



# CCPC Observations on the Report on package travel and linked travel arrangements

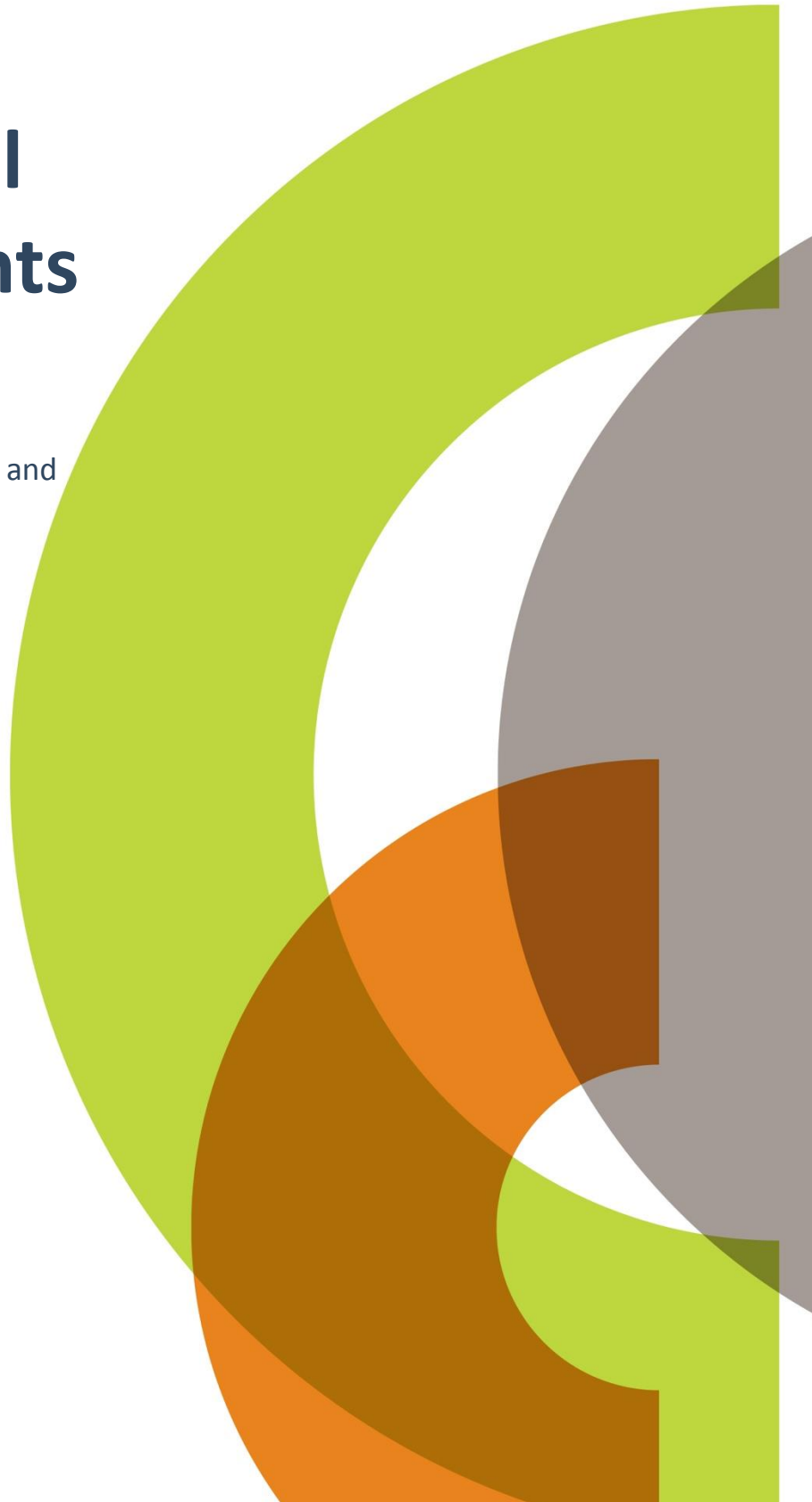
European Commission  
Directorate General for Justice and  
Consumers

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Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

Competition and  
Consumer Protection  
Commission



# Competition and Consumer Protection Commission Observations

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## Introduction

1.1 The Competition and Consumer Protection Commission ('CCPC') welcomes the opportunity to provide observations in respect of the Report from the European Commission to the European Parliament and to the Council on the application of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements ('the Report'). The CCPC is an independent statutory body with a dual mandate to enforce competition and consumer protection law in Ireland. The CCPC is of the view that any potential future change to the framework of consumer protection as it applies to package travel and linked travel arrangements should not result in transferring a greater degree of risk from business to consumers.

