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Narrow Price Parity and Market Power in Digital Platforms

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Abstract

This paper deliberates an appropriate policy approach to Price Parity Obligations ("PPOs"), particularly narrow PPOs, applied by business-to-consumer ("B2C") digital platforms. This is done by considering both the anticompetitive effects and procompetitive and efficiency arguments for the use of narrow PPOs in markets intermediated by digital platforms through the lens of market power. While wide PPOs are generally considered anticompetitive, this view is mixed for narrow PPOs. When digital platforms with market power apply narrow PPOs it suppresses price differentiation and price competition, resulting in higher average prices; it also increases business user dependency on the platform which reinforces platform market power; it can enable the exploitation of business users by unilaterally raising commissions and restrict their flexibility to innovate and develop their own direct distribution channels and marketing strategies. Arguments justifying the use of narrow PPOs include a determent of free-riding behaviour and the so-called 'billboard effect', but research suggests that on balance this has a minimal impact and courts have determined that narrow PPOs are not a precursor to platform efficiency gains. Smaller platforms with little or no market power are unlikely to have sufficient power to enforce narrow PPOs. This raises the relevance of applying these pricing restrictions altogether. When considering these arguments holistically, the paper argues that *ex-ante* regulation of narrow PPOs is the better policy approach.

The paper also undertakes a review of Booking's removal of PPOs agreed to in August 2024 which follows a finding by the Competition Commission of South Africa that PPOs impede competition resulting in a likely adverse effect. Based on qualitative responses, South African accommodation providers indicate that the removal of Booking.com's PPOs has resulted in their direct channels experiencing intensified price competition with Booking.com and other rival platforms. Furthermore, a year after the intervention the top 45 accommodation providers experienced an increase in online traffic with a 20% increase in traffic to their direct online sites while Booking.com experienced a 12% decrease in online traffic. While there is insufficient data to conclude on a causal relationship between the intervention and observed outcomes, the observed outcomes suggest that *prima facie* the intervention benefited business users' own direct online channels and enhanced competition between them and the platform.

Keywords: Price parity, PPOs, MFNs, market power, digital markets, price competition, Booking.com, South Africa, policy, regulation.

JEL classification: D40, K21, L11, L42, L51, L83, L86

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List of abbreviations

B2B	Business-to-business
B2C	Business-to-consumer
CAC	Competition Appeals Court
CCSA	Competition Commission of South Africa
CJEU	Court of Justice of the EU
CMA	Competition and Markets Authority
DID	Difference-in-differences
EC	European Commission
ERSA	Economic Research Southern Africa
GDS	Global Distribution Systems
MFN	Most Favoured Nation
OIPMI	Online Intermediation Platform Market Inquiry
OTA	Online Travel Agency
PPC	Price Parity Clause
PPOs	Price Parity Obligations
SPLC	Substantial Prevention or Lessening of Competition
VABEO	Vertical Agreement Block Exemption Order
VBER	Vertical Block Exemption Regulations

EXECUTIVE SUMMARY

Purpose and background

This paper's primary objective pertains to establishing policy to regulate price parity obligations ("PPOs") applied by business-to-consumer ("B2C") online intermediation platforms[2]. This includes the removal of wide PPOs which is a well-supported policy approach in Europe and a policy pertaining to narrow PPOs which is assessed through the lens of market power. The paper also includes a review of accommodation provider and online accommodation intermediation platform competition in South African travel since the removal of Booking.com's narrow and wide PPOs agreed to in August 2024.

In July 2023, the Online Intermediation Platform Market Inquiry ("OIPMI") undertaken by the Competition Commission of South Africa ("CCSA") found that Booking.com's wide and narrow PPOs impede, distort or restrict competition resulting in an adverse effect on competition at the platform and travel accommodation levels. As such, Booking.com was mandated to remove these pricing restrictions from their contractual obligations in South Africa, as well as a precondition to participate in any membership programs including Genius, Preferred Partner and Preferred Plus programs, and to effectively communicate the removal of these PPOs to travel accommodation providers (CCSA, 2024).

PPOs are pricing restrictions placed on the seller of goods and services (referred to as business users) by intermediaries that distribute those goods and services. Wide PPOs occur where intermediaries such as Booking.com mandate that business users (e.g. hotels, guesthouses, etc.) must offer the same or better prices on that platform relative to rival platforms. Wide PPOs have generally been found to be anticompetitive and are characterised as hardcore restrictions in the EU's Vertical Block Exemption Regulations ("VBER"), similarly they have been gazetted in South Africa in draft Vertical Restraints Regulations as restrictions that are likely to result in a substantial prevention and lessening of competition ("SPLC"). Wide PPOs are considered anticompetitive because they restrict business users' ability to differentiate pricing strategies across platforms, limit entry or expansion of smaller platforms, increase the risk of exploitation by forcing uniform pricing despite cheaper commission rates on rival platforms, shift the cost and burden of monitoring prices onto business users, and lead to an increase in prices of goods and services.

Narrow PPOs and market power

The paper assessed the application of narrow PPOs applied by digital platforms with market power. Narrow PPOs occur where digital platforms mandate that business users provide the same or better prices on the platform than the business user's own direct online sales channel. In the EU, narrow PPOs are exempt where the online intermediary platform has a share of less than 30% in its respective intermediation market. Given their size, market power and 'gatekeeper' status, Amazon and Booking.com are not exempt. Similarly, the OIPMI mandated the removal of narrow PPOs for leading platforms, including Booking.com and Takealot.

Generally, in its application, competition law and regulation characterise firm relationships as either vertical or horizontal. However, firm relationships can be more nuanced. This was recognized in the South African Breweries case, where the Competition Appeals Court recognized 'dual distribution' as primarily vertical with horizontal components incidental to it. Similarly, the business user digital platform relationship is vertical in nature but exhibits a strong horizontal component. For example, both compete on general search where roughly 40% of traffic for both Booking.com and major accommodation providers stems from general non-

[2] Also referred to as 'digital platforms' in the context of this paper.

branded searches. This is an important distinction to make as business users and digital platforms are also essentially 'horizontal' price competitors in the online space.

Where there is market power, narrow PPOs impede competition resulting in an adverse effect likely outweighing efficiency justifications. Digital platforms are two-sided and enjoy network effects, where more business users selling goods and services on one side of the platform makes the platform more attractive for customers on the other side of the platform. This is mutually reinforcing as the platform grows. Market power is reinforced by portfolio effects within digital ecosystems, superior consumer data access, and is demonstrated by the ability to unilaterally raise higher commission rates. For example, platforms can leverage improved visibility for business users in exchange for participating in programs that command higher commission rates such as Booking.com's Preferred Partner exclusive program.

Platforms justify narrow PPOs with the arguments that it prevents free-riding suggesting that consumers would find goods and services on the platform and then go to the business user's direct site to purchase the good or service at a cheaper rate, and the so-called 'billboard effect' where awareness of the business user stems from visibility on the platform. The collation of research to-date suggests that free-riding is likely to be small and can also flow in the opposite direction. While there is evidence of the billboarding effect, this appears to be declining over time. Either way, both the highest court in Germany, the Bundesgerichtshof, and the Court of Justice of the EU found that PPOs are not necessary for platforms to realise efficiency gains. Platforms have also argued that narrow PPOs are necessary to reduce search costs by having a one-stop-shop where consumers can find the cheapest price. However, the mirror image of this convenience is that it would undermine price competition and reinforce business user dependency on the platform further entrenching it.

The concern with narrow PPOs is that they are likely to reinforce wide PPO outcomes. This is because business users do not have an incentive to price lower on rival platforms when it undercuts the price of their own direct channel. Furthermore, narrow PPOs impose monitoring costs on business users. Under conditions of market power, narrow PPOs are likely to result in the following adverse outcomes:

- It impedes price differentiation and subsequent price competition between platform and business users, rendering average higher prices for goods and services. The removal of narrow PPOs in Germany and France provides a natural experiment for research. Studies show that the removal of Booking.com's PPOs in these countries has resulted in a reduction in online hotel prices depending on hotel types (Larrieu, 2019; Ennis et al., 2022; Mantovani et al., 2021). The largest price decreases were experienced by small and independent non-branded hotels (Larrieu, 2019). For hotel chains, there has been a shift to offline bookings and cheaper offline prices (Ma et al., 2024). Booking.com has also funded its own discounts through its Booking Sponsored Benefit to compete with business user prices. Following Amazon's removal of narrow PPOs in the US, Song (2021) found a price drop on Amazon and eBay for (i) the product with a greater commission rate difference between the two platforms and (ii) the product with a higher commission rate on Amazon.
- It reinforces business user dependency on the leading platform as consumers typically habituate to the booking portal where they expect to find the cheapest prices, attracting business users. This creates a vicious cycle that entrenches the market power of the platform. Ultimately narrow PPOs can contribute to a platform 'tipping' to a hard to reverse 'winner-takes-all' outcome.
- It can lead to exploitative behaviour as the leading platform can unilaterally raise distribution costs (e.g. commission rates) while business users are restricted in offsetting these higher costs in the form of cheaper prices on its direct channel or higher prices on the platform.
- It restricts the flexibility and autonomy of business users by stifling their ability to further develop and innovate their own distribution and marketing channels and strategies that ultimately compete with digital platforms online.

Reviewing the removal of Booking.com's PPOs in South Africa

A qualitative questionnaire was sent to accommodation providers to assess the impact of removing Booking.com's PPOs in South Africa. While many respondents indicated no change, several have suggested intensified price competition with Booking.com and rival online travel agencies ("OTAs"). These responses are also consistent with the European experience following the removal of PPOs which has typically been associated with overall decreases in average room prices. Using Similarweb data, Booking.com's overall online traffic decreased by 12% a year after Booking.com agreed to remove PPOs. This corresponded with a 20% increase in overall traffic to the websites of the top 45 online travel accommodation providers, representing large and medium-sized travel accommodation providers. The removal of Booking.com's PPOs in South Africa appears to have likely yielded beneficial outcomes for competition and consumers. For accommodation providers it proves to be a double-edged sword with improved flexibility, autonomy and growing online traffic with a corresponding intensification of competition which lowers their average daily rates. Considering the overall body of evidence and research, a preliminary view is that the removal of PPOs appears to have been a positive intervention by the CCSA for competition in the online distribution of rooms.

Policy discussion: a wholesale ban of wide and narrow PPOs

The general view is that there is a strong case for the removal of wide PPOs, however, this view is mixed regarding the removal of narrow PPOs. The main objective of this paper is to consider the appropriate regulatory approach to narrow PPOs when considering the market power of the B2C platforms applying them. I argue that (i) with market power, the application of narrow PPOs generates anticompetitive adverse effects that likely outweigh efficiency or procompetitive justifications for reasons that have been discussed, and (ii) with little or no market power, smaller digital platforms may want to use narrow PPOs to protect their investments and scale without impeding overall competition. Smaller platforms by their very nature, however, lack the power to enforce narrow PPOs. This raises the question as to what benefit narrow PPOs are to these platforms in the first place. Further, smaller platforms may opt to scale through price competition.

