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Bridging Monopolies of Power: Foreign Tourism Trade Relations between Germany and Jordan and Constitutional Uncertainty*

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Abstract

International tourism trade relations often operate ‘outside’ national territorialities of law. In holiday destinations without mass tourism, tour operators usually rely on local service providers to produce the tourist package tour on-site. Because tour operators are not always able to establish effective governance mechanisms with their local service providers, loss of their business – and in the worst case bankruptcy – can cause significant economic costs. The paper discusses the efficiency of tour operators’ strategies to deal with such constitutional uncertainty and to impose ‘self-enforcement’. The extensive empirical case study at hand enriches our understanding of private ordering in the service sector and thus contributes to the conceptual discussion within the New Institutional Economics of International Transactions (NIEIT).

Keywords: International private law; transaction costs; private ordering; tourism; Jordan; Germany

JEL classification codes: F02; F15; K 33; L14

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1 Setting the scene

“The old Roman provincial town of Jerash, the city of Madaba founded by the Moabites and mentioned in the Bible several times, the citadel of Amman, and the mosaics of Madaba; the cradle of man! Petra – the antique capital of the Nabateans, world-famous for its tombs! Jeep journeys and trekking tours in the Wadi Rum following the footsteps of Lawrence of Arabia, and the Dead Sea, which at 401 metres below sea level is the lowest accessible spot on the surface of our planet! Or Aqaba, the gate to the Gulf of Aqaba! What a fantastic Jordan trip this was!”

Each and every tour operator is pleased when they receive such positive feedback from their customers; however, this is not always the case. The operator takes responsibility for the promised product quality on behalf of his customer but obviously he does not ‘produce’ it on site and is, hence, extremely dependent on his suppliers at the very destination. The challenge for both, the tour operator in Germany and the suppliers in Jordan, lies in the fact that those ‘cultural’ tours are mainly produced in a kind of ‘legal vacuum’. When a tourist books his holiday trip, he only buys a product quality promise and the future holiday experience on the destination site. The product itself is produced in the presence of the tourist (*spatial fix*, Urry 1987).

The tour operator, therefore, must find suitable control mechanisms to keep the specific product promise, which in its resulting form is closely linked to his own market reputation. The resource intensive legal process in the event of a claim towards the supplier remains blocked to him in most cases. Hence, these specific conditions of travel ‘production’ make alternative (informal) forms of negotiation and control between firms in the (international) tourist foreign trade necessary. However, transactions refer “to economic activities and interactions with the potential to create or add value” (Schmidt-Trenz and Schmidtchen 2006: 6) and are thus complex and positive. The New Institutional Economics of International Transactions (NIEI) is expected to offer fruitful conceptual insights to this phenomenon (Schmidt-Trenz and Schmidtchen 2006) and is, hence, applied to the case at hand.

The paper discusses the case of international foreign trade using the example of tourist package tours from Germany to Jordan. At about 25 to 30 percent, international tourism has been one of the most important service sectors in the international trade for a long time (Lee et al. 2002), and featuring a turnover of an estimated US\$ 623 billion in 2004 is an important pillar in the international foreign trade. Taking into account the national as well as the international tourism, more than US\$ 4 trillion are generated, contributing about 10 percent to the global GDP (Telfer and Sharpley 2008: 2). With approximately 100 million employees worldwide, the tourism industry has by now become the most important source of employment in many regions and is considered a strategic and vital sector in their economy (OECD 2008). Accordingly, the case at hand provides high (practical) relevance for the field of international foreign trade.

1. Fragmented global production processes without bridges between legal territorialities

The concept of global value chains (GVC) offers a promising heuristic to sketch today's dominating fragmented value added processes in the global production (Gereffi 1994, 1996; Gereffi and Korzeniewicz 1994), which similarly apply to touristic value added processes (Dörny 2008a, b, c; Clancy 1998; Mosedale 2006; Barham et al. 2007; Schamp 2007).

GVCs consist of a number of independent economic entities. Due to the closely associated and increased international division of labour, specialisation and – as a result of increasing exchange relations between firms – transaction costs rise accordingly. The GVC concept assumes that each value chain is dominated and ‚governed‘ by a focal company, or *lead firm*, which coordinates the (fragmented) production process. Governance in this case is defined as influence of authority on the distribution of the financial, material, and human resources of firms embedded in a value chain as well as on the material and immaterial flows between them (Gereffi 1995: 113). Governance therefore can cover a large number of versatile application possibilities in terms of content. They comprise binding specifications regarding product design, quantity, and quality, but also mechanisms of control and sanction towards the suppliers as well as common agreements and conventions among the

firms of a value chain. The potential sanctioning of misconduct is an essential part of each value chain's governance.

However, governance goes beyond a mere pattern. That means that control over resources and functions do not automatically equal a powerful governing actor. Only an actor, who in principal has the possibility of influencing other actors within a value chain in his structural sense (*power*), comprises the economic governance in his position when he actually and effectively exercises this influence (*control*) (Dicken et al. 2001: 93; Medina-Munoz and Medina-Munoz 2002: 14). Conversely, only the continuous valorisation of this leverage potential via specific mechanisms and instruments is denoted as value chain governance in the strict sense of the word. Moreover, governance relations are embedded in socio-political processes and regulatory systems, determined by the influence of local, national, and international conditions and policies, which all considerably shape the globalisation process on each value added stage of a value chain (Gereffi 1995; Humphrey and Schmitz 2000). In short, institutions determine the national and international frame of reference for the interaction of the value chain's segments (Stamm 2008).

In the case at hand, small and medium-sized enterprises (SMEs) hold the lead firm position of a value chain instead of the globally operating corporations otherwise being in the spotlight. It is evident that the business activities of suppliers and lead firms in different nation states with different legal systems pose specific problems on the governance function's effectiveness. So far, formal – bridging – institutions on a supra national level do not exist in international tourism. *However, if law and legal practice as governance modes are missing, which alternative mechanisms enable a small – resource deprived – tour operator to create an effective and efficient governance of their suppliers?*

The paper sets out as follows: The next section outlines the specific business relation between the two central business partners within the production process of package tours from Germany to Jordan and transforms this relationship into a principal-agent-constellation, which is dealt with in more detail in the third section. By doing so, I aim to depict and sensitise for the twofold challenge a tour operator faces in international tourism transactions: *possessive uncertainty* and *transactional uncertainty*. Both specific forms of uncertainty strongly effect the business relation at

hand. Sections 4 and 5 introduce the empirical design and the particular institutional environments of tourism in both countries Germany and Jordan. In section 6, I refer to historically derived examples of the creation of a ‘spontaneous framework of rules’ to establish efficient transaction structures, which form the basis for an empirical discussion of the transaction processes between the two tourism business partners in the case at hand in section 7. To abstract from the empirical evidence, the framework of the New Institutional Economics of International Transactions (NIEI) provides valuable conceptual insights. I close with a short discussion in the final section 8.

