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Case brings hidden OTA practices to light

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Spending an afternoon reading 67 pages of legalese usually isn't my idea of a good time. But as I researched findings this week from a court case that could have a major impact on how hotel rooms are sold—The City of San Antonio v. Hotels.com—I found myself deeply interested.

Online travel agencies—usually considered the enemy by sources I speak with and the losers in this particular court case—to me are an important part of the hotel industry's recovery. Marketing materials from the likes of Expedia, Kayak, Priceline and Hotwire certainly drive profit margins for those respective companies, but they also pique consumers' interest in travel and new destinations. Commercials entice people to try new things, including vacations and hotel stays.

- [Read "Ruling could spell end of OTA merchant model."](#)

But as the OTAs came under fire in this lawsuit, executives from the companies offered some rather intriguing responses, and Judge Orlando Garcia didn't hold back in dishing commentary in his findings of fact. Executives from both hotel companies and travel agencies contradicted themselves—to the point where it was almost comical. And in deposed statements, executives from a number of third-party intermediaries shed light on certain parts of their business that have been hidden from their partners—including hoteliers—for a long time. In fact, so many revelations came to light that the OTAs named in the lawsuit filed a motion afterward asking the court to "place the conclusions under seal."

- [Read the full Findings of Fact and Conclusions of Law.](#)

"For example, the court disclosed the method and manner that Hotels.com calculated its service fee—a fact that is subject to defendants' pending motion to redact the trial transcript," the advisory reads.

Messages left with the defendants' attorneys were not returned and the status of that advisory is unclear. As of Tuesday afternoon, the filings were still available on Pacer, a national index for U.S. district, bankruptcy and appellate courts.

Of the 300 findings of fact, here are 15 highlights that stood out. All quotes are written by Judge Garcia but attributed to depositions from witnesses in the case.

- "The OTCs attempt to maintain rate parity on the rate of the room itself, but not on the total retail price paid by the consumer."
- "Only the OTCs calculate and collect hotel occupancy tax on the wholesale rate rather than the rate paid by the consumer. To the city's knowledge, no other entities have attempted to do this."

- One defendant testified that Travelocity “easily doubles its revenue under the merchant model.”
- One defendant testified that “the profitability under the merchant model is approximately 18% to 22%, compared with 8.93% under the agency model.”
- “Apparently there was a period of time in the early years (prior to 2000) when Hotels.com calculated and collected hotel occupancy tax on the retail rate, rather than the wholesale rate—which is what the cities are seeking herein.”
- “For six years, Travelocity’s variable surcharge was calculated by taking the markup amount and multiplying it by the tax rate, resulting in the same amount that the cities content should have been paid in taxes. In November 2008, the variable surcharge was dissolved and the fixed service fees went from 2.61% to 5.5%.”
- “InterContinental Hotels Group, a major hotel supplier, has requested that the OTCs unbundle service fees and taxes to promote transparency with the consumer. ... Expedia and Hotels.com strongly objected to unbundling service fees and taxes and refused to do business with [IHG](#) for several years.”
- One defendant testified that Priceline “simply increased the service fee when they wanted to increase gross profit or revenue.”
- “There was a short period of time, for the first several months in 2001, when Hotwire calculated occupancy tax on the retail rate as opposed to the wholesale rate. The formula that Hotwire used to calculate its variable service fee during that time period is the same formula used to calculate tax on the margin—the damages being sought herein.”
- “The tax issue being litigated ‘would basically go away’ with an alternative model, but they chose to stay with the merchant model in dispute, which results in more revenue for the OTCs.”
- “Before legal issues about occupancy tax arose, the OTCs openly admitted they were collecting hotel occupancy taxes and simply called the tax what it is—a ‘tax.’ Now the OTCs do not want to admit that they collect taxes and they call the tax collected from consumers a ‘tax recovery charge.’” A former Hotwire employee testified that he doesn’t know what a hotel tax recovery charge is.
- One defendant testified that Site59.com collects a tax as part of its sales of hotel rooms, but after being reminded that Site59 in the lawsuit takes the position that it does not collect tax, the defendant admitted inconsistencies in statements on whether or not it collects tax.
- “When one defendant was asked why the OTCs taxed the wholesale or net rate instead of the retail rate, he answered: ‘I don’t know that I have a good answer for that.’”
- “Expedia and Hotels.com actually calculated and collected hotel occupancy taxes on the retail rate for a brief period of time, ending in 2002, and then changed their methodology for reasons that remain unexplained.”
- “The OTCs concede that they currently make enough revenue through their markup and service fee to charge taxes on the margin and still make a considerable profit.”