Travel Department response to Consultation on Insolvency Protection Arrangements

Before answering the questions posed, we would like to raise the following points:

Driving Competitive Disadvantage

The papers submitted as part of the consultation process fail to address a key limitation of the current scheme, and that is its scope. While exact data is not in the public domain, it seems to be widely accepted that even with the extension of protection to Linked Travel Arrangements, less than 20% of the travellers are likely to be covered. There is also a consensus that this proportion is in decline.

The obvious conclusion is that consumers are either unaware of the protection provided by the existing scheme or do not value it. The costs of the existing scheme already put bonded tour operators and travel agents at a competitive disadvantage, and any increase in costs is therefore likely to increase that level of disadvantage and drive consumers further away from booking travel arrangements with any form of protection. That cannot be in the interests of consumers and is unlikely to be the intent of the legislation.

Historical context

The need for the proposed changes seems to be driven in large part not by the changes to the PTD, but rather by the depletion of the existing TPF caused by the demise of Lowcostholidays. Had Lowcostholidays had an appropriate level of bonding then the call on the fund would have been mitigated. It is noteworthy that in the UK, the CAA forced the issue with the company, with the result that it left the ATOL scheme altogether. Although this did not serve consumers well, had the Commission had the same level of oversight of Lowcostholidays in Ireland, it would not be in the position it is in now, and the TPF would be adequately funded.

The current proposals seem to have as an objective not to increase the workload of the Commission. It is Travel Department’s view that the Commission must address the need to increase its oversight of the companies in the scheme based on agreed risk factors, with liquidity a primary concern. This will go a long way to mitigate the risk of failures not being covered by bonds.

Duplication of Protection

Since the initial consultation process started there has been a significant change in the level of credit card usage by consumers. The protection afforded by credit card purchases does not appear to have been factored into the proposals. While this protection in no way matches that provided by the CAR scheme, to ignore it completely both in terms of the protection it provides, and the additional cost burden imposed from January 18 on tour operators and travel agents (no longer able to pass the costs onto consumers) should not be ignored.

Broadening the scope of the insolvency protection following the introduction of EU PTD 11

(Questions 5.1 and 5.2)

It is our understanding that the extension of the insolvency protection scheme is required by law, and it would not make any sense to create or establish a separate scheme for Linked Travel Arrangements. That said, it is our view that broadening the scope just to Linked Travel Arrangements achieves very little and a scheme that truly provides protection for all consumers, not just those booking through Travel Agents or Tour Operators, would be more effective and equitable.

Proposed options for reform

Questions 5.3-5.7

Travel Department's preference would be to see a scheme that provides protection to the majority of the travelling public, including flight only bookings (both those booked direct with the airlines and booked through travel agents.) Were such a scheme in place then an ATOL style per passenger contribution at a low level (<€1) would make most sense. This would mitigate the very clear risk that airline failure represents to travel organisers and the travelling public (as in the case of Monarch and Thomas Cook Airlines in the UK and Wow Air recently which did have a significant impact in Ireland.)

Assuming that the Commission is minded to continue with the existing very limited protection scheme (in terms of the proportion of the travelling public covered), then we believe that any such scheme should reflect the level of risk pertaining to each company. This should include the opportunity for companies to limit the level of bond required by agreeing to certain liquidity thresholds. Option F establishes the rights of the Commission to increase levels of bonding based on certain criteria (yet to be established.) Giving Travel Agents and Operators the opportunity to reduce levels of bonding based on certain criteria seems a reasonable counterbalance to this and is strongly recommended.

With regard to the definitions, there needs to be far greater clarification on both eligible turnover, and on what is considered to be travel agent vs tour operator turnover. We would argue that fully prepaid commitments for flights should be excluded from eligible turnover and the remaining revenue of the associated package using these flights should be treated as travel agent. Similarly, prepaid accommodation should also be excluded from turnover.

Based on existing definitions, but with the sole change being the exclusion of payments made to suppliers immediately, then our estimate is that the various schemes would increase our costs by between 50% and 600%. Option F would represent a 200% increase. This is penal for us and no doubt for many of our competitors – and will potentially hasten the demise of some.

Travel Department does not object to the proposed insurance policy to avoid a gap in protection, but the level of the levy when not in the form of insurance under several of the options (C,D and E) is excessive especially if the risk management proposal outlined above is implemented. The levels of the levy (but not the bonding) suggested for Option F look reasonable as an interim measure, but not for 10 years.

Of the options presented, Option C or I would be our preference subject to acceptable costs – but only with adjustments as follows:

- Option C: With risk management properly executed the need for such a high one-off levy would be mitigated, and a lower levy would be achievable.
- Option I: With CAR's active exercise of discretion in terms of the requirement for bonding, the level of levy could be reduced. We would also recommend a mechanism to review that level after 5 years.

Impact of the options on travel trade industry

(Questions 5.8-5.10)

Based on our assessment, the impact of the additional costs, on top of higher insurance premiums (widely reported) and increased credit card fees, will simply make Travel Agents and Tour Operators at large uncompetitive. None of the options are particularly palatable.

Paying a higher levy in the short term may be a requirement, but the level of the levy cannot be at the higher end of the range under any circumstances, and there should be a review built into any scheme to reflect the fact that if risks are properly managed, the requirement should diminish long before a 10 year period has elapsed.

The burden of basing bonding on eligible turnover is impossible to quantify without further clarification of the definitions as outlined above.

Travel Department does not agree with the assessment that Option I is too administratively costly. It is critical that any future scheme learns lessons from the past and includes appropriate controls and reporting requirements based on the risk profile of each business.

Conclusion

Travel Department's strong preference would be for a universal consumer protection scheme (covering airlines as well as tour operators etc) based on a per passenger contribution (in € and not a %.) Given the volume of airline failures across Europe in recent years, failing to address this very real risk as part of the review would seem like a missed opportunity.

The proposed options outlined in the consultation document would increase Travel Department's bonding and licensing costs by between 50% and 600%. On top of increasing insurance costs and credit card fees, this imposes an unacceptable burden on the company, and serves to create a very unlevel playing field when compared with DIY travel.

The increase in costs do not fairly address the relative risk associated with our business, and we feel strongly that a liquidity factor should be introduced into any proposed scheme.

Risk management should be at the heart of any new scheme and the Commission should have the resources to ensure that they can provide appropriate oversight of the industry in order to mitigate against calls on the fund.