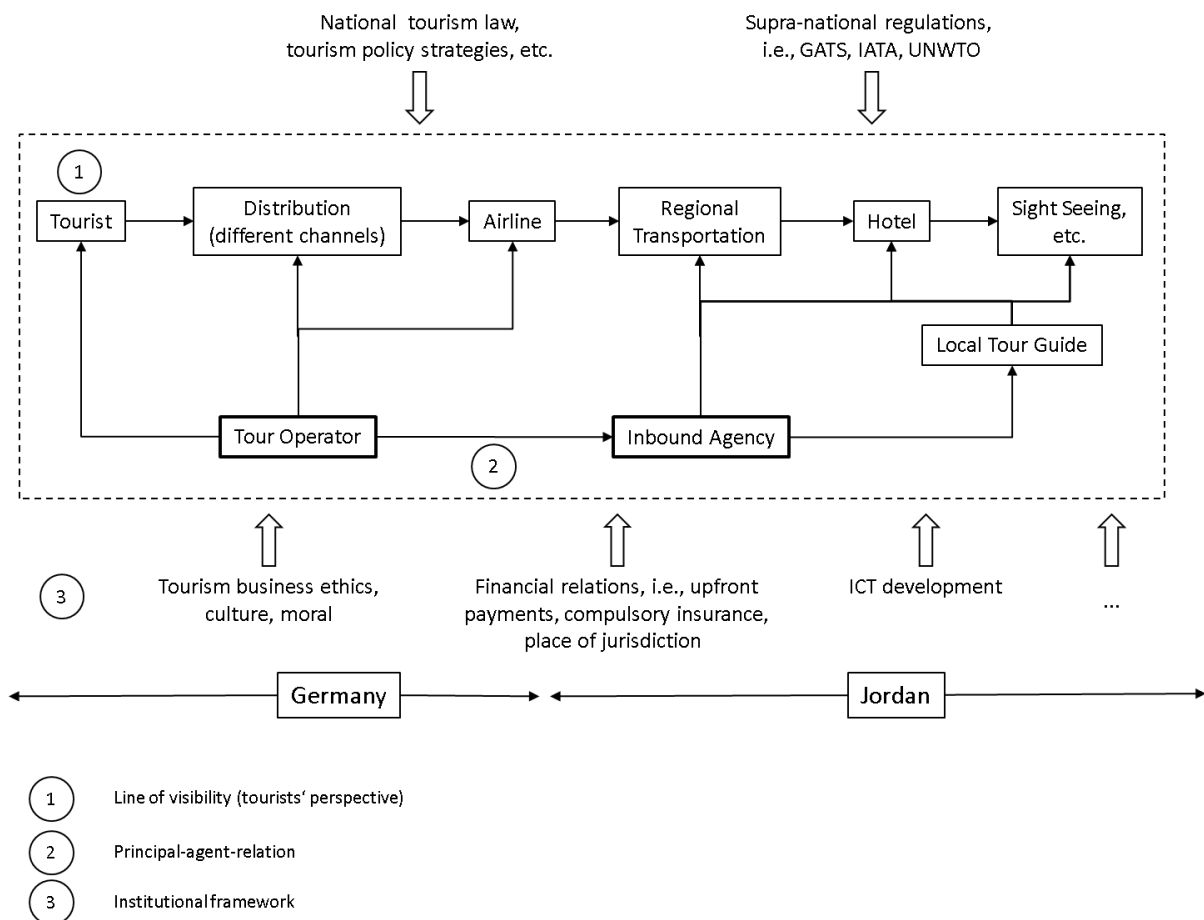
2. Tourism trading structures and organisation

In principle, a packaged tour, which can be produced and offered in multitudinous variants and strongly differentiated qualities, differs from individual travel by the intervention of a tour operator as organized form of travel. To offer his travel product with a (profitable) total price, the tour operator needs to standardise partial tourist services to a certain degree and to introduce an efficient interface-management. Therefore, with the purchase of a package tour the tourist benefits from organisational use and cost advantages instead of booking the respective individual travel services. Accordingly, a tour operator is able to organise transactions more efficiently than the producers of the partial tourist services such as hotels, guided local tours, or the local transportation services. Because each of these sub-sectors only contributes one specific part to the packaged tour, the tour operator occupies a strategically important position during the production of this organised form of travelling (figure 1). Hence and in general, the package tour can be defined as an economic commodity, for which the tour operator’s original tasks lie within the monitoring of the offered services, customer care and client relations, as well as in offering a certain degree of security in personal and general crisis situations during a trip (Schneider 2001: 228). In addition, his function also applies to the constant re-discovery of customer needs, trends, and their individual satisfaction. The tour operator is, hence, rather a ‘value generator’ than a ‘real value creator’.

Whilst a tour operator bears the responsibility of and plans/organises the package tour in the tourist’s country of origin (outgoing tourism), the inbound agency

assumes the actual organisation of the local tourist services in the holiday destination (incoming tourism). There, inbound agencies are the most important point of contact and take over the complete ground handling. Depending on the defined requirements of the tour operator, an incoming agency's tasks comprise accommodation reservations, the organisation of transfer services and round trips within the country, as well as the management and handling of any tourist's complaints. Further, inbound agents are able to pool the demand of a number of tour operators from all over the world towards the local hotels or other service providers. In turn and via such achieved economies of scale, they are able to pass on the favourable prices/conditions towards the tour operators.

Figure 1: Configuration of a packaged tour-value chain from Germany to Jordan



Source: Dörry (2008c), translated and slightly adapted

Such service contracting of a tour operator towards an inbound agent is customary in destinations in which there are large cultural and linguistic differences and an

unfavourable cost-benefit ratio argues against a direct procurement strategy of a tour operator. This cost-benefit-ratio predominantly relates to the considerable information advantages of the incoming agent in relation to the tour operator. The effort necessary to acquire detailed destination information such as the opening hours of certain tourist sites, local public holidays, or hotel construction works at short notice along with noise pollution for the tourists in Jordan, imply undue expenses for a tour operator located in Germany in relation to the achievable customer volumes and profit margins of doing it in-house. Also different cultural and social standards and values, e.g., in terms of negotiations between the tour operator and the multiple service providers in the destination, are generally too costly for a (small or medium-sized) German tour operator. Termed economically, the marginal benefits fall below the marginal costs, which is why an outsourcing of these tasks and services towards the Jordanian inbound agent is highly effective.

