Insolvency Protection Arrangements for Linked Travel Arrangements and Packages in Ireland

Development of consumer protection arrangements

August 2019

Commission for Aviation Regulation

INTERIM REPORT

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1. INTRODUCTION

CEPA are advising the Commission for Aviation Regulation (CAR) on selecting a preferred option for reforming the current insolvency protection regime to comply with the EU Package Travel Directive 2015/2302 (EU PTD II). This work follows the 2017 Stage I consultation[1] where a shortlist of options was selected for further consideration.

In selecting a preferred option, we have been asked to consider the bonding arrangements and how the Travellers' Protection Fund (TPF) can be replenished, building on three reform options proposed in Stage 1. We have also been given the latitude to propose new options not considered in Stage I, and options that require legislative change.

We have been asked to consider the implications of a variety of potential reforms to the bonding arrangements such as:

- Raising bonding levels for companies deemed to be riskier according to set criteria (to levels above the current 4% for travel agents and 10% for tour operators).
- Grading companies as high, medium or low risk and setting bonding requirements accordingly.
- Evaluating different business models and considering how different licensees may be impacted by the options being proposed.
- Having a tiered approach to bonding, starting from 2% of projected licensable turnover (PLTO) for companies projecting less than €2m and rising to 6% for turnover above €6m.
- Redefining turnover when setting the bonding level, to exclude turnover related to visas, passport applications, insurance and boarding-pass fees, etc.
- Charging a fee per traveller or per booking as opposed to requiring the licensee to pay an insurance premium to fulfil bonding requirements.

In relation to the TPF, we have been asked to examine the implications of:

- Introducing a levy that can be used to purchase insurance and gradually top-up the TPF.
- Using the money currently in the TPF to purchase insurance or secure a line of bank credit to cover the possibility of future collapses generating claims in excess of the company's bond.

The scope of this work is limited to insolvency protection for packages and linked travel arrangements (LTAs) including travel to comply with EU Package Travel Directive 2015/2302. Therefore, the possibility of covering flight only sales by airlines is outside the scope of this work. Many stakeholders have suggested that a more thorough review of insolvency protection be undertaken, covering both the scope and ambition of the regime.[2]

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[1] Commission for Aviation Regulation (2017) Consultation: Travel Trade Consumer Protection Measures. http://www.aviationreg.ie/_fileupload/Travel%20trade/CP8%20Travel%20Trade%20Consumer%20Protection%20Measures.pdf

[2] Both through their responses to the Stage I consultation, and in a stakeholder workshop held in May 2019 as part of this study.

1.1. METHODOLOGY

Reflecting the industry consultation in late 2017, feedback from a workshop we held with industry in May 2019[3], and taking into account the work done to date by CAR, Europe Economics and Indecon, we updated the Stage 1 consultation options to account for EU PTD II and developed additional options for the reform of the consumer protection scheme.

We evaluated a short list of options based on *efficiency*, *effectiveness*, *impact on the travel trade*, *ease and cost of implementation and ongoing operation*, in addition to ensuring the chosen option encourages *fair competition* and is *robust to economic and industry changes*. Whilst some of the outcomes can potentially be described quantitatively, if approximately, the overall assessment is qualitative and might also involve trade-offs that depend upon policy preferences. We present the assessment of options and various trade-offs related to each through a discussion of the core evaluation criteria, defined below.

- **Effectiveness:** Effectiveness implies satisfactorily complying with legal requirements and delivering the level of protection required. In practice effectiveness is not a yes/no question – there can be levels of effectiveness – the risk of insufficient bonding or large calls on the TPF can always be further reduced, thus giving different levels of effectiveness.

- **Impact on the travel trade:** All options inevitably have some effect on the travel trade through the charging of different amounts to different participants in that trade. This is likely to be advantageous to some participants over others. This is an acceptable impact if it is proportionate and aligned with due cause – i.e., it is encouraging less risky practices, in a proportionate way. What would be less acceptable would be for it to be distortionary, i.e. encourage or discourage certain kinds of firms or business practices for irrelevant or disproportionate reasons. We also need to ensure that it is fair in a distributional way. For example, banding can have the effect of encouraging operators to locate themselves close to or just below band boundaries, thus perhaps maximising the amount of risk for a given level of payment. This would both reduce the effectiveness of the scheme at a given cost, and unnaturally distort the trade. Such edge effects might be unavoidable, but we seek to avoid them being of much significance or avoid them overall where possible.

- **Efficiency:** Efficiency is primarily about achieving compliance and protection at the lowest cost to the traveller. A more sophisticated understanding is that there might be a trade-off between effectiveness and cost, and at some point, the cost of increasing the effectiveness might be considered excessive or poor value for money.

- **Ease and cost of implementation:** This is around the straightforwardness in practical and legal terms of implementing the proposed structure. We note that there may be a trade-off between effectiveness e.g. in terms of the complexity of an option, and the practicalities of implementation.

- **Ease and cost of on-going operation**: Here we consider the administrative costs of the scheme rather than the actual sums of money put aside for bonding and the fund. These costs fall on both government and the travel companies. While we cannot quantify them, we can form a view over which versions of the scheme would be, in a qualitative sense, more administratively onerous on the relevant parties.

[3] Industry meeting-Radisson Blu Hotel Dublin Airport 21st May 2019.

Within the scope presented above, we have considered options for reform that address the short to medium-term. When trading-off performance of options against the criteria above, we have focused on ensuring the short to medium-term risks to the effectiveness of the regime are dealt with in a cost-effective manner and in a way that limits the impact on industry. We note that, given the current state of the scheme and changing nature of the travel industry, this may not be the most appropriate approach over the long term. We therefore recommend that CAR advises Government to undertake a more thorough review in future that considers the most appropriate ambition for the insolvency protection regime, both in terms of the scope of travel that is covered and the overall effectiveness of the scheme.

1.2. Sources of information

To inform our analysis we relied upon information in the public domain, including:

- the Stage 1 consultation responses;
- reports from Europe Economics, and Indecon produced in connection with the Stage 1 consultation;
- amendments to the Package Holidays and Travel Trade Act of 1995 through Statutory Instruments No.80 and No.105 of 2019, including the CAR's guidance note to industry;
- Transport (Tour Operators and Travel Agents) Act, 1982 (as amended) and Tour Operators and Travel Agents (Bonding) Regulations, 1983;
- CAR's licensing guidelines for travel agents and tour operators;
- the EU Package Travel Directive 2015/2302; and
- legal documents on the implementation of the EU Package Travel Directive 2015/2302 in the UK, Netherlands, Denmark, France and Norway.

We also analysed data provided by CAR on licensee turnover, previous insolvencies and the associated claims, as well as TPF account balances.

1.3. Timeline

The market consultation period is planned for six weeks. Following which we will collate and summarise the consultation responses and update this report to reflect the findings. We expect to deliver the final report in September.

1.4. Structure of this report

The remainder of this report is structured as follows:

- Section 2 provides some context for the Stage 2 consultation.
- Section 3 presents the key issues we considered in developing the options for assessment.
- Section 4 assesses the options for reforming the scheme.
- Section 5 outlines our conclusions.
- Appendix A summarises and updates the international case studies from Stage 1.

2. CONTEXT

2.1. BACKGROUND

Under a scheme put in place in 1982, customers with overseas travel contracts originating from Ireland are protected if their tour operator or travel agent (we use the term "travel organiser" to cover all kinds of suppliers covered by the scheme) becomes insolvent. In the event of an organiser insolvency, the scheme was established to ensure that customers are fully refunded if they are unable to travel or are repatriated if they are already abroad. Since its implementation, there have been approximately 11,000 claims paid totalling €15 million.

The scheme consists of two parts, the first of which is a bonding requirement for travel organisers, held against any claims made. Since the inception of the scheme, bonding levels have been set at 4% of projected licensable turnover (PLTO) for agents and 10% for operators. The Travellers' Protection Fund (TPF) acts as a back-up, covering any claims that exceed the bond arranged by the firm. It was originally funded through a levy on tour operators, but this was removed in 1987 as the TPF was thought to be sufficiently funded. The TPF has however been drawn down over the last three decades without being replenished.

Currently the fund stands at €1.3 million. Without replenishment, the TPF may be unable to cover consumers in the event of another large insolvency or economic downturn leading to numerous smaller insolvencies.

Stage 1 of this work involved a review of the existing protection scheme and identifying potential options for reform. This work was conducted by Europe Economics who suggested five potential reform options.

2.2. PREVIOUS STUDY

The previous study used industry data and consultations, along with case studies (see Appendix A) and desk research to assess the Irish insolvency protection scheme. The study's authors found that the rise of direct booking has altered the industry since the initiation of the scheme; many customers book their flights directly with airlines, and many travel organisers now hold on to cash for much shorter periods of time. Even so, the scheme remains relevant and important to provide protection to consumers who choose to book through agents and operators.

The study found that, since the start of the scheme, 62% of claims have been covered by bonds.[4] Considering all historic claims, the majority of which are refunds rather than repatriation, there is significant variation in the proportion of a bond required to cover a claim. The level at which bonding is set has a significant impact on claims drawn from the TPF. Disregarding the two largest organiser collapses, it was found that travel agents would have historically required 13% bonding levels and operators 17% to have prevented any draw on the TPF.

Several additional concerns were raised within the report, including:

- Between 2012-2016 one third of companies initially underestimated their PLTO. In some of these cases CAR required the organiser to submit a revision, while in others the organiser would increase their bonding levels to account for their increased turnover. Typically, underestimation was a single

[4] Europe Economics (August 2017) Bonding of the Irish travel trade industry.

year occurrence, although there was evidence that a few companies were consistently underestimating their PLTO.

- Claims as a percentage of PLTO are higher in summer months, and therefore less likely to be covered by bonds. This points to the potential to account for increased risk in summer months by adjusting bonding requirements, but this would only be useful under certain business models.[5]
- Organisers with both agent and operator licenses have an incentive to project their turnover of the former (bonded at 4%) at significantly higher levels relative to the latter (bonded at 10%) to avoid higher levels of overall bonding, which may not be a true reflection of turnover.[6]
- A few travel organisers, such as lowcostholidays.ie, report their PLTO as a small proportion of their total turnover. If this is not a fair representation of their turnover at risk, it would result in claims in excess of bonding levels in the event of insolvency.

The 2017 Report provided five possible reform options, shown in Table 2-1 below, that include variations on bonding level requirements, options for replenishment of the TPF and PLTO-related adjustments.[7] These options were assessed against three criteria:

- legislative change;
- effectiveness; and
- efficiency.

Any **legislative change** would take time to implement and slow the process of reform, which is not desirable in the current environment i.e. when the TPF is depleted. For a scheme to be **effective**, it would need to protect customers against future insolvency, assessed by looking backwards at its ability to cover all past collapses had it originally been in place. **Efficiency** was considered based on the cost of the proposed scheme to both the industry and the Commission, relative to the current situation in which costs are low.[8]

[5] For example, a travel organizer specialising in ski holidays will experience peak travel period in the winter months, while an organiser specialising in European cruises will experience peaks in summer.

[6] Europe Economics analysed 2016 data on firms that were licensed as both an agent and operator. They found that TA PLTO was significantly higher than TO PLTO but could not confirm if this was legitimate within the business model or an overstatement to reduce bonding levels.

[7] Europe Economics (August 2017) Bonding of the Irish travel trade industry: Interim Report.

[8] CAR's administrative costs have reduced in the past decade through an improvement of internal procedures. Bonding costs for the Irish industry are lower than other countries. For example, in France, travel organisers are required to bond to their full turnover. Additionally, relative to other countries in Europe which use a form of TPF, Irish organisers have not been required to contribute to the TPF since 1987.

Table 2-1: Scheme reform options presented in Europe Economics study

Item	Option A	Option B	Option C	Option D	Option E
Bonding, Travel Agent	200%	4%	4%	8%	8%
Bonding, Tour Operator	100%	10%	10%	20%	20%
PLTO definition	No change	No change	No change	Excludes payments passed onto supplier immediately and bills paid in arrears	Excludes payments passed onto supplier immediately and bills paid in arrears
One-off levy	No	2.5% TO only	0.35%	0.35%	0.25%
On-going levy	No	0.2% TO only	0.03%	0.03%	0.02%
Other	-	-	-	-	Firms cannot exceed PLTO. Firms must identify at point of sale to consumer whether eligible to claim
No legislative change	✓	✓	✗	✗	✗
Impact on effectiveness	✓✓✓	✓✓	✓✓	✓✓	✓✓
Impact on efficiency	✗✗	✗	~	✓	✓

Source: CAR (2017) Consultation: Travel Trade Consumer Protection Measures

The report recommended Option E as it provides for ongoing and shared replenishment of the TPF, reflects risk in bonding by re-defining the PLTO and reduces the likelihood of tail risks by limiting organiser turnover to their PLTO. However, by limiting trading to the PLTO it also penalises organisers that perform better than expected.

2017 Consultation

In August 2017, CAR released the report for stakeholder consultation and received 42 written responses.[9] Stakeholders generally disagreed with the scope of the reform; the protection scheme covers only package holidays and thereby reduces the competitiveness of bonded organisers without providing protection for the majority of travellers. They also recognised that the current scheme would be unable to provide consumers

[9] Commission for Aviation Regulation (2017) Consultation: Travel Trade Consumer Protection Measures

with protection due to the depletion of the TPF if there was another large collapse or economic downturn in which there could be a larger number of insolvencies.

Aside from the scope, respondents had some suggestions as to how the scheme should be adjusted. Many indicated that it should be designed based on average claims as opposed to large, atypical events. In this way, well-run organisers would not be paying for the risk imposed by those companies that are mismanaging their risks. They suggested that CAR find another means of addressing the collapse of a substantial organiser. This might be by insurance, a line of bank credit or government funding.

Most respondents also suggested that customers should contribute to the cost of their own travel protection through a levy, as this would provide consumers with increased visibility of the protections they are receiving. If the levy were to be applied to all passengers, this would also level the playing field for organisers that are currently bonded. They emphasised that there was a general lack of consumer awareness regarding the protection provided through bonding.

Respondents generally supported the tailoring of bonding levels based on objective, risk-based criteria. This would better match what it costs the firm to take part in the scheme to the level of risk that the firm imposes. This same sentiment was also reflected in the frequent suggestion of more stringent licensing requirements, better monitoring mechanisms, and taking measures against those firms that consistently underestimate PLTO. However, Europe Economics noted that large insolvencies were found in all the country case studies they developed regardless of their licensing requirements and monitoring procedures, demonstrating that no system can entirely avoid them and any such scheme must provide for them.

Stakeholders generally had unfavourable views of all options presented. They disagreed with increasing bond levels and levies, but particularly the former. Despite the support for a redefinition of PLTO to better reflect risk, there were still objections to increasing bonding based on the redefinition.

After considering the outcome of the consultation, CAR opted to retain options C, D and E for consideration in Stage 2. We have supplemented the Stage 1 options to include the following variants:

- bonding levels based on risk-assessment;
- adjustment of the PLTO definition;
- replenishment of the TPF through a passenger levy; and
- use of the TPF to purchase insurance.

2.3. EU Package Travel Directive 2015/2302

In 2015 the EU published a new Package Travel Directive 2015/2302 (EU PTD II), which came into force across the EU on 1st July 2018. To reflect the changing nature of the travel industry, the EU PTD II increases the scope of protection by redefining package travel to include dynamic packages[10] and including linked travel arrangements (LTAs).

Article 3(5) of the EU PTD II defines a "linked travel arrangement" as meaning at least two different types of travel services purchased for the purpose of the same trip or holiday, not constituting a package, resulting in the conclusion of separate contracts with the individual travel service providers, if a trader facilitates:

[10] Dynamic packages are customised by the consumer rather than the travel organiser.

(a) On the occasion of a single visit or contact with his point of sale, the separate selection and separate payment of each travel service by travellers; or

(b) In a targeted manner, the procurement of at least one additional travel service from another trader where a contract with such other trader is concluded at the latest 24 hours after the confirmation of the booking of the first travel service. Passenger carriers, accommodation providers, and vehicle rental companies are all able to offer LTAs.

Prior to the introduction of the EU PTD II, package travel was only protected through the Irish scheme if it originated in Ireland. However, the EU PTD II harmonises protection across the EU by adjusting the scope of the scheme depending on where the organiser is established and for non-EU organisers, where the package is sold or offered for sale. The Irish legislation for consumer protection now also includes package travel/LTAs sold by firms established in Ireland when the travel originates *elsewhere.* Article 17(1) of the EU PTD II requires Member States to ensure that organisers established in their territory provide security for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency. If the carriage of passengers is included in the package travel contract, organisers shall also provide security for the traveller's repatriation. Continuation of the package may be offered. Organisers not established in a Member State which sell or offer for sale packages in a Member State or which by any means direct such activities to a Member State shall be obliged to provide the security in accordance with the law of that Member State,

The increased scope of the arrangements raises questions about the most appropriate method of inclusion within the Irish protection scheme. Travel agents and tour operators selling dynamic packages and package travel originating elsewhere are relatively well-matched to organisers within the current scheme and could thus be incorporated relatively easily. However, LTA providers sell protected travel under a different model. The funds they hold that are protected under the directive are solely for the service they provide directly to customers. LTA providers can be passenger carriers, accommodation providers or vehicle rental companies, all of which have significantly different business models from travel organisers and therefore different levels of insolvency risk.

Certain airlines established in Ireland that sell/offer for sale LTAs in Ireland have put into place firm-level insurance to protect customers in the event of an insolvency. If this is considered to be an efficient means of protection for these firms, it is worth considering the continuation of this approach for all LTAs, as well as extending it to other organisers. However, it is our understanding that at current costs, this form of insurance is expensive relative to other forms of protection under consideration, especially for smaller organisations.[11]

In March 2019 the Government published Statutory Instruments No.80 and No.105 of 2019 in order to implement EU PTD II. This increased the scope of insolvency protection in the Irish protection scheme. Under the new Statutory Instruments, travel organisers and sellers of LTAs are required to implement protection in at least one of three ways:

- a sum of money deposited in a bank or financial institution in the sole name of CAR;
- a contract of guarantee; and/ or
- an insurance policy.

These forms of protection must amount to 4% of turnover for the previous financial year or between 4% and 10% of projected turnover. In May 2019 CAR issued a guidance to industry regarding the legislative changes,

[11] Based on feedback provided by stakeholders at the May 2019 workshop.

allowing for the exclusion of corporate travel (where there is a general agreement in place) from PLTO under the existing consumer protection scheme.

2.4. Issues with the current insolvency protection regime

Now that new types of travel arrangements are in scope of the insolvency protection regime, the current system of requiring firms to be licensed and bonded for package holidays sold and originating in Ireland, which has existed for many decades, may not be the only option for providing consumers with protection.

The previous study concluded that there were no significant concerns with the existing framework for insolvency protection. It is relatively well understood by the industry and was considered efficient relative to alternatives. It has also, to date, provided effective cover since its inception, though this has largely been due to the legacy of the TPF which has provided a back-up in instances when bonds have been insufficient to pay out all claims. Given the depletion of the TPF, there are now concerns around how long cover will continue to be effective.

The transposition of EU PTD II broadens the number and types of travel arrangements that are protected, as well as the number and type of firm covered by the Irish regime. This increases complexity, with the combination of EU and domestic legislation creating different arrangements for different types of firm. For example, a customer purchasing package travel that originates outside of Ireland from an Irish established organiser, does not have recourse to the TPF if the travel organiser becomes insolvent and the organiser's bond is insufficient to cover all of claims. Therefore, existing bonding requirements are likely to leave a gap in coverage.

We therefore consider whether the current system continues to provide cover that is more effective and efficient than alternatives.

If the current system of bonding is retained, it is likely that the TPF will continue to be needed as a back-up for instances when a bond is not large enough to cover all claims. The TPF requires additional funding to ensure customers are effectively covered in the event of future insolvencies.

As the TPF has not received additional funding since 1987, the fund has gradually reduced in size over time and was significantly depleted following the insolvencies of Failte Travel and lowcostholidays.ie. There is a risk that the TPF is insufficient to meet all claims in the event of future insolvencies. To ensure this risk does not materialise, we consider:

- options to replenish the TPF in the short term, to deal with the immediate risk from a large-scale insolvency; and
- longer-term options to replenish the TPF to more sustainable levels.

The previous study by Europe Economics suggested options for replenishing the TPF, which we review in the next section.

The current rules around bonding results in some firms being over-bonded, meaning their PLTO is higher than actual turnover, whereas others are under-bonded. If a bond-based regime is to be retained, bonding rules should be reviewed to more closely align a company's bond with their exposure to claims following insolvency.

The current rules around bonding are set with reference to PLTO, at 4% of for travel agents and 10% for tour operators. However, many firms immediately pass on payments made by customers to their suppliers (e.g. airlines), reducing the size of claims if a firm was to become insolvent.[12] Such firms are likely to be over-bonded under current rules. On the other hand, some firms sell highly seasonal travel meaning that a firm is likely to be significantly under-bonded just before the start of a season and over-bonded at the end of the season, as the bond is flat throughout the year regardless of exposure levels. The previous study considered options for changing the definition of PLTO to more closely align it with the types of revenues that are most at risk in the event of an insolvency, we develop that analysis in the sections which follow.

The current rules around bonding treat all firms equally regardless of the likelihood of insolvency. Consideration is needed as to whether firms with higher risk of insolvency can and should be bonded to higher levels.

Some firms are at a higher risk of insolvency than other firms, and as such, have a higher likelihood of making claims on the TPF. It would be appropriate for such firms to be bonded to higher levels to reduce the risk of the firm's bond being insufficient to deal with all claims.

However, the Europe Economics study concluded that there was no reliable way of determining which firms are higher risk, and as a result, did not recommend different bonding levels for different firms. We reconsider this, drawing on experience from other schemes in Europe.

[12] In the event of an insolvency, the consumer has the right to a refund whether or not all travel package payments have been passed to suppliers. However, we assume that in this circumstance, the majority of consumers will choose to travel rather than request a refund.

3. CONSIDERATION OF ISSUES

3.1. OPTIONS AVAILABLE FOR PROTECTING CONSUMERS FROM TRAVEL ORGANISER INSOLVENCY[13]

We believe there are four broad approaches to reforming travel organiser insolvency:

- The first is the existing arrangement of **firm-level bonds with a back-up option** if bonding is insufficient. Under this arrangement, we would expect a firm's bond to cover most instances where there is a travel organiser insolvency. However, in some rarer circumstances where the bond is insufficient to pay out all the claims, a back-up option would be required. This back-up option could take the form of the TPF, insurance against claims exceeding bonded levels, or a combination of the two.
- A second arrangement would require each firm to purchase **insurance to cover its full liabilities** under the insolvency protection regime. This is an arrangement akin to that which some airlines have in place now. Under this option, the insurance provider would be liable for all claims in the event of a travel organiser insolvency. As a result, there would be a greater role for insurance providers in order to minimise risk exposure.
- A third option is for all **insolvency protection arrangements to be pooled across the industry**. In other words, all claims in the event of an insolvency are be paid out from a single channel, either the TPF, or a similar mutual insurance fund. This is most similar to the UK ATOL scheme. All travel organisers would then contribute towards this fund through a levy per customer or based on turnover.
- The final option is for each firm to **place customer payments in a trust account**, which they are not able to access unless a travel arrangement has been fulfilled. This protects customer payments in the event of an insolvency. However, a back-up option would be required to fund repatriations which are not fully covered through funds in the trust account.

As a guiding principle, we believe that all firms within scope of EU PTD II should have access to, or able to select between, the same protection option(s) in Ireland in order to ensure a level playing field within the industry. Consequently, we do not consider it is appropriate for the TPF to be available only for certain types of package holidays / LTAs (i.e. where they include a travel element commencing in Ireland) or certain types of firms (TAs or TOs), as is currently the case.

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13 Recital 39 of the EU PTD II provides that Member States shall ensure that travellers purchasing a package are fully protected against the organiser's insolvency. Member States in which organisers are established should ensure that they provide security for the refund of all payments made by or on behalf of travellers and, insofar as a package includes the carriage of passengers, for the travellers' repatriation in the event of the organiser's insolvency. While retaining discretion as to the way in which insolvency protection is to be arranged, Member States should ensure that the protection is effective. Effectiveness implies that the protection should become available as soon as, as a consequence of the organiser's liquidity problems, travel services are not being performed, will not be or will only partially be performed, or where providers require travellers to pay for them. Member States shall be able to require that organisers provide travellers with a certificate confirming a direct entitlement against the provider of the insolvency protection.

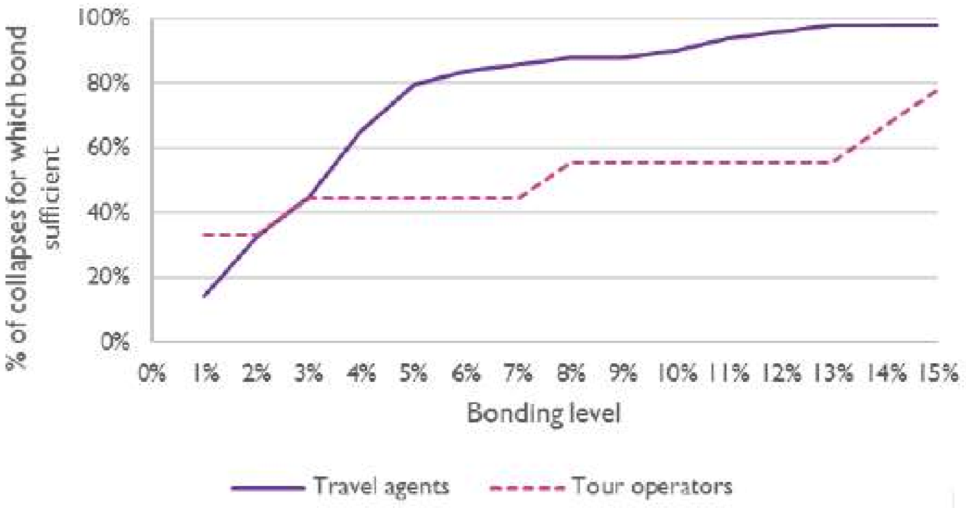
3.1.1. Bonding with a back-up fund

Ideally, bonds would be set at a level that fully covers any potential claims in the event of failure. Due to differing business models however, it is difficult to estimate what a firm's potential liabilities are at any one time. Trying to set bonds at levels that would cover all eventualities would be very expensive with bonds set at over 100% of licensable turnover (LTO).

The existence of the TPF as a back-up fund to pay out claims in the few instances where firms are under-bonded, allows for much lower overall bonding levels for all firms. Bonding levels and contributions to a back-up mechanism have an inverse relationship; higher levels of bonding allow for lower contributions. For example, there are two consumer protection schemes in the Netherlands: The Garantiefonds voor Gespecialiseerde Touroperators (GGTO) sets bonding at 0.125% of turnover with a levy of €15 per booking, whereas the bonding levels in the Stichting Garantiefonds Reisgelden (SGR) scheme are 1.5% of turnover with an annual contribution that ranges from €275 to over €5,250 (the GGTO equivalent of 18 to 250 bookings).

Analysis of historic claims in Ireland shows that bonds have been large enough to pay out all claims in approximately 70% of insolvencies for travel agents and approximately 60% of insolvencies for tour operators.

Figure 3-1: Percentage of collapses for which bond sufficient at different bonding levels



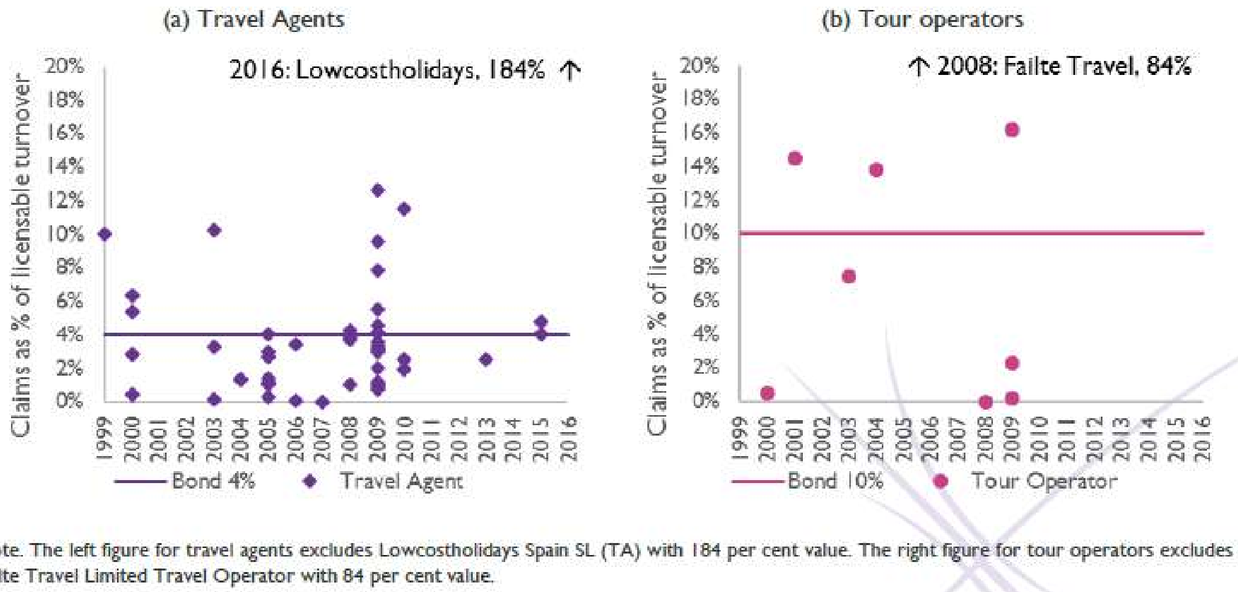
Source: Extracted directly from Europe Economics Interim Report – Bonding of the Irish travel trade Industry, August 2017.

As can be seen in the figure above, travel agents would need to be bonded to 5% of projected LTO and tour operators to 15% of LTO, to cover claims for 80% of insolvencies. However, the small number of tour operator failures means that this historic pattern is less likely to be representative of the future pattern of insolvencies.

Bonding

Based on the existing definition of PLTO, the analysis above suggests that current bonding levels have fully covered claims for between 60% and 70% of insolvencies and has thus been broadly appropriate in the past when the TPF was of sufficient size. The definition of PLTO is not very well targeted to the size of potential claims in the event of an insolvency. This can be seen from the variation in the size of claims as a proportion of LTO, as shown in Figure 3-2.

Figure 3-2: Claims as a percentage of licensable turnover for individual collapses by year



Source: Europe Economics Interim Report – Bonding of the Irish travel trade Industry, August 2017.

Regulation 4(1) of the Travel Agents (Licensing) Regulations 1993 defines "PLTO" as meaning the total of receipts estimated by an applicant for a travel agent's licence in respect of overseas travel contracts to which the Travel Agents (Licensing) Regulations 1993 apply during the period of time in the future for which a licence is being sought. This definition includes areas of revenue that are considered low risk, such as:

- revenue that is immediately passed on to suppliers; and
- revenue that is held for only a short period of time before a holiday commences.

Revenue related to corporate travel, which is not protected under current legislation and is often paid in arrears, was previously included within the definition of PLTO. However, the guidance note issued to industry in May 2019 allows for corporate travel to be exempt from insolvency arrangements, provided there is a general agreement (in line with PTD 11 requirements).

As bonds are set with reference to PLTO, certain firms would be over-bonded such as those that sell a large proportion of 'instant purchase'[14] travel tickets.

We consider two options for reform of the metric on which bonding requirements are based:

- **Redefining the PLTO metric** to exclude payments immediately transferred to suppliers and any revenue received in arrears.
- Setting **bonding requirements based on** a new **'turnover at risk'** concept – this is any income received from customers for holidays yet to be fulfilled, excluding any payments already passed onto suppliers, at a precise period in time, as opposed to an annual sum such as PLTO. The aim would be to ensure that firms are bonded to a value that represents the maximum amount of customer payments that a travel organiser is holding at any one time, for holidays that are yet to be fulfilled. The key difference with the above metric is the incorporation of seasonality into the bond calculation.

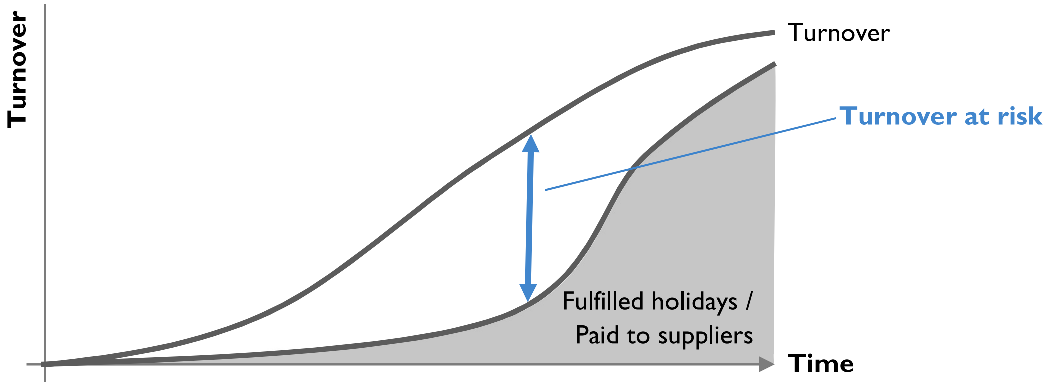
[14] Purchases from travel organisers where the payments related to the travel component (e.g. the flight) is immediately passed onto suppliers (such as airlines) and a ticket is immediately issued to the customer.

Firms with highly seasonal travel would be required to have a higher bond if they hold a larger volume of customer funds at any one time within the licensable period.

With the redefined PLTO metric, bonding percentages would need to increase to ensure the cash value of the bond remains broadly similar for a typical firm. As with the previous study, we concur that a doubling of bonding percentages to 8% and 20% is appropriate. Although this means some firms would post higher bonds if they hold onto customer payments for a longer period of time, other firms would post lower bonds than they currently do if a greater proportion of their revenue is made up of instant purchase travel tickets.

The turnover at risk metric would vary by time of year and as such, a firm's bond would be set based on the highest level of turnover at risk within the 12-month licensable period. All firms would therefore be required to track the value of customer payments for holidays that are yet to take place and track any payments that have already been made to suppliers for those holidays. In the absence of a back-up fund such as the TPF, firms would need to be bonded to 100% of the turnover at risk. With a back-up fund, a lower percentage would be sufficient to provide effective cover.

Figure 3-3: Diagram illustrating the maximum turnover at risk metric



Source: CEPA analysis.

As an example, the 2018 UK Package Travel Regulations implemented EU PTD II for all LTAs and non-flight packages, with flight packages covered under the ATOL Regulations. The Package Travel Regulations allow travel organisers and LTA providers to protect consumers through either (a) insurance, (b) bonding, or (c) trust accounts, with independent trustees and insurance. The great majority of traders chose bonding or insurance.

Bonds must be held by a UK Department for Business 'Approved Body', of which there are currently three. Two different bonding structures are permitted. The first requires a minimum 25% bond, with bonding set to meet the maximum level of exposure. In this case, a reserve fund is not required. The second requires a minimum 10% bond, with a reserve fund.

Adapting bonding rules for riskiness of travel organiser

Responses to CAR's previous consultation on insolvency protection generally commented that the current arrangement was largely a one-size fits all approach. Many respondents believed bonding levels should vary by the riskiness of the travel organiser.

When reviewing the bonding rules in other EU states, we find that some adopt higher bonding requirements for newer firms. In the UK's ATOL scheme for example, new Standard ATOL holders are required to be bonded to 15% of LTO, reducing to zero after four years. However, the Europe Economics study found little evidence to suggest that newer firms were riskier in terms of the likelihood of failure or the size of claims following insolvency. Therefore, we do not believe that differential bonding requirements based on the age of a firm is likely to make the scheme more effective.

Alternatively, we are aware that certain business practices are likely to be riskier, either because it is likely to lead to a higher risk of insolvency or because the size of claims following insolvency is likely to be greater. These include:

- firms selling highly seasonal travel, where an insolvency at certain times of the year would leave the firm significantly under-bonded (leading to a larger draw on the TPF);
- firms reliant on a single supplier or a small number of suppliers, leaving them vulnerable in the event of any issues with a supplier;
- firms selling packages with long lead times and holding customer money for long periods; and
- firms consistently under-reporting their PLTO relative to actual licensable turnover.

Similarly, there are financial indicators that suggest a higher risk of insolvency, such as:

- a firm has an opaque ownership structure with limited capital;
- a low level of liquidity, where cash or current assets are unable to cover current liabilities;
- a high proportion of assets that are financed through debt; and
- significant variances in (projected) revenue.

None of the above indicators provide categorical evidence of high risk, with many low risk firms potentially scoring positively on such indicators. We therefore do not think it is feasible to implement automatic rules that adjust bonding based on such indicators. However, we think it is sensible to give CAR the powers to increase bonding requirements for firms that they deem to be higher risk, based on indicators similar to those listed above.

We believe it would be possible for CAR to score individual firms based on the above risk factors. If more of the above indicators are true for an individual travel organiser it would be considered riskier. And if the risk score reached a predefined threshold then bonding levels would be increased. It is difficult to determine a sensible approach to scoring and setting thresholds without undertaking a forensic review of the riskiness of travel providers currently in scope of the insolvency protection regime and of historic insolvencies. However, we believe it would be sensible for such thresholds to be set relatively low in the first instance, and then adapted over time as CAR develops a better understanding of the relative importance of different risk factors.

Back-up

Absent 100% levels of bonding, some form of back-up option would be required to fully protect consumers. This may take the form of the TPF or insurance against claims exceeding bonded levels. The analysis of the current scheme undertaken by Europe Economics indicates that the TPF should be approximately €5.2 million to be able to withstand two large collapses within one year. **This entails raising €3.9 million in the short term.** As the scope of the scheme has now been extended to include additional arrangements, we suggest that CAR review the target level of the TPF on an ongoing basis to ensure it remains sustainable.

A low on-going levy, as suggested by Europe Economics would ensure the long-term sustainability of the TPF. In order to cover the average annual absolute fall of the previous decade, a total annual levy of €540,000 would be required, amounting to approximately 0.06% of transactions.[15] However, the TPF also requires considerable replenishment in the near term. This could be achieved through:

- a one-time levy of 0.39% of PLTO to fully replenish the TPF immediately;
- a fairly rapid replenishment by charging a levy of 0.17% of PLTO for three years, accepting a heightened risk for a period; or
- a lower on-going levy, while using the existing TPF funds and a portion of the levies to purchase insurance that provides full or partial protection against claims exceeding bonding levels, until the TPF reaches sustainable levels.[16]

Under current Irish legislation, all arrangements covered by the licensing and bonding scheme must also have recourse to the TPF. This is not the case for two types of arrangements: LTAs, and package holidays originating elsewhere sold by a firm established in Ireland. The levy charged to fund the TPF must therefore be based on turnover that includes those arrangements, as well as the additional firms that provide them.

These levies were calculated based on data from previous collapses, including only those firms that have been covered under the current regime. Increasing the scope of arrangements within the protection scheme is expected to increase the value of claims. However, it will also increase the total value of contributions to the TPF. Assuming the additional organisers that are now within scope have a similar risk profile to those currently covered by the scheme, the levy percentages are expected to remain appropriate going forward.

A **one-time levy** immediately replenishes the TPF and mitigates the risk of a gap in funding in the event of a future insolvency. It is also the cheapest option, and the percentage may reduce further with the inclusion of LTA providers. However, it imposes a burden on travel organisers for the first year. It may also be considered inequitable for incumbent providers and existing customers to pay extra for the protection of future firms and consumers.

The burden can be reduced through **a higher on-going levy for a short period** until the TPF is fully replenished, but this approach risks leaving a short-term gap in coverage if there is to be large-scale insolvency in the near term. This would ensure that the TPF had sufficient funds to cover two large scale insolvencies in just over two years.

Although **insurance** could be purchased to cover the risk of a shortfall in the TPF in the short term, this could be more costly relative to the levy options without insurance cover. There are two main products that are potentially available:

- a product that provides full cover for any claims exceeding firm bonds; or
- an excess insurance product that provides cover for any claims where the TPF is insufficient.

In either instance, the overall levy would need to reflect the cost of insurance as well as the cost of replenishing the TPF. The insurance would ensure full coverage while avoiding a large, short-term financial shock for incumbent organisers. A similar mechanism can be found in the Netherlands, where the compulsory traveller protection fund, the SGR, has a captive insurance company that acts as a back-up to bonding arrangements. It is funded through annual membership based on turnover, as well as its own investments and fines for mismanagement. Some countries make alternative use of insurance arrangements in schemes

[15] Based on 2017 PLTO levels, approximately €1 billion.
[16] There are a number of possibilities for the detailed numbers in this arrangement, limited by the number of years of insurance that could be purchased with funds available. This approach is based on the assumption that this insurance will be available in the market at a reasonable price.

consisting of bonding with a back-up. For example, the Air Travel Trust (ATT) in the UK administers the ATOL scheme, in which firms are bonded and a levy is administered on all package travel as a contribution to a back-up fund for when bonding in insufficient to cover all claims. To complement the fund, the ATT also holds insurance against large, atypical events (e.g. claims greater than £75 million in the event of a large operator failure).

Our engagement with insurers has suggested that, although a product that provides full cover for any claims exceeding bonds theoretically exists in the market, they may be reluctant to offer such a product. This is due to the scale of claims against the TPF in recent years and the relatively low level of the bond in Ireland, compared with other countries they are active in. The alternative would be for CAR to purchase excess cover, where insurers pay out any claims that exceed both firm bonds and the remaining funds in the TPF within a given licensing period. This would still mitigate the risk of the TPF ever being in deficit but would require an immediate levy on travel organisers to fund both the insurance product and to replenish the TPF.

If insurance cover is not available, or not available at a price considered cost-effective by CAR, there are four potential options available to CAR under current legislation:

- The default option would be for CAR to allow the TPF to be fully run down if claims exceed bonds and stop paying claims once this happens. This would leave Ireland non-compliant with the EU Directive and is therefore not recommended.
- An alternative would be to pro-rate claims downwards for future claims once the remaining funds in the TPF reaches a certain threshold. This would increase the longevity of the TPF (though not indefinitely) but would still leave Ireland non-compliant with the EU Directive.
- An immediate levy to replenish the TPF could be introduced for tour operators only. This would place a significant undue burden on a small proportion of the industry and, although it would allow Ireland to remain compliant with EU PTD II, is discriminatory and therefore not recommended.
- CAR could obtain a government guarantee /loan which would come into effect if the TPF were to fully deplete. Such a guarantee was used in the UK when the Air Travel Trust Fund fell into deficit.

Only the latter option presents a reasonable alternative if insurance cover is not available or available at too high a price.

3.1.2. Firm-level insurance

As an alternative to bonding, firms could purchase insurance to cover their liabilities under the insolvency protection regime. We understand from stakeholders that such products do not exist in the Irish market; firms currently purchase such products from the UK if they wish to do so. From discussions with the insurance industry, access to these products and their cost, tend to be based on the risk profile of individual travel organisers and therefore the cost of such insurance will vary substantially between firms. This would ensure the cost to an individual firm was not impacted by the insolvency risk of others in the industry. However, we expect that information required by insurance firms is likely to be as/more administratively burdensome than the existing arrangement with CAR, unless CAR retains a certain level of oversight of travel organisers (oversight may reduce the insolvency risk and therefore the premium).

Feedback from industry participants who have investigated insurance products, suggests that the cost of such insurance products is likely to be greater than contributions to a collective fund such as the TPF.[17] Ultimately,

[17] This has not been independently verified.

the cost of the insurance product would be impacted by the stringency and detail of CAR's oversight of travel organisers under the regime. Under this arrangement, CAR would also be required to take an additional oversight role to ensure insurance firms were processing claims for consumers appropriately.

3.1.3. Pooled insolvency protection

Pooled insolvency protection functions in a similar manner to the TPF but removes the requirement for a firm level bond. In such an arrangement, each firm or each customer would pay a levy into a fund (such as the TPF). The levy can be collected from travel organisers on an annual basis or from customers when each package holiday/LTA is sold. The levy could be set as a fixed value or as a proportion of the value of the package/LTA sold. A levy set as a proportion of the value of a holiday is generally more equitable than a fixed sum, as it ensures that customers with more expensive holidays pay proportionately more than those who purchase cheaper holidays. In the event of an insolvency, all claims would be paid from the fund.

There are several potential variations of pooled insolvency protection arrangements, such as varying the size of the levy set each year depending on the size of all claims in that one year. However, the arrangement described above is the most commonly used approach and reflects the current ATOL scheme in the UK (discussed in the box below).

Regardless of the form of the levy, we would expect the charge to be reflected in the prices that customers pay. In the UK's ATOL scheme, the levy is charged at £2.50 per passenger. We consider the cost in Ireland in our review of Option H in Section 4.6.

UK ATOL Scheme

The government-run ATOL scheme in the UK provides financial protection for most package holidays, as well as some flight-only bookings sold by businesses established in the UK. It does not cover LTAs, which are required by UK law to provide an alternative form of insolvency protection for consumers. Under the ATOL scheme, participating travel organisers must pay a levy of £2.50 to the Air Travel Trust Fund (ATTF) for every person they book on a holiday. This levy contributes to a fund that is used to cover customer claims in the event of a licensed firm's insolvency.

Travel organisers must obtain an ATOL license on an annual basis in order to participate in the scheme. There are five available licenses: Standard, Small Business, Franchise, Accredited Bodies and Trade. Here we discuss only Standard and Small Business licenses, as the others (or their parent companies/ associates) are subject to similar licensing requirements.

Organisers are eligible to apply for a Small Business ATOL (SBA) if they have licensable revenue under £1 million and book up to only 500 passengers per year, whereas Standard ATOLs apply for organisers with licensable revenue over £1 million. Firms are subject to a Personal Fitness and Competence Test, which assesses all persons who are likely to have influence over the business such as directors, shareholders or family members of the ATOL holder. The test considers a range of criteria for each person, including skills, qualifications, honesty, integrity, previous regulatory breaches and criminal history. The test also requires that one person in the business pass an ATOL training course.[18]

Applicants must also pass a Financial Test in order to obtain their license.[19] As shown in Table 3-1 below, small businesses are subject to four financial ratio tests, while Standard ATOL applicants must pass seven. The thresholds required to pass these tests are not available publicly.

Table 3-1: ATOL financial tests

Ratio	Formula	Description
Small Business and Standard ATOL		
Current ratio	Current assets / current liabilities	Liquidity measure – the ability to pay short term liabilities.
Cash ratio	Cash / current liabilities	Liquidity measure – the ability to pay short term liabilities with cash (equivalents)
Leverage ratio	Total debt / total assets	Financial risk measure – the proportion of assets financed by debt.
Return on Assets	Net profit (loss) / total assets	Efficiency measure – the ability to use assets to generate profit
Standard ATOL only		
EBITDA Margin	EBITDA / revenue	Profitability measure

[18] ATOL Policy and Regulations 2014/01. Criteria for an applicant for and grant of, or a variation to, an ATOL: fitness, competence and Accountable Person. Available at: http://publicapps.caa.co.uk/docs/33/Fitness%20note%2022814.pdf

[19] ATOL Policy and Regulations 2016/01. Criteria for an applicant for and grant of, or a variation to, an ATOL: Financial. Available at: http://publicapps.caa.co.uk/docs/33/ATOL%20financial%20JUN16.pdf

Revenue Growth	Revenue / previous year revenue	Growth measure
Revenue Variance	Revenue / projected revenue	Forecast quality measure

Source: UK Civil Aviation Authority

In addition to these tests, firms that initially join ATOL are subject to bonding requirements for the first four years of holding a license.[20] The level of bonding decreases over time, as outlined below in Table 3-2. However, firms that are unable to meet one or more of the financial ratio tests in Table 3-1 above may also be subject to bonding requirements if they are unable to immediately improve their balance sheet.

Table 3-2: ATOL bonding requirements

Period ATOL held	SBA	Standard ATOL	
		% of annual sales rev	Subject to minimum
< 1 year	£50,000	15%	£50,000
< 2 years	£40,000	12.5%	£40,000
< 3 years	£30,000	10%	£30,000
< 4 years	£20,000	7.5%	£20,000
> 4 years	No bond		

Source: UK Civil Aviation Authority

3.1.4. Trust accounts

Another option for protecting consumers from travel organiser insolvency is the use of trust accounts. In such an option, all customer payments are held in trust and not accessible to travel organisers until payments are made to suppliers or a travel arrangement has been fulfilled. This ensures that, even in the event of an insolvency, customer payments are protected within the trust account (minus any payments made to suppliers). In such instances, therefore, the sums in the trust account can be used to refund the customer, or alternatively, to pay the suppliers to allow the customer to travel.

We have chosen not to pursue this option for the following reasons:

- Trust accounts require travel organisers to have substantial liquidity as the travel organiser's internal costs cannot be funded through customer payments until their travel arrangement has been fulfilled. For some smaller travel organisers, we do not consider this to be a feasible option.
- A back-up option would still be needed to fund repatriations where due to an insolvency, a customer is stranded abroad. It is not guaranteed that funds in the trust account would be sufficient to fund repatriations when the travel organiser is also responsible for supplying travel.

[20] ATOL Policy and Regulations 2016/02. Requirement for bonding and other forms of security. Available online: https://publicapps.caa.co.uk/docs/33/ATOL%20201602%20JUL16.pdf

- A back-up option would also be needed to provide cover in the event of large airline failures that precipitate other travel organiser failures within the industry. If payments have already been made to airlines, trust accounts would not provide sufficient security for a customer's funds, and therefore a back-up option would be needed.

Option G, which we assess in the following section, operates in a similar manner to trust accounts. However, it has the benefit of giving travel organisers the flexibility between posting cash bonds (which introduces a similar liquidity issue as trust accounts) or posting bank bonds (where the liquidity issue is reduced).

3.1.5. Accredited bonding / insurance schemes

Another option, used in the UK, is to allow industry associations to provide accredited bonding and insurance schemes. In such instances, CAR would deem a firm compliant with its obligations under the EU Directive if they participated in one of these schemes. The schemes would be:

- responsible for assessing and monitoring the financial viability of its members;
- responsible for specifying the rules around bonding and any top-up levy for claims in excess of bonds; and
- liable for paying out all claims in relation to the insolvency of one of its members.

We have not pursued this option as there is no body currently active in this space in Ireland. Additionally, as membership of these schemes is often used to reduce the administrative burden and remove the bonding requirement for companies that are subject to them, these services may be expensive on a per passenger basis. Nonetheless we understand that some of the UK bodies may be interested in providing such a service for Irish travel organisers, and therefore, we suggest CAR considers this further if there is significant appetite in the industry for pooled options.

3.2. FEASIBILITY CONSIDERATIONS

3.2.1. Risk perception from insurance industry

One of the options we consider is the purchase of insurance to replace or supplement the TPF. We learned from consultations with insurers that the insurance industry perceives the Irish consumer protection scheme to be quite high risk. This stems from the extensive losses to the TPF in the last decade, as well as what they consider to be a low level of bonding relative to other schemes they are familiar with.[21] This concern has translated into a limited willingness to offer an insurance product that would act as a back-up in place of the TPF. However, there is interest in supplying a product that would provide excess cover; this would make the TPF the first point of loss in the event that claims exceed bonds, while insurance would cover any instances where the total claims on the TPF exceed the funds available.

Therefore, we assume in all of our insurance related options in Section 4, that an insurance product with excess cover, rather than full cover, is used as the stop-gap measure until the TPF is fully funded. Excess cover was also suggested by insurers to be more affordable than a TPF back-up.

[21] For example, non-flight packages in the UK are required to be bonded between 10% - 25%, packages in Norway require a guarantee between 25% - 100%, while in France 100% guarantee is required.

Despite the availability of the required insurance product, it is important to note that the high-risk perception of the Irish travel industry will result in high premiums that are unlikely to reduce for a number of years. If, in the near term, there are a number of insolvencies that increase the risk profile of the scheme, the insurer may increase the premium further. Additionally, there is a risk that they may require changes to the structure of the scheme in order to continue offering cover, for example, an increase in bonding levels.

3.2.2. Time to implement changes

The low level of the TPF has created a risk of customer exposure in the event of a large-scale insolvency or economic downturn.

All the options we consider in this study require changes to primary legislation, which has a lead-in period. In addition, the options involving more substantial change to the current system (such as changes to bonding metrics or a wholesale replacement of the regime) will also take time for CAR and industry to establish administratively. Finally, any changes to bonding rules can only be introduced gradually as firms existing bonds are run down, which could take up to a year from any change being introduced.

The overall effect of this is that all options leave consumers exposed to any issues with the current system, potentially for several years before any reforms are fully implemented. The pressure on the TPF will remain over this period. Unless an insurance product can be purchased immediately by CAR, the only alternatives that leave Ireland compliant with EU legislation, which is not recommended, is re-introducing an immediate levy on tour operators only or obtaining a government guarantee /loan to cover any shortfall.

3.2.3. Transition costs

The TPF currently lacks sufficient funds to pay out claims that exceed bonds on an ongoing basis as it has not been replenished for several decades. Therefore, any reform to the scheme that is compliant with EU legislation will inevitably increases the overall cost of providing insolvency protection to consumers of package holidays. We expect these costs will be passed on to passengers as we have little evidence to suggest the industry has the capacity to absorb such costs. This will inevitably lead to higher costs for package travel relative to self-organised travel, which may in turn reduce the number of people choosing to book through travel organisers. However, it does provide such passengers with an increased level of protection that they would otherwise not have.

As such, there is a risk that current firms may fail and/or exit the market due to the heightened costs. We have kept this under consideration when generating and assessing reform options. However, we have also had to account for the insurance industry perception that current bonding levels are too low, which has implications for the feasibility of some of the proposed reforms.

4. ASSESSMENT OF OPTIONS FOR REFORMING THE SCHEME

Tale 4-1 below sets out seven options for reforming the consumer protection scheme in Ireland, in light of EU PTD II.[22] Options C, D and E have been brought forward for consideration from the previous consultation in 2017. Every option presented below is fully inclusive of all package holidays and LTAs now under the scope of EU PTD II, and all will require legislative change. In addition, travel organisers can elect to purchase firm-level insurance (Option H) under all the options. **We expect that the costs imposed on travel organisers from each scheme, irrespective of how it is presented to customers will, by and large, be passed on to their customers.**

Impacts on *efficiency*, *effectiveness* and *travel trade* have been assessed, along with *cost* and *ease of implementation and ongoing operation*. For Options C, D and E, the impact assessments have been updated from Phase I to account for the changes from EU PTD II. A scheme is considered effective if it is expected to fully protect customers against all future insolvencies. The travel trade assessment looks at impacts of cost and competitiveness of the proposed scheme on industry. Efficiency has been considered based on the option's ability to provide protection relative to the costs of the proposed scheme to both the industry and the Commission. Ease of implementation considers the practicality and straightforwardness of implementing the proposed structure, including the legal aspects, while ease and cost of ongoing operation assesses the overall cost of administering the scheme.

The costs presented in Table 4-1 below are based on historic turnover data of the participants of the current protection scheme only, as well as estimates provided by insurers. As such, the figures for levies and cost per holiday are illustrative at this stage, presented in order to provide an indicative measure of relative impact. They are subject to change by the time of implementation.

[22] These options have been updated relative to what was presented to stakeholders in the workshop on 21st May 2019.

Table 4-1: Options for reforming the consumer protection scheme

Item	Bonding and back-up					Firm level insurance	Pooled insolvency protection
	Option C	Option D	Option E	Option F	Option G	Option H	Option I
Bonding with reference to	4% - 10% of PLTO	8% - 20% of eligible turnover	8% - 20% of eligible turnover	8% - 20% of eligible turnover	65% of turnover at risk	✗	✗
Reference definition	No change to current PLTO definition	Eligible turnover: PLTO excluding payments passed onto supplier immediately and bills paid in arrears	Eligible turnover: PLTO excluding payments passed onto supplier immediately and bills paid in arrears	Eligible turnover: PLTO excluding payments passed onto supplier immediately and bills paid in arrears	Turnover at risk: the maximum amount of payments for holidays yet to be fulfilled, excluding payments passed onto suppliers	N/A	N/A
TPF	One-off levy of 0.39% of LTO On-going levy of 0.06% of LTO	One-off levy of 0.39% of LTO On-going levy of 0.06% of LTO	One-off levy of 0.25% of LTO On-going levy of 0.04% of LTO	10-year levy of 0.12% of LTO for the purchase of excess insurance On-going levy of 0.06% of LTO thereafter	10-year levy of 0.04% of LTO for the purchase of excess insurance On-going levy of 0.02% of LTO thereafter	N/A	10-year levy of 0.26% of LTO for the purchase of excess insurance 0.12% thereafter
Other			Firms cannot exceed PLTO	Bonding can rise to 25% of eligible turnover at CAR discretion If projected eligible turnover is less than previous year, firms must be bonded to previous years' figures		Firm-level insurance	Firms can be bonded to 25% of LTO at CAR discretion
Expected cost for an average holiday of €550 [23]	€0.55 - €2.55	€0.55 - €2.55	€0.45 - €2.45	€0.90 - €2.90	€0.45 - €2.45	Firm-dependent	€1.65 - €3.65

[23] This cost includes both the cost of bonding and TPF levy. For Options F, G and I, the costs lower after 10 years as insurance is phased out. For Options C, D and E, the costs do not reflect the higher cost in the first year of the scheme.

4.1. OPTION C: INCREASE THE TPF THROUGH A LEVY ON TRAVEL ORGANISERS AND LEAVE BONDS UNCHANGED

Details of reform

Under this option, bonding rules would remain as they currently are, but the scope would be extended so that travel organisers are licensed for all their package holiday and LTA business. Licensable turnover would therefore be extended to include any revenue from the sale of package holidays to customers outside of Ireland, including dynamic packages, and any revenue from the sale of LTAs.

As customers of LTAs have less protection than customers of package holidays, the scale of claims following the insolvency of an organiser that only sells LTAs is likely to be lower than the scale of claims for other organisers. Therefore, we propose bonding levels at the lower end of the existing scale, with providers of LTAs bonded at the same level as travel agents, at 4% of PLTO. This means the licensing regime would need to extend to all:

- Irish-established entities for all packages and LTAs sold/offered for sale in the EU, and
- non-EU entities selling packages/LTAs sold/offered for sale in Ireland.

Under EU PTD II, organisers are required to issue a certificate to passengers, informing them whether the holiday they have been sold is covered by the insolvency protection regime. We also expect travel organisers to inform CAR of:

- their projected licensable turnover, broken down into packages, LTAs and other; and
- the actual number of protected packages / LTAs sold (and certificates issued).

This would allow CAR to track the actual value of package holidays and LTAs sold against PLTO on an annual basis as they do currently, and whether there is a risk of a firm becoming significantly under-bonded.[24]

Additionally, every entity covered by bonding requirements would also have recourse to the TPF if their bonding is insufficient following an insolvency. This would inevitably increase the number of claims on the TPF. In return, such entities would also be levied for the replenishment of the TPF. We expect that the increased claims on the TPF would be matched by the additional funding levied on travel now in scope of the protection regime.

The TPF would be replenished through a one-off levy of 0.39% of LTO to be paid by all travel organisers, with a recurring annual levy of 0.06% of LTO to ensure the fund remains sustainably funded. This levy would be set as a proportion of each licensed sale and is designed to be large enough to pay out all claims in the event of the two largest insolvencies in the last decade occurring in a single year. The recurring levy has been set at the average value of annual claims on the TPF over the period 1999 to 2018.

As noted in the previous study, the TPF was originally funded through a levy on tour operators only. However, this was implemented when travel agents primarily sold package holidays that were fulfilled by tour operators. As this is no longer the case, it makes sense to distribute the burden of replenishing the TPF across all firms that have recourse to the TPF in the event of an insolvency.

[24] Under all options, CAR may choose to ask certain firms to increase their reporting frequency if the firm is considered to have a higher risk of insolvency, as they do now.

Impact assessment

Scheme effectiveness. This option is likely to continue to provide effective cover for customers of package holidays and LTAs and deals with the immediate risk to the TPF. The scheme would provide effective cover if the two worst collapses seen since 1999 were to be repeated in a single year. The extension of the scheme to cover LTAs and non-Ireland sales also ensures effective cover for all consumers covered by the Irish insolvency protection regime. The on-going levy is designed to ensure the TPF is sustainably funded in the longer term.

However, the size of the levies we have calculated are based on historical events and as such, there remains a risk that future insolvencies may occur at a greater scale than has previously been experienced. If collapses at the scale of lowcostholidays.ie. were to become more frequent, it is likely that the TPF would quickly deplete once again and require additional funding. One mitigation against this is the requirement for firms to report on the value of protected packages/LTAs sold on an ongoing basis (quarterly or monthly), providing CAR with an early warning if a firm is likely to be significantly under-bonded.

This option may not be adequate in the event of low probability, high impact events. For example, the collapse of a major airline could precipitate the failure of many travel organisers reliant on the airline as a supplier. Under EU PTD II, travel organisers are still required to discharge their obligations to customers in the event of supplier insolvency, even if customer payments have already been transferred to the supplier. It is likely that under a scenario like this, organiser bonds would be insufficient to pay out all claims, thereby leading to a significant draw on the TPF. Although this can be considered a 'worst-case' scenario, it ought to be considered a distinct possibility. However, we do not believe it is efficient to immediately fund the TPF to deal with such an event.

Impact on travel trade. This option imposes a higher cost on travel organisers than currently, as they are now required to pay a levy to fund the TPF. We expect that the cost of the on-going levy would be passed directly onto customers, though travel organisers may be required to absorb some of the cost of the one-off levy in order to maintain competitive pricing.

Relative to the current scheme, the levy itself should not have a material impact on the competitiveness of different travel organisers relative to one another. However, without adequate monitoring and oversight by CAR, the current bonding rules may give companies with riskier business practices a competitive advantage over those with less risky business models. Additionally, the levy is likely to reduce the competitiveness of package holidays and LTAs relative to self-organised travel (without cover), accelerating the shift towards passengers booking their own travel and accommodation directly with providers.

Scheme efficiency. This option retains the current definition of PLTO, albeit excluding corporate sales (where there is a general agreement), which imposes larger bonding costs for some travel organisers and lower bonding costs for other travel organisers than is necessarily efficient. This means that the potential draw on the TPF is higher than if bonding requirements were better targeted based on the likelihood of insolvency and the potential size of claims. This means the size of the levy to fund the TPF is higher than it could otherwise be.

Ease of implementation. This option would require legislative changes to ensure that the Commission has the power to levy charges on travel agents and providers of LTAs, as well as request projected and historic information from LTA providers. It would also require a legislative change to ensure all affected customers have recourse to the TPF if their travel organiser's bond is insufficient to pay out all claims.

Beyond the legislative changes, this option is relatively straightforward to implement as it retains the broad structure of the existing insolvency protection scheme.

Ease and cost of ongoing operation. The extension of the scheme to include LTAs and non-Ireland sales expands the number of firms covered by the scheme, increasing the administrative costs on CAR relative to the current scheme. There would also be an additional cost on travel organisers from providing regular updates on the number of packages and LTAs sold, if this form of risk mitigation is adopted. However, as the scheme would largely function as it currently does, the costs of on-going operation would be similar to existing levels for both CAR and travel organisers.

Conclusions

Option C makes limited changes to the current regime, aside from the introduction of a levy to fund the TPF and extending coverage to include dynamic packages, non-Ireland and LTA sales. This imposes a cost on travel organisers that is higher than the alternative options and may also reduce their competitiveness relative to direct travel bookings. As the structure has not been adjusted to reflect individual firm risk, the scheme is less likely to be adequate to effectively manage low-probability, high impact events compared with other options. Additionally, it retains the current issue of over- and under-bonded firms, thus reducing its efficiency.

4.2. Option D: Bond to eligible turnover

Details of reform

Under this option, in addition to the extension of the scheme to include dynamic packages, non-Ireland and LTA sales, bonding would be based on eligible turnover, which is defined as PLTO excluding:

- Payments made to suppliers immediately, where customer payments are less at risk in the event of a travel organiser insolvency as suppliers are still able to fulfil their portion of the holiday; and
- Payments made in arrears by customers, which would not be at risk in the event of an insolvency.

Eligible turnover is therefore narrower than PLTO. If 50% of licensable turnover is related to the purchase of flight tickets, the majority of which is passed on to airlines immediately, we would expect the value of eligible turnover to be approximately half the value under the existing the definition. This means that bonding percentages would need to increase from 4% to 8% for travel agents and LTA providers, and from 10% to 20% for tour operators to maintain the level of protection from bonding. We assume that payments made in arrears make up a small proportion of total PLTO. On average, the value of bonds posted by industry would be the same as in Option C, though some individual firms that hold consumer funds would be required to post higher bonds than they currently do.

All travel organisers would still be required to provide both projections and audited records of licensable turnover and sales of packages/ LTAs on an annual basis. However, as we use eligible turnover in place of PLTO in this option, they would also need to provide projected and audited records of immediate supplier payments and any income received in arrears.

For the replenishment of the TPF, similar to Option C, this would be through a one-off levy of 0.39% of LTO to be paid by all travel organisers, with an on-going annual levy of 0.06% of LTO to ensure the fund remains sustainably funded. There remains a risk that future insolvencies may occur at a greater scale than historic events, on which size of the levies are calculated, thereby depleting the TPF. However, this risk is lessened relative to Option C as bonding is better matched to funds at risk.

Impact assessment

Scheme effectiveness. Compared with Option C, this option provides slightly more effective protection because bonding rules are better targeted towards the firms where claims are likely to be higher in the event of an insolvency. Firms that hold onto customer money, rather than passing it immediately on to a supplier, are required to have larger bonds. This means that in more circumstances, bonds are likely to be sufficient to pay out all claims, reducing the number of instances when recourse to the TPF is required. As we have maintained the same levies as Option C, this enables the TPF to be more resilient in the event of larger scale insolvencies.

However as with Option C, this option may be unable to provide cover in the event of low probability, high impact events. In the scenario outlined above where there is major airline failure that precipitates multiple travel organiser failures, it is likely that bonds would be insufficient as the firms would not be bonded for any payments that are immediately passed onto the airline. Regardless, we believe that the TPF is better equipped to deal with such instances as it is better able to pool risk across the industry and across time.

Impact on travel trade. Under this option, some firms would find their bonding costs are lowered while other firms would have higher bonding costs relative to Option C. Although this creates differing requirements for different firms, it better reflects each firm's likelihood of drawing on the TPF in the event of an insolvency. Therefore, this option can be considered more equitable than Option C. Overall, across the industry as a whole, we expect bonding costs to remain largely as they currently are.

As with Option C, the introduction of a levy to fund the TPF is unlikely to affect the relative competitiveness of different firms within the insolvency protection regime. However, depending on how much passengers value the protection afforded by the regime, it could affect the competitiveness of firms selling package holidays/ LTAs relative to providers selling travel directly to consumers relative to the current scheme.

Scheme efficiency. This option is more efficient than Option C in the longer term as it allows for more instances when bonding is sufficient to pay out all claims, without increasing the cost of bonding across the industry as a whole. However, this comes at a consequence of higher administrative costs for travel organisers in terms of producing additional information for CAR, and for CAR in terms of monitoring firms to ensure eligible turnover is not being deliberately understated. However, as there is a clear definition of eligible turnover and a transparent framework within which to calculate it, the administrative costs for CAR are lower than they would be if bonds were set individually for all firms.

Ease of implementation. As with all the options being considered, a legislative change is required to implement this option. Legislation would be needed to allow CAR to levy travel agents and LTA providers to fund the TPF and change the basis of bonding from PLTO to eligible turnover.

There would need to be guidance issued to organisers to ensure they fully understand what would and would not be included in eligible turnover.

Ease and cost of ongoing operation. Relative to Option C, there would be an increased administration burden on firms due to the additional reporting requirements to CAR. Specifically, both the projections and records of eligible turnover (i.e. the proportion of holidays that are paid in arrears and the proportion of payments that are passed onto suppliers immediately). However, we expect this to be a relatively small requirement above the existing information firms provide, in addition to those imposed through the EU PTD II.

As stated above, it is likely that this option would also increase the administrative burden for CAR relative to existing requirements. As the projections received from travel organisers is more complex, it would require greater policing to ensure that the projections provided are accurate. This may involve cross-checking projections of eligible turnover with previous years' turnover, or CAR asking firms to provide details of contractual arrangements with suppliers.

We believe these administrative costs would generally be outweighed by lower bonding costs for travel organisers that are less risky, and through a more efficient scheme overall.

Conclusions

By basing bonding on eligible turnover rather than PLTO, Option D provides bonding rules that are better matched to risk. This reduces the likelihood that claims would exceed bonding in the event of an insolvency, making the scheme more effective. It does so without increasing the overall cost of bonding to the industry as a whole. However, it also introduces higher administrative costs for both CAR and travel organisers relative to current arrangements and may also affect the competitiveness of the latter.

4.3. Option E: Bond to eligible turnover and prevent firms trading above projected licensable turnover

Details of reform

Option E builds on Option D by preventing firms from trading above their PLTO. This means that when a firm's actual licensable turnover exceeds the PLTO for which they are licensed, it would be illegal for a firm to sell additional package holidays/ LTAs until the PLTO projection is revised and the value of the bond is increased accordingly. In the event of an insolvency therefore, the total value of claims would not exceed 100% of PLTO, limiting the draw on the TPF for large scale insolvencies. Relative to Options C and D, this mechanism increases the resilience of the scheme in the event of low-probability, high impact insolvencies.

Under this option, bonding levels would remain at 20% of eligible turnover for tour operators and 8% for travel agents and LTA providers. However, lower one-off and on-going levies would be needed to replenish the TPF as the total value of claims for any single insolvency would be capped at 100% of PLTO. Therefore, under the assumption that the TPF must cover the largest two insolvencies within the last decade, this option requires a one-off levy of 0.25% of LTO in addition to an on-going levy of 0.04%. This levy would be set as a proportion of each licensed sale.

This option allows for a bond to be increased in the event that a firm is able to sell package holidays/ LTAs above their PLTO, thereby better matching their bond level to their risk exposure. This requires bonds to be easily adjustable and/ or complementary. Bonds in the form of insurance policies or guarantees would likely be difficult and costly to adjust. However, a bank deposit could easily be increased. Firms may seek to balance flexibility with hassle by choosing to be bonded through the former and adjusting the bond level later in the year through the latter.[25]

Under EU PTD II, organisers are required to issue a certificate to passengers, informing them whether the holiday they have been sold is covered by the insolvency protection regime. We also expect travel organisers to inform CAR of:

- their projected licensable turnover, broken down into packages, LTAs and other; and
- the actual number of protected packages / LTAs sold (and certificates issued) on a quarterly basis.

This would allow CAR to track the actual number of package holidays and LTAs sold against PLTO, and alert firms if there is a risk of them becoming significantly under-bonded within the next quarter in order to prompt them to increase their bond and PLTO.

If a travel organiser chooses to increase their PLTO, this would introduce administrative costs to both the company in question and to CAR. As such, we recommend CAR charge a small administrative fee of €50 for PLTO adjustments to prevent overuse.

Impact assessment

Scheme effectiveness. This option provides cover that is largely as effective as Option D. It reduces the risk of insolvencies that are not covered by bonding, including large-scale insolvencies where claims are greater than 100% of a firm's licensable turnover, although they are still possible. It also reduces the size of the TPF, resulting in similar levels of effectiveness overall.

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[25] In the event of an insolvency, cash is called first.

However as with Options C and D, this option may be unable to provide cover in the event of low probability, high impact events, though the TPF will be marginally better equipped to deal with such instances than Option C.

Impact on travel trade. As with Option D, firms may face higher or lower bonding costs depending on whether they hold on to consumer funds, better reflecting the likelihood of drawing on the TPF in the event of an insolvency. They may also incur costs if their sales exceed the PLTO cap and they are required to update their PLTO and bond. Overall, we expect the industry-wide cost of bonding to remain largely the same as it is now.

The introduction of the TPF levy under Option E is unlikely to impact the competitiveness of firms within the scheme. However, it may be reduced relative to direct sales to consumers, but to a lesser extent than preceding options.

Scheme efficiency. By capping licensed sales to PLTO and adjusting bonding to better match risk, Option E reduces the likelihood of claims exceeding bonding without exceeding the overall cost of bonding to the industry relative to preceding options and current arrangements. It also reduces the levies used to fund the TPF without sacrificing consumer protection. Both the industry and CAR would face higher administration costs under this option.

Ease of implementation. As with Option D, legislative change would be required to change the basis of bonding from PLTO to eligible turnover, to collect TPF levies from travel agents and LTA providers and to provide CAR with the power to request information from LTA providers. Additional legislative change would be needed to prevent firms from trading above their PLTO.

CAR would use their current system to track sales against PLTO and a procedure for the adjustment of PLTO within the licensing year. A guidance would need to be issued to organisers to ensure they fully understand eligible turnover.

Ease and cost of ongoing operation. Option E is likely to increase the administrative burden for CAR due to the more complex monitoring of eligible turnover relative to PLTO. It would also increase administrative burden for travel organisers compared to Option C due to the required reporting of both annual projected and actual supplier payments and payments in arrears, which is more complex than the current PLTO reporting. However, for most firms it should be a relatively straightforward adjustment unless supplier terms change significantly from one licensable period to the next. Overall, we do not expect these costs to be significant over and above the usual reporting requirements, in addition to those imposed through the EU PTD II.

It may be difficult for some firms to adjust their bonding mid-way through the licensing period at short notice, which could affect the flexibility of their operations.

However, firms would have a lower TPF levy relative to Option D, and those that are less risky would also face lower bonding costs. More importantly, the resilience of the TPF would be increased through the PLTO trading cap, thus making the scheme more efficient relative to preceding options and outweighing the additional costs.

Conclusions

Basing bonding on eligible turnover rather than PLTO in Option E mirrors Option D, resulting in bonding rules that are better aligned with risk. The effectiveness of the scheme is increased further through capping trade to PLTO, limiting the draw on the TPF for large scale insolvencies. This de-risking also reduces TPF levies, although operators are subject to increased reporting and potential PLTO/bonding adjustments. Similar to preceding options, there may be a small impact on firm competitiveness. CAR may also face a higher administrative burden under Option E.

4.4. OPTION F: BOND TO ELIGIBLE TURNOVER WITH EXCESS INSURANCE IN THE SHORT TERM

Details of reform

As with Options D and E, Option F adopts bonding based on eligible turnover, with the same bonding requirements of 8% for travel agents and LTA providers, and 20% for tour operators. However, under this option, two further changes to bonding are proposed.

First, organisers must be bonded against the projected eligible turnover (determined through PLTO) or the previous year's actual eligible turnover, whichever is greater. This measure reduces the risk of firms significantly understating their eligible turnover and allows CAR to make a quick check through their annual reporting to ensure firms are appropriately bonded. It does not remove the issue of understated revenues entirely, as quickly growing firms may significantly understate PLTO/eligible turnover.

Secondly, CAR would be able to increase bonding requirements *up to* 25% of eligible turnover for individual firms if they are at higher risk of insolvency, or at risk of being insufficiently bonded. This could be exercised under the following circumstances:

- Overreliance (>70%) on single supplier for air travel or accommodation;
- Introduction of new business model;
- Significant change in ownership/ management;
- Consistent underreporting of eligible turnover/ under-bonded;
- Significant variation in profitability;
- Historic non-compliance; or
- Failing financial test(s).

Financial tests, outlined in Table 4-2 below, would be applied to each firm, with thresholds indicating a pass or fail. Smaller organisers with turnover of less than €1m would be subject to different thresholds.[26] Net cash flow will also be considered for companies with turnover greater than €1m.

Table 4-2: Financial ratios for discretionary bonding

Test	Formula	Description
Current ratio	Current assets / current liabilities	Liquidity measure – ability to pay short term liabilities. Higher ratio is favourable
EBITDA margin	EBITDA[27] / revenue	Profitability measure – earnings remaining after operating expenses. Higher ratio is favourable.
Return on assets	Net profit / total assets	Efficiency measure – ability to use assets to generate profit. Higher, positive ratio is favourable.
Leverage ratio	Total debt / total assets	Financial risk measure – proportion of assets financed by debt. Lower ratio is favourable. >1 is a deficit.

Source: CEPA analysis

This option imposes a levy of 0.12% of LTO initially which results in a relatively slow replenishment of the TPF over 10 years. To achieve this without a long period of risk exposure, we propose using funds in the

[26] Thresholds for smaller and standard organisers are to be determined at a later stage and refined over time.

[27] Earnings before interest, tax, and depreciation of assets

TPF to purchase insurance against claims on the TPF in excess of the remaining funds in a given licensing period. A portion of the proceeds from the new levy would contribute to the purchase of insurance until the TPF is fully replenished. This would be a short-term measure to ensure that there is no gap in coverage. The cost of insurance at this stage is based on estimates provided by the insurance industry, and therefore the length of time for which the existing TPF funds would cover the insurance premium remains subject to change.[28] Ultimately this would depend on the final price that insurers charge for this product. Alternatives to insurance, once existing TPF funds are used up, would be for the government to provide a short-term guarantee, or for the levy to be temporarily increased to accelerate replenishment of the TPF.

The use of insurance in the shorter term avoids a large one-off cost for travel organisers, though it does mean a higher on-going levy. With an initial levy of 0.12% of LTO, enough funds should be raised in 10 years to replenish the TPF. After this period, insurance cover would no longer be needed and the on-going levy could be reduced to 0.06% of LTO.

Impact assessment

Scheme effectiveness. This option provides cover that is more effective than Options C, D and E. By allowing CAR to more effectively scrutinise individual firms and increase bonding levels accordingly, CAR can react to situations where they believe the risk of insolvency is likely to lead to a substantial draw on the TPF. CAR would use information provided by firms during (and if the firm is higher risk, between) licensing periods, such as actual licensed sales data, to quickly identify firms that are at risk of being under-bonded.

By reducing the likely draw on the TPF for routine insolvencies, the fund is more resilient to systemic risks, such as an airline collapse. Levies will be used to purchase insurance in the near term and increase the TPF in order to manage high-impact, low probability events, thereby enabling the robustness of the fund over the long term.

Impact on travel trade. This option potentially increases bonding costs for firms that are reducing in size as there bond is based on the previous year's actual eligible turnover. It also increases the bonding costs for certain firms that are deemed to be higher risk by CAR relative to other proposed options, as well as administrative costs for CAR as they increase their oversight. However, in the longer term, this should mean a reduced draw on the TPF, and therefore lower on-going contributions for funding the TPF.

As with preceding options, the introduction of a levy to fund the TPF is unlikely to affect the relative competitiveness of different firms within the insolvency protection regime, though it could affect the competitiveness of firms selling package holidays relative to firms dependent on self-organised travel. However, this option reduces the burden for travel organisers in the first year of operation by spreading the cost of replenishing the TPF over a longer period. This means that the impact on the competitiveness of package holidays relative to self-organised travel is more muted in any one year.

Scheme efficiency. As with Options D and E, this option increases the number of instances when bonding is sufficient without significantly increasing bonding costs. As a result, it can be considered a more efficient option relative to Option C and existing arrangements. As we have based the appropriate size of the TPF on the largest two insolvencies experiences in the past decade, it is possible that the TPF has higher funding than

[28] We have used a very conservative estimate of the cost of insurance to model this scenario. We assume that full insurance cover is purchased for ten years, and is priced based on historic draws on the TPF with a 40% margin. Reducing the margin to 20% implies a levy of 0.10%.

is necessary given the proposed changes to the bonding rules. If this turns out to be the case, then the on-going levy for the TPF can be reduced further in future without affecting the sustainability of the fund.

The efficiency of the scheme in the near term is somewhat reliant upon the cost of insurance, which depends upon the extent of future insolvencies. In the event that an economic downturn leads to a number of insolvencies, the insurance premium may rise to match the increased level of risk. This would require a longer period of holding insurance, extending the higher levy period and thus increasing the overall cost to industry. If, under heightened risk, the insurance company requires changes to the bonding scheme, there may be a greater impact.

Ease of implementation. As with all the options being considered, a legislative change is required to implement this option. Legislation would be needed to change the basis of bonding to eligible turnover, to allow CAR to levy travel agents and LTA providers to fund the TPF, to require firms to set bonds to the maximum of either 8-20% of projected eligible turnover or the previous year's actual eligible turnover, to allow CAR to use TPF funds to pay for insurance and to allow CAR to increase bonding requirements for firms up to a cap of 25% of eligible turnover.

CAR would also need to purchase insurance excess cover for the TPF to address the current shortfall. Discussions with the insurance industry have indicated that a bespoke product could be made available. This would be contingent on CAR imposing appropriate controls around licensing and monitoring to maintain an adequate risk profile.

Ease and cost of ongoing operation. As with Options D and E, there would be an administrative burden from firms having to provide additional projections and records of both supplier payments and payments made in arrears to CAR. This is somewhat a more complex concept than PLTO, and therefore it may take firms longer to put together their projections of eligible turnover. However, for most firms it should be a relatively straightforward adjustment from projecting PLTO to projecting eligible turnover unless supplier terms change significantly from one licensable period to the next. Overall, we expect this to be a relatively small requirement above the existing reporting undertaken by firms.

This option increases the administrative burden on CAR relative to preceding options discussed, as they now have the ability to adjust bonding requirements through greater scrutiny of individual firms. We have provided a brief description of instances when adjustments to bonding levels may be appropriate. However, it is likely that further guidance is required to ensure this is implemented transparently and fairly.

Conclusions

Option F provides CAR with greater discretion to scrutinise firms and their bonding levels, enabling them to react to and manage potential insolvency risks, thus increasing the effectiveness and resilience of the scheme without significantly increasing the overall cost of bonding to the industry. Additionally, firms would be subject to lower contributions to the TPF, relative to preceding options, as an insurance product would be used to pay claims that would collectively put the fund in deficit within a certain period. Although Option F may cost more in the long run relative to Options C, D, E and G, it provides full cover in the short term at relatively low cost to industry. However, it does introduce a degree of subjectivity into the bonding rules and inflicts higher administrative costs on CAR through more active monitoring of licensees. As with all preceding options, it may also have a small impact on firm competitiveness and introduces some additional administrative requirements relative to current arrangements. Although the calculations we have made are based on estimates provide by the insurance industry, this option remains subject to an appropriate product being made available through insurance providers at a workable cost.

4.5. OPTION G: BOND TO TURNOVER AT RISK WITH EXCESS INSURANCE IN THE SHORT TERM

Details of reform

In this option, we set bonding with reference to 'turnover at risk'; the maximum amount in customer payments a travel organiser is holding onto at any one time. A firm's bond would therefore be much more closely targeted on the likely size of claims, significantly reducing the instances when a bond is insufficient to pay out all claims.

This option is functionally similar to trust accounts or escrow accounts, where customer payments are placed in separate accounts that travel organisers only have access to once a holiday has been fulfilled or to make payments to suppliers. This option, however, gives organisers the flexibility to post bank bonds rather than cash bonds reducing the need for them to have a large amount of liquidity.

Firms can either choose to project their likely turnover at risk for the subsequent 12-month period and post an appropriately sized bond, or they can adjust their bond mid-year if they are holding onto more of customers' funds than originally anticipated.

Under this option, we propose firms being bonded to 65% of their turnover at risk to maintain a similar net cost effect on a typical firm. In the worked examples below, we show that for a firm that operates with limited seasonality, this is equivalent to 4% of PLTO. For a travel organiser that operates a business model where the majority of their income is in a single quarter, this implies a bond equivalent to 16% of PLTO. For a tour operator with limited seasonality, this is equivalent to 8% of PLTO.

Bonding with reference to turnover at risk (Travel Agent with non-seasonal income)

Travel Agent licensable turnover: €2 million

Maximum weekly turnover: €38,462

Air travel (Expenditure share: 50%)

- Of which scheduled: 80%
- Payment held for: 0 weeks
- Of which chartered: 20%
- Payment held for: 2 weeks

Maximum air travel turnover at risk: €7,692

€38,462 * 50% expenditure share * [(80% scheduled share * 0 weeks) + (20% chartered share * 2 weeks)]

Accommodation (Expenditure share: 50%)

- Of which scheduled: 80%
- Payment held for: 7 weeks
- Of which chartered: 20%
- Payment held for: 2 weeks

Maximum accommodation turnover at risk: €115,385

€38,462 * 50% expenditure share * [(80% bed banks share * 7 weeks) + (20% direct share * 2 weeks)]

Maximum turnover at risk: €123,077 (€7,692 + €115,385)

Bond: €80,000 (65% * €123,077)

Bond as a percentage of licensable turnover: 4% (€80,000 / €2,000,000)

Bonding with reference to turnover at risk (Tour Operator with non-seasonal income)

Travel Agent licensable turnover: €2 million

Maximum weekly turnover: €38,462

Air travel (Expenditure share: 50%)

- Of which scheduled: 0%
- Payment held for: 0 weeks
- **Of which chartered: 100%**
- **Payment held for: 7 weeks**

Maximum air travel turnover at risk: €134,615

€38,462 * 50% expenditure share * [(0% scheduled share * 0 weeks) + (100% chartered share * 7 weeks)]

Accommodation (Expenditure share: 50%)

- Of which scheduled: 80%
- Payment held for: 7 weeks
- Of which chartered: 20%
- Payment held for: 2 weeks

Maximum accommodation turnover at risk: €115,385

€38,462 * 50% expenditure share * [(80% bed banks share * 7 weeks) + (20% direct share * 2 weeks)]

Maximum turnover at risk:	€250,000	(€134,615 + €115,385)
Bond:	€162,500	(65% * €250,000)
Bond as a percentage of licensable turnover:	8%	(€162,500 / €2,000,000)

Bonding with reference to turnover at risk (Travel Agent with seasonal income)

Travel Agent licensable turnover: €2 million

Maximum weekly turnover: €153,846

Air travel (Expenditure share: 50%)

- Of which scheduled: 80%
- Payment held for: 0 weeks
- Of which chartered: 20%
- Payment held for: 2 weeks

Maximum air travel turnover at risk: €30,769

€153,846 * 50% expenditure share * [(80% scheduled share * 0 weeks) + (20% chartered share * 2 weeks)]

Accommodation (Expenditure share: 50%)

- Of which scheduled: 80%
- Payment held for: 7 weeks
- Of which chartered: 20%
- Payment held for: 2 weeks

Maximum accommodation turnover at risk: €461,538

€153,846 * 50% expenditure share * [(80% bed banks share * 7 weeks) + (20% direct share * 2 weeks)]

Maximum turnover at risk:	€492,308	(€30,769 + €461,538)
Bond:	€320,000	(65% * €492,308)
Bond as a percentage of licensable turnover:	16%	(€320,000 / €2,000,000)

Organisers would need to report to CAR on a quarterly basis the number and value of licensed holidays sold, the value of customer payments received, and any payments made to suppliers. This would allow CAR to monitor whether organisers are appropriately bonded.

Even if organisers are bonded to 100% of turnover at risk, there are still likely to be a few instances where bonding is insufficient. This could be due to firms underestimating their turnover at risk or passing on payments to suppliers for only portions of holidays (e.g. flights but not hotels), and could arise from significant repatriation costs and/ or CAR's administrative costs of addressing the claims. This option would therefore still require the TPF as a back-up in instances where bonding is insufficient. However, as bonds are more closely targeted to the likely scale of claims, the TPF would not need to be funded to the same scale.

With bonds that are more closely targeted to the likely scale of claims, we assume that the two largest historic insolvencies, under this scheme structure, would have had total claims of €1.7 million for lowcostholidays.ie and €0.7 million for Failte travel (including administration costs).[29] Given each firm's bond, this means the TPF would need to be sustainably funded at €1.9 million to deal with these insolvencies in a single year. With an on-going levy of 0.040% of LTO, enough funds should be raised in 10 years to replenish the TPF and fund insurance cover over this period – assuming a suitable product at a workable price is offered by the market.[30] After this period, insurance cover would no longer be needed and the on-going levy can be reduced to 0.02% of LTO. For a typical holiday package, this would be a levy of approximately €0.25 for the first 10 years, and a levy of €0.10 thereafter.

Impact assessment

Scheme effectiveness. This option provides cover that is very effective as it is most closely targets the likely scale of claims. This means that in the vast majority of instances, organiser bonds should be sufficient to pay out all claims following an insolvency.

Although this option requires lower levies to fund the TPF relative to all other proposed options, we expect that it would be drawn-on on fewer occasions, meaning that it continues to provide effective cover at lower levels of funding.

Impact on travel trade. As we have proposed a bonding percentage of 65% of turnover at risk, this option is likely to increase bonding costs above existing levels for most firms. Firms that hold onto customer money for an average of three weeks and have turnover that is not seasonal would face bonding costs that are similar to the current scheme. Firms with more seasonal turnover or those that hold onto customer payments for longer would face higher bonding costs. Although this creates different bonding costs for different types of firms, we believe it is appropriate to do so as it better reflects the riskiness of each firm's business model in terms of the likely scale of claims.

Scheme efficiency. In terms of overall level of protection, this option is the most effective as it most closely targets bonding levels with the level of risk imposed by an individual firm. This means that bonding costs are increased for risker firms but the levies for funding the TPF are reduced.

However, this comes at the expense of an increased administrative burden on CAR and firms due to the complexity and extensive reporting required. Stakeholder feedback has suggested that this is less of an issue with larger firms where they have automated systems to report the maximum turnover at risk but is likely to be a more significant issue for smaller firms.

As with Option F, the efficiency of the scheme would also be dependent upon the ongoing cost of insurance.

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[29] We estimate this by assuming that bonds at 65% of turnover at risk would reduce the size of claims by 65%.

[30] We have used a very conservative estimate of the cost of insurance to model this scenario. The information provided here is based on insurance costing no more than our estimate.

Ease of implementation. As with all the options being considered, a legislative change is required to implement this option. Legislation would be needed to define turnover at risk and set the new bonding requirements, allow CAR to purchase insurance with the TPF funds and to allow CAR to levy travel agents and LTA providers to fund the TPF.

There would also need to be guidance issued for firms so they understand the new bonding requirements and how to calculate turnover at risk. As this is a new concept, it may take a while before firms become accustomed to the new bonding rules.

CAR would need to purchase insurance cover for the TPF to cover the current shortfall. Discussions with the insurance industry have indicated that a bespoke product could be made available. This would be contingent on CAR imposing appropriate controls around licensing and monitoring to maintain an adequate risk profile.

Ease and cost of ongoing operation. Although effective, this option imposes a significant administrative burden on industry due to the requirement for detailed monthly projections to determine turnover at risk as well as quarterly reporting on sales data. Whereas larger firms are likely to have automated systems that allow them to both estimate and report the maximum turnover at risk, this will pose a significant administrative challenge, and therefore cost, for smaller firms in the industry. The complexity of this option makes it somewhat impractical.

This option is also likely to increase the administrative costs for CAR relative to preceding options as the turnover at risk metric is more complex than licensable turnover. This means it would be more burdensome on CAR to monitor an organiser's projections of turnover at risk. This can be mitigated by using certain indicators, such as the number of licensed holidays sold, or patterns of payments made to suppliers.

Conclusions

Option G is highly effective as it provides a high likelihood that all claims would be covered by bonds by closely matching bonds with the funds that are at risk in the event of an insolvency. This reduces the required contributions to the TPF industry-wide. However, it is a complex scheme that imposes a significant administrative burden on the travel industry (more prevalent for smaller firms) and CAR due to the increased reporting and monitoring, respectively. Additionally, it is expected to increase the cost of bonds for most firms; particularly those who do not pass on customer payments to suppliers.

4.6. OPTION H: FIRM LEVEL INSURANCE

Details of reform

Under this option, the current arrangement for bonding and the TPF would be replaced by each firm taking out insurance to fulfil its obligations under the insolvency protection requirements in EU PTD II and associated Irish legislation. Insurers will expect CAR to continue licensing and monitoring firms to ensure they were being run appropriately and not engaging in risky business practices. However, the primary responsibility of financial oversight of organisers would transfer to insurance companies.

Insurance companies would also be responsible for administering and paying out claims following insolvency, with organisers informing CAR of their insurance details. CAR would then oversee the insurance companies to make sure claims are being properly dealt with.

Before this option can be implemented, CAR would need to engage with insurance providers to ensure they are fully aware of their potential responsibilities under the new regime and the potential riskiness of travel organisers (in terms of the likelihood of insolvency and the likely scale of claims). This would allow the insurance companies to more appropriately price the insurance cover of individual firms.

Under current legislation, organisers are able to purchase firm-level insurance as a form of consumer protection. We expect this to continue to be the case, regardless of the reform option chosen.

Impact assessment

Scheme effectiveness. This option should, in theory, provide complete cover in the event of any insolvency, provided travel organisers comply with the requirement to take out insurance cover. Under this option, cover should be adequate even if multiple large-scale insolvencies were to occur.

Impact on travel trade. We understand from stakeholders that insurance is considered an expensive and unattractive option for most travel organisers. It is difficult to confirm whether this is likely to be the case as such insurance products are not readily available in Ireland, though Irish providers. The cost of the insurance product will vary between organisers, but this variance is unlikely to significantly affect the relative competitiveness of different firms within the insolvency protection regime. However, the insurance cost may affect the competitiveness of package travel relative to other forms of travel.

Scheme efficiency. Although this option provides effective cover, evidence we have received from stakeholders suggests this comes at the cost of efficiency. The simpler arrangement of the TPF and its ability to pool risks across the industry, means the cost of providing cover is likely to be cheaper than insurance cover. However, there may be a small reduction in the administrative requirements for organisers not needing to provide CAR with the same level of information as they currently do.

Ease and cost of implementation. This option would require limited legislative change as insurance is covered as an optional method for providing the security required under EU PTD II. However, if this was made a sole requirement, legislation would be needed to remove other forms of security.

There would need to be a period of extensive engagement between CAR and insurance providers to ensure that they are confident in their pricing of the insurance product.

Ease and cost of ongoing operation. The cost of on-going operation for CAR would be much simpler under this option as the responsibility for financial oversight of organisers would largely be transferred to insurers. Although CAR would still oversee individual insurance providers to make sure they were dealing with claims appropriately, the cost of doing this would be much smaller relative to the administrative requirements of preceding options.

Conclusions

Option H should be highly effective assuming firms comply with the insurance requirements. However, it may be an expensive option for travel organisers and may therefore affect the competitiveness of package travel relative to other forms of travel. Despite its effectiveness, the cost of this option reduces its efficiency relative to other options under consideration.

4.7. Option I: Pooled insolvency arrangements funded with excess insurance in the short term

Details of reform

As an alternative to each firm posting their own bond or taking out insurance cover for their obligations following insolvency, the insolvency protection could be pooled across the industry. Each travel organiser would pay a levy based on their licensed sales, which would then be paid into a fund. This fund would then be used to pay out all claims following a travel organiser insolvency. The levy could be passed through and marketed to consumers by presenting it as a separate charge to increase consumer awareness of the scheme, as is done in the UK under ATOL. However, unlike the UK system, we propose a levy in the form of a percentage charge based on the cost of the holiday as it is more equitable than a fixed sum for each holiday sold.

In effect, this fund would operate the same as the TPF currently does, but without bonds being used in the first instance following insolvency. Inevitably, this implies higher one-off and on-going levies to ensure the fund is sustainable. To simplify the administration of CAR collecting the levy from organisers, we propose the levy be paid in arrears based on the previous period's actual licensed sales.

Taking the two largest insolvencies in the previous decade, the TPF would need to be funded to a total of €10.5 million to provide full cover (in place of a bond and a separate levy). This amount should be sufficient to pay out all of the claims for the two largest insolvencies in the absence of any bonding arrangement. The cost of funding this over a single year would be a levy of 0.92% of LTO. We do not consider this to be viable option, as the additional cost is highly likely to have a negative impact on the sales of package travel/ LTAs. As such, we consider two alternatives:

- Purchasing insurance cover for the first ten years. Such a product may be available but will depend on the extent to which insurers are confident in CAR's monitoring of individual firms. We propose a levy of 0.26% of the value of licensed sales (LTO) for the first ten years. The levy would reduce to 0.12% thereafter. This would ensure adequate funding to pay out an average of €1.2 million in claims each year.
- Phasing in funding over three years. This would mean a levy of 0.31% for the three years. Provided the TPF was sufficiently replenished and the risk of insolvencies does not increase, this would reduce to 0.12% thereafter.

One of the key risks of this option is that it encourages risky behaviour by firms, as the cost following an insolvency is borne by the industry as a whole. This could mean that calls on the TPF increase over time and as a result, the levy needed to sustainably fund the TPF also increases. For example, in the UK, the ATOL protection levy was initially set at £1 per person in 2008, but this was subsequently increased to £2.50 as the Air Travel Trust Fund's deficit widened.

This effect can be mitigated somewhat by following an approach similar to that adopted by the UK CAA. CAR would subject individual firms to more intensive monitoring at the time of licensing, and potentially during the licensing period, and require bonds from high risk firms. This would add to the administrative burden for both CAR and travel organisers due to increased monitoring and financial reporting, respectively. The level of this burden will depend on the extent of the monitoring CAR chooses to impose on firms. For all firms, CAR would use the financial information it currently collects from firms on an annual basis to assess their financial health through ratios (similar to ATOL) and would request more detailed or frequent information from firms where there is a heightened concern of insolvency. CAR currently carries out this analysis on a monthly basis for some firms, a quarterly basis for half of all firms and for all firms by the end of each year.

Under this option, CAR would be able to require individual firms to be bonded up to 25% of LTO, in addition to the on-going TPF levy, if there is concern regarding a firm's financial performance. The guidelines around bonding increases would be the same as those detailed in Option F and would introduce minor subjectivity into bonding rules. This is similar to the ATOL scheme in which firms can be bonded despite holding a licence for over four years if the CAA has concerns about its financial health. This would ensure individual firms that are considered to be at a higher risk of insolvency, such as new firms or those with concerning financial ratios, do not impose additional risk on the industry as a whole. They would also face higher costs through increased reporting and bonding, relative to firms that do not face a material insolvency risk.

Impact assessment

Scheme effectiveness. This scheme provides a certain degree of effective cover, though there are two major risks to this:

- There is a short-term gap (for the first three years) where the size of potential claims may exceed the value of the remaining funds in the TPF. We have considered whether the purchase of insurance could mitigate this risk. As discussed in Section 3.2, insurance companies perceive the scheme to be high-risk. Any product offered may be on the basis that CAR impose more stringent requirements and higher monitoring, thereby increasing the administrative costs for both CAR and travel organisers.
- In the longer term, there is an issue stemming from the pooling of risk across the industry. This may encourage some firms to undertake more risky behaviour, and therefore increase the number of claims made against the fund. If this risk was to materialise, the TPF would once again be at risk of being insufficient to pay out all claims. This would in turn mean that the levy for funding the TPF increases over time, as has been experienced in other states. We have proposed one mitigation against this (imposing bond requirements on riskier firms) which is dependent on scrutiny by CAR which would need to be funded and resourced to undertake these tasks.

Impact on travel trade. This option imposes similar costs to all travel organisers, as opposed to the current arrangement which has differing requirements depending on whether the firm is a travel agent or tour operator, and therefore does not reflect the size of potential claims in the event of an insolvency. For individual firms, this may mean a higher cost compared with a bonding arrangement, but for others it may mean a lower cost. Assuming the cost of a bank bond is 4% of the cost of the bond, we believe this option is slightly cheaper for a typical firm than the bonding options; the options involving bonding and a TPF contribution cost between 0.2% and 0.4% of LTO whereas this option would cost between 0.1% and 0.3%.

Imposing an interim measure is important to ensure there is no gap in coverage; there is some evidence from the UK that when ATOL levies were increased from £1 to £2.50 there was a negative impact on sales.

During our discussions with industry, there were concerns raised about less risky travel organisers paying to fund the claims against riskier organisers. This was raised as an issue particularly when discussing options for replenishing the TPF. Under this option however, this would be a more significant issue as the risk of all firms is pooled across the industry.

Scheme efficiency. As stated above, this option is likely to be less costly for a low-risk firm relative to the alternative options, at least in the short-term, while CAR would only face slightly increased administrative costs from monitoring (not including the initial set-up and assessment costs when the scheme is introduced).

As this option is more likely to encourage risky behaviour in the long-term, there may be an increase in claims against the TPF if not effectively monitored leading to higher contributions, more detailed/ frequent reporting requirements from travel organisers and monitoring/ claims processing requirements from CAR. If there are increases in claims, this may also result in a higher insurance premium. Despite the increase in effectiveness, the increase in potential risk also reduces the efficiency in the long-term relative to Option F.

The insurance premium will also be dependent upon the confidence of the insurers in both the set-up of the scheme and in CAR's ability to effectively monitor firms, as this will reduce their exposure.

Ease of implementation. Because this would be a new scheme entirely there would be significant up front set up costs to design and implement the scheme. There would need to be a transition process so that CAR could develop more detailed criteria for scrutinising the riskiness of firms. Getting travel organisers onboarded onto the scheme would impose new reporting requirements for organisers. All existing travel organisers would need to be reassessed under the new criteria to be covered.

Under this option, CAR would manage the TPF and be responsible for paying out claims. It would require legislative changes to remove the requirement to be bonded and allow CAR to collect levies from all affected firms, as well as bond firms up to 25% where necessary. There would be some guidance necessary to ensure that firms understand the new rules and to set up new arrangements to collect the levies.

Ease and cost of ongoing operation. This option has the potential to be much simpler for travel organisers relative to Options C through G as they no longer need to provide projections of their licensable turnover. They would still need to provide audited accounts to ensure they are in sound financial health.

For firms that are considered higher risk by CAR, such as new firms, those with concerning financial ratios or those that have changes in their top-level management, could be subject to additional reporting requirements and bonding costs. In the long term, if there is an increased level of risky behaviour due to the pooling of risk, the financial reporting requirements and therefore administrative costs may increase across the industry. The extent of these additional requirements will be dependent upon the extent to which CAR chooses to expose firms to increased scrutiny.

CAR would face considerably higher administrative costs under this option relative to the current scheme. They would still need to collect and assess PLTO for licensing purposes but would see increased administrative costs due to the need to monitor for risky behaviour of firms and impose bonding where necessary. However, these could be reduced by focusing monitoring efforts on those firms they consider to be at higher risk of insolvency. CAR may also face increased claim processing cost over the long term as this option encourages risky behaviour by pooling risk across the industry.

Conclusions

Option I, while providing effective protection in the long term, may result in a short-term gap in coverage. Although the contributions are significantly higher due to the removal of bonding, overall, it is expected that this scheme could result in lower costs for industry relative to bonding arrangements in the short term. However, as was seen with ATOL, levies can increase quite quickly (from £1 per holiday to £2.50 per holiday in four years). However, it also runs the risk of incentivising more risky behaviour as the cost is borne industry-wide. Mitigating this risk would considerably increase monitoring and administrative costs for CAR, which could also increase reporting requirements for firms. We also note that transitioning to such an arrangement is time consuming and onerous.

5. CONCLUSION

Based on our assessment of the evidence, there is no clear preferred option, and there are trade-offs with any option. However on balance and provided that the cost of the necessary insurance is available at a reasonable price, **Option F - which involves bonding to eligible turnover and buying excess insurance in the short term –** provides the most benefits with the least disruption and cost to the industry compared to the other options. In addition, firms who wish to operate outside of Option F, could purchase insurance coverage - Option H: Firm level insurance.

Option F bases bonding on eligible turnover, defined as PLTO excluding:

- payments made to suppliers immediately, where customer payments are less at risk in the event of a travel organiser insolvency as suppliers are still able to fulfil their portion of the holiday; and
- payments made in arrears by customers, which would not be at risk in the event of an insolvency

It requires bonding of 8% for travel agents and LTAs and 20% for tour operators and allows CAR to increase bonding requirements for individual firms if they believe they are at higher risk of insolvency, or at risk of being insufficiently bonded. This may be the case if, for example, a firm is new and has adopted an untested business model or if CAR suspects that a firm's PLTO is being understated.

This option imposes a levy of 0.10% of LTO initially which results in a relatively slow replenishment of the TPF over ten years. To achieve this without a long period of risk exposure, we propose using the remaining funds in the TPF to purchase insurance against claims exceeding a firm's bond and potentially a portion of the proceeds from the new levy to purchase insurance in later years (if required) until the TPF is fully replenished. This would be a short-term measure to ensure that there is no gap in coverage while the TPF is replenished. The cost of insurance at this stage is unknown and therefore it is difficult to predict for how long the existing TPF funds would cover the insurance premium.[31] Ultimately this would require market testing to determine what insurers are likely to charge. Alternatives, once existing TPF funds are used up, would be for the government to provide a short-term guarantee, or the levy could be temporarily increased to accelerate replenishment. This option is also subject to the appropriate product being made available for the short term TPF cover through insurance providers at an acceptable cost.

The use of insurance in the shorter term avoids a large one-off cost for travel organisers, though it does mean a higher on-going levy. With an initial levy of 0.12% of LTO, enough funds should be raised in 10 years to replenish the TPF. After this period, insurance cover would no longer be needed and the on-going levy could be reduced to 0.06% of LTO.

Option F provides CAR with more discretion to scrutinise firms and their bonding levels, enabling them to react to and manage potential insolvency risks, thus **increasing the effectiveness** and **resilience of the scheme** without significantly increasing the overall cost of bonding to the industry. It may have a small negative impact on competitiveness and will introduce some additional administrative requirements, compared with the current regime.

Compared with Options C, D and E, firms would be subject to lower contributions to the TPF in the short term as claims that exceed bonding levels would initially be covered through insurance paid for from existing TPF funds. Although Option F may cost more for the industry as a whole in the long run, it provides full

[31] We have used a very conservative estimate of the cost of insurance to model this scenario. The information provided here is based on insurance costing no more than our estimate.

cover in the short term at minimal upfront cost to industry. However, it does inflict higher administrative costs on the industry and CAR relative to the existing scheme and introduce levels of subjectivity. In addition, the practicalities of CAR applying their discretion to the bonding levels would need to be worked through.

Based on stakeholder feedback we expect parts of the industry to be attracted to Option I (a scheme similar to ATOL) and we acknowledge that the analysis places this close in the round to Option F. However, Option I is likely to impose significant up-front set up costs on CAR and new reporting requirements on the travel industry i.e. the current regulatory burden is unlikely to be reduced. Under Option I, CAR could be required to closely monitor a large number of firms in more detail at least initially whereas in Option F, most firms would be adequately covered by the bonding rules. On balance we consider that Option F is also likely to be more stable in the longer-term relative to Option I, with less likelihood of CAR needing to increase the levy in future. There is some evidence to suggest that ATOL like schemes may become more expensive as they evolve - the ATOL levy increased by 250% in the UK after four years and there is at least anecdotal evidence that this negatively impacted sales. However, an ATOL-like scheme has the advantage that it could probably more easily be expanded to cover a larger portion of the travel trade should Government policy towards insolvency protection change in future.

In any event reforming the scheme will take time due to required legislative changes, in addition to set up costs and the run-down period on current bonding arrangements. The low level of the TPF creates concern, in the short term at least, that consumers may not be covered in the event of another large insolvency. In the interim, CAR has options available to mitigate this risk: obtain a government guarantee which would come into effect if the TPF were fully depleted in the interim; pro-rate claims to the extent possible (noting that this is not what the European legislation requires); explore the purchase of insurance for excess cover; or charge a temporary levy to TOs that require legislative change.. This avoids a gap in coverage, and as it will be required to obtain under the recommended Option F, also avoids additional administrative arrangements.

All of the options inevitably increase the cost of providing protection for customers of package holidays. This reflects the current lack of an adequately funded TPF to pay out claims in excess of bonds. As our options are limited in scope to security for packages and LTAs under the relevant EU and Irish legislation, this may lead to some customers switching from purchasing package holidays to purchasing different components of their holidays separately.

APPENDIX A **INTERNATIONAL CASE STUDIES**

As part of the Stage 1 review, protection arrangements in five European countries were investigated to see what lessons, if any, could aid in the redesign of the Irish scheme.[32] We summarise each of these in turn, and discuss whether there were any changes to their insolvency protection schemes since the introduction of the EU Directive on Package Travel 2015/2302/EU (EU PTD II) that recently came into effect.

A.1. **DENMARK: REJSEGARANTIFONDEN (RGF)**

The Rejsegarantifonden (RGF) was created in Denmark in 1979 in response to the bankruptcy of a large travel provider. It is operated as an independent, private, non-profit organisation. The scope and power of the RGF has expanded over the years, including in response to the EU PTD1 which instituted a wider definition of a package holiday. All travel providers are required to be on the register of the RGF in order to obtain a license.

In contrast to Ireland, the Danish package holiday market grew between 2003 – 2008 (reaching DKK 17 billion), and after a slow down due to the 2008 recession, has continued to grow since 2012. In 2009 the RGF was extended to include all airlines that operated international routes to/ from Denmark. However, after a legal battle with Norwegian Air this was reduced to only include airlines with a physical presence in Denmark. As of 2016 there were 549 licensed travel providers (agents, operators and airlines) operating in Denmark.

A guarantee is required for all travel providers, the level of which is an absolute value (as opposed to a percentage), dependent upon their projected turnover. This applies equally for airlines and package holiday providers. The RGF monitors sales on a quarterly basis and can adjust the required level of guarantee accordingly for an individual provider. It often also requires a higher level of guarantee for new entrants. Registration, and thus licenses, can be revoked by the RGF if the provider is suspected of poor risk-management. All providers must also pay an annual fee which covers the management expenses of the RGF, part of which is variable based on turnover. 70% of RGF's management expenses are covered by the variable portion of fees.

Since 2015 the funds for airlines and agents/ operators have been separated into sub-funds, each with a target level of equity. The target is intended to ensure the fund can cover the two largest insolvencies in the past decade. When the sub-funds drop below the target after a failure, they are replenished through a temporary levy per package or per passenger. The agent/ operator sub-fund is based on the largest historic failures, and currently set at DKK 50 million. The air transport fund is double that level, but considered to be relatively low as historic airline failures have resulted in losses between DKK 450 million – 1.1 billion.

In July 2018 the definition of package travel was adjusted to reflect EU PTD II. This, in addition to the inclusion of LTAs, has increased the scope of the RGF.[33]

A.2. **FRANCE: ATOUT REGISTER**

In 2010 France instituted a number of legislative changes to the tourism industry. Providers of packaged holidays have since been required to obtain their licenses from Atout France, the agency that is responsible

[32] Europe Economics (August 2019) Bonding of the Irish travel trade industry: Interim Report
[33] https://www.rejsegarantifonden.dk/english/

for the promotion of France as a tourist destination. Previously this was done through local administration. Package holidays make up over a third of French outbound travel.

The licensing process requires applicants to provide a financial guarantee from an approved organisation, the level of which was changed in 2014 due a ruling by the European Court of Justice (ECJ). France's legislation had previously stipulated that a guarantee had to cover a certain percentage of a travel company's turnover. However, the ECJ's interpretation of Article 7 of the EU PTD1 was that the guarantee must cover all the repatriation costs and advance payments. This change was reflected in two decrees: two Arrêtés (Orders) in 2009 and 2014 and a Décret in 2015. Travel agents and operators are now required to provide an annual guarantee covering the full cost of package holidays sold that year.[34]

There are over 3,300 registered agents and operators in France, (noting that these may be affiliates or branches, and may not be individually licensed/ operating). There is no single entity that provides guarantees and compensation on claims, and therefore no comprehensive statistics on the French protection scheme. However, the report considered statistics from APST which provides guarantees to 70% of the market, assessing risk based on financial documentation of the providers.

In 2015 the APST provided guarantees worth approximately €1.55 billion of which €0.97 billion was counter-guaranteed. It was estimated that 150 companies became insolvent that year. 51 of those were members of the APST and the company had to process claims for 13,200 travellers; 80% were from one bankruptcy (Consult/Destination Privilèges). The expected total value of all uncovered claims for insolvencies between 2006 and 2015 is €5.1 million.

A consultation regarding changes to French regulation in relation to EU PTD II was launched in early 2016, and the government transposed the directive into an ordinance at the end of 2017.[35] This brings both dynamic packages and LTAs under the scope of the insolvency protection scheme, requiring a guarantee from a collective guarantee organisation, a credit institution, an insurance company or a financing company.[36]

A.3. THE NETHERLANDS: SGR AND GGTO

Packaged travel makes up only 22% of overseas travel in the Netherlands, but the legislation and cover has remained relatively stable since the introduction of protection schemes. There are currently two traveller protection funds operating in the Netherlands: the Stichting Garantiefonds Reisgelden (SGR) which is a compulsory traveller protection fund established in 1983; and the Garantiefonds voor Gespecialiseerde Touroperators (GGTO) established in 2012 which covers customers of small, specialised tour operators.

The SGR had 786 registered members in 2016, all of which are required to provide a bank guarantee that covers 1.5% of turnover (with a minimum amount of €5,000). A higher guarantee level can be requested by the SGR based on financial results of the provider. In the case of a provider failure, customers are covered up to a maximum of €12,500 per customer, per trip. The insolvencies to date have been varied, with only 1 in 2015 and 17 in 2013.

A captive insurance company acts as a backstop when guarantees are unable to cover claims. The equity is entirely owned by SGR, ranging between €80 and €87 million. It is funded through annual membership fees

[34] Europe Economics (2017) Bonding of the Irish travel trade industry: Interim Report
[35] Augros (2017) The implementation of the new PTD in France: a balanced deal between all actors?
[36] Ministry of the Economy and Finance (2017) Order No 2017-1717 of 20 December 2017 transposing Directive (EU) 2015/230. Available online: https://ec.europa.eu/info/sites/info/files/fr_en_order_no_2017-1717_on_package_travel_and_lta.pdf

based on turnover in foreign and national markets, as well as SDG's investments and any fines associated with mismanagement. Annual membership fees range between €275 and €5,250 for turnover under €100 million, and is determined upon request for higher levels.[37] SGR is able to pursue legal action against the management of a provider to cover losses of funds if they are suspected to be due to mismanagement of risk.

In 2017 SGR protection was extended to cover foreign customers buying package holidays from Dutch companies, complying with EU PTD II. The Directive has been transposed into Dutch law, and LTAs are reflected in SGRs updated guarantee scheme.[38]

The 240 members (as of July 2017) of the GGTO have a maximum annual revenue of €1 million. The fund is still building equity using a membership fee, equal to 0.125% of turnover, as well as a €15 levy per booking.[39] Every member must have enough cash or a credit line to cover fixed costs for a month and must also have equity worth 15% of tangible assets. If members cannot meet these criteria, they must obtain and keep a loan as a deposit or provide a guarantee.

In the case of a failure of a member of the GGTO, which has yet to happen, customers would be afforded the same level of protection as in the SGR. Losses would be covered by the GGTO if they are less than 50% of the fund level. If they are higher, all members must assist with paying the claims and would be repaid by the fund at an interest rate of 2.5%

A.4. NORWAY: REISEGARANTIFONDET

Norway created the Reisegarantifondet (RGF) in 1982 and implemented a travel guarantee scheme in 1995 through the Package Travel Act. Under this scheme, travel providers are required to obtain guarantees or a similar form of security in order to cover any claims in case of insolvency. If the guarantee is unable to cover the full value of the claims, the RGF acts as a back-up. There were multiple failures between 2006 – 2009, depleting the fund by almost half. This led Norway to adopt new regulations in 2007, 2009 and 2017.

As of 2016 there were 839 members in the RGF, with 3 making up 63% of guarantee volume. Each firm's required guarantee is based on the average of three consecutive months of projected guarantee-liable turnover, where the second month is the peak month within the projected year. This is then separated into four classes of turnover depending on size, each with their own formula for calculating the level of guarantee.[40]

In addition to the guarantee, providers are required to pay a fee to maintain RGF's equity. This fee has been adjusted over time to account for fund depletion and stabilisation. Initially it was an annual flat fee of NOK 2,000 (Euro equivalent of approximately €200), but after the depletion of the RGF this was increased to NOK 3,500 – 70,000 (Euro equivalent of €360 - €7,200) based on turnover. Once the fund had reached a stable level in 2012, based on the assumption that it could cover the two largest bankruptcies of the last decade, the fee was reduced for the 3 lower classes. This reduced the total annual amount of fees collected by half. The RGF is required by law to contain at least NOK 15 million and was reported by Europe Economics to float between NOK 19 – 22 million.

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[37] SGR (2019) SGR Participant contribution 2019. Available online: https://www.sgr.nl/reisorganisaties/aanmelden/

[38] SGR (July 2018) Guarantee Scheme. [Accessed 27 March 2019] https://www.sgr.nl/wp-content/uploads/Garantieregeling-201807-SGR-Engels.pdf

[39] GGTO website [Accessed 28 May 2019] https://www.stichting-ggto.nl/html/Welkom.asp

[40] Norwegian Ministry of Children and Equality (June 2018) Package Travel Regulations. English translation accessed online on 24 May 2019 at: https://lovdata.no/dokument/SFE/forskrift/2018-06-22-954

The RGF released a consultation in 2016 regarding changes related to EU PTD II, at which time Norwegian requirements were already broadly in line with the new directive.[41] The responses were mixed, with some similarities to the Stage 1 consultation in Ireland (e.g. a level playing field). In July 2018 the Government adopted the EU PTD II, requiring LTAs and other additional package travel arrangements to participate in the guarantee scheme through the re-definition of guarantee-liable turnover, as well as contribute to the RGF.

A.5. UK: ATOL SCHEME

The Air Travel Organiser's Licence (ATOL) is a financial protection scheme introduced in the early 1970s, and has since experienced a number of changes in response to provider failures in the air travel industry. After initially only covering repatriation, levies were introduced in 1974 to protect the advanced payments of customers. The scope of the scheme was expanded in the early 1990s based on the definition of a holiday package provided in EU PTD1.

Prior to 2008, the scheme consisted of a bonding requirement and levy per booking, calculated as a percentage of turnover. This was then changed to a £2.50 flat charge per booking, although the license and associated fees remain dependent on turnover. Following a review of the ATOL scheme in 2012, two adjustments were implemented: customers were to be provided with an ATOL certificate at the time of booking; and travel arrangements that consisted of a “flight-plus-booking” were to be covered, with a booking considered something such as car rental or hotel.

There were 2,000 ATOL providers in 2015. That year, package holidays made up 35-37% of all trips to North America and Europe, and 55% of trips to other destinations. ATOL is administered by the Air Travel Trust (ATT). In 2016, 8% of the levies collected by ATT were used to compensate customers due the bankruptcy of 19 companies. The ATT also holds insurance against large, atypical events (e.g. claims greater than £75 million in the event of a large operator failure).

A consultation was held in 2016 in light of the EU PTD II and received 58 responses that were generally positive regarding the adjustment of ATOL to fit the new directive. The Department for Transport intends to take forward the following changes in regulation:[42]

- alignment of the ATOL scheme with EU PTD II new “package” definition;
- updating scope and levy to focus on sales by UK-established businesses;
- increase powers of CAA to allow the request of relevant information from travel operators; and
- ensure there is legislative flexibility to introduce a separate levy/ fund for flight-led LTAs.

In July of 2018 the definition of package travel was updated within the Civil Aviation Regulations to include dynamic packages and LTAs.[43] Additionally, amendments were made to the insolvency arrangements available to package travel/ LTA providers. The ATOL scheme does not apply to airlines under legislation, which has resulted in airlines setting up subsidiary companies that are eligible to hold ATOL licenses in order to protect the holidays they sell which are protected under the EU Package Travel Directives.[44]

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[41] EU Member State Workshop (25 October 2016) Directive (EU) no. 2015/2302 on Package Travel and Linked Travel Arrangements.
[42] UK Department for Transport (January 2017) ATOL reform consultation: Government response.
[43] UK Department for Transport (2018) The Civil Aviation (Air Travel Organisers’ Licensing) (Amendment) Regulations 2018.
[44] UK Department for Transport (2016) Modernising consumer protection in the package travel sector: Consultation on ATOL changes.

There are currently five types of ATOL licenses available, (standard, small business, franchise, accredited bodies and trade) for which different requirements apply. The majority are subject to personal fitness and competence tests which assess all persons who may have influence over the business, as well as financial criteria tests that evaluate the health of the business based on a variety of accounting ratios. All ATOL licensed firms are also subject to a bonding requirement, typically a minimum of £50,000. Bonds are typically obtained through CAA-approved banks and insurance companies but may also be provided via charged deposit accounts or trust accounts. The level of bonding reduces over time, however, certain business models or circumstances may give rise to more extensive tests or higher bonding.

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