Consistent with other jurisdictions and the arguments provided, an outright prohibition of wide PPOs seems appropriate. For narrow PPOs the argument is more nuanced depending on the level of market power the digital platform possesses with anticompetitive concerns heightening when applied by digital platforms with market power. As such narrow PPOs under these conditions should not be exempt. From a policy perspective, *ex-ante* regulation of narrow PPOs seems the appropriate approach as it will be difficult to undo anticompetitive harms *ex-post*. From an *ex-ante* perspective, policy makers must decide on which approach to use. Either follow the European approach applied by the VBER and VABEO which makes a digital platform with a platform share of over a threshold (e.g. 30%) non-exempt. Another approach is an outright prohibition of narrow PPOs applied by B2C platforms where the onus is on the platform to apply to the competition authorities for exemption. Both approaches have potential trade-offs and are discussed in more detail.

Lastly, competition agencies must be wary of backdoor attempts to implement PPOs. Visibility on a platform is critical for business users and may be leveraged to impose price parity. For example, this has manifested as preconditions to membership programs such as Booking.com's Preferred Partner program and through algorithmic penalisation for not adhering to price parity.

1. Introduction

The main objective of this paper is to put forward an argument for the prohibition of price parity obligations ("PPOs") found across business-to-consumer ("B2C") online intermediation platforms[3] as an overarching policy to be implemented into competition regulations. This covers both wide and narrow PPOs, with the argument more nuanced for narrow PPOs. This paper also does a review of the removal of Booking.com's narrow and wide PPOs publicly agreed to in August 2024. This follows the July 2023 finding in South Africa's Online Intermediation Platform Market Inquiry ("OIPMI") that both Booking.com's wide and narrow PPOs are likely to impede, distort or restrict competition and result in an adverse effect on competition at the platform and travel accommodation levels. As such, Booking.com was mandated to remove these pricing restrictions from their contractual obligations in South Africa, including PPOs used as preconditions to participate in any membership programs including Genius, Preferred Partner and Preferred Plus programs, and to effectively communicate the removal of these PPOs to travel accommodation providers (CCSA, 2024).

While it has broadly been accepted that so-called wide PPOs are considered anticompetitive, there is much debate around the competitive effects of narrow PPOs. The paper examines the relationship between B2C digital platforms with market power, their application of narrow PPOs, and the corresponding impact on competitive outcomes. This largely draws from existing evidence, literature and studies following the removal of narrow PPOs of leading platforms such as Booking.com and Amazon across Europe and pairing it with observations emanating from an assessment of Booking.com's removal of PPOs in South Africa. The OIPMI found that narrow PPOs applied by digital platforms with market power are likely to result in an adverse effect on competition where they impede price competition, reinforce business user dependency on the platform further entrenching it, enable exploitation of business users, and stifle their flexibility to innovate and develop their own marketing and distribution channels and strategies. This paper reaffirms the OIPMI's position by delving deeper into these findings and further argues that for smaller platforms with little or no market power, their inherent lack of market power means that they cannot effectively enforce narrow PPOs in any case. This therefore raises the question for the need of narrow PPOs altogether. If they are applied by digital platforms with market power, they are likely to result in an overall adverse outcome, but their ability to be enforced is limited if applied by digital platforms with no market power.

Since the removal of Booking.com's PPOs in South Africa there appears to be intensified price competition between travel accommodation providers, Booking.com and rival online travel agencies ("OTAs"). This view is informed by responses to a qualitative questionnaire sent to accommodation providers and is also consistent with outcomes across Europe where the removal of narrow PPOs has typically been associated with overall decreases in average room prices. Furthermore, a year after the announcement of the removal of PPOs, Booking.com's overall online traffic decreased by 12%. This corresponded with a 20% increase in overall traffic to the websites of the 45 largest travel accommodation providers. When one considers the aforementioned, a reasonable inference can be made *prima facie* that the removal of Booking.com's PPOs in South Africa has likely yielded beneficial outcomes for competition, consumers, and, to an extent, business users[4].

The paper concludes advocating for a policy of *ex-ante* regulation of both narrow and wide PPOs, with a nuanced deliberation on how to regulate narrow PPOs.

[3] The terms "online intermediation platforms" and "digital platforms" are used interchangeably in this paper.

[4] For business users, narrow PPOs proves to be a double-edged sword with improved flexibility, autonomy and growing online traffic. This allows for more innovation in the distribution of rooms. Intensified competition benefits end consumers, however, it also means lower rates charged by business users.

2. Background to Price Parity Obligations

2.1 What are price parity obligations?

In business, price parity obligations ("PPOs") are pricing restrictions placed on suppliers of goods or services by a distributor to exact the same or better pricing relative to rival distribution channels including the supplier's own direct distribution channel for those goods or services. There are two types of PPOs, referred to as wide and narrow PPOs, and they are typically enforced by contractual clauses called price parity clauses ("PPCs"). In the context of digital platforms:

- Wide PPOs occur where a digital platform obligates business users to offer the best or same prices and discounts for goods and services on its platform relative to public facing online distribution channels including rival platforms.
- Narrow PPOs occur where a digital platform prevents business users from offering goods and services at better prices and discounts on its own direct public facing online sales channel relative to the digital platform.

PPOs feature most prominently in business-to-consumer ("B2C") online digital platforms but can also be in other markets such as business-to-business ("B2B") platforms such as Global Distribution Systems ("GDS") prominent in the airline industry. The debate around PPOs has been most prominent in the B2C online digital platform space covering travel accommodation, e-Commerce, and food delivery intermediation, and price comparison sites (e.g. insurance), etc. In B2C digital markets, PPOs do not typically apply to offline and non-public distribution of rates (e.g. private exclusive programmes and offline consumer loyalty programmes, email marketing, walk-in-rates, etc.)

The debate around PPOs has been most fierce in the travel accommodation sector, especially with respect to Booking.com within some countries (i.e. countries in the European Economic Area, Switzerland, Russia and South Africa) where Booking.com's enforcement of PPOs for hotel bookings was prohibited, requiring them to remove wide and narrow PPCs from contracts. In Germany, for example, the debate over the application of narrow PPOs was resolved in the country's highest court, the *Bundesgerichtshof*, resulting in its prohibition citing that the "*competitive effect of the narrow price parity clause can thus generally be compared to imposing minimum sales prices*" (Bundesgerichtshof, 2021:7), which is considered a restrictive vertical practice in competition law, including South Africa's Competition Act[5].

In the travel accommodation space wide PPOs occur where online travel agents ("OTAs") such as Booking.com mandate that accommodation providers (such as hotels, bed & breakfasts, guesthouses, etc.) offer the same or better prices on the OTA platform for their rooms compared to other online sales and distribution channels, such as rival OTAs. Narrow PPOs occur where OTAs mandate that accommodation providers provide the same or better prices on the OTA's booking channel than the accommodation provider's own direct online booking site.

2.2 Background to PPOs

PPOs draw from and are synonymous with so-called Most Favoured Nation ("MFN") obligations, also known as MFN clauses in contracts. MFN treatment originated in the Middle Ages since the 11th century, representing the liberal attitude of contemporary governments towards trade and competition between European merchants. It invoked a notion of fair treatment where, say the Byzantines would trade with

[5] See Section 5(2) and 5(3) of the South African Competition Act no.89 of 1998.

Venetians on the same basis as Genoans (Wang, 2022: 4-33). From the 12th century onwards, MFN guarantees could more often be seen in commercial treaties concluded between nation states. MFNs perpetuated into the 18th and 19th centuries with conditional and unconditional MFNs into the war, interwar and post-war periods of the 20th century. After the Second World War and into the modern era, the MFN principle was codified as a core obligation in Article I of the General Agreement on Tariffs and Trade ("GATT") in 1947, forming a central pillar of the rules-based multilateral trading system. With the establishment of the World Trade Organization ("WTO") in 1995, the MFN principle was enshrined in various agreements, including those covering trade in goods, services, and intellectual property, with few exceptions allowed.

In the airline industry, for example, the concept of ensuring fair access to pricing originated since the 1960s with the first airline computerised reservations systems ("CRSs"), where airlines offered CRSs, such as the Sabre system, inventory at the most favoured prices. This had the benefit of streamlining bookings and connecting flights. This evolved into B2B GDS systems in the 1980s which became essential distribution channels for reaching a global network of travel agents. Since the internet era, MFN clauses faced increased regulatory scrutiny by competition authorities raising concerns about their anti-competitive effects on the market, leading to a gradual shift and the emergence of more flexible distribution models such as the International Air Transport Association's New Distribution Capability ("NDC") initiative allowing airlines to distribute their full range of products and personalized offers directly to travel agents and third parties, bypassing traditional GDS limitations including restrictive MFN clauses[6].

2.3 Regulatory interventions and policies in South Africa and abroad

South Africa's Online Intermediation Platform Market Inquiry ("OIPMI") released in July 2023 found that wide and narrow PPOs applied by online intermediation platforms (or digital platforms) with market power are likely to impede, restrict or distort competition. This is to say that "*an adverse effect on competition is established if any feature, or combination of features, of a market for goods or services impedes, restricts or distorts competition in that market*"[7]. The determination of 'adverse effect on competition' is dissimilar to the 'substantial prevention and lessening of competition' ("SPLC") test in that it is a less onerous threshold to uphold and can apply to a broader array of market features within the market[8] as opposed to limiting scrutiny (and subsequent remedy) to the anticompetitive conduct of firms involved in a market such as an abuse of dominance, cartels, or resulting from a merger. The OIPMI mandated that Booking.com remove narrow and wide PPOs enforced by Booking.com, a platform determined to have market power in online travel accommodation intermediation deeming it to have features that are likely to impede, restrict or distort competition. Similarly, Takealot, South Africa's largest e-Commerce intermediation platform found to have market power, was mandated to remove its narrow PPOs[9]. In food delivery, the CCSA mandated UberEats,

[6] An insight to draw from MFNs in the airline industry is that they were an important tool to scale a global network of flight distribution. However, over time when GDS intermediaries attained significant market power, coupled with the potential to disintermediate GDS systems and new efficiencies arising from the advent of the internet, the MFN tool became increasingly anti-competitive.

[7] Section 43A(2) of South Africa's amended Competition Act of 1998 (no.89).

[8] To date, the legal concept of 'adverse effect' as per Section 43A of the amended South African Competition Act of 1998 (no. 89) has not yet been tested in the courts. It is, however, broadly understood to embody a lower evidentiary threshold.

[9] Takealot historically applied a wide PPC in its marketplace seller agreements, but this was changed to a narrow PPC in 2015.

deemed a leading platform[10], to effectively communicate the removal of wide PPOs and Bolt Foods, a smaller food delivery platform, to actively remove its wide PPOs.

In South Africa, Draft Vertical Restraints Regulations[11] have proposed that wide PPOs be characterised as a market restraint with a strong likelihood of a SPLC. In the UK, wide retail PPOs[12] have been characterised as a hardcore restriction alongside minimum resale price maintenance as per Article 8(2)(f) of its Vertical Agreement Block Exemption Order ("VABEO"), covering both online and offline markets (CMA, 2022: 77), and wide PPOs have similarly not been exempt as per Article 5(1)(d) of the European Union's Vertical Block Exemption Regulations ("VBER"). In the EU, narrow retail PPOs are considered exempt if supplied by an intermediary where its market share in that intermediation market is less than 30% (EC: 89). In the UK rather, concerns about size pertain to the size of the supplier via an intermediary, where narrow parity is exempt if a supplier's share is lower than the 30% threshold. Notwithstanding this, the UK's Competition and Markets Authority ("CMA") notes in its guidance notes that "*under certain conditions, in particular where competition at the* <u>*intermediation level*</u> *is limited, narrow retail parity obligations may harm competition by (i) replicating the effects of wide retail parity obligations or (ii) lessening or eliminating competition from the direct channel. This may allow intermediaries to maintain a higher price for their services* [e.g. commission rates]*, leading to higher retail prices for the intermediated products on all sales channels*" (CMA 2022: 136).

