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**Szilágyi Pál**

**The evaluation of the Hungarian sector  
inquiry in the online travel market**

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# The evaluation of the Hungarian sector inquiry in the online travel market<sup>12</sup>

## Introduction

Recently there is increased focus on the travel markets.<sup>3</sup> The Hungarian Competition Authority carried out a market analysis on the market of online hotel bookings. The final report was adopted in May 2016.<sup>4</sup> In this article, we will first give a detailed overview of the report and after that offer some comments on it.

## The final report – a quick summary

### The subject of the sector inquiry

At start, the period investigated was 2010 - 2013, but due to international and national developments on the market, and due to the amended behaviour of online travel agencies, the investigation also covered 2014 and 2015. During the sector inquiry, the GVH requested information from several undertakings and market actors and also provisioned a survey to test the consumer side of the market. The GVH also used the data available at the Central Bureau of Statistics and other surveys that were accessible.

### The market of online travel agencies

With the evolution of online hotel bookings, the market for booking an accommodation, the undertakings active in this market, the business models and the way how accommodation is booked changed significantly. Several undertakings provide services where one can book accommodation online. These undertakings include both international, globally active and national ones. The market of online travel agencies is a two-sided market, where online travel agencies connect supply and demand, namely accommodation providers with consumers. With the advent of online travel agencies the market became more transparent since, on the website of the OTA, one can compare the offers of numerous hotels. Due to the increased transparency, competition between hotels grew (namely the so-called inter-brand competition), however, there was no competition on prices on the merits between OTAs, and the prices of the hotels were basically similar on every sales channel during the first period of the market inquiry.

### Price parity clauses<sup>5</sup>

The lack of price competition can be traced back to the so-called price parity (rate parity, retail MFN) clauses included in the agreements demanded by the OTAs. In these agreements concluded with the

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<sup>1</sup> "The present paper is published under the aegis of the Hungarian Ministry of Justice, within the framework of the program entitled 'The Elevation of the Standards of Legal Education'"

<sup>2</sup> The author has investments in the hotel and travel industry.

<sup>3</sup> See e.g. SZILÁGYI, Pál: Travel markets and competition law. PLWP 2017/14. Link: [http://www.plwp.eu/files/2017-14\\_Szilagyai](http://www.plwp.eu/files/2017-14_Szilagyai).

<sup>4</sup> In Hungarian see here: GAZDASÁGI VERSENYHIVATAL: Végleges jelentés az online szálláshelyfoglalás piacán lefolytatott ágazati vizsgálatról. (2016).

<sup>5</sup> I have evaluated MFN clauses in a different article, therefore this article will not cover that part of the sector inquiry.

OTAs, the hotels accept that they will not sell hotel rooms at lower rates on any sales channel, than the lowest price given to the OTA. A hotel can comply with this clause if it standardises the prices of the rooms on all sales channels. This will stop intra-brand competition and with this competition between all OTAs that sell the same room.

Price parity clauses can be found not only in the terms and conditions of international providers, but also in the contracts of the larger national providers. Price parity clauses in Hungary were adopted due to the behaviour of the large international providers and the majority of the Hungarian market participants have used such clauses since they were founded. In the sector inquiry the GVH concludes, that even one contract of a large OTA that includes a price parity clause can lead to uniform prices of hotel providers for the same room on all sales channel.

## The final report – a detailed overview

According to the sector inquiry, price parity has rather a negative impact on hotels, as they could maximise their profits if they could sell rooms via their own sales channels or on platforms with lower commission rates at a lower price. However, the emergence of online travel agents also had substantial benefits, since due to the online platforms the occupancy rates have increased. For consumers, the benefit of price parity could be a reduction in search costs, but since search is done online, so this cost saving is basically just the saving on search time.

### Narrow price parity

In many European countries, the parity clauses have been subject to a competition assessment. The case law outlined by the sector inquiry typically focuses on the fact that the online travel agents shall introduce the so-called narrow price parity clauses, instead of the broad MFN clauses. The parity clauses were completely rejected only by the German competition authority and the French legislature. With the narrow price parity clauses the online travel agents require the hotels not to provide better terms on their on websites compared to those offered to them; regarding other sales channels and other hotels the parity clauses impose no obligations on hotels.

