Tourism's Recovery: A Risky Business?

Tourism's recovery requires risk management. COVID-19 will present a residual threat for the foreseeable future. Consumers will not travel, and business will not operate, unless they are confident that adequate and affordable protection is available. For the insurance industry and actuaries, the degree of uncertainty and magnitude of risk is hard to quantify. From a policy perspective, how is liability fairly allocated in a business environment where government intervention can cause loss?

ECTAA and the European Tourism Association (ETOA) represent a very large cross-section of agents and operators, suppliers and other stakeholders involved with the tourism that takes place in Europe, and travel products sold to Europeans keen to visit destinations worldwide. This paper sets out an analysis of the status quo as a basis for multi-stakeholder discussion: this must involve the insurance industry. The implications are wide: on government, destinations, business and the travelling public.

Objectives

The regulatory and financial protection framework needs urgent review. It should have six objectives.

- Restore business and consumer confidence
- Competitive market for insurance products to suit new circumstances
- Minimal duplication of cover
- Fair allocation of risk
- Consumers' active participation in their own risk management
- Legal certainty

Analysis

Four main factors contributed to current challenges and represent obstacles to recovery.

- The scale and nature of possible insurable financial risk arising from business interruption, cancellation and refunds, health costs and repatriation
- The scale and nature of government intervention and its impact
- National variation in policy application and financial support mechanisms
- Awareness of and access to appropriate insurance cover

The crisis occurred shortly after the collapse of Thomas Cook, whose impact on the financial protection system meant that we met the current situation in a depleted state. COVID-19-related confusion and argument about cancellation and refunds blighted an already stressed industry, damaging B2B relations and consumer confidence, and putting many businesses in jeopardy.

The current crisis calls into question the potential of market failure. Some risk may be uninsurable. We must achieve an appropriate balance between the various stakeholders, including consumers able to make well-informed decisions, with a choice of products to enable them to manage risk themselves. This will require regulatory review whose scope includes consumer and passenger rights, and package travel.

Short-term support mechanisms, while welcome, have proven insufficient for many, and may not last long enough. The regulatory and financial protection framework has failed both consumers and business.

Consumers are not always aware of the coverage provided by insurance they buy. Typically, coverage for cancellation or curtailment is not provided unless insured become sick; risk of becoming sick is insufficient. Exceptional circumstances, such as pandemics, are typically excluded, and not covered by policies taken out after the situation is known. Following the outbreak, some policies have been withdrawn or, in the case of new cover, express exclusions mean travellers have limited recourse to policies purchased in the event of a Covid-19 related claim. While new products have developed, particularly in respect of cancellation rights, there is still a significant opportunity to restore consumer confidence through more comprehensive and innovative cover tailored to suit current circumstances, and similar scenarios in future.

Insurance and the Package Travel Directive (PTD) B2C operators are typically required to have insolvency protection and usually must also carry public liability insurance. Many will also take out professional indemnity insurance. Some operators are already reporting difficulty in obtaining renewal of cover. Where cover exists, it may be insufficient, increasing financial risk to business. A more thorough gap analysis is required to determine whether this constitutes a market failure, or is otherwise a deterrent to recovery.

Regarding refunds, under the current PTD, B2C operators selling to EU consumers must provide refunds to consumers within 14 days following cancellation due to 'exceptional and unforeseen circumstances beyond the control of the tour operator.' This was not the case previously and puts an unreasonable burden on the operator, as shown by the COVID-19 pandemic. The new obligation has already proven to be financially fatal to operators and represents a deterrent to recovery. Its impact demonstrates the need to review how, in an uncertain world, risk should be shared more equitably, with liability subject to reasonable limits.

The concept of proportionality already exists in the PTD in respect of insolvency protection. Recital 40 specifies that "effective insolvency protection should not have to take into account highly remote risks, for instance the simultaneous insolvency of several of the largest organisers, where to do so would disproportionately affect the cost of the protection, thus hampering its effectiveness. In such cases the guarantee for refunds may be limited." Something similar should be considered for refund requirements in case of exceptional circumstances. Strict liability on operators to refund consumers in all circumstances is unreasonable, as the COVID-19 crisis has shown.

Long-term, the framework will only be fair and commercially viable if insurance options evolve to protect against such risks, irrespective of whether these are 'exceptional or unforeseen'.

Some of the most significant financial harm has been within the supply chain: B2B operators and agents are exposed via prepayment which suppliers were unable or unwilling to return. B2C clients obliged to refund consumers were themselves over-extended given total loss of cash flow. This was a systems failure, which led to businesses being forced to choose least-worst options, damaging both confidence and relationships.

Conditions for change

- Recognition that 'business as usual' as regards B2C regulation has not worked, and that a future framework needs to cope with exceptional and prolonged shocks much better.
- Recognition of the downstream impact within the supply chain.
- Availability of adequate protection against arising risks from pandemic both for business (professional indemnity, public liability) and consumers (travel insurance).
- Recognition that acceptance of risk on the part of consumers, with competitive protection options to suit, will be necessary
- Recognition that distribution of liability within the value chain, particularly where there is an imbalance of power in commercial dealings, has not worked
- Acceptance that, if insurance market cannot meet demand, state support through direct grant, pooled guarantee funds or similar may be needed.

Contact information: crusse@ectaa.org and tfairhurst@etoa.org