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The effects of narrow price parity clauses on online sales – Investigation results from the Bundeskartellamt's Booking proceeding

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Contact

Bundeskartellamt
9. Decision Devision
Kaiser-Friedrich-Straße 16
53113 Bonn
poststelle@bundeskartellamt.bund.de
www.bundeskartellamt.de

Photo credits
Gettyimages – nadla (Titel)

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A. Introduction

So-called price parity clauses (also referred to as MFN (most favoured nation) clauses) are restrictions of online sales often imposed on suppliers by intermediaries such as marketplaces or online booking platforms.

The effects of such clauses on competition, particularly if they are applied by leading platforms in the market, have for many years been the subject of debate, also at the international level. This particularly applies to online sales of hotel rooms by leading online hotel platforms. Some EU member states (France, Austria, Italy, Belgium) have meanwhile issued legal provisions outside competition law which prohibit price parity clauses.

In their most comprehensive form such clauses stipulate that suppliers using a platform may not offer their products or services at lower prices or more favourable conditions anywhere else (so-called "wide price parity clauses"). Other forms of price parity clauses exclusively refer to certain sales channels (so-called "narrow price parity clauses").

"Narrow best price clauses" were the subject of a proceeding conducted by the Bundeskartellamt against Booking.com. Booking.com obliged accommodation providers using its online platform to guarantee a minimum availability of the same rates and conditions which the accommodation providers themselves offered online.

Whereas the Bundeskartellamt considered this conduct as an infringement of competition law, the Düsseldorf Higher Regional Court (hereafter: Court) decided in favour of Booking.com's online hotel platform in the first instance. The Court held that the clauses applied by Booking at the time the Bundeskartellamt's decision was issued were admissible under competition law.[1] The Court revoked the Bundeskartellamt's prohibition decision as it considers the narrow price parity clauses to represent an "ancillary restraint" complementing the main contract concluded between Booking.com and the hotels on the brokerage of hotel bookings by end consumers. The Federal Court of Justice has now allowed the authority's appeal on points of law against the Court's decision. The proceeding is thus ongoing and the question whether Booking.com infringed competition law remains open.

Within the framework of the appeal proceedings the OLG had requested the Bundeskartellamt to examine the effects of the prohibition of the (narrow) price parity clauses on the competitive relationship between the online hotel platforms, on the hotels' pricing behaviour and the consumers' booking behaviour. The Court in particular raised the question of whether the narrow price parity clause might constitute an "ancillary restraint" that was necessary in order to prevent a "disloyal

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1 Düsseldorf Higher Regional Court (OLG), 4 June 2019, VI-Kart 2/16 (V); available (in German) at https://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2019/Kart_2_16_V_Beschluss_20190604.html

exploitation" of Booking.com's brokerage service by its partner hotels. Without such a provision, the court held, hotels could more or less "free-ride" on the online platform's service in order to gain the attention of potential guests, but redirect these guests with better prices to their own websites - in which case the online platform would not earn a commission. The Bundeskartellamt subsequently conducted comprehensive further investigations.

In view of the relevance of (narrow) price parity clauses for online hotel platform markets, but also for other platforms in the digital economy, the results of the investigations are of significance beyond the case in question. The prevention or reduction of potential free-riding has played a significant and increasingly relevant role in many international antitrust cases, in particular in cases involving internet-related restraints of competition. However, the discussion of this issue under competition law aspects is generally conducted at a purely conceptual level, and there has been no empirical research on actual free-riding effects, or at least no such findings have been published. The investigations carried out in the case in question provide a unique insight into the quantitative dimension of possible free-riding effects. The Bundeskartellamt has received a large number of requests to publish these data. Against this background the authority decided to make the results of its investigations as summarised in the evaluation note available to the public.

B. The investigations

The investigations carried out by the Bundeskartellamt covered the period from 2015 until the summer of 2018. Key platform operators changed their practice of applying price parity clauses during this period. The results of the investigation have thus provided a basis for assessing competition involving the use of a wide price parity clause (until the summer of 2015), a narrow clause (until the end of 2015) and finally competition without any price parity clause (since early 2016). The investigations focused on the period in which no price parity clause was used.

Specifically, the Bundeskartellamt conducted the following investigations:

- In a first step information was gathered from the relevant large and smaller operators of online hotel platforms active in the German online hotel platform market, in particular Booking.com, HRS and Expedia.[2]
- The Bundeskartellamt also conducted an extensive online survey covering hotels and other accommodations located in Germany[3] which were listed in at least one of the three major

[2] Findings, Table 1.

[3] Hereinafter referred to as "hotels" or "accommodations": these terms cover hotels and other commercial suppliers which, just as hotels, offer accommodation for overnight stays (e.g. guest houses, apartments, aparthotels, motels, resorts, bed and breakfast houses and hostels). The term "hotel rooms" thus also covers rooms in "other accommodations".

online hotel platforms, in order to gather information on the significance of the different online sales channels and their price-setting behaviour. A representative random sample of approximately 300 accommodations was selected from the customer lists of the three major online hotel platforms in a complex procedure.[4]

- The extent to which prospective customers book their hotel room with Booking.com even though the partner hotels offer more favourable rates and/or conditions through their own online sales channels, was also examined. The Bundeskartellamt commissioned a market research company to carry out this expert survey.[5]

The structure of the investigations, their depiction in the Findings document and many of the questions discussed there are the result of concrete specifications given by the Court during the "Booking" proceeding.

C. Summary of the investigation results from the Bundeskartellamt's perspective

In the judicial proceeding the Court ultimately did not accept all the details of the Bundeskartellamt's investigation results and the conclusions and assessments it drew from them. A final judicial clarification, also of Booking.com's further objections, is still pending. The following explanations and the Findings are exclusively based on the Bundeskartellamt's perspective on the investigation results and the conclusions and assessment it has drawn from them.

The investigations have shown that ultimately the elimination of the narrow price parity clauses has not harmed Booking.com's market success. Meanwhile Booking.com is by far the leading online hotel platform in Germany, and even without the price parity clause the company has been able to consolidate its market position further and achieve enormous growth rates (see details under I.). The accommodations use the pricing options now available to them in a diversified sales mix, without neglecting the "hotel booking portal" sales channel (see details under II.). Most consumers do not compare accommodation prices but book where they first found an accommodation, which rules out any significant redirection/free-riding activities (see details under III.). An accommodation's own online direct sales channel is predominantly used by consumers who already knew the accommodation before they made a booking (see details under IV.).

I. Ultimately, the elimination of the narrow price parity clause has not harmed Booking

[4] The random sample, based on the population, was representative in terms of the stratification criteria "use of [1-3] of the major online hotel platforms" and "number of rooms" (as an indicator of hotel size). The number of approx. 300 accommodations was selected to ensure that data would be gathered from a sufficient number of different types of hotels (e.g. large and small hotels, hotels that are members of a hotel chain etc.). See Findings, para. 19ff.

[5] Findings, para. 122ff.

The annual and monthly (i.e. seasonally adjusted) analysis of the commission and booking turnovers shows that, even after two years without the narrow price parity clause, Booking.com has not had to incur any losses in its business of brokering accommodations located in Germany to end consumers.[6] On the contrary, Booking.com has been able to consolidate its position in a growing market even further and, far ahead of HRS and Expedia, it has meanwhile become the leading online hotel platform for bookings of hotels located in Germany.[7] All other key figures (number of hotel partners/market coverage[8], employees[9], advertising expenditure[10]) indicate that Booking's business has not suffered any appreciable disadvantages resulting from the elimination of the narrow price parity clauses.

II. The accommodations deliberately use their new scope for pricing in a sales mix

Even after the elimination of the narrow price parity clause, online hotel platforms in general and Booking.com in particular continue to represent the central distribution channel in online sales, irrespective of the size of the accommodations surveyed. Even though hotels now mostly offer their own online real-time booking facilities[11], around three quarters of the generally increasing online sales are still generated via online hotel platforms.[12] Almost two-thirds of the accommodations that use Booking.com said that it had become "almost indispensable in economic terms" for them.[13]

Against this backdrop it has become clear that the hotels are not interested in neglecting their sales via online hotel platforms. Rankings on online hotel platforms are decisive for the number of brokered guest bookings as in most cases only the hotels ranked 1 to 5 on the standard results list will be booked.[14] Decisive factors for improving a ranking position are in particular customer reviews and booking volumes, the conversion rate and commission rates.[15] The importance accommodations attach to the ranking on Booking.com is demonstrated by the fact that the vast majority of accommodations listed on Booking.com take measures to improve their ranking.[16]

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6 Findings, paras. 4-12.

7 Findings, paras. 7 and 11.

8 Findings, para. 14.

9 Findings, para. 13.

10 Findings, paras. 15f.

11 Findings, paras. 53 ff.

12 Findings, paras. 58 ff.

13 Findings, para. 46.

14 Findings, para. 170.

15 Findings, para. 171.

16 Findings, para. 48 ff.

At the same time, more than half of the accommodations cooperating with Booking.com actually make use of the options for price differentiation now available between Booking.com and the hotels' own direct online sales.[17] The frequency and extent of price differentiation can be seen to vary from case to case.[18] This development confirms the conclusion reached by the Bundeskartellamt in its prohibition decision which stated that the narrow price parity clause restricted hotel competition. Without this clause each hotel can now apply its own sales strategy also in online sales, including the extent and frequency of price differentiation according to the level of commission rates[19], its own distribution costs[20] and other standards relevant to the hotel[21].

In contrast to the expectations expressed by all the large online hotel platforms, this development has not reduced the platforms' turnover.[22] Also, the ratio between overall online sales and the growth of the hotels' own direct online sales has developed in the same way as before.[23] In the Bundeskartellamt's view this refutes the argument put forward by the online hotel platforms claiming that narrow price parity clauses were necessary.

After Booking.com, the leading online hotel platform for accommodations located in Germany, had abandoned the narrow price parity clause, the accommodations' price differentiation activity between the online hotel platforms has also noticeably increased.[24] Much more could have been expected to develop in this respect if the online hotel platforms were to agree to offer more favourable commission rates for more favourable hotel rates.[25] During the period covered by the investigations the online hotel platforms apparently were not interested in making such offers.[26]

The investigations also showed that there is a clear positive correlation between the frequency with which accommodations publish different prices on different online hotel platforms and the claim that they charge lower prices on their own online booking facility than on Booking.com.[27]

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[17] Findings, paras. 82 ff.

[18] Findings, paras. 91ff. and 95 ff.

[19] Findings, paras. 66ff. and 190 ff.

[20] Findings, paras. 68ff.

[21] Findings, paras. 99ff.

[22] Findings, Table 2.

[23] Findings, paras. 58ff.

[24] Findings, paras. 172ff.

[25] Findings, paras. 182ff.

[26] Findings, paras. 184 and 193.

[27] Findings, paras. 177 ff.

All in all it must be assumed that hotels examine their options very carefully and weigh up which sales strategy is most profitable for them. The market conditions and good sales services provided by the platforms ultimately lead to a situation where the hotels also have a substantial interest in generating turnover through online hotel platforms and aim to strengthen their own direct sales (only) if this interest is taken into account. This means that customer flows were not redirected during the survey period and that, in the Bundeskartellamt's view, this is not likely to occur in the near future either.

III. Consumers rarely compare prices and they book where they first found the accommodation, which rules out any significant free-riding activity

The consumer survey was conducted long after the Bundeskartellamt had issued its prohibition decision, i.e. in a competitive environment without the narrow price parity clause. It represents the population in Germany aged 18 and over, but it only refers to (online) booking behaviour with regard to hotels in Germany.[28] The survey has shown that consumers most generally book on the website where they (first) found the accommodation.[29] The vast majority of accommodations which consumers did not know before are found by them online[30], in particular on Booking.com[31]. In almost all of these cases (99%) consumers went on to make a booking on Booking.com.[32] In the light of the survey's findings, the scenario which Booking.com presented during the proceeding (consumers find a hotel on Booking.com, but end up booking directly with the hotel) thus practically does not exist. In the view of the Bundeskartellamt it thus can be ruled out even for a competitive environment without the narrow price parity clause that free-riding is of any quantitative relevance. Conversely this means that narrow or wide price parity clauses applied by Booking.com cannot significantly contribute to reducing free-riding.

Only one third of consumers actually compare the prices of a particular accommodation online.[33] This finding of limited comparisons of a hotel's prices on different booking channels[34] is confirmed by information which the online hotel platforms provided themselves. According to these data the vast majority of booking decisions are made on the basis of the list of standard results provided by the platforms, and bookings made at hotels ranked 1 to 5 on the standard results list account for more

[28] Findings, para. 122.

[29] Findings, para. 165.

[30] Findings, para. 138.

[31] Findings, para. 139.

[32] Findings, paras. 140ff. (142).

[33] Findings, paras. 145ff.

[34] Findings, para. 151 ff.

than 70% of all bookings made.[35] If consumers feel that even comparing the prices of different hotels on the same platform is troublesome, this applies all the more to the search for a particular hotel on different platforms.

On the whole the majority of consumers are less interested in price comparisons and less price sensitive in their actual booking behaviour than would be expected based on the statements of at least the major online booking platforms. Against this background the Bundeskartellamt does not expect Booking.com to incur any relevant loss of turnover in the future if the platform continues to refrain from using the narrow price parity clause.

IV. Most consumers who use the hotels' direct online sales channels have already been familiar with their hotel prior to booking

One of the results of the consumer survey is that about two-thirds of consumers were not familiar with the accommodation before booking it; about one third of consumers already knew the accommodation before booking.[36] The survey also showed that the two online distribution channels relevant for accommodations (online hotel platforms and the hotels' own direct online sales channels) attract different customer groups:

The "online hotel platform" distribution channel is mainly relevant for consumers who do not know the accommodation before booking it.[37] More than 80% of these consumers found the accommodation (which they booked online) on the internet.[38] Two-thirds of these consumers found their accommodation on Booking.com.[39] As described above almost all the bookings are made where the accommodation was first found: 99% of all consumers who found their accommodation on Booking.com also actually booked it on Booking.com.[40] Less than 1% booked their accommodation through the hotel's direct online sales facility.[41] Similar findings apply to the other online hotel platforms.

The remaining one third of consumers already knew the accommodation before booking it. The hotels' own direct sales facility is only of economic importance in the case of these consumers.

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35 Findings, para. 170.

36 Findings, Table 40.

37 Findings, Tables 41 and 42.

38 Findings, Table 43: 778 of 926.

39 Findings, Table 44: 485 of 778. HRS (74 of 778) and Google (65 of 778) were by far the most frequently cited locations where accommodations were found; other websites were practically irrelevant in this respect.

40 Findings, Table 45 [479 of 485] and Table 46. **Interpretation guide for table 45:** The absolute figures can be read both in the respective columns and rows; the percentage figures only in rows.

41 Findings, Table 45 [4 of 485] and Table 46.

- Almost two-thirds of the bookings made via the hotels' own direct online sales channel are accounted for by consumers who already knew the accommodation before booking it.[42] These bookings have not resulted from marketing efforts or any services provided by Booking.com or other online hotel platforms. In the view of the Bundeskartellamt this cannot be qualified as "free-riding" or as any other type of disloyal behaviour by the accommodation because the platform's search function is not of any use to consumers in this context.
- However, the remaining one third of consumers who booked directly and did not know their accommodation before booking it, did not find the accommodation on an online hotel platform but in most cases on Google[43] or "another website".[44] This confirms once again that there is no significant free-riding on the online hotel platforms' services.

According to the Bundeskartellamt's investigations the narrow price parity clause is thus an excessive measure as it leads to a situation where consumers who do not use Booking.com's services have to pay higher room rates. In the period under review, only in *less than 1%* of all cases surveyed where a consumer found an accommodation for the first time on Booking.com but went on to book via another sales channel, the narrow price parity clause actually served to protect the online hotel platform Booking.com from disloyal behaviour by the accommodation. However, the narrow price parity clause applies to *all* cases where a consumer makes a booking via the hotel's own direct online sales facility.

Furthermore, the investigations have shown that Booking.com is not only the most important online sales channel for first-time bookings but also processes a significant share of the bookings made by consumers who already knew the accommodation.[45]

D. Annex: Findings

The Findings document was prepared for publication from another document which the Bundeskartellamt had used to present its investigation results to the Court.

Where the term (wide/narrow) "best price clause" appears in this document, it is to be understood as (wide/narrow) "price parity clause".

[42] Findings, Table 42.

[43] Findings, Table 45 [31 of 97].

[44] Findings, Table 45 [29 of 97].

[45] Findings, Tables 41 and 42.

Findings of the Bundeskartellamt's investigations on the effects of price parity clauses in the area of online hotel platforms

1 The investigations were triggered by questions of the first instance court in the appeal procedure against the prohibition decision of the Bundeskartellamt. See sections A. and C. for information on the status of the proceeding and an assessment of the results. For further information on this paper, see section D. The questions related to the relationship between Booking.com and its hotel partners, the competitive relationship between the hotel platforms and actual consumer behaviour.

2 The Bundeskartellamt translated the issues covered by the Court's questions into actual questionnaires for the various market players and carried out the corresponding investigations. Additionally, the Bundeskartellamt added further questions to the questionnaires autonomously. This document contains a detailed description of the findings of all of these investigations.

3 The investigations covered the period from 2015 until the summer of 2018. First of all, developments in the nationwide hotel platform market in Germany will be outlined for the years 2013 to 2017 (in the following under 1.). Then the results of the investigations into the relationship between Booking.com and its hotel partners will be outlined (in the following under 2.) as well as the competitive relationship between the hotel platforms (in the following under 3.). There is a Table of Contents at the end of this document.

1. Developments in the Germany-wide hotel platform market in the years between 2013 and 2017

4 One of the issues to be dealt with was whether Booking.com has suffered sales losses due to the abolition of the narrow price parity clause. For this purpose, the corporate groups listed in the following table were asked about their activities on the German online hotel platform market.

Table 1: Overview of the online hotel platform operators surveyed and their respective hotel platforms

Booking
Legal entity: Booking.com
www.booking.com

Expedia
Legal entity: Egencia LLC www.egencia.de
Legal entity: Expedia, Inc. www.expedia.de www.wotif.com
Legal entity: Hotels.com, LP de.hotels.com
Legal entity: Hotwire, Inc. www.hotwire.com
Legal entity: Orbitz Worldwide, LLC www.orbitz.com www.cheaptickets.com www.ebookers.de
Legal entity: Travelscape, LLC www.travelocity.com
HRS
Legal entity: Hotel Reservation Service Robert Ragge GmbH www.hrs.de , www.hrs.com etc.
Legal entity: HOTEL DE GmbH www.hotel.de, www.hotel.info
Legal entity: HRS Destination Solutions GmbH www.holidays.hrs.de
Legal entity: HRS Destination Solutions GmbH www.tiscover.com , www.tiscover.de etc.
LMNext (previously Lastminute)
Legal entity: LMNEXT DE GmbH www.lastminute.de
Legal entity: BRAVONEXT, S.A. www.bravofly.de
COMVEL
Legal entity: COMVEL GmbH www.weg.de www.ferien.de www.restplatzboerse.de
ehotel
Legal entity: ehotel AG www.ehotel.de
Invia Travel op to March 2017 Unister Travel)

Legal entity: Invia Travel
www.hotelreservierungen.de
www.hotels.ab-in-den-urlaub.de
www.hotel.reisen.de
www.booking-now.de
www.hotel.kurz-mal-weg.de

5 In accordance with the Bundeskartellamt's prohibition decision in the "HRS price parity clauses" proceedings of 20 December 2013[1], HRS had removed the price parity clause from its general terms and conditions and in the relevant individual contracts by 1 March 2014 at the latest.[2] At present, Booking.com is no longer using price parity clauses for hotels located in Germany either. Of the major platform operators surveyed, only Expedia continues to use price parity clauses, however Expedia explained to its hotel partners in a separate letter - without changing the wording of its General Terms & Conditions (GTC) - that it would desist from enforcing its price parity clauses for accommodation within the EEA with effect from 1 August 2015 for a period of at least five years, insofar as these clauses affect other online hotel platforms or offline sales and relate to prices, conditions or the availability of rooms. The smaller online hotel platform operators were not asked whether they use price parity clauses because they are not relevant for the market.