### The main findings of the sector inquiry

The GVH's position fits in with the findings of international procedures that the full use of parity clauses may restrict competition by standardising prices and increasing entry barriers. In a market with a similar concentration to the Hungarian market, this can be particularly worrisome. The use of full-scale parity clauses does not entail any kind of scale and efficiency gains or benefits to consumers, which would justify a complete restriction on intra-brand competition.

Taking also into account the danger of free-riding, a narrow price parity clause might be a suitable solution to the market problems. Narrow price parity clauses open the way for the freedom of accommodation providers to use different pricing strategy on different sales channels. On the other hand, the online travel agents have the opportunity to announce promotions or to compete with each other on the account of their commission.

### Signs of limited competition on the market

#### *Pricing of accommodations and price parity on the market*

The sales structure of accommodation providers has changed fundamentally with the entry of online travel agents. The average number of guests using online travel agents to book has exceeded the

number of guests who use traditional ways, namely those using e-mails, phones, traditional travel agencies or who are walk-in guests.

With the advent of online travel agencies the market became more transparent since, on the website of the OTA, one can compare the offers of numerous hotels. Due to the increased transparency, competition between hotels grew (namely the so-called inter-brand competition), however, there was no competition on prices on the merits between OTAs, and the prices of the hotels were basically similar on every sales channel during the first period of the market inquiry.

The lack of price competition can be traced back to the so-called price parity (rate parity, retail MFN) clauses included in the agreements demanded by the OTAs. In these agreements concluded with the OTAs, the hotels accept that they will not sell hotel rooms at lower rates on any sales channel, than the lowest price given to the OTA. A hotel can comply with this clause if it standardises the prices of the rooms on all sales channels. This will stop intra-brand competition and with this competition between all OTAs that sell the same room.

Price parity clauses can be found not only in the terms and conditions of international providers but also in the contracts of the larger national providers.

#### *Online hotel booking trends in Hungary*

One reason the GVH decided to inspect the hotel booking market, more precisely the processes on the market of online travel agents, is that online bookings show a growing trend in Hungary and its significance is increasing. This trend was also supported by the results of the consumer market research conducted during the sector inquiry. Online hotel bookings, namely bookings made via hotel websites, online travel agencies or coupon sites make up almost half of all reservations. Moreover, nearly half of the online reservations are done via online travel agents, whose share has exponentially increased over the years.

Main focus of the enquiry

During the sector inquiry, the GVH was primarily interested in finding out whether there are market players in the online accommodation market or regulatory factors that hinder the efficient operation of the market. Accordingly, the study focused on the following topics:

Price parity - Is price parity raising any competition law problems? It is possible to amend the domestic practice in a way that will result in more competitive pricing of OTAs? Is it possible and would market participants be willing to sell at a price different from that dictated by price parity?

Commissions - Can the amount of commissions payable to online travel agents affect the prices? Do they have upward pricing pressure? What are the commissions of the different OTAs?

Market entry - Are there barriers to entry or obstacles? If so, what type? How could one make market entry of new entrants more attractive?

#### *The period under scrutiny*

At start the period investigated was 2010 - 2013, but due to international and national developments on the market, and due to the amended behaviour of online travel agencies, the investigation also covered 2014 and 2015.

### *Sales channels of hotels*

Hotels sell their rooms either online or offline. In the market study the differentiation is not based on technical differences, but based on inherent characteristics of the different channels. An online channel assumes a user interface (like a web page), where the entire search and booking process can take place, within a standardised framework. Accordingly, "online" channels include booking on the website of the accommodation, booking with online travel agents or other online channels such as coupon pages. Two main groups of "offline" channels are: own direct offline channel of the hotel (by phone, fax, e-mail, personally booked booking) and other offline channels, including traditional travel agents. (E-mail - a traditionally online channel is therefore treated as offline in the market study, since there is no standardized one-step execution of the reservation.)

It is evident, that regarding those hotels who have submitted data, offline sales had a bigger role than online in 2012. Among online sales channels, online travel agents play a significant role for all types of accommodations, but for hotels and other types of accommodations, they have a greater role than for hotel-chains.

