



消費者委員會 CONSUMER COUNCIL

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來函檔號 YOUR REF.

本函檔號 OUR REF. CC 1/257/PTPD

14 April 2020

By email: Consultation@compcomm.hk

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

**Attn: Mr Jindrich KLOUB, Executive Director (Operations)**

Dear Mr Kloub,

**Re: Case EC/02NJ - Consultation under Section 2, Schedule 2 of the Competition Ordinance  
regarding the Commission's proposal to accept commitments from online travel agents**

Thank you for inviting the Consumer Council (the Council) to comment on the captioned consultation. Please find attached the Council's submission for consideration of the Competition Commission.

Should you have any queries on the views in the submission, please feel free to contact Ms Vera TAM, Acting Principal Planning and Trade Practices Officer at tel: 2856 8543 or via email: veratam@consumer.org.hk.

Yours sincerely,

Eddy TONG  
Acting Chief Executive  
Consumer Council

Encl.

## **Consumer Council**

### **Submission to the Competition Commission regarding the Proposal to Accept Commitments from Online Travel Agents (14 April 2020)**

1. The Consumer Council (the Council) is pleased to submit its views concerning the Competition Commission's (the Commission) proposal to accept commitments (the Proposed Commitments) from three major online travel agents (the Three OTAs) as set out in a consultation paper (the Consultation Paper) issued by the Commission on 31 March 2020.
2. The Council appreciates the Commission to conduct public consultation to enhance regulatory transparency and engage the public in policy-making. This would also provide guidance to businesses in the Hong Kong travel industry and act as a deterrent to other businesses which might have similar anti-competitive conducts.
3. While understanding that the Commission has taken into account factors such as the urgency and complexity of the matter concerned and whether the matter is likely to be controversial in setting the duration of the consultation period (now given 14 days), the Council would expect more sufficient time for the public to comment on this important matter. Nevertheless, the Council welcomes the efforts of the Commission in investigating the suspected anti-competitive conducts by the Three OTAs relating to certain clauses<sup>1</sup> in their agreements with accommodation providers in Hong Kong (the Investigation).
4. In its previous in-depth study report "Online Retail – A Study on Hong Kong Consumer Attitudes, Business Practices and Legal Protection" (the Report)<sup>2</sup> published in November 2016, the Council called for attention about potential competition implications stemmed from the market power of OTAs. The Council's report pointed out that OTAs which already had a large share of the travel booking market and could possibly be exerting considerable market power over small-scale hotels; and might restrict small-scale hotels' ability to market rooms at lower prices. Some small-scale hotels indicated to the Council at the interviews that they relied on the OTAs for a high proportion of their

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<sup>1</sup> The existing clauses require accommodation providers in Hong Kong to always give the Three OTAs the same or better terms as those they offer in all other sales channels as regards room prices ("wide price parity"), room conditions ("wide conditions parity") and/or room availability ("room availability parity").

<sup>2</sup> See [https://www.consumer.org.hk/ws\\_en/competition\\_issues/reports/2016/online-retail.html](https://www.consumer.org.hk/ws_en/competition_issues/reports/2016/online-retail.html).

bookings and the OTAs had some influence on their pricing. They intimated that some OTAs required best available rate (BAR) contracts from the hotels preventing other OTAs or the hotels themselves from displaying lower prices online. The Council urged the related authorities including the Commission to closely monitor how online platforms exercise their growing market power and to consider remedies for problems found.

5. Having considered the competition concerns of the potential effects of lessening competition among market players and depriving consumers of the benefits of effective competition in the travel industry as stated in the Council's Report and in the Consultation Paper, as well as the implications of the Proposed Commitments<sup>3</sup>, on the whole, the Council supports in principle the Commission's proposed acceptance of the Proposed Commitments. Besides, the Council sets forth its comments on individual issues as follows:

#### *Exemptions to the Proposed Commitments*

6. It is noted that the Proposed Commitments have expressly excluded specific types of bookings, namely managed, opaque and package bookings. It is also understood that such exemptions are made on the basis that the relevant bookings have particular product characteristics which the Commission finds justifiable to be treated differently from normal standalone accommodation bookings. Given that package bookings are becoming more popular in Hong Kong in recent years, and that the Consultation Paper did not provide further details for the aforesaid exemption, the Council considers it beneficial to consumers if the Commission would clarify the rationale behind and that consumer interests would not be compromised by such exemption.

#### *Effective period*

7. With regard to the timeframe, it is noted that the Proposed Commitments will remain in force for a period of five years from the implementation date after the Commission accepts the commitments. The Council considers that the Commission should keep reviewing the commitments to ensure they are fulfilled by the Three OTAs and the situation when it is approaching the end of the effective period so as to consider the necessity of extending the effective period or to investigate whether there should be other means to address the relevant potentially anti-competition terms.

