

CHAPTER 10

Conclusions

The complex monopoly

10.1. We are required to report whether a complex monopoly situation exists in the supply of services by travel agents for tour operators in relation to the marketing and supply of the tour operators' foreign package holidays (the reference services). Under section 7(1)(c) and (2) of the Fair Trading Act 1973 a monopoly situation (called, under section 11(1) of the Act, a 'complex monopoly situation') exists if at least one-quarter of all the reference services supplied for members of one and the same group consisting of two or more persons who whether voluntarily or not, and whether by agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the supply of reference services.

10.2. We found that the tour operators specified at paragraph 4.1 for whom reference services are supplied prohibit the travel agents who supply those services 'from supplying the tour operators' foreign package holidays at a discount from the price prescribed by the tour operators . . . irrespective of whether the prohibition is imposed in express terms or takes the form of a prohibition imposed by the tour operators on their travel agents on offering pecuniary or other benefits to the public to acquire the tour operators' foreign package holidays through travel agents' (the reference practice—see paragraph 1.1). We have adopted a more restricted definition of discount in our consideration of the public interest (paragraph 10.27). It was put to us by ABTA and others that the relationship between a tour operator and travel agent was that between a principal and his agent. It followed in ABTA's opinion that a clause in an agreement between the parties was not capable of preventing, restricting or distorting competition within the meaning of section 7(2) of the Act, in so far as the clause defined the terms (including the price) that the travel agent may quote on the tour operator's behalf. Without the clause the agency could not exist. However, such a clause was capable of restricting competition within the meaning of section 9(2) in so far as the clause sought to control the offer by the travel agent of inducements which could not be seen to be offered on behalf of the tour operator (paragraphs 9.33 to 9.36). We agree with ABTA's opinion.

10.3. At the time of the reference two of the largest tour operators in the United Kingdom were preventing Ilkeston Consumer Co-operative Society Ltd (Ilkeston) from operating its voucher scheme in respect of sales of their foreign package holidays. This successfully prevented Ilkeston from offering vouchers against some 45 per cent of its sales of foreign package holidays. We believe that the Ilkeston vouchers are inducements to purchase foreign package holidays through the society rather than through other travel agents. The tour operators concerned also regard the Ilkeston scheme as the offer of inducements (see paragraphs 6.9 and 6.10). We conclude that the action of these tour operators restricted competition between travel agents within the meaning of section 7(2), and that similar action would be possible by any tour operator who engaged in the reference practice.

10.4. We find that the reference practice restricts competition between travel agents since it prevents travel agents who in supplying their services wish to offer inducements, from competing with travel agents who do not wish to do so. We estimate that tour operators which engage in the practice acquire over 70 per cent of the reference services supplied in the United Kingdom; the one quarter of total supply criterion is therefore more than met. We conclude that a complex monopoly situation exists in favour of the tour operators specified at paragraph 4.1 and those other tour operators for whom reference services are supplied on the basis set out at the beginning of paragraph 10.2.

10.5. The action taken by two tour operators to prevent Ilkeston from operating its voucher scheme (paragraph 10.3) was a step taken for the purpose of exploiting and maintaining the monopoly situation, and an action on their part which was attributable to the existence of the monopoly situation.

The public interest

10.6. In reaching our conclusions on the public interest, we consider first the ways in which the reference practice operates against the public interest. Secondly, we consider whether abolition of the reference practice would have other effects contrary to the public interest. Finally we discuss certain other matters which we believe should be taken into account in considering the effect on the public interest of abolishing the reference practice.

Price competition between travel agents

10.7. Price competition between travel agents has been almost entirely in the form of inducements such as free insurance, free transport to the airport, free holiday spending money, free goods and in the case of certain co-operative societies vouchers which can be credited against purchases of goods in other departments of the society which issued the voucher. Offers of inducements are fairly widespread but much more common in some locations than others. This has enabled some multiple travel agents to respond selectively for example by offering free insurance only in the locations where it is necessary in order to retain market share. There have been few national promotions of voucher schemes (see paragraphs 4.18 to 4.20).