### *Setting room prices and price changes (notion of channel management)*

The study also included how accommodations set their room prices, how frequently they change them and how much the competitors' prices are monitored.

The main factor when setting a room price is actual and future demand (taking into account the occupancy of the hotel) and the prices of competing hotels. The pricing strategy of hotels also depends on the standard of the room, the season, the room costs and the expected profits. Prices are also influenced by the payment and cancellation terms associated with the booking, which may vary by sales channel.

The frequency of price changes is different prices for each type of accommodation. Within accommodation types, the habit of hotel chains is also not uniform, they change prices with different frequencies. It happens that room rates change daily or even several times during the day, which is typical for hotels in Budapest, in the main season and for online bookings, since in these cases supply and demand and the price of the rooms of competitors changes frequently.

It is typical for accommodation providers to monitor the prices of competitors. Large hotel chains keep track of prices on hotels and online travel agents' websites and in print media ads. They also use services of monitoring companies, like Hungarian Hotel Monitor, or Smith Travel Research (STR), TravelClick or Rate Gain, which is internationally recognised. These service providers offer daily and monthly performance evaluations.

Hotels that are not part of the chain are also regularly tracking the prices (some also do daily competitor analysis).

### *Online travel agents as platforms*

#### *Operation of online travel agents (linking the demand and supply side)*

On the market of online bookings, the online travel agents are those who link the supply offered by the accommodation providers with the demand of travelling consumers looking for an accommodation, enabling the search and booking of accommodations based on different criteria. The revenue of online travel agents comes from contractually set commissions that are paid after the realised booking made via their website.

The essence of general online travel agent sites is that users can quickly at no additional cost find available accommodations with prices and they are also able to book those. The service offered by the online travel agents might be different in content: some sites only offer accommodation (even for one night), other sites allow only the booking of packages.

These are typically bookable for more nights, but there might be even daily offers for only one night on those too. It is also frequent that some sites offer both room rates and packages at the same time.

The online travel agents manage and forward customer data and bookings. They might also ask the guests to review the accommodation, which they can publish on their website. Online travel agents usually stipulate that the accommodation provider cannot show any contact details (phone, e-mail, website, etc.) on the website of the OTA. This is how they try to protect themselves from those

“Free-riders”, who only use the website of the online travel agent to search and make a detailed comparison and then book their stay directly at the selected accommodation provider.

On the page of the online travel agent, the consumer can book the accommodation that is favoured during the search process. With a booking, a contractual relationship will be set up between the hotel and the consumer. How the contractual relationship will be established differs depending on the type of online travel agent: (i) OTAs where it is required by the accommodation provider to confirm the booking; and (ii) OTAs which allow real-time bookings.

In case of (i) OTAs which require that the accommodation provider confirms the booking, the portal will first confirm the request to the user, but this is not the final confirmation of the booking by the accommodation provider. The accommodation provider will inform the guest (or the portal) of the confirmation of the booking - or if it is not able to accommodate the guest - about the rejection. The accommodation provider will pay a commission after each realised booking. Most of the domestic players are such an online travel agent.

In case of OTAs (ii) which allow real-time bookings - as opposed to those in the previous sub-type - here we are talking about real bookings, which means, that the accommodation provider offers capacity, a contingent to the online travel agent and the consumer will be able to book within that predetermined limits, which means that the consumer gets a quick (instant) confirmation of the booking and this is also a confirmation by the accommodation provider. The accommodation provider will pay a commission after each realised booking. The accommodation provider in this case entitles the online travel agent to conclude a contract on behalf of him. However, even in this case, the online travel agent does not become the subject of the contract.

The uploading and updating of data to the online travel agents' websites are usually the responsibility of the accommodation providers. In general, the accommodation providers specify the type of data to be included on the site (these are mostly for accommodation facilities, room facilities, prices, cancellation conditions), but the content of the information is determined and uploaded by the accommodation. Uploading the data is done by the revenue managers of the hotels, nowadays usually not manually, but with so-called computerised channel managers (like Rate Tiger, Rate Gain). If the online travel agent does not offer to the hotel a self-managed interface to upload the data, the hotel will send all changes in writing to the intermediary. In this case, it is the responsibility of the online travel agent to update the information sent by the hotel on its website in a timely manner and without any changes.

