

Antitrust and Competition Update

September 17, 2026

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Booking Holdings v European Commission: **EU General Court Confirms Theories of Harm** **Can Travel Across an Ecosystem**

Executive Summary

- **What's new:** The EU General Court upheld the European Commission's prohibition of Booking's acquisition of eTraveli — the first merger blocked on the basis of a pure ecosystem theory of harm.
- **Why it matters:** The ruling reinforces the Commission's ability to challenge mergers involving ecosystem tie-ups by allegedly dominant players and lends judicial support to the entrenchment theory of harm introduced in the Draft Merger Guidelines.
- **What to do next:** Large companies contemplating acquisitions of complementary services should consider conducting an assessment of ecosystem- and entrenchment-related risks in their deals and preparing robust efficiency evidence. The Commission's Draft Merger Guidelines recognize that mergers combining complementary products or technologies may reduce transaction costs and increase interoperability, which could help counter an ecosystem theory of harm.

On 9 September 2026, the European Union's General Court delivered its judgment in *Booking Holdings v European Commission* (Case T-1139/23), confirming the European Commission's (Commission's) decision in *Booking Holdings/eTraveli* (M.10615) to prohibit Booking's acquisition of eTraveli. This is the first merger blocked on the basis of a pure ecosystem theory of harm.

The judgment, which may still be appealed to the EU's top court, reinforces the Commission's ability to challenge mergers involving ecosystem tie-ups by allegedly dominant players.

Background

In November 2021, Booking, the largest hotel online travel agency (OTA) in the European Economic Area (EEA), agreed to acquire eTraveli, a leading flight OTA. Although the transaction did not meet the EU merger thresholds, it was referred to the Commission at the parties' request.

In September 2023, the Commission blocked the merger.¹ Its prohibition rested on the theory that the acquisition would strengthen Booking's already dominant

¹ In contrast, the UK Competition and Markets Authority (CMA) cleared the transaction in Phase 1, finding limited evidence that a flight OTA offering is, or could become, a particularly significant customer retention and acquisition channel for hotel OTA services.

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position in the hotel OTA market by enabling it to develop a “travel ecosystem” and increase opportunities for cross-selling accommodations.

By acquiring eTraveli, the Commission found that Booking would attract a significant number of additional customers earlier in their travel-booking journeys.

The case was the first in which the Commission based merger objections on a novel “reverse leveraging” theory of harm. The Commission acknowledged that the theory was not squarely addressed in the Non-Horizontal Merger Guidelines (Guidelines), noting 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. [...], such circumstances, referred to by the Notifying Party as ‘reverse leveraging’², were not explicitly foreseen in the Non-Horizontal Guidelines but nor were they excluded from them. Such circumstances, [...], have risen only more recently with the development of online ecosystems.

The Commission said its argument was in line with its 2019 report “[Competition Policy for the Digital Era](#)” and indicated that for a company operating in an ecosystem which benefits from strong positive network effects, “the risk [...] extends to the strengthening of dominance as it fortifies the dominance of the ecosystem.”

In April 2026, the Commission published the [Draft Merger Guidelines](#) (DMG) indicating, based on its assessment of *Booking Holdings/eTraveli*, that a merger may result in a significant impediment to effective competition “when it leads to the entrenchment of a dominant position [...] across closely related markets, which may consist of one or several distinct but interconnected markets (‘ecosystem’).”

The DMG also note that the Commission may assess merging firms’ existing market power by taking into account “how relevant the ecosystem is for effectively competing in the core market.”

The Commission rejected Booking’s efficiency claims, including those based on the elimination of double marginalization, which the DMG recognize as a valid merger synergy. The Commission’s skepticism in this case was partly based on the lack of anticipated consumer benefits in Booking’s internal documents.

² The reverse leveraging effect was described by the General Court in the judgment as “the merged entity [using] its position on a market in which it does not have market power (the flight OTA market) to strengthen its allegedly dominant position on another market (the hotel OTA market).” By contrast, traditional leveraging consists of using dominance in one market to extend market power to another (nondominant) market.

