

ANNEXURE 2

TRAVEL AND ACCOMMODATION

Introduction	167	4.3. Payment terms	209
1. Platform market delineation and market power	168	4.4. Metasearch results and consumer choice	210
1.1. Stakeholder's views and supporting arguments	168	4.5. Commission differentials between hotel chains and accommodation providers	211
1.2. Inquiry's views and supporting arguments	152	4.6. Concerns with contractual agreements of car rental platforms	214
2. Market structure and competitive dynamics	175	4.7. SME and HDP development	216
2.1. Stakeholder's views and supporting arguments	175	5. Provisional remedies	219
2.2. Inquiry's views and supporting arguments	175	5.1. Price parity	219
2.3. Accommodation ecosystem and Booking.com's influence on business user behaviour and pricing	177	5.2. Accommodation funded discounts and loyalty programmes	220
3. Platform competition findings	180	5.3. Sponsored platform ranking	222
3.1. Price parity	180	5.4. Transparency in labelling of paid ranking	223
3.2. Accommodation funded discounts and loyal programmes	192	5.5. Payment terms	224
3.3. Other competition issues currently not in scope of the Inquiry and/or needing further consideration.....	199	5.6. Metasearch results and consumer choice	224
4. Business user competition and treatment findings	206	5.7. Commission differentials between hotel chains and accommodation providers	225
4.1. Sponsored platform ranking	206	5.8. Concerns with contractual agreements of car rental platforms	226
4.2. Transparency in labelling of paid ranking	208	5.9. SME and HDP development	226

6. Annexures

6.1. Annexure A: Market delineation	228
6.2. Annexure B: Booking.com connectivity hub. Average Daily Rate	234
6.3. Annexure C: Rival OTAs cannot reasonably replicate accommodation funded discounts in absolute and relative terms.	235

Appendix A: List of submissions received	238
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Appendix B: Meetings	240
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Appendix C: Public hearings	240
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Appendix D: Statement of Issues.....	240
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Table of figures

Figure 1: Booking.com's guest booking journey	178
Figure 2: Ranking boost from joining the Genius programme	198
Figure 3: Rudimentary depiction of price recommendation and other influences on online prices of travel and accommodation services.....	201

List of tables

Table 1: Platform revenue shares for online accommodation intermediation	174
Table 2: Cross-browsing behaviour between platforms and accommodation providers.....	188

[Introduction]

1. The Online Intermediation Platform Market Inquiry “OIPMI” published its Provisional Report and Provisional Summary Report on 13 July 2022 for public and stakeholder comment.¹ The OIPMI Final Report (Annexure 2) does not seek to repeat all the discussions had in the Provisional Report but rather mention affirmations, and address the comments and contestations made by stakeholders. The Final Report will focus on those concerns that will have the biggest impact on platform competition and business user competition. In its findings, the Inquiry aims to provide an evidenced-based basis in its determinations and depict the nature of the market, and the impact of platform and business user conduct in a way that most accurately reflects the realities of the state of competition within the market. The Inquiry also seeks to provide further assessment and evidence on market features and themes explored in the Provisional Report, but not addressed in its findings. Where necessary, the Inquiry will present new evidence and its views pertaining to features that impede, restrict or distort competition in terms of Section 43(C) of the Competition Act No. 89 of 1998 (as amended).
2. The Provisional Report has demonstrated how the Covid pandemic and subsequent lockdowns and travel restrictions have adversely impacted the market for the online intermediation of travel and accommodation services.² In general, the pandemic has changed the relationship that people have with online technology in that they have become more comfortable using tech services such as video meetings, online intermediation platforms, social network platforms, etc. The probable trend is a higher uptake and reliance on the usage of online intermediation platforms in travel and accommodation going forward. In fact, the Inquiry is seeing evidence of this now despite the recent pandemic. For example, commission revenues earned by and booked room nights on online travel agents (“OTAs”) appear to be outstripping pre-pandemic levels in 2022 already.³ It is therefore imperative to address issues that are likely to impede, restrict or distort competition amongst platforms and travel and accommodation service providers. Furthermore, consideration needs to elucidate issues that might hinder SME and HDP participation both at a platform level and at a business user level.

1 OIPMI Provisional Report and Provisional Summary Report available here: <https://www.compcom.co.za/online-intermediation-platforms-market-inquiry-provisional-report/> [Accessed on 6 December 2022]

2 PR Chapter 2, Section 1.2.1., para. 13 to 18.

3 For example Booking Holdings global revenues rose by 13.4% from USD15bn in 2019 to USD17bn in 2022 (Booking.com 10-K SEC filing for the years ended 2022 and 2020). In South Africa, [REDACTED]

[1. Platform Market Delineation and Market Power]

1.1 Stakeholder's views and supporting arguments

3. Booking.com is the only platform that has raised significant objections to how the platform market has been delineated. The platform argues that the Provisional Report does not correctly define the relevant product and geographic markets or properly assess the nature and level of competition in these relevant markets suggesting this is a requirement as per Section 43C(1) of the Competition Act No. 89 of 1998 (as amended).⁴ It is argued that traditional tools such as the hypothetical monopolist test, which is based on either or both a small but significant increase in price ("SSNIP") test or the reduction in quality ("SSRIQ") test, be used for business users and consumers respectively. Furthermore, Booking.com disagrees with the Inquiry's observation that direct online channels are unlikely to constrain a dominant intermediation platform⁵ and notes that assessing the 'must-have' status (i.e., dependency) of accommodation providers on platforms is not a basis to determine that accommodation intermediation platforms constitute a separate product market.
4. Booking.com considers that the market for the online distribution of accommodation be broader than OTAs. It is argued that the Provisional Report ignores that the relevant market consists of not just global platforms, but also a variety of other distribution

channels such as the direct channel, travel merchants, offline channels, metasearch sites, etc.⁶ Furthermore, it is argued that consumers have zero switching costs, and they can (and do) multi-home at zero cost. Therefore, multi-homing by travellers should be considered when considering the substitutability of different channels and the competitive pressure this creates.⁷ Booking.com concludes that when the relevant market is properly defined, its share is modest and cannot be considered a "dominant" firm.⁸ Furthermore, it is argued that the risk of "tipping" and "entrenchment" in the online intermediation market for travel and accommodation is small (if it exists at all).⁹

1.2 Inquiry's views and supporting arguments

5. The Inquiry will deal with market delineation, arguments pertaining market definition and the appropriateness of demonstrating market power collectively in this section of the Report.

Market delineation and market definition

6. The Inquiry has conducted a detailed market delineation for the distribution of accommodation in Section 1.3 of the Provisional Report which has covered both online and offline distribution (and has been included in **Annexure A** of this report for convenience). Furthermore, the Inquiry's conception of platform revenue share has been broader than just online travel agents

4 Bcom RPR 1.1, para. 1.2.3.

5 Bcom RPR 1.1., para. 4.3.

6 Bcom RPR 1.1., para. 4.3.

7 Bcom RPR 1.1., para. 4.3.

8 Bcom RPR 1.1., para. 5.2.1. For example, [REDACTED]

9 Bcom RPR 1.1., para. 2.5.

("OTAs") in that it also includes platforms such as Airbnb and Vrbo which operate a different business model to that of OTAs. The Inquiry disagrees with Booking.com's assertion that it is a modest player in a broader market for the distribution of online (and offline) accommodation.¹⁰ While providing its estimated market share, Booking.com did not provide any indications of what the remaining market share entailed.¹¹ Nonetheless, based on business user survey responses collated by the Inquiry, distribution through online intermediation platforms is estimated to constitute 40% of overall accommodation distribution, walk-ins (15%), accommodations own direct online distribution (15%)¹² and other means of distribution such as GDS, bed banks, wholesalers, tour operators, etc. (approximately 30%).

7. Booking.com vociferously argues that an accommodation provider's own online direct distribution (i.e., website) is a constraint on Booking.com, seemingly to suggest a broader market where both sets of distributors being considered as horizontal competitors. The Inquiry is of the view that the following caveats should be taken into account when considering whether accommodation providers' direct online channels are in fact constraints on online accommodation intermediation platforms, and whether their relationship can be characterized as either vertical or horizontal:

- 7.1. Online intermediation platforms (such as Booking.com) provide a distribution service or distribution input, as it were, on behalf of accommodation providers and not in competition with them.
- 7.2. Accommodation providers are the owners of the rooms they wish to sell and assume the risk of not distributing a room whereas online intermediation platforms neither own the rooms nor assume the risk of an empty room.
- 7.3. In the hypothetical scenario that an accommodation provider's own online distribution channel is considered a sufficiently competitive constraint on the online intermediation platforms, as to suggest that both are in a horizontal relationship, business practices such as narrow price parity could be considered as an anti-competitive restrictive horizontal practice as they aim to suppress horizontal price competition in online retail distribution. This scenario could constitute a hardcore restriction prosecutable under Section 4 of the Competition Act.
- 7.4. In reality, however, it is seemingly accepted that the relationship between accommodation providers and online intermediation platforms is vertical in nature. For example, the Swedish Competition Authority concluded that Booking.com and hotels are "not active in the same relevant market" but rather they are in a vertical relationship.¹³ The Federal Court of Justice (Bundesgerichtshof), Germany's highest court, appears to resonate this vertical characterisation



12 In Scandinavia in 2015, hotels' own online channels account for approx. 10 percent of hotels' sales whereas online bookings in total account for just above 30 percent. Swedish Competition Authority (2015). In the matter with Booking.com. Available at: https://www.konkurrensverket.se/globalassets/dokument/engelska-dokument/beslut/13_0596e.pdf [Accessed on 8 December 2022]

13 Swedish Competition Authority (2015). In the matter with Booking.com, para. 25. Available at: https://www.konkurrensverket.se/globalassets/dokument/engelska-dokument/beslut/13_0596e.pdf [Accessed on 8 December 2022].

noting that the “*competitive effect of the narrow price parity clause can thus generally be compared to imposing minimum sales prices*”¹⁴, which is considered a restrictive vertical practice. In the European context, business users’ (e.g., accommodation providers) own direct online distribution and third-party platform distributors (e.g., Booking.com) would be considered as being in the same category as dual distributors under the Vertical Block Exemption Regulation (“VBER”)¹⁵ where the characterization of dual distributors has been dealt with in the South African context. For example, the South African Competition Appeals Court (“CAC”) cited *Debra Pearlstein et al Antitrust Law Developments (2002) of 81* in the South African Breweries (“SAB”) case¹⁶ noting that “*the modern trend, however, has been for courts to treat dual distribution agreements as vertical*”. Subsequently, in the SAB case, the CAC was of the view that the relationship between the dual distributors, SAB’s own distribution network and appointed distributors, were primarily vertical.¹⁷

8. The purpose of defining a relevant market is to determine whether the party of interest has market power and can leverage this power to anti-competitive effects. In fact, Section 7(c) the Competition Act No. 89 of 1998 (as amended) notes that a firm is considered dominant if “*it has less than 35% of that market, but has market power*”,

notwithstanding the Inquiry’s finding that Booking.com has over 45% of platform revenue share in accommodation intermediation (where the onus would be on Booking.com to prove that it does not have market power). Travel and accommodation intermediation is a two-sided market characterized by direct and indirect network effects where the more travellers a platform has, the more valuable the platform is to travel and accommodation service providers and vice versa.¹⁸ As such, a traditional framework of assessing the market dynamics and market power of online intermediation platforms is not appropriate.

9. This view is supported by literature. For example, Cremer et al. (2019) argue that a notable difference between online platforms and conventional ways of assessing market power in single-sided markets is that there is less emphasis on market definition and more focus on theories of harm and identification of anti-competitive strategies.¹⁹ Furthermore, the notion of market shares doesn’t necessarily reflect market power: big is not necessarily bad if large market share is due to being better than competitors (CMA, 2020)²⁰ and market power can be exerted where market share is significantly below 40% (Cappai & Colangelo, 2020).²¹ Hovenkamp (2021) notes that the best way to address portfolio markets is to avoid market definition altogether as digital markets are particularly susceptible to direct measurements of market power that do not depend on a market definition.

14 Federal Court of Justice (Decision) in the Booking.com case (KVR 54/20), para 19. 2021. Available at: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/BGH_Entscheidung_Booking_EN.pdf?__blob=publication-File&v=3 [Accessed on 8 December 2022].

15 European Commission. Commission adopts new Vertical Block Exemption Regulation and Vertical Guidelines. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2844. [Accessed on 20 November 2022].

16 Competition Appeal Court (2015). In the matter between the Competition Commission of South Africa and SAB and others (case number: 129/CAC/Apr14), para. 40. Available at: <https://www.saflii.org/za/cases/ZACAC/2015/1.pdf> [Accessed on 8 December 2022].

17 Ibid, para. 45.

18 See the Provisional Report for a more detailed discussion on network effects (PR Chapter 2, section 2.2.1, para 63 to 65)."

19 Cremer, de Montjoye & Schweitzer (2019). "Competition Policy for the Digital Era.": Prepared for the European Commission. p. 3-4.

20 Competition Markets Authority (2020). "Market Study: Online Platforms and digital advertising".

21 Cappai & Collangelo (2020). "Navigating the Platform Age: the 'More Regulatory Approach' to Antitrust Law in the EU and the U.S." TTLF Working Paper, No. 55.

Franck and Peitz (2019:8) assert that “market shares are less apt in the context of two-sided platforms to indicate market power (or the lack of it). Therefore, where market shares are used as a measure of market power, the law should abstain from defining “hard” thresholds.”²²

10. The Inquiry’s investigation and subsequent observation of Booking.com’s model of operation, given that it operates a two-sided platform, is that it seeks to attract travellers to the platform by being the cheapest option available online. It does this by applying wide and narrow price parity in conjunction with substantive discounts, mostly funded by accommodation providers, and a “closed” loyalty Genius programme currently available to all its members. On the business user side of the platform, it appears to exploit its market power by extracting substantive volumes of accommodation funded discounts and getting accommodation providers to participate in exclusive programmes such as Preferred Partner and Preferred Plus which offer higher commission rates in exchange for improved visibility on the platform. Booking.com is able to do this as it becomes an unavoidable partner for accommodation providers to access the pool of travellers on the other side of the platform.
11. Even if the Inquiry were to humour the notion of applying the SSNIP test on the accommodation provider side of the market, it finds that Booking.com has unilaterally

increased its average commission rate by more than the 5-10% threshold between 2015 and 2022²³ while increasing its commission revenues several fold over the same period.²⁴ This indicates that Booking.com appears to behave to an appreciable extent independently of its competitors.²⁵ Furthermore, it recently introduced the Preferred Plus programme²⁶ which costs accommodation providers a substantively higher commission rate than the Preferred Partner programme.²⁷

12. Booking.com has proposed using the SSNDQ test on the consumer (traveller) side of the platform market considering that charging consumers a zero price for distribution is a market feature of OTAs.²⁸ The Inquiry considers the application of the SSNDQ test to be inappropriate and would not mirror the realities of network effects in the online accommodation intermediation market. Firstly because it poses two practical challenges: (i) how does a firm operationalise a decrease in quality and (ii) how does one quantify a 5-10% decrease in quality.²⁹ Secondly, Booking.com is unlikely to have an incentive to operationalise a decrease in quality considering that its whole business model is predicated on attracting consumers to the platform and giving them a seamless experience, which is then used to extract the rents from accommodation providers on the other side.

22 Franck & Peitz, 2019. “Market Power and Market Definition in the Platform Economy”. Centre on Regulation in Europe (CERRE). p.8.

23 [REDACTED]

24 [REDACTED]

25 See Davis (2020). “The Competition Commission of South Africa vs Babelegi Workwear and- Industrial Supplies cc”. The Competition Appeals Court of South Africa, CAC CASE NO: 186/CAC/JUN20.

26 Booking.com Partner Hub. All you need to know about Preferred Plus. Available at: <https://partner.Booking.com/en-gb/help/growing-your-business/increase-revenue/all-you-need-know-about-preferred-plus> [Accessed on 8 December 2022].

27 [REDACTED]

28 This is not the case for platforms such as Airbnb and Vrbo.

29 Franck & Peitz (2019). “Market Power and Market Definition in the Platform Economy”. Centre on Regulation in Europe (CERRE). p.65.

Box 1: Conclusion on market definition

Booking.com offers accommodation providers an online distribution service and does not carry the risks of ownership for the rooms it distributes. Furthermore, as demonstrated by competition authorities and courts alike, a vertical relationship exists between Booking.com and accommodation providers' own direct online distribution channels. Notwithstanding the Inquiry's reservations about undertaking a market definition exercise, for reasons deliberated in this section of the Report, but rather for reasons of completeness, the appropriate relevant market for the purpose of the Inquiry's assessment is the provision of online accommodation intermediation platform services.

Market power

13. Booking.com has market power and engages in business practices that entrench its market position. While the Inquiry agrees with Booking.com that the accommodation intermediation market has not tipped irreversibly, it disagrees that it is not entrenched.³⁰ Despite Booking.com enjoying strong network effects, part of this entrenchment is reinforced by business practices such as narrow and wide price parity, its ability to attract substantive accommodation funded discounts and aspects of its Genius Loyalty programme. These business practices are dealt with later in this report. While it does not appear that the online accommodation intermediation market has

yet tipped, consideration needs to be given to how further and prolonged entrenchment can potentially result in irreversible tipping.³¹

14. Booking.com's unilateral increasing of average commission rates over time appears to be fuelled by the growth of its higher yielding commission exclusivity programme, Preferred Partner and Preferred Plus.³² Since 2019, the proportion of total transaction value ("TTV") that pertains to Booking.com's exclusivity programme has increased substantially as a percentage of overall TTV, where in 2022 it accounted for more than half of overall TTV on the Booking.com platform.³³ Furthermore, the highest commission yielding programme, Preferred Plus, which was introduced in 2021, grew several fold in 2022.³⁴ With respects to the Genius loyalty programme and the substantive accommodation funded discounts the platform has been able to attract³⁵, rivals do not attract the same levels of these accommodation funded discounts both in absolute and relative terms (discussed later). Naturally, Booking.com's ability to attract higher commission-based transactions and unparalleled accommodation funded discounts is an unambiguous testament of the dependency that accommodation providers have on the platform where they need to contend for higher visibility and discoverability. It is also a testament to Booking.com's market power.
15. The notion of economic dependency that business users have on online intermediation platforms where the platforms are considered

30 This is evidenced by the fact that Booking.com has had over half of the online accommodation intermediation revenue share since at least 2018.

31 Booking.com has made significant inroads into the domestic traveller market.

32 The Preferred Plus commission rate is 18% and Preferred Plus is 23%. 123Compare.me (2021). Good or Evil: Preferred Plus Booking.com Program. Available at: https://123compare.me/en/preferred_plus_booking-com/ [Accessed on 10 February 2023].

33 In other words, the higher commission yielding exclusivity programme accounted for most of Booking.com's transaction value.

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unavoidable trading partners³⁶ or 'must-haves'³⁷ is an important consideration in respects to conceiving market power. For example, Cremer et al. (2019) note that *"even in an apparently fragmented marketplace, there can be market power. This kind of market power is linked to the concept of "unavoidable trading partner" and has sometimes been called "intermediation power" in the area of platforms"*.³⁸ Table A1 of this report delineates the dependency that hotels³⁹, for example, have on online intermediation platforms. More than half of hotels survey indicated that they are dependent or highly dependent on the online platform.⁴⁰ Similarly, in the Booking.com case in Germany, evidence considered by German Federal Court of Justice indicated that the majority of hotels consider their presence on Booking.com to be practically indispensable in economic terms for the distribution of their hotel rooms.⁴¹

16. Booking.com, as part of the Booking Holdings stable, enjoys unparalleled portfolio benefits⁴² by belonging to a broader travel and accommodation conglomerate.⁴³ This

can serve to further entrench Booking.com where the Booking Holdings portfolio of platforms feature strongly across online intermediation and lead generation for travel and accommodation, accounting for over half of online platform and lead generation revenues in South Africa.⁴⁴ Platforms covered by Booking Holdings include metasearch engines such as Kayak, Priceline, Momondo, HotelsCombined and Cheapflights (for flights), and intermediation platforms such as Rentalcars, which is by far the largest online car rental intermediary in South Africa, and Agoda, a smaller accommodation intermediation platform. Evidence is indicative of portfolio effects amongst these platforms. Most indicative of this is how Booking.com's Genius loyalty programme features across these platforms where Genius rates can influence the visibility and rank on many of these adjacent Booking Holdings platforms (for the benefit of the Genius member)⁴⁵ and provide Genius members preferential discounts on adjacent travel products.⁴⁶ Furthermore, Booking Holdings

36 Cremer, de Montjoye & Schweitzer (2019). "Competition Policy for the Digital Era.": Prepared for the European Commission. p. 4.

37 As in the case of the WeBuyCars merger case. (See Competition Tribunal (2020). MIH eCommerce Holdings WeBuyCars merger decision. Case # LM183Sep18).

38 Cremer, de Montjoye & Schweitzer (2019). "Competition Policy for the Digital Era.": Prepared for the European Commission. p. 4.

39 Note that all the metrics presented in Table A1 reflect the respondents experience with platforms more broadly, however, with respects the dependency question, it relates to a specific platform and not dependency on platforms (collectively) which was illustrated in Table A1 erroneously. The question on dependency reads as follows: *"How dependent is your company on the online platform?"*.

40 Most of these hotels indicated that the platform most responsible for its revenues was Booking.com (i.e. the main platform). When consulting the Redflank Survey raw data, only 4 of these respondents (out of 40) indicated that other platforms were responsible for a higher proportion of their sales than Booking.com.

41 Federal Court of Justice (Decision) in the Booking.com case (KVR 54/20), para 1. 2021. Available at: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/BGH_Entscheidung_Booking_EN.pdf?__blob=publication-File&v=3 [Accessed on 8 December 2022].

42 In economic literature this is referred to as 'portfolio effects' or 'conglomerate effects.'

43 [REDACTED]

44 See PR Chapter 2, section 1.2.3, para. 25.

45 [REDACTED]

46 Evidence collated thus far also suggests that Rentalcars have partnered with car rental operators to provide discounted benefits to Genius Loyalty members [REDACTED]

can broaden its pool of accommodation providers offered to travellers⁴⁷, and certain kinds of commercially sensitive data is shared within the stable.⁴⁸

Table 1: Platform revenue shares for online accommodation intermediation

Accommodation platforms	Commission revenues (%)		
	2018	2019	2020
Booking.com	[50-60] %	[50-60] %	[50-60] %
Agoda	[0-10] %	[0-10] %	[0-10] %
Airbnb	[10-20] %	[20-30] %	[20-30] %
Expedia	[0-10] %	[0-10] %	[0-10] %
Other global	[0-10] %	[0-10] %	[0-10] %
Tripco (Lekkeslaap/Travelground)	[0-10] %	[0-10] %	[0-10] %
SafariNow	[0-10] %	[0-10] %	[0-10] %
Afristay	[0-10] %	[0-10] %	[0-10] %
Other domestic	[0-10] %	[0-10] %	[0-10] %
Total accommodation	100,0%	100,0%	100,0%

Source: Inquiry's own calculations using revenue data submitted by platforms. Expedia figures include their portfolio of platforms attracting travellers to South Africa including za.hotels.com, Vrbo, Orbitz, Hotwire, ebookers, Wotif and Cheaptickets. "Other global" includes Trip.com, eDreams and Kid & Coe. "Other domestic" includes Bushbreaks, SA-Venues, Computicket, Flightcentre, Roomsforafrica, SA Places and Travelcheck.

Box 2: Conclusion on market power

Booking.com has market power and engages in business practices (such as price parity), leverages an expansive Genius loyalty programme and enjoys portfolio benefits that entrench its market position. This market power is manifested in the following ways: (i) it accounts for more than 45% of the online accommodation platform intermediation market, (ii) it can attract an unparalleled and substantive value of accommodation funded discounts which in turn can use to reinforce its network by attracting more travellers, (iii) it has introduced an extra tier of exclusivity and attracted additional commissions (in exchange for visibility) in the form of its Preferred Partner and Preferred Plus programmes which now collectively account for more than half of its transaction value, (iv) by doing this it effectively (unilaterally) increases its average commission rates and its commission revenues, (v) and accommodation providers appear to be economically dependent on Booking.com as a "must-have" or "unavoidable partner". Thus, Booking.com is a leading⁴⁹ (or dominant) platform for the provision of online accommodation platform intermediation services.

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49 The notion of a leading platform has been used before in the context of Booking.com. For example, the German Federal Court of Justice noted that "Booking.com is a leading online hotel platform in Germany and Europe" when providing reasons for its judgement. (Federal Court of Justice (Decision) in the Booking.com case (KVR 54/20), para 1. 2021. Available at: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/BGH_Entscheidung_Booking_EN.pdf?__blob=publicationFile&v=3 [Accessed on 8 December 2022]).

[2. Market structure and competitive dynamics]

2.1 Stakeholder's views and supporting arguments

17. Feedback from stakeholders suggests that they mostly or fully agree with how the Inquiry has described the market structure and competitive dynamics in the online travel and accommodation intermediation market⁵⁰. Some stakeholders did, however, disagree with some of the Inquiry's conclusions, pointed out potential misunderstandings, and highlighted omissions made in the Provisional Report. More specifically these include the following:

- 17.1. Barriers to entry and expansion are low, and that the market is highly dynamic and competitive, especially considering that there are many online platforms intermediating accommodation.⁵¹
- 17.2. Concerns with the Inquiry's conclusion that its assessment dispels "*preconceived notions of rampant multi-homing by users occurring on travel accommodation platforms*"⁵² and its use of Similarweb data used in assessing multi-homing.⁵³
- 17.3. The Provisional Report lacked a detailed assessment of the bargaining power of certain accommodation providers, specifically certain hotel chains, which may make it difficult for online intermediaries, including those of a certain size (i.e., smaller), to impose conditions (such as price parity clauses).⁵⁴
- 17.4. The Provisional Report did not recognise

that some hotel chain franchisors effectively operate as OTAs where the chain hotel franchisor's central booking site operates as an online intermediary marketing and distribution channel with regards to individual franchisee hotels. For example, it is noted that many large hotel chains (e.g. Hilton Hotels) operate as franchisors which offer independent hotels general franchise services, a choice of brands and a central online booking services platform.⁵⁵

2.2 Inquiry's views and supporting arguments

18. Evidence assessed by the Inquiry indicates high barriers to expansion. However, it does appear that barriers to entry are seemingly low. The strong network effects that leading platforms such as Booking.com enjoys by virtue of being a leading platform, creates significant barriers to expansion in itself as new entrants need to build a significantly strong network on both sides of the platform (i.e., consumer adoption on the one side and business users on the other side). While some platforms have been able to gain some traction, they have mostly been limited to niche markets as delineated in Section 2.5.3 of the Provisional Report.⁵⁶ Furthermore, it was delineated in Section 2.5.2 of the Provisional Report⁵⁷ (and the OIPMI Annexure 1, Google Final Report) that paid and organic search poses significant barriers to expansion as a key marketing channel to attract travellers. Paid search benefits the platform with the

50 This is the case for airlines, activities, accommodation online intermediation (e.g. Amadeus RPR 1, para 1; eDreams RPR 1, para 1; GYG RPR 1.1; Hotelbeds RPR 1, para 1.; Tripco VM3; [REDACTED])

51 Bcom RPR 1.1., para. 2.5 & 5.6.4.

52 Expedia RPR 1.1., para 1.20

53 Bcom RPR 1.1., para. 4.3.14.; Expedia RPR 1.1., 1.21.

54 Hotelbeds RPR 1, para.1.

55 Expedia RPR 1.1., para 1.27 to 1.30.

56 See PR Chapter 2, para. 105 to 106.

57 See PR Chapter 2, para. 103 to 104.

deepest pockets (i.e., Booking.com) and establishing oneself with a favourable rank on organic search results is a lengthy and resource intensive process.⁵⁸ Lastly, as discussed later in **Annexure C**, the extensive level of accommodation funded discounts attained by a leading platform, as in the case of Booking.com, can raise barriers to expansion for a rival platform as they are not able to replicate these discounts.

