

[REDACTED]<sup>1</sup>

## INTRODUCTION

Widespread use of the internet by consumers means that digital routes are a key channel for hotel bookings, whether through OTAs or directly via hotels' own digital sites. However, the market dominance [REDACTED]<sup>2</sup> – means they are de facto gatekeepers to online bookings; enabling them, *inter alia*, to demand unfair contract terms from their hotel suppliers and intimidate hotels who would like to work with new market entrants or offer lower prices directly to consumers.

Additionally, OTAs also retain customers' information rather than passing it along to the hotel. This isolates and controls the customer relationship by preventing hotels from directly contacting guests before and after bookings, which results in a reduction in both service and competition. While hotels and SME hotel owners must devote investment to branding, renovation, staff, upkeep and improving the end customer experience, due to their large size, OTAs are able to channel their vast resources into marketing and advertising, focusing exclusively on the point at which the customer is at the point of purchase, without having to invest in the whole 'customer journey' (i.e. check in, hotel stay, service, dining and amenities, and check out).

Looking to the future, these developments will be exacerbated by the increase of instant booking options within DCTs/metasearch sites such as [REDACTED], which adds a further level of separation between consumers and hotels. By using market power to drive consumers to book through an intermediary and preventing them from booking rooms directly, these platforms are preventing customers from benefiting from the best deals available which they can only get if they book directly. As we outline in our answers, this will become increasingly relevant as complex algorithms are developed that scour the internet and arrive at pricing solutions in real time.

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## RESPONSE TO SPECIFIC QUESTIONS

### **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?**

In our view, consumers will benefit the most from improvements to the transparency of the business models and ranking methods used by OTAs, and we welcome the CMA's plans to consider this issue further.

#### *Ranking*

When we asked customers why they use OTAs, 82% said it was "to get the lowest price", so an OTA does its job if it helps guide consumers to the lowest price for a given location and class of hotel. Consumers also expect transparency about relationships between DCTs and suppliers and pricing, with trust in DCTs fairly high. They expect DCTs to display unbiased, organic hotel listings, with many assuming that the cheapest deals are shown first.

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<sup>1</sup> [REDACTED]

<sup>2</sup> [REDACTED]

However, the default search results displayed by OTAs are not ordered by price or geography, but rather by those ‘recommended’ by the OTA. The hotels that are ‘recommended’ by the OTAs are those which have paid extra commission (or given other preferential treatment) to the OTA, without clear and transparent disclosure of this on the OTA’s site. [§]. This may be a factor in the CMA’s finding in paragraph 5.60 of its Full Update Paper<sup>3</sup> that consumers aware of comparison sites thought that they offer recommendations based on what to choose.

Additionally, the CMA research suggests that where participants suggested that they did see bias in results, this was mitigated by the perception that they are in control, for instance could ignore results they viewed to be ‘sponsored’. Internal research suggests that even experienced users are unaware that all rankings are based on a commercial formula, not just those tagged at the top as ‘preferred’ or ‘advertisement’.

Furthermore, [§].

The basis of OTAs sort orders are not made clear to the customer. Consumers should be able to see not only the absolute costs of using the DCT (maybe as a “booking fee”) but also a clear explanation of how the default sort order is constructed, and why a listing is “recommended”. By comparison, [§].

#### *Discounts*

The CMA’s qualitative consumer research also showed that users were observed to pay attention to select information and offers, for instance only looking at the top few offers or the first page of a site. A common practice among OTAs is to display fictitious discounts. [§]. This cannot be and is not a discount as it does not relate to the hotel’s price for that given night, rather it misleads the consumer into believing they are getting a better deal.

A review<sup>4</sup> (published on 7th April 2017) of price comparison sites, including OTAs, by the European Commission’s Directorate for Justice and Consumer (DG JUST) identified some of these tactics used by OTAs such as showing different prices to what is actually available on the suppliers’ site and pressuring a consumer to book by falsely claiming that only a few rooms are available.

