
STATUTORY INSTRUMENTS

1998 No. 1945

MONOPOLIES AND MERGERS

The Foreign Package Holidays (Tour Operators and Travel Agents) Order 1998

Made - - - - *7th August 1998*
Laid before Parliament *10th August 1998*
Coming into force - - *16th November 1998*

Whereas the Secretary of State, as required by section 91(2) of the Fair Trading Act 1973⁽¹⁾, published a notice on 7th January 1998 of her intention to make this Order, and invited written representations to be made to her before 11th February 1998 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), (3) and (4) of, and paragraphs 1, 4, and 6 of Schedule 8 to, the said Act, and all other powers enabling him in that behalf, and for the purpose of remedying or preventing the 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 1998 and shall come into force on 16th November 1998.

(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

(1) 1973 c. 41.
(2) Cm. 3813.

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;

“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 put together 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 a 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” agreements 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:

- (a) imposes any restriction, whether as to charges or other terms or conditions or otherwise, in respect of the supply or offer of supply by the travel agent of foreign package holidays of another tour operator; or
- (b) requires a 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.

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 who does not, or does not propose to, offer inducements at least equal in value to or marginally less in value than the inducements which the travel agent applies, or proposes to apply, when supplying or offering to supply the foreign package holidays of another tour operator.

Registrable agreements

5. This Order shall not apply in respect of an agreement in so far as it is, or if made would be, an agreement to which the Restrictive Trade Practices Act 1976 applies or, as the case may be, would apply.

Kim Howells,
Parliamentary Under Secretary of State for
Competition and Consumer Affairs
Department of Trade and Industry

7th August 1998

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order 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 imposes any restriction in respect of the supply by the travel agent of foreign package holidays of another tour operator or which requires the travel agent to offer inducements in respect of the tour operator's foreign package holidays at least equal in value to or marginally less in value than those offered by the travel agent in respect of the foreign package holidays of another tour operator ("most favoured customer" agreements).

Article 4 prohibits a tour operator 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 who does not offer inducements at least equal in value to or marginally less in value than those the agent offers in respect of the foreign package holidays of another tour operator.

Article 5 excludes from the scope of the Order the making or carrying out of an agreement in so far as it is an agreement to which the Restrictive Trade Practices Act 1976 applies or would apply if made.

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 Appraisal has been drawn up by the Department of Trade and Industry and is available from the Consumer Affairs and Competition Policy Directorate, Department of Trade and Industry, Room 6.P.11, 1 Victoria Street, London SW1H 0ET, Telephone 0171 215 5607. Copies have been placed in the libraries of both Houses of Parliament.