19. The notion that the market is competitive because there are many online accommodation intermediation platforms distributing rooms does not reflect the reality of competitive dynamics at play and is fundamentally flawed. While it is the case that there are several online accommodation intermediation platforms, and that this market is fragmented, the market is effectively skewed in favour of Booking.com and Airbnb (to a lesser extent) where both platforms collectively accounted for over three-quarters of commission revenues earned in South Africa between 2018 and 2020. There are several smaller platform rivals in the market but none of these smaller rivals account for more than 10% of online accommodation intermediation revenue share. A skewed market with a small, fragmented tail is not indicative of a competitive market, especially where only two platforms, enjoy significant amounts of network benefits.
20. Perhaps a more apt conclusion on multihoming is that both single-homing and multi-homing features in the market for online accommodation platform intermediation.

As Similarweb data⁵⁹ shows, depending on the platform, that approximately 30% of users were single-homing⁶⁰ (a proxy used for consumer loyalty) in 2021 and approximately 70% were multi-homing (i.e. visiting more than one site in that year).⁶¹ The Inquiry found a very similar outcome in 2022 where 32.5% of users who visited Booking.com, for example, did not visit any other site in that year.⁶² The same stakeholders that appear to contend the Inquiry's evidence on multi-homing ironically cite other studies that more or less corroborate the Inquiry's evidence. For example, Booking.com cites a Competition Markets Authority ("CMA") investigation which suggests that in the hotel sector, 25% of users use one comparison site and 75% use multiple comparison sites.⁶³

21. It may be true that smaller platforms have less negotiating power vis-à-vis hotel chains and their ability to impose conditions. Several smaller local platforms do not appear to enforce price parity, nor do they typically distribute rooms of large hotel chains. This is because hotel chains tend to be more dependent on platforms operating in highly competitive nodes such as Cape Town, Durban or Sandton and can focus on direct online distribution in less competitive nodes (discussed in Annexure A of this report). Global platforms such as Booking.com typically dominate highly competitive nodes as they can outbid rival platforms as well as hotel chains for favourable results on paid search and leverage their organic search footprint in their favour. It seems apparent that global hotel chains, more so than localized

58 The top percentile of clicks following travel related queries on both paid and organic search drive disproportionately more traffic following travel related queries than the other 99 percentiles combined. (Google RPR1.2 and Google WS5a, Annex 14.1). This is discussed in more detail in the Google Final Report, Annexure 1. Based on Similarweb data, Booking.com drives more traffic than any other domain in the travel and accommodation sector in South Africa.

59 A question was raised pertaining to the sample used by the Inquiry to determine the incidence of multi-homing. The Similarweb data analysed covered 100 domains.

60 For example they only visited the given accommodation platform's domain and no others in the 2021 year.

61 See Figure A2 in Annexure A, section 6.1 of this report.

62 Using Similarweb's "Audience Loyalty" function including a list of 57 domains including accommodation intermediation platforms, metasearch sites, major hotel chains, independent hotels, resorts etc. for the 2022 calendar year. Other platform outcomes on single-homing in 2022: Airbnb 30.3%; Lekkeslaap 25.6%; Expedia 16.7%; SafariNow 12.6%; Agoda 11.2%; hotels.com 9.3%.

63 Bcom RPR 1.1a, para 4.3.17. Also see Expedia RPR 1.1a, para. 1.24.

hotel chains, can exert negotiating power on the large global platforms, and this is evident in their ability to extract more favourable commission rates relative to their smaller accommodation rivals. Notwithstanding this, global platforms are still effective in enforcing conditions on hotel chains that are important to their business model (such as price parity).⁶⁴ This suggests that the countervailing power of hotel chains is limited in relation to global online accommodation intermediation platforms. Furthermore, they represent a fraction of online accommodation platform revenues.⁶⁵

22. The value proposition that online intermediation platforms provide travellers with is the ability to search for, sort and filter accommodation across a variety of providers. While it is recognized that some global hotel chains operate several branded hotels, and distributes these brands through a centralized booking system, they cannot be considered online accommodation intermediation platforms. This is because these centralized booking systems appear to be restricted to the franchisor's brands and not open to a broader set of accommodations.⁶⁶ Furthermore, the Inquiry has frequently observed hotels belonging to hotel chains, such as Hilton Hotels, featuring on online accommodation intermediation platforms such as Expedia and Booking.com to distribute hotel rooms. This suggests that hotel chains, notwithstanding their centralized booking systems, use online accommodation intermediation platforms for distribution.

2.3 Accommodation ecosystem and Booking.com's influence on business user behaviour and pricing

23. Given its prominence and market power, Booking.com may have the ability to influence the accommodation provider ecosystem with respects to the numerous establishments listed on the platform.⁶⁷ For example, the platform may influence the accommodation providers' pricing relative to its competitors (e.g. average daily rates "ADRs" that affect platform ranking), the pricing model that is adopted (e.g. flexible or non-refundable payment terms), which programmes to participate in (e.g. Genius and Preferred Partner programmes) and products and services to offer guests (e.g. free room upgrades, free breakfasts etc). Based on educational tools provided to accommodation providers through Booking.com's Connectivity Hub, recently discovered by the Inquiry,⁶⁸ a more intimate understanding of the Booking.com accommodation provider interface, especially through the accommodation providers dashboard could be determined.
24. Here one can find Booking.com's conception of the Guest Booking Journey on the platform (see Figure 1) which includes eight identified steps.⁶⁹ Notable mentions in the Guest Booking Journey for purpose of deliberation in this section is Stage 3, 'search views', *"where ranking plays a big role. If a property has a high ranking in our system, they'll get more search views than a property with a low ranking"*. Another important feature is average daily rates ("ADRs"), which impacts the booked revenue.

64 [REDACTED]

65 [REDACTED]

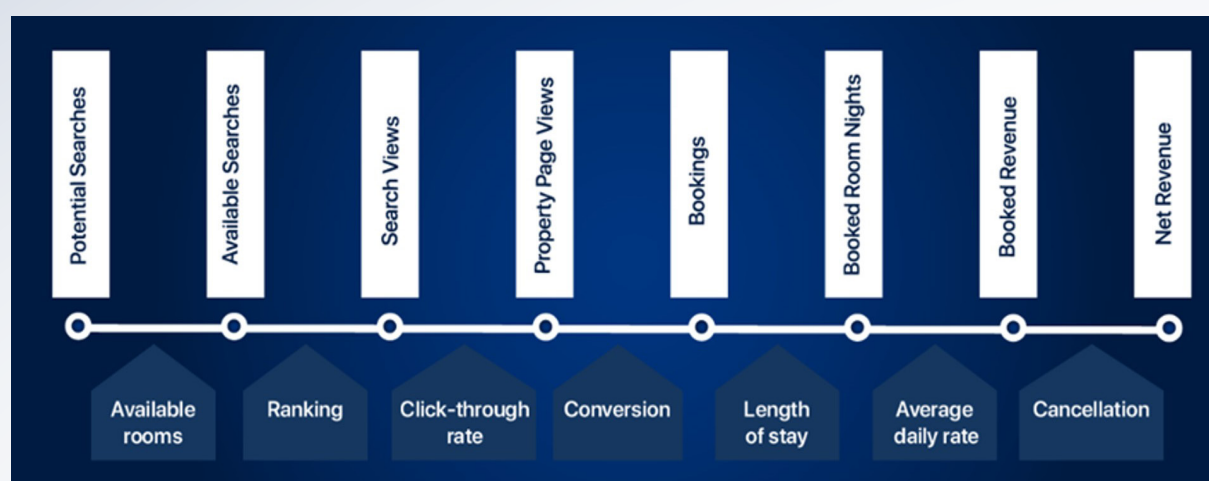
66 Franchisees appear to benefit from the reduced commission rates negotiated between the franchisor and platform.

67 [REDACTED]

68 Booking.com Connectivity Hub: Education. Available at <https://connectivity.booking.com/en-gb/education> [Accessed on 11 December 2022]. In December 2022, Booking.com's Connectivity Hub was discovered by the Inquiry and was publicly accessible online, however, the site now appears to require a login and is password protected (15 February 2023).

69 For a detailed explanation of these steps, please see: Booking.com Property Performance Course Lesson 1: Focus Finder. Available at: <https://connectivity.booking.com/en-gb/education/lesson-1-focus-finder> [Accessed on 11 December 2022].

Figure 1: Booking.com's guest booking journey



Source: Booking.com Property Performance Course Lesson 1: Focus Finder. Available at: <https://connectivity.Booking.com/en-gb/education/lesson-1-focus-finder> [Accessed on 11 December 2022].

25. The tool at the centre of the accommodation provider interface is Focus Finder⁷⁰, a sorting and recommendation engine, which provides actionable intelligence to help accommodation providers improve their performance.⁷¹ It analyses a property's performance, such as how they price at each step of the guest booking journey from a guest's initial search on Booking.com to their stay at the accommodation. Focus Finder identifies where the property is experiencing drop-offs in that journey, and offers commercial advice based on the specific challenges the property faces which takes the form of tailored tips (such as adding a particular product to suggesting deals) or opportunities (such as the Genius loyalty programme and Preferred Partner programme) that help properties to optimise their performance.⁷²

26. Focus Finder also compares an establishment's performance to similar properties, which is called the 'competitive set'. Accommodation providers have noted that the competitive set is suggested by Booking.com but ultimately, they chose which rival accommodation providers to have in their competitive sets.⁷³ There is a minimum of 10 rival establishments in a competitive set. Where exactly an establishment appears in search results depends on their performance, their competitive set's performance, and the changing demand in their local market⁷⁴. The display of rival performance on the Booking.com platform can be characterized as being transparent for accommodation providers in terms of their competitive set, both on an aggregate basis and at an individual level. At an aggregate level, accommodation providers can compare ADRs and the

70 Focus Finder can be found in the Opportunity Centre. See Booking.com Property Performance Course Lesson 1: Focus Finder. Available at: <https://connectivity.Booking.com/en-gb/education/lesson-1-focus-finder> [Accessed on 11 December 2022].

71 Suesz, E. (2020). How Focus Finder redefined Booking.com's approach to performance advice. Available at: <https://partner.Booking.com/en-us/click-magazine/bookingcom-news/how-focus-finder-redefined-bookingcom%E2%80%99s-approach-performance-advice> [Accessed on 11 December 2022].

72 Focus Finder can be found in the Opportunity Centre. See Booking.com Property Performance Course Lesson 1: Focus Finder. Available at: <https://connectivity.Booking.com/en-gb/education/lesson-1-focus-finder> [Accessed on 11 December 2022].

73

74 Booking.com. Lesson 2: How to improve your portfolio's performance. Available at: <https://connectivity.Booking.com/en-gb/education/lesson-2-how-improve-your-portfolio%E2%80%99s-performance> [Accessed on 11 December 2022].

number of booked room nights relative to the competitive set.⁷⁵ Accommodation providers can also observe granular metrics of rivals in the competitive set such as their review score and whether they belong to the Genius or Preferred Partner programmes.⁷⁶

27. Considering that ranking is very important, the features that affect ranking (or the Search Results Score) most on Booking.com is the conversion rate, ADRs, cancellations, property page views, and review scores⁷⁷, where conversion is the most important. When faced with ranking issues, Focus Finder will highlight the 'Ranking' metric as needing improvement in orange/red and the property the option to "take action"⁷⁸. This becomes potentially problematic with respects to ADRs, for example how does one "improve" their ADR if flagged as an issue in the Search Results Score? Explanations provided on Booking.com's Connectivity Hub also raise concerns where the platform states that if an accommodation provider's *"properties have a lower ADR than similar properties nearby, their Focus Finder will highlight the 'Average daily rate' metric as needing improvement (orange/red)."*⁷⁹ It is not clear what "needing improvement" means but the initial interpretation of this is that in some instances Booking.com prompts accommodation providers to raise prices of these establishments. If this is the case, it would warrant antitrust scrutiny for both the platform and accommodation provider.

28. This is a novel issue uncovered late in the Inquiry and has not been fully explored. The Inquiry has not encountered any other price

recommendations or prompts by Booking.com except for the prompts where ADRs are highlighted in orange or red on the Search Results Score dashboard. Engagements with a few accommodation providers suggest that they are aware of ADRs in the Search Results Score, and orange/red prompts, but this does not primarily influence their pricing.⁸⁰ Rather the use of Revenue Management Systems ("RMS") seems to be a bigger factor affecting accommodation prices.⁸¹ Nonetheless, Booking.com's prompts could potentially have the effect of aligning prices across competitive sets and can have further pricing implications for the broader accommodation ecosystem where narrow and wide parity is applied, this is discussed in the next section. Furthermore, ADRs and prompts, and RMS are discussed in more detail in the section pertaining to AI tools and price recommender systems.

75 This observation is based on information submitted by accommodation providers [REDACTED]

76 Booking.com also provides accommodation providers a performance score relative to their competitive set. [REDACTED]

77 Booking.com. All about the Ranking dashboard. Available at: <https://partner.Booking.com/en-gb/help/growing-your-business/analytics-reports/all-about-ranking-dashboard> [Accessed on 11 December 2022].

78 [REDACTED]

79 See screenshot in **Annexure B**. Booking.com. Lesson 2: How to improve your portfolio's performance. Available at: <https://connectivity.Booking.com/en-gb/education/lesson-2-how-improve-your-portfolio%E2%80%99s-performance> [Accessed on 11 December 2022].

80 [REDACTED]

81 [REDACTED]

[3. Platform Competition findings]

3.1. Price Parity

3.1.1. Stakeholder's views and supporting arguments

3.1.1.1 Enforcement of parity obligations (by Booking.com)

29. Booking.com notes that it does not enforce price parity clauses in South Africa⁸² but submits that it should be able to retain these clauses in its contracts, and should be entitled to enforce them, should the need arise⁸³. Booking.com notes that it does not penalize accommodation providers' ranking if price parity is not adhered to. In June 2021, Booking.com updated the Price Quality Score feature on its algorithm to "External Prices". External prices are an information metric on an accommodation providers dashboard to indicate whether they are "competitive" or "not competitive". Lastly, it is noted that consumer behaviour affects ranking on the platform where a price differentiation strategy, where lower prices on an accommodation providers own online distribution channels, may result in a lower ranking on the platform due to lower conversion and click-through-rates (in the context where the consumer finds the accommodation on Booking.com's own distribution channel and then books on the accommodation providers direct online channel).⁸⁴

3.1.1.2 Wide Parity

30. Booking.com submits that wide parity obligations are necessary to maintain the one-stop-shop efficiency where travellers must be able to rely on getting the best price on the platform⁸⁵. Furthermore, if accommodation providers could price differentiate across channels, it would mean that prices are less transparent for travellers. Booking.com argues that wide parity is important for every platform to generate sufficient turnover in the long term to recoup the costs of market entry and marketing costs invested. Lastly, it was pointed out that the Inquiry failed to provide evidence that wide parity obligations harm competition and have a price effect.

3.1.1.3 Narrow Parity

31. The main efficiency argument put forward by the global OTAs are that narrow parity clauses are necessary to deter free riding which they consider poses a real risk to their platforms⁸⁶ including making the platform look less attractive for investors to invest in.⁸⁷ It is stated that OTAs offer accommodation providers a risk-free, cost-effective marketing channel to generate incremental bookings at no upfront cost.⁸⁸ The risk that these OTAs seek to mitigate with narrow parity obligations is that accommodation providers would offer the same rooms elsewhere for lower prices than on the OTA, while having enjoyed the benefits of the presence on its platform.⁸⁹ This will at some point become widely known to travellers,

82 Bcom, RPR1.1, para.9.7.1

83 Bcom, RPR1.1, para.9.7.2.

84 Bcom, RPR1.1, para.9.7.6.

85 See Bcom PRP1.1, para 9.3 & 9.4

86 Bcom, RPR1.1, para 9.3.1. Expedia RPR 1.1a., para. 1.19.

87 Bcom, RPR1.1, para 9.3.1.

88 Expedia RPR 1.1a., para. 1.19.

89 Bcom, RPR1.1, para 9.5.3.

and subsequently they will book far fewer rooms via the platform.⁹⁰ If accommodation providers could systematically under-cut OTAs' rates, the OTAs' business model would no longer be viable, particularly where OTAs market shares do not exceed 30%.⁹¹ As such there are no realistic alternatives to the parity clause.⁹²

32. Furthermore, in conjunction with the free riding argument:

32.1. It is noted that the Inquiry has both relied selectively⁹³ and heavily⁹⁴ on the Bundeskartellamt's prohibition decision and German Federal Supreme Court decision in 2021 on the of Booking.com's narrow parity clauses but did not refer to the large body of findings made by several Competition Authorities⁹⁵ which recognise that narrow-parity clauses are proportionate and offer legitimate legal and commercial safeguards for online intermediaries against attempts of suppliers to free-ride on the upfront investments.

32.2. Accommodations already benefit from the so-called billboard effect: just being on an OTA increases their sales via other distribution channels.⁹⁶ For example, a study by Anderson and Han (2017) is cited where tests done in 2009 found that OTAs were able to increase hotel reservations by between 7.5% and 26%.⁹⁷

32.3. The Similarweb data relied on by the Inquiry is limited and flawed as it assesses

cross-browsing behaviour on the same day, this does not represent the total extent of billboarding and the realities of the consumer journey which involves many touchpoints (different site visits) and generally takes significantly longer than a day.⁹⁸

32.4. Expedia notes that each sector needs a case specific assessment of free riding. For example, it was noted that the removal of Most Favoured Nation ("MFN") clauses (price parity clauses) in the airline booking sector by some or all participants in the ecosystem would fundamentally destabilize the supply chain in that sector.⁹⁹ This is because of the highly concentrated supplier base (airlines) in this sector.

33. Other arguments raised pertaining to narrow parity.

33.1. Accommodation providers are still in full control of their pricing. Narrow parity clauses also do not restrict accommodation providers' closed user groups, loyalty programmes or other offline channels and as such can price cheaper on these channels.¹⁰⁰

33.2. The accommodation provider would have the incentive to charge higher price on OTAs (as opposed to charging lower price on their direct channels).¹⁰¹ As such the removal of narrow parity clauses would likely drive up the price of accommodation across the board.

90 Bcom, RPR1.1 para 9.5.5.

91 Expedia RPR 1.1a., para. 1.14 & 1.17.

92 Bcom, RPR1.1, para 9.3.1.5.

93 Bcom, RPR1.1, para 9.3.6.

94 Expedia RPR 1.1a., para. 1.9.

95 These include the views of the Swedish, Danish and Hungarian Competition Authorities in 2015.

96 Bcom, RPR1.1, para 4.3.8. Expedia RPR 1.1a., para. 1.19.

97 Expedia RPR 1.1a., para. 1.6. This study was also cited by Booking.com (Bcom RPR 1.1a, footnote 24). See Anderson and Han (2017). The Billboard Effect: Still Alive and Well. *Cornell Hospitality Report, Vol. 17, No.11*. Available at: https://ecommons.cornell.edu/bitstream/handle/1813/70982/Anderson_2017_The_billboard_effect.pdf?sequence=1&isAllowed=y [Accessed on 13 December 2022].

98 See Expedia RPR 1.1a, para. 1.5.; Bcom RPR1.1, para 4.3.4; Tripco RPR1, p.4.

99 Expedia RPR 1.1a, para. 2.9.

100 Bcom, RPR1.1, para 9.5.2.

101 Expedia RPR 1.1a, para.1.16

3.1.2. Inquiry's views and supporting arguments

3.1.2.1 Enforcement of parity obligations (by Booking.com)

34. Booking.com enforces price parity in that it is a precondition for joining and participating in its Genius Loyalty programme¹⁰² and advertises this precondition for its exclusivity programmes, Preferred Partner and Preferred Plus¹⁰³. Being eligible to join these programmes is important to most accommodation providers as they are drivers of visibility on the default search results¹⁰⁴, where high ranking is responsible for the lion's share of bookings.¹⁰⁵ Furthermore, the majority of accommodation providers distributing their rooms belong to either one or both of these programmes.¹⁰⁶ Therefore, there is incentive to price at parity to derive the visibility benefits of belonging to these programmes. Since June 2021, however, Booking.com no longer uses Price Quality Score (PQS) in its algorithm and as such it does not appear that adherence to price parity impacts rank directly.
35. Booking.com's External Prices model indicates whether prices are "competitive" or "not competitive" overall, and transparently displays in detail instances where prices for rooms on other online channels are cheaper than Booking.com.¹⁰⁷ Furthermore, Booking.com notes that to belong to its

Preferred Partner exclusivity programme, accommodation providers need to adhere to External Prices which is described as its *"measurement of how competitive [the accommodation provider's] prices are on our platform, compared to on other websites. [The accommodation provider will] need to be 'competitive' to be able to join the programme."*¹⁰⁸ The Inquiry understands these terms "competitive" and "not competitive" to mean "pricing at parity" or "not pricing at parity" respectively.

36. Booking.com claims that it does not enforce parity but retains parity clauses in its contracts, and would be entitled to enforce them, should the need arise. The Inquiry's interpretation of this is that Booking.com uses a "carrot-and-stick" approach to enforcing parity clauses where the carrot (incentive) is to belong to the Genius loyalty programme and exclusivity programmes in exchange for improved visibility. Booking.com seems to rely predominantly on prompts such as the detailed and transparent External Prices display on the accommodation providers dashboard to indicate whether accommodation providers are pricing "competitively" and provide exact details of where prices are not competitive. The platform, however, seems intent to keep price parity clauses most likely as a "stick", perhaps to remind accommodation providers of their contractual price parity

¹⁰² Bcom WS5.1, para. 3.

¹⁰³ Booking.com Partner Hub (2022). All you need to know about the Preferred Partner Programme. Available at: <https://partner.booking.com/en-gb/help/growing-your-business/increase-revenue/all-you-need-know-about-preferred-partner-programme> [Accessed on 15 February 2023].

¹⁰⁴ [REDACTED]

¹⁰⁵ [REDACTED]

¹⁰⁶ [REDACTED]

¹⁰⁷ In fact, the Booking.com dashboard (for business users) provides a statistic (out of 100) where room prices on other online channels was lower than Booking.com and transparently specifies what channels these were. See Bcom WS 5.2, para 10.4.2. and [REDACTED] for examples.

¹⁰⁸ Booking.com Partner Hub (2022). All you need to know about the Preferred Partner Programme. Available at: <https://partner.booking.com/en-gb/help/growing-your-business/increase-revenue/all-you-need-know-about-preferred-partner-programme> [Accessed on 15 February 2023].

obligations if needs be.¹⁰⁹ The result is that there is self-enforcement by establishments both incentivised by the carrot and wishing to avoid the consequences of the stick of the unavoidable partner.

37. Lastly, it is clear to the Inquiry that the effective removal of parity obligations, would not only include the removal of these clauses from the contracts but also clear, unambiguous, and widespread communication to accommodation providers that there are no parity obligations and that they can price freely across online distribution channels. For example, across several European Member States, 47% of the hotels that responded to an electronic survey indicated that they were not aware that certain OTAs had changed or removed their parity clauses.¹¹⁰ In the UK it was noted that many *"hotels were not aware that Booking.com and Expedia no longer enforced 'wide' parity clauses or of what this means for hotels' ability to differentiate their prices across online travel agents."*¹¹¹

3.1.2.2 Wide parity

38. None of the arguments raised provide substantive efficiency and pro-competitive justifications with respects to wide price parity.¹¹² In fact some of the arguments posited are likely to result in further entrenchment of leading platforms. More specifically:

- 38.1. The notion of a platform being a one-stop-shop in a given market suggests

that the platform could be entrenched. As demonstrated in this report, this is the concern that the Inquiry has with respects to Booking.com. Ideally in a platform market, the ability of consumers to shop around is important in constraining the network effects of platforms, especially larger ones (i.e., constraining it from becoming too big and possibly tipping). While Booking.com might apply wide parity across online distribution channels, it effectively offers consumers discounted prices either by utilising accommodation funded discounts or funding its own discounts. This suggests that Booking.com's effective price may be less than its rivals while wide price parity is applied, making it the cheapest option. Therefore, a cynical but likely observation is that the platform leverages parity obligations to control prices across the online accommodation intermediation ecosystem where it can invariably leverage its market power to attract (mostly accommodation funded) discounts and be the cheapest price point for travellers. This reinforces user traffic to and bookings on the platform, and this reinforcement serves to deepen the platforms entrenchment. Booking.com's notion that *"Travelers must be able to rely on getting the best price on the Booking.com platform"*¹¹³ seems to echo this objective. The concern with this statement is that Booking.com, who has access to many travellers through its cheapest price points¹¹⁴, can exploit its market power on the accommodation

109 For example, the EU Monitoring Report found that 25% of those hotels that did price differentiate across channels did so because of fear of penalization. See Report on the Monitoring Exercise carried out in the online hotel booking sector by EU Competition Authorities in 2016. Available at: https://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf [Accessed on 15 December 2022].

110 Report on the Monitoring Exercise carried out in the online hotel booking sector by EU Competition Authorities in 2016, para. 17. Available at: https://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf [Accessed on 15 February 2023].

111 OECD. 2018. Implications of E-commerce for Competition Policy - Note by the United Kingdom, 6 June 2018, DAF/COMP/WD(2018)53, page.10.

112 [REDACTED]

113 Bcom, RPR1.1, para 9.3.1.2.

114 [REDACTED]

providers side of the platform by charging higher commissions or create conditions that direct accommodation providers to its higher commission yielding exclusive programmes.

- 38.2. The online accommodation intermediation market appears to be transparent regardless of parity clauses considering that metasearch engines, which are effectively price comparison sites, feature strongly as a lead generation input. Furthermore, the ubiquitous use of rate shopping tools makes the vast array of online prices accessible to users of these rate shopping tools. It's the Inquiry's view that price differentiation across online distribution channels appears to be an important driver of platform competition. Evidencing this observation, is the growing value of the leading platform's own funded discounts to match lower prices on other online distribution channels.¹¹⁵
- 38.3. With respects to recouping of market entry and marketing costs. Firstly, Booking.com is a profitable and leading platform with a global footprint and a relatively small cost footprint in South Africa.¹¹⁶ It has more than recouped its cost of market entry. Secondly, search engine marketing, the largest platform cost, raises concerns relating to barriers to expansion. Booking.com has deep pockets, giving it an unparalleled advantage on paid search and it also fares well in organic search results.¹¹⁷ Its marketing cost investment therefore is a market feature that invertedly raises the barriers to expansion for smaller platform rivals. While its main objective might be to generate traffic to its site, Booking.com's search engine marketing strategy effectively doubles as a defensive

strategy protecting its platform against rivals seeking to attract new users to their sites. Therefore, the use of wide parity as a means to recoup marketing costs has the effect of doubling down on raising barriers to expansion.¹¹⁸ In addition, smaller rivals have their own marketing costs and can potentially use lower prices through price differentiation as a tool to attract customers (and recoup these costs).

