21 April 2015: Online hotel booking sector

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The Autorité de la concurrence, in coordination with the European Commission and the Italian and Swedish authorities, has obtained particularly extensive commitments from Booking.com aiming to boost competition between online booking platforms and give hotels more freedom in commercial and pricing matters.

These commitments, undertaken for 5 years, will come into force from 1 July 2015 with an intermediary assessment planned for late 2016.



> Version française

In brief

Within the scope of a procedure initiated before the Autorité de la concurrence by the main French hotel unions[1] and the Accor group, Booking.com commits to change its commercial practices. Booking.com indeed commits to amend the price parity clause and remove any clause imposing parity obligations in terms of the availability of rooms or commercial conditions. This is not only in relation to competing platforms but also hotels' direct offline channels as well as some of their online channels.

Hotels may consequently freely apply lower prices and/or better commercial conditions on platforms in competition with Booking.com and allocate them larger quotas of rooms. In particular, they may also offer prices at a lower rate than those displayed on the Booking.com website via their offline sales channels (on-site bookings, by telephone, fax, email, instant messaging, physical sales outlets of travel agencies, etc.) as long as these prices are not published on the hotel's website. They may also offer prices at a lower rate than those displayed on the Booking.com website to customers who are members of loyalty programmes.

In addition, hotels may reserve a number of rooms greater than the number of rooms allocated to Booking.com to their direct sales channel (online or offline).

These commitments are undertaken for 5 years and come into force from 1 July 2015. These measures constitute a balanced package that meets the aims sought by the Autorité:
- they should provide an impetus to competition between Booking.com and competing OTAs, allowing the commissions levied on the hotels to fall;
- they also give hotels some countervailing power by considerably improving their commercial and pricing freedom;
- they maintain at the same time the OTAs' (Online travel agents) economic model which provides consumers with powerful research and comparison services.

The Autorité de la concurrence will carry out an assessment with the participation of both parties on the effectiveness of the commitments by January 1st 2017 at the latest.

This procedure takes place within the European context of enhanced cooperation. France, Sweden and Italy have worked together, in close coordination with the European Commission, to obtain similar commitments

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

The sale of nights via internet has experienced a remarkable increase over the last decade. Today, almost all hotel guests (93%[3]) use the internet to find a hotel, although the vast majority of reservations are made offline (66%[4]). Online booking platforms (Booking.com, Expedia, HRS being the three main sites for French hotel bookings) serve as intermediaries between clients (tourists, business travellers) and hotels.

The development of online booking platforms constitutes remarkable progress for consumers as it enables them to research, compare and book hotels on the same site, benefiting from information available in their own language, as well as from comments by other customers and photographs. This has increased competition between hotels while enabling them to achieve visibility throughout the world, thus 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[5] .

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 a 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 widely used by Internet users all over the world. Booking.com occupies a key position vis-à-vis French hoteliers. It holds the leadership position, with more than two thirds of the market of online bookings made on the platforms. Out of the 17,000 French hotels, a vast majority is referenced on its website.

Hotel unions and the Accor group have denounced the parity clauses with which hotels are obliged to comply in order to be referenced on Booking.com

Hotel unions and the Accor group 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 at least as favourable offers of room prices, number of nights

stayed and other conditions (booking conditions, whether or not breakfast is included, etc.) as those offered on competing platforms as well as through other distribution channels (on and off line), including the hotel's own distribution channels (website, telephone, e-mail, the hotel reservation desk, etc.). According to the trade unions, hotels are thus prevented from putting the booking platforms in competition with one another. Since these clauses are applied on all platforms, hotels find themselves forced to agree to identical prices per night, availability and conditions for the offer of rooms, from whence the term "parity clauses". 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 online platforms and risk of foreclosure of new entrants

The implementation of parity clauses may have anti-competitive effects. It is likely to reduce competition between Booking.com and its competing platforms. Indeed, whatever the level of the commission rate charged by Booking.com, hotels are obliged to grant it room rates, number of rooms available for booking and sales conditions that are as favourable as those granted to 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 cannot differentiate on price and offer customers cheaper room rates.

THE MAIN COMMITMENTS MADE BY BOOKING

Booking.com has substantially supplemented its initial commitment proposal in response to the main concerns raised during the market test and requests from the Autorité de la concurrence (the points marked in red are the improvements made).

1) The removal of any price parity obligation with regard to other OTAs

Hotels may henceforth offer lower prices than those displayed on Booking.com via other online booking platforms. As a result, they will be able to adapt their

prices in line with quality of services and/or level of commission rates provided by the booking platforms. Other platforms may display these lower prices on their own websites, comparison sites and search engines.

