

Booking files court appeal of EU veto on Etraveli deal

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Booking Holdings has lodged its planned appeal of the contentious EU prohibition of its Etraveli takeover, MLex has learned. The hotel booking platform is challenging the European Commission's first prohibition based on a pure "conglomerate" theory of harm, based on the idea that Booking expanding its "ecosystem" risked strengthening its dominant position on its core market. Dealmakers, especially in the digital sector, will be anxious to hear the court's verdict.

Booking Holdings lodged its planned appeal of the EU veto on its takeover of Etraveli on Tuesday, MLex has learned, alleging that the decision was vitiated by serious legal and factual errors and should be annulled.

In September, the European Commission prohibited Booking's bid to buy the Swedish flights online travel agent on the grounds that its dominant position on the market for hotel online travel agencies in the European Economic Area would have been strengthened (see [here](#)).

The case will be closely watched because it was the first time the EU watchdog based merger objections on a pure "conglomerate" theory of harm — meaning that Booking was not buying a head-to-head competitor or a supplier, but rather acquiring a neighboring business (see [here](#)).

The commission blocked the deal on the theory that Booking expanding its "ecosystem" risked strengthening its dominant position on its core market.

Dealmakers, especially in the digital sector, will be anxious to hear the court's verdict on this position.

The appeal is expected to be grounded on arguments already brought forward in the context of the merger review (see [here](#)), in particular that the commission was wrong to depart — without justification and without warning — from its longstanding decisional practice and its 2008 guidelines on non-horizontal mergers.

The guidelines speak of the need to prove that competitors would be hampered — "foreclosed" — by the deal. Booking says without providing foreclosure, the commission has no justification for blocking a deal that brings about efficiencies — here, a "one-stop shop" for travel services.

Another element Booking is expected to emphasize in its appeal is the commission's incorrect assessment of the "counterfactual." The "counterfactual" is a comparison of the situation if the merger is allowed versus the situation if it is prohibited.

Booking says the commission incorrectly determined that if the deal were prohibited, it would not have a flights business at all. But Booking had, and still has, a commercial relationship with Etraveli that has been extended to 2028.

That error, and a litany of others that appeared in the final decision, rendered the commission's analysis of the deal fundamentally flawed and should lead the court to invalidate it, Booking is expected to argue.

The commission was expecting the appeal, and at an event* yesterday, head of mergers Guillaume Lorient said: "I welcome that we'll be in court — I think it's very important to bring these cases to court."

"Maybe it's untested, but I think the facts warranted that type of review and that type of discussion."

The case reference is Booking Holdings v Commission T-1139/23.

*Annual CRA Brussels Conference, Brussels, Dec. 6, 2023.

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