EUROPEAN COMMISSION
DG Competition

**PUBLIC VERSION**

# *Case M.10615 - BOOKING HOLDINGS / ETRAVELI GROUP*

(Only the English text is authentic)

## REGULATION (EC) No 139/2004
## MERGER PROCEDURE

Article 8(3) Regulation (EC) 139/2004
Date: 25/09/2023

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EUROPEAN
COMMISSION

Brussels, 25.9.2023
C(2023) 6376 final

# COMMISSION DECISION

**of 25.9.2023**

**declaring a concentration to be incompatible with the internal market and the functioning of the EEA Agreement**

**(Case M.10615 – BOOKING HOLDINGS / ETRAVELI GROUP)**

(Only the English text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union[1],

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings[2], and in particular Article 8(3) thereof,

Having regard to the Commission's decision of 16 November 2022 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations,

Having regard to the final report of the Hearing Officer in this case,

## 1. INTRODUCTION

(1) On 10 October 2022, following a referral pursuant to Article 4(5) of the Merger Regulation, the Commission received a notification of a proposed concentration pursuant to Article 4 of that Regulation by which Booking Holdings Inc. ('Booking' or the 'Notifying Party') will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over certain activities of Flugo Group Holdings AB ('Flugo') operating under the trading name 'eTraveli Group' ('ETG', and together with Booking the 'Parties'), by way of a purchase of shares (the 'Transaction').

## 2. THE OPERATION AND THE CONCENTRATION

(2) **Booking** is a publicly listed company incorporated in the United States. Booking operates online travel agency ('OTA') brands such as Booking.com, Rentalcars, Priceline and Agoda. In the EEA, Booking is mainly active in the provision of accommodation OTA services under the Booking.com brand. Booking is also active

[1] OJ C 115, 9.8.2008, p.47.

[2] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

in the provision of metasearch services ('MSS') for accommodation, car rental and flights via its KAYAK business (which includes the brands KAYAK, Momondo, Cheapflights, HotelsCombined, among others). Moreover, Booking provides access to its OTA accommodation functionalities, via commercial affiliated agreements, to certain rival OTAs that do not have the capability to offer such services.

(3) **Flugo** is a Stockholm-based company that operates an OTA via its brands Gotogate, My Trip, Seat24 and SuperSaver. Flugo is primarily active as a flight OTA. It also has a flight MSS business operated under the Flygresor brand (primarily active in Sweden), which would be retained by the sellers and, therefore, falls outside the scope of the Transaction.

(4) The Transaction concerns the acquisition of sole control by Booking over ETG. Booking will acquire the shares of Flugo Group Holdings AB, with the exclusion of the subsidiary Flightmate AB, which comprises the MSS business that will be retained by the sellers.

(5) It follows that the proposed Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## 3. UNION DIMENSION

(6) The Transaction does not have an EU dimension within the meaning of Article 1(2) of the Merger Regulation since ETG's aggregate EU-wide turnover does not reach EUR 250 million. Nor does the Transaction have an EU dimension within the meaning of Article 1(3) of the Merger Regulation, since ETG does not achieve a turnover of more than EUR 25 million in at least three Member States.

(7) However, the Transaction could have been reviewed under the national merger control laws of three Member States, namely Austria, Cyprus and Germany. On 14 February 2022, the Parties thus submitted a Form RS requesting that the case be referred to the Commission. No Member State objected to the request within the legal time limit and the request was accepted on 9 March 2022.

(8) Therefore, the Transaction has a Union dimension pursuant to Article 4(5) of the Merger Regulation.

## 4. THE PROCEDURE

(9) As mentioned above, on 14 February 2022, the Parties submitted a Form RS requesting the referral of the Transaction to the Commission on the basis of Article 4(5) of the Merger Regulation. On 9 March 2022, the request was accepted. On 10 October 2022, the Commission received a notification of the Transaction in accordance with Article 4 of the Merger Regulation.

(10) Throughout its initial (Phase I) investigation, the Commission reached out to a large number of market participants (competitors, customers and other stakeholders) by means of e-Questionnaires and telephone conferences.

(11) Following this initial contact with the market, hotel and flight OTA provider [name of OTA] submitted a memorandum regarding the potential harm posed by the Transaction on 25 October 2022.

(12) On 28 October 2022, a state-of-play meeting between the Parties and the Commission took place during which the Commission explained the preliminary findings of the market investigation and its preliminary conclusions.

(13) On 16 November 2022, the Commission raised serious doubts as to the compatibility of the Transaction with the internal market and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation ('the Article 6(1)(c) decision'). The Commission preliminarily concluded that the Transaction raised serious doubts as to its compatibility with the internal market with respect to the potential strengthening of Booking's dominant position in the hotel OTA market in the EEA.

(14) On 18 November 2022, the Commission provided non-confidential versions of certain key submissions by third parties collected during the Phase I investigation to the Parties.

(15) On 28 November 2022, the Parties requested an extension of the Phase II deadline by 15 working days pursuant to Article 10(3) 2nd sub-paragraph of the Merger Regulation.

(16) On 30 November 2022, the Parties submitted their written comments on the Article 6(1)(c) decision ('Response to the Article 6(1)(c) decision') together with 7 annexes. Following the Response to the Article 6(1)(c) decision, a state-of-play meeting with the Notifying Party was held on 6 December 2022.

(17) During the Phase II investigation, the Commission sent several requests for information to the Parties and third parties, including competitors, customers and other stakeholders through eRFI questionnaires.

(18) The procedure was suspended by two Commission decisions adopted pursuant to Article 11(3) of the Merger Regulation ('stop the clock' or 'StC' decisions) due to the failure of the Parties to provide complete and timely responses to three Commission's requests for information ('RFIs').

(19) The first of these decisions was adopted on 16 December 2022 after Booking failed to respond fully to RFI 6 of 25 November 2022 and RFI 8 of 29 November 2022. The decision suspended the time limits referred to in the first subparagraph of Article 10(3) of the Merger Regulation as of 8 December 2022 and the suspension ended on 5 April 2023.

(20) The second decision was also adopted on 16 December 2022 after Flugo, the Target's parent company failed to respond fully to RFI 9 of 29 November 2022. The decision suspended the time limits referred to in the first subparagraph of Article 10(3) of the Merger Regulation as of 13 December 2022 and the suspension ended on 18 April 2023.

(21) Another state-of-play meeting between the Commission and the Notifying Party took place on 25 May 2023 in which the Commission informed the Notifying Party that it intended to issue a Statement of Objections in relation to the Transaction.

(22) On 9 June 2023, the Commission issued a Statement of Objections with respect to the Transaction (the 'SO'). In the SO, the Commission preliminarily concluded that the Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2(3) of the Merger Regulation, by strengthening Booking's already dominant market position. In particular, the Transaction may increase barriers to entry, hamper the expansion of Booking's

competitors and lead to higher costs for hotels and higher prices for end customers. Access to file was given to the Notifying Party via DVD on 9 June 2023.

(23) Access to confidential data and information relied upon by the Commission in the SO was granted to the Notifying Party's economic advisors in accordance with the data room procedure[3] between 13 and 21 June 2023.

(24) On 24 June 2023, the Notifying Party responded to the SO (the 'Response to the SO').

(25) On 29 June, [name of OTA] was admitted interested third person pursuant to Article 5 of Decision 2011/695/EU.

(26) On 4 July, access to confidential third-party submissions relied upon by the Commission in the SO was granted to the Notifying Party's legal advisors in accordance with the data room procedure.

(27) On 5 July 2023, HOTREC – Hotels, Restaurants & Cafés in Europe ('HOTREC') was admitted as interested third person on 05 July 2023.

(28) On 6 July 2023, [an OTA] made a written submission in line with the elements highlighted in its response to the market investigation.

(29) The Parties requested to be heard at a formal hearing, which was held on 7 July 2023.

(30) The Commission continued its investigation by collecting information from the Parties and third parties. On the basis of this information, the Commission issued four letters of facts to the Notifying Party. On 13 July 2023, the Commission issued a first letter of facts ('First Letter of Facts') relating to the market definition, the market reconstruction, the connected trip[4], the network effects, customer inertia, Booking's prices, customer loyalty, Booking's position vis-à-vis other OTAs and the increment resulting from the Transaction. On 18 July 2023, the Notifying Party responded to the First Letter of Facts ('Response to the First Letter of Facts').

(31) On 14 July 2023, additional access to file was given to the Notifying Party.

(32) On 19 July, access to confidential third-party submissions relied upon by the Commission in the SO was again granted to the Notifying Party's legal advisors in accordance with the data room procedure.

(33) On 24 July 2023, a further access to the data room by the Notifying Party's economic advisors was granted.

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[3] Business secrets and other confidential information of third parties within the meaning of Article 339 TFEU, Article 18(3) of the Merger Regulation and Article 17(3) of the Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 amending Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Implementing Regulation", OJ L 336, 14.12.2013, page 1) can exceptionally be made available to the addressee of a Statement of Objections within the framework of the data room procedure and under the strict conditions set out in data room rules. The data room procedures are set in the Best Practices on the disclosure of information in data rooms, 2 June 2015, available at http://ec.europa.eu/competition/mergers/legislation/disclosure information data rooms en.pdf.

[4] Connected trip refers to combining several travel services such as flights and accommodation. See further section 6.5.2.1 below.

(34) On 25 July 2023, a State of Play meeting was held, where the Commission communicated to the Notifying Party that, upon consideration of the Response to the SO; it maintained its concerns as expressed in the SO.

(35) On 26 July 2023, the Commission issued a second letter of facts ('Second Letter of Facts') relating to market definition, market reconstruction, Booking's effective commissions and its main competitors' average weighted commission, the market size of the 2022 flight OTA market in the EEA, flight OTA market size projections in the EEA until 2026, counterfactual, growth in share in the hotel OTA market as a result of the Transaction, acquiring new customers, Booking buys a main customer acquisition channel, cross sell, customer inertia and multi-homing, hotel multi-homing. On 8 August 2023, the Notifying Party replied to the Second Letter of Facts ('Response to the Second Letter of Facts').

(36) On 31 July 2023, the Notifying Party offered commitments pursuant to Article 8(2) of the Merger Regulation in order to address the competition concerns identified by the Commission (the 'Initial Commitments'). The offer of commitments triggered the automatic extension of the time limit for adopting a final decision by 15 working days pursuant to the first subparagraph, last sentence, of Article 10(3) of the Merger Regulation.

(37) On 2 August 2023, the Commission launched a market outreach to seek the views of market players on the Initial Commitments (the 'Market Test'). The detailed procedure relating to the Initial Commitments is laid down in section 8.2 below.

(38) On 2 August 2023, access to file was again given to the Notifying Party.

(39) On 3 August 2023, an MSS submitted a complaint regarding the Transaction.

(40) On 8 August, [an OTA] was admitted as interested third person pursuant to Article 5 of Decision 2011/695/EU and submitted a complaint regarding the Transaction.

(41) On 10 August 2023, the Commission issued a third letter of facts ('Third Letter of Facts') relating to the rationale of the Transaction, counterfactual, market size of the 2022 flight OTA market in the EEA, Booking's growth projections for the flight OTA market in the EEA, ecosystem, increase of barriers to entry and/or expansion on the hotel OTA market in the EEA, cross-sell, harm to hotels and potentially to consumers. On 17 August 2023, the Notifying Party replied to the Third Letter of Facts ('Response to the Third Letter of Facts').

(42) On 18 August 2023, access to file regarding the market investigation was granted to the Notifying Party.

(43) On 21 August 2023, a State of Play meeting between the Commission and the Notifying Party took place. During that meeting, the Commission informed the Notifying Party that it maintained its competition concerns after having considered and further investigated the arguments brought forward. At this meeting, the Commission also provided feedback on the outcomes of the Market test.

(44) On 23 August 2023, the Commission issued a fourth letter of facts ('Fourth Letter of Facts') relating to network effects, market reconstruction and cross-selling. On 25 August, the Notifying Party responded to the Fourth Letter of Facts ('Response to the Fourth Letter of Facts').

(45) On 25 August 2023, the Notifying Party submitted a revised set of commitments ('Revised Commitments').

(46) On 24, 25 and 30 August 2023, additional access to the data room was granted to the Notifying Party's economic advisors.

(47) On 11 September 2023, access to file was again given to the Notifying Party.

(48) The Advisory Committee was convened on 13 September 2023.

(49) The Hearing Officer provided its favourable opinion on the proceedings in her report which was submitted on 15 September 2023.

## 5. RELEVANT MARKETS

(50) In the EEA, Booking is primarily active through the Booking.com brand, mainly offering hotel OTA services via proprietary capabilities. Booking.com also provides flight OTA services through a commercial affiliate agreement with ETG. Booking is further active in the provision of MSS for accommodation, car rental and flights via its KAYAK business (which includes the brands KAYAK, Momondo, Cheapflights, HotelsCombined, among others). ETG focusses on the supply of flight OTA services via proprietary capabilities under Gotogate, My Trip, Seat24 and SuperSaver, while also offering hotel OTA services through a commercial affiliate agreement with Booking.com.

(51) OTA service providers are online retailers that sell one or more type of travel services (among others, flights, accommodation and car rentals) supplied by travel service providers ('TSPs') such as airlines, accommodation and rental car companies. On the one hand, OTAs provide, search, compare and booking services to consumers and, on the other hand, marketing services and booking functionalities to TSPs.[5]

(52) OTAs act as intermediaries between TSPs and end-customers. However, one may consider that TSPs (i.e., rental companies, airlines or hotels) are the OTAs' main customers since the OTAs are service providers to, and are paid by, TSPs. In other words, OTAs derive most of their revenues from providing services to TSPs (typically through commissions). The OTAs' services to TSPs include marketing services and online booking functionalities. Above all, OTAs' services enable the TSPs to reach out to a larger number of end-users compared to what TSPs could achieve on their own.

(53) The competitiveness of the OTAs and the value of the services provided to TSPs depend on the OTAs' success in securing sales for the TSP with end customers and therefore on the OTAs' ability to reach out to as many customers as possible.

(54) Global distribution systems ('GDS')[6] and bed banks allow TSPs to connect with OTAs in order to facilitate the flow of information and content (e.g., information on availability and pricing, booking services).[7]

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[5] M.8416 – The Priceline Group / Momondo Group Holdings, decision of 17 July 2017, paragraph 17.

[6] A global distribution system is a computerised network system owned or operated by a company that enables transactions between TSPs, mainly airlines, hotels, car rental companies, and travel agencies. TSPs communicate their real time inventory and prices to GDS that do not hold inventory themselves. Based on this information GDS allow their customers, travel intermediaries rather than end-customers, to reserve these services. The main GDS are Sabre, Amadeus and Travelport. There exist also non-GDS aggregators such as OTAs or bed banks that purchase rooms from accommodation providers in bulk at

(55) MSS websites aggregate information in relation to one or more type of travel services. MSS provide, on the one hand, search and comparison services to consumers to allow them to compare offers for the same travel product made by a TSP and/or by one or more OTAs. The customer experience on a MSS is as follows: the customer runs a search that is passed on to OTAs and airlines; the MSS sorts the results; and, by clicking on the result, the customer is redirected to the website of the OTA or airline offering the travel service.[8] On the other hand, MSS provide lead generation services (which consists in gaining the interest of potential customers in order to increase future sales) to TSPs and OTAs by redirecting customers to them to complete their bookings.[9]

(56) OTA service providers can operate using their own proprietary capabilities (e.g., customer interface website, back-end booking software, inventory, and customer support platform) and/or source those capabilities, in full or in part, from other suppliers of OTA services or MSS through commercial affiliate arrangements. Commercial affiliate agreements are services provided by MSS and OTA services suppliers (that have their own proprietary content) to third-party websites that lack proprietary content (e.g., other MSS providers, OTAs, or TSPs) but still wish to offer MSS or OTA services to their customers and therefore need the appropriate content. Commercial affiliate services can be provided through a number of methods, including via links, on a white-label basis or via API data feed.[10]

### 5.1. General features of the OTA markets

(57) OTAs act as intermediation platforms between TSPs and end-customers.

(58) The Commission considers that the key commercial relationship is that between the OTAs and the TSPs, between which the relationship is contractual. As mentioned in paragraphs (52) and (53) above, the OTA enables the TSP to reach out to a large number of customers and provide specific functions to the TSP for which the OTA is directly remunerated. For the TSPs (in particular, hotels in the case of Booking), the OTAs represent a distinct sales channel that (i) allows them to reach a broad customer base and (ii) has a range of characteristics that allow to distinguish it from the other main sales channels (including the direct sales channel and brick-and-mortar travel agencies). TSPs provide OTAs with the content they sell and pay a commission to the OTAs. For instance, in the case of Booking, the end-customers do not pay Booking for its services. Booking is compensated by a commission paid by the TSP when a sale is made. The commission represents a percentage of the price of the accommodation sold via Booking. Booking.com operates either through an agency model, where the consumer pays the TSPs directly (typically at the hotel) and Booking receives a commission from the TSPs, or through a merchant model, where

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a discounted, static price for specific dates, and sells them to OTAs, travel agents, destination management companies, airlines, or tour operators.

7 Form CO, paragraph 1.9; non-confidential minutes of a conference call with Expedia, dated 2 December 2022 [DOC ID 51527] paragraph 5.

8 Non-confidential minutes of a conference call with [an OTA], dated 3 March 2022 [DOC ID 664], paragraph 10.

9 M.8416 – The Priceline Group / Momondo Group Holdings, decision of 17 July 2017, paragraph 17. In that decision, the Commission noted that MSS generally re-direct users to a TSP or OTA website in order to complete their booking, however some MSS have recently begun to offer a direct booking function, allowing the user to complete the transaction without leaving the MSS website.

10 Form CO, paragraph 1.9.

the consumer pays the price charged by the TSPs to Booking.com directly and Booking.com then transfers it to the TSPs (less Booking's commission).[11] Regardless of the model, the TSPs generally remain ultimately contractually responsible vis-à-vis the end-customer,[12] and Booking.com does not take ownership of any of the inventory.[13] The same generally holds true for Booking's competing OTAs.[14]

(59) OTAs also have commercial relationships with end-customers. The success with end-customers is one of the two legs that determines the success of an intermediation platform.

(60) According to the Notifying Party, in 2022, the total transaction value ('TTV') generated by all OTAs for all travel services amounted to EUR […] at the EEA level.[15] Accommodation OTA (including hotel OTA) is the largest OTA market and accounts for approximately [70-80]% of the TTV for all travel services,[16] while flights OTA account for only [10-20]%,[17] and car rental OTA for [0-5]%.[18]

(61) Booking and ETG derive the vast majority of their TTV respectively from their hotel and flight OTA services. In 2022, at the EEA level, Booking generated EUR […] billion TTV through the supply of hotels OTA services,[19] EUR […] million TTV through the supply of flight OTA services,[20] and EUR […] million TTV through the supply of car rental OTA services.[21] In 2022, at the EEA level, ETG generated EUR […] million TTV through the supply of hotel OTA services, EUR […] billion TTV through the supply of flight OTA services,[22] and EUR […] million TTV through the supply of car rental OTA services.[23]

(62) Given its much larger size, the hotel OTA market generates by far the highest commissions in total value despite having commission rates relatively similar to those for car rental. Booking's commissions to hotels providers vary between [10-20]% and [10-20]% of the total purchase price, while its commissions for flight OTA services are significantly lower (below [5-10]% of the total purchase price).[24] Booking's commissions for car rental OTA's commission range between [10-20]% of the total purchase price.[25]

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11 Response to RFI 31, Question 1.

12 [Details of Booking's commercial terms].

13 Response to RFI 31, Question 1.

14 Non-confidential minutes of a conference call with [an OTA], dated 2 December 2022 [DOC ID 51527], paragraph 6; non-confidential minutes of a conference call with [an OTA], dated 7 March 2022 [DOC ID 533], paragraph 14.

15 Response to RFI 32, Question 1 except for the flight market size which was provided in the Response to RFI 24, Question 1.

16 According to the Parties, the total EEA market size in 2022 for accommodation OTA services amounted to EUR […] billion in TTV (Response to RFI 32, Question 1).

17 According to the Parties, the total EEA market size in 2022 for flights OTA services amounted to EUR […] billion in TVV (Response to RFI 24, Question 1).

18 According to the Parties, the total EEA market size in 2022 for car rental OTA services amounted to EUR […] billion in TTV (Response to RFI 32, Question 1).

19 Response to RFI 17, Annex 3 (Euromonitor without Airbnb, unadj).

20 Response to RFI 24, Question 1.

21 Response to RFI 28, Question 2.

22 Response to RFI 24, Question 1.

23 Response to RFI 26, Question 9.

24 Form CO, paragraph 8.33.

25 Form CO, paragraph 8.33.

(63) The success of the various OTAs can also be measured through their web traffic and conversion rate. For instance, in January 2022 in France, Booking attracted almost [5-10] million unique visitors for its accommodation OTA services, and approx. [50.000-100.000] unique visitors for its flight OTA services.[26] By comparison, for the same period in France, ETG attracted approx. [500-1.000] unique visitors for its accommodation OTA services, and approx. [450.000-550.000] unique visitors for its flight OTA services.[27] Website traffic has to be read in conjunction with conversion rate, which indicates the percentage of website traffic which has resulted in bookings.[28] For instance, at the EEA level in 2022, Booking's conversion rate was [0-5]% for accommodation, [0-5]% for flights, [5-10]% for car rental, [0-5]% for attractions and [5-10]% for taxi.[29] In turn, ETG's conversion rate was [0-5]% for flights,[30] and [0-5]% for car rental at the EEA level in 2022.[31]

## 5.2. Product market definition

### *5.2.1. Travel intermediation markets*

#### 5.2.1.1. The Commission's past decisional practice

(64) In its past decisional practice, the Commission considered that the market for the intermediation of travel services could be segmented between online and brick-and-mortar travel agencies, but ultimately left the market definition open.[32]

(65) Furthermore, the Commission considered whether the market for online travel services could be further segmented by type of distribution, distinguishing between direct sales by TSPs (such as hotels and airlines) and indirect sales through the intermediation of OTAs. With respect to the online distribution of flights, the Commission concluded that the online distribution of flights through OTAs and through airlines' direct distribution channels (*i.e.*, flight TSPs) were part of the same market.[33]

(66) In addition, the Commission considered whether MSS and OTA services formed part of the same or separate markets,[34] but left the market definition open, acknowledging, that '(…) *both aim to attract customers interested in organising their travel, [however] they appear to offer different services and generally operate on the basis of different business models*'.[35]

(67) The Commission and national competition authorities also considered that the provision of OTA services could be further segmented by type of travel products,

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26 Form CO, Attachment W, Response to QP8, Annex 5.

27 Form CO, Attachment W, Response to QP8, Annex 5.

28 Form CO, footnote 470.

29 Response to RFI 13, Annex 3.

30 Response to RFI 6, Question 17.

31 Response to RFI 26, Question 9.

32 M.8416 – The Priceline Group / Momondo Group Holdings, decision of 17 July 2017, paragraph 16 and ff; M.8046 – TUI / Transat France, decision of 20 October 2016, paragraph 13 and ff; M.6163 – AXA / Permira / Opodo / Go Voyages / eDreams, decision of 30 May 2011, paragraph 18 and ff; M.4601 – KarstadtQuelle / MyTravel, decision of 4 May 2007, paragraph 21 and ff.

33 M.6163 – AXA / Permira / Opodo / Go Voyages / eDreams, decision of 30 May 2011, paragraph 25 and ff.

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between flights, hotels, car rentals and package holidays, but left the market definition open.[36]

(68) National competition authorities have also looked into online travel services in their antitrust decisions assessing most-favoured nation clauses in contracts for the online distribution of hotel accommodation. In this context, the German, French, Italian, Swedish and Swiss competition authorities and the Düsseldorf appeal court in Germany considered that OTAs specialising in the distribution of hotel accommodation belong to a distinct market, implicitly or explicitly excluding MSS.[37]

5.2.1.2. The Notifying Party's views

(69) *First*, the Notifying Party does not disagree with the Commission and the national competition authorities' past decisional practices on the segmentation of the OTA market by type of travel service.[38] The Notifying Party argues that alternative accommodations are part of the same OTA market as hotels.[39]

(70) In the first place, the Notifying Party submits that a significant number of consumers view hotel and private accommodation as substitutable.[40] In particular, the Notifying Party claims that Booking.com's internal surveys show that […] of Booking.com users considered traditional and alternative accommodation types interchangeably.[41]

(71) In the second place, the Notifying Party argues that price is not a material distinguishing factor between hotels and alternative accommodations, and that Booking's data reflects a […] between different types of property.[42]

(72) In the third place, the Notifying Party claims that the average stay durations are similar for alternative accommodations and hotels.[43]

(73) In the fourth place, the Notifying Party alleges that consumers' preference for certain facilities does not distinguish hotels from alternative accommodation, in particular because guests value certain property attributes over specific property types.[44]

(74) In the fifth place, the Notifying Party argues there are low barriers to OTA expansion from hotels to alternative accommodation and *vice versa*. In particular, the Notifying Party submits that OTAs historically specialising in alternative accommodation types

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36 M.8416 – The Priceline Group / Momondo Group Holdings, decision of 17 July 2017, paragraph 44; German national competition authority, decision B9-66/10 of 20 December 2013 and decision B9-121/13 of 23 December 2015; UK national competition authority, decision ME/5882-12 of 14 May 2013.

37 German national competition authority, decision B9-66/10 of 20 December 2013 and decision B9-121/13 of 23 December 2015; French national competition authority, decision 15-D-06 of 21 April 2015; Italian national competition authority, decision I779 of 21 April 2015; Swedish national competition authority, decision 596/2013 of 15 April 2015; Swiss national competition authority's decision of 19 October 2015 addressed to Booking.com, Expedia, Inc and HRS; Düsseldorf Higher Regional Court, decision B 9-121/13 of 9 January 2015, HRS vs Bundeskartellamt.

38 Form CO, paragraph 6.44.

39 Response to the Article 6(1)(c) decision, Annex 2, Market definition, paragraph 1.5.

40 Response to the Article 6(1)(c) decision, Annex 2, Market definition, paragraph 1.5; Response to the SO, paragraph 4.2; Response to the First Letter of Facts, page 6 and ff.

41 Response to the SO, Annex 5, paragraph 4.3.

42 Response to the SO, Annex 5, paragraph 4.6.

43 Response to the SO, Annex 5, paragraph 4.9.

44 Response to the SO, Annex 5, paragraph 4.11.

have shown that they are capable of extending their offer to hotel-type inventory and *vice versa*.[45]

(75) In the sixth place, the Notifying Party points to internal documents, filings and analyst reports indicating competition between the likes of Airbnb and Vrbo and Booking.com.[46]

(76) *Second*, the Notifying Party submits that OTAs, brick-and-mortar travel agencies[47] and TSPs[48] all compete in a single market for the provision of travel intermediation services. In particular, the Notifying Party argues that accommodation OTAs and accommodation TSPs directly compete in the same market.

(77) In the first place, the Notifying Party alleges that there is strong demand-side substitutability as the underlying product is exactly the same.[49]

(78) In the second place, the Notifying Party considers that accommodation OTA are subject to increasing competitive pressure from TSPs, and that they offer the same product to consumers, just via a different distribution channel.[50]

(79) In the third place, the Notifying Party submits that Booking.com and TSPs consider one another as competitors.[51]

(80) *Third*, the Notifying Party submits that flight OTAs and airlines directly compete in the same product market.

(81) In the first place, the Notifying Party considers that airlines rely on two main distribution channels to sell tickets on flights that they operate: direct sales through their own website and indirect sales through partners or agents such as flight OTAs. While indirect sales occur directly through partners and OTAs, direct sales are completed on the airline's website by customers who either navigate directly to the airline website or are redirected from online advertising or an MSS. Airlines and flight OTAs therefore compete for the sale to the consumer.[52]

(82) In the second place, the Notifying Party claims that, in the current case, the Commission is diverging from its decision practice without merit.[53] The Notifying Party considers in particular that different purposes for consumers and airlines are irrelevant to the market definition.[54]

(83) The Notifying Party also submits that when conducting online searches for travel options, consumers often use MSSs to compare the prices and options available on both TSP and OTA websites.[55]

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45 Response to the SO, Annex 5, paragraph 4.14.

46 Response to the Article 6(1)(c) decision, Annex 2, Market definition, paragraph 5.1 and ff; Response to the SO, Annex 5, paragraph 4.17 and ff.

47 Form CO, paragraphs 6.30 and 6.223.

48 Form CO, paragraphs 6.34 and 6.223(ii).

49 Response to the SO, Annex 5, paragraph 3.1.

50 Response to the SO, Annex 5, paragraph 3.15.

51 Response to the SO, Annex 5, paragraph 3.20.

52 Response to the SO, Annex 5, paragraph 2.1 and ff.

53 Response to the SO, Annex 5, paragraph 2.8 and ff.

54 Response to the SO, Annex 5, paragraph 2.12.

55 Response to the Article 6(1)(c) decision, Annex 2, Market definition, paragraph 1.3 and ff.

5.2.1.3. The Commission's assessment

(84) Booking and ETG are OTA services providers. While Booking focuses its activities primarily on hotel OTA services, ETG focuses almost exclusively on flight OTA services.

(85) *First*, the Commission investigated whether the Parties' main activities, i.e., hotel OTA services and flight OTA services, belong to the same market, in particular by considering whether the market for OTA services should be segmented by type of travel service.

(86) *Second*, the Commission considered whether it is appropriate to further segment the markets for flight and hotel OTA between the consumer side and the TSP side.

(87) *Third*, the Commission considered whether the markets for flight and hotel OTA could be broadened to include other travel service providers, namely (i) brick and mortar travel agencies, (ii) the TSPs' direct online channel.

5.2.1.3.1. Segmentation of the OTA market by type of services

(88) OTAs can sell one or more type of travel services (e.g., flights, hotels, private accommodation, car rentals). These services, in the context of this Decision, are also referred to as 'verticals'. Not all OTAs offer all services. Some OTAs have their own proprietary content whereas others rely on content from other service providers (other OTAs or MSSs) via commercial affiliate agreements. For instance, Booking offers flights OTA services to end-customers under a commercial affiliate agreement with ETG, and ETG offers accommodation OTA services to end-customers under a commercial affiliate agreement with Booking.[56]

(89) The Commission assessed whether the provision of hotel OTA services belongs to a separate market from the flight OTA services and concludes that flight and hotel OTA services belong to two separate markets. The Commission also assessed whether hotel OTA services and private accommodation OTA services belong to separate markets. It concludes that this is the case and that hotel OTA services constitute a separate market within the broader market of accommodation OTA services.

(90) *First*, there is limited demand and supply substitutability for the online intermediation of different travel services.

(91) <u>In the first place</u>, there is no demand-side substitutability between the types of services. A hotel would only be interested in the services provided by a hotel OTA, and an airline by those provided by a flight OTA. As TSPs are typically active only in one type of travel services, the customer base for OTA services relating to different verticals (such as flights, hotels, car rentals) are different.

(92) <u>In the second place</u>, there is limited supply-side substitutability between the types of services. Not all OTAs are active or directly active in all verticals, meaning that OTAs tend to reach a level of specialization in a specific vertical. Therefore, the number, identity and relative strength of the alternative suppliers for the online intermediation of different travel services can greatly differ. Indeed, Booking is by far the leading hotel OTA but has a limited presence as a flight OTA services provider and offers such services only thanks to the commercial affiliate agreement

[56] Form CO, paragraphs 1.4 and 1.8.

with ETG. ETG and eDreams are the main suppliers of flight OTA services and have a *de minimis* presence as regards hotel OTA services selling only content sourced from other OTAs. Likewise, Airbnb is a leading provider of private accommodation OTA services but has only limited presence in the hotel OTA market and is not active as a flight OTA.

(93) The level of specialization of OTAs by vertical is confirmed by the market investigation. The majority of respondents that expressed a view explained that, even though most of the OTAs offer a variety of travel services, their relative success in selling such services materially differs.[57] For instance, a hotel respondent mentioned that '*the question is not the offer but the reality of bookings. (...)* [J]*ust because you can rent a car with EasyJet* [doesn't mean] *that you do it*',[58] suggesting that customers show preference to certain OTAs depending on the type of travel service they are looking to book. Likewise, an OTA indicated that, '[i]*f an End User is only looking for one product, e.g., rental cars, it would most probably prefer a specialist. If an End User searches a combination, it would most probably prefer a one stop-shop*'.[59]

(94) The level of specialization of OTAs by vertical can also be inferred from the data submitted by the Notifying Party. Booking indicated that it generates the vast majority of their TTV with hotels (EUR […] billion TTV in 2022 at the EEA level – B2C),[60] and its TTV with flight OTA services is limited (EUR […] million TTV in 2022 at the EEA level).[61] The opposite is true for ETG, which generates the vast majority of its TTV with flight OTA services (EUR […] billion TTV in 2022 at the EEA level),[62] and its TTV through hotels is limited (EUR […] million TTV in 2022 at the EEA level – B2C).[63]

(95) *Second*, barriers to entry into individual OTA services, and in particular in flight and accommodation OTA services, appear to be high, therefore limiting supply-side substitutability between verticals.

(96) <u>In the first place</u>, regarding accommodation, the majority of respondents to the market investigation that expressed a view indicated that it was difficult or very difficult for an OTA that offers services other than accommodation (e.g. flights) to expand its offering so as to include accommodation to a level comparable to that of the main accommodation OTAs in terms of investment cost, and time required to develop these services.[64]

(97) <u>In the second place</u>, regarding flights, evidence in the file indicates that the barriers to entry are high. [Booking's experience with the development of a proprietary flight OTA offering]. [Booking's experience with the development of a proprietary flight

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57 Response to questions 9 and 9.1. of Questionnaire Q1 to OTAs [DOC ID 2739] and questions 9 and 9.1. of Questionnaire Q3 to hotels [DOC ID 2737].

58 Response to question 9.1. of Questionnaire to hotels Q3 to hotels [DOC ID 1984].

59 Response to question 9.1. of Questionnaire Q1 to OTAs [DOC ID 2739].

60 Response to RFI 17, Annex 3 (Euromonitor without Airbnb, unadj).

61 Response to RFI 24, Question 1.

62 Response to RFI 24, Question 1.

63 Response to RFI 17, Annex 3 (Euromonitor without Airbnb, unadj).

64 Response to questions 10.1, 10.1.1, 10.2 and 10.2.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

OTA offering]. These factors resulted in Booking opting for the Transaction as a means for having its own proprietary flight OTA platform.[65]

(98) *Third*, contrary to what the Notifying Party argues, evidence in the file shows that the hotel OTAs and private accommodation OTAs belong to separate markets.

(99) In the first place, the hotel OTA market includes all OTAs that cater for hotel and provide intermediation services for hotels. Therefore, OTAs that do not provide services to hotels do not operate in the hotel OTA market.[66] Not all OTAs that offer hotel OTA services also offer private accommodation and *vice versa*.

(100) Moreover, the degree of success of OTAs offering both hotel and private accommodation services can vary greatly between the two markets. For instance, Airbnb is one of the main suppliers of private accommodation OTA services but, as explained in particular in paragraph (262) below, only has a *de minimis* presence in the hotel OTA market.

(101) In addition, some of the main OTAs that offer both hotel and private accommodation have separate businesses to deal with the two sides of the businesses, showing the lack of supply-side substitutability between them. For instance, Airbnb in addition to offering some hotel rooms on its main website (Airbnb.com) operates a separate hotel OTA platform, HotelTonight, that it acquired in 2019. Likewise, Expedia operates, in addition to its main website (Expedia.com) which offers mainly hotels, a separate private accommodation platform, Vrbo. As to Booking, although it offers hotels and private accommodation services from the same platform, it had to operate a significant reorganization of its activities to cater to the needs of its private accommodation customers.[67] In an internal document prepared in the ordinary course of business, Booking explained that the entry into private accommodation [Details of Booking's business strategy].[68] [Details of Booking's business strategy].[69]

(102) In the Response to the First Letter of Facts, the Notifying Party first argues that the inference drawn from the internal document cited in the paragraph above[70] is wrong, and that it is incorrect to say that the entry into private accommodation was a '*dedicated effort*'.[71] The Commission considers that this comment is not appropriate, because the Commission's reading of the internal document does not go beyond what is written in the document itself, i.e. that Booking had to take several steps to enter into private accommodation, including a '*dehotelization*' and a '*dedicated effort*'.[72] Second, the Notifying Party explains that Booking.com's and other OTAs' default search results show hotel and alternative accommodation types fully intermingled.[73] The Commission is of the view that this point is not relevant: what matters is that there are differences on the supply side, and the same goes for the demand side.

(103) In the particular case of Airbnb, qualitative evidence gathered during the market investigation indicates that Airbnb is not seen as a close competitor to Booking in the

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65 Booking Counterfactual Paper, paragraph 5.1.
66 Non-confidential minutes of a call with HOTREC, dated 21 June 2023 [DOC ID 58045], paragraph 2.
67 Response to QP8, Attachment L.
68 Response to QP8, Attachment L, page 2.
69 Response to QP8, Attachment L, page 2.
70 Response to QP8, Attachment L, page 2.
71 Response to the First Letter of Facts, page 8.
72 Response to QP8, Attachment L, page 2.
73 Response to the First Letter of Facts, page 8.

hotel OTA business. As mentioned by an OTA: '*Airbnb's focus being other accommodation, hotel portfolio is limited*.'[74] Another OTA indicated that: '*Booking offers all kind of accommodation, Airbnb only private accommodation*'[75]. A hotel indicated that: '*Airbnb is uprising on the market, but not for our source of business (hotel)*'[76] while another stated that: '*While Airbnb has a vast portfolio, it mostly consists of other types of accommodation*'.[77]

(104) In its response to the SO, the Notifying Party argues that Booking's internal documents, filing and analyst reports, and evidence on the Commission's file indicate competition between Airbnb, Vrbo and Booking.com.[78] Several Booking's internal documents looking at Airbnb and Vrbo focus on the home segment rather than the hotel segment.[79] For instance, Booking internal document prepared in the ordinary course of business identifies as business objective to [Details of Booking's business strategy and assessment of competitors].[80] The same internal document notes the following: [Details of Booking's business strategy and assessment of competitors].[81] Another internal document of Booking prepared in the ordinary course of business looking at Airbnb is named '*Strategy 2022+: Homes Strategy*' (emphasis added) and focuses on private accommodations.[82] Similarly, an analyst report from Similarweb identifies Airbnb and Vrbo as '*vacation homes*' providers, as opposed to hotel providers.[83] Another analyst report from JMP looks at Airbnb for its Home segment and notes that Airbnb's investments for hotels have significantly decreased.[84]

(105) In the Response to the First Letter of Facts, the Notifying Party claims that both hotels and alternative accommodations list the same accommodation on multiple types of platforms.[85] The Commission agrees that in some cases, the same accommodation can be listed on multiple types of platforms. However, not all OTAs that offer hotel OTA services also offer private accommodation and *vice versa*. In addition, as explained in paragraph (100), the degree of success of OTAs offering both hotel and private accommodation services can vary greatly between the two markets.

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74 Response to question 18.4.1. of Questionnaire Q1 to OTAs [DOC ID 2419].

75 Response to question 18.4.1. of Questionnaire Q1 to OTAs [DOC ID 2739].

76 Response to question 17.2.1 of Questionnaire Q3 to hotels [DOC ID 2074].

77 Response to question 17.2.1. of Questionnaire Q3 to hotels [DOC ID 1999].

78 Response to the SO, Annex 5, paragraph 4.17.

79 For instance, Booking's internal document, BOOK_00655327-[Details of Booking's assessment of its competitors] – *Sept '19* [ID 51850-5944]; Booking's internal document, BOOK_00971049-*Homes Strategy_Initial Answers INTERNAL_April 2021* [ID 51853-83363]; Booking's internal document, BOOK_00690909-2022+ *Homes Strategy_Initial Factbase_Global Strategy Internal_March 2021* [ID51850-41523].

80 Booking's internal document, BOOK_00655327--[Details of Booking's assessment of its competitors] – *Sept '19* [ID 51850-5944], page 2.

81 Booking's internal document, BOOK_00655327--[Details of Booking's assessment of its competitors] – *Sept '19* [ID 51850-5944], page 2.

82 Booking's internal document, BOOK_00971049-*Homes Strategy_Initial Answers INTERNAL_April 2021*[ID 51853-83363].

83 Booking's internal document, *BOOK_02017533-Similarweb Travel_Industry_Insight_Report_Report_April-May_2022_(1)* [ID 56972-5660], slide 27.

84 Booking's internal document, BOOK_02053663-*Initiating Coverage of* [Name of OTA] *Redefining the Travel Market with […] (JMP Securities) 48 pages – 04-Jan-21* [ID56978-18675], slide 14.

85 Response to the First Letter of Facts, page 10.

(106) In the second place, contrary to what the Notifying Party argues,[86] the barriers to OTA expansion from private accommodation to hotels are high. The majority of OTAs that expressed a view confirmed that it is either difficult or very difficult for other accommodation OTA to expand its offering to include hotels in view of the costs and time required. An OTA estimated the investment costs at between EUR 50-250 million, and another one considered that it would take 3-5 years.[87] An OTA also explained that, in order to attract a critical volume of end-customers, a hotel OTA needs to obtain attractive content in terms of rates and other elements (e.g., cancellation, 'pay at property') from hotels, but the hotels would not give access to their inventory at attractive conditions unless the OTA has a critical customer base.[88] Similarly, the barriers to entry from hotels to private accommodation are also high. As explained in paragraph (101), in an internal document, Booking explained that the entry into private accommodation '*came with a dedicated effort [Details of Booking's business strategy] provided to our customers*'.[89] In the same document, Booking explained that it even had to carry out a '*dehotelization*' (sic) of its services to cater to the needs of the private accommodation providers, as the Booking platform was conceived for hotels and was not adapted to private accommodation.[90]

(107) In the response to the First Letter of Facts, the Notifying Party disagrees with the Commission's reading of that internal document, and reiterates that there are low barriers to OTA expansion from hotels to alternative accommodations and *vice-versa*.[91] First, the Notifying Party argues that '*Booking's own efforts to develop its Homes listings were a direct response to suppliers listing on Booking.com*', and that '*Booking.com's efforts to attract more Homes listing simply built on existing listing from home owners*'.[92] The Commission considers that the Notifying Party's arguments do not convince. In the first place, in the same internal document, Booking explains that they entered the vacation rental business [Details of Booking's business strategy].[93] In the second place, still in the same internal document, Booking explains that to become a relevant market player, Booking had to develop a value proposition and [Details of Booking's business strategy].[94] Second, the Notifying Party states that the evidence from Booking.com is corroborated by competitors which have found this process easy and organic as well, that additional evidence received in the market investigation supports the Parties' argument and that the Parties' arguments are also consistent with public statements from hotels chains.[95] The Commission considers that evidence in the file contradicts the Notifying Party's position. As explained in paragraph (106), the majority of OTAs that expressed a view confirmed that it is either difficult or very difficult for other accommodation OTA to expand its offering to include hotels in view of the costs and time required.

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86 Response to the Article 6(1)(c) decision, Annex 2, Market definition, paragraph 5.12.
87 Response to questions 11, 11.1. and 11.1.2 of Questionnaire Q1 to OTAs [DOC ID 2739].
88 Non-confidential minutes of a conference call with eDreams Odigeo, dated 1 December 2022 [DOC ID 57675], paragraph 2.
89 Response to QP8, Attachment L, page 2.
90 Response to QP8, Attachment L, page 2.
91 Response to the First Letter of Facts, page 6.
92 Response to the First Letter of Facts, pages 6 and 7.
93 Response to QP8, Attachment L, page 1.
94 Response to QP8, Attachment L, page 2.
95 Response to the First Letter of Facts, page 7.

(108) In the third place, feedback from the market investigation suggests that the regulatory requirements for operating hotels are stricter than for other types of accommodation.[96] According to HOTREC, *'[h]otels are subject to high regulatory requirements that require them to comply with various obligations on issues such as labour, tax, environmental, intellectual property, safety, health and food. Unlike other tourism services, however, the activities of STR [short-term-rental] hosts remain to a large extent unregulated or under regulated.'*[97] This translates in different requirements for hotel OTAs and other (including private) accommodation. Indeed, feedback from the market investigation gives indications that, as a result of those regulatory requirements for hotels, running a hotel OTA comes with different requirements as compared to running another (including private) accommodation OTA. For example, an OTA explained that, from a technical point of view, platforms such as Airbnb need to have certain functions that are adapted to other types of accommodations, including *'registration requirements and authorisation schemes on hosts, thresholds for the number of STRs [short-term-rental], day limit on the sharing activity, (...) [and] different requirements for hosts'*.[98]

(109) In the fourth place, the demand profile of consumers that stay at hotels and private accommodation differ.

(110) The vast majority of hotels that expressed a view indicated that hotels are more expensive than other (including private) accommodation for end-users in terms of price per night per capita.[99] In this context, some respondents explained that hotel rooms are more expensive due to higher taxation compared to other types of accommodation and higher operating costs including fixed subscriptions and employment of staff.[100] Furthermore another hotel pointed out that there is a difference in the way the two different types of accommodation are priced. More specifically, according to that respondent, hotel rooms are priced per capita, while other types of accommodation, such as private rentals, are generally priced per night meaning that the price per night remains the same regardless of the number of guests.[101]

(111) The fact that hotels are more expensive than other types of accommodation for end users is also confirmed by the Notifying Party's submissions. Indeed, on Booking's platform, in 2022, in the EEA, the average cost per room per night for a (chain and independent) hotel was EUR […][102] whereas for other (including private) accommodations ('home') it was EUR […].[103] The average cost per room per night for a hotel is therefore [10-20]% higher than for other (including private) accommodations. Likewise, in 2022, in the EEA, the average cost per traveller for a (chain and independent) hotel was EUR […],[104] whereas for other (including private) accommodations it was EUR […].[105] The average cost per traveller for a hotel is

96 Response to question 12 of Questionnaire Q1 to OTAs [DOC ID 2739] and question 12 of Questionnaire Q3 to hotels [DOC ID 2737].
97 Response to question 12 of Questionnaire Q3 to hotels [DOC ID 2346].
98 Response to question 12 of Questionnaire Q1 to OTAs [DOC ID 2739].
99 Response to question 11.1. of Questionnaire Q3 to hotels [DOC ID 2737].
100 Response to question 11.1.1. of Questionnaire Q3 to hotels [DOC ID 2737].
101 Response to question 11.1.1. of Questionnaire Q3 to hotels [DOC ID 2737].
102 Response to RFI 12, Annex 3, EEA core and chain for 2022.
103 Response to RFI 12, Annex 3, EEA home for 2022.
104 Response to RFI 12, Annex 3, EEA core and chain for 2022.
105 Response to RFI 12, Annex 3, EEA home for 2022.

therefore [10-20]% higher than for other (including private) accommodations. Similarly, in internal documents prepared in the ordinary course of business, Booking notes that alternative accommodations are more affordable than hotels: ''[Details of pricing by accommodation type]'[106]; and '[Details of pricing by accommodation type]'.[107] In the same vein, Booking notes that '[Details of pricing by accommodation type]'.[108]

(112) In the Response to the First Letter of Facts, the Notifying Party argues in particular that '*the average cost data relied upon above is (at best) a highly superficial analysis of the prices charged by hotels and by private accommodation provides*'.[109] As explained in paragraph (110) and (111), the Commission's finding that hotels are more expensive than other types of accommodation for end users relies both on the results of the market investigation and on the data provided by the Notifying Party.

(113) Moreover, certain hotels explained that hotels are more suitable for short stays, whereas often, owners of private vacation homes prefer to rent their properties for longer durations, and therefore sometimes set requirements for a minimum duration of stay to their customers.[110] This is in line with the Notifying Party's submissions, which showed that between 2016 and 2022 in the EEA, the average duration of stay in other types of accommodation by end users ranged between […] and […] days, compared to [lower average number of days] and [lower average number of days] for independent and chain hotels.[111] An analyst report from JMP expects the length of stay in alternative accommodation to get even longer in the coming years, and notes that '*41% of alternative accommodation trips now exceed 7 days*'.[112]

(114) In addition, in internal documents prepared in the ordinary course of business and analysing the differences between hotels and alternative accommodations, Booking explained that the preference for type of properties is also generational. Indeed, Booking estimates that millennials (sic) '[Details of Booking's assessment of consumer preferences]', while baby boomers (sic) *'[Details of Booking's assessment of consumer preferences]*'.[113] Booking also noted that '[Details of Booking's assessment of consumer preferences].[114] Similarly, in another internal document, Booking notes that '[Details of Booking's assessment of consumer preferences]'.[115]

(115) In the Response to the SO, the Notifying Party argues that a significant number of consumers view different property types as substitutable.[116] In particular, Booking argues that an internal study shows that '*[…] of Booking.com users considered*

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106 BOOK_02106971-2022+ Strategy Offsite_ Travel Customer Needs [ID 56972-56423], page 14.

107 Booking's internal document, BOOK_01034210-2022+ 'Homes Strategy_Initial Factbase_Global Strategy Internal_March 2021' [ID 51854-46984], page 10.

108 Booking's internal document, Attachment D338 - EC_00000294 [ID526-294], page 27.

109 Response to the First Letter of Facts, pages 12-13.

110 Response to question 11.2.1. of Questionnaire Q3 to hotels [DOC ID 2737].

111 Form CO, Attachment X, Response to QP9, Annex 2.

112 Booking's internal document, BOOK_02053663-*Initiating Coverage of Airbnb Redefining the Travel Market with Alternative Accommodations (JMP Securities) 48 pages - 04-Jan-21* [ID 56978-18675], page 11.

113 Booking's internal document, BOOK_02106971-2022+ Strategy Offsite_ Travel Customer Needs [ID 56972-56423], page 9.

114 Booking's internal document, BOOK_02106971-2022+ Strategy Offsite_ Travel Customer Needs [ID 56972-56423], page 3.

115 Booking's internal document, Attachment D338 - EC_00000294 [ID 526-294], page 27.

116 Response to the SO, Annex 5, paragraph 4.3.

*traditional and alternative accommodation types interchangeably*'.[117] The Commission considers that other evidence in the file contradicts this finding. *First*, this finding is limited to personal trips, as the title of the graph referred to by Booking reads '*Preferred property type for personal trips*'.[118] For business trips, another customer study carried out by Booking shows that the majority of travellers ([40-50]%) prefer hotels.[119] *Second*, another customer study carried out by Booking shows that travellers have property preferences based on their travel destinations.[120] For instance, apartment is the preferred property type for a stay in a city.[121] *Third*, yet another customer study carried out by Booking and looking at the German market shows that the majority of German travellers ([40-50]%) prefer hotels over other types of properties.[122]

(116) In the Responses to the First and Second Letters of Facts, the Notifying Party reiterates that consumers' preferences do not delineate hotels from alternative accommodations and that consumers select an accommodation because it has certain property attributes or corresponds to a certain trip type.[123] The Commission considers that it is precisely because hotels have certain different attributes (for instance, reception, room cleaning, breakfast) that other (including private) accommodations do not offer, that consumers do not substitute them. The OTA services that these consumer use are therefore different.

(117) Therefore, for the purposes of the present Decision, the Commission considers that (i) flight and accommodation OTA services belong to two separate products markets and (ii) OTA accommodation services can be further segmented between hotel OTA services and other (including private) accommodation services.[124]

5.2.1.3.2. Two-sided nature of OTA services (consumer and TSP sides)

(118) OTAs are two-sided platforms, which serve consumers on one side and TSPs on the other. For each of the segmentations defined above (flight and hotels), the Commission considered whether it would be appropriate to define separate markets for the consumer or end-user side on the one hand and the TSP side on the other. The Commission concluded that such a distinction is not appropriate for the reasons listed below.

(119) *First*, OTA platforms are transaction matching platforms, where the OTAs have services to provide only if, on the one side of the platform, the TSPs supply them and can sell the services they procure from the TSPs only if the consumers, on the other side, purchase them. For instance, a consumer can only book accommodation with an OTA if the OTA has entered into an agreement with the accommodation provider to source content. As explained in paragraph paragraphs (52) and (53) above, the relationship between OTAs and TSPs is the main commercial relationship of the

117 Response to the SO, Annex 5, paragraph 4.3 (i).
118 Form CO, Figure 6.9.
119 Booking's internal document, BOOK_02090231 [ID 56972-39690], slide 11.
120 Booking's internal document, BOOK_00672305 [ID 51850-22921], slide 7.
121 Booking's internal document, BOOK_00672305 [ID 51850-22921], slide 7.
122 Booking's internal document, BOOK_02073979-2021_DACH OBJECTIVES incl. [ID 56972-33786], slide 19.
123 Response to the First Letter of Facts, pages 14-15-16; Response to the Second Letter of Facts, pages 3-4.
124 Similarly, the Commission considers that hotel OTA and private accommodation OTA belong to two separate products markets.

travel services intermediation market. It is the TSPs that typically pays the OTAs commission and TSPs remain ultimately contractually responsible vis-à-vis the end-customer.[125] Moreover, the OTAs typically do not take ownership of the inventory they offer.[126] OTAs act as intermediary between TSPs and the end customers. *Vis-à-vis* consumers, the role of the OTA consists in offering the content of the TSPs as well some ancillary services.

(120) *Second*, evidence collected by the Commission indicates that the OTA markets are characterized by the presence of network effects resulting from the number of end-users and TSPs using a given OTA platform. In particular with respect to hotel OTA services, a majority of OTAs expressing a view considered that the breadth of the hotel portfolio was the main parameter that end-users would take into account in their selection of an OTA.[127] It follows that the greater the number of TSPs using an OTA platform, the more attractive that platform will be for end-users. Conversely, the more end-users an OTA has, the more attractive it would be for the TSPs as the likelihood of making a sale increases with the number of end-users. Therefore, competitive dynamics in the OTA markets are dictated by how successful an OTA is on the two sides of the market, which thus need to be considered together.

(121) For these reasons, for the purposes of the present Decision, the Commission concludes that, with respect to the hotel and flight OTA markets, there is no need to define separate product markets for services provided to consumers and to TSPs.

5.2.1.3.3. Distinction between brick-and-mortar agencies and OTAs

(122) As Booking and ETG are active in the supply of OTA services, the Commission took these services as a starting point and considered whether the relevant product market should be widened to include the travel intermediation services provided by brick-and-mortar agencies (both online and offline).

(123) In line with previous practice, the results of the Commission's investigation indicates that OTAs belong to a distinct product market than brick-and-mortar travel agencies.

(124) *First*, the majority of respondents that expressed a view during the market investigation indicated that OTAs and brick-and-mortar agencies have different characteristics and functions that make them not interchangeable.

(125) <u>In the first place</u>, the OTAs that expressed a view during the market investigation indicated that from the perspective of end-customers, the services provided by OTAs and brick-and-mortar travel agents are not interchangeable in terms of ability to

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125 Ultimate contractual responsibility for the booking (e.g., in case of non-availability of the purchased product, cancellation, refunds or overbooking) will be determined by the agreement between Booking and the TSP. In general, ultimate responsibility for the end-customer will rest with the TSP but may be shared with Booking.com. For example, in case of non-availability of the purchased product, Booking.com's standard terms state that the TSP is '*responsible for finding a solution as soon as possible*'; however, where the TSP is unable to offer a suitable alternative, the end-customer is either allowed to choose alternative accommodation of a similar category or better on Booking.com that costs the same (if available), or cancel their booking at no cost (with a refund of anything they've paid). Similarly, if a TSP had received the payment already, they are responsible for the refund, while if Booking.com had taken the payment, they are responsible for processing the refund (Response to RFI 31, Question 1).

126 Response to RFI 31, Question 1.

127 Response to question 17 of Questionnaire Q1 to OTAs [DOC ID 2739].

compare different offerings.[128] In addition, the majority of OTAs that expressed a view indicated that OTAs offer a broader choice to end-customers compared to brick-and-mortar agencies.[129]

(126) In the second place, the majority of hotels that expressed a view indicated that OTAs and brick-and-mortar agencies are not interchangeable in terms of visibility.[130] OTAs offer greater visibility compared to brick-and-mortar travel agencies, due to their online presence, cooperation with MSS and other advertisement channels.[131] Similarly, the majority of respondents to the market investigation that expressed a view further indicated that OTAs' online presence enables to reach out to a wider pool of end users compared to brick-and-mortar travel agencies and thus generates more demand.[132]

(127) *Second*, the results of the Commission's investigation indicate that the level of commission charged by OTAs and brick-and-mortar travel agencies differs. In particular, the majority of OTAs and hotels that expressed a view indicated that OTAs, especially the large ones, such as Booking, charge higher commissions to hotels compared to brick-and-mortar travel agencies.[133] For example, an OTA explains that '*[Information confidential to a third party] with the hotels, while a Brick and Mortar agency has no chance. Booking.com charges hotels [...]% and more for a better position on their side, while a Travel Agent gets 10% average*'.[134] Another market participant explained that '*the pricing strategy of the brick and mortar travel agencies is not affected by the conditions imposed by OTAs and their pricing. Rather, brick and mortar travel agencies charge an average commission of 8% whereas OTAs generally charge at least double. Pricing by brick and mortar travel agencies on the one hand and by OTAs on the other are not interrelated.*'[135] Similarly, the German Hotel Association submits that '*Commissions paid to brick-and-mortar travel agencies (in Germany between 8 to 10%) are lower than those for OTAs (12-25% basic commissions). In addition, many OTAs have 'boosters' for higher hotel visibility or 'Preferred Programs' and those hotels that want to upgrade and be boosted, pay an even higher commission on top*'.[136] Similarly, brick-and-mortar agencies charge a somewhat higher commission for flights than OTAs. Indeed, based on public sources, brick-and-mortar agencies can charge up to 20% of the total purchase price,[137] while ETG charges less than [0-5]% of the total purchase price.[138]

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128 Response to questions 6.1. of Questionnaire Q1 to OTAs [DOC ID 2739].

129 Response to questions 6.2. of Questionnaire Q1 to OTAs [DOC ID 2739].

130 Response to question 5.1. of Questionnaire Q1 to OTAs [DOC ID 2739] and to question 5.1. of eQuestionnaire to hotels.

131 Response to question 5.1.1. of Questionnaire Q1 to OTAs [DOC ID 2739] and to question 5.1.1. of Questionnaire Q3 to hotels [DOC ID 2737].

132 Response to questions 5.2 and 5.2.1. of Questionnaire Q1 to OTAs [DOC ID 2739] and questions 5.2. and 5.2.1. of Questionnaire Q3 to hotels [DOC ID 2737].

133 Response to questions 5.3. and 5.3.1. of Questionnaire Q1 to OTAs [DOC ID 2739] and questions 5.3. and 5.3.1. of Questionnaire Q3 to hotels [DOC ID 2737].

134 Response to question 5.3.1. of Questionnaire Q1 to OTAs [DOC ID 2253].

135 Non-confidential minutes of a conference call with HOTREC, dated 3 June 2022 [DOC ID 1205], paragraph 2.

136 Response to question 5.3.1. of Questionnaire Q3 to hotels [DOC ID 2193].

137 See for instance, https://corecommissions.com/guide-travel-agent-commissions/#:~:text=Compensation%20earned%20from%20airline%20tickets,%2D22%25%20for%20international%20flights [DOC ID057685], last accessed on 7 June 2023; and https://www.cambodia-

(128) *Third*, some respondents to the market investigation indicated that with respect to hotel intermediation services some brick-and-mortar travel agencies follow a different business model, namely, reserving a number of inventories in advance from hotels and bearing the risk of selling it, whereas in the case of OTAs the risk of selling the inventory is borne by the hotels.[139]

(129) In view of the foregoing, for the purposes of the present Decision, the Commission considers that brick-and-mortar agencies and OTAs belong to separate product markets.

5.2.1.3.4. Distinction between TSPs and OTAs

(130) An additional question is whether the supply of OTA services in each of the respective segments defined above could be enlarged to include direct sales from the respective TSPs. The Commission has carried out this analysis for both the hotel and the flight verticals.

(131) As a preliminary remark, the Commission considers, both in the hotels and flights sectors, OTAs and TSPs are active on different levels in the market: OTAs are intermediaries, while the TSPs are not.

5.2.1.3.4.1. Distinction between hotel TSPs and hotel OTAs

(132) Evidence in the file, including evidence from the Parties, as well as feedback from the Commission's market investigation, indicates that hotel OTAs and hotel TSPs (*i.e.*, hotels selling their services online) belong to distinct product markets, for the reasons listed below.

(133) *First*, hotel OTAs and hotel TSPs are active on different levels in the market: hotel OTAs are a specific sales channel for hotel TSPs and hotel TSPs remunerate them for their intermediation services. There is therefore a vertical relationship between hotel OTAs and hotel TSPs. This is then reflected in the fact that services for end-customers are on average more expensive on hotel OTAs. As explained in paragraph (437), for example, Booking's 'Relative Price Difference' ('RPD') data shows that, in the EEA, reserving a hotel room via Booking [Details of Booking's pricing data]).[140]

(134) *Second*, hotels OTAs and hotels provide different services to end-users and different services to other hotels. As explained above, OTAs act as an intermediary platform between the TSPs and the end-customers. OTAs provide (i) marketing services and online booking functionality to a wide range of TSPs, and (ii) search, compare and online booking services to end-consumers for one or more types of travel products from several TSPs.[141] For example, a market participant indicated that '*with the 'search, compare and book' functions, the OTAs offers the consumer a service package that is not available in this form by the hotel's direct online distribution channel. On the hotel distribution channel the consumer can 'only' book, but not*

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travel.com/understanding-host-travel-agency-commissions-and-how-they-benefit-you-and-your-customers/ [DOC ID057684], last accessed on 7 June 2023.

138 Form CO, paragraph 8.33.

139 Response to questions 5.3. and 5.3.1. of Questionnaire Q1 to OTAs [DOC ID 2739] and questions 5.3. and 5.3.1. of Questionnaire Q3 to hotels [DOC ID 2737].

140 Commission on the basis of the Response to RFI 4, Annex 3.

141 Form CO, paragraph 1.9.

*search and compare simultaneously*'.[142] In contrast, TSPs typically do not provide marketing services or online booking functionality for other TSPs.

(135) In that regard, the Notifying Party argues in the response to the SO that some hotel brands (Accor and Marriott) provide similar services to hotel OTAs in that their websites enable consumers to search across a number of different brands, different locations and different hotels within those brands and locations.[143] However, the Commission considers that Accor's and Marriott's comparison tools are different than the services offered by hotel OTAs. Indeed, these comparison tools are limited to comparison within the hotel's own brands and do not include hotels provided by other hotel providers. Those TSPs thus do not provide services to third party TSPs. Marriott's website presents its comparison tool as a means to '*compare Marriott's portfolio of brands*'.[144] Similarly, Accor's website introduces this tool as '*compare our brands*'.[145]

(136) Similarly, during the market investigation, an OTA explained that hotel customers look for hotels' offers on hotel OTAs and tend not to check directly on hotels' websites because for any given destination there is a very wide choice of hotels, the hotel market being very fragmented.[146] The OTA further explained that '*the language of the hotel's website may in some cases make it difficult for customers to book directly on the hotel's website. For example, if a non-Italian speaking traveller is looking for a hotel in Italy, it might be difficult for the traveller to book directly on the hotel's website in Italian. Also there may be a lack of trust to book with an unknown hotel in a foreign destination and customers therefore prefer booking with a known brand (e.g., booking.com).*'[147]

(137) *Third*, contrary to what the Notifying Party argues,[148] hotel OTAs and hotel TSPs have different characteristics.

(138) In the first place, OTAs allow hotels to reach customer segment that they would not otherwise be able to cover through the direct channel. In this respect, during the market investigation, a hotel indicated that '*the own channel and the OTAs have different purposes. OTAs are useful for capturing demand the own channel cannot reach for different reasons*'.[149] The majority of hotels that expressed a view, indicated that OTAs and TSPs are not interchangeable for end-customers,[150] even though both allow end-users to book inventory hotel room. In this context, some hotels explained that (i) OTAs offer more unique services, as they allow end-users to search and compare properties prior to booking; (ii) hotel direct distribution channels

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142 Response to question 10.1 of Questionnaire Q3 to hotels [DOC ID 2193].

143 Response to the SO, Annex 5, paragraph 3.5. The Parties reiterated their argument in the Response to the First Letter of Facts (page 17).

144 https://www.travelagents.marriott.com/travelagents/comparebrands.mi [DOC ID 58350], last accessed on 4 July 2023.

145 https://group.accor.com/en/hotel-development/compare-our-brands [DOC ID 58349], last accessed on 4 July 2023.

146 Non-confidential minutes of a conference call with [an OTA], dated 26 June 2023 [DOC ID 58373], paragraph 6.

147 Non-confidential minutes of a conference call with [an OTA], dated 26 June 2023 [DOC ID 58373], paragraph 6.

148 Response to the Article 6(1)(c) decision, Annex 2, Market definition, paragraphs 4.3 to 4; Response to the First Letter of Facts (page 17).

149 Response to question 10.1 of Questionnaire Q3 to hotels [DOC ID 2132].

150 Response to question 10 of Questionnaire Q3 to hotels [DOC ID 2737].

are not as widely known as OTAs, because their advertisement expenditure is smaller than that of the latter; and (iii) the customers originating from OTA bookings, differs from customers from direct distribution channels.[151]

(139) In the second place, when hotels sell through OTAs, they lose the direct customers relationship, do not get customer data, and the relationship between the end-customer and the hotel TSP is mediated by the hotel OTA. The absence of direct contact between hotel TSPs and end-customers, as well as the lack of access to the end-customers' data may alter the experience that the hotel TSPs can offer to end-customers. For instance, a market participant noted that '*In order for hotels to establish a proper customer relationship with the guest, it would of course be important to obtain the guest's postal address (for Christmas cards etc.) as well as its email address and mobile phone number (for urgent notifications or inquiries)*.'[152] Similarly, another market participant explained that '*the own channel gives a hotel the opportunity to establish a relationship with the customer which is not possible with customers coming through OTAs since OTAs do not share unique identifiers with hotels. As a result, a guest who books via an OTA is always an unknown for the hotel, whereas a guest who books via the own channel can be recognized and can receive personalized service*'.[153]

(140) *Fourth*, the Commission's investigation shows that hotel OTAs represent a more expensive distribution channel for hotel TSPs compared to the TSP's direct distribution channel.[154] The majority of hotel respondents that expressed a view indicated that the costs of their direct distribution channel vary between 0 and 5% of the room price, while the costs of distribution through OTAs are higher.[155] A major hotel chain explained that '*the main difference for* [the hotel chain] *between the OTA distribution channels and* [the hotel chain]*'s own direct distribution channel is that the OTA distribution channel is a higher-cost one. An average OTA booking costs more than a booking through* [the hotel chain]*'s own channels.*'[156] For instance, in 2021 at the EEA level, Booking's fees represented [10-20]% on average of the total purchase price, regardless of the type of hotel.[157]

(141) *Fifth*, the fact that hotel OTAs and hotel TSPs belong to separate markets is also reflected in the Notifying Party's internal documents, notably those prepared in the ordinary course of business and analysing the main competitors in the market. In these documents, Booking does not consider the TSPs (including in particular independent hotels) as its main competitors.[158]

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151 Response to questions 10 and 10.1 of Questionnaire Q3 to hotels [DOC ID 2737].

152 Non-confidential minutes of a conference call with HOTREC, dated 3 June 2022 [DOC ID 1205], paragraph 5.

153 Response to question 10.1 of Questionnaire Q3 to hotels [DOC ID 2132].

154 Non-confidential minutes of a conference call with Marriott, dated 4 July 2022 [DOC ID 2550], paragraph 7; response to question 10.1. of Questionnaire Q3 to hotels [DOC ID 2737].

155 Response to question 30 of Questionnaire Q3 to hotels [DOC ID 2737].

156 Response to question 10.1. of Questionnaire Q3 to hotels [DOC ID 2448].

157 Commission calculation based on Booking's Response to RFI 6, Question 6, Annex 2.1.

158 See for instance Booking's internal document D245 – EC_00000201, dated 8 March 2021 [ID 000526-000201]; Booking's internal document BOOK_00820602-Q92 - D244 – Market Position vs. the., dated 2023 November 2021 [ID 051852-027123]; Booking's internal document - BOOK_01363525-Price Display Competitive Overview, dated February 2020 [ID 51857-87096], slides 10 to 16.

(142) *Sixth*, contrary to what the Notifying Party argues,[159] end consumers do not easily switch from using TSPs web sites to OTAs and *vice versa*. [Assessment of confidential consumer surveys][160] [Assessment of confidential consumer surveys][161] [Assessment of confidential consumer surveys][162] [Assessment of confidential consumer surveys].[163] [Assessment of confidential consumer surveys].[164]

(143) In view of the foregoing, for the purposes of the present Decision, the Commission considers that hotel OTAs and hotel TSPs belong to separate markets. The Commission nevertheless will assess to what extent TSPs exercise a competitive out-of-market constraint on OTAs.

5.2.1.3.4.2. Distinction between flight TSPs and flight OTAs

(144) Evidence in the file, including evidence from the Parties' submissions, as well as feedback from the Commission's market investigation, suggests that flight OTAs and flight TSPs (*i.e.,* airlines, mostly selling their services online) belong to distinct product markets, for the reasons listed below.

(145) *First*, OTAs and TSPs provide different services to end-users and other TSPs. OTAs act as an intermediary platform between the TSPs and the end-customers. OTAs provide marketing services and online booking functionality to a wide range of TSPs, and provide search, compare and online booking services to consumers for one or more types of travel products from several TSPs. In contrast, TSPs typically do not provide marketing services or online booking functionality to other TSPs.

(146) In addition, the service proposition to end-customers is also different, given that the TSPs' online direct channels typically offer a more limited choice of travel products for consumers to search, compare and book online. In particular, individual TSPs have a limited ability to offer combined tickets for multi-flight trips compared to OTAs who intermediate the inventory of different airlines. Contrary to what the Notifying Party argues,[165] the content depth is a main driver of customers' choice to purchase a flight with an OTA rather than an airline.[166] Content depth includes in particular the possibility to combine flights from several airlines. An OTA explained that there are two types of combination services offered by flight OTAs. Cross-faring is the most basic combined service. It consists of combining one airline for the outbound trip and a different airline for the inbound trip (ex: for a single trip, Lufthansa for the outbound and Easyjet for the inbound). All flight OTAs can offer this type of combination. Virtual interlining is a more complex combination service. It consists of combining several airlines for one trip (ex: an outbound Budapest-Lisbon with a stopover in Madrid, Ryanair flying Budapest-Madrid and TAP Air Portugal flying Madrid-Lisbon ).[167] The OTA also noted that *'The OTA's significant added value in this case is not only offering more options to customers but also*

159 Response to the Article 6(1)(c) decision, Annex 2, Market definition, paragraphs 4.8 and 4.9.
160 [Discussion of confidential consumer surveys].
161 [Discussion of confidential consumer surveys].
162 [Discussion of confidential consumer surveys].
163 [Calculations based on the results of confidential consumer surveys].
164 Form CO, Attachment D.6 Lego_Wave 2a_Report, slide 20 [DOC ID: 1236-167].
165 Response to the SO, Annex 5, paragraph 2.13 (ii); Response to the First Letter of Facts, pages 23-24.
166 Non-confidential minutes of a conference call with [an OTA], dated 26 June 2023 [DOC ID 58373], paragraphs 9 and 10.
167 Non-confidential minutes of a conference call with [an OTA], dated 26 June 2023 [DOC ID 58373], paragraph 10.

*protecting them from missed connections because of schedule change, delays and cancellations. In such virtual interlining schemes, OTAs ensure that travellers are able to arrive at their final destination or receive a full refund.'* Contrary to what the Notifying Party is arguing,[168] very few airlines offer virtual interlining services, and this is likely not to increase in the future.[169] OTAs are therefore better positioned then airlines in providing customers with alternative solutions in case of missed connection or schedule change.

(147) In the below internal document prepared in the ordinary course of business, Booking also identified differences in the service propositions offered by flight OTAs and airlines to end-customers.

**Figure 1: [Details of service propositions to flight end-customers]**

[Figure redacted]

*Source: Booking's internal document, [ID 51850-10852] BOOK_00660236.PPTX, Competitor Value Props _ Flights, dated 9 June 2020, slide 6.*

(148) In the Response to the First Letter of Facts, the Notifying Party argues that the slide above shows that TSPs and OTAs compete and lays out competitive advantage for each.[170] The Commission disagrees with the reading of the Notifying Party and considers that the slide above shows major differences in the service proposition to end-customers that limit the substitutability of the different offers.

(149) *Second*, flight OTAs and airlines are active on different levels in the market: flight OTAs are a specific sale channel for airlines and airlines remunerate them for their intermediation services. For instance, in the last five years ETG received remuneration through commissions from many airlines with which it has a direct contractual relationship.[171] When content is sourced from GDSs, flight OTAs receive a fixed commission for each OTA sale from those GDSs, who in turn charge a fee to airlines.[172] There is therefore a (at least indirect, through GDSs) vertical relationship between flight OTAs and flight TSPs.

(150) *Third*, flight OTAs and airlines have different characteristics.

(151) In the first place, during the market investigation, an OTA indicated that the OTA channel enables airlines to reach customer segments that they would not otherwise be able to cover. In particular, '*By flights being listed also on other distribution channels such as Kiwi.com or/and other OTAs it increases the visibility of airlines' flights, namely for customers who would not otherwise know about the existence of those flights/airlines.*'[173] Moreover, '*OTA works with wider pool of End Users, put more marketing efforts to attract and connect with the client.*'[174] Also, '*OTAs gives extra visibility to the airlines, in particular to small and medium airlines with low brand recognition or to large airlines outside of their domestic market.*'[175]

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168 Response to the SO, Annex 5, paragraph 2.13 (ii); Response to the First Letter of Facts, page 24.

169 Non-confidential minutes of a conference call with [an OTA], dated 26 June 2023 [DOC ID 58373], paragraph 11.

170 Response to the First Letter of Facts, page 25.

171 Booking Flights Submission dated 27 February 2023 [DOC ID 57045], para. 5.11.

172 Response to RFI 26, Question 4.

173 Response to question D.A.A.1-2 of eRFI to Competitors [DOC ID 56669].

174 Response to question D.A.A.1-2 of eRFI to Competitors [DOC ID 56576].

175 Response to question D.A.A.1-2 of eRFI to Competitors [DOC ID 56625].

(152) In the second place, the direct channel is more profitable for airlines. An internal document prepared in the ordinary course of business, Booking noted that bookings through direct channel enable airlines to '*reduce costs*' compared to bookings through OTAs.[176]

(153) In the Response to the First Letter of Facts, the Notifying Party claims that the fact that one method is perceived to be less expensive does not mean that the functions are 'different' or that they do not compete.[177] The Commission considers that the fact that direct channel is more profitable for airlines than flight OTA supports the findings that flight OTAs and airlines have different characteristics.

(154) In the third place, the fact that flight OTAs and flight TSPs belong to separate markets is also reflected in the ETG's internal documents, notably those prepared in the ordinary course of business and analysing the main competitors in the market. In these documents, ETG […].[178]

(155) In the Response to the SO, the Notifying Party argues that '*certain airlines are willing to collaborate with OTAs only to fill cabins on routes or directions that are less popular, or during certain seasons when demand is lower*'.[179] Evidence in the file indicates that cooperation between airlines and flight OTAs is not limited to certain routes, directions or seasons. Indeed, an OTA explained that '*The cooperation between airlines and flight OTAs to give OTAs access to the airlines content is very binary: in general, either the airline accepts to give access to its entire flight content (regardless of the routes, directions or period), or to none of the content (ex RyanAir, Wizzair)*'.[180] In the Response to the Second Letter of Facts, the Notifying Party claims in particular that '*The Parties have provided clear evidence in the Flights Submission that airlines grant varying degrees of access to their content at their discretion: it is not true that airline cooperation with flight OTAs is binary as eDreams suggests*'.[181] The Commission disagrees with the Notifying Party's response: in the submission referred to by the Notifying Party (nor in other submissions), the Notifying Party did not submit any evidence supporting the fact that cooperation between airlines and flight OTAs is limited to certain routes, directions or seasons.[182] In the Response to the Second Letter of Facts, the Notifying Party further argues that '*[Booking's assessment of competitor submissions].*'[183] The Notifying Party did not explain why it considers this statement [Booking's assessment of competitor submissions], and the Commission sees no reason to set aside a statement from a flight OTA.

(156) In the Response to the First Letter of Facts, the Notifying Party argues that the letter of facts and the SO do not provide a single argument (or piece of additional objective evidence) to explain how competitive dynamics have changed to an extent that merits a deviation from the Commission's decision practice that considered airlines and OTAs as part of the same market (see case COMP/M.6163 – AXA / Permira /

176 Booking's internal document, BOOK_02022115, slide 32 [ID 56972-10242].
177 Response to the First Letter of Facts, page 26.
178 […].
179 Response to the SO, Annex 5, paragraph 2.3 (i).
180 Non-confidential minutes of a conference call with [an OTA], dated 26 June 2023 [DOC ID 58373], paragraph 12.
181 Response to the Second Letter of Facts, page 5.
182 Booking Flights Submission dated 27 February 2023 [DOC ID 57045].
183 Response to the Second Letter of Facts, page 5.

Opodo / Go Voyages / eDreams, decision of 30 May 2011, paras. 25 to 38).[184] The Commission considers that paragraphs (144) to (155) above explain in detail the current competitive dynamics between flight OTAs and flight TSPs.

(157) Finally, in the Response to the Second Letter of Facts, the Notifying Party considers that [the OTA's] views on the distinction between flight TSPs and flight OTAs has changed since 2011, and that the Commission should have inquired about it.[185] The Commission notes that this consideration is irrelevant, as the Commission's investigation relies on the current views of the stakeholders at the time of the investigation.[186] If a stakeholder's views are supported by facts and aligned with other evidence, their validity is not called into question by the simply fact that the same stakeholder had a different opinion years ago.

(158) In view of the foregoing, for the purposes of the present Decision, the Commission considers that flight OTAs and flight TSPs belong to separate markets.

(159) The Commission will nevertheless assess to what extent TSPs exercise a competitive out-of-market constraint on OTAs.

5.2.1.3.5. Distinction between MSSs and OTAs

(160) The results of the market investigation confirmed the Commission's previous decisional practice that OTAs belong to a distinct product market than MSS.

(161) The majority of respondents to the market investigation that expressed a view indicated that MSS and OTAs operate different business models and play a different role in the value chain, and, in particular:[187]

(162) *First*, MSS show and compare prices from different providers (including OTAs and TSPs) and give OTAs and TSPs the opportunity to advertise their offering. By contrast, OTAs, although also comparing different offerings, only indicate the price offered on their own platform.[188]

(163) *Second*, MSS do not allow customers to book travel services directly but rather provide customers with a link to an OTA or a TSP website and the booking takes place on the OTA or TSP platform.[189] An OTA explained that '*MSS' business model is more advertising than travel intermediation. MSS are in practice platforms where customers can search and compare but cannot book. They are more akin to a specialised search engine than an OTA. The customer experience on a MSS is as follows: the customer runs a search that is passed on to a multitude of OTAs and airlines; the MSS sorts in the results; and, by clicking on the result, the customer is redirected to the website of the OTA or airline offering the travel service. The MSS have nothing to do with the booking and, therefore, customers cannot ask the MSS*

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184 Response to the First Letter of Facts, page 21.

185 Response to the Second Letter of Facts, page 6.

186 Non-confidential minutes of a conference call with [an OTA], dated 26 June 2023, paragraphs 9, 10 and 11 [DOC ID 58373].

187 Response to questions 7 and 7.1. of Questionnaire Q1 to OTAs [DOC ID 2739], questions 4 and 4.1. of Questionnaire Q2 to MSS [DOC ID 2741], and questions 7 and 7.1. of Questionnaire Q3 to hotels [DOC ID 2737]; non-confidential minutes of a conference call with HOTREC, dated 21 June 2023 [DOC ID 58045], paragraph 2.

188 Response to questions 7 and 7.1. of Questionnaire Q1 to OTAs [DOC ID 2739], questions 4 and 4.1. of Questionnaire Q2 to MSS [DOC ID 2741], and questions 7 and 7.1. of Questionnaire Q3 to hotels [DOC ID 2737].

189 Non-confidential minutes of a call with HOTREC, dated 3 June 2022 [DOC ID 1205], paragraph 12.

*for a ticket refund or anything related to customer service. After-sales services are provided by the OTA / airline to which the customer was re-directed. MSS have therefore no ownership of the customer, they are paid by the OTAs / airlines that are listed in their websites if the end customer chooses the relevant OTA/airline offer listed in the MSS (i.e., "clicks" on the MSS link)*'.[190] Similarly, a MSS explained that '*whereas there is some degree of overlap, OTAs and MSS are different businesses and provide different services to customers. For example, OTAs allow for booking and provide a range of services that are typically not offered by MSS (packages, virtual inter-lining and detailed customer service).*'[191]

(164) *Third*, MSS and OTAs methods of remuneration are different: MSS are remunerated by OTAs and TSPs at a cost-per-click ('CPC') or a cost-per-acquisition ('CPA') basis.[192] OTAs are instead remunerated primarily through commissions paid by TSPs on sales achieved on their platform.[193]

(165) In view of the foregoing, for the purposes of the present Decision, the Commission considers that MSS and OTAs belong to separate markets.

*5.2.2. Commercial affiliate agreements*

5.2.2.1. The Commission's past decisional practice

(166) In its past decisional practice, the Commission considered but left open whether commercial affiliate agreements (namely agreements between two OTAs where one supplies the other a type of travel service at a fee, so that the latter expands its offering to other types of travel services) constitute a distinct product market from OTA or MSS, and further left open whether potential markets for commercial affiliate agreements should be further segmented based on the type of travel service.[194]

5.2.2.2. Notifying Party's views

(167) The Notifying Party considers that there is no distinct market for commercial affiliate services, and that the latter should be treated as part of the overall market for the supply of MSS or OTA services respectively, due to the fact that commercial affiliate services are add-on services, intended to generate incremental revenues for an OTA or MSS provider when there is an increase in demand, and there are no material barriers preventing an existing supplier of OTA services from offering OTA or MSS services via a commercial affiliate agreement.[195]

5.2.2.3. The Commission's assessment

(168) Evidence in the file suggests that for a supplier that owns proprietary OTA capabilities, commercial affiliate agreements are intended to generate incremental

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190 Non-confidential minutes of a conference call with [an OTA], dated 3 March 2022 [DOC ID 664], paragraphs 9 and 10.

191 Non-confidential minutes of a conference call with [an MSS], dated 15 March 2022 [DOC ID 670], paragraph 10.

192 Form CO, paragraph 8.62(ii).

193 Form CO, paragraph 8.125.

194 M.8416 – The Priceline Group / Momondo Group Holdings, decision of 17 July 2017, paragraph 57; M.9005 – Booking Holdings / HotelsCombined, decision of 23 October 2018, paragraph 69.

195 Form CO, paragraphs 6.46 and 6.47.

OTA revenue,[196] whereas for a supplier sourcing third-party proprietary OTA capabilities, commercial affiliate agreements allow it to gain a share of revenue derived from visitors on its platform.[197] Moreover, under commercial affiliate agreements, suppliers sourcing services will typically have limited control over, *inter alia*, inventory, terms of supply and prices, contractual relationship with end consumers, and end consumer-related issues and questions.[198] These will often be controlled by the supplier that owns proprietary OTA capabilities. In this context, the Notifying Party submits that it generates [Details of margins achieved through the commercial affiliate agreement].[199]

(169) In view of the foregoing, for the purposes of the present Decision, the Commission considers that commercial affiliate agreements are add-on services for OTA and do not constitute a distinct market.

*5.2.3. Conclusion on product market definition*

(170) In light of the above, for the purpose of the present Decision, the Commission considers that the hotel OTA market and the flight OTA market are the relevant product markets to assess the effects of the Transaction.

### 5.3. Geographic market definition

*5.3.1. The Commission's past decisional practice*

(171) In its past decision practice, the Commission considered, that, due to language barriers, OTA markets are likely to be national in scope, but ultimately left the market definition open.[200]

*5.3.2. The Notifying Party's views*

(172) The Notifying Party submits that the geographic scope of the markets for the provision of OTA services are wider than national, since most major OTAs are active on a pan-European or global level and there are limited variations in their service offerings in each EEA-country.[201]

*5.3.3. The Commission's assessment*

(173) For the purposes of the present merger control Decision, based on the results of the market investigation, as well as evidence in its file, the Commission considers that the geographic scope of the OTA market is likely to be EEA-wide. The conclusion applies to both the hotel and flight OTA markets.

(174) *First*, the main OTAs provide their services at the EEA level and the services they offer are rather homogeneous across Member States. The majority of hotel respondents that expressed a view indicated that they generally consider that the

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196 Non-confidential minutes of a conference call with [an OTA], dated 13 May 2022 [DOC ID 2788], paragraph 19.

197 Non-confidential minutes of a conference call with [an OTA], dated 19 December 2022 [DOC ID 51501], paragraph 5.

198 Non-confidential minutes of a conference call with [an OTA], dated 10 July 2022 [DOC ID 2497], paragraph 4; non-confidential minutes of a conference call with [an OTA], dated 19 December 2022 [DOC ID 51501], paragraph 5.

199 Form CO, paragraph 6.97.

200 M.8416 – The Priceline Group / Momondo Group Holdings, decision of 17 July 2017, paragraph 68; and COMP/M.9005 – Booking Holdings / HotelsCombined, decision of 23 October 2018, paragraph 72.

201 Form CO, paragraphs 6.68, 6.69 and 6.70.

large OTAs, like Booking, operate on an EEA-wide basis as they offer their services to customers across the EEA, for properties located across the EEA. They nevertheless note that smaller OTAs focus their businesses at national, or even regional levels.[202] The same also holds true for flights. Indeed, there is limited variation in the Parties' flight offering by country and the nature of the services provided to the users across the EEA is the same.[203] In addition, the major flights OTAs are active on a pan-European or global basis, and national or regional players have also sought to expand into new countries.[204]

(175) *Second*, the majority of OTAs that expressed a view during the Phase I market investigation considers that the OTA market is at least EEA-wide. They explain that OTAs build their brands at an international level and they develop technologies and business models that allow them to expand their geographic coverage across many different countries in a short period of time.[205] [Details of Booking's commercial terms].[206]

(176) *Third*, according to the Notifying Party, unless required by law or regulation within a particular jurisdiction, agreements between hotels and OTAs are not typically limited in scope to a single Member State and allow for the sale of hotel reservations on the OTAs' platforms irrespective of the location of the end-customers. Indeed, many end-customers will be booking hotels for when they travel outside of their home location (i.e., their booker country), so any geographical limitation would run counter to OTAs' aims of encouraging end-customers to book hotels through their platform, irrespective of their location.[207]

(177) *Fourth*, since an OTA success depends on the number of customers, it makes commercial sense for an OTA to reach out to customers across as many countries as possible. In this context, the customer base of OTAs tends to be more international compared to all other channels for small and medium hotels.[208]

(178) *Fifth,* languages and legislative barriers to expansion across Member States have reduced over the past years.

(179) In the first place, with regards to language barriers, the majority of OTAs that expressed a view explain that localization of websites is very easily achieved due to the increased prevalence of automated language translation software and functionalities as well as the local currency functions.[209] This allows the main OTAs to make their platforms available in the language of (almost) each country in which they operate, or at least in a few select languages.[210]

(180) The availability of these platforms in multiple languages is also a proof of the OTAs' international presence and scope. For instance, Booking's website is available in

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202 Response to question 13.1. of Questionnaire Q3 to hotels [DOC ID 2737].
203 Form CO, paragraphs 6.68 and 6.69.
204 Form CO, paragraph 6.67; non-confidential minutes of a conference call with [an OTA], dated 1 December 2022 [DOC ID 57675], paragraph 17.
205 Response to question 13.1. of Questionnaire Q1 to OTAs [DOC ID 2739].
206 Form CO, footnote 424.
207 Response to RFI 31, Question 6.
208 Market study on the distribution of hotel accommodation in the EU, COMP/2020/OP/002, Page 19.
209 Response to question 13.1. of Questionnaire Q1 to OTAs [DOC ID 2739].
210 Response to questions 14, 14.1, 15 and 15.1 of Questionnaire Q3 to hotels [DOC ID 2737].

45 languages, and ETG's website is available in 35 languages.[211] [Details of Booking's commercial terms].[212] An OTA explained that '*Due to the wide possibilities of obtaining translations in the EU, these markets have stopped to be nationals (sic) in scope. The EU can, in this sense, be considered as a sole market, com[pr]ising all of the Member States.*'[213] Another OTA explained that '*the OTA would need to translate its website to the local language, which is relatively easy technologically because it can be done e.g., by translation programs or, [...], through professional translation companies*'.[214]

(181) In addition, translation to the local language is not always a necessary step to enter a new country. A market participant indicated that '*that the use of the English language is an increasing option in a number of countries and that, in the Netherlands and some Scandinavian countries like Denmark and Sweden, OTAs can operate only with an English website*'.[215]

(182) Regarding the offering of local support, a main OTA explained that '*[The OTA] translates the content of its offers and website and deploys call centers with national languages throughout Europe to handle consumer requests in several languages. The set-up of the call centers is mostly happening through contracting and this does not constitute a barrier to entry or expansion.*'[216] The offering of local support in many languages and countries is also supported by the Notifying Party's submission. Indeed, Booking is able to handle customers enquiries regardless of the customer's location, as it currently provides customer service through call centres in […] locations ([Details of Booking's business strategy] are outsourced) that are able to deal with customer enquiries 24 hours a day in over 40 different languages.[217]

(183) <u>In the second place</u>, as regards legislative barriers, a major OTA explained that '*Within the EEA, [the OTA] considers that it is not difficult to serve every European country as the licensing and legal framework are harmonised.*'[218] Similarly, another respondent explained that, although national regulatory requirements in running an OTA may differ on a country by country basis, OTAs can expand their activity in the EU easily because the regulatory requirements between EU countries are more or less unified.[219]

(184) This is also in line with the submission of the Notifying Party. The Notifying Party considers that the regulatory framework for operating an OTA is largely harmonised between Member States. This is done for instance through key legislation governing certain aspects of the sale of travel products (such as the sale of package holidays)

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211 Response to RFI 12, question 2.

212 Response to QP7, Annex P, Article 2.1.3.

213 Response to question 13.1. of Questionnaire Q1 to OTAs [DOC ID 2040].

214 Non-confidential minutes of a conference call with [an OTA], dated 9 December 2022 [DOC ID 51316], paragraph 5.

215 Non-confidential minutes of a conference call with [an OTA], dated 25 April 2022 [DOC ID 891], paragraph 9.

216 Non-confidential minutes of a conference call with [an OTA], dated 1 December 2022 [DOC ID 57675], paragraph 16.

217 Form CO, footnote 135.

218 Non-confidential minutes of a confidential call with [an OTA], dated 1 December 2022 [DOC ID 57675], paragraph 16.

219 Response to question 13.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

that is expressly harmonised at the European level (e.g., via the Package Travel Directive).[220]

(185) Although a majority of OTAs considered that it was still not always easy for OTAs to adapt their services (e.g. translating the webpages, providing local customer support, complying with local legal requirements) to cater to different national markets in the EEA, in particular in terms of costs and duration, a sizeable minority considered that it was easy for OTAs to adapt their services to cater to different national markets in the EEA.[221] In addition, a majority of OTAs offers services in multiple languages and in all the languages of the countries they operate in.[222]

(186) Therefore, for the purposes of the present merger control Decision, the Commission will assess the effects of the Transaction on the hotel and flight OTA markets at the EEA level.

## 6. COMPETITIVE ASSESSMENT

(187) Booking and ETG are both active in the provision of OTA services. However, while Booking focuses on the supply of hotel OTA services and, as per the findings below, holds a dominant position in the hotel OTA market in the EEA, ETG mainly operates as a provider of flight OTA services and is one of the top 4 flight OTAs in the EEA. The activities of the Parties are therefore to a large extent complementary. In light of this, this SO assesses the extent to which, through the acquisition of ETG's flight OTA capabilities in the EEA, the Transaction would further strengthen Booking's market position in the EEA for the provision of hotel OTA services.

### 6.1. Framework for the assessment

#### *6.1.1. Legal framework*

(188) Article 2 of the Merger Regulation provides that the Commission has to appraise concentrations within the scope of the Merger Regulation with a view to establishing whether or not they are compatible with the internal market. For that purpose, the Commission must assess, pursuant to Article 2(2) and (3), whether or not a concentration would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in the internal market or a substantial part of it.[223]

(189) The Commission's Horizontal Merger Guidelines note that the creation of or the strengthening of a dominant position is a primary form of competitive harm. The concept of dominance is defined as 'a situation where one or more undertakings wield economic power which would enable them to prevent effective competition from being maintained in the relevant market by giving them the opportunity to act to a considerable extent independently of their competitors, their customers and, ultimately, of consumers'.[224]

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220 Response to RFI 22, Question 1.

221 Response to question D.B.1-1 of eRFI to Competitors.

222 Non-confidential minutes of a conference call with [an OTA], dated 1 December 2022 [DOC ID 57675], paragraph 16; non-confidential minutes of a conference call with [an OTA], dated 25 April 2022 [DOC ID 891], paragraph 9.

223 Horizontal Merger Guidelines, paragraph 1.

224 Horizontal Merger Guidelines, paragraph 2.

(190) According to the Commission's Horizontal Merger Guidelines, the creation or strengthening of a dominant position held by a single firm as a result of a merger has been the most common basis for finding that a concentration would result in a significant impediment to effective competition.[225] In particular, the guidelines note that some proposed mergers would, if allowed to proceed, significantly impede effective competition by leaving the merged firm in a position where it would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult or otherwise restrict the ability of rival firms to compete.[226]

(191) In a similar way, the Commission's Non-Horizontal Merger Guidelines indicate that a non-horizontal merger may significantly impede effective competition (particularly as a result of the creation or strengthening of a dominant position) by changing the ability and incentive to compete on the part of the merging companies and their competitors in ways that cause harm to consumers.[227]

(192) Indeed, both the Horizontal and non-Horizontal merger guidelines foresee that a significant impediment of competition may be the result of the creation or strengthening of a dominant position which can arise from a structural change in the market that decreases the ability for competitors to enter or expand in the market and more generally to compete.[228]

(193) The Transaction would allow Booking to acquire a channel for acquiring customers, i.e. the OTA flight operator ETG. In turn, this channel would enable Booking to gain a significant amount of additional traffic for its hotel OTA offering and, as a result, to increase sales of its hotel OTA services. Moreover, by expanding its flight offering to its existing portfolio of OTA services, Booking will expand its ecosystem of OTA services,[229] In this way, the Transaction would reinforce network effects in the market for hotel OTA services and thus to increase barriers to entry and expansion on the hotel OTA market, where Booking is already dominant).

(194) Therefore, even though the Transaction relates to the acquisition of an operator active in a different market, i.e. the flight OTA market, the Transaction would make entry or expansion by rivals in the hotel OTA market more costly and reduce competitive constraints on Booking. As a result, the Transaction will strengthen Booking's dominant position, enabling Booking to increase costs for its customers, namely hotels using Booking's platform to list their properties and, likely also, end customers that search for accommodation on Booking. The effects of the Transaction would manifest themselves in the market absent any specific conduct by Booking.

(195) However, such 'horizontal effects' of the Transaction would need to be assessed in light of some of the considerations that can be found in the Non-Horizontal Merger Guidelines, which can be applied by analogy, as regards the circumstances that may make it unlikely that anticompetitive effects may arise from a transaction involving

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225 Horizontal Merger Guidelines, paragraph 3.

226 Horizontal Merger Guidelines, paragraph 36.

227 Non-Horizontal Merger Guidelines, paragraph 15.

228 Horizontal Merger Guidelines, paragraph 36, Non-Horizontal Merger Guidelines, paragraph 49.

229 Ecosystem of services refers to Booking's wide range offer of services that cover multiple facets of the travel experience (for example, different types of accommodation, flights, taxis, car rental, tickets to attractions).

companies offering complementary goods or services. In particular, these include countervailing buyer power, potential entry and efficiencies.[230]

(196) In its response to the SO, the Notifying Parties argued that the relationship between the Parties' activities is neither horizontal nor vertical but complementary. Consequently, the legal framework for the assessment of the Transaction are the principles for the assessment of conglomerate mergers set in the Non-Horizontal Guidelines. The Notifying Party argues that according to the Non-Horizontal Guidelines conglomerate mergers may raise concerns only when the combined entity will have the ability and incentive to foreclose its competitors and that such foreclosure would have a significant impact on effective competition, such as by leveraging the entity's position on a market where it holds market power into a neighbouring market.

(197) The Notifying Party argued that in the SO the Commission has unlawfully diverged from the Non-Horizontal Guidelines which it is legally bound to apply by adopting an entirely new and legally unsound standard for the assessment of conglomerate mergers and confusing the Non-Horizontal Merger Guidelines with the Horizontal Merger Guidelines. Contrary to the framework established by the Non-Horizontal Guidelines, the SO raised concerns of *'reverse leveraging'* by which Booking would leverage its position in the neighbouring market for flight OTA services to strengthen its dominant position in the market for hotel OTA services. The Notifying Party argued further that in the SO the Commission did not conduct any assessment of foreclosure and how the Transaction could *'tip'* the market towards Booking.com.[231]

(198) The arguments of the Notifying Party cannot be accepted.

(199) Article 2 of the Merger Regulation requires the Commission to examine whether a concentration that has Union dimension is compatible with the internal market or otherwise may significantly impede competition in the internal market or in a substantial part of it, in particular as a result of the creation and strengthening of a dominant position. The Commission has a margin of discretion with regard to economic matters for the purpose of applying the substantive rules of the Merger Regulation, in particular Article 2 thereof.[232]

(200) Recital 28 of the Merger Regulation provides that, in order to clarify and explain the Commission's appraisal of concentrations under that regulation, it is appropriate for the Commission to publish guidance which should provide a sound economic framework for the assessment of concentrations with a view to determining whether or not they may be declared compatible with the internal market. However, such guidelines may not be regarded as rules of law which the administration is always bound to observe, and do not constitute the legal basis for the decisions taken by the Commission in the matter concerned.[233] Such guidelines do not relieve the Commission from the discretion the Regulation confers on it and they must be kept under continuous review for the purposes of anticipating any major developments not covered by those measures.[234] Although the Commission must apply its guidelines to

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230 Non-Horizontal Merger Guidelines, paragraphs 114 and 115.

231 Response to the SO, pages 10-14 and Annex 1, Legal Framework.

232 *Commission v CK Telecoms UK Investments Ltd* C-376/20 P ECLI:EU:C:2023:561, paragraphs 125.

233 *Commission v CK Telecoms UK Investments Ltd* C-376/20 P ECLI:EU:C:2023:561, paragraphs 123-124.

234 Compare *Hellenic Republic v Commission*, C-431/14 P, ECLI:EU:C:2016:145, paragraphs 71.

the extent that they are laid down in mandatory terms,[235] under pain of being found, where appropriate, to be in breach of general principles of law, it may depart from them in an individual case by giving proper justification.[236]

(201) In the face of dynamic and rapidly changing economic reality, the Non-Horizontal Guidelines cannot relieve the Commission, in circumstances that were not envisaged by them, from its duty to examine whether a concentration may significantly impede competition in the internal market or in a substantial part of it, in particular as a result of the creation and strengthening of a dominant position. In fact, the Non-Horizontal Guidelines themselves, adopted in 2008, explain that they are based on the contemporary experience of the Commission up to that time which is still evolving and that the principles of assessment will be developed and refined on a case by case basis.[237] Furthermore, the Non-Horizontal Guidelines explain that the general guidance in the Horizontal Guidelines is relevant also to non-horizontal mergers,[238] even more so because mergers may entail both horizontal and non-horizontal effects.[239] The Non-Horizontal guidelines are not laid down in mandatory terms that limit concerns of significant impediment to competition only to the circumstances explicitly foreseen in the Non-Horizontal Guidelines.

(202) In the case at hand, the Commission is indeed concerned that Booking would leverage its ability to acquire customers in the neighbouring flight OTA market to strengthen its dominant position in the hotel OTA market. Admittedly, such circumstances, referred to by the Notifying Party as 'reverse leveraging', were not explicitly foreseen in the Non-Horizontal Guidelines but nor were they excluded from them. Such circumstances, with which the Commission did not have experience in 2008 when the Non-Horizontal Guidelines were adopted, have risen only more recently with the development of online ecosystems and were in fact already examined previously by the Commission (although in the circumstances of that specific case conglomerate concerns were finally not proven).[240] Consequently, the Notifying Party cannot argue that its legitimate expectations and right to equal treatment are not respected by the Commission in this case.

(203) Specifically, with respect to foreclosure, it is recalled that the Non-Horizontal Merger Guidelines do not require that foreclose is established.

(204) This approach is also in line with the suggested theories of harm identified in the Commission's report on Competition policy for the digital era.[241] The report notes in particular that, in cases where the acquirer operates an ecosystem that benefits from strong positive network effects, which act as a significant barrier to entry, '*the risk to competition resulting from an acquisition <u>is not limited to the foreclosure of rivals' access to inputs, but extends to the strengthening of dominance as it fortifies the dominance of the ecosystem</u>, in part because the new services add value to the*

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235 *Wieland-Werke AG v Commission*, T-251/19, ECLI:EU:T:2022:296, paragraph 38.

236 *Dansk Rørindustri A/S and others v Commission*, Joined cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, ECLI:EU:C:2005:408, paragraph 209.

237 Non-Horizontal Guidelines, recital 8.

238 Non-Horizontal Guidelines, recital 6.

239 Non-Horizontal Guidelines, recital 7.

240 Case M.10349 - Amazon / MGM.

241 European Commission, 'Competition Policy for the digital era', Final report, 2019.

*consumers for which they are complements and in part because they help retain other users for which they are partial substitutes*' (emphasis added).[242]

(205) In any event, the guidelines define foreclosure as *'any instance where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.'* (emphasis added). Accordingly, contrary to what the Notifying Party seems to suggest, in order to show foreclosure, there is no need to show that the market would 'tip' or that competitors would exit the market.[243] It is sufficient that rivals' ability to access the market, or expand in it, is hampered.

(206) the Commission finds that, via the acquisition of ETG, the Transaction will enable Booking to increase barriers to entry and expansion (in particular via network effects) on the hotel OTA market, thus limiting potential and actual rival hotel OTAs' access to customers, thus limiting their ability to access the hotel OTA market and expand in it, and more generally to compete in that market. The Commission thus concludes that the Transaction is likely to strengthen Booking's dominant position in the hotel OTA market, constituting a significant impediment of effective competition in the internal market.

*6.1.2. Economic framework*

(207) The Notifying Party submitted with its response to the SO an opinion of an expert ('the Expert') commenting on the economic framework of analysis applicable to the case at hand.

(208) In his opinion the Expert stated that *'the SO implicitly acknowledges that the merger will create efficiency benefits'* and that the growth of Booking will come from offering end-customers better Connected Trip products[244] and thus from competition on the merit.[245] The Commission notes that as will be explained further in section 6.7.2.6 below, the growth of Booking through the Transaction will come not from competition on the merits but to a significant extent from taking advantage of its brand strength and end-customer inertia that would allow Booking to cross-sell (or 'attach') to customers purchasing flights also hotel nights. Once end-customers access Booking's flight OTA offering, they will be drawn very likely to its hotel offering and reserve hotel nights with it, without comparing offers from other sources.

(209) The Expert suggested that the benefits that end-customers will enjoy from the Transaction could be one stop shopping, elimination of double marginalisation, 'Cournot effect' discounts,[246] conditional discounts,[247] and perks such as free rides from the airport. The argument with respect to elimination double marginalisation and Cournot effects are dealt with and dismissed in section 7.3 (1167) below.[248] The

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242 European Commission, 'Competition Policy for the digital era', Final report, 2019, page 121.

243 Non-horizontal merger guidelines, paragraph 18.

244 See footnote 4 above and section 6.5.2.1 below.

245 Response to the SO, Annex 2 – Economic Framework, page 2.

246 On the Cournot effect see further section **(1167)** below.

247 Conditional discounts are discounts granted when a customer purchases both flights and hotels.

248 For example, there is doubt to what extent one stop shop is in fact a benefit customers would appreciate. The Notifying Party itself argued that there is very little demand to one stop shopping as end-customers prefer booking hotels two weeks after booking their flights. Response to the SO, paragraph 4.42 and 4.55.

Expert did not substantiate his arguments with reference to any benefits of the Transaction to end-customers but simply cites passages from the SO that explain how Booking will grow its volumes post-Transaction in support of the claim that the Transaction is beneficial to end-customers. According to the Expert if Booking's sales volume grow it must necessarily mean that Booking offers additional benefits to end-customers.[249] However, as explained above, the Commission found that the growth of Booking post-Transaction will be largely due to Booking's existing brand strength end-customer inertia rather than competition on the merit.

(210) The Expert goes on to argue that the SO shows no foreclosure and provides no evidence or analysis to suggest that the increase in Booking's volumes would tip the market and force the exit of rivals.[250] The Commission notes that it is incorrect to argue that it would need to show that rivals will exit the market or that the market will 'tip'. The Commission is only required to show that actual or potential rivals' access to supplies or markets will be hampered as a result of the Transaction.[251] As will be explained in detail below, the Commission reached the conclusion that the Transaction is indeed likely to hamper the access of actual or potential rivals' to the hotel OTA market.

(211) Finally, the Expert discusses a possible theory of harm referred to as *'portfolio differentiation'* by which Booking will focus post-Transaction on Connected Trip products (that is combining several travel services such as flights and accommodation) with the result that competition on stand-alone services will weaken. The Expert opines that this theory of harm is not a concern in the case at hand. The Commission notes that neither the SO nor this decision raise such concerns. It is therefore not necessary for the Commission to form a view on the arguments of the Expert with respect to portfolio differentiation.

## 6.2. Overview of market dynamics in the hotel OTA market

### *6.2.1. The largest and most profitable of the OTA markets*

(212) The hotel OTA market is the largest OTA market in terms of TTV. According to information submitted by the Notifying Party, in 2022, the market for hotel OTA services in the EEA amounted to approx. EUR […] Billion in TTV.[252] By contrast, in 2022, the market for flight OTA services in the EEA amounted to approx. EUR […] Billion[253] in TTV and car rental OTA services to EUR […] Billion in TTV.[254]

(213) Moreover, the hotel OTA market generates the highest commissions for OTAs: the standard commissions charged to hotels range between [10-20]%. Flight OTA commissions are significantly lower (below 5% of the total purchase price).[255] Car rental OTA's commission range between [10-20]%.

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249 Response to the SO, Annex 2 – Economic Framework, pages 3-6.

250 Response to the SO, Annex 2 – Economic Framework, pages 2-3.

251 In that respect, the argument of the expert that the Transaction will not affect rivals access to hotels because hotels multi-home between OTAs is discussed in section 6.7.2.3.2 below.