The Unfair Commercial Practices Directive – and its implementation in UK law – should provide protections for consumers. The UCPD was adopted in 2005 and transposed into UK law in 2008 through the Consumer Protection from Unfair Trading Regulations and Business Protection from Misleading Marketing Regulation. The UCPD covers misleading actions and misleading omissions, both of which appear to be relevant to the OTA practices outlined above. However, in practice only single instances of an infringement are dealt with, which fails to address the systemic nature of some of these practices.

We would like to see more consistent and rigorous enforcement (through mechanisms which are already readily available, such as the UCPD) to ensure OTAs are up front about the

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<sup>3</sup> <https://assets.publishing.service.gov.uk/media/58da7afce5274a06b000003c/dct-update-paper.pdf>

<sup>4</sup> European Commission press release on the results of its screening exercise of price comparison and travel booking websites, 7 April 2017, [http://europa.eu/rapid/press-release\\_IP-17-844\\_en.htm](http://europa.eu/rapid/press-release_IP-17-844_en.htm)

commercial relationships they have and the impact this has on the way they deliver services to the customer.

#### *Multi homing*

While we recognise that multi-homing is in theory beneficial for the consumer, in the online hotel booking sector the benefits are severely limited by the market dominance of [X], and by the effect of price parity clauses which these players enforce in the sector. We discuss these points in our answers to questions 10, 11 and 16.

#### *Filtering*

While we also consider that the use of functionalities such as filtering are beneficial to the consumer, in the case of OTAs, filtering by price will not turn up an effective list, again because of the extensive contractual requirement of price parity clauses in the sector, which we discuss in our answer to question 16, and the OTAs' preferred programmes which are purely based on the high direct and indirect commission rates charged.

### **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?**

While online hotel bookings were not considered as part of the case studies in the report, it should be noted that within this sector [X].

The emergence of OTAs should, in theory, have created a low-cost route to market for hotels, allowing them to reach customers around the world, at a lower cost than traditional travel agents or even in the direct channel. Low cost distribution coupled with the ability for consumers to compare hotels easily, should lower the barriers to entry for new hotels wishing to market themselves and level the playing field between large and small/independent hotel operators; all of which should benefit the consumer in terms of increased choice and lower prices

When online travel agents such as [X] first entered the market, this was arguably the case. However, as these groups have amassed substantial market power, their commissions have increased considerably – from around 5%, towards upwards of 20% or more of the total cost of a room booking. These commissions (direct and indirect) are now so large that they are fundamentally challenging the economics of operating a hotel. Small and independent operators have even less bargaining power compared to the larger hotel groups, however they have little choice but to use OTAs and pay the commissions – if they don't they will effectively be locked out of the online channel.

Further, while DCTs have proven popular amongst consumers for their convenience, they owe their position of strength in part to a lack of explanation of how they work, leading to a high number of consumers not fully understanding the breakdown of the cost they are bearing. Customers use DCTs because they believe they are getting the best deal but the costs of doing so are not made clear to them; customers do not see that if they spend £1,000 booking a hotel through an OTA, they are paying the OTA around £200 to £300 for the five minutes they are spending booking the hotel and, as a result, are only getting a hotel room worth £700-800.

**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?**

The hotel sector is highly fragmented – in Europe, 60% of hotels are independent and only 16% of rooms belong to the top five hotel companies<sup>5</sup>. However, there is a chronic lack of competition among OTAs [X]<sup>6 7</sup>.

[X]

Online channels have grown their share of the overall market with a 65% share of the global online travel in 2016, and this share continues to increase at a very fast pace. OTAs have grown faster than direct online channels. This is largely attributable to: the absence of hotels' ability to differentiate price between channels (or in some instances communicate such price differences to customers) and due to the ability of OTAs to collate commissions across many thousands of hotels and spend advertising funds on promoting only one brand (that of the OTA) and one message (a best price guarantee supported by a narrow MFN). This huge marketing spend – including through self-promotion on metasearch sites, coupled with contractual restrictions on hotels and an aggressive approach to new entrants to the market - has enabled the large OTAs to dominate the online experience.

