

14 December 2023

**Competition and Markets Authority (CMA) response to the Department for Business and Trade's (DBT) call for evidence on the Package Travel Legislation**

The Competition and Markets Authority (CMA) is dedicated to promoting competitive markets and tackling unfair behaviour to support productivity, innovation and sustainable growth for the benefit of people, businesses, and the wider economy.

In responding to this consultation, the CMA has regard to the interests of consumers, namely, package travel customers, and the wider industry. The sector is facing significant change with the rise of alternative booking platforms as well as facing disruption during the COVID-19 pandemic. The CMA has experience enforcing against the current Package Travel Regulations (PTRs) through its enforcement action in the sector which secured more than £200 million of refunds for consumers during the pandemic.

The CMA recommends that DBT should consider how changes to the PTRs:

- Affect the overall level of protection for consumers and consider how any changes to the PTRs should be communicated to consumers.
- Affect competition between operators and minimise competitive distortions.
- Affect wider issues in the industry, including its long-term sustainability, as well as the ability for authorities to enforce against these regulations.

The CMA puts protecting consumers and supporting competition at the heart of everything we do. Both our competition and consumer objectives are relevant in this response, as is the work we have done in addressing problems in the sector following the pandemic, and previously ensuring hotel booking platforms and car hire sites comply with their consumer law obligations.

Officials at the CMA would be willing to discuss this response further with DBT officials.

Best wishes,

Competition and Markets Authority

## Package Travel Legislation: Updating the Framework – CMA response

### Background to the sector and the CMA's role.

1. The Competition and Markets Authority (CMA) is an independent non-ministerial UK government department and is the UK's principal competition and consumer protection authority. We help people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. The CMA has a statutory duty to promote competition for the benefit of consumers.
2. The CMA has responsibilities including merger control, antitrust and consumer enforcement as well as conducting market studies and investigations to address sector-wide issues. The CMA also has a role in providing advice and recommendations to government and public authorities. The CMA's advice and recommendations are made with a view to ensuring that policy decisions take account of the impacts on competition and on consumers.
3. The CMA has recently conducted work in the travel and tourism sector, including investigations during the pandemic over refunds for cancelled package holidays<sup>1</sup> and working with the CAA to help improve airlines' understanding of and compliance with consumer law following disruptions to the sector in Summer 2022.<sup>2</sup>
4. In the CMA's annual plan 2023-24, we outlined two outcomes which are most relevant in this response; that people can be confident they are getting great choices and fair deals and that competitive, fair-dealing businesses can innovate and thrive.<sup>3</sup> As part of the CMA's work achieving real impact for the people we serve we are active across areas which are most important to people, including 'getting about and travelling'.<sup>4</sup> Our strategic steer asks us to support government to make 'proportionate pro-competitive policy choices'.<sup>5</sup> The CMA is responding to this consultation on the Package Travel and Linked Travel Arrangements Regulations (2018) with these objectives in mind.
5. The advent of the internet and low-cost airlines has changed how people book holidays but there remains a significant group of holidaymakers who prefer the convenience and protection that a package holiday affords them. ABTA estimates that 52% of people in the UK went on holiday abroad in the year to August 2023, and of those 52%, three-fifths went on a package holiday.<sup>6</sup> There were estimated to be over 2,000 tour operator businesses in the UK in 2021.<sup>7</sup>

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<sup>1</sup> [COVID-19 cancellations: package holidays](#), CMA.

<sup>2</sup> [CMA and CAA joint open letter to airlines on compliance with consumer law](#), CMA.

<sup>3</sup> [CMA Annual Plan 2023 to 2024](#), CMA.

<sup>4</sup> [CMA Annual Plan 2023 to 2024](#), CMA.

<sup>5</sup> [Strategic steer to the Competition and Markets Authority 2023](#), DBT.

<sup>6</sup> [Holiday Habits 2023-24](#), ABTA.

<sup>7</sup> [Non-financial business economy, UK and regional \(Annual Business Survey\): 2021 results](#), ONS.