252 Response to RFI 17, Annex 3, 'Euromonitor without Airbnb unadjusted' tab.

253 Response to RFI 24, Question 1.

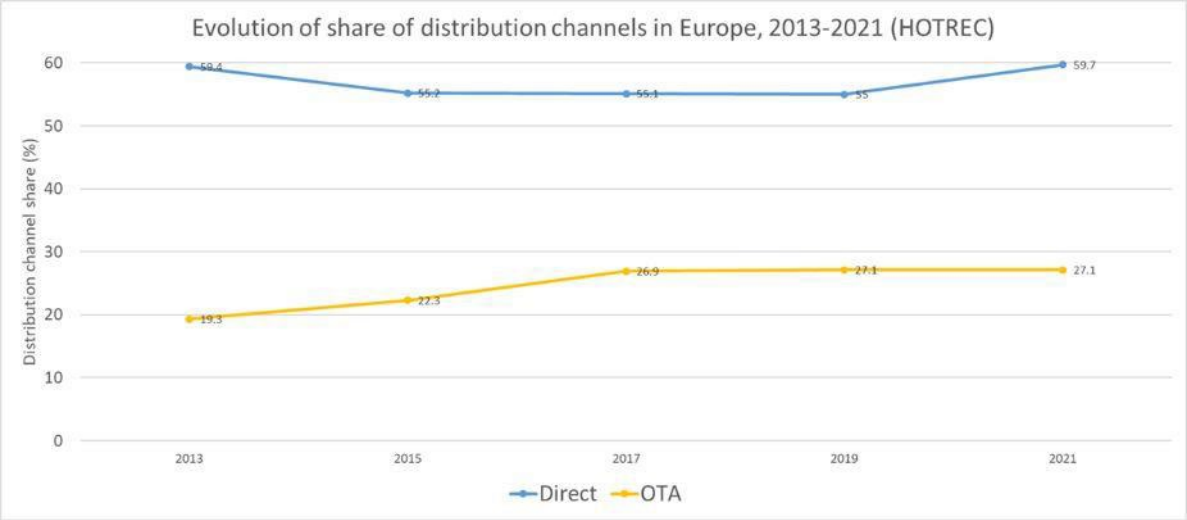
254 Response to RFI 32, Question 1.

255 Form CO, para. 8.23.

### 6.2.2. *The evolution of the hotel OTA market*

(214) Over the past decade, the importance of the OTA channel for hotels has increased materially. HOTREC estimated that this channel represented approximately 27% of hotel bookings in Europe (including through the offline and online channels) in 2021, up from about 19% in 2013 (see image below).

**Figure 2: Evolution of hotels' direct and OTA channels in Europe, 2013-2021**




*Source: Commission's based on HOTREC's data from HOTREC's European Hotel Distribution Study, slide 18*[256]

(215) The hotel OTA market in the EEA has become increasingly concentrated over the past 10 years (2013-2022). Based on the results of the Commission's market reconstruction,[257] there are two main suppliers of OTA services to hotels, namely Booking and Expedia, which account for approx. [80-90]% of the hotel OTA market in the EEA. As noted below, Booking appears to be the undisputed leading supplier of OTA services to hotels in the EEA (with a market share of approximately [60-70]%) and has been increasing its mark share rapidly over the past 10 years (from [20-30]% in 2013 to [60-70]% in 2022). The number 2 player is Expedia (with a market share of approx. [10-20]%). The remainder of the market ([10-20]%) includes a series of smaller OTAs with market shares likely below 10%.

(216) As regards end customers, the results of the Commission's market reconstruction[258] indicate that there are three main hotel OTAs which represent approximately [70-80]% of the market. As noted below, Booking appears to be the undisputed market leader in the hotel OTA services market for end customers in the EEA (with a market share of [60-70]%), which has also grown over the past 10 years (from [20-30]% in 2013 to [60-70]% in 2022). The number 2 player is Expedia (with a market of approx. [5-10]%) and the number 3 is HRS (with a market share of approx.

256 For completeness, the Commission notes that based on HOTREC's European Hotel Distribution Study, slide 18, hotels have other distribution channels different from the direct and OTA channels, that are not represented in this figure, which include *inter alia*, trade associations, tour operators and brick and mortar travel agencies, wholesalers, GDS.

257 See section 6.4.3 below for the Commission's market reconstruction exercise.

258 See section 6.4.3 below for the Commission's market reconstruction exercise.

[0-5]%). The remainder of the market includes a long tail of hotel OTAs with market shares around and below 1%.[259]

*6.2.3. The hotel market is characterised by strong network effects which act as important barriers to entry and expansion*

(217) The hotel OTA market is characterized by the existence of strong network effects which act as strong barriers to entry and expansion.

(218) *First*, hotel OTAs are intermediaries between hotels and end customers which provide marketing and online booking services to hotels and increase the hotel's visibility, allowing it to reach more end customers. In this regard, the attractiveness of the OTA for a hotel depends on the number of end customers that the OTA is able to attract. As explained in Booking's internal documents: '[Booking's analysis of the market].'[260] In other words, the greater the number of end customers an OTA has, the more attractive it is for hotels to be listed on that OTA, and the better content (rates) the hotel would be willing to provide to the OTA. Likewise, the greater the number of hotels listed on an OTA and the better the rates, the more attractive such OTA is for end consumers.[261]

(219) One OTA explained that OTAs with larger end-customer base are more attractive to hotels and are able to demand higher commissions. Higher commissions allow the larger OTAs to spend more on advertising (see below, paragraph (231) et seq.). The larger OTAs are also able to negotiate with hotels lower prices (typically for the OTAs loyalty programs). More advertising and lower prices attract in turn more end-customers and so on.[262]

(220) It follows that the value of an OTA platform increases for both sides the higher the number of users on the other side. As explained by Booking's CEO in internal correspondence:

'[Booking's analysis of the market].'[263]

(221) *Second,* the inter-dependency between hotels and end customers creates a 'causality dilemma' and plays against smaller OTAs and new entrants. The inter-dependency between hotels and end customers results in a self-reinforcing dynamic that is difficult to break for smaller OTAs and new entrants since it is difficult for them to reach a competitive scale in terms of the number of end customers and hotels using the platform. On the one hand, new entrants and small OTAs need to achieve certain scale in the number of end customers using the platform to make it sufficiently attractive to induce hotels to be listed on the platform and to make the OTA benefit from competitive room rates. On the other hand, without an attractive hotel offer in terms of number of properties and rates, a hotel OTA would be less appealing to end customers.

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259 Based on HOTREC, European Hotel Distribution Study [DOC ID 56979-5041], slide 85.

260 Form CO, attachment W, Response to QP8 - Attachment J - Default Ranking Algorithm Explained, page 1.

261 Compare, decision of the Competition and Markets Authority of the United Kingdom of 29 September 2022 on the acquisition by Booking Holding Inc. of certain activities of eTraveli Group AB, paragraph 63.

262 Non-confidential minutes of the call with [an OTA] dated 26 June 2023 [DOC ID 58373], paragraph 4.

263 BOOK_00972153 [DOC ID 51853-84467].

(222) In contrast, the network effect characteristic of the hotel OTA market benefits the [Details of Booking's business strategy],[264] [Details of Booking's business strategy].

**Figure 3: [Details of Booking's business strategy]**

[Figure redacted]

*Source: BOOK_00956466 [ID 51853-68780], slide 7*

(223) The existence of a self-reinforcing dynamic between the different components characterizing the network effects of the OTA hotel industry was also mentioned during the market investigation. In particular, a market participant noted that '*The larger the OTA, the stronger the bargaining power, the better your offer, the more* consumers *you (can) attract and the more you can further grow. It is a vicious circle*'.[265]

(224) In the same vein, another market participant noted that '*Since the ability to provide hotel OTA services is largely dependent on having a huge customer base and a strong brand (largely due to network effects), it is furthermore very difficult to (successfully) penetrate this market and become profitable. To that extent, Booking has significantly benefitted from a first-mover advantage*.'[266]

(225) In its response to the fourth letter of facts, the Notifying Party argued that the Commission ignored the views of [an OTA's] '*a highly experienced and successful market player*' that according to the Notifying Party opined that network effects are not significant in the hotel OTA market.[267] The Commission notes that the paragraphs in [the OTA's] submission to which the Notifying Party makes reference in support of its argument[268] do not relate to network effects at all but to multi-homing by end-customers.[269] In fact, [the OTA] did not discuss the issue of network effects in its submission.

(226) *Third,* smaller hotel OTAs and new entrants face additional barriers to reach a competitive scale in the hotel OTA market. This exacerbates network effects already present in the hotel OTA market:

(227) <u>In the first place</u>, the results of the Commission's investigation indicate that it is difficult for smaller hotel OTAs and new entrants to obtain a wide portfolio of hotel properties to be able to compete effectively on the market. In particular, it is difficult for smaller hotel OTAs, unlike larger hotel OTAs, to enter into and manage bilateral contracts with a high number of hotels in order to build and maintain a sizeable property portfolio, as this requires significant time and resources. By way of example, to manage its approx. [Size of Booking's hotel portfolio] hotel and hotel-like properties in the EEA,[270] Booking (the number one player on the hotel OTA

264 BOOK_00956466 [DOC ID 51853-68780], slide 7.

265 Response to question 26.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

266 Non-confidential version of [an OTA's] submission dated 25 October 2022 [DOC ID 120635], paragraph 17.

267 Response to the fourth letter of facts, paragraph 7.

268 Paragraphs 3.11, 3.15 and 3.21 of [an OTA's] comments on Section 5 of the European Commission's SO, dated 6 July 2023.

269 see paragraph ((233) et seq. below.

270 Booking's portfolio in the EEA is composed of a total of approx. […] properties, including […] hotels, and approx. […] 'hotel-like' properties within Booking's 'home' category, in accordance with Form CO, Attachment W, response to QP8, Annex 8 and Response to RFI 6, question 6. Booking's portfolio

market in the EEA) employs approx. [Details on the number of Booking's full time employees].[271]

(228) The Notifying party argued that '*it is quick and easy for a new entrant to enter to the hotel OTA market via a commercial affiliate arrangement via one of the many business-to-business accommodation providers.*'[272]

(229) However, the results of the market investigation indicate that having a direct contractual relationship with hotels provides a material advantage to hotel/other accommodation OTA service providers over having a portfolio of hotels through GDS/non-GDS aggregators.[273] In particular, some OTAs[274] note that having a direct relationship allows OTAs to have more control and get better content from the hotels, which would increase the attractiveness of their platform for end customers: '*It provides two kind of advantages, firstly you have more availability in high demand periods of the year, and secondly on average you have a higher commission or you can get a higher mark-up*'[275] and '*It is two way relationship and hotels prefer it. You may be able to secure, rates and inventory (ARI) or one part of those*'[276] and '*OTAs have more control over the content they can get from the accommodations, and the customer care issues are somewhat easier to solve too*'.[277] A hotel indicated that *'[a] direct contractual relationship gives the OTA a better negotiating position, they have direct access to the inventory and can try to influence the supplier's pricing and supply policy*'.[278]

(230) In addition, a majority of hotels having expressed a view indicated that it is very difficult/difficult for a hotel OTA to obtain a wide portfolio of properties in order to effectively compete on the market.[279] In particular, some hotels noted that '*for a new platform it will be almost impossible to convince hotels to load their hotels and prices on their website because the volume of bookings will be almost zero*'; and that *'[i]t depends on the success of the OTA. For Booking.com it is quite easy, as they bring a lot of bookings in a short time. Others might suffer because they don't have that visibility*'. Another hotel noted that *'[n]ew OTAs have almost no chance to attract big chains to work with them as it wont [sic] be worth the workload as they will not be able to compare to the big ones like Booking.com and Expedia."*[280]

(231) <u>In the second place</u>, it is important for OTAs to be able to attract end customers to their platform. In this sense, OTAs do not only need a hotel portfolio that would be attractive to end customers, but OTAs also need to be able to generate traffic. OTAs invest in online advertising (e.g., Google Ads) to attract online traffic which in turn drives sales. In the market investigation, a majority of hotels having expressed a view consider that ad spending is important/very important for a hotel OTA to be able to

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includes approx. […] million properties under Booking's 'home' category, the Notifying Party estimates that approx. […]% of its 'home' category would be 'hotel-like' properties.

271 Form CO, Attachment W, Annex 9 to response to QP8.

272 Response to the fourth letter of facts, page 4.

273 Responses to question 19 of Questionnaire Q1 to OTAs [DOC ID 2739] and question 18 of Questionnaire Q3 to hotels [DOC ID 2737].

274 Responses to question 19.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

275 Responses to question 19.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

276 Responses to question 19.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

277 Responses to question 19.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

278 Responses to question 18.1 of Questionnaire Q3 to hotels [DOC ID 2737].

279 Responses to question 19 of Questionnaire Q3 to hotels [DOC ID 2737].

280 Responses to question 19.1 of Questionnaire Q3 to hotels [DOC ID 2737].

effectively compete on the market.[281] A majority of OTAs having expressed a view also indicated that search engine optimisation, (i.e. the know-how to most effectively allocate and use a company's ad budget) was important for a hotel OTA to compete effectively on the market[282] and that Google constitutes the most important advertising channel.[283]

(232) The results of the market investigation indicate that Booking has the highest marketing expenditure in the EEA amongst its main competitors in the hotel OTA market.[284] In particular, Booking's total accommodation marketing budget for the EEA in 2022 amounted to approx. EUR […] Billion. Booking spends approximately […] of this budget in Google (approx. […]).[285] Importantly, for each Euro that Booking spends on advertising towards end consumers in the EEA it generates more than […].[286] Specifically regarding Google advertising, each Euro that Booking spends generates approximately […] in TTV and around […] in revenue.[287]

(233) In the third place, the OTA sector is characterised by a considerable degree of customer inertia. According to an internal survey of Booking, [Survey data on customers purchasing behaviour].'[288]

(234) The Notifying Party argued that [Survey data on customers purchasing behaviour].'[289]

**Figure 4: [Details of a confidential survey]**

[Figure redacted]

*Source: Response to pre-notification questionnaire to the Parties ('QP') 8 – Attachment D.7 – Lego_Wave 2a_Questions*

(235) [Booking's interpretation of confidential survey results][290] [Booking's interpretation of confidential survey results][291] [Booking's interpretation of confidential survey results].

(236) The analysis of responses provided in a survey often involves, as in this case, a significant measure of interpretation of how respondents understood the questions and how they understood the response options. The conclusion that […]% of customers go directly to their usual website/app was the conclusion Booking itself reached for the purpose of internal reporting when the survey was conducted (summer 2020). Higher credibility must be attributed to this internal and contemporaneous analysis of Booking than to the new analysis prepared by Booking for the purpose of these proceedings, three years after the survey was conducted.

(237) Furthermore, according to the [Details of a confidential survey][292] made by Booking, around [Details of a confidential survey][293] who search for accommodation do so

281 Responses to question 20 of Questionnaire Q3 to hotels [DOC ID 2737].
282 Responses to question 22 of Questionnaire Q1 to OTAs [DOC ID 2739].
283 Responses to question 21 of Questionnaire Q1 to OTAs [DOC ID 2739].
284 Response to RFI II Competitors Data, Q3, available in the data room.
285 Form CO, Attachment W, Annex 14 to response to QP8. Teach-in session presentation [DOC ID 1535-2491], slides 6 and 7.
286 Response to RFI 23, question 3.
287 Response to RFI 23, question 3.
288 Form CO, Attachment D.6 Lego_Wave 2a_Report, slide 20 [DOC ID: 1236-167].
289 Email of the Notifying Party of 13 July 2023, point ii.
290 [Details of a confidential survey].
291 [Details of a confidential survey].

only using a single source. The surveys show that also specifically with respect to Booking, about [Details of a confidential survey] its EEA customers search only on Booking.com before making a purchase.[294]

(238) This conclusion is supported by the slide below that shows that a very similar share of customers, [60-70]%, already know where they want to book at the start of the booking journey suggesting that they are not comparing offers from other sources. The slide also shows that although end-customers are aware of many OTA brands ([…] on average) they only ever used a very small number ([…] on average), manifesting very limited multi-homing.

**Figure 5: [Details of customer behaviour]**

[Figure redacted]

*Source: response to the StC decisions, Attachment 1.2 – 84 Survey reports, BRES02_Quant_ Report -BPC Summary V3.3 UK_DE_FR November 2019, slide 14.*

(239) In its response to the First Letter of Facts, the Notifying Party did not contest the findings in the slide above. It argued however that the evidence shows that customers multi-home when purchasing accommodations because 'of *customers that already knew where they want to book, […]% searched on more than one website in the previous 12 months. If the time period is extended to beyond 12 months, this percentage increases to […]%'* and that they *'visited […] websites when searching of accommodation […].*'[295] The numbers of different websites visited refer to any point in time, that is, the total number of different websites ever visiting by these customers.[296] The Commission notes the statistic that [...]% of customers, already know where they want to book at the start of the booking journey, refer to the last trip[297] while the statistics quoted by the Notifying Party to show multi-homing refer to periods of time at least 12 month long. While it is possible that from time-to-time customers look at different websites, at any given time [...]% of all customers already know where they want to book at the start of the booking journey and within this group, a share representing [...]% of all customers, search only on that website.

(240) The statistics cited above about customer inertia show that hotel OTAs have significant power in terms of providing information to customers and that a significant share of customers searching for accommodation visit only one provider. The offers that providers show to the customers therefore play a significant role to determine customers' choices. Although OTAs other than Booking also experience a certain degree of customer inertia, inertia tends to disproportionately benefit Booking. This is because it is the largest hotel OTA in the EEA and consumers rely disproportionately on the dominant undertaking – Booking – as information source. Since end-customers shop around only to a limited extent, their switching between OTAs is also limited. As a result, Booking's market position is further shielded from

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292 See section 5.2.1.3.4.1 above.

293 [Details of a confidential survey].

294 [Calculations based on details of a confidential survey].

295 Response to the First Letter of Facts, paragraph 40.

296 Response to RFI 39, paragraph 3.1.

297 See q56 and the preceding questions in Response to RFI 39, Annex 1, tab FINAL-BOOKING_BRAND PREFERENCE.

competitors who may be offering better deals, but are less able to inform consumers about those.[298]

(241) In its response to the SO, the Notifying Party argued that '*the fact that many of Booking.com's customers search only on Booking.com for accommodation does not mean that they are likely to purchase both flights and accommodation on the same platform*.'[299] In support of its argument, Booking brings forward several points of fact.

(242) Booking argues that '*[...]% of customers buy another travel service from their chosen accommodation OTA*.'[300] The Commission notes however that this observation is explained not by the fact that customers multi-home, but rather because there is much more demand for hotel OTA services than for flight OTA services. According to Booking's own estimates, in only […] of customers of hotel OTAs also require flight OTA services.[301] If indeed about […]% of the customers purchase hotel nights at the same website as their flight tickets, then this actually confirms the Commission's finding of […]% customer inertia.

(243) Booking further argues that only […]% of customers who booked both flights and hotels made both purchases within an hour and that on average customers book hotels […] after the flights '*providing ample opportunity and time to consider and compare other options.*'[302] However Booking did not support this argument with evidence showing that flight customers would typically start afresh their search for hotels. Customer inertia suggests instead that customers who book flights with an OTA would have a preference to also reserve hotels with that OTA, even if some time after the original flight's reservation. This is even more so considering that the OTA has exact knowledge of the customers' destination and duration of stay and is able to address to them targeted ads. As explained by one of Booking's competitors: '*the OTA who sold the flight ticket has a competitive advantage as it knows the dates and destination of the customer's trip. Importantly, this OTA has already established a relationship with the customers and can suggest hotel offers during the booking process of the flight, or it can send the customer follow-up emails with hotel offers. In addition, subject to marketing investments, the OTA can use various channels such as Youtube, Google Search, display advertising networks (e.g., news websites, etc.) to push to the flight customers hotel ads while they use these channels (e.g., "retargeting" practice).*'[303]

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298 Booking's rivals appear less able to inform consumers about their offers due to the customer inertia benefitting Booking: data in section 6.7.2.6.1 below show that [details of customer visits on Booking's platform]. This results in Booking getting a disproportionately large share of visits and therefore opportunity to inform its customers about its offering.

299 Response to the SO, paragraph 4.42.

300 Response to the SO, paragraph 4.42(i).

301 This is because mainly because the large majority of flight customers purchase their flight tickets directly with the airlines and do not require flight OTA services. In addition, a share of hotel OTA customers not require flights at all. According to Figure 4.1 in the response to the SO (page 36), *'the Flights Waterfall'*, […] transactions out of total […] hotel OTA transaction ([…]%) require both flight OTA and hotel OTA services. According to Figure 4.2 of the response to the SO (page 37), *'the Hotel Waterfall'*, the hotel waterfall, […] transactions out of total […] hotel OTA transaction ([…]%) require both flight OTA and hotel OTA services.

302 Response to the SO, paragraph 4.42(ii).

303 Non-confidential minutes of the call with an OTA dated 26 June 2023 [DOC ID 58373], paragraph 16.

(244) Indeed, one rationale behind the Transaction is exactly to increase sales of accommodation by cross selling from flight reservation to hotel reservation (see section 6.5 below).

(245) The Notifying Party further argues that the results of [Details of a confidential survey] surveys showing that about [Details of a confidential survey] of its EEA customers search only on Booking.com before making a purchase relate only to single trips. When looking at the last 12 months, […]% of Booking users had also booked somewhere else and there is nothing to suggest that the […]% that reserved only on booking.com did not compare with other sources.[304] In addition, [Details of a confidential survey].[305] The Commission's view is that these figures do not contradict the conclusion that while the individual customer may from time to time compare or even book with other sources, at any given time, about […]% of overall hotel OTA customers reserve hotel rooms on Booking.com, directly or indirectly through other OTAs selling Booking's inventory, and […]% of them search and book only with Booking.com, not comparing with any other source.

(246) The Notifying Party also argues that it has no way of knowing whether individual customers compare or not offers from several sources and therefore it must make competitive offers towards all customers. The Commission notes that this statement is inaccurate. Booking knows at least whether customers were re-directed from meta websites and therefore were considering different offers that the meta website presented to them. Booking also know that […]% of its customers do not look anywhere else. Just on the basis of these two facts, Booking can have a good idea with respect to a very large share of its customers who multi-home (those who are re-directed from meta) and who are likely not to do so (those arriving directly to its website). Indeed, Booking itself explained [Details of Booking's pricing].[306]

(247) The Notifying Party also argues that the SO provides no evidence about how the acquisition of ETG will affect inertia. However, it states, in line with the conclusion of the Commission, that […]% statistic is not unique to Booking but represents the behaviour of the general customer population.[307] The Commission notes that sections 6.7.2.3.2 and 6.7.2.6.2 of the SO explained in detail why the Transaction is likely to increase customer inertia and loyalty (see further in sections 6.7.2.3.2 and 6.7.2.6.2 below).

(248) The Notifying Party further argues that only […]% of its high value customers ('HVCs', see further section 6.4.7.3 below)[308] book exclusively with it and that the remainder book also with other sources that better suit their travel plans. According to the Notifying Party this shows that customers are multi-homing and Booking needs to compete for each transaction.[309] The Commission considers that the fact that only […]% of HVCs purchase exclusively with Booking and never from any other source does not show multi-homing. The Commission notes that it is enough for an HVC to purchase one trip with another provider in order not to be considered an exclusive customer of Booking. But when an HVC (or any other customer to that

304 Response to the SO, paragraph 4.42(iii).
305 Response to the SO, paragraph 4.42(iv).
306 Response to RFI 24, paragraph 6.2.
307 Response to the SO, paragraph 4.45.
308 See section 6.4.7.3 below.
309 Response to the SO, paragraph 4.47-4.48.

matter) does not reserve a trip with Booking it is not necessarily because of multi-homing. It may be for example that the trip simply did not require accommodation. This happens quite frequently in fact; Booking itself estimates for example that in […]% of flight transactions accommodation is not needed.[310] So it is very likely that from time to time HVCs will book a trip that does not require accommodation and therefore will not be considered among the […]% of customers that purchase exclusively from Booking. As explained in section 6.4.7.3 below, [Details of customer behaviour].

(249) The Notifying Party argued that the SO contradicted its inertia finding by citing internal Booking data [Details of Booking's customer retention].[311] The Commission disagrees with the conclusion suggested by Booking. Indeed, Booking seems to [Details of Booking's customer retention] (see further section 6.7.2.6.2.1 below). These [Details of Booking's customer behaviour]. Nevertheless, Booking's market share for hotels OTA services is close to [60-70]%, showing the hold Booking has on the [Details of Booking's customer behaviour]. Considering Booking's own conclusion that it is not perceived by customers to be better than other OTAs (see further section 6.7.2.6.2.1 below), Booking's hold on its customer base is likely explained by customer loyalty and inertia.

(250) Finally, the Notifying Party referred to statement of respondents to the Commission's market investigation that argued that customers multi-home.[312] The Commission acknowledges that there is certain degree of multi-homing with about […] of customers searching on more than one source. However, the other […] of customers do not, and it is the conduct of the inert […] that would allow Booking, through the Transaction, to strengthen its dominant position in the hotel OTA market.

(251) It follows from the above that network effects create a high barrier to entry and expansion to new entrants and smaller OTAs because they require significant effort to reach a competitive scale, if at all possible. The existence of Booking, an operator already benefiting from an extensive network of hotels and customers as well as customer inertia, exacerbates even further such difficulties.

*6.2.4. Mapping of hotel OTA players*

(252) Market players in the hotel OTA market in the EEA have built their hotel offering differently to compete on the market:

(253) Some hotel OTAs have their proprietary hotel inventory and enter into bilateral direct contracts with hotels, to which they provide hotel OTA services to. These hotel OTAs are fully independent as they do not rely on competitors (via commercial affiliated agreements) to be able to provide hotel OTA services to end-customers. The market investigation identified bilateral direct contacts with hotels as a material competitive advantage.[313] In this regard, the three main players on the hotel OTA market vis-à-vis end customers all have their own proprietary hotel OTA inventory. These players accounted for approx. [70-80]% of the hotel OTA market in the EEA on 2022 and are Booking, Expedia and HRS.[314]

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310 Figure 4.1 in the Response to the SO, page 36, '*the Flights Waterfall*'.

311 SO, paragraph 776; response to the SO, paragraph 4.50.

312 Response to the SO, paragraph 4.56.

313 Responses to Questions 10.1 and 10.1.1 of Q1. See also section 6.2.3 above.

314 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2C).

(254) Another group is composed by hotel OTAs that source hotel OTA content from competitors to provide hotel OTA services to end customers. These hotel OTAs do not have any direct relationship with the hotels whose rooms they market in their platforms. Instead, these hotel OTAs enter into commercial affiliated agreements with other OTAs which have the bilateral contracts with the hotels, including with Booking, to be able to provide hotel OTA services to end-customers. In this regard, these hotel OTAs are not fully independent competitors, as they depend on third party OTAs to be able to provide hotel OTA services to end customers and are to a large extent unable to select the content they offer or influence the rates at which they access hotel inventory. The results of the market investigation indicate that hotel OTAs that depend on third party OTAs for the provision of hotel OTA services to end customers have a competitive disadvantage because they do not have control over the room rates and they need to split the commission with the third-party OTA providing the hotel OTA content.[315] As explained in section 6.2.3 above the difficulty to establish direct relationships with a sufficient number of hotels constitutes a significant barrier to entry and expansion in the hotel OTA market. The hotel OTA market in the EEA is a top-heavy industry, where a few large players are the major suppliers of OTA services to hotels, with a long tail of smaller players. Booking's market share amounted to [60-70]% in 2022, while the second market player, Expedia, had a market share of [10-20]% on a B2B basis.[316] The remaining independent hotel OTAs include HRS, Airbnb, OYO, Travelminit and Weekendesk, as well as some smaller players.[317]

(255) *Vis-à-vis* end customers, the hotel OTA market in the EEA is also rather concentrated. Booking remains the main player with a market share of [60-70]% on a B2C basis. Expedia remains the second player with a market share of [5-10]%. Other hotel OTAs supplying hotel OTA services to end customers include HRS, TUI, lastminute, OYO rooms, eDreams, Weekendesk and Trip.com with lower market shares below [0-5]%.[318] The Commission notes that a number of players in the hotel OTA market are also active in the flight OTA market with a sizeable share. This includes eDreams, Trip.com, Lastminute, TUI and Expedia.

6.2.4.1. Independent hotel OTAs

(256) According to the information provided by the Notifying Party, Booking, Expedia, HRS, Airbnb, OYO, Travelminit and Weekendesk provide hotel OTA services exclusively through their proprietary content.[319]

(257) *Booking* – Booking's portfolio in the EEA is composed of approx. [...] hotels, split between [...] independent hotels and [...] chain hotels.[320] In addition, Booking's portfolio also includes approx. [...] million properties under Booking's 'home' category, which includes entire properties for short-stay rental, 'hotel-like' properties such as bed & breakfasts, and 'unique' places (campsites, houseboats, castles and barns).[321] The Notifying Party estimates that approx. [...]% of its 'home' category

315 See section 6.2.3 above.
316 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2B).
317 Response to RFI 6, Annex 8.
318 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2B).
319 Response to RFI 6, Annex 8.
320 Form CO, Attachment W, Annex 9 to response to QP8, Annex 8.
321 Form CO, Attachment W, Annex 8 to response to QP8.

would consist of 'hotel-like' properties.[322] In this regard, in total, Booking's hotel and 'hotel-like' properties would amount to approx. [...] properties. Booking is by far the largest player in the hotel OTA market in the EEA, with a 2022 market share of [60-70]% on a B2B basis, and [60-70]% on a B2C basis.[323] In addition, Booking's market share has been continuously growing in the last years, from [20-30]% in 2013 to [60-70]% in 2022 on a B2B basis, and from [20-30]% in 2013 to [60-70]% in 2022 on a B2C basis.[324]

(258) Besides its own OTA activities, Booking supplies accommodation OTA content to [...] third-party OTAs in the EEA, and [...] third-party OTAs globally.[325] A majority of respondents that expressed a view during the market investigation ranked Booking as the number 1 supplier of accommodation OTA content to third-party OTAs.[326]

(259) *Expedia* – Expedia is the 2nd largest player in the hotel OTA market in the EEA after Booking.[327] Expedia has a market share of [10-20]% in the hotel OTA market in 2022 at the EEA level on a B2B basis, and [5-10]% on a B2C basis. Expedia had been increasing its position as a supplier of OTA services to hotels, and its market share (on a B2B basis) increased to [10-20]% in 2019 (from [5-10]% in 2013). However, Expedia's B2B market share decreased during 2019-2020 by [5-10] percentage points and has only increased to [10-20]% in 2021-2022 but is still below 2019 levels.[328] Vis-à-vis end customers, Expedia also managed to increase its market share from [5-10]% in 2013 to [10-20]% in 2019, on a B2C basis, but has since then experienced a decrease in market share which is estimated at [5-10]% in 2022, on a B2C basis, and which is also still below 2019 levels.[329] The majority of OTAs that expressed a view indicated that, with the exception of Airbnb, Booking and Expedia were the closest OTA competitors in terms of brand recognition, ability to attract online traffic, advertising strength, breadth of hotel portfolio, large customer base, technical capabilities and back-end, added-data driven on hotel performance, user experience and customer support.[330] However, Expedia's market position is much lower than Booking's which indicates that Expedia's ability to sell is very low compared to Booking's. In addition to its own OTA activities, Expedia is a provider of accommodation OTA content to third-party OTAs. A majority of respondents that expressed a view during the market investigation ranked Expedia the number 2 provider of accommodation OTA content to third-party OTAs, after Booking.[331]

(260) The remaining independent hotel OTAs, including HRS, have a combined market share of [10-20]% in the hotel OTA market in 2022 at the EEA level on a B2B basis.[332] As further explained below, only Expedia provided TTV regarding its B2B activities in the hotel OTA market in the context of the market investigation, so the Commission has not been able to calculate the individual market share of each of

322 Response to RFI 6, question 6.
323 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2B and B2C).
324 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2B and B2C).
325 Response to Request for Information RFI 13, paragraph 5.1 and footnote 20.
326 Responses to question C.1.1 of eRFI to Competitors.
327 HOTREC, European Hotel Distribution Study 2022 [ID 56979-5041], slide 5.
328 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2B).
329 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2C)
330 Responses to Question 18 of Question Q1 (Phase 1) to OTAs.
331 Responses to question C.1.1 of eRFI to Competitors.
332 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2B).

these remaining players on a B2B basis.[333] The assessment below therefore refers to the individual market shares of these players on a B2C basis.

(261) *HRS* – HRS is the third market player in the hotel OTA market in the EEA.[334] In 2022 at the EEA level, HRS had a market share of [0-5]% on a B2C basis.[335] HRS has lost [0-5] percentage points of market share over the past ten years on a B2C basis (from [5-10]% in 2013 to [0-5]% in 2022).[336] The European Hotel umbrella association HOTREC explained the reasons of the decline over the last ten years: '[…] *HRS who was the biggest market player in Germany in 2011 declined and was overtaken by Booking because Booking* – approx. *50 times bigger than HRS – was able to use its enormous financial resources and economies of scale in order to virtually declassify HRS in its home market Germany – at least as far as private guests are concerned. HRS switched their focus on business users*.'[337] HRS's re-positioning on narrower niche markets was also confirmed by a number of OTAs and hotels during the market investigation. A hotel indicated that: '*HRS attracts German corporate guests mainly*'[338] and another stated that '*HRS* [is] *restricted to corporate business, especially* [in] *Germany*'.[339]

(262) *Airbnb* – Airbnb is a small player in the hotel OTA market in the EEA, where it expanded its offering in 2019 through the acquisition of HotelTonight. Airbnb's estimated market share in the hotel OTA market in the EEA is below [0-5]%. The Commission notes that Airbnb's focus is on private accommodation and, therefore, its presence on the hotel OTA market in the EEA is limited. In particular, TTV information provided by Airbnb indicates that Airbnb achieves the vast majority of its TTV in accommodation OTA services from private accommodation and that hotel OTA sales represent a small percentage of its total accommodation OTA sales in the EEA.[340]

(263) The remaining independent players active in the hotel OTA market include OYO, Travelminit and Weekendesk, with market shares of [0-5]% or less in the hotel OTA market in 2022 at the EEA level on a B2C basis.[341]

6.2.4.2. Hotel OTAs dependent on content from competitors

(264) A number of players active in the hotel OTA market are not fully independent competitors, as they source hotel OTA content from other OTAs[342] which have their own direct relationship with hotels, such as Booking, Expedia or HRS.

(265) In particular, according to information provided by the Notifying Party and the market investigation, eDreams Odigeo and Kiwi do not have a proprietary hotel OTA platform and instead relies on a commercial affiliated agreement with other OTAs,

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333 See section 6.4.3 below for the Commission's market reconstruction exercise.
334 HOTREC, European Hotel Distribution Study 2022 [DOC ID 56979-5041], slide 5.
335 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2C).
336 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2C).
337 Non-confidential minutes of a conference call with [an association], dated 3 June 2022 [DOC ID 1205], paragraph 9.
338 Response to question 17.1.1. of Questionnaire Q3 to hotels [DOC ID 2737].
339 Response to question 17.1.2. of Questionnaire Q3 to hotels [DOC ID 2737].
340 TTV information submitted by [an OTA] in the context of the market reconstruction.
341 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2C).
342 Response to RFI 6, Annex 8.

including with Booking, to be able to provide hotel OTA services to end customers.[343]

(266) According to the information provided by the Notifying Party and the market investigation, Lastminute, TUI and Trip.com have some proprietary hotel OTA content, but they also rely on commercial affiliated agreements with third party OTAs.[344]

(267) eDreams Odigeo, Kiwi, Lastminute, and TUI are estimated to have market shares of [0-5]% in the hotel OTA market in 2022 at the EEA level on a B2C basis.[345]

(268) Therefore, it appears that Booking and Expedia are the only major independent hotel OTAs. The other players have very limited market shares and few of them are fully independent from their competitors.

### 6.3. Overview of market dynamics in the Flight OTA markets

(269) The flight OTA market is smaller in terms of TTV than the hotel OTA market. As commissions are much lower (below 5% of TTV), the flight OTA market is a 'volume' market where flight OTAs try to capture as many transactions as possible. In order to do this, flight OTAs rely on MSSs to reach a much broader customer base. Indeed, MSSs are often the main channel for flight OTAs to acquire customers and play a pivotal role in this market. For instance, in 2021, [80-90]% of ETG's customer transactions were generated through MSS.[346] In addition, in Europe, more than [80-90]% of flight tickets are sold directly by the airlines.[347]

(270) Like hotel OTAs, flight OTAs are intermediary platforms connecting airlines to end customers. However, according to pre-notification calls, barriers to entry seem relatively low in the flight OTA market, as flight OTAs can source flight content from the global distribution systems, such as Amadeus and Sabre, to start operating. During a pre-notification interview, an OTA indicated that '*entering into the flight OTA segment is not difficult: an OTA would need an accreditation with IATA, and it would be able to obtain content from GDSs. While it is the case that some legacy and low-cost carriers want to restrict the content that is distributed via indirect channels, the OTA would be able to obtain additional content through aggregators like Travelfusion (in addition to GDSs)*'[348]. However, the OTA also indicated that *'[t]he downside for a new entrant is that margins in flight OTA services are low and therefore their ability to compete as a flight only may be more limited // In this sense, it is interesting for OTAs to add accommodation to their offering, which they can cross-sell with flights. By way of example, eDreams Odigeo is an OTA focused on flight services with their own flight platform and significant traffic. eDreams Odigeo sources accommodation content from other OTAs to enhance its customer*

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343 Response to RFI 6, Annex 8; Response to RFI 13, Annex 2; non-confidential minutes of the call with [an OTA], 3 March 2022 [DOC ID 664], paragraph 7.

344 Response to RFI 6, Annex 8; non-confidential minutes of a conference call with [an OTA], dated 19 December 2022 [DOC ID 51501], paragraph 10.

345 Commission's market reconstruction [DOC ID 120780] and Euromonitor (B2C); Response to RFI 17, Annex 3, 'Euromonitor without Airbnb unadjusted' tab.

346 Form CO, attachment D411 [DOC ID 19695], page 11.

347 Phocuswright, Europe Travel Market Report (2021-2025), Figure 12 (see Attachment E to the Parties' consolidated response to QP7, provided at Attachment T to Form CO).

348 Non-confidential minutes of the call with [an OTA], dated 13 May 2022 [DOC ID 2788], paragraph 15.

*proposition and offer these in addition to the flights. eDreams may also have built its own hotel portfolio via direct agreements with accommodation providers.*' [349]

(271) Flight OTAs also seem less reliant on online advertisement (which can require significant upfront investments) as they attract significant traffic through MSS which they pay on a cost-per-click or cost-per-acquisition basis. In this regard, a majority of OTAs having expressed a view on the market investigation considered that it is 'very important' and 'important' for a flight OTA to be present on MSS platforms.[350]

(272) However, evidence on the file suggests that creating a state-of-art flight OTA platform such as ETG, which is particularly important to provide very competitive prices and offerings in this market (including by virtual interlining[351]), requires significant investments in technology and time and these efforts would be difficult to replicate for another competitor in the flight OTA segment.

(273) Indeed, Booking's internal document referred to ETG's flight OTA platform as [Strategic and commercial assessment of ETG's platform].[352] [Strategic and commercial assessment of ETG's platform].[353]

(274) Further, the results of the market investigation indicate that ETG is the most successful flight OTA in the EEA in terms of the parameter that OTAs have selected as most important to be able to effectively compete: prices offered to consumers.[354] Indeed, ETG is ranked first in terms of price, followed by eDreams Odigeo.[355]

(275) The EEA flight OTA market is relatively fragmented. eDreams is the market leader (20-30% share), followed by two other major flight OTAs having comparable size: ETG ([10-20]%) and Trip.com (10-20%).[356] As explained by a market participant, '*ETG, Trip.com and eDreams Odigeo secure good pricing due to volume and technical ability to source deals worldwide. Expedia and Lastminute gain their price advantage through bundling. Kiwi on the other hand uses it's* [sic] *technical backend abilities and makes use of virtual interlining to secure great deals, but this often to the disadvantage of the end user.*'[357]

### 6.4. Booking has a dominant position in the hotel OTA market in the EEA

#### *6.4.1. The Notifying Party's views*

(276) The Notifying Party alleges that Booking is subject to clear competitive pressures exerted by existing OTA rivals, hotels and new prospective entrants. In particular, the Notifying Party submits that Booking faces a set of strong rival OTAs; and that Booking has been discounting an increasing proportion of its room nights at its own expense to compete with prices offered by rival OTAs and the hotels' direct sales channel. The Notifying Party also claims that the hotels' direct sales channel is a

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349 Non-confidential minutes of the call with [an OTA], dated 13 May 2022 [DOC ID 2788], paragraphs 15 and 16.

350 Responses to question 34 of Questionnaire Q1 to OTAs [DOC ID 2739].

351 Virtual interlining refers to a flight OTA's ability to combine flights from different carriers for the same trip (often these carriers have no existing traditional commercial interline relationship); e.g., for a round trip London-Cotonou; inbound operated by IAG and outbound by AirFrance.

352 Booking's internal document D010, slide 9 [DOC ID 147-33].

353 Booking's internal document D011, slide 3 [DOC ID 147-22].

354 Responses to question 31 of Questionnaire Q1 to OTAs [DOC ID 2739].

355 Responses to question 32.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

356 Commission's flight OTA market reconstruction, [DOC ID 58714].

357 Responses to question 32.1.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

growing constraint on Booking, fuelled by the marketing opportunities presented by MSS channels (such as Google Hotels) and general search advertising.[358]

*6.4.2. The Commission's assessment*

(277) As will be explained in more details below the Commission finds that Booking holds a dominant position in the market for hotel OTAs because (i) Booking is by far the largest hotel OTA and holds market shares higher than [50-60]% in the EEA and Booking's position has increased over the years (and is projected to keep growing) thereby widening the gap between Booking and its competitors; (ii) evidence in the file indicates that Booking is able to act independently from its competitors and customers charging higher commissions from hotels and higher prices from end consumers, and Booking still has managed to increase its market share overtime; (iii) Booking significantly outperforms its competitors for each of the parameters that OTAs and hotels consider the most important to determine an hotel OTA's competitiveness on the market and (iv) network effects, customer inertia and unmatchable advertising spend reinforce Booking's position on the market.

*6.4.3. Market shares in the hotel OTA market*

(278) For the purpose of assessing the Transaction, the Commission's analysis is based on market shares in the hotel OTA market in the EEA on a 'Business-to-Business' ('B2B') and on a 'Business-to-Consumer' ('B2C') bases. This is consistent with the market definition, according to which hotels are the main customers of an OTA, paying a fee for the provision of online travel intermediation services by the OTA. In this regard, market shares on a B2B basis provide an indication of the competitive importance of Booking and its competitors as OTA distribution channels for hotels to sell their hotel rooms. In addition, as the attractiveness of an OTA for hotels to be displayed therein depends on the number of end customers that OTA can successfully sell to, B2C market shares provide an indication of the competitive importance of Booking and its competitors for the sale of hotel rooms to end customers and, ultimately, of the attractiveness of their respective platforms for hotels.

(279) In line with industry practice, hotel OTA sales and market shares are presented on a TTV basis.

6.4.3.1. The market share information submitted by the Notifying Party

(280) The Notifying Party submits that it is not aware of any reliable third-party estimates for the size of the hotel OTA market from which to calculate market shares for the EEA or Member States. According to Booking, this stems from the lack of reliable third-party statistics on OTA sales per country.[359] Further, the Notifying Party is of the view that B2B market shares do not capture the competitive dynamics of the hotel OTA market. In particular, the Notifying Party submits that B2B sales by Booking are sales of hotel OTA services from Booking's commercial affiliated partners, that Booking played no role in acquiring those customers for the hotels and if the third-party commercial affiliate partners were to source their content from other OTAs, Booking.com would lose the entirety of these sales. Accordingly, while the Notifying Party has provided B2B estimates at the request of the Commission,

358 Response to the Article 6(1)(c) decision, Annex 4 'Dominance'. Response to the SO, section 5.

359 Form CO, Annex 7 paragraph 2.10.

the Notifying Party submits that B2C market shares would be the relevant proxy for assessing the Transaction.[360]

(281) The Notifying Party initially adopted a conservative assumption that Booking holds a [40-50]% share in the broader accommodation OTA market (that is, hotel and other types of accommodation different from hotels, others including private accommodation) in the EEA (on a B2C basis) and inferred market sizes accordingly.[361] The Notifying Party has explained that this assumption is based on a consideration of the implied Euromonitor market shares, Google clickshare data, and Semrush traffic data.[362] The Commission notes that the assumed market shares at EEA level are largely based on online traffic and clickshare data, which are not representative of TTV or revenues. By way of example, if a customer is to visit three different OTA sites before making a purchase, traffic data would allocate such 'purchase' to all three OTAs that the customer visited, whereas only one OTA achieved the sale and therefore generated the TTV / revenues.

(282) Following the Commission's request to provide more representative market shares, the Notifying Party submitted on October 2022 TTV data for the broader accommodation OTA market on the basis of estimates based on data from Euromonitor,[363] a world's leading provider of market research reporting, including regarding the accommodation intermediation markets, while noting strong reservations regarding the estimates of the total market size at EEA level which, in Booking's view, is underestimated.[364] The Notifying Party attempted to account for these deficiencies by applying a normalisation to align the Euromonitor market size estimates with Booking's view of its overall EEA share for the broader market of accommodation OTA services on a B2C basis. Specifically, all market sizes were adjusted by a common factor such that Booking.com market share at EEA level in 2019 was [40-50]%. In this regard, the Notifying Party submitted market shares in both (i) an adjusted (with the normalisation to align to Booking's view of its EEA share of [40-50]%); and (ii) an unadjusted basis (without normalisation). Further, at the Commission's request, the Notifying Party submitted Euromonitor market shares for the hotel OTA market, excluding sales of OTA services related to private accommodations.

(283) On 11 March 2023, the Notifying Party submitted revised Euromonitor market shares on an 'unadjusted' basis for both the hotel OTA market and the broader market for accommodation OTA services in the EEA and per Member State for 2011-2022, on a B2C basis.[365] Further, the Notifying Party revised its previously submitted TTV to account for cancellations ('net-arrived' or 'NA' TTV), which it had not done in the previous Euromonitor market shares provided in October / November 2022.[366] The difference between 'as-booked' TTV (that is, including hotel

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360 Response to RFI 24, paragraphs 12.1 et seq.

361 Form CO, Annex 7 paragraph 2.12. The Commission understands that these estimates would refer to Booking's share vis-à-vis end customers (B2C).

362 Response to the RFI 4, paragraph 3.11 and 3.12.

363 Response to QP10, Annex 1.1. The Notifying Party also submitted on November 2022 a revised version of the information provided in the response to RFI 4, Annex 2.

364 Form CO, Annex 7 paragraph 2.14. The Notifying Party further noted that Euromonitor market size estimates provided in October and November 2022 were '*highly questionable*' at Member State-level.

365 Response to RFI 17, Annex 3.

366 Response to RFI 17, paragraph 1.2.

nights that were booked but cancelled later) and NA TTV is […]% in 2022, and was lower in previous years ([…]% in 2021, and only […]% in 2019 and 2018).[367]

(284) The Notifying Party explained that the new market shares were produced on the basis of revised Euromonitor market size estimates for 2011-2021 and Euromonitor's latest forecast for 2022 included in Euromonitor's report of August 2022.[368] According to the Notifying Party, Euromonitor market size estimates for 2011-2021 were materially revised in this August 2022 report.[369] The Notifying Party has explained that they ignored the existence of the revised August 2022 report until they prepared the response to the Commission's RFI 17 (which was sent on 23 February 2023), and that Booking cannot determine retrospectively when the 2022 update became accessible on the Euromonitor online research database (Euromonitor Passport) from which Booking downloads the information.[370]

(285) The Notifying Party claims that the Euromonitor's revisions to the market size estimates for 2011-2021 '*have led to a more realistic share of supply and significantly reduce the implied Booking.com share in 2011 – 2021 to a level much more in line with its view of having a [40-50]% accommodations OTA market share*'[371]. Regarding the market share data provided for 2022, the Notifying Party submits that its estimates are based on the most recent Euromonitor market size report issued in August 2022, and that they expect Euromonitor to revise its 2022 accommodation OTA market size upwards around August 2023. As a result, the Notifying Party is of the view that the estimated 2022 market shares are unreliable and should not be relied upon.[372]

(286) The Commission is of the view that the first Euromonitor market shares submitted by the Notifying Party in October/November 2022 were not robust estimates, especially at Member State level, both on an 'adjusted' and 'unadjusted' basis. In particular, at Member State level, Booking's market share on the hotel OTA market (and the broader accommodation OTA market) is above [100-110]% in a number of Member States for 2022 and even previous years.

(287) As regards the revised Euromonitor market share data provided by the Notifying Party on 11 March 2023, the Commission notes that the data shows the same shortcomings, especially at Member State level. Indeed, at Member State level, Booking's market share on the hotel OTA market (and the broader accommodation OTA market) is still estimated above [100-110]% in a number of Member States for 2022 and some previous years.[373] Further, the Commission notes that the revision carried out by Euromonitor modified significantly the estimated market sizes at EEA and Member State-level. The difference in estimated market size at EEA level under the previous Euromonitor data and the one submitted in March 2023 is included below. It is unclear to the Commission where the revisions from Euromonitor come from and how they could result in such significant upward revision.

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367 Response to RFI 17, Annex 4 'EEA-wide summary' tab.
368 Response to RFI 17, paragraph 1.2.
369 Response to RFI 17, paragraphs 1.2 and 1.3.
370 Response to RFI 23, paragraphs 2.9 and 2.10.
371 Response to RFI 17, paragraph 1.2 (i).
372 Response to RFI 17, paragraphs 1.2 and 1.7 et seq.
373 See for example for Austria, Croatia, Cyprus, Estonia, Ireland, Malta, Poland, Romania, Slovakia in Response to RFI 17, Annex 3.

**Table 1: Comparison of EEA-wide market sizes based on 'old' and 'new' Euromonitor data provided by the Notifying Party**

| Year | New market size | Old market size | Difference |
|---|---|---|---|
| 2011 | [Market share data] | [Market share data] | [Market share data] |
| 2012 | [Market share data] | [Market share data] | [Market share data] |
| 2013 | [Market share data] | [Market share data] | [Market share data] |
| 2014 | [Market share data] | [Market share data] | [Market share data] |
| 2015 | [Market share data] | [Market share data] | [Market share data] |
| 2016 | [Market share data] | [Market share data] | [Market share data] |
| 2017 | [Market share data] | [Market share data] | [Market share data] |
| 2018 | [Market share data] | [Market share data] | [Market share data] |
| 2019 | [Market share data] | [Market share data] | [Market share data] |
| 2020 | [Market share data] | [Market share data] | [Market share data] |
| 2021 | [Market share data] | [Market share data] | [Market share data] |
| 2022 | [Market share data] | [Market share data] | [Market share data] |

*Source: Response to RFI 17, Annex 5*

(288) Given the limitations of the market share data provided by the Notifying Party, the Commission has conducted a market reconstruction exercise with the main objective of estimating the market size of the hotel OTA market in the EEA, and of calculating market shares of Booking and their competitors. The methodology and sources for estimating the market size of the hotel OTA market in the EEA and calculating Booking's and its competitors' market shares, is included below. In particular, the Commission identified Booking's top 10 B2C competitors on the basis of the Euromonitor data provided and requested sales data information (TTV) to complete the Euromonitor data with information that Booking did not have and could not otherwise obtain. Further, following a request from the Notifying Party, the Commission sent a request to Euromonitor to update the 2022 'passport' dataset used by the Notifying Party as basis for its estimates for the accommodation OTA segment size in 2022.[374]

(289) The market shares refer to TTV and are calculated on both B2B and B2C bases, in consistency with the Commission's approach to market definition where the hotels are the main customers of an OTA, but the attractiveness of the OTA depends on how successfully the OTA can attract sales from end customers.

(290) For the purposes of the Commission's market reconstruction exercise, where TTV data from Booking's competitors in the hotel OTA market was not provided by the relevant market player, the Commission has used Booking's market share estimates on the basis of the 'revised' Euromonitor market shares provided in March 2023. The Commission followed this approach, which is more conservative and reflects the latest input provided by the Notifying Party.

(291) The Commission is however of the view that the 'unadjusted' Euromonitor market shares and market size data provided in October/November 2022 seem more reliable. In particular, for the reasons noted below, the Commission is of the view that the

[374] E-mail from M. Bergamasco dated 19 June 2023 with title "Bahamas – Euromonitor update" and [DOC ID 58454].

revised Euromonitor market size data for 2013-2021 provided by the Notifying Party is overestimated:

(292) *First*, as a result of the significant upward revision in market sizes for 2013-2021 in the 'revised' Euromonitor data submitted in March 2023, the share of unidentified competitors under 'Others' is significantly high at approx. [20-30]% in the estimates provided by Booking for the hotel OTA market (on a B2C basis).[375] Where the actual TTV reported by Booking's competitors is imputed to calculate the total market size in the Commission's market reconstruction, the share of unidentified competitors under 'Others' is higher. In particular, the share of 'Others' under the market reconstruction ranges between approx. 60-30% for B2B market shares, and 40-30% for B2C market shares throughout the period considered (2013-2022). The Commission has not been able to identify, and the Notifying Party has not submitted which are the competing OTAs that would be behind the 'Others' category. In the Commission's view, the significant portion of unidentified hotel OTA competitors under 'Others' would indicate that the revised Euromonitor market size data for 2013-2021 provided by the Notifying Party is overestimated.

(293) *Second,* the significant upward revision in market sizes for 2013-2021 in the revised Euromonitor data submitted in March 2023 has also resulted in lower shares for Booking for the period 2013-2021 compared to the results of the market reconstruction where the 'old' Euromonitor market size submitted in October/November 2022 were used when third party data by Booking's competitors was not provided. This has resulted in the Commission's market reconstruction reporting a significant increase in Booking's market share between 2021 and 2022 (of [5-10]% on a B2B basis, and [5-10]% on a B2C basis) which seems incredibly high considering that the second player has only reported an increase in market share of about [0-5]% and the remaining competitors have not experienced any growth in market share at all.

(294) The Commission notes that these findings refer to the results of the Commission's market exercise before two updates, which are further explained in sections 6.4.3.3 and 6.4.3.4 below, were carried out to account for more updated data from Euromonitor submitted by the Notifying Party after the Statement of Objection. However, the same arguments apply to the results of the Commission's market reconstruction when the latest Euromonitor updated data is used. In particular, taking into account the updated Euromonitor data provided by the Notifying Party on 11 August 2023, the results of the Commission's market reconstruction show that the portion of 'Others' in the hotel OTA market is significantly high at [20-30]% on a B2C basis and [10-20]% on a B2B basis in 2022, and is higher in previous years during the period considered. In addition, Booking's market share between 2021-2022 also rises significantly in 2022 ([5-10]% on a B2B basis, and [5-10]% on a B2C basis).

6.4.3.2. The Commission's market reconstruction exercise

(295) The Commission's market reconstruction exercises focused on estimating the market size for the hotel OTA market in the EEA as well as Booking's and the main competitors' shares on both a B2B and B2C bases. The steps taken by the Commission during the market reconstruction exercise are described below.

[375] Response to RFI 17, Annex 3.

(296) *First*, the Commission identified Booking's main competitors in the hotel OTA market in the EEA on the basis of the B2C Euromonitor market share information provided by Booking in October and November 2022.[376] These are Expedia, TUI, Lastminute, Bergfex, HRS Group, OYO Rooms, eDreams Odigeo, Travelminit, and Weekendesk, which, according to the Euromonitor market share information provided by Booking in October and November 2022 would (together with the Parties) account for [80-90]% of the hotel OTA market[377] in the EEA in 2021. On the basis of the information provided in the Form CO,[378] the Commission also identified Trip.com as an OTA active in the hotel OTA market. The Commission notes that, under the 'new' market share provided by Booking in March 2023, these market participants would account for [80-90]% of the hotel OTA market in the EEA in 2022.[379]

(297) For completeness, the Commission also identified Booking's main competitors on a broader accommodation OTA market. These include Airbnb, Expedia, TUI, Lastminute, Bergfex, HRS Group, OYO Rooms, eDreams Odigeo, Travelminit, and Weekendesk, which together with Booking, would account for [90-100]% of the total accommodation OTA market in 2021, on the basis of the 'old' Euromonitor market share information provided by Booking[380] and [80-90]% on the basis of the 'new' Euromonitor market share information provided by Booking in March 2023.[381]

(298) The Commission then contacted these top 10 B2C competitors with a request to complete a template with sales data information, including TTV, for (i) hotel[382] OTA services and (ii) total accommodation OTA in the EEA and in the EEA Member States yearly for the reference period of 2012-2022.[383]

(299) In addition, the Commission requested the other main provider of hotel OTA services to hotels, Expedia, for its B2B sales (in TTV) for hotel OTA services and accommodation OTA services in the EEA for each year for the period 2012-2022.[384] A number of OTAs interviewed during the market investigation indicated that Booking and Expedia are the main OTAs with direct relationship with hotels.[385]

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376 Responses to the pre-notification request for information (QP10), Annex 1.1. and RFI 4, Annex 2. The Notifying Party identified Expedia, Airbnb, TUI, Lastminute and HRS as 'strong accommodation OTA rivals' in Annex 4 to their Response to the Article 6(1)(c) decision , paragraph 3.13 et seq.

377 Response to RFI 4, Annex 2, 'Euromonitor without Airbnb unadjusted' tab.

378 Form CO, paragraphs 1.18, 1.26, 3.11. The Notifying Party also identified Trip.com as a 'threat' in Annex 4 to their Response of the Article 6(1)(c) decision , paragraph 4.1.

379 Response to RFI 17, Annex 3, 'Euromonitor without Airbnb unadjusted' tab.

380 Response to RFI 4, Annex 2, 'Euromonitor with Airbnb unadjusted' tab

381 Response to RFI 17, Annex 3, 'Euromonitor with Airbnb unadjusted' tab.

382 In the request to competitors, 'hotel' was defined as independent hotels (including 'hotel-like' properties such as B&Bs) and hotel chains, which would be in line of Booking's core and chains and 'hotel-like' properties within the home category. See RFI II Competitors Data, question 1 and Annex.

383 The Commission first requested yearly data for the period 2012-2021 in January 2023, and then issued a follow-up RFI for 2022 data by the end of February 2023 where 2022 information was available.

384 IDs 57580, 57179, 57101, 57091, 57091, 57016, 56995, 56969.

385 Responses to question C-1.1 to eRFI to Competitors [DOC IDs 56017, 53611. 55459. 56668, 56637, 55447, 54793], and non-confidential minutes of a conference call with Lastminute, dated 19 December 2022 [DOC ID 51501], paragraph 10(i); non-confidential minutes of a conference call with Trip.com, 20 December 2022 [DOC ID056917], paragraph 9; and non-confidential minutes of a conference call with eDreams, dated 1 December 2022 [DOC ID 57675], paragraph 2(iii).

(300) In order to minimise potential confusion with the market participants contacted and to ensure they replied as required, the Commission interacted with a number of market participants via follow-up e-mails to further explain the instructions for filling in the template and to clarify any doubts that market participants might have had. Out of the 11 OTAs contacted, 7 provided TTV information.[386]

(301) *Second*, the Parties' TTV information was collected separately. Booking submitted its B2C NA TTV in hotel OTA services in the EEA, which includes Booking's TTV achieved from the sale of hotel (core and chain) rooms as well as 'hotel-like' properties within the home category to end customers.[387] ETG provided similar information. Separately, Booking and ETG also submitted their B2C NA TTV in total accommodation OTA services in the EEA.[388]

(302) At the request of the Commission, Booking also submitted its total NA TTV (including B2C and B2B sales) in hotel OTA services as well as in accommodation OTA services in the EEA.[389] The Commission notes that since ETG sources hotel and accommodation OTA content from Booking, its TTV was inputted to Booking.

(303) *Third*, the total market size for the hotel OTA market for each year of the period considered (2012-2022) has been calculated using as a starting point Euromonitor's total market sizes from 2012-2022 as provided by the Notifying Party in its latest submission of 11 March 2023.[390] The Commission has then adjusted the total market sizes provided in Euromonitor's data with the B2C TTV collected from the Parties and their competitors. For those competitors who did not respond to the Commission's request or could not provide the requested TTV information for the whole period considered, the Commission used Booking's estimates based on the latest Euromonitor's market shares provided, as the most reliable data point available.[391] The Commission has used the same approach to infer the total market size for the accommodation OTA market for same period (2012-2022).[392]

(304) *Fourth,* B2B market shares for Booking and Expedia in the hotel OTA market have been calculated using the total market size resulting from the market reconstruction exercise and Booking's and Expedia's respective total (B2B and B2C) TTV data. The Commission is of the view that the market shares are representative of the hotel OTA market. Booking and Expedia are the main two suppliers of OTA services to hotels, and their share covers [80-90]% of the hotel OTA market in 2022.

(305) *Fifth,* B2C market shares for Booking and the top 10 competitors in the hotel OTA market have been calculated using the total market size resulting from the market reconstruction exercise and Booking's and the competitors' respective B2C TTV data. The Commission is of the view that the market shares are representative of the number of hotel OTAs, and their position, that sell hotel rooms to end customers. In

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386 HRS Group, Trip.com, Bergfex and OYO Rooms did not provide the requested information.

387 Response to RFI 17, Annex 3, 'Euromonitor without Airbnb unadjusted' tab; and Response to RFI 23, paragraph 2.8.

388 Response to RFI 17, Annex 3, 'Euromonitor with Airbnb unadjusted' tab.

389 Response to RFI 24, Annex 1.

390 Response to RFI 17, Annex 3, 'Euromonitor without Airbnb unadjusted' tab.

391 Response to RFI 17, Annex 3, 'Euromonitor without Airbnb unadjusted' tab.

392 The Commission has used as a starting point Euromonitor's market sizes; and Booking's estimates for competitors shares for those competitors that did not provide data to the market reconstruction; as included in the response to RFI 17, Annex 3, 'Euromonitor with Airbnb unadjusted'.

total, Booking's and these top 10 competitors' share covers [70-80]% of the hotel OTA market in 2022.

(306) The Commission considers this methodology to be providing the most accurate estimation possible. The methodology relies on Euromonitor's most recent estimates as well as the Notifying Party's best estimates, which are complemented with information sought from Booking's competitors, to which Booking could not have access to.

(307) In its response to the SO, the Notifying Party claims that the Commission's methodology to adjust the Euromonitor's market size is flawed because it replaces the Euromonitor estimate of the market size with a figure partly built up from rivals' TTV.[393] The Notifying Party submits that whereas the '*Parties' analysis anchors itself on the market size estimated by the third party research company Euromonitor. The methodology in the SO instead takes the fixed anchor point for the analysis as the Parties' indicative estimates of rivals' shares, and amends Euromonitor's published estimates to align with the TTV of rivals implied by the Parties' share estimates for rivals. This approach effectively assumes that the Parties' visibility of individual rivals' TTV is more reliable than Euromonitor's estimate of the market size*'.[394]

(308) The Commission is however of the view that the Commission's methodology provides the most accurate estimation possible as it complements Euromonitor's and the Notifying Party's estimates with actual TTV gathered from competitors, which neither Euromonitor[395] nor Booking have access to.

(309) *First*, the results of the Commission's market reconstruction included in the SO are in line with the latest views gathered from Euromonitor regarding the market size of the broader accommodation OTA market in the EEA. The Commission notes that Euromonitor's report does not have a specific classification for 'hotel OTAs' only, rather Euromonitor's 'lodging' category includes more types of properties other than hotels (e.g., private accommodation).[396] During a call on 22 June 2023, Euromonitor explained that based on the preliminary data that Euromonitor has for 2022, the accommodation intermediation market in Europe is not to recover to 2019 levels until 2023.[397] The Commission's market reconstruction results in a market size for the EEA accommodation OTA market in 2022 that is slightly below approx. [0-5]%) the Euromonitor market size estimate submitted by Booking for 2019 (EUR […]).[398] In addition, the 2022 market size for the accommodation OTA market resulting from the Commission's market reconstruction is [0-5]% higher than the 2022 market size reported by Booking on the basis of Euromonitor for the accommodation OTA market (EUR 60.98 billion).[399] This is a further indication that the results of the

393 Response to the SO, Annex 7, Section 3.1, page 14.

394 Response to the SO, Annex 7, Section 3.1, page 14. The Notifying Party raised similar arguments in its response to the Second Letter of Facts, Annex 1, page 11 and Annex 2, Section 3.3, page 17.

395 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraphs 3 and 4 [DOC ID 58107].

396 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraph 2 [DOC ID 58107].

397 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraph 6 [DOC ID 58107].

398 Response to RFI 17, Annex 3, 'Euromonitor with Airbnb unadjusted' tab.

399 Response to RFI 17, Annex 3, 'Euromonitor with Airbnb unadjusted' tab.

market reconstruction exercise for the accommodation OTA market for 2022 deliver a more conservative estimate for Booking's market share than if the Commission were to use the market size estimates for the accommodation OTA market submitted by Booking.

(310) *Second*, following the Response to the SO, the Commission has carried out a 'robustness check' of the results of the market reconstruction included in the SO regarding the hotel OTA market.[400] The Commission's 'robustness check' takes a more conservative approach than the market reconstruction carried out in the SO for the hotel OTA market because it (i) starts off with Booking's estimates for the accommodation OTA market provided in RFI 17; (ii) replaces Booking's and its main competitors TTV with the actual TTV in hotel OTA services submitted to the Commission; and (iii) assumes, on a conservative basis, that all TTV estimated by Booking in the accommodation OTA market for the remaining competitors[401] refers to hotel OTA TTV. Under this conservative approach, which – compared to the market reconstruction in the SO – assumes a higher hotel OTA TTV for the rest of the market which did not participate in the market reconstruction,[402] the total market size of the hotel OTA market would only increase by [0-5]% (in comparison to the results of the market reconstruction reported in the SO). As a result, Bookings market share on a B2B basis would only decrease by [0-5] percentage points (from [70-80]% reported in the SO to [70-80]%); and on a B2C basis by [0-5] percentage points (from [60-70]% reported in the SO to [60-70]%).[403]

(311) In its response to the Commission's Second Letter of facts, the Notifying Party criticises the 'robustness check' carried out by the Commission and argues that *first*, the approach to partition the broader accommodation OTA market into hotels and private accommodation ('homes') is not warranted due to the sufficient demand-side substitutability between hotels and 'homes';[404] and, *second*, that '*it appears that lack of clarity around the identification of "hotel-like" properties has led to TTVs for the hotel OTA segment that are materially less than those reported in the accommodation OTA segment*', and that this concern is not addressed in the Commission's robustness check.[405] The Notifying Party's arguments about an alleged lack of clarity around the identification of 'hotel-like' properties are however

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400 The Commission recalls that in order to calculate the market size and estimated shares in the hotel OTA market in the EEA, the Commission used as starting point the estimates on market size for a hotel OTA market in the EEA that Booking submitted in RFI 17 and replaced Booking's estimates regarding the total transaction value ('TTV') of its main competitors with the actual hotel OTA TTV provided by competitors.

401 Remaining competitors include those which did not provide hotel OTA TTV in the market reconstruction and the 'others' category.

402 This is because, as explained above, the Commission has assumed that Booking's estimates regarding the TTV achieved by these remaining competitors (i.e., those that did not participate in the market investigation and the 'Others' category) in the accommodation OTA market would all refer to hotel OTA services, when some of these players are active in other types of accommodation. For example, both Bergfex (https://www.bergfex.com/sommer/oesterreich/unterkuenfte/) and OYO Rooms (https://oyovacationhomes.com/our-brands) list accommodations other than hotels in their websites.

403 The Commission notes that this robustness check refers to the results of the market reconstruction exercise as presented to the Notifying Party following issuance of the SO. As indicated in the following sections, the Commission has carried out two more updates to the market reconstruction as the Notifying Party has provided more updated data following its response to the SO.

404 The Notifying Party's arguments regarding the sufficient demand-side substitutability between the hotels and private accommodation are dealt with in section 5.2.1.3 above.

405 Response to the Second Letter of Facts, Annex 2, Section 3.2, pages 15 and 16.

unwarranted. In the RFI sent to Booking's competitors to gather the relevant TTV used for the Commission's market reconstruction, the Commission clearly indicated that by 'hotel', the Commission referred to '*both independent hotels (including "hotel-like" properties such as B&Bs) and hotel chains*'[406]. In this sense, the Notifying Party's claim that competitors may have excluded TTV corresponding to 'hotel-like' properties is unfounded, when the Commission clearly requested competitors to add such TTV when reporting their TTV for hotel OTA services.

6.4.3.3. Update of the market reconstruction exercise based on 2022 data

(312) Following a request from the Notifying Party[407] and after a conference call with Euromonitor[408], the Commission sent a request to Euromonitor to update the 2022 'passport' dataset used by the Notifying Party as basis for its estimates for the accommodation OTA segment size in 2022.[409]

(313) Euromonitor provided the relevant data on 12 July 2023, and accepted on 17 July 2023 to make the confidential data available to the Parties' legal counsel in the data room.

(314) The Commission then updated the results of its market reconstruction exercise for the hotel OTA market in the EEA in 2022. By doing so, the Commission addressed the Notifying Party's allegations in the Response to the SO that the previous market reconstruction was based on outdated data. The Commission proceeded as follows:

(315) *First*, the Commission converted the total market size from the Euromonitor dataset for 2022 to Euros, applying the corresponding annual average ECB USD-EUR exchange rate.

(316) *Second*, the Commission increased the resulting total market size by 2.2% to account for the fact that the Euromonitor 'passport' data did not include several EEA countries.[410] The Commission notes that this is the same adjustment that the Notifying Party carried out to the Euromonitor passport data which served as basis for the accommodation OTA market size for 2022 submitted in response to RFI 17.[411] This resulted in an estimate of the total market size for accommodation OTA covering the entire EEA in 2022. Furthermore, as Euromonitor explained, its 'passport' data does not contain a specific classification for 'hotel OTAs', but rather refers to a broader 'lodging' category which '*includes more types of properties different than hotels (e.g., private accommodation), and the 'sourcing' side does not only refer to OTAs but also other intermediaries on the B2C side (e.g., brick-and-mortar travel agencies and tour operators)*'.[412]

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406 See, for example, DOC IDs 2909 and 2910, Question 1, to which the Notifying Party got access during the access to file exercise.

407 E-mail from M. Bergamasco dated 19 June 2023 with title 'Bahamas – Euromonitor update' [DOC ID].

408 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023 [DOC ID58107].

409 Commission's request to Euromonitor, [DOC ID 58454].

410 The Euromonitor passport data do not include the following nine EEA countries: Cyprus, Estonia, Iceland, Latvia, Lithuania, Luxembourg, Malta, Liechtenstein and Slovenia (Response to RFI 36, paragraph 2.1).

411 Response to RFI 36, paragraph 2.4.

412 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraph 2 [DOC ID 58107].

(317) *Third,* to estimate the market size for the narrower hotel OTA market in the EEA in 2022, the Commission has followed the same approach used by the Notifying Party in its response to RFI 17, estimating the market size for the narrower hotel OTA market at [70-80]% of the size of the broader accommodation OTA market in the EEA.

(318) *Fourth*, the Commission has followed the approach discussed in the SO (see section 6.4.3 above) to carry out its market reconstruction. In particular, the Commission has used the updated 2022 Euromonitor market size for the hotel OTA market, and has then used Booking's TTV, as well as the estimate of the competitors' TTV as provided by Booking in RFI 17. The Commission has then replaced the Notifying Party's estimates regarding the competitors' TTV with the actual hotel OTA TTV provided by competitors during the market reconstruction and adjusted the total market size accordingly.

(319) In its Response to the Second Letter of Facts, the Notifying Party raise the same concerns regarding the Commission's methodology that were raised in its Response to the SO. In particular, the Notifying Party claims that the Euromonitor's' updated 2022 market size submitted by Euromonitor is broadly in line with the Notifying Party's previous submissions,[413] and that the Commission's approach to adjusting the Euromonitor market size estimates is contrived and conceptually flawed, and results in a 'substantive difference' between the Notifying Party's share estimates and those resulting from the Commission's market reconstruction.[414] The Notifying Party further claims that the hotel OTA market size is understated, and that the 'robustness check' carried out by the Commission does not properly address the Parties' concerns[415]; and that the Commission's market reconstruction overstates Booking's market share by not adjusting the 'others' category to respect the total market size estimated by Euromonitor.[416]

(320) The Commission disagrees with the Notifying Party's claims and is of the view that the Commission's methodology provides the most accurate estimation possible and represents, in any event, an estimate of the market size that is favourable to the Notifying Party for the following reasons.

(321) *First*, it complements Euromonitor's and the Notifying Party's estimates with actual TTV gathered from competitors, to which Euromonitor[417] does not have access and therefore represent a more accurate proxy for these competitors estimates.

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413 Response to Second Letter of Facts, Annex 2, Section 3.1, Page 14. The Commission notes that in the Response to the SO, the Notifying Party raised the argument that the previous 2022 market size for the hotel OTA market was understated as it was based on estimates that were not revised by Euromonitor at the time that they were provided by the Notifying Party (March 2023). The Commission understands that this claim has been abandoned since the Commission requested and used Euromonitor's updated passport data provided in June 2023, following the request from the Notifying Party.

414 Response to Second Letter of Facts, Annex 2, Section 3.3, pages 17 and 18.

415 Response to Second Letter of Facts, Annex 2, Section 3.2, pages 15 and 16. Similarly, Response to the SO, Annex 7, Section 3.3.

416 Response to Second Letter of Facts, Annex 2, Section 3.2, pages 15 and 16. Similarly, response to the Second Letter of Facts, Annex 2, Section 3.3, pages 17 and 18.

417 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraphs 3 and 4 [DOC ID 58107]

(322) *Second*, the resulting market size for the hotel OTA market in the EEA in 2022 remains higher than the 2019 hotel OTA market size resulting from the market reconstruction, although Euromonitor has indicated that the hotel OTA market would not recover to pre-Covid levels until 2023.[418]

(323) *Third,* according to Euromonitor, the passport data used as a basis for both the broader accommodation OTA market and the narrower hotel OTA market reconstruction does not only refer to OTAs but also other intermediaries in the B2C side. In particular, Euromonitor indicated that '*the "sourcing" side does not only refer to OTAs but also other intermediaries on the B2C side (e.g., brick-and-mortar travel agencies and tour operators)*'.[419] However, the Commission has used the total market size resulting from Euromonitor to estimate the TTV of those competitors that did not participate in the market reconstruction, thus potentially allocating TTV to those competitors that are not strictly related to hotel OTA or the broader accommodation OTA services, which would artificially inflate their market share and underestimate Booking's share.

(324) *Fourth*, the Notifying Party's claims regarding the 'understated' size of the hotel OTA market resulting from the market reconstruction are based on an alleged underreporting by competitors of their TTV in hotel OTA services due to 'lack of clarity' around the identification of 'hotel-like' properties in the RFI sent to competitors for the market reconstruction.[420] However, as explained above, the RFI that the Commission sent to Booking's competitors to gather the hotel OTA TTV clearly indicated that by 'hotel', the Commission referred to *both independent hotels (including "hotel-like" properties such as B&Bs) and hotel chains*'[421]. In this sense, the Notifying Party's claim that competitors may have excluded TTV corresponding to 'hotel-like' properties is unfounded, when the Commission clearly requested competitors to add TTV arising from 'hotel-like' properties when reporting their TTV for hotel OTA services.

(325) *Fifth,* the Commission disagrees with the Notifying Party's argument that Euromonitor's market size should not be adjusted. In particular, as indicated above, Euromonitor lacks access to actual TTV from market players, and its estimates do not only refer to sales by OTAs but also other types of intermediaries on the B2C side (brick-and-mortar travel agencies and tour operators),[422] which are not part of the relevant market. In this regard, the Notifying Party's claim that there is an 'error' in the Commission's market reconstruction methodology not to increase the 'Others' category to respect the higher Euromonitor estimated market size is unwarranted, as accepting the Notifying Party's claim would be tantamount to accepting Euromonitor's market size estimates where, as the evidence shows, there are better data points available (i.e., the actual TTV reported by Booking's competitors) and Euromonitor's market size estimates include TTV generated by other intermediators, different from OTAs, that do not belong on the market.

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418 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraphs 3 and 4 [DOC ID 58107]

419 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraph 2 [DOC ID 58107]

420 Response to Second Letter of Facts, Annex 2, Section 3.2, pages 15 and 16.

421 See, for example, DOC IDs 2909 and 2910, Question 1, to which the Notifying Party got access during the access to file exercise.

422 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraphs 2-4 [DOC ID58107].

6.4.3.4. Update of the market reconstruction based on business data submitted by the Notifying Party

(326) On 11 August 2023, the Notifying Party provided new updated Euromonitor data,[423] according to which the Notifying Party submitted revised market size estimates for the broader total accommodation OTA market in the EEA for the years 2019-2022.

(327) The Notifying Party indicated that the new updated Euromonitor data now also includes estimates of the total market size including 'business' bookings, which had been excluded in the previous Euromonitor's report of August 2022. The Notifying Party therefore requested the Commission to correct its estimates by taking into account both the leisure and business OTA segment sizes from the new updated Euromonitor data submitted on 11 August 2023.[424]

(328) The Commission notes that the Parties have only provided updated market size estimates for the broader accommodation OTA market in the EEA for the years 2019-2022. The Notifying Party indicated that the new updated market size estimates are based on '*Euromonitor 2023 publication on booker basis (adjusted to cover the 30 EEA countries)*'.[425] By '*adjusted to cover the 30 EEA countries*', the Commission understands, following the approach of the Notifying Party in previous submissions of market share data,[426] that the Notifying Party has applied an adjustment factor based on GDP to estimate the total market size of the total accommodation OTA markets for the 9 EEA countries not covered by the Euromonitor data.[427]

(329) For the remaining years included in the Commission's market reconstruction exercise (2013-2018)[428], the Notifying Party has only provided updated raw data from Euromonitor that refers to the total estimated TTV in a broader accommodation OTA market comprising 21 EEA countries.[429] In this regard, to estimate the total market sizes for the broader accommodation OTA market in the EEA, the Commission requested the Notifying Party to provide the relevant adjustment factors that should be applied to adjust the Euromonitor totals to estimate a market size for the accommodation OTA market in the entire EEA for each year between 2013-2018. The Notifying Party provided the requested information on 21 August 2023.

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423 E-mail from J Pelucchi dated 11 August 2023, 20:33h CET, titled "M.10615 - Booking/ETG - Euromonitor estimates" [DOC ID 120429].

424 E-mail from J Pelucchi dated 11 August 2023, 20:33h CET, titled "M.10615 - Booking/ETG - Euromonitor estimates" [DOC ID 120429].

425 E-mail from J Pelucchi dated 11 August 2023, 20:33h CET, titled "M.10615 - Booking/ETG - Euromonitor estimates" [DOC ID 120429].

426 See for example responses to RFI 36, paragraph 2.2 and RFI 4, paragraph 3.3.

427 Specifically, the Notifying Party explained that the ratio of the accommodation OTA market size to annual GDP for the 21 countries covered by Euromonitor was applied to the annual GDP data for the missing 9 EEA countries from Euromonitor. The 9 missing EEA countries are Cyprus, Estonia, Iceland, Latvia, Lithuania, Luxembourg, Malta, Liechtenstein and Slovenia (Response to RFI 36), paragraphs 2.1 and 2.2).

428 For the avoidance of doubt, the Commission's market reconstruction covers the period 2013-2022 for the hotel OTA market in the EEA [DOC ID 120780].

429 As noted above, the 9 EEA countries not covered by the 'raw' Euromonitor data include Cyprus, Estonia, Iceland, Latvia, Lithuania, Luxembourg, Malta, Liechtenstein, and Slovenia (Response to RFI 36), paragraphs 2.1 and 2.2).

(330) Following the request of the Notifying Party[430], the Commission has updated the results of its market reconstruction exercise for the hotel OTA market in the EEA using the new market size estimates for the years 2013-2022 submitted by the Notifying Party on 11 August 2023, using the adjustment factors provided by the Notifying Party to account for the 9 EEA countries not covered by the Euromonitor raw data, and the ECB average exchange rate USD/EUR for each respective year.

(331) The Commission notes that, as part of its market reconstruction exercise, the Commission has also corrected one aspect of Euromonitor's estimates, as explained in the Commission's market reconstruction methodology, which is summarised in the three points below.

(332) *First*, as explained by Euromonitor during a call in June 2023, in their report, Euromonitor takes a look at the 'lodging' sector and considers a '*sourcing side [that] does not only refer to OTAs but also other intermediaries on the B2C side (e.g., brick-and mortar travel agencies and tour operators)*'; while '*[t]he B2B intermediaries (e.g., GDSs) are not included*'[431]. It follows that the market size estimates submitted by the Notifying Party for 2013-2022 during the investigation (including the newer updates for 2019-2022 submitted on 11 August 2023), which are based on Euromonitor, Include TTV which does not specifically relate to the broader total accommodation and hotel OTA markets, but rather to activities by other intermediaries which do not compete with OTAs, such as tour operators and brick-and-mortar travel agents. For this reason, the Commission has reduced the total market size estimates recently submitted by the Notifying Party for the total accommodation OTA for 2019-2022 and those resulting from the adjusted Euromonitor data from 2013-2018 by the relevant share that HOTREC's European Hotel Distribution Study 2022[432] estimated for tour operators and travel agents.

**Table 2: share of tour operators and brick-and-mortar travel agents**

| Year | Share (%) |
|---|---|
| 2013 | 9,60% |
| 2015 | 8% |
| 2017 | 7,80% |
| 2019 | 8,10% |
| 2022 | 5,40% |

*Source: HOTREC European Hotel Distribution Study 2022, slide 18[433] [DOC ID 56978-92690]*

(333) *Second*, to estimate the market size for the narrower hotel OTA market in the EEA in 2013-2022, the Commission has used the same proportion within the broader accommodation OTA market that the Notifying Party used in its response to

430 E-mail from J Pelucchi dated 11 August 2023, 20:33h CET, titled "M.10615 - Booking/ETG - Euromonitor estimates" [DOC ID 120429].

431 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraph 2 [DOC ID 58107].

432 HOTREC, European Hotel Distribution Study 2022, [DOC ID 56978-92690].

433 The Commission notes that for the years missing in HOTREC's study, the Commission has considered the share of the more recent previous year, and that given the impact of the Covid-19 pandemic on the travel sector in 2020 and 2021, the Commission has, on a conservative basis, not applied any reduction on those years as the 2019 share of tour operators and brick and mortar travel agents may not have remained the same during 2020-2021.

RFI 17[434]. The proportion represented by the narrower hotel OTA market within the broader accommodation OTA in the EEA, following the estimates submitted by the Notifying Party in its response to RFI 17 is included below for each year between 2013-2022:

**Table 3: Proportion (%) of the narrower hotel OTA market within the broader accommodation OTA market in the EEA, 2013-2022**

| Year | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|---|---|---|---|---|---|---|---|---|---|---|
| Difference (%) | 92% | 89% | 86% | 82% | 79% | 76% | 73% | 72% | 72% | 72% |

*Source: response to RFI 17, Annex 3*

(334) *Third*, the Commission has followed the approach discussed in section 6.4.3.2 above to carry out its market reconstruction. In particular, the Commission has used the updated adjusted Euromonitor market sizes for the hotel OTA market, and has used Booking's TTV, as well as the estimate of the competitors' TTV as provided by Booking in RFI 17. The Commission has then replaced the Notifying Party's estimates regarding the competitors' TTV with the actual hotel OTA TTV provided by competitors during the market reconstruction and adjusted the total market size accordingly.

(335) The Commission is of the view that this methodology provides the best available proxy market size given that:

(1) The Commission's methodology takes into account the most updated data from Euromonitor, while correcting for an important short-coming of the Euromonitor data, namely the fact that the Euromonitor data encompasses TTV from intermediaries other than OTAs.

(2) The Commission's market reconstruction complements Euromonitor's and the Notifying Party's estimates with actual TTV gathered from competitors, to which neither Euromonitor[435] nor the Notifying Party have access and therefore represent a more accurate proxy for these competitors estimates.

(336) In addition, the Commission notes that the results of the market reconstruction are conservative estimates, which are favourable to the Notifying Party, as the resulting market size for the hotel OTA market in the EEA in 2022 remains higher than the 2019 hotel OTA market size, although Euromonitor has indicated that the hotel OTA market would not recover to pre-Covid levels until 2023.[436]

(337) In the response to the Fourth Letter of Facts, the Notifying Party explained that the updated Euromonitor data provided on 11 August 2023 only referred to the online segment, and therefore would not include TTV from offline intermediaries such as brick and mortar travel agents and tour operators.[437] The Commission has therefore taken out the interim step indicated in paragraph (332) above from the calculations of the market reconstruction, and has therefore not reduced the market sizes by the

434 Response to the RFI 17, Annex 3, see differences in market size for 2022 between 'Euromonitor with Airbnb unadjusted' and Euromonitor without Airbnb unadjusted' tabs.

435 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraphs 3 and 4 [DOC ID 58107].

436 Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraph 6 [DOC ID 58107].

437 Response to Fourth Letter of Facts, page 8 and Data room report 'Response to Fourth LOF Final'.

relevant share that HOTREC's European Hotel Distribution Study 2022 estimated for tour operators and travel agents. The results of the market reconstruction exercise for the hotel OTA market in the EEA in 2013-2022 are included in section 6.4.4 below, on both a B2B and B2C basis. This has had a limited impact on the resulting market sizes, especially for 2022, as the HOTREC's estimated share for tour operators and travel agents only amounted to 5.4% in 2022.[438]

(338) In addition, the Notifying Party reiterates its claims in the response to the SO,[439] that the Commission's market reconstruction methodology is based on a contrived methodology that places more emphasis on Booking's 'guesstimates' on the market shares of its competitors than the estimates of Euromonitor of the EEA market size. The Notifying Party further claims that the hotel OTA TTV of competitors provided in the context of the market reconstruction is not accurate and that the Commission has not checked the accuracy. In addition, the Notifying Party disagrees with the Commission's approach to market definition to consider a narrower market for hotel OTA services in the EEA.

(339) The Commission reiterates its views expressed above regarding the robustness of the Commission's market reconstruction results, which provide the best proxy given the limitations of the available data (see paragraphs (320) et seq. above). Further, the Commission disagrees with the Notifying Party's views regarding the accuracy of the hotel OTA TTV submitted by Booking's competitors. First, the Notifying Party does not put forward evidence supporting the fact that the hotel OTA TTV submitted by competitors is inaccurate. Second, in the RFI sent to competitors for the market reconstruction, competitors were asked to provide TTV for both broader accommodation OTA services, and hotel OTA services, and 'hotel' was clearly defined by the Commission as comprising '*both independent hotels (including""hotel-lik"" properties such as B&Bs) and hotel chains*'[440]. The claim that the hotel OTA TTV submitted by competitors is inaccurate is therefore unfounded.

*6.4.4. Booking has high market shares indicative of dominance in the hotel OTA market in the EEA*

(340) According to established case law, very large market shares (50% or more) can in themselves be evidence of the existence of a dominant market position.[441] Based on the results of the market reconstruction exercise, the Commission has reached the conclusion that Booking holds market shares well-above 50% and, therefore, indicative of a dominant market position, in the market for the provision of hotel OTA services in the EEA.

(341) *First,* the results of the market reconstruction indicate that Booking is by far the leading supplier of OTA services to hotels in the EEA and the gap between Booking's market share and its competitors is significant.

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438 HOTREC European Hotel Distribution Study 2022, slide 18 [DOC ID 56978-92690].

439 Response to the SO, Annex 7 and response to Fourth Letter of Facts, page 5-13.

440 See, for example, DOC IDs 2909 and 2910, Question 1, to which the Notifying Party got access during the access to file exercise.

441 Case T-221/95, Endemol v Commission, [1999] ECR II-1299, paragraph 134, and Case T-102/96, Gencor v Commission, [1999] ECR II-753, paragraph 205. Commission's Horizontal Merger Guidelines, para. 17.

(342) In the first place, the table below includes Booking's and Expedia's market shares in the hotel OTA market in the EEA on a B2B basis for the period 2019-2022, on the basis of the market reconstruction exercise. The table shows that Booking's market share has remained above 50% over the past 4 years. Furthermore, Booking's market share has increased by [10-20] percent points since 2019 from [50-60]% to [60-70]% in 2022.[442] In comparison, Expedia, the second supplier of hotel OTA content in the EEA, had a market share of only [10-20]% in 2022, which decreased by [0-5] percent points from 2019. The remainder of the market is composed of a number of competitors (including HRS, TUI, Lastminute, Weekendesk, Travelminit and potentially smaller OTAs with their own proprietary content[443]), which together hold a [10-20]% market share. The share of these remaining competitors has also been decreasing in comparison to 2019 (from [20-30]% to [10-20]% in 2022).

**Table 4: Market shares of Booking, Expedia and other competitors in the hotel OTA market (2019-2022, B2B, NA TTV[444] on a booker-basis)**

| Company | 2019 | 2020 | 2021 | 2022 |
|---|---|---|---|---|
| **Booking** | [Booking's market shares from 2019-2022 on a booker basis] | [Booking's market shares from 2019-2022 on a booker basis] | [Booking's market shares from 2019-2022 on a booker basis] | [Booking's market shares from 2019-2022 on a booker basis] |
| Expedia | [10-20]% | [5-10]% | [10-20]% | [10-20]% |
| Others | [20-30]% | [40-50]% | [30-40]% | [10-20]% |
| Total | 100% | 100% | 100% | 100% |

*Source: Commission's market reconstruction [DOC ID 120780] and Euromonitor*[445]

(343) In the second place, the results of the market reconstruction indicate that, over the past 10 years (from 2013-2022), Booking has been consolidating its position as the leading supplier of hotel OTA services to hotels in the EEA.

(344) The figure below reflects the evolution of Booking's market share in the hotel OTA market in the EEA since 2013, on a B2B basis. The data shows that Booking has increased its market share by [40-50] percentage points since 2013 (more precisely from [20-30]% in 2013 to [60-70]% in 2022). Moreover, Booking has experienced

442 [DOC ID 120780]. For completeness, even in a broader market for all accommodation OTA services in the EEA, Booking would remain the leading OTA with the highest share in 2022 (at approx. [50-60]% on a B2B basis under the result of the Commission's market reconstruction exercise with the most updated data ). Even though Booking's market share would be lower in this hypothetical broader market for all accommodation OTA services, the difference in market share would not materially affect the assessment of the Transaction.

443 Data submitted by the Notifying Party in response to RFI 6, Annex 8 refer to other OTAs with their own accommodation content including, among others, Dnata, Onthebeach, TravelUp, LoveHolidays, ThomasCook, Hotelmix, Lodging World, Sunshine.co.uk. However, the Commission notes that none of these OTAs are identified in the market share estimates provided by the Notifying Party such that it is impossible to estimate their market share.

444 NA = Net arrived i.e., the TTV on a booking basis that is adjusted to take into account the number of cancellations.

445 Underlying data and calculations were made available to the Notifying Party's external advisors in the data room.

growth in the aftermath of the Covid-19 pandemic, i.e., at a time where the travel industry was recovering from a wave of shock. Indeed, although Booking's market share slightly decreased by [0-5] percentage points from [50-60]% to [50-60]% between 2019 and 2020 potentially due to the shock in travel caused by the Covid-19 pandemic, Booking's market share rapidly started to increase again to reach [50-60]% during 2021 and even more so during 2022, up to [60-70]%.

**Figure 6: Evolution of Booking's market share in the hotel OTA market, EEA, B2B, 2013-2022**

[Figure redacted]

*Source: Commission's market reconstruction [DOC ID 120780] and Euromonitor*[446]

(345) In comparison, the market share of the main competitor, Expedia, has remained significantly lower and further decreased in the aftermath of the Covid-19 pandemic. Expedia's market share that amounted to [10-20]% in 2019 decreased to [5-10]% in 2020 and is currently [0-5] percent points below the 2019 levels at [10-20]%.

(346) This existing gap between Booking's market share and its competitors' was mentioned by a number of OTAs and hotels during the market investigation. For example, an OTA indicated that: '*When looking at the growth of accommodation OTA providers since 2013 (HOTREC data), Booking is constantly growing while Expedia and HRS (its major competitors) decreased in market shares […] It is impossible to identify a serious competitor to Bookiong* [sic] *as of today, which seems a non contestable marketplayer* [sic] *in MSS and OTA accommodation sectors.*"[447] Another OTA estimated that: '*HOTREC's estimated market shares demonstrate Booking.com has been able to grow through the years whereas its closest competitors decreased in market shares*.'[448] An OTA interviewed by the Commission also noted that '*Booking took the lead in a relatively fast paste [sic] in the last ten years and is now the clear market leader*'.[449]

(347) <u>In the third place</u>, Booking provides accommodation OTA content to […] OTAs active in the hotel OTA market in the EEA[450], and, in 2022, through these partners, Booking achieved approximately EUR […] billion in hotel OTA TTV in the EEA (on a B2B basis).[451] A comparison between Booking's B2B and B2C market shares in the EEA reflects that Booking is a successful supplier of hotel OTA content to other OTAs in the EEA. In particular, in 2022, Booking's market share on a B2B basis was [5-10]% higher than Booking's market share on a B2C basis, which indicates that Booking's hotel OTA content obtained from hotels is successfully sold by its partners in the EEA.

(348) *Second,* Booking is also the leading hotel OTA in the EEA market for end customers, which makes Booking a particularly attractive OTA platform for hotels.

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446 Underlying data and calculations were made available to the Notifying party's external advisors in the context of a data room procedure.

447 Response to question 27.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

448 Response to question 28.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

449 Non-confidential minutes of a conference call with Lastminute, dated 19 December 2022 [DOC ID 51501], paragraph 12.

450 Response to RFI 13, paragraph 5.1 and Annex 1.

451 Calculated considering Booking's total (B2B and B2C) TTV in hotel OTA services in the EEA in 2022 (as reported in response to RFI 24, Annex 1) and Booking's B2C TTV in hotel OTA services in the EEA in 2022 (as reported in RFI 17, Annex 3).

(349) In the first place, the table below includes Booking's and its main rivals' market shares in the hotel OTA market in the EEA (on a B2C basis), on the basis of the results of the market reconstruction. The table shows that Booking's market share, which amounted to [60-70]% in 2022, has remained above [40-50]% during 2019-2021, only decreasing in 2020, where Booking's market share lowered to [40-50]%, potentially as a result of the shock in the travel business caused by the Covid-19 pandemic.

**Table 5: Market shares of hotel OTAs in the EEA (2019-2022, B2C, NA[452] TTV on a booker-basis)**

| Company | 2019 | 2020 | 2021 | 2022 |
|---|---|---|---|---|
| **Booking** | [Booking's market shares from 2019-2022 on a booker basis] | [Booking's market shares from 2019-2022 on a booker basis] | [Booking's market shares from 2019-2022 on a booker basis] | [Booking's market shares from 2019-2022 on a booker basis] |
| ETG[453] | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| Expedia | [10-20]% | [0-5]% | [5-10]% | [5-10]% |
| TUI | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| lastminute | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| Bergfex | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| HRS Group | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| OYO Rooms | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| eDreams ODIGEO | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| Travelminit | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| Weekendesk | [0-5]% | [0-5]% | [0-5]% | [0-5]% |
| Other | [30-40]% | [30-40]% | [30-40]% | [20-30]% |
| **Total** | **100%** | **100%** | **100%** | **100%** |

*Source: Commission's market reconstruction [DOC ID 120780] and Euromonitor*[454]

(350) In comparison, Booking's competitors have market shares approx. 10 times lower than Booking. The number 2 player, Expedia has a market share of [5-10]% whereas the number 3 player, HRS, has a market share of only [0-5]%. The remaining hotel OTAs active on the market have market shares below [0-5]%. In addition, a number of players active in the hotel OTA market, such as eDreams Odigeo, Lastminute and TUI are not fully independent competitors since they source hotel OTA content from those OTAs[455] (such as Booking, Expedia or HRS) which have developed their own proprietary content through direct relationships with hotels. Based on information provided by the Notifying Party, eDreams Odigeo does not have a proprietary hotel OTA platform and relies on a commercial affiliated agreement with other OTAs, including Booking,[456] in order to provide hotel OTA services to end customers.

452 NA = Net arrived i.e., the TTV on a booking basis that is adjusted to take into account the number of cancellations.

453 Consistent with the Notifying Party's approach, the Commission has separated ETG from Booking, as ETG provides hotel OTA services in the EEA thanks to a commercial affiliated agreement whereby Booking provides hotel OTA content to Booking.

454 Underlying data and calculations were made available to the Notifying party's external advisors in the context of a data room procedure.

455 Response to RFI 6, Annex 8.

456 Response to RFI 13, Annex 2.

Lastminute and TUI have some proprietary hotel OTA content, but nevertheless rely on commercial affiliated agreements with third party OTAs, including Booking.[457]

(351) In the second place, the results of the market reconstruction indicate that Booking has been increasing the gap with its competitors over the past 10 years (2013-2022), consolidating its position as the most successful hotel OTA vis-à-vis end customers. While Booking has increased its market share by [30-40] percentage points since 2013 (from [20-30]% in 2013 to [60-70]% in 2022), including in the aftermath of the Covid-19 pandemic, Booking's closest competitor Expedia has lost market share since 2019, and still remained below 2019 levels in 2022. The remaining players have maintained low market shares below [0-5]% during the whole period considered (2013-2022) and have also experienced a decrease in market share after the Covid-19 pandemic. The gap between Booking and its competitors has therefore increased over the years, and even intensified as a result of the shock to the travel industry caused by the Covid-19 pandemic.[458]

(352) Booking's expansion and pre-eminence over competitors is also confirmed by industry reports. In the 'Europe Travel market Report 2021-2025', PhocusWright notes that '*Booking.com expanded its market share in 2021, as pandemic-weary travelers turned to trusted brands and the OTA's accommodation focus suited the moment (...). In addition to hotels, the brand also benefited from the increased popularity of short-term rentals. Booking.com Europe represented a projected 59% of Europe OTA gross bookings in 2021*'[459] and that *'[t]he brand's [Booking's] dominance makes it difficult for smaller, homegrown OTAs to compete and even other global brands have struggled to increase their footprint in Europe. Expedia Group is the second largest OTA in Europe, with 9% market share, followed by eDreams Odigeo with 5% share*.'[460]

(353) *Third,* the B2B and B2C market shares resulting from the Commission's market reconstruction exercise are in line with industry reports and is confirmed by the feedback of the market investigation.

(354) In the first place, as regards B2B market shares in the hotel OTA market, the figure below shows the evolution of Booking's market share between 2013 and 2021 based on the data collected by HOTREC in the context of its study on European hotel distribution of June 2022.[461] The study, which compiles market share data for the main hotel OTAs in Europe, shows that Booking accounted for 71.2% of the B2B hotel OTA market in Europe in 2021, and that Booking increased its market share from more than 11 points (from 60% to 71.2%) for the period 2013-2021. The same survey also mentions that '*[t]he dominance of Booking has been rising over the last*

457 Response to RFI 13, Annex 1.

458 Commission's market reconstruction [DOC ID 120780] and Euromonitor's data.

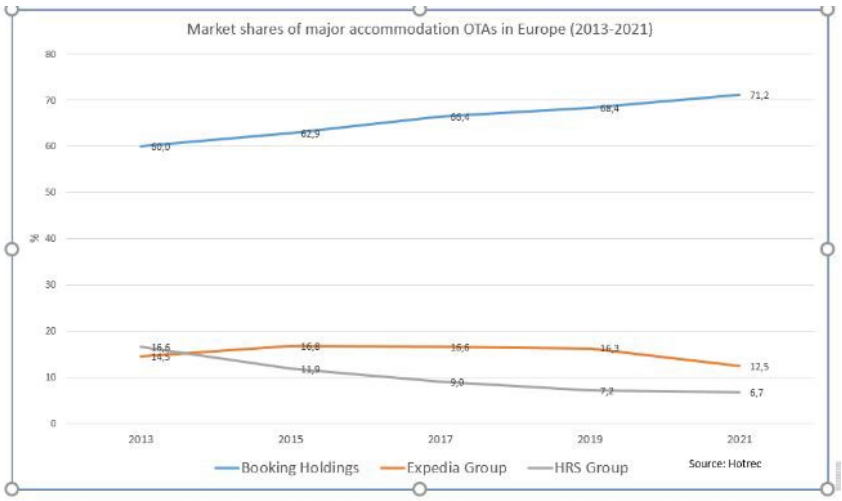
459 Attachment E to QP7, page 17.

460 Attachment E to QP7, page 17.

461 HOTREC, European Hotel Distribution Study [DOC ID 56979-5041], slide 85. The Commission notes that HOTREC's Hotel Distribution Study is the result of a survey to about 3,900 hotels carried out by the Hotel EU association. Whereas the Notifying Party has raised issues about the accuracy of the data, the Commission considers HOTREC's study as useful guidance of the market structure and indicative of market shares on a B2B basis. In addition, a series of competitors referred to 'HOTREC's shares' during the market investigation (as indicated in paragraph ((348) above). The Commission has therefore used HOTREC's study to test the accuracy of the results of Commission's market reconstruction [DOC ID 120780].

*8 years by more than 11-percentage points, from 60.0% in 2013 to 71.2% in 2021*'.[462]

**Figure 7: Market shares of major hotel OTAs in Europe (2013-2021)**




*Source: HOTREC survey, slide 85.*

(355) In comparison, the B2B market shares of Booking's two main competitors in the EEA, Expedia and HRS have decreased over the same period. The figure above shows that Expedia lost two points between 2013 and 2021 whereas HRS experienced a sharper decline with a decrease of almost 10 points (from 16.6% to 6.7%, on a B2B basis) for the same period.

(356) <u>In the second place,</u> qualitative evidence gathered during the market investigation confirms that Booking is the leading supplier of OTA services to hotels in the EEA. A hotel indicated that: '*Bookings make up 80% of the market and have the lead position in the consumers mind*'[463]; a hotel association declared: '*Booking is in a very dominant position. The market share of Booking has increased considerably from 60% in 2013 to 71% in 2021. Together, the three biggest accommodation OTA players make up over 90% of the market*.'[464] A large hotel chain indicated that: '*Of the gross hotel booking volume that is booked online, OTAs account for around 70% of online bookings. // Approximately 70% of the OTA bookings in Europe are booked through Booking.com, which is the largest player in the OTA market in the EEA for accommodation services*.'[465]

(357) In addition, the majority of OTAs that expressed views indicated that Booking is the main provider of accommodation OTA content. Expedia was considered as the number 2 provider. Some OTAs indicated that they also sourced content from HRS or 'other' small OTAs.[466] Last, a number of OTAs interviewed by the Commission

462 HOTREC, European Hotel Distribution Study [DOC ID 56979-5041], slide 5.

463 Response to question 17 of Questionnaire Q3 to hotels [DOC ID 2737].

464 Non-confidential minutes of a conference call with HOTREC, dated 3 June 2022 [DOC ID 1205], paragraph 3.

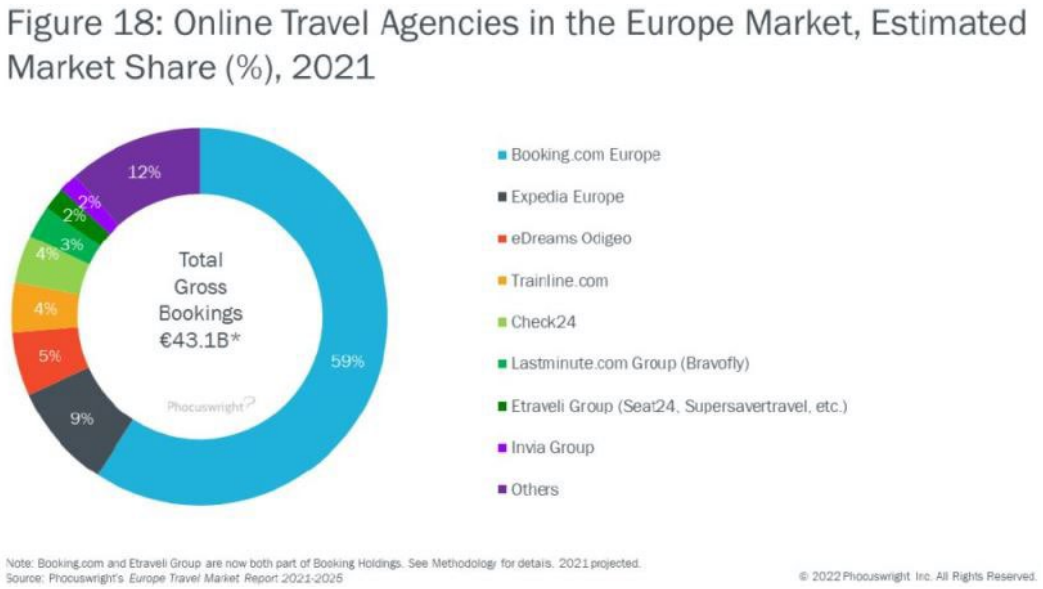
465 Non-confidential minutes of a conference call with Marriott, dated 4 July 2022 [DOC ID 2550], paragraph 3.

466 Responses to question C.1.1 of eRFI to Competitors [DOC IDs 54647, 53611, 56570, 56683, 54793].

identified Booking and Expedia as the two main OTAs from which to source accommodation OTA content.[467]

(358) In the third place, as regards B2C market shares, PhocusWright's '*Europe Travel Market Report 2021-2025*' of March 2022 estimated that Booking held a share of 59% share of Europe's OTA gross bookings in Europe in 2021.[468] The figure below extracted from PhocusWright's report, shows that Booking's market share is significantly above the market shares of the number 2 player, Expedia, whose estimated market share is 9%, and the number 3 player, eDreams Odigeo, whose estimated market share is 5%. The Commission notes that PhocusWright's report refers to the overall OTA market in Europe and therefore includes gross bookings from other travel verticals besides hotel and other types of accommodation (such as, in particular, flights).

**Figure 8: Online Travel Agencies in the Europe market, estimated market share (%), 2021**




*Source: PhocusWright 'Europe Travel Market Report 2021-2025', Figure 18*

(359) During the Commission's investigation, a number of OTAs also indicated that Booking holds market shares in excess of 50% in the EEA (on a B2C basis). For example, an OTA stated that *'No player can compete with Booking.com in the EEA, they have more than 60% of the market share*'[469].

(360) Based on the foregoing, the Commission has reached the conclusion that Booking holds high market shares indicative of dominance in the hotel OTA market in the EEA, regardless of whether the B2B or B2C sides are considered.

*6.4.5. Booking expects to continue to grow its sales in hotel OTA services going forward*

(361) Evidence provided by Booking on the TTV (before cancellations) for hotel OTA services achieved during 2022 and Booking's projections for the years 2023-2025 in

467 Non-confidential minutes of the call with Kiwi, 9 December 2022 [DOC ID 51316], para. 8; non-confidential minutes of the call with Lastminute, 19 December 2022 [DOC ID 51501], para. 10; non-confidential minutes of the call with Trip.com, dated 20 December 2022 [DOC ID 056917], paragraph 9.

468 PhocusWright study, Form CO, Attachment E to QP7, pages 17 and 18, figures 18 and 19.

469 Response to question 27.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

the EEA shows that Booking expects a significant growth in sales of hotel OTA services.

(362) The figure below represents the evolution of Booking's TTV for hotel OTA services from 2012 to 2022 and includes Booking's projections for 2023-2025. The figure below shows that, by the end of 2022, Booking had not only managed to recover to 2019 TTV levels, but also actually increased its total TTV (B2C and B2B) by [20-30]% (from approx. EUR […] in 2019 to EUR […] in 2022). It also shows that, after a slight decline projected for 2023, Booking expects to grow yearly by […]% between 2023 and 2024 and by […]% between 2024 and 2025.

