

## MEMBER BULLETIN

November 2016

# ACCC and Online Rate Parity

The Australian Competition and Consumer Commission commenced an investigation into online rate parity after TAA and AHA raised a range of concerns at the time of the Expedia acquisition of Wotif, including that these parity clauses were anti-competitive as they stopped consumers from getting different prices from competing online sites. Following an investigation by the ACCC, Expedia and Booking.com have each reached agreement to amend price and availability parity clauses in their contracts with Australian hotels and accommodation providers.

On 11 October representatives from TAA and the AHA met with ACCC Chairman Rod Sims and ACCC staff to express our concern that the ACCC's resolution with Booking.com and Expedia did not go far enough and are still seeking further action by the ACCC to address concerns of the hotel industry. In particular, we are seeking OTA contracts to allow a hotel, through its own public website, to be able to advertise its own room rates at whatever price it determines including lower than rates offered by OTA's such as Expedia and Booking.com.

The ACCC noted the industry's concerns and in particular the need for ensuring effective communication. They advised that they continued to be interested in a range of other issues accommodation providers have raised and agreed to host an industry forum in November.

### ACCC and Accommodation Industry Roundtable – 16 November

A roundtable was held with representatives of the accommodation industry on the 16 November in Sydney. Attendees on the day were Accor; Amora; Choice; IHG; Mantra; Marriott; Meriton; Radisson; Rydges; Silverneedle and Quest. There was robust discussion around the issue of rate parity and trade practice violations by OTAs.

#### Narrow Price Parity

On rate parity the ACCC advised that their approach was consistent with the interpretation of the law reflected in the Full Court's decision in *Flight Centre*. How competition law applies to suppliers and acquirers (where they claim to be 'principles' and 'agents') in preventing discounting on a service provider's own website is currently before the High Court of Australia.

Should the Court find in favour of the ACCC's position ie. find against *Flight Centre* that agents compete with principles, then this may have implications for online hotel bookings.

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### Trade Practice Violations

The meeting was also an opportunity to discuss a range of trade practices violations inclusive of the following:

- The potential non-compliance by the OTAs with the ACCC's administrative resolution by imposing consequences on hotels for offering different rates to different online travel agents (OTAs), including the practice of dimming and darkening the listing of a hotel;
- 'Bait and switch' issues when consumers search for a particular hotel or by particular location;
- 'Brand jacking' by OTAs by using hotels' intellectual property and the use of Google Adwords purchasing strategies that substantially increase the price of search terms; and
- Potential false, misleading or deceptive conduct by OTAs on their websites, including misleading 'was/now' pricing by OTAs.

### Next Steps

The ACCC advised that in order to understand and pursue the conduct of concern, **they need to receive evidence of that conduct.**

This can include:

- copies of direct communications with OTAs (e.g. letters, emails to and from the OTAs, and notes summarising conversations with their representatives),
- screen shots of interactions with OTAs via various online platforms/portals including what the hotels sees at the "back end" that is not publicly visible, screen shots of what consumers see noting the dynamic nature of room rates, and;
- any other evidence you may be able to provide to us that demonstrates the concerns raised.
- We would also be interested in opportunities to discuss this evidence with the employees of your organisations who are directly involved in the communications.

In terms of the different sales channels, ACCC are also interested in a breakdown of hotels' booking/sales percentages from all channels, including loyalty customers.

We recommend that you provide the above information direct to Simon Pomery, [simon.pomery@acc.gov.au](mailto:simon.pomery@acc.gov.au). It is important that we build a strong evidence base to ensure the matters above are addressed.

### Further information

If you have questions about the information provided in this overview, please email: [taa@tourismaccommodation.com.au](mailto:taa@tourismaccommodation.com.au).