

# Questionnaire for the public consultation on a New Competition Tool

Fields marked with \* are mandatory.

## Introduction

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### Objectives of the public consultation

The proposal for a New Competition Tool is one of the measures aimed at making sure that competition policy and rules are fit for the modern economy. It is meant to address gaps in the current EU competition rules, which have been identified based on the Commission's enforcement experience in digital and other markets, as well as the worldwide reflection process about the need for changes to the current competition law framework to allow for enforcement action preserving the competitiveness of markets.

EU competition law can address (i) anti-competitive agreements and concerted practices between companies pursuant to Article 101 of the Treaty on the Functioning of the European Union ("the EU Treaty") and (ii) the abuse by a company of its dominant position pursuant to Article 102 of the EU Treaty. The enforcement experience of the Commission and national competition authorities, as well as the worldwide reflection process on the fitness of the existing competition rules to tackle today's challenges have helped to identify certain structural competition problems that these rules cannot tackle (e.g. monopolisation strategies by non-dominant companies with market power) or cannot address in the most effective manner (e.g. strategies by companies with market power to extend their market position into multiple related markets).

The objective of this consultation is to collect stakeholder views on two aspects. First, stakeholders are asked to provide their views on whether there is a need for a new competition tool to ensure fair and competitive markets with a view to delivering lower prices and higher quality, as well as more choice and innovation to European consumers. Second, stakeholders are asked to provide their views on the characteristics that such a new competition tool should have in order to address structural competition problems in a timely and effective manner.

In parallel, the Commission is also engaged in a process of exploring, in the context of the Digital Services Act package, ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants. As part of that process, the Commission has launched a consultation to seek views on the framing, on the scope, the specific perceived problems, and the implications, definition and parameters for addressing possible issues deriving from the economic power of large, digital gatekeeper platforms. As such, the work on a proposed New Competition Tool and on the ex ante rules complement each other. The work on the two impact assessments will be conducted in parallel in order to ensure a coherent outcome. In

this context, the Commission will take into consideration the feedback received from both consultations. We would therefore invite you, in preparing your responses to the questions below, to also consider your response to the parallel consultation on ex ante rules for large, digital gatekeeper platforms, which can be found at [Digital Services Act survey](#).

## About you

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\* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* I am giving my contribution as

- Academic/research institution
- Business association

- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\* First name

Jacques

\* Surname

Lovell

\* Email (this won't be published)

jacques.lovell@hotrec.eu

\* Organisation name

*255 character(s) maximum*

HOTREC - The umbrella association of Hotels, Restaurants, Cafés & similar establishments in Europe.

\* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

\* Web address

https://www.hotrec.eu/

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

### \* Country of origin

Please add your country of origin, or that of your organisation.

- |   |  |  |  |
|---|--|--|--|
| <input type="radio"/> Afghanistan         | <input type="radio"/> Djibouti           | <input type="radio"/> Libya            | <input type="radio"/> Saint Martin                     |
| <input type="radio"/> Åland Islands       | <input type="radio"/> Dominica           | <input type="radio"/> Liechtenstein    | <input type="radio"/> Saint Pierre and Miquelon        |
| <input type="radio"/> Albania             | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania        | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria             | <input type="radio"/> Ecuador            | <input type="radio"/> Luxembourg       | <input type="radio"/> Samoa                            |
| <input type="radio"/> American Samoa      | <input type="radio"/> Egypt              | <input type="radio"/> Macau            | <input type="radio"/> San Marino                       |
| <input type="radio"/> Andorra             | <input type="radio"/> El Salvador        | <input type="radio"/> Madagascar       | <input type="radio"/> São Tomé and Príncipe            |
| <input type="radio"/> Angola              | <input type="radio"/> Equatorial Guinea  | <input type="radio"/> Malawi           | <input type="radio"/> Saudi Arabia                     |
| <input type="radio"/> Anguilla            | <input type="radio"/> Eritrea            | <input type="radio"/> Malaysia         | <input type="radio"/> Senegal                          |
| <input type="radio"/> Antarctica          | <input type="radio"/> Estonia            | <input type="radio"/> Maldives         | <input type="radio"/> Serbia                           |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini           | <input type="radio"/> Mali             | <input type="radio"/> Seychelles                       |
| <input type="radio"/> Argentina           | <input type="radio"/> Ethiopia           | <input type="radio"/> Malta            | <input type="radio"/> Sierra Leone                     |
| <input type="radio"/> Armenia             | <input type="radio"/> Falkland Islands   | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore                        |
| <input type="radio"/> Aruba               | <input type="radio"/> Faroe Islands      | <input type="radio"/> Martinique       | <input type="radio"/> Sint Maarten                     |
| <input type="radio"/> Australia           | <input type="radio"/> Fiji               | <input type="radio"/> Mauritania       | <input type="radio"/> Slovakia                         |
| <input type="radio"/> Austria             | <input type="radio"/> Finland            | <input type="radio"/> Mauritius        | <input type="radio"/> Slovenia                         |
| <input type="radio"/> Azerbaijan          | <input type="radio"/> France             | <input type="radio"/> Mayotte          | <input type="radio"/> Solomon Islands                  |
| <input type="radio"/> Bahamas             | <input type="radio"/> French Guiana      | <input type="radio"/> Mexico           | <input type="radio"/> Somalia                          |
| <input type="radio"/> Bahrain             | <input type="radio"/> French Polynesia   | <input type="radio"/> Micronesia       | <input type="radio"/> South Africa                     |

- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago

- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen

- Czechia
- Lebanon
- Saint Helena  
Ascension and  
Tristan da  
Cunha
- Zambia
- Democratic  
Republic of the  
Congo
- Lesotho
- Saint Kitts and  
Nevis
- Zimbabwe
- Denmark
- Liberia
- Saint Lucia

### \* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

**Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

**Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

## A. How to answer?

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You are invited to reply to this public consultation **by 8 September 2020** by filling out the eSurvey questionnaire online. The questionnaire consists of four main sections:

1. General information on the respondent
2. Structural competition problems: this section aims to gather the experience and views of stakeholders on scenarios resulting in a structural lack of competition and structural risks for competition, as well as about whether the current EU competition rules can deal with them.
3. Assessment of policy options: this section aims to gather the views of stakeholders on the four policy options outlined in the Inception Impact Assessment.
4. Institutional set-up of a new competition tool: the section aims to gather the views of stakeholders about how the new competition tool should be shaped in order to address structural competition problems in a timely and effective manner.

The Commission will summarise the **results in a report**, which will be made publicly available on the Commission's [Better Regulation Portal](#).

In the interest of time, the questionnaire is available in English only during the first two weeks. Thereafter the questionnaire will also be available in all official EU languages. You may respond to the questionnaire in any official EU language.

To facilitate the analysis of your reply, we would kindly ask you to **keep your answers concise** and to the point. You may include documents and URLs for relevant online content in your replies. **You are not required to answer every question.** You may respond 'not applicable/no relevant experience or knowledge' to questions on topics where you do not have particular knowledge, experience or opinion. Where applicable, this is strongly encouraged in order to allow the Commission to gather solid evidence on the different aspects covered by this questionnaire.

You are invited to read **the privacy statement attached** to this consultation for information on how your personal data and contribution will be dealt with.

You have the option of saving your questionnaire as a 'draft' and finalising your response later. In order to do this you have to click on 'Save as Draft' and save the new link that you will receive from the EUSurvey tool on your computer. Please note that without this new link you will not be able to access the draft again and continue replying to your questionnaire. Once you have submitted your response, you will be able to download a copy of your completed questionnaire.

Whenever there is a text field for a short description, you may answer in **maximum 3000 characters**.

Questions marked with an asterisk (\*) are **mandatory**.

**Digital markets** in this questionnaire refer to markets largely relying on digital technologies with certain specific characteristics, such as extreme economies of scale and scope, strong network effects, zero pricing and data dependency.

No statements, definitions, or questions in this public consultation may be interpreted as an official position of the European Commission. All definitions provided in this document are strictly for the purposes of this public consultation and are without prejudice to definitions the Commission may use under current or future EU law or in decisions.

In case you have questions, you can contact us via the following functional mailbox: [COMP-NEW-COMPETITION-TOOL@EC.EUROPA.EU](mailto:COMP-NEW-COMPETITION-TOOL@EC.EUROPA.EU);

If you encounter technical problems, please contact the Commission's [CENTRAL HELPDESK](#).