**Figure 9: Booking's actual and projected TTV in hotel OTA services in the EEA (B2C and B2B)**

[Figure redacted]

*Source: Booking's data provided in responses to RFI 4, Annex 2 and RFI 16, Table 4.*

### *6.4.6. Booking can act independently on the hotel OTA market in the EEA*

(363) The case law of the Court of Justice defines an undertaking's dominant position as '*a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant markets by affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers*.'[470]

(364) As discussed below, data gathered during the Commission's investigation shows that (i) Booking has been able to maintain higher commissions to hotels than rivals; (ii) Booking is an unavoidable partner for hotels (i.e. is able to impose terms and conditions); (iii) the evidence put forward by the Notifying Party does not support the finding that Booking is sufficiently constrained by direct sales from hotels or constraints from suppliers of other (including private) accommodation services (such as Airbnb); and (iv) there is no evidence of likely entry or expansion that would effectively constrain Booking. As a result, the Commission finds that Booking can act independently on the hotel OTA market in the EEA.

(365) The Notifying Party considers that the Commission incorrectly asserts that Booking is able to act independently from its competitors and customers and that evidence from the parties show that Booking.com is subject to intense competitive pressure.[471] The Notifying Party alleges that there is no robust evidence that (i) Booking charges the highest commissions; and (ii) Booking is not the most expensive option for end-users. [472]

(366) In particular, the Notifying Party claims that Booking is facing increasing competition from hotels ('brand.com') and rival OTAs and that, as a result, Booking has been obliged to discount the room prices it discloses on its platform (via its BSB program)[473] to a greater extent at its own expense to remain competitive.[474] The

470 Case 27/76 [1978] ECR 207.

471 The Response to the SO, paragraph 5.11.

472 The Response to the SO, paragraphs 5.11 and 5.12.

473 The Response to the SO, paragraphs 5.12 and 5.24; see also 'Booking's Sponsored Benefits' program. Response to the Article 6(1)(c) decision, Annex 4, paragraph 3.1 and Booking's accommodation paper [DOC ID 57285], paragraphs 2.2 and 4.33-4.35.

474 The Response to the SO, paragraphs 5.24; Booking's Accommodation paper [DOC ID 57285], paragraphs 2.2 and 4.1 et seq.

Notifying Party submits that due to this discount, Booking's effective commission rates have been decreasing steadily in recent years.[475]

(367) The Notifying Party also submits that Google Hotels has become the dominant accommodation MSS and is promoting competition from brand.com and smaller OTAs to the detriment of Booking.[476] In particular, the Notifying Party claims that while historically MSS revenues have come from OTAs and relatively few accommodations were listed on MSSs, Google Hotels has changed this dynamic.[477] Google Hotels allegedly has encouraged an increasing number of accommodations to list directly on the Google Hotels platform by offering them free clicks and preferential placing in search results.[478] In doing so, Google Hotels would be pursuing a strategy that would enable brand.com to grow its online presence at the expense of OTAs (and other MSSs – such as Trivago–- are now adopting similar tactics).[479]

(368) Before turning to the Notifying Party's arguments, the Commission would like to make a number of general observations.

(369) *First*, the Commission cannot accept the Notifying Party's allegations that the Commission would have mischaracterized or selected pieces of evidence.[480] In this context, the Commission stresses that it has obtained ample evidence from different sources (i.e., both quantitative, qualitative and from the Notifying Party's own internal documents) all pointing to the same findings that Booking is able to behave to an appreciable extent independently of its competitors and customers, as confirmed by a large majority of competitors and customers in the market investigation (see sections below).

(370) *Second*, the Commission considers that the dominance test, as illustrated by the above-referenced quote from the Court of Justice, cannot be interpreted as meaning that the dominant company does not face any competitive constraints but that such constraints, if they exist, are not *sufficient* to constrain the dominant company.

(371) In addition, the Commission refers to the sections below which include the evidence showing that Booking is able to act independently on the hotel OTA market in the EEA.

6.4.6.1. Booking's effective commission to hotels has remained higher than the commissions of Booking's main competitors since 2015

(372) The evidence gathered during the Commission's investigation indicates that Booking has been able to maintain higher commissions to hotels than its rivals. The Commission considers that this is an indication that Booking is not pressured by rivals to lower its prices to hotels for the provision of hotel OTA services.

(373) The figure below represents the evolution of Booking's effective commission rates to hotels, calculated as net commissions earned by Booking from hotels divided by Booking's net TTV, over the past 10 years (2011-2022). At least since 2011,

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475 Booking's Accommodation paper [DOC ID 57285], paragraphs 2.2 and 4.33-4.35.

476 The Response to the SO, paragraph 5.53 et seq.

477 Idem.

478 Idem.

479 The Response to the SO, paragraph 5.53 et seq.; see also Booking's Accommodation paper [DOC ID 57285], paragraph 5.1 et seq.

480 Response to the SO, paragraph 5.11 et seq.

Booking has been able to maintain its effective commission rate stable at approx. [10-20]% regardless of the type of hotel. In particular, the average effective commission rate has been maintained approx. [10-20]% for independent hotels ('core' and 'hotel-like' properties within Booking's 'home' category). As regards hotel chains, Booking's average effective commission to hotel chains has remained slightly lower but still approx. around [10-20]% throughout the period considered.

**Figure 10: Evolution of Booking's average effective commission by type of hotel/property, EEA**

[Figure redacted]

*Source: Commission calculation based on Booking's response to RFI 23, Annex 1*

(374) Booking's average effective commission to hotels is higher than its main competitors' commissions.

(375) Booking's average effective commissions to hotels ([10-20]%)[481] is approx. [0-5] percent points higher than the average commissions of Booking's main competitors, which is estimated at 11.98%, on a TTV-weighted basis.[482] This results from the Commission's market reconstruction exercise, during which the Commission gathered TTV and revenue data from 4 of Booking's top 10 competitors[483], which account for approximately [70-80]% of the market (including Booking and the number 2 player on the market Expedia)[484] and used such data to calculate an effective commission rate (calculated as the ratio net arrived revenues (commission) / net arrived TTV).

(376) In its response to the Commission's SO[485], and in a subsequent submission[486], the Notifying Party observes that it would be necessary to ensure that information for the OTAs in question is collected on a like-for-like basis in order to make a meaningful comparison of OTA's commission rates. In particular, the Notifying Party suggests that there may be potential differences in the revenue recognition by Booking and its main rivals. In addition, the Notifying Party points at potential product mix effects that may distort the comparison between OTAs. Further, the Notifying Party submits that the Commission's findings are not in line with the participants responses to the Commission's market investigation, including the intervention of HOTREC during

481 This is considering the commissions charged to chain, core and 'hotel-like' properties. Commission calculation based on Booking's Response to RFI 23, Annex 1

482 The Commission has compared Booking's effective commission, with that of the competitors that participated in the Commission's market reconstruction [DOC ID 120780], calculated on a weighted basis. Further to the Notifying Party's allegations that the Commission computed the rates on non-comparable TTVs, the Commission re-calculated the rates using the same methodology used to calculate Booking's average effective commission, and calculated an average for Booking's main competitors on a TTV-weighted basis.

483 Booking's top 10 competitors as they were listed in the market share information provided by Booking on October/November 2022 in response to QP10, Annex 1.1. The Notifying Party also submitted on November 2022 a revised version of the information provided in the response to RFI 4, Annex 2. As further explained below, the Commission removed a competitor from the calculations because they had confirmed that its revenue data was not comparable to Booking's revenue data.

484 Based on results of the market reconstruction on the hotel OTA market on a B2C basis [DOC ID 120780].

485 Annex 7, Section 2.

486 E-mail from […] dated 13 July 2023 titled "M.10615 - Follow up re commission rates and multi-homing" [DOC ID 58466].

the oral hearing of 7 July 2023, Booking's internal IPSOS survey and Booking's own experience.[487]

(377) The Notifying Party's criticism is unfounded for the following reasons:

(378) *First,* the Commission's investigation indicates that the revenue data gathered from Booking and its competitors is, contrary to the Notifying Party's views, comparable. In particular, the Commission asked Booking to describe how Booking calculated the revenue data that served as a basis for calculating Booking's average effective commission. Booking provided a description of its methodology[488], which the Commission then used to ask the relevant competitors whether the information submitted had been provided on the same basis.

(379) The Commission notes that [OTA], as well as [OTA] and [OTA] confirmed to the Commission that the revenue information provided matched the description provided by Booking.[489] Only [OTA][490] and [OTA][491] explained that this was not the case, and [OTA] re-submitted its revenue data in line with Booking's approach.[492] [OTA] was not able to provide the data in a comparable manner[493] and [OTA's] previously submitted revenue data skewed the results of the Commission's weighted average commission of Booking's competitors resulting in a lower weighted average. As a result, the Commission did not include [OTA's] data in its calculations regarding the average effective weighted commission of Booking's competitors.

(380) The Commission re-calculated the average weighted commission of Booking's main competitors considering the new data provided by Lastminute. The result is that the weighted average commission of Booking's main competitors amounts to approx. 11.98%. This is consistent with the Commission's conclusions that Booking has a higher average effective commission ([…]%) than its main rivals.[494]

(381) In its response to the Second Letter of Facts, the Notifying Party argues that it is unclear whether the data provided by rival OTAs which served as basis for the Commission's calculations of the average weighted commissions are comparable to that of Booking.[495]

(382) Specifically, the Notifying Party notes that Lastminute operates a different business model to Booking, as it mostly relates to dynamic packages (a package deal including a flight and a hotel) which typically entail commission rates that are '*materially lower than commission rates on accommodation transactions because package deals combine higher commission product (accommodation) with a lower commission product (flights)'.*[496] The Commission does not consider these arguments founded for the following reasons.

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487 Idem.

488 Response to RFI 34, paragraphs 1.1 and 1.2.

489 DOC IDs 58377, 58224, 58329.

490 DOC ID 58391.

491 DOC ID 58506.

492 DOC IDs 58456, 58457, 58458 (available to the Notifying Party's external advisors in data room).

493 DOC ID 58506.

494 The Commission's revised calculations were made available to the Notifying Party's counsel in the context of a data room procedure.

495 Response to Second Letter of Facts, Annex 1, pages 20-22; and Annex 2, Section 2.1.

496 Response to Second Letter of Facts, Annex 1, pages 20-22; and Annex 2, Section 2.1.1.

(383) In the first place, as explained above, the Commission's RFI to rival OTAs, including [OTA], clearly asked rival OTAs to confirm whether the commission data they provided matched the data submitted by Booking by listing the different elements that Booking had taken or not into account in its methodology used to provide commission revenue data to the Commission. In particular, as disclosed to the Notifying Party during the access to file exercise, the RFI clearly asked the rival OTAs whether the revenue data that they previously provided aligned with the criteria used by Booking.[497] [OTA] clearly responded that the previously provided data was not aligned with the description contained in the RFI and that they would provide data matching such description.[498]

(384) In the second place, the fact that [OTA] may generate more revenues from dynamic packages does not imply that the commission data provided is not comparable to Booking. As indicated in the paragraph above, the Commission's RFI clearly asked [OTA] to provide '*amounts received from hotels for the provisions of OTA services by your company*'.[499] The fact that, through a dynamic package, an OTA like [OTA] would get some commission revenue from a hotel, on one side, and from an airline, from the other, does not mean that when providing the data [OTA] has not provided '*the amounts received from hotels for the provisions of OTA services*',[500] that is, the commission revenue, as it was clearly requested by the Commission in its RFI.

(385) Regarding [OTA], the Notifying Party makes similar arguments indicating that the fact that [OTA] has a different business model than Booking '*would suggest* [OTA] *is likely to treat discounts differently to Booking.com*'.[501] The Commission considers this Notifying Party's argument to be unfounded. As explained above, the Commission's RFI to [OTA] (as well as the rest of rival OTAs) requested confirmation that [OTA] had provided data matching the data submitted by Booking by listing the different elements that Booking had taken or not into account in its methodology to provide the commission revenue to the Commission. In its response to the Commission's RFI, (to which the Notifying Party has had accessed to during the access to file exercise) [OTA] noted that:

*'[f]ollowing review by my colleagues I can confirm that the revenue data we provided matches the requirements as indicated in your email:*

*- Amounts received from hotels for the provision of OTA services by your company (including any subsidiaries), including if hotels pay any premium in exchange for additional services (e.g., visibility booster).*

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497 In particular, the email to [OTA] (and to the other OTAs participating in the market reconstruction) said: 'Regarding the revenue data your company provided in response to Q.2 of RFI II and its follow-up (RFIs re-attached for convenience), could you please confirm that the 'revenue' data for hotel OTA services your company provided referred to: // Amounts received from hotels for the provision of OTA services by your company (including any subsidiaries), including if hotels pay any premium in exchange for additional services (e.g., visibility booster). // Net of Cancellations // Excluding: o Coupons and loyalty program costs // o Partner discounts or rebates // o Insurance revenue/costs // o GDS incentives/costs // o Payment processing revenues/costs // Does not take into account discounts to end customers // Please note that 'hotel' refers to both independent hotels (including "hotel-like" properties such as B&Bs) and hotel chains, and excludes those properties different from hotels (e.g., private accommodation, short stay rentals, vacation villas). [DOC ID 58391].

498 [DOC ID 58391].

499 [DOC ID 58391].

500 [DOC ID 58391].

501 Response to Second Letter of Facts, Annex 1, pages 20-22; and Annex 2, Section 2.1.2.

- *Net of Cancellations*
- *Excluding:*
  - *Coupons and loyalty program costs*
  - *Partner discounts or rebates*
  - *Insurance revenue/costs*
  - *GDS incentives/costs*
  - *Payment processing revenues/costs*
- ***Does not take into account discounts to end customers***
- *"hotel" refers to both independent hotels (including""hotel-lik"" properties such as B&Bs) and hotel chains, and excludes those properties different from hotels (e.g., private accommodation, short stay rentals, vacation villas).*'[502]

(386) *Second,* evidence on the file indicates that the potential impact of 'product mix effects', i.e., the fact that OTAs portfolios could contain differing proportions of hotel types, is not very significant in the present case.

(387) In the first place, Booking's own effective average commission does not differ significantly between hotel chains and independent hotels. Booking's effective average commission to independent hotels (including 'core' and 'hotel-like properties' within Booking's 'home' category) amounted to approx. [10-20]% in 2022; whereas Booking's commission to hotel chains was approx. [10-20]%.[503] Even if the 'hotel-like' are not considered, Booking's commission to independent hotels ('core') amounted to [10-20]% in 2022. [504] In its response to the Second Letter of Facts, the Notifying Party reiterates that '*differences in accommodation portfolios could distort a comparison of commission rates even where two OTAs offer similar rates for a given type of accommodation'*, however, the Commission notes that Booking's own effective average commission would indicate that such distortions are not significant.

(388) In the second place, the Commission considers that the results of its average weighted calculations are not impacted by the Notifying Party's argument on 'product mix effects'. More precisely, the Notifying Party alleged[505] that there are a series of product-mix effects '*that may be present within the commission rates estimated in the SO, but which do not appear to have been considered or investigated as part of the market reconstruction exercise*'.[506] These are ranking/visibility boosters, the role of non-financial conditions and differences in consumer portfolio. The Commission finds that the results of the Commission's average weighted calculations are not impacted by these elements for the following reasons:

(a) As noted above, the Commission has confirmed with the four OTAs whose net arrived revenues (that after cancellations) have been used to calculate the competitors' average effective weighted commissions that their data was

502 [DOC ID 58377].
503 Response to RFI 23, Annex 1; see also paragraph 244 and Figure 7 of the Commission's SO.
504 Response to RFI 23, Annex 1; see also paragraph 244 and Figure 7 of the Commission's SO.
505 Response to the SO, Annex 7, sections 2.21 – 2.24.
506 Response to the SO, Annex 7, page 10.

provided in a similar manner as Booking provided its own NA revenue data, including in relation to visibility boosters and non-financial conditions.

(b) The Commission notes that the Notifying Party has produced no concrete evidence regarding the alleged differences in consumer portfolio, namely any differences between corporate and leisure travel, and that the OTAs that participated in the market reconstruction target a broad range of customers, as Booking does.

(389) In its response to the Second Letter of Facts, the Notifying Party reiterates its arguments that the Commission's exercise to calculate Booking's and its main competitors average weighted commissions does not produce reliable results. In particular, the Notifying Party claims that the Commission's assessment '*does not address the product mix effect arising from visibility boosters'* and that '*[w]hile the Commission has confirmed that rivals' revenue data includes visibility boosters in the same way the Booking.com's data does, this does not address the product mix effect point previously made by the Parties.*'[507] The Notifying Party claims that '*[h]otels may choose to purchase different levels of visibility boosters from different OTAs, in which case they will not be purchasing comparable services from those OTAs. To the extent that hotels might purchase more visibility boosters from Booking.com than from other OTAs, this would imply higher commission rates for Booking.com; but in this case those commission rates would reflect the purchase of a different product from Booking.com, rather than higher like-for-like commission rates or any form of market power. The average surcharge paid to Booking.com for participation in the Preferred Partner Programme is around [0-5]%, and around [5-10]% on top of this for participation in the Preferred Partner Plus Programme, while for visibility boosters, partners choose the commission level freely and this can go up to [30-40]%*'[508] In addition, the Notifying Party notes that the Commission's analysis of commission rates only takes into account revenue generated from hotels, but does not consider other implications of negotiations between OTAs and hotels, '*such as OTAs offering lower commission rates to hotels in return for exclusivity*'.[509]

(390) The Commission disagrees with the Notifying Party's position for the following reasons.

(391) <u>In the first place</u>, the Commission has already confirmed with the competitors that provided the commission revenue data which has been served as basis for the Commission's calculations that such data did include any premiums such as visibility boosters.[510]

(392) <u>In the second place</u>, more importantly, the fact that hotels would decide to pay a premium or higher commission to Booking to be ranked higher in Booking's search page (whereas they may not do so with rival OTAs, and which can '*go up to [30-40]%'* as the Notifying Party indicates[511]) does indicate a degree of market power by Booking. Indeed, due to its dominant position on the hotel OTA market, Booking is able to charge a higher commission to hotels that require being ranked more prominently on its website to be able to reach out to more end customers. Rival

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507 Response to the Second Letter of Facts, Annex 1, page 20; and Annex 2, Section 2.2.1.
508 Response to the Second Letter of Facts, Annex 1, page 20.
509 Response to the Second Letter of Facts, Annex 2, Section 2.2.3.
510 DOC IDs 58391; 58377; 58224; 58329.
511 Response to the Second Letter of Facts, Annex 1, page 20.

OTAs would not be able to charge such premiums that result in a higher commission given their much less prominent position in the hotel OTA market. As explained in section 6.4.6.2 below, during the market investigation, the Commission gathered qualitative evidence from hotels indicating that due to Booking's position in the hotel OTA market, Booking is an unavoidable partner for hotels, and is in a strong negotiating position to impose terms and conditions to hotels.

(393) In the third place, regarding the Notifying Party's claim that OTAs may offer lower commissions to hotels in exchange for exclusivity, the Commission notes that this argument is not substantiated and that the Notifying Party claimed during the Oral Hearing and in its response to the Second Letter of Facts that multi-homing by hotels; i.e., hotels using more than one OTA platform, is very common.[512]

(394) *Third*, the Notifying Party alleges in a further submission[513] that the Commission's analysis of the weighted average commission of Booking's main competitors could be significantly impacted by a 'geographic mix'. The Commission notes that the Notifying Party has not elaborated in its written submissions on what it means by 'geographic mix' or its specific impact. The Commission understands that the 'geographic mix' may refer to the fact that the OTAs may have different hotel portfolios across jurisdictions, and that the standard commission may vary between countries.

(395) However, data about Booking's commissions indicates that this alleged 'geographic mix' does not have a meaningful impact on the average effective commission. The tables below include Booking's effective commissions (calculated as NA revenues divided by NA TTV) per EEA Member State, for each of (i) hotel chains; (ii) 'core' (i.e., independent hotels); and (iii) 'core' and 'hotel-like' within Booking's 'home' category, for 2022. The average commission does not differ more than approx. [0-5]% between countries. In particular, for hotel chains, it remains at approx. [10-20]%; for 'core' (and 'core' and 'hotel-like') at approx. [10-20]%, with only Germany and Poland listing a lower average commission of approx. [10-20]%.

**Table 6: Booking's commissions**

| Country | Booking's average effective commission | | |
|---|---|---|---|
| | Hotel chains | 'Core' (independent hotels) | 'Core' and 'hotel-like' within homes |
| Austria | [10-20]% | [10-20]% | [10-20]% |
| Belgium | [10-20]% | [10-20]% | [10-20]% |
| Bulgaria | [10-20]% | [10-20]% | [10-20]% |
| Croatia | [10-20]% | [10-20]% | [10-20]% |
| Cyprus | [10-20]% | [10-20]% | [10-20]% |
| Czech Republic | [10-20]% | [10-20]% | [10-20]% |
| Denmark | [10-20]% | [10-20]% | [10-20]% |
| Estonia | [10-20]% | [10-20]% | [10-20]% |
| Finland | [10-20]% | [10-20]% | [10-20]% |

512 The Notifying Parties' slides for the oral hearing, page 49; and response to the Second Letter of Facts, Annex 1, pages 58 and 59.

513 E-mail from J. Pelucchi dated 13 July 2023 titled 'M.10615 – Follow-up re. commission rates and multi-homing.' [DOC ID 58466].

| Country | Booking's average effective commission | | |
|---|---|---|---|
| | Hotel chains | 'Core' (independent hotels) | 'Core' and 'hotel-like' within homes |
| France | [10-20]% | [10-20]% | [10-20]% |
| Germany | [10-20]% | [10-20]% | [10-20]% |
| Greece | [10-20]% | [10-20]% | [10-20]% |
| Hungary | [10-20]% | [10-20]% | [10-20]% |
| Iceland | [10-20]% | [10-20]% | [10-20]% |
| Ireland | [10-20]% | [10-20]% | [10-20]% |
| Italy | [10-20]% | [10-20]% | [10-20]% |
| Latvia | [10-20]% | [10-20]% | [10-20]% |
| Liechtenstein | [10-20]% | [10-20]% | [10-20]% |
| Lithuania | [10-20]% | [10-20]% | [10-20]% |
| Luxembourg | [10-20]% | [10-20]% | [10-20]% |
| Malta | [10-20]% | [10-20]% | [10-20]% |
| Netherlands | [10-20]% | [10-20]% | [10-20]% |
| Norway | [10-20]% | [10-20]% | [10-20]% |
| Poland | [10-20]% | [10-20]% | [10-20]% |
| Portugal | [10-20]% | [10-20]% | [10-20]% |
| Romania | [10-20]% | [10-20]% | [10-20]% |
| Slovakia | [10-20]% | [10-20]% | [10-20]% |
| Slovenia | [10-20]% | [10-20]% | [10-20]% |
| Spain | [10-20]% | [10-20]% | [10-20]% |
| Sweden | [10-20]% | [10-20]% | [10-20]% |

*Source: Commission's calculations on the basis of response to RFI 18, Annex 2*

(396) Further, the Commission notes that its approach to consider Booking's and its main competitors' average commission at EEA level is consistent with the Commission's views regarding market definition for the hotel OTA market, which is considered to be EEA-wide in scope. In addition, similarly to Booking, its main competitors, and notably Expedia, are also active across the EEA.

(397) *Fourth*, the Notifying Party submits that HOTREC indicated that 'accommodation OTA commission rates are in the 15-20% range for all major competitors, specifically naming Booking and Expedia in this range' and the hotels that participated in the Commission's market investigation have not complained that Booking has a higher commission rate than other OTAs.[514]

(398) The Commission notes that there is a difference between (i) standard commissions, which the OTAs publish and which are broadly similar on the market, and (ii) the actual effective commission charged which can vary on case-by-case basis due to the negotiating position of the hotel (and the OTA), and the willingness of the hotel to pay a premium to be ranked higher in the OTA's website (the visibility booster).[515] HOTREC did not specify to which of the two its statement referred. In any event, the revenue and TTV data gathered from Booking's and from Booking's main

[514] E-mail from J. Pelucchi dated 13 July 2023 titled 'M.10615 – Follow-up re. commission rates and multi-homing.' [DOC ID 58466].

[515] Form CO, Attachment W, Consolidated response to QP8, paragraphs 30.1-30.3.

competitors in the context of the market reconstruction is a more reliable piece of evidence than HOTREC's statement. The data gathered provides a good proxy of the ability of an OTA to impose a higher commission on hotels. As the data gathered is comparable between competitors, and the alleged product and geographic mix effects do not have a significant impact (as the evidence above shows), the Commission considers that the fact that HOTREC and hotels that participated in the market investigation have not complained that Booking has a higher standard commission than other OTAs does not contradict the Commission's conclusion that Booking's actual average commission is higher than its main competitors. In addition, the Commission recalls that a number of hotels indicated during the market investigation, that Booking is an unavoidable partner for hotels, and that Booking has been able to impose terms and conditions in the past.[516] Similarly, an OTA indicated during the market investigation that: '*[t]he perception in the hotel industry is that Booking is more expensive than other hotel OTAs and much tougher with its conditions. First, it seems the commission of Booking is higher than other hotel OTAs. Second, Booking usually requests discounted prices for its Genius program, whereas other Hotel OTAs do not request such discounts*.'[517] In its response to the Second Letter of Facts, the Notifying Party reiterates its arguments that HOTREC's statements during the Oral Hearing contradict the findings of the Commission, and that the Commission should have sent a formal RFI to HOTREC to investigate its claim and collected information directly from hotels on the commission rates that they pay to different OTAs.[518] The Commission reiterates its arguments above regarding HOTREC's statement and notes that requesting comparable commission data from the major OTAs provides sufficiently representative results. In this regard, the Commission recalls that during the market reconstruction exercise, the Commission gathered data from the top 5 competitors of Booking, representing (together with Booking) [70-80]%[519] of the hotel OTA market.

(399) *Fifth*, the Notifying Party indicates that [Details of a confidential consumer survey]'.[520] A snapshot of the raw data behind this question from Booking's [Details of a confidential consumer survey] survey is included below. The Commission notes that it has been unable to identify a question in the [Details of a confidential consumer survey] survey to partners headed [Details of a confidential consumer survey]', as Figure 1 of Annex 7 to the Response to the SO is headed. The Commission therefore understands that the right reference relates to the question: '*[Details of a confidential consumer survey]*'.[521]

**Figure 11: [Snapshot of a confidential consumer survey]**

[Figure redacted]

*Source: Table 32, M.10615_IPSOS 2022_Partner survey – CONFIDENTIAL.xlsx submitted by the Notifying Party*

(400) The raw data regarding Booking's [Details of a confidential consumer survey]. In this regard, while [Details of a confidential consumer survey]. In addition, the

516 The Commission's SO, Section 6.4.6.2.

517 Non-confidential minutes of the call with eDreams dated 26 June 2023, paragraph 13 [DOC ID 58373].

518 Response to the Second Letter of Facts, Annex 2, Section 2.3.

519 Based on results of the market reconstruction on the hotel OTA market on a B2C basis [DOC ID 120780].

520 Response to the SO, Annex 7, p. 5.

521 [Details of a confidential consumer survey].

Commission reiterates that its conclusion that Booking's average commission is higher than its main competitors is based on actual data, which has been proven comparable.

(401) In its response to the Second Letter of Facts, the Notifying Party reiterates its arguments regarding [Details of a confidential consumer survey]'.[522] The Commission reiterates its argument that its conclusion that Booking's average commission is higher than its main competitors is based on actual data, which has been proven comparable, and should therefore carry a higher evidentiary value than a survey run by Booking. In addition, the Commission reiterates the point that [Details of Booking's customers].

(402) *Sixth*, Booking claims that the Commission's conclusion that its average commission is higher than its main competitors in the EEA contradicts its own experience.[523] The Commission reiterates that its conclusion is based on actual data provided by Booking and its main competitors, which is comparable, as the competitors have confirmed, and which therefore carries higher evidentiary value than Booking's unsubstantiated claims.[524]

(403) The Commission also gathered revenues and TTV from Booking's main competitors in the hotel OTA market in the EEA as part of the market reconstruction exercise, which has allowed the Commission to calculate the effective commissions charged to hotels by these competitors. The results of this exercise indicate that, while Booking's effective commissions has remained stable at [10-20]% regardless the type of hotel property, the effective commissions charged by Booking's rivals have suffered fluctuations and are currently lower than Booking's.[525]

(404) Last, the Commission is of the view that Booking's introduction of the BSB program does not alter the fact that Booking is not constrained by rivals on the hotel OTA market as explained in section 6.4.6.3 below.

6.4.6.2. Booking is an unavoidable partner for hotels and is able to impose terms and conditions on them.

(405) The Commission considers that Booking is an unavoidable partner for hotels for the following reasons:

(406) *First*, as indicated in section **6.4.4** above, the results of the Commission's market reconstruction indicate that Booking is by far the most successful hotel OTA vis-à-vis end customers. Since the primary reason for hotels to be listed on an OTA platform is to reach out to as many end customers as possible, Booking, in its quality of leading hotel OTA for end customers, represents the platform on which hotels 'must' be listed.

(407) *Second,* as previously mentioned, Booking's hotel portfolio is significantly larger than the hotel portfolio of its main competitors, which suggests that hotels consider it more important to make use of Booking's OTA services than of the services of Booking's rivals. This stems from information submitted by rival OTAs during the market reconstruction exercise which indicates that rivals' hotel portfolios are

522 Response to the Second Letter of Facts, Annex 2, Section 2.3.
523 The Response to the SO, Annex 7, p. 5.
524 DOC IDs 58377, 58224, 58329, 58456, 58457, 58458.
525 See paragraphs ((372) et seq. above.

smaller than Booking's hotel portfolio.[526] In particular, Booking's portfolio in the EEA is composed of a total of approx. […] properties between hotel and hotel-like properties within its 'home' category.[527] The strength of Booking's portfolio is also mentioned in the Notifying Party's internal documents referred to below in which Booking indicates that its portfolio covers approx. [70-80]% of worldwide hotel supply, and that Booking has already [Details of Booking's portfolio]. In particular, Booking notes that '[Details of Booking's portfolio]'.

**Figure 12: Booking's access to global hotel supply**

[Figure redacted]

*Source: Booking's internal document D341, slide 38*

(408) In addition, information submitted by the Notifying Party indicates that hotels give Booking access to more than half[50-60]% of the room inventory that hotels expect to sell through all channels.[528]

(409) *Third,* as indicated in section 6.4.6.1 above, Booking has been able to maintain the same commission level (at approx. [10-20]%) over the past 10 years (2011-2022). The Commission considers that this is an additional element that characterizes the lack of sufficient competitive pressure that Booking faces on the hotel OTA market.

(410) *Fourth,* evidence in the file indicates that Booking is able to impose terms and conditions on hotels.

(411) In the first place, approximately half of the hotels that expressed a view during the Commission's market investigation indicated that, during the COVID pandemic, Booking required them to apply cancellations policies broader than those that hotels were willing to grant.[529] In particular, a hotel explained that '*booking.com forced us during covid to reimburse customers when they did not respect the order put in place by the government'*[530] and that '*if we are not at booking.com we are almost invisible booking.com buys up expensive domain names from hotels so that their websites are not visible. Their customer service is almost unreachable and we have to do all their travel agent work while we pay them a commission*'[531]. The Commission notes that the fact that the COVID pandemic could be regarded as an exceptional situation does not prevent the fact that Booking had the ability to impose such conditions on hotels.

(412) In the second place, in its European Hotel Distribution Study of 2022, the European umbrella association of hotels, HOTREC, estimated that, in 2021, Booking

526 Responses to Q4 of RFI II Competitors Data, available in data room.

527 Booking's properties in the EEA include […] hotels (see Form CO, Attachment W, Annex 8) and approx. […] 'hotel-like' properties within Booking's 'home' category (according to Form CO, Attachment W, response to QP8, paragraphs 23.1 et seq and Response RFI 6, question 6, Booking's 'home' portfolio includes approx. […] properties and the Notifying Party estimates that approx. […]% of its 'home' category would be 'hotel-like' properties).

528 The Notifying Party submitted that, based on Eurostat data, hotels occupancy rate is approx. […]% (Booking's Accommodation deep-dive presentation [DOC ID 1535-560], slide 15 and Booking's Accommodation paper, footnote 30 [DOC ID 57285]). Out of this, Booking receives approx. […]% based on Booking's response to RFI 6, Question 29, Annex 11.

529 Response to question A.6 of Questionnaire to Hotels (Phase II).

530 Non-confidential version of Hôtel Turenne's response to question B.10 to Questionnaire to Hotels (Phase II) [DOC ID 53526].

531 Non-confidential version of Hôtel Turenne's response to question B.10 of Questionnaire to Hotels (Phase II) [DOC ID 53526].

represented 71.2% of the hotels' distribution of hotel rooms in the OTA channel[532] and 19% of all available distribution channels to hotels[533]. HOTREC also indicated that '*[r]egarding some aspects of the relations with OTAs, most hoteliers (55%) feel pressured by OTAs to accept platforms terms and conditions (e.g., regarding cancellation policy, special discounts) that hotels would otherwise voluntarily not offer. As expected, the higher the volumes of room nights generated by OTAs in a hotel, the higher the perceived pressure*.'[534]

(413) The Notifying Party alleges that the market investigation is flawed as it places insufficient weight on consumer evidence. The Commission allegedly has not sought to obtain any evidence from consumers and has instead placed all of its reliance on the hearsay views of hotels. The Parties claim that the Commission should have conducted a consumer survey.[535]

(414) The Notifying Party also considers that the example of cancellation policies is not indicative of market power since it was a mere application of a force majeure clause due to the COVID-crisis that worked for the benefit of consumers and that it had a negative impact on Booking's performance. The Notifying Party also alleges that this isolated example is not relevant to demonstrate that Booking has market power and that Booking's policy has also been to the benefit of hotels.[536]

(415) The Commission considers that these arguments are unfounded. The Commission fails to understand why the fact that, the majority of hotels and OTAs considered, in reply to the market investigation, that Booking was in a strong negotiating position and able to impose terms and conditions on hotels should be dismissed and that it is evidence that the market investigation is flawed. The Commission also considers that the fact that Booking's policy (and in particular cancellation policies during COVID) may have been in the interest of *consumers* is irrelevant since the question addressed the issue of Booking's market power vis-à-vis *hotels*. Then, the Commission considers that there is some inconsistency on the Notifying Party's arguments to allege on the one hand that Booking's policy is supportive of hotels and on the other to allege that hotels are biased against Booking.[537]

(416) In addition, contrary to the Notifying Party's argument, the cancellation policy is not the only ground on which the Commission concludes that Booking holds market power. Indeed, the majority of hotels and OTAs indicated that Booking was able to impose terms and conditions on hotels and that hotels did not hold sufficient negotiating power vis-à-vis Booking (see paragraphs (417) et seq. above). The Commission considers that the example of cancellation policies is particularly indicative of Booking's dominance irrespective of the contractual context and the fact that Booking was […] resorting to a force majeure clause in the agreement(s) with hotels. The gist of the matter was that (i) there was a disagreement between hotels and that (ii) Booking was able to *unilaterally* impose conditions that hotels did not want.

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532 HOTREC, European Hotel Distribution Study , slide 85 (56979-5041).

533 Calculated considering that HOTREC, European Hotel Distribution Study estimates that the OTA channel accounts for 27.1% of all channels available to hotels, see slide 17 (56979-5041).

534 HOTREC, European Hotel Distribution Study , slide 6 (56979-5041).

535 Response to the SO, paragraphs 5.58-5.61.

536 Response to the SO, paragraphs 5.67-5.69.

537 Response to the SO, paragraph 5.69.

(417) In the third place, during the market investigation in Phase I, a majority of hotels that expressed a view indicated that Booking is in a position to impose terms and conditions on hotels.[538] In particular, some hotels indicated that '*they* [Booking] *set the rules. If you don't want to follow them, they throw you off the platform*.'[539]; another one indicated that: '*There is absolutely no doubt that independent hotels have to accept all of their terms in order to get listed*'[540] and another added that: '*Yes, certain condition and operating methods are almost imposed. There is very little or no opportunity for negotiation of terms and conditions. It's a take it leave it situation* […]'[541]. Another one expressed similar views and considered that: '*Booking.com is without a doubt the strongest OTA on the market, which can be intimidating to some businesses as whenever they would decide to increase their commissions (which are already quite high), they would simply have to comply or lose a significant (in some cases more than¾4) of their bookings. Airbnb is a strong provider on a different scale as they offer cheap private accommodations and this platform is mostly used for these purposes. Therefore, they are a strong provider, however for a slightly different customers*.'[542]

(418) In the fourth place, the majority of OTAs who expressed a view during the Phase I market investigation considered that Booking is in a strong negotiating position to impose terms and conditions on hotels, in particular on independent hotels. For example, an OTA mentioned that: '*Independent hotels who overly rely on Booking.com as its major distribution channel, will be in a weak position to refuse commercial conditions that benefit Booking.com*'[543]; another one indicated that: '*As outlined above Booking has got a dominant position in terms of Google advertising, customer base, brand consideration etc. and therefore can impose high commissions on hotel partners*'[544]; another one considers that: '*Booking.com is the most relevant channel for indipendent hotels* [sic] *by far, and their scale doesn't allow hard negotiations as they are easily replaceable*'[545]; another one indicated that: '*Due to its market power, Booking can demand that hotels provide it with correct and detailed hotel information (for free) […]. Furthermore, as explained above, the first results on a search result page will lead to 80% of all bookings. Hence, if your market position is really strong (you attract most visitors) you can pressure independent hotels to pay more for positions that convert the best. Even if Booking would be obliged to give access to its platform, it can still steer which hotel the customer will select*'[546]; another one considers that: '*In some cases, Booking.com sells more than the 60-70% of the inventory of the hotel, which allows them to impose those conditions to the hotel. Booking.com is the only OTA in Europe that has been able to increase their Commission (they started charging the hotels a 5% commission, and*

538 Response to question 25 of Questionnaire Q3 to hotels [DOC ID 2737].
539 Response to question 25.1.1 of Questionnaire Q3 to hotels [DOC ID 2737].
540 Response to question 25.1.1 of Questionnaire Q3 to hotels [DOC ID 2737]. Although the last two statements may reflect to the dependency of independent hotels on OTAs in general, the Commission considers that they may be particularly true of Booking. As previously mentioned, one of the respondents, HOTREC, expressed the view that Booking was dominant in the hotel OTA market.
541 Response to question 25.1.1 of Questionnaire Q3 to hotels [DOC ID 2737].
542 Response to question 17.1.1 of Questionnaire Q3 to hotels [DOC ID 2737].
543 Response to question 25.1.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
544 Response to question 25.1.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
545 Response to question 25.1.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
546 Response to question 25.1.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

*now they charge around 15-18%)*'[547]; another one expressed the view that: '*This market power gives Booking the ability to dictate market conditions and impose conditions on its providers, which can hardly be challenged, as Booking is a key partner that cannot be ignored. …It must be noticed that the bargaining power is severely unbalanced between independent hotels and Booking*'.[548]

(419) In the fifth place, as regards hotel chains, the majority of OTAs and hotels who expressed a view indicated that, although chains would be in a better negotiating position than independent hotels, Booking would still hold negotiating power over them and be able to impose its conditions.[549] For example, an OTA mentioned that: '*They* [chains] *can negotiate better conditions, but just can't get rid of Booking.com*'[550]; another one indicated that: '*Though hotel chains and hotel groups have a stronger bargaining power towards Booking, and Booking could hardly do without them in the inventory, Booking remains able to indirectly impose conditions on them because of the competition with independent hotels and other hotel chains on its platform: Booking can use the breadth of its inventory to impose conditions to chains so that they have an incentive to appear in top results of Booking*'.[551]

(420) A hotel noted that '*Even chains cannot negotiate conditions anymore as Booking.com holds the market power in Europe. New conditions are being forced on hotels since 3 years now, restricting the hotels modus operandi and their way of distributing their rates*.'[552]

(421) In the sixth place, the majority of hotels who expressed a view considered that independent hotels and other (including private) accommodation providers would not have negotiating power over Booking when negotiating contractual agreements.[553] A hotel indicated that: '*The agreement conditions are given, no space for negotiation. Simply take it or leave it*'[554]; another mentioned: '*there is no option to negotiate. There are fix conditions and independent hotels accept them or not*.'[555]; another indicated that: '*Compared to a small independent hotel, Booking has more bargaining power. To them, Booking imposes the conditions in terms of commission. In terms of visibility, a small independet* [sic] *hotel is more likely to be chosen on Booking.com than by its website and for this reason it is better to offer the entire inventory*.'[556]

(422) The Commission considers that the feedback of the market investigation is corroborated by the data that the Notifying Party submitted on the level of its effective commission rates. As explained above, the data shows that (i) hotels have been unable to extract lower commission rates from Booking and (ii) for the last 10 years, Booking has been able to maintain its effective commission rate at approx. [10-20]% regardless of the type of hotel property.

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547 Response to question 25.1.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
548 Response to question 25.1.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
549 Response to question 25 of Questionnaire Q1 to OTAs [DOC ID 2739].
550 Response to question 25.2.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
551 Response to question 25.1.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
552 Response to question 25.2.1 of Questionnaire Q3 to hotels [DOC ID 2737].
553 Response to question 27 of Questionnaire Q3 to hotels [DOC ID 2737].
554 Response to question 27.1.1 of Questionnaire Q3 to hotels [DOC ID 2737].
555 Response to question 27.1.1 of Questionnaire Q3 to hotels [DOC ID 2737].
556 Response to question 27.1.1 of Questionnaire Q3 to hotels [DOC ID 2737].

(423) *Fifth*, the results of the market investigation also indicate that hotels depend on Booking for a larger share of their sales.

(424) The majority of hotels who expressed a view indicated that Booking amounted to between 61% and 100% of their total bookings through the OTA channel.[557]

(425) In particular, a hotel noted that '*Booking.com has a major volume of reservations and therefore already become an unavoidable partner for the hotel. Booking.com charge much higher commission compared to direct online bookings*'[558]; and another hotel noted that '*Booking is already a giant which hotels are not able to ignore or not operate with. Their market position is already very big and they already (pre-covid) had a say at how hotels should sell their property. Smaller and independent hotels are most vulnerable when one considers that the hotels own website has to compete with that of booking.com. Even they [sic] way their commission is charged to the hotels, they charge commission on the total sale which means that booking also charges commission on the tax value of the sale. Their dominant position is that you either accept their way or are left out. I believe that this merger will give them far more dominance in the sector*'. [559]

(426) Another one specified that '*[o]f all the reservations that come from different OTA'S they own 99% of the reservations. They make partnerships with all the other smaller players and impose their rules. Because of their large presence we unfortunately cannot do without them anymore*';[560] another hotel mentioned that '*Booking imposes conditions of sale that change almost every year and for which you have no choice but to continue or leave them, but as they are the leader, it's a bit David against Goliath*'.[561] Another hotel indicated that '*Booking has actually become too big and powerful for hoteliers to do without. And that is a dangerous situation because they can then unilaterally determine the rules of the game. So further growth of their activities is actually not desirable*'.[562]

6.4.6.3. Booking does not feel pressure from out-of-market constraints

(427) The Notifying Party submits that Booking is constrained by rival OTAs, hotels' direct channel ('brand.com'), as well as Google Hotels.[563]

(428) In particular, the Notifying Party considers that competition from large OTAs and smaller OTAs have doubled as shown by Google Hotels data on auction participants and hotel/accommodation OTAs can source content from various sources (CAA, bed banks, hotels directly) and do not focus on one source of supply.[564]

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557 Response to question 29 of Questionnaire Q3 to hotels [DOC ID 2737].

558 Non-confidential version of [Hotel's] response to Question B10 of Questionnaire to Hotels (Phase II) [DOC ID 54946].

559 Non-confidential version of [Hotel's] response to Question B10 of Questionnaire to Hotels (Phase II) [DOC ID 56359].

560 Non-confidential version of [Hotel's] response to Question B10 of Questionnaire to Hotels (Phase II) [DOC ID 52113].

561 Non-confidential version of [Hotel's] response to Question B10 of Questionnaire to Hotels (Phase II) [DOC ID 52575].

562 Non-confidential version of New [Hotel's] response to Question B10 of Questionnaire to Hotels (Phase II) [DOC ID 54403].

563 See paragraphs ((363) to ((367) above.

564 Response to the SO, Section 5.C.

(429) As a general comment, the Commission does not deny that dominant companies may face a degree of competitive pressure exerted by competitors or out-of-market forces. The case law does not hold that a company is dominant only when it faces no competition. The Commission considers that the dominance test relies on the premise that such competitive pressure is not *sufficien*t to constrain the dominant company and that the dominant company therefore can act to a certain extent independently from its competitors and customers. In this context, the Commission considers that the Notifying Party has not produced evidence that the alleged very high competitive pressure faced by Booking has had any impact on Booking's position overtime. The Commission reiterates that Booking's market share has constantly increased over the last 10 years and there is therefore no evidence that rival OTAs, new entrants, brand.com and Google Hotels are taking market share away from Booking.

(430) As regards the Parties' argument that OTAs dealing with other travel verticals can easily deploy a hotel OTA business by sourcing content from various sources including other OTAs,[565] OTAs that depend on rivals to source content suffer a significant competitive disadvantage compared to OTAs that source content directly from bilateral contracts with hotels as the former have limited to no control over the inventory they offer and the prices at which it is sold. Last, as explained in further details in section 6.4.6.4 below, the Commission notes that the market investigation has not identified any recent market entrant in the hotel OTA market and that the Parties have not produced any tangible evidence of such market entry.

(431) The Notifying Party also alleges that the direct channel is continuing to gain strength at the expense of the OTAs and that brand.com is investing heavily in the online direct channel to drive more direct bookings by improving their websites; becoming more technically savvy; using low-cost sophisticated channel managers; and increasingly running more successful marketing campaigns.[566]

(432) The Commission disagrees with the Notifying Party's arguments and finds that while direct sales by hotels may be increasing, so is the size of the market for hotel OTA and, while the relative size of the hotel OTA market may be shrinking as a share of the overall hotel sales this is not an indication of a loss of sales by hotel OTAs in favor of hotels' direct channel. Moreover, while direct sales by hotels may have grown in the past years, Booking has also been able to grow consistently throughout the years, which is evidence that the out-of-market competitive constraints posed by hotels' direct sales channels do not materially constrain Booking.

(433) More specifically, the Commission is of the view that, based on the evidence on the file, Booking does not seem constrained by any out-of-market forces.

(434) *First,* the evidence on the file does not support the existence of alleged pressure from brand.com or Airbnb on Booking's hotel OTA business.

(435) <u>In the first place</u>, as indicated in section 6.4.6.1 above, Booking's commissions have remained higher than the commissions of its main competitors, and Booking has been able to maintain the same commission level (at approx. [10-20]%) over the past 10 years (2011-2022). The Commission considers that Booking would likely have been forced to lower its commissions to hotels, should Booking had felt sufficient

565 Response to the SO, Section 5.C.

566 Response to the SO, Section 5.D.

competitive pressure from brand.com or other (including private) accommodations providers such as Airbnb.

(436) In the second place, if Booking felt sufficient pressure from brand.com or suppliers of private accommodation OTA services (such as Airbnb), Booking would have been compelled to display lower prices on its platform in order to capture more end customers and increase the attractiveness of its platform vis-à-vis hotels. However, evidence submitted by Booking indicates that Booking's displays higher prices than the lowest priced competitor online, and that this trend has been increasing over time.

(437) In its ordinary course of business,[567] Booking monitors its performance through RPD data, which represents the difference in price between the price displayed by Booking.com and the cheapest among the main online competitors and brand.com (i.e., hotels' websites). [Details of Booking's pricing data].[568] [Details of Booking's pricing data].[569]

**Figure 13: Booking.com's Relative Price Difference, EEA, May 2020 – March 2023: Percentage price difference of Booking over the lowest-price reference ('public' and 'loyal' customer groups)**

[Figure redacted]

*Source: Commission on the basis of the response to RFI 20, Annex 2*

(438) [Details of Booking's pricing data][570] [Details of Booking's pricing data].[571]

(439) [Details of Booking's pricing data][572] [Details of Booking's pricing data].

(440) It must be noted that available data does not allow for a comparison of prices between Booking and the main online alternatives, which would factor in discounts offered by Booking's OTA competitors and hotels. As a consequence, the analysis of Booking's loyal customers' prices likely overestimates the prices offered by Booking's OTA competitors and hotels. [Details of Booking's pricing data].[573] [Details of Booking's pricing data].

(441) [Details of Booking's pricing].[574] [Details of Booking's pricing].

**Figure 14: Booking's discounts, as percentage of the cheapest displayed rival's price**

[Figure redacted]

*Source: Commission on the basis of the response to RFI 20 Annex 2*

(442) According to the information provided by the Notifying Party in the figure below, in about [Details of Booking's pricing]% searches there is a cheaper alternative to Booking. Only in about [Details of Booking's pricing]% of searches Booking makes the cheapest offer.[575]

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567 See for example internal document D328, Financial Overview Board of Directors Meeting October 22, 2020, slides 35-36 [DOC ID 526-284].

568 Response to RFI 4, dated 8 November 2022, paragraphs 1.1 et seq. and Annex 3.

569 Booking's Response to RFI 20, par. 5.1.

570 [Details of Booking's pricing].

571 Commission analysis based on Booking's Response to RFI 4, Q.1.c.

572 [Details of Booking's pricing].

573 Booking's Response to RFI 24, par. 6.1.ii.

574 [Details of Booking's pricing].

575 See also, Figure 1 of the same response and Notifying Party, accommodation paper of 17 March 2023, paragraph 4.32; response to RFI 21, question 4.

**Figure 15: Pricing comparison between Booking, brand.com and OTA rivals**

[Figure redacted]

*Source: Response to RFI 24, question 4 Figure 2.*

(443) [Details of Booking's pricing].'[576] The Commission notes that even if these are the hotels and not Booking who set the higher prices on Booking's platform, this does not change the conclusion that Booking can act independently from its competitors and customers. Hotels charge higher prices through Booking because of Booking's higher commissions. Nevertheless, while Booking is cheapest in not more than [Details of Booking's pricing]% of cases Booking is able to grow and to reach a market share that is much higher than [20-30]%, of about [Details of Booking's pricing]% in the B2C side of the hotel OTA market. As shown in Figures 19 and 20 below, Booking was even able to calculate how much more expensive it can be and still make the sale. The ability to reach such market share with higher prices indicates an ability to act independently than competitors and customers.

(444) In its response to the SO, the Notifying Party argued that the correct way to interpret the RPD is that Booking is the cheapest OTA in *'a staggering'* [Details of Booking's pricing]% of cases[577] and that the RPD of Booking compared to individual competing OTAs shows that Booking offers lower prices in auctions [Details of Booking's pricing] competing OTAs.[578]

**Figure 16: RPD of Booking compared to individual competing OTAs**

[Figure redacted]

*Source: Response to the SO, Figure 5.2*

(445) The Commission notes that Booking did not challenge the Commission's finding that overall, [details of Booking's pricing] although Booking was able in parallel to significantly increase its market share. These findings, shows that Booking is not constrained by the prices of its rivals.

(446) Internal documents show that Booking is aware that the room rates listed on its platform are not the best on the market in relevant comparisons.

(447) In an internal document Booking explained that [Booking's assessment of its growth rate].[579] This shows that Booking is [Details of Booking's pricing] (although not as fast as it would have preferred). Another internal document states that Booking [Details of Booking's pricing].[580]

(448) The slide below shows that the number one reason for customers to leave Booking is [Details of Booking's pricing].

**Figure 17: Reasons to churn**

[Figure redacted]

*Source: response to the StC decisions, Attachment 1.2 – 84 Survey reports, BRES01_Quant _ report_mode Active_Churn Research US_UK_DE Deep Dive Feb 2020, [DOC ID 51549] slide 7.*

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576 Response to the SO, paragraph 5.48.

577 [Details of Booking's pricing].

578 Response to the SO, paragraphs 5.19-5.22.

579 Attachment D018 - 2. 2021 Offsite PRESENTATION Deck_June 2021_2021.05.26, slide 7 [DOC ID 147-4].

580 BOOK_00972871-2. Our Strategy Ambition_Offsite 2 (002).pptx, slide 17 [DOC ID 051853-085185].

(449) The slide below shows that [Customer perception of Booking's pricing].

**Figure 18: reason not to reserve on Booking**

[Figure redacted]

*Source: response of the Notifying Party to the StC decisions, Attachment 1.2 – 84 Survey reports, BRES02_Quant_ Report -BPC Summary V3.3 UK_DE_FR November 2019 [DOC ID 51550], slide 24.*

(450) [Customer perception of Booking's pricing].

**Figure 19: [Details of confidential survey in Germany]**

[Figure redacted]

*Source: response to the StC decisions, Attachment 1.2 – 84 Survey reports, BRES60_Main competitors in key markets [DOC ID 51608], slide 30.*

**Figure 20: [Details of confidential survey in France]**

[Figure redacted]

*Source: response to the StC decisions, Attachment 1.2 – 84 Survey reports, BRES60_Main competitors in key markets [DOC ID 51608], slide 36.*

(451) In the response to the First Letter of Facts, the Notifying Party argued [Assessment of Booking's brand value].'[581] The Commission notes that the [Assessment of Booking's brand value] is another element of evidence showing that Booking is able to charge higher prices than its rivals. The evidence showing the actual price difference between Booking and its rivals was discussed above.

(452) *Second*, the Commission is of the view that Booking's introduction of the BSB program does not alter the fact that Booking does not feel pressured by out-of-market constraints and is not constrained by rival OTAs on the hotel OTA market.

(453) Booking started the 'BSB' program in 2019. Through the program, Booking provides discounts [Details of Booking's pricing]. According to the Notifying Party, [Details of Booking's pricing].[582]

(454) The Notifying Party considers that the BSB program constitutes evidence that Booking.com faces increasing competitive pressure (from other OTAs and direct sales from hotels).[583] According to Booking, a dominant company able to act independently of its competitors and customers would simply not give up its own profits to offer lower prices to consumers.[584]

(455) In the first place, as a general comment, the Commission considers that findings of dominance cannot be automatically discarded by the simple fact that a company enters into a discounting policy as the Notifying Party seems to suggest. If that were the case, discounting practices that the Commission and the Courts have previously identified as abusive under Article 102 TFEU would have never been caught. Indeed, although the Notifying Party alleges that the BSB discounts are a 'response' to the competitive pressure exerted by brand.com, Booking's internal documents [Details of Booking's pricing].

581 Response to First Letter of Facts, paragraph 45.
582 [Details of Booking's pricing and discounts].
583 The Response to the SO, paragraph 5.24.
584 Idem.

**Figure 21: the driver behind BSB's program tests**

[Figure redacted]

*Source: Booking's internal document, BOOK_02186203-BSB [DOC ID 56978-73529]*

(456) In the second place, data provided by Booking[585] reflects that, in 2022, […]% of room nights from hotel chains sold by Booking benefited from a BSB discount. [Details of Booking's pricing and discounts].[586] [Details of Booking's pricing and discounts].[587] The Commission considers that if the introduction of the BSB program was mainly a response to the competitive pressure exerted from the hotels' direct channel (i.e., brand.com), it would have been reasonable to expect that a higher proportion of chain hotels would have benefited from the BSB discounts, since the Notifying Party indicated that chains are typically more sophisticated players, with their own customer-facing websites and loyalty programs.[588]

(457) In the third place, [Details of Booking's BSB program].[589]

(458) In the fourth place, the Commission considers that the Booking's BSB discounts to end customers have not eroded Booking's margins (commissions) significantly. The Figure below compares Booking's effective commission rates to hotels (blue line), and Booking's effective commission rates minus the amount of the BSB discounts to end customers (orange dotted line). Even accounting for BSB's 'discounts', Booking's effective commissions remained [larger than competitors'] and only decreased by [comparison of Booking's commission rates]% since the introduction of the BSB program in 2019 (from [comparison of Booking's commission rates]% commissions in 2018 to [comparison of Booking's commission rates]% 'BSB' commissions in 2022).[590] Indeed, Booking's effective commissions with the BSBs discounts ([comparison of Booking's commission rates]%) is still higher than the commissions of its main competitors (which are estimated at 11.6%, on a TTV weighted basis, based on the results of the market reconstruction exercise).

**Figure 22: Booking's effective commission rate compared to 'effect' of BSB discounts to end customers**

[Figure redacted]

*Source: Booking's data provided in Annex 1 to RFI 23*

(459) In the fifth place, Booking's internal documents also indicate that the BSB program is not only a defensive (as the Notifying Party claims) but also an offensive strategy. In particular, an internal document from Booking on the BSB program indicates that [Details of Booking's discounting strategy].

**Figure 23: [Redacted]**

[Figure redacted]

*Source: Booking's internal document, BOOK_02093921 [DOC ID ID56972-43378], slide 4*

585 Response to RFI 24, Table 2.

586 As explained, the Notifying Party has submitted that only […]% of its 'home' category would include 'hotel-like' properties; see Response to RFI 23, footnote 8.

587 Commission's calculations on the basis of Response to RFI 23, Annex I.

588 Booking's Accommodation paper [DOC ID 57285], paragraphs 4.25 et seq.

589 Response to RFI 28, paragraph 7.3.

590 Response to RFI 23, Annex 1.

(460) [Details of Booking's discounting strategy].[591] [Details of Booking's discounting strategy].

(461) Importantly, Booking's internal documents in relation to the BSB program suggests that the BSB program [Details of Booking's discounting strategy].[592]

**Figure 24: [Results of the testing of the BSB program]**

[Figure redacted]

*Source: Booking's internal document, BOOK_02186203-BSB [DOC ID 56978-73529]*

(462) In the sixth place, [details of Booking's discounting strategy].[593] The Commission considers that these documents are a further indication that BSB discounts have no impact whatsoever on the commission rates that Booking charges to hotels. As mentioned in the document below [details of Booking's discounting strategy].

**Figure 25: [Details of Booking's discounting strategy]**

[Figure redacted]

*Source: Booking's internal document, BOOK_02186203-BSB [DOC ID 56978-73529]*

(463) The Notifying Party considers that the fact that the discount is applied with the hotels' knowledge 'does not contradict' the fact that the discount is a reply to competitive pressure. The Commission disagrees with this statement and considers that the fact that Booking's strategy is applied with the knowledge of the entities which allegedly pose an out-of-market constraint to Booking, and Booking's internal documents refer to the BSB [Details of Booking's discounting strategy] casts doubt as to whether the discount was introduced first and foremost as a reaction to competitive pressure from direct sales from hotels.

(464) *Third,* evidence in the file does not support the Notifying Party's claim that Google Hotels is a major threat to Booking. The Notifying Party alleges that Google Hotels has become the dominant accommodation MSS in the EEA, and that its rise reflects Google's broader strategy to shift traffic from Google Search to Google Hotels.[594]

(465) The Commission considers that the Notifying Party refers to general trends and has not shown how this evolution has resulted in taking market shares away from Booking, in particular in view of the fact that Google Hotel cannot replicate Booking's main advantage to build content sourcing over many years through a large number of bilateral contracts with hotels. Then, the Commission considers that, even if hotels use increased strategies to be listed on Google Hotels' services, they still have a strong incentive to be listed on Booking as confirmed by the market investigation.

(466) In addition, it is incorrect for the Notifying Party to allege that the Commission has not taken the potential impact of Google Hotel in consideration.

(467) In the first place, sales data provided by Booking and the results of the market reconstruction exercise indicate that, during the period where Google was allegedly 'boosting' referrals from Booking's competitors and the hotels' direct channel, Booking did not experience any decrease in sales and/or market share. On the

591 The Response to the SO, paragraph 5.24.
592 Response to RFI 28, paragraph 7.1 et seq.
593 BOOK_0206778.
594 Response to the SO, Sections 5C and 5D.

contrary, vis-à-vis end customers, Booking's B2C NA[595] TTV in hotel OTA services in the EEA increased by […]% from 2021 to 2022 (from approx. EUR […] in 2021 to EUR […] in 2022). In terms of market share, the market reconstruction exercise indicates that Booking increased its market share by [0-10] percentage points (from [50-60]% in 2021 to [60-70]% in 2022).

(468) In comparison, rival OTAs have seen their B2C shares decrease or remain stable at below 2% in the hotel OTA market in the EEA. On the other hand, according to Phocuswright, the hotels' direct channel only experimented a slight increase of 2 percentage points (from 40% in 2021 to 42% in 2022),[596] and it is unclear whether this increase related to the impact of Google Hotels' practices.

(469) In the second place, whereas information submitted by Booking indicates that Google Hotels has increased its market share in the MSS accommodation market to approx. 50%, evidence in the file shows that MSSs are not an important sales channel for Booking. The breakdown of Booking's gross bookings between the different channels indicates that Booking's main sales channel is its own platform (Booking.com). In particular, from 2021 to 2022, direct gross bookings increased from approx. […]% to […]% at EEA level.[597] The second channel is Google Ads (which refers to the space in Google's search result page that Google puts up for auction, which is different from Google Hotels, as indicated by the Notifying Party[598]), which accounts for approx. […]% of gross bookings at the EEA level. The remaining ~[…]% is split between MSS and other OTAs with which Booking has commercial affiliated agreements.[599]

(470) *Last,* qualitative evidence gathered during the market investigation confirms the Commission's findings that competitors are currently unable to impose a competitive constraint on Booking in the EEA.[600] For example, an OTA mentioned that: '*We believe that it will be difficult to impose a competitive constraint on Booking in the EEA due to Booking's market power*'[601]; another one indicated that rival OTA's competitive constraint on Booking would be: '[…] *almost impossible given the reach, quality of the data and the investments needed to be as competitive as Booking.*'[602]; another one stated that: '*No player can compete with Booking.com in the EEA, they have more than [60-70]% of the market share*'[603]; another mentioned that: '*It is impossible to identify a serious competitor to Booking as of today, which seems a non-contestable market player in MSS and OTA accommodation sectors*'[604].

(471) It follows from the above that Booking does not seem constrained by out-of-market forces, particularly, from the hotels' direct channel, Airbnb or Google Hotels.

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595 Net-arrived.
596 Response to the Article 6(1)(c) decision , Figure 4.2.
597 Response to pre-notification request for information (QP8), Annex 18 and Form CO, para. 8.70.
598 See Figure 5.4 of Booking's accommodation paper in paragraph 5.9 [DOC ID 57285].
599 Response to pre-notification request for information (QP8), Annex 18 and Form CO, para. 8.70.
600 Response to question 27 of Questionnaire Q1 to OTAs [DOC ID 2739].
601 Response to question 27.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
602 Response to question 27.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
603 Response to question 27.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
604 Response to question 27.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

6.4.6.4. No evidence of likely entry or expansion that would effectively constrain Booking

(472) The Notifying Party alleges that Booking is constrained by the potential threat of entry and expansion of new and established players. In particular, the Notifying Party refers to potential expansion by (i) Expedia and Trip.com; (ii) potential entry into the broader accommodation OTA market by Revolut, which already entered the accommodation OTA market in the UK; and (iii) Uber, which announced plans in April 2022 to expand its app to offer flights, trains and hotels.[605]

(473) The Commission's market investigation has not indicated that there will be likely entry or expansion into the hotel OTA market in the EEA that would effectively constrain Booking.

(474) *First,* the results of the market reconstruction did not provide instances of effective entry or expansion into the hotel OTA market that would have affected Booking's position over the past 10 years. In particular, as explained in section 6.4.4 above, Booking's market share has increased both for B2B and B2C, while Booking's rivals market shares have remained significantly lower and/or have decreased.

(475) As regards hotels, Booking remained the leading supplier of OTA services with a market share of [60-70]% in 2022 (which as previously mentioned increased by [40-50] percentage points since 2013 (from [20-30]% in 2013 to [60-70]% in 2022). In comparison, Expedia's market share remained much lower throughout the whole period (2013-2022) and is currently [10-20]% down from [10-20]% before the Covid-19 pandemic in 2019.

(476) As regards end customers, Booking also remained the leading hotel OTA in the EEA, with a market share of [60-70]% in 2022. The gap between Booking's market share and the market shares of Booking's competitors also increased (Booking increased its market share by [30-40] percent points from [20-30]% in 2013 to [60-70]% in 2022). In comparison, Booking's closest competitor, Expedia, had a market share of [5-10]% until 2019 before experiencing a decrease between 2020-2021. In 2022, Expedia was still below its 2019 levels (at [5-10]%). The remaining hotel OTA competitors have maintained low market shares below 5% during the whole period considered (2013-2022) and have also experienced a decrease in market share after the Covid-19 pandemic. Last, evidence in the file indicates that the third player on the market, HRS, decided to re-orientate its strategy and focus on business customers as a consequence of strong competition from Booking on the hotel OTA market.[606]

(477) *Second,* the majority of OTAs that expressed a view during the market investigation consider that Booking's market position acts as a deterrent for companies wishing to enter the hotel OTA market in the EEA.[607] In particular, some OTAs noted '*Booking's position acts as a deterrent because its size and penetration of the market make it difficult for rivals to come up with a value proposition to hotel providers. HOTREC's estimated market shares demonstrate Booking.com has been able to grow through the years whereas its closest competitors decreased in market shares*'[608]; that '*For a newcomer, the existence of a company that has a market share*

605 Response to the Article 6(1)(c) decision , Annex 4 on Dominance, paragraph 4.1 (i)-(iii); and Booking's Accommodation paper, paragraph 4.22 [DOC ID 57285].

606 See paragraph ((261) above.

607 Response to question 28 of Questionnaire Q1 to OTAs [DOC ID 2739].

608 Response to question 28 of Questionnaire Q1 to OTAs [DOC ID 2739].

*over [60-70]% is an evident deterrent*.'[609]; that '*Booking has strong brand recognition and deliveres [sic] inventory management tool for the hotels*'.[610] Other OTA noted that '*Booking pushes a lot on the best prices and many hotels, despite the parity rate has been abolished, are afraid to make better prices than Booking on other channels because they would lose visibility on Booking*'[611]; and another that '*it is a strong competitor and therefore a high investment is necessary for new participants in the market*'.[612]

(478) Likewise, a majority of hotels that expressed a view during the market investigation indicated that they were unaware of instances of entry of new hotel OTAs in the EEA in the last three years.[613] In particular, some hotels noted that '*Not successfully. As indicated above, it is quite imposible to start successfuIl [sic] OTA and compete to Booking.com*'[614]; that '*No I am not aware, the existing Large OTA's are very dominant in the market and would be a barrier for entry for new operators in terms of visibility and promotion*'[615]; and that '*have not heard of new OTA*'.[616]

(479) *Third,* during an interview with the Commission, industry expert Phocuswright indicated that they do not expect any specific entry into the hotel OTA market in the EEA. In particular, Phocuswright indicate that '*Phocuswright is not aware of any significant instances of entry or exit into the OTA market in the EEA. Google is significant as a search engine but is not a classical OTA. HRS has largely exited the leisure travel market and is now focused on the corporate travel market.*'[617]

(480) *Fourth,* evidence in the file indicate that the Notifying Party's specific allegations on Expedia and Trip.com's potential expansion does not seem to amount to 'effective' expansion that would challenge Booking's dominant position on the hotel OTA market.

(481) <u>In the first place</u>, as regards Trip.com, Booking's own market share estimates for the hotel OTA market submitted to the Commission do not single out Trip.com within the group of competing OTAs. In this sense, Trip.com is estimated to have a market share below [0-5]% on the hotel OTA market in 2022 on a B2C basis.[618] Further, although […].[619] As a consequence, Trip.com cannot be considered as a fully independent competitor on the hotel OTA market.[620]

(482) <u>In the second place</u>, as regards Expedia, the results of the market reconstruction indicate that, although Expedia is the second provider of OTA services to hotels, its market share over the past 10 years remained significantly lower than Booking's B2B, Expedia's market share was approx. [10-20]% and more recently decreased to

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609 Response to question 28.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
610 Response to question 28.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
611 Response to question 28.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
612 Response to question 28.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
613 Response to question 24 of Questionnaire Q3 to hotels [DOC ID 2737].
614 Response to question 24.1 of Questionnaire Q3 to hotels [DOC ID 2737].
615 Response to question 24.1 of Questionnaire Q3 to hotels [DOC ID 2737].
616 Response to question 24.1 of Questionnaire Q3 to hotels [DOC ID 2737].
617 Non-confidential minutes of a call with Phocuswright, dated 13 December 2022 [DOC ID 51463], paragraph 10.
618 Response to the RFI 17, Annex 3, 'Euromonitor without Airbnb unadjusted' tab.
619 Response to RFI 6, Annex 8.
620 Non-confidential minutes of a conference call with […], 20 December 2022 [DOC ID 056917], paragraphs 6, 7. Response to RFI 6, Annex 8.

[10-20]% in 2022. As regards B2C, Expedia's market share is also significantly lower than Booking [5-10]% and Expedia does not seem to have recovered from the Covid-19 crisis. Last, as shown in section 6.4.7, the market investigation shows that Booking outperforms Expedia (as well as other rival OTAs) for all of the parameters that competitors and customers consider as the most important parameters to determine competitiveness of a hotel OTA.[621]

(483) *Fifth,* evidence in the file including the Notifying Party's own submissions do not confirm that Uber has already entered the hotel OTA market in the EEA. In addition, it is unclear if and when Uber would do so, and even in the case such entry would take place, there is no evidence that it would sufficiently constrain Booking's position.

(484) In the first place, news reports provided by the Notifying Party refer to a pilot project by Uber that is limited to the UK. Uber's website indicates that the search and booking feature of 'Uber Travel' is '*specific'* to the UK.[622] The Commission has not found any evidence that would clearly indicate that Uber would expand the pilot project to the EEA in the short-term.

(485) In the second place, reports provided by the Notifying Party indicate that Uber's '*intention to expand the platform into areas like hotel bookings*' is a '*multi-year experiment that will take time to develop, engage customers on, and roll out to more markets if successful*'.[623] Importantly, Booking's internal documents refer to [Booking's assessment of its competitors].[624] On that basis, even if one assumes that Uber had plans to offer hotel OTA services in the EEA, such plans (from the Notifying Party's own admission) would take time.

(486) In the third place, industry expert Phocuswright expressed its doubts as to whether Uber could be considered as a hotel OTA that would directly compete with Booking and other OTAs in the EEA. In particular, Phocuswright indicated that '*[s]pecifically for Uber, Phocuswright is of the view that Uber is still far from being able to be considered an OTA as they are so far only piloting ride reservations for travel itineraries exported into their platform and, importantly, Uber has a different business model from OTAs.*'[625]

(487) In the fourth place, based on reports provided by Booking, the Commission understands that, […].[626] […].[627] […][628] […].

(488) *Last,* based on the information provided by Booking, it is unclear whether Revolut could be considered as a significant competitor on the hotel OTA market in the EEA, which would sufficiently constrain Booking and other hotel OTAs. Revolut is a 'fintech' company that offers banking services through its 'financial super app'.

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621 See section 6.4.7 below.

622 'UK Specific Experience // When in the UK, Uber Travel also enables the rider to search, book, and purchase train and coach (bus) tickets directly within the Uber app' see https://www.uber.com/us/en/ride/how-it-works/travel/ (last accessed 13 April 2023).

623 Response to the Article 6(1)(c) decision , Attachment F.

624 DOC ID 51852-27615, slide 5.

625 Non-confidential minutes of a call with Phocuswright, dated 13 December 2022 [DOC ID 51463], paragraph 10.

626 Response to the Article 6(1)(c) decision , Attachment G.

627 In total, Booking's hotel and 'hotel-like' properties would amount to approx. […] properties. See section **6.4.7.1.1** below.

628 See section 6.2.3 above.

Revolut's 'Stays' option in its app will allow customers in the EEA to book hotels and other travel verticals,[629] but it is unclear how Revolut would gain access to hotel content, what would be its business model and what geographic reach it would achieve in the upcoming years. The Notifying Party has not produced any internal documents that would refer to the potential disruption caused by Revolut's entry (whereas it provided internal documents that monitor Uber's pilot project as noted above), nor the Commission has found any internal documents from Booking referring to Revolut's potential entry and the impact that this entry would have on Booking. The Commission also notes that if Revolut […].[630]

*6.4.7. Booking outperforms hotel OTA competitors in the EEA*

(489) The Notifying Party indicated that the competitiveness of a hotel OTA is determined by a series of different parameters that will influence the selection of hotels and end-users.[631] During the market investigation, the Commission requested OTAs and hotels to identify the parameters that they consider the most important to determine the level of competitiveness of a hotel OTA.[632] As the attractiveness of an OTA also depends on the number of end customers it is able to successfully sell to, the Commission also requested OTAs to identify the parameters that end-users would consider as the most important in their selection of an OTA.[633]

(490) On that basis, OTAs and hotels ranked eight parameters by order of importance and then, indicated how the main OTAs would fare for each of these parameters. Booking was ranked as the number one OTA and categorized as 'very strong' for each of these parameters and, in particular, for those who may be considered as the most important ones based on the market investigation.

6.4.7.1. Most important parameters to determine a hotel OTA competitiveness

(491) From the eight parameters identified above, the following parameters may be identified as the most important by OTAs and/or hotels since they are either listed in the top 3 parameters in the OTAs and/or hotel lists or specifically identified as important to very important in other parts of the questionnaires:

(i) the OTA's breadth of hotel portfolio; this parameter comes first in the list of parameters that end users would consider as the most important in their selection of an OTA with a mean of 4.45 out of 5. [634]

(ii) the OTA's large customer base; OTAs identified this parameter as the most important one that hotels take into account in their selection of an OTA with a mean of 4.42[635] whereas hotels ranked it as the third most important one with a mean of 4.57 out of 5.[636]

(iii) the OTA's ability to attract online traffic; this is the first parameter identified by hotels in their selection of an OTA with a mean of 4.74 out

629 Response to RFI 16, question 6.
630 See section 6.2.3 above.
631 Form CO, paragraphs 8.124 – 8.126.
632 Response to questions 16 and 17 of Questionnaire Q1 to OTAs [DOC ID 2739]; response to question 16 of Questionnaire Q3 to hotels [DOC ID 2737].
633 Response to question 18 of Questionnaire Q1 to OTAs [DOC ID 2737].
634 Responses to question 17 of Questionnaire Q1 to OTAs [DOC ID 2739].
635 Responses to question 16 of Questionnaire Q1 to OTAs [DOC ID 2739].
636 Responses to question 16 of Questionnaire Q3 to hotels [DOC ID 2737].

of 5[637] and the second that OTAs identify as the most important to be selected by hotels with a mean of 4.29.[638]

(iv) the OTA's brand recognition; OTAs consider it as the second most important criterion that end-users would consider in selecting an OTA with a mean of 4.23[639] and hotels rank it as the second main parameter in their selection of an OTA with a mean of 4.67.[640]

(v) the OTA's advertising strength: according to OTAs, advertising strength is the third most important parameter that hotels take into account when selecting an OTA with a mean of 4.10.[641] On the hotel side, the results are a bit more nuanced. Hotels have ranked it as the fifth main parameter with a mean of 4.22.[642] However, a large majority of hotels indicated that ad spending is an 'important' to 'very important' parameter for a hotel OTA to compete on the market.[643]

(vi) the OTA's ability to offer added data-driven services on hotel performance data: a large majority of hotels who expressed a view indicated that customers data is important to very important for an accommodation OTA to be able to effectively compete on the market.[644]

6.4.7.1.1. Breadth of hotel portfolio

(492) The Commission understands that OTAs compete on the breadth of their product offering (hotel portfolio) since it is in an OTA's best interest to try to secure as much choice as possible for end-users in order to attract as many consumers as possible (see section **6.2.3** above, paragraph (228)). . An OTA with an extensive hotel portfolio in terms of number of properties and availability therefore is more likely to meet end-user's needs and increase its customer base. The network effects[645] that characterize the industry also imply that the more end users will use an OTA platform, the more hotels will have an interest in connecting to that OTA as they are more likely to be able to sell their accommodation to consumers.

(493) During the market investigation, OTAs confirmed the importance of the breadth of hotel portfolio as a competitive parameter. OTAs considered that it was the number one parameter that end-users would take into account in their selection of an OTA.[646] For example, an OTA explained that: '*[Customers] also care about its breadth of hotel portfolio, as it gives them different possibilities of choosing different hotels. Also, it is easier for End Users to purchase everything at the same shop, which is*

637 Responses to question 16 of Questionnaire Q3 to hotels [DOC ID 2737].
638 Responses to question 16 of Questionnaire Q1 to OTAs [DOC ID 2739].
639 Responses to question 17 of Questionnaire Q1 to OTAs [DOC ID 2739].
640 Responses to question 16 of Questionnaire Q3 to hotels [DOC ID 2737].
641 Responses to question 16 of Questionnaire Q1 to OTAs [DOC ID 2739].
642 Responses to question 16 of Questionnaire Q3 to hotels [DOC ID 2737].
643 Responses to question 20 of Questionnaire Q3 to hotels [DOC ID 2737].
644 Responses to question 21 of Questionnaire Q3 to hotels [DOC ID 2737].
645 Direct network effects are the benefits for the users of the same side of a platform. For example, the benefit for users of an instant messaging platform from being able to reach a larger number of users. Indirect network effects are the benefits for the users of one side of a platform from the network effect on the other side of the platform. For example, hotels, on one side of a hotel OTA platform, benefit from a larger number of end-consumers using the platform on its other side and vice-versa.
646 Response to question 17 of Questionnaire Q1 to OTAs [DOC ID 2739].

*why they value the One stop-shop*.'[647]; another OTA mentioned that '[End-users] *also care about* [the OTA] […] *breadth of hotel portfolio, as it gives them different possibilities of choosing different hotels*'[648]

(494) The Commission understands that there are several ways in which an OTA can build its hotel portfolio, including (i) purchasing content from GDSs and aggregators at a fee; (ii) entering into commercial affiliated services agreement with another OTA to be able to sell the OTA's hotel 'content'; and (iii) entering into direct bilateral contracts with hotels. The Commission also understands that, for an OTA, option (iii) of entering into direct contracts represents a significant competitive advantage compared to options (i) and (ii) since it gives the OTA the possibility to control its terms and conditions by negotiating with each hotel on an individual basis. In contrast, options (i) and (ii) would not confer the same advantage since it would make the OTA dependent on the content and the terms/conditions of a third party.[649] The Commission also understands that direct sourcing requires a significant amount of time and resources since the OTA needs to individually negotiate with a significant number of hotels. This implies that an OTA would require to invest in a workforce of a certain size in order to manage these partnerships.

(495) The Notifying Party tried to undermine the importance of bilateral contracts with hotels by alleging that the Commission overstates the extent of Booking's bilateral contracts with hotels.[650]

(496) However, the competitive advantage that direct sourcing represents first was confirmed by the market investigation. The large majority of the OTAs and hotels who expressed a view confirmed that having a direct contractual relationship with hotels provides a material advantage to a hotel OTA over having a portfolio through GDS/non-GDS aggregators.[651] As indicated by an OTA: '*OTAs have more control over the content they can get from the accommodations, and the customer care issues are somewhat easier to solve too*'[652]; Another one indicated that '[…]*Most importantly, the quality of data from GDS and non-GDS aggregators is not nearly as good as the data that is directly provided by hotels [..] If you have a direct relationship, you can enforce your process and contractual preferences (in case [your] [sic] size allows you to do so)*'[653]; A hotel explained that '*A direct contractual relationship gives the OTA a better negotiating position, they have direct access to the inventory and can try to influence the supplier's pricing and supply policy*'[654]; A large hotel chain also mentioned that: '*While sourcing from another intermediary or GDS aggregator might provide the OTA with additional inventory (depending on the OTA), it does not provide the OTA with the same level of influence as it would have from a direct relationship with the hotels. The inventory is 'second hand' inventory, over which the OTA has no influence*.'[655]

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647 Response to question 17.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
648 Response to question 17 .1 of Questionnaire Q1 to OTAs [DOC ID 2739].
649 For commercial affiliate agreements, see para. ((168) above.
650 Response to the SO, paragraph 5.71.
651 Response to question 19 of Questionnaire Q1 to OTAs [DOC ID 2739] and to question 18 of Questionnaire Q3 to hotels [DOC ID 2737].
652 Response to question 19.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
653 Response to question 19.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
654 Response to question 18.1 of Questionnaire Q3 to hotels [DOC ID 2737].
655 Response to question 18.1 of Questionnaire Q3 to hotels [DOC ID 2737].

(497) The majority of hotels that expressed a view also confirmed that it is 'difficult' or 'very difficult' for a hotel OTA to obtain a wide portfolio of hotels through direct bilateral contacts since building individual relationships with hotels requires a significant amount of time and resources.[656] A hotel mentioned that: '*It is necessary to invest a lot of time and effort in the successful acquisition of new facilities from start to finish.*'[657]; another specified that, although it is relatively easy to build a portfolio by acquiring content from GDS/non-GDS aggregators, '[..] *It is certainly far more difficult and time-consuming (if not almost impossible) to establish DIRECT contractual relationships with a large number of hotel operators in a manageable time period as a brand new operator.*'[658]

(498) *Second*, contrary to the Notifying Party's arguments, the Commission did not overplay the extent of Booking's bilateral contracts with hotels. On this point, the Commission refers to developments in section 6.4.7.2 below, which show that the Commission's findings are based on an array of evidence, including data provided by the Notifying Party itself.

6.4.7.1.2. Large customer base

(499) A large customer base will enhance the popularity of the platform and directly influence the number of bookings and profits that hotels may expect to derive from that platform.

(500) The market investigation confirmed that a large customer base is an important parameter to determine the level of competitiveness of an OTA. OTAs ranked it as the number one parameter that hotels would take into account when selecting an OTA[659] whereas hotels considered that it was the third most important one.[660] As indicated by an OTA, '[…], *the large customer base and prices listed on OTA platforms are the key parameters for hotels*'.[661]

6.4.7.1.3. Ability to attract online traffic

(501) OTAs compete to drive traffic to their website. This is achieved by several means such as running adverts, paid listings in search engines or indirectly by connecting to meta-search sites as well as general brand advertising either online or in offline media.[662]

(502) Hotels and OTAs have ranked the ability to attract online traffic respectively as the first and second most important parameter to determine the competitiveness of a hotel OTA. An OTA indicated that: '*Hotels have limited human resources, so they only want to work with companies from which they expect significant traffic immediately, not with a new player*'[663] A hotel expressed similar views and declared that '[…] *ability to attract online traffic directly correlates with our business success*.'[664]

656 Response to question 19 of Questionnaire Q3 to hotels [DOC ID 2737].
657 Response to question 19.1 of Questionnaire Q3 to hotels [DOC ID 2737].
658 Response to question 19.1 of Questionnaire Q3 to hotels [DOC ID 2737].
659 Response to question 16 of Questionnaire Q1 to OTAs [DOC ID 2739].
660 Response to question 16 of Questionnaire Q3 to hotels [DOC ID 2737].
661 Response to question 16.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
662 Form CO, paragraph 8.100 (vi).
663 Response to question 11.1.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
664 Response to question 17.2.1 of questionnaire Q3 to hotels [DOC ID 2737].

6.4.7.1.4. Brand recognition

(503) An OTA's success to attract online traffic appears directly linked to the brand recognition of that OTA. The more famous the OTA's brand, the more chance that it will attract significant online traffic.

(504) During the market investigation, hotels confirmed the importance of brand recognition by ranking it as the second most important parameter to determine the selection of an OTA. As explained by a hotel: '*As we pride ourselves in honesty and brand recognition, it's very important for us to have partnerships with reputable organizations. Also, brand recognition/reputation provides certain 'safety' to End Users*'.[665]

(505) On the other hand, although OTAs have given brand recognition a lower rank since it appears as the fourth most important parameter on their list, a number of them mentioned its importance to an OTA's overall success. As indicated by an OTA: '*End Users care about the reputation of the OTA in order to have ease of use and be calm regarding the booking purchased and the service provided by the OTA during the stay.*'[666] Another OTA indicated: '*When choosing an OTA, hotels take into account very seriously the OTA´s recognition and reputation, the ability to attract online traffic via the OTA platform and the OTA´s advertising strength, which will give much more visibility to the hotel*.'[667]

6.4.7.1.5. Advertising strength

(506) OTAs drive traffic to their website by running adverts through paid listings in search engines or indirectly by connecting to meta-search sites as well as general brand advertising either online or offline (primarily TV). In this context, the amount of advertising expenditures that an OTA can dedicate to increasing its visibility online may have a significant impact on the OTA's ability to compete on the market.

(507) During the market investigation, OTAs confirmed the importance of advertising strength as a competitive parameter and ranked it as the third most important parameter to determine the competitiveness of an OTA.[668] As indicated by an OTA: '*advertising strength [...] will give much more visibility to the hotel*.'[669]

(508) In terms of what would be their preferred advertising medium, a large majority of the OTAs who expressed a view indicated that (i) Google was by far the most important advertising channel[670]and (ii) search engine optimisation, (i.e. the know-how to most effectively allocate and use a company's advertising budget) was 'important' to 'very important' to determine a hotel OTA effective competition on the market[671]. As explained by an OTA: '*Google as most important advertising network, in particular when it comes to search advertising*'[672]; another one also referred to Google as one

665 Response to question 16.1 of Questionnaire Q3 to hotels [DOC ID 2737].
666 Response to question 17.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
667 Response to question 16.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
668 Response to question 16 of Questionnaire Q1 to OTAs [DOC ID 2739].
669 Response to question 16.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
670 Response to question 21 of Questionnaire Q1 to OTAs [DOC ID 2739].
671 Response to question 22 of Questionnaire Q1 to OTAs [DOC ID 2739].
672 Response to question 21.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

of the main advertising mediums since Google has '*significant reach in all segments, including eTravel*'.[673]

(509) The large majority of hotels who expressed a view also indicated that advertising spending was 'important' or 'very important' for a hotel OTA to be able to effectively compete on the market in order to gain traffic to the OTA platform(s).[674] As explained by a hotel: '*Ads are important because they increase visibility and visibility increases the number of bookings*'[675]; another one indicated that: '*Effectively presenting yourself on the market to a targeted group on the market is connected to the ad expenses (at least in the beginning, when the business is establishing an image/brand). Accordingly, we believe ad expenses are very important to effectively compete on the market.*'[676]

6.4.7.1.6. Added-data driven services on hotel performance

(510) OTAs compile data on hotel performance in order to tailor their offer to consumers. The Commission understands that holding comprehensive data enables OTAs to quickly identify the best suited offer to the customer's profile.

(511) During the market investigation, a large majority of hotels that expressed a view indicated that customers' data was an 'important' to 'very important' parameter for a hotel OTA to effectively compete on the market.[677] As indicated by a hotel: '*Customer data is the key to success for many industries – for OTA they are extremely important, as they try to largely prevent direct contact between the service provider and the end customer until the actual service is used. OTA try to 'own' the customer although they actually only act as an intermediary between the end customer and the service provider*'.[678]

(512) A number of OTAs also stressed the importance of data as indirectly influencing the end-user's selection of an OTA. As explained by an OTA: '*Although customers will not actively choose a* [sic] *OTA that has data-driven services, they are greatly influenced by the quality of the data driven capabilities of an OTA or booking platform. Based on our data, we see that customers only make reservations on the first or second page of the search results. If an OTA wants to be successful with hotels they need to have a great amount of data to provide the right content on the first two pages.*'[679]; Another one indicated that: '*In general, the more data you have, the higher the statistical significance of your data-driven products. These data are not only customer data but all data you receive about the hotel. Hence, the more content you own and the more data you have from your customers, the higher the chance that your output is relevant for your customer.*'[680]

(513) Booking outperforms its competitors for each of the competitive parameters identified in the market investigation.

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673 Response to question 21.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
674 Response to question 20 of Questionnaire Q3 to hotels [DOC ID 2737].
675 Response to question 20.1 of Questionnaire Q3 to hotels [DOC ID 2737].
676 Response to question 20.1 of Questionnaire Q3 to hotels [DOC ID 2737].
677 Response to question 21 of Questionnaire Q3 to hotels [DOC ID 2737].
678 Response to question 21.1 of Questionnaire Q3 to hotels [DOC ID 2737].
679 Response to question 17.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
680 Response to question 18.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

6.4.7.2. Booking has a wide hotel portfolio, larger than its main competitors

(514) *First*, information gathered by the Commission during the market reconstruction exercise indicates that Booking's hotel portfolio in the EEA is larger than its main competitors. Booking's portfolio in the EEA is composed of approx. […] properties, including […] hotels, split between […] independent hotels and […] hotel chains[681] and approx. […] 'hotel-like' properties[682] within Booking's 'home' category, which includes entire properties for short-stay rental, 'hotel-like' properties such as bed & breakfasts and guest houses, and 'unique' places (campsites, houseboats, castles and barns).[683] Based on the information submitted by Booking's main rivals during the market reconstruction exercise, .[684]

(515) *Second*, Booking sources approximately [90-100]% of its inventory from direct bilateral contracts with hotels.[685] As mentioned above, the market investigation identified bilateral direct contacts with hotels as a material competitive advantage. Since Booking's inventory is almost fully 'proprietary' (i.e., Booking does not depend on B2B suppliers or third-party content providers), Booking can control the distribution channel by negotiating prices and conditions directly with hotels.[686] During the market investigation, an OTA confirmed that point and indicated that Booking's large portfolio of hotels built on direct relations offered Booking a strong bargaining power on hotels: '*Booking has more direct relations with hotels than other OTAs. In an indirect relation, it is more difficult to impose conditions as you cannot directly negotiate. Secondly, if your reach is extremely high, you negotiation position is much stronger. The larger the OTA, the stronger the bargaining power, the better your offer, the more* consumers *you (can) attract and the more you can further grow. It is a vicious circle*'.[687]

(516) *Third*, Booking's superiority in terms of hotel portfolio is highlighted in some of Booking's internal documents. For example, [Details of Booking's business strategy][688]. [Details of Booking's business strategy].[689]

(517) *Fourth*, the results of the market investigation confirmed that Booking is the leading OTA in terms of breadth of hotel portfolio in the EEA. Both OTAs and hotels ranked Booking as the number one OTA in that category with the maximum score and a large advance on its competitors.[690] As indicated by an OTA: '*Booking is leading in terms of breadth of hotel portfolio with 6,2 million listings*'.[691] Other OTAs pointed to the fact that the two largest hotel OTAs, Booking and Expedia '[…] *have, by far,*

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681 Form CO, Attachment W, response to QP8, Annex 8.

682 Response to RFI 6, question 6. Booking's portfolio includes approx. […] properties under Booking's 'home' category, the Notifying Party estimates that approx. […] of its 'home' category would be 'hotel-like' properties.

683 Form CO, Attachment W, response to QP8, paragraphs 23.1 et seq.

684 Responses to Q4 of RFI II Competitors Data, available in data room.

685 Form CO, paragraph 8.9.

686 In comparison, an accommodation OTA provider who source inventory via a B2B agreement (e.g., a commercial affiliate agreement) is dependent on the third-party supplier for access to inventory as well as the price and conditions that it offers to end-users.

687 Response to question 26.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

688 Booking ID D257, p.2.

689 Booking ID D255, p. 7.

690 Response to question 18 of Questionnaire Q1 to OTAs [DOC ID 2739]; response to question 17 of Questionnaire Q3 to hotels [DOC ID 2737].

691 Response to question 18.4.1 of Q1 to OTAs [DOC ID 2739].

*the largest breadth of hotel portfolio due to their first-mover advantage [...]*';[692] however, as mentioned by one of them, '*Booking has a dominant position in the European market and Expedia has top position in North America market*.'[693]

(518) In its response to the SO, the Notifying Party claims that based on its review of the information included in the data room on the number of properties provided by competitors, some competitors list a larger number of chain hotels and independent hotels than Booking.[694] The Commission disagrees with the Notifying Party's claim. In particular, when comparing Booking's properties and the properties of rival OTAs which provided data for the market reconstruction, the Notifying Party has deliberately not taken into account among Booking's hotels those 'hotel-like' properties included in Booking's 'home' portfolio. However, the Commission considers that these 'hotel-like' properties should be taken into account because (i) these are properties akin to hotels which should be counted towards the total number of hotel properties of Booking in the EEA; and (ii) as the Notifying Party's advisors could verify in the data room, rival OTAs have included those 'hotel-like' properties within the count of 'hotel' properties because in the requests for information sent to competitors for the market reconstruction the Commission's definition of 'hotel' also referred to hotel-like properties.

6.4.7.3. Booking has a core pool of customers that makes most of its sales

(519) Evidence in the file indicates that Booking has access to a large pool of high-spending, loyal customers that frequently return to its platform. In comparison, rival OTAs disproportionately rely on 'new customers', who make irregular accommodation bookings and are less likely to be loyal (section 6.4.7.4 below). Booking outperforms OTA competitors in attracting the highest value consumers.

(520) *First,* about [20-30]% of Booking's customers worldwide represent [70-80]% of its revenue. Booking refers to these customers as [Details of Booking's customers and revenue].[695]

**Figure 26: [Details of Booking's customers]**

[Figure redacted]

*Source: BOOK_00972871, Annual Strategic Offsite – Our Ambition and Strategy, slide 9 [DOC ID 51853-85185].*[696]

(521) *Second*, as can be seen in the figure below, [Details of Booking's customers and business strategy]. '[697]

**Figure 27: Booking's strategic considerations regarding customers' travel spend**

[Figure redacted]

*Source: Response to QP8 – Attachment X – Day 1_2022 Offsite Master Deck_20 July 2022-CONFIDENTIAL.pdf, slide 16 [ID1236-219].*

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692 Response to question 18.4.1 of Q1 to OTAs [DOC ID 2739].

693 Response to question 17.5.1 of Questionnaire Q3 to hotels [DOC ID 2737].

694 Response to the SO, Annex 7, Section 5.

695 In another internal documents it is stated that the number of [Details of Booking's customers].

696 See also Attachment D018 - 2. 2021 Offsite PRESENTATION Deck_June 2021_2021.05.26, slides 7 and 24 [ID 147-4].

697 BOOK_00978535 Accelerating Customer Growth: High Value Customer Deep dive, slide 7 [DOC ID 51853-90849].

(522) In addition to HVCs, Booking has identified two other tiers of customers:

- [Details of Booking's customers]: [Details of Booking's customers] of the remaining [80-90]% of customers.
- [Details of Booking's customers]: [Details of Booking's customers] of the remaining [80-90]% of customers.[698]

(523) [Details of Booking's customers and business strategy].[699] [Details of Booking's customers and business strategy].[700]

(524) [Details of Booking's customers and business strategy].

6.4.7.4. Booking has the most loyal and broadest customer base

(525) *First*, some of Booking's internal documents highlight that Booking has the largest customer base. For example, in a recent document in which Booking summarizes its strategy and objectives in accommodation for 2021, Booking considers that […][701].

(526) *Second*, the market investigation confirmed Booking's pre-eminence in terms of customer base since both OTAs and hotels ranked Booking as the number one OTA with almost the maximum score and a large advance on all competitors.[702] As mentioned by an OTA: '*Only Booking has a worldwide larger customer base; Expedia is more USA, HRS more german, Trip.com more Chinese, Odigeo and Last Minute have a big European customer base, while Kiwi and Airbnb have a worldwide base'*;[703] . Hotels expressed similar views with a hotel referring to Booking as *'[…] the most popular site by far'*;[704] another hotel indicated that: *'Given the stupendous market power of Booking.com it would be no surprise that they benefit from a very strong customer base in our markets'*.[705] An industry association stated that '*Booking's brand is now so strong and well-known that many end-customers do not know the name of their hotels, they only know that they booked on Booking. As a result, end-customers become very loyal to Booking, in particular with the Genius program, to the detriment of their 2 loyalty towards hotels. This is*

698 BOOK_00978535 Accelerating Customer Growth: High Value Customer Deep dive, slide 5 [DOC ID 51853-90849]; BOOK_01254624 High-value customers: segmentation and approach, slide 4 [DOC ID 51856-77972].

699 BOOK_00982141 Loyalty Strategy & Metrics, slide 9 [DOC ID 51853-94455] and BOOK_01053256 Booking.com Loyalty Strategy 2025+, slides 7 and 28 [DOC ID 51854-66030].

700 In the Excel file BOOK_00982986 [DOC ID 51853-95300] on worksheet 'UPDATED Global vs Genius vs Cus' in row 114 Booking calculated profits per customer by value segment. For 'low present value customers' the calculations show losses of around 1-3 EUR per customer. Booking argued in its response to Questions 4 and 6 of RFI 30 that these calculations do not represent real losses and arise because marketing '*costs are equally split between all transactions in a channel, the costs of the more expensive advertisements that are typically targeted at perceived higher value transactions (e.g. one week in Paris) are spread equally between all transactions, including lower value transactions (e.g. one night in Arles).*' However, the Commission sees no trace of marketing costs being split equally by customer, as in the same file (row 113 on the same sheet) per customer marketing costs are higher for high value customers than for low-value customers.[Details of Booking's profits per customer]

701 BOOK_02057025 Prioritizing For Impact, Booking.com 2020 Plan, p.1 [DOC ID 56978-22037].

702 Response to question 18 of Questionnaire Q1 to OTAs [DOC ID 2739]; Response to question 17 of Questionnaire Q3 to hotels [DOC ID 2737].

703 Response to question 18.5.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

704 Response to question 17.5.1 of Questionnaire Q3 to hotels [DOC ID 2737].

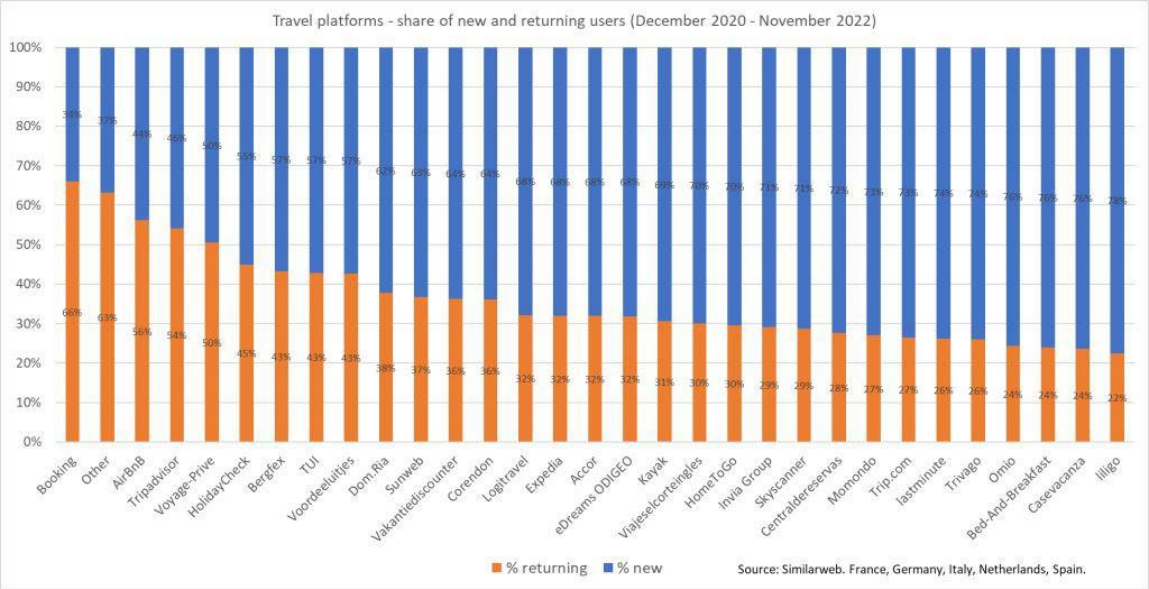
705 Response to question 17.5.1 of Questionnaire Q3 to hotels [DOC ID 2737].

*particularly true for independent hotels and small hotel chains which do not have a strong branding power.'*[706]

(527) *Third,* Booking has a customer base that is more loyal than that of its competitors with about [Details of Booking's customer behaviour].[707]

(528) In this context, the figure below is based on Similarweb data provided by Booking and presents the share of returning and new customers[708] of various travel websites aggregated over five Member States (France, Germany, Italy, Netherland and Spain). It shows that Booking enjoys a much higher share of returning customers than other travel websites.

**Figure 28: Share of returning and new customers**




*Source: Commission calculation based response of the Notifying Party to the StC decisions, Annex 3.*

This conclusion is supported by Booking's own internal figures, estimating likelihood to rebook at about [60-70]%.

**Figure 29: [Details of Booking's customer behaviour]**

[Figure redacted]

*Source: response to the StC decisions, Attachment 1.2 – 84 Survey reports, BRES44_Post-trip CXM_Rides Q3 2021, slide 10.*

(529) These findings are also supported by the market investigation. All competitors who expressed an opinion indicated that Booking enjoys higher customer loyalty than other accommodation OTAs.[709] One competitor stated that 'user surveys and testing in Europe, Booking.com comes as the top travel booking platform mentioned by

706 Non-confidential minutes of a call with HOTREC, dated 21 June 2023 [DOC ID 58045], paragraph 4.

707 Booking response to StC decisions, Attachment 1.2, BRES34_CXM Post-trip_H2 2020.pdf. [DOC ID 51667].

708 New Users are unique visitors not having visited the website for at least three months. The remaining users are Returning. See Similarweb https://support.similarweb.com/hc/en-us/articles/360017986977-New-vs-Returning-Users, retrieved on the 12th of December 2022.

709 eRFI to competitors, question E.1 [DOC IDs 52995, 54085, 53611, 54053, 54479, 54869. 55459, 55346, 56637, 56624, 55454, 2422, 56683, 56790, 55447, 56602, 55319].

users.'[710] Another one explained that: 'Booking's brand recognition is very strong and generates high customer loyalty.'[711]

6.4.7.5. Booking is the market leader in terms of attracting web traffic

(530) *First*, in several of its internal documents, [Booking's assessment of its market position].[712] [Booking's assessment of its market position].[713]

(531) *Second*, Booking's pre-eminence in terms of traffic awareness was confirmed by the market investigation. OTAs and hotels have ranked Booking as the number one OTA in terms of 'ability to attract online traffic' with almost the maximum score.[714] As mentioned by an OTA: *'Reports consistently demonstrate that Booking has the strongest ability to attract online traffic mainly thanks to its advertising power*'[715]; a hotel indicated that: '*Without a doubt Booking.com as number 1 due to massive marketing budget ( it was all over the news) and by far biggest presence in online visibility*'[716]; another hotel mentioned that: '*Booking.com is the biggest in our market. From all the reservations made by OTA's is 98% made by booking.com, 2% by expedia and from the others we almost have no reservations*'[717]; another hotel considers that: '*Only Booking and partially Expedia can bring customers.*'[718]

6.4.7.6. Brand recognition

(532) The market investigation establishes that brand recognition is linked to an OTA's ability to attract online traffic and that the two competitive parameters are related. In other words, Booking's pre-eminence in traffic awareness as identified above provides an indication of the strength of Booking's brand in the EEA.

(533) Booking's pre-eminence in terms of brand recognition is confirmed by the market investigation. OTAs and hotels have ranked Booking as the number one OTA in terms of 'brand recognition' with almost the maximum score and a significant advance on Booking's next competitors.[719] As indicated by an OTA: '*Booking is the absolute leader'*[720]; a hotel stated that: '*On European market Booking.com is main brand. Others sales channels are less important, generationg* [sic] *low amount of bookings*'[721]; another one mentioned: '*Booking.com is Europe's market leader and after this there is nothing comparable for a very long time. Airbnb is very strong in certain destinations throughout Europe but better regulated than Booking.com. Expedia attracts the international guests while as HRS attracts German corporate guests mainly*.' [722]

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710 eRFI to competitors, question E.1 [DOC ID 54793].
711 eRFI to competitors, question E.2 [DOC ID 56624].
712 Booking's ID D297, [DOC ID 1535-516].
713 Booking's ID D242, [DOC ID 1535-461], slide 31.
714 Response to question 18 of Questionnaire Q1 to OTAs [DOC ID 2739]; Response to question 17 of Questionnaire Q3 to hotels [DOC ID 2737].
715 Response to question 18.2.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
716 Response to question 17.2.1 of Questionnaire Q3 to hotels [DOC ID 2737].
717 Response to question 17.2.1 of Questionnaire Q3 to hotels [DOC ID 2737].
718 Response to question 17.2.1 of Questionnaire Q3 to hotels [DOC ID 2737].
719 Response to question 18 of Questionnaire Q1 to OTAs [DOC ID 2739]; and response to question 17 of Questionnaire Q3 to hotels [DOC ID 2737].
720 Response to question 18.1.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
721 Response to question 17.1.1 of Questionnaire Q3 to hotels [DOC ID 2737].
722 Response to question 17.1.1 of Questionnaire Q3 to hotels [DOC ID 2737].

6.4.7.7. Booking's advertising strength in the EEA is higher than its main competitors

(534) The evidence in the file indicates that Booking's advertising strength in the EEA is significantly higher than that of its main competitors. In particular, Booking spends more in advertising that its main competitors and, based on information submitted by Booking, for every Euro spent on paid advertising, Booking generates approximately EUR [...] in TTV and around EUR [...] in revenues on an 'as-booked' basis.[723] The results of the market investigation also indicate that Booking is a particularly strong advertiser and that rivals have difficulties to outbid Booking in Google Ads, which is a very important advertising channel.

(535) *First*, the Commission's market investigation indicates that Booking's marketing expenditure in the EEA is larger than its main competitors by orders of magnitude.

(536) The Notifying Party considers that the Commission misunderstood Booking's approach to advertising expenditures and, in particular that (i) Booking's global budget is not out of place compared to the budget of competitors, in particular Expedia and Airbnb and that a large advertising budget is not necessary to succeed on the OTA market as demonstrated by Airbnb; (ii) the vast majority of Booking.com's expenditure takes the form of performance marketing, which does not require large, fixed marketing budgets because the expenditure is only incurred for as long as it meets the ROI target (i.e. it is capable of supporting a profitable line of business for Booking.com); (iii) a high advertising spending on Google is not necessary for success, as clearly demonstrated by Airbnb's experience.[724]

(537) The Commission considers that the Notifying Party's arguments are unfounded since (i) the reference to Booking's budget not being out of place with its competitors is irrelevant since Booking seems to refer to comparisons of the global advertising budget of its competitors as opposed to the EEA budget (see paragraphs ((538) and ((541) below; (ii) the reference to Airbnb's success as an example that advertising spend is not an important parameter for OTAs is irrelevant since Airbnb is precisely not a hotel OTA; (iii) the Notifying Party's allegation that advertising is not important for OTAs contradicts the findings of the market investigation (see paragraph ((507) above); and (iv) the Commission fails to understand how Booking's marketing strategy of adopting a performance based model can demonstrate that Booking's advertising spend is lower than its competitors.

(538) In contrast to the Notifying Party's views, the Commission considers that evidence from several sources show that Booking's marketing expenditures in the EEA is by far larger than its competitors'.

(539) <u>In the first place</u>, in 2022, Booking's advertising expenditure in the EEA amounted to approx. EUR [...] Billion, corresponding to approx. [20-30]% of its overall revenues. Approximately [...]% of the marketing expenditure in 2022, totalling approx. EUR [...] Million relates to advertising in Google.[725]

(540) <u>In the second place</u>, Booking submitted a presentation to the Commission on 28 September 2022,[726] which includes estimates of the global advertising budget of

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723 Response to RFI 23, paragraph 3.3 and Table 1.

