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IATA response to the UK Department for Transport call for evidence on Airline Insolvency review

The International Air Transport Association (IATA) is the global trade association representing approximately 280 of the world's airlines and 84% of today's worldwide traffic. On behalf of all members and the industry, IATA is active across the aviation industry activity and helps formulate industry policy and global standards on critical aviation issues.

Some 105 IATA member airlines operate into the United Kingdom and account for 65% of available seat kilometres operated to, from and within the UK. IATA therefore welcomes the opportunity to contribute to this Call for evidence launched by the UK Government seeking how to protect passengers from the effects of airline failure and how to fund the associated costs.

On a general basis, IATA's position with regards to airline bankruptcy and passenger protection is to avoid further regulation, including the creation of a fund and/or raising a levy on passengers. This kind of measures would have unintended consequences, amongst others, making travel more expensive and distorting competition in the marketplace. IATA however does support the review of existing bankruptcy laws to permit the continued operations of airlines in insolvency and to consider protecting the priority of passengers' claims during the insolvency process.

The specific comments outlined below comprise IATA's initial point of view on the matter and represent our view forward on some of the questions and related issues that we would like to discuss during the working sessions that will take place before the final recommendations are issued:

1. With regards to the **task** "*making recommendations on how to protect passengers from the effects of airline failure and to do so in a manner that reduces reliance on the tax payer*", whilst we recognize the value of the exercise, we also believe that the approach during the engagement process should be driven by a principle of minimum state interference to regulate in this matter. We appreciate that the Monarch Airline's case has been particularly costly for the UK Government, but that should not lead us to lose perspective on the reduced number of insolvencies that have affected, or will affect, passengers. Indeed, according to the European Commission, between 2011 and 2020 some 0.07% of flight-only (as opposed to package travel) passengers would be affected by air carrier insolvency, of which only 12% could be stranded abroad -equivalent to 0.0084% of passengers transported-). Furthermore, in view of the document that accompanies this call for evidence, there seems to be enough mechanisms at the moment that, if properly

used and combined, would be sufficient to cover the repatriation of passengers or financial claims when airlines become insolvent.

2. With regards to the **principles** outlined in point 1.11. we believe the following general considerations should be taken into account throughout the exercise:

- **Customers should be able to make informed choices** between the various products and services available in the market, from first-class travel to a basic economy fare and, through access to full and correct information, know what to expect should things go wrong. The more prescriptive legislation or the requirements are, the higher the likelihood that they will negatively impact connectivity and competitiveness. This could be one of the consequences of creating a fund or a levy as a mean to protect in case of an insolvency.
- In general, we believe **customers should not be given standardized and “gold-plated” levels of protection**. Instead, IATA would be more inclined to explore regulatory responses that focus on provision of information (particularly in terms of what the airline will do when things go wrong) as opposed to measures that introduce prescriptive requirements. Whilst we do not recommend a regulation that would oblige airlines to subscribe an insurance policy covering a potential insolvency, it would seem to be a consistent approach in a free market that airlines seeking to differentiate themselves from their competitors can subscribe such a policy and inform their passengers who can thus make an “informed decision” before proceeding with the purchase.
- Given the **global nature of aviation**, it seems difficult to define a framework where there are no market distortions and/or do not imply an extraterritorial application of measures on airlines over which the UK has no jurisdiction. Also, from a point of view of private international law and non-discrimination principles, we would like to understand how some of the proposed measures to repatriate UK originating passengers would fit in the liability regimes airlines are subject to.

3. With regards to the **possible solutions** outlined in the document, we have some general comments and open questions that we would like to discuss in further detail as soon as more information becomes available.

- **Refunds and repatriation** in case of an airline bankruptcy should be addressed separately: Indeed, for refunds, the current mechanisms in place, both statutory and non-statutory, provide in our view sufficient protection to the passengers (once certain aspects are clarified).
- Any outcome of this exercise will necessarily require a **series of complementary measures** with the aim to accommodate the principle that there is no "one size fit all" solution.

- In particular, with regards to the **IATA BSP system** and the refunds that may allow IATA to reimburse travel agents for moneys submitted to the airline depending on the national insolvency provisions, the truth is that in the case of Monarch Airlines we cannot assure how this would have worked since the airline in question did not participate in the BSP. The system has been tested in other cases in other jurisdictions with positive results. During the exercise we would like to assess along with the Airlines Insolvency Review team whether the UK Law would allow a situation in which the money that is being collected on behalf of an UK insolvent airline, could be allocated back to travel agents which ultimately could reimburse passengers for non-flown tickets.
- We are not sure whether the **ATOL** scheme is fit for purpose considering the recent insolvency cases. In fact, the current distribution environment as well as how consumers have modified their behavior when it comes to purchase holidays have completely changed the landscape since its inception. Nowadays, the proportion of passengers buying direct from airline's website versus through a travel agency varies geographically but also from an airline to another. This new landscape should be part of the discussions while assessing the current framework. At this point we strongly believe ATOL is not the right mechanism to flight-only bookings. Extending the application of the ATOL or other form of package travel protection to flight-only tickets would create market distortions and wrongly allocate risks.
- Subscribing an **insurance policy** would imply additional cost on the airlines. This is a mechanism that should be left for the airlines which ultimately in a free market environment may decide to opt for this solution as a way to differentiate themselves from its competitors. But obviously, in a scenario of free market forces, naturally, those airlines that are economically healthier should be able to find better insurance policy deals than those that are less financially viable.
- Having **passenger subscribing for its own insurance policy** should be another layer to promote by raising awareness throughout the travelling public.
- **IATA rescue fares** have proved to be efficient in the few occasions that have been triggered since its inception. IATA and the UK CAA, in a joint effort, have made this system work quite well for the repatriation for the Monarch passengers.
- **Insolvent airline to continue trading:** There is merit in analyzing the impact of an insolvent airline filing for administration under the current English insolvency Law on the airline's ability to maintain required licenses, to understand under what conditions an insolvent airline would be able to continue trading while under the control of the administrators. If there are

adequate provisions in the UK Law, then we wonder why these were not used in recent cases of airline insolvencies in the UK. We would be keen to understand what are the current conditions for the UK Government that would make the CAA opt for suspending an airline operating license rather than allowing it to keep flying and repatriate its passengers.

- Creation of a **special administration regime governing airline bankruptcies**: We see the merits of exploring this solution as it could help overcome some of the inconveniences created when an airline becomes insolvent. The regime would allow the administrator to consider the potential harm to passengers if the airline stops trading and as a result is unable to provide repatriation services and also assist the insolvent airline to continue trading if that is the best option. Furthermore, and in view of a first assessment of the current system, the creation of such regime could in principle be introduced by secondary legislation rather than primary legislation which would facilitate the process and its eventual approval.
- **Preferential creditor status of passengers in an insolvency process**: Whilst we would caution that the advantages of this solution must be carefully weighed against its disadvantages, we see it would be worthwhile exploring what possibilities there are in the current framework that would allow a new category of preferential debt for airline passengers without implying any kind of levy on the passengers to assume that initial payment.

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