

RULING

on the case No. 11/01/10-41/2019

Resolutive part of the ruling announced on December 21, 2020

Full and complete ruling issued on December 29, 2020

Commission of the Federal Antimonopoly Service for consideration of the case on violation of antimonopoly legislation No. 11/01/10-41/2019 composed of: <...> (hereinafter – the Commission),

having considered the case No. 11/01/10-41/2019 on the grounds of violation by LLC Booking.com B.V. (Herengracht 597, 1017 CE, Amsterdam, Netherlands) of the Paragraph 3 of the Part 1 of the Article 10 of the Federal Law of July 26, 2006 No.135-FZ "On Protection of Competition" (hereinafter – the Law on Protection of Competition) that consisted of imposing terms of contract regarding the necessity of compulsory provision of and compliance with the price and room parity, as well as terms of interaction with closed user groups to accommodation facilities, what may lead to the restriction of competition, and (or) the infringement of other economic entities' interests in the market of services of accommodation facilities information aggregators.

at presence during the hearing of <...>

E S T A B L I S H E D:

I. Preliminary statement

FAS Russia received the application of January 31, 2019 No. 145 of All-Russian Non-Governmental Organization of Small and Medium Business "OPORA RUSSIA" (hereinafter – OPORA RUSSIA, the Applicant) on sings of violation of antimonopoly legislation by LLC Booking.com B.V. (hereinafter – Booking.com, the Defendant).

Based on the information send to FAS Russia the following was established.

Booking.com owns and operates the information aggregator of accommodation facilities, including website and application. Besides, Booking.com comprises other

services, aggregators and metasearch engines in the field of tourism and services (Agoda, Kayak, Priceline etc.).

According to the Applicant, Booking.com abused its dominant position in the Russian market of services of accommodation facilities through the imposition of the price and room parity for accommodation facilities (hotels, hostels etc.) operating on the territory of the Russian Federation, thereby infringing interests of accommodation facilities and damaging Russian hotel services market.

Based on the results of the Application consideration, FAS Russia revealed signs of abuse of dominant position by Booking.com in the aforementioned market through the imposition of unfavorable terms of contract regarding the necessity of compulsory provision of and compliance with the price and room parity, as well as terms of interaction with closed user groups to accommodation facilities operating on the territory of the Russian Federation.

The imposition of unfavorable contract terms by a dominant entity is prohibited by the Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition.

In accordance with the Article 39.1 of the Law on Protection of Competition, violation by an economic entity of the Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition entails a written warning demanding to stop actions (inaction), in which signs of violation of antimonopoly legislation are seen.

When signs of violation of antimonopoly legislation of Booking.com were revealed, FAS Russia on November 12, 2019 issued a warning to Booking.com demanding to stop its actions (inaction), in which signs of violation of antimonopoly legislation are seen¹ (outgoing letter of FAS Russia of November 12, 2019 No. ИА/99021/19).

Booking.com ignored this warning.

In accordance with the Part 8 of the Article 39.1 of the Law on Protection of Competition, in case of non-compliance with the warning within the prescribed time limit in the presence of signs of violation of antimonopoly legislation, antimonopoly authority is obliged to take decision on bringing a case on violation of antimonopoly legislation.

Taking the foregoing into consideration, FAS Russia made a decision to initiate a case against Booking.com, followed by an order of December 27, 2019 No. 1763/19 of FAS Russia on initiating a case No. 11/01/10-41/2019 (hereinafter – the Case), and to establish a Commission for consideration of the case on violation of the antimonopoly legislation on the grounds of violation by Booking.com (Herengracht

¹ <https://br.fas.gov.ru/ca/upravlenie-regulirovaniya-svyazi-i-informatsionnyh-tehnologiy/ce12aabe-b261-4ce2-aa5a-d71d8a93cbe7/>

597, 1017 CE, Amsterdam, Netherlands) of the Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition, that consisted of the imposition of terms of contract regarding the necessity of compulsory provision of and compliance with the price and room parity, as well as terms of interaction with closed user groups to accommodation facilities operating on the territory of the Russian Federation.

By the ruling on setting the Case for consideration of December 27, 2019 (outgoing letter of FAS Russia of December 30, 2020 No. АГ/115747) OPORA RUSSIA was engaged in the consideration of the Case in the capacity of the Applicant.

By the ruling on postponement of the Case consideration of June 19, 2020 (outgoing letter of FAS Russia of June 22, 2020 No. АГ/52400/20) the Commission upon an application of Association of Restaurateurs and Hoteliers (hereinafter — ARH) engaged this association in the capacity of interested party, as the consideration of the Case affects interests of ARH members, having contractual relationship with Booking.com within the framework of accommodation facilities economic activity.

According to ARH, by imposing unfavorable terms Booking.com infringes interests of ARH members, being accommodation facilities, as well as restricts, prevents or eliminates competition in the commodity markets, where aforementioned ARH members carry out their activity, and can have considerable negative impact on the state and the development of hotel services market in the Russian Federation.

II. Analysis of the state of competition in the commodity market

As part of the consideration of the application, under the Paragraph 3.36 of the Administrative Regulations of FAS Russia on Execution of the State Function on Initiation and Consideration of Cases of Violation of the Antimonopoly Legislation of the Russian Federation, approved by the order of FAS Russia of May 25, 2012 No. 339 and the Procedure for Analysis of the State of Competition in the Commodity Market, approved by the order of FAS Russia of April 28, 2010 No. 220 (hereinafter – the Procedure), FAS Russia conducted an analysis of the state of competition in the market of services of accommodation facilities aggregators (hereinafter – aggregators, online travel agency, OTA) the results of which are reflected in the analytical report on the state of competition in the market of the services of accommodation facilities information aggregators (hereinafter – the Analytical Report), presented in the Case papers.

Under the Paragraph 3.27 of the Administrative Regulations of FAS Russia on Execution of the State Function on Establishing the Dominant Position of an Economic Entity when Considering Applications, Materials, Cases on Violations of Antimonopoly Legislation and Exercising State Control over Economic

Concentration, approved by the order of FAS Russia of May 25, 2012 No. 345, on November 17, 2020 FAS Russia finalized the Analytical Report and included the results of the accommodation facilities survey, results of hotel services ultimate consumer survey (Research of All-Russian Public Opinion Research Center) and other information.

Based on the results of the analysis of the state of competition in the aggregator services market the following was established.

A. Time frame of the research

Time frame of the research of the market under investigation is from January 1, 2016 to December 31, 2018.

Commission notes that there were no changes in the market of aggregator services in 2019.

In 2020, the new coronavirus infection COVID-19 was spreading on the territory of the Russian Federation and on the territories of other countries.

In that context in 2020 executive orders of the president of the Russian Federation, decrees of the Government of the Russian Federation and high officials of the subjects of the Russian Federation imposed restrictions on traveling to other countries, on movement among and inside subjects of the Russian Federation, as well as restrictions on economic activity of legal entities and individual entrepreneurs.

In particular, the aforementioned restrictions affected accommodation facilities (hotels, hostels etc.), which didn't carry out economic activity during the period of restrictions, as well as hotel services ultimate consumers, who didn't move and stayed indoors. Moreover, aggregators were also affected by these restrictions, as their economic activity is directly linked with functioning of accommodation facilities and hotel services consumers. Therefore, these restrictions to some extent affected all parties of the aggregator services market.

However, the Commission supposes that taking into account the fact that aggregators mainly provide information services on their platforms (accommodation facilities reservations, money transactions, accommodation facilities online marketing etc.), the aforementioned restrictions didn't have significant impact on presence (absence) of dominant position of economic entities in the aggregator services market in 2020.

B. Product boundaries of the commodity market

1. Preliminary product boundaries of the commodity market

In accordance with the Article 1 of the Federal Law of November 24, 1996 No. 132-FZ "On the Bases of Tourist Activity in the Russian Federation", hotel it is a mean of placement in which hotel services are provided and which belongs to one of the types of the hotels provided by the regulations on classification of hotels approved by the Government of the Russian Federation.

Types of the hotels are listed in the Regulations on hotel classification (hereinafter – the Regulations), approved by the resolution of the Government of the Russian Federation of February 16, 2019 No. 158. Thus, types of the hotels include hotels, resort hotels, apartment hotels, hostels, motels, apartment complexes, and other accommodation facilities, listed in the Paragraph 5 of the Regulations.

Legislation of the Russian Federation that regulates hotel and tourist activity lacks the notion of accommodation facility aggregator. However, accommodation facility aggregator is in fact products (services) information aggregator.

According to the Federal Law of February 7, 1992 No. 2300-1 "On the Protection of the Consumers' Rights", the owner of the products (services) information aggregator is an organization, regardless of its legal status, or an individual entrepreneur, that owns computer program and (or) website and (or) website page, and provides consumer with an opportunity with regard to a particular product (service) to study sellers' offers of making a sales contract (services agreement), to make a sales contract with a seller, as well as to pay a product (service) in advance through money transaction to the aggregator owner within the applicable forms of non-cash payments.

Services of accommodation facilities aggregators are information services presenting available accommodation facilities and their rooms that a consumer can reserve for a payment via aggregator's platform (website). On this aggregator's platform (website) receiving parties (hotels) can offer their accommodation facilities for reservations, while consumers can make online reservations of accommodation facilities.

