STATUTORY INSTRUMENTS

1987 No. 1131

MONOPOLIES AND MERGERS

The Restriction on Agreements and Conduct (Tour Operators) Order 1987

Made - - - -	*30th June 1987*
Laid before Parliament	*9th July 1987*
Coming into force	
All Articles except Article 4	*31st July 1987*
Article 4	*7th October 1987*

Whereas the Secretary of State, in accordance with section 91(2) of the Fair Trading Act 1973(a), published on 10th October 1986 a notice stating his intention to make this Order, indicating the nature of the provisions to be embodied in it and stating that any person whose interests were likely to be affected by it and who was desirous of making representations in respect of it should do so in writing before 14th November 1986;

And whereas the Secretary of State has considered the representations made to him in accordance with that notice;

Now, therefore, the Secretary of State, being the appropriate Minister within the meaning of section 56 of the said Act, in exercise of the powers conferred by sections 56(2) and 90(2) and (4) of, and paragraphs 1, 2, 4 and 7 of Part I of Schedule 8 to, the said Act and for the purpose of remedying or preventing adverse effects specified in a report of the Monopolies and Mergers Commission entitled "A Report on the matter of the existence or the possible existence of a complex monopoly situation in relation to the supply in the United Kingdom of agency services by travel agents for tour operators in relation to the marketing and supply of foreign package holidays"(b), hereby makes the following Order:

Citation and Commencement

1. This Order may be cited as the Restriction on Agreements and Conduct (Tour Operators) Order 1987 and shall come into force on 31st July 1987, except article 4 which shall come into force on 7th October 1987.

Definitions

2. In this Order–

"accommodation" means the provision of a place to sleep but includes the provision of sleeping accommodation in a means of transport only where that accommodation represents a substantial proportion of the accommodation for a holiday; and it includes the provision of a site for the erection of a tent or a parking place for a caravan, mobile home or other similar vehicle;

"agency services" means the services of marketing on behalf of a tour operator foreign package holidays provided by that operator;

"foreign package holiday" means services, accommodation and facilities provided, under a contract made within the United Kingdom, by a tour operator in connection

(a) 1973 c.41. (b) Cmnd 9879.

with a holiday to be taken outside the United Kingdom except where transport to and from the United Kingdom or accommodation outside the United Kingdom (whether or not for the duration of the holiday) is not provided;

"inducement" means a benefit, whether pecuniary or not, offered to a class or classes of persons or to the public at large by a travel agent expressly on his own behalf as an incentive to that class or those classes of persons or the public at large to acquire foreign package holidays through him rather than through another;

"relevant agreement" means an agreement between a tour operator and a travel agent for the supply in the United Kingdom of agency services by the travel agent to the tour operator in relation to the marketing and supply of foreign package holidays;

"tour operator" means a person who provides foreign package holidays to the public or a section of it; and

"travel agent" means a person who markets foreign package holidays under one or more relevant agreements on behalf of a tour operator.

Agreements

3.—(1) Subject to paragraph (3) of this article, it shall be unlawful for a tour operator to make or carry out a relevant agreement to the extent that that agreement contains provisions, express or implied, which prohibit a travel agent from offering inducements or are intended to persuade a travel agent not to offer inducements.

(2) This article shall apply to prohibit the carrying out of a relevant agreement already in existence on the date on which this Order is made.

(3) This article shall not apply to a relevant agreement in so far as it is or would be an agreement to which the Restrictive Trade Practices Act 1976(**a**) applies or, as the case may be, would apply.

4.—(1) Subject to paragraph (2) of this article, any tour operator who is a party to a relevant agreement shall, to the extent that that agreement contains provisions referred to in article 3(1) above terminate it before 5th January 1988.

(2) This article shall not apply to a relevant agreement in so far as it is an agreement to which the Restrictive Trade Practices Act 1976 applies.

Conduct

5. It shall be unlawful for a tour operator to withhold or to agree to withhold or to threaten to withhold orders for agency services from a travel agent who offers or who has offered or who proposes to offer inducements except in circumstances where such orders are withheld, or would be if an agreement or threat to withhold were carried out, for a reason, other than the offering of inducements, which could have led a reasonable tour operator to withhold orders for agency services from a travel agent.

6.—(1) It shall be unlawful for a tour operator to give or agree to give any preference in respect of the giving of orders for agency services to travel agents who do not offer inducements or who offer inducements only to a limited extent or who offer only certain types of inducements or who have not offered or who do not propose to offer inducements.

(2) A tour operator shall be regarded as giving a preference where he treats a travel agent, with regard to the terms or conditions on which orders for services are given or any other matter, in a manner significantly more favourable than that in which he normally treats travel agents who offer inducements.

Francis Maude
Parliamentary Under Secretary of State,
Department of Trade and Industry

30th June 1987

(**a**) 1976 c.34.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes it unlawful for a tour operator to make or carry out an agreement (whether existing or future) for agency services with a travel agent to the extent that it prohibits or is intended to dissuade the travel agent from offering inducements to the public to purchase the tour operator's foreign package holidays through him rather than another travel agent. It also requires tour operators to terminate any such existing agreement to that extent. These provisions of the Order do not apply to agreements in so far as they are agreements to which the Restrictive Trade Practices Act 1976 (c.34) applies.

The Order further makes it unlawful for a tour operator to refuse to deal with a travel agent on the grounds that that agent offers inducements, or to give preferential treatment to travel agents who do not offer inducements.

Copies of the report of the Monopolies and Mergers Commission upon which the Order is based (Cmnd 9879) may be obtained from Her Majesty's Stationery Office.