39. Wide parity obligations distorts and impedes competition in the online accommodation intermediation platform market in the following ways:
 - 39.1. Wide parity further entrenches Booking.com. Through wide price parity obligations, Booking.com can restrict price differentiation across the online accommodation intermediation platform market. At the same time it can leverage its market power to attract unparalleled levels of accommodation funded discounts on the platform making it a one-stop-shop to the exclusion of rival platforms.
 - 39.2. ADR prompts, where ADRs affect ranking in the Search Results Score on Booking.com, delineated in Section 2.3 of this report, has the potential to influence prices, either by increasing or decreasing them, to be in line with the accommodation provider's competitive set. When used in conjunction with wide parity, these prices which apply across online distribution channels including the accommodation provider's own online distribution channels is effectively the same (or has same effective price floor at least).
 - 39.3. Wide parity obligations restrict market expansion of small rival platforms through

115 

116 

117 See arguments raised in Section 4.2.2 and Figure 5 of Annexure 1 of the Google Final Report.

118 It can be conceived as a platform justifying the use a tool that raises barriers to expansion (wide parity), in order to fund a tool that has the effect of raising barriers to expansion (paid search advertising).

price differentiation. Small rival platforms can price differentiate by (i) obtaining lower daily rates from accommodation providers and (ii) lowering retail prices by charging lower commission fees. Evidence gathered by the Redflank Survey suggest that, had the main platform used by an accommodation provider not restricted different pricing on other platforms, 25% and 50% of large and small metro-based hotels; and 17% and 3% of large and small non-metro-based hotels would offer lower prices on other online platforms.¹¹⁹ Furthermore, a study that was done in Europe to assess the change from wide to narrow parity found that 21% of hotels price differentiated prices between OTAs whereas 79% did not, although 47% of hotels were unaware of the changed parity terms.¹²⁰ Lastly, an empirical assessment by Ennis *et al.* which assessed the regulatory changes in price parity from wide to narrow in European countries showed that the probability of sales by hotels through their direct channels become cheaper than OTA sales for mid-level and luxury hotels.¹²¹

39.4. Wide parity obligations restrict accommodation providers from differentiating their strategy across distribution channels. For example, establishments may want to offer lower prices to local platforms that target local travellers.¹²²

39.5. Lastly, Booking.com can fund its own discounts on the platform to match prices along other distribution channels which is evidenced by the Booking.com's Sponsored Benefit programme. As price differentiation across online accommodation intermediation platforms intensifies, so will the likelihood of price competition intensify through the provision of platform funded discounts.

Box 3. Conclusion and findings on wide parity clauses

The wide parity obligation is one of the tools in Booking.com's arsenal to control or at least significantly influence the online accommodation intermediation platform market. Furthermore, it impedes and distorts platform competition by further entrenching Booking.com and potentially raise prices of accommodation distributed through online channels.

More broadly speaking, wide parity obligations limit the expansion of smaller platforms by impeding their ability to price differentiate, and limits business users from differentiating their strategy and prices across platforms. Furthermore, evidence suggests that prices are likely to be cheaper on rival platforms absent wide parity. There also appears to be no convincing efficiency and pro-competitive justifications for wide parity clauses.

Therefore, the Inquiry finds that wide parity obligations impede and distort competition, particularly when enforced by a leading platform, by preventing accommodation providers from distributing on rival platforms at lower prices, by limiting the ability of rival platforms from engaging in their own discounting of prices and distribution innovations, and distorts competition by further entrenching the leading platform and potentially raising prices in the accommodation competitive set and more broadly the accommodation ecosystem.

119 Redflank Survey, 2021, slide 95.

120 Report on the Monitoring Exercise Carried out in the Online Hotel Booking Sector by EU Competition Authorities in 2016. Available at: https://ec.europa.eu/competition/ecr/hotel_monitoring_report_en.pdf. (Accessed on 21 April 2022).

121 Ennis, S., Ivaldi, M., & Lagos, V. 2020. Price Parity Clauses for Hotel Room Booking: Empirical Evidence from Regulatory Change. Available at: https://www.tse-fr.eu/sites/default/files/TSE/documents/doc/wp/2020/wp_tse_1106.pdf. [Accessed on 04 December 2022].

122 For example, Tripco notes that "one of the advantages to the local platforms is because we are driven by domestic tourism. Establishments are often happier to discount to locals". (Tripco, OS, p.35).

3.1.2.3 Narrow Parity

40. The concern the Inquiry has with narrow parity is that it impedes competition and enables exploitative behaviour by the leading platform. The anticompetitive effect (or impediments to competition) of narrow parity clauses are most acutely experienced when applied by a platform demonstrating market power¹²³ and this appears to be the case of Booking.com in online accommodation platform intermediation. Narrow parity is seemingly a key tool in Booking.com's arsenal to further entrench itself by impeding competition, impeding distribution innovations of accommodation providers, and leveraging dependency of accommodation providers on it to extract more rents. These observations have been demonstrated in section 3.2 of the Provisional Report and are demonstrated within this report.¹²⁴

Free riding concerns raised by platforms are not substantive.

41. Before addressing the views raised by stakeholders, it is noteworthy to mention that the question of narrow parity and free riding was addressed at length by the German courts with Germany's highest court, the Federal Court of Justice, concluding, in the context of Booking.com being the leading platform¹²⁵ (i.e., platform with market power), that *"hotel booking platforms provide the hotels with the advantage of significantly greater customer reach. However, the narrow price parity clause*

is not a precondition for these efficiency gains. Although the existence of a free-rider problem cannot be ruled out, the Bundeskartellamt's further investigations and Booking.com's assertions have not shown any indications that this problem severely threatens the efficiency of the services offered by the platform. On the other hand, however, the narrow price parity clause significantly restricts the online sales managed by the hotels themselves without using the platform".¹²⁶

42. It was argued that the Inquiry relied too heavily on the Bundeskartellamt's prohibition decision and German Federal Supreme Court in the Provisional Report. It is true that the Inquiry has relied on their deliberations to a large extent, and that there is good reason for this. Firstly, the Bundeskartellamt, as far as the Inquiry is aware, is the only study which actively tested for free riding from OTAs to accommodation providers. Secondly, Germany provides a good testing ground as it is one of the few jurisdictions where a transition from wide, to narrow, to no parity has actually taken place.¹²⁷
43. The main arguments made by the Swedish, Danish and Hungarian Competition Authorities in 2015 appear to be that absent narrow parity, accommodation providers are likely to lower their rates on their own direct online channels creating a realistic free riding efficiency concern. The Swedish Competition Authority also appeared to rely on a Booking.com survey in its assessment that found that

¹²³ For example, Hotelbeds notes that *"narrow parity is a concern only where the online intermediation platform has market power, i.e., it is a 'leading platform' within the meaning of the Provisional Report"* and further states that narrow parity is only a concern *"where competition for the supply of online intermediation services is limited, which allows a provider of online intermediation services with a high market share to maintain a higher price for its services"*. (Hotelbeds RPR1.1., para. 2).

¹²⁴ These observations are also discussed in the Provisional Report. See PR Chapter 2, section 3.2, page 120 to 136.

¹²⁵ The Federal Court of Justice states in the first paragraph of its Decision that *"Booking.com is a leading online hotel platform in Germany and Europe"*. See Federal Court of Justice (Decision) in the Booking.com case (KVR 54/20), para 19. 2021. Available at: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Others/BGH_Entscheidung_Booking_EN.pdf?__blob=publicationFile&v=3 [Accessed on 14 December 2022]

¹²⁶ Federal Court of Justice (2021). Press release: Federal Court of Justice confirms illegality of Booking.com's *"narrow price parity clauses"* (translated from German). Available at: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2021/18_05_2021_BGH_KVR_54-20_Booking.com.pdf?__blob=publicationFile&v=3 [Accessed on 14 December 2022].

¹²⁷ Given that wide parity has been and is currently in force in South Africa, one cannot do a similar assessment capturing the effects of a move to no parity.

65% of consumers booking Swedish hotels stated that they would be likely to book at the hotel's website instead of Booking.com if the price were 10% lower on the hotel's website.¹²⁸ Notwithstanding the fact that these assessments were made in 2015, in a digital market that was more novel to competition authorities then than it is now, two important caveats need to be interrogated pertaining to the link between the assessments made and actual incidences of free riding:

- 43.1. Firstly, that every establishment would sell all their rooms online via their online channels at a significant discount to OTAs. Based on the evidence at hand, it is true that a substantial number of accommodation providers would price lower on their own distribution channels (discussed later in the report).¹²⁹ However, there are many that wouldn't. Secondly, of those who do sell at lower prices, many may not do so at a significant discount to the OTA (unlike the 10% discount cited in the Swedish study in the previous paragraph). As discussed later, OTAs provide accommodation providers with a unique value proposition over and above price and therefore the latter may not have the incentive to price significantly lower on their own direct online channel.
- 43.2. Secondly, that lower prices on the hotel's direct online channels will automatically result in free riding. Evidence presented by the Bundeskartellamt found that only one third of consumers compare the prices of a particular accommodation

online.¹³⁰ Here the value proposition of OTAs to consumers and other features of non-price competition is important such as cancellation policies, the convenience and seamlessness of using an OTA, etc. are likely to limit active searches for prices elsewhere.

44. During the Inquiry, none of the OTAs were able to provide concrete evidence of actual free riding despite the Inquiry's requests to produce such evidence. The most concrete evidence at the Inquiry's disposal is that in a world of no parity, 99% of all consumers who found their accommodation on Booking.com also actually booked it on Booking.com¹³¹, suggesting that only 1% of consumers booked elsewhere.
45. With respects to the billboard effect, it seems natural to assume that billboard effect remains the same regardless of the price parity obligations employed (including no parity).¹³² As such the relevant question is "how does a change from narrow to no parity affect free riding?", which is the subject of debate in this section of the report. The Inquiry acknowledges that billboard effect happens but has two important caveats to raise (i) a study by Anderson and Han (2017), a study often cited by OTAs, finds that the billboard effect is decreasing over time and (ii) OTAs are also likely to benefit from billboard effect off hotels.¹³³ On the latter point, the authors find that 31% of travellers who start their search at a hotel site end up booking at an OTA, while 35% of travellers who start their search on an OTA end

128 Swedish Competition Authority (2015). In the matter with Booking.com, para. 29. Available at: https://www.konkurrensverket.se/globalassets/dokument/engelska-dokument/beslut/13_0596e.pdf [Accessed on 8 December 2022].

129 For example, 38% of small metro hotels, 55% of small non-metro hotels, 38% of large metro hotels and 33% of large non-metro hotels indicated that would lower prices on their own website had the main platform they use not restrict different pricing. In Germany approximately 53% of all the hotels that use Booking.com always or often undercut the prices offered on their online direct distribution channels (Federal Court of Justice, para. 73).

130 Bundeskartellamt, 2020. The effects of narrow price parity clauses on online sales – Investigation results from the Bundeskartellamt's Booking proceeding. Competition and Consumer Protection in the Digital Economy. p.6.

131 Bundeskartellamt, 2020. "The effects of narrow price parity clauses on online sales – Investigation results from the Bundeskartellamt's Booking proceeding". Page 7. Available at: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe_Digitales_VII.pdf?__blob=publicationFile&v=3. [Accessed on 04 December 2022]

132 In other words, billboard effect stays the same regardless of wide parity, narrow parity or no parity.

133 See Anderson and Han (2017). The Billboard Effect: Still Alive and Well. *Cornell Hospitality Report*, Vol. 17, No.11. Available at: https://ecommons.cornell.edu/bitstream/handle/1813/70982/Anderson_2017_The_billboard_effect.pdf?sequence=1&isAllowed=y [Accessed on 13 December 2022].

up booking at a hotels direct online channel. This puts into question the preconception that consumers search on OTAs first, and then book on an accommodation providers website. In fact, this evidence suggests that the reverse happens to almost an equivalent extent in relative terms.

46. Evidence assessed in South Africa seems to suggest a similar trend. The extent of cross-browsing behaviour where searches were first made on the OTA's Booking.com, Agoda and za.hotels.com and then on 30 of the largest hotel chains, independent hotels and resorts' own websites in South Africa and vice versa was assessed.¹³⁴ The table below shows that in the 2022 calendar year, in relative terms, that visits to an accommodation's own website first and then to Booking.com was more than twice as likely than a search in

the opposite direction.¹³⁵ Considering that Booking.com gets much more online traffic than the 30 largest accommodation service providers in South Africa combined, more visits started on Booking.com first and then the accommodation providers (7.7m) than vice versa (4.8m) in absolute terms. In relative terms, proportionately more visits were made at the smaller OTAs first, Agoda and za.hotels.com, and then to the accommodations own websites. The inference being that, in relative terms, a consumer's search on a smaller OTA and then an accommodation's website, is likely to be higher than in the opposite direction. However, for the leading platform, the opposite appears to be the case. This observation reaffirms the market power Booking.com has, how it impacts consumer search behaviour, and reiterates that the platform should not be allowed to enforce narrow parity obligations.¹³⁶

Table 2: Cross-browsing behaviour between platforms and accommodation providers

2022 Calendar year	Booking.com	Agoda.com	za.hotels.com
Proportion of visits to OTA then made visits to 30 largest hotel domains (%)	13,5%	17,5%	15,3%
Proportion of visits to the 30 largest hotel domains that then made visits to the OTA on average (%)	29,3%	2,0%	3,0%
Number of visits to OTA that then made visits to the 30 largest hotel domains	7 661 736	280 480	773 023
Number of visits to the 30 largest hotel domains that then made visits to the OTA	4 847 635	335 352	493 583

Source: own compilation using Similarweb's "Audience Interests" and "Traffic and engagement" features. The largest hotel domains include the likes of Southern Sun, Sun International, Hilton Hotels, Marriott, Radisson, Forever Resorts, ihg.com, clhg.com, the President Hotel, The Capital Hotel & Apartments, Hyatt, Accor, One & Only Resorts, etc.

47. The notion that narrow price parity (of the leading platform) is essential for OTAs and that there are no other alternatives is both alarmist and misleading. Firstly, it must be

noted that the enforcement of competition policy is not intended to protect the narrow business interests and model of a few market players, but rather ensure an efficient and

¹³⁴ The Inquiry acknowledges some of the critiques and limitations pertaining to Similarweb data. For example, the Inquiry acknowledges that the consumer journey typically takes significantly longer than a day and that cross-browsing behavior does not cover the full spectrum of billboarding (e.g. offline attempts to contact accommodation providers). Nonetheless, the cross-browsing data is still informative with respects to billboarding behaviour as it seems that most high intent travellers will make their accommodation search and bookings on the same day.

¹³⁵ In other words, visits first to the accommodation providers first and then Booking.com was 29.3% and 13.5% vice versa - indicating that visitors were 2.17 times more likely to go to the accommodation providers website first before going to the OTA.

¹³⁶ Also, this assessment corroborates with Anderson and Han's (2017) findings that consumer search and booking behaviour flows in both directions.

competitive environment which balances the interests of a broad range of stakeholders.¹³⁷ Secondly, the evidence provided by the Bundeskartellamt shows that Booking.com in fact increased its market share when narrow parity considerations were removed.¹³⁸ Thirdly, all but one of the small rival South African platforms do not exercise price parity. Fourthly, the airline industry, as Expedia pointed out, features characteristics that make free riding more likely.¹³⁹ However, despite having a low number of business users (airlines) and selling a more homogenous product (flights) than accommodation, Travelstart, the largest flights OTA in South Africa does not apply price parity obligations.¹⁴⁰ This no parity situation in online intermediation for flights is likely due to the negotiating power that airlines have relative to OTAs and less about trying to protect the platform from free riding. The same is likely true for the smaller South African platforms that don't apply parity. Rather, the application of price parity in the case of leading platforms appears to be symptomatic of their size, dependency of accommodation providers on them, and their negotiating power.

48. OTAs seem to offer a somewhat different value proposition to travellers than accommodation providers' own direct online channels. It is the case that OTAs provide search, filter, rank (default or customised) and compare functions across accommodation providers

for accommodation providers and assist travellers in making booking decisions.¹⁴¹ This is true for all online accommodation intermediation platforms. Nonetheless, for unavoidable platforms visibility matters a lot (discussed later in the report). The more dependent an accommodation provider is on a platform, the more likely it will have incentive aligning price behaviour to maximise conversions on the platform (to generate bookings and improve visibility on the platform). Given that the conversion rate is the most important factor in Booking.com's Search Results Score, the incentive to free ride is counterbalanced by the desire to improve visibility on the platform.¹⁴² Lastly, two other important features of platform competition include cancellation policies and having real, unbiased customer reviews.¹⁴³ For example, some travellers might select a platform for the cancellation policy it can provide.¹⁴⁴

Narrow price parity likely impedes and distorts platform and business user competition.

49. As discussed, wide parity in conjunction with heavy levels of accommodation funded discounts are entrenching Booking.com and impeding competition because accommodation providers are restricted from providing differentiated prices on rival platforms. Rival platforms cannot replicate the scope and magnitude of Booking.com's accommodation funded discounts on their

137 Including South African stakeholders in the context of South Africa. See the Preamble of the Competition Act no. 89 of 1998.

138 Bundeskartellamt, 2020. "The effects of narrow price parity clauses on online sales - Investigation results from the Bundeskartellamt's Booking proceeding". Page 4. Available at: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe_Digitales_VII.pdf?__blob=publicationFile&v=3. [Accessed on 04 December 2022]

139 These characteristics include a few market players and a relatively homogenous product. For example, a traveller can find something on Travelstart and then easily book a flight on the 3 or 4 existing airline websites. This is for a product (flights) that is far less heterogenous than accommodation where price, location, amenities, reviews, etc. matter more.

140 Instead Travelstart charges a service charge for bookings.

141 A view that accommodation providers resonate with.

142 This is because a user finding a room on Booking.com and then booking the same room at a cheaper rate at the accommodations website is likely to reduce the rate of conversion on Booking.com.

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own platforms (discussed later) and limit their ability to attract travellers on price. Narrow parity obligations can have the effect of emulating wide parity outcomes as accommodation providers have little incentive in providing differentiated prices on rival platforms as this would undermine prices on their own online direct channels.^{145, 146} Furthermore, they may fear penalisation by the leading platform if they provided lower rates on rival platforms. Or they may be unaware of changes in price parity policies altogether. Evidence of these concerns exist, for example, a European study in 2016 concluded that following a move from wide to narrow parity, 79% of accommodation providers did not apply price differentiation across OTAs¹⁴⁷ and of those not price differentiating 25% indicated fear of penalization by OTAs as a reason and 15% believed that they were contractually restricted from price differentiating across OTA channels.¹⁴⁸ Based on these observations it appears that narrow parity does in fact emulate a wide parity outcome.

50. Narrow parity impedes price competition between accommodation providers. An accommodation provider might want to engage in online price competition with a rival (outside the OTA ecosystem) using

rooms listed on an OTA but may be deterred from doing so by narrow parity obligations.¹⁴⁹

51. Lastly, narrow parity obligations, in conjunction with ADR prompts, where ADRs affect ranking in the Search Results Score on Booking.com, delineated in Section 2.3, could potentially influence prices of the accommodation providers room on its own distribution channel and by extension across all online accommodation distribution channels.

Narrow parity impedes innovation in online travel and accommodation distribution.

52. The Bundeskartellamt found that absent parity obligations, hotels used their new scope to price differentiate across all online interfaces including their own direct online channels to factor in a sales mix (which included OTAs).¹⁵⁰ It was also noted that hotels examine their options very carefully and weigh up which sales strategy is most profitable for them. During the Inquiry, accommodation providers expressed frustration at not being able to price optimally and being constrained, or not being flexible enough, in their ability to lower prices or provide discounts in certain circumstances.¹⁵¹ Furthermore, by being free to adopt their own distribution mix without pricing restrictions, accommodation providers are free to develop

145 Salvatore P & Kadambari P, 2021. Competitive Effects of Price Parity Agreements. Compass Lexicon. Available at: <https://www.compasslexecon.com/the-analysis/competitive-effects-of-price-parity-agreements/11-15-2021/>. (Accessed on 22 March 2022).

Andrea Mantovani, Claudio Piga and Carlo Reggiani. 2019. Much ado about nothing? Online platform price parity clauses and the EU Booking.com case.

146 Andrea Mantovani, Claudio Piga and Carlo Reggiani. 2019. Much ado about nothing? Online platform price parity clauses and the EU Booking.com case. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3381299. (Accessed on 22 March 2022)

147 Report on the Monitoring Exercise Carried Out in the Online Hotel Booking Sector by EU Competition Authorities in 2016, para. 28. Available at: https://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf [Accessed on 15 February 2023].

148 Report on the Monitoring Exercise Carried Out in the Online Hotel Booking Sector by EU Competition Authorities in 2016, para. 28. Available at: https://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf [Accessed on 15 February 2023].

149 This might play out in a scenario where price competition is profitable where the accommodation provider distributes its rooms on its own online channels because the corresponding distribution costs on Booking.com at these competitive rates make price competition unprofitable.

150 Bundeskartellamt, 2020. "The effects of narrow price parity clauses on online sales - Investigation results from the Bundeskartellamt's Booking proceeding". Page 4. Available at: https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe_Digitales_VII.pdf?__blob=publicationFile&v=3. [Accessed on 15 December 2022].

151

or innovate new distribution approaches and engage in their own marketing campaigns.¹⁵² Innovative online distribution designs may reduce dependence that accommodation providers have on platforms, spur new forms of business user competition and may even introduce new forms of platform competition.

Narrow parity deprives consumers of lower prices.

53. Numerous accommodation providers have indicated that they would decrease prices on their own direct channels absent narrow parity restrictions. For example, the Redflank Survey indicated that 38% to 55% of hotels would provide lower rates absent parity restrictions and the Bundeskartellamt found that approximately 53% of hotels actually did distribute at lower rates on their own direct channels when the parity restrictions were removed. Lastly, Ennis et al. (2020) found that prices for mid-level hotels in Germany decreased following a move to no parity.¹⁵³

Narrow parity, a tool where Booking.com can exploit accommodation providers.

54. As indicated earlier in the market power section of this report, Booking.com's unilateral increasing of average commission rates appears to have been fuelled by the growth of its higher yielding commission exclusivity programme,¹⁵⁴ Preferred Partner and Preferred Plus, to a point where these exclusive programmes account for more than half of Booking.com's total transaction value.¹⁵⁵ Adherence to price parity or at least pricing "competitively" in the context of

Booking.com's External Prices, as discussed in Section 3.1.2.1 of this report, is a prerequisite of joining these exclusive programmes.

55. This means that Booking.com has successfully steered accommodation providers in increasing volumes over time, in absolute and relative terms, to these higher commission yielding exclusivity programmes yet at the same time placed pricing restrictions through narrow parity obligations. This suggests that Booking.com, through these programmes, can extract higher commissions with little or no impact on pricing on its platform. Alternatively put, accommodation providers are disincentivising from passing through their increased online distribution costs in the form of higher prices on Booking.com and must therefore either absorb these increased distribution costs or raise prices of affected rooms on both their own online distribution channels and Booking.com.

Box 4. Conclusion on narrow parity obligations used by the leading platform

Narrow parity obligations, applied by leading platforms in particular, create conditions that impede and distort competition both at the platform and business user level. This is the case with Booking.com. For example, narrow parity clauses emulate wide parity outcomes, perpetuating the concerns highlighted with wide parity. Furthermore, narrow parity impedes distribution mixes and innovations of accommodation

152 [REDACTED]

153 Ennis, S., Ivaldi, M., & Lagos, V. 2020. Price Parity Clauses for Hotel Room Booking: Empirical Evidence from Regulatory Change. Available at: https://www.tse-fr.eu/sites/default/files/TSE/documents/doc/wp/2020/wp_tse_1106.pdf. [Accessed on 04 December 2022].

154 The Preferred Plus commission rate is 18% and Preferred Plus is 23%. 123Compare.me (2021). Good or Evil: Preferred Plus Booking.com Programme. Available at: https://123compare.me/en/preferred_plus_booking-com/ [Accessed on 10 February 2023].

155 [REDACTED]

providers in the online distribution of their rooms, where such innovations could reduce dependency on the platform and potentially evolve into platform competitors.

Narrow parity obligations harm consumers and business users. Higher prices are indirectly charged to consumers by accommodation providers as the latter are restricted from offering lower prices, that they would have otherwise done (absent narrow parity), on their own distribution channels. Accommodation providers are exploited given their dependency on Booking.com and need for visibility on the platform. This is demonstrated by the increasing adoption of high commission yielding exclusive programmes offered by Booking.com which already account for more than half of the platform's total transaction value. Accommodation providers are exploited as they are charged higher commissions and cannot directly pass these higher distribution costs on to Booking.com in the form of higher prices to recoup these costs.

Lastly, the risk of free riding is not a substantive concern for the leading platform. Notwithstanding claims that narrow parity obligations are necessary to deter free riding, none of the platforms provided sufficient evidence to validate this claim but rather relied on speculative arguments to convey their concerns. Rather, evidence obtained by the Bundeskartellamt suggests that a very small level of free riding (1%) might occur, and cross-browsing and booking behaviour suggest that consumers often start their search on an accommodation's website and then complete their booking on the leading OTA.

In short, the Inquiry finds that narrow parity obligations impede and distort platform and business user competition, and that the consumer and business user harms, and the harms to innovation, emanating from the leading platform's (Booking.com) use of narrow parity obligations far outweigh efficiency considerations.

Some further remarks on price parity in general

56. The Inquiry has observed that almost all the domestic OTAs in South Africa, including the largest which is Tripco do not have price parity clauses in their contracts,¹⁵⁶ except for one.¹⁵⁷ To date the Inquiry has not found sufficient evidence that proves that this smaller platform that has wide parity clauses in its contracts is able to enforce price parity provisions and as it stands it seems that the rationale is to ensure they do not have worse pricing than the leading OTA which is Booking.com. Some of the other international OTAs with a small presence in SA, such as Expedia, also have price parity provisions. However, the Inquiry is of the view that given their minor position for South African OTA bookings, and predominately for foreign visitors rather than domestic travel, these parity provisions are unlikely to have any significant effect on the competitive landscape as when used by the leading platform. Furthermore, in alternative accommodation markets, Airbnb does not have price parity obligations.

3.2. Accommodation funded discounts and loyal programmes

3.2.1. Stakeholder's views and supporting arguments

57. Booking.com argues that the Genius loyalty programme does not impede,

¹⁵⁶ See PR Chapter 2, Table 12

¹⁵⁷ (e.g. [REDACTED])

restrict or distort competition nor does its loyalty schemes have an adverse effect on competition. More specifically its argued that loyalty discounts do not impede competition from smaller platforms.¹⁵⁸ Nor does Booking.com lock-in accommodation providers through its loyalty programmes or deals (i.e. no lock-in affect).¹⁵⁹ Furthermore, it is argued that loyalty programmes provide benefits for both customers and accommodation providers and restricting them is likely to lessen competition, and negatively impact on consumers and concludes that prohibiting loyalty schemes is likely to reduce competition and harm consumers. Lastly, it is argued that Booking.com's loyalty schemes promote inter-brand competition and yield benefits for travellers and accommodation providers (where both OTAs and hotel chains have loyalty programmes).¹⁶⁰

58. Furthermore, Booking.com argues that it does not extract discounts from accommodation providers noting that: (i) Genius is voluntary for accommodation providers to opt in; (ii) 10% is a fairly standard and reasonable discount in the industry, contrasting this with bed banks (where discounts up to 25% are offered); (iii) loyalty programs are very common; (iv) other loyalty programs are relatively more closed to business users; (v) it is not clear that such schemes are not replicable; (vi) it enables accommodation providers to showcase their best deals¹⁶¹; (vii) only a relatively small proportion of bookings on Booking.com are Genius bookings¹⁶²; and (viii) accommodation providers are offered the flexibility to turn off their Genius discount for 30 days a year. Furthermore, the platform questions whether testing the replicability of

the scale and magnitude of accommodation funded discounts is the correct test and proposes the "*as efficient competitor test*".