The interaction between aggregators and accommodation facilities is as follows. Hotel that wants to place its services on aggregator's platform (website), makes an electronic application on the aggregator's website (where it gives information on its rooms, facilities (internet, parking, swimming pool etc.), prices, rules of work and accommodation in the hotel, photos of the hotel etc.). After the application check, the aggregator concludes an agreement with the hotel. Then the hotel publishes information on the aggregator's platform (website) and becomes available for search and reservation by consumers.

Accommodation facilities aggregator serves as a mediator (by ensuring processing of orders, payments via its platform (website) between a hotel and a hotel services consumer. Aggregator doesn't buy and resell accommodation, while hotel services

consumer doesn't pay aggregators for these services. Consumers pay directly to the receiving party (accommodation facility), which in its turn pays commission to the aggregator that served as a mediator for reservation of this accommodation facility as soon as the consumer paid for the accommodation.

Thus, aggregators that directly interact with accommodation facilities receive remuneration in the form of commission proportional to the reservation payment.

The receiving party (accommodation facility) sets the price for one night, as well as accommodation availability.

Taking the foregoing into consideration, preliminary product boundaries of the commodity market under investigation are defined as the market of the services of the accommodation facilities aggregators.

2. Determination of the commodity market product boundaries and the evaluation of substitutability

The role of the accommodation facilities aggregators is not limited to the reservation of temporary accommodation on their platforms (websites). Being popular among consumers looking for and comparing accommodation facilities, aggregators play a central role for accommodation facilities, as they make them visible online among a great number of aggregator users around the world.

The accommodation facility needs to be presented on the aggregator platforms (websites) that are popular among internet users across the globe, especially if aggregator platforms contain information about competing accommodation facilities, and if an accommodation facility doesn't have well-known or popular trade mark (brand). Otherwise, accommodation facility risk ceding consumers to competing accommodation facilities, publishing information on aggregator platforms (websites).

Thus, accommodation facilities aggregators while providing accommodation facility reservation services enable consumers to compare accommodation facilities in order to make the best choice. Accommodation facilities in their turn have an opportunity to promote their hotel services by covering large audience of an aggregator.

The position that accommodation facilities aggregators provide consumers with comprehensive service, comprising several services (search, comparison of hotels (by rooms availability, prices, consumers' feedbacks), facilitated hotel services payment system for all parties, promotion (marketing services) of a hotel on the aggregator's website), is confirmed by aggregators themselves.

Taking the foregoing into consideration, potentially substitutable products for accommodation facilities aggregators services can be:

- services for dissemination of information on accommodation facilities and their reservation directly on the accommodation facilities' websites;
- services for dissemination of information on accommodation facilities and their reservation in search engines (Google, Yandex, Mail.ru etc.) (advertisement in search engines, ranking of accommodation facility website in search engine results);
- services for dissemination of information on accommodation facilities and their reservation in metasearch engines (Kayak, Trivago, RoomGuru etc.);
- services for dissemination of information on accommodation facilities and their reservation in classified advertisements websites with sections devoted to the rent (sale) of apartments, houses, rooms, and other real estate properties (Avito, Yandex.Realty, Cian etc.)

In order to assess the possibility of inclusion of these potentially substitutable products in the group of substitutable products for accommodation facilities aggregators services, FAS Russia conducted a hypothetical monopolist test, used data collected during the accommodation facilities survey, used data of the All-Russian Public Opinion Research Center (VCIOM) research "Practice of search and reservation of accommodation facilities while travelling in Russia", and evaluated functional purpose, application, qualitative and technical characteristics, as well as other characteristics of potentially substitutable products, and made the following conclusions.

By reserving temporary accommodation directly on the accommodation facility's website, consumer doesn't have an opportunity to compare and evaluate several accommodation facilities (in terms of quality and prices), and only has an opportunity to reserve temporary accommodation in this particular accommodation facility. Moreover, with hotel disseminating information on its services only on its website, it will not be as visible among potential consumers, as it can be on aggregator's platform (website).

It follows that services related to dissemination of information on accommodation facilities and their reservation directly on accommodation facility's' websites cannot be substitute for services offered by accommodation facilities aggregators.

Services related to the dissemination of information on accommodation facilities and their reservation in search engines (Google, Yandex, Mail.ru etc.) cannot be substitute for services offered by accommodation facilities aggregators.

Generally, search engines rank various websites depending on conformity of these sites and their content to user search request. Website owners spend considerable a lot of money (for content and advertisement in search engines) for their websites to be relevant to users' requests and at top of search results.

Thus, for successful advertisement and promotion of their services via websites in search engines among other hotels (aggregators, metasearch engines), accommodation facilities must have a lot of money for these purposes. Consequently, small hotels that are not part of hotel chains are marginalized.

Besides, the majority of search engines lack tools for reservation and payment what makes them less functional for users (that want not only to find and compare hotels, but to reserve and pay for them), as well as for accommodation facilities.

For the same reasons services for dissemination of information on accommodation facilities in metasearch engines can't be substitute for services offered by accommodation facilities aggregators as they are less functional (search and comparison of accommodation facilities on platform (website) of metasearch engine without the possibility of reservation and payment).

Services for dissemination of information on accommodation facilities and their reservation in classified advertisements website with sections devoted to the rent (sale) of apartments, houses, rooms, and other real estate properties (Avito, Yandex.Realty, Cian etc.) can't be substitute for services offered by accommodation facilities aggregators.

This conclusion was confirmed by the results of accommodation facilities survey, conducted by FAS Russia, as well as by individuals providing services of classified advertisements websites with sections devoted to the rent (sale) of apartments, houses, rooms, and other real estate properties.

According to the response of LLC IRealtor (cian.ru) to FAS Russia, this company doesn't provide services of accommodation facilities information aggregator and doesn't cooperate with accommodation facilities (hotels, hostels etc.), cian.ru doesn't publish information on such accommodation facilities, doesn't have tools for reservation, payment, and communication with such facilities (incoming letter of May 19, 2020 No. 88865-ЭП/20).

LLC KEX eCommerce (avito.ru) in its response to FAS Russia confirmed the fact that it doesn't provide services of accommodation facilities information aggregator, and that Avito itself doesn't have tools typical for accommodation facilities information aggregators. Avito is an online ad catalogue (incoming letter of March 20, 2020 No. 51080-ЭП/20).

In order to evaluate substitutability and in accordance with the Paragraph 3.9 of the Procedure, FAS Russia conducted written sample survey of 66 accommodation facilities of various types and categories, operating on the territory of the Russian Federation (hereinafter – Accommodation Facilities Survey), including questions about the possibility and effectiveness for such facilities to use search engines (Google, Mail.ru, Yandex etc.), classified advertisements websites with sections

devoted to the rent (sale) of apartments, houses, rooms, and other real estate properties (Avito, Yandex.Realty, Cian etc.) as a separate channel for distribution of their services, as well as about the possibility of further usage of aggregator services if they increase cost of their services by 10%.

According to the results of the Accommodation Facilities Survey, search engines (Google, Mail.ru, Yandex etc.) don't serve as a separate channel for distribution of services of 43 accommodation facilities or 65.15% of respondents.

Classified advertisements website with sections devoted to the rent (sale) of apartments, houses, rooms, and other real estate properties (Avito, Yandex.Realty, Cian etc.) don't serve as a separate channel for distribution of services of 60 accommodation facilities or 90.9% of respondents.

Within the framework of the hypothetical monopolist test, accommodation facilities were asked the following question:

"Imagine that all aggregators decided to increase commission for their services by 10% for accommodation facilities on the territory of the Russian Federation and they are not expected to reduce this commission in the years to come. How would you act in this situation?"

- our accommodation facility (accommodation facility chain) would continue to use services of aggregators for the dissemination of information on accommodation facilities services;
- our accommodation facility (accommodation facility chain) would stop using aggregators services and switch to other channels for the dissemination of information on hotel services, for example, direct channels (reservation at the reception desk, on the hotel's website, by phone, by e-mail) and (or) travel agencies or other channels for the distribution of accommodation facilities services."

35 accommodation facilities (53% of respondents) answered that they would continue to use services of aggregators for the dissemination of information on accommodation facilities services if aggregators increased commission for their services by 10%.

At the same time 23 accommodation facilities would stop using aggregators services and switch to other channels for the dissemination of information on hotel services, for example, direct channels (reservation at the reception desk, on the hotel's website, by phone, by e-mail) and (or) travel agencies or other channels for the distribution of accommodation facilities services if aggregators increased commission for their services by 10%.

Thus, the majority of respondents are not ready to completely abandon aggregators services in the case of a 10% increase in the cost of their services.

According to the results of the Accommodation Facilities Survey, the majority of the respondents don't consider search engines (Google, Mail.ru, Yandex etc.) to be a separate channel for the distribution of their services, as well as classified advertisements websites with sections devoted to the rent (sale) of apartments, houses, rooms, and other real estate properties (Avito, Yandex.Realty, Cian etc.), which are not considered to be a separate channel for the distribution of services by over 90% of respondents.

Besides, according to the research carried out by VCIOM "Practice of search and reservation of accommodation facilities while travelling in Russia", submitted to FAS Russia by the authorized representatives of ARH in the letter of August 9, 2020 (incoming letter of September 9, 2020 No. 154673/20) (hereinafter – VCIOM Research), for 90% of respondents (living in Russian cities with population of 1 million and more, aged 18 and older, traveled within the Russian borders over the last year and stayed in temporary accommodations (hotels, apartments, hostels) it is important to have an opportunity to immediately reserve accommodation of choice on the same platform where they look for an accommodation.

