

Duff on Hospitality Law

## **Rate Parity as Price Fixing: UK's Office of Fair Trading Statement Suggests Trouble Ahead for Industry Standard Online Travel Agent Contract Provisions**

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The United Kingdom's Office of Fair Trading (OFT) issued a Statement of Objections this Tuesday alleging that industry giants [Booking.com](#), [Expedia, Inc.](#) and [InterContinental Hotels Group](#) violated the UK's Competition Act of 1998. The Statement of Objections will not be made public, but from OFT's comments, its [rate parity](#) and best rate guarantees that are causing the trouble.

Requiring on-line travel agents (OTAs) to honor a hotel supplier's best rate guarantee (at retail) and requiring hoteliers to provide inventory to distributors at the same price across all distribution channels are as close to universal practice in this industry as I have seen. And now, OFT appears to consider them by a less salubrious name: price-fixing. However, the Statement of Objections is not "the final word." It is a sort of pre-trial opinion in which OFT provides official notice of a "proposed infringement [of the Competition Act 1998] decision" and the parties to the dispute may make written and oral arguments to be considered before final decision is rendered.

OFT's statement was issued at the end of an investigation begun in 2010 after a complaint was made by Skoosh, a small British OTA. Skoosh contacted OFT after Skoosh's own hotel suppliers demanded that Skoosh raise its retail rates to a certain figure (among other allegations). The hoteliers, of course, were apparently acting to meet pressure applied by Booking and Expedia not to violate what was almost certainly a contractually required rate parity obligation of some sort. In effect, Skoosh raised concerns with OFT that rate parity and best rate guarantees operate together to artificially fix prices in the marketplace and therefore act as a barrier to competition, particularly for new or smaller players, like Skoosh, who might be willing to undersell the larger OTAs to grow its business.

If OFT formally issues a finding of an infringement, despite its jurisdiction being limited to the UK, the finding will cause--at a minimum--a shift in the way a significant majority of the hospitality industry conducts its distribution business, as well as the amount of competition in the marketplace. The Internet, after all, is international. So please stay tuned!

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**Tags:** anticompetitive, antitrust, booking, distribution, Expedia, OFT, OTA