6 A review of market developments over the years from 2013 to 2017 shows that neither the abolition of the broad nor narrow price parity clause has had a negative impact on Booking.com's economic development. The market volume of the Germany-wide hotel platform market almost doubled between 2013 and 2017 (representing a growth rate of [80-90]%). Booking.com in particular benefited from this, as did Expedia to a lesser extent. By contrast, the market importance of HRS has declined significantly. The other platform operators surveyed continue to be merely of marginal importance.

7 Booking.com managed to increase turnover and bookings consistently throughout the period 2013 to 2017. Its turnover grew consistently by at least 20% per annum

[1] cf.. Bundeskartellamt, 20 December 2013, B9-66/10 – HRS. Düsseldorf Higher Regional Court dismissed the complaint by HRS with the decision of 9 January 2015 (Düsseldorf Higher Regional Court, 9 January 2015, VI-Kart 1/14 (V) – HRS) and HRS waived the right to appeal.

[2] Düsseldorf Higher Regional Court, 9 January 2015, VI-Kart 1/14 (V) – HRS, margin number 141 ff.

and by [130-140]% in total compared to the years 2013 to 2017. The overall increase in bookings was also just under [130-140]% between 2013 and 2017. As a result, Booking.com significantly increased its market share in the period from 2013 to 2017 by [10-15] percentage points in terms of both turnover and volume to a market share of [60-65]% (both in terms of turnover, taking into account a 5% safety margin[3] on the market volume and in terms of the number of booking made, taking into account a 10% safety margin[4] on the market volume) in 2017.

8 Expedia also managed to almost double its commission revenue in the Germany-wide hotel platform market between 2013 and 2017 (have grown its revenue by [90-100]%). The number of bookings actually increased by [150-160]% during the same period. In relative terms, Expedia nevertheless only managed to slightly increase its market share in the fast-growing Germany-wide hotel platform market between 2013 and 2017 (by [0-5] percentage points based on turnover and by [0-5] percentage points based on volume). In 2017, Expedia had a market share of [10-15]% (based on turnover with a safety margin, see above) or [10-15]% (based on volume with a safety margin, see above).

9 Although the market as a whole is experiencing strong growth, the commission revenues generated by HRS from the brokerage of hotel rooms located in Germany remained virtually unchanged in absolute terms over the entire period. Accordingly, the market share almost halved in the period 2013 to 2017 and in 2017 was still about [15-20]% (based on turnover, with a 5% safety margin) or [15-20]% (based on volume, with a 10% safety margin). HRS says it has increasingly moved away from the classical online hotel platform business model in recent years and has

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3 The Bundeskartellamt is not familiar with any other platform operators that are relevant to the German hotel platform market. A corresponding survey of the accommodations within the framework of the hotel survey (see below) did not provide any evidence of additional competitors that would need to be taken into account in the platform sector either. To cover all eventualities, a safety margin of 5% was nevertheless applied to the turnover-based market volume, which is likely to have been set way too high, given the insignificance of the known smaller platform operators. This means that the market shares of the large platform operators have probably been underestimated in this overview.

4 Since only the three major hotel platform operators but not the smaller ones were asked to provide booking figures, a generous safety margin of 10% (not merely 5%) was applied to the total market volume for the volume-based market volume in order to make up for the lack of volume of the smaller platform operators as well as any other competitors. In view of the insignificance of the known smaller platform operators, this safety margin is probably far too high. This means that the market shares of the major platform operators have probably been underestimated in this overview.

focused on services for business travellers. HRS is focusing on handling all business processes relating to travel management for multinational corporations. According to HRS, more than two-thirds of all overnight stays it brokered in 2017 were attributable to cooperation with international key accounts.

The small platform operators continued to be of marginal importance throughout the period 2013 to 2017 (combined [0 to 5]% market share).

Table 2: Development of commission revenues generated by the three major platform operators active on the German hotel platform market, including the change in percentage year-on-year and a comparison of the years 2013 to 2017

	Booking	Difference to the previous year in %	HRS	Difference to the previous year in %	Expedia	Difference to the previous year in %
Total turnover generated with online sales of hotel rooms (Germany, in € million)						
2013	[…]		[…]		[…]	
2014	[…]	+ [20-30]	[…]	+ [0-10]	[…]	+ [10-20]
2015	[…]	+ [20-30]	[…]	+ [0-10]	[…]	+ [20-30]
2016	[…]	+ [20-30]	[…]	+ [0-10]	[…]	+ [10-20]
2017	[…]	+ [20-30]	[…]	+ [0-10]	[…]	+ [10-20]
2013 to 2017		+ [130-140]		+ [0-10]		+ [90-100]
Total turnover generated with online sales of hotel rooms (Germany, in € million)						
2013	[…]		[…]		[…]	
2014	[…]	+ [20-30]	[…]	+ [0-10]	[…]	+ [10-20]
2015	[…]	+ [20-30]	[…]	+ [0-10]	[…]	+ [20-30]
2016	[…]	+ [20-30]	[…]	+ [0-10]	[…]	+ [10-20]
2017	[…]	+ [20-30]	[…]	+ [0-10]	[…]	+ [10-20]
2013 to 2017		+ [130-140]		+ [0-10]	[…]	+ [90-100]

Table 3: Development of turnover-based market share on the German online hotel platform market in the years 2013 to 2017 (commission revenue with hotel partners)

	Book-ing	HRS	Expedia	LMNext	ehotel	COMVEL	Invia
Figures in %; calculated without a safety margin							
2013	[50-55]	[30-35]	[10-15]	[0-5]	[0-5]	N/A	[0-5]
2014	[55-60]	[25-30]	[10-15]	[0-5]	[0-5]	N/A	[0-5]
2015	[60-65]	[20-25]	[10-15]	[0-5]	[0-5]	N/A	[0-5]
2016	[60-65]	[20-25]	[10-15]	[0-5]	[0-5]	[0-5]	[0-5]
2017	[65-70]	[15-20]	[10-15]	[0-5]	[0-5]	[0-5]	[0-5]
Figures in %; calculated with a safety margin of 5% on the total market volume[5]							
2013	[50-55]	[30-35]	[10-15]	[0-5]	[0-5]	N/A	[0-5]
2014	[55-60]	[25-30]	[10-15]	[0-5]	[0-5]	N/A	[0-5]
2015	[55-60]	[20-25]	[10-15]	[0-5]	[0-5]	N/A	[0-5]
2016	[60-65]	[15-20]	[10-15]	[0-5]	[0-5]	[0-5]	[0-5]
2017	[60-65]	[15-20]	[10-15]	[0-5]	[0-5]	[0-5]	[0-5]

Table 4: Development of the booking volumes/room nights of the three major platform operators[6] on the Germany-wide hotel platform market in the years 2013 to 2017

	Booking.com	**HRS**	**Expedia**
2013	[…]	[…]	[…]
2014	[…]	[…]	[…]
2015	[…]	[…]	[…]
2016	[…]	[…]	[…]
2017	[…]	[…]	[…]
Difference 2013 → 2017 in %	+ [130-140]	+ [10-20]	+ [150-160]

[5] The Bundeskartellamt is not aware of any other platform operators relevant to the German online hotel platform market. A corresponding survey of the accommodations within the framework of the hotel survey (see below) did not provide any evidence of additional competitors that would need to be taken into account in the platform sector either. To cover all eventualities, a safety margin of 5% was nevertheless applied to the turnover-based market volume, which is likely to have been set way too high, given the insignificance of the known smaller operators. This means that the market shares of the major online hotel platform operators have probably been underestimated in this overview.

[6] Investigations carried out in recent years have shown that the small platform operators do not have the relevant figures available or that it would be very difficult to obtain them. Investigations into the booking numbers were therefore limited to the three major platform operators.

Table 5: Development of volume-based market share of the three major operators in the German online hotel platform market for the years 2013 to 2017 (bookings/room nights of the hotel partners)

	Booking.com	HRS	Expedia
Figures in %; calculated without a safety margin			
2013	[50-55]	[35-40]	[5-10]
2014	[50-55]	[35-40]	[10-15]
2015	[50-55]	[30-35]	[10-15]
2016	[65-70]	[20-25]	[10-15]
2017	[70-75]	[15-20]	[10-15]
Figures in %; calculated with a safety margin (10%)[7]			
2013	[45-50]	[35-40]	[5-10]
2014	[45-50]	[30-35]	[5-10]
2015	[45-50]	[30-35]	[10-15]
2016	[60-65]	[20-25]	[5-10]
2017	[60-65]	[15-20]	[10-15]

11 The monthly, i.e. seasonally-adjusted, analysis of market developments over the years 2015 to 2017 (first half of the year) also confirms the impression already gained from the above-mentioned data that neither the restriction to narrow price parity clauses in July 2015 nor the abolition of the narrow price parity clause (which was prohibited by the Bundeskartellamt on 22 December 2015) has had a negative impact on the economic development of Booking.com. Since Expedia corrected its turnover figures for the years 2015 to 2017 at very short notice and was unable to provide an adjusted monthly breakdown of commission revenues at short notice, the figures for the monthly economic development are based on the booking volumes/room nights of the three major platforms. Booking.com generated by far the highest booking volumes and consistently managed to significantly increase the monthly booking volumes both in the EU and in Germany year-on-year.

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[7] Since only the three major online hotel platform operators but not the smaller ones were asked to provide booking figures, a generous safety margin of 10% (not merely 5%) was applied to the total market volume for the volume-based market volume in order to make up for the lack of volume of the smaller operators as well as any other competitors. In view of the insignificance of the known smaller platform operators, this safety margin is probably far too high. This means that the market shares of the major online hotel platform operators have probably been underestimated in this overview.

Table 6: Monthly analysis of the booking volumes of accommodations located in Germany brokered by the three major online hotel platform operators in the years 2015 to 2017 (1st half of the year)

	Booking	Difference to the previous year in %	Expedia	Difference to the previous year in %	HRS	Difference to the previous year in %
Jan 15	[…]		[…]		[…]	
Jan 16	[…]	+ [20-30]	[…]	+ [20-30]	[…]	+ [0-10]
Jan 17	[…]	+ [20-30]	[…]	+ [20-30]	[…]	+ [0-10]
Feb 15	[…]		[…]		[…]	
Feb 16	[…]	+ [20-30]	[…]	+ [30-40]	[…]	+ [0-10]
Feb 17	[…]	+ [20-30]	[…]	+ [20-30]	[…]	+ [0-10]
Mar 15	[…]		[…]		[…]	
Mar 16	[…]	+ [20-30]	[…]	+ [0-10]	[…]	+ [0-10]
Mar 17	[…]	+ [10-20]	[…]	+ [40-50]	[…]	+ [0-10]
Apr 15	[…]		[…]		[…]	
Apr 16	[…]	+ [10-20]	[…]	+ [30-40]	[…]	+ [10-20]
Apr 17	[…]	+ [30-40]	[…]	+ [20-30]	[…]	+ [20-30]
May 15	[…]		[…]		[…]	
May 16	[…]	+ [20-30]	[…]	+ [30-40]	[…]	+ [0-10]
May 17	[…]	+ [10-20]	[…]	+ [20-30]	[…]	+ [0-10]
Jun 15	[…]		[…]		[…]	
Jun 16	[…]	+ [10-20]	[…]	+ [0-10]	[…]	+ [0-10]
Jun 17	[…]	+ [30-40]	[…]	+ [20-30]	[…]	+ [10-20]
Jul 15	[…]		[…]		[…]	
Jul 16	[…]	+ [30-40]	[…]	+ [0-10]	[…]	+ [0-10]
Aug 15	[…]		[…]		[…]	
Aug 16	[…]	+ [10-20]	[…]	+ [0-10]	[…]	+ [0-10]
Sep 15	[…]		[…]		[…]	
Sep 16	[…]	+ [30-40]	[…]	+ [30-40]	[…]	+ [0-10]
Oct 15	[…]		[…]		[…]	
Oct 16	[…]	+ [30-40]	[…]	+ [60-70]	[…]	+ [0-10]
Nov 15	[…]		[…]		[…]	
Nov 16	[…]	+ [20-30]	[…]	+ [30-40]	[…]	+ [0-10]
Dec 15	[…]		[…]		[…]	
Dec 16	[…]	+ [30-40]	[…]	+ [0-10]	[…]	+ [0-10]

Table 7: Monthly analysis of the booking volumes of accommodations located in the EU brokered by the three major online hotel platform operators between 2015 and 2017 (1st half of the year)

	Booking.com	**Difference to previous year in %**	**Expedia**	**Difference to previous year in %**	**HRS**	**Difference to previous year in %**
Jan 15	[…]		[…]		[…]	
Jan 16	[…]	+ [20-30]	[…]	+ [40-50]	[…]	+ [0-10]
Jan 17	[…]	+ [20-30]	[…]	+ [20-30]	[…]	+ [0-10]
Feb 15	[…]		[…]		[…]	
Feb 16	[…]	+ [30-40]	[…]	+ [40-50]	[…]	+ [10-20]
Feb 17	[…]	+ [20-30]	[…]	+ [20-30]	[…]	+ [0-10]
Mar 15	[…]		[…]		[…]	
Mar 16	[…]	+ [30-40]	[…]	+ [30-40]	[…]	+ [0-10]
Mar 17	[…]	+ [10-20]	[…]	+ [20-30]	[…]	+ [0-10]
Apr 15	[…]		[…]		[…]	
Apr 16	[…]	+ [10-20]	[…]	+ [20-30]	[…]	+ [10-20]
Apr 17	[…]	+ [40-50]	[…]	+ [10-20]	[…]	+ [10-20]
May 15	[…]		[…]		[…]	
May 16	[…]	+ [10-20]	[…]	+ [20-30]	[…]	+ [0-10]
May 17	[…]	+ [10-20]	[…]	+ [20-30]	[…]	+ [0-10]
Jun 15	[…]		[…]		[…]	
Jun 16	[…]	+ [10-20]	[…]	+ [20-30]	[…]	+ [0-10]
Jun 17	[…]	+ [20-30]	[…]	+ [10-20]	[…]	+ [10-20]
Jul 15	[…]		[…]		[…]	
Jul 16	[…]	+ [20-30]	[…]	+ [20-30]	[…]	+ [0-10]
Aug 15	[…]		[…]		[…]	
Aug 16	[…]	+ [10-20]	[…]	+ [30-40]	[…]	+ [0-10]
Sep 15	[…]		[…]		[…]	
Sep 16	[…]	+ [20-30]	[…]	+ [40-50]	[…]	+ [0-10]
Oct 15	[…]		[…]		[…]	
Oct 16	[…]	+ [20-30]	[…]	+ [40-50]	[…]	+ [0-10]
Nov 15	[…]		[…]		[…]	
Nov 16	[…]	+ [20-30]	[…]	+ [40-50]	[…]	+ [0-10]
Dec 15	[…]		[…]		[…]	
Dec 16	[…]	+ [30-40]	[…]	+ [40-50]	[…]	+ [0-10]

12 A comparison of the growth rates shows that in some months, the increase in Germany exceeds the EU-wide growth rates. In view of the fact that Booking.com does not apply the price parity clause consistently in European countries and is not allowed to do so everywhere[8], the validity of this comparison is limited. Notwithstanding this, the figures are at least a further indication that the price parity clause is not indispensable and is not of crucial importance for increasing booking volumes.

Table 8: Comparison of the increase rates in Booking.com's booking volumes in the EU and Germany

	Difference to the previous year / rate of increase EU	**Difference to the previous year / rate of increase Germany**
Jan 15		
Jan 16	+ [20-30]	+ [20-30]
Jan 17	+ [20-30]	+ [20-30]
Feb 15		
Feb 16	+ [30-40]	+ [20-30]
Feb 17	+ [20-30]	+ [20-30]
Mar 15		
Mar 16	+ [30-40]	+ [30-40]
Mar 17	+ [10-20]	+ [10-20]
Apr 15		
Apr 16	+ [10-20]	+ [10-20]
Apr 17	+ [40-50]	+ [30-40]
May 15		
May 16	+ [10-20]	+ [20-30]
May 17	+ [10-20]	+ [10-20]
June 15		
June 16	+ [10-20]	+ [10-20]
June 17	+ [20-30]	+ [30-40]
Jul 15		
Jul 16	+ [20-30]	+ [30-40]
Aug 15		
Aug 16	+ [10-20]	+ [10-20]

8 Besides Germany, price parity clauses are also prohibited in France (law adopted in the summer of 2015), Austria (law adopted in 2017), Italy (law adopted in 2018) and Belgium (Act decision adopted in July 2018).

Sep 15		
Sep 16	+ [20-30]	+ [30-40]
Oct 15		
Oct 16	+ [20-30]	+ [30-40]
Nov 15		
Nov 16	+ [20-30]	+ [20-30]
Dec 15		
Dec 16	+ [30-40]	+ [30-40]

13 The development in the number of employees shows clear differences between the online hotel platform operators. Unlike HRS and Expedia, Booking.com has significantly increased its number of employees throughout Europe, including in Germany. Incidentally, the following table also shows that the three major hotel platform operators do not rely on a single European sales office, but continue to have national presences and different national focal points of activity.

Table 9: Number of employees at Booking.com, HRS and Expedia for the online distribution of hotel rooms

	Booking.com[9]		**HRS**		**Expedia**	
	2015	30/06/2017	2015	30/06/2017	2015	30/06/2017
World	5,000-10,000	10,000	1,000-5,000	1,000-5,000	5,000-10,000	5,000-10,000
EU	1,000-5,000	1,000-5,000	1,000-5,000	500-1,000	1,000-5,000	1,000-5,000
D	0-500	1,000-5,000	500-1,000	500-1,000	0-500	0-500
EU-MS-2	+ [1,000-5,000]	+ [1,000-5,000]	+ [0-500]	+ [0-500]	+ [500-1,000]	+ [1,000-5,000]
EU-MS-3	+ [0-500]	+ [1,000-5,000]	+ [0-500]	+ [0-500]	+ [500-1,000]	+ [500-1,000]

14 An analysis of the key figures of the contracts concluded between the major hotel booking platforms and their hotel partners also shows that Booking.com managed to develop its market position even without the price parity clause. Between 2015 and 30 June 2017 alone, Booking.com almost doubled its number of hotel partners and hotel locations in Germany.

[9] Full-time equivalents.

Table 10: Number of hotel partners/contracting partners of the three major online hotel platforms in Germany

	Booking.com	HRS	Expedia
2012	N/A	10,000-20,000	0-10,000
2013	N/A	10,000-20,000	0-10,000
2014	N/A	10,000-20,000	0-10,000
2015	20,000-30,000	10,000-20,000	0-10,000
2017 (30/06/2017)	40,000-50,000	10,000-20,000	0-10,000

Table 11: Number of hotel locations in Germany for which the respective hotel platform sells rooms

	Booking.com	HRS	Expedia
2012	10,000-20,000	10,000-20,000	0-10,000
2013	20,000-30,000	10,000-20,000	0-10,000
2014	20,000-30,000	10,000-20,000	0-10,000
2015	30,000-40,000	10,000-20,000	0-10,000
2017 (30.06.2017)	60,000-70,000	20,000-30,000	0-10,000

15 Booking.com and Expedia above all greatly expanded their expenditure in the area of online advertising and search engine advertising particularly between 2012 and 2017[10]: Booking.com by [300-400]% (online advertising) and [200-300]% (search engine advertising), Expedia by [400-500]% (online advertising) and [400-500]% (search engine advertising). HRS's expenditure for online advertising, on the other hand, increased only slightly by [0-to 100]% over the same period, while expenditure for search engine advertising actually fell by [0 to 100]%.

16 Measured against the respective total global external turnover, Booking.com's advertising expenditure has accounted for more than one-third every year since 2015, and has accounted mostly for been [20 to 30]% in recent years at HRS and Expedia (see table on the next page).

[10] The figures for the year 2017 were extrapolated/doubled as respondents were only asked to provide the expenditure for the first half of 2017.

