8 November 2017

Commission for Aviation Regulation
3rd Floor, Alexandra House
Earlsfort Terrace
DUBLIN 2
D02 W773
Ireland

Dear Sirs

Consultation: Travel Trade Consumer Protection Measures
Commission Paper 8/2017

Thank you for the opportunity to contribute to this consultation which is very timely bearing in mind the developments in the travel industry over the last decade and the changes to be introduced through the Package Travel Directive 2015 (PTD 2015).

ABTA

ABTA was founded in 1950 and is the largest travel trade association in the UK, with around 1,200 members and 4,500 outlets and offices. Our Members range from small, specialist tour operators and independent travel agencies specialising in business and leisure travel, through to publicly listed companies and household names. ABTA Members deliver 90% of the package holidays sold in the UK, with Members also selling millions of independent travel arrangements. ABTA's mission is to achieve confidence at the heart of travel; confidence to businesses to trade and to invest, confidence for customers to book and confidence that the industry is building a sustainable future. ABTA works with its Members, destination governments and the tourism supply chain to embed sustainability into the heart of tourism operations worldwide.

In 2008, the two largest financial protection bodies in the UK under the 1992 Package Travel Regulations (1990 Package Travel Directive), the Association of British Travel Agents (ABTA) and the Federation of Tour Operators (FTO) merged to form ABTA Limited as it is today. FTO commenced modern holiday bonding in 1967 and ABTA followed in the 1970s, well before the 1990 Directive.

ABTA is the UK's largest 'Approved Body' (by the Department for Business – BEIS) under the Package Travel Regulations and has absorbed much of the work of the former Passenger Shipping Association (PSA) Approved Body for cruise companies and AITO Trust for the Association of Independent Tour Operators. We hold some £500 million in Bonds and operate both tour operating (organiser) and travel agent (retail) bonding schemes. We hold some £20 million in our insurance based reserve fund structure and a further £20 million in reserves, against liabilities including those relating to our financial protection scheme.

The ABTA scheme is similar to the scheme of protection operated by CAR and therefore shares many of the same challenges and opportunities. We were therefore pleased to assist the Commission's consultants, Europe Economics, with their review of the UK market provision of financial protection to consumers.

We are pleased to respond to the Commissioner's request that we contribute to the consultation in the capacity of an interested third party.

CAR Consultation Questions

1. Are there material developments in the market that have been ignored that are relevant when thinking about the effectiveness and efficiency of the current travel trade protection scheme?

There have been many changes in the distribution of travel services following the rise of internet sales and low cost carriers. The protection that sits behind these sales is often confusing and can be insufficient depending on how trips are purchased by consumers and sold by travel companies.

This situation is likely to become more pressing with the introduction of PTD 2015 as more travel agents find themselves acting as package organisers and picking up responsibility under the Directive for the services that they sell rather than relying on their capacity as agents in the supply chain. Given the changing and developing roles of different types of travel intermediary, a financial protection scheme that is based too firmly on the historic concepts of travel agent and tour operator is unlikely to be fit for purpose. An Online Travel Agent (OTA) taking full payment at the time of booking as the 'organiser' of a package may represent a far greater risk than a traditional travel agent or tour operator operating a deposit and balance scheme of payment for the same services.

The requirement for protection under PTD 2015 to be effective for sales throughout the EU regardless of departure point or the traveller's place of residence will need to be taken account of when redesigning any protection scheme. This can bring risks in that exceed the historic scale seen in a Member State's scheme, and will bring specific challenges when dealing with the citizens of the other Member States.

The 2015 Directive removes any doubt (if the ECJ had left any in relation to its decisions on the 1990 Directive) that the Member State has a very high level of responsibility and liability for the proper implementation of the Directive. It will be very difficult, legally and politically, for any Member State to allow consumers to suffer loss as a result of a scheme that is unable to deliver the full protection required. This means that if the Member State is to remove the tax payer from risk, a robust and fully funded scheme structure is required.

Brexit is a material development that should be taken into account when considering any review of consumer financial protection. There is considerable trade between Ireland and the UK, and any reform process should be looking to ensure that the current trade between Irish travel companies and UK consumers and vice versa is protected and enhanced for the benefit of businesses and consumers alike.

2. Do you agree with the finding that the current scheme is not effective in protecting consumers?

The scheme has been largely effective in protecting consumers historically as consumers have received the protection to which they were entitled.

Whether the scheme would be capable of providing that protection in the future, and whether the Member State responsibilities under PTD 2015 could be met, must be a cause for concern under current structure and funding models.

