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www.takeover.ch**RECOMMENDATION****of 20 April 1999****Public Exchange Offer of Kuoni Holdings Plc, incorporated in England and Wales, for all Registered Shares A in Kuoni Reisen Holding AG and Registered Shares B in Kuoni Reisen Holding AG**

Kuoni Reisen AG (Kuoni) is a company with registered offices in Zurich. It operates travel agencies and provides travel planning services. The company's issued share capital amounts to CHF 16 Mio. divided into 100'000 registered "A" shares of CHF 10.-- nominal value each and 300'000 registered "B" shares of CHF 50.-- nominal value each. The registered B shares are listed on the Swiss Exchange (SWX).

On 15 March 1999 the Board of Directors of Kuoni and First Choice Holidays Plc (First Choice) officially announced the terms of a merger of the two companies by means of the acquisition of the shares in the two companies by exchange offers to be made by a new entity, Kuoni Holdings Plc (Kuoni Holdings). Following implementation of the merger, Kuoni Holdings will be the parent company for Kuoni and First Choice with their respective subsidiaries and will hold, assuming full acceptance of the exchange offers, 100% each of Kuoni and First Choice. Assuming full acceptance of the exchange offers, the repurchase and cancellation of the paid-in reserved shares ("Vorratsaktien") and exercise of all share options for shares in First Choice, the former shareholders of Kuoni would own 53% of Kuoni Holdings and the former shareholders of First Choice would own 47% of Kuoni Holdings.

On 23 March 1999 Kuoni informed the Takeover Board that it would launch an exchange offer for all issued and outstanding registered "A" and registered "B" shares of Kuoni.

A delegation composed of Mr. Hans Caspar von der Crone (Chairman), Mrs. Claire Huguenin and Mrs. Maja Bauer-Balmelli has been appointed to review the offer.

## **Considerations of the Delegation:**

### **1. Scope of the Takeover Regulation**

According to Art. 22.1 and 2 lit. e SESTA the statutory provisions on public takeovers apply to any offer made publicly to purchase or exchange equity securities of Swiss companies whose equity securities are, in whole or in part, listed on an exchange in Switzerland. The scope of the takeover rules is not limited to transactions that may lead to a change of control. Thus, this exchange offer is subject to the rules of SESTA and the promulgated ordinances.

### **2. Equal Treatment Principle**

According to Art. 10.1 OTB the offer must extend to all categories of listed equity securities. If the offer extends also to non-listed equity securities, the equal treatment principle shall apply to these securities as well (Art. 10.2 OTB).

The non-listed “A” shares with a nominal value of CHF 10.-- each will be exchanged into 296’545 shares in the offeror. The listed “B” shares with CHF 50.-- nominal value each will be exchanged into five times more shares in the offeror than the “A” shares. The exchange ratio accordingly is based on the nominal value of the shares. The Board of Directors in its report explicitly declares that this basis is justified. Furthermore, the Review Body’s report contains an express confirmation that the ratio between the different classes of shares (registered shares “A” and “B” of Kuoni) has been fixed appropriately.

The Takeover Board, therefore, considers the equal treatment principle to be adequately observed.

### **3. Acting in Concert and Organized Group**

Those who coordinate their conduct with the offeror by contract or by any other organized measures in view of the offer shall be held to be acting in concert or as an organized group (Art. 15 SESTO-FBC and Art. 11 OTB). Such persons cooperating with the offeror are to be described in the prospectus, and must comply with the rules of transparency, with the rules concerning equal treatment, with the rules of fairness and with the rules concerning the duty to report transactions (Art. 12 OTB).

All of the subsidiaries of Kuoni and First Choice respectively are qualified as persons acting in concert. According to the Takeover Board’s practice of the so-called “consolidated standpoint of view” not every single subsidiary must individually be included in the prospectus. The Takeover Board accepts that the prospectus refers to the subsidiaries as “all companies under Kuoni’s and First Choice’s control”. With regard to the rules of transparency (e.g. the duty to report) of the offeror and all persons acting in concert, the Takeover Board accepts the application of the same “consolidated standpoint of view”.