3. The Nature of the Relationship Between Suppliers and Intermediaries

To understand the competitive dynamics between sellers of goods and services and their means of distributing these goods and services, including through their own direct channels and through intermediaries such as online intermediation platforms it is important to understand the relationship between these sellers of goods and services and the intermediaries that they use. Competition law, including South African competition law, partitions firm relationships as either vertical or horizontal. In reality, however, these relationships do not always fit neatly into rigid delineations. It can be that firm relationships fall along a vertical-horizontal spectrum as in the case of various modes of distribution, including 'dual distribution'. Here the seller both competes with and depends on rival distribution modes including distribution services provided by intermediaries. This characterisation is important as the nature of the seller-intermediary relationship is typically characterised as vertical but there are elements of 'horizontal' competition between the two. Invariably this will help understand the impact of narrow PPOs as sellers are both dependent on intermediaries for distribution but also innovate and use their own direct sales channels to compete with the intermediaries they use.

Sellers of goods and services and the intermediaries they use to distribute these goods and services, such as in the case of online intermediation platforms, are vertical in nature. This corresponds to characterisations

[10] While the OIPMI Final Report does not specifically state that UberEats has market power, it did designate it a leading platform. Section 2.2.4 of the OIPMI Final Report (2024: 22-23) provides a delineation of factors characteristic of leading platforms such as the size of the platform in terms of the online intermediation market, the degree of business user dependency on the platform, network effects including the number of sellers and consumers on both sides of the platform, platform behaviour and observed outcomes, market structure, etc. These factors also give credence to determining market power depending on the magnitude of these factors and corresponding market outcomes. Other jurisdictions have also attempted to apply such labels for platforms such as Germany's 'Paramount Significance for Competition Across Markets' as per Section 19a of the German Competition Act and 'Strategic Market Status' as per UK's Digital Markets, Competition and Consumers Act of 2024. In Germany, the Bundesgerichtshof (2021: 3) characterised Booking.com as a "<u>*leading*</u> *online hotel platform in Germany and Europe*".

[11] See Section 3.12.5 of the Draft Vertical Restraints Regulations which were published for public comment on 3 June 2024 in the Government Gazette. (Government Gazette, 2024).

[12] Retail PPOs are of relevant concern in this paper as it embodies a B2C relationship. The CMA delineates PPOs in terms of online and offline (i) retail (B2C) and (ii) non-retail (B2B) relationships.

of PPOs falling within the UK's VABEO and EU's VBER which focus on vertical block exemptions. Germany's Bundesgerichtshof inferred a vertical relationship between Booking.com and accommodation providers, and similarly this was in line with the conclusion of the OIPMI[13]. The South African Competition Appeals Court ("CAC") found in the South African Breweries ("SAB") case that the relationship between SAB's own distribution network and appointed distributors was that of 'dual distribution' and primarily vertical in nature citing "*the modern trend, however, has been for courts to treat dual distribution agreements as vertical*".[14]

The CAC's (2015) delineation of the nature of the relationship of 'dual distribution' between SAB and its appointed distributors offers a compelling and nuanced perspective. Like with dual distribution, PPOs also feature as verticals in VBER and VABEO, yet the CAC in its determination correctly recognised that there was a horizontal component to their relationship citing in CAC (2015: 25): "*the evidence indicates that the relationship between the parties is primarily a vertical one. Although there is also a horizontal component, the latter component is incidental to, and flows from, the vertical arrangement*." Evidence in online intermediation platforms also suggests that their relationship with business users also has components that are horizontal in nature[15] like in the case of 'dual distribution' albeit nuanced.

In the case of the online intermediation platform and business user relationship, the horizontal component of competition is likely to be stronger than in the case of 'dual distribution'. The basis for this argument is that under dual distribution the supplier is likely to have a stronger say in where and how independent distributors market and sell its own products whereas online intermediation platforms have more agency in displaying and pricing/discounting the goods and services of the business users it distributes for. In fact, business users dependent on online intermediation platforms have limited power over how their goods and services are curated or displayed within the platform given this is typically algorithmically determined by the platform's own proprietary algorithm and platforms themselves impose conditions on business users (e.g. PPOs).

Further evidence to suggest a horizontal component in the relationship between business users and online intermediation platforms lies in the fact that both compete for user traffic. For example, both depend on general search as an important source of referral traffic to their websites/platforms[16] where general search is typically the starting point of the consumer journey for discovering goods and services (OIPMI Final Report, 2023:24). To compete, both business users and online intermediation platforms need to invest in search engine optimisation making sure their websites/platforms are relevant to user queries or pay for search results on the search engine results page, both constituting a costly marketing exercise. For example, using Similarweb data[17], Booking.com's overall source of online traffic for the calendar 2025 year comprised of 24.9% organic search and 27.9% paid search referrals. Of this traffic, 25.6% relates to branded search meaning that the remaining 74.1% of general search relates to contestable general travel accommodation related search queries i.e. approximately 40% of all Booking.com traffic results from "contestable" searches. Similarly, for the largest 45 accommodation providers, 53.3% of web traffic was sourced from organic search

[13] See paragraph 7.4.of Annexure 2 of the OIPMI Final Report.

[14] Citing Debra Pearlstein et al. Antitrust Law Developments (2002) of 81 in CAC (2015: 23).

[15] If the nature of the relationship between online intermediation platforms and business users were horizontal in nature with vertical components, PPOs would raise concern pertaining to potential horizontal price fixing which carry stronger legal sanctions.

[16] In the general search, Google Search is the de facto monopoly consisting of over 90% of general searches in South Africa.

[17] Similarweb is a digital intelligence platform that provides analytics on website traffic, user behaviour, and market trends by collating web traffic from scraping websites and using AI models to estimate web traffic. The service is widely used by stakeholders operating in the online marketing and the digital research space including the OIPMI and the stakeholders involved.

and 7% from paid search where 65.4% relates to non-branded search. This too means that approximately 40% of these travel accommodation providers' web traffic also comes from "contestable" searches. This horizontal component of competition is also characteristic of news media and digital platforms such as Google Search in the market for attention and engagement to sell advertising. The Media and Digital Platforms Market Inquiry ("MDPMI") found that while news media is dependent on digital platforms for discovery and referral traffic, they also compete with digital platforms with content, a medium to attain and retain engagement.

The point of this section is to draw attention to the fact that there is a strong horizontal component in price competition between digital platforms and business users' own direct channels, albeit that the chief overarching relationship that governs these market participants is vertical in nature. This is an important distinction to make to understand how narrow PPOs restrict what is in essence horizontal price competition between digital platforms and business users in the online space[18]. Furthermore, it is important for the application of the law and regulation to understand these deeper nuances, where often the tendency is to pigeonhole relationships as either 'horizontal' or 'vertical' in nature.

4. Concerns With Wide PPOs

In the UK and EU, wide PPOs are considered hardcore restrictions. In South Africa, wide PPOs are characterised as a market restraint with a strong likelihood of a SPLC in the draft South African Vertical Restraints Regulations. For purposes of understanding and completeness, a discussion on why wide PPOs are considered anticompetitive is covered in this section. This also assists in understanding how narrow PPOs, which are argued to emulate wide PPOs, likely result in adverse effects on competition and possible SPLCs. These reasons are as follows:

Firstly, from a platform competition perspective, wide PPOs have the potential of limiting market entry or expansion by new or smaller digital platforms as these restrict potential entrants and small market players, especially those with low-cost business models, from expanding their market share through price competition (Boik & Corts, 2016). Platforms can engage in across-platform price competition by lowering the price of goods and services on their platform by taking a cut in commission rates or through platform funded discounting. For example, Ennis et al. (2022) modelled both a before-and-after and difference-in-differences assessment following the removal of wide PPOs but allowing for narrow PPOs in the EU. It was found that the probability of the hotel's direct channel being cheaper on average than OTAs had significantly increased, at least for mid-level and luxury hotels. Also, the Redflank Business User Survey cited in the OIPMI Provisional Report (2022) found that stated user responses to a removal of wide PPOs would result in lower prices on rival platforms[19].

Secondly, from a business user's perspective, wide PPOs restrict their ability to pursue a differentiated pricing strategy across platforms. For example, a business user might want to offer lower prices on a particular platform to attract a particular type of customer or execute a marketing strategy, however, wide PPOs limit their ability to do so. As such, this undermines the flexibility of business users to price freely or target certain user groups that would have derived benefit from discounted pricing. In the EU, several EU Competition

[18] Hypothetically speaking, as a thought experiment, if the nature of the relationship between online intermediation platforms and business users were characterised as horizontal with vertical components, PPOs would fall within Section 4 of the South African Competition Act that deals with prohibited restrictive horizontal practices, potentially leading to heavier penalties. The effect of this would be exacerbated if a platform imposing these pricing restrictions had significant market power.

[19] For example, for the provision of accommodation, the Redflank Survey (2022) found that 25% and 50% of large and small metro-based hotels would offer a lower price on another online platform respectively; and 17% and 3% of large and small non-metro-based hotels would lower their prices on another platform respectively.

Authorities monitored the transition from wide to narrow PPOs in travel accommodation by Booking.com and Expedia in 2016 and found that the transition resulted in an increase in room price differentiation between OTAs and hotels in eight of the ten participating Member States (ECN, 2016). Also 21% of hotels differentiated their prices between OTAs whereas 79% did not, although 47% of hotels were unaware of the changed parity terms.

Thirdly, business users are more susceptible to exploitation as the final retail price charged across platforms must also factor in the highest commission rate charged by a platform. To absorb high commission fees, business users would have to keep prices high across platforms thereby hurting consumers. By removing wide PPOs, business users have the option to offset high commission fees by charging lower prices on cheaper rival platforms, creating competition and reducing dependency on the high commission fee platform (assuming there is divergence by consumers towards the cheaper platforms).

Lastly, monitoring prices across channels also shifts responsibility and cost burden onto business users. For example, some business users procure rate shopper services to monitor prices across various online channels at their own expense (OIPMI Provisional Report, Annexure 2). Also, business users are not always in control of final platform prices, for example, discounted inventory procured through alternative wholesale channels or platform funded discounts may reduce the final price displayed on the platform. In this context, business users may be unduly penalised for not adhering to wide PPOs.

