

**Notice issued under section 2 of Schedule 2 of the Competition Ordinance  
regarding the Commission’s proposal to accept commitments  
in online travel agents case (EC/02NJ)**

**Introduction**

1. The Competition Commission (“**Commission**”) has conducted an investigation under section 39 of the Competition Ordinance (Cap. 619) (“**Ordinance**”) in relation to suspected anti-competitive conduct by online travel agents (“**OTAs**”), relating to certain terms in their agreements with Hong Kong accommodation providers<sup>1</sup>.
2. Three of the OTA websites that were investigated (the relevant legal entities for which are set out in paragraph 10 below, together the “**Parties**”) were:
  - a. Booking.com (“**Booking**”);
  - b. Expedia.com (“**Expedia**”); and
  - c. Trip.com (“**Trip**”).
3. As part of the investigation, the Commission examined key terms in agreements between the OTAs and accommodation providers that required the accommodation providers to:
  - a. always give the OTA the same or better price as the prices they offer or apply in all other sales channels (although for the purposes of the investigation such clauses are defined to exclude the accommodation provider’s own online sales channels) (“**wide price parity**”)<sup>2</sup>;
  - b. always give the OTA the same or better room conditions as those they offer or apply in all other sales channels (although for the purposes of the investigation

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<sup>1</sup> “Accommodation providers” is being used herein to include hotels, guest-houses, bed and breakfasts, or any other type of accommodation service provider that supply rooms in Hong Kong and enters into a contract with an OTA.

<sup>2</sup> “Wide price parity” is distinguishable from “narrow price parity”. A narrow price parity clause only requires the accommodation providers to always give the OTA the same or a better price as the price the accommodation provider offers through their own online sales channels. The Proposed Commitments described below do not include a commitment by the Parties not to implement narrow price parity clauses, which may give rise to pro-competitive benefits around the avoidance of free-riding by the accommodation provider.

such clauses are defined to exclude the accommodation provider's own online sales channels) ("**wide conditions parity**"); and

- c. always give the OTA room availability that is at least as favourable as those given to any of its competitors ("**room availability parity**"),

together the "**Relevant Provisions**".

4. Based on its investigation, the Commission found that:
  - a. Booking's agreements with accommodation providers included terms requiring wide price parity, wide conditions parity and room availability parity;
  - b. Expedia's agreements with accommodation providers included terms requiring wide price parity, wide conditions parity and room availability parity; and
  - c. Trip's agreements with accommodation providers included terms requiring wide price parity.
5. The Commission considers that by including the terms set out in paragraph 4 in their agreements with accommodation providers, the Parties may have made and given effect, and be giving effect, to agreements which could potentially prevent, restrict or distort competition in contravention of section 6 of the Ordinance ("**First Conduct Rule**").
6. Each of the Parties have offered commitments under section 60 of the Ordinance to take and refrain from particular actions ("**Proposed Commitments**"). The Proposed Commitments are appended as **Annexes 1, 2 and 3**. The Commission considers that the Proposed Commitments are appropriate to address its concerns about a possible contravention of the First Conduct Rule, and it therefore proposes to accept them.
7. In accordance with the requirements of section 2, Schedule 2 to the Ordinance, the Commission hereby gives notice of the Proposed Commitments and requests parties to make representations in response to this notice (including on the Commission's proposed acceptance of the Proposed Commitments).
8. The remainder of this notice sets out further details regarding:
  - a. the Parties (Part A);
  - b. the role of OTAs in the supply of accommodation provider rooms (Part B);
  - c. the competition concerns identified by the Commission (Part C);

- d. the Proposed Commitments (Part D and Annexes 1, 2 and 3); and
- e. the manner in which interested parties should make representations in response to this notice (Part E).

#### A. The Parties

9. The Parties form part of the three major OTA groups in Hong Kong<sup>3</sup> and make up a large part of OTA accommodation bookings in Hong Kong.