Based on data uploaded by hotels, the online travel agent will determine the order of hotels (ranking) on their website. The ranking is influenced by a number of factors: it is depending on the commission

rate, the number of visitors and bookings (conversion), the minimum number of rooms, the number of cancellations, but several other factors might also play a role, like the length of the introductory text, the quality of the photo gallery, the management of prices (quick updates, compliance with price parity), reviews of previous guests and the response time to guest enquiries. Rankings are an important factor for hotels because the accommodation that is located at the end of the result list will be less likely booked. Although according to consumer research, a significant proportion of Hungarian travellers (62%) said that they were looking at all the bids, but more than four fifths of respondents were using the filters, so the number of accommodations displayed could be considerably reduced. Despite the widespread use of filters, however, one-third of consumers view only the hotel offers shown on the first few pages, so in these cases, the order may have an important role for the accommodation provider.

#### *Business models of online travel agents*

Where the money paid for the accommodation by the consumer will end up (at the online travel agent or the accommodation provider) depends on the business model used by the online travel agent. This also implies that the accounting for the commission due to the online travel agent is also not uniform.

The study distinguishes three business models based on the way how commissions will be accounted for: merchant, agency/commission based and mixed model.

In the merchant model, the consumer pays for the service (in advance), to the intermediary, and the latter one will transfer the money reduced by the commission to the accommodation provider.

In the agency/commission model, the consumer pays directly to the hotel (at the time of departure) and the accommodation provider will later pay the amount of the commission to the online travel agent.

The mixed model is a mixture of the previous two, in which case the consumer pays the intermediary, who transfers the whole amount to the accommodation provider and the hotel will later pay commission to the online travel agent.

The vast majority of online travel agents in Hungary operate under the commission-based model, thus their income is paid in the form of a commission paid by the accommodation after the rooms are sold through them.

#### Online travel agents on the Hungarian market

International online travel agencies (Booking.com, Expedia) entered the Hungarian market in the early 2000s. Domestic online travel agents appeared first in 2004, like the current domestic market leader Szallas.hu Ltd. entered the market in 2009.

In addition to the presence of the domestic market leader and the strong international undertakings new entrants, new booking sites also entered the market.

The entering of the market by Szallas.hu in 2009 had great importance and it already significantly emerged in 2010 based on the booking volume compared to other national service providers and it could also keep the market leader position ever since then.

It is also important to point out that in the contracts between the accommodation providers and the internationally active foreign seated undertakings the price parity clauses were already applied in the early 2000s. In this respect, the operation of the market was fundamentally determined by the

behaviour of the first market players on the online booking market. The domestic players who have entered only later have adopted the established practices and therefore used the same clauses since their market entry.

The online travel agents who are active on the Hungarian market and who have been contacted during the enquiry (together with the business model they follow and the date of entering the market) is summed up in the following table.

<b>General online travel agent</b>	<b>Website operated</b>	<b>Market entry</b>
Booking.com B.V.	booking.com	2001
Expedia-csoport	expedia.com, hotels.com	2002-2003
Hotelstart Kft.	budapesthotelstart.com, szallasvadasz.hu	2004
Lázár&Lázár Kft.	wellnesshetvege.hu	2004
Utazzitthon.hu Kft.	utazzitthon.hu	2004
Utisugo.hu Kft.	utisugo.hu	2006
Ad Solutions Kft.	wellnesscentrum.hu	2006
PK Travel Kft.	utazok.hu	2007
Szállodák Kft.	budapestiszallodakhotelek.hu	2008
Szallas.hu Kft.	szallas.hu	2009
Hotel7 Kft.	szoba.hu	2009
HRS GmbH	hrs.com	2009
HotelPremio Kft.	szallodak.hu, budapesthotelreservation.hu	2010
InternetHotel Kft.	budapestiszallodak.hu, szallasmania.hu	2010
InnoWell Kft.	wellnessakció.hu	2011
Travelminit SRL	travelminit.eu	2010

Based on available data, the above mentioned online travel agents contacted in the enquiry cover almost the whole of the online accommodation booking market.

Market participants providing data in the sector inquiry have highlighted the following events affecting the accommodation booking market over the past decade. (It should be noted that in some cases the market trends they refer to are not supported by the data revealed by the study.)

