



# The Competitive Effects of Parity Clauses on Online Commerce

OECD Hearing on “Across Platform Parity Agreements”

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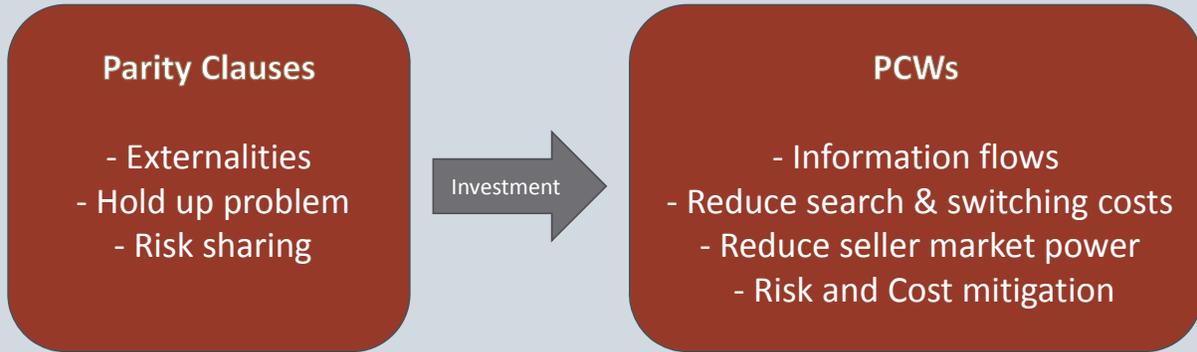
## Agenda

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- Economic rationale.
- Categorisation
- Wide vis-à-vis narrow parity.
- The adequate level of intervention.

## Economic rationale

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## Competitive analysis

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- Balancing exercise
- Safeguard incentives to invest in demand enhancing features.
- Safeguard competition.
  
- Multiple variations of parity.
- Spectrum of effects – context dependant.

## Narrow / Wide

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A *narrow parity* clause links the price and terms quoted on an online platform, to those available directly on the upstream supplier's website, ensuring that the former will not be less attractive than the latter.

A *wide parity* clause provides for similar protection on a wider scale, aiming to ensure that the price and terms quoted through the platform in question will not be higher than the price available directly on the upstream supplier's website *or* on any other platform.

## Distribution model

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*Wholesale model* - the agreement governs the price at which the upstream supplier will sell to the online platform (helps ensure the platform's competitive cost structure).

*Agency model* - the upstream supplier sets the final price and the platform receives a commission. The platform does not purchase the product.

*Hybrid model* (example: *merchant model*) - may includes a fixed mark-up on the wholesale price.

## Wide (Agency)

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### Possible harmful effects:

- Excessive intermediation
  - Limits on low cost entry to the downstream market
  - Price uniformity
  - Limits on innovation and investment.
- *The Bundeskartellamt HRS decision.*

## Narrow (Agency)

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- ❖ *Increase in commission may result in a competitive disadvantage.*
- ❖ *Lower price, better services → lower commission.*
- ❖ *Facilitates entry.*

### Possible harmful effects:

- Network effects and competition on commissions
  - Reduction in vertical competition.
- *Booking.com commitment decisions.\**

\* Slaughter and May acts for Booking.com

## The adequate level of intervention

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### Competition Agency

- Fact oriented effects based analysis.
- The Bundeskartellamt wide reading of the *HRS* judgment (Düsseldorf Higher Regional Court).

### State Intervention

- Competition law is one of several policies promoted by the state.
  - Political agenda, social agenda, protection of local businesses...
- *The risk of an industry (selective) absolute ban –*  
*Externalities are not costless, even when endorsed by the State.*

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*Working paper available online:*

A Ezrachi, 'The Competitive Effects of Parity Clauses on Online Commerce' [2015] SSRN -

<http://ssrn.com/abstract=2672541>