

July 15, 2019

The Honorable David Cicilline
Chairman
House Judiciary Subcommittee on Antitrust,
Commercial, and Administrative Law
United States House of Representatives
2233 Rayburn House Office Building
Washington, DC 20515

The Honorable F. James Sensenbrenner
Ranking Member
House Judiciary Subcommittee on
Antitrust, Commercial, and Administrative Law
United States House of Representatives
2233 Rayburn House Office Building
Washington, DC 20515

The Honorable Jerrold Nadler
Chairman
House Judiciary Committee
United States House of Representatives
2131 Rayburn House Office Building
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
House Judiciary Committee on
United States House of Representatives
1504 Longworth House Office Building
Washington, DC 20515

Dear Chairman Cicilline, Ranking Member Sensenbrenner, Chairman Nadler, and Ranking Member Collins:

Thank you for your continuing attention to digital platforms and competition. The Subcommittee's July 16 hearing on "Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship," presents an important opportunity to examine how platforms impose onerous, anticompetitive terms on companies that provide goods and services to consumers and use other practices that reduce price competition and quality. AHLA appreciates that the Committee is taking a close look at these practices.

The hotel industry and millions of U.S. consumers have gained first-hand experience with platforms' anticompetitive practices through their dealings with online travel agencies ("OTAs"), which allow consumers to search for hotel rooms, compare rates, and make reservations.

The OTA marketplace is highly consolidated. Approximately half of all online hotel bookings in the United States occur through OTAs. In 2018, two companies (Booking Holdings and Expedia) accounted for 92% of all OTA bookings – the result of past consolidations. The large proportion of bookings handled by OTAs means that hotels of all sizes – from small, independent owners to large chains – have no choice but to do business with OTAs.

OTAs' high commissions are a clear sign of their ability to exclude competition. OTAs earn revenue primarily by charging hotels a commission on each room booked through their platforms, which are typically around 25 percent or higher. Despite these high commissions, there has been no serious, sustained effort by a new entrant in the OTA marketplace.

One way that OTAs exclude competition and maintain their ability to charge high prices is by imposing so-called "most-favored nation" (MFN) clauses on hotels. These terms prohibit hotels (and

other companies that offer hotel room booking services) from offering to consumers room rates that are lower than the OTAs offer. OTA-imposed MFNs make it too costly for hotels to allow a new rival to offer a lower rate, because hotels would have to offer the same rate to incumbent OTAs.

OTAs have developed other measures to stifle competition and charge high commissions to hotels. For instance, as one recent study documented, OTAs have punished hotels that sought lower commissions by demoting the hotels' position in search results – a practice known as “search bias.”¹ In addition, OTAs have degraded the quality of such hotels' search listings by making the listings more difficult to read and removing photos.

Ultimately, consumers pay for OTAs' exclusionary practices. They pay higher prices for hotel room because MFNs soften competition between established OTAs and discourage new entrants. They pay as users of online booking services that have seen little evidence of innovation, quality, or efficiency improvements in recent years. And they pay as some hotels are forced to cut back on investments in their properties to cover the high costs of OTA-based distribution.

OTAs' practices clearly illustrate how platforms in a highly concentrated market can harm competition and consumers. As the Committee continues its inquiry, AHLA encourages you to examine closely how platforms that purport to expand consumer choice and convenience may use their market position to prevent price competition and reduce the quality of services offered to consumers.

We respectfully request that you include this letter in the July 16 hearing record. AHLA thanks you for your attention to these issues.

Sincerely,

Brian Crawford
Executive Vice President
American Hotel & Lodging Association

cc: Members of the House Judiciary Committee

¹ See Benjamin Edelman, *Impact of OTA Bias and Consolidation on Consumers* 4 (July 12, 2017), available at <http://www.benedelman.org/publications/ota-bias-12jul2017.pdf>.