open. The criteria of Article 9(2)(a) of the Merger Regulation are met, since, as explained in Section 6 below, the Transaction threatens to significantly affect competition in the markets for package holidays to short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain sunshine destination countries (e.g. Turkey) supplied in the Netherlands, which present all the characteristics of distinct markets, as explained in Section 5.2 below.

5.2. **Geographic market definition – package holidays supplied by tour operators**

5.2.1. *Introduction*

- (60) Given that the Parties' activities overlap in the supply of package holidays in Belgium and in the Netherlands, the Commission will assess whether a broader geographic market for the supply of package holidays is pertinent, encompassing both the Netherlands and Belgium as well as airports in the neighbouring countries,⁵⁷ as claimed by the Notifying Party.⁵⁸
- (61) In its previous decisional practice, the Commission has considered that the market for the supply of package holidays in general, as well as its possible segments for foreign package holidays, for short/medium haul package holidays or for package holidays to specific destinations are national in scope.⁵⁹
- (62) In two cases related to the supply of package holidays in Austria and Germany, the Commission left open whether Germany and Austria formed one geographic market, although it found that there were some indications suggesting that competitive conditions in both countries were converging, or whether the relevant geographic market was national.⁶⁰ The Commission therefore assessed the effects of the transaction in Germany and Austria separately and on a geographic market encompassing both Austria and Germany.⁶¹

⁵⁷ Form CO, paragraph 101 *et seq.*

⁵⁸ i.e. the Commission will not assess, for the purpose of this decision, the geographic scope of the plausible wider market for leisure travel services, which would comprise package holidays, dynamic packages and independent holidays

⁵⁹ See for example cases M.8046 – *TUI/Transat France*, paragraph 65; M.6704 – *REWE Touristik GmbH/Ferid NASR/EXIM Holding SA*, paragraph 28; M.5867 – *Thomas Cook/Öger Tours*, paragraphs 11 and 13; Case No IV/M.1524 – *Airtours/First Choice*, paragraph 50.

⁶⁰ Cases M.4600 – *TUI/First Choice*, paragraph 39; M.1898 – *TUI Group/GTT Holding*, paragraph 22.

⁶¹ See for example M.4600 – *TUI/First Choice*, paragraph 149 *et seq.*

(63) In a case related to the supply of package holidays in the Netherlands, the relevant geographic market was defined as national.⁶²

5.2.2. *The Notifying Party's views*

(64) The Notifying Party argues that the geographic scope of the supply of package holidays is broader than national and encompasses the Netherlands and Belgium taken together, as well as airports in neighbouring countries.⁶³

(65) In particular, the Notifying Party notes that [...] Dutch and Belgian passengers frequently use airports outside of their home countries in Belgium, the Netherlands, Germany, France and Luxembourg. This is notably because large numbers of Dutch and Belgian residents live within 100 km of airports in neighbouring countries.⁶⁴ In particular, when prices are higher during school holidays, customers are more likely to purchase a package holiday with a flight departing from a foreign airport.⁶⁵

(66) Furthermore, the Notifying Party submits that in 2018, [...]% of Corendon customers living in Belgium booked via Corendon's Dutch website and [...]% of Sunweb customers living in Belgium booked via Sunweb's Dutch website,⁶⁶ which would support the claim that Belgium is part of a broader geographic market encompassing also the Netherlands. On the other hand, less than [...]% of Corendon and Sunweb customers living in the Netherlands booked via Belgium as the country of sale.⁶⁷

5.2.3. *Commission's assessment*

(67) As explained in Section 5.2.1 above, in its decisional practice the Commission has so far always concluded that the geographic scope for package holidays was national, with the notable exception of two cases related to the supply of package holidays in Germany and Austria, in which the Commission left open whether the geographic market could be broader than national. In this case, in line with the Commission's decisional practice, the results of the market investigation point strongly towards two separate national markets.

(68) From a demand-side perspective, according to the market investigation, the majority of customers purchase package holidays supplied in their country of residence. Belgian residents generally purchase package holidays supplied in Belgium (either via brick and mortar shops, call centres or online). To cater for this demand, tour operators and travel agents that responded to the market investigation and that are active in both Belgium and the Netherlands have dedicated retail channels (e.g. a website with a ".be" or ".nl" domain name as relevant).⁶⁸ Sunweb and Corendon also have dedicated websites for Belgian and Dutch residents.⁶⁹

(69) Only a minority of Belgium residents (about 5%) would purchase package holidays supplied in the Netherlands (either via brick and mortar shops, call centres or

⁶² Case M.4600 – *TUI/First Choice*, paragraph 38.

