EUROPEAN COMMISSION

Brussels, 23.10.2018
C(2018) 7144 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

**To the notifying party:**

**Subject:** **Case M.9005 - BOOKING HOLDINGS / HOTELSCOMBINED**
**Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]**

Dear Sir or Madam,

(1) On 13.07.2018 the European Commission received, by means of a reasoned submission, a referral request pursuant to Article 4(5) of the EU Merger Regulation ("EUMR") with respect to the acquisition ("the proposed Transaction") by Booking Holdings Inc. USA., ("**Booking Holdings**") of sole control over HotelsCombined Pty Ltd, Australia ("**HotelsCombined**") (together with Booking Holdings, the "Parties").

(2) The proposed Transaction did not have an EU dimension within the meaning of Article 1(2) of the EUMR, because HotelsCombined's aggregate EU-wide turnover does not reach EUR 250 million. In addition, the proposed Transaction did not have an EU dimension within the meaning of Article 1(3) of the EUMR, since HotelsCombined does not achieve a turnover of more than EUR 25 million in at least three Member States. The proposed Transaction would have been capable of being reviewed under the national merger control laws of three Member States, namely Austria, Cyprus and the United Kingdom. As a

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

consequence, a copy of this submission was promptly transmitted to the Member States on 13.07.2018.

(3) On the basis of the Reasoned Submission submitted by the Parties pursuant to Article 4(5) of the Merger Regulation, in its Note to the Member States, the Commission took the view that the submission fulfilled the two conditions set out in Article 4(5) of the EUMR in that (i) the proposed Transaction is a concentration within the meaning of Article 3 of the EUMR, and (ii) it has to be notified in at least three Member States. The Commission considered that if the referral request was granted, the costs and burdens linked with making filings in three Member States would be avoided and the Parties would benefit from the one-stop-shop principle. In addition, the Commission took the view that the proposed Transaction fulfilled a number of further criteria set out in the Commission's Notice on Case Referral.[3]

(4) First, the proposed Transaction would have affected trade in a large number of EEA countries, as both parties are active in each of the 31 Member States of the EEA. Secondly, since the Commission had already dealt with these sectors and markets, for example in Case M.8416 – *Priceline/Momondo*, it is best-placed to carry out the investigation.

(5) The above-mentioned Member States competent to review the concentration under their national competition law did not express their disagreement to the referral request within the 15 working day deadline.

(6) As a consequence, the proposed Transaction was deemed to have an EU dimension and on 18.09.2018, the European Commission received the notification of the proposed Transaction pursuant to Article 3(1)(b) of the EUMR.[4]

## 1. THE PARTIES

(7) **Booking Holdings** provides metasearch services for travel ("MSS"), allowing consumers to search for and compare prices in particular for flights but also for hotel rooms (including other types of holiday accommodation), rental cars and package holidays, across online travel agents ("OTAs") and other travel service providers ("TSPs") under the brands KAYAK, Swoodoo, Checkfelix, Cheapflights and Momondo. Booking Holdings also operates OTA brands offering hotel and rental car reservations, such as Booking.com and Rentalcars.com.

(8) **HotelsCombined** provides MSS which allow consumers to search for and compare prices for hotel rooms and other types of holiday accommodation across OTAs and other TSPs. Its MSS do not allow consumers to search for other travel products.

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3 Commission Notice on Case Referral in respect of concentrations, OJ C 56, 05.03.2005, p.2, paragraphs 25 to 32.

4 OJ L 24, 29.1.2004, p. 1 (the "EUMR").

(9) The Parties provide commercial affiliate programmes, which are services provided to third party websites (e.g. other MSS providers or OTAs) that wish to offer comparison services to their visitors or to combine different travel services.

(10) Neither of the Parties is active at TSP level.[5]

## 2. THE OPERATION AND THE CONCENTRATION

(11) The proposed Transaction concerns the acquisition of sole control over HotelsCombined by Booking Holdings. Pursuant to a share and purchase agreement, which was concluded on 9.07.2018, Booking Holdings will acquire 100% of the issued share capital in HotelsCombined through a private acquisition.

## 3. EU DIMENSION

(12) For the reasons outlined above, the proposed Transaction has an EU dimension within the meaning of Article 4(5) EUMR and was therefore notified to the Commission in accordance with Articles 4(1) and 4(2) of the EUMR.

## 4. MARKET DEFINITION

### 4.1. The Parties' activities

*4.1.1. HotelsCombined*

4.1.1.1. MSS

(13) HotelsCombined, which does not offer any display advertising on its websites, operates a hotel MSS which allows consumers to search for and compare the prices of hotel rooms and other types of accommodation, such as hostels and holiday rentals[6], for particular dates, across OTAs (such as Booking.com and Expedia) and TSPs. Its MSS does not enable consumers to search for other travel services (such as flights, car rentals or package holiday deals).

(14) HotelsCombined provides services through desktop websites, mobile optimised websites[7] and apps. In the EEA, HotelsCombined is active in 26 Member States.[8]

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5 Parties' reply to QP 1 dated 5 September 2018.

6 Section A.1 of the Form CO: […], any reference to "hotels" includes hostels and other types of accommodation such as holiday rentals, unless stated otherwise.

7 These are a visually simplified version of the desktop website to provide a user experience that is better tailored to mobile devices with a smaller screen than a desktop device.

8 HotelsCombined has a country-specific domain in each of the following EEA countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the UK. It also offers services in Croatian / Croatian Kuna, and Icelandic / Icelandic Krona.

(15) Almost all of HotelsCombined's revenues are generated by fees paid by OTAs or hotels for website referrals. These fees are either charged on a (i) commission/cost per acquisition basis ("CPA")[9] or (ii) pay-per-click/cost-per-click ("PPC"/"CPC") basis[10].

(16) HotelsCombined is also active as a supplier of hotel MSS commercial affiliate programmes. Customers (typically other MSS providers, OTAs or travel blog websites) which enter into commercial affiliate agreements with HotelsCombined can offer visitors to their sites HotelsCombined's MSS product to enable them search for and compare the prices of hotel rooms. EUR […] million[11] or [the majority] of HotelsCombined's EEA revenues are generated via this channel.

(17) The Parties submit that it does not cost anything to become a HotelsCombined affiliate. As remuneration, the affiliate is paid a share of the revenue earned by HotelsCombined from OTAs and hotels for bookings generated via the affiliate's site. […]. This is a revenue-sharing partnership, as the affiliate has the benefit of monetising its website by relying on HotelsCombined's offering, whilst HotelsCombined benefits from broader exposure to the affiliate site's consumer visits.

