

CAA Non- Executive Board Members: **Mr Graham Ward CBE**
Ms Anne Lambert



Ashurst LLP
London Fruit & Wool Exchange
1 Duval Square
London E1 6PW

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Dear Sirs

Decision 1/2019 by the Civil Aviation Authority (CAA) in relation to the Consumer & Markets Group (CMG)'s proposal to revoke or suspend the Operating and Route Licences of Thomas Cook Airlines Limited (TCAL)

1. I refer to the CMG notice dated 23 September 2019 (**CMG Proposal**) containing its proposal to revoke TCAL's operating licence (**OL**) OL/A/138 and route licences (**RLs**) RL/C04 and RL/S04.
2. The hearing in relation to this request took place on 4 November 2019 at the offices of Reed Smith LLP in Broadgate Tower, London. The hearing lasted from 9.00am until around 1.00pm and both sides had the opportunity to make submissions, present evidence and ask questions of the other side.
3. The CAA Panel is comprised of Mr Graham Ward CBE (Chair) and Ms Anne Lambert, both appointed by the Secretary of State for Transport as Non-Executive Members of the Board of the CAA.

The questions to be decided by the Panel

4. The questions to be decided by the Panel are whether, in light of the evidence and the relevant law:
 - a. the Panel should defer taking any decision about TCAL's OL no. OL/A/138 for a period up to 3 months; or, if not
 - b. whether the Panel should, pursuant to Article 3 and/or Article 9 of EC Regulation No 1008/2008 (**EU Regulation**) and Regulation 7 of the Operation of Air Services in the Community Regulations 2009 (**UK Regulations**) revoke or suspend TCAL's OL, (and if so, which).

The evidence

5. In reaching its decision, the CAA Panel has carefully considered the evidence and submissions set out below:

- a. Documents submitted by TCAL and CMG in preparation for the hearing in the Hearing Bundle and Submissions Bundle;
- b. Documents handed up during the hearing; and
- c. Oral submissions presented at the hearing by TCAL and CMG, which are set out in the agreed transcript of the hearing.

The relevant legal framework and CAA Guidance

6. The relevant legal framework is set out in the EU Regulation and UK Regulations, as summarised below.
7. As to the relevant provisions of the EU Regulation:
 - a. Under Article 3(2) the competent licensing authority [i.e. the CAA] shall not grant OLs or maintain them in force where any of the requirements of Chapter II of the Regulation (i.e. Articles 3-14) are not complied with.
 - b. Article 4 sets out the conditions for granting an OL, including that the undertaking hold a valid Air Operator Certificate (**AOC**) (sub para (b)), and that the undertaking meets the financial conditions specified in Article 5 (sub para (g)).
 - c. Article 5(1) provides that the competent licensing authority shall closely assess (among other things) whether an undertaking applying for an operating licence for the first time can demonstrate that it can meet at any time its actual and potential obligations for a period of 24 months from the start of operations.
 - d. Article 8(1) provides that an OL shall be valid as long as the air carrier complies with the requirements of Chapter II. Article 8(2) requires the CAA closely to monitor compliance with the requirements of Chapter II of the Regulation, and in any case to review compliance with these requirements “*when a potential problem has been suspected*”. Article 8(3) adds that the OL shall be resubmitted for approval when a Community air carrier has not started operations within six months of the granting of an OL (sub para (a)) or has ceased its operations for more than six months (sub para (b)).
 - e. Under Article 9(1), the competent licensing authority [i.e. the CAA] may at any time assess the financial performance of a Community air carrier which it has licensed [such as TCAL]. Based upon its assessment, the authority shall suspend or revoke the OL if it is no longer satisfied that the Community air carrier can meet its actual and potential obligations for a 12-month period.
 - f. Article 9(1) also provides that the competent licensing authority may grant a temporary licence, not exceeding 12 months, pending financial reorganisation of the Community air carrier provided that safety is not at risk, that this temporary licence reflects, when appropriate, any changes to the AOC, and that there is a realistic prospect of a satisfactory financial reconstruction within that time period.
 - g. Article 9(2) provides that whenever there are clear indications that financial problems exist or when insolvency or similar proceedings are opened against a Community air carrier licensed by it the competent licensing authority [i.e. the CAA] shall without delay make an in-depth assessment of the financial situation and on the basis of its findings review the status of the OL in compliance with this Article within a time period of three months.