**\* 1. Please indicate your role for the purpose of this consultation.**

- An individual citizen
- An association or trade organisation representing consumers
- An association or trade organisation representing businesses
- An association or trade organisation representing civil society
- A business / economic operator of small size
- A business / economic operator of medium size
- A business / economic operator of large size
- A public authority
- A research institution / Think tank



- Academia (Legal field)
- Academia (Economics)
- Academia (Engineering)
- Academia (Other)
- Law firm / consultancy
- Other: Optional

**\* 2. Only for businesses / economic operators: Please identify the markets /sectors in which you provide your services.**

- A - Agriculture, forestry and fishing
- B - Mining and quarrying
- C - Manufacturing
- D - Electricity, gas, steam and air conditioning supply
- E - Water supply; sewerage; waste management and remediation activities
- F - Construction
- G - Wholesale and retail trade; repair of motor vehicles and motorcycles
- H - Transporting and storage
- I - Accommodation and food service activities
- J - Information and communication
- K - Financial and insurance activities
- L - Real estate activities
- M - Professional, scientific and technical activities
- N - Administrative and support service activities
- O - Public administration and defence; compulsory social security
- P - Education
- Q - Human health and social work activities
- R - Arts, entertainment and recreation
- S - Other services
- T - I am not a business/economic operator
- Other

**\* 3. Please briefly explain your activities/describe your organisation/company and - if applicable - the main goods/services you provide.**

*3000 character(s) maximum*

HOTREC represents the hotel, restaurant and café industry at European level. The sector counts in total around 2 million businesses, 99.3% of which are small and medium sized enterprises (90% are micro enterprises, i.e. employing less than 10 people). The industry provides some 12 million jobs in the EU alone. HOTREC brings together 45 national associations representing the interest of this industry in 33 different European countries. HOTREC members directly represent hospitality establishments.

HOTREC closely follows relevant EU policy developments for the European hospitality sector and coordinates the position of its members. In turn HOTREC communicates these views to relevant EU policy and decision makers.

HOTREC is also active in international fora such as the UNWTO and follows standardisation issues in the field of tourism via ISO and CEN.

**\* 4. Only for businesses / economic operators: Does your company provide digital goods or services?**

- I am not a business operator/representative of businesses
- No
- Not applicable
- Yes, I am active as an e-commerce marketplace
- Yes, I operate an app store
- Yes, I develop and provide apps
- Yes, I provide a search engine
- Yes I provide an operating system
- Yes I provide a social network
- Yes, I provide network and/or data infrastructure/cloud services
- Yes, I provide digital identity services
- Other

Please specify

*3000 character(s) maximum*

Hotels, restaurants, bars and cafés see digital and tech innovation as an opportunity to better connect with their guests and provide improved services. Hospitality establishments are trialing and selectively rolling out digital innovations to provide a more personalized and interactive experience for guests, such as online room or table selection through booking apps, mobile check-in and check-out with digital payment, mobile key technology and personalized smart cards for gathering customer preferences and the deployment of “Internet of Things” (“IoT”) technology in “smart rooms”.

Hospitality establishments are also investing in and rolling out new technologies at an unprecedented rate in order to welcome back guests safely and with social distancing during the COVID-19 pandemic (e.g., digital menus, chatbots, touchless digital menu systems, virtual TV remote control and apps for inventory management systems at pools and beaches for resorts).

Hospitality establishments are also mobilising digital innovation to achieve sustainability in the sector, for instance with the possibilities opened up by smart-building (e.g., optimization of heating and ventilation, management of reductions in electricity consumption, maximization of building security, smart sensors for lighting and control of appliances from remote location).

**\* 4.1. Please explain your answer. Please indicate what types of digital goods or services you provide. If you replied ‘no’, please indicate if you expect to provide digital goods or services in the next five years.**

*3000 character(s) maximum*

The provision of digital services is not the core business of hospitality establishments. However, like in many sectors, the websites of hospitality establishment are an essential 'shop window' in the digital sphere and a strong share of reservations and bookings are made via digital platforms. When it comes to hotel reservations, more than half of all European travel bookings were made online in 2019.

Further digital innovations have the potential to support the core business of hospitality establishments and provide guests with an enhanced experience.

**5. Only for business / economic operators: As a business user, do you rely on digital services or on digital operators and/or online platforms? (For the purposes of this questionnaire ‘online platform’ refers to a firm operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups.)**

- Yes, my business is fully dependent on digital operators and/or online platforms
- Yes, my business is largely dependent on digital operators and/or online platforms
- Yes, my business is somewhat dependent on digital operators and/or online platforms
- No
- Not applicable / no relevant experience or knowledge
- I am not a business operator/representative of businesses

**5.1. If yes, please describe those digital services you use. If no, please explain why you do not use digital services, and whether you expect/plan to rely on them in the next five years.**

*3000 character(s) maximum*

Hospitality establishments are very dependent on online platforms, which consumers use to find, compare offers and make reservations. There is an online ecosystem bringing together search engines (e.g. Google), specialised meta-search engines (e.g. Trivago, Tripadvisor, KAYAK) and booking platforms (e.g. Booking.com; TheFork).

Competition concerns which are relevance for this consultation response first and foremost affect the hotel sector. However we urge the European Commission to also closely follow the evolution of the online market for restaurant reservations and search functions to avoid the errors of the past which are affecting the hotel industry today.

As one of the most digitalized sectors, the hotel industry has become heavily intermediated over time by a handful of powerful 'online travel agents' ("OTAs") which enjoy significant and increasing bargaining power vis-à-vis business users (hotels) for whom OTAs have become unavoidable trading partners.

According to HOTREC research conducted in collaboration with HES-SO Valais School of Management, almost 30% of hotel bookings in 2019 were made via OTA platforms.

The 3 main players within the OTA market remain Booking Holding, Expedia Group and to a lesser extent HRS, with an aggregated market share of 92%. Booking.com is by far the most influential player, with a share of 68.4% in the OTA market. The dominance of Booking.com has been rising over the last 6 years by more than 8%, from 60.0% in 2013 to 68.4% in 2019. Expedia could maintain its market shares during the last 4 years (16.3% in 2019, compared with 16,6% in 2017 and 16,8% in 2015). HRS has seen a steady decrease of market shares, from 16.6% in 2013 to 7.2% in 2019.

The imbalance of bargaining power between these large online platforms and hotels is of prime concern, enabling OTAs to behave unilaterally in a way that is unfair and harmful to the legitimate interests of hotels and consumers in the EU.

It should also be noted that these OTAs are vertically integrated, with meta-search engines under the ownership of the same holdings as the OTAs. Booking.com owns and operates KAYAK, Mamondo, and HotelsCombined; while Expedia owns a majority share in Trivago.

The hotel industry has been hit extremely hard by the COVID-19 pandemic, which is likely to increase its reliance upon two established online platforms (Booking.com and Expedia).

## **C. Structural competition problems**

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Structural competition problems concern structural market characteristics that have adverse consequences on competition and may ultimately result in inefficient market outcomes in terms of higher prices, lower quality, less choice and innovation. These market characteristics (explained in more detail below) include extreme economies of scale and scope, strong network effects, zero pricing and data dependency, as well as market dynamics favouring sudden and radical decreases in competition ("tipping") and 'winner-takes-most' scenarios. These characteristics can typically be found in digital but also in other markets.

As the Commission has established in some of its competition decisions, these characteristics can make a position of market power or dominance, once acquired, difficult to contest.

While structural competition problems can arise in a broad range of different scenarios, they can be generally grouped into two categories depending on whether harm is about to affect or has already affected the market:

- **Structural risks for competition** refer to scenarios where certain market characteristics (e.g. network and scale effects, lack of multi-homing and lock-in effects) and the conduct of the companies operating in the markets concerned create a threat for competition, arising through the creation of powerful market players with an entrenched market position. This applies notably to tipping markets. The ensuing risks for competition can arise through the creation of powerful market players with an entrenched market and/or gatekeeper position, the emergence of which could be prevented by early intervention. Other scenarios falling under this category include unilateral strategies by non-dominant companies to monopolise a market through anti-competitive means.
- **Structural lack of competition** refers to a scenario where a market is not working well and not delivering competitive outcomes due to its structure (i.e. structural market failures). These include (i) markets displaying systemic failures going beyond the conduct of a particular company due to certain structural features, such as high concentration and entry barriers, customer lock-in, lack of access to data or data accumulation, and (ii) oligopolistic market structures characterised by a risk for tacit collusion, including markets featuring increased transparency due to algorithm-based technological solutions.

The questions in this section aim to gather information on the types of market characteristics that may result in structural competition problems, and on gaps in Articles 101 and 102 of the EU Treaty, in order to understand the most appropriate scope for a new competition tool. (Article 101 of the EU Treaty prohibits agreements between companies which prevent, restrict or distort competition in the EU and which may affect trade between Member States ('anti-competitive agreements'). These include, for example, price-fixing or market-sharing cartels. Article 102 of the Treaty prohibits any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it.)