*4.1.2. Booking Holdings*

(18) Booking Holdings is active globally and has a material presence in the EEA with the following brands: (i) KAYAK, Momondo, Cheapflights, Swoodoo and Checkfelix, which are travel MSS brands operated as a single business division ("the KAYAK Group") and (ii) Booking.com, agoda.com and Rentalcars.com, which are OTA brands offering hotel and rental car reservations, respectively.

4.1.2.1. MSS

(19) With the exception of the Momondo brand,[12] the KAYAK Group offers consumers the opportunity to complete their booking using booking functionality embedded within the website of the relevant MSS brand, powered by the OTA or TSP with which the booking is actually made. Given that the booking is actually made with the OTA or TSP, the consumer's contract is with the OTA or TSP, and the OTA or TSP provides the booking confirmation and is responsible for subsequent customer service.

(20) Most of the KAYAK Group's revenues are generated from referrals to TSPs and OTAs. These are charged for on either a CPC/PPC or on a CPA basis ([…]). Under the CPA model, the OTA or TSP pays a flat amount or a percentage of the

9 This is where a customer (i.e. an OTA or a hotel) pays a proportion of the revenue it generates in a given month from consumers who complete a booking with the OTA/TSP, having clicked through to that OTA/TSP service from HotelsCombined's MSS search.

10 This is where a customer pays a flat amount every time a HotelsCombined visitor clicks on a link to its website, regardless of whether a booking is made.

11 These revenues are net of payments to commercial affiliates.

12 […].

revenue generated every time a visitor clicks on a link to its website and makes a booking.

(21) The KAYAK Group offers a MSS commercial affiliate programme covering flights, hotels, car rentals and package holidays. However, flights are the core of KAYAK's commercial affiliate programme in the EEA – […]. In addition, the KAYAK Group, through the Momondo brand, offers a MSS commercial affiliate programme for flights. The Swoodoo, Checkfelix and Cheapflights brands do not offer commercial affiliate programmes. The KAYAK group turns EUR […] million, equivalent to […] % of its total MSS revenues in the EEA, with these programmes.

(22) The KAYAK Group's affiliate programme operates a similar revenue-sharing model to HotelsCombined. Affiliate customers are paid a proportion of the advertising revenues derived by the relevant KAYAK Group brand from the OTAs/TSPs to whom users click through from the affiliate site. KAYAK also powers the flights offering on the websites of Booking.com and agoda.com (Booking Holdings' OTAs) on a white label commercial affiliate basis. Revenues from clicks through to OTAs/TSPs from such users are paid to the KAYAK Group (which pays a portion of such revenues to Booking.com or agoda.com as appropriate), and the relevant OTA/TSP does not have any resulting relationship with Booking.com/agoda.com.

4.1.2.2. OTAs

(23) With regard to Booking.com, Booking.com is an OTA that primarily allows consumers to search for and book hotel rooms (and other types of accommodation). Booking.com is available in all major European languages and makes its services available to consumers in all EEA member states. Booking.com derives its revenues primarily from commissions paid by hotels on bookings made by consumers on the site. Booking.com also offers OTA commercial affiliate services for hotels.

(24) Booking.com's commercial affiliate programme offers a number of implementation methods including white label, API and links. It does not cost anything to become a Booking.com affiliate. Booking.com pays affiliate partners a proportion of the commission revenue generated from stayed bookings, i.e. from bookings that are non-cancelled/fulfilled, made through the affiliate's site. The proportion of the commission paid by Booking.com to affiliate partners ranges from […]. This is a revenue-sharing partnership – the affiliate has the benefit of monetising its website by relying on Booking.com's offering, while Booking.com benefits from broader exposure through the affiliate site's consumer visits.

(25) Booking Holdings' brand agoda.com is an OTA that primarily allows consumers to search for and book hotel rooms (and other types of accommodation). Agoda.com offers commercial affiliate services for hotels. Similarly to Booking.com's commercial affiliate programme, agoda.com offers a number of implementation methods and operates a similar revenue-sharing model.

(26) With regard to Booking Holdings' brand rentalcars.com,[13] it is an OTA that allows consumers to search for and book rental cars. The majority of Rentalcars.com's revenues are derived from margins made on car rental reservations and ancillary products such as insurance and the hire of child seats. Similarly to Booking.com's commercial affiliate programme, Rentalcars.com offers a number of implementation methods and operates a similar revenue-sharing model.

(27) Booking Holdings also operates two further OTAs: priceline.com and Rocketmiles, neither of which has a material presence in Europe.

## 4.2. Relevant product markets

### *4.2.1. Online travel intermediation services*

(28) In a prior decision, the Commission considered whether online travel markets form part of a broader market comprising the services provided by all suppliers in the travel industry's value chain, i.e. suppliers of different kinds of travel services, tour operators, brick-and-mortar, and OTAs and other intermediaries.[14] Although the Commission found evidence pointing towards the existence of a separate market for the online intermediation of travel services, the Commission left open whether there is a distinct market for the online intermediation of travel services.[15]

(29) As neither of the Parties is active in brick and mortar, it can be left open also in the present case whether the online intermediation of travel services constitutes a separate product market. The Commission will therefore look at the online travel sector only, as the proposed Transaction would not lead to serious doubts as to its compatibility with the internal market under the narrower of the two market delineations.

(30) The online travel sector is characterised by a multitude of players at various levels of the value chain, such as (i) TSPs, (ii) OTAs and (iii) MSS providers.[16] Among the main ones are:

- TSPs, such as airlines, hotel operators, car rental companies or other transport service suppliers;

- OTAs, namely online retailers which sell one or more types of travel service, supplied by a range of TSPs, such as flights, hotel and other travel accommodation and car rental. OTAs provide, on the one hand, search, compare and booking services to consumers and, on the other hand, marketing services and booking functionality to TSPs.

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13 Rentalcars.com primarily offers its services in the EEA through TravelJigsaw Limited, a company incorporated in England and Wales.

14 M. 8416 – *Priceline/Momondo*, paragraph 16.

15 M. 8416 – *Priceline/Momondo*, paragraph 19.

16 M. 8416 – *Priceline/Momondo*, paragraph 17.

- MSS, namely websites which aggregate information relating to one or more types of travel service. MSS provide, on the one hand, search and comparison services to consumers and allow them to compare offers for the same travel product made by the TSP and/or by one or more OTAs. On the other hand, MSS provide lead generation services to TSPs and OTAs.[17]

(31) As neither of the Parties is active at TSP level, the Commission will assess the impact of the proposed Transaction on MSS and on MSS and OTAs combined.

