Review of Travel Trade Legislation in Ireland

Commission Paper 5/2008

2 September 2008

Commission for Aviation Regulation
3rd Floor, Alexandra House
Earlsfort Terrace
Dublin 2
Ireland

Tel: +353 1 6611700
Fax: +353 1 6611269

E-mail: info@aviationreg.ie

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EXECUTIVE SUMMARY

1. In a letter sent on 9 May 2008, the Minister of Transport asked the Commission for Aviation Regulation ("the Commission") to conduct a study with the following terms of reference:

   To review the effectiveness of the travel trade licensing provisions as the optimum means to provide financial protection to the travelling public

   To consider whether the regulatory requirements are being by-passed by on-line vendors of travel services and if there is any consequential loss of consumer protection or distortion of competition

   To consider the overall internal coherence of the regulatory framework with regard to relative treatment of tour operators and travel agents

   To consider, in the light of the analysis, the need for reform by way of a new approach, amendments to the existing arrangements to improve efficiency and effectiveness or indeed through some deregulation

2. The current travel trade licensing and bonding regime seeks to provide the travelling public with financial protection. Customers can claim for refunds and repatriation in the event that their licensed travel agent or tour operator is unable to fulfil its contractual obligations. Travel agents and tour operators must have a licence and organise a bond which can be called upon in the event that they are unable to fulfil their contractual obligations.

3. This consultation paper presents the Commission's preliminary thinking and allows interested parties an opportunity to comment on the suitability or otherwise of the current travel trade licensing and bonding regime. Comments are also sought on possible options for reforming the existing regime. The Commission plans to send a final report to the Minister at the end of the year.

4. The existing provisions have provided financial protection to the travelling public purchasing from licensed travel agents and tour operators. However, this report identifies a number of perceived problems with the existing regime that might suggest it is not the optimum means of providing financial protection to the travelling public.

5. The internet has been one of a number of developments affecting the industry that might require updating legislation developed in the early 1980s (with some changes, mainly to legal definitions, in the mid 1990s). It is becoming increasingly easy for consumers to purchase trips overseas without using licensed travel agents or tour operators. Purchases from these alternative suppliers may provide no financial protection to the consumer in the event of the business being unable to fulfil its contractual obligations.

6. Over time, licensees may conclude that to compete for such custom they need to save the costs associated with licensing and bonding, so

reconstitute their businesses to avoid having to comply with such requirements. The policy options available to avoid this outcome might seek to make the licensing and bonding conditions less onerous or alter the scope of the regime so that firms selling what to consumers seem like broadly similar products face similar regulatory requirements.

7. This report identifies a large and diverse range of reforms to the existing regime that might address some of the perceived problems with the existing regime. Which of these options, if any, should be implemented will depend on the answers to the following three basic questions:

> Which members of the travelling public should receive what financial protection?
>
> What requirements should licensees have to satisfy?
>
> What are the most suitable arrangements to ensure that there is adequate financial protection available to those the scheme is designed to protect?

8. Respondents to this consultation paper may wish to set out answers to these three questions. Or they may wish to comment on the likely impact and suitability of the various reform options outlined in this report, including whether they are necessary, i.e. do they address a real problem with the existing regime.

9. Concerning which members of the travelling public should receive financial protection; this report sets out three high-level options. Two would involve the extremes of providing financial protection to either 0% or 100% of all consumers travelling overseas. The other addresses whether purchases with credit cards should be included under the travel-trade licensing and bonding regime and is arguably more about improving the legal framework than addressing fundamental questions about who should or should not enjoy financial protection under a State-sanctioned traveller-protection scheme.

10. Five options are set out concerning changes to the licensing requirements –

- ending the need to satisfy a fit and proper test,
- ending the need for audited accounts,
- a single licence for a travel agent and tour operator,
- licences to last indefinitely, and
- acceptance of overseas' licences.

All of the options identified would likely entail reduced administrative costs, but would require changes to the existing legislation. The Commission is separately reviewing what changes it might make to its processes to reduce the costs of licensing without a change in the legislation. While the Commission welcomes comments on how the administrative burden under the existing regime might be reduced, it would prefer responses to this consultation paper to concentrate on options requiring a change in the legislation.

11. The current bonding requirements appear to be the biggest regulatory burden to travel agents and tour operators complying with the existing travel trade regime. Seven possible options are set out for reforming how to put in place adequate financial protection. Two options look at ceasing to require individual firms to be bonded, and moving to a collective scheme. They differ only in that new entrants would still need a bond under one of the options. Another option would replace the bonding requirements, instead requiring travel agents and tour operators to place customers' payment in escrow accounts. The other four options focus on reforming the current bonding scheme. They vary from a largely administrative change (ceasing to base the bond's level on projected licensable turnover) to attempts to set bonds at a level more commensurate with the likely risks following a collapse, either by altering the percentage of licensable turnover that needs to be bonded, redefining licensable turnover or by determining bonding requirements on a case-by-case basis.

12. Finally, the paper outlines three options that might allow for a travel-trade licensing regime that is more effectively and efficiently enforced. Two of the options – increased penalties or devolving enforcement powers to local authorities – are motivated by the thought that they might make it harder for unlicensed firms to act as travel agents or tour operators. Another option looks at exempting bodies such as schools and sports clubs that would not normally be considered to be tour operators or travel agents from having to comply with the regulations.

13. The report contains preliminary estimates from a cost-benefit analysis of the existing regime. The preliminary estimates suggest the current scheme costs about €3.5 for every trip for which financial protection applies. A satisfactory approach for assessing the benefits of the scheme has proved harder to develop. Comments on how to measure the costs or the benefits are welcome. Having estimates of the cost and benefits that are of roughly the right magnitude will help better to understand the likely merits of different reform options.

14. The deadline for responses to this consultation paper is 31 October 2008. The Commission will consider all responses it receives when developing its final recommendations to the Minister.

1. INTRODUCTION

1.1 This report presents the Commission's preliminary findings, including an outline of some options for reform, following a review of the current travel trade licensing and bonding regime in Ireland. Interested parties are invited to comment on whether there is a need for reforming the current regime, as well as the likely impact of different reform options.

1.2 In a letter sent on 9 May 2008, the Minister for Transport asked the Commission for Aviation Regulation to conduct such a study. He proposed the following broad terms of reference:

- *To review the effectiveness of the travel trade licensing provisions as the optimum means to provide financial protection to the travelling public*
- *To consider whether the regulatory requirements are being by-passed by on-line vendors of travel services and if there is any consequential loss of consumer protection or distortion of competition*
- *To consider the overall internal coherence of the regulatory framework with regard to relative treatment of tour operators and travel agents*
- *To consider, in the light of the analysis, the need for reform by way of a new approach, amendments to the existing arrangements to improve efficiency and effectiveness or indeed through some deregulation*

1.3 Following receipt of the Minister's letter, the Commission published a notice paper inviting suggestions on what issues such a review might address.[1] Eight parties, listed in Appendix A, responded to this notice. These comments have helped the Commission focus its study, as have subsequent meetings sought by and held with the Irish Travel Agents Association (ITAA) and the Irish Tour Operators Federation (ITOF).

1.4 There appear to be a variety of quite different perceived problems with the existing regime. Industry developments have arguably meant that legislation designed in the early 1980s, with some minor changes in the mid 1990s (mainly to the legal definitions), needs updating. Payment systems have evolved with more widespread use of credit cards and within the industry more moves towards real-time payments. The internet has introduced a new distribution channel for travel products. The airline industry has also changed significantly, such that an airline collapse is now more conceivable than it was in the 1980s (when airlines tended to be State-owned and largely protected from competitive pressures) and more consumers are buying trips directly from airlines.

1.5 The changes mean that the majority of overseas trips no longer qualify for the financial protection associated with buying from tour operators and travel agents. A response may be necessary. The status quo may be unsustainable, since it is becoming increasingly easy for consumers to purchase trips overseas without using licensed travel agents and tour operators. Purchases from these alternative suppliers may provide no financial protection to the consumer in the event of the business being unable to fulfil its contractual obligations. Over time, licensees may conclude that to compete for such custom they need to save the costs associated with licensing and bonding, so

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[1] Commission for Aviation Regulation (2008) "Review of Travel Trade Legislation," CN2/2008, www.aviationreg.ie.

reconstitute their businesses to avoid having to comply with such requirements. The options available to avoid this outcome might seek to make the licensing and bonding conditions less onerous or altering the scope of the regime so that firms selling what to consumers seem like broadly similar products face similar regulatory requirements.

1.6 The next section describes how the current regulatory regime works, for those less familiar with the existing arrangements. It does not attempt to provide a definitive legal guide to the regime, but instead seeks to provide an informative overview.

1.7 Section three identifies some of the perceived problems with the existing regime. In doing so, it covers material relevant to the first three bullets of the Minister's terms of reference.

1.8 The Commission has reviewed the approaches taken in a variety of other jurisdictions to providing the travelling public with financial protection. Section 4 describes some of the different approaches.

1.9 Section 5 deals with the final bullet in the Minister's terms of reference, outlining various options to reform the existing regulatory framework. It also provides a brief assessment of the likely regulatory impact of these different options. Appendix B contains preliminary estimates from a cost-benefit analysis of the existing regime. The results suggest that the current scheme costs about €3.5 for every trip for which financial protection applies. A satisfactory approach for assessing the benefits of the scheme has proved harder to develop. Having estimates of the cost and benefits that are of roughly the right magnitude will help better to understand the likely merits of different reform options.

1.10 Each of the sections is structured around three basic questions:

1. Which members of the travelling public should receive what financial protection?

2. What requirements should licensees have to satisfy?

3. What are the most suitable arrangements to ensure that there is adequate financial protection available to those the scheme is designed to protect?

1.11 As should be clear from the questions posed above, this study has confined its scope to the financial protection in place to consumers should their supplier fail to fulfil its contractual obligations. It has not sought to address other consumer protection issues relating to package holidays, such as how to treat changes in the price of a holiday after the initial contract, what information should be provided to a consumer when purchasing a trip, or claims for false advertising or unsatisfactory holidays.

1.12 The necessary details for parties wishing to respond to this consultation paper are in Section 6. While the Commission has attempted to be comprehensive in this review, if parties believe that the report has failed to describe material problems with the existing regime or omitted possible reforms then comments to that effect are welcome. Similarly, the Commission would also welcome comments where parties believe that the Commission has wrongly described something as a problem or outlined a reform addressing a non-issue.

1.13 The Commission plans to finalise this review and recommend to the Minister any changes to the existing arrangements by the end of the year. In doing so, the Commission will carefully consider all responses to this consultation paper received before 31 October 2008.

2. CURRENT TRAVEL TRADE REGIME

2.1 This section reviews how the current travel trade regulatory regime works. The original legislation requiring travel agents and tour operators to be licensed and bonded was the Transport (Tour Operators and Travel Agents) Act 1982. This was introduced following the collapse of Bray Travel, which had left many customers stranded overseas and in need of government consular assistance to return home. There have been subsequent updates to the legislation, most notably the Package Holidays and Travel Trade Act 1995 which gave effect to the European Union Council Directive 90/314/EEC. Aside from the two acts referred to, a number of important measures have been introduced by way of secondary legislation and a full list of these is set out in Appendix C.

Who the Scheme Protects

2.2 The current regulations seek to provide the travelling public with financial protection. In particular, consumers can claim for refunds and repatriation in the event that their licensed travel agent or tour operator is unable to fulfil its contractual obligations. The discussion that follows in this section assumes that the seller is trading legally and has any necessary licences. There is no financial protection under this legislation available to consumers who purchase travel products from unlicensed traders in Ireland, even when the seller should have been licensed. Another possibility not considered here is that the seller is governed by a regime in a different jurisdiction which may afford the consumer protection in addition to or instead of any financial protection available under Irish law.

2.3 Not all consumers travelling are eligible for refunds or assistance with repatriation under the travel-trade regime. In addition, in some instances alternative legislation or contractual arrangements may provide some consumer protection (most notably, consumers purchasing travel with credit cards). But there are consumers currently not eligible for any refund in the event that their contract has not been fulfilled prior to departure or they need to make alternative arrangements to return home, for example consumers purchasing trips directly from carriers.

2.4 For a consumer planning a trip, there are three scenarios to consider. First the consumer is merely seeking to purchase travel. Second, the consumer wishes to purchase travel in association with accommodation facilities or other services, e.g. car rentals, green fees for golf, etc. Finally, the consumer may wish to purchase some non-travel items such as accommodation or car rental without travel. Each of these scenarios is considered below.

Consumer buying travel only

2.5 If the consumer contracts with a licensed travel agent or tour operator to travel from Ireland to a foreign destination, then the consumer enjoys the following financial protections:

a. If the licensed travel agent or tour operator is unable to fulfil its contractual obligations to the consumer before handing the money over to the carrier, the consumer will be entitled to refund. In the event that the consumer is stranded overseas, the statutory provisions will extend to reimbursing the consumer for reasonable costs incurred to get back to Ireland.

b. If the licensed travel agent or tour operator subsequently is unable to fulfil its contractual obligations to the consumer after passing the money onto the carrier, then the consumer will be unaffected since the consumer should be issued with a ticket that the carrier will honour allowing the consumer to travel. In some cases the ticket may have to be reissued if the consumer did not receive it from the collapsed firm.

2.6 This protection under the 1982 Act is not available for trips that are within the State. Consumers purchasing domestic trips have no financial protection should a company selling the product collapse before the trip is taken, unless the consumer has taken out appropriate insurance or purchased the trip with a credit card (in which case they may have a claim on their credit card company). However, a trip that includes a leg that starts and ends in the State may be covered provided it is purchased as part of a longer trip commencing in the State with a destination overseas. For example, a consumer purchasing a trip from a travel agent to fly from Galway to Dublin and then onto Amsterdam may be covered for both legs of the journey, provided the two flights were bought from the travel agent as a single purchase.

2.7 The legislation does not provide coverage to consumers purchasing travel only directly from airline and ferry companies where the entity is acting as a carrier. If the consumer purchases directly from a carrier, and the carrier subsequently fails, the consumer will not be eligible for reimbursement under the travel-trade regime. Since the 1982 Act there has been a significant increase in the share of trips to foreign destinations that are bought directly from the carrier. For example, many people nowadays buy airline tickets directly from the airline.

2.8 Not all consumers visiting travel agents to buy tickets to travel overseas will enjoy the financial protection offered by the current travel-trade regime. In some instances, they will end up purchasing a ticket directly from the carrier, rather than contracting with the travel agent. For example, consumers who go to travel agent's premises and purchase an airline ticket with their credit or debit card may be paying the airline directly, rather than paying the travel agent. If the customer's credit card is debited directly to the provider, their contact will be with the airline and not the travel agent. Consequently, they will not be eligible for compensation under the travel-trade regime as carrier-only activity does not require a licence or bond.

2.9 Consumers will also not be protected under the Irish regime if the trip they purchase from a travel agent or tour operator does not commence in Ireland. For example, if the travel agent sells the consumer a flight from Heathrow to Asia, but the consumer makes their own travel arrangements to get to London, they will not be eligible for reimbursement under the scheme because the travel does not commence within the state. However, the consumer would be protected if the travel agent sold a trip to Asia starting in Ireland, going via Heathrow. Similarly, a consumer booking a trip to the US and an internal US flight from a licensed travel agent would be fully covered under the scheme, whereas a consumer booking a trip to the US from a licensed travel agent and later, under separate contract, asking their travel agent to add an internal US flight may only be eligible for reimbursement for the costs of the Ireland-US flights and not have coverage for the internal US flight.

2.10 Passengers purchasing a trip with a credit card may be entitled under its conditions of use to a charge-back from their credit-card company should a trip be cancelled because a supplier is unable to fulfil its contractual obligations. For those consumers using their credit card to purchase a trip from a licensed travel agent, this may affect the identity of the party paying out any reimbursement that is due. For those consumers that have purchased directly from an airline, a claim against the credit-card company may be their only route for securing reimbursement. In this latter instance, the consumer may not be eligible for reimbursement of costs incurred returning to Ireland if stranded overseas. Payments with debit cards do not provide the consumer with similar protection.

Consumer buying a package including travel

2.11 A consumer purchasing travel in association with accommodation, facilities or other services should be eligible for protection under the existing travel-trade regime. This extends to consumers purchasing from airlines, coach and ferry companies, provided that the carrier sells their travel services as part of a holiday (in such cases the company's activities cannot be defined as acting as a carrier and they would need a travel agent's or a tour operator's licence).

2.12 Again, the timing of purchases from a licensed travel agent or tour operator may be important in determining whether a consumer is protected under the scheme. If the consumer purchase a trip to a foreign city from a licensed travel agent, and at a later date buys from the travel agent accommodation, the financial protection only relates to the travel element. Had the consumer booked the travel and accommodation at the same time, then all of the costs would be eligible for protection as it would be part of the same package.