10.8. We received a wide range of opinion on the ability of travel agents to 'give away' more of their commission if the reference practice were ended. Many pointed to what they considered to be the low profitability of travel agents (see paragraphs 7.7, 7.16, 7.30 and 8.6); they took the view that there was little or no scope for an increased level of price competition between travel agents that would be within the bounds of commercial prudence. Our profit survey shows that on average the profitability of small travel agents is low. These agents are under increasing financial pressure but their average profitability disguises a wide range of performance. Some small firms are better placed than others to initiate or respond to increased competition. Our survey does not indicate that the profitability of medium or large firms is low (paragraphs 5.5 to 5.9).

10.9. We found a wide range of view within the industry on the need for travel agents to improve their efficiency. Some argued that trading conditions had been so difficult recently that those inefficient agents who had not already been weeded

out would be unable to survive (paragraphs 9.11 and 9.27). Others took the view that an average agent's commission of 10 per cent protected inefficient agents (paragraphs 6.15 and 9.25). We commented above on the low profitability of some small travel agents but as this is only one indicator of the level of efficiency of those agents, we are unable to reach any conclusion in this matter.

10.10. It was put to us (paragraphs 9.11, 9.17 and 9.44) that, within the bounds of fair competition, there was no room for a significant increase in travel agents' offers of inducements, although such reductions in consumer prices could appear more significant for a family holiday. We believe that this understates the potential value of a more widespread offer of inducements to the holidaymaker, particularly in the important family holiday market. For example, vouchers offered by Lunn Poly or Ilkeston against a foreign package holiday taken by a family of four, would be substantial (paragraphs 4.18 and 6.5). If schemes similar to those promoted by Lunn Poly and Ilkeston were more widely offered there could be material benefit to holidaymakers. We are satisfied that at the time of the reference, the reference practice was restricting price competition between travel agents by constraining the value and incidence of inducements offered by them.

Innovation by travel agents

10.11. We considered whether the reference practice inhibited innovation in the marketing and supply of foreign package holidays and thereby discouraged entry of innovative travel agents who might, for example, wish to offer basic services by mail order at lower cost.

10.12. The view generally put to us by the industry was that travel agents had been innovative, notably in the offer of various kinds of inducements and the adoption of new technology—for example the installation of computerised booking systems. It was pointed out that the remaining restrictions in ABTA's rules relating to premises and employment of qualified staff were minimal, and that there was therefore nothing to prevent travel agents offering a low cost mail order service to holidaymakers who did not feel the need for the advice offered by the traditional travel agency in the High Street. Nevertheless, few agents seem to have followed Page & Moy's example of offering a basic service by mail order at lower cost without using or incurring the overheads of running a shop (paragraph 9.25). We believe that the industry has been resistant to innovations which bite deeply into agents' margins—hence the opposition to the Ilkeston and Page & Moy schemes (paragraphs 4.22 and 4.23, and 6.7). The reaction to these schemes was probably a reflection of the attitude in the industry, particularly amongst travel agents, and in our view has discouraged innovation by travel agents.

10.13. This attitude, taken with the constraint on the offer of inducements by travel agents, has had the effect of depriving the customer of choice of mix of prices and services most suited to his needs, for example by encouraging the conventional travel agent who offers personal attention to the holidaymaker and discouraging travel agents who wish to cater for customers who feel no need for personal advice and would prefer a more limited service at a lower price. The prohibition encourages the conventional travel agency by helping to secure the income necessary to support the former kind of outlet. The needs of the holidaymakers who require personal service are well catered for in the High

Street but those who, on the basis of experience, know what they want and may feel no need for personal advice have a quite limited choice of outlet which will charge them a lower price for the narrow services they need.

10.14. We now consider the possible adverse effects on the public interest of abolition of the reference practice.

Increased concentration amongst travel agents

10.15. It emerged from our discussions with three of the largest multiple travel agents that their market expansion in recent years would continue whether or not the reference practice is ended (paragraph 7.26). However, it was put to us by many tour operators and travel agents that ending the practice was likely greatly to accelerate the growth of the largest multiples. This view was perhaps most strongly advanced by Intasun which suggested that up to a third or so of the independent travel agents could go out of business (paragraph 9.13). Horizon felt that as a result of increased concentration some small communities could lose their local travel agent (paragraph 9.19). We recognise that such a development would be inconvenient for some holidaymakers. A survey carried out by Holiday Which? in summer 1984 found that the most frequently given reasons for booking with a particular travel agent were convenience of location and previous experience of using that agent (paragraph 8.16). Nevertheless, we doubt whether much weight can be given to the adverse effect of possible acceleration of an existing trend. It is likely that ending the reference practice would cause some acceleration of the process of concentration among travel agents but we could form no view on the contribution which abolition would make.