According to the VCIOM Research, 79% of respondents look for accommodation facilities through various accommodation facilities information aggregators, a half of them (48%) uses specialized travel websites, 38% look for hotels via search engines, and 37% rely on recommendations.

At the same time 62% of respondents tend to choose hotel (apartment, hostel) via various reservation systems, 12% - via specialized travel websites, and 10% - via search engines.

Taking the foregoing into consideration, the Commission concluded that the market under investigation is an independent market, and that its product boundaries cannot be expanded to other channels for distribution of accommodation facility services (hotel services), as the impossibility of such expansion is declared by accommodation facilities themselves, as well as by ultimate consumers of accommodation facility services (hotel services).

Thus, the product boundaries of the market under investigation are defined as the market of services of accommodation facilities aggregators.

C. Geographical boundaries.

Geographical boundaries of the commodity market are defined as the Russian Federation on the basis of the following.

According to the Paragraph 4.1. of the Procedure, geographical boundaries of the market are the boundaries within which buyer (buyers) gets (get) or has (have) an economic, technical or other possibility to acquire goods and doesn't (don't) have such possibility beyond them.

According to both received information and publicly available information, accommodation facilities information aggregators carry out their activity online across the globe regardless of the place of legal registration of a company, which owns the aggregator.

Besides, while determining geographical boundaries of the market under investigation it is necessary to take into account the fact that consumers of the services of accommodation facilities aggregators are individuals who need to reserve an accommodation, as well as accommodation facilities themselves publishing information about themselves on the aggregators' platforms (websites).

Thus, the services of an aggregator can be used anywhere in the world both for reservation of accommodation facility and for sale of accommodation services without any extra cost.

Factors that restrain accommodation facilities aggregators from distributing their services are the aggregator interface language, a number of registered accommodation facilities and the necessity to abide by the national legislation (in the field of tourism, hospitality, taxes etc.)

Thus, aggregators compete with each other for the number of accommodation facilities registered on their platforms, and the number of reservations, regardless of the territory on which such facilities are located, or from which territory reservation is made.

The analysis of the aggregator services market is conducted in connection with the consideration of the Application on the Booking.com actions related to the establishment of price parity for accommodation facilities operating on the territory of the Russian Federation.

Given that aggregators' platforms (websites) contain (and help to conclude relevant contract/agreement) hotels with specific location, economic activity of which is directly linked to the location (in this specific case research focuses on the behavior of aggregators towards accommodation facilities on the territory of the Russian Federation), aggregators' platforms (websites) are translated into languages of host countries (in this specific case into Russian), aggregators in host countries have legal entities and staff, that interact with hotels (for example in the Russian Federation Booking.com interacts with hotels via Russian legal entity LLC Booking.com Russia), aggregators and accommodation facilities activity to a large extent depends on country and regional legislation in the field of hospitality and tourism (in this specific case on the Russian Federation legislation), the market of the services of accommodation facilities aggregators should be considered within countries' territorial borders, in this case as the territory of the Russian Federation.

D. Composition of economic entities operating in the commodity market and their shares.

The composition of economic entities operating in the commodity market consists of accommodation facilities aggregators operating on the territory of the Russian Federation and enabling creation, editing, and deletion of information on services of such accommodation facilities, as well as search, comparison, and reservation of services of such accommodation facilities within established time frame of the research from 2016 to 2018.

In order to identify economic entities operating in the commodity market, information received from the Application, publicly available online resources, aggregators, as well as from economic entities, providing accommodation facilities with the Channel Manager Service (LLC TRAVEL LINE SYSTEMS and LLC Binovo) was used.

Channel Manager is an automated system (software) of third parties (provided to hotels by contract) that enables technical exchange of accommodation facility data (such as prices, number of available rooms, reservations) with aggregators.

Accommodation facility sends information on available rooms and accommodation prices to Channel Manager, which in its turn disseminates this information among aggregators, which publish information on accommodation facility on their platforms (websites). An accommodation facility chooses aggregator that it will work with.

After the reservation of an accommodation facility via aggregator was made, Channel Manager sends information on reservation to the accommodation facility and updates information on available rooms of the accommodation facility on other connected aggregators.

Unlike accommodation facilities aggregators, Channel Manager doesn't provide its services for ultimate consumers (that want to reserve a hotel). Channel Manager enables technical exchange of the aforementioned information between accommodation facilities and available aggregators.

Thus, economic entities providing Channel Manager services have the most complete information on the composition of economic entities operating as accommodation facilities aggregators on the territory of the Russian Federation.

Based on the analysis of the submitted information, FAS Russia identified aggregators through which the biggest number of reservations of accommodation facilities operating on the territory of the Russian Federation using Channel Manager were made over the period under investigation, namely:

- Booking.com B.V. (booking.com)

- LLC Hotel Reservation Service RUS (hrs.com)
- LLC CBooking-technology (cbooking.ru)
- LLC Bronirovanie Gostinits (ostrovok.ru)
- LLC A and A (zabroniryi.ru)
- LLC ACADEMSERVICE (acase.ru)
- LLC 101 hotel (101hotels.ru)
- LLC Bronevik (bronevik.com)
- Agoda Company Pte. Ltd. (agoda.com) – part of the same group as Booking.com
- HOTELBEDS, S.L.U. (hotelbeds.com)
- Ctrip.com (Hong Kong) Limited (Ctrip.com, trip.com)
- Expedia Group (expedia.com)
- Airbnb Ireland US (airbnb.com)

The total market share of accommodation facilities aggregators chosen as the largest, according to the information provided by LLC TRAVEL LINE SYSTEMS and LLC Binovo, by the number of reservations made through these aggregators over the period under investigation is over 95%.

The abovementioned economic entities, which operate as accommodation facilities aggregators, were asked to provide information on sales volumes in value and quantity terms (number of reservations) over the 2016, 2017 and 2018 years.

Based on the results of the analysis of information provided by aggregators, the shares (in value and quantity terms) of the largest economic entities operating in the commodity market under investigation were determined (the results are presented in Table 1 and Table 2).

E. Determination of concentration ratio of the commodity market

According to the Analytical Report, the concentration ratio of the market under investigation is defined as high during the period under investigation.

F. Determination of barriers to entry.

Barriers to entry in the commodity market for accommodation facilities information aggregators are hard to overcome. For successful entry into the market and competition with its participants, it is necessary to have a large base of consumers of hotel services and hotels (barrier in the form of network effects), as well as to make significant initial investments with a long payback period, such as design, development and introduction of a fully-functioning service (aggregator) into the market, as well as advertisement for this service among all consumer groups and the formation of brand awareness (reliability).

Price and rooms parity for Russian accommodation facilities set by aggregators can be one more barrier to entry into the aggregator services market for new players in the Russian Federation.

G. Definition of dominant economic entities

According to the Paragraph 1 of the Part 1 of the Article 5 of the Law on Protection of Competition, dominant position is recognized when an economic entity has a share in the certain goods market that exceeds fifty percent.

According to the market analysis, the share of Booking.com, which owns such aggregators as Booking.com and agoda.com in the market of services of commodity facilities aggregators on the territory of the Russian Federation, in value terms was:

- 83.28% in 2016;
- 81.88% in 2017;
- 79.55% in 2018.

The share of Booking.com on the territory of the Russian Federation in quantity terms was:

- 82.29% in 2016;
- 85.51% in 2017;
- 83.93% in 2018.

These figures show that the Booking.com share in the market under investigation in both value and quantity terms is roughly the same and is about 80% of the total market on the territory of the Russian Federation over the period under investigation.

During the period under investigation, the relative size of the shares of Booking.com in the market under investigation was not subject to any fluctuations and remained almost unchanged.

Taking the foregoing into consideration, in accordance with the Part 1 of the Article 5 of the Law on Protection of Competition, Booking.com occupies dominant position in the market of services of accommodation facilities aggregators.

Booking.com objections to the Analytical Report (dominant position) and their assessment on the part of the Commission

A. Booking.com objections to the Analytical Report (dominant position)

During the investigation, the Defendant submitted written objections to the analysis of the state of competition in the accommodation facilities aggregators services market (incoming letter of January 21, 2020 No. 9135-ДПЦ/20, of February 2020 No. 31629/20, of September 18, 2020 No. 15941/20).

In these objections, the Defendant rejects the Analytical Report results and believes that it doesn't occupy dominant position in the commodity market under investigation.

According to Booking.com, product boundaries of the market are larger than those determined by FAS Russia in the Analytical Report. Thus:

- aggregators compete with direct hotel sales (sales on the website, by phone, via e-mail, social networks, advertisement in media etc.);
- aggregators compete with hotel sales through travel agencies;
- aggregators compete with metasearch and search engines (Google, Yandex, Mail.ru etc.);
- aggregators compete with platforms for search of private accommodation (Airbnb, Cian, Avito, Yandex.Realty etc.).

Therefore, according to Booking.com, the aforementioned channels for hotel services sales should be included in the commodity market to determine its boundaries.

The Defendant also supposes that barriers to entry into the market are surmountable, as the major economic entities from other commodity markets (Google, Facebook, Amazon, Yandex, Mail.ru etc.) can have all opportunities, business contacts and other instruments necessary for successful entry into the market of services of accommodation facilities aggregators.

