

Digital Comparison Tools Market Study:

Update Paper - Response form

1. Thank you for taking the time to respond to the questions in the Update Paper for our Market Study of Digital Comparison Tools (DCTs), published on our [website](#) on 28 March 2017.
2. Please download and save this form before completing it. Please submit your response by **5pm on Monday, 24 April 2017**, either by:
 - Email to: comparisontools@cma.gsi.gov.uk.
 - Or by post to: Digital Comparison Tools Market Study
Competition and Markets Authority
7th floor
Victoria House
37 Southampton Row
London WC1B 4AD
3. Please note:
 - You can choose which questions to respond to, but we ask all respondents to provide a small amount of background information at the start of this form. The boxes will 'expand' to accommodate long responses if required.
 - We are particularly keen to receive evidence in support of responses. If you are able to supply evidence please attach this with your response.
 - We intend to publish responses to our Update Paper in full. If you wish to submit information that you consider to be confidential, this should be indicated to us clearly and an explanation given as to why you consider it to be confidential.
 - The CMA may use the information you provide for the purposes of facilitating the exercise of any of its statutory functions. This may include the publication or disclosure of the information. Prior to publication or disclosure, in accordance with its statutory duties under Part 9 of the Enterprise Act 2002, the CMA will have regard to (among other considerations) the need to exclude, so far as is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if disclosed, would or might, in our opinion, significantly harm the individual's

interests or, as the case may be, the legitimate business interests of that business (confidential information). Further information about how the CMA will use information submitted during the Market Study can be found on our [website](#).

4. If you have any questions about our Market Study or this online form please contact the team at comparisontools@cma.gsi.gov.uk.

Your details

(Fields marked * are required)

Title*	[REDACTED]
--------	------------

Forename	[REDACTED]
----------	------------

Surname*	[REDACTED]
----------	------------

Email*	
--------	--

What is your role / profession*	Chief Executive, British Hospitality Association
---------------------------------	--

Are you representing yourself or an organisation?*	An organisation
--	-----------------

If you are representing yourself rather than an organisation would you be content for us to include your name when we publish your response?*	n/a
---	-----

If you are representing an organisation:

(a) What is the organisation's name?*	The British Hospitality Association ("BHA")
---------------------------------------	---

(b) Please could you briefly explain the role of your organisation, including the sectors in which it operates or has most interest?*	
---	--

This submission is made on behalf of the British Hospitality Association ("BHA") a representative body for the UK hospitality and tourism industry comprised of some 45,000 member-businesses, including hotels, serviced apartments, private rental schemes, private members' clubs, self-catering accommodation, restaurants, food service management companies, attractions, sport stadiums and other leisure outlets across the UK.

This submission deals specifically with issues relating to digital comparison tools ("DCTs") in relation to the hospitality industry. We refer in our responses below to online travel agencies ("OTAs") and metasearch engines ("MSEs") and adopt the definitions used by the CMA at paragraph 3.12 of the report.

We have previously provided a response to the questions in the CMA's Statement of Scope published on 29 September 2016. We have tried not to repeat the responses and examples of detrimental anti-competitive and misleading practices we gave in that document though

we remain of the view that they are highly relevant to the issues that the CMA is considering. In this response to the CMA's update we highlight the key concerns for the hospitality industry.

Consumers

1. Should we focus our attention on the consumer groups we identify in Chapter 5 (see paragraphs 5.82 to 5.95) and if not, what groups should we focus on?

In relation to online hotel bookings, we do not think that the issues in the market (for which, see below) can be dealt with simply by focusing on the specific consumer groups you have identified in Chapter 5. The online hotel booking marketplace suffers from a lack of competition and certain detrimental practices employed by OTAs (e.g. the use of most favoured nation clauses (“**MFNs**”), misleading pricing information etc.). These are, in our view, structural issues, which affect all consumers and which cannot be dealt with simply by focusing on specific consumer groups.

2. In which sectors do DCTs not currently play a major role but could in principle offer substantial benefits to consumers? Why have they not become established in these sectors?

n/a

3. How has the growing use of DCTs affected suppliers’ offers to consumers who do not use DCTs in our case study sectors and more broadly? What impact have DCTs had on suppliers’ ability to discriminate between active and inactive consumers? What are the implications for vulnerable consumers?

n/a

4. What factors, if any, have we missed that may be holding back consumers from using DCTs?

n/a

5. What, if anything, should be done about consumers' concerns about data sharing and the extent to which they feel in control?

n/a

6. What actions, if any, are needed to improve the way consumers use DCTs – including multi-homing and using DCTs' functionalities such as filtering and ranking?

There are three real issues relating to hospitality DCTs / OTAs / MSEs, which have a detrimental effect on consumers and which, in our view, require further consideration by the CMA.