This local inbound agent is in a very similar intermediary position of service bundling as the tour operator (figure 1). Other than the tour operator, the inbound agency is embedded in the institutional context of the holiday destination, in which the tourist experience good is ‘produced’ and in which the agent functions as the central supplier of the tour operator. Moreover, the inbound agent’s local networks are of crucial importance to ensure the smooth running of the tour operator’s product. In times of seasonal peaks along with capacity bottlenecks and over bookings of hotels, good personal relations between the agent and the hotel can help tremendously in the performance of booking requests of the tour operator.

Two main levels during the production of the package tour are important to differentiate (figure 1): Whilst tourists are able to trace specific tourist services and performance processes directly during their holiday stays (*line of visibility*), other processes running in the background, such as coordination between the tour operator, the inbound agents, and further downstream suppliers are not visible/recognisable for the tourist. The relation between the tour operator and the inbound agent might be conceived as a principal-agent-constellation.

3. Principal-agent relations and the bridging of disparate jurisdiction

3.1 New Institutional Economics (NIE): information asymmetries and uncertainty

The relationship of the value chain's lead firm, the tour operator, and the inbound agent as its central supplier, displayed in figure 1, allows for a conceptualisation of the principal-agent-theory. On the one hand, the tour operator is an exclusive keeper of the gate to the German market. Due to the existing consumer demand in Germany for package tours to Jordan, a tour operator is forced to offer this product, unless he is willing to leave his market share to his competitors. At the same time, a tour operator is able to provide a large range of holiday destinations worldwide, which relativises the pressure to particularly offer the travel product Jordan.

On the other hand, the inbound agent is also a kind of gatekeeper of the other various suppliers in the destination. A tour operator could theoretically avoid the inbound agent. In fact, however, this is a rather costly endeavour because the inbound agent has the necessary know-how, i.e., creation of asset specificities, and know-whom, i.e., social networks, to be able to arrange such a complex travel product. At the same time, the agent has to stand his ground in the Jordanian inbound agents' competition. This fierce competition weakens the position of the single inbound agent towards the tour operator. The tour operator can try to capitalise on the agent's power disadvantages by setting up business relations with a number of inbound agents, hence enforcing an 'internal' competition among his suppliers. However, the fierce competition on the German market prevents tour operators from exercising extensive power as a principal. Because of their complementary gatekeeper position, both tour operator and inbound agent heavily depend on each other.

The shared production processes of a package tour are pervaded by information asymmetries. They are *ergo* uncertain business processes. The uncertainty is especially displayed by the missing knowledge of character and quality of the experience good 'package tour': The tour operator is uncertain with regard to the quality of the package in Jordan, arranged by the inbound agent; the operator hence

has a big problem if he makes a bad choice regarding his agent. Conversely, the agent is uncertain with regard to the service provision of the local sub-suppliers such as local tour guides, restaurants, hotels, or buses.

In the business relation at hand, the producers' achievements of performance objectives depend on the purposive behaviour of the parties in regard to the transaction. According to the principal-agent-theory, a principal engages his agent with the provision of the required goods and services, well-defined by the principal (transfer of property rights). Because of the agent's information advantage over the principal, the agent can assess his own behaviour and his efforts to fulfil the specifications much more effectively than the principal. The agent hence has the possibility to opportunistically use (*moral hazard*) these informational asymmetries (Eggertsson 1990). For the principal, economic exchange is fundamentally uncertain because of the agent's assumed opportunism. The principal can alternatively try to reduce his own uncertainty in observing the agent's action by significantly increasing the (economic) incentives for the agent (*incentive contracts*, cf. Richter and Furubotn 2003: 234ff.). In fact, the according costs of control are high. With reference to Ronald Coase (1992), Mary Shirley explicates that "[w]hen information is costly and property rights are poorly protected, contracts become hard to specify and enforce and transaction costs are high" (Shirley 2008: 613). This setting applies to the case at hand.

The NIE starts from the assumption that institutions reduce uncertainty. Based on the supposition of an individual's bounded rationality, rule-governed action is meaningful ('rules of the game', North 1984, 2004). Douglass North's term 'institutional environment' comprises both formal and informal aspects of beliefs (e.g., religion), of norms (e.g., trust), of culture (e.g., the intergenerational transfer of norms, values, and ideas), of legal systems, of micro-institutions (e.g., commercial codes), etc. (Shirley 2008: 617).

3.2 New Institutional Economics of International Transactions (NIEIT): constitutional uncertainty

The NIE discusses transactions within one 'closed' territoriality of law. However, the business relation between the operator and the agent at hand bridges several

territorialities of law and hence touches several national monopolies of power. The NIEIT offers an opportunity to conceptually deal with such “international aspects of private law” (Schmidt-Trenz and Schmidtchen 2006: 4).

Both tour operator and inbound agent act within a given national territoriality of law with respective institutions. Yet, the production of international package tours transcends *per definitionem* national borders. The crux of the matter is that a legal bridge does not exist, i.e., in the sense of internationally binding rules to the enforcement of contracts in international tourism; both territorialities of law – Germany and Jordan – are disconnected from each other and raise transaction costs. Consequently, the tour operator faces a twofold uncertainty problem: He lacks information about his agent’s opportunism; and he lacks legal possibilities for sanctions (e.g., Schmidtchen 1995; Schmidtchen and Schmidt-Trenz 2003; Schmidt-Trenz 1990; Schmidt-Trenz and Schmidtchen 1991). This constitutional uncertainty poses particular coordination problems in regard to quality for economic agents in international tourism mirrored in high transaction costs.

Because international transactions touch numerous national legal systems and the related monopolies of power, the NIEIT further assumes that for international transactions both possessive uncertainty and transactional uncertainty prevail. However, possessive security and transactional security are the two fundamental functions of the private law system (Kronman 1985). *Possessive security* exists „when (1) the property rights which ‘specify the norms of behaviour with respect to things that each person must observe in his interactions with other persons, or bear the costs of nonobservance’ (Furubotn and Richter 1991: 2) are unambiguously defined and assigned to persons, and (2) these rights are protected by ‘guarantees based on sanctions that are established either by law or by custom’ (Furubotn and Richter 1991: 2)” (Schmidt-Trenz and Schmidtchen 2006: 7-8). Concurrently, *transactional security* is assured “when the parties to a transaction can reasonably expect that the transaction will be executed as promised” (Schmidt-Trenz and Schmidtchen 2006: 8).

