

## Booking's Etraveli deal blocked in EU over dominance concerns

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**MLex Summary:** Booking has seen its plan to buy Etraveli blocked by EU merger regulators, who today said the deal would have strengthened Booking's dominant position on the market for hotel online travel agencies. The European Commission said Booking is the leading hotel OTA and Etraveli is one of the main providers of OTAs for flights. Booking had offered to address concerns by promising to show flight consumers a "choice screen" showing hotel offers from rivals, but this was insufficient, the commission said.

*Statement follows.*

Mergers: Commission prohibits proposed acquisition of eTraveli by Booking

Brussels, 25 September 2023

The European Commission has prohibited, under the EU Merger Regulation, the proposed acquisition of Flugo Group Holdings AB ('eTraveli') by Booking Holdings ('Booking'). The acquisition would have allowed Booking to strengthen its dominant position on the market for hotel online travel agencies ('OTAs') in the European Economic Area ('EEA'). Booking did not offer remedies that were sufficient to address these concerns.

The Commission's investigation

Today's decision follows an in-depth investigation by the Commission of the transaction, which would have combined Booking and eTraveli, two leading providers of OTA services in a concentrated industry. Booking is the leading hotel OTA while eTraveli is one of the main providers of flight OTA services in Europe. Booking is also active in the market for metasearch services ('MSS') mainly through its price comparison platform KAYAK.

OTAs provide an important intermediation service, matching demand and supply for travel services, which include accommodation, flights, car rentals, and attractions. In the EEA only, OTAs handle transactions worth more than €100 billion annually. Hotel OTA services are the largest and most profitable segment of the OTA market and are worth approximately €40 billion annually.

During the investigation, the Commission received feedback from a large number of stakeholders, including hotels and competing OTAs. Market participants were concerned that the transaction would strengthen Booking's dominant position on the market for hotel OTAs in the EEA, reduce competition and increase prices for hotels and, possibly, for consumers.

The Commission's decision

The Commission found that the transaction would have strengthened Booking's dominant position in the hotel OTA market, leading to higher costs for hotels and, possibly, for consumers. More specifically, the Commission found that:

Booking is the dominant hotel OTA in the EEA, which has been consistently growing over the past ten years to reach a market share above 60%. There is only one sizeable competitor in the market, which is however much smaller and mainly focused on the US market. Rival OTAs are not able to exert sufficient competitive price pressure on Booking, which is thus free to charge higher commissions to hotels than some of its main competitors. Moreover, Booking benefits from network effects as it has developed a significant scale in its hotel offering that, in turn, attracts an ever larger number of consumers.

The transaction would have allowed Booking to acquire a main customer acquisition channel. After accommodation, flight OTA services are the second largest OTA market and the closest complement to Booking's core hotel OTA business. Flight OTA services are an important customer acquisition channel for hotel OTAs as they generate a significant amount of traffic and are often the first step in the planning of a trip. On the flight OTA market, eTraveli is a best-in-class OTA and the number two player in the EEA. Booking could have leveraged

eTraveli's capabilities to become the main flight OTA in Europe.

The transaction would have allowed Booking to expand its travel services ecosystem, which revolves around its hotel

OTA business. A flight OTA product is a crucial growth avenue in this ecosystem as it would generate significant additional traffic to Booking's platform. This is because, among the different travel OTA services, flights have the highest chance to lead to the cross-selling of accommodation. These would have allowed Booking to benefit from existing customer inertia because a significant share of these additional consumers would have stayed on Booking's platforms. Therefore, the transaction would have made it more difficult for competitors to contest Booking's position in the hotel OTA market.

By increasing traffic to and sales by Booking's platforms, the transaction would have reinforced network effects and increased barriers to entry and expansion, making it harder for competing OTAs to develop a customer base capable of supporting a hotel OTA business. OTAs currently on a path to become full-fledged competitors may not be able to do so if the transaction goes ahead.

The strengthening of Booking's dominant position would have further increased its bargaining position towards hotels and diverted demand from cheaper sales channels to Booking. This could have resulted in higher cost for hotels and, possibly, consumers.

#### Booking's proposed remedies

The remedies offered by Booking did not adequately address the Commission's competition concerns so that it could be concluded that competition would be preserved on a lasting basis. Booking proposed to show flight customers a choice screen on the flight check-out page, which is the page shown to travellers after they purchase their flight tickets. In such choice screen, Booking offered to display multiple hotel offers from competing hotel OTAs, allowing customers clicking on the displayed offer to be redirected to the hotel OTA's website. The choice screen presented the following characteristics:

It would have been powered by KAYAK, Booking's metasearch service ('MSS') service.

