

THE TOURIST'S RIGHTS - CAN THE
EUROPEAN COMMUNITY HELP ?

November 13, 1980

Address by

Commissioner Richard BURKE

I have been invited to speak about the Commission's intentions in relation to a forthcoming consumer protection directive dealing with package tour operations. That invitation is perhaps a little too specific. As Commissioner responsible for Consumer Affairs and Transport Policy, I have directed my staff to carry out a thorough examination of consumer problems in the area of tourism, and I intend to ensure, as far as I can, that the European Community takes whatever measures seem necessary.

I should like to make it clear at the outset that I have no intention of launching a consumerist crusade. What I want to do is

- firstly, to define the main problems encountered by consumers,
- secondly, to establish what gives rise to these problems,
- thirdly, to define what action the European Community can usefully take to alleviate these problems, in the interests of the overall development of tourist services. This means, of course, that the customer must be sure that his reasonable demands are met.

But I do not intend to pit the most extravagant demands of the occasional traveller against the unsatisfactory practices of the fly-by-night package tour operator.

I am now involved, with my departments, in a process of consultation and discussion with the various interests concerned. We are gathering ideas, listening to complaints and assembling information on how the sector works.

I feel particularly fortunate to have this opportunity of discussing the subject in one of Ireland's - indeed Europe's - most famous tourist centres, and where, I suspect, a very large proportion of those one meets on an occasion like this must themselves be experts on some aspects of tourism.

Let us briefly review the general background.

The last quarter - century has seen an enormous growth in all forms of tourism. During that time, there has been a rapid increase in the proportion of the population taking holidays away from home, a substantial increase in the distance between home and holiday location, and a huge increase in the proportion of holiday travellers going outside their own countries.

The increase in the diversity of holiday types has been no less spectacular. Camping and caravanning have expanded, and have become truly international holiday activities. Private touring, using hotels, guest - houses and "B and B" accommodation has expanded. The development of package-tours by air has perhaps been the most visible manifestation of the growth in tourist activity. In this sector alone, we have seen a multiplication of available formulae, from individual inclusive tours to large group charter operations. Rail, road and sea transport operators have also expanded their tourism activities, and have developed new forms of packages.

This ever - increasing range of opportunities is eloquent testimony of the imagination and creativity brought to bear by enterprises in

the tourist industry, and evidence of a real desire to serve consumers' needs. It is a self - interested desire, of course, but then an efficient market requires a positive self - interest on the part of both buyer and seller.

It is fair to say that this growth in volume and diversity could not have taken place if the products and services offered were notably deficient, and if consumers felt, on the whole, that they were not getting a satisfactory deal. Tourism, as you all know, is a highly - competitive business. There is competition between regions and between companies. There is competition between operators in each sector of activity - between hotels, between tour operators, between transport companies. There is even some competition between transport modes. On the whole, there are no dominant positions in this business, so that market forces operate fairly freely.

In many areas of the tourist business, operators work on relatively small margins. This has, indeed, led to a number of bankruptcies in recent years, with dramatic effects of customers.

The overall picture, then is one of a very active, creative and competitive business, which has demonstrated its capacity to attract an increasing number of customers.

Here, in my view, we find one source of problems. Pressure to meet a growing market often results in situations in which capacity actually available may fall short of capacity sold. New hotels may not be finished in time. Aircraft may be held up, leading to disruption of

very tightly - calculated schedules. Buses may be held up for similar reasons, with similar results. Basic infrastructures and services such as water supply, sewage services, power and even roads may lag behind the provision of accommodation and transport services.

In their eagerness to take the long-planned and perhaps exotic holiday, consumers may not be aware of the terms of the contract offered, until something goes wrong, and they find themselves without the means to put things right.

The very creativity of the business can lead to packages being put together without it being very clear what are the contractual relationships involved.

This reflection leads me to the starting - point of my activity in relation to tourism. I would outline the main problems as follows.

The first group can arise even before a contract is concluded between the customer and the tour operator. They are :

- inaccurate or incomplete descriptions of holidays offered in brochures
- inadequate price information
- exaggeration of the quality of services offered
- misleading descriptions of the accommodation offered
- misleading presentation of the length of the holiday offered
- incomplete or misleading description of the travel services offered.

The second group of problems are those which relate to the contract itself : they are :

- price variations
- variations of the services offered
- penalties connected with cancellation
- unfair conditions in relation to reservations and insurance
- failure on the part of the travel agent or organizer to carry out his contractual obligations
- unsatisfactory conditions of transport
- overbooking of transport facilities
- unsatisfactory accommodation
- overbooking of accommodation.

Thirdly, there are problems which arise after the contract : these are problems relating to complaints and redress.

In addition to these, there is the general problem of safety - safety in transport and in accommodation.

Then there is the fact that the package tour customer pays in advance. If something goes wrong, he has lost one of the consumer's classic weapons - the simple decision not to buy.

We cannot construct a perfect world : I doubt the existence of a perfect contract. But a fair balance must be struck. On the evidence available, it does not seem that the balance struck now is always fair.

I have indicated what the main problem areas are. Given the variety of problems, it would indeed be surprising to find that there was no legislation in the matter.

This is not the case. There exist a variety of legislative and other measures aimed at some of the problems I have mentioned. There is, for example, the Brussels Convention of 1970, concerning group travel. There is an OECD Resolution calling for improved consumer information and protection in relation to package tours by air. Unfortunately, neither of these measures has been applied with particular vigour or consistency throughout the Community.