2.13 "Dynamic packaging" may result in a consumer purchasing a package, including travel, which affords no financial protection under the current travel-trade regime. Dynamic packaging involves the consumer purchasing the various elements of a trip from different parties in what to the consumer may seem like a single package. For example, a consumer visiting the homepage of an airline's website may be able to follow links from that page to purchase an airline ticket to the destination, train tickets to and from the airport, accommodation, car rental, and trips to the theatre. But if the airline itself is only selling the airline ticket, and all the other purchases are with other companies, then the current travel-trade regime provides no financial protection. The airline, as a carrier, does not need a travel agent or tour operator's licence or a bond to sell tickets on its own services; while the company or companies selling other standalone elements, such as accommodation, would not need to be bonded or licensed since they are not selling their product as part of a package. Currently no airlines in the State are licensed travel agents or tour operators.

Consumer buying a package excluding travel

2.14 A consumer buying a package of accommodation and "other tourist services not ancillary to the accommodation, accounting for a significant proportion of the package" is protected under the existing travel trade legislation in Ireland. This applies to packages that are within the State or outside the State, provided the purchase was sold in Ireland.

2.15 However, there is no protection if the consumer purchases individual non travel services separately, even when these are purchased from bonded package providers, tour operators or travel agents. A consumer just purchasing accommodation would not be covered because it is not part of a package.

2.16 A consumer contracting directly with a number of different providers (dynamic packaging) may not be eligible for the financial protection that the current scheme provides consumers purchasing a package. This may be relevant for consumers purchasing accommodation and other services via the internet. It can also apply for some consumers using a travel agent to purchase a variety of services, if the travel agent processes the payments such that the consumer purchases the items directly from the ultimate provider rather than making a payment to the travel agent.

THE PACKAGE	WHO THE CONTRACT IS WITH	WHAT'S COVERED UNDER THE CURRENT TRAVEL TRADE LICENSING REGIME
Flight from Dublin to London	Travel agent	Would be covered if the travel agent is unable to fulfil its contractual obligations to the consumer. Travel agent would have to make arrangements (possibly an alternative flight) if the airline failed.
Flight from Dublin to London	Airline	No protection
Trip by car from Dublin to London, taking the ferry to Holyhead	Ferry company	No protection
Taking a bus and ferry from Dublin to London	Bus company	Covered if an all-in ticket since the bus company is not acting purely as a carrier, but also as an agent providing a ferry ticket as well as a bus ticket. This is an overseas travel contract plus a bus service.
Taking a bus and ferry from Dublin to London	Bus and ferry company	No protection if two separate tickets. The bus and ferry companies are acting as carriers only.
Flight from Dublin to London and staying in a hotel	Travel agent	Would be covered if the travel agent was unable to fulfil its contractual obligations.

THE PACKAGE	WHO THE CONTRACT IS WITH	WHAT'S COVERED UNDER THE CURRENT TRAVEL TRADE LICENSING REGIME
Flight from Dublin to London and staying in a hotel	Tour operator	Would be covered if the tour operator is unable to fulfil its contractual obligations.
Accommodation only in London	Travel agent	No protection
Flight from Dublin to London and then onto Montreal	Travel agent	Would be covered if the travel agent is unable to fulfil its contractual obligations.
Flight from London to Montreal	Travel agent	No protection, since journey did not originate in the State.
Return flight from Dublin to Malaga	Travel agent	Yes.
Flight from Malaga to Dublin	Travel agent	No protection, since journey did not originate in the State.
Cruise with boarding in Ireland	Cruise company	Yes. The company would need to be a licensed tour operator to sell the holiday.
Cruise with boarding outside Ireland	Travel agent	Yes, it is a package that includes accommodation and travel to the point where the cruise departs.

Table 1: The financial protection Irish law provides travelling consumers

2.17 In all cases, the financial protection provided to consumers under the legislation only arises when a bonded entity collapses and the contracts have not been fulfilled (the money has not been passed to the providers, the tickets have not been received by the consumer, or the traveller is left stranded abroad). The bonding and licensing arrangements reviewed in this paper do not address compensation demands consumers may have because their holiday was falsely advertised in a brochure or the quality of the accommodation was unacceptable. The National Consumer Agency (NCA) deals with such complaints.

Licensing Requirements

2.18 The 1982 Act requires all tour operators and travel agents to be licensed and bonded if they are buying, selling or arranging overseas travel originating within the State to destinations outside the State. The legislation, as amended in 1995, defines tour operators and travel agents for the purposes of the licensing regime; these definitions are included in appendix D. The table below provides more intuitive, but not legally binding, definitions.

Tour Operator	Arranges tours and travel, books hotels and may publish brochures.
Travel Agent	Sells holiday packages, airline tickets, and sea voyages, on behalf of tour operators and transport carriers

Table 2: Who is a tour operator and who is a travel agent?

2.19 In 2007 there were 290 licensed travel agents and 74 licensed tour operators. This compares with 358 licensed travel agents and 75 licensed tour operators in 1997. The number of licensed travel agents has fallen by over 20% in the last decade.

2.20 The legislation provides guidance on the financial, business, bonding and organisational requirements that applicants must meet to obtain a licence from the Commission. To apply for a licence, an applicant must:

a. Submit audited signed accounts within four months of the end of the company's financial year;

b. Provide information on their experience in the travel industry and general business background;

c. Pay a licence fee, which is currently €300 to renew for travel agents and at least €300 for tour operators (more for those with larger licensable turnover);[2]

d. Provide details demonstrating that they have an appropriate bond in place.

2.21 The requirements are the same for new applicants and those renewing their licence, although the Commission currently requires new applicants to provide detailed projections, market research, evidence of share capital, and memoranda of understanding. All licences need to be renewed annually (currently licences expire 30 April for some travel agents, including all ITAA members, and 31 October for tour operators and all other travel agents). Firms seeking a tour operator licence and a travel agent licence need to apply for separate licences, and consequently pay two licence fees.

2.22 The 1982 Act requires the Commission to refuse an application for a licence if it is not satisfied with the applicant's financial, business and organisational resources or that the applicant is a fit and proper person to conduct the business of a travel agent or tour operator.

[2] For more details, see www.aviationreg.ie/Apply_for_a_licence/Default.152.html

The Level of Protection – Bonding Arrangements

2.23 All tour operators and travel agents that wish to be licensed must provide a bond to the Commission. The bonds are required to fund any refunds that may need to be paid if the company goes out of business. Additionally package providers are also required to have a bond in place (a package provider sells a package consisting of at least two of the following components: transport; accommodation; and other tourist services that form a significant portion of the package). The bonds are required to fund any reimbursements that may need to be paid if the company goes out of business. Not all package providers are required to have a license with the Commission as they are not travel agents or tour operators.).

2.24 For licensed travel agents and tour operators the bonds under the 1982 Act can take the form of

- cash lodged with the Commission, or cash deposited in a bank or financial institution registered with the Financial Services Authority in the sole name of the Commission,
- a guarantee provided by a bank,
- a guarantee provided by an insurer, or
- any arrangement or scheme entered into on a collective basis by any group of travel agents, e.g. the ITAA group bonding scheme.

2.25 The amount of the bond is determined by reference to the projected licensable turnover of the travel agent or tour operator. Tour operators must have a bond equivalent to 10% of their licensable turnover, whereas travel agents need to be bonded for 4% of licensable turnover. Legislation specifies these levels.

2.26 When a licence is up for renewal, the Commission assesses the appropriate size of the bond following analysis of the licensable turnover recorded in the last set of audited accounts, audited certificates of licensable turnover during the licence period, and a projection of future licensable turnover. If a firm has a record of sales growth and in some cases, under bonding, the Commission may challenge the turnover projection of the applicant.

2.27 In the event of a travel agent's business collapsing, the bond is used to provide a refund to its customers where the agent did not pass over money that was due to a tour operator or provider as part of the overseas contract. After the agent has passed the money on to a tour operator, the tour operator then carries the risk of fulfilling the contract with the customer. If a tour operator's business failed, then a refund to customers would have to be made out of its bond.

2.28 Six months after ceasing to trade, a travel agent or tour operator will be released from their bonding obligations. The Commission updates its website and issues press releases to keep consumers informed in the event of a tour operator or travel agent's business failing.

2.29 If a bond is insufficient to meet all claims received, customers may have their claim paid from the Travellers' Protection Fund (TPF). This fund, held by the Department of Finance, is administered by the Commission. It was funded by a levy that was applied on every consumer of a tour operator during the mid

1980s. In 1987, the levy was stopped as the Fund had reached a level considered sufficient to provide adequate protection for consumers based on the evidence from past collapses. Since then the Fund has maintained a surplus, and the levy has not been reintroduced. There is currently approximately €6 million in the Fund.

2.30 Package providers that are not licensed need to be insured for all claims in the event that they collapse or have a bond equivalent to either 10% or 15% of turnover, depending on whether or not they are a member of an approved body with a reserve fund or insurance cover.

Enforcement Powers

2.31 If a tour operator or a travel agent trades without a licence, then this is an offence which is subject on conviction to a maximum fine of €100,000 and/or up to five years in jail. The Commission is responsible for enforcing the licensing obligations on travel agents and tour operators. It maintains on its website a list of all licensed tour operators and travel agents, together with the expiry date of each licence, and a list of licences that expired in the previous six months.

2.32 The Commission also investigates complaints received of illegal trading. In addition the Commission has initiated a number of prosecutions in respect of illegal trading. All such prosecutions have been successful. Other investigations have subsequently led to a trader seeking a travel agent or tour operator's licence, increasing the number of customers afforded financial protection under the travel trade licensing regime.

3. POSSIBLE PROBLEMS WITH THE STATUS QUO

3.1 This section considers how well the current travel trade licensing and bonding regime realises the following two goals that might be ascribed to it:

a. To refund consumers' monies paid to their agent or operator and

b. To provide cash to repatriate consumers who are stranded abroad.

3.2 For the purposes of this paper, the Commission has sought to highlight how adequately the current regime might be meeting these objectives. Obviously some parties might want to argue that these are not, or should not, be policy objectives. For example, some might want to argue that the policy objective should focus on financial protection for consumers of "bricks and mortar" travel agents, rather than all members of the travelling public.

3.3 There are two sets of possible problems with the current scheme that the Commission seeks to describe in this section. One set relates to the extent to which the scheme is succeeding in realising its policy goals. Are the travelling public enjoying the financial protection that is intended? The second set relates to whether the policy objectives are being met in a cost effective manner.

3.4 The potential problems identified in this section include those identified by parties responding to CN2/2008.

Who the Scheme Protects

3.5 The current travel trade regime does not ensure that all members of the travelling public are financially protected and not stranded overseas if their supplier is unable to fulfil its contractual obligations. Instead, it is arguably arbitrary in which members of the travelling public enjoy do or do not enjoy financial protection. Table 1 in Section 2 outlines some examples of different ticketing arrangements and who is or is not protected under the current regime.

3.6 If the goal is to ensure that as many members of the travelling public as possible are covered, then the regime would need to be amended to include the following, among other things:

a. customers who purchase travel products from unlicensed traders not bonded overseas;

b. customers who purchase travel products directly from overseas-based traders (except in cases where the travel commences in Ireland);

c. customers purchasing travel only directly from airline, ferry and coach companies;

d. customers that purchase travel only that does not commence in the State;

e. customers of a travel agent that purchases a ticket directly from a carrier using either their credit or debit card rather than paying the travel agent;

f. customers buying domestic travel only; and

g. customers who separately purchase accommodation or other non-travel items relating to their overseas travel plans.

3.7 Some of these discrepancies have become more significant since the legislation was passed, because of changes in the travel-trade industry, including technological advances. For example, travel agents account for a decreasing share of the sales of trips overseas. Since 2003, their share has fallen from over one third to just over one fifth of such sales, as the chart below shows.

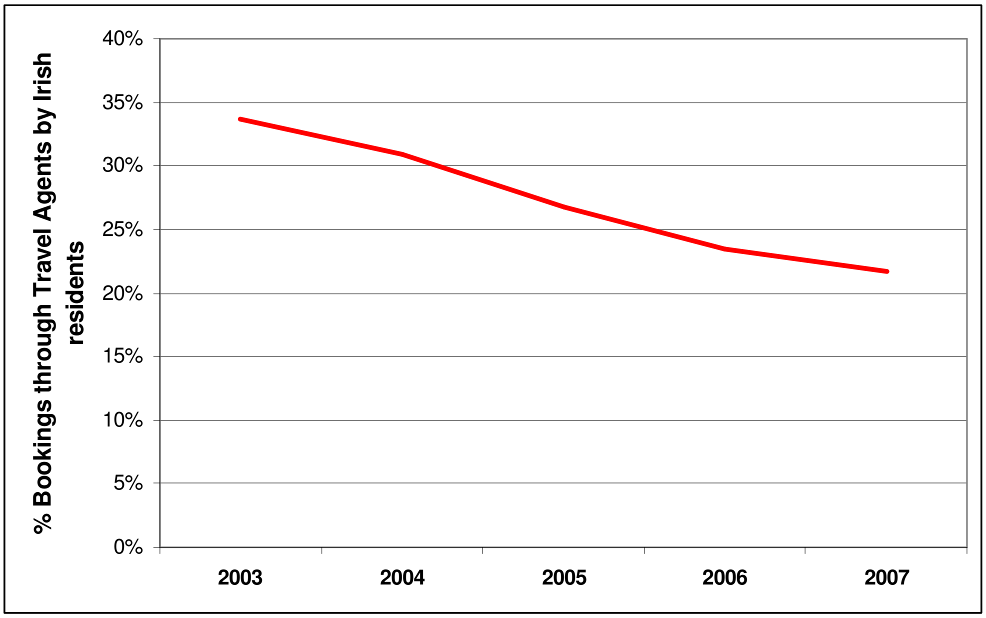

Figure 1: Percentage of international trips booked through a travel agent 2003-07.

Source: Central Statistics Office Ireland.

3.8 A corollary of this is that there may not be financial protection in place for an increasing share of the total number of overseas trips sold in the State. Between 1997 and 2007 tourism expenditure by Irish residents increased, in real terms, by 140%. Yet in the same period, there was only a 31% increase in the amount of financial protection in place to cover the possibility of travel agents or tour operators not being able to fulfil their contractual obligations.

	1997	2007	% Change
Number of licensed businesses	433	377	-13
Total licensable turnover	€1,756m	€2,297m	+31
Expenditure abroad by Irish residents[3]	€2.677m	€6,163m	+140

Table3: Changes in expenditure on travel and financial protection in place, 1997-2007
All € figures in 2007 price terms

Source: Central Statistics Office Ireland and Commission for Aviation Regulation

3.9 The growth of the internet has perhaps been the most important development in the travel-trade industry since the 1982 and 1995 Acts setting up the current travel trade regulatory regime came into place. In 2007 nearly two-thirds of international trips were booked via the internet, as the chart below shows. Internet sales now account for almost three times as many sales as those by "traditional" travel agents.

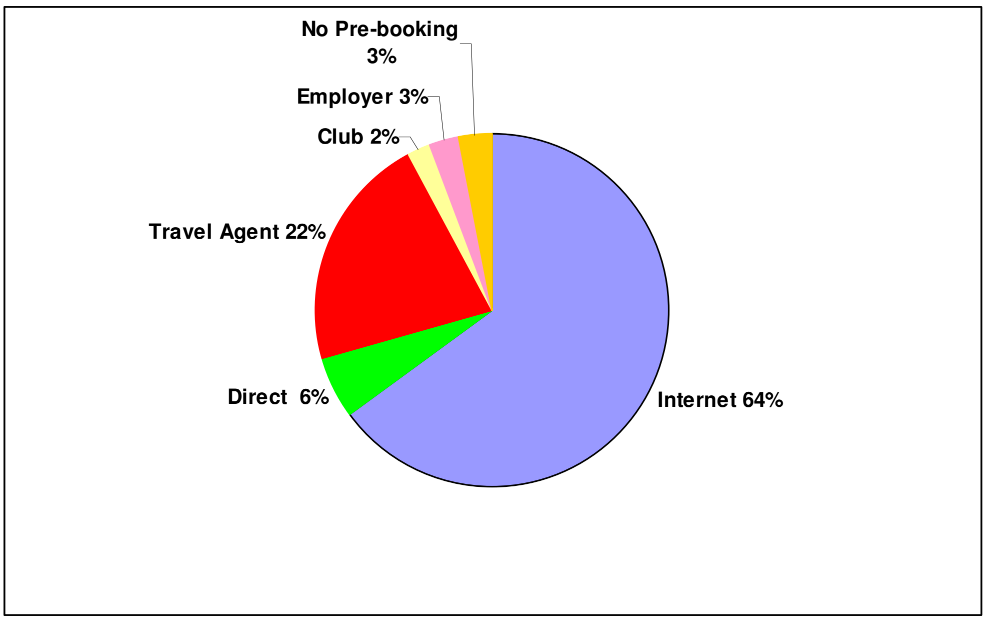

Figure 2: Method of Booking – International travel by Irish residents

Source: Central Statistics Office Ireland.

