

Abolition of mandatory certification of hotel services – chaos or liberalisation

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Before September 2012 hotel services in Ukraine were subject to mandatory certification as to their compliance with minimum requirements in relation to their quality and the level of safety ensured for guests and their property. Based on the results of mandatory certification, hoteliers were entitled (but not obliged) to initiate the categorisation procedure in order to obtain the ‘stars’ for their hotels.

On 13 September 2012 mandatory certification of hotel services was abolished. From now on, both the procedure for the certification of hotel services and the categorisation procedure are voluntary. This means that hotels and other accommodation facilities are no longer obliged to confirm compliance of their services with minimum legislative requirements. Therefore, both forms of state regulation, certification and categorisation, are applicable only on the initiative of hoteliers. However the voluntary nature of this procedure does not entitle the hotelier to award hotel ‘stars’ at its own discretion; hotel ‘stars’ are awarded upon results of a voluntary certification of services as to the level of safety ensured for guests and their property.

At first sight, there are only advantages to this new system. The Ukrainian

Ministry of Economic Development and Trade asserts that compliance with the new procedure ‘will reduce expenses of business entities in the provision of accommodation services’. The Ministry refers to the experience of European countries which have recently abolished mandatory certification – namely Lithuania, Latvia, Poland, and Russia.

Indeed, we must admit the certification procedure was quite bureaucratic and was a holdover from Soviet times. Frankly speaking, the old certification procedure had several disadvantages: no transparent or clear certification criteria, a long (up to 60 days) bureaucratic procedure, and the requirement to get the certificate renewed every five years. Even though Ukrainian legislation provided relatively high penalties for breach of the law where hotel services were provided without certification (the penalty amounted to 50 per cent of the gross rooms revenue), in practice a lot of hotels simply ignored the law.

Carrot principle – consequences for the market

Now, when all forms of state regulation become ‘voluntary’, the main question is what consequences might be expected in the market? Will the hotel market really benefit from self-determination?

As the state has cut its leverage and control over the hotel industry considerably, the risk that hoteliers may abuse their newly given freedom only grows. The Ukrainian hotel market shows a number of examples of unfair and unauthorised assignment of 'stars' to hotels, which negatively affect consumers, as the false 'stars' mislead them about the expected quality of services. Quite often the level of hotel services do not correspond to the 'stars' on the hotel signboard or the price of the accommodation.

Despite this kind of deceit, consumers hesitate to claim damages in court caused by misleading information about hotel services. And it is quite obvious why: taking into account the duration of the court proceedings it is unlikely that any guest, either foreign or Ukrainian, would be willing to waste their time and money suing a hotel. This results in a situation where dishonest hotels remain unpunished and consumers leave the hotel with an unpleasant impression of the hotel and of the Ukraine in general.

In addition to this violation of consumers' rights, false and exaggerated 'stars' awarded to the hotel negatively influence the hospitality market in general as such activity amounts to unfair competition. This causes damage predominantly to hotels operated by hotel management companies under the highest standards of hotel services which, unlike their unfair competitors, do comply faithfully with the star ratings. The quality of services in such hotels under world-known brands is usually much higher compared to local hotels, since business reputation, credibility and customer satisfaction is the most important value to a hotel. In practice it turns out that a three star hotel operated by a world-known brand corresponds to a four star local unbranded hotel and a three

star local unbranded hotel will most probably surprise guests since it will correspond to a two or even a one star branded hotel.

Despite such adverse consequences for the hotel services market Ukrainian legislation does not currently contain any sanctions for such illegal practices.

Does this mean that the Ukrainian hotel market is slowly but steadily deteriorating? We cannot but hope that it is not the case and that the Anti-monopoly Committee of Ukraine ('AMCU') will find a remedy for the situation.

In particular, the AMCU and its regional divisions are entitled to impose fines on the hotels for unfair competition and decisions have already been made on this issue by the Committee on several occasions. The fines are potentially quite impressive – about UAH 20-25,000 (approximately US\$2,500 to US\$3,000) for each violation and may reach up to five per cent of the gross revenues from the sale of hotel services during the last financial year according to the Law on Protection against Unfair Competition.

It should be noted that the AMCU has not instituted any major law enforcement activity in the hotel area yet. Nevertheless, considering the fact that the Committee has become very proactive in the past few years in the sphere of enforcement of the law on misleading advertising and has significantly improved its enforcement practice during this period, one could assume that we will see new cases in the hospitality industry.

Taking into account the considerable sanctions capable of being imposed by the AMCU we hope that with proactive enforcement by the AMCU the Ukrainian hotel market may be brought into line with the legislative requirements. The legislator's strategy is basically wise – deregulate the business, introduce inter-

nal controls and set high penalties for violations.

The European experience: we have something to strive for

Currently, the most progressive standards system in Europe is the one developed by Hotelstars Union, established by the global European association HOTREC. Its members are Austria, Czech Republic, Germany, Hungary, Holland, Sweden, Switzerland, Estonia, Lithuania, Latvia and Luxemburg. A distinctive feature of the criteria developed by Hotelstars Union is the points system whereby a hotel can choose between facilities to obtain points which contribute to the overall classification.¹ This non-prescriptive approach gives the hotel flexibility in reaching the number of points necessary to achieve the appropriate star rating.

As we see, the categorisation procedure in Europe is based on the freedom of choice principle. Nevertheless, to provide services with 'stars' hotels are still required to undergo a categorisation procedure. The categories to be assigned already contain minimum requirements as to the quality and scope of services and minimum required hotel facilities. The Ukraine could benefit from the adoption of such a scheme – making the star system clearer and more transparent for guests.

Conclusion

It should be noted that hoteliers should be interested in passing the categorisation procedure to obtain their stars as these hotels are exempt from taxation for ten years. The hotel stars are assigned by the special commission of the State Agency for Tourism and Resorts, which, upon assessment, issues a certificate assigning a hotel category. Such a certificate is issued for a maximum of three years or, with a quality management system, for a maximum of five years.

It cannot be denied that certification is a survival of the past and liberalisation of the hotel business should be strived for. On the other hand, such liberalisation should not adversely affect consumers and competition in the market. That is why we stand for the implementation of mandatory categorisation on the basis of European standards. This will ensure:

- hotels' adherence to the minimum quality requirements depending on a category;
- transparency and clarity of the categorisation criteria for consumer confidence in the quality of hotel services.

Note

1 www.hotelstars.eu/userfiles/files/German%20Hotel%20Classification%202010-2014_excl%20%20Logo.pdf.