



“Trusted Travel for All”

Response of the Irish Travel Agents Association

to

**The Commission for Aviation Regulation consultation on a
review of the Travel Trade Regulation in Ireland
(Commission Paper 5/2008)**

October 2008

Almost three decades have passed since the most important piece of legislation which governs the travel trade was enacted. These have been years of strong growth, and considerable change, for our industry, yet the fundamental approach to travel trade regulation has remained static, becoming increasingly outdated. The review, being undertaken by the Commission on Aviation Regulation (CAR) is, therefore, long overdue and very welcome.

In reality, the Irish Travel Agents Association (ITAA) views this exercise as addressing three different challenges at once:

- The challenge to bring equity and proportionality to our system of travel trade regulation, with flexible structures that can adapt to a dynamic industry that has always evolved quickly.
- The challenge to urgently modernise the existing legislation that imposes unacceptably heavy burdens on license holders.
- The challenge to devise a genuinely universal consumer protection regime to protect those travelling out of Ireland from airline or other supplier failure.

Some might argue that the current system of regulating Travel Agents and Tour Operators should be left as it is while Government reflects on the arguments for and against different models of universal consumer protection. However, this would be a serious mistake. The current system, devised at the beginning of the 1980s, is manifestly broken. It needs to be fixed in the short term. It is strangling the development of indigenous Irish travel companies, and its operation is contrary to many of the Government's principles of better regulation.

The good news is that our current approach to the regulation of Travel Agents and Tour Operators can be vastly and quickly improved without recourse to time consuming primary legislation.

ITAA members are licensed. We provide bonded travel services, and hence a high level of consumer protection. We deserve a responsive regulatory regime that adapts to the changing market in our sector. This is the first review of the 1982 Act in more than 25 years. We look forward to swift conclusions and equally swift reforms arising.

Jim Vaughan
President
31 October 2008

Executive Summary

Ireland's travel industry has seen considerable growth and development in recent decades. It has evolved to keep pace with the changing needs of consumers, and to face the challenging business environment of the 21st century. However, the regulatory and legislative framework under which the industry operates has not responded accordingly. The result has been that travel trade regulation in Ireland has increasingly grown out of touch with the industry, and the travelling consumer.

This has had very negative consequences. By failing to deal appropriately with the change, both licensed travel agents and the travelling consumer have been disadvantaged. An incomplete and inequitable travel trade licensing regime, coupled with a lack of proper protections for the group of consumers who do not book through licensed operators, is the major legacy of the lack of reform in this area.

The ITAA believes that it is vitally important for all stakeholders – licence holders, consumers, trade employees and, indeed, the taxpayer – that regulatory structures for the travel industry are developed which are flexible, proportional, equitable, and which will allow the industry to grow and develop for the future. Significantly enhancing consumer protection, and reducing the unnecessary regulatory burden on compliant licensed businesses in the sector, are fundamental reforms which are urgently needed.

In this submission, the ITAA is outlining a series of recommendations which will, we believe, introduce these positive characteristics into the regulatory system for the travel trade in Ireland, including:

- The introduction of a system of universal protection for the travelling public, funded by way of a small levy on all departures from Irish airports and ports, to protect consumers regardless of the manner in which they book their trip
- Pending radical reform of the system in favour of the introduction of this system of universal protection, the level of bonding to be fixed at 2% immediately
- The introduction of a number of modernisations in travel trade regulation, with a view to substantially reducing the administrative burden on traders
- The adoption of a proactive and innovative approach to tackling illegal trading in the travel sector
- The development of a structured stakeholder consultation process to enhance communications between key stakeholders such as the ITAA and the CAR

The changing economic environment in Ireland – and throughout Europe and wider world – has cast a particular spotlight on the travel industry. In recent months, we have seen the failure of a number of high profile suppliers, such as Zoom and XL Airways, which have highlighted the considerable gaps in consumer protection at this time.

The ITAA believes that the challenge facing the travel industry today is clear – a far more efficient, reformed and modernised approach to travel trade regulation needs to be introduced, coupled with the significant expansion of protections for the consumer.

Our recommendations will allow these goals to be achieved.

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Section 1. Background to the ITAA's submission.

This submission is the result of an extensive consultation with license holders undertaken by the Irish Travel Agents Association (ITAA). Founded in 1970, the ITAA is the representative body for Travel Agents and Tour Operators in Ireland. Amongst the Association's stated aims is the creation and maintenance of standards among its members for the betterment of consumers and the industry. Members of the ITAA are eligible to participate in a collective bond, administered by the ITAA, which allows them to meet both their obligations pursuant to Section 11 of the Transport (Tour Operators and Travel Agents) Act, 1982 and their obligations which arise pursuant to Part III of the Package Holidays and Travel Trade Act, 1995.

In recent years, the Association has consistently pointed to the incomplete and inequitable nature of the travel trade licensing regime and to the considerable exposure facing many consumers who do not book through licensed operators. For example, in 2004 the Association sought a meeting with Minister for Transport Brennan to discuss this matter. In October 2005 the ITAA and ITOF jointly presented to the Oireachtas Committee on Transport urging urgent reform. The same year Minister for Transport Cullen attended the ITAA Conference where the issue was again raised with him. Minister of State Gallagher was also pressed on the issue at the ITAA's 2006 Conference.

Therefore, we welcome the decision by Minister for Transport, Noel Dempsey T.D. to launch this review subsequent to further representations from the Association. We also welcome the active engagement of the Commission in the review process, the wide ranging consultation paper which was published in early September, and the manner in which the Commission has made itself available to engage in discussion with stake holders during the review process.

ITAA's internal consultation process

Both before and after the consultation paper's publication the ITAA has been listening to the concerns of license holders including members and non-members, travel agents and tour operators. The ITAA's own consultation process has included considerable outreach to the industry. We organised a series of four regional consultations meetings (Dublin, Carickmacross, Cork and Ennis) in May 2008 to assess the views of our members. This was followed by an invitation to our members to respond to the Commission's Terms of Reference. Subsequently, the ITAA Board prepared a response to Commission on issues we felt warranted particular attention in the review exercise (Letter of 12 June - appendix (i)).

