

Economist's Note

Best Price Clauses: What Policy as Regards Online Platforms?

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I. Introduction

In the recent past, a number of national competition authorities (NCAs) in Europe have reviewed so-called 'best price' clauses in the contracts between online travel agents (OTAs) and hotels.¹ Interestingly, these have reached quite different decisions. In 2013, Germany's Bundeskartellamt (BKartA) prohibited the best price clauses of Hotel Reservation Service (HRS), an OTA.² By contrast, in April 2015, the NCAs of France, Italy, and Sweden accepted commitments from Booking.com to adopt so-called 'narrow' instead of 'wide' price parity clauses.³

What these competition authorities have in common is that they have all intervened against 'wide' best price clauses used OTAs. In all of these cases, the competition authorities generally agreed that 'wide' best price clauses had the potential to restrict competition between OTAs for commission rates⁴ that hotels have to pay for every booking at an OTA.⁵ Under a wide best price clause, the OTA obliges the hotel not to charge a higher price on the OTA than on almost⁶ any other booking channel, in particular, including both other OTAs and the hotel's own direct sales channels.

The primary theory of harm can be described as follows: if an OTA reduces the commission rate it charges to hotels, the hotels cannot pass on this cost saving to

Key Points

- Online sales platforms may use best price clauses, which restrict service providers to offer better deals to customers elsewhere.
- Competition authorities intervened against such clauses of online travel agents that restrict the hotels' sales on other online platforms (so-called wide clauses).
- By contrast, that unanimity does not exist if the clauses are limited to hotels' direct sales (so-called narrow clauses).
- This article discusses the authorities' different approaches, apparently diverging standards of proofs, as well as empirical methods to evaluate the different policies moving forward.

consumers who book on this platform in the form of lower room prices, as the hotels are not allowed to charge lower prices on that OTA than on other OTAs, due to the 'wide' best price clauses of these other OTAs. Assuming a starting point of equal room prices across

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1 By OTAs I mean hotel booking platforms such as Booking.com, Expedia, and HRS. I use the term *best price clauses* throughout the article. One should keep in mind that there are ancillary clauses such as availability parity, which can be interpreted as clauses which try to prevent a bypass of the price parity clause by hotels. Another term often used for these clauses is (retail) '*most-favoured-nation*' clauses. In this article, I generally refer to hotels as the typical accommodations listed on the booking platforms. In its general terms and conditions, Booking.com uses the term 'accommodation'. Other types of accommodation present on OTAs include, for example, holiday apartments.

2 BKartA, decision of 20 December 2013, B 9 – 66/10 – HRS. In another early decision the Office of Fair Trading (OFT) accepted commitments from Booking.com, Expedia, and IHG, which in particular excluded non-public loyalty scheme prices from the scope of the best price clauses; OFT, decision 31 January 2014, OFT1514dec – Case reference CE/9320/10. The decision was annulled on appeal on procedural grounds. (CMA press release, 16 September 2015, CMA closes hotel online booking

investigation, <<https://www.gov.uk/government/news/cma-closes-hotel-online-booking-investigation>> accessed 11 April 2016).

3 Konkurrentsverket, decision of 15 April 2015 – 596/2013 – Booking.com; Autorité de la concurrence, decision of 21 April 2015 – 15-D-06 – Booking.com; Autorità Garante della Concorrenza e del Mercato, decision of 21 April 2015 – I779 – Booking.com. Hereafter, I refer mostly to the Swedish decision. Meanwhile, several European NCAs have closed their investigations into best price clauses in reaction to Booking.com's announcement that it is applying narrow best price clauses across the EEA.

4 OTAs usually charge a percentage share of the room price as commission if the consumer books via the OTA.

5 BKartA para 167 (n 2), Konkurrentsverket paras 21–22 (n 3), Autorité de la concurrence paras 115–122 (n 3), Autorità Garante della Concorrenza e del Mercato paras 6–8 (n 3).

