

CNMC fines Booking.com 413.24 million for abusing its dominant position over the last 5 years

By better positioning hotels with more bookings on Booking.com, it has prevented other online agencies from entering the market or expanding.

Madrid, 06 August 2024. The *Comisión Nacional de Mercados y Competencia* (CNMC) has fined Booking.com 413,240,000 euros for abusing its dominant position and infringing Articles 2 of Law 15/2007, of 3 July, on the Defence of Competition and 102 of the Treaty on the Functioning of the European Union. This is the highest fine that the CNMC has imposed so far and, in addition, it is accompanied by several behavioural obligations to ensure that neither the conduct that gave rise to the infringements, nor any other conduct that may have an equivalent effect, continues in the future.

The company - which acts as an online travel agency that intermediates between hotels and customers, allowing them to compare prices and make bookings - has committed two abuses of its dominant position from at least 1 January 2009 to the present day: Imposing several unfair trading conditions on hotels in Spain that use Booking's intermediation services, and restricting competition from other online travel agencies that offer the same services.

Unfair commercial conditions imposed by Booking on hotels located in Spain:

- ✓ **A pricing clause** that prevents hotels from offering their rooms on their own websites below the price they offer on Booking.com, while Booking.com reserves the right to unilaterally lower the price that hotels offer through Booking's website or app.
- ✓ **Several clauses** whereby only the English version of Booking.com's General Terms and Conditions (GTC) is legally binding; the law applicable to the GTC is the law of the Netherlands; and the courts of Amsterdam have jurisdiction in the event of a dispute between the parties.
- ✓ **Lack of transparency** in reporting on the impact and profitability of subscribing to the Preferred, Preferred Plus and Genius programmes. These programmes allow hotels to improve their ranking in Booking.com's predetermined results ranking, in exchange for a higher commission or discounts on the best-selling or cheapest room the hotel has on Booking.com.

Abuse of exclusionary dominance by restricting the competence of other competing online travel agencies:

- ✓ **The use of a hotel's total number of bookings through Booking.com as a positioning criterion in Booking.com's default results list.** This incentivises hotels to concentrate their online bookings solely through Booking.com, preventing other competitors from entering or expanding in the market.
- ✓ **The use, as a criterion for accessing and remaining in the Preferred and Preferred Plus programmes, of a performance requirement based primarily on the profitability of each hotel for Booking.com.** This encourages hotels wishing to enter or remain in these programmes to follow a pricing and availability policy based on concentrating their sales on Booking, to the detriment of other competing agencies.

Consequences of these practices:

- ✓ **Unfair trading conditions** prevent hotels from offering cheaper prices for their rooms on their own websites. In case of disputes over General Terms and Conditions (GTC), they cannot go to Spanish courts and have to use Dutch law, which leads to unfair litigation costs.
- ✓ **Lack of transparency** prevents hotels from making informed decisions on whether or not to subscribe to the Preferente, Preferente Plus and Genius programmes, which are very relevant for hotels located in Spain.
- ✓ **The total use of hotel bookings** on Booking, as a criterion for positioning in Booking.com's predetermined results ranking, and the use of a performance requirement - profitability of each hotel for Booking - to access or remain in Preferred and Preferred Plus, restrict competition from other online travel agencies and result in hotels not being able to access better commercial conditions in the provision of online booking intermediation services.

Source of information: [CNMC](#)