



## Hotels can post different prices with different online travel agencies

*FACTS: The Swedish Competition Authority's investigations regarding conditions of price parity between online travel agencies and hotels (Booking.com, dnr 596/2013 & Expedia, dnr 595/2013).*

In 2014 and 2015, the Swedish Competition Authority investigated so-called conditions of price parity in contracts between hotels and companies offering online travel agency services (known as online travel agencies or OTAs). The investigations by the Swedish Competition Authority concerned the contractual terms and conditions used by the two largest OTAs in Sweden, Booking.com and Expedia. The case relating to Booking.com was closed through a decision to accept a voluntary commitment from Booking.com. As regards Expedia, the case was closed when the company changed its contractual terms and conditions.

### **What is an online travel agency?**

An online travel agency, OTA, is a company that provides one or more platforms online. A platform of this kind can be used by consumers to search for, compare and book hotel rooms at the hotels that are listed on the platform. A hotel becomes listed on an OTA's platform by concluding a contract with the OTA. It is the hotel that determines and posts the room prices that will be shown to consumers using the platform. The OTA is paid for its services through a commission rate that the hotel pays when consumers book rooms through the platform. If consumers only use the platform to search and compare hotels, but do not book hotel rooms through the platform on which they found the room, no commission rate is paid to the OTA in question.

### **The market for the provision of OTA services in Sweden**

In Sweden, there are two main OTAs. The largest is Booking.com, which operates the platform with the same name. The second largest is Expedia, which operates the platforms Hotels.com and Expedia.com. Most hotels are listed on the platforms of both Booking.com and Expedia.

The investigations by the Swedish Competition Authority have shown that the hotels and OTAs do not compete on the same relevant market. This is because the OTAs offer consumers a search and comparison function that individual hotels are not able to offer. OTAs and hotels are thus active in different levels of the distribution chain, where the hotels provide the OTAs with hotel rooms, which they provide to consumers on behalf of the hotels.

### **Conditions of price parity**

Both Booking.com and Expedia have applied so-called conditions of price parity in their contracts with the hotels.

The conditions of price parity meant that a hotel could not offer consumers a lower price either through a competing OTA or through its own sales channels, such as the hotel's own website.

Booking.com and Expedia also applied similar conditions of parity in regard to other conditions relating to rooms or booking conditions, such as terms of cancellation or breakfast being included in the price of the room.



## Anti-competitive agreements

Under Chapter 2 Section 1 of the Swedish Competition Act (2008:579) and Article 101 of the Treaty on the Functioning of the European Union (TFEU), it is prohibited for companies to agree on contracts or cooperate in a way that restrict competition. The provisions include both agreements between competitors and agreements between companies that are not in competition with each other. Not all agreements that restrict competition are prohibited. Chapter 2 Section 2 of the Swedish Competition Act provides the possibility of an exemption for agreements that have predominantly positive effects for consumers. This can be the case if an agreement gives rise to efficiency gains in a way that also benefits consumers through lower prices or higher quality.

Companies that are not in competition with each other and are part of the same distribution chain for a product or service often have a common interest in increasing or improving sales of the product or service in question. Contracts between companies that are not in competition with each other are therefore often beneficial for competition and for consumers. However, sometimes such contracts can give rise to competition issues.

## What were the competition problems with the conditions of price parity applied by the OTAs?

*Restriction of competition* - The conditions of price parity applied by the OTAs restricted competition between the OTAs. The conditions of price parity mean that the price a hotel posts for a hotel room on the platform of one OTA may not be higher than the price on any competing OTA's platform or in any other sales channel. If an OTA increases its commission rates vis-à-vis the hotel, the hotel cannot respond by increasing room prices only in relation to that OTA, as the price would then be lower in other channels and in breach of the conditions of price parity.


This means that an OTA that applies conditions of price parity can increase its commission rates without this resulting in a higher room price on the platform of that OTA compared to other platforms. This, in turn, means that the OTA can increase its commission rate without losing demand to other platforms. Given these conditions and given that the hotels have a need of being listed on several OTAs, the OTAs have less reason than would otherwise be the case to compete with each other by offering hotels lower commission rates or in other ways compete with each other by offering hotels more attractive services or products.

The conditions of price parity also mean that the price of the hotel rooms posted by the hotel on the platform of the OTA cannot be higher than the price the hotel offers in its own sales channels, e.g. the hotel's own website. The Swedish Competition Authority has not found that this aspect of the conditions of price parity causes competition issues.

*Entry barriers* - Conditions of price parity can also constitute a barrier to entry into the market, as an OTA cannot enter the market by competing with low commission rates or other offers to the hotels in exchange for the hotels setting lower room prices at the platform of the new OTA.