6 Non-public loyalty schemes, contracts with enterprises, and (physical) travel agencies were usually excluded from this best price clause. In addition to the price parity on (almost) all sales channels, the wide best price clauses required that the offer regarding all other conditions is at least as good as the offer on other sales channels, and that the hotel offers at least the same room availability to the OTA as in other channels.

all sales channels, this means that the hotels can only reduce their prices equally on all sales channels that are covered by the best price clause.⁷ Because of this, the OTA is not able to gain any competitive advantage – in terms of lower consumer prices compared to other sales channels and thus higher demand – by reducing the commission it charges. Consequently, the best price clauses restrict the OTAs' incentives to compete by proposing attractive commission rates. As a corollary, higher commissions will lead to higher commissions and higher consumer prices. Furthermore, market entry for new OTAs is impeded, in that the strategy to acquire a customer base by offering lower commission rates and thereby obtaining lower room prices is not feasible, due to the best price clauses of incumbent OTAs.⁸

By contrast with the German prohibition of best price clause (HRS and more recently Booking.com⁹), Booking.com's commitments, which were accepted by the NCAs in France, Italy, and Sweden, allow Booking.com the possibility to agree so-called 'narrow' best price clauses with hotels. Narrow best price clauses prohibit the hotel from publishing lower prices on its direct online sales channels than the hotel offers on the OTA that imposes the clauses.¹⁰ However, the OTA is not allowed to restrict the hotel's room prices offered by the hotel on other OTAs.

Against this background, the recent decision by the BKartA of December 2015 concerning Booking.com is remarkable. In July 2015, Booking.com applied the same 'narrow' best price clauses in Germany as it had committed to in France, Italy, and Sweden.¹¹ A few days later, Expedia also announced a similar narrowing of its best price clauses across Europe.¹² This meant that the

BKartA was confronted only with the 'narrow' best price clauses that its fellow European authorities had already approved by accepting the commitments. Nevertheless, the BKartA prohibited the 'narrow' best price clause of Booking.com and it is continuing its proceedings against Expedia.

The BKartA's decision relating to Booking.com January 2015 refers to the Oberlandesgericht Düsseldorf, which upheld the BKartA's previous decision to prohibit HRS's best price clauses completely.¹³ In the meantime, the French parliament had enacted a law that prohibits all best price clauses between OTAs and hotels. Thereby, the French parliament – at least implicitly – questions the adequacy of the commitments that were accepted by the French Competition Authority.¹⁴ Similar legislative actions against best price clauses of OTAs are also being debated in Italy.¹⁵

In substance, there are essentially two points of difference in the BKartA's prohibition approach and the approaches taken by the competition authorities in France, Sweden, and Italy to accept Booking.com's commitments.¹⁶ First, the authorities differed in their assessment of the potential of 'narrow' best price clauses to restrict competition. Second, the authorities differed with regard to their assessment of potential efficiency claims according to article 101(3) TFEU.¹⁷

II. Assessment of narrow best price clauses

A. Theory of harm

All these four authorities appear to agree that there is a risk that the narrow best price clause may also restrict

7 A hotel could also leave an OTA. However, hotels often have a strong interest in being present on the big OTAs; therefore, leaving the platform might be rather unappealing if there are enough customers who are likely to book the hotel only via these platform. The theory of harm presented assumes this implicitly.

8 In addition, the BKartA also sees a restriction of competition on the market for hotel rooms, due to the best price clauses. The price competition between hotels would be affected because the hotels that are bound by the narrow best price clause cannot offer a lower room price on their own online sales channel than on the OTA (BKartA, n 9, para 10). By contrast, the Swedish Competition Authority takes the view that there is no restriction of competition on adjacent markets (Konkurrensverket, decision of 15 April 2015 (n 3), para 26 – Booking.com).

9 BKartA, decision of 23 December 2015, B 9–121/13 – Booking.com.

10 Besides price, also the parity on other booking conditions was narrowed accordingly. Moreover, the parity for room availability has been removed. Moreover, offline sales and loyalty schemes are excluded from the narrow parity clause. Moreover, booking.com committed not to bypass the new arrangements in certain ways, for instance by conditioning the positioning in the booking.com's list of results (ranking) on the hotel giving Booking.com its best room price.

11 Press release Booking.com 25 June 2015; 'Booking.com to Amend Parity Provisions Throughout Europe' <<http://news.booking.com/booking-com-to-amend-parity-provisions-throughout-europe>> accessed 13 April 2016.

12 Expedia press release 01 July 2015; 'Expedia Amends Rate, Conditions and Availability Parity Clauses' <<http://www.expediainc.com/news-release/?aid=123242&fid=99&yy=2015>> accessed 11 April 2016.