5. PPOs and Market Power in Digital Platforms

5.1 Market power in digital platforms

Digital platforms are multisided intermediaries bringing together interdependent groups including sellers of goods and services and consumers of those goods and services. As such digital platforms experience network effects where the platform becomes more attractive to consumers where a larger variety of goods and services are available to them and becomes more attractive to sellers of goods and services where there are more consumers. This virtuous cycle characteristic of network effects becomes mutually reinforcing. The OIPMI found that the tendency in digital markets was to trend towards bifurcation consisting of one or two scaled intermediation platforms that dominate online transactions, and a fringe of subscale platforms that either occupy niche submarkets or provide little competitive pressure to the mainstream market (OIPMI Final Report, 2023: 20). Typically, these scaled platforms, referred to as “leading platforms” in the OIPMI, are indispensable distribution channels for business users which invariably become dependent on them. These platforms are essentially unavoidable, and for a business user to lose access to these channels would equate to losing access to a significant number of consumers. The size of a platform matters and so does market power, where this fact is captured by the 30% VBER market threshold. The 30% threshold, however, is a reference point delineating where market power might reside. However, market power can reside in markets where the digital platform’s market share is smaller or larger than 30%. For example, an indispensable distribution partner with a share of less than 30%, can exhibit market power.

Market power is also reinforced by the portfolio effects of a digital platform operating in a larger digital ecosystem held by that platform’s holding company. For example, in travel accommodation Booking Holdings owns metasearch engines such as Kayak, Priceline, Momondo, HotelsCombined and Cheapflights, which reinforce leads to OTAs such as Booking.com and Agoda (also falling within the Booking Holding group). For example, Cheapflights was Booking.com’s largest source of referral traffic in South Africa where those platforms within the Booking Holding ecosystem were responsible for approximately one-third of total third-party referral traffic and 2.2% of overall traffic to the Booking.com site in 2025 (using Similarweb data). Booking Holdings also owns Rentalcars, an online car rental intermediary, and Agoda, a smaller accommodation intermediation platform. Integrating these various travel intermediaries provides scope for

Booking Holdings to realise its vision of a 'Connected Trip' to keep travel related bookings within its ecosystem. While there may be some consumer benefits to a 'Connected Trip' (i.e. ease of booking), this too potentially reinforces business user dependence on the holding company's ecosystem (to access customers) and its corresponding market power. Another portfolio benefit emanating from belonging to an ecosystem of digital platforms is superior access to consumer data relative to rivals. For example, Kramer and Shekhar (2025: 123) note that "*digital platform ecosystems thrive on their ability to acquire and leverage user data across multiple data-driven services. This enables dominant platforms to harness insights obtained from their primary markets, where user data is collected, thus gaining a competitive advantage in secondary markets, where they exploit this data*."

Beyond market size, network effects and business user dependency, there are several other markers of market power. For example, business users need to compete with rival business users for visibility on 'leading platforms'. The OIPMI found that featuring prominently and ranking favourably on a leading platform drives significant leads to a business user's goods and services. While relevancy to a user's search is important, a platform with market power can leverage demand for lucrative positions on its platform by extracting certain commercial terms from business users, provide poorer services to them or offer them unfavourable take-it-or-leave-it conditions (e.g. PPOs). For example, in exchange for improved visibility, the platform can leverage its market power to extract business user funded discounts or push users to higher commission 'exclusive programs'. In travel accommodation, for instance, it was found that accommodation funded discounts accounted for a large share of Booking.com's commission revenues. The OIPMI Final Report (2023: 42) notes that "*in comparison to the more successful OTAs, Booking.com can extract around three times more accommodation funded discounts than their total combined commission earned in absolute terms*" meaning that were these rivals to convert 100% of their commissions into discounts (i.e. earn zero revenue), they would still fall short of matching accommodation funded discounts on the Booking.com platform.

Another marker of market power includes a platform's ability to unilaterally increase average commission rates while expanding its volume of trade. For instance, the OIPMI showed that Booking.com unilaterally increased its average commission rate by more than the [5-10]% threshold between 2015 and 2022 while increasing its commission revenues several fold over the same period (OIPMI Final Report, 2023). Again, a big reason for this increase in average commissions was a shift towards Booking.com's higher commission based exclusive programs called "Preferred Partner" and "Preferred Partner Plus" which offers improved visibility in exchange for participation where choosing to not participate would be potentially detrimental to business user discoverability and consumer leads.

5.2 Market features and market power

To understand how market power is leveraged in digital platforms, it is important to understand the market features that are characteristic of both the digital platforms and the business users that utilise them. Various online intermediation platform market streams have different features shaped by unique aspects of those markets which may elicit similar or different business user, platform and consumer behaviour. In addition, these markets have different structural features such as the number, size and level of fragmentation among business users and within the platform markets themselves. The goods and services sold through digital platforms can range from being highly heterogenous and differentiated to being quite homogenous. The features of digital platforms, including platform and business user competition, help to understand where digital platform market power lies.

In South Africa, e-Commerce and online travel accommodation intermediation are characterised as having a dominant platform, namely Takealot and Booking.com respectively, which largely sell heterogenous and differentiated goods and services. Their platform rivals are generally smaller, fragmented and intermediate for niche corners of the market e.g. Lekkeslaap for local travellers travelling to 'out of the city' destinations and Airbnb cornering the so-called alternative accommodation market. Business users that depend on these platforms to distribute their products and services are vast and fragmented. Where competition amongst business users is intense to attract consumers such as accommodation bookings in dense 'competitive nodes' like Cape Town or selling products with many competing sellers (e.g. sneakers), featuring prominently on the dominant platform becomes an important source for leads. This intersection of business user competition and fragmentation in turn confers much market power to the dominant platform where the platform becomes an indispensable marketplace for the vast variety of sellers.

The platform market share of a platform, however, does not always confer market power. Travelstart was the largest flight OTA pre-Covid, comprising of a [60-70]% market share in 2019. Notwithstanding its market size, the OIPMI's assessment was that the platform did not exert market power. This is largely because there were a small number of airlines operating in South Africa selling relatively homogenous products (i.e. flights). Airlines have their own online booking sites where consumers can more easily shop around for flights between the OTA and airline websites. Airline flight inventory is a must-have for the OTA given the limited number of airlines and the large amount of flight inventory each airline carries. As such airlines demonstrate significant countervailing power in relation to OTAs considering that they can potentially withdraw flight inventory if the OTA imposed unfavourable terms and conditions, or they could choose to simply not adhere to them. In online food delivery, the market comprises of two 'leading platforms' namely UberEats and Mr D. Here the business user market is also fragmented but a distinction between independent restaurants and restaurant chains (e.g. KFC, McDonald's, etc.) can be made. Here the latter exhibits stronger countervailing and negotiating power. To incentivise the listing of restaurant chains, food delivery platforms charge lower commission rates.

5.3 Market power and the ability to enforce Narrow PPOs

The question of digital platform market power relates to the ability of digital platforms to enforce narrow PPOs. My argument is that a digital platform with market power can meaningfully enforce narrow PPOs whereas a digital platform without market power can attempt to enforce narrow PPOs but has no intrinsic power to compel business users to adhere to them. This begs the question as to the relevance of narrow PPOs - if under the context of no or little digital platform market power, platforms do not have the ability to meaningfully enforce narrow PPOs. So why have them at all? Where market power does exist, the enforcement of narrow PPOs likely results in an adverse effect and a possible SPLC on platform and business user competition that outweighs efficiency gains. This also reinforces business user dependence on the platform and leads to potential exploitative outcomes (all discussed in next section).

Prior to the OIPMI's remedial actions, narrow PPOs were contractually enforced by Booking.com and Takealot in their respective markets. For accommodation providers, adhering to narrow PPOs was a requirement to participate in Booking.com's Genius loyalty program and exclusive program (Preferred Partner and Preferred Plus programs) in exchange for improved visibility on the platform[20]. In addition to enforcing narrow PPOs, Booking.com was already receiving accommodation funded discounts through its Genius loyalty program and higher commission rates through its exclusive programs. Collectively, these programs covered the lion's share of booking value on the platform where the Genius program was rapidly growing, accounting for [20-30]% of total discounts offered on the platform (OIPMI Final Report, 2023: 42). Participation in Booking.com's exclusive programmes grew from [40-50]% of total transaction value in 2019 to [70-80]% of Booking.com's total transaction value in 2022. This suggests that these higher commission programs were aligned with most of the value booked on the Booking.com platform. It also demonstrates

[20] For example, the Preferred Partner program is advertised to offer qualifying accommodation providers 30% more visibility, and the Preferred Plus program 60% more visibility. The Genius loyalty program claimed to bring an increase of 70% more traffic and 45% more revenue. (OIPMI Final Report, 2023: 44).

the leverage that rank and visibility on the platform had on accommodation providers to push the bulk of booking value to the higher commission programs. In line with the remedial actions, Booking.com currently does not appear to list narrow PPOs as a prerequisite to participate in the Genius loyalty program on its public-facing website while narrow PPOs (termed 'External Prices') remain a prerequisite for its exclusive programs, except for a few 'no parity countries' like South Africa[21].

In the airline industry, Travelstart, the OTA with a high market share pre-Covid, did not have PPOs in their contracts, nor did they enforce them (OIPMI Final Report, 2023: 189). This is because the OTA did not have market power to enforce PPOs considering the countervailing power of airlines' own direct booking sites. Small platforms may seek to impose narrow PPOs but their ability to enforce them is limited. For example, a narrow PPO was applied by a small local OTA but the OIPMI (Final Report, 2023: 41) noted that there was insufficient evidence that it was able to enforce it given the lack of dependency of accommodation providers. This OTA has since exited the market[22]. Enforcement of narrow PPOs may however not always be in the interest of small OTAs, especially where these platforms intend competing with larger OTA rivals and hotel direct channels. Smaller OTAs in countries that hold some local market share, such as MakeMyTrip in India and Despegar.com in Argentina, are competing primarily on price where they display prices lower than both direct channels and dominant OTAs (HM, 2025). Similarly, according to 123Compare.me (2025), a hotel price parity and conversion software, Booking.com is experiencing intensified price competition from smaller OTAs in South Africa[23].

6. Assessing Arguments in Favour of Narrow PPOs

The main arguments put forward by digital platforms in favour of implementing narrow PPOs are that it stops free-riding and it limits the so-called 'billboard effect'[24]. Furthermore, narrow PPOs are argued to be necessary to recoup investments such as site functionality, customer services, marketing services at no upfront costs, technological capabilities etc. Lastly, having the cheapest prices on one channel (e.g. a leading platform) reduces search costs for consumers because they don't need to shop around. With respect to alleged free-riding, the concern is that consumers will find products and services on the platform and then go directly to the business user's website where it is cheaper to procure.

For both Booking.com and Takealot[25], the OIPMI Final Report (2023) noted that the platforms provided no compelling evidence to support their arguments justifying the use of PPOs, with these arguments being largely speculative. In Germany, for example, the Bundeskartellamt (2020) found that after 2 years following the removal of narrow PPOs, Booking.com's market position was not harmed, rather it managed to grow and further consolidate its market position. The *Bundesgerichtshof* (2021) ruled out the notion that absent narrow PPOs, the free-rider problem would make the platform unable to maintain its full range of services. Evidence provided by the Bundeskartellamt found that 99% of all consumers who found their accommodation on Booking.com also actually booked it on Booking.com with less than 1% booking their

[21] To navigate which countries are 'no parity countries', one must click a link in the exclusive program partner webpage, to the "Definitions" section of the "General Delivery Terms". Currently, South Africa is the only non-European country that is considered 'no parity countries' with the European Economic Area (EEA), Switzerland and Russia having this status. In the EEA, Booking.com has been designated 'gatekeeper' status as of November 2024.