724 Response to the SO, paragraphs 5.73 and 5.74.

725 Form CO, Attachment W, Response to pre-notification Request for Information (QP8), Annex 14.

726 European Commission Teach-in: advertising capabilities, negotiations with hotels and discounting, 28 September 2022 [DOC ID 19670].

its main competitors. As a consequence, this document allows for some points of comparison. According to Booking, Airbnb and Trip.Com's respective global budgets for advertising would amount to USD 723 million and 722 million, i.e., [Details of Booking's budget], and Expedia's global budget for advertising would amount to USD 4.2 Billion.[727]

(541) In the third place, the Commission collected data from Booking's main competitors in the hotel OTA market on their advertising expenditure in the EEA. The information submitted shows that Booking's advertising spend in the EEA is larger than its main competitors by several orders of magnitude.[728]

(542) *Second*, Booking is able to gain significant sales from every Euro spent on advertising.

(543) In the first place, data submitted by Booking indicates that for every Euro spent on paid advertising, Booking generates approx. EUR [...] in sales of accommodation OTA services (in TTV) and EUR [...] in revenues in accommodation OTA services on an 'as-booked' basis. In this regard, through paid advertising channels, Booking has been able to generate in 2022, EUR [...] Billion in accommodation OTA sales (in TTV), and EUR [...] Billion in revenues. Considering that, in 2022, hotel OTA sales represented [...]% of Booking's total accommodation OTA sales,[729] through paid advertising, Booking has been able to generate EUR [...] Billion in hotel OTA TTV in the EEA in 2022, corresponding to a approx. [10-20]% market share in hotel OTA services in the EEA and approx. [20-30]% of Booking's own sales of hotel OTA services to end customers.

**Table 7: [Details of Booking's advertising spend]**

[Table redacted]

*Source: Response to RFI 23, Table 1*

(544) In the second place, specifically regarding Google advertising channels, for every Euro spent, Booking generates approximately EUR [...] in sales of accommodation OTA services (in TTV) and around EUR [...] in revenues of accommodation OTA services on an 'as-booked' basis. In this regard, through Google advertising Booking has been able to generate in 2022, EUR [...] Billion in hotel OTA sales,[730] corresponding to a [10-20]% market share in hotel OTA services in the EEA and [10-20]% of Booking's own sales of hotel OTA services to end customers.

**Table 8: [Details of Booking's advertising spend]**

[Table redacted]

*Source: Response to RFI 23, Table 2*

(545) *Third*, evidence in the file indicates that Booking is a very strong player in Google ad bidding.

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727 European Commission Teach-in: advertising capabilities, negotiations with hotels and discounting, 28 September 2022, slide 6 [DOC ID 19670].

728 Response to RFI II Competitors Data, Question 3.

729 Based on B2C NA TTV provided by the Notifying Party in response to RFI 17, Annex 3, 'Euromonitor without Airbnb unadjusted' tab. In 2022, Booking's NA TTV for total accommodation OTA services amounted to approx. EUR [...] billion; and for hotel OTA services to approx. EUR [...] Billion.

730 This is applying the ratio of hotel OTA sales ([70-80]%) in Booking's total accommodation OTA sales of EUR [...] billion arising from advertising in Google.

(546) In the first place, Booking's click coverage data provided in the same presentation to the Commission indicate that [Details of Booking's advertising spend].[731] [Details of Booking's advertising spend].'[732] [Details of Booking's advertising spend].[733] [Details of Booking's advertising spend].[734]

(547) In the second place, Booking's ability to outperform its rivals is also supported by the results of the market investigation with a majority of OTAs indicating that they had difficulties to outbid Booking on Google Ads. In particular, a number of OTAs referred to Booking's pre-eminence to run ads on Google, which they consider to represent by far the most important advertising channel. For example, an OTA indicated that Booking has '[…] *highest share of advertising with Google, dominating adwords/paid ads*'[735]; another one mentioned: *'Booking has the strongest advertising strength, relying on a budget unmatched in the travel sector*'[736]; according to another OTA: *'Booking appears in every single search, lots of money invested in organic and paid search results*.'[737]

(548) A large majority of hotel OTAs also indicated that they had difficulties in outbidding Booking in Google AdWords for accommodation searches.[738] Almost half of the respondents indicated that they never or rarely outbid Booking with the other half indicating that they could do it 'sometimes'.[739] As a result, the general pattern appears to be that no one is able to regularly outbid Booking on Google ads. By way of illustration, a competitor indicated that '*This depends on the country, and the effort Booking puts into winning on a market. If they focus on a market they are able to outbid us easily'*[740]; another one was more categorical and indicated that *'We can't compete on accommodation level with Booking conversion rates.'*[741]

(549) Some hotels expressed similar views with a hotel indicating that: '*Booking invest in Google adwords and normally is on the top on google.*'[742] Another one explained that: '*Without a doubt Booking.com as number 1 due to massive marketing budget (it was all over the news) and by far biggest presence in online visibility:'*[743] another one specified that: '*Booking.com advertises on every google.gr search at the top*

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731 Booking Holdings / ETG: European Commission Teach-in: advertising capabilities, negotiations with hotels and discounting, slide 10 [DOC ID 19670].

732 Booking Holdings / ETG: European Commission Teach-in: advertising capabilities, negotiations with hotels and discounting, slide 10 [DOC ID 19670].

733 '*Booking has its own bidding algorithms but ~[...]% OF Paid Search spend is run through Google's algorithms*'. European Commission Teach-in: advertising capabilities, negotiations with hotels and discounting, 28 September 2022 [DOC ID 19670].

734 European Commission Teach-in: advertising capabilities, negotiations with hotels and discounting, 28 September 2022, slide 9 [DOC ID 19670].

735 Response to question 18.3.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

736 Response to question 18.3.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

737 Response to question 18.3.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

738 Response to question B.10 of e-RFI to Competitors.

739 Response to question B.10 of e-RFI to Competitors.

740 Non-confidential version of [OTA]' response to question B.10 of e-RFI to Competitors [DOC ID 54053].

741 Non-confidential version of Elmar [OTA]'s response to question B.10 of e-RFI to Competitors [DOC ID 56795].

742 Response to question 17.3.1 of Questionnaire Q3 to Hotels [DOC ID 2737].

743 Response to question 17.3.1 of Questionnaire Q3 to hotels [DOC ID 2737].

*lines paying millions for this feature for many years now, as a matter fact searching for one Hotel by its name, Booking.com appears before the Hotel itself.'*[744]

(550) *Last,* the market investigation also confirmed Booking's pre-eminence in advertising. Both OTAs and hotels ranked Booking as the number one OTA for 'advertising strength' with almost the maximum score and a large advance on its competitors.[745]

(551) In the first place, from the point of view of OTAs, Booking was ranked as the number one OTA in terms of advertising strength with a mean of 4.83 out of 5 and 26 out of 29 respondents rated Booking as 'very strong' in this sector.[746] The second main OTA in the EEA, Expedia was ranked in third position with a mean of 3.83.[747]

(552) In the second place, from the point of view of hotels, Booking was also ranked as the number one OTA in terms of advertising strength with a mean of 4.86 out of 5 and 78 out of 87 respondents qualified Booking as 'very strong' in that sector.[748] In comparison, Expedia, as second, scored a mean of 4.11.[749]

(553) It follows from the above that Booking's advertising strength in the EEA is far larger than that of its main competitors, and that, through advertising, Booking is able to secure [20-30]% of its market share in the hotel OTA market in the EEA (on a B2C basis). Only through advertising in Google, Booking is able to secure [20-30]% of its market share in the hotel OTA market in the EEA (on a B2C basis).

6.4.7.8. Customers data

(554) As previously mentioned, hotels consider that customers' data is an important to very important parameter for an accommodation OTA to be able to effectively compete on the market.[750]

(555) The market investigation pointed to Booking's pre-eminence over its competitors in terms of access and use of data. Both OTAs and hotels ranked Booking as the number one OTA for added data-driven services on hotel performance.[751] On the OTA side, Booking obtained a mean of 4.55 out of 5 with a majority of respondents qualifying Booking as 'very strong'.[752] As mentioned by an OTA: '*Added value of data driven services only comes with large customer base, therefore Booking dominant*'[753]; a hotel also indicated that '*Only booking.com is giving any useful data of hotel performance*'[754]. In comparison, Expedia, in a second position, obtained a mean of 4.13.[755]

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744 Response to question 17.3.1 of Questionnaire Q3 to hotels [DOC ID 2737].

745 Response to question 18 of Questionnaire Q1 to OTAs [DOC ID 2739]; response to question 17 of Questionnaire Q3 to hotels [DOC ID 2737].

746 Responses to question 18.3 of Questionnaire Q1 to OTAs [DOC ID 2739].

747 Responses to question 18.3 of Questionnaire Q1 to OTAs [DOC ID 2739].

748 Responses to question 17.3 of Questionnaire Q3 to hotels [DOC ID 2737].

749 Responses to question 17.3 of Questionnaire Q3 to hotels [DOC ID 2737].

750 Response to question 21 of Questionnaire Q3 to hotels [DOC ID 2737].

751 Response to question 17 of Questionnaire Q1 to OTAs [DOC ID 2739]; Responses to question 17 of Questionnaire Q3 to hotels [DOC ID 2737].

752 Response to question 18.7 of Questionnaire Q1 to OTAs [DOC ID 2739].

753 Response to question 18.7.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

754 Response to question 17.7.1 of Questionnaire Q3 to hotels [DOC ID 2737].

755 Response to question 18.7 of Questionnaire Q1 to OTAs [DOC ID 2739].

(556) Hotels also ranked Booking as number one for added-data driven services with a mean of 4.34 out of 5 whereas Expedia comes second with a mean of 4.09 .[756]

(557) Based on the foregoing, the Commission considers that Booking appears to outperform its competitors for each of the parameters that determine the level of competitiveness of an OTA and, in particular, for those defined as the most important by the market investigation.

*6.4.8. Network effects, customer inertia and unmatchable advertising spend reinforce Booking's position on the market making it unassailable*

(558) As explained in section 6.2.3 above, network effects create high barriers to entry and expansion into the hotel OTA market in the EEA because rivals and potential entrants require significant effort to reach competitive scale. The existence of an operator already benefiting from an extensive network and very high market shares exacerbate such difficulties even further. In particular, the evidence presented in the above sections 6.4.4, 6.4.5, 6.4.6 and 6.4.7 indicates that:

(559) *First*, Booking is the leading supplier of OTA services to hotels, with a market share of [60-70]% (on a B2B basis) and has been increasing the gap with competitors over the past 10 years (from a market share of [20-30]% 2013 to [60-70]% in 2022) (see Table 4 above). Booking's main competitor, Expedia has a much lower market share ([10-20]%) which has not recovered to its 2019 levels yet. The remainder of the market is composed of number of competitors (including HRS, TUI, Lastminute, Weekendesk, Travelminit and potentially smaller OTAs with their own proprietary content[757]), that together hold a [10-20]% market share.

(560) *Second,* Booking is also a leading hotel OTA for end customers, with a market share of [60-70]% (see Table 5 above). Booking's main rival, Expedia has a much lower market share at [5-10]%, and the remaining market players include a long-tail of hotel OTAs with market shares lower than [0-5]%. This makes Booking especially attractive for hotels to list their hotel rooms in Booking's platform. Indeed, the results of the Commission's market investigation indicate that despite having a higher commission than its main competitors, Booking remains an 'unavoidable partner' for hotels.

(561) *Third,* consistent with Booking's market position, Booking has the highest hotel portfolio amongst its main competitors and enjoys significant customer inertia. [Details of Booking's customer behaviour].

(562) *Fourth*, Booking is especially strong in online advertising (particularly through Google), which exacerbates the impact of network effects. Indeed, the market investigation has indicated that advertising online and, particularly, through Google is an important customer acquisition channel for OTAs. [Details of Booking's customer behaviour].[758] Based on data submitted by the Notifying Party, through

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756 Responses to question 17.7 of Questionnaire Q3 to hotels [DOC ID 2737].

757 Data submitted by the Notifying Party in Response to RFI 6, Annex 8, refer to other OTAs with their own accommodation content including, among others, Dnata, Onthebeach, TravelUp, LoveHolidays, ThomasCook, Hotelmix, Lodging World, Sunshine.co.uk. However, the Commission notes that none of these OTAs are identified in the market share estimates provided by the Notifying Party such that it is impossible to estimate their market share.

758 Indeed, according to the explanations of the Notifying Party its advertisement spend account to [40-50%] of its revenue.

paid advertising, Booking has been able to generate EUR [...] Billion in hotel OTA TTV in the EEA in 2022, corresponding to a [10-20]% market share in hotel OTA services in the EEA and [20-30]% of Booking's own sales of hotel OTA services to end customers. Specifically, through advertising in Google, Booking was able to generate in 2022, EUR [...] Billion in hotel OTA sales, corresponding to a [10-20]% market share in hotel OTA services in the EEA and [10-20%] of Booking's own sales of hotel OTA services to end customers.[759]

(563) Based on the above four findings, the Commission finds that Booking has an unmatched scale. It is therefore very difficult for other OTAs to compete against the scale advantage of Booking. The ability of competitors to grow and challenge Booking's position is further limited by customer inertia and Booking's unmatchable advertising spend. Furthermore, there is only limited space left in the market to grow through competition with other OTAs of comparable size.

(564) As explained by an OTA during the market investigation '*For a hotel OTA to attract a critical volume of end customers, the OTA needs to obtain attractive content in terms of rates and other elements (e.g., cancellation, 'pay at property') from hotels and accommodation providers. However, accommodation providers would not give access to their inventory at attractive conditions unless the OTA has a critical customer base. The cost for acquiring a customer of accommodation OTA services is generally higher than the cost for acquiring a customer of flight OTA services. This is because the accommodation OTA market is characterized by the existence of players, like Booking, with a very significant brand position which tend to concentrate the best rates from hotels and spend significantly on advertising and marketing (in particular in Search Engine Marketing, such as Google ads).*'[760]

(565) In addition, qualitative evidence gathered during the market investigation indicates that the presence of a dominant company (Booking) which enjoys network effects already acts as a barrier to entry/expansion in the hotel OTA market:

(a) The majority of hotels who expressed a view indicated that they were not aware of any new entry into the hotel/accommodation OTA over the last 3 years.[761] Some hotels indicated that '*Not successfully. As indicated above, it is quite impossible to start successful OTA and compete to Booking.com*'[762]; that *'[l]arge OTA's are very dominant in the market and would be a barrier for entry for new operators in terms of visibility and promotion*'[763] Another hotel also declared that *'[m]arket entry for new OTAs are more or less a thing of the past, we saw a few struggling recently*.'[764]

(b) The majority of OTAs who expressed a view considered that Booking's position acts as a deterrent on new market entry.[765] OTAs noted that '*They are discouraged by the dominance of booking.com*'[766]; that '*it is a strong competitor and ther[e]fore a high investment is necessary for new partic[i]pants in the market*'[767]; that *'[...] For hotel-*

759 See section **6.4.7.7** above.

760 Non confidential minutes of a conference call with [OTA], dated 1 December 2022 [DOC ID 57675], paragraph 2 (iii).

761 Response to question 24 of Questionnaire Q3 to hotels [DOC ID 2737].

762 Response to question 24.1 of Questionnaire Q3 to hotels [DOC ID 2737].

763 Response to question 24.1 of Questionnaire Q3 to hotels [DOC ID 2737].

764 Response to question 19.1 of Questionnaire Q3 to hotels [DOC ID 2737].

765 Response to question 28 of Questionnaire Q1 to OTAs [DOC ID 2739].

766 Response to question 28.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

767 Response to question 28.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

*only OTAs, it is nearly impossible to enter the current market. Investments are high, the quality of the available third-party content is low and acquisition costs are high. Hotel suppliers are also hesitant to offer better deals to other OTAs given their dependence of Booking.com [...]*'[768]; and that '*Booking's position acts as a deterrent because its size and penetration of the market make it difficult for rivals to come up with a value proposition to hotel providers*.'[769]

*6.4.9. Conclusion: Booking is dominant on the hotel OTA market*

(566) Based on the foregoing, the Commission's conclusion is that Booking holds a dominant position on the market for hotel OTA services in the EEA.

**6.5. With the Transaction, Booking seeks to find new avenues to growth its accommodation OTA business and overall**

*6.5.1. The Notifying Party's views*

(567) The Notifying Party alleges that the Transaction allows Booking to add proprietary flight OTA capabilities to its existing accommodation and car rental OTA activities.[770] Booking explains that its current activities in the European flight OTA sector result from the commercial affiliated agreement that Booking has with ETG, which activities are very limited (flights currently account for less than [0-5%] % of Booking.com's EEA OTA TTV).[771]

(568) [Details of Booking's flight strategy].[772] [Details of Booking's flight strategy].[773]

(569) Booking also considers that the Transaction rationale is reflected in Booking's valuation of ETG's business. According to this valuation, [...]% of ETG's value would derive from what ETG itself generates from its own brands; [...]% from the acceleration of Booking's own flight OTA offering in the EEA; and the remaining [...]% from the expected synergies from cross-selling other travel services (including accommodations) to the incremental flight customers that will be brought to Booking's platform.[774]

(570) Finally, Booking indicates that the Transaction is an important step towards Booking's 'Connected Trip' vision. The Connected Trip represents Booking's long-term aspiration to expand into other verticals than accommodations in order to be able to link different travel components together and provide a one-stop-shop solution to end consumers.[775]

*6.5.2. The Commission's assessment*

6.5.2.1. Connected Trip is Booking's strategic choice to increase growth of its accommodation business

(571) The Commission considers that Booking has experienced a slowdown in the growth of its revenue from its traditional hotel business and, as a consequence, has been trying to find new avenues for growth. For example, Booking's internal documents

768 Response to question 28.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
769 Response to question 28.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
770 Form CO, para. 1.11.
771 Form CO, para. 1.13 and 1.14.
772 Form CO, paragraph 1.14.
773 Form CO, para. 3.4 and 3.5.
774 Form CO, para. 1.16.
775 Form CO, para. 1.17.

reflect that while Booking '*significantly outgrew the accommodation market'* between 2010 and 2019, the '*OTA market is maturing and [Booking's] growth rate had been slowing pre-pandemic'*.[776]

(572) As can be seen in the figure below, Booking observed that its overall customer growth slowed down, and the average transaction value remained flat. On the other hand, the same figure shows that Booking identified a growth potential in the HVC segment. As explained in section 6.4.7.3 above, customers in this segment, although representing only [20-30]% of Booking's customers worldwide, account for approx. [70-80]% of Booking's revenues. Booking concludes that it must build stronger direct relationships with its existing best customers in order to increase their loyalty (or 'stickiness'). In order to achieve this goal, Booking is developing the Connected Trip,[777] i.e., a comprehensive travel ecosystem that would allow customers the possibility of booking multiple travel services on the Booking platform.[778]

**Figure 30: Booking's strategic goal with the Connected Trip**

[Figure redacted]

*Source: BOOK_00972871, Annual Strategic Offsite – Our Ambition and Strategy, slide 9 [DOC ID 51853-85185].*[779]

(573) The slide above explains that in view of the slowing growth in Booking's hotel OTA business, the purpose of Connected Trip is to increase Booking's customer loyalty in order to drive growth of the accommodation business.

(574) The slide below shows the potential of Connected Trip: [50-60]% of all travels are connected trips involving at least two verticals and connected trips involve longer stay and higher accommodation spend.

**Figure 31: The potential of Connected Trip**

[Figure redacted]

*Source: response to the StC decisions, Attachment 1.2 – 84 Survey reports, BRES02_Quant_ Report -BPC Summary V3.3 UK_DE_FR November 2019, slide 20.*

(575) The view that connecting multiple travel verticals aims at boosting growth in accommodations – and in particular attracting the highest value customers - is repeated consistently in Bookings' internal documents. In one internal document is it explained that the *[Details of Booking's business strategy]'*[780] [Details of Booking's business strategy].'[781]Another internal document states that: *[Details of Booking's*

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776 Booking's internal document D018, 2. 2021 Offsite PRESENTATION Deck_June 2021_2021.05.26, slides 6, 7 and 9 [DOC ID 147-4].

777 Booking's internal documents D018, 2. 2021 Offsite PRESENTATION Deck_June 2021_2021.05.26, slides 17 and 20 [DOC ID 147-4]; BOOK_02056716 Q53. D020 Booking Holdings 2020 Strategic Offsite Deck – Final (1), slides 4 and 30 [DOC ID 56978-21728]; D256 2022 Accommodation Strategy & Objectives – ELT Memo, slide 5 [DOC ID 526-212]; D333, slides 2 and 10 [DOC ID 526-289]; D338 Strategic Offsite – June 2019, slides 29-33 and 92 [DOC ID 526-294].

778 Booking's internal documents D018 2. 2021 Offsite PRESENTATION Deck_June 2021_2021.05.26, slide 17 [DOC ID 147-4]; D003 B.com Flights M&A Discussion Materials (June 23, 2021) slide 3 [DCO ID 147-3]; D010 Project Bahamas – Pre-LOI Discussion Materials (Aug 2021), slide 3 [DOC ID 147-33].

779 See also Attachment D018 – 2. 2021 Offsite PRESENTATION Deck_June 2021_2021.05.26, slides 7 and 24 [ID 147-4].

780 D020 – Booking Holdings 2020 Strategic Offsite Deck – Final (1), slide 45 [DOC ID 56978-21728], emphasis in the original document.

781 D020 – Booking Holdings 2020 Strategic Offsite Deck – Final (1), slide 74 [DOC ID 56978-21728].

*business strategy].'*[782] Another internal document explains that : *[Details of Booking's business strategy].'*[783]

(576) Booking's strategy as explained above should also be understood against the background of internal documents in which Booking states that [Details of Booking's business strategy].[784] [Details of Booking's business strategy].

6.5.2.2. A Flight offering is the steppingstone to the 'Connected Trip' and to growth in the sale of accommodation in general

(577) A Flight offering is viewed by Booking as the steppingstone to Connected Trip and consequent additional growth in the sale of accommodations. The Commission found several pieces of evidence in Booking's internal documents, which corroborate this finding.

(578) For example, an internal email exchange between Booking's senior management explains that: [Details of Booking's business strategy].'[785] Another Internal documents explain that [Details of Booking's business strategy].'[786] Another internal document indicates that *'**Strategy:** [Details of Booking's business strategy].'*[787]

(579) In addition, Booking's latest Proxy Statement for 2022 indicates that Booking is *'expanding and enhancing our flight product at Booking.com, which is a key component of our Connected Trip vision'*[788].

(580) A slide from a Booking internal document on its flights business [Details of Booking's business strategy][789] [Details of Booking's business strategy].

**Figure 32: Why is Booking developing a flight offer**

[Figure redacted]

*Source: BOOK_00914751 Intro to flights vertical, current state & future plans [DOC ID51853-27067], slide 7*

(581) In an internal exchange regarding Booking's flight offer, Booking's CEO explained that *[Details of Booking's business strategy].*[790]

(582) The Commission also found evidence that ETG understood that Booking's purpose of growing in flights was a strategy to grow its accommodations business. For example, as early as 2019, an internal document of ETG reviewing ETG's potential buyer(s) indicates that, in order to sell to Booking *[...]*[791] Later, in an email to the

782 D039 – July 2020 QBR Master Deck, slide 31 [DOC ID 212].
783 D041 – BKNG_QBR_Master Deck_April 2021, slide 108 [DOC ID 214].
784 Commission calculations based on BOOK_00982141, slide 9 [DOC ID 51853-94455].
785 BOOK_00808809 [DOC ID 51852-15330].
786 D007 – Memo – M&A Board Update _ September 2021, page 3 [DOC ID 147-27] and D003, slide 3 [ID147-3]; D010, slide 3 [DOC ID 147-33].
787 D039 – July 2020 QBR Master Deck, slide 103, emphasis in the original document and slide 114, 116 [DOC ID 212].
788 Booking Notice of Annual Stockholders' Meeting and Proxy Statement, page 10 [DOC ID 120831], available at https://s201.q4cdn.com/865305287/files/doc_financials/2022/ar/2002proxybookings.pdf
789 BOOK_00914751 Intro to flights vertical, current state & future plans, slides 2 and 4 [DOC ID51853-27067].
790 BOOK_00121344 [DOC ID 51139-5532].
791 [...].

CEO of Booking, the CEO of ETG states that *[...].'*[792] In a document shared between the Parties ETG states that it is [...].[793]

(583) As stated in the figure below, the Connected Trip is a critical element of Booking's growth strategy and *'beyond accommodations, flights is the most critical element of the Connected Trip'* and Booking *'cannot execute the Connected Trip vision without a globally competitive flights platform.'*

**Figure 33: Connected Trip and flight offer**

[Figure redacted]

*Source: Attachment D003 – B.com Flights M&A Discussion Materials (June 23, 2021).pdf slide 3 [ID147-3]*

(584) Earnings calls from Booking, where the CEO and CFO of Booking Holdings present the quarterly earnings, further confirm that Booking views the flights offer as a steppingstone to the Connected Trip and that it will lead to growth in the sale of accommodations:

- Booking earnings call Q2 2021:
  - '*On our Connected Trip Vision [...] The top priority on this front has been to scale up a robust flight platform on Booking.com, which will give us the ability to engage with flight bookers early in their travel journey and allow us an opportunity to cross-sell our accommodation and other services to these bookers.*'; and '*while it remains early days for Booking's flight product, we are seeing positive data indicating we are getting entirely new customers for Booking.com. In addition, we are seeing an encouraging attach rate*[794] *of accommodation bookings from these new customers. These early data points help demonstrate that our flight offering creates a new funnel to bring incremental customers to the platform and then cross-sell an accommodation to these new customers. We expect to continue to build on the early success we are seeing with flights at Booking.com.*' (emphasis added)[795]
  - '*something that we're really pleased with is seeing the attachment rate again is something that we obviously have reason to want to do this is not just to sell a flight ticket. It's to actually get some of those higher margin, those accommodations and build out that Connected Trip.*' (emphasis added)[796]
  - In response to the following questions: '*keep sticking with the air and I guess learnings to date. And talk about this as – is this a new customer acquisition tool? Is this a cross-sell product? [...]*', Booking Holdings'

792 ETG_0000190261 [DOC ID 51542-7288].

793 Response to RFI 17 – Attachment 2 – Operating Model & Roadmap – ETG Pre-Work Exercise [DOC ID 57082], slide 11.

794 Attach rate is the share of customers who after purchasing one product (for example flight tickets) purchase (or "attach") an additional product (for example, accommodation).

795 Booking Holdings earnings call transcript Q2 2021, [DOC ID 114515], p. 5. Available at: https://ir.bookingholdings.com/events/event-details/2021/Q2-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx.

796 Booking Holdings earnings call transcript Q2 2021, [DOC ID 114515], p. 17. Available at: https://ir.bookingholdings.com/events/event-details/2021/Q2-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx.

CEO responds: '*[…] we haven't been out really marketing this, yet new customers are coming to the site. And then we're seeing them get an attractive cross-sell that I really like seeing that as a sign that this is the right direction that we're going. […] I would just leave everyone with the sense that we're very pleased. This is bringing us new customers, new customers who are buying not just flight tickets but some of them are buying hotels too. This is proving out a little bit of our long-term vision of this Connected Trip. Now, do I expect that to happen with something like activities? No, I'm not really thinking a lot of people are going to come for an activity first.*' (emphasis added)[797]

- Booking earnings call Q3 2021:
  - '*While it remains early days for Booking's flight product, we are seeing that over 25% of Booking's flight bookers are entirely new customers. With these new customers, we are seeing an encouraging attach rate of accommodation bookings. However, there is more work to be done to further optimize the cross-sell opportunity. The early signals help demonstrate, though, that a flight offering can drive incremental new customers to the platform to which we can cross-sell our accommodation product. We are beginning to test initiatives targeting these new customers, including, for example, encouraging account creation to activate Genius status, and in some cases, offering additional incentives for them to book accommodations.*' (emphasis added)[798]
- Booking earnings call Q4 2021:
  - '*On Etraveli, that was a different situation where, as I pointed out many times, how important it is for us to have this Connected Trip vision fulfilled, and one of the critical parts of it is our flight business. And we absolutely are very pleased to see not only the growth in our number of flight bookings, but also the fact the number of customers getting coming and the number who are then buying an accommodation.*' (emphasis added)[799]
- Booking earnings call Q1 2022:
  - '*On our Connected Trip Vision, we continue to make progress as we work on the foundations such as developing a flight offering on Booking.com, which is now live in 40 countries. This flight offering gives us the ability to engage with potential customers, who choose their flight options early in their discovery process and allows us an opportunity to*

[797] Booking Holdings earnings call transcript Q2 2021, [DOC ID 114515], pp. 17-18. Available at: https://ir.bookingholdings.com/events/event-details/2021/Q2-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx.

[798] Booking Holdings earnings call transcript Q3 2021, [DOC ID 114519], p. 5. Available at: https://ir.bookingholdings.com/events/event-details/2021/Q3-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx.

[799] Booking Holdings earnings call transcript Q4 2021, [DOC ID 114517], p. 13. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q4-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx.

*cross-sell our accommodation and other services to these flight bookers.*' (emphasis added)[800]

- '*We have seen that in over 70% of our flight bookings on Booking.com, the flight was the first or only product that was booked. This helps confirm the value of flights as the starting point in many people [sic] people's booking journey and it is an anchor product that we can utilize to cross-sell accommodations and other products. A meaningful percentage of bookers who first book a flight then book an accommodation. We continue our work to further optimize the cross-sell opportunity and build on the early positive signals that we are seeing so far.*' (emphasis added)[801]
- '*Flight continues to be a source for new customers with about one quarter of all flight bookers in Q1 being new customers for Booking.com. We've also seen recent success driving incremental room nights in experiments where discounts were applied to non-accommodation products that were attached to the transaction. To put it simply, we believe having more products on the shelf increases our merchandising opportunities and helps us sell more room nights.*' (emphasis added)[802]
- '*And then you asked, what are the biggest things for 2023? Well, the things I just talked about right now, flights right now. I really like the fact we're getting new customers coming in, and they're coming in, they're buying a meaningful number of buyer accommodations. And we haven't optimized this yet. That's something important.*' (emphasis added)[803]

- Booking earnings call Q2 2022:
  - '*This year we continue to make progress as we work on building the foundations of the Connected Trip, including developing a flight offering on Booking.com. This flight offering gives us the ability to engage with potential customers who choose their flight options early in their discovery process, and it allows us an opportunity to suggest other services to these flight bookers. Flights continues to be a source for new customers with about one-quarter of all of our flight bookers globally being new to Booking.com [...]*' (emphasis added)[804]

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800 Booking Holdings earnings call transcript Q1 2022, [DOC ID 114518], p. 5. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q1-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

801 Booking Holdings earnings call transcript Q1 2022, [DOC ID 114518], p. 5. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q1-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

802 Booking Holdings earnings call transcript Q1 2022, [DOC ID 114518], p. 5. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q1-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

803 Booking Holdings earnings call transcript Q1 2022, [DOC ID 114518], p. 5. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q1-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

804 Booking Holdings earnings call transcript Q2 2022, [DOC ID 114516], p. 5. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q2-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

- '*[…] for a meaningful percentage of bookers who first book a flight then book an accommodation. And we're saying for new customers, we see that an encouraging percentage of them are attaching an accommodation to the flight booking […].*' (emphasis added)[805]

- Booking earnings call Q3 2022:
  - '*We continue to make progress on building foundations that we connect provision including our work to […] further develop our flight offering on Booking.com. This flight offering gives us the ability to engage with potential customers who choose their flight options early in their discovery process, and over 20% of all of our flight bookings globally are new to Booking.com.*' (emphasis added)[806]

- Booking earnings call Q4 2022:
  - '*We've continued to make progress on further developing our flight offering on Booking.com, which is now available in over 50 countries. This flight offering gives us the ability to help our consumers book another important component of their travel in one place on our platform and allows us to engage with potential customers who choose their flight options early in their travel discovery process. We continue to see that over 20% of all of our flight bookers globally are new to Booking.com.*' (emphasis added)[807]
  - '*Obviously, we're very pleased where we are in terms of the growth of the number of [flight] tickets that we are selling now. It's a very good product. We like it because as I mentioned some people go to flights first, so we want to make sure they know who we are and then start buying from us.*' (emphasis added)[808]

(585) In the Response to the Third Letter of Facts, the Notifying Party argues, *inter alia*, that the quotes from Booking's earning calls '*simply highlight Booking's unquantified aspiration to cross-sell*'.[809] The Commission considers that the quotes from Booking's earning calls cited above go beyond a mere unquantified aspiration to cross-sell (see for instance, the above quote: '*we are seeing positive data indicating we are getting entirely new customers for Booking.com. In addition, we are seeing an encouraging attach rate of accommodation bookings from these new*

805 Booking Holdings earnings call transcript Q2 2022, [DOC ID 114516], p. 21. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q2-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

806 Booking Holdings earnings call transcript Q3 2022, [DOC ID 114513], pp. 5-6. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q3-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

807 Booking Holdings earnings call transcript Q4 2022, [DOC ID 114514], p. 4. Available at: https://ir.bookingholdings.com/events/event-details/2023/Q4-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

808 Booking Holdings earnings call transcript Q4 2022, [DOC ID 114514], p. 19. Available at: https://ir.bookingholdings.com/events/event-details/2023/Q4-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

809 Response to the Third Letter of Facts, page 5.

*customers*'[810]). The Commission rather considers that the quotes demonstrate that Booking views the flights offer as a steppingstone to the Connected Trip and that it will lead to growth in the sale of accommodations.

(586) Flights are critical to Connected Trip and increasing accommodation sales for the following reasons:

(587) *First*, flights are the 'entry point' of the trip and are therefore a significant customer acquisition channel. As noted in Figure 33 above and elsewhere, flights are [Details of Booking's business strategy].[811] Booking has also noted that [Details of Booking's business strategy].'[812]

(588) OTAs with experience both in flight and accommodation that responded to the market investigation have also indicated that flight tickets are the '*entry product'*; that *'[c]onsumers typically book flights before accommodation, for the following reasons: // Flights are perceived to be more limited in terms of availability and timing, whereas hotel options are perceived as more extensive. // Flight schedules can impact hotel check in and checkout dates. // Flight prices are also perceived to be more prone to fluctuation, especially closer to travel dates, whereas hotel pricing perceived to be more static*'[813]; and that '*[t]he common customer behaviour for travel products is starting with flights, and then booking accommodation and other services.* '[814]

(589) Another flight OTA submitted that '*It should further be noted that – even in the absence of an explicit mixed bundling strategy – Booking will be able to strengthen its (dominant) position on the hotel OTA market. With the integration of a flight OTA, Booking will have access to even more consumer data, which enables it to retarget consumers more efficiently. Booking will then be able to specifically target consumers at the beginning of their journey (i.e., when booking a flight). Attracting flight traffic will subsequently also attract more hotel traffic. Similar to the Commission's decision in Google/Fitbit, this would give Booking control over important data that could further strengthen Booking's dominance on the hotel OTA market. These data advantages will likely foreclose other (flight/hotel) OTAs and raise significant barriers to entry. In the end, this leads to a decrease in choice for the consumer and the ability for Booking to increase its prices profitably*'.[815]

(590) *Second*, flights offer significant cross-sell opportunities to cross-sell other verticals and accommodations in particular. Figure 33 notes that flights have *'[...]'* Booking's recent strategic dashboard presentations for Q2 2022 indicate that […]. In particular, data gathered by Booking reflects that […][816] […].[817] […].[818] OTAs that responded

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810 Booking Holdings earnings call transcript Q2 2021, [DOC ID 114515], p. 5. Available at: https://ir.bookingholdings.com/events/event-details/2021/Q2-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx.

811 Booking's internal documents D003, slide 3 [ID147-3]; D038, slides 8, 12 [DOC ID 211].

812 Booking's internal document D007, page 6 [DOC ID 147-27].

813 Response to question 23.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

814 Response to question 23.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

815 Non-confidential version of an OTA's submission dated 25 October 2022 [DOC ID 120635], paragraph 44.

816 In Booking's internal document D401 Strategy update – Strategic Opportunity Dashboard Q1 2022 [DOC ID 1535-620], slide 6 the attach rate of flights was measured at [...]% compared to [...]% of car rental, [...]% of attractions tickets and [...]% of airport taxis. In BOOK_00675349Booking LT – Trips

to the market investigation have indicated that '*flight offers drive additional traffic to OTA sites and ultimately drive additional accommodation bookings*'; that '*many customer who booked a flight ticket will be receptive to other complementary travel services such as accommodation/hotel or car rental';* and that *'[o]wning the customer data for its flights, allows the OTA to cross sell accommodation in a much more targeted and efficient way*'.[819] A hotel that responded to the market investigation also indicated that '*an OTA would be able to increase customer loyalty by cross-selling flight services with accommodation* services, as it would have greater influence over the entire customer booking journey.'[820]

(591) As seen in the figure below, [Details of Booking's customer behaviour].[821]

**Figure 34: [Details of Booking's cross-sell strategy]**

[Figure redacted]

*Source: Form CO, Attachment D.6 Lego_Wave 2a_Report, slide 14 [DOC ID: 1236-167].*

(592) Furthermore, as shown in the figure below (upper right corner), [Details of Booking's cross-sell strategy]. In the internal document below, Booking concluded that [Details of Booking's cross-sell strategy].[822]

**Figure 35: [Details of Booking's cross-sell strategy]**

[Figure redacted]

*Source: Form CO, Attachment D.6 Lego_Wave 2a_Report, slide 78 [DOC ID: 1236-167]*

(593) Booking also noted that the potential of flights to cross-sell other verticals is already being used by its main competitor, Expedia. In an internal document examining the strategy of Expedia, Booking stated that it expects that Expedia *'will continue to leverage its strengths: use flights as a customer acquisition channel and its strong packaging engine to cross sell customers into other travel products'*. Booking concluded that the *[Booking's assessment of its competitors]*.[823]

(594) *Third*, Booking found that Connected Trip is likely to increase the loyalty (or 'stickiness') of existing customers. An internal document of Booking states: [Details of Booking's customer behaviour].[824] Booking also observed that [Details of Booking's customer behaviour].[825] In sum, the customers who already prefer Booking to other OTAs, and tend to book several travel services online, are more inclined to book them from one OTA. Consequently, the loyalty (or 'stickiness') of this group of customers is likely to increase should Booking offer Connect Trip.

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Impact, slide 4 [DOC ID 051850-025965], the attached rate of flights was measured at approximately [Details of Booking's customer behaviour].

817 BOOK_00675349 Booking LT – Trips Impact, slide 4 [DOC ID 051850-025965] states that [Details of Booking's cross-sell strategy].

818 Booking's internal document D405 – BKNGQBR Master Deck April 2022, slide 98 [ID 1535-624]. The mentioned numbers indicate the number of transactions that started with the purchase of either flights or car rental transactions that to which customers added accommodation sale.

819 Response to questions 23.1 and 24 of Questionnaire Q1 to OTAs [DOC ID 2739].

820 Response to question 22 of Questionnaire Q3 to hotels [DOC ID 2737].

821 Form CO, Attachment D.1 Lego_Wave 1_Report, slides 14 and 17; see also slide 18 [DOC ID: 1236-140].

822 D011 – Project Bahamas – Update Meeting (Oct 2021), slide 3 [DOC ID: 147-22].

823 Attachment D021 – 2019 BKNG Offsite vF3 (2), slide 28 [DOC ID 147-1].

824 Form CO, Attachment D.6 Lego_Wave 2a_Report, slide 29 [DOC ID: 1236-167]

825 Form CO, Attachment D.16 – Lego_Wave 3_Report, slide 41 [DOC ID 1236-147]

(595) Analysis of reservations data in mid-2022 provided by Booking also confirms that Connected Trip increases customers' loyalty. The analysis shows that [Details of Booking's customer behaviour].[826] In another internal document, shown in the figure below, it is concluded that [Details of Booking's customer behaviour] and that increased loyalty of customers making reservations in 2022 could be expected to generate in the following six months [...] incremental accommodation in repeat bookings and EUR [...] of incremental accommodation margin.

**Figure 36: [Details of Booking's customer behaviour]**

[Figure redacted]

*Source: BOOK_00675349-Booking LT – Trips Impact, slide 8 Attachment D.16 - Lego_Wave 3_Report [DOC ID 1236-147]*

(596) Booking observed that Connected Trip will not only increase loyalty but also decrease cancellations. Booking calculated that Connected Trip customers are [...]% less likely to cancel their reservations leading to [Details of Booking's accommodation sales] in 2022.[827] This could be the result of customers attaching in the same reservation, accommodations that are typically easy to cancel or modify, with other verticals, mostly flights, which are more difficult to cancel or modify. Connected Trip has therefore an effect of reducing flexibility for customers, as explained in an internal email of Booking: [Details of Booking's business strategy].[828] Another explanation could be that Connected Trip allows Booking to attract customers that have a stronger intention to travel and are thus comfortable attaching additional travel services to accommodation.

(597) The outcome of the market investigation confirms these indications. A majority of respondents that expressed a view indicated that post-Transaction, Booking will have the ability and incentive to cross-sell through ETG's flight OTA services to increase sales in hotel OTA services.[829] In particular, some respondents noted that:

– Cross-selling is '*one of the key strategic reasons behind the Booking/ETG deal, as Booking wants to extend its customer reach in the field of flights, as well as in selling even more accommodation. As flight only often serves as a starting point for the customer (securing the flight first and then look for a suitable accommodation), trying to bring the customer initially already into the Booking shop enhances the opportunities for any further sales. As margins on flight sales are usually extremely slim, Booking surely intends to sell customers higher-margin products, with accommodation first as a core product with much higher margin* (…).'[830]

– '*Customers that fly mostly need accommodation. If you have data of customers who fly it will increase your ability to reach these customers. 70% of the customers first purchase a flight and subsequently book accommodation. If you have the data of these customers or if you have them in a flight book funnel, you strongly increase your chance of selling a hotel as you can target these*

826 BOOK_00675349-Booking LT – Trips Impact, slide 10 [DOC ID 051850-025965].
827 BOOK_00675349-Booking LT – Trips Impact, slide 11 [ID 051850-025965].
828 BOOK_02023155 [DOC ID 56972-11282].
829 Responses to questions 29 and 30 of Questionnaire Q1 to OTAs [DOC ID 2739].
830 Response to question 29.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

*customers really specifically, thereby reducing your overall marketing spend and optimising your margins*.'[831]

- '*Booking will be able to use its customer database of flight ticket reservations to push accommodation suggestions or, during the search of flights on its website, suggest packages including flight + accommodation*.'[832]
- '*The ETG business is much less profitable than the hotel business. If you want to return your investment of the purchase of the ETG flight OTA service, you need to do so by increasing the profitability of the group. You can do so by increasing your market share of hotels by using flight customer data to target new customers*.'[833]
- *'[T]he commercial terms associated with the intermediation of the sale of hotel rooms are significantly more interesting than the sale of flights. The general OTA business model is that the sale of accommodation and associated revenues contributes most to an OTA's profit margins*.'[834]
- '*The whole strategic reason behind this proposed transaction is, from our perspective, not only to keep end users on Booking`s platform, but to gain more traffic, more customers and generate more revenue and margin*.'[835]

6.5.2.3. The Connected Trip is the way for Booking to attract and retain HVCs

(598) According to Booking's internal documents, about [...] of HVCs book on average two out of six annual trips that represent [...] of their accommodation spend[836] outside of Booking (only about [...] of HVCs reserve their trips exclusively with Booking). On that basis, Booking considers that it has an opportunity to increase its value proposition to HVCs through loyalty enhancing measures.

**Figure 37: Booking considerations regarding loyalty and creation of value**

[Figure redacted]

*Source: Response to QP8 – Attachment X – Day 1_2022 Offsite Master Deck_20 July 2022-CONFIDENTIAL.pdf, slide 91 [ID1236-219]*

(599) Bookings strategy is therefore to focus on its most valuable customers explaining that 'The Connected Trip Vision: Is focused on the needs of High Value Customers.'[837] Another internal document states that – [Details of Booking's business strategy].

*Source: BOOK_01254624, High-value customers: segmentation and approach, slide 3 [DOC ID 51856-77972]*

(600) Booking understands that there is high degree of correlation between Connected Trip customers and HVCs; as stated in an internal document: *[Details of Booking's*

831 Response to question 29.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
832 Response to question 29.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
833 Response to question 30 of Questionnaire Q1 to OTAs [DOC ID 2739].
834 Response to question 30 of Questionnaire Q1 to OTAs [DOC ID 2739].
835 Response to question 47.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
836 BOOK_00982141 Loyalty Strategy & Metrics, slide 8 [DOC ID 51853-94455].
837 Response to QP8 – Attachment X – Day 1_2022 Offsite Master Deck_20 July 2022-CONFIDENTIAL.pdf, slide 34 [DOC ID 1236-219].

*customer behaviour]*[838] [Details of Booking's customer behaviour].[839] Booking plans *[...]*[840] Booking explains internally that *[...]*[841] and that *[...]*. '[842]

(601) Booking is also planning to [Details of Booking's customer behaviour and spend] A recent presentation to Booking's Board of Directors explains that '*our top [...]% of customers bring in [...]% of our revenue – we know that they book more often, stay longer and spend more, but they still book [...] their stays elsewhere. They are a key segment for our business, but they still represent an enormous opportunity! To address this, we are transforming Genius into an enhanced experience that rewards and recognizes our HVTs* [High Value Travelers] *across the entire Connected Trip.*'[843] The same presentation states that one of Bookings 2023 company goals is '*High Value Travelers: Transform Genius into a Connected Trip loyalty program*' with the aim of increasing the number of HVC transactions by [...]% already in 2023 (from [...] in 2022 to [...] in 2023).[844]

6.5.2.4. Connected Trip and in particular flight OTA services are also a way for Booking to attract new customers

(602) The additional services offered on Booking through Connected Trip are also a way to acquire new customers. As explained in an email by the CEO of Booking: [Details of Booking's business strategy].[845]

(603) Similarly, in a recent presentation of Booking from January 2023 it is stated that *[Details of Booking's business strategy].*[846] The Notifying Party state in response to the Second Letter of Facts that this quote '*simply shows that Booking has considered that flights could potentially bring incremental accommodation customers. The Parties have never disputed this*'.[847] The Notifying Party does argue however that flights-to-accommodation cross selling is very limited and could never been the main rationale of the Transaction.[848]

(604) However, in its internal document, Booking estimated that in the coming years new customers drawn to Booking by Connected Trip verticals would attach significant incremental accommodation sales: [...] nights in 2023, [...] in 2024 and [...] in 2025.[849]

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838 BOOK_00779814 Estimating the effect of the Connected Trip on Core business [DOC ID 51851-65294], slide 2.

839 BOOK_00978535 Accelerating Customer Growth: High Value Customer Deep dive, slide 7 [DOC ID 51853-90849]. Booking's response to the StC decisions, attachment 1.2, BRES76_High Value Customers (research) – ELT [DOC ID 51853-90820], slide 41.

840 BOOK_00972871, Annual Strategic Offsite – Our Ambition and Strategy, slide 9 [DOC ID 51853-85185].

841 BOOK_01053256 Booking.com Loyalty Strategy 2025+, slide 48 [DOC ID 51854-66030].

842 BOOK_01053256 Booking.com Loyalty Strategy 2025+, slide 49 [DOC ID 51854-66030].

843 Response to RFI 19 – Annex 2 – 2023-2025 Plan Appendix, slide 15.

844 Response to RFI 19 – Annex 2 – 2023-2025 Plan Appendix, slide 6. See also Response to QP8 – Attachment X – Day 1_2022 Offsite Master Deck_20 July 2022- CONFIDENTIAL.pdf, slides 33 and 35 [ID1236-219].

845 BOOK_00121344, page 1 [DOC ID 51139-5532].

846 Response to RFI 20 – Attachment 1 (B.com flights x Turkish airlines) [DOC ID 57164], Slide 5.

847 Response to the Second Letter of Facts, Annex 1, p. 46.

848 Response to the Second Letter of Facts, Annex 1, p. 46.

849 See Figure 98 above, Booking's Consolidated Budget 2022-2024, ME.6991.22 [DOC ID 846]. See also Attachment D033 – Project Bahamas – Board Materials (Nov 2021), slide 11 [DOC ID 147-14] estimating *[Details of Booking's business performance]* A transaction represents on average about [...]

(605) Booking found in mid-2022 that the Connected Trip verticals already generate about [...] net active customers per month[850] and about [...] over the entire 2022.[851] In this context, flights represent the most successful vertical in attracting new customers: as shown by the internal document below, [...] of flight customers are entirely new to Booking compared to only [...] of car rental customers and [...] of attractions and taxis.

**Figure 38: [Details of Booking's business strategy]**

[Figure redacted]

*Source: BOOK_00675349-Booking LT – Trips Impact slide 3 [ID 051850-025965].*

### *6.5.3. Conclusions*

(606) The main rationale of the Transaction, even if not the only one, is ultimately to enable Booking to increase its sales in the hotel OTA market.

(607) Facing a slowdown in its growth, Booking has identified the 'Connected Trip' as an engine for growth, aiming at increasing the loyalty of existing customers and attracting new ones, focusing on HVCs, the most profitable customer segment. The evidence shows that the purpose of the 'Connected Trip' is to increase the sale of hotel OTA services by driving customers to attach hotel reservations to the purchase of other travel services ('verticals'). Flights are the key element of the 'Connected Trip' because it is the first travel service purchase in the majority of customers' journeys and it is the vertical most purchased online. Flights are the vertical representing the highest potential of cross sale into the hotel OTA market. In addition, considering the central role of flights in the majority of travels booked online, flights are the vertical without which the 'Connected Trip' would lose its appeal to customers.

## 6.6. Counterfactual

### *6.6.1. The Notifying Party's views*

(608) The Notifying Party submits that the current commercial affiliated partnership between the Parties is the appropriate counterfactual for the assessment of the effects of the Transaction.[852] According to the Notifying Party, the Transaction Valuation Model ('TVM') demonstrates that approximately [...]% of the cross-sell opportunity that results from the Transaction would be obtained under the current commercial affiliate agreement.[853] Through the commercial affiliated partnership, ETG provides flight OTA content to Booking in exchange for a fee, which Booking then sells through Booking.com. The Parties' commercial affiliated partnership first started on 10 January 2019 under a 'Simplified Contract' ('Phase 0 Agreement'), which was replaced by a 'Phase 1' cooperation agreement on 27 August 2019 ('Phase 1 Agreement'). After a series of amendments and following negotiations that lasted

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nights, see for example D036 – Weds 4_ October 2019 QBR _ Flights _ Final, slide 15 [DOC ID 209]; Attachment D010 – Project Bahamas – Pre-LOI Discussion Materials (Aug 2021), slide 29 [DOC ID 147-33].

850 As explained in the figure, 'net new customers' = new customers + returning customers – churned (one year inactive) customers.

851 Source: BOOK_00675349-Booking LT – Trips Impact slide 11 [ID 051850-025965].

852 Booking Counterfactual Paper [DOC ID 57160], paragraph 1.1.

853 Response to the Article 6(1)(c) decision, paragraph 4.26.

from January to June 2021, the Parties decided to go further into the co-operation by signing the current Phase 2 Agreement on 9 June 2021 (the 'Phase 2 Agreement').[854]

(609) The Notifying Party claims that the Phase 2 Agreement reflects the competitive conditions that existed at the time of the Transaction, as the Phase 2 Agreement is not linked in any way to the prospects of the Transaction. In particular, the Notifying Party submits that the Phase 2 Agreement is the most recent modification to the extensive and enduring partnership between ETG and Booking, and that the negotiation of the Phase 2 Agreement started more than 6 months before Booking approached the private equity fund CVC to explore a potential acquisition of ETG.[855]

(610) In addition, the Notifying Party submits that the Phase 2 Agreement is the 'most likely' scenario absent the Transaction since the Parties have a mutual financial and strategic incentive to continue the cooperation in the future.[856] In the Notifying Party's view, the Phase 2 Agreement is the 'most likely' scenario by reference to the evidence and on the basis of Commission precedents such as *Olympic/Aegean Airlines*, where the Commission concluded that the Parties ceasing operations on certain routes were not transaction-specific as they had ceased operating routes 'before transaction talks were even initiated'.[857]

(611) On Booking's side, absent the Transaction, Booking would not look into building its own flight OTA platform because [Details of Booking's business strategy].[858]

(612) Booking also submits that ETG is the best partner for Booking to create a meaningful flight OTA business, and that the terms of the Phase 2 Agreement were negotiated so as to ensure that Booking would have access to a competitive flight OTA product that would allow Booking to scale its flight OTA business profitably.[859] In particular, Booking notes that the Phase 2 Agreement gives it control over the branding, as well as flexibility to set up its margin targets which has 'effectively' given Booking the '*ability to lower prices to remain competitive*'.[860] The Phase 2 Agreement also allows Booking to market flights through MSS, albeit with a [...]% cap on sales that Booking can do through the MSS channel. In addition, Booking submits that the fact that it pays a [...] fee to ETG means that Booking [...].[861] Booking further notes that it has strong incentives to maintain the arrangements under the Phase 2 Agreement absent the Transaction, and that it has no incentive to switch to another flight OTA provider.[862]

(613) On ETG's side, absent the Transaction, ETG alleges that it would have an incentive to continue with the Phase 2 Agreement. In particular, ETG notes that the Phase 2 Agreement is [...]. In addition, ETG's profits from the Phase 2 Agreement are *[...]* because the payment model under the Phase 2 Agreement ensures that ETG earns a [...] of the flight product offered to Booking under the agreement. Further, ETG

854 Response to the RFI 4, dated 7 November 2022.
855 Booking Counterfactual Paper [DOC ID 57160], paragraph 2.4 (i) (b) and (c).
856 Booking Counterfactual Paper [DOC ID 57160], paragraph 1.1. See also the Response to the SO, paragraphs 3.A and Annex 3.
857
858 Booking Counterfactual Paper [DOC ID 57160], paragraph 5.1.
859 Booking Counterfactual Paper [DOC ID 57160], paragraph 5.1.
860 Booking Counterfactual Paper [DOC ID 57160], paragraph 5.1 (iii).
861 Booking Counterfactual Paper [DOC ID 57160], paragraph 5.1 (iii).
862 Response to the SO, Annex 3, paragraphs 7.1-7.9.

claims that it negotiated the Phase 2 Agreement with Booking with the knowledge that Booking had said that an acquisition was not on the table.[863]

(614) The Notifying Party communicated to the Commission, on 15 August 2023,[864] that Booking and ETG have entered into an amendment to the Phase 2 Agreement (the 'Amendment') to, among other things, [...][865] [...] (e.g., [...]. The Notifying Party noted that the Amendment has been entered into given the uncertainties created by the Commission's investigation into the Transaction and that the Amendment will provide the Parties and their respective employees, business partners and broader stakeholders with the comfort and confidence that, whatever the outcome of the Commission's investigation, the cooperation between the Parties remains secure and enduring for the long term. In the Parties' view, the Amendment is proof that the Phase 2 Agreement was and remains a stable, long-term commitment that benefits both Booking and ETG independent of the Transaction.[866]

(615) The Notifying Party thus considers that the Commission unlawfully assesses the effects of the Transaction based on a counterfactual in which Booking is not present in flight OTA at all. For the Notifying Party, there would be no basis for such a finding, which defies commercial logic and ignores the Horizontal Guidelines requiring the Commission to accept as the counterfactual the agreement in place between the Parties at the time of the Transaction (which, as previously mentioned, was the Phase 2 Agreement), unless a more likely counterfactual can reasonably be predicted.[867] In the Notifying Party's view, the Commission does not make any finding of a more likely counterfactual than the Phase 2 Agreement but merely points to a number of other theoretical scenarios which each, in any event, assume that Booking will remain active in flight OTA.[868]

*6.6.2. The Commission's assessment*[869]

(616) When assessing the competitive effects of a merger, the Commission compares the competitive conditions that would result from the notified merger with the conditions that would have prevailed without the merger (i.e., the 'counterfactual'). In most cases the competitive conditions existing at the time of the merger constitute the relevant point of comparison, but the Commission may also take into account future changes in the market that can reasonably be predicted.[870]

(617) In past precedents relating to the airline industry, the Commission has not accepted as an appropriate counterfactual pre-existing co-operation between the parties where, on the basis of the evidence available on the file, it was reasonable to conclude that

863 ETG's Counterfactual Paper [DOC ID 57028] and Response to RFI 16, paragraphs 12.1-12.21.

864 E-mails of 15 August 2023 [DOC IDs 120494 and 120489]and response to Second Letter of Facts, executive summary[DOC ID 120495].

865 [...].

866 E-mails of 15 August 2023 [DOC IDs 120494 and 120489]and response to Second Letter of Facts, executive summary[DOC ID 120495].

867 Response to the SO, Annex 3.

868 Idem.

869 The assessment of the cooperation agreements between Booking and ETG is without prejudice to the assessment of such agreements under Articles 101 and 102 TFEU and/or the national laws of the Member States.

870 Horizontal Merger Guidelines, paragraph 9.

the cooperation agreements would be terminated absent the proposed transaction.[871] Moreover, where the Commission has accepted pre-existing co-operation between the parties as an appropriate counterfactual, the agreements were not negotiated in parallel with a potential merger between the parties to the agreements.[872]

(618) In the response to the SO, the Notifying Party asserts that the Commission has, in past decisions related to airline and telecoms mergers, accepted pre-existing co-operation between the parties to a transaction as relevant counterfactual unless it infringes Art. 101 TFEU or there were specific factual circumstances that demonstrate that the co-operation will not continue absent the merger.[873]

(619) The Commission notes, as a preliminary point, that in the precedents raised by the Notifying Party involving airline mergers, the Commission compared the permanent change to the market structure brought by the transaction with cooperations which had a vocation of continuity (as alliances and code sharing agreements are typically set for a long period of time) and which were not negotiated in parallel with the potential transaction. Regarding the Commission's decision in *Hutchinson 3G Italy / Wind / JV*, and the quote referred by the Notifying Party,[874] the Commission notes that the quote does not refer to the counterfactual used by the Commission to assess the merger in the case, and that the Commission decision continued '*the Commission notes that the fact that one or more types of network sharing agreement are likely to constitute a realistic and reasonably practicable alternative to a given transaction, it does not mean that these agreements are necessarily to be viewed as the situation that would have likely prevailed in the absence of the merger, when assessing the likely anti-competitive effects of the proposed transaction*.'[875]

(620) In the present case, the Commission finds that it cannot accept the Notifying Party's claim that the appropriate counterfactual for the assessment of the Transaction is the Phase 2 Agreement.

(621) *First*, evidence in the file indicates that the Phase 2 Agreement is a 'natural experiment' for the Transaction and is thus linked to it. While the Notifying Party claims that the negotiations of the Phase 2 Agreement and the Transaction are not linked,[876] internal documents from Booking show that, [Details of the Parties commercial negotiations]. As regards ETG, [...].

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871 Case COMP/M.5440 Lufthansa/ Austrian Airlines, paragraphs 60 et seq. Case COMP/M.5889, United Airlines/Continental Airlines, paragraphs 36-42.

872 By way of example, in the precedents put forward by the Notifying Party in its Counterfactual paper regarding code sharing agreements in the airline sector (COMP/M.5403 Lufthansa/BMI (2009), paras 42-44; and COMP/M.5181 Delta Air Lines/Northwest Airlines (2008), paras 32-33), those code sharing agreements were not negotiated in parallel and as a 'natural' experiment of the transactions.

873 Response to the SO, Annex 3, Section 3.

874 In the response to the SO, Annex 3, paragraph 3.1 (ii), the Notifying Party notes, referring to the *Hutchinson 3G Italy / Wind / JV* case that *'[the Commission found that "although the Parties favoured a JV Transaction over the possibility to form a network sharing agreement this does not indicate that the latter form of cooperation would not have been a realistic and reasonably practical alternative under the scenario where the JV would not have been an option (the counterfactual)" and the fact that "the Parties had a clear economic incentive to favour consolidation over other alternatives" did "not imply that network sharing arrangements would not be commercially viable arrangements in the absence of the merger."'*

875 Case COMP/M.7758 Hutchison 3G Italy/ Wind / JV, paragraph 1577.

876 Response to the Article 6(1)(c) decision, Section 3.E.4.

(622) *Second,* even if the Commission were to accept, *quod non,* that the existing cooperation between the Parties were not impacted by the negotiations of the Transaction, the Commission finds that the Transaction would bring a fundamental change to the current, by definition temporary, contractual relation between Booking and ETG by turning it into a permanent structural link, thus removing the possibility that one of the Parties could terminate the cooperation. In this regard, the Commission is of the view that it cannot offset the effects of a permanent structural change on the market with something that is temporary in nature, such as the Phase 2 Agreement, which has been in place for a limited period of time.

(623) *Third,* contrary to the Notifying Party's allegations, the Commission finds that the Parties would have likely discontinued the Phase 2 Agreement in the mid- to long-term absent the Transaction. In the short-term, absent the Transaction, the Parties would have likely renegotiated the terms of the Phase 2 Agreement or that conditions would have arisen leading to the termination of the Phase 2 Agreement, for example when ETG would be sold to a competitor of Booking listed in the Phase 2 Agreement.

(624) The Commission notes that it cannot accept the Amendment as further proof that the Phase 2 Agreement is the most likely counterfactual absent the Transaction for the following reasons.

(625) In the first place, the Notifying Party claims that the Amendment has been negotiated and entered into on 10 August 2023, that is after the signing of the Transaction and at the latest stages of the merger investigation, after the Commission issued the SO to the Notifying Party listing the elements that, in the Commission's view, indicated that it was likely that the Phase 2 Agreement would not continue as it stands absent the Transaction. The Notifying Party claims that the new terms of the Amendment should eliminate the concerns raised by the Commission in the SO It also submitted on 15 August 2023 a table summarising the preliminary concerns of the Commission, as expressed in the SO, and how the amendments to the Phase 2 Agreement would dispel such concerns.[877] In this regard, the Commission is of the view that the terms of the Amendment, [Details of the Parties commercial negotiations], have likely been negotiated and agreed upon in view of the ongoing merger investigation and do not correspond to normal market terms that the Parties would have negotiated absent their willingness to have the Transaction cleared. The Commission considers that the Amendment would not have been entered into absent the ongoing merger investigation, and thus the Transaction. Given the very late stage at which the Commission was informed about the Amendment, it appears that it in fact constitutes an attempt to influence the Commission in order to accept the Parties' proposed counterfactual.

(626) In the second place, the Notifying Party has not provided the actual text of the contract, even in a draft form, to the Commission and the Commission has therefore not been able to fully review the Amendment to understand whether any of its terms are conditional upon the Transaction being cleared or whether there is any other clause in the Amendment that would invalidate the main terms highlighted by the Notifying Party. The Commission notes that the Notifying Party on 15 August 2023 only submitted a table referring to the main terms of the Amendment, and how these change the previous terms of the Phase 2 Agreement and should, in the Notifying

[877] Response to Third Letter of Facts, Annex 1.

Party's view, remove the preliminary concerns raised by the Commission in the SO. On 23 August 2023, while the Notifying Party further submitted a chronology of the negotiations and three emails between the Parties regarding the negotiations of the Amendment, in which the Parties claimed that the Amendment was entered into on 10 August 2023,[878] No signed copy of the Amendment was submitted to the Commission.

(627) In the third place, the possibility of an Amendment was only mentioned to the Commission on 7 August 2023, together with the Response to the Second Letter of Facts. On 15 August 2023, the Notifying Party confirmed that the Amendment had been entered into. The Commission notes that the Notifying Party thus only confirmed the existence of the Amendment on 15 August 2023, at a relatively late stage of the procedure.[879] As noted above, it did not provide a copy of the Amendment to the Commission, thus severely limiting the Commission's ability to review the Amendment properly.

(628) In the fourth place, the Commission notes that the Amendment is still an agreement that could be renegotiated between the Parties. By contrast, the Transaction would turn the temporary contractual relationship between the Parties into a permanent structural link, which eliminates the possibility of the Parties ceasing to cooperate.

(629) In the fifth place, for the reasons given in the sections below, the Commission notes that the Phase 2 Agreement was negotiated in parallel with the Transaction and that its terms (which are more favourable to Booking than standard market terms would permit) were influenced by the prospects of the Transaction. In this regard, [Details of the Parties commercial negotiations], and that has been entered into during the merger proceedings, should *a fortiori* be regarded as an agreement that the Parties would not have entered into absent the Transaction.

(630) Consequently, the Commission's analysis below regarding the Phase 2 Agreement applies equally to the Amendment (in particular section 6.6.2.1.1 below), which will thus not be considered separately.

6.6.2.1. The Phase 2 Agreement is a 'natural experiment' for the Transaction

(631) The Commission's investigation indicates that the Phase 2 Agreement was entered into by the Parties as a 'natural experiment' for the Transaction.

(632) *First*, contrary to the Notifying Party's claims, evidence on the file indicates that the Parties negotiated the Phase 2 Agreement while Booking was already assessing the Transaction. Indeed, contrary to the Notifying Party's claim, evidence on the file shows that there was an overlap between the Parties' negotiation of the Phase 2 Agreement and Booking's preparation of the TVM in which Booking assessed the value of ETG and synergies arising out of a potential Transactions to inform the negotiations with CVC.[880]

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878 Email from M Cramer dated 23 August 2023, titled 'RE: M.10615: BOOKING HOLDINGS/ETRAVELI GROUP: Chronology on extension of the CAA'.

879 In order for the Commission to take the decision within the legal deadline, the process of consulting all relevant internal services of the Commission and the Member States had to start on 18 August 2023 or very close thereto.

880 The Notifying Party submits (Form CO, paragraph 3.17) that Booking produced a valuation model (the TVM) in the course of assessing the Transaction (from May 2021 to November 2021), to value the target business and synergies arising from the combination. The model involved multiple iterations, and

(633) *Second*, ETG's internal documents indicate that an important objective for ETG with the Phase 2 Agreement was [...].

(634) *Finally*, Booking's internal documents also show that, for Booking, the Phase 2 Agreement and the overall commercial affiliated agreement with ETG was aimed at [...].

(635) In its response to the SO, the Notifying Party claims that Booking did not view the Phase 2 Agreement as a 'natural experiment' for the Transaction, as the Notifying Party did not pursue the Transaction until after the Phase 2 Agreement was signed and that by then, [Details of the Parties commercial negotiations].[881] Further, the Notifying Party claims that ETG did not enter into the Phase 2 Agreement as a means to convince Booking of the Transaction. Rather, the Phase 2 Agreement was always [...].[882]

(636) The Commission considers that the body of evidence indicates that there was an overlap between the Parties' negotiation of the Phase 2 Agreement and Booking's assessment of a potential acquisition and that the Notifying Party has not presented robust evidence to the contrary. Indeed, Booking [Details of the Parties commercial negotiations][883] and the evidence on the file indicates that while the negotiations of the Phase 2 Agreement took place (between December 2020-June 2021), both Parties had already been considering a possible Transaction since at least sometime in 2020. [Details of the Parties commercial negotiations]. In May 2021, ETG provided its business case for the Transaction. In the Commission's view, this is crucial evidence that the Phase 2 Agreement (which was negotiated between December 2020-January 2021) was negotiated while Booking was assessing the Transaction.

(637) As regards ETG, the Commission finds that ETG's internal documents show that [...] noted in paragraphs ((706) et seq. below. The Commission notes that the Phase 2 Agreement has indeed been profitable for ETG, and has allowed ETG to grow, but this does not contradict the fact that ETG agreed [...]. Further, the Commission disagrees with the Notifying Party's position that the Phase 2 Agreement follows the [...]. The only other bespoke B2B agreement that ETG has is with [...], and its terms are much less favourable to [...] than those that Booking enjoys under the Phase 2 Agreement, as further explained in paragraphs ((664) to ((666) below. The Commission thus considers that the Phase 2 Agreement does not correspond to market terms.

6.6.2.1.1. The Phase 2 Agreement was negotiated while Booking was assessing the Transaction

(638) The Parties started negotiations on the Phase 2 Agreement between December 2020 and January 2021 and the Phase 2 Agreement was signed on 9 June 2021.[884] The Notifying Party claims that the negotiations of the Phase 2 Agreement and the Transaction are not linked.[885] However, internal documents from Booking show that, by the time Booking decided that it wanted to deepen the co-operation with ETG and

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version 33 was used to inform valuation of, and negotiation with, ETG and was presented to the Booking Board on 23rd November 2021 in support of the request for approval of the acquisition.

881 Response to the SO, Annex 3, paragraphs 6.1-6.4.

882 Response to the SO, Annex 3, paragraph 6.5.

883 Response to the SO, Annex 3, paragraph 6.3.

884 Booking's Deep dive on counterfactual presentation [DOC ID 51939], slide 5.

885 Response to the Article 6(1)(c) decision, Section 3.E.4.

negotiations of the Phase 2 Agreement started, Booking was already considering a possible Transaction.

(639) Indeed, as of January 2020, while Booking's official position was against a potential acquisition of ETG because [Details of Booking's business strategy], internal documents show that a potential acquisition was being considered by both Parties. [Details of Booking's business strategy]. In May 2021, ETG provided to Booking its business case for the Transaction, which is clear evidence that the negotiation of Phase 2 (which started at the end of 2020 and culminated with the signing of the Phase 2 contract on 9 June 2021) and preliminary assessment of the Transaction including with the provision by ETG of financial information, (January 2020 – April 2021) overlapped.

(640) *First,* Booking's internal communication dated 9 January 2020 (involving Booking's CEO) indicates that, [Details of the Parties commercial negotiations], a potential acquisition of ETG was a distinct possibility if Booking were to find it beneficial: *'[Details of the Parties commercial negotiations]'.*[886]

(641) *Second*, in a presentation dated October 2020 titled '*BKNG Flights strategy - Discussion with Glenn and David*' [Glenn Fogel is Booking's CEO], it is part of the '*specific next steps'* that strategic conversation with ETG starts including senior leaders on both Booking and ETG ('*[Details of the Parties commercial negotiations]*').[887]

**Figure 39: [Details of the Parties commercial negotiations]**

[Figure redacted]

*Source: D162 [DOC ID 1535-381], slide 4.*

(642) *Third,* in another Booking internal communication between the SVP Head of Corporate Development and Booking's CEO dated 6 December 2020, Booking's CEO notes in relation to ETG that it is '*[Details of the Parties commercial negotiations].*'[888] In the Commission's view, this internal exchange between Booking's CEO and the Head of Corporate Development indicates that by December 2020, Booking would be open to a potential acquisition ([Details of the Parties commercial negotiations]) and that [Details of the Parties commercial negotiations].

(643) *Fourth*, in correspondence dated 8 December 2020 between ETG's and Booking's CEOs, ETG's CEO re-assures Booking's CEO regarding a potential acquisition of ETG by [...] and notes that '*[...].*'[889]

(644) *Fifth,* an internal document from ETG from December 2020 which reports [...] on Booking's ambitions with the Phase 2 Agreement indicates that, […].

**Figure 40: [Redacted]**

[Figure redacted]

*Source: E007, slide 3 (emphasis added)*

886 BOOK_00954547 [DOC ID 51853-66861].
887 D162, slide 4 [DOC ID 1535-381].
888 BOOK_00808809 [DOC ID 51852-15330].
889 ETG_0000190261 [DOC ID 51542-7288].

(645) The Commission notes that faced with the [...], ETG did not consider the possibility of demanding Booking a financial compensation (e.g., a higher supplier fee), but Booking's clarity on [...][890] which indicates that, for ETG, the Phase 2 Agreement was a means to entice Booking into entering into the Transaction, and that its terms are [...]. [Details of the Parties commercial negotiations].[891] Further, Booking's flight TTV data reflects that the volume of flights sold by Booking has increased considerably. Particularly, in 2021 (half of the year under the Phase 2 Agreement, which was signed on June 2021) Booking achieved [...] in flights; whereas Booking [...] its sales of flight OTA services (to a total of [...]) in 2022.[892] In this regard, under the Phase 2 Agreement, Booking's cost are lower ([...]) while the level of cooperation and product development for ETG [...] compared to previous versions of the cooperation ([...]).

(646) *Sixth,* on 15 April 2021,[893] Booking's CEO is reported as requesting an assessment of the Transaction. Booking's SVP of Trips, which was the former lead for Booking's flight strategy and negotiation of the flight commercial affiliated agreement with ETG,[894] briefed the Corporate Development team (including its head) regarding a meeting with Booking's CEO: '*[Details of the Parties commercial negotiations]'* clearly indicates that this quote is about the Transaction.

(647) The figure below shows that the Corporate Development team was convinced about the Transaction at the time. It includes an excerpt of the communication with the SVP Head of Corporate Development in response to Booking's CEO request to '*looking more closely at this [the Transaction]'*[895]:

**Figure 41: [Details of the Parties commercial negotiations]**

[Figure redacted]

*Source: BOOK_00811152 [DOC ID 51852-17673]*

(648) Importantly, this communication also shows how Booking was in close communication with ETG's CEO: '*also [Details of the Parties commercial negotiations]*'.[896]

(649) *Seventh,* correspondence between ETG's CEO and CVC dated 5 May 2021 (thus still prior to the signing of the Phase 2 Agreement) clearly indicates that by that date, [...] and that Booking's CEO gave directions to engage with ETG to start the analysis thereof. In an email titled [...], ETG's CEO reports to CVC that:

'[...].'[897]

(650) *Lastly,* [Details of the Parties commercial negotiations].[898]

890 E007, Slide 3 [DOC ID 136].
891 Booking's Counterfactual Paper, paragraph 5.1 (iii) (f) (i) and [DOC ID 51861-15517], slide 3.
892 Response to RFI 28, Annex I.
893 BOOK_00811152 [DOC ID 51852-17673].
894 Response to RFI 5, paragraph 3.3.
895 BOOK_00811152 [DOC ID 51852-17673].
896 BOOK_00811152 [DOC ID 51852-17673].
897 ETG_0000017071 [DOC ID 51103-17071] (emphasis added).
898 The Notifying Party confirmed that Booking based its decision on entering into the Transaction in the TVM in Form CO, para. 3.17. The Notifying Party indicated that the '*TVM was the basis for valuing the target business and synergies arising out of the combination'*.

(651) In the first place, the document shows that on 21 May 2021, ETG had shared with Booking its views regarding the business case for the Transaction. This is referred in later Booking presentations assessing the merits of the Transaction as 'management case' and it served as starting point for Booking's own assessment of the Transaction.[899] As noted in the figure below, the 'Source' for Booking's views regarding the valuation of ETG's standalone business is '*Etraveli Financial Plan for Booking.com (May 21, 2021).*' The fact that Booking's CEO gave the order internally to start the assessment of the Transaction on 5 May 2021, and that ETG's 'file' is dated 21 May 2021 is further proof that ETG's '*Etraveli Financial Plan for Booking.com (May 21, 2021)'* referred to ETG's views regarding the Transaction and was shared for purposes of assessing a potential acquisition by Booking of ETG.

**Figure 42: [Details of the Parties commercial negotiations]**

[Figure redacted]

*Source: D002 [DOC ID 147-2], slide 11, (emphasis added)*

(652) In the second place, the document shows that Booking had already received by the date of the presentation (10 June 2021) '*[Details of the Parties commercial negotiations]*' arising from the Transaction.

**Figure 43: [Details of the Parties commercial negotiations]**

[Figure redacted]

*Source: D003 [DOC ID 147-3], slide 23*

(653) In the third place, the same document reflects that, [Details of the Parties commercial negotiations].

**Figure 44: [Booking's assessment of the Transaction]**

[Figure redacted]

*Source: D002 [DOC ID 147-2], slide 7[900] (emphasis added)*

(654) In the fourth place, the same internal document reflects that Booking's preliminary assessment of the Transaction ('Proforma') was drafted as a comparison with the scenario where Booking would source flights from ETG through the Phase 2 Agreement [Details of the Parties commercial negotiations].[901] Again, the source for Booking's estimations are '*[Booking's assessment of the Transaction]*'.

**Figure 45: [Booking's preliminary assessment of the Transaction]**

[Figure redacted]

*Source: D002 [DOC ID 147-2], slide 12 (emphasis added)*

(655) In the fifth place, the same presentation notes as '*next steps'* whether to engage ETG in [Details of the Parties commercial negotiations].

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899 For example, see D003 [DOC ID 147-3], slide 25. Booking confirmed that 'management case' refers to ETG's financial forecasts which were used as an input into Booking's TVM in their response to the Article 6(1)(c) decision, paragraph 3.22.

900 The same document also refers to ETG's management case provided on 21 May 2021 in slide 11.

901 Booking confirmed that 'management case' refers to ETG's financial forecasts which were used as an input into Booking's TVM in their response to the Article 6(1)(c) decision, paragraph 3.22.

**Figure 46: [Booking's valuation of the transaction]**

[Figure redacted]

*Source: D002 [DOC ID 147-2], slide 16 (emphasis added)*

6.6.2.1.2. With the Phase 2 Agreement, ETG seeks to entice Booking to acquire ETG

(656) Evidence on the file indicates that, for ETG, one of the objectives of the Phase 2 Agreement (and previous iterations of the commercial affiliated agreement) was to convince Booking into acquiring ETG ([...]). In this regard, ETG's internal documents reflect that [...] noted in paragraphs ((706) et seq. below.

(657) *First,* ETG's internal documents from 2018, before the Parties entered into the Simplified Contract (i.e. the Phase 0 Agreement) [...]. While ETG notes that '*[...]*'.

**Figure 47: [Redacted]**

[Figure redacted]

*Source: RFI 4, Attachment 6, slide 22 (emphasis added)*

(658) Similarly, a later presentation (December 2018) from ETG identifies '*[...]'*.

**Figure 48: [Redacted]**

[Figure redacted]

*Source: RFI 4, Attachment 7, slide 25 (emphasis added)*

(659) *Second*, the co-operation (which culminates in the Phase 2 Agreement) is designed by ETG as a bespoke solution from the very start (that is, as of the Phase 0 Agreement) to [...]. ETG's internal document from 2018 already refers to the co-operation between the Parties as a '*[...]*'.

**Figure 49: [Redacted]**

[Figure redacted]

*Source: Response to RFI 4, Attachment 6*

(660) Additional ETG internal documents from 2019 reflect [...].

**Figure 50: [Redacted]**

[Figure redacted]

*Source: E072, [DOC ID 51541-33942], slides 23 and 32*

(661) Correspondence between ETG's and Booking's CEO dated August 2019 also confirms how ETG ultimately seeks to create [...].[902]

(662) *Third,* the Phase 2 Agreement is [...]. The Commission finds that this further confirms ETG's intentions to [...] for Booking. The Notifying Party failed to provide a convincing alternative explanation to this reading of the Phase 2 Agreement by the Commission.

(663) <u>In the first place</u>, the Parties have confirmed that the Phase 2 Agreement is [...] co-operation and that '*[...]'*. In particular, the Parties have explained that:

- *'[...].'*
- *'[...]'*; and

[902] ETG_0000004387 [DOC ID 51103-4387].

- *'[...]'.*[903]

(664) In the second place, a comparison between the Phase 2 Agreement and other commercial affiliated agreements entered by ETG with other partners, shows that Booking is [...].

(665) In particular, ETG has entered into and submitted to the Commission other commercial affiliated agreements between ETG and other third party OTAs, [...].[904] The commercial affiliated agreements between ETG and each of [...]. According to the terms of the contracts, [...]. In comparison, Booking's Phase 2 Agreement is a contract tailored to Booking needs with [...] and, as noted, [...]. Moreover, ETG provides Booking with [Details of the Parties commercial negotiations].

(666) The only other ETG commercial affiliated agreement whose clauses are [...] is the one with [...].[905] [...], but the contract only covers [...] and does not allow, at this stage, for [...].[906] In comparison, throughout the commercial affiliated partnership, Booking has been able to expand its flight OTA business to a number of new geographies and further expansion into new markets is possible under Annex 1 Clause 2.1 of the Phase 2 Agreement.[907] In addition, Booking is able to market via MSS (with [...]), albeit with a [20-30]% cap.[908] As noted above, the fee paid by Booking is [...].

6.6.2.1.3. For Booking, the Phase 2 Agreement is a means to test the benefits of integrating a flight OTA platform in its offering

(667) [Details of the Parties commercial negotiations and rationale].

(668) Indeed, in internal correspondence dated 9 December 2020[909] between Booking's CEO and the senior team dealing with the relationship with ETG, at the time Booking and ETG started negotiations of the Phase 2 Agreement, the senior team explained to Booking's CEO that, in '[Details of the Parties commercial negotiations and rationale].'[910]

(669) This internal correspondence takes place in the context of an upcoming meeting with ETG's CEO for the negotiation of the Phase 2 Agreement, where ETG's CEO '[...].'[911]

(670) In response to these concerns, Booking's SVP Head of Corporate Development notes in the same e-mail thread that '[Details of the Parties commercial negotiations and rationale].'[912]

(671) Regarding the need for Booking to deepen the cooperation with ETG in connection with Booking's ambitions regarding the Connected Trip strategy, the senior team notes as '[Details of the Parties commercial negotiations and rationale].'[913]

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903 Response to the Article 6(1)(c) decision, paragraph 3.17.
904 Response to RFI 4, Attachments 5.1, 5.2 and 5.3.
905 Response to RFI 14, Attachment 5.3.
906 Response to RFI 14, Attachment 5.3. [...].
907 Booking's Counterfactual Paper, paragraph 5.1 (iii) (d).
908 Booking's Counterfactual Paper, paragraph 5.1 (iii) I.
909 BOOK_00808809 [DOC ID 51852-15330].
910 BOOK_00808809 [DOC ID 51852-15330].
911 BOOK_00808809 [DOC ID 51852-15330].
912 BOOK_00808809 [DOC ID 51852-15330] (emphasis added).

(672) Similarly, in the memorandum of 28 September 2021, to Booking's Board of Directors for the approval of the Transaction, Booking refers to the partnership with ETG and how it served to [Details of the Parties commercial negotiations and rationale].

**Figure 51: Memorandum to Booking's Board of Director for the approval of the Transaction**

[Details of the Parties commercial negotiations and rationale]

*Source: Booking's internal document D007 [DOC ID 147-27]*

6.6.2.2. The Transaction would result in a structural change by removing the Parties' ability to put an end to their cooperation

(673) *First,* as indicated above, even if the Commission were to accept, *quod non*, that the existing cooperation between the Parties were not impacted by the negotiations of the Transaction, the Commission finds that the Transaction would change the current temporary contractual relation between Booking and ETG into a permanent structural link, thus removing the possibility that one of the Parties could terminate the cooperation. The Commission cannot offset the effects of a permanent change in the structure of the market with an agreement, which is temporary in nature, has been in place for a limited period of time and can be subject to amendments.

(674) In this regard, the Commission finds that the Parties are under no contractual obligation to prolong the Phase 2 Agreement beyond 1 May 2026. [...],[914] [...].

(675) The Commission notes that the Parties have extended the term of the Phase 2 Agreement with the Amendment. However, the Parties entered into the Amendment after signing the Transaction and during the merger proceedings in order to influence the Commission such that it would accept the Notifying Party's claim that the Phase 2 is the appropriate counterfactual. Indeed, the Amendment appears influenced by the ongoing investigation, as it specially eliminates the terms of the Phase 2 Agreement which served as basis for the Commission's finding that the Phase 2 Agreement would unlikely continue as it stands absent the Transaction. Further, the Commission notes that the Notifying Party has not provided the actual text of the Amendment to the Commission, which has thus been unable to verify whether its terms are definitive and cannot be changed, or whether they are conditional on the results of the merger proceedings.. In any event, the Amendment also constitutes a contractual arrangement between Booking and ETG which they can always further amend or terminate in common agreement. The Commission's below analysis therefore equally applies to the Amendment.

(676) *Second,* the Commission has reached the conclusion that it is likely that the Phase 2 Agreement (and the Amendment) will not continue in the mid to long-term absent the Transaction.

(677) Indeed, [Details of Booking's business strategy].

(678) <u>In the first place</u>, it is not in Booking's strategic interest to depend on third parties in order to provide flight OTA content. Indeed, the strategic decision that Booking took at the time of the Transaction was either to 'buy' ETG or 'build' its own proprietary platform.[915] [Details of Booking's business strategy].[916] In the meantime, Booking

913 BOOK_00808809 [DOC ID 51852-15330].
914 Form CO, Attachment J, Phase 2 Agreement.
915 Form CO, paragraph 6.123.

wanted to scale up its flight OTA business in the EEA and test which benefits having a flight OTA would involve for its hotel OTA business. This was the purpose of Booking's commercial affiliated agreement with ETG.[917] [Details of Booking's business strategy].[918]

**Figure 52: [Details of Booking's risk assessment]**

[Figure redacted]

*Source: Booking's internal document D005 [DOC ID 1535-224], slide 8 (emphasis added).*

(679) Another Booking's internal document indicates that [Details of Booking's business strategy]*'.*[919] By July 2020, Booking's flight strategy was to temporarily rely on ETG for the supply of flight OTA content in order to scale up its flight business, [Details of Booking's business strategy]. Thus, in the absence of the Transaction, Booking's strategy was to develop its own flight OTA platform, not to continue its cooperation with ETG.

**Figure 53: Booking's strategy regarding scaling of flight business**

[Details of Booking's business strategy]

*Source: D039, slide 123 [DOC ID 212] (emphasis added)*

(680) In the second place, the success of the Connected Trip, which is a key driver for Booking's ability to grow and defend its position in the hotel OTA market in the EEA,[920] requires that Booking has its own proprietary flight OTA platform in the mid to long-term.

(681) Indeed, although the Phase 2 Agreement allows Booking to achieve a certain growth in flights, it also contains a series of restrictions that limit Booking's ability to unleash the full potential of offering flight OTA service on Booking's platform and make more difficult the successful development of the Connected Trip.

(682) For example, the earnings call transcript from Booking Holdings for Q4 2021 states that '*In November, we announced our intention to acquire Etraveli for €1.6 billion […] Given the strategic importance of flights to our Connected Trip offering, we believe it is critical to bring Etraveli's flight expertise and technology in-house, while also unlocking some of the limitations that exist in our current commercial agreement.*'[921]

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916 Please refer to paragraph ((611) above for more information regarding [Details of Booking's business strategy].

917 See paragraphs ((608) above.

918 Booking's internal document D005, slide 8 [DOC ID 1535-224].

919 D039, slide 123 [DOC ID 212].

920 Please refer to the Commission's views regarding the Transaction rationale in section 6.5 above for further details.

921 Booking Holdings earnings call transcript Q4 2021, [DOC ID 114517], p. 5. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q4-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx. In its response to the Third Letter of Facts (page 13), the Notifying Party notes that it has never disputed that the Phase 2 Agreement included some limitations for Booking to unlock the full potential of ETG's flight offering, but that the quote does not support the Commission's view that the success of the Connected Trip requires Booking's own proprietary flight offering, nor that the Parties would, absent the Transaction, continue a cooperation under less favourable terms. The Commission disagrees with the Notifying Party's views, and notes that the quote expressly refers to the '*strategic importance'* of flights for the Connected Trip and how it is '*critical'* to bring ETG's technology '*in-house while also unlocking some of the limitations'* under the Phase 2 Agreement. The

(683) In particular, under the Phase 2 Agreement, [Details of Booking's business strategy].[922] [Details of Booking's business strategy].[923] [Details of Booking's business strategy].[924] [Details of Booking's business strategy].[925] [Details of Booking's business strategy].

(684) [Details of the Parties' commercial negotiations]. As noted above, the ability for a flight OTA to market its products in an MSS is very important, as MSS are the main channel for acquiring flight OTA customers. By way of example, ETG achieved [90-100]% of its sales of flight OTA services through the MSS channel in 2022.[926] In this regard, the cap on Booking's flight OTA sales materially impacts Booking's ability to fully harness ETG's capabilities in service of Booking's flight offering.

(685) It follows that the Phase 2 Agreement limits Booking's full ability to offer an attractive flight product and target flight customers, especially those more prone to buy its core product of accommodation.

(686) The previous versions of the ETG commercial affiliated agreements limited Booking's ability to unleash the full potential of the Connected Trip even more. The Parties first entered into the Phase 0 Agreement on 10 January 2019, whereby ETG provided flight content to Booking, but the service was provided by re-directing customers to ETG's websites with IP addresses covering the geographies of the agreement to ETG's website.[927] Booking would not be able to provide a Connected Trip 'one-stop-shop' service if it had to re-direct end customers to another OTA's website for the purchase of flights.

(687) The Phase 0 Agreement was then replaced by the Phase 1 Agreement on 27 August 2019.[928] The Phase 1 Agreement went one step closer to an integration process by switching to an API model under which ETG provided flight content to Booking but enabled Booking to sell flight OTA services from Booking's own website. As with the Phase 2 Agreement, […];[929] […][930].

(688) The limitations of the Phase 2 Agreement and the impact for Booking's flight OTA business are also illustrated in Booking's internal documents. For example, in a presentation, Booking notes that the [Details of Booking's flight growth].[931]

**Figure 54: Key strategic risk for Booking.com arising out restrictions included in Phase 2 Agreement (November 2021)**

[Figure redacted]

*Source: D015 [DOC ID 1535-234], slide 16 (emphasis added)*

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Commission further notes that the finding that the Parties would unlikely continue with the Phase 2 Agreement as it stands absent the Transaction is based on other evidence, as indicated in sections 6.6.2.3 and 6.6.2.4below.

922 Form CO, paragraph 6.104.

923 Form CO, paragraph 97.

924 Form CO, Attachment J and Form CO, footnote 164.

925 Form CO, paragraph 6.105.

926 Booking Flights deep-dive session, 2 February 2023 [DOC ID 51938], slide 18.

927 Response to RFI 4, dated 7 November 2022, Attachment 1 'Simplified Contract'.

928 Response to RFI 4, dated 7 November 2022, Attachment 2 'Phase I Agreement.

929 Response to RFI 4, dated 7 November 2022, Attachment 2 'Phase I Agreement', clause 5.2.2.

930 Booking's internal document, BOOK_01622127 [DOC ID 51861-15517], slide 3.

931 D015 [DOC ID 1535-234], slide 16.

(689) Similarly, a recent (April 2022) Booking's flight strategy presentation refers to the differences between the '*current set-up'* and the post-Transaction situation (*'Proposed set-up (post close)'*) and [Details of Booking's business strategy].[932]

**Figure 55: Differences in set-up between Phase 2 Agreement and Transaction**

[Figure redacted]

*Source: Booking's response to RFI 6, Attachment H.8 [DOC ID 19675], slide 15*

(690) Booking's presentation prior to signing the Letter of Intent regarding the Transaction, on 30 August 2021, indicates that '[Details of Booking's business strategy]'.

**Figure 56: Booking's pre-LOI discussion presentation regarding the Transaction**

[Figure redacted]

*Source: D010 [DOC ID 147-33], slide 3 (emphasis added)*

(691) Similarly, in the presentation to Booking's Board for the approval of the Transaction it was noted that '[Details of Booking's business strategy]*'*.

**Figure 57: Project Bahamas Board Materials, 23 November 2021**

[Details of Booking's rationale for the transaction]

*Source: D033, slide 4 [DOC ID 147-14] (emphasis added)*

(692) In the third place, ETG's internal documents also indicate that [...]. In particular, in ETG's view, in a scenario where ETG would not be bought by Booking ([...]), and ETG remained [...], ETG noted that '[...]'.

**Figure 58: ETG's view regarding likelihood in the long-term of Booking continuing with commercial affiliated relationship with ETG**

[Figure redacted]

*Source: ETG ID E006 [DOC ID 135], slide 28 (emphasis added)*

(693) *Third*, ETG's internal documents indicate that, absent the Transaction, [...].

(694) In the first place*,* as an entity owned by the private fund, CVC, ETG's ultimate goal is to find an 'exit' strategy. Indeed, ETG's 2021-2025 Strategic Plan presentation indicates that ETG's long-term strategy revolves around [...].[933]

(695) The same document indicates that [...][934] [...].

**Figure 59: ETG's 2 potential 'exit' scenarios in the Strategic Plan for 2021-2025**

[Figure redacted]

*Source: E006 [DOC ID 135], slide 29*

(696) While ETG's Strategic Plan identifies Booking [...], the figure above indicates that ETG also [...].

(697) Internal documents from Booking at the time of the negotiation of the Transaction also show that [Details of Booking's business strategy].[935]

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932 Booking's Response to RFI 6, Attachment H.8 [DOC ID 19675], slide 15..

933 E006 [DOC ID 135], slide 30.

934 E006 [DOC ID 135], slide 30.

935 D005, slide 8 [DOC ID 1535-224].

(698) Furthermore, in Booking's presentation dated 6 August 2021 regarding the Letter of Intent to be submitted to CVC to acquire ETG, Booking notes that '[Details of Booking's business strategy]'.

**Figure 60: Other valuation considerations from Booking**

[Details of Booking's rationale for the transaction]

*Source: Booking's internal document D010, slide 20 [DOC ID 147-33]*

(699) In the second place, under Clause 8.3 and 8.4 of the Phase 2 Agreement, [...].[936] [...].

(700) Given Booking's [Details of Booking's business strategy] it is likely that Booking would exercise its right to terminate the Phase 2 Agreement in the event that any of these competitors would purchase ETG, [...]. The Commission notes that the Notifying Party has indicated that [...] has announced '*ambitions to become "number one" in Europe'*[937] and that [...]. In an e-mail exchange with Booking's CEO, ETG's CEO indicated that '[...]".[938] ETG's internal documents also indicate that ETG considered [...].[939]

(701) In its response to the SO, [...].[940] [...].[941]

(702) The Commission disagrees with the Notifying Party's views. *First*, any investor in ETG be it strategic or financial would have to value the B2B operations of ETG considering the temporary nature of the cooperation with Booking. In this regard, the Commission has reached the conclusion[942] that in the short term it is likely that the terms of the Phase 2 Agreement would be renegotiated and be less advantageous than the current ones for Booking (and more similar to those of the Phase 1 Agreement). *Second*, the Commission finds that [...] that Trip.com could have been a potential buyer for ETG, [...].

(703) It follows from the above that due to Booking's and ETG's respective strategies and business objectives (as detailed in their internal documents), it is likely that the Phase 2 Agreement would not continue in the mid to long-term, or even in the short-term should ETG ([...]) be sold to any of Booking's rivals listed in the Phase 2 Agreement.

6.6.2.3. Absent the Transaction, the Phase 2 Agreement will likely be subject to re-negotiation in the short-term

(704) The Commission has reached the conclusion that it is likely that, absent the Transaction, the Phase 2 Agreement (including to the extent it has been modified by the Amendment) will be re-negotiated in the short-term and, therefore, that the current competition conditions as established by that agreement would not be maintained in a counterfactual scenario. Evidence in the file indicates that the Phase 2 Agreement results in a [...][943]; and that ETG [...]. In this regard, absent the

936 These are referred as 'Listed Competitor' in the Phase 2 Agreement, see Recital 1 'Definitions'.
937 Booking's Accommodation Paper [DOC ID 57285], paragraph 4.22.
938 ETG_0000190261 [DOC ID 51542-7288].
939 E006 [DOC ID 135], slide 29 and 41; E001 [DOC ID 1534-1], slide 175.
940 Response to the SO, paragraphs 5.2-5.9.
941 Response to the SO, paragraph 5.4.
942 See next sub-section.
943 As indicated above, the Commission has not taken into consideration the Amendment on its assessment for the reasons explained above.

Transaction, it is likely that ETG would re-negotiate the terms of the Phase 2 Agreement to [...].

(705) *First*, according to information provided by ETG, [...]. In particular, in 2022 ETG received EUR [...] on flight sales through Booking.com and EUR [...] out of ETG's own brands.[944] Importantly, under the Phase 2 Agreement, [Details of commercial negotiations between the Parties].[945] [Details of commercial negotiations between the Parties] by Booking of ETG's flights would impact ETG's profitability, [...].[946]

(706) *Second,* ETG's internal documents from December 2020 indicate that the current Phase 2 Agreement results in a [...].[947]

**Figure 61: [Redacted]**

[Figure redacted]

*Source: E007 [DOC ID 136], slide 3 (emphasis added)*

(707) Similarly, in its Strategic Plan for 2021-2025, ETG notes in relation to the Phase 2 Agreement that '[...]'.[948]

**Figure 62: ETG's trade off at the time of the negotiations of the Phase 2 Agreement (Strategic Plan 2021-2025)**

[Figure redacted]

*Source: E006 [DOC ID 135], Slide 36 (emphasis added)*

(708) *Third,* ETG claims that, although the Phase 2 Agreement with Booking involves [...]. In particular, the 'meta cap' limits to the transactions under the Booking brand in the MSS channel to [...]% of all ETG transactions in that channel. Moreover, [...].[949] [...].

In the first place, the projected market shares of Booking and ETG in flight OTA sales under the Phase 2 Agreement show that, as from 2022, if the Parties continued with the Phase 2 Agreement, ETG's growth path would be [...] since Booking would increase its share in the flight OTA market significantly. The table and figure below include the estimated market share data provided by the Parties if they were to continue with the Phase 2 Agreement.

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944 ETG's Paper on Counterfactual, paragraph 12.12.

945 Booking's internal document, BOOK_01622127 [DOC ID 51861-15517], slide 3. The Notifying Party indicated in the response to the SO (Annex 3, Section 4) that the reference to EUR [...] would refer to the Service Fee, which is just one component of the total fee that Booking pays to ETG for each flight transaction, in addition to the Customer Service Fee. The Commission acknowledges this, and has made the correction, but notes that its overall conclusion that the fee could be reduced the more volumes remains unchanged, because (as indicated by the Notifying Party in its response to the SO, Annex 3, paragraph 4.10) [Details of contractual relationship between the Parties].

946 Considering all things equal.

947 E007, slide 3 [DOC ID 136].

948 E006, slide 36 [DOC ID 135].

949 The MSS 'cap' is a safeguard for ETG under the Phase 2 Agreement, because the MSS is an important channel for MSS is an important channel for flight OTAs to make sales to end customers, and a main channel for ETG. In particular, [...] (Booking's Flights deep-dive session, dated 2 February 2023 [DOC ID 51938], slide 18).

**Table 9: Parties' actual and projected market shares in flight OTA services in the EEA under Phase 2 Agreement**

| | | 2019 | 2020 | 2021 | 2022 | 2023 F | 2024 F | 2025 F | 2026 F |
|---|---|---|---|---|---|---|---|---|---|
| **Parties' TTV** | Booking (m €) | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] |
| | ETG (m €) | [...] | [...] | [...] | [...] | [...] | [...] | [...] | [...] |
| **Parties' shares (OTA)** | Booking | [0-5]% | [0-5]% | [0-5]% | [5-10]% | [20-30]% | [20-30]% | [20-30]% | [30-40]% |
| | ETG | [10-20]% | [10-20]% | [10-20]% | [10-20]% | [10-20]% | [10-20]% | [10-20]% | [10-20]% |

*Source: Phocuswright, Parties' data 2019-2021, Booking Transaction Valuation Model. Parties' flight OTA TTV for 2022 provided in response to RFI 28 (Annex I) and market size provided in RFI 24 (Table 1)*[950]

**Figure 63: Parties' actual and projected market shares in flight OTA services in the EEA under Phase 2 Agreement**

[Figure redacted]

*Source: Commission on the basis of Phocuswright, Parties' data 2019-2021, Booking Transaction Valuation Model*

(709) The projected market shares show that ETG was on a growth path from 2019, but the Parties expect that ETG's market share, which reached its peak of [10-20]% in 2022, will start decreasing as from 2023 by [0-5] percentage points (to [10-20]% in 2023) and continues decreasing to [10-20]% by 2026. By contrast, throughout the same period, Booking's market share is expected to increase by [10-20] percentage points from 2022 to 2023 (from [5-10]% to [20-30]%) and to increase by [0-5] percentage points yearly until reaching [30-40]% by 2026. The Commission considers reasonable to assume that it is likely that the decrease in ETG's market share results to a large extent, from the Phase 2 Agreement given (i) ETG's concerns regarding the cannibalisation of 'ETG's core business', as expressed in internal documents[951]; (ii) that the Parties have confirmed the difficulty of capturing sales from airlines' direct channel[952]; and (iii) that Booking's flight product under the Phase 2 Agreement is essentially the same as ETG's flight product (as the supplier of the flight OTA content).

(710) In its Statement of Objections[953], the Commission referred to projected market shares of Booking and ETG in flight OTA sales under the Phase 2 Agreement which show that, as from 2022, if the Parties would continue with the Phase 2 Agreement, ETG's growth path will be brought to a halt as Booking increases its share in the flight OTA market significantly.

950 As explained in ((800) below, the Commission is of the view that the total market size for flight OTA services in the EEA submitted by the Notifying Party in the Response to RFI 24 is more reliable than the higher figure provided in Response to RFI 28 or the lower figure provided in Response to RFI 6.

951 E007, slide 3 [DOC ID 136].

952 Booking Flights Submission [DOC ID 57045], Section 5.

953 Paragraphs 460-461.

(711) The Commission notes that this finding, as set out in the SO, is not significantly altered if the market sizes resulting from the Commission's flight OTA market reconstruction are considered. In particular, as indicated in the table below which includes revised actual 2022 and forecast market shares for 2023-2026 under the Phase 2 Agreement, ETG's market share in 2022 reached [10-20]% and would start decreasing to [0-10]% as from 2023 Its market share is estimated to remain flat and only increase to between [0-10]% by 2026 (but still below its peak of [10-20]% in 2022). On the contrary, Booking's market share is expected to increase every year from [5-10]% in 2022, to approx. [10-20]-[20-30]% by 2026.[954]

**Table 10: Parties' projected market shares in flight OTA services in the EEA under Phase 2 Agreement**

| | | 2022 | 2023 F | 2024 F | 2025 F | 2026 F |
|---|---|---|---|---|---|---|
| **Parties' TTV** | **Booking (m €)** | [...] | [...] | [...] | [...] | [...] |
| | **ETG (m €)** | [...] | [...] | [...] | [...] | [...] |
| **Parties' shares (OTA)** | **Booking** | [5-10]% | [10-20]-[10-20]% | [10-20]-[10-20]% | [10-20]-[10-20]% | [10-20]-[20-30]% |
| | **ETG** | [10-20]% | [0-10]% | [0-10]% | [0-10]% | [0-10]% |

(712) In the second place, Booking's assessment of ETG on a standalone basis in the context of the assessment of the Transaction is further proof that ETG will suffer a degree of cannibalisation from Booking's sales in a scenario in which the Transaction does not go ahead. The figure below compares ETG's view regarding the prospects of the Transaction (*'management case'*) and Booking's views (*'revised case'*). The graphs show that in Booking's view, from 2022 to 2026, Booking's flight transactions would increase from [20-30]% of the total combined flight transactions (i.e., through Booking's brand and ETG) to [60-70]%; and ETG's transactions (that is, not via Booking) would decrease from [80-90]% to [30-40]%. The Commission notes that the Notifying Party has explained that Booking is already able, pre-Transaction, to achieve approx. [70-80]% of the growth in Booking's flight OTA business under the Phase 2 Agreement.[955] In this regard, while the scenarios below refer to the Transaction scenario, they are an indication that Booking's sales result in a degree of cannibalisation of ETG's sales.

**Figure 64: Booking's standalone valuation of ETG**

[Figure redacted]

*Source: Booking's internal document D010, slide 17 [DOC ID 147-33]*

(713) In its response to the SO, the Notifying Party claims that the actual performance of ETG during 2018-2023 proves that cannibalisation is very low and that the growth of ETG's own brands has not been impacted by the launch of Booking's flights via the Phase 2 Agreement.[956] Further, the Notifying Party notes that ETG's concerns regarding cannibalisation were efficiently resolved in the negotiation of the Phase 2 Agreement primarily via the MSS cap, when the MSS is a key channel for ETG, and

954 Commission's Second Letter of Facts.
955 Response to the Article 6(1)(c) decision, Annex 5.
956 Response to the SO, Annex 3, paragraph 4.4.

ETG's secured right to steer pricing per transaction for both ETG and Booking brands.[957].

(714) The Commission however notes that the market share data and projections submitted by the Notifying Party and referred to above indicate that while ETG was growing more than the market until 2022, it is expected to grow less than the market as from 2023. That is, although it would [...]. At the same time Booking will experience significant growth higher than the market. The Commission considers that this indicates a degree of cannibalisation of ETG, which the Notifying Party has not rebutted. In this respect, the market share data relied upon by the Commission provides a more useful comparison than the transaction data put forward by the Notifying Party, which lacks any element of comparison. In this regard, the Commission notes that it does not deny the Notifying Party's argument that the Phase 2 Agreement is profitable for ETG and allows it to grow (that is, in terms of absolute sales while losing market shares since the market grows faster). Rather, the Commission finds on the basis of the evidence, that with the Phase 2 Agreement ETG accepted a degree of cannibalisation that it would not have accepted if not for the Transaction. In this regard, the Commission finds that, given the importance of the MSS channel for ETG's overall business,[958] ETG could have not agreed to allow Booking to use the MSS, as the case was with the Phase 1 Agreement. Regarding the price steering mechanism, the Commission understands that under any commercial affiliated agreement the owner of the content (in this case ETG) gets the right to set the price of every sale.

(715) *Fourth,* to understand ETG's incentive (or lack thereof) to re-negotiate the Phase 2 Agreement absent the Transaction, the Commission has considered a hypothetical scenario where ETG would be able to maintain its 2022 flight OTA market share of [10-20]% in the EEA during 2023-2026 period and, therefore, avoid cannibalisation from Booking's sales; while the Parties' combined market share remains at [40-50]% by 2026.[959] The Commission is of the view that this hypothetical scenario is reasonable considering that evidence on the file referring to ETG as a best-in-class flight OTA that is in a growth trajectory.[960] In this regard, it is not unreasonable to assume that ETG would not be losing market share if it could prevent cannibalisation from Booking's sales.

(716) In such hypothetical scenario, between 2023 and 2026 ETG would make a total of EUR [...] more profits and would handle EUR [...] more TTV compared to a scenario where the Parties would continue with the Phase 2 Agreement.[961] For comparison,

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957 Response to the SO, Annex 3, paragraph 4.5-4.8.

958 Response to the SO, Annex 3, paragraph 4.7.

959 The Commission notes that the hypothetical scenario is also conservative because it is based on the assumption that Booking's fee is [...] where internal documents from Booking (DOC ID 51861-15517, slide 3) show that Booking's service fee can even be reduced to approx. […] if Booking achieves certain volumes (corrected following comments from the Notifying Party in its response to the SO, Annex 3, paragraph 4.10, as noted above ).

960 Please refer to section 6.7.2.2.2 above for a summary of the file's evidence indicating that ETG is a 'best in class' flight OTA on a growth trajectory.

961 Note that this is a conservative estimate, as it is based on the Notifying Party's 2023-2026 flight OTA market size and TTV forecasts provided in Response to RFI 6, which appear low in light of the actual 2022 flight OTA TTVs reported in Annex 1 of the Response to RFI 28. Indeed, the previous forecast provided by the Notifying Party in Response to RFI 6 amounted to EUR [...] of flight OTA sales for Booking for 2022, whereas Booking actually achieved EUR [...] in 2022 in flight OTA sales.

the additional revenue accounts for approx. [10-20]% of ETG's 2022 revenues in flight OTA services in the EEA.[962] From this perspective, ETG would have an incentive to re-negotiate the Phase 2 Agreement to its advantage. Importantly, [Details of Booking's business strategy]. In this sense, any re-negotiation of the Phase 2 Agreement would likely result in better conditions for ETG to the detriment of Booking, such that the likely scenario absent the Transaction would not be the current Phase 2 Agreement, with the growth in flights that Booking expects to achieve from it. Such re-negotiation would be in the absence of the Transaction and thus the Amendment is not relevant for the purposes of the analysis here.