⁶³ Form CO, paragraph 101 *et seq.*

⁶⁴ Form CO, paragraph 108 *et seq.*

⁶⁵ Form CO, paragraph 147 *et seq.*

⁶⁶ Form CO, Annex QP2-2 – Belgian residents booking via Dutch website of the Parties.

⁶⁷ Form CO, Annex QP2-3 – Dutch residents booking via Belgian website.

⁶⁸ Replies to Q1 – Questionnaire to Tour Operators, question 30; Q2 – Questionnaire to Online Travel Agents, question 34; Q3 – Questionnaire to Travel Agents, question 27.

⁶⁹ E.g. www.corendon.nl for Dutch residents and www.corendon.be with pages in French and Dutch; www.sunweb.nl for Dutch residents and www.sunweb.be with pages in French and Dutch for Belgian residents.

online).⁷⁰ The figure of 5% is in line with Sunweb’s actual figure of [...]%, but well below the [...]% for Corendon. This difference might be explained by the fact that [...] while [...] of Corendon’s sales in Belgium in 2018 were achieved via travel agents rather than online or via Corendon’s call centres.⁷²

- (70) Similarly, Dutch residents generally purchase package holidays supplied in their home country. Only a minority of Dutch residents (about a maximum of 5%) would purchase package holidays supplied in Belgium.⁷³ This figure of 5% is also in line with the Parties’ figure provided in Section 5.2.2 above. Furthermore, the majority of respondents to the market investigation having expressed a view indicated that the majority of customers living in Belgium and in the Netherlands would continue purchasing package holidays supplied in their residence country in case of small but significant non-transitory price increase.⁷⁴
- (71) In addition, customer preferences seem to be different in Belgium and in the Netherlands. A tour operator explained that “*package holidays are created taking account of national preferences. For instance, for the packages offered [in the] Netherlands, hotels are booked based on the preferences of Dutch customers. In addition, pricing is determined at a national level*”.⁷⁵ Furthermore, Sunweb notes that “*the slightly different taste of Belgians for hotels enables a more diversified portfolio on many destinations*”.⁷⁶ In that regard, in an internal document discussing Sunweb’s entry plan [...].⁷⁷ According to a report commissioned by the Notifying Party, there are also distinct customer preferences in terms of purchase channels: [details of customer behaviour] while [details of customer behaviour].⁷⁸
- (72) On the supply side, the Commission notes that the Parties define their source markets on a [...] basis [...]. More specifically, when defining their entry or expansion strategies, the geographies are defined on a country basis. For instance, [...] ⁷⁹ [...].⁸⁰ Consequently, the Parties monitor their competitors on a national basis, in terms of turnover and brand recognition, as shown in the figures below.

Figure 1

[...]

Source: Form CO, Annex 22A – Triton 5.4 Doc #47 – [...], p.17.

Figure 2

[...]

Source: Form CO, Annex 22A – Triton 5.4 Doc #09 [...], p.20.

⁷⁰ Replies to Q1 – Questionnaire to Tour Operators, question 28; Q2 – Questionnaire to Online Travel Agents, question 31; Q3 – Questionnaire to Travel Agents, question 25.

⁷¹ Form CO, Annex QP2-2, footnote 1.

⁷² Form CO, Annex 22A – Triton 5.4 Doc #9 [...], p. 37.

⁷³ Replies to Q1 – Questionnaire to Tour Operators, question 27; Q2 – Questionnaire to Online Travel Agents, question 31; Q3 – Questionnaire to Travel Agents, question 24.

⁷⁴ Replies to Q1 – Questionnaire to Tour Operators, questions 34-35; Q2 – Questionnaire to Online Travel Agents, question 36-37; Q3 – Questionnaire to Travel Agents, question 29-30.

⁷⁵ See agreed non-confidential minutes of a conference call of 2 September 2019 with a tour operator, paragraph 4.

⁷⁶ Form CO, Annex 22A – Triton 5.4 Doc #15 [...], p. 22.

⁷⁷ Form CO, Annex 22A – Triton 5.4 Doc #048 [...], p. 57.

⁷⁸ Form CO, Annex 22A, Triton 5.4 Doc #30 [...], p. 123.