13 BKartA, press release 09 January 2015; 'Bestpreisklauseln von HRS verstoßen gegen deutsches und europäisches Kartellrecht – Oberlandesgericht Düsseldorf bestätigt den Untersagungsbeschluss des Bundeskartellamtes' <http://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2015/09_01_2015_OLG-Entscheidung-HRS.html> accessed 11 April 2016.

14 'Loi Macron' 10.07.2015, see <<http://www.hotelnewsnow.com/Article/16460/Frances-end-to-rate-parity-creates-grey-areas>> for more information (accessed 27 April 2016).

15 Newman und Eccles, Mlex 12 April 2016, Expedia hotel-pricing probe ends in Italy with commitments, <www.mlex.com> accessed 13 April 2016.

16 It should be noted that prohibition decisions reach firm conclusions on matters of fact and law, whereas in commitments decisions competition authorities make only a preliminary assessment. This can translate into less detailed decisions for commitments than for prohibitions.

17 And according to the corresponding national law.

competition between OTAs in the same ways as the wide best price clause.¹⁸ These narrow clauses could restrict competition between hotel booking portals if an OTA expects that a reduction of the commission will not at all, or will only marginally reduce hotel prices on its platform relative to other sales channels. This is to be expected if it is unprofitable for hotels to reduce prices on one platform (e.g. HRS) while the price on the hotel's direct online sales channel has to be maintained at the higher level offered on another OTA used by the hotel, for instance Booking.com. This parity is required by the 'narrow' best price clause.¹⁹ In this situation, consumers who would usually book on a direct sales channel could switch to the OTA that now offers a cheaper price. As a consequence, the hotel now has to pay commission to the OTA also for these bookings. Moreover, these commissions might well be significantly higher than the additional costs that typically accrue on the hotel's direct sales channel and, therefore, make such a price decrease unprofitable for the hotel.

A price decrease on an OTA that charges a lower commission rate tends to be more profitable for a hotel:

- (i) The more consumers switch from OTAs with higher commission rates to the OTA with lower commission rates.
- (ii) But, the fewer consumers switch from hotel's direct sales channels, as these will still tend to be more profitable for the hotel than an OTA with somewhat lower commission.
- (iii) The more consumers book the hotel via the cheaper platform, who, absent the price decrease, would not have booked a hotel at all or would have booked another hotel.
- (iv) The higher are the variable direct online distribution costs.
- (v) The lower is the commission rate at the OTA that lowered the commission.
- (vi) The higher is the commission rate at the OTAs that did not lower the commission.

The extent of the demand shift from the direct sales channel to the cheaper OTA seems to be a crucial

factor. In order to estimate how many consumers would switch from the direct sales channel to the OTA with lower prices, one may need to consider evidence from historical events (e.g. the temporary suspension of best price clauses) or from carefully designed consumer surveys. The extent of the switching that can be expected depends on the share of direct bookings, the price sensitivity of consumers who used to book directly, as well as these consumers are aware of price differences. A survey that, for example, interviews consumers concerning their hypothetical switching behaviour as a consequence of hypothetical price differences will not be informative if it does not also enquire consumers about the consumers' degree of information they have about actual price differences.

Even if it can be expected that hotels will lower their room prices on the cheaper OTA in response to a decrease in commission, it remains an open question whether such a decrease will be profitable for the OTA.

B. BKartA's conclusion

The BKartA stressed in its reasoning that consumers switching to the low-cost platform may 'cannibalise' sales from hotel's direct channels, where hotel margins are likely to be the highest, noting that '[t]here is little incentive for a hotel to reduce its prices on a hotel booking portal if at the same time it has to display higher prices for its own online sales.'²⁰ Initial direct channel consumers would now book on the low-price platform and would thereby increase the hotel's sales costs.²¹ This would be particularly important to the extent that the direct sales constitute a large channel. For every seven bookings on OTAs, there were on average about three bookings via hotels' websites.²² Moreover, the BKartA observed that the hotels that it had surveyed 'had contended repeatedly that they would not permanently undercut the prices on their own website with prices at an OTA.'²³ In addition, the BKartA argued that it would not be sufficient to consider the aforementioned incentives for one hotel and for one OTA in isolation. The other hotels' and platforms' competitive reactions to such a change in pricing would need to be taken into account when

18 BKartA paras 8–9 (n 9), Konkurrensvetket para 38 sowie 44–47 (n 3), Autorité de la concurrence para 291, Autorità Garante della Concorrenza e del Mercato para 20.