During the summer months, the Association continued to reflect on the key issues under consideration in this review and drew some lessons from the contrasting experience arising from the closure of airlines and Tour Operators. Our letter to the Commission of 29 August, issued in the wake of the collapse of Zoom Airlines (appendix (i)), drew attention to the need for greater consumer awareness of the risks of exposure in the event of airline failure, and also the gaps in protection afforded by both credit and debit card purchases and in travel insurance cover. The subsequent

failure of XL Airways underlined, with great emphasis, the points we made at that time.

During the summer months, the ITAA also engaged in detailed exchanges with the Commission on the issue of appropriate bonding levels for travel agents. We have identified reform in this area as the simplest and fairest way of alleviating the unnecessary burden on agents. The fruits of this exchange are summarised in our proposal to move to 2% bonding in section 3.2 below.

Once the Commission published its consultation paper on 2 September the ITAA launched an intensified discussion with license holders. This included a special Board review of the options under consideration, and consultation with members and the Irish Tour Operators Federation. Our intensified discussion culminated in a special half day consultation meeting of license holders on Wed 8 October which more than 80 Tour Operators and travel agents attended. The session included a discussion with the Commissioner for Aviation Regulation. Subsequently, the meeting agreed the core elements of this submission, which has been finalised and approved by the ITAA Board.

The value of independent travel companies

It should be noted that the travel trade in Ireland is a sector that has shown remarkable resilience given the changes in the travel industry in recent years. One could argue indeed that it ought to be nurtured rather than oppressively regulated.

The sector comprises approximately 400 businesses. The vast majority are small indigenous enterprises seeking to compete in a highly globalised international services industry. Our members generate employment in towns throughout Ireland.

Travel professionals make a significant contribution to ensuring competition in the travel market in Ireland, facilitating the distribution of many travel services that would not be able to gain a foothold and compete against the extremely dominant travel brands without the support of independent retailers. A reduction in the number of travel agents in Ireland will be the likely outcome if the reforms we are seeking are not delivered.

Section 2. Towards a system of universal protection for the travelling public.

The Commission's paper makes the point that only a fraction of travel purchases by Irish residents are protected by the relevant regulatory regime. This is a result of the manner in which the travel market has changed since 1982, when the current legislation was drafted. Many consumers now buy direct from suppliers such as airlines. New, unregulated intermediaries, such as "bed brokers" and car hire brokers, have emerged. Internet commerce has significantly reduced the relevance of national borders and national consumer protection regimes. The amount and type of travel bought has also grown enormously resulting in more overseas trips, and more trips per capita. And, finally, efficiencies in the aviation sector which have reduced the cost of leisure travel have probably been particularly significant for Ireland as an island nation.

In our response to the consultation's terms of reference (Appendix i) we pointed out that the review should develop a wide perspective of consumer protection including the relevance of the Consumer Protection Act 2007 and also take into account the nature of protection afforded by both insurance products and credit card purchases.

Nowadays, many consumers' travel arrangements are not financially protected to any significant extent. To recall:

Many consumers are not insured for their travel

According to the Irish Department of Foreign Affairs less than 50% of travelling consumers have travel insurance.

Travel insurance may not cover the relevant risks

Much of the travel insurance on offer does not protect against supplier failure. The coverage afforded by the different insurance policies in relation to airline and/or supplier failure is varied, with some policies not providing any cover in respect of airline and/or supplier failure and other policies providing limited coverage. It should be noted that those insurance policies which provide cover in respect of airline and/or supplier failure limit or exclude coverage by reference to the type of travel service supplier from whom the consumer purchased their travel service. This leads to the situation where different groups of consumers, who may all have bought identical travel product/arrangements, are not afforded access to equal insurance coverage.

Credit and debit cards refunds (when available) do not cover consequential loss.

Credit card purchases often provide protection in the event that a specific service, such as a flight, is not provided. However, they offer no cover against the loss if other services, including connecting flights and hotel reservations, which may be lost as a consequence of a cancelled flight. In addition, it ought to be noted that, in contrast to the UK, there is no statutory obligation on credit card companies in Ireland to provide refunds.

Costs of repatriation will greatly exceed card refund amounts

In the event that an airline fails to deliver the return leg of a trip, and the consumer is stranded and obliged to make new arrangements at short notice, the costs are normally very much greater than the value of any refund that might be secured on a credit card.

An airline's membership of IATA does not guarantee refund or repatriation

The historical "gentleman's understanding" that one IATA airline would ensure the repatriation of customers in the event of the closure of a different airline can no longer be relied upon in this era. Many airlines are not members of IATA now (notably the "no-frills" airlines) and even those that are in IATA take a much more hardheaded approach to obligations and costs.

In fact, in general only consumers who have bought what we might call "organised travel" are protected i.e. where a licensed operator has assumed responsibility for the fulfilment of the trip regardless of the risk of failure of any particular supplier (airlines, transfer provider, accommodation supplier etc.)

Consumers seem to be oblivious to this lack of protection. The problem seems to fall between two stools, as the National Consumer Agency has been silent on the issue while the Commission explains to consumers that their remit only covers consumer claims arising from the closure of a licensed travel agent or tour operator.

The ITAA believes that the time has come for the development of a more comprehensive or "universal" protection scheme for those travelling out of Ireland. An efficient scheme could be put in place that would protect consumers regardless of the manner in which they book their trip. We believe this could be best administered through a small levy (of probably significantly less than one Euro) which could be collected on departures from Irish airports and ports. This levy could go towards protecting monies spent by consumers with entities of various sorts including airlines, tour operators, travel agents, and other traders who would be prepared to subscribe to the scheme and who would be awarded the "*trusted travel*" identity.

The scheme could be collected by a universal departure levy (on trips originating in Ireland) where claimants would have purchased services from a "trusted travel licensee" in order to benefit in the event of supplier failure.

Indeed, the plan for an Air Travel Tax announced in Budget 2009 by the Minister for Finance earlier this month provides an opportunity to move quickly towards such a levy-based universal protection system. If this tax is to be implemented, a small amount of the levy funds could be ring fenced to build up a reserve to protect passengers from supplier failure. This is a matter that the ITAA is exploring with the Department of Finance.