These arguments are fostered by the conclusions made in the report "FAS Russia analysis of the Russian market of services of accommodation facilities information aggregators – discussion paper", prepared by the PwC for Booking.com (incoming letter of April 14, 2020 No. 69037-ЭП/20) (hereinafter – PwC Analysis).

B. Commission assessment of the Defendant's objections to the Analytical Report

As previously mentioned, on November 17, 2020 the Analytical Report was finalized and completed by the results of the Accommodation Facilities Survey, conducted by FAS Russia within the framework of the Case consideration, as well as by the results of the hotel services ultimate consumers survey (VCIOM Research).

The results of the Accommodation Facilities Survey and hypothetical monopolist test, as well as the results of the VCIOM Research demonstrate that hotel services sales channels mentioned by the Defendant (direct sales, sales through travel agencies, metasearch (search) engines, platforms for private accommodation search) are not part of the market of services of accommodation facilities aggregators and cannot be included in the product boundaries of this market.

Besides, conclusions of the PwC Analysis are not supported neither by documents nor by facts. Moreover, PwC Analysis emphasizes that it builds on generally accepted concept of competition and uses relative economic literature. PwC didn't carry out alternative market analysis.

Therefore, according to the Commission, the PwC Analysis results cannot serve as a proof that Booking.com doesn't occupy dominant position and (or) doesn't have negative impact on accommodation facilities (hotels, hostels etc.), ultimate consumers, and competition in the aggregators services market.

The Commission notes that in accordance with the Paragraph 2.2.1 of the Conditions price parity doesn't apply to prices intended for closed user group (closed user group means group with certain restrictions, membership in which is not automatic and (1) consumers consciously chose to become a member of the group; (2) any online or mobile interface used by closed user group members is password-protected; (3) closed user group members completed customer profile; (4) consumer that the price was offered to has already made at least one advanced reservation as a member of closed user group), on the condition that such prices are not (directly or indirectly) available for general public. If the price for the closed user group is (directly or indirectly) available (through accommodation facility) to (direct or indirect) business competitor of Booking.com or to any other third party (platform, including any (metasearch) search engine or price comparison website), Booking.com has the right for the price parity with respect to such price.

Thus, Booking.com exercises control over working conditions of accommodation facilities with their closed user groups, what hampers the promotion of direct sales channels for accommodation facilities among consumers using loyalty program discounts.

Analytical Report also notes that successful advertisement and promotion of services through websites in search engines among other hotels (aggregators, metasearch engines) demands that accommodation facilities have a lot of money for these purposes, what leads to marginalization of small hotels that are not part of hotel chains.

Besides, the majority of search engines lack tools for reservation and payment, what makes them less functional for users (that want not only to find and compare hotels, but to reserve and pay for them), as well as for accommodation facilities.

According to the VCIOM Research, only 10% of respondents look for accommodation facilities through search engines.

According to the Accommodation Facilities Survey results reflected in the Analytical Report, 65.5% of respondents don't consider search engines to be a separate sales channel.

Thus, direct sales of accommodation facilities cannot be substitute for sales through aggregators.

According to the Accommodation Facilities Survey results reflected in the Analytical Report, if aggregators increased commission for their services by 10%, 34.8% of respondents (less than half) would stop using aggregators services and switch to other channels for dissemination of information on hotel services, including travel agencies.

According to the VCIOM Research, only 3% of respondents chose accommodation facilities through travel agencies.

Unlike aggregators, the majority of travel agencies websites don't have instruments for reservation and payment.

Thus, travel agencies services cannot be substitute for aggregator services.

The Defendant's arguments in favor of inclusion of Airbnb.com into the composition of economic entities operating in the market under investigation were taken into account and data on the volume of its economic activity was reflected in the Analytical Report.

According to the submitted data, Airbnb Ireland US (Airbnb.com) operates as accommodation facilities aggregator, publishing information on accommodation facilities on its website, enabling consumer to choose, compare such accommodation facilities, reserve and pay for them via its website. Airbnb.com services are also paid for by commission.

The Commission states that the inclusion of Airbnb.com into the composition of economic entities operating in the aggregator market didn't influence the Analytical Report conclusions about the Booking.com dominant position in the market of services of accommodation facilities aggregators. According to the finalized Analytical Report, Booking.com share in the market under investigation didn't change and was about 80%.

Avito (avito.ru) and Cian (hereinafter – services) were not covered by the Analytical Report as they are not part of the aggregator market. This conclusion is confirmed by services themselves, as well as by Accommodation Facilities Survey and VCIOM Research.

According to written explanations of LLC IRealtor (Cian) submitted to FAS Russia, Cian enables its users to publish in its data base information on real estate properties for their purchase, sale or rent. Cian doesn't interact with accommodation facilities, Cian doesn't have instruments for reservation, payment and communication with accommodation facilities.

According to written explanations of LLC KEX Ecommerce (Avito) submitted to FAS Russia, Avito (avito.ru) is designed for placement, search and review of advertisement for goods and services classified into different sections. Avito wasn't designed for publishing information on accommodation facilities, available rooms, and facilities, including meal, internet etc.

In addition, according to the results of the Accommodation Facilities Survey, 90.9% of respondents don't consider classified advertisements websites with sections devoted to the rent (sale) of apartments, houses, rooms, and other real estate properties (Avito, Yandex.Realty, Cian etc.) to be a separate channel for distribution of services.

According to the information received during the VCIOM Research, none of the respondents mentioned Cian and Avito (avito.ru) among the instruments for search of accommodation facility.

The market of services of accommodation facilities information aggregators is characterized by considerable network effects, which hamper entry to this market and leave barrier that is hard to overcome.

The attractiveness of an aggregator for one party of the commodity market (for example, for hotel services consumers) depend on the number of entities of the other party of the commodity market (for example, hotels). Therefore, in order to enter the market and operate successfully, aggregator needs to make platform attractive for both parties of the commodity market.

Under the Paragraph 8.4 of the Procedure, barriers to entry into the commodity market are considered to be surmountable if money spent on overcoming these barriers are recompensed by revenues (benefits), that an economic entity, planning to enter this commodity market, will obtain (expects to obtain).

In this particular case barrier is hard to overcome, as entry into the market requires adequate accommodation facilities base, as well as considerable initial investments with long payback period. For example, design, development and introduction of a fully-functioning aggregator into the market, as well as its further advertisement to attract accommodation facilities and hotel services consumers.

Conclusions about hard-to-overcome barriers in the commodity market under investigation are indirectly confirmed by third parties (Tinkoff travel and Ozon.Travel), having relations of partnership with aggregators. SC Tinkoff Bank and LLC Internet Travel opinions on this issue are reflected in the Analytical Report (incoming letter of July 20, 2020 No. 125573-ДСП/20, of August 28, 2020 No. 148314-ЭП/20).

According to the 2018 annual report of the Booking.com parent company Booking Holdings Inc published on the US securities and Exchange Commission website, the

total cost of marketing and promotion for Booking.com, Agoda and other services, being part of Booking Holdings Inc in 2018 was about 4.4 billion dollars.

According to the Accommodation Facilities Survey, 96% of respondents mentioned aggregator as a channel for distribution of their services. At the same time 93% of respondent mentioned Booking.com as a main aggregator.

According to VCIOM Research, 81% among those who look for accommodation facility through various aggregators also mentioned Booking.com as an aggregator of choice.

According to the Commission, this data confirms the Analytical Report conclusions about considerable network effects, caused by the fact that aggregators' attractiveness for one group of users totally depend on the size of the other group, as well as by the necessity to make major initial investments, what hampers entry into the commodity market and forms hard-to-overcome barrier.

Thus, taking the foregoing into consideration, the Commission concludes that Booking.com occupies dominant position in the market of services of accommodation facilities information aggregators, that there are hard-to-overcome barriers to entry into this market in the form of network effects and huge investments.

Therefore, the Commission considers the Defendant's objections to the Analytical Report (dominant position) to be unjustified, not proved by facts of the Case, and under the Paragraph 3.25 of the Administrative Regulations, concludes that Booking.com occupies dominant position in the market of servicers of accommodation facilities aggregators.

The assessment of presence (absence) in the Booking.com actions of sings of the violation of the Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition

A. Definition of the Booking.com B.V. actions (inaction)

The legal relations between Booking.com and accommodation facilities are regulated by the Partnership Agreement with Booking.com (hereinafter – the Agreement), by General Service Conditions of Booking.com (hereinafter – the Conditions), by Privileged Program Conditions (hereinafter – the Privileged Program), and other additional agreements (hereinafter – the provisions of the Conditions, and the Privileged Program, being in force at a time of the consideration of the Application and issue of the warning to Booking.com, are quoted).

The Agreement, according to the Paragraph 2 of this Agreement, is a public offer and enters into force as soon as accommodation facility accepted the Conditions. Under the Paragraph 3 of the Agreement, it is regulated by the Conditions. The

Conditions are publicly available in the internet at the following link: <https://admin.booking.com/hotelreg/terms-and-conditions.html?language=ru;cc1=ru>

Under the Paragraph 2.2.1 of the Conditions, accommodation facility undertakes to provide Booking.com with price and room parity (vacant room, facilities availability) (hereinafter – price, room and facilities parity).