Encouragement of cross-subsidy

10.16. It was widely believed among tour operators and travel agents who gave evidence to us that Ilkeston was able to finance its voucher scheme only by cross-subsidy from other parts of the business. We found that Ilkeston had not cross-subsidised its foreign package holiday business in the period we examined and that the Society was unlikely to do so in the future (paragraph 6.13). On the contrary, the basis of the scheme has already been changed on two occasions. The indications are that Ilkeston will continue to make any adjustment necessary to maintain the separate profitability of its travel business. Fears were also expressed to us that new entrants (multi-product retail businesses were among those mentioned) might make unfair use of cross-subsidy. While it clearly cannot be ruled out that new entrants might take advantage of the ending or modification of the reference practice to cross-subsidise their foreign package holiday business, we do not regard this as a major factor. Indeed we note that despite the rapid growth in package holidays in recent years there has been no new entrant of this kind.

Risk of a price war

10.17. Again we found a wide range of opinion on the likelihood of a deleterious price war resulting from the ending of the reference practice. Some were inclined to dismiss the possibility while others could foresee an increased level of failure amongst tour operators and travel agents; the tour operators because they might be forced into paying higher commission than was financially

prudent in order to finance excessive 'discounting' by travel agents, and the travel agents because they were forced into ever higher levels of 'discounting', which they could not afford even with the benefit of any increased overrides they were able to negotiate. It was put to us that an increased level of failure amongst travel firms could have a destabilising effect which would be unwelcome to holidaymakers and might eventually jeopardise the present bonding arrangements.

10.18. We should expect ending or modification of the reference practice to result in increased competition but it seems to us that it would be unlikely to take the extreme form of a price war in the absence of predatory new entrants. We have seen no evidence that they are likely to emerge (paragraph 10.16).

10.19. As we have said above, one result of an increased level of competition could be the encouragement of non-cost-related commissions such as overrides to travel agents. It was put to us that this could be to the detriment of the smaller travel agents who were less well placed than the large multiples to negotiate commissions. We had some evidence that small travel agents were treated as well as large travel agents so far as overrides were concerned. However, we believe that it is likely that the large multiples would in any price war be better able to protect their margins by extracting higher overrides from tour operators than most of the independent travel agents and smaller chains. No doubt there would be exceptions but it is hard to believe that a chain with two or three hundred outlets would not have a head start over smaller firms.

10.20. We also found a fairly widely held view in the industry that a greater use of overrides or other forms of increased commission would encourage the expansion of preference selling by travel agents, to the benefit of major tour operators but to the detriment of other tour operators and of customer choice. It was felt that in any price war brought about by ending the reference practice large tour operators would be able to structure their incentive commissions in such a way that travel agents would sell their holidays in preference to those of smaller tour operators. (This would tend to squeeze out the latter and eventually reduce the range of holidays on offer (paragraphs 7.12 and 9.30)). It was, however pointed out that level of commission was only one factor in a travel agent's decision to recommend a particular operator. Other very important considerations were the ease of dealing with an operator and the all-round quality of the operator's service to holidaymakers. It was suggested that recommending inferior holidays could not be in the long-term interests of a travel agent's business (paragraphs 7.27 and 7.35).

10.21. While we recognise the contribution made by overrides to the profitability of some travel agents, we are not convinced that ending or modifying the reference practice would be likely to have a significant effect on their level and incidence. We found that the largest tour operator did not pay overrides and we had no indication that its policy in this regard was influenced by the reference practice. Our profits survey of tour operators and other evidence showed that the smaller firms already tended to pay higher levels of commission and overrides than the larger firms. Preference selling of the holidays of major tour operators could be encouraged, but in our view to a limited extent because consumer choice would persist as a strong control.

