

NEW STRICT REGULATION ON BEST PRICE CLAUSES

As of 01 January 2017 amendments of the Austrian Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb, UWG*) and of the Price Labelling Act (*Preisauszeichnungsgesetz*) come into force, which ban Best Price Clauses as "aggressive business practices" and declaring such contractual provisions as void. This legislative change is a reaction to concerns also raised by authorities in other countries across the EU (eg decision of the German Federal Cartel Office dated 23 December 2015). In France similar provisions are already in place.

AGGRESSIVE PER SE

The new number 32 of the Annex to the UWG – the so-called "Black List" – prevents a booking platform operator from demanding that a provider of accommodation shall not offer a cheaper price or other better conditions on other distribution channels - including its own website - than are offered on the booking platform. Such a business practice is deemed aggressive *per se*; Hence, no further review of the significance of the violation is required.

CONTRACTUAL CLAUSES NULL AND VOID

Additionally, the amended Section 7 of the Price Labelling Act *inter alia* states that prices shall be determined freely by the hospitality company and shall not be restricted by booking platform operators by using price fixing or best price clauses. Such clauses in contracts between a hospitality company and a booking platform operator are null and void.

RETROACTIVE EFFECT

The important aspect of this amendment is that the changes become retroactively effective. This means they are applicable also to existing contracts and terms and conditions. Hence, the hospitality companies' obligations with respect to such clauses cease automatically without a contractual amendment of any party.

CONSEQUENCES AND ACTION ITEMS

As of the beginning of 2017 booking platform operators cannot invoke such contractual provisions anymore, even if they are part of an ongoing contractual relationship. Nevertheless, such agreements and the booking platform's terms and conditions must be revised accordingly. In case of non-compliance not only contractual partners but also competitors, and advocacy groups may bring claims for preliminary injunction, cease and desist, removal, damages and publication of judgment.

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