It would have been displayed on the Booking.com branded flight platform and on the eTraveli branded flight platform. It would have been shown to flight customers located in the EEA and to flight customers located outside the EEA and travelling in the EEA.

It would have displayed four hotel options offered by OTAs. A drop-down menu appearing under each of the four hotel options would have contained up to four additional offerings from other hotel OTAs for the same hotel.

The recommended OTA, that is the one appearing first, would have been the OTA offering the lowest price for each hotel. The KAYAK algorithm would have been used to: (i) select the four hotels shown in the choice screen; and (ii) select the additional OTAs shown in the dropdown menu for each accommodation. The KAYAK algorithm includes a bidding mechanism, meaning that Booking would have been remunerated by competitors for referrals from the choice screen.

Hotel OTAs could be displayed provided they meet the following criteria: (i) complying with KAYAK's technical and quality standards for OTA partners; and (ii) generating at least 60% of their total accommodation revenue from the sale of hotel rooms. Booking's offers could also be displayed.

The Commission conducted an extensive analysis of the proposed commitments, including testing their efficacy with the relevant market participants. The feedback received indicates that the proposed remedies were not sufficiently comprehensive and effective and did not eliminate entirely the identified competition concerns. In particular:

The selection and ranking of offers by competing hotel OTAs were not sufficiently transparent and non-discriminatory, because KAYAK – a subsidiary of Booking – would have been in control of several aspects of their implementation.

The offers from competing hotel OTAs would have been displayed only on the flight check-out page and not in other important cross-sell opportunities such as emails, notifications, or other pages of the website. Furthermore, the flight check-out page represents only a small share of the cross-sell opportunities that Booking could have pursued through the acquisition of eTraveli.

The commitments would have been difficult to monitor effectively, especially because of Kayak's algorithm working as a black box.

Based on this, the Commission found that the remedies offered by Booking were not sufficient to address the competition concerns and to prevent the transaction's detrimental effect on competition. As a result, the Commission has decided to block the proposed transaction.

#### Companies and products

Booking, headquartered in the US, operates OTA brands such as Booking.com, Rentalcars, Priceline and Agoda. In the EEA, Booking is mainly active in the provision of hotel OTA services under the Booking.com brand and, to a limited extent, in the provision of flight OTA services, which it sources from eTraveli. Moreover, Booking is active in the provision of MSS for accommodation, car rental and flights via its KAYAK business (including the brands KAYAK, Momondo, Cheapflights, HotelsCombined, among others). Booking provides access to its OTA accommodation functionalities, via commercial affiliated programmes, to certain rival OTAs that do not have the capability to offer such services.

eTraveli, headquartered in Sweden, operates an OTA via its brands Gotogate, My Trip, Seat24 and SuperSaver. eTraveli is primarily active as a flight OTA.

Merger control rules and procedure

The transaction was notified to the Commission on 10 October 2022, and the Commission opened an in-depth investigation on 16 November 2022. On 9 June 2023, the Commission sent a Statement of Objections to Booking.

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the Merger Regulation) or for which it acquired jurisdiction by virtue of referral from Member States (see Articles 4(5) and 22 of the Merger Regulation) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II). In the past ten years, the Commission has approved almost 3500 mergers. Today's prohibition is only the 11th merger that the Commission has blocked over the same period.

There are currently four ongoing Phase II merger investigations: (i) the proposed acquisition of Asiana by Korean Air; (ii) the proposed creation of a joint venture by Orange and MasMovil, (iii) the proposed acquisition of iRobot by Amazon; (iv) the proposed acquisition of Figma by Adobe.

For more information

More information will be available on the Commission's competition website, in the Commission's public case register under case number M.10615.

Quotes:

Europe is a world-leading tourism destination attracting millions of travellers every year. The travel industry plays a vital role for the local economy of many regions, cities, and rural areas. Booking's acquisition of eTraveli would strengthen Booking's dominant position in the online travel agencies market and likely lead to higher costs for hotels and, possibly, consumers. Our decision to block the merger means that European hotels and travellers will not be further limited in the options available to offer their services and book their trips. This also means that the drive for competitive prices and innovation will be preserved in this important part of the travel industry.

Didier Reynders, Commissioner for Justice - 25/09/2023

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