[22] The OIPMI remedial actions did not require this smaller OTA to remove its PPOs.

[23] This is partially corroborated with a 3.85% decrease in online traffic to Booking.com from calendar year 2024 to 2025 and a 2.47% increase in Lekkeslaap traffic over the same period (using Similarweb data). As discussed later, there has been a significant growth in traffic to accommodation's own direct sites.

[24] The 'billboard effect' relates to the awareness that a business (e.g. a hotel) derives in the mind of the customer from being visible and discovered on a digital platform. It is likened to being advertised on a billboard.

[25] Amazon were required to remove PPOs in the EU in 2013 and the US in 2019. The platform is still performing well and the largest eCommerce platform in these regions.

accommodation through the accommodation's own direct online facility. Similarly, a smaller South African travel accommodation platform noted that it also observed free-riding in less than 1% of bookings. Anderson and Han (2017) find that alleged free-riding can go in both directions with 31% of travellers who start their search on a hotel site end up booking at an OTA, while 35% of travellers who start their search on an OTA end up booking on a hotel site. This "reverse free-riding" manifests where the consumer habitually finds a product or service on the business user's website but finalises the transaction on the platform where he or she may enjoy discounted prices (e.g. the consumer may benefit from the platform's loyalty program)[26].

While billboarding does exist, Anderson and Han (2017) note that the 'billboarding effect' is decreasing over time and OTAs are also likely to benefit from billboarding off hotels. The authors estimate the billboard effect to range between 5% to 35%, while the survey conducted by EY-Parthenon in 2020 suggests an effect of around 42% for small and medium-sized accommodations in Germany, France, Portugal and Italy. A European Commission (2022) market study on the distribution of hotel accommodation in the EU found that 63% of independent hotels consider that using OTAs also increases the volume of bookings on their own direct sales channels. This finding however was mixed for hotel chains where some considered that using OTAs does not increase their total volume of bookings, but rather "cannibalises" bookings from their direct sales channels. The 'billboard effect' is said to be paired with a significant spend on marketing, especially paid search, undertaken by digital platforms.

As with the marketing spend, the investments made into developing and integrating technology into their platforms and the 'billboard effect', narrow PPOs are not a precursor to these benefits. This resonates with the *Bundesgerichtshof's* (2021) and Court of Justice of the EU ("CJEU", 2024) findings. The *Bundesgerichtshof* (2021: 21) recognised that "*there is no doubt that the operation of an online hotel platform results in significant efficiency gains both for consumers and the hotels connected to the platform*" but in referring to the Bundeskartellamt argument, the *Bundesgerichtshof* (2021: 21) notes that "*the authority rightly denies the causality between the narrow price parity clause and these efficiency gains since these gains do not exclusively arise from the price parity clause and the permanent and economically successful operation of the platform is possible even without agreeing on a narrow price parity clause.*" The *Bundesgerichtshof* (2021: 31) concludes that "*the overall assessment of these effects caused by Booking.com's narrow price parity clause does not suggest that the efficiency gains potentially associated with this clause in terms of containing free-riding activities at any rate balance out its manifestly anti-competitive effects; neither are such indications demonstrated by Booking.com. On the contrary, the anti-competitive clause results in significant efficiency losses which cannot be justified by the mere opportunity for Booking.com to use increased profits to improve the services it offers*." The CJEU (2024) concluded that price parity clauses, both wide and narrow, are not objectively necessary for the implementation of Booking.com's online booking platform and are not proportionate to the objectives pursued by the platform. On that basis the price parity clauses did not qualify as 'ancillary restraints' and thus fall under the Article 101(1) TFEU prohibition[27].

Digital platforms offer benefits that business users need in exchange for a commission fee that are independent of PPOs. For example, the European Commission (2022) observed that the prohibition of OTA parity clauses in Austria and Belgium was not associated with a greater or lesser use of OTAs by hotels. Business users benefit from additional sales channels and more exposure, access to a booking or buying website where they otherwise may not have one, or access to web features that they may have not been able to develop themselves such as real time availability, booking/purchasing and payment facilities. The relationship between digital platforms and business users is mutually beneficial but not conditioned on PPOs.

[26] For example, Booking.com is known to sponsor its own discounts through Booking Sponsored Benefit.

[27] This is based on an interpretation by Herbert Smith Freehills Kramer (2024).

Typically, smaller independent business users are more likely to depend on digital platforms for their online distribution of goods and services because they may not have their own direct booking/selling site, they may have a site with limited features, or a limited budget to effectively market their goods or services outside the platform. For example, in response to an ERSA questionnaire[28], 45.5% of accommodation providers submitted that they have no real time payment facility integrated into their booking portal. In contrast, larger business users such as hotel chains, restaurant chains and retailers are relatively less dependent on digital platforms where they have their own website/platform that integrates all relevant design and technology for searching, purchasing and paying in real time. They have the resources to afford their own online marketing strategies independent from digital platforms[29] and thus also make their own investments.

From a consumer's perspective, digital platforms provide a convenient and value-added service to search for, find and pay for goods and services in one sitting. For example, Morton (2023: 6) notes "*a consumer who sees a product on Amazon and searches for the seller's page to buy it at a lower price is giving up all the services of Amazon: saved payment, saved addresses and quick delivery times*" where switching costs resulting from forgone convenience minimises potential free-riding. It is tempting to fall into the argument that PPOs are justifiable as it results in the cheapest price one-stop-shop. While there is a convenience factor to the one-stop-shop platform and a corresponding reduction in search costs, implicitly this means fewer distribution channels and a corresponding accretion of market power that this platform exerts over business users on the other side. Where price competition across channels thrives, the consumer is ultimately faced with a choice, a trade-off between convenience or competitive prices on rival platforms in the longer term.

Smaller digital platforms with no or limited market power may encounter a marginally higher possibility of free-riding. These platforms may want to apply narrow PPOs to protect their investments, to create scope to scale their platforms and to mitigate the impact of possible free-riding where the impact is likely to be felt more[30]. The VBER takes this into account where platforms with narrow PPOs and a share of less than 30% fall within the exempt category. While this might be the case, as argued previously, smaller platforms with little or no market power are less able to enforce PPOs and face relatively weaker bargaining power *vis-à-vis* larger business users, again bringing into question the relevance of PPOs for these platforms altogether. Also, as in Argentina and India (discussed previously), smaller localized platforms may want to engage in price competition across distribution channels.

Reasons provided in case law note that narrow PPOs are not necessary as a precursor for efficiency gains. Both platforms and business users must make investments into developing and marketing their distribution channels through which they sell goods and services. Furthermore, the removal of PPOs in other countries has not been associated with lesser usage by business users where many platforms have since expanded post-removal. While some free-riding might occur, existing research seems to suggest that the extent of free-riding is small and that to an extent the opposite happens where consumers find a good or service on the business users' site and then purchase it on the platform. On balance the arguments justifying the use of narrow PPOs are relatively weak in substance, and when one considers the arguments made against the usage of narrow PPOs in the next section, the harms associated with the use of narrow PPOs likely outweigh the benefits. This assertion however is more nuanced for smaller platforms with little or no market power.

[28] The questionnaire was sent to accommodation providers for the purposes of this ERSA research (discussed later).

[29] For example, during OIPMI, a hotel chain indicated that it was moving its establishments off Booking.com and developing its own online marketing strategy. Recently, the hotel chain indicated that it had all but one of its establishments removed from Booking.com.

[30] The same establishment benefitting from free-riding will have a proportionately larger negative impact on a smaller platform relative to a larger platform, when one factors in relative size.

7. Arguments Against Narrow PPOs Where Digital Platforms Have Market Power

A major concern with narrow PPOs is that they emulate wide PPO outcomes. A business user may wish to differentiate prices between various online intermediation platforms to distribute products and services but may not have an incentive to do so if narrow PPOs are applied. The CMA (2022) notes that in principle, business users that are subject to narrow retail PPOs[31] may differentiate their offers across the intermediaries that they use. However, to do so, it must offer conditions on its direct channels that are not more favourable than the conditions that it offers on the 'most expensive' intermediary with which it has a narrow retail PPO. To offer a cheaper price to a rival intermediary would be to undermine prices on its own direct online channel. In essence, narrow PPOs reflect prices on the highest priced intermediary for a given good or service. They also argued that narrow PPOs directly restrict price competition between the business user's own direct channel and an online intermediary platform while indirectly restricting competition between various online intermediary platforms.

In the context of very weak competition between alternative intermediaries and the dominant intermediary, and dependency by business users for reaching online customers through that intermediary, there needs to be greater caution in permitting conduct that may limit whatever competition that exists, be it other online distribution channels or the direct channels of sellers. Furthermore, like with wide PPOs, monitoring adherence to narrow PPOs imposes monitoring costs onto business users while they still bear the risks of not selling their goods or services on the platform. This section explores how narrow PPOs when applied by digital platforms with market power are likely to adversely affect or harm competition and the business users that depend on them. Four themes are explored, namely that narrow PPOs applied by digital platforms with market power: (i) impede price competition and corresponding lower prices, (ii) reinforce dependency on the platform and entrenches the platform's market power, (iii) lead to potential business user exploitation, and (iv) restrict the flexibility of business users to determine and innovate their own distribution and marketing strategies, and develop their own purchasing/booking sites.

7.1 Narrow PPOs impede price competition

The removal of PPOs results in intensified price competition between business users and digital platforms, and amongst various digital platforms. For example, between 33% to 55% of hotels (depending on size and location) in South Africa stated that they would lower prices on their own websites had the main platform they use not restricted different pricing[32]. Furthermore, in the EU in countries where OTA parity clauses are prohibited, it is expected that hotels would have a greater tendency to offer lower prices on their direct online sales channels than on OTAs (European Commission, 2022). Here more than 50% of independent hotels price differentiated between sales channels where offering lower prices on the hotel website relative to the prices offered on OTAs is the most common form of price differentiation accounting for 31% of hotels, followed by price differentiation in favour of the hotel's direct offline channels relative to OTAs (24% of hotels) and price differentiation between OTAs (9% of hotels)[33]. Moreover, the prohibition of Booking.com's narrow parity clause in Germany also led to an increase in price differentiation across OTAs (Bundeskartellamt, 2020). Larrieu (2019) also shows an increase in price discrimination across OTAs after the abolition of price parity clauses in France in 2015, with an increase in across-platform price discrimination

[31] The term retail PPOs is synonymous with PPOs in B2C digital platform markets.

[32] Based on the Redflank Business User Survey undertaken during the OIPMI (OIPMI Provisional Report, Chapter 2, 2022).

[33] Hotel chains stated that they generally do not differentiate the prices or room availability they offer between sales channels, though in some cases they allow their member hotels some discretion on this (European Commission, 2022).

being higher amongst high quality hotels (4 and 5-star hotels), luxury hotels and brand hotels. This is likely driven by the fact that they are "*more responsive to competition in the online channel*" (Larrieu, 2019: 23). In South Africa, the OIPMI (2023: 185) concluded, "*as price differentiation across online accommodation intermediation platforms intensifies, so will the likelihood of price competition intensify through the provision of platform funded discounts*" after finding that Booking.com was funding its own discounts in competition with accommodation providers. This was done through its Booking Sponsored Benefits ("BSB") program[34], which was evidenced by its increasing volumes of BSB discounts over time.

