



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPEAL UNDER SECTION 47 OF THE COMPETITION ACT 1998

CASE No. 1226/2/12/14

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (the “Rules”), the Registrar gives notice of the receipt on 31 March 2014 of an appeal under section 47(1)(c) of the Competition Act 1998 (the “Act”), by Skyscanner Limited (“Skyscanner”) of Quatermile One, 15 Lauriston Place, Edinburgh, EH3 9EN, against a decision dated 31 January 2014 made by the Office of Fair Trading (“OFT”)¹ titled “Hotel online booking: Decision to accept commitments to remove certain discounting restrictions for Online Travel Agents” (the “Decision”). Skyscanner is represented by Maclay Murray & Spens LLP, also of Quatermile One, 15 Lauriston Place, Edinburgh, EH3 9EN (ref: Catriona Munro).

By its Decision, the OFT accepted commitments from Booking.com B.V., priceline.com Inc., Expedia Inc., InterContinental Hotels Group plc and Hotel Inter-Continental London Limited (the “Parties”) to address certain competition concerns identified in a statement of objections (“SO”) issued in proceedings under Chapter I of the Act and Article 101 of the Treaty on the Functioning of the European Union. The OFT identified three competition concerns in the SO concerning the online offering of “room-only” hotel accommodation bookings by online travel agents (“OTAs”): (1) that current restrictions on the discounting of a hotel’s “room-only” rate leads to limited competition on the offer of room rates to consumers between OTAs and between OTAs and the hotel’s direct online sales channel; (2) that current restrictions on discounting may increase barriers to entry to the extent that they prevent new OTAs from entering the market and/or achieving sufficient scale; and (3) that, to the extent that similar discounting restrictions are replicated in the market, any prevention, restriction or distortion of competition is further exacerbated.

In order to address the OFT’s competition concerns identified in the SO, the Parties offered certain commitments to the OFT that they would modify their behaviour in accordance with certain principles. Having undertaken a public consultation, the OFT requested from the Parties, and received, certain amendments to those commitments (the “Final Commitments”).² Having undertaken a second public consultation on the Final Commitments, and taken account of representations made during that consultation, the OFT concluded in the Decision that the Final Commitments offered by the Parties address the OFT’s competition concerns.

Skyscanner states that it has a “sufficient interest” for the purposes of section 47(2) of the Act on the basis that:

1. It is an “Other OTA”, as defined in the Final Commitments;
2. Its business – the advertising of hotel prices to consumers – will be directly and substantially affected by the Final Commitments; and
3. It made representations to the OFT during the consultation process.

¹ The relevant functions of the OFT have been taken over by the Competition and Markets Authority (“CMA”), which is accordingly the respondent to this appeal.

² The Final Commitments are set out at Annexe 1 of the Decision, and summarised at paragraph 1.9 of the Decision.

By its notice of appeal, Skyscanner contests the Decision on the following three grounds:

1. The Final Commitments have the effect of requiring third parties (other OTAs and other hotels) to act in line with the Final Commitments and to comply with a set of key principles outlined therein, even though those third parties did not offer commitments and the OFT did not accept commitments from those third parties under section 31A of the Act. The OFT (now CMA) has thus acted *ultra vires* its powers as set out in section 31A.
2. In making the Decision, the OFT failed to take into account properly or at all the representations that Skyscanner made on the impact that the Decision and, in particular, paragraph 19 of the Final Commitments would have on the meta-search sector and/or on inter-brand competition. The OFT (now CMA) therefore failed to take into account relevant considerations and/or acted in breach of paragraph 2(1)(b) of Schedule 6A to the Act.
3. By putting in place the Final Commitments without considering the potential anti-competitive consequences that they may have, the OFT (now CMA) has acted contrary to the policy and objects of the Act to promote competition to the benefit of consumers and/or has acted irrationally.

By way of relief, Skyscanner requests that the Tribunal:

1. Quash the whole or part of the Decision;
2. Remit the matter to the CMA with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal;
3. Order that the CMA pay Skyscanner's costs of this appeal.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules. Any request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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