6. The COVID-19 pandemic led to the cancellation of thousands of flights and holidays and suspended the industry's activities for a significant period. The CAA estimates that in 2022, air travel passengers were still recovering from the pandemic and were at 75% of pre-pandemic levels.<sup>8</sup>
7. The package travel industry regularly cites several different reasons why consumers may choose to purchase a holiday through a tour operator, including value for money and greater security.<sup>9</sup> Despite the internet facilitating travellers booking flights and accommodation separately, package holidays remain a popular choice for consumers, potentially because of the consumer protections which are offered to package holidaymakers.

### **Why the CMA is responding to this consultation.**

8. The PTRs provide significant protection for consumers in the event of problems with their holiday and provide a clear legal basis for consumer protection, as they have done in some form since the 1970s. The PTRs also give consumers certainty about the standard to which their package holiday provider must adhere and protections around refunds if something goes wrong. This certainty can be especially important and valuable in the event of severe delays or other disruptions which could be very distressing for individuals at the time. More broadly, for industry these regulations provide a common standard, allowing operators to do business on a level playing field. Modifying longstanding regulations, such as the PTRs, may have unintended consequences for consumers and package travel operators.
9. The COVID-19 pandemic gave rise to significant disruption to the travel sector. The CMA's experience of intervening during the pandemic has informed our response, along with wider developments in the industry of relevance:
  - a. **Enforcement.** The CMA investigated [suspected breaches of consumer protection law in the package holiday sector](#) in 2020 and 2021, following concerns that consumers were not being refunded when their holidays were cancelled during the pandemic. The CMA wrote an [open letter](#) to package travel operators in July 2020, followed by a further [open letter](#) in May 2021 having received over 23,000 complaints, warning the sector about its obligation to consumers. The CMA undertook enforcement action against selected package travel operators and its work in this sector secured more than £200 million of refunds for consumers.<sup>10</sup> The clarity of the law regarding the obligation to provide refunds was an important feature of the success of this work.

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<sup>8</sup> [2022 in review: UK air travel reaches 75% of pre-pandemic levels as Spain tops most popular destination list](#), CAA.

<sup>9</sup> [Travel Trends 2023](#), ABTA.

<sup>10</sup> [COVID-19 cancellations: package holidays](#), CMA.

- b. **Insolvency.** In recent years, there have also been concerns around the solvency of the industry, with the UK government having to organise repatriation of holidaymakers after the failure of both Monarch in 2017 and Thomas Cook in 2019. Additionally, further insolvencies, such as Truly Travel/Teletext Holidays has exposed the complexity and fragility of some of the business models in the sector.<sup>11</sup> The PTRs should continue to provide protection for consumers' bookings in the event of insolvency.
- c. **Roles and responsibilities of parties.** The internet has made it easier than ever to book a holiday, but it has also created confusion for consumers if they book a component of their holiday through a third party, especially if this provider sells both protected packages and unprotected holidays. Although changes to the PTRs are not seeking to address this, all operators in the sector must be clear with consumers about which holidays are protected and which are not, as well as understanding and discharging their responsibilities when something goes wrong.
- d. **Interactions with other authorities.** The PTRs are enforceable by several different authorities, including Trading Standards and the CAA.<sup>12</sup> It is essential that any changes to the PTRs recognise that there are multiple agencies which enforce against the PTRs. Consumers should be clear where to go if something goes wrong. Additionally, potential changes to Regulation 261,<sup>13</sup> which provides consumer protection in the aviation sector, must be viewed in tandem with any proposed changes to the PTRs. The overall level of protection afforded to consumers when things go wrong has an important impact on their trust and confidence when booking holidays.

### **Principles that CMA recommends DBT considers in its review.**

10. We have outlined below three principles which the CMA recommends that DBT considers in its review of the package travel legislation. Specific points around the proposed changes are considered further down in this response.

- a. **We recommend that any changes to the PTRs which lessen protection for consumers should be considered carefully and communicated clearly.** Consumers may choose to purchase a package holiday for several reasons, including the current consumer protection offered, value for money and the simplicity of refunds.<sup>14</sup>

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<sup>11</sup> <https://travelweekly.co.uk/news/tour-operators/teletext-holidays-parent-leaves-the-travel-trust-association> ; <https://www.travelgossip.co.uk/latestnews/ta-to-launch-voluntary-refund-scheme-after-truly-travel-customers-complain-theyve-been-left-out-of-pocket/>

<sup>12</sup> [The Package Travel and Linked Travel Arrangements Regulations 2018](#), Gov.uk.

