

SEVERE BLOW FOR BOOKING.COM BUSINESS MODEL IN GERMANY



In the future, in Germany, contract hotels will be allowed to offer overnight stays at lower prices than those listed on Booking.com.

Heavy blow for Booking.com: The world's largest portal for hotel accommodation **may no longer prohibit its contract partners from offering rooms at a lower price than stated on the platform.** This was decided on May 18 by the German Federal Court of Justice in Karlsruhe. "The judges saw this practice as incompatible with German and international antitrust law," a spokesman for the Dehoga hotel association said after the ruling was announced. Cartel Office chief Andreas Mundt, who was among the plaintiffs, welcomed the ruling.

For years, hotel associations with the support of the German Federal Cartel Office have been suing against the alleged superiority of online hotel portals. Hoteliers report that Booking.com, HRS and Expedia in particular ruthlessly dictate their contract conditions to mostly medium-sized accommodation providers. A study by the University of Applied Sciences of Western Switzerland in Valais found that only a quarter of all European overnight accommodation establishments still feel they are treated fairly by the portals.

For example, hostels are forced to participate in discount campaigns or to grant guests generous cancellation conditions. In addition, there are agency commissions, which often amount to between 15 and 25 percent of the accommodation price, while the hoteliers themselves usually only have a margin of between three and five percent.

The industry achieved its first court victory in 2015 against the Cologne-based hotel broker HRS. At that time, the Düsseldorf Higher Regional Court prohibited the long-established booking rival from always demanding the lowest rates from its hotel partners.

However, the dispute was only about the so-called "wide best price clauses", with which HRS was prohibited from offering lower prices on competitor portals. The controversy over the "narrow best price clauses" however continued. With them, the portals could prohibit their hotel partners from undercutting the online hotel rates listed with them with their own price lists, for example, at the reception desk.

This prohibition practice had also been banned by the Bonn Cartel Office in 2015, but then failed after a complaint by Booking at the Higher Regional Court. Booking's "narrow rate parity clauses" were necessary and proportionate, ruled the lower court of the BGH to the surprise of the competition guardians. The Düsseldorf court referred to the danger of free riders who use Booking in hotel searches in order to book cheaper at the hotel itself.

Although the best price clauses impaired competition, the Düsseldorf Higher Regional Court believed at the time, they were necessary for the Booking.com business model and were not covered by the ban on cartels.

Because the head of the Cartel Office, Mundt, appealed, a contrary decision has now been reached at the Federal Court of Justice. The business model of Booking.com - and thus also of similar hotel portals - is now likely to be affected accordingly.

Although Booking, according to its own statement, suspended the best price clause in 2015 in order to avoid claims for damages from hoteliers, **the dependence of hotels on the booking portals continued to grow**. Hotel groups such as Accor ("Ibis", "Mercure") are now struggling to counter this with expensive customer loyalty programs such as "Accor Live Limitless (ALL)" or "Hilton Honors". While almost 64 percent of all overnight stays in Germany were booked directly with the hotel in 2013, the share fell to 58.5 percent by the end of 2019, according to a study by the University of Applied Sciences of Western Switzerland.

Online booking platforms, on the other hand, were able to expand their share from 20.9 to 29.6 percent during this period. The three main players Booking, Expedia and HRS came to a combined market share of 92 percent in the European market of online booking portals, with Booking dominating with a share of 68.4 percent in Europe and 66.6 percent in Germany.

Date: 2021-05-24

Article link:

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