(717) In its response to the SO, the Notifying Party claims that the Commission's analysis of ETG's incentives to renegotiate the Phase 2 Agreement is flawed because of (i) the fact that the Commission has erroneously found that ETG's fee could be reduced to [...] when this would refer to the supplier part of the Service Fee and ETG's total fee also includes the Customer Service Fee; (ii) that cannibalisation is low, whereas it would need to be a [60-70]% for the Phase 2 Agreement not to be profitable for ETG; (iii) that the hypothetical fails to account for the effect a renegotiation of terms would have on Booking's growth and success in the flight OTA segment, which would be impaired. In this sense, the Notifying Party claims that as ETG stands to make significant losses if any re-negotiation causes Booking to grow more slowly in flights, it clearly has no incentive to re-negotiate.[963] In addition, the Notifying Party notes that Booking would retain significant negotiating leverage in the event of renegotiation given that, in 2023, Booking is expected to account for [...] of ETG's orders and [...] of ETG's profit and these figures are expected to increase by 2026. By contrast, flights are a *de minimis* part of Booking's business, such that [...].[964]

(718) The Commission accepts the Notifying Party's claim that the [...] referred to the Service Fee but notes that its overall conclusion that ETG's fee paid by Booking could be reduced the more volumes Booking makes remains unchanged. This is because ETG pays Booking a 'sales bonus' the more volumes Booking is able to achieve under the Phase 2 Agreement, which reduces the amounts that ETG gets out of Booking from the Phase 2 Agreement. Importantly, in its hypothetical scenario, the Commission has taken into account the fee currently paid by Booking ([...]) and not a potentially lower one if the Parties were to continue the cooperation in the future. Further, the Commission reiterates that its position is that ETG accepted a degree of cannibalisation that it would have otherwise not agreed to in the absence of the prospect of the Transaction. In this regard, the Commission's hypothetical scenario above has been constructed as such to understand whether –all other things being equal – ETG would have earned more with the cooperation had it not accepted the degree of cannibalisation. Further, the Commission disagrees with the Notifying Party's claim that [...]. In the Commission's view, while Booking accounts for a relevant portion of ETG's orders and profit, ETG's pricing commitment vis-à-vis Booking is a [...] commitment to help Booking achieve its revenue targets, but not a firm obligation, such that ETG could devote less resources (and sustain less costs) to support Booking's business initiatives absent the Transaction . In addition, Booking

962 ETG's total revenues including all brands for 2022, as provided on response to RFI 14, attachment 3.
963 Response to the SO, Annex 3, paragraphs 4.9-4.10.
964 Response to the SO, Annex 3, paragraphs 4.12-4.13.

has, as indicated above,[965] [Details of Booking's business strategy]. It follows that, contrary to the Notifying Party's claims, [...].

(719) It follows from the above that ETG would have an incentive, absent the Transaction, to renegotiate the Phase 2 Agreement in order to be compensated for the cannibalisation to its own brands from Booking's flight OTA sales. Such potential compensation could take many forms (e.g., a higher fee, lower cap for MSS, worse conditions for the supply of the flight OTA content to Booking) but would in any event likely lead to an increase of Booking's costs for the sourcing of flight OTA services, and its growth in the flight OTA market would be lower than under the current Phase 2 Agreement. In this regard, contrary to the Notifying Party's views, the Commission considers that the current Phase 2 Agreement does not reflect the conditions absent the Transaction. This is because the evidence on the file does not support the Notifying Party's assertion that the Parties have a mutual financial and strategic incentive to continue the cooperation as it currently stands.

(720) This finding is also supported by the fact that the Phase 2 Agreement, provides for better conditions for Booking than the Phase 1 Agreement, including a lower fee.[966] Absent the Transaction ETG would likely aim at achieving terms closer to those of the Phase 1 Agreement.

6.6.2.4. The most likely scenario, absent the Transaction, is that the Phase 2 Agreement would not remain in place as it stands

(721) For the reasons set out above, the Commission has reached the conclusion that it is likely that, in the mid to long-term, Booking would prefer to develop its own proprietary flight OTA platform not to depend on any third party in line with Booking's '[Details of Booking's business strategy]'[967]. [...]. Alternatively, in the short term, the Phase 2 Agreement may be renegotiated to address [...] resulting in worse conditions for Booking that would not allow it to achieve the growth in flights that it expects under the Phase 2 Agreement. In this regard, the Commission has reached the conclusion that, contrary to the Notifying Party's claims, the most likely counterfactual is not the current Phase 2 Agreement.

(722) While the evidence on the file indicates that, absent the Transaction, Booking would not want to be dependent on third parties for the provision of flight OTA services and to develop its own flight OTA solution, it is not possible for the Commission to determine whether Booking would be in a position to develop a proprietary flight OTA solution and if it managed to develop it, when such a solution would be ready and how would it look like in terms of its capabilities. Indeed, when Booking decided to build its own flight OTA platform […] and, therefore, abandoned the project to pursue the Transaction. […][968] […].[969]

**Figure 65: Booking's views regarding the time for [proprietary solution] to be competitive**

[Figure redacted]

*Source: D005 [DOC ID 1535-224], slide 8 (emphasis added)*

965 See section 6.5.2 above regarding the rationale for the Transaction.
966 See paragraph ((687) above.
967 D039 [DOC ID 212], slide 13.
968 D010 [DOC ID 147-33], slide 4.
969 D005 [DOC ID 1535-224], slide 8.

**Figure 66: Booking's views regarding the comparison between [proprietary solution] and ETG**

[Figure redacted]

*Source: D010 [DOC ID 147-33], slide 4*

(723) Moreover, in the earnings call from Booking for Q4 2021, its CEO Glen Fogel stated that '*Now, Etraveli has been powering the Booking.com product for two years. Great technology. They do a lot of things that could we recreate on our own? Probably. But it would take a long time. It would require us to use resources that we want to use elsewhere. So, by acquiring Etraveli, we're going to bring that technology in-house and be able to do things that we couldn't do when we were just a commercial partner. So, I'm looking very forward to having that close and hopefully as we said in the future and then really begin to develop a great, great combination.*' (emphasis added)[970] In its response to the Third Letter of Facts, the Notifying Party submits that Glen Fogel's statement confirms that [proprietary solution]. was not a plausible option around October 2021 which serves to emphasize the Notifying Party's view that the only plausible counterfactual is the continuation of the Phase 2 Agreement, as the Parties have recently decided to extend in term.[971] The Commission considers that this statement from Booking's CEO does not contradict evidence put forward in this decision which indicates that Booking would prefer not to depend on third parties for the provision of flight OTA services, as clearly indicated in its internal documents. The statement merely makes clear that the Transaction is Booking's preferred option but does not make any pronouncements on the preferred alternative if the Transaction would not go through. In addition, the Commission recalls its position that the Amendment was entered into during the merger proceedings cannot be accepted as appropriate counterfactual, as its revised terms are likely influenced by the ongoing merger investigation.

(724) An OTA interviewed during the market investigation noted that it is indeed difficult to build a flight OTA platform independently, and that Booking could have preferred to acquire ETG not to be dependent on a third party, but also given the difficulties, number of years and investment needed to build a performing flight OTA platform in the EEA 'from scratch'. In this regard, the OTA indicated that: '*It is not easy to develop such a wide network because the technological side of it is very complex, requiring a direct and seamless connection to the IT systems of over 200 airlines. It is very difficult to build it independently so it is necessary to either cooperate with the likes of ETG or buy them. Booking probably preferred buying ETG mostly in order not to be dependent on a third party; for the longer run it is difficult to manage such relationship, even more so where the margins are slim as in flights. In addition, owning ETG would give Booking control over the customer data which is very important for the business. Finally, it will give Booking control over the product design. ETG has established its capabilities over a stretch of 10 years plus, including the use of merging companies itself. Therefore, to build up capabilities from scratch end-to-end, meaning from sourcing / connectivities to airlines to steering/yielding, selling to customers & marketing (including own flight OTA and MetaSearch) and fulfillment, it would take many years with heavy investment, going easily into double digit million euros or more (probably time and the complexity of setting up this*

970 Booking Holdings earnings call transcript Q4 2021, [DOC ID 114517], p. 13. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q4-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx.

971 Response to Third Letter of Facts, page 15.

*whole infrastructure are two main reasons why booking has opted for a purchase rather than setting up own infrastructure).*'[972]

(725) Another OTA also highlighted the difficulties of building a platform: '*It is relatively easy technologically to connect to a GDS, present its content and direct customers to the airlines websites. It is more difficult to build the technology that would allow the operator to sell directly to customers via its own platform and be the 'merchant of record', to offer combination of products or products that the airlines do not offer. The investment in building such technology is significant. It is almost impossible to estimate the cost as it depends on the platform a company decides to build. As for the time, [CONFIDENTIAL] - nevertheless, again it very much depends on the platform a company decides to build. Maintaining the technology is also challenging. Kiwi for example has about [non-confidential version: hundreds of] employees handling the technology side (in addition to about the same number for customer support) and maintaining the technology costs millions of euro every month.*

The OTA also must have relevant content for the countries in which it would like to operate. Building the right content may take some time, from months to years because it depends on the negotiations with the relevant airlines.'[973]

(726) Another OTA noted that '*the access to the inventory alone is not sufficient to be competitive in the flight OTA market. The platform is also a key element to attract customers. Most flight OTAs do not use a standard platform, they rather build it in-house and consider their platform as proprietary. Compared to standard platform, proprietary platforms offer unique features and can be tailored-made (e.g. how the platform works, the services it offers to end-customers etc), which represents a key competitive advantage for the flight OTA*.'[974]

(727) On the basis of the above, the Commission concludes that the counterfactual put forward by the Parties (that is, the continuation of the Phase 2 Agreement) is not the appropriate framework to assess the effects of the Transaction; and that, in view of Booking's difficulties building its own flight OTA platform through [proprietary solution], it is uncertain whether and by when Booking would be able, in a counterfactual scenario, to successfully build its own flight OTA platform, and how such solution would look like in terms of capability. In the alternative, the Notifying Party has not provided evidence regarding the estimated number of flights that Booking would be able to achieve under a counterfactual scenario of lesser cooperation with ETG.

(728) Therefore, as a starting point, the Commission has assessed in section 6.7.2.4 below, the potential increment in TTV in hotel OTA services brought by the Transaction on the basis of a 'zero' flights counterfactual scenario.

(729) Moreover, the Commission notes that even if it accepted the Notifying Party's argument that the existing cooperation with ETG were the appropriate counterfactual, quod non, the Transaction would allow Booking to grow its hotel OTA business and would result in a positive increment beyond what can be achieved

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[972] Non-confidential minutes of the call with [OTA], dated 5 December 2022 [DOC ID 50713], paragraph 9.

[973] Non-confidential minutes of the call with [OTA], dated 9 December 2022 [DOC ID 51316], paragraphs 4 and 5.

[974] Non-confidential minutes of the call with [OTA], dated 19 December 2022 [DOC ID 51501], paragraph 6.

under the existing cooperation. In addition, the Commission considers that the gap between what Booking could achieve through the Transaction compared to the Phase 2 Agreement is bigger than the [20-30]% argued by the Notifying Party .[975] This is because , as indicated above, (i) in the short-term it is likely that ETG seeks to achieve terms closer to the Phase 1 Agreement[976]; and (ii) [Details of Booking's business strategy]. The Commission's arguments are further developed in section 6.7.2.4 below.

## 6.7. Strengthening of Booking's dominant position on the hotel OTA market in the EEA

### *6.7.1. The Notifying Party's views*

(730) The Notifying Party claims that a cross-selling theory of harm is entirely novel and lacks evidential, legal and economic support.[977] In particular, the Notifying Party alleges that the Transaction involves largely complementary businesses and that any cross-selling theory of harm therefore would amount to an efficiency offence.[978] Last, the Notifying Party considers that any cross-selling theory of harm should be assessed within the framework of the guidelines on the assessment of non-horizontal mergers.[979]

(731) When applying this framework, the Notifying Party alleges that cross-selling from a flights product can only give rise to *de minimis* effects on the accommodation OTA market and as a result, cannot raise credible concerns in terms of foreclosing rival OTAs.[980] In the Notifying Party's views, the Transaction would only result in a […]% increase of accommodation OTA demand, of which […]% would be merger-specific.[981] This demand-increase would only be *de minimis*, as demonstrated by the announcements that several current and potential competitors made on their entry and expansion plans in the accommodation OTA sector (including Uber, Revolut, TUI and Trip.com).[982] Last, the Notifying Party considers that a significant number of OTA competitors will remain in Europe, many of whom already have an existing presence across multiple verticals including flights and accommodation.[983]

(732) As regards the ability of Booking.com to foreclose accommodation OTA rivals, the Notifying Party claims that bookings will remain contestable and that Booking cannot automatically deprive any competitor of their sales.[984] On the flight OTA market, the Parties would only hold a combined market share of [10-20]% whereas 83% of EEA flights market is controlled by airlines. Flight OTAs' main strategy to compete for orders is to undercut the airlines prices and seek to generate a positive margin through the sale of ancillaries. According to the Notifying Party, these market dynamics would remain unaffected by the Transaction and therefore the Parties would not have the requisite market power to engage in a foreclosure strategy of

975 See paragraph ((608) above.
976 As indicated in section 6.6.2.3 above.
977 Booking Theory of harm submission, paragraphs 2.1 to 2.6.
978 Booking Theory of harm submission, paragraph 2.1.
979 Booking Theory of harm submission, paragraphs 3.1 to 3.2 and Booking Legal Framework paper.
980 Booking Theory of harm submission, paragraphs 5.9 to 5.16.
981 Booking Theory of harm submission, paragraphs 5.9.
982 Booking Theory of harm submission, paragraphs 5.11.
983 Booking Theory of harm submission, paragraphs 5.14.
984 Booking Theory of harm submission, paragraphs 5.19 to 5.44.

accommodation OTA providers.[985] The Notifying Party further alleges that the booking of a flight and an accommodation result from distinct decisions from customers, which would prevent Booking from controlling traffic.[986] Last, the Notifying Party indicates that customers usually multi-home, which would also prevent Booking from foreclosing rival hotel OTAs.[987]

(733) Finally, as regards Booking.com's incentive to engage in an aggressive discounting strategy to foreclose its rivals, the Notifying Party alleges that available evidence shows that Booking aims to operate a profitable, standalone flights business.[988]

*6.7.2. The Commission's assessment*

(734) The Commission has reached the conclusion that the Transaction is likely to result in a significant impediment of effective competition due to the strengthening of Booking's dominant position in the hotel OTA market in the EEA by increasing barriers to entry or expansion on that market. As a result, Booking's position on the hotel OTA market would become more difficult to contest than it is today and lead to harm for hotels and, possibly, end customers.

6.7.2.1. The Commission's theory of harm

(735) Section 6.1 above sets out that when the Commission investigates whether a concentration is compatible with the internal market it must assess, pursuant to Article 2(2) and (3) of the Merger Regulation, whether or not that concentration would significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position in the internal market or a substantial part of it.[989] The Commission considers that the Transaction displays elements of both a horizontal and a non-horizontal merger. Although Booking's and ETG's services are to a large extent complementary, the Commission considers that the Transaction would likely involve effects on the market for hotel OTA services that would typically result from a horizontal merger in that Booking may further entrench its position on the hotel OTA market. However, these effects arise since the Transaction would enable Booking to acquire a target that is present on another, upstream market, i.e. a flight OTA which constitutes an important customer acquisition channel. As such, the Transaction also has elements of a non-horizontal merger.

(736) As a starting point of its competitive assessment in sections 6.2-6.4 above, the Commission investigated the market dynamics of the hotel OTA and flight OTA markets as well as Booking's position on the hotel OTA market in the EEA.

(737) *First*, in relation to market dynamics, the Commission found evidence that the hotel OTA market was by far the most profitable market in the OTA sector. This market is characterised by strong network effects (as set out in section 6.2.3 above) which act as barriers to entry or expansion in the EEA. In practice, this means that in order to effectively compete on the market, players must attract a sufficient number of end customers, which in turn depends to a large extent on the number of hotels (and the

985 Booking Theory of harm submission, paragraphs 5.17 to 5.18 and Booking Flights submission [DOC ID 57045].
986 Booking Theory of harm submission, paragraphs 5.20 to 5.21.
987 Notifying Party's theory of harm submission, paragraphs 5.22 to 5.25.
988 Notifying Party's theory of harm submission, paragraphs 5.45 to 5.47.
989 Horizontal Merger Guidelines, paragraph 1.

rates) that the platform is able to offer. On the other hand, hotels are attracted to an OTA platform essentially by the (high) number of end-customers that they can potentially reach through the platform. As a consequence, hotels are willing to offer better content (and rates) to those OTAs that have the highest number of customers. This interaction between the magnitude in numbers of hotels and end customers that can meet on an OTA platform creates network effects, and such network effects play in favour of Booking, as the dominant hotel OTA in the EEA. In contrast, as previously set out in section **6.2.3** above, network effects play against smaller OTAs and new entrants since these OTAs find it very difficult and time consuming to reach a competitive scale. Additional barriers to entry and expansions in the hotel OTA market in the EEA consist in (i) the difficulty for smaller OTAs to manage a large number of bilateral contracts with hotels in order to develop a proprietary offering, (ii) the impossibility for smaller OTAs to invest significant amounts in online advertising to attract customers and (iii) customer inertia and brand strength that play in favour of the main players in the market (and in particular Booking).

(738) *Second*, as outlined in section 6.4 above, the Commission came to the conclusion that Booking is a dominant player on the market for hotel OTA services in the EEA. This conclusion is based on several elements, *i.e.*, Booking's level of market share, Booking's expected growth on the market, evidence showing that Booking can act independently from hotels and competitors and evidence showing that Booking outperforms competitors in the EEA on the most important parameters that determine hotel OTAs' ability to compete. Moreover, it follows from section 6.2 above that competition on the market for hotel OTA services in the EEA is currently already weak. As a result, further strengthening of Booking on that market is likely problematic for (potential) competition.

(739) In view of the foregoing, the Commission will assess in this section whether the Transaction would reinforce existing network effects and raise barriers to entry or expansion on the hotel OTA market as a result of the traffic that Booking would acquire through the Transaction thereby allowing it to further strengthen its already dominant position on the market for hotel OTA services in the EEA and enabling Booking to harm hotels and end customers.

(740) *First*, the Commission considers in section 6.7.2.2 below that through the Transaction, Booking would purchase a main customer acquisition channel. Indeed, Flight OTA services generate additional end-customer traffic for hotel OTA services, since booking flights constitute the first 'step' of a trip for a significant portion of end customers, and, as evidenced by Booking's internal documents, flights are a key component of Booking's Connected Trip strategy. The acquisition of ETG would allow Booking to attract a significant number of additional customer traffic. ETG is already a leading flight OTA services player in terms of market share and it is considered to be a best-in-class flight OTA provider that has been on a consistent growth path. Post-Transaction, Booking would be able to accelerate the growth of the merged entity's flight OTA business thus further increasing additional traffic via the flight OTA business to the hotel OTA business in the short- to mid-term. In this way, Booking will be able to develop a travel ecosystem where it would be able to leverage its brand strength and existing customer inertia to further strengthen its position on the hotel OTA market.

(741) *Second,* the Commission finds in section 6.7.2.3 below that the expected growth that Booking will achieve on the hotel OTA market thanks to the Transaction will make its position on that market even more difficult to contest. Indeed, the acquisition of ETG would increase barriers to entry and expansion on the hotel OTA market in the EEA. In particular, by purchasing a main customer acquisition channel and developing a travel ecosystem, Booking will be able to attract additional end customers earlier on their travel journey (*i.e.*, from the moment a customer visits Booking's platform in search of a flight, at the time of the booking of a flight or before the search for an accommodation starts), and grow its position on the hotel OTA market, partly as a result of the existing customer inertia and the ability of Booking to target these customers to also make use of Booking's hotel OTA services. This, in turn, will increase Booking's scale and, thus, network effects making its position on the hotel OTA market even more difficult to contest. As a result of the Transaction, Booking will be able to strengthen its already dominant position on the hotel OTA market. At the same time, the ability of rival hotel OTAs to attract customers would be further reduced. This, in turn, will make it harder for these rivals to build or scale-up a hotel OTA offering and will consequently hamper rival hotel OTAs' ability to compete on the merits.

(742) *Third*, in section 6.7.2.4 below, the Commission finds that Booking's growth on the hotel OTA market would take place in an already concentrated market where Booking holds a dominant position. As will be further set out below, the Commission considers that the Transaction will result in an incremental hotel OTA TTV of EUR […] billion in 2025, if all gains arising out the Connected Trip are considered. This would represent an increment in Booking's market share of approx. [0-5]% (based on the market size resulting from the market reconstruction for 2022).[990] On the other hand, if, conservatively, one only considered the incremental hotel bookings directly linked to flights, the Transaction would result in an incremental hotel OTA TTV of approx. […] by 2025. This would represent an increment in Booking's market share of approx. [0-5]% (again based on the market size resulting from the market reconstruction for 2022).[991] In other words, Booking's large market shares for hotel OTA services would increase further, and its dominant position, would be further strengthened.

(743) *Fourth*, the strengthening of Booking's dominant position resulting from the increase of barriers to entry and expansion will lead to harm to hotels as set out in section (1077). The fact that Booking's market position will become even less contestable as a result of the Transaction will further reduce the competitive pressure on Booking and Booking's incentives to offer better conditions to hotels (including lower commissions).

(744) *Fifth*, section 6.7.2.6 below sets out that the strengthening of Booking's market position may also lead to harm to end customers. Thus, the Transaction will increase Booking's ability to acquire end customers, as well as their loyalty and inertia. Since Booking generally charges higher prices compared to those offered by other hotel OTAs, its acquired end customers will ultimately pay higher prices.

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990 See section 6.7.2.4.2 below for the Commission's methodology for calculating the increment resulting from the Transaction.

991 Please note that, as further explained in section 6.7.2.4.2 below, the incremental TTV has been estimated considering Booking's more recent estimates as included in a presentation dated May 2022.

(745) *Sixth*, as explained in section 7 below, the likely anticompetitive effects of the Transaction cannot be mitigated by efficiencies claimed by the Parties.

(746) On the basis of these findings, as explained below, the Commission comes to the conclusion that the Transaction would significantly impede effective competition in a substantial part of the internal market.

6.7.2.2. Booking buys a main customer acquisition channel

(747) In section 6.5.2 above, the Commission already set out its views on the rationale of the Transaction. In short, the Commission concludes that, through the Transaction, Booking is seeking to develop its Connected Trip strategy, increasing both customer loyalty and growth in the hotel OTA market.[992] Developing a flight OTA offering is the cornerstone to the Connected Trip strategy (and to growth in the hotel OTA market in general) for Booking. On that basis, the Commission considers that the flight OTA market constitutes an important customer acquisition channel for Booking.

(748) By acquiring flight OTA capabilities, Booking is tapping into the segment of consumers that require both flight OTA and hotel OTA services. According to Booking's estimates, this segment represents [Details of customer demand].[993] As explained in section 6.5 above, Booking's accommodation business has experienced slowing growth and Booking identified the flight OTA business as a leverage to increase the growth of its accommodation business. At present, Booking has achieved a dominant position in the hotel OTA market with limited presence in the flight OTA market; according to Booking, at present only [less than 1%]% of its customers are acquired via flight to accommodation cross-sell.[994] Considering that the other customer acquisition channels (such as direct access, PPC advertisement, MSS platforms and others[995]) are already dominated by Booking, the flight OTA market represents an important customer acquisition channel for rival OTAs, while there is still significant scope for Booking to obtain additional hotel customers through flights.

(749) In their response to the second Letter of Facts, the Parties argue that the range from [Details of customer demand] '*is static and conservative as it ignores the existence of market dynamics*'.[996] The Parties fail to further substantiate this point and only refer to the flight waterfall and hotel waterfall analysis, which are models presented by the Notifying Party to estimate the total cross-selling opportunity for Booking.com.[997] In section 6.7.2.4.3 below, the Commission sets out why it considers that it cannot take

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992 In addition to increased growth in the Hotel OTA market, the Connected Trip may have additional rationales including building and growing a flight OTA business.

993 According to Figure 4.1 in the Response to the SO, page 36, [Details of Booking customers' purchasing patterns].

994 Response to the SO, Figure 4.3 (page 38).

995 Form CO, page 256, Table 8.3.

996 Response to the second Letter of Facts, Annex 1, p. 47.

997 Response to the Article 6(1)(c) decision, Section 4.A and Annex 5. The accommodation 'waterfall' follows a top-down approach starting with the estimated accommodation OTA market size and identifying the proportion of the market that could potentially be affected by cross-selling flights into accommodation post-Transaction. The flights 'waterfall' follows the same top-down approach starting with the entire flight OTA market size and calculating how many of those customers could reasonably be cross-sold an accommodation by Booking.

the waterfall models into account as they are conservative and static analyses that do not take into account market developments.

(750) The importance of flight OTA services as a customer acquisition channel for hotel OTAs was also confirmed by a competitor, which explains that it '*is concerned that post-Transaction it will be more difficult for it to sell accommodation. Further to the Transaction, Booking will benefit from not only the traffic and possible upselling of the flight bookings that are made on its website through the current commercial agreement in place with ETG, but also from the traffic and customer relationship established by other ETG's brands (gotogate, flight network, Mytrip and Supersaver). Therefore, there are even less commercial opportunities for competing hotel OTAs to sell accommodation as these flight customers will highly likely be pushed towards Booking's offers.*'[998]

(751) These considerations were echoed by the hotel association HOTREC. HOTREC explained that '*cross-selling flights with hotels is a very powerful tool for Booking. It would enable Booking to generate additional traffic to Booking's platform and attract more customers.*'[999]

(752) The Commission further concludes that, as compared to other travel products that are part of Booking's Connected Trip strategy (*i.e.* car rental, taxis and attractions), flights are the most important customer acquisition channel.

(753) *First*, from the perspective of the end customer, a flight ticket is often the 'entry product' for a trip. In the course of the market investigation, rival OTAs explained that: '*[t]he common customer behaviour for travel products is starting with flights, and then booking accommodation and other services.*'[1000]; and that: '*[c]onsumers typically book flights before accommodation, for the following reasons: // Flights are perceived to be more limited in terms of availability and timing, whereas hotel options are perceived as more extensive. // Flight schedules can impact hotel check in and checkout dates. // Flight prices are also perceived to be more prone to fluctuation, especially closer to travel dates, whereas hotel pricing perceived to be more static*'.[1001]

(754) In addition, Booking's internal documents confirm the importance of flights as an entry product, by indicating that flights are [Details of Booking's business strategy].[1002]

(755) As flights are an important entry product for a customer's trip, flights also represent an important customer acquisition channel for OTAs. In this context, a competitor explained to the Commission that it '*believes that flights have a funnel effect on accommodation as they are the starting point of a trip*'.[1003] Another competitor '*believes that it is likely that Booking will use flight products as a traffic acquisition channel for hotel bookings and will be willing to spend much more for flight than*

998 Non-confidential minutes of a call with eDreams Odigeo dated 26 June 2023 [DOC ID 58373], paragraph 17.

999 Non-confidential minutes of a call with HOTREC dated 21 June 2023 [DOC ID 58045], paragraph 5.

1000 Response to question 23 of Questionnaire Q1 to OTAs [DOC ID 2739].

1001 Response to question 24 of Questionnaire Q1 to OTAs [DOC ID 2739].

1002 Booking's internal documents D003, slide 3 [ID147-3]; D038, slides 8, 12 [DOC ID 211].

1003 Non-confidential minutes of a conference call with Kiwi, dated 10 July 2022 [DOC ID 2497], paragraph 16.

*what would be affordable for flight OTAs*'.[1004] Data gathered by Booking shows that flights are the first product booked in […]% of transactions that are not attached to a prior accommodation booking, in comparison with […]% for car rental, […]% for attractions and […]% for airport taxi.[1005] Booking also considers that [Details of Booking's business strategy].[1006] As a result, flights play an important role in Booking's Connected Trip strategy. Booking's latest Proxy Statement for 2022 clearly confirms that point since Booking states that it is '*expanding and enhancing our flight product at Booking.com, which is a key component of our Connected Trip vision*'.[1007] Booking's slide below refers to flights as being the most critical element in that respect.

**Figure 67: Flights as the [redacted] element for the Connected Trip**

[Figure redacted]

*Source: Attachment D003 – B.com Flights M&A Discussion Materials (June 23, 2021).pdf [ID147-3] slide 3*

(756) *Second*, the Commission finds that one of the reasons why a flights product is important for the Connected Trip is that it is by far the product '*[Details of Booking's business strategy]'* as shown on the slide below.[1008]

**Figure 68: Lego Wave 1, opportunities for verticals to be booked in the same website as accommodations**

[Figure redacted]

*Source: Response to QP8, Attachment D.1, Lego study wave 1, slide 78.*

(757) On the basis of Priceline's existing flights business, an internal document of Booking already identified in 2018 that [Details of Booking's business strategy].[1009] The same presentation also shows that flights drive customers to other products, including hotels.[1010]

**Figure 69: Flight business drives customers to other products, including hotels**

[Figure redacted]

*Source: Booking's internal document, D357, slide 7*

(758) The potential for Booking to drive value from flights to its accommodation business, also follows directly from the Transaction's rationale. An internal document describes [Details of Booking's business strategy].'[1011] Another internal document explained that: [Details of Booking's business strategy].'[1012] In an email exchange between senior management, it was also explained that: '*[Details of Booking's business strategy]*.'[1013] Finally, Booking's recent strategic dashboard presentations

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1004 Non-confidential minutes of a conference call with eDreams Odigeo, dated 1 December 2022 [DOC ID 57675], paragraph 22.

1005 Booking's internal document D401 [DOC ID 1535-620], slide 6.

1006 Booking's internal document D007, page 6 [DOC ID 147-27].

1007 Booking Notice of Annual Stockholders' Meeting and Proxy Statement, page 10 [DOC ID 120831], available at https://s201.q4cdn.com/865305287/files/doc_financials/2022/ar/2002proxybookings.pdf.

1008 Response to QP8, Attachment D.1, Lego study wave 1, slide 78.

1009 Booking's internal document, D357, [DOC ID 1535-576] slide 8.

1010 Booking's internal document, D357, [DOC ID 1535-576] slide 7.

1011 Booking's internal document, D039 [DOC ID 212], slide 31.

1012 Booking's internal document, D041, slide 108 [DOC ID 214].

1013 Booking's internal document, BOOK_00808809 [DOC ID 51852-15330].

for Q2 2022 indicate [Details of Booking's business strategy]. In particular, data gathered by Booking reflects that [Details of Booking's business strategy].[1014]

(759) In the response to the SO, the Parties argue that the Commission is wrong to find that flight OTA services represent an important customer acquisition channel for hotel OTA providers.

(760) *First*, the Parties argue that flights is a *de minimis* source of traffic. In particular Semrush data would show that the top 10 accommodation OTA providers in the EEA (excluding Booking) obtain […]%, of their traffic from the direct channel, MSS and search (both paid and organic). Finally, Booking's data would show that only […]% of accommodation customers from Booking.com are acquired via flight to accommodation cross-sell.[1015]

(761) The Commission does not agree with the Parties' arguments that these figures show that flight OTA services cannot be seen as an important customer acquisition channel for hotel OTA providers. In relation to the Semrush data, the Commission notes that if the weighted figure is taken into account, then […]% of traffic would come from indirect channels including flights. This is not insignificant. In particular when taking into account that Booking currently dominates the direct and search channels and that it considers itself that it does not have to have the cheapest offer on MSS channels to be able to drive a significant increase in bookings, relying on their brand strength.[1016]

(762) In relation to the Parties' argument that Booking.com obtains only […]% of its accommodation customers from the flight to accommodation cross-sell, the Commission notes that Booking identifies the following customer acquisition channels: direct ([…]%), Google Ads ([…]%), strategic partnerships ([…]%), MSS ([…]%), other ([…]%) and flight to accommodation cross-sell ([…]%).[1017] The Commission notes first that strategic partnerships, *i.e.* sales by competing hotel OTA providers of Booking's inventory cannot be seen as a realistic customer acquisition channel for competitors. The Commission concluded above that on a B2B basis, Booking has a market share of [60-70]% (see Table 4: Market shares of Booking, Expedia and other competitors in the hotel OTA market (2019-2022, B2B, NA TTV on a booker-basis) above). In addition, Booking currently dominates the direct and search channels and it considers itself that it does not have to have the cheapest offer on MSS channels to be able to drive a significant increase in accommodation bookings, relying on its brand strength. The Commission considers that this demonstrates that it is difficult for hotel OTA providers to effectively compete for most of the customer acquisition channels that Booking identifies. Even if flight to accommodation cross-sell is a small customer acquisition channel for Booking at the moment, this mainly reflects Booking's current dominant position achieved in other channels. As Booking is only recently entering into the flight OTA business, it will likely become a more important customer acquisition channel for Booking in the future. In any event, flight to accommodation cross-sell is an important customer

1014 In Booking's internal document D401 [DOC ID 1535-620] the attach rate of flights was measured [Details of Booking's market share]. In BOOK_00675349-Booking LT – Trips Impact [ID 051850-025965] slide 4, [Details of Booking's market share].

1015 Response to the SO, para. 4.33(i); see further Response to the second Letter of Facts, Annex 1, pp. 48-50.

1016 Booking's internal document D105 [DOC ID 526-61], p. 31.

1017 Response to the SO, para. 4.33(i) and figure 4.3.

acquisition channel for competitors especially in light of the other customer acquisition channels that are already dominated by Booking.

(763) *Second*, the Parties argue that the flight OTA market represents only a small pool of potential hotel customers. According to the Parties, a hypothetical monopolist in the flight OTA market would only be able to gain a [0-5]% market share in the hotel OTA market. As a result, the flight OTA market would structurally be too small to be a meaningful customer acquisition channel for hotel OTA providers.[1018]

(764) The Commission does not agree with the Parties' calculation of the potential increment on the hotel OTA market for a hypothetical monopolist on the flight OTA market. As already mentioned above, it follows from the Parties' flight waterfall and hotel waterfall (see in more detail section 6.7.2.4.3 below) that Booking is tapping into the segment of consumers that require both flight OTA and hotel OTA services which represents a significant share ranging from [5-10]% to [10-20]% of the total demand for hotel OTA services.[1019] This is significantly larger than the [0-5]% that the Parties claim. The main reason for this difference is that the Parties assume that the potential market share increase is limited by applying a 15% attach rate.[1020] This attach rate is […] than the attach rate that Booking itself achieves on the market. In the TVM, Booking assumes that it will be able to have an attach rate from flights to cross-sell accommodations of […]%.[1021] However, the Commission notes that, since 2021, Booking's flight to accommodation attach rate has [Details of Booking's attach rates] (see further para. 175 above).[1022]

(765) *Third*, the Parties argue that the importance of flight OTAs is expected to be reduced further due to the constraint from airline.com on flight OTA providers.[1023] In paragraphs ((859)-((868) below, the Commission assesses the impact of the constraints imposed by airlines on the flight OTA market in general and on Booking's growth projections on the flight OTA market until 2026 in particular showing that even taking into account these constraints Booking would be expected to grow significantly in the market for flight OTA services in the EEA. Moreover, the Commission refers to the most recent industry reports from PhocusWright which were published in June 2023, where PhocusWright indeed forecasts that by 2026 the supplier-direct online (airline.com) channel will grow significantly as compared to 2019 but still forecasts that the flight OTA channel will have recovered to 2019 levels.[1024] The Parties themselves recognize that '*estimates from third-party data provider Phocuswright are the main source for market sizes for flight OTA*', albeit

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1018 Response to the SO, para. 4.33(ii); see further Response to the second Letter of Facts, Annex 1, pp. 48-50.

1019 According to Figure 4.1 in the Response to the SO, page 36, '*the Flights Waterfall*', […] million transactions out of a total of […] million hotel OTA transactions ([…]%) require both flight OTA and hotel OTA services. According to Figure 4.2 of the response to the SO, page 37, '*the Hotel Waterfall*', […] million transactions out of a total of […] million hotel OTA transactions ([…]%) require both flight OTA and hotel OTA services.

1020 Response to the SO, footnote 76.

1021 Booking's 'Project Bahamas – Phase II Model v33 – Datapack version – EC.xlsx'; tab. 'Synergies' line 75 [DOC ID 1535-2530].

1022 Response to RFI 6, Annex 10.

1023 Response to the SO, para. 4.33(iii); see further Response to the second Letter of Facts, Annex 1, pp. 48-50.

1024 Response to RFI 35, Attachment 1.1 (Figure 12) and Attachment 1.3 (Figure 9).

with reservations on the accuracy of their figures.[1025] For these reasons, the Commission does not agree with the Parties that constraints imposed by airlines on flight OTA providers will mean that a flight OTA offering is expected to become a less important customer acquisition channel for hotel OTA providers.

(766) On the basis of the foregoing, the Commission considers that a flight OTA product represents an important customer acquisition channel for hotel OTA providers and specifically for Booking since it constitutes a '*[Details of Booking's business strategy]*'.[1026]

6.7.2.2.1. Through the acquisition of ETG, Booking will acquire a significant amount of additional customer traffic

(767) Beyond the conclusion that the flight OTA market is an important customer acquisition channel for hotel OTA providers, the Commission considers that Booking's acquisition of ETG will enable Booking to acquire a significant amount of additional customer traffic which will offer a significant number of new opportunities to cross-sell hotel rooms.

(768) Statements by both the CEO of ETG and the CEO of Booking confirm […][1027] Later, in another email to Booking's CEO from 8 December 2020, ETG's CEO states that '*[…]*'.[1028] On Booking's side, Booking's CEO explained in an internal email conversation from 7 September 2020 that '*[Details of Booking's business strategy]*'.[1029]

(a) All flight OTA customer traffic presents a cross-selling opportunity

(769) In order to enable further growth on the hotel OTA market, any additional customer traffic, regardless of whether a flight sale is made, presents a cross-selling opportunity for Booking. In this regard, one OTA provider explains that '*most customers start their trip project with booking their flight. The OTA who sold the flight ticket has a competitive advantage as it knows the dates and destination of the customer's trip. Importantly, this OTA has already established a relationship with the customers and can suggest hotel offers during the booking process of the flight, or it can send the customer follow-up emails with hotel offers. In addition, subject to marketing investments, the OTA can use various channels such as Youtube, Google Search, Display advertising networks (e.g., news websites, etc.) to push to the flight customers hotel ads while they use these channels (eg "retargeting" practice).*'[1030]

(770) The importance of a flights offering as a means to attract new customers and to create an early customer relationship was also acknowledged in a presentation by Booking, which states that [Details of Booking's business strategy].[1031]

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1025 Form CO, Annex 7, para. 2.2.

1026 Booking Notice of Annual Stockholders' Meeting and Proxy Statement, page 10 [DOC ID 120831], available at https://s201.q4cdn.com/865305287/files/doc_financials/2022/ar/2002proxybookings.pdf.

1027 ETG_0000004387 [DOC ID 51103-4387] (emphasis added).

1028 ETG_0000190261 [DOC ID 51542-7288], pp. 1-2.

1029 BOOK_00121344 [DOC ID 51139-5532], p. 1.

1030 Non-confidential minutes of a conference call with eDreams Odigeo dated 26 June 2023 [DOC ID 58373], paragraph 16.

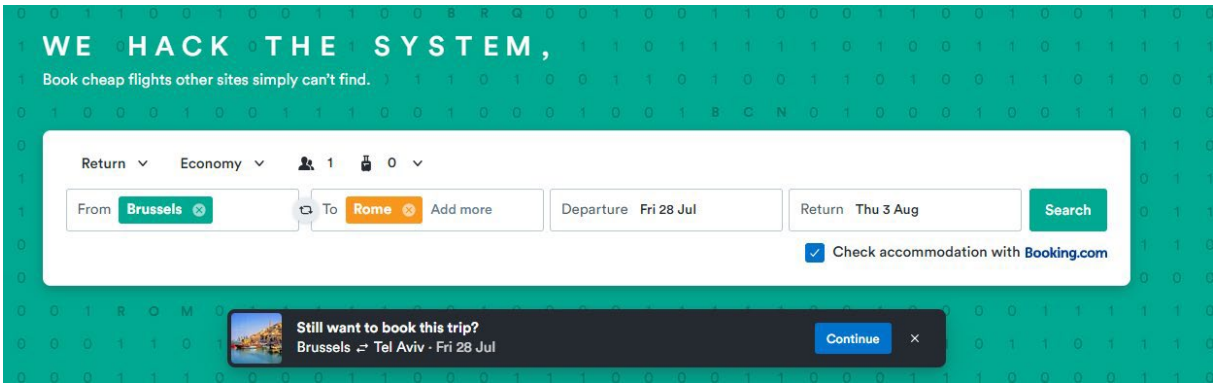
1031 Response to RFI 20, Attachment 1, slide 5.

(771) When a customer is searching for flights on an OTA platform, either through a web browser on a desktop, through a web browser on a mobile device or through an application on a mobile device, the customer will necessarily provide the platform with information about him or herself and on the planned journey such as where the customer is located and preferred language, origin and destination of the trip, dates of the trip, number of travellers and their age groups as well as flight booking class.[1032] The platform is able to collect this information and, even if the customer does not book the flights, the platform can use this information to target the customer with ads for hotels that are tailored to the customer's planned journey and possible preferences related to the customer's profile. If the customer made the search after logging in to a personal account on the platform, the platform would also have information on the customer's booking history and would be able to better tailor the ads with offers that correspond to the customer's profile. Such ads can be shown on the Booking website while the customer is visiting it or through retargeting channels, that is, ads that are shown to the customer while surfing the internet (for example, an ad for a hotel OTA's offer that is shown while the customer is visiting a news website). If the customer uses an application on a mobile device, the platform can send the customer notifications to the mobile device or show the customer other types of prompts on the application. If the customer searched the platform using a personal account, the platform would also know the customer's email address and could send targeted ads also by email.[1033]

(772) The cross-selling opportunity is thus not limited to the actual moment of a sale of the flight, as the Notifying Party asserts[1034] (see in more detail paragraph ((1217) ff below), but can also occur prior to the sale or after because of the data in the possession of the flight OTA which can then target the customer with ads.

(773) *First*, the cooperation between Booking and Kiwi is an example of pre-reservation promotion. As can be seen in the screen shot below, the default option on the Kiwi flight search webpage is to look for accommodation on Booking.

**Figure 70: Kiwi flight search web page**




*Source (visited on 20 July 2023): https://www.kiwi.com/en/*

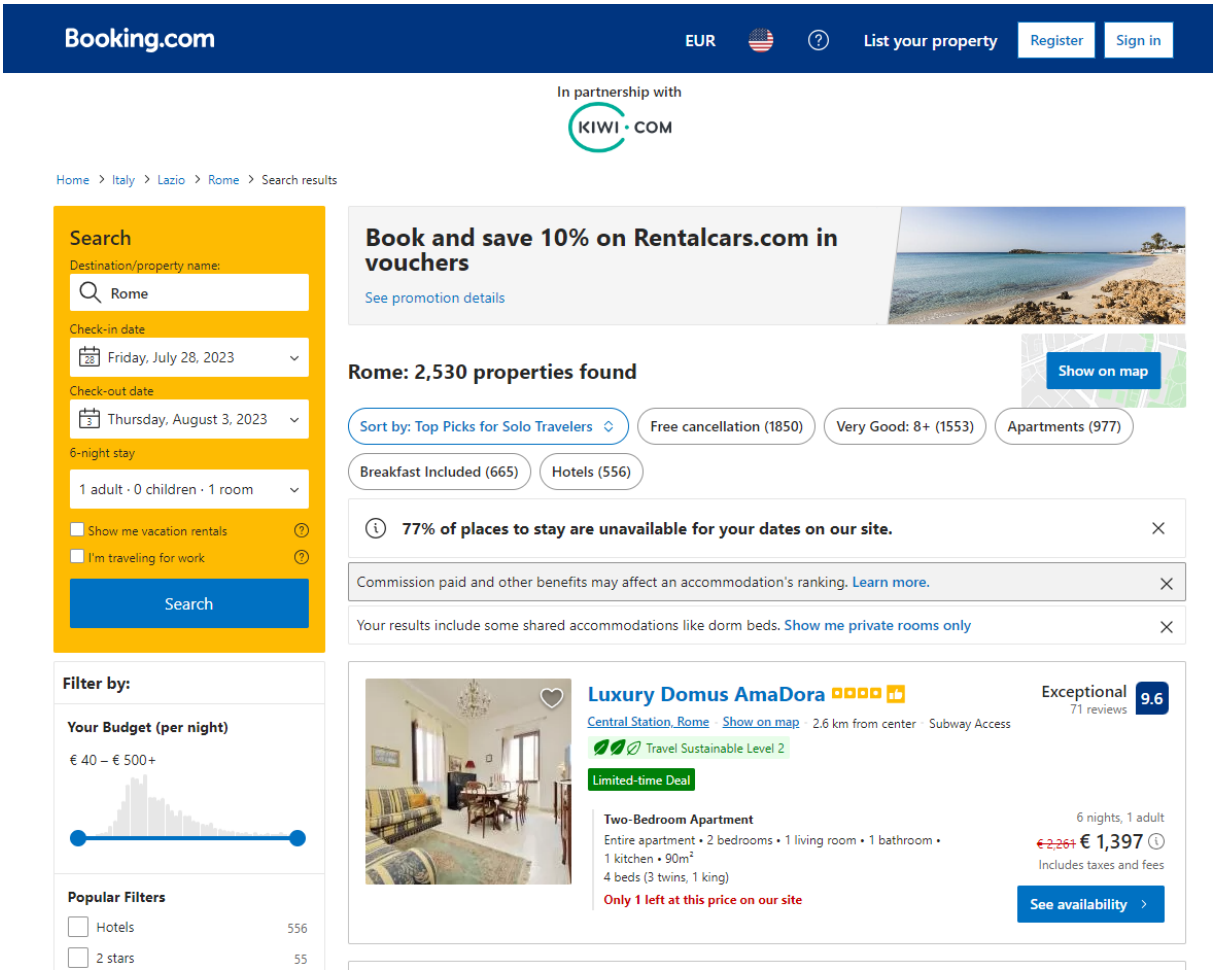
1032 See for example response to RFI 37, question 38.

1033 On targeted ads see Form CO, pages 264-265 and non-confidential minutes of a conference call with eDreams Odigeo dated 26 June 2023 [DOC ID 58373], paragraph 16. See further response to RFI 37, questions 34 and 36.

1034 Booking makes a distinction between an attached accommodation booking and a cross-sell: '*[Details of Booking's business strategy]*. See Response to RFI 41, Question 8.

(774) If the customer does not remove the default option, once the flight search criteria are entered, the internet browser will automatically open a new tab on Booking.com, as can be seen in the screen shot below, noting '*in cooperation with Kiwi.com*' making accommodation offers based on the customer's flight search criteria (destination and dates).

**Figure 71: Booking.com tab**




*Source (visited on 20 July 2023):* [https://sp.booking.com/searchresults.html?aid=2079993&checkoutmonth=08&lang=en&label=pagesbsearch-see-2079993-click&checkinyear=2023&ss=Rome+(Italy)%E2%80%8E&groupadults=1&groupchildren=0&placeid_lon=12.4963655&selectedcurrency=EUR&checkoutmonthday=03&checkinmonth=07&placeidlat=41.9027835&checkoutyear=2023&checkinmonthday=28](https://sp.booking.com/searchresults.html?aid=2079993&checkoutmonth=08&lang=en&label=pagesbsearch-see-2079993-click&checkinyear=2023&ss=Rome+(Italy)%E2%80%8E&groupadults=1&groupchildren=0&placeid_lon=12.4963655&selectedcurrency=EUR&checkoutmonthday=03&checkinmonth=07&placeidlat=41.9027835&checkoutyear=2023&checkinmonthday=28)

(775) *Second*, when a customer actually books flights on a platform, the platform has more accurate information on the customer which it can use for targeted ads in a similar way as outlined in paragraph ((771) above. In the first place, once flights are booked, the customer's travel plans are confirmed, making it more likely that there is demand for a hotel booking. In the second place, when booking the flights, the customer typically has to provide the platform with more personal details including email address. This information allows the platform to better target the customer with tailored ads, including by email. In addition, a customer who booked a flight with a specific platform, having already established a relationship with the platform for that specific journey, can be expected to be more inclined to also book hotels with that platform. This is likely to be even more relevant to HVCs who, as explained in

section 6.5.2.3 above of this Decision, have stronger preference to connect the trip (i.e. to purchase several travel services for the same trip on the same website.

(776) *Third*, after booking a flight, the customer has the possibility to consult the booking on the platform, either through a browser or through the application – for example to verify the flight times. This represents additional customer traffic, resulting in additional cross-selling opportunities by way of targeted offers in a similar way to those described in paragraph ((771) above.

(777) *Fourth*, all these strategies are likely to be even more effective with respect to HVCs that as explained in section 6.5 above of this Decision, have a stronger tendency to connect the trip.

(778) *Fifth*, Booking is already using targeted ads and intends to continue doing so post-Transaction.[1035]

(779) In their response to the second Letter of Facts, the Parties argue that the Commission overstates the cross-selling opportunity of flight customers. In particular, the Parties argue that while Booking.com appears to have the highest attach rates in the industry, it is noteworthy that it obtains few customers from cross-selling. Most of Booking.com's main hotel OTA competitors would also offer already flights and have the opportunity to deploy the cross-selling strategies that the Commission set out.[1036]

(780) In paragraph (762) above, the Commission set out that even if flight to accommodation cross-sell is a small customer acquisition channel for Booking at the moment, this mainly reflects Booking's current dominant position achieved in other channels it dominates. As Booking is only recently entering into the flight OTA business, it will likely become a more important customer acquisition channel for Booking in the future. Moreover, flight to accommodation cross-sell is an important customer acquisition channel for competitors especially in light of the other customer acquisition channels that are already dominated by Booking (see section 6.7.2.2 above). In this regard, one flight OTA provider explains for example that '*it is not practical to start an OTA today only with accommodation. It is easier to develop traffic for a flight OTA because it could be generated through the meta-search engines. But margins in flights are very low and the cost of the meta-search engines is high. Consequently flights are not so much important for profit as much as they are important for traffic to the OTA's website. Flights represent significant cross sell potential because customers start their search for holidays by looking for flights and because the flight search traffic is so large.*'[1037] In any event, cross-selling opportunities are not limited to actual attached hotel bookings to a pre-existing flight booking as the Commission set out. Indeed, in the Commission's view any additional customer traffic to the Parties' combined flight OTA platform post-Transaction would present cross-selling opportunities.

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1035 Form CO, paragraph 8.67, 8.95(ii).

1036 Response to the second Letter of Facts, Annex 1, pp. 53-55.

1037 Non-confidential minutes of a conference call with TUI dated 5 December 2022 [DOC ID 50713], paragraphs 6-7.

(781) A statement during an earnings call from Booking Holdings from Q3 2021 confirms that the cross-selling opportunity is not limited to the actual moment of a sale of the flight: '*While it remains early days for Booking's flight product, we are seeing that over 25% of Booking's flight bookers are entirely new customers. With these new customers, we are seeing an encouraging attach rate of accommodation bookings. However, there is more work to be done to further optimize the cross-sell opportunity. The early signals help demonstrate, though, that a flight offering can drive incremental new customers to the platform to which we can cross-sell our accommodation product. We are beginning to test initiatives targeting these new customers, including, for example, encouraging account creation to activate Genius status, and in some cases, offering additional incentives for them to book accommodations.*' (emphasis added)[1038]

(782) The above quote explains that a flight offering can drive new customers to the platform, which allows for different targeting strategies.

(783) In its response to the Third Letter of Facts, the Notifying Party claims that the quote simply explains that a flight offering can offer the opportunity to drive new customers to an OTA platform, which allows for different targeting strategies for cross-selling which are competition on the merits. The Notifying Party further notes that data it submitted indicates that the cross-selling opportunity from flights is small, as depicted in the waterfall analyses. In that respect, the Commission notes that the quote clearly indicates that flights bring new customers into Booking's platform which are prone to be cross-sold accommodation. The Commission reiterates its views regarding flights being an important customer acquisition channel and refers to paragraphs ((759) et seq. above for a response to the Notifying Party's arguments to the contrary, and to section 6.7.2.4.3 below for the Commission's views regarding the waterfall analyses of the Notifying Party.

(784) In addition, Booking already targets customers to book an accommodation before a flight booking is confirmed. Therefore, Booking's practices show that Booking identifies cross-sell opportunities regarding potential flight bookings even before the moment these customers confirm their flight. The first screen shot below shows that Booking currently targets visitors of Booking's flight offering during their search process by offering a discount if you book your stay with Booking (see the 'Genius Trip savings' box at the bottom of the screen shot):[1039]

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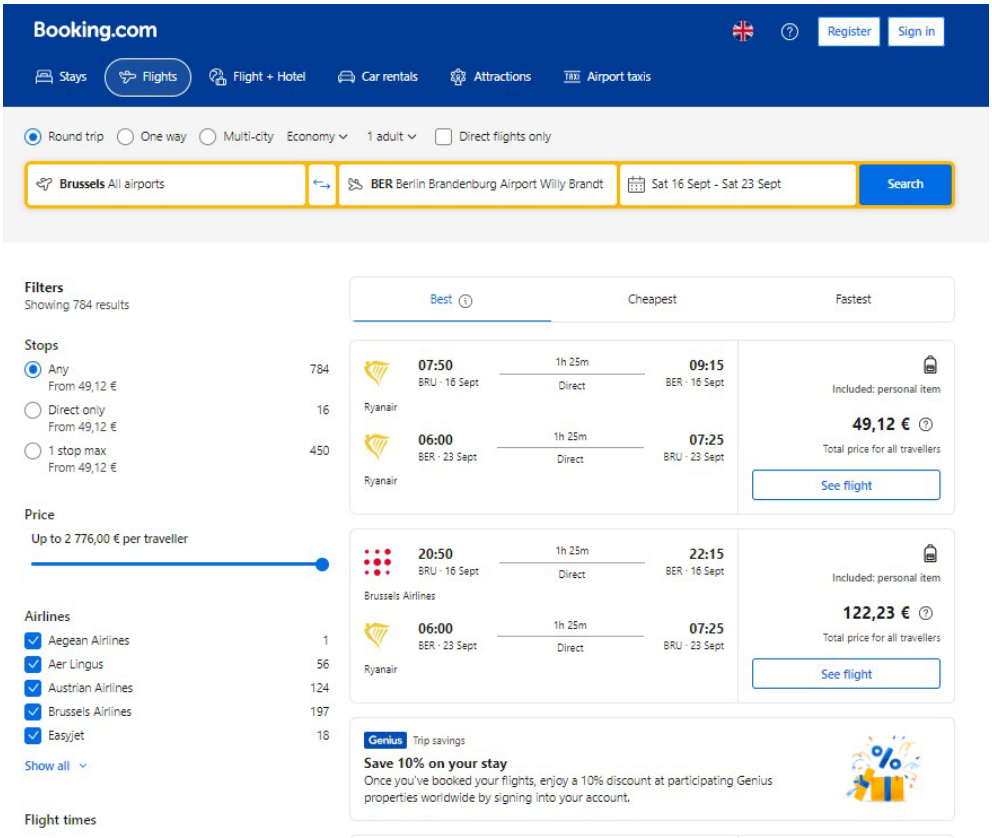
1038 Booking Holdings earnings call transcript Q3 2021, [DOC ID 114519], p. 5. Available at: https://ir.bookingholdings.com/events/event-details/2021/Q3-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx.

1039 Contrary to the Notifying Party's claim, this box is shown to both registered and non-registered users. See Fourth Letter of Facts, paragraph 24.

**Figure 72: Screen shot during the search process for a flight on Booking's platform**

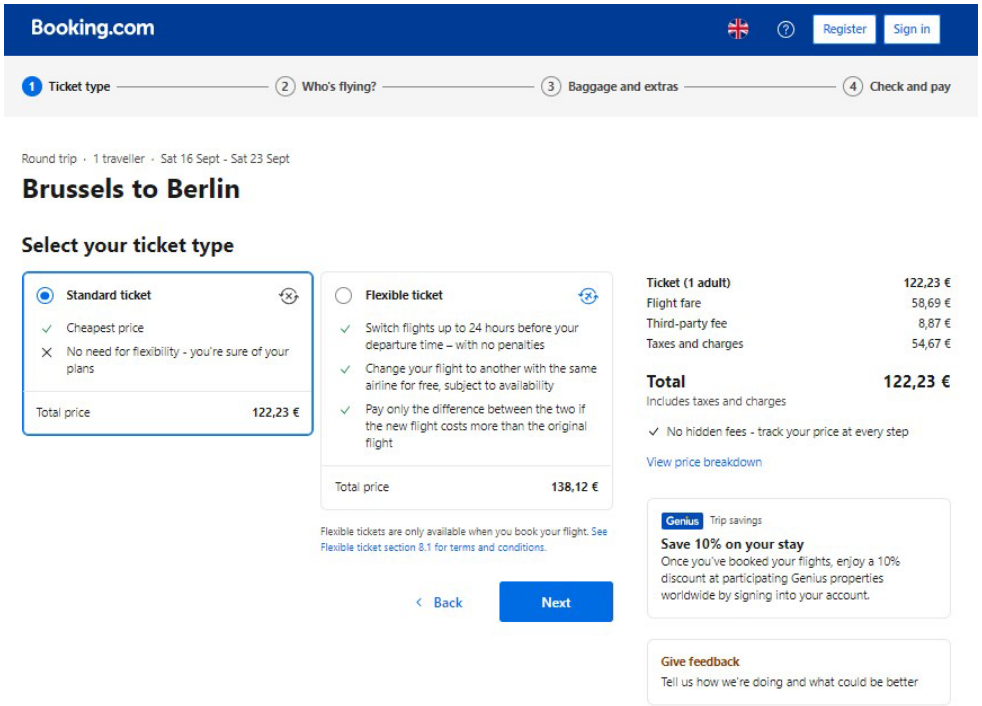



*Source: Booking.com website*

(785) The second screen shot shows that Booking also currently targets visitors of Booking's flight offering after the search is concluded, during the booking process but before the booking confirmation, by offering a discount if you book your stay with Booking (see the 'Genius Trip savings' box at the bottom of the screen shot):[1040]

1040 Contrary to the Notifying Party's claim, this box is shown to both registered and non-registered users. See Fourth Letter of Facts, paragraph 24.

**Figure 73: Screen shot during the booking process of a flight on Booking's platform**




*Source: Booking.com website*

(786) Although these ads are not 'cross-sell links', their purpose is obviously to cross-sell accommodation services to flight customers, particularly to the majority of customers that purchase both services from Booking without using the cross-sell links (see response to RFI 41, question 8).

(787) The Notifying Party notes that '*[Details on Booking's discounts]*'[1041] The Commission notes that this further confirms the fact that successful sale of accommodation to customers acquired through the flight platform can occur even before (and even in the absence) of a flight purchase.

(788) The fact that '*[Details of Booking's competitors]* '[1042] also confirms the importance of these placements in cross-selling accommodation to flight customers.

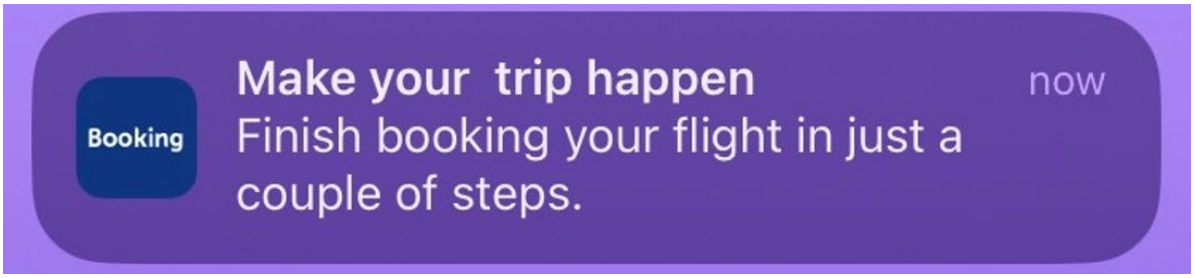
(789) In short, the Genius ads show that Booking can use (and does use) ads displayed outside the flight confirmation page to cross-sell accommodation to flight customers. Otherwise, if those ads were unable to generate any sale whatsoever, there would be no reason for Booking to display them.

(790) The third screen shot below shows that Booking also currently sends prompts to visitors on their mobile devices that have searched for flights on Booking's platform in order to '*Make your trip happen*':

1041 Response to the Third Letter of Facts, page 34.

1042 Response to the Third Letter of Facts, page 34.

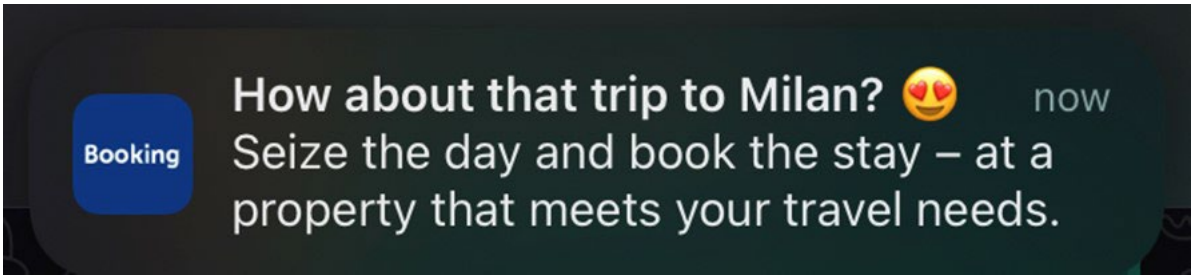
**Figure 74: Prompt to visitors of Booking's flight offering on their mobile device**




*Source: Booking.com mobile app*

(791) Finally, the fourth screen shot below shows that Booking also currently sends prompts to flight customers on their mobile devices that have purchased flights on Booking's platform in order to cross-sell a matching accommodation:

**Figure 75: Prompt to customers of Booking's flight offering on their mobile device**




*Source: Booking.com mobile app*

(792) This shows that Booking can use (and does use) push notifications (and possibly other types of messages more generally) outside the flight confirmation page to cross-sell accommodation to flight customers. Otherwise, if those notifications were unable to generate any sale whatsoever, there would be no reason for Booking to display them.

(793) On the basis of the above, the Commission considers that it does not overstate the opportunity for hotel OTAs to cross-sell accommodation to visitors of a flight OTA platform.

(b) Booking will acquire a significant amount of additional customer traffic through the acquisition of ETG

(794) ETG indicated at the end of November 2022 that it had recorded over […] website redirects (i.e. visits from flight customers) to its brands' websites in the EEA for 2022 YTD.[1043] Booking, for its part, recorded over […] flight visits in the EEA in 2022 YTD through the Phase 2 Agreement with ETG.[1044] Although the combined number of EEA visits from flights in 2022 YTD ([…]) is significantly lower than the amount of visits Booking generates through its accommodation business (around […] in 2022), it is [Details of Booking's business] to the number of visits that Booking generates from all the other verticals (car rental, taxis and attractions) combined in 2022 (around […] in 2022).[1045] As a result, the flight vertical represents by far the most important vertical that could generate visits to Booking's platform.

1043 Response to RFI 6, Figure 17.1.
1044 Response to RFI 6, Figure 17.3.
1045 Response to RFI 13, Annex 3.

As such, by acquiring ETG's business, Booking will be able to get access to a significant amount of customer traffic.

(795) Booking submitted data on projections and growth plans on the expected number of flight transactions (see in more detail paragraph ((839) below), and data on the relevant conversion rates (*i.e.*, when a flight visit is converted into a sale). On that basis, the Commission calculated the expected number of additional website visits that will be generated as a result of the Transaction. As shown in the figure below, the acquisition of ETG would result in an expected combined number of flight visits in the EEA, which would amount to […].

**Figure 76: Estimated EEA website visits to Booking.com per vertical in 2026[1046]**

[Figure redacted]

*Source: TVM v27 [DOC ID 1015]; RFI 6, Attachment H.3 [DOC ID 19670], p. 16; Responses to RFIs 6 and 13*

(796) As explained above, the significant amount of additional customer traffic that will be generated through the acquisition of ETG will provide Booking with cross-selling opportunities to its more profitable hotel OTA business. In order to further support cross-selling from flights into accommodation, Booking set up a dedicated 'flights cross-sell and value' team in March 2022.[1047] This team mentions in an internal document that [Details of Booking's business strategy][1048]. The presentation also refers to the attach rate at the time of the presentation in March 2022 as well as its target for 2022: [Details of Booking's market share].[1049]

(797) In the TVM, Booking assumes that [Details of Booking's business strategy].[1050] However, the Commission notes that, since 2021, [Details of Booking's attach rate]. The evolution of Booking's attach rates, as shown in the figure below, underlines the value of the additional customer traffic that it will generate through the acquisition of ETG.

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1046 2026 website visits by vertical have been calculated as forecasted transactions divided by a conversion rate (visits to transaction), both specific to the vertical. The 2026 estimated transactions for car rental and attractions are linear extrapolations based on Booking's 2023-2025 annual forecasts in its Response to RFI 20, Q1 (Tables 1 and 2), using the Excel 'TREND' function. 2026 EEA net flight transactions are based on 23.4 million (worldwide) transaction from 'AMS B.com GTM Workshops – Etraveli (ETG) Integration presentation, May 2022,' slide 16, assuming [Details of Booking's market share]). The [80-90]% non-US on global flight share corresponds to the TVM v27, worksheet 'P&L side by side, cells S10/S9 [DOC ID 1015], while the [70-80]% EEA on non-US flight share corresponds to Booking's Response to RFI 6, footnote 7. For car rental and attractions, the commission used the 2022 conversion rates (RFI 13 Annex 3, Q2). For flights, the commission considered multiple conversion rates, namely TVM v27 'Buy Build Model' cell R108; RFI13 Annex 3 Sheet 'Q2' (unweighted average flight conversion rate over the last 12 months with data available) [DOC ID 1015] and RFI 6 Table 17.1 for EEA site visits to sale conversion on ETG brands in 2022, for the latter taking the inverse of the number of visits needed for a transaction as conversion rate. The chart displays the lowest and highest estimated 2026 flight-related website visits based on these various flight conversion rates.

1047 Booking's internal document, Cross-Sell to ABU Team Overview 2022, BOOK_00767088 [DOC ID 51851-52568].

1048 Booking's internal document, Cross-Sell to ABU Team Overview 2022, BOOK_00767088 [DOC ID 51851-52568], slide 2.

1049 Booking's internal document, Cross-Sell to ABU Team Overview 2022, BOOK_00767088 [DOC ID 51851-52568], slide 9.

1050 Booking's internal document, 'Project Bahamas – Phase II Model v33 – Datapack version – EC.xlsx'; tab. 'Synergies' line 75 [DOC ID 1535-2530].

**Figure 77: Evolution of Booking's attach rate (2021-2022, EMEA)**

[Figure redacted]

*Source: Response to RFI 6, Annex 10*

(798) In the response to the SO, the Parties argue that […]. In particular, the Parties argue that […], [Details of contractual relationships between the Parties]. In any event, many of the remaining hotel OTA providers already have access to their own flights traffic.[1051]

(799) The Commission considers that the above figures on the additional customer traffic that Booking would acquire show ETG is already a significant source of customer traffic and this is expected to increase. Moreover, in section 6.7.2.2.2 below, the Commission sets out why it considers that ETG is a leading flight OTA provider and that the Parties combined are the second biggest flight OTA provider in the EEA in 2022. Finally, the Commission notes that through the acquisition of ETG, Booking expects to accelerate its growth on the flight OTA market and that as a result it will likely be the biggest flight OTA provider by 2026 with a market share of [30-40]% (see section 6.7.2.2.2 below). As a result of this, it will be more difficult for competing flight OTA providers to generate customer traffic and have cross-selling opportunities to sell hotel bookings, regardless of whether they have a commercial affiliate agreement with ETG today.

(800) On the basis of the above, the Commission considers that through the acquisition of ETG, Booking will be able to get a significant amount of additional traffic to its platform, which will in turn present additional opportunities to cross-sell hotels, not only at the actual moment of the sale of a flight, but from the moment of the first traffic.

6.7.2.2.2. ETG is a leading flight OTA provider and it's on a consistent growth path

(a) Market shares for the period 2019-2021

(801) The EEA flight OTA market is relatively fragmented. In the Form CO, the Parties provided market shares for the period 2019-2021. These market shares are based on traffic data (i.e., website visits) collected from Semrush, and therefore do not reflect actual transactions or revenues of competing flight OTAs.[1052]

**Table 11: Market shares of flight OTAs in the EEA according to the Notifying Party (2019-2021, B2Cs)**

| Company | 2019 | | 2020 | | 2021 | |
|---|---|---|---|---|---|---|
| | TTV (EUR, m) | Share (%) | TTV (EUR, m) | Share (%) | TTV (EUR, m) | Share (%) |
| Booking | […] | [0-5%]% | […] | [0-5]% | […] | [0-5]% |
| ETG | […] | [10-20]% | […] | [10-20]% | […] | [10-20]% |
| **Combined** | **[…]** | **[10-20]%** | **[…]** | **[10-20]%** | **[…]** | **[10-20]%** |
| eDreams ODIGEO | - | [20-30]% | - | [20-30]% | - | [20-30]% |

1051 Response to the SO, para. 4.35(i).

1052 Form CO, Annex 5, pp. 35-36.

| Company | 2019 | | 2020 | | 2021 | |
|---|---|---|---|---|---|---|
| | TTV (EUR, m) | Share (%) | TTV (EUR, m) | Share (%) | TTV (EUR, m) | Share (%) |
| Lastminute | - | [10-20]% | - | [10-20]% | - | [10-20]% |
| Trip.com | - | <10% | - | <10% | - | [10-20]% |
| Kiwi | - | <10% | - | <10% | - | <10% |
| Travelgenio | - | <10% | - | <10% | - | <10% |
| Expedia | - | <10% | - | <10% | - | <10% |
| TUI | - | <10% | - | <10% | - | <10% |
| Omio | - | <10% | - | <10% | - | <10% |
| FTI Group | - | <10% | - | <10% | - | <10% |
| Ticket | - | <10% | - | <10% | - | <10% |
| **Total** | **17 669 476 695** | **100%** | **3 508 139 975** | **100%** | **4 853 733 562** | **100%** |

*Source: Form CO, Annex 5, pp. 35-36.*

(b) Market size of the 2022 flight OTA market in the EEA

(802) Following the Response to the SO, the Commission conducted a market reconstruction for the EEA flight OTA market in 2022.[1053] The analysis is based on flight OTA sales by customer location on a TTV basis, in line with industry practice.

(1) The market share information submitted by the Notifying Party

(803) In the SO[1054], the Commission set out that the Parties provided different TTV figures and market size figures for the flight OTA market on three occasions as set out in the table below. In order to establish the market size and respective market positions of the Parties on the flight OTA market in the EEA for 2022, the Commission needs to take into account the most reliable 2022 figures that were provided by the Parties.

**Table 12: Market size estimates and Parties' TTV on the 2022 flight OTA market in the EEA**

| Company | RFI 6 (15 December 2022) | | RFI 24 (7 April 2023) | | RFI 28 (17 April 2023) | |
|---|---|---|---|---|---|---|
| | TTV (EUR, m) | Share (%) | TTV (EUR, m) | Share (%) | TTV (EUR, m) | Share (%) |
| Booking | […] | [5-10]% | […] | [5-10]% | […] | [5-10]% |
| ETG | […] | [20-30]% | […] | [10-20]% | […] | [10-20]% |
| **Combined** | **[…]** | **[20-30]%** | **[…]** | **[20-30]%** | **[..]** | **[20-30]%** |
| **Total market size** | **6,835** | **100%** | **11,044** | **100%** | **13,817.26** | **100%** |

*Source: Response to RFI 6, question 4, Table 4.1; Response to RFI 24, question 1, Table 1; and Response to RFI 28, question 1, Annex 1.*

1053 Response to the SO, Annex 7, p. 21.
1054 SO, paragraph 547.

(804) The figures provided by the Parties in RFI 6 are forecasted figures that were submitted on 15 December 2022. The figures submitted by the Parties respectively on 7 and 17 April 2023 as part of the response to RFI 24 and RFI 28 include the Parties' actual full year sales for 2022 and estimated data for the market size. As regards the Parties' actual 2022 sales data, the table above relies on the latest data provided in response to RFI 28 as we understand that these are the accurate final figures for both Booking and ETG.

(805) In the SO, the Commission considered that the 2022 market size of the flight OTA market in the EEA amounts to EUR 11,044 million as the Parties submit in RFI 24.[1055]

(806) In the response to the SO, the Notifying Party criticizes the Commission's preliminary conclusion, stating that '*a notable absence from the SO is a market reconstruction for flight OTA*'.[1056] The Notifying Party also submitted a new, fourth, 2022 market size estimate, based on its 2021 market size estimate and an average TTV growth between 2021 and 2022 of 251%, which amounts to EUR 17,031,869,515.[1057]

(807) Following the Commission's request to provide market share estimates for the Parties and all competitors holding a market share of more than 3% as well as a market share estimate for an 'Others' category, the Parties submitted market shares on the basis of this fourth market size estimate.[1058]

(808) The Commission is of the view that the Parties' fourth market size estimate is likely overstated.

(809) *First*, the Parties base their estimate of the 2022 market size on the 2021 market size they previously calculated[1059] and multiply this market size by taking into account the average TTV growth of Booking, ETG and certain competitors.[1060] The Commission considers that 2019 is more reliable to be used as a base year for estimating the 2022 market size, as 2019 was the last year prior to the Covid-19 pandemic and reporting on the speed of market recovery has not always been consistent.

(810) *Second*, the Parties have taken into account the average TTV growth of only some of the largest players on the market whereas, as mentioned before, the flight OTA market is relatively fragmented and the Parties themselves consider that these largest players represent ~60% of the market.[1061] The Commission considers that it is not reliable to assume an average growth of the market only on the basis of six players given that the market is fragmented and the growth of some players may come at the cost of other players in the market.

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1055 SO, paragraph 565.

1056 Response to the SO, Annex 7, p. 21.

1057 Response to the SO, Annex 7, Table 10.

1058 Response to RFI 35, Annex 1.

1059 Form CO, Annex 7.

1060 The average TTV growth as calculated by the economic advisors of the Notifying party is based on the reported 2021 and 2022 TTV of ETG, Booking and a small number of competitors (based on documents that were made available in the data room).

1061 See Response to RFI 35, Annex 1 and Commission's flight OTA market reconstruction, [DOC ID 58714].

(811) In particular, it cannot be inferred that the entire flight OTA market in the EEA would have grown at the same rate as Booking, whose growth rate from 2021 to 2022 was driven by the continued expansion of Booking.com's flight platform as demonstrated by the following quotes from earnings calls from Booking:

- Booking's earnings call Q2 2022:
  - '*Airline tickets booked in the second quarter were up about 190% versus a small base in 2019 and up 31% versus 2021 driven by the continued expansion of Booking.com's flight platform.*'[1062]
- Booking's earnings call Q3 2022:
  - '*Airline tickets booked in the third quarter were up about 235% versus a smaller base in 2019 and up 45% versus 2021 driven by the continued expansion of Booking.com's flight offering.*'[1063]

(812) *Third*, the Parties argue that the latest market size estimate is confirmed because [Details of Booking's market share].[1064] To arrive at this […]% estimate, the Parties rely on a IATA figure which indicates that the number of passengers in Europe in 2022 is […]% below 2019 levels and that the price of flights has increased by over […]%.[1065] In response to an RFI by the Commission, PhocusWright (of whom the Parties recognize that '*estimates from third-party data provider Phocuswright are the main source for market sizes for flight OTA*', albeit with reservations on the accuracy of their figures[1066]) however estimates that the EEA flight OTA market in 2022 has recovered to […]% of 2019 levels expressed in gross booking value.[1067] This figure therefore already takes into account any price increase of flight tickets. When applying this [...]% recovery rate to the Parties' 2019 market size estimate of EUR 17,669,000,000, the 2022 market size would be EUR 12,014,920,000, *i.e.,* EUR 5 billion less than the Parties' latest market size estimate.

(813) Accordingly, the Commission is of the view that the Parties' market size estimate provided in response to RFI 24 (EUR 11,044,000,000) seems more reliable, for the reasons set out in the SO. This market size estimate is more comparable to the market size estimate of EUR 7,355 million by PhocusWright.[1068] However, the Commission accepts the Parties' arguments regarding the reliability of PhocusWright's 2022 market size where they observe that '*Phocuswright does not provide OTA market sizes for all EEA countries; and even for those countries where OTA estimates are provided, they may not capture all relevant OTA sales and/or accurately reflect the market*',[1069] and that '*PhocusWright has historically*

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1062 Booking Holdings earnings call transcript Q2 2022, [DOC ID 114516], p. 7. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q2-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

1063 Booking Holdings earnings call transcript Q3 2022, [DOC ID 114513], p. 7. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q3-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

1064 Response to RFI 35, paragraph 2.4.

1065 The Parties use the following calculation: (1.0-0.22)*125.

1066 Form CO, Annex 7, para. 2.2.

1067 PhocusWright, Response to RFI, [DOC ID 58295].

1068 PhocusWright, Response to RFI, [DOC ID 58295].

1069 Form CO, Annex 7, paragraph 2.2.

*understated its own estimates and repeatedly revised its OTA market sizes estimates upwards in subsequent publications*'.[1070]

(814) Despite the above reservations indicating that the Parties' most recent 2022 market size estimate is highly conservative, the Commission nonetheless used that estimate as the starting point for its market reconstruction as it reflects the latest input from the Parties.

(2) The Commission's market reconstruction exercise

(815) The Commission's market reconstruction exercise estimates the market size for the flight OTA market in the EEA; as well as the Parties' and the main competitors shares on a customer location basis. The steps taken by the Commission during the market reconstruction exercise are described below.

(816) *First*, the Commission listed all OTA providers that the Notifying Party identified in the Form CO as the main flight OTA competitors and it asked the Parties to provide 2022 market share estimates of all competitors that the Parties consider hold a market share of more than 3%.[1071] In addition to Booking and ETG, these competitors are eDreams, Lastminute, Kiwi, Travelgenio, Trip.com and Expedia. According to the Parties, these players account for [80-90]% of the flight OTA market in the EEA in 2022.[1072]

(817) *Second*, the Commission contacted the main flight OTA competitors with a request to complete a template with flight OTA TTV data in the EEA and in the EEA Member States yearly for the reference period of 2012-2022.[1073]

(818) In total, the Commission received TTV information for the purpose of the market reconstruction exercise from 8 competing flight OTA providers.

(819) *Third*, the Commission requested the Parties to provide their flight OTA TTV information at an EEA level.[1074]

(820) *Fourth*, the total market size for the flight OTA market in the EEA for 2022 has been calculated using as a starting point the Parties' total market size that was submitted in response to the SO (EUR 17,031,869,515). The Commission then adjusted the total market size with the actual TTV data collected from the Parties and their competitors. For those competitors where the Commission cannot rely on actual TTV data, the Commission used the Parties' TTV estimates for those competitors based on the Parties' estimated total market size of EUR 17,031,869,515, as the most reliable data point available.[1075]

(821) The Commission considers this methodology to provide a highly conservative estimate. The methodology relies on the Parties' most recent market size estimates for the EEA flight OTA market in 2022 as well as their best estimates of the competitor's market position, which are complemented with information sought from the Parties' competitors themselves, to which the Parties could not have access.

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1070 Response to RFI 35, paragraph 1.2.

1071 Response to RFI 35, Annex 1.

1072 Response to RFI 35, Annex 1.

1073 The Commission first requested flight OTA TTV data to some competitors in January 2023, in the context of the market reconstruction exercise for the hotel OTA market, and then issued a request to remaining flight OTA competitors following the Response to the SO, in June 2023.

1074 Response to RFI 28, Annex 1.

1075 Response to RFI 35, Annex 1.

(822) In their response dated 7 August 2023 to the second Letter of Facts, the Parties argue that '*the flights market reconstruction reflects the same contrived methodology for adjusting market sizes that is used in the accommodation OTA market reconstruction [...]*'.[1076]

(823) As the Commission concluded in relation to its market reconstruction exercise in relation to the hotel OTA market, the Commission is of the view that the Commission's methodology provides the most accurate estimation possible as it complements the Notifying Party's estimates with actual TTV gathered from competitors. This information is not available to the Notifying Party. Moreover, the Commission applied the Parties' latest market size estimate as the starting point for its market reconstruction exercise, even though the Commission considers that this estimate is likely overstated as set out in paragraphs ((808)-((813) above.

(824) The market reconstruction exercise results in the following market shares for the relevant market players.[1077]

**Table 13: Market shares in the 2022 Flight OTA market in the EEA**

| **Company** | **2022** |
|---|---|
| ETG | [10-20]% |
| Booking | [5-10]% |
| ***Combined*** | ***[20-30]%*** |
| eDreams Odigeo | [20-30]% |
| Expedia | [0-5]% |
| Lastminute | [5-10]% |
| Kiwi | [5-10]% |
| Trip.com | [10-20]% |
| Travelgenio | [5-10]% |
| Others | [20-30]% |
| **Total** | **100%** |

*Source: Commission's flight OTA market reconstruction, [DOC ID 58714].*

(825) On the basis of these findings, the Commission notes that, combined, the Parties are the second biggest player on the market, after eDreams Odigeo. The Commission further notes that its market reconstruction reveals that Expedia, which is Booking's largest competitor in the hotel OTA market, is almost three times smaller on the EEA flight OTA market in 2022 than ETG and four times smaller than the Parties combined.

(c) ETG is on a consistent growth path

(826) ETG has not only been able to grow its market share in the period 2019-2022, but it was already on a consistent growth path prior to the COVID-19 pandemic. This

[1076] Response to the second Letter of Facts, Annex 2, p. 20.

[1077] Commission's flight OTA market reconstruction, [DOC ID 58714].

growth is also independent of the Phase 1 Agreement with Booking signed in January 2019.

(827) A presentation from a Strategy Meeting of ETG's management team in 2019, sets out how, before 2017 when the company was bought by CVC, ETG was already '*[...]*'.[1078] For the period 2014-2019, an internal ETG presentation states that ETG was '*[...]*'. In the same presentation, ETG reports on its financials from 2016 until July 2019 as well as its projections for 2019-2021. These figures show a *[...]*.

**Figure 78: [Redacted]**

[Figure redacted]

*Source: ETG's internal document, E001 [DOC ID 1534-1], Management Team September 12-13 2019 Strategy meeting, slide 22.*

(d) ETG is a best-in-class flight OTA representing a rare asset

(828) Beyond ETG's market share and its consistent growth from at least 2014 until today, the results of the market investigation as well as internal documents from both ETG and Booking confirm that ETG is a best-in-class flight OTA provider.

(829) *First*, the results of the market investigation confirm that ETG is perceived as a strong player on the market by its rivals. According to responding OTAs, the price of offering is with a distance the most important parameter for flight OTAs to compete effectively on the market (followed by the breadth of an OTA's offering, brand recognition and customer support / user experience).[1079] Respondents underline the importance of price on the flight OTA market by stating, among others, that '*[p]rice tends to be 80% of the factor*' and that '*[c]ustomer behaviour studies have consistently shown that the price was the key driver for choosing a flight OTA services provider. It is particularly relevant for leisure market where travellers are less time sensitive*'.[1080] On average, respondents rank ETG to be the strongest flight OTA provider when it concerns the price of its offering.[1081] Moreover, one respondent states that '*Generally, we see the market power of the largest OTAs (Trip.com and ETG) increasing.*'[1082] ETG also scores high on certain other parameters of competition, such as breadth of offering (3rd)[1083] and technical capabilities and back-end (2nd).[1084]

(830) Several of ETG's rivals have confirmed ETG's strength in the flight OTA market during calls with the Commission. [OTA] describes ETG as '*a significant European OTA that has a leadership position for specific products and in specific countries (Flights/Nordics in particular)*'.[1085] It further explained that '*ETG is a successful flight OTA that has grown fast since its creation. In terms of booking volumes, it seems that ETG is a bit bigger than [OTA], and much so in the Nordic countries*'.[1086]

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1078 […].

1079 Responses to question 31 of Questionnaire Q1 to OTAs [DOC ID 2739].

1080 Responses to question 31.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

1081 Responses to question 32 of Questionnaire Q1 to OTAs [DOC ID 2739].

1082 Responses to question 32.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

1083 Responses to question 32.3 of Questionnaire Q1 to OTAs [DOC ID 2739].

1084 Responses to question 32.5 of Questionnaire Q1 to OTAs [DOC ID 2739].

1085 Non-confidential minutes of a conference call with [OTA], dated 3 March 2022 [DOC ID 664], paragraph 20.

1086 Non-confidential minutes of a conference call with [OTA], dated 3 March 2022 [DOC ID 664], paragraph 22.

[OTA], which entered into a partnership with ETG in 2022 for distributing ETG's flight content, considers that '*ETG has developed a more advanced technology in comparison to [OTA], and other flight OTAs active on the market*'.[1087] It further highlights ETG's '*very wide network of direct relationships with airlines*' and explains that '*it is not easy to develop such a wide network because the technological side of it is very complex, requiring a direct and seamless connection to the IT systems of over 200 airlines*'.[1088]

(831) *Second*, the Commission's investigation reveals that ETG's internal documents also indicate that ETG is a strong player on the flight OTA.

(832) ETG itself describes its position on the market in a presentation to Booking from May 2021 as follows: '*[...]*'.[1089] Internal documents of ETG confirm that it considers itself to be a key player in the flight OTA market. As regards the key parameter of pricing, ETG states in a presentation to Booking that […].[1090] Measuring its competitiveness by comparing the share of wins within the meta distribution channel, […].

**Figure 79: [Redacted]**

[Figure redacted]

*Source: ETG, Information to Booking.com / Booking Holdings incl. Updated Financial Plan 2021-24, May 21, 2021, BOOK_01622392 [DOC ID 51861-15781], slide 9.*

(833) In a presentation from the same day, the mission of ETG is described as […].[1091] To demonstrate its strength, ETG relies on the share of wins and states it is '[…]'.[1092] It even goes further to state that it has a […].[1093] As a result, ETG concludes […].

**Figure 80: [Redacted]**

[Figure redacted]

*Source: ETG, Company overview, ETG_0000018669 [DOC ID 51103-18669], slide 11.*

(834) Beyond figures on the share of wins, ETG relies on Skyscanner click share data (being the largest MSS) as the best proxy for market share[1094] While ETG considers that click share data is the best proxy for market shares, it observes that click share data focusses more on the number of orders of an OTA than on the actual financials (revenues, margins etc.). As a result, click share data does not correspond to actual sales, but reflects the number of website visits. Therefore, the Commission does not consider traffic to be an accurate proxy for market share. Despite these limitations of click share data, the Commission notes that ETG uses the click share data to conclude that throughout the COVID-19 crisis, it has been able to significantly strengthen its market position.[1095] In addition to ETG itself, it also considers

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1087 Non-confidential minutes of a conference call with [OTA], dated 25 April 2022 [DOC ID 891], paragraph 7.

1088 Non-confidential minutes of a conference call with [OTA], dated 5 December 2022 [DOC ID 50713], paragraphs 8-9.

1089 ETG, Information to Booking/com / Booking Holdings incl. Updated Financial Plan 2021-24, May 21, 2021, BOOK_01622392 [DOC ID 51861-15781], slide 4.

1090 Annex A to QP6, slide 12.

1091 ETG, Company overview, ETG_0000018669 [DOC ID 51103-18669], slide 2.

1092 ETG, Company overview, ETG_0000018669 [DOC ID 51103-18669], slide 2.

1093 ETG, Company overview, ETG_0000018669 [DOC ID 51103-18669], slide 3.

1094 ETG's internal document, ETG_0000186991, slide 7 [DOC ID 51542-4092].

1095 ETG's internal document, ETG_0000186991, slide 7 [DOC ID 51542-4092].

Lastminute, eDreams ODIGEO and Kiwi to be winners in the market. However, it is ETG's view that it is uniquely positioned to win going forward:

**Figure 81: [Redacted]**

[Figure redacted]

*Source: ETG, Strategic plan 2021-25, ETG_0000186991, slide 9.*

(835) The slide above demonstrates that ETG's position is not solely based on its pricing capability. ETG also considers that it is in the […].[1096] VI stands for Virtual Interlining, which is a key capability of state-of-the-art flight OTA providers. Virtual interlining refers to a flight OTA provider's capability to combine flights from different carriers for the same trip, as airline carriers often do not have an existing commercial interline relationship.[1097] ETG explained that *'[…]'*.[1098] In one internal document which compares ETG's capabilities to that of [A proprietary flight platform], ETG states that it […].[1099]

(836) In addition to its partnership with Booking, ETG also mentions in the slide above its '*solid Google Flights co-op*'.[1100] The relationship with Google Flights is important, as the third MSS following Skyscanner and KAYAK. ETG itself describes its relationship with […].[1101]

(837) *Third*, the strong position of ETG on the flight OTA market is also recognised by Booking. Internal documents of Booking [Details of Booking's business strategy].[1102] Another internal document indicated that ETG's technology was [Details of Booking's proprietary flights platform.[1103] [Details of Booking's proprietary flights platform].[1104] These statements mirror the above-mentioned view from market participants that underline ETG's strong position in relation to its technical capabilities.

(838) In its response to the SO, the Notifying Party claims that ETG is a just one of a number of good competitors, that ETG has a modest market share in the flights OTA market in the EEA, and that the results of the market investigation do not support the finding that ETG is a 'rate asset'.[1105] The Commission disagrees with the Notifying Party's views and notes that the Notifying Party's claims regarding ETG's market share do not take into account future projections, and that the results of the market investigation have indicated that ETG is ranked first in price, which is the most important competition parameter. In addition, the Notifying Party has not put forward robust evidence to contradict the statements included in the Parties' internal documents.

(839) On the basis of all of the above, the Commission comes to the conclusion that ETG is a best-in-class flight OTA provider that even prior to the cooperation with Booking

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1096 ETG's internal document, ETG_0000186991 [DOC ID 51542-4092], slide 9.

1097 For example, for a round trip London-Cotonou, an inbound flight could be operated by IAG and the outbound flight by AirFrance.

1098 Flights deep-dive session, 2 February 2023 [DOC ID 51938], slide 24.

1099 Response to QP6, Annex A, slide 7.

1100 ETG's internal document, ETG_0000186991 [DOC ID 51542-4092], slide 9.

1101 Response to QP6, Annex A, slide 10.

1102 Booking's internal document D010, slide 9 [DOC ID 147-33].

1103 Booking's internal document D011, slide 3 [DOC ID 147-22].

1104 Booking's internal document D010, slide 3 [DOC ID 147-33].

1105 Response to the SO, Annex 6, Section 3.

was on a consistent growth path. On its own, it is already the second largest flight OTA provider in the EEA (and according to [OTA] the largest in terms of volume[1106]).

6.7.2.2.3. Booking will be able to accelerate the growth of the combined Booking/ETG flight OTA product

(840) Following the proposed Transaction, Booking projects an accelerated growth of the combined Booking/ETG flight OTA product, which is based on a strategy that is not fixed and that will depend on several growth factors.

(a) Booking's accelerated growth projections

(841) Following the proposed Transaction, Booking aims to become the leading flight OTA provider in the short term, […]. In a presentation to the Commission, Booking presented a forecast according to which, by 2026, Booking's flight sales would grow […] as compared to the current commercial affiliate agreement and even […] if Booking's flight sales through the agreement were not taken into account.[1107]

(842) Upon the request of the Commission, the Notifying Party submitted market shares in response to RFI 6 along the lines of these growth projections in December 2022. According to these market shares, post-Transaction the Parties' combined EEA market share in 2026 on a flight OTA market could amount to [50-60]%. In the SO, the Commission preliminarily considered that the projections are a clear indication that the Notifying Party expects to be the largest player on the market and to grow rapidly.[1108]

(843) In its response to the SO, the Notifying Party argues that '*the SO accepts that airlines control the distribution of inventory and can/do stop any single flight OTA from becoming too large, but does not then engage with the constraint that this is likely to pose on the Parties' projected market share growth in flights post-Transaction*'.[1109]

(844) The Commission conducted a market reconstruction to establish the size of the EEA flight OTA market in 2019. On this basis, the Commission established new market size estimates for the EEA flight OTA market for the period 2023-2026.[1110] These market sizes allow the Commission to estimate the expected market share of the Parties based on the TTV projections that the Parties provided in response to RFI 6.[1111] The market reconstruction supports the Commission's finding in the SO that the Parties are expected to grow their market share and that, by 2026, the Parties' combined market share on a conservative basis would likely amount to [30-40]% and would likely be larger, up to 59%.

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1106 '*ETG is a successful flight OTA that has grown fast since its creation. <u>In terms of booking volumes, it seems that ETG is a bit bigger than [OTA], and much so in the Nordic countries</u>*' (emphasis added); see Non-confidential minutes of a conference call with [OTA], dated 3 March 2022 [DOC ID 664], paragraph 22.

1107 Post-State of Play meeting, 8 November 2022, slide 10.

1108 SO, paragraph 589.

1109 Response to the SO, Annex 6, para. 1.2(a).

1110 The Commission notes that the resulting market size estimates for 2023-2026 that the Commission relies on are larger than the 2022 market size that follows from the market reconstruction set out above.

1111 Response to RFI 6, question 4.

(1) The market share information submitted by the Notifying Party

(845) In response to questions by the Commission, the Notifying Party submitted market size estimates for the EEA flight OTA market for the period 2019-2026.[1112] The Parties explained that for the forecasted market size in 2026, '*this uses the Phocuswright 2019 flight OTA market TTV (11.66 EUR billion) and makes one adjustment to forecast the 2026 flight OTA segment size*' and for the forecasted market sizes in the period 2022-2025 the market sizes '*are estimated via linear interpolation from 2021 to 2026*'.[1113] The Notifying Party submitted that '*the Phocuswright market size estimates have proven to be largely inaccurate and understated throughout the Covid-19 recovery and are of limited value in modelling how Booking.com's and ETG's flight OTA shares will develop until 2026*'.[1114] While the Parties used the Phocuswright 2019 flight OTA market TTV of EUR 11.66 to estimate the market size in 2026, the Parties themselves have estimated the EEA flight OTA market size in 2019 to be EUR […] million.[1115]

(2) Adjusted market size forecasts for the period 2023-2026

(846) In response to RFI 6, the Parties have forecasted the size of the EEA flight OTA market for the period 2022-2026. The Commission notes however that, in the meantime, the flight OTA market has recovered faster than expected. For example, PhocusWright states in its Europe Travel Market Report 2022-2026 that '*Airline gross bookings more than doubled in 2022*'[1116] and it states in its Eastern Europe Travel Market Report 2022-2026 that '*the airline segment is experiencing a much-needed rebound from pandemic-related losses […]*'.[1117] Similarly, eDreams observed that '*2022 was an exceptional year because after the pandemic the demand for travel and flights was very strong compared to 2019*'.[1118] For these reasons, the Commission considers it appropriate to reconsider the market size estimates that the Parties provided until 2026, also in light of the Notifying Party argument that '*the SO accepts that airlines control the distribution of inventory and can/do stop any single flight OTA from becoming too large, but does not then engage with the constraint that this is likely to pose on the Parties' projected market share growth in flights post-Transaction*'.[1119] The steps taken by the Commission to estimate the size of the EEA flight OTA market for the period 2023-2026 are described below.

(847) *First*, the Commission agrees with the Parties' approach to estimate the market size for 2026 on the basis of the market size for 2019, as the last year before the Covid-19 pandemic. The Parties conservatively used the market size for 2019 that was reported by PhocusWright (EUR 11.66 billion) to estimate the 2026 market size. PhocusWright most recent estimate of the EEA flight OTA market size in 2019 is EUR 10.738 billion.[1120] While the Commission considers that PhocusWright's reporting on the flight OTA market is the most reliable third-party source available, it does recognize that its travel market reports do not report on each EEA member

1112 Response to RFI 6, question 4, Table 4.1.
1113 Response to RFI 6, question 4, footnote 6.
1114 Response to RFI 6, question 4, paragraph 4.2.
1115 Response to RFI 6, question 4, Table 4.1.
1116 Response to RFI 35, Attachment 1.1, p. 12.
1117 Response to RFI 35, Attachment 1.3, p. 12.
1118 Non-confidential minutes of the call with eDreams dated 26 June 2023, paragraph 14 [DOC ID 58373].
1119 Response to the SO, Annex 6, paragraph 1.2(a).
1120 Response to the SO, Annex 6, paragraph 1.2(a).

state.[1121] The Parties themselves estimate the 2019 market size to be EUR […] billion. To estimate the market size in 2026, the Commission used the Parties' 2019 market size estimate of EUR […] billion (instead of PhocusWright's latest 2019 market size estimate of EUR 10.738 billion) as the starting point of its approach as this is the most conservative approach, given that it takes the highest market size estimate as starting point, and it reflects the latest input from the Parties. The following steps below describe the same approach for estimating the 2019 market size as was used above to estimate the 2022 market size.

(848) *Second*, the Commission contacted the main flight OTA competitors with a request to complete a template with their respective flight OTA TTV data in the EEA and in the EEA Member States yearly for the reference period of 2012-2022.[1122]

(849) In total, the Commission received TTV information for the purpose of the market reconstruction exercise from 8 competing flight OTA providers.

(850) *Third*, the Commission requested the Parties' flight OTA TTV information at an EEA level for the year 2019.[1123]

(851) *Fourth*, the total market size for the flight OTA market in the EEA for 2019 has been calculated using as a starting point the Parties' total market size estimate of EUR […] billion. The Commission then adjusted the total market size with the actual TTV data collected from the Parties and their competitors. For those competitors where the Commission cannot rely on actual TTV data, the Commission used the Parties' TTV estimates for those competitors based on the Parties' estimated total market size of EUR […] billion, as the most reliable data point available.[1124]

(852) The Commission considers this approach to be providing an appropriate, but highly conservative estimate. The methodology relies on the Parties' market size estimates for the EEA flight OTA market in 2019 (which are significantly higher than the 2019 market size estimates by PhocusWright) as well as well as their best estimates of the competitor's market position, which are complemented with information sought from the Parties' competitors, to which the Parties could not have access.

(853) *Fifth*, the Commission identified three public sources that report on recovery of the air travel market: Eurocontrol (which reports on 'Instrument Flight Rules' (IFR) movements),[1125] Airport Council International (ACI) Europe (which reports on

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1121 Market size information for the flight OTA market as reported on by PhocusWright is split over two reports: the Europe Travel Market Reports and the Eastern Europe Travel Market Reports. The Europe Travel Market reports includes information on the following EEA member states: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, Norway and Switzerland. The Eastern Europe Travel Market reports includes information on the following EEA member states: Bulgaria, Czechia, Estonia, Greece, Hungary, Latvia, Lithuania, Poland and Romania. However, the reports do not contain breakouts for each of these countries. The PhocusWright reports therefore do not include country information on the following EEA member states: Croatia, Cyprus, Iceland, Liechtenstein, Malta, Slovakia and Slovenia. Greece is included in both reports. See PhocusWright Response to RFI, [DOC ID58295].

1122 The Commission first requested flight OTA TTV data to some competitors in January 2023, in the context of the market reconstruction exercise for the hotel OTA market, and then issued a request to remaining flight OTA competitors following the Response to the SO, in June 2023.

1123 Response to RFI 28, Annex 1.

1124 Response to RFI 35, Annex 1.

1125 Eurocontrol, Forecast update 2023-2029, dated 31 March 2023, [DOC ID 58672, DOC ID 58674 and DOC ID 58679]; see further Commission's flight OTA market reconstruction, [DOC ID 58714].

European airport passenger traffic)[1126] and IATA (which reports on air passenger numbers).[1127] While these three public sources report on market recovery in the air travel market from different angles, the Commission notes that none of these sources report specifically on the recovery of the EEA flight OTA market. Therefore, the Commission requested PhocusWright, as '*the main source for market sizes for flight OTA*'[1128] according to the Parties, to provide its market recovery estimates until 2026 as compared to 2019.[1129] These four sources report as follows on market recovery expectations vs. 2019:

**Table 14: Air travel market recovery expectations vs. 2019**

| | **Market recovery expectation vs. 2019** | | | |
|---|---|---|---|---|
| **Source** | **2023** | **2024** | **2025** | **2026** |
| PhocusWright[1130] | [70-80]% | [80-90]% | [80-90]% | [90-100]% |
| Eurocontrol[1131] | 93% | 98% | 100% | 102% |
| ACI Europe[1132] | 91% | 98% | 102% | 105% |
| IATA[1133] | 96% | 105% | 111% | - |

*Source: PhocusWright, Eurocontrol, ACI Europe and IATA market recovery expectations.*

(854) *Sixth*, in addition to the market recovery expectations by Eurocontrol, ACI Europe and IATA, the Commission takes into account the expected inflation rate until 2026. This is not necessary for PhocusWright's market recovery expectation, as this is based on gross bookings by value and their market recovery expectation therefore already accounts for inflation. For 2023, the Commission took into account the actual inflation rate that so far has been reported by the ECB to assume an average 2023 inflation rate of 5.4%.[1134] For the years 2024-2026, the Commission assumed an average inflation rate of 3% per year. This inflation assumption is conservative as compared to the inflation outlook from the ECB (given that a higher assumed inflation rate ultimately results in a bigger market size and smaller market share estimates for the Parties), which states that '*inflation should continue to fall during 2023, driven by declines in energy and food inflation. As cost pressures fade and the*

1126 Airport Council International (ACI) Europe, Airport traffic forecast – 2023 scenarios & 2023-2027 outlook, dated December 2022, [DOC ID 58677]; see further Commission's flight OTA market reconstruction, [DOC ID 58714].

1127 IATA press release dated 1 March 2022, Air passenger numbers to recover in 2024, [DOC ID58678]; see further Commission's flight OTA market reconstruction, [DOC ID 58714].

1128 Form CO, Annex 7, paragraph 2.2.

1129 PhocusWright Response to RFI, [DOC ID 58295].

1130 PhocusWright Response to RFI, [DOC ID 58295].

1131 Eurocontrol, Forecast update 2023-2029, dated 31 March 2023, [DOC ID58672, DOC ID58674 and DOC ID58679]; see further Commission's flight OTA market reconstruction, [DOC ID 58714].

1132 Airport Council International (ACI) Europe, Airport traffic forecast – 2023 scenarios & 2023-2027 outlook, dated December 2022, [DOC ID 58677]; see further Commission's flight OTA market reconstruction, [DOC ID 58714].

1133 IATA press release dated 1 March 2022, Air passenger numbers to recover in 2024, [DOC ID58678]; see further Commission's flight OTA market reconstruction, [DOC ID 58714].

1134 Commission's flight OTA market reconstruction, [DOC ID 58714].

*ECB's monetary policy measures gradually take effect, inflation should decline from 5.4% this year to 3.0% in 2024 and to 2.2% in 2025*'.[1135]

(855) The Commission considers that this approach provides highly conservative market size estimates. The approach relies on the Parties' own market size estimate for the EEA flight OTA market in 2019 as well as well as their best estimates of the competitor's market positions, which are complemented with information sought from the Parties' competitors, to which the Parties could not have access. The approach then relies on a broad range of market recovery expectations by four different sources, each reflecting a different angle of market recovery. Finally, the approach relies on a conservative estimate of the ECB's inflation outlook.

(856) This approach for estimating the EEA flight OTA market size for the period 2023-2026 results in the following projected market shares for the Parties, when taking into account only the market recovery expectations from Eurocontrol, ACI Europe and IATA that report on market recovery for the entire air travel industry in the EEA.[1136] The market share results on the basis of PhocusWright's market recovery expectations relating specifically to the flight OTA market in the EEA, are discussed in paragraphs ((859)-((867) below.

**Table 15: EEA flight OTA market size forecast 2023-2026 and Parties' market shares**

| | | **2023 F** | **2024 F** | **2025 F** | **2026 F** |
|---|---|---|---|---|---|
| **Market size range (m €)** | | 17,119-18,059 | 18,989-20,345 | 19,957-22,153 | 20,926-21,584 |
| **Parties' TTV** | **Booking (m €)** | […] | […] | […] | […] |
| | **ETG (m €)** | [...] | [...] | […] | […] |
| | **Combined (m €)** | […] | […] | […] | […] |
| **Parties' shares** | **Booking** | [10-20]% | [10-20]% | [20-30]% | [20-30]% |
| | **ETG** | [5-10]% | [5-10]% | [5-10]% | [5-10]% |
| | **Combined** | **[20-30]%** | **[20-30]%** | **[20-30]-[30-40]%** | **[30-40]%** |

*Source: Commission's flight OTA market reconstruction, [DOC ID 58714].*

(857) The Commission considers that these market share estimates are likely an understatement given the Commission's overall conservative approach of estimating the market size for the period 2023-2026 as described above.

(858) This additional evidence supports the Commission's preliminary finding in the SO that '*the projections are a clear indication that the Notifying Party expects to be the largest player on the market and to grow rapidly*'.[1137]

1135 European Central Bank (ECB), June 2023 at a glance – Inflation outlook, [DOC ID58676]; see further Commission's flight OTA market reconstruction, [DOC ID 58714].

1136 Commission's flight OTA market reconstruction, [DOC ID 58714].

1137 SO, paragraph 589.

(3) Competitive constraints imposed by airlines on the flight OTA market

(859) The Notifying Party argued that the Commission '*accepts that airlines control the distribution of inventory and can/do stop any single flight OTA from becoming too large, but does not then engage with the constraint that this is likely to pose on the Parties' projected market share growth in flights post-Transaction*'.[1138] In particular, in relation to the competitive pressure of airlines, the Notifying Party submits, *first*, that airlines are incentivised to keep control over the distribution of content. *Second*, airlines would employ various techniques to strengthen their position to the detriment of flight OTAs by pursuing the disintermediation of GDSs, imposing content restrictions on flight OTAs, and by outright obstructing flight OTAs. *Third*, airlines' grip on distribution of flight content would mean that the Parties will remain a limited channel for flights.[1139]

(860) Internal documents from Booking set out its value proposition for airlines: [Details of Booking's flights strategy].[1140] The Notifying Party explained that this internal document sets out . *Booking.com is continuing to develop its thinking on how to achieve this goal but* […]'.[1141] In this regard, the Notifying Party submitted an example of a recent engagement it had with an airline. In this presentation, Booking describes its ideas for collaborations with airlines as follows:

**Figure 82: [Details of Booking's flights strategy]**

[Figure redacted]

*Source: Response to RFI 20, Attachment 1, slide 19.*

(861) Despite these ideas for how Booking can collaborate with airlines, it explains in response to the Commission's questions that '*Booking does not have any particular expectations of how, or if, airlines will respond any differently to Booking.com and ETG's joint offering*' but that '*Booking.com aspires to build a collaborative and mutually beneficial relationship with airlines. If successful in this respect, Booking.com would generate pro-consumer, pro-competitive and pro-airline benefits […]*'.[1142]

(862) Contrary to the Parties' argument that the Commission does not sufficiently take into account the constraints posed by airlines,[1143] the Commission considers on this basis that the Notifying Party does not appear to fear constraints from airlines to its flight OTA offering, as it believes that it can collaborate with airlines in a mutual beneficial relationship which would also generate pro-airline benefits.

