



DETERMINATION OF MERGER NOTIFICATION M/10/003 -

Club Travel/Budget Travel

Section 21 of the Competition Act 2002

Acquisition by Club Travel Limited of Budget Travel Limited

Dated 15 February 2010

Introduction

1. On 22 January 2010, in accordance with Section 18(1) of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby Club Travel Limited ("Club Travel") would acquire sole control of certain assets of Budget Travel Limited ("Budget Travel") (collectively, the "Budget Travel Assets").
2. Budget Travel ceased trading on 25 November 2009. On 14 December 2009 the High Court appointed Simon Coyle, of Mazars, as Liquidator of Budget Travel. Upon completion of the liquidation process, Budget Travel would be dissolved.

The Undertakings Involved

The Acquirer

3. Club Travel is a 75% owned subsidiary of Club Travel Holdings Limited, a company controlled by Mr. Liam Lonergan. The remaining 25% is owned personally by Mr. Liam Lonergan.
4. In the State, Club Travel is mainly active as a travel agent and to a limited extent as a tour operator. Club Travel operates from its retail premises in Dublin and over the internet. As a travel agent, Club Travel's activities include:
 - The sale of packaged holidays organised by tour operators, flights and hotels to customers;
 - The provision of travel agency services to corporate customers and the government sector; and,
 - The distribution to other travel agents of long-haul flights of airlines which do not have sales and marketing offices in the State.
5. As a licensed tour operator, Club Travel organises soccer and rugby tours. However, Club Travel's involvement in this business has been limited [...] in 2008.

The Target

6. The Budget Travel Assets to be acquired by Club Travel include trade marks, business names and a database of customers of Budget Travel who used its website.
7. In the State, up to 25 November 2009, Budget Travel was active as a licensed tour operator and a travel agent. As a tour operator Budget Travel organised package holidays, mainly to short haul sun destinations (i.e., "Sun and Sea Packaged Holidays"¹). Budget Travel's packaged holidays were sold to customers directly through Budget Travel's own retail premises or over the Internet and indirectly through travel agents who were franchisees of Budget Travel². No other travel agencies were authorised to sell Budget Travel packaged holidays. In addition to the sale of its own packaged holidays, Budget Travel provided other travel agency services such as the sale of packaged holidays of other tour operators, flights and travel insurance to customers.

Rationale of the transaction

8. According to Club Travel, the acquisition of the Budget Travel Assets will enable it to enter as a competitor in the provision of "Sun and Sea Packaged Holidays" and to expand its business in e-Commerce.

Third Party Submissions

9. No submissions were received.

Failing Firm

Views of the Parties

10. The parties argue that the circumstances facing Budget Travel satisfy the criteria for the failing firm defence, as set out by the Authority in its Merger Guidelines.³
11. According to the parties, the financial situation of Budget Travel is such that, it is unable to meet its financial obligations in the near future and no possibility exists that Budget Travel will be successfully re-organised under the process of an examinership. The parties argue that this is demonstrated by the fact that it has been placed in liquidation by the High Court.
12. The Liquidator of Budget Travel Limited has not been successful in trying to sell Budget Travel as a going concern for a price in excess of the liquidation value of its assets. The parties argue that this satisfies the criterion of requiring firms to make good-faith and verifiable efforts to elicit reasonable alternative offers of acquisition to the proposed transaction.

¹ This is the parties' term to describe this type of product.

² Budget Travel owned 33 retail premises (reduced by 13 in 2008) and had 15 franchisees which laid out their shops in the style, logo and branding of Budget Travel.

³ *Notice in Respect of Guidelines for Merger Analysis*, pp. 26-27, available at http://www.tca.ie/images/uploaded/documents/n_02_004_Merger_Analysis_Guidelines.pdf.

13. Finally, the parties argue that in the absence of the proposed transaction, the Budget Travel Assets to be acquired would definitely exit the relevant market.
14. The parties therefore conclude that the proposed transaction will facilitate competition for "Sun and Sea Packaged Holidays" and will not substantially lessen competition in the market for the provision of tour operating or travel agency services.

Analysis

15. The Authority acknowledges that, as set out in its Merger Guidelines, "a merger may not substantially lessen competition in a market if part or all of the merging assets are certain to exit the market in the event of the merger not taking place".⁴
16. The Authority also acknowledges the arguments of the parties regarding Budget Travel and notes also that Budget Travel is no longer a going concern.
17. The Authority considers, however, that in this instance it is not necessary to reach a conclusion on whether Budget Travel is a failing firm, in light of the reasons set out below.
18. There are horizontal overlaps in the activities of the parties in the provision of tour operator and travel agency services in the State. The parties submit that tour operator and travel agency services are distinct markets. The parties submitted that the result of the proposed transaction will not be to substantially lessen competition in any market for goods or services in the State due to the minimal overlap in their activities and the existence of sufficiently strong competitors.
19. The Authority considers that, for the purposes of examining the proposed transaction, it is not necessary to make a finding on the relevant product markets because the proposed transaction is unlikely to give rise to any competition concerns in any market in the State.
20. The increase in Club Travel's market share in respect of travel agency services that is likely to result from the proposed transaction is not significant. Prior to Budget Travel being put into liquidation, it had a market share of approximately [0-5]%, while Club Travel had a market share of approximately [5-10]%.⁵
21. As regards tour operator services, the data provided by the parties suggests that, post-merger, Club travel will account for approximately [10-15]% of the market.⁶
22. The investigation also confirms that, post-transaction, Club Travel will continue to face significant competition from other suppliers of tour operator services (such as Falcon Travel, Sunworld/Panorama, and Topflight) and providers of travel agency services comprising more

⁴ Ibid, paragraph 5.17.

⁵ The parties' estimates derive from the percentage of each party as a percentage of the Total Bonded Turnover of Travel Agents and Tour Operators, as provided by the Commission for Aviation Regulation.

⁶ Club Travel accounts for approximately [0-5]%. The [10-15]% market share is based on the assumption, post-merger all of the pre-liquidation customers of Budget Travel [10-15]% would transfer to Club Travel.

than 200 bonded travel agents in the State. Furthermore, there are other Internet based options (e.g. airlines websites or travel websites such as Expedia, Travelocity and Opodo) readily available to customers to purchase travel and holiday services.

23. In view of the above, the Authority considers that the proposed transaction does not raise any competition concerns in the State.

Determination

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition of sole control by Club Travel Limited of certain assets of Budget Travel Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

For the Competition Authority

Dr Stanley Wong
Member of the Competition Authority