**6. Please indicate to what extent each of the following market features/elements can be a source or part of the reasons for a structural competition problem in a given market in your view.**

**Please, give examples of sectors/markets or scenarios you are aware of in the follow-up question.**

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
A - One or few large players on the market (i.e. concentrated market)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B - High degree of vertical integration ('Vertical integration' relates to scenarios where the same company owns activities at upstream and downstream levels of the supply chain)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
C - High start-up costs (i.e. non-recurring costs associated with setting up a business)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
D - High fixed operating costs (i.e. costs that do not change with an increase or decrease in the amount of goods or services produced or sold)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
E - Regulatory barriers ('Regulatory barriers' refer to regulatory rules that make market entry or expansion more cumbersome or extensively expensive)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
F - Importance of patents or copyrights that may prevent entry	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
G - Information asymmetry on the customer side ('Information asymmetry' occurs when customers (consumers or businesses) in an economic transaction possess substantially less knowledge than the other party so that they cannot make informed decisions)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
H - High customer switching costs ('Switching costs' are one-time expenses a consumer or business incurs or the inconvenience it experiences in order to switch over from one product to another or from one service provider to another)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
I - Lack of access to a given input/asset which is necessary to compete on the market (e.g. access to data)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<p>J - Extreme economies of scale and scope ('Extreme economies of scale' occur when the cost of producing a product or service decreases as the volume of output (i.e. the scale of production) increases. For instance serving an additional consumer on a platform comes at practically zero cost. 'Economies of scope' occur when the production of one good or the provision of a service reduces the cost of producing another related good or service)</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>K - Strong direct network effects (Where network effects are present, the value of a service increases according to the number of others using it. For instance in case of a social network, a greater number of users increases the value of the network for each user. The more persons are on a given social network, the more persons will join it. The same applies e.g. to phone networks)</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<p>L - Strong indirect network effects (Indirect network effects, also known as cross-side effects, typically occur in case of platforms which link at least two user groups and where the value of a good or service for a user of one group increases according to the number of users of the other group. For instance, the more sellers offer goods on an electronic marketplace, the more customers will the marketplace attract and vice versa)</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>M - Customers typically use one platform (i.e. they predominantly single-home) and cannot easily switch</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<p>N - The platform owner is competing with the business users on the platform (so-called dual role situations, for instance the owner of the e-commerce platform that itself sells on the platform)</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<p>O - Significant financial strength</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>P - Zero-pricing markets ('Zero-price markets' refer to markets in which companies offer their goods/services such as content, software, search functions, social media platforms, mobile applications, travel booking, navigation and mapping systems to consumers at a zero price and monetise via other means, typically via advertising (i.e. consumers pay with their time and attention)</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>Q - Data dependency ('Data dependency' refers to scenarios where the operation of companies are largely based on big datasets)</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

R - Use of pricing algorithms ('Pricing algorithms' are automated tools that allow very frequent changes to prices and other terms, taking into account all or most competing offers on the market.)





Please explain your answers above and give examples of the features/elements you indicated if possible. Please specify the letter of the row of the feature /elements you are referring to.

*5000 character(s) maximum*

A: Two platforms (Booking.com and Expedia) control over 85% of the OTA hotel booking market. Acquisitions of competing OTAs (horizontal integration), which were shut down and online traffic directed to the leaders' eponymous websites, eliminating competition and reducing consumer choice: Booking.com owns and operates booking.com, agoda, priceline.com, rocketmiles, travelweb; while Expedia owns and operates expedia.com, hotels.com, hotwire.com, Orbitz (including their brands CheapTickets and ebookers), Travelocity and Wotif; both Booking.com and Expedia also acquired other smaller OTAs that no longer operate as independent platforms

B: The above-mentioned OTAs own meta-search engines. Booking.com owns and operates KAYAK, Momondo, and HotelsCombined; while Expedia owns a majority share in Trivago.

C, D, J, K, L, M, P: OTAs are associated with large network effects, whereby they become increasingly strong vis-à-vis their rivals as the size of the user base on each side of the platform increases (i.e., consumers typically are drawn to the platforms where they can find the greatest choice of hotels, and hotels typically want to use the platforms on which they are exposed to the greatest number of consumers); the presence of these network effects, and potentially some economies of scope and scale to distribute hotel rooms at lower operational costs, create effective barriers to entry.

OTAs offer loyalty and personalization programs (achieved with the help of previously acquired personal data) whereby customers can benefit from additional discounts (ultimately paid for by hotels), preferential deals, lower modification and cancellation fees and the ability to purchase ancillary services which generate switching costs and means that entrant OTAs, which do not have the same scale or deep pockets as established OTAs, are unable to effectively compete for customers; these "lock-in" strategies are further strengthened by the recognized cognitive cost for consumers in switching platforms, in terms of time, effort, energy and the concentration.

I, Q: OTAs accumulate considerable, valuable and diverse data (both individual customer identification and performance data as well as market data); this vast amount of data is paired with the scale and capital required to profitably invest in the development of analytical tools (e.g., AI algorithms, deep learning and computing powers) needed to process, interpret and monetize such data in order to anticipate their customers' needs and influence their conduct (through more targeted offers, outreach to consumers that may not be served otherwise) and to control a large portion of the customer relationship.

Finally, OTAs have a structural impact on the sector through conglomerate strategies giving them control over entire 'ecosystems' of adjacent markets; over time, OTAs have been able to leverage their significant assets (data and financial clout) to preempt potential competition and to enter new business lines.

**6.1. Can you think of any other market features/elements that could be a source or part of the reasons for a structural competition problem in a given market?**



Yes

No

**6.2. Please indicate which are these other market features/elements that can be a source or part of the reasons for a structural competition problem in a given market and rate them according to their importance from 0 to 4 (0 = no knowledge/no experience; 1 = no importance/no relevance; 2 = somewhat important; 3 = important; 4 = very important).**

4 - Although the OTA market is dominated by a duopoly of companies, smaller OTAs offer very similar terms and conditions as the larger player, meaning that business partners and consumers have access to competing albeit very similar if not identical to competing offers.

**7. Please indicate what market scenarios may in your view qualify as structural competition problems and rate them according to their importance.**

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* A (not necessarily dominant) company with market power in a core market extends that market power to related markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Anti-competitive monopolisation, where one market player may rapidly acquire market shares due to its capacity to put competitors at a disadvantage in the market unfairly.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Highly concentrated markets where only one or few players are present, which allows to align their market behaviour.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* The widespread use of algorithmic pricing that allows easily to align prices.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Gatekeeper scenarios: situations where customers typically predominantly use one service provider/platform (single-home) and therefore the market dynamics are only determined by the gatekeeper.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Tipping (or 'winner takes most') markets ('Tipping markets' refer e.g. to markets where the number of customers is a key element for business success: if a firm reaches a critical threshold of customers, it gets a disproportionate advantage in capturing remaining customers. Therefore, due to certain characteristics of that market, only one or very few companies will remain on those markets in the long term.)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**\* 7.1. Please explain your answers above and give examples if possible.**

*5000 character(s) maximum*

As explained above, the online hotel distribution has been controlled by a duopoly of two leading platforms for several years. Each of Booking.com and Expedia holds significant bargaining power vis-à-vis their business users. This has led to serious structural competition and other issues that the existing regulatory and competition framework cannot tackle or effectively address, resulting in several regulatory and enforcement gaps.

OTAs have a structural impact on the sector through conglomerate strategies giving them control over entire 'ecosystems' of adjacent markets; over time, OTAs have been able to leverage their significant assets (data and finances) to preempt potential competition and to enter new business lines.

**\* 7.2. Can you think of any other market scenarios that qualify as structural competition problems?**

- Yes
- No

**\* 7.3. Please indicate which are these other market scenarios that in your view qualify as structural competition problems and rate them according to their importance from 0 to 4 (0 = no knowledge/no experience; 1 = no importance /no relevance; 2 = somewhat important; 3 = important; 4 = very important).**

*3000 character(s) maximum*

4

Hotels are aware of the significant disruptive and competitive advantages of the largest platforms (mainly, Google, Amazon and, possibly, Facebook), and their potential impact on online hotel distribution in Europe.

While the entry of these platforms in the online hotel distribution sector could potentially have procompetitive effects (notably, increasing the potential competition between indirect distribution channels), such an entry would also most certainly be associated with potential anticompetitive effects and monopolization risks and affect control over hotels' ability to directly distribute their rooms online.

Google in particular can set the prices for placing advertisements and presenting a hotel's information in the search results. It is expanding into a the hotel distribution market that is mediated by its own origin platform (i. e., the search engine platform); and therefore could alter the terms of trade in the hotel booking market by changing their behavior in the search platform through leveraging and self-preferencing strategies.

They may acquire significant control over the hotels' indirect channels (OTAs depend on them to reach out to consumers).

Market commentators have reported Google's attempt to expand its dominance in the market for general search services to the separate market for vacation rental intermediation services by favoring its own service in general search results pages (Google Vacation Rentals) :

- Favorable ranking and display ensure that Google’s service receives more user attention and clicks than any competing service may acquire, even if it is more relevant to the user’s search query;
- Google is technically tying its general search service with a distinct vacation rental service and self-preferencing by consistently positioning and displaying the “boxes” of its vacation rental search service above all competing services, which will result in anticompetitive foreclosure of competing vacation rental providers.

It is essential that these platforms do not become the next generation of “gatekeepers” in the online hotel distribution segment.