(863) In general however, the Commission recognized in its SO that '*airlines exert significant control over the distribution of their content*' when describing the market dynamics in the flight OTA market.[1144]

(864) The only way for the Commission to quantify the impact of those constraints by the airlines could pose on the Parties' projected market share growth, is to take into account the market recovery expectations that are prepared by PhocusWright. After

1138 Response to the Statement of Objections, Annex 6, para. 1.2(a).
1139 Booking, Flights Submission dated 27 February 2023 [DOC ID 57045], para. 5.2.
1140 Booking's internal document D408 [DOC ID 19694], slide 8.
1141 Response to RFI 20, paragraph 4.1.
1142 Response to RFI 20, paragraphs 4.2-4.3.
1143 Response to the SO, Annex 6, paragraph 1.2(a).
1144 SO, paragraph 180.

all, PhocusWright provided specific market recovery expectations for each channel in the airline industry separately, *i.e.,* supplier-direct online (airlines' websites), OTA and offline.[1145] PhocusWright's market recovery expectations therefore take into account whether one channel is expected to grow at the detriment of another. This is not the case for any of the other sources of market recovery expectations set out above, given that they only report on market recovery expectations for the air travel industry as a whole and not specifically for the supplier-direct online and OTA channels.

(865) Moreover, the Commission notes that the Parties' flight TTV projections for the period 2023-2026, resulting from Booking's TVM, were prepared while Booking was aware of the constraints that airlines may pose on its growth projections.

(866) Based on the approach described above for estimating the EEA flight OTA market size for the period 2023-2026 and taking into account the market recovery expectations from PhocusWright, the market shares of the Parties are as follows.[1146]

**Table 16: EEA flight OTA market size forecast 2023-2026 and Parties' market shares based on PhocusWright market recovery estimates**

| | | 2023 F | 2024 F | 2025 F | 2026 F |
|---|---|---|---|---|---|
| **Market size range (m €)** | | 10,831 | 11,987 | 12,565 | 13,287 |
| **Parties' TTV** | **Booking (m €)** | […] | […] | […] | […] |
| | **ETG (m €)** | […] | […] | […] | […] |
| | **Combined (m €)** | […] | […] | […] | […] |
| **Parties' shares** | **Booking** | [20-30]% | [30-40]% | [30-40]% | [40-50]% |
| | **ETG** | [10-20]% | [10-20]% | [10-20]% | [10-20]% |
| | **Combined** | **[30-40]%** | **[40-50]%** | **[50-60]%** | **[50-60]%** |

*Source: Commission's flight OTA market reconstruction, [DOC ID 58714].*

(867) In their response dated 7 August 2023 to the second Letter of Facts, the Parties argue that '*these Phocuswright projections are materially contradicted by information collected from flight OTAs as part of the Commission's market reconstruction. This confirms the Parties' previously stated view that Phocuswright consistently and materially understates the OTA markets, and demonstrates that the upper bound flight OTA share estimates presented in the Second LoF cannot be regarded as reliable.*'[1147]

(868) The Commission considers that it is unlikely that the Parties will be able reach a [50-60]% market share on the flight OTA market in the EEA by 2026. These market share estimates do however underline, in the Commission's view, that the Commission's estimated 2026 combined market share of the Parties in the range of

1145 See Response to RFI 35, Attachment 1.1, figure 12 and Attachment 1.3, figure 9.
1146 Commission's flight OTA market reconstruction, [DOC ID 58714].
1147 Response to the second Letter of Facts, Annex 2, p. 20.

[30-40]% is, if anything, a conservative estimate. It cannot be excluded that despite the constraint posed by airlines on the flight OTA market as a whole, the Parties will be able to achieve a higher combined market share (as the Parties' expected TTV are forecasted taking into account market realities, including constraints posed by airlines).

(b) Booking's growth projections according to the TVM are not implausible

(869) In relation to the growth projections set out above, the Notifying Party previously submitted that it is impossible to infer estimates of the Parties' market share contained in the TVM for several reasons. *First*, it states that not the entire increase in TTV and market share is merger-specific but rather that much of the growth would be achieved if the Phase 2 Agreement between Booking and ETG were taken into account as the appropriate counterfactual. *Second*, the model does not take into account the growth and size of the flight OTA market to develop the forecasts. The market shares are produced by combining the TTV forecasts for Booking.com and ETG and market size estimates from Phocuswright. The Notifying Party submits that the projections were produced by different parties, at different times and for different purposes and that therefore these figures do not align. Finally, the Notifying Party submits that the Parties consider that a [30-40]-[50-60]% market share of the flight OTA market is highly implausible given: (i) the intense levels of competition between OTAs and airlines; and (ii) the inherent inability for any one OTA to offer all flights at attractive prices.[1148]

(870) The Commission considers that, while Booking's growth projections may be ambitious, they cannot be set aside as highly implausible as argued by the Notifying Party.

(871) *First*, as regards the Parties' argument that a large part of the TTV and market share growth set out above would also be achieved in the context of the Phase 2 Agreement between the ETG and Booking, the Commission refers to its assessment of the relevant counterfactual in section **6.6.2** above.

(872) *Second*, the Commission considers that, while the Notifying Party's growth projections until 2026 are highly ambitious, even if these projections would not take into account the growth and size of the flight OTA market, the projections are a clear indication that the Notifying Party expects grow rapidly and to be the largest player on the market in the short term.

(873) *Third*, the Commission dismisses the Notifying Party's arguments that a [30-40]-[50-60]% market share on the flight OTA market would be highly implausible.

(874) In the first place, Booking's flight TTV has grown significantly faster in 2022 than was forecasted in its TVM (EUR […] million according to the response to RFI 20[1149], and EUR […] million according to the response to RFI 24[1150], instead of the forecasted EUR […] million). According to Booking, this is due to the faster than expected recovery from COVID-19.[1151] Even if the market grew at the same rate as the Parties, the Parties would still be on track to achieve a combined market share well above [30-40]%.

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1148 Response to RFI 6, question 4.
1149 Response to RFI 20, table 3.
1150 Response to RFI 24, table 1.
1151 Response to RFI 20, para. 3.2 and table 3.

(875) In the second place, the Parties themselves prepared the growth projections being aware of the levels of competition they face from OTAs and airlines. The Parties were also aware of the difficulty for a flight OTA provider to be able to offer attractive prices on all flights. In any event, the results of the market investigation[1152] and ETG's internal documents[1153] confirm that ETG is the strongest competitor on the parameter of price. Moreover, an internal document from Booking dated 16 May 2022 describes the following value proposition for airlines: [Details of Booking's flights strategy].[1154] Booking explained that it is still developing its thinking on how to achieve its goal to be the best value to airlines, but explained that it is currently working on [Details of Booking's flights strategy].[1155] The fact that Booking was already aware of the competition flight OTAs face from airlines at the time that it prepared its growth projections, and that it still considers it can add value in May 2022, underlines that Booking itself does not expect airlines will be able to effectively constrain Booking in achieving its growth targets.

(876) In the third place, at the start of the negotiation process with ETG, Booking revised its TVM calculations on the basis of data supplied by ETG and forecasted a higher growth by 2026 than it does in the TVM. A document from August 2021 with pre-Transaction discussion materials, includes a 'management forecast' prepared by ETG. This forecasts a higher number of gross flight transactions in 2026 ([…] million as compared to […] million according to the TVM) as well as a higher worldwide TTV (EUR […] million as compared to EUR […] million in the TVM).[1156] On the basis of these figures, Booking prepared a 'revised case' which refers to […] million gross transactions in 2026 and a TTV of EUR […] million.[1157]

(877) In the fourth place, as will be set out further below, Booking has explored significantly more ambitious growth targets than those set out in the TVM. This shows that the growth projections set out in Table 10 must be considered to be realistic internally, despite any of the existing competitive pressures the Parties may face.

(878) In the fifth place, according to one provider of MSS services, '*Booking's share of all redirects in the EU on the [CONFIDENTIAL] platform has increased seven-fold in the last 12 months (June 2022-June 2023). By comparison, eTraveli's share has remained relatively constant over the same period […]. This illustrates the rapid and aggressive growth of Booking in flights, consistent with its stated commercial goals*'.[1158]

(879) In para. ((834) above, the Commission observed that '*beyond figures on the share of wins, ETG relies on Skyscanner click share data (being the largest MSS) as the best proxy for market share. While ETG considers that click share data is the best proxy for market shares, it does observe that click share data focusses more on the number of orders of an OTA than on the actual financials (revenues, margins etc.). As a result, click share data does not correspond to actual sales but reflects the number of*

1152 Responses to question 32 of Questionnaire Q1 to OTAs [DOC ID 2739].
1153 See e.g., Annex A to QP6, slide 12.
1154 Booking's internal document D408 [DOC ID 19694], slide 8.
1155 Response to RFI 20, para. 4.1.
1156 Booking's internal document D010, slide 15 [DOC ID 147-33].
1157 Booking's internal document D010, slide 16 [DOC ID 147-33].
1158 Submission by an MSS provider to the European Commission dated 4 August 2023, [DOC ID 114526], para. 2.4(b).

*website visits. Therefore, the Commission does not consider traffic to be an accurate proxy for market share.*' While the Commission indeed considers that the number of redirects, or click share, are not an accurate proxy for market share, the Commission finds that the strong growth of redirects towards Booking's platform in the period June 2022 – June 2023 suggests a strong increase in website visits and interest in Booking's flight product.

(880) *Fifth*, the […] times growth projection by 2026 is consistent with other statements and internal documents of Booking. A presentation from May 2022 regarding the ETG integration formulates the post close forecasts, not including other acceleration activities for Booking's flight business. According to this, Booking's forecasted 2026 net TTV would amount to EUR […] million rather than the EUR […] million mentioned in Table 16 above. Over time, it is the ambition of Booking that [Details of Booking's flights strategy].

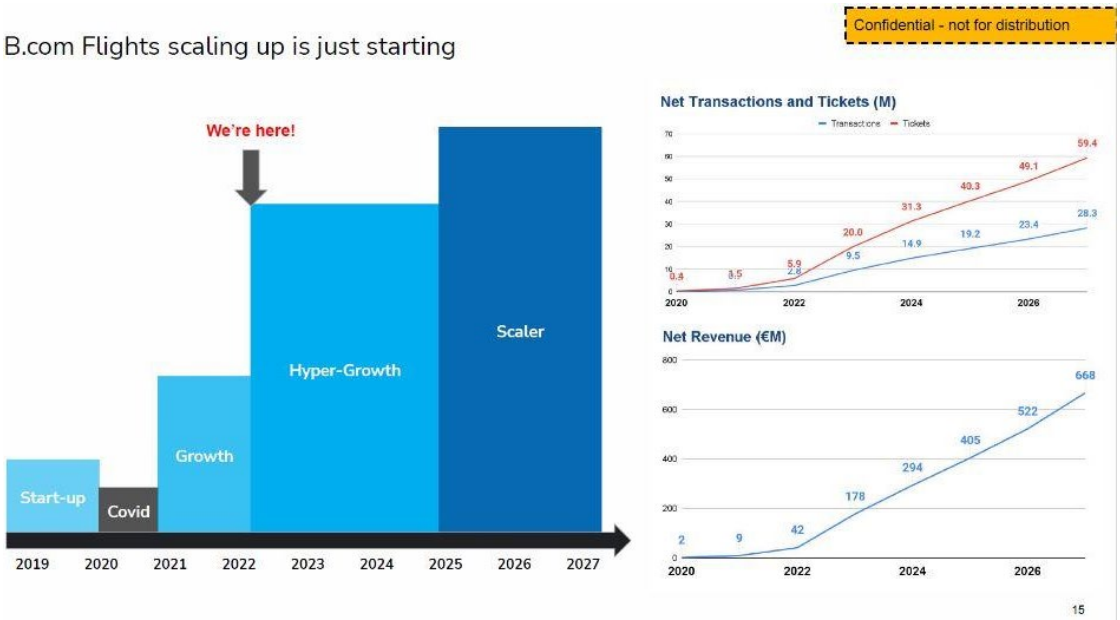
**Figure 83: [Booking's growth projections]**

[Figure redacted]

*Source: Booking, AMS B.com GTM Workshops, Etraveli (ETG) Integration, May 2022, RFI 6, Attachment H.3 [DOC ID 19670], p. 16.*

(881) Booking also refers to its growth ambitions in public. During a public conference in June 2022, the following statement was made on its growth potential: '*On flights, BKNG noted it could grow to be several times larger than today (annual run-rate 20M tickets as of Q1) and become a meaningful part of overall GBV. While driving much lower margins, flights can help with customer acquisition, stickiness, and packages/cross-selling*'.[1159] This is consistent with the growth projections mentioned in Figure 83 above. On the basis of its growth projections, Booking concludes that the scaling up of Booking Flights is just starting.

**Figure 84: Booking Flights scaling up**




*Source: Booking, AMS B.com GTM Workshops, Etraveli (ETG) Integration, May 2022, RFI 6, Attachment H.3 [DOC ID 19670], p. 15.*

1159 Booking's internal document BOOK_00911217 [DOC ID 51853-23533].

(882) Taking into account the evidence set out above, the Commission considers that, while Booking's growth projections may be ambitious, they cannot be set aside as highly implausible as argued by the Notifying Party.

(883) As a matter of fact, beyond Booking's post close forecasts, it established a [Details of Booking's revenue target] which is even more ambitious as part of its [Details of Booking's revenue target]. The revenue stretch target requires that, in addition to the estimated [Details of Booking's revenue target].[1160] The figure below represents the latest profit & loss for Booking and ETG's combined flight offering under the [Details of Booking's revenue target]. These figures have eliminated double counting in relation to Booking's flight sales under its Phase 2 Agreement with ETG and contain a net TTV of EUR […] million. This net TTV [Details of Booking's revenue target] that Phocuswright recorded in 2019 (last year pre Covid-19).

**Figure 85: [Details of Booking's revenue target]**

[Figure redacted]

*Source: Booking's internal document D411 [DOC ID 19695], Flights 2B27 – P/L Follow-Ups, July 2022, slide 16.*

(884) The Notifying Party explained that Booking ultimately concluded that a USD […] billion growth target by 2027 would be unrealistic and that it therefore has not continued to work on the plan.[1161] This would be clear from Booking's 2023 Flight Budget which forecasts a flight revenue of EUR […] million in 2025.[1162] Even if this is the case, the Commission notes that these ambitious growth targets, which would require a further […] of growth beyond Booking's post close projections, at least demonstrate that the post close projections themselves are internally considered to be realistic and the forecasts in the TVM have not been adjusted downward (the 2022 TTV increased even significantly from EUR […] million to EUR […] million[1163] according to RFI 24 or EUR […] million[1164] according to RFI 20).

(b) Booking's growth strategy is based on many growth factors

(885) On the basis of a review of internal documents, the Commission identifies three stages of Booking's plans to achieve growth in the flight OTA market: [Details of Booking's flights strategy].

(886) **Booking's flight strategy as set out in 2020.** Prior to the decision to acquire ETG, Booking (through the Phase I Agreement with ETG), Agoda and Priceline all offered a flights product. During the Quarterly Business Review of July 2020, Booking discussed its flights strategy and objectives by brand. The general flights strategy is described as follows: '*[Details of Booking's flights strategy]*'.[1165,1166] Specifically for

1160 Booking, AMS B.com GTM Workshops, Etraveli (ETG) Integration, May 2022, RFI 6, Attachment H.3 [DOC ID 19670], p. 31.

1161 Response to RFI 17, question 3.

1162 Response to RFI 17, question 3 and Attachment 1, slide 6.

1163 Response to RFI 20, table 3.

1164 Response to RFI 24, table 1.

1165 Booking's internal document D039, slide 103 [DOC ID 212].

1166 Related to the last sentence in the quote, Booking explained that [Details of Booking's flights strategy]. Response to the Article 6(1)(c) decision, Annex 6, Zero Profit, paragraph 1.4 and ff. The extent to which potential discounts on flights may constitute an efficiency in this case are discussed in Section 7 below.

Booking.com, which is active in the EEA, the following strategies and objectives are identified:

**Figure 86: [Booking.com strategy and objectives]**

[Figure redacted]

*Source: Booking's internal document D039 [DOC ID 212], July 2020, slide 114.*

(887) For Booking.com, the strategy is in short to use flights to drive growth of the accommodations business and to invest in the flights business in the short term. This strategy leads Booking.com to formulate two flights objectives: […].[1167]

(888) In order to achieve its flight objectives, Booking identified five priority areas in which to invest: [Details of Booking's business strategy].[1168]

(889) **Booking's GTM model for integrating ETG.** In early 2022, the Parties worked on the GTM model for integrating ETG into Booking's business. The GTM initiatives aim at driving growth following the Transaction through 2027. Booking identified six key activities to achieve the growth as set out in Table 16 above:

**Figure 87: [Details of Booking's growth strategy]**

[Figure redacted]

*Source: Booking, AMS B.com GTM Workshops, Etraveli (ETG) Integration, May 2022, RFI 6, Attachment H.3 [DOC ID 19670], p. 17.*

(890) Many of the priority areas for the flights business that Booking identified prior to the proposed Transaction are reflected in the key activities for the GTM model to integrate ETG: in particular [Details of Booking's flights strategy]. In the short-term following the closing of the Transaction, Booking identifies several focus areas for the period 2022-2024 and then additional focus areas to 'accelerate & scale' for the period 2025-2027.

**Figure 88: [Details of Booking's growth strategy]**

[Figure redacted]

*Source: Booking, AMS B.com GTM Workshops, Etraveli (ETG) Integration, May 2022, RFI 6, Attachment H.3 [DOC ID 19670], p. 19.*

(891) For 2022, pricing optimisation (or pricing enrichment) is seen as one of the key activities or focus areas. In the second half of 2021, ETG and Booking conducted 'zero commission experiments' and it sought to continue the experiments in 2022. These experiments took place during the period in which the Transaction was being negotiated: [Details of Booking's flights strategy].'[1169] Already in late September 2021, the Senior Manager Strategy and Operations of Booking observes that [Details of Booking's flights strategy] and he even wants to know if there would be '*[Details of Booking's commission]*'.[1170]

(892) Despite these experiments, the Commission understands that it is not Booking's intention to [Details of Booking's commercial strategy]. For example, a recent Booking.com Supervisory Board presentation indicates that Booking.com's flights

1167 Booking's internal document D039, slide 119 [DOC ID 212].
1168 Booking's internal document D039, slide 116 [DOC ID 212].
1169 Booking's internal document, BOOK_01432185 [DOC ID 51858-58615].
1170 Booking's internal document, BOOK_01641846 [DOC ID 51861-35149].

have consistently performed at [Details of Booking's financial performance].[1171] Another internal presentation states that Booking expects to [Details of Booking's financial performance] for its flights business.[1172] However, this presentation mentions that Booking would seek to improve [Details of Booking's financial performance] and that, not taking into account the Transaction, it aims to achieve [Details of Booking's financial performance].[1173] This also follows indirectly from Booking's stated flights value proposition towards customers as it is set out in the GTM presentation of May 2022, which includes: [Details of Booking's flights strategy].[1174] In any event, the Commission notes that flight OTA providers generally offer discounts on the flight ticket and seek to make a profit on the sale of ancillary products such as seats, luggage, insurance etc. In this regard, the Parties explained that [Details of Booking's discounts].[1175] As such, Booking.com discounted less than ETG in 2022.

(893) For 2023, the focus of Booking is among others on achieving growth in volumes and growing market share. The most important outcome in this regard is to [Details of Booking's flights strategy] as shown in the figure below.

**Figure 89: [Redacted]**

[Figure redacted]

*Source: Booking, Flights Go to Market integration Master Deck last updated: 27.10.2022, RFI 6, Attachment H.7, p. 10.*

(894) Improving the conversion rate is closely related to the channel mix where Booking expects to make flights sales. As set out in Figure 70 above, Booking aims to achieve [Details of Booking's conversion rate][1176].[1177]

(895) As also shown in Figure 66 above, Booking forecasts changes in its 'channel mix' between 2022 and 2027. In 2022, […]% of Booking's flight transaction stem from the Meta channel and […]% are direct sales. By 2027, Booking forecasts that […]% of flight transactions will come from the Meta channel and […]% will be direct sales.[1178] Booking will therefore be significantly less reliant on MSS channels than other flight OTA providers. By way of example, ETG generated […]% of its own brand sales from MSS channels in 2022.[1179] If Booking becomes less reliant on the MSS channel overall (despite its forecasted growth) then it will also be able to save costs on customer acquisition. An example of the costs of customer acquisition through the MSS channel is the 'cost per acquisition' ('CPA') that is charged by KAYAK to its top 5 flight OTA customers (Booking, Travelgenio, Kiwi, eDreams ODIGEO and ETG). The mean CPA charged for these flight OTA providers varies from EUR […] to EUR […].[1180] This is a significant cost factor considering that ETG sells […]% of its orders […]ancillary services on the remaining […]% of its

1171 Booking's internal document provided to the CMA, H535 [DOC ID 1491], slide 48. See further Response to RFI 17, Attachment 1, slide 2.
1172 Booking's internal document, BOOK_00914751 [DOC ID 51853-27067], slide 4.
1173 Booking's internal document, BOOK_00914751 [DOC ID 51853-27067], slide 2.
1174 Booking's internal document H.3, p. 18 [DOC ID 19670].
1175 Booking Flights deep-dive session, 2 February 2023 [DOC ID 51938], slide 25.
1176 'X-sell from ABU to flights' refers to cross-selling accommodation to flights.
1177 Booking's internal document H.3, p. 17 [DOC ID 19670].
1178 Booking's internal document H.3, p. 16 [DOC ID 19670].
1179 Booking Flights deep-dive session, 2 February 2023 [DOC ID 51938], slide 18.
1180 Form CO, paragraph 8.193 and Table 8.8.

orders.[1181] In 2022, ETG achieved on average EUR […] ancillary revenues per order in the EEA.[1182]

**Figure 90: [Redacted]**

[Figure redacted]

*Source: Booking Flights deep-dive session, 2 February 2023 [DOC ID 51938], slide 25.*

(896) On the basis of Booking's internal documents, the Commission therefore considers that there are many factors that Booking expects to contribute to its forecasted growth under the GTM model developed for the integration of ETG. Two important activities [Details of Booking's growth strategy].

(897) **Program 2B27.** [Details of Booking's growth forecasts].[1183]

(898) [Details of Booking's growth forecasts].[1184] In order to assess the feasibility of this target Booking has identified growth pools that go beyond the pro forma forecasts of the GTM model. The presentation which identifies these growth pools states that it is an early perspective which would need to be validated, however it concludes: [Details of Booking's growth forecasts].[1185] The figure below lists the ten growth pools that Booking identified.

**Figure 91: [Details of Booking's growth forecasts]**

[Figure redacted]

*Source: Booking, AMS B.com GTM Workshops, Etraveli (ETG) Integration, May 2022, RFI 6, Attachment H.3 [DOC ID 19670], p. 32.*

(899) [Details of Booking's growth forecasts].

(900) [Details of Booking's growth forecasts][1186].[1187] The Notifying Party further explained that […].'[1188] *Second*, under the TVM, the forecasted marketing costs as compared to the direct costs decrease from […].[1189] *Third*, the potential significant growth in PPC volume follows from flight strategy documents prior to the Transaction. In an internal document from August 2020, Booking estimates that it will be able by 2024 to achieve a […]% PPC growth as a percentage of total MSS channel sales due to lower customer intent in this channel:

**Figure 92: PPC growth in flights**

[Figure redacted]

*Source: Booking, Flights 2024 Growth Strategy Sizing, Overview of Model, Assumptions, and Output, B.com Flights Aug 2020, Attachment D130 [DOC ID 1535-349], slide 6.*

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1181 Booking Flights Submission dated 27 February 2023 [DOC ID 57045], para. 5.3.

1182 Booking Flights Submission dated 27 February 2023 [DOC ID 57045], Table 5.

1183 Booking's internal document D408 [DOC ID 19694], slide 3.

1184 Booking, AMS B.com GTM Workshops, Etraveli (ETG) Integration, May 2022, RFI 6, Attachment H.3 [DOC ID 19670], p. 31.

1185 Booking, AMS B.com GTM Workshops, Etraveli (ETG) Integration, May 2022, RFI 6, Attachment H.3 [DOC ID 19670], p. 32.

1186 Response to RFI 22, para. 3.1; TVM Model, V.27.

1187 Form CO, Table 8.3.

1188 Form CO, para. 8.73.

1189 Response to RFI 22, para. 4.2 and Table 3; TVM Model, V.27.

(901) The Notifying Party argues that while it has [Details of Booking's growth strategy].[1190] In practice, Booking states that of its flight sales in the EEA, only […]% of transactions derived from the PPC channel in 2021 and only […]% in 2022.[1191] In terms of advertising expenditure in the EEA, Booking spent EUR […]on the PPC channel in flights, as compared to EUR […] on the MSS channel.[1192] More generally, the Notifying Party explained that it had abandoned Program […] as it concluded it was unrealistic.[1193]

(902) The Commission considers that regardless of the question whether […] is realistic and whether there is evidence that growing the PPC channel could drive meaningful volumes to the flight business, […] shows that there are many potential growth pools for Booking to achieve further growth in the flight OTA market beyond its growth projections that are part of the GTM model to integrate ETG. On the basis of the description above, Booking's growth strategy appears to depend on many factors and there are many potential growth opportunities.

(903) Taking into account all of the above, the Commission finds that Booking's growth plans in the flight OTA market post-Transaction are based on many different strategies to integrate ETG and further grow the flight OTA business of the merged entity. In particular, Booking focuses [Details of Booking's pricing].

6.7.2.2.4. Through the acquisition of ETG, Booking will develop an ecosystem that leverages brand strength and customer inertia

(904) In the previous paragraphs, the Commission came to the preliminary conclusion that a flight OTA product is an important acquisition channel for hotel OTA providers and that Booking will get access to a significant amount of additional customer traffic through the acquisition of ETG. Then, the Commission preliminarily found that ETG is a best-in-class flight OTA provider that, even prior to the cooperation with Booking, was on a consistent growth path. Booking expects to be able to accelerate the growth of the combined flight OTA business post-Transaction to become the biggest player on the flight OTA market. While Booking's growth strategy depends on many factors, a particular focus seems to [Details of Booking's pricing].

(905) In addition to accommodation, its core business, Booking is already offering additional travel services such as car rental, taxi rides, tickets to attraction and flights through the Phase 2 Agreement. The Commission considers that, through the acquisition of ETG, Booking will be able to develop a travel ecosystem. In section **6.5.2** above, the Commission described Booking's Connected Trip strategy. Within that strategy, combining several travel products, a flight product is crucial in a travel ecosystem revolving around Booking's dominant position in the hotel OTA market. In the figure below, this is even made more explicit when Booking states in a presentation from 2020 that [Details of Booking's business strategy].[1194]

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1190 Response to RFI 22, para. 3.4 and Booking's internal document D411 [DOC ID 19695], slides 4 and 7.
1191 Response to RFI 22, Table 1.
1192 Response to RFI 22, Table 2.
1193 Response to RFI 17, question 3.
1194 Booking's internal document D162, p. 2 [DOC ID 1535-381].

**Figure 93: [Redacted]**

[Figure redacted]

*Source: Booking, BKNG Flights strategy Discussion between with Glenn and David, October 2020, D162, p. 2.*

(906) This presentation not only identifies the Connected Trip as a […], but it also describes the Connected Trip as a […]. In this sense, a Connected Trip strategy that expands beyond Booking's traditional focus on accommodations develops a travel ecosystem that will be harder to replicate for any existing rival or potential entrant in the travel industry.

(907) In addition, the following statements from an earnings call from Booking Holdings for Q4 2021 confirm that the acquisition will allow Booking to build a travel ecosystem:

- Glenn Fogel: '*The goal of course is to make it so that it is so seamless, so frictionless that people when they're using Booking.com for any kind of travel they're doing, they're finding it easier and offering more value and that value comes from suppliers being willing to chime in to our platform and be able to offer different things that we can then very, very scientifically target different customers in a way that gets an incremental customer to that supplier, the customer is happy, the supplier is happy, and of course we make money. <u>That will develop the loyalty. That will develop the direct business. That's where we're going for, and it's the same way in other parts of e-commerce where people don't shop around, they don't look around.</u> They go to one player because they know that's the place where they're going to get the most value*' (emphasis added).[1195]

- David Ian Goulden (CFO and EVP, Booking Holdings) adds to the above statement: '*And, Glenn, I'd just add to that as well that when we kind of look at our customer base and not too surprisingly <u>our top customers, the ones that kind of spend the most with us, use us most often and more likely to use multiple things, more likely to use the app, and they're much more likely to come to us directly. So that's the model we're trying to build upon to build the loyalty that Glenn mentioned and we do have good evidence that that is a trend that we can build on, and the more we build value, complete travel offering, frequency, direct linkage via the app, the more loyal those customers become.</u>*' (emphasis added)[1196]

(908) In the Response to the Third Letter of Facts, the Notifying Party claims that the statements above '*simply refer to Booking's aspiration of increasing consumer loyalty through the offering of better products*'.[1197] The Commission disagrees with this claim, as the statements above explicitly spell out how the Transaction will allow Booking to build and develop a travel ecosystem.

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1195 Booking Holdings earnings call transcript Q4 2021, [DOC ID 114517], p. 15. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q4-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx.

1196 Booking Holdings earnings call transcript Q4 2021, [DOC ID 114517], p. 15. Available at: https://ir.bookingholdings.com/events/event-details/2022/Q4-2021-Booking-Holdings-Earnings-Conference-Call/default.aspx.

1197 Response to the Third Letter of Facts, page 20.

(909) To the point that the Connected Trip functions as a key lever to reinforce the 'accommodations flywheel', the Commission considers that the development of a travel ecosystem by Booking will allow it to leverage certain aspects of its hotel OTA business which ultimately will support further growth of its core market.

(910) *First*, Booking will be able to leverage the strong brand that it has built in the hotel OTA market. In a presentation from late 2021, Booking states that there are indications that its brand strength matters.[1198] The results of the market investigation confirmed that, according to competing OTAs, the price of offering is by far the most important parameter for flight OTAs to compete effectively on the market.[1199] It is true that pricing is particularly important in the MSS sales channel, where prices are directly compared, and where ETG currently achieves […]% of its sales.[1200] However, even in the MSS channel, the brand strength of Booking would matter. Booking states that [Details of Booking's business strategy].[1201]

**Figure 94: [Details of Booking's brand strength]**

[Figure redacted]

*Source: Booking, TBU QBR – December 2021, Booking's internal document D105 [DOC ID 526-61], p. 31.*

(911) The importance of Booking's brand strength in the flight MSS channel is further confirmed by one MSS provider, which states that '*where a customer does choose to redirect to Booking, the Booking.com proposition is usually the more expensive option. Whilst most OTA receive 70-75% of their redirects on [CONFIDENTIAL] by offering the cheapest price, the opposite is true for Booking, for which the percentage is typically below 25%. Table 5 sets out the percentage of Booking redirects that occurred where they are the cheapest option in June 2023.*'[1202]

**Table 16: Percentage of Booking redirects where they are the cheapest option in June 2023**

| Geographic market | Total Booking redirects | Redirects where Booking is cheapest | % of Booking redirects where it is cheapest |
|---|---|---|---|
| PL | […] | […] | […]% |
| DE | […] | […] | […]% |
| SE | […] | […] | […]% |
| GR | […] | […] | […]% |
| IT | […] | […] | […]% |
| ES | […] | […] | […]% |
| PT | […] | […] | […]% |
| FR | […] | […] | […]% |

*Source: Submission from an MSS provider to the European Commission dated 4 August 2023, [DOC ID 114526], para. 2.11(a)(ii).*

1198 Booking's internal document D105 [DOC ID 526-61], p. 31.
1199 Responses to question 31 of Questionnaire Q1 to OTAs [DOC ID 2739].
1200 Booking Flights deep-dive session, 2 February 2023 [DOC ID 51938], slide 18.
1201 Booking's internal document D105 [DOC ID 526-61], p. 31.
1202 Submission from an MSS provider to the European Commission dated 4 August 2023 [DOC ID 114526], para. 2.11(a)(ii).

(912) *Second*, Booking would also be able to leverage the considerable degree of customer inertia that characterises the OTA sector[1203] . According to an internal document of Booking, [Details of Booking's assessment of consumers' trends].'[1204] Furthermore, according to the LEGO[1205] and IPSOS[1206] surveys made by Booking, […] of the customers[1207] who search for accommodation do so only using a single source. The surveys show that also specifically with respect to Booking, [Details of Booking's assessment of consumers' trends] of its EEA customers search only on Booking.com before making a purchase.[1208]

(913) As Booking is the largest player on the hotel OTA market with high market shares, customer inertia works in its favour when customers do not shop around and therefore do not switch OTA provider. The significant amount of additional customer traffic that Booking will be able to generate through the acquisition of ETG may therefore contribute to make Booking's dominant position on the hotel OTA market even more difficult to contest.

(914) This is further evidenced by a transcript from an earnings call from Booking for Q4 2022, stating that '*We've expanded our offering into travel verticals others than accommodations with a focus on flights. And in the future, we will work to link relevant travel components together to provide a more seamless and flexible booking and travel experience. <u>We believe that the result of this initiative and the improved consumer experience, we will drive increases in customer engagement and loyalty to our platform over time.</u>*' (emphasis added)[1209]

(915) In the response to the SO, the Notifying Party argued that its platform does not present the characteristics of an ecosystem. In the view of the Notifying Party *'a defining feature of an ecosystem is that it is difficult for consumers to leave the ecosystem to access services that compete with the ecosystem. This typically occurs because consumers tend to exhibit inertia after an initial purchase has "locked-in" consumer demand for adjacent services (such as when a user buys a phone, and cannot avoid using the app store on the phone) or because the consumer has a perceived "sunk cost" that it hopes to recoup (such as a membership fee) or because*

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1203 See in that regard sections 6.2.3 and 6.4.8 above.

1204 Form CO, Attachment D.6 Lego_Wave 2a_Report, slide 20 [DOC ID: 1236-167].

1205 Project LEGO was a series for customer surveys conducted by Booking in 2020-2021. Each Survey included 500 respondents from each of Germany, Spain, France, United Kingdom, Italy and the US. See Form CO, attachment W.

1206 [Details of Booking's assessment of consumers' trends]. The consumer survey covers 11,483 consumers across 10 countries (Austria, France, Germany, Italy, Greece, Portugal, Spain, Czech Republic, Ireland and Sweden). The accommodation survey covers 2,790 Booking.com partners across the same countries of the Consumer survey. See submission of the Notifying Party of 3 March 2023.

1207 [Details of Booking's assessment of consumers' trends].

1208 Commission calculation based on Lego survey wave 5. EEA respondents only (Germany, France, Italy, Spain). For the calculation of the percentages, the denominator includes respondents who indicated having booked with the particular accommodation service provider in response to Question 24 ('*What website or app did you use to book accommodation for this trip*?'). The numerator includes the respondents from the denominator who named only the particular accommodation service provider in response to Question 23 ('*What websites or apps did you use to research and plan accommodation for this trip?*') Both questions admit multiple responses.
Commission calculation based on the IPSOS survey, response to RFI 21, annex 1. [Assessment of a confidential consumer survey].

1209 Booking Holdings earnings call transcript Q4 2022, [DOC ID 114514], p. 4. Available at: https://ir.bookingholdings.com/events/event-details/2023/Q4-2022-Booking-Holdings-Earnings-Conference-Call/default.aspx.

*of the high frequency and regularity of using one service the co-use case becomes habitual (a "walled garden").'*[1210] The Notifying Party argues that there is no consumer lock-in or 'walled garden' in its platform and customer can and do multi home. According to the Notifying Party, *'Booking.com is simply a platform offering a wide variety of travel options across multiple travel products for sale, which can be bought individually at the customer's own discretion.'*

(916) The argument of the Notifying Party cannot be accepted. As explained above, flight offering is the essential element of the 'Connected Trip'. Through Connected Trip Booking will be able post-Transaction to create a travel ecosystem by offering a very wide range of inter-related travel products that could be bought separately or together in numerous combinations. Booking will be able to acquire additional customers because of the combination of the strength of its brand (rather than the quality[1211] or prices[1212] of its services) and customers inertia that would first, draw customers to Booking and then would lead them to buy with Booking several travel services.

6.7.2.3. The Commission concludes that the Transaction is likely to increase barriers to entry/expansion for rival hotel OTAs and strengthen network effects

(917) For the reasons set out below, the Commission has reached the conclusion that it is likely that the Transaction will result in an increase in barriers to entry and expansion into the hotel OTA market and, as result, that the dominant position of Booking on the market for the supply of hotel OTA services would become even less contestable than it is today.

(918) In particular, the Transaction would allow Booking to become a leading flight OTA in the EEA. As a result, Booking will acquire an important source of traffic enabling Booking to grow its position on the OTA hotel market. In addition, the Transaction will also reduce the chances of smaller OTAs to build up a customer base through flights to whom they can sell hotel OTA services.

(919) In this context, the Transaction will allow Booking to develop a travel ecosystem attracting end customers earlier on in their trip planning process. The Transaction will further increase the network effects which, already pre-Transaction, created high barriers to entry and expansion on the hotel OTA market. Those barriers make it very difficult for rivals to contest Booking's dominant position on the hotel OTA market and the Transaction will thus further entrench Booking's market position and further shield it from competition. The Commission, therefore, finds that, via the Transaction, Booking will be able to strengthen its dominant position on the OTA hotel market. These points are assessed in detail below.

6.7.2.3.1. Strong network effects present on the hotel OTA market make it difficult for rivals to contest Booking's dominant position, pre-Transaction

(920) As explained in section **6.2.3** above, the hotel OTA market is a highly concentrated market characterised by the existence of strong network effects that already make it very difficult for rivals to contest Booking's dominant position. As explained in section **6.4.8** above, Booking benefits from the most extensive network of hotels amongst its rivals and enjoys significant customer inertia (as approx. […]% of Booking's customers in the EEA only search on Booking).

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1210 Response to the SO, footnote 131.

1211 See section 6.7.2.6.2.1 below.

1212 See section 6.7.2.6.3 below.

(921) Indeed, Booking's high market shares in the hotel OTA market in the EEA, on both B2C and B2B bases, are testament of the positive effect of the network effects present in the hotel OTA market on Booking.

(922) In the first place, despite evidence reflecting that Booking is an expensive alternative for end customers,[1213] Booking has remained the leading hotel OTA in the EEA vis-à-vis end customers with a market share of [60-70]% in 2022 (on a B2C basis). Booking's B2C market share has also been increasing significantly over the past 10 years (from [20-30]% in 2013 to [60-70]% in 2022).[1214]

(923) In the second place, consistent with Booking's leading position for end customers, Booking is a very attractive platform for hotels to be listed and is, therefore, a leading supplier of OTA services to hotels in the EEA with a market share of [60-70]% (on a B2B basis). Booking's B2B market share has also been increasing consistently over the past 10 years (from [20-30]% in 2013 to [60-70]% in 2022).[1215] This is despite evidence reflecting that Booking charges higher commissions to hotels than its main competitors.[1216]

(924) In the third place, Booking is able to 'acquire' market share through paid advertising online, which reinforces network effects and makes Booking's position on the hotel OTA market even more difficult to contest. Data provided by the Notifying Party regarding Booking's advertising strategy in the EEA indicates that, in 2022, through paid advertising, Booking was able to 'acquire' a [10-20]% market share in the hotel OTA services market in the EEA or, putting it differently, to secure [20-30]% of Booking's own sales of hotel OTA services to end customers (see section 6.4.7.1.5 above). Specifically, through advertising in Google, Booking was able to generate in 2022 a [10-20]% market share in hotel OTA services in the EEA, or to 'secure' [20-30]% of Booking's own sales of hotel OTA services to end customers. Further, the results of the market reconstruction indicate that Booking's main rivals cannot match the advertising expenditure of Booking in the EEA.[1217]

(925) It follows from the above that due to network effects, which are exacerbated by Booking's significant strength in advertising, rivals' ability to contest Booking's market position is already very low pre-Transaction. Indeed, given Booking's advertising strength, almost […]% of Booking's sales to hotel OTA customers are captive pre-Transaction (see section 6.4.7.7 above).

6.7.2.3.2. The Transaction will further increase existing network effects by allowing Booking to acquire an important customer acquisition channel and reinforce its travel ecosystem

(926) The Transaction will increase the existing network effects on the hotel OTA market even further, and result in an entrenchment of Booking's market position because it will allow Booking to attract additional customers to its hotel OTA platform which would in turn become more attractive to hotels, thus reinforcing Booking's travel ecosystem. Indeed, as further explained in section 6.7.2.2.1 above, through the

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1213 See section 6.4.6.3 above.
1214 Commission's market reconstruction [DOC ID 120780] and Euromonitor.
1215 Commission's market reconstruction [DOC ID 120780] and Euromonitor.
1216 See section **6.4.6.1** above.
1217 Response to RFI 23, Tables 1 and 2. See also section 6.4.7.7 above.

Transaction, Booking will be acquiring an important customer acquisition channel and add the missing piece to Booking's ecosystem, the 'Connected Trip'.

(927) *First*, flight OTA services serve as an important customer acquisition channel.[1218]

(928) In the first place, generally, flight OTA services are the closest complement to hotel OTA services. In internal documents Booking notes that flights are in […]% of the cases the beginning of the booking journey for hotel customers[1219] [Details of Booking's business strategy].[1220]. In addition, flights show the highest opportunity to be booked in the same website as accommodation,[1221] and drive a higher amount of traffic than any other vertical (besides accommodation).[1222] Further, flights show the highest cross-selling opportunity with accommodation amongst other verticals. In particular, Booking's internal documents reflect that flights have a […]% attach rate whereas car rental has a lower attach rate of […]%.[1223]

(929) In a May 2022 presentation regarding the impact of the Connected Trip, Booking notes that of all accommodation bookings that arise because the end customer buys another travel service first ('anchor'), […]% originate in flights.

**Figure 95: [Details of Booking's flights strategy]**

[Figure redacted]

*Source: BOOK_00675349 [DOC ID 051850-025965], slide 4*

(930) In the same presentation, Booking refers to data showing the number of new customers that it could attract to its platform from different verticals. Regarding flights, Booking indicates that [Details of Booking's attach rates].[1224]

**Figure 96: [Details of Booking's flight strategy]**

[Figure redacted]

*Source: BOOK_00675349 [DOC ID 051850-025965], slide 3*

(931) In the second place, the acquisition of ETG will allow Booking to attract significant traffic and to further increase it. ETG is a 'best-in-class' flight OTA which held a [10-20]% market share in the flight OTA market[1225] in 2022 and generates approx. […] in TTV[1226]. Further, evidence on the file indicates that ETG was on a consistent growth path prior to the Covid-19 pandemic, recording double digit growth of net

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1218 The Commission notes that, in the response to the SO, the Notifying Party claimed that flights do not serve as an important customer acquisition channel. The Commission has replied to the Notifying Party's argument in section 6.7.2.2 above.

1219 Attachment D003 – B.com Flights M&A Discussion Materials (June 23, 2021).pdf [ID147-3] slide 3. Similarly, Booking's internal documents note that that '*flights is a new customer acquisition funnel for Booking.com and by creating a flights product we are able to capture a set of customers who start their trip planning with the flight product'* (Booking's internal document D007, page 6 [DOC ID 147-27]).

1220 Booking's internal documents D003, slide 3 [ID147-3]; D038, slides 8, 12 [DOC ID 211].

1221 Form CO, Attachment W, Attachment W, Attachment D.1, slides 14 and 17. See also slide 18.

1222 See above section 6.7.2.2.1.

1223 In Booking's internal document D401 [DOC ID 1535-620] the attach rate of flights was measured at […]% compared to […]% of car rental. In BOOK_00675349-Booking LT - Trips Impact [ID 051850-025965] slide 4, the attached rate of flights was measured at approximately […]% compared to […]% of car rental.

1224 BOOK_00675349 [DOC ID 051850-025965], slide 3.

1225 Commission's flight OTA market reconstruction, [DOC ID 58714].

1226 Response to RFI 28, question 1, Annex 1.

sales and net revenue in its internal documents.[1227] Importantly, Booking's own expectations regarding post-Transaction growth (as recorded in the TVM) indicate that the merged entity would account for at least [30-40]% of the flight OTA market, on a conservative basis (and potentially more, up to [50-60]%) and, therefore, through the Transaction, Booking would become a leading flight OTA in the EEA.[1228]

(932) Booking recorded over […] flight visits in the EEA in 2022 through the Phase 2 Agreement with ETG which allows Booking to provide flight OTA services. It is expected that the number of visits that Booking will be able to generate thanks to the Transaction (that is, visits of end customers looking for flights) would range between […] in the EEA by 2026.[1229]

(933) *Second,* the Transaction will also allow Booking to increase customer inertia. Indeed, [Details of Booking's flights strategy][1230], the Connected Trip, which is Booking's strategy to strengthen customer inertia, and to make Booking's platform 'stickier' for new and existing end customers, including the so-called 'high-value customers' ('HVC')[1231] which are especially attractive end customers. Indeed, Booking's internal documents reflect that the Connected Trip increases customer loyalty as it results in a higher repeat rate.

(934) Thus, in a May 2022 presentation focusing on the impact of the Connected Trip, Booking indicates that '*[Details of Booking's customer behaviour]*.'[1232] In addition, the slide below shows that Connected Trip customers who purchased flights are 13% more likely to rebook an accommodation compared to non-Connect Trip customers.

**Figure 97: [Details of Booking's business strategy]**

[Figure redacted]

*Source: BOOK_00675349-Booking LT – Trips Impact [ID 051850-025965] slide 8*

(935) In addition, as explained in paragraph ((570), Booking's internal documents indicate that an objective of the Connected Trip is [Details of Booking's business strategy].[1233] In the May 2022 presentation regarding the impact of the Connected Trip, Booking notes that '*[Details of Booking's customer behaviour]'*.[1234]

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1227 See above paragraph (800) and section 6.7.2.2.3. ETG's internal document, E001 [DOC ID 1534-1], Management Team September 12-13 2019 Strategy meeting, slides 22, 170.

1228 Based on the Commission's flight OTA market reconstruction, [DOC ID 58714], and considering the TTV projections submitted in Response to RFI 6. See sections 6.7.2.2.2 and **6.7.2.2.3** above. The Commission considers it unlikely that the combined flight OTA market share will reach [50-60]% in 2026 but considers that this is an indication that the estimated projected market share of [30-40]% is conservative.

1229 See more details above in section **6.7.2.2** above.

1230 See more details above in paragraph **(**570)**.**

1231 As further explained below, HVC are, according to Booking's internal documents, [Details of Booking's customers] (see BOOK_00972871, Annual Strategic Offsite – Our Ambition and Strategy, slide 9 [DOC ID 51853-85185]).

1232 BOOK_00675349-Booking LT - Trips Impact [ID 051850-025965] slide 10.

1233 BOOK_00972871, Annual Strategic Offsite – Our Ambition and Strategy, slide 9 [DOC ID 51853-85185].

1234 BOOK_00675349-Booking LT - Trips Impact [ID 051850-025965] slide 10.

(936) A January 2022 Booking presentation confirms that HVCs are particularly interesting for Booking because they [Details of Booking's customer behaviour].[1235] In 2021, Booking generated EUR […] of TTV out of HVC, corresponding to […] of Booking's overall TTV, whereas Booking achieved a total of EUR […] from non-HVC.[1236] In this regard, HVCs are especially attractive end customers, also from the point of view of hotels, because they do not only spend more on a booking, but also stay longer and travel more. The fact that, post-Transaction, Booking would be more able ([Details of Booking's business strategy]) to acquire and retain the HVCs will further strengthen network effects reinforcing Booking's platform. Booking will not only be able to achieve more sales through less transactions from HVCs but will also have access to and will be able to retain a valuable pool of customers for hotels, thus increasing the attractiveness of its platform for those hotels.

(937) Booking has itself quantified the effects of the increased 'stickiness' of Booking's platform in terms of incremental bookings. As indicated in Booking's May 2022 presentation recording the impact of the Connected Trip, Booking notes that as a result of the increased 'stickiness' of the Connected Trip, [Details of Booking's financial affairs].[1237]

(938) Similarly, in its Consolidated Budget for 2022-2024, Booking noted that the Connected Trip (already pre-Transaction) would result in incremental ~[…] as-booked room nights by 2024 and […] by 2025 as a result of three elements, one of which was referred as [Details of booking's financial affairs]. [Details of Booking's financial affairs].

**Figure 98: [Details of Booking's growth projections]**

[Figure redacted]

*Source: Booking's Consolidated Budget 2022-2024, ME.6991.22 [DOC ID 846]*

(939) *Third,* internal correspondence between Booking's CEO and the Senior Vice President for Accommodation indicates that one of the objectives of the Connected Trip [Details of Booking's business strategy] is to [Details of Booking's business strategy]:

(940) In an email exchange titled '*the Connected Trip vision'* dated April 2021,[1238] Booking's SVP for Accommodation notes *[Details of Booking's business strategy]*.[1239]

(941) To which Booking's CEO replies: [Details of Booking's business strategy].[1240]

(942) Indeed, these objectives of using the Connected Trip to reinforce network effects and Booking's already strong position in accommodation (the 'flywheel') and to create a differentiating factor are also depicted in an flights strategy document of Booking, where it is indicated that Booking is [Details of Booking's business strategy].

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1235 D044 [DOC ID 217], slide 36.

1236 D044 [DOC ID 217], slide 36.

1237 'ABU' stands for accommodation. BOOK_00675349-Booking LT – Trips Impact [ID 051850-025965] slide 8.

1238 BOOK_02023130 [DOC ID 56972-11257], and BOOK_02106922 [DOC ID 56972-56374].

1239 Idem.

1240 Idem.

**Figure 99: [Details of Booking's business strategy]**

[Figure redacted]

*Source: Attachment D162 [DOC ID 762], slide 1*

(943) Similarly, in a presentation that ETG made to Booking regarding the benefits of flights for Booking's Connected Trip strategy and how flights could make the Connected Trip a 'reality',[1241] ETG notes within the […] that the Connected Trip […]'[1242] and specifically noted that Booking could succeed with this strategy because of its stronger position on the hotel OTA market: […].[1243] Importantly, one element highlighted by ETG as a factor of success for Booking is that […].[1244] Indeed, as noted in section 6.4.4 above, the results of the market reconstruction indicate that Booking is the only hotel OTA that has fully recovered from the pre-pandemic levels in 2019.

**Figure 100: [Redacted]**

[Figure redacted]

*Source: ETG_0000030233 [DOC ID 51103-30233]*

(944) *Fourth,* qualitative evidence gathered during the market investigation supports the finding that the Transaction will reinforce network effects, resulting in higher barriers to entry/expansion into the hotel OTA market. An OTA explained that '*the fact that the market would be more centralised around Booking.com, would make it more complicated for rival accommodation OTAs to enter and/or expand their activities within the markets with presence of Booking.com.*' [1245].

(945) Other OTAs noted that accommodation OTA competitors lacking a flight offering would not be able to compete with Booking's offers of flights and hotel. This is because '*[o]ther hotel-only OTAs will not be able to target as specifically, which makes the costs of acquisition much higher compared to Booking.com*'[1246] The Commission notes that, based on the limitations of the Phase 2 Agreement (as pointed by Booking)[1247] in order to engage in successful cross-selling as well as the difficulties around building a flight OTA platform [Details of Booking's proprietary flights platform],[1248] it would be challenging for an accommodation OTA provider, currently lacking flight OTA capability, to develop such a flight OTA offering to be able to effectively compete with Booking post-Transaction.

(946) Further, in the course of the investigation, an OTA noted: '*It should further be noted that – even in the absence of an explicit mixed bundling strategy – Booking will be able to strengthen its (dominant) position on the hotel OTA market. With the integration of a flight OTA, Booking will have access to even more consumer data, which enables it to retarget consumers more efficiently. Booking will then be able to specifically target consumers at the beginning of their journey (i.e., when booking a flight). Attracting flight traffic will subsequently also attract more hotel traffic. Similar to the Commission's decision in Google/Fitbit, this would give Booking*

1241 ETG_0000030233 [DOC ID 51103-30233], slide 14.
1242 Idem.
1243 Idem.
1244 Idem.
1245 Response to question 48.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
1246 Response to question 42.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
1247 Form CO, paragraph 6.104.
1248 Form CO, Annex 13.

*control over important data that could further strengthen Booking's dominance on the hotel OTA market. These data-advantages will likely foreclose other (flight/hotel) OTAs and raise significant barriers to entry. In the end, this leads to a decrease in choice for the consumer and the ability for Booking to increase its prices profitably*.'[1249]

(947) In the response to the SO, the Notifying Party argued that the Commission ignored *'the general principle that network effect only give rise to a concern where the network effects are strong enough to lead to "tipping" into foreclosure as a result*.'[1250] The argument of the Notifying Party cannot be accepted. As explained in section 6.1 above, the Commission does not need to show that the market will 'tip' in order to find a significant impediment to effective competition. Furthermore, the cases cited by the Notifying Party do not support its argument. In the first case, *Google / Double Click*, the Commission did not establish a general principle but only found that there was no evidence for strong network effects.[1251] It was in the more recent case, *Microsoft / LinkedIn*, that the Commission explained in general terms that network effects may *'raise competition concerns in particular if they allow the merged entity to foreclose competitors and make more difficult for competing providers to expand their customer base. Network effects have to be assessed on a case-by-case basis.'*[1252] As explained above, the Transaction is likely to make it more difficult for competitors to enter or expand their customer base in the hotel OTA market, and consequently the Transaction will make it more difficult for rivals to compete with Booking.

(948) The Notifying Party further argued that network effects cannot lead to foreclosure because hotels and end customers multi-home. Multi-homing means that more activity on Booking would not deprive competing OTAs access to hotels and customers.[1253]

(949) This argument cannot be accepted. With respect to end customers, the Commission found that end customers in the hotel OTA market in general and of Booking's end-customers specifically are characterised by a high degree of inertia with a large share of them going directly to the OTA of their usual choice or visit and reserve on only one OTA. Furthermore, Booking's customer inertia and loyalty is likely to increase post-Transaction (see above sections 6.2.3, 6.7.2.3.2 and 6.7.2.6.2 of this decision).[1254]

(950) With respect to hotels, the Notifying Party relied on a Commission report[1255] to show that multi-homing is prevalent among hotels, noting that the majority of independent hotels and hotel chains listed their rooms on more than one OTA.[1256] The Commission notes that according to this report *'as regards hotel chains, it can be assumed that they generally have more staff and greater administrative capacity, which can be expected to make it easier for them to manage relationships with a*

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1249 Non-confidential version of a submission by an OTA, dated 25 October 2022, paragraph 44. [DOC ID 120635].

1250 Response to the SO, paragraph 4.62.

1251 Case M.4731 - *Google / Doubleclick* (2008), paragraph 304.

1252 Case M.8124 - *Microsoft / LinkedIn* (2014), paragraph 130.

1253 Response to the SO, paragraph 4.63.

1254 See also sections 6.2.3, 6.7.2.3.2 and 6.7.2.6.2 of the SO.

1255 Market study on the distribution of hotel accommodation in the EU COMP/2020/OP/002.

1256 The Notifying Parties' slides for the oral hearing, page 49.

*higher number of OTAs. In that sense, the majority of the respondent hotel chains say that, in 2021, they listed their rooms on five or more OTAs, while a minority of the respondent chains said they had distribution agreements with four OTAs.'*[1257] According to the report, independent hotels that do not have the same resources as hotel chains to manage their relationships with OTA, are significantly less likely to multi-home. According to the report 28% of independent hotels use only one OTA; 39% use two OTAs; 17% use three OTAs and only 15% use more than three OTAs. The two main hotel OTAs are Booking (88% of hotels) and Expedia (61%), following in size are HRS (16%) and Airbnb (12%).

(951) The report shows that most independent hotels (67%) work with either one or two OTAs, most likely pairing Booking (88%) and Expedia (67%), with all other OTAs trailing significantly behind.[1258]

(952) In the response to the SO, the Notifying Party argued that because hotels multi-home between hotel OTAs (*i.e.,* they offer their rooms on several OTAs in parallel), the growth of Booking post-Transaction will not limit the access of rival hotel OTAs to hotels and will not deteriorate their inventory. The Commission notes however that the statistics above show that hotels have in fact limited capability to multi-home between hotel OTAs. If more hotels choose to work with Booking post-Transaction because of the increase in Booking's end-customer base, this is likely to mean that some hotels, because they typically can manage relationships with only one or two hotel OTAs in parallel, will have to give up working with some hotel OTAs in exchange to starting to work with Booking.

(953) The limited ability of independent hotels to multi-home between hotel OTAs means that an increase in the size of Booking's hotel network is likely to lead to other OTAs losing hotels.

(954) In addition, even if hotels were multi-homing, OTAs will still find it increasingly difficult to reach end customers as the Transaction will allow Booking to capture an even larger share of end-customers earlier in the booking journey (that is already when booking flights, before searching for hotels) and increasing inertia and loyalty.

(955) In light of the above, the Commission considers that the Transaction will result in an increase in the network effects present on the hotel OTA market. Indeed, the Transaction will allow Booking to attract additional customers to its hotel OTA platform (estimated between […] million additional visits in the EEA by 2026) as well as to increase customer inertia thanks to the development of its travel ecosystem, via the Connected Trip strategy. This would in turn make Booking an even more attractive platform for hotels, thus securing Booking the broadest and best content which in turn would attract more end customers to Booking's platform, thus reinforcing network effects and increasing the existing barriers for competing hotel OTAs and potential entrants to gain scale on the market.

(956) In its response to the SO, the Notifying Party argued that '*Booking.com is simply a platform offering a wide variety of travel options across multiple travel products for sale, which can be bought individually at the customer's own discretion. It is not a complex "ecosystem" […]*'.[1259]

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1257 Market study on the distribution of hotel accommodation in the EU COMP/2020/OP/002, 35.

1258 Market study on the distribution of hotel accommodation in the EU COMP/2020/OP/002, page 37.

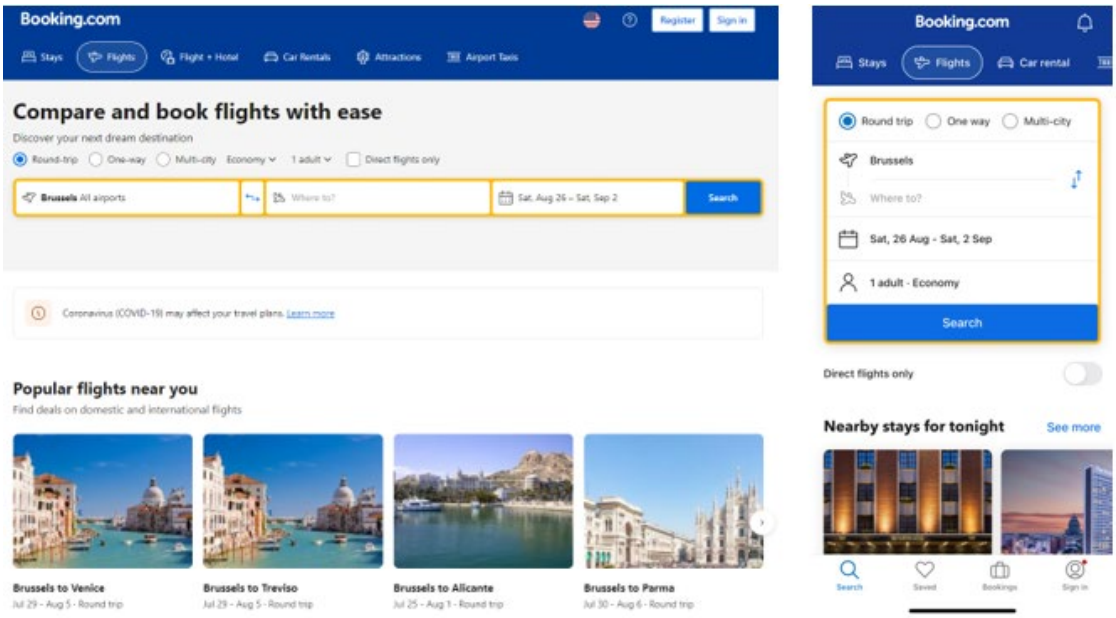
1259 Response to the SO, paragraph 4.60.

(957) In relation to the Parties' argument that Booking's website is simply a platform offering a wide variety of travel options across multiple travel products, the Commission sets out below the way in which Booking intends to integrate ETG's business within Booking Holdings.

(1) Integration of ETG's business within Booking Holdings

(958) Today, Booking.com already offers a flight product on its own platform through the Phase 2 Agreement with ETG. This flight offering is integrated both on Booking.com's website and mobile app as is clear from the screen shots represented below.

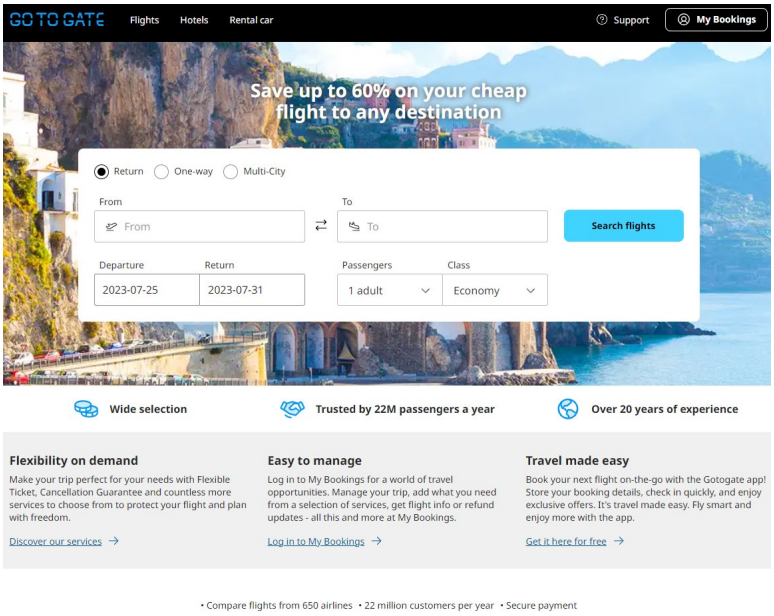
**Figure 101: Booking website and app**




*Source (visited on 24 July 2023): https://www.booking.com/*

(959) For its part, ETG's brands (which include, inter alia, Gotogate, My Trip, Seat24 and SuperSaver), contain an exclusive link on their website to Booking.com's website for its accommodation offering.

**Figure 102: Gotogate website**




*Source (visited on 24 July 2023): https://www.gotogate.com/rf/destination?domain=google-a&campaign=brand-XX&text=7&gclid=EAIaIQobChMI-_ui_b-ngAMVBbjtCh2WxApEEAAYAiAAEgIz9vD_BwE*

(960) The Commission understands that this situation will not change following the Transaction. In response to RFI 37, the Parties explain that […].[1260] A presentation on the integration and onboarding of ETG confirms this intention when it describes the BHl Business Integration Program: [Details of Booking's business strategy].[1261] This presentation describes that ETG will function as an [Details of Booking's business strategy],[1262] that, in terms of its management structure, [Details of Booking's business strategy].[1263] *[Details of Booking's business strategy]*[1264] and that, in relation to the Phase 2 Agreement between ETG and Booking.com, the '*existing agreement will transition to a similar [inter-company] agreement*'.[1265]

(961) In a different document relating to the Go to Market operating model and the Integrate/Migrate/Invest Roadmap, the respective roles of ETG and Booking.com following the Transaction are described:[1266]

**Figure 11: [Details of Booking's business strategy]**

[Figure redacted]

*Source: Response to RFI 6, Attachment H.8 [DOC ID19675], slide 2.*

(962) The Commission considers on the basis of this information that Booking's integration plan for ETG involves that [Details of commercial negotiations].[1267] At the same time, Booking.com will continue to offer flights content on its platform and

1260 Response to RFI 37, paragraph 3.1.
1261 Response to RFI 6, Attachment H.3 [DOC ID 19670], slide 4.
1262 Response to RFI 6, Attachment H.3 [DOC ID 19668], slide 20.
1263 Response to RFI 6, Attachment H.1 [DOC ID 19668], slide 20.
1264 Response to RFI 6, Attachment H.1 [DOC ID 19668], slide 20.
1265 Response to RFI 6, Attachment H.1 [DOC ID 19668], slide 20.
1266 Response to RFI 6, Attachment H.8 [DOC ID 19675], slide 2.
1267 Booking will be able to sell hotel nights to customers purchasing flight tickets on ETG using the same cross-sell techniques explained in section 6.7.2.2.1 above.

will have as a role to [Details of Booking's business strategy].[1268] It is the role of ETG to [Details of Booking's business strategy].[1269] While ETG's brands will remain independent within the holding, [Details of Booking's business strategy].[1270] [Details of Booking's business strategy].[1271]

(963) In paragraphs ((840)-((868) above, the Commission set out Booking's growth projections from 2023 until 2026. The Commission considers conservatively that the Parties' combined market share on the flight OTA market in the EEA will increase to [30-40]% by 2026. Booking's growth projections further show that Booking's expected flight TTV will grow significantly as compared to the flight TTV of ETG, and according to the internal document mentioned above ETG's volumes will even decline.[1272]

**Table 18: EEA flight OTA market size forecast 2023-2026 and Parties' market shares**

| | | 2023 F | 2024 F | 2025 F | 2026 F |
|---|---|---|---|---|---|
| **Market size range (m €)** | | 17,119-18,059 | 18,989-20,345 | 19,957-22,153 | 20,926-21,584 |
| **Parties' TTV** | **Booking (m €)** | […] | […] | […] | […] |
| | **ETG (m €)** | […] | […] | […] | […] |
| | **Combined (m €)** | **[…]** | **[…]** | **[…]** | **[…]** |
| **Parties' shares** | **Booking** | [10-20]% | [10-20]% | [20-30]% | [20-30]% |
| | **ETG** | [5-10]% | [5-10]% | [5-10]% | [5-10]% |
| | **Combined** | **[20-30]%** | **[20-30]%** | **[20-30]%** | **[30-40]%** |

*Source: Commission's flight OTA market reconstruction, [DOC ID 58714].*

(964) Based on the above, the Commission considers that it is Booking's intention to develop its embedded flight offering on the Booking platform, thereby further building its ecosystem as part of its Connected Trip strategy and to shift volumes from ETG's own brands to the Booking brand.

(2) The integration of ETG's business allows for an array of cross-selling opportunities

(965) In the SO, the Commission already described that the Connected Trip is Booking's strategic choice to increase growth of its accommodation business.[1273] In paragraphs ((769)-((778) above, the Commission further set out how traffic to the websites of ETG's brands and to Booking's platform can translate into a wide array of cross-selling opportunities. The Commission considers that the integration of

1268 Response to RFI 6, Attachment H. 8 [DOC ID 19675], slide 3.
1269 Response to RFI 6, Attachment H. 8 [DOC ID 19675], slide 3.
1270 Response to RFI 6, Attachment H.8 [DOC ID 19675], slide 3.
1271 Response to RFI 6, Attachment H.8 [DOC ID 19675], slide 3.
1272 Response to RFI 6, Attachment H.8 [DOC ID 19675], slide 3.
1273 Decision, section **6.5.2.1** above.

ETG's business, as it is described above, is likely to accelerate these cross-selling opportunities, either via the websites of ETG's own brands, which will continue to be run as a separate business within Booking Holdings, or via Booking's own platform.

(3) The integration of ETG's business and its commercial affiliated agreements

(966) At present, […].[1274] In relation to ETG's capacity to continue to develop B2B relationships with partners other than Booking, the Commission considers that as part of the integration plan, the rules for engaging with any affiliates will be set by Booking.com.

(967) The Commission understands that today, all capabilities in relation to ETG's API rest with ETG as demonstrated in the slide below:[1275]

**Figure 104: Booking.com Flights operating model today**

[Figure redacted]

*Source: Response to RFI 6, Attachment H.8 [DOC ID19675], slide 7.*

(968) […][1276], […]:[1277]

**Figure 105: Booking.com Flights operating model in 2027**

[Figure redacted]

*Source: Response to RFI 6, Attachment H.8 [DOC ID 19675] [DOC ID 19675], slide 8.*

(969) Finally, the Commission understands from Booking's integration timelines and phasing, that it perceives the launch of a […] as an accelerated growth strategy for the period 2024-2027:[1278]

**Figure 106: [Details of Booking's business strategy]**

[Figure redacted]

*Source: Response to RFI 6, Attachment H.8 [DOC ID 19675], slide 29.*

(4) Conclusion

(970) On the basis of the evidence set out above, the Commission considers that, while [Description of Booking's business strategy], thereby further building its ecosystem as part of its Connected Trip strategy.

6.7.2.3.3. Post-Transaction, existing hotel OTA rivals and potential entrants will see their chances to /expand/enter in the hotel OTA market further reduced

(971) Evidence on the file indicates that a path for hotel OTAs already active on the market and potential entrants to expand their hotel OTA services is based on developing a customer base through flights. Indeed, some rivals leverage their flight OTA services to attract customers to whom they can sell hotel OTA services.

(972) The Commission has reached the conclusion that these rival hotel OTAs and potential entrants will see their chances to become fully-fledged competitors on the hotel OTA market in the EEA further reduced post-Transaction. *First*, the

1274 Response to RFI 4, Attachments 5.1, 5.2 and 5.3. See further paragraph ((665) above.
1275 Response to RFI 6, Attachment H.8 [DOC ID 19675], slide 7.
1276 Response to RFI 6, Attachment H.8 [DOC ID 19675], slide 9.
1277 Response to RFI 6, Attachment H.8 [DOC ID 19675], slide 8.
1278 Response to RFI 6, Attachment H.8 [DOC ID 19675], slide 29.

Transaction will allow Booking to acquire significant additional traffic to its platform, accounting on a conservative basis for at least [30-40]% of the flight OTA customers. Competitors are likely to lose access to those customers.[1279]

(973) *Second*, post-Transaction, these rival hotel OTAs and potential entrants would not have sufficient available alternatives to compensate from the loss of traffic resulting from the Transaction. This is because other verticals (e.g., car rental) do not generate as much traffic as flights; and Booking dominates the paid advertising channel, as the OTA with the highest budget for advertising. In this regard, these rivals will find it more difficult to attract flight customers and build a customer base that would make them attractive for hotels to list their properties in their platforms. This will further increase the already existing barriers in the hotel OTA market imposed by network effects.

(974) Further, it is likely that, as Booking seeks to grow its flight OTA business and to become a leading flight OTA in the EEA, Booking would have little incentive, post-Transaction, to enter into cooperation agreements with rival OTAs that would allow them to build their flight OTA business to develop their customer base. In this regard, it is likely that, post-Transaction, Booking would either stop or degrade existing co-operations of ETG with rival OTAs ([…]); or that if Booking were to enter into commercial affiliated agreements to provide flight content to rivals, the conditions under the commercial affiliated agreements would be less favourable than what Booking enjoys pre-Transaction under the Phase 2 Agreement.

(975) The Commission's arguments are further developed below:

(a) With the Transaction, Booking acquires an important customer acquisition channel

(976) *First,* as explained above, by acquiring ETG, Booking would be acquiring a leading flight OTA, which is expected to bring between […] million additional visits to its platform by 2026 and achieve, on a conservative basis, at least [30-40]% market share on the flight OTA market by 2026, following the Transaction.[1280]

(977) *Second*, during the market investigation some OTAs indicated that offering flights drives additional traffic to a hotel OTA and ultimately additional accommodation bookings.[1281]

(978) An OTA indicated that '[f]light offers drive additional traffic to OTA sites and ultimately drive additional accommodation bookings. Consumers typically book flights before accommodation, for the following reasons: // • Flights are perceived to be more limited in terms of availability and timing, whereas hotel options are perceived as more extensive. // Flight schedules can impact hotel check in and checkout dates. // • Flight prices are also perceived to be more prone to fluctuation, especially closer to travel dates, whereas hotel pricing perceived to be more static. // OTAs that offer both flights and accommodation can engage in cross-selling'.[1282]

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1279 Based on the Commission's flight OTA market reconstruction, [DOC ID 58714], and considering the TTV projections submitted in Response to RFI 6. See sections 6.7.2.2.2 and 6.7.2.2.3 above.

1280 Based on the Commission's flight OTA market reconstruction, [DOC ID 58714], and considering the TTV projections submitted in Response to RFI 6. See more details in sections 6.7.2.2.2 and 6.7.2.2.3 above.

1281 Response to Question 23 of Q1 to OTAs [DOC ID 2739].

1282 Response to Question 23 of Q1 to OTAs [DOC ID 2739].

(979) Another OTA noted that '*[t]he common customer behaviour for travel products is starting with flights, and then booking accommodation and other services. Owning the customer data for its flights, allows the OTA to cross sell accommodation in a much more targeted and efficient way*.'[1283]

(980) Another OTA indicated that '*1. If a customer booked a flight, you know there is often need for accommodation. // 2. Costs of acquisition for flights is approximately 30% of accommodation. You will more easily increase your customer base and you will increase the possibility of retargeting. // 3. You can use margin on one of the products to sell more of the other product. // 4. You can reduce cost of operations and investments in infrastructure. // 5. Airlines give you better rates if you sell a combination of products. // 6. If you increase your buying power you will be able to negotiate better kickbacks/commissions*'.[1284]

(981) Another OTA claimed that '*A hotel OTA such as Booking.com that also operates a flight platform such as ETG would definitely be more successful in attracting end users to its platform. // Surveys show that travel plans start with a flight booking, before looking at accommodation. Therefore a flight OTA platform has more chances to attract end users at the beginning of their travel plans, and create touchpoints to sell a package (flight + hotel) or a post booking (hotel after purchase of flight ticket) than a 'simple' hotel OTA platform.*'[1285]

(b) There are a series of players in the hotel OTA market that have the potential to expand

(982) The Commission's market investigation indicates that, besides Booking and Expedia (which are the main suppliers of hotel OTA content to third party OTAs); and a series of smaller players with their own proprietary content (HRS, Weekendesk and Travelminit), there are a series of players in the hotel OTA market in the EEA which are not fully independent (because they rely in different degrees on other OTAs to provide hotel OTA services), but that have their own proprietary flight OTA businesses.

(983) These are all OTAs already active to different degrees in the hotel OTA market in the EEA, which would have the potential to expand their activities on the hotel OTA market, particularly by using their flight OTA platforms to develop a customer base, gain scale and become a more attractive partner to hotels. One OTA that is currently mainly focusing on flights with limited activities on the hotel OTA market is eDreams. eDreams has confirmed to the Commission that it is planning to enter the hotel OTA market in the short-term and that flights constitute an important customer acquisition channel to do so.[1286]

(984) <u>In the first place</u>, there are some flight OTAs which have managed to build some proprietary hotel inventory, but they are not fully independent competitors on the hotel OTA market because they source hotel OTA content from third parties to grow their offering. As the hotel OTA business of these OTAs grow, they could gain the scale to become a more attractive partner for hotels, thus enjoying more content and

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1283 Response to Question 23 of Q1 to OTAs [DOC ID 2739].

1284 Response to Question 23 of Q1 to OTAs [DOC ID 2739].

1285 Response to Question 23 of Q1 to OTAs [DOC ID 2739].

1286 Non-confidential minutes of a conference call with [OTA], dated 1 December 2022 [DOC ID 57675], paragraphs 9 and 18.

better rates, and increasing their ability to compete with Booking's. However, as Booking, being already dominant in the hotel OTA market, will become a leading flight OTA through the Transaction, it will be more difficult for those OTAs to attract flight customers and build a customer base that would make them attractive for hotels to list their properties in their platforms. This group of OTAs includes:

(a) **Trip.com** is a flight OTA with an estimated market share of 10-20% in the EEA flight OTA market in 2022.[1287] Trip.com explained to the Commission that they are just building up Trip.com's flight and hotel path, and that '*[t]he main cross-selling opportunity that Trip.com sees is from flights to accommodation. Trip.com explains that this is the main play for Expedia. Booking traditionally was a stand-alone provider but now obviously starts as well.*'[1288] Trip.com's market share in the hotel OTA market in the EEA is currently low (potentially [0-5]%), as Trip.com's activities in the EEA are still in '*very much at the early stages*'[1289] and Trip.com '*has expanded its presence in Europe over the last 4 years*'.[1290] Indeed, Trip.com explained that Trip.com is more developed in Asia and that while '*Trip.com in Europe was able to build on the technology from C-Trip [Trip.com's main company in China], which had built a platform over the years. This is however not necessarily the same platform because European customers are different, prefer a different look and feel etc.*'[1291] In this regard, while Trip.com has its own inventory in Europe, it also sources hotel OTA content from other third-party suppliers (including Booking until recently)[1292] to provide a more complete offering to end customers as *'[w]ithin Europe, customers want different things. For example, Spanish people want to go to the coast, while in other countries customers have different preferences. Trip.com has a core platform in terms of inventory, but this needs adaptation based on room plans, rates etc.*'[1293]

(b) **Lastminute** is a flight OTA with an estimated market share of 5-10% in the EEA flight OTA market in 2022.[1294] Lastminute also provides hotel OTA services to end customers in the EEA, with an estimated market share of [0-5]% in 2022 (on a B2C basis). Lastminute has its own proprietary hotel OTA content but also sources from third parties (including through Booking)[1295] to complete its offering.[1296] This is because *'[d]irect contracting requires a lot of internal resources, so LastMinute focuses its efforts in direct*

1287 Commission's flight OTA market reconstruction, [DOC ID 58714].

1288 Non-confidential minutes of a conference call with [OTA], dated 20 December 2022 [DOC ID 056917], paragraph 4.

1289 Non-confidential minutes of a conference call with [OTA], dated 20 December 2022 [DOC ID 056917], paragraph 5.

1290 Non-confidential minutes of a conference call with [OTA], dated 28 March 2022 [DOC ID 648], paragraph 3.

1291 Non-confidential minutes of a conference call with [OTA], dated 20 December 2022 [DOC ID 056917], paragraph 6.

1292 Non-confidential minutes of a conference call with [OTA], dated 28 March 2022 [DOC ID 648], paragraph 5. Response to RFI 13, Annex 1.

1293 Non-confidential minutes of a conference call with [OTA], dated 20 December 2022 [DOC ID 056917], paragraph 7.

1294 Commission's flight OTA market reconstruction, [DOC ID 58714].

1295 Response to RFI 13, Annexes 1 and 2.

1296 Response to RFI 6, Annex 8.

*contracting on key destinations (...). For other destinations, LastMinute supplements its inventory with third party providers*'.[1297]

(c) **TUI** had an estimated market share of below 10% on the flight OTA market in the EEA in 2022.[1298] TUI has its own flight OTA content […][1299] TUI provides hotel OTA services in the EEA to end customers, with an estimated market share of [0-5]% in 2022 (on a B2C basis). TUI has its own proprietary hotel OTA content, but also sources some content from third parties, including Booking.[1300] During the market investigation, TUI explained that *'[w]hen TUI started its OTA business it was already an established travel agency with its own travel assets (an airline, hotels) and built on those*'.[1301] Regarding the importance of flights as a means of attracting traffic, TUI noted that '*It is easier to develop traffic for a flight OTA because it could be generated through the metasearch engines. But margins in flights are very low and the cost of the meta-search engines is high. Consequently flights are not so much important for profit as much as they are important for traffic to the OTA's website. Flights represent significant cross sell potential because customers start their search for holidays by looking for flights and because the flight search traffic is so large. So for example, TUI's website would offer those booking a flight discounted hotels in their destination.*'[1302]

(985) In the second place, there are also flight centric OTAs which lack any proprietary hotel OTA solution, and instead source content from third party OTAs to be able to offer accommodation to end customers. These OTAs could over time seek to develop their own hotel OTA offering (as their hotel OTA business grows through sales coming from flight customers). As explained by an OTA during the market investigation, '*commercial affiliated agreements would constitute a first step for OTAs to check the merits of adding a new vertical to their offering, before acquiring the proprietary content and functionalities*'.[1303] This group of OTAs includes:

(a) **eDreams** is a flight centric OTA with an estimated market share of 20-30% in the flight OTA market in 2022.[1304] eDreams explained to the Commission that it has plans in the short-term to enter the accommodation OTA market ('*eDreams is planning to enter the accommodation OTA industry in the short term*')[1305] and that flights represent eDreams' main channel to attract customers

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1297 Non-confidential minutes of a conference call with [OTA], dated 19 December 2022 [DOC ID 51501], paragraph 10.

1298 Commission's flight OTA market reconstruction, [DOC ID 58714]. [OTA] will be in the 'Others' category, but the Commission notes that, in 2021, the Notifying Party estimated [OTA]'s market share in the flight OtA market to be below 10% (Form CO, Annex 5, pp. 35-36).

1299 […].

1300 Response to RFI 6, Annex 8; Response to RFI 13, Annex 1.

1301 Non-confidential minutes of a conference call with [OTA], dated 5 December 2022 [DOC ID 50713], paragraph 5.

1302 Non-confidential minutes of a conference call with [OTA], dated 5 December 2022 [DOC ID 50713], paragraph 7.

1303 Non-confidential minutes of a conference call with [OTA], dated 1 December 2022 [DOC ID 57675], paragraph 18.

1304 Commission's flight OTA market reconstruction, [DOC ID 58714].

1305 Non-confidential minutes of a conference call with [OTA], dated 1 December 2022 [DOC ID 57675], paragraph 9.

to its platform and a channel to sell accommodation afterwards.[1306] eDreams is able to provide hotel OTA services as it sources hotel OTA content from third party OTAs, including via Booking.[1307] In this regard, in 2022, eDreams' B2C market share in the hotel OTA market was below [0-5]%. eDreams explained '*that cross-selling flights with accommodations is easier for eDreams than to sell stand alone accommodation OTA services due to Booking's dominant position in the accommodation OTA market in the EEA. For eDreams, acquiring accommodation customers is more expensive than acquiring flight customers, particularly due to the advertising fees, which are much higher for accommodation OTA services given Booking's very high marketing budget. According to eDreams, based on public sources, Booking spends between EUR 4 to 6 billion on search engine marketing, which makes Booking the biggest and main spender in Google. In turn, Booking's product is particularly strong*'.[1308]

(b) **Kiwi** is another flight centric OTA with estimated market share in the flight OTA market of 5-10% in 2022.[1309] Kiwi does not have its own proprietary OTA platform for accommodation and currently re-directs its flight customers that also want accommodation to Booking's website.[1310]

(c) **Tix** is another flight centric OTA with estimated market share in the flight OTA market below 10% in 2022.[1311] According to the Notifying Party, Tix is also active in the provision of hotel OTA services via a commercial affiliated agreement with other OTAs through which Tix re-directs the end customer to the website of the accommodation OTA. [1312]

(c) As Booking grows its flight OTA business as a result of the Transaction, rival OTAs will face higher barriers to expansion/entry into the hotel OTA market

(986) *First,* post-Transaction, Booking would likely become the leading flight OTA and would see its combined market share increase significantly by 2026 (from [20-30]% in 2022 to, on a conservative basis, at least [30-40]%). By contrast, the remaining players would likely see their market shares decreased. This includes the current remaining top 3 players: eDreams (the current market leader with a market share of [20-30]% in 2022 in the flight OTA market); Lastminute ([5-10]%); and Trip.com ([10-20]%); as well as other market players with current market shares [<10]% such as TUI, Kiwi and Tix.[1313] In this regard, post-Transaction, it would be more difficult for these rival OTAs to expand their activities on the hotel OTA market (including by becoming fully-fledged competitors with their own proprietary platform) by using

1306 Non-confidential minutes of a conference call with [OTA], dated 1 December 2022 [DOC ID 57675], paragraph 4.

1307 Response to RFI 6, Annex 8; and Response to RFI 13, Annexes 1 and 2.

1308 Non-confidential minutes of a conference call with [OTA], dated 1 December 2022 [DOC ID 57675], paragraph 8.

1309 Commission's flight OTA market reconstruction, [DOC ID 58714].

1310 Non-confidential minutes of a conference call with [OTA], dated 9 December 2022 [DOC ID 51316], paragraph 14.

1311 Commission's flight OTA market reconstruction, [DOC ID 58714]. Tix would be part of the 'Others' category.

1312 Response to RFI 16, paragraph 8.1.

1313 2022 market shares from the Commission's flight OTA market reconstruction, [DOC ID 58714].

their flight OTA businesses to develop a customer base susceptible of acquiring hotel accommodation, gain scale and become more attractive partners to hotels.

(987) The Commission considers reasonable to assume that the significant growth to be achieved by Booking on the flight OTA market, post-Transaction, is to the detriment of rival flight OTAs that will likely see their market shares reduced. The Parties have explained that it is very difficult for flight OTAs to make flight OTA sales in competition with airline direct sales. In particular, the Parties have noted that '*it is a critical feature of the online flights market that airline.com is and will remain the dominant distribution channel*'[1314] and that airlines employ various techniques to push their direct channel to the detriment of OTAs, including charging fees to OTAs (which reduce the OTAs' chances to price competitively) and to withhold the cheapest fares from the GDS (thus keeping them to their direct channel).[1315] In this regard, the Parties have noted that *'[a]s airlines exert increasing control over distribution and seek to move towards non-GDS sources, the level of airline incentives paid to OTAs via GDS is decreasing, making it harder for flight OTAs to grow and compete*.'[1316]

(988) *Second*, evidence on the file indicates that these rival OTAs would not have available alternative sources of traffic to bring the 'lost' customers of flight OTA services to their platforms.

(989) In the first place, as explained above, compared to other travel verticals (i.e., taxis, car rental, attractions) flights are the most significant vertical to get additional traffic to the OTA's platforms. In addition, flights are the most effective vertical to drive accommodation bookings as flights have higher attach rates to accommodation compared to car rental or other verticals.

(990) In the second place, paid online advertising, while theoretically available to other competitors as a source of traffic, is still dominated by Booking, which has the highest advertising budget.[1317]

(991) In the third place, as explained above, Booking has a strong brand and enjoys customer inertia.[1318]

(992) In the fourth place, even if rival flight OTAs were to offer better prices than Booking to achieve a sale via MSS, which (as explained above)[1319] is an important customer acquisition channel for flight OTAs,[1320] Booking's internal analyses reflect that Booking considers that, [Details of Booking's business strategy]. In particular, Booking notes that [Details of Booking's business strategy].[1321]

(993) In the fifth place, as noted above, given Booking's objective to grow its flight OTA business in the EEA, it is unlikely that Booking would be willing to enter into extensive co-operations with other OTAs that would allow rivals to scale or grow their flight OTA business significantly. In this regard, it is likely that, post-

1314 Booking Flights Submission [DOC ID 57045], paragraph 5.1.
1315 Booking Flights Submission [DOC ID 57045], paragraphs 5.6, 5.8.
1316 Booking Flights Submission [DOC ID 57045], paragraph 5.10.
1317 See section 6.4.7.7 above.
1318 See section 6.4.7.4 above.
1319 See section 6.3 above.
1320 Booking Flights deep-dive session, 2 February 2023 [DOC ID 51938], slide 18.
1321 Booking's internal document D105 [DOC ID 526-61], p. 31.

Transaction, Booking would either stop or degrade existing co-operations of ETG with rival OTAs (such as TUI); or that when Booking entered into commercial affiliated agreements to provide flight content to rivals, the conditions under the commercial affiliated agreements would be less favourable than what Booking enjoys pre-Transaction under the Phase 2 Agreement. Whereas there will remain other flight OTAs from whom rival hotel OTAs could hypothetically source flight OTA content from, evidence on the file indicates that ETG is a 'best-in-class' and, consequently, alternative suppliers of flight OTA content may not be at ETG's level.

(994) It follows from the above that competing flight OTAs would have, post-Transaction, limited scope to compete with Booking to win back flight OTA customers. In this regard, the Transaction will further reduce the chances for smaller OTAs to become fully-fledged competitors on the hotel OTA market in the EEA. Indeed, in addition to the difficulties arising from the strong network effects already present on the hotel OTA market, it will be more difficult for them to attract flight customers and build a customer base that would make them attractive for hotels to list their properties in their platforms.

(995) *Third,* qualitative evidence gathered during the market investigation confirms the Commission's views.

(996) In the first place, eDreams indicated during the market investigation: '*the Transaction is an acceleration into flights for Booking. If Booking becomes more aggressive in the flight OTA industry, it will be extremely difficult for eDreams to compete both in flight and accommodation, in particular because (i) Booking invests heavily in Google advertising and dominates the space in Google; (ii) Booking is also vertically integrated into KAYAK and is therefore in a position to self-preference its OTA brands; and (iii)Booking will be in a position to implement aggressive practices such as cross subsidization between profits generated by accommodation booking services and flights services, which will be very difficult (or even impossible) for other OTAs to compete (...) As a result, the Transaction could also makes Booking's position on the accommodation OTA market in the EEA less contestable.*'[1322]

(997) In the second place, a number of hotel and flight OTAs indicated during the market investigation that the Transaction would increase barriers to entry and expansion into the hotel OTA market. An OTA indicated that this is because '*Booking would have an access to new hotel clients from flight OTA's*'[1323]; another OTA noted that post-Transaction Booking would have '*more customers, more traffic, high incentive to upsell from low margin flight only offering towards higher margin products like hotel only/accommodation*'[1324]; and another OTA that '*Booking.com customers will remain being Booking.com customers regarding the selling of accommodation, but with this transaction they will also add those customers not usually interested in Booking.com just because of those offers regarding the purchasing of flights*.'[1325]

(998) Another OTA also indicated that *'[w]ith the near monopol pos[i]tion Booking.com has and if they can add as well content from etraveli they will be able to dominate*

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1322 Non-confidential minutes of the call with [OTA], dated 1 December 2022 [DOC ID 57675], paragraph 23.

1323 Response to question 43.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

1324 Response to question 43.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

1325 Response to question 43.1 of Questionnaire Q1 to OTAs [DOC ID 2739].

*the online market which results in less competition and only leaves some travel niches for the smaller OTA's to survive*.'[1326] Another noted that '*Booking will become even more dominant in the European market*';[1327] and another that '*Booking.com already has a very strong market position. The Transaction would further strengthen this*'.[1328]

(999) Another OTA indicated that due to '*investments needed for other OTAs to compete on the same level as Booking will be extremely high*',[1329] Booking will also be able to decrease the profitability of competitors in the flight OTA market, reducing their ability to invest resources in expanding into the accommodation segment: '*Most other OTAs generate their margin on products with a lower yield. If Booking is able to even further reduce this yield, competing OTAs will not be able to invest in any expenditure towards the accommodation market. Due to its strong market position, Booking already has the highest yield in the accommodation market, so it is already difficult (impossible) to compete.*'[1330]

(1000) Similarly, some hotels that participated in the market investigation expressed similar views. One hotel noted that *'[t]he more routes to market the larger [Booking] will become, the more powerful that [Booking] will become*'[1331]. Another hotel indicated that '*Booking already has a dominant position in the area of hotel reservations and this acquisition will further strengthen this position to the detriment of hotels and other OTAs*'[1332] and another hotel indicated that *'[a]lready at the moment Booking is clearly the dominant OTA. In the case of expanding Booking's offer to, for example, packages with flights – it could further strengthen its position, which would be a significant impediment to equal competition for other market participants*'.[1333] Other hotels noted that *'[t]he merger would strengthen Booking.com's position even more on the market*'[1334] and that '*Booking.com's power will likely increase in the future, also as a result of this merger*'.[1335]

(1001) Given the evidence on the file, the Commission concludes that, as a result of the Transaction, barriers to entry or expansion on the hotel OTA market in the EEA will increase.

(1002) In its response to the SO, the Notifying Party claims that the growth in the combined entity's flight OTA sales by 2026 is based on ambitious projections by Booking, and that flight traffic is not lost to rivals in the hotel OTA market, as there will remain other sources of traffic such as online advertising and hotel MSS which are more important than flight OTA customers, which account for a small proportion of the flight segment relative to the broader online flight market. The Notifying Party also

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1326 Non-confidential version of [OTA]' response to question F.1 of eRFI to Competitors [DOC ID 54647].
1327 Non-confidential version of [OTA]'s response to question F.1 of eRFI to Competitors [DOC ID 56795].
1328 Non-confidential version of [OTA]' response to question F.1 of eRFI to Competitors [DOC ID 54053].
1329 Response to question 48.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
1330 Response to question 48.1 of Questionnaire Q1 to OTAs [DOC ID 2739].
1331 Response to question 35.1 of Questionnaire Q3 to hotels [DOC ID 2737].
1332 Non-confidential version of [HOTEL]'s response to question B.10 of Questionnaire to Hotels (Phase II) [DOC ID 56330].
1333 Non-confidential version of [HOTEL]'s response to question B.10 of Questionnaire to Hotels (Phase II) [DOC ID 52841].
1334 Non-confidential version of [HOTEL]' response to question B.10 of Questionnaire to Hotels (Phase II) [DOC ID 54658].
1335 Non-confidential version of [HOTEL]'s response to question B.10 of Questionnaire to Hotels (Phase II) [DOC ID 55331].

notes that ETG is not an important partner of OTAs for the provision of flight OTA content, rather ETG only has […] customers while other flight OTAs like Kiwi, or Expedia would still be able to provide flight OTA content to hotel OTAs. Further, the Notifying Party reiterates its arguments that flights are not an important customer acquisition channel for hotel OTAs, that successful hotel OTAs like Booking have managed to succeed without a flight OTA offering, and that there is new entry by Uber and Hopper to the flight OTA market.[1336]

(1003) The Commission disagrees with the Notifying Party's arguments that the projected growth of the combined entity on the flight OTA market is based on ambitious expectations and that flights do not constitute an important customer acquisition channel, as explained in section 6.7.2.2 above. In addition, the Commission disagrees with the Notifying Party's claim that rival OTAs would have alternative channels to acquire customers, as Booking leads in the paid online advertising space and also enjoys significant brand loyalty and customer inertia, which would allow Booking not to depend on the MSS channel as indicated in its internal documents (see paragraph ((895) above). Further, the Commission agrees that other flight OTAs would remain on the market and hotel OTAs would be able to enter into commercial affiliated agreements with them for the provision of flight OTA services. However, the Commission notes that evidence on the file indicates that ETG is a 'best-in-class' and that alternative suppliers of flight OTA content may not be at ETG's level. Finally, the Commission is of the view that the Notifying Party has not presented robust evidence regarding any potential effective entry by Uber and Hopper. As indicated in section **6.4.6.4** above, Uber has so far only launched in the UK and it is unclear whether it will move to the EEA. As per Hopper, the Notifying Party indicates that it is a fintech company that seems to be present only in the UK for now, but the Notifying Party has not put forward robust evidence indicating the effective likely entry in the EEA of Hopper.

6.7.2.4. The reduced contestability of Booking's market position is confirmed by its expected growth in share in the hotel OTA market as a result of the Transaction

(1004) The reduced contestability of Booking's position on the hotel OTA market is confirmed by the fact that Booking, which was already expecting to grow by 2025, expects to further increase its market share on the hotel OTA market in the EEA as a result of the Transaction.

(1005) The Notifying Party has confirmed that the Transaction would allow Booking to gain market share on the hotel OTA market, but that such increment would be *de minimis* (at most [0-5]% depending on the approach to estimate the total cross-sell impact).[1337] In particular, the Notifying Party has used 3 scenarios to calculate the impact of the Transaction on the broad accommodation market: (i) the TVM that Booking developed to determine the consideration to pay for the acquisition of ETG; and (ii) the accommodation; and (iii) flight 'waterfalls'.[1338]

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1336 Response to the SO, Annex 6, paragraphs 4.1-5.2.

1337 Response to the Article 6(1)(c) decision, Annex 5; Booking's Counterfactual Deep dive presentation, slide 27; and Theory of Harm paper, paragraph 5.6.

1338 The accommodation and flights waterfalls are presented in Response to the Article 6(1)(c) decision, Annex 5. The accommodation waterfall starts from the estimated number of all accommodation OTA customers and then step-by-step removes the estimated share of irrelevant customers (e.g. those who do not need a flight, those who need a flight but book directly with the airline, etc.) to reach the estimated

(1006) In addition, the Notifying Party submits that any increment should be reduced by […]% to account for the fact that Booking will already secure the majority of the flight-to-accommodation cross-sell independently of the Transaction as a result of the Phase 2 Agreement with ETG.[1339] When such reduction is applied, the increment put forward by the Notifying Party would range between 0.08-0.14% depending on the approach taken. [1340]

(1007) As explained in section 6.6.2 above, the Commission has reached the conclusion that the continuation of the Phase 2 Agreement is not the appropriate counterfactual to assess the effects of the Transaction; and that, [Details of Booking's proprietary flights platform], it is uncertain whether and when Booking would be able, in a counterfactual scenario, to build its own flight OTA platform, and how such scenario would look like in terms of number of flights sold by Booking. [Details of Booking's business strategy regarding its proprietary flights platform]. Further, the Commission requested the Notifying Party to provide flight projections for Booking produced in 2019/2020, i.e., before Booking considered the Transaction, to understand if these could be used as a proxy for the number of flights that Booking would expect to achieve under either a lesser cooperation with ETG or another flight OTA or with its own flight OTA platform. In its response, the Notifying Party however indicated that the flight projections produced by Booking in 2019/2020 were non-informative and rough estimates with [Details of Booking's performance projections][1341] In addition, the 2019/2020 estimates were more ambitious than those included in the TVM as 'baseline' scenario (i.e., counterfactual), which informed Booking's decision to approve the Transaction.[1342]

(1008) Consequently, the Commission has assessed the potential increment in TTV in hotel OTA services brought by the Transaction on the basis of a 'zero' flights scenario. Even if the Commission were to accept a counterfactual in which the Notifying Party would be able to achieve part of the growth in flight OTA sales (and corresponding cross-selling into hotel OTA services) as projected under the Phase 2 agreement with ETG, quod non, it is not disputed by the Notifying Party that the Transaction will allow Booking to become stronger in the market for hotel OTA services. In this sense, it is undisputed by the Notifying Party that the Transaction would allow Booking to grow, and that the counterfactual would only result in a higher or lower increment, but an increment that would in any event be positive, thus increasing Booking's market share on the hotel OTA market.

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increment in Booking's sale of accommodation post-Transaction. The flight waterfall starts from the estimated number of all flight OTA customers and then step-by-step removes the estimated share of irrelevant customers (e.g. those who do not need accommodation, etc.) to reach the estimated increment in Booking's sale of accommodation post-Transaction. The Notifying Party reiterated its arguments regarding the waterfalls being robust evidence demonstrating that, in the Notifying Party's view, the impact of post-Transaction cross-sell is *de minimis* (response to the SO, paragraphs 4.28 et seq; and Annex 4, Section 2).

1339 Response to the Article 6(1)(c) decision, Annex 5.

1340 Response to the Article 6(1)(c) decision, Annex 5; Booking's Counterfactual Deep dive presentation, slide 27; and Theory of Harm paper, paragraph 5.6.

1341 Response to RFI 30, paragraph 2.2.

1342 The Notifying Party's TVM includes as 'baseline' for 2024 a total of […]; whereas Booking's flight projections dated 2019/2020 [Details of Booking's performance projections] (see Response to RFI 30, table 2.1).

(1009) Last, contrary to the Notifying Party's approach, the Commission calculated the potential increment arising out of the Transaction by also taking account of all incremental hotel bookings that would arise out of the Connected Trip. The Commission's approach is motivated by the fact that the evidence on file indicates that Booking would expect to grow its hotel OTA business as a result of the Connected Trip, which is predicated on having a flight OTA business (in other words, there would be no growth in the zero flights counterfactual scenario).

(1010) The Notifying Party considers that the Commission's reliance on a 'zero flights counterfactual' would result in an overstatement of the potential impact by a factor of around 23 times – from a maximum increment of 3% - 4% of hotel OTA shares under the Commission's allegedly flawed analysis, to a maximum of 0.13% - 0.17% if the correct counterfactual was applied. The Notifying Party reiterates that the large majority ([…]%) of the future growth in Booking.com's flight business would be likely to arise under the Phase 2 Agreement. For the Notifying Party, the effect would not relate to the Transaction but would happen irrespective of the Transaction since Booking is already offering flights.[1343]The Notifying Party also considers that the Commission's increment calculations contain a series of flaws.[1344]

(1011) Specifically regarding the Commission's approach to the counterfactual, the Commission reiterates its conclusion, explained in section 6.6.2 above, that the Phase 2 Agreement[1345] would not remain in place as it stands and that it is likely that, in the mid to long-term, Booking would prefer to develop its own proprietary flight OTA platform. In relation to the Notifying Party's argument that only […]% of the projected flight sales post-Transaction would effectively be incremental sales as compared to the 'build' scenario, which is based on the Phase 2 Agreement, the Commission finds that the following additional considerations support its finding that irrespective of the counterfactual, the Transaction will result in a positive increment on the hotel OTA market in the EEA that would likely be higher than the one put forward by the Notifying Party.

(1012) *First,* while the Commission did not identify and Booking did not submit any reliable projections showing the expected sales under the Phase 1 Agreement through 2025,[1346] the sales that Booking would achieve under a renegotiated cooperation agreement would likely be materially lower than those under the Phase 2 Agreement. In the TVM, Booking estimated that the Transaction would allow it to achieve more sales than if it did develop its own flight platform (according to Booking's own calculations, […]% of its post-Transaction sales would be incremental compared to the 'build' scenario, based on the Phase 2 Agreement).[1347] However, the Phase 2 agreement proved to be more successful than Booking estimated at the time of the TVM. Indeed, under the TVM, Booking estimated that under the Phase 2 Agreement Booking would achieve a total of approx. […]in flights in the EEA,[1348] while data

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1343 Response to the SO, Section 4.B.1 and Annex 4. Similarly, the Notifying Party reiterated its position regarding the 'zero flights counterfactual' in its response to the First Letter of Facts and the Second Letter of Facts.

1344 Response to the SO, paragraphs 4.22 et seq and Annex 4.

1345 For the reasons explained in the same section of this decision, the Commission finds that it cannot take into account the Amendment and, therefore, the existence of the Amendment does not change the conclusions reached by the Notifying Party.

1346 As explained in paragraph (1007) above.

1347 Response to the Article 6(1)(c) decision, Annex 5.

1348 [Details of Booking's turnover forecasts].

submitted by Booking indicated that the Phase 2 Agreement actually allowed Booking to generate approx. […] in flights in the EEA in 2022[1349], that is, [Details of Booking's turnover projections][1350] [Details of Booking's turnover projections]. Absent the Transaction, Booking would therefore likely achieve sales that are lower than those estimated in the TVM not only in the 'buy' scenario but also in the 'build' scenario.

(1013) In this regard, the Commission is of the view that any gap between the Transaction ('buy') and the counterfactual ('build') should be higher than […]% of the increment in flights, as submitted by the Notifying Party. This is because, as indicated above, (i) any 'build' scenario would not allow Booking to generate as many flight sales as included in the TVM, as there is uncertainty regarding whether and when Booking would be able to create its own flight OTA platform,[1351] and, in the short-term, it is likely that ETG seeks to achieve terms closer to the Phase 1 Agreement;[1352] and (ii) the 'buy' scenario under the TVM is [Details of Booking's growth forecasts].

(1014) *Second,* the Notifying Party alleges that any increment resulting from the Transaction should be reduced by […]%, to account for the fact that the gap between 'build' and 'buy' is […]%, resulting in an increment on the hotel OTA market that the Notifying Party puts forward ranging between 0.08% and 0.14%.[1353] However, it follows from the above that the gap between the 'build' and 'buy' scenarios would be significantly higher. Therefore, any reduction of Booking's share in the hotel OTA market under the counterfactual where Booking would maintain some type of cooperation with ETG, would be significantly higher than the […]% of the increment under the zero flights counterfactual, as claimed by the Notifying Party. The Commission therefore considers that even if it were to accept the Notifying Party's approach for calculating the increment on the hotel OTA market[1354], the increment of Booking's share on the hotel OTA market as a result of the Transaction would in any event be significantly larger than the increment that would exist absent the Transaction.

(1015) In its response to the Second Letter of Facts, the Notifying Party claimed that the Commission's argument that a re-negotiated cooperation agreement would result in lower flight sales for Booking is not based on robust evidence. In particular, the Notifying Party notes that [Details of the Parties' commercial negotiations].[1355] The Notifying Party then claims that its estimate that the Transaction would give rise to […]% more sales than in a Phase 2 Agreement scenario, absent the Transaction, is likely now to overestimate the difference between a Phase 2 Agreement scenario and a merger scenario.[1356] In addition, the Notifying Party notes that the higher sales in 2022 reflect a faster than expected Covid recovery in 2022, which has brought forward growth that Booking anticipated would occur during 2023, and that the

1349 Response to RFI 38, Annex 1.
1350 Calculated considering the more updated (May 2022) flight projections in Figure 28 of the SO.
1351 As indicated in paragraph ((722) et seq above.
1352 As indicated in section 6.6.2.3 above.
1353 Response to the Article 6(1)(c) decision, Annex 5.
1354 For completeness, the Commission maintains that the appropriate way to calculate the increment is the one explained in section 6.7.2.4.2 below.
1355 Response to Second Letter of Facts, paragraph 1.5 (iii).
1356 Response to Second Letter of Facts, paragraph 1.5 and Annex 1, page 44.

Commission's claims that the TVM projections are outdated is based on an internal document which was part of a [Details of Booking's business strategy].[1357]

(1016) The Commission reiterates its position regarding the Amendment which is further explained in section 6.6.2 above. In particular, the Commission cannot take into account a re-negotiation of the current cooperation between the Parties that took place after signing the Transaction and during the Commission's investigation thereof because the terms of the Amendment are influenced by the ongoing merger investigation. The Commission is of the view that the Amendment was entered into as means to influence the Commission to accept the Parties' proposed counterfactual. In addition, the Commission has not been provided with a copy of the signed Amendment and cannot therefore fully verify its terms. Further, the Commission cannot accept that the potential increment arising out of a Transaction would be even lower on the basis of a more advantageous version of a cooperation which was already (prior to signing) negotiated in parallel to the Transaction and not on market terms that ETG would have required if it were not for the prospect of the Transaction, as explained in section 6.6.2 above. Specifically, regarding the internal document with [Details of Booking's turnover forecasts], the Commission disagrees with the Notifying Party's arguments, as explained in paragraphs (1052) et seq. below.

(1017) The Commission's response to the rest of the Notifying Party' arguments is further elaborated below.

6.7.2.4.1. Booking expects to grow thanks to the Connected Trip, which depends on Booking being able to offer flights through its own platform

(1018) The Commission has reached the conclusion that the successful development of the Connected Trip depends on Booking having a flight OTA platform. Indeed, the evidence on file shows that Booking estimated the expected growth of its hotel OTA business as a result of the development of the Connected Trip strategy, which is predicated on having a flight OTA business. In this regard, contrary to the Notifying Party's views, the Commission considers that all incremental accommodation bookings that are expected to arise from the Connected Trip should be taken into account to calculate Booking's growth on the hotel OTA market as a result of the Transaction. It is important to specify in this context that flights constitute the main entry point and source of traffic (besides accommodation) for Booking's Connected Trip.

(1019) *First,* as discussed in section 6.5.2.2 above and indicated by the evidence submitted by Booking and discussed immediately below, flights represent the most important customer acquisition channel (besides accommodation) for Booking's Connected Trip. The figure below shows monthly visits to Booking's platform from 2019-2022 segmented by the types of OTA services ('verticals') that make up the Connected Trip (in addition to Booking's core business, accommodation OTA services).