[X]<sup>8</sup>

**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?**

We welcome the CMA's indication that it will explore the case for wide or narrow MFNs further in the next phase of the DCT study, and encourage the CMA to closely examine the online hotel booking sector as part of this further work.

These agreements are harmful to consumers, as we outline below.

*Impact of Narrow Most Favoured Nation Clauses (MFNs)*

[X] insist on clauses in their contracts with hotel groups, including [X], that give them parity with the hotel's own prices. We have seen that in this sector, narrow MFNs do replicate the effect of a wide MFN, and also serve to lessen competition from direct channels.

Once a hotel agrees to price parity with one OTA, for instance [X], it can only offer a cheaper price to another OTA, such as [X], if it undercuts the prices on its own channel – a decision that is neither logical or rational. The effect of this is to insert an artificial floor price in the market. Furthermore, as the online hotel booking sector is dominated [X] – as outlined above in answer to questions 10 and 11 - the inclusion of narrow MFNs by [X] results in price parity across almost the entire sector (89%). The use of narrow MFNs therefore has the same effect as wide MFNs: prices across the market are more-or-less identical. OTAs cannot offer a price advantage in relation to each other and are not able to compete in a meaningful way on

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<sup>5</sup> Source: Phocuswright European Travel Overview, December 2013

<sup>6</sup> [X]

<sup>7</sup> [X]

<sup>8</sup> <http://www.publications.parliament.uk/pa/ld201516/ldselect/lddeucom/129/129.pdf>

price, and as such consumers are prevented from benefitting from a genuinely competitive OTA market.

Additionally, the use of narrow MFNs negatively impacts on competition between hotels. As hotels are not able to offer a lower price on their direct channel than that of the OTA, even though the OTA price includes a significant commission, they are not able to price competitively. This means that OTAs can increase the cost of commission, thereby forcing a price increase on the hotel's direct channel and thus an increased cost to the consumer, without the threat of a competitive disadvantage.

In our view, it is therefore necessary for action to be taken on both wide and narrow MFNs. A ban on parity would drive intermediaries to act in the consumer interest and focus on value-added services that help consumers select the right hotel, rather than having their choices shaped for them by OTAs, which are principally focused on steering the customer to whichever hotel provides the largest commission.

This kind of action would remove some of the practices that have resulted from the dominance of the large intermediaries and help enable suppliers to connect directly with consumers, or strategically use intermediaries to help them do this. This would be a welcome levelling of the playing field for both hotels and smaller intermediaries. Competition on price, backed by consequences for those who seek to stifle competition (for example by enforcing algorithms that effectively ensure rate parity), would enable new players to enter the market with new business models and would put the onus of proof onto online intermediaries to prove their added value to the supply chain as consumers will have to pay extra for it, rather than it being an inevitable cost. Offline channels would also be put to the test for their efficiencies, rather than being tied in to the pricing set across channels and so suppliers, intermediaries and consumers would all be able to play a part in ensuring that the most efficient solutions are presented transparently.

The elimination of parity clauses would also free hotels to price more competitively in the direct channel, and therefore increase price competition further, whilst also helping focus competition on quality. For example, some hotel brands in France-- where parity has recently been banned -- have been able to offer consumers cheaper pricing through direct channels. We understand that various hotel brands moved as soon as they could to take advantage of the development of the law in France [§]. This has resulted in better pricing being available and displayed openly to consumers. Some other hotel operators have not done the same however, lest they risk retaliatory behaviour by the OTAs (as illustrated by the recent DG COMP report)

#### *Discrepancy in bargaining power*

[§] regularly "shop" hotels' pricing and alter the appearance of the hotel on their platforms if the hotel does not give them the best price, typically by moving the hotel down the sort order and/or removing it from [§] or "dimming" the hotel's placement [§]. This means that, whether a narrow MFN is in place or not, hotels are only able to offer a cheaper price to another OTA or via their direct channel if they face up to the consequences from [§] in an important distribution channel.