⁷⁹ Form CO, Annex 22A – Triton 5.4 Doc #015 [...], p. 16.

⁸⁰ Form CO, Annex 22A – Triton 5.4 Doc #048 [...], p. 54.

- (73) Furthermore, the Parties [...]. For instance, [...]. This shows that conditions of competition for package holidays supplied in Belgium are different from the competitive conditions for package holidays supplied in the Netherlands.

Figure 3

[...]

Source: Form CO, Annex 22A – Triton 5.4 Doc #048 [...], p. 34.

- (74) In addition, Sunweb and Corendon have dedicated personnel for Belgium and for the Netherlands. For instance, Sunweb has local (i.e. national) offices, including local call centres and staff in charge of “local market (language related)”⁸¹ while Corendon has [...].⁸²
- (75) Finally, customers living near and departing from foreign airports do not contradict the finding of separate geographic markets defined on the basis of the point of sale because the mere fact of departing from a foreign airport does not mean that the conditions of competition in Belgium and the Netherlands are sufficiently homogeneous to conclude that they belong to the same geographic market.⁸³
- (76) In light of these demand- and supply-side considerations and its decisional practice, the Commission considers that the market for package holidays in Belgium and the market for package holidays in the Netherlands constitute distinct markets.

5.2.4. Conclusion on geographic market definition

- (77) In view of the above and in line with its decisional practice, the Commission considers that for the purpose of this decision and without prejudice to further investigation by the Netherlands Authority for Consumers and Markets, the geographic market for the supply of package holidays is national in scope. Therefore, the market for package holidays supplied in Netherlands and its plausible segmentations present all the characteristics of distinct markets, within the meaning of Article 9(2)(a) of the Merger Regulation.

5.3. Conclusion on market definition

- (78) The Commission considers that for the purpose of this decision and without prejudice to further investigation by the Netherlands Authority for Consumers and Markets, the exact product market definition can be left open, since, as explained in Section 6 below, the Transaction threatens to significantly affect competition in the markets for package holidays to all short/medium all sunshine destinations supplied in the Netherlands and for package holidays to certain sunshine destination countries (e.g. Turkey) supplied in the Netherlands, which present all the characteristics of distinct markets, as explained in Section 5.2 above. In the following section, the Commission will therefore assess the effects of the Transaction on the plausible narrower markets for package holidays to short/medium sunshine destinations and package holidays to specific countries of destination.
- (79) With respect to the geographic market definition, the Commission considers that for the purpose of this decision and without prejudice to further investigation by the

⁸¹ Form CO, Annex 22A – Triton 5.4 Doc #048 [...], p.36.

⁸² Form CO, Annex 22A – Triton 5.4 Doc #09 [...], p. 52.

⁸³ This is without prejudice to the fact that in the competition assessment the Commission calculated market shares including package holidays with flights departing from foreign airports.

Netherlands Authority for Consumers and Markets, the geographic market for the supply of package holidays is national in scope.

6. COMPETITION ASSESSMENT

- (80) For the purpose of this decision, the Commission will focus its assessment on the plausible narrower markets, namely the market for package holidays to all short/medium-haul sunshine destinations supplied in the Netherlands and the market for package holidays to specific destination countries.⁸⁴
- (81) In the Form CO, the Notifying Party submits that the merged entity will continue to face significant competition from a large number of competing travel services providers in all market segments, as a consequence, in particular, of a number of factors, such as ongoing competition from traditional tour operators, competition from suppliers of dynamic package holidays and pressure from providers of independent booking services.
- (82) The Commission, however, based on its preliminary analysis, identified a number of factors indicating that the Transaction would threaten to significantly affect competition in the markets for the supply of package holidays in the Netherlands and would thus require further in-depth investigation.
- (83) The table below includes the market shares of the Parties in the Dutch market for the supply of traditional package holidays to all short/medium haul sunshine destinations and for the broader market including both traditional package holidays and dynamic package holidays to all short/medium haul sunshine destinations. It is possible to observe that the combined market shares of the Parties are above [40-50]%, even taking into account a broader market definition.

