

Proposed Commitments by online travel agents – Questions and Answers

1. What are parity clauses and how do they work in the accommodation bookings market?

Parity clauses, also known as most-favoured-nation (MFN) clauses, are terms which may apply in the contract between an online travel agent (OTA) and an accommodation provider.

Accommodation providers enter into contracts with OTAs to enroll on the OTAs' platforms, and the OTAs then sell rooms on behalf of the providers. The accommodation providers set the room prices to be displayed to consumers on the OTAs' platforms and pay the OTAs an agreed commission for each sale.

The parity clauses involved in this case are as follows:

- **Wide price parity** has the effect that the accommodation provider always has to give the OTA the same or better price as the prices it offers or applies across all other sales channels (including the accommodation provider's own offline sales channels and other OTA platforms).
- **Wide conditions parity** has the effect that the accommodation provider always has to give the OTA the same or better terms and conditions as those it offers or applies across all other sales channels (including the accommodation provider's own offline sales channels and other OTA platforms).
- **Room availability parity** has the effect that the accommodation provider always has to give the OTA the same or better room availability as those it offers or applies across all other sales channels.

2. What are the Competition Commission's (Commission) concerns with these parity clauses arising from its investigation?

The Commission's concerns with such parity clauses are that a Hong Kong accommodation provider is unlikely to give a better room price, better room conditions or better room availability to a new OTA or one which is willing to accept a lower commission from the accommodation provider on room sales. This is because the accommodation provider would then have to offer the better room rate/conditions/room availability to the OTA which benefits from the parity clause(s). In turn, this may have the potential effect of reducing the incentive of OTAs to offer lower commission rates in the first place. As a consequence, buyers of accommodation services, such as hotel guests, possibly may not benefit from lower and more varied room rates.

3. What are commitments under section 60 of the Competition Ordinance (Ordinance)?

Under section 60 of the Ordinance, the Commission may at any stage accept a commitment to take any action or refrain from taking any action from parties under investigation, where the Commission considers it appropriate to address its concerns about a possible contravention of a competition rule.

If the Commission accepts a commitment, it may agree to terminate its investigation and not to bring proceedings in the Competition Tribunal regarding the matters covered by the commitments, or terminate them if it has already brought proceedings. The Ordinance does not require parties offering commitments to make any admission of a contravention. If a person fails to comply with the commitment, the Commission may seek to enforce it in the Tribunal.

4. What commitments have been given by Expedia.com, Booking.com and Trip.com?

The relevant legal entities of Expedia.com, Booking.com and Trip.com have agreed to remove wide price parity, wide conditions parity and room availability parity terms (to the extent that they apply to other OTAs and offline channels) from their respective existing and future contracts with accommodation providers in Hong Kong.

5. What are the benefits of the commitments to consumers, Hong Kong accommodation providers and others?

Consumers

The intended purpose of the proposed commitments is to seek to ensure that there is competition on room prices, room conditions and room availability between each of the Parties as well as between the Parties and other OTAs. The Commission expects that the commitments may therefore result in consumers seeing greater competition and variation in, for example, Hong Kong hotel prices across different OTA platforms.

Hong Kong accommodation providers

Hong Kong accommodation providers will also have greater bargaining power in their negotiations with OTAs. Without the parity restrictions, accommodation providers could offer better rates or conditions or room availability to a particular OTA in return for a lower commission. This may in turn improve rates, conditions and/or room availability to the benefit of consumers.

New OTAs

A new OTA wishing to enter the market could also potentially benefit in these circumstances, in the sense that it could accept a lower commission from accommodation providers in return for better rates, conditions or room availability than those of its competitors. Consumers would in turn benefit from the entry of new OTAs into the market.

6. Why are commitments suitable in this case?

Commitments are considered suitable in this case because they appropriately address the concerns raised by the Commission's investigation. Commitments would ensure a speedy resolution to the concerns identified by the Commission and are considered to be a proportionate response in the circumstances.

7. How can I make comments on the commitments?

Interested parties are invited to submit representations on the proposed commitments to the Commission **no later than 18:00 on 14 April 2020** by one of the following means:

- a. *(Preferred)* Email to Consultation@compcomm.hk, with the case reference number EC/02NJ quoted in the subject line of the email
- b. Fax to +852 2522 4997
- c. Post to:

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

Representations received after the deadline will not be considered.
