

# Proposed merger between TravelSupermarket Limited and Icelolly Marketing Limited

## Decision on relevant merger situation and substantial lessening of competition

**ME/6933/21**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 12 August 2021. Full text of the decision published on 6 September 2021.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

### SUMMARY

1. TravelSupermarket Limited (**TSML**) and Icelolly Marketing Limited (**Icelolly**) have agreed to merge (the **Merger**). Icelolly and TSML are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Icelolly and TravelSupermarket is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of metasearch services (**MSS**) for package holidays in the UK. The CMA has therefore assessed the impact of the Merger in relation to the supply of these services, but has also taken account of competitive constraints posed by alternative channels for package holidays in the UK.
4. MSS websites are two-sided platforms. On one side, they serve consumers who use MSS websites to search for and compare package holidays and then potentially click through to other websites to purchase a package holiday. On

the other side, MSS websites serve travel service providers (**TSPs**) and online travel agents (**OTAs**) (together **Travel Providers**), who use MSS websites to attract consumers looking to purchase a package holiday to their own website. TSPs include airlines, hotel operators and tour operators. OTAs are agents for TSPs, and offer comparison and booking services to consumers on their websites.

5. Although the CMA has found that the evidence indicates that the Parties are each other's closest competitor in the supply of MSS for package holidays in the UK, the CMA considers that the Parties will be constrained by the wide range of alternative channels available to users on both sides of the platform post-Merger, such as search engines and Travel Providers' own websites. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

7. Icelolly operates the package holiday comparison and holiday deals website [www.icelolly.com](http://www.icelolly.com). Palatine Private Equity LLP (**Palatine**) is the indirect controlling entity of Icelolly. Icelolly's 2020 turnover was approximately £[REDACTED] in the UK.
8. TSML holds the TravelSupermarket business (**TSM**). TSM operates the travel comparison website [www.travelsupermarket.com](http://www.travelsupermarket.com). TSML is ultimately a wholly-owned subsidiary of Moneysupermarket.com Group PLC (**MSMG**). MSMG is a UK listed company providing price comparison services to UK consumers in a variety of sectors. TSM's 2020 turnover was approximately £5.9m in the UK.

### **Transaction**

9. On completion of the Merger, TSM and Icelolly will be held under the common ownership of Ice Travel Group Limited (**ITGL**), a new company that has been formed for the purposes of the Merger.
10. Prior to completion of the Merger, shares in ITGL will be held as follows: [60-70]% by Moneysupermarket.com Financial Group Limited (**MSFG**) (ultimately

a wholly-owned subsidiary of MSMG) and [30-40]% by Palatine Private Equity Fund II LP (a fund managed by Palatine).<sup>1</sup> On 13 May 2021, ITGL entered into share purchase agreements with TSML and Icelolly Bidco Limited, which holds the share capital of Icelolly, to effect the Merger. At completion of the Merger, TSML and Icelolly will be transferred to ITGL. At or immediately after completion, shares comprising [5-10]% of the issued share capital in ITGL will be issued to the management of ITGL. The remaining shares in ITGL will then be held as follows: 62% by MSFG and [30-40]% by Palatine Private Equity Fund II LP.

11. The Merger is not subject to review by any other competition authority.

## **Jurisdiction**

12. The CMA believes that the Merger (as described in paragraphs 9 and 10) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.<sup>2</sup>
13. Each of TSM and Icelolly is an enterprise. The Parties are currently held within distinct corporate groups; TSM is part of the Moneysupermarket.com Group and Icelolly is part of the Palatine corporate group. Following completion of the Merger, the Parties will be held under a single entity. TSM and Icelolly will cease to be distinct enterprises. In addition, the Parties will cease to be distinct from each other's corporate groups, so that TSM ceases to be distinct from Palatine and Icelolly ceases to be distinct from the Moneysupermarket.com Group.

## ***The share of supply test***

14. The CMA will have regard to any reasonable description of goods or services to determine whether the share of supply test is met. The share of supply test is not an economic assessment of the type used in the CMA's substantive assessment. The group of goods or services need not amount to a relevant economic market and may differ from the relevant economic market used for the purposes of the substantive assessment of the merger.<sup>3</sup>
15. The Parties submitted that the share of supply test may be met if assessed using a frame of reference of MSS for package holidays in the UK.<sup>4</sup> The CMA considers that all suppliers of MSS for package holidays offer a similar

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<sup>1</sup> Before and after completion, Palatine Private Equity Fund II LP will hold its shares in ITGL through its subsidiaries Icelolly Topco Limited and Icelolly Bidco Limited.