- h. Article 9(5) provides that in case a Community air carrier's AOC is suspended or withdrawn, the competent licensing authority [i.e. the CAA] shall immediately suspend or revoke that air carrier's OL.
 - i. Article 14 provides that the licensing authority, when adopting a decision to suspend or revoke an OL, shall ensure that the carrier is given the opportunity to be heard.
8. The UK Regulations make provision for the implementation of the EU Regulation in the UK. In particular:
- a. Regulation 5 designates the CAA the competent licensing authority for the purposes of (amongst other things) Articles 3-11 of the EU Regulation.
 - b. Pursuant to Regulation 7, the CAA may revoke or suspend an OL that it has granted. It may exercise these powers only after notifying the licence holder of its intention to do so and after due consideration of the case and any representations made by the licence holder.
 - c. By Regulation 8(2) and paragraph 3 of Schedule 2, a decision to revoke or suspend does not take effect until 14 days after the licence holder has been notified of the CAA's decision.
9. As regards route licences, section 69A(5) of the Civil Aviation Act 1982 states that where a person holds an OL and an RL and the OL is suspended or revoked, the RL shall, from the date when the revocation or suspension takes effect, cease to be in force (or, in the case of suspension, not be effective during the period of suspension of the OL).
10. The applicable procedure is set out in the CAA's document CAP 1591 "*Guidance on the procedure for a decision by a CAA Board Member pursuant to Part 1 (Regulation 7) of the Operation of Air Services in the Community Regulations 2009 and Chapter II of Regulation (EC) No 1008/2008*" (September 2017).

Agreed Facts

11. On 4 February 2013, the Civil Aviation Authority (CAA) re-issued the following licences to Thomas Cook Airlines Limited (TCAL):
- a. Operating Licence (OL) OL/A/138;
 - b. Route Licence, RL/C04 (charter route licence); and
 - c. Route Licence, RL/S04 (schedule route licence).
12. The CAA was made aware of financial problems at TCAL (and generally within the Thomas Cook Group (the **TC Group**)) from September 2018. On or around 9 May 2019, the CAA commenced an in-depth assessment of the financial situation of TCAL at this time.
13. During the course of that assessment, the CAA was in contact with the TC Group. The TC Group informed the CAA that there was a realistic possibility of the sale of certain parts of its business and that it was involved in the negotiation of potential injections of funding into the TC Group by, among others, Fosun Tourism Group and a number of banks and bondholders.

