

Duff on Hospitality Law

OTA & Travel Distribution Update: French authorities to examine travel platforms' pricing practices; tour operators' cooperation may result in lower fines; Trivago under Australian anti-trust scrutiny for misleading advertising

By Greg Duff on 12.14.18 | Posted in OTA Update

Is it just my generally biased view of online travel platforms or are regulators finally taking a hard look at the sometimes questionable practices of these channels? Enjoy.

French Authorities to Examine Travel Platforms' Pricing Practices

("Hotel platforms may face French antitrust probe for excessive pricing, de Silva says," MLex, December 5, 2018) (subscription required)

In a statement last week, the head of the French Competition Authority announced that online travel platforms operating in France, like Booking.com, could soon face antitrust scrutiny over the allegedly excessive prices charged hotels for displaying their rooms. While these types of cases are relatively rare, there has been a recent revival of excessive pricing investigations in several European Union countries. Should this investigation go forward, it will be interesting to note whether the French Competition Authority believes that Booking.com (or other online platforms) enjoys such market dominance that it is able to demand excessive prices.

Tour Operators' Cooperation May Result in Lower Fines

("Tour operators seen assisting EU hotel-pricing probe to win lower fines," MLex, December 3, 2018) (subscription required)

According to a story published last week by mlex (see attached), tour operators Thomas Cook, TUI, Kuoni and Rewe are the subject of an European Commission anti-trust probe focused on the operators' contracting practices that allegedly required hotelier Melia Hotels to set pricing on the basis of consumers' nationality or country of residence. Similar claims (which are unique to the European Union) have been successfully pursued against electronic goods retailers.

According to the story, at least a few of the operators are now cooperating with EU regulators in the hope of reducing the possible multi-million dollar fines.

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Trivago Under Australian Anti-Trust Scrutiny for Misleading Advertising

("Trivago Faces Multimillion Dollar Fine for Misleading Advertising in Australia," Skift Travel News, December 3, 2018)

A travel aggregator or metasearch site that offers users impartial and objective search results based solely on room rate. Does such a site really exist? This and other similar claims by Expedia Group owned Trivago have been the subject of court proceedings initiated by the Australian Competition and Consumer Commission (ACCC) in August of this year. According to the ACCC, Trivago prioritizes search results on the advertising fees paid to Trivago (with those advertisers willing to pay the highest cost per click featured at the top), not on room rates as Trivago claims. Although Trivago initially denied the ACCC's accusations (and similar accusations of misleading consumers through the use of strike through pricing), Trivago has now apparently admitted to the wrongdoing. The ACCC's claims are now scheduled for trial later this month. Is an examination of Expedia's Accelerator Program or Booking.com's Genius Program next? What type of consumer disclosures might be sufficient to avoid this kind of enforcement activity? Answers to these questions may be forthcoming as the proceeding continues.

For those of you interested in understanding better the nature of Trivago's recent claims against several leading hotel companies (and why those claims likely don't stand a chance of prevailing), I'd encourage you to look at the series of [six articles](#) we featured earlier this year on hoteliers' and search engines' keyword practices. If you have questions about this recently filed litigation or the claims involved, we would be happy to speak with you further.

Other news:

Booking a Hotel, Why Not Try Parasailing? Travel Sites Push Experiences

Wall Street Journal, December 6, 2018

Booking companies and hoteliers are trying to sell travelers more online than just a place to stay, an airline ticket or a car rental. These web-based firms also want customers to purchase experiences such as parasailing excursions, food tours and aquarium adventures. The amount spent by travelers on tours, attractions, events and activities while traveling has swelled 21% since 2014 to \$159 billion, and companies like TripAdvisor Inc., Expedia Group Inc. and Booking Holdings Inc. are trying to get customers to buy more...

Travel Site Sues Hilton, Marriott, Others Over Search Scheme

Law360 - Hospitality, December 6, 2018 (subscription required)

Online travel agent TravelPass Group LLC hit leading hotel chains including Hilton, Marriott and Hyatt with a suit in Texas federal court on Thursday, accusing them of agreeing not to compete...