

Foreign package holidays (2)

1 Title of report: Foreign Package Holidays: a report on the supply in the UK of tour operators' services and travel agents' services in relation to foreign package holidays (MMC - Cmnd 3813)

2 Published: 19 December 1997

3 Orders:

The Foreign Package Holidays (Tour Operators and Travel Agents) Order 2000 (SI 2000 No 2110)

Made – 27 July 2000

In force – 9 October 2000

Whereas the Secretary of State, as required by section 91(2) of the Fair Trading Act 1973(1), published a notice on 8th May 2000 of his intention to make this Order, and invited written representations to be made to him on or before 9th June 2000 about the provisions proposed to be contained in it;

And whereas the Secretary of State has considered the representations received;

Now, therefore, the Secretary of State, being the appropriate Minister under section 56 of the said Act, in exercise of the powers conferred on him by sections 56(2) and 90(2), (4) and (7) of, and paragraph 1 of Schedule 8 to, the said Act, and for the purpose of remedying or preventing adverse effects specified in the report of the Monopolies and Mergers Commission entitled 'Foreign Package Holidays: A report on the supply in the UK of tour operators' services and travel agents' services in relation to foreign package holidays'(2), hereby makes the following Order:-

Citation, commencement and interpretation

1.-(1) This Order may be cited as the Foreign Package Holidays (Tour Operators and Travel Agents) Order 2000 and shall come into force on 9th October 2000.

(2) In this Order-

'accommodation' means the provision of a place to sleep, including the provision of a site for the erection of a tent or a parking place for a caravan, mobile home or other similar vehicle, but does not include the provision of sleeping accommodation in a means of transport unless that accommodation represents a substantial proportion of the accommodation for the holiday;

'foreign package holiday' means services, accommodation and facilities provided under a contract, made within the United Kingdom, by a tour operator for a holiday outside the United Kingdom provided transport to or from the United Kingdom and accommodation outside the United Kingdom (whether or not for the duration of the holiday) are included;

'the linked supply or offer to supply of foreign package holidays' has the meaning assigned to it by article 3;

'tour operator' means a person who, otherwise than occasionally, organises foreign package holidays and supplies or offers them for supply, whether directly or through a travel agent;

'travel agent' means a person who supplies or offers for supply a foreign package holiday organised by a tour operator;

'travel agent and a tour operator who are linked' means -

(a) a travel agent and a tour operator who are interconnected bodies corporate; or

(b) a travel agent and a tour operator who are the same body corporate;

and the expressions 'link', 'linked travel agent' and 'linked tour operator' shall be construed accordingly; and

'travel group' means -

(a) a group of interconnected bodies corporate which includes a travel agent and a tour operator; or

(b) where a travel agent and a tour operator are the same body corporate, that body corporate.

Market share test

2. This Order shall apply where-

(a) the linked travel agent or the travel group of which it is part has a share of the market in travel agents' services exceeding 5 per cent;

(b) the linked tour operator or the travel group of which it is part has a share of the market in tour operators' services exceeding 5 per cent; or

(c) paragraphs (a) and (b) are both satisfied.

Transparency of ownership links

3. Subject to article 5, from the date this Order comes into force it shall be unlawful for a travel agent and a tour operator who are linked to make or carry out an agreement (whenever made) between-

(a) such linked travel agent and tour operator; or

(b) such linked travel agent and another person in its travel group;

for the supply or offer to supply by the linked travel agent to a consumer of a foreign package holiday organised by the linked tour operator ('the linked supply or offer to supply of foreign package holidays') unless article 4 is satisfied.