14. As confirmed in the witness statement of Dr Fankhauser (CEO of the TC Group) dated 22 September 2019, by that date the directors of the TC Group had *“with regret, and notwithstanding their efforts to the contrary, reached the decision that they have no option but to present a winding up petition under section 124 of the Insolvency Act 1986 and to seek the immediate appointment of a liquidator”* (paragraph 3).
15. In the judgment of Mr Justice Marcus Smith dated 23 September 2019 ([2019] EWHC 2626 (Ch)), the Judge provided a summary of the TC Group’s evidence at [7]-[12]:
 - “7. *During the course of the last 12 months, the Group's financial position has deteriorated as a result of challenging trading conditions, including the general economic slow-down, customer uncertainty and a substantial increase in competition in the Group's markets. The Group has unsecured financial indebtedness of about £1.9 billion. The debt arises under a revolving credit facility and two series of notes. A substantial number of the Companies are principal debtors or guarantors in respect of the revolving credit facility and/or the notes. The Companies have a number of other very substantial liabilities, including liabilities to employees, bonding providers, credit card issuers, pension creditors, the CAA and intercompany liabilities.*
 8. *In addition, the Group is facing an urgent cashflow crisis. This has been exacerbated by the media coverage of the Group's financial difficulties in recent days, which has significantly damaged public confidence in the Group's ability to trade. In recent days, suppliers have demanded pre-payment from the Group for crucial supplies, which has further impaired the Group's liquidity. It is projected that the Group will run out of money by around 4 October 2019, and quite possibly earlier than this date.*
 9. *In order to survive, the Group needs to raise a large amount of new money. The Group has made extensive efforts to secure an infusion of new money. However, despite these efforts, it is now clear that sufficient support from the Companies' stakeholders, in order to achieve a successful outcome for the Group, has not been obtained.*
 10. *A number of the Companies in the Group participate in a Group-wide cash pooling arrangement, which effectively means that their cashflow positions are inextricably intertwined. Although some of the Companies do not participate in the Group's cash pooling arrangement, they are also cashflow insolvent.*
 11. *For a number of months, the Group has pursued a number of options, in an effort to address its financial difficulties. A number of Companies within the Group have sought to promote schemes of arrangement under Part 26 of the Companies Act 2006. The schemes have sought to amend the consent thresholds for implementing a debt for equity swap under the Group's finance documents. The schemes would not, in themselves, have affected any recapitalisation of the Group. Some form of injection of additional capital would have been required in order to enable the schemes to have effect.*
 12. *The reason the schemes have not progressed is that it is clear that there is insufficient support for the restructuring which the schemes would have sought to facilitate. That has been explained to me in detail in the evidence before me, and I need not go into it in the course of this ruling. What is clear is that, based on extensive discussions with the Group's creditors, the directors believe that there is no realistic prospect that a restructuring of the Group can be achieved within the necessary timeframe. The result is that, with great regret, the directors*

of the Companies have concluded that the Companies cannot continue to carry on in business.”

16. Marcus Smith J held at [15]-[16] that there was no alternative to compulsory liquidation of the Companies.
17. By winding up order of Marcus Smith J dated 23 September 2019, TCAL was ordered to be wound up under the provisions of the Insolvency Act 1986 [1/1-6]. Following the Winding-Up Order, the Official Receiver (David Chapman) became the liquidator of TCAL and associated companies.
18. By a second order of Marcus Smith J dated 23 September 2019, the Official Receiver and Special Managers were appointed. Simon Appell, Alastair Beveridge, Daniel Imison and Benjamin Browne, all of AlixPartners UK LLP, were appointed as the Special Managers of TCAL (amongst other TC Group entities).
19. On 23 September 2019, once the final TC Group flights had landed, SARG wrote to the Official Receiver and TCAL Special Managers, providing formal notice of its proposal to revoke TCAL's AOC and CAMO (the **SARG Proposal**). The SARG Proposal also stated that the AOC had been provisionally suspended under Article 254 of the Air Navigation Order 2016 (to which TCAL had consented by email at 09.30pm on 22 September 2019).
20. Paragraph 9 of the SARG Proposal also noted that SARG understood that, unless otherwise agreed in writing with the CAA and subject to TCAL's ability to provide certain services in the context of repatriation, as a consequence of liquidation TCAL would not:
 - a. Take bookings for flights or other travel accommodation;
 - b. Request or accept payments of any kind from consumers in respect of balances for existing bookings (unless the travel or holiday which was booked had already completed) or new bookings; and/or
 - c. Provide flight accommodation (as defined in the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012) to any person.
21. Also on 23 September 2019, CMG wrote to TCAL proposing to revoke TCAL's Operating Licence and Route Licences (i.e. the CMG Proposal).
22. Following the orders of Marcus Smith J, TCAL has continued to employ and provide financial support to its postholders with the intention to maintain an appropriate management system for TCAL's reduced size and non-operational status.
23. TCAL owns the beneficial interest in three aircraft and six aircraft engines. Legal title in these aircraft and engines is being transferred to TCAL. TCAL has possession of the three aircraft.

