

## **Commission for Aviation Regulation: Review of existing insolvency protection arrangements**

### **Consultation: Travel Trade Consumer Protection Measure-Phase 2**

#### **TUI Group response**

##### **About TUI**

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TUI Group is the world's leading tourism business operating in around 180 countries worldwide, with over 380 owned hotels, five airlines with over 150 aircraft, and three cruise lines with 17 ships. TUI Ireland is a member of TUI Group and is one of Ireland's largest tour operators, taking Irish holidaymakers abroad since 1988.

##### **Opening remarks**

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We recognise that a proportionate degree of financial protection in the travel industry is essential in order to engender confidence among consumers and to respond in the event of business failure.

It is important that the views of industry are fully incorporated as changes to the licensing regime in Ireland are implemented. We welcomed the chance to participate in an earlier stakeholder roundtable and the opportunity to respond formally via this consultation process. However, we must highlight how concerned we are with the Commission's intention to proceed with its preferred option (F).

In respect of the change from 'projected licensable turnover' to 'eligible turnover', while we recognise that change is intended to better reflect the actual turnover at risk in the event of insolvency, we have concluded that this will impose an additional administrative burden and will fail to meet the objective of only protecting money that is at risk. We have elaborated on this in more detail in our response to the consultation questions below and request a further meeting with the Commission to work through these concerns before any proposals are finalised. We also have existing concerns in relation to the double protection of bookings, which disproportionately affect TUI's business, as TUI operates as both a tour operator and a travel agent.

A reasonable timeframe must be provided to businesses to implement any changes that come into effect. Based on past experience, we recommend that once the final proposals are presented to industry, a timeframe of 18 months to two years for implementation should follow to allow businesses to design the changes into their existing systems.

##### **Consultation questions**

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*Broadening the scope of insolvency protection following the introduction of EU PTD II*

**Q: Do you agree that providers of Linked Travel Arrangements are included in the same insolvency protection regime as organisers of package travel holidays? If not, what protection arrangements should be in place for customers of Linked Travel Arrangements?**

**A:** TUI does not offer Linked Travel Arrangements (LTAs), but for the purpose of ensuring that consumer protection is maintained and that the competitive playing field is level, it seems appropriate that providers of LTAs are covered by the same insolvency protection regime. However, LTA providers should not attract a lower rate of bonding, given the level of exposure to risk is the same as other types of arrangements in scope.

**Q: Should the licensing and bonding regime be extended to include all package travel and Linked Travel Arrangements within the scope of the new EU Directive? If not, what do you believe would be the most appropriate arrangement for these sales?**

**A:** Under the UK regime, Linked Travel Arrangements are not covered by the ATOL scheme and are instead protected by a bond issued by the Association of British Travel Agents.

There needs to be a simple solution in place to protect Linked Travel Arrangements (LTAs) that don't have a travel element, but it does not seem appropriate that these sales would be licensed by the Commission. We would recommend working with the insurance market to find a separate arrangement to cover these sales. With regards to other package travel and LTAs that have come under the scope of the new Directive and involve an element of travel, we would agree that they should be included in the existing licensing and bonding regime.

In the UK, approved providers can operate financial protection schemes. For example, the ABTA scheme for travel agents provides pipeline protection to tour operators in the event of a travel agent failure, so that consumer payments reach the tour operator and the consumer can continue to travel. The scheme also considers claims from consumers in the event that the agent has not booked the consumer's holiday. The schemes generally hold financial security in the form of bonds and insurance instruments.

The current Commission guidance is unclear with regards to who is protecting packages that have been created without a travel component. Any changes to the guidance would need careful consideration and be clearly defined so that the licence holders are able to update any selling systems to separately identify this type of package. The current setup in the UK is very simple and it is easy to determine which packages are protected by whom, this is not currently the case in Ireland.

*Proposed options for reform*

**Q: Are there other reforms that you think should have been considered that would ensure appropriate levels of protection for consumers of package travel/Linked Travel Arrangements?**

**A:** We do not think there are other options for reform that should have been considered as part of the consultation process.

**Q: Which reform options do you think the Department of Transport, Tourism and Sport should pursue? Do you agree with the proposal to pursue Option F? Why and if not why not? If you consider another option to be preferable, why?**

**A:** We strongly disagree with the proposal to pursue Option F. While we recognise that the changes to the definition of licensable turnover have been changed to better reflect the actual funds at risk in the event of an insolvency, the change to the definition is impractical.

There are two issues with the proposal First, the use of both eligible turnover and licensable turnover and secondly, the current mechanism results in "double protection".

Based on an assumption that eligible turnover is in line with the turnover that is recognised in the financial statements, this will vary considerably between firms that are licenced by the Commission, depending on the terms and conditions of each company. An overview of how this will apply to TUI Ireland and Adehy is below:

The Tour Operator (TUI Ireland) revenue for a package holiday is accounted for on a departure basis. All customers must pay for the holiday before departure, so there are no 'payments made in arrears by customers, which would not be at risk in the event of an insolvency' and would therefore fall out of the 'eligible turnover' definition.

Turnover for our Travel Agent (Adehy) is included within the financial statements as commission income. For the existing 'projected licensable turnover' requirements this is grossed up on a monthly basis to reflect the gross booking revenue. The commission income for Adehy is recognised on departure for TUI Ireland packages and 84 days before departure for third party holidays, which is broadly in line with when the final balance is due from the customer for third party holidays. The balance due dates are determined by the commercial relationships that we have with the suppliers of the holiday or individual components that are being sold.