*4.2.2. Distinction between general and specialised search engines*

(32) In its prior decision practice, the Commission has concluded that internet general search should be distinguished from specialised search, with focuses on specific segments of online content, such as, for example, travel search engines.[18] In line with the Commission's precedents, the Parties have therefore excluded general search engines from the scope of the relevant market.[19]

(33) As a consequence, the impact of the proposed Transaction will be assessed on markets for specialised search engines.

*4.2.3. Distinction between MSS and OTAs*

4.2.3.1. Commission and NCAs' practice

(34) In a prior decision, the Commission considered whether MSS and OTA services are two distinct markets.[20] MSS were considered in a previous decision in which the Commission pointed out that MSS providers aggregate and compare fares, but do not offer booking capabilities, instead channelling consumers to TSPs or travel agents offering the best fares. However, the Commission did not define the market on which MSS providers operate.[21]

(35) National competition authorities have also looked into the online travel sector. The UK national competition authority has looked into MSS markets in its assessment of the acquisition of KAYAK by Priceline, assessing the impact of the merger on the supply of online travel search services to UK consumers and the supply of online lead generation services to TSPs, without ultimately defining MSS markets.

(36) In its assessment, the UK national competition authority considered that MSS providers and OTAs are both in a vertical relationship and compete with each

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17 MSS generally re-direct users to a TSP or OTA website in order to complete their booking, however some MSS have recently begun to offer a direct booking function, allowing the user to complete the transaction without leaving the MSS website.

18 M. 8416 – *Priceline/Momondo*, paragraph 21.

19 Form CO, paragraph 6.66.

20 M. 8416 – *Priceline/Momondo*, paragraphs 24-39.

21 M. 8416 – *Priceline/Momondo*, paragraph 24. See also M.4523 – *Travelport/Worldspan*, paragraphs 31-33.

other, as they both seek to obtain traffic by providing online travel search services to consumers and online lead generation services to TSPs. However, in that decision, the OFT did not conclude on the precise market definition and analysed competition between OTAs and MSS only "on a cautious basis", finding that, even in a potential market including both OTAs and MSS, an OTA and a MSS provider "are not in fact close competitors".[22]

(37) Conversely, in their antitrust decisions assessing most-favoured nation clauses in contracts for the online distribution of hotel accommodation, the German, French, Italian, Swedish and Swiss competition authorities and the Düsseldorf appeal court in Germany treated OTAs specialising in the distribution of hotel accommodation as belonging to a distinct market, implicitly or explicitly excluding MSS.[23]

(38) However, in Case M. 8416 – *Priceline/Momondo,* the Commission ultimately left open whether there are distinct markets for MSS and OTAs.[24]

4.2.3.2. Parties' views

(39) The Parties submit that OTAs and MSS should not be included in the same market.[25] On the consumer side of the market, MSS and OTAs offer fundamentally different services, as OTAs enable consumers to book travel services, whilst MSS are a price comparison tool which enables consumers to search for the booking platform that gives them the best deal. The Parties refer to those respondents to the market investigation carried out by the Commission in Case M. 8416 – *Priceline/Momondo* that considered that MSS and OTAs should be considered as two separate markets, in particular to the argument according to which MSS would offer a much broader comparison, displaying offers from multiple distribution channels and enabling consumers to compare prices for the same travel product, whereas OTAs only enable consumers to compare different travel products.[26]

(40) In addition, the Parties submit that support and after-sale service offered to consumers by OTAs are far more comprehensive than those offered by MSS providers. The Parties refer to those respondents to the market investigation carried out by the Commission in Case M. 8416 – *Priceline/Momondo* who considered that MSS and OTAs should be considered as two separate markets, in

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22 M. 8416 – *Priceline/Momondo*, paragraph 26. OFT decision of 14 May 2013 (ME/5882-12) on the anticipated acquisition by Priceline.com of Kayak Software Corporation, paragraph 14 and following.

23 M. 8416 – *Priceline/Momondo*, paragraph 27. German national competition authority's decisions of 20 December 2013 and 23 December 2015 addressed to HRS and Booking.com respectively; French, Italian and Swedish national competition authorities' decisions of 15-21 April 2015 addressed to Booking.com; Swiss national competition authority's decision of 19 October 2015 addressed to Booking.com, Expedia, Inc and HRS; judgment of Düsseldorf Higher Regional Court of 9 January 2015, *HRS vs Bundeskartellamt.*

24 M. 8416 – *Priceline/Momondo*, paragraph 40.

25 Form CO, paragraphs 6.74 and following.

26 M. 8416 – *Priceline/Momondo*, paragraph 36. Form CO, paragraph 6.76.

particular to the argument according to which OTAs have a more direct relationship with consumers, providing additional services, such as call centres and after-sale support and that those MSS providers which responded to the market investigation in Case M. 8416 – *Priceline/Momondo* stated that, for an MSS to start offering services similar to an OTA, significant time and investment would be required.[27]

(41) With regard to the advertiser side of the market, the Parties submit that MSS and OTAs offer fundamentally different services to advertisers for the following reasons[28]: (i) the primary function of MSS is an advertising channel for OTAs, whilst all of an OTA's revenues are derived from TSPs, (ii) MSS do not have a direct relationship with many TSPs, such as hotels, whilst OTAs have contractual relationships with all TSPs whose travel services are offered on their site, (iii) MSS and OTAs often adopt fundamentally different payment models, (iv) in the hotel booking sector, OTAs offer booking functionality, whilst MSS redirect consumers to an OTA or a TSP to complete the booking, (v) for small and medium sized hotels a MSS is not an alternative to an OTA, (vi) MSS that have sought to introduce booking functions have faced major obstacles, (vii) TSPs rely on OTAs to provide support and after-sale services.

(42) In addition, the Parties submit that the type of platform (e.g. desktop, apps) or whether the service is addressed to leisure/business travellers or used for foreign/domestic destinations, or for short-haul/long-haul travel do not constitute an essential characteristic of the market.[29] With regard to the type of platform, the Parties clarify that (i) most major MSS providers are active across all platforms and as mobile websites improve, the distinction between apps and websites is increasingly disappearing, (ii) consumer experience is largely the same across platforms, (iii) consumers are increasingly beginning their travel research on one platform and continuing it on another one. With regard to whether the service is addressed to leisure/business travellers or used for foreign/domestic destinations, or for short-haul/long-haul, the Parties submit that all major MSS compare travel options on their sites with no distinction being made generally between leisure and business travellers. All major MSS compare prices for travel to foreign and domestic destinations and travel to short-haul and long-haul destinations.