The main purpose of a levy would be to refund consumers in the event of supplier failure and assist with repatriation where required. In this, it would fulfil the same function as the current scheme which applies to Agents and Operators, but with far greater coverage being afforded to the travelling consumer.

One could imagine that a fund built up from the levy could ensure necessary cover through a combination of cash reserves and an insurance policy (in a manner similar to the ITAA's current Collective Bond)

Clearly, if such a scheme was put in place it would replace the existing schemes for Travel Agents and Tour Operators in operation under the 1982 Act. It would also respond appropriately to the European obligations to provide a scheme for financial protection for consumers who purchase package holidays as required under the 1995 Act. In the ITAA's view, the European definition of a package holiday is archaic and obligations to protect consumers can be effectively bypassed by unregulated travel companies who offer holidays but avoid the strictly defined concept of a package.

In this respect, the ITAA also believes that, whilst it is not unambiguously stated in the Commission's consultation paper, Option 3 – "End scheme and rely on market to provide protection" – is simply not possible given the constraints of the EU's Package Travel Directive 90/314/EC.

If the Government is seriously committed to ensuring a high level of consumer protection in the travel field, we believe that a universal scheme as proposed by the ITAA is most appropriate. While not all travel sold to Irish consumers will be covered, the vast majority of trips will be protected, consumers will be able to understand clearly whether their trip or trip components are covered, and the inequities of the current system would be reduced.

The details of the scheme, including eligibility, grounds for refund claim, and avoidance of moral hazard would need to be worked out by a stakeholders group including CAR and the ITAA.

Section 3. Substantial overhaul of the current system.

3.1 The need for an overhaul.

Addressing gaps in consumer protection is one thing. Reforming the existing outdated, costly, inequitable and inefficient regime is another. The CAR's consultation paper reveals many of the problems with, and costs of, the regime. A substantial overhaul of the current system is urgent and must not await what we fear may be a long period of reflection on any potential new universal protection regime.

Our overall critique of the current system is based on two key concerns.

Firstly, the requirement for bonding imposes a heavy financial penalty on regulated businesses by forcing them to ring fence a significant fraction of working capital solely to satisfy bonding requirements. This obligation constrains companies from competing and distorts the market, and does not apply to our non regulated competitors such as airlines selling travel services on their websites, bed brokers etc.

Secondly, businesses in our sector are being oppressed by a system that breaches key principles of the Government's own better regulation strategy. In particular, the principle of proportionality, which was one of six set out by Government in its White Paper in 2004, is relevant:

“Proportionality

We will regulate as lightly as possible given the circumstances, and use more alternatives.

We will ensure that both the burden of complying and the penalty for not complying are fair.

We will use Regulatory Impact Analysis appropriately when making regulations.”

The CAR's own consultation paper notes that:

“The current licensing regime does not distinguish between businesses of different sizes (other than in the licence fees tour operators pay). The potential numbers of consumers requiring redress in the event of a small travel agency ceasing to trade would be much smaller than for a larger company, yet the risk assessment that both companies must pass to qualify for a licence is broadly similar. As a result there is equality across all travel agents regardless of whether they are small family licensed businesses or large incorporated companies. Smaller agents may find licensing costs a relatively greater burden than their larger counterparts”.

This comment illustrates one of the most obvious failings with respect to proportionality. A system designed to supervise quite large companies is not suitable for micro enterprises. Indeed, the Better Regulation White Paper also goes on to state:

“In Small and Medium Enterprises, owners and managers tend to combine a number of functions, and administrative compliance is not easily delegated or contracted out. Excessive compliance requirements and administrative procedures that are insensitive to the special difficulties of SMEs will deter new entrepreneurs and distract existing enterprises from innovation and expansion.”

This accurately reflects the experience of ITAA members who point out that much valuable time is spent ensuring their technical compliance with a tight and outdated framework while those not caught in the regulatory net are ignored and free to develop their business.

It is the strong opinion of the ITAA and its members that the existing system is unacceptably costly, imposes excessive administrative burdens and impedes the basic ability of our member companies to compete on a level playing field.

We welcome the fact that the consultation paper acknowledges some of these difficulties and opens up a discussion on the scope for reform of both financial requirements and administrative obligations. Pending the replacement of the entire scheme with a universal protection arrangement we would emphasise the following steps as interim steps to relieve the burden on agents.

3.2 Fixing a bonding requirement of 2%.

For Travel Agents, in particular, we believe that the requirement for companies to provide a 4% bond is unnecessary. Pending radical reform of the system we believe that full consumer protection would still be assured if the required bonding level was fixed instead at 2%. This change could be made by the Commission for Aviation Regulation using its own powers. It could be done immediately upon the conclusion of this consultation process so that it could apply to those agents renewing their licences as of 1 May 2009.

We would make the following points to support this recommendation;

1. Bonds of this level are rarely, if ever, required.

An analysis of bond calls since 2000 shows that 2% is adequate to cover the costs arising from that small percentage of agents whose closure triggers any call on the bond. On the following page we attach our own analysis of the levels of calls made in recent years together with a short commentary;

2. The travel agent business model has changed - reducing risk

In previous correspondence and discussions with the Commission we have demonstrated that changing funds transmission practices, and the reforms in business models in the sector, have meant that agents typically hold customers monies for very short periods of time (for example many flights are now instant purchase transactions by agents). Consequently, on those rare occasions where agency closures lead to calls on bonds the amounts involved have not been substantial;

