

12 January 2023

Competition and Markets Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600
By email: TandApricingconsultation@treasury.gov.au

Dear Sir/Madam

The Accommodation Association (AAoA) and Tourism Accommodation Australia (TAA) are pleased to provide the following submission to The Treasury and Australian Trade and Investment Commission's consultation process into Online bookings – restrictions on tourism and accommodation providers setting prices.

This submission reflects the views of our smaller and independent accommodation providers and has been created by the Associations to provide our views on the specific issues around ensuring smaller and independent accommodation providers can set their own prices.

AAoA and TAA is advocating on behalf of our members to level out the playing field and to remove restrictions on our members, especially smaller and independent members, from setting their own prices to best meet their commercial interests. We believe banning price parity clauses in OTA contracts will not be enough to allow for that outcome, a strong code of conduct that bans 'algorithm punishment' and other forms of punitive action against accommodation providers is also required to genuinely ensure Australian accommodation owners and their managers can set their own price and continue to recover from the impact of the COVID-19 pandemic.

Summary of Requested Actions

1. Banning the use of 'price parity clauses' in contracts with online booking platforms to allow accommodation providers to set their own prices.
2. Establishment of a code of conduct, that will ensure booking platforms comply to meet agreed standards.

About the Accommodation Association and Tourism Accommodation Australia

AAoA and TAA are the peak industry associations representing close to 1,500 accommodation operators and over 30,000 rooms across Australia. Members of AAoA and TAA include major hotels, resorts, motels, motor inns, services apartments, bed and breakfasts and guesthouses. These members are a major contributor to the economy, providing the second highest contribution to Tourism GVA.

AAoA and TAA are committed to the future development and growth of a sustainable accommodation sector in Australia.

Price Parity Clauses

Price Parity clauses between individual accommodation providers currently exist in some agreements between the business and the online booking platforms. In 2016 a concession was made by online booking platforms to amend certain types of price parity clauses, that allowed accommodation providers to offer room rates that are equal to, or lower than those advertised on an online booking platform for bookings made in person or over the phone.

Currently the Associations understand, through consultation with our smaller and independent members, that price parity clauses do still exist in some agreements. We are also aware that although some online booking platforms have waived price parity clauses or similar restrictions, an element of price parity is still enforced through other methods, such as 'algorithm punishment'.

The Association has heard from several members that when they have advertised a room rate that is lower than those agreed to with an online booking platform, even if a price parity clause does not exist in their agreement, they find themselves in a situation where they are ranked lower than their competitors or penalised through another form of 'algorithm punishment'.

There is a significant relationship imbalance due to the huge market power Online Travel Agents platforms have accumulated and through price parity clauses. Smaller and independent accommodation providers are losing control over their business, their inventory, how to market their business and their ability to negotiate with online travel agent platforms.

Removing price parity clauses from Online Travel Agents (OTAs) contracts will level the playing field, rebalancing the negotiating power and relationship between smaller and independent accommodation providers and the OTA's. Currently, smaller accommodation providers have no choice but to offer all Online Travel Agents the same room rate deal, effectively removing the ability of a business to deal with a preferred platform and restricting their ability to make the best decision for their business, staff, and their customers.

Code of Conduct

A code of conduct is important to provide a framework for online booking platforms. A code of conduct would outline a compliance and enforcement approach and facilitating oversight.

It is essential that a complete review of the existing requirements under Australian Law are considered to avoid duplication. AAoA and TAA believes that a code of conduct, if developed properly and through consultation with the tourism and accommodation industry and the online booking platforms, can provide the appropriate level of comfort to regulators, consumers, and the industry that anti-competitive pricing behaviour is not occurring.

A code of conduct must also establish an acceptable standard of behaviour for online booking platforms to ban 'algorithm punishment', which is currently practiced by lower rankings on the platforms website or 'greying out' which significantly impact smaller Australian operators who chose to offer a better rate to customers.

The principal objectives of a code of conduct must be to ensure;

- Standard of behaviour for all stakeholders, to assist online booking platforms, travellers and Australian accommodation providers of the standard of conduct expected from online booking platforms so as to ensure a level playing field.
- Provide for resolution of disputes and complaints concerning the conduct of online booking platforms.
- Outline compliance and enforcement approach that applies for contraventions of the code by online booking platforms.
- Facilitate the oversight of the booking platform industry including the review of monopoly settings on commissions

Case studies from AAoA and TAA members:

- A. A small regional operator recently published a lower rate on their website than what was advertised through an OTA platform. The contract manager flagged with the owner that a lower rate was detected and therefore their hotel received a lower rating on the platform. The lower rating meant that their listing was pushed much further down the search engine and the hotel saw an immediate and significant drop in their bookings. The rating was not restored until the hotel owner agreed to increase the price on their website so that it matched the platforms price.
- B. A small independent Australian operator ran a promotion for a specific international market, allowing them to book a special rate to encourage international visitors to return post the COVID-19 pandemic. An online travel agent picked up the promotion through their regular data scrapping and offered the promotion to all markets including the domestic Australian market. The operator was effectively forced into offering what was intended to be a specific international marketing promotion to other markets which undermined their recovery and their marketing strategy.
- C. A common problem is a guest will advise the hotel that they have booked direct with the property due to believing that they guarantee the best available rate. The hotel will stand behind this only to be discredited by the OTA with the guest showing a cheaper rate on an OTA site that the hotel is not aware of. The rate has been discounted by the OTA without communication or permission by the hotel.
- D. Due to the size and strength of their capital and marketing budgets, OTAs have a monopoly on the internet search engines such as google i.e. if you type in a town with accommodation then you will get a major OTA website as your first page options. This makes it difficult for hotels not to work with the OTAs as they control the search engines, dictate the lowest rates and demand and determine the commissions rates (from what was traditionally 10% to 18%) which the smaller independent hotel/motel has no negotiating position.

Conclusion

AAoA and TAA thank you for the opportunity to make this submission.

This submission has been developed after extensive consultation with our members on the specific issues around ensuring smaller and independent accommodation providers can set their own prices to best meet their commercial interests. We believe banning price parity clauses in OTA contracts will not be enough to allow for that outcome, a strong code of conduct is also required to genuinely ensure Australian accommodation owners and their managers can set their own price and continue to recover from the impact of the COVID-19 pandemic,

We welcome the opportunity to expand on the issues and recommendations raised.



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