<sup>2</sup> Section 33(1)(a) of the Act.

<sup>3</sup> [Guidance on the CMA's jurisdiction and procedure \(CMA 2\)](#), paragraph 4.63.

<sup>4</sup> Final Merger Notice submitted to the CMA on 24 June 2021 (**FMN**), paragraph 5.3.

proposition, namely enabling consumers to search and compare package holidays using similar search parameters (eg price, star rating etc). In addition, as explained above, the group of goods or services need not amount to a relevant economic market for the purposes of the share of supply test. Therefore, the CMA considers that MSS for package holidays represents a reasonable description of services for the purposes of the Act.

16. The CMA believes that the share of supply test in section 23 of the Act is met. The Parties overlap in the supply of MSS for package holidays in the UK, with a combined share of supply of [90-100]% by value with an increment of [30-40]%.<sup>5</sup>
17. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 25 June 2021 and the statutory 40 working day deadline for a decision is therefore 20 August 2021.

## Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). In an anticipated merger, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.<sup>6</sup>
20. In assessing the counterfactual, the CMA is likely to focus only on significant changes where there are reasons to believe that those changes would make a material difference to its competitive assessment.<sup>7</sup> As part of its assessment of the counterfactual, the CMA may consider the ability and incentive (including but not limited to evidence of intention) of the merger firms to pursue alternatives to the merger.<sup>8</sup> At Phase 1, where there are multiple realistic counterfactual scenarios, the CMA will choose the one where the merger firms exert the strongest competitive constraint on each other, and

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<sup>5</sup> Source: The CMA's analysis of the Parties' submissions on their revenue in FMN (Annex 15.19 and Annex 15.22) and the revenue of other suppliers of MSS for package holidays in the UK.

<sup>6</sup> [Merger Assessment Guidelines \(CMA 129\) 18 March 2021](#) (**Merger Assessment Guidelines**), paragraph 3.2 and paragraph 3.9.

<sup>7</sup> Merger Assessment Guidelines, paragraph 3.8 and 3.9.

<sup>8</sup> Merger Assessment Guidelines, paragraph 3.14.

where third parties exert the weakest competitive constraints on the merger firms.<sup>9</sup>

21. The Parties' submitted that the Merger should be primarily assessed against pre-pandemic levels of activity, focusing on 2019 in particular, but that the CMA should have regard to the ongoing impact of the pandemic on the Parties' businesses.<sup>10</sup>
22. The Parties also submitted that the Coronavirus (COVID-19) pandemic has had a negative effect on their businesses and that there are uncertain prospects of recovery over the short term. Icelolly submitted that [REDACTED].<sup>11</sup> TSM submitted that [REDACTED].<sup>12</sup>
23. The evidence received by the CMA indicates that the Coronavirus (COVID-19) pandemic is not expected have a long-term negative impact on the sale of package holidays. Industry research forecasts that sales of holiday bookings and package holidays will continue gradually increasing as the impact of the pandemic lessens.<sup>13</sup> In addition, the vast majority of Travel Providers that responded to the CMA's investigation submitted that they consider consumer demand for package holidays compared with other travel products may change following the pandemic. In particular, respondents noted that demand for package holidays would likely increase relative to other travel products due to the protection inherent in package holiday bookings, such as the opportunity for refunds in the event of cancellations.
24. The Parties' internal documents also indicate that the Parties would have likely continued operating and have relatively stable financial positions, despite the negative impact of the Coronavirus (COVID-19) pandemic on their businesses. For instance, MSMG management [REDACTED],<sup>14</sup> and Icelolly's latest financial statements indicate that it expects to continue operating within all existing covenants without depending on further external borrowing.<sup>15</sup>
25. The CMA considers that the Coronavirus (COVID-19) pandemic has had an impact on the Parties' revenues and overall businesses. However, the evidence available also suggests prospects for recovery, including a long-term gradual increase in the sale of package holidays. Consequently, the

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<sup>9</sup> Merger Assessment Guidelines, paragraph 3.12.

<sup>10</sup> FMN, paragraph 11.4.

<sup>11</sup> FMN, paragraph 11.39.

<sup>12</sup> FMN, paragraph 11.5.