**8. Structural competition problems may arise in markets where a (not necessarily dominant) company with market power in a core market may apply repeated strategies to extend its market position to related markets, for instance, by relying on large amounts of data.**

**\* 8.1. Do you have knowledge or did you come across such market situation?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 8.2. In which sectors/markets did you experience repeated strategies to extend market power to related markets?**

*3000 character(s) maximum*

In the hotel OTA market:

- Acquisitions of competing OTAs by Booking.com and Expedia (horizontal integration),
- Conclusion of a network commercial agreements and strategic investments with other online platforms in the core and related markets of their ecosystems ;
- Acquisition of meta-search engines and comparison websites (vertical integration) , which were compromised as platforms that otherwise might have provided effective entry/growth opportunities for smaller OTAs
- Extensive and opaque affiliate and business partner networks;
- Expansion into markets that are adjacent or related to the core online hotel booking market through conglomerate strategies:
  - o Alternative accommodations booking either through the expansion on their leading platforms (Booking.com) or through the acquisition of alternative accommodation platforms (Expedia owns and operates Vrbo (including HomeAway), Pillow, ApartmentJet and CanadaStay);
  - o Other market segments such as corporate travel: Booking.com developed the Booking.com for Business solution; while Expedia owns and operates Egencia and Expedia Partner Solutions;
  - o Transportation and restaurant booking: Booking.com owns and operate Rentalcars, Cheapflights as well as OpenTable; while Expedia owns and operates among other platforms CruiseShipCenters and SilverRail.

These acquisitions and expansions aim at making sure that Booking.com and Expedia continue to attract user attention through multiple contact points across their respective ecosystems and drive as much traffic as possible to their platforms and further entrench them. Today, Booking.com and Expedia control entire “ecosystems” in the travel sector, and consumers are regularly misled through the existence of illusory choices, believing that they have compared competitive offers that in fact come from two groups of affiliated platforms

**\* 8.3. Please list and explain instances where a company with market power has used its position to try to enter adjacent/neighbouring markets to expand its market power.**

*3000 character(s) maximum*

Hotel reservation OTAs have been spending considerable resources on marketing and promotional activities (essentially massive SEA/keyword bidding over general search or metasearch platforms), which is unlikely to create value and is mainly directed at diverting volumes.

Such excessive SEA/keyword bidding spending makes it even harder or impossible for other operators (business users or potential competing OTAs) with limited resources to compete; Booking.com and Expedia are also able to fill online advertising slots with their sister brands, pushing smaller rivals further down in search results where consumers are unlikely to find them;

Such spending has constantly grown year-on-year (e.g., Booking.com and Expedia marketing budgets were close to \$10 billion in 2019) and simply overwhelms the ability of other operators to generate substantial consumer traffic over general search or metasearch platforms. Since the beginning of 2020 and despite the impact of the COVID pandemic, Booking.com and Expedia were able to spend \$1.1 billion and \$1.5 billion, respectively, in online marketing expenses.

**\* 8.4. Do you consider that strategies to extend market power to related markets are common in digital sectors/markets?**

- Not applicable / no relevant experience or knowledge
- No
- Yes, to some extent
- Yes, common
- Yes, very common

**\* 8.5. Please explain your answer and identify the sectors/markets concerned.**

*3000 character(s) maximum*

Please see above responses highlighting the acquisition strategies of OTAs.

**\* 8.6. In your experience, does a repeated strategy by a company with market power to extend its market power to related markets raise competition concerns?**

- Yes
- No
-

Not applicable / no relevant experience or knowledge

**\* 8.7. Please explain your answer, and indicate the competition concerns that may arise in case of leveraging strategies.**

*3000 character(s) maximum*

The strategies implemented by OTAs tend towards strong horizontal and vertical concentration and further hamper hospitality establishments' capacity to handle their own distribution channels independently.

**\* 9. Do you think that there is a need for the Commission to be able to intervene in situations where structural competition problems may arise due to repeated strategies by companies with market power to extend their market position into related markets?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 9.1. Please explain your answer. If you replied yes, please also indicate the type of intervention that would be needed.**

*3000 character(s) maximum*

The European Commission should intervene imposing behavioral and structural remedies on both OTAs (without requiring the finding of a dominant position) that would take into account the fact that the structural competition issues result from a variety of interwoven factors (structural and behavioral) creating competition concerns that are market-wide. In this regard, European Commission intervention via a New Competition Tool should complement standard competition law and the suggested ex ante regulatory instrument under the Digital Services Act.

**\* 9.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective to address those market situations?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 9.3 Please explain your answer.**

*3000 character(s) maximum*

The unbalanced bargaining power between Booking.com and Expedia, on the one hand, and hotels on the other hand, has resulted in large-scale unfair trading and anticompetitive practices that hurt hotels and consumers in Europe. Unfortunately, the experience of the hotel industry is that standard EU competition law has not proved adequate to address these issues, resulting in serious regulatory and enforcement gaps.

The potential entry of other Big Tech operators (such as Google, Amazon or Facebook) in online hotel

distribution raises significant risks for competition that should be properly anticipated by regulators and enforcement authorities.

**10. Anti-competitive monopolisation refers to scenarios where one market player may rapidly acquire market shares due to its capacity to put competitors at a disadvantage in the market unfairly, for instance, by imposing unfair business practices or by limiting access to key inputs, such as data.**

**\* 10.1. Do you have knowledge or did you come across such market situation?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 10.2. In which sectors/markets did you experience anti-competitive monopolisation strategies?**

*3000 character(s) maximum*

We experience anti-competitive monopolisation strategies in the hotel OTA sector.

**\* 10.3. Please provide examples and explain them.**

*3000 character(s) maximum*

When booking through online travel agents, and thus establishing a contract between the consumer and the service provider e.g. the hotel, communication between the hotel and the guest is managed indirectly, by the online platform. With this practice, platforms restrict access to, and the use of, personal and non-personal data, including that which are directly generated by a company's activities on the platform.

Platforms are thus monopolising / holding-back the relationship between the establishment and its customer and are unduly burdening the access to such data, which would be valuable for the further development of the services. Furthermore, the fact that there is a third party 'reading' the correspondence is reducing the incentive for communication both on the side of the guests as well as the establishment, thus deterring the further improvement of the quality of the final services. The relationship in the world of hospitality, which is based on trust, service, and empathy cannot be achieved through a non-personal e-mail. A hotel needs a free and direct communication channel with its guest – in digital as well as in analogue times.

Access to and use of data generated in relation to a service provider's business activity is getting more and more valuable. Businesses should have direct access to such data and access to such data must not be hindered by online platforms. In fact, the direct communication between the consumers and the service providers shall be restored.

**\* 10.4. Do you consider that anti-competitive monopolisation is common in digital sectors/markets?**

- Not applicable / no relevant experience or knowledge
- No
- Yes, to some extent



- Yes, common
- Yes, very common

**\* 10.5. Please explain your answer and identify the sectors/markets concerned.**

*3000 character(s) maximum*

OTAs financial power and capacity to generate and leverage data enables them to engage in a variety of abuses and unfair practices (e.g., excessive pricing, imposition of anti-competitive terms of service, foreclosure of smaller rivals/entrants, and misleading advertising that diverts online traffic and further entrenches them competitively).

**\* 10.6. In your experience, does anti-competitive monopolisation raise competition concerns?**

- Yes
- No
- Not applicable / no relevant experience or knowledge

**\* 10.7. Please explain your answer and indicate the competition concerns that may arise in case of anticompetitive monopolisation.**

*3000 character(s) maximum*

Expedia was founded in 1996 and Booking.com in 1998. They are no longer “start-ups” heralding new business models and innovation, but global giants that have come to control entire online ecosystems.

They do not bear any significant commercial and/or financial risks in connection with the online distribution of hotel rooms. Their investments and long-term spending commitments are amply sunk (massive SEA /advertising spending are operating expenses that can easily be reduced/stopped if they do not generate the desired returns). Their business model’s contribution to innovation is today very limited and relies mainly on protecting entrenched (profitable) positions and unfairly monopolizing value in the distribution chain.

These strategies lock-in both business partners and consumers.

**\* 11. Do you think that there is a need for the Commission to be able to intervene in situations where structural competition problems may arise due to anti-competitive monopolisation?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 11.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective to address anti-competitive monopolisation?**

- Yes

- No
- Not applicable /no relevant experience or knowledge

**12. An oligopoly is a highly concentrated market structure, where a few sizeable firms operate. Oligopolists may be able to behave in a parallel manner and derive benefits from their collective market power without necessarily entering into an agreement or concerted practice of the kind generally prohibited by competition law. In those situations rivals often ‘move together’ to e.g. raise prices or limit production at the same time and to the same extent, without having an explicit agreement. Such so-called coordinated behaviour can have the same outcome as a cartel for customers, e.g. price increases are aligned.**

**\* 12.1. Do you have knowledge or did you come across such market situations?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 12.2. Please identify the markets concerned and explain those market situations.**

*3000 character(s) maximum*

Although Booking.com and Expedia may appear to compete aggressively with each other, their oligopolistic interdependence is real; indeed, it is difficult for a hotel to negotiate commercial concessions with one of these platforms unless it can give assurances that the same concessions will be obtained from the other.