	Collapse	Travel Agents	Bond amount	Called by CAR	TPF top up	refund to bond provider	call less refund	total call	% actually drawn
1999	30/09/1999	Austin Porter Travel	30,220	30,220	45,479		30,220	75,699	250.49
2000	12/01/2000	Grainne Mc Donlad Tr	67,481	19,046	0	11,661	7,365	7,385	10.94
	11/11/2000	Isle of Man TA	69,836	69,836	0	20,642	49,194	49,194	70.44
2003	24/04/2003	Sunworth	56,000	56,000	87,893	0	56,000	143,893	256.95
	17/06/2003	Paddy Quinn Fairview	58,400	7,500	0	5,273	2,227	2,227	3.81
2004	31/10/2003	Tara travel	20,000	20,000	0	3,593	16,407	16,407	82.04
	12/05/2004	Co-op travel	196,000	4,000	0	918	3,082	3,082	1.57
	09/09/2004	Blackrock	108,000	50,000	0	13,233	36,767	36,767	34.04
	14/10/2004	Castaway	68,000	25,000	0	2,474	22,526	22,526	33.13
2005	25/01/2005	Balbriggan	21,912	21,912	0	5,601	16,311	16,311	74.44
	31/01/2005	T.T.E	56,400	100	0	0	100	100	0.18
	24/05/2005	Paul Buckley	109,800	109,800	0	55,849	53,951	53,951	49.14
	12/07/2005	Italiatour	60,000	15,000	0	186	14,814	14,814	24.69
	21/11/2005	Beacon	353,302	353,302	0	139,907	213,395	213,395	60.40
	06/12/2005	Ballsbridge	196,000	80,000	0	11,288	68,712	68,712	35.06
	14/12/2005	Finlandia TA	34,000	20,000	0	6,293	13,707	13,707	40.31
2006	12/05/2006	Tony Roche Travel	228,000	228,000	505	0	228,000	228,505	100.22
			1,733,351	1,109,716	133,877	276,918	832,798	966,675	55.77
									48%
Travel Agents with Tour Operator business									
2000	12/04/2000	Maple Leaf Tours TA	2,539	2,539	0	2,539	0	0	0.00
	02/05/2000	LSA travel	117,121	117,121	44,014	0	117,121	161,135	137.58
	22/06/2000	Groupworld TA	231,854	231,854	138,408	0	231,854	370,262	159.70
2001	22/06/2001	Bon Voyage TA	40,468	2,277	0	2,277	0	0	0.00
2003	17/01/2003	Elite TA	152,000	125,000		11,474	113,526	113,526	74.69
			543,982	478,791	182,422	16,290	462,501	644,923	118.56
									119%
Tour Operators									
2000	12/04/2000	Maple leaf tours TO	152,369	15,231	0	7,244	7,987	7,987	5.24
	22/06/2000	Groupworld TO	29,839	29,839	0	29,839	0	0	0.00
2001	22/06/2001	Bon Voyage TO	226,648	226,648	101,420	0	226,648	328,068	144.75
2003	17/01/2003	Elite TO	12,105	12,105		12,105	0	0	0.00
2004	12/05/2004	JetGreen TO	417,800	417,800	160,230	0	417,800	578,030	138.35
2005	14/12/2005	Finlandia TO	12,000	5,000	0	5,000	0	0	0.00
			850,761	706,623	261,650	54,188	652,435	914,085	107.44
									77%
			3,128,094	2,295,130	577,949	347,396	1,947,734	2,525,683	81%
									62%
		TOTAL							

Notes to Table

On the table on previous page we show the ITAA's analysis of claims on bonds since 1999. It might be noted that this analysis takes no account of the many licences that were allowed expire without any call on the bond at all (due to merger, retirement or other reason for exiting the sector).

The analysis illustrates that travel agents who do not also operate as tour operators triggering calls on the bond during the period very rarely caused claims of more than 2% of licensable turnover. One might also note that the level of percentage call has trended downwards over the recent years and that the sums involved in calls arising from the closure of such travel agents is small.

In the early years of the decade a small cluster of Travel agencies with substantial tour operating activity closed also. However in these cases the call on the bond was attributable to Tour Operating losses and a "knock on" impact on their travel agency activity.

One might also note that the Travellers Protection Fund (the reserve fund built up some years ago) earns deposit interest annually. The total earned in the six year period 2001 and 2006 was €1,238,103. Only approximately 10% of this interest was spent on covering top up amounts required arising from travel agent closures during the period in question.

3. Rationale of 4% level was never explicit or justified

There was no firm logic to the original (and current) level of agent turnover bonding of 4% established at the time that the legislation was enacted in 1982. This was originally described to our Association's representatives in the early 1980s as a number that could be reviewed "after a couple of years". Now, in 2008, this level is finally being reviewed for the first time, but the time that has passed since this bonding level entered into operation has more than demonstrated that it places an unnecessarily high burden on ITAA members;

4. Requirement to tie up cash damages adaptability and competitiveness

As mentioned above, the very requirement to set aside 4% of total turnover as a bond seriously damages the competitiveness of small businesses. It is a disincentive to investment and weakens our ability to compete with companies offering similar services who are not required to be bonded as they are outside the scheme;

5. The principal of reduced burden though collective bonding was lost during regulatory drafting.

The original concept was that a collective bond covering a large number of licence holders could be set at a lower level than individual companies would have to provide. This could still provide the necessary level of consumer reassurance but at considerably less cost to businesses. However, despite being a core part of the pre legislative discussions between the industry and Government, this was never enshrined in the legislation enacted. As a result, the ITAA's Collective Bond, for example, must provide cover every year for the sum of all participants' individual bonds requirements.

6. This is the simple solution.

An alternative to a flat rate bonding requirement of 2% would be to engage in a complex re-analysis of what ought be defined as licensable turnover and what levels of risk might be imputed to different types of turnover (as contemplated in Paras 5.72 - 5.75). We would caution against this approach, particularly in the short term. It might be useful as part of a fundamental reform but ought not to be the cause of any delay in reducing the extent of over-bonding which can be easily and promptly addressed.

7. Effective cost management in the event of repatriations can ensure that the level of calls on bonds is minimised.

In the event of a failure and call on a bond (of tour operators in particular) the most substantial costs arising relate to the need to secure flights and other services at short notice in order to achieve repatriations. Good scenario planning and an active collaboration between the regulator and the industry can ensure that the costs incurred in responding to a closure are minimised thereby reducing the risk of any call on the reserve Travellers Protection Fund. The Commission should be able to intervene when companies are evidently at risk of failure so as to manage down the level of consumer exposure at least cost.

Pending the Government's decision on the wider issues of licensing reform we consider that it is within the CAR's own powers to amend the level of bonding required with immediate effect so that agents renewing their licences in the spring of

2009 would be required to post a bond of 2%. This power should be exercised immediately.