TCAL's AOC

24. TCAL's AOC no. [GB0549] and Continuing Airworthiness Management Organisation (**CAMO**) no. [UK.MG.0219] have been provisionally suspended and the CAA's Safety and Airspace Regulation Group (**SARG**) has made a formal proposal dated 23 September 2019 that it be revoked (i.e. the SARG Proposal). There will be a separate hearing at a later date to deal with the AOC and CAMO issues.

Submissions of CMG

25. CMG say that the CAA is obliged, pursuant to Article 3(2) and Article 9(1) of the EU Regulation, to take action now to revoke or suspend the OL because it can no longer be satisfied that TCAL can meet its actual and potential obligations for a 12-month period. In this regard, CMG relies principally on the evidence presented to the Court in support of TCAL's application to be wound up on 23 September 2019 (see paragraphs 14-15 above).
26. CMG assert that it had completed an 'in depth assessment' of TCAL's financial situation for the purposes of Article 9(2) by 23 September 2019 (having begun it in May 2019) and the making of the winding up order on that date did not oblige it to carry out a fresh assessment pursuant to Article 9(2). The relevant assessment had been completed when TCAL itself presented evidence to the court that it could not meet its actual and potential liabilities. The winding up order had resulted in a change of control but had not altered TCAL's financial prospects for the better. If anything, the contrary was true.
27. Accordingly CMG says that it did not err in failing to carry out a fresh assessment on the change of control of TCAL brought about by its being placed into liquidation.
28. Furthermore, Article 9(1) imposed an obligation on the CAA to act promptly. There was therefore no need to wait and indeed to do so would be antithetical to the structure and purpose of Article 9(1).
29. Given the above matters, CMG submitted that the only real issue for the Panel was whether TCAL's OL should be suspended rather than revoked, as to which:
 - a. The relevant consideration governing the choice between revocation and suspension was whether there was any prospect of the air carrier remedying the problem which had led to non-compliance with the requirements of the EU Regulation. The evidence showed that there was no credible prospect of this.
 - b. TCAL's ability to recover assets for its creditors was not a relevant consideration for the CAA in deciding what should happen to its OL.
 - c. The fact that airline insolvencies were treated differently across different EU countries was not a factor affecting how the Panel should reach its decision in relation to this OL.
 - d. Lack of a risk to passengers or aircraft was not a reason to suspend rather than revoke.
30. Although CMG also originally relied on Article 9(5) (suspension or withdrawal of AOC) as a free-standing ground in support of its arguments as to the suspension or revocation of the OL, by the time of the hearing the parties were agreed that the AOC issues would be determined at a later date. Accordingly, CMG did not press the Article 9(5) argument pending that determination.

Submissions of TCAL

31. TCAL submit that the OL should not be revoked, and instead that either:
 - a. Any decision should be deferred for three months (**Deferral Argument**); or
 - b. The OL should be suspended for a period of six months (**Suspension Argument**).

