

4th February 2019

Mr Mark Fitt
Committee Secretary
Senate Economics Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Mr Fitt,

Thank you for the opportunity to respond to the questions on notice raised at the Thursday, 31 January Senate Hearing into the *Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and other Measures) Bill 2018*.

Tourism Accommodation Australia's (TAA) representative at the hearing was Mr Dougal Hollis, General Manager Victoria. The questions on notice we wish to address are as follows:

Question on Notice 1.

Chair: *Your submission suggested that the impending changes are designed to capture the overseas online booking sites, that they will adversely affect travel agents that sell tours, as well as Contiki, Trafalgar and AAT Kings. Can you explain that to the committee please?*

TAA response: The submission you reference is from Tourism and Transport Forum (TTF) who have tour operators as their members. It is not mentioned in TAA's submission which focusses on accommodation providers only.

Essentially TTF were concerned that many of the rates for the period from 1 July 2019 to 30 June 2020, have already been printed for brochures, utilised by non-resident suppliers of inbound tours and were therefore requesting an exemption from the GST payment until after that period, so that the required pricing changes can be made.

Questions on Notice 2.

Senator KETTER: *I think you've indicated you support the price parity suggestions from Mr Munro – is that right?*

TAA response: Yes, we support the suggestions from Mr Munro and agree that accommodation providers, as owners and operators of the asset, should be allowed to compete freely with OTAs by offering lower rates to all customers across all online and offline channels.

TAA takes issue with current contractual arrangements that prevent hotels from offering their customers the best possible deal through online channels. TAA believes these contracts have the effect of 'substantially lessening competition' under Section 45 of the Competition and Consumer Act.

TAA believes a range of activities undertaken by online travel agencies (OTAs), including 'bait and switch', 'brand jacking' and other potential false, misleading or deceptive conduct such as 'was/now' pricing constitute a 'misuse of market power' under Section 46 of the Competition and Consumer Act.

Questions on Notice 3

Chair: *May I clarify something there, Senator Ketter. What would be your constituents' objection to the price parity issue being addressed?*

TAA Response: As outlined above and in our response to the inquiry we support the ability of accommodation providers, as owners and operators of the asset, to be allowed to compete freely with OTAs by offering lower rates to all customers across all online and offline channels.

We are however cognisant of the importance of price parity amongst OTAs themselves to prevent uncontrolled undercutting of prices. In addition, without this price parity, any new online booking channel seeking to enter the market would effectively be blocked because of the substantial market power exerted by the two dominant OTAs – Expedia and Booking Holdings.

Questions on Notice 4

Senator KETTER: *Did you have any meetings with the government or Treasury in the lead up to this legislation? Can you tell us when those meetings occurred?*

TAA Response: Yes, Treasury sent TAA a draft of the legislation on the 20 July 2018, with a request for submissions direct to Treasury by 9 August 2018. We then followed up with member queries on impacts on the 26 July 2018. A roundtable was organised between Treasury, the ATO and a range of member hotels on the 31 July 2018.

In the roundtable and further discussions, Treasury clarified that the legislation only applies where the OTAs are acting as 'Principals' in the sale of hotel accommodation. Given that this is a business to business transaction, the onus is on the OTA to remit GST, and therefore accommodation providers should not be impacted.

At that meeting and in subsequent emails we did raise the issues of 'tax indemnity clauses' in OTA contracts and the implications if the GST was to be passed back to the hotels. The ATO advised that tax indemnity clauses were illegal and that we should notify them of any contracts that contained that provision.

Questions on Notice 5

Senator KETTER: *What feedback did you receive from Treasury on any future legislation that may be in train?*

TAA Response: We discussed the draft of the legislation only. In our conversations and meetings with Treasury they did not advise of any further legislation that may be in train.

Questions on Notice 6

Senator KETTER: *Does Airbnb warrant that the premises are safe and suitable?*

TAA Response: Airbnb does not warrant that the premises are "safe and suitable" in most cases. They believe that the relationship is between the Host and the Guest. However Airbnb does have a Guest Refund policy in certain instances:

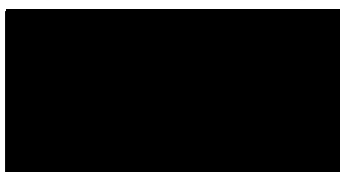
- The host fails to provide reasonable access to the booked listing.
- The listing is misrepresented (ex: number of bedrooms, location, lacks promised amenities).
- The listing isn't generally clean, is unsafe, or there's an animal in the listing that wasn't disclosed prior to booking.

