

The Competition and Consumer Protection Commission

-and-

Booking.com

AGREEMENT AND UNDERTAKINGS

This Agreement and Undertakings ("the Agreement") is made by and between the Competition and Consumer Protection Commission (the "CCPC"), and Booking.com B.V. ("Booking.com") on the date set forth below. The CCPC and Booking.com are referred to collectively herein as the "Parties".

**WHEREAS:**

- i. The CCPC has been investigating whether certain terms and conditions agreed between Booking.com and the accommodations that avail of its services could contravene section 4 of the Competition Act 2002 (the "Act") and Article 101 of the Treaty on the Functioning of the European Union ("TFEU"). Booking.com has cooperated fully with the CCPC's investigation.
- ii. The CCPC's investigation identified concerns in respect of clauses requiring that accommodations should offer to Booking.com pricing, conditions and availability terms which are no less favourable than the terms that such accommodations make available on all other online distribution channels, including on the accommodation's own website. Such requirements are known as 'price parity', 'conditions parity' and 'availability parity' clauses. The CCPC was concerned that the conduct at issue could constitute an infringement of section 4 of the Act and Article 101 of the TFEU.
- iii. Booking.com has reached agreement with competition authorities in France, Italy and Sweden to resolve similar concerns. The CCPC has informed Booking.com that an agreement on substantially the same terms would also resolve the concerns of the CCPC.

iv. The Parties have therefore agreed the following terms which, at clauses 1 to 9 below, reflect exactly the substance of Booking.com's agreement with the competition authorities of France, Italy and Sweden. In order to address the CCPC's competition concerns arising from its investigation and to assist the CCPC with bringing its investigation to a close, Booking.com hereby undertakes as follows:

1. Price and conditions parity

1.1 Booking.com will not enter into or enforce obligations that:

- (i) require accommodations to propose room rates on Booking.com that are equal to or lower than those offered on any other OTA;
- (ii) prohibit accommodations from offering room rates on Offline Channels that are equal to or lower than those offered on Booking.com, provided that these room rates are not Published Online or Marketed Online; and /or
- (iii) restrict the Unpublished room rates that accommodations are able to offer, provided that these are not Marketed Online.

**("Price Parity").**

1.2 Booking.com will not enter into or enforce obligations that:

- (i) require accommodations to propose the same or more favourable terms and conditions to consumers on Booking.com as those offered on any other OTA;
- (ii) prohibit accommodations from offering on Offline Channels the same or more favourable terms and conditions to consumers as those offered on Booking.com, provided that these terms and conditions are not Published Online or Marketed Online; and /or

- (iii) restrict the Unpublished terms and conditions to consumers that accommodations are able to offer, provided that these are not Marketed Online.

**("Conditions Parity")**

2. Availability parity

2.1 Booking.com will not enter into or enforce obligations that require accommodations to offer the same or a greater number of rooms, of any type, on Booking.com as those offered on any other OTA, or as is reserved for the accommodation itself ("**Availability Parity**").

2.2 If Booking.com specifies on its site information relating to the availability or to the number of rooms available to book at an accommodation, Booking.com will also display the words "on this site/our site".

3. Communication

3.1 Booking.com will ensure that its communication policy complies with the Commitments.

4. Equivalent measures

4.1 Booking.com will not offer lower commission rates or other incentives to accommodations that are conditional on accommodations observing Price Parity, Conditions Parity and/or Availability Parity, which Booking.com has abandoned as indicated above at Clauses 1.1, 1.2 and 2.1, including but not limited to:

- (i) Booking.com will not de-list or threaten to de-list any accommodation for refusing to enter into or for non-compliance with Price Parity, Conditions Parity and/or Availability Parity.

- (ii) Booking.com will not increase commissions (or impose any other charges) for refusing to enter into or for non-compliance with Price Parity, Conditions Parity and/or Availability Parity.
- (iii) Booking.com's ranking algorithm will not take into account directly whether an accommodation refuses to enter into or does not comply with Price Parity, Conditions Parity and/or Availability Parity.

## 5. Contact with Prior Customers

- 5.1 Booking.com will not enter into or enforce any obligations that prohibit an accommodation from contacting Prior Customers, provided that any contact with Prior Customers by the accommodation shall at all times be compliant with applicable privacy and data protection laws.

## 6. Scope

- 6.1 The Commitments apply to all bookings made by consumers worldwide in respect of hotels and other accommodations located in Ireland.

## 7. Timeframe

- 7.1 Booking.com will implement the Commitments by 1 October 2015.
- 7.2 The Commitments will remain in force for a period of five years thereafter.

## 8. Anti-avoidance

- 8.1 In the event that Booking.com transfers any of its contracts with accommodations to another company in the Priceline Group, Booking.com will ensure these Commitments are respected as regards those contracts.

9. Definitions

**"Commitments"** means the undertakings given by Booking.com as set out in this document.

**"Marketed Online"** means marketed to the general public online by any means, including on mobile applications. This definition does not include online marketing that is not aimed at the general public: it excludes in particular email, SMS and instant messaging communications.

**"Offline Channel"** means a channel that does not involve the use of the internet, such as bookings made in person at an accommodation's reception, by telephoning an accommodation, or at a bricks and mortar travel agency.

**"OTA"** or **"online travel agent"** means any online reservation service that is not controlled, directly or indirectly by the accommodation or the chain (whether integrated or not) to which this accommodation belongs. A rate published by an OTA on a meta search site means a rate offered on an OTA.

**"Priceline Group"** means all companies that are directly or indirectly controlled by the Priceline Group, Inc from time to time.

**"Prior Customer"** means a customer that has stayed with the accommodation on at least one prior occasion regardless of how the customer booked their previous stay with the accommodation. A customer that has stayed at one property that is part of a hotel chain or a community of hotels that have a common reservation service is deemed to be a Prior Customer of all accommodations in that chain or community.

**"Published Online"** means made available to the general public online by any means, including on mobile applications. In the case of rates, publication includes the display of the actual rates or sufficient detail for the consumer to calculate rates.

**“Unpublished”** means not Published Online.

## **Conclusion**

10. In consideration of Booking.com entering into this Agreement, the CCPC undertakes that it shall conclude its investigation and shall refrain from instituting proceedings or taking any further action against Booking.com in relation to the matters at issue in the investigation for so long as Booking.com remains in compliance with the Commitments.
11. This Agreement shall be and is intended by the Parties to be a binding and enforceable agreement which may be enforced by the Parties by an action in any court of competent jurisdiction in the State.
12. This Agreement shall be binding on Booking.com and on the successors and assigns of Booking.com and on its employees, servants and agents. For the avoidance of doubt, Booking.com shall procure that its subsidiary Priceline Booking (Ireland) Ltd. also complies with this Agreement.
13. The Agreement is without prejudice to Booking.com’s position in any other judicial or administrative proceedings in any jurisdiction. Nothing in the Agreement may be construed as implying that Booking.com has infringed competition law.

EXECUTED BY:

For and on behalf of the Competition and Consumer Protection Commission



Name *GERARD FITZGERALD*

Title *MEMBER OF COMMISSION*

Date *9 September 2015*

EXECUTED BY:

For and on behalf of Booking.com B.V.



Name *Rutger Prahl*

Title *general counsel*

Date *25 September 2015*