32. As to the Deferral Argument TCAL's position is that:
- a. When TCAL was placed in compulsory liquidation that triggered a new obligation on CMG under Article 9(2) to make an in-depth assessment of the financial situation of, and the intentions and plans for, TCAL. That arose because there had been a material change of the circumstances and the management of TCAL neither of which were accounted for in the previous assessment.
 - b. CMG should have investigated what steps were likely to be taken in the liquidation of TCAL prior to making its proposal to revoke the OL, especially since the Special Managers appointed on 23 September 2019 had the express power to carry on TCAL's business "*so far as may be necessary for its beneficial winding up*" and the necessary funding could have been made available to this end.
 - c. Since taking control on 23 September, the Official Receiver and its Special Managers had a number of complex and pressing issues to deal with, including repatriation of passengers, dealing with the employees of the TC Group and considering the interconnections between the companies in the group. These issues took priority over the preparation of a detailed business plan for TCAL. TCAL contend that in the circumstances the CMG should have allowed the Official Receiver a period of up to three months to explain the future of TCAL.
 - d. Liquidation was not necessarily a terminal event for a company and, as Newey LJ had observed in *R (Monarch Airlines Ltd) v Airport Co-ordination Ltd* [2018] 1 Lloyds Rep 549 at [56(ii)], the circumstances and objectives of an administration can change. The same was true of a liquidation, and there were examples of companies (such as British Steel and Carillion) continuing to trade during a compulsory liquidation process.
 - e. As a result, TCAL argued that CMG's issuing of its proposal on 23 September without making a further in-depth assessment was an error which the Panel was invited to correct.
33. As to the Suspension Argument, TCAL argued that the Panel had an unfettered discretion whether to suspend or revoke and advanced ten reasons why, if the Panel were unpersuaded as to the Deferral Argument, the appropriate course was to suspend rather than revoke the OL:
- a. There has been a change of control of the management of the company (as to which TCAL relied on similar arguments to those set out above).
 - b. The new management has financial backing from a new source (essentially the UK Government) which is committed to providing the necessary funding to maximise the value to be realised from the company.
 - c. The liquidation is at an early stage and it would not be unreasonable to allow more time for the liquidator to explore the options for TCAL (and to preserve the status quo while it does so).
 - d. Preserving the OL retains the possibility that TCAL could be sold as a business. It would be appropriate and consistent with Article 9(1) to give a reasonable window to explore the possibility of a sale of TCAL as an airline with a subsisting OL. That possibility had not been capable of being explored to date because the liquidator

could not in good faith invite third party offers for the airline while under the threat of revocation of the OL.

- e. TCAL has three Airbus A330s at its disposal (as beneficial owner) and is taking steps to transfer relevant legal title to itself. The ultimate intention is to sell these aircraft but a valid OL might enable TCAL to realise value by wet-leasing them. TCAL's current OL allows it to wet lease aircraft.
- f. TCAL has been allocated take-off and landing slots for the summer 2020 season, which it has contracted to exchange for valuable consideration with other air carriers. If TCAL's OL is revoked rather than suspended then it will not be able to complete these exchange agreements.
- g. The possibility of realising assets as part of an orderly liquidation is a legitimate objective of retaining an OL. The fact that suspension of the OL would place TCAL in a better position to recover and realise assets than if it were revoked was a relevant factor for the Panel to take into consideration. Furthermore, facilitating an orderly liquidation was consistent with the purpose and terms of the EU Regulation including because Article 8(3) contemplated a period of up to 6 months in which an airline could retain its OL in force even if it was not actually operating.
- h. The Panel should exercise its discretion in a manner which is consistent with the aim of the EU Regulation itself, which was to create an internal aviation market with consistent rules. In this regard, TCAL relied on Recital 2 to the regulation which states that "*in order to ensure a more efficient and consistent application of Community legislation for the internal aviation market a series of adjustments to the current legal framework is required*". TCAL pointed to the differing treatment of insolvent airlines in other EU countries and in particular the experience of Air Berlin, which was able to retain its OL and continue to fly despite entering an insolvency regime in August 2017. It also noted that, of the three airlines in the TC Group, only the UK one could not fly. Ordering a suspension rather than a revocation would assist in smoothing out these differences in national insolvency laws which were creating an unevenness in the EU aviation market.
- i. The suggested approach would be consistent with the current UK Government's intention to introduce a special administration regime for insolvent airlines (reflected in the Department for Transport's Airline Insolvency Review final report dated March 2019), and in particular to allow insolvent airlines to continue to operate their aircraft for a limited period of time after the entry into insolvency.
- j. There was no risk to passengers or aircraft from a suspension because the airline was not flying.