In the past couple of years they have introduced Airbnb Plus, '*a new selection of only the highest quality homes with hosts known for great reviews and attention to detail. Every home is visited in person for a 100+ point quality inspection to ensure your comfort.*'¹ This statement points to some form of warrantee. However we understand from their media reports that this represents only about 2000 properties out of their hundreds of thousands of listings.

TAA has for some time been concerned that there are no protections for guests and that is why it is important that there is transparency of hosts through registration and a Code of Conduct that is implemented with strong enforcement measures.

Thank you for the opportunity to respond to the Senate Committee. As discussed with Treasury, TAA and our members support the intent of the bill but are concerned at the unintended consequences of this measure and these go largely to the issue of market power.

Yours Sincerely,



CAROL GIUSEPPI
CEO

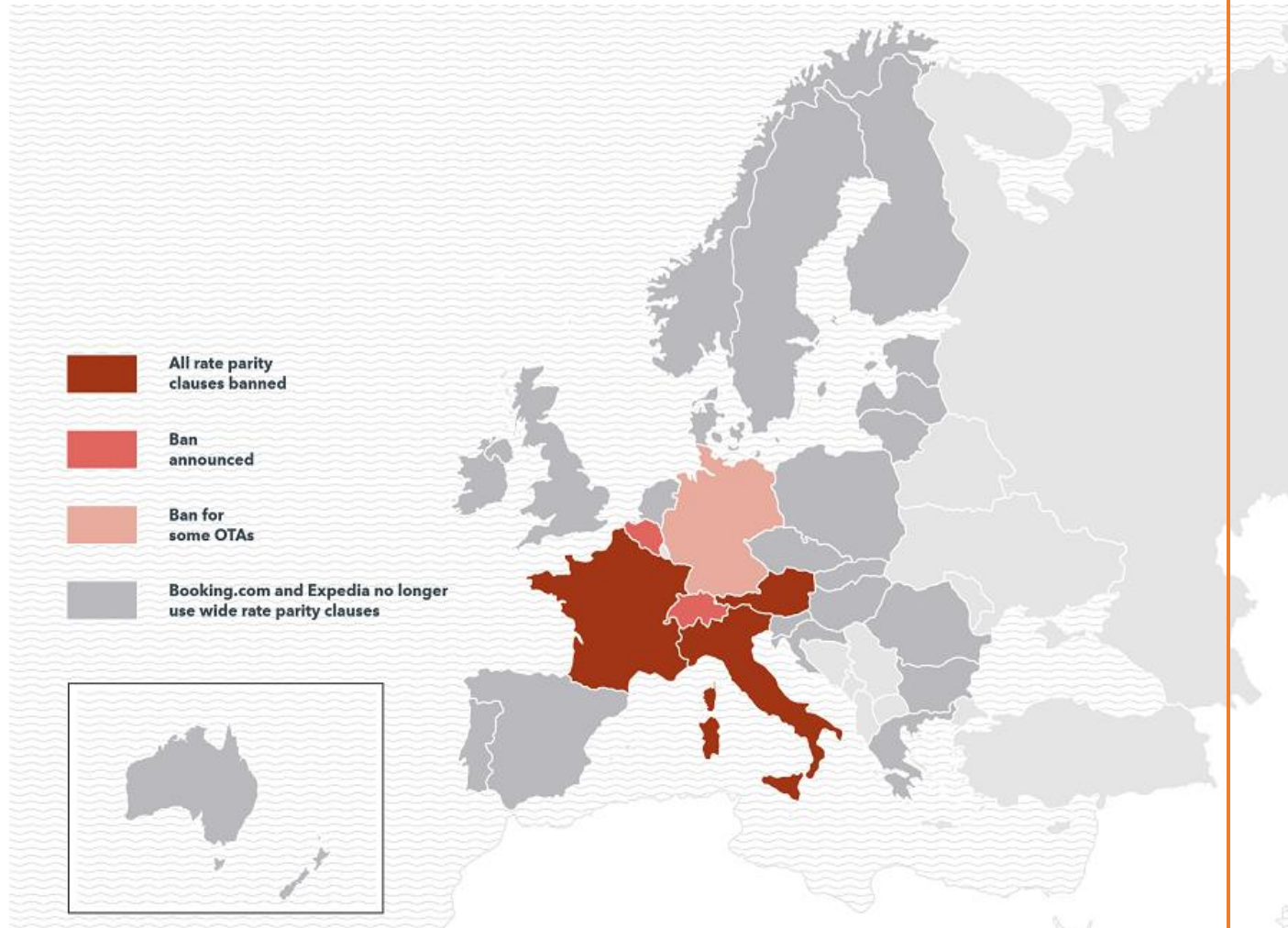
Attachment: On the issue of Online Rate Parity, I have attached a comparison of overseas jurisdictions and the different types of parity that apply.