Several of the Community's Member States have specific legislation dealing with some of the problems I have mentioned.

Some of the problems are covered, in whole or in part, by more general legislative provisions.

Nowhere do we find a comprehensive body of legislation or administrative practice covering all of these problems. To be fair, it would be unrealistic to expect to find this. The problem is, however, that in many Member States, important problem areas seem to be untouched by legislation.

There is, of course, the possibility of self-regulation by the industry itself. There are indeed many codes of practice in different sectors of the tourist industry, administered by professional associations. Where such codes exist, there is considerable pressure to conform to standards which, by and large, are inspired by reputable operators who want to ensure that they can continue to attract increasing numbers of clients.

Given the enormous size and diversity of the tourist business, however, and the constant addition of new clients, I believe that it is neither reasonable nor realistic to expect that it can be satisfactorily regulated solely by people in the business. The fact that some Member States have legislation on some of the problems I have mentioned bears out this belief.

This is why I have been anxious to start work on these matters at EEC level.

We are not starting completely from scratch. There exist some legislative provisions and proposals which have a bearing on some of the problems I have mentioned.

In the road transport sector, there are several pieces of Community legislation governing

- conditions of access to the profession of road passenger-transport operator
- common rules on international transport of passengers by coach and bus
- regulations on drivers' hours, which have very important implications for safety.

In addition, we have negotiated an agreement on the international carriage of passengers by road by means of occasional coach and bus services, between the Community and ten other European countries (including Greece, soon to become a member of the Community, and Spain, currently negotiating accession). This agreement has been initialled : there are still some technical problems to be resolved before we can proceed to formal signature.

As far as air transport is concerned, we have begun to build up a Community approach to the improvement of services. The Commission has recently, for example, made a proposal for the development of inter-regional air services. This would help in the further development of tourism in many regions of the Community.

The Commission's July 1979 Memorandum on the improvement of air transport services also recommended a greater degree of flexibility in the authorization of non-scheduled passenger services. This too is a measure which would further assist in the development of tourism.

In the area of consumer policy, our proposal for a directive on misleading and unfair advertizing would meet some of the potential tourist's problems, particularly those concerning inadequate or misleading information on prices, accommodation and transport facilities.

Thus, there are already some Community measures and proposals on which we can build.

It is clear, however, that these measures and proposals to which I have referred do not cover all of the problems which I have set out.

It may even be the case that where existing legislation or proposals touch on the problems at issue, they do not go far enough, or that there are specific aspects of the problem which demand special treatment.

One of the central objectives of our action must be to clarify the contractual relationships involved in package tours, whatever

mode of transport is used. Has the individual customer got a single contract with the travel agent who retails the tickets, or is the contract with the wholesaler who puts the package together ?

Or has he got a series of separate contracts with the transport operators involved, the hotels, and the tour organizers ?

It is important to clarify this issue so that the customer who encounters a problem knows where to go in order to seek redress.

Next, it is necessary to specify what should be in the contract, what its provisions should be on a number of key points and where and how it is enforceable. The specification of the contract provisions is a very important matter, since this is where the balance between the consumers' and producers' interests will be struck. This is where the really knotty problems arise.

What are reasonable and fair provisions governing cancellation of the contract by the consumer ? Can he be totally free to cancel at any time, without incurring a penalty ?

How long must he suffer a delay in the service rendered before he can reasonably contend that the other party has failed to fulfil his obligations under the contract ? How unsatisfactory must accommodation be to constitute grounds for cancelling the contract or for claiming compensation ?

How far in advance should a tour operator fix his prices without, for example, allowing for the effects of variations in fuel costs ?

How should we deal with the effects of exchange rate variations on the cost of the various parts of the package ?

How do we deal with problems created by differences in law regarding contractual liabilities between the country of origin and the country of destination ?

This recital of some of the complex issues facing us shows how difficult a task we will have. It also shows, however, that there is an urgent need to deal with them.

It is estimated that some 20 million organized travel tours are booked annually in the EEC Member States. If 95 % of these bookings turn into satisfactory holidays, there are still one million bookings where problems are encountered.

This figure of 20 million organized travel tours does not cover the whole of the market. Many other holiday bookings incorporating some kind of contractual agreement are made.

I conclude that we are dealing with a very substantial problem, which deserves our urgent attention.

There is another aspect of the question which deserves serious consideration in a slightly different context. This is the matter of the availability and price of energy sources. I do not know of any estimate of the proportion of total energy use accounted for by tourism. It cannot be very large but it is nevertheless important in a society which has come to regard holiday travel as an integral, if exciting part of life.

I am sure that you remember the effect on tourism of the fuel shortages of the summer of 1979. There were specific reasons for that problem, but who is to say that different circumstances could not, in the future, lead to similar results ?

Scaremongering is not my business, but I think that it is very clear that all those involved in the tourist industry must, in their own interests, consider very seriously what possibilities of energy saving are open to them.

The various segments of the industry are already responding to the problem under the pressure of fuel prices. So far, however, the response has tended to be rather unco-ordinated, though none the less real for that.

I would suggest that it is time that a co-ordinated approach was adopted, so that the maximum effect can be achieved.

I have set out my view of the problems we have to face. As you can see, I have not yet come to the point of defining precisely how we should approach these problems at European level.

We are discussing the possible approaches with the various interests concerned, and I hope to have very soon the results of a special study of the European package tour market.

The Commission is open to any views which interested parties might want to put forward, and I hope that my remarks tonight will stimulate reactions on your part.