

## Foreign package holidays (3)

**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 2001 (SI 2001 No 2581)

Made – 12 July 2001

In force – 20 August 2001

Whereas the Secretary of State, as required by section 91(2) of the Fair Trading Act 1973,<sup>1</sup> published a notice on 12th February 2001 of his intention to make this Order, and invited written representations to be made to him on or before 21st March 2001 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 her by sections 56(2) and 90(2), (3) and (4) of, and paragraphs 1, 4, and 6 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',<sup>2</sup> 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 2001 and shall come into force on 20th August 2001.

(2) In this Order-

'accommodation' means the provision of 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

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<sup>1</sup> 1973 c. 41.

<sup>2</sup> Cm. 3813.

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;

'inducement' means a benefit, whether pecuniary or not, offered by a travel agent as an incentive to acquire a foreign package holiday through him;

'most favoured customer requirement' means a requirement contained within an agreement between a travel agent and tour operator which obliges the travel agent, when supplying or offering to supply foreign package holidays of that operator, to offer inducements at least equal in value to or marginally less in value than the inducements which the travel agent applies when supplying or offering to supply the foreign package holidays of another tour operator;

'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; and

'travel insurance' means any policy of insurance against the risks to any person arising during or in connection with a foreign package holiday.

#### Price reductions and travel insurance

2. It shall be unlawful for a travel agent or a tour operator (where the tour operator and travel agent are interconnected bodies corporate and when the tour operator is supplying or offering to supply foreign package holidays directly to the public or any class of persons) to discriminate either in respect of the price charged for a foreign package holiday or by requiring payment of an additional charge against a person who does not acquire travel insurance in respect of that holiday from that travel agent or, as the case may be, tour operator.

#### 'Most favoured customer' requirements and related conduct

3. It shall be unlawful for a tour operator to make or carry out an agreement (whenever made) with a travel agent which obliges the travel agent to comply with a most

favoured customer requirement except in circumstances where the tour operator is required to compensate the travel agent for the value of the inducements required to be offered by the travel agent as a result of a most favoured customer requirement.

4. It shall be unlawful for a tour operator to withhold or threaten to withhold supplies of foreign package holidays from, or to discriminate in respect of the supply of foreign package holidays to, a travel agent as a result of the failure of the travel agent to enter into or comply with an agreement which is or would be unlawful under Article 3.

Revocation

5. The Foreign Package Holidays (Tour Operators and Travel Agents) Order 1998(1) is hereby revoked.

*Melanie J Johnson,*

Parliamentary Under-Secretary of State for Competition, Consumers and Markets  
Department of Trade and Industry, 12th July 2001

## EXPLANATORY NOTE

*(This note is not part of the Order)*

Following the judgment of the Court of Appeal in *R v Secretary of State for Trade and Industry ex parte Thomson Holidays* (handed down on 9th December 1999), whereby an order of certiorari was issued to quash Articles 3 and 4 of the Foreign Package Holidays (Tour Operators and Travel Agents) Order 1998, this Order revokes (Article 5) that Order and substitutes the following provisions.

Article 2 prohibits travel agents (and those tour operators in a group of companies which includes a travel agent when the tour operator sells directly to the public) from discriminating in the price charged for a foreign package holiday, or by imposing an additional charge, against a person who does not buy travel insurance in respect of that holiday from the agent or tour operator.

Article 3 prohibits tour operators from entering into or carrying out an agreement (whenever made) which requires the travel agent to comply with a most favoured customer requirement except where the tour operator is required to compensate the travel agent for the value of the inducements required to be offered by the travel agent as a result of such a requirement.

Article 4 prohibits tour operators from withholding supplies or threatening to withhold supplies of foreign package holidays from, or discriminating in respect of the supply of foreign package holidays to, a travel agent as a result of the failure of the travel agent to enter into or comply with an agreement which is or would be unlawful under Article 3.

S.I. 1998/1945

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 the Competition Policy Directorate of the Department of Trade and Industry, Room 618, 1 Victoria Street, London SW1H 0ET, telephone 020 7215 6125. Copies have been placed in the libraries of both Houses of Parliament.

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