

The Booking.com case in Sweden

Circumstances

4. Booking.com B.V. is an online travel agent that operates the website www.booking.com, which is a platform on which consumers can search for, compare and book hotel rooms. The company operates in a large number of countries. The website www.booking.com is available in over 40 languages and offers about 445 000 accommodations in 200 countries.

8. The hotel market in Sweden is characterised by the fact that a number of larger hotel chains account for a significant share of hotel rooms sold. Hotels use various sales channels to reach customers. The customers are in part companies, in part leisure travellers. In addition to hotels' own sales channels, primarily sales via telephone or sales via the hotels' websites, hotel room sales take place via traditional travel agencies and online travel agencies. In Scandinavia, the hotels' own online channels account for approx. 10 percent of hotels' sales whereas online bookings in total account for just above 30 percent. In order to achieve the highest possible occupancy rate, it is common for Swedish hotels to enlist on several online travel agencies.

9. Online travel agencies operate platforms on the internet through which consumers can search for 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 according to certain criteria such as price, the number of stars of the hotel, customer reviews, facilities, type of accommodation, etc. The search results are often presented as a list of hotels recommended by the online travel agency, but the consumer can also choose to have the search results presented according to number of stars, location, price or reviews by previous customers.

10. The hotels that have enlisted on the platform by entering into contracts with the online travel agency, upload information about and images of the individual hotel to the platform. It is the hotel that decides on and uploads the room prices 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. No remuneration is payable if a consumer uses the online travel agency's search and comparison services without completing a booking on the platform.

12. Booking.com is the largest online travel agency in terms of bookings of hotels located in Sweden. Booking.com's standard contracts with hotels, like other online travel agencies' contracts, contain clauses on so called parity. In substance the clauses mean that a hotel has to offer the same or a better price for a room via Booking.com compared to the price offered by the hotel via other channels. Accordingly, a hotel may not, for example, offer a lower price in its own sales channel or via another competing online travel agency than offered via Booking.com. The same applies to different conditions with respect to the room or the booking, for example cancellation rules or inclusion of breakfast in the room price. Consequently, the hotel may not offer better conditions via other sales channels than it does via Booking.com. Furthermore, the contracts contain terms stipulating that hotels must provide Booking.com with access to the same or a greater number of rooms as provided to Booking.com's competitors.

The Competition Authority's preliminary assessment

18. According to the Competition Authority's investigation, Booking.com's market share in Sweden exceeds 30 percent by an appreciable margin, hence the block exemption concerning vertical agreements is not applicable to Booking.com's contracts with hotels located in Sweden.²

19. The price parity clause aims to guarantee that Booking.com obtains the same or a better price for the same room in relation to all of the hotels' other sales and distribution channels. Price parity thus applies in part to the relationship between Booking.com and its competitors ("horizontal price parity"), in part to that between Booking.com and the hotels ("vertical price parity").

Price parity between Booking.com and its competitors

20. The contracts between hotels and Booking.com constitute vertical agreements, i.e. agreements between companies that are not competitors. The provision that hotels may not offer better prices via Booking.com's competitors than they do via Booking.com, the horizontal price parity, does, however, have an impact on the competition between Booking.com and other online travel agencies, in other words the competition between companies in the same relevant market. Restrictions on competition between companies that are competitors, known as horizontal restrictions, are in general more problematic for competition than vertical restrictions.

21. The price parity clauses in Booking.com's and other online travel agencies' contracts with hotels mean that the price of hotel rooms is the same on competing online travel agencies. Booking.com's price parity clause implies that increases in Booking.com's commission rate cannot lead to a higher room price on Booking.com than that available through its competitors, which means that Booking.com can raise its commission rate without losing customers to its competitors. The price parity clause, combined with the fact that hotels generally want to enlist on several competing platforms, thus implies that Booking.com has less incentive, than would otherwise be the case, to compete by offering hotels low commission rates. This risks leading to higher commission rates, which in turn risks leading to higher hotel room prices.

