20 March 2006: Tourism – Self-Catering and Bed & Breakfast accommodation

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The Conseil de la Concurrence requires Gîtes de France to remove or alter the exclusivity clauses imposed on its members

>Version française

Following a referral by the Ministry of Economy, the Conseil de la Concurrence has handed down a decision imposing a penalty on Gîtes de France national federation for abusing its dominant position in the labelled self-catering and Bed & Breakfast market, and has asked the federation to alter a number of clauses in its membership contracts.

Gîtes de France's domination over the labelled self-catering and Bed & Breakfast market

Gîtes de France, Clévacances and Accueil Paysan are the main organizations offering labels to owners of self-catering accommodation in France. Within the labelled Bed & Breakfast market there are, in addition to the three labels already mentioned, two other names: Fleurs de Soleil and Bed&Breakfast (B&B).

Gîtes de France has at least a 70% market share within these two markets and its position in the market for labelling is further strengthened by the favourable situation that it enjoys within department-level public organizations.

In this respect, the Conseil de la Concurrence noted that there was some confusion in structures between Gîtes de France and a number of public bodies concerned with tourism (regional tourist boards, chambers of agriculture and local and regional government). Consequently, Gîtes de France had obtained a

preponderant position in public procedures for determining and allocating subsidies.

The practices involved: exclusivity clauses imposed on members by Gîtes de France

Members are bound by 3 types of exclusivity clauses laid down by Gîtes de France:

- A membership exclusivity clause for Gîtes de France label, which prohibits simultaneous membership of another label organization.

  This clause means more than an owner simply not being able to use two different labels for the same accommodation, it also makes it impossible for him to market another nearby holiday rental facility (bed and breakfast accommodation, self-catering accommodation or a camp site) which is not registered under the Gîtes de France label.

- Publication exclusivity clause: under this clause, all advertising issued by members can only be done through guides published by Gîtes de France.

- Exclusive marketing clause: when owners do not market their accommodation themselves, this exclusivity clause requires the marketing to be done by the booking service accredited by the "Relais départemental" of Gîtes de France organization when there is one in the region.

Exclusivity clauses which hinders the development of competing labels

The Conseil de la concurrence estimated that, given Gîtes de France's dominant position, these exclusivity clauses are abusive in so far as they tend to lock in customers and that they enable Gîtes de France to control the whole marketing chain for accommodation bearing its label – during all the membership period (which is 10 years when subsidies are involved).

The Conseil took the view that these clauses hinder the development of competing labels and restrict members' commercial freedom and that their duration and scope were excessive.

Injunctions

The Conseil limited its fine to €10,000, but it made several injunctions ordering the Federation to:

· Remove the following from its contracts:

- the clause requiring the prior approval of the local Gîtes de France organization for advertising in media other than those published by the Gîtes de France network;
- the clause prohibiting owners from simultaneously managing furnished holiday accommodation - or other forms of holiday accomodation - owned by them, but not labelled Gîtes de France, nearby their Gîtes de France approved accommodation.

· Restrict to the first two years of joining the Gîtes de France network, the clause forbidding members to use double labelling for the same rural self-catering accommodation (except in cases where the Federation has signed an agreement with a third party) . The same restriction is to be applied to the clause requiring members who do not want to advertise their accommodation themselves to advertise through the local Gîtes de France organization (even for a membership period exceeding two years or for a tacit or explicit membership renewal).

There shall be a 4-month deadline for complying with these injunctions. Non-compliance will incur a €150 penalty payment per day starting from the deadline expiry date.

> Decision 06-D-06 of March 17th 2006 concerning the practices implemented in the sector of tourist accommodation, rural self-catering and Bed & Breakfast sector