#### 4. Conditions

According to Art. 13 OTB an offer, in general, may be made subject exclusively to conditions precedent, i.e. the conditions must be fulfilled before the close of the offer period and only if the offeror itself is unable to decisively influence the fulfillment thereof. An offer may be made subject to resolutive conditions (i.e. conditions that may be fulfilled once the first acceptance period has expired) only with the approval of the Takeover Board. The Board approves resolutive conditions if the advantages of such conditions for the offeror outweigh its disadvantages for the recipients of the offer and for the offeree.

Condition a): The 80% acceptance level of the total number of issued registered shares corresponds to 320'000 shares. The offeror and the persons acting in concert hold a total of 100'000 Kuoni "A" shares and 4'718 Kuoni "B" shares. Furthermore, it must be taken into account that 33'000 paid-in reserved shares will not be tendered. The acceptance level, therefore, is not in the offeror's decisive control and consequently permissible. The offeror reserves the right to lower the 80% acceptance level to not less than 66 2/3%. This corresponds to 266'666 shares. The Board of Directors of Kuoni has received indications that the Kuoni and Hugentobler Foundation (Foundation) holding all issued 100'000 registered "A" shares supports the exchange offer. At this time, the Foundation is not in a position to firmly commit itself to tender its shares. However, the Foundation is qualified as a person acting in concert with the offeror and one of the trustees is also nominated for election to the Board of Directors of the offeror. According to Art. 13.1 OTB the offer may only be made subject to conditions precedent if the offeror itself is unable to decisively influence the fulfillment thereof. In order to show that this condition is not in the offeror's decisive control a confirmation was submitted to the Takeover Board by the trustee who also is nominated for election to the Board of the offeror. He confirms that he will not participate in the decision making process of the Foundation with regard to the acceptance or refusal of the present exchange offer. The Takeover Board, therefore, considers this condition to be permissible.

Condition b): The required passing of resolutions by the general meeting to be held on 11 May 1999 or at any adjournments thereof of the shareholders of Kuoni is not likely to be decisively influenced by the offeror. Therefore, this condition is permissible.

Condition c): The regulatory matters are not in the offeror's decisive control and it is in the shareholder's best interest if such regulatory proceedings are satisfactorily resolved.

Condition d): Also this condition is not in the offeror's decisive control. In order not to create a situation where the exchange offer to the shareholders of First Choice will be discontinued and the offer to the Kuoni shareholders must be continued, the Takeover Board approves this condition.

Thus, the Takeover Board approves condition a) to be drafted as a condition precedent and conditions b), c) and d) to be drafted as resolutive conditions.

## **5. Exemption from the obligation of the review body to value the unlisted securities offered in exchange**

According to Art. 24.5 OTB the offer prospectus must contain a valuation by a review body of the securities offered in exchange if such securities are not listed on the principal stock exchange. The market capitalization of Kuoni Holdings is expected to be equal to the combined capitalization of the two companies, Kuoni and First Choice because the only assets of the offeror consist of the shares of Kuoni and the shares of First Choice that are (with the exemption of the "A" shares in Kuoni) listed on a stock exchange (SWX and London). Based on the market prices of these shares and the announced exchange ratios for Kuoni as well as for First Choice shares, the expected market price of the shares of offeror can be calculated daily.

Therefore, the Takeover Board under Art. 24.5 OTB recognizes the offeror to be a de facto listed company and, consequently, no valuation is required.

## **6. Compliance with the Minimal Offer Price Rule**

Art. 10.5 OTB sets forth that if the offer includes securities whose acquisition would entail the obligation to make an offer, the price of the offer must be in conformity with the provisions governing mandatory offers (Art. 32 SESTA and Articles 37 – 43 SESTO-FBC). The price offered must correspond to the average stock exchange price during the last 30 trading days prior to the publication of the offer or to the prior announcement (Art. 37.2 SESTO-FBC).

The exchange offer will be published on 23 April 1999. The Takeover Board is prepared to take into account that for the publication of the offer various technical steps are to be undertaken, thus that the relevant 30 days period cannot just last up to the very day of the publication. The Takeover Board considers that a maximum of two to three trading days (depending on the circumstances) is adequate and sufficient for the required technical work prior to the publication.

The report of the review body dated 20 March 1999 includes an express confirmation that the provisions regarding minimal price have been observed. The requirement of Art. 10.5 OTB has been satisfied.