According to data providers, the global economic crisis that began in 2008 had a negative effect on Hungarian tourism and hotel industry, which also affected the activity of online travel agents. From



2010 to 2014, however, the total value of bookings via online travel agents increased steadily. Despite the fact that online travel agents are an important selling channel for hotels, hotels themselves are striving to increase their direct sales, which may negatively affect the online travel agent market in the future (however, this argument is currently not backed up by the available data).

The emergence and rapid expansion of coupon sales has been a significant change since 2010 with respect to the online travel agent market. Several companies who operate a webpage for coupons are also operating a general online travel agency site and vice versa. Around 2010 several online travel agents launched a website for coupon offers. Based on the available data, since 2010, the total value of bookings on coupon pages has increased steadily, but the significance of coupon pages seems to fall from 2014 onwards.

With the emergence of search sites (like Google, Yahoo, Bing), specialized search engines, guest reviews and price comparison sites or meta-search engines (like trivago.hu, tripadvisor.com, hotelscombined.com, hotelpricelot.com, kayak.com, wego.com, Google Hotel Finder) and the spread of their use also resulted in a significant changes to the OTA market. These portals help consumers to find and compare accommodations and online travel agents quickly, thus helping consumers to find the best deal and ensure the transparency of prices. As a result of the spread of the search engines, search optimisation became more important (also) for online travel agents. As the organic search results of large search engines nowadays often change from day to day, and Google shows paid ads on the top of its list of hits, it has been more difficult to reach a persistent appearance at the top of the organic search results.

#### Evolution of commission rates

The revenue of online travel agents comes from contractually set commissions that are paid after the realised booking made via their website. The commission rate is set by most of the online travel agents based as a percentage of the gross room rate.

The online travel agents can set a basic commission rate, but can also decide not to apply the basic commission rate, but set one individually, based on the characteristics of the hotel.

The commission rate might be the same for each accommodation in theory, but it may be possible that the online travel agent differentiates between the contracted hotels or bookings and applies a different commission rate for different groups (like hotels in Budapest - rural accommodations, individual - group bookings).

In practice, several of the online travel agents present in Hungary do not distinguish between the contracted accommodations and apply the same basic commission rate in every case. Other online travel agents, however, distinguish between partners and use different commission rates for different groups of accommodations.

Those online travel agents who use different commission rates, the differentiation might be made along multiple variables. Common variable for using different commission rates are the location of the hotel (e.g. in Budapest or in the countryside) or the category of the hotel (e.g. hotel or another type of accommodation). It is also possible to find differentiation based on the type of booking (e.g. individual booking, group booking, booking for an event), on preferred partnership (standard or preferred hotel), or based on booking volume. There is also an example in practice that an online travel agent uses several criteria to distinguish among the accommodation providers to determine commission rates (e.g. standard partner in Budapest, preferred partner in Budapest, standard partner in the countryside or preferred partner in the countryside).

The rate of the commission (be it basic or special) for an accommodation at an online travel agent changes only rarely and is usually the same for several years. A possible cause for change might be the increase in the costs of the online travel agents, the increase of the booking volume of the partner or the entering of a loyalty program by the accommodation. The level of commission for campaigns or for regular bookings is usually the same.

In the case of five online travel agents present on the Hungarian market, hotels can increase commission rates in order to influence the position in the rankings. In these cases, change in the commission rate is more frequent. Based on the data provided during the enquiry, the change in the commission rates is more frequent for hotels in Budapest for this reason.

The commission rates used in Hungary by the online travel agents range from 10 to 30 percent, a very broad range. In the case of those online travel agents who differentiate, commission rates are higher for hotels in Budapest than for hotels in the countryside (usually with 3 - 5%) and the commission rates for hotels is higher than for other types of accommodations. This is confirmed by data provided by accommodation providers; as can be seen in the table below, the commission rate range is the broadest in the case of hotel chains, is very similar for hotels and is significantly smaller for guest houses.

