

## Pomery, Simon

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**From:** Fleming, Richard  
**Sent:** Wednesday, 3 August 2016 5:19 PM  
**To:** 'wouter.groenewold@booking.com'  
**Cc:** Scott, Tim; Pomery, Simon  
**Subject:** TRIM: ACCC letter - Booking.com [SEC=UNCLASSIFIED]  
**Attachments:** booking.com.pdf

**HP TRIM Record Number:** D16/121444

**Security Classification:** UNCLASSIFIED

Good morning Mr Groenewold

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 Wouter Groenewold  
Associate General Counsel  
Booking.com International B.V.

By email: [wouter.groenewold@booking.com](mailto:wouter.groenewold@booking.com)

Dear Mr Groenewold

**Re: Booking.com Use of Parity Clauses**

I refer to your letter dated 22 June 2016 where Booking.com advised of its willingness to offer undertakings to the Australian Competition and Consumer Commission (ACCC) under section 87B of the *Competition and Consumer Act 2010* (Cth) (the Act) regarding price, conditions and availability parity clauses with properties in Australia.

As previously identified, we are conscious that any outcome in relation to this matter needs to address concerns about anticompetitive conduct while preserving the competitive tensions in the market. In this regard, we consider that an administrative resolution, involving a commitment from both Expedia and Booking.com to remove wide online price parity, offline price parity and room availability parity clauses from all contracts with Australian accommodation providers, would substantially address our competition concerns.

**Terms of Administrative Commitments**

ACCC Commissioners have considered the commitments suggested by Booking.com and are prepared to resolve the ACCC's concerns through an administrative resolution based on commitments given to the ACCC in the following terms:

***Price Parity***

Booking.com makes the commitment that it will not enter into or enforce obligations that:

- (a) require accommodation providers to propose room rates on Booking.com 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 Booking.com 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.

### ***Conditions Parity***

Booking.com 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 Booking.com 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 Booking.com, 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***

Booking.com 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 Booking.com as those offered on any other online travel agent, or as is reserved for the accommodation provider itself.

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

Booking.com 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 Booking.com B.V., Booking.com International B.V. and Booking.com (Australia) Pty Ltd (referred to collectively as Booking.com), including entities over which Booking.com or holds or acquires a controlling interest or operational control, and in respect of all websites that Booking.com operates now, or in the future, relating to the distribution of online accommodation search and booking services.

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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.

### **Scope**

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

### **Duration**

Booking.com 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 Booking.com, and that the commitments offered by Booking.com will be no more onerous or broader in scope than any similar commitments by any 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 Booking.com 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 into 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 Booking.com provide the ACCC with copies of amended or new contracts with Australian accommodation providers implementing 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.

I encourage Booking.com to review its business processes and practices, particularly around possible unfair contract terms, to ensure compliance with the Act.

It should also be noted that the ACCC intends to make public reference to this administrative resolution of the matter, including in news media statements and in ACCC publications.

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

### **Other Priceline Group entities**

Booking.com is on notice that the ACCC would have concerns if other entities operating under the Priceline Group, including but not limited to Agoda.com, continued to engage in the conduct of concern addressed through Booking.com making these commitments.

**Next Steps**

Please confirm in writing whether Booking.com is willing 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@accc.gov.au](mailto:richard.fleming@accc.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Marcus Bezzi', written in a cursive style.

Marcus Bezzi  
Executive General Manager  
Competition Enforcement