

Pomery, Simon

From: Wouter Groenewold <wouter.groenewold@booking.com>
Sent: Wednesday, 10 August 2016 11:52 PM
To: Fleming, Richard
Cc: Scott, Tim; Pomery, Simon
Subject: TRIM: RE: ACCC letter - Booking.com [SEC=UNCLASSIFIED]
Attachments: Response Bcom ACCC (16_08_10).pdf; Commitment Narrow MFN (markup Bcom 16_08_10).doc

HP TRIM Record Number: D16/121449

Dear Mr Fleming,

Please find attached our confirmation (with a small clarification in the commitments (see the markup document) to avoid confusion or misunderstanding on the scope and interpretation of the commitments).

We will roll out the amendment of the existing contracts and update the template general delivery terms for new partners within the coming days in order to have the commitments in place and effective as per 1 September 2016.

I trust to have informed you sufficiently.

Yours sincerely,

Wouter Groenewold
Associate General Counsel / Compliance & Ethics Officer

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From: Fleming, Richard [<mailto:richard.fleming@accc.gov.au>]
Sent: Wednesday, August 03, 2016 9:19 AM
To: Wouter Groenewold
Cc: Scott, Tim; Pomery, Simon
Subject: ACCC letter - Booking.com [SEC=UNCLASSIFIED]

Good morning Mr Groenewold

Please find our letter attached.

Kind regards

Richard

Richard Fleming
General Manager | Enforcement ACT
Australian Competition & Consumer Commission
23 Marcus Clarke Street Canberra 2601 | <http://www.accc.gov.au>
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Booking.com

By mail: Richard.Fleming@accc.gov.au
Australian Competition & Consumer
Commission
Attn. Mr Richard Fleming
23 Marcus Clarke Street
Canberra ACT 2601
AUSTRALIA

Direct Line: +31 20 713 3571
Email: wouter.groenewold@booking.com

10 August 2016

Re: Booking.com/narrow MFN - commitments

Dear Madam/Sir,

Further to your letter dated 3 August 2016, please be informed as follows

NARROW MFN

I can hereby inform you that Booking.com is willing to accept the commitments as set out in your letter. We will implement the commitments for Australian properties before 1 September 2016. For the avoidance of doubt, Booking.com assumes that the ACCC's commitments are to be interpreted consistently with the corresponding clauses of the commitments in the EU in order to maintain and preserve a consistent roll out of the narrow MFN. As you may appreciate and understand, the use of the defined terms in the EU commitments avoids any confusion on the scope and interpretation of the commitments. For clarity, we would suggest the ACCC includes the definitions of "published", "unpublished" and "marketed" online in footnotes, as it has done in respect of "offline channels". For your convenience, we attach a mark-up with these changes.

RELATED ENTITIES / AGODA

I can inform you that we can accept the commitments for the Booking.com group of entities. With regard to your comment in respect of Agoda, I can inform you that I have forwarded your letter to Agoda. Since Booking.com does not own or control Agoda and is not in the position to instruct Agoda, we have to refer you to Agoda for further action in this respect.

PRESS STATEMENT

I understand that you wish to issue a press statement. We would be grateful if you could share a draft of your statement, and the timing of the announcement, to allow Booking.com to prepare its communications in relation to the commitments. Booking.com would also be grateful for assurance that Expedia will give its commitments at the same time as Booking.com.

[ALLEGEDLY] UNFAIR CONTRACT TERMS

To the extent that you consider that certain terms of our contract are not compliant with the Act, we would appreciate if you could provide us with further information about your concerns such that we can evaluate the clause, allegation and consider our position.

Booking.com

I trust to have informed you sufficiently and that you will close your file on the basis of the above commitments.

Yours sincerely,
Booking.com

Wouter Groenewold
Associate General Counsel

Price Parity

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

- (i) 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;
- (ii) prohibit accommodation providers from offering room rates on offline channels¹ that are equal to or lower than those offered on Booking.com provided that these room rates are not published² or marketed³ to the general public online; and /or
- (iii) restrict the unpublished⁴ 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:

- (i) 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;
- (ii) 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
- (iii) 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.

¹ "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.

² "published online" means made available to the general public online by any means, including on mobile applications. In the case of rates, publication includes the display of the actual rates or sufficient detail for the consumer to calculate rates.

³ "marketed online" means marketed to the general public online by any means, including on mobile applications. This definition does not include online marketing that is not aimed at the general public: it excludes in particular email, SMS and instant messaging communications.

⁴ "unpublished" means not published online.

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.

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.