

Duff on Hospitality Law

## **OTA & Travel Distribution Update: Sabre's previously announced acquisition runs into regulatory trouble; enforceability of Booking.com's venue clause to be reviewed by EU's highest court; EU's platform-to-business rules to take effect**

By Greg Duff on 4.26.19 | Posted in OTA Update

This week's Update features a number of stories on important developments in the EU. Enjoy.

### **Sabre's Previously Announced Acquisition Runs Into Regulatory Trouble**

*("Sabre's Farelogix purchase draws 'killer acquisition' questions from UK watchdog," MLex Insight, April 19, 2019) (subscription required)*

Several months ago, we featured a [story](#) detailing the evolution of the airline distribution industry and in particular, the growing rivalry between legacy (read: old) global distribution systems (like Sabre) and airlines they serve over airlines' attempts to bypass the global distribution systems through the use of emerging technologies (like the new distribution capability (NDC) offered through Farelogix). In a somewhat ironic move, Sabre announced plans in November of last year to acquire Farelogix for \$360 million. The US Department of Justice and now the UK's Competition and Markets Authority (and possibly other EU regulators) have begun to ask questions about the proposed deal and its potentially stifling effects on competition within the distribution industry (aka "killer acquisition"). There are many potential lessons to be learned here for the distribution industry generally, which is why we will continue to feature stories updating the status of Sabre's efforts.

### **Enforceability of Booking.com's Venue Clause To Be Reviewed by EU's Highest Court**

*("Booking.com's contracts with German hotel come under EU court review," MLex Insight, April 17, 2019) (subscription required)*

Germany's Supreme Court has asked the EU's highest court to review the enforceability of a distribution contract's venue selection clause (as we all know, requiring that disputes be heard exclusively in courts in the Netherlands) where a party to the contract (in this case, a German hotelier) claims that the party has abused in market dominant position. The hotelier, which has been pursuing Booking.com for years under claims that Booking.com's contract terms and

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practices are abusive, seeks to invalidate the contract's venue clause because the hotelier had no choice but to agree to its terms. Germany's Supreme Court has now referred the case to the EU's highest court asking the court to consider whether the venue selection clause should be enforced.

**EU's Platform-to-Business Rules To Take Effect**

*("EU unfair practices digital rules put spotlight on Google, Amazon, Facebook," Reuters Technology, April 17, 2019)*

On Wednesday, the European Parliament approved the EU Commission's Platform-to-Business Rules, which target 7000 online marketplaces, app stores and price comparison tools. Google Search, Apple's App Store, Amazon Marketplace, eBay, Instagram and travel meta search site, Skyscanner, are just a few of the companies effected. The Rules, which, among things, prohibit certain trade practices and require the creation of internal systems to respond to consumer complaints, are the result of a cooperative effort between regulators and members of the effected technology industry. Future Updates will look closer at these new Rules (which are expected to take effect later this year) and their likely effects on the travel distribution industry.

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Other news:

**New Research: The Evolution of Online Hotel Distribution in Europe**

*Skift Travel News, April 19, 2019* If there is one constant in the world of European hotel distribution, it's that hotel owners need to be willing to constantly tweak their strategy and stay flexible when selecting the booking channels and strategies they use to maximize results. That's the key takeaway from a new report titled "The Evolution of Online Distribution in Europe," out today from D-EDGE, a new hospitality brand created by the merger of Availpro and Fastbooking.

**Diller's Expedia Group buys Liberty Expedia in deal to simplify corporate structure**

*Crain's New York Business News Feed, April 17, 2019*

Expedia Group Inc. agreed to acquire Liberty Expedia Holdings in an all-stock deal that will simplify the online travel company's ownership model and boost its value. "This transaction marks an important milestone in the evolution of Expedia Group," said Mark Okerstrom, CEO of Expedia Group. "It represents a strong benefit to our shareholders—simplifying and improving our corporate and governance structure and effecting a meaningful reduction in our share count."