The two leading hotel booking OTAs have been able to simultaneously impose wide and narrow parity clauses (or most-favored nation, “MFN” clauses) to a significant fraction of hotel operators in Europe (both independents and chains), which effectively prevent hotels from offering better prices, conditions and availabilities to consumers online.

Wide parity clauses have been prohibited or abandoned in most jurisdictions in Europe; however they had been in place for so long that, to a large extent, “the harm is done” since OTAs have been able to build high barriers to entry; in addition the prohibition on wide parity clauses only (i.e., maintaining narrow parity clauses) could not (and have not) spurred competition among OTAs.

Narrow parity clauses remain commonplace in the EU jurisdictions which have not banned these practices in the hotel OTA sector. As both major OTAs and others impose narrow price parity clauses on their hotel business partners, the end result is that hotel room prices are very similar from one platform to another and the hotels themselves must offer a price which is equal or higher.

Furthermore, research shows that legal prohibition of narrow parity clauses might be de facto materially hindered by the OTAs’ algorithmic power (i.e., hotels that do not grant the best prices, conditions and availabilities are de-ranked or “dimmed” by the OTAs’ algorithms; and therefore hotels have no choice but to grant parity to OTAs) . Both Booking.com and Expedia have also implemented programs that boost the online visibility on their platforms of hotels that adhere to specific programs requiring price parity and room availability.

### 12.3. In your experience, what are the main features of an oligopolistic market with a high/substantial risk of tacit collusion?

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* High concentration levels	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Competitors can monitor each other's behaviour	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Oligopolists competing against each other in several markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Homogeneity of products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* High barriers to enter (e.g., access to intellectual property rights, high marketing costs, global distribution footprint, strong incumbency advantages, network effects...)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Strong incumbency advantages due to customers' switching costs and/or inertia	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Lack of transparency for customers on best offers available in the markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Vertical integration into key assets of the vertical supply chain	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Existence of a clear price leader, resulting in leader-follower behaviour	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**\* Please explain your answer and your rating above.**

*3000 character(s) maximum*

The hotel OTA market is dominated by two major players who can both monitor each other's behaviour and pricing policies. They compete globally and typically offer the same hotel rooms and similar prices (a problem exacerbated by narrow MFNs).

The presence of network effects, and potentially some economies of scope and scale to distribute hotel rooms at lower operational costs, create effective barriers to entry for other players and hotel's own distribution channels.

Parity clauses facilitate consumer "lock-in" strategies (and single-homing) as consumers are not encouraged to use other platforms because OTAs guarantee that they offer the best prices and availabilities; this reinforces consumer inertia which in turn further entrenches OTAs' market positions.

**\* 12.4. Can you think of any other features of an oligopolistic market with a high /substantial risk of tacit collusion?**

- Yes  
 No

**\* 12.5. Please indicate which are these other features of an oligopolistic market with a high/substantial risk of tacit collusion and rate them according to their importance from 0 to 4 (0 = no knowledge/no experience; 1 = no importance /no relevance; 2 = somewhat important; 3 = important; 4 = very important).**

*3000 character(s) maximum*

4- Beyond the OTA duopoly, smaller players replicate similar behaviour and pricing policies.

**\* 12.6. In your experience, what are the main competition concerns that arise in oligopolistic markets prone to tacit collusion?**

*3000 character(s) maximum*

The imbalance of bargaining power between these large online platforms and hotels is of prime concern, enabling all OTAs to behave unilaterally in a way that is unfair and harmful to the legitimate interests of hotels and consumers in the EU.

**\* 12.7. Do you consider that oligopolistic market structures are common in digital sectors/markets?**

- Not applicable / no relevant experience or knowledge  
 No  
 Yes, to some extent  
 Yes, common  
 Yes, very common

**\* 12.8. Please explain your answer and identify the sectors/markets concerned.**

3000 character(s) maximum

The hotel industry's experience is that digital markets are not necessarily only characterized by single company dominance but - particularly with the development of ecosystem models - by the presence of powerful actors acting in several markets making oligopolistic and tacit collusion scenarios more relevant.

**\* 13. Do you consider that there is a need for the Commission to be able to intervene in oligopolistic markets prone to tacit collusion in order to preserve /improve competition?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 13.1. Please explain your answer.**

3000 character(s) maximum

EU rulings on abuses of "collective dominance" have tended to depend on findings that the undertakings in question either have some legal/economic links to each other or appear on the market as a collective entity.

As a result, harms arising from tacit collusion and oligopolistic interdependence have proven to be difficult to remedy, even in traditional markets. In the digital economy, such problems are inevitably increased. The potential for abuses is more real and imminent because online platform markets tend to become highly concentrated and platform users are readily placed in positions of dependence on the leaders. Operators of the leading platforms then can exploit this commercial imbalance and significant market power in an interdependent way, given the transparency inherent in the operation of public websites.

HOTREC considers that a broader and more "holistic" approach focusing on a far wider set of competition concerns beyond explicit collusion and the abuse of dominance would be of relevance to specifically address the issues raised above.

**\* 13.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective instruments to address oligopolistic market situations prone to tacit collusion?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 13.3. Please explain your answer.**

3000 character(s) maximum

See previous replies: EU rulings on abuses of "collective dominance" have tended to depend on findings that the undertakings in question either have some legal/economic links to each other or appear on the market as a collective entity. From our experience, tacit collusion can occur without direct legal or economic links.

**14. Relying on digital tools, companies may easily align their behaviour, in particular retail prices via pricing algorithms. (Pricing algorithms are automated tools that allow very frequent changes to prices and other terms taking into account all or most competing offers on the market.)**

**\* 14.1. Do you have knowledge or did you come across such market situations?**

- Yes
- No
- Not applicable /no relevant experience or knowledge.

**\* 14.2. Please list and explain those situations and in which markets you encountered them.**

*3000 character(s) maximum*

OTAs accumulate considerable, valuable and diverse data (both individual customer identification and performance data as well as market data); this vast amount of data is paired with the scale and capital required to profitably invest in the development of analytical tools (e.g., AI algorithms, deep learning and computing powers) needed to process, interpret and monetize such data in order to anticipate their customers' needs and influence their conduct (through more targeted offers, outreach to consumers that may not be served otherwise) and to control a large portion of the customer relationship.

**14.3. In your view, what are the main features of markets where pricing algorithms are used?**

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* The market is highly transparent (i.e. competitors can easily observe and understand the market behaviour of other players, and align their conduct), even without using the pricing algorithms	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* The market is not transparent (i.e. without the pricing algorithms, competitors would not be able to observe and understand market behaviour of other players)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Prices might be aligned, without market players explicitly agreeing their prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* The goods and services offered in the market where the pricing algorithms are used are digital	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

\* The goods and services offered in the market where the pricing algorithms are used are not digital



**14.4. Please explain your answers above. Please also use this space to mention any other features of markets where pricing algorithms are used and rate their importance.**

*3000 character(s) maximum*

We have knowledge of the pricing algorithms used by OTAs. However we see that OTAs can easily compare prices among themselves given the inherent transparency of public websites. the imposition of narrow price parity clauses leads to a situation where prices might be aligned.

**\* 14.5. Do you consider that pricing algorithms are common in digital sectors /markets?**

- Not applicable / no relevant experience or knowledge
- No
- Yes, to some extent
- Yes, common
- Yes, very common

**14.7. In your experience, what are the main competition concerns that arise in markets where pricing algorithms are used?**

**[Multiple choice possible]**

- Alignment of prices / less competition between market players
- Prices increase
- Less choice for customers
- Others

**\* 14.8. Please explain.**

*3000 character(s) maximum*

Parity clauses effectively prevent hotels from offering better prices, conditions and availabilities to consumers online; and lead to a de facto alignment of prices available via OTA platforms.

**\* 15. Do you consider that there is a need for the Commission to be able to intervene in markets where pricing algorithms are prevalent in order to preserve/improve competition?**

- Yes
-

No

- Not applicable /no relevant experience or knowledge

**\* 15.1. Please explain your answer.**

*3000 character(s) maximum*

There is clear evidence that the parity clauses unilaterally imposed by the OTAs constitute unfair trading practices, restrict competition and hurt consumers. Wide or narrow parity clauses (MFNs) in OTA agreements with business users should be banned.

Parity clauses have the potential of raising fees paid by hotels and harming consumers and facilitate consumer "lock-in" strategies (and single-homing) as consumers are not encouraged to use other platforms because OTAs guarantee that they offer the best prices and availabilities; this reinforces consumer inertia which in turn further entrenches OTAs' market positions.

**\* 15.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective instruments to address all scenarios where algorithmic pricing can raise competition issues?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**16. So-called tipping (or 'winner takes most') markets are markets where the number of users is a key element for business success: if a firm reaches a critical threshold of customers, it gets a disproportionate advantage in capturing remaining customers. Therefore, due to certain characteristics of that market, only one or very few companies will remain on those markets in the long term.**

**\* 16.1. Do you have knowledge or did you come across such market situations?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 16.2. Please list and explain those situations and in which markets you encountered them.**

*3000 character(s) maximum*

Hotel booking OTAs have been able to increase their bargaining power over the last decade by imposing unfair terms and trading practices, until the point where markets have "tipped" to their benefit. The existence of a duopoly in the market with one excessively strong player (68,4% market share of Booking.com) leads us to consider that the market has already tipped.