In this particular case price parity means the same or better prices for the same accommodation facilities as those, offered in accommodation facilities websites, applications or call centers of accommodation facilities (including client systems for room reservation), or directly in an accommodation facility, in comparison with any Booking.com competitor (including any agency for online/offline room reservation or agency for room reservation or mediator) and/or with any third party (making online or offline reservations), which is a business partner of an accommodation facility or is somehow associated with it. At the same time price parity doesn't apply to prices intended for closed user group (closed user group means group with certain restrictions, membership in which is not automatic and 1(1) consumers consciously chose to become a member of the group; (2) any online or mobile interface used by closed user group members is password-protected; (3) closed user group members completed customer profile; (4) consumer that the price was offered to, has already made at least one advanced reservation as a member of closed user group), on the condition that such prices are not (directly or indirectly) available for general public. If the price for the closed user group is (directly or indirectly) available (through accommodation facility) to (direct or indirect) business competitor of Booking.com or to any other third party (platform) (including any (metasearch) search engine or price comparison website), Booking.com has the right for the price parity with respect to such price

Room parity means that the accommodation facility must provide Booking.com with such number of rooms available for reservation that is at least as beneficial as a number of rooms offered to any other business competitor of Booking.com (including any agency for online/offline room reservation or agency for room reservation or mediator) and/or to any third party (making online or offline reservations), which is a partner of accommodation facility or is somehow associated with it.

Under the Paragraph 5.1 of the Conditions, an accommodation facility assures Booking.com and guarantees that during the term of the Agreement room prices advertised on Booking.com correspond to the best available price for equivalent stay in an accommodation facility and that guest reserving room in accommodation facility either directly or through third party or through other tools or channels cannot get better price.

Under the Rules and Regulations for Travel published on Booking.com website, if after making a reservation the guest finds online an accommodation facility previously reserved on Booking.com with the same reservation conditions but at a lower price, Booking.com undertakes to pay back the price difference under the rules and terms of "We pay back price difference" service.

Thus, this service is available when another offer is for the same accommodation facility and the same type of the room; when another offer is for the same check-in and check-out dates; when another offer has the same cancellation rules and conditions.

This service is not available if another offer is found on the website which doesn't show which accommodation or room you will stay in until the reservation is completed; if another offer is reserved using a loyalty or bonus program; if another offer is special or discounted; if the guest has a Booking.basic reservation or compares with Booking.basic.

Under the Paragraph 6.2 of the Conditions, an accommodation facility must completely eliminate, recompense or prevent harm with regard to Booking.com (or its CEOs, officers, staff members, agents, affiliated companies, and subcontractors) related to any obligations, costs, expenses (including reasonable remuneration and legal services expenses), losses, damages, claims, interests, fines and legal proceedings, paid, borne or assumed by Booking.com (or its CEOs, officers, staff members, agents, affiliated companies, and subcontractors), insofar as any claims under or in connection with the condition "We pay back price difference" are not settled between a guest and an accommodation facility upon departure of this guest (by paying a lower price), all claims made by guests with respect to or in accordance with the condition "We pay back price difference".

Under the Paragraph 10.9 of the Conditions, the Agreement enters into force and remain effective only after Booking.com confirms in written form the acceptance and approval of an accommodation facility. By registering for and subscribing to the partner program of Booking.com as an accommodation partner, an accommodation facility accepts and acknowledges the rules and terms of the Agreement.

Thus, an accommodation facility can conclude an Agreement only if it accepts the Conditions, including price and room parity terms for its hotel services.

Under the Paragraph 3 of the Article 1.1.1. of the Privileged Program (program that Booking.com offers to accommodation facilities meeting requirements and interested in participation in such program to improve the accommodation facility rating on Booking.com), in order to join this program, an accommodation facility, along with being among 30% of accommodation facilities with best sales performance in a particular populated area, as well as with review rating of 7 and more, must satisfy the following performance criterion: accommodation facilities

with competitive prices on Booking.com and without price and facilities parity violations which agree to permanently offer competitive prices for all rooms of each type are eligible for this program.

Under the Article 2.2 of the Privileged Program, an accommodation facility cannot be a member of such program (Booking.com can terminate its membership or deny membership) if it violates rules or doesn't meet requirements of the Privileged Program and cannot rectify the violation or eliminate shortcomings within two weeks after the notification was received or immediately in case of repeated violation of the Paragraph 2 of the Article 1.2, according to which, the conservation of the status of privileged partner demand that an accommodation facility provides Booking.com with price and facilities parity.

According to the Paragraph 7.2 of the Conditions, each party can terminate the Agreement (and close an accommodation facility on Booking.com) or suspend (completely or incompletely meeting obligations, commitments) the Agreement with regard to other party with immediate entry into force and without the necessity to notify the other party of default, including in case of considerable violation of any provision of the Agreement by one of the parties (for example, the violation of price and room parity by an accommodation facility).

According to FAS Russia, price parity condition of Booking.com may prevent accommodation facilities from setting lower prices for their services on one aggregator's website than on the other, as well as prevent them from the possibility to offer better prices for their services to third parties for online and offline distribution. The same goes for room parity.

Condition about price, room and facilities parity may limit the ability of new players of the accommodation facility aggregators market to compete with Booking.com in terms of price and number of rooms offered by accommodation facilities on the platform (website) of a new aggregator, because regardless of actions of such aggregators aimed at providing accommodation facilities with best interaction conditions, for example, reduced commission, they cannot offer better conditions for reservation to the ultimate consumer, and consequently are limited in their ability to attract new website users.

Therefore, price, room and facilities parity mentioned in the Paragraph 2.2.1 of the Conditions results in (may result in) the prevention, restriction, elimination of the competition in the accommodation facilities aggregator market including in view of the fact that it hinders (may hinder) entry of new players into this market.

Besides, the provisions of the Paragraph 2.2.1 of the Conditions, namely the conditions under which an accommodation facility can set separate prices for closed user groups, limit the ability of accommodation facilities to form their own conditions of user membership in such closed groups.

Moreover, the provisions of the Conditions, the Agreement and the Privileged Program regarding the necessity to comply with the price, room and facilities parity regardless of the channel for dissemination of information on accommodation facility (metasearch, travel agencies, other accommodation facilities information aggregators) impose unfavorable contract terms to accommodation facilities and lead (may lead) to the infringement of their interests in the field of business activity, as accommodation facilities have to provide parity and to ensure compliance with the price, room and facilities parity in all information dissemination channels, what can be difficult and in some cases completely impossible.

Conclusions about possible negative consequences for accommodation facilities caused by the necessity of compulsory provision of and compliance with price, room and facilities parity, as well as terms of interaction with closed user groups, set by Booking.com are also confirmed by the Accommodation Facilities Survey, according to which, about 25% of respondents believe that price, room and facilities parity set by several aggregators prevents free pricing in various channels of hotel services sales.

In addition, according to this survey, more than 15% of respondents believe that non-compliance with price parity set by Booking.com and reduced prices for their hotel services on other aggregators' websites entails rating decline on Booking.com.

Taking the foregoing into consideration, the Commission concludes that Booking.com conditions about price, room and facilities parity may have negative impact on the state of competition in the market of services of accommodation facilities aggregators on the territory of the Russian Federation, that they are unfavorable for accommodation facilities and can infringe their interests in the field of business activity.

Thus, there are signs of violation of the Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition in actions (inaction) of Booking.com that constitute the imposition to accommodation facilities operating on the territory of the Russian Federation terms of contract about the necessity of compulsory provision of and compliance with the price, room and facilities parity, as well as terms of interaction with closed user groups, which may lead to:

- prevention, restriction, elimination of competition in the market of services of accommodation facilities aggregators;
- infringement of the interests of accommodation facilities in the field of business activity.

The warning of FAS Russia of November 12, 2019 demanded Booking.com to terminate actions (inaction) with signs of violation of antimonopoly legislation (hereinafter – the Warning 1), underscored the necessity to exclude terms about the necessity of compulsory provision of and compliance with the price, room and

facilities parity in all channels of hotel services sales (distribution) from all relevant contracts (agreements) (hereinafter – broad parity).

However, this warning didn't apply to direct channels of hotel services sales (for example, reception desk, phone, hotel website etc.) (hereinafter – narrow parity).

On September 14, 2020 during the consideration of the Case, OPORA RUSSIA and ARH presented applications against the imposition to accommodation facilities of unfavorable terms of contract about the necessity of compulsory provision of and compliance with price and room parity in direct accommodation facilities sale channels (narrow parity).

The Applicant and the interested party explained their point of view by the fact that narrow parity clauses set by Booking.com are also unfavorable for them and lead to the prevention, restriction, elimination of competition in the accommodation facility market, as well as to the infringement of the interests of accommodation facilities in the field of business activity and to the infringement of the interests of ultimate consumers of hotel services, because narrow parity prevents hotels from offering their services at reduced prices on their own websites to ultimate consumers.

OPORA RUSSIA in its application invoked results of the research of the Competition authority of Germany (Bundeskartellamt) "The effects of narrow price parity clauses on online sales – Investigation results from the Bundeskartellamt's Booking proceeding" published in August 2020.

According to OPORA RUSSIA, the main conclusion of the aforementioned research demonstrates that the abolition of the narrow price parity contributed to the development of sound market competition for accommodation facilities and didn't do harm to Booking.com success in the German market.