However, both the tour operator and the inbound agent are embedded in different territorialities of law. Should there be an event of litigation regarding the claims of unsatisfied service results, fundamental questions have to be answered first:

Which court has jurisdiction? Which law is applicable according to private international law? (Schmidt-Trenz and Schmidtchen 2006: 17). Legal backup and contract enforcement by the tour operator as a consequence of the agent's opportunistic behaviour within this specific institutional environment has to be assessed ambivalently. A transfer of the place of jurisdiction to Germany seems possible – and the empirical data suggest that only the large travel companies with extensive legal departments are able to – if the tour operator has sufficient resources at his disposal. It is a foregone conclusion that legal actions regarding the 'package tour' commodity could quickly become unreasonably expensive. The discussed small and medium-sized German tour operators in the case at hand are moreover incapable of creating (economic) incentives for their agents to prevent them from moral hazard. However, practice shows that transactions between a German small or medium-sized tour operator and a Jordanian small or medium-sized inbound agency can be durable, efficient, and successful.

The derived question of the *how* aims at the structure and organisation of the tour operator's governance mechanisms under the condition of constitutional uncertainty.

4. A qualitative research design

Germany is one of the international key touristic source markets and has a negative tourism balance sheet since 1958. In 2010, it reached -32.778 billion Euros. This renders German tourists attractive for the international tourism industry and their goods and services (Deutsche Bundesbank 2012). For a long time, the Arabian region has attracted German pilgrims and travellers on educational journeys as a classic holiday region. Jordan with its cultural heritage and natural wealth still exerts its fascination. For German tourists to Jordan, however, packaged travels remain the essential means of travel.

Empirical evidence used in the paper is based on 42 semi-structured, in-depth personal interviews with experts (Schoenberger 1991) in Germany. Interview partners included some brand named companies, whereas most were independent small and medium sized operators with regular packages to Jordan, as well as occasional providers. The data analysis followed the maximizing principle (Glaser

and Strauss 1967). The political instability in the Middle East and the so-called neighbouring effect on Jordan mainly held responsible for the long data collection period between May 2004 and February 2006 (cf., Dörry 2008c).

To avoid a one-sided tour operator's perspective (*data triangulation*, cf., Nightingale 2009; Leech and Onwuegbuzie 2009), six central inbound agents in Jordan, dealing among others with the German market, were also interviewed in depth. Further, 70 Jordanian inbound agents were assessed with the help of a standardised questionnaire (empirical results discussed in Rawashdeh 2006, in Arabic language). All of the 70 assessed Jordanian inbound agents met the criteria 'small family business' and had six employees on average. Inbound agents, who have been active in the international tourism for many years now, employ twelve people on average, the Jordanian market leaders even between 60 and 131 persons.

5. National law – rules of the game for the tourism industries in Germany and Jordan

German tourism laws and regulations aim especially at the protection of the consumer and the closely linked tour operators' obligation to exercise diligence. Tourists from Germany benefit from the protection of a restrictive national travel legislation in the form of the German travel law. It subjects the tour operator to an obligation to inform, not only prior to the conclusion of a travel contract. In addition and under the threat of compensation payments to the customer, the German travel law obliges the operator to fulfil his promised goods and service quality. The amount of compensation a tourist can legally claim for in the case of an inadequate service performance during the holiday travel is not legally fixed. However, the so-called *Frankfurter Tabelle* is a fixed but not legally binding compensation payment orientation framework. These legally agreed consumer's rights hence touch the governance and control function of the tour operator towards his downstream producers. In case of a justified customer's complaint/claim, practice shows that almost all tour operators favour goodwill payments over a court decision, because reputational damages can severely impact the operator's future business and are in the long run far more expensive than the compensatory payments for a proven goods and service deficiency during the travel.

In Jordan, the tourism sector with its manifold sub-sectors is strongly regulated and formalised by the state, i.e., via a number of tourism laws. They comprise, for instance, the obligation for inbound agents or tourist sites to report general tourist data. These tourism laws have further implications for the labour market policy in the country. For example, foreign tourist groups of five or more people are obliged to appoint a local tourist guide, which extends the value chain and possibly increases the need for resources and coordination of an inbound agent. The tourism law also contains quality insurance measures such as a licensing system for restaurants and local transportation. Inbound agents, for example, have to provide evidence that their employees meet the required levels of qualification and education for an international travel business. According to statements of some interviewed inbound agents, the challenges lie in the very selective controlling and sanctioning of these requirements by the state or the complete lack thereof. This situation is especially disliked (or feared) by the established and large inbound agents, because these regulations are considered to be significant barriers for market entry, and lacking behaviour sanctions would give rise to their fear that competitors could stimulate the economy.

6. Historically derived possibilities of bridging disparate jurisdiction and ‘self-enforcement’

Written contracts between both private-economic enterprises, including a determined place of jurisdiction, do not exist in the prevailing cases of the examined business relations between German tour operator and the Jordanian inbound agency. However, from an economic perspective, a contract exists between both parties, regardless of the formal differences between a document (law) and a verbal arrangement (convention).

“It depends on what is a contract. A contract could very well be: you ask me for a quotation, I go back and say: these are my prices, these are my conditions and I can get you the rooms. And you come back and say, all right, book it! That’s a contract [...] because there’s correspondence on that but not a full contract signed and sealed. But other contracts, other companies – we have quite a few of the major ones, the big ones – because of their size, because of their own requirements, they ask us to sign a contract, which we do. [What happens if you did not meet the tour operator’s requirements?, SD] If you do contracts or even if you don’t [...] you’re committed. If your correspondence said that you’re going to provide A, B, C, D, and E at these prices, you are the provider and more or less you

lose the contract. If you provide A, B, D, and E and you forget C, you have to compensate the tour operator and client” (interview, inbound agent 2).

The empirically examined business relations between tour operators belonging to the ‘Giants’ group¹ and their Jordanian counterparts is based on formal contracts, with which the operator defines the agent’s desired behaviour. Thus, the large German tour operators are able to bypass the existing international legal loophole to their own advantage. Due to their large internal resources, they are able to ‘transfer’ the whole legal case to their own national legal system and the legislation here prevailing.

Let us stay with the ‘Giants’ for a little longer. Tour operators of this group usually force their inbound agencies worldwide to take out liability insurance, offered – as a general rule – by German insurance companies. This insurance guarantees a tour operator’s flexibility and continuity in two regards: 1) in the event of an entitled customer’s complaint, the tour operator receives compensation payment from his agent, while at the same time, the agent is protected against his own sub-suppliers in the destination; 2) high sums in dispute will not ruin the inbound agent and hence not affect the specific investments the tour operator made in his inbound agency. In sum, an agent’s liability insurance enables the tour operator to sustain the relationship with the agent and protect his own investment (development of asset specificities). However, even the well-resourced ‘Giants’ pointed out that they hardly take administrative legal steps in general and for reasons of reputation and time-costs prefer an amicable arrangement with their business partners.