Table 1 – The Parties’ market shares for the supply of traditional and traditional + dynamic packages to all short/medium-haul sunshine destinations in the Netherlands

| | Traditional | Traditional + Dynamic Package Holidays |
|-----------------|-------------|--|
| Sunweb | [20-30]% | [20-30]% |
| Corendon | [20-30]% | [20-30]% |
| Combined | [40-50]% | [40-50]% |
| TUI | [40-50]% | [40-50]% |
| Aggregated Tail | [5-10]% | [10-20]% |

Source: Commission’s calculations based on (i) the Parties’ estimates provided in response to QP7 and QP2; (ii) TUI’s responses to the Commission’s data request of 17 October 2019 and 24 October 2019 and (iii) the total market sizes computed during the market reconstruction exercise.

- (84) The competitive concerns in relation to the Transaction appear even clearer when taking into consideration the market shares of the Parties in the supply of package holidays to some destination countries with respect to which the Transaction leads to affected markets.

⁸⁴ As explained in section 5.1 above, at this stage the question whether the relevant product market includes package holidays, dynamic packages and independent holidays requires further investigation.

Table 2 – The Parties’ market shares for the supply of traditional and traditional + dynamic packages to single destination countries in the Netherlands

| | Traditional | Traditional + Dynamic Package Holidays |
|----------|-------------|--|
| Bulgaria | [60-70]% | [60-70]% |
| Egypt | [50-60]% | [50-60]% |
| Greece | [60-70]% | [50-60]% |
| Portugal | [40-50]% | [40-50]% |
| Turkey | [50-60]% | [50-60]% |

Source: Commission’s calculations based on the Parties’ estimates provided in response to QP7 and QP2 and the total market sizes computed during the market reconstruction exercise.

- (85) The table above indicates the destination countries where the combined market shares of the Parties in the supply of package holidays to certain sunshine destination countries equal or exceed half of the market. In Portugal, where market shares are comparatively lower, they nonetheless are equal or in excess of [40-50]%, depending on the market definition used as a reference.
- (86) In relation to all countries taken into consideration above, the Transaction brings about a substantial increment in market share.⁸⁵ In addition, regardless of the product market definition adopted, the only credible competitor remaining on the market is TUI, with a marginal presence of other operators, which seem to have limited growth perspectives, as indicated also in the Parties’ internal documents.⁸⁶ The Transaction, therefore, qualifies as a three-to-two merger, in which the remaining two major operators are subject to very limited fringe competition.⁸⁷ This market structure could lead not only to horizontal non-coordinated effects, in particular through the creation or strengthening of a dominant position, but also to horizontal coordinated effects.
- (87) In addition, the results of the market investigation have revealed a number of concerns arising in connection with the Transaction.⁸⁸ The respondents have indicated that the Parties are generally seen as close competitors, an aspect also reflected in the internal documents submitted by the Notifying Party⁸⁹ and have the same high level of brand recognition, which sets them apart from smaller competitors.⁹⁰ According to a number of respondents to the market investigation, the merger is expected to increase the negotiating power of the merged entity in seeking access to hotel accommodations in certain country of destination. Finally, the market

⁸⁵ In Bulgaria, the increment is at least [20-30]%, depending on the market definition adopted; in Egypt at least [20-30]%; in Greece at least [20-30]%; in Portugal at least [10-20]%; in Turkey [5-10]%.

⁸⁶ See, for example, the document [...] 22 March 2018, p.10, where it is mentioned that competitors have [...].

⁸⁷ This is supported by internal documents of the Parties. See, for example, the document [...] 4 March 2019, which reports the opinion of a former board member of the Thomas Cook Group [...].

⁸⁸ For example, that the Parties achieve a dominant position in Turkey, see Q1, question 41.1; or concern about Corendon discontinuing its package holidays offer through travel agencies, see Q2, question 48.1 and question 52.1.

⁸⁹ See the document [...] p. 13; the presentation [...], slide 15, which indicates that [...]; see also the document [...] p. 17.

⁹⁰ [...] slide 15, which indicates that [...].

investigation also revealed the concern that the merged entity would have the ability and the incentive to restrict access to hotel accommodations.⁹¹

- (88) In addition to horizontal non-coordinated effects, the market structure post-Transaction with a symmetric quasi-duopoly may be conducive to horizontal coordinated effects, though this question would require further investigation.
- (89) Based on its preliminary analysis, therefore, the Commission considers that the Transaction would threaten to significantly affect competition in the markets for package holidays to all short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain sunshine destination countries supplied in the Netherlands (mentioned in Table 2 above) which present all the characteristics of distinct markets.

