

## **PART 8 OF THE ENTERPRISE ACT 2002 (EA02)**

### **UNDERTAKING TO THE COMPETITION AND MARKETS AUTHORITY (CMA) UNDER SECTION 219 OF THE EA02 RELATING TO:**

#### **THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008**

Booking.com B V ("**Booking.com**") of Herengracht 597 Amsterdam 1017CE Netherlands

Voluntarily gives the following undertakings to the CMA under section 219 of the EA02.

For the avoidance of doubt these undertakings relate to the CMA's consumer law investigation into hotel booking sites, and do not amount to an admission that any person has infringed the law.

#### **UNDERTAKING**

In accordance with sections 219 and 219B of the EA02, Booking.com undertakes to the CMA, with effect from the relevant Effective Date:

- where applicable, not to continue or repeat any conduct which contravenes paragraphs 4 to 23 below;
- not to engage in such conduct in the course of its Hotel Business;
- not to consent to or connive in the carrying out of such conduct by a body corporate with which it has a special relationship (within the meaning of section 222(3) of the EA02); and
- to comply with the Enhanced Consumer Measures set out in paragraph 24 below.

#### ***Interpretation***

1. Defined terms are set out in **Schedule 1**. All references to time are to Greenwich Mean Time.
2. Each of the requirements of the undertakings apply wherever and in whatever format Booking.com makes search and booking of standalone Hotels to consumers available on the Website. This includes but is not limited to mobile, tablet and application-based formats of the Website.
3. The requirement to provide information Clearly would not be met where information that is provided in Non-Static Text materially alters or contradicts the meaning of information in Static Text.

### ***Disclosing the effect of Money Earned on Search Results***

4. To ensure that consumers are not misled about the effect of Money Earned by Booking.com on the Ranking of Search Results, and are able to distinguish between Guaranteed Slot Listings and other Listings on the Search Results page, Booking.com will take the steps set out at paragraphs 5 and 6.
5. If Money Earned by Booking.com may affect the Ranking of the Search Results being displayed to the consumer, then:
  - a. Booking.com must include an explanation that Money Earned may affect the Ranking of the Search Results in Clear and Prominent Static Text either:
    - i. on the same webpage, screen or equivalent as the Search Results; or
    - ii. on any webpage, screen or equivalent where a consumer can carry out a search for Hotels; or
    - iii. on a webpage, screen or equivalent presented during the period from when the consumer carries out a search for Hotels until immediately before the consumer is presented with the Search Results; and
  - b. if necessary, provide further details about how Money Earned may affect the Ranking via an appropriate Access Route.
6. Booking.com will ensure that Guaranteed Slot Listings are:
  - a. Clearly and Prominently labelled as such; and
  - b. differentiated from other Listings.

### ***Comparisons with prices in different circumstances***

7. To ensure that consumers are not misled by comparisons with prices in different circumstances (e.g. comparisons with prices for different Stay Dates) or with offers available elsewhere, Booking.com will take the steps set out at paragraphs 8 and 9.
8. When making a comparison between the Offer Price and another price payable in different circumstances Booking.com will not create the impression that the comparison shows a Discount. For example by:
  - a. Clearly and Prominently identifying and differentiating between the relevant features of the two (e.g. through permanent Static Text immediately adjacent to the comparison);
  - b. not presenting the comparison with a strike-through line or equivalent, unless Booking.com has Clearly and Prominently identified and differentiated between the two in accordance with paragraph 8(a) above;

- c. not accompanying the comparison with “% off”, “reduced”, or any equivalent wording or presentation, unless Booking.com has Clearly and Prominently identified and differentiated between the two in accordance with paragraph 8(a) above; and
  - d. not accompanying the comparison with specific value claims (e.g. “great value”) unless Booking.com has Clearly and Prominently identified and differentiated between the two in accordance with paragraph 8(a) above.
9. Where a Hotel offer is compared with another Hotel offer that is bookable on another site (e.g. on a Hotel provider’s website or another booking site), Booking.com will:
- a. Clearly and Prominently identify and differentiate between the two offers, including by Clearly and Prominently displaying the name of the Hotel provider or booking site in permanent Static Text immediately adjacent to the comparison;
  - b. Clearly provide details of the comparison offer e.g. via an Access Route; and
  - c. take appropriate steps to ensure the offer is genuinely available to book at the time the comparison is made and that the comparison does not become misleading in circumstances where the Hotel offer made elsewhere has changed; and
  - d. not create the impression that the comparison shows a Discount. For example, Booking.com will not use the messaging referred to under paragraphs 8(b) to (d) above, unless:
    - i. the comparison is made between offers with the same Stay Dates, comparable Room Types and comparable Booking Conditions; or
    - ii. Booking.com has Clearly and Prominently identified and differentiated between the relevant features of the two (e.g. through permanent Static Text immediately adjacent to the comparison).