Until today, Jordanian insurance companies do not provide liability insurance for inbound agencies in Jordan. This institutional lack raises transaction costs for small tour operators tremendously. None of these small tour operators are able to transfer the whole legal case to Germany. Within this context, a Jordanian inbound agent explains that

“...a great many companies in Europe, actually worldwide, don’t like to work with us, because we as a Jordanian inbound agent are not able to get liability insurance. It is not a matter of price. Not at all. But there simply is no liability insurance here. I am only protected by the fact that, if there is a

¹ For a classification of the tour operators according to their size/resources and their product ranges, see the paper’s Annex.

claim against me, this must take place in Jordan. And here in Jordan the only law applies in this regard is *faith*“ (interview, inbound agent 1).

“So we carry our own risk in that sense. As an incoming agency I have to carry my own risk. I open myself to the liability if I had a group coming from Germany and the clients go back and say the food was bad, we didn’t stay at the right hotel, the guide didn’t speak good German and so on. I might get a claim from the tour operator because he’s going to get a claim from his passengers: I need compensation of maybe ten times what I’ve charged for the entire group. That is a problem. That is unfortunately a weakness in Jordan but you cannot find a company to give us professional liability insurance” (interview, inbound agent 2).

“It’s a funny business. As much as the world has contracts, in the travel business, it’s a lot of gentleman agreements. Most of it is still done even if you’re... we send a quotation and they say, okay, book the group. We book in good faith. We send him an invoice and he says, okay, I’ll pay next week. But if he doesn’t pay and the group comes, what do you do? You can do nothing. Legally, anywhere in the world, you have to accept the group, provide the service, and then find a way to collect your money” (interview, inbound agent 3).

Asked about the consequences this implies for his own business, the agent continues:

“It’s not easy. If it’s a small amount of money it’s cheaper to forget about it than to get a lawyer to find another lawyer in the other country to start doing the claims and so on. [...] You have a lot of trust, and reputation is very important, that’s why we take things very seriously to keep our name a very reputable company because it means there has to be reputation and trust” (interview, inbound agent 3).

Searching the economic history shows that even centuries ago, e.g., traders were able to create ‘spontaneous’ regulatory framework (private ordering), within which efficient exchange structures were established. Both, Avner Greif (1989, 1993) and Henrik Egbert (2006), have analysed cases from various time epochs, and I would like to sketch their results in the following. Both cases identify possible solutions and alternatives, which offer insightful explanatory value to transmit to our case at hand. In conclusion, the offered alternatives within the frame of private ordering will be assessed by their benefit value for the tourism trade relation between tour operator and inbound agent.

6.1 Case study I: ‘Maghribi Trader’s Coalition’ – Development of an efficient trading system in an uncertain political environment of the 10th and 11th century

In his case study, Greif (1989, 1993) analysed a union of Jewish traders, which is based on commercial services and was originally located in Baghdad, spreading – affected by the changing political power relations during the 10th and 11th century – to Tunisia and later to Spain, Sicily, Egypt, and Palestine. The political instability in the region and the spatial fragmentation of the nation states at that time was amongst others reflected in an inconsistent and hardly resistant judicial system.

By dispatching their goods to agents overseas, the traders who took over the operational business transactions for the businessmen saved high costs instead of travelling on their own with the goods entrusted to them. These cost savings translated above all into a substantial increase in efficiency, while simultaneously the supervision of the agent uncovered fundamental (cost) problems. Greif illustrates in detail, aided by the principal-agent-constellation, how those complicated and extremely unsafe international commercial structures could be organised efficiently by means of specific social and economic institutions in form of the Maghribi Trader's Coalition. The uncertainty for the economic subjects caused by the foreign trade structures at that time fed above all on significant asymmetries of information and a lack of a uniform judicial system. As a result the Mediterranean traders created institutions equipped with highly efficient sanction levers:

“Members of the coalition provided each other with agency services that increased the value of a member’s capital. Each trader benefited from being a coalition member more than he could have by establishing agency relations based upon a reputation mechanism outside the coalition. Obtaining the benefits of coalition membership depended upon proper conduct in the past, while the short-run gain from cheating today was less than the long-run benefit an honest coalition member could obtain. Since this situation was common knowledge, the merchants perceived that the agents could not do better by cheating. The agent acquired a reputation of being honest, the merchant could trust him. In short, the traders utilized a *perpetuum mobile* – the contractual relations among them reduced the transaction cost associated

with agency relations and thus motivated each coalition member to follow these contractual arrangements” (Greif 1989: 859, emphasis in original).

Thus, each trader simultaneously acted as an agent for another trader of the coalition. Subsequently, the individual members were forced to invest in their own trade. However, they also profited from the diversification of their commercial structures, which had the advantage of more solid and improved scales and scope effects (Greif 1993). Besides, the members united a

“...common religious-ethnic origin [which] provided the natural boundaries for the coalition and served as a signal where information regarding past conduct could be obtained, while the commercial and social ties within the coalition served as a network for the transmission of information” (Greif 1989).

On this basis, they particularly used reputation and trust as control and sanctioning mechanisms. Trust in this case predominantly constituted trust in the effectiveness of the system. The participating traders generally followed the credo of their own utility function (Greif 1989: 858), whereby the self-interest of an agent was determined by his own expenditure and the respective monetary income. This cultural code of behaviour was recorded in the merchant's law (Greif 1993: 543), which was accessible to everybody.

As soon as deception could be proved to an agent, he was subjected to major economic sanctions. In a proven case of fraud, a trader operating as agent not only lost his business relation to the cheated trader immediately and for life. He was also immediately punished in multiple regard; that is by a boycott of all the other traders of the coalition. Nevertheless, here the sanctioning did not end. Such exclusion had consequences for at least the first subsequent generation, because a member's status was passed on from generation to generation.

The reliability expected of an agent was derived from the affiliation to a ‘family association’, while this also contained the presumption of a lucrative nature of the agent's activity. The principals offered high monetary incentives to create a gap between the expected lifelong benefit from the business activity of their agents and the best existing ‘job alternative’. However, the principal also tried to keep his costs to the agent as low as possible by only ever awarding single assignments; in

keeping with the motto, “[t]he shorter the contract, the sooner the merchant can punish a cheater, and the less he will have to pay to keep his agent honest” (Greif 1989: 876).

Summarising the Maghribi Trader's Coalition's mode of action, it was first based on the condition of a common ethnic-religious – namely Jewish – origin of all members. Besides, the central individual motive of economic independence formed the basis of all members of these agent relations; hence, the coalition did not work through mutual help or even altruism. The commercial aims of the community were strengthened by the economic independence of all members (Greif 1989: 869). Their social connections rather served the important exchange of information and, thus, also contained the essential component of mutual control. In hindsight, this non-anonymous principle vested with economic sanctioning mechanisms and based on the duality of principal and agent was apparently quite effective. Apparently and despite meticulous recordings, there were only few cases of fraud on the part of the agents (Greif 1989).