Taking into account the aforementioned positions, OPORA RUSSIA and ARH materials, on September 18, 2020 during the consideration of the Case the Commission issued a warning to Booking.com to terminate actions (inaction) in which signs of violation of antimonopoly legislation are seen (outgoing letter of FAS Russia of September 18, 2020 No. АД/81041/20) (hereinafter – the Warning 2).

According to the Warning 2, Booking.com should exclude terms on the necessity of compulsory provision of and compliance with the price and room parity in all channels of hotel services sales (distribution) from relevant contracts (agreements) with hotels. Thus, the Warning 2 emphasized the necessity of excluding by Booking.com narrow parity clauses from all relevant contracts (agreements) with accommodation facilities operating on the territory of the Russian Federation.

Booking.com B.V. ignored the Warning 2.

B. Booking.com objections to the Analytical Report and general objections concerning the necessity of terms for different types of parities

According to the Commission and the Analytical Report, Booking.com, Expedia.com, Hrs.com, Ctrip.com and other aggregators set different types of parities with respect to the accommodation facilities. Different types of parities (price, room (availability and quality) parity) allow to (1) safeguard interests of aggregators against so-called free-riding, when if there is no price parity, ultimate consumers will use aggregators only for search and comparison of accommodation facilities, while making reservations directly on accommodation facilities websites, and consequently depriving aggregators of commission income – therefore, aggregators will not have motivation to develop their platforms, because ultimate consumers will use them as information resources and accommodation facilities, as free platforms for marketing and promotion; (2) focus on improving quality of their platforms and services, and consequently compete in terms of quality rather than prices; (3) provide ultimate consumers of accommodation facilities with better and safer service, which is beneficial for both accommodation facility and consumer, as aggregators ensure price transparency, reduced costs for search and reservation of accommodation facilities, and accommodation facilities (small and large) get free marketing channel for promoting their services among numerous consumers in all areas where an aggregator operates.

One of the Russian aggregators (Bronevik.com) on request of FAS Russia (incoming letter of May 14, 2019 No. 80948/19) to express its opinion about the parity said that it prevents dumping and gives equal chances in terms of prices for different channels to attract clients in accommodation facilities with the help of their own marketing and technological instruments. Price parity protects ultimate consumer from disinformation.

Thus, the practice of setting different types of parities for accommodation facilities used by major international aggregators may lead to the fact that new players in this market will also set price parity and room parity because this practice is generally accepted and popular among the largest market players.

During the consideration of the Case, FAS Russia in its ruling on postponement of the Case consideration of October 30, 2020 (outgoing letter of FAS Russia of October 30, 2020 No. АД/95066/20) asked Booking.com to present its position about the influence of the possible abolition of the compulsory provision of and compliance with price, room and facilities parity in all channels for hotel services sales (distribution) (abolishment of narrow and broad parity) with regard to Booking.com on accommodation facilities operating on the territory of the Russian Federation, accommodation facilities ultimate consumers, as well as on the state of competition in the Russian accommodation facilities aggregators market (hereinafter – the Position).

On November 12, 2020 Booking.com presented to FAS Russia its Position, according to which the possible abolition of the parity will lead to negative consequences for all parties of the aggregator services market (for accommodation facilities, ultimate consumers and Booking.com) (incoming letter of November 13, 2020 No. 193532-ЭП/20).

Thus, according to the Position, in case of the abolition of the parity:

1. Booking.com will be used as an advertisement platform (by hotels and consumers) (free-riding effect), while reservations will be made on hotels' websites, what will inflict losses on Booking.com and cause deterioration of the aggregator services quality for all parties, including ultimate consumers of hotel services.
2. Quality and credibility of search for hotel services consumers will be reduced what will lead to poor quality of service for consumers and increase in time they spend while looking for adequate and good accommodation facility.
3. Accommodation facilities can increase prices for ultimate consumers, as they will not be bound by parity obligations.
4. Booking.com will not have motivation to invest in its platform and services, what will cause deterioration of its aggregator services for accommodation facilities and ultimate consumers.
5. The abolition of the parity only with regard to Booking.com may create unfair competitive advantages for other accommodation facilities aggregators. According to Booking.com, the parity can be prohibited only for all players of the Russian market through drafting and adopting a relevant federal law.

C. Commission assessment of the Booking.com objections concerning the necessity of conditions for different types of parities

Booking.com arguments about the necessity of narrow and broad parities are confirmed neither by documents nor by facts. They are ambiguous and refuted by the Case papers.

The Commission notes that accommodation facilities aggregators market, as well as the practice of setting parities with regard to accommodation facilities have already been studied by different European competition and public authorities during the period from 2010 to 2017.

According to this assessment, in some countries (for example, France, Austria, Belgium, and Italy) this practice is prohibited by legislation with regard to unlimited number of actors.

During the consideration of the Case, FAS Russia asked the Defendant to present information and documents about how its standing has changed on the territory of Austria, Belgium, and Italy after the abolition of all types of parity, namely how

profit of Booking.com has changed after the abolition of the parity comparing to the last report year before the abolition and how the number of reservations has changed after the abolition of the parity comparing to the last report year.

Booking.com presented requested data <...>

Thus, according to the data presented by Booking.com to FAS Russia in letter of March 19, 2020 No. 2020-03-0069 (incoming letter of March 25, 2020 No. 54106-ДСП/20) <...>

Contrary to the position of the Defendant, it demonstrates that <...>

Taking the foregoing into consideration, the Commission considered the Defendant's arguments concerning this issue to be unjustified, not proved by facts of the Case.

According to the Commission, there is no grounds to believe that if narrow and broad parity clauses are excluded from relevant contracts (agreements) with accommodation facilities, Booking.com will be used only as an advertisement platform while reservations will be made on hotels' websites, as Booking.com has considerable network effect (popular brand, quality of service, big database of accommodation facilities etc.), which makes it valuable for accommodation facilities and hotel services ultimate consumers. Complete refusal of aggregator services and switch to direct sales channel, for example, to hotel services sales through their own website, will be economically unprofitable for accommodation facilities.

This conclusion is indirectly confirmed by the Defendant itself in its response of April 12, 2019 No. 04-0034 (incoming letter of April 12, 2019 No. 63951-ДСП/19) to FAS Russia request. In this response Booking. Com stated that, <...>

Germany witnesses the court proceeding between the country's competition authority and Booking.com with regard to the practice of setting narrow parity by the aggregator. Within the framework of this court proceeding the Competition authority of Germany conducted on the territory of Germany the research "The effects of narrow price parity clauses on online sales – Investigation results from the Bundeskartellamt's Booking proceeding", the results of which were published in August 2020 (hereinafter – the Research).

OPORA RUSSIA presented the certified translation of the Research to the Case papers (incoming letter of October 27, 2020 No. 182817/20).

Having studied the Research materials FAS Russia concluded that its results can be used during the consideration of the Case and within the framework of the Analytical Report, as the Research assesses and analyses the similar time frame (2015-2018), similar participants of the commodity market (aggregators Expedia.com,

Booking.com HRS and others, hotels, hotel services ultimate consumers), as well as evaluates practices of setting different types of parities by accommodation facilities aggregators.

Here and below are the results of the Research (the text of the Research is in italics).

According to the Research, 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, around three quarters of the generally increasing online sales are still generated via online hotel platforms. Almost two-thirds of the accommodations that use Booking.com said that it had become "almost indispensable in economic terms" for them.

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. Decisive factors for improving a ranking position are in particular customer reviews and booking volumes, the conversion rate and commission rates.

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. The frequency and extent of price differentiation can be seen to vary from case to case. 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, its own distribution costs and other standards relevant to the hotel

In contrast to the expectations expressed by all the large online hotel platforms, this development has not reduced the platforms' turnover. 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. In the Bundeskartellamt's view this refutes the argument put forward by the online hotel platforms claiming that narrow price parity clauses were necessary.

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

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.

According to FAS Russia, this conclusion of the Research is justified because the opposite would imply that hotels would be able to create sales channels on their website comparable to aggregators (OTA) what would require the creation of similar platforms which within a short period of time would have to become as popular as aggregators, and offer the same services and of the same quality. However, this scenario is possible only if aggregators refuse to compete with hotels websites and stop their economic activity, what is considered to be unrealistic.

As previously mentioned, aggregators invest heavily in marketing and promotion of their services, and from year to year these investments tend to increase (for example, 2019 annual report of the Booking.com parent company Booking Holdings Inc, page 39 of the report). This conclusion is also confirmed by the data from the Research, according to which *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: 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 [0-100]% over the same period, while expenditure for search engine advertising actually fell by [0 to 100]%.*

The Research contains survey of hotel services ultimate consumers. *The survey has shown that consumers most generally book on the website where they (first) found the accommodation. The vast majority of accommodations which consumers did not know before are found by them online, in particular on Booking.com. In almost all of these cases (99%) consumers went on to make a booking on Booking.com. 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. This finding of limited comparisons of a hotel's prices on different booking channels 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 than 70% of all bookings made.

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.

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 hotel'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.

Moreover, the Research evaluates real consequences of the abolition of all types of parities on the territory of Germany in terms of formation by hotels of their own price policy on different online hotel platforms, as well as in terms of the formation of aggregators' commission.

According to the Research, *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. More than 40% of the accommodations surveyed which are listed on at least two online hotel plat-forms 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 platforms 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.