Table 12: Total online advertising expenditure of the three major platform operators active in Germany (worldwide, in € million)

	Booking	Difference to previous year (%)	HRS	Difference to previous year (%)	Expedia	Difference to previous year (%)
2012	[…]		[…]		[…]	
2013	[…]	+ [40-50]	[…]	+ [0-10]	[…]	+ [20-30]
2014	[…]	+ [30-40]	[…]	+ [0-10]	[…]	+ [20-30]
2015	[…]	+ [40-50]	[…]	+ [0-10]	[…]	+ [60-70]
2016	[…]	+ [30-40]	[…]	+ [0-10]	[…]	+ [30-40]
2017[11]	[…]	+ [20-30]	[…]	+ [0-10]	[…]	+ [30-40]
2012 → 2017		+ [300-400]		+ [0-10]		+ [400-500]

Table 13: Expenditure for search engine advertising of the three major online hotel platform operators active in Germany (worldwide, in € million)

	Booking	Difference to previous year in %	HRS	Difference to previous year (%)	Expedia	Difference to previous year (%)
2012	[…]		[…]		[…]	
2013	[…]	+ [30-40]	[…]	+ [0-10]	[…]	+ [40-50]
2014	[…]	+ [30-40]	[…]	+ [0-10]	[…]	+ [20-30]
2015	[…]	+ [30-40]	[…]	+ [10-20]	[…]	+ [50-60]
2016	[…]	+ [20-30]	[…]	+ [10-20]	[…]	+ [40-50]
2017[12]	[…]	+ [20-30]	[…]	+ [10-20]	[…]	+ [30-40]
2012 → 2017		+ [200-300]		+ [30-40]		+ [400-500]

[11] Estimate - figures doubled for the first half of 2017

[12] Estimate - figures doubled for the first half of 2017

Table 14: Offline advertising expenditure of the three largest online hotel platform operators active in Germany (German, in € million)

	Booking	Difference to previous year (%)	HRS	Difference to previous year (%)	Expedia	Difference to previous year (%)
2013	[…]		[…]		[…]	
2014	[…]		[…]	+ [20-30]	[…]	+ [30-40]
2015	[…]	+ [30-40]	[…]	+ [0-10]	[…]	+ [20-30]
2016	[…]	+ [0-10]	[…]	+ [0-10]	[…]	+ [0-10]
2017[13]	[…]	+ [40-50]	[…]	+ [80-90]	[…]	+ [20-30]

Table 15: Share of total expenditure (in %) for online advertising in the total external turnovers of the three major online hotel platform operators active in Germany for the years 2013 to 2017 - in each case worldwide

	Booking.com	HRS	Expedia
2013	[30-40]	[20-30]	[20-30]
2014	[30-40]	[20-30]	[10-20]
2015	[30-40]	[20-30]	[20-30]
2016	[30-40]	[20-30]	[20-30]
2017[14]	[30-40]	[10-20]	[20-30]

17 Against the backdrop of the investigation results, it is not apparent in summary that Booking.com's turnover and market position on the German hotel platform market were adversely affected by the removal of the broad price parity clause or the prohibition of the narrow price parity clause. On the contrary, Booking.com has always managed to increase turnover, booking figures and the number of contracting partners in recent years. Booking.com has by far the highest market coverage of hotels located in Germany. This economic success is also mirrored by the fact that it has greatly increased its number of employees In addition, Booking.com obviously continues to have considerable financial opportunities in the online advertising sector.

2. Relationship between Booking.com and its hotel partners

18 In the following, the questions regarding the relationship between Booking.com and its hotel partners will be answered. The results of the investigation from the hotel

[13] Estimate - figures doubled for the first half of 2017

[14] Estimate - figures doubled for the first half of 2017

survey carried out in the middle of the year 2018 will be used as the basis for this (under b. in the following). But first of all, the structure of the hotel survey data record will be explained (under a. in the following).

a. Descriptive statistics about the accommodations in the data record

19 The database used contains the responses of 279 accommodations. These accommodations were previously selected by drawing a random sample out of the lists of customers of the three online hotel platforms Booking.com, Expedia and HRS. 26 (around 9%) of these respondents said they belonged to a hotel chain. 245 respondents (about 88%) said they did not belong to a hotel chain, eight respondents (about 3%) said they did not know whether or not they belonged to a hotel chain. The survey included members of major hotel chains.

20 The accommodations that said they belonged to a hotel chain were also asked how they were integrated into the hotel chain. Ten of the hotels indicated that they were a branch and were controlled by head office. Six respondents said they belonged to a franchise system[15]. Eight accommodations reported that joint distribution via hotel platforms was based on a joint contract covering several locations. Three accommodations provided information on other types of cooperation.

21 The accommodations surveyed also provided information on their DEHOGA[16] classification ("stars"), although a significant proportion of respondents did not have any DEHOGA classification. Nevertheless, all DEHOGA star categories are represented in this data record.

Table 16: DEHOGA classification of accommodations

DEHOGA classification	Number of accommodations	Percentage (rounded)
1 star	2	1%
2 stars	12	4%
3 stars	77	28%
4 stars	34	12%
5 stars	2	1%

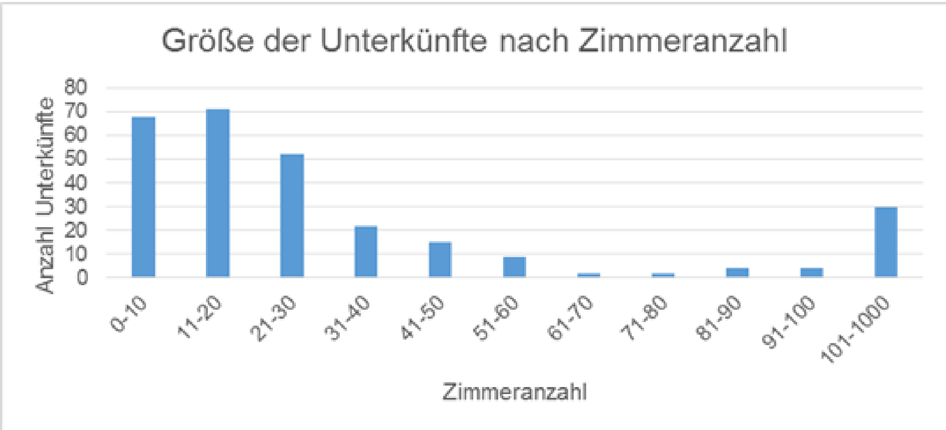
[15] This included one accommodation that had previously said that it did not know whether or not it belonged to a hotel chain.

[16] Abbreviation for the German Hotel and Restaurant Association (Deutscher Hotel- und Gaststättenverband).

No DEHOGA classification / 0 stars	152	54%
Sum total	**279**	**100%**

22 The data record also contains information about the size of the accommodations. The average number of the accommodations' rooms is 40, the median[17] being just 21 rooms. This means that 50% of the accommodations have a maximum of 21 rooms and are therefore relatively small, while some other accommodations have a very large number of rooms. The highest number of rooms indicated was 389. The distribution of accommodation according to the number of rooms is shown in the following diagram:

Table 17: Distribution of accommodations in the data record by the number of rooms



23 The distribution of room sizes was also examined for the random sampling on basis of the customer lists of the three major online hotel platforms. Accommodations with less than 20 rooms were categorised as "small", all others were categorised as "large". In the original sample, as with the population as a whole, the first category accounted for (about) 54% and the second for 46%. In this data record, however, the hotels are distributed among the two categories as follows: 130 accommodations (47%) had less than 20 rooms, 149 (53%) had 20 rooms or more.

24 These minor deviations from the overall population can be explained, among other things, by the fact that the data of the customer lists provided by the hotel platforms were of poor quality in some cases. They also included accommodations that can no longer be booked on the respective online booking platforms. This can also be

[17] The median divides the data record into two (equal) halves in such a way that the values in one half are not greater than the median value and are not smaller in the other half.

seen from the difference between some key figures in the original sample and the answers that could ultimately be used. In addition, there are some discrepancies in the information provided by the accommodations on their use of online hotel platforms. Some of the accommodations surveyed said that at the time of the survey they were not using any online hotel platforms at all. This is contradicted by the fact that they were included in the sample in the first place through the customer lists provided by the online hotel platforms. It is possible, however, that these accommodations used online hotel platforms in the past, but have since ceased doing so.[18]

25 In view of the size of the customer lists, some of which contain more than 61,000 entries, it is not surprising that some data are incorrect. The data deficiencies in the customer lists described here do not pose a problem for the evaluation results either, because they are unlikely to have led to any systematic distortion of the sampling. In addition, the following evaluation is based exclusively on the information provided by the accommodations surveyed and not on the data from the customer lists provided by the online hotel platforms, so that any data deficiencies in the lists do not affect the figures given here.

26 The accommodations included in the data record said they had 12,331 overnight stays on average in 2017. Here, too, the median of 4,473 overnight stays is significantly lower. The maximum here is around 200,000 overnight stays. A similar distribution can be observed in the overnight turnovers generated in 2017. The average turnover per accommodation is €763,549, the median is €239,945, and turnover ranges between €1,069 and €21,693,098[19]. These figures also highlight that the majority of accommodations in the data record are smaller accommodations and only a few very large hotels raise the averages significantly.

27 The 30 accommodations which have more than 100 rooms account for more than 56% of the total turnover generated by all accommodations with overnight stays in the data record. The 140 accommodations with a maximum of 21 rooms account for only 9% of turnover. Based on this turnover distribution, alternative considerations for accommodations with a maximum of 21 rooms (i.e. the median value, see

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[18] Due to the way in which the questionnaire used is designed, it is not evident how many of the accommodations that said they were not using online hotel platforms may have done so in the past. Only accommodations that currently use online hotel platforms were asked if they used them in the past.

[19] One accommodation did not provide any information about turnover generated in 2017.

above paragraph 22) and for accommodations with more than 100 rooms are described below in a number of places. This approach is intended to take into account the potential differences in the information provided by very large and very small accommodations. When evaluating these data, it should also be taken into account that the few large accommodations in the data record are much more important in terms of turnover than the smaller accommodations with a maximum of 21 rooms.

28 Only 21 of the accommodations surveyed (8%) have their own customer loyalty programme within the meaning of "closed user groups". These - typically very large - accommodations have an average of 58,275 overnight stays, which is multiple times the median of 4,473 overnight stays. In total, they account for 43% of turnover generated with overnight stays in the entire data record. These 21 accommodations were also asked how many overnight stays customer loyalty programmes accounted for in 2017. The corresponding average value is 49,800 overnight stays. However, some of these figures do not appear to be plausible because the number of nights via the customer loyalty programme indicated is higher than or equal to the total number of overnight stays at the accommodation. If these three figures are disregarded, the average value is reduced to 8,160 overnight stays. This corresponds to around 14% of the total number of overnight stays at these accommodations.

b. Parity rates and conditions

29 A further topic of the investigations was the extent to which the hotel partners currently grant Booking.com parity rates and conditions in their own online distribution channels, although they are not obliged to do so, and if so, the reasons behind this decision.

aa. Accommodations' use of online distribution channels

30 In the following, it will be outlined how accommodations use hotel platforms in general (see (1)) and Booking.com in particular (see (2)) and how significant the platforms are in the accommodations' sales mix. It was also determined what proportion of accommodations have an online real-time booking facility on the hotel's own website and to what extent these accommodations use meta search engines (see (3)). Finally, it is outlined how important the hotels' own online direct distribution channels are, according to the results of the investigations, in the sales mix of the accommodations now and in the future, to what extent the size of the accommodations and the degree of occupancy by regular customers plays a role and which

percentage of the accommodations are currently relying on their own online distribution as their primary distribution channel or will do so in the near future (for more information see (4)).

(1) Use of online hotel platforms in general

31 As part of the hotel survey, the accommodations surveyed indicated what online hotel platforms they were listed on at the time of the survey. The data record also includes a few accommodations that stated they were not using any online hotel platforms at the time of the survey.[20] All in all, 260 accommodations provided information on the online hotel platforms they are using. The following evaluations are based on this information.

32 It shows that most accommodations (almost four-fifths) were bookable on one to three online hotel platforms at the time of the survey.[21] A differentiated analysis of the size of accommodations shows that smaller accommodations tend to use fewer online hotel platforms than large accommodations. Three-quarters of the accommodations with a maximum of 21 rooms use one or two platforms. None of these smaller accommodations use more than four online hotel platforms simultaneously. Particularly large accommodations with more than 100 rooms tend to use even more online hotel platforms. Half of these accommodations use three of four platforms and quite a few of them use more than four.

[20] This is contradicted by the fact that they were included in the sample in the first place through the customer lists provided by the online hotel platforms. It is possible, however, that these accommodations used online hotel platforms in the past, but have since stopped doing so. Due to the way in which the questionnaire used is designed, it is not evident how many of the accommodations that said they were not using online hotel platforms may have done so in the past. Only accommodations that currently use online hotel platforms were asked if they had used them in the past.

[21] A total of 256 of the accommodations surveyed stated that they had concluded an independent contract with an online hotel platform. 23 accommodations said they had not concluded a contract with an online hotel plat-form, yet a total of ten of these accommodations stated that they were bookable via online hotel platforms - even though they did not belong to a hotel chain. Since it seems more likely that these 10 accommodations did not understand what an “independent” contract means than that they mistakenly said that they were bookable through an online hotel platform, the information provided by these accommodations was also taken into account.

Table 18: Use of online hotel platforms by the accommodations surveyed[22]

Number of platforms used	All accommodations		Accommodations (max. 21 rooms)		Accommodations (max. 100 rooms)	
	Number	in %	Number	in %	Number	in %
1	54	21%	42	33%	0	0%
2	98	38%	54	42%	5	17%
3	56	20%	26	20%	8	27%
4	34	13%	6	5%	7	23%
5	8	3%	0	0%	4	13%
6	8	3%	0	0%	5	17%
7	1	0%	0	0%	0	0%
8	1	0%	0	0%	1	3%
Sum total	**260**	**100%**	**128**	**100%**	**30**	**100%**

33 All in all, 260 accommodations participating in the survey use online hotel platforms in the first place. As far as the distribution among the individual online hotel platforms is concerned, almost all accommodations use Booking.com. HRS and Expedia follow by a wide margin. Other online hotel platforms are used only occasionally.

Table 19: Use of the individual online hotel platforms (multiple answers possible)

Name of the hotel platform	Number of accommodations
Booking.com	248
HRS: *hrs.de, hrs.com, hotel.de, hotel.info, holidays.hrs.de*	191
Expedia: *expedia.de, expedia.com, egencia.de, hotels.com, hotwire.com, orbitz.com, cheaptickets.com, ebookers.de, travelocity.com, wotif.com*	98

[22] In some cases, the "other" online hotel platforms mentioned do not offer a booking facility, but merely redirect customers to hotel booking platforms or the accommodation website, or simply list the e-mail addresses of accommodations. Overall, the seven most common online hotel booking platforms (including different brands from the same group such as hotel.de at HRS) were given to the respondents as possible answers, to which they could add “other online hotel platforms", whereby the "other online hotel platforms" were to be named in each case (free text). A total of 70 accommodations said they were using “'other online hotel platforms”, only a few of which said they were using several “other” online hotel platforms. However, the figures in the table overestimate the number of online hotel platforms actually used. Only very rarely did the accommodations actually name online hotel platforms which qualify as such within the product market definition.

lastminute/COMVEL: *lastminute.de, last-minute.com, weg.de, ferien.de*	15
ehotel	18
unister / invia: *fluege.de, ab-in-den-urlaub.de, hotelreservierung.de*	14
7Travel: *ferien.de, tropo.de, reise.com*	3
Other platforms	70

34 Only two online hotel platforms that corresponded to the Bundeskartellamt's substantive market definition[23] already confirmed as correct by the Court's decision on HRS[24] were ultimately mentioned in the free text field "other platforms" and which did not belong to the Booking.com, Expedia or HRS groups, namely "ctrip"[25] (named once) and "Ostrovok"[26] (also named once).

35 All the other contractual partners named under "other platforms" do not meet the criteria for online hotel platforms. This applies, for instance to the tour operator "Kurzurlaub.de" (mentioned eleven times in total), Hostelworld and Hostelsclub (mentioned six times in total), which specialise in the brokerage of hostels, and some regional brokerage platforms such as "Ostbayern-Tourismus", which each received less than five mentions. The online hotel platform Agoda, which belongs to the Booking group, was also mentioned (eight times in total).

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[23] In some cases, the "other" online hotel booking platforms mentioned do not offer a booking facility, but merely redirect customers to hotel booking platforms or the accommodation website, or simply list the e-mail addresses of accommodations. However, most of the platforms are specialised platforms (e.g. city platforms, online travel agencies or tour operator platforms) which could not be included in the product market because they did not provide a brokerage service subject to payment in relation to the accommodations. In addition, online travel agencies and tour operator platforms target different customer groups than online hotel platforms, as they are aimed primarily at holidaymakers and not at people who only want to book a hotel room; the range of tour operator platforms is geared towards individual tours and group package tours. Düsseldorf Higher Regional Court, 9 January 2015, VI-Kart 1/14 (V) – HRS, paragraph 56 (juris).

[24] Düsseldorf Higher Regional Court, 9 January 2015, VI-Kart 1/14 (V) – HRS, paragraph 25 ff. (juris).

[25] There is a close partnership between ctrip and Booking.com: cf. https://news.booking.com/ctrip-and-booking-com-forge-global-travel-partnership/ .

[26] Ostrovok is a hotel booking platform that is aimed primarily at Russian consumers/travellers: https://www.prnewswire.com/news-releases/ostrovok-russias-fastest-growing-online-travel-company-secures-136-million-in-funding-125408323.html

36 The following table shows the distribution of accommodation among the three largest online hotel platforms. This shows that there is no accommodation among the respondents that uses an online hotel platform that is not one of the top 3 platforms.[27]

Table 20: Use of Booking.com, Expedia and HRS

Use of online hotel platforms	Number of accommodations	Share distribution	
Only Booking	60	23%	27%
Only HRS	10	4%	
Only Expedia	0	0%	
Only Booking + Expedia	9	3%	40%
Only Expedia + HRS	2	1%	
Only Booking + HRS	92	35%	
Booking + HRS + Expedia	87	33%	33%
Sum total	**260**	**100%**	**100%**

37 As the table illustrates, a total of approx. 95% of accommodations are listed on Booking.com, approx. 73% on HRS and approx. 38% on Expedia. 27% of the accommodations use only one of the top 3 platforms, 40% use two and 33% use all three online hotel booking platforms.

38 These figures mean there are certain deviations from the distribution in the sample, which, however, do not affect the validity of the survey results. According to the information available at the time of sampling, 83.4% of the accommodations were listed on Booking.com, 56.1% on HRS and 23.8% on Expedia. The extent of "multi-homing" (identified) was originally significantly lower than indicated by the figures shown above. In principle, there could be several reasons for this. Firstly, accommodations may have concluded brokerage contracts with other online hotel platforms between the cut-off date of the respective customer list and the cut-off date of the survey. It is also possible that despite careful comparison of customer lists not all matches were found, for instance if the spelling of the names of the accommodations differed too much.

27 This observation is mainly due to the fact that only the customer lists provided by these three platforms were used for sampling purposes.

39 Finally, not all the accommodations originally surveyed also responded to the questionnaire.[28] As pointed out in the first part of the written pleading, it was not possible to obtain answers from some of the accommodations originally surveyed for instance because they may have ceased operating. This applied more frequently to smaller accommodations which, as indicated above, tend to use fewer online hotel platforms.

40 The present data record shows a high level of "multi-homing" among the accommodations with regard to the three leading online hotel platforms, more so than in the population established for the random sampling. At the same time, however, it is worth noting that the accommodations in the data record primarily use Booking.com and then, if applicable, also the other two large online hotel platforms. When they use other online hotel platforms, there is a clear ranking with HRS as the second most frequent and Expedia as the third most frequent alternative.

41 56 out of the 260 accommodations [29] (21.5%) stated that, in addition to the online hotel platforms on which they are currently featured, they intend to use other online hotel platforms in the near future. Respondents were able to give multiple answers to the following question about their reasons. Specifically, with 45 mentions, the largest number of accommodations said they thought they could increase their turnover by using additional platforms. 31 and 24 respondents said they thought they could enhance their visibility on the Internet or could make it easier for customers to find them by using additional platforms.[30] 28 accommodations said that their competitors were also using several online hotel platforms and they therefore wanted to increase the number of platforms they used. A total of 21 respondents said they had gained positive experience selling rooms via online hotel platforms. 17 respondents said that the prohibition and removal of price parity clauses had made having a presence on additional online hotel platforms more attractive. Eight

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[28] The original sample encompassed 319 accommodations, but ultimately it was only possible to use the answers of 279 accommodations.