### ***Discounts***

10. To ensure that price comparisons, that are presented as a Discount, represent a genuine saving for consumers, Booking.com will take the steps set out at paragraphs 11 to 13.
11. When showing a Discount, either set by Booking.com or the Accommodation Provider, Booking.com will provide details about what the Standard Rate Price refers to via an appropriate Access Route.
12. Where a Discount is set by Booking.com, Booking.com will:

- a. take all steps that are reasonably practicable to ensure that the Standard Rate Price used as a comparator is the price that a consumer would have genuinely had to pay in circumstances matching their Search Criteria; and
- b. when assessing whether a Standard Rate Price is genuinely payable, Booking.com will take into account the “*CTSI Guidance for traders on pricing practices*” and the sections of the “*UK Code of Non-broadcast Advertising and Direct & Promotional Marketing*” that relate to prices, as amended from time to time.<sup>1</sup>

13. Where the Discount is set by the Accommodation Provider, Booking.com will:

- a. refer the Accommodation Provider to the guidance, or an explanation of the guidance, described above in paragraph 12(b);
- b. put in place appropriate mechanisms to ensure that the Standard Rate Price is genuinely payable, such as audits or other technical means available to Booking.com; and
- c. take appropriate action to ensure compliance where the mechanism set out in paragraph 13(b) demonstrates that an Accommodation Provider’s Standard Rate Prices were not genuine prices.

### ***Displaying the Total Price***

14. To ensure that consumers are not misled about the amount they will have to pay, and that wherever a price is displayed the Total Price is displayed, Booking.com will take the steps set out in paragraph 15.

15. In particular, Booking.com must ensure that where:

- a. elements of the Total Price are calculable in a foreign currency, the approximate total must be calculated and included in the Total Price, and that an explanation of how the amount has been calculated (e.g. the currency exchange rate used) is provided, either via an appropriate Access Route or Clearly and Prominently, no later than the stage at which the consumer will complete their booking;
- b. Booking.com also displays a breakdown of the price, the Total Price is still displayed Clearly and Prominently next to the constituent elements;
- c. a consumer requests Search Results are ordered according to price, Search Results are ordered according to the Total Price. This will not prevent Search Results from being ordered according to non-Total Price where this is

---

<sup>1</sup> At the date of this undertaking, section 3 of the *UK Code of Non-broadcast Advertising and Direct & Promotional Marketing*.

specifically requested by the consumer and paragraph 14 above is complied with;

- d. a consumer requests that Search Results are ordered according to a combination of price together with another criteria (e.g. star rating, customer reviews), Booking.com will use the Total Price as the price element it uses to ascertain the order of the Search Results; and
- e. a consumer has selected optional extra products or services, thereafter Booking.com will include the cost of these in the price displayed to consumers.

***Statements about popularity and availability and price***

16. To ensure that consumers are not misled by statements about popularity and availability and price, Booking.com will take the steps set out at paragraphs 17 to 23.

*Popularity and availability*

17. Booking.com must ensure that statements made on the Website about the popularity and availability of destinations and / or Hotels must:

- a. be Clear;
- b. disclose the assumptions, limitations and qualifications that are relevant to the statement; and
- c. be substantiated by Booking.com's data.

18. In particular:

- a. if a statement is not based on real time data it must disclose the time period to which the statement relates (e.g. "in the last X minutes") in at least the same format, and as Clearly and Prominently, as that used to display the statement. For example, if the statement is displayed in permanent Static Text, the time period to which the statement relates must also be displayed by way of permanent Static Text;
- b. if statements about the number of users viewing or searching for a destination, Hotel or Room Type do not relate to the same destination, Hotel, Stay Dates or other Search Criteria (other than occupancy level) selected by the consumer then this must be explained in at least the same format, and as Clearly and Prominently, as that used to display the statement;
- c. statements about the availability of Hotels or Room Types for a destination must state in at least the same format, and as Clearly and Prominently, as that used to display the statement that this represents the availability on the Website; and

- d. statements about the number of available rooms in a Hotel must include any applicable qualifications (e.g. that the statement only applies to rooms available at a particular Offer Price and not to all rooms).

