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Minister Ebrahim Patel
Department of Trade and Industry

Minister Tito Mboweni
Department of Treasury

Minister Pravin Gordhan
Department of Public Enterprises

Minister Naledi Pandor
Department of International
Relations and Cooperation

Commissioner Ebrahim Mohamed
National Consumer Commission

Ombudsman Magauta Mphahlele
Consumer Goods and Services
Ombud

By email: 15 April 2020

Dear President Ramaphosa,

RE: REQUEST FOR URGENT CLARIFICATION OF CONSUMERS' RIGHT TO A REFUND

1. The purpose of this letter

We refer to our letter, dated 1 April 2020, in which we brought to your attention the fact that airlines are no longer complying with the Consumer Protection Act 68 of 2008 by offering only vouchers or credits instead of full refunds. We attach the letter for your ease of reference.

Since our letter of 1 April 2020, refunds have all but ground to a halt. Most airlines are now offering vouchers in lieu of refunds. Many governments have intervened to come to the aid of consumers, travel agents and airlines.

The purpose of this letter is to:

- Offer some insight into what other governments are doing to protect consumers, travel agents and airlines since our last letter.
- Provide new recommendations that apply to all travel service providers.
- Request assistance in co-ordinating with the banks when it comes to processing 'charge-backs'.

2. How other governments have resolved this issue

These are some of the interventions made by governments elsewhere in the world:

- Strict enforcement of consumer laws, OR
- Create a Government-funded Travel Guarantee Fund to reimburse affected travellers, OR
- Temporarily remove consumers' right to a refund in the CPA, AND
- Remove the duty to refund for travel agents or tour operators in instances where the travel service provider has not refunded them.

2.1. Strict enforcement of consumer laws

In our previous letter, we requested that the National Consumer Commission start to enforce the CPA against airlines in particular. The United States of America's Department of Transport recently denied a request by the airlines to do away with current refund requirements.

We requested a statement from the National Consumer Commission that airlines, specifically SAA, must comply with the CPA and continue to offer refunds as an alternative to vouchers. We wish to extend that request now to all airlines and other travel service providers (e.g. hotels).

While we certainly understand and have empathy for the situation in which the national carrier and all airlines find themselves, we see it as our duty to advocate on behalf of travel agents, but more importantly, the South African consumer. Consumers are being left out of pocket at a time when they cannot depend on their normal income.

2.2. Create a Travel Guarantee Fund to reimburse travellers

The reality is that travel service providers and travel agents have been very hard hit by the near-total collapse of travel globally. They simply do not have the liquidity to refund all of the bookings that have been cancelled as a result of travel bans. Some Governments have chosen to respect consumer rights by providing funding specifically earmarked to refund consumers.

Belgium and Denmark have created Travel Guarantee Funds to refund consumers whose travel plans were affected by the COVID-19 pandemic. In Denmark, the Travel Guarantee Fund will be reimbursed by travel service providers (i.e. airlines) through a turnover-based contribution over a long period.

2.3. Temporarily suspend the consumers' right to a refund in the CPA

Where governments were not willing to provide funding for refunds, they have opted to suspend temporarily the consumers' right to a refund and replace it with a right to a voucher.

France has amended its laws relating to packaged travel as follows:

- The traveller must be informed that they have received a voucher and a proposition for a new package which has to be similar to the original package and be the same price.

- If the traveller does not accept the new package, the traveller must be offered other alternatives. If the price of the alternative is lower, the traveller will receive a voucher equal to the remaining cost. If the price is higher, the traveller has to bear the additional cost.
- If the traveller has not chosen a package after 18 months, they are entitled to demand the full refund.

Belgium, Italy, Germany and the Netherlands have amended their consumer laws to suspend consumers' right to a refund for cancellations as a result of the COVID-19 pandemic. This is a more drastic approach as it permanently deprives consumers of the right to choose. Again, we would only support this avenue, if the vouchers are secured by Government.

3. Our recommendation

3.1. Temporarily suspend the right to a refund

We recommend the approach taken by the French:

- The traveller must be informed that they have received a voucher and a proposition for a new package which has to be similar to the original package and be the same price.
- If the traveller does not accept the new package, the traveller must be offered alternatives. If the price of the alternative is lower, the traveller will receive a voucher equal to the remaining cost. If the price is higher, the traveller has to bear the additional cost.
- If the traveller has not chosen a package after 18 months, they are entitled to demand the full refund.

We are in favour of the French approach, because:

- The consumer is not deprived of their right to a refund, it is merely delayed.
- The delay protects the travel service providers.
- It will not put further strain on Government coffers.
- It is very similar to section 47 of the CPA.

However, the precarious financial position in which SAA finds itself means that vouchers may be of little value to consumers if the airline is liquidated. We would only support this avenue, if the vouchers issued by SAA are secured by Government in the event of the liquidation of SAA at the end of the business rescue process.

3.2. Travel agents should not be forced to refund if the travel service provider has not extended the refund

While the Government considers our recommendation, travel agents should not be required to refund customers when the travel service provider refuses to refund the travel agent. Currently, our advice to travel agents who find themselves in this position is to encourage the traveller to make a complaint against the travel service provider with the Consumer Goods and Services Ombud.

We request a public statement by the National Consumer Commission that, under the current extraordinary conditions, travel agents are not required to make cash refunds when they have not been refunded by the airlines themselves. This will protect our members' cashflow.

3.3. Any Government funding for travel service providers should be conditional

We have sympathy with the severe pressure that all travel businesses are under. We ask that if the South African Government decides to provide financial assistance to South African Airways, or any other service provider, they are directed to settle first the outstanding refunds due to passengers and travel agents for refunds requested as a result of the COVID-19 crisis. This will preserve the entire travel supply chain and consumers.

4. Request assistance from banks

Whichever approach Government decides to take must be communicated clearly to the South African banks. We are seeing an increase in cases where consumers, who are understandably frustrated with the refund process, are circumventing the dispute process with travel agents and travel service providers by going directly to the banks to reclaim payments made on credit cards.

This 'charge back' is being passed on to travel agents who are then left out of pocket. Should this continue, it could cripple our members.

Visa and Mastercard have already issued statements stating that cardholders must first resolve their disputes with the merchant (travel service providers and travel agents), before reclaiming credit card statements.

However, the fact that it is not clear to anybody how to resolve these disputes is prompting cardholders to circumvent the process.

This further underlines the requirement for urgent clarification from Government to protect both consumers and the businesses that operate in the travel and tourism sector.

5. In conclusion

If Government is not willing to take steps to enforce the CPA in light of the crisis, Government should adopt alternative arrangements to protect the consumer. Quietly condoning non-compliance with the CPA is not an option as it erodes trust in South Africa's consumer laws and institutions.

ASATA and our members remain committed to supporting Government in whatever route it opts to take and is available to provide further input and advice.

Yours sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Otto de Vries
CEO