3.10 The level of financial protection available to customers booking trips via the internet is uncertain. Some such purchases will be with bonded entities and so will be protected. However, the internet has made it easier for carriers and other companies to distribute their own products direct to customers, rather than rely on traditional travel agents. Bookings made directly with an airline or hotel is not covered by the current travel trade regime. It has become

[3] The CSO defines expenditure abroad by Irish residents to include purchases of consumer goods and services inherent in travel and stay.

popular for consumers to arrange their own holidays, book their transport and accommodation separately on-line as opposed to availing of ready made package holidays. Such arrangements do not fit in with the definition of a package holiday specified in the 1995 Act.

3.11 The internet also makes "cross-border shopping" easier: consumers may be purchasing travel products from foreign-based companies. In theory, such companies should be licensed if selling travel originating from the State, but where the company has not sought an Irish licence, the customer will not be protected under the travel-trade regime in Ireland. They may or may not be protected by schemes in place in the country where the firm is based. Whether this affords more or less financial protection than available in Ireland will depend on the where the business is based: the schemes to protect consumers in the event of the closure of a travel business vary by country (the next section provides some examples).

3.12 There may be separate financial protection available to customers purchasing with a credit card which would reduce the benefit of the current travel trade regime. Many purchases are not being made at traditional "bricks and mortar" travel agencies but instead are made via the internet using credit cards. Moreover, many customers using traditional travel agents are using credit cards and thus may enjoy some financial protection irrespective of whether the travel-trade regime was in place. This might reduce the (incremental) benefits of the scheme in any cost-benefit analysis.

3.13 There has been a 16% increase in the number of credit cards issued in Ireland from 2002 to 2006. Figure 3 shows the growth of the number of credit cards in issue over this period. If it is assumed that consumers will continue to increase their use of credit cards to book their travel, the effects of this on the requirement for the Commission's consumer protection and the bonding scheme need to be examined.

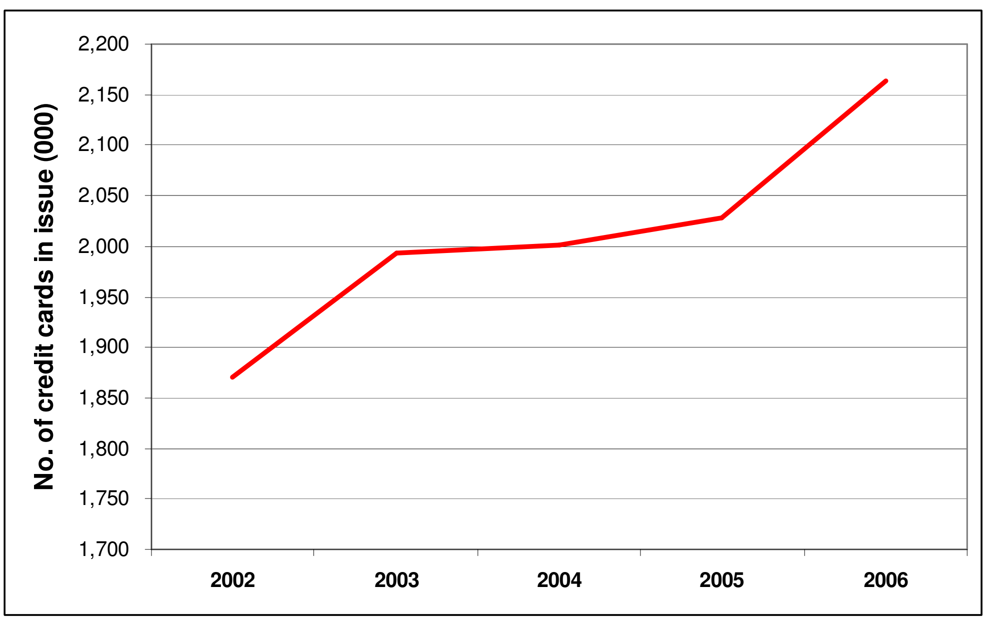

Figure 3: Growth of the number of credit cards in issue from 2002-06.

Source: Statistical Yearbook of Ireland 2006, Central Bank & Financial Services Authority of Ireland.

3.14 More generally, there is a question of how robust the current scheme will be to future developments in payment schemes. The plans for a Single European Payments Area would make cross-border payments easier to facilitate. This might give rise to disputes as to where the payment was made for the purposes of deciding which jurisdiction's rules should apply to determine what financial reimbursement, if any, a consumer was due in the event that an entity is unable to fulfil its contractual obligations.

3.15 In assessing the current scheme, another issue is the extent to which consumers are aware of the financial protection they enjoy under different scenarios. It is perhaps not surprising that consumers are not always aware of when they are covered: there are ongoing debates among policy makers about some of the definitions in the European directives and the Irish legislation. For example, the definition of terms such as "significant" and "consumer" in the Package Holidays Directive may benefit from further clarification.

3.16 It may be that consumers are making travel purchases unaware of the protection available in different circumstances. The Commission's experience following collapses of licensed operators reveals that a number of consumers have not understood whether or not their particular holiday is protected under the current travel trade regime. Such lack of awareness may hinder the ability of licensed and bonded entities to compete: they will incur additional administrative costs, but consumers may not factor in the differing levels of financial protection available when deciding who to purchase from. For the policy maker, there is also the risk that in the event of a collapse of a travel business that is not bonded under the travel-trade regime (for example, a major carrier); there will be many consumers unhappy that they may not be eligible for refund.

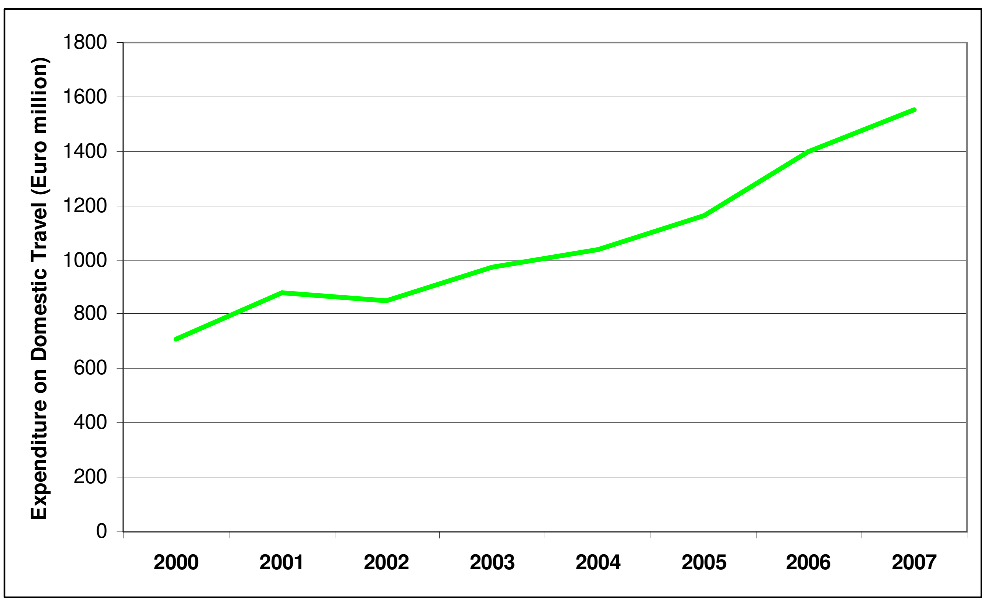

Figure 4: Expenditure by Irish residents on domestic travel (€ million)

Source: Central Statistics Office

3.17 Similarly, there may be many complaints from consumers if they are told that they are not eligible for a refund for domestic travel purchased from a travel agent. Figure 4 shows the increase in Irish people's expenditure on domestic travel from 2000–2007. The amount spent on domestic travel increased almost 120% between 2000 and 2007.

3.18 The current scheme fails to provide financial protection to consumers purchasing through a club, unless each individual in the club makes their payment direct to a licensed agent or operator. This may represent a shortcoming with the current regime. These consumers will not be protected if their club encounters financial difficulties, or if the club has made travel arrangements with a firm that is not bonded.

3.19 Consumers in possession of a gift voucher from a licensed travel agent or tour operator that goes out of business are not entitled to reimbursement if the voucher was not exchanged for travel prior to the cessation of trading.

Licensing Requirements

3.20 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.

3.21 One risk is that if the costs are perceived to be too large, some would-be licensees will decide not to apply. The current regime may be acting as a barrier to entry to the ultimate detriment to consumers because of reduced competition. Alternatively, it may be that some companies choose not to seek a licence to enjoy a cost advantage over their rivals. This does not mean that they are necessarily trading illegally. For example, carriers do not need a travel-trade licence for as long as they only sell tickets for their own transport services. In this example, the existing regime may be creating a distortion in the market, deterring carriers from branching out and offering travel agency or tour operator services. The by-passing of the current regime by a range of travel organisers, such as hotel brokers, results in a curtailment of consumer protection and an uneven playing field in the market, disadvantaging travel agents and tour operators who currently have to be licensed.

3.22 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.

3.23 Currently the 1982 Act defines a travel agent broadly, such that many organisations and individuals require a licence and a bond. School tour groups, parish pilgrimages, club organised events, or individuals acting on behalf of a group of friends should all be licensed if they are arranging and booking overseas travel for a group of people. The administrative costs to such bodies associated with getting a licence and arranging a bond may be prohibitive. There may also be the question of whether policy makers intend for the requirements to extend to such groups, particularly where they are only organising a single trip in the year. Of course any exemption would remove the financial protection consumers now enjoy (to the extent that such bodies do currently comply with the legislation and become licensed and/or bonded). Currently, to be exempt such bodies would have to ensure that individuals all make payments directly to a licensed travel agent or tour operator, rather than giving the money to the club or school to pass on.

The Level of Protection – Bonding Arrangements

3.24 The bond may be a significant cost to licensed travel agents and tour operators licensed under the current scheme.

3.25 To date, all claimants that are eligible for financial assistance following the collapse of a travel agent or tour operator have received the payments due. The current scheme has provided the level of protection that the legislation intended. From 1999 to 2006, 22 travel agents and 6 tour operators failed to meet contractual obligations to their customers and had their bonds called down by the Commission. Until the end of 2007 the total amount required to provide consumer protection for collapsed travel agents was €1,611,970 and for tour operators was €914,085.

3.26 However, the individual bonds held by tour operators and travel agents have not always been sufficient. For a quarter of the collapses in this period, the bonds were insufficient to meet all the claims for financial restitution following the collapse and a draw on the TPF was necessary to ensure all eligible claimants were reimbursed. The TPF provided 20% of the cost of the total amount of consumer protection for failed travel agents and 23% of the cost for closed tour operators between 1999 and 2006.

3.27 Looking forward, it is possible that the current bonding arrangements along with the TPF would not be sufficient to fund all the eligible claims if a large operator (or a number of medium-sized operators at the same time) went out of business.

3.28 These findings might suggest that the current requirements that travel agents have a bond equal to 4% of licensable turnover and tour operators a bond of 10% of licensable turnover are insufficient. Yet a number of travel agents and tour operators argue that the bonding requirements are unnecessarily large. This contention may be consistent with the observation that the current bonding requirements may be insufficient for some travel agents and tour operators.

Travel Agents					
Date	**Business Name**	**Size of Bond (€)**	**Total Claims (€)**	**Claims against TPF (€)**	**Total Claims as % of Bond**
30/09/1999	Austin Porter Travel	30,220	75,699	45,479	250%
12/01/2000	Grainne McDonald Tvl	67,481	7,385	-	11%
12/04/2000	Maple Leaf Tours	2,539	-	-	0%
02/05/2000	LSA Travel	117,121	161,135	44,014	138%
22/06/2000	Group World Travel	231,854	370,262	138,408	160%
11/11/2000	Isle of Man Holidays	69,836	49,194	-	70%
22/06/2001	Bon Voyage Travel	40,468	-	-	0%
17/01/2003	Elite Travel	152,000	113,526	-	75%
24/04/2003	Sunworth	56,000	143,893	87,893	257%
17/06/2003	Fairview Travel	58,400	2,227	-	4%
31/10/2003	Tara Travel	20,000	16,407	-	82%
09/09/2004	Blackrock Tours	108,000	36,767	-	34%
14/10/2004	Castaway Travel	68,000	22,526	-	33%
25/01/2005	Balbriggan Travel	21,912	16,311	-	74%
31/01/2005	T.T.E	56,400	472	-	1%
24/05/2005	Paul Buckley Travel	109,800	53,951	-	49%
12/07/2005	Italiatour	60,000	14,814	-	25%
21/11/2005	Beacon Travel	353,302	213,395	-	60%
06/12/2005	Ballsbridge Travel	196,000	68,712	-	35%
14/12/2005	Finlandia TA	34,000	13,707	-	40%
12/05/2006	Tony Roche Travel	228,000	228,505	505	100%
31/10/2006	Co-operative Travel	196,000	3,082	-	2%
Travel Agent Total		**2,277,333**	**1,611,970**	**316,299**	**71%**
Tour Operators					
12/04/2000	Maple Leaf Tours	152,369	7,987	-	5%
22/06/2000	Group World Travel	29,839	-	-	0%
22/06/2001	Bon Voyage Travel	226,648	328,068	101,420	145%
17/01/2003	Elite Travel	12,105	-	-	0%
12/05/2004	JetGreen Airways	417,800	578,030	160,230	138%
14/12/2005	Finlandia TA	12,000	-	-	0%
Tour Operator Total		**850,761**	**914,085**	**261,650**	**107%**
Total Agents & Operators		**3,128,094**	**2,526,055**	**577,949**	**81%**

Table 4: Claims against bonds and the Travellers' Protection Fund (1999-2007)

Source: Commission for Aviation Regulation

3.29 The diverse range of business models means that a "one size fits all" approach to bonding may be inappropriate. For example, the figure below shows the percentage of annual licensable turnover that different tour operators had collected in the first six months of 2007. Not all tour operators collect a steady stream of income throughout the year. Focussing on annual turnover to set a bonding requirement fails to distinguish between those companies that receive most payments in a short period and those that are receiving payments evenly throughout the year. The former category might give rise to a claim for restitution amounting to close to 100% of their licensable turnover if they are unable to fulfil contractual obligations following their busiest weeks of the year. But setting a bond requirement this high might serve no purpose at other times of the year, or for companies that have a steadier stream of turnover.

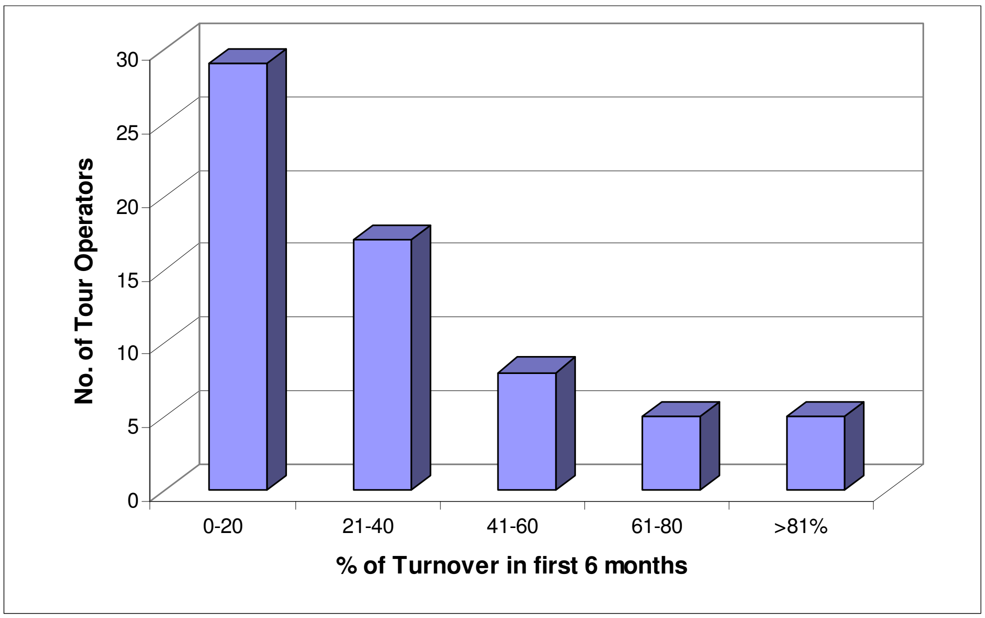

Figure 5: Percentage of licensable turnover tour operators earned in first half of 2007

Source: Commission for Aviation Regulation

3.30 The current bonding requirements also fail to distinguish between those tour operators and travel agents who hold on to their customers' funds for a significant length of time, and those that make a payment to the final provider almost immediately after receiving payment from the customer. Both types of business may have the same annual licensable turnover, but only the former is likely to give rise to significant claims should it be unable to fulfil contractual obligations. As payments systems evolve and it becomes easier to engage in real-time transactions, the focus on annual licensable turnover may become less and less relevant in assessing the potential liability should a bonded company in the travel industry go out of business.