[29] This question was only displayed to accommodations that had previously indicated they were selling via online hotel platforms.

[30] 31 accommodations selected the response option: "Having a presence on additional online hotel platforms increases visibility on the Internet (e.g. with hotel meta search engines or Google)"; 24 accommodations selected the answer option "Without a presence on other online hotel platforms, the hotel is not easy enough for customers to find".

accommodations mentioned other reasons for their intention to use additional online hotel platforms.

42 38 out of 260 accommodations[31] (14.6%) indicated that it had been possible to book the hotel via additional online hotel platforms in the past. The terminations of contractual relationships affected HRS in particular (twelve mentions), unister/invia (nine mentions), Expedia and ehotel (five mentions respectively). Only two hotels said it used to be possible to book them via Booking.com (but that this it is no longer possible now). The majority of contracts were terminated by the accommodations (27 mentions); only two accommodations indicated that the contractual relationship had been terminated by the online hotel platform. The main reasons cited for termination were insufficient booking volumes (13 responses; multiple responses to this question were possible) and the level of commissions paid (eleven responses). Price parity clauses, which were perceived as too restrictive, were only cited in seven cases as a reason for termination by the accommodations.

43 Based on the above-mentioned survey results, there is no evidence to suggest that online hotel platforms will play a lesser role in the sales mix of accommodations in the future. The number of accommodations that intend to have a presence on other online hotel platforms in the future exceeds the number of accommodations that had a presence on other online hotel platforms in the past. As far as Booking.com in particular is concerned, there has been very little evidence of migration by accommodations at least in the past (two cases in the present sample).

44 The accommodations were also asked whether they had concluded a contract with the online hotel platforms based on general terms and conditions (GTC) or had negotiated individual contracts. The vast majority of accommodations concluded contracts based on GTC. This applies in particular to the three major online hotel platforms.

[31] This question was only displayed to accommodations that had previously indicated they were selling via online hotel platforms.

Table 21: Number of contracts based on GTC and number of individual contracts

	All accommodations		Chain hotels	
	GTC	**Individual contract**	**GTC**	**Individual contract**
Booking	225	23	14	12
HRS	174	17	15	10
Expedia	77	21	7	13
Lastminute	9	6	4	4
ehotel	14	4	4	3
unister / invia	12	2	4	1
7Travel	1	2	0	1
Sum total	**512**	**75**	**48**	**44**

45 Individually negotiated contracts are disproportionately common in accommodations belonging to a hotel chain. 44 out of a total of 75 individual contracts concluded by all hotels surveyed, i.e. just under 59%, were concluded by hotel chains. Individual contracts are much less common among independent accommodations,

(2) Use of Booking.com

46 The accommodations that have a contractual relationship with Booking.com were asked how important Booking.com is for their sales activities. Almost two-thirds of these accommodations said that their presence on Booking.com was virtually indispensable in economic terms. All in all, well over 90% of the accommodations stated that Booking.com is either indispensable or at least important for their own sales activities. Only a few accommodations see this differently. Nearly all small accommodations with a maximum of 21 rooms attach very high importance to sales via Booking.com. Yet the vast majority of very large accommodations with more than 100 rooms also indicate that selling through Booking.com is virtually indispensable from an economic point of view. The corresponding percentage is actually significantly higher than the percentage for all or small accommodations.

Table 22: Relevance of Booking.com for accommodations

Presence on Booking.com	All accommoda-tions		Accommoda-tions ≤ 21 rooms		Accommoda-tions ≤ 100 rooms	
	Num-ber	Per-centag e	Num-ber	Per-centag e	Num-ber	Per-centa ge
Is virtually indispensable in economic terms for the my hotel room sales	160	64.5%	77	63.1%	25	83.3%
Is important for my hotel but we could also manage with-out it	73	29.4%	38	31.1%	4	13.3%
Has no tangible effect on bookings	12	4.8%	7	5.7%	1	3.3%
Is an economic disad-vantage for my hotel	3	1.2%	0	0%	0	0%
Sum total	**248**	**100%**	**122**	**100%**	**30**	**100%**

47 In total, 45 out of 248 accommodations surveyed used to be or still are “Preferred Partners” of Booking.com (18%). This applies in particular to large accommodations and members of hotel chains. Twelve out of 30 accommodations that have more than 100 rooms either used to be or still are “Preferred Partners” of Booking.com (40%), the same applies to eleven out of 26 chain accommodations (42%). By contrast, smaller accommodations that have a maximum of 21 rooms are or used to be “Preferred Partners” comparatively rarely (12 out of 122 or 10%). In the context of the platform survey, Booking.com indicated that hotel partners with “Preferred Partner” status accounted for just over 50% of its commission revenue. “Preferred Partners” therefore account for a significant share of Booking.com's turnover.

48 The 248 of the accommodations surveyed that have a contractual relationship with Booking.com were also asked to indicate whether and, if applicable, what measures they would take to increase their visibility on Booking.com's website (multiple responses possible). The following table summarises the responses given.

Table 23: Measures aimed at enhancing the hotel's ranking on Booking.com

Measures aimed at enhancing visibility on Booking.com	
	Number
We try to obtain as many good customer reviews on Booking.com as possible.	159
We adapt our price-setting behaviour (by reducing room prices or improving conditions on Booking.com or in general)	57
We are willing, at least occasionally, to pay Booking.com higher commission than the standard commission.	42
We try to reduce the frequency of cancellations via Booking.com.	40
We try to avoid declining sales via Booking.com.	24
We avoid charging lower hotel room prices and/or offering more favourable conditions on our own online distribution channel compared to sales via Booking.com.	10
Other measures	25
No measures	40

49 The vast majority of the 248 Booking.com accommodations surveyed therefore take such measures. 57 accommodations (23%) reported using two measures, 33 accommodations (13%) said they used three or even more measures. This can be seen as an indication that the majority of accommodations listed on Booking.com attach great importance to ranking on Booking.com.

50 The most frequently mentioned response (159) was "to get as many good customer reviews as possible on Booking.com". A total of 85 accommodations (approx. 34%) stated that they were taking measures relevant for price or sales in a bid to increase visibility on Booking.com, for instance by offering lower room prices or more favourable conditions, by at least occasionally paying higher commissions or avoiding more favourable prices or conditions in their own online sales channels. Another 40 accommodations (16%) said that they were trying to reduce the frequency of cancellations. 24 accommodations (just under 10%) said they were trying to avoid declining sales on Booking.com.

51 In the free text section "other measures" (25 mentions in total, i.e. 10%), the accommodations primarily mentioned measures that can be summed up under the generic term of updating the content of their presence on Booking.com and the frequent updating of their presence. A total of 14 accommodations (just under 6%) provided information in this respect. The main measure here is to regularly update the images used to promote the accommodation on Booking.com. In four other

cases, accommodations made comments which can be summed up under the heading of special price offers such as temporary special offers.

52 40 accommodations (16%) stated that they were not taking any measures to improve their rankings on Booking.com. It emerges from the reasons indicated in the corresponding free text field that the majority of these accommodations (27 accommodations) simply see no need for this, since Booking.com is of no real importance in their sales mix and they manage to achieve a high room occupancy rate without Booking.com. Five other accommodations stated that they had just a few competitors in their region and therefore did not need to influence the ranking on Booking.com. A further three accommodations said they thought paying for a better ranking would be unfair and intransparent vis-à-vis customers.

(3) Use of direct online sales and meta search engines

53 Out of the total of 279 accommodations in the data record, 272 accommodations have their own website, of which 167 (59.9%) also have an online real-time booking facility. Out of the 248 accommodation surveyed that use Booking.com, 152 (61.3%) have an online real-time booking facility, while six (2.4%) do not have their own website.

54 Very large accommodations with more than 100 rooms nearly always have an online real-time booking facility (28 out of 30 accommodations - 93.3%). All of these 30 accommodations (also) have their own website. Smaller accommodations with a maximum of 21 rooms are less likely to have their own online real-time booking facility. However, this is not uncommon in the case of smaller accommodations either, as 57 of the smaller accommodations surveyed have an online real-time booking facility (40.7%).

55 Accommodations that do not have an online real-time booking facility on their own website (112 in total) were asked why they do not offer one (multiple answers possible). The most frequently cited reasons were a lack of technical/personnel resources/knowledge (57 entries, i.e. 51%). Furthermore, it was frequently stated that sufficient utilisation of capacity was guaranteed even without an online real-time booking facility (47 entries, i.e. 42%) and/or that online real-time booking facilities were not worthwhile in financial terms (30 responses, i.e. 27%). 20 accommodations said they do not provide an online real-time booking facility due to a lack of customer demand. Only three accommodations indicated that they had ceased offering an online real-time booking facility because customers had complained about

price differences. Pressure exerted by Booking.com or other hotel platforms played practically no role in this context either (and was only mentioned in three responses).

56 The 167 accommodations that have their own online real-time booking facility were also asked whether they had a direct presence on hotel meta search engines. This resulted in a divided picture: just over half of the accommodations that have their own online real-time booking facility indicated that they were not active on hotel meta search engines themselves (91 responses or 55%); 76 of these accommodations (46%), on the other hand, use hotel meta search engines.[32] The figures vary little if one considers exclusively the accommodations listed on Booking.com: 71 out of 152 (47%) of the accommodations that are listed on Booking.com and that also have their own online real-time booking facility use a meta search engine.[33]

57 Measured against the total number of accommodations surveyed (279 useful responses), 27% of accommodations use meta search engines. The data on the frequency of use of meta search engines tend to be overestimated, however, since many accommodations also named hotel platforms such as Expedia, Booking.com or HRS in the free text field "other meta search engines” in response to this question. In addition to these hotel platforms, "Holidaycheck" was the only other website mentioned more frequently as an alternative website. If this is taken into account, the number of hotel meta search engines used is lower than the above-mentioned figures. When evaluating the results, it should also be taken into account that although some of the accommodations use meta search engines, in principle, they did not indicate how frequently they do so.

(4) Relevance of the various distribution channels

58 The hotel survey also determined the relevance of the various online distribution channels for turnover in the years 2015 to 2017. Accommodations indicating that they sell through online hotel platforms and/or have an online real-time booking facility were asked to allocate their online sales turnovers to the two online sales channels "online hotel platforms" and "online real-time booking facility". It is clear that hotel platforms continued to be the most important online sales channel from

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[32] Out of these 76 accommodations, 61 use Trivago, 43 Tripadvisor and 12 Kayak; 20 also named other hotel meta search engines.

[33] Trivago is most frequently used (58 responses), followed by Tripadvisor (42 responses), Kayak (12 responses). 18 accommodations said they use other websites..

an accommodation perspective between 2015 and 2017. The distribution between the two online sales channels has remained by and large steady; between 2015 and 2017, bookings made via online hotel platforms accounted on average for around 75% of online turnover generated by the accommodations surveyed; around 25% of online bookings were generated via the company's own direct online sales channel.

Table 24: Distribution of turnover generated by accommodations via an online sales channel

Distribution of online turnovers			
	2015	2016	2017
Share of online hotel platforms:	74	75	76
Share of online real-time bookings:	26	25	24

59 The situation is similar when a separate look is taken at the accommodations listed on Booking.com. The following table (next page) shows that online hotel platforms are also the most important online sales channel for the accommodations listed on Booking.com. The small accommodations listed on Booking.com have not quite managed to maintain a steady ratio between the online distribution channels. The very large accommodations, on the other hand, handle a much smaller proportion of their online bookings via online hotel platforms. They managed to maintain the distribution of the two online sales channels at a constant level, thus recording an increase in bookings made via direct online distribution channels in absolute terms.

Table 25: Distribution of turnover from overnight stays generated by online sales of accommodations listed on Booking.com

Distribution of online turnover	All accommodations listed on Booking.com			Booking.com accommodations ≤ 21 rooms			Booking.com accommodations > 100 rooms		
	2015	2016	2017	2015	2016	2017	2015 [34]	2016	2017
Share of online hotel platforms:	75	77	78	80	82	84	60	64	63
Share of online real-time bookings:	25	23	22	20	18	16	41	36	37

[34] N.B.: one of the 30 hotels with more than 100 rooms indicated a ratio of 44 to 57 for 2015. If the corresponding figure was deleted, the figure for 2015 would be 60% for hotel platforms and 40% for hotels' own online real-time booking facility.

60 In line with the turnover distribution between online hotel platforms and online real-time booking facilities described above, only a few of the 167 hotels that have an online real-time booking facility surveyed indicated that the latter has already become the sales channel with the highest turnover. However, about one-third of these accommodations aim to make their own direct online sales channel the sales channel that generates the highest turnover. All in all, around 50% of the accommodations surveyed that offer a real-time online booking facility think this sales channel has considerable development potential. However, the other 50% of the respondents that already have an online real-time booking facility believe that their own direct online sales channel will not prevail in the future because other distribution channels are either too strong or more attractive. The exact figures are indicated in the table below.

Table 26: Accommodations' assessment of the relevance of direct online sales for turnover

Is the hotel's own online real-time booking facility the sales channel that generates the most turnover in your hotel?		
	Number	**Percentage**
Yes it is	26	15.6%
No, but this is our aim for the future.	56	33.5%
No, this sales channel is unlikely to become the main sales channel for my hotel in the future because other sales channels are too strong.	63	37.7%
No, other sales channels are more attractive in my opinion.	22	13.2%
Sum total	**167**	**100%**

61 The accommodation data on this issue are also distributed in a relatively similar way when sub-groups are considered. This applies both to accommodations with a maximum of 21 rooms and to accommodations with more than 100 rooms. A decision was therefore made not to show the figures separately.

(5) Summary evaluation

62 The results of the investigation show that distribution via online hotel platforms in general and via Booking.com in particular, regardless of the size of the accommodation surveyed, is an important sales channel if not the most important online sales channel. The development in sales and market share in the first section has already shown that Booking.com is the market leader on the German online hotel platform market by a long stretch. This importance is also reflected in the results of the hotel

survey. 89% of all accommodations surveyed and 95% of accommodations that use online hotel platforms use Booking.com. Almost two-thirds of the accommodations surveyed that use Booking.com said it has become “almost indispensable in economic terms” for them. The importance attached to the ranking on Booking.com is demonstrated by the fact that the vast majority of accommodations listed on Booking.com take measures to improve their ranking.

63 The majority of the accommodations surveyed (60%) and also a large proportion (41%) of the smaller accommodations surveyed have their own online real-time booking facility. Hotel platforms are also the most important online sales channel for accommodations that have their own online real-time booking facility. However, these accommodations have managed to keep the ratio between the two online sales channels - platforms on the one hand and real-time booking on the other - relatively stable despite the strong growth in platform turnover.

64 The accommodations' view of the potential of their own direct online sales is divided: while around 50% of the accommodations surveyed that already have an online real-time booking facility rely on direct online sales as the strongest distribution channel, the other 50% believe that other sales channels - the online hotel platforms - are too strong or more attractive.

bb. Distribution costs of accommodations

65 In order to be able to assess the extent of latitude in the pricing of accommodations in their own online sales channels, the accommodations (and online hotel platforms) were asked how much commission they pay the platforms (under (1)). It was also determined which costs the accommodation has to incur for direct online sales, including advertising expenditure, and what percentage of the accommodations advertise more favourable rates and/or conditions in their own online sales channels, how and to what extent (under (2)).

(1) Commissions paid to hotel platforms

66 With approximately [12-17%] the average commission paid to the three major online hotel platforms according to the accommodations surveyed is relatively similar.

67 For all three major online hotel platforms, there is little difference between the average commission, standard commission and maximum commission charged.

Thus, there is no indication that many of the accommodations surveyed pay higher commissions or can negotiate significant discounts on the standard commission.

(2) Distribution costs and advertising for hotels’ own direct online distribution channels

68 The 167 hotels that have an online real-time booking facility on their website indicated that in the calendar year 2017 they incurred an average of €9,948 in distribution costs, including advertising for the hotel's own online distribution channel. The median value[35] of distribution costs is in the region of €1,700, i.e. 50% of the values given for the distribution costs indicated by the relevant hotels are greater than or equal to €1,700; the maximum figure indicated is around €200,000. At the same time, these accommodations recorded an average overnight stay turnover of €1,122,380 for 2017. The distribution costs for the hotels' own online distribution channels thus accounted on average for less than 1% of overnight sales.

69 There is a clear difference between smaller and very large accommodations. Accommodations with a maximum of 21 rooms spend on average just €1,974 on distribution costs for the hotel's own online distribution channel - where the average is just €1,000 and the maximum is €25,000. These accommodations generated an average overnight stay turnover of €137,542 in 2017. The distribution costs for the hotels' own online sales thus accounted for less than 2% of overnight sales on average.

70 The figures are much higher for very large accommodations with more than 100 rooms. The average distribution costs amounted to €27,027 in 2017. The average is €10,000 and the maximum is €170,000. These accommodations in turn generated an average turnover from overnight stays of €3,927,592 in 2017. The distribution costs for the hotels' own online distribution channels thus accounted on average for less than 1% of overnight sales.

71 The accommodations that actually list more favourable prices and/or conditions on their own direct online sales channel or on their own website were also asked whether they advertise them specifically. 151 accommodations responded to this question. Out of these, 95 accommodations (63%) said they did not advertise more favourable rates and/or conditions, whereas 56 accommodations (37%) said they

[35] The median thus divides a data record, a sample or a distribution into two (equal) halves in such a way that the values in one half are not greater than the median value and are not smaller in the other half.

did. Such advertising is primarily carried out by large accommodations: 23 accommodations with more than 100 rooms responded to this question, 15 of these accommodations (65%) stated that they advertise more favourable rates and/or conditions on their website or direct online booking facility.[36] Smaller accommodations with a maximum of 21 rooms are less inclined to do so (16 out of 54 accommodations, i.e. 30%).

72 The 56 accommodations that said they advertise more favourable rates/conditions on their website said the average advertising costs for this in the calendar year 2017 amounted to €2,286.[37] In relation to the average overnight stay turnover of all accommodations with an online real-time booking facility in the data record of €1,122,380 in 2017, this advertising expenditure appears to be relatively reasonable (well below 1% of the average overnight stay turnover). The accommodations concerned were also asked how often they advertise their hotel's own online sales channel. Eleven accommodations indicated that they advertise their own online sales channel always or daily. In the free text responses, 13 other accommodations essentially indicated that they advertise weekly to monthly, but at least regularly. Seven accommodations reported that they rarely advertise the hotel's own online sales channel. Some accommodations said they were always promoting direct online sales of their own accommodation, but the information they provided related to communication with their own guests. This group consisted of ten accommodations.

73 The 95 accommodations that quote lower prices in their own direct online sales channels or on their own website without advertising them were asked why they do not advertise. The free text answers can be divided into five categories. The main reason given (by 31 respondents, i.e. almost 33%) was that there is no need for such advertising measures. The second most frequent reason (12 respondents, i.e. just under 13%) was that the relevant advertising is too unprofitable or too expensive. The same number of respondents (also 12) said that it is too much trouble to advertise. Ten respondents said they had not yet considered advertising. Finally,

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36 The same applies to accommodations belonging to a hotel chain. 12 out of 18 advertise (67%). These are, however, for the most part the same as accommodations with more than 100 rooms.

37 The manifestly erroneous claim made by one accommodation which said its advertising costs amounted to €2 million was disregarded This figure appears to be incorrect because the total turnover generated by this accommodation is less than €3.5 million and the total expenditure of this accommodation for online sales is around €39,000.

five other respondents indicated that they intend to advertise particularly favourable rates and/or conditions on their website in future.

(3) Summary evaluation

74 According to the accommodations surveyed, the average amount of commission paid in 2017 for hotel rooms brokered via the three major platform operators was approximately [12-17%] of the room price. This share can at least serve as a rough indication of the pricing leeway accommodations have in online sales. It is worthwhile selling via hotels’ own online sales channel if the associated costs are lower than the commission payable to online hotel platforms.