3.3 Reducing Administrative burdens.

There are several useful proposals in the consultation paper about the manner in which the administrative burden of licensing and bonding might be reduced. These would go some distance to addressing the excessive regulatory burden referred to in section 3.1 above.

Indefinite as opposed to annual licences

The ITAA supports the idea of indefinite licenses with the right for the Commission to withdraw licenses as appropriate. The current process of annual license renewal is a serious administrative burden imposed on small business managers as well as a substantial administrative cost. While we are aware that the Commission proposes to bring the processes on-line in the near future, which might assist, the provision of indefinite licences would be vastly more sensible.

Examination of Business Credentials

We believe that there is little point in the Commission seeking to examine business credentials – particularly as the examination of such credential is not of assistance to the Commission in addressing the risks identified in the consultation document.

Removal of audit obligation for small businesses.

Many smaller agents would benefit from the small business audit exemption if it were not for the Commission's requirement for Audited Accounts. A lighter requirement with respect to the provision of annual financial data could undoubtedly be devised which would reduce the cost imposition on small agents.

Single Licence for Tour Operators and Travel Agents

We note the Commission's comments concerning the merits of a single licence for all travel trade companies. While we believe that such an initiative would have attractions we are not convinced that a single licence requires a unified bond. This is something we would like to examine in more detail with the Commission.

We would definitely support a harmonisation of renewal/review dates for the filing of any data required by the Commission. It is an anachronism that ITAA members who hold both types of licence are currently required to renew their travel agent and tour operator licences at different dates. It is extraordinary to think that such a minor detail cannot be adjusted without secondary legislation.

Option of Collective Bonding for Tour Operators

The current legislation provides for the option of Collective Bonding for Travel Agents. The ITAA provides such a bond and has recently sought to develop a Collective Bond service for Tour Operators also. However, this request has been rejected by CAR on the basis that it is not envisaged in the legislation. This option should be facilitated in any reform.

3.4 Financial protection considerations.

Collection on a fee per trip basis

We note with interest the reflections in the consultation paper on option 9 “*End bonds and rely on TPF funded by fee per trip.*” This, of course is the model that was launched by the CAA in the UK in spring of this year. While this system may sound attractive, we oppose this approach if it is to exclusively relate to “*purchases covered by the [current] regime*”. If a TPF/levy scheme is to be introduced it should cover all purchases of trusted travel as argued in section 2 of this submission.

Escrow accounts

We disagree with the suggestion that escrow accounts might be appropriate in the travel sector.

Firstly, no case has been made that this sort of heavy regulation system is necessary.

Secondly, the sort of system lends itself to scenarios where service providers (e.g. solicitors) are custodians of relatively small numbers of large sums of money for long periods of time. The travel sector involves the holding of large numbers of small sums for short periods of time. Therefore the costs of administration and, in particular, supervision would vastly outweigh the benefits.

Thirdly, the objective we are pursuing is to simplify the whole licensing and bonding process and to level the playing field with other players. To impose escrow requirements on travel agents and tour operators without also imposing them on airlines (who tend to hold clients monies for much greater periods) would be most unjust.

Finally, the practicality of operating such a system given the diversity of transactions and payment systems involved in the very diverse travel sector is highly questionable.

3.5 Enforcement considerations

Illegal trading

The comments in the consultation paper on this topic are disappointing. While the Commission may have been successful in any prosecutions related to illegal trading, the number of such prosecutions has been minimal and the penalties handed down by the courts have been derisory. Reform should include the fixing of higher minimum and maximum fines for illegal trading.

More importantly, however, the Commission could take a different approach to policing illegal trading which would have much greater impact and serve to highlight to consumers the risk of booking unregulated travel. Ideas which the ITAA would be happy to explore with the Commission would include: an activist approach to inspections of any person thought to be trading illegally, collaboration between the Commission and the Gardaí, the use of practices such as ‘mystery shopping’ and the development of a dialogue and forum involving the Commission and representatives of license holders to identify trends and areas of concern.

The consultation paper contemplates the idea of delegation of enforcement to local authorities. However, given the need for a level of expertise in what is and is not illegal trading (considering the complexity of the regime) and the fact – acknowledged by the Commission – that many vendors of travel services are internet based we believe that enforcement responsibility should stay with the industry regulator.

Exemption from licensing for clubs and schools and parishes

Many community groups such as parishes and schools and sports clubs work with professional travel agents when planning overseas trips. There are considerable benefits to groups in doing so. These relate to cash flow, financial control, planning, problem resolution, and provision of appropriate insurances as well as the most obvious issue of travel and destination knowledge and value for money.

Frequently, community groups prefer to entrust responsibility to a regulated professional rather than an individual volunteer who may or may not be of sufficient reliability to be entrusted with large amounts of, for example, student or parishioners monies. In this context it would be unwise to provide an exemption for such bodies.

Definitional issues would also undoubtedly arise from such an exemption, with the emergence of “travel clubs” to circumvent a regulatory regime applying to compliant license holders.

Consideration should also be given to the protections afforded to consumers under the 1995 Package Holiday Act and the relevant EU Directive. Exempting such groups from the requirements of the 1982 Act should not be taken without considering how participants entitlements under the 1995 Act would be protected.

3.6 Structured dialogue to ensure relevance and equity in the regime

In the recent past there has been reasonably good dialogue between the Commission and the ITAA. However, this has not always been the case. Better regulation principles would suggest that any reform of the regime should also envisage a structured stakeholder dialogue on an annual or bi-annual basis where there would be an opportunity for regulated businesses to explore issues of concern and where improvements in different aspects of the regime could be proposed and developed. We would envisage the creation of such a structured stakeholder dialogue to be an important outcome of this review process.

Section 4. Summary of Recommendations

Recommendations on Universal Protection for the Travelling Public

The ITAA recommends that the systems by which the travelling public are protected be comprehensively overhauled and modernised, and that a universal protection scheme be introduced for those travelling out of Ireland which would protect consumers regardless of the manner in which they book their trip.

The ITAA recommends that this scheme of universal protection should be funded by way of a small levy on all departures from Irish airports and ports.