3.31 Credit-card companies may in certain cases offer a refund to consumers if they cannot avail of the service that they purchased, regardless of whether the service provider is licensed or not. In situations where credit-card companies do give a refund by way of chargeback, this means that the financial protection offered by the Commission's licensing and bonding scheme is unnecessary. Alternatively, one may argue it is an additional and alternative source of protection. In general, consumers should firstly seek repayment from its travel agent or tour operator, secondly seek to cancel cheques or seek a credit card call back and then latterly if all else fails make a claim against a travel agents or tour operators bond. It is arguable that if the credit-card companies reimbursed consumers who booked through a licensed agent or operator, than this might suggest that the current bonding requirements (set when the credit-card industry was considerably smaller) are too high.

3.32 A separate problem with the current regime is that it relies on forecasts of licensable turnover for the purposes of determining the size of the bond required. This task has proved more difficult with the growth of dynamic packaging, since there has been an increase in companies' non-licensable activity. The relationship between total turnover and licensable turnover is less predictable than it used to be.

3.33 If the projection by the licensee proves to be wrong, it may be that the tour operator or travel agent had an insufficient bond to meet all claims should it be unable to fulfil its contractual obligations (ignoring for now the problems previously identified with the current bonding requirement concerning the timing of receipts and payments). In these circumstances, there would need to be a draw on the TPF. A final verification of projected licensable turnover can only take place after the licence year ends, which will be too late if the tour operator or travel agent has gone out of business before then.

3.34 Tour operators and travel agents might view it as inequitable that licensed agents and operators must go to the expense of procuring a bond whereas some airlines operating in a similar manner to a tour operator or dynamic package providers do not have to provide such a bond. Technological advances have made aspects of the current travel trade regime obsolete as some businesses legitimately do not need to secure a licence. These businesses do not have to carry the cost of providing a bond or providing protection should they go out of business. This may give such unlicensed agents and operators a competitive advantage.

Enforcement Powers

3.35 Some licensed travel agents and tour operators have on a number of occasions complained to the Commission about unlicensed trading. Currently there are a number of aspects to enforcing the existing regime that render it somewhat difficult.

3.36 Criminal law demands a high standard of proof. The Commission faces a resource constraint. This limits its ability to advertise and increase consumer awareness about who is or is not licensed (and the somewhat arbitrary distinction between what the current scheme does and does not cover is difficult information to disseminate). It is questionable whether it is a good use of resources for the Commission to be investigating and potentially prosecuting small groups organising travel without a licence, such as school tours. It would be prohibitively expensive to monitor all travel-trade activity, particularly now that so much trade occurs via the internet rather than through traditional "bricks and mortar" travel agencies.

3.37 Sales via the internet give rise to another problem, which is the difficulty of taking effective action against companies based outside the State.

3.38 Even for unlicensed traders that have a presence in Ireland, the current enforcement powers may not be sufficient. The threat of being brought to the District Court and having to pay relatively modest penalties if convicted may not be a sufficient deterrent to businesses of a certain size from trading illegally.

3.39 The current legislation specifying the type of information that agents and operators must maintain for the Commission's inspection following closure of a business requires review. Once an agent or an operator goes out of business, the Commission requires information on the number and value of sales plus the payments made to other service providers such as airlines, hotels or operators. The Commission has previously had difficulty obtaining information stored off site by a web provider following a collapse.

3.40 Receipts do not currently have to state whether all, part or none of the product being sold is bonded and therefore providing financial protection. This may hinder consumers' ability to make an informed purchase knowing what elements of their trip is afforded travel protection.

3.41 The number and level of claims may be higher than necessary in some cases because once licensed it is difficult for the Commission to revoke a licence. Events subsequent to the issue of a licence may cause the Commission to conclude that a travel agent or tour operator should no longer be trading, yet currently it is difficult to revoke a licence. To do so, the Commission must give seven days notice and, except in the case of a collapse, the entity has the right to appeal the decision to the High Court.

3.42 The current legislation also provides for limited scope to enforce conditions attached to licences, such as the level of the bond that must be maintained. There is no system of penalties in place for travel agents or tour operators who breach the conditions of their licences (short of revoking the licence).

3.43 A package provider is required to have sufficient evidence of security for the reimbursement of money paid over and for the repatriation of the consumer if they are unable to fulfil their contractual obligations to the customer. For organisers of packages that do not include a travel component (or only have a travel element within Ireland), there is no need for the organiser to have a licence, but they do need to have a bond. The Commission does not administer package provider's bonds if they are not travel agents or tour operators as it has no legal basis upon which to do so.The NCA does not keep a record of the package providers that are bonded in the state, as it is not the licensing authority of package providers. Consequently, there is no ongoing monitoring to ensure that package providers have an adequate bond in place. Moreover, should the package provider go out of business, there is no body tasked with assisting consumers with claiming any monies owed and, should the bond prove to be insufficient, consumers will not be eligible to claim from the TPF.

Summary

3.44 The current travel trade bonding and licensing regime in Ireland is primarily governed by two acts dating back to 1982 and 1995 respectively. The Acts arguably are not suited to more recent and likely future developments affecting the travel-trade industry, such as the growth of the internet and changes in payment systems. The European Commission has itself called for a review of the Council Directive on Package Travel Holidays, transposed in Ireland by the 1995 Act.

3.45 Providers and carriers are increasingly selling directly to consumers rather than through travel agents. Determining who needs what licences or bonding under the current regime is becoming increasingly complex, and there is a real risk that the current scheme is failing to protect all of the travelling public, while at the same time imposing unnecessary costs on some sectors of the industry.

4. TRAVEL-TRADE REGULATIONS OVERSEAS

4.1 The material in this section gives examples of different approaches adopted elsewhere, whether within the European Union or not. It does not attempt to be comprehensive. Instead, its purpose is to identify possible options to consider when assessing whether Ireland should reform its current travel trade licensing regime.

4.2 All EU Member States, including Ireland, need to comply with the Council Directive on Package Travel Holidays. A brief summary of how each Member State has implemented the Directive is included in Appendix E. As is clear from the appendix, there are differences in the way that different Member States have chosen to implement the Directive. Ireland has discretion in designing a travel-trade regime that complies with European directives in a manner best suited to meetings policy goals in the State. Thus there may be potential for Ireland to learn from the approaches in other jurisdictions, whether inside or outside the EU, when considering reforms to its travel-trade licensing and bonding regime.

4.3 The UK recently changed from a licensing and bonding scheme of tour operators similar to the current Irish scheme to a consumer-contribution scheme. The change has increased the numbers who enjoy financial protection. The one consistent feature of the old and new scheme is that consumers of an Air Travel Organisers Licence (ATOL) holder can claim a refund in the event of bankruptcy by a supplier. The changes have sought to reduce the administrative burden on businesses, allowing businesses to apply for a tour operator’s licence without arranging a bond (provided they have been in business for four or more years). The new arrangements also entail new monitoring and risk-analysis techniques which have reduced the demands for returns from smaller businesses, although such firms do have to retain information on sales for a year and be able to provide it to the Civil Aviation Authority (CAA) within a week of any request for such details.

Who the Scheme Protects

4.4 While there are variants of travel trade licensing globally, most schemes aim to provide the consumer with some financial protection in the event of failure. The level and nature of this protection can vary.

4.5 Austria and Finland’s regulations provide protection for package tours even when the trip’s duration is less than 24 hours.

4.6 The financial protection extends to some consumers who have purchased from unlicensed travel agents in Australia. In certain circumstances, such as when the consumer genuinely did not know that the agent was unlicensed, Australia’s Travel Compensation Fund (TCF) may provide reimbursement to the consumer in the event of their travel agent collapsing. Generally, the TCF provides a similar type of financial protection as is offered by bonds and the TPF in Ireland.

4.7 In Hong Kong consumers are only entitled to claim up to 90% of the tour fare paid from a Travel Industry Compensation Fund (TICF) in the event of the collapse of a travel agent’s business. Consumers of packages from travel agents can only make claims up to a set monetary value from the Package Tour Accident Contingency Fund Scheme only if the consumers have properly franked receipts. If a travel agent cancels a package tour less than seven days before the departure date, consumers are entitled to a full refund plus

15% of the price of the relevant package tour within three working days (provided this does not exceed a certain set amount).

4.8 Purchases made directly from air carriers are usually not included within the scope of the schemes. In the UK, the CAA recommends that tour operators purchase scheduled airline failure insurance to provide some financial protection to their consumers.

Licensing Requirements

4.9 Some Member States require that there is a separate licensing regime in addition to being on some form of commercial register. Often licences are for a fixed one year period or variable period lasting no more than 12 months. However, in Bulgaria they are granted indefinitely.

4.10 The information that licensees must provide varies across jurisdictions. In some cases, would-be licensees must provide details on criminal records. In Estonia licensees must provide management accounting information quarterly on the 20th of the month following the end of the quarter.

4.11 In the UK, the administrative burden on licence holders depends on the number of passengers sold travel-based services and how long the firm has been in business. The CAA uses a web-based financial model to calculate various financial ratios for all licence applications to determine whether the company is sufficiently financially viable to receive a licence or not. The CAA may request additional information if necessary before granting a licence. The number of customers that a business has dictates the frequency that the information on the value of their sales must be submitted to the CAA. New entrants must submit a bond to the CAA in order to get a licence. After four years of licensed trading, the businesses are considered by the CAA to have earned their autonomy and are no longer required to have a bond to get a licence, although they must contribute to the Air Travel Trust Fund.

4.12 Outside Europe, Hong Kong also distinguishes between businesses in the travel trade in terms of the licensing requirements. Depending on how the business is registered, audited and/or management accounts may be required. All travel agents who sell inbound and outbound travel must apply for a licence with the Travel Industry Council. To receive a licence for the sale of travel, all agents must pay 0.3% of tour fares to the Travel Industry Compensation Fund and a monthly licence fee of HK$485 (€45)[4]. Each branch office of a travel agent's business requires a separate licence. There are also a set of fees for applications, amendments, duplicates, etc. Firms seeking to renew their licence after it has expired have to make a new application.

4.13 The State of Victoria in Australia requires separate licences for each partner in a partnership, as well as changing additional fees for each branch office a travel agent has. However, entities with an annual turnover of less than AUS$50,000 (€29,313) do not need to be licensed. Businesses selling overseas travel must have a certificate of competency or have acquired at least one year's experience selling international travel. The Business Licensing authority may conduct such inquiries it thinks fit including whether there are criminal convictions. There are prescribed forms for display in premises and classification as to the type of licence held.

[4] Source: www.xe.xcom. All currency conversions were based on rates quoted at 3pm GMT, 28 August 2008

4.14 In Ontario (Canada) travel agents are required to register under the Travel Industry Act 2002 and Ontario Regulations with the Travel Industry Council (TICO). There are specific rules relating to the minimum level of working capital relative to sales; the trust accounts; accounting records; advertising requirements; disclosure requirements and general filing issues. The application process distinguishes between sole traders, partnerships and corporate entities. New applicants must pay a fee of CAN$2750 (€1,779) plus a security deposit of CAN$10,000 (€6,470), have a minimum working capital of CAN$5,000 (€3,235) and have confirmation that they have opened a trust account. Renewal fees are based on a sliding scale of sales values. There is a fee for each branch in addition to the main office fee. TICO spends some of its funds on consumer awareness issues and also on the development of the Minimum Education Standards programme. In the past applicants re-registered every two years – this is now moving to an annual basis.

4.15 Some jurisdictions, including Victoria (Australia), Ontario (Canada), and Hungary demand that at least one-suitably qualified manager is in charge of day-to-day activities. Slovakia requires travel agents and tour operators have three years experience in the travel trade industry or specific training if they are to get a licence. In Greece the Organisation of Tourism, Education and Training (OTEK) provides statutory training and education for travel agents.

The Level of Protection – Bonding Arrangements

4.16 All EU Member States require that in the event of insolvency, there ought to be sufficient funds to repatriate travellers to the point of departure in the relevant Member State or in the case of travel not yet having commenced, a full refund of the package cost. In some jurisdictions, the mandated financial protection is greater than in Ireland. For example, Bulgaria requires all packages to include medical expenses insurance.

4.17 The level of protection required in a financial guarantee varies. Some jurisdictions exempt smaller tour operators from putting in place financial protection: in Denmark, for example, tour operators with a turnover of less than DKK250,000 (€33,520) do not need a bond. The size of the bond in Denmark is larger for tour operators who receive over 50% of their turnover from air charters. Hungary also distinguishes between charter and non-charter travel in its rules for determining the level of financial protection that needs to be in place.

4.18 The form of that the protection takes varies across jurisdictions. Some are more prescriptive than Ireland in determining what form any financial security should take. For example, in Belgium tour operators must take out insurance cover against bankruptcy.

4.19 Perhaps the starkest distinction is between regimes such as Ireland where individual travel agents and tour operators must arrange some financial protection, such as a bond, and other jurisdictions where there is a collective scheme in place. For example, in Australia travel agents do not need to post a bond. Instead, in the event of a collapse, all claims will be paid by the TCF. The TCF is funded by fees collected from all agents. Similarly, in Hong Kong the TICF is used to pay any claims, funded by a levy of 0.3% on all outbound fares (excluding accommodation costs). The balance on the TICF fund at 31 March 2008 was HK$516.48 million (€44.8 million).

4.20 In the UK, if you have booked and contracted with a licensed tour operator for a complete air holiday package or just a flight, ATOL protects you from losing money or being stranded abroad if the tour operator goes out of business.

The £1 (€1.24) fee on the consumers of all tour operators and travel firms selling air holiday packages and flights in the UK is used to replenish the Air Travel Trust Fund which is currently in deficit. The CAA uses some of the funds raised through the £1 levy to purchase insurance that allows it to provide refunds to consumers in the event of a bankruptcy. The £1 levy contributions are only intended to last until the Air Travel Trust Fund has been built up to £250 million (€310,455,408).

Enforcement Powers

4.21 In a number of jurisdictions, there are regulations in place requiring package providers to inform consumers about the level and/or form of financial protection available. Licences must be displayed in Bulgaria. In Austria, tour operators' promotional materials must indicate their insurance company, policy number and a contact that tourist may contact; tickets and documents must provide details of the insolvency protection that is in place. In Belgium the contract must contain details of the insurance company covering the tour operator's trips. German package providers must provide consumers with a copy of their risk coverage certificate.

4.22 Some countries have specific consumer protection agencies that travellers must apply to in case of difficulty, e.g. the Travel Disputes Commission in Belgium, Denmark's Travel Guarantee Fund, and the Konumentverk in Sweden.

4.23 In the UK, if ATOL is not satisfied with either the fitness of the individuals in control of a firm or the financial resources of the firm they can propose to revoke the license. Alternatively they can propose to suspend and revoke. This gives the firm three days to respond with representation in the case of a proposal to suspend and 21 days in the case of revoking. The CAA also requires that full financial information on sales is available for site inspections within three days of notice being given, or made available within five days if information is to be sent to the CAA.

4.24 The level of fines for unlicensed trading varies considerably. In Hong Kong fines can be up to HK$100,000 (€8,672). In Victoria (Australia) the maximum penalty is 500 penalty points (currently one penalty point equates to AUD$110.20 (€64.57)) or 12-months imprisonment.

5. POLICY OPTIONS

5.1 This section looks at some options that might address possible problems with the current regime identified in Section 3. Each option is briefly described, along with an outline of how it will affect the travelling public and suppliers. Possible costs and benefits of making the necessary changes are identified. Important assumptions underlying the analysis, and possible risks, are stated.

5.2 The options have been grouped under the headings used elsewhere in this report – who the scheme protects, licensing requirements, the level of protection, and enforcement powers – depending on what problem the option is primarily focussed on addressing. Of course, in many instances a reform to address concerns about who the scheme protects, for example, is likely to affect who needs to be licensed and what level of protection needs to be in place. It may be that the best reform of the existing regime will entail a selection of options, perhaps changing the scope of who is covered while at the same time altering the licensing and bonding requirements.

