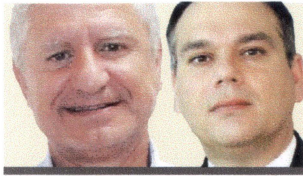


# More pro-business trickery?



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Consumers do not enjoy automatic representation in the five-member managing board. In fact, they are not mentioned at all. The minister or the authority choose whether consumer representatives should be nominated.

It was reported by the media that tour operators will contribute to the fund according to their size and market share. The regulations do not stipulate this and give no direction.

The regulations explain in some detail the procedures to be followed by consumers when claiming a refund. In this respect the established operators have made sure they will not be expected to make good for any bankrupt operators among their numbers. Indeed, refunds are not made from the sum of contributions made by the tour operators.

In cases where an operator becomes insolvent, consumers will first be paid from the insolvent operator's share to the fund. Should this not be sufficient to cover all customer claims, the balance will be paid from the funds collected through the certification scheme.

**"Consumers beware!  
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pro-business climate,  
consumer protection is  
under threat and is no  
longer fashionable"**

Customers of the failed Fantasy Tours operation might have claimed a refund a few years ago had a fund been in place to protect consumers against travel agency bankruptcies.

In the run-up to Malta's EU accession, the EU Package Travel Directive was transposed into Maltese law, seeking to protect the financial interests of travellers. But the fund was not implemented in Malta. This constituted an incomplete transposition, a failure which caused harm to Fantasy Tours customers.

Since successive administrations had failed to completely transpose the directive, the government risked being sued for damages over Fantasy Tours. Its recent decision to pay those adversely affected is a clear admittance of this: the Malta Tourism Authority will be making up for those losses out of taxpayer money.

A business-friendly and clearly business-scripted insolvency fund of sorts has now been rolled out under the Package Travel Insolvency Fund Regulations, which attempt to address this long-standing issue.

Like the recent White Paper on estate agents, this government initiative comes already operator-approved and stamped.

Similar compensation schemes exist in other areas. For example, in the financial services sector, depositor and investor compensation schemes compensate customers as a result of failed investment firms or failed banks.

Consumers are informed of licensed companies participating in the schemes, how to lodge a claim and the way this is processed. These schemes are managed and administered by an independent management committee which includes a consumer representative.

The Package Travel Insolvency Fund shows significant differences.

One doubts whether this system will be adequate to cover all claims. In this regard the European Court has often stated that consumers are entitled to a full refund.

Who pays for these new 'certificates'? Regulation 9 is controversial, whereas regulation 10 is poorly written. Is it clear enough that it is the trader who pays them? We do not think so, and in fact it is the unsuspecting consumers who may end up paying for them.

The trick possibly is that the costs will be borne by the consumers and the operator will just stick the charge onto the customer's bill. In this way, traders get it their way by gradually reducing their own contributions to the fund.

Once everything is on line and well-structured, why are customers still expected to present the certificate as evidence of their loss, "otherwise the board shall not be obliged to provide a refund...?"

If this is not anti-consumer trickery, what is it? Does the directive actually allow placing the ordinary consumer in such difficulty, obliging him to make sure he does not mislay this certificate (a piece of paper) and to make him pay for a statutory guarantee? This obligation makes no sense and is an unfair restriction on the exercise of a consumer right founded in the directive.



**Anti-consumer: The board managing the insolvency fund for package travel is dominated by members of the trade and fails to impose a deadline for the satisfaction of consumer claims. Photo: Chris Sant Fournier**

Incredibly, the rules also allow the fund to pay back contributions, or part thereof, to the operators. Instead it should have made the contributions non-refundable and allowed them to accumulate in order to help salvage a potentially big insolvency in the future.

The managing board is badly structured and gives no guarantee of independence or balance. Packed with industry representatives, no place at the table is reserved for consumer representatives. Trade representatives are, however, present – and how – conflicts of interest notwithstanding. In fact, the rules do not exclude a member on grounds of conflict of interest.

The rules allow too much discretion in the hands of the trade-dominated managing Board, allowing it to set its own terms of reference but then dramatically failing to impose a deadline for the satisfaction of consumer claims.

The fund payments are only triggered by insolvency and not also by circumstances such as fraud and misappropriation. And the funds available to customers of a failed operator do not seem very extensive or encouraging.

A few questions:

- Who determines that an insolvency situation exists, and on what basis?
- What is the deadline within which consumers must receive payment from the fund?
- What happens if in the business model adopted, customers fail to find sufficient funds for their full claims?
- Is it legitimate, within a supposedly consumer measure, to burden consumers with obligations and charges?
- Is this transposition measure truly in line with the EU directive?

The Malta Tourism Authority may have successful promotional credentials but it has no significant credentials as a consumer agency. Its very own internal structure favours industry and promotional and marketing activities rather than regulation and consumer protection. Its latest venture in consumer guarantee fund creation is hardly inspiring.

Consumers beware! In the increasingly pro-business climate, consumer protection is under threat and is no longer fashionable. Consumers have lost their voice and are now gradually also losing their protection and their rights.

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