19 The 'narrow' best price clause covers publicly available prices on the hotels' websites (and as the case may be metasearch sites); however, e-mails, loyalty schemes with non-publicly available prices, as well as traditional offline sales channels like telephone bookings, are excluded from the scope of the clause.

20 BKartA, press release 23 December 2015; 'Narrow "best price" clauses of Booking also anticompetitive' <http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/23_12_2015_Booking.com.html?sessionid=560C9EBDCE6268A8E09E5D28FAF8A687.1_cid387?nn=3591286> accessed 21 April 2016.

21 BKartA paras 194 and 195 (n 9).

22 BKartA para 195 (n 9).

23 BKartA para 204 (n 9).

analysing incentives.²⁴ Based on this reasoning, the BKartA concluded that 'narrow' best price clauses would also restrict competition between OTAs.

C. Other NCA's conclusions

In its ruling, the Swedish NCA has also acknowledged this potential effect of cannibalisation. However, the Swedish NCA took the view that its economic analysis supported the conclusion that there would be incentives for hotels to offer lower room prices on an OTA in exchange for lower booking commissions. The authority acknowledged concerns expressed by market participants during the investigation that the narrow best price clause offered by Booking.com would not resolve the competition problem,²⁵ similar to the concerns expressed by the BKartA in Germany. However, the Swedish NCA reasoned that Booking.com finally offered a further narrowing of the price parity clauses, so that they no longer would cover the hotel's 'offline' sales channels.²⁶ The authority argues further that the analyses had shown that the incentives to offer lower prices on an OTA than on the hotel's own channel increase as the share of direct sales covered by the best price clause decreases. Moreover, the Swedish NCA emphasised that hotels would have an incentive to pass through a decrease in commissions in order to increase overall sales.

The Italian and French decisions essentially coincided with the Swedish decision in concluding that platforms would have incentives to offer lower hotel room prices in exchange for lower commissions.²⁷ However, in their decisions, these two authorities revealed further details of the quantitative analysis underpinning this conclusion. An important consideration for the French NCA seemed to be the relatively small size of the online channel covered by the final version of the narrow best price clause offered by Booking.com under the commitments. The French NCA shared the opinion of the BKartA that, rather than simply conducting a 'static' analysis of the market, the reactions of all market participants to a price decrease should be considered. However, the French NCA's (qualitative) assessment was that this

would be more likely to lead to an increase, rather than a reduction, in competition.²⁸

For these reasons, the French, Italian, and Swedish authorities reached different conclusions to the German authority about whether or not narrow best price clauses restricts competition between OTAs. Unfortunately, from the authorities' decisions, it is not evident how far these difference conclusions can be ascribed to different national market conditions, or rather to differing economic evaluations of comparable market situations.

III. Assessment of efficiencies

In addition to reaching different conclusions concerning the impact of the narrow best price clause on competition, the authorities also arrived at different views with respect to the question whether these price parity clauses could be justified on grounds of efficiency gains within the meaning of Article 101(3) TFEU.

A. Verifiability

The Swedish NCA briefly stated that hotels would have an incentive to convince consumers who found their room offers on an OTA to book directly at the hotel – for instance with a lower room price on the direct channel.

This would be beneficial for the hotel because it would enable it to avoid paying the commission to the OTA. If a hotel had complete freedom in its pricing, then it could potentially free-ride on the OTA's investments in a high-quality platform.²⁹ With reference to surveys of consumers and hoteliers, the authority concluded that the narrow best price clause is capable of decreasing the risk of free-riding substantially.^{30,31}

The BKartA was more sceptical towards this efficiency justification, noting that Booking.com was 'unable to prove that a relevant free-riding problem, which could be solved by the application of narrow best price clauses, exists.'³² According to the BKartA, free-riding would take place 'if hotel companies profit by being present on a portal where they can be found there by the end customers, who then go on to make direct

24 BKartA paras 203 und 204 (n 9). However, it remains open how a quantitative analysis that allows for these dynamics could be conducted.

25 Konkurrensverket paras 44–47 (n 3).

26 Konkurrensverket para 47 (n 3). Not covered from the narrow best price clause are offline direct sales channels such as telephone and reception, but also non-public offers via the Internet such as e-mails and closed user groups.

