

# Collective damage action by European hotels against Booking.com



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## Hotels across Europe are invited to join the HOTREC-supported initiative of a collective damage action against Booking.com

With its judgment of 19 September 2024, the European Court of Justice (ECJ) confirmed that the parity clauses used by Booking.com violated European competition law. The judgment is firm and produces legally binding effect in all EU Member States (and quasi-binding effect for EEA countries and Switzerland).

As a basic principle of European law and according to the unambiguous jurisprudence of the ECJ and the EFTA Court, hotels located in Europe have a claim for damages against Booking.com.

European hotels have suffered significant financial damages as a consequence of the parity clauses, namely in the form of artificially inflated commission rates paid to Booking.com and distortions of the hotels' direct sales channels. HOTREC jointly with national hotel associations across Europe supports an initiative to collectively enforce damage claims against Booking.com and obtain full compensation for all European hotels affected by the illegal behaviour.

### Background

Booking.com introduced the wide parity clauses across Europe in 2004. Under the regime of these wide parity clauses hotels in Europe were prevented from offering lower rates or better conditions on any other distribution channel than on the Booking.com platform.

After the intervention of several European competition authorities, in July 2015 Booking.com reduced the scope of the parity clauses from "wide" to "narrow". Since then, hotel partners were in principle allowed to offer lower rates or better conditions on other Online Travel Agencies (OTAs). They were, however, still prevented from offering lower rates or better conditions on their own direct (online) distribution channels.

On 22 December 2015 the German Federal Cartel Office (FCO) found that the narrow parity clauses were in violation of European competition law and issued a prohibition decision against Booking.com. According to the FCO's findings, the narrow parity clauses restrict (price) competition between the OTAs, undermine the hotels' direct sales channels, produce foreclosure effects, and thereby foster the increasing market concentration in the OTA market. The FCO's decision of 22 December 2015 was fully upheld by the German Federal Supreme Court (BGH) in a ruling of 18 May 2021. And finally, with its judgment of 19 September 2024, also the ECJ has decided that the wide and narrow parity clauses as used by Booking.com violated EU competition law. Both, ECJ and BGH, clarified in their

respective judgments that the parity clauses do not qualify for an exemption under article 101(3) TFEU, given that they are not objectively necessary and therefore excessive.

Booking.com only eliminated all parity clauses from its general terms and conditions (GDTs) from 2 December 2024, in compliance with the Digital Markets Act.

## **Damages claims of hotels against Booking.com**

The European Courts have repeatedly confirmed that infringements of European competition law, namely articles 101(1) and 102 TFEU, give rise to corresponding cartel damages claims. Already back in 1973, the ECJ held that the EU competition rules “create direct rights in respect of the individuals concerned which the national courts must safeguard” (Case C-127/73, BRT v SABAM). In later rulings, such as Courage and Crehan (Case C-453/99) or Manfredi (C 295/04 to C 298/04), the ECJ laid the foundation for the right of any individual, citizen or business, to claim full compensation for the harm caused to them by an infringement of the EU competition rules. Hence, the hotels’ damage claims against Booking.com originate directly from European primary law, irrespective of whether or not the national civil law regimes in the EU/EEA Member States would explicitly recognize/regulate such cartel damages claims. By participating in the collective action hotels will also comply with potential corporate obligations not to forego justified and valuable claims.

## **Damages quantification**

The hotels’ damage claims against Booking.com comprise *damnum emergens* (financial losses) and *lucrum cessans* (lost profits).

The wide and narrow parity clauses had the effect of appreciably restricting competition to the detriment of hotels. In the first place, the parity clauses eliminated price competition between the OTAs, which resulted in artificially inflated commission levels. Secondly, the parity clauses hampered the hotels’ – far less expensive – direct distribution channels. And thirdly, the parity clauses impeded the market entry of new OTAs and forced smaller OTAs out of the market, hence provoking a continuous oligopolization of the OTA market.

Hence, the hotels’ damages resulting from the application of the anti-competitive parity clauses by Booking.com are multi-dimensional and their quantification is generally complex. However, it follows from economic reports produced by Booking.com itself in previous proceedings to which this initiative has access, that without the parity clauses the commissions would likely have dropped below 5%. Against this backdrop, it is fair to assume that the hotels have been overcharged by Booking.com by at least 30%. This is the approximate amount that hotels will likely be able to claim plus legal interests.

## Forum

Actions for damages can be brought before the national courts in the country where the hotels are located, but also at the seat of Booking.com BV in the Netherlands (Art. 4 (1) and 7 (2) Reg. (EU) 1215/2012).

In the case at hand, it seems advantageous to bring legal action against Booking.com in the Netherlands for the following 3 main reasons:

- By suing Booking.com at its seat in the Netherlands the hotels avoid any discussion on international jurisdiction.
- It is possible to bundle the claims of all European hotels in one single forum, which not only results in significant synergies of scale and scope, but also exposes Booking to significant financial liability.
- The Amsterdam District Court is probably the most experienced court in Europe in the field of collective antitrust damage actions. It is already familiar with the matter and handles the proceeding in the parallel (still pending) litigation between German hotels and Booking.com very competently and smoothly. There is no reason to doubt that the court will deal with any subsequent action for damages the same way.