Discussion and Determination

Deferral Argument

34. The Panel does not agree that, in the circumstances of this case, CMG was obliged under Article 9(2) to carry out a fresh in-depth assessment on the making of the compulsory winding up order. There was no dispute between the parties that CMG had carried out one such assessment, beginning in May 2019. That assessment had come to an end by 22 September 2019 when it became clear that any restructuring of the TC Group was not going to proceed, and TCAL's board of directors concluded that there was no reasonable prospect of the company continuing to trade. On 23 September 2019 the company itself presented the evidence which led Marcus Smith J to make the

relevant orders for winding up and appointment of Special Managers. In his judgment, the judge concluded, having considered the evidence, that the group's financial state was such that compulsory liquidation was the "*only viable option*". This was essentially a categorical statement for the purposes of Article 9(1) that TCAL could no longer meet its actual and potential liabilities for the next 12 months.

35. Where an assessment has been performed, completed and concluded in this manner, Article 9(2) does not require CMG to go through the motions of performing another in-depth assessment simply because insolvency proceedings have formally opened. Article 3(1) provides clearly that the competent licensing authority "*shall not*" maintain an OL in force when any of the requirements of Chapter II of the EU Regulation are not complied with. It seems to the Panel that the principal purpose of Article 9(2) is to impose a definitive obligation on the relevant licensing authority to act promptly to review a carrier in obvious financial difficulties where it had not already done so, consistently with Article 8(3) which requires the authority to "*review compliance...when a potential problem has been suspected*". Having concluded that the requirements of Article 9(1) were not met, CMG was justified in proceeding to make its proposal to revoke.
36. TCAL's argument that CMG was obliged to pause and consider the plans of the Official Receiver and the Special Managers for the company is also devoid of reality on the facts of this case. The fact of TCAL entering into compulsory liquidation had changed the company's prospects for the worse, not the better. Although TCAL sought to suggest that the company might in the future be able to continue trading, its legal representatives fairly accepted that there have been no expressions of interest in wet-leasing the remaining aircraft, or in purchasing the airline. The fact that in some circumstances some companies have been able to continue to trade despite being subject to a winding up order does not assist TCAL while there is no evidence that such a prospect is more than theoretical.
37. For the Panel's purposes, the relevant test is that set out in Article 9(1): is the Panel satisfied that TCAL can meet its actual and potential obligations for the next 12 months? Significantly, it was never suggested by TCAL that any delay would lead to it being able to satisfy that test in the future. Nor was it ever suggested that TCAL could meet the conditions for a temporary licence in Article 9(1). In those circumstances, there was no justification for CMG or the Panel deferring its decision and indeed to do so would not be consistent with the Article 3(2) obligation.

Suspension Argument

38. Apart from its Deferral Argument, TCAL did not ultimately disagree that the Panel must either suspend or revoke its OL. The question for the Panel under this head is therefore which course to take.
39. The Panel did not agree that its discretion to choose between suspension or revocation was unfettered. Ultimately its power to suspend or revoke derived from the EU Regulation (and the implementing UK Regulations) and had to be exercised consistently with the provisions and purposes of that legislation including, in particular, Article 3(2). Revocation and suspension have different impacts: revocation is terminal because an air carrier who wished in the future to continue operating would need to apply afresh for a new OL but suspension leaves open the possibility that the carrier may in future be able to trade on the original OL. Although there is no explicit guidance in the Regulation about when a suspension would be the appropriate course as opposed to revocation, it is inherent in the notion of suspension that it is a response to temporary non-compliance with the relevant rules. This suggests that suspension rather than revocation might be

appropriate in circumstances where there was a realistic prospect that within a reasonable time the non-compliance would be remedied, and the suspension lifted.