¹ Airbnb website

Global Status of Online Rate Parity

The current OTA share of APAC online hotel bookings is 73% up from 70% in 2014.¹

The current hotel distribution landscape is a global patchwork of regulations of rate parity clauses and OTA behaviours².



In Europe, several national jurisdictions (France, Austria, Belgium and Italy) prohibit all OTA parity clauses outright, with two more Switzerland having announced concrete plans to follow suit.

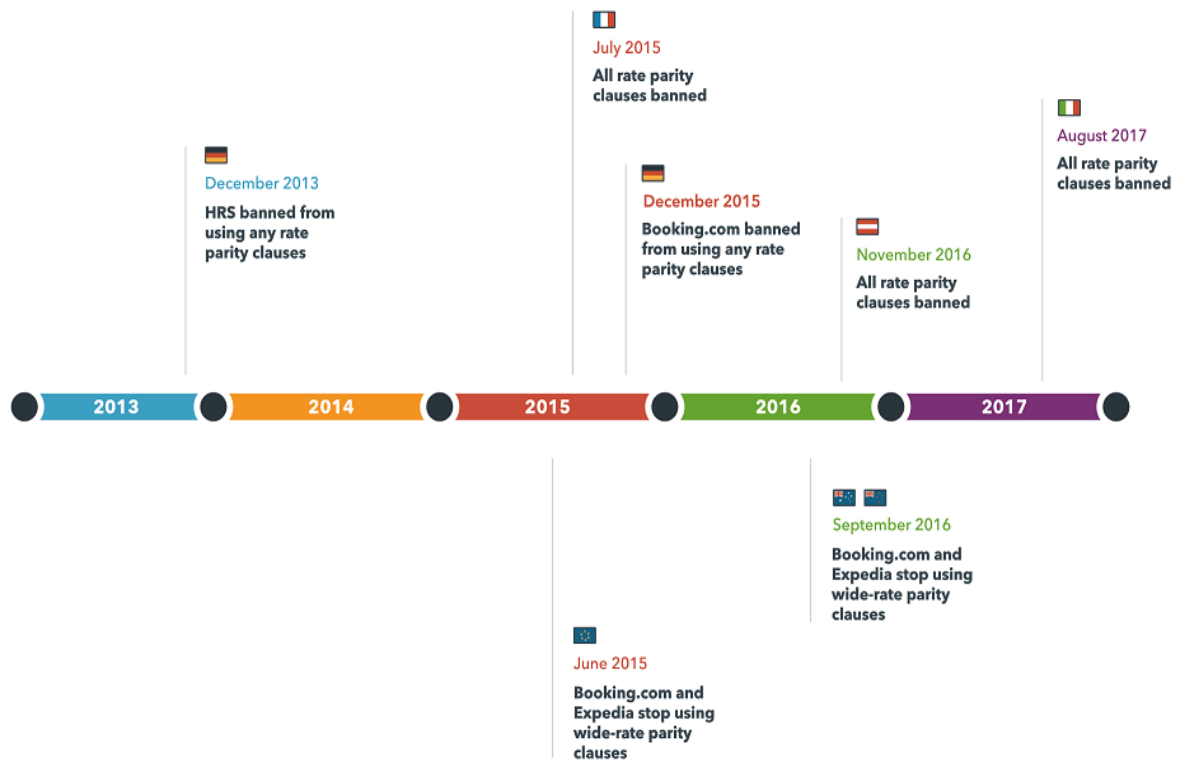
In Germany decisions by the competition regulator only apply to certain OTAs (HRS and Booking.com), while other OTAs continue to use wide and narrow rate parity clauses within the German market. In Sweden, the Swedish Patent and Market Court issued its judgement forbidding Booking.com to impose parity clauses in its contracts with hotels from 20 October 2018 onwards.

¹ Expedia 2017

² <http://www.hotelnewsnow.com/Articles/27374/Rate-paritys-legal-landscape>

In Australia, New Zealand, and the European Union, Booking.com and Expedia have, in agreement with regulators, adopted only narrow rate parity clauses. In other major markets, however, these OTAs continue to use wide rate parity clauses.