(1020) <u>In the first place,</u> since their introduction on Booking's platform in 2019, flights represent the vertical that has experienced the highest growth in number of visits to an extent that it has outpaced the other verticals (excluding accommodation). By December 2022, flights visits amounted to […] higher than car rental's visits. This importance of flights as a potential source of cross-selling is also shown by the fact

[1357] Response to Second Letter of Facts, paragraph 1.5 and Annex 1, page 44.

that, even though Booking set up a rental car business in 2004,[1358] i.e., fifteen years before Booking started offering flights in 2019, the amount of traffic brought to Booking's platform remained far less significant. Further, Booking's internal assessment of the different travel verticals shows that a consumer's decision to purchase car rental services typically comes after the decision (i) to purchase a flight (which comes first) ; (ii) to obtain accommodation (which comes as a close second);[1359] and (iii) that within the Connected Trip, flights are more effective in bringing new customers than car rental (*[Details of Booking's business strategy]*).[1360]

**Figure 107: Monthly visits to Booking.com by vertical (2019-2022, EEA)**

[Figure redacted]

*Source: Commission on the basis of Booking's response to RFI 13, Annex 3 [DOC ID 51884]*

(1021) In the second place, a Booking's flight strategy presentation from April 2022 indicates that flights are the [Details of Booking's business strategy].

**Figure 108: Booking's flight business value proposition as anchor and key element of Connected Trip**

[Figure redacted]

*Source: Booking's response to RFI 6, Attachment H.8 [DOC ID 19675], slide 2*

(1022) In the third place, in another presentation close to the approval of the Transaction (15 November 2021), it was noted that [Details of Booking's business strategy].

**Figure 109: Booking,com's flight strategy drives execution of the Connected Trip**

[Figure redacted]

*Source: D015 [DOC ID 1535-234], slide 3 (emphasis added)*

(1023) In the fourth place, the fact that [Details of Booking's business strategy] in connection with the Connected Trip was highlighted in the memo that was sent to Booking's Board of Directors regarding the Transaction(28 September 2021):

**Figure 110: Booking's memo for Board regarding update on the Transaction**

[Figure redacted]

*Source: Booking's D007, page 5 [DOC ID 147-27] (emphasis added)*

(1024) *Second,* a number of Booking's internal e-mails and documents indicate that flights are an essential component of the Connected Trip and, as such, almost all growth arising from the Connected Trip could be inputted to Booking's ability to offer flights in its platform and attract flight customers:

(1025) In the first place, a January 2022 internal e-mail from Booking's CEO indicates the great importance that Booking places on flights as a venue to reach their growth goals, and the link between flights as a 'foundation' of the Connected Trip: [Details of Booking's flights strategy].[1361]

(1026) In the second place, an August 2022 internal document from Booking reflects the interplay between flights and the Connected Trip, and how they both fit into

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1358 Response to RFI 31, Table 8.1. The Commission notes that whereas Booking's rental car business was created in 2004, it was only acquired by Booking's parent company, Priceline, in 2010.

1359 See Booking's internal document, [DOC ID 211] included in Figure below.

1360 BOOK_00675349 [DOC ID 051850-025965], slide 3.

1361 BOOK_00136907 [DOC ID 51139-21095] (emphasis added).

Booking's growth strategy to increase the share of customer travel spend and build a competitive advantage for Booking:

**Figure 111: Booking's rationale for investing in Connected Trip and flights**

[Figure redacted]

*Source: BOOK_00771372 – August 2022 [DOC ID 51851-56852]*

(1027) In the third place, in a correspondence on September 7, 2020 between Booking's CEO and the team focusing on the Connected Trip, it is noted that [Details of Booking's flights strategy][1362] [Details of Booking's flights strategy].[1363]

(1028) In the fourth place, another Booking presentation on the Connected Trip indicates that flights are more key to the successful development of the Connected Trip than other verticals:

**Figure 112: Vertical prioritisation**

[Figure redacted]

*Source: D038, [DOC ID 211]*

(1029) In the fifth place, Booking's internal documents considering the Transaction also indicate that flights are instrumental for the development of the Connected Trip:

**Figure 113: Booking's flight M&A discussion materials presentation**

[Figure redacted]

*Source: Booking's D003, slide 3 [DOC ID147-3] (emphasis added)*

**Figure 114: Project Bahamas – Update meeting (October 2021)**

[Figure redacted]

*Source: Booking's D011, slide 34 [DOC ID 147-22] (emphasis added)*

**Figure 115: GMB M&A update (September 2021)**

[Figure redacted]

*Source: Booking's D014 [DOC ID 1535-233], slide 2 (emphasis added)*

(1030) *Third,* a number of ETG's internal documents also highlight the important role of flights as enabler of the Connected Trip and source of growth for Booking.

(1031) In the first place, in an e-mail on August 1, 2019, between ETG's and Booking's CEOs, ETG's CEO notes that [Details of commercial negotiations][1364]

(1032) In the second place, in a presentation to […], ETG indicates that […]:

**Figure 116: ETG's views on the importance of flights for the Connected Trip**

[Figure redacted]

*Source: ID Book_00788273 [DOC ID 51851-73753]*

6.7.2.4.2. The Commission's calculations regarding the market share increment arising from Booking's ability to offer flights as part of the Connected Trip

(1033) *First*, the Commission's calculations regarding the incremental TTV in hotel OTA services arising out of Booking's ability to offer flights as part of the Connected Trip

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1362 BOOK 00121344 [DOC ID 51139-5532].
1363 BOOK_00121344 [DOC ID 51139-5532].
1364 ETG_0000004387, [DOC ID 51103-4387].

are based on the same formula used by the Notifying Party in the TVM, with some assumptions and adjustments to reflect the recent evolution of the hotel OTA market since the TVM, which is dated November 2021.

(1034) *Second*, the Commission notes as a preliminary point, that calculations based on the TVM (as proposed by the Notifying Party) are inherently conservative.[1365] [Details of booking's financial affairs]:

**Figure 117: Booking's expected gains in accommodation arising out of the Connected Trip**

[Figure redacted]

*Source: Booking's Consolidated Budget 2022-2024, ME.6991.22 [DOC ID 846]*

(1035) However, while a part of the incremental gains in hotel OTA arising from the Transaction is directly related to flights cross-selling, evidence on the file indicates that flights are also (indirectly) linked to the remaining gains. In particular, as explained above, flights are key for the successful development of the Connected Trip because flights are typically the beginning of the customer journey and therefore bring the customer into Booking's platform in the first place, unlike the other remaining verticals (car rental, taxi or attractions), which are much less often bought first.[1366] The Commission has therefore calculated the incremental gains in hotel OTA arising from the Transaction considering all 3 effects described above ('flight ABU x-sell'; 'Value Leadership' and 'Halo effect') in full.

(1036) In addition, as explained further below, there are a series of elements that the Notifying Party has used in the formula to calculate the increment which are outdated and, therefore, provide a resulting increment that is too conservative.

(1037) In its response to the SO,[1367] the Notifying Party reiterates its arguments that the Commission should only consider those portions of the 'Value Leadership' and 'Halo' effect that are directly linked to flights because the '*VL and [Halo] are vertical-specific and are not related to and do not impact other verticals such as flights'*.[1368] However, the Commission notes that the Notifying Party has not put forward robust evidence contradicting the Commission's finding that flights are key for the development of the Connected Trip. In this regard, the fact that discounts are provided for a specific vertical or the fact that a transaction involving more products (flights, taxi, car rental) would result in fewer cancellations or a higher repeat rate does not contradict the finding that flights bring the customer into Booking's platform in the first place, unlike the rest of verticals. For this reason, the Commission finds it appropriate to assess the potential increment arising out of the Transaction by considering, first, all gains arising out of the Connected Trip, and second – on a more conservative basis - only those directly related to flights.

(1038) On the basis of the TVM (with updated flight projection figures retrieved from Booking's internal documents), the Commission considers that the Transaction results in:

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1365 In the SO, the Commission referred to an internal document from Booking referring to the TVM to argue that the TVM was conservative. Following evidence brought forward by the Notifying Party in its response to the SO, the Commission notes that it mis-read the internal document, but that other pieces of evidence support the Commission's finding that the TVM is conservative, which elements are described in the remaining of this section.

1366 See section **6.7.2.4.1** above.

1367 Response to the SO, Annex 4, Section 3.3.2.

1368 Response to the SO, Annex 4, Section 3.3.2, page 15.

(a) If all gains arising out of the Connected Trip are considered, incremental hotel OTA TTV of approx. EUR […] in 2025. This represents an increment in Booking's market share of [0-5]% if the market size resulting from the market reconstruction for 2022 is considered.[1369]

(b) If, conservatively, only the incremental bookings directly linked to flights are considered, the Transaction would result in incremental hotel OTA TTV of approx. EUR […] by 2025. This represents an increment in Booking's market share of [0-5]% if the market size resulting from the market reconstruction for 2022 is considered.

(1039) The Commission notes that Booking's internal documents of May 2022 provided more updated figures regarding the incremental accommodation transactions resulting from the Connected Trip. If these more recent estimates are taken into account, the Transaction results, by 2025, in:

(a) Approx. EUR […] in incremental hotel OTA TTV, which accounts for a market share increment of approx. [0-5]% if all gains arising from the Connected Trip are considered.[1370]

(b) Approx. EUR […] in incremental hotel OTA TTV, which accounts for a market share increment of approx. [0-5]% if, on a conservative basis, only the gains directly linked to flights are considered.[1371]

(1040) The Commission's methodology to arrive to these figures is explained below, differentiating between based on the TVM (with updated flight projections) but differentiating between (a) calculations on the basis of the TVM (with updated flight projections), considering all gains from the Connected Trip; (b) calculations on the basis of the TVM (with updated flight projections), considering (on a conservative basis) only gains directly resulting from flights; and (c) The Commission's increment

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1369 The Commission considers that it is a reasonable proxy to use the market size for 2022 to calculate the market share increment for 2025, as (i) this is the most reliable source available; and (ii) the results of the market reconstruction [DOC ID 120780] and Booking's own Euromonitor estimates submitted on 11 March 2023 indicate that 2022 has already recovered to pre-pandemic levels (and has actually increased in TTV in comparison to 2019). Further, as indicated in section 6.4.3.3 above, the resulting market size for the hotel OTA market in the EEA in 2022 remains higher than the 2019 hotel OTA market size resulting from the Commission's market reconstruction [DOC ID 120780], although Euromonitor has indicated that the hotel OTA market would not recover to pre-Covid levels until 2023 (see Non-confidential minutes of a call with Euromonitor, dated 22 June 2023, paragraph 6 [DOC ID 58107]). In its response to the SO, the Notifying Party criticizes the Commission's approach on the basis that the 2022 Euromonitor figure previously taken by the Commission was understated; that the Commission unduly adjusted the Euromonitor total market size figure; and that this is an extreme assumption that the hotel OTA market will experience no growth. The Commission refers to sections 6.4.3.2, 6.4.3.3 and 6.4.3.4 above, where it is explained that, further to a series of requests from the Notifying Party, the Commission requested Euromonitor for updated 2022 data. The Commission also used the most updated data provided by the Notifying Party on 11 August 2023 for the market reconstruction exercise. The Commission considers that the results provide the best proxy for the market size and an estimate of market size that is favorable to the Notifying Party. Further, the Commission re-iterates that the results of the market reconstruction for 2022 are the most reliable source available, and already indicate that the hotel OTA market has recovered to 2019 levels, when Euromonitor considered that it would not do so until 2023.

1370 This is also using the market size resulting from the market reconstruction [DOC ID 120780] for 2022 as proxy for market size in 2025.

1371 This is also using the market size resulting from the market reconstruction [DOC ID 120780] for 2022 as proxy for market size in 2025.

calculations on the basis of more updated figures from Booking's recent internal documents (May 2022).

(a) The Commission's increment calculations on the basis of the TVM (with updated flight projections), considering all gains from the Connected Trip

(1041) *First*, as noted above, the Commission has used a similar formula than the one included in Booking's TVM to estimate incremental accommodation TTV, adjusted for the 'Value Leadership' and 'Halo effects' in Booking's Consolidated Budget for 2022-2024. The formula used by the Commission to calculate the incremental TTV is described in the figure below.

**Figure 118: Formula to calculate incremental TTV**

[Figure redacted]

*Source: Commission on the basis of Booking's formula used in the TVM[1372] and adjusted for flight portion of Value Leadership and Halo effects*

(1042) *Second*, the Commission has used the following elements as inputs to the formula:

(1043) In the first place, the Commission has taken, as a starting point, the number of net flight transactions by 2025 that would attach an accommodation booking under the TVM, and has then adjusted the figure considering Booking's more recent estimates (from May 2022) regarding the number of flights that Booking expects to achieve through the Transaction.[1373] In particular, the steps taken by the Commission are as follows:

(i) The Commission has taken the number of net flight transactions that Booking inputted in the TVM for 2025, [1374] and has deducted from those the flights that would result from a previous accommodation purchase ('sourced from ABU')[1375] following the same approach taken by the Notifying Party in the TVM.[1376]

(ii) In addition, the Commission has only considered 'Non-US' flights as subject to attach an accommodation OTA sale in the EEA (and has reduced the resulting number by […]%, as the Notifying Party claims that only […]% of 'Non-US' flights are related to the EEA).[1377] The resulting numbers of net flight transactions subject to cross-selling under the TVM are included in the table below.

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1372 Booking's 'Project Bahamas - Phase II Model v33 - Datapack version - EC.xlsx'; tab 'Synergies' lines 71-85 [DOC ID 1535-2530].

1373 Booking's internal document 'AMS B.com GTM Workshops', slide 16 provided as Attachment H.3 to RFI 6 [DOC ID 19670].

1374 Booking's 'Flights- buy vs build v27 (P&L Output).xlsx' [DOC ID 1015]; tab 'Buy Build model' cells N-Q in line 30.

1375 Booking's 'Flights- buy vs build v27 (P&L Output).xlsx' [DOC ID 1015]; tab 'Buy Build model' cells N-Q in line 32.

1376 See Booking's 'Project Bahamas - Phase II Model v33 - Datapack version - EC.xlsx'; tab 'Synergies' line 73 [DOC ID 1535-2530].

1377 Response to RFI 6, footnote 7.

**Table 19: Net flight transactions subject to cross-selling under the TVM**

| Element (in Millions) | 2025 |
|---|---|
| Net flight transactions (non-US)[1378] | […] |
| Flight transactions sourced from ABU[1379] | […] |
| Net flight transactions for cross-selling | […] |
| EEA-only net flights transactions for cross-selling | […] |

*Source: Commission on the basis of Booking's TVM and Booking's estimates regarding the proportion of EEA flights in 'Non-US' flights*

(iii) To account for Booking's more recent estimates (included in the figure below from Booking's flight business forecast of May 2022), the Commission has adjusted by increasing the EEA-only number of net flights transactions for cross-selling by approx. […]%. This relates to the difference between the number of non-US flights that Booking expects to sell in 2025 under the more recent (May 2022) flight estimates (approx. […])[1380] and the TVM ([…]). The resulting figure of EEA-only net flights transactions for cross-selling is approx. […].

**Figure 119: Booking's flight business forecast (May 2022)**

[Figure redacted]

*Source: Booking's internal document 'AMS B.com GTM Workshops' provided as Attachment H.3 [DOC ID 19670] to RFI 6*

(1044) In its responses to the SO[1381] and to the Second Letter of Facts, the Notifying Party alleges that the Commission has inappropriately adjusted the increment resulting from the TVM calculations by […]% to reflect more updated flight projections which, according to the Notifying Party, refer to a '*preliminary assessment of a theoretical "stretch" case for the Booking.com Flights business post-Transaction*'.[1382] Similarly, in its response to RFI 6, the Notifying Party alleged that three presentations containing Booking's flight projections post-Transaction (including the presentation from which the Commission extracted the flight projections used in the increment calculations) [Details of Booking's financial affairs]. [1383]

(1045) The Commission is however of the view that the updated flight projections included in the Figure above refer to the 'Go-to-market' forecast for Booking's flights post-Transaction and that they cannot be regarded as a stretch case for the following reasons.

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1378 Booking's 'Flights- buy vs build v27 (P&L Output).xlsx' [DOC ID 1015]; tab 'Buy Build model' cells N-Q in line 30.

1379 Booking's 'Flights- buy vs build v27 (P&L Output).xlsx' [DOC ID 1015]; tab 'Buy Build model' cells N-Q in line 32.

1380 Booking's flight business forecast from May 2022 estimates total […] net flight transactions, of which […] would correspond to 'non-US' flights, calculated on the basis of the ratio of non-US tickets from total net tickets included in the slide of Booking's flight forecast ('Booking's internal document 'AMS B.com GTM Workshops' provided as Attachment H.3 [DOC ID 19670] to RFI 6').

1381 Response to the SO, Annex 4, page 19.

1382 Response to the SO, Annex 4, page 18.

1383 Response to RFI 6, paragraph 31.1 (ii).

(i) The projections that the Commission has used in the increment calculations (reproduced in the Figure above), do not refer to an ambitious case to reach a $2B revenue target post-Transaction. On the contrary, the slide clearly indicates that the forecast does not include any '*additional acceleration activities'* [Details of Booking's financial affairs] (emphasis added). Rather, the slide indicates that the projections are based on [Details of Booking's growth strategy]. The Commission has described Booking's GTM initiative in section 6.7.2.2.3 above, indicating that the GTM is Booking's 2022 plan for integrating ETG post-Transaction.

(ii) Additionally, the following slide in the Notifying Party's presentation containing the above projections indicates that *[Details of Booking's growth strategy]*. In the Commission's view, this is a further indication that the above projections do not include more ambitious plans to reach the [Details of Booking's growth strategy], according to which Booking would be able to double the growth expected under the post-close 'P/L forecast' to reach the $2B stretch target. As indicated in paragraphs (883)-(884) above, the fact that these ambitious growth targets would require a further growth that is [Details of Booking's growth strategy], at least demonstrates that the post close projections themselves are internally considered to be realistic.

**Figure 120: Growth drivers before incremental 'Program 2B27' acceleration initiatives**

[Figure redacted]

*Source: Booking's internal document 'AMS B.com GTM Workshops' provided as Attachment H.3 to RFI 6 [DOC ID 19670], slide 17*

(1046) In the second place, the Commission has used [Details of Booking's financial affairs].[1384] This is conservative as Booking's attach rate has significantly increased with time from […]% in January 2021 to […]% by November 2022. [Details of Booking's customer purchasing patterns].

**Figure 121: Evolution of Booking's attach rate (2021-2022, EMEA)**

[Figure redacted]

*Source: Response to RFI 6, Annex 10*

(1047) In the third place, the Commission has used […] following Booking's approach in the TVM.[1385] The Commission disagrees with the Notifying Party's view that the [40-50]% is linked to Booking's estimated market share on the OTA accommodation market in the EEA. On the contrary, Booking's internal documents related to the TVM indicate that the cannibalisation rate is not linked to Booking's market share.

**Figure 122: Booking's deep-dive into the TVM**

[Figure redacted]

*Source: Booking's D010 [DOC ID 147-33], slide 29*[1386]

(1048) In the response to the SO, the Notifying Party claims that '*the concept of cannibalisation is directly tied to Booking's market share, as it attempts to address*

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1384 Booking's 'Project Bahamas - Phase II Model v33 - Datapack version - EC.xlsx'; tab. 'Synergies' line 75 [DOC ID 1535-2530].

1385 Booking's 'Project Bahamas - Phase II Model v33 - Datapack version - EC.xlsx'; tab. 'Synergies' line 76 [DOC ID 1535-2530].

1386 On the same line, D011, slide 31 [DOC ID 147-22]; D012, slide 17 [DOC ID 147-6].

*those sales that Booking would have made even if Booking did not sell the consumer a flight'*.[1387] However, the Notifying Party has not put forward any evidence contradicting the quote in the internal document referred to above, which states that the cannibalisation is not linked to market share.

(1049) In the fourth place, in line with the approach followed by Booking in the TVM, the Commission has considered […] as the number of nights per transaction.[1388] The resulting number of incremental as-booked room nights resulting from cross-selling flights into accommodation thus amounts to approx. […].

(1050) In the fifth place, the Commission has added the number of incremental accommodations as-booked room nights that Booking expects to gain from the 'Value Leadership' and 'Halo' effects.[1389] The Commission has seen no indication from Booking's internal documents that the estimates included in Booking's Consolidated Budget for 2022-2024 could be fully attributed to the EEA. In this regard, the Commission has reduced Booking's 'Value Leadership' and 'Halo effect' estimates included in its Consolidated Budget by […] consistent with the adjustment carried out for the calculations of the EEA net flights. The resulting total incremental as-booked room nights (i.e., from the 'Value Leadership', 'Halo' and cross-selling flights into accommodation) are included in the table below. For completeness, the Notifying Party has indicated that the number of flights underlying the 'Value Leadership' and 'Halo effect' estimates in the Consolidated Budget do not differ significantly from the number of flights included in the TVM[1390], [Details of Booking's financial affairs].[1391]

**Table 20: Incremental as-booked room nights from Connected Trip's Value Leadership and Halo effects and cross-selling flights into accommodation, adjusted for the EEA, 2025**

| Effect of Connected Trip | Incremental as-booked room nights (Millions) |
|---|---|
| Halo | […] |
| Value Leadership | […] |
| Cross-selling flights to accommodation | […] |
| **Total ABRN arising from adding flights to Connected Trip, EEA** | […] |

*Source: Commission's calculation on the basis of Booking's Consolidated Budget 2022-2024, ME.6991.22 [DOC ID 846]*

(1051) In the sixth place, based on the Commission's calculations, the Transaction would result in a total incremental as-booked room nights of approx. […]. The Commission notes that these refer to all types of accommodation, including hotel and private accommodation. In order to isolate the number of as-booked room nights related to hotels, the Commission has reduced the total incremental as-booked nights by

1387 Response to the SO, Annex 4, Section 3.3.4.1.

1388 Booking's 'Project Bahamas - Phase II Model v33 - Datapack version - EC.xlsx'; tab. 'Synergies' line 141 [DOC ID 1535-2530].

1389 Booking's Consolidated Budget 2022-2024, ME.6991.22 [DOC ID 846].

1390 This is the combined effect of multiplying 88.58% (proportion of 'non-US' flights over the total flights) and 70% (proportion of EEA flights over 'non-US flights).

1391 Response to RFI 13, Tables 4.1 and 4.2.

[…]%.[1392] This represents the proportion of Booking's number of hotel nights sold, out of the total accommodation nights sold in 2022. The resulting number of incremental as-booked hotel room nights is approx. […].

(1052) Last, the Commission has used […] as the average price per hotel room night based on Booking's data for 2022.[1393] The Commission notes that this is a conservative proxy, as the data provided by Booking indicates that the average price per hotel room night has increased by […]% every year since 2020 ([…])[1394] and would, therefore, most likely be much higher by 2025.

(1053) In the response to the SO, the Notifying Party claims that the Commission's approach to take the average price per hotel room night in 2022 ([…]) is wrong and that the Commission should have taken the value specific to hotels that are cross-sold as provided in the TVM (EUR […]).[1395] The Notifying Party further notes that '*an adjustment for the average price per room night would only be valid if the average price per room night for cross-sold rooms increased more quickly than the average price per room night in the market in general. If not, then this would cancel out in the increment calculation as the numerator and denominator would be similarly impacted*'.[1396]

(1054) The Commission notes that its methodology to calculate the increment uses the TVM's model and assumptions as a starting point, as the Commission's methodology uses the same attach rate, cannibalisation rate, and rooms per night as used in the TVM. The only elements that the Commission has corrected were those which, based on the evidence on the file, were grossly underestimated. In particular, the Commission has used updated flight projections included in Booking's more recent internal documents. In addition, the Commission considered that a good proxy for the price of a hotel room in 2025 would be the price in 2022, since this is the most updated data and, in the face of high inflation in the overall economy (including the hotel sector) and considering the fact that Booking expects its cross-selling activities to increase over time, it is reasonable to expect that the price of a hotel room and a cross-sold room would converge over time. In addition, the Commission notes that the Notifying Party has not put forward evidence supporting its claim that the price of a cross-sold room would be a best proxy in the face of a cross-selling business that is expected to grow significantly in the upcoming years.

(1055) Further, the Notifying Party claims that the Commission should have also adjusted the number of nights per transaction.[1397] However, the Commission notes that in the information submitted by the Notifying Party during the investigation the number of nights per transaction for total accommodation in the EEA was […] in 2021 in the

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1392 The Commission has inferred the number of hotel nights sold from Booking's NA TTV in hotel OTA in 2022 (as provided in Response to RFI 17, Annex 3), divided by the average cost per hotel room night in 2022 ([…], as provided in Response to RFI 12, Annex 3). The Commission has used the same approach to infer the total number of room nights sold by dividing Booking's NA TTV in accommodation OTA in 2022 2022 (as provided in Response to RFI 17, Annex 3), divided by the average cost per hotel room night in 2022 ([…], as provided in Response to RFI 12, Annex 3).

1393 Response to RFI 12, Annex 3, EEA core and chain for 2022.

1394 Response to RFI 12, Annex 3, EEA core and chain for 2020-2022.

1395 Response to the SO, Annex 4, Section 3.3.4, paragraph 1.

1396 Response to the Second Letter of Facts, Annex 1, page 64.

1397 Response to the SO, Annex 4, Section 3.3.4 and response to the Second Letter of Facts, Annex 1, page 64.

EEA, and not the […] included in the TVM. This is an indication that the TVM was based on different parameters and, therefore, that it is not appropriate to depart from the approach taken in the TVM.

(1056) On the basis of the above, out of its ability to offer flights, Booking will achieve incremental hotel OTA TTV of approx. […]. This represents an increment in Booking's market share of approx. [0-5]% if the 2022 market size from the market reconstruction is considered.[1398]

(a) The Commission's increment calculations on the basis of the TVM (with updated flight projections), considering (on a conservative basis) only gains directly resulting from flights

(1057) As noted above, the Commission has also, on a conservative basis, calculated the incremental hotel OTA TTV that is a direct result of Booking offering flights on its platform.

(1058) The Commission's methodology is the same as the one explained in the previous sub-section, with the only difference that the Commission has only included the portion of the 'Value Leadership' and 'Halo effects' that is directly linked to flights. The table below includes the estimates used by the Commission on the basis of the information provided by Booking.[1399] As with the full figures for 'Value Leadership' and 'Halo' effects, the Commission has reduced the estimates provided by the Booking by […]% to account for the fact the full 'Value Leadership' and 'Halo' effects may not be attributed to the EEA. In summary, the resulting number of total as-booked room nights arising out of the Transaction *directly* as a consequence of flights amounts to approx. […] million.

**Table 21: Flight portion of Value Leadership and Halo effect, adjusted for EEA, 2025**

| Effect of Connected Trip | Incremental as-booked room nights (Millions) |
|---|---|
| Value Leadership (Flights)[1400] | […] |
| Halo (Flight Anchor)[1401] | […] |
| Cross-selling flights into accommodation | […] |
| Total ABRN directly linked to flights, EEA | […] |

*Source: Booking estimates provided in response to RFI 4, Attachment 10.*

(1059) As above, in order to isolate the number of hotels as-booked room nights from the total, the Commission has reduced the resulting ABRN […] million by […]%, resulting in […] million as-booked hotel room nights. These result in incremental hotel OTA TTV of approx. EUR […] million by 2025; and an increment in Booking's market share of approx. […]% if the market size resulting from the

1398 The Commission considers that it is a reasonable proxy to use the market size for 2022 to calculate the market share increment for 2025, as (i) this is the most reliable source available; and (ii) the results of the market reconstruction [DOC ID 120780] and Booking's own Euromonitor estimates submitted on 11 March 2023 indicate that 2022 has already recovered to pre-pandemic levels (and has actually increased in TTV in comparison to 2019).

1399 Response to RFI 4, Figures 23.3 and 23.4 and Attachment 10.

1400 Response to RFI 4, Attachment 10 tab 'Summary VL', cells E-H line 10.

1401 Response to RFI 4, Figure 23.4 and Attachment 10. [Details of Booking's financial affairs] using the same approach by Booking for 2022-2024.

market reconstruction for 2022 is considered.[1402] However, the Commission considers that these figures under-estimate the size of the increment. As explained in detail immediately below, updated figures provided by the Notifying Party point to a significantly larger increment.

(c) The Commission's increment calculations on the basis of more updated figures from Booking's recent internal documents (May 2022)

(1060) The Commission notes that the potential increment in Booking's market share calculated on the basis of the TVM (in sub-sections (a) and (b) above) is based on conservative estimates regarding the number of incremental transactions or booked room nights that Booking would gain from adding flights to its platform. Indeed, a recent presentation from Booking including internal estimates regarding the [Details of Booking's financial affairs].

(1061) In the first place, in a presentation from May [Details of Booking's flight strategy]. The relevant analysis from Booking is included in the figure below, which indicates that *[Details of Booking's flight strategy]*. In comparison, under the TVM, the number of incremental accommodation transactions is […] million.[1403]

**Figure 123: Booking's estimated accommodation transactions from flight cross-selling**

[Figure redacted]

*Source: BOOK_00675349 [DOC ID 051850-025965], slide 4*

(1062) In the second place, following the same approach described above to estimate the incremental accommodation TTV, Booking's estimated […] incremental accommodation transactions would amount to a total of […] as-booked room nights. The Commission notes, however, that there is no indication in Booking's internal document that the full incremental as-booked room nights could be attributed to the EEA. As such, the Commission has conservatively applied a reduction of […] (in line with the approach to the net flight transactions), resulting in approx. […] million as-booked room nights from cross-selling flights into accommodation.

(1063) In the third place, the Commission understands that Booking's more recent estimates above are not calculated on the basis of the Transaction, but on Booking's flight projections under the current Phase 2 Agreement which, according to the Notifying Party, allows Booking to realise […] of the growth in flights in a Transaction scenario. In this regard, the Commission has revised upwards the number of as-booked room nights by 25%. The resulting as-booked room nights from cross-selling flights into accommodation amounts to approx. […].

(1064) In the fourth place, if the as-booked room nights resulting from cross-selling flights are reduced to […]% to isolate those related to hotel from the total, the same adjustments included above regarding the 'Value Leadership' and 'Halo' effects are implemented. Multiplying by average price per hotel room night of […], Booking's

1402 The Commission considers that it is a reasonable proxy to use the market size for 2022 to calculate the market share increment for 2025, as (i) this is the most reliable source available; and (ii) the results of the market reconstruction [DOC ID 120780] and Booking's own Euromonitor estimates submitted on 11 March 2023 indicate that the 2022 has already recovered to pre-pandemic levels (and has actually increased in TTV in comparison to 2019).

1403 This is if we consider […] million net flights subject to cross-selling (see Table 19) and apply the rest of the formula in Figure 118, without adjusting for EEA-only flights.

ability to offer flights will result in higher incremental hotel OTA TTV and market share increment than under the Commission's TVM calculations. In particular:

(a) Approx. […] in incremental hotel OTA TTV, which accounts for a market share increment of [0-5]% if all gains arising from the Connected Trip are considered, as evidence on the file indicates that flights are directly and indirectly linked to almost all expected gains arising out of the Connected Trip.

(b) Approx. […] in incremental hotel OTA TTV, which accounts for a market share increment of approx. [0-5]% if, on a conservative basis, only the gains directly linked to flights are considered. As discussed above in section 6.6.2.4, even if the Commission were to accept the Notifying Parties' argument in relation to the counterfactual *quod non*, the Transaction would still result in a material increment which cannot be fully quantified but would likely be larger than the Notifying Party's estimate.

(1065) It follows from the above that, where more updated estimates from Booking are used, the potential increment arising out of the Transaction is higher.

6.7.2.4.3. The waterfall analyses carried out by the Notifying Party are conservative and static analyses

(1066) On the basis of the following reasons, the Commission considers that the Notifying Party's accommodation and flight 'waterfalls' are conservative and static analyses that do not take into account market development.

(1067) *First,* the flights waterfall is based on the one hand, on deducting from the total flight OTA transactions of those flight customers that would not require accommodations; and, on the other hand (in a further step), by applying a 'cross-sell' rate representing those flight customers that would purchase accommodations after purchasing a flight.[1404] The Commission is of the view that, by adopting this approach, the Parties double-discount the number of flights customers that do not purchase accommodations after a flight, as these are already counted in the 'flight-to-accommodation cross-sell'.

(1068) In addition, if the double-discounting issue is corrected[1405] and under the Commission's approach regarding the counterfactual and with the […]% cannibalisation rate used by Booking in its TVM analysis,[1406] the results of the flight waterfall analysis are consistent with the Commission's more conservative increment calculations resulting from the Transaction, which only take into account the flight specific portions of the 'Value Leadership' and 'Halo' effects. Even under a higher cannibalisation rate of […]%, which the Commission does not think is appropriate as explained further below[1407], the results of the adjusted flight waterfall are aligned with the Commission's calculations of the market share increment in the hotel OTA

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1404 Response to the SO, Annex 4, Figure 1.

1405 This means that the first step in the flight waterfall to discount the […]% of flight customers which do not purchase accommodation from the flight OTA market size is not taken into account.

1406 Consistent with its position regarding the counterfactual, the Commission will not apply the […]% reduction applied by the Parties resulting from the fact that Booking is able to secure […]% of the growth in flights under the current Phase 2 Agreement (Section 2.3, page 8 of Annex 4 to the Response to the SO). Further, consistent with its position regarding the cannibalization rate, the Commission will use the cannibalization rate of […]% used by Booking in the TVM.

1407 Paragraph 714.

market post-Transaction. A comparison between the adjusted flight waterfall analysis and the Commission's increment calculations is set out in the Table below.

**Table 22: Comparison between the flight waterfall submitted by the Notifying Party, the 'adjusted' flight waterfall scenarios and the Commission's increment calculations**

| Flight waterfall (Annex 4 to Response to the SO) | Flight waterfall adjusted([1408]) | Flight waterfall adjusted with higher cannibalisation rate (66%) | Commission's increment calculation (TVM, flight portion of Value Leadership and Halo effects) | Commission's increment calculation (May 2022, flight portion Value Leadership and Halo effects) | Commission's increment calculation (TVM, full Value Leadership and Halo effects) | Commission's increment calculation (May 2022, full Value Leadership and Halo effects) |
|---|---|---|---|---|---|---|
| [...] | [...] | [...] | [...] | [...] | [...] | [...] |

*Source: Annex 4 to the response to the SO, and Commission calculations*

(1069) The Commission notes that the flight waterfall analysis[1409] does not include any steps to consider the potential impact of the 'Value Leadership' and 'Halo' effects, in full or partially. The fact that the adjusted flight waterfall results in potential increments in line with those calculated by the Commission under the approach of considering only the specific flight portion of the 'Value Leadership' and 'Halo' is further proof that the flight waterfall analysis is too conservative, static and does not take into account market developments. Indeed, the flight waterfall analysis should account for the effects of the 'Value Leadership' and 'Halo' as Booking does in its internal analysis regarding the Connected Trip, as explained further below in paragraph (1033) above.

(1070) *Second*, the same double-discounting issue described above can be found in the hotel waterfall. In particular, the hotel waterfall is based on, on the one hand, deducting from the total transactions in the hotel OTA market those hotel customers that would not require a flight; and, on the other hand (in a further step), applying the 'flight to accommodation cross-sell' rate to reflect 'the fact that Booking.com will only be able to cross-sell flight to a portion of its customers'.[1410] The Commission is of the view that, with their approach, the Parties double-discount the amount of hotel customers that would not be willing to purchase a flight, as the 'flight-to-accommodation cross-sell' would already represent those hotel customers willing to purchase a flight.

(1071) If the double-discounting issue is corrected,[1411] and with the same approach as with the flight waterfall above,[1412] the results of the hotel waterfall analysis are consistent

[1408] For the adjustment, the Commission has not applied the […]% of flight customers that purchase accommodation and has applied a […]% cannibalisation rate and no reduction on the counterfactual, consistent with the Commission's approach.

[1409] Response to the SO, Annex 4, Figure 1.

[1410] Response to the SO, Annex 4, Figure 2.

[1411] This means that the first step in the hotel waterfall to discount the […]% of hotel customers which do not purchase a flight from total hotel OTA market size is not taken into account.

[1412] This means following the Commission's approach regarding the counterfactual and with the […]% cannibalisation rate used by Booking in its TVM analysis. Consistent with its position regarding the counterfactual, the Commission will not apply the […]% reduction applied by the Parties resulting from the fact that Booking is able to secure […]% of the growth in flights under the current Phase 2 Agreement (Section 2.3, page 8 of Annex 4 to the Response to the SO). Further, consistent with its

with the Commission's conservative increment calculations resulting from the Transaction that only take into account the flight specific portions of the 'Value Leadership' and 'Halo' effects. Even following the same conservative approach as above, with a higher cannibalisation rate of […]%,[1413] the results of the adjusted hotel waterfall are aligned with the Commission's calculations regarding the market share increment in the hotel OTA market.[1414] A comparison between the adjusted hotel waterfall analysis and the Commission's increment calculations is included in the Table below.

**Table 23: Comparison between the hotel waterfall submitted by the Notifying Party, the 'adjusted' flight waterfall scenarios and the Commission's increment calculations**

| Hotel waterfall (Annex 4 to Response to the SO) | Hotel waterfall adjusted [1415] | Hotel waterfall adjusted with higher cannibalisation rate (66%) | Commission's increment calculation (TVM, flight portion of Value Leadership and Halo effects) | Commission's increment calculation (May 2022, flight portion Value Leadership and Halo effects) | Commission's increment calculation (TVM, full Value Leadership and Halo effects) | Commission's increment calculation (May 2022, full Value Leadership and Halo effects) |
|---|---|---|---|---|---|---|
| […] | […] | […] | […] | […] | […] | […] |

*Source: Annex 4 to the response to the SO, and Commission calculations*

(1072) The Commission notes that the hotel waterfall analysis in Figure 2 of Annex 4 to the Response to the SO does not include any steps to consider the potential impact of the 'Value Leadership' and 'Halo' effects, in full or partially. As with the flights waterfall, the fact that the adjusted hotel waterfall results in potential increments in line with those calculated by the Commission under the conservative approach, which considers only the specific flight portion of the 'Value Leadership' and 'Halo' effects is further proof that the hotel waterfall analysis is too conservative, static and does not take into account market developments.

(1073) In its response to the First Letter of Facts,[1416] the Notifying Party argues that the Commission's adjustments to the flight and hotel waterfalls related to the double-counting issue do not materially affect the results of the waterfalls,[14171418] and that

position regarding the cannibalization rate, the Commission will use the cannibalization rate of […]% used by Booking in the TVM (see SO, paragraph 714).

1413 The Commission reiterates that a higher cannibalisation rate is not appropriate as explained in the SO (paragraph 714).

1414 See paragraphs 707 and 708 of the SO.

1415 For the adjustment, the Commission has not applied the 50% of hotel customers that do not purchase flights and has applied a […] and no reduction on the counte1factual, consistent with the Commission's approach.

1416 Response to the First Letter of Facts, pages 48-51.

1417 Specifically regarding the 'double-discounting' issue in the flight waterfall analysis, the Notifying Party notes that the first step of the Commission's analysis to address the 'double-discounting' issue is intended to address the fact that the attach rate already accounts for flight customers that do not need accommodation, but that the waterfall analysis is intended to provide a visual demonstration of the intuition behind the increment analysis based on the TVM, and therefore it was important to highlight the point that many flight customers do not require accommodation (response to the First Letter of Facts, pages 48 and 49). However, this does not rebut the Commission's conclusion that the flight

the major difference between the Commission's increment calculations and the results of the waterfall analyses lies on the Commission assuming a 'zero-flight' counterfactual whereas, from the point of view of the Notifying Party, the correct counterfactual is that the Phase 2 Agreement would continue absent the Transaction and, therefore, any increment resulting from the Transaction should take into account that Booking is able to achieve, pre-Transaction via the Phase 2 agreement, approximately [70-80]% of the growth in flights it would achieve post-Transaction.

(1074) The Commission re-iterates its position, explained in paragraphs ((1006) et seq. above, that the Phase 2 Agreement is not the appropriate framework to assess the effects of the Transaction. The Commission has calculated the increment on the basis of a 'zero' flight scenario given the impossibility to determine with certainty whether and when Booking would be able, in a counterfactual scenario, to build its own flight OTA platform, and how such solution would look like in terms of flights OTA capability. In addition, the Commission has found no evidence (nor the Notifying Party has produced any) regarding the estimated number of flights that Booking would be able to achieve through 'Firefly. Further, the Commission re-iterates its position in paragraphs ((1010) to ((1013) above that, even if the Commission were to accept the Notifying Party's approach for calculating the increment in the hotel OTA market, *quod non*, the amount of the increment on the hotel OTA market as a result of the Transaction would in any event be significantly larger than the amount of the increment that would exist absent the Transaction as put forward by the Parties.

(1075) Further, the Notifying Party indicates in its response to the First Letter of Facts that the 'Value Leadership' and 'Halo' effects '*were implicitly factored into its growth rate assumptions in the TVM'*.[1419] However, the Notifying Party did not offer robust evidence in support of the claim that the 'Value Leadership' and 'Halo' effects were factored in the TVM growth rates, and why this would imply that the increment calculations should not take these effects into account.

6.7.2.4.4. Growth directly and indirectly arising from the Transaction will take place in a highly concentrated market where Booking holds a dominant position

(1076) Any growth directly and indirectly arising from Booking's ability to offer flights through the Transaction should be considered in the current setting on the hotel OTA market.

(1077) As explained in sections 6.2.26.4.4 above, the market for hotel OTA services in the EEA is highly concentrated. Booking is the leading supplier of OTA services to hotels and end customers. Evidence on the file further indicates that Booking is able to act independently from competitors, hotels and end customers to a significant extent; and that network effects reinforce Booking's position on the market. On this

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waterfall analysis incurs in double-discounting the amount of flight customers that do not require accommodation.

1418 Specifically regarding the 'double-discounting' issue in the hotel waterfall analysis, the Notifying Party also criticises the Commission's approach to excluding the […]% of hotel OTA customers who do not require a flight, as by doing so, the Commission '*applies the flights-to-accommodation attach rate to a base which includes customers who do not purchase any flights and so cannot be cross-sold accommodation*' (response to the First Letter of Facts, page 51). The Commission however notes that the Notifying Party does not put forward any evidence or argumentation rebutting the fact that the hotel waterfall does incur in double-discounting the amount of flight customers that do not require accommodation.

1419 Response to the First Letter of Facts, page 50.

basis, the Commission has found that Booking holds a dominant position on the hotel OTA market.

(1078) In addition, as explained in section 6.7.2.3 above, the Commission has reached the conclusion that it is likely that the Transaction results in higher barriers to entry/expansion into the hotel OTA market in the EEA. In the Commission's view, the fact that the Transaction will result in a positive increment, irrespective of the counterfactual (as the Notifying Party has not disputed), is a further confirmation of the Commission's view that Booking's dominant position would be strengthened and become more difficult to contest post-Transaction.

6.7.2.5. The strengthening of Booking's market position will likely lead to harm to hotels

(1079) As the Transaction will likely raise barriers to entry and expansion on the hotel OTA market for rival OTAs and Booking's position will become more difficult to contest, the Commission has reached the conclusion that it is likely that Booking's incentives to lower commissions and provide more beneficial terms and conditions to hotels would decrease.

(1080) In addition, costs for hotels would increase because, as a result of the Transaction, more sales of hotel rooms would be funnelled through Booking which is, on the basis of the evidence available on file, one of the most expensive sales channels available to hotels.

(1081) In its response to the SO, the Notifying Party considers that the Commission has failed to recognise that there is a high prevalence of multi-homing by accommodation providers. Hotels have always used a combination of online and offline distribution methods, as well as direct and indirect channels to market their inventory and the emergence of channel managers is allegedly facilitating this strategy. Booking.com is only one of these channels, and indeed only a small proportion of hotels' inventory is sold through Booking.com. The Notifying Party considers that this is not consistent with the notion that hotels would be more dependent on Booking.com as a result of the de minimis impact of the Transaction on the hotel OTA market segment.[1420] The Notifying Party also refers to an IPSOS survey showing that hotels can use diverse counter-strategies to limit a commission increase or unfavourable terms and conditions from Booking.[1421] Further, the Notifying Party claims that the Commission's allegation that Booking's bargaining position vis-à-vis hotels will increase as a result of the Transaction is unfounded since there is no robust evidence indicating that Booking has the highest commission to OTAs and that, in fact, Booking's 'effective' commissions have been [Details of Booking's financial affairs][1422]. The Notifying Party also notes that the results of the Commission's market investigation indicate that it is unlikely that Booking would increase its commission rates as a result of the Transaction.[1423]

(1082) As a preliminary comment, the Commission would like to emphasise that it does not dispute the Notifying Party's arguments that hotels can use multiple distribution channels nor that there is some degree of multi-homing by hotels. However, as explained in paragraphs ((950) and ((951) above, the results of the Commission's

1420 Response to the SO, Section 4.B.6.
1421 Response to the SO, Section 4.B.6, paragraph 4.68.
1422 Response to the SO, paragraphs 4.71-4.72 and 5.18.
1423 Response to the SO, paragraph 4.73.

market study on the distribution of hotel accommodation in the EU[1424] indicate that hotels have in fact limited capability to multi-home, and that most hotels (67%) work with either one or two OTAs, most likely pairing Booking (88%) and Expedia (67%), with all other OTAs trailing significantly behind.[1425]

(1083) In addition, the Commission fails to see the relevance of the Notifying Party's argument since, as highlighted by the market investigation, Booking appears to be an unavoidable trading partner for hotels. In other words, whereas hotels my indeed use various methods to distribute their services, they *must* be listed on Booking. In this context, and contrary to the Notifying Party's arguments, the Commission does not consider that Booking is one distribution channel(s) amongst others but, as mentioned above, rather an unavoidable or at the very least very important trading partner. In addition, the Commission considers that the mere fact that hotels develop counter-strategies as such is not a relevant argument to conclude that Booking lacks market power. The real question is rather whether these strategies have proved to be *effective* to limit Booking's market power in the hotel OTA market. The market investigation and the evidence on file indicates that this is not the case, as explained in section 6.4.6.2 above.

6.7.2.5.1. As Booking's dominant position will be strengthened post-Transaction, its incentives to lower commissions and provide more beneficial terms and conditions to hotels would decrease

(1084) The results of the market investigation indicate that a majority of hotels having expressed a view are concerned that Booking would be able, post-Transaction, to impose conditions to hotels that will benefit Booking at the expense of the service providers. Indeed, a majority of hotels having expressed a view raised concerns in that regard[1426]; and particularly indicated that Booking would be able to raise commissions post-Transaction.[1427] Moreover, one MSS provider states that '*the resulting higher barriers to entry would allow the merged entity to increase the commission it charges to hotels on its platform, which, in turn, is likely to result in higher prices being passed through to consumers. The extent of this pass-through of costs is likely to be especially pronounced in Europe, in which a significant proportion of hotels that list on Booking's platform are small, independent businesses that may be less financially capable of absorbing increases in Booking's commission.*'[1428]

(1085) Based on the evidence available on the file, since Booking's position will become more difficult to contest post-Transaction due to the increase in barriers to entry and

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1424 Market study on the distribution of hotel accommodation in the EU COMP/2020/OP/002.

1425 Market study on the distribution of hotel accommodation in the EU COMP/2020/OP/002, page 37.

1426 Response to question B.2 of Questionnaire to Hotels (Phase II); and response to question 38 of questionnaire Q3 to hotels [DOC ID 2737].

1427 Response to question B.7 of Questionnaire to Hotels (Phase II).

1428 Voluntary submission from an MSS provider to the European Commission dated 4 August 2023, [DOC ID 114526], para. 3.7. In its response to the Third Letter of Facts, the Notifying Party claims that the information provider is not well placed to express informed views on the effect of the Transaction on commissions paid to hotels since it has no experience of negotiating commissions with hotels nor any experience as a hotel OTA, and that the quote is unsubstantiated. The Commission notes that while the information provider is an MSS operator, it is vertically integrated into an OTA, which is active in hotel OTA services and was identified by Booking as a 'threat' in its submissions (see section **6.4.6.4** above). In this regard, views from this information provider constitute qualitative evidence.

expansion in the hotel OTA market,[1429] the Commission has reached the conclusion that Booking will be less constrained to lower its commissions to the level of its main competitors and may be able to impose on hotels even more detrimental terms and conditions (including through higher commissions).

(1086) *First,* as explained above in section 6.4.6.1, Booking has already been able to maintain a stable level of commission to hotels of [details of Booking's financial affairs]% over the last 10 years (2011-2022). The Figure below includes Booking's effective commission rate calculated on the basis of the commission earned by Booking from hotels divided by the net TTV achieved by Booking from selling hotel OTA services. Since 2020, Booking's effective commissions have increased to [details of Booking's financial affairs]%, putting a halt to the slight downward trend that Booking's commissions were experiencing since 2011-2012.

**Figure 124: Booking's effective commission rate for hotels (2011-2022, EEA)**

[Figure redacted]

*Source: Booking's data provided in Annex 1 to RFI 23*

(1087) *Second*, Booking's effective commission is approx. […] percent points higher than the average of Booking's main competitors, which is estimated at […], on a weighted basis, based on the results of the market reconstruction exercise, as explained in section **6.4.6.1** above.[1430]

(1088) The Commission notes that in its Response to the SO and Second Letter of Facts, the Notifying Party has raised a series of issues regarding the Commission's comparison exercise between Booking's average effective commission and the weighted average commission of its main competitors. As indicated in section **6.4.6.1** above, the Commission is of the view that its comparison exercise provides robust results and indicates that Booking's effective average commission is higher than that of its main competitors.

(1089) Further, the Commission notes that the Notifying Party's claims regarding its 'effective' commission [Details of Booking's financial affairs] refer to Booking's commission rate after discounts provided to end customers (not to hotels) are taken into account. Indeed, as from 2019, Booking started the BSB program through which Booking provides discounts to end customers on some of the rates provided by hotels. BSB discounts are offered by Booking from its own margin, but BSB discounts do not have any impact on the commission rate charged by Booking to hotels (which remains unchanged) and, therefore, the fact that Booking has started this program does not affect the finding that Booking's effective commission rate to hotels has increased since 2020, and that Booking's effective commission rate is higher than the rate charged by its main rival OTAs (or other distribution channels, as explained in paragraph ((1100) below and section 6.4.6.1 above).

(1090) As noted above, the Transaction would allow Booking to strengthen its dominant position on the hotel OTA market, particularly because barriers to entry and expansion will increase, further reducing the ability of rivals to effectively constrain

[1429] Please refer to section 6.7.2.3 above for the Commission's assessment of the likely increase in barriers to entry and expansion resulting from the Transaction.

[1430] The Commission has compared Booking's effective commission, with that of the competitors that participated on the Commission's market reconstruction, calculated on a TTV weighted basis.

Booking.[1431] In this regard, with Booking growing more as a result of the Transaction, and with rivals being unable to contest its position, chances for hotels to increase pressure on Booking to reduce its headline commission to the market level would be further reduced.

(1091) *Third,* internal documents from Booking indicate that, post-Transaction, and in the context of the Connected Trip, Booking is also considering […]. The figure below contains an excerpt from Booking's plans for 2023. Similarly, in a July 2022 internal communication between Booking's CEO and the SVP for Accommodations, […].[1432]

**Figure 125: Booking's plan to introduce packaged holidays in its offering by 2023**

[Figure redacted]

*Source: Booking's ID D403, slide 55*

(1092) The Commission's investigation has indicated that packages typically entail higher commissions for hotels than stand-alone hotel bookings. Qualitative evidence from the market investigation indicates that packages allow OTAs to charge a higher commission. Some market participants indicate that Expedia already offers such packages and claims higher fees in exchange. For instance, one respondent stated that '*Expedia offers packages with flights. If you want that they offer your hotels with the packages than you have to pay more commission. So, I think that there is a possiblilty that booking.com will do the same*'.[1433] Another hotel indicated that Booking '*would stress the increase of booking quality, longer stays, better guests etc.,etc. basically the same that Expedia has been doing for years'*;[1434] and another hotel that *'if we want a share of the new package segment we probably need to give them package XX% discount as Expedia demand for their package rates*.' [1435] The Commission notes that, as the commission would be higher to hotels, it cannot be excluded that hotels pass-on part of this increase in costs to the room price, thus increasing costs of the hotel room for the end customers.

(1093) The results of the market investigation indicate that hotels are concerned that Booking will raise commissions particularly given Booking's ability, post-Transaction, to start providing packages.[1436] In particular, some hotels noted that:

(a) '*Given the experience gained over the years, we expect a significant increase in commissions due to the fact that they intend to take over the entire market. Already now they have very aggressive policies to capture the customer which however fall on the hotel. Unfortunately they are so strong that without them the percentage of receptivity would drastically decrease. If they made flight + hotel packages we would be completely dependent on them who at that point could increase the commission as they like. In 2017 we changed our company name and, being historical customers, our commission was […]%. Despite written assurances on their site that the commission would not change they increased it to […]% and written communications disappeared* '; [1437]

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1431 See section **6.7.2.3** above.

1432 BOOK_01656023 [DOC ID 51861-49267].

1433 Response to question 37.1 of questionnaire Q3 to hotels [DOC ID 2737].

1434 Response to question 37.1 of questionnaire Q3 to hotels [DOC ID 2737].

1435 Response to question 37.1 of questionnaire Q3 to hotels [DOC ID 2737].

1436 Response to question B.7 of Questionnaire to Hotels (Phase II).

1437 Non-confidential version of Bonafous 5 S.r.l – Hotel Alpi Resort's response to question B.10 of Questionnaire to Hotels (Phase II) [DOC ID 54138].

(b) *'As soon as [Booking] become established as a core distribution channel for opaque (Flight + Hotel) then they can simply update their terms and conditions and impose higher commissions on dynamic packaging or ask you to cease the collaboration if you do not agree with the terms. Booking holdings has a technological competitive advantage that very few companies can match (hotel sector is nowhere near in client profiling nor it has the huge market intelligence that they have; the latter applies for airlines as well that do not have a clear image on availability of beds in a destination). Whoever has a clear image on demand, bed capacity of a destination and flight capacity is in an advantageous position to take commercial decisions that others won't be able to do so (on time)*'; [1438]

(c) *'As the biggest OTA in Europe, with a significant weight in Lisbon's hotel sales, we want to highlight our concern about Booking.com's future possibility to impose packaged rates on hotels which would harm the overall distribution of hotel rooms and would take quite a share of the hotels' revenue due to Booking.com being the main sales channel most properties in Portugal have. The misuse of these packaged rates (having those rates publicly sold and not packaged) and the inability of the properties to effectively control if this misuse is happening would be harmful to the hotel's direct channel and the hotel's other partners as well*'. Other hotels noted that *'[w]e would expect that Booking.com would claim a higher commission for these ,,packaged' bookings*' and that *'[i]f Booking were to enter the wholesale market, this could potentially lead to higher commission rates*'.[1439]

(1094) Qualitative evidence gathered from OTAs during the market investigation supports the finding that Booking may be in a position to increase its commissions as a result of the Transaction. An OTA indicated that '*[i]n the end it is likely that it will increase its commissions. The more powerful Booking becomes, the more dependent hotels will become, which will in turn enable Booking to increase its commissions. // Please remember that when selling in an online market, the costs of acquisition is driving your success. The more conversions you are able to do, the lower the costs of acquisition are. For independent hotels, there will be no alternative as: a) it is too expensive to advertise themselves; and b) the number of alternative OTAs will reduce and therefore they will be forced to use Booking if they want to reach consumers. If they become dependent on a single supplier (Booking), they will lose their ability to negotiate*'.[1440]

(1095) Another hotel OTA noted that *'as the position of Booking would be stronger, conditions may get worse for hotels and other contractual partners.'* and another that '*with this transaction Booking.com is able to sell more, as a consequence they will have more power to negotiate and they will have the chance to increase the commissions*.'[1441]

(1096) A hotel also indicated that *'[i]ncrease in OTA segment leading to increase of cost leading to increase of rates. [I]t would not be a good spiral for any of us except for Booking.com.*'[1442]

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1438 Non-confidential version of Porto Angeli Hotel (ATLAS SA)'s response to question B.10 of Questionnaire to Hotels (Phase II) [DOC ID 53061].

1439 Response to question 37.1 of questionnaire Q3 to hotels [DOC ID 2737].

1440 Response to question 45.1 of questionnaire Q1 to OTAs [DOC ID 2739].

1441 Response to question 45.1 of questionnaire Q1 to OTAs [DOC ID 2739].

1442 Response to question 40.1 of questionnaire Q3 to hotels [DOC ID 2737].

(1097) The Notifying Party claims in its response to the SO, that some respondents to the market investigation have indicated that they do not expect Booking to increase its commissions post-Transaction.[1443] However, the Commission notes that other qualitative evidence gathered during the market investigation indicates the opposite (as noted in this section 6.4.6 above), and in any case, the Commission's conclusion is that, while it cannot be excluded that Booking will increase its commission post-Transaction, the evidence on file indicates that post-Transaction, as Booking's position will become more difficult to contest and its bargaining position vis-à-vis hotels further increases, Booking's incentives to lower commissions and provide more beneficial terms and conditions to hotels will likely decrease.

6.7.2.5.2. The Transaction could particularly result in increasing costs for hotels because it will allow Booking to shift demand for hotel rooms to Booking, which is the one of the most expensive sales channels for hotels

(1098) The Commission has reached the preliminary conclusion that it is likely that, as a result of the Transaction, Booking will be able to funnel more sales of hotel rooms through its platform. As Booking is a more expensive channel than the main rival OTAs and alternative sales channels, costs for hotels would increase. In particular, the Commission estimates that, as a result of the Transaction, hotels would be approximately paying EUR 14.48 more per hotel booking, as more sales in hotel OTA services are channelled through Booking.[1444]

(1099) Further, as hotels' distribution costs increase, hotels may also increase prices to end customers. As explained by a hotel chain during a pre-notification interview, *'[b]y preventing hotels from prioritising cheaper channels, overall costs for hotels may increase. Costs to consumers may also increase*'.[1445] In the same vein, in a submission to the Commission, an MSS described the impact of the increase to barriers to entry and/or expansion on the hotel OTA market in the EEA as follows: '*the resulting higher barriers to entry would allow the merged entity to increase the commission it charges to hotels on its platform, which, in turn, is likely to result in higher price being passed through to consumers. The extent of this pass-through of costs is likely to be especially pronounced in Europe, in which a significant proportion of hotels that list on Booking's platform are small, independent businesses that may be less financially capable of absorbing increases in Booking's commission*'[1446].

(1100) *First,* based on the evidence on the file, Booking is one of the most expensive sales channels for hotels.

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1443 Response to the SO, paragraph 4.73.

1444 [Details of Booking's financial affairs].

1445 Non-confidential version of the minutes of call with [HOTEL], dated 4 July 2022 [DOC ID 2550], paragraph 16.

1446 An MSS' voluntary submission to the European Commission dated 4 August 2023, para. 3.7[DOC ID 114526]. In its response to the Third Letter of Facts, the Notifying Party claims that this MSS is not well placed to express informed views on the effect of the Transaction on commissions paid to hotels since it has no experience of negotiating commissions with hotels nor any experience as a hotel OTA, and that the quote is unsubstantiated. The Commission notes that while the information provider is an MSS operator, it is vertically-integrated into an OTA, which is active in hotel OTA services and was identified by Booking as a 'threat' in its submissions (see section **6.4.6.4** above). In this regard, views from this MSS constitute qualitative evidence.

(1101) In the first place, as explained above, Booking is one of the most expensive sales channels for hotels in comparison with rival hotel OTAs. If Booking's effective commission is compared to that of the market (on a weighted basis), Booking is approx. […] percentage points more expensive than its main competitors based on the results of the market reconstruction exercise.[1447]

(1102) In the second place, the results of the market investigation indicate that Booking is more expensive than alternative sales channels available to hotels. In particular, while Booking's average effective commission rate is around […], the hotels' direct channel would at maximum cost […] of the price of the room to hotels. Brick-and-mortar travel agencies' cost is estimated to be around […] of the room price.

**Table 24: Average costs of selling a hotel room (expressed as % of room price)**

| Sales channel | Average costs |
|---|---|
| Booking | […] |
| Hotel direct online distribution channel (i.e., brand.com) | 0-5% |
| Brick and mortar travel agents | 10-11% |

*Source: Booking data and results of market investigation*[1448]

(1103) *Second,* evidence on the file indicates that the Transaction will allow Booking to shift demand for hotel rooms away from other channels to its own platform. Indeed, Booking will not be generating new demand for hotel OTA services through the Transaction.[1449] Rather, the Transaction will allow Booking to tap into those flight customers that would in any event need accommodation (which Booking estimates are around […]% of flight customers).[1450]

(1104) In the first place, Booking's internal correspondence indicates that [Details of Booking's flight strategy].

(1105) In a July 2022 internal communication, Booking's CEO notes that through the Connected Trip [Details of Booking's flight strategy].[1451]

(1106) In a communication between Booking's CEO and SVP for Accommodation regarding the [Details of Booking's flight strategy].[1452] [Details of Booking's flight strategy].[1453]

(1107) In an August 2022 internal communication, Booking notes that one concern raised by hotel chains regarding the Connected Trip is [Details of commercial negotiations].[1454] In response, Booking's CEO notes that the Connected Trip would provide '*opportunities for chains to compete to get incremental customers (especially ones who are loyal to competing chains)*',[1455] such that Booking would be

1447 Booking's effective commission calculated on the basis of Booking's data provided in RFI 23; and the weighted average effective commission of the market resulting from the Commission's market reconstruction exercise.

1448 Response to question 30 of questionnaire Q3 to hotels [DOC ID 2737].

1449 The Notifying Party has not made any claim in this regard.

1450 Booking's Theory of Harm deep dive presentation, slide 31 – Booking notes that out of the total flight OTA customers only 30% do not need accommodation.

1451 BOOK_00982816 [DOC ID 51853-95130].

1452 BOOK_02023137 [DOC ID 56972-11264].

1453 BOOK_02023137 [DOC ID 56972-11264].

1454 BOOK_00916327 [DOC ID 51853-28643].

1455 BOOK_00916327 [DOC ID 51853-28643].

able, through the Connected Trip, to shift demand between hotels included in the Booking platform.

(1108) *Third*, the majority of hotels having expressed a view during the market investigation indicated that the Transaction would allow Booking to capture sales from the hotel's direct channel.[1456] In particular, a majority of hotels having expressed a view indicated that Booking would be able to capture at least 5% of sales of their direct channel. Approximately one third of hotels having expressed a view considered that Booking would be able to capture at least 10% of sales of their direct channel post-Transaction.

(1109) In addition, qualitative evidence gathered by the Commission during the market investigation indicates that a number of hotels are concerned that the Transaction will allow Booking to shift demand from their direct channel:

(a) '*By creating a company that bundles the flight and accommodation of travelors (sic), [Booking] will take its market power from accommodation into the flight market and will further decrease our share of direct bookings (these are relevant for most family owned hotels, when I look to my peeers-not (sic) so much for large accommodation Groups and chains-some I offer them), which are guests who still travel individually by looking for the cheapest fligtht (sic) and accommodation separetely (sic) (...) This merger would be resulting in another advantage (taking the direct bookings of smaller Hotels which they rely on, since at least 10-15% more revenue) large scale Hotel-companies would gain towards their small competitors by their size. And the accomodation (sic) business is finacially (sic) very intensive meaning this gap will wipe out most of small business in mid/longterm, since it is another puzzle piece which will favor large scale companys (sic) even more. Ultimatively (sic) this trend will reduce the quality of service (less players on the market/ less competitors) for our guests and will damage this market. As a result, we small hotels will be suffering under this merger*' [1457]

(b) '*Booking becoming bigger could have an impact on hotels' ability to yield inventory from Booking. By preventing hotels from prioritizing cheaper channels, overall costs for hotels may increase. Costs to consumers may also increase*'.[1458]

(c) Other hotels have indicated that '*with Booking offering flight bookability there will definitely be an impact on our direct distribution channel*'[1459] and that *'[i]t is possible that, over time, the Transaction might allow Booking to attract a larger number of users, which could potentially allow Booking to capture a higher share of accommodation bookings, including from direct hotel booking channels*'[1460]

(1110) *Fourth,* in their SEC filings, a number of hotel chains have raised similar concerns regarding the impact on their direct distribution channel and profitability arising from OTAs becoming stronger:

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1456 Response to question B.8 of Questionnaire to Hotels (Phase II).

1457 Non-confidential version of [hotel]'s response to question B.10 of Questionnaire to Hotels (Phase II) [DOC ID 54489].

1458 Non-confidential version of [hotel]'s response to question B.10 of Questionnaire to Hotels (Phase II) [DOC ID 56678].

1459 Response to question 40.1 of questionnaire Q3 to hotels [DOC ID 2737].

1460 Response to question 40.1 of questionnaire Q3 to hotels [DOC ID 2737].

(a) [Hotel]: '*A proportion of the Group's bookings originate from large multinational, regional and local online travel agents and intermediaries with which the Group has contractual arrangements and to which it pays commissions […] Further, if these companies continue to gain market share, they may impact the Group's profitability, undermine the Group's own booking channels and value to its hotel owners, and may be able to increase commission rates and negotiate other favourable contract terms*'.[1461]

(b) [Hotel]*:'[o]ur business and profitability could be harmed to the extent that online intermediaries succeed in significantly shifting loyalties from our lodging brands to their travel services, diverting bookings away from our direct online channels, or through their fees, increasing the overall cost of Internet bookings for our hotels*'.[1462]

(c) [Hotel]: '[*a] significant, and increasing, percentage of hotel rooms are booked through internet travel intermediaries. If these intermediaries are successful in continuing to increase their share of bookings, or are otherwise successful in executing strategies to strengthen their commercial and contractual ties to our hotels and hotel guests, these intermediaries may be able to obtain higher commissions, reduced room rates or other significant contractual and operational concessions from our hoteliers or us. // (…) In addition, some competitors to our branded hotels may have substantially greater marketing and financial resources than our hotels, which may result in these competitors obtaining more favourable pricing terms from internet reservation channels. As a result, our hotels' ability to compete for guests effectively and their operating results and financial condition could be adversely affected*.'[1463]

(d) [Hotel]: '*consumers worldwide routinely use internet travel intermediaries to book travel. Some of these intermediaries are attempting to increase the importance of generic quality indicators (such as 'four-star downtown hotel') at the expense of brand identification. These intermediaries hope that consumers will eventually develop brand loyalties to their reservation system rather than to our brands. Some of these intermediaries have launched their own loyalty programs to further develop loyalties to their reservation system. In addition, these intermediaries typically obtain higher commissions or other potentially significant contract concessions, increasing the overall cost of these third-party distribution channels. If the volume of sales made through internet travel intermediaries continues to increase, consumers may develop stronger loyalties to these intermediaries rather than to our brands, our distribution costs could increase significantly, and our business revenues and profits could be harmed. // the renewal of distribution agreements on less favourable terms could adversely impact our business*'.[1464]

(e) [Hotel]: *'[a] significant percentage of hotel rooms for individual guests are booked through internet travel intermediaries, to whom we commit to pay various commissions and transaction fees for sales of our rooms through their systems. (…) If these bookings increase, certain hospitality intermediaries may be able to obtain higher commissions, reduced room rates or other significant concessions from us or our franchisees. These hospitality intermediaries also may reduce bookings at our*

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1461 https://www.sec.gov/ix?doc=/Archives/edgar/data/0000858446/000119312522063939/d217009d20f.htm
1462 https://www.sec.gov/ix?doc=/Archives/edgar/data/1048286/000162828022002666/mar-20211231.htm
1463 https://www.sec.gov/Archives/edgar/data/0001733381/000156459019006310/ck0001733381-s1a.htm
1464 https://d18rn0p25nwr6d.cloudfront.net/CIK-0001468174/6b0aaf49-6404-48a5-86fe-565455f79d90.pdf

*hotel properties by de-ranking our hotels in search results on their platforms, and other online providers may divert business away from our hotels. Although our contracts with many hospitality intermediaries limit transaction fees for hotels, there can be no assurance that we will be able to renegotiate these contracts upon their expiration with terms as favourable as the provisions that existed before the expiration, replacement or renegotiation. Moreover, hospitality intermediaries generally employ aggressive marketing strategies, including expending significant resources for online and television advertising campaigns to drive consumers to their websites. As a result, consumers may develop brand loyalties to the intermediaries' offered brands, websites and reservations systems rather than to the Hilton brands and systems. If this happens, our business and profitability may be significantly affected as shifting customer loyalties divert bookings away from our websites, which increases costs to hotels in our system*'.[1465]

(1111) It follows from the above that as the Transaction will allow Booking to grow its sales in accommodation OTA services in the EEA and to shift demand to its own channel, costs for hotels will likely increase, without Booking adding value by bringing in new customers. This is because Booking is typically the most expensive sales channel for hotels, as Booking has a higher average commission than its main rivals and is also generally more expensive than other distribution channels.

(1112) In its response to the SO and Second Letter of Facts, the Notifying Party reiterates its concerns regarding the comparability of the commission data of Booking and its main competitors used for the calculation of harm to hotels, as well as its criticism to the Commission's methodology to calculate the increment resulting from the Transaction. The Commission refers to sections 6.4.6.1 and 6.4.6.3 above, for its response to the Notifying Party's arguments which, in the Commission's view, do not invalidate the Commission's findings.

(1113) Further, the Notifying Party claims that any potential increase in hotels' use of Booking.com post-Transaction would not represent a form of potential harm, as the Transaction does not, in the Notifying Party's view, lead to foreclosure of rival OTAs. In this sense, the Notifying Party indicates that any choice by hotels to increase their use of Booking.com in preference to rival OTAs would represent competition on the merits, rather than harm to competition or to hotels. The Commission disagrees with the Notifying Party's claims. As indicated in sections 6.7.2.3 and 6.7.2.5 above, the Commission has reached the conclusion that, post-Transaction, hotel OTAs already active and potential entrants will see their chances to expand/enter on the hotel OTA market further reduced and that, as a result, Booking's bargaining position vis-à-vis hotels will increase (thereby reducing its incentives to lower commissions).In any event, as Booking is the most expensive channel for hotels and as the Transaction will allow Booking to shift demand to its own channel, costs for hotel will likely increase, without Booking adding value by bringing in new customers.

6.7.2.6. The strengthening of Booking's market position may lead to harm to end customers

(1114) The Transaction is also likely to result in higher costs for end customers because the Transaction may increase Booking's ability to cross sell its higher prices products to

[1465] https://otp.tools.investis.com/clients/us/hilton_worldwide2/SEC/sec-show.aspx?Type=html&FilingId=13903789&CIK=0001585689&Index=10000

end customers. Evidence on file indicates that Booking's prices are higher than alternative options online.

6.7.2.6.1. Booking enjoys a high degree of customer loyalty and inertia

(1115) As explained in section 6.2.3 above, the OTA sector is generally characterised by a considerable degree of customer inertia. As will be explained below, Booking enjoys a considerably higher degree of customer loyalty and inertia compared to alternative travel websites.

(1116) In the first place, as explained in section 6.4.7.4 above Booking already has a successful platform that enjoys higher degree of customer loyalty.

(1117) In the second place, SimilarWeb data provided by Booking suggests that [Details of customer purchasing patterns].[1466] For example, [Details of customer purchasing patterns]. Cross visits between Booking and other travel websites show a similar pattern in every country: while only a small share of Booking's users tend to visit other accommodation OTAs, a relatively large share of the users of those other accommodation OTAs tend to visit Booking.com.

(1118) Figure 108 below presents this analysis in an aggregated form, based on of information provided by the Notifying Party for five Member States (Germany, France, Italy, Spain and the Netherlands). It shows the significant gap between the limited share of visitors to Booking.com that also visit alternative travel websites compared to the considerably higher share of visitors of those alternative travel websites that also visit Booking.com.

**Figure 126: Cross visits between Booking and other travel websites**

[Figure redacted]

*Source: Commission calculation based on Booking's response to StC Decision Annex 3*

(1119) The same conclusion is reached by analysing the data from another provider, SemRush. Based on SemRush data, Figure 109 compares for each EU Member State, Norway and Iceland the aggregated share of visitors to Booking.com that also visited alternative travel website with the aggregated share of visitors of these alternative websites that also visit Booking.com. [Details of customer behaviour].

**Figure 127: website cross visit**

[Figure redacted]

*Source: Commission calculation based on SemRush data, Booking Response to RFI 6, Follow Up 1, Q3, Annex 2*

(1120) [Discussion of confidential consumer surveys]. That is, [Discussion of confidential consumer surveys].[1467]

(1121) In addition, customers have misperceptions about Booking's prices. While customers value low prices, many of them have the perception that Booking offers the best

[1466] Similarweb cross-visit data provided by Booking in Annex 3 of the StC decisions. Similarweb is a major provider of website visit statistics. The data used relates to website audience interests, in particular website cross-visitation. They capture the average percentage of visitors of a website who browsed this and the analysed website on the same day.

[1467] [Discussion of confidential consumer surveys].

prices. [Discussion of confidential consumer surveys].[1468] [Details of Booking's pricing].[1469]

(1122) [Discussion of confidential consumer surveys].[1470]

6.7.2.6.2. Bookings' customer loyalty is likely to increase post-Transaction

(1123) The Commission considers that Bookings' customer loyalty is likely to increase post-Transaction.

(1124) In the first place, as explained in sections 6.5.2.2 and **6.5.2.3** above, Booking expects that customer loyalty will increase through the Connected Trip and its increased ability to cross sell flights to accommodation.

(1125) In the second place, Booking's internal documents indicate that […]. This is reflected by the flight to accommodation attach rate submitted by Booking, which in Q1 2022 was around […] for new customers, […] for returned customers and […] for existing customers.[1471] This would be consistent with Booking's platform becoming 'stickier' over time, making users less likely to search on other accommodation OTA platforms. Indeed, Booking's forecasts regarding the Connected Trip's impact on incremental accommodation bookings reflects that the [Details of Booking's financial affairs][1472] increases significantly over time from […] incremental booked nights in 2023 to […] in 2024 and […] in 2026.[1473]

6.7.2.6.2.1. Booking is likely not the best performing OTA

(1126) As can be seen in the slide below, in an internal document entitled *'First time bookers - What brings them to Booking.com and what might cause them to come back?'* Booking compared customer experience with Booking, to other reservation options with respect to several elements of the service and concluded that *'on most service elements, we're not doing better than other reservation solutions.'* In fact, a sizeable part of end consumers find Booking worse than other OTAs for most parameters. On prices, with respect to which the slide below reports [Details of a confidential customer survey], it was explained in sections 6.4.6.3 and 6.8.2.5.1 above that this is an incorrect perception as Booking is typically not cheaper than other alternatives.

**Figure 128: customer experience**

[Figure redacted]

*Source: [Details of a confidential customer survey]*

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1468 [Discussion of confidential consumer surveys].

1469 [Discussion of confidential consumer surveys].

1470 Response to RFI 24, paragraph 6.2.

1471 Form CO, Attachment Y, Response to pre-notification RFI (QP10), Data Pack, paragraph 4.7 [DOC ID1535-635].

1472 In marketing, 'Halo impact' is the customer bias towards certain products because of favourable experience with other products made by the same company. [Details of Booking's financial affairs] See Figure 86 above, Booking's Consolidated Budget 2022-2024, slide 62 [DOC ID 846].

1473 See Figure 86 above, Booking's Consolidated Budget 2022-2024, slide 62 [DOC ID 846]; and Booking's internal document provided to the CMA, H535, slide 48 [DOC ID 1491].

(1127) Based on these findings, the internal document also concludes that *[Details of a confidential customer survey]*[1474] and [Details of a confidential customer survey].[1475]

(1128) Another internal document of Booking notes that *'[Details of a confidential customer survey]'.*[1476] However, Booking also found that '*[Details of a confidential customer survey]'.*[1477] [Details of a confidential customer survey].[1478]

(1129) In another internal document of Booking, it is stated that *[Details of a confidential customer survey]'.*[1479] [Details of a confidential customer survey]. '[1480]

(1130) The slide below shows that satisfaction with Booking is not significantly different than with other OTAs.

**Figure 129: [Details of a confidential customer survey]**

[Figure redacted]

*Source: response to the StC decisions, Attachment 1.2 – 84 Survey reports, BRES43_Post-trip CXM Q3 2021 [DOC ID 51591], slide 27.*

(1131) In its response to the First Letter of Facts, the Notifying Party argued that the slide above *'confirms that Booking.com is active in an extremely competitive market and that any incremental gain in market share is through competition on the merits as reflected in consumer preferences.'*[1481] The Commission notes that the finding that the hotel OTA market is in fact not competitive but dominated by Booking was explained in detail in section 6.4 above. The evidence above shows that Booking is capable of maintaining its dominant position while not offering better services to end-customers, suggesting that Booking's position is the result of customer inertia rather than competition on the merit.

(1132) An internal Booking document points out the challenges with its first time customers: *[Details of a confidential customer survey].*[1482] The figure below presents similar result, specifically with respect to EEA customers.[1483] The figure shows that [Details of a confidential customer survey]. *'[1484]*

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1474 Booking's response to the StC decisions, Attachment 1.2, BRES36_First-time Bookers - Summary of findings and resources [DOC ID 51669], slide 24.

1475 Booking's response to the StC decisions, Attachment 1.2, BRES36_First-time Bookers - Summary of findings and resources [DOC ID 51669], slide 24.

1476 Booking's response to the StC decisions, Attachment 1.2, BRES36_First-time Bookers - Summary of findings and resources [DOC ID 51669], slide 24.

1477 Booking's response to the StC decisions, Attachment 1.2, BRES48_Recap_State of the brand 2021_Insights_December 2021 [DOC ID 51681], slide 7.

1478 Booking's response to the StC decisions, Attachment 1.2, BRES36_First-time Bookers - Summary of findings and resources [DOC ID 51669], slide 24.

1479 Booking's response to the StC decisions, Attachment 1.2, BRES45_Report_Connected _Trip_Tracker_wave_1 [DOC ID 51678], slide 8.

1480 Booking's response to the StC decisions, Attachment 1.2, BRES45_Report_Connected _Trip_Tracker_wave_1 [DOC ID 516768], slide 8.

1481 Response to the First Letter of Facts, paragraph 49.

1482 Booking's response to the StC decisions, Attachment 1.2, BRES36_First-time Bookers - Summary of findings and resources [DOC ID 51669], slide 3. In response to the Commission's question Booking explained that this statement refers to customers worldwide in 2018 on a rolling 365-day basis. See explanation in Response to RFI 21, paragraph 2.2.

1483 The methodology underling Figure 111 is different than in BRES36. See explanation in Response to RFI 21, question 2.

1484 Booking's response to the StC decisions, Attachment 1.2, BRES36_First-time Bookers - Summary of findings and resources [DOC ID 51669], slide 24.

**Figure 130: retention of new customers**

[Figure redacted]

*Source: Notifying Party, presentation for the accommodation deep dive session of 2 March 2023 (sent on 27 February 2023) [DOC ID 1535-560], slide 11.*

(1133) Although Booking enjoys very high market shares and strong customer loyalty, evidence in Booking's own customer surveys shows that [Details of a confidential customer survey]. Customers' loyalty to Booking seems therefore likely to be more a matter of customers' inertia rather than higher value to customers.

6.7.2.6.3. Post-Transaction it is likely that more customers will pay higher prices

(1134) The Commission considers that it is likely that Post-Transaction more customers will pay higher prices.

(1135) In the first place, as explained in sections 6.4.6.3 and 6.8.2.5.2.1 above, Booking is not always the cheapest channel for consumers. RPD data show that on average, Booking is […] or […] more expensive per transaction than the cheapest alternative.[1485] [Details of a confidential customer survey]. [1486] Even when considering Booking's discounted prices to its loyal customers, prices remains on average […] more expensive than the cheapest alternative, or [… per transaction.[1487] This is in fact an under-evaluation of the price difference because it compares Booking's prices to its loyal customers with competitors' public prices. In all likelihood, competitors' prices to their loyal customers are lower than these public prices and the price difference with Booking will thus be more significant.

**Figure 131: Booking.com's Relative Price Difference, EEA, May 2020 – March 2023**

[Figure redacted]

*Source: Commission on the basis of Response to RFI 20, Annex 2*

(1136) As explained in section 5.2.1.3.4.1 above, only about […] of Booking's customers search also on other hotel OTA platforms and other distribution channels. It could be conservatively assumed that these customers are aware of other offers and make an informed choice to purchase on Booking (either because it makes the cheapest offer for their search or the best offer in their eyes even if not the cheapest). By contrast, […] of Booking's customers do not search elsewhere. They do that either because of inertia or because of the wrong impression that Booking is the cheapest channel. These customers are likely not making an informed choice to purchase on Booking and pay on average between [Details of Booking's pricing] more per transaction compared to the cheapest alternative.

(1137) Consequently, it can be assumed that at least […] of Booking's projected incremental sales post-Transaction would be made at a price of between […] or between […] more per transaction compared to the cheapest alternative.

(1138) In the second place, as explained in section 6.7.2.6.1 above, Booking already enjoys high levels of customer loyalty and inertia. A significant share of Bookings' customers, […], single-home making a purchase on Booking without visiting other

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1485 Commission calculation based on Booking's Response to RFI 20, Annex 2, Question 5 (RPD data). [Details of Booking's pricing].

1486 Response to RFI 20, paragraph 5.1 explaining the RPD data for '*loyal customers*'.

1487 Commission calculation based on Booking's Response to RFI 20, Annex 2, Question 5 (RPD data). [Details of Booking's pricing].

travel websites. Customers who single-home are dependent on the information provided to them by Booking and are less likely to be aware of cheaper offers for the same hotels.

(1139) It is therefore likely that post-Transaction a significant share of flight customers would attach accommodation purchase without multi-homing and will be dependent exclusively on the offers made to them by Booking. In addition, as customer loyalty and inertia are expected to increase post-Transaction, the share of Booking customers who single-home and are not aware of offers that are cheaper than on Booking.com can be expected to increase.

(1140) In the third place, as explained in detail in section 6.7.2.5.1 above, the Transaction will increase the sale of hotel nights through Booking diverting sales from cheaper sales channels. Consequently, hotels will pay Booking its higher commission compared to other sales channels on a larger number of transactions. Consequently, as the Transaction will have a negative impact on hotels' distribution costs, hotels may also increase prices to end customers.

### 6.8. Conclusion

(1141) In light of the above, the Commission finds that the Transaction is likely to strengthen Booking's dominant position in the hotel OTA market in the EEA and. Therefore, is not compatible with the internal market pursuant to Article 2(3) of the Merger Regulation.

## 7. EFFICIENCIES

### 7.1. Framework of analysis

(1142) Pursuant to the Horizontal Merger Guidelines, it is possible that efficiencies brought about by a merger counteract the effects on competition and in particular the potential harm to consumers that it might otherwise have.[1488] This will be the case when the Commission is in a position to conclude on the basis of sufficient evidence that the efficiencies generated by the merger are likely to enhance the ability and incentive of the merged entity to act pro-competitively for the benefit of consumers, thereby counteracting the adverse effects on competition which the merger might otherwise have.[1489]

(1143) The efficiencies have to benefit consumers, be merger-specific and be verifiable. These conditions are cumulative.[1490] Efficiencies should be substantial, timely, and should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur.[1491]

(1144) The Non-Horizontal Merger Guidelines explain that vertical and conglomerate mergers provide substantial scope for efficiencies. In vertical relationships for instance, as a result of the complementarity, a decrease in mark-ups down-stream will lead to higher demand also upstream. This is often referred to as the

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1488 Horizontal Merger Guidelines, paragraph 76.

1489 Horizontal Merger Guidelines, paragraph 77. See also Section 9 of the FORM CO in Annex I of Regulation 802/2004.

1490 Horizontal Merger Guidelines, paragraph 78.

1491 Horizontal Merger Guidelines, paragraph 79.

'internalisation of double mark-ups'.[1492] In conglomerate mergers, a merged firm may, depending on the market conditions, internalise the positive effect of a drop in the price of one product on the sales of the complementary product and may have a certain incentive to lower margins if this leads to higher overall profits (this incentive is often referred to as the 'Cournot effect').[1493]

(1145) The Notifying Party advanced two alternative efficiency arguments under two different counterfactuals. These are discussed below in section 7.2 and 7.3 respectively.

### 7.2. Phase 2 Agreement counterfactual and EDM efficiency

#### *7.2.1. The Notifying Party's argument*

(1146) The Notifying Party argues that *[Details of Booking's commercial strategy].* '[1494]

(1147) The Notifying Party explains that it pays a supplier fee to ETG for each flight transaction.[1495] The supplier fee is currently […] and is expected to rise […] by 2026.[1496] The Transaction will represent an efficiency in the form of the elimination of the supplier fees Booking would have had to pay ETG absent the Transaction and under the Phase 2 Agreement . The Notifying Party refers to this efficiency as elimination of double marginalisation ('EDM') efficiency.

(1148) It is recalled that in the TVM, Booking estimated how many flight tickets it could sell under the Phase 2 Agreement and how many incremental flight transactions it would be able to achieve post-Transaction. For 2026, for example, Booking expected to be able to achieve […] under the Phase 2 Agreement (on which it would have had to pay supplier fees as under the Phase 2 Agreement Booking and ETG act independently of each other, and hence, EDM efficiencies would not materialize) and additional […] transactions should the Transaction materialise (on which it would not have to pay supplier fees anymore). The EDM efficiency is the supplier fees that Booking would have had to pay on […] flight transaction absent the Transaction and under the Phase 2 Agreement ([Details of Booking's pricing]).[1497]

(1149) The Notifying Party concedes that not all the EDM efficiency would be passed on to consumers. Based on the *'specific flight OTA elasticity implied by ETG's current margins'*[1498] Booking's revenue would be maximised at a level of […] pass on. This

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1492 Non-Horizontal Merger Guidelines, paragraph 13.

1493 Non-Horizontal Merger Guidelines, paragraph 117.

1494 Response to the Article 6(1)(c) decision, Annex 7, efficiencies annex, page 1.

1495 A transaction represents approximately two flight tickets; response to question 5 of RFI 24.

1496 Notifying Party submission of 16 March 2023 on Merger-specific efficiencies, page 8.

1497 The Notifying Party explains that *'the incremental* […] *transactions would not represent a consumer benefit. This is because these transactions would comprise consumers that switch to Booking.com due to its price no longer being artificially inflated by double marginalisation but would otherwise have purchased from rivals that are not subject to double marginalisation.'* Notifying Party submission of 16 March 2023 on Merger-specific efficiencies, page 7.

1498 This is an approximation to estimate the change in sales brought about by a price increase of one euro. It is calculated based on the margins of the firm concerned. According to the calculations of the Notifying Party, the elasticity of ETG in -[…], meaning that for a price increase of [0-5] in price, ETG will lose 34.5% of its customers. Notifying Party submission of 16 March 2023 on Merger-specific efficiencies, page 17.

means that in 2026 the pass-on would be about […] and the discount per flight transaction […] compared to the price under the Phase 2 Agreement .[1499]

(1150) The Notifying Party then assumes, without substantiating its assumption, that competing flight OTAs will respond to Booking's price reductions with a *[Details of Booking's pricing]*.[1500]

*7.2.2. The Commission's assessment*

(1151) The Commission concludes that the Notifying Party did not substantiate its arguments with respect to the EDM efficiencies.

(1152) *First*, the concerns raised by the Commission relate to hotel OTAs. The efficiencies identified by the Notifying Party relate to customers in another market, that of flight OTA. As explained above, efficiencies should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur.[1501] In this case, harm to hotels and end consumers arises in the hotel OTA market. It is that market where efficiencies are considered.

(1153) In the response to the SO, the Notifying Party argued that the principle cited above derives from the Horizontal Merger Guidelines which are of limited relevance for non-horizontal conglomerate mergers and that the Non-Horizontal Guidelines do not comment on a necessity for efficiencies to arise in the same relevant market as the market of concerns.[1502] This argument cannot be accepted. The Non-Horizontal Merger Guidelines, in their overview section[1503] and in the section on efficiencies in conglomerate merger,[1504] explicitly refer to Section VII on efficiencies in the Horizontal Merger Guidelines making it clear that the principles set in the Horizontal Merger Guidelines with respect to efficiencies apply to conglomerate mergers.

(1154) *Second*, as explained in Section 6.5.3 above, the Commission's view is that the Notifying Party is wrong in arguing that the Phase 2 Agreement is the relevant counterfactual for the assessment of the Transaction. *Second*, as explained in section 6.5.3 above, the Commission's view is that the Notifying Party is wrong in arguing that the Phase 2 Agreement is the relevant counterfactual for the assessment of the Transaction. The efficiencies cannot be calculated on the basis of the number of flight transactions Booking would have achieved under the Phase 2 Agreement.

(1155) *Third*, there is no evidence in the internal documents of Booking to show that it has actually considered a pass-on to customers of the saved fees paid to ETG. In fact, TVM shows that the per-flight supply fee increases after the Transaction and flights ticket prices remain unchanged.

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1499 Notifying Party submission of 16 March 2023 on Merger-specific efficiencies, page 9.

1500 Notifying Party submission of 16 March 2023 on Merger-specific efficiencies, page 10. Notifying Party submission of 16 March 2023 on Merger-specific efficiencies. The Notifying Party provides a range for the monetary benefits consumers in the flight OTA market may expect due to rivals lowering their prices to react to Booking's allegedly reduced flight prices. [Details of Booking's business strategy].

1501 There is a limited communality between end consumers of the hotel OTAs and end consumers of flight OTAs. Booking estimates that […] of accommodation OTA customers also purchase tickets with flights OTA. Notifying party, accommodation impact supplementary note of 22 December 2022, figure 1.

1502 Response to the SO, Annex 8, Efficiencies, pages 4-5.

1503 Non-Horizontal Merger Guidelines, paragraph 21 and corresponding footnote 1 (page 9).

1504 Non-Horizontal Merger Guidelines, paragraph 115 and corresponding footnote 3 (page 25).

**Figure 132: Flight tickets prices in the TVM**

[Figure redacted]

*Source: Commission calculations based on Booking's internal TVM v27 [DOC ID 1015].*

(1156) The Notifying Party acknowledges that *'there is no explicit modelling of changes in pricing within the TVM'* but adds that *[Details of Booking's pricing]*.[1505] The references and quotes from Booking's internal documents refer in very general terms to the [Details of Booking's pricing strategy]. They do not however show that these emanate from the efficiencies as presented by Notifying Party.[1506]

(1157) In the response to the SO, the Notifying Party argued that the TVM *'was not intended to represent a complete equilibrium model of post-merger price optimisation'*[1507] and that *'similarly, the corporate development team opted not to attempt to model post-Transaction flight OTA price changes.'*[1508] The Commission considers that the absence of internal documents showing that Booking considered to implement the EDM efficiency discounts, casts doubt on the evidentiary value of the EDM efficiency model prepared by Booking's consultants for the purpose of this procedure. The Commission also notes that this is only one of the considerations elaborated in this section leading the Commission to the conclusion that Booking did not substantiate its arguments with respect to the EDM efficiencies.

(1158) *Fourth*, it should be recalled that the alleged benefit of […] for each flight transaction or […] in aggregate annually by 2026 is lower than the harm to hotels of about EUR […] per transaction.[1509] When considering the harm to hotels in aggregate, it is between EUR […] in case of the lower increment estimation[1510] and […] million in case of the higher increment estimation,[1511] annually by 2026.[1512]

(1159) In the response to the SO the Notifying Party argued, in essence, that the Transaction will not give rise to hotel harm, reiterating its argument that the Commission erred in finding that Booking charges hotels higher commissions.[1513] This argument was dismissed in section 6.4.6.1 above.

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1505 Response to the Article 6(1)(c) decision, Annex 7, efficiencies annex, page 5. See also response to question 9 of RFI 4.

1506 The only reference presented by the Notifying Party to its internal documents that may arguably allude to pass-through of supplier fees to customers is found in a footnote in slide 11 of Attachment D004 - Bahamas Integration Discussion October 15, 2021 [ID 147-5] where it is stated in high level terms: *[Details of Booking's pricing strategy].'*

1507 Response to the SO, Annex 8, Efficiencies, pages 10-11.

1508 Response to the SO, Annex 8, Efficiencies, pages 10-11.

1509 See section 6.7.2.5.1 above.

1510 [Details of Booking's commission].

1511 [Details of Booking's commission].

1512 Note that this estimate of harm to hotels is conservative as it ignores any harm arising from the transaction further weakening Booking's incentives to reduce commissions. Booking's commission vis-a-vis hotels is already higher than that of most competing hotel OTAs (section 6.4.6.1 above). With the transaction further increasing Booking's hotel OTA market share, Booking's incentives to reduce the commission will be weakened. Harm from Booking having reduced incentives to lower commissions remained even if hotels were able to pass on some of Booking's commissions to consumers in the form of higher room rates. As explained by a hotel chain during a pre-notification interview, *'[b]y preventing hotels from prioritising cheaper channels, overall costs for hotels may increase. Costs to consumers may also increase*' (non-confidential version of the minutes of the call with [hotel] [DOC ID 2550], paragraph 16).

1513 Response to the SO, Annex 8, Efficiencies, pages 2-3.

(1160) The Notifying Party further argued that hotels can choose whether or not to sell their room nights through Booking and will pay higher commissions to Booking only if Booking provides them with a better product, that is, more hotel demand.[1514] The argument of the Notifying Party cannot be accepted. As explained above, the Transaction would allow Booking to grow its sales of hotel nights at the expense of other hotel OTAs. Room nights that hotels were once able to sell through competing hotel OTAs will post-Transaction be sold by Booking for higher commissions to the hotels. Hotels will therefore pay higher commissions for the same service.

(1161) The Notifying Party also argued that in any case the Commission's calculations of the harm to hotel are misguided.

(1162) *First*, the upper bound of the harm calculations would be misguided because it attaches the entirety of potential [Details of Booking's financial affairs] to the Transaction.[1515] This argument amounts in essence to challenging again the Commission's calculation of the increment that the Transaction will bring about. The increment calculation and the response to the arguments of the Notifying Party with respect to them were already discussed in section 6.7.2.4.2 above. In any case, even when taking into consideration the lower bound of the harm calculations, the harm to hotels is higher than the EMD efficiency argued by the Notifying Party.

(1163) *Second*, the Notifying Party argued that the harm calculations are not based on the counterfactual on which the EDM is based; on that basis the harm to hotels would be only EUR 9.2 million.[1516] This argument cannot be accepted. For the reasons explained in section 6.5.3 above, the Commission rejected the counterfactual advanced by the Notifying Party. Consequently, the Commission cannot base its assessment of the harm caused by the Transaction on the erroneous counterfactual suggested by the Notifying Party.

(1164) *Third*, the Notifying Party argues that while its efficiency calculations considered a […] pass-through to consumers, the Commission's harm calculations did not, although it should have calculated the pass-through to consumers. This argument cannot be accepted. In the context of competition law in general and specifically in review of non-horizontal mergers, the concept of 'consumers', with respect to which the Commission must examine the possible anti-competitive effects and efficiencies benefits of a merger, encompasses intermediate and ultimate consumers. [1517] The Commission is therefore correct in examining the harm to hotels, direct customers of hotel OTAs, and is not required to calculate the pass-on to end-customers.

(1165) *Fourth*, in an internal document exploring flight discounts, Booking notes that *[Details of Booking's discounts and consumer behaviour].'*[1518] Accordingly, a discount of […] per transaction is unlikely to be considered meaningful by customers and guide their purchase choices. It is recalled that in its TVM Booking estimates the average flight transaction price to be […], meaning that […] discount represents a

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1514 Response to the SO, Annex 8, Efficiencies, pages 2 and 4.

1515 Response to the SO, Annex 8, Efficiencies, page 6.

1516 Response to the SO, Annex 8, Efficiencies, page 6 and the response to RFI 34, Annex 1.

1517 Article 2(1)(b) of the Merger Regulation and the non-Horizontal Guidelines, paragraphs16.

1518 BOOK_00667810 Flights Deals Exploring how we could run special discount type campaigns in the near future, slide 2 [DOC ID 51850-18426]. See similar explanations from a flight OTA, non-confidential minutes of conference call with Tix, dated 23 August 2023 [DOC ID 120758], paragraphs 12-13.

price reduction of […]% .[1519] It is therefore questionable whether Booking would have the incentive to pass on the argued efficiency to customers, as a discount of such magnitude is unlikely to be material, and hence to appreciably affect customer behaviour and increase Booking's sales of flight tickets.[1520]

(1166) In the response to the SO the Notifying Party claimed that the finding of the Commission *'is inconsistent with economic logic'*, explaining the economic theory behind its efficiency calculations.[1521] The Commission notes that the Notifying Party did not deny or refute the statement made in its internal presentation cited in paragraph ((1164) above according to which *[Details of Booking's discounts and consumer behaviour]. '*[1522] This statement must reflect Booking's experience with the actual (rather than the theoretical) behaviour of customers.

(1167) Finally, with respect to competitors' reactions, it is noted that as explained above, efficiencies relate to the conduct of the merged entity and not to that of its competitors. The possible reactions and counter strategies of competitors are taken under consideration in the analysis of the impact of the Transaction on competition. Furthermore, considering the negligible level of the alleged discounts it is not obvious that competitors would react at all. In any case, the Notifying Party did not substantiate its argument about […]. The Commission is thus unable to verify that assumption.

(1168) In its response to the SO, the Notifying Party argued that the Commission's view that competitors' reactions are not relevant to the assessment of efficiencies *'is not consistent with economic theory'*[1523] and that *'there is no clear basis to distinguish the merged entity's behaviour from its direct and foreseeable pro-competitive impact via rational rival responses. '*[1524] The Commission notes that its approach stems from the analytical framework for the assessment of mergers and the clear language of Annex I of Regulation 802/2004 and paragraph 77 the Horizontal Guidelines.

### 7.3. No-flight counterfactual and Cournot effect

#### *7.3.1. The argument of the Notifying Party*

(1169) The Notifying Party argues in the alternative that, in a counterfactual that assumes that Booking would sell no flights (and therefore the Transaction will not lead for saving in supplier fees), Booking would still have an incentive to discount flight transactions in order to attract more customers that in turn will buy more accommodation with Booking. Considering ETG's elasticity of demand[1525] and the flights to accommodation attach rate (that is, how many accommodation transactions each flight transaction attracts) the Notifying Party submits that it would maximise its profits by discounting […] per flight transaction and EUR […] million annually

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1519 [Details of Booking's pricing and discounts].

1520 As explained above, Booking's growth in the flight and hotel OTA markets is likely to be driven to a significant extent by customer inertia (section 6.7.2.6.1 above).

1521 Response to the SO, Annex 8, Efficiencies, pages 8-9.

1522 BOOK_00667810 Flights Deals Exploring how we could run special discount type campaigns in the near future, slide 2 [DOC ID 51850-18426].

1523 Response to the SO, Annex 8, Efficiencies, pages 9-10.

1524 Response to the SO, Annex 8, Efficiencies, pages 9-10.

1525 See footnote 1498 above.

by 2026.[1526] In addition, Booking argues that competitors would react by offering a discount of […] on each flight transaction […]).[1527]

*7.3.2. The Commission's assessment*

(1170) The Commission finds that the Notifying Party did not substantiate its argument for efficiencies in a no-flight counterfactual. The arguments of the Notifying Party and the Commission's responses in section 7.2.2 above are also relevant in this section and will not be reproduced below.

(1171) *First*, as noted above, the concerns raised by the Commission relate to the hotel OTA market. The efficiencies identified by the Notifying Party relate to customers in another market, that of flight OTA. As explained above, efficiencies should, in principle, benefit consumers in those relevant markets where it is otherwise likely that competition concerns would occur.

(1172) *Second*, it should be recalled that the alleged benefit of […] for each flight transaction, and […] in aggregate is lower than the harm to hotels of about […] per transaction and […] in aggregate annually by 2026.[1528]

(1173) *Third*, according to Booking's own internal documents reviewed in paragraph ((1164) above, a discount of […] per flight ticket (or less than […]%) is not likely to be significant to customers and advise their purchasing choices increasing Booking's sales. It is therefore unlikely that Booking would have an incentive to offer such discount.

(1174) *Fourth*, with respect to competitors' reaction, it is noted that as explained above, efficiencies must relate to the conduct of the merged entity and not to that of its competitors. The possible reactions and counter strategies of competitors are taken under consideration in the analysis of the impact of the Transaction on competition. Furthermore, considering the negligible level of the alleged discounts, it is not obvious that competitors would react at all. In any case the Notifying Party did not substantiate its argument about […], which is unverifiable.

## 8. COMMITMENTS

### 8.1. Analytical framework

(1175) When a concentration raises competition concerns, the merging parties may seek to modify the concentration in order to resolve those competition concerns and thereby obtain clearance for the concentration.[1529]

(1176) Under the Merger Regulation, the Commission has the responsibility to show that a concentration would significantly impede effective competition in the internal market

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1526 Notifying Party submission of 16 March 2023 on Merger-specific efficiencies, page 11.

1527 Notifying Party submission of 16 March 2023 on Merger-specific efficiencies. The Notifying Party provides a range for the monetary benefits consumers in the flight OTA market may expect due to rivals lowering their prices to react to Booking's allegedly reduced flight prices. [Details of Booking's pricing] The Notifying Party takes […] as central case, without underpinning this with evidence.

1528 See paragraph ((1157) above and the footnotes there.

1529 The Merger Regulation in Articles 6(2) and 8(2) expressly provides that the Commission may decide to declare a concentration compatible with the common market following modification by the parties. Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27) (the "Remedies Notice"), paragraph 5.

or in a substantial part of it. In contrast, it is for the parties to the concentration to propose appropriate commitments to eliminate the competition concerns identified by the Commission.[1530] The Commission only has the power to accept commitments that are deemed capable of rendering the concentration compatible with the internal market so that they will prevent a significant impediment to effective competition in all relevant markets in which competition concerns were identified.[1531]

(1177) The commitments must eliminate the competition concerns entirely and must be comprehensive and effective in all respects.[1532] Furthermore, the commitments must be capable of being implemented effectively within a short period of time as the conditions of competition on the market will not be maintained until the commitments have been fulfilled.[1533] The commitments must also be proportionate to the competition concerns identified.[1534]

(1178) The Remedies Notice sets out that '*commitments which are structural in nature, such as the commitment to sell a business unit, are, as a rule, preferable from the point of view of the Merger Regulation's objective, inasmuch as such commitments prevent, durably, the competition concerns which would be raised by the merger as notified, and do not, moreover, require medium or long-term monitoring measures*'.[1535]

(1179) The Remedies Notice also states that '*the question of whether a remedy and, more specifically, which type of remedy is suitable to eliminate the competition concerns identified, has to be examined on a case-by-case basis. Nevertheless, a general distinction can be made between divestitures, other structural remedies, such as granting access to key infrastructure or inputs on non-discriminatory terms, and commitments relating to the future behaviour of the Merged Entity*'.[1536]

(1180) The Remedies Notice further sets out that '*divestitures are the best way to eliminate competition concerns resulting from horizontal overlaps and may also be the best means of resolving problems resulting from vertical or conglomerate concerns*'.[1537] Other structural commitments *'may be suitable to resolve all types of concerns if those remedies are equivalent to divestitures in their effects'* whilst commitments

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1530 Remedies Notice, paragraph 6.

1531 Remedies Notice, paragraph 7.

1532 Recital 30 of the Merger Regulation. Remedies Notice, paragraph 9. However, the entire elimination of competition concerns may not require the removal of the full increment in shares resulting from the Transaction. See Judgment of the General Court of 22 June 2022, Case T-584/19, *ThyssenKrupp v Commission*, paragraph 781.

1533 Remedies Notice, paragraph 9.

1534 Remedies Notice, paragraph 1, footnote. 3. Paragraph 30 of the Merger Regulation. The General Court set out the requirements of proportionality as follows: "*the principle of proportionality requires measures adopted by Community institutions not to exceed the limits of what is appropriate and necessary in order to attain the objectives pursued; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued*" (Case T-177/04 – easyJet v Commission (ECLI:EU:T:2020:182), paragraph 133). The General Court has further explained that: "*such a principle cannot be interpreted as meaning that the Commission must accept commitments insufficient to eliminate that SIEC*" (Case T-584/19 – Thyssenkrupp AG v European Commission, (ECLI:EU:T:2022:386), paragraph 911).

1535 Remedies Notice, paragraph 15.

1536 Remedies Notice, paragraphs 16-17.

1537 Remedies Notice, paragraph 17.

relating to the future behaviour of the combined entity *'may be acceptable only exceptionally in very specific circumstances*'.[1538]

(1181) Whilst being the preferred remedy, divestitures or the removal of links with competitors are not the only remedy possible to eliminate certain competition concerns. However, divestitures '*are the benchmark for other remedies in terms of effectiveness and efficiency. The Commission therefore may accept other types of commitments, but only in circumstances where the other remedy proposed is at least equivalent in its effects to a divestiture*' (emphasis added).[1539]

(1182) Concerning access remedies, '*commitments granting access to infrastructure and networks may be submitted in order to facilitate market entry by competitors. They may be acceptable to the Commission in circumstances where it is sufficiently clear that there will be actual entry of new competitors that would eliminate any significant impediment to effective competition. […] Often, a sufficient reduction of entry barriers is not achieved by individual measures, but by a package comprising a combination of divestiture remedies and access commitments or a commitments package aimed at overall facilitating entry of competitors by a whole range of different measures. If those commitments actually make the entry of sufficient new competitors timely and likely, they can be considered to have a similar effect on competition in the market as a divestiture. If it cannot be concluded that the lowering of the entry barriers by the proposed commitments will likely lead to the entry of new competitors in the market, the Commission will reject such a remedies package*.'[1540]

(1183) The Commission may accept non-divestiture remedies that are limited in their duration. The acceptability of a time limit and the duration will depend on the individual circumstances of the case.[1541]

(1184) The Commission also recalls that it has the legal duty to ensure, when assessing the remedies proposed by the Notifying Party, that such remedies are effective. The Remedies Notice states that '[i]*n order for the commitments to remove the competition concerns entirely and to be comprehensive and effective, there has to be an effective implementation and ability to monitor the commitments. Whereas divestitures once implemented do not require any further monitoring measures, other types of commitments require effective monitoring mechanisms in order to ensure that their effect is not reduced or even eliminated by the parties. Otherwise such commitments would have to be considered as mere declarations of intentions by the parties and would not amount to any binding obligations, as, due to the lack of effective monitoring mechanisms, any breach of them could not result in the revocation of the decision according to the provisions of the Merger Regulation … given the long duration of non-divestiture commitments and their frequent complexity, they often require a very high monitoring effort and specific monitoring tools in order to allow the Commission to conclude that they will effectively be implemented*.'[1542]

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1538 Remedies Notice, paragraph 17.
1539 Remedies Notice, paragraph 61.
1540 Remedies Notice, paragraph 63.
1541 Remedies Notice, paragraph 70.
1542 Remedies Notice, paragraphs 13 and 130.

