

Approval of the Commitment Plan submitted by Booking.com B.V.

March 16, 2022
Japan Fair Trade Commission

The Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) has investigated Booking.com B.V. in accordance with the provisions of the Antimonopoly Act (hereinafter referred to simply as the “Act”), and suspected that the conducts mentioned in 2 below might fall under Trading on Restrictive Terms prescribed in paragraph 12 of the Unfair Trade Practices designated pursuant to Article 2, paragraph 9, item (vi) of the Act, and that Booking.com B.V. might violate Article 19 of the Act. Recognizing that competition may be promptly restored, through the Commitment Procedure, by measures taken by Booking.com B.V. in a timely manner to eliminate the conducts, the JFTC issued the Notice of Commitment Procedures (hereinafter referred to simply as the “Notice”) to Booking.com B.V. on December 17, 2021, pursuant to Article 48-2 of the Act.

Booking.com B.V. submitted an application to the JFTC for an approval of the plan of measures necessary to eliminate the conducts mentioned in 2 below (hereinafter referred to as the “Commitment Plan”) pursuant to Article 48-3(1) of the Act. The JFTC recognized that the Commitment Plan would conform to both of the following approval requirements: (i) the measures are sufficient for eliminating the conducts mentioned in 2 below, and (ii) the measures are expected to be reliably conducted; hence, the JFTC approved the Commitment Plan pursuant to Article 48-3(3) of the Act today. (Note1) (Note2)

It is noted that the JFTC’s approval of the Commitment Plan does not represent a determination that the conducts of Booking.com B.V. constitute a violation of the Act.

(Note 1) An approval of the Commitment Plan is an administrative disposition under the Act.

(Note 2) The JFTC may render a decision to rescind the approval and resume the investigation procedure conducted before the Notice is issued, for instance, if the JFTC recognizes that the Commitment Plan is not being conducted according to the approved Commitment Plan.

1. Overview of the Applicant

Corporate Name	Booking.com B.V.
Address	Herengracht 597, Amsterdam, The Netherlands
Representative	M.F. Lima da Rocha Barros, Director

2. Overview of the Suspected Violation of the Act

Booking.com B.V. requires, in the contract with operators of Accommodation facilities (hereinafter referred to as “Accommodation operator(s)”) (Note 3) who place information about Accommodation facilities located in Japan on the online travel agencies’ websites (hereinafter referred to as “OTA website(s)”) (Note 4) named “Booking.com” operated by Booking.com B.V. (hereinafter referred to as the “Booking.com website”), that the room rates and availability of the Accommodation operators’ Accommodation facilities located in Japan listed on the Booking.com website shall be equivalent to or more favorable than those offered through other

sales channels (except for the requirements* provided in these contracts that such room rates shall be equivalent to or more favorable than those offered through the sales channels such as the websites operated by the Accommodation operators, etc. (hereinafter referred to simply as “Sales channels operated by the Accommodation operators”) (Note 5). (*The requirements are hereinafter referred to as “narrow parity clauses for room rates”) (Note 6); and Booking.com B.V. requires the Accommodation operators to comply with the conditions described above either through Booking.com B.V., or through Booking.com Japan K.K., which provides support services to Booking.com B.V. in Japan.

(Note 3) “Accommodation facilities” mean facilities used for the “business of operating an inn or hotel” prescribed in Article 2, paragraph 2 of the Hotel Business Act (Act No. 138 of 1948) with licensing prescribed in Article 3, paragraph 1 of the same Act.

(Note 4) “OTA websites” mean websites which provide reservation service of accommodation facilities through the internet.

(Note 5) “Sales channels operated by the Accommodation operators” mean sales channels such as websites, etc. i) operated by the Accommodation operator itself or ii) operated by the management entity of a hotel chain, etc. to which the Accommodation operator belongs, exclusively for the Accommodation operators belonging to the hotel chain, etc.

(Note 6) So-called “parity clauses” can be categorized into “narrow” parity clauses and “wide” parity clauses; the former requires Accommodation operators to provide room rates, etc. equivalent to or more favorable price etc. than those offered only on Sales channels operated by the Accommodation operators, whereas the latter requires Accommodation operators to provide room rates, etc. equivalent to or more favorable price than those offered on all other sales channels.

3. Effects Caused by the Conducts

Due to the conducts mentioned in 2 above, the Accommodation operators are required to place equivalent to or more favorable room rates on the Booking.com website than those on other OTA websites, for example, if the Accommodation operators want to discount their room rates on other OTA websites.

According to the conducts mentioned in 2 above, for example, the following effects on their business activities of some OTAs competing with Booking.com B.V. were found:

- When an OTA “X” placed discount room rates of Accommodation facilities on X’s website at X’s own expenses, the Accommodation operators required X to cancel the placement of discount rate, because the Accommodation operators are required to place equivalent to or more favorable room rates on the Booking.com website at the Accommodation operator’s own expense.

- When an OTA “Y” planned and proposed a limited-time bargain offer of Accommodation facilities on Y’s website, the Accommodation operators rejected the plan, because the Accommodation operators are required to place equivalent to or more favorable room rates on the Booking.com website, even though the plan might attract a wider user base of Y’s website.

4. Overview of the Commitment Plan

(1) Booking.com B.V. will cease the conducts mentioned in 2 above.

- (2) Booking.com B.V. will not perform the conducts similar to those mentioned in 2 above. Also Booking.com B.V. will continuously refrain from requiring the Accommodation operators to follow the conditions mentioned in 2 above, with ranking-algorithm and other systems for deciding the ranking to place the accommodations on the Booking.com website, for the next three years.
- (3) The board of directors of Booking.com B.V. will resolve to cease the conducts mentioned in 2 above and not to perform the similar conducts for the next three years.
- (4) Booking.com B.V. will notify the Accommodation operators of the measure taken based on (3) and the measure to be taken (1) above, and thoroughly disseminate the measures to the employees involved in relevant business in Booking.com B.V. and the executives and employees involved in relevant business in Booking.com Japan K.K.
- (5) Booking.com B.V. will take measures necessary to do the following:
 - A. Preparing of guidelines for compliance with the Act concerning transactions with the Accommodation operators, and thorough disseminating them to the employees involved in the relevant business in Booking.com B.V., Booking.com Japan K.K. or the companies which support the business of Booking.com B.V. in Japan.
 - B. Regular training of the employees involved in the relevant business in Booking.com B.V., and Booking.com Japan K.K. or the companies which support the business of Booking.com B.V. in Japan regarding compliance with the Act concerning transactions with the Accommodation operators and regular audit by persons in charge of risk-management.
- (6) Booking.com B.V. will report the state of implementation of the measures mentioned in (1), (3), (4) and (5) above to the JFTC.
- (7) Booking.com B.V. will annually report the state of implementation of the measures mentioned in (2) and the state of implementation of the measures taken based on (5) B above to the JFTC for the next three years.

5. Approval of the Commitment Plan

The JFTC recognized that the Commitment Plan mentioned in 4 above would conform to all the approval requirements, and approved the Commitment Plan.

6. Future Response to Booking.com B.V. 's Narrow Parity Clauses for Room Rates

The JFTC did not cover narrow parity clauses for room rates contracted between Booking.com B.V. and the Accommodation operators in this Commitment Procedure, based on the present situation that the Accommodation operators do not necessarily abide by the clauses.

However, the JFTC will pay close attention to any effect on competition among OTAs caused by the future management of narrow parity clauses for room rates by Booking.com B.V, from the viewpoint of promoting and maintaining fair and free competition, and then will respond strictly to any anticompetitive problem under the Act attributed to the clauses.

* Every announcement is tentative translation.