27 Autorité de la concurrence paras 299–305.

28 Autorité de la concurrence paras 307–309 (n 3).

29 Konkurrensverket para 28 (n 3).

30 Konkurrensverket para 30 (n 3).

31 The French Autorité de la concurrence does not cover this aspect explicitly in its decision. It simply repeats the free-riding problem, as it was expressed by Booking.com, as well as the opinions of other market participants (paras 187–198). In the Italian decision the free-riding argument is not assessed explicitly either.

32 BKartA para 12 (n 9).

bookings through the hotel's own website.' The BKartA questioned whether this really occurred in practice. It did not consider that Booking.com had provided sufficient evidence of this. It also suggested that different sales channels such as OTAs and hotels' own websites would tend to attract different customer groups, due to their different characteristics.³³

In its decision, the BKartA discussed which types of investments might, in principle, be worth protecting, due to their efficiency benefits. It argued that contract-specific investments, such as investments in photos and text processing, would be relatively small in scale and noted that, in any event, Booking.com had not submitted any arguments in this regard.³⁴ With regard to the general and non-contract-specific investments in advertising, the BKartA argued that these activities would, at least partially, 'serve in particular to improve the image and increase the popularity of the hotel platform and that consequently, these investments are not lost for Booking.com through possible free-riding.'³⁵ In general, the BKartA suggested, Booking.com would have a significant incentive even without narrow best price clauses to invest in the quality of its portal; and Booking.com had not, in any case, sufficiently demonstrated that such concerns would be eliminated or significantly reduced upon removal of the narrow best price clauses.³⁶ Moreover, the BKartA did not accept that the claimed efficiency gains of the best price clauses resulting from a potential decrease in customer search costs would be sufficient to outweigh the anti-competitive effects of these clauses.³⁷

It is noteworthy that the arguments concerning the potential free-riding behaviour are mainly qualitative. Much of the quantitative evidence, such as the GfK survey that is referred to by Booking.com, allow only limited conclusions regarding the expected extent of free-riding. In the light of the rather comprehensive analyses with regard to the presence of a restriction of competition according to Article 101(1) TFEU, it seems desirable that also the assessment of potential efficiency gains within the meaning of Article 101(3) TFEU should be conducted more rigorously and, to the extent possible, more quantitatively throughout the different steps, including the effects on investments.

B. Indispensability

The apparent differences between the views of different NCAs concerning the indispensability of (narrow) best price clauses for realising such efficiencies are also interesting in this regard. On this, the European Commission's Vertical Guidelines state: 'Undertakings invoking the benefit of Article 101(3) are not required to consider hypothetical and theoretical alternatives. They must, however, explain and demonstrate why seemingly realistic and significantly less restrictive alternatives would be significantly less efficient. If the application of what appears to be a commercially realistic and less restrictive alternative would lead to a significant loss of efficiencies, the restriction in question is treated as indispensable.'³⁸

While these guidelines are in principle clear, in practice there is significant scope for debate in relation to the interpretation of what constitutes an *obviously realistic alternative*. The Swedish NCA briefly stated in its decision to accept Booking.com's commitments that the prevailing business model would allow consumers to use the search and select services on the OTA for free and then subsequently to book directly via a hotel's own platform. In this context, hotels would be incentivised to encourage consumers to book directly on their websites, in order to avoid paying commission if they were free to set prices as they wished. As a consequence, Booking.com faced a significant risk of not being compensated for its services. The Swedish NCA's reasoning did not consider the question whether another payment model could avoid this free-riding risk. A possible interpretation is that alternative payment models would not be considered as sufficiently realistic alternatives in an indispensability assessment of the best price clauses.^{39,40}

By contrast, the BKartA argued that Booking.com did not sufficiently show why alternatives that might, at face value, appear realistic and less restrictive than a payment model based on a booking commission protected by best price clauses would be significantly less efficient in reality.⁴¹ On the contrary, the BKartA stated that there would be 'various alternative business models that are thoroughly realistic even in the present case.' The BKartA suggested that there may be grounds for concluding that alternative business models would be realistic, for instance because they have been applied

33 BKartA paras 270–272 (n 9).

34 BKartA para 276 (n 9).

35 BKartA para 278 (n 9).

36 BKartA para 274 (n 9).

37 BKartA paras 280 und 281 (n 9).

38 EC Guidelines on vertical restraints, 2010/C 130/01, n 125 therein.

39 Konkurrensverket para 28 (n 3).

40 Analogous to the question of a possible free-riding problem, the French Autorité de la concurrence also does not discuss the question of indispensability in its decision. This topic is only touched when quoting opinions of market participants (paras 193–194, n 3).