Effect on employment

10.22. TSSA argued that the public interest was presently served by a large variety of operators supported by a large number of retail outlets (paragraph 8.22). It seems fairly clear, however, that growth of the largest tour operators and travel agents is going to reduce the participants at both levels of the industry, whatever happens to the reference practice. This makes it particularly difficult to estimate the effect on employment of ending or modifying it. We estimate that travel agents have around 30,000 employees and tour operators some 12,000. It was put to us that economies of scale could mean that few of the staff of small operators and agents which were taken over or simply cease trading, would be absorbed into the remaining firms (paragraph 9.19). We note, however, that the foreign package holiday market is expanding and that it is part of a growing leisure industry. Existing trends in the tour operating and travel agent sectors mean that there would be a loss of firms in any event (paragraphs 3.6 and 7.26). We find it impossible to quantify these factors and their effect on employment.

Unequal pricing

10.23. There were strong feelings in the trade, particularly amongst coach operators, that ending the reference practice would increase the incidence of unequal pricing as between one customer and another, resulting in a loss of customer confidence in the individual operator and in the foreign package holiday industry generally (paragraphs 7.15, 8.8, 9.21 and 9.55). Evidence to the Commission was mixed on whether tour operators themselves ever discounted holidays to stimulate late sales. Certain tour operators told us that they always repackaged such holidays (paragraphs 8.4, 9.15, 9.22 and 9.31). In a general context we were told by ABTA that there were repackaged holidays which were cheaper than the originals but bore a great deal of resemblance to them (paragraph 9.56).

10.24. We believe that consumers tend to be aware of the potential benefits of shopping around for the best buy. Nearly all offers by travel agents have so far been in the form of inducements which can be seen to have come from them, and we do not see why such inducements should in any way result in a loss of confidence in the individual operator or the industry.

10.25. We now turn to other matters which we believe should be taken into account in our consideration of the public interest.

Privileged discounts

10.26. We found that some tour operators and travel agents offered a percentage off the price of foreign package holidays to selected groups of customers; travel agents made such offers to employees of or shareholders in major business clients, and both tour operators and travel agents made them to members of trade unions and staff associations. We were told that the impact of these schemes was not significant (paragraph 4.13). Whilst we would not wish to attach much importance to these arrangements and their apparent lack of impact on the principal/agent relationship, we believe that they would undermine any argument in favour of allowing tour operators to prohibit the offer of inducements to the public at large.

Travel agents' offers of inducements

10.27. We found a widespread tolerance by tour operators of travel agents' offers of 'pecuniary or other benefits to the public as an inducement to acquire the tour operators' foreign package holidays through travel agents', given that there was no question of the offer of a direct reduction in the tour operator's price. As we say in paragraph 10.7 price competition between travel agents has been almost entirely in the form of inducements. Difficulties have arisen in cases where the inducements were expressed in monetary values, for example vouchers as in the case of the Ilkeston scheme or holiday spending money offered as a rebate as in the Page and Moy scheme. In neither of these cases could there be much doubt that the offer was being made by the travel agent and not by the tour operator, nor was there any suggestion by the travel agent that the tour operators' holidays were being offered at prices lower than their advertised prices. For the purpose of considering the reference practice we have defined a discount as the direct offer by a travel agent of the tour operator's foreign package holiday at a price lower than the tour operator's advertised price.

Conclusions

10.28. Our understanding is that this reference was made to the Commission because of steps taken by the three leading tour operators to prevent Ilkeston from offering vouchers in respect of holidays booked with their companies. Thomson Travel and Horizon maintained their threat to withdraw supply and Ilkeston withdrew their holidays from the scheme. Intasun, following OFT's intervention, suspended its threat, which it told us it had made for another reason, and Ilkeston continued to offer vouchers on Intasun's holidays. In the course of our inquiry Thomson Travel and Horizon withdrew their objections to the Ilkeston scheme. At the time they threatened to withdraw supply Thomson Travel, Intasun and Horizon apparently believed that Ilkeston was cross-subsidising its foreign package holiday business. We found that this view was mistaken (paragraph 10.16).