1. Lack of competition

A small number of OTAs dominate the UK and European online hotel bookings marketplace. The same groups also have a significant number of the largest MSEs and travel services within their group. The market dominance of the OTAs enables them to impose contractual terms on hotels. In recent years this has led to the average commission charged increasing from c.5% to between 15% and 25% of the price and the imposition of MFNs. This has increased the price of hotel rooms to consumers. We deal with the issue of lack of competition in further detail in response to questions 10, 11 and 16 below.

2. Presentation of results

When consumers search for hotel rooms with an OTA, the results of that search are often presented in a way that can be, in our view, misleading. The two largest OTAs often do not in the first instance rank available hotel rooms according to objective criteria (e.g. price) but in accordance with internal criteria based on the potential profitability of the booking to the OTA itself. In our view, this can lead to consumers (who often have high levels of trust in OTAs) being misled.

Further, OTAs often present the price of available rooms as being "discounted". In reality, the "discount" is often not a discount as conventionally understood but represents the difference between the current price and the highest price at which that same room had been available in the previous month. We deal with the issue of the presentation of results in further detail in response to question 21 below.

3. Reviews

Fraudulent reviews, whether good or bad, can have a serious impact on how consumers choose hospitality venues. We deal with the issue of reviews in further detail in response to question 19 below.

Inputs to DCTs

7. Have we captured the range of issues that might prevent DCTs from operating effectively?

n/a

8. Do the issues identified materially affect DCTs' ability to operate effectively and deliver good consumer outcomes?

n/a

9. Are current or planned initiatives sufficient to address the issues found?

n/a

Competition

DCTs' market position and barriers to entry and expansion

10. What explains the strong position of a specific DCT in each of our case study sectors? What do DCTs do to grow their business in sectors where they appear to be relatively small compared to the leading DCT of the sector?

In the context of online hotel bookings, the largest OTAs were relatively early entrants to the market. Having achieved early market dominance, they have been able to maintain that position, often through the acquisition of new entrants. Once acquired, the new entrants tend to remain under separate branding but the hotels and prices offered on the OTA “brand” will often be similar, or the same as, the hotels and prices offered on another “brand” in the group. This gives the illusion of competition without any of the benefits that competition provides.

We have not seen any evidence in recent years of a small OTA being able to grow its business sufficiently to challenge the main players.

11. What are the barriers, if any, for DCTs to enter or expand into sectors where they currently do not provide comparison services or where they are currently relatively small?

In the context of online hotel bookings, the barriers to entry for new OTAs are significant.

First, there is no effective price competition in the market. Although the MFNs imposed on hotels are, in formal terms, “narrow”, the reality is that there is price parity across the market. This is because if a hotel wishes to offer a lower price on OTA B compared to OTA A (perhaps because of a lower commission on OTA B) it can only do so if it is willing to “undercut” the price offered on its own platform (as otherwise it would be in breach of the narrow MFN imposed by OTA A). Understandably, hotels are unwilling to impose higher prices on consumers who purchase rooms directly given that such direct sales do not attract a commission charge from an OTA.

OTAs also engage in other actions to enforce price parity. As the CMA will be aware, the large OTAs regularly monitor the price of hotel rooms across other OTAs. When they identify a lower price on a different platform, they have been known to respond by delisting or “dimming” (removing photographs) that hotel from their platform. The threat of such action, which can have a significant effect on a hotel’s business, has served to discourage hotels from taking advantage of the theoretical benefit of a narrow (as opposed to a wider) MFN.

The lack of price competition creates a significant barrier to entry to new players.

Second, the way in which consumers use OTAs creates a significant barrier to entry. Generally speaking, consumers looking for a hotel room start with a search engine (nearly always Google). The cost of appearing predominately on a Google search is significant and it is therefore only the largest OTAs that are able to afford to do this. The largest OTAs now dominate the search rankings on Google and significant investment would be required from a new entrant in order to change this.

As a result of the lack of competition identified above, hotels are required to accept MFN clauses and pay significant rates of commission (c.15%-25%) and consumers are required to pay higher prices for their rooms. From an industry perspective, the hardest-hit are

small and medium hotels or hotel chains. SMEs do not have the negotiating power of the larger hotel chains (which, in any event, are obliged to accept MFNs and pay significant sums in commission) and, accordingly, have no choice but to accept the high rates of commission charged by OTAs.

