

放膽為外遊業減少監管

A leap of faith in deregulation

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接連放寬外遊市場的監管措施，結果難以預測。

The outcome of successive measures to deregulate the outbound industry is hard to predict.

兩種監管方法

概括來說，現代社會有兩種監管方法：以規則或以披露為本的監管。所謂以規則為本，是指監管當局規定甚麼必須做、甚麼不准做，而監管若以披露為本，則基本上甚麼都可以做，只要把產品、服務等的資料向顧客充份披露就行。

不消說，這兩種監管方法各有利弊，也各有支持者與反對者。受監管者通常都反對以規則為本的監管，因為他們以為那會窒礙競爭與創新，使做生意的成本上漲，而且剝奪消費者真正的選擇。另一方面，以規則為本的監管可以使消費者安心，他們甚至可能認為規則不夠全面，保障不足。

以披露為本的監管總是受業者歡迎，理由是這種方法可以消除另一種方法的弊病。至於消費者，他們可能要到投訴所買的東西有毛病，然後得知在收據或服務協議之中，有那麼一項字體很小的條款，正好涵蓋他們的投訴，使投訴失去理據，那時他們才會察覺到這種方法的不足之處。

談到監管的方法，往往不是有了一種就不要另一種，而是以規則和以披露為本兩種方法的結合，並把重點放在其中一種。重點如何決定，通常要考慮的因素包括：交易是否涉及大額的金錢？市場是否成熟？監管環境稱道以規則還是以披露為本的監管？

始於以規則為本……

一九八八年議會開始對外遊業實行自律監管，當時業界遠沒有今天井然有序，嚴重的欺詐個案也不是沒有發生：在一九八六、八七年，有兩家旅行社拿了數千名旅客的團費潛逃。要應付這種局面，議會唯有在規則中詳細訂明會員旅行社必須做與不可做的事情。以規則為本的監管模式就這樣設立起來了。

Two methods of regulation

There are, broadly speaking, two methods of regulation in modern societies: rules-based and disclosure-based. Rules-based regulation means that the regulating authority sets down what must and must not be done, whereas under disclosure-ruled regulation basically anything is allowed so long as information on a product, service or whatever is sufficiently disclosed to the customers.

These two methods of regulation, of course, have their pros and cons, and supporters and opponents. Those who are regulated are generally against rules-based regulation, which according to them stifles competition and innovation, inflates the cost of doing business and deprives the consumers of real choice. The consumers, on the other hand, are often put at ease by rules-based regulation and may even argue that the rules are not comprehensive enough to protect them.

Disclosure-based regulation is almost always welcomed by the traders because it can cure the demerits of the other method of regulation, but the consumers may be unaware of its shortcomings until they complain about what they have bought and are told that there is a clause in the small print of the receipt or the service agreement covering, and therefore invalidating, their complaints.

When it comes to methods of regulation, more often than not, it is not a matter of rules-based versus disclosure-based, but a combination of them with more emphasis put on either of them. Factors in deciding the emphasis often include whether large sums of money are involved in transactions, whether the market is mature, and whether the regulatory environment is in favour of rules-based or disclosure-based regulation.

From rules-based regulation ...

When the outbound industry began to be self-regulated by the TIC in 1988, it was far less regulated than today and severe fraudulent cases were not unheard of: in 1986 and 1987, two travel agents had absconded with the tour fares collected from thousands of travellers. Faced with such a situation, the TIC had no option but to lay down rules detailing what must and must not be done by its member agents. A rules-based regulatory model was thus set up.

