

## **PART 8 OF THE ENTERPRISE ACT 2002 (EA02)**

### **UNDERTAKINGS TO THE COMPETITION AND MARKETS AUTHORITY (CMA) UNDER SECTION 219 OF THE EA02 RELATING TO:**

#### **THE PACKAGE TRAVEL AND LINKED TRAVEL ARRANGEMENTS REGULATIONS 2018; and**

#### **THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008**

Truly Holdings Limited (hereafter 'THL') of registered office 192-198 Vauxhall Bridge Road, London, SW1V 1DX on behalf of itself and its subsidiary companies Truly Travel Limited (company number 06856368) and Alpha Holidays Limited (company number 10270092) voluntarily gives the following undertakings to the CMA under section 219 of the EA02.

For the avoidance of doubt these Undertakings relate to the CMA's consumer law investigation into Package holiday terminations, and do not amount to an admission that any person has infringed the law.

### **UNDERTAKINGS**

In accordance with sections 219 and 219B EA02, THL undertakes (i) on its own behalf;<sup>1</sup> and (ii) in respect of any third party acting in its name with its authority or on its behalf with its authority:

- not to engage in any conduct which contravenes paragraphs 2 to 17 below;
- not to engage in such conduct in the course of its business or another Package holiday business; and
- not to consent to or connive in the carrying out of such conduct by a body corporate with which it has a special relationship (within the meaning of section 222(3) EA02).

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<sup>1</sup> The reference to THL's "own behalf" shall include circumstances where, following the date of these Undertakings, any new or existing subsidiary of THL begins selling package holidays, in which case THL shall procure their compliance with these Undertakings, where relevant and to the extent the Undertakings remain applicable, until such time as the subsidiary ceases to be owned or controlled by THL.

## Interpretation

1. Defined terms are set out below.
  - (1) When a date or time period is specified, the obligation must be met by 17:00 hours in the time zone of the UK on the relevant day.
  - (2) **“ATOL Protection”** means cover under the Air Travel Organiser’s Licence financial protection scheme in the event that an ATOL holder ceases to trade.
  - (3) **“Affected Booking”** means a Package Travel Contract that has been terminated:
    - i. by or on behalf of THL in the Relevant Period in connection with the COVID-19 pandemic in circumstances where the Traveller would be entitled to a Refund under the PTRs; or
    - ii. by a Traveller in the Relevant Period in connection with the COVID-19 pandemic in circumstances where the Traveller would be entitled to a Refund under the PTRs, and THL accepts (or has already accepted) that a Refund is payable to the Traveller.
  - (4) **“Affected Traveller”** means a Traveller in respect of an Affected Booking who made a payment to THL but excluding:
    - i. Any person who has already received a Refund; and
    - ii. Any person who has received and fully redeemed a Refund Credit Note in circumstances where the value of the Refund Credit Note is at least equivalent to the amount of the applicable Refund
  - (5) **“Cash”** means any bankable method of payment.
  - (6) **“Clear/Clearly”** means communication in a manner which is timely, transparent, unambiguous, non-misleading and complete, and in relation to written communication includes intelligible.
  - (7) **“Easily Accessible”** means being available to the user within a reasonable number of clicks and being clearly navigable.
  - (8) **“New Cancellations”** means where termination of a Package Travel Contract occurs on or after 25 May 2021, in circumstances where the PTRs entitle the Traveller to a full refund (without any deductions) of all payments made under the Package Travel Contract, and THL accepts that a full refund is due to the Traveller.

- (9) **“Package”** has the meaning set out in regulation 2(5) of the PTRs.
- (10) **“Package Travel Contract”** has the meaning set out in regulation 2(1) of the PTRs.
- (11) **“Payment”** means a payment of Refunds and outstanding Cash balances due in accordance with paragraph 3.
- (12) **“Prominent/Prominently”** means information that is immediately apparent, immediately communicated or immediately visible.
- (13) **“PTRs”** means The Package Travel and Linked Travel Arrangements Regulations 2018.
- (14) **“Refund”** means a repayment in Cash of the total sum that the Affected Traveller has paid in respect of the Affected Booking (less any amount previously refunded in Cash).
- (15) **“Refund Credit Note”** means a refund credit note provided by THL to Travellers for a specified monetary sum and which can be redeemed for Cash and/or alternative travel services booked with THL.
- (16) **“Relevant Period”** means 17 March 2020 to 24 May 2021 inclusive.
- (17) **“Traveller”** means any individual who has concluded a contract or is entitled to travel on the basis of a contract concluded for the provision of a package holiday with THL, within the scope of the PTRs.

