15 December 2014: Online hotel booking sector

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Booking.com has proposed to the Autorité de la concurrence
to remove the so-called “pricing parity clause” obliging hotels
to grant it pricing conditions that are at least as favorable as those granted to the other online platforms

Hotels can now place booking.com in competition with the other platforms ;
this will guarantee future reductions of the level of the commission rates

> Version française

In brief

Within the scope of a procedure initiated before the *Autorité de la concurrence* by the French main hotel unions[1] , Booking.com proposes to remove the pricing parity clause which forbids hotels which use the services provided by Booking to offer rooms at a lower price on the other competing online booking platforms.

The commitments proposed should enable the hotels referenced on booking.com to be free to propose rooms at different prices according to the platform used. They may be able to vary the prices depending on the conditions applied to them.

Booking.com proposes to extend that commitment to all EEA countries. Seven competition authorities in Europe (in France, Germany, Sweden, UK, Italy, Austria, Ireland) have opened cases concerning online booking platforms. Under the aegis of the European Commission, national authorities have set up closed cooperation in order to harmonize the handling of these issues. France, Sweden and Italy have led the way in this cooperation. The *Autorité de la concurrence* has thus worked closely with its Swedish and Italian counterparts as well as with the European Commission during the negotiations with Booking.com.

The *Autorité de la concurrence*, like its Swedish and Italian counterparts, has launched today a consultation (market test) with stakeholders in the sector to check if the proposed commitments are adequate to address the competition concerns identified.

70% of rooms booked via the internet are made through online booking platforms[2]

The sale of nights via internet experienced remarkable increase over the last decade. Today, almost all hotel guests (93%[3]) use the internet to find an hotel. The hotel booking platforms (Booking.com, Expedia, HRS being the three main

sites for French hotel bookings), serve as intermediaries between clients (tourists, business travelers) and hotels.

In Europe, these represent the main channel for online bookings, accounting for about 70% of online hotel bookings, the remaining 30% being bookings made directly from hotel websites. For an hotel, especially in France, the world's leading tourist destination, it is essential to be present on these platforms: they ensure great visibility and are used by Internet users all over the world. If a hotel does not subscribe to such platforms, it risks losing customers to the benefit of its competitors.

Among these websites, Booking.com is a major player in the market. It holds a leadership position and owes on the French market a particularly strong position in terms of visits and at a lesser extent in terms of online bookings. Out of the 17 000 French hotels, nearly three-quarters are referenced on its site.

An economic model that protects the investments made by the portals

The development of reservation portals constitutes remarkable progress for consumers as it enables them to research, compare and book hotels on the same site, benefiting from the information available in their own language, as well as from comments by other hotel clients and photographs. This has increased competition between hotels while enabling them to achieve visibility throughout the world, enabling them to dispense with the traditional tourist guides and travel agencies. On the other hand, these platforms, and especially booking.com, deduct commission from the hotelier that is proportional to the cost of the reservation[4].

In order to protect the heavy investment made by these platforms to render hotels visible on the web (especially enabling their listing on search engines such as Google) – which the hotels could not afford on their own – the sites require hoteliers to comply with a pricing parity clause. This clause prevents consumers from finding the hotel room on the portal and then dealing directly with the hotel to confirm their reservation at a lower price.

Hotel unions have denounced the parity clauses with which they are obliged to comply in order to be referenced on booking.com

Hotel unions have accused the online hotel booking platforms - and Booking.com in particular - of subjecting hotels to compliance with so-called "parity" clauses. Under these clauses, online platforms require hotels to make similar (or at least less favourable) offers of room prices for number of nights stayed and other conditions (reservation conditions, whether or not breakfast is included, etc.) to those offered on competing portals as well as through other distribution channels (on and off line), including the hotel's own distribution channels (its internet site, telephone number, e-mail, the hotel reservation desk, etc.). According to the trade unions, hotels are thus prevented from competing on the reservation platforms. Since these clauses are applied on all platforms, hotels find themselves forced to agree to identical trading conditions. As an example, if a hotel offers a room at €100 a night on booking.com, it will be forced to offer a night at the same price on the Expedia and HRS sites.

The competition concerns: sluggish competition between platforms and risk of hindering new booking platforms to enter the market

The implementation of parity clauses may have anti-competitive effects. It is likely to reduce competition between booking.com and its competing platforms. In fact, whatever the level of the commission rate charged by booking.com, hotels are obliged to grant it room rates, the number of rooms available for booking and terms and conditions of sale that are as favorable as those to be found on competing platforms.

Furthermore, parity clauses may lead to the foreclosure of smaller platforms or those that have just entered the online booking market. Even when lower commission rates are offered which are more attractive to hotels, these platforms can not differentiate in prices and offer cheaper room rates to customers.

The proposed commitments

In response to the competition concerns expressed by the *Autorité*, booking.com

has approached the investigations service to propose commitments. The commitments proposal are currently subject to consultation (market test). Essentially booking.com is undertaking to remove the pricing parity clause from its contracts which oblige hotels to offer booking.com conditions that are, at least as favorable as those offered on competing platforms. Booking.com has further offered to extend this commitment to all the EEA countries. Thanks to this commitment, hotels will enable competition between booking platforms and thus allow the cost of commission, and ultimately room rates, to fall. These commitments should therefore benefit both hotels and consumers.

While increasing competition between reservations platforms, the proposed commitments guarantee the viability of their economic model while maintaining parity with respect to the hotel booking channels. A balanced solution is thus proposed, providing an impetus to competition in the market in order to bring down prices while preserving the existing efficiency gains.

In order to check the relevance of this proposal, the Autorité de la concurrence is launching a market test to gather the observations of the stakeholders in the sector, namely the hoteliers, competing sites, meta-search sites, consumers, etc.

The following steps of the procedure

Once the market test has been completed, the *Autorité's* college will convene a session to hear the parties and examine the observations formulated by third parties. Where applicable, the Autorité may require such commitments to be amended or supplemented then, once the commitments have been made compulsory, the proceedings will be closed. Should the Autorité find that the commitments, even where amended, remain unsatisfactory, it will resume the standard litigation procedure

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The *Autorité* keeps investigating the Expedia and HRS platforms, also covered by the complaint lodged by the hotels.

[1] The trade unions in question are: Union des Métiers and des Industries de l'Hôtellerie (UMIH), Groupement National des Chaînes Hôtelières (GNC),

Confédération des Professionnels Indépendants de l'Hôtellerie (CPIH), Syndicat National des Hôteliers, Restaurateurs, Cafetiers and Traiteurs (SYNHORCAT), Fédération Autonome Générale de l'Industrie Hôtelière Touristique (FAGIHT). The Ministry of the Economy also requested the Autorité for its opinion.
[2] Source: Phocuswright Europe.
[3] Source: Coach Omnium.
[4] Average commission amounts to between 10% and 30% of the retail price, inclusive of tax, depending on the platform in question and the chosen model (payment at the time of the reservation or payment at the time of the actual stay).

> Third interested parties have until 31 January 2015 inclusive to submit their comments on the proposed commitments

> All practical information is specified in the market test available here.

> The commitment proposal is available here.

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