<sup>13</sup> For example, see Icelolly internal document, FMN, Annex 10.6, '[REDACTED]', in particular figure 1 regarding [REDACTED] and TSM internal document, FMN, Annex 10.2, '[REDACTED]', page 10. See also [REDACTED] included in TSM internal document, FMN, Annex 08.2.1, '[REDACTED]', page 6.

<sup>14</sup> TSM internal document, FMN, Annex 10.4a, '[REDACTED]'.

<sup>15</sup> Icelolly internal document, FMN, Annex 2.5, 'Icelolly Topco limited: Annual report and consolidated financial statements for the year ended 31 December 2019'; filed in December 2020, page 17.

CMA believes that there is a realistic prospect that, absent the Merger, the Parties would have continued to operate independently.

26. The CMA therefore believes that the relevant counterfactual is the prevailing conditions of competition with a primary focus on the levels in activity in 2019 before the impact of the Coronavirus (COVID-19) pandemic. However, the CMA has also taken account of the potential impact of the Coronavirus (COVID-19) pandemic where relevant in its competitive assessment.

## **Competitive assessment**

### ***Background***

#### *Package and non-package holidays*

27. Under the Package Travel and Linked Travel Arrangements Regulations 2018 (**Package Holidays Regulations**),<sup>16</sup> a package holiday is a travel product that (i) covers a period of at least 24 hours or involves overnight accommodation; and (ii) combines two of: transport, accommodation, vehicle rental, or a tourist service (such as a guide or entry to an attraction where it is a significant part of the trip). When consumers purchase a package holiday as defined under the Package Holidays Regulations, consumers will benefit from certain protections entitling them to a refund or compensation if, for example: (i) the booking company goes out of business (financial protection); or (ii) the holiday provided does not match the description of what was sold (legal protection).
28. Consumers booking a holiday can also independently book separate travel products for the same trip; for instance, booking a flight directly with an airline and booking accommodation directly with a hotel. The majority of Travel Providers that responded to the CMA's investigation considered that there are differences in the manner that consumers shop for package holidays when compared to how they purchase individual elements of a trip. Some respondents submitted that package holidays are more difficult to compare than individual elements of a trip, such as flights or hotels. This is because package holidays are more complex products that combine different options, in addition to bundling the price of these separate elements. Further, in contrast to package holidays, a consumer who has independently booked travel products may find it difficult to reschedule, cancel or be refunded for the products in the event that a trip cannot go ahead.

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<sup>16</sup> Package Travel and Linked Travel Arrangements Regulations 2018, [Regulation 2](#).

## *Channels available to consumers and Travel Providers*

29. Consumers typically purchase products online after a period of research.<sup>17</sup> Third parties indicated that consumers for package holidays usually have in mind their preferred destinations and typically start their purchasing journey using search engines to look for providers of package holidays or for packages to their preferred destination.
30. Third parties also indicated that, in order to compare the elements included in the package holidays as well as view consumer reviews of the destination, consumers visit multiple websites before booking a package holiday. For example, one Travel Provider submitted that on average consumers visit between 16-20 different websites. Consumers will consider which Travel Provider offers the best price for their preferred destination, the best overall quality of service, and the refund or cancellation policies of the package holiday before making a purchase. MSS websites can be valuable to consumers as part of this process as, for a given time period and destination, they can easily and relatively quickly compare package holidays from a range of Travel Providers.
31. As consumers use a number of resources when searching for and comparing travel products, including package holidays, Travel Providers advertise across a wide range of acquisition channels to attract consumers to their websites and to potentially purchase a package holiday. The advertising activities and acquisition channels used by the Parties and third parties that responded to the CMA's investigation include the following.
  - (a) Display advertising on various websites (such as the online editions of UK newspapers and magazines, travel websites, etc), as well as on social media platforms.
  - (b) Promoting their websites in search engines, which can be through the use of paid search advertising or through links in organic search results for their brand and for destinations where they offer package holidays.
  - (c) Referrals (ie consumers clicking through a link paid for by Travel Providers) from websites operated by their affiliates and partners, such as MSS suppliers, deals platforms and travel review aggregators.

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<sup>17</sup> The CMA has previously considered the importance of online search for the behaviour of consumers. CMA, April 2017, '[Online search: Consumer and firm behaviour – A review of the existing literature](#)'. In particular, see paragraphs 3.2-3.18 regarding how consumers search on the internet and paragraphs 4.20-4.29 on consumers' use of multiple websites and platforms to conduct a single search.

