

TRANSLATION
ONLY THE SWEDISH TEXT IS AUTHENTIC

Alleged competition problem concerning hotel room booking via online travel agencies

Decision by the Swedish Competition Authority

The Swedish Competition Authority (hereinafter “the Competition Authority”) will not investigate the case any further.

The case

Background

Expedia Inc., a U.S. company, is the parent company in an international group (“Expedia”) which operates in the online travel agency sector. The group includes the Swedish company, Expedia Sweden AB, whose activities consist of providing marketing and supplier functions in the travel industry.

In 2013, the Competition Authority started an investigation regarding certain conditions in Expedia’s agreements with Swedish hotels. The terms and conditions implied that the prices of hotel rooms offered by hotels via Expedia must be equal to or better than the prices the hotels offer or apply in other sales channels (so-called price parity clause). The investigation also included parity clauses regarding the availability of rooms and other conditions such as cancellation rules and breakfast. The Competition Authority’s investigation has focused on the question of whether the parity clauses constitute an infringement of the prohibition of restrictive agreements in Chapter 2 Section 1 of the Swedish Competition Act (2008:579), SCA, and Article 101 of the Treaty on the Functioning of the European Union, TFEU.

The investigation concerning Expedia’s contract terms and conditions was carried out in parallel with another investigation¹ concerning equivalent conditions in agreements between Swedish hotels and another company in the market for online travel services, Booking.com. On 15 April 2015, the Competition Authority decided to accept voluntary commitments from Booking.com in accordance with Chapter 3 Section 4 of the SCA.

¹ The case had ref. no. 596/2013.

The Competition Authority has carried out a range of investigative measures. In the various stages of the case, the Competition Authority has been in contact with hotel companies and online travel agencies, and has requested information and economic data from various market participants.

As of 1 August 2015, Expedia has amended its terms and conditions, inter alia regarding price parity.

Expedia's activities

Expedia's business mainly consists of the provision of online travel agency services. The travel services that Expedia provides via its platforms include services for booking hotel rooms, flights, package holidays and car rentals. Expedia provides platforms in more than 70 countries and in several languages. Its brands for booking hotel rooms include Expedia, Hotels.com and Venere.

The market for online travel agency services

Online travel agencies operate platforms on the internet through which consumers can search, compare and book rooms in hotels that have enlisted on the platform in question. Once the consumer has chosen the location and the relevant dates, the consumer can refine the search by selecting certain criteria such as price, the number of stars of the hotel, customer feedback, facilities, type of accommodation. The consumer can then book the selected hotel directly via the online platform without making any contact with the hotel itself.

Hotels that have enlisted on the platform by entering into contracts with the online travel agency upload information and images of the hotel to the platform. It is the hotel that decides and uploads its room rates that are to be displayed to consumers on the platform. The remuneration received by the online travel agencies from the hotels consists of a commission payable upon booking. If a consumer uses online travel agencies' search and comparison services without completing a reservation on the platform, no remuneration is payable.

Assessment in the Booking.com case

In the above-mentioned parallel investigation concerning Booking.com, the Competition Authority has preliminarily defined the relevant market as the market for the provision of online travel agency services to hotels located in Sweden. There are two main companies in this market. The largest one is Booking.com followed by Expedia.

In its preliminary assessment in the case concerning Booking.com, the Competition Authority considered that the contract clauses which guaranteed Booking.com the same or better price than that offered via Booking.com's competitors for the same room (so-called horizontal price parity) restricted competition between Booking.com and other online travel agencies. Contract clauses which guaranteed Booking.com the same or a better price for the same

room than the price hotels offered via their own channels (vertical price parity) was considered not to affect competition beyond the impact of the horizontal price parity.

In order to remedy the competition concerns identified by the Competition Authority, Booking.com offered voluntary commitments. The Competition Authority found in its decision of 15 April 2015 that Booking.com's voluntary commitments remedied the competition concerns and therefore decided to accept the commitments.

The commitments imply *inter alia* that Booking.com may not prevent hotels from offering lower prices via competing online travel agencies than via Booking.com. Nor may Booking.com prevent hotels from offering lower rates in another online channel (such as members of the hotel's loyalty program) or an offline channel (e.g. bookings via phone or on-site) than via Booking.com, provided that these prices are not marketed or made available to the general public online.

Assessment

In the assessment of whether a matter that has been investigated requires further review, the Competition Authority considers the seriousness of the matter and the importance of providing a guiding decision. The ability of the Competition Authority to effectively investigate and intervene against the competition problem in question is also of importance.

The Competition Authority's investigation has shown that Expedia's market position is strong. Circumstances indicating this include the fact that many hotels consider that they have to enlist on Expedia, Expedia's commission rates, and Swedish hotels' relatively low occupancy rates which increase the need to use online travel agencies to attract guests that hotels have difficulty reaching in other ways.

The present investigation concerns similar contract terms and conditions to those which were investigated by the Competition Authority in the case concerning Booking.com's agreements with hotels. Considering *inter alia* Expedia's position on the market for the provision of online travel agency services to hotels located in Sweden, the Competition Authority has preliminarily found that Expedia's parity clauses have affected competition in a similar manner to Booking.com's parity clauses.

Expedia has now informed its hotels partners that Expedia waives certain contract clauses as of 1 August 2015. Expedia no longer applies parity clauses regarding price or other conditions (such as cancellation rules and breakfast) which hotels offer via competing online travel agencies. Nor is parity required for prices and conditions that are not published or marketed online to the general public, for example prices and conditions offered via hotels' offline channels or to members

of the hotels' loyalty programs. Furthermore, Expedia will not apply parity requirements regarding the number of rooms that hotels make available via competing online travel agencies or via the hotels' other sales channels.

Expedia has thus changed its contract conditions in a similar way to Booking.com's commitments. The clauses that the Competition Authority preliminarily assessed to be anti-competitive are therefore no longer part of Expedia's agreements with Swedish hotels.

In view of the above, the Competition Authority does not consider there to be reasons to investigate the case further. The Competition Authority's decision not to investigate the case further does not mean that the Competition Authority has taken a position on whether Expedia's previous or current parity clauses are in breach of competition rules.

Separate action

The Competition Authority's decision not to investigate the alleged competition concern further cannot be appealed. This is pursuant to Chapter 7 Section 1 of the SCA.

Companies affected by the decision may, however, bring an action in court to have the case tried under Chapter 3 Section 2 of the SCA. An affected company could, for example, be the company which has reported a certain practice to the Competition Authority, if the company's legal position is affected by the Authority's decision or if the decision has a substantial effect on the company.

A separate action on the prohibition of anti-competitive cooperation between companies under Chapter 2, Section 1 of SCA or Article 101 TFEU is brought about by an application for a summons to the Swedish Market Court.

This decision has been taken by Head of Unit Martin Mandorff. The rapporteur was Senior Case Officer Sophie Ducaté.

Martin Mandorff

Sophie Ducaté

This decision is published on the Competition Authority's website

Copy: Expedia Inc.