4.2.3.3. Commission's assessment

(43) The Commission considers that even though MSS providers and OTAs are both active in the intermediation of travel services online and both aim to attract consumers interested in organising their travel, they seem to offer different services and generally operate on the basis of different business models.

(44) The Commission agrees with the Parties that the type of platform does not seem to represent an important characteristic of the market, given that (i) with regard to the type of platform, most major MSS providers are active across all platforms and as mobile websites improve, the distinction between apps and websites is

27 M. 8416 – *Priceline/Momondo*, paragraph 37. Form CO, paragraph 6.80.

28 Form CO, paragraph 6.81.

29 Form CO, paragraphs 6.86 to 6.91.

increasingly disappearing and consumers are increasingly beginning their travel research on one platform and continuing it on another one. With regard to (ii) whether the services are addressed to leisure/business travellers or used for foreign or domestic destinations, or for short-haul/long-haul, the Commission agrees with the Parties that these aspects do not seem to constitute an important characteristic of the market.

(45) However, as the proposed Transaction would not raise serious doubts, either on the basis of distinct markets for MSS or on the basis of a broader market comprising both MSS and OTAs, the exact scope of the product market may be left open for the purposes of this decision.

4.2.3.4. Conclusion

(46) Therefore, for the purposes of this Decision, the Commission concludes that it may be left open whether there are distinct markets for MSS and OTAs. The Commission will therefore assess the impact of the Transaction both on markets for MSS only and on broader markets comprising both MSS and OTAs.

*4.2.4. Distinction by type of travel service*

4.2.4.1. Commission and NCAs' practice

(47) In its prior decision practice, the Commission considered that the online distribution of travel services could be further segmented by type of travel products, between flights, hotels, package holidays, etc., though ultimately the exact definition of the product market was left open.[30]

(48) National competition authorities have also distinguished between hotels, flights and car rentals, considering that these are not interchangeable from the consumer's point of view and observing that MSS and OTAs often specialise in one type of travel services, even if there is some complementarity between the different types of travel services from the supply side, as consumers may prefer to organise their entire journey or holiday in a "one-stop" shop.[31]

4.2.4.2. Parties' view

(49) The Parties, which do not overlap in OTAs but do overlap in a broad market for all travel MSS and, to the extent that the MSS market is segmented by type of travel, in a narrower market for hotels MSS only, submit that it is not necessary to sub-segment the MSS market by type of travel.[32]

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30 M. 8416 – *Priceline/Momondo*, paragraphs41-51. Cases M.8046 – *TUI/Transat France*, paragraph 101; M.6163 - *AXA/ PERMIRA/ OPODO/ GO VOYAGES/EDREAMS*, paragraph 18 and following.

31 Illustratively, OFT decision of 14 May 2013 (ME/5882-12) on the anticipated acquisition by Priceline.Com of Kayak Software Corporation, para.31; German national competition authority's decisions of 20 December 2013 and 23 December 2015 addressed to HRS and Booking.com respectively.

32 Form CO, paragraph 6.72.

(50) The Parties refer to certain responses received during the market investigation conducted by the Commission in Case M. 8416 – *Priceline/Momondo* according to which the markets for online travel intermediation should not be further segmented by type of travel services, as MSS and OTAs specialising in only one type of travel service would be in competition with respectively those MSS or OTAs that offer a broader range of travel services; that the business model and technology required to offer online intermediation services for different types of travel services is comparable, and that even if not identical, different types of travel services are complementary and thus likely to be sourced together by consumers.[33]

(51) In addition, the Parties submit that over the past years there has been significant and increasing convergence in the sector and that there are few significant MSS that continue to offer comparisons for a single type of travel service only.[34]

4.2.4.3. Commission's assessment

(52) The Commission considers that segmenting MSS and OTAs markets by different types of travel service should be considered. However, as the proposed Transaction would not raise serious doubts, irrespective of whether broader markets comprising all travel MSS or the narrower segment of MSS for hotels are taken into account, the exact delineation of the relevant product market may be left open.

4.2.4.4. Conclusion

(53) As a consequence, for the purpose of the decision, the Commission concludes that it may be left open whether MSS and OTAs should be further segmented based on the type of travel service they intermediate. The Commission will therefore assess the impact of the proposed Transaction on markets for hotels MSS and a broader market for all travel MSS.

*4.2.5. Commercial affiliate programmes*

(54) The MSS and OTAs markets could be segmented into (i) MSS and/or OTAs excluding commercial affiliate programmes, i.e. business-to-consumer (B2C), and (ii) commercial affiliate programmes, i.e. business-to-business (B2B).

4.2.5.1. Commission's practice

(55) Commercial affiliate programmes are services provided by MSS and/or OTAs to third party websites that wish to generate revenue by driving traffic to the affiliated MSS or OTA and therefore offer comparison services to their visitors and/or to combine different travel services.

(56) In a prior decision, the Commission assessed commercial affiliate programmes in the travel sector.[35] The Commission left open whether commercial affiliate

[33] Form CO, paragraph 6.69.

[34] Form CO, paragraphs 6.71-6.72.

[35] M. 8416 – *Priceline/Momondo*, paragraphs 52-58.

programmes constitute a distinct market or are part of broader markets for the operation of MSS and OTAs. Similarly, the Commission left open whether potential markets for commercial affiliate programmes should be further segmented, based on whether these are offered by MSS or OTAs, or by type of travel services.[36]

4.2.5.2. The Parties' view

(57) On the one hand, the Parties submit that MSS and OTAs should not be further segmented between (i) MSS and OTAs excluding commercial affiliate programmes (B2C) and (ii) commercial affiliate programmes (B2B), as commercial affiliate programmes are simply an add-on used to generate incremental revenue and increase traffic to MSS and OTAs.[37] In this context, the Parties raise similar arguments for OTAs[38] and refer to the market investigation carried out in M.8416 – *Priceline/Momondo*, in which the majority of respondents considered that the provision of commercial affiliate programmes by MSS providers is part of the overall market for the operation of MSS, notably as they viewed these programmes as an additional means for MSS to increase traffic to their websites.[39]