75 In this comparison, it must first be taken into account that maintaining a hotel's own online sales channel creates a mainly fixed cost block for the hotel, which increases only insignificantly for each additional booking made via this sales channel. Once a hotel has decided to set up its own online sales system, the costs incurred by any additional booking made via its own sales channel are negligible compared to the full commission payable for each booking made via an online hotel platform. From this point of view, the price-setting leeway for additional bookings would correspond to almost the entire commission otherwise payable to the online hotel platform.

76 However, having their own distribution channel would continue to offer hotels a clear cost advantage if not just the variable costs of any additional booking made via the accommodations' own online distribution channel were compared to the commission the platform receives for any additional overnight stay, but the total costs of the hotels' own online distribution channel (i.e. fixed costs and variable costs) were distributed over all bookings made via this channel and then this average value was compared to the commission payable to the platform.

77 However, this comparison is problematic in practical terms since the hotels do not consistently allocate turnover to the booking channel used, with the result that it was not possible to ask the relevant questions. In this respect, it was not possible to determine the average online sales costs of an overnight stay booked on the hotel's own online distribution channel. However, it is possible to take an approximate look at the ratio between the distribution costs of the hotels’ own online distribution channel and their total overnight stay turnover:

78 As outlined in the previous section, smaller accommodations with a maximum of 21 rooms - which account for 50% of the data record - spent an average of just €1,974 on distribution costs for the hotel's own online sales channel in 2017. This

was juxtaposed with average overnight stay turnover of €137,542 generated by these smaller accommodations in 2017. The corresponding online distribution costs for the few very large accommodations with more than 100 rooms averaged €27,027 in 2017. This was juxtaposed with an average overnight stay turnover of € 3,927,592 generated by these hotels in 2017. These absolute figures emphasise that the costs incurred by the hotels' own online sales are low in relation to the overnight turnover generated in each case; the online distribution costs amount to less than 2% of the overnight sales turnover on average for smaller accommodations and less than 1% of the overnight sales turnover on average generated by the few very large accommodations.

79 The large margin between these percentages and the average commission rate of [12-17%] per overnight stay justifies the conclusion that even when the full costs incurred by the hotel's own online sales channel are taken into account, there is also a clear cost advantage over distribution via hotel platforms. This finding is also confirmed by the accommodations' view that the lower costs of direct online sales are the most frequent reason for price differentiation be-tween direct online sales and online hotel platforms.[38]

80 Slightly more than one-third of the accommodations that actually offer more favourable prices and/or conditions via their own online real-time booking facility or their own website than on Booking.com also advertise these offers. In the case of very large hotels with more than 100 rooms, the proportion is just under two-thirds. The corresponding advertising costs of these accommodations that engage in price differentiation averaged €2,286 in the 2017 calendar year.[39] In view of the fact that bookings made via the hotel's own direct online sales channel come primarily from consumers who already know the hotel[40], it can be explained that the advertising expenditure here is relatively low compared to the average overnight stay turnover.

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[38] See para. 100 below.

[39] The fact that this amount is higher than the funds covering the distribution costs of smaller accommodations (see above) is explained by the fact that no distinction was made between smaller and very large accommodations for the evaluation of advertising costs due to the comparatively low number of responses.

[40] See para. 143 below.

cc. Price differentiation between online sales channels and hotel platforms

81 The following section first describes the percentage of accommodations that are actually willing to offer more favourable rates and/or conditions in their own direct online sales channel than on the online hotel platform and the reasons why they may not engage in price differentiation (under (1)). In addition, it is explored how often and to what extent accommodations undercut rates or improve conditions (under (2)). Section (3) shows which incentives exist for or against price differentiation between direct online sales and hotel platforms from the accommodations' perspective. Last but not least, the results of the investigation are presented in order to illustrate how Booking.com is likely to respond if more than 25% of the accommodations offer cheaper rates and/or more favourable conditions on their own online sales channel (see (4)). The investigations on the number of follow-up bookings made after bookings made on Booking.com (see (5)) were not very productive.

(1) Proportion of accommodations that engage in price differentiation between their own online sales channels and hotel platforms

82 In order to determine what percentage of the accommodations are actually prepared to offer more favourable rates and/or conditions on their own direct online sales channels than on the online hotel platforms, the accommodations had to answer various questions concerning the price-setting behaviour in direct online sales in relation to the prices set for online hotel platforms.

83 First of all, the accommodations were asked whether they offer more favourable rates or other conditions for the same room and the same period via their online real-time booking facility or website than for bookings made through Booking.com.

84 Out of the 152 accommodations in the sample that have an online real-time booking facility and are listed on Booking.com, 109 (72%) said they engage in price differentiation. 43 accommodations (28%), on the other hand, stated that they did not offer different prices/conditions.

85 The price-setting behaviour of the 90 accommodations in the sample that are listed on Booking.com and do not have their own real-time booking facility but are able to offer more favourable rates/conditions on their own website than on Booking.com, was also determined. Here, 42 (47%) of these accommodations (just under 50%) indicated that they offer a cheaper rate or more favourable conditions for the same room and the same period on the hotel's own website than on Booking.com. The

majority of these accommodations 48 (53%) say they do not engage in price differentiation.

86 The following table contains the evaluation results in detail - differentiated according to accommodations with real-time booking facilities on the one hand and those that (only) have their own website.

Table 27: Price-setting behaviour in direct online sales

Do you ever offer cheaper rates or more favourable conditions for bookings made for the same room for the same period than for bookings made through Booking.com?				
	Real-time booking facility		**Hotel website**	
Yes	109	72%	42	47%
No	43	28%	48	53%
Total	152	100%	90	100%

87 The price-setting behaviour of the smaller accommodations with a maximum of 21 rooms and the very large accommodations with more than 100 rooms shows certain differences, as the following table illustrates. It is clearly rarer for smaller accommodations to set lower prices/more favourable conditions in their own direct online sales channel. Large accommodations with more than 100 rooms, on the other hand, nearly always have an online real-time booking facility. These accommodations offer more favourable prices or other more favourable conditions on their online direct sales channel somewhat more frequently.

Table 28: Price-setting behaviour in direct online sales - accommodations with a maximum of 21 rooms and accommodations with more than 100 rooms

Do you ever offer cheaper rates or more favourable conditions for bookings made for the same room for the same period than for bookings made through Booking.com?								
	Accommodations (max. 20 rooms)				**Accommodations (max. 100 rooms)**			
	Real-time booking		**Hotel website**		**Real-time booking**		**Hotel website**	
Yes	30	59%	24	36%	22	79%	1	50%
No	21	41%	42	64%	6	21%	1	50%
Total	51	100%	66	100%	28	100%	2	100%

88 The 91 accommodations using Booking.com which have a real-time online booking facility or a hotel website but indicated that they did not differentiate prices, were asked to explain the reasons for their behaviour. Accommodations with an online real-time booking facility indicated in a total of 20 cases that customers might complain or have actually complained about price differences. Nine respondents cited

the lack of technical resources/knowledge as a reason. Contract loyalty vis-à-vis Booking.com was mentioned as a reason five times. Pressure exerted by Booking.com was mentioned three times in total. Five accommodations indicated that such behaviour is not worthwhile or has not been worthwhile. Other reasons were mentioned only four times.

89 Accommodations that do not have their own website but do have a real-time online booking facility said the lack of technical resources/knowledge (18 responses) and actual or potential customer complaints (16 responses) were the main reasons why they did not offer cheaper rates/more favourable conditions on their own website. Eight accommodations indicated that such behaviour is not or would not have been worthwhile in financial terms. Three and two accommodations respectively cited contract loyalty vis-à-vis Booking.com and pressure exerted by Booking.com as reasons why they did not offer lower prices/more favourable conditions in their direct online sales channels. A total of ten accommodations cited other reasons for such behaviour. (Five accommodations indicated in the free text responses, inter alia, that they do not have their own website where they could have offered such prices).

90 In summary, it can be ascertained that out of the 248 accommodations surveyed which use Booking.com, around 98% would in principle be able to offer cheaper rates or more favourable conditions via the Internet (their own online real-time booking facility or website) than on Booking.com, since 152 accommodations (61%) have their own real-time booking facility and 90 accommodations (36%) at least have their own website. This notwithstanding, 91 of these accommodations (37%) do not publish more favourable prices or conditions on their own direct online sales channel. The main reasons cited for this behaviour were the customer's desire for price parity via the distribution channels and the lack of their own technical resources/knowledge. Some accommodations indicated that such pricing behaviour was not financially worthwhile. Pressure exerted by Booking.com and the loyalty of accommodations vis-à-vis Booking.com played only a minor role in the responses.

(2) How often and to what extent do accommodations engage in price differentiation between their direct online sales channels and hotel platforms?

91 First of all, it was examined how often the 151 accommodations that said they offer cheaper prices/more favourable conditions via their online real-time booking facility or their own hotel website than on Booking.com actually do so.

Table 29: Frequency with which more favourable prices/conditions are offered through direct online sales channels than on Booking.com

How often do you offer cheaper rates than the rates quoted on Booking.com?			
Accommodations with a direct online sales channel		Accommodations that (only) have a website	
Number	Percentage	Number	Percentage
mostly/always more favourable than on Booking.com (75 - 100% of cases)			
65	60%	18	43%
often cheaper than on Booking.com (50 - 74% of cases)			
13	12%	7	17%
occasionally cheaper than on Booking.com (25 - 49% of cases)			
17	16%	9	21%
rarely/never cheaper than on Booking.com (50 - 25% of cases)			
14	13%	8	19%
Sum total			
109	100%	42	100%

92 It appears that accommodations that have online real-time booking facilities engage slightly more often in price differentiation than accommodations that have a website but no online real-time booking facility. 60% of the accommodations surveyed that have an online real-time booking facility and are listed on Booking.com offer lower prices/more favourable conditions "mostly or always" on their direct online sales channel than on Booking.com, whereas less than half (43%) of the accommodations that do not have an online real-time booking facility do so. For the most part, both groups are at least "frequently" cheaper than on Booking.com (72% and 60% respectively). However, a considerable proportion of accommodations in both groups (13% and 19% respectively) indicated that they rarely or never offered lower prices/more favourable conditions than on Booking.com.

93 It is possible to roughly deduce from the answers given how often the accommodations listed on Booking.com offer more favourable prices or more favourable

other conditions overall via their online real-time booking facility or their hotel website:

94 A total of 248 hotels have indicated that they are listed on Booking.com. Out of these 248 accommodations, six do not have their own website ruling them out from offering different prices on their own websites. In addition, 91 accommodations (43 with a real-time booking facility and 48 with a hotel website) indicated that they do not offer lower prices than on Booking.com (see Table 27). In total, 97 out of 248 accommodations, or 39% of the accommodations listed on Booking.com, are never cheaper than on Booking.com. On the other hand, about 42% of the accommodations listed on Booking.com (78 that have and 25 that do not have a real-time booking facility) offer lower prices/more favourable conditions on the hotel's own real-time booking facility or website in more than 50% of the cases. In addition, around 19% of the accommodations listed on Booking.com (31 with and 17 without an online real-time booking facility) offer lower prices or more favourable conditions in less than % of the cases.

95 It was also established to what extent accommodations actually undercut or improve the rates/conditions set on hotel platforms in their own direct online sales channels or on their own website. To this end, the accommodations, which at least occasionally differentiate on price between their own online sales channels and Booking.com, were asked by how much they reduce prices. The following table (see next page) sums up the corresponding data, once again differentiated according to accommodations with an online real-time booking facility and accommodations that (only) have their own website.

Table 30: Price differences between direct online sales channels and Booking.com

How much lower are room rates offered than on Booking.com?			
Accommodations with a direct online sales channel		Accommodations that (only) have a website	
Number	Percentage	Number	Percentage
up to 5% lower in most cases			
33	30%	8	20%
mostly 5% to 10% lower			
52	48%	12	30%
mostly 10% to 15% lower			
22	20%	17	43%
mostly at least 15% lower			
2	2%	3	8%
Sum total			
109	100%	40	100%

96 It is noticeable that accommodations that only have a website but no online real-time booking facility are less likely to quote different prices on their website than on Booking.com (see above), but tend to charge lower prices than accommodations that have an online real-time booking facility. Half of the accommodations without an online real-time booking facility usually quote rates on their website that are at least 10% lower than on Booking.com, whereas only 25% of the accommodations with an online real-time booking facility do so.

97 In summary, it can be ascertained that a little more than 40% of the accommodations listed on Booking.com that have their own real-time booking facility and/or website offer lower rates and/or more favourable conditions in at least half of the cases than on Booking.com, whereas just under 40% of the accommodations in question never do. Nearly 50% of accommodations with an online real-time booking facility that differentiate on price set the prices around 5 to 10% lower. Accommodations that only have a website tend to engage less frequently in price differentiation, but are usually at least 10% cheaper than on Booking.com.

98 When the discounts indicated are compared, it becomes apparent that the vast majority of accommodations keep the discount lower than the average commission paid to Booking.com. According to the accommodations surveyed, this was on average about [12-17%] (see above). In most cases, selling rooms via direct online sales channels is likely to be more profitable than via Booking.com, despite discounts for accommodation, even when the costs of operating the real-time online

booking facility and/or the hotel's own website, as well as any corresponding advertising costs are taken into account.

(3) Reasons for price differentiation in direct online sales channels

99 The 129 accommodations (95 that have an online real time booking facility and 34 that do not) which indicated that they offered lower prices/more favourable conditions on their direct online sales channel in at least 25% of the cases were also asked about the incentives or reasons for this behaviour (multiple answers possible). The following table shows the frequency distribution of the responses, in turn differentiated according to accommodation with and without online real-time booking facilities.

Table 31: Reasons for price differentiation between accommodations' own online sales channels and Booking.com

Why are rates cheaper than on Booking.com?			
Accommodations with an online real-time booking facility		Accommodations that (only) have a website	
Number	Percentage	Number	Percentage
Fairness towards customers: customers should not pay more than the costs they incur; anyone selecting the booking channel that is less expensive for the hotel will also receive a more favourable price/conditions.			
59	62%	21	62%
Cost savings for the hotel: distribution via hotel platforms is more expensive than distribution via the hotel's own online real-time booking facility; customers should therefore be given an incentive to select the booking option that is cheaper for the hotel			
71	75%	19	56%
Customer loyalty: my hotel combines the lower prices/more favourable conditions for bookings made via the hotel's own website with its own customer loyalty programme[41]			
39	41%	5	15%
Other reasons			
5	5%	7	21%

[41] Several accommodations affirmed this possibility, even though they had previously said they did not have a customer loyalty programme of their own. This may be due to them having a different interpretation of the term "customer loyalty programme". In question 10 of the questionnaire, the definition "customer loyalty programme" was linked to the existence of a so-called "closed user group". In accordance with the previous General Terms and Conditions of Booking.com of 14 August 2014, Section 2.2.1, a "closed user group" was defined as follows: "A group in which users actively decide to become a member and have filled in a customer profile. The key characteristic of a closed user group is that the rates offered are not (directly or indirectly) publicly available or are not made available". This rather narrow definition of customer loyalty programmes may have led to accommodations initially indicating that they did

100 Both groups cited the lower costs incurred by direct sales as the most frequent reason for differentiating prices between direct online sales and online hotel platforms. Accommodations want their guests to share in this cost saving ("fairness towards customers") or are keen to redirect their customers to the distribution channel that is more cost-effective for them ("cost saving for the hotel"). By contrast, customer loyalty via loyalty programmes is of subordinate importance. The "other reasons" given by just a few accommodations, include for instance that they offered more favourable rates for long-term bookings that are rarely made on Booking.com, but that the price per overnight stay on Booking.com was always the same. The loyalty of regular customers was also mentioned in the free text responses as a reason for lower prices.

101 The accommodations were also asked which factors would encourage them to quote more favourable prices and conditions on their direct online sales channel than on Booking.com more frequently in future or for the first time.

102 The survey results for the accommodations which, by their own account, already engage in relevant price differentiation are summarised in the following table (see next page), once again differentiated according to accommodations with and without online real-time booking facilities. The responses were provided by a total of 151 accommodations (multiple answers possible). Out of these, 109 accommodations had an online real-time booking facility and 42 only had their own website.

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not have any such programme while subsequently referring at this point to their own customer loyalty programme - which is probably not based on a "closed user group".

Table 32: Factors that could lead to more frequent price differentiation between direct online sales channels and online hotel platforms

Which factors might encourage you to offer more favourable prices/conditions on your own direct online sales channel in the future than via Booking.com?			
Accommodations with an online real-time booking facility		Accommodations that (only) have a website	
Number	Percentage	Number	Percentage
If more of our customers asked to receive a better price or more favourable conditions when selecting a sales channel that is more favourable for the hotel			
56	51%	15	36%
If distribution via online hotel platforms was even more expensive than distribution via the hotels' own distribution channels (e.g. by further reducing the costs of distribution via the hotels' own website or by increasing platform commissions)			
58	53%	14	33%
If my hotel were to implement its own customer loyalty programme or expand an existing customer loyalty programme			
29	27%	9	21%
If price parity clauses continue to be prohibited			
59	54%	16	38%
If commission for bookings made via Booking.com increase			
72	66%	21	50%
If the other conditions for my hotel deteriorate to my disadvantage when booking through Booking.com			
62	57%	16	38%
If Booking.com does not transmit the data of the customer making the booking to me			
29	27%	7	17%
Other factors			
10	9%	6	14%
None; I don't think it makes commercial sense to offer more favourable prices or conditions via the hotel's own website than with bookings made via Booking.com more frequently than at present			
10	9%	8	19%

103 The factors most frequently cited that might lead to more favourable offers in direct online sales in the future were increased distribution costs for the use of Booking.com, whether due to an increase in booking commissions by Booking.com (72 and 21 responses respectively) or more inferior other conditions for accommodations (62 and 16 responses respectively). A relative increase in price compared to the hotel's own sales channels is also one of the factors frequently mentioned (58 and 14 responses). Also frequently mentioned were the continuation of the prohibition of the price parity clauses (59 and 16 responses) and increased customer

demands for more favourable conditions in accommodations' direct online sales channel (56 and 15 responses). By contrast, customer loyalty programmes and the availability of customer data play only a subordinate role. Relatively few accommodations said that they thought an even more intensive differentiation of prices and conditions between direct online sales channels and Booking.com would make no commercial sense. With regard to the "other factors", a number of accommodations stated that they will not quote lower prices on direct online sales channels more frequently in the future because they always do so now.

104 A similar picture emerges regarding the frequency distribution of the factors mentioned - with a lower number of responses due to the smaller group size - for accommodations which have not yet set more favourable prices/conditions on their direct online sales channel even though they have the opportunity to do so. The following table (see next page) shows the actual figures once again differentiated according to accommodations with and without an online real-time booking facility. A total of 91 accommodations responded. Out of these, 43 accommodations had an online real-time booking facility and 48 had only their own website.

Table 33: Factors that might encourage accommodations to offer lower prices/more favourable conditions via their direct online sales channel than through Booking.com (for the first time) in the future

Which factors might encourage you to offer lower rates/more favourable conditions via your own direct online sales channel (for the first time) in the future than through Booking.com?			
Accommodations with an online real-time booking facility		Accommodations that (only) have a website	
Number	Percentage	Number	Percentage
If more of our customers asked to receive a better price or more favourable conditions when selecting a sales channel that is more favourable for the hotel			
17	40%	11	23%
If distribution via online hotel platforms was even more expensive than distribution via the hotels' own distribution channels (e.g. by further reducing the costs of distribution via the hotels' own website or by increasing platform commissions)			
17	40%	13	27%
If my hotel were to implement its own customer loyalty programme or expand an existing customer loyalty programme			
6	14%	4	8%
If price parity clauses continue to be prohibited			
13	30%	9	19%
If commission for bookings made via Booking.com increase			
22	51%	19	40%
If the other conditions for my hotel deteriorate to my disadvantage when booking through Booking.com			
17	40%	10	21%
If Booking.com does not transmit the data of the customer making the booking to me			
9	21%	6	13%
Other factors			
1	2%	9	19%
None; I don't think it makes commercial sense to offer more favourable prices or conditions via the hotel's own website than with bookings made via Booking.com more frequently than at present			
11	26%	-[42]	-

105 For these accommodations too, it is apparent that increased distribution costs (increase in commission or deterioration in conditions) via Booking.com in particular encourage accommodations to offer more favourable prices/conditions via their

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[42] Figures are only available for accommodations that have an online real-time booking facility.

own online sales channel. Also mentioned relatively frequently were increased customer demands for more favourable conditions, the relative increase in the price of distribution via hotel platforms and the continued prohibition of price parity clauses. There were no factors among the "other factors" that were mentioned several times.