7. ASSESSEMENT UNDER ARTICLE 9(3) OF THE MERGER REGULATION

7.1. The criteria of Article 9(2)(a) of the Merger Regulation

- (90) According to Article 9(3) of the Merger Regulation, the Commission may refer the whole or part of the case to the competent authorities of the Member State concerned with a view to applying the Member State's national competition law if, following a request for referral by that Member State pursuant to Article 9(2) of the Merger Regulation, the Commission considers that the Transaction threatens to significantly affect competition in a market within that Member State, which presents all the characteristics of a distinct market.
- (91) Therefore, in order for a referral request to be made to a Member State, one procedural and two substantive conditions must be fulfilled pursuant to Article 9(2)(a) of the Merger Regulation.
- (92) Although the Notifying Party considers that the geographic market for the supply of package holidays might be broader than national in scope, it does not seem to contest that the Referral Request meets the procedural requirements laid down in Article 9(2)(a) of the Merger Regulation.⁹²
- (93) As to the procedural condition, the referral request must be made within 15 working days from the date on which the notification of a concentration before the Commission is received by that Member State. In this regard, the Commission notes that the Netherlands, via the Netherlands Authority for Consumers and Markets, received a copy of the notification of the Transaction on 21 October 2019. The Referral Request was made by letter received by the Commission on 11 November 2019. Therefore, the Referral Request was made within 15 working days following the receipt by the Netherlands of the notification of the Transaction, and, consequently, within the deadline provided for in Article 9(2) of the Merger Regulation.
- (94) As to the substantive conditions, first, the requesting Member State is required to demonstrate that, based on a preliminary analysis, there is a real risk that the transaction may have a significant adverse impact on competition, and thus that it deserves scrutiny. Such preliminary indications may be in the nature of *prima facie*

⁹¹ Q1, question 64.1; Q2, questions 65 and 80.1; Q3, questions 53.1 and 60.1.

⁹² Email of the Notifying Party's external counsel dated 22 November 2019, (the "Notifying Party's submission dated 22 November 2019").

evidence of such a possible significant adverse impact, but would be without prejudice to the outcome of a full investigation.⁹³ Second, the requesting Member State is required to show that the geographic market(s) in which competition is affected by the transaction is (are) national, or narrower than national in scope.⁹⁴

7.1.1. Markets within the Netherlands which present all the characteristics of distinct markets

- (95) In its previous precedents, the Netherlands Authority for Consumers and Markets concluded that the geographic market for the supply of leisure holidays, including narrower plausible markets, was national in scope.⁹⁵ In assessing the geographic scope of the relevant markets in its previous cases, the Netherlands Authority for Consumers and Markets noted that tour operators supply package holidays in a specific country and that their market activities typically focus on the country of the departure.⁹⁶ Similarly, in the present Referral Request, the Netherlands Authority for Consumers and Markets considers that the supply of package holidays is national in scope.⁹⁷
- (96) The Netherlands Authority for Consumers and Markets' findings with regard to the geographic scope of the markets for package holidays are consistent with the Commission's decisional practice and the results of the Commission's market investigation. Therefore, it can be concluded that the markets for the supply of package holidays in the Netherlands are distinct from other geographical areas.
- (97) In light of the above, the Commission considers that the markets identified in the Referral Request (namely the markets for package holidays supplied in the Netherlands) present the characteristics of distinct markets in the Netherlands, as required under Article 9(2)(a) of the Merger Regulation.

7.1.2. Markets within the Netherlands in which the Transaction threatens to significantly affect competition

- (98) The Netherlands Authority for Consumers and Markets' Referral Request is based on the concerns that the Transaction threatens to significantly affect competition in the markets for package holidays supplied in the Netherlands, including the potential narrower markets for the supply of traditional package holidays and the supply of traditional and dynamic package holidays to both EEA and non-EEA medium haul sunshine destinations.⁹⁸
- (99) In its Referral Request, the Netherlands Authority for Consumers and Markets noted that the Parties are likely to obtain a substantial combined market share post-Transaction, ranging between [40-50]% on the potential Dutch market for the supply of traditional package holidays to the EEA short/medium haul sunshine destinations (with an increment of [10-20]%) and [40-50]% on the potential Dutch market for the supply of package holidays to non-EEA short/medium haul sunshine destinations

⁹³ Commission Notice on Case Referral in respect of concentrations ("Referral Notice"), OJ C 56, 05.03.2005, p. 2, paragraph 35.

⁹⁴ Referral Notice, paragraph 36.