32. In addition, the Parties and third parties told the CMA that they engage in ‘above the line’ activities (such as TV and radio advertising). This form of advertising increases consumer awareness of their brands and aims to attract them directly to their websites rather than through the acquisition channels listed above.

### ***Horizontal unilateral effects***

33. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>18</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.
34. In its assessment, the CMA has considered (and discusses in turn below) the:
- (a) frame of reference;
  - (b) features relevant to competition between two-sided platforms;
  - (c) closeness of competition between the Parties;
  - (d) competitive constraints on the Parties from alternative suppliers of MSS for package holidays in the UK; and
  - (e) competitive constraints on the Parties from the alternative channels available to consumers and Travel Providers.

### ***Frame of reference***

35. The Parties submitted that the frame of reference is the provision of online travel intermediation services in the UK, which would include suppliers of MSS websites as well as the services offered by firms in the channels available to consumers and Travel Providers set out in paragraph 31.<sup>19</sup>
36. In assessing an anticipated merger, the CMA is required to consider whether it ‘may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services’.<sup>20</sup> The assessment of the relevant market is an analytical tool that forms part of the

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<sup>18</sup> Merger Assessment Guidelines, paragraph 4.1.

<sup>19</sup> FMN, paragraph 13.2.

<sup>20</sup> Section 33(1)(b) of the Act.



analysis of the competitive effects of the merger and should not be viewed as a separate exercise.<sup>21</sup>

37. In line with the approach set out in the CMA's Merger Assessment Guidelines,<sup>22</sup> the CMA considers that the analysis of the evidence gathered for the purposes of competitive assessment in this case, which assesses the potentially significant constraints on the Parties' behaviour, captures the competitive dynamics more fully than a separate formal analysis of market definition.<sup>23</sup> The CMA notes that its assessment of whether the Merger may be expected to result in an SLC does not depend on the precise definition of the relevant market.<sup>24</sup>
38. In this case, the CMA has assessed competitive dynamics relevant to the Parties' overlapping activities in relation to the supply of MSS for package holidays in the UK. This includes the competitive constraint on the Merged Entity not only from other MSS suppliers for package holidays in the UK (as discussed in paragraphs 51-54) but also from the competitive constraint from the alternative channels available to consumers and Travel Providers in package holidays (as discussed in paragraphs 55-69).
39. The CMA therefore considers that it is not necessary to conclude on widening the frame of reference. The CMA has focused its assessment on the effects of the Merger in relation to the Parties' overlapping activities, but has also considered the wider competitive dynamics affecting the supply of MSS for package holidays in the UK.

#### *Features relevant to competition between two-sided platforms*

40. As outlined above, MSS websites can be considered two-sided platforms as they serve and connect two distinct customer groups (consumers and Travel Providers). When assessing competitive effects in mergers involving two-sided platforms, the CMA may consider each side of the platform separately, or incorporate both sides in one assessment.<sup>25</sup>
41. In the present case, the CMA has based its approach on (i) the importance of network effects as well as (ii) the competitive conditions on each side of the Parties' platforms. These are discussed in turn below.

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<sup>21</sup> Merger Assessment Guidelines, paragraph 9.1.

<sup>22</sup> Merger Assessment Guidelines, paragraph 9.2.

<sup>23</sup> Merger Assessment Guidelines, paragraph 9.2.

<sup>24</sup> Merger Assessment Guidelines, paragraph 9.5.

<sup>25</sup> Merger Assessment Guidelines, paragraph 4.24.

### *Importance of network effects*

42. Two-sided platforms such as MSS websites are often characterised by network effects, where the value of the product for customers on one side of the platform depends on the volume of users either on the same side (direct network effects) or on the other side (indirect network effects).<sup>26</sup> Where network effects are strong, the growth of a two-sided platform may be self-reinforcing: growth in customer numbers increases network effects; increased network effects attract more customers; more customers lead to greater network effects; and so on.<sup>27</sup>
43. The CMA has found that indirect network effects are an important feature in the competitive dynamics between suppliers of MSS for package holidays and for travel products more generally.
- (a) The Parties submitted that, although there is no concern that network effects could be material, it is valuable for consumers to have a wide range of potential options to compare on their websites and it is also valuable for Travel Providers to have a large number of consumers visiting their websites.<sup>28</sup>
- (b) The Parties' internal documents on commercial strategy indicated it was important for the Parties to increase the number of consumers and Travel Providers that use the Parties' websites.<sup>29</sup>
- (c) The CMA received evidence that MSS suppliers' commercial strategies are aimed at (i) attracting a high quality of consumer to their website, so that it becomes more valuable to Travel Providers and (ii) providing consumers with an easy-to-use website with a range of offers and destinations from Travel Providers to compare.

