

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

- These practices have affected hotels located in Spain and other online travel agencies that compete with the platform.
- Its terms and conditions create an inequitable imbalance in the commercial relationship with hotels located in Spain.
- By better positioning hotels with more bookings on Booking.com, other online agencies have been prevented from entering the market or expanding.

Madrid, 30th July 2024 - The CNMC has fined Booking.com €413,240,000 for abusing its dominant position and breaching articles 2 of Act 15/2007, of 3 July, on the Defence of Competition (LDC) and 102 of the Treaty on the Functioning of the European Union (TFEU) ([S/0005/21](#)).

The company has committed **two instances of abuse** of its dominant position from at least 1 January 2019 to date by **imposing a number of unfair trading conditions on hotels** located in Spain that use its booking intermediary services and **restricting competition from other online travel agencies (OTAs)** offering the same services.

Booking.com

Booking.com operates as an online travel agency. It uses its website as an intermediary service between hotels, which market their rooms, and customers, who search for a hotel, compare prices and make their bookings.

It charges a commission to the hotel calculated on the amount of the bookings made through Booking.com and has a hotel inventory, which is provided directly by the hotels under General Delivery Terms (GDT) that the hotels have to subscribe to with Booking.com. Adherence to them is mandatory to be listed on the Booking.com website and application. Other agencies, such as eDreams or Lastminute, have hotel inventories provided by other travel agencies or, in the case of Logitravel, by wholesale suppliers.

Market share and complaints

Booking.com's market share in Spain¹ has fluctuated during the period under investigation between 70 and 90%.

In 2021, the Spanish Association of Hotel Managers and the Madrid Hotel Business Association reported the company for abusing its dominant position. In October 2022, the CNMC initiated disciplinary proceedings ([press release](#)), whose investigation has established that Booking.com committed the following anti-competitive practices:

Abuse of an exploitative dominant position

By imposing various **unfair commercial conditions** on hotels located in Spain; specifically:

- **A pricing clause** that prevents them from offering their rooms on their own websites below the price they offer on Booking.com², while Booking.com reserves the right to unilaterally lower the price that hotels offer through Booking's website or application.
- **Several clauses** whereby (i) only the English version of Booking.com's General Delivery Terms (GDT) is legally binding, (ii) the law governing the GDT is that of the Netherlands and (iii) the courts of Amsterdam have jurisdiction in the event of a dispute between the parties.
- **Insufficient transparency in the information** on the impact and cost-effectiveness of subscribing to the Preferred, Preferred Plus and Genius programmes. These schemes allow participating hotels to improve their positioning in Booking.com's predetermined ranking of results, in exchange for a higher commission or discounts on the best-selling or cheapest room the hotel has on Booking.com.

¹ In the market of online travel agencies' supply of online booking intermediation services to hotels.

² This clause is known as narrow price parity.

Abuse of an exclusionary dominant position

By restricting competition from **other competing online travel agencies** using the following methods:

- **Using the total number of bookings** of a hotel through Booking.com as a criterion in Booking.com's default ranking results. This encourages hotels to consolidate their online bookings only through Booking.com, preventing competitors from entering or expanding in the market.
- **Using** a performance requirement based primarily on each hotel's profitability for Booking.com **as a criterion for entry and permanence in the Preferred and Preferred Plus schemes**. This encourages hotels that want to enter or remain in the programmes to follow a pricing and availability policy that leads them to consolidate their sales on the platform, to the detriment of other competing agencies.

Impact of the conduct

The unfair trading conditions prevent hotels from offering cheaper prices for their rooms on their own websites, while Booking.com reserves the right to lower the room price published by the hotel on Booking.com. They cannot turn to the Spanish courts in case of disputes over General Delivery Terms (GDT) and have to use Dutch law, which leads to unequal litigation costs.

The lack of transparency prevents them from making informed decisions on whether or not to subscribe to the Preferred, Preferred Plus and Genius schemes, which are very relevant for hotels located in Spain.

The total use of hotel bookings on Booking, as a criterion in Booking.com's predetermined ranking of results, and **the use of a performance criterion** (profitability of each hotel for Booking) to access or remain in Preferred and Preferred Plus programmes, restrict competition from other online travel agencies and result in hotels not being able to access better trading conditions when providing online booking intermediary services.

Penalties and obligations

The CNMC has ordered Booking.com to pay **two fines of €206,620,000** for each of the single and continuous infringements of abuse of a dominant position: (i) imposing a series of unfair trading conditions on hotels located in Spain and (ii) restricting competition from other online travel agencies when offering online booking intermediary services to hotels located in Spain, respectively. The **total fine is €413,240,000**.

Furthermore, it requires it to comply with **various obligations** to ensure that neither the conduct which gave rise to the infringements, nor any other conduct which may have an equivalent effect, is continued in the future.

An administrative appeal may be lodged directly with the Spanish National High Court against this decision within two months from the day following its notification.

Related content:

- [\(S/0005/21\)](#)
- [Press release](#) (17/10/2022); The CNMC launches disciplinary proceedings against Booking.com for possible anti-competitive practices affecting hotels and online travel agencies