

# Kluwer Mediation Blog

## A Trip to the World of Tourism!

Andrea Maia (Mediar360 – Dispute Resolution ) · Monday, July 8th, 2019

I owe my recent participation in a very challenging project to my dear friend and mediation partner, [Constança Madureira](#). For some time, she has been able to build a career as a lawyer and associate it with an extensive and respected professional background in the hotel and lodging industry. Having worked in top executive positions for renowned international hotel companies, she qualifies as an expert on the subject matter.

Moreover, once mediation became a part of Constança's continuous education in the last few years, she was able to identify several advantages and positive impacts of alternative dispute resolution. With that in mind, she extended me the invitation to join her in a dispute system design for a Brazilian hotel.

As I learned from Constança, the first thing that comes to people's mind when they think about Tourism is the lay representation of its tangible products: the hotel, the airplane, the trip, local attractions, and other associated images. However, technically and truly speaking, it is much more than this. Tourism is complex and this complexity derives from the ongoing growth of tourism flows in today's global context.

At the same time, Tourism is associated with socioeconomic and sustainable development. Compared to other strategic economic activities, Tourism is one of the fastest growing industries in the world, in some cases, topping oil exports, the food industry and automobile industry.

In short, from a pragmatic standpoint, Tourism is a relevant factor to promote the productive chain of all sectors that benefit from the increase in travelers' flows. On the other hand, by its nature, Tourism is a key element to promote social inclusion, or rather, considering its best practices, it is an efficient and democratic tool to allow generation of income, employment, knowledge, and access to citizenship.

A deep immersion in the hotel project led us to an inevitable conclusion simultaneously. We had been dealing with inherent conflicts to any hotel operation, nonetheless, we envisioned the possibility of extending alternative dispute resolution tools to other players in the Tourism industry. Two possible scenarios came up then taking into consideration the conflicts specific nature and the improvement in relationships through consensus building and positive attitude/dialogue.

## Online Dispute Resolution Tools

Automated negotiations can be a fast, cheap, reliable, efficient and modern way to deal with hotels everyday situations such as guest complaints and feedback, misleading or fake advertising, unauthorized payments, price discrepancies, service delays or failures, reservations (overbooking, cancellation, online travel agencies – OTAs), communication cultural barriers, luggage liability (loss, damage), suppliers defaulting. That said, we believe that ODR can be a very effective tool to manage less complex, day-to-day disputes in a hotel.

### **Alternative Dispute Resolution Tools**

In general, ADR applies to every stage of a hotel project – planning/feasibility, implementation/operation and closing.

We also agree that ADR is a most valuable tool when infrastructure implementation is concerned. Even though the Brazilian present legal framework is very favorable and friendly to the development of sustainable tourism in protected areas (like parks), several obstacles persist, including:

- a) park administration – hostile attitudes of managers and employees, resistance to partnerships with private sector,
- b) inadequate or outdated management plans – due to the absence of a combined system of protected areas governance and financing, lack of knowledge of priorities, lack of expertise of the public sector to establish realistic tourism management criteria,
- c) communication problems – the need to promote dialogue facilitation and consensus building,
- d) training and capacity building – understaffing, poorly trained managers, employees,
- e) excessive bureaucracy and delays in licensing due to jurisdiction overlaps of the public agencies involved,
- f) loss of significant revenues and insufficient or misdirected public and private investments,
- g) exclusion of traditional groups/communities in the implementation and operation of the projects,
- h) infrastructure – absence or lack of adequate infrastructure to the project feasibility.

Problems and impasses of such nature have led to setbacks in tourism development in Brazilian protected areas. Many projects have been unfinished, interrupted or even canceled due to their usefulness and inadequacy to public policies for the development of sustainable tourism in protected areas.

In this sense, we believe that ADR, including collective/multi-party mediation can be used to prevent or mitigate conflicts inherent to sustainable tourism development in the context of protected area management culture and practice. Also, the adoption of ADR can serve as a gateway to the Brazilian market where there is a shortage of tourism experts – not limited to protected area tourism management professionals – with ADR know-how.

Finally, thanks Constança, for taking me along on this a fantastic trip to the world of Tourism!

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green, and a circular arc in blue, green, and red.

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