Many studies show that the wholesale removal of Booking.com's PPOs[35] in European countries has resulted in a variation of no effect to a reduction in online hotel prices depending on hotel types, and for hotel chains, a shift to offline bookings and an intensification of cheaper offline prices. However, there does not appear to be a single finding of an increase in offline and online hotel prices post-removal. Isolating price changes resulting from a change in PPO status is challenging considering prices sold across channels are influenced by various factors not related to the PPOs such as seasonality, unrelated marketing strategies and 'black swan' events such as a terrorist attack (as happened in Paris in 2015). Having said this, several studies have sought to estimate the price impact flowing from the removal of PPOs.

Larrieu (2019) notes that a decrease in hotel prices can be explained by an increase of price discrimination (or price differentiation)[36]. Here Larrieu (2019) found, using a before-after design and controlling for external shocks, that the termination of PPOs caused a decrease of about 3.1% to 4.5% in the average level of prices set by hotels in Paris. Small hotels (in terms of rooms) were most impacted with an average price decrease between 5.27% and 5.18% for hotels with less than 43 rooms, independent hotels (i.e. not associated with a hotel chain/group), faced a stronger decrease of their average prices of 4.98% compared to 'brand hotels' with a 2.65% decrease in price. Larrieu (2019: 18) notes that hotels with low market power are more affected by the removal of PPOs in terms of the magnitude of price decreases noting that "*the balance of bargaining power between hotels and platforms is a key factor in assessing the effect of the drop of PPAs on prices*."

Ma et al. (2024) found, using quasi-experimental evidence on the removal of PPOs in France in 2015 for three major international hotel groups, the following: (i) a limited and non-significant effect on room prices sold through online channels visible to consumers, (ii) a significant price reduction on sales channels not visible to consumers, such as the hotels' direct offline channel and (iii) a significant shift in sales share from OTAs to the hotels' direct offline channel. Ennis et al. (2022) found using before-after and a difference-in-differences ("DIDs") approach, that the probability of the direct channel being cheaper has increased, mainly for mid-level hotels in Germany following the removal of Booking.com's PPOs in France and Germany. Hunold et al. (2018) found that PPOs influence the pricing and availability of hotel rooms across online sales channels where the abolition of Booking.com's narrow PPOs across countries (using Germany as reference point) is associated with the direct channel of chain hotels having the strictly lowest price more often[37]. The authors also find that hotels publish their offers more often on Booking.com when the OTA does not use the narrow PPO while simultaneously promoting the direct online channel more actively i.e. there appears to be an intensification of hotels promoting their rooms across channels following the removal of narrow PPOs. Lastly, Mantovani et al. (2021) used DIDs to assess the removal of PPOs in France in 2015, finding that in the short

[34] Booking.com (2026) notes that "*Booking Sponsored Benefit (BSB) allows us to cover a portion of the room cost to attract potential bookers. That means we'll pay part of the room cost on behalf of customers to help increase bookings for partners.*"

[35] This includes a move from wide and narrow parity to no parity and a move from narrow parity to no parity.

[36] In this context price differentiation and price discrimination are used interchangeably but are technically nuanced in meaning. Price discrimination includes charging different prices for precisely that same good or service, whereas price differentiation incorporates price differences covering goods and services that may incorporate variations in their product or service offering (e.g. including free breakfast or late cancellation policy in travel accommodation).

[37] Data was collected using the metasearch site Kayak.

run average hotel prices dropped significantly by 2.6% moderating to a drop of 1.6% in the medium run. Overall, the intervention appears to have benefited a subset of consumers using Booking.com, where for example, hotel prices on *Booking.com* dropped by approximately 12% for 3-star hotels a year after the intervention.

In e-Commerce, Song (2021) undertook a large-scale empirical study using DIDs to explore the impact of Amazon's removal of PPOs (wide and narrow) in 2019 in the United States on prices of products that are subject to differential commission rates on competing platforms. The DIDs analysis shows that, because of Amazon's removal of PPOs, the product with a greater commission rate difference between Amazon and eBay experienced a larger price drop on both platforms. Furthermore, the product with a higher commission rate on Amazon experienced a greater price reduction on both platforms. Lastly, it was found that Amazon as a retailer was more responsive to the policy change than its third-party sellers. Song (2021: 19) concluded that its findings imply that platform PPOs "*reduce platform competition and are thus a potential antitrust concern*".

7.2 Narrow PPOs reinforce dependency

During the OIPMI it was observed that narrow PPOs reinforce the dependency of business users on must-have (i.e. unavoidable) digital platforms such as Booking.com and Takealot, where these platforms already enjoy significant network effect benefits, have a captured audience[38] and superior data advantages[39] (relative to business users) despite PPOs. In travel accommodation, most hotels in South Africa indicated that they are either dependent or very dependent on distributing their rooms through online intermediation platforms[40] where a significant proportion of sales rely on leading platforms such as Booking.com. Booking.com featured as the most important online travel accommodation distribution channel for hotel rooms in South Africa with 90.9% of accommodation providers saying it is the most important channel, when considering the two most important channels[41]. Direct online channels such as the hotel's own website were the most important distribution channel in 63.6% of the responses. The European Commission (2022: 10) found that the use of OTAs to distribute their rooms was the largest source of bookings in Europe, increasing from 19.7% in 2013 to 29.9% in 2019 of total offline and online bookings. Of the OTAs, Booking.com had by far the largest share of bookings of 67.7%. Altogether, Booking.com accounted for approximately one fifth of all travel accommodation online and offline room bookings in Europe and South Africa[42].

Narrow PPOs reinforce consumer traffic to the digital platform with the knowledge that said consumers would habitually find the cheapest price on the platform and continue to expect to find the cheapest price

[38] For example, in travel accommodation, global OTAs such as Expedia and Booking.com largely own the foreign traveller channel given their global brand awareness and ubiquity worldwide.

[39] Both in eCommerce and travel accommodation, the digital platform enjoys superior data knowledge about the consumer and traveller, what they like to purchase and their preference of travel accommodation. The European Commission (2022: 15) cites various authors noting that information asymmetry between hotels and OTAs exist where the OTAs' ownership of consumer data is a driver for the increasing dependency of hotels on OTAs around the world.

[40] Based on the Redflank Business User Survey, between 50% to 63% of hotels (depending on size and region) responded that they were either dependent or very dependent on online intermediation platforms (OIPMI Provisional Report, Chapter 2, 2022: 28).

[41] This is based on an ERSA questionnaire sent to accommodation providers in South Africa (see Appendix A). Note that respondents were given a maximum of two options when rating their most important online distribution channel, thus the collective response rate adds up to over 100%.

[42] In South Africa, Boooking.com was estimated to account for 21% of all travel accommodation room bookings (OIPMI Provisional Report, Chapter 2, 2022: 25).

on that platform going forward[43]. This learned behaviour disincentivises consumers to seek alternative distribution channels including the business user's own online and offline direct channels. Furthermore, dependency can be reinforced by limiting the flexibility and agency of business users to innovate their own distribution and marketing channels and strategies including investing in their own booking/purchasing site. For example, in eCommerce, the OIPMI Final Report (2023:52) notes that "*the ability of sellers to boost sales on their own direct channel is one means to reduce their dependency on Takealot, and the ability to price in that channel as they wish is in turn an important means to drive sales*." In travel accommodation, the Bundesgerichtshof (2021: 31) notes that narrow PPOs "*increases the hotels' dependence on the already very strong platform booking.com, which further strengthens the anti-competitive effect of the narrow price parity clause for hotels. This effect is a direct and intended consequence of reducing the attractiveness of direct distribution*." The reinforcement of dependency becomes a vicious cycle that further entrenches dependency on the platform, reinforcing its market power and potential anti-competitive effects. Ultimately, this reinforced dependency can potentially result in a platform tipping leading to a "winner-takes-all" outcome. Here, the network effects of the platform are so entrenched that platform rivals can do little to make competitive inroads into the digital platform market.

7.3 Narrow PPOs and the exploitation of business users

The use of narrow PPOs enables leading and dominant platforms to exploit business users. This typically manifests itself where these platforms raise the costs of distribution to business users, such as higher commission rates, where business users are restricted to pass on these increased costs in the form of higher prices on these platforms. Piccolo and Prasad (2021) note that "*a platform can set a high commission knowing that the 'narrow' parity agreement prevents the seller from using direct sales to undercut it*." Business users are thus compelled to undertake one of two actions: (i) absorb the increased cost of distribution without raising prices, thereby reducing profits or (ii) raise prices across distribution channels including its own. In travel accommodation the OIPMI found that Booking.com's average commission rate increased well above a small but significant non-transitory increase in price (i.e. more than 10%) between 2015 and 2022, while increasing its absolute commission revenues severalfold over the same period. The platform was able to shift most of its bookings in terms of transaction value to its exclusive programs including Preferred Partner and Preferred Plus, where adhering to narrow PPOs was a precondition to joining. Due to the importance of visibility on Booking.com, accommodation providers were electing to belong to these programs in exchange for improved visibility, notwithstanding higher commission rates shifting from a standard rate of 15% to 18% and 23% for each respective program.

7.4 Narrow PPOs impede business user flexibility

By limiting price differentiation and competition, narrow PPOs potentially impede a business user's flexibility to innovate its own distribution and marketing capabilities and strategies. This was a point made by business users during OIPMI (2023), suggesting that they were restricted by narrow PPOs. For example, a hotel group indicated that it sought to take control of its own destiny by developing its own improved real time online booking site comparable to Booking.com. This was accompanied by largely moving its hotels off the platform and developing its own marketing and distribution strategy where dependency and inflexibility (e.g. due to restrictive pricing conditions) were raised as concerns. Following Booking.com's agreed removal of PPOs in August 2024, several accommodation providers welcomed the newfound flexibility and freedom to

[43] For example, Booking.com's Genius loyalty program may consistently offer the cheapest option thus habituating consumers to the platform where they assume they will find the cheapest option without searching elsewhere. Prior to OIPMI intervention, narrow PPOs were a prerequisite to selling rooms through the Genius loyalty program where rooms were offered at parity to the platform plus additional accommodation funded Genius discounts. This made the OTA the cheapest channel relative to the direct channel which was restricted from selling rooms at a lower price than what it sold on Booking.com.

reimagine strategies in marketing and pricing rooms and invest in their direct booking channels (Schultz, 2024)[44].

In addition to limiting price differentiation and competition, narrow PPOs were noted to impede the development of online and offline loyalty programmes. They also potentially disincentivise the launch of independent flash sales or specific, lower-priced promotions on business user's own sites considering that they must offer the same price on the platform. For example, following the removal of narrow PPOs in South Africa, Tshifhiwa Tshivhengwa, CEO of the Tourism Business Council of SA noted that PPOs *"results in establishments not being able to take advantage of offering a special, or they have to be constantly negotiating with Booking.com, so it does interfere with business in terms of making sure that you have a dynamic pricing that you can adjust according to the demand"* (Luckhoff, 2024).

