

Airline Insolvency Review
A call for evidence response from Thomas Cook Group

16 May 2018

I. Introduction

Thomas Cook Group welcomes this opportunity to respond to the Airline Insolvency Review's initial Call for Evidence.

In October 2017, the collapse of the Monarch Travel Group typified the significant challenges currently facing European aviation: an extremely competitive marketplace, over-capacity, consolidation, regulatory change, and structural uncertainty caused by Brexit. Despite this, airline insolvencies – thankfully – remain rare.

The insolvency of the Monarch Travel Group did pose some serious questions about the current protection and insolvency landscape, and the impact that political decisions can have on both customers and industry. We strongly welcome the detailed and focussed consideration of these questions that the Review will provide, and we look forward to working closely with you to come to proportionate and fair recommendations that work in the customer's best interest.

II. About Thomas Cook Group

For more than 177 years, Thomas Cook has been the UK's trusted pioneer in global travel, opening up the world and enabling travel for all. One of the world's leading leisure travel groups – and the only of this scale headquartered in the UK – Thomas Cook Group plc employs around 22,000 people, operating from 17 source markets. Our sales in 2017 totalled £9 billion.

Our UK business sent six million British customers on holiday in 2017. From booking their holiday right through to their return back home, our customers are supported by 8,800 employees in the UK, including in our 600 stores lining high streets across the country.

The Group structure consists of a tour operator, a travel agency, an own-branded hotels and resorts business, a one-stop-shop holiday money solution, and importantly for the purpose of this review, one of Europe's top-ten largest airlines. Thomas Cook Group Airline connects 18.5 million passengers to over 130 destinations world-wide. Our combined fleet consists of 100 aircraft, including 35 in the UK, where nearly 6,000 of our airline employees are based.

III. Thomas Cook Group response

We would like to highlight that due to the complexity of the issues under consideration and the short timeframe for responding, this submission will seek to provide an overview of the business's general approach to the themes and general proposals articulated in the Call for Evidence. As the work of the review continues, we hope to be able to provide more technical and comprehensive input.

One general point worth highlighting initially is that cases of airline insolvencies are incredibly rare. European Commission figures¹ highlighted by the International Air Transport Association show that between 2011 and 2020 only 0.07% of flight-only passengers (as opposed to package travel), would

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0129&from=EN>

be affected by air carrier insolvency, with only 12% (or 0.0084% of the total number) of those affected, being stranded abroad and in need of repatriation.

At Thomas Cook, we do not make this point lightly. The business remains absolutely focussed on putting the customer at the heart of everything we do, and we acknowledge that consumer protections can be overlapping, complex, and confusing. We also acknowledge that while airline insolvencies may be rare, their impact can be disproportionately high, and it is the consumer who bears the brunt of the impact.

However, when considering the complexity of any of the options currently under consideration, and the risk of creating burdens for the UK aviation industry that could make it uncompetitive in a fiercely competitive global marketplace, it is important that any solution is proportionate, considers this wider context, and does not result in regulatory overreach.

i) An all-flights levy

Thomas Cook Group would strongly discourage any proposal of a state sponsored mutual insurance undertaking, where customers pay a levy on travel products that would then feed into a fund used to pay refunds and repatriation costs. It is our understanding that no other sector is under the same obligation to protect all its customers in case of bankruptcy and we do not believe that the case has been made that airlines should be singled out, particularly as the insolvency of airlines is a far less common occurrence than in other sectors.

As well as raising questions about how the level needed in the fund would be calculated in reality, we believe that a levy of this kind would create a market distortion, one of the principles that the Call for Evidence explicitly hopes to avoid. Even if applied to all carriers, UK carriers would naturally have the highest proportion of customers departing from UK airports, and would therefore be disproportionately affected by a levy of this kind. This would not only be unfair for UK carriers, but we would also expect the resulting cost implications for customers to be significant.

Considering the issues identified, we believe that there are more viable options available than a levy that would not result in such a significant market distortion and could provide a greater level of transparency and choice for customers.

ii) The orderly wind-down of an airline

From our initial assessment, we believe that a viable option available would be to allow an insolvent airline to keep its fleet operating through administration, for a very short time-limited period. The average UK holiday is between 7 and 10 nights in length, so a 14-day window of repatriations, where operations could be wound-down, would offer sufficient time in which passengers and industry could adjust to such a significant shift in the market, in terms of any sale or asset realisations that would take place.

This approach would also provide for protection against any UK citizens being stranded abroad, as it would allow for a full repatriation programme. While we appreciate the challenges inherent in this approach, as outlined in the Call for Evidence, we do believe there is a strong case for further exploration with respect to how insolvency rules may be amended to mitigate any immediate customer impacts resulting from an airline insolvency, namely, ensuring full and prompt repatriation of UK citizens.

Following the collapse of Monarch, the CAA essentially ran a “shadow airline” through the chartering of solvent airlines, whilst Monarch’s fleet of planes were grounded. We believe that this was highly

inefficient, as Monarch's fleet represented the capacity in terms of aircraft and crew to carry out a full repatriation effort. Such capacity would be particularly essential to realising a repatriation if an insolvency were to occur during peak travel season, and the chartering of solvent airlines may not be an option.

