ABTA Response to the CMA Consultation on its Provisional Decision: Strategic Review of Markets Remedies

September 2026

Restriction on Agreements and Conduct (Tour Operators) Order 1987

ABTA welcomes the opportunity to provide further comments on the CMA's provisional decision to revoke the Restriction on Agreements and Conduct (Tour Operators) Order 1987 (the "1987 Order").

In our earlier submission, ABTA highlighted the significant changes that have taken place within the travel sector since the Order was introduced, including increased competition, the growth of direct-to-consumer sales, the emergence of online distribution channels, and the reduction in vertically integrated travel groups. Those observations remain valid.

However, we would like to place greater emphasis on the continuing value of the 1987 Order and the role it has played in shaping current market behaviour.

The CMA's provisional decision notes that the conduct addressed by the Order is no longer widespread. While we recognise this, it is important to acknowledge that the absence of such conduct may itself be a consequence of the Order having been in place for almost four decades. The Order has established a clear and well-understood framework governing the relationship between tour operators and travel agents and has likely contributed to the development of industry practices that support price competition and consumer choice.

As set out in our previous response, a key feature of the 1987 Order is that it applies in circumstances where a travel agent is acting as an agent for the tour operator. In such arrangements, there may not be a "resale" for the purposes of competition law, meaning that the protections available under Chapter I of the Competition Act 1998 do not always apply with the same clarity. The CMA acknowledges this point in its provisional decision but concludes that this does not amount to a material enforcement gap.

While ABTA is not aware of widespread evidence that such practices are currently occurring, the 1987 Order nevertheless provides legal certainty in an area where the application of general competition law may be less straightforward. It creates a clear, sector-specific prohibition that is readily understood by businesses and avoids the need for complex assessments of whether particular arrangements fall inside or outside the scope of competition law.

The travel sector continues to contain a diverse range of distribution models. Although many businesses now operate across multiple parts of the distribution chain, travel agents remain an important route to market and play a significant role in promoting competition and consumer choice. The 1987 Order provides assurance that travel agents are free to offer discounts or other incentives to customers without facing restrictions or discriminatory treatment from suppliers.

ABTA therefore considers that, in assessing whether the Order remains appropriate, the CMA should take account not only of current market conditions but also of the benefits arising from the legal certainty and clarity that the Order provides. The removal of a long-established sector-specific remedy creates a risk that uncertainty could emerge regarding the extent to which particular agency arrangements are covered by existing competition law provisions.

ABTA's membership includes both travel agents and tour operators, who may hold differing views on the commercial merits of the Order. As such, ABTA does not take a strong position on whether the Order should ultimately be retained or revoked. However, if the CMA's objective remains to prevent the re-emergence of the practices that originally gave rise to the remedy, we consider that the Order continues to represent a clear and effective mechanism for achieving that outcome.

We therefore encourage the CMA to give greater weight to the certainty, clarity and preventative effect of the 1987 Order when reaching its final decision, and to consider carefully whether those benefits would be fully replicated through reliance on general competition law alone.

Foreign Package Holidays (Tour Operators and Travel Agents) Order 2000

ABTA does not have any additional substantive comments beyond those provided previously.

As noted in our earlier submission, the market structure that led to the introduction of the Order has changed significantly, with substantially reduced vertical integration across the sector and greater transparency regarding ownership and commercial relationships. Consumers today also have access to a wider range of information about travel businesses and their affiliations than when the Order was introduced.

The CMA should nevertheless ensure that any decision to revoke the Order does not inadvertently reduce transparency for consumers regarding ownership links and commercial relationships where these remain relevant to purchasing decisions.

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

ABTA remains of the view that many of the consumer protection objectives underpinning the 2001 Order are now addressed through more recent legislation and regulation, including the Package Travel Regulations, FCA rules governing insurance distribution and wider consumer protection law.

However, we note that the provisions relating to restrictions imposed on travel agents by tour operators, including most-favoured-customer style requirements, continue to serve a competition-related purpose. While such practices do not appear to be prevalent in today's travel market, this may in part reflect the fact that the Order has provided a clear prohibition for many years.

As with the 1987 Order, the CMA should consider whether the removal of these provisions could reduce certainty regarding the acceptability of such practices, even where broader competition law would continue to apply. Any decision to revoke the Order should therefore be accompanied by confidence that existing competition law provides an equivalent and readily enforceable safeguard.

Overall, ABTA accepts that market conditions and the regulatory framework have evolved substantially since the 2001 Order was introduced. However, the CMA should carefully weigh the practical benefits of clarity and deterrence provided by sector-specific remedies against the benefits of reducing regulatory overlap.