⁹⁵ See the Netherlands Authority for Consumers and Markets' decisions in cases 4660/Holiday Break – Djoser, recital 12; 3677/Globe Reisburo – Rabobank Reisbureaus, recital 15; 1556/Travel Unie – Kras Holding, recital 18; 4971/TUI – HollandExcel, recital 23. See also Referral Request, paragraphs 32-33.

⁹⁶ Referral Request, paragraph 33.

⁹⁷ Referral Request, paragraph 36.

⁹⁸ Referral Request, paragraphs 41-44 and Table 1.

(with an increment of [30-40]%).⁹⁹ In addition, based on the Netherlands Authority for Consumers and Markets' preliminary assessment, the combined markets shares of the Parties in the markets for the traditional package holidays to certain EEA and non-EEA destinations could be as high as [60-70]% (Bulgaria), [50-60]% (Greece) and Turkey ([50-60]%).¹⁰⁰ This indicates that the Transaction will have a significant impact on competition in the Dutch markets.

- (100) The Netherlands Authority for Consumers and Markets considers that the Transaction is likely to have significant effects in the Netherlands due to the fact that it will eliminate each of the Parties' closest competitor which in turn might have a negative effect on "inexpensive" prices.¹⁰¹
- (101) Besides, the Netherlands Authority for Consumers and Markets considers that the Parties have not adequately identified in the Form CO the degree of competitive pressure exerted by alternative providers of package holidays. Therefore, at the present stage it cannot be excluded that the alternative providers will be able to exert sufficient competitive pressure.¹⁰²
- (102) The *prima facie* competition concerns of the Netherlands Authority for Consumers and Markets are consistent with the results of the market investigation of the Commission with respect to the markets for package holidays supplied in the Netherlands.
- (103) In light of the above, following the Commission's preliminary assessment, the Commission concludes that the Transaction threatens to significantly affect competition in the markets for package holidays to short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain sunshine destination countries supplied in the Netherlands, as required under Article 9(2)(a) of the Merger Regulation.

7.1.3. Conclusion

- (104) In light of the above, the Commission considers that the legal requirements laid down in Article 9(2)(a) of the Merger Regulation are fulfilled, as the Transaction threatens to significantly affect competition in the markets for package holidays to short/medium haul sunshine destinations supplied in the Netherlands and for package holidays to certain sunshine destination countries supplied in the Netherlands, which present all the characteristics of distinct markets.

7.2. The Commission's discretion in deciding whether to refer

- (105) Pursuant to Article 9(3) of the Merger Regulation, in the event that the criteria provided for in Article 9(2)(a) are fulfilled with regard to a proposed transaction, the Commission retains a margin of discretion in deciding whether to refer a given case to a national competition authority.¹⁰³
- (106) In its email submission dated 22 November 2019, the Notifying Party explained that it considers that the Commission is better placed to review the Transaction, in essence, for the following reasons:

⁹⁹ Referral Request, paragraphs 42-43.

¹⁰⁰ Referral Request, Table 1.

¹⁰¹ Referral Request, paragraph 46.

¹⁰² Referral Request, paragraph 47.

¹⁰³ Referral Notice, paragraph 7.

- (a) The Parties consider that it is questionable whether the Transaction gives rise to affected markets that are national in scope. Therefore, the Commission would be best placed to assess the Parties' submissions, which indicate broader than national scope of the geographic market.
 - (b) Sunweb and Corendon compete in Belgium and in the Netherlands. A one-stop-shop review by the Commission would therefore be efficient and would ensure consistency of approach.
 - (c) The Commission has experience in the relevant markets impacted by this case.
 - (d) The Parties have already invested significant time and resources in the pre-notification and the phase 1 investigation of the filing during the EU level review.¹⁰⁴
- (107) In the following, the Commission assesses the appropriateness of a referral in the present case in light of the principles set out in the Referral Notice.
- (108) According to paragraph 9 of the Referral Notice, "In principle, jurisdiction should only be reattributed to another competition authority in circumstances where the latter is more appropriate for dealing with the merger, having regard to the specific characteristics of the case as well as the tools and expertise available to the authority". The Referral Notice also states that "particular regard should be had to the likely locus of any impact on competition resulting from the merger" and that "[r]egard may also be had to the implications, in terms of administrative effort, of any contemplated referral".
- (109) Moreover, paragraph 13 of the Referral Notice states that "referral should normally only be made when there is a compelling reason for departing from 'original jurisdiction' over the case in question, particularly at the post-notification stage".
- (110) In contrast to the Notifying Party's view,¹⁰⁵ the Commission considers that there are compelling reasons for departing from the original jurisdiction over the present case, by partially referring the Transaction to the Netherlands.
- (111) First, considering that the geographic scope of the relevant markets is likely to be national (see Section 5.2 above), and that the Transaction is likely to significantly threaten competition in those markets, the Netherlands Authority for Consumers and Markets is better placed to evaluate any submissions of the Parties in relation to potentially broader markets by way of assessing the behaviour of Dutch consumers (e.g. their ability and willingness to switch between package holidays, dynamic packages and independent travel options), for example, through customer surveys. In addition, if the Parties offer remedies, the Netherlands Authority for Consumers and Markets would be better placed to assess the remedies' submissions, which would likely have a country-specific nature. Besides, contrary to the Notifying Party's argument in relation to consistency of approach, the Commission considers that referring a part of the case to the Netherlands does not entail a risk of inconsistency of approach across the internal market, considering that the Belgian and Dutch