Some smaller OTAs continue to use wide parity clauses across all markets, except where they are banned.



Countries where narrow and wide rate parity clauses are strictly prohibited:

- **France** – July 2015 – The “Macron Law,” which outlawed all rate parity clauses, was adopted in July 2015.
- **Austria** – November 2016 – Austria amended the Competition Law to outlaw all rate parity clauses in November 2016.
- **Italy** – August 2017 – The Competition and Market Law, which outlawed all rate parity clauses, was adopted in August 2017.
- **Belgium** - 20 July 2018 – The Belgian federal parliament adopted by unanimous vote a new law banning rate parity clauses from contracts between online booking platforms and tourist accommodation providers. This legislative move was initiated by Horeca Bruxelles/Brussel, Horeca Vlaanderen and Horeca Wallonie, with the support of the Belgian consumer organisation ‘Test Achat’.

Countries where rate parity clauses are prohibited for some OTAs:

- **Germany** – December 2013 – The Federal Competition Authorities prohibited all parity clauses used by HRS, a major German OTA. December 2015 – The Federal Competition

Authorities ordered Booking.com to remove all rate parity clauses from its contracts before January 31, 2016. A temporary injunction in May 2016 by Booking.com was unsuccessful; the decision remains in force, though a full appeal may still be pending.

- **Sweden** - In late July, 2018, the Swedish Patent and Market Court issued its judgement forbidding Booking.com to impose parity clauses in its contracts with hotels from 20 October 2018 onwards.

Countries where Booking.com and Expedia have agreed to use only narrow rate parity clauses:

- **European Union** – June to July 2015 – In agreement with regulators in Italy, Sweden, and France, Booking.com changed its rate parity clauses in Europe from wide to narrow at the end of June 2015. Expedia followed suit shortly thereafter at the beginning of July 2015.
- **Australia** – September 2016 – Expedia and Booking.com agreed to amend their contracts from wide to narrow rate parity clauses, after an investigation by the Australia consumer watchdog. Removal of rate parity clauses is the subject of an ongoing review.

Investigation is ongoing with the ACCC instituting proceedings in the Federal Court against Trivago on the 23 August 2018. The ACCC alleges that from at least December 2013, Trivago ran TV advertisements presenting its website as an impartial and objective price comparison service that would help consumers identify the cheapest prices for hotel rooms when, in fact, Trivago's website prioritised advertisers who were willing to pay the highest cost per click fee to Trivago.

- **New Zealand** – October 2016 – Expedia and Booking.com subsequently agreed to amend price and availability clauses to be in line with their approach in Europe and Australia.

Countries where plans to ban rate parity have been announced:

- **Switzerland** – March 2017 – A Council of States Resolution on March 6, 2017, instructed the Federal Council to submit legislative amendments that would prohibit rate parity clauses in contracts between online booking platforms and hotels.

Countries where rate parity has not been regulated:

- **USA** – February 2014 – In the USA, no uniform regulation of rate parity clauses has emerged. In February 2014, a significant antitrust case against 22 travel brands including Marriott, Expedia, and Priceline was dismissed, which reduced pressure for regulation in the country.
- **Latin America** – Rate parity clauses are widespread and not specifically regulated in Latin American countries.
- **UK** - The Competition and Markets Authority (CMA) in the UK launched its investigation into hotel booking sites on 27 October 2017. In late June 2018 it announced it is commenced enforcement action against a number of hotel booking sites that it believes may be breaking consumer protection law.

As part of its ongoing investigation, the Competition and Markets Authority (CMA) has identified widespread concerns, including:

- Search results: to what extent search results are influenced by factors that may not be relevant to the customer's requirements, such as the amount of commission a hotel pays the site.
- Pressure selling: creating a false impression of room availability or rushing customers into making a booking decision.
- Discount claims: whether the discount claims made on sites offer a fair comparison for customers.
- Hidden charges: the extent to which sites include all costs in the price they first show customers or whether people are later faced with unexpected fees, such as taxes or booking fees.

The CMA will be requiring the sites to take action to address its concerns, where they are believed to be breaking consumer protection law. The CMA continues to assess the evidence it has gathered on the practices of other online hotel booking sites and could launch further enforcement cases in due course.

Though not an exhaustive list of all the countries currently facing and adapting to changes in OTA behaviour and legal proceedings regarding rate parity, this research on major global markets does reveal that rate parity is clearly a thing of the past in some areas of the world and on shaky legal ground in others.