The ITAA further recommends that a small amount of the levy that is to be collected by way of the recently announced Air Travel Tax could achieve this purpose by being ring fenced to build up a reserve to protect passengers from supplier failure.

Recommendations on Bonding

The ITAA believes that the requirement for travel agents to provide a 4% bond is unnecessary. Pending radical reform of the system in favour of a universal scheme of protection as called for in this submission, the ITAA recommends that the bonding level be fixed at 2%, that this change be implemented immediately, and that it apply to agents renewing their licences as of 1 May, 2009.

Recommendations on Reducing Administrative Burdens

The ITAA strongly recommends that steps be taken to reduce the administrative burden of regulation on businesses in the travel sector. Specific ITAA recommendations in this regard include:

- The introduction of indefinite licences to replace the current annual licensing approach
- Ending the examination of business credentials by the CAR
- Examining the possibility of issuing single licences for Tour Operators and Travel Agents
- Harmonising the renewal/review dates for the filing of data required by the CAR
- Facilitating the introduction of collective bonding for tour operators

Recommendations on Financial Protections

Whilst noting with interest the option of ending the bonding regime and relying on the TPF funded by a fee per trip model, the ITAA would recommend against following this course of action if the scheme to be introduced would only cover the same travel purchases as are covered by the current regime.

The ITAA strongly recommends against the introduction of escrow accounts on the basis that no case has been made for this heavy regulatory response, that the costs of administration and supervision of these accounts would far outweigh the benefits of same, and that this approach would seriously undermine attempts to simplify the licensing and bonding process and provide a level playing field for the industry.

Recommendations on Enforcement

The ITAA recommends that the Commission adopt a stricter and more proactive approach to tackling illegal trading, including fixing higher minimum and maximum fines for illegal trading.

The ITAA also recommends that enforcement responsibility should remain with the Commission.

The ITAA recommends that an innovative approach be adopted to tackling illegal trading in the travel sector, including:

- An activist approach to inspections of any person thought to be trading illegally
- Collaboration between the Commission and the Gardaí
- The use of practices such as ‘mystery shopping’
- The development of a dialogue and forum involving the Commission and representatives of license holders to identify trends and areas of concern

The ITAA recommends against the introduction of an exemption from licencing for groups such as clubs, schools and parishes.

Recommendations on Dialogue

A structured stakeholder consultation process, to take place on an annual or bi-annual basis, should be put in place to enhance communications between key stakeholders such as the ITAA and the CAR.

Appendices

Mr Niall O'Connor
Commission for Aviation Regulation
Alexandra House
Earlsfort Terrace
Dublin 2

12 June 2008

Dear Niall

Re : Review of Travel Trade Regulations

I refer to the Commission's invitation to comment on the draft terms of reference published on 22 May last.

The Irish Travel Agents Association (ITAA) welcomes the Minister's decision and the Commission's engagement in a review of licensing. We concur that the regime is outdated and broadly agree with the terms of reference as set out. In previous exchanges we have highlighted to the Commission a range of concerns related to equity, administrative burden, enforcement and consumer protection arising from the regime currently in operation. We believe these matters are within the scope of the published terms of reference and we look forward to them being dealt with comprehensively in the review which is now commencing.

At this stage we would draw attention to four elements that are not explicitly referenced in the notice, but which we believe will have importance in ensuring the review is successful.

- Firstly, the reference to "on-line vendors" in the terms of reference must be broadly interpreted. In particular, airlines that sell not only flights but also a wide range of other travel services, through their websites currently fall completely outside the travel trade consumer protection regime. The development of other on-line suppliers of travel services such as accommodation brokers also needs to be taken into account as do on-line

travel agents based outside the jurisdiction and beyond the reach of the existing licensing regime.

- Secondly, the extent of development of horizontal consumer protection legislation since 1982, most recently the Consumer Protection Act 2007, should be taken into account in the review. In this respect it might be noted that there is an absence of any specific regime of consumer protection in the event of airline insolvency.
- Thirdly, the consumer protection afforded through financial services such as credit card purchasing and various travel insurance products is extensive and ought to be taken into account in such a review.
- Fourthly, we would recommend that a review would embrace an analysis of best practice in regulation in other jurisdictions both within and beyond the EU so as to identify the least burdensome, but effective, regimes that apply.

The ITAA looks forward to playing an active and constructive role in the full review that is to roll out over the coming months. We are at the Commission's disposal to provide any information on the experience of our members - licensed and compliant travel agents and tour operators - as may be required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Nugent', with a long horizontal flourish extending to the right.

Simon Nugent
Chief Executive

APPENDIX (1)



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Mr Cathal Guiomard
Commissioner for Aviation Regulation
3rd Floor
Alexandra House,
Earlsfort Terrace,
Dublin 2.

29 August 2008

Re: Airline Passenger Protection

Dear Cathal

The news that Zoom Airlines ceased flying today and the problems and costs that customers are facing illustrates vividly one of the most yawning gaps in the current travel regulatory regime. As the ITAA has pointed out previously, the absence of Government regulated financial protection in the event of airline collapse is not widely understood by consumers - many of whom assume that the Travel Trade regulations protect all travellers' monies.

While we believe that addressing this point is a very important element of the regulatory review currently in train, we would also suggest that in the short term the Commission consider a communications strategy to help consumers understand that such flights are not protected.

In particular we believe there is a dangerous lack of clarity as to what entitlements people might have in the event they have made (a) credit card and (b) debit card purchases. The Association's own efforts to clarify this issue have so far been inconclusive. What we do know is that consumers ought not assume the UK entitlements apply here. Another issue that warrants clarity is that of the protection offered by different travel insurance products in the event of airline collapse.

Naturally this is also an area where the ITAA and members will also continue to work. However, there are issues where the CAR's intervention could be extremely effective in highlighting issues and steps that consumers might take to protect themselves. Given the trends in the aviation sector and the economic climate we would suggest an initiative in this respect is urgent.