### *Competitive conditions on each side of the Parties' platforms*

44. The CMA may assess each side of two-sided platforms separately where competitive conditions (such as the number and strength of alternatives available) are different on the two sides of the platform as a platform operator may have different incentives as regards what it offers to users on either side of its platform.<sup>30</sup>

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<sup>26</sup> Merger Assessment Guidelines, paragraph 4.22.

<sup>27</sup> Merger Assessment Guidelines, paragraph 4.23.

<sup>28</sup> FMN, paragraphs 23 and 13.17.

<sup>29</sup> For example, see: TSM internal document, Annex 10.4b '[§<']' and TSM internal document, FMN, Annex 10.10, '[§<']'.

<sup>30</sup> Merger Assessment Guidelines, paragraph 4.24 (b).

45. In the present case, the CMA has found that the competitive dynamics are broadly similar on each side of the Parties' platforms.
- (a) As outlined above, the channels available to consumers to search for and compare package holidays from a Travel Provider are the same as those available to Travel Providers aiming to attract consumers looking to purchase a package holiday to their own website.
  - (b) Around half of Travel Providers that responded to the CMA's investigation told the CMA that they do not consider MSS websites to be an important resource for consumers and that alternative channels (such as search engines and Travel Providers' own websites) are more important to consumers when shopping around for package holidays.
  - (c) The CMA has found (as set out below between paragraphs 56-64) that suppliers of MSS for package holidays are a less important source of consumers to Travel Providers and that they attract more consumers to their websites when advertising on the alternative channels used by consumers searching for package holidays.

*Conclusion on features relevant to competition between two-sided platforms*

46. For the reasons set out above, the CMA has found that indirect network effects are an important feature in the competitive dynamics between suppliers of MSS for package holidays and that the competitive dynamics are broadly similar on each side of the Parties' platforms. The CMA therefore considers it is appropriate in the present case to assess the constraints on both sides of the Parties' two-sided platforms together in its competitive assessment.

*Closeness of competition*

47. The Parties submitted that they do not consider each other to be their closest competitor.<sup>31</sup> The Parties argued that this is because they routinely monitor a large number of competitors as closely as each other. The Parties also submitted that they have different focuses in their competitive offering because Icelolly is an MSS for package holidays and a deals website but TSM is a 'traditional' MSS for flights, hotels and package holidays.

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<sup>31</sup> FMN, paragraph 15.73.

48. The CMA considers that the available evidence shows the Parties are each other's closest competitor in the supply of MSS for package holidays in the UK.
- (a) The CMA has found that the Parties are currently the two largest suppliers of MSS for package holidays in the UK, with TSM and Icelolly having shares of supply of [50-60]% and [30-40]%, respectively, in 2019 and 2020.<sup>32</sup>
- (b) The vast majority of third parties that responded to the CMA's investigation indicated that the Parties compete closely in the supply of MSS for package holidays in the UK.<sup>33</sup>
- (c) The Parties' internal documents show that, while they monitor other MSS suppliers and a range of other Travel Providers (particularly in relation to their advertising activities), the Parties consider each other to be their closest competitor when monitoring their commercial performance and regularly benchmark their competitive offering against one another.<sup>34</sup>
49. The CMA notes that there is a degree of differentiation between the Parties' competitive offerings. However, the CMA considers that this does not prevent them from being close competitors. In the present case, the CMA considers that the Parties are likely to be close competitors as their rivals' offerings are more differentiated (as acknowledged by the Parties)<sup>35</sup> and as there are few other suppliers of MSS for package holidays in the UK.
50. On the basis of this evidence, the CMA considers that TSM and Icelolly are each other's closest competitors in the supply of MSS for package holidays in the UK.

*Competitive constraints from suppliers of MSS for package holidays in the UK*

51. The Parties submitted that they are still constrained by Kayak and Tripadvisor even though these companies' shares of supply of MSS for package holidays in the UK is smaller than the Parties.<sup>36</sup> The Parties submitted that this is

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<sup>32</sup> Source: The CMA's analysis of the Parties' submissions on their revenue in FMN (Annex 15.19 and Annex 15.22) and the revenue of other suppliers of MSS for package holidays in the UK.