<sup>13</sup> [Response to the aviation consumer policy reform consultation](#), DfT.

<sup>14</sup> According to ABTA, 42% of people who booked a package holiday said it was the best value option for the price. [Holiday Habits 2023](#), ABTA.

With the PTRs having been in place for a number of years, consumers will expect a minimum level of protection, and any changes to protection should be communicated clearly. Consumers should know what classes as a package holiday and any changes to their protection which are dependent on the specific components of a holiday that they purchase should also be clearly communicated.

- b. **We recommend that any changes to the PTRs should keep in mind the effects on competition and aim to minimise competitive distortions.** The PTRs provide a level playing field for consumer protection, allowing operators to compete on other issues, such as price and services, an important issue given the difficulty of assessing payment protections in the event of failure at the point of purchase. The changes proposed in this consultation would reduce the standard of protection required by package travel operators selling to UK customers relative to other jurisdictions. Although package travel operators would still be free to offer a higher standard of protection, the burden may shift to the consumer to shop around effectively and find the suitable level of protection for them. This could weaken effective competition between firms due to higher consumer search costs, as well as potentially leading to poorer outcomes for some consumers, particularly those who choose a package due to convenience and value for money. The CMA notes DBT's [Impact Assessment](#) of these proposed changes and highlights the CMA's own recently updated [Competition Assessment Guidelines](#) as a helpful tool to consider the impact of policy changes on competition.
- c. **We recommend that any changes to the PTRs should consider wider issues including the future of the UK package travel industry, the future enforcement landscape, and any potentially unforeseen consequences.** The CMA believes that one of the primary reasons consumers select a package holiday is the higher level of protection it offers. Should this no longer be the case, consumers may have less protection when things go wrong and vote with their feet, which could lead to significant change in the sector. Additionally, any weakening of insolvency protection may lead to higher costs down the line from repatriation and redress, as well as difficulties in enforcing against a weaker, less clear set of protections. Fundamentally, significant changes to this longstanding piece of legislation may have unintended and unforeseen consequences.

11. The CMA's response to this consultation covers three main themes.

- a. Which packages and customers should the regulations apply to?
- b. How should packages, linked travel arrangements and other tourist services be presented to the customer?

- c. How should the PTRs best support both consumer protection and the ongoing viability of the sector?

### **Which packages and customers should the regulations apply to?**

12. The consultation includes proposals to remove the protection for UK-only package holidays, exempt business trips from the requirements and to set a minimum cost threshold for the PTRs to apply. The CMA suggests that these measures could leave consumers worse off if the consequences of these changes are not communicated clearly.
- a. Removing protection for domestic package holidays could generate confusion for consumers, especially if the same tour operator offers both protected foreign holidays and non-protected domestic ones. Search costs and uncertainty could increase, particularly if there are differing levels of protection for UK-only package holidays offered by, say, an operator which sells holidays to UK and non-UK customers. This could lead to a UK consumer having less protection than an EU consumer on the same trip.<sup>15</sup> Further, there are reasons other than language and crossing borders which mean travellers may need assistance getting home if something goes wrong (such as personal characteristics like being elderly or disabled) and in any event it is not necessarily straightforward to travel across the UK.
  - b. We recommend that DBT considers the importance of setting clear definitions of business travel in its proposals to exempt this type of travel from the PTRs. The proposed approach of basing protection on the main purpose of the trip will create challenges for travel operators and travellers to have a clear understanding of when the protections apply to any given trip. There is a risk that individuals could lose protection by incorrectly identifying themselves as travelling for business purposes, when in fact their travel purposes are mixed. Operators could face difficulties in identifying which travellers are travelling for which purpose, and which purposes predominate. Government should also consider carefully any potential unforeseen consequences of removing these protections on the market for business travel.
  - c. Setting a cost threshold for the PTRs to apply may also lead to complications around compliance with the regulations. The consultation proposes that this threshold could be determined by total cost, which could disincentivise operators offering trips to large groups, or by