5.3 At this stage, the Commission is not endorsing any of the options outlined. Instead, it seeks the views of interested parties on their respective merits. The material that follows does not attempt to quantify the costs and benefits of the various options. Such an exercise may have merit once suitable metrics for measuring the costs and benefits have been developed. Appendix B contains a cost-benefit analysis of the current regime, for which comments are welcome. The preliminary estimates suggest that the scheme costs about €3.5 per trip covered; a satisfactory measure of the benefits has proved harder to develop.

Options to Reform Who the Scheme Protects

Option 1 Extend coverage to cover all trips out of the State

5.4 One option for reform would be to increase the number of travellers covered by the scheme by extending the scope of the regime. The earlier sections of this report drew attention to the fact that the current travel trade regime only applies to a fraction of trips out of the State. The option assessed here would seek to cover all trips out of the State, regardless of whether the purchase was from an agent, an operator, a carrier, a package provider or an internet-based company.

5.5 The obvious benefit of this option is that more consumers would be protected. In 2007, there were 7.8 million trips taken by Irish residents overseas. The CSO data suggest that only 22% of trips are purchased from travel agents, so potentially as many as 5 million additional trips would be covered. The aggregate benefit of such a change depends on the assumed benefit per traveller of enjoying the financial protection that the current travel-trade regime provides.

5.6 A further possible advantage that might be advanced is that it would create a "level playing field" for all firms selling trips out of the State. It would not be just travel agents and tour operators who had to incur the costs of being licensed and bonded. Of course, an alternative way to realise this possible benefit would be to abandon the scheme.

5.7 The change would certainly entail significant additional costs. More businesses would need to be licensed and bonded. For some firms, such as airlines, the costs of getting licensed for consumer-protection purposes may not be too large because they already have to get licensed to operate an airline. But for other firms, licensing could add substantially to the burden of satisfying legal requirements just to trade. Moreover, all the firms would have to satisfy bonding requirements which appear to be the most significant cost of the regime.

5.8 Such a change might also require increasing the funds available in the TPF. Given that the TPF currently seems insufficient to cover the collapse of a large travel agent or tour operator, it would be in even more need of additional funding if the protection was extended. The costs of raising funds to top-up the TPF, perhaps through a levy on trips as was applied in the 1980s to build up the TPF, might need to be considered.

5.9 There are some important practical considerations that might detract from this option. Administering the scheme is likely to be more burdensome, and where consumers had claims for refunds or repatriation it may be considerably more difficult for the Commission to collect the information necessary to verify whether the claim should be met. It is difficult to see how the State could adapt the current scheme to cover dynamic packaging, such as consumers purchasing accommodation direct from a hotel (or even a foreign-based internet seller). Attempting to require airlines not licensed in Ireland to be licensed if they wish to sell airline tickets directly to consumers may contravene existing international agreements.

5.10 As Aer Lingus commented in responding to CN4/2008, there may be merit in not attempting to implement such changes in isolation from various ongoing EU processes, instead favouring consistent pan-European regulation. Of course, this study can help inform what changes, if any, the State should seek in the reviews of the EU regulations and directives governing package travel and travel services.

Option 2: Reduce coverage and rely on credit payment protection

5.11 The number of travelling consumers protected by the scheme might alternatively be reduced. One option would be to exempt from the current licensing and bonding scheme all purchases made with credit cards, a payment system that was in its infancy at the time the scheme was first developed in the early 1980s.

5.12 Clients who paid the travel agent or tour operator with a credit card may be able to claim from their credit-card provider. Thus there may be an element of double bonding as the agent or operator in most cases must provide additional guarantees to their bank in respect of credit-card transactions. Excluding such payments from the scheme would reduce the costs of the current scheme to the travel industry.

5.13 While such a change would not affect the way refunds are currently processed (other than possibly creating greater legal certainty), it is less clear how such an option might deal with travellers who paid with a credit card and are now seeking repatriation. It may be more efficient for a single body to organise repatriation – all travellers would know to deal with the same body, and the option of securing a charter plane requires a critical mass of travellers to be viable. The treatment of expenses claims may also cease to be consistent across all travellers if each credit-card provider was responsible for assessing such claims.

5.14 There may be market consequences from such a change. Travel agents and tour operators may seek to encourage more of their consumers to pay with credit cards. The credit-card companies and banks may increase the charges they levy on travel agents and tour operators.

Option 3: End scheme and rely on market to provide protection

5.15 A final option under the heading of 'who the scheme protects' is to abandon the travel trade licensing and bonding scheme. The costs and benefits of such an option correspond to those

5.16 identified in Appendix B which assesses the costs and benefits of the current scheme.

5.17 This option may not be possible if Ireland is still to comply with the Package Travel Directive 90/314/EEC. There might also be a "time consistency" problem: this option will only realise all the cost savings identified if the State can credibly commit not to refund or repatriate members of the travelling public following the collapse of a travel agent or tour operator. If, following a collapse, the State is likely to intervene anyway it may be more effective to have a scheme in place to regulate the industry and ensure that any refunds or repatriation can be made in an orderly manner.

The Commission seeks views from interested parties on who should be afforded financial protection under the current scheme. As well as comments identifying categories of consumers that should be included or excluded from being financially protected, the Commission would welcome parties' thoughts on the costs and benefits of such changes and any legal or other impediments that might be relevant.

Parties should not feel confined to the three high-level options that the Commission has outlined – **extending protection to all travellers**, **excluding credit-card purchases from the scheme** or **not requiring any protection be available** in the event of a travel agency or tour operator being unable to fulfil its contract with the customer. There may be good reasons to choose a scheme that provides financial protection to something in between 0% and 100% of all consumers travelling overseas (options 3 and 1), while option 2 is arguably more about improving the legal framework than addressing fundamental questions about who should or should not enjoy financial protection under a State-sanctioned traveller-protection scheme.

Options to Change the Licensing Requirements

5.18 The next set of options relate to changing the licensing requirements. Most would reduce the administrative costs associated with getting a licence, an outcome consistent with a number of current government initiatives aimed at cutting "red tape".

5.19 Some of the options might also warrant particular attention given that the EU's Services Directive will soon apply. This Directive requires a reduced compliance burden on businesses, and may necessitate a number of changes to the licensing scheme that applies to the travel trade in Ireland.

Option 4: Remove need to satisfy business credentials

5.20 The current legislation requires all applicants for a licence to prove that they are fit and proper to carry on as a licensed business. Removing this test of credentials could reduce the cost of licensing for all applicants, requiring parties to provide less documentation to the Commission for review.

5.21 At the margin, it is possible that this saving could result in additional firms seeking a licence. The travelling public might benefit from increased competition and/or the fact that some tour operators or travel agents might get a licence and a bond who otherwise would not have. This latter outcome would imply some increase in the number of consumers enjoying the financial protection the travel-trade licensing and bonding regime provides.

5.22 The cost savings from a simplified application may be more than offset by increased costs associated with more claims processing, if the reduced vetting of applicants results in more licensees subsequently running into financial difficulties. If there are additional claims, then the case for increasing the TPF may grow.

5.23 The stand-alone value of licensing may also influence the desirability of this option. It might be claimed that the nature of payments in the travel-trade industry, with consumers purchasing packages from travel agents and tour operators (and handing over the money) makes the industry relatively attractive to rogue trading. A licensing scheme may reduce the potential for such activity, with the obvious benefits to consumers of a reduced chance of falling victim to unscrupulous traders. There might also be a benefit to the industry, since increased confidence that licensed traders are going concerns likely to honour their commitments may give consumers greater confidence to purchase trips.

Option 5: Audited accounts only required from large companies

5.24 Another option to simplify the current licensing regime would be to remove the requirement on all firms to produce audited accounts to get a licence. The Commission is legally bound to review all applicants' audited accounts in advance of granting a licence. For larger firms this is unlikely to be a significant burden since they already have to prepare audited accounts. But for smaller businesses the burden may be greater since they would not otherwise need to produce audited accounts.

5.25 Firms that are only legally required to produce audited accounts because of the travel-trade licensing conditions may account for more than half of all licensees. A large number of firms may enjoy a cost saving from such a change.

5.26 One possible concern is that it might be a false cost saving: a business benefits from the scrutiny of its costs and revenues that an audit provides. Arguably, the merits or otherwise of having an audit for the company's own well being should be left to individual firms to decide.

5.27 For the purposes of ensuring consumers enjoy a suitable level of financial protection, some concerns with abandoning the requirements for accounts are that it may:

a. Increase the likelihood of unsuitable businesses securing and maintaining a licence since there would not be the check associated with an auditor verifying the accuracy of an applicant's accounts; and

b. Hamper efforts to determine the appropriate level of any bond the licensee should have in place. An unintended side effect of removing the requirement for audited accounts may be that a greater number of small businesses collapses, which when they do occur, will require claims being paid from the TPF because of insufficient bonds being in place.

5.28 To address these two concerns, the Commission could require alternative information. However, there is a risk that ultimately the information sought will prove as onerous or more onerous to the applicant as providing audited accounts.

Option 6: Single licence for all travel-trade companies

5.29 This option would end the legal requirement for companies to separately get both a travel agent's licence and a tour operator's licence if they want to conduct both types of business. It could reduce administrative costs for the firms involved as well as the Commission.

5.30 It might also save these firms some costs associated with arranging bonds, since they would only need a single bond. The appropriate size of the bond would need to be carefully considered if the revised bonding requirements are to retain the levels of financial protection provided by the current scheme which requires travel agents' bonds equal to 4% of licensable turnover and tour operators' bonds equal to 10% of licensable turnover. However, it is likely that the appropriate size of a bond would be smaller than is currently the case.

5.31 There are 30 businesses that currently have both an agent's and an operator's licence. Whether the change in these rules would encourage other travel agents or tour operators, who currently only have an entitlement to operate as just a travel agent or just a tour operator, to expand their business is unclear.

Option 7: Licences granted indefinitely

5.32 Ceasing the requirement for firms to renew their licences annually would reduce the administrative burden. Arguably the current requirement to renew annually is of limited benefit, especially for those firms where most of the details relating to the licence are unchanged from the previous year. The Commission, in its cost-benefit analysis, assumed that 96% of travel agents and 87.5% of tour operator licence applications are renewals, which would imply that removing the need to renew annually would save a lot of firms some administrative time.

5.33 The size of any savings would depend on whether the end of an annual renewal process also meant an end to annual checks on the bonding arrangements. If the Commissions ceased to assess annually the adequacy of the licensee's bond, there would be almost no licensing costs after the initial licence was granted. But without annual monitoring of bonding arrangements there would be the risk that over time some licensees will cease to have adequate bonds in place. Consumers might enjoy less financial protection than is currently the case. Claims against the TPF may become more common following collapses because of relatively smaller bonds than are currently in place.

5.34 No annual monitoring would also mean that there was only a single check that licensees met fit and proper standards. Some of the risks identified under the option to abandon the need to satisfy business credentials (option 4) might arise.

5.35 A more modest change than this option would be to require licence renewals but less frequently than annually. Rather than granting indefinite licences, it might be that the trade-off between the benefits of ongoing monitoring and the administrative costs of a renewal application leads to the conclusion that the there should be renewals but less frequently than annually.

Option 8: Accept licences from other jurisdictions

5.36 An option for reform could be to accept licences from other jurisdictions and remove the requirement for such businesses also to obtain a licence in Ireland. This would save licensing costs for global operators in the Irish market that are currently licensed to sell foreign travel in other countries as well.

5.37 How satisfactory this option is, in terms of ensuring that there is no detriment to Irish consumers from reduced financial protection, would depend on how similar other jurisdictions' licensing requirements are to Ireland's. To the extent that they are the same (or more onerous), the change should not adversely affect Irish consumers.

5.38 Perhaps the biggest problem with this option would be the monitoring required. There would need to be a decision about which jurisdictions' licences to accept, and even after the initial list of countries was drawn up the regimes in those jurisdictions would need to continue to be monitored to ensure that there were no changes that gave rise to concern that a foreign licence was no longer a suitable substitute. The Commission would also need to monitor individual firms to ensure that foreign licences are renewed at the appropriate dates and that more generally the Commission is notified of any material developments, such as revocation of a licence.

5.39 The costs the Commission would incur monitoring foreign licences would need to be recovered. Under the Commission's current funding arrangements, such costs would be recovered from fees collected from Irish-licensed travel agents and tour operators. The fairness of such a scenario may be questioned, particularly since it is the larger firms who are more likely to have foreign operations and thus realise cost savings.

The Commission seeks views from interested parties on what reforms, if any, should be made to the travel trade licensing regime. Five options, along with an outline of some of the major benefits and drawbacks associated with each, have been identified –

ending the need to satisfy a fit and proper test,
ending the need for audited accounts,
a single licence for a travel agent and tour operator,
licences to last indefinitely, and
acceptance of overseas' licences.

All of the options identified would likely entail reduced administrative costs, but would require changes to the existing legislation. If there are other options that parties think have merit, including ones that might increase the licensing burden, the Commission would welcome such suggestions.

The Commission is separately reviewing what changes it might make to its processes to reduce the costs of licensing without a change in the legislation. While the Commission welcomes comments on how the administrative burden under the existing regime might be reduced, it would prefer responses to this consultation paper to concentrate on options requiring a change in the legislation.

Options affecting Financial Protection & Bonding Arrangements

5.40 The Commission's preliminary estimates of the costs of the existing travel trade licensing and bonding regime suggests that the majority of the costs of the scheme relate to the bonding requirements. The scope for cost savings is therefore greatest here.

5.41 At the same time, the most obvious benefits from the existing regime – the effective insurance against being left stranded overseas or not being refunded if a consumer's travel agent or tour operator collapses – depend, at least currently, on the bonding regime. The scope for undermining (or improving) the financial protection that is the primary rationale for the existing regime is consequently also greatest when reviewing possible reforms of the bonding arrangements.

Option 9: End bonds and rely on TPF funded by fee per trip

5.42 The most radical overhaul of the existing regime would be to cease requiring all travel agents and tour operators to individually arrange a bond. Agents and operators would no longer have to arrange a bond equal to a percentage of their licensable turnover. In the event of a collapse all claims would be paid from the TPF, rather than the current situation where claims are first against the bond and any excess paid from the TPF. Such a reform would require the TPF to increase in size, presumably funded by a levy on consumers of purchases covered by the regime.

5.43 The total level of bonds arranged in 2007 was €137m. To date, there have never been claims in excess of €2m following the collapse of a bonded travel-trade company. In this decade bonds of around €1b will have been arranged, yet claims to date have totalled less than €5m (or 1% of this bond total). Most of the bonds arranged have ultimately proved redundant, and have merely imposed a cost on a company that has managed to continue trading or close its business without leaving consumers stranded overseas or in need of a refund. A counter to this argument would be that these "redundant" bonds are no different to other insurance products where no claim was ultimately made (with the benefit of hindsight, many motorists did not need to arrange a motor insurance policy, but the State still requires all motorists to take some insurance). Nevertheless, the Commission's current estimates suggest that the annual costs of arranging bonds totalling €137m may exceed the total annual claims by a significant margin, suggesting the potential exists to identify a cheaper insurance scheme.

5.44 To make this option feasible, the TPF is likely to need regular funding, at least in the near term. Interest earned on the TPF, given its current size, may not suffice to pay out all the claims for refunds and repatriation likely to arise in a year. The target size for the TPF following such a switch would depend in part on forecasts of likely annual claims and in part on decisions about how to handle possibly large claims following the collapse of one of the bigger tour operators or travel agents. It may be more cost effective to seek cover from the insurance industry to fund any claims following a single collapse in excess of a certain amount (say €2m). Such an arrangement would require annual premium payments to the insurance industry, to be funded out of the TPF or from contributions. The willingness of the insurance industry to provide such cover, and the costs and conditions that might apply is uncertain and may vary over time.

5.45 There are some drawbacks to such a change. Currently, bonding costs for individual travel agents or tour operators partly reflect the risk of collapsing – firms in a precarious financial position are likely to find it more expensive to arrange a bond. The costs of arranging a bond may ultimately deter some of the less financially secure firms from seeking a licence. Prevention of firms with marginal business cases from trading may be better than the "cure" of paying out claims as these firms finally collapse. It might also be cheaper for those firms in better financial health to arrange their own bond than have to fund a scheme in some way that does not distinguish between those firms exceedingly unlikely to give rise to claims and those that are more likely to do so.

5.46 The absence of a bond will also reduce the penalty to firms that collapse of leaving consumers without a holiday or stranded overseas. Currently, firms have the incentive of getting their bond returned if they organise their affairs and run down their business in an orderly fashion so that there are no claims against their bond.

5.47 The costs of arranging and overseeing any system implemented to collect funds to top up or maintain the TPF also need to be factored into the analysis.