10.29. ABTA told us that a tour operator needed to be able to prohibit a travel agent from offering inducements where in the circumstances there was a real risk that the consumer may be led to believe that the offer came from the tour operator (paragraph 9.35). We have seen no evidence that any travel agent wishes to alter the tour operator's price or imply that it has been altered. On the contrary, the travel agent wants the credit for passing on some part of his commission to the customer because he would like the customer to do further business with him. If he gives the impression that the inducement is being offered by the tour operator, part of the commercial benefit of offering inducements, the attraction of future business, would be lost.

10.30. We believe that the public interest would be best served by :

- (a) preserving the ability of the tour operator to control the price of his foreign package holidays; and
- (b) safeguarding from intervention by tour operators the ability of travel agents to compete with each other by offering pecuniary or other benefits to the public as an inducement.

Given the widespread tolerance of the offer of inducements by travel agents noted at paragraph 10.27, we considered whether any action was necessary to achieve

these aims. In our view action is necessary for the reason given in paragraph 10.3. Restrictive measures could be taken by any tour operator who engaged in the reference practice. We note in this connection ABTA's comment that partly because the Commission was deliberating on the matter, in some respects the position had been put on ice (paragraph 4.21).

10.31. We understand the worries of many firms in the industry that ending the reference practice could have the effects set out in paragraphs 10.15 to 10.24 which would in sum outweigh any benefits which might accrue from increased competition. We take the contrary view that these dangers are outweighed by the desirability of maintaining and promoting effective competition between travel agents, which we believe is likely to result in significant benefits to holidaymakers. Many of the dangers foreseen are inherent in the changes which are already taking place in the industry. In our view these changes should take place in as competitive an environment as possible.

10.32. We conclude that the ability, which the reference practice gives tour operators, to interfere with the way a travel agent induces customers to book holidays with him rather than another travel agent, constitutes a fact which operates against the public interest by reason of the adverse effects on competition between travel agents set out in paragraphs 10.7 to 10.13

- (a) The reference practice has restricted competition between travel agents in the value and incidence of inducements offered by them.
- (b) The reference practice has discouraged innovation by travel agents.
- (c) The effect has been to deprive the customer of the mix of prices and services most suited to his needs.

Remedies

10.33. We considered whether the possibility of action under the Competition Act 1980 might provide a sufficient safeguard for travel agents who wish to offer inducements which do not involve the offer of a discount (see paragraph 10.27). No doubt such action would have its utility in particular cases but we are not satisfied, given the circumstances of this industry, that it could be relied upon as a general safeguard.

10.34. We also considered whether it would be practicable for the Director General of Fair Trading, under section 88 of the Fair Trading Act, to consult the relevant tour operators with a view to obtaining from them undertakings that they would not seek to prevent travel agents from offering inducements provided they did not directly reduce the tour operators' price. ABTA argued that seeking and obtaining undertakings would require consultation with some hundreds of tour operators, and an ultimate willingness on the part of all of them to offer and be bound by undertakings in identical terms. Additional problems would be imposed by new entrants into the tour operating industry (paragraph 9.38). We accept that it would be impracticable for the Director General to obtain undertakings on this scale.

10.35. ABTA considered, albeit with very considerable reservations (paragraphs 9.38 to 9.40), that in the circumstances described in paragraph 10.34 legislative action, presumably by the use of the Secretary of State's powers under

Schedule 8 of the Fair Trading Act 1973, would be the only alternative to undertakings. We are nevertheless, reluctant to recommend such action as the first resort. We therefore recommend that the Director General of Fair Trading should consult with ABTA with a view to securing an appropriate addition to its Code of Practice with the objective of ensuring that its travel agent members should be free to offer inducements, subject to preserving the ability of the tour operators to control the price of their foreign package holidays (see paragraph 10.30). As such consultations will necessarily occupy some time, we also recommend that the Director General should request ABTA to bring the Commission's findings to the attention of its members.

10.36. If the outcome of the consultations we recommend should prove to be unsuccessful in the opinion of the Director General, we recommend that the Secretary of State should take legislative action in order to ensure that travel agents are free to compete with each other in the offer of inducements, again subject to preserving the ability of the tour operators to control the price of their foreign package holidays.

H H Hunt (*Chairman*)

M B BUNTING

H L G GIBSON

L A MILLS

D P THOMSON

S N BURBRIDGE (*Secretary*)

30 June 1986