

August 27, 2012

Honorable Jon Leibowitz
Chairman, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Leibowitz:

For several years many hotels and resorts have employed unfair and deceptive pricing practices harmful to consumers with respect to their advertisements and information that they supply to the global distribution systems (GDSs) and online travel agencies (OTAs). Unfortunately, the hotel industry has embraced these anti-consumer practices. As advocates for individual travelers as well as large corporate buyers of travel services, petitioners request that the FTC consider taking appropriate enforcement action.

The Drip Pricing Deception

“Drip Pricing,” as the FTC knows well from its leadership on the issue, is a deception scheme whereby a supplier carves out a portion of its true price; labels that portion as a mandatory extra fee or charge; deducts it from the true price; and features the artificially reduced remainder of the true price in advertising, online postings and price information supplied to GDSs and OTAs. In some cases suppliers add the separated fees before a consumer makes a final purchase commitment. In other cases suppliers wait to spring the mandatory fee on consumers only after they arrive at the hotel or resort. Consumers who arrange accommodations through opaque sites such as Hotwire or Priceline are warned about “possible fees” but are not informed of the amounts prior to making a nonrefundable purchase.

The most common artificially carved-out hotel fees are labeled as “resort,” “housekeeping,” and “Internet access;” however, there are others. And with offending hotels and resorts, those fees are mandatory whether or not a consumer actually uses the specific services identified as covered by the fee. The consumer travel press has reported on this anti-consumer practice - sometimes indicating that unhappy guests can jawbone a hotel into deducting the onerous fees from a bill - but increasingly reporting that hotels stonewall guests on these fees.

A related deception is failure to include VAT in featured and posted prices for European hotels in US travel purchase channels. In Europe, hotels are required to include VAT as part of all posted prices; however, some hotels post pre-VAT prices on their US websites and through GDSs and OTAs.

Who is Harmed

Mandatory artificial “fees” and hidden VAT can make a hotel’s posted rate appear to be below the true price by as much as \$30 a night – more than enough to drive consumer choices in the travel marketplace. This widespread drip pricing damages several important stakeholders in the marketplace for overnight accommodations:

- Consumers and corporate travel managers find it difficult to determine the true cost of a stay in advance and to make accurate price comparisons among competitive hotel/resort options.
- Over time drip pricing can reduce the intensity of competition resulting in higher average prices paid.
- OTAs are unable to provide accurate side-by-side price comparisons, and they are therefore often unable to present true final prices, even at the time of consumer purchase commitment. Instead, they are reduced to issuing vague “you may be subject to additional fees and charges” disclaimers.
- State and local taxing authorities are deprived of revenue because they collect taxes on only the carved-out partial price rather than the true full price.
- OTAs and other travel agencies are deprived of a portion of earned commissions for the same reason.
- Hotels that display rates in an honest manner suffer in supposedly side-by-side price displays when competitors display artificially low rates. As a result, some suppliers feel pressure and reluctantly adopt the drip-pricing model in order to appear competitive.

In fact, it's hard to see how drip-pricing deception benefits anybody other than the suppliers that practice it.

Precedents For Government Action

Government agencies have taken prior actions specifically to outlaw drip pricing in several different arenas:

Airlines. Following the sudden rise in fuel prices, many airlines started carving out a portion of a true airfare by labeling it a “fuel surcharge” and excluding that amount from their price promotions and displays. Fortunately for consumers, the US Department of Transportation quickly took decisive action to outlaw such false price advertising. DoT now requires that airlines include all applicable non-optional fees and taxes in its price displays, including those they collect in behalf of governmental taxing authorities.

Cruise Lines. In 1997, the Florida State Attorney General's office entered into agreements with six large cruise lines to stop drip pricing. From the news release:

Butterworth accused the lines of charging consumers more for so-called "port charges" than necessary to cover actual dockage costs and keeping the difference. Port charges as defined by the cruise lines can equal nearly 30 percent of the price of the cruise itself.

"Port charges should only reflect the fees cruise ships actually pay for use of port facilities and services," Butterworth said. "The companies have

included such things in port charges as their own operating expenses for fuel, fresh water and wages.

The consumer winds up paying the cruise line more than the advertised price of the cruise, and that is inherently deceptive."

Under the agreements, the cruise lines can no longer charge customers any fees in addition to the advertised initial ticket price except those fees actually passed on by the company to a governmental agency.

Florida's action had an additional beneficial outcome for consumers: Because Florida is such an important part of the cruise market, big cruise lines voluntarily decided to refrain from drip pricing anywhere.

Tour operators. In the 1980s, the FTC took action against a Boston-based tour operator – International Weekends – that was using drip pricing promotions. Because of this supplier's large market share, many competitors in the Eastern US implemented the same practice. Once International Weekends stopped its unfair and deceptive practices, other tour operators quickly reverted to honest price advertising.

Remedy

An obvious remedy would be a requirement to prohibit drip pricing by hotels and resorts. Specifically, such firms should be required to include any mandatory fees and charges in the base prices they post anywhere – in print, on their own websites, and in GDS and OTA postings. This requirement should apply to all hotels and resorts based in the U.S. and to foreign-based hotels that distribute in the US.

As the Florida State Attorney General noted about drip pricing, the practice "is inherently deceptive." The challenge is to find and implement the right policies to protect consumers from it.

Sincerely,

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