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<sup>15</sup> We are aware that the EU is also considering updating the PTRs which operate within the EU jurisdiction. On 29/11/2023, the European Commission adopted a proposal for a [Directive to amend the Package Travel Directive](#). This proposal includes provisions to greater simplify for what counts as a package, provides stronger cancellation rights to customers and stronger insolvency protection requirements.

average cost, which could become difficult to calculate. This could lead to a lack of clarity for consumers around whether their trip is protected if an operator does not make this clear at booking. Operators could exploit loopholes in cost calculation to deny refunds to consumers, and consumers who are least well off (and so cannot afford to buy a protected package) may find themselves facing unexpected extra expenses if something goes wrong on their trip.

### **How should packages, linked travel arrangements and other tourist services be presented to the customer?**

13. The linked travel arrangements (LTAs) were introduced in 2018 to address the increase in additional services offered by travel operators, including after purchase. Whilst these regulations may have offered greater flexibility to operators, the CMA believes that there is a benefit to simplifying these rules by combining the LTAs with the existing PTRs to have a single set of clear protections.
  - a. The current separate rules for services bought before and after checkout could create a loophole, incentivising operators to ‘drip’ additional services onto the initial purchase, knowing that these services come under a lower standard of protection. The LTAs are a complex set of rules and the CMA considers that bringing all relevant operators’ services under the PTRs will aid consumers by simplifying the experience as well as making the overall level of protection consistent.
  - b. Similarly, the legal arrangement of ‘other tourist services’ also lends itself to a grey area. As with LTAs, consumers may assume that a particular service offered by an operator comes under the PTRs when this is not the case. The CMA suggests two options, either bringing ‘other tourist services’ within the PTR umbrella or updating the PTRs to require operators to note clearly and in plain English, which elements would be covered by the PTRs, requirements which already apply under general consumer law. The CMA’s preference, due to the higher standard of protection afforded to package holidays, would be to envelope ‘other tourist services’ within the PTRs umbrella.

### **How should the PTRs best support both consumer protection and the ongoing viability of the sector?**

14. The pandemic exposed significant weaknesses in the package travel industry in delivering refunds to affected customers on time. The CMA’s experience in securing over £200m of refunds for consumers was made possible by the legal clarity provided by the PTRs. Measures which raise the risk of operator insolvency could lead to unforeseen harmful outcomes for taxpayers or customers.

- a. We understand that the proposal to introduce a clause in the regulations which allows operators to delay refunds in the case of 'extenuating circumstances' has come about through the extraordinary circumstances during the pandemic. Should the government introduce this change, we recommend a careful and clear definition of what would count as an 'extenuating circumstance' (primarily that it is extraordinary, unforeseen and affecting the whole industry, rather than any individual operator) and how much of an extension there would be to timeframes for issuing refunds. Any lack of clarity in this definition could lead to disputes and delays for consumers and the CMA is clear from its work during the pandemic that package travel operators remain responsible and liable for prompt payments of refunds.
- b. The pandemic also exposed severe limitations in the consumer enforcement system, namely in ATOL. The CMA suggests that protections in the event of insolvency should be maintained. Significant taxpayer obligations from repatriation could occur if poorly regulated firms become insolvent and further flexibility in insolvency protection may create more risks.
- c. The CMA is aware of disputes between package holiday operators and transit operators themselves (e.g. airlines), particularly during the pandemic. These difficulties were accentuated by inadequate contractual and redress arrangements between commercial parties. These issues should be resolved through contractual arrangements between the businesses and the CMA does not consider that it is appropriate to make this the consumer's problem to resolve, especially since consumers may lack the means to do so.
- d. Proposals to remove territorial restrictions on insurance cover for package travel operators may allow operators to benefit from lower insurance premia. However, we would encourage the government to remove this territorial restriction selectively rather than unilaterally, so that it only encompasses jurisdictions where there is a high standard of insurance regulation. In the event of insolvency, insurance may need to pay out quickly to repatriate or refund customers, timeframes which may be delayed if the insurer is not operating from the UK.