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.

Based on the above, Commission of FAS Russia concludes that the Defendant's arguments about the necessity of parity for effective competition among aggregators, protection of consumer interests (hotel services consumers) and protection against free-riding on the part of accommodation facilities (hotel services ultimate consumers) are refuted by the results of the Research and real behavior of accommodation facilities, ultimate consumers, confirmed by the relevant surveys. By contrast, the Research results demonstrate negative effect of parities (broad and narrow) for hotels, ultimate consumers and for competition among aggregators.

The Defendant's Position that the abolition of all types of parities only with regard to it can lead to unfair benefits and anticompetitive advantages for other market players is ambiguous and unjustified.

Booking.com in its letter of November 18, 2020 (incoming letter of November 18, 2020 No. 196550-ЭП/20) informed FAS Russia that it asked to attach to the Case materials the Booking.com letter of July 15, 2020 No. 2020-07-0016 (incoming letter of July 16, 2020 No. 123131-ЭП/20) with a proposal to discuss with FAS Russia the bringing of Russian versions of the Conditions and the Privileged Program in line with versions of these documents with narrow parity drafted and applied in the majority of EU countries. Draft amendments to the Conditions and the Privileged Program were attached to the letter (hereinafter – the Amendments of July 15, 2020).

<...>

Thus, Booking.com in the Amendments of July 15, 2020 <...>, what contradicts the aforementioned position of Booking.com that the abolition of the parity only with regard to the company will result in unfair competitive advantages for other players of the accommodation facilities aggregators market.

Commission assessment of the Amendments of July 15, 2020.

<...>

VI. About the presence in actions (inaction) of Booking.com violation of the Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition

Taking into account the conclusions of the Analytical Report, the results of the Accommodation Facilities and Hotel Services Ultimate Consumers Surveys, the Case materials and papers, as well as analyses and conclusions of the foreign competition authorities with regard to the practice of setting broad and narrow parity by aggregators (including Booking.com), the Commission concludes that:

1. Booking.com occupies dominant position in the market of services of accommodation facilities aggregators within geographic boundaries of the Russian Federation.
2. The provisions of the Conditions, Agreement, Privileged Program and other applicable contracts (agreements) concluded between Booking.com (authorized person) and accommodation facilities, related to the necessity of compulsory provision of or compliance with price, room and facilities parity in all channels of hotel services sales (distribution) (metasearch, travel agencies, other aggregators, accommodation facilities websites etc.), as well as related to terms of interaction between accommodation facilities and closed user group impose unfavorable contract terms to accommodation facilities and lead to (may lead to) the prevention, restriction and elimination of competition in the market of the services of accommodation facilities aggregators, and lead to (may lead to) infringements of the interests of accommodation facilities in the field of business activity.

Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition prohibits actions (inaction) of the dominant economic entity which result into (may result into) the prevention, restriction, elimination of competition and (or) the infringement of the interests of other entities (economic entities) in the field of business activity or consumers at large, including the imposition to a counterpart of contract terms that are unfavorable for it or irrelevant to the contract (economically or technologically unjustified and (or) not provided for by federal laws, regulatory legal acts of the president of the Russian Federation, regulatory legal acts of the Government of the Russian Federation, regulatory legal acts of the authorized federal executive authorities or judicial acts on transfer of funds, other properties, including property rights, as well as consent to conclude a contract on the condition that it will contain provisions on a product in which a counterpart is not interested, and other requirements).

About the Commission's conclusions on the facts of the case, as well as about the consideration of the Defendant's objections to the conclusion.

On November 24, 2020 in accordance with the Article 48.1 of the Law on Protection of Competition, the Commission adopted the Conclusion on the facts of the Case No. 11/01/1041/2019 (outgoing letter of FAS Russia of December 8, 2020 No. АД/107441-ДСП/20, hereinafter – the Conclusion). Copies of the Conclusion were sent to the parties to the Case and were received by them.

In accordance with the Part 5 of the Article 48.1 of the Law on Protection of Competition, the parties to a case may provide the Commission with explanations, evidence and arguments in a written form with regard to the circumstances presented in the conclusion on the facts of the case before the end of the consideration of the case on the violation of the antimonopoly legislation and the announcement of the resolute part of the decision at the meeting of the Commission.

On December 21, 2020 Booking.com submitted to FAS Russia its objections to the Conclusion (incoming letter of December 21, 2020 No. 218902-ЭП/20, hereinafter – the Objections).

In the Objections, the Defendant repeated its arguments that it doesn't occupy dominant position and that there is need to expand product boundaries of the market under investigation. In addition, the Defendant made observation about the necessity of setting narrow parity.

In the Objections, the Defendant invokes the results of the VCIOM Research and supposes that direct hotel sales, hotel sales through travel agencies, metasearch and search engines, and platforms for search of private accommodation should be included in the product boundaries of the market under investigation.

Having evaluated these arguments, the Commission concludes that they are not proved by the facts of the Case and surveys of accommodation facilities and hotel services ultimate consumers (VCIOM Research).

The fact that 37% of the VCIOM Research respondents look for accommodation facilities relying on the recommendations (of relatives, friends) doesn't mean that direct sales should be included in the product boundaries of the commodity market.

As previously mentioned, the market of the services of accommodation facilities aggregators is the subject of this investigation. This market is characterized by the fact that the aggregators provide the comprehensive service, comprising several services. The search of the accommodation facilities on the aggregator's platform (website) is only part of this service, therefore, the opportunity of ultimate consumers to look for information on hotels in different resources (recommendations, search engines, classified advertisements website with sections devoted to the rent (sale) of real estate properties) doesn't mean that the aforementioned information resources should be included in the product boundaries of the aggregator services market.

The fact of getting information on accommodation facilities from different resources doesn't mean that earlier it was not received from aggregator. For example, taking into account aggregators investments into advertisement of their services and brand promotion, as well as the quality and utility of aggregator services for consumers and accommodation facilities, information on hotels received from friends may be in its turn received from aggregators.

Besides, it is highly likely that information on hotels received by consumers from search engines was earlier received from aggregators.

Thus, visual analysis of the search results of the search engines such as Google and Yandex demonstrate that even before organic results of information on hotels in these engines, relevant links to hotel offers from aggregators in the form of advertisement links and (or) interactive enriched responses of search engines are offered.

Examples are provided below.

Example from Yandex search results (search request "hotels in Moscow"):

Example from Google search results (search request "hotels in Saint-Petersburg"):

These PC screenshots show that even before organic search results of Google and Yandex a consumer is offered to study aggregators' offers at the top of the screen.

Taking the foregoing into consideration, the Commission concludes that the Defendant's arguments about the necessity of inclusion the aforementioned methods of information search on accommodation facilities in the product boundaries of the market are untenable, refuted by the facts of the Case, the results of the Accommodation Facilities Survey, VCIOM Research and by the facts.

The Defendant in the Objections notes that the absence of the results of the consumers' survey and the hypothetical monopolist test with regard to both parties of the market (accommodation facilities and hotel services ultimate consumers) in the Analytical Report violates requirements of the antimonopoly legislation and the Procedure. Therefore, according to the Defendant, the Analytical Report cannot be considered as a proof of the dominance of the Defendant in the market under investigation. In addition, according to the Defendant, VCIOM Research also cannot be considered as a proof of the dominance of the Defendant, as this research didn't build on methods provided for by the Procedure.

Having examined Booking.com arguments, the Commission considers them to be untenable for the following reasons.

During the consideration of the Case the competition authority conducted Accommodation Facilities Survey using the method of hypothetical monopolist test which confirmed conclusions about the product boundaries of the market of

aggregator services. FAS Russia didn't conduct survey of hotel services ultimate consumers using the method of hypothetical monopolist test not only because of its complexity, but also because of its uselessness.

However, ultimate consumers' survey was carried out within the framework of the VCIOM Research. The results of the Accommodation Facilities Survey, together with the results of the VCIOM Research, give an objective evaluation of the conclusions about product boundaries of the market under investigation. There are no legal and factual grounds for the Commission not to take into account the results of the VCIOM Research while evaluating the product boundaries of the aggregator services market.

In addition, the Commission informs that the Analytical Report builds on the results of the aggregator services market analysis which was conducted in order to examine the application of OPORA RUSSIA representing different Russian accommodation facilities. In this particular case, it is an accommodation facility that is a consumer (buyer) of the aggregator services for which it pays commission; besides, using its services an accommodation facility is subject to the influence of possible dominant entities. In this situation the survey of hotel services ultimate consumers that are not subject to the influence of possible dominant subjects in the market of aggregator services cannot influence the hypothesis about the presence (absence) of dominant position in the commodity market under consideration.

In the Objections, the Defendant challenges integrity and credibility of the Accommodation Facilities Survey, conducted by FAS Russia, because within the framework of this survey OPORA RUSSIA received questionnaire for accommodation facilities in order to distribute it among accommodation facilities – members of this organization.

The Commission notes that this questionnaire was sent not only to OPORA RUSSIA but also to Russian Hotel Association.

The Commission considers the Defendant's argument that the results of the Accommodation Facilities Survey are not objective because the competition authority involved the Applicant and the accommodation facilities – members of OPORA RUSSIA in the survey to be unjustified. The Commission doesn't have information that anyone in the survey was subject to influence on the part of third parties, and that their responses are unreliable. Besides, the Defendant didn't prove that accommodation facilities' responses were unreliable.