*Commission rates for different accommodation providers*

	<b>hotel chains</b>	<b>hotels</b>	<b>other types of accommodation</b>	<b>Together</b>
<b>Range of commission rates (%)</b>	12 - 30	10 - 25	10 - 15	10 - 30

Based on the available data, it can also be established that the rate actually used differs from the basic commission rates in several cases. The deviation may be caused by commission rates that were set individually or by the higher commission offered by the hotel (in order to have a higher ranking).

Market shares, degree of concentration on the market

The size of the online travel agent market might be estimated on the one hand based on the total value of bookings via the online travel agents or, on the other hand, based on the realised revenue out of commissions. Given that, based on the information obtained, the respondents covered almost the whole of the market, the market size was determined by the aggregation of the data provided by the online travel agents about themselves.

The table below shows the estimated size of the total online travel agent market based on the gross value of bookings and the net commission income of online travel agents.

million HUF	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Size of OTA market based on the gross value of bookings</b>	17 568,8	24 502,8	37 678,1	47 706,8	64 826,6
<b>Size of OTA market based on net commission income</b>	2 297,6	3 238,7	5 303,9	6 693,0	9472,2

Market shares based on the gross value of bookings

	2010	2011	2012	2013	2014
<b>Booking.com B.V.</b>	[50-60]%	[50-60]%	[60-70]%	[60-70]%	[60-70]%
<b>Szallas.hu Kft.</b> <sup>88</sup>	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
<b>Expedia csoport</b> <sup>89</sup>	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%
<b>HRS GmbH</b> <sup>90</sup>	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
<b>Hotelstart Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Utazitthon.hu Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Utisugo.hu Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	n.a.
<b>PK Travel Kft.</b> <sup>91</sup>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>HotelPremio Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Szállodák Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Hotel7 Kft.</b>	n.a.	n.a.	n.a.	n.a.	n.a.
<b>InternetHotel Kft.</b>	n.a.	n.a.	n.a.	n.a.	[0-5]%
<b>Travelminit SRL</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	n.a.
<b>Σ</b>	100,0%	100,0%	100,0%	100,0%	100,0%

Market shares of online travel agents based on the net commission income

	2010	2011	2012	2013	2014
<b>Booking.com B.V.</b>	[60-70]%	[60-70]%	[60-70]%	[70-80]%	[60-70]%
<b>Szallas.hu</b> <sup>94</sup>	[5-10]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%
<b>Expedia csoport</b> <sup>95</sup>	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
<b>HRS GmbH</b> <sup>96</sup>	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%
<b>Hotelstart Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Utazitthon.hu Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Utisugo.hu Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	n.a.
<b>PK Travel</b> <sup>97</sup>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>HotelPremio Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Szállodák Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Hotel7 Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>InternetHotel Kft.</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Travelminit SRL</b>	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>Σ</b>	100,0%	100,0%	100,0%	100,0%	100,0%

Based on market shares, the market is considered to be concentrated, with the first three undertakings representing together 80-90% of the market and the first five undertakings covering almost the entire market, accounting for more than 95% of the market. The market share of the former undertakings also showed an upward trend between 2010 and 2014, due to the increase of the market share of Booking.com. Several of the online travel agents confirmed the increase of the market share of the larger market participants and the decline in the importance of smaller players in recent years.

On the basis of the market share calculated on the basis of commission income, very similar order and trends can be seen as in the case of market shares based on the gross value of booked accommodation.

Based on the figures, it can be seen that Hungarian online travel agencies typically use lower commission rates than international operators, at least than Booking.com.

With regard to market concentration, we have very similar results for the combined market share of the largest three or five market players as we could see in the market shares calculated based on the gross value of booked accommodation.

One of the most common measurements of market concentration is the HHI index. The table below shows the HHI indices for 2010-2014 based on the two estimations (based on gross booking value and net commission rate).

The table shows that HHI indices are high in both cases and have been increasing steadily since 2010. The market of online travel agents is therefore also highly concentrated based on these measurements.

*HHI-indices  
(2010-  
2014)*

	<b>Based on gross booking value</b>	<b>Based on net commission income</b>
<b>2010</b>	3290	4271
<b>2011</b>	3682	4768
<b>2012</b>	4393	4993
<b>2013</b>	4784	5423
<b>2014</b>	4950	5104

The characteristics of contracts with the online travel agents

General terms and conditions

The GTCs applied by the online travel agencies are by their nature unilaterally determined by the OTAs. Accommodation providers usually cannot conclude contracts with other terms, so they either accept the terms in their entirety or there will be no agreement between the parties. Based on information provided during the market enquiries in a limited number of cases, there might be that the contracts include different terms individually negotiated, then the terms in the general Terms and Conditions, usually in the case of major hotel chains.