Booking proposed commitments that included a choice screen on the flight checkout page and displaying hotel offers from competing OTAs on Booking.com and eTraveli brand platforms. The Commission rejected these behavioral commitments, among other reasons, because it said they did not remove Booking’s cross-selling opportunities across hotel services to flight customers and were difficult to monitor.

The General Court’s Ruling

The Guidelines Leave Room for Novel Approaches

The judgment concluded that the Commission’s assessment did not contradict the Guidelines. The General Court found that the Guidelines reserved for the Commission a right to apply and further develop theories of harm not expressly set out in the text. This is particularly relevant in digital markets, as their specific characteristics were not yet known — and therefore not sufficiently taken into account — when the Guidelines were published in 2008.

On that basis, the General Court determined that the Commission’s approach, including the focus on “reverse leveraging,” was permissible. The General Court also pointed out that the Commission may, where appropriate, account for credible and realistic future market developments in constructing the counterfactual scenario.

Commission’s Analytical Errors Were Significant but Not Decisive

The General Court was not wholly in agreement with the Commission’s approach, however, taking a critical stance towards certain elements of the Commission’s analysis, which the General Court found was “vitiated by a number of errors.” The General Court determined that:

- The post-merger market share increment — that is, the increase in Booking’s market share in the hotel OTA space — could be limited to less than 1%.
- Booking’s growth post-transaction had not been shown to lead hotels to transfer additional inventory to Booking’s platform.
- The Commission did not establish that such growth would enable Booking to increase commissions from hotels.

Ultimately, despite its criticisms, the General Court excused these errors, noting that the Commission may base its assessments on qualitative elements, provided that the “evidence [...] is sufficiently cogent and consistent.”

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The General Court emphasized that the substantial market gap between Booking and its competitors, combined with strong network effects and the fact that the increment would be achieved in a channel which Booking does not yet dominate, would create a travel ecosystem difficult for competitors to replicate.

The judgment thus affirmed a finding of anticompetitive foreclosure effects sufficient to prohibit a merger despite the very limited share increment in the dominated market post-transaction, and on the basis that the merger would make the dominant position less contestable and consolidate a low level of competition.

This is a fairly low evidentiary standard, which the Commission may interpret as latitude to challenge acquisitions by dominant companies beyond what is contemplated in the DMG.

Proof of Efficiencies Was Inadequate

The General Court also upheld the Commission's rejection of Booking's claimed efficiencies. Several efficiency arguments were found inadmissible on account of procedural errors. On substance, the General Court shared the Commission's skepticism regarding the marginal cost reduction claim because Booking's internal documents did not show that the claimed benefits would be passed on to consumers.

The General Court also rejected out-of-market efficiencies in the form of price reduction in the flight OTA market, noting that only those efficiencies which relate to the markets susceptible to competitive harm (in this case, the hotel OTA) and which are capable of counterbalancing the anticompetitive effects are relevant to the analysis. The General Court found limited commonality between the two consumer groups.

Although the DMG allow for out-of-market efficiencies to alleviate competition concerns, the DMG also presuppose that the harmed and benefiting consumers are "substantially the same."

Takeaways

The *Booking* ruling, which may still be appealed to the EU's top court, confirms the increasing relevance of ecosystems in merger control assessment and now lends judicial support to the entrenchment theory of harm introduced in the DMG.

It remains to be seen whether this theory of harm will gain importance in the context of the EU Digital Markets Act and the gatekeepers' obligation to report deals, and whether the judgment may prompt large companies to engage in cooperation agreements with service providers in adjacent markets, in lieu of acquisitions.

The ruling also accepts the Commission's expansive interpretation of its own Guidelines, here based on the characteristics of digital markets, which were not fully reflected in the 2008 Guidelines.

Amid increasing consideration of efficiencies, companies should consider documenting pro-competitive aspects of their contemplated transactions early and ensure that those are verifiable, merger-specific and benefit consumers. The DMG recognize that mergers combining complementary products or technologies may reduce transaction costs and increase interoperability, which could help counter an ecosystem theory of harm.

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