2) The removal of the price parity clause in relation to offline hotel channels and loyalty programmes

Hotels may propose lower prices than those available on Booking.com via their own direct offline channels (telephone, hotel reception, bilateral emails, travel agencies). However, these prices offered offline must not be published or marketed online to the public in general, namely on the internet (hotel website, comparison sites and search engines) or by means of mobile phone apps.

> Nonetheless, hotels may, for example, on the pages accessible to the public on their website, display qualitative information regarding the prices offered via their offline channels, such as "attractive prices", "good prices", etc. Furthermore, hotels will be allowed to send emails and SMS messages to consumers informing them of the prices offered via their offline channels.

Hotels will also be able to offer lower prices than those available on the Booking.com online site to clients who belong to a loyalty programme.

3) The removal of the obligations regarding parity of conditions

Hotels will also be completely free to offer consumers more favourable conditions than those offered on Booking.com via other platforms and via their own offline channels. This notably concerns breakfast or any other service (e.g. gym, spa, internet access, etc.) as well as booking conditions (e.g. cancellation).

4) The complete removal of any parity obligation in relation to availability

Hotels will be entirely free to manage their capacity and their availability in terms of rooms. They may allocate Booking.com a number of rooms that is less than that offered to other online platforms and/or via their own channels. Hotels will from now on have a certain leeway to negotiate with Booking.com insofar as they may favour online reservation platforms that offer them a better service and/or a lower commission rate by offering them a greater number of rooms. They may also reserve the sale of a certain number of rooms to their direct channels, in particular during the tourist season, when the hotel has no difficulty

in filling the rooms.

> Furthermore, Booking.com commits, when it is posting information on availability or number of rooms available for booking at an accommodation, to display the remark "on this/our site". This will avoid the possibility of consumers believing that no other room is available via any channel.

5) The possibility that hotels may contact prior customers

Booking.com commits not to prohibit hotels from making contact with prior customers, namely customers who have already stayed at the accommodation at least once, whatever the means of booking used for the previous stay, including via Booking. The concept of prior customer is defined in the broadest sense since customers who have stayed at one property that is part of a hotel chain or a community of hotels that have pooled their reservation services are deemed to be prior customers of all the accommodation in this chain of hotels or community of hotels.

6) Timetable for implementation and intermediary assessment clause

Booking.com commits to implement the commitments by 1 July 2015 at the latest in order to allow implementation as from the start of the approaching summer tourist season, for a duration of 5 years.

Moreover, Booking.com commits to submit a report to the Autorité de la concurrence on the implementation of the commitments with a view to drawing up an assessment by both parties on the effectiveness of the commitments made. This report should be duly submitted at the earliest on 1 July 2016 and at the latest on 1 October 2016. This report drawn up by Booking.com will be sent to the parties who made the referral. These parties may make observations on the report and produce their own quantitative and qualitative data in relation to the consequences of the implementation of these commitments. An adversarial hearing to which Booking.com and the parties who made the referral will be called will be organised for 1 January 2017 at the latest. This assessment led by the Autorité de la concurrence should make it possible to establish whether the implemented commitments have allowed competition to be boosted significantly and in particular whether they led to a fostered competition

between platforms, to a reduction in commission levels and a broadening of competitive offers.

The changes brought in by the commitments

What hotels can do	Before the commitments	After the commitments
Offer lower prices via other OTAs	Prohibited	Authorised
Offer consumers lower prices via their offline channels: -telephone -hotel reception desk -text messages -instant messaging (WhatsApp, Messenger, etc.) -emailing marketing campaign	Prohibited	Authorised
Offer lower prices to consumers provided that these room rates are not available to the public on the internet	Prohibited	Authorised
Offer lower prices under their loyalty programmes	At the discretion of Booking.com	Authorised
Communicate publicly the fact that they are offering “attractive” prices directly and via their loyalty programmes	Prohibited	Authorised
Grant more favourable commercial conditions to other OTAs	Prohibited	Authorised
Grant other OTAs a greater number of available rooms and/or reserve the sale thereof to their own channels for certain periods	Prohibited	Authorised

Contact prior customers of the hotel and the chain or community of hotels to which the hotel belongs	**Prohibited**	**Authorised**

[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).
[2] Source: Phocuswright Europe
[3] Source: Coach Omnium
[4] Source: Phocuswright Europe
[5] 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 booking or payment at the time of actual stay).

> ***See full text of Decision 15-D-06 of 21 April 2015 concerning practices implemented in the online hotel booking sector***

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> See decision of the Paris court of Appeal (8th October 2015)