For the avoidance of doubt references to informing or notifying a Traveller, including an Affected Traveller, of his or her options or entitlements pursuant to these Undertakings may be satisfied where THL informs or notifies the ‘lead passenger’ (or equivalent) on any group booking, in line with the terms of the Package Travel Contract.

## **Refunds**

- 2. THL will use all reasonable endeavours to ensure that:
  - a) Refunds are paid to Affected Travellers, in respect of Affected Bookings, who:
    - i) have not received a Refund Credit Note as at the end of the Relevant Period;
    - ii) have received a Refund Credit Note (whether for an amount partially or fully equivalent to the value of the applicable Refund) and have

requested or otherwise indicated that they would like a Refund as at the end of the Relevant Period;

- iii) have received a Refund Credit Note (whether for an amount partially or fully equivalent to the value of the applicable Refund) which has not been redeemed (at all) but has expired as at the end of the Relevant Period;
- iv) do not fall within paragraphs 2(a) (i)-(iii) but have otherwise been informed by THL that they will receive a Refund, and have, as at the end of the Relevant Period, been awaiting payment of a Refund for over 14 days from the termination of the Package Travel Contract.

b) The outstanding Cash balance due to Affected Travellers, in respect of Affected Bookings, is repaid to the Affected Traveller where this has been requested by the Affected Traveller in circumstances where:

- i) the Affected Traveller has been paid a partial Cash amount of the Refund due as at the end of the Relevant Period;
- ii) the Affected Traveller has been issued with a Refund Credit Note for the full value of the applicable Refund and has partially redeemed that Refund Credit Note as at the end of the Relevant Period; or
- iii) the Affected Traveller has been issued with a Refund Credit Note for an amount less than the value of the applicable Refund, which has been fully or partially redeemed as at the end of the Relevant Period.

c) The outstanding Cash balance due to Affected Travellers, in respect of Affected Bookings, is repaid to the Affected Traveller in circumstances where the Affected Traveller has been issued with a Refund Credit Note for the full value of the applicable Refund and has partially redeemed that Refund Credit Note and that Refund Credit Note has expired as at the end of the Relevant Period.

3. THL will use all reasonable endeavours to make the payments described in paragraph 2 above within the following time limits:

- a) By **30 June 2021** where termination of the Affected Booking occurred on or before 31 July 2020;
- b) By **31 July 2021**, where termination of the Affected Booking occurred between 1 August 2020 and 31 October 2020 (inclusive); or

- c) By **31 August 2021**, where termination of the Affected Booking occurred between 1 November 2020 and 24 May 2021 (inclusive).
4. For the avoidance of doubt, where for any reason a Refund or repayment is not paid to an Affected Traveller within the relevant timeframe stated in paragraph 3 above (including where the Affected Traveller does not contact THL in time or at all in accordance with paragraph 6), THL will continue to use all reasonable endeavours to make the Refund as quickly as possible and will record the steps taken to process the Refund and the reasons why the payment has not been made.
5. THL will comply with the requirements of paragraphs 2 to 4 above, and paragraph 6 below, irrespective of whether it has received reimbursement of any amounts it has paid to any of the service providers associated with the Affected Booking (for example, the airline or accommodation provider) unless and to the extent that the Affected Traveller has previously –
- a) received a Cash refund from the service provider in respect of the service it was due to provide under the Package Travel Contract and THL has documented proof of confirmation of this; or
  - b) rebooked or amended with the service provider in respect of the service it was due to provide under the Package Travel Contract and THL has documented proof of confirmation of this; or
  - c) received a voucher from the service provider for the service it was due to provide under the Package Travel Contract and:
    - i) has been advised by THL that the voucher may be rejected in favour of an equivalent Cash payment by THL; and
    - ii) has expressly confirmed they do not intend to exercise that option.
6. THL will use all reasonable endeavours to ensure that it Clearly notifies, in a format agreed in advance with the CMA, all Affected Travellers (who do not otherwise fall within paragraph 2 above) to which THL has issued a Refund Credit Note (whether for an amount partially or fully equivalent to the value of the applicable Refund), and which has not been fully or partially redeemed nor expired as at the end of the Relevant Period, of their right to a Refund. Further, it must:
- a) provide this notification by **27 May 2021** and
  - b) where the Affected Traveller:

i) confirms that they wish to retain the Refund Credit Note, advise them that it can be redeemed at any time before its expiration date and is redeemable for a Cash refund upon expiry; or

ii) confirms that they want a Refund or fails to respond within 14 days of the notification, use all reasonable endeavours to make payment of the Refund in accordance with the relevant deadline set out in paragraph 3 above.

7. For the avoidance of doubt, paragraph 6 includes Affected Travellers who were or are prevented from redeeming a Refund Credit Note because of:
- a) restrictions in the terms of the Refund Credit Note, (including on the face of the Refund Credit Note and /or on the covering email attaching the Refund Credit Note), regarding the date on which the Refund Credit Note can be exchanged for a Refund; and/or
  - b) practical restrictions imposed by THL preventing requests for Cash redemptions from being actioned, for example, by not activating a designated mailbox for Refund requests until a certain date.

### **Provision of Information to Consumers on THL's Website**

8. By no later than **28 May 2021** THL shall:
- a) set up a designated page on its website which Clearly and Prominently provides an explanation of these Undertakings and of THL's complaints procedure regarding delayed payment of refunds;
  - b) remove any material on its website which conflicts with the information provided in accordance with sub-paragraph 8(a) above; and
  - c) set up a designated webform on its website that is Easily Accessible and enables Travellers to lodge requests for Cash refunds or to notify THL that they wish to retain their Refund Credit Notes to redeem at a later date.

### **Refund Credit Notes**

9. THL shall ensure that where Refund Credit Notes are offered or otherwise issued, it notifies the Traveller Clearly and Prominently that:
- a) the Traveller may opt for a full Cash refund in the alternative; and

- b) the Refund Credit Note may be redeemed for a full Cash refund by the Traveller at any time before it expires.
10. THL will not state, imply or otherwise give the impression that a Refund Credit Note:
- a) has ATOL Protection, when this is not the case; or
  - b) will have ATOL Protection until the Refund Credit Note expires, when this is not the case (for example because ATOL Protection ends before the Refund Credit Note expires).
11. Where a Package has been cancelled in circumstances where a Traveller is entitled to a full refund in accordance with the PTRs, THL shall not offer or otherwise issue Refund Credit Notes which are not of at least the same financial value as the amount paid to THL for the cancelled Package.

For the avoidance of doubt, and in order to avoid double recovery, where any of the circumstances in paragraph 5(a), 5(b) or 5(c) apply in respect of that service, the Refund Credit Note may be reduced by a sum equivalent to that Cash payment or value received.

## Ongoing Obligations

12. In the case of New Cancellations, THL will ensure that processes are put in place and followed so that where refunds due under the PTRs are required to be paid, this is done without undue delay and, in any event, they are paid in full not later than 14 days after the termination of the Package Travel Contract, or following redemption of a Refund Credit Note accepted by the Traveller for Cash.
13. THL will comply with the requirements of paragraph 12 irrespective of whether it has received reimbursement of any amounts it has paid to any of the service providers associated with the Affected Booking (for example, the airline or accommodation provider).

## Reporting

14. Without prejudice to any further information notice<sup>2</sup> that might be sent to it by the CMA, THL will provide the CMA with an initial report on **8 June 2021** providing the following information:

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<sup>2</sup> Under Part 3 of Schedule 5 to the Consumer Rights Act 2015.

