

Pomery, Simon

From: Gargett, Tim (AU) <Tim.Gargett@au.kwm.com>
Sent: Tuesday, 23 August 2016 11:28 AM
To: Fleming, Richard
Cc: Scott, Tim; Pomery, Simon; Ridgeway, Stephen (AU)
Subject: TRIM: Expedia - Letter to the ACCC - Use of parity clauses
Attachments: Expedia - letter to the ACCC - 23 August 2016.pdf; Expedia - Waiver Note.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

HP TRIM Record Number: D16/121465

Dear Richard

Please find attached a letter from Expedia in relation to the above matter, as well as a copy of the Waiver Note as referred to in the attached letter.

Kind regards
Tim

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Without prejudice and confidential

23 August 2016

To Marcus Bezzi
Executive General Manager
Competition Enforcement
Australian Competition and Consumer Commission
marcus.bezzi@accg.gov.au

Dear Mr Bezzi

Re: Expedia Group Use of Parity Clauses

We refer to your letter dated 3 August 2016 and our subsequent telephone conferences and meetings.

We confirm that Expedia is willing to agree that the relevant Expedia entities (as defined below) will not enter into or enforce the price, conditions and availability parity obligations described in your letter dated 3 August 2016, and that the relevant Expedia entities will provide waivers in relation to those obligations in their current Lodging Contracts (as defined below) in the attached form ("**Waiver Note**"), on the following conditions:

- (a) the ACCC agrees that there is no admission by Expedia of any contravention of any legislation;
- (b) the agreement and the waivers will operate for a period of 3 years commencing on 1 September 2016;
- (c) the agreement will apply to current and future lodging contracts between the following Expedia entities Expedia Lodging Partner Services Sàrl, Travelscape LLC, Hotels.com LP, VacationSpot SL and AAE Travel Pte Limited (**relevant Expedia entities**), and Australian accommodation providers (**Lodging Contracts**);
- (d) for the avoidance of doubt, the agreement and the waivers will not apply to contracts between members of the Expedia Group other than the relevant Expedia entities and Australian accommodation providers including, without limitation:
 - (i) HomeAway or any other vacation rental accommodation businesses or websites controlled by Expedia now or in the future; or
 - (ii) Trivago or any other accommodation metasearch businesses or websites controlled by Expedia now or in the future;
- (e) Expedia retains the right to rescind the agreement and waivers in light of any regulatory, legislative or other market developments which can reasonably be expected by Expedia to impact the Lodging Contracts and this right will be included as an express term in the Waiver Note;

- (f) before exercising the right to rescind the agreement and the waivers, Expedia will provide the ACCC with one month's prior written notice;
- (g) Expedia will provide the Waiver Note to Australian accommodation providers by 14 October 2016;
- (h) the ACCC agrees that it does not propose to take any further action in relation to the conduct which the agreement seeks to directly address, as described and qualified in the ACCC's letter dated 3 August 2016;
- (i) the ACCC has reached agreement with Booking.com to the same effect as this agreement;
- (j) the ACCC will use reasonable endeavours to reach an agreement with Agoda to the same effect as this agreement;
- (k) any media release published by the ACCC in relation to this agreement or the agreement reached with Booking.com will deal with both agreements in the same release; and
- (l) the ACCC will provide a copy of the ACCC's proposed media release 72 hours in advance of its publication and the opportunity for Expedia to comment on any incorrect or misleading statements it may contain.

Thank you for the opportunity to discuss the resolution of this matter. We look forward to the ACCC's response.

Yours sincerely



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EXPEDIA – WAIVER NOTE

The following amendments apply to your lodging agreement with a relevant Expedia entity (**Agreement**). The changes shall apply to stand-alone, non-opaque and non-managed bookings of Australian accommodation (**Accommodations**) under the Agreement made by consumers worldwide through the relevant Expedia websites.

The Expedia entities to which these amendments apply (**relevant Expedia entities**) are restricted to:

- (a) Expedia Lodging Partner Services Sàrl;
- (b) Travelscape LLC;
- (c) Hotels.com LP;
- (d) VacationSpot SL; and
- (e) AAE Travel Pte Limited.

1. Rates

Expedia will not enter into or enforce obligations that:

- (a) require Accommodations to propose room rates on relevant Expedia websites that are equal to or lower than those offered on any other online travel agent other than online travel agents controlled directly or indirectly by an Accommodation or, if applicable, the chain to which an Accommodation belongs;
- (b) prohibit Accommodations from offering room rates on offline channels¹ that are equal to or lower than those offered on relevant Expedia websites provided that these room rates are not published or marketed to the general public online; and/or
- (c) restrict the unpublished room rates that Accommodations are able to offer, provided that these are not marketed to the general public online.

2. Guest Experience

Expedia will not enter into or enforce obligations that:

- (a) require Accommodations to propose the same or more favourable terms and conditions to consumers on relevant Expedia websites as those offered on any other online travel agent;
- (b) prohibit Accommodations from offering on offline channels the same or more favourable terms and conditions to consumers as those offered on relevant Expedia websites, provided that these terms and conditions are not published or marketed to the general public online; and/or
- (c) restrict the unpublished terms and conditions that Accommodations 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's reception, by telephoning an Accommodation, or at a bricks and mortar travel agency.

3. Rooms

Expedia will not enter into or enforce obligations that require Accommodations to offer the same or a greater number of rooms, of any type, on relevant Expedia websites as those offered on any other online travel agent, or as is reserved for the Accommodation itself.

5. Miscellaneous

Each relevant Expedia entity reserves the right to rescind this waiver in light of any regulatory, administrative, judicial, legislative and/or other market developments which can reasonably be expected by any relevant Expedia entity to impact the Agreement.

Without prejudice to this position, this waiver is applicable for a period of three (3) years from 1 September 2016.

Subject only to the amendments effected by this waiver, your Agreement remains in full force and effect.

A handwritten signature in black ink, appearing to read 'Cyril Ranque', with a horizontal line extending to the right.

Cyril Ranque
President Expedia Lodging Partner Services
Expedia® Lodging Partner Services