59. Booking.com also notes that the Provisional Report does not take into account how Booking.com's Genius loyalty program actually works. For example, (i) it is offered to a closed user group; which (ii) it connects global accommodations providers to this closed-user group; (iii) it gives an opportunity to price differentiate and get additional bookings on Booking.com; (iv) it is up to the accommodations themselves whether they want to offer Genius rates (while conforming to Genius eligibility criteria); and (v) every customer with an account on Booking.com receives a Genius membership status level 1 and gets instant access to Genius discounts on selected Genius properties.¹⁶³

60. Lastly, Booking.com notes that the Inquiry's allegation that it assigns Genius properties a ranking boost through which it gives an unmatched competitive advantage to them against non-Genius properties is untrue. It is then argued that, on average, a small proportion¹⁶⁴ of Genius partner bookings uplift is driven by the ranking boost. Other benefits of belonging to Genius includes marketing benefits such as tagging of "Genius", which can also be used as a filter by members.¹⁶⁵ It is concluded that most of the impact for Genius partners does not come from the ranking boost but comes from the Genius branding and discounted price.

61. Regarding the provisional remedy that the leading platform funds its own discounts on the platform, Expedia notes that travel

158 Bcom RPR1.1, para. 9.8.

159 Bcom RPR1.1, para. 9.8.16 & 9.8.17.

160 Bcom WS4, para 4

161 Bcom RPR1.1, para. 9.8.3 & 9.8.4.

162 [REDACTED] of bookings in 2021 were Genius bookings. Bcom RPR1.1, para. 9.8.12.

163 This has been the case since [REDACTED].

164 [REDACTED]

[REDACTED] Bcom RPR1.1, para. 9.8.15.

165 Bcom WS4, para. 6

accommodation platforms, including leading platforms, should be free to design their loyalty schemes terms to accommodations as they see fit. Mandating that loyalty discounts need to be funded by (leading) intermediary platforms amounts to a form of rigid price regulation which will (i) harm competition and (ii) deprive consumers of discounts which will no longer be available to them.¹⁶⁶ However, Tripco notes that *"currently the larger the platform, the greater their ability to solicit a discount from an establishment. This results in self-perpetuating circle, where the largest platform can offer the deepest discounts (funded by their suppliers), and thereby get more customers, which in turn gives them more bargaining power with suppliers for more discounts, and so on".*¹⁶⁷

3.2.2. Inquiry's views and supporting arguments

The extent of accommodation funded discounts on Booking.com reinforces its market power

62. The Inquiry maintains that network effects are prominent feature of online travel accommodation intermediation services. This means that the more attractive the platform is to a group on one side of the platform e.g. travellers, the more attractive the platform is to the other side wishing to attract these travellers i.e. accommodation providers. The larger the pool of travellers on the platform, the more indispensable the platform becomes to accommodation providers, and the more dependent they become on the platform to reach travellers. The Inquiry supports the notion put forward by Tripco as reflecting the realities of travel accommodation platforms wherein the larger the platform, the greater its ability to solicit accommodation funded discounts, where accommodation providers dependent on that platform for business

(particularly for visibility on the platform) offer deeper discounts to continue attracting travellers. As such the cycle continues. Accommodation funded discounts means that Booking.com can create dependencies on the platform by sheer virtue of its size, or market power, at little direct cost and run the bulk of its Genius loyalty programme free of charge (gratis).

63. This behaviour becomes a self-fulfilling prophecy as more travellers expect to find discounted prices on the platform and accommodation providers willingly or out of a sense of obligation provide these discounts. Firstly, this self-perpetuating cycle further entrenches an already large platform and gives it scope to further exploit business users. In the case of Booking.com it already has over half of the online accommodation intermediation platform business in South Africa, and as articulated in the market power section of this report, has been able to grow its higher commission yielding exclusive programme over time where it accounts for most of its total transaction value. Secondly, effective competition from rival OTAs is impeded as they cannot reasonably replicate the magnitude, and overall depth or breadth of accommodation funded discounts. This raises rival OTAs barriers to expansion.

64. On this second point (in the previous paragraph), the Inquiry maintains that assessing whether rival OTAs can reasonably replicate the magnitude, and overall depth and breadth of accommodation funded discounts including those used in the leading platforms loyalty programme is the appropriate test. It assumes that if rivals were to profitably fund their own discounts and replicate Booking.com's overall discounts in absolute and relative terms, they could compete on more of an equal footing with

¹⁶⁶ Expedia RPR1.1a, para. 10.

¹⁶⁷ [REDACTED] Tripco WS4.1, para. 5.2.

the leading platform and competition is thus less likely to be impeded. The notion of conducting an “*as efficient competitor test*” in an online intermediation platform market is inappropriate. This is because it does not factor in the importance of strong network effects in these markets.¹⁶⁸

65. The Inquiry has sought to assess whether rival OTAs can reasonably (or profitably) replicate the magnitude, and overall depth and breadth of accommodation funded discounts. Or similarly put, whether they can do this in absolute and relative terms. A summary of this assessment is captured below with a more expansive and detailed delineation represented in **Annexure C**.

65.1. The Inquiry assessed whether a rival OTA¹⁶⁹ could profitably replicate Booking.com’s accommodation funded discounts in relative terms. In other words, on average, could the rival OTA profitably discount prices to match Booking.com’s discounted consumer facing retail price.¹⁷⁰ The assessment was applied to three scenarios: (i) accommodation funded discounts forming part of the Genius loyalty programme; (ii) total accommodation funded discounts (including Genius discounts and promotional deals such as last-minute deals, early booker deals, limited time deals, etc.); and (iii) total accommodation and platform funded

discounts for each calendar year from 2018 to 2021. The Inquiry found that on average the rival OTA could profitably match Booking.com’s accommodation funded discounts forming part of its Genius programme in relative terms. However, this was not the case in terms of total accommodation funded discounts and total (accommodation and platform funded) discounts.

65.2. The value of non-Genius accommodation funded discounts (i.e. those pertaining to deals and promotions) were several times larger than those pertaining to Genius funded discounts in South Africa.¹⁷¹ However, Genius accommodation funded discounts has been growing rapidly over time with discounts getting deeper in each period (e.g. at 15% and 20% of booking value).¹⁷² Furthermore, Booking.com has been using an automated tool called Genius Dynamic Pricing which effectively determines the accommodation providers Genius discounted price (and the effective Genius accommodation funded discount) on the platform on a dynamic basis.¹⁷³ Adoption of this automated tool is also growing at a fast pace in South Africa¹⁷⁴ and gives Booking.com significantly much more control over price determination on the platform for those accommodation providers choosing (and funding) this option.¹⁷⁵

168 It is possible that an inefficient platform with strong network effects can perform better than efficient platform with weak network effects. For example, considering that Agoda is a small platform and has not been able to expand significantly, it is not evidence that Agoda is an inefficient platform. Similarly, Expedia, a world recognized OTA has struggled to make inroads into the South African market. This does not mean it’s an inefficient platform but rather does not enjoy the same network benefits as Booking.com in South Africa.

169 [REDACTED]

170 This was calculated by assessing the [REDACTED] after it funded discounts on its own platform to match Booking.com average discounted price.

171 [REDACTED]

172 [REDACTED]

173 See Bcom WS5.2, Annex 2.

174 [REDACTED]

175 [REDACTED]

65.3. The total value of accommodation funded discounts pertaining to Booking.com's Genius loyalty programme is larger than each OTA rivals total commissions earned. This means that was each OTA rival to use 100% of their commissions to fund their own discounts, this would be insufficient to match the value of Genius accommodation funded discounts, which Booking.com in effect attains for free, in absolute terms. Where total accommodation provider funded discounts on the Booking.com platform are concerned, including Genius and non-Genius discounts, they were (i) several times larger than all the rival OTA commissions combined and (ii) larger than rival OTA platform and accommodation funded discounts combined by a factor between 5 to 10. This proves that rival OTAs are unable to replicate the magnitude of discounts offered by Booking.com in absolute terms.

65.4. There are substantially more Genius loyalty members than rival OTA loyalty members combined. In fact Genius has more than 10 times the number of loyalty members than rival OTAs have loyalty members combined. Also the absolute number of establishments participating in the Genius programme are significantly larger than rival OTAs. In addition, rival OTAs cannot reasonably replicate associated accommodation funded benefits such as free room upgrades and free breakfasts that the Genius programme is able to solicit.¹⁷⁶

65.5. Rival OTAs entirely or mostly fund their own loyalty programmes. In relative terms, platform funded discounts by smaller OTA rivals are significantly larger than Booking.com and until 2020 this was also the case in absolute terms. The rational inference is that rival platforms, lacking market power to attract accommodation funded

discounts, must and do fund their own discounts.

65.6. In conclusion, the above observations demonstrate how accommodation funded discounts cannot be reasonably and profitably be replicated by OTA rivals in absolute and relative terms. Where accommodation funded discounts as per the Genius programme are concerned, rival OTAs cannot replicate Genius discounts in absolute terms, however, they can do this in relative terms (i.e. match the average Genius discounted price) by funding their own discounts. Considering the rate at which Genius discounts are growing, it seems that the ability to profitably match the Genius discounted price will diminish over time.

The design of the Genius programme

66. Booking.com argues that it does not lock-in accommodation providers into its Genius programme. For example, it allows Genius partners the flexibility to turn off their Genius discount for 30 days a year. However, the notion of no "lock-in" would suggest that accommodation providers are free to join and leave the Genius programme without incurring any punitive measures. Firstly, by noting that Genius partners are granted flexibility to turn off their Genius discount 30 days a year, it implies that Genius partners must provide Genius discounts 335 days a year. Upon further inspection, based on Booking.com's publicly available partner support page, it is noted that once an establishment opts out of the Genius programme, it wouldn't be able to re-join the programme within six months.¹⁷⁷ This appears to be a disincentive to leave the Genius programme and embodies a degree of lock-in. Having said this, it is a common feature for loyalty programmes to have rules around membership and the

¹⁷⁶ [REDACTED]. (Bcom WS7, para. 7).

¹⁷⁷ Booking.com Partner Hub. Becoming a Genius Partner. Available at: <https://partner.Booking.com/en-us/help/growing-your-business/increase-revenue/becoming-genius-partner> [Accessed on 19 January 2023]

abovementioned rule does not appear to significantly impact competition.

67. One feature of the Genius programme design that has an adverse effect on competition is the requirement to price at parity. Booking.com's requirement that accommodation providers price "competitively" (or at parity) in order to participate in the Genius programme reduces the ability of accommodation providers to pass on the cost of these discounts onto the platform and, like the arguments made in Section 3.1. of this report, serve to further entrench it. Therefore the requirement to price at parity as a prerequisite to participate in the Genius loyalty programme is a design that impedes platform competition
68. Lastly, Booking.com is correct in mentioning that the Genius programme represents a closed user group, however, any member that opens an account with Booking.com attains Genius Level 1. Subsequently the number of Genius members is massive¹⁷⁸ and significantly larger than rival OTAs total loyalty members combined,¹⁷⁹ bringing into question how closed the "closed" user group is. While Booking.com's intent is to price differentiate through the Genius programme, the Genius programme can still continue price differentiating by funding more of its own discounts. In the same vein, inter-brand competition still happens if Booking.com funds its own discounts just like rival OTAs do (and is enhanced through the removal of price parity).

There is a ranking and visibility boost from joining the Genius programme and Booking.com advertises as much.

69. Booking.com has already provided evidence of a ranking boost resulting from belonging to the Genius programme.¹⁸⁰ Additionally, there are proportionately more Genius bookings relative to the proportion of establishments that are Genius Partners, suggesting that there are benefits to being a Genius Partner.¹⁸¹ Furthermore, Booking.com advertises a visibility and ranking boost. For example, in its partner support page it notes that *"joining Genius gives you extra visibility through special tagging, ranking boosts, and various marketing investments from Booking.com. On average, partners who join Genius see an increase of 70% in search result views, 45% in bookings, and 40% in revenue with the cost of the discount accounted for."*¹⁸² Booking.com also advertises ranking boosts on its business user dashboard (see Figure 2 below). This shows that accommodation providers need to either participate in Booking.com's massive Genius loyalty programme or the even larger exclusive Preferred Partner and Preferred Plus programmes (discussed previously) to attain more visibility on the platform, where the former serves to further entrench the platform and the latter to exploit accommodation providers for more money.

178 [REDACTED]. (Bcom WS5.1, Annexure 2).

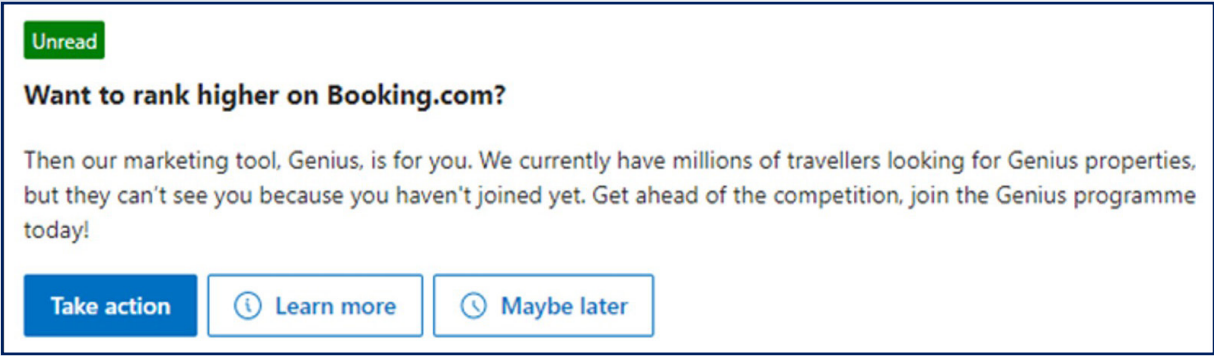
179 [REDACTED]

180 [REDACTED]. Bcom RPR1.1, para. 9.8.15.

181 For example, [REDACTED] (See Bcom WS5.1, Annex 2).

182 Booking.com Partner Hub. Becoming a Genius Partner. Available at: <https://partner.Booking.com/en-us/help/growing-your-business/increase-revenue/becoming-genius-partner> [Accessed on 19 January 2023].

Figure 2: Ranking boost from joining the Genius programme



Source: [redacted]

Box 5. Conclusion on accommodation funded discounts and the Genius programme

Accommodation funded discounts are symptomatic of Booking.com’s ability to attract them (due to their market power) and creates a virtuous (or vicious) circle where lower discounted prices on the platform attracts travellers and this access to travellers in turn reinforces accommodation providers’ dependency on the platform. It is important to maintain good visibility on the platform in order to drive customer traffic and bookings, and as such Booking.com incentivises accommodation providers to sponsor promotional deals or join the Genius programme, its higher commission yielding exclusive programmes, or both. This deepens Booking.com’s entrenched position and raises barriers to expansion for smaller platforms, notwithstanding their efforts to self-fund their loyalty programmes and other promotional discounts. This keeps these rival platforms small and often bound to a niche customer group.

The evidence collated indicates that rival platforms cannot reasonably and profitably replicate Booking.com’s accommodation funded discounts in absolute or relative terms. This means that they cannot, on average, match customer facing retail prices on Booking.com nor can they provide such discounted prices as ubiquitously as Booking.com. OTA rivals cannot replicate Genius accommodation funded discounts in absolute terms, however up to the period of assessment, it was possible in relative terms. Nonetheless, this seems likely to change given the rapid growth of Genius discounts where Genius discounts (and corresponding prices) are increasingly becoming more automated and within Booking.com’s control.

Having said this, accommodation funded discounts propose a dual duality. On the one hand they further serve to entrench Booking.com but also results in discounted prices for consumers (in the short term at least). Similarly, accommodation providers might feel obligated to provide discounts given their need to drive consumer traffic and their corresponding dependence on Booking.com, whereas others might see it as means to sell rooms they otherwise would not sell (albeit at a discounted price). The Inquiry’s sense when engaging with market participants is that it is a bit of both. In the long run however accommodation funded discounts ultimately deepens Booking.com’s entrenchment by raising barriers to expansion and is a result of its existing market power.

The Inquiry, however, finds that the requirement to price at parity (or “competitively”) as a prerequisite to participating in the Genius loyalty programme is a design feature that will impede platform competition and further entrench Booking.com.

This requirement must subsequently be removed as accommodation providers should be able to determine their own effective discounted price on the platform (before the platform applies its own funded discounts).

3.3. Other competition issues currently not in scope of the Inquiry and/or needing further consideration.

3.3.1. AI tools and price recommender systems in online travel and accommodation

70. The Inquiry raised “rate shoppers” as a potential concern for further research.¹⁸³ Rate shoppers appear to be used by OTAs and accommodation providers to monitor online prices across various distribution channels. For example, they can be used to monitor prices and be used to flag prices that are not at parity (such as Booking.com’s use of “external prices”).¹⁸⁴ Rate shoppers, however, fall within a broader ecosystem of artificial intelligence (“AI”) tools offered by price recommender system software service providers such as RateGain and Fornova. For example, RateGain offers “Competitor Pricing Intelligence” services for OTAs and metasearch sites, airlines, hotels, car rentals, package providers and cruises and ferries.¹⁸⁵ Fornova provides competitive and revenue intelligence tools and allows its users to “shop competitor rates, compare pricing, products & inventory with suppliers, partners & competitors from any platform, any channel, any location, and at any time”.¹⁸⁶

71. Broadly speaking, the online world creates transparency where firms can easily

monitor millions of price points including their competitors’ online prices and make automated updates in real time.¹⁸⁷ AI tools intensifies the ability of firms to monitor broader market prices, and in some cases quantities and aggregate demand. It seems that the online space has created an environment where information that would have previously been considered commercially sensitive is now in the public domain. For example, in the car rental space, RevAI notes that it provides “A single dashboard with price monitoring tool for car rentals [that] allows revenue managers to get all the insights needed to review pricing, map competition and see availability easily for chosen competitors”. It also notes that it provides “customizable dashboards to go granular and track your competitor position in the market”.¹⁸⁸

72. As in with travel and accommodation, AI tools are used in markets that demonstrate limited capacity, market segmentation, low marginal costs and perishable units of inventory i.e. if you don’t use it, you lose it (e.g. hotel rooms).¹⁸⁹ These markets are characterized by dynamic pricing where, on the one hand, AI tools can enhance allocative efficiencies and allow travel services providers to navigate seasonality where they can recoup losses in periods of low demand through higher prices in periods of high demand. Having said this, there is no guarantee that travel service providers are

¹⁸³ See Section 3.5.3 para 211 of Chapter 2 of the Provisional Report

¹⁸⁴ “External prices” feature on accommodation provider’s Booking.com dashboard interface.

¹⁸⁵ RateGain (2023). Available at: <https://rategain.com/rate-intelligence-overview/> [Accessed on 6 February 2023].

¹⁸⁶ Fornova OTA (2023). Available at: <https://www.fornova.com/online-travel-agency> [Accessed on 6 February 2023].

¹⁸⁷ E.g., RateGain’s Optima MarketDRONE Insights. See: <https://rategain.com/hotels/rate-intelligence/> and in the airline industry see Kong Chung Wai of Singapore Airline’s testimony: <https://airgain.ai/> [Accessed on 7 February 2023].

¹⁸⁸ RevAI (2023). Car Rental Management System and Competitor Rate Intelligence Tool - Car Rate Shopping - Rev-AI. Available at: <https://rev-ai.io/travel-software/car-rate-shopping/> [Accessed on 6 February 2023].

¹⁸⁹ Gaudix, J.; Cortes, P.; Onieva, L. & Munuzuri, J. (2008). Technology Revenue Management System for Customer Groups in Hotels. Note a fifth characteristic delineated by the authors is future demand is uncertain, however, since 2008, predictability of future demand has improved with AI tools.

making losses in periods of low demand and may in fact (with the assistance of AI tools) be making very high or supra-competitive profits in high demand periods. Beyond the more obvious concerns around explicit forms of collusion, AI tools can also potentially enhance the ability of users to tacitly collude.^{190, 191}

73. Also, many AI tools advertise themselves as being able to maximise and improve the revenues of their users.¹⁹² If such claims are true and manifests itself in the form of higher profits,¹⁹³ then collectively speaking (given limited industry constraints), one could assume that overall prices are increasing as a result. For example, sophisticated tools can potentially take advantage of consumers' willingness to pay¹⁹⁴ at each iteration and in effect cause a transfer of consumer surplus to producer surplus. This represents a transfer of wealth from less sophisticated consumers to more sophisticated producers, which may be problematic in exacerbating inequalities or driving up prices in an already highly inequal country as South Africa. A more nefarious outcome, however, could be AI tools recommending capacity restrictions

in a market already characterised by limited capacity. For example in the USA, AI software used by property owners appear to have recommended restricting capacity, charging higher prices and making more profit. As a result clear deadweight losses accrue where vacant rooms and homelessness coexist in the name of AI facilitated profits.¹⁹⁵ In South Africa, the role of AI tools in the car rental industry would be a suitable candidate for further research where prices appear to have more than doubled in 3 years¹⁹⁶ and volumes appear to have decreased significantly.¹⁹⁷

74. In online travel and accommodation intermediation price recommender systems pervade several levels of distribution. Most notably they are typically used in Revenue Management Systems ("RMS") by business users. For example, car rental operators might use fleet management service providers such as Bluebird (Rental¹⁹⁸) and TSD Mobility Solutions¹⁹⁹ with price recommendation features built in.²⁰⁰ RMS is commonly used by hoteliers, for example, Siteminder, the world's largest channel manager, connects hotels with a wide range of RMS to keep rates optimised.²⁰¹

190 Ezrachi, A. and Stucke, M.E. (2017). Artificial Intelligence & Collusion: When Computers Inhibit Competition. *University Of Illinois Law Review* (Vol. 2017)

191 This could be through the use of software such as Revenue Management Systems, platform automated or info tools, or the platform itself could be aligning strategies between business users (kind of like a hub-and-spoke arrangement).

192 RateGain (2023). Available at: <https://rategain.com/about-us/> [Accessed on 6 February 2023]

193 See RevAI (2023). Available at: <https://rev-ai.io/>; Fornova (2023). About Us. Available at: <https://www.fornova.com/about-us>; TUV SUD (2023) TUV SUD Used Car Pricing Tool. Available at: <https://www.tuvsud.com/en/industries/mobility-and-automotive/retail-and-leasing/automotive-remarketing/it-tools/car-pricing-tool>; Pricepoint (2022). Pricepoint - Automated Revenue Management Software for Hotels. Available at: <https://pricepoint.co/fully-automated-revenue-management/> [all sites accessed on 6 February 2023].

194 See RevAI (2023). Available at: <https://rev-ai.io/> [Accessed on 6 February 2023].

195 The effect of this behaviour can be seen in markets with fairly widespread use and adoption of recommended prices. In this example, the widely used software, YieldStar, had about 90% of suggestions adopted by apartment managers. (See Vogell, H., Coryne, H., & Little, R. (2022). ProPublica - Rent Going Up? One Company's Algorithm Could Be Why. Available at: <https://www.propublica.org/article/yieldstar-rent-increase-realtor-rent> [Accessed on 7 February 2023].

196 For example, a weekend (2 day) rental at King Shaka Airport in Durban in July 2018, cost R448.01 (incl. VAT) but had increased by 276.8% to R1688 per day for the same rental in October 2022.

197 Evidence gathered from a prominent car rental operator shows that between January 2019 and September 2022, prices for car rentals have more than doubled and volumes are approximately a fifth of what they were in 2019. [REDACTED]

198 See: <https://www.autorentalnews.com/10153097/bluebird-thermeon-navotar-combine-to-form-rentall> [Accessed on 7 February 2023].

199 See: <https://tsdweb.com/solutions/> [Accessed on 7 February 2023].

200 For example, TSD appears to partner with Rate Highway and Bluebird with RateGain. See: <https://www.barsnet.com/bluebird-and-thermeon-partner-with-rategain-to-help-maximize-revenue/> [Accessed on 7 February 2023].

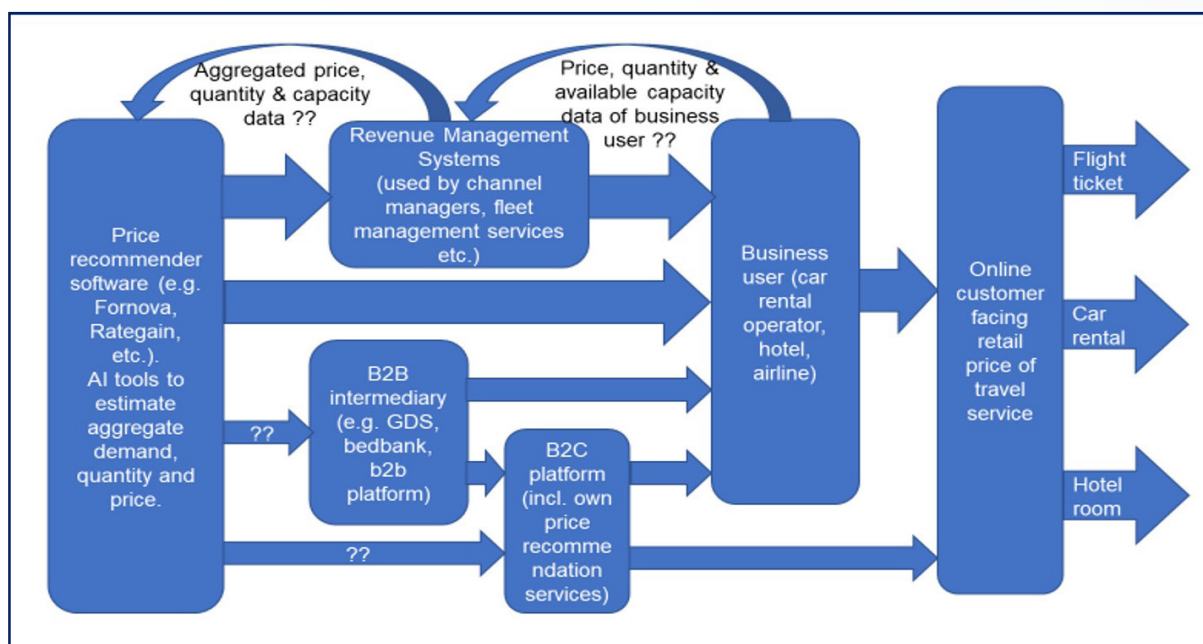
201 SiteMinder (2023). Revenue Management Systems (RMS) Integrations. Available at: <https://www.siteminder.com/integrations/revenue-management-systems/> [Accessed on 7 February 2023].

RateGain also provides its own hotel channel management solution including RMS inputs²⁰² where Booking.com has recognised RateGain as a Premier Connectivity Provider.²⁰³ The Inquiry's engagements with hoteliers also seem to suggest that RMS is a major influence on pricing.²⁰⁴

75. As mentioned, price recommender system inputs appear to occur at various tiers of online intermediation (see Figure 3 below) including B2C platforms. As delineated in the report, ADR's feature in Booking.com's ranking algorithm, the Genius Dynamic Pricing determines discounted prices for

Genius members and Airbnb offers Smart Pricing tools to its hosts.²⁰⁵ Figure 3 below provides a rudimentary illustration²⁰⁶ of how various influences, especially AI price recommendation tools, which appear to affect the online (and to some extent offline) consumer facing retail price of travel and accommodation services.²⁰⁷ In order to understand the impact that price recommender systems have on the final price of travel and accommodation services, one would have to have a broad understanding of all the influences on the final price. As such an assessment of pricing from first principles would be necessary.