10. The Parties are as follows:

- a. in the case of Booking, Booking.com B.V. and Booking.com (Hong Kong) Ltd. Booking.com is operated by Booking.com B.V. and is supported in Hong Kong by Booking.com (Hong Kong) Ltd. Booking.com B.V. and Booking.com (Hong Kong) Ltd. are direct and indirect fully owned subsidiaries of Booking.com Holding B.V. Booking.com B.V. and Booking.com Holding B.V. are incorporated in the Netherlands. Booking.com (Hong Kong) Ltd. is incorporated in Hong Kong;
- b. in the case of Expedia, Expedia Lodging Partner Services Sarl. Expedia Lodging Partner Services Sarl is the primary entity for Expedia's accommodation supply business, and alongside Travelscape, LLC (d/b/a Expedia Travel), VacationSpot S.L., Hotels.com, L.P., BEX Travel Asia Pte., Ltd., enters into lodging contracts with accommodation providers in Hong Kong. Each entity is a direct or indirect subsidiary of Expedia, Inc. The Proposed Commitments given by Expedia relate to Expedia Group brand sites that offer hotels to consumers including, in Hong Kong, the brands Expedia and hotels.com; and
- c. in the case of Trip, Trip International Travel (Hong Kong) Limited ("**Ctrip Travel HK**") and Ctrip.com (Hong Kong) Limited ("**Ctrip HK**"). Ctrip Travel HK is the holding company used as the contracting party to sign all supply agreements with hotels in Hong Kong region. Ctrip HK is an affiliated company of Ctrip Travel HK and operates the Trip.com website. Both Ctrip HK and Ctrip Travel HK are part of Trip.com Group.

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<sup>3</sup> There are also a few smaller OTAs operating in Hong Kong.

## **B The role of OTAs in the supply of accommodation provider rooms**

11. Accommodation providers use both their own sales channels and other channels such as traditional offline travel agencies and OTAs such as the Parties to reach customers.
12. OTAs operate platforms on the internet through which consumers can search for and book rooms in accommodations that use the platforms. Accommodation providers enter into agreements with the OTAs to enroll on the platforms and upload information about and images of the accommodations to the platforms. Consumers visiting the OTAs' platforms may search for accommodation providers, compare accommodations on the basis of different criteria, including price, and then book rooms. They are not charged by the OTA for using its platform in this way.
13. Accommodation providers set the room prices to be displayed to consumers on the OTAs' platforms and the OTAs receive commission from the accommodation providers for each sale. The OTAs do not typically purchase the rooms but act as agents selling the rooms on behalf of the accommodation providers.
14. In order to achieve the highest possible occupancy rate, it is common for Hong Kong accommodation providers to enroll on several OTAs. The more accommodation providers on an OTA website, the more consumers it will attract, and the more consumers that visit a particular OTA website, the more appealing the OTA will typically be to accommodation providers.

## **C The competition concerns identified by the Commission**

15. This section explains the situation that the Proposed Commitments are seeking to deal with, for the purposes of section 2(2)(d) of Schedule 2 of the Ordinance.
16. The agreements between the accommodation providers and OTAs constitute vertical agreements, i.e. agreements between undertakings that are not competitors<sup>4</sup>. The Commission has assessed whether the Relevant Provisions could have the potential effect of harming competition within the meaning of the First Conduct Rule.

### *Wide price parity terms*

17. Wide price parity terms may have the potential effect of softening competition among OTAs as they mean that the price of accommodation providers' rooms will always be the same on competing OTAs' websites.

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<sup>4</sup> For further information, please refer to the Commission's Guideline on the First Conduct Rule, paragraphs 6.5 to 6.9.

18. Absent such a clause, an OTA may try to attract accommodation providers to its platform by offering a low commission rate on the sale of rooms. However, with wide price parity terms, the accommodation providers cannot reflect this lower commission rate by way of a lower room rate on that OTA. Any reduced commission rate is therefore unlikely to be accompanied by increased demand by consumers for that OTA's services. This potentially reduces the OTA's incentive to reduce the commission rate in the first place, and thus OTA competition in commission rates is softened.
19. The wide price parity terms could have the potential further effect that increases in an OTA's commission rate cannot lead to a higher room price on that OTA's platform than that available through its competitors. If an OTA increases its commission rate, accommodation providers have the choice of increasing their room rates to accommodation seekers to reflect this higher cost, a decision which would mean also increasing the room rates on other OTAs platforms that have not increased their commission fees, or absorbing the increase in commission. The accommodation provider cannot increase its room rate on the higher cost OTA's platform alone (thereby placing competitive pressure on that OTA by driving consumer traffic away from its platform to other OTAs). Therefore, unless the accommodation provider is prepared to drop the OTA altogether, wide price parity may have the potential effect of softening competition by reducing the competitive pressure accommodation providers can place on the OTAs.
20. Wide price parity clauses may also have the potential effect of hindering entry and expansion by new or smaller OTAs. Specifically, OTAs wishing to enter the market or smaller OTAs may not be able to compete effectively with the incumbents by offering lower commission rates in return for better room rates.