Allowing an airline to carry out repatriation efforts whilst insolvent proved a very effective method in the case of AirBerlin where disruption was minimised, although the loan from the German government provided to the airline made possible this outcome.

To overcome the significant challenges such a system could pose, it is likely the regulation would require the availability of sufficient financial resources to meet, or at least assure, the outstanding claims of suppliers and underwrite the expenses and liabilities arising from contributions. This solution would be workable, but financial resources would need to mitigate the knock-on effect of favouring passengers, as opposed to unsecured creditors, such as airlines' suppliers, and employees, as this could lead to poorer terms of financing for airlines, due to the increase risks for lenders and worse payment terms from suppliers.

iii) The insurance market

An option currently available to passengers is to take out personal travel insurance, which provides passengers with adequate and affordable cover against airline insolvency.

There is currently no legal obligation on airlines or airline ticket agents to provide or offer passengers a specific Scheduled Airline Failure Insurance (SAFI) policy. It is currently up to passengers to purchase SAFI or ensure that any broader travel insurance product will also refund the ticket price or cover the repatriation costs in the event of an airline insolvency.

Evidently in the case of Monarch, not a significant enough proportion of passengers used this option and therefore we would encourage the review to look at ways to promote a passenger-insurance based model and look at how it could better address risks like airline failure. This is something that the Foreign and Commonwealth Office has successfully done with discretionary travel insurance, which generally covers against personal injury or loss, by proactively promoting travel insurance through the multiple channels available to the UK Government.

Executed in a similar way, the Government would be able to achieve a culture of taking out insurance against airline insolvency, guaranteeing consumer confidence and promoting greater awareness of the issue. Airlines must play a role in making airline insolvency insurance more prominent, and ensure transparency as part of the booking process. We would be delighted to work closely with the Review to outline the most effective means through which this objective might be achieved.

iv) Improved financial regulation of airlines

We strongly support this Review considering options available that would focus on the prevention of an airline insolvency, so as to reduce the likeliness of an event of this nature occurring in the first place. Any improvements to the oversight of an airline's financial situation through the Civil Aviation Authority (CAA) would be welcome.

Although thought would need to be given as to when an intervention would be triggered and what an intervention would actually entail, amendments to the airline licensing regime could enable regulators to intervene earlier, and we'd strongly support this approach.

During the Monarch failure, there were concerns that any intervention from the CAA could result in a collapse of customer confidence, predetermining the collapse of the airline. These concerns were certainly justified; however, a review into these processes, which would reduce the chance of an airline reaching the point of bankruptcy and better protect passengers', would be welcome.

v) Other concerns

In addition to the main points addressed above, we would like to provide comment on some of the other points raised within the Call for Evidence:

- With respect to the **legal requirement for airlines to protect their passengers from their own insolvency through insurance, bonding or other methods**, further to questioning how this would work in practise, such as potential restrictions on airline activity and when a pay-out would actually be triggered, this option could be more detrimental to smaller airlines, as larger carriers would be able to secure better premiums, due to their size and scale. This could be perceived by some as a market distortion. Like other considerations that would impose costs on airlines, additional costs would ultimately be passed onto the customer.
- Any practical steps that might be taken to **open up the aviation insolvency market to the financial sector** should indeed be explored by Government; however, there are risks involved in commercial solutions, which ought to be considered thoroughly. Developing such capital markets would take time, as there is clear evidence such solutions do not currently exist. Additionally, a financial sector-led solution could preclude some businesses from being able to trade where they are otherwise able to today, and could have more serious implications for other businesses, such as being forced into liquidation if insolvency protection could not be secured. If businesses had to put in place a scheme of bank guarantees or bonding, this could cause an issue for the whole EU aviation market. Furthermore, insurers would limit their bonding capacity based on how they perceive the financial strength of individual firms (insurers may decline to underwrite what they perceive to be poor risks or financially weak companies).
- The **Government providing capital to underpin a private operation to repatriate affected customers** seems logical, as private agents are arguably the most qualified and capable to carry out such operations. However, this would require state sponsorship, as there would be little incentive for private agents to carry out the work in the first place and as with the option of procured wet-lease capacity, there would be questions around capacity, particularly if a larger airline were to fail.
- **Changes to UK law to place the emphasis on those administering an insolvent airline** would help ensure passenger welfare, but would require a shift away from the current model, which provides for a clear administration objective of rescuing debtor companies or realising assets for the benefit of creditors, firstly secured and then unsecured. A shift away from this model would therefore require a special administration regime for airlines. Although these do exist in other sectors, such a solution is possible but would require significant changes to UK insolvency law.

IV. Further information

We would be very happy to provide any further clarity or detail with respect to any of the matters raised within this consultation response. We look forward to continuing the discussion in the months ahead. In the meantime, should you require any further information, please contact [REDACTED]