The removal of narrow PPOs reduces business user dependency on the leading platform and frees them to develop their own distribution mix. In Germany, the removal of PPOs saw accommodations deliberately use their new scope for pricing in a sales mix (Bundeskartellamt, 2020:4) which ultimately granted more flexibility to business users without adversely impacting on OTA usage as a distribution channel. Lastly, the Bundesgerichtshof (2021:30) judged that there is no causal link between narrow PPOs and efficiency gains but rather impedes hotel autonomy by noting that "*by using a narrow price parity clause significantly impedes the hotels' efficient and platform-independent marketing of accommodations.*"

8. The Removal of Booking.com's PPOs in South Africa: Some Observations

For the purposes of this research, I tried to assess the impact that the removal of narrow PPOs had on accommodation providers, price competition and changes in their distribution and sales strategy including investing in their own direct channel. Information was gathered through a questionnaire predominantly qualitative in nature sent to accommodation providers ("ERSA questionnaire")[45]. These questions covered the impact that the removal of narrow PPOs had on marketing and distribution strategies of business users as well as price competition (see Appendix A). Another source of information to complement the assessment was Similarweb, an AI web traffic estimator service which scrapes and estimates web traffic across various online channels, providing an online portal for website analysis and market intelligence services.

The ERSA questionnaire was sent directly to 90 accommodation providers across various accommodation types (e.g. hotels, hotel chains, bed and breakfasts, guesthouses, self-catering, lodges, hostels, etc.) and circulated by the Federated Hospitality Association of Southern Africa ("FEDHASA") to its members[46]. There were 11 responses in total notwithstanding challenges in sending questionnaires directly to accommodation

[44] For example, Wayne Neath of Dream Hotels & Resorts noted that "*the settlement is not just a legal adjustment but a pivotal moment to reimagine how we engage with our guests and promote our properties. It's an invitation to rethink our digital strategies, invest in our direct booking platforms, and leverage this newfound flexibility to offer even more value to our customers.*" Neil Hughes of Providence Hospitality South Africa stated, "*One of the biggest challenges we've faced in our business was to make sure people book directly with us. The ruling now assists us in doing that. Now there's no one dictating how and where we need to price our products*" and Graham Wood of Sun International noted, "*we welcome the news because it allows hotels to regain control of their rate strategy and pricing. If a hotel wants to sell the lowest/best rate possible on their own website, they should be able to do so and this ruling allows it to happen*."

[45] Information was also requested from Booking.com, however a response was not received.

[46] A link to the questionnaire was sent by FEDHASA to its members. It is not clear how many received this link and how many members were also recipients of the questionnaire directly sent to them.

providers[47]. This suggests a response rate of approximately 12% which is considered fairly good[48]. However, this is not to say that the responses fall within the concept of statistically significant nor are they wholly representative of the travel accommodation sector in South Africa. Nonetheless, the responses hold useful insights as to the impact following the removal of Booking.com's PPOs in South Africa, especially narrow PPOs.

Based on their responses[49], accommodation providers have invested in developing their own booking sites with approximately half having a real time payment facility integrated into their booking portal. Many accommodation providers face structural hurdles when competing with established OTAs like Booking.com and still maintain a large degree of dependence on the Booking.com platform to distribute rooms, regardless of PPO status. The challenges identified include the high cost of maintaining proprietary technology and the lack of integrated, real-time payment processing which approximately half of the respondents did not have. This contrasts to the "one-stop-shop" convenience and seamless booking experience that OTAs provide. Further, accommodation providers indicated that they have limited marketing reach relative to OTAs. These challenges accommodation providers face illustrate the need for value-added services that OTAs provide which is unrelated to the implementation of narrow PPOs.

Following the removal of narrow PPOs in August 2024, most of the respondents reported no significant change to their marketing and distribution mix. However, only 3 respondents (27.3%) indicated that they received communications regarding the removal of PPOs[50]. Nonetheless, several accommodation providers have begun price differentiating to cover distribution costs by applying surcharges e.g. [10-15]% over and above their rack rates through various OTA channels, while others are offering discounts or planning 'discount campaigns' on direct bookings. One respondent indicated that it has developed a loyalty program that extends various amenities to guests for direct bookings. Lastly, it was indicated that the removal of PPO obligations has reduced the monitoring burden on accommodation providers to prove to Booking.com that they are not breaching PPOs, including lower prices on other OTAs that they did not approve.

The most compelling feedback suggests intensified price competition between accommodation providers, Booking.com and other OTAs. This competition comes from lower rates offered by rival OTAs like Agoda (which falls within the Booking Holdings group), and discounts sponsored by Booking.com. These platforms have responded by undercutting direct rack rates, sometimes by sacrificing their own commission to ensure they remain the cheapest option. As one respondent put it, "*a double-edged sword is at play, with hotels wanting to undercut Booking.com and vice versa, the ADR may be greatly impacted negatively, driving down potential revenue maximisation for hotels (especially in areas where there is a saturation of properties/ options/ etc.)*". This captures the price competition dynamic, where ultimately hotels have more autonomy but must compete more with platforms on price, pushing hotel prices down in general. These lower prices are invariably good for consumers.

Using Similarweb data, there has been a decline in online traffic to Booking.com while there has been a corresponding increase in traffic to the websites of accommodation providers since the removal of PPOs.

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[47] Several accommodation providers acknowledged receipt but declined to participate in the survey, while with others there was difficulty in establishing the correct contact person and their details (i.e.it is unclear whether the appropriate person received the questionnaire.).

[48] Graglia (no date) of Survey Monkey notes that for online surveys, a "good" survey response rate is between 10% and 30%.

[49] These responses include 5 hotels, 2 guesthouses, 2 lodges, 1 hotel chain, and 1 self-catering accommodation, each having between 1 to over 80 establishments distributing between 10 and 180 rooms.

[50] 7 respondents stated they received no communications regarding the removal of narrow PPOs while 1 respondent was unaware of the pricing restrictions imposed by Booking.com (possibly because the establishment was opened in 2025 after the removal of PPOs).

This was found by assessing June to August year-on-year changes[51] in online traffic to Booking.com and a list of the 45 largest travel accommodation websites in South Africa (by online traffic), covering medium and large accommodation providers[52], to understand online traffic changes that coincide with the removal of PPOs[53]. Online traffic declined by 12% between 2024 and 2025 (June to August) in absolute terms for Booking.com, following a minor decline of 0.9% year-on-year between 2023 and 2024. Similarly, Booking.com's share of Similarweb's 'accommodation and hotels' curated web category declined from 44% in 2023 and 2024 to 38% in 2025 (June to August)[54]. When considering the 'Top 45 hotels', web traffic to their websites increased by 20.4% year-on-year (June to August) between 2024 and 2025. At face value, it appears that the removal of PPOs in South Africa has been associated with a displacement of online traffic from Booking.com to growing traffic for accommodation providers. However, due to limitations in the length and breadth of data available this serves as observational value as one cannot establish statistical significance or causality.

In conclusion, since the removal of PPOs in August 2024, accommodation providers have been and show signs of further developing and innovating their own booking portals with improved features like real time booking to facilitate a seamless booking experience. There are also signs of intensified price competition between accommodation providers, Booking.com and rival OTAs. Increased price competition and corresponding lower prices are consistent with the literature examining the effect following the removal of PPOs delineated in Section 7. It also coincides with a significant reduction in web traffic to Booking.com one year after the removal of PPOs with a corresponding increase in traffic to accommodation providers. Based on the information collected and analysed from Similarweb and the ERSA questionnaire, *prima facie* indications are that removing both narrow and wide PPOs has been good for competition and consumers overall, with the outcome being nuanced for business users facing more price competition. More data and information are needed to make a robust assessment following the removal of PPOs in South Africa.

9. Policy Discussion

The primary purpose of this paper is to weigh in on a broader policy and corresponding regulatory approaches to PPOs utilised in B2C digital markets. It is universally understood that wide PPOs result in anticompetitive outcomes and are considered hardcore restrictions in several jurisdictions. This makes prohibiting wide PPOs an easier decision for policy makers and has already been gazetted in the proposed draft Vertical Restraints Regulations for South Africa. However, the approach to narrow PPOs has been mixed across jurisdictions and the removal of narrow PPOs has only applied to some of the largest online intermediation platforms such as Amazon and Booking.com.

[51] A 3-month period was chosen (June to August) as a "before" i.e. before and when Booking.com agreed to remove PPOs (i.e. in August 2024) and a "after" period (i.e. June to August 2025) to do the year-on-year assessment. It was important to balance coverage with a sufficient transmission period following the agreed removal of PPOs, hence the June to August period was chosen over a longer period.

[52] Many small accommodation providers do not have their own websites with built-in booking facilities and must nonetheless depend on digital platforms to distribute their rooms.

[53] The curated list of the top 45 hotels includes the 45 accommodation providers that received the most online traffic in the periods of assessment. There is high inequality in online traffic to accommodation websites even amongst the largest 45, with the smallest ten of these websites accounting for 15% of the largest website's traffic. With the 45th largest accommodation provider receiving 856 monthly visits, the tail following the top 45 sites is incrementally small in its accretion to and impact on overall accommodation website traffic. Furthermore, as establishment's get smaller, they do not have booking facilities on their sites and become more dependent on platforms to facilitate distribution and bookings. As such the top 45 accommodation providers is a proxy for total online accommodation albeit missing relatively small amounts of traffic at the tail end. Lastly, there are limitations to Similarweb recording data for sites at low levels of traffic (Similarweb, 2026).

[54] One limitation of the Similarweb package is that it does not have data for app engagement. As such it does not capture how much of Booking.com's online web traffic has diffused into app sessions.

The paper makes the case that the application of narrow PPOs by digital platforms with market power is likely to generate anticompetitive adverse effects that outweigh efficiency or procompetitive justifications such as free-riding[55]. Furthermore, narrow PPOs can indirectly facilitate the tipping of a digital platform with market power towards a 'winner-takes-all' outcome where a lack of price competition between the platform and the business user's direct channels reinforces dependence on the platform. Narrow PPOs may be useful for smaller digital platforms with little or no market power to protect their investments and scale without significantly impeding competition. A counterargument and observation[56] though, is that smaller platforms may want to scale through price competition as opposed to the assumed price protection afforded by narrow PPOs. These smaller platforms by their very nature lack the power to enforce narrow PPOs. This raises the question as to why narrow PPOs are needed in the first place.

This paper also assesses the removal of Booking.com's PPOs in South Africa. Consistent with findings in Europe, the removal of both wide and narrow PPOs from Booking.com appears to indicate increased price competition between accommodation providers' own direct channels, Booking.com, and rival OTAs[57]. This has also corresponded with growth in overall online traffic and traffic for travel accommodation providers. If one infers from research on the removal of narrow PPOs in Europe and the responses to the ERSA questionnaire, the removal of PPOs is likely resulting in average price decreases of travel accommodation. In this case the end consumer ultimately benefits from these lower prices and a greater presence of offline and online direct travel accommodation options. This resonates with the aim of competition policy and consumer welfare i.e. lower prices and increased choice.

