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Judgment of the Court in Case C-264/23 | Booking.com and Booking.com (Deutschland)

Online accommodation reservation platforms: price parity clauses cannot, in principle, be classified as ‘ancillary restraints’ for the purposes of EU competition law

Booking.com, a company incorporated under Netherlands law with its registered office in Amsterdam (Netherlands), offers a worldwide online intermediation service for the reservation of accommodation. Hotel establishments pay a commission to Booking.com for any reservation made by travellers through the platform. While establishments may use alternative sales channels, they are prohibited from offering overnight stays at prices lower than those offered on Booking.com. Initially, that prohibition applied both to the offer on hoteliers’ own sales channels and to the offer on sales channels operated by third parties (a clause known as a ‘wide parity’ clause). Since 2015, a limited version of that clause prohibits only the offer of overnight stays at a lower price through hoteliers’ own sales channels.

The German courts, without having referred questions to the Court, held that the price parity clauses (narrow or wide) used by hotel reservation platforms were contrary to inter alia EU competition law. The German Federal Cartel Office had already reached the same conclusion.

Hearing an action brought by Booking.com seeking, inter alia, a declaration that the parity clauses employed by that company were valid, the District Court, Amsterdam, decided to refer questions to the Court of Justice for a preliminary ruling concerning the compatibility of price parity clauses, both narrow and wide, in the light of the EU competition rules.

In its judgment, the Court emphasises that the provision of online hotel reservation services by platforms such as Booking.com has had a neutral, or even positive, effect on competition. Those services enable consumers, on the one hand, to have access to a wide range of accommodation offers and to compare those offers simply and quickly according to various criteria and accommodation providers, on the other hand, to acquire greater visibility.

However, it has not been established that price parity clauses, whether wide or narrow, first, are objectively necessary for the implementation of that main operation and, second, are proportionate to the objective pursued by it.

In that regard, so far as concerns wide parity clauses, it must be stated that such clauses, in addition to the fact that they are liable to reduce competition between the various hotel reservation platforms, carry the risk of ousting small platforms and new entrants.

The same is true of narrow parity clauses. Although those give rise, prima facie, to a less restrictive effect on competition and are intended to address the risk of free-riding, they do not appear to be objectively necessary to ensure the economic viability of the hotel reservation platform.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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