Figure 3: Rudimentary depiction of price recommendation and other influences on online prices of travel and accommodation services.



Source: Own compilation based on own insights. (?? - relates where the Inquiry is unsure of certain relationships and further research is needed).

202 See: <https://rategain.com/hotels/connectivity-channel-manager/#:~:text=RezGain%2D%20Smart%20Hotel%20Channel%20Manager%20Software&text=It%20is%20a%20one%2Dstop,%2DBanks%2F%20Wholesalers%20%26%20OTAs> [Accessed on 7 February 2023].

203 RateGain (2022). Booking.com Recognizes RateGain as a Premier Connectivity Partner for 2022. Available at: <https://rategain.com/press-release/booking-com-recognizes-rategain-as-a-premier-connectivity-partner-for-2022/> [Accessed on 7 February 2023].

204 [REDACTED]

205 Airbnb (2023). Help Center: Smart Pricing. Available at: <https://www.airbnb.co.za/help/article/1168> [Accessed on 7 February 2023].

206 This is a rudimentary depiction. Further investigation is needed for a more specific and conclusion depiction.

207 The Inquiry does not discount the notion that underlying costs also impact retail prices, however, it acknowledges that prices are largely determined by market conditions.

Box 6: Conclusions on AI tools and price recommender systems and need for further research

The Inquiry observes that AI tools and price recommender systems currently impact prices, quantities, demand and capacities in the online travel and accommodation market.²⁰⁸ Price recommender systems feature in software such as RateGain and Fornova, and feature strongly in Revenue Management Systems used by travel and accommodation business users. Furthermore, other tiers operating in online travel and accommodation retail such as B2C platforms have price recommender systems of their own. Beyond online travel and accommodation, it is also recognised that AI tools and price recommender systems are used in, for example, automated bidding in the ad tech space, used car sales, etc. Furthermore, the use of AI tools and price recommender systems are likely to gain more traction over time. There also seems to be an assumption that dynamic pricing is an efficient solution in dynamic markets. Notwithstanding this assumption, there is a genuine need to deep dive and understand from first principles how prices are determined in dynamic markets such as rental cars, flights and hotels that use automated software to determine prices.

As such, further research into the role that AI tools and price recommender systems have in impacting prices, quantities, demand and capacities in the car rental, airline, and accommodation space as well as any other market deemed necessary for such an assessment is needed.

To do this, a deep dive into how online prices shown to consumers are determined, building up from first principles, is necessary to understand the broader impact of dynamic prices and the role that AI tools and price recommender systems play in the marketplace.

3.3.2. Concerns around GDS

3.3.2.1 Stakeholder's views and supporting arguments

76. The Market Inquiry also considered issues raised but that were not within the scope of the Inquiry. Three issues pertaining to Global Distribution Systems ("GDS") namely that their services are expensive, and that price parity and full content parity is applied. The corresponding concerns were that high prices raise distribution costs of flights, price parity restricts the flexibility of prices that airlines choose, and full content parity creates a cycle of dependency on GDS.²⁰⁹ In response to these concerns, the following was raised by stakeholders:

76.1. It is posited that the market for the distribution of air tickets is competitive²¹⁰ and new forms of distribution have entered. For example, among other factors, (a) the entrance of content aggregators, (b) the introduction of solutions based on the New Distribution Capability ("NDC") standard and (c) airlines choosing to disintermediate through direct connects.²¹¹

208 These features (price, quantities, demand and capacities) also influence price recommendation software in a feedback loop.

209 The value proposition of GDS is that they create an environment where one can connect a passage of transport between two obscure destinations across the globe due to their unparalleled access to content and interline arrangements. The concern is that the more content given to GDS, the more dependent airlines are on GDS and the more indispensable their services become to airlines. Naturally, GDS can potentially exploit this dependency by raising prices for its distribution services.

210 For example, Travelport purports that they face significant competition from other GDSs such as Sabre and Amadeus. (Travelport RPR 1.1, para. 16).

211 Amadeus RPR1.1, para. 1.

- 76.2. Airlines possess countervailing power in that they can negotiate contracts and choose across varying types of distribution channels. For example, they distribute directly through their own website, have direct connects with online travel agents (i.e. have direct API integrations), distribute through content aggregators and distribute through metasearch sites.
- 76.3. GDS as a share of flight ticket distribution is declining. For example, GDS constituted [80-90]% of flight distribution in the 1990s and this has now decreased to [10-20]% presently²¹², whereas airline direct distribution channels (websites, mobile apps, call centres, etc.) is [50-60]% and is growing fast.
- 76.4. It is argued that GDS facilitates the entry of smaller airlines as they have access to travel agents through GDS integrations where non-GDS methods of distribution carry high costs for airlines (such as development costs to build a direct connect or a website/mobile app, and increasingly high costs of marketing and advertising via (meta)search engines)²¹³. Furthermore, smaller travel agents would not be in a position to offer a broad range of content to consumers²¹⁴ absent access to GDS content.
- 76.5. Price parity obligations are not applied, and airlines are not obligated to use GDS.²¹⁵ In terms of full content parity, full content parity is optional and is a voluntary supplementary agreement, GDS do not restrict the use of other distribution channels and can be negotiated.²¹⁶ However, should an airline agree to conclude a full content agreement ("FCA"),

the airline commits to provide content to the users of the GDS service provider that is no worse than content available in its other distribution channels.²¹⁷ Having said this, it is noted that many airlines have shifted away from an FCA to a basic Global Distribution Agreement ("GDA"). The GDA enables airlines the flexibility to allow customers to book fare content on any non-GDS airline ticket distribution system and/or to its direct channels.²¹⁸

- 76.6. GDS service providers argue that they are not expensive. GDS platforms argue that the costs are in a fair basis given the value associated with the services they provide²¹⁹ such as giving access to global travel agencies, whereas non-GDS distribution channels such as direct channel have high development costs and Google search costs.

3.3.2.2 Inquiry's views and supporting arguments.

77. Regarding the competitive dynamics elucidated by stakeholders, the Inquiry acknowledges changes in the B2B distribution of flight tickets, particularly in the online space, which are taking place. Stakeholders have mentioned that there has been entry of new distribution models such as travel content aggregators, NDC based solutions and direct connect. While the share of GDS in overall flight ticket distribution has declined over time and there has been entry of new types of B2B distributors, the GDS market is continuously held by a global oligopoly consisting of three GDS service providers namely Travelport, Amadeus and Sabre which collectively have over 97% of the

²¹² [REDACTED]
²¹³ Amadeus RPR1.1, para. 2.

²¹⁴ Travelport RPR1.2, para. 2.2.

²¹⁵ Amadeus RPR1.1, para. 2.

²¹⁶ [REDACTED]

²¹⁷ [REDACTED]

²¹⁸ [REDACTED]

²¹⁹ Travelport RPR1, page 2

global GDS market.²²⁰ Furthermore, GDS had been growing in revenue terms before the pandemic.²²¹ and is likely to continue growing from pandemic levels.

78. A distinction that needs to be made is the impact that GDS has on low-cost carriers (“LCCs”), and full-service carriers (“FSCs”) as well as domestic and international routes (typically serviced by FSCs).²²² Evidence collated thus far suggest that for LCCs the majority of flight tickets are distributed through an airline’s own website, otherwise much of the distribution takes place through direct connect²²³ (with OTAs) or travel content aggregators such as Trans-end and Travelfusion. However, where FSCs are concerned, GDS feature strongly. As stated before, the major value proposition that GDS offers content which has been collected over time and an array of interline arrangements that facilitate long haul travel. Travel content aggregators feature in the distribution of LCC flight tickets but not in a meaningful way where FSC’s are concerned. Feedback from stakeholders, however, seem to suggest that as NDC solutions grow, the more competition GDS will face.²²⁴

79. Airlines in the market for the distribution of air tickets do appear to have countervailing power.²²⁵ This is because they can negotiate terms with the GDS providers, and in the case of some LCCs, not use them altogether. Furthermore, as discussed previously in the Report in section 3.1, they are not subject to any price parity obligations imposed by OTAs and can push the cost of distribution to OTAs (unlike online accommodation intermediation). Lastly GDS, like any other B2B intermediary, allows for small and new airline to connect with a broad range of travel agents as well as smaller OTAs to obtain content from airlines. This value proposition is true for many B2B intermediaries, including travel content aggregators, who provide similar solutions as GDS but for cheaper.

80. Lastly, based on engagements, full content agreements appear to be negotiable and so are the fees.²²⁶ Furthermore, as purported by GDS, there does not appear to be clear indications of price parity obligations. However, GDS fees appear to be expensive. For example, fees charged by GDS per flight are several times more expensive than fees charged by travel content aggregators.²²⁷

220 Gilbert, D. Just Three Companies Control 97% of This Growing Market. *Smart Money*. Available at: <https://investorplace.com/smartmoney/2022/06/just-three-companies-control-97-of-this-growing-market/> [Accessed on 9 February 2023]. Globally Amadeus is estimated to have 40% of the market, Sabre 35% and Travelport 22%.

221 For example, Amadeus revenues almost doubled from \$3.44bn in 2010 to \$6.25bn in 2019. While the Covid pandemic had a major impact on GDS revenues (as illustrated in the 2020 figures), recovery is underway. A similar trend exists for Sabre and Travelport. See Statista (2022). Available at: <https://www.statista.com/statistics/501692/amadeus-revenue/> and <https://www.statista.com/statistics/501809/sabre-revenue/> and <https://www.statista.com/statistics/501874/travelport-revenue/> [Accessed on 9 February 2023].

222 For South Africa, at least, domestic routes are mostly comprised of LCCs (e.g. Flysafair and Lift) and FSCs (e.g. South African Airways and Airlink). Regional and domestic routes are typically made of FSCs).

223 [REDACTED]. TS,WS3, para. 1.

224 [REDACTED]
225 Airline countervailing power is lower for FSCs and international travel.

226 [REDACTED]

227 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

This also suggests that the extent to which travel content aggregators can apply competitive constraints on GDS is limited.²²⁸ Furthermore, the fees charged by GDS do not appear transparent.²²⁹ Other evidence also suggests that GDS make high gross and net margins and that these margins are higher in South Africa when compared to the overall EMEA region.²³⁰

81. The market for the B2B intermediation of flights appears to be changing and new technologies are entering this space challenging the historic hold that traditional GDS has had. This certainly seems the case for LCCs, however, there is scope for more competition in the FSC ticketing market. Margins appear high, particularly in South Africa, and it is hoped that entry of NDC solutions and other competitive pressures take place promptly in order to reduce the distribution costs of flight tickets.

228 GDS plays an important role in facilitating and connecting flights across the globe where one of its major value propositions is the rich content it offers. This might explain why travel content aggregators focus on the LCC market but struggle to constrain GDS in the FSC market.

229 Trans-end became a travel content aggregator because it felt that there was a lack of transparency in the GDS fee structure. Engagements with travel content aggregators suggest that they charge a flat fee per booking, whereas GDS appear to charge a complex matrix of fees (when one considers their agreements). Furthermore, an airline indicated that GDS charges a fee per action covering basically everything a customer or travel agent does, even if it doesn't result in a booking. [REDACTED]

230 For example, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[4. Business user competition and treatment findings]

4.1. Sponsored platform ranking

4.1.1. Stakeholder's views and supporting arguments

General views on sponsored ranking

82. Booking.com argues that payment for advertising, which is visible and attracts consumers whether in print, on television, radio, on outdoor billboards and signs, via search engines, or within online platforms, is a cost of doing business in all markets. Generally, larger companies have larger advertising budgets. However, there is a vast range of opportunities available to accommodation providers to advertise their services to consumers. The mere fact that a smaller hotel cannot afford to pay for search results on an online platform, is highly unlikely to have an adverse effect on competition, or even hamper its ability to compete in the relevant market. As such, it is argued that it is highly unlikely that paid result placement by online travel services, or their arrangement of search results are features of the market that impede, restrict or distort competition in any relevant market due to how competitive the relevant accommodation markets are in South Africa.

83. It is submitted that there are no advertisement programmes in relation to the order of the listings on search results in South Africa. Therefore, neither the Preferred Partner Programme nor the Visibility Booster are pure advertisement programmes. Visibility booster

offers a ranking boost to anyone for specific dates and they can choose to pay up to [20-30]% commission²³¹. However, the Preferred Partner Programme and the Visibility Booster gives a boost to the ranking score and does not guarantee a higher placement in the search results / default ranking. Lastly, it should also be pointed out that paid ranking is a standard business practice for many different types of platforms.

84. Expedia supports the provisional recommendations stating that disclosure to consumers that compensation is a factor in the ranking should be sufficient to ensure consumers are adequately informed and the disclosure is not potentially misleading.²³² However, this is the case for compensation that translates into guaranteed positions on the search results, such as the case of TravelAds, but not where there is no guaranteed positioning on the search results such as in the case of its Accelerator programme.²³³

On default ranking and sorting, filtering, and ordering

85. Booking.com submits that the default ranking involves interplay between various different parameters which are determined by multiple algorithms that are constantly being developed and revised by a machine learning team in order to make sure that customers are presented with the results that are most relevant to them.²³⁴ As such each customer has his or her own default results that are relevant to him or her such as the accommodation types (e.g. luxury

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232 Expedia RPR1.1, para 2.19

233 Expedia RPR1.1, para 2.17

234 Bcom RPR1.1, para 10.3.1

hotels or backpackers, etc.) that the customer typically searches for. Commercial parameters such as participation in programmes that come at a slightly increased commission fee are just one of the many factors that influence default ranking.

default ordering is through “tiebreaking”. As consumers add additional sorting criteria, tie-breaking becomes less likely, further minimizing or eliminating the impact of commercial factors on the ordering of results.

4.1.2. Inquiry’s views and supporting arguments

86. It is argued that allowing the top (or first) search results to only display organic search results will not be in the consumer’s interest.²³⁵ Booking.com’s ranking is first and foremost designed to align with the consumer’s preferences and trip characteristics through multiple algorithms and to further predict what consumers wish to book. Moreover, consumers have full control over the presentation of the search results to receive a tailored ranking order and can choose various alternative sorting methods from the ranking bar or the filter section.²³⁶ Such sorting and filtering can reduce (and, in many cases, does reduce) the influence that commercial parameters have on the ordering of search results. Examples of non-default ordering includes sorting by price, accommodation type, star rating, distance to amenities, best reviews etc.
87. Where non-default ordering is concerned, for example where consumers sort results by price (“lowest to highest”), accommodations are sorted based on the user’s selected characteristic(s). The only influence that commercial parameters have on non-

88. The Inquiry maintains its view that paying higher commissions in exchange for improved visibility, although the latter is not always guaranteed, does constitute a form of advertising. This includes participation in programmes such as Visibility Booster, the Accelerator programme, and Booking.com’s exclusivity programmes, Preferred Partner and Preferred Plus. Not only does Booking.com advertise that participating in these programmes boosts visibility,²³⁷ the Inquiry calculated that participating in these higher commission yielding programmes boosts visibility on average.²³⁸ The Inquiry understands that visibility plays an important factor for business users to effectively compete on platforms, especially for the top 10 results where [70 to 90]% of bookings are made²³⁹. On the Booking.com platform, paid or sponsored listings accounted for [40 to 50]% of the top 10 results on average whereas organic search results only accounted for [30 to 40]%.²⁴⁰ The Inquiry is of the view that sponsored ranking, which includes higher commission rates in exchange for improved visibility, constitutes paid advertising.

235 Bcom RPR1.1, para 10.5.1

236 Bcom RPR1.1, para 10.5.2.

237 For example, the Preferred Partner Programme gives greater visibility to the top 30% of Booking.com’s partners. An accommodation provider has to meet a set of criteria to join, but once they become a member, they can expect a big boost in bookings. (See Booking.com Partner Hub, “All you need to know about the Preferred Partner Programme”, available at: <https://partner.Booking.com/en-gb/help/growing-your-business/increase-revenue/all-you-need-know-about-preferred-partner-programme> [Accessed on 15 March 2023])

238 The Inquiry calculated that increasing their commission from the standard commission rate of 15% to the Preferred Partner commission rate of 18% would improve their ranking by an average of [redacted] per listing. While the Inquiry has observed that in some instances paying higher commissions does not always result in improved visibility, the Inquiry’s assessment is that on average paying higher commissions results in higher ranking and improved visibility. (Own calculations based on data submitted in Bcom, WS2b, Annex 1)

239 [redacted]. Bcom, WS3a. para.1.1.

240 (Bcom WS2b, para.71.). The proportion of organic results is likely to have decreased since, as the Inquiry has observed an increase in Genius and Preferred Partner bookings over time.

89. The excessive pay for visibility in exchange for higher commissions of travel accommodation platforms impedes the ability of SMEs to effectively compete on the platform since they are less likely to afford to pay additional commissions for visibility on Booking.com's platforms. This observation can be inferred by the fact that on average rooms not belonging to one of Booking.com's exclusive programmes were significantly cheaper than rooms belonging to the exclusive programme. Furthermore, those rooms that were part of the higher commission yielding Preferred Plus programme were slightly more expensive than those rooms belonging to the Preferred Partner programme on average.²⁴¹ Evidence collated by the Inquiry suggests that hotel chains, often selling more expensive rooms, are more likely to opt for the Preferred Partner programme relative to the overall population of accommodation providers that are eligible to join.²⁴²

4.2. Transparency in labelling of paid ranking

4.2.1. Stakeholder's views and supporting arguments.

90. Expedia considers that only payments guaranteeing higher ranking or display in a predefined position should be characterised as 'paid results'.²⁴³ The use of the term 'Ad' in a manner that is clear and prominent for consumers is sufficiently transparent in this regard. Expedia argues that badging disclosure should not be required where travel providers have decided to increase their commission in the hope of a higher ranking and Booking.com

notes that neither the Preferred Partner Program nor the Visibility Booster are pure advertisement programs.²⁴⁴ This is because increased commissions through programmes such as Expedia's Accelerator programme or Booking.com's Visibility Booster programme may generally boost rank, but this is not guaranteed nor is placement in any particular position guaranteed.²⁴⁵ Notwithstanding these arguments, Booking.com notes that it clearly tags the Visibility Booster to consumers as "promoted", and an adjacent text box provides additional clarification, and as such is clearly labelled.

91. OTAs warn against prescriptive and static labels for advertising. For example, Expedia notes that the term 'Ad' is clear and prominent for consumers, is sufficiently transparent, and was agreed in conjunction with the Consumer Protection Cooperation Network in the EU in 2020 to replace the previous term 'sponsored'.²⁴⁶ The issue with a prescriptive design proposal for transparency would require a bespoke redesign of the search results page just for South Africa which would raise operating costs in this regard. Lastly, consumers would not be able to distinguish between listings which have been ranked based on the platform's algorithm (which involves additional commission compensation), and those which are displayed in a predefined position which the accommodation provider paid for. This is likely to further distort consumers' choice by creating more confusion as to the meaning of the disclosure.²⁴⁷

241 [REDACTED] (Own calculations using data submitted by Bcom WS7, Annexure 1 and other TTV data submitted by Booking.com)

242 Hotel chains are less likely to belong to the Genius loyalty programme relative to the overall population of eligible accommodation providers and more likely to join the exclusive programmes. (Bcom RPR1.2, Annex 4).

243 Expedia RPR1.1, para. 2.17.

244 Bcom RPR1.1, para. 10.4.

245 Bcom RPR1.1, para. 10.4; Expedia RPR1.1, para. 2.17.

246 Expedia RPR1.1, para. 2.20.

247 Expedia RPR1.1, para. 2.18

4.2.2. Inquiry's views and supporting arguments

92. Global platforms such as Booking.com clearly label and disclose to consumers that the platform search ranking results may be influenced by commercial parameters that are in place between the platform and business users. Booking.com clearly labels Visibility Booster listings with "promoted" icon and on top of that an icon message pops up which gives an explanation that the "property spends a little extra to promote its visibility on their site". In addition, Booking.com has a "thumbs up" icon to label Preferred Partner and Preferred Plus Programme listings and also has a description that states that "*this property may pay Booking.com a bit more to be in the Programme*".²⁴⁸ However, the thumbs up display by Booking.com for Preferred Partner and Preferred Plus Programmes seems ambiguous, where customers only get a sense that the results are sponsored when they hover above the thumbs up icon and the message states the property may have paid Booking.com a bit more to be in the Programme.
93. The Inquiry has observed that domestic platforms such as Tripco and Afristay do not appear to disclose to consumers that they engage in paid ranking i.e. property may have paid the platform higher commissions in exchange for improved visibility/ranking.
94. The Inquiry is of the view that paid ranking through higher commissions, just like paying for positions on the platform's results page, constitutes a form of advertising. Even though these programmes do not guarantee a predefined position on the platform's results page, they do, as the product's name suggests, enhance visibility on the platform. Furthermore, labels including 'Ad', 'promoted'

and 'sponsored' are sufficient and permitted to disclose whether a search engine result is paid for. This is because such labels are very easy to understand and clearly give a description and inform consumers if the ranking is paid for. Furthermore, they have been generally accepted globally by other consumer protection agencies.²⁴⁹

4.3. Payment terms

95. The Inquiry reviewed contractual terms and conditions contained in the business user contracts and provisionally found that there are several conditions that may be unfair and non-transparent. The Inquiry found that there is no parity between OTAs and business users in relation to payment terms. For instance, global OTAs expected business users to pay within 15 days, and do enforce this rigidly, whereas they pay accommodation providers within 30 days. This draws off several complaints raised by accommodation providers which claim to have suffered substantial financial loss when their properties were removed from the platform following non-payment, citing stringent payment terms and non-flexibility by the OTA.

4.3.1. Stakeholder's views and supporting arguments

96. Booking.com submitted that through its Facilitated Payment product, consumers have an option of either paying the accommodation directly by selecting the pay at the property option or through the platform.²⁵⁰ Booking.com further submitted that business users are free to choose which payment option makes commercial sense for them.²⁵¹ It was explained that accommodation providers can either choose to arrange their own payments where the customer either pays at

248 Inquiry's own observation based on Booking.com platform.

249 Other consumer protection agencies include the European Commission, the Competition Commission of India and the CMA.

250 Bcom, RPR1.1, p.42

251 Bcom, RPR1.2, p. 6

the property upon arrival, or the property can provide a different payment method to the customer directly. Additionally, the customer can opt for facilitated payments whereby Booking.com takes payment on behalf of customers and transfers the amounts due to the business user. OTAs offer virtual credit cards ("VCC's") which facilitate payments for accommodation providers that do not have payment facilities or may not meet regulatory requirements to handle such payments on behalf of the customers.

4.3.2. Inquiry's views and supporting arguments

97. Virtual credit cards are temporary, digital versions of credit cards that OTAs use to pay accommodation providers for bookings that the guests pay for on the platform. They function like regular credit cards and give business users guaranteed payouts from platforms.²⁵² For each transaction the platform sends a new VCC even if it's the same guest that has made the booking. For instance, Booking.com activates their VCCs one day after the check-in date²⁵³ where accommodation providers can start charging against the card (i.e. withdraw their earnings). Whereas with Expedia, the Expedia Virtual Card is only activated when the guest check outs, meaning accommodation providers can charge the Expedia Virtual Card one day after the check-out date.²⁵⁴ VCCs have a limited charging period, and the charging rules differ per booking site.²⁵⁵ Therefore, by allowing the accommodation providers to charge the VCC and get access to their earnings one day after the check-in or check-out date, concerns

around the asymmetry payment terms appear to be resolved.

4.4. Metasearch results and consumer choice

98. The Inquiry made an observation that the cheapest price for a room advertised on a metasearch result was not necessarily the most prominently displayed for most metasearch engines ("MSE's"). Typically the option with the highest cost per click ("CPC") is the most prominent. Evidence suggests that the most prominent display drove approximately 85% of the clicks in South Africa and that only 74% of the most prominently displayed results were also the cheapest on average.²⁵⁶ Due to commercial agreements between metasearch engines and business users using its services, the business users pay more per click to improve and influence the ranking, display and occupy the most prominent position on the result. This is in effect the metasearch business model and therefore the cheapest result is not necessarily the most prominently displayed.²⁵⁷
99. The Inquiry was concerned that this will have a negative effect on consumer choice since consumers are most likely to choose the most prominent display and business users pay more in terms of CPC for the most prominent display. Therefore, the Inquiry recommended that travel metasearch engines should prominently highlight the cheapest option to consumers even if it does not appear first on the ranking.

252 Cloudbeds (2022). Booking.com Virtual Credit Card (VCC) - Everything You Need to Know. Available at: <https://myfrontdesk.cloudbeds.com/hc/en-us/articles/4407551138331-Booking-com-Virtual-Credit-Card-VCC-Everything-you-need-to-know->. Accessed on 10 December 2022

253 Booking.com Partner Hub. Understanding earlier activation dates virtual credit cards. Available at: <https://partner.booking.com/en-us/help/policies-payments/payment-products/understanding-earlier-activation-dates-virtual-credit-cards>. Accessed on 11 December 2022

254 Expedia Group. Expedia Virtual credit card. Available at: https://developers.expediagroup.com/supply/lodging/docs/booking_apis/booking_notification/learn/#expedia-virtual-card. (Accessed on 23 February 2023)

255 Smart Hotel.nl. Why hotels should (not) want virtual credit cards. Available at: <https://blog.smarthotel.nl/en-us/virtual-credit-cards-hotels>. Accessed on 10 December 2022

256 Own calculations using un-weighted averages for the following metasearch sites:

257 With the exception of

4.4.1. Stakeholder's views and supporting arguments

100. Trivago submits that the manner in which search results are presented is subject to complex algorithms, which may include sponsored links, but are also designed to ensure relevance for the consumer.²⁵⁸ Value offerings indeed feature prominently and if they did not, most consumers would not make use of travel aggregators. Lower priced options are key drivers of consumer decision making and conversion into bookings. In addition, the cheapest offer is prominently displayed as Trivago's "our lowest price" on the website. Furthermore, consumers have numerous search options at their fingertips when sorting and filtering. As such, it seems like any remedial action in this regard would not be warranted, yet alone necessary.

4.4.2. Inquiry's views and supporting arguments

101. The Inquiry found that for travel metasearch engines there is no clear leading or dominant platform at present.²⁵⁹ Trivago used to be the largest metasearch provider in South Africa, however, has lost significant share over time. Furthermore, the Inquiry found that some metasearch platforms such as Skyscanner, and Trivago²⁶⁰ do clearly mark the cheapest lead even though it may be less prominent slot whereas Tripadvisor and Kayak, which forms part of Booking Holdings, do not appear to clearly mark its cheapest lead as being the cheapest. Also, consumers have an option of sorting and filtering their search results where the cheapest lead is displayed but may be less prominent. At present, there are no features

of MSEs that indicate that competition is impeded, restricted or distorted, however, this may change if any metasearch engine becomes the dominant driver of travel and accommodation leads especially where the MSE forms part of portfolio of platforms where conduct such as self-preferencing becomes a concern.²⁶¹

4.5. Commission differentials between hotel chains and accommodation providers

4.5.1. Stakeholder's views and supporting arguments

102. Booking.com notes that it is not a "dominant firm". Therefore, it is accordingly not subject to the restriction on price discrimination in section 9 of the Competition Act (or indeed the restriction on "excessive" pricing in section 8 of the Competition Act).²⁶² Furthermore, it is submitted that there is no basis for the notion that offering better commission rates to large hotel chains constitutes price discrimination. Booking.com submits that whilst most of its partners pay a standard commission, there are a select few large hotel chains that have negotiated their commission.²⁶³ Global chains can negotiate better commission rates based on certain factors as they offer a relatively high number of accommodations and rooms through the platform (especially from a global perspective); they have well-known brands and guests expect certain global chains to be displayed on the platform; and transactions with global chains are accordingly not "equivalent" from an economic perspective to those with accommodations which offer fewer rooms

258 trivago RPR1.1a

259 See PR Chapter 2, Table 5.

260 Trivago has a clear tab for "our lowest price"; Kayak marks its lowest price in green; Tripadvisor has a tab for "view all deals from (R - lowest price)"

261 For example Kayak, Cheapflights, Momondo, HotelsCombined form part of Booking Holdings and Trivago forms part of Expedia. Leveraging dominance in metasearch by self-preferencing the OTA, especially where the OTA is also dominant, can be used to reinforce market power and dominance. In such a scenario, this would be anticompetitive.

