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Mr Huw Merriman MP
Chair, Transport Select Committee
House of Commons
London
SW1A 0AA
Sent via email

7 May 2020

Dear Mr Merriman,

I write today to thank you, and the other Members of the Transport Select Committee, for your time and questions at the session held on 7 May 2020. I also wanted to take the opportunity to reiterate a few key points from my evidence, which I think it is important to clarify for the Committee ahead of the forthcoming evidence sessions later this month.

Firstly, it is useful to provide an overview of the situation facing the travel industry:

- As intermediaries, many travel businesses themselves have not yet received money back from airlines and other suppliers and are therefore unable to pay cash refunds immediately;
- Combined with the additional financial burden of repatriation costs, the refunds issue has created an unsustainable financial pressure on UK travel businesses;
- In the absence of urgent regulatory intervention to amend the Package Travel Regulations, and critically to remove the threat of chargebacks and Section 75 claims under the Consumer Credit Act, the current situation will inevitably result in the insolvency of many travel companies across the UK;
- Inaction will put hundreds of thousands of jobs at risk, and likely increase the delays customers will face in receiving monies owed to them;
- Unlike other sectors, loans simply will not be a viable way through this crisis for most travel companies, as the industry operates on low margins and businesses would not be able to afford the interest incurred;
- The burden of refunds following failures will fall ultimately on the tax payer, through the Air Travel Trust that provides the financial backing to the CAA ATOL scheme of consumer financial protection. ABTA estimates the value of pre-payments due to customers could amount to £4.5bn, with most of this financial liability sitting within the ATOL scheme.

As a result of the Covid-19 crisis, ABTA has been in talks with Ministers and officials for several weeks. It is deeply alarming that six weeks after the initial FCO travel ban, which effectively closed the travel industry, the government has taken no action to date to provide clarity for either businesses or consumers. In this regard, ABTA has been clear that the Government must confirm that the rules of the Air Travel Trust Fund, which underpins the ATOL scheme of consumer financial protection, allow for deferred refunds, and that any Refund Credit Notes issued by travel providers would carry forward full financial protection. ABTA has provided Ministers and officials at the Department for Transport and Department for Businesses, Energy and Industrial Strategy with a legal opinion setting out clearly the above financial protection situation. I have enclosed a copy of this advice for your information. It is a matter of deep regret, and a source of unnecessary consumer confusion, that Ministers have refused to clearly state their position on ATOL protection to date. ABTA would politely encourage Members to consider this matter for questioning, should no announcements be forthcoming in advance of your session with the Minister.

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While the consumer protection confirmation is important, ABTA's primary ask is that the Government temporarily remove the fourteen-day deadline for cash refunds in the Package Travel Regulations. This rule has simply proven impossible for travel companies to meet during the current situation, either as a result of money being held by suppliers or the sheer volume of refunds due. More than ten European countries have now adopted proposals to ensure the survival of their travel sector, which undermines claims by Ministers that this cannot be altered due to it being EU-derived law. The reason why such regulatory change is critical is that without removing the fourteen-day timeframe travel agents and tour operators will remain vulnerable to Section 75 claims under the Consumer Credit Act and credit card company chargeback rules. This is the single biggest threat to the existence of many travel businesses, and ultimately the single biggest exposure for UK taxpayers taking account of HM Treasury's liability under the ATOL regime.

Finally, I also wanted to highlight once again the distinction that exists between the situation surrounding refunds of airlines, governed by the EU Air Passenger Rights regulations and that of tour operators and travel agents under the Package Travel Regulations. Airlines have a legal obligation to issue cash refunds within 7 days under the EU Regulations on Air Passenger Rights, but vitally airlines do not have any scheme of financial protection in place to guarantee that consumers, or indeed businesses, that purchase flight seats will receive their money back in the event of the insolvency of the carrier. This means that any voucher issued to consumers or businesses by airlines is essentially an IOU, which has no monetary value until it is utilised for a future flight or refunded at the end of the voucher term. For tour operators and travel agents who have sold packages, the disparity between the lack of insolvency protection for carriers and the full financial protection under the Package Travel Regulations presents a very stark situation, as any issuance of vouchers in place of cash refunds by airlines effectively transfers the financial liability of the airline on to the tour operator or agent involved until the point that voucher is utilised or a cash refund is issued. It is for this reason that ABTA's position remains that, whilst an industry wide solution could be acceptable, in the absence of a solution on airline insolvency, the Department for Transport and CAA must enforce existing rules against airlines to unblock supply chains across the sector.

I hope the additional background information supplied will be useful to the Committee as you consider your future hearings, and I remain at your disposal to answer in more detail any questions that any Member of the committee might still have at this point. My colleague, Luke Petherbridge, ABTA's Head of Public Affairs [redacted] is happy to help should there be any outstanding matters to address.

Yours sincerely,

Mark Tanzer
CHIEF EXECUTIVE