Some of the rules, laid down to tackle specific trade malprac-

有些規則本來是針對特定的業界陋習的，但原先的目標根除之後，就可能顯得莫名其妙了。今天，物業價格不住攀升，大家都無法想像三十年前議會還未開始自律監管的時候，有一家旅行社在報章雜誌大賣廣告，聲稱只要報名參加旅行團就可以參加大抽獎，大獎竟然是一個住宅物業！結果數以千計的人參加了旅行團，而那家旅行社卻忽然結業，拿走了所有團費。會員知道這件往事之後，會不會認為一些廣告規例未必沒有道理？

……變成以披露為本

經過議會長年累月的不懈努力，外遊業變得井然有序，兼且充滿競爭與創新。三十年來不僅外遊旅行社變得自律多了，它們的顧客也精明得多，不會那麼輕易被騙買下可疑的旅遊產品或服務了。此外，今天的競爭也激烈得多：與本地旅行社爭取客人的對手，現在不僅有航空公司及酒店（它們過去要靠旅行社銷售機票及房間），而且還有在香港沒有註冊的網上旅行社（它們無須遵守議會的任何規則）。

考慮到上述背景以及《競爭條例》已經生效，議會認為現在要把以規則為本的監管模式改為更加著重披露了。在過去幾年，尤其是在二零一五年之後，好些監管外遊業務不同範疇的規例，不是被撤銷就是大為放寬（見「特稿」，二零一六年第四期，以及本期「議會簡報」）。以第二百三十號指引為例，其前身有一項條文禁止旅行社宣傳議會沒有批准的賠償。可是，如果旅行社承諾出了差池就會賠償大筆金錢，而且說到做到，為甚麼要阻止它們呢？

要準確預測並不容易

放寬監管可以有多種方式，轉變監管重心是其中之一，就像外遊業那樣。放寬對電訊市場的監管是本地最成功的例子，而放寬對銀行業的監管則是美國最糟糕的例子，結果造成一九三零年代「大蕭條」以來最嚴峻的金融危機，因而被稱為「大衰退」。

對外遊業的監管放寬了，結果會怎樣？會成為本地另一個放寬監管的成功例子嗎？此事最後會怎樣，現在誰都不知道，有一段時間可能仍會那樣，或許要到旅遊業監管局成立後，結果才會揭曉。✎

tics, may seem to be baffling when their original targets have been rooted out. Nowadays with property prices ever-rising, it is beyond imagination that about 30 years ago when the TIC had not yet taken up its self-regulatory role, there was a travel agent which splashed advertisements across the press claiming that those who joined its tours could take part in its lucky draw, whose grand prize was nothing less than a flat! Thousands of people joined its tours, and the travel agent suddenly closed down and ran away with the tour fares. After learning about this past event, will members now find some of the advertising rules more reasonable?

... to disclosure-based regulation

After years of sustained efforts by the TIC, the outbound industry has become a properly regulated, yet innovative industry full of competition. Not only have travel agents doing outbound business become more disciplined during the last three decades, their customers have also grown smarter and less likely to be lured into buying dubious travel products or services. Also competition is much fiercer now: local travel agents have to fight for customers with airlines and hotels, which used to rely on them to sell their tickets and rooms, and with online travel agents not registered in Hong Kong, which need not follow any rules of the TIC at all.

With this background and the Competition Ordinance in place, the TIC has considered that it is time to change its rules-based mode of regulation to one more focused on disclosure. Over the past few years and particularly since 2015, several rules governing different aspects of running outbound business have been repealed or greatly relaxed (see "Feature", No. 4/2016 and "Council Bulletin" in this issue). Take Directive No. 230. A provision in its predecessor banned travel agents from promoting any compensation not allowed by the TIC. But if they promise to offer their customers huge sums of compensation should anything go wrong and are able to honour it, why should they be stopped?

Accurate predictions hard to come by

Deregulation may take many forms, one of which is a shift of regulatory focus, just like the outbound industry. While the deregulation of the telecommunications market is the most successful local example, that of the banking sector may be the most disastrous example in the United States, its consequences being named "the Great Recession" for having brought about the worst financial crisis since the Great Depression in the 1930s.

What will be awaiting a deregulated outbound industry? Will it become another successful local example of deregulation? The jury is out now, and may continue to be so for some more time, until perhaps after the Travel Industry Authority is established. ✎