

Paris, December 19th, 2019

AhTop v. Airbnb: the CJEU puts the French State face-to-face with its responsibilities

The much-awaited ruling of the Court of Justice of the European Union is a blank check for Airbnb Ireland UC as the company can still hide behind the Directive on Electronic Commerce. The French Government must redouble efforts to change archaic rules.

The French judge had requested a preliminary ruling on two issues:

- Do the services provided in France by Airbnb Ireland UC via an electronic platform managed from Ireland benefit from the freedom to provide services contemplated in the Directive on Electronic Commerce (June, 2000) ?
- Are the restrictive rules relating to the exercise of the profession of real estate agent in France, laid down by the “Hoguet Law” (January, 1970), enforceable against the Airbnb Ireland UC ?

According to the CJEU, the intermediation service provided by Airbnb Ireland UC can be classified as an “*information society service*” because the platform would only put potential tenants in touch with distant renters offering short-term accommodation services : “*It consists essentially of providing a tool for presenting and finding accommodation for rent, thereby facilitating the conclusion of future rental agreements*” has stated the Court. An astonishing statement as Airbnb Ireland UC deeply influences the conditions under which the service is provided: indications on the fixing of the price, centralization of payment, collection and payment of tourist taxes, assistance in the creation of “experiences” and “adventures”, etc.

While the Directive on Electronic Commerce dates from June, 2000, when digital technology was still in its early stage of development, Airbnb Ireland UC will consequently continue to benefit from a status quo disconnected from reality. A situation that has become untenable for too long, which cannot leave the French State powerless.

The Court's decision demonstrates the urgent need for a complete overhaul of this directive. Unable to meet the significant challenges posed by digital players, this choice represents a major threat for the players in the real economy, job creators, who bear the brunt of platforms competition.

The Court of Justice of the European Union also indicates that the legal provisions of the “Hoguet Law”, which regulates the profession of real estate agent in France, cannot -- as it stands -- apply to Airbnb Ireland UC because France had to notify the European Commission, in accordance with the Directive on Electronic Commerce.

A Member State is entitled to enforce a “restrictive” regulation on an information society service if it “*presents a serious and grave risk of prejudice*” to public security and the protection of consumers but must notify the Commission. It is therefore a form requirement which does not call

into question the foundations of the “Hoguet law”. It is now up to the French Government to take all the necessary measures so that the law can be applied quickly.

The decision of the Court relates only to the “Hoguet Law” and has no impact on the other legal texts now in force to regulate the activity of Airbnb Ireland UC: the Law for a Digital Republic (“Loi pour une République numérique”, 2016) or the recent Élan Law on housing, planning and digital technology (2018) -- two ambitious measures taken by the French Government -- aren't called into question. They appear more than ever proportionate and justified by the consequences of the platform's activity. They demonstrate the determination of the French Government to establish fair rules for the benefit of the French people and the French companies.

Serge Cachan, President of AhTop: “We take note of this decision. The Directive on Electronic Commerce has shown its limits, it must be changed as soon as possible so that it enters the 21st century. It is urgent for the Government to make its voice heard in the coming months to radically transform the rules of competition in the European Union. Proof of the legitimacy of our fight, the foundation of “Hoguet Law”, however, are not called into question. Alongside the public authorities and the numerous municipalities which have already tackled the issue head-on, we will continue to join forces so that the perceptions of Airbnb Ireland UC change.”

ABOUT AHTOP

Created on July 21st, 2015, with more than 30,000 members, the Association for Professional Accommodation and Tourism (AhTop) intends to unite all tourism professionals and unify all economic players to promote a high level of service and thus contribute to the attractiveness of tourism in France within the framework of a modernized and adapted legislation (in terms of real estate activity or town planning in particular).

It brings together trade union organizations such as the GNI-Synhorcat and the FAGIHT which are founding members, FNAIM, UNIS, SNPI, the international group Best Western, the Federation of Parisian bed and breakfast professionals as well as various actors of the French tourism industry (hotels, guest houses, youth hostels, catering, travel agencies, real estate professions and co-ownership trustees).

PRESS CONTACT

Mathieu Letranchant – mathieu@2017.fr – +33 (0)6 38 81 19 29