Agreements between DCTs and suppliers

12. What has been the impact of the removal of wide MFNs in the private motor insurance sector?

n/a

13. What has been the impact of narrow MFNs in the sectors where we have observed them (home insurance, private motor insurance, credit cards, broadband and flights)?

n/a

14. What is the commercial rationale for the non-brand bidding and negative matching agreements we have observed (in all of our case study sectors) and what is their commercial and competitive impact?

n/a

15. What is the commercial rationale for the non-resolicitation agreements we have observed (in home insurance and energy) and what is their commercial and competitive impact?

n/a

16. In which other sectors, if any, are (i) wide or narrow MFNs; (ii) non-brand bidding or negative matching; or (iii) non-resolicitation agreements in place? What impacts do they have in these sectors?

In the context of online hotel bookings, so-called “narrow” MFNs are in operation. In our view these are anti-competitive, harmful to the hotel industry and, most significantly, harmful to consumers.

As we have explained in our response to question 11 above, although the MFNs imposed on hotels are, in formal terms, “narrow”, the reality is that there is price parity across the market. This is because of: (i) the commercial unfeasibility of “undercutting” the price offered on a hotel’s own platform on a specific OTA; and (ii) the practices of the OTAs in response to competition (e.g. delisting and “dimming”).

From a consumer perspective, the use of narrow MFNs is, in our view, harmful. We say this for three reasons.

First, it creates an anti-competitive market whereby the largest OTAs are able to charge commission in the region of 15% - 25% of the price, causing prices to increase at the expense of consumers.

Second, narrow MFNs (as we explain in response to question 11 above) create a significant barrier of entry to new players. As a result, the market for online hotel bookings is highly concentrated without any real price competition between the OTAs.

Third, narrow MFNs compel hotels to offer the same prices on their own platforms, even though such bookings do not attract a commission charge from an OTA. As a result, consumers booking directly have to pay a much higher price than they would otherwise likely pay.

We are, of course, aware that the CMA is continuing to monitor the recent move in the industry from wide to narrow MFNs to see what impact (if any) it has on competition. For all the reasons stated above, we do not think the move will have any impact on the lack of price competition in the market. Indeed, we have yet to see evidence that it has done so. Given the nature of the market in online hotel bookings, and the dominance of a small number of OTAs, the imposition of narrow MFNs is, in our experience, economically identical to the imposition of wide MFNs.

17. Are there any other agreements in place that may affect the effectiveness of DCTs and/or the effectiveness of competition between DCTs (and competition between DCTs and other sales channels)?

n/a

Unbundling and hollowing out

18. How has the growth of DCTs affected product features and/or the product mix in our case study sectors over time? What specific evidence/examples indicate these changes?

n/a

19. How widespread is the use of product reviews and ratings on DCTs and what has been the impact, if any, of the use of these tools?

“Product” reviews are widespread in the hospitality industry (particularly in the areas of hotels and restaurants) and it has had a significant impact on restaurants in particular.

However, it remains the case that, despite the use of automated systems to detect misuse, fraudulent reviews can be found on hospitality-focused DCTs (particularly on MSEs). This has an obvious impact: a fraudulently bad review damages the supplier and a fraudulently good review can spoil a consumer’s meal or holiday.

In our view, MSEs should have some form of rapid response system, so that where a fraudulent review is identified, it can be dealt with immediately so as to prevent any further damage to consumers and suppliers.

20. What needs to be in place to prevent or mitigate any harmful impact of product unbundling or hollowing out and what can DCTs do about it?

n/a

Regulation

21. What are your views on the issues we list in Table 8.1 and at paragraphs 8.13 to 8.42 of Chapter 8 and how could they be addressed?

Excessive barrier to entry

In the area of online hotel bookings, we disagree that the existing regulatory regime is overly complex. Indeed, there is very little regulation in this space. There are significant barriers to entry in this market but they are not caused by regulatory factors, as we explain in response to question 11 above. The barriers to entry are caused by the lack of price competition in the market (driven by the dominance of a small number of OTAs and their effective imposition of price parity) and the high costs associated with search engine results.

Insufficient enforcement

We agree that there is a lack of effective enforcement. We have explained in some detail above the real issues that currently exist in the market: lack of competition, the misleading presentation of results and issues relating to online reviews.

We recognise that the scope of the CMA's work has been, of necessity, very broad. However, the hospitality industry is fundamentally different to the home insurance, credit card or energy markets, which are highly regulated with their own regulatory bodies. In our view, many of the problems we have identified have been caused not simply by insufficient enforcement but by a lack of regulation to enforce. Any concern about a "regulatory burden" is entirely misplaced in relation to online hotel bookings.

The applicable law (such as it is) is geared towards protecting consumers in individual consumer-business interactions. For example, the Consumer Protection from Unfair Trading Regulations 2008 ban unfair commercial practices (e.g. pressure selling, false limited offers etc). The Consumer Rights Act 2015 deals, in broad terms, with product quality, including digital content. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 set requirements for the provision of information and provide for consumer cancellation rights.