262 Bcom RPR1.1, para 8.3

263 Bcom RPR1.1, para 8.3.1

and/or do not have a global reach or as well-known brands.²⁶⁴

103. It was also noted that the Inquiry failed to provide evidence which indicates that charging different commission rates is likely to have the effect of substantially preventing or lessening competition or impeding the ability of SMEs or firms owned and controlled by HDPs to participate in any relevant market.²⁶⁵ Furthermore, the Inquiry does not set out any analysis of the significance of online booking services in the cost structure of accommodation providers or as a driver of sales; or deal with the likelihood that the elimination of the differential, would result in SMEs or HDPs facing increased demand for their services and/or improving the prospect of higher levels of investment.

4.5.2. Inquiry's views and supporting arguments

104. The Inquiry is of the view that the difference in commission fees paid by global hotel chains has a distortionary effect on smaller independent hotels, hotel chains that do not benefit from preferential commission rates and other accommodation providers that compete directly with these global hotel chains. The Inquiry understands that improved visibility on the leading platform can be attained by acquiring special status, such as being a Preferred Partner where becoming a Preferred Partner requires payment of a higher commission fee. However, given their

global prominence, several global chains negotiate their commission fees, where the differential can be as much as [5-25]%, this is the case for standard commission fees²⁶⁶ as well as Preferred Partner commissions.²⁶⁷ This puts global hotel chains at a competitive advantage relative to their rivals such as independent hotels where they enjoy paying lower commission rates for products that confer visibility benefits²⁶⁸ such as those derived from the Preferred Partner program. These advantages can be particularly useful in highly competitive nodes such as Sandton, Pretoria, Rosebank (JHB), Cape Town etc. where global hotel chains compete for visibility on the platform with other accommodation providers.

105. Not all chains have negotiated contracts with Booking.com, for instance, only [5-10] global chains, and [0-5] local chains have negotiated commissions in place.²⁶⁹ Albeit that some of the largest chains attain preferential commission rates, they only represent a small fraction of total managed hotel chains in South Africa.²⁷⁰ Similarly, managed hotel chains represent [20-30]% of total bookings²⁷¹, where the majority of bookings are done with independent accommodation providers. Initially the Inquiry was concerned that by having preferential rates, global chains would have a visibility advantage. While this is still the case, over half of the booked room nights and transaction value generated on Booking.com are linked to its

264 For example, Booking.com argues that [REDACTED]

[REDACTED] (Bcom RPR1.1, para 8.3.1)

265 Bcom RPR1.1, para 8.3.2

266 Commission discrimination also occurs on the standard commission rate, with a slightly smaller range differential.

267 For example, [REDACTED]

[REDACTED] (See Bcom WS3c, para. 4)

268 There is no discrimination on the Visibility Booster programme as an accommodation establishment determines what additional commission it is willing to pay, and the ranking boost is based on that.

269 [REDACTED]

[REDACTED] (Bcom WS3c, para. 4: Bcom RPR1.2, para. 15).

270 There are approximately [REDACTED] managed hotel chains based on data submitted by Booking.com. Therefore, the [REDACTED] large chains account for a small fraction of total managed hotel chains. (See Bcom RPR1.2; Annex 3 & 4).

271 Bcom RPR 1.2, Annex 3.

exclusive programmes.²⁷² This means that there is already a high adoption of Booking.com's exclusive programmes by hotel chains and independent accommodation providers, albeit that the adoption rate by managed hotel chains of the Preferred Partner programme is higher than accommodation providers more broadly, by approximately [0-10]%.²⁷³ It also means that belonging to these exclusive programmes drive the bulk of bookings. Notwithstanding the visibility benefits of belonging to the exclusive programme, the commission rate differentials do give hotel chain beneficiaries a distribution cost advantage over rivals.²⁷⁴

106. Therefore, the relatively higher commission fees charged to rivals of hotel chain beneficiaries puts them at a disadvantage in terms of higher distribution costs and poorer visibility. To belong to Booking.com's exclusive programmes or participating in visibility boosts means that online distribution costs for accommodation providers, especially smaller independent accommodation rivals rise. This is particularly true for the areas where hotel chain beneficiaries compete and are dependent on OTAs for discoverability and customer acquisition, such as in competitive nodes. Furthermore, the relative cost disadvantage that smaller and independent accommodation providers face is exacerbated by their inability to pass through these higher distribution costs in the form of higher prices on the platform due to narrow price parity restrictions. This is another good reason for the removal of narrow price parity obligations maintained by the leading platform.

107. The Inquiry argues that OTAs cannot rely on the argument that commission rate discrimination is justified based on the economies of scale that global chains provide i.e. where they incur relatively lower per unit marketing costs given the global reach and volume of hotel chain establishments. Booking.com has provided no evidence to support this claim. In contradiction to this point, one could argue that global chains are well resourced to drive their own marketing campaigns and as such drive up the marketing costs of Booking.com who contest space on Google's SERP (and other online channels) to win consumer traffic away from these global chains. In fact several hotel chains such as Marriott attract a considerable amount of traffic from search,²⁷⁵ suggesting that OTAs may have to joust with global chains for traffic on certain search terms thereby raising their marketing costs. A more plausible argument for the differences in commissions that favour global hotel chains is that they possess superior bargaining power relative to their rivals given their brand value and global presence.

108. A Section 9 assessment of price discrimination is not necessary for the purpose of this Market Inquiry. As such the Inquiry does not have to determine equivalence or a substantial lessening of competition. Rather the Inquiry's observation is that preferential commission rates for certain hotel chains gives them an advantage up to [5 to 25]% of their distribution costs, driving up their rivals relative distribution costs. This cost advantage means that in those areas where hotel chains depend on platforms to drive traffic, their commission differentials have a distortionary effect on competition between

272 [REDACTED] of all booked room nights and [REDACTED] of total transaction value were linked to the Preferred Partner and Preferred Plus programmes in 2022. (Own calculations based on data submitted in Bcom WS7, Annexure 1.)

273 This assessment was done using data for Q4 2021 to Q3 2022 (Bcom RPR1.2, Annex 4). For this period adoption was [REDACTED] higher for managed hotel chains than overall establishments.

274 This is a point conceded by a prominent hotel chain, [REDACTED]

275 Based on data from Similarweb, Marriott attracted approximately 788 100 visits in 2022 through Google Search, accounting for more than half its traffic.

these hotel chains and their rivals. This is another reason necessitating interventions such as SME and HDP support (discussed later).

4.6. Concerns with contractual agreements of car rental platforms

109. The Inquiry had a concern with a certain clause in the Standard Contract template of Booking.com Transport Limited (“BTL”) also known as Rentalcars.com. The Inquiry was concerned that such a clause may facilitate collusion for last minute rental bookings on the Rentalcars platform.

4.6.1. Stakeholder’s views and supporting arguments

110. Rentalcars submitted its rationale for having the clause in its contract.²⁷⁶ Rentalcars further notes that it is not a dominant firm in any relevant market defined in the Provisional Report, and therefore the clause could not actually impede, restrict or distort competition in any relevant market.

4.6.2. Inquiry’s views and supporting arguments

111. The Inquiry is of the view that the rationale provided by BTL simply confirmed the concerns of the Inquiry which firmly hold the view that if this clause is implemented, then it constitutes collusive conduct in contravention of section 4(1)(b) of the Act. One would expect that for last minute bookings a firm would want to drop price in order to remain price competitive (as opposed to increasing it). Furthermore, proving dominance is not a prerequisite for collusive conduct in contravention of section 4(1)(b) of the Act, notwithstanding the fact

that the Rentalcars platform has [60-70]% online car rental intermediation platform revenue share.²⁷⁷ Having said this, the Inquiry did not establish that any car rental companies operating in South Africa on an agency basis had this clause in their actual signed agreements.²⁷⁸

112. The Inquiry undertook a random spot check to assess differences in prices for last minute bookings with the prices for the exact same booking a week later at a number of airports. The Inquiry found that there was no variation in the price between last minute bookings and the exact same booking a week later for all the car rental operators for both East London Airport and Oliver Tambo Airport in Johannesburg. However, for Avis, at Cape Town International Airport it appeared that the cheaper “Pay Now” option had been dropped for last minute bookings, leaving only the more expensive pay on collection link (corresponding with the higher price option for earlier like-on-like bookings). Avis Budget Southern Africa’s (“Avis SA”) response to dropping the “Pay Now” option 24 hours before collection was due to the high prevalence of credit card fraud and the necessity for Avis Budget to conduct enhanced security checks on credit card bookings. However, due to recent technological improvements shortening the period for security checks the “Pay Now” option is now available for up to 2 hours of vehicle rental collection.²⁷⁹

113. The Inquiry also undertook a second spot check to assess the differences in prices for last minute bookings for the outbound destinations. The Inquiry found that for outbound destinations prices were actually higher for last minute bookings especially for

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277 See PR Chapter 2, Table 6.

278 As far as the Inquiry is aware, Avis Budget Global “ABG” (and by extension Avis Budget South Africa), is the only car rental operator in South Africa contracted on an agency basis. (See Avis OS, p. 3). The Inquiry received submissions from ABG and (ABG, WS4.1 and ABG, WS4.2).

279 Avis SA, WS5, para. 2.

destinations such as Frankfurt. However, it is worth noting that for outbound destinations prices are not set and managed by Avis SA but rather by Avis Budget Global (“ABG”) based in the UK.

114. The Inquiry also had engagements with Avis SA who is a licensee of ABG. Avis SA submits that it determines its own rates and then loads these rates onto Wizard which is ABG’s Global Reservation and Rental System.²⁸⁰ Avis SA further submits that the same rates are available on its direct websites and confirmed that it does not have any direct contracts with global intermediaries, including BTL but rather obtains these contractual terms from ABG.

115. The Inquiry found that there seems to be some monitoring that takes place if car rental operators are not pricing “competitively” on the Rentalcars website. The Inquiry is aware that Rentalcars sends car rental operators messages should the prices that are on direct car rental websites be lower than the ones on Rentalcars platform.²⁸¹ The Inquiry also found that multiple conversations take place between Rentalcars and Avis SA, and most likely other car rental operators, on a frequent basis discussing detailed information such as rate shops on the Rentalcars platform, benchmarks, pricing and other detailed information at various categories of vehicles.²⁸²

116. The Inquiry also observed that BTL advertises an alignment of strategy and is concerned that such behaviour may suggest and promote coordination and sharing of commercially sensitive rates between competitors. However, Avis SA submits that

BTL conducts a benchmarking exercise to compare rental rates on its public platform²⁸³ but does this by relying on publicly available data. Further, Avis SA submits that it conducts its own general rate shopping exercises, but it is not obligated to increase or decrease its rates based solely on the analysis done by BTL of the rates that are published on the Rentalcars platform.²⁸⁴

117. The Inquiry would like to reiterate that it is concerned about the level of detail and frequency of information discussed between the platform and Avis SA²⁸⁵, and most likely other car rental operators. Consideration must be given to the fact that in an online era lots of detailed information is publicly available which can easily be scrapped or crawled which may have been considered non-public and possibly commercially sensitive in an era preceding online markets. The implications of these observations and online realities delineated above are in need for further consideration and study by competition authorities, policy makers, think tanks and academics. This includes frequent discussions around benchmarks, rate shops, detailed categorical sales data, tacit alignment of strategies between platform and business users, etc. even if it is based on online public information and players note that they are free to price as they choose on their own direct channels.

118. Based on the above discussions, the Inquiry did not obtain sufficient evidence that such a clause for the increase in rates for last minute bookings exists in South Africa. However, if such an agreement did take place, it would have been considered anticompetitive coordination of last-minute prices.

280 Avis, WS3.1, para8

281

282

283 Avis SA WS5, para3.3

284 Avis SA WS5, para3.5

285 Such as BTL’s detailed Quarterly Business Review engagements with car rental operators.

4.7. SME and HDP Development

4.7.1. Stakeholder's views and supporting arguments.

119. Booking.com submits that the Inquiry does not have any statutory power to order any firm to take action in order to "require" any firms to implement the HDP measures, nor has the Commission demonstrated any adverse effect on competition.²⁸⁶ None of the HDP measures suggested by the Inquiry in the Provisional Report as generally required of online platforms are appropriate for Booking.com's business in South Africa.
120. Booking.com also argues that it already supports SME and HDPs by making it possible for SMEs and HDPs to gain access to large numbers of local and international travellers efficiently and cost effectively. Booking.com further submits that it has already implemented programmes to support HDPs and SMEs in South Africa. For example, Booking.com has run a South African Booking Booster Alumni program.²⁸⁷ Furthermore, they intend to partner up with one of South Africa's tech start-up companies to allow users to do virtual tours on Booking.com.²⁸⁸
121. Booking.com notes that it supports the Inquiry's efforts to assist and facilitate participation of SMEs in the market.²⁸⁹ In addition, it considers implementing some practical initiatives in South Africa that it believes would be effective in enhancing the ability of small firms to participate in

the accommodation market in South Africa. Some of the upcoming innovations and initiatives that Booking.com will embark on are to upskill property partners in the hospitality sector, help grow hospitality-entrepreneurs with a focus on SMME's in the region, ensuring hospitality businesses have the best chance of attracting customers in the most affordable manner and help grow the rate of employment in the hospitality sector.^{290, 291}

122. Airbnb submits that over and above to what has already been outlined in the Provisional Report, they have continued to invest and expand its various projects in order to drive impact and scale.²⁹² Airbnb has continued its partnership with the University of Johannesburg School of Tourism and Hospitality to extend entrepreneurship training to its students through the Academy which expanded to more regions. The platform also participated in the President's District Development Model in order to drive inclusive tourism in the region and support the Just Transition. Furthermore, it facilitated boot camps in the Waterberg region with local implementation partners which resulted in 50 participants from rural and under-resourced communities receiving skills and development training as well as extensive post-training support.
123. The platform has a long-term partnership with the Development Bank of Southern Africa (DBSA) and through one of the bank's social Innovation initiatives, Airbnb has initiated a DLAB precinct in Mitchell's

286 Bcom RPR1.1, para 13.2.2.2

287 Bcom RPR1.1

288 Booking.com is considering partnering up with [REDACTED]

289 Bcom RPR 1.4, Annexure B, page 9

290 Bcom RPR1.10, page10 and Bcom, WS8.1

291 [REDACTED]

[REDACTED]. Bcom, WS8.1; Bcom, E8.2. Booking.com submitted further details regarding its investments in South Africa (B.com, WS9.2).

292 Airbnb RPR1, para 5.2

Plain and considers rolling it out in Jabulani, Gauteng. Airbnb also plans to provide free Wi-Fi for 100 Academy Hosts in order to provide people with network access. Lastly, they have invested an additional R1.5 million in the Academy Fund to support hosts that were most hit hard by Covid-19.²⁹³

4.7.2. Inquiry's views and supporting arguments

124. The tourism sector in South Africa is substantially untransformed not only from an ownership perspective but also from a community perspective. The Group Areas Act²⁹⁴ ensured that prime tourism locations nationally were reserved for whites, who currently benefit from the ownership of accommodation and travel-related services in those areas. Moreover, the allocation of fiscal resources was used to invest in tourism infrastructure in those areas, benefiting the previously advantaged, and excluding HDP communities in benefiting from domestic and inbound tourism. Whilst government has a clear role to play in addressing this historical inequity, and there are initiatives to try build tourism infrastructure in HDP communities, online accommodation intermediation platforms now play a material role in shaping the tourism industry in several ways. Most directly, the sheer volumes of bookings made through online accommodation platforms, and particularly Booking.com and Airbnb, means that simply being on the platform itself is becoming indispensable to the viability of many establishments seeking to make a place for themselves in the tourism industry.

125. Online accommodation intermediation platforms provide information on facilities and services, as well as ratings and written reviews, to help consumers make

comparisons and to make informed decisions. In addition, discoverability and visibility on the platform shapes which establishments attract more volumes of travellers. Finally, online platforms provide information on particular destinations and seek to promote destinations to travellers. In these ways, the establishments online accommodation platforms seek to bring onboard and the tourism communities they seek to promote will influence the success of those communities and individual establishments.

126. However, the OTAs have predominately focused on established tourism and travel destinations and establishments, reinforcing historical advantage and disadvantage. This is reflected in the small number of listings from HDP owners and communities, and the lack of promotion of alternative tourism communities.²⁹⁵ This market feature impedes the ability of HDP-owned SME establishments and communities to compete and sustain themselves in the tourism industry. Given the potential of the tourism industry to support economic activity and employment, this market feature contributes to broader inequality within South African society. As the dominant OTA for inbound and domestic travel, Booking.com does most to shape the winners and losers but also benefits most from that tourism activity amongst OTAs. Smaller domestic OTAs and global OTAs with less share in the market similarly have an obligation too but their market position should inform the extent of that obligation.

127. Considering the huge amounts of revenue Booking.com has generated in South Africa, the Inquiry is of the view that Booking.com has made very little investment to support local

293 Airbnb RPR1, para 5.2

294 Group Areas Act (1950). Available at: <https://blogs.loc.gov/law/files/2014/01/Group-Areas-Act-1950.pdf>. (Accessed on 20 February 2023).

295 For example, the Redflank Survey suggests that 8% of large hotels and 5% of small hotels had HDP ownership and a survey run by Genesis Analytics suggested that HDP ownership account for 13% of hosts (11% of the survey did not respond). [Redflank, 2021, slide 29; Genesis and Airbnb (2021). The foundation of inclusive tourism, available at: [Genesis-Analytics-Airbnb-The-foundations-of-inclusive-tourism-13-Sept-2021-Final-report.pdf](#) (Accessed on 17 March 2023)].

establishments. Much of the commission revenues generated in South Africa, are relayed back overseas to the Netherlands, for example, where it enjoys lower corporate tax rates²⁹⁶ and the nominal tax advantage it enjoys in South Africa is larger than the total commission revenues earned by some platforms.²⁹⁷ As such most revenues generated in South Africa do not stay or get circulated in South Africa, in what appears to be an extractive model.²⁹⁸ While there are some investments into programmes in South Africa, the amount of investments currently in place is minimal, a small fraction of what it generates in South Africa.²⁹⁹ Therefore, further investment into SME and in particular HDP-owned SME development is not only warranted, it is necessary.

has allowed communities from non-traditional tourist areas to open their homes and supply community-based tourism. Airbnb has invested millions of Rands into alternative tourism and established several initiatives including but not limited to forming strategic partnerships with Ikeja, University of Johannesburg, an Airbnb Africa Academy fund whereby they provide information, training and tools to support aspiring entrepreneurs from rural and under-resourced communities across South Africa to list their own offerings on Airbnb. Airbnb has also paid out a relief fund to hosts hit by Covid³⁰⁰ and lastly it invested in the Waterberg region which included a HDP community development project.^{301, 302}

128. Unlike Booking.com, Airbnb has made substantive investments in alternative tourism and in particular HDP-owned SME development. By virtue of being an innovator platform Airbnb has opened supply from a more informal source of accommodation such as apartments, houses, home-sharing which provides opportunity for more HDP and SME involvement. As such, Airbnb

296 For example, Booking.com benefits from a Dutch "Innovation Box" and its effective tax rate was [REDACTED] in 2019 as opposed to the corporate tax rate of 28% in South Africa. Using the operating profit margin for Booking.com in that year and applying it to the total commission revenues generated by Booking.com in South Africa, the tax advantage that Booking.com had relative to domestic platforms accounted for [REDACTED] or [REDACTED] of 2019 total commission revenues earned in South Africa in 2019. This is calculated by multiplying the corporate tax rate differential by Booking.com's operating profit by the total commission revenues earned in South Africa which equals ([REDACTED]). [Source: Booking Holding B.V. Annual Accounts 2019 submitted on 22 July 2021, page 15 & 45].

297 For example, [REDACTED]

298 For example, based on Booking.com's 2019 financial data only [REDACTED]. Bcom WS1.1. Exhibit 1; Bcom, WS1.2.

299 Booking.com submitted its investment plans for South Africa (discussed earlier). While most of the plan was centered around marketing Booking.com, meaningful contributions were small, accounting for [REDACTED]

[REDACTED] The Inquiry views much of this expenditure as part of Booking.com's own marketing expenditure with the effect of expanding its own network and future sales on the platform. (See Bcom WS8.1; Bcom, E8.2; Bcom, WS9.1 & Bcom WS 9.2).

300 The investment amount to date totals R2.5m for the Covid relief fund.

301 Airbnb has invested [REDACTED] to date in the Waterberg region.

302 See Airbnb RPR1 and Airbnb WS4 for more detail.

[5. Provisional Remedies]

129. The following section deals with stakeholder views in response to proposed provisional remedies. For the most part the overarching arguments feeding into these provisional remedies have been discussed in detail in earlier sections of this report. The Inquiry provides its final views factoring stakeholder input, and evidence provided to and assessed by the Inquiry.

5.1. Price Parity

130. The Inquiry put forward the provisional remedy pertaining to the removal of and prohibition on price parity clauses, both wide (as applied to competing platforms) and narrow (as applied to the business user's own direct online channels) from contracts with business users, and communication to that effect.³⁰³

5.1.1. Stakeholder's views and supporting arguments

131. Expedia submits that both wide and narrow parity clauses form an important element of the fair commercial balance between intermediary booking sites and their travel supplier partners, such as accommodations and airlines.³⁰⁴ Expedia considers that a blanket removal and prohibition on price parity clauses, both wide and narrow, from contracts with accommodation and travel providers would not be proportionate and may lead to significant negative knock-on effects for South African accommodations as well as, importantly, South African consumers. Expedia further notes that wide parity clauses ensure that competitive terms

are made available more widely to end consumers, thus enhancing competition for the benefit of consumers. This makes it more difficult for accommodations to discriminate against less price sensitive or less 'digitally literate' consumers who may engage in less multi-homing. Furthermore, the blanket removal and prohibition of parity clauses (wide and narrow) recommended by the Inquiry should not apply to agreements with all travel providers and should be restricted to agreements with accommodation providers only.

132. Booking.com submits that both wide and narrow parity clauses are necessary and should be able to retain these clauses in its contracts, and should be entitled to enforce them, should the need arise.³⁰⁵

5.1.2. Inquiry's views and supporting arguments

133. As discussed extensively in Section 3.1 of this report, the Inquiry is of the view that wide parity must be removed from contracts with accommodation providers in South Africa. The Inquiry has provided evidence and substantive arguments that wide parity obligations impede and restrict price competition amongst competing platforms, market expansion of small rival platforms through price differentiation and accommodation providers from differentiating their strategy across distribution channels. Moreover, there has not been any proper and clear justification as to why wide parity obligations are important and should be implemented.

303 See OIPMI Provisional Summary Report, section 8.2.4, p.52. Available at: <https://www.compcom.co.za/wp-content/uploads/2022/07/OIPMI-Provisional-Summary-Report.pdf>. (Accessed on 31 March 2023)

304 Expedia RPR1.1, para 2.5

305 Bcom RPR1.1, para 9.3.1 & 9.7.7

134. The Inquiry has demonstrated the adverse effect that narrow parity obligations enforced by platforms with market power has had on creating an environment that impedes and distorts competition. The Inquiry has found Booking.com to be the leading platform having market power in online accommodation intermediation in South Africa, accounting for more than half of the platform revenue share, of which accommodation providers are dependent on as a route to market, and through its ability to increasingly grow its higher commission yielding exclusive programmes, as well as its ability to attract accommodation funded discounts that outweigh commissions earned by any of its rival platforms.
135. The Inquiry is of the view that narrow parity obligations enforced by leading platforms such as Booking.com impede and distorts competition in that it dulls price competition, and it hampers innovations for room distribution. Narrow parity has an element of replicating the effects of wide parity obligations. Absent narrow parity obligations, accommodation providers have indicated that they would price lower on their own online channels and would be freer to adopt and innovate their own distribution strategy. In fact, there is evidence that Booking.com engages in price competition by responding to price differentiation across online channels by sponsoring its own discounts. There is no strong evidence of purported free riding and where it does take place it is *de minimis* where the Inquiry has also shown evidence of travellers first finding accommodation on hotels' website and then booking on the platforms. Lastly, the Inquiry has demonstrated how Booking.com uses narrow parity to exploit accommodation providers.
136. Hence, the Inquiry is of the view that both wide and narrow price parity clauses must be removed from Booking.com contracts with accommodation providers. In fact, all wide and narrow parity obligations and prompts such as "external prices"³⁰⁶ must be removed including back-door avenues such as making it a precondition for its loyalty and exclusive programmes (which form the bulk of Booking.com's total transaction value in any case). Given the UK and European Member States experience where a significant number of accommodation providers were unaware of changes in parity obligations, it therefore stands that it must be clearly and unambiguously communicated to accommodation providers that they are no longer obligated to price at parity on the Booking.com platform and that they are free to determine their price on the platform.
137. Regarding small platforms, their ability to enforce price parity provisions are likely to be limited given the lack of dependency of accommodation providers. Price parity provisions are unlikely to have an adverse effect on the competitive landscape when used by small platforms, including local and global platforms, given their negligible size and network effects in South Africa.
- 5.2. Accommodation funded discounts and loyalty programmes**
138. The provisional remedies included a prohibition on exclusionary loyalty scheme design, including schemes that include only a subset of business users, and which are part or whole funded by business user funded discounts. Loyalty schemes must include all business users and be fully funded by the platform.³⁰⁷

306 In other words notions of pricing "competitively" or "not competitive" which act as pricing prompts effectively emulating wide and narrow parity when applied across online distribution channels.

307 See OIPMI Provisional Summary Report, section 8.2.4, p52. Available at: <https://www.compcom.co.za/wp-content/uploads/2022/07/OIPMI-Provisional-Summary-Report.pdf>. (Accessed on 31 March 2023)

5.2.1. Stakeholders views and supporting documents

139. Booking.com submits that the restrictions proposed by the Provisional Report are not lawful, reasonable or practical, and are highly likely to harm consumers and accommodation providers in South Africa.³⁰⁸
140. Expedia submits that rules mandating loyalty discounts to be funded by intermediary platforms amounts to a form of rigid price regulation which will (i) harm competition and (ii) deprive consumers of discounts which will no longer be available to them.³⁰⁹ Therefore, travel and accommodation platforms, including leading platforms, should be free to design their loyalty schemes terms to accommodations however they want. Whereas Tripco is of the view that as it *“currently stands the larger the platform, the greater their ability to solicit a discount from an establishment. This results in self-perpetuating circle, where the largest platform can offer the deepest discounts (funded by their suppliers), and thereby get more customers, which in turn gives them more bargaining power with suppliers for more discounts, and so on”*.³¹⁰ Accordingly, Tripco notes that the proposed remedy is appropriate in such a way that the leading platform’s ability to solicit discounts from accommodation providers will be removed.

