

CASE CARD | 20 July 2026

Wikingerhof v Booking.com (KZR 51/22)

Abuse of dominance

1. CASE SUMMARY

A. Summary of facts

The operator of a hotel sued the online booking platform Booking.com over several of its business practices.

First, Booking.com displayed discount advertisements such as “today, get x% off”, which were based on price comparisons with other booking dates rather than on an actual reduction of the usual price.

Second, Booking.com withheld essential customer contact details (including email addresses and mobile phone numbers) from hotels, instead channelling all communication through its own so-called ‘alias’ system.

Third, Booking.com offered a so-called ‘Ranking Booster’, allowing hotels to improve their search ranking in return for paying commissions exceeding the standard rate of 15%, in some cases reaching 30-50%.

The plaintiff alleged that these practices constituted an abuse of a dominant position and acts of unfair competition.

B. Notes on case history

The case follows the European Court of Justice’s (‘ECJ’) preliminary ruling in *Wikingerhof I* on international jurisdiction. In the present proceedings, the German Bundesgerichtshof issued a final ruling on the misleading advertising claims, while remanding the antitrust claims to the Schleswig Higher Regional Court for further factual assessment.

C. Legal analysis

The Federal Court of Justice (‘FCJ’) confirmed that the discount advertisements were misleading within the meaning of Section 5(2) of the German Unfair Competition Act (‘UCA’). According to the FCJ, consumers expect a reduction compared to the normal or previous price, rather than a mere comparison with prices on other dates.

Importantly, the FCJ held that the voluntary commitments made by Booking.com towards the European Commission and national consumer protection authorities did not eliminate the ‘risk of recurrence’ under German law. As a result, the conditions for a cease-and-desist injunction remained fulfilled.

With regard to the withholding of customer data, the FCJ clarified that, for a claim under Section 33 of the Act

against Restraints of Competition ('ARC'), it is sufficient that the conduct is objectively capable of hindering competition. The systematic withholding of guest data was considered capable of restricting hotels in the development of direct customer relationships.

As to the 'Ranking Booster', the FCJ held that such a scheme may constitute an abuse of dominance under Section 19(2) No. 2 ARC. An abuse can already arise where a dominant undertaking makes a serious offer of such conditions, irrespective of whether the counterparty actually accepts them. The FCJ further confirmed that both cost-based analyses and market comparisons are appropriate methods for assessing whether such commissions are abusive.

2. QUOTES

"Under Section 5(2) No. 2 UCA, a commercial practice is misleading if it contains false information or other information likely to mislead consumers as to the reason for the sale, such as the existence of a special price advantage." (free translation)

"The Court of Appeal erred in law in finding that, in the present case, the risk of repetition had exceptionally ceased to exist even in the absence of a cease-and-desist declaration subject to a penalty, on the ground that the defendant had undertaken, with effect from 16 June 2020, to cease the infringement vis-à-vis the CPC network. As a matter of principle, a mere commitment by the infringer to refrain from future infringements is not sufficient to eliminate the risk of repetition." (free translation)

3. RELEVANT LEGISLATION

- Section 19(1), (2) No. 1, No. 2 ARC
- Section 33(1), (3) ARC
- Section 5(2) No. 2 UCA
- Regulation 2017/2394

4. PRACTICAL SIGNIFICANCE

The judgment confirms that commitments given at EU or administrative level do not bar private enforcement actions before German civil courts. In addition, it significantly lowers the evidentiary threshold for claimants by

confirming that it suffices to show that a practice is objectively capable of restricting competition, without the need to demonstrate concrete anticompetitive effects.