From a practical point of view, the arrangement between online travel agencies and hotels usually arises from the fact that the parties record the details of the parties and the commission paid by the hotel in usually one or two pages, and in addition the contract refers to the general terms and conditions to which the parties are obliged to comply. The sector inquiry also found that an online travel agency did not use the GCC published separately from the contract to be concluded, but the two elements mentioned above (contract and GTC) are both included in the model contract used by the online travel agency. The content of the agreement is also determined by the online travel agency in this case too, the hotel cannot amend the terms of the agreement. The two constructions have the same legal effect as the applicability of the general terms and conditions is not influenced by the fact whether they are included in a contract or just referred to it in the contract.

### *Contractual provisions relating to commissions*

All online travel agencies who were included in the sector inquiry apply a business model where the service provided to the hotels is paid primarily through a commission payable for bookings via the system of the online travel agent.

Commissions charged by online travel agents are usually defined as a percentage of the value of the reservation. Some - mainly smaller online travel agents - apply the same commission to each of their partners; However typically this is not the case, but rather commissions are defined based on several variables (location, the category of the hotel, type of the hotel). It is common that for major hotels a different commission level is determined.

Commissions are typically set at a level of 10 - 30% of the net booking value.

For the online travel agents contacted by the GVH, the commission rate is typically paid afterwards, based on monthly invoicing, and the guest pays the accommodation fee for the hotels directly. However, it is also possible that the guest pays to the online travel agent and the OTA will transfer the fee for the accommodation to the hotel after deducting the commission fee.

For cancellations or no-shows most of the general terms and conditions have special rules regarding the commissions. If the guest is allowed to cancel the booking without charge, the accommodation provider will not be charged any commission. However, if the guest is obliged to pay the fee due to the cancellation, or if the fee is due to the no-show of the guest, the online travel agent is entitled to charge the commission fee based on the amount payable by the guest.

All general terms and conditions obtained in the sector inquiry contain penalties if the hotel fails to pay the commission fee. The penalty systems are generally based on gradualism: in case of non-payment, the hotel concerned will first be suspended and not shown in the rankings and the consumers will not be able to find the hotel. If the hotel fails to pay the commission despite this sanction, the online travel agent is entitled to terminate the contract, usually immediately.

### *Ranking*

As noted above, the general terms and conditions of the online travel agents usually contain rules on how the rankings on the online travel agent's website are established. It is important that the users (bookers) can also influence the order of hotels themselves if after choosing a date and place, they use filters, like price, ratings, distance from a particular location, etc. The rules in the general terms and conditions are therefore applicable to those cases where there are no set filters by the users, or in the case the hotels have the same rankings after a filter is applied.

Accordingly, typically the general terms and conditions have rules unilaterally defined by the online travel agents on rankings (often automatic algorithms are used). Online travel agents take several factors into account when setting the rankings, including in particular the commission paid by the hotel (the commission revenue generated by the hotel or the level of commission if there are different commission levels for the hotels), the realised number of bookings and the reviews after previous bookings. An important aspect in the ranking is the commission payment discipline (late payment of commission is usually resulting in downgrading), the number of visitors to the hotels and the conversion rate.

The detailed contractual terms of the online travel agents, usually allow two ways to improve the ranking position: it can improve any of the factor above (better reviews by fewer guest complaints) or can pay a fee to the online travel agent for a better position. This payment can be realised by paying a

higher commission fee (in this case the improvement in the rankings is dynamic, depending on the number of bookings) or the hotels can accept and comply with a predefined set of rules. One of the major player in the market uses a system, where the hotels compete with one another in the form of a kind of bidding procedure for a better ranking. There is also an online travel agent which does not allow the hotels to modify the ranking.