5.2.2. Inquiry’s views and supporting documents

141. The Inquiry notes that a common feature of travel and accommodation platforms, in particular OTAs, is the promotion of numerous discounted rooms, mostly funded by accommodation providers in the case of Booking.com and self-funded in the case of the smaller OTAs. In fact, it is quite common that in loyalty programme design to have it

funded by the various parties that seemingly benefit from the loyalty scheme. In the case of Booking.com, most accommodation provided discounts are funded outside the Genius programme (i.e. through promotions and deals) but accommodation funded discounts linked to the Genius programme are growing fast and may soon represent most accommodation funded discounts on the platform.

142. In the case of accommodation funded discounts there exists a dual duality. The first duality is that consumers benefit from lower prices, thereby enhancing consumer welfare. Similarly, a leading platform entrenches its market position as consumers are attracted to the lower (accommodation funded) prices thereby further expanding the leading platforms network and reinforcing its market power. The second duality is that accommodation providers may benefit from selling unsold rooms by selling them at discount on the platform but on the other hand they may feel obligated to provide discounts given their dependency and need for visibility on the platform. Echoing Tripco’s views, the Inquiry also considers accommodation funded discounts as reinforcing the virtuous (vicious) circle of dependency on Booking.com and its market power thereby further entrenching the platform.

143. As with Expedia’s view, the Inquiry does not want to put in any hard restrictions on accommodation funded discounts on the Booking.com platform as this can benefit consumers and business users in some circumstances. Rather the Inquiry focuses on features of Booking.com’s loyalty programme that results in adverse effect and impedes or distorts competition. The feature in the Genius programme that impedes

308 Bcom RPR1.1, para 1,24

309 Expedia RPR1.1a, para 2.14

310 Tripco WS4.1

or distort competition is the requirement for accommodation providers to price “competitively”, Booking.com speak for pricing at parity. The Inquiry is of the view that being restricted from offering deeper discounts on one’s own online channel for the cheapest and best-selling rooms further entrenches dependency on the platform where accommodation providers should have the option to pass through the cost of the discount (and commissions) in the form higher prices on Booking.com. Also, the removal of narrow parity obligations is likely to result in Booking.com using its own platform funded discounts to be price competitive. The Inquiry is not convinced that other features of the Genius programme are likely to distort or impede competition, such as the minimum customer review score of 7.5. Naturally, this is to maintain a certain level of quality and is unlikely to be exclusionary given that a large proportion of eligible users have not opted to use the service.³¹¹

144. Seeing that the requirement of pricing “competitively” or at narrow parity is being resolved in conjunction with the removal of narrow parity obligations (discussed in the previous subsection of this report) and given that there are no other features of the Genius programme that the Inquiry deem to impede, distort, or restrict competition, the Inquiry will not pursue the requirement that Booking.com fully funds the discounts offered in its loyalty programme.

5.3. Sponsored platform ranking

145. The Inquiry made a provisional remedy that the top (or first) search results screen may only have organic (or natural) search results

and any paid results can only appear once the consumer has scrolled down (i.e. paid results may not appear until after the ‘fold’ on a desktop and the scroll point on a mobile search results page).³¹²

5.3.1. Stakeholder’s views and supporting documents

146. Booking.com submits that placing organic at the top of the search results and having paid results only appear once the consumer has scrolled down will not be in the consumer’s interest.³¹³ It was explained that their ranking is designed to align with the consumer’s preferences and trip characteristics through multiple algorithms and to further predict what consumers wish to book (which can include both Preferred Partner properties as well as properties that are not subject to any programmes). Further, consumers have full control over the presentation of the search results to receive a tailored ranking order and can choose various alternative sorting methods from the ranking bar or the filter section.
147. Expedia submits that they disagree with imposing overly static and narrowly prescriptive advertising placement and sort order restrictions.³¹⁴ Paid-for commercial advertisements, where an accommodation provider has paid to appear in a specific position in the search results, should not be restricted providing such listings are badged and distinguishable from other listings, as per the current display on za.hotels.com.

5.3.2. Inquiry’s views and supporting documents

148. The Inquiry raised concerns about organic

311 Between July 2021 and June 2022, approximately ■■■ of eligible managed hotel chains and ■■■ of eligible independent accommodation providers opted to become a Genius partner. (Own calculations from Bcom RPR1.2, Annex 3.

312 See OIPMI Provisional Summary Report, section 8.3.4, p57. Available at: <https://www.compcom.co.za/wp-content/uploads/2022/07/OIPMI-Provisional-Summary-Report.pdf>. (Accessed on 31 March 2023)

313 Bcom RPR1.1, para 10.5.1

314 Expedia RPR1.1, para 2.23

search results being crowded out of top 10 results.³¹⁵ The Inquiry has learnt that putting organic search results at the top 10 results might not achieve the purpose of improving visibility for small and new accommodation providers where sponsored ranking can help them get better visibility and attract travellers to their accommodations.³¹⁶ The Inquiry reemphasises the importance of visibility on the platform for discoverability of establishments, being key to driving bookings. This provides an opportunity for Booking.com to improve visibility of new, SME and HDP accommodation providers by providing ad credits. Therefore, the Inquiry considers that if programmes are in place to boost the visibility of HDP accommodation providers on the platform then no further action on the prominence of paid results is required.

5.4. Transparency in labelling of paid ranking

149. The Inquiry made the provisional remedy that paid results (i.e. results in whole or part based on payments including increased commission fees) integrated into the search results are required to be clearly distinguishable as advertising including (i) both prominent shading and border, and (ii) a large, bold and unambiguous 'ADVERT' label in the middle above the impression.³¹⁷

5.4.1. Stakeholder's views and supporting arguments

150. Expedia supports the provisional remedy stating that disclosure to consumers that compensation is a factor in the ranking should be sufficient to ensure consumers

are adequately informed and the disclosure is not potentially misleading, however, this is limited to where sponsored ranking guarantees a position in the results page.³¹⁸

151. Booking.com submits that it clearly explains the Visibility Booster to consumers by putting a tag that reads "promoted" next to the accommodation's name and on top of that it provides a text box that contains additional clarification.³¹⁹ Therefore, the Visibility Booster which is conceivably the closest initiative to what the Inquiry considers to be an 'advertisement', is clearly labelled and explained as such to consumers.

5.4.2. Inquiry's views and supporting arguments

152. The Inquiry finds that the leading platform Booking.com sufficiently distinguishes sponsored or paid results with a "promoted" label and adds an adjacent text box to provide additional clarification of the "thumbs up" icon and as such it is sufficiently labelled. However, local platforms do not appear to clearly label sponsored or paid results with an appropriate "Promoted", "Ad" or "Sponsored" label. Therefore, the Inquiry recommends that platforms, including local platforms, mark sponsored listings in an appropriate and transparent way. The Advertising Regulatory Board amended clause 12.5 of its Code of Advertising to include sponsored ranking³²⁰ (see below). The Inquiry recommends that online travel and accommodation intermediation platforms operating in South Africa register with the Advertising Regulatory Board.

"12.5 On intermediation services, search

³¹⁵ See PR Chapter 2, para 163.

³¹⁶ For example, [REDACTED]

³¹⁷ See OIPMI Provisional Summary Report, section 8.3.4, p.57. Available at : <https://www.compcom.co.za/wp-content/uploads/2022/07/OIPMI-Provisional-Summary-Report.pdf> . (Accessed on 31 March 2023)

³¹⁸ Expedia RPR1.1, para 2.19

³¹⁹ Bcom RPR1.1, para 10.4.3

³²⁰ Advertising Regulatory Board (2023). See paragraph 18.1. Section III - Specific Categories of Advertising. Available at: <https://www.arb.org.za/news%2c-advisories---events.html> [Accessed on 8 May 2023].

*platforms and any similar digital platforms, where businesses pay for a particular rank position, or a boost in their ranking, on the search results page, this constitutes a form of advertising and must be clearly identifiable to the average user through appropriate labels such as.*³²¹

12.5.1 'Sponsored',

12.5.2 'Promoted' or

12.5.3 'Ad'."

5.5. Payment terms

153. The Inquiry made the provisional remedy that there should be symmetric payment terms for bookings where the option exists for payment through the platform or the hotel.³²²

5.5.1. Stakeholder's views and supporting arguments

154. Booking.com submitted that through its Facilitated Payment product, consumers have an option of either paying the accommodation directly by selecting the 'pay at the property' or through the platform where accommodation providers are free to choose which payment option makes commercial sense for them.³²³ OTAs offer virtual credit cards ("VCC's") which facilitates payments for accommodation providers that do not have payment facilities or may not meet regulatory requirements to handle such payments on behalf of customers.

5.5.2. Inquiry's views and supporting arguments

155. The Inquiry is of the view that a remedy for asymmetric payment terms is no longer needed due to the availability of VCC's. Booking.com has changed its payment mechanism to include VCCs that allow

accommodation providers to start charging the VCC one day after the check-in date or one day after the check-out date in the case of Expedia. Therefore, this removes the concern the Inquiry initially had on asymmetric payment terms between accommodation providers and the global OTAs, and hence this remedy is no longer needed.

5.6. Metasearch results and consumer choice

156. The Inquiry made the provisional remedy that travel metasearch engines should highlight prominently the cheapest option to consumers even if it does not appear first on the ranking or on the most prominently displayed lead for a given result.³²⁴

157. The Inquiry understands that CPCs are how metasearch engines mainly monetise their business. As previously discussed in section 4.4 of this report, some metasearch engines are transparent about the cheapest rate such as Skyscanner and trivago and this is good for consumer choice and welfare even though some metasearch engines such as Tripadvisor and Kayak, which forms part of Booking Holdings, could mark their cheapest price more clearly. MSEs are important tools for price transparency across the accommodation ecosystem and useful in driving inter-brand and intra-brand competition. Since there is no dominant or leading metasearch engine, the Inquiry is of the view that currently there is no need to require a remedial action. However, it might become a problem in the future where a MSE becomes a dominant player, especially where it belongs in a holding group with a portfolio of online travel platforms including OTAs. At this point the Inquiry recommends that travel and accommodation metasearch engines clearly mark the cheapest option or

321 Advertising Regulatory Board (2023). See paragraph 18.1. Section III – Specific Categories of Advertising. Available at: <https://www.arb.org.za/assets/section-iii---specific-categories-of-advertising-v2023.2.pdf> [Accessed on 38 May 2023]

322 See OIPMI Provisional Summary Report, section 8.3.4, p.57. Available at: <https://www.compcom.co.za/wp-content/uploads/2022/07/OIPMI-Provisional-Summary-Report.pdf>. (Accessed on 31 March 2023)

323 Bcom RPR1.2, p. 6

324 See OIPMI Provisional Summary Report, section 8.3.4, p.57. Available at: <https://www.compcom.co.za/wp-content/uploads/2022/07/OIPMI-Provisional-Summary-Report.pdf>. (Accessed on 31 March 2023)

lead as the “cheapest” on any given MSE result.

5.7. Commission differentials between hotel chains and accommodation providers

158. The Inquiry made the provisional remedy that platforms should implement a standardised rate card that complies with a maximum cap on fee differentiation between the average low volume user category and the average high volume user categories, including both listing and promotional fees.³²⁵

5.7.1. Stakeholder’s views and supporting arguments

159. Booking.com submits that the recommendation made by the Inquiry of putting a maximum cap on price differentials; or restricting the extent of the discrimination within a range of 10-15% (based on the average in the ‘large’ and ‘small’ class of firms) is neither reasonable nor practical.³²⁶ Neither is requiring Booking.com to stick to a standard rate card and refrain from bespoke negotiations with large business users.
160. Expedia submits that such a remedy amounts to a price regulation measure and as such would be an aggressive intervention in the price setting freedom of firms.³²⁷ Any implementation of such a remedy would be wholly inappropriate. Southern Sun submits that such a remedy could result in unintended consequences, bring an end to effective negotiations between OTAs and hotel groups on commission rates, and there would be an increase in the price of hotel rooms.³²⁸ There was, however, one hotel chain that expressed that the remedial action would be successful, sufficient and allow for an even playing field across all properties regardless of size and budgets.³²⁹

5.7.2. Inquiry’s views and supporting arguments

161. Some hotel chains, largely due to their global prominence and superior bargaining power, are afforded the opportunity to negotiate a reduction on commission fees. This puts them at a competitive advantage relative to their rivals where they enjoy paying lower standard commission rates and lower exclusive programme rates that bring visibility benefits at a cheaper rate. Alternatively put, this means that smaller rivals have higher distribution costs due to the relatively higher commission rates they pay and are subsequently comparatively disadvantaged. This is the case on Booking.com for which many accommodation providers are dependent on for the distribution of their rooms.
162. SMEs and HDPs are particularly prejudiced in this regard as they often do not have the budget to afford such high distribution costs and/or miss out on revenues that they can use to further expand their business. Again, this is another reason for narrow parity obligations to be removed in order for these accommodation providers to pass through the additional commission costs in the form of higher prices on the Booking.com platform. The Inquiry is of the view that platforms can support paid ranking by smaller accommodation providers, including HDPs, to be better placed to compete with larger hotel chains by offering tailored programmes. These programmes can be tailored to ensure more effective outcomes by designing platform and category-specific HDP programmes to address the concerns around inclusion, visibility and discoverability on the platform, and the level of assistance

325 See OIPMI Provisional Summary Report, section 8.3.4, p.57. Available at: <https://www.compcom.co.za/wp-content/uploads/2022/07/OIPMI-Provisional-Summary-Report.pdf>. (Accessed on 31 March 2023)

326 Bcom RPR1.1, para 8.6

327 Expedia RPR1.1, para 2.26

328 Southern Sun RPR1.1 and Southern Sun RPR1.2

329

required such actively supporting HDP onboarding onto the platform.

163. The Inquiry therefore will no longer pursue the provisional remedy requiring a standardised rate card and associated cap on differentials for an approach that elevates SME's and in particular HDP-owned SME's visibility and discoverability. This is discussed in more detail in Section 5.9.

5.8. Concerns with contractual agreements of car rental platforms

164. The Inquiry made a provisional remedy that there should be a removal of the offending clause on higher last-minute prices from contracts with car rental companies, alternatively the Commission to investigate for potential collusive conduct.³³⁰
165. To date the Inquiry has not established that this clause has been implemented in South Africa by Booking.com Transport Limited (Rentalcars) given that the clause for higher-last minute bookings was discovered for retail agency agreements in a standardised contract template.³³¹ The Inquiry found no evidence of this clause in any signed contracts implemented in South Africa, and as such the provisional remedy falls away. Having said this, should there be such clauses in contractual agreements applied in South Africa then it is recommended that the Commission will prosecute the implicated parties as the clauses are clearly anti-competitive.

5.9. SME and HDP Development

166. The Inquiry made provisional remedies that leading platforms across all categories are required to institute an HDP programme targeted at overcoming barriers to participation, which should include the following minimum components:³³²
- Personalised assistance with platform onboarding;
 - Waiver of onboarding costs or fees;
 - Fees that are no higher than the best placed business users;
 - Credits for platform promotional activity;
 - Identification and discoverability on the platform by HDP designation if authorised by the HDP business user.
167. Booking.com provided an investment plan for South Africa³³³ as well as some expenditure it has incurred to train SMEs in marketing and attracting travellers to South Africa.³³⁴ However, the Inquiry understands that the initiatives and considerations proposed by Booking.com do not sufficiently assist SME establishments especially those that are HDP-owned and HDP communities in gaining visibility and discoverability, where HDP ownership of travel accommodation establishments is less than 15% in South Africa. These SMEs must also compete with large hotel chains that get preferential commission rates. Furthermore, the proposed investment plan constitutes a small fraction of what Booking.com earns in South Africa, notwithstanding the corporate tax benefits it receives. In contrast, Airbnb has

330 See OIPMI Provisional Summary Report, section 8.3.4 p.57. Available at: <https://www.compcom.co.za/wp-content/uploads/2022/07/OIPMI-Provisional-Summary-Report.pdf>. (Accessed on 31 March 2023)

331 [REDACTED]

332 See Provisional Summary Report, section 8.5.2, p.63. Available at: <https://www.compcom.co.za/wp-content/uploads/2022/07/OIPMI-Provisional-Summary-Report.pdf>. (Accessed on 31 March 2023)

333 Bcom, WS8.1; Bcom E8.2 & Bcom, WS9.2.

334 Bcom, WS9.1 & Bcom, WS9.2.

demonstrated substantial investment into SME, HDP-owned SME and HDP community development such as its covid relief fund and the Waterberg project.

168. The Inquiry is of the view that to ensure there is adequate investment made by platforms to support SME/HDP development in particular HDP-owned SME development, leading platforms must develop funding programmes to identify, onboard, promote and grow accommodation establishments, activities and experiences provided by SMEs that are HDP-owned and HDP communities. As such the Inquiry imposes a remedial action that Booking.com develops a funding programme worth R50m over three years accounting for roughly [1 to 2]% of revenue generated in South Africa per annum. This amount is smaller than the effective corporate tax benefit that Booking.com enjoys over competing local platforms³³⁵ and also corresponds with the value of commission benefits that several large hotel chains enjoy.³³⁶ In short it will assist in levelling the playing field for these HDP-owned SME accommodation providers and create an environment where HDP communities can potentially earn revenues by participating in the provision of accommodation. The Inquiry also recommends that other local and global online travel and accommodation platforms engage in SME and especially HDP-owned SME development programmes.

335 For example, the Inquiry calculated this corporate tax benefit to be [5 to 10]% of Booking.com's commission revenues in 2019 in South Africa.

336 The Inquiry estimated that the benefit that several hotel chains attain from preferential standard and exclusive programme commission rates was a little higher than the stated remedial action amount in South Africa. The Inquiry estimated that the commission benefit that hotel chains obtained in 2022 was [REDACTED] higher than the annual R16.67m remedial action.

[6. ANNEXURES]

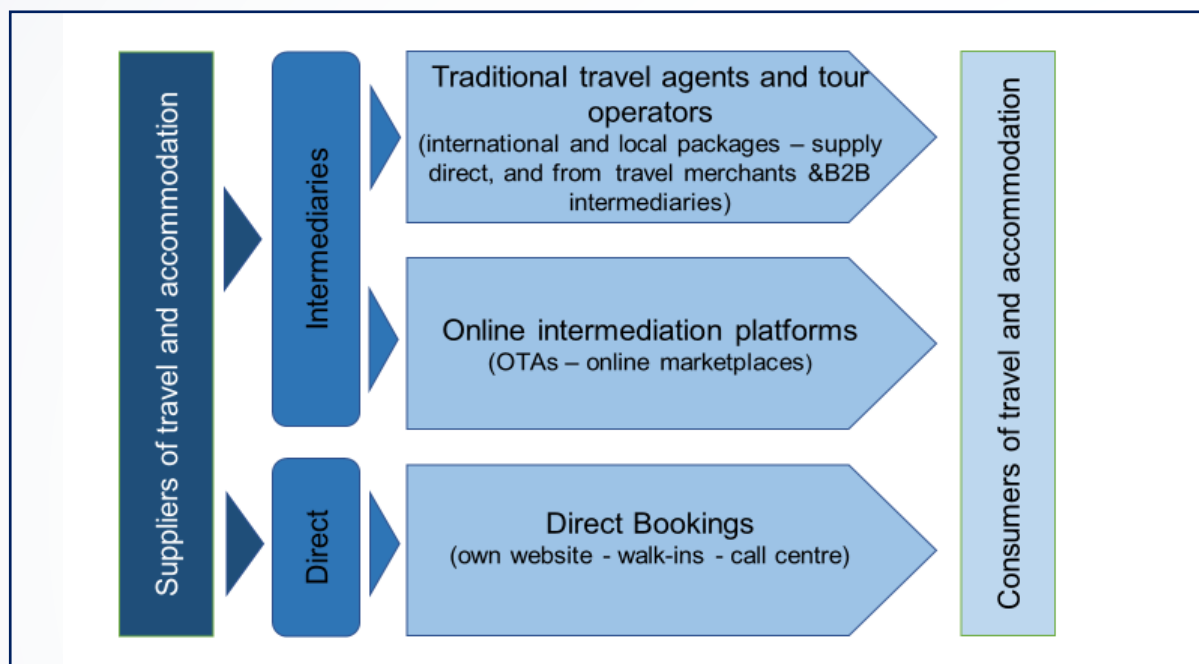
6.1. Annexure A: Market delineation

Developing a conceptual framework to evaluate constraints

169. Submissions by online platforms have listed the following distribution channels as broadly having competitive constraints on online intermediation platforms (including marketplaces and OTAs), including other online intermediation platform markets,

direct channels (such as own website, walk-ins, direct calls), offline (or traditional) travel agents³³⁷, local tour operators, and international tour package operators.³³⁸ Internet search sites such as Google and metasearch sites also get cited as potential competitive constraints.³³⁹ A simplistic overview of the major distribution channels for travel and accommodation inventory is depicted in Figure A1 below.³⁴⁰

Figure A1: Distribution channels for travel and accommodation products and services



Source: Commission's own compilation based on submissions by Bcom, WS1a, p.3 & Bcom, WS2a, Annex 1, p. 9.

³³⁷ The term "offline" can be misleading as the so-call offline travel agents, also known as traditional travel agents, have online websites. The major difference is that these "offline" agents have traditional brick-and-mortar offices where one can walk in, make an online enquiry (but not complete a booking) or call directly. For matters of clarity, we will refer to these travel agents as traditional travel agents. Traditional travel agents differ from OTAs in that the entire accommodation intermediation, including search, booking and payment occur online on the OTA's platform.

³³⁸ Expedia, WS2a, p. 20, para. 36.; Bcom, WS1a, p.3.;

³³⁹ Airbnb, WS1, p.3.

³⁴⁰ Travel merchants and business-to-business ("B2B") intermediaries obtain supply from travel and accommodation service providers and on-sell to mostly traditional travel agents and tour operators.

170. The typical distribution mix differs between each category of travel and accommodation (e.g., accommodation, flights, car rentals, activities, buses) as well as within each category. For example, distribution through own website features stronger in flights relative to accommodation, however, two different hotel chains might opt to have a different distribution need for online intermediation platforms. Other features that typically impact how inventory is distributed includes³⁴¹: (i) **location** - the amount of traffic a travel and accommodation provider enjoy depends on location e.g. urban vs rural, downtown vs airport etc., (ii) **competitive intensity** - the number of service providers in a given "catchment area" impacts on price, occupancy and particularly marketing to attract traveller traffic, (iii) **seasonality** - such as high and low season confer different strategies to attract traffic, (iv) **consumer captivity** - different distribution strategies to sell inventory to loyal customers and to attract new customers, and (v) **size** - distribution needs and dependencies might change according to the size of the operator (e.g. small /intermediate vs big or local vs global). The rest of this section evaluates traditional travel agents, metasearch engines and direct channels, and the extent to which they may or may not have constraints on online accommodation intermediation platforms.

Traditional travel agents as a constraint on online intermediation platforms

171. Traditional travel agents differ from online intermediation platforms in that they typically have brick-and-mortar stores, a direct agent which one can call, and an online presence, with no or limited online intermediation operations³⁴². In South Africa they sell flights, accommodation, car rental and packages³⁴³. Examples of traditional travel agents include Flightcentre, Harveyworld, Rennie's BCD travel, Thompsons, Travelstart's Club Travel, and Egencia. Their value proposition to customers is to offer an in-person booking experience³⁴⁴, transactions for groups, and package deals³⁴⁵. Traditional travel agents typically target corporate³⁴⁶ or business travellers and leisure travellers that want to have the convenience of soliciting an agents experience and his or her ability to group transactions³⁴⁷. Furthermore, traditional travel agents have the benefit of having established connections, having access to deals that are not available to the public and have the ability to negotiate better prices³⁴⁸. This contrasts to online travel intermediation platforms which focuses on the individual traveller that wishes to take charge of booking each leg of the trip³⁴⁹, where platforms such as Booking.com do not offer packaged travel products but offer linked products where a consumer

341 Adapted from the Ernst & Young Parthenon Report (2021) on OTAs. "Size" is own inclusion. Also downloadable online at: https://www.ey.com/en_zs/strategy/how-to-help-europes-small-and-independent-hotel-market-succeed [accessed 8 May 2023].

342 Flightcentre, WS1, p. 3. Only █ of Flightcentre's overall sales related to sales via its online intermediation platform.

343 In South Africa, 60% of traditional travel agent revenues related to air travel, 20.8% accommodation, 5.1% car rentals and 6.9% packages in 2017. (Grant Thornton. 2018. The South African Travel Sector in 2017. p.8 Available at: <http://www.asata.co.za/wp-content/uploads/2018/06/ASATA-Full-Report-The-South-African-Travel-Sector-in-2017.pdf>. (Accessed on 18 February 2022))

344 Travellers booking through traditional travel agencies put a premium on personal contact and social interaction with an agent. (De Jager, K. 2014. Choosing Between Travel Agencies and the Internet. *Dissertation: Faculty of Management, School of Tourism and Hospitality, Department of Tourism Management, University of Johannesburg.*)

345 De Jager, K. 2014. Choosing Between Travel Agencies and the Internet. *Dissertation: Faculty of Management, School of Tourism and Hospitality, Department of Tourism Management, University of Johannesburg.*

346 Meeting with Flightcentre. 14 September 2021. Also many of these traditional travel agents specifically state that they target corporate travellers e.g. Rennie's BCD Travel

347 De Jager, K. 2014. Choosing Between Travel Agencies and the Internet. *Dissertation: Faculty of Management, School of Tourism and Hospitality, Department of Tourism Management, University of Johannesburg*

348 Van Rensburg, MJ. 2014. Relevance of travel agencies in the digital age. *African Journal of Hospitality, Tourism and Leisure* Vol. 3 (2)).

349 See Airbnb, SOI

can purchase different groupings of travel products on different check out points.³⁵⁰

172. When considering the extent to which traditional travel agents (and by extension tour operators) constrain online intermediation platforms, one observes that: (i) in South Africa traffic to the websites of traditional travel agents accounted for 2% of overall online traffic³⁵¹ to travel and accommodation intermediation platforms in the 2021 calendar year³⁵², (ii) there is a trend (in Europe at least) where there is significant growth of distributing through online channels for small and medium accommodation since 2016 and shrinking of offline channels^{353, 354} (iii) a shift of local corporates to booking on self-booking tools (e.g. Travel IT) and platforms, (iv) traditional travel agencies form separate business entities, for example Travelstart has Club Travel³⁵⁵ and Expedia had Egencia³⁵⁶, (v) that majority of sales covered by traditional travel agents include corporate travellers (56% of sales in 2017)³⁵⁷ and government entities (21% of sales in 2017) and (vi) that a considerable value of tour packages were sold by traditional travel agents (R2.7bn in turnover).³⁵⁸ When one considers the balance of evidence, it appears that traditional travel agent appeal to different product and customer segments and, as such, do not apply any meaningful constraints on

online intermediation platforms. Conversely online intermediation platforms pose some constraints on traditional travel agents. This latter conclusion is in light of the shift of travellers, including some corporates, towards online search and bookings.³⁵⁹

Metasearch engines as a constraint on online intermediation platforms

173. Metasearch engines (or sites) effectively aggregate travel and accommodation inventory to provide a comprehensive one-stop comparison service for travel and accommodation supply, where information from airlines, car rentals, hotels etc., can easily be searched and prices compared.³⁶⁰ They have become an important point of reference and source for referrals (lead generation) directly for the travel and accommodation service provider and online intermediation platforms.³⁶¹ They are part of the distribution mix that provide leads directly to a travel and accommodation provider's website, thereby disintermediating online intermediation platforms but are mostly used by online intermediation platforms as a marketing channel to generate leads. They are seen both as a competitor and strategic partner to intermediation platforms.
174. Metasearch engines are seen as competitors for traffic and relevance at the search and

350 Bcom, WS2a, p.9, para 3.3

351 63% of this traditional travel agent site traffic data relates to Flightcentre, which also has a small customer facing online intermediation platform service.