(58) On the other hand, the Parties submit that any market for commercial affiliate programmes must be segmented between OTA and MSS commercial affiliate programmes, respectively.[40] The Parties refer to the market investigation carried out in M.8416 – *Priceline/Momondo*, in which respondents were split as to whether commercial affiliate programmes offered by MSS are interchangeable with commercial affiliate programmes offered by OTAs.[41] Indeed, some respondents pointed out the differences in the type of services offered by MSS providers and OTAs, whereas others indicate that they considered both OTAs and MSS when selecting the commercial affiliate programme they entered into, or that they have entered into affiliate programmes offered by both MSS providers and OTAs.[42] The Parties refer also to the OFT's decision regarding Booking Holdings' acquisition of the KAYAK Group in 2013, in which the OFT, while recognising that there was a technical overlap between KAYAK's (MSS) and Booking Holdings' (OTA) affiliate programmes, it did not consider that they overlapped to

36 M. 8416 – *Priceline/Momondo*, paragraph 57.

37 Form CO, paragraph 6.102.

38 Form CO, paragraph 6.108.

39 M. 8416 – *Priceline/Momondo*, paragraph 54.

40 Form CO, paragraphs 6.111 and following.

41 Form CO, paragraph 6.112.

42 M. 8416 – *Priceline/Momondo*, paragraph 55.

a material degree and did not consider the overlap in the competitive assessment.[43]

(59) In conclusion, the Parties submit that OTAs and MSS do not act as a material competitive constraint on each other in the supply of commercial affiliate programmes because they have fundamentally different business models and therefore offer fundamentally different products to consumers, advertisers and affiliate partners.[44]

(60) With regard to a possible segmentation by type of travel, the Parties submit that it would not be appropriate to sub-segment any hypothetical market for commercial affiliate programmes by hotels, etc.[45] The Parties refer to the market investigation carried out in M.8416 - *Priceline/Momondo*, in which respondents were split as to whether commercial affiliate programmes should be further segmented on the basis of the type of travel.[46] In this context, the Parties submit that many of the major MSS providers and OTAs that offer commercial affiliate programmes do so across multiple types of travel.[47] In addition, many commercial affiliate customers use the same MSS or OTA across all types of travel.[48]

(61) In addition, the Parties submit that the services provided by Google through its AdSense product have some significant similarities to commercial affiliate services and could form part of the market for commercial affiliate services. However, the Parties state that they adopted a conservative approach and excluded Google AdSense from the relevant commercial affiliate programmes market and instead analysed Google AdSense as an out-of-market constraint.[49]

(62) In addition, the Parties submit that, should the Commission identify a market for commercial affiliate programmes segmented by type of travel (i.e. hotels), the commercial affiliate programmes of Airbnb should be included in the product market, given that (i) most major OTAs that offer commercial affiliate programmes list a range of accommodation on their site and offer these listings as part of their respective commercial affiliate programmes, (ii) a number of MSS also include holiday rentals in their offering, (iii) Airbnb's affiliate programme is substitutable with the commercial affiliate programmes of OTAs offering hotel room reservations.[50]

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43 Form CO, paragraph 6.113. See also KAYAK, Decision ME/5882-12, Office of Fair Trading, 14 May 2013 at paragraphs 48 to 50.

44 Form CO, paragraph 6.114.

45 Form CO, paragraph 6.125 and following.

46 M. 8416 – *Priceline/Momondo*, paragraph 56.

47 Form CO, paragraphs 6.126 – 6.127.

48 Form CO, paragraph 6.129.

49 Form CO, paragraphs 6.137 and following.

50 Form CO, paragraph 6.143 and following.

(63) Finally, the Parties submit that neither the implementation method nor the service type constitute important characteristics of the market.[51] Commercial affiliate programmes encompass a range of implementation methods which enable an affiliate customer to partner with an MSS provider or OTA. Each of these methods involves a revenue-sharing model. The implementation methods consist of (i) white label[52], (ii) API data feed[53], (iii) links[54].

(64) The Parties submit that, from the perspective of the commercial affiliate customer, each implementation method forms part of a continuum of alternative solutions which allow them to achieve the following goals: (i) partner with a MSS/OTA to achieve a share of revenue derived by that MSS/OTA from visitors originating on their site and (ii) offer relevant travel search and/or booking functionality to their visitors (either on their site itself or via an easily accessible widget or link on their site). The Parties submit that (i) each solution involves revenue sharing and access to a travel search product and forms part of a continuum of solutions offered to customers to achieve the same aim, (ii) most MSS offer a range of different types of commercial affiliate solutions, (iii) each of the Parties typically offers affiliate services based on the same standard contract whatever implementation solution is chosen by the customer (iv) affiliate customers do switch between different implementation models and/or use various implementation models concurrently.

4.2.5.3. The Commission's assessment

(65) The Commission considers that the AdSense product can hardly be considered as part of the same market. It is also rather doubtful whether it could be seen as an out-of-market constraint to the market for commercial affiliate programmes because, unlike commercial affiliate programmes, the AdSense product matches text and display advertisements to a website, based on the website's content, visitors and their searches. Therefore, for the purpose of this case, the Commission does not consider AdSense as part of the same market or as an out-of-market constraint.

(66) The Commission considers that the commercial affiliate programmes of Airbnb exert some constraint due to the fact that (i) most major OTAs that offer

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51 Form CO, paragraphs 6.131-6.136.

52 The affiliate customer is given access to a reproduction of the MSS/OTA site which can be customised with the brand of the affiliate customer (e.g. HotelsCombined's arrangement with the […], or Kayak's agreement with […]).

53 A "back-end" live information feed including, for example, hotel room availability and prices. This can be used to provide a full MSS solution or by an existing MSS to "plug" gaps in its existing inventory coverage. This solution allows a much higher level of customisation of the consumer interface, the look and feel of the website and the presentation/comparison of listings – it is also as a result the most complex to implement and therefore only suitable for affiliates with sophisticated IT resources.

54 This implementation method involves providing a link (/referral) to the MSS/OTA site. Clicking on the link takes the consumer directly to the MSS/OTA site front page. The affiliate gets a revenue share if the user then goes on to click-out (to a TSP/OTA in the case of a MSS) or book (on the OTA in the case of an OTA) within a specified time period.

commercial affiliate programmes list a range of accommodation on their site and offer these listings as part of their respective commercial affiliate programmes, (ii) a number of MSS also include holiday rentals in their offering, (iii) Airbnb's programme is substitutable with the commercial affiliate programmes of OTAs offering hotel room reservations. In any event the question whether the commercial affiliate programmes of Airbnb are part of the commercial affiliate programmes product market can be left open for the purpose of this Decision since the proposed Transaction would not lead to serious doubts as to its compatibility with the internal market whether or not the programmes of Airbnb are included. Therefore, for the purpose of this Decision, the commercial affiliate programmes of Airbnb are included in the relevant market.