## Are there efficiency gains?

The Swedish Competition Authority has in its investigations taken into consideration that the conditions of price parity in relation to the hotels' websites can prevent the hotels from free riding on the investments of the OTAs. The hotels only pay an OTA if a booking is made through that OTA. With such payment models, there is a risk of free riding if hotels are presented and searchable through the platforms of the OTAs and customers find hotels through the search and comparison services of the platforms, but then visit the hotels' own websites and book their rooms there, instead of booking on the OTAs' platforms.



In such cases, there is a risk that hotels could increase the number of bookings in their own sales channels by making use of the OTAs' investments to attract customers, without having to pay anything to the OTAs. By decreasing the risk of such free riding, the condition of price parity enables the OTAs to continue to offer user-friendly search and comparison services free of charge.

### **The preliminary assessment of the Swedish Competition Authority**

The Swedish Competition Authority made the assessment that the conditions of price parity, in so far as they regulated the prices posted at competing OTAs, could be in breach of the prohibition against anti-competitive agreements under Chapter 2 Section 1 of the Swedish Competition Act and Article 101 TFEU.

### **Booking.com**

To deal with the identified competition problem, Booking.com has undertaken not to apply the condition on price parity, and parity for other terms, in relation to the competitors of Booking.com. Booking.com has also undertaken not to apply conditions of parity in regard to the number and types of available rooms.

As regards the hotels' own sales, Booking.com has undertaken not to apply conditions of parity in regard to prices and other terms relating to sales in the hotels' offline channels. Further, Booking.com may not require parity regarding room prices or other terms that are not publicly available, but only offered to certain customers or groups of customers.

The commitment regarding conditions of price parity means that hotels can offer lower room prices at an OTA in exchange for a lower commission rate. In the assessment of the Swedish Competition Authority, the commitment thus reinstates competition between Booking.com and its competitors.

The other commitments regarding conditions other than price mean that the hotels have a greater opportunity to favour the OTAs that offer them better

terms, in particular lower commission rates, and thus contribute to reinstating competition between the OTAs, for the benefit of consumers.

The Swedish Competition Authority closed its investigation of Booking.com through a decision to accept the commitment from Booking.com.

<http://www.konkurrensverket.se/en/news/commitments-given-by-booking-com-benefit-consumers/>

### **Expedia**

During the Swedish Competition Authority's investigation of Expedia's conditions of price parity, Expedia changed its contractual terms and conditions for hotels in a similar manner to what Booking.com committed to do. After these changes, the Swedish Competition Authority also closed its investigation of Expedia.

<http://www.konkurrensverket.se/en/news/investigation-of-the-online-travel-agency-expedia-closed/>

### **International collaboration**

The Swedish Competition Authority's two investigations were coordinated with the competition authorities in France and Italy. These authorities decided on the same day as the Swedish Competition Authority to accept the commitment from Booking.com. The European Commission assisted the competition authorities in this coordination.

Even though the investigations were conducted at a national level and coordinated between three EU Member States, Booking.com and Expedia have changed their contractual terms and conditions for hotels located throughout the EEA.

In Germany, the investigation of the competition authority against the online travel agencies HRS and Booking.com led to a decision to prohibit them from applying all conditions of parity, i.e. also conditions of parity towards the hotels' own online sales channels.

In France and Austria, corresponding total prohibitions have been implemented through legislative changes. A similar legislative change is being discussed in Italy.



## Monitoring of the changes in the online booking of hotel rooms

During 2016, the Swedish Competition Authority and nine other competition authorities<sup>1</sup> have, together with the European Commission, performed a monitoring exercise of the effects of the changed contractual terms and conditions in the Member States in question.

The monitoring exercise shows that it is now more common than before that hotels post different prices at different OTAs, or that the hotels have different product offerings at different OTAs. These are important steps toward better conditions for competition between OTAs.

The commission rates that the online travel agencies charge to the hotels in the Member States in question have been relatively stable or slightly decreasing over the period from January 2014 to June 2016. The majority of the hotels in the electronic survey answered that there had been no significant change in the commission rates after the changes to the contractual terms and conditions.

The monitoring exercise shows that more knowledge is needed among the hotels about the changes made in the contractual terms and conditions and what they mean for hotels. Many hotels are not aware of the changes made and what they mean for their opportunities to post different prices in different channels.

Based on the results of the monitoring exercise, the Director Generals of the competition authorities in the European Competition Network, ECN, decided at a meeting in February 2017 to keep the development of the online booking of hotel rooms under review to give the market more time to adapt to the changes that the past investigations have resulted in, in order to evaluate competition within the online hotel booking sector again in due course.

The report on this monitoring work has been published:

[http://ec.europa.eu/competition/ecn/hotel\\_monitoring\\_report\\_en.pdf](http://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf)

<sup>1</sup>The other participating authorities are the competition authorities in Belgium, the Czech Republic, France, Germany, Great Britain, Hungary, Ireland, Italy and the Netherlands.

6 April 2017