

Duff on Hospitality Law

## Year In Review: Roundup of 2023 "Online Travel Update" Blog Posts

By Greg Duff on 12.30.23 | Posted in Online Travel Update

Happy New Year! We are once again providing a roundup of some of the major developments and trends in the online travel industry that caught our attention this past year. Wishing everyone a successful 2024.

- Greg Duff

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### January 11, 2023

**OTAs' Loyalty Ambitions Continue to Evolve.** *PhocusWire* featured this past week an interesting story on the evolving loyalty ambitions of the major distribution platforms – Expedia, Booking.com, Hopper and Airbnb (interesting to note that Agoda/Priceline, Trip.com or other large platforms did not make the cut). Highlights from the article include (1) Expedia's upcoming rollout of its new combined loyalty program, One Key, which will reward members with both upfront immediate discounts as well as loyalty program accruals that can be used for future bookings (including VRBO), (2) the anticipated cooperation among Booking.com's existing loyalty program (Genius), its Rewards & Wallet program and its new payments platform to provide members both upfront discounts (up to 20% now and maybe larger in the future) and loyalty program accruals and (3) Hooper's and Airbnb's alternative approach to building brand loyalty via gamification (Hopper) and alternative service programs (Airbnb's Aircover) without a traditional membership program.

**The Future of Booking.com's Payments Platform?** The recent comments of Booking Holdings' CFO, David Goulden, which were featured last week in Dennis Schaal's weekly Online Travel Briefing for *Skift*, sent minor tremors through the hotel industry. In his comments, Goulden blamed the slowing growth of Booking.com (in the years leading up to the pandemic) on its over reliance on the agency model (i.e., hotel collect model). Now, with Booking.com's rollout of its payments platform (and its new merchant role), things may be changing at Booking.com. According to Gould, the payments platform will allow Booking.com to better merchandise its products and services through various newly available "levers." More specifically, with regard to hotel rates, Gould noted that "we [Booking.com] relied entirely upon

what we got from our property partners to give us great rate because its still primarily what we do, but we couldn't participate in those more targeting pricing promotional activities, and now we can." What should suppliers anticipate for 2023? Rate discounts? Instant credits or rebates? Armed with recent (favorable) changes and clarifications in EU competition law, Booking.com is well poised to take advantage of any or all of these opportunities.

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### February 3, 2023

**Biden Calls for Legislation Limiting Unfair Fees.** Add ticket agency fees (thank you Taylor Swift) to the growing list of "unfair" fees being targeted by the Biden Administration. In comments at last week's meeting of the White House Competition Council, the President called on Congress to pass legislation (the Junk Fee Prevention Act) limiting fees in several industries, including an outright ban on "surprise resort and destination fees." The likelihood of any substantive legislation coming out of Congress – particularly given the strong business interests that will likely line up to oppose any such legislation and the general divisive (dysfunctional) nature of Congress – is very low. While federal legislation may be a remote possibility, the same headwinds may not hinder similar efforts at the federal regulatory level (FTC) or individual state level. This week's news of possible federal legislation on the issue comes as several clients are hearing rumblings or actually receiving written notice of increased efforts to reign in resort fees at the state level.

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### March 31, 2023

**American Airlines Forces Adoption of NDC.** What better way to get travel agents to embrace your new preferred connectivity solution than limiting certain (preferred) content to only that solution? On April 3, American Airlines moves forward with its controversial plan to make certain content available only through NDC connections. While agents may still view these preferred fares via their legacy GDS connections, agents will be forced to use an NDC connection to make the booking.

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### May 19, 2023

**Following Its Settlement with Marriott, Texas AG Targets Hyatt.** With a settlement in hand with Marriott, the Texas Attorney General is now targeting other national hotel brands and operators with claims that their rate and resort fee practices violate Texas consumer protection laws. In announcing the settlement, Texas Attorney General Ken Paxton stated, "Marriott is now taking proactive steps to promote price transparency. In contrast, other major hotel chains have defended their deceptive practices, and they will be facing the full force of the law for their actions." Apparently, Hyatt is next on the Texas AG's list as the AG's office filed suit on Monday against Hyatt.

