9 February 2017: Hotel booking platforms

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The *Autorité de la concurrence* conducts an initial intermediary assessment of the commitments made by Booking.com.

The *Autorité* has not ruled out the possibility of issuing an opinion at its own initiative if the change in competition so requires, and is actively contributing to all of the actions taken at national and European level to more effectively oversee digital platforms' behaviour.

In keeping with the calendar laid down in *Autorité de la concurrence* Decision 15-D-06 of 21 April 2015 (**see press release of 21 April 2015**), which had challenged the parity clauses applied by Booking.com in its contracts with hoteliers, the *Autorité* has conducted an intermediary assessment of changes on the market as part of *inter partes* proceedings.

Today the *Autorité de la concurrence* is publishing the results of this intermediary assessment of the commitments made by Booking.com, the first such assessment of changes on the market, less than two years after the decision was published. Despite the occurrence of events unrelated to the commitments and which radically disrupted the performance of this assessment, it proved to be a useful exercise from which many lessons were learnt. More specifically, the information disclosed to the *Autorité* in the course of this assessment would suggest that some hoteliers today varied their prices according to the online hotel booking platforms used, practices formerly prohibited by the price parity clauses.

Where the situation so warrants, the commitment procedures allow the *Autorité de la concurrence* to take swift action in a sector. In its **Decision 15-D-06**, the *Autorité*

linked this framework to the performance of an intermediary assessment of the commitments made, one year after their implementation. This assessment was based on the contributions from Booking.com and the hoteliers, which were examined during a contradictory review point before the Board of the *Autorité* on 6 December 2016.

The assessment results held by the *Autorité* may suggest that more hoteliers are now varying their prices according to the online hotel booking platforms. This price difference is evidence of an initial change in the sector, though without any visible sign of increased competition among OTAs, based on other more qualitative or quantitative criteria (market share, quality of the offering, change in commission rates).

The *Autorité* points out, though, that the assessment it performed was radically disrupted by the occurrence of the terrorist attacks and the entry into force of the Macron Law. It is very difficult to distinguish the results of the commitments from the results of these two events. The terrorist attacks had a major impact on the tourism sector, making the 2015 and 2016 tourist seasons particularly unusual. Moreover, the entry into force of the Macron Law, one month after the commitments made by Booking.com took effect, radically changed the legal framework by cancelling any form of price parity clause in contract between hoteliers and online hotel booking platforms[1].

The intermediary assessment by the *Autorité* of the commitments made by Booking.com has proved useful, despite the above-mentioned limitations, and yielded many lessons. It has opened up fresh avenues of analysis for the *Autorité*, which should be investigated, within the best-suited framework, European or national. The *Autorité* has noted hoteliers' continued dissatisfaction, expressed in the assessment, with the behaviour of Booking.com and, more generally, with the play of competition in the sector.

The *Autorité* will remain particularly vigilant as to the state of competition in the sector, and has not ruled out the possibility of issuing an opinion at its own initiative if the change in competition so requires. It plays an active role in the European Working Group on the sector, which is expected to release its

findings in the coming weeks, and contributes to all of the action taken at national and European level to more effectively oversee digital platforms' behaviour.

Under the auspices of the European Commission, the French *Autorité de la concurrence*, along with the nine other European competition authorities[2], is currently assessing the effects of the various solutions introduced in the different European countries with regard to online hotel bookings. The working group sent questionnaires to the various industry players, hoteliers, online booking platforms, "meta-search engines", etc. using a consistent methodology so that the various solutions could be compared.

The working group's findings should be released in the coming weeks. They will provide input for the competition authorities' analyses and initiatives in this sector at national and community level. Against this backdrop, an exchange of thoughts between the authorities in the European Network Competition, involving the European Commission and the leaders of the national competition agencies, is underway to define the best option for these competition issues.

Moreover, the *Autorité* has opened a sector-specific inquiry into the online advertising sector, in which it will investigate certain common issues concerning algorithms and the interpretation of the results.

Lastly, the *Autorité* will pay particular attention to ensure that consumers can make enlightened choices and receive honest information from online booking platforms that does not distort the competition among hotels. In this respect, it notes that hotel booking platforms and digital platforms in general now ensure that their action lies within the framework of the Digital Republic Bill No. 2016-1321 (*loi pour une république numérique*) adopted on 7 October last, which obliges them to be honest with consumers about their ranking criteria. This example shows the complementarity of the work of the legislator and that of the *Autorité de la concurrence*, which allows a case-by-case analysis.

Through its work in both litigation and in a consultative capacity, the *Autorité* actively contributes to more effectively identifying the problems and competition issues specific to digital technology, of which online hotel booking platforms are an example.
For some years now, the *Autorité* has used its consultative tools and its litigation powers to help improve understanding of how digital platforms work, and facilitate the detection and sanctioning of any anti-competitive practices used in the sector, which could be detrimental to both the proper operation of the markets and consumers' interest.

On the consultative level, the *Autorité* has already examined the competitive situation of the online advertising sector in its Opinion No. 10-A-29 of 14 December 2010. The *Autorité* has also published two sector-specific studies in collaboration with other European competition authorities. The first of these, in December 2014, was conducted jointly with the CMA and addressed the economic analysis of open and closed systems. It analysed the competition among ecosystems, a common type of competition in certain digital sectors. The second study, published in May 2016, was conducted jointly with the Bundeskartellamt. It addressed data and its importance for the application of competition law. Following on from this publication, the *Autorité* decided in May 2016 to issue an opinion at its own initiative in order to analyse the conditions in which data is used in the online advertising sector. In so doing, it contributes to the current debate on the preponderant economic role of "digital platforms".

In the litigation field, the *Autorité de la concurrence* issued a decision in June 2010 on the practices employed in the online advertising sector. The combined use of urgent interim measures[3], which allow injunctions to be pronounced swiftly when the urgency of the situation so requires, and commitments[4] had allowed the *Autorité de la concurrence* to take swift action in this sector. The decision to use commitments also enabled the *Autorité* to step in quickly in the online hotel bookings sector in April 2015. In so doing, it obtained changes in the contractual conditions between the Booking.com hotel booking platform and its hotelier partners.

> **See the intermediary assessment of the commitments made by Booking.com** (in French)

[1] Concerning the price parity clauses, the commitments made by Booking.com gave hotels the possibility of offering lower prices on platforms in competition with Booking.com, as well as on their direct off-line channels (phone, e-mail, instant messaging, bricks-and-mortar travel agencies, etc.) but not on their website.

[2] The competition authorities of the following European Union Member States are taking part in the exercise: Germany, Belgium, France, Hungary, Ireland, Italy, the Netherlands, the Czech Republic, the United Kingdom and Sweden.

[3] *Autorité de la concurrence* **Decision No. 10-MC-01** of 30 June 2010 concerning the request for urgent interim measures, submitted by the Navx company.

[4] *Autorité de la concurrence* **Decision No. 10-D-30** of 28 October 2010 concerning practices applied in the online advertising sector.

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