



Merger Remedies Review: Booking Holdings Inc.'s Response to CMA Call for Evidence

On behalf of Booking Holdings Inc., we welcome the CMA's initiative to review its merger remedies approach and are pleased to submit our perspectives on how various elements of the CMA's process could be reformed or improved. Our most recent experience with the CMA's merger control regime consists of a Phase I review and unconditional clearance by the CMA of Booking Holdings Inc.'s proposed acquisition of Etraveli Group.

The CMA's approach to behavioral remedies

We welcome the CMA's willingness to review its approach to behavioral remedies. We believe that with respect to concentrations in industries such as ours, which consist largely of rapidly changing online platforms, operating in dynamic markets with low barriers for new entrants (now accelerated by Generative AI capabilities). As many transactions in these markets involve complementary or vertically related products rather than horizontal competition, historically structural divestments have proven more challenging to design. This can result in the perverse situation where a transaction between parties that are not competitors is harder to clear than one between direct competitors and this has in some cases led to prohibition of an entire transaction. Our own experience leads us to believe that behavioral remedies are likely appropriate to address competition concerns that may arise in such transactions, which often relate to input services, such as interoperability and access to key technology or licenses. These remedies also ensure better flexibility to adapt to the evolving markets.

Addressing these issues often does not require design of any new process, but rather can be achieved in a proportionate manner by imposing legal obligations to do something that is already common in the market, for example, to expose APIs to third parties to allow systems to interoperate. In fact, we believe that in many cases remedies like guaranteed access to third parties can actually lead to more intense competition than might exist in a divestment scenario, giving the beneficiaries of, e.g. an access remedy, access to greater demand than they might otherwise receive, or indeed than a divestment purchaser would have in the case of a divestment remedy. We know first hand how contestability and competition can be enhanced by offering consumers the choice of where to transact, because this is something we already offer in the ordinary course of our business through our metasearch sites like KAYAK.

Assessing, monitoring and enforcing remedies

With respect to transactions in the digital services sector, we believe that the task of monitoring and enforcement may be less complex given that it is easier and quicker to collate and provide relevant transaction data. Such transaction data can then be quickly and effectively validated to ensure compliance.

Furthermore, while we understand that monitoring remedies (in particular behavioural ones) may be a challenging and costly exercise for the CMA, the need to appoint of external trustee to ensure compliance should be assessed on a case-by-case basis as there are other effective monitoring mechanisms, in particular for consumer-facing services, such as periodic data sharing with regulatory authorities as well

regular customer feedback and complaints. This is especially so in the context of platforms that are already subject to periodic reporting and audit requirements under recently enacted digital regulations. We also note that the CMA's strong capabilities in its Digital Markets Unit and its DaTA team, which we believe puts the CMA in a good position to design such remedies and monitor compliance.

Rivalry Enhancing Benefits and Relevant Customer Benefits

We praise the CMA's decision to accept an investment remedy in Vodafone/Three, and believe that such types of commitments can be an effective way to address competition concerns. We also believe that in our specific industry, platform mergers into adjacent markets may generate efficiencies and may, in itself, represent a form of platform-to-platform competition. These efficiencies not only take the form of quantifiable cost savings, but also, in such cases, create valuable benefits to customers and supplier partners in the form of enhanced travel value and incremental bookings.

Platform acquisitions in adjacent industries can benefit consumers in several important areas. Bringing together complementary products can save consumers money through: (1) lower prices (such as discounts and lower transaction costs) driven by well-established economics theories like Cournot pricing efficiency and elimination of double marginalisation, and (2) convenience (one-stop shopping, easier order tracking, and customer service for questions, modification or cancellation). These benefits generally require the merging parties to further invest to deliver enhanced value to consumers (such as check-out features, payments, multi-product tracking, coordination across supplier partners), which further triggers rival companies to invest in innovations that drive a virtuous cycle of consumer benefits.