The House of Lords report on Online Platforms and the Digital Single Market provided this insight into the challenges faced by those smaller OTAs who challenge the more established OTA (at para 118)<sup>9</sup>:

[✂]

Additionally, some hotel brands' experience in France, where hotels can now choose to offer consumers cheaper prices through direct channels as a result of the ban on parity, tells a similar story. [✂]. Therefore, not only should the direct use of parity clauses – both wide and narrow – be prohibited, but the large OTAs should also be prevented from taking measures to bias the display of hotels depending on whether they have been given parity. If this is not the case, then hotels will continue to be penalised for not giving parity and a pattern of parity will return.

### *Freeriding*

We disagree with the CMA's view that narrow MFNs can deliver benefits to consumers by preventing freeriding on a DCTs' investment. [✂] we believe that this argument is flawed for several reasons:

1. As a point of principle, "freeriding" can only occur if an OTA chooses to be compensated by a highly profitable model whereby they receive huge commissions which are multiplied over a longer stay even though the OTA has done nothing to affect the longer stay. If an OTA was truly concerned about freeriding, it could switch its model to a "click-through" model whereby it was remunerated for the referral of the guest. This is a model that the OTAs are fully familiar with due to their sister companies operating in this precise way.
2. OTAs do not invest in marketing for particular hotels, but spend their vast marketing funds promoting their own OTA brand(s). We have previously calculated that large hotel brands such as ours spend around [✂] times as much money on marketing per hotel as [✂]. This is known as the "reverse billboard effect";
3. To the extent that OTAs do undertake any marketing for hotels, they are more than adequately compensated by the very high commission levels they charge;
4. OTAs actually rely on having the brand equity of known hotels (brands and leading independents) on their site as this gives their sites efficacy in the consumers' minds;
5. In the absence of rate parity, OTAs would be more competitive, for the reasons outlined above.

The European Commission's monitoring report of parity clauses published on 6 April 2017 found no evidence of freeriding in markets where narrow parity clauses were in use nor in markets where parity clauses have been prohibited by national law. The report also stated that 47% of hotels had not realised that new parity clauses had been introduced. Of the 53% of hotels that were aware of the changes, 79% did not change the prices they offered to different OTAs. Among the main reasons for this was that hotels did not see why they would treat OTAs differently, OTAs did not allow hotels to offer different prices and hotels were worried about being penalised by OTAs through retaliatory actions.<sup>10</sup>

### *DCTs credibility and business models*

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<sup>9</sup> Ibid.

<sup>10</sup> Point 39 - [http://ec.europa.eu/competition/ecn/hotel\\_monitoring\\_report\\_en.pdf](http://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf)

While we agree with the CMA’s initial view that narrow MFNs may help to preserve DCTs’ credibility and to sustain their business model, we believe that this is not in the consumer interest. OTAs are only able to attract consumers through their ability to offer prices at least as low as those available through direct channels. This is because OTAs are not currently focused on providing value added services that help consumers select the right hotel. A ban on parity would drive intermediaries towards this more value-added model, and therefore would increase innovation in the sector.

The CMA have also been told by at least one supplier and one DCT that narrow MFNs can help build consumer confidence where DCTs are not established in a market. However, we argue that in the online hotel booking sector, price parity is a barrier to new entrants to the market, rather than a benefit. We have gone into more detail on this in our answers to questions 10 and 11.

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

<b>Excessive barrier to entry</b>	Regulation is not the main barrier to entry for DCTs, but the market dominance of [redacted] which limit the ability of new entrants to join the market effectively. Please see question 11.
<b>Inconsistencies and lack of coordination</b>	<p>Aside from the issues with parity clauses, which we have outlined already, there are practices which are commonly employed by OTAs which we feel are unfair to customers and should be addressed through more consistent enforcement of consumer protection rules:</p> <ul style="list-style-type: none"> <li>• OTAs displaying ‘discounts’ when in fact they are misleadingly comparing the hotel’s actual price for that night and a more expensive nightly rate at some point around the booking night (typically thirty days), e.g. comparing that day’s price with the most expensive price 30 days prior to or following the night in question. To be clear, this cannot be and is not a discount, because it does not relate to the hotel’s offered price for that given night. Rather, it misleads the consumer into believing they are getting a deal which is entirely illusory. Indeed, rate parity contracts mean any site specific discounts are necessarily impossible, as other OTAs would demand the same rate.</li> <li>• Search orders being altered to promote hotels which have paid extra commissions to the OTA without clear and transparent disclosure. [redacted]</li> <li>• The default search results displayed by OTAs are not ordered by price or geography, but rather are those ‘recommended’ by the OTA. The basis of this ‘recommendation’ is not made clear to the customer. The fact it is heavily influenced by the commission paid by the OTA may be an unwelcome surprise to many consumers.</li> </ul>
<b>Too prescriptive and not future-proof</b>	We consider that regulation needs to evolve as technology evolves and consumer patterns change, such as the increasing shift to mobile.