Yours sincerely

Simon Nugent
Chief Executive

**Note on ‘Regulatory Burden and Proportionality’
in context of
CAR’s Review of Travel Trade Legislation in Ireland
Tom Ferris, Consultant Economist.**

1 **Context:** This Note focuses on ‘Regulatory Burden and Proportionality’ in the context of the Commission for Aviation Regulation (CAR) Review of Travel Trade Legislation in Ireland. It is interesting to note that CAR¹ recognises in its Paper that:

“A natural first question to ask of any licensing regime is: are the costs of the scheme proportionate? There are a number of aspects of the current regime that give rise to administrative costs that seem unnecessary to critics:

- a. Businesses seeking a tour operator and travel agent licence must apply for and pay for two separate licences.*
- b. Licences must be renewed annually, with some information resubmitted.*
- c. The audited accounts required are onerous to provide. Larger companies operating in a number of jurisdictions query why they have to provide separate accounts, while smaller companies complain that it can significantly add to their audit bill.*
- d. Complying with information requests that the Commission may make throughout the year”.*

Seeking to have a licensing regime, where the costs of the scheme are proportionate, is consistent with the principles set-down by Government, in its White Paper on ‘Regulating Better’ (January 2004) – see **Appendix 1**. In particular, the Proportionality Principle is very relevant, namely to regulate as lightly as possible given the circumstances, and to use more alternatives; to ensure that both the burden of complying and the penalty for not complying are fair, and to use Regulatory Impact Analysis appropriately when making regulations.

2. **Administrative Burden:** The Travel Trade is not unique in having to cope with administrative burdens. Across all the different business sectors, administrative burdens are seen as a growing problem. As a consequence, there is a growing move in Europe to cut ‘red tape’ and to reduce administrative burdens. The CAR Paper recognises this problem and notes that such burdens are not spread equally across the travel trade. Specifically, the paper states² that: -

“The current licensing regime does not distinguish between businesses of different sizes (other than in the licence fees tour operators pay). The potential numbers of consumers requiring redress in the event of a small travel agency ceasing to trade would be much smaller than for a larger company, yet the risk

¹ See Paragraph 3.20 of “Review of Travel Trade Legislation in Ireland”, which was published by the Commission for Aviation Regulation, on 2 September, as Commission Paper 5/2008.

² See Paragraph 3.22 of “Review of Travel Trade Legislation in Ireland”,

assessment that both companies must pass to qualify for a licence is broadly similar. As a result there is equality across all travel agents regardless of whether they are small family licensed businesses or large incorporated companies. Smaller agents may find licensing costs a relatively greater burden than their larger counterparts”.

But what of the initiatives that are being taken to tackle the problem? In March 2007, the EU Summit endorsed a European Commission’s initiative to tackle administrative burdens. The Heads of State and Government set an ambitious 25% target for reducing the burden of administration that falls on companies as a result of legislation originating at EU level, to be achieved by 2012. In terms of domestic legislation the targets are more flexible. The Summit invited Member States to set their own targets for legislation originating at national level, recognising that the different starting points and traditions have to be respected.

The Irish Government committed itself to implement the target set for EU derived legislation and also to tackle administrative burdens arising from national legislation. Specifically, the Government has set a target to reduce the administrative burdens caused by national legislation by 25% by 2012, a process in which all Government Departments will participate. This target is in support of the EU-wide approach. Furthermore, the Government has decided that all new regulations should be subject to measurement of the administration costs to business with a view to keeping them to the minimum. The Minister for Enterprise, Trade and Employment was given responsibility to lead a cross-Departmental and agency initiative, working in co-operation with business in addressing regulatory burdens. The First Report on this initiative, which is chaired by the Secretary General of Enterprise, Trade and Employment, was completed recently – a matter addressed in the next Section.

3. High Level Group: The First Report of the High-level Group on Business Regulation was completed last July³. In an opening statement, the Chairman declares that

“...the burden imposed by regulation should always be proportionate. In recent times, Governments internationally have begun to challenge the cost of regulation, to both Government (and thus the taxpayer) and business, in terms of diverting resources that could be used more productively elsewhere. In particular, there has been a determined effort to reduce the ‘red tape’ factor, i.e. the administrative cost to business when making returns, completing applications, keeping records etc., in compliance with Government regulatory requirements”.

These comments that are very pertinent in the review of travel trade legislation. The Chairman went on to say that Ireland must guard against imposing avoidable costs on business. The Group’s Report that accompanies the Chairman’s introduction outlines a series of concrete measures in specific policy areas – Taxation, Statistics, Environment, Health & Safety and Employment & Company Law. The Group’s Report provides evidence that reducing administrative costs has widespread practical

³ Report to the Tanaiste and Minister for Enterprise, Trade and Employment, High-level Group on Business Regulation First Report, July 2008

benefits. The working examples contained in the Report and the Group's future work programme also demonstrate that, with some innovative thinking, the application of new technology and the use of tools to measure costs and benefits, real long-term efficiencies can be delivered. **Appendix 2** reproduces the section of the Report dealing with the 'Approach of the High-Level Group'. The full Report is available on www.entemp.ie

Appendix 1

Government White Paper on 'Regulating Better', January 2004

This Government White Paper, of January 2004, set out six principles for better regulation. The principles are the following: -

Necessity

We will require higher standards of evidence before regulating.

We will reduce red tape.

We will keep our regulatory institutions and framework under review.

Effectiveness

We will target our new regulations more effectively.

We will make sure that regulations can be adequately enforced and complied with.

We will ensure that existing regulations in key areas are still valid.

Proportionality

We will regulate as lightly as possible given the circumstances, and use more alternatives.

We will ensure that both the burden of complying and the penalty for not complying are fair.

We will use Regulatory Impact Analysis appropriately when making regulations.

Transparency

We will consult more widely before regulating.

There will be greater clarity about Public Service Obligations.

Regulations will be straightforward, clear and accessible.

Accountability

We will strengthen accountability in the regulatory process.

We will improve appeals procedures.

Consistency

We will ensure greater consistency across regulatory bodies.

We will ensure that regulations in particular sectors/areas are consistent.