352 Own calculation using Similarweb data.

353 Distribution through OTAs grew by 7.1% while distribution through traditional travel agents and tour operators shrunk by 1.5% and 1% respectively between 2016 and 2019 (EY Parthenon Report, p.8. Bcom, WS1a, p.8.).

354 Lift Airlines also submitted the trend towards online booking of flights. (Lift, WS2, p.2, para.2)

355

356 In its submission (Expedia WS1, p.1, footnote 2), Expedia notes that it "operates a corporate managed travel booking business, Egencia, to assist corporate customers with managing their corporate travel needs. The Egencia business is not covered in this Response as it offers no booking services to the general public."

357 These are figures compiled by Grant Thornton on behalf of the Association of Southern African Travel Agents ("ASATA") which represents traditional travel agents. (Grant Thornton. 2018. The South African Travel Sector in 2017. p.8 Available at: <http://www.asata.co.za/wp-content/uploads/2018/06/ASATA-Full-Report-The-South-African-Travel-Sector-in-2017.pdf>. Accessed on 18 February 2022).

358 Ibid.

359 For example, Ernst & Young Parthenon Report (2021) notes that "consumers are increasingly using the internet not only to find an accommodation, but also to book that accommodation." (Bcom W1a, Exhibit 4, p.3)

360 SkyS, WS1. para 3

361 Expedia, WS1. para 3.

price comparison stage of the consumer journey but must refer leads on to generate revenue.³⁶² Therefore they compete with online intermediation platforms along various marketing channels, particularly on paid³⁶³ and organic search.³⁶⁴ However, most online intermediation platforms see metasearch engines as a strategic marketing channel to acquire leads.³⁶⁵ This is further evidenced by the fact that OTA's generate by far the largest proportion, typically over 80%, of metasearch lead revenues.³⁶⁶ In conclusion, metasearch site can be seen more as a complementary service provider than a competitor.

Direct channels as a constraint on online intermediation platforms for the provision of online accommodation intermediation

175. The distribution mix of accommodation providers varies according to the need to attract new customers, the size of the establishment, its location, the intensity of competition in a particular catchment area and the degree of consumer loyalty that the establishment enjoys. The Market Inquiry collated information from surveys sent to large accommodation providers including large independent hotels, resorts, hotel chains and timeshare rentals.³⁶⁷ On average, online intermediation platforms accounted for roughly 40% of sales by these large establishments, where Booking.

com accounted for roughly 21% (or 52% of total online intermediary sales). Walk-ins and direct calls accounted for roughly 15% of sales and sales through own website roughly 15%, suggesting that for every unit sale through an establishment's own website, 2.6 units are sold through online intermediation platforms.³⁶⁸ At a granular level, the distribution mix use case for each accommodation providers varies. For example, ATKV's usage of online intermediaries is 7.5% because it is a resort that enjoys historical loyalty³⁶⁹ whereas large independent hotels usage is 30% because they do not belong to a hotel chain.³⁷⁰

176. In the case of small and medium sized accommodation providers the distribution mix sees a higher adoption of online intermediation platforms relative to own websites. Nightsbridge, a channel management software company providing services to 7500 (predominantly³⁷¹) small accommodation establishments³⁷², indicated that 87% of transactions were done through online intermediary platforms and 13% through an establishment's own websites in 2020.³⁷³ This suggests that for every sale by the establishment's website, 6.7 sales were made through online intermediation platforms. This dependence on online platforms is articulated in the Ernst & Young's (2021) report on small and independent accommodations, noting that

362 Agoda, WS2, p.20, para. 31; B.com, WS2a, p.24, para.41. Expedia, WS2a, p.20, para. 37

363 Note competing on paid search raises an intermediaries marketing spend on Google, thereby increasing Google's revenues. Paid search competition benefits general search engines and indirectly results in increased prices to consumers as intermediaries increase price to try recoup their marketing expenses.

364 Trivago, WS1, para 3.

365 Agoda, WS2, p.20, para. 31.; Airbnb, W2, para. 25; B.com, WS2a, p.24, para.41.

366

367 13 responses were received overall.

368 Own calculations. The remaining inventory is likely to have been distributed through other means e.g., GDS, travel merchants (e.g. bed banks) and tour operators.

369 ATKV, OS, p.6

370 This is the reasoning offered by two independent hotels.

371 80% of establishments have 10 rooms or less.

372 Such as bed-and-breakfast establishments (B&Bs), guest houses, boutique hotels, apartments etc.,

373 NightsB, WS1.

*"most accommodations indicate that the cost effectiveness of OTA bookings cannot easily be matched by other channels. Even though commissions are often seen as high, accommodations indicate they would not to be able to realize an equal number of bookings when redirecting these commission costs to marketing on their own direct channels."*³⁷⁴

177. Large independent hotels and hotel chains have invested and are investing into strengthening their own online channels.³⁷⁵ To do this effectively, however, an establishment needs to invest in a comparable booking process as one would have with OTAs such as Booking.com and have adequate resources for paid media to create a presence, and a digital strategy to drive traffic.³⁷⁶ This comes down to a property's strength and presence. If the establishment cannot do this, it will be stuck having to deal with online intermediation platforms because they have this presence.³⁷⁷ Certain locations such as cities have a high degree of competition in particular "catchment areas", which limits large accommodation establishments to direct traffic through direct channels and increases their dependence on online intermediation platforms.³⁷⁸ This is because competition in high catchment areas means that more establishments and platforms are driving up keyword bid costs to have prominent visibility on the first SERP. Given limited results, particularly above the fold³⁷⁹

of the SERP, it is cheaper for large hotels to market the establishment through online intermediation platforms.

178. Establishments have indicated that the major use case for online intermediation platforms is attaining new clients. Results from the Redflank Survey suggest that the main value-add that online intermediation platforms offer establishments is the number of potential customers they can reach (see Table A1 below) with 60%+ for each category of establishment (small, large, metro, non-metro) indicating that this why they use online intermediation platforms. Survey responses by large accommodation providers³⁸⁰, suggest that online intermediary platforms access different types of customers. For example, accommodation providers noted that platforms such as Expedia access international travellers³⁸¹, platforms such as Lekkeslaap access domestic and Afrikaans speaking travellers, and one establishment stated that it uses Booking.com because it generates business it is not used to having. ATKV noted that its use of OTAs was to attract a new demographic of travellers as to accelerate a more diversified racial profile. ATKV also stated that about 95% of new guests were obtained via OTAs.³⁸² In addition, the extent to which an establishment uses online intermediation platforms depends on whether the customers targeted are covered by existing platforms. This is particularly the case for large and small metro hotels.

374 Ernst & Young Parthenon Report (2021) (see Bcom W1a, Exhibit 4, p.3)

375 


376 

377 

378 



379 The fold is the point at which a user needs to scroll down to see more results on the SERP.

380 The Market Inquiry's own questionnaire sent to business users. Respondents wished identities to be confidential.

381 Many accommodation providers articulated this view. Expedia has also indicated that one of its major value propositions is that it connects international travellers with accommodation providers. (Expedia, OS).

382 ATKV, OS, p.6-7.

Table A1: Travel and Accommodation Survey Results

Survey Results	Large Hotels		Small Hotels	
	Metro	Non-Metro	Metro	Non-Metro
Factors impacting decision to use platform				
The number of sales the platform helps generate	10%	25%	62%	75%
Extent targeted customers are covered by platform	40%	38%	21%	38%
Number of potential customers the platform reaches	60%	63%	64%	75%
Dependency on platforms				
Moderately dependent	20%	25%	25%	38%
Dependent	30%	38%	25%	38%
Very dependent	30%	25%	25%	15%
% of sales that could be replaced if online platforms were no longer used				
Less than 21%	88%	72%	88%	75%
21% to 50%	13%	29%	13%	24%
More than 50%	0%	0%	0%	0%
Timeframe of replacement through own services or traditional sales channels				
Not at all	13%	14%	25%	38%
Longer than 6 months	50%	43%	38%	19%

Source: Commission's own compilation of Redflank Survey results, 2021.

179. Most large and small hotels are dependent on online intermediation platforms, regardless of whether they are located in metro or non-metro areas. This was the finding in the Redflank Survey, where 50% or more of the respondents indicated that they were dependent or very dependent on online intermediation platforms regardless of their size or location. This number increases to 75% or more when one includes those establishments that are moderately dependent.³⁸³ Similarly, 88% of large and small metro hotels indicated that only 21% or less of sales could be replaced if platforms were no longer used.³⁸⁴ All the hotels indicated that no more than 50% of sales could be replaced if platforms were no longer used. In terms of replacing those sales, 63% of metro hotels³⁸⁵ (large and

small) indicated it would take longer than 6 months to replace sales were they to stop using platforms, with some indicating that they wouldn't be able to replace sales at all.

180. Lastly, visitors to online intermediation platforms, particularly Booking.com and Airbnb, show brand loyalty. For example, 31.9% and 33.5% of Booking.com and Airbnb.co.za site audience visited these respective websites exclusively (i.e. "full loyalty"³⁸⁶) in the "accommodation and hotel" industry during the 2021 calendar year (See Figure A2). This is relevant because it suggests that approximately one-third of the large online intermediation platforms' traffic are not contestable, even by rival platforms.

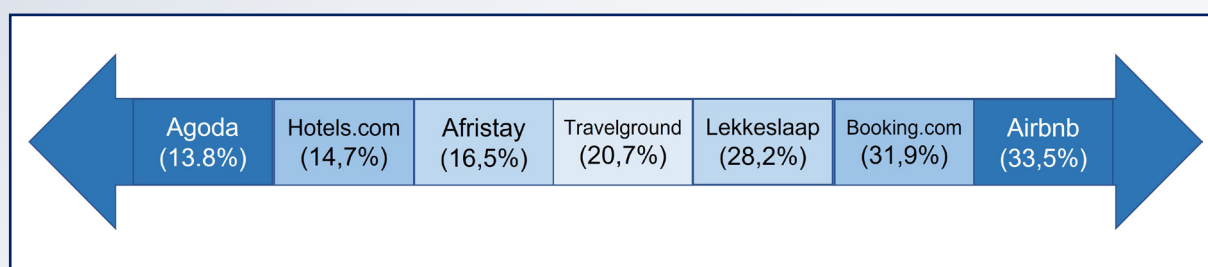
383 Other categories were slightly dependent and not dependent.

384 This figure was 72% for large non-metro hotels and 75% for small non-metro hotels.

385 This figure is 57% for large and small non-metro hotels.

386 Similarweb has a feature in its Market Analysis segment which delineates "Audience Loyalty" for a given industry. Audience Loyalty delineates a scale that captures the number of sites a visitor searches in an industry following a search on a particular website e.g., Booking.com. Full loyalty indicates the proportion of users that only visited one site in the industry during a defined period.

Figure A2: “Full loyalty” spectrum across online intermediation platforms during 2021



Source: Commission's own compilation using Similarweb's "audience loyalty" function

181. In conclusion, while the use case might vary across different accommodation providers, online intermediation platforms remain unavoidable partners for the distribution of accommodation. This is evidenced by the demonstrable dependency that accommodation providers have on online intermediation platforms and their ability to attract new and a unique set of travellers.

The use case for online intermediation platforms is particularly strong for smaller establishments and in regions or catchment areas where there is intense rivalry between accommodation providers, regardless of size. Lastly, online intermediation platforms have a significant number of visitors that are fully loyal and thus are not contestable.

6.2. Annexure B: Booking.com Connectivity Hub. Average Daily Rate

Lesson 2: How to improve your portfolio's performance

- ✓ 1. Availability
- ✓ 2. Ranking
- ✓ 3. Click-through rate (CTR) & Conversion
- ✓ 4. Length of Stay (LoS)
- ✓ 5. Average Daily Rate (ADR)
- ✓ 6. Cancellations
- ✓ Let's test your knowledge

5. Average Daily Rate (ADR)

What is average daily rate (ADR)?

The average daily rate is the average rate a property receives per room night.

What to do if your portfolio has ADR issues?

If your properties have a lower ADR than similar properties nearby, their Focus Finder will highlight the 'Average daily rate' metric as needing improvement (orange/red). The tool will also propose specific commercial opportunities as potential solutions.

Tips to increase your properties' ADR

Aside from the solutions suggested by Focus Finder, you can help your properties boost their average daily rate:

- Suggest that your properties pitch guests an upgrade to a higher priced room, which will increase ADR.
- Advise your properties to create a more package-like proposition by offering extra services (e.g. meals, add-ons, activities) throughout the guest experience. Why?
 - 84% of Booking.com guests check a property's services before booking
 - 61% of Booking.com guests prefer to book breakfast before arrival
 - 50% of global travellers frequently or always use extra services at their accommodation
 - 30% of Booking.com guests paid for extra services on their last trip

Source: Booking.com. Lesson 2: How to improve your portfolio's performance. Available at: <https://connectivity.booking.com/en-gb/education/lesson-2-how-improve-your-portfolio%E2%80%99s-performance> [Accessed on 11 December 2022].

6.3. Annexure C: Rival OTAs cannot reasonably replicate accommodation funded discounts in absolute and relative terms.

182. In this Annexure, the Inquiry demonstrates that rival OTAs do not or are unable to profitably replicate the magnitude, depth and breadth, of accommodation funded discounts that Booking.com can attract by assessing whether they can reasonably and profitably replicate these discounts in absolute or relative terms where the former speaks of the ubiquity of discounted prices and latter speaks of whether rival platforms can, on average, match the discounted prices found on Booking.com's platform. The nature of network effects means that enhancing visibility on the leading platform is important for accommodation providers to attract consumer bookings. One of the main tools to do this³⁸⁷ is to fund discounted rooms either through (as a feature of) the Genius loyalty programme or other promotional deals (e.g. Last-Minute Deals, Early Booker specials, etc.). These accommodation funded discounts attract consumers, knowing that they will get a discounted deal, and in turn increase dependency of accommodation providers on the platform who need access to these consumers. This creates a virtuous (or vicious) circle where, because of network effects, consumers learn to go to the platform where they often get discounts and accommodation providers needing to access these customers, must provide discounts to attract consumers. This perpetuates dependency on, and further entrenches, the leading platform.
183. Below we show that rival OTAs³⁸⁸ do not and are unable to profitably and reasonably replicate accommodation funded discounts

that the leading platform, Booking.com, is able to attain by funding own discounts in relative and absolute terms.

- 183.1. Firstly, the Inquiry sought to assess whether [REDACTED] profitably match Booking.com's accommodation funded discounts by funding its own discounts. In other words the assessment sought to evaluate [REDACTED] could, on average, match the customer facing retail prices on the Booking.com platform by funding its own discounts. The assessment was applied to three scenarios: (i) accommodation funded discounts forming part of the Genius loyalty programme; (ii) total accommodation funded discounts (including Genius discounts and promotional deals such as last-minute deals, early booker deals, limited time deals, etc.); and (iii) total accommodation and platform funded discounts for each calendar year from 2018 to 2021. As delineated in Table C1 below, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] However, was one only to consider Genius accommodation funded discounts, [REDACTED] [REDACTED] and price match Booking.com on average. Considering that Genius discounts almost [REDACTED] [REDACTED] and is seemingly growing at a rapid pace, it seems quite likely that rival OTAs may not be able to profitably price match with Booking.com (in terms of Genius discounts) in the future.

387 The other major tool to enhance visibility on the Booking.com platform is partaking in the Preferred Partner and Preferred Plus exclusive programmes.

388 [REDACTED] [REDACTED] [REDACTED]

Table C1: [REDACTED]

	2018	2019	2020	2021
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

183.2. Secondly, the total value of accommodation funded discounts pertaining to Booking.com's Genius loyalty programme is larger than each of the OTA rivals total commissions earned in each period.³⁸⁹ This means that was each rival to use 100%

of their commissions to fund their own discounts, this would be insufficient to match the value of Genius accommodation funded discounts, which Booking.com in effect attain for free.

Table C2: Genius accommodation funded discounts versus total commissions earned by rival OTAs

Rand (millions)	2018	2019	2020	2021
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

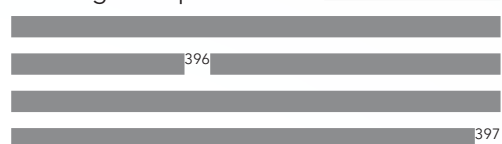
183.3. Thirdly, the value of Genius accommodation funded discounts is growing over time³⁹⁰ and the value of these discounts are getting deeper. [REDACTED]

[REDACTED] Both the level of Genius and total accommodation funded discounts on the Booking.com platform have been and are currently deeper than any of their OTA rivals combined.³⁹²

183.4. Fourthly, total accommodation provider funded discounts on the Booking.com platform, including Genius and other accommodation funded discounts, was (i) several times larger than all the rival

389 [REDACTED]
390 In fact, the value of Genius loyalty accommodation funded discounts grew significantly between 2021 and 2022 [REDACTED]
391 This is clearly shown in Booking.com's submission. Bcom WS 5.1, Annex 2.
392 For example, [REDACTED]
[REDACTED] Therefore, in relative (and absolute) terms, total accommodation funded discounts on Booking.com were larger than all OTA rivals combine

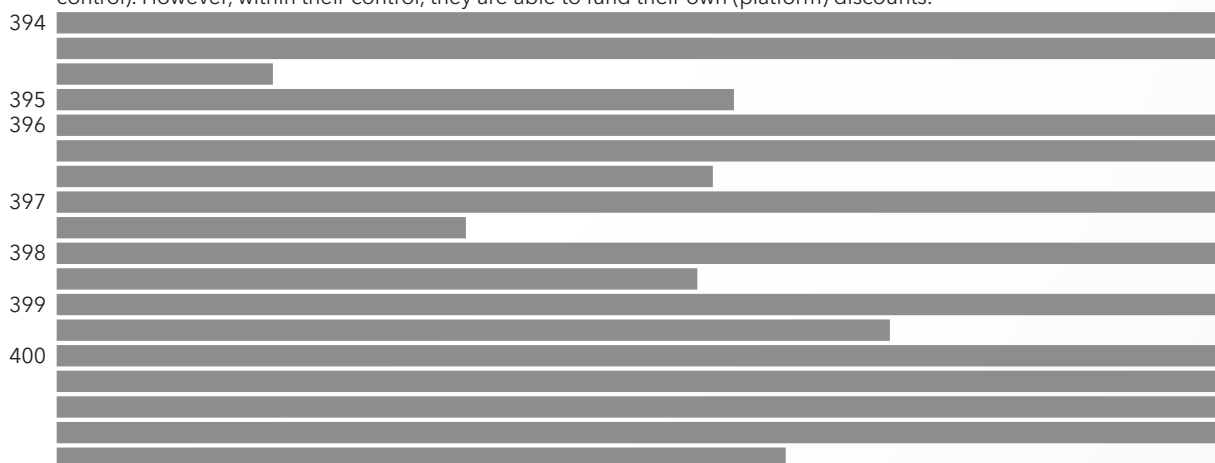
OTA commissions³⁹³ combined by several multiples³⁹⁴ and (ii) was larger than rival OTA platform and accommodation funded discounts combined by a factor between 5 to 10.³⁹⁵ This proves that rival OTAs are unable to replicate the magnitude of discounts offered by Booking.com. Firstly, because they do not have nor can they reasonably replicate the market power resulting from the network benefits that Booking.com enjoys where it can attract a significant volume of accommodation funded discounts and, secondly, they do not earn sufficient commissions to fund their own discounts. When one contrasts accommodation funded discounts on the Booking.com platform to



183.5. Fifthly, there are substantially more Genius loyalty members than rival OTA loyalty members combined. In fact Genius has more than 10 times the number of loyalty members than rival OTAs have loyalty members combined.³⁹⁸ Also the number of establishments participating in the Genius programme are significantly larger than rival OTAs.³⁹⁹

183.6. Lastly, rival OTAs entirely or mostly fund their own loyalty programmes.⁴⁰⁰ In relative terms, platform funded discounts by smaller OTA rivals are significantly larger than Booking.com and until 2020 this was entirely the case in absolute terms. The rational inference here is that rival platforms, lacking market power to attract accommodation funded discounts, must fund their own discounts. While Booking.com platform funded discounts are growing, they still remain small in relative terms. This suggests that there is scope for Booking.com to further fund their own discounts.

393 The reason for making the comparison between Booking.com's accommodation funded discounts with rival platforms total commissions is that given the large size of Booking.com and subsequent network benefits, smaller rivals do not have the market power to attract significant volumes of accommodation funded discounts (as this falls outside their locus of control). However, within their control, they are able to fund their own (platform) discounts.



Appendix A: List of submissions received

Submission made by	Stakeholder type (e.g., platform, pure online reseller, B&M, CSS)	Submission date	Report shorthand Reference
Booking.com	Platform	21-Jun-21	Bcom, WS1.1
Booking.com	Platform	22-Jul-21	Bcom, WS1.2
Booking.com	Platform	10-Sep-21	Bcom, WS2a
Booking.com	Platform	30-Sep-21	Bcom, WS2b
Booking.com	Platform	06-Oct-21	Bcom, WS2c
Booking.com	Platform	31-Jan-22	Bcom, WS3a
Booking.com	Platform	18-Feb-22	Bcom, WS3b
Booking.com	Platform	08-Apr-22	Bcom, WS3c
Booking.com	Platform	26-Aug-22	Bcom, RPR1.1
Booking.com	Platform	23-Sep-22	Bcom, RPR1.2
Booking.com	Platform	06-Oct-22	Bcom, RPR1.3
Booking.com	Platform	24-Oct-22	Bcom, WS4
Booking.com	Platform	02-Dec-22	Bcom, WS5a
Booking.com	Platform	09-Dec-22	Bcom, WS5b
Booking.com	Platform	19-Dec-22	Bcom, WS6
Booking.com	Platform	12-Jan-23	Bcom, WS7
Booking.com	Platform	08-Feb-23	Bcom, WS8.1
Booking.com	Platform	24-Mar-23	Bcom, E8.2
Booking.com	Platform	19-Jun-23	Bcom, WS9.1
Booking.com	Platform	27-Jun-23	Bcom, WS9.2
Booking.com	Platform	14-Jul-23	Bcom, WS9.3
Agoda	Platform	20-Sep-21	Agoda, WS2
Agoda	Platform	19-Sep-22	Agoda, WS4
Agoda	Platform	12-Dec-22	Agoda, WS5
Kayak	Platform	17-Sep-21	Kayak, WS2
Kayak	Platform	04-Feb-22	Kayak, WS3
eDreams	Platform	09-Sep-22	eDreams, RPR1
Expedia	Platform	10-Sep-21	Expedia, WS2a
Expedia	Platform	07-Sep-22	Expedia, RPR1.1
Expedia	Platform	13-Oct-22	Expedia, RPR1.1a
Expedia	Platform	13-Oct-22	Expedia, WS4
Expedia	Platform	09-Dec-22	Expedia, WS5
trivago	Metasearch	06-Aug-21	trivago, WS1
trivago	Metasearch	31-Jan-22	Trivago, WS3

Submission made by	Stakeholder type (e.g., platform, pure online reseller, B&M, CSS)	Submission date	Report shorthand Reference
trivago	Metasearch	24-Aug-22	Trivago, RPR1.1
trivago	Metasearch	13-Oct-22	Trivago, RPR1.1a
Skyscanner	Metasearch	29-Oct-21	SkyS, WS2
Tripadvisor	Metasearch	14-Apr-22	Tripadv, WS3
Airbnb	Platform	23-Jun-21	Airbnb, WS1
Airbnb	Platform	01-Oct-21	Airbnb, WS2
Airbnb	Platform	15-Sep-22	Airbnb, RPR1
Airbnb	Platform	16-Mar-23	Airbnb, WS4
Flightcentre	Platform	13-Jul-21	Flightcentre, WS1
Tripco	Platform	24-Aug-22	Tripco, RPR1
Tripco	Platform	17-Nov-22	Tripco, WS4.1
Tripco	Platform	24-Nov-22	Tripco, WS4.2
Travelstart	Platform	28-Jan-22	TS, WS3
Travelstart	Platform	16-Nov-22	TS, WS4
GetYourGuide	Platform	25-Aug-22	GYG, RPR1.1
GetYourGuide	Platform	20-Oct-22	GYG, RPR1.2
Hotelbeds	Bedbank	23-Aug-22	Hotelbeds, RPR1
Travelport	B2B Platform	17-Mar-22	Travelport, WS3
Travelport	B2B Platform	12-Sep-22	Travelport, RPR1.1
Travelport	B2B Platform	21-Oct-22	Travelport, RPR1.2
Travelfusion	B2B Platform	15-Feb-22	Travelfusion, E1
Amadeus	GDS	04-Mar-22	Amadeus, WS1
Amadeus	GDS	24-Aug-22	Amadeus, RPR1.1
Amadeus	GDS	19-Oct-22	Amadeus, RPR1.2
Amadeus	GDS	29-Nov-22	Amadeus, RPR1.3
Avis Budget SA	Business user	07-Sep-22	Avis SA, RPR1
Avis Budget SA	Business user	21-Oct-22	Avis SA, WS3.1
Avis Budget SA	Business user	25-Oct-22	Avis SA, E3.2
Avis Budget SA	Business user	11-Nov-22	Avis SA, WS4
Avis Budget SA	Business user	10-Feb-23	Avis SA, WS5
Avis Budget Group	Business user	21-Dec-22	ABG, WS4.1
Avis Budget Group	Business user	18-Jan-23	ABG, WS4.2
Rentalcars	Platform	17-Sep-21	RC, WS2
Rentalcars	Platform	26-Oct-22	RC, WS4

Submission made by	Stakeholder type (e.g., platform, pure online reseller, B&M, CSS)	Submission date	Report shorthand Reference
Rentalcars	Platform	01-Nov-22	RC, WS5.1
Rentalcars	Platform	16-Nov-22	RC, E5.2
Southern Sun	Business user	29-Aug-22	Southern Sun, RPR1.1
Southern Sun	Business user	12-Oct-22	Southern Sun, RPR1.2
Lift	Business user	23-Sep-21	Lift, WS2

Appendix B: Meetings

Meeting held with	Stakeholder type	Meeting date	Report shorthand reference
Flightcentre	Platform	14-Sep-21	Meeting with Flightcentre. 14 September 2021
Flysafair	Business user	02-Dec-21	Flysafair, VM1
Trans-end	B2B platform	25-Feb-22	Trans-end, VM1
SICA Guest House	Business User	06-Oct-22	SICA, VM1
Booking.com	Platform	07-Oct-22	Bcom, VM1

Appendix C: Public Hearings

Meeting held with	Stakeholder type	Meeting date	Report shorthand Reference
Tripco	Platform	04-Nov-21	Tripco, OS
Expedia	Platform	15-Nov-21	Expedia, OS
ATKV	Business user	05-Nov-21	ATKV, OS
Avis Budget SA	Business user	18-Nov-21	Avis, OS

Appendix D: Statement of Issues

Submission made by	Stakeholder type	Submission date	Report shorthand reference
Airbnb	Platform	23-Jun-21	Airbnb, SOI