Option 10: Only require entrants to have bonds, rely on TPF otherwise

5.48 Requiring new entrants to the travel-trade industry to have a bond might be one way to address the concern that riskier businesses should bear the costs associated with the risk that they will collapse leaving consumers with claims for refunds or repatriation. The rationale for only placing a bonding requirement on new entrants would be that, on average, they are more risky business propositions.

5.49 This is an imperfect option that seeks to design a more targeted approach to ensuring consumers enjoy financial protection. Not all entrants will be riskier than existing firms in the travel trade. However, it is an objective way of deciding who needs an individual bond and who does not, saving the licensing body from having to decide which firms are the most risky and in need of an individual bond. If the

Commission were required to decide who had to arrange an individual bond, its decisions may have a significant bearing on the competitiveness of travel-trade firms and may be subject to legal challenge. Those required to arrange a bond may find banks and insurers unwilling to assist given that the Commission has effectively signalled it has reason to suspect the firm is riskier than most in the sector.

5.50 An obvious concern with this option of targeting new entrants is that it creates a barrier to entry. If entry is deterred, the benefits that might arise from increased competition will be denied consumers. Alternatively, entrants may choose to circumvent the bonding requirements by structuring their business such that they do not qualify as travel agents, tour operators or package providers. In this case, consumers of such firms will be denied (legally) any financial protection that the current travel trade licensing and bonding regime provides.

5.51 Other than in its treatment of new entrants, the analysis of this option is similar to the preceding option to abolish the need for individual bonds.

Option 11: Require escrow accounts instead of bonds

5.52 An alternative to requiring parties to hold bonds, or relying on a TPF to pay out claims, would be to require travel agents and tour operators to open dedicated escrow accounts to handle all payments received from customers. All payments made by customers to a travel agent or tour operator would be placed in a bank account managed by the bank. Tour operators and travel agents would not have access to the money until the customer's contract has been fulfilled, i.e. the customer has returned home.

5.53 Such a proposal would have implications for cash-flow management. Tour operators and travel agents could not rely on forward booking by customers to pay creditors, so would need separate working capital. This may create problems for some tour operators and travel agents. For the purposes of consumer protection this may be desirable, since it is travel agents and tour operators who rely on advance payments to fund other debts due that are those most likely to be unable to fulfil their contractual obligations to customers.

5.54 The scheme would make claims handling much easier. Customers yet to travel would have their money returned from the escrow account by the bank. For those customers requiring repatriation, their payments held in the escrow account could be used in the first instance, although there may need to be additional funds in place since the costs of repatriating people often costs more than the customer originally paid for travel when purchasing the trip. Furthermore, a reserve fund such as the TPF may be necessary to help out customers in need of a refund or repatriation if the travel agent or tour operator had failed to operate an escrow account properly; the fact that the travel agent or tour operator would be acting illegally in this case would not provide immediate relief to a customer wishing to return to Ireland.

5.55 At this stage, it is uncertain how willing banks would be to provide such accounts to travel agents and tour operators. Even if they were willing to offer such accounts, it may be that the proposed management fees they would want to charge would be prohibitively expensive.

Option 12: Have bonds depend on past year's licensable turnover

5.56 If it is decided to retain the requirement for firms to make individual arrangements (including the decision to join a collective bond scheme) to ensure cash is in place in the event of their collapse, then there are a number of possible reforms that might represent an improvement on the existing scheme. One option is to base the amount of the required bond on the previous year's licensable turnover, rather than rely on projected turnover.

5.57 This option is motivated mainly by administrative considerations, rather than seeking to enhance the financial protection or reduce the costs of bonding. Nevertheless, it may realise some cost savings if the administrative burdens are reduced.

5.58 Under the current legislation the calculation of the amount of the bond that all applicants must post is based on a projection of the next year's licensable turnover. There will be forecast errors. Currently firms that under-project benefit from the savings arising from having to arrange a lower bond. It is questionable whether travel agents or tour operators should enjoy a cost advantage over their competitors merely because they under-project turnover more than their rivals. To mitigate the incentives to under-project, licensees must provide auditor's statements certifying the reasonableness of their projection.

5.59 The costs of providing forecasts of demand and having an auditor and the Commission review such forecasts could be avoided if instead the bond depended on the previous year's turnover. However, the savings may not be so great since the Commission would still need to satisfy itself that it should grant the applicant licence, including evidence that the business was fit to operate in the forthcoming year.

5.60 Such a change may lead to a reduction in the total level of bonds, at least in periods where aggregate licensable turnover is projected to grow year-on-year. However, arguably it is during periods when licensable turnover is expected to decline that there are most likely to be collapses. Bonding costs would thus be lower than under the current arrangements during expansionary periods, while there would be an in-built bias in their calculation such that during recessionary periods bonds would be relatively higher and thus better able to meet any claims should a collapse occur.

5.61 New entrants would of course have no previous licensable turnover, so they would not need to post a bond. There may be a case for refinements to relying just on past turnover so as to avoid this.

Option 13: Alter percentages of licensable turnover to be bonded

5.62 Changing the percentage of licensable turnover that has to be bonded may have a material affect on the costs of a bond. Travel agents and tour operators would benefit if the percentages of licensable turnover that had to be bonded were reduced from 4% and 10% respectively.

5.63 As shown in Section 3, the current level of the bonds has not always been sufficient following a collapse to meet all claims. If the goal was to ensure that bonds alone were sufficient to meet claims, then based on the evidence this decade the bonds would need to rise significantly as a percentage of licensable turnover. It would have taken bond levels equal to about 10% of licensable turnover for travel agents and 15% for tour operators to meet all claims between 2000 and 2007 without drawing against the TPF. Such a change would represent a significant increased burden on travel agents and tour operators, and in many cases would be disproportionate relative to the likely level of claims that there might be against their business in the event of collapse.

5.64 An alternative is to reset the percentages based on the average experience to date, recognising that the TPF exists and was always intended to cover claims should a collapse occur in the worst weeks of the year. The experience this decade suggests that the 10% level of licensable turnover used to determine bonds for tour operators has corresponded to the average level of claims following a collapse. But for travel agents, the data show that bonds equal to 3% of licensable turnover would have met the "average" claim against travel agents that collapsed this decade. Of course, had the bonds been lower there would have been more claims paid from the TPF. The fact that following some collapses the bond is more than sufficient to meet claims has no bearing on the size of the TPF – remaining funds in the bond are returned to the firm rather than used to top up the TPF to cover for those collapses where the bond alone was insufficient. To reduce the percentage of licensable turnover that travel agents had to be bonded for in this manner would increase the need to collect funds to top up the TPF.

5.65 Moreover, experience this decade may not correspond to the likely level of claims that might be experienced over a full business cycle. Evidence available from the UK, which has data on the number of company insolvencies back to the early 1980s, suggests that the number of insolvencies economy-wide is inversely related to GDP growth.

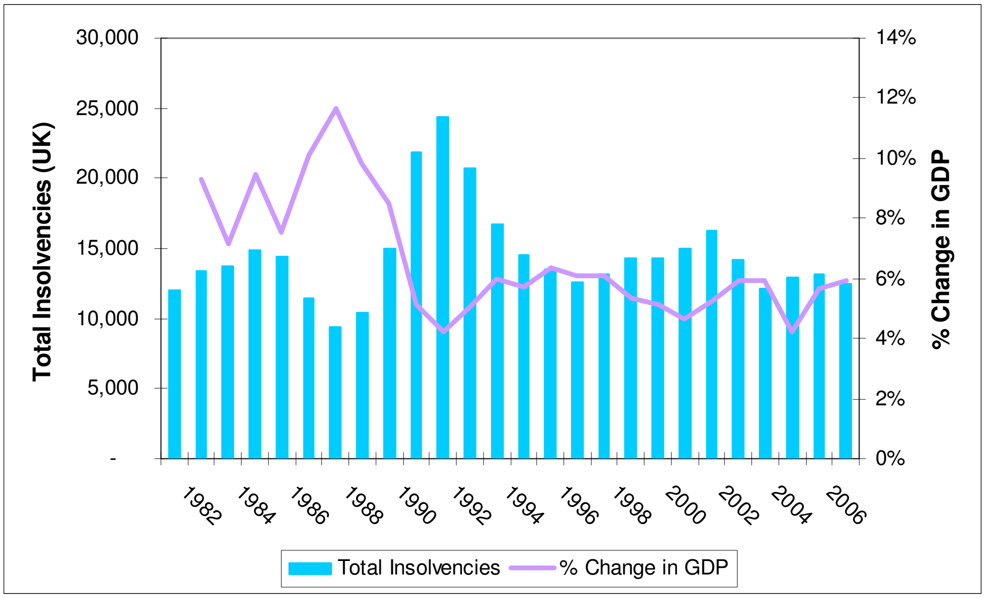

Figure 6 : UK insolvencies and GDP growth

Source: UK Office for National Statistics

Option 14: Assess bonding requirements on a case-by-case basis

5.66 Instead of applying an across the board cut (or increase) to the level of individual bonds that firms must arrange, by altering the percentage of licensable turnover that must be bonded, it might make more sense to determine this percentage on a case-by-case basis. This might allow the level of the bonds to better match the risks of possible claims against that bond, potentially lowering the level of bonds, and therefore costs, for those businesses least likely to generate lots of claims in the event that they were to collapse.

5.67 In many of the collapses this decade, but not all, the level of the bond has proved to be larger than the level of claims and associated administrative costs. It is possible that the collapses occurred at an opportune time in the year, or that these travel agents or tour operators' arrangements were such that the bond was always going to be more than sufficient. For example, a travel agent only selling to corporate clients who pay in arrears is unlikely to collapse with lots of customers seeking refunds.

5.68 A more tailored regime arguably increases consumer protection, since each firm's bond will be set at a more appropriate level given the risks of claims arising under its business model. For many travel agents and tour operators, it may reduce the costs associated with bonding.

5.69 There are possible shortcomings with the scheme. First, it may significantly increase the costs of administering the regime, since the Commission would need to develop a more detailed understanding of each firm's cash-flow patterns to determine the appropriate level of a bond. Moreover, after granting a licence the Commission would need to be satisfied that the licensee's business model did not subsequently change in a manner that was inconsistent with the risk assumed when setting the level of the bond.

5.70 The challenge of assessing what the likely level of claims will be in the event of a collapse will not be easy. One imponderable will be determining how the company is likely to respond should its financial situation deteriorate, since in such circumstances its current cash-flow management may change from its normal practice. Claims will arise following a situation where the firm got into financial difficulties, so those are the scenarios that should guide what the size of the bond should be.

5.71 The Commission would have to set out clear and transparent reasons for increasing the size of the bond for an individual business to prevent any accusations of discriminating unfairly among businesses. In practice, it might be that the Commission ends up setting bond levels for firms according to a set of guidelines, rather than assessing on a case-by-case basis. There may be a natural tendency to avoid detailed case-by-case risk assessments in favour of general rules. This may still be attractive, since it would be easier to adapt the rules as industry developments reduced the appropriateness of previous approaches than needing legislative changes as is currently the case.

Option 15: Redefine licensable turnover

5.72 Rather than granting the licensing body discretion to set the level of the bond for each travel agent and tour operator, another option for reforming the current scheme would be to alter the definitions of licensable turnover in an attempt to better align the size (and therefore costs) of bonds with the likely level of claims in the event of a collapse.

5.73 The Commission is aware of a number of possible changes that might be made.

a. Exclude travel agency sales within the one business from the tour operator’s licensable turnover. Currently a firm that is both a licensed travel agent and a licensed tour operator must get bonds based on licensable turnover for the travel agency business and licensable turnover for the tour operator business. Where, acting as a travel agency, it sells a holiday provided by its tour operating business, the turnover is included to calculate the bonds of both the travel agency business and the tour operating business. Yet in practice, the consumer who bought the package will only ever have one claim against the company.

b. Exclude sales that are paid in arrears from the calculation of licensable turnover. If a travel agent and a consumer have an agreement only to pay for the trip after it has been completed, there will not be any claims for refunds.

c. Exclude sales executed through systems that require immediate onward payment of the consumer’s cash from the travel agent.

d. Exclude sales where the travel agent or tour operator places the funds in a client account.

e. Exclude turnover for which a claim would be covered by a bond in place in a foreign jurisdiction. Obviously, this would only apply to larger operators bonded outside Ireland as well as in the State. This particular tweak to the measurement of licensable turnover would require familiarity with the rules in other jurisdictions governing bonds and who could claim in the event of a collapse. As with the option to exempt foreign licensees to need a licence in Ireland, there would be a need to monitor that the bond was maintained and that the rules governing the bond did not change, if the goal of financial protection for consumers was not to be jeopardised.

5.74 An alternative to excluding such funds from the calculations of licensable turnover would be to weight such revenues less than the revenues from other types of sales for the purposes of determining the required size of a bond. For example, consider a tour operator who projects turnover of €300, a third of which would be covered by a bond overseas. Suppose turnover covered by a separate bond was treated as half as risky, i.e. given a weight of 0.5. Then the bond that the tour operator would have to pay would be €25 (10% of €200 plus 10% of 0.5*€100).

5.75 Such a reform would increase the number of forecasts necessary, with the added administrative burden for all parties in providing and analysing the additional forecasts. There is also the possibility that events will transpire such that the forecasts prove to bear little relationship to the way that the company's business operated in the year to which the bond applied. For example, if a firm started requiring a major customer to pay in advance rather than arrears the potential claims for a refund in the event of a collapse would suddenly be much larger than was anticipated at the start of the year when the bond was set.

The Commission seeks views from interested parties on what reforms, if any, should be made to the travel trade bonding regime. To help parties, the Commission has outlined seven possible options for reforms, along with some of the major considerations

The first two options look at **ceasing to require individual firms to be bonded and moving to a collective scheme**. They differ only in that one option would **still require new entrants to have a bond**.

Another option would end bonding requirements, and instead **require all travel agents and tour operators to open escrow accounts** to hold customer monies.

The latter options focus on reforming the current bonding scheme. They vary from a largely administrative change (**ceasing to base the bond level on projected licensable turnover**) to attempts to set bonds at a level more commensurate with the likely risks following a collapse, either by **altering the percentage of licensable turnover that needs to be bonded**, **redefining licensable turnover** or by **determining bonding requirements on a case-by-case basis**.

Options to Change Enforcement Powers

5.76 The current scheme needs to be enforced. This entails costs. However, if there is to be an incentive for firms to be licensed as travel agents or tour operators, then there needs to be an effective deterrent to unlicensed trading. This section looks at how changes in the law might either allow the Commission to administer the existing regime more cost effectively or deter unlicensed trading.

Option 16: Increase penalties for unlicensed trading

5.77 Increasing the penalties for unlicensed trading (particularly in the District Court) may deter such activity. The current penalties were set at the time the legislation was drafted, and consequently may no longer be sufficient to act as a deterrent to firms engaged in unlicensed trading.

5.78 If increased penalties did result in reduced unlicensed trading then fewer consumers would be purchasing trip overseas for which no financial protection applied. Of course, there would still be plenty of instances of firms selling trips overseas legally without needing a travel agent or tour operator's licence and for which no financial protection applies, for which there would still be no financial protection.

5.79 The Commission's enforcement costs may fall over time, should the higher penalties reduce the inclination of firms to act as unlicensed travel agents or tour operators.

Option 17: Devolve enforcement to local authorities

5.80 This option would give local authorities the power to enforce compliance with the travel trade regulations, including bringing any prosecutions. Currently the Commission has sole responsibility for enforcing the legislation.

5.81 The size of any penalty ultimately only matters if a successful prosecution for unlicensed trading is secured. This requires effective policing of the existing rules. Arguably local authorities are able to monitor activities in their areas better than the Dublin-based Commission.

5.82 As with the option of increased penalties, the hoped-for benefits of this option are fewer consumers purchasing holidays from unlicensed travel agents and tour operators and thus not enjoying financial protection. However while the transfer of enforcement powers to local authorities may reduce the number of 'bricks and mortar' businesses from illegally trading; the local authorities are unlikely to be any more successful than the Commission at preventing illegal trading on the internet. Arguably, the latter form of trading is of greater significance going forward.

5.83 This option could increase the amount spent on enforcement by not just the Commission, but the local authorities who will need to train some of their staff to be familiar with the travel-trade regulations (which as Section 2 perhaps demonstrates, are not always simple to understand).

Option 18: Exclude schools, parishes, clubs from needing a licence

5.84 The final option instead would reduce enforcement costs (and potentially other costs) by redefining who needs to get a licence so that bodies such as schools, parish churches or sports clubs organising a trip do not need a licence.

5.85 Currently no such groups are licensed as travel agents or tour operators, so any overseas trip they would like to undertake needs to be arranged in a manner that ensures they are not, perhaps inadvertently, trading illegally as an unlicensed travel agent or tour operator. It is questionable whether the costs of complying with the existing legislation and the potential costs of the Commission of enforcing the rules in the event of non-compliance are warranted in the case of some of these groups.