## Collective enforcement of claims on a pan-European level

For the purposes of bundling and jointly enforcing the damages claims of hotels in Europe, the foundation “Hotel Claims Alliance” under Dutch law (so-called “Stichting”) has been set up. Delegates from hotels and hotel associations have been appointed to the Stichting’s Advisory Board, ensuring that the hotels’ interests are at all times adequately represented.

The Stichting will enter into bilateral agreements with the participating hotels. Under these agreements the hotels will assign their damage claims to the Stichting, so that the Stichting will be able to enforce the bundled claims in its own name and at its own risk in one collective action. This has the advantage for the hotels that they are not a party to the proceedings and do not have to litigate directly against Booking.com.

The Stichting will first try to achieve an amicable settlement with Booking.com in order to save time and money for everybody. However, should such amicable settlement not be possible, then the Stichting will bring a legal action against Booking.com before the Amsterdam District Court. In this case, a first instance judgment could be expected within 2 years.



The entire process will be financed by an experienced and solvent litigation funder who will fund all necessary costs and expenses (court fees, lawyers' fees, economists, etc.) and who would also assume the adverse costs risk in case the litigation was unsuccessful. The participating hotels will neither have to make any cost contributions, nor assume any risks/liabilities. In case of success, the funder will receive a refund of twice the litigation costs plus a quota litis of 30%. Details are set forth in the agreement that the participating hotels sign with the Stichting.

## Team

The Stichting will be able to rely on a team of the most renown experts in the field of competition actions in Europe in general and in relation to the anticompetitive effects of parity clauses in particular. Following highly specialized lawyers, competition economists and service providers will secure the cutting-edge enforcement of the claims of hotels on a pan-European basis:

**Dr Volker Soye** (partner SGP Schneider Geiwitz & Partner, Germany)

Volker is partner for competition law and competition litigation with more than 25 years of experience. Volker has advised clients in all areas of EU and national competition law. Volker successfully represented the German Hotel Association in the investigation of Booking.com by the German Federal Cartel Office, including the appeal proceedings before the Higher Regional Court of Düsseldorf and the Federal Court of Justice. Volker also leads the team of lawyers representing thousands of hotels in damage actions against Booking.com in Germany and the Netherlands where he has achieved the landmark judgment of the European Court of Justice against Booking.com of 19 September 2024.

**Theodoor Verheij** and **Bas Lem** (partners Brande & Verheij, Netherlands)

Theodoor and Bas are partners with the litigation boutique Brande & Verheij. They specialize in high-profile litigation, both in regular courts and before arbitral tribunals. The practice of Brande & Verheij has a strong focus on collective redress and complex commercial litigation. The recent experience of Theodoor and Bas includes the two largest competition damages actions in the Netherlands (air cargo and trucks). Both are in particular familiar with collective pan-European damage actions based on the assignment model.

**Prof Maarten Pieter Schinkel** (University of Amsterdam)

Maarten Pieter Schinkel is full professor for competition economics and regulation at the University of Amsterdam. He is one of the most renown economic experts with a vast experience in competition damage actions in Europe and the Netherlands. He has written and published extensively about the effects of anticompetitive conduct, including the use of price parity clauses.

### **Ulrich Laitenberger** (University of Tilburg)

Ulrich Laitenberger is Associate Professor in Information Management at Tilburg University. Ulrich conducts empirical research at the intersection of economics and information systems, including digital markets and platforms as well as effects of price parity clauses.

### **CDC Cartel Damage Claims** (Brussels)

**Dr Till Schreiber** and **Dr Christian Classen** of CDC are responsible for the overall case management and strategic oversight. Since more than 20 years CDC is the pioneer and leader in antitrust damage recovery in Europe. To date, CDC has claimed over two billion euros in antitrust damages for European companies and has been successful in 100% of the cases pursued. CDC can count on a team of experienced economists, data scientists and lawyers on which the initiative can draw on a need-to-basis.

## **Participation and Next Steps**

Participation in the collective action against Booking.com is open to all European hotels which were listed on the Booking.com platform between 2004 and 2024. There exist no further eligibility criteria in terms of hotel size or location.

Joining is easy and does not take much time. Just **register on the website [www.mybookingclaim.com](http://www.mybookingclaim.com)** and our onboarding team will get in touch with you and closely guide you through the entire process. It is important to register via this exact website in order to benefit from the unique advantages of the initiative supported by HOTREC. Other initiatives that market their services online and in media do not have the support of HOTREC and the relevant national hotel associations. They also cannot build on the team which has already successfully represented the interests of hotels before the European Court of Justice as well as national competition authorities.

The deadline for participation is the **31 July 2025**.