6.2 Case Study II: informal border trade between Bulgaria and Turkey in the 1990s

In contrast to Greif's historical case study, the study of Henrik Egbert (2006) moves in the present and deals with the (unlawful) international *suitcase traders* between Bulgaria and Turkey. A central role is assigned to a conglomerate of informal institutions for crossing the border back to Bulgaria. According to Egbert, the case of the suitcase traders is characterised by people, who cross the border as tourists, attempting to conceal their true travel reason of trading goods. The case study may be read within the frame of the black economy, a fact that particularly emphasises why involved exchange partners can operate in a virtually unlegislated space and only apply alternative risk-reducing strategies with informal character. In this case example the principal-agent relation is also based on threat and sanctioning: The central element is bribery.

Egbert describes in detail how packaged coach tours offered by Bulgarian travel companies were established as a specific form of international business tourism, which bloomed following the period of political transition between 1992

and 1996. Istanbul and its numerous colourful markets, where inexpensive – and often phoney – brand products were sold, was one destination for these Bulgarian business tourists. Their incentive was to achieve lucrative profits by generating sales margins of the Turkish goods in their own country, provided that they succeeded in transferring these goods across the border exempt from duty. Formally this worked as follows:

“In Bulgaria, traders registered at a travel agency or another organisation offering organized trips to Istanbul. They paid a lump sum which included services provided by the travel agency. The latter was in charge of preparing and conducting the trip (Konstantinov 1996: 771): a) The agency arranged a group visa for all passengers in the bus. b) The agency chartered a bus. c) It arranged a cheap hotel in Istanbul for two or three nights. The hotel was additionally used to store the purchased goods. d) A professional tour guide from the agency – most often women – accompanied the group and was in charge of all problems that could appear during the trip. Of special importance was her ability to ensure a smooth border crossing procedure. In several cases she received assistance by the bus driver or other traders who together formed a leading sub-group within a bus” (Egbert 2006: 352).

According to Bulgarian legislation at the time, each tourist and non-trader respectively, was entitled to a certain amount of imported goods. Officially registered traders paid profit-curtailing duty fees, which rendered the formal tourist status more attractive. For the business tourist, the goods amounts quoted in the customs declaration entailed the risk of paying substantial duty fines when discovered by the customs officials. As a result, a trader concerned would not only have lost the expected profit but would also have suffered a significant loss on his business trip. In this regard, perpetually changing regulations in Bulgaria of the early 1990s left ample room for interpretation for ‘tourists’ and border officials, on which basis the informal trade could occur. Consequently, the crux of the matter for not registered traders lay in crossing the border without any complications and generating as much profit as possible. The subsequent process of the (female) tour guide bribing the border officials, which was crucial to the success of the trip, Egbert describes as follows:

“Before arriving at the border – normally around midnight – the tour guide collected money from all traders on the bus for the collective bribe. A trader had to

pay according to the pieces of luggage he or she intended to bring undeclared across the border [...]. At the border point buses with traders were considered as whole entities and no individual bribing occurred on these organized tours. After passing the Turkish side of the border, at the Bulgarian border a theatre play began. [Since everybody at the border knew that goods were transported untaxed across the border, the term smuggling would be incorrect.] The traders filled in their customs declaration forms, passports were controlled. [...] The tour guide handed over the collected declaration forms of the group indicating that there was ‘nothing to declare’. The following most sensitive part of the bribing procedure did not occur in public. The tour guide – who acted as a go-between among the group of traders and the official – disappeared with the latter. They negotiated a collective bribe for all traders in the bus. The exact amount of cash that passed from hand to hand remained a secret between the two. In case the last step of this ticklish process was successful, the tour guide returned to the nervously waiting traders, gave a sign to load the bus and it left for the Bulgarian hinterlands” (Egbert 2006: 353).

The fact that the tour guide could at all times intimidate the customs officials in those ‘negotiations’ is exemplified by the story of a customs official, who at first did not accept the bribe and insisted on proper payment of the duty fees. His insistence was ineffective insofar as the tour guide expressed her knowledge of previously accepted bribes by his brigade colleagues, for which the respective official would also have been held responsible. Specific knowledge and valuable informal networks from former (legal) tour guide jobs were basic determining factors of success for the tour guide in her new (unlawful) occupation. Meanwhile, opportunistic behaviour on her part during these confidential bribery negotiations was confined by the competition among the tour guides, because they canvass for customers not least by means of their good reputation.

6.3 Conclusions from the two case studies

There are various possibilities to overcome constitutional uncertainty in international trade relationships: a) through direct investment, e.g., by transnational operating companies, b) via quasi-hierarchically organised production value chains with captive governance mechanisms (Gereffi et al. 2005), c) with reputation as a punitive

instrument among members of a group as discussed by Avner Greif and based on the example of the Medieval Traders (Greif 1989, 1993), and d) by means of a middleman as shown in the example of the Bulgarian suitcase traders in the early 1990s (Egbert 2006).

For the first two mentioned mechanisms a) and b), hierarchically or quasi-hierarchically organised structures are necessary preconditions, which we cannot find in the organisation of package tours from Germany to Jordan. In our discussed tourism example, relational characteristics shape the cooperation between the tour operator and the inbound agent (Dörry 2008c), so that the performed mechanisms in the examples c) and d) rather apply. Both historically informed examples provide starting points for a possible dealing with constitutional uncertainty. In both historical cases, the formal way of legal enforcement was impossible: In the case of the Maghreb traders it was prevented by costliness, in the case of the Bulgarian suitcase traders it was due to unlawfulness.

Greif's 'Maghribi trader' example emphasises the mechanism of multilateral punishment by and exclusion from the coalition coupled with a loss of reputation across generations. Nowadays, such an example is no longer conceivable in this magnitude and cannot be transferred to the tourism trade relations. However, results from interviews with representatives of the German tour operators strongly suggest the exclusion of 'black sheep' in regard to both tour operators and incoming agents from this specific tourism community of practice, thus preventing them from future cooperation and business involvement.

Based on the example of the Bulgarian suitcase traders, Egbert discussed the 'middleman' as instrument for the relativisation of uncertainty. As a result of their mutual interest in profit, a relationship of dependence associated the 'tourists' with the (female) middleman.

