

# An economic perspective on pricing parities and Online travel agencies

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## Introduction

- ❑ many European competition authorities have started investigations against online travel agencies
  - competitive dynamics vary across countries
  - most investigations focus on contractual clauses imposing pricing parities or most-favoured nation (MFN)
- ❑ what are the main theories of harm?
  - pricing parities or MFN clauses soften competition between platforms and between hotels
  - online platforms also increase price transparency
    - facilitate entry and raise competition between hotels
  - are pricing parities necessary for OTAs?
- ❑ how does the online nature of the platform affect the effect of pricing parities?

## Investigations across Europe

- ❑ Germany, UK, but also Austria, Belgium, Denmark, France , Hungary, Ireland, Italy, Norway, Sweden and others?
  - DG Comp decided not to take over in June 2014
- ❑ often pan-European pricing clauses, but competitive dynamics differ significantly across countries
  - while Booking.com is the European leader, its market share varies significantly across countries
    - eg, HRS is the leader in Germany
  - bargaining power of travel agents and hotel chains differs across countries
  - relative importance of leisure and business trips
  - relative importance of domestic and foreign reservations

## Investigation in Germany

- the Bundeskartellamt (BKA) received a complaint against Hotel Reservation Service (HRS), the leading German platform, in 2010
  - the best price or MFN clause was precisely laid out
    - HRS expects its partners to offer HRS the **lowest room rates available** including all taxes and other fees. The hotel guarantees the HRS price is at least as low as the cheapest offered **by or for the hotel on other booking and travel platforms** on the Internet or on offers on the hotel's own Web pages. The hotel also pledges to hold its other sales partners to this guarantee or to ensure that, **if it is bookable at a cheaper rate elsewhere on the Internet, this price will definitely be available to HRS customers.**
  - on 20 December 2013, the 9<sup>th</sup> decision division of the BKA found that MFN clauses infringe competition law
    - the BKA attempted to evaluate relation-specific investments (<10% of revenues)
    - analysis casts doubt on indispensability of MFN
  - appeal pending before the Düsseldorf Higher Regional Court

## Investigation in the UK

- the Office of Fair Trading opened an investigation into pricing parities in September 2010, following a complaint by Skoosh
  - it sent an SO in July 2012 and accepted commitments by Expedia, Booking.com and InterContinental Hotels Group on the 31 January 2014
    - (CAT 1226/2/12/14 §24) The main element of the Commitments is the **removal of the complete prohibition on discounting** room-only rates by OTAs **and its replacement by limited discounting to closed groups** of consumers
    - the OFT implicitly accepts pricing parities, provided that hotels and platforms can reduce prices for closed groups
  - the decision to accept commitments was appealed by Skyskanner, a comparison website for hotels, and Skoosh
    - mainly because the commitments could have an adverse impact on meta-search websites
      - ie on inter-brand competition

## Investigation in the UK

- ❑ the CAT annulled the decision on the 26 September 2014, because the OFT had failed to consider potential anti-competitive effects of the commitments
- ❑ the judgment informs on other points (judicial review)
  - In allowing restrictions on the disclosure of specific price information, **the OFT has limited the availability of the kind of information used by** meta-search and other **price comparison websites** to enable consumers to make direct and immediate comparisons of actual prices of available hotel rooms. **Restricting access to such information may be seen as an obvious error** and were this an appeal “on the merits” we might well wish to quash the decision on these grounds. But this is an application for judicial review and the grounds on which we can intervene are more limited. (§151)
  - Skyscanner claims that **the OFT**, by taking the decision, **has breached its duty to promote competition and has therefore acted illegally**. Attractive though this argument may be, we cannot accept it. [...] Somewhat reluctantly, therefore, we have come to the view that this is a case where expert appreciation is needed and, as this is an application for judicial review, we must refrain from substituting another assessment for that of the OFT. (§152)

## Theory of harm

- pricing parities are akin resale price maintenance
  - they have the capacity to reduce coordination failure in the value chain (eg double marginalization)
  - they can also protect margins and facilitate collusion upstream and downstream, eg by increasing price transparency or by raising barriers to entry
    - see, eg Shaffer (1991), Dobson and Waterson (2007) Jullien and Rey (2007), Asker and Bar-Isaac (2011), Rey and Vergé (2010)
- the two-sided nature of platforms should not be underestimated
  - as for credit cards, there might be a case to cap transfers from one side (hotels) to the other side
  - to attract travelers, OTAs cannot propose price reductions (because of MFNs) and are therefore limited to other strategies such as increased expenses on advertisement

## Theory of harm

- the OFT set out three theories of harm (CAT 1226/2/12/14 §14)
  - restrictions on discounting ***limit price competition*** and ***increase barriers to entry***
  - rate parity obligations are capable of ***reinforcing*** and exacerbating any prevention, restriction or ***distortion of competition arising from discounting restrictions***
  - to the extent that similar discounting restrictions and rate parity obligations are ***replicated in the market, then*** any prevention, restriction or ***distortion of competition is further reinforced*** and exacerbated



## Theory of harm

- the BKA sets out a number of theories of harm
  - (§153) The MFN clauses are suited and indeed intended to **restrain competition between the hotel portals and to make it difficult to enter the market; they also restrain competition between the hotels.**
  - (§155) The restraint of competition between the hotel portals relates to competition for the lowest **booking commissions**, aggressive competition for the best conditions and the market **entry of new competitors. Anti-competitive effects** of the MFN clauses **are strengthened by the application of MFN clauses by the other major portals** in Germany Booking and Expedia.
  - (§164) The MFN clauses have negative effects on **competition between the hotel partners of HRS and other hotels.** Competition between the hotels for the **best prices** of rooms is particularly affected. Competition is restrained for all channels which the hotels use for selling hotel rooms. **Anti-competitive effects** of the MFN clauses on competition between the hotels **are strengthened by MFN clauses which other major portals** in Germany, like Booking and Expedia, **apply.**

## Efficiency arguments

- ❑ OTAs have significantly improved travelers' access to information
  - intensify inter brand (hotel) competition
    - facilitate entry on the market for hotels
    - encourage hotels to be more responsive to consumer demand
  - unrestricted discounting may have harmful effects to the extent that incentives to invest are at risk
    - free-rider's problem: clients could use the platform to search and compare but book where it is cheaper
    - the platform would not recoup its investments
- ❑ 101(3): indispensability of MFN clauses?
  - alternatives exist: fixed fee for hotels, service fee for clients, cost-per-click, two-part-tariff
  - difficult to prove? MFNs may have emerged for a good reason