Appendix 2

Extract from

Report to the Tanaiste and Minister for Enterprise, Trade and Employment, High-level Group on Business Regulation First Report, July 2008

relating to

‘Approach of the High-Level Group’

“In approaching its work the Group is concerned to ensure that administrative savings to business are effected without undermining the policy objectives behind the regulation. This means that the protections afforded to workers or the environment, for example, will not be weakened in any way as a result of reducing the cost to businesses of administering the regulation concerned. In fact, the Group believes that enabling regulations to be dealt with more efficiently by both businesses and the regulating authority would help to improve compliance and, therefore, make regulations even more effective. The initial approach of the Group was to examine specific issue under the five priority areas identified by the Business Regulation Forum and in the workshops held to identify the specific regulations which businesses find most onerous, burdensome or irritating. The Group revisited the submissions to the Business Regulation Forum, received during 2006, to identify concrete issues of concern to business. The listing of issues arising from both sources is contained in Appendix B and has been reviewed by the High-level Group. They can be categorised under a number of headings. Some were already under consideration or acted upon by other bodies; some are under consideration at present, either by the High-level Group or in other fora; and some, because they are matters of policy rather than administration, fall outside the remit of the Group. Through its work over the past twelve months, the Group identified a number of short term and longer-term actions which already had reduced or would, in the near future, reduce the administrative burden of Government regulations on business. In particular, the Group focused on measuring the costs to business and the savings that could be achieved”.

Anomalies Arising from the Current Travel Trade Licensing Regime
(Prepared by the ITAA's Legal Advisor)

Since the enactment of the Transport (Tour Operators and Travel Agents Act, 1982, (the "1982 Act") the implementation and application of the various provisions of the 1982 Act has given rise to lack of clarity and inconsistencies which the members of the ITAA and their advisors have found perplexing. Both CAR and the ITAA, find themselves frequently in the position of having to consider and advise in relation to various provisions contained within the 1982 Act, acknowledge that as the 1982 is currently worded the legislation gives rise to anomalies and inconsistencies which operate to the detriment of both consumers and travel agents. Cited below are a number of the most salient examples of such anomalies. It is submitted that in any future revision of the legislation the following anomalies must be remedied.

1. Overseas Travel Contracts

The protection afforded by the 1982 Act is limited to "**overseas travel contracts**, namely contracts *for the carriage of a party to the contract (with or without any other person) by air, sea or land transport to a place outside Ireland, whether the provision of the carriage is the sole subject matter of the contract or is associated with the provision thereunder of any accommodation, facilities or services.*

A direct consequence of this definition is to deny consumers who purchase vouchers from both licensed travel agents the protection afforded by bonds maintained by such travel agents until such vouchers are "put against" the cost of a particular booking.

Aside from requirement to adhere to the strict wording of the legislation, there seems no strong basis for denying consumers who purchase vouchers from licensed travel agents equal protection of such monies pending the presentation of such a voucher for payment towards the cost of a particular travel arrangement.

2. Exclusion of Carriers

As has been acknowledged within the CAR's own consultation paper and is more generally fully accepted the varied means of distribution of travel services has grown exponentially and continues to do so.

The definition of Travel Agent (and indeed tour operator) in the Transport (Travel Agents and Tour Operators), Act, 1982 specifically states that such term does not apply to *Carriers*.

A consequence thereof is that consumers, who purchase directly from a *Carrier*, be it an airline; ferry company or other carrier is denied the protection of its monies paid in respect of the service to be provided by such carrier, when dealing directly with a Carrier.

There seems no justification for the differentiation in the level of protection afforded to consumers' monies relative to the particular supplier in whose control the monies are held.

3. Regulatory Requirements are being by-passed by on-line vendors

CAR specifically acknowledges and invites further comment in relation to the ability of on-line vendors of travel services to structure their business in such a way so as to avoid regulatory requirements.

As a consequence of two significant developments in travel, namely the Internet and the emergence of low cost carriers, the consumer has increasingly the ability to book directly with other travel service providers through the web sites of such travel service suppliers, who in turn offer such consumers the ability to access the web sites of other suppliers of travel services. The consumer is often not aware that the combination of various travel services which he has purchased in this fashion is not protected by the current regulatory regime.

This has resulted in both a distortion of competition as between suppliers of essentially identical travel services being subject to markedly different levels of compliance and in the unjustified and unfounded differentiation in the treatment of consumers of what are often identical travel services.

It is often the case that consumers are unaware that they are not protected giving rise to a concern that they are purchasing travel services in the mistaken belief that they have protection when they do not.

It is submitted that if it is the case that the protection offered by the current regulatory regime is considered important, it should be provided to all consumers of all travel services regardless of from whom they have purchased their travel service; otherwise, it is inequitable to both consumers who find themselves not protected and those specific parts of the travel industry that is required to bear the costs and burdens of the system.

4. Scope for Inconsistent Application of the Bond

Section 13 (3) of the Transport (Tour Operators and Travel Agents) Act, 1982 provides that the bonds maintained by licence holders are to provide *“that, in the event of the inability or failure of the tour operator or travel agent concerned to meet his financial or contractual obligations in relation to overseas travel contracts, a sum of money will become available to the Minister, or to any person nominated or approved of by the Minister, as trustee, to be applied for the benefit of any customer of the tour operator or travel agent concerned who has incurred loss or liability because of such inability or failure to meet financial or contractual obligations”*.

The above wording is broad ranging, essentially providing that upon a travel agent being unable to fulfil its financial or contractual obligations in relation to an overseas travel contract, the bond is to be applied for the benefit of a customer affected as a consequence.

In the event that there are some qualifications as regards the circumstances in which a bond will or will not be applied; such qualifications should be clearly stated for the benefit of consumers; suppliers; agents and principals.

5. Licensable Turnover

The definition of "*licensable turnover*" namely "*the total of receipts by an applicant for a travel agent's licence in respect of overseas travel contracts to which these Regulations apply during the period covered by the applicant's latest audited accounts*", as provided for under SI 183 of 1983, would appear to require considerable adjustment given the variety of payment methods utilised by suppliers of travel services, whereby for example consumers monies are remitted by direct debit; or credit card payments are made to suppliers thereby resulting in the instant purchase and delivery of the relevant travel service; all significantly reducing if not completely eliminating the retention by travel agents of clients monies.

The failure to revisit this definition having regard to the developments in payment methods will continue to result in consumers' monies being either unnecessarily bonded or bonded to a disproportionate extent.