

Expedia

Commitments pursuant to Section 60 of the Ordinance

Whereas:

- (1) The Commission is conducting an investigation into whether the terms and conditions in the bilateral agreements between certain market participants in the hospitality sector in Hong Kong (including Expedia) and Accommodations (particularly, conditions MFN, rate MFN and room availability MFN) contravene the first conduct rule in Section 6(1) of the Ordinance.
- (2) Expedia considers, and understands that the Commission considers, that it would be beneficial for the matter to be resolved in an expedient and effective manner by way of commitments pursuant to Section 60 of the Ordinance.
- (3) To this end, Expedia has offered the following commitments to the Commission pursuant to Section 60 of the Ordinance.

1. Definitions

- 1.1. The following terms in these commitments have the meanings set out below:
 - a) “**Accommodations**” means hotels, guests houses, bed and breakfast establishments and any other type of conventional commercial lodging located in Hong Kong, with which Expedia has entered into a contract, or negotiations in anticipation of signing a contract, in relation to a listing on Expedia Sites. Accommodation has a corresponding meaning;
 - b) “**Commission**” means the Hong Kong Competition Commission;
 - c) “**Expedia**” means Expedia Lodging Partner Services, Sàrl, on behalf of the entities in the Expedia group which have entered into any contracts with Accommodations (including Travelscape, LLC (d/b/a Expedia Travel); VacationSpot S.L.; Hotels.com, L.P.; and BEX Travel Asia Pte., Ltd.);
 - d) “**Expedia Sites**” means websites operated by Expedia group companies that offer online booking services for Accommodations and which, for the avoidance of doubt, excludes accommodation metasearch websites or vacation rental accommodation websites;
 - e) “**Hong Kong**” means the Hong Kong Special Administrative Region of the People’s Republic of China;
 - f) “**managed booking**” means a booking made as part of a managed travel services umbrella agreement. Umbrella agreements are those offered by corporate managed travel agencies that offer comprehensive travel services to corporate customers;

- g) “**offline channel**” means a channel that does not involve the use of the internet, such as bookings made in person at an Accommodation’s reception, by telephoning an Accommodation, or at a bricks and mortar travel agency;
- h) “**opaque booking**” means a booking where the property name, and precise location are withheld from the guest making the booking until the guest has paid for the booking;
- i) “**Ordinance**” means the Competition Ordinance (Cap. 619);
- j) “**OTA**” or online travel agent means any online reservation service that is not controlled, directly or indirectly, by the Accommodation or the hotel chain (whether integrated or not) to which the Accommodation belongs;
- k) “**package booking**” means a booking made by a guest who also has booked or books another travel component such as a car-hire, airfare, rail ticket or other non-lodging component;
- l) “**published online**” means made available to the general public online by any means, including on mobile applications. In the case of rates, publication includes the display of the actual rates or sufficient detail for the consumer to calculate rates;
- m) “**marketed online**” means marketed to the general public online by any means, including on mobile applications. This definition does not include online marketing that is not aimed at the general public: it excludes in particular email, SMS and instant messaging communications;
- n) “**stand-alone, non-opaque and non-managed bookings**” means bookings that are not a (i) package booking, (ii) opaque booking or (iii) managed booking; and
- o) “**unpublished**” means not published online.

2. Commitments

Pursuant to Section 60 of the Ordinance, Expedia offers the following commitments to the Commission:

2.1. Rates:

- a) Expedia will not enter into or enforce obligations that require Accommodations to propose room rates on Expedia Sites that are equal to or lower than those offered on any other OTA.
- b) Expedia will not enter into or enforce obligations that prohibit Accommodations from offering room rates on offline channels that are equal to or lower than those offered on Expedia Sites, provided that these room rates are not published online or marketed online.

- c) Expedia will not enter into or enforce obligations that restrict the unpublished room rates that Accommodations are able to offer, provided that these are not marketed online.
- 2.2. Rooms:
- a) Expedia will not enter into or enforce obligations that require Accommodations to offer the same or a greater number of rooms, of any type, on Expedia Sites as those offered on any other OTA, or as is reserved for the Accommodation itself.
- 2.3. Terms and Conditions:
- a) Expedia will not enter into or enforce obligations that require Accommodations to propose the same or more favourable terms and conditions to consumers on Expedia Sites as those offered on any other OTA.
 - b) Expedia will not enter into or enforce obligations that prohibit Accommodations from offering on offline channels the same or more favourable terms and conditions to consumers as those offered on Expedia Sites, provided that these terms and conditions are not published online or marketed online.
 - c) Expedia will not enter into or enforce obligations that restrict the unpublished terms and conditions to consumers that Accommodations are able to offer, provided that these are not marketed online.

3. Termination of Commission's investigation

- 3.1. These commitments are offered by Expedia on the basis that, if the Commission accepts these commitments, the Commission:
- a) will terminate that part of its investigation that relates to the terms and conditions in Expedia's agreements with Accommodations located in Hong Kong, pursuant to Section 60(3) of the Ordinance; and
 - b) will not commence or continue its investigation, or bring proceedings in the Competition Tribunal, in relation to the matters to which these commitments relate, pursuant to Section 60(4) of the Ordinance.

4. No acknowledgment of contravention

- 4.1. In offering these commitments to the Commission, Expedia has not made any admission that it has acted in contravention of any competition rule of the Ordinance (or any other applicable laws or regulations), and nothing in these commitments shall be construed as being such an admission.

5. Hotel Bookings

- 5.1. These commitments shall apply to stand-alone, non-opaque and non-managed bookings of Accommodations located in Hong Kong made via Expedia Sites.

6. Transfer or Assignment

- 6.1. In the event that Expedia transfers or assigns any of its agreements with Accommodations to another company within its group, Expedia will ensure that these commitments shall continue to apply with respect those so transferred or assigned contracts.

7. Implementation

- 7.1. In implementing these commitments, Expedia shall take steps to amend its existing agreements with Accommodations as necessary for compliance with these commitments. Expedia shall communicate the amendment of such agreements to Accommodations within the timeframe set out in Clause 8.1 of these commitments below.
- 7.2. These commitments apply to the Expedia Sites, which comprise (1) the sites of Expedia's brands with Hong Kong consumer facing sites, namely Expedia (expedia.com.hk) and Hotels.com, and (2) the sites of brands Orbitz, Wotif, Ebookers, Cheaptickets, Travelocity, Lastminute.com Australia and New Zealand (<https://www.lastminute.co.nz/> and <https://www.lastminute.com.au/>) and Mr Jet Sweden (<https://www.mrjet.se/>), which do not have Hong Kong consumer facing sites.

8. Timeframe

- 8.1. Expedia will implement these commitments within 90 calendar days of the date Expedia receives notice of the Commission's acceptance of these commitments.
- 8.2. Expedia shall provide the Commission with a report on its implementation of these commitments within 120 calendar days of the date Expedia receives notice of the Commission's acceptance of these commitments.
- 8.3. Within 13 months after the initial report is provided by Expedia in compliance with Clause 8.2, and annually on a date 12 months thereafter, Expedia shall provide an annual compliance statement to the Commission, signed by an authorised officer of Expedia, confirming to the best of his/her knowledge, that Expedia continues to abide by its obligations set out in Clauses 2.1, 2.2 and 2.3 of these commitments in its contracts with Accommodations.

8.4. These commitments shall remain in force for a period of five years from the date of their initial implementation under Clause 8.1.

Signed by Expedia Lodging Partner Services, Sàrl
by its authorised representative

[Signed]

Name: [Signatory name]

Title:

Date:

May 7th, 2020