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Connecticut Continues Crack Down on Call-Arounds

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In April 2010, the Connecticut Attorney General entered into a settlement with La Quinta whereby the hotel chain agreed to stop participating in call-arounds, which the Attorney General has described as a "wide spread and long-standing" practice in the hotel and hospitality industry which facilitates illegal price fixing among hotels. Recently, the Attorney General announced the settlement of another claim of call-around price fixing, this time against McSam Hotel Group, LLC, Metro Ten Hotel, LLC and Jamsan Hotel Management, Inc., which own or manage two Holiday Inn Express and one Homewood Suites hotels in Hartford and Waterbury, Connecticut. Under the settlement agreement, the companies agreed to stop call-arounds at hotels they own or operate, both in Connecticut and elsewhere, and pay a civil penalty totaling $50,000. The companies continue to deny any wrongdoing.

Call-arounds are a practice whereby a hotel contacts its local competition and "shares, collects and exchanges information which is not otherwise available to the public" concerning room rates and occupancy rates solely for the purpose of illegally fixing room rates. By engaging in call-arounds, a hotel is able to fix its rates at a level that does not needlessly undercut its local competitors; in the case of the Holiday Inn Express in Waterbury the Attorney General alleged specific instances of the hotel raising rates on certain guest rooms after learning through call-arounds that its competitors were near or at full occupancy. According to the Attorney General, the Waterbury Holiday Inn Express engaged in call-arounds from the beginning of 2007 until sometime in June of 2008.

The settlement with McSam, Metro Ten and Jamsan is very similar to the agreement the Connecticut Attorney General entered into with La Quinta in 2010, except that La Quinta was not required to pay a penalty (because, according to the Attorney General's press release, of La Quinta's "cooperation early in the investigation"). Importantly, too, the recent settlement makes it clear that the issue with the hotel information exchange is that the information shared was non-public. The La Quinta agreement was written more broadly (though not necessarily interpreted any differently) than the McSam/Metro Ten/Jamsan Settlement, possibly allowing criticism that the earlier agreement as written was unworkable in that it attempted to curtail exchange of information otherwise available to the public, and so available via industry resources, internet searches, blind calls and the like.

It is interesting that more state attorneys general have not followed Connecticut's lead in addressing call-arounds. Although, now that it is clear that the unfair trade element of the practice is the exchange of non-public information (allowing for tacit, if not express, collusion,) the practice of call-arounds may invite greater scrutiny. In any event, it is always a good idea to think twice before exchanging any non-public information with a competitor.