

## Pomery, Simon

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**From:** Fleming, Richard  
**Sent:** Wednesday, 3 August 2016 5:17 PM  
**To:** 'Ridgeway, Stephen (AU)'  
**Cc:** Scott, Tim; Pomery, Simon  
**Subject:** TRIM: ACCC Letter - Expedia [SEC=UNCLASSIFIED]  
**Attachments:** King wood mallesons.pdf

**HP TRIM Record Number:** D16/121441

**Security Classification:** UNCLASSIFIED

Good afternoon Stephen

Please find our letter attached.

Kind regards

Richard

**Richard Fleming**

General Manager | Enforcement ACT

Australian Competition & Consumer Commission

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3 August 2016

Mr Stephen Ridgeway  
Partner  
King & Wood Mallesons

By email: [stephen.ridgeway@au.kwm.com](mailto:stephen.ridgeway@au.kwm.com)

Dear Mr Ridgeway

**Re: Expedia Group Use of Parity Clauses**

I refer to your letter dated 13 July 2016, confirming that your client, the Expedia Group (**Expedia**), is prepared to provide contractual waivers in relation to relevant parity clauses in its contracts with Australian accommodation providers, to address the concerns raised by the Australian Competition and Consumer Commission's (**ACCC**) about the use of such parity clauses.

**Terms of Administrative Commitments**

ACCC Commissioners have considered Expedia's proposed administrative resolution to this matter and are prepared to resolve the ACCC's concerns based on commitments given to the ACCC in the following terms:

***Price Parity***

Expedia makes the commitment that it will not enter into or enforce obligations that:

- (a) require accommodation providers to propose room rates on Expedia that are equal to or lower than those offered on any other online travel agent;
- (b) prohibit accommodation providers from offering room rates on offline channels<sup>1</sup> that are equal to or lower than those offered on Expedia provided that these room rates are not published or marketed to the general public online; and /or
- (c) restrict the unpublished room rates that accommodation providers are able to offer, provided that these are not marketed to the general public online.

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<sup>1</sup> "offline channel" means a channel that does not involve the use of the internet, such as bookings made in person at an accommodation provider's reception, by telephoning an accommodation provider, or at a bricks and mortar travel agency.

### ***Conditions Parity***

Expedia makes the commitment that it will not enter into or enforce obligations that:

- (a) require accommodation providers to propose the same or more favourable terms and conditions to consumers on Expedia as those offered on any other online travel agent;
- (b) prohibit accommodation providers from offering on offline channels the same or more favourable terms and conditions to consumers as those offered on Expedia, provided that these terms and conditions are not published or marketed online to the general public; and /or
- (c) restrict the unpublished terms and conditions that accommodation providers are able to offer to consumers, provided that these are not marketed online to the general public.

### ***Availability parity***

Expedia makes the commitment that it will not enter into or enforce obligations that require accommodation providers to offer the same or a greater number of rooms, of any type, on Expedia as those offered on any other online travel agent, or as is reserved for the accommodation provider itself.

### ***Amendment (existing) contracts***

Expedia makes the commitment that it will amend the contract for existing accommodation providers and update its template for future accommodation providers.

### ***Related Entities***

This commitment applies to the Expedia Group, including entities over which Expedia holds or acquires a controlling interest or operational control, and in respect of all websites that Expedia operates now, or in the future, relating to the distribution of online accommodation search and booking services.

### ***Scope***

These commitments apply to all bookings made by consumers worldwide in respect of accommodation provided in Australia.

### ***Duration***

Expedia will give effect to these commitments for a period of three years commencing from 1 September 2016.

### **The commitments are not an admission**

The ACCC confirms that by making this commitment, there is no admission of liability by Expedia, and that the waivers offered by Expedia will be no more onerous or broader in scope than any similar commitments by any other online travel agent (OTA) carrying on business in Australia.

### **Comfort from the ACCC about any further action**

The commitments address the ACCC's most serious competition concerns and subject to the comment below, I am authorised to advise you that the ACCC does not propose to take any further action in relation to the conduct which the commitments seek to directly address. In this regard I note that the commitments do not directly address the 'narrow' MFN clauses between Expedia and accommodation providers.

I also note that the commitments do not directly address the Australian Consumer Law concerns raised in previous correspondence.

While the ACCC proposes to close its investigation the issues mentioned in the previous two paragraphs following receipt of the commitments, you should be aware that we may re-open our consideration of these issues should we receive any further complaints from industry.

I request that Expedia provide the ACCC with copies of amended or new contracts with Australia accommodation providers that implement the commitments, as well as any communication to accommodation providers regarding changes resulting from implementation of the commitments, as soon as possible, but no later than 7 September 2016.

Your client is on notice about these related issues and I encourage Expedia to review its business processes and practices, particularly around possible unfair contract terms, to ensure compliance with the *Competition and Consumer Act 2010* (Cth).

We also may re-open our consideration of these issues if there is any suggestion that Expedia is not complying with these commitments.

### **Media release**

You have requested that Expedia be provided with a copy of the ACCC's draft media release 72 hours in advance of its publication for an opportunity to comment on any incorrect or misleading statements it may contain. We expect to be able to accommodate this request and it will be on the limited basis to correct any factual errors rather than the capacity to influence any editorial comment.

### **Next Steps**

Please confirm in writing Expedia's intention to make the commitments to the ACCC as outlined in this letter by 10 August 2016.

If you wish to discuss this matter further, please feel free to contact Richard Fleming, General Manager Enforcement ACT, by phone on (02) 6243 1278 or by email [richard.fleming@acc.gov.au](mailto:richard.fleming@acc.gov.au)

Yours sincerely



Marcus Bezzi  
Executive General Manager  
Competition Enforcement