106 In addition, the accommodations that said they differentiate prices albeit rarely (i.e. in less than 25% of cases) offer lower prices in their direct online sales channel were asked why they rarely do so. The following table (see next page) shows the distribution of responses. The figures are based on the responses of 22 accommodations.

Table 34: Reasons why price differentiation between direct online sales channels and online hotel platforms occurs rarely/never

Why are rates quoted in direct online sales channels rarely cheaper than on Booking.com?	
Accommodations with an online real-time booking facility	Accommodations that (only) have a website
Most of our customers always expect to be offered the same final price/conditions regardless of what booking channel they use.	
10	4
Most of my customers don't care or hardly notice different prices / conditions, if at all.	
2	1
We are currently still trying out strategies for price and conditions differentiation, we may leverage the possibility of price and conditions differentiation more often in the future.	
1	1
Price/conditions differentiation via various booking channels is too time-consuming/costly.	
1	0
Legal uncertainties	
0	0
The costs of selling via Booking.com are only slightly higher than the costs of selling via the hotel's own online real-time booking facility.	
1	0
The costs of selling via Booking.com are lower than the costs of selling via the hotel's own online real-time booking facility.	
0	0
The different distribution costs of the online sales channels are allocated to all distribution channels and are therefore not reflected in the current prices.	
0	1
Pressure exerted by Booking.com	
0	0

107 There are very few responses available to this question because, as explained above, such pricing behaviour applies only to very few types of accommodation. Of the few accommodations that answered, only the assumed customer expectation of equal prices and conditions across all sales channels was given as the reason why they tend not to differentiate between prices and conditions. Other possible reasons, on the other hand, are of little consequence.

108 In summary, the following can be established: the most important incentive for accommodations to offer different prices in direct online sales channels or on their

own website on the one hand and on hotel platforms on the other is that direct sales incur lower costs. The accommodations want their guests to share in this cost saving ("fairness towards the customer") or to redirect their customers to the sales channel that is more cost-effective for them ("cost saving for the hotel"). Accordingly, the accommodations indicated that, in particular, increased distribution costs (increased commission or inferior conditions) via Booking.com would be an incentive to engage in price differentiation more frequently or for the first time. The continued prohibition of price parity clauses was also frequently cited as a prerequisite. The main reason why some accommodations have rarely engaged in price differentiation so far is their assumption that customers expect to be offered the same rates and conditions across all distribution channels.

(4) Booking.com's counter-response to accommodations' price differentiation behaviour

109 Furthermore it was examined as to how Booking.com is likely to respond if more than 25% of accommodations offer cheaper rates and/or more favourable conditions via their own online sales channels.

110 All three major online hotel platforms indicated that they would expect to see a significant decrease in bookings and a loss of turnover in this case. When asked what could be done to prevent this, Booking.com in particular said that price parity clauses and the means used to enforce them, e.g. termination of the contract, partial termination of a special status, e-mails or calls to the accommodation and the possibility of a compensation mechanism, were effective means. Expedia and HRS do not feel they are in a position to prevent price differentiation on their own due to their comparatively low significance in the market.

111 Based on the above-mentioned data now available on the price differentiation behaviour of accommodations, it can be said that the scenario of prices that are shown on Booking.com being undercut in the hotels' own online distribution is no longer hypothetical: at present approx. 42% of the accommodations surveyed and listed on Booking.com offer lower rates and/or more favourable conditions than on Booking.com in at least half of the cases. At the same time, there can be no mention of a slump in sales or bookings, on the contrary, Booking.com's sales have always grown significantly in recent years (see above).

112 The results of the hotel survey have also shown that pressure exerted by Booking.com on accommodations to decide whether they want to quote lower rates in

their direct online sales channel in the first place plays a very subordinate role - at least currently - but this has probably also been the case in the (at least more recent) past:

113 Accommodations that claim to offer lower prices on their own website and/or in their own real time booking channel than on Booking.com were asked how Booking.com's responded. The responses show that Booking.com rarely exerted pressure on accommodations, particularly at the time of the survey. As the following table specifically shows, only a few accommodations confirmed that Booking.com was exerting pressure in response to their own price-setting behaviour. This applies equally to accommodations with and without their own online real-time booking facility.

Table 35: Does Booking.com exert pressure in response to price differentiation between direct online sales and online hotel platforms?

Does Booking.com exert pressure if you offer your customers lower rates/more favourable conditions than if they book via Booking.com?				
	Real-time booking facility		Hotel website	
Yes	14	13%	3	7%
No	95	87%	39	93%
Total	109	100%	42	100%

114 Asked about the details of Booking.com's response, the accommodations included e-mails or phone calls, de-ranking and contract terminations. Accommodations mostly indicated that they had experienced these practices in the past, but no longer at the time of the survey. Two accommodations indicated that Booking.com had exerted pressure until early 2014, three said it had done so until 2015, five said it had done so until early 2016 and one said it had done so until early 2017. Only two accommodations said Booking.com continues to exert pressure to the present day.

(5) Follow-up bookings

115 It could not be clarified conclusively how many follow-up bookings accommodations managed to achieve on average by customers who had made bookings via Booking.com. Very few of the accommodations surveyed even took the opportunity to provide estimates. In total, only seven out of 248 relevant accommodations responding to the question actually knew what the average number of follow-up bookings was. The bandwidth of the few responses is broad: one hotel assumes that every booking made via Booking.com will result in exactly one additional booking

via Booking.com; another assumes that each booking will result in 200 subsequent bookings via the direct online sales channel and via Booking.com. This issue will not be explored in detail against this backdrop.

c. End consumer structure and consumer behaviour

116 It was also examined to which extent prospective customers book their hotel room with Booking.com, even though the partner hotels offer more favourable rates and/or conditions through their own online sales channels. In this context, it is also relevant what percentage of consumers book through the accommodations' online sales channels without having found the accommodation previously on Booking.com.

aa. End consumer structure

117 The percentage of bookings made via Booking.com attributable to "tied" customers (e.g. business travellers who are tied into framework contracts with companies, regular customers within the framework of the Genius programme) as well as bookings made using a customer profile stored with Booking.com and special discount promotions is shown below.

118 The majority of bookings, especially those made on Booking.com and Expedia, are still made by customers who are not tied in any of the above-mentioned ways (hereinafter referred to as "independent" customers). However, online hotel platforms are increasingly succeeding in increasing the number of bookings made through framework contracts and customer loyalty programmes, i.e. increasing the number of "tied" customers. At HRS, which has specialised more and more on business travellers in recent years, the number of bookings made by "tied" customers is now even higher. This seems to indicate that end customers have a basic interest in the business traveller or regular customer programmes provided by hotel platforms.

119 The number of bookings accounted for by customer profiles stored on the respective platform account is very high at Booking.com and Expedia. HRS's comparatively low figures can probably be attributed to the fact that HRS generates a large proportion of its bookings via framework contracts and customer loyalty programmes, and that personal customer profiles are therefore less important than for hotel platforms that do not specialise in business customers.

120 The following applies to all online hotel platforms: once a customer profile has been created, customers can avail themselves of services that are only available to registered/logged-in users. In particular they can manage their bookings, but also, for instance, store and use information (e.g. means of payment) as well as participate in customer loyalty programmes, meaning this information is readily available for future bookings and does not need to be re-entered each time. All three major online hotel platforms said that creating a customer profile was beneficial for the customer, as it facilitates and accelerates future booking processes, especially by eliminating the need to enter large amounts of data. Since customers would have to re-enter all of the relevant booking data when they book via the hotel's direct online booking channel - unless they are already registered with the corresponding hotel or hotel chain - this could be an incentive for end customers to also process future bookings via the corresponding platform.

121 The online hotel platforms could create incentives for end customers to process bookings via their platforms, inter alia, by launching their own discount campaigns. Expedia has been offering various special discounts for some years now, some of which are financed by the hotels and some by Expedia itself ("10 plus 1"). According to Booking.com, it did not start offering special discounts ("refer a friend") until early 2017. Both groups of companies see the campaigns as advertising measures to familiarise new bookers with the platform or to increase the conversion rate. According to the online hotel platforms, the discounts granted do not exceed the amount of commission they earn with the specific booking. By specialising in business travellers and concluding framework contracts, HRS is adopting a different approach and says it is not yet offering any corresponding discount campaigns.

bb. Investigation results of the consumer survey as to consumer behaviour

122 Subject to the investigations was also the consumer behaviour in relation to the online booking of rooms located in Germany. The consumer survey that was conducted in the summer of the year 2018 was based on the most recent online booking made at a hotel located in Germany by the consumers surveyed. The prerequisite for participating in the survey was that this booking had been made in the last 12 months prior to the survey. In order to limit the further questioning of consumers who had made such a booking, so-called screening questions were asked before the actual survey began. The following evaluations refer only to consumers who have not already been filtered out based on the screening questions. The results

of the consumer survey that is representative of the German population aged 18 and over are presented in the following.

123 A total of 2,533 consumers were asked about their booking behaviour, 1,525 of whom provided information on the price comparisons they conducted.

124 The contracted market research institute provided the Bundeskartellamt with the data from the consumer survey in the form of two data records: the raw data record and the weighted final data record. Accordingly, the results of the consumer survey are presented in two versions in the following: once unweighted and once on the basis of the data basis weighted by person-specific characteristics (in the latter case providing only proportional values rather than absolute figures). In no case do the weighted distributions deviate significantly from the results of the unweighted database. This shows that the survey results are not based on a distorted random selection of respondents compared to the German population as a whole.

(1) Booking channels used / "booking location"

125 Particular relevance had the question where consumers book their accommodation on the Internet and where and how they find accommodation on the Internet. In the following we will first discuss the booking location.

126 To this end, consumers were asked which booking channel they used to make their most recent online booking for a hotel located in Germany. The purpose of this filter question was to remove consumers who either had not used any of the online booking channels relevant to the present proceedings (hotel websites/apps, Booking.com, HRS, Expedia), or who could no longer remember exactly where they had booked online, or who mistook (meta) search engines for a "booking location".

127 The majority of consumers booked their accommodation on Booking.com, followed by hotel websites/apps and HRS. As expected, Expedia bookings are under-represented in the data record compared to Expedia's market share, as Expedia is, to the best of the Bundeskartellamt's knowledge, very popular among foreign consumers. The category "Other booking channels" presumably not only includes bookings made at smaller hotel platforms, but also booking locations that consumers can no longer remember or have mistaken for search engines. The distribution weighted according to consumers' personal characteristics is shown in the right-hand column of the table.

Table 36: Overview of online booking channels used by consumers surveyed

	Responses in the survey (Raw data)		Weighted Distribution
Booking channel	**Number**	**Percentage**	**Percentage**
Hotel website / app	591	23.33	21.64
Booking.com	933	36.83	38.27
Expedia	23	0.91	1.13
HRS	206	8.13	6.51
Other online booking	550	21.71	23.32
No answer given	*9*	*0.36*	*0.29*
Don't know	*221*	*8.72*	*8.85*
Total	**2,533**	**100**	**100**

128 Following this filter question, the interviews were only continued with consumers[43] who stated that they had booked their accommodation via the hotel website or one of the three leading hotel platforms Booking.com, Expedia or HRS that are relevant in this context. This reduced the number of interviews relevant for further evaluations to 1,753.

129 Where consumers had indicated that they had booked via the hotel website or app (a total of 591 respondents), they were asked how accurate the booking had been. The aim of this question was to only filter out bookings that had been made via the respective accommodation's online real-time booking facility.

Table 37: Type of booking made on the hotel website or hotel app

	Responses in the survey (Raw data)		Weighted Distribution
Type of booking	**Number**	**Percentage**	**Percentage**
Real-time booking	363	61.42	60.36
E-mail or telephone	220	37.23	38.25
No answer given	*0*	*0*	*0*
Don't know	*8*	*1.35*	*1.38*
Total	**591**	**100**	**100**

43 This does not apply to the recording of consumers' personal characteristics which have been recorded for all consumers.

130 Even though the majority of consumers who had indicated that they had booked via the hotel website or app or had used the real-time online booking facility of the respective accommodation, more than 200 bookings were made via other booking channels (telephone or e-mail). As these other booking channels are not directly affected by so-called narrow price parity clauses, the interviews were only continued with consumers[44] who had actually booked their accommodation via a real-time booking facility. When reference is made to bookings made via a hotel website/app in the following, this always mean a hotel's own online real-time booking facility (hereinafter also referred to as "**real-time booking facility**"). Accordingly, this reduced the number of interviews relevant to the investigations after this question by a further 228. There remained 1,525 interviews, which form the basic aggregate for the following evaluations.

(2) Reason for hotel bookings

131 The remaining 1,525 consumers were asked whether their booking was made for a personal trip or a business trip. The information on this question is presented in the following tables for the four relevant booking channels.

Table 38: Reason for trip according by booking channel - raw data record

Booking channel	Personal	Business	No answer given	Don't know	Total
Hotel website / hotel app (real-time booking facility)	295	65	2	1	363
	81.27%	17.91%	0.55%	0.28%	100%
Booking.com	773	159	1	0	933
	82.85%	17.04%	0.11%	0%	100%
Expedia	19	4	0	0	23
	82.61%	17.39%	0%	0%	100%
HRS	110	96	0	0	206
	53.40%	46.60%	0%	0%	100%
Total	**1,197**	**324**	**3**	**1**	**1,525**
	78.49%	**21.25%**	**0.2%**	**0.07%**	**100%**

[44] This does not apply to the recording of consumers' personal characteristics which have been recorded for all consumers.

Table 39: Reason for the trip according to booking channel - raw data record

Booking channel	Per-sonal	Business	No answer given	Don't know	Total
Hotel website / ho-tel app (real-time booking facility)	78.49%	20.01%	1.07%	0.43%	100%
Booking.com	81.95%	17.91%	0.14%	0%	100%
Expedia	89.42%	10.58%	0%	0%	100%
HRS	55.36%	44.64%	0%	0%	100%
Total	**78.39%**	**21.18%**	**0.33%**	**0.01%**	**100%**

132 The booking channels have different focal points with regard to the reason for the consumers' trips. While all other channels are predominantly used by private travellers, HRS has a comparatively large proportion of business travellers. This mirrors the findings made to date on HRS's customer structure. Overall, i.e. across all channels, almost 80% of bookings were made for personal travel purposes.

(3) Room rates

133 The actual room rate was then determined as the reference value for subsequent price comparison issues. The consumers surveyed paid an average of €98.28 per night and room for their last booking. The median of the data was around €90, with values fluctuating between €8 and €4.000.[45] The average room rate varies slightly depending on what booking channel is used (from €94.50 at HRS to €111.62 at Expedia). At €96.69, the average room rate, which is weighted to be representative of the population, is slightly lower than the non-weighted average.

(4) Location where the accommodation was found

134 The following section deals with the results of the investigation regarding the location where the accommodation was (first) found.

135 First of all, it was clarified whether consumers were familiar with the accommodation before they booked it. As there is no need for consumers who are already familiar with their accommodation to search for a hotel before booking, it is anticipated that they go through a different booking process than consumers who first need to identify the accommodation in question before booking and then decide which hotel to book.

[45] Rates ≤ 0 and > 9,996 were deleted.

Table 40: Accommodation known prior to booking

	Responses in the survey (Raw data)		Weighted Distribution
	Number	**Percentage**	**Percentage**
Hotel known prior to booking	593	38.89	37.48
Hotel not known prior to booking	926	60.72	62.26
No answer given	*3*	*0.2*	*0.12*
Don't know	*3*	*0.2*	*0.14*
Total	**1,525**	**100**	**100**

136 It became apparent that most consumers (about two-thirds) were not familiar with the accommodation before they booked it. However, as the following evaluations show, this does not apply to the same extent to all booking channels.

Table 41: Accommodation known prior to booking broken down by booking channel - raw data record

	Hotel known prior to booking	Hotel not known prior to booking	*No answer given*	*Don't know*	Total
Hotel website / hotel app (real-time booking facility)	223	139	*0*	*1*	363
	61.43%	38.29%	*0%*	*0.28%*	100%
Booking.com	263	666	*2*	*2*	933
	28.19%	71.38%	*0.21%*	*0.21%*	100%
Expedia	6	16	*1*	*0*	23
	26.09%	69.57%	*4.35%*	*0%*	100%
HRS	101	105	*0*	*0*	206
	49.03%	50.97%	*0%*	*0%*	100%
Total	**593**	**926**	***3***	***3***	**1,525**
	38.89%	**60.72%**	***0.2%***	***0.2%***	**100%**

Table 42: Accommodation known prior to booking broken down by booking channel - weighted data record

	Hotel known prior to booking	Hotel not known prior to booking	*No answer given*	*Don't know*	Total
Hotel web-site / hotel app (real-time booking facility)	63.08%	36.73%	*0%*	*0.2%*	100%
Booking.com	27.67%	72.06%	*0.11%*	*0.16%*	100%
Expedia	19.44%	78.33%	*2.24%*	*0%*	100%
HRS	46.97%	53.03%	*0%*	*0%*	100%
Total	**37.48%**	**62.26%**	***0.12%***	***0.14%***	**100%**

137 It is evident across all distribution channels that most consumers (around two-thirds) did not know the accommodation before booking it, although there are large differences between distribution channels in this respect. While consumers booking through Booking.com and Expedia did not know the accommodation before booking it, almost two-thirds of consumers booking through direct online sales channels knew the accommodation before booking it.[46] This means that accommodations booked through the accommodations' direct online sales channel were known to consumers before the booking was made. For these consumers, comparisons between different types of accommodation offered by hotel platforms are at best of secondary importance. On the other hand, the results of the investigation also show that a significant proportion of consumers who were already familiar with the accommodation before booking still booked via a hotel platforms and not directly with the accommodation itself.

138 If the respondents were not familiar with the accommodation before booking it, they were asked where they found it. A clear picture emerges here: the vast majority of these respondents (over 80%) found the accommodation on the Internet or online.[47]

[46] Due to its focus on business travellers with corresponding booking specifications, HRS is a special case among online hotel platforms: here almost half of the consumers already knew the accommodation before booking it.

[47] This result is probably also driven by the fact that only "online" bookers were surveyed. All consumers who had previously indicated that they had booked "offline" had already been filtered out by previous questions.

Table 43: Location where the accommodation was found prior to booking

	Responses in the survey (Raw data record)		Weighted analysis
Location where the accommodation was found	**Number**	**Percentage**	**Percentage**
Travel agency	3	0.32	0.34
Word of mouth	103	11.12	10.96
Advertising by the hotel	29	3.13	3.35
On the Internet/app	778	84.02	83.97
Other source	12	1.3	1.19
No answer given	*0*	*0*	*0*
Don't know	*1*	*0.11*	*0.18*
Total	**926**	**100**	**100**

139 A clear trend can also be identified regarding the exact location where the accommodation was found on the Internet: as the table below shows, about two-thirds of consumers who were not familiar with their accommodation before booking it found it for the first time on Booking.com on the Internet. HRS or Google were by far the most frequently cited locations where the accommodation was found. Other websites were rarely mentioned.

Table 44: Location where the accommodation was found on the Internet

	Responses in the survey (Raw data record)		Weighted Distribution
Online location where the accommodation was found	**Number**	**Percentage**	**Percentage**
Booking.com	485	62.34	67.72
HRS	74	9.51	7.78
Google	65	8.35	6.99
Trivago	12	1.54	1.52
Expedia	5	0.64	1.03
TripAdvisor	3	0.39	0.43
Check24	3	0.39	0.34
hotels.com	2	0.26	0.13
AirBnB	1	0.13	0.01
Hotel.de	1	0.13	0.16
holydays.hrs.de	1	0.13	0.13
Another website	59	7.58	6.18
No answer given	*2*	*0.26*	*0.12*
Don't know	*65*	*8.35*	*7.36*
Total	**778**	**100**	**100**

(5) Juxtaposition of the location where the accommodation was found and the booking channel used

140 Furthermore it was explored to what extent consumers who find accommodation on Booking.com end up not actually booking there but via the accommodation's direct online sales channel. It has already been shown in the previous section that around two-thirds of consumers find their accommodation on Booking.com first. A comparison of the (first) location where the accommodation was found and the actual booking channel used (see the table on the following page) can now reveal where consumers who were not familiar with the hotel prior to booking and then found it on the Internet ended up actually making the booking.

