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## HUNGARIAN COMPETITION AUTHORITY (HCA)'S EXPEDITED SECTOR INQUIRY TO DRIVE NEW LEGISLATION FOR ONLINE BOOKING AND ACCOMMODATION SERVICES - THE HCA PUBLISHED ITS DRAFT REPORT ON 20 OCTOBER 2023

### KEY TAKEAWAYS

**Trigger:** The booking and accommodation expedited sector inquiry started on 24 August 2023. It was triggered by a series of complaints about Booking.com withholding payments to Hungarian accommodation service providers.

**Proposed outcome:** The HCA [recommends](#) a legislative ban of parity clauses by online intermediaries, more transparency on ranking criteria and mandatory clauses in intermediaries' general terms protecting accommodation services providers.

**EU context:** The HCA's draft report takes account of recent EU and national developments with respect to the competition assessment of hotel rate parity clauses. It is a useful recap, but one may wonder how the HCA's quick fix (triggered by the non-payment of a large platform player) fits into the series of competitive assessments of narrow parity clauses in other jurisdictions and wider EU legislation.

**Wider impact on businesses:** The expedited sector inquiry is a tool enabling the HCA quick intervention into business processes, without the need to justify actions under Article 101 or 102 TFEU, or even to conduct a proper competition analysis during a traditional sector inquiry. Therefore, it is important that businesses are well prepared to assess the potential impact of an inquiry in their sector, have good processes in place to provide adequate responses quickly if contacted by the HCA (including during a dawn raid), and review their wider options to challenge unwanted consequences, if necessary.

### OVERVIEW

**The draft report is a result of the HCA's expedited sector inquiry, triggered during the summer of 2023**, due to a high number of complaints reporting that Booking.com failed to pay to Hungarian accommodation providers booked fees over an extended period. The HCA conducted dawn raid inspections and collected an extensive range of data from Hungarian and foreign-based online accommodation intermediaries and accommodation providers. Feedback was collected about the practices of Booking.com, Szallas.hu, Expedia.com and HRS.com.

**Historically**, the HCA conducted a sector inquiry for online accommodation booking between 2013 and 2016, against the background of various proceedings in 11 other EU Member States. In its final report, the HCA found that full rate parity clauses restrict competition, but narrow rate parity clauses — could have efficiency benefits, for example in combatting free-riding. (Narrow parity clauses are used by booking platforms to restrict accommodation providers in providing more favourable rates on their website than on the platform, but do not restrict more favourable rates in the accommodation providers' other channels, including other platforms.)

In addition, the HCA investigated and imposed competition fines on major booking platforms in recent years for unfair commercial practices, such as Szallas.hu (case 41/2019/VJ) and Booking.com (17/2018/VJ). The investigation against Airbnb was closed with commitments (case 89/2016/VJ).

The [new draft report](#), available for public consultation until 20 November 2023, contains several proposed measures to promote price competition and to protect the interests of accommodation providers and consumers, including:



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**Ban on Price Parity Clauses:** The HCA would propose legislative **ban on the use of price parity clauses by online accommodation intermediaries**. In the HCA's view, a legal prohibition of narrow price parity clauses would increase incentives for accommodation providers to offer rooms at lower prices through their own channels and, in the longer term, this would also have an impact on the commission levels applied by the platforms, and could lead to more effective commission competition between large platforms. Similar bans are in place in various EU countries, including France, Austria, Italy, and Belgium.

**Transparent Ranking Criteria:** The HCA recommends that **accommodation intermediaries should make the criteria for ranking search results on their platforms transparent**. Often, higher-paying providers receive preferential treatment, which may not be clear to consumers. In this way, consumers would be informed in a visible, understandable and legally-compliant way if an accommodation is ranked higher in the results, e.g. because it has paid a higher commission to the accommodation provider. While the HCA found that some information is often provided about ranking, such information is mostly difficult to find and unclear. Transparency in ranking criteria can empower consumers and encourage competition among accommodation providers.

**Regulated General Terms:** The HCA proposes **regulation for online intermediary general terms and practices to ensure that accommodation providers have access to efficient complaint resolution mechanisms and remedies of breach of contract**. The investigation revealed unequal negotiation and contractual relations, necessitating rules for compensation and legal consequences for platform failures.

## INTERNATIONAL OUTLOOK

The HCA also reviewed related developments at Member State level since 2015 (including France, [Sweden](#), [Germany](#), [Croatia](#), [Spain](#), [Czechia](#), [Lithuania](#), Romania, [Netherlands](#)), and also the UK ([here](#), [here](#), [here](#), [here](#)), [Switzerland](#), [Turkey](#), [Australia](#) and [New Zealand](#). Further, the HCA mentioned that under the Online Intermediation Services Regulation, all online intermediary service providers are required to justify any use of a price parity clause in their general terms and conditions on the basis of economic, commercial or legal grounds. Further, the HCA references the EU Commission's Vertical Block Exemption Regulation, which excludes broad price parity clauses, but continues to give narrow price parity clauses the benefit of the block exemption for vertical agreement. Against these, the HCA's draft report does not assess how the divers approach of the national competition authorities support (or, as the case may be, challenge) the rationale of the HCA's own proposals, or how the HCA's proposals fit into the existing EU legislative framework.

**Next steps:** The HCA's draft report was discussed by the Hungarian Parliament's Economic Committee on 23 October 2023 discussed the expedited sector inquiry. The minutes of the session are not public to date (15 November 2023). Consequently, we expect that the proposed amendments will go before Parliament in a formal legislative amendment process.

**Use case of the expedited sector inquiry:** This is the 8<sup>th</sup> time the HCA has used this tool. Since 2021 the HCA conducted 3 expedited inquiries into the construction sector, 2 into the food sector, and 2 into Covid-19 antigen tests. While prior expedited inquiries clearly aimed to protect Hungarian consumers from the impact of unusual inflation levels and the epidemic, the HCA has now started to use the tool for the benefit of Hungarian businesses.

**HCA powers in expedited sector inquiries:** The HCA can conduct expedited sector inquiries if it reasonably suspects that competition is distorted in a sector, and if urgent authority intervention is required. The HCA has powers to conduct dawn raids, and response to information requests is mandatory within short notice.

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