#### *Room availability parity terms*

21. Room availability parity terms have the potential effect of preventing accommodation providers from rewarding or otherwise playing OTAs off against each other by making more rooms available to lower-cost OTAs (i.e. those offering a lower commission to the accommodation provider). As in the case of the wide price parity terms, this may have the possible effect of softening competition among OTAs, as OTAs may have reduced incentives to compete on the basis of commission rates and there may be a foreclosing effect on new entrants and smaller OTAs.

#### *Wide conditions parity terms*

22. The competition concern with wide conditions parity is similar to that with room rate and room availability parity. Specifically, if there is a wide conditions parity clause in an

agreement with a particular accommodation provider, an OTA offering a lower commission rate to the accommodation provider potentially cannot benefit from better room conditions than the OTA with the parity clause.

23. This has the potential effect of reducing the incentives of the OTA to lower its commission rate in the first place as the reduction will not result in better room conditions being given to that OTA by the accommodation provider (and the potential for an increase in consumer traffic to that OTA's website). Another possible effect is that an accommodation provider also cannot use better room conditions as a bargaining tool in its commission negotiations with OTAs.

#### **D. Proposed Commitments**

24. This section provides a high level summary of the Proposed Commitments appended in **Annexes 1, 2 and 3** and explains their intended object and effect for the purposes of section 2(2)(b) of Schedule 2 of the Ordinance.
25. The Proposed Commitments do not constitute an admission by the Parties of a contravention of a competition rule.
26. Should the Commission accept the Proposed Commitments, it will not continue its investigation, or bring proceedings in the Tribunal, against the Parties regarding this matter.

#### *Scope*

27. The Proposed Commitments have the purpose of ensuring that none of the Parties will enforce or enter into agreements with accommodation providers that contain wide price parity, wide conditions parity and room availability parity terms.
28. The Proposed Commitments also provide that the Parties will not enforce or enter into agreements with accommodation providers that restrict the terms and conditions, including room rates, that accommodation providers are able to offer through their own offline sales channels.
29. The intended purpose of the Proposed Commitments is to address the competition concerns described in Part C by seeking to ensure that room prices, room conditions and room availability exist as potential competition parameters in the relationship between each of the Parties and with respect to other OTAs.
30. Since wide price parity terms will no longer apply between OTAs as a result of the Proposed Commitments, it will be possible for OTAs to compete with each other by inducing

accommodation providers to offer lower prices on their platforms in return for the OTA agreeing to take a lower commission rate on room sales. Equally, it will be possible for accommodation providers to place competitive pressure on OTAs by offering lower room prices to OTAs that are willing to charge lower commission rates.

31. The Proposed Commitment to not apply terms relating to room availability parity, as well as parity concerning other conditions, would also increase the ability of accommodation providers to reward an OTA offering lower commission rates than its competitors (for example, by offering such an OTA more favourable cancellation rules or free breakfasts on rooms). This may also help to promote competition between OTAs.
32. Finally, the Proposed Commitments exclude specific types of bookings from their scope (i.e., managed, opaque and package bookings), on the basis that such bookings have particular product characteristics which justify their differential treatment from normal standalone accommodation bookings.

#### *Timeframes*

33. The Parties will implement the Proposed Commitments within 90 calendar days from the dates on which they receive notice that the Commission accepts them.
34. Each of the Parties will provide the Commission with a separate written report on their compliance with their respective Proposed Commitments within 120 calendar days from the date on which they receive notice that the Commission accepts them.
35. The Proposed Commitments will remain in force for a period of five years from the implementation date specified in paragraph 33 above.

#### **E. Making representations in response to this notice**

36. The Commission invites representations from interested parties on the matters in this notice, including the Commission's proposed acceptance of the Proposed Commitments. The Commission will consider all representations received within the deadline below before making its decision on whether to accept the Proposed Commitments.
37. Any party wishing to provide representations should do so in writing **no later than 6pm on 14 April 2020**. **Representations received after this time will not be considered.**
38. Representations should be sent to the Commission as follows:

- a. by email (preferred) to [Consultation@compcomm.hk](mailto:Consultation@compcomm.hk), with the case reference number EC/02NJ quoted in the subject line of the email;
- b. by fax to +852 2522 4997; or
- c. by post to:

Representations on Case EC/02NJ  
Competition Commission  
19/F South Island Place  
8 Wong Chuk Hang Road  
Wong Chuk Hang.

39. The Commission will publish the representations received on its website.

40. If a party would like to claim confidentiality over some or all of their representations, they should identify the relevant material and set out reasons why the identified material is, in their opinion, confidential pursuant to section 123(2) of the Ordinance. They should also provide a non-confidential version for publication purposes, from which all confidential information has been redacted.