Table 45: Juxtaposition of the location where the accommodation was found and the booking channel used / booking location - raw data record

	Booking channel / booking location				
Location where the accommoda-tion was found	**Hotel's own real-time booking facility**	**Booking**	**Expedia**	**HRS**	**Total**
Booking.com	4	479	1	1	485
	0.82%	98.76%	0.21%	0.21%	100%
Expedia	0	0	5	0	5
	0%	0%	100%	0%	100%
HRS	1	1	0	72	74
	1.35%	1.35%	0%	97.30%	100%
Google	31	25	3	6	65
	47.69%	38.46%	4.62%	9.23%	100%
Trivago	3	2	3	4	12
	25%	16.67%	25%	33.33%	100%
TripAdvisor	0	3	0	0	3
	0%	100%	0%	0%	100%
Check24	1	1	0	1	3
	33.33%	33.33%	0%	33.33%	100%
AirBnB	1	0	0	0	1
	100%	0%	0%	0%	100%
Hotel.de	1	0	0	0	1
	100%	0%	0%	0%	100%
hotels.com	0	2	0	0	2
	0%	100%	0%	0%	100%
holidays.hrs.com	1	0	0	0	1
	100%	0%	0%	0%	0%
Another website	29	26	0	4	59
	49.15%	44.07%	0%	6.78%	100%
No answer given	*1*	*1*	*0*	*0*	*2*
	50%	*50%*	*0%*	*0%*	*100%*
Don't know	*24*	*39*	*0*	*2*	*65*
	36.92%	*60%*	*0%*	*3.08%*	*100%*
Total	97	579	12	90	778
	12.47%	74.42%	1.54%	11.57%	100%

141 The distribution weighted as representative of the population is as follows:

Table 46: Juxtaposition of the location where the accommodation was found and the booking channel used / booking location - weighted data record

	Booking channel / booking location				
Location where the accommodation was found	**Hotel website**	**Booking**	**Expedia**	**HRS**	**Total**
Booking.com	0.68%	**99.02%**	0.2%	0.11%	100%
Expedia	0%	0%	**100%**	0%	100%
HRS	3.6%	2.78%	0%	**93.63%**	100%
Google	**47.34%**	37.94%	4.05%	10.67%	100%
Trivago	13.1%	11.36%	**45.05%**	30.49%	100%
TripAdvisor	0%	**100%**	0%	0%	100%
Check24	22.78%	**61.74%**	0%	15.48%	100%
AirBnB	**100%**	0%	0%	0%	100%
Hotel.de	**100%**	0%	0%	0%	100%
hotels.com	0%	**100%**	0%	0%	100%
holidays.hrs.com	**100%**	0%	0%	0%	100%
Another website	**49.61%**	42.89%	0%	7.5%	100%
No answer given	*45.9%*	*54.1%*	*0%*	*0%*	*100%*
Don't know	*33.91%*	*60.73%*	*0%*	*5.36%*	*100%*
Total	10.34%	**78.06%**	2.13%	9.48%	100%

142 It can be ascertained on the basis of the tables above that not many consumers who initially found their accommodation on a hotel platforms are redirected to the hotel's website. If consumers find accommodation on a hotel platform, they nearly always book this accommodation on the respective hotel platform. The same applies to Booking.com. Around 99% of consumers who first found their accommodation on Booking.com subsequently also booked it there.

143 The majority of consumers who book via a direct online sales channel are already familiar with the accommodation. When consumers book accommodation through a direct online sales channel that they were not familiar with before booking, they usually find the accommodation on Google. Other locations where accommodation is found are not really relevant for consumers who subsequently book "direct". In particular, the entire data record contains only four bookings made via direct online sales channels for accommodation that was found on Booking.com first.

(6) Price comparisons made by consumers

144 Another objective of the consumer survey was to determine the extent to which consumers compare or do not bother to compare the prices of a particular accommodation on the various booking channels before booking, why they do so and the extent to which they notice price differences.

(a) Extent of price comparisons

145 It emerged that almost two-thirds of consumers booking accommodation on the Internet do not compare prices between the various online booking channels.

Table 47: Number of price comparisons – all online booking channels

	Responses in the survey (raw data record)		Weighted distribution
	Number	**Percentage**	**Percentage**
Yes, I compared prices	508	33.31	32.66
No, I did not compare prices	993	65.11	64.8
No answer given	*3*	*0.2*	*0.12*
Don't know	*21*	*1.38*	*2.42*
Total	**1,525**	**100**	**100**

146 The above-mentioned distribution does not change significantly in relation to consumers who have booked either on Booking.com or on the hotel's website. In both cases, more than 60% of consumers did not compare prices before booking.

Table 48: Number of price comparisons – for bookings made on Booking.com

	Responses in the survey (raw data record)		Weighted distribution
	Number	**Percentage**	**Percentage**
Yes, I compared prices	329	35.26	34.18
No, I did not compare prices	586	62.81	62.28
No answer given	*2*	*0.21*	*0.11*
Don't know	*16*	*1.71*	*3.42*
Total	**933**	**100**	**100**

Table 49: Number of price comparisons – for bookings made via hotels' own online sales channels

	Responses in the survey (raw data record)		Weighted distribution
	Number	**Percentage**	**Percentage**
Yes, I compared prices	107	29.48	30.27

No, I did not compare prices	253	69.7	69.25
No answer given	*0*	*0*	*0*
Don't know	*3*	*0.83*	*0.48*
Total	**363**	**100**	**100**

147 The same applies to consumers who were not familiar with their accommodation before booking and first found it on Booking.com: two-thirds of this group did not compare prices.

Table 50: Number of price comparisons made – for accommodations found on Booking.com

	Responses in the survey (raw data record)		**Weighted distribution**
	Number	**Percentage**	**Percentage**
Yes, I compared prices	165	34.02	33.4
No, I did not compare prices	316	65.15	65.57
No answer given	*0*	*0*	*0*
Don't know	*4*	*0.82*	*1.03*
Total	**485**	**100**	**100**

(b) Reasons for not comparing prices

148 Just under two-thirds of consumers do not compare prices between the various online booking channels. These consumers were asked why they did not compare prices and gave following answers:

Table 51: Reasons for not comparing prices - weighted

I did not compare prices because … (Multiple answers possible)	**All consumers**	**Only consumers who booked on Booking.com**
	Weighted proportion	Weighted proportion
It was too much trouble to compare prices on different websites	69%	72%
I found the hotel prices reasonable anyway	67%	69%
Appreciate the provider's booking terms and conditions	50%	56%
I don't think a different website would offer cheaper rates	45%	44%
Booking was particularly convenient because I was already registered	39%	45%

I compared the rates of different hotels on the Internet	37%	38%
Provider offered best price guarantee	23%	26%
I was not paying for the accommodation myself	17%	14%
Provider offered discounts	14%	15%
My employer told me what booking channel to use	6%	2%
Other reasons	7%	7%
Number of respondents	**993**	**586**

149 The most common reasons given were that it would be too much trouble to compare rates on several websites or that consumers thought the price of the accommodation was reasonable anyway. Other frequently mentioned reasons related to the features of the booking channel. Consumers either found the booking particularly convenient or appreciated the provider's booking conditions. Booking.com's customers mentioned both reasons somewhat more frequently.

150 Compared to these reasons, the best price guarantee promised by the respective booking channel was mentioned less frequently. Around 23% of all respondents, around 26% of Booking.com customers and around 18% of non-Booking.com customers mentioned this promise as a reason for not comparing prices.

(c) Websites included in price comparisons

151 About one-third of consumers compare prices between different online booking channels before they make a booking. These consumers were asked which websites they used.

152 Customers who found (Table 50) and/or booked (Table 48) their accommodation on Booking.com compared the Booking.com price with the prices on the following pages:

Table 52: Price comparisons if the accommodation was found or booked on Booking.com

(Multiple answers possible)	**Accommodation found on Booking.com**[48]		**Accommodation booked on Booking.com**[49]	
	Number	Percentage	Number	Percentage
Hotel website / app	46	28%	80	24%
Expedia	19	12%	32	10%
HRS	34	21%	75	23%
Google	18	11%	33	10%
Trivago	54	33%	101	31%
TripAdvisor	7	4%	17	5%
Check24	5	3%	12	4%
AirBnB	2	1%	4	1%
weg.de	0	0%	1	0%
Hotel.de	12	7%	19	6%
hotels.com	3	2%	3	1%
Tropo	0	0%	1	0%
Kayak	0	0%	1	0%
hotel.info	0	0%	1	0%
holidays.hrs.de	2	1%	5	2%
Another website	26	16%	55	17%
No answer given	*0*	*0%*	*1*	*0%*
Don't know	*13*	*8%*	*46*	*14%*
Number of respondents	**165**		**329**	

48 "Accommodation found on Booking.com" refers to consumers who were not familiar with their accommodation before booking and found it for the first time on Booking.com, regardless of where they ended up booking it (in which case the place of booking is usually Booking.com, see paragraph 142 above).

49 "Accommodation booked on Booking.com" refers to the behaviour of consumers who booked their accommodation through Booking.com regardless of whether they were already familiar with it and irrespective of where they had (first) found it.

153 The distribution weighted as representative of the population is as follows:

Table 53: Price comparisons if the accommodation was found or booked on Booking.com - weighted

(Multiple answers possible)	**Accommodation found on Booking.com**[50]	**Accommodation booked on Booking.com**[51]
	Percentage	Percentage
Hotel website / app	28%	26%
Expedia	9%	8%
HRS	17%	19%
Google	12%	12%
Trivago	31%	30%
TripAdvisor	2%	4%
Check24	3%	3%
AirBnB	1%	1%
weg.de	0%	0%
Hotel.de	4%	4%
hotels.com	1%	0%
Tropo	0%	0%
Kayak	0%	0%
hotel.info	0%	0%
holidays.hrs.de	1%	1%
Another website	19%	18%
No answer given	*0%*	*1%*
Don't know	*9%*	*15%*

154 The result of the survey shows that just over one-third of the consumers who found and/or booked their accommodation on Booking.com had previously carried out price comparisons and that less than one-third of them directly compared the prices on Booking.com with the prices on the hotel's own website. In absolute terms, only 80 out of the 933 consumers who booked on Booking.com and 46 out of the 485

50 "Accommodation found on Booking.com" refers to consumers who were not familiar with their accommodation before booking and found it for the first time on Booking.com, regardless of where they ended up booking it (in which case the place of booking is usually Booking.com, see paragraph 142).

51 "Accommodation booked on Booking.com" refers to the behaviour of consumers who booked their accommodation through Booking.com regardless of whether they were already familiar with it and irrespective of where they had (first) found it.

who first found the hotel on Booking.com compared the price published on Booking.com with the price on the hotel's own website, i.e. less than 10% of all consumers. Consumers can also obtain initial information on rates charged on direct sales channels from accommodations that advertise their direct selling prices e.g. on Trivago, TripAdvisor or Google. However, in the context of the hotel survey, only slightly more than 25% of the accommodations surveyed stated that they were represented on meta search engines.

155 Only 30% of consumers who booked their accommodation via the hotel's own direct online sales channel bothered to compare prices on other websites (see above table 49). Those who did so often used Booking.com, HRS or Trivago. In absolute terms, 57 out of the total of 363 respondents (see Table 54) who booked via the hotel's own direct online sales channel (see above Table 49) or 16% compared the room rate on Booking.com before booking.

Table 54: Overview of the booking channels consumers used to compare prices before booking on the hotel's own direct online sales channel

Consumers who booked on the hotel's own direct online sales channel before comparing prices on …	**Raw data record**		**Weighted distribution**
	Number	**Percentage**	**Percentage**
Booking.com	57	53%	57%
Expedia	13	12%	15%
HRS	27	25%	22%
Google	9	8%	9%
Trivago	31	29%	34%
TripAdvisor	3	3%	4%
lastminute.de	1	1%	1%
Check24	2	2%	2%
hotel.de	3	3%	2%
Bing	1	1%	4%
holidays.hrs.de	3	3%	2%
Another website	15	14%	14%
No answer given	*1*	*1%*	*0%*
Don't know	*10*	*9%*	*8%*
Number of respondents	**107**		

156 Where respondents indicated that they had compared prices on one of the four booking channels Booking.com, Expedia, HRS or an accommodation's direct online sales channel, they were asked whether they were actually able to book the respective accommodation there. It emerged that even when consumers tried to compare prices, they were not always able to find bookable offers.

Table 55: Bookability of the accommodation on the price comparison websites - weighted

Bookable on … ?	**Location found on Booking.com[52]**			**Accommodation booked on Booking.com[53]**		
	Yes	No	*Don't know*	Yes	No	*Don't know*
Hotel website (real-time booking facility)	67.61%	22.03%	*10.36%*	76.18%	14.16%	*9.66%*
Expedia	83.11%	6.46%	*10.44%*	77.14%	8.04%	*14.82%*
HRS	74.53%	19.97%	*5.51%*	72.51%	14.73%	*12.75%*
Number of respondents	73	15	11	144	20	23

(d) Results of the price comparisons made

157 The tables below show that one-third of consumers who compared prices between different online distribution channels actually noticed price differences for the same accommodation in about two-thirds of their price comparisons.

[52] "Accommodation found on Booking.com" refers to consumers who were not familiar with their accommodation before booking and found it for the first time on Booking.com, regardless of where they ended up booking it (in which case the place of booking is usually Booking.com, see paragraph 142).

[53] "Accommodation booked on Booking.com" refers to the behaviour of consumers who booked their accommodation through Booking.com regardless of whether they were already familiar with it and irrespective of where they had (first) found it.

Table 56: Result of price comparisons - raw data record

	All respondents		Location where the accommodation was found Booking.com		Booking location Booking.com	
	Number	**Percentage**	**Number**	**Percentage**	**Number**	**Percentage**
Yes, different prices were quoted for the same hotel.						
	295	65.85%	91	59.87%	180	63.60%
No, the same price was quoted for the hotel everywhere.						
	87	19.42%	34	22.37%	58	20.49%
No, no meaningful comparison was possible, because the hotel was only listed on one website/app indicating the price.						
	20	4.46%	12	7.89%	16	5.65%
No answer given	*0*	*0%*	*0*	*0%*	*0*	*0%*
Don't know	*46*	*10.27%*	*15*	*9.87%*	*29*	*10.25%*
Total	*448*[54]	*100%*	*152*	*100%*	*283*	*99.99%*

Table 57: Result of price comparisons - weighted

	All respondents	Location where the accommodation was found Booking.com	Booking location Booking.com
	Percentage	**Percentage**	**Percentage**
Yes, different prices were quoted for the same hotel.			
	67.68%	63.71%	66.26%
No, the same price was quoted for the hotel everywhere.			
	18.99%	22.57%	20.14%
No, no meaningful comparison was possible, because the hotel was only listed on one website/app indicating the price.			
	4.97%	6.48%	5.35%
No answer given	0%	0%	0%
Don't know	8.36%	7.24%	8.25%

54 Out of the total 508 consumers surveyed who compared prices, 60 no longer knew where they had done so. For these respondents, the interview ended with question 14.

158 Consumers who (i) took the trouble to compare prices in the first place, came across (ii) bookable offers and (iii) who noticed price differences, were also asked about the specifics of price differences. However, it is noteworthy that the number of responses for each type of price difference is very small compared to the total of 1,525 consumers surveyed. Since only relatively few answers (less than 50) to the various questions are available, the corresponding figures are not deemed to be statistically reliable. They are merely indicative of trends. For this reason, no percentages are given for the following evaluations - both in relation to the raw data record and in relation to the weighting that is representative of the population.

159 A total of 39 respondents fulfilled the above-mentioned criteria (i)-(iii), booked (iv) their hotel on Booking.com and compared it (v) with the price published on the hotel's own website. This group noticed the following price differences: in six cases the prices on Booking.com and the hotel's website were the same, in 27 cases the price published on the hotel's website was higher, in five cases it was lower than on Booking.com, although these consumer still booked the accommodation through Booking.com. (No response given / don’t know: 1 case).

160 Conversely, 32 respondents fulfilled the above-mentioned criteria (i)-(iii), booked (iv) via the hotel's direct online sales channel having previously compared (v) prices on Booking.com. The price differences noticed by this group were as follows: in seven cases the prices in the hotel's direct online sales channel and Booking.com were the same, in 19 cases the price on Booking.com was higher, in four cases the price on Booking.com was lower than in the hotel's direct online sales channel, although the accommodation was still booked via the hotel's direct online sales channel.. (No response given / don’t know: 2 cases).

161 In this respect, it was found in most but not all cases that customers who compared prices opted for the cheaper booking channel. In the 24 cases in which the hotel was found to offer a better a price, five respondents still booked on Booking.com even though it was the more expensive option. However, four out of 31 respondents who found Booking.com cheaper booked their accommodation directly via the hotel's more expensive online direct sales channel. In the end, about 10 - 20% of the consumers who compared prices and found price differences ended up not booking via the cheaper booking channel. Due to the small amount of data available, it is not possible to make generalisations based on these evaluations as to the frequency of cheaper prices on the hotel website in relation to Booking.com, the results of the hotel survey are more informative in this respect.

162 It was then investigated whether the rates found in the price comparison also corresponded to the offer ultimately booked in terms of details of the offer such as room size or other conditions. The result of the survey shows that although most of the offers were comparable, in many cases there were no comparable offers available:

- The 32 respondents who ultimately booked on Booking.com and previously found higher or lower prices on the hotel website (27 + 5, paragraph 159), indicated that the offer on the hotel website was similar in 22 cases, in five cases they said the offer details were different; in five cases no answer was given or respondents said they didn't know.

- The 23 respondents who ultimately booked via the hotel's own online direct sales channel and previously found higher or lower prices on Booking.com (19 + 4, paragraph 160), indicated that the offer on the hotel website was similar in 18 cases, in four cases they said the offer details were different, no answer was given or respondents said they didn't know. 1 case.

163 Only if the offers found were comparable were consumers asked how much cheaper or more expensive the offers on the hotel website or on Booking.com were. The results are illustrated in the following tables. According to the survey, respondents more frequently found higher rather than lower prices on hotel websites or Booking.com than on their respective booking channel, with the differential predominantly ranging between €0 and €20.

Table 58: Price differences on the hotel's website compared to the booking channel (Booking.com) - raw data

How much higher/lower were the rates?	Lower rates	Higher rates
€0-10	2	5
€10-20	0	11
€20-50	0	3
> €50	0	0
No response given	0	0
Don't know	1	0

Table 59: Price differences on Booking.com compared to the booking channel (hotel direct sales channel) - raw data

How much higher/lower were the rates?	Lower rates	Higher rates
€0-10	1	9
€10-20	1	5
€20-50	1	1
> €50	0	0
No response given	0	0
Don't know	0	0

164 Finally, the respondents who had booked on hotel platforms and had previously tried to compare prices on the accommodation's website, but had either not found different prices or bookable offers, were asked how they would have reacted if different prices had been quoted for the same room on the hotel's website under the same other conditions (see table next page). A total of 39 respondents answered the hypothetical question how they would have reacted if the price on the hotel's website had been 10% lower. A total of 34 respondents answered the follow-up question as to how they would have reacted if the room price on the hotel's website had been (just) 5% lower.[55] The data corresponds more or less to the actual booking behaviour of customers who compared and found different prices (see para. 159 to 161).

[55] Only respondents who had said they would have booked on the hotel's own website and not on the hotel platform if the price difference had been 10% were asked about their booking behaviour it the price difference had been (only) 5%.

