

GERMAN HOTELIERS DEMAND COMPENSATION FROM A BOOKING PORTAL



The German Hotel Association (IHA) supports a class-action lawsuit brought by around 2,000 hotels against Booking.com at the Berlin Regional Court.

The association justifies its commitment to help hoteliers to their rights in court. Since 2004 at the latest, the booking portal has applied best-price clauses with which it prohibited affiliated hotels from offering rooms at lower rates through any other distribution channel. With these clauses, Booking.com shielded its business model against any competition in violation of antitrust law, which ultimately allowed the company to collect booking commissions of up to 50% of the room rate from hoteliers.

Settlement Negotiations Failed

Hoteliers were overcharged and harmed by the best price clauses. The German Hotel Association is now supporting around 2,000 hotels that have joined its "daBeisein" initiative to enforce their claim for compensation in court.

"After several months of settlement negotiations that were actually constructive, Booking.com surprisingly left the negotiating table at the end of October last year and arbitrarily sued 66 hotels participating in the initiative in a Dutch court in Amsterdam for 'negative determination of its liability.' This left the remaining 2,000 hotels with no other option than to now file a class action suit themselves with the Berlin Regional Court," Otto Lindner, as IHA Chairman, explains the procedure.

In 2013, the Federal Cartel Office had initiated antitrust proceedings against Booking.com following a complaint by the German Hotel Association due to the use of best price clauses in violation of antitrust law. After both the Federal Cartel Office and the Düsseldorf Higher Regional Court left no doubt in the parallel case of HRS that the best price clauses were incompatible with German and European antitrust law, the booking portal ultimately removed the best price clauses from its terms and conditions in Germany in 2015.

Portal Profited from Its Practice for Many Years

"At this point in time, Booking.com had already applied the best price clauses for more than 10 years and thereby massively restricted the competition between the hotel booking portals and the direct sales of the hotels. This not only brought the commission competition between the booking portals to a virtual standstill, but also considerably impeded the sales of hotels via their own homepages, which were currently being developed. Under the regime of the best price clauses, the booking commissions have not only been able to maintain themselves at an excessive level since 2004, but have also increased significantly over the years," points out Markus Luthe, General Manager of the German Hotel Association.

"We now want to enforce the hotels' claim for compensation under the principles of German and European antitrust law against Booking before the competent courts in Berlin and Amsterdam."

Since the enforcement of the demands on their own would be associated with prohibitive costs and risks for many hotels, the hotel association has bundled the interests and ensured through agreements with renowned litigation financiers that the hotels can get through the legal disputes without costs or cost risks, the IHA holds.

Statement from Booking.com

The company Booking.com naturally sees the facts in a completely different light. The position of the booking portal is quite vague: "We expressly disagree with the allegations made by the IHA, and although we were prepared to engage in an open and constructive dialogue, the IHA has insisted on inappropriate as well as unfounded allegations without showing any willingness to adequately discuss the factual or legal reasons for its concerns.

The parity clauses challenged by the IHA not only ensure that we can provide all of the value and services we provide to our partners. They are also known to all of our partners who choose or have chosen to list on Booking.com. As a result, we refer customers from all over the world to our partners. At a much lower price than it would cost them to advertise their own accommodations to generate the same business.

Especially in these unprecedented times, which continue to have an immense impact on the entire travel industry - including Booking.com and our lodging partners - we should all remain focused and more committed than ever to rebuilding our industry together. We all have a stake in avoiding unnecessary and costly litigation and focusing our efforts on rebuilding the travel industry."

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