

December 23, 2015

Successful complaint by IHA:

German Competition Authority (Bundeskartellamt) prohibits Booking.com from using any kind of parity clauses

In its recent decision the German Competition Authority prohibits Booking.com from using narrow parity clauses, only introduced in July 2015, in its Terms and Conditions and other agreements. The German and European market leader among the online booking portals is therefore no longer allowed to apply both wide and narrow parity clauses against its hotel partners in Germany. Otherwise Booking.com would be committing an administrative offense that could be punished by fines of up to hundreds of millions. Booking.com was sentenced to remove the offending clauses from its Terms and Conditions and Preferred Partner agreements.

“We extraordinarily welcome the consistent and comprehensive intervention by the Bundeskartellamt. Today's decision fully confirms our legal opinion that even modified MFN clauses represent a clear and blatant restraint of competition and are incompatible with applicable antitrust law discriminating hoteliers and consumers alike”, commented Markus Luthe, CEO of the German Hotel Association (IHA). The IHA had initiated the investigations with an appropriate appeal against the booking platform in autumn 2013.

Already on March 30, 2015 the Bundeskartellamt informed Booking.com of its competition concerns regarding the continued use of 'best price' clauses in its contracts with hotels in Germany. This measure became necessary after the hotel booking portal had continuously adhered to use its 'best price' clauses despite the Bundeskartellamt's confirmation of the infringement decision by the Düsseldorf Higher Regional Court in the parallel proceedings against HRS.

Following pressure from numerous competition authorities all over Europe, Booking.com finally offered to slightly loosen the MFN clauses in its Terms and Conditions. The commitments proposed by Booking.com allowed for best price clauses not to be demanded from other OTAs. Booking.com also allegedly abandoned the parity on availability and conditions with respect to other portals. The hotel's own online distribution channel, however, should still remain subject to the parity clauses disabling the hotelier to offer better terms on his own website than on Booking.com. That way the hotel could not even have informed its guests on lower prices on 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 options of communication channels to media of the 20th century such as telephone, fax or mail.

“We are relieved that the Bundeskartellamt, unlike the competition authorities in France, Italy or Sweden, with today’s decision rejected the commitments offered by Booking.com as entirely inadequate. With this decision the end of the parity regime should now be ushered in Germany for all portals. This is an important step for the hotel industry towards regaining entrepreneurial freedom and it will ensure fair competition in terms of online distribution which is increasingly gaining in importance”, commented Markus Luthe.

For the future the German Hotel Association (IHA) recommends to the consumers even more than already today to scroll down in the lists of search result on booking portals in order to find the best offers or to generally check with the hotel’s own website.

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.