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Rate parity clauses should continue to bind hotels

Booking.com flouts warning of the German Competition Authority (Bundeskartellamt)

Today Booking.com announced via press release, that the Amsterdam-based company will continue to force its German hotel partners not to offer lower prices on the hotel website than on the online portal. Booking.com will thereby apply the recently issued self-commitments on the use of MFN clauses with the antitrust authorities in Sweden, France and Italy also in Germany.

„With this procedure Booking.com flagrantly violates the warning given on April 2, 2015 by the German Competition Authority that has assessed the commitments offered by Booking.com as clearly insufficient. Likewise, with this approach Booking.com ignores relevant case-law of the Higher Regional Court of Dusseldorf ", criticized Markus Luthe, CEO of the German Hotel Association (IHA).

“As the dominant market player, Booking.com tries to use the crowbar to reach advantageous arrangements for them at the expense of the hospitality industry and ignores case law and antitrust decisions. We are very confident that the Bundeskartellamt will not accept and tolerate such Wild West methods”, Luthe explains. The recent announcement of Booking.com is legally considered of no relevancy to hotels in Germany and is thus solely used to generate uncertainty and confusion among domestic as well as foreign partner hotels.”

The commitments of Booking.com propose to no longer demand the best price clause in relation to other OTAs. Booking.com is also willing to give up the parity on availability and conditions with respect to other portals.

The online sales channels of the hotels though should still remain subject to the parity clauses disabling the hotelier to offer better terms on his own website than on Booking.com. The hotel should not even be allowed to inform guests on the hotel website on lower prices on other direct booking channels.

“The German and the European hotel industry refuse to accept such restrictions on their entrepreneurial freedom to market prices and conditions. The hotel industry is not willing to accept that the leading online booking portal is restricting their choice of communication channels to media of the 20th century such as telephone, fax or carrier pigeon”, Luthe points out the paradox of action. "Rather, we are still of the clear opinion that any kind of parity clauses is fundamentally anti-competitive and has to be prohibited.”

The adopted self-commitments of Booking.com by the competition authorities in France, Italy and Sweden are also not yet final. In addition the Commercial Court in Paris declared on May 7, 2015 the best price clauses of Expedia void; also a case against the parity clauses of Booking.com is still pending in front of the French Commercial Court. “It does not look like as if the commitments that are now unilaterally be extended by Booking.com also to Germany, will have a long date of minimum durability”, Luthe is confident.

About the German Hotel Association (IHA)

The German Hotel Association (IHA) is the national trade association for the hotel industry in Germany. IHA represent more than 1.400 hotels in Germany ranging from all categories of individual hotels, chain hotels and hotel cooperations. The primary role is to lobby government across Germany and in Europe, representing the views of the hotel industry and promoting and protecting the interests of all operators in the industry. IHA also provides members with a wide range of services designed to keep them informed of industry issues, help grow their business and save them money and time.