However, such statutory consumer protection is designed for individual consumer-business interactions. It does not deal with the systemic issues we have identified above, which cause real detriment to consumers and the hospitality industry.

In our view, self-regulation of the OTAs and MSEs is insufficient. The issues can only be dealt with by the CMA exercising its enforcement powers or by Parliament taking steps to legislate to ban some of the damaging practices that we currently see. In our view:

- The CMA needs to exercise its enforcement powers in relation to the lack of competition in the area of online hotel bookings. In particular, the CMA should consider what steps it can take in relation to narrow MFNs and other informal measures designed to ensure price parity in the market (we appreciate that this is currently being monitored). At present, this is restricting competition and causing real detriment to consumers through higher prices.
- Due to the lack of competition, commission rates are too high. This is causing real detriment to consumers through higher prices. Consumers are not aware of this. In our view, a more competitive market would lead to lower prices but, in any event, we think that the CMA should consider requiring OTAs to be more transparent with consumers about commission rates (by, for example, requiring OTAs to show a separate "price" for the hotel room and the commission charged).

- As we have explained in response to question 6 above, we have real concerns about the way in which search results are presented to consumers. The “default” results page does not usually rank hotel rooms according to objective criteria (e.g. price) but in accordance with internal criteria based on the potential profitability of the booking to the OTA itself. In our view, that can lead to consumers (who often have high levels of trust in OTAs) being misled. This practice should be prohibited unless OTAs and MSEs explain clearly and prominently (on the same website page as the rankings) to consumers the basis on which results are ranked.
- We are also concerned that consumers may be misled by hotel “ratings” on an OTA. Often, these are not “ratings” as conventionally understood by consumers (in that they represent a review of a hotel compared to certain criteria) but are driven by a hotel’s willingness and ability to pay for such a rating. In our view, that can lead to consumers (who often have high levels of trust in OTAs) being misled. A clear explanation of the criteria for ratings should be required and displayed on the same website page as the ratings.
- As we have also explained in response to question 6 above, we have concerns about the presentation of “discounts” on OTAs. In reality, the “discount” is often not a discount as conventionally understood but represents the difference between the current price and the highest price at which that same room had been available in the previous month. In our view, that can lead to consumers (who often have high levels of trust in OTAs) being misled. This practice should be prohibited (or, at the very least, OTAs should be required to explain to consumers the basis on which the “discount” is calculated).
- As we have also explained in response to question 19 above, MSEs should have some form of rapid response system so that where a fraudulent review is identified, it can be dealt with immediately so as to prevent any further damage to consumers and suppliers.

22. What is the balance between potential benefits and risks in introducing a cross-sector approach? What would be the most effective approach(es), and why?

n/a

23. How could a cross-sector approach interact with existing regulatory frameworks?

n/a

The future of DCTs

24. What future developments outlined in Chapter 9 are likely to have the greatest impact in driving engagement? If there are any important developments we have missed, what are they and why are they important?

Future technology will, of course, affect consumer engagement with DCTs, however, it is difficult to make predictions, other than in very general terms. To date it is clear that the digital marketplace in tourism is controlled by a very few platforms and this seems likely to continue or increase as the major players (Google amongst them) extend their activities in the tourist sector.

What is apparent is that greater engagement in a fair and competitive market can only be achieved if consumers are aware of how search actually works in practice and how it is paid for: in general DCTs are not impartial in providing search results and there are huge, invisible costs at each stage of search (advertising and commissions) paid for unwittingly by the consumer as room and restaurant prices increase to cover these costs.

We believe that consumers should be informed of these factors, if so, they will be far more likely to use a range of DCT platforms (using new and future technology) , as well as booking directly, thereby creating a fairer and more competitive market in which they can choose not only 'best price' but also additional, beneficial terms to suit their specific requirements when booking.

25. What future DCT-related technologies might affect or assist vulnerable consumers?

n/a

Other comments and further contact

We welcome submissions on any of the issues we address in our update paper from interested parties. We would particularly like to hear views, supported wherever possible by evidence, on the following themes if not already addressed above:

- a) What DCTs do and the benefits they can offer.
- b) Consumers' views on and use of DCTs.
- c) Inputs to DCTs.
- d) Competition between DCTs and between DCTs and the suppliers whose services they compare.
- e) Regulation of DCTs.
- f) The future of DCTs.
- g) The focus of the second part of the market study.

Do you have any other comments you would like to add?

Would you be willing for us to contact you to discuss your response?*
--

Yes

Thank you for taking the time to complete this form.

Please email it to: comparisontools@cma.gsi.gov.uk.

Or post it to:

**Digital Comparison Tools Market Study
Competition and Markets Authority
7th floor
Victoria House
37 Southampton Row
London
WC1B 4AD**