5.86 Exempting such groups from the legislation would reduce the numbers of consumers afforded financial protection under the travel-trade regime. This may not matter unless it is thought that schools or church parishes, for example, are likely to be unable to meet their financial commitments after receiving payments for foreign travel.

5.87 Perhaps the main concern is that in practice it will be difficult to re-define the legislation in a manner that does not create an "uneven playing field". For example a sports club that has successfully organised a foreign trip for its members may expand the number of trips it organises each year until it gets to the point that this becomes its main activity and it is effectively a tour operator. But if sports clubs were exempted, then it would have an advantage over other tour operators of not having to incur the costs of getting licensed and bonded.

The Commission would welcome any suggested changes to the way the current legislation is enforced. The options that the Commission has outlined are, in two cases, motivated by a desire to make enforcement more effective so that it becomes harder for unlicensed firms to act as travel agents or tour operators. They would seek to achieve this by **increasing the level of fines for illegal trading** or by **devolving enforcement to local authorities** better able to monitor activity in their regions than a Dublin-based office. The final option instead suggests a way that the regime might better focus resources, **exempting bodies such as schools** that would not ordinarily be considered to be travel agents or tour operators.

Summary

5.88 The options for reform of travel trade licensing are listed in Annex F. Interested parties are asked to send in proposals or comments on these options plus suggestions on the reform of the travel trade regime.

6. RESPONDING TO THIS CONSULTATION PAPER

6.1 The Commission welcomes responses to this consultation paper from all interested parties. Responses should be titled "Travel Trade Review".

6.2 The deadline for responses is 31 October 2008. They should be sent to

Cathryn Geraghty
Commission for Aviation Regulation
3rd Floor
Alexandra House
Earlsfort Terrace
Dublin 2.

1) By email to info@aviationreg.ie

2) By fax to 00-353-1-6611269

6.3 If submissions contain confidential material, it should be clearly marked as confidential. The Commission is subject to the provisions of the Freedom of Information legislation.

6.4 The Commission will place all submissions received on its website. It may also include the information in reports and elsewhere as required. Ordinarily, the Commission does not edit this material. Any party submitting information to the Commission shall have sole responsibility for the contents of such information and shall indemnify the Commission in relation to any loss or damage of whatsoever nature and howsoever arising suffered by the Commission as a result of publication or dissemination of such information either on its website, in its reports or elsewhere.

6.5 While the Commission uses best endeavours to ensure that information on its website is up to date and accurate, the Commission accepts no responsibility in relation to and expressly excludes any warranty or representations as to the accuracy or completeness of the contents of its website.

A. RESPONSES TO CN2/2008

The Commission received responses to Commission Notice 2/2008 from the following parties:

Aer Lingus
Brittany Ferries
Club Travel
Hilary Murphy Travel
Irish Tour Operators Federation
Irish Travel Agents Association
Maurice Sweeney
Millfield Travel Management Consultants

All responses are available on the Commission's website (www.aviationreg.ie).

B. COSTS AND BENEFITS OF THE CURRENT REGIME

B.1 This appendix develops a framework for conducting a cost-benefit analysis of the current travel-trade licensing and bonding regime. The exercise helps to identify possible approaches (and their shortcomings) to identifying key costs and benefits. The estimates developed can help assess the different options for possible reform of the current travel-trade regime. The exercise requires a number of assumptions, some more heroic than others. Constructive comments on how the estimates might be improved are welcome, including identifying costs or benefits not currently measured.

B.2 The estimates attempt to measure the incremental costs and benefits that the travel trade regime generates. If a licensee would have to incur a cost even in the absence of the travel-trade regime, to produce audited accounts for example, then the fact that the licensing regime requires audited accounts is not a cost (to the extent that the contents of those accounts correspond to what would be produced in the absence of the travel trade licensing and bonding regime).

B.3 The estimates focus on the costs (or benefits) of the scheme, which is not the same as the costs (or benefits) that individuals incur. For example, a travel agent paying a licence fee to the Commission is a cost to the travel agent, but not a cost of the scheme. The cost of the scheme is what it costs the Commission to administer the licensing regime and what additional resources the travel agent needs to employ to comply with licensing requirements, including submitting materials.

Costs of current travel trade regime

B.4 The direct costs of the travel trade regime are incurred by the Commission and the licensed travel agents and tour operators. The Commission estimates that these costs may be €6m per annum, with the costs associated with posting a bond accounting for the majority of these costs.

B.5 Its 2007 Financial Statements record total expenditure by the Commission of €652,867 on travel-trade licensing and bonding, including staff costs.

B.6 The Commission estimates the total cost to the industry of the existing regime is just under €5.5m (this excludes licence fees paid to the Commission). To estimate the costs to the licensed business, certain assumptions have been made about the costs of filling in the application form, retaining an auditor, and receiving memorandum and articles of association plus company registration information from the Companies Registration Office.

B.7 The administrative costs associated with completing and submitting forms to the Commission are based on an estimate of the amount of staff time required to complete the forms multiplied by salary costs. Staff costs are assumed to be €18.79 per hour, which corresponds to the average hourly earnings reported by the Central Statistics Office (CS0) in 2007.

B.8 For companies seeking a *new* licence, the Commission has assumed applicants spend four working days preparing and submitting an application (including responding to any supplementary queries the Commission may have). This includes the time required to gather documents confirming their legal representation, banker and auditor/accountant, specifying ownership and control of the business (including acquiring copies of forms from the Companies Registration Office for those businesses registered as a company), getting a bank statement showing the capitalisation, assets, borrowing and credit arrangements, specifying premises and staff and stating any past activities. Drawing on recent experience, the Commission has assumed that 4% of travel agent licence applications and 12.5% of tour operator licence applications annually are from new entrants.

B.9 For companies *renewing* a licence, the Commission has assumed that on average a company requires one working day of staff time to complete the application form, provide the Commission with supplementary documentation and make arrangements to have a suitable bond in place. The administrative burden faced by firms might vary significantly. For example, firms in a more precarious financial position may have to expend considerably more time arranging a bond and demonstrating to the Commission's satisfaction that they are a viable going concern than other firms seeking to renew a licence; larger firms may have to notify the Commission of more changes, such as of names of directors.

B.10 All applicants must provide the Commission with audited accounts. Generally, all companies registered in Ireland are required to furnish an annual audit anyway unless they satisfy all of the following requirements (i) the company's turnover does not exceed €317,435, (ii) its balance sheet does not exceed €1.905 million, (iii) its average number of employees does not exceed fifty, (iv) it is not a parent or subsidiary undertaking and (v) the company is up to date with its obligations to file certain documents with the Registrar of Companies, so this requirement of the travel-trade licensing and bonding regime only costs them to the extent that they incur additional costs producing an audited projection of licensable turnover in the next licence year. The Commission has assumed that this costs €500 per firm. The Commission has assumed that 20% of travel agents and 50% of tour operators would have to produce audited accounts even without the licensing regime in place. For smaller firms that would not otherwise have to produce audited accounts, the Commission has assumed that the need for audited accounts (including a statement of projected licensable turnover) imposes an average cost of €4,000 per firm. This is towards the upper end of the range (£2,150-£3,370 (€2,669 - €4,183)) proposed by the Financial Services Authority in the UK for the average cost of a statutory audit for a small firm.[5]

B.11 The biggest single cost to travel agents and tour operators in many cases may be the costs associated with arranging a bond. The current value of bonds held by licensed travel agents and tour operators is €137m. The table below provides a break down. The cost of securing a bond will depend on which option the business chooses. The evidence from the table below suggests that the cheapest option is not the same for all firms, since different firms have chosen different bonding options.

[5] 2006 FSA CP6, Quarterly Consultation number 8

Bond Holder	Bank	Insurance	Cash	Group Scheme	Total	Value of Bonds (€)
Agent	108	28	37	120	293	**60,215,181**
Operator	43	19	14		76	**76,886,244**
Total	151	47	51	120	369	**137,101,425**

Table 5: Number and value of bonds held by licensed agents and operators in May 2008

B.12 To estimate the cost of arranging a bond, the Commission has focussed on the cost of a cash bond. All cash bonds supplied to the Commission are placed in a bank account that currently pays an annual interest rate of 5%. Assuming no claim against the bond, the cash is returned to the travel agent along with the interest accrued six months after the end of the licence year to which it relates. Therefore, the cost of this arrangement to the licensee is income foregone, arising because either the firm could have invested the money and earned a higher rate of return elsewhere or could have avoided paying a higher rate of interest to borrow the funds needed to place a cash bond. The Commission has assumed it costs a firm 7% to borrow the funds for a cash bond.[6] This implies that the annual costs of having to hold a cash bond are equivalent to 2% of the value of the bond.

B.13 Using this as a first approximation for the cost of arranging a bond for all bonded travel agents and tour operators, including the many that choose other options (presumably because they are cheaper) would imply the cost to the whole industry of providing bonds is about €4.2m. The cost of the bonding requirements will be lower than the Commission has estimated for many established travel agents and tour operators with plenty of assets. For such entities, the low risk of collapse means banks and insurance companies are willing to offer a bond for a low fee. In contrast, some businesses with high levels of debt or new to the industry may face considerably higher fees and also encounter difficulty raising capital to post as a bond. For these firms, the estimate may be too low.

B.14 The estimated costs of the scheme do not include any costs for administering the TPF, or for managing claims following the collapse of a tour operator or travel agent.

B.15 For an "average" travel agent, the assumptions used to generate the costs of the scheme suggest that the licensing and bonding regime represents 0.2% of their licensable turnover. For the "average" tour operator the burden is even higher measured against licensable turnover, amounting to 0.35%. The scheme is proportionately more burdensome for smaller travel agents and tour operators. Travel-trade companies with turnover less than €0.5m abolishing the existing regime might save costs equal to 1% of their licensable turnover.

[6] This estimate is based on the Bank of Ireland's quoted variable interest rate of 6.99% for loans of €100,001-€300,000 to small and medium businesses. Correct as of 29 August 2008.

B.16 In 2007 the CSO recorded 7.8 million trips abroad, of which 22% were booked through a travel agent. If we use this as an estimate of the total number of trips that were protected under the existing travel trade licensing and bonding regime, then the scheme costs about €3.5 per trip.

Commission costs	€652,867
Number of Travel Agents	300 (80% are small businesses)
Number of Tour Operators	85 (50% are small businesses)
Time needed to complete an application	4 days (new applicant) 1 day (renewal)
Labour cost completing applications	€18.79 per hour
Percentage of licence applications from firms renewing licences	95% travel agents 87.5% tour operators
Total value of bonds	€137 million
Interest received for bonds on deposit	5%
Cost of raising cash to use as a bond	7%
No of overseas trips by Irish residents	7,830,000
Percentage of bookings using licensed travel agents and tour operators	22%

Table 6: Assumptions used to estimate costs of travel trade licensing and bonding regime

Benefits

B.17 There is perhaps even more scope for disagreement about the scale of benefits arising from the current scheme.

B.18 The most obvious benefits of the current travel-trade regime relate to the refunds, including repatriation, which the travelling public receives in the event that their travel agent or tour operator cannot meet its financial obligations. Between 1999 and the end of 2007, there have been claims against the bonds of 22 travel agents and 6 tour operators. In some of these cases, the claims had to be paid from the TPF. The average individual claimant sought reimbursement equal to €763, totalling in aggregate €2.5m. This averages out at less than €0.5m per annum in claims. Of course, it might be argued that the period 2001-2007 does not represent a complete business cycle, and instead relates to a period of generally favourable economic conditions. Over a complete business cycle more collapses, and consequently claims, might be expected. To the extent that the experience in this period is indicative of the likely level of claims more generally, this would imply that the expected value of the scheme (in terms of the reimbursement expected) is about €0.25 per trip protected.

B.19 Arguably the value of the scheme is more than just the sums of money paid in refunds and to repatriate people whose travel agent or tour operator has encountered financial difficulties – people value being insured against unexpected losses. How much people would be willing to pay for this "peace of mind" that the current travel trade licensing and bonding regime provides is unclear. It will depend on the likelihood they assign to a claim arising and their willingness (or otherwise) to bear that risk.

B.20 There might be a case for arguing that the willingness to pay for the kind of insurance that the travel-trade regime provides has declined since 1982, when the scheme was first introduced, for two reasons. First, incomes have risen such that the cost of a holiday is a smaller share of a person's annual income than was the case in the early 1980s. Second, the airline industry has evolved considerably such that scheduled carriers provide much greater network connectivity – the cost of arranging a flight home in the event that a charter company fails is, in real terms, likely to be considerably less than it was in the early 1980s.

B.21 For more general travel insurance, the Commission surveyed five insurers' websites in July 2008 and found an average insurance premium for a two-week trip within Europe of €22 for an adult, while the premium for a three-week trip anywhere in the world (including America and Canada) was €51. The average claim on such products is of a similar magnitude to that under the travel-trade licensing and bonding regime, with average claims just under €600 according to OSG.[7] Away from travel, the Office for Fair Trading in the UK found 20% of electrical appliances are purchased with an extended warranty.[8] Such warranties might add 10% to the cost of an item,

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[7] www.insurance-institute.ie/training/downloads/2008/DickHarnett28.5.08.ppt#279,21,Travel Insurance Current Issues

[8] Office of Fair Trading (2002). "Extended warranties on domestic electrical goods", www.oft.gov.uk/shared_oft/reports/consumer_protection/oft387.pdf

suggesting that some consumers are willing to pay €80 to be insured against a €800 purchase failing. How much weight, if any, to attach to these or other examples when assessing how much the travelling public would be willing to pay to be insured against the collapse of their travel agent or tour operator is questionable.

B.22 Clearly, deciding on how much the travelling public values the current scheme will influence significantly any conclusions reached about what reforms to make. Given the absence of a compelling estimate of the benefits, and the significant range of estimates implied by just three simple calculations (€0.25-€80), the Commission has not at this stage settled on a point estimate of the benefits. Such an estimate is likely to go a long way to determining the final recommendations – choosing a high estimate would probably imply extending the scope of the regime while a low estimate would call into the question the value of retaining the current scheme.

B.23 Two final points on the benefits of the current regime. The Commission has not attempted to quantify the benefits of just a licensing regime. Conceivably, there may be some value to the travelling public just from knowing a travel agent or tour operator has been licensed by a government body, even if there was no financial protection in place in the event of a collapse. Second, the Commission has not sought to estimate how many more collapses there might have been, if any, in the absence of the current travel trade licensing and bonding regime. It is possible that it has deterred some more marginal businesses from entering or remaining in the sector. If this is the case, the regime has resulted in fewer collapses than would otherwise have been the case, resulting in fewer travellers being inconvenienced. .

C. RELEVANT LEGISLATION AND REGULATIONS

Transport (Tour Operators and Travel Agents) Act 1982
SI 102 Tour Operators and Travel Agents (Bonding) Regulations 1983
SI 104 (Claims by Customers) Regulations 1983
SI 139 Travellers Protection Fund Regulations 1984
SI 434 Travellers Protection Fund (Amendment) Regulations 1986
SI 182 Tour Operators (Licensing) Regulations 1993
SI 183 Travel Agents (Licensing) Regulations 1993
SI 212 Tour Operators (Licensing) (Amendment) Regulations 1995
SI 213 Travel Agents (Licensing) (Amendment) Regulations 1995
SI 526 Tour Operators (Licensing) (Amendment) Regulations 2006
SI 527 Travel Agents (Licensing) (Amendment) Regulations 2006

Package Holiday and Travel Trade Act 1995

Aviation Regulation Act 2001
SI 840 Aviation Regulation Act 2001 (Levy No 8) Regulations 2007

Consumer Protection Act 2007

D. LEGAL DEFINITIONS

Some of the terms used in this document, such as "travel agent" or "tour operator", are defined in the legislation governing the current travel trade licensing and bonding regime. This document has attempted to use such terms in a manner consistent with the legislation, while at the same time being accessible to a wider audience.

Carrier: a person (other than a package provider where the package includes transport commencing in the State to destinations outside the State or Northern Ireland) whose principal business is the provision of transport by land, sea or air on aircraft, vessels or other modes of transport owned and operated by such person.

Organiser: A person who, otherwise than occasionally, organises packages and sells or offers them for sale to a consumer, whether directly or through a retailer.

Overseas Travel Contract: contract for the carriage of a party to the contract (with or without any other person) by air, sea or land transport commencing in the State to a place outside the State or Northern Ireland, whether the provision of the carriage is the sole subject matter of the contract or is associated with the provision there under of any accommodation, facility or service.

Package: a combination of at least two of the following components pre-arranged by the organiser when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation-

(a) transport;
(b) Accommodation;
(c) other tourist services, not ancillary to transport or accommodation, accounting for a significant proportion of the package.