## Report on package travel and linked travel arrangements

1.2 The provision of statutory control over package holidays has been a welcome addition to the suite of consumer protection measures since the first Directive in 1990 and subsequently Directive (EU) 2015/2302 ('the Package Travel Directive'). The CCPC welcomes the fact that the Package Travel Directive reflects the new ways that travellers book holidays particularly the trend to move away from on-premises to online booking models. This is a positive development and, as noted in the European Commission 'click through bookings report'<sup>1</sup>, one that is likely to continue to prove to be valuable as most consumers embrace new booking and payment options.

1.3 Regardless of such developments it is the CCPC view that there is still, and will continue to be, a significant imbalance in the contractual relationship between a

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<sup>1</sup>

[https://ec.europa.eu/info/sites/info/files/live\\_work\\_travel\\_in\\_the\\_eu/consumers/documents/com\\_2019\\_270\\_f1\\_report\\_from\\_commission\\_en.pdf](https://ec.europa.eu/info/sites/info/files/live_work_travel_in_the_eu/consumers/documents/com_2019_270_f1_report_from_commission_en.pdf)

consumer and an organiser of Package Travel ('Package organisers'), and the additional protections that such travellers can benefit from should be retained where at all possible. It is a very welcome consumer protection measure that refunds for terminated package travel contracts (and cancelled flights under Regulation (EC) 261/2004) are regulated by express statutory provisions.

- 1.4 As recognised in the Report, the COVID-19 pandemic has brought the "unavoidable and extraordinary circumstances" provision in Article 12 of the Package Travel Directive into sharp focus. In the absence of general provisions in Irish law applying to frustration of contracts the unavoidable and extraordinary circumstances rules have been of assistance to travellers who would otherwise have lost significant sums of money. On the other hand Package organisers are now faced with a statutory obligation to refund travellers with little or no revenue from new bookings, or being unable to recoup payments that have already been made to third parties or delay by such service providers in refunding payments for their element of packages that could not be performed due to the pandemic.
- 1.5 As noted in the Report, a number of Member States have intervened in a variety of ways in response to these difficulties. In Ireland an intervention of sorts in the shape of the Refund Credit Note ('the RCN') has been made. The RCN facility is not provided for through the Directive but operates as a collateral /local arrangement given effect through regulations under the Transport (Tour Operators and Travel Agents) Act 1982.
- 1.6 The CCPC notes that the European Commission, in Recommendation (EU) 2020/648 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic, at Paragraph 21 declares; "*Consumer and passenger organisations at Union and national level should encourage travellers and passengers to accept, instead of reimbursement in money, vouchers that present the characteristics, and benefit from the insolvency protection, described in this Recommendation.*" The CCPC notes Action 1 of the Communication (COM (2020) 696) on a New Consumer Agenda, which will require an analysis of the extent to which the Package Travel Directive is still adequate in light of recent crises. The

CCPC further notes that such analysis will build on the content of the Report and that such analysis is likely to consider specific rules for pandemics. It is submitted that there may be merit in putting Recommendation (EU) 2020/648 a more solid footing in the context of a review of the existing provision.

- 1.7 Finally, the CCPC makes the observation that some traders might seek to avoid their responsibilities and obligations under the Package Travel Directive. This might include ensuring that some aspects of the contract with the consumer are concluded otherwise than through the booking process. The effect of this for consumers would, for example, be a failure by the organiser to carry out risk assessments of the supplier's financial viability, with the result that the traveller carries a significant amount of risk for the consequences of a supplier's failure. The CCPC would welcome any consideration in the analysis of the Package Travel Directive of incidences of such behaviour by traders.

ENDS



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