ABTA Submission

Strategic review of markets remedies Introduction

Introduction

ABTA is the largest travel association in the UK, representing around 3,900 consumer brands. ABTA members range from small, specialist tour operators and independent travel agencies specialising in business and leisure travel to publicly listed companies and household names, from call centres to internet booking services, and from high street retailers to homeworking travel agents. ABTA members have an annual combined turnover of more than £40 billion, comprising consumer and business travel expenditure.

ABTA welcomes the opportunity to respond to this consultation on the CMA's strategic review of markets remedies. We support efforts to ensure that regulatory frameworks are clear, proportionate and aligned with today's marketplace. ABTA's response aims to set out the overview of how the current travel industry marketplace has evolved since the markets remedies were first introduced, including the regulatory landscape that has developed around them, highlighting where, and if, equivalent or stronger protections now exist elsewhere in legislation.

ABTA's response also only relates to two of the 33 markets remedies: Restriction on Agreements and Conduct (Tour Operators) Order 1987 and The Foreign Package Holidays (Tour Operators and Travel Agents) Order 2001.

Overall, ABTA believes that where a remedy's provisions have been **fully** superseded by broader, newer legislation, such as, for example, the Competition Act 1998 or the current package travel and consumer protection framework, we consider there is a case for removal to reduce complexity and regulatory duplication. However, where a remedy still addresses a specific market practice not clearly covered elsewhere, or provides clarity for businesses and consumers, there may be merit in retaining it. ABTA would suggest, for the reasons set out below, that the Restriction on Agreements and Conduct (Tour Operators) Order 1987 (the 1987 Order) may fall under this latter category.

While ABTA has sought to set out, below, whether changes in the regulatory and market landscape address the issues the remedies were introduced to resolve, ABTA would call the CMA to undertake its own detailed analysis of regulatory developments since the remedies identified were introduced and consult with the industry again to ensure any conclusions are informed by up-to-date evidence and operational insight.

ABTA would be happy to provide further information, including additional industry insight, on how the current competition and consumer protection environment functions in practice.

Overview of Today's Marketplace

Since the Restriction on Agreements and Conduct (Tour Operators) Order 1987 ("the 1987 Order") was introduced, the marketplace has changed significantly. Consolidation across the sector means many businesses now operate as both tour operators and travel agents, as reflected in later regulations such as the 2000 and 2001 Ownership and Transparency Orders.

The rise of digital sales channels, including online travel agencies and dynamic packaging platforms, has also changed discounting and promotional practices across the sector. While the commercial landscape has modernised, travel agents remain a critical route to market for tour operators, providing essential advice, financial protection, itinerary planning and support for consumers, particularly for complex, higher value or long-haul bookings. Any regulatory framework should therefore continue to recognise the ongoing importance of travel agents in ensuring customer choice and market competitiveness.

The Restriction on Agreements and Conduct (Tour Operators) Order 1987

The 1987 Order was originally made under the Fair Trading Act 1973 and prevents tour operators from prohibiting travel agents from offering inducements or discounts to customers. The Order aims to address concerns around resale price maintenance in foreign package holiday sales and to protect consumer choice. It also covers situations where the travel agent is acting as an agent for the principal.

Since 1987, the competition law framework has been changed substantially. The Competition Act 1998 (Chapter I) prohibits agreements between two independent undertakings that prevent, restrict, or distort competition, including resale price maintenance (RPM), and these are treated as “hardcore restrictions”.

In considering whether the Competition Act 1998 (Chapter I) would already prohibit the types of restrictions addressed by the 1987 Order, it is important to consider whether, in the tour operator/travel agent arrangement, the agent sells on behalf of the principal rather than reselling a product in its own right. In such cases, there may be no “resale price” for competition law to apply to, and Chapter I does not always capture these relationships. This is why the 1987 Order was originally introduced to address a specific type of restriction in the travel sector that general competition law does not always clearly cover.

ABTA would suggest that the removal of the 1987 Order should only be considered (provided this does not diminish clarity for businesses or consumers) if the Competition Act and CMA powers now provide sufficient protection even in agency-based sales models.

The Foreign Package Holidays (Tour Operators and Travel Agents) Order 2001

The Foreign Package Holidays (Tour Operators and Travel Agents) Order 2001 (the 2001 Order) was introduced to prevent travel agents and tour operators from “tying” their own travel insurance products to the sale of foreign package holidays, following concerns identified by the Monopolies and Mergers Commission. The Order prohibits businesses from charging customers extra if they choose not to purchase the seller’s insurance. It replaced an earlier 1998 Order that had been quashed by the Court of Appeal and was designed to remedy specific anti-competitive practices in the market.

The 2001 Order was introduced in a different marketplace and regulatory environment, and many of its provisions have been superseded by new legislation, including under the Information requirements of the Package Travel Regulations (PTRs), which requires operators to tell consumers about travel insurance, including whether one is recommended and important information about insurance before and after the sale. While the PTRs require organisers and retailers to provide travellers with certain information about optional travel insurance, the Regulations do not regulate the sale of insurance itself — this sits under the Financial Services and Markets Act 2000 and FCA rules, supported by wider consumer protection frameworks such as the Consumer Rights Act.

Again, as with above, ABTA would support the removal of the 2001 if the CMA believed that new legislation now provides sufficient and equivalent protection to what the Order was introduced for.