41 BKartA para 292 (n 9).

in similarly structured markets. The BKartA also states that this type of comparative analysis would be particularly important in instances where 'the relevant market is characterized by pre-existing competition restrictions and therefore it cannot be ruled out that, simply for that reason, alternative business models have not been able to establish themselves.'⁴² The BKartA suggested that there would be multiple realistic alternatives, including listing fees (such as with the supplier platform www.wer-liefert-was.de), membership models (e.g. Immoscout – real estate), and advertising space-related fees (e.g. Immowelt – also real estate).⁴³ Moreover, the current, booking commissions based payment model of OTA's could be continued even without best price clauses.⁴⁴

In general, it is possible that a restraint secures a certain payment model – such as per-booking commissions – but beyond that restricts competition to such an extent that the overall result harms competition and consumers, when compared to the relevant counter-factual. In this case it would be preferable to prohibit the restraint even if the payment model needs to be changed.⁴⁵ However, for such a decision the competition authority (or court) must still assess whether other payment models are realistic. In view of the cases discussed above, there appears to be uncertainty as to when the indispensability threshold is met in practise. As changing the payment model is a major business decision, better guidance as well as a more consistent decision making across competition authorities would be preferable in this regard.

IV. Outlook

Looking ahead, the hotel booking cases are likely to remain the subject to debate for several reasons. First, some national investigations are still open and Booking.com's appeal of the BKartA's decision is still before a German court. Moreover, as discussed above, the commitments decisions by other NCAs relating to Booking.com's narrow best price clauses are limited to 5 years.

Five years can be a long time in rapidly evolving online markets. Nonetheless, this time frame provides an opportunity for competition authorities to conduct a comparative analysis of the impacts of the various national legal frameworks – which the network of European NCAs has announced.⁴⁶ As discussed above, OTAs are forbidden by legislation from using best price

clauses in France, and the major OTAs no longer use them in Germany, with the exception of Expedia's continued use of a narrow clause. By contrast, narrow best price clauses are currently used by Booking.com and Expedia in many, if not all, other European countries. In addition to this, wide best price clauses are, to our knowledge, still being used in non-European countries.

An empirical evaluation can exploit these different national regimes for best price clauses of OTAs to investigate whether these different regimes lead to different market outcomes, in particular, as regards commission rates and how hotels set prices across channels. Moreover, as the various remedies have been adopted at different times in different countries – there is scope for investigating whether these reforms have led to discernible changes in outcomes within a particular country.

In terms of methodology, one useful approach might be to ask hotels or other market participants whether the competitive conditions have noticeably changed. Important questions to investigate might include: identifying to what extent hotels (and perhaps particularly small ones) are aware of the changes pertaining to best price clauses; whether they have been effectively charged different commission rates; and whether they have changed their pricing policy as a result. In addition, the OTAs themselves would be in a position to report on changes in their practices and provide data on website visits and booking rates that could be informative about the extent of 'free-riding'. Finally, a rigorous quantitative exercise could – in principle – collate hotel room prices published on the different online sales channels, and use this to investigate whether there is more variation in such prices in countries or at times with less wide or no best price clauses.

The results of this evaluation may provide helpful insights not only for online hotel booking cases, but also for the treatment of price parity clauses more generally. Beyond hotel booking, online distribution and other online services are a fast-growing part of the economy. In a 'digital' European Single Market, it seems desirable that the decisional practise of competition authorities provides coherent and clear indications with respect to the assessment of the competitive effects of vertical restraints in online markets and their potential efficiencies. At a basic level, this is important for companies to be able to operate in more than one member state without having to make arbitrary adjustments to their

42 BKartA para 293 (n 9).

43 BKartA para 294 (n 9).

44 BKartA para 296 (n 9).

45 It remains an open question whether best price clauses are essential for the per-booking commissions, such that without them a change in the

payment model would be necessary. The prohibition of best price clauses in Germany and France may allow this question to be answered in real market conditions.

46 BKartA (n 20).

business practices in case of comparable market circumstances. However, it is also important because the design of payment models is a central component of online services. In this context, a clear view of what practises are likely to be admissible can help businesses to find the most efficient compliant solution from the outset,

rather than having to make costly changes at a later date.

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