(67) The Commission agrees with the Parties that neither the implementation method nor the service type seem to constitute important characteristics of the market, for the following reasons: (i) each solution involves revenue sharing and access to a travel search product and forms part of a continuum of solutions offered to customers to achieve the same aim, (ii) most MSS offer a range of different types of commercial affiliate solutions, (iii) each of the Parties typically offers affiliate services based on the same standard contract whatever implementation solution is chosen by the customer and (iv) affiliate customers do switch between different implementation models and/or use various implementation models concurrently.

(68) The Commission considers that it may be left open whether commercial affiliate programmes constitute a distinct market or are part of broader markets for the operation of MSS and OTAs. Similarly, the Commission considers that it may be left open whether potential markets for commercial affiliate programmes should be further segmented, based on whether these are offered by MSS or OTAs, or by type of travel services.

4.2.5.4. Conclusion

(69) The Commission concludes that, for the purpose of this Decision, whether there are distinct markets for the provision of commercial affiliate programmes by MSS providers and OTAs and the exact delineation thereof can be left open, as the proposed Transaction does not raise serious doubts under any such plausible product market definition.

## 4.3. Relevant geographic markets

### *4.3.1. MSS and OTAs*

4.3.1.1. Commission and NCAs' decision practice

(70) In its prior decisions, the Commission considered that, notably due to language barriers, markets for the distribution of various types of travel services are likely to be national.[55]

(71) National competition authorities in the EEA have also assessed markets for MSS and OTAs on a national basis.[56]

[55] M. 8416 – *Priceline/Momondo*, paragraph 59. See also M.8046 – *TUI/Transat*, paragraph 104 and following. M.6163 – *AXA/Permira/OPODO/Go Voyages/Edreams*, paragraph 29 and following.

(72) However, in M.8416 – *Priceline/Momondo*, the Commission concluded that the exact geographic scope of MSS and OTA markets may be left open and, as a consequence, assessed the impact of the Transaction at global, EEA-wide and national level.[57]

4.3.1.2. Parties' view

(73) The Parties submit that most major MSS and OTAs are active on a pan-European or global basis. Other national or regional players have also sought to expand into new markets, such as EasyVoyage, which intends to expand into Northern Europe from its well-established position in Southern Europe.[58]

4.3.1.3. Commission's assessment

(74) As the proposed Transaction would not raise serious doubts, irrespective of whether global, EEA-wide or national markets are taken into account, the exact delineation of the geographic markets may be left open.

4.3.1.4. Conclusion

(75) For the purpose of this Decision, the Commission concludes that the exact geographic scope of MSS and OTA markets may be left open. The Commission will assess the impact of the proposed Transaction at global, EEA-wide and national level.

*4.3.2. Commercial affiliate programmes*

4.3.2.1. Commission's decision practice

(76) In a prior decision, the Commission considered that the geographic scope of any potential market for commercial affiliate programmes would be likely to be global. However, as the Transaction did not give rise to serious doubts under any plausible geographic market definition, the exact geographic delineation was left open.[59]

4.3.2.2. Parties' view

(77) The Parties submit that the geographic scope of any possible market for the supply of commercial affiliate programmes would be at least EEA-wide, for the following reasons: (i) competition between suppliers of commercial affiliate programmes takes place on at least an EEA-wide basis, (ii) many of the Parties' competitors in both MSS and OTAs are active on a pan-EEA – if not global –

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56 M. 8416 – *Priceline/Momondo*, paragraph 60. German national competition authority's decisions of 20 December 2013 and 23 December 2015 addressed to HRS and Booking.com respectively; French, Italian and Swedish national competition authorities' decisions of 15-21 April 2015 addressed to Booking.com.

57 M. 8416 – *Priceline/Momondo*, paragraph 69.

58 Form CO, paragraphs 6.154-6.155.

59 M. 8416 – *Priceline/Momondo*, paragraph 72.

basis and (iii) many affiliate customers have agreements covering multiple country domains, covering Europe as whole or even globally.[60]

4.3.2.3. Commission's assessment

(78) The Commission considers that the geographic scope of any potential market for commercial affiliate programmes would be likely to be global. However, as the Transaction would not give rise to serious doubts under any plausible geographic market definition, the exact geographic delineation may be left open.

4.3.2.4. Conclusion

(79) For the purpose of this Decision, the Commission concludes that the exact geographic scope of the markets for commercial affiliate programmes may be left open. The Commission will assess the impact of the proposed Transaction at global, EEA-wide and national level.

## 5. COMPETITIVE ASSESSMENT

### 5.1. Overview of affected markets

(80) The proposed Transaction gives rise to the following horizontally affected potential markets, namely those for (i) MSS including commercial affiliate programmes (B2C+B2B) in Denmark and Sweden, (ii) MSS excluding commercial affiliate programmes (B2C) in Denmark and Sweden for hotels, in Austria, Denmark and Sweden for all travel services; (iii) MSS commercial affiliate services (B2B) at global, EEA level and in each EEA Member State, (iv) MSS and OTAs combined, excluding commercial affiliate services (B2C), at global, EEA level and in each EEA Member State, (v) MSS and OTA combined – commercial affiliate programmes (B2B) at worldwide, EEA and in each EEA Member State, (vi) MSS and OTA combined including commercial affiliate programmes (B2C+B2B) at worldwide, EEA and in each EEA Member State;

(81) The proposed Transaction also gives rise to three groups of vertically affected potential markets, namely (i) MSS excluding commercial affiliate services – OTAs excluding commercial affiliate services; (ii) MSS commercial affiliate programmes – MSS excluding commercial affiliate programmes; and (iii) MSS and OTA commercial affiliate services – MSS and OTA excluding commercial affiliate services. Group (i) is vertically affected in all EEA member states, while groups (ii) and (iii) are affected in the EEA-wide market upstream and in each EEA member state downstream.

### 5.2. Sectoral overview

(82) In 2017, the MSS market in the EEA had an estimated value of around EUR […] billion.

(83) Booking Holdings has a relatively strong footprint in the EEA, where it achieves […] of its turnover of more than EUR 11 billion. Its total revenues in MSS (both

[60] Form CO, paragraph 6.159.

B2C and B2B) are around EUR […] million and therefore more than […] times larger than the revenues of HotelsCombined.