Taking the foregoing into consideration, the Commission supposes that the Accommodation Facilities Survey results are reliable and objective.

In addition, the Commission notes that according to the Paragraph 1 of the Resolution of the plenum of the Supreme Court of the Russian Federation of June

23, 2015 No. 25 "On the Application of Some Provisions of the Section I of Part 1 of the Civil Code of the Russian Federation by courts", while evaluating actions of the parties as conscientious or unconscientious, it is necessary to proceed from the expected behavior of any participant of the civil turnover, taking into account rights and legitimate interests of another party, and assisting it in receiving necessary information.

Under the Paragraph 5 of Article 10 of the Civil Code of the Russian Federation, good faith of civil-law relations participants and reasonableness of their actions are assumed.

Thus, the Commission considers the aforementioned argument of the Defendant to be unjustified and unconfirmed by the facts of the Case.

According to the Objections, the Defendant considers approach of FAS Russia to determining geographic boundaries of the market to be ambiguous and notes that it requires revision. Defendant also notes that the competition authority's Analytical Report doesn't assess potential competition with aggregators on the part of major players of other (contiguous) markets of information technologies (Google, Yandex, Amazon, Mail.ru etc.) which possess all necessary resources for entering the aggregator services market in a short time.

After examination of these arguments, the Commission found them untenable.

The Analytical Report determines the geographical boundaries of the aggregator services market in accordance with the Procedure requirements. The Commission also notes that despite the Defendant's arguments concerning this issue while determining these boundaries the Analytical Report built not only on the information from the application of OPORA RUSSIA, but on the determination of real areas of sales and purchase of aggregator services on the part of accommodation facilities.

The Defendant's argument about the potential competition on the part of economic entities operating in the contiguous markets is proved neither by the Case papers nor by facts. Thus, if such potential competition is assumed to have a considerable impact on the aggregator services market, then aggregators' standing in the market must be a subject to this influence. However, according to the Analytical Report, the aggregators' standing is stable from year to year. The Booking.com share in the Russian aggregator services market was about 80% from the year 2016 to 2018.

Therefore, within the framework of the consideration of this Case, the Commission doesn't have grounds to believe that the aforementioned potential competition on the part of economic entities from the contiguous markets has considerable impact on the aggregator services market.

In the Objections, the Defendant gives arguments in favor of narrow parity. According to the Defendant, narrow parity is an important condition that protects

aggregators against free-riding effect, makes them credible as well as reduces search costs for consumers. In order to justify its position, the Defendant invokes the results of the Accommodation Facilities Survey and the Research of the Competition Authority of Germany.

After the examination of these arguments the Commission concludes that they contain erroneous data and are untenable.

The Defendant in its arguments concerning this issue invokes the Conclusion findings and says that: *as it follows from pages 37-38 of the Conclusion, 75% of 66 accommodation facilities that took part in the survey of FAS Russia doesn't think that parity clauses limit their ability to pursue independent price policy. Besides, 85% of accommodation facilities doesn't believe that price parity clauses violation can lead to an accommodation facility rating decline on the Booking.com.*

The Commission notes that the Conclusion doesn't contain the aforementioned findings.

Within the framework of the Accommodation Facilities Survey, FAS Russia didn't ask accommodation facilities if they believe that parity provisions limit their ability to pursue independent price policy. Accommodation facilities were not asked whether they believe that price parity provision violation can lead to an accommodation facility rating decline on the Booking.com.

However, FAS Russia asked them the following question: what are the consequences of price, room and facilities parity set by some aggregators for your accommodation facility (accommodation facility chain)? (provide some examples).

While answering this question almost 25% of respondents said that price, room and facilities parity set by some aggregators led to lack of free pricing in different hotel services sales channels.

While answering this question over 15% said that in case of non-compliance with price, room and facilities parity set by Booking.com and reducing prices for their hotel services on other aggregators' websites their Booking.com rating declines.

The Commission informs that neutral answer or no-answer on the part of an accommodation facility to this question doesn't mean that those accommodation facilities which didn't answer this question or gave neutral answer may be considered as those that are not affected by price, room and facilities parity.

Thus, the Commission states that the Defendant gave false information concerning this issue and consequently this argument is untenable.

In the Objections, the Defendant invokes the Research and the results of its own 2018 research and says that without narrow parity clause free-riding effect is gaining momentum and consumers compare prices on Booking.com with prices on a hotel's

website to make better choice. In this situation hotels and hotel services consumers take advantage of Booking.com while reservation itself is made on a hotel website.

After the evaluation of these arguments the Commission concludes that they are untenable. In fact, these arguments boil down to the fact that the Defendant seeks to limit the ability of consumers to look for (reserve on their terms) accommodation facilities in any other channels except Booking.com.

The Commission notes that the aggregator services are important for accommodation facilities and hotel services ultimate consumers as they ensure transparency of the market, quality, rapidity, and provide small local hotels with the possibility to be presented in the global market. At the same time these positive effects of aggregators activity should not justify their anticompetitive practices locking hotels and consumers into one hotel services sales channel and making other forms of the service provision in the aggregator market difficult for implementation.

According to the Commission, Booking.com practice of setting price, room and facilities parity can be classified as anticompetitive practice.

However, the Commission notes that the Case papers don't have information and documents proving that now and in the foreseeable future the abolition of the broad and narrow parity will have negative impact on accommodation facilities, ultimate consumers and competition in the market of services of accommodation facilities information aggregators. <...> This also demonstrates that the abolition of all types of parities can positively influence accommodation facilities, as well as hotel services ultimate consumers.

Taking the foregoing into consideration, the Commission concludes that the Objections arguments didn't disprove the Case evidence and the Conclusion finding about the dominance of Booking.com in the market of the services of accommodation facilities aggregators, as well as about the violation of the Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition by Booking.com.

Commission's decision on this case.

In view of the Conclusion findings that Booking.com violates the Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition not refuted by the Objections, the Commission concludes that the provisions of the Conditions, the Agreement, the Privileged Program and other applicable contracts (agreements) concluded between Booking.com (authorized person) and accommodation facilities, related to the necessity of compulsory provision of or compliance with price, room and facilities parity in all channels of hotel services sales (distribution) (metasearch, travel agencies, other aggregators, accommodation facilities websites etc.), as well as related to terms of interaction between accommodation facilities and closed user

group impose unfavorable contract terms to accommodation facilities and lead to (may lead to) the prevention, restriction, and elimination of competition in the market of the services of accommodation facilities aggregators, and lead to (may lead to) infringements of the interests of accommodation facilities in the field of business activity.

The Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition prohibits actions (inaction) of the dominant economic entity which lead to (may lead to) the prevention, restriction, elimination of competition and (or) the infringement of the interest of other entities (economic entities) in the field of business activity or consumers at large, including the imposition to a counterpart of contract terms that are unfavorable for it or irrelevant to the contract (economically or technologically unjustified and (or) not provided for by federal laws, regulatory legal acts of the president of the Russian Federation, regulatory legal acts of the Government of the Russian Federation, regulatory legal acts of the authorized federal executive authorities or judicial acts on transfer of funds, other properties, including property rights, as well as consent to conclude a contract on the condition that it will contain provisions on a product in which a counterpart is not interested, and other requirements).

The Commission found in the facts of the Case and the Defendant didn't refute the fact that the Defendant has not yet complied with the requirements of the Warning 1 and Warning 2 and did not exclude from the relevant applicable contracts (conditions, agreements) with Russian accommodation facilities terms about the necessity of compulsory provision of and compliance with the price, room and facilities parity by accommodation facilities, as well as terms of interaction between accommodation facilities with their closed user groups.

Thus, the Commission concludes that there are grounds to issue remedies to Booking.com.

The Commission guided by the Article 23, Part 1 of the Article 39, Parts 1-4 of the Article 41, Article 49, Article 50 of the Law on Protection of Competition,

R U L E D:

Acknowledge that LLC Booking.com B.V. (Herengracht 597, 1017 CE, Amsterdam, Netherlands) violated the Paragraph 3 of the Part 1 of the Article 10 of the Law on Protection of Competition by imposing on accommodation facilities operating on the territory of the Russian Federation unfavorable terms of Partnership Agreement with Booking.com B.V. (agreement with accommodation facility), General Service Condition of Booking.com B.V., Privileged Program Conditions, concluded between Booking.com B.V. (authorized person) and accommodation facilities, related to the necessity of compulsory provision of and compliance with the price,

room and facilities parity in all channels of hotel services sales (distribution) (metasearch, travel agencies, other aggregators, accommodation facilities websites etc.), as well as related to terms of interaction between accommodation facilities and closed user group, which lead to (may lead to) the prevention, restriction, elimination of the competition in the market of the services of accommodation facilities aggregators, as well as to the infringement of the interests of accommodation facilities in the field of business activity.

Based on the results of the consideration of the Case No. 11/01/10-41/2019 on the violation of antimonopoly legislation, issue remedies with regard to the case on the violation of antimonopoly legislation to Booking.com B.V. (Herengracht 597, 1017 CE, Amsterdam, Netherlands).

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NB: Copies of this ruling, <...> published on the website of FAS Russia (fas.gov.ru), do not contain data (information) constituting commercial, official, or other secret protected by the law and received by the competition authority in the exercise of its powers.