If the offeror, following publication of the exchange offer, acquires equity securities of the target company at price higher than the offer price, it shall offer this higher price to all recipients of the offer (Art. 10.6 OTB). It is the Takeover Board's practice that the relevant time period in which the offeror is not allowed to purchase shares at a higher price without triggering the obligation to offer this higher price to all recipients of the offer amounts to six months (cf. Recommendation of 4 June 1998, Pirelli & Cie.). In case of an exchange offer the six months period starts at the execution day of the offer.

## **7. Report of the Board of Directors**

The Board of Directors in its report must set forth all the information required by Art. 29 OTB which permits the recipients of the offer to reach an informed decision. This requirement has been met.

The report of the Board of Directors should also indicate the intentions of each shareholder owning more than 5% of the voting rights to the extent such intentions are known to the board (Art. 30.1 OTB). The report of the Board sets forth that the Board has received indications that Kuoni and Hugentobler Foundation supports this exchange offer. Art. 30.1 OTB therefore is observed.

Furthermore, the report shall clarify whether certain members of the board or executive management have a conflict of interest. In particular, the report shall indicate whether certain members have entered into a contractual agreement with or other commitments to the offeror (Art. 31.2 OTB). Among the current board members of Kuoni are two members who are also nominated for election to the Board of Directors of the offeror. Therefore, the report must contain the measures taken to avoid having a potential conflict of interest negatively impact on the recipients of the offer (Art. 31.3 OBT). In this context it is also required that the report sets forth the terms and conditions of the continuing mandates of the respective board members or the terms of the termination of the mandates if this is relevant to the quality and to the quantity of a potential conflict of interest. The rules of transparency require full disclosure.

The report of the Board of Kuoni describes that the resolution was passed by unanimous votes also of the disinterested members. Furthermore, the report includes statements with regard to the terms of the continuing mandate of Mr. D. Affolter and to the termination of the mandate of Mr. R. Gullotti. All the requirements of Art. 31 OTB have been satisfied.

## **8. Waiver of the Cooling-off Period**

The offeror presented the offer to the Takeover Board for its review prior to publication of the offer, together with the report of the Board of Directors (Art. 14.2 OTB). The Takeover Board, therefore, exempts the offeror from the duty to observe the cooling-off period.

## **9. Shares held by UBS**

UBS as per 8 April 1999 holds 38'000 "B" shares as paid-in reserved shares "Vorratsaktien" out of which 5'000 shares are used to cover commitments of Kuoni and its employee participation and option schemes. The remaining 33'000 shares will be transferred to a wholly owned subsidiary of Kuoni Holdings. The exchange offers extends also to these shares. However, the prospectus sets forth that they will not be tendered in the present exchange offer, but will be cancelled by way of a capital reduction to be decided by the next general meeting of shareholders.

According to Art. 10.2 OTB the offer shall extend to all listed equity securities which is met by the present case.

## **10. Fee**

According to Art. 62 OTB each offeror must pay a fee for review of the offer by the Takeover Board (par.1). In the case of an exchange offer for securities listed on the main market, the total amount of the offer shall be established on the basis of the average opening price of these securities during the 10 trading days preceding the submission of the offer to the Takeover Board (par. 4). If non-listed

securities are offered in exchange, the fee shall be determined on the basis of the valuation made by the review body. The Takeover Board, however, qualifies the offeror to be a listed company. Therefore, the value of the securities offered in exchange is deemed to be equal to the value of the Kuoni shares. The average price of the Kuoni 300'000 "B" shares during the relevant period amounts to CHF 5'468.--. In addition, the offer also extends to 100'000 non-listed "A" shares that based on the nominal value the share price is CHF 1'093.60 per share. Based on the foregoing the value of the offer exceeds CHF 1 billion. Therefore, the maximum fee of CHF 200'000.-- shall be charged.

**The Takeover Board adopts the following recommendation:**

The exchange offer of Kuoni Holdings Plc complies with the Stock Exchange Act.

The Takeover Board grants the following exemptions from the Takeover Ordinance (Art. 4): resolutive conditions (Art. 13.4), waiver of the cooling-off period (Art. 14.1).

The fee amounts to CHF 200'000.--.

The Chairman

Hans Caspar von der Crone

This recommendation is communicated to:

- Kuoni Holdings Plc, through its representative