

# HOTEL ONLINE BOOKING INVESTIGATION

## Case closure summary

### Issue

Suspected breaches of competition law involving alleged resale price maintenance ('RPM') arrangements between InterContinental Hotels Group plc ('IHG') and Hotel Inter-Continental London Limited and each of (i) Booking.com B.V. ('Booking.com') and its ultimate parent company priceline.com Incorporated; and (ii) Expedia, Inc ('Expedia') (together, the 'Parties'), relating to room-only hotel accommodation bookings at the Intercontinental London-Park Lane Hotel (the 'Investigation').

### Summary of work

1. In September 2010, the Office of Fair Trading ('OFT') opened an investigation into whether certain arrangements between hotels and online travel agents ('OTAs') infringed the Chapter I prohibition of the Competition Act 1998 (the 'Act') and/or Article 101(1) of the Treaty on the Functioning of the European Union ('TFEU').
2. In July 2012, the OFT issued a Statement of Objections alleging that the Parties had infringed the Chapter I prohibition and/or Article 101(1) TFEU in relation to the online offering of room-only hotel accommodation bookings by OTAs. The OFT alleged in the Statement of Objections that Booking.com and Expedia had each entered into separate arrangements with IHG that restricted the OTA's ability to discount the headline rate at which room-only hotel accommodation bookings were offered to consumers (the 'Discounting Restrictions', a form of RPM).
3. In August 2013, the Parties offered commitments under section 31A of the Act to address the OFT's competition concerns set out in the Statement of Objections. In January 2014, the OFT decided to accept commitments (the 'Commitments') from the Parties to remove restrictions on offering discounts from headline rates for hotel rooms in the UK subject to certain conditions (the

‘Commitments Decision’).<sup>1</sup> Having accepted the Commitments, the OFT closed the investigation in accordance with section 31B(2) of the Act.

4. On 26 September 2014, the Competition Appeal Tribunal (‘CAT’) handed down a judgment (the ‘Judgment’) which partly upheld an appeal by Skyscanner Limited (‘Skyscanner’) and quashed the Commitments Decision with a direction to ‘reconsider the matter in accordance with [the] Judgment’.<sup>2</sup> The CAT did not consider it appropriate to make any further directions. As a result of the Judgment, the Investigation was re-opened.
5. Since the date of the Judgment, there have been a number of developments in the hotel online booking sector, particularly with regard to retail most-favoured nation clauses (‘Retail MFNs’), sometimes also referred to as ‘rate parity’ obligations. Retail MFNs are provisions of an agreement between a hotel and an OTA under which a hotel is obliged to offer the same or a better price for a room on a particular OTA as the price offered on other OTAs or certain other sales channels, sometimes including the hotel itself. For the purposes of this summary, ‘wide Retail MFNs’ means contractual restrictions by which a hotel is obliged to offer the same or a better price for a room on a particular OTA as the price offered on other OTAs, and ‘narrow Retail MFNs’ means contractual restrictions by which a hotel is obliged to offer the same or a better price for a room on a particular OTA as the price offered on the hotel’s own online direct sales channels. The developments include the following:
  - Several competition authorities have launched investigations in relation to Booking.com’s and/or Expedia’s Retail MFNs and/or other parity restrictions.
  - On 21 April 2015, the competition authorities in France, Italy and Sweden each accepted commitments from Booking.com to amend its price, availability and booking conditions parity provisions with respect to other OTAs and certain other sales channels<sup>3</sup> (the ‘Booking.com Commitments’).<sup>4</sup>

---

<sup>1</sup> OFT (2014), [Hotel online booking: Decision to accept commitments to remove certain discounting restrictions for Online Travel Agents](#) (OFT1514dec).

<sup>2</sup> CAT 16 (2014), *Skyscanner Ltd v CMA*, paragraph 174.

<sup>3</sup> Availability parity is a requirement on a hotel to offer the same or greater number of rooms on an OTA as those offered via other OTAs or certain other sales channels. Booking conditions parity is a requirement on a hotel to offer the same or more favourable terms and conditions to consumers on an OTA as those offered via other OTAs or certain other sales channels.

<sup>4</sup> See, by way of example, the Swedish Competition Authority’s [decision](#) to accept commitments from Booking.com in relation to price, availability and booking conditions parity.

- Booking.com has amended the parity provisions in its agreements with hotels throughout Europe (including the UK), with effect from 1 July 2015 in line with the Booking.com Commitments.
  - Expedia has waived its parity provisions as to price, availability and booking conditions as applied throughout Europe (including the UK) so as to have a similar effect for its arrangements as the amendments made by Booking.com to its parity provisions with hotels throughout Europe, with effect from 1 August 2015.
6. As directed by the CAT, the Competition and Markets Authority ('CMA') has reconsidered the matter in accordance with the Judgment. In the light of the CAT's views, the CMA has taken a fresh look at the matter in order to determine whether to pursue the Investigation as an administrative priority. In doing so, the CMA has taken into account relevant information, including an internal assessment of the possible respective effects on competition and consumer welfare of the Discounting Restrictions and of the Retail MFNs (including in the light of the market developments noted above), discussions with certain other competition authorities investigating Retail MFNs in the same sector, and the views expressed by interested third parties after the matter was remitted to the CMA. In reaching this decision, the CMA also had careful regard to comments on its proposed closure from the Parties, Skyscanner and Skoosh International Ltd.
  7. Taking into account the matters set out above in the context of the CMA's prioritisation principles, the CMA has considered the strategic significance, impact, risks and resource implications of continuing the present investigation, and has decided that it is appropriate to close the Investigation on the grounds that it no longer constitutes an administrative priority. This decision does not amount to a decision or view as to whether a party acted illegally and no implication may be drawn that any party was acting illegally.
  8. The decision to close the Investigation does not affect any other action that the CMA may wish to take in relation to practices in this sector in the future. As noted above, Booking.com and Expedia have removed their wide Retail MFNs and certain other MFNs. The effect of these revised terms and the remaining wide and narrow Retail MFNs on competition and consumers are matters that the CMA intends to keep under review.
  9. The decision to close the Investigation should not be taken to imply that the CMA would not prioritise suspected RPM arrangements in the future. The CMA considers that RPM is a serious infringement and it will continue to investigate suspected RPM activity, as appropriate, and where doing so

meets the CMA's published administrative prioritisation principles.<sup>5</sup> The CMA considers that agreements and concerted practices between undertakings that directly or indirectly fix prices are among the most serious infringements of competition law.

**16 September 2015**

---

<sup>5</sup> [CMA Prioritisation Principles \(CMA16\)](#).