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### August 11, 2023

**Texas Attorney General Files Suit Against Booking Holdings.** “Duped” “Misled” and “Deceived” - All three words appear in the Texas AG’s recently filed complaint against Booking Holdings to describe Booking’s offending conduct. Similar to previous complaints filed against Hyatt and Hilton, this latest complaint targets Booking’s failure to include mandatory fees in the rates displayed on its websites. Even when the fees are finally disclosed at checkout, the small font and inconspicuous placement of the disclosures make them unlikely to be seen. According to the complaint, Booking further misleads consumers by grouping mandatory fees together with taxes in a single line item “Taxes and Fees” at checkout. The complaint not only highlights the effects of Booking’s practices on Texas consumers, but also on Booking’s “honest competitors” that are put at a competitive disadvantage by appropriately including mandatory fees in their displayed prices (the complaint points to recent settlements with Marriott and Omni and Marriott’s total price displays). We will continue to monitor and report on this case as it moves forward.

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### September 8, 2023

**AI Trip Planners Are Everywhere.** While we all have read stories detailing the major booking platforms’ adoption of generative AI for trip planning (some of those stories have been featured in our weekly Update), smaller AI powered niche planners are now popping up everywhere. This past week, *Skift* featured three new planners – Troupe (short term rentals), GenixGPT (“hidden gems”) and JetAI (private plane charters). What’s obvious is that not all of these planners will make it - fall out is inevitable. What will be interesting to watch is how many, if any, will be acquired by the major booking platforms.

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### September 29, 2023

**EU Commission Officially Vetoes Booking’s Purchase of eTraveli.** The long awaited decision by the EU Commission regarding Booking Holdings’ proposed purchase of eTraveli finally arrived. In short, the Commission believed that the acquisition would have further cemented Booking’s already dominant market position (60% market share) in hotel distribution in the EU. With an enhanced flight offering (identified by the Commission as a major acquisition channel for prospective hotel guests), Booking would have been in a position to expand its travel ecosystem and thereby drive even more traffic to its platform (ultimately resulting in higher costs for hoteliers and consumers). In rendering its decision, the Commission considered and ultimately rejected Booking’s proposed compromise – a so-called “carousel” whereby a Kayak powered menu of competing hotel offers from other OTAs would have been shown upon checkout by flight customers. According to the Commission, the fact that the carousel would have been powered by a Booking Holdings company led to questions of transparency and possible discrimination. As we have noted in prior Updates, Booking has publicly criticized the EU’s decisions (as late as last week at the Skift Global Form) and has vowed to fight the

Commission's decision. More to come . . .

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### October 6, 2023

**Hopper's Latest: Clicks, Job Cuts and New Termination.** Hopper continued to garner much of the industry's attention this past week as the war of words between Hopper and Expedia continued (it was all about clicks and screens), Hopper announced significant job cuts and according to reports today (Sunday), Hopper announced the termination of another larger supplier (Booking.com). As for the expressed concerns of Expedia CEO Peter Kern regarding the numbers of clicks or screens required to complete a booking on Hopper (and the resulting likelihood of customer confusion), we too noted similar concerns when recently reviewing the Hopper mobile app and booking process for one of our clients. If you've never spent much time on the Hopper app, you should. It is a vastly different experience. Job cuts at Hopper were reported this past week by Canadian news publications – the cuts result in the loss of roughly a third of Hopper's total work force (250 employees). According to a Hopper spokesperson, the cuts were part of Hopper's overall effort to boost its business (a/k/a reduce expenses and turn a profit) and focus on direct supplier connections. Finally, reports issued this morning by *Skift* suggest that Hopper may have terminated its supplier agreement with Booking.com. Look for more news on this latest change at Hopper in next week's Update.

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### October 13, 2023

**California Prohibits Hidden Fees.** As we [reported](#) a few weeks ago, California governor Gavin Newsom had options when considering how best to address so-called junk fees. Of the two options awaiting signature – one focused on the hospitality industry and the other drafted more broadly to apply to any industry that features advertised or displayed pricing - the governor chose the broader option. Effective July 1, 2024, the newly signed legislation prohibits the display of a price that does not include all mandatory fees and charges (excluding shipping charges and government imposed charges). Note that the legislation does not require that the total price be the most prominently displayed – like other standards. Under the California legislation, all advertised prices must reflect the “total” price. The legislation applies equally to suppliers and their OTA counterparts and will require “total” pricing both for hotels located in California (regardless of whom might see the listing) and for hotels located outside California whose listings will be shown to California residents.