**16.3. Please indicate what are in your view, the main market features of a tipping market. Please rate each of the listed competition concerns according to its importance.**

	No knowledge/No experience	No importance/No relevance	Somewhat important	Important	Very important
* Direct network effects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Indirect network effects	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Economies of scale	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Users predominantly single-home (i.e. they use typically one platform only)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

**\* 16.4. Please explain your answer, indicating why you consider the above features relevant for a tipping market and describe any other feature that you consider important.**

*3000 character(s) maximum*

The following characteristics have entrenched the market dominance:

- imposition of parity clauses
- terms and practices to unfairly divert consumer attention and traffic (such as SEA and keyword bidding), massive spending on digital advertising, brand-bidding
- manipulating search results and rankings
- practices that harm consumers and reduce welfare (such as, higher advertising levels, more intrusive advertising, less attractive or relevant content offers)
- strong brand presence through massive brand marketing expenses
- control of entire digital conglomerates beyond their core markets that lock-in consumers and further entrench their positions as incumbents

**\* 16.5. In your view, is tipping common in digital sectors/markets?**

- Not applicable / no relevant experience or knowledge
- No
- Yes, to some extent
- Yes, common
- Yes, very common

**\* 16.6. Please explain your answer and identify the sectors/markets concerned.**

*3000 character(s) maximum*

Our experience shows that that the hotel OTA market has tipped. We would also draw attention as stated previously, there is also a risk of seeing further market tipping if the largest platforms such as Google, Amazon and Facebook enter the booking market, for all hospitality segments, including restaurant and café reservation/search functions.

**16.7. In your experience, what are the main competition concerns that arise in tipping markets? Please rate each of the listed competition concerns according to its importance.**

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* Efficient or innovative market players will disappear	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*					

There will not be sufficient competition on the market in the long run	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Customers will not have enough choice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Customers may face insufficient innovation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Customers may face higher prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**\* 16.8. Please explain your answers above. Please also use this space to mention any other competition concerns that arise in tipping markets and rate their importance.**

*3000 character(s) maximum*

Today, hotel booking OTA business model's contribution to innovation is today very limited and relies mainly on protecting entrenched (profitable) positions and unfairly monopolizing value in the distribution chain.

**\* 17. Do you consider that there is a need for the Commission to be able to intervene early in tipping markets to preserve/improve competition?**

- Yes
- No
- Not applicable /no relevant experience or knowledge.

**\* 17.1. Please explain your answer.**

*3000 character(s) maximum*

For markets that have already “tipped”, the New Competition Tool could be used to address structural absences of competition by imposing behavioral remedies (as a complement to the ex ante regulatory instrument);

For markets that display structural risks for competition (“tipping” markets), the New Competition Tool could provide for a graduated response based on recommendations to act in a specific way to avoid tipping; and only if recommendations do not prove sufficient, (behavioral / structural) remedies would be imposed. For example, if Google is perceived as posing a credible threat to entry on the online hotel distribution market and, given its numerous competitive advantages, to “tipping” the market leading to anticompetitive outcomes, the new instrument could be activated to prevent harmful conduct from materializing.

**\* 17.2. Do you consider that Articles 101/102 of the EU Treaty are suitable and sufficiently effective instruments to intervene early in ‘tipping markets’, to preserve/improve competition?**

- Yes
- No

- Not applicable /no relevant experience or knowledge

**\* 17.3. Please explain your answer.**

*3000 character(s) maximum*

The existing framework for EU competition law enforcement has in many instances shown itself adept at treating novel or complex issues, even in digital markets, such as multi-sided markets, zero-price factors or innovation theories of harm . However, the enforcement experience in Europe also shows that standard competition law cannot be “stretched” indefinitely and has not been able to tackle all of these issues or has not been able to tackle them in the most effective manner.

**18. So-called ‘gatekeepers’ control access to a number of customers (and/or to a given input /service such as data) that – at least in the medium term – cannot be reached otherwise. Typically, customers of gatekeepers cannot switch easily (‘single-homing’). A gatekeeper may not necessarily be ‘dominant’ within the meaning of Article 102 of the EU Treaty.**

**\* 18.1. Have you encountered or are you aware of markets characterised by ‘gatekeepers’?**

- Yes
- No
- Not applicable / no relevant experience or knowledge

**\* 18.2. Please list which companies you consider to be ‘gatekeepers’ and in which markets.**

*3000 character(s) maximum*

Because of a combination of complex interplays between digital market characteristics, firm conduct, consumer behavior and technological factors, Booking.com and Expedia have emerged over the last decade as unavoidable trading partners in the online hotel distribution sector, and enjoy significant bargaining power vis-à-vis their business users (hotels). Today, Booking.com and Expedia act as “gatekeepers” of whole platform ecosystems in Europe beyond their core markets.

We would also draw attention to risks of seeing gatekeeper platforms emerge in the area of restaurant booking platforms, meal-delivery services and review websites for hospitality establishments.

**\* 18.3. Do you consider that gatekeeper scenarios are common in digital sectors/markets**

- Not applicable / no relevant experience or knowledge
- No
- Yes, to some extent
- Yes, common
- Yes, very common

**\* 18.4. Please explain your answer and identify the sectors/markets concerned.**

*3000 character(s) maximum*

**\* 18.5. Do you consider that gatekeeper scenarios also occur in non-digital sectors/markets?**

- Not applicable / no relevant experience or knowledge
- No
- Yes

**18.7. Please indicate what are, in your view, the features that qualify a company as a ‘gatekeeper’. Please rate each of the listed features according to its importance.(0 = no knowledge/no experience; 1 = no importance/no relevance; 2 = somewhat important; 3 = important; 4 = very important).**

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* High number of customers/users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Customers cannot easily switch (lack of multi-homing)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Business operators need to accept the conditions of competition of the platform - including its business environment - to reach the customers that use the specific platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**\* 18.8. Please explain your answer, indicating why you consider the indicated features relevant for qualifying a company as a gatekeeper. Please also add any other relevant features that qualify a company as a gatekeeper and rate their importance.**

*3000 character(s) maximum*

Beyond the high number of customers and potential lock-in effect for consumers, which are important, the most pressing issue across the hotel OTA booking sector is the fact that the platforms impose very similar terms and conditions to business partners. The combination of these three factors lead to a situation where hotels have no alternative to use these platforms and accept their conditions.

As such, the terms and conditions are unilaterally imposed by major platforms and hotels have no bargaining power vis-à-vis the platforms. In addition, the use of 'penalties' such as de-ranking or dimming offers of hotels that attempt to act more independently or attempting to compete with the platform for sales or in connection with a contract negotiation or commercial dispute exacerbate the exercise of gatekeeper power.

**18.9. In your experience, what are the main competition concerns that arise in markets featuring a gatekeeper?  
Please rate each of the listed competition concerns according to its relevance.**

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important
* Gatekeepers determine the dynamics of competition on the aftermarket/platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* As customers/users cannot easily switch, they have to accept the competitive environment on the aftermarket/platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Business operators can only reach the customers that use the specific platform /aftermarket by adapting their business model and accepting their terms and conditions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>



- \* 18.10. Please explain your answers above. Please also use this space to mention any other competition concerns that arise in markets featuring a gatekeeper and rate them in importance.**

*3000 character(s) maximum*

Hotel booking OTAs have gradually captured a large share of the total revenues of an entire “ecosystem” and have become unavoidable trading partners for hotels to reach consumers online. As such, hotels have little choice but to accept the terms and conditions imposed by the OTAs.

- \* 19. Do you consider that there is a need for the Commission to be able to intervene in gatekeeper scenarios to prevent/address structural competition problems?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

- \* 19.1. Please explain your answer.**

*3000 character(s) maximum*

The European Commission should adopt a new and flexible ex ante regulatory framework for large online platforms acting as gatekeepers.

- \* 19.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective instruments to intervene in markets characterised by ‘gatekeeper platforms’ in order to preserve/improve competition?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

- \* 19.3. Please explain your answer.**

*3000 character(s) maximum*

Empirically, the power of gatekeeper platforms in the hotel OTA sector shows that the existing EU competition law framework is not sufficiently equipped to address the emergence of gatekeeper platforms.

- \* 20. In which sectors/markets do you consider that structural competition problems may occur?**

- Structural competition problems may occur in all sectors/markets
- Structural competition problems may occur in some specific sectors/markets (including but not only digital sectors/markets).
-

Structural competition problems only occur in digital sectors/markets

- Structural competition problems mainly occur in digital sectors/markets
- Not applicable / no relevant experience or knowledge

**\* 20.1. Please explain your answer and identify the sectors/markets your reply refers to.**

*3000 character(s) maximum*

We refer to the above-mentioned structural competition problems we have identified in the OTA hotel booking market.