<sup>33</sup> The majority of Travel Providers also indicated that TSM was a close or very close alternative supplier of MSS for package holidays to Icelolly and almost all Travel Providers considered that Icelolly was a close or very close alternative to TSM.

<sup>34</sup> For example, see: TSM internal document, FMN, Annex 10.3 '[REDACTED]'; TSM internal document, FMN, Annex 10.4d, '[REDACTED]'; and Icelolly internal document, FMN, Annex 10.7, '[REDACTED]', TSM internal document, FMN, Annex 15.6, '[REDACTED]'; Icelolly internal document, FMN, Annex 9.5, '[REDACTED]'; Icelolly internal document, FMN, Annex 10.23, '[REDACTED]'.

<sup>35</sup> FMN, paragraph 15.75.

<sup>36</sup> FMN, paragraph 25.3.

because Kayak and Tripadvisor are much larger, better resourced and have greater brand recognition than the Parties in relation to travel products.

52. The CMA considers that the available evidence shows Kayak and Tripadvisor are weak constraints on the Parties in the supply of MSS for package holidays in the UK.
- (a) The Merged Entity will have a high combined share of supply of [90-100]% post-Merger and will be more than 10 times larger than the next largest supplier of MSS for package holidays in the UK.<sup>37, 38</sup>
  - (b) The majority of Travel Providers that responded to the CMA's investigation indicated that other suppliers of MSS for package holidays were not close alternatives to the Parties.<sup>39</sup>
  - (c) Kayak and Tripadvisor each told the CMA that they do not consider either TSM or Icelolly to be close competitors to their overall businesses, although Kayak did tell the CMA that it competes closely with the Parties in relation to its package holiday offering.<sup>40</sup>
  - (d) The CMA's review of the Parties' internal documents found that, although the Parties do routinely monitor Kayak and Tripadvisor, there is a greater focus on the other merging firm when monitoring commercial performance and benchmarking competitive offering against other suppliers of MSS for package holidays.<sup>41</sup>
53. The Parties submitted that the only other suppliers of MSS for package holidays currently active in the UK are Kayak and Tripadvisor. However, one third party who responded to the CMA's investigation considered that it also supplies MSS for package holidays in the UK. The CMA's review of the Parties' internal documents showed that they did not routinely monitor this third party in relation to package holidays and only one Travel Provider indicated that it considered this third party to be an alternative supplier of MSS for package holidays to the Parties. The CMA has therefore taken a

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<sup>37</sup> The CMA's analysis of the Parties' submissions on their revenue in FMN (Annex 15.19 and Annex 15.22) and the revenue of other suppliers of MSS for package holidays in the UK.

<sup>38</sup> The Parties submitted that, based on their revenues in 2019, they expect the Merged Entity would have a combined share of around 80% in the supply of MSS for package holidays in the UK. FMN, paragraph 25.5.

<sup>39</sup> A majority of Travel Providers that responded to the CMA's investigation indicated that Kayak was not a close or very close alternative supplier to TSM or Icelolly in the supply of MSS for package holidays. Only one Travel Provider indicated that Tripadvisor was a close or very close alternative supplier to TSM and no Travel Providers indicated that Tripadvisor was a close or very close alternative supplier to Icelolly in the supply of MSS for package holidays.

<sup>40</sup> [REDACTED].

<sup>41</sup> For example, see: TSM internal document, FMN, Annex 10.1, '[REDACTED]'; TSM internal document, FMN, Annex 15.8, '[REDACTED]'; Icelolly internal document, FMN, Annex 10.13, '[REDACTED]'; Icelolly internal document, FMN, Annex 10.15, '[REDACTED]'; and Icelolly internal document, FMN, Annex 10.7, '[REDACTED]'.

conservative approach and not included this third party in its share of supply estimates. In any event, the CMA notes that the Merged Entity would still have a high combined share of supply (around [80-90]%) post-Merger when including the revenue earned by the third party.

54. On the basis of this evidence, the CMA considers that it is not likely that the Parties will be constrained by other suppliers of MSS for package holidays in the UK post-Merger.

#### *Competitive constraints from alternative channels available to consumers and Travel Providers*

55. The Parties submitted that they are constrained by the wide range of alternative channels available to consumers and Travel Providers (as set out in paragraph 31).<sup>42</sup> The Parties argue that this is because (i) the Parties' websites are not important to consumers or Travel Providers and (ii) Travel Providers can easily switch to other channels in response to the Parties increasing prices or degrading the quality of their websites. These are discussed in turn below.