#### *Time limited offers*

- 19. Booking.com will take steps to ensure that it does not present an Offer Price as being time limited in circumstances where the Offer Price will continue to be made available after the expiry of the stated period, including but not limited to the steps set out in paragraph 20 below.
- 20. Booking.com will:
  - a. refer the Accommodation Provider that submits such Offer Price to the principles in paragraph 19 above; and
  - b. put in place appropriate mechanisms to ensure that the Offer Price will not continue to be available after the expiry of the stated period. Such mechanisms may include, but are not limited to, appropriate audit mechanism or other technical means available to Booking.com.
- 21. Booking.com will ensure that the presentation of non-time limited Offer Prices does not include countdown timers or other messages or graphics which imply there is a deadline after which the Offer Price will no longer be available.
- 22. Paragraph 19 does not prevent a previously time limited Offer Price from being available on the Website at a future time provided that:
  - a. the Offer Price was not presented as a unique offer that would not be repeated; and
  - b. a reasonable period of time has elapsed after the expiry of the stated time period.

#### *Sold-out Hotels*

- 23. Booking.com should not include sold-out Hotels in pre-determined Positions in Search Results. This does not prevent Booking.com from including sold-out Hotels in Search Results if:
  - a. absent the Ranking System specifically placing sold-out Hotels in pre-determined Positions, the Ranking System would ordinarily place that Hotel in the same Position or where this is not possible a substantially similar Position, based on the Search Criteria; or
  - b. where 23(a) is not possible, the Position of a sold-out Hotel is appropriate within the Search Results based on the Search Criteria; or
  - c. unless included in Search Results pursuant to paragraphs 23(a) or (b) above, sold-out Hotels only appear after all Listings that are available to book.

## **Enhanced Consumer Measures**

24. Booking.com will:

- a. ensure that all Major Changes to the Website (whether made manually or by the output of algorithms or other automated functions) are assessed by suitably qualified advisors for compliance with this undertaking. Where necessary, Booking.com will take appropriate steps to ensure compliance;
- b. produce a report to the CMA by 17:00 hours on 1 March 2020 on the implementation of paragraphs 4 to 23 of this undertaking. This report must include:
  - i. an explanation of the changes made to implement the undertakings (including changes made prior to giving these undertakings but which address the issues covered by them); and
  - ii. an explanation of how the undertakings and changes have been embedded in internal policies, guidance and training materials for employees, providing copies of such documents.
- c. produce a report to the CMA by 17:00 hours on 1 March 2021 that:
  - i. where Major Changes that affect the practices described in this undertaking have been made since the report provided under paragraph 24(b), provides the rationale for those changes and, where applicable, any supporting materials in relation to the changes, e.g. the results of relevant internal testing; and
  - ii. summarises the effectiveness of the audit mechanisms set out in paragraph 24(a), including an explanation on what steps have been taken to ensure compliance.
- d. Booking.com will, upon receipt of a written request by the CMA, produce a report to the CMA within one month explaining the steps taken by Booking.com to comply with paragraph 24(a) of this undertaking.

BY SIGNING THIS UNDERTAKING Booking.com IS AGREEING TO BE BOUND BY IT.

CONDUCT WHICH CONTRAVENES PARAGRAPHS 4 TO 23 ABOVE MAY CONSTITUTE A COMMUNITY INFRINGEMENT PURSUANT TO SECTION 212 OF THE EA02. IF HAVING SIGNED THIS DOCUMENT Booking.com BREACHES ANY OF THE ABOVE UNDERTAKING, IT IS AWARE THAT IT MAY BE THE SUBJECT OF AN APPLICATION TO THE COURT FOR AN ENFORCEMENT ORDER UNDER SECTION 215 OF THE EA02.

THE CMA WILL CONSIDER VARYING OR TERMINATING THE UNDERTAKING, EITHER UPON REQUEST FROM Booking.com OR UNDER THE CMA'S OWN INITIATIVE, WHERE THERE HAS BEEN A CHANGE OF CIRCUMSTANCES SUCH THAT THE UNDERTAKING IS NO LONGER APPROPRIATE IN DEALING WITH THE ISSUES IT WAS DESIGNED TO REMEDY (E.G. THE UNDERTAKING IS AFFECTED BY NEW LEGISLATION OR CHANGES IN MARKET CONDITIONS).

Signed on behalf of Booking.com B V by:



## Schedule 1: Definitions

Defined terms in this undertaking have the following meanings. Where applicable, the singular includes the plural and vice versa:

**Access Route** means a way for a user of the Website to access information, including but not limited to links, pop-ups and Hovertext.

**Accommodation Provider** means any business or entity making one or more Hotels available to book through the Website by consumers.