¹⁰⁴ Notifying Party's submission dated 22 November 2019.

¹⁰⁵ Notifying Party's submission dated 22 November 2019.

competent authorities have given indication of their intention to cooperate during their respective investigations.¹⁰⁶

- (112) As to the third point raised by the Notifying Party in relation to the Commission's experience in the relevant markets impacted by the case, it should be noted that the Netherlands Authority for Consumers and Markets has also gained up-to-date relevant knowledge in relation to the Dutch leisure industry while assessing cases concerning similar markets to those affected by the present Transaction.¹⁰⁷
- (113) Last, while the Notifying Party argues that significant resources and time have been spent in pre-notification and phase 1 of this case, this in no way precludes the Commission from its discretion to view the Referral Request favourably, provided that the conditions in Article 9(2)(a) of the Merger Regulation are fulfilled. Besides, at this point of the review of the Transaction, any additional administrative effort of the Parties due to a partial referral would not be disproportionate. The Netherlands Authority for Consumers and Markets has already formed a broad picture of the main characteristics of the case and potential competition concerns prior to the filing of its Referral Request. The Netherlands Authority for Consumers and Markets indicated that its market investigation could be launched upon the adoption of this referral decision by the Commission.¹⁰⁸
- (114) In light of the above, the Commission considers that the Netherlands Authority for Consumers and Markets is in the best position to investigate the effects of the Transaction in the Netherlands.

7.3. Conclusion

- (115) In light of the above, the Commission considers that (i) the legal requirements to request a referral under Article 9(2)(a) of the Merger Regulation are met and (ii) the competent authorities of the Netherlands are the most appropriate and best placed to carry out a thorough investigation of the effects of the Transaction in the Netherlands.
- (116) It is therefore appropriate for the Commission to exercise its discretion under Article 9(3) of the Merger Regulation and partially refer the case to the Netherlands insofar as it concerns the Netherlands.

8. CONCLUSION

- (117) From the above it follows that the conditions to request a referral under Article 9(2)(a) Merger Regulation are met. The Commission also considers that, given the local scope of the market(s) affected by the Transaction, the competent authorities of the Netherlands are better placed to carry out a thorough investigation of parts of the case, and that it is therefore appropriate for the Commission to exercise its discretion under Article 9(3)(b) Merger Regulation and to partially refer the Transaction to the Netherlands as regards its effects in the Netherlands.
- (118) On the same date as this decision, the Commission has also adopted a decision on the basis of Article 9(3)(b) of the Merger Regulation pursuant to which the Commission

¹⁰⁶ See email correspondence between the Netherlands Authority for Consumers and Markets and the Commission of 24 October 2019. See also email correspondence between the Belgian Competition Authority and the Commission of 8 November 2019 and 9 November 2019.

¹⁰⁷ Referral Request, paragraphs 51 and 55.

¹⁰⁸ Referral Request, paragraph 58.

partially referred the notified concentration to Belgium as regards its effects in Belgium.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration is referred partially to the competition authority of the Netherlands, as regards the aspects concerning the Netherlands, pursuant to Article 9(3)(b) of Council Regulation (EC) No 139/2004.

Article 2

This Decision is addressed to Kingdom of the Netherlands.

Done at Brussels, 10.12.2019

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President