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<sup>3</sup> In response to the Commission's investigation, the Three OTAs have offered commitments to remove the clauses of concern in their existing and future contracts with accommodation providers. The Commission considers that the proposed commitments are appropriate to address its concerns, and it therefore proposed to accept them.

### *Scope of OTAs under investigation*

8. The Council noted from the Consultation Paper that Booking.com, Expedia.com and Trip.com were three of the OTA websites that the Commission has investigated and proposed to accept their commitments. It is, however, not presented in detail in the Consultation Paper the scope of the OTAs that the Commission has investigated. For instance, apart from the Three OTAs, the Council is aware of other OTAs operating in Hong Kong. Also, some hotel booking sites, meta-search engines and short-term rental sites also provide accommodation booking services to consumers. To strike a balance between maintaining confidentiality for investigation and public interests, the Council is of the view that the Commission should clarify whether its investigation has covered all OTAs and booking sites which provide similar services; and if yes, whether the Commission is aware of similar anti-competitive conducts on the part of other OTAs and booking sites relating to the terms in their agreements with accommodation providers in Hong Kong.

### *Other anti-competitive conducts / trade malpractices discovered*

9. Save for the Three OTAs contractually requiring the accommodation providers to provide “wide price parity”, “wide conditions parity”, and “room availability parity” (as defined in the Consultation Paper) in favour of the Three OTAs, the Council seeks the Commission’s advice on whether it has spotted other anti-competitive conducts, trade malpractices and/or related issues on the part of OTAs, hotel booking sites and/or price comparison sites in Hong Kong.

10. In August 2016, the Council published a survey report<sup>4</sup> in its CHOICE magazine which revealed that 5 of the 8 hotel booking websites surveyed provided the lowest price guarantees, however, these websites imposed many restrictions in their terms and conditions such as eligibility and valid period. For instance, the lowest price guarantee was only available for booking of exact matches in all stipulated terms, including the same hotel, room type, bed type, accommodation date, payment arrangement, etc. These stringent restrictions could make a successful claim a daunting task to consumers. In another CHOICE magazine survey report<sup>5</sup> published in March 2019, the Council raised questions about misleading practices in the way some price comparison websites display the prices. The Council’s survey found that the “cheapest” airfares shortlisted by such websites could vary by nearly a double for the same flight. Also, the displayed prices on

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<sup>4</sup> See [https://www.consumer.org.hk/ws\\_en/news/press/478/hotel-booking-sites.html](https://www.consumer.org.hk/ws_en/news/press/478/hotel-booking-sites.html).

<sup>5</sup> See [https://www.consumer.org.hk/ws\\_en/news/press/509/flight-search-comparison-sites.html](https://www.consumer.org.hk/ws_en/news/press/509/flight-search-comparison-sites.html).

such websites were found to differ from the actual purchase prices of the ticket-selling websites with the biggest variation from one comparison website as high as over 40%, thereby frustrating consumers' effort at comparing prices.

11. Examples of malpractices were also found in overseas. In June 2018, the Competition and Markets Authority of the United Kingdom took enforcement action against a number of hotel booking websites that it believed might be contravening certain consumer protection laws and provisions in the areas such as pressure selling, misleading discount claims, the effect that commission has on how hotels are ordered on sites, and hidden charges.

12. The Council is of the view that if trade practices issues were found in the Investigation, they should be flagged to the public and authorities concerned. In any case, the Council invites the Commission to examine the above-mentioned potential malpractices given that the paramount objective of competition policy is to make the market work better for consumers, viz. protecting and improving consumer welfare.

#### *Other types of service providers involved in the OTA industry*

13. Apart from accommodation providers, the businesses of OTAs may also involve agreements with other travel industry players as agents to resell their products and services. The Council urges the Commission to extend the scope of investigation to reviewing the OTA agreements with other types of service providers in Hong Kong, if that is not part of the Investigation.

#### *Necessary guardrails to strengthen the governance of OTAs*

14. The Council considers that strengthening the governance of OTAs would help improve the quality and development of the travel industry in Hong Kong. The Council suggests the Commission to put forward policy recommendations to the Travel Industry Authority being set up to formulate practice guidelines governing OTAs, among others, to observe and comply with the Competition Ordinance (the Ordinance) and do business with good trade practices. For instances, providing clear and accurate information on product/service descriptions and prices, and bringing transparency on the effect of the benefits the respective OTAs received from product/service providers on search results.

#### *Other industries*

15. While the Council considers the current Investigation has set up a good reference

for other industries, the Council supports the Commission to look into any similar potential contravention of the Ordinance in other industries going forward.

*Conclusion*

16. In view of the Council's comments as mentioned above, the Commission is recommended to conduct more investigations and provide additional insights to the public as far as possible in order to ensure that the interests of consumers can be adequately safeguarded.