**Booking Conditions** means the non-price conditions on which a room is made available to a consumer, including but not limited to whether or not cancellation is available, and on what terms, and whether breakfast, early check-in or late check-out or other ancillary amenities are made available without an additional charge.

**Clear and Clearly** means information must be:

- a. clear;
- b. displayed in plain language;
- c. easily understandable;
- d. accurate; and
- e. not misleading, both by action or omission.

**Discount** means a reduction to the Standard Rate Price.

**Effective Date** means the date by which paragraphs 1-23 of these undertakings are to take effect, being 24:00 hours on 1 September 2019.

**Guaranteed Slot Listings** means information about a Hotel which is guaranteed to appear in a specific pre-determined Position on the Search Results page (e.g. in the top three slots on the Search Results page) solely as a result of Money Earned by Booking.com.

**Hovertext** means any text which is not permanently displayed on screen, but which becomes visible when a consumer hovers a cursor over a particular icon or part of a display.

**Hotel** means any separately listed lodging, including but not limited to hotels, hostels, bed and breakfasts, guest houses, vacation rentals, and holiday apartments.

**Hotel Business** means providing online search and standalone booking of Hotels. For the avoidance of doubt these undertakings do not apply where a consumer indicates they intend to search for and/or book a package holiday i.e. a combination of at least two different types of travel services for the purpose of the same trip or

holiday, such travel services including but not limited to the carriage of passengers, provision of accommodation, car rental or any other tourist service.

**Listing** means the information about Hotels presented in the Search Results on the Website.

**Major Changes** means changes to the presentation of information or services on the Website which fall within the scope of this undertaking under the following provisions and could affect compliance with this undertaking:

- a. paragraphs 4-6 (disclosing the effect of Money Earned by Booking.com on the Ranking of Search Results)
- b. paragraphs 7-9 (Comparisons with prices in different circumstances)
- c. paragraphs 10-13 (Discounts)
- d. paragraphs 14-15 (Total Price)
- e. paragraphs 16-23 (Statements about popularity, availability and price)

**Money Earned** means a payment (including additional payments) received by Booking.com, including but not limited to payments made by an Accommodation Provider or booking site, which may affect the Position of a Hotel or Hotels in Search Results.

**Non-Static Text** means text (or other information) which is not permanently or automatically displayed on the face of a webpage. For the avoidance of doubt this includes but is not limited to links, pop-ups and Hovertext.

**Offer Price** means a price for a specific Hotel, Room Type and Booking Conditions that is bookable on the Website.

**Position** means the place at which a Hotel appears in the Ranking.

**Prominent and Prominently** means information must be presented so that it:

- a. is noticeable to consumers as required by this undertaking;
- b. is in a font, size, colour and position to enable the consumer to easily identify, read and understand the information, including as compared with other information on the page; and
- c. does not require the user to take any action to access the information as required by this undertaking.

**Ranking** means the relative prominence given to a Hotel in the Search Results.

**Ranking System** means the system used by Booking.com to select and order Hotels and present Search Results.

**Room Type** means a category of room at a Hotel where more than one category is available at different prices and with differing sizes, occupancy levels, amenities, views, and/or levels of comfort.

**Search Criteria** means the parameters of a consumer's search on the Website, including but not limited to destination, Stay Dates, Room Types, Booking Conditions, occupancy level.

**Search Results** means the list of Hotels presented on the Website after consumers input their search criteria (e.g. one or more of destination, Stay Dates, Room Type, Booking Conditions and occupancy level).

**Standard Rate Price** means a genuinely available price for a Hotel matching all of the consumer's Search Criteria, including but not limited to the destination, Stay Dates, Room Type, Booking Conditions and occupancy level searched for.

**Static Text** means text (or other information) which is automatically displayed on the face of the Website without the need for any triggering action from the consumer.

**Stay Dates** means the date or dates the consumer indicates he or she requires when using the search function on the Website.

**Total Price** means the total price payable by the consumer, including all Unavoidable Charges that are reasonably calculable in advance based on the Search Criteria, including but not limited to city taxes and resort fees.

**UK** means the United Kingdom of Great Britain and Northern Ireland.

**Unavoidable Charges** means all fees, charges, taxes and other amounts that are reasonably calculable in advance based on the Search Criteria and that a consumer is obligated to pay, whether up front at the time of booking or otherwise at the Hotel.

**Website** means Booking.com and, unless otherwise agreed with the CMA, the requirements of this undertaking will also apply equally to any other internet-based site, platform or facility (in any form, including but not limited to 'mobile' and 'App' based formats) operated by or on behalf of Booking.com in connection with online Hotel booking services and which is directed in any way to UK consumers.