**\* 21. If in response to question 7 you indicated that other forms of structural competition problems in addition to the ones listed above exist, do you consider that there is a need for the Commission to be able to intervene in order to address these other forms of structural competition problems in order to preserve/improve competition?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 21.1. Please explain your answer.**

*3000 character(s) maximum*

Because there are a variety of interwoven factors (structural and behavioral) creating competition concerns that are market-wide, a more “holistic” analysis of markets is required.

**\* 21.2. Do you consider that Articles 101 and 102 of the EU Treaty are suitable and sufficiently effective instruments to address these other forms of structural competition problems?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 21.3. Please explain your answer.**

*3000 character(s) maximum*

Competition authorities usually tend to focus more narrowly on one issue and (in abuse cases) one firm and also tend to focus on exclusionary practices, assuming that exploitative abuses would self-correct. This has not happened, and online hotel distribution is a case in point.

\*

**22. Article 101 of the EU Treaty prohibits agreements between companies which prevent, restrict or distort competition in the EU and which may affect trade between Member States (anti-competitive agreements). These include, for example, price-fixing or market-sharing cartels. Is Article 101 of the EU Treaty, in your view, a suitable and sufficiently effective instrument to address structural competition problems?**

- Yes
- No
- Not applicable/no relevant experience or knowledge

**\* 22.1. Please explain your answer. If you replied 'no', please indicate the types of conduct and situations that in your view, Article 101 of the EU Treaty does not sufficiently or effectively address, and why.**

*3000 character(s) maximum*

We believe that a more holistic approach is required to take a combination of factors into account. The current regulatory framework at the EU level does not yet specifically address the significant bargaining power that large online platforms acting as gatekeepers hold, in particular there are no meaningful protections against unfair trading practices in B2B relationships at the EU level.

**\* 22.2. Please explain in which markets the market situations and problematic conducts you have identified manifest themselves.**

*3000 character(s) maximum*

There is a broad range of unfair practices imposed by OTAs on hotels as a result of their gatekeeper power:

- Imposing either wide or narrow parity clauses (MFNs) in their agreements with business users (as well as other practices that limit the visibility of the business users' own websites such as a ban on hotels' listing of guest loyalty program rates on metasearch)
- Purposefully dimming or de-ranking specific business users as a penalty against a business user attempting to compete with the platform for sales or in connection with a contract negotiation or commercial dispute
- Pre-emptive advertising designed to or resulting in one company or advertiser (including the sub-brands and sister companies belonging to the same group) occupying so many slots in paid search results that competitors' ads are crowded out
- Pricing paid search advertisements based on trademarked keywords in a way that enables other online platforms to regularly out-bid the trademark owners
- Making the provision of services subject to acceptance by the business users of other supplementary services (tying)
- Using other parties' (e.g., sellers on their platform) commercially sensitive data for their own pricing, marketing, or competitive purposes

\*

**23. Article 102 of the Treaty prohibits any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it. Is Article 102 of the Treaty, in your view, suitable and sufficiently effective to address structural competition problems?**

- Yes
- No
- Not applicable/no relevant experience or knowledge

**\* 23.1. Please explain your answer. If you replied 'no', please indicate the type of conduct and situations that in your view, Article 102 of the EU Treaty does not sufficiently or effectively address, and why.**

*3000 character(s) maximum*

Empirically, the existing EU legal framework has not prevented unfair practices imposed by a duopoly of major OTA hotel booking platforms.

**\* 23.2. Please explain in which markets the market situations and problematic conducts you have identified manifest themselves.**

*3000 character(s) maximum*

See answer 22.2

## **D. Assessment of policy options**

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The questions in this section seek to gather feedback on the policy options outlined in the [Inception Impact Assessment](#).

**\* 24. In light of your responses to the questions of Section C, do you think that there is a need for a new competition tool to deal with structural competition problems that Articles 101 and 102 of the EU Treaty (on which current competition law enforcement is based) cannot tackle conceptually or cannot address in the most effective manner? (Article 101 of the EU Treaty prohibits agreements between companies which prevent, restrict or distort competition in the EU and which may affect trade between Member States (anti-competitive agreements). These include, for example, price-fixing or market-sharing cartels. Article 102 of the Treaty prohibits any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it.)**

- Yes
- No

- Not applicable /no relevant experience or knowledge

**\* 24.1. Please explain your answer. Please indicate which structural competition problems the new tool should tackle or address.**

*3000 character(s) maximum*

We see the overall positive potential of the New Competition Tool.

Digitization and characteristics of digitalized markets (as well as unfair terms and practices) have created some specific structural competition issues in the online hotel distribution sector that cannot be addressed at all or effectively by existing tools. The online hotel distribution sector in Europe has been dominated for over a decade by a duopoly of OTAs (Booking.com and Expedia) and displays structural competition problems that have not been remedied and do not seem to be capable of being addressed in the foreseeable future under standard EU competition laws.

The Commission's Inception Impact Assessment provides that the New Competition Tool would allow the Commission to intervene in markets experiencing a structural lack of competition (the market has "tipped" and as a result is not working well and not delivering a competitive structure due to its configuration) or structural risks for competition (the market is "tipping" and early intervention could prevent the emergence of powerful market players with an entrenched and/or gatekeeper position).

We consider that the New Competition Tool should allow the Commission to intervene by imposing behavioral and/or structural remedies on both OTAs (without requiring the finding of a dominant position) that would take into account the fact that the structural competition issues result from a variety of interwoven factors (structural and behavioral) creating competition concerns that are market-wide. In this regard, we see the new instrument as a valuable complement to standard competition law and the suggested ex ante regulatory instrument.

**\* 25. Do you think that such a new competition tool (that would not establish an infringement by a company and would not result in fines) should also be able to prevent structural competition problems from arising and thus allow for early intervention in the markets concerned?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 25.1. Please explain your answer. Please indicate which structural competition problems the new tool should prevent.**

*3000 character(s) maximum*

The instrument could also prove extremely helpful to ensure that the rise of other major platforms such as Google, Facebook and Amazon operating in online hotel distribution does not result in the market "tipping" in favor of another set of "gatekeepers" with significant market power. The New Competition Tool could therefore be used to prevent the repetition of past regulatory failures.

**\* 26. What are in your view the most important structural competition problems that should be tackled with such a new competition tool?**

*3000 character(s) maximum*

The New Competition Tool could :

- play a more proactive role in promoting increased competition.
- allow for a broader and more “holistic” approach and would focus on a far wider set of competition concerns beyond explicit collusion and the abuse of dominance;
- allow for early intervention to prevent markets from tipping, an issue of particular relevance in digital platform markets that exhibit strong network effects;
- focus on anti-competitive effects, regardless whether conduct is deliberately anti-competitive or whether firms are otherwise culpable for the harm;
- be better able than standard competition law to consider the wider context, and in particular the complex interplay between competition law and other policy areas such as privacy, consumer protection, fairness and environmental issues.

**\* 27. In your view, what should be the basis for intervention for the new competition tool?**

- The tool should be dominance-based (i.e. it shall only be applicable to dominant companies within the meaning of Article 102 of the EU Treaty)
- The tool should focus on structural competition problems and thus be potentially applicable to all undertakings in a market (i.e. including dominant but also non-dominant companies).
- Other
- Not applicable /no relevant experience or knowledge

**\* 27.1. Please explain your answer. Please indicate what type of situations would be covered by the scope of application you suggested.**

*3000 character(s) maximum*

A tool broader than one based on dominance would lend itself better to prevent market tipping and also be more useful in keeping any ex ante regulation relevant in the future.

We favour an instrument that is market structure-based (and not dominance-based) and which specifically targets digital or digitally-enabled markets with “winner takes most” market dynamics.

**\* 28. In your view, what shall be the scope of the new competition tool?**

- It shall be applicable to all markets (i.e. it should be horizontal in nature)
- It shall be limited in scope to sectors/markets where structural competition problems are the most prevalent and/or most likely to arise
- Other
- Not applicable / no relevant experience or knowledge

\*

**28.1. Please explain your answer. If you indicated ‘limited in scope’, please indicate what sectors/markets should be covered by the new competition tool, and why.**

*3000 character(s) maximum*

We believe that the New Competition Tool should be narrow in scope and subject to appropriate checks and balances in view of the significant expansion of the Commission’s powers the instrument would represent. We believe that hospitality reservation markets should be addressed by this tool.

**\* 28.2. Do you consider that the new competition tool should apply only to markets/sectors affected by digitisation?**

- Yes
- No
- Not applicable / no relevant experience or knowledge

**\* 28.3. Please explain your answer, indicating what markets/sectors you would consider as affected by digitisation.**

*3000 character(s) maximum*

We would recommend staying as close as possible to established concepts in EU competition law, while taking into account the key specificities of digital markets to which the New Competition Tool would apply. In line with existing competition rules and long-standing case-law, remedies imposed through the New Competition Tool should be strictly necessary, proportionate, properly designed and capable of specifically addressing any perceived competition issues on digital markets.

