

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

RECENT DEVELOPMENTS IN TRADE
AND COMPETITION ISSUES IN THE SERVICES SECTOR:
A REVIEW OF PRACTICES IN TRAVEL AND TOURISM

by

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Preface

The basic mandate for UNCTAD's work in the area of competition law and policy is provided by the Conference itself and by the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (adopted by General Assembly resolution 35/63 of December 1980), which constitutes the sole universally applicable multilateral instrument in this area, although it is not a legally binding instrument. In the implementation of this mandate, the UNCTAD secretariat prepares studies on different competition issues, services annual meetings of UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy, and undertakes technical assistance, advisory and training activities for developing countries and countries in transition, aimed at assisting them to adopt and effectively implement national competition laws and policies, to establish appropriate institutional mechanisms and procedures, and to participate effectively in the elaboration of international rules in this area.

At the present time, UNCTAD is heavily involved in the preparations for UNCTAD X, to be held in Bangkok, in February 2000. Moreover, UNCTAD's Intergovernmental Group of Experts on Competition Law and Policy, meeting at its second session (7-9 June 1999), acted as preparatory body for the Fourth United Nations Conference to Review All Aspects of the Set of Principles and Rules for the Control of Restrictive Business Practices, scheduled to meet in September 2000.

In addition to this, the World Trade Organization (WTO), at its Singapore Ministerial Conference (9-13 December 1996), decided to establish a Working Group on the Interaction between Trade and Competition Policy at WTO, and decided, *inter alia*, that this Group would draw upon work in UNCTAD and the contribution it can make to the understanding of issues. Further, it encouraged cooperation with UNCTAD, to ensure that the development dimension is taken fully into account.

To help fulfil these mandates, the UNCTAD secretariat is issuing a series of papers with the aim of providing a balanced analysis of issues arising in this area, and addressed to governmental officials, officials of

international organizations, representatives of non-governmental organizations, business people, consumers and researchers. While the series would best be read as a whole, each study may also be read by itself, independently of the others. The main objective of publishing these papers is informative, for background use by delegations, and they are part of the process of capacity-building in the broad areas of competition law and policy and competitiveness in globalizing markets. The papers are published under the name of their authors; however, the views expressed therein do not necessarily reflect those of UNCTAD.

This series of papers has been made possible thanks to voluntary contributions received from the Netherlands and Norway. These contributions are gratefully acknowledged.

A handwritten signature in dark ink, reading 'R Ricupero', with a horizontal line underneath.

Rubens Ricupero

Geneva, August 1999

Secretary-General of UNCTAD

Executive summary

This study is designed to map out the market structure and private anticompetitive activities that have been thrown up by recent developments in the air transport and travel and tourism markets. It is structured as an attempt to marry together the two approaches that the author thinks are needed to address the issue adequately. On the one hand one has to be able to chart the macro-economy issues that direct and shape the nature of the air travel and tourism markets. On the other hand, one also has to be able to look at the way in which the consumer behaves in the market and how he takes decisions about travel. The author believes it is only through approaching the issue from both directions that one can really get a true view of the market.

In this light the study is structured in four sections. Part I looks at the issue of how the consumer is reached and how the consumer takes decisions in travel markets. Of particular interest here is the focus on distribution mechanisms and the tour operator/travel agent relationship. Part II looks at the development of aviation alliances and the disjuncture between the national/regional nature of aviation regulation and the increasingly globalizing industry. Part III looks at the hotel sector and the matrix of issues that face players in the industry and at the relationship between the sector and the distribution mechanisms by which consumers access hotels. Part IV attempts some conclusions and recommendations for future work.

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Introduction

1. Analysing competition in the services sector is always a peculiarly difficult job. The provision of services involves a direct and close relationship between buyer and seller, and the nature of their relationship cannot always be rationalized in a standard market model. The regulation of services has also tended to be different from the regulation of goods insofar as services are very often tied closely into products and often form the “soft” or culturally specific element of the overall offering.

2. The travel and tourism sector, while a relatively recent phenomenon in its present form, has been with us for centuries. An extremely insightful comment from Hippolyte Tain (1828-1893) illustrates the lack of change in tourism over the past two centuries: “There were essentially six kinds of tourists. The first travel for the pleasure of moving, absorbed in counting the distance they have covered. The second go with a guidebook, from which they never separate themselves: ‘They eat trout in the places it recommends and argue with the innkeeper when his price is higher than the one it gives.’ The third travel only in groups, or with their families, trying to avoid strange foods, concentrating on saving money. The fourth have only one purpose, to eat. The fifth are hunters, seeking particular objects, rare antiques or plants. And finally there are those who ‘look at the mountains from their hotel window . . . enjoy their siesta and read their newspaper lounging in a chair, after which they say they have seen the Pyrenees.’”¹

3. While the recent commodification of travel has altered the nature of the travel market it has also given rise to new regulatory problems. The flow of tourists primarily from developed to developed and from developed to developing countries has meant that competition and market structure issues in developed countries have had cross-border effects not previously encountered. Similarly, the trend toward globalization has placed the national and regional nature of the regulatory system under increasing strain. These and other questions are dealt with in this paper, which is designed to map out the market structure and private anticompetitive activities that have resulted from recent developments in the air transport and travel and tourism markets.

I. Reaching the consumer: competition issues in distribution

4. The key relationship in the holiday industry is that between those who supply the “holiday” package and those who retail these holidays. The supplier, or tour operator, puts together the holiday package by negotiating with destinations and operators in third countries. Tour operators operate largely through the following routes:

- A subsidiary of a vertically integrated firm with a number of related travel interests;
- An entirely independent firm that specializes in putting holiday packages together and selling them;
- A subsidiary of an airline; and
- An operator directly linked to a travel agent.

5. The tour operator market is characterized by a large number of small players and a few very large players with relatively large market shares, as shown in table 1 below. This tends to lead, in most industries, to a position where the larger operators face little effective competition because the size of the next tier of competitors is so small.

TABLE 1

Tour operator market concentration, United Kingdom and United States

(Early 1990s)

<i>Tour operator numbers</i>	<i>Number of major tour operators</i>	<i>Major tour operator market share (percentage)</i>
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