22. The Competition Authority has, in view of the above, found support for the conclusion that the clause stipulating price parity between Booking.com and its competitors restricts competition. The fact that Booking.com's competitors also apply horizontal price parity aggravates the situation and means that competition on prices and commissions between the online travel agencies is severely restricted.

23. Booking.com's price parity clause may also constitute a barrier to entry into the market as an online travel agency cannot enter or expand on the market by competing with low commission rates in exchange for hotels setting lower room prices on that operator's channels.

Price parity between Booking.com and hotels

24. The price parity clause in Booking.com's contracts also implies that hotels may not offer better room prices in the hotels' own channels than they offer via Booking.com. The Competition Authority's investigation has not shown that this vertical price parity affects competition between Booking.com and other online travel agencies beyond the impact of the horizontal price parity established above.

27. Booking.com and other operators in the online travel agency market provide consumers with the opportunity to easily search for, compare and book hotel rooms online and provide hotels with the opportunity to market themselves and make hotel rooms bookable directly for consumers. The business model used on the online travel agency market means that consumers can use the services without having to pay for them. The business model also means that hotels only pay for the online travel agency's services when a booking is actually completed, which means that they do not need to invest in or bear any risk for marketing that does not lead to a reservation. The Competition Authority's investigation further supports the conclusion that the online travel agencies' services contribute to price transparency on the market and to increased competition between hotels, which is also to the benefit of consumers.

28. The business model used on the market therefore means that no remuneration is payable to Booking.com if a consumer uses Booking.com to search and choose a hotel, but then books directly with the hotel. The business model thus means that hotels have an incentive to persuade consumers who have found the hotel on Booking.com to book in the hotel's own channel instead, since the hotel then does not have to pay any remuneration to Booking.com. If the hotel was completely free to control the relationship between prices on the hotel's own channels and prices on Booking.com, the hotel would have the

possibility to free-ride on Booking.com's investments. Booking.com would therefore face significant risk of not being compensated for the services it provides to the hotels.

30. The Competition Authority's assessment, which is supported by analyses and the above-mentioned surveys supplied by Booking.com, is in view of the above that the vertical price parity substantially reduces the risk that hotels free-ride on investments made by Booking.com. This in turn allows Booking.com to receive remuneration for its search and compare services so that the services can continue to be offered on the market to the benefit of consumers.

Conclusion

31. With reference to the above, it is the Competition Authority's preliminary assessment that the clause requiring that Booking.com must be offered prices that are the same or better than those offered to its competitors, constitutes a restriction of competition contrary to [...] Article 101(1) of the TFEU.

Commitments

34. Subsequent to Booking.com being informed of the Competition Authority's preliminary assessment, Booking.com has offered voluntary commitments in order to address the competition problems indicated by the Competition Authority's investigation.

40. In summary, the final commitments mean that Booking.com undertakes to not apply the parity terms regarding price and other conditions in relation to Booking.com's competitors. Booking.com also undertakes to not apply parity terms with respect to the number and type of available rooms. With respect to hotels' own sales, Booking.com undertakes to not require parity with respect to room prices or other conditions as regards offline sales. Further, Booking.com undertakes to not require parity regarding such room prices or other conditions that are not available online to the general public, but that are offered by the hotels only to certain customers or groups of customers. Finally, Booking.com has undertaken to not apply equivalent measures, i.e. measures which would mean the enforcement of such price, conditions or availability parity that is forbidden in accordance with the commitments.

43. The commitments mean that Booking.com undertakes to no longer apply terms concerning price parity in relation to its competitors. Hereby, the incentives for Booking.com and its competitors to compete with each other by inducing hotels to offer lower prices in their channels will be reintroduced.

Conclusion

50. With reference to the above, the Competition Authority concludes that the commitments are capable of solving the competition problems which according to the Competition Authority's investigation result from the price parity clauses in Booking.com's contracts with Swedish hotels.