Table 60: Hypothetical booking behaviour if prices on the hotel website had been lower - raw data

	Would you have booked on the hotel's website, if the price had been 10% lower?			Would you have booked on the hotel's website, if the price had been 5% lower?		
	All respondents	Accommodation found on Booking.com	Accommodation booked on Booking.com	All respondents	Accommodation found on Booking.com	Accommodation booked on Booking.com
	Number	Number	Number	Number	Number	Number
Yes	34	16	31	29	14	26
No	4	2	4	5	2	5
No answer given	0	0	0	0	0	0
Don't know	1	1	1	0	0	0
Total	39	19	36	34	16	31

(7) Summary

165 The questions about actual behaviour have shown that consumers generally book on the website where they find the accommodation. Customers who book directly with the hotel are predominantly customers who were already familiar with the hotel before booking. The overall results of the survey show that only a minority of consumers booking accommodation online bother to compare prices. Depending on the point of view, 60% to 70% of consumers do not compare the prices of their accommodation via the various booking channels. Of the one-third of consumers who compare prices in the first place, only a few compare the price published on the hotel's direct online booking channel with Booking.com (less than 30% consumers compare prices before booking on Booking.com, less than 60% before booking on the hotel's own website). This means just under 10% of the customers (who compare prices and those who do not) compare prices direct between Booking.com and the hotel's website. And even those who do compare prices do not always find lower prices at comparable conditions to those offered on Booking.com on the ho-

tel's direct online sales channel. Ultimately, about 10-20% of consumers who compare prices and find price differences end up not actually booking via the cheaper channel.

d. Alternative to price parity clauses?

166 In order to answer the question whether tracking is a suitable and legally permissible tool for determining which customers find their accommodation on Booking.com and then book directly on the hotel's online booking channel (see (aa)), the Bundeskartellamt has carried out investigations to determine the extent to which the price-setting behaviour of the accommodation is monitored (see (bb)) and what incentives online hotel platforms use to persuade hotels (primarily) to sell their rooms via online hotel platforms (see (cc)).

aa. Monitoring consumer behaviour: tracking

167 All three major platform operators stated that at least the currently used forms of tracking are not suitable for determining whether customers end up booking via the hotel partner’s direct online sales channel after looking for accommodation on the hotel platform. One platform pointed out that tracking is technically complex. In view of the fact that some Internet users object to the use of cookies, delete them in the course of their search or install tracking blockers, tracking in particular is not a universal solution. The legal admissibility may be subject to the customers' consent. Some respondents argued that it was already technically impossible to allocate different searches made over several days and devices to the same searcher.

bb. Monitoring the price-setting behaviour of accommodations

168 The investigations have shown that all three major online hotel platforms monitor the price-setting behaviour of accommodations listed with them. However, the focus so far has been on monitoring the price-setting behaviour of other hotel platforms By observing meta search engines and/or the websites of the major hotel chains, almost all of the major platforms at least partially track the pricing of accommodation in direct online sales channels. The monitoring is automated, regular and is conducted at short intervals (at least weekly if not daily). Some online hotel platforms use external service providers to this end.

169 All three major online hotel platform operators indicated in the survey that they inform or contact hoteliers if they notice price differences. According to the German

Hotel Association, Booking.com provides its hotel partners with detailed price performance overviews in which differences between the prices published on Booking.com and other online sales channels are listed accurate to the day, but are probably not channel-specific. According to the German Hotel Association, Expedia and HRS maintain similar overviews.

cc. Ranking factors as an incentive for accommodations to sell their rooms via online hotel platforms

170 The results of the investigations show that the vast majority of booking decisions are made on the basis of the list of standard results. Two online hotel platforms stated that in over 80% of the searches the results list is not re-sorted, one platform did not comment on this aspect. The hotel ranked first in the standard results list is the most likely to be booked: one platform said bookings made at hotels ranked first on the standard results list account for 45% of bookings made, another platform said they account for 27.8% and another platform said they account for 34% of bookings made. In total, one online hotel platform said bookings made at hotels ranked 1 to 5 on the standard results list account for 70.8% of the bookings made; one platform said they account for 52% and another platform said they account for 66%. Accommodations that rank 5th in the standard results list therefore have a comparatively low likelihood of being booked.

171 The factors that are taken into account in the standard ranking of all online hotel platforms are the booking volume generated by accommodations, the conversion rate and the commission rates. All online hotel platforms emphasise in their responses that these are, however, only some of the many factors considered by the respective algorithm. The algorithms are primarily designed to reflect individual customer preferences as accurately as possible. This probably means that not all consumers who are searching at the same time are shown the same standard results list. The ranking is probably also influenced by the personal preferences of the specific end customer, as far as these are known. Nevertheless, the hotel platforms can still provide an incentive for hotels to generate at least certain booking volumes via the respective platform in order to achieve a promising position in the standard ranking by taking into account booking volumes, conversion rates and commission/commission amounts for the standard ranking.

3. Competitive relationship between online hotel platforms

a. Do accommodations engage in price differentiation between online hotel platforms?

172 In the following, it will first be shown whether and how often accommodations engage in price differentiation between online hotel platforms (see (aa)). Under (bb) it is shown what the incentives or reasons are for accommodations to engage in price differentiation and to what extent the removal of the narrow price parity clause has had an impact in this respect.

aa. Frequency/scope of price differentiation between online hotel platforms

173 The hotel survey also investigated the extent to which accommodations publish different prices and/or conditions on the various online hotel platforms. This question obviously only concerns accommodations listed on at least two online hotel platforms. In total, data are available for 205 accommodations. The following table shows the actual response distribution. About one-third of the respondents indicated that they compare prices between online hotel platforms at least occasionally (i.e. in at least 25% of cases), of which 50% (i.e. in total about one-sixth) do so always or mostly (i.e. in at least 75% of cases). By contrast, almost two-thirds of accommodations stated that they rarely or never (i.e. in less than 25% of cases) offered different prices or conditions on different online hotel platforms.

Table 61: Frequency of differentiation in terms of price and conditions between online hotel platforms

Different prices/conditions on online hotel platforms	All accommodations	
	Number	Percentage
always/mostly (75 to 100% of cases)	33	16%
frequently (50 to 74% of cases)	16	8%
occasionally (25 to 49% of cases)	22	11%
rarely/never (less than 25% of cases)	134	65%
Sum total	**205**	**100%**

174 Small accommodations with a maximum of 21 rooms do not behave any differently in this respect than the accommodations in the data record as a whole. Of these,

only a few frequently (i.e. in at least 50% of cases) differentiate the prices or conditions between the various online hotel platforms, as the following table shows in detail.

Table 62: Frequency of differentiation in terms of price and conditions between online hotel platforms - only accommodations with a maximum of 21 rooms

Different prices/conditions on online hotel platforms	All accommodations	
	Number	Percentage
always/mostly (75 to 100% of cases)	16	19%
frequently (50 to 74% of cases)	3	4%
occasionally (25 to 49% of cases)	12	14%
rarely/never (less than 25% of cases)	54	64%
Sum total	**85**	**100%**

175 Very large accommodations with more than 100 rooms tend to differentiate prices and conditions between different online hotel platforms less frequently than smaller accommodations. More than 80% of these very large accommodations rarely or never differentiate prices and conditions between different online hotel platforms, i.e. in less than 25% of cases.

Table 63: Frequency of differentiation in terms of price and conditions between online hotel platforms - only accommodations with more than 100 rooms

Different prices/conditions on online hotel platforms	All accommodations	
	Number	Percentage
always/mostly (75 to 100% of cases)	4	13%
frequently (50 to 74% of cases)	1	3%
occasionally (25 to 49% of cases)	0	0%
rarely/never (less than 25% of cases)	25	83%
Sum total	**30**	**100%**

176 No significant differences are apparent when accommodations with and without online real-time booking facilities on the own website are considered separately. In both groups about two-thirds of the accommodations in each case offer different

conditions or prices on different online hotel platforms for the same rooms rarely or never and only about one-sixth say they do so always or mostly.

Table 64: Frequency of price and conditions differentiation between online hotel platforms - accommodations with and without online real-time booking facilities

Different prices/conditions on online hotel platforms	Accommodations that have a direct online sales channel		Accommodations that have no direct online sales channel	
	Number	Percentage	Number	Percentage
always/mostly (75 to 100% of cases)	23	17%	10	15%
frequently (50 to 74% of cases)	12	9%	4	6%
occasionally (25 to 49% of cases)	14	10%	8	12%
rarely/never (less than 25% of cases)	88	64%	46	68%
Sum total	**137**	**100%**	**68**	**100%**

177 However, there is a clear correlation between the frequency with which accommodations publish different prices on different online hotel platforms and the claim that they charge lower prices/offer more favourable conditions on their real-time online booking facility than on Booking.com. The following table shows the distribution of the relevant answers.

Table 65: Correlation between vertical and horizontal differentiation in terms of price and conditions - accommodations that have an online real-time booking facility

Differentiation in terms of price/conditions…									
between direct online sales channels ↔ Booking.com		between online hotel platforms							
		rarely/never < 25% of cases		occasionally 25-49%		frequently 50-74%		mostly > 75% of cases	
	Number	Number	%	Number	%	Number	%	Number	%
Yes	98	54	55.1%	11	11.2%	11	11.2%	22	22.4%
No	39	34	87.2%	3	7.7%	1	2.6%	1	2.6%
Sum total	**137**	**88**	**64.2%**	**14**	**10.2%**	**12**	**8.8%**	**23**	**16.8%**

178 Accommodations indicating that they offer more favourable prices/conditions on their online real-time booking facility than on Booking.com are at the same time much more likely to advertise different prices/conditions on different online hotel platforms than accommodations that never offer more favourable prices/conditions via their online real-time booking facility than on Booking.com.

179 The group with which this pattern of behaviour can be investigated is relatively small in the sample, since the inquiry system requires a total of three criteria to be met: 1) the accommodation must have its own online real-time booking facility, 2) it must be present on at least two online hotel platforms and 3) one of the platforms must be Booking.com. The result of the survey shows that only some of the accommodations that meet these criteria make comprehensive use of the resulting differentiation possibilities. According to the data shown in the table above, 33 accommodations that differentiate between their own online real-time booking facility and Booking.com prices/conditions at the same time also differentiate at least frequently between prices/conditions on different online hotel platforms. In terms of the number of accommodations in the sample that meet the above-mentioned three criteria (137 accommodations), around 25% currently make extensive use of price differentiation possibilities. Around 25% of the accommodations (34 to be precise) that meet the above-mentioned criteria also indicated that they did not engage in price or conditions differentiation between Booking.com and their own online real-time booking facility and that they rarely/never did so between different online hotel platforms. It is interesting to note that the accommodations of the two groups do not differ in size. The accommodations belonging to the group that engage heavily in price differentiation have on average 42 rooms, the number of rooms of the accommodations which rarely/never engage in price differentiation, is on average 46.

180 Only very few of the accommodations surveyed (a total of 5) stated that although they did not differentiate between their own direct online sales channel and prices/conditions on Booking.com, they did so at least occasionally between online hotel platforms. The largest group in terms of numbers (out of a total of 65 accommodations) said they differentiated between their own direct online sales channel and Booking.com and rarely/never (54 accommodations) or occasionally (a further 11 accommodations) between online hotel platforms. In relation to all accommodations that meet the above-mentioned criteria, this corresponds to 39% or a further 8% of accommodations.

181 The patterns of behaviour described above can also be observed here - albeit less clearly - if one considers the above-mentioned price-setting behaviour for the accommodations listed on at least two online hotel platforms, including Booking.com, which do not have an online real-time booking facility, but do have a hotel website on which cheaper prices/conditions could be offered. All in all, the above-mentioned criteria apply to 62 accommodations in the sample. Accommodations that meet the above-mentioned criteria but never offer cheaper deals on their own website than on Booking.com are less likely to publish different prices on hotel platforms than accommodations that at least occasionally offer cheaper rates on their own website than on Booking.com. With a total of 5 accommodations, the group that leverages the potential for price differentiation by at least frequently quoting different prices on online hotel platforms while offering lower prices on their website than on Booking.com is not very large (8% of all accommodations that meet the above-mentioned criteria).

Table 66: Correlation between differentiation in terms of price and conditions between online hotel platforms -- accommodations that do not have an online real-time booking facility but do have their own website

Differentiation in terms of price/conditions…									
between website ↔ Booking.com		between hotel platforms							
		rarely/never < 25% of cases		occasionally 25-49%		frequently 50-74%		mostly > 75% of cases	
	Number	Number	%	Number	%	Number	%	Number	%
Yes	29	17	58.6%	7	24.1%	1	3.4%	4	13.8%
No	33	26	78.8%	0	0%	2	6.1%	5	15.2%
Sum total	**62**	**43**	**69.4%**	**7**	**11.3%**	**3**	**4.8%**	**9**	**14.5%**

bb. What are the incentives/reasons for price differentiation between online hotel platforms from the accommodations' perspective?

182 Asked whether accommodations differentiate prices or conditions between online hotel platforms more frequently in return for lower commissions for the use of online hotel platforms, the vast majority of accommodations said they did (87 accommodations, or 42%). 70 accommodations (34%) said they did not (see also the following table).

Table 67: Importance of reductions in commission for price and conditions differentiation from the accommodations' point of view

Willingness to differentiate prices and conditions more frequently in return for lower commissions?		
	Number	Percentage
No	70	34%
Yes	87	42%
Don't know	48	23%
Sum total	**205**	**100%**

183 When asked how the prohibition of Booking.com's price parity clause since December 2015 has affected the willingness of accommodations to differentiate prices or conditions between platforms, a total of 71 accommodations using Booking.com indicated that they have become more inclined to offer competing platforms lower rates and/or conditions in return for lower commissions since the prohibition was imposed on price parity clauses. This corresponds to about 35% of the accommodations that use other online hotel platforms alongside Booking.com. 132 accommodations (65% of the accommodations that use online hotel platforms other than Booking.com) replied that the prohibition had not increased their readiness. This result applies to both small and very large accommodations. About one- third of accommodations with a maximum of 21 rooms and accommodations with more than 100 rooms said their willingness had increased due to the prohibition of Booking.com's price parity clause.

184 The 134 accommodations that stated they never or only rarely quoted different prices or conditions on different online hotel platforms were asked why this is. The free text answers can be grouped into four larger categories. The largest group comprising almost one-third of the accommodations (42 accommodations, i.e. 31%), stated that their basic corporate policy was to offer the same prices and conditions on all online hotel platforms. Slightly more than 25% of the accommodations (35 answers, i.e. 26%) said they had no interest in engaging in price or conditions differentiation between online hotel platforms or that they felt it would be too much trouble to do so. 14 accommodations (10%) said they were satisfied with the current situation and with the use of Booking.com in particular. One group of no less than 16 accommodations (12%) pointed out that no online hotel platform had hitherto offered cheaper commissions or other benefits and that they therefore saw no reason to differentiate prices or conditions between online hotel platforms.

185 The accommodations which claimed that the prohibition of Booking.com's price parity clause had increased their willingness to differentiate prices/conditions between online hotel platforms were subsequently asked to what extent they had actually granted more favourable prices and/or conditions. It becomes apparent that accommodations indicating that the price parity clause prohibition had increased their willingness to differentiate prices and conditions tend to do so more frequently than the accommodations listed on Booking.com as a whole.

Table 68: Frequency of price/conditions differentiation following the prohibition of Booking.com's narrow price parity clause

Frequency of price differentiation on online hotel platforms				
	Accommodations with increased willingness to engage in price/conditions differentiation following the prohibition of the price parity clause		Booking.com accommodations as a whole	
always/mostly (75 – 100% of cases)	11	15%	33	16%
frequently (50 – 74% of cases)	8	11%	16	8%
occasionally (25 – 49% of cases)	22	31%	21	10%
rarely/never (< 25% of cases)	31	43%	133	66%
Sum total	**72**	**100%**	**203**	**100%**

cc. Summary evaluation

186 To sum things up, it can first be stated that currently one-third of the accommodations surveyed engage in price differentiation between online hotel platforms at least occasionally, one-sixth say they do so always or mostly. Two-thirds of the accommodations surveyed, which are listed on several online hotel platforms, stated that they rarely or never do so, in particular because any such differentiation is not compatible with their corporate policy and/or would be too much trouble. The investigations have shown that accommodations which generally differentiate prices between their online real-time booking facility or their website and the offers on Booking.com, are also more inclined to set different prices on different online hotel platforms.

187 A large proportion of accommodations (42%) said they would be prepared to offer online hotel platforms more favourable prices or conditions in return for lower commissions. A further quarter of accommodations (23%) said they were still undecided in this respect. Although this indicates there is a keen basic interest in the online hotel platforms adopting a corresponding business strategy, it seems unlikely at present that they are doing so.

188 Accommodations indicating in the survey that the prohibition of the narrow price parity clause had increased their willingness to differentiate prices between online hotel platforms tend to offer different prices/conditions on different online hotel platforms more frequently than the accommodations generally listed on Booking.com (and at least one other online hotel platform).

b. Does competition exist between the three major online hotel platforms in respect of commission?

189 The different commission concepts of the online hotel platforms and the trend in commission are illustrated below under (aa). The question whether commission-related competition exists between the three major online hotel platforms operating in Germany or whether an uncompetitive oligopoly exists in this respect is subsequently answered under (bb). The incentive or willingness of competing online hotel platforms to offer more favourable commissions in return for more favourable rates and/or conditions will be discussed as well as the reasons for this, among other things. It is shown whether and, if so, to what extent competing online hotel platforms actually offer more favourable commissions in return for more favourable rates and/or conditions and what the reasons for this are.

aa. Commission models and commission trends

190 The relevant online hotel platforms for accommodations located in Germany offer different commission concepts. In some cases, the commission concepts provide for regional differentiation. In some cases, higher commission rates also cover certain invoicing services for the accommodations. Some online hotel platforms offer partner programmes with higher commission rates. All three major platform operators give accommodations the opportunity to improve their ranking by increasing the commission rate for short periods. These programmes are called “visibility booster” at Booking.com, “ranking booster” or “Recommended by HRS” at HRS

and “Accelerator” at Expedia. The smaller platform operators charge lower standard commission rates in some cases or conclude individual commission contracts in others.

191 All three major online hotel platforms have indicated that the Bundeskartellamt's decisions to prohibit the broad/narrow price parity clauses have had no effect on their standard commission rates. As far as can be seen, the platforms have not changed the standard commission rates, and accordingly there have been no significant changes in the level of the average commission they charge.

bb. Competition for commission

192 As outlined in the foregoing, the online hotel platforms relevant in Germany use different commission models. Some of the smaller platform operators charge comparatively low commissions - this is also reflected in the average commissions - but are offering less internet reach at least at present.

193 In the course of the investigations, all of the major online hotel platforms stated that they have not and are currently not pursuing any strategy in the direction of offering more favourable commissions in return for more favourable room prices and/or conditions. Booking.com argues that competition on the online hotel platform market does not primarily involve competition for commission, but takes place through other parameters. Competition between booking platforms involves, in particular, competition based on performance.

194 However, it would be too short-sighted to conclude from the status quo alone that there can be no corresponding competition for commission between the online hotel platforms. On the contrary, the strong market growth of the national online hotel platform market seems to be the reason why accommodations may not offer more favourable rooms/conditions in return for lower commissions. In the period between 2013 and 2017, the market volume of the German online hotel platform market grew by [80-90]%. Against this backdrop, it is true to say that the established three major online hotel platform operators do not have any incentive to adopt a relevant commission strategy at least at present. The comparatively low commissions charged by the smaller platforms show, however, that this is basically a realistic scenario.

195 Against the backdrop of the significant shifts in market share over the past five years, in which Booking.com has managed to expand its market leadership, taking a market share of almost two-thirds of the German online hotel platform market at

the expense of HRS and Expedia, there is no reason to conclude that an uncompetitive oligopoly exists solely on the basis of the essentially unchanged level of commission.

c. Summary evaluation

196 One-third of the accommodations surveyed which are listed on at least two online hotel platforms, already engage in price differentiation between the platforms at least occasionally today, one-sixth say they do so always or mostly. More than 40% of the accommodations surveyed which are listed on at least two online hotel platforms expressed a basic interest in the online hotel platforms developing a corresponding business strategy. At least the three major online hotel platforms are currently only beginning to do so (HRS). Due to the steady market growth over the past few years, the online hotel plat-forms have little incentive to develop a relevant business strategy. In view of the high level of interest on the hotel side, however, it is to be expected that this could change if market growth slowed down or stagnated.

197 Accommodations indicating in the survey that the prohibition of the narrow price parity clause had increased their willingness to differentiate prices between online hotel platforms tend to do so more frequently on online hotel platforms. The prohibition of the price parity clause has also had a positive impact on competition between platforms.

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