#### *Reviews and complaint handling*

The online travel agents who command larger traffic usually allow guests to record their experience either in the form of free text or based on a number of predefined parameters. Regarding the reviews, the general terms and conditions usually require hotels to tolerate them: the online travel agent will unilaterally publish the reviews and at most makes it possible for the hotel to comment on the review.

As stated above, the reservation via the online travel agent makes the latter one not party to the contract between the accommodation provider and the guest. Accordingly, some of the general terms and conditions obtained state that the online travel agent will not mitigate complaints regarding the services of the hotel and will not accept any liability for the services of the hotel. This rule is however - it seems - not necessarily familiar to Hungarian travellers. According to the results of consumer research, more than half (56%) of the guests will contact both the online travel agent and the accommodation provider in case of any problems leading to a complaint. Only 22% of the guests would act according to the general terms and conditions, by contacting the hotel to resolve the problem, while 15% would turn to only the online travel agent with a complaint.

The online travel agents manage and forward customer data and bookings. They might also ask the guests to review the accommodation, which they can publish on their website.

#### *Fees and discounts*

The general terms and conditions usually state that the price of a hotel room is defined by accommodation provider. In the setting of prices, the online travel agents have no role.

However, several of the online travel agents allow in the general terms and conditions that it is allowed to offer discounts at the expense of their own commission. In this case, the accommodation provider is entitled to the same fee and the whole amount of the discount will be deducted from the commission of the online travel agent.

#### *Partner programs*

As mentioned above, the relationship between an OTA and a hotel might also differ - apart from the level of commission - based on the extra service offered by the online travel agent to their partners (like highlighted promotion of the hotel, higher level of customer service, price discounts for services, more detailed statistics, etc.) for higher traffic or higher commission.

#### A short evaluation of the sectoral inquiry

The Hungarian competition authority carried out a detailed assessment of the travel market and regarding online travel agencies. Most of the theoretical elaborations and the inclusion of data in the

final report are well placed and well-focused. There are however several problems regarding the conclusions drawn from the data.<sup>6</sup>

The GVH fails to realise the growing importance of the online travel agents and how the market is close to reaching or has already reached a tipping point where the oligopolistic market – characterised by the characteristics of two-sided markets – leads to consumer harm as a result of oligopolistic interdependence. The effect of similar contractual terms in the general terms and conditions of OTAs with the growing importance of the online market leads to higher commissions which lead to higher hotel room prices.

Due to the narrow focus of the sector inquiry, it also misses a very important issue. Competition between hotels is very intense due to the very competitive nature of the industry. Competition between the online travel agents is however – at best – very soft. Moreover, there is also real competition between hotels and OTAs for visibility. The real competition – where hotels are clearly losing – is on visibility to consumers. It is probably that if a consumer searches for an accommodation at any search engine, she will find OTAs as the leading results on the search engines due to good SEO, but mainly due to the ads placed by the online travel agents. OTAs are among the largest consumers of search providers like Google or Microsoft. A large part of the high commission paid by hotels – which make hotel rooms more expensive – is spent on advertising the OTA. This, however, is a clear consumer welfare loss and does not provide any clear benefit to the consumers.

The German competition authority after having a full competition assessment came to the conclusion that the way how OTAs operate are anti-competitive.<sup>7</sup> The final report was published well after the decision of the Bundeskartellamt but fails to provide any reason why it deviates from the competitive assessment of the German authority. While the final report of the GVH argues theoretically that the current system provides benefits to consumers, the German decision and authority clearly state that there are absolutely no benefits to the consumers and lead to a clear welfare loss. Since the report was published later, it should have included the reasons why there is such a huge difference in the assessment.

However, since the publishing of the final report, the GVH carried out a dawn raid at Booking.com, which is an indication that the developments of the market since the publication on the market is warranting further scrutiny.

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<sup>6</sup> I will not cover here the competitive assessment of MFN/price parity clauses, since I have done that in a different article.

<sup>7</sup> See further B9-121/13 Booking.com B.V., Booking.com (Deutschland) GmbH, HRS-Hotel Reservation Service Robert Ragge GmbH, Expedia Inc., Hotelverband Deutschland (IHA) e.V. and SZILÁGYI, Pál: A német versenyhivatal Booking.com döntése. PLWP 2016/17. Link: <http://plwp.eu/evfolyamok/2016/175-2016-17>.