The customs officers were kept under control by their greed for profit but also by the threat of punishment through the middleman. In turn, the middleman could not constantly claim increasing profits from the bribes paid by the 'tourists', while ensuring that the bribes demanded by the customs officers were kept rather stable. If this worked well, the middleman benefitted and gained a reputation to secure future business. If one understands the middlemen as a kind of information broker or

intermediary, certain points parallel our case study from the package tourism to Jordan. Tourist specific trade fairs are of great importance in terms of information exchange and the industry specific ‘buzz’ (Asheim et al. 2007; Storper and Venables 2004). In contrast to the Bulgarian middleman, the trade fairs are not subject-bound but object-bound, and information exchange at trade fairs is not controlled by one person but circulated freely between equally strong economic entities that are united by their affiliation to one specific community of practice. The next section introduces the actual implementation of the different strategies among the principals and agents in today’s tourism trade relations.

7. Modes of governance – empirical evidence²

In the phase of contact initiation already, both players follow uncertainty reducing selection strategies, which they try to influence to their advantage via strategies of *screening* (tour operator) and *signaling* (incoming agents) (Glückler and Armbrüster 2003; Dörry 2008c: 165ff.). Personal contacts, networks, and recommendations are profound and essential.

During the actual production process, tour operators are fully liable to their customers for shortcomings in services provided by agents at the destination. To avoid opportunistic action of the agent within a framework of costly international transactions, an operator needs to establish effective governance mechanisms. Other than integrated tour operators’ structures, specialised small and medium-sized operators have to find alternative ways. Since business success depends upon comparatively low fault tolerance, operators have developed particular management practices and governance mechanisms that range from up-front modification of package production to mechanisms of control implemented upon completion of the traveller’s journey, such as a variety of feedback instruments.

Overall, heterogeneous and fragmented structures of co-operation were found in this empirical context, often depending not least on the internal resources of the tour operator. Despite Jordan’s minor importance as a holiday destination, at least

² This passage is largely based on a section of the book chapter “Crossing Juridical Borders“ (Dörry 2008b). For a fuller empirically-based discussion of the stability of economic relations within an as ‘unstable’ perceived political environment in Jordan influenced by the so-called ‘neighbouring effect’, see Dörry (2008c).

according to the average number of tourist arrivals, cooperation between tour operators and inbound agents seems to be determined by a mix of factors of economic strengths. This is indicated by the realised numbers of guests, and informal, rather socially established institutions such as ‘trust’ and reciprocity resulting from frequency and quality of performed trips.

Not only management practices but also the number of local inbound agents that a small and medium-sized operator works with is considered an essential control instrument. Some tour operators maintain relatively stable relationships with more than one inbound agent as business partner on the grounds of strategy and competition/cost reduction. Strategically, having more than one inbound agent allows tour operators to deal with capacity constraints during seasonal peaks in, for example, hotel provision. In regard to competition, having multiple inbound agents encourages competition in terms of quality and price that give tour operators a competitive edge in the aggressive markets in which they deal.

In terms of service procurement, empirical evidence suggests that powerful tour operators negotiate prices with local partners only partly upfront. Instead, they fix their own prices and re-negotiate contracts in their favour:

“I take the prices I don’t agree with and do not calculate with them but with lower prices. Afterwards, I re-negotiate the contract with the inbound agent [...]. We carry the risk of sales and marketing, so we expect good prices from the supplier.” (Interview 2, translation SD)

Incoming agents have clear reasons to accept such dictated conditions. Brand named tour operators have images built on reputation which can, in turn, help inbound agents to acquire new business from other tour operators. However, a large number of economically ‘weaker’ tour operators in Jordan were less prescriptive in the way they bought services from their local business partners:

“The inbound agent has a very good buying power in Jordan; we would have no chance to get these good prices.” (Interview 8, translation SD)

The product managers of tour operators use regular travel to their tourist destinations to exercise and maintain control over suppliers even though they have no legal power. They become acquainted with ‘their’ products while checking services such as hotel quality. Few tour operators were unable to make regular inspection visits for

financial reasons. Without the destination-specific knowledge and experience of these visits, power over the travel product shifts to the inbound agent.

As cooperation between players in the supply chain varies, so do payment modes. Some tour operators pay for packages fully or partly in advance, while others are invoiced for a travel package after the holiday has been completed. If there are justifiable complaints against an inbound agent, the chances of a tour operator recovering financial compensation from the agent are mixed. In long-term relations, ex-post payments were far more common than in short-term or only recently set up relationships. It is clear that trust, based on the tour operator's economic strength and business reputation in Jordan, and self-interest on the part of tour operators and inbound agents create rather stable business relations even in the absence of contract enforcement and legal sanctions (Sayer 2000).

Interview data further suggests that there is no simple regulatory procedure that links partners in the tourism supply chain examined here. Verbal contracts and email requests, especially amongst independent small and medium-sized operators, enable both business partners in a relationship to save costs by cutting bureaucracy and being flexible in changing business partners when performance is low. Under such circumstances, the exit of one of the business partners can be simple, quick and cheap because there are no legal obstacles. Serious service failings, non-competitive prices, or dishonesty are the most common reasons for tour operators breaking trading relationships. It can be argued that a tour operator's 'voice' (Hirschman 1970) is backed up by not only the operator's high sunk costs in search for local partners but also by their threat of exit as it affects inbound agents. This threat can be used to develop long-term relationships. In most cases, the 'voice' option is chosen over the exit strategy, but each firm has to find its own optimal mix of exit and 'voice' (Sayer 2000). Firms interested in using Jordan as a long-term destination within their product range invest time to ensure that inbound agents understand their service expectations, i.e., criteria such as quality, service orientation, professionalism, flexibility, reliability, creativity, promptness.

However, as the responsibility of inbound agents, supply or product failings can only be rectified through negotiation because (the large number of) tour operators have little power, as they do not control huge demand (Schamp 2007). This

situation strengthens the position of the inbound agents because of their embeddedness in and familiarity with a particular cultural environment and their negotiating tactics with their subordinate suppliers in Jordan that the German tour operators rely on.

8. Summary and Discussion

I discussed and analysed the empirical results of the tourism trade relationships between German tour operators and Jordanian inbound agents. For this case study, the NIEIT and its specific focus on the international private law (Schmidt-Trenz and Schmidtchen 2006) provided a constructive conceptual framework to understand the constraints and contradictions the foreign trade relationship between the two agents is faced with: Whilst principals in trade relations with their agents can deal with information and moral hazard situations by relying on judicial practices covering a specific territory or administrative space, the case study at hand introduced the situation of complex international transactions taking place and operating under constitutional uncertainty.