Package Provider: The organiser or where the retailer is also party to the contract, both the organiser and the retailer, or in the case of a package sold or offered for sale by an organiser established outside the State through a retailer established within the State (and where the transport component of the package commences outside the State) the retailer.

Tour Operator: A person other than a carrier who arranges for the purpose of selling or offering for sale to any person accommodation for travel by air, sea or land transport commencing in the State to destinations outside the State or Northern Ireland or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or other services.

Travel Agent: A person other than a carrier who as agent sells or offers to sell to, or purchases or offers to purchase on behalf of, any person, accommodation on air, sea or land transport commencing in the State to destinations outside the State or Northern Ireland or who holds himself out by advertising or otherwise as one who may make available such accommodation, either solely or in association with other accommodation, facilities or other services.

E. TRAVEL-TRADE REGIMES IN OTHER EU MEMBER STATES

EU Directives Relating to the Travel Trade

E.1 The 1995 Package Holidays and Travel Trade Act was enacted to transpose Council Directive No. 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours. This directive is at present under review.

E.2 The review of the Package Holidays and Travel Trade Act forms part of the European Commission's review of all consumer contract law. This entails reviewing eight Directives: the Doorstep Selling Directive 85/577; the Package Travel Directive 90/314; the Unfair Contract Terms Directive 93/13; the Timeshare Directive 94/47; the Distance Selling Directive 97/7; the Price Indication Directive 98/6; the Injunctions Directive 98/27; and the Consumer Sales Directive 99/44.

E.3 A major issue which the European Commission is seeking to address is that of returns (refunds in the travel industry). National laws currently differ on who should pay for returned items/refunds and what the procedure is, meaning that cross-border traders and consumers need to be familiar with the laws of a number of Member States. The Distance Selling Directive is central to the regulation of cross border e-commerce.

E.4 The review of the 90/314 Directive has also been effected by the Services Directive which is due to be transposed in December 2009. The Directive aims to help to create more growth and jobs in the EU by freeing up cross-border trade and investment in services. Businesses should find it easier to establish anywhere in the EU, saving time and money. Business should also find it easier to provide services across borders. The directive will require Member States to remove unjustified obstacles.

Travel-Trade Regimes in other Member States

E.5 Much of the material that follows was informed by a report published by the University of Bielefeld for the European Commission in February 2008.[9] That study looked at the transposition of the eight consumers directives listed above in the 27 Member States.

Austria. The "Allegemeine Reisebedingungen" (ARB 1992) general travel conditions form the usual basis for package contracts. The ARB rules prescribe the obligations of operators and their agents e.g. on the provision of information, guarantees, compensation, termination and cancellation, contract alterations etc. The rules in Reiseburo-Sicherungsverordnung ("Travel Bureau Financial Security Regulation") also apply to package tour operators. Most consumer protection provisions for package tours apply even where the duration is less than 24 hours. In the case of insolvency, consumers must have the assurance that their money is protected. Cover is provided by an insurance contract, a bank guarantee or a guarantee from a body established under public law. In their promotional material (brochures), tour operators must indicate the insurance company, the policy number and an office which

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[9] Universität Beilefeld (2008) "EC Consumer Law Compendium – Comparative Analysis" http://ec.europa.eu/

tourists can contact if they need to. The tickets/holiday documents must also give details of the insolvency protection

Articles 31b-31f of the Consumer Protection Act; Regulations on operating provisions for travel agents BGBI 599/1994; Regulations 881/1994 and 170/1996 (Travel Bureau Financial Security Regulations).

Belgium. For the consumer to be protected, the package must have two components (similar to Irish law). The tour operator must provide adequate guarantees of solvency by taking out insurance cover against bankruptcy. Where an operator goes bankrupt before departure or while the trip is in progress the consumer is entitled to full reimbursement, or if necessary, repatriation at no extra charge. The contract must contain details of the insurance company covering the tour operator's services.

Act of 16 February 1994 regulating package travel contracts and travel intermediation contracts; Royal Decree of 25 April 1997 implementing Article 36 of the law of 16 February 1994; Royal Decree of 1 February 1995 specifying the conditions for professional indemnity insurance for tour operators and travel agents towards travellers

Bulgaria. Tour operators and travel agents are licensed by the Minister of Economy. Licences are indefinite and a sticker shall be shown in a visible place. There is a requirement that the personnel working in either shall meet the requirements for education, foreign language qualification and length of service. Each operator must provide evidence of an insurance contract for obligatory medical expenses.

Law on Tourism 2002

Cyprus. Travel agents and tour operators are controlled by the Competition and Consumer Protection Division of the Ministry of Commerce, Industry & Tourism. The operator must provide evidence of security for the reimbursement of money paid over and for repatriation. This may be by insurance or by a bond. The sum is calculated as "may reasonably be expected to enable all money paid over by consumers under or in contemplation of contracts for relevant packages which have not been fully performed to be repaid". This sum must be at least 20% of all payments which the supplier received in the year prior to the bond commencing and at least equal to the maximum amount of all payments which the supplier expects to hold at any one time in respect of contracts which have not been fully performed. Breaches of offences must be prosecuted within 3 years of the offence having being committed. Authorised officers may only enter premises at a "reasonable" hour of the day or reasonable day.

The Package Travel, Holidays and Tours Law of 1998, L.51 (I)/98.

Czech Republic. The package holiday components are the same as for Ireland. A concessionary trade licence for which a security fund is mandatory and this provided for by insurance. The insurance certificate is issued with the contract and specifies the name of the insurance company and a schedule of events which would require the insurance being called upon. There is an obligation to label premises, promotional and other materials designed for the client with the words “tour operator” unless the words are part of a trade name.

Civil Code (Act No 40/1964); Act 159/1999 on conditions of business operation in the tourism industry which amended Civil Code (Act 40/1964)

Denmark. Operators and agents must be registered with the Travel Guarantee Fund. Security may take the form of a cash deposit or insurance bond or equivalent assets. Where turnover is below DKK250,000 (€33,527) no bond is required. Thereafter there is a scale of bonding based on the previous four quarters turnover. There are higher rates of bonding where air charters comprise 50% or more of turnover. Retailers for foreign organisers are exempt if the travel arrangements sold satisfies the conditions of a scheme approved in another EU or EAA country.

Act No 472/1993 on Package Travels; Act No 315/1997 on the Travel Guarantee Fund

Estonia. An ’undertaking’ must be on the commercial register and have a sufficient security. In the contract reference is made to information on the possibility of insuring against the tour operator withdrawing from the contract so to cover the cost of assistance, including repatriation in the event of an accident or illness. The regulations apply to contracts entered into as a result of an auction, advertising or other such economic activity in Estonia, regardless of which state’s law applies to the contracts. Package means a combination of travel services when the service covers a period of less than 24 hours but includes accommodation service. Security is deemed to be an obligation, assumed by an insurance company or credit institution located in Estonia or a State party to the Agreement of the European Economic Area, to guarantee, in the case of insolvency of a travel undertaking, the existence of travel resources for the return of travellers to the place of departure, if the package contract includes passenger services or the return of the price of the package the consumer has paid. There is a scale of percentages based on turnover. Where actual turnover exceeds that previously planned, the security must be increased. Quarterly sales data is to be supplied by the 20th of the month following each quarter to the Consumer Protection Board.

Tourism Act 2001; Law of Obligations Act 2002

Finland. “Package Trip” is used to cover package travel, package holidays and package tours. Trips of 24 hours or less are covered if accommodation is included. A brochure is not a legal requirement but if it is published then the contents must be accurate. The consumer Ombudsman has oversight on contracts issued by the tour operators. All tour operators must lodge a bond to protect travellers should the tour operator go bankrupt. Issues relating to the bonds are dealt with by the National Consumer Association. There is a three-month period of liability after the end of a bond or guarantee. Tour operators must have a suitable accounting system in place that indicates payments made by consumers, including instalments. Agents who act for a foreign organiser must lodge security for their own and their principals' insolvency.

Package Travel Act 1079/1994; Act of Package Travel Undertakings 1080/1994; Package Travel Regulation 1085/1994; and Statute on Package Tour Operators 366/1995

France. Operators must either hold a travel agent's licence, belong to an approved association, be authorised as a local tourism organisation or hold a delegated approval in the case of ancillary operators. All these forms of authorisation must be linked to an officially issued serial number from the Prefecture or District authority. Operators must provide evidence of financial guarantees to cover the cost of repatriation and reimbursing customers should they become insolvent. All details must be included in the operators letterhead/ shop sign and in advertising and contract documents. Tour operators must provide customers with evidence that they can guarantee adequate financial security. The guarantee can be from a guarantee body, a credit institution or an insurance company. The rules for calculating the guarantee and the minimum amount to be provided for are set by a decision of the Minister for Tourism. Except in the case of repatriation, the payments out of the guarantee must be made within three months of completed documentary evidence.

Law 92-645 18 July 1992 and Decree 94-490 of 15 June 1994 and amended by Law of 2 July 2003and Law 2006-437 of 14 April 2006.

Germany. The sale of package travel related products is regulated in Germany by Articles 651a to 651m of the Civil Code (BGB) and the Regulation on Information and Report Requirements under Civil Law (BGB-Info). The consumer must be given a copy of the Sicherrungsschein (risk coverage certificate) against bankruptcy of the operator. Claims must be made within one month of completion of travel. In the case of force majeure, the consumer and operator may cancel the contract. If abroad, the cost of any return journey is shared equally between the operator and the consumer. Some agents are considering moving to dealer status by buying the package of the operator and 'selling' the package to the consumer. Website offers are considered offers in the same way as the printed brochure irrespective of the domain name. The website owner is the commercial tour organiser.

Articles 651a-651m of the Civil Code; Regulation in Notice of 5 August 2002

Greece. Generally same provisions as for Irish travel. Operators must have both 'professional liability' and either an insurance bond or a bank bond against bankruptcy. There is statutory training and education for travel agents run by OTEK.

Presidential Regulation No. 339/96 on package travel

Hungary. Tour operators and travel agents (the travel entrepreneur) are required by law to perform travel-trade activities as licensed by the Hungarian

Trade Licensing Office and also listed on the Trade Register. Unauthorised concerns are liable to a fine of HUF 100,000 (€420). The provisions do not apply to tours organised by educational institutions only and for tours by clubs, public service and not for profit organisations solely for their members at prime cost. At least one person in the operator's office must have undergone formal training and qualification. No licence will be issued to an operator where there is a conviction within the last five years for unauthorised trading. Any change in the registration details must be notified within 15 days. The registration fee is HUF2,000 (€8.40) plus VAT. The full registration details must be on all documents brochures etc as filed in the registry. All operators must have a financial security issued by a bank or insurance company. There is a fixed date for all surety contracts of 31st October. The financial security is 12% of net sales or HUF4,000,000 (€16,794) at the least; 20% of net sales budgeted if this involves charter airplanes or minimum HUF20,000,000 (€83,972) and 3% of net domestic sales. The financial security figures may be revised if the sales to the previous 31st December exceed projections. Financial obligations can only be terminated after a period of six months from the last contract.

Government Decree 214/1996 (XXII.23.) on Travel Contract and Mediation of Travel

Italy. The provisions are broadly similar to Ireland. There is a national guarantee fund for package travel that covers both repatriation and for sums paid before the travel commences but also where the operator may have no direct liability, the provision of immediate financial help to tourists who are obliged to return from non EU countries in the event of an emergency. The fund only applies to licensed travel agents or tour operator. The fund is funded by 2.0% (previously 0.5%) of the total compulsory insurance premium paid into the national budget. Regional governments issue the licences.

Legislative Decree 111 of 17 March 1995; Decree 349 of 23 July 1999; Legislative Decree 206 of 6 September 2005

Latvia. The draft laws appear generally similar to Irish law. It is unclear what provisions have been adopted.

Tourism law 1998; Cabinet Regulation No 163 Regulations regarding Package Tourism Services 2000 (as amended in 2002 and 2004)

Lithuania. Licensing regime has been abolished in favour of a new certification of tourism services and the establishment of minimal requirements. Financial guarantees are required and have to be issued by banks or insurance companies. Intermediaries do not need to have these guarantees. A contract on insurance assistance shall form part of the main contract. There is a minimum educational level to be required. To obtain a certificate to trade, it is necessary to have business premises; adequately trained staff; the head of administration not to have a criminal conviction or the conviction has expired; and ready to supply a package of tourist services.

Law on tourism of 19 March 1998 No VIII-667

Luxembourg. The package definitions are similar to Ireland. Less than 24 hours must include an overnight stay to be covered. The brochure must be clear and accurate and include information on optional insurance to cover the costs of repatriation in the event of an accident or sickness. A copy of the guarantee certificate must be attached to the purchaser's copy of the contract.

Law of 14 June 1994; Grand ducal Regulation of 4 November 1997 and Grand Ducal Regulation of 26 November 2001

Malta. The licensing and guarantee requirements are unclear. The treatment of packages is broadly similar the Irish provisions.

Malta Travel and Tourism Services Act; Package Travel, Package Holidays and Package Tours Regulations, 2000

Netherlands. The package directive is generally transposed. Financial guarantees are in place. There does not appear to be a licensing requirement.

Decree 15 January 1993, containing rules concerning data that organisers of organised trips must state on behalf of travellers

Poland. Tour operators and travel agents are required to be registered. There is a requirement for a financial guarantee to be supplied by a bank or insurance company.

The Act on Tourist Services of 29 August 1997 (as amended) and Law of 2 July 2004

Portugal. The package directive is generally transposed. Operators must take out civil liability insurance and possess a bank guarantee. There is a minimum guarantee amount of €24,939.89 and a maximum of €249,398.95. The minimum insurance is €74,819.69. Notice of intention to claim under the guarantee must be within 20 working days from the time the package ended. A book for customer's complaints and other comments must be made available with a copy of the complaint given to the customer and a copy sent to the Director –General of tourism. There is also an ombudsman for travel agencies.

Decree law No 209/97 Order No 1069/97; Decree law 54/02

Romania. No detailed information available, but package providers must be registered with Trade Registry.

Government Ordinance 631 of 16 November 2001 (not available in English)

Slovakia. Travel trade activities may only be carried by businesses registered on the Commercial Register and possessing a trade licence for tourism purposes. A demonstrable level of three years experience or specific travel trade training is required to be a travel agent. Similar conditions are imposed on tour operators. Insurance or bank guarantees are obligatory.

Act No. 281/2001 on Package Travel

Slovenia. A licence is required from the Chamber of Commerce. The Tourism Promotion Act specifies the regulations relating to the organising and selling of package travel, package holidays and package tours as well as performing the services of tourist guides and tourist escorts. There are requirements for either insurance bonds or financial guarantees the cost of which is applied on a sliding scale.

Promotion of Tourism Development Act; the Code of Obligations (Articles 883-903).

Spain. Package tour contracts bind the customer to the operator or agent but do not create a legal relationship with service providers.

Law 21/1995 of 6 July 1995 on package tours

Sweden. Swedish law imposes a greater liability on package providers than required under the Directive, including a supervisory responsibility if something goes wrong during a package tour. Travel organisers and travel agencies must have financial security (a bond) to protect travellers in the event of bankruptcy. The Konumentverk is the supervisory authority and ensures that the law on package travel is respected.

Package Tours Act 1992:1672

United Kingdom. The regulations came into effect on 23 December 1992. The organiser is liable for the actions of service providers. There are a number of bonding systems in operation including ATOL which has recently changed to a £1 (€1.24) per ticket arrangement for businesses in operation for more than 3 years.

SI 1992/3288 Package Travel, Package Holidays & Package Tour Regulations

F. POLICY OPTIONS OUTLINED IN PAPER

Options to Reform Who the Scheme Protects

Option 1 Extend coverage to cover all trips out of the State

Option 2: Reduce coverage and rely on credit payment protection

Option 3: End scheme and rely on market to provide protection

Options to Change the Licensing Requirements

Option 4: Remove need to satisfy business credentials

Option 5: Audited accounts only required from large companies

Option 6: Single licence for all travel-trade companies

Option 7: Licences granted indefinitely

Option 8: Accept licences from other jurisdictions

Options affecting Financial Protection & Bonding Arrangements

Option 9: End bonds and rely on TPF funded by fee per trip

Option 10: Only require entrants to have bonds, rely on TPF otherwise

Option 11: Require escrow accounts instead of bonds

Option 12: Have bonds depend on past year's licensable turnover

Option 13: Alter percentages of licensable turnover to be bonded

Option 14: Assess bonding requirements on a case-by-case basis

Option 15: Redefine licensable turnover

Options to Change Enforcement Powers

Option 16: Increase penalties for unlicensed trading

Option 17: Devolve enforcement to local authorities

Option 18: Exclude schools, parishes, clubs from needing a licence