

## **Keyword Restrictions - Part VI: Hotels and OTAs – Where Do We Go From Here?**

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At long last, it's time to wrap up this series regarding the antitrust questions raised by keyword search restrictions. What should you take away from it?

Start with this: when competitors agree to such restrictions on each other's advertising and seek to give their marks broader protection than the law affords, antitrust law may render these agreements unlawful due to their anticompetitive effects.

But when the maker of a product, such as a hotel, uses such restrictions to organize its distribution chains—clarifying who may advertise or sell the hotel's products when, how, and where—antitrust law has relatively little to say. Yet many of the complaints about keyword advertising restrictions tend to focus precisely on their (alleged) impact on competition among competing vendors of a given hotel's rooms, overlooking that these restrictions likely improve that hotel's ability to compete with other brands, a good thing.

It's worth a paragraph on Google's role in all this. Scattered through the concerns about keyword search restrictions are critiques of Google's search dominance and the potential for Google to abuse that dominance. In particular, we've read complaints that Google is designing its search engine to give priority to its own travel service over organic search results that will include hits on OTA websites. Google's dominance is undeniable, though hardly unchallenged. But at least under U.S. law, translating one firm's market dominance into a viable antitrust claim is not especially easy, particularly in high tech fields where the alleged abuse may simply be a technology-enabled integration of historically distinct products, such as travel services and internet search.

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Certainly hotels should take care in formulating their policies around restrictions on keyword search advertising. But a properly structured agreement between a hotel and an OTA that defines the parties' roles, rights, and responsibilities in advertising the hotel's properties should readily withstand antitrust scrutiny.

Thanks for reading.