The empirical results on the mechanisms and forces to deal with such uncertainty showed a large variety (see, e.g., tables 2, 3, and 4) among the trading partners, but also their varying success. The general picture, however, illuminates the “spontaneous forces that an almost complete self-regulation ... has resulted [in], based on ‘private ordering’” (Schmidt-Trenz and Schmidtchen 2006: 4). In Germany, the turnover especially among small tour operators is high. This is not only a cause of the fierce competition within the German tour operating sector. It can also be interpreted as a result of high losses especially some of the small tour operators face due to their inability to 1) deal with moral hazard of their agents and 2) to claim (financial) compensation backed by (internationally applicable) judicial practices.

In short, legal loopholes can cause high economic costs, although I am not aware of any statistics, which provide detailed figures for the tourism sector. In this vein, Hans-Jörg Schmidt-Trenz and Dieter Schmidtchen state “that legal differences are also economically relevant” (2006: 2) and continue that “[w]hile for domestic transactions the legal foundations and their enforcement through the ‘protective state’

(Buchanan 1975: 68) are unequivocal, international transactions touch a multitude of legal systems and the monopoly of power claimed by each state within its boundaries. ... Taking the territoriality of law as given ... [n]o international trader can be sure to get a return for what he has given up in advance” (Schmidt-Trenz and Schmidtchen 2006: 3).

More empirical work would help to fill our knowledge gap on how economic entities – especially small and medium-sized enterprises, which are, regarding the example of tour operators and inbound agents, the backbone of national economies – reduce the existing constitutional uncertainty. This knowledge might finally lead us to paying more attention to the existing challenges of the exchange of goods and services in general, which crosses national territorialities of law.

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Annex I: Classification of empirically examined German Tour Operators

The result of the cluster analysis among the 42 empirically investigated German tour operators shows three reference groups, which feature following characteristics:

Table 1: Typology of the empirically investigated tour operators

Label Criteria	‘Minis’	‘Mediums’	‘Giants’
Organisational structure	Independent	Independent	Dependent on large company groups
Size of organisation according to number of employees	Micro, small	Small, medium	Medium, large
Frequency of trips to Jordan	Sporadic, no fixed upfront travel dates	Upfront fixed travel dates, low frequency of trips	Fixed travel dates, high frequency
Travel catalogue Website	No yes	Yes yes	Yes yes
Customer target group	Homogeneous travel groups	Individual travellers, homogeneous travel groups	Individual travellers, homogeneous travel groups
Characteristics of offered travel product	Taylor-made offers for (homogeneous) travel groups	Largely standardised, applicable product modules; tailor-made offers for travel groups	Largely standardised, applicable product modules; tailor-made offers for travel groups

Source: Dörry (2008c)

Note that the grouping of tour operators at hand only applies to the travel product of Jordan. In a few cases (not in all), the same tour operators are much stronger in terms of other travel products in their product range, such as India or Egypt.

Annex II: Selected interview sequences

Table 2: Tour operators' economic purchasing power in Jordan; empirical anchor examples

Tour Operator's Economic Purchasing Power Economic Strength in Jordan...	Anchor examples from interview sequences
...high (because of procurement cooperation with other tour operators)	“This agency provides us and firm x [same parent company, SD] with contracts. However, we impose our requirements and it could be possible that x wants to use the same hotel as us. Then, the contract is for both of us and it'll be cheaper. [...] The calculation is the same but the services around it are very distinct among the tour operators” (interview, tour operator 7, Giants).
...high (in case of low tourist demand, subsequent negotiation of the contractual agreements with the aim to set further incentives towards German tourists via cheap prices)	“We have seasonal contracts, a winter and a summer contract, and accordingly we generally negotiate twice a year. If business is extremely low, it can happen that we re-negotiate contracts to push through price reductions or [...] to simply reduce some hotels per se“ (interview, tour operator 42, Giants).
...low (strong position of the inbound agency in Jordan regarding service purchase)	“Our inbound agency is very powerful in Jordan. So we start small, we have no other chance at all“ (interview, tour operator 8, Mediums).
...low (strong position of the inbound agency in Jordan regarding service purchase)	“We always work with partners on-site. [...] Together, we have more business and hence better prices, [...] especially in destinations where we are weak, where we do not have too many tourists“ (interview, tour operator 10, Minis).

Source: Dörry (2008c), translations SD

Table 3: Tour operators' travels of control to Jordan; empirical anchor examples

Importance of tour operators' regular travels to Jordan to...	Anchor examples from interview sequences
...sell Jordan better	“We do not manage to travel every second year to Jordan. That's why we have to rely on our inbound agent who examines the quality on-site. [...] But we have to know our product. We think that we could not sell properly what we do not know“ (interview, tour operator 3, Minis).
...ensure service provision in the destination towards the German travel law	“Of course, you can rely on what the inbound agency says. But often it has not necessarily anything to do with what the German travel law requests. And we are rather overcautious in this regard“ (interview, tour operator 4, Minis).
...to ensure the promised services on-site	“You have to go there and check which busses do they use, have the tires a good profile, what about the drivers, are the interpreters and tour guides working well, etc. [...] Without following these things closely, nowadays, you cannot be on the safe side to get the services and goods which you promised your customers in advance“ (interview, tour operator 21, Minis).
...control own inbound agent and other on-site service providers	“If you don't go there and have a look around yourself, then you simply cannot expect an assessment from elsewhere“ (interview, tour operator 22, Minis).

Source: Dörry (2008c), translations SD

Table 4: Tour operators' terms of payment to his inbound agent before travel; empirical anchor examples

Tour operators' terms of payment before travel	Anchor examples from interview sequences
Only deposit is usual	One of our principles is that the moment the service is performed the service has to be paid. [...] But there are also efficiency constraints for us. We cannot transfer each little amount worldwide. And therefore we developed a system, which is country specific. [...] As a general rule we reserve the right to always withhold a certain amount" (interview, tour operator 5, Giants).
Full payment is usual	"We are one of the very few tour operators who [...] pay the full amount to the inbound agent before travel. Most of the tour operators change to the principle: -The full amount is only due following the tourists' happy return to be able to cover possible claims etc. We work on a basis of trust, which is rewarded by our inbound agent. We pay upfront but expect a very good service. This principle works well" (interview, tour operator 11, Mediums).
Full payment is usual	"...because this is about reciprocity. We do not want to do business with each other only once and then it's over. We intend to sustain a continuous cooperation which needs a certain trust basis. Otherwise we don't have to start this business. Our tourists who we send over there have to return alive and kicking. For this, I carry the responsibility" (interview, tour operator 29, Mediums).
Only deposit is usual	"No, not all. [...] If an inbound agent demands 100 percent upfront, then he won't get it. I pay a maximum of 80 percent to have a certain room for claim manoeuvre. To get money back from an inbound agent or other service providers on-site is virtually impossible. Everybody understands that, too" (interview, touroperator26, Minis).

Source: Dörry (2008c), translations SD



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