4.-(1) This article is satisfied where-

(a) there is displayed on the front of the linked travel agent's retail premises in a prominent position so that it may be easily read, the name of the travel agent and the name of the travel group of which the travel agent is part together with an explanation of the link between the travel agent and that travel group;

(b) there is displayed on the front of every foreign package holiday brochure of the linked tour operator, available to consumers in the linked travel agent's retail premises, in a prominent position so that it may easily be read, a notice stating the name of the travel agent together with an explanation of the link between the tour operator and the travel agent;

(c) there is displayed in the linked travel agent's retail premises in a prominent position so that it may easily be read by consumers in those premises, a notice which states the name under which the linked tour operator trades in foreign package holidays through linked travel agents, an explanation of the link between the tour operator and the travel agent and, where the condition specified in paragraph (b) is required to be satisfied, the fact that the brochures display the requisite notice;

(d) there is stated in legible characters on all business stationery of the linked travel agent used for the purposes of the linked supply or offer to supply of foreign package holidays the name of the travel group of which the travel agent is part together with an explanation of the link between the travel agent and that travel group; and

(e) all advertisements made on behalf of the linked travel agent or linked tour operator, which are connected with the linked supply or offer to supply of foreign package holidays and which refer to both the linked travel agent and tour operator, contain a statement explaining the link between them.

(2) The conditions specified in sub-paragraphs (a), (b), (d) and (e) of paragraph (1) above do not apply where the name of the travel agent and the tour operator are the same or are so similar to each other that members of the public might reasonably conclude from that fact that the travel agent and tour operator are linked.

(3) In this article 'business stationery' means business letters, invoices and receipts issued in the course of business and written demands for payment of debts arising in the course of business which are used in respect of the linked supply or offer of supply of foreign package holidays to consumers.

(4) In this article 'name' means the name under which, as the case may be, the tour operator, travel agent or travel group, trade in the United Kingdom with consumers of foreign package holidays.

5. Where a travel agent and a tour operator who were not linked become linked after the date on which this Order is made the provisions of article 3 shall not apply until two months have elapsed from the date on which the travel agent and tour operator became linked.

6. Where paragraphs (a), (b) or (c) of article 2 become satisfied after the date on which this Order is made, the provisions of article 3 shall not apply until two months have elapsed from the date on which any of those paragraphs were satisfied.

Directions by the Office of Fair Trading as to compliance measures

7.-(1) The Office of Fair Trading¹ may give directions to any linked travel agent or linked tour operator specified in the directions, or to the holder for the time being of any office specified in the directions in any such travel agent or tour operator so specified-

(a) to take such steps, within the competence of the travel agent or the tour operator or the holder of the office as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, article 3; or

(b) to do or refrain from doing anything so specified or described which the travel agent or tour operator or holder of the office is required by article 3 to do or refrain from doing.

(2) The Office of Fair Trading² may vary or revoke any directions given under paragraph (1) above.

¹ The reference to the Secretary of State was replaced by the Office of Fair Trading by SI 2006/355, paragraph 4 (6) from 10 March 2006

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Kim Howells,

Parliamentary Under-Secretary of State for Consumers and Corporate Affairs,
Department of Trade and Industry

27th July 2000

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prohibits travel agents and tour operators, who are interconnected bodies corporate or who are the same body corporate and satisfy a market share test, from entering into or carrying out agreements (whenever made) for the supply or offer to supply by the travel agent to consumers of the foreign package holidays of the tour operator, unless the travel agent takes certain specified steps to draw that corporate link to the attention of consumers. The market share test is satisfied where one or other or both of the following criteria is or are satisfied: the travel agent or the travel group to which it belongs has a share of the market in travel agents' services exceeding 5 per cent; or the tour operator or the travel group to which it belongs has a share of the market in tour operators' services exceeding 5 per cent.

The Order gives the Office of Fair Trading power to issue directions to travel agents, tour operators and their office holders relating to steps to be taken by them to ensure compliance with the Order.

Copies of the report of the Monopolies and Mergers Commission on which the Order is based (Cm. 3813) may be obtained from The Stationery Office.

A Regulatory Impact Assessment has been drawn up by the Department of Trade and Industry and is available from Competition Policy Directorate, Department of Trade and Industry, Room 618, 1 Victoria Street, London SW1H 0ET, telephone 020 7215 6937. Copies have been placed in the libraries of both Houses of Parliament.

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AMENDMENTS

Articles 7(1) and (2) were amended by SI 2006/355 paragraph 4 (6)