It is clear from the published responses to the Consultation that various parties regard the cost of the failure of LowCostHolidays.com to be a good example of the sort of issue that must be

addressed. The fund has been severely depleted by one event and that was, in part, the result of the level of security held in comparison to the level of 'risk' business conducted by that OTA. The company in question exited from the ABTA scheme of financial protection some time before its failure, as a result of failure to agree the level of bonding required to remain in Membership. The company left the ATOL scheme and migrated to a company established in the Spanish Balearic Islands, where it continued to trade in the same markets and through the same website as before.

We return to our theme that a much more sophisticated structure of primary security (bond calculation) that reflects the exposure of the scheme to the trader is required. Sophistication need not mean complexity or disproportionate additional cost. Traders should carry the fair costs that relate to the risk and exposure they represent to the scheme.

3. Do you agree with the finding that the scope to reduce the costs of the current scheme while maintaining the current level of consumer protection is limited?

We do not feel fully qualified to comment on this in detail, but this would appear to be the case at face value.

4. Do you agree that to be effective, the scheme needs to be designed with sufficient contingency to be able to meet all claims in full in the event that there are two collapses in a single year that give rise to the same level of claims as the two largest collapses in the history of the scheme? If not, what criteria would you propose?

The Member State responsibilities under PTD 2015 lead one to conclude that there needs to be sufficient contingency within any scheme of protection to meet in full all reasonably foreseeable costs arising as a result of failures, regardless of the number of failures in any particular year.

The key issue here is to ensure the appropriate level of primary security (bonding, insurance, etc.) in each individual case and to then have a reserve fund structure that is able to meet the residual risk. In any scheme structure it is possible to imagine scenarios in which multiple failures follow some sort of global catastrophe. Such risks are probably best (or only dealt with) through catastrophe insurance arrangements.

The role of the fund structure in 'normal business' is to have the capacity to manage the normal economic cycle and the geopolitical crises that interact with it over a period of 10-20 years. In that time frame a major geopolitical event; a war; an oil crisis of some sort; the normal economic cycle and the travel and aviation industry's propensity to overcapacity and correction will normally play out once or twice.

When considering the scenario of two major failures, the focus should first and foremost be on understanding the individual risk profiles and how to cover that exposure through primary security. It should not be the role of the reserve fund to act as a very large goal keeper in order to compensate for a weak primary defence. In this context that primary defence is both the primary security and monitoring of the businesses through the licensing process.

So, strong contingency yes, but only in proportion to the exposure.

5. Are there other reforms that you think should have been considered? How would these reforms ensure that all consumers protected enjoy full financial protection?

We would support the ITAA observation that the reform of the scheme should not be considered without consideration of the new 2015 Directive, that must be enacted in to the law of each Member State by 1 January 2018 and be effective from 1 July 2018.

6. Which of the reforms do you think the Commission should pursue, if we conclude that the current scheme needs changing? Why?

We would respectfully suggest that the current reform options, structured around standard bonding rates for travel agents and tour operators be reconsidered.

The legal status and capacity of a travel company is important, but the defining issue in relation to exposure of the scheme is relates to the business model and terms of trade.

A 'travel agent' acting as an 'organiser' (under PTD) and taking full balance payment at the time of booking may represent a greater exposure to the scheme than a traditional tour operator.

Equally, a traditional travel agent trading on normal terms with tour operators who themselves are the appropriately bonded 'organiser' entity designated by the directive represents a significantly smaller risk to the scheme.

It is not necessary, or proportionate, to increase the standard bonding of all travel agents to cater for the outlier case of an OTA operating an organiser role and responsibility on non-agency payment terms.

We would advocate against standard bonding rates (we are not against minimum rates). The rates of bonding should relate to the risk represented to the scheme of financial protection.

Businesses should, within the law, be free to develop and follow their chosen business model in a competitive environment. Equally, they should then carry the fair and proportionate costs that flow from those commercial decisions.

Flat rates of bonding and contribution will, on average, ultimately penalise more conservative businesses and over time encourage payment terms that increase risk to the scheme of protection if there are no cost consequences in doing so.

The same principles apply to reserve fund funding, although with the right level of primary security, the use of a simpler levy to fund reserves is less distorting.

Conclusion

We hope that these responses are of assistance.
We would be happy to provide any clarification that would be of assistance.

Simon Bunce
Director of Legal Affairs
ABTA

sbunce@abta.co.uk

John de Vial
Director of Financial Protection, ABTA
Director, ANTA Insurance PCC Limited

jdevial@abta.co.uk

November 2017