- a) The total number of Affected Bookings divided between:
    - i) the number where a Payment had been paid to the Affected Traveller by the deadline for payment in paragraph 3 immediately preceding the date of the report (in so far as there is such a deadline immediately preceding); and
    - ii) the number where a Payment had not yet been paid to the Affected Traveller by the deadline for payment in paragraph 3 immediately preceding the date of the report (in so far as there is such a deadline immediately preceding).
  - b) For those Affected Bookings where a Payment had been made to the Affected Traveller:
    - i) the number where payment of the Payment was made within the time limits set out in paragraph 3 (where applicable); and
    - ii) the number where payment of the Payment was made outside of the time limits set out in paragraph 3 (where applicable).
  - c) For any Affected Bookings where a Payment that was due to be paid to an Affected Traveller in accordance with paragraph 3 had not yet been paid to the Affected Traveller as at the date of the report:
    - i) the total amount outstanding under all relevant Affected Bookings, also broken down by the month when the Package was terminated;
    - ii) an explanation as to why these payments have not been made yet;
    - iii) the steps that THL has taken to make the outstanding payments; and
    - iv) confirmation of when these payments will be made.
15. THL will then provide reports on a fortnightly basis from 8 June 2021, covering the periods since the previous repayment deadline set out in paragraph 3 above. Each report will contain the information outlined in paragraph 14 relevant to the payment period in paragraph 3 whose deadline immediately precedes the reporting date.
16. THL will also provide reports on the payment of Refunds to Travellers in respect of New Cancellations falling within the scope of paragraph 12 of these Undertakings. The reports will provide the information listed in sub-paragraphs (a) to (c) below in relation to the relevant period covered. The first report will be provided on **8 June 2021**. THL will provide subsequent reports on a fortnightly



basis as set out at paragraph 14 above each of which will cover the period since the previous report under this paragraph:

- a) The total number of New Cancellations within the time period and the total value; and
  - b) A break down by number and value of New Cancellations in respect of which:
    - i) the Traveller has been paid a full refund, of which:
      - a. the full refund was paid within 14 days from the termination of the Package Travel Contract;
      - b. the full refund was paid later than 14 days after the termination of the Package Travel Contract;
    - ii) the payment of the full refund remains outstanding as at the date of the report.
  - c) Such other information as the CMA reasonably requests and notifies in writing relevant to the discharge of these Undertakings.
17. In relation to Refund Credit Notes and the requirements set out at paragraph 6 to inform Affected Travellers of their rights to request a full cash refund for the amount outstanding, THL will submit reports on **4 June 2021** and **18 June 2021**, setting out the following information:
- a) The number of Affected Travellers contacted by THL and the date and method of contact; and
  - b) The number of Affected Travellers who requested that their Refund Credit Note be exchanged for a Refund broken down by whether this is via the webform of another form of communication (e.g. email, telephone) and the value of the amounts to be refunded, and of these:
    - i) The number and value of such Refunds made to the Affected Travellers as at the date of the report; and
    - ii) The number and value of such Refunds outstanding.

**BY SIGNING THESE UNDERTAKINGS TRULY HOLDINGS LIMITED ARE AGREEING THAT THEY WILL BE BOUND BY THEM.**

**THESE UNDERTAKINGS REPRESENT A COMMITMENT BY TRULY HOLDINGS LIMITED IN RELATION TO FUTURE COMPLIANCE WITH CONSUMER PROTECTION REGULATION AND PRACTICE. THESE UNDERTAKINGS DO NOT AMOUNT TO AN ADMISSION THAT ANY PERSON HAS COMMITTED ANY CRIMINAL OFFENCE OR OTHERWISE INFRINGED THE LAW.**

**IF HAVING SIGNED THIS DOCUMENT TRULY HOLDINGS LIMITED BREACHES ANY OF THE ABOVE UNDERTAKINGS, THEY ARE AWARE THAT THEY MAY BE THE SUBJECT OF AN APPLICATION TO THE COURT FOR AN ENFORCEMENT ORDER UNDER SECTION 215 OF THE EA02.**

**THE CMA WILL CONSIDER VARYING OR TERMINATING THE UNDERTAKINGS, EITHER UPON REQUEST FROM TRULY HOLDINGS LIMITED OR UNDER THE CMA'S OWN INITIATIVE, WHERE THERE HAS BEEN A CHANGE OF CIRCUMSTANCES SUCH THAT THE UNDERTAKING IS NO LONGER APPROPRIATE IN DEALING WITH THE ISSUES IT WAS DESIGNED TO REMEDY (EG IF THE UNDERTAKING IS AFFECTED BY NEW LEGISLATION OR CHANGES IN MARKET CONDITIONS).**

**Signed on behalf of TRULY HOLDINGS LIMITED**

**Date**

**[REDACTED]**