



Application of the EU competition rules in the digital tourism sector

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Applicable regulatory framework

EU Competition law: no specific rules for tourism sector



General EU competition rules apply:

Article 101 on restrictive agreements

Article 102 on abuse of a dominant position

Article 101

Prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices

which **may affect trade between Member States** and

which have as **their object or effect the prevention, restriction or distortion of competition** within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Exceptions exist (Art 101(3))

Article 102

Prohibits any **abuse by one or more undertakings of a dominant position** within the internal market or in a substantial part of it
in so far as it **may affect trade between Member States.**

May, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Hotel online booking investigations of the parity/MFN clause

Most favoured nation (MFN) clause

Hotel must give the OTA:

- room **prices**
- room **availability**, and
- booking & cancellation **conditions**

no less favourable than those it puts on any other sales channel (**online, offline, direct & indirect**).

Exceptions: hotel + OTA loyalty scheme discounts (hidden), corporate rates, offline travel agent rates.

All major OTAs use parity clauses.

Parity/MFN clause – the result



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Parity clause – Article 101(1)

Parity clause restricts inter-OTA competition, by eliminating room price + room availability as parameters of competition.

Disincentivises OTAs from competing on the price they charge to hotels: commission.

Foreclosure: new OTAs cannot attract consumers using lower room prices. No consumer base = unattractive to hotels.

The NCA cases – adopted decisions

UK

01/2014: OFT commitments decision against Booking.com, Expedia, IHG, IHL.

Found 'by object' restrictions on OTA's ability to discount the room price.

Imposed a right for OTAs and hotels to offer discounts to loyalty scheme customers.

09/2014: Decision annulled on appeal (procedural grounds).

DE

12/2013: BKartA prohibits HRS's parity clauses.

Clause infringes Article 101(1) 'by effect'.

01/2015: HRS decision upheld on appeal.

BKartA cases against Booking.com and Expedia ongoing.

The NCA cases - FR, IT, SE & others

12/2014: **FR, IT, SE** NCAs jointly market test commitments proposed by Booking.com. 'Close coordination' by the Commission.

The **FR, IT, SE** cases against Booking.com and Expedia are continuing. Expedia has begun settlement discussions.

Several **other NCAs** have opened investigations or are conducting informal or sector enquiries in the OTA sector.