40. In relation to the ten arguments raised by TCAL set out in paragraph 33 above, the Panel concluded as follows:
- a. The fact that there has been a change of control in the company as a result of entry into compulsory liquidation does not of itself point in favour of suspension rather than revocation. If the change of control brought realistic prospects of TCAL meeting the requirements for maintaining an OL within a reasonable time then that would be another matter, but the evidence does not begin to support this.
 - b. The UK's government's agreement to underwrite the costs of the liquidation does not alter this conclusion. Ultimately, the question for the Panel is whether there is any realistic prospect of TCAL being able within a reasonable time to meet its actual and potential obligations for the following 12 months. Although the arrangements in place on the insolvency provided funding for the post-liquidation expenses, they had no impact on the viability of the underlying business.
 - c. Five weeks have passed since the liquidation opened, and for the reasons already explored in paragraph 36 above, there is no evidence at all of any real prospect that TCAL could continue to trade as an airline, let alone meet its actual or potential obligations for the next 12 months. Accordingly there is no justification to "*preserve the status quo*" by merely suspending the OL.
 - d. Although not revoking the OL would theoretically enhance the prospects of selling TCAL as an operating airline, there was absolutely no evidence that this was likely to happen.
 - e. Similarly, although the suspension rather than revocation of the OL would assist in any future wet-lease transaction there was simply no evidence of any such transaction on the horizon. Its prospects were not enhanced by the timing of any such initiative, given that demand for flights was less in the winter.
 - f. Allowing TCAL to participate in slot transactions so as to maximise the recovery of assets for TCAL's creditors was not a reason to suspend rather than revoke, for the reasons set out in the next sub paragraph.
 - g. The primary issue for the Panel in exercising its powers under the relevant legislation to choose between revocation and suspension is, as set out above, whether there is a realistic prospect that within a reasonable time TCAL's non-compliance will be remedied such that it might in future satisfy the conditions for operating as a licenced air carrier. If the answer to that question is 'no' then the fact that the suspension of the OL would, all other things being equal, lead to a better recovery for TCAL's creditors than its revocation does not assist TCAL. Ultimately, an OL¹ is granted to an airline in order to permit it to provide air services, not to maximise value for the airline's owners or creditors. The fact that some provisions of the EU Regulation (such as Article 8(3)) are consistent with a temporary pause in operations does not detract from the Panel's conclusion; the Panel agrees with CMG that such a pause would only be acceptable if and to the extent that the other provisions of the EU Regulation, including the financial requirements, were complied with.

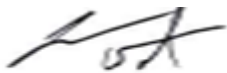
¹ Defined in the EU Regulation as "*an authorisation granted by the competent licensing authority, permitting it to provide air services*".

- h. The Panel accepts that it was one of the purposes of the EU Regulation to remove barriers to the functioning of the internal market in aviation insofar as these were created by airline licensing requirements. However the inconsistencies pointed to by TCAL result from varying insolvency regimes in different EU member states. It did not seem to the Panel that the alleviation of such inconsistencies was a relevant consideration in the exercise of its powers under the EU Regulation; if the Panel were otherwise persuaded that it should revoke rather than suspend then it should therefore not decline to do so in order to compensate for differences in insolvency laws.
 - i. The Panel was not persuaded by TCAL's arguments based on the proposals for future legislation in the Airline Insolvency Review. Its task is to make a decision by reference to the existing legislation. Furthermore, the principal aim of the Review seems to have been the more efficient repatriation of customers of a failed airline; the proposals to amend the licensing regime contained in the Review were made with this aim in mind (not the better realisation of assets for creditors).
 - j. Finally, the argument relating to passenger safety is at best a neutral one for TCAL and does not positively support suspension rather than revocation.
41. There is therefore no reason relating to TCAL's position as an air carrier to keep the OL in existence: put simply, TCAL does not need an OL because there is no prospect of it operating as an air carrier again. In the Panel's view it therefore follows that the appropriate course is to revoke the licence rather than to suspend it.

Decision

42. For the reasons set out above TCAL's OL should be revoked.
43. By Regulation 8 and paragraph 3 of Schedule 2 of the UK Regulations this decision does not take effect until 14 days after the licence holder has been notified of the CAA's decision, i.e. the date of this letter.
44. By section 69A(5) of the Civil Aviation Act 1982, TCAL's Route Licences will also cease to be in force on the date the revocation of the OL takes effect.

Yours faithfully



Graham Ward CBE
Chair of the Panel

cc Paul Smith, Director, CMG
Reed Smith LLP