#### *The importance of the Parties' websites to consumers and Travel Providers*

56. The CMA considers that the available evidence shows that MSS websites and, in particular, the Parties' websites are less important than other channels available to consumers and Travel Providers in package holidays.
57. For consumers, the CMA has found that MSS websites are a less important resource than other channels when shopping around for package holidays online.
- (a) As set out above, around half of Travel Providers told the CMA that they do not consider MSS websites to be an important resource for consumers when searching for and comparing package holidays.
- (b) While a majority of Travel Providers told the CMA that they can only access some consumers through MSS websites, they considered that it would be a small proportion (likely less than 5%) of the traffic to their websites.
- (c) In contrast, all Travel Providers told the CMA that search engines are an important or very important resource for consumers. This is because (as set out in paragraph 29) consumers typically start their research process

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<sup>42</sup> FMN, paragraph 15.90.

by using search engines to look for providers of package holidays or for packages to their preferred destination.

58. For Travel Providers, the CMA has found that MSS websites are a less important source of traffic and source of sales to than other channels used in their consumer acquisition activities. This is shown in Table 1 below.

**Table 1: Source of traffic and in package holidays for Travel Providers (on average) in 2019**

|                            | Source of traffic | Source of sales |
|----------------------------|-------------------|-----------------|
| Paid search                | [20-30]%          | [20-30]%        |
| Organic search             | [20-30]%          | [20-30]%        |
| Direct                     | [10-20]%          | [10-20]%        |
| MSS websites               | [10-20]%          | [10-20]%        |
| Deals websites             | [5-10]%           | [5-10]%         |
| E-mail                     | [5-10]%           | [0-5]%          |
| Referrals                  | [0-5]%            | [0-5]%          |
| Social media               | [0-5]%            | [0-5]%          |
| Online display advertising | [0-5]%            | [0-5]%          |
| Other                      | [0-5]%            | [0-5]%          |

Source: Responses to the CMA's questionnaire by Travel Providers.

59. Table 1 shows that, for the Travel Providers that responded to the CMA's investigation, MSS websites represented a small proportion of the traffic to their websites (an average of [10-20]%) and source of sales (an average of [10-20]%) in 2019.<sup>43</sup> In contrast, Table 1 shows that other channels are more important sources of traffic and sources of sales to Travel Providers.

- (a) Search engines (when considering both organic and paid search) represented an average of [40-50]% of the traffic and an average of [40-50]% of the sales for the Travel Providers that responded to the CMA's investigation in 2019.<sup>44</sup>
- (b) Consumers who visited Travel Providers' websites directly (rather than, for example, clicking through a link on an MSS website or on a search engine) represented an average of [10-20]% of the traffic and an average of [10-20]% of the sales for the Travel Providers that responded to the CMA's investigation in 2019.

60. The importance of other channels to Travel Providers when aiming to attract consumers to their websites is reflected in the allocation of their advertising spend. Table 2 shows that, for the Travel Providers that responded to the CMA's investigation, MSS websites accounted for an average of [10-20]% of their package holiday advertising spend in 2019.

<sup>43</sup> The proportion of traffic sourced from MSS websites by Travel Providers is broadly consistent with SimilarWeb data provided by the Parties. FMN, Table 4 and paragraph 12.39.

<sup>44</sup> The proportion of traffic sourced from organic and paid search by Travel Providers is broadly consistent with SimilarWeb data provided by the Parties. FMN, Table 4 and paragraph 12.39.

**Table 2: Package holiday advertising spend by Travel Providers (on average) in 2019**

|                                    | Allocation of advertising spend |
|------------------------------------|---------------------------------|
| Paid search                        | [40-50]%                        |
| TV and Radio                       | [20-30]%                        |
| MSS websites                       | [10-20]%                        |
| Affiliates and partners            | [5-10]%                         |
| Other 'above the line' advertising | [5-10]%                         |
| Deals websites                     | [5-10]%                         |
| Online display advertising         | [0-5]%                          |
| Search engine optimisation         | [0-5]%                          |
| Other                              | [0-5]%                          |

Source: Responses to the CMA's questionnaire by Travel Providers.