Only a travel agent is able to create multi-contract packages under the new Package Travel Directive regulations. In this scenario, if a customer has paid Adehy in full for their multi-contract package and the

suppliers have been paid for all amounts owed, the new definition of eligible turnover does not require the agent to have a bond in this situation and we are concerned this results in a reduced level of financial protection for the customer.

We can determine the amount a customer has paid for each holiday and how much has been paid to each of the suppliers at the point of revenue recognition in each of our companies. However, based on the points outlined above, we disagree that using the new definition of eligible turnover provides an appropriate level of financial protection for customers and is putting an excessive burden on those operating in Ireland under the Commission's licencing regime.

Alongside the points above regarding eligible turnover, TUI has a concern that the existing financial protection regime results in TUI "double protecting" its sales. The majority of sales made via Adehy are for package holidays that have been created by TUI Ireland. These bookings are currently protected under both the tour operator and travel agent licence, resulting in double protection and a disproportionate financial burden on TUI compared to other licensees. The proposal to increase the percentage of bonding requirements and levies on licence holders will therefore further impact TUI disproportionately.

We would prefer a scheme that retains the existing definition of licensable turnover and retains as close to the current level of bonding as possible, while addressing the issue of double protection.

Given insolvency protection is achieved largely via bonding rather than a flat rate levy (like the UK ATOL scheme), the additional cost incurred is accounted for in our pricing rather than being passed on to the customer directly, putting us at a further competitive disadvantage to other businesses operating under the licensing regime.

**Q: Do you agree with the proposal in options D, E and F to base bonds on eligible turnover, which excludes immediate supplier payments bills paid in arrears, rather than projected licensable turnover? Do you agree that it is then appropriate to increase bonding to double the current proportion?**

**A:** We disagree with the proposal in options D, E and F to base bonds on eligible turnover rather than projected licensable turnover for the reasons set out in our answer to the previous question. We do not think the consultation provides appropriate justification for doubling the bonding requirement based on this change in definition and there is a lack of transparency in the consultation report with regards to how the Commission has arrived at the estimated cost per passenger as set out in the 'options for reform' table.

**Q: Do you agree that an insurance policy with a higher levy for the first ten years is the most appropriate way to avoid a gap in protection, as presented in Option F? If not, what alternative(s) would you suggest?**

**A:** The proposal to levy firms for ten years to replenish the Travellers' Protection Fund would be inequitable unless new market entrants or firms that enter the licensing regime after the ten years is up were also subject to a higher levy in the first ten years of operation/joining the licensing regime. Otherwise, current market operators are effectively paying in to a fund to offset the insolvency risk of firms that enter the market in the future. While acknowledging that this approach could result in a surplus, the 0.06% ongoing levy could potentially be reduced to offset any such surplus.

**Q: Do you agree that the Commission should be able to increase bonding for firms they perceive to be at a higher risk of insolvency/ under-bonding? Why? Do you agree with the guidelines for bonding increases set out in Option F? Are there other guidelines that should be considered?**

**A:** While we recognise that the Commission for Aviation Regulation should have a greater role in managing risky behaviour of travel firms, the proposal to allow a 25% bonding level to be imposed at their discretion is of concern. The financial tests outlined in the consultation paper are rigid. Instead of applying these tests arbitrarily, the Commission should instead commit to working with businesses to understand

their accounting processes before applying any increased bonding, in the event that a business fails to meet the financial tests outlined.

*Impact of options on travel trade industry*

**Q: The report has assessed that Option F has a lower impact on the travel industry than Options C, D and E because the cost of replenishing the Travellers' Protection Fund is spread over several years, rather than concentrated into a short period. What impact does this have on your business? Would you prefer to pay a higher levy over a shorter period?**

**A:** It is preferable to pay a lower levy over a longer period of time, rather than a higher levy over a shorter period of time as it represents less of a financial burden. However, we are concerned at the lack of transparency in respect of how the Commission arrived at the expected costs set out in its 'options for reform' table and are of the view that the estimates are likely to be an underrepresentation of the true additional cost of the suggested bonding and levy requirements.

Our own initial calculations suggest an impact of almost €250,000 incurred by additional bonding and the proposed levy. This is an unfair financial burden on TUI and results in TUI effectively "propping up" the Commission's fund on behalf of other operators in the Irish travel industry, many of who are likely to have a considerably higher chance of failure.

The proposed increase in bonding and additional levy creates an unfair and disproportionate burden on a small section of the industry and creates an uneven competitive landscape. It has been noted in previous papers by the Commission that only around 20% of travel bookings made are covered by the licensing scheme. Increasing costs to the extent set out in Option F may have the unintended consequence of incentivising customers to book alternative, unprotected arrangements due to increased costs.

**Q: Options D, E and F base bonding on eligible turnover. This requires firms to provide data on both projected and realised supplier payments and payments in arrears. Do you agree with the report's view that the additional burden of providing such information is limited?**

**A:** We do not agree with the report's view that the additional burden of providing information on realised supplier payments is limited and are of the view that the impact of this requirement has been underestimated. While the requirement to provide this additional information would create almost no additional burden on travel agents, who pass on monies paid by customers almost immediately, this requirement would create a disproportionate burden on tour operators.

**Q: Do you agree with the report's assessment that Option I is too administratively costly (for both industry and the Commission) given the current scope of consumer protection arrangements? Why and if not why not?**

**A:** We do not agree that a scheme as set out under Option I is too costly or imposes a large administrative burden, taking into account that the overall objective is to achieve an adequate level of financial protection for customers. In the UK, a similar scheme exists and operates effectively.