(84) HotelsCombined's home region is the Asia-Pacific region. It is small in the EEA, with revenues of around EUR […] million for MSS excluding commercial affiliate programmes (i.e., MSS services to travellers, B2C) and another EUR […] million for MSS commercial affiliate programmes (B2B). HotelsCombined largest customer for affiliate programmes was […]which accounted for […] of HotelsCombined revenues in 2017 when the contract was terminated […]. Moreover, HotelsCombined only offers MSS services for hotels, while Booking Holdings in 2017 earned [the majority] of its MSS revenues with flights and only […]% with hotels.

(85) In addition to the Parties, other MSS providers active in the EEA include large global players, such as Google,[61] Trivago, Skyscanner and TripAdvisor, which are all larger than the merged entity at the EEA level for MSS services, as well as a number of well-established national players.

## 5.3. Horizontal effects

### *5.3.1. MSS*

5.3.1.1. MSS - including commercial affiliate programmes

(86) For all MSS, i.e. including commercial affiliate programmes (B2B+B2C), at national level, the Parties submit that estimating market shares is challenging. [62] However, on a theoretical and conservative basis, the Parties submit that the Parties' combined market share is less than 20% in all EEA Member States except Denmark ([30-40]% with an increment of [5-10]% brought about by HotelsCombined) and Sweden ([20-30]%, with an increment of [5-10]% brought about by HotelsCombined) in the hotels segment. However, by taking into account the termination of HotelsCombined's contract with […], the Parties' combined market share will be less than [30-40]% in Denmark and less than [20-

61 Only in respect of MSS excluding commercial affiliate programmes (B2C).

62 The Parties submit that the estimation of market shares from the supply of MSSs commercial affiliate programmes is challenging given that (i) the Parties are not aware of any reliable and comprehensive source of market share data and (ii) it is not possible to identify with accuracy the number and identity of competitors' customers of commercial affiliate programmes. The Parties prepared estimates of market shares from the supply of commercial affiliate services as follows: (a) the estimates used the KAYAK Group's and HotelsCombined's actual revenues as an input. These revenues were allocated to the country in which the domain of the commercial affiliate customer is located or, in the case of a '.com' domain, the location of the consumer 'click' or booking. These revenues were net of payments to affiliates. (ii) KAYAK Group used these actual revenues to estimate the revenues generated by its key competitors in the supply of MSSs affiliate services, taking into account any material customers known of, the likely number of 'long-tail' links customers, the level of commission charged (where publicly available) and, where appropriate, the extent to which an affiliate provider may benefit from having a well-known MSS excluding commercial affiliate programmes presence in a given market, (iii) These estimates were adjusted to take into account feedback from the business team in HotelsCombined. The market investigation confirmed that precise market share data is not readily available and the Parties' competitors do not tend to have a good market overview either. However, the market investigation confirmed the relative position of the merging parties and their main competitors based on turnover data. (Form CO, Annex 3)

30]% in Sweden. As outlined above, the market shares are driven by the comparative size of the B2C segment and including the B2B segment does not have any material impact on the market shares.

(87) At EEA level, according to the Parties' best estimates, the Parties' combined market share is [5-10]% (with an increment of [0-5]% brought about by HotelsCombined) in the hotels segment. The Parties submit that the estimated EEA-wide B2C market size is EUR […] million, whilst the B2B segment is only EUR […] million, i.e. [0-5]% of the size of the B2C segment. Market shares are driven by the B2C position and including B2B revenues does not have any material impact on market shares, given the comparatively non-significant size of the B2B segment.

(88) According to the Parties' best estimates, the Parties' combined market share at worldwide level is [5-10]% (with an increment of [0-5]% brought about by HotelsCombined) in all travel. In the hotels segment, according to the Parties' best estimates, the Parties' combined market share at worldwide level is [0-5]% (with an increment of [0-5]% brought about by HotelsCombined). Market shares are driven by the B2C position. The Parties submit that commercial affiliate programme revenues in the hotels segment are only EUR […] million in a combined worldwide B2C and B2B market of EUR […] billion. In conclusion, including B2B revenues does not have any material impact on market shares given the comparatively non-significant size of the B2B market.

(89) There are several reasons why the proposed Transaction will not lead to any serious doubts in this potential market, other than the small to modest combined market shares. First, the Parties are not close competitors, as HotelsCombined is only active in hotel MSS while Booking Holdings mostly provides flights MSS. Therefore, prior to the proposed Transaction, the constraint imposed on Booking Holdings by HotelsCombined is negligible. Second, as confirmed by the market investigation, the merged entity will continue to be constrained by important competitors, such as TripAdvisor, Trivago and Skyscanner.

(90) Moreover, the majority (two-thirds) of the respondents to the market investigation expressed an intention to enter or expand their services in MSS excluding commercial affiliate services in the next 3 years. And the majority (more than three-quarters) of respondents to the market investigation expressed an intention to enter or expand their services in MSS commercial affiliate programmes in the next 3 years. Of those respondents who expressed an intention to enter or expand, more than 70% stated this would apply to both hotels and flights; and more than 70% stated this would include all or part of the EEA. This indicates that barriers to entry and expansion are low. The investment costs for entering the market are limited and MSS providers do not need a physical presence to be able to operate in a given EEA Member State. Many incumbents seem to be well placed to expand their market presence.

5.3.1.2. MSS excluding commercial affiliate programmes

(91) For all travel MSS excluding commercial affiliate programmes, according to the Parties' best estimates, the Parties' combined market shares are [20-30]%, [50-60]% and [20-30]% in Austria, Denmark and Sweden respectively, but the

increment brought about by HotelsCombined is *de minimis* (below [0-5]%) in each of these countries.[63] Moreover, the Parties are not close competitors, as HotelsCombined is only active in hotel MSS while Booking Holdings mostly provides flight MSS. Therefore, prior to the proposed Transaction, the constraint imposed on Booking Holdings by HotelsCombined is negligible. In addition, the merged entity will continue to be constrained by important competitors:

(a) In Austria, by Trivago, TripAdvisor and Google[64] (among others), with market shares of [20-30]%, [10-20]% and [10-20]% respectively.

(b) In Denmark, by Google with a market share of [10-20]% (and growing), as well as smaller but well-established players such as TravelSupermarket, Skyscanner, TripAdvisor and Trivago, each with market shares of [5-10]% to [5-10]%.

(c) In Sweden, by Flygresor, Google and Skyscanner, with market shares of [20-30]%, [10-20]% and [10-20]% respectively.