61. Consistent with the sources of traffic to their websites, Table 2 shows that TV and Radio advertising (which aims to increase consumer awareness of Travel Providers' brands and attract them directly to their websites) is a large proportion of Travel Providers' package holiday advertising spend (an average of [20-30]%) in 2019. Advertising through search engines (when considering both paid search and search engine optimisation) also represented a large proportion of Travel Providers' package holiday advertising spend (an average of [40-50]%) in 2019.
62. The importance of search engines for attracting consumers shopping around for package holidays online is reflected in the Parties' internal documents. These documents show that the Parties routinely benchmark their performance in relation to their paid search advertising activities and their positioning in organic results on search engines, both for their brand and the destinations for which package holidays are offered on their websites.<sup>45</sup>
63. In addition, the CMA has found that the Parties and Travel Providers compete with each other when aiming to attract consumers to their websites from search engines.
- (a) Travel Providers told the CMA that they compete with the Parties as well as with other Travel Providers when aiming to attract consumers to their websites from search engines (particularly in relation to paid search advertising).
- (b) Data provided by TSM on its 'impression share'<sup>46</sup> from package holiday related keywords shows that the Parties compete with a number of Travel

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<sup>45</sup> For example, see: TSM internal document, FMN, Annex 15.8, '[REDACTED]' and Icelolly's response to the CMA's notice under section 109 of the Act dated 14 May 2021, Annex 050-[REDACTED].

<sup>46</sup> The 'impression share' can be defined as how often the branded advert of a firm appears in the sponsored search results out of the number of times a search engine user enters a particular search term or if their search query includes a specific keyword (ie the 'impression').



Providers (such as [X], [X], and [X]) to attract consumers to their websites from search engines through paid search advertising.<sup>47</sup>

64. The CMA therefore considers that the available evidence shows that MSS websites in general, and the Parties in particular, are less important to consumers and Travel Providers relative to the other channels available to them in package holidays.

*Ease of switching between channels for Travel Providers*

65. All Travel Providers that responded to the CMA's investigation indicated that they can easily reallocate their advertising spend across the channels available to them to attract consumers to their websites.
66. The vast majority of Travel Providers that responded to the CMA's investigation told the CMA that they allocate more of their budgets to those channels with lower consumer acquisition costs so that they can maximise the overall return on their advertising spend. In this regard, one Travel Provider explained to the CMA that it takes a holistic approach to its consumer acquisition strategy such that if its acquisition costs increased in one channel, it would consider reallocating its advertising spend to another channel, or across a number of other channels, with lower costs.
67. In addition, almost all Travel Providers that responded to the CMA's investigation indicated that return on advertising spend is an important or very important factor when partnering with MSS suppliers. Many Travel Providers told the CMA that they would reallocate all or part of their budget from the Parties to other channels in response to an increase in acquisition costs (or a corresponding fall in their return on advertising spend) on the Parties' websites relative to these other channels post-Merger.
68. The CMA therefore considers that the available evidence shows Travel Providers can easily switch between channels and, in particular, Travel Providers would stop or reduce their use of the Parties' websites in response to an increase in acquisition costs relative to the other channels available to them post-Merger.<sup>48</sup>

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<sup>47</sup> TSM internal document, FMN, Annex 15.8f, '[X]'.

<sup>48</sup> Two respondents to the CMA's market investigation raised concerns that the Merger would result in the Parties obtaining a strong market position. Specifically, concerns were raised that the Parties could effectively set the market price that all MSS for package holidays charge; restrict TSPs and OTAs' access to consumers by preventing them from listing on the Parties' website; and that other MSS suppliers would be unable to compete against the Parties. However, the availability of alternative channels, and in particular the ease of switching between them, indicates that such concerns are unlikely to arise.

*Conclusion on competitive constraints from the alternative channels available to consumers and Travel Providers*

69. On the basis of this evidence, the CMA considers that it is likely the Parties will be constrained by the wide range of alternative channels available to consumers and Travel Providers post-Merger.

*Conclusion on horizontal unilateral effects*

70. For the reasons set out above, the CMA believes that, while the Parties are each other's closest competitors and other suppliers of MSS for package holidays in the UK will pose a weak constraint on the Merged Entity, there is a wide range of alternative channels available to consumers and Travel Providers in package holidays which will constrain the Merged Entity. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.

## **Decision**

71. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
72. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Eleni Gouliou**  
**Director, Mergers**  
**Competition and Markets Authority**  
**12 August 2021**