After considering the above this leaves three possible options from a policy perspective:

- Firstly, one can maintain the status quo and not apply regulations targeted to narrow PPOs. The concern is that any complaint against and *an ex-post* investigation into narrow PPOs as a vertical restriction, most likely assessed under Section 5(1) of the Competition Act (no.89 of 1998), would warrant a rigorous investigation by the competition authority and scrutiny by courts which can be burdensome, resource intensive and take years to finalise. Here the Bundeskartellamt case against Booking.com and the ultimate finalisation of the case by the Bundesgerichtshof is informative. Following the assessment of the OIPMI, regulations pertaining to narrow PPOs in Europe (e.g. VBER), and the research done and knowledge attained by the CCSA, *ex-ante* regulation of narrow PPOs seems to be a sensible option. Also clearly gazetted regulations provide policy certainty for platforms and businesses.
- One *ex-ante* regulatory option would be to exempt narrow PPOs below a threshold platform market share (e.g. 30%) like with the VBER where the threshold value is a proxy for market power, unless a case is brought to the competition authority and an investigation deems that the narrow PPO does not merit exemption[58]. The benefit of this approach is that it reduces the regulatory burden on smaller platforms and competition authorities as exemptions below the threshold do not need to be investigated. The difficulty of this approach is that stakeholders including the platforms themselves may not know what their platform market share is at the outset thus requiring some investigation.

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[55] A digital platform with market power can be argued to be a *de facto* price regulator by applying PPOs in an online market such as travel accommodation where this power can leverage reach to influence pricing decisions of business users that dependent on the platform. In addition to PPOs, Booking.com has used tools such as Focus Finder in their accommodation provider dashboards to prompt price changes depending on how the accommodation provider fares with respects to rivals in their 'competitive set'. The MDPMI did not investigate this further (See OIPMI Final Report, Annexure 2, p. 177).

[56] Based on the observation of intensified price competition by localised OTAs such as MakeMyTrip in India and Despegar.com in Argentina.

[57] Largely based on the qualitative feedback from the ERSA questionnaire.

[58] Here competition authorities would assess the market power and alleged anticompetitive effects of the smaller platform's application of narrow PPOs, balancing this with procompetitive or efficiency evidence.

- Another *ex-ante* option is for the wholesale prohibition of narrow PPOs in B2C digital platforms, where provisions can be made for the application of exemptions wherein the authority must assess whether the platform exhibits market power and the corresponding impact of the narrow PPOs on the intermediation market[59]. This approach is likely to have a chilling effect on the use of narrow PPOs altogether and may deter smaller platforms from applying for exemption even if they may consider it important for their business. For those which do apply, it adds regulatory burden on themselves and the competition authorities assessing their application. Again, the exemption application by smaller platforms still begs the question whether they can enforce narrow PPOs if they do not have the market power to do so.

After considering the regulatory approaches discussed above, on balance, an *ex-ante* approach to regulating narrow PPOs appears to be more appropriate. As established, there is a higher likelihood of anticompetitive harms of narrow PPOs applied by B2C digital platforms with market power outweighing efficiency and pro-competitive justifications. As the *Bundesgerichtshof* noted, narrow PPOs are not necessary for platforms to realise efficiency gains and digital platforms such as Booking.com have continued to grow following their removal. Putting in regulations to prohibit narrow PPOs altogether or above a certain threshold, still provides digital platforms the option to apply for exemption. The onus is thus shifted towards the platform to justify the use of narrow PPOs and the antitrust authority to assess this (ideally factoring in the deliberations of this paper). Other benefits of *ex-ante* regulation are that it provides more policy certainty around the use of PPOs and averts potential harms (e.g. tipping) before they happen which will be harder to rectify *ex-post*. It is the author's view that the choice of which *ex-ante* regulatory approach to follow is ultimately the decision of the regulatory jurisdiction based on priorities and capacity. Prohibiting narrow PPOs altogether may have a chilling effect on their use by smaller platforms for better or for worse and any exemption assessment will put regulatory burden on the platforms and competition authorities. Setting a threshold for narrow PPOs still requires an assessment of platform market shares, exemption assessments for larger platforms and creates scope for platforms with market power but with a platform share below the threshold to use narrow PPOs.

Lastly, consideration must be given to backdoor approaches to implementing wide and narrow PPOs after they have been prohibited. For example, PPOs can be implemented as a precondition to join programs run by a platform, such as loyalty or exclusive programs or price parity can be algorithmically induced. For example, the Spanish competition authority fined Booking.com for algorithmically demoting hotels in search rankings if they offered lower prices on other hotel booking platforms. Similarly, Amazon has been accused in the US and the EU of linking the display of the 'Buy Box' on its marketplace to sellers' adherence to price parity (Hoppner, 2024). Algorithmic attempts by digital platforms to penalise price differentials of the same good or service distributed between various online channels, including the business user's direct channel and rival platforms, should be treated as a breach of *ex-ante* regulations where PPOs have been prohibited.

[59] For example, assessing whether their anticompetitive adverse effects outweigh efficiency or pro-competitive justifications.

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Appendix A: ERSA Questionnaire to Accommodation Providers

The following is a questionnaire sent to travel accommodation providers of various types across South Africa to complete on "Google Forms".

Preamble

The paper relates to the Competition Commission of South Africa's ("CCSA's") remedial order for Booking.com to remove and communicate the removal of both narrow and wide price parity obligations following the commencement of the Online Intermediation Platform Market Inquiry ("OIPMI"): See link here. https://www.compcom.co.za/wp-content/uploads/2024/08/BOOKING-COM-AND-COMPETITION-COMMISSION-REACH-SETTLEMENT-ON-ONLINE-INTERMEDIATION-PLATFORMS-MARKET-INQUIRY-APPEAL-1.pdf

These questions focus mostly on the removal of Booking.com's narrow parity obligations. For context, Booking.com used to prevent hotels and accommodation providers from offering cheaper prices and discounts on their own websites than on the Booking.com platform (i.e. narrow parity obligations). These narrow parity obligations also extended to participation eligibility on Booking.com's Genius loyalty program and Preferred Partner exclusive program. The Competition Commission instructed Booking.com to remove pricing obligations including pricing obligations placed on accommodation providers as preconditions for participating in Booking.com's loyalty and exclusive programs. These orders were finalised in August 2024 and made public. Now hotels can set lower prices on their own direct sites than on the Booking.com platform. The purpose of the research paper is to examine the impact of this change.

Questions

1. What is the name of your business? *[type answer]*

2. What accommodation type is your business? *[select option]*
    a. Hotel Chain
    b. Hotel
    c. Guest House
    d. Bed and Breakfast
    e. Other *[specify]*

3. How many establishments does your business have? *[type answer]*

4. How many rooms does your business sell? [type answer]

5. What are the main online distribution channels through which your business distributes rooms? (select maximum 2 largest online distribution channels)
    a. Direct on own website or online booking portal
    b. Booking.com
    c. Other online travel agencies or platforms (e.g. Lekkeslaap, Airbnb, SafariNow, etc.)
    d. Other *[specify]*

6. Does your business have its own direct online booking portal to book rooms? If yes, is there a real-time payment facility integrated into the booking portal?
    a. No
    b. Yes, but there is no real-time payment facility integrated into the booking portal

c. Yes, there is a real-time payment facility integrated into the booking portal
d. Other *[specify]*

7. What are the challenges with developing your own online accommodation booking portal? How does your business' booking experience compare with Booking.com's online booking experience? *[Answer if applicable, otherwise mark as "N/A" (i.e. not applicable).]*

8. Has your online room booking portal changed since the announcement that narrow price parity obligations be removed in August 2024? *(note: narrow price parity relates to Booking.com requiring your business to price at a rate that is the same or higher on your own booking portal than Booking.com*). *[type answer]*

9. Has your business received communication from Booking.com regarding the removal of narrow price parity obligations? *(This includes the removal of pricing restrictions set as prerequisites to joining Booking.com's Genius loyalty program and Preferred Partner exclusivity program.) [select option]*
    a. No, I've never been aware of pricing restrictions placed on my business by Booking.com
    b. No, I have not received any communication regarding the removal of price parity obligations
    c. Yes, I have received communication regarding the removal of price parity obligations

10. Has the removal of narrow parity price obligations changed how your business prices and discounts rooms on your own direct online booking channel and/or across booking channels? *[type answer]*

11. Has the removal of narrow parity price obligations changed the sales distribution mix of your establishment's rooms? *[type answer]*

12. Has the removal of narrow parity price obligations changed your business' online marketing and sales strategy? *[type answer]*

13. Has the removal of narrow parity price obligations changed how your business promotes its own loyalty program and targets loyalty customers? *[type answer]*

14. Since the removal of price parity obligations, has there been a change in how Booking.com distributes your business' rooms on its platform including discounted rates funded by Booking.com? *[type answer]*

15. Since the removal of price parity obligations, has there been a change in how Booking.com tries to match or beat lower prices advertised on your own direct online booking site for the same room? *[type answer]*

16. Provide any additional feedback on how the removal of narrow price parity obligations impacted your business and its ability to distribute rooms online. (if applicable). *[type answer]*

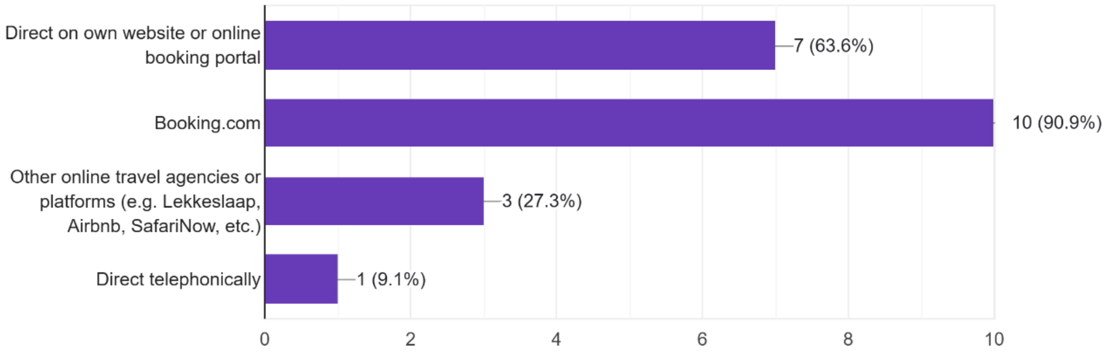
Appendix B: Descriptive Statistics from ERSA Questionnaire Responses

What accommodation type is your business?

11 responses

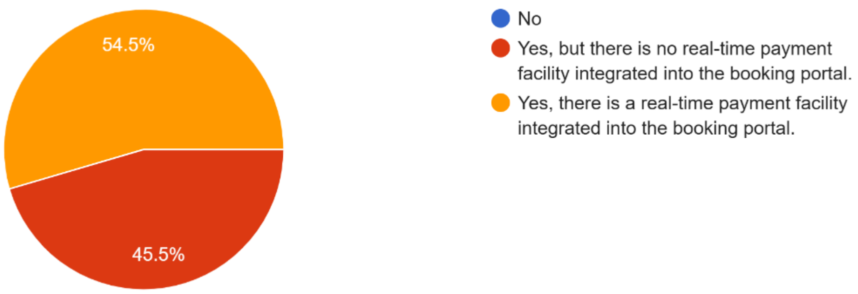
What are the main online distribution channels through which your business distributes rooms? (select maximum 2 largest online distribution channels)

11 responses



Does your business have its own direct online booking portal to book rooms? If yes, is there a real-time payment facility integrated into the booking portal?

11 responses



Has your business received communication from Booking.com regarding the removal of narrow price parity obligations?

11 responses