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Press and Information

PRESS RELEASE No 61/08

9 September 2008

Judgment of the Court of First Instance in Case T-212/03

MyTravel Group v Commission

**THE COURT OF FIRST INSTANCE REJECTS THE CLAIM FOR DAMAGES
BROUGHT BY MYTRAVEL**

The fact that the Court annulled the decision of the Commission prohibiting the acquisition of First Choice by MyTravel does not make the Community liable in damages, since the Commission did not manifestly and gravely infringe Community law.

On 29 April 1999, the United Kingdom travel company Airtours, which has since been renamed MyTravel Group, announced its intention to acquire the whole of the issued share capital of First Choice, one of its competitors in the United Kingdom, on the stock market. On the same date, Airtours applied to the Commission for approval of the proposed merger.

On 22 September 1999, the Commission declared the merger incompatible with the common market on the ground that it would have led to a collective dominant position on the United Kingdom short-haul foreign package holiday market.

Since it did not accept the Commission's analysis, Airtours brought proceedings before the Court of First Instance for the annulment of the Commission's decision. By judgment of 6 June 2002¹, the Court of First Instance annulled the decision, holding that the Commission had not shown to the requisite degree that negative effects on competition would arise by virtue of the merger.

Following that judgment, MyTravel Group brought an action before the Court of First Instance claiming damages for the loss it claimed to have suffered by reason of the unlawfulness vitiating the review procedure undertaken by the Commission of the compatibility of the proposed acquisition of the applicant's competitor with the common market.

The Court of First Instance holds, first of all, that for the non-contractual liability of the Community to arise there must be unlawful conduct by its institutions **amounting to a manifest and grave disregard for the limits on their discretion.**

¹ See the Press Release on the judgment delivered in Case T-342/99 *Airtours v Commission*.

Next, the Court holds that the possibility cannot be ruled out in principle that **manifest and grave defects which affect the Commission's economic analysis underlying a decision declaring a concentration incompatible** with the common market could constitute breaches that are sufficiently serious to give rise to the non-contractual liability of the Community. However, the complexity of the situations to be regulated in the control of mergers, the difficulties of application connected with the time constraints imposed on the administration in that regard and the margin of discretion available to the Commission **must be taken into account** in analysing whether a sufficiently serious breach on the Commission's part may have arisen.

That exercise is **more demanding** than that which is required in an action for annulment, where the Court need only examine the lawfulness of the contested decision in order to satisfy itself that the Commission has correctly appraised the different elements of the merger. In the present case, errors of assessment and the failure to put forward relevant evidence, as established in the *Airtours* judgment of 6 June 2002, whether considered individually or as a whole, are not of themselves sufficient to give rise to a manifest and grave infringement of the limits imposed on the Commission's discretion in the control of mergers and in the presence of a complex oligopoly situation.

Having regard to those considerations, the Court of First Instance rules that **the Commission did not commit a sufficiently serious infringement of a rule of law in analysing the Airtours/First Choice merger in light of the criteria relating to the creation of a collective dominant position.**

Lastly, in light of the documents produced in the case, the Court of First Instance holds that the commitments submitted by Airtours in order to resolve the problems relating to the potential negative effects on competition identified by the Commission **were indeed examined by it and did not respond to its objections clearly. The Commission therefore did not infringe its duty of diligence in that regard and, as a result, the non-contractual liability of the Community also does not arise in this context.**

In those circumstances, the **Court of First Instance dismisses the action brought by MyTravel Group in its entirety.**

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE EN FR

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-212/03>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
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