<b>Insufficient enforcement</b>	As outlined in previous answers, we would like to see more consistent and rigorous enforcement to ensure OTAs are up front about the commercial relationships they have and the impact this has on the way they deliver services to the customer. The UCPD already exists within UK law and provides a framework for this to happen.
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**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?**

As Chapter 9 of the CMA’s update paper notes, the increasing trend in the proportion of mobile devices being used as a platform to access DCTs looks set to continue. Not only this, but they will increasingly influence the ways customers access additional services to compliment the primary product they are purchasing.

This is especially true for OTAs, which, according to research firm PhoCusWright<sup>11</sup>, “are investing heavily in mobile websites and apps and can service consumers via multiple devices throughout all phases of the travel process. This allows OTAs to be present not just in the dreaming, planning and booking stages, but also as travellers are in transit, checking and changing itineraries, reading reviews, sharing experiences, and choosing restaurant options, hotel accommodations, tours and activities”.

As mobile bookings increase, there will also be an increase in the potential market power of the handsets customers use. According to technology research firm Garner<sup>12</sup>, Android and iOS operating systems now account for a combined 99% of the worldwide smartphone operating system market. As of 2016, Android holds 86.2% of the market, up from 82.2% in 2015.

[✂]

While we welcome competition within the marketplace, it should be based on price and quality, and not on a company’s ability to monopolise customer interaction. Indeed, if [✂] continues to implement a travel strategy whereby it acts as an intermediary to the OTAs via mobile, or if it expands its own booking/trip services further, it will mean consumers become further removed from the service they are purchasing and it will further inflate prices by adding yet another layer of cost that is passed onto the consumer. We have already seen evidence of OTAs refusing to share basic customer information with the hotels they have booked (e.g. contact details), which prevents suppliers properly servicing their customers.

As noted in paragraph 9.8 of the CMA update paper, looking further ahead alternative interfaces such as voice recognition and automated systems have the potential to play a revolutionary role within the tourism and hospitality space.

Voice recognition will, as the technology evolves, allow customers to engage with a ‘robot travel agent’. Such a service could be a smorgasbord of different online providers or be done via a unique platform such as Amazon’s Alexa or Apple’s Siri. Instead of the user having to engage with a different interface or app for each stage of the booking process, voice

<sup>11</sup> [http://www.phocuswright.com/free\\_reports/online-travel-agencies-more-than-a-distribution-channel](http://www.phocuswright.com/free_reports/online-travel-agencies-more-than-a-distribution-channel)

<sup>12</sup> <http://www.gartner.com/newsroom/id/3415117>



recognition will allow hotels, flights, restaurants, taxis, etc. to all be booked simultaneously and coordinated in a central place. Clearly OTAs will wish to maximise the opportunity of this modern technology and the CMA should be mindful that this has the potential to further concentrate the power of the dominant OTAs.

As voice recognition evolves, artificial intelligence will also play an increasingly powerful role in the booking process. In this brave new world, it is perfectly conceivable that a customer asks for a two-week holiday in a specific location, and the 'robot travel agent' then outlines the best options to meet their preferences based on complex algorithms that analyse prices and reviews on a real-time basis, and ensuring that consumers are not aware of the competition that exists in the marketplace. Artificial intelligence has the potential to embolden the customer by creating wider competition and choice; however, the CMA should note that it can also create conditions for the most imperfect competition.

## **Annex A**

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[ENDS]