

BOOKING.COM MUST EXCLUDE BEST PRICE CLAUSES IN EUROPE



Booking.com must now remove best price clauses in its hotel contracts in the European Economic Area, as mandated by the Digital Markets Act (DMA). As a designated gatekeeper under the DMA, Booking.com has informed its hotel partners in Europe about the removal of rate parity clauses in its contracts. This action complies with Article 5(3) of the DMA, which prohibits platforms designated as gatekeepers from preventing their commercial users from offering their services or products on more favorable terms through other intermediary platforms or their own online sales channels. This legislation aims to decrease the reliance of smaller providers on dominant platforms in the European Union.

Booking.com has been officially designated as a gatekeeper by the European Commission. The company has six months until mid-November 2024 to adjust its business practices to meet the Digital Markets Act (DMA) requirements. **It's important to note that failure to comply with these regulations could lead to significant financial penalties**, with fines of up to ten percent of the company's global annual turnover and up to 20 percent for repeat violations. This underscores the seriousness of the situation and the need for prompt action.

Best price clauses, which have been illegal in Germany since a landmark decision by the Federal Cartel Office in 2015 and confirmed by the Federal Court of Justice in 2021, have been controversial in other EU member states. Until recently, these contractual terms were commonly used in countries such as Ireland, Poland, Sweden, Spain, etc. However, the legal landscape is changing, and all parties must be aware of these developments.

Legislation at the highest European level is developing in parallel with implementing the DMA obligations. Since mid-2020, many European hotels and Booking.com have been in dispute. The hotels seek damages for violating EU competition law due to Booking.com's use of best price clauses. The proceedings were suspended in spring 2023 to submit two questions to the ECJ. One of the questions is whether the best price clauses are necessary ancillary contractual agreements in the contractual relationship between Booking.com and the hotels.

Booking.com claimed that the clauses were necessary to prevent "untrustworthy" hotel behavior, such as "free riding." However, the Federal Court of Justice rejected these arguments in 2021, declaring the clauses anti-competitive and emphasizing Booking.com's large market share in hotel booking portals. In his final submissions on June 6, Advocate General Collins essentially confirmed this position and **stated that the clauses are unlikely to be essential to the purpose of the contract and could, therefore, violate EU competition law**. A final decision by the ECJ is expected in a few months.

By withdrawing best price clauses across Europe before the end of the implementation period, November 12, 2024, Booking.com may want to forestall further negative headlines about its longstanding unfair business practices.

Date: 2024-06-24

Article link: <https://www.tourism-review.com/bookingcom-to-end-best-price-clauses-news14509>