(92) For hotels MSS, according to the Parties' best estimates, the Parties' combined market share is [30-40]% in Denmark and [20-30]% in Sweden, with an increment of [0-5]% in each country, while Austria is not an affected market. As with all travel MSS, the merged entity will be constrained by strong competitors:

(a) In Denmark, by Trivago with a market share of [20-30]% and Google with a market share of [10-20]%, as well as by Skyscanner, TripAdvisor and TravelSupermarket, each with market shares of [10-20]% to [10-20]%.

(b) In Sweden, by Trivago, Flygresor and Google, with market shares of [20-30]%, [20-30]% and [10-20]% respectively.

(93) For the EEA as a whole, according to the Parties' best estimates, the combined market share is [10-20]% for all travel and [0-5]% for hotels, whilst at worldwide level it is [5-10]% for all travel and [0-5]% for hotels.

(94) Moreover, the majority (two-thirds) of the respondents to the market investigation expressed an intention to enter or expand their services in MSS excluding commercial affiliate services in the next 3 years. This indicates that barriers to entry and expansion are low. The investment costs for entering the market are limited and MSS providers do not need a physical presence to be able to operate in a given EEA Member State. Many incumbents seem to be well placed to expand their market presence.[65]

(95) The majority of the respondents who expressed such an intention included both hotels and flights in their entry or expansion plans, the segments in which the Parties are strongest. Furthermore, the majority of the respondents who expressed

63 See footnote 62 above on the methodology for the calculation of market shares.

64 For flights and hotels (B2C, excluding commercial affiliate programmes).

65 Form CO, paragraph 6.221. See also M. 8416 – *Priceline/Momondo*, paragraph 107.

such an intention included all or part of the EEA in the geographic scope of their expansion plans.

5.3.1.3. MSS commercial affiliate programmes[66]

(96) At a worldwide level, according to the Parties' best estimates, the Parties' combined market share in MSS commercial affiliate programmes would be [20-30]% with an increment of [5-10]% brought about by the Kayak Group.

(97) In the EEA, according to the Parties' best estimates, the Parties' combined market share would be [30-40]% for 2017, (HotelsCombined [10-20]%, Kayak Group [10-20]%). HotelsCombined's market share is, however, overstated because approximately […]% of its EEA turnover in 2017 is attributable to two contracts (with […]) in respect of which, the Parties submit that notice to terminate was served prior and independently to the proposed Transaction.[67] As a consequence, the Parties' combined market share would drop to around [20-30]% (with an increment of [10-20]%).

(98) At national level, given that there is no reliable data, the Parties submit that they believe that HotelsCombined's market share will be higher in the Nordic countries than elsewhere in the EEA. However, […]. Given that the contract with […]was terminated, HotelsCombined's 2018 revenues and market shares in the Nordic countries will be significantly lower than in 2017.

(99) The Parties will continue to be constrained by large competitors such as Skyscanner, Trivago and TripAdvisor among others, with market shares of [20-30]%, [10-20]% and [10-20]% respectively.

(100) The Parties are not close competitors, as HotelsCombined is only active in hotels while [the majority] of Booking Holdings' MSS commercial affiliate programme revenues are accounted for by flights.

(101) Focussing on the hotels segment, according to the Parties' best estimates, the Parties' combined market share at worldwide level would be [30-40]% with an increment of [0-5]% brought about by the Kayak Group. According to the Parties' best estimates, the Parties' combined market share would be [40-50]% in the EEA, with an increment of only [0-5]% brought about by the Kayak Group.

(102) There are several strong competitors such as Trivago and TripAdvisor with EEA market shares of [20-30% and [20-30]% respectively. The market investigation, on the basis of turnover data, confirmed the relative position of the Parties and their main competitors in the markets considered.

(103) At national level,[68] given that there are is no reliable data, the Parties submit that they expect that in all the EEA Member States other than the Nordic countries (in

66 See footnote 62 above on the methodology for the calculation of market shares.

67 Contracts won recently are included.

68 Booking Holdings notes that KAYAK Group's hotels MSS B2B revenues across the EEA as a whole are just €[…]. HotelsCombined's revenues are […] times larger at €[…] million.

which market shares are expected to be higher), the Parties' combined hotels MSS commercial affiliate programmes market share would be less than [30-40]% (with an increment brought about by KAYAK Group of [10-20]% or less in all such Member States and be [5-10]% or less in most such Member States). In the Nordic countries, KAYAK Group is only active in Denmark and Sweden, generating just EUR […] of revenue. The increment brought about by KAYAK in each of these Member States would be significantly less than [0-5]%.

(104) The Parties are not close competitors due to their complementary product offerings. HotelsCombined focusses exclusively on the hotels segment, while the Kayak Group has a focus on flights.

(105) Moreover, the majority (more than three-quarters) of respondents to the market investigation expressed an intention to enter or expand their services in MSS commercial affiliate programmes in the next 3 years. Of those respondents who expressed an intention to enter or expand, more than 70% stated this would apply to both hotels and flights; and more than 70% stated this would include all or part of the EEA.

(106) This indicates that there are low barriers to entry and expansion for an existing MSS provider seeking to provide commercial affiliate services in a sector in which it is active as a B2C MSS provider. Once a consumer-facing MSS provider has the OTA/TSP inventory and the technology to provide a search and comparison functionality it can begin providing commercial affiliate services relatively quickly and at a low cost.

*5.3.2. MSS and OTAs*

5.3.2.1. MSS and OTAs combined, excluding commercial affiliate programmes

(107) The Parties submit that accurate data on total market volumes and consequently Booking Holdings' share of the hotels OTA segment is not available. This statement was confirmed by the market investigation. As a consequence, the Parties have adopted a conservative approach and assumed that the market for MSS and OTAs combined, excluding commercial affiliate services, for all travel and hotels is affected at global, EEA and national level.[69]

(108) At worldwide level, according to the Parties' best estimates, the Parties' combined market share for all travel MSS and OTAs combined, excluding commercial affiliate programmes is [20-30]%, with an increment brought about by HotelsCombined of less than [0-5]% for all travel. For hotels MSS and OTAs combined, excluding commercial affiliate programmes, at worldwide level, according to the parties' best estimates, the Parties' combined market share is [20-30]%, with an increment of less than [0-5]%.

(109) At EEA level, according to the Parties' best estimates, the market for MSS and OTAs for hotels excluding commercial affiliate programmes is affected. […].[70]

69 Form CO, paragