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A response to the consultation on the Review of Travel Trade Legislation in Ireland.

Introduction.

1. This response is submitted by the Irish Tour Operators Federation ("ITOF") which is a non-commercial organisation that represents the main outbound tour operators from Ireland. The members are American Holidays, Budget Travel, Crystal Holidays, Falcon/JWT Holidays, Panorama & Airtours Holidays, Sunworld Holidays, Sunway Holidays, Stein/Slattery Travel and Topflight. All members are bonded and are licensed by the Commission for Aviation Regulation as required by legislation.
2. ITOF is pleased to have this opportunity to contribute to this review. It is ITOF's considered view that the current environment in which its members operate is long overdue for review as it has its roots in legislation which is out dated.
3. The volume of those travelling on a 'package' holiday in 1990 was approximately 200,000, growing to approximately 400,000 in 1995 and there was continued growth in the market as consumers evolved with the requirement and ability to travel abroad more regularly. Very few could have predicted today's landscape with the volume of options available to travel abroad. However, tour operator volumes in 2008 are now 1 million but there has been a significant and exponential rise in volume of capacity available over the past number of years, particularly schedule airlines. This is confirmed by the continued growth of Irish airports and in 1990 there were circa 5 million increasing in 1995 to approximately 7.5m who travelled through Dublin Airport. This has grown in 2008 to over 23/24million.
4. It is ITOF's belief that financial protection of the consumer should only be maintained in the context of legislation or protection that is balanced and proportionate. However,

any balanced or proportionate view must be secured not only for the consumer but in respect of all companies which compete for such consumers. Current legislation has a one dimensional concern towards consumer travel protection in the event of the failure of companies currently within the scope of the legislation, particularly ITOF members. Therefore, the present system only affords protection to consumers who travel with companies to which the travel bond relates such as tour operators/travel agents. However, the vast majority of consumers are not covered if they book either directly or via a broker with any other component part of an overseas holiday via an airline, hotel/apartment complex, car hire etc.

5. The Commission has asked two related questions as to which members of the travelling public should receive what financial protection and what are the most suitable arrangements to ensure that there is adequate financial protection available to those the scheme is designed to protect?

6. The first aspect gives rise to a question as to whether consumer protection such as provided by the present bonding scheme is a necessity or whether it should be abolished or whether, alternatively it should be afforded to all travelling consumers.

ITOF calls on the Minister under this review to either (a) abolish the current bonding arrangement or (b) extend the scheme to offer similar bonded protection to all consumers, not covered under the current legislation, travelling abroad on a 'single component' option, flight, car hire, accommodation only etc.

7. OPTION (A) – ABOLISH CURRENT BONDING ARRANGEMENT.

ITOF is conscious that the abolition of the present bonding arrangement would remove a measure of consumer protection which presently exists. However, ITOF does not believe that the presence of the bonding scheme is a consideration for the vast majority of consumers, if any, when purchasing travel services and this is evidenced by the large volume of travel sales which are conducted by consumers with sellers who provide no such bonding protection. ITOF submits that consumers do not seek or obtain similar protection in any other sphere of their purchasing and ITOF sees no reason why the scheme should apply uniquely to a section of the travel industry.

8. ITOF accepts the fact that the removal of the bonding requirement would require legislative change but it submits that such a change would be justified in the context of up-dating the travel market and ensuring proper competition by removing a competitive disadvantage from a significant section of the industry which is an inevitable consequence of the present legislation. It is submitted that this injustice could not have been in the contemplation of the legislature when the legislation was introduced. Since the present legislation came into effect, the travel industry has seen a revolution in the options available to consumers and the travel agents and tour operators are struggling to compete with those suppliers who are not subject to any similar burden. The advent and ubiquity of the internet and the availability of low fares

airlines has so altered the industry as to make it utterly unrecognisable from the industry it was in the 1980's. The norms of that time are not applicable to the current environment.

9. As previously stated, suppliers of travel services who are free to operate outside of the scope of current legislation are achieving a significant competitive advantage in offering single component elements of a holiday with scheduled/low fare airlines, hotels/apartments, car hire, along with the myriad of brokers who facilitate such bookings by virtue of the fact that do not have the cost associated with current legislation.
10. With regard to the potential reduction in the 'bonding level', ITOF refers to data provided by the Commission, as at 10th of July, relating to the call on the 'bond' and the outcome of the calls. On the basis of this data it was confirmed that this single mechanism would not present a strong argument for a reduced bonding arrangement. However, this again is a single dimensional measure relating to those consumers who book through bonded organisers and there is no data as to how consumers have been affected over the years from any failures when booking directly or via a broker for services. Moreover, this has masked recent developments for example with Futura Gael going into administration and where this entity was not covered by current legislation and therefore had no requirement to be bonded. However, albeit not selling directly to consumers there was an incremental cost and financial exposure arising from this administration to all tour operators who had contracted flights with this airline. This additional cost arose by this airline and such entities not being required to be bonded thus creating a further imbalance and additional pressure for tour operators.

The current bonding system is essentially justified by the fear of collapse of a tour operator yet no similar bonding requirement applies to airlines that are increasingly likely to collapse as some very significant ones have in recent times. The present system protects a limited number of travellers at a cost to tour operators and travel agents while simultaneously millions of passengers who avail of scheduled or low fares airlines or single component elements of travel have no such protection.

11. ITOF submits that in view of the changed nature of the market for travel services a significant number of the travelling public does not have the benefit of any financial protection. Therefore, call upon the Minister to create a balanced and equitable system by abolishing the current regime.

OPTION B – INTRODUCE LEGISLATION TO COVER ALL CONSUMERS.

12. It is submitted that since the regulatory requirements do not apply to all suppliers of services in the industry therefore the regulatory requirements are being by-passed by on-line vendors and for travellers who do not book through a bonded travel agent or tour operator. Accordingly, it is submitted that there is a complete failure of consumer protection and a gross distortion of competition. In ITOF's submission this distortion

of competition is self-evident where one set of suppliers are subject to regulations which impose a very significant financial burden on them and there is no such burden on their direct competitors. Therefore, if the Minister was to continue with a bonding arrangement then it is a minimum requirement to afford protection to the majority of consumers who are currently not protected by extension to cover those currently not captured within the legislation.

OTHER OPTIONS TO ENSURE CONSUMER FINANCIAL PROTECTION

13. Other issues relating to consumer protection are that in other countries consumers are protected by purchase of goods and services via Credit card. Also, insurance policies could be required, if the consumer so wished, to cover and offer the same financial protection as offered by the present bond.

OTHER CONSIDERATIONS;

14. There is a further significant cost to ITOF members incurred by way of administration, senior management time etc, to ensure fulfilment of required regulator documentation to comply with legislation. This too distorts competition without any advantage to the travelling public.
15. ITOF members as required under current legislation are, as indicated above, disadvantaged and burdened with a cost that is not levied on those companies competing for the same consumers. However, it is critical that any review of legislation does not recommend a mechanism to allow a bonded arrangement that creates an even higher cost to ITOF members.
16. In ITOF's submission, the present regulatory framework fails to recognise the overlap between travel agents and tour operators which results in a large element of double bonding where a travel agent sells packages for a related tour operator and both related entities are required to be bonded for the same package. This represents a significant cost burden on ITOF members. Therefore, ITOF calls on the Minister to immediately rectify this imbalance by reducing the level of retail bond required by 'vertically integrated' travel agents according to the level of business generated for its parent tour operator. For example, if 50 % of retail business is generated for the tour operator then the 4% Travel Agent bond should be reduced to 2% and so on.
17. In ITOF's submission, the seriousness of the situation and the degree of competitive distortion in the market means that a new approach is required rather than a mere reform of the existing regime.
18. It is ITOF's submission that the most essential element of any new regime is equality of treatment of all suppliers of travel services. This can only be achieved by the abolition of the bonding requirement as presently constituted or, if bonding is to remain, the introduction of a new scheme which governs all purchases of travel

services whether through travel agents, tour operators or by dynamic packaging or any other means.

19. It is submitted by ITOF that the removal of the bonding requirement would enable its members to provide the travelling public with more competitive terms than they can avail of at present.
20. ITOF refers to the Government's recent announcement of the introduction of a departure tax. While not wishing to comment at this time on the effect which that measure will have on the travel trade generally as we believe it would be premature to do so, ITOF would argue that if it is considered necessary to levy the travel industry in order to create a fund from which affected passengers could be assisted then consideration should be given to a levy which applies to all travel and not just to those entities which are presently required to have a bond in place. The income generated by this levy should be ring-fenced to provide the financial protection currently afforded by the bond. In ITOF's opinion, if this scheme was introduced the fund would soon reach a level as to make its continuation unnecessary once a sufficient reserve had been built up so that the levy could be removed.

Conclusion

21. In summary, ITOF believes that the legislation should be amended to remove the requirement for travel agents and tour operators to be bonded as the present system does not afford financial protection to a significant proportion of the travelling public and has the effect of grossly distorting competition in the travel market.
22. ITOF urges the Minister to amend the current legislation as a matter of urgency.

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