**\* 29. If a new competition tool were to be introduced, how should a smooth interaction with existing sector specific legislation (e.g. telecom services, financial services) be ensured?**

*3000 character(s) maximum*

**30. Do you consider that under the new competition tool the Commission should be able to:**

	Yes	No	Not applicable /no relevant experience or knowledge
* • Make non-binding recommendations to companies (e.g. proposing codes of conducts and best practices)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Inform and make recommendations/proposals to sectorial regulators	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Inform and make legislative recommendations	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

\* • Impose remedies on companies to deal with identified and demonstrated structural competition problems

<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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**\* 30.1. Please explain your answers indicating why you consider that the new competition tool should include or not include the options above.**

*3000 character(s) maximum*

It should be noted that the New Competition Tool might be a valuable complementary tool to the ex ante regulatory instrument in at least two substantive areas where there is a potential gap in the Commission’s proposals for ex ante regulation, and which the New Competition Tool could usefully fill:

- The power to impose structural remedies
- The need for market-wide intervention to promote competition; the ex ante regulation would only apply to “gatekeeper” platforms, but in some instances, interventions may be best applied to all firms across a market; this may provide a valuable role for the New Competition Tool (and this actually appears to be the most powerful strength of the New Competition Tool ).
- In online hotel distribution, if the ex ante regulatory instrument were to prohibit all forms of (wide and narrow) MFNs when applied by “gatekeeper” platforms (“blacklist” under Option 3a), the Commission could consider it appropriate to extend this prohibition to other (non “gatekeeper”) platforms through the New Competition Tool .

**31. Do you consider that in order to address the aforementioned structural competition problems, the Commission should be able to impose appropriate and proportionate remedies on companies? If yes, which?**

	Yes	No	Not applicable /no relevant experience or knowledge
* • Non-structural remedies (such as obligation to abstain from certain commercial behaviour)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Structural remedies (for instance, divestitures or granting access to key infrastructure or inputs)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* • Hybrid remedies (containing different types of obligations and bans)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

**\* 31.1. Please explain your answer and why you indicated or not indicated the remedies listed above.**

*3000 character(s) maximum*

The New Competition Tool should allow for an extensive range of remedies, from recommendations to market participants to the imposition of more specific behavioral or even, in specific circumstances, structural remedies. These remedies (or packages of remedies) should be designed depending on the nature and magnitude of the structural competitive issues (with higher standards required for the stricter remedies) and of the market operators, with due consideration to the complex set of drivers for the issues arising in many digital platform markets.



**\* 32. Do you consider that certain structural competition problems can only be dealt with by structural remedies, such as the divestment of a business?**

- Yes
- No
- Not applicable /no relevant experience or knowledge
- Other

**32.1. Please explain your answer.**

*3000 character(s) maximum*

Divestment of assets could be considered as part of remedies requiring some form of structural change on the part of the party or parties to whom the measures are directed.

## **E. Institutional set-up of a new competition tool**

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The questions in this section seek feedback on what features and set-up the new competition tool should have.

**\* 33. Do you consider that enforcement of the new competition tool by the Commission would require adequate and appropriate investigative powers in order to be effective?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 33.1. Please explain your answer.**

*3000 character(s) maximum*

The enforcement of a New Competition Tool implies appropriate power for an enforcement authority to initiate and conduct investigations upon own initiative or on the basis of a complaint (by operators or trade associations).

**33.2. Please indicate what type of investigative powers would be adequate and appropriate to ensure the effectiveness of the new competition tool. Please rate each of the listed investigative powers according to its importance.**

	No knowledge /No experience	No importance /No relevance	Somewhat important	Important	Very important

* Addressing requests for information to companies, including an obligation to reply	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Imposing penalties for not replying to requests for information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Imposing penalties for providing incomplete or misleading information in reply to requests for information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* The power to interview company management and personnel	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Imposing penalties for not submitting to interviews	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* The power to obtain expert opinions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* The power to carry out inspections at companies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Imposing penalties for not submitting to inspections at companies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**\* 33.3. Please explain your answer. Please also list here any other investigative powers that you would consider appropriate to ensure the effectiveness of the new competition tool.**

*3000 character(s) maximum*

- the power to require gatekeeper platforms to provide all necessary data and information in order to conduct investigations of prohibited trading practices; this should include monitoring powers (such as regular reporting from the gatekeeper platform);
- the power to carry out unannounced on-site inspections within the framework of its investigations, in accordance with national rules and procedures;
- the power to take decisions finding an infringement of the dedicated regulatory rules and requiring the gatekeeper platform to bring the prohibited trading practice to an end;
- the power to impose, or initiate proceedings for the imposition of, fines and other equally effective penalties and interim measures on the infringing gatekeeper platform, in accordance with national rules and procedures;
- the power to publish its decisions.
- the necessary resources and expertise to perform its duties, including high level of technical capabilities (data processing, auditing capacities).

**\* 34. Do you consider that the new competition tool should be subject to binding legal deadlines?**



Yes

No

Not applicable /no relevant experience or knowledge

**\* 34.1. Please explain your answer, including the resulting benefits and drawbacks. If you replied yes, please specify the type of deadlines.**

*3000 character(s) maximum*

The enforcement authority should be in a position to set deadlines, which is all the more important because of the speed and dynamics of digital markets.

**\* 35. Do you consider that the new competition tool should include the possibility to impose interim measures in order to pre-empt irreparable harm?**

Yes

No

Not applicable /no relevant experience or knowledge

**\* 35.1. Please explain your answer.**

*3000 character(s) maximum*

Interim measures may be necessary to prevent clearly unfair practices and dominance which create irreparable harm during the investigation.

**\* 36. Do you consider that the new competition tool should include the possibility to accept voluntary commitments by the companies operating in the markets concerned to address identified and demonstrated structural competition problems?**

Yes

No

Not applicable /no relevant experience or knowledge

**\* 36.1. Please explain your answer.**

*3000 character(s) maximum*

Voluntary commitments should be possible but their implementation should be carefully monitored and failure to live up to voluntary commitments should be strongly penalized.

**\* 37. Do you consider that during the proceedings the companies operating in the markets concerned, or suppliers and customers of those companies should have the possibility to comment on the findings of the existence of a structural competition problem before the final decision?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 37.1. Please explain your answer.**

*3000 character(s) maximum*

Suppliers and customers of hotel booking platforms should have the possibility to comment of findings and provide suggestions to ensure effective remedies.

**\* 38. Do you consider that during the proceedings the companies operating in the markets concerned, or suppliers and customers of those companies should have the possibility to comment on the appropriateness and proportionality of the envisaged remedies?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**\* 38.1. Please explain your answer.**

*3000 character(s) maximum*

We believe that consultation of relevant suppliers would support an approach whereby remedies are strictly necessary, proportionate, properly designed and capable of specifically addressing any perceived competition issues on digital markets.

**\* 39. Do you consider that the new competition tool should be subject to adequate procedural safeguards, including judicial review?**

- Yes
- No
- Not applicable /no relevant experience or knowledge

**F. Concluding questions and document upload**

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**40. Taking into consideration the parallel consultation on a proposal in the context of the [Digital Services Act package](#) for ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers remain fair and contestable for innovators, businesses, and new market entrants, please rate the suitability of each option below to address market issues raised by online platform ecosystems.**

	Not applicable /No relevant experience or knowledge	Not effective	Somewhat effective	Sufficiently effective	Very effective	Most effective
* 1.Current competition rules are enough to address issues raised in digital markets	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* 2.There is a need for an additional regulatory framework imposing obligations and prohibitions that are generally applicable to all online platforms with gatekeeper power	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* 3. There is a need for an additional regulatory framework allowing for the possibility to impose tailored remedies on individual large online platforms with gatekeeper power on a case-by-case basis.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* 4. There is a need for a New Competition Tool allowing to address structural risks and lack of competition in (digital) markets on a case-by-case basis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* 5. There is a need for combination of two or more of the options 2 to 4.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

**\* 40.1. Please explain which of the options, or combination of these, in your view would be suitable and sufficient to address the contestability issues arising in the online platforms ecosystems.**

*3000 character(s) maximum*

We believe that a holistic approach combining powers to sanction existing abuses and prevent future markets from tipping on a case-by-case basis is crucial.

As pointed out throughout this submission, the hotel industry's experience is that digital markets are not necessarily only characterized by single company dominance but - particularly with the development of ecosystem models - by the presence of powerful actors acting in several markets making oligopolistic and tacit collusion scenarios more relevant. There are also risks of new forms of market tipping scenarios with the emergence of the largest tech players into the market.

**41. Please feel free to upload a concise document, such as a position paper, explaining your views in more detail or including additional information and data. Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.**

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**\* 42. Do you have any further comments on this initiative on aspects not covered by the previous questions?**

*3000 character(s) maximum*

**\* 43. Please indicate whether the Commission services may contact you for further details on the information submitted, if required.**

- Yes
- No

**Contact**

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