(1185) Ideally, such monitoring is done by market participants benefitting from the remedy themselves, and the remedy should provide for dispute resolution mechanisms to allow market participants to enforce the remedies.[1543]

(1186) Paragraph 14 of the Remedies Notice further provides that where '*the parties submit remedy proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted*'.[1544] The Commission may reject such remedies in particular on the grounds that the implementation of the remedies cannot be effectively monitored and that the lack of effective monitoring diminishes, or even eliminates, the effect of the commitments proposed.[1545]

(1187) In terms of timing, pursuant to Article 19(2) of the Commission Regulation (EC) No 802/2004,[1546] the commitments in Phase II have to be submitted in a timely fashion, that is, no later than 65 working days after proceedings were initiated, to allow for an adequate assessment and for proper consultation of Member States.[1547] The Commission is under no obligation to accept any potential improvements to the commitments after the expiry of that deadline.[1548] If the Commission nevertheless voluntarily agrees to assess such commitments, they will only be accepted where it can clearly be determined – on the basis of the Commission's assessment of information already received in the course of the investigation, including the results of prior market testing, and without the need for any other market test – that such commitments, once implemented, fully and unambiguously resolve the competition concerns identified and where there is sufficient time for proper consultation with Member States. The Commission will normally reject modified commitments that do not fulfil those conditions.[1549]

### 8.2. Procedure

(1188) The Notifying Party firstly engaged in discussions about potential remedies on 11 July 2023 (that is 14 working days before the deadline for the submission of remedies), when it shared with the Commission a high-level briefing paper on a possible remedy concept. The Commission requested further information on the remedy concept by RFIs dated 14 and 20 July 2023. The Commission also provided the Notifying Party with some preliminary feedback on the remedy concept at a State of Play meeting on 25 July 2023.

(1189) The Notifying Party submitted a first draft of the Form RM and the commitments text on 26 July 2023 (that is four working days before the deadline for the submission of remedies). The Commission requested further information on the Form RM and the commitments text by RFI dated 28 July 2023.

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1543 Remedies Notice, paragraph 66.
1544 Remedies Notice, paragraph 14.
1545 Remedies Notice, paragraph 14.
1546 Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Implementing Regulation").
1547 Remedies Notice, paragraph 94.
1548 Remedies Notice, paragraph 94 and Implementing Regulation, Article 19(2).
1549 Remedies Notice, paragraph 94.

(1190) The Notifying Party then formally submitted commitments pursuant to Article 8(2) of the Merger Regulation (the 'Initial Commitments') on 31 July 2023.

(1191) The following day, the Commission launched a market outreach to seek the views of market players on the Initial Commitments (the 'Market Test'). As part of the Market Test, the Commission sent questionnaires to 176 OTAs, 35 MSSs, 14,208 hotels and 129 associations of hotels (the 'Market Test Questionnaires').[1550]

(1192) Notwithstanding the summer period, the Market Test's response rates were generally in line with those of previous market outreaches.[1551]

**Table 25 Market Test's response rates**

| | Questionnaires sent | Responses received | Responses received for previous questionnaire |
|---|---|---|---|
| **OTAs** | 176 | 40 (23%) | 35 (21%) |
| **MSSs** | 35 | 14 (40%) | 15 (42%) |
| **Hotels** | 14,208 | 775 (5%) | 926 (6%)[1552] |
| **Hotel Associations** | 129 | 21 (16%) | |

(1193) On 21 August 2023, during a State of Play meeting, the Commission gave the Notifying Party feedback on the Market Test and its own assessment of the Initial Commitments.

(1194) On 25 August 2023, the Notifying Party formally submitted a revised set of commitments (the 'Revised Commitments').

(1195) On 31 August 2023, the Commission gave the Notifying Party feedback on its own assessment of the Revised Commitments, and indicated that the Revised Commitments did not entirely eliminate the competition concerns identified.

## 8.3. The Initial Commitments

### *8.3.1. Description of the Initial Commitments*

(1196) According to the Notifying Party, the Initial Commitments aim at ensuring that EEA customers that book a flight with Booking.com are presented with – and can select from – a range of accommodation options from various other hotel OTAs.[1553]

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1550 OTAs and MSSs received additional questions compared to hotels and hotel associations. For this reason, the summary of market test results summarized in the following sections are sometimes limited to the feedback of OTAs and MSSs.

1551 The Commission was not able to verify whether any responses to the Market Test Questionnaire were submitted by entities belonging to the same corporate group, although the instructions attached to the questionnaires specified that only one response should be submitted for each corporate group. The Commission noted that one respondent submitted two identical responses to the MSS Market Test Questionnaire. Since the two responses are largely supportive of the Initial Commitments, the Commission conservatively took them both into account when calculating the overall results of the Market Test.

1552 Hotels and hotel associations received the same previous questionnaire.

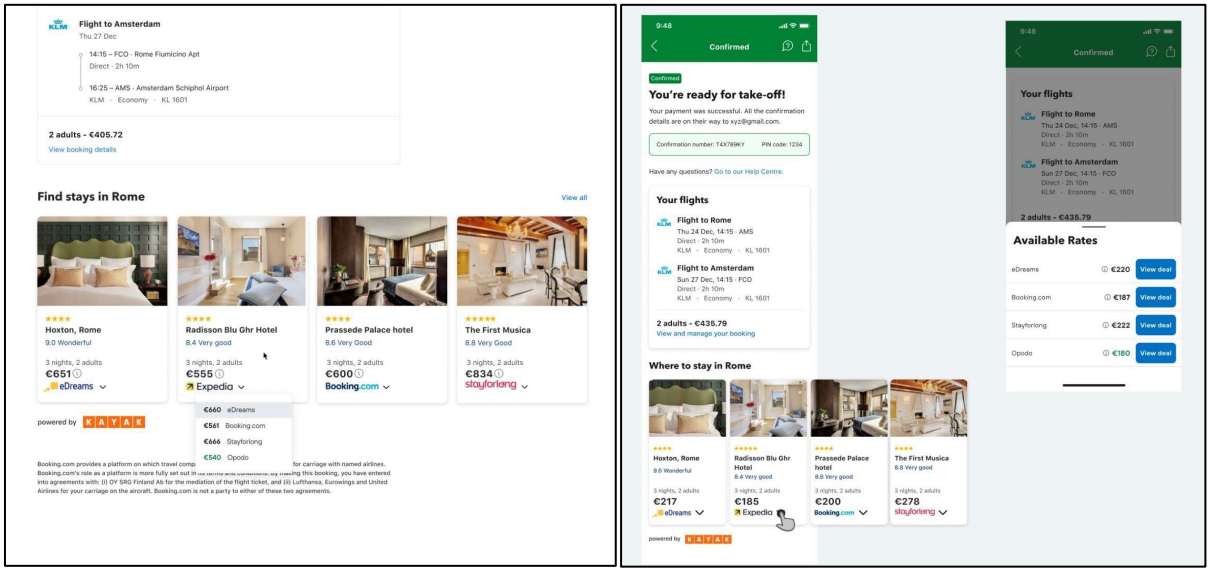
1553 Form RM submitted on 31 July 2023, paragraph 1.3.

(1197) In particular, pursuant to the Initial Commitments, after the purchase of a flight on Booking.com's platform, the order confirmation page would display a choice screen (the 'Carousel') containing accommodation offers from competing hotel OTAs. When a customer clicks on an OTA name or icon in the Carousel, they would be redirected to the hotel OTA's website.

(1198) The Carousel would be displayed on the desktop site, the mobile site and the mobile application of the Booking.com branded flight platform. The Carousel would not be displayed on other flight platforms controlled by Booking, particularly the ETG branded flight platforms acquired through the Transaction (such as mytrip.com or gotogate.com). Also, the Carousel would only be shown to flight customers located in the EEA, but not to flight customers located outside the EEA and travelling to the EEA.

(1199) The display of the Carousel on the flight confirmation page would show four accommodation options by four recommended hotel OTAs. A drop-down menu appearing under each of these four accommodation options would contain up to four additional offerings from different hotel OTAs for the same accommodation. The cheapest offer for each accommodation would be highlighted in green (*see* **Figure** below).[1554] Overall, the Carousel would thus display four accommodation options by up to five OTAs (one recommended OTA and up to four OTAs listed in the drop-down menu).

**Figure 133: Illustrative mock-ups of the Carousel on the desktop webpage, mobile webpage and mobile app**




*Source: Annex 2 to the Initial Commitments*

1554 The Commission notes that the main layout of the Carousel would be significantly restricted in certain circumstances. For instance, as shown in **Figure**: (i) the mobile website would immediately show only two accommodation options, with the other two becoming visible only after lateral scrolling, and (ii) no drop-down menu would be visible on the mobile app. Moreover, it is possible that drop-down menu would show less than four alternative OTAs, in case not enough offers are available for a given accommodation option (see Response to RFI 41, Question 10; in those cases, the Initial Commitments do not provide for any subsidiary criterion ensuring that the overall number of 20 offers on the Carousel is attained). These limitations may significantly affect the comprehensiveness and effectiveness of the Carousel.

(1200) The four accommodation options and the corresponding four recommended hotel OTAs would be selected and ranked by the algorithm of Booking's metasearch site KAYAK, provided that the four recommended hotel OTAs for each accommodation option are different and belong to different corporate groups (the 'Priority Principle')[1555]. The additional OTAs listed in the drop-down menus would also be selected and ranked by KAYAK's algorithm, with the same OTA (or OTAs belonging to the same corporate group) possibly being listed in more than one drop-down menu. KAYAK's algorithm could include a number of factors, such as the predicted probability of a click on a given offer (click through rate), KAYAK's estimated revenue per click, and the price offered to customers. Booking and KAYAK would enter into an arms' length commercial affiliate agreement to implement the Initial Commitments.

(1201) Hotel OTAs could be able to participate in the Carousel provided that they meet the following criteria: (i) the OTA complies with KAYAK's usual technical and quality standards for OTA partners and (ii) at least 60% of the OTA's total accommodation revenue is generated from the sale of hotel rooms. Booking itself would be eligible to participate in the Carousel.

(1202) Hotel OTAs, including Booking itself, would pay for referrals from the Carousel on the same terms as under their standard contracts for metasearch services with KAYAK. This would also allow OTAs to place extra bids to achieve greater visibility with respect to specific accommodation properties.

(1203) The Initial Commitments would be subject to an initial implementation period of up to three months and will remain in effect for five years after the closing of the Transaction.

(1204) In the event that a hotel OTA, showing a sufficient legitimate interest, reasonably claims that Booking and/or KAYAK are failing to comply with their obligations arising from the Initial Commitments, a fast-track dispute resolution procedure would apply.

*8.3.2. The Notifying Party's views*

(1205) The Notifying Party claims[1556] that the Initial Commitments would eliminate all the possible competition concerns identified by the Commission in the SO, by offering EEA consumers who book a flight on Booking.com a choice of KAYAK's top four recommended accommodations, along with a variety of different hotel OTA offers for each of the recommended accommodations that a consumer can select from to purchase an accommodation.

(1206) As a result of the Initial Commitments, accommodation providers would be assured that other OTAs will be able to compete for Booking.com flight customers through the Carousel, which will promote the continued use of multiple OTAs by accommodation providers. The Initial Commitments would eliminate any alleged risk of accommodation providers 'single-homing' with Booking.com in order to have access to flights traffic and would mean there will be no strengthening or entrenching of Booking.com's bargaining position with accommodation providers. Therefore, accommodation providers would have no incentive to switch from rival OTAs to

[1555] The same principle however would not apply to OTAs being shown on the same or different drop-down menus.

[1556] Form RM submitted on 31 July 2023.

Booking.com, as Booking.com's hotel OTA competitors would have fair access to Booking.com flight customers through the Carousel.

(1207) The Initial Commitments would address concerns about alleged entrenchment or contestability or customer inertia and promote customer choice. Booking.com flight customers would be visually reminded when presented with the Carousel that they have various options to search for, and book, accommodation. Flight customer access to those providers would then be facilitated by way of a customer friendly interface.

(1208) The Initial Commitments would address concerns about increased barriers to entry and expansion:

(a) By giving rival hotel OTAs direct access to Booking.com flight customers;

(b) By ensuring that a range of OTAs are given the opportunity to be shown on the confirmation page, thereby facilitating competition by smaller/new entrant OTAs;

(c) By ensuring that there is no guarantee Booking.com will be featured as a recommended OTA in the Carousel. In any event, Booking and its owned or affiliated brands can be featured on no more than one out of the four recommended hotel OTAs for each proposed accommodation option; and

(d) By ensuring that the hotel OTA offer with the cheapest price for a given property featured on the Carousel will always be shown at least in the drop-down menu.

(1209) The Notifying Party also argues that the Carousel is designed to maximise the chances that customers will click on one of the displayed OTAs. KAYAK would be incentivised to provide the consumer with the best possible experience, and so to design the display and drop-down menu in a way that is clear and informs consumers of the different alternatives available to them.

(1210) In conclusion, according to the Notifying Party, the Initial Commitments fully address, from a number of different angles, the Commission's concerns as set out in the SO. Indeed, hotel OTA competitors and consumers would be better off as a result of the Initial Commitments than they would absent the Transaction, since they would only have the benefit of the Carousel if the Transaction were approved and completed.

*8.3.3. The Commission's assessment*

(1211) As explained in more details in the following sub-sections, the Commission considers that the Initial Commitments are not sufficiently comprehensive and effective because their scope of application shows several limitations, particularly based on the cross-selling mechanism used by Booking, the online platforms displaying the Carousel, and the origin of the consumers accessing the Carousel.

(1212) The selection criteria for the Carousel content and the eligibility requirements are also not sufficiently transparent and non-discriminatory, particularly because KAYAK – a subsidiary of Booking itself – will be in full control of several aspects of their implementation.

(1213) The Initial Commitments also cannot be effectively monitored and considerably limit Booking's liability in case of infringement.

(1214) As a result, the Initial Commitments do not entirely eliminate the competition concerns raised by the Transaction.

*8.3.3.1.* The Initial Commitments are limited to only one among several possible cross-selling opportunities relating to flight customers

(1215) The competition concerns raised by the Transaction focus on the potential cross-selling of hotel services to flight customers acquired by Booking as a result of the Transaction.

(1216) Booking may cross-sell hotel services to those flight customers at different points of their booking journey. Among others, Booking may engage in cross-selling by:

(a) displaying 'cross-sell links' on several pages of the Booking platform. These links are already now used by Booking, mainly on the flight confirmation page and on the My Trips page, but to a lesser extent also on other small placements on the platform;[1557]

(b) advertising its hotel offer on its flight platform during the flight *search*. Indeed, Booking already uses this space to advertise its discounted offers for accommodations under the Genius loyalty program;[1558]

(c) advertising its hotel offer on its flight platform during the flight *booking process*, before the final purchase. Indeed, Booking already uses this space to advertise its discounted offers for accommodations under the Genius loyalty program;[1559]

(d) advertising its hotel offer on the flight confirmation page after a purchase on its platform;

(e) advertising its hotel offer through ads on other websites, to be targeted at flight customers based on the information collected about those customers through Booking's flight platform;

(f) advertising its hotel offer on separate messages addressed to flight customers (such as email or notifications), even before a flight purchase, based on the information collected about those customers through Booking's flight platform. Indeed, Booking already advertises its services through notifications targeted to customers that have purchased (or even just searched) a flight on its platform.[1560]

(1217) The scope of the Initial Commitments is however limited to only one of the possible cross-selling points, that is the confirmation page after a flight purchase. This means that the Carousel will not be displayed in relation to other opportunities that Booking will have to cross-sell hotel services to newly acquired flight customers. The Initial Commitments would not offer rival hotel OTAs any visibility in those other cross-selling opportunities.

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1557 Response to RFI 41, question 8. Unlike the advertising of Genius discounted offers during the search or booking process (mentioned further below), the 'cross-sell links' allow the customers to directly purchase an accommodation product by clicking on them.

1558 Fourth Letter of Facts, paragraph 24. See also Figure above.

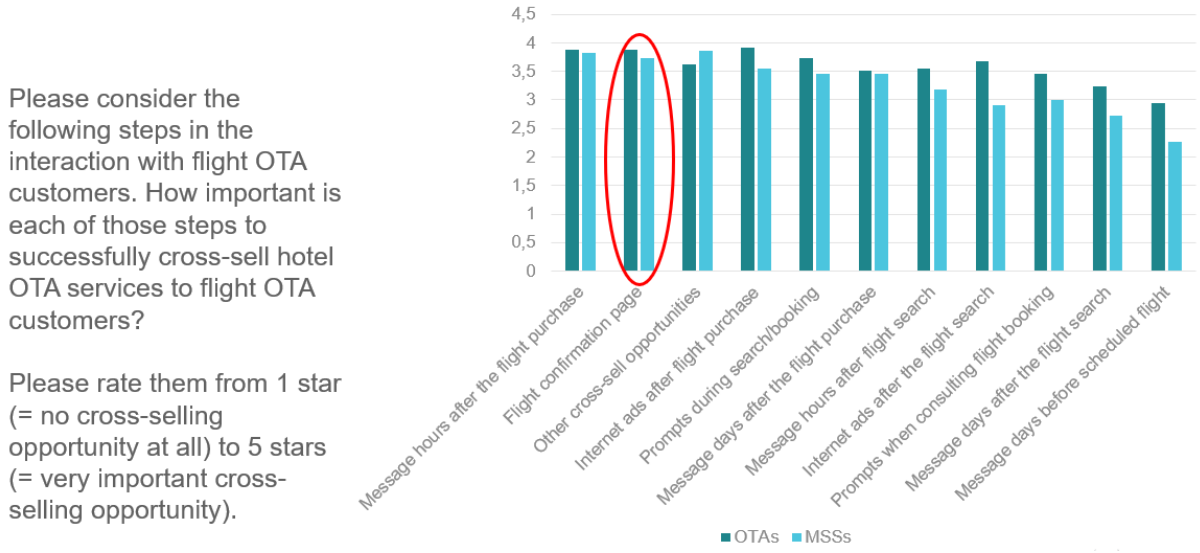
1559 Fourth Letter of Facts, paragraph 24. See also Figure above.

1560 Third Letter of Facts, paragraph 41. Fourth Letter of Facts, paragraph 28. See also Figure and Figure above.

(1218) The Notifying Party's submissions seem to define the notion of 'cross-selling' in an unduly narrow sense, essentially limited to purchases made through the 'cross-sell links' mentioned at paragraph ((1215) above under point (a).[1561]

(1219) However, at least all other examples mentioned in the same paragraph would also constitute 'cross-selling', as they effectively encourage a flight customer to purchase accommodation services from Booking. In fact, the results of the Market Test show that some of the other steps in the interaction with flight customers are at least as important as the flight confirmation page to successfully cross-sell accommodation to those customers.

**Figure 134: Responses to OTAs and MSSs Market Test Questionnaires, Question C.A.1**




*Source: Commission's market test*

(1220) But even limiting the analysis to the 'cross-sell links' (and assuming that any other cross-selling on the part of Booking is *de minimis*),[1562] only […]% of clicks and […]% of transactions generated through those links originate from the flight confirmation page. The majority of those clicks and sales originate from 'cross-sell links' located in the My Trips page or elsewhere on the platform.[1563] This demonstrates that, even under an unduly narrow definition of 'cross-selling,' a remedy limited to the flight confirmation page would not be sufficiently comprehensive.

(1221) The Notifying Party also argues that the Initial Commitments need not cover any cross-selling opportunities beyond the flight confirmation page. This is because, when a customer has decided to defer their hotel reservation to a later stage (which for the average Booking.com flights customer is c. […]), they will necessarily begin a new search which will be for accommodations rather than flights. The Notifying

1561 Response to RFI 41, question 8. Unlike the advertising of Genius discounted offers during the search or booking process, the 'cross-sell links' allow the customers to directly purchase an accommodation product by clicking on them.

1562 In response to the Commission's questions, the Notifying Party acknowledged that Booking's cross-selling is not limited to 'cross-sell links' mentioned in Response to RFI 41, question 8, but also includes "*email and push notifications*" which however account for just […]% of cross-sold accommodation. See Response to the Fourth Letter of Facts, page 19.

1563 Response to RFI 41, Question 8.

Party claims that, in the context of a new search days or weeks after the flight booking, it is highly likely that the customer will (like most of Booking's customers) search multiple sites.[1564]

(1222) However, even when the customers begin a new separate search for accommodation, the fact remains that they would still be influenced by any advertising or other outreach that Booking would target at them based on the details – destination, dates, participants, etc. – acquired during the flight purchase (or during the flight search, before or without a final purchase)[1565]. These commercial strategies would encourage the cross-selling of hotel services to customers acquired through the flight platform, which is the main focus of the competition concerns raised by the Transaction.

(1223) Competing hotel OTAs would not be able to replicate the same commercial strategies because, unlike Booking, they would not be aware of the details concerning the trip (destination, dates, participants, etc.) that are necessary to target their commercial outreach. They may obtain those details if the customer visited their websites and searched accommodation for a given specific trip. But as noted by the Notifying Party, that would probably happen days or weeks after the flight purchase, giving Booking a significant head start in competing for those customers with targeted marketing.

(1224) The results of the Market Test further confirm the importance of other cross-selling 'touchpoints' beyond the flight confirmation page. Respondents noted that:[1566]

- 'Targeted messaging works best for this kind of purchases. By selling more flights booking.com would have a great expansion of their addressable audience.'[1567]
- 'Timely and targeted marketing campaigns can capture travellers' attention … Effective post-flight sale marketing can lead to increased hotel bookings.'[1568]
- 'We speak to our customers across a range of touchpoints about hotels, before, during and after purchase … our attachment is not based on any one of these but is very spread across many of these touchpoints.'[1569]
- 'All the above listed steps are very important for successful cross-sale of hotel OTA services to flight OTA customers.'[1570]
- 'There are ample opportunities for Booking.com to cross-sell accommodation after a flight has been booked on one of its flight platforms.'[1571]

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1564 Response to RFI 37, Question 34.

1565 Response to RFI 37, Question 36.

1566 Responses to OTAs and MSSs Market Test Questionnaires, Questions C.A.2, C.A.3, C.A.5 and C.A.6.

1567 Non-confidential version of [OTA]'s response to question C.A.2 of Questionnaire to OTAs on commitments [DOC ID 118978].

1568 Non-confidential version of [OTA]'s response to question C.A.2 of Questionnaire to OTAs on commitments [DOC ID 118000].

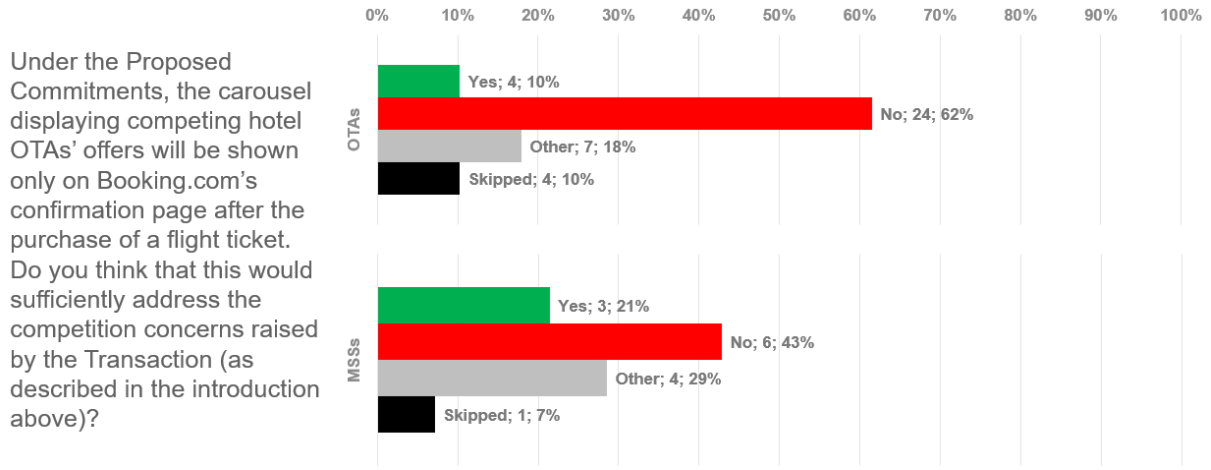
1569 Non-confidential version of [OTA]'s response to question C.A.2 of Questionnaire to MSS on commitments [DOC ID 119253].

1570 Non-confidential version of [OTA]'s response to question C.A.2 of Questionnaire to OTAs on commitments [DOC ID 119369].

1571 Non-confidential version of [OTA]'s response to question C.A.2 of Questionnaire to OTAs on commitments [DOC ID 119495].

- ‘There are countless places in the booking process and in follow-up customer contact where - directly or subliminally - offers can be played out.’[1572]
- For these reasons, most respondents stated that a Carousel limited to the flight confirmation page would not be sufficient to address the competition concerns raised by the Transaction.

**Figure 135: Responses to OTAs and MSSs Market Test Questionnaires, Question C.A.4**




*Source: Commission's market test*

(1225) In conclusion, the Transaction will allow Booking to acquire additional flight customers and to cross-sell accommodation to those customers, *irrespective* of whether the cross-selling occurs on the flight confirmation page or as a result of any other commercial outreach made by Booking based on the flight purchase (or search). The Initial Commitments only cover one among those cross-selling opportunities and therefore are not sufficiently comprehensive and effective.

*8.3.3.2.* The Initial Commitments are limited to Booking.com's platform

(1226) The competition concerns raised by the Transaction focus on the significant amount of additional flight traffic that Booking will be able to acquire through the Transaction. These concerns are not limited to traffic acquired through one specific website among the many websites controlled by Booking as a result of the Transaction. Indeed, Booking will benefit from newly acquired traffic irrespective of the specific brand or interface shown to each flight customer, be it Booking.com, Gotogate.com, MyTrip.com or others.

(1227) However, pursuant to the Initial Commitments, the Carousel will only be shown on the Booking.com website. The Carousel instead will not be shown on other websites controlled by Booking, particularly the ETG-branded websites acquired through the Transaction (such as Gotogate.com or MyTrip.com). Therefore, the Initial Commitments only cover a part of the flight traffic acquired through the Transaction.

[1572] Non-confidential version of [OTA]'s response to question C.A.5 of Questionnaire to OTAs on commitments [DOC ID 118330].

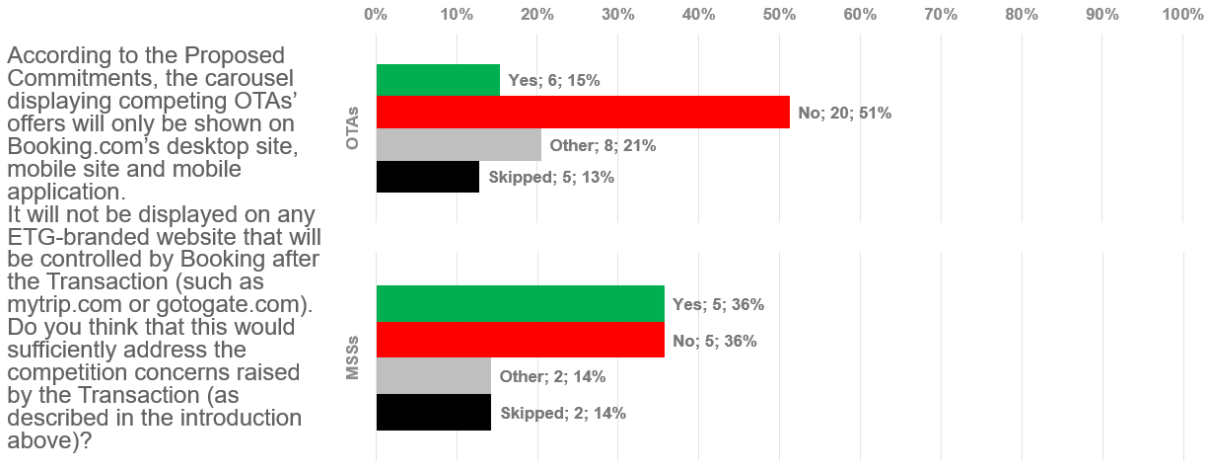
(1228) The Notifying Party argues that the Initial Commitments ought not to apply to websites other than Booking.com, because those websites will be run independently of Booking.com post-Transaction.[1573] However, in the absence of any binding commitment to that effect, the Commission has no reason to assume that that will actually be the case: Booking will solely own and fully control all of those websites, and nothing prevents it from coordinating their activities in the future.

(1229) In any case, even if those websites were run independently from Booking in the future, the fact remains that Booking will in any event be able to cross-sell hotel services to flight customers acquired from those websites. If those cross-selling opportunities are excluded from their scope, the Initial Commitments cannot entirely eliminate the abovementioned competition concerns.

(1230) The Notifying Party also argues that accommodation cross-selling on ETG-branded websites has been limited so far. Again, in the absence of any binding commitment to that effect, the Commission has no reason to assume that that will continue to be the case in the future.

(1231) Several respondents also confirmed that a Carousel limited to the Booking.com website would not be sufficient to address the competition concerns raised by the Transaction.

**Figure 136: Responses to OTAs and MSSs Market Test Questionnaires, Question C.B.1**




*Source: Commission's market test*

(1232) Respondents further commented that:[1574]

- 'The Proposed Commitments do not make any sense when they are only shown on Booking.com … It is by acquiring ETG's flight platforms that the merging parties will be able to increase traffic and sales in their respective markets.'[1575]
- 'The majority of the flight volume and thereby also hotel cross-sell opportunity is on ETG's websites.'[1576]

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1573 Response to RFI 37, question 3.

1574 Responses to OTAs and MSSs Market Test Questionnaires, Question C.B.2.

1575 Non-confidential version of [OTA]'s response to question C.B.2 of Questionnaire to OTAs on commitments [DOC ID 119495].

1576 Non-confidential version of [OTA]'s response to question C.B.2 of Questionnaire to OTAs on commitments [DOC ID 118286].

- ‘ETG gets most of its traffic from meta and SEM and I suspect post-acquisition Booking will run a multi-brand strategy with respect to traffic acquisition.’[1577]
- ‘Being in a group of companies operating in the same sector eventually would lead to consolidation of these companies, only in name or not, and internally sharing customer information.’[1578]

(1233) In conclusion, because of their limited scope in terms of platforms covered, the Initial Commitments cannot be considered to be sufficiently comprehensive and effective.

*8.3.3.3.* The Initial Commitments are limited to EEA customers

(1234) The competition concerns raised by the Transaction focus on the increased costs for hotels as a result of more sales of hotel rooms being funnelled through Booking after the Transaction.

(1235) For the purpose of the Commission’s assessment, as far as those additional sales are generated by hotels located in the EEA, the origin of the final customer is irrelevant. In other words, EEA hotels will suffer harm as a result of additional final customers reserving their rooms on Booking, irrespective of whether those final customers travel from outside or from within the EEA.

(1236) And indeed, non-EEA customers are an important source of revenue for EEA hotels. Booking estimates that c. […]% of its EEA destination TTV and revenues comes from non-EEA bookers.[1579] Respondents to the Market Test also noted that ‘*Non-EEA customers comprise a significant proportion of the total customers booking hotels … Markets such as the British, American, Russian, Chinese or Japanese are very relevant for EEA Hotels and EEA OTAs.*’[1580]

(1237) However, pursuant to the Initial Commitments, the Carousel will only be shown to final customers located in the EEA, as identified by reference to the website used to make the relevant Booking. Therefore, the Initial Commitments would not be able to entirely address the potential harm suffered by hotels as a result of the Transaction.

(1238) This is also confirmed by the results of the Market Test. With the exception of MSSs, all other categories of respondents generally confirmed that a remedy limited to EEA customers would not sufficiently address the competition concerns raised by the Transaction.

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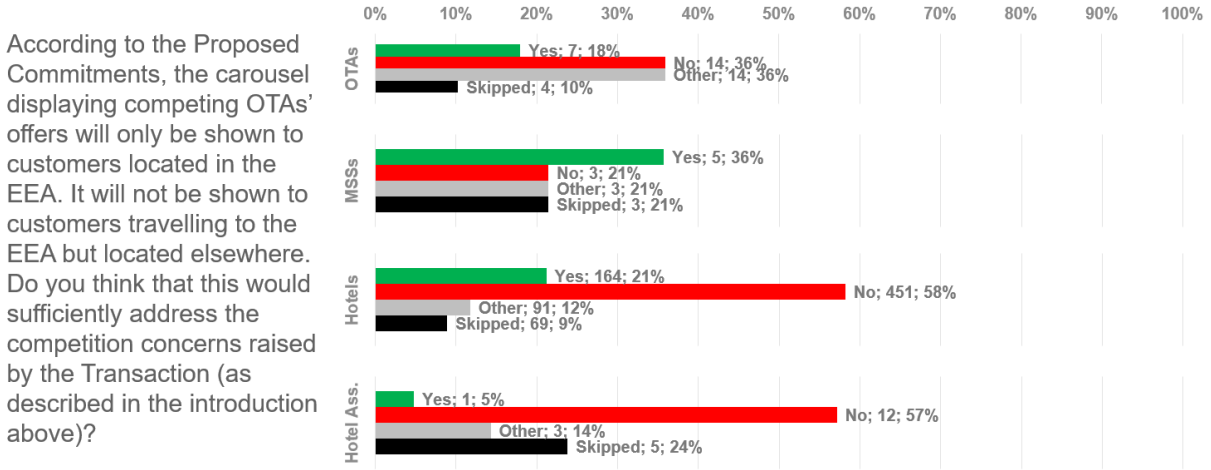
1577 Non-confidential version of [MSS]’s response to question C.B.2 of Questionnaire to MSS on commitments [DOC ID 116401].

1578 Non-confidential version of [OTA]’s response to question C.B.2 of Questionnaire to OTAs on commitments [DOC ID 118978].

1579 Response to RFI 41, Question 13.

1580 Responses to OTAs and MSSs Market Test Questionnaire, Question C.C.2.

**Figure 137: Responses to OTAs and MSSs Market Test Questionnaires, Question C.C.1, and hotels and hotel associations Market Test Questionnaires, Question C.B.1**




*Source: Commission's market test*

(1239) In conclusion, because of their limited geographic scope, the Initial Commitments cannot be considered to be sufficiently comprehensive and effective.

*8.3.3.4.* KAYAK's involvement in the implementation of the Initial Commitments undermines their effectiveness

(1240) KAYAK is a subsidiary of Booking and operates an MSS platform.

(1241) Under the Initial Commitments, KAYAK would be involved in several crucial aspects of the management of the Carousel. It would define the standards that hotel OTAs have to comply with to participate in the Carousel. It would manage the algorithms that select the accommodation solutions and OTAs featuring in the Carousel. It will receive the proceeds from the auctions for increased visibility on the Carousel.

(1242) Since Booking and its competitors will participate in the Carousel, the management of the Carousel by a subsidiary of Booking itself gives rise to certain risks in terms of potential discrimination or unfair treatment of the different participants.

(1243) The Notifying Party dismisses these concerns, claiming that '*KAYAK is run independently from Booking.com*.'[1581] However, KAYAK cannot be considered independent from Booking.com: as both entities are owned and solely controlled by the same corporate group, KAYAK and Booking.com are effectively one and the same undertaking for the purposes of the Merger Regulation.

(1244) The Notifying Party points out that KAYAK operates as an independent profit centre, it is subject to applicable transfer pricing principles for intragroup transactions and it has a separate management team incentivized primarily by reference to KAYAK's individual performance.[1582] None of these circumstances in themselves imply that affiliated entities subject to common control should be considered to be 'independent' from each other. KAYAK's shares are held by Booking, its revenues are consolidated in Booking's financial statements, its CEO Steve Hafner directly reports to Booking's CEO Glenn Fogel (who is also CEO of

1581 Form RM submitted on 31 July 2023, para. 1.6.

1582 Response to RFI 37, Question 27 and Response to RFI 40, Question 7.

Booking.com).[1583] In the absence of any binding commitment to that effect, nothing prevents Booking from coordinating the activities of KAYAK and Booking.com in the future.

(1245) The Notifying Party also claims that KAYAK has an economic incentive to be seen by Booking.com's rivals as a neutral platform that does not preference Booking.com or any other Booking brand. However, that incentive may not be strong enough to rule out any risk of self-preferencing. In fact, already today it cannot be excluded that KAYAK may be engaging in some self-preferencing of Booking.com's offers, displaying them more prominently than cheaper competing offers for the same accommodation solution (as explained in more detail in section 8.3.3.5.4 below).

(1246) KAYAK's lack of independence towards Booking.com undermines the effectiveness of the Initial Commitments in several different aspects, particularly those discussed in more detail below.

*8.3.3.5.* The criteria for the selection of the Carousel content are not transparent and non-discriminatory

(1247) The criteria for the selection of the accommodation options and OTAs to be shown on the Carousel are a particularly important aspect of the Initial Commitments. The Initial Commitments could only be approved if those criteria were transparent and non-discriminatory.[1584]

(1248) However, the Initial Commitments fail to meet that standard on both counts. The selection criteria are not transparent, in that they are not clearly defined in the Initial Commitments and they are subject to change in the future (either through automatic machine learning processes or at KAYAK's full discretion). The selection criteria are also not non-discriminatory, because they aim at maximising Booking/KAYAK's profitability even at the detriment of more competitive rival offerings.

8.3.3.5.1. The selection criteria are not clearly defined

(1249) The Initial Commitments do not provide a clear definition of the selection criteria. They only indicate that the selection criteria are those applied by the KAYAK Algorithms, and that the KAYAK Algorithms are those used by KAYAK '*from time to time*' to rank accommodation results and accommodation providers.[1585]

(1250) The Initial Commitments do list certain factors used by the KAYAK Algorithms to calculate the ranking score of each accommodation options and OTAs. Those factors are:

(a) the click-through rate, that is the predicted probability of a click on an accommodation offered by a given hotel OTA in response to the relevant search query;

(b) KAYAK's estimated revenue per click, consisting of the cost-per-click as detailed in the KAYAK's contract with each OTA as well as the auction bid placed by each OTA to increase its visibility for a specific search or property;

(c) the price offered by the OTA to consumers.

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1583 Response to QP7, Annex 7.

1584 Remedies Notice, para. 62.

1585 Initial Commitments submitted on 31 July 2023, para. 31.

(1251) It should be noted that, of the three factors mentioned above, only the price offered by OTAs to consumers is known *a priori*.[1586] The other two factors are themselves the result of some calculations carried out by the KAYAK Algorithms, with little information being provided in the Initial Commitments about those calculations.[1587] Also, it appears that these factors are multiplied by certain coefficients, which are subject to change from time to time.[1588]

(1252) Moreover, the wording of the relevant provision ('*the standard algorithms could include a number of factors such as…*,'[1589] emphasis added) seems to imply that this list of three factors is not exhaustive and in any case subject to change in the future. Therefore additional factors could possibly be added in the future, and it is unclear what be their relative importance compared to those mentioned in the Initial Commitments.

(1253) The text of the Initial Commitments therefore does not allow the Commission (or the Monitoring Trustee, or the market participants) to understand exactly which factors determine the selection of the Carousel's content and to assess if that selection is transparent and non-discriminatory.

(1254) In order to clarify this point, the Commission requested the Notifying Party to provide real world examples of how the individual factors listed in the Initial Commitments are combined by the KAYAK Algorithms to generate the ranking score of a given accommodation option. However, the scores provided in the Notifying Party's response were not equal to the product of the underlying factors.[1590] Upon further request of the Commission, the Notifying Party only noted that this discrepancy '*is due to the fact that there are some in-search session normalization of scores happening*.'[1591]

(1255) In short, notwithstanding the questions addressed by the Commission, the Notifying Party was not able to provide an exhaustive and univocal description of the functioning of the KAYAK Algorithms allowing the Commission to understand (and, therefore, monitor) what factors are fed into the algorithms and how those factors are combined into a final ranking score.[1592]

(1256) The results of the Market Test show that the Carousel selection criteria are not considered to be sufficiently clear by market participants. As shown in the picture below, several respondents were not able to understand the Carousel's selection

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1586 Moreover, the price offered to customers is only taken into account in the ranking of OTAs for each accommodation options. It is *not* taken into account for the ranking of the accommodation options themselves. See Response to RFI 37, question 28.

1587 For instance, with respect to the click-through-rate factor, the Notifying Party provided a high-level description list of the underlying variables, although it is unclear how those variables are quantified exactly. See footnote 19 of the Form RM submitted on 31 July 2023: [details of KAYAK's proprietary algorithm] The Notifying Party also noted that the domain and device used to access the Carousel would have some impact on the click-through rate factor, although it is unclear how that would be quantified exactly (see Response to RFI 37, Questions 10 and 30).

1588 See, for instance, the multiples applied to KAYAK's estimated revenue per click in Response to RFI 40, para. 8.3.

1589 Initial Commitments submitted on 31 July 2023, para. 31.

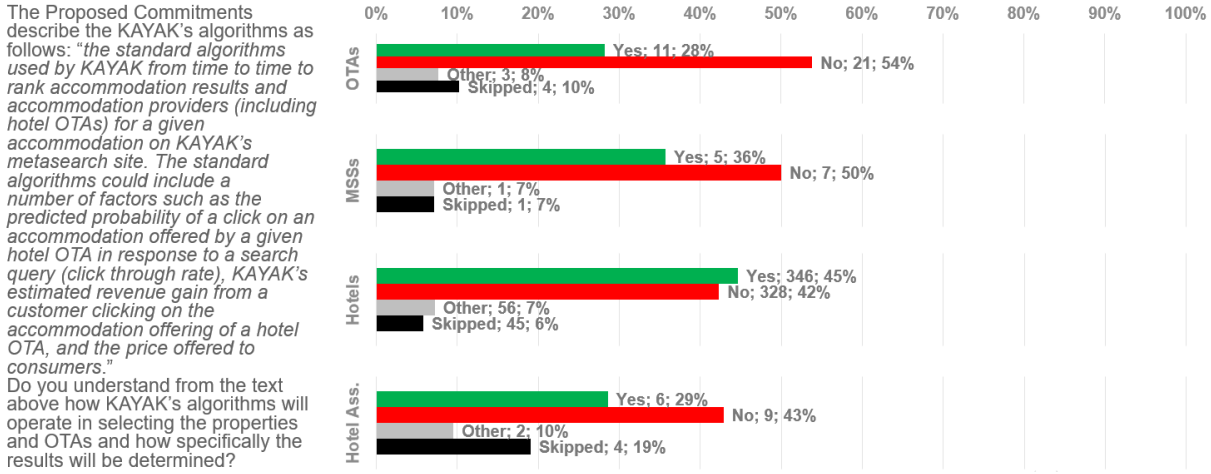
1590 Response to RFI 37, question 28.

1591 Response to RFI 40, question 8.

1592 The Commission notes that it is responsibility of the parties to provide all information available that is necessary for the Commission's assessment of the remedies proposal. See Remedies Notice, para. 7.

criteria based on the description of the KAYAK Algorithms provided in the Initial Commitments.

**Figure 138: Responses to OTAs and MSSs Market Test Questionnaires, Question G.1, and hotels and hotel associations Market Test Questionnaires, Question E.1**




*Source: Commission's market test*

(1257) Market participants had several reservations about the functioning of these algorithms in practice:[1593]

- 'The term 'predicted probability of a click on an accommodation offered by a given hotel OTA' is unclear. How does Kayak calculate the "probability"? What are the factors?'[1594]
- 'To understand how an algorithm works, one would need to examine the programming code and all the parameters involved.'[1595]
- 'The ranking description is too broad and vague, granting Kayak excessive freedom to operate without any means for participating OTAs to verify the fairness of the ranking process.'[1596]
- 'Such algorithms are extremely complex and are usually changed several times, depending on the company's requirements and wishes. Numerous parameters are taken into account, which represent a booking probability of one provider, but also a discrimination of the other. The description given here is far too inaccurate to clearly define the process.'[1597]
- 'The description seems to be very subjective to Kayak and quite generic.'[1598]

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1593 Responses to OTAs and MSSs Market Test Questionnaires, Questions G.2, G.4.

1594 Non-confidential version of [OTA]'s response to question G.2 of Questionnaire to OTAs on commitments [DOC ID 118787].

1595 Non-confidential version of [OTA]'s response to question G.2 of Questionnaire to OTAs on commitments [DOC ID 118034].

1596 Non-confidential version of [MSS]'s response to question G.2 of Questionnaire to MSSs on commitments [DOC ID 119253].

1597 Non-confidential version of [OTA]'s response to question G.2 of Questionnaire to OTAs on commitments [DOC ID 118330].

1598 Non-confidential version of [OTA]'s response to question G.2 of Questionnaire to OTAs on commitments [DOC ID 117822].

- ‘The algorithm’s description is too general. It lacks specific details such as how each component contributes to the final result.’[1599]
- ‘The declaration is very general and leaves a lot of creative freedom. It remains intransparent. Moreover, it explicitly includes KAYAK’s estimated revenue gain which can be maximised by booking.com offers without creating loss at a group level.’[1600]
- ‘The text is not a description of the algorithm but just a (non-exhaustive) list of the some factors that KAYAK takes into account. The exact list of factors, their weights, and the calculations to be done to determine the results selection and order are not described in the text.’[1601]
- ‘The answer is vague in response to what exactly will be used and when and the factors and their weighting isn’t defined.’[1602]

8.3.3.5.2. The selection criteria are continuously subject to change

(1258) Moreover, due to intrinsically transient nature of the KAYAK Algorithms, an exhaustive description of their functioning may be outright impossible.

(1259) As explained by the Notifying Party, the KAYAK Algorithms ‘*are based on machine learning models developed through KAYAK’s access to a comprehensive range of provider datasets and continuous “A/B” testing*’ (that is ‘*an experiment where two or more variants of a page are shown to users at random, and statistical analysis is used to determine which variation performs better for a given conversion goal*’). For this reason, ‘*these internal algorithms change continuously*.’[1603]

(1260) Indeed, the Notifying Party had to clarify that its previous description of the KAYAK Algorithms did not correspond to the algorithms running just five days later, because those algorithms had changed in the meantime. ‘*This is a function of the fact that KAYAK’s algorithm (as any algorithm with similar purposes) is a dynamic calculation that is constantly being tested, retrained, and modified to offer better experience and conversion rates for partners and consumers. <u>It is difficult to predict with accuracy the ways and speed in which the algorithm may change over the course of the years</u>*’ (emphasis added).[1604]

(1261) Since the Carousel selection criteria are constantly changing and any description of their functioning would rapidly become obsolete, the Commission is not in a position to conclusively assess their suitability to address the competition concerns raised by the Transaction.

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1599 Non-confidential version of [OTA]’s response to question G.4 of Questionnaire to OTAs on commitments [DOC ID 119394].

1600 Non-confidential version of [MSS]'s response to question G.2 of Questionnaire to MSSs on commitments [DOC ID 119626].

1601 Non-confidential version of [MSS]’s response to question G.2 of Questionnaire to MSSs on commitments [DOC ID 118013].

1602 Non-confidential version of [MSS]’s response to question G.2 of Questionnaire to MSSs on commitments [DOC ID 118978].

1603 Response to RFI 37, question 26.

1604 Response to RFI 40, question 8.

8.3.3.5.3. The selection criteria may be changed at KAYAK's full discretion

(1262) As mentioned above, the wording of the Initial Commitments ('*the standard algorithms could include a number of factors such as…*,'[1605] emphasis added) allows for future changes of the Carousel's selection criteria.

(1263) Possible future changes would not just be the limited to the ongoing evolution of algorithms based on machine learning, as described above. KAYAK itself may in the future deliberately decide to change how the algorithm works. For instance, KAYAK may eliminate some of the factors listed in the Initial Commitments or include new factors not listed therein. It may also decide to replace the algorithms with different selection criteria in all or certain cases. In fact, nothing in the text of the Initial Commitments would prevent KAYAK from changing the Carousel selection criteria at any point in time, in whatever way it sees fit.

(1264) This effectively means that an essential element of the Initial Commitments offered by Booking could be changed at any moment, at the full discretion of a subsidiary controlled by Booking itself. Because KAYAK, as explained above, is not independent from Booking, the Commission cannot assume – in the absence of any binding commitment to that effect – that KAYAK will in the future refrain from changing the Carousel selection criteria in a way that discriminates against Booking's competitors.

8.3.3.5.4. The selection criteria are not non-discriminatory and may lead to self-preferencing of Booking's offers

(1265) Even assuming that they were sufficiently clear and not subject to change, the selection criteria listed in the Initial Commitments are not non-discriminatory. This is because those criteria aim at maximizing KAYAK/Booking's profits, even when this leads to the self-preferencing of Booking's own offers to the detriment of other more competitive OTAs participating in the Carousel.

(1266) In particular, as mentioned above, one of the main factors taken into account in selecting the Carousel's content is KAYAK's estimated revenue per click. This estimate consists of two elements:

(a) The effective cost-per-click that KAYAK gains on every click (regardless of the accommodation offering) on the OTA partner, which is a fixed amount as detailed in KAYAK's contract with that OTA; and

(b) The auction bid made by each OTA to increase its visibility for a specific search or property.[1606]

(1267) This effectively means that a more competitive OTA (*e.g.*, offering better prices or having better user ratings) could be side-lined in the Carousel layout in favour of a less competitive OTA, simply because the latter agreed to a higher cost-per-click in its contract with KAYAK or offered a higher bid to KAYAK for that specific property. This selection criterion is therefore discriminatory, in that it discriminates against competitive offerings in favour of offerings that are more profitable for Booking/KAYAK.

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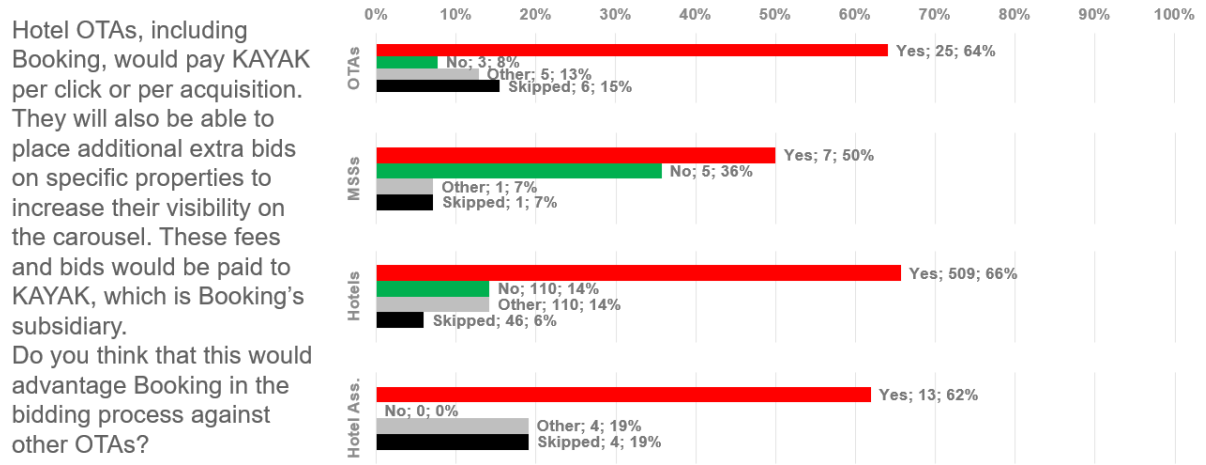
1605 Initial Commitments submitted on 31 July 2023, para. 31.

1606 Form RM submitted on 31 July 2023, footnote 21.

(1268) The selection criterion is all the more discriminatory in that it provides Booking with an advantage compared to rival OTAs in placing auction bids. Indeed, all proceeds for the auctions, including those placed by Booking itself, are collected by Booking's own subsidiary KAYAK. This means that Booking is better positioned to outbid its rivals, knowing that any bid it offers at the auction will simply move to a different profit centre of its own corporate group.

(1269) Strong opposition against this mechanism was raised during the Market Test. As shown in the picture below, a solid majority of respondents stated that KAYAK's bidding process would unduly advantage Booking.

**Figure 139: Responses to OTAs and MSSs Market Test Questionnaires, Question G.12, and hotels and hotel associations Market Test Questionnaires, Question E.3**




*Source: Commission's market test*

(1270) Respondents also noted that:[1607]

- 'Booking can pay more than other OTA:s to their subsidiary, knowing this is in reality 'internal money'[1608]
- 'Basically, every euro spend by a competing OTA in an attempt to be shown on KAYAK/the carousel, will in fact benefit the competitor (i.e., Booking.com). It would be an illusion to think that the activities and/or income streams within the Booking-concern will be entirely separated.'[1609]
- 'Booking.com can pay any price because it ultimately stays within the group. booking.com is therefore likely to be included with high rankings.'[1610]

(1271) The second factor used by the KAYAK Algorithms, that is the click-through rate, may also have discriminatory effects. This is because this factor aims at maximizing the probability of the customer clicking on a given offer, thereby favouring OTAs with a strong brand recognition that can easily be recognized by customers (such as Booking) to the detriment of smaller and less known OTAs. This further reinforces customers' inertia in favour of Booking, rather than neutralizing it.

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1607 Responses to OTAs and MSSs Market Test Questionnaires, Question G.13.

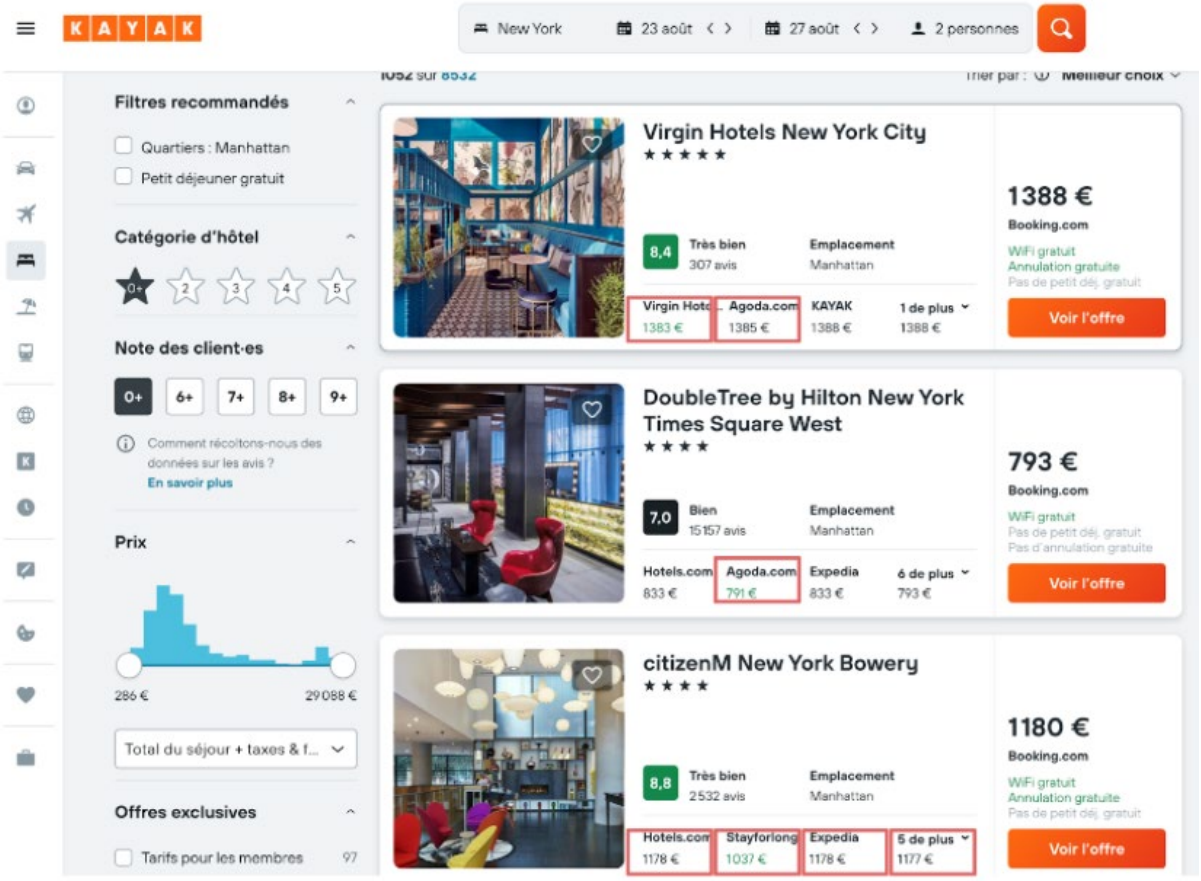
1608 Non-confidential version of [OTA]'s response to question G.13 of Questionnaire to OTAs on commitments [DOC ID 118286].

1609 Non-confidential version of [OTA]'s response to question G.13 of Questionnaire to OTAs on commitments [DOC ID 119495].

1610 Non-confidential version of [MSS]'s response to question G.13 of Questionnaire to MSSs on commitments [DOC ID 119626].

(1272) The discriminatory nature of KAYAK's selection criteria is demonstrated by the fact that already now those criteria result in the self-preferencing of Booking's offers on KAYAK's platform. As shown in the picture below, Booking's offers are prominently displayed as recommended offers on KAYAK even when they are significantly more expensive than competing OTAs' offers.

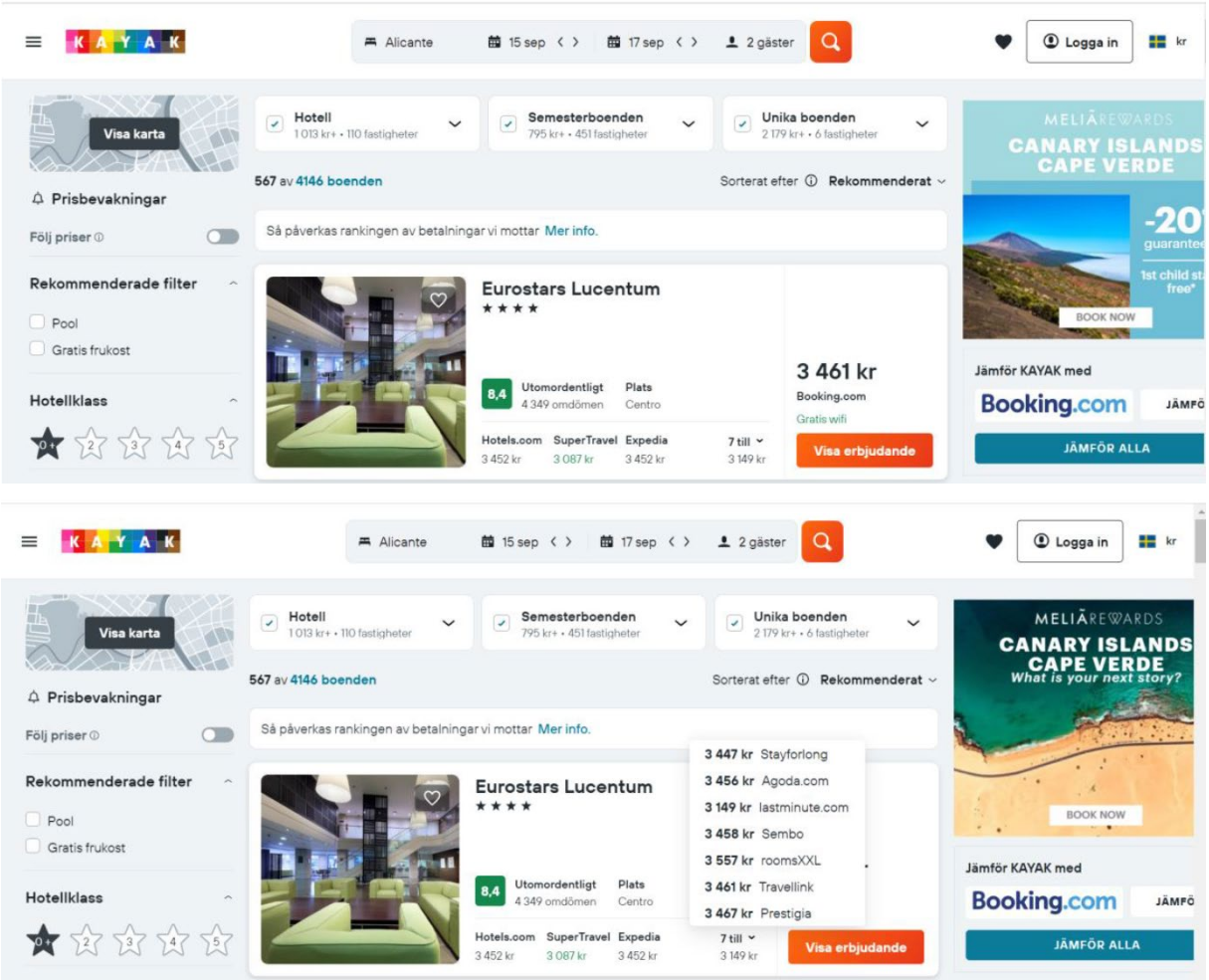
**Figure 140: KAYAK self-preferencing Booking's more expensive offers**




*Source: response to 04_Competitors - (Phase II) - eRFI to OTAs on commitments.*

(1273) In certain cases, Booking's offer is shown as recommended even if it is more expensive than *seven* out of ten alternative offers, and *12% more expensive* than the cheapest alternative offer.

**Figure 141: KAYAK self-preferencing Booking's more expensive offer**



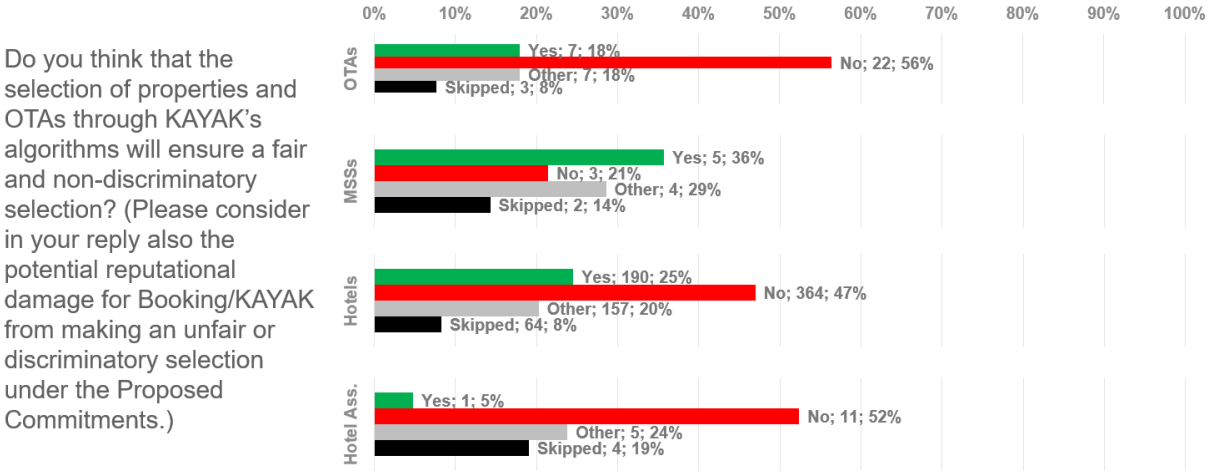

*Source: response to 04_Competitors - (Phase II) - eRFI to OTAs on commitments.*

(1274) These findings are difficult to reconcile with the Notifying Party's statement that '*KAYAK has never preferenced any of Booking Holdings brands and it would be detrimental to KAYAK's business as a reputable MSS for it to start preferencing Booking.com or any of its offerings*.'[1611]

(1275) Respondents to the Market Test were also sceptical about KAYAK's ability to ensure a fair and discriminatory selection of the Carousel's content. Apart from MSS respondents (who often implement selection processes similar to KAYAK's), all other categories of respondents provided strongly negative feedback on this point.

[1611] Response to RFI 41, question 6.

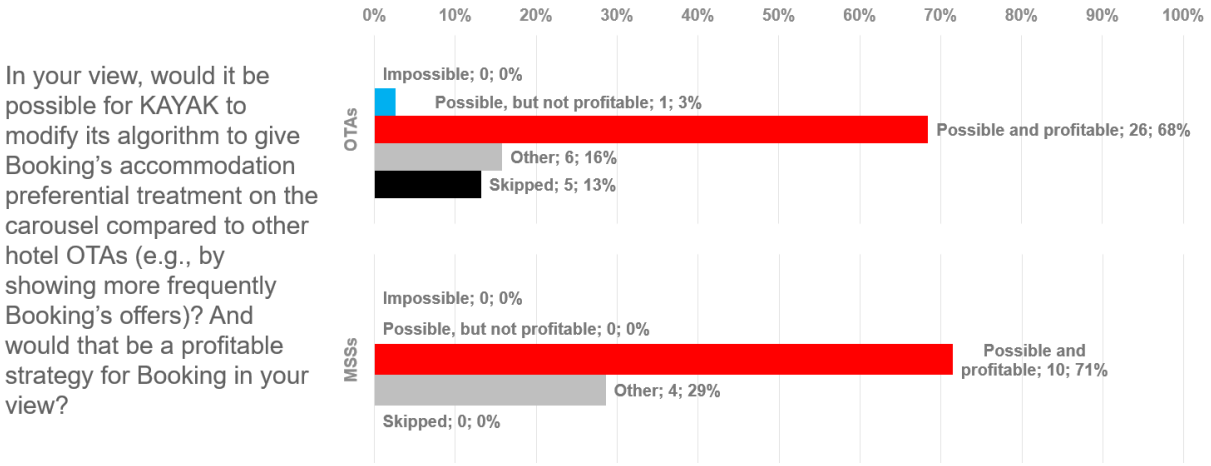
**Figure 142: Responses to OTAs and MSSs Market Test Questionnaires, Question G.3, and hotels and hotel associations Market Test Questionnaires, Question E.2**




*Source: Commission's market test*

(1276) In particular, a robust majority of respondents (including MSSs themselves) stated that KAYAK would have both the ability and the incentive to modify its algorithms to self-preference Booking's offers on the Carousel.

**Figure 143: Responses to OTAs and MSSs Market Test Questionnaires, Question G.6**




*Source: Commission's market test*

(1277) Respondents also noted that:[1612]

- 'The use of algorithms in the selection process can introduce biases, unintended discrimination, or favoritism towards certain properties or OTAs, potentially leading to an unfair representation on the carousel.'[1613]
- 'The algorithm is neither accessible nor controllable from the outside. Even minimal changes would mean a redirection of sales without being noticed. The application of this algorithm is beyond any control. It is therefore a good faith agreement.'[1614]
- Booking/KAYAK 'could definitely put their fingers on the scales if they wanted to.'[1615]

8.3.3.5.5. The selection criteria do not take into account possible affiliation agreements between participants in the Carousel

(1278) The selection criteria set forth in the Initial Commitments also do not account for the fact that some of the OTAs participating in the Carousel may actually offer accommodation options from the same inventory. Indeed, for the purpose of the Initial Commitments, OTAs sourcing their hotel inventory from other OTAs would not be considered to be affiliated to those companies and could therefore be showed as recommended OTAs on the Carousel at the same time.[1616] In particular, the 'alternative' hotel OTAs showed in the Carousel may in fact be sourcing their inventory from Booking itself, so that the customers' choices in favour of those OTAs would in the end result in additional sales for Booking's own inventory. That is indeed the case for four out of the top ten OTAs by hotel revenue generated on KAYAK (*i.e.*, Trip.com, SnapTravel, eDreams and Stayforlong).[1617]

(1279) The selection criteria therefore undermine the effectiveness of the Initial Commitments, because some of the alternative options selected based on those criteria may actually redirect the consumer to Booking's own inventory.

*8.3.3.6.* The eligibility requirements applying to hotel OTAs are not transparent and non-discriminatory

(1280) The selection criteria described above only apply to the offers of OTAs that are considered eligible to participate in the Carousel. Since the eligibility criteria are prerequisites for access to the Carousel, they are acceptable in so far as they are transparent and non-discriminatory.[1618]

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1612 Responses to OTAs and MSSs Market Test Questionnaires, Question G.4, G.5, G.7.

1613 Non-confidential version of [OTA]'s response to question G.7 of Questionnaire to OTAs on commitments [DOC ID 118741].

1614 Non-confidential version of [OTA]'s response to question G.5 of Questionnaire to OTAs on commitments [DOC ID 118330].

1615 Non-confidential version of [MSS]'s response to question G.4 of Questionnaire to MSSs on commitments [DOC ID 116401].

1616 Response to RFI 40, Question 6.

1617 Response to RFI 41, Question 5 and Annex 1.

1618 Remedies Notice, para. 62.

(1281) The Initial Commitments set forth two eligibility criteria:

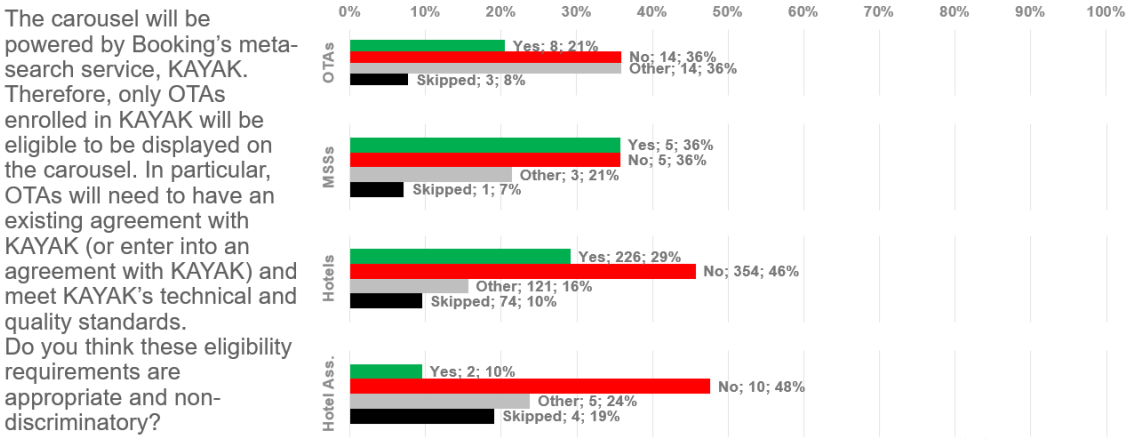
(a) The OTA 'complies with KAYAK's usual technical and quality standards for OTA partners'[1619] ('KAYAK's Standards') and

(b) 'at least 60% of [the OTA's] total accommodation revenue is generated from the sale of hotel rooms'[1620] (the 'Qualifying Threshold').

(1282) With respect to the KAYAK's Standards, these are not sufficiently transparent and may have discriminatory effects also as a result of future changes in their provisions. In fact, nothing in the Initial Commitments prevents KAYAK from changing the KAYAK's Standards in the future. This effectively means that an essential element of the Initial Commitments offered by Booking could be changed at any moment by full discretion of a subsidiary controlled by Booking itself. Because KAYAK, as explained above, is not independent from Booking, the Commission cannot assume – in the absence of any binding commitment to that effect – that KAYAK will in the future refrain from changing the KAYAK's Standards in a way that discriminates against Booking's competitors.

(1283) The results of the Market Test also showed that generally KAYAK's Standards are not seen as sufficiently appropriate and non-discriminatory.

**Figure 144: Responses to OTAs and MSSs Market Test Questionnaires, Question F.1**




*Source: Commission's market test*

(1284) Market respondents observed that:[1621]

- Compliance with KAYAK's Standards 'creates a significant burden on smaller and mid-size competing hotel OTAs, as the costs involved to be inserted in an accommodation MSSs are considerable. Every OTA that wishes to advertise via an MSSs needs to build a so-called cache with hotel prices including all different room types for all its accommodations. This is technically difficult because of the complexity and extensiveness of the database. Moreover, it is very costly to maintain this database and keep it up-to-date.'[1622]

1619 Initial Commitments submitted on 31 July 2023, page 1.
1620 Initial Commitments submitted on 31 July 2023, page 1.
1621 Responses to OTAs and MSSs Market Test Questionnaires, Question F.2.
1622 Non-confidential version of [OTA]' response to question F.2 of Questionnaire to OTAs on commitments [DOC ID 119495].

- ‘By favoring OTAs already affiliated with KAYAK, these requirements create barriers for new or smaller players in the industry who might want to participate but don’t have existing partnerships.’[1623]
- ‘Kayak forces MSSs participants to buy minimum bundles of MSSs traffic + large advertising buys in order to participate in the MSSs. This limits participation to larger players.’[1624]

(1285) With respect to the Qualifying Threshold, this requirement would have a discriminatory effect towards certain potential new entrants in the hotel OTA market, such as OTAs focusing on non-hotel accommodations. By definition the Qualifying Threshold would exclude all such new entrants from the Carousel. This is because revenues generated from those new competitors shortly after entering the hotel OTA market would necessarily be smaller than the revenues they generate in their core segment of non-hotel accommodations.

(1286) The Notifying Party claims that the Qualifying Threshold is necessary to tailor the scope of the remedy to the specific competition concerns raised by the Transaction, which focus on the hotel OTA segment and do not cover non-hotel accommodations.[1625] Without the Qualifying Threshold, the Carousel would display more home-stay accommodations at the expense of hotels.[1626]

(1287) This justification is self-contradictory and inconsistent with the very design of the proposed remedy. In order to limit the scope of the Carousel to hotels, the requirement should apply *to the properties* shown in the Carousel (irrespective of the OTAs offering those properties). Instead, by applying the requirement *to the OTAs* based on their revenues, the Qualifying Threshold fails to achieve its stated goal: on the one hand it would still allow non-hotel accommodations to be shown on the Carousel (to the extent that they are offered by OTAs generating 60% of their accommodation revenue from hotels),[1627] on the other hand it may exclude small but credible competitors in the hotel segment.

(1288) The Market Test results confirmed this assessment. While the overall feedback on the Qualifying Threshold was generally negative, market participants were particularly concerned about the potential impact of this requirement on small hotel OTAs or new entrants in the hotel OTA market.

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1623 Non-confidential version of [OTA]’s response to question F.2 of Questionnaire to OTAs on commitments [DOC ID 118741].

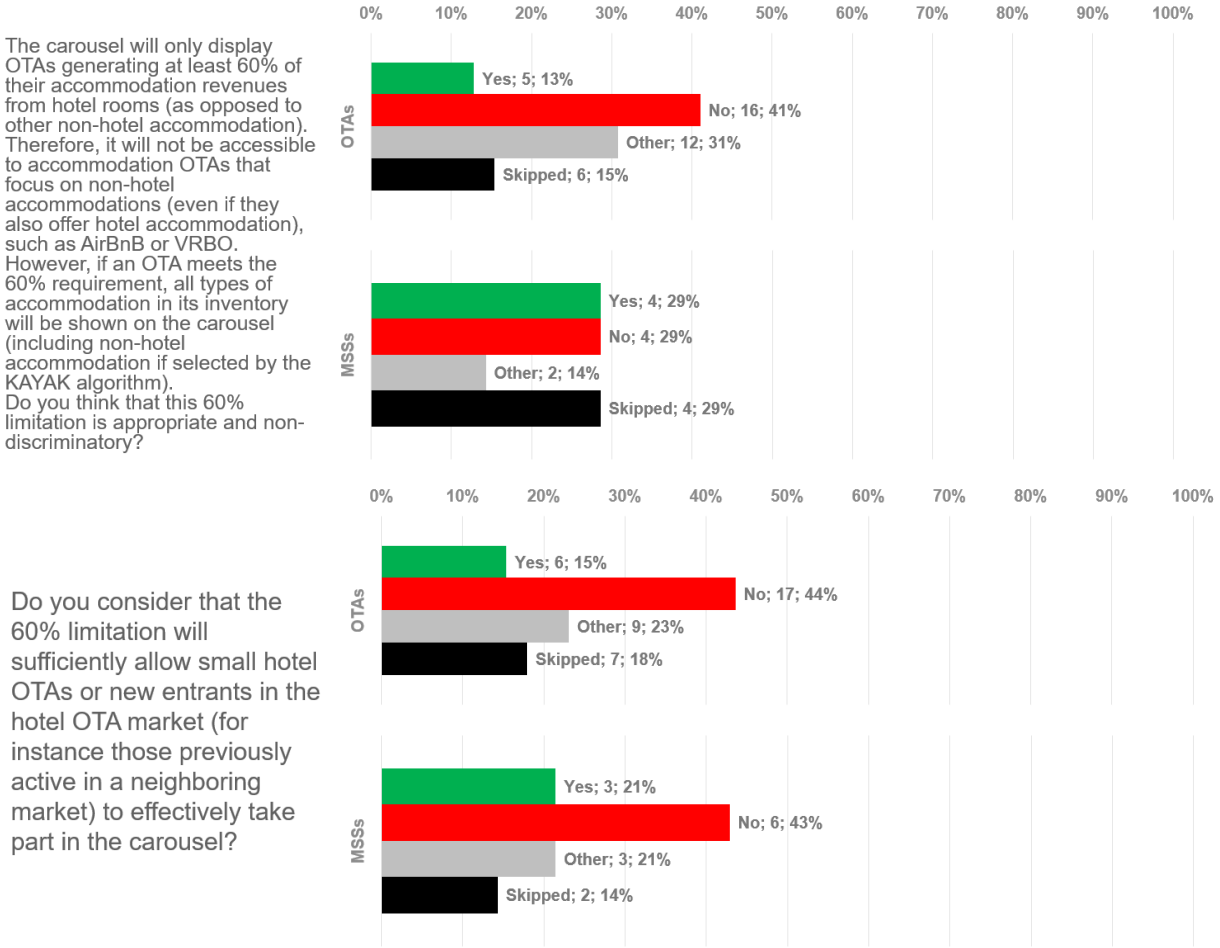
1624 Non-confidential version of [OTA]’s response to question F.2 of Questionnaire to OTAs on commitments [DOC ID 116401].

1625 Response to RFI 37, question 21.

1626 Response to RFI 40, question 4.

1627 Response to RFI 37, question 22.

**Figure 145: Responses to OTAs and MSSs Market Test Questionnaires, Questions F.3 and F.5**




*Source: Commission's market test*

(1289) Market respondents observed that:[1628]

- The Qualifying Threshold is 'clearly discriminatory against alternative accommodation providers, since non-hotel accommodations are allowed to be shown but only hotel-focused OTAs so that they can grow their share in the non-hotel market.'[1629]
- 'Perhaps 60% is something discriminatory since perhaps there could be OTAs that, even if they are below, can be useful for the user.'[1630]

(1290) In conclusion, the Commission finds that the OTA eligibility requirements set forth in the Initial Commitments are not sufficiently transparent and non-discriminatory.

1628 Responses to OTAs and MSSs Market Test Questionnaires, Questions F.4 and F.6.

1629 Non-confidential version of [OTA]'s response to question F.4 of Questionnaire to OTAs on commitments [DOC ID 110002].

1630 Non-confidential version of [OTA]'s response to questions F.4, F.6 of Questionnaire to OTAs on commitments [DOC ID 88471].

*8.3.3.7.* The Initial Commitments cannot be effectively monitored

(1291) As explained in the Remedies Notice, commitments other than divestitures '*require effective monitoring mechanisms in order to ensure that their effect is not reduced or even eliminated by the parties. Otherwise, such commitments would have to be considered as mere declarations of intention by the parties and would not amount to binding obligations, as, due to the lack of effective monitoring mechanisms, any breach of them could not result in the revocation of the decision according to the provisions of the Merger Regulation. Where, however, the parties submit remedies proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted. The Commission may reject such remedies in particular on the grounds that the implementation of the remedies cannot be effectively monitored and that the lack of effective monitoring diminishes, or even eliminates, the effect of the commitments proposed.*'[1631]

(1292) Since certain aspects of the Initial Commitments are not sufficiently clear and are subject to change in the future, the Commission notes that the implementation of the Initial Commitments could not be effectively monitored in this case.

(1293) In fact, as explained in section 8.3.3.5 above, the Initial Commitments do not include an exhaustive and univocal description of the factors fed into the KAYAK Algorithms and of the way in which those factors are combined to select the content of the Carousel. Moreover, the Notifying Party itself acknowledged that '*it is difficult to predict with accuracy the ways and speed in which the algorithm may change over the course of the years*.'[1632] Indeed, the Carousel's selection criteria may be changed at the full discretion of KAYAK, in a way that discriminates against the competitors of its parent company Booking.

(1294) This means that neither market participants, nor the Commission or the Monitoring Trustee, would be in a position to effectively monitor how the selection criteria are applied and whether those criteria are discriminatory.

(1295) As regards the market participants, these have no access to the KAYAK Algorithms as run by the Carousel from time to time. Because the Carousel would only be shown on the flight confirmation page, its content would not be immediately accessible on the internet but it would only be visible after the purchase of a flight ticket. Market participants cannot be expected to acquire flight tickets on Booking.com just to monitor compliance with the Initial Commitments.

(1296) As regards the Commission and the Monitoring Trustee, it is unclear whether they will be able to collect any evidence showing how the Carousel content is selected and whether this selection is non-discriminatory. The Notifying Party itself explained that '*these internal algorithms change continuously such that it will only be possible to share with the Commission and the Monitoring Trustee the results of a particular search or aggregated searches within a period of time instead of the models and metrics that make up the "algorithm" at any one time*.'[1633] In other words, the

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1631 Remedies Notice, paras. 13 and 14.

1632 Response to RFI 40, question 8.

1633 Response to RFI 37, question 26.

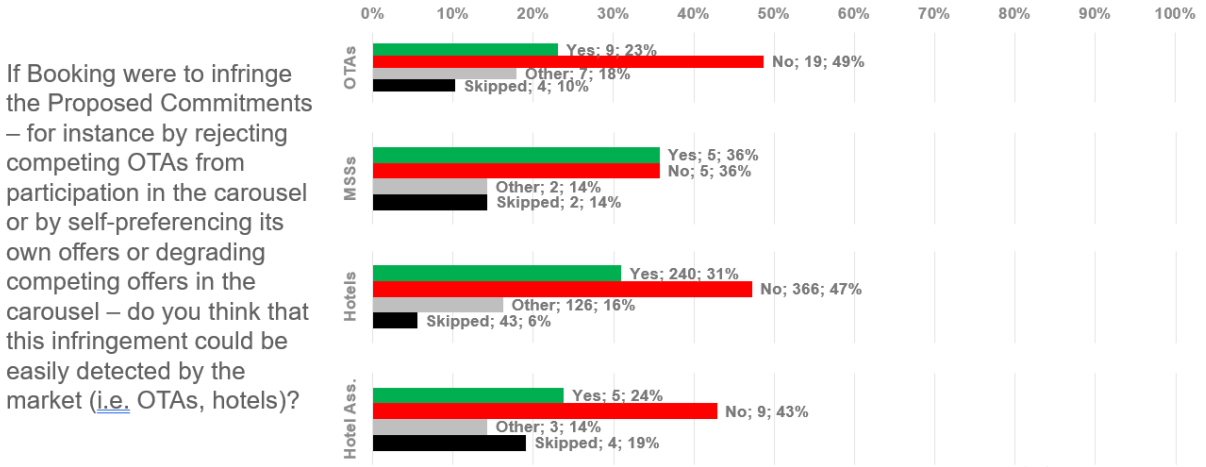
KAYAK Algorithms will work as a black box: it will only be possible to monitor the final outcome of their computations, but not the inner workings producing that outcome. And the Initial Commitments do not provide any benchmark to assess whether that monitored outcome would be discriminatory or not.

(1297) When asked to explain how exactly the Commission or the Monitoring Trustee could effectively detect any potential distortion in the selection of the Carousel content, the Notifying Party explained that '*KAYAK can cache a randomised sample (e.g., 1%) of all search sessions automatically generated through the Hotel OTA Carousel displayed on a flight booking confirmation page, and provide to the Monitoring Trustee the same search results that would be displayed if such sessions were run on KAYAK's website directly (up to the fourth property displayed on the Hotel OTA Carousel for such session), to show that any deviations from KAYAK's algorithm are solely the result of the Priority Principle*.'[1634]

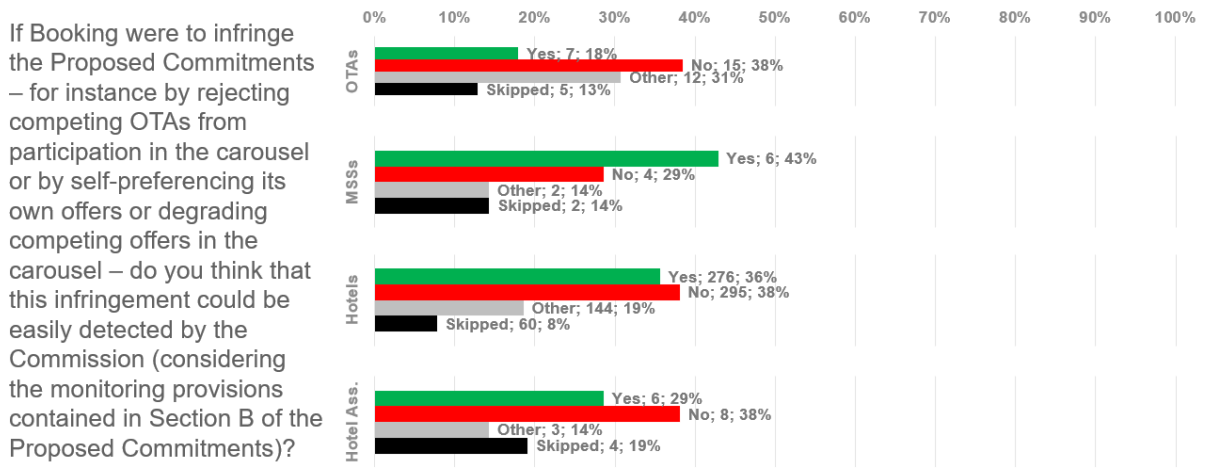
(1298) But this survey would only show that the output of the algorithms is the same on the Carousel and on KAYAK. It would not show how that output was calculated by the algorithms. In particular, it is unclear how any distortion of the selection criteria (either due to a technical error or as a result of KAYAK's deliberate self-preferencing of Booking's offers) would be apparent from the randomised sample.

(1299) The results of the Market Test confirm that the Initial Commitments would be difficult to monitor. Many respondents stated that neither the market nor the Commission could easily detect a potential infringement of the Initial Commitments on Booking's part.

**Figure 146: OTAs and MSSs Market Test Questionnaires, Questions J.1 and J.3, and hotels and hotel associations Market Test Questionnaires, Questions G.1 and G.2.**




1634 Response to RFI 41, question 7.




*Source: Commission's market test*

(1300) Market participants also commented that:

- 'It is well difficult for market players to detect the offers displayed in the carousel as these are only shown on the confirmation page after a flight booking. Evidently, [the respondent] will not regularly complete a flight booking on Booking.com's flight platform just to check the implementation of the Proposed Initial Commitments.'[1635]
- 'If Kayak's algorithm is allowed to select offers based on criteria that are not transparent to the market (such as click through rate or revenue to Kayak) there is no way for the market to detect infringements.'[1636]
- '[An infringement] would remain completely undetected and, even if suspected, could never be proven.'[1637]
- 'If it is not easy for the industry to detect, it is even less so for the Commission.'[1638]
- 'There's too many steps, both commercial and technical, for the EC to effectively monitor.'[1639]

(1301) In conclusion, the implementation of the Initial Commitments cannot be effectively monitored, and the lack of effective monitoring diminishes, or even eliminates, the effect of the proposed Initial Commitments.

*8.3.3.8.* The Initial Commitments' duration may not be sufficient

(1302) The Notifying Party argues that the five-year duration of the Initial Commitments is sufficient. It does so by reference to a previous Commission decision relating to a

1635 Non-confidential version of [OTA]'s response to question J.2 of Questionnaire to OTAs on commitments [DOC ID 119495].

1636 Non-confidential version of [OTA]'s response to question J.2 of Questionnaire to OTAs on commitments [DOC ID 118286].

1637 Non-confidential version of [OTA]'s response to question J.2 of Questionnaire to OTAs on commitments [DOC ID 118330].

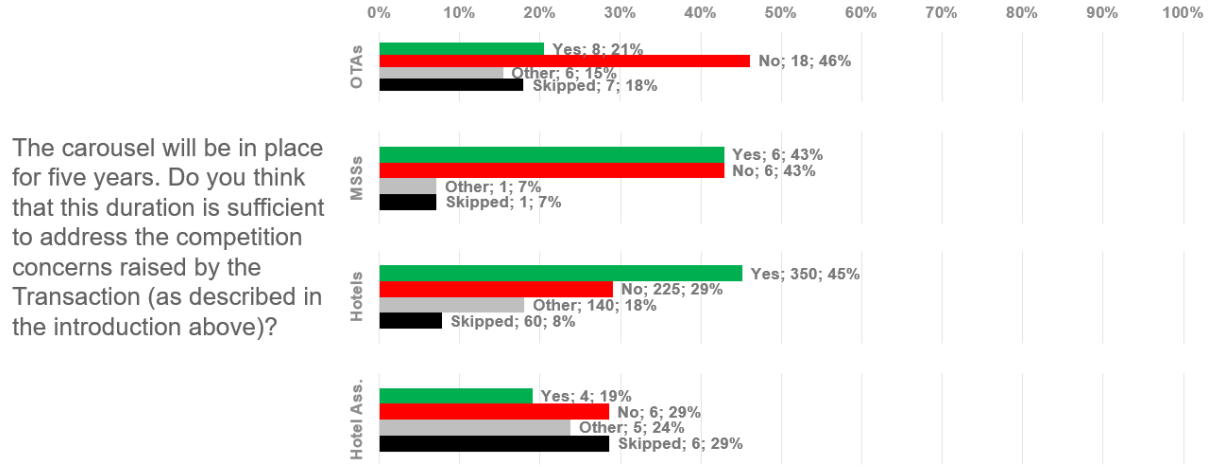
1638 Non-confidential version of [OTA]'s response to question J.4 of Questionnaire to OTAs on commitments [DOC ID 119167].

1639 Non-confidential version of [OTA]'s response to question J.4 of Questionnaire to MSSs on commitments [DOC ID 116401].

different market (*Microsoft (Tying)*) as well as to the possible changes in market conditions expected in the future.[1640]

(1303) As shown in the picture below, the results of the Market Test on this point were mixed.

**Figure 147: OTAs and MSSs Market Test Questionnaires, Question C.D.1, and hotels and hotel associations Market Test Questionnaires, Question C.C.1.**




*Source: Commission's market test*

(1304) While certain respondents noted that '*the e-commerce travel sector changes continuously and 5 years is a long period in this sector*,' others believe that '*the development of the structure of the relevant markets does not remove the Commission's competition concerns. The markets are, on the contrary, moving towards further consolidation and an increased focus on the lowest price.*'[1641]

(1305) The point concerning the sufficient duration of the Initial Commitments can be left open, because the other shortcomings affecting the remedy proposal in any event warrant its rejection.

*8.3.3.9.* The Initial Commitments limit Booking's liability in case of infringement

(1306) Finally, the Initial Commitments include certain provisions that seriously undermine their enforceability and effectiveness.

(1307) *First*, paragraph 7 of the Initial Commitments provides that '*KAYAK separately and on its own account, commits to fulfil its obligations under the Commitments insofar as they relate to KAYAK (such commitments, the "KAYAK Commitments"). In the event of structural changes to the BHI Group such that KAYAK leaves the BHI Group within a period of five years from the Closing Date, BHI will immediately cease to be responsible for KAYAK's compliance with the KAYAK Commitments – for which KAYAK itself will remain responsible pursuant to this paragraph 7. BHI (or one of its subsidiaries) and KAYAK shall continue the commercial affiliate agreement entered into pursuant to these Commitments for a period of 5 years from the Closing Date.*'

1640 Form RM submitted on 31 July 2023, paragraphs 2.32 to 2.34.

1641 Response to OTA Market Test Questionnaire, question C.D.3.

(1308) As explained above, KAYAK and Booking are one and the same undertaking for the purpose of the Merger Regulation. Is it therefore impossible for KAYAK to undertake commitments '*separately and on its own account*' without Booking assuming liability for those commitments. Moreover, the provision effectively implies that Booking could free itself from large parts of the Initial Commitments by divesting KAYAK. That would be an unacceptable circumvention of the Initial Commitments.

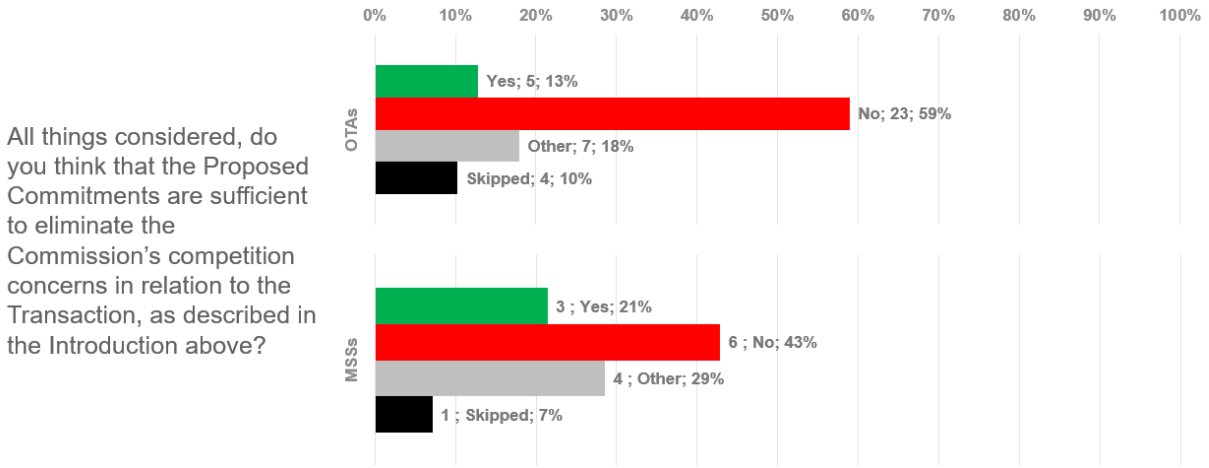
(1309) Moreover, paragraph 27 of the Initial Commitments exclude Booking's liability under certain circumstances, some of which are described in extremely vague and open-ended terms. For instance, the provision specifies that '*Notwithstanding any other provision of these Commitments, BHI and KAYAK shall be permitted under these Commitments to take steps to … improve user or platform … experience.*' Such an all-embracing provision could exclude Booking's liability, without any obvious reasons, in a broad range of hypothetical circumstances.

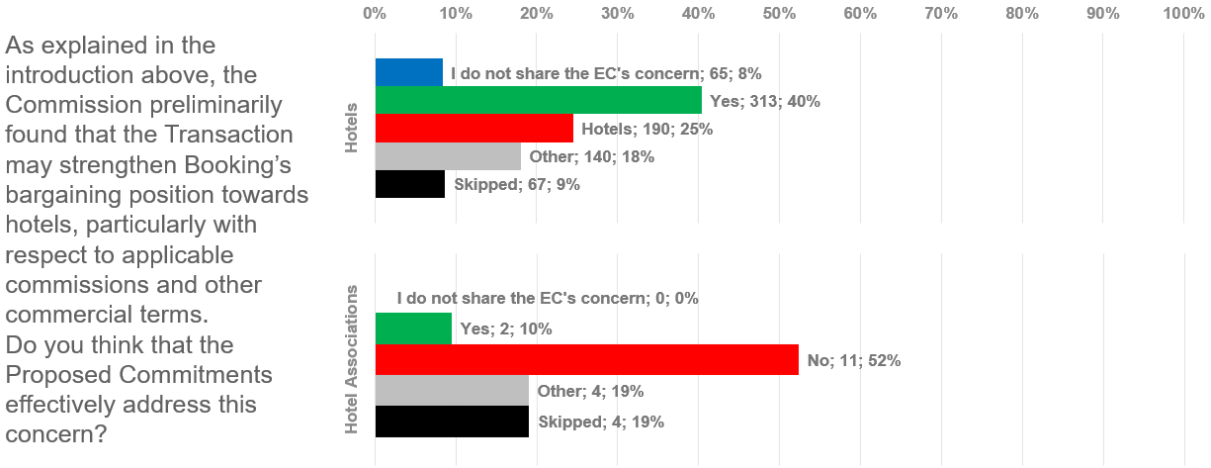
*8.3.4. Conclusion on the Initial Commitments*

(1310) In light of the above, the Commission concludes that the Initial Commitments are not comprehensive and effective from all points of view and do not entirely eliminate the competition concerns raised by the Transaction.

(1311) This conclusion is confirmed by the results of the market test. With the exception of hotels, all other categories of respondents – particularly OTAs, who would be the main beneficiaries of the proposed remedy – provided negative feedback as to the Initial Commitments' suitability to eliminate the competition concerns raised by the Transaction.

**Figure 148: Responses to Question K.2 of the OTA and MSS Market Test Questionnaires and H.1 of the hotels and hotel associations Market Test Questionnaires**






*Source: Commission's market test*

(1312) The Market Test also collected feedback about the Notifying Party's main claims as presented in the Form RM, namely that: (i) the Carousel would facilitate competition by smaller OTAs or by new entrant OTAs in the EEA, (ii) the Carousel would encourage hotels to use multiple OTAs to market their accommodation offer in the EEA, (iii) the Carousel would reduce hotels' incentive to switch from other OTAs to Booking, because those OTAs would have access to Booking's flight customer through the carousel, (iv) the Carousel would eliminate any possibility for Booking to increase its bargaining position towards hotels in the EEA through the Transaction and (v) the Carousel would encourage Booking's flight customers to 'shop around' for accommodation, neutralizing their tendency to buy both flight and accommodation from Booking. Each of these outcomes is considered to be unlikely or very unlikely by both OTA and MSS respondents.[1642]

(1313) For these reasons, the Initial Commitments do not render the concentration compatible with the internal market and must be rejected.

## 8.4. The Revised Commitments

### *8.4.1. Description of the Revised Commitments*

(1314) Compared to the Initial Commitments, the Revised Commitments introduced the following changes to the remedy concept.

(a) The Carousel would no longer be limited to the Booking.com platform, but would also be shown on the desktop site, mobile site or mobile application for the ETG brands MyTrip, GotoGate / Flybillet, Trip, Flightnetwork, Travelstart, Seat24 and SuperSaver.

(b) The Carousel would no longer be limited to customers located in the EEA, but would instead be shown to all customers purchasing a flight to an EEA destination, irrespective of their location.

(c) Booking and KAYAK would commit that they will provide hotel OTA partners with information on the relevant Eligibility Criteria that needs to be complied with to access the Carousel.

[1642] OTAs and MSS Market Test Questionnaires, Question K.1.

(d) The selection criteria for the Carousel have been modified so that the lowest priced OTA offer for a selected accommodation is always listed in the Carousel as recommended offer immediately below the selected accommodation.

(e) The definition of the KAYAK Algorithms no longer includes a description of the factors relied upon by those algorithms.

(f) The requirement that the four recommended OTAs shown on the carousel are different and belong to different corporate groups has been discarded.

(g) Para. 7 of the Initial Commitments concerning commitments undertaken by KAYAK '*separately and on its own account*' was discarded.

(h) Para. 27 of the Initial Commitments was revised to remove the exclusion of Booking's liability for any steps taken '*to ... improve user or platform ... experience.*'

(i) The duration of the commitments was extended from five to six years.

*8.4.2. The Notifying Party's views*

(1315) The Notifying Party argues that, by ensuring that the cheapest offer for each property will be featured, the revised selection criteria address the Commission's and Market Test respondents' concerns by ensuring that the lowest priced offer will always be displayed more prominently and removes the ability of Booking.com or other OTAs to 'bid up' or rely on their brand presence to boost an otherwise higher priced offer. This will be a selection criterion to be listed as a Recommended OTA which will not vary over time. The Notifying Party argues that this selection criterion will be transparent and easy to monitor. Moreover, it argues that it would not be possible for KAYAK to discriminate in favour of any Booking.com OTA brand without it being obvious to market participants, and to further ensure compliance it remains the case that the Monitoring Trustee can request and audit the carousel search results by way of verification at any time.[1643]

*8.4.3. The Commission's assessment*

8.4.3.1. The Revised Commitments only partially address some of the shortcomings of the Initial Commitments

(1316) Under the Revised Commitments, the selection criteria for the Carousel have been modified so that the lowest priced OTA offer for a selected accommodation is listed in the Carousel as recommended offer immediately below the selected accommodation.

(1317) The price of each offer is determined by the corresponding OTA and is therefore beyond Booking/KAYAK's control. Therefore, the ranking of the OTAs on the basis of the price offered is more transparent than the initial criteria based on the KAYAK Algorithms.

(1318) However, the scope of this improvement is limited. Under the Revised Commitments, the criterion of the lowest price would only apply to the selection of the recommended OTA. The KAYAK Algorithms would still determine all other aspects of the Carousel display, and in particular (i) the choice of the four

[1643] See the Notifying Party's Comments on the Commission's Market Test and Improved Set of Commitments submitted on 25 August 2023, page 5.

accommodation options to be shown on the Carousel and (ii) the choice and the ranking of the OTAs to be shown in the drop-down menu for each accommodation option.

(1319) For all the aspects of the Carousel display that continue to rely on the KAYAK Algorithms, the issues described in section 8.3.3.5 above remain unaddressed. In particular, the choice of the four accommodation options and the choice and the ranking of the OTAs in the drop-down menu are still based[1644] on criteria that are not clearly defined, are continuously subject to change (either through automatic machine learning processes or at KAYAK's full discretion), and may lead to discriminatory effects, self-preferencing of Booking's offers or redirection of customers to Booking's own inventory.

(1320) In particular, in the absence of any explicit commitment to that effect, it is not possible to rule out *a priori* that KAYAK would change its algorithms so as to show, in a certain number of cases, accommodation offers for which Booking is offering the best price and therefore is shown as recommended OTA. Or that KAYAK would change its algorithms so as to show in the drop-down menus, in a certain number of cases, OTAs who are sourcing their inventory from Booking itself (or not to show competing OTAs that are particularly competitive).

(1321) The Revised Commitments therefore do not sufficiently address the issues raised by the Carousel selection criteria.

(1322) The Revised Commitments also extend the duration of the remedy from five to six years. The Notifying Party did not explain why such a limited increase in duration would meaningfully improve the effectiveness of the remedy.[1645]

8.4.3.2. The Revised Commitments do not address at all other shortcomings of the Initial Commitments

(1323) The Revised Commitments do not introduce any meaningful improvement in relation to several issues raised during the Market test.

(1324) *First*, the scope of application of the remedy remains unchanged, since the Revised Commitments still provide that the Carousel will only be displayed on the flight confirmation page. All other types of cross-selling of hotel services to flight customers remain excluded from the scope of the Commitments. The issues described in section 8.3.3.1 above therefore remain unaddressed.

(1325) *Second*, the Revised Commitments do not introduce any change to the eligibility requirements for the OTAs' access to the Carousel. The Revised Commitments only provide that OTAs will be informed about those eligibility requirements. But this in no way resolves the lack of transparency and the potential discriminatory effects of those eligibility requirements as described in section 8.3.3.6 above, particularly with respect to KAYAK's unfettered ability to change those requirements at any moment and at its sole discretion. Those issues therefore remain unaddressed.

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1644 See the Notifying Party's Comments on the Commission's Market Test and Improved Set of Commitments submitted on 25 August 2023, page 8.

1645 See the Notifying Party's Comments on the Commission's Market Test and Improved Set of Commitments submitted on 25 August 2023, para. 6.4.

(1326) *Third*, to the extent that different aspects of the Carousel display continue to rely on KAYAK Algorithms, the Revised Commitments do not introduce any mechanism allowing the effective monitoring of their implementation. In particular, the Revised Commitments do not include an exhaustive and univocal description of the factors fed into the KAYAK Algorithms and of the way in which those factors are combined to select the four accommodation options shown in Carousel and to select and rank the OTAs shown in the drop-down menu for each accommodation options. This means that neither market participants, nor the Commission or the Monitoring Trustee, would be in a position to effectively monitor how the selection criteria are applied and whether those criteria are discriminatory. The issues described in section 8.3.3.7 above therefore remain unaddressed.

8.4.3.3. The Revised Commitments raise additional issues compared to the Initial Commitments

(1327) In certain aspects, the Revised Commitments are even less comprehensive that the Initial Commitments, and therefore raise additional issues as to their overall suitability to eliminate the competition concerns.

(1328) *First*, the definition of the KAYAK Algorithms in the Revised Commitments no longer includes a description of the factors relied upon by those algorithms. This means that KAYAK would have an even broader latitude in changing those factors in the future.

(1329) *Second*, the Revised Commitments no longer include a requirement that the four recommended OTAs shown on the Carousel are different and belong to different corporate groups. This effectively means that, under the Revised Commitments, Booking may well feature on the Carousel as the only recommended OTAs for all accommodation offers, which would considerably diminish the effectiveness of the Carousel itself.

*8.4.4. Conclusion on the Revised Commitments*

(1330) In light of the above, the Commission concludes that the Revised Commitments do not eliminate the competition concerns identified entirely – also in light of the outcome of the Market Test – and when compared to the Initial Commitments raise further issues as to their overall suitability.

(1331) For these reasons, the Revised Commitments do not render the concentration compatible with the internal market and must be rejected.

## 9. CONCLUSION: INCOMPATIBILITY WITH THE INTERNAL MARKET

(1332) For the reasons set out in section 6 above, and in light with the results of the investigation, the Commission considers that the Transaction would cause a significant impediment to effective competition as a result of strengthening Booking's dominant position in the market for hotel OTAs. The Transaction should therefore be declared incompatible with the internal market and with the functioning of the EEA Agreement.

### 9.1. The Transaction is likely to have a negative impact on hotels

(1333) As explained in section **6.7.2** above, the Transaction is likely to have a negative impact on hotels.

(1334) *First*, as explained in section **6.7.2.5.1** above, post-Transaction, as Booking will enjoy a position more difficult to contest post-Transaction, its incentives to lower commissions and provide more beneficial terms and conditions to hotels would decrease.

(1335) *Second*, as explained in section **6.7.2.5.2** above, the Transaction could particularly result in increasing costs for hotels because it will allow Booking to shift demand for hotel rooms to Booking, which is the one of the most expensive sales channels for hotels.

**9.2. The Transaction is likely to have a negative impact on end customers**

(1336) As explained in Section 6.7.2.6 above, the Transaction is likely to have a negative impact on customers.

(1337) This is because Booking enjoys a high degree of customer loyalty and inertia (section **6.7.2.6.1** above), and Bookings' customer loyalty is likely to increase post-Transaction (section **6.7.2.6.2** above). It is therefore likely that, post-Transaction, more customers will pay higher prices (section **6.7.2.6.3** above).

**9.3. The Transaction is likely to significantly impede effective competition in the EEA**

(1338) As explained in section **6.7** above, the Transaction is likely to significantly impede effective competition in the EEA.

(1339) *First*, as explained in section **6.7.2.2** above, with the Transaction, Booking is buying a main customer acquisition channel and will be able to develop an ecosystem of travel services that leverages brand strength and customer inertia.

(1340) *Second*, as explained in section **6.7.2.3** above, the Transaction is likely to increase barriers to entry/expansion for rival hotel OTAs and strengthen network effects.

(1341) *Third*, as explained in section **6.7.2.4** above, the reduced contestability of Booking's market position is confirmed by its expected to growth in share in the hotel OTA market as a result of the Transaction.

HAS ADOPTED THIS DECISION:

*Article 1*

The notified operation whereby Booking Holdings Inc. would acquire sole control of Flugo Group Holdings AB within the meaning of Article 3(1)(b) of the Merger Regulation is hereby declared incompatible with the internal market and the functioning of the EEA Agreement.

*Article 2*

This Decision is addressed to:

Booking Holdings Inc.
800 Connecticut Avenue
Norwalk
CT 06854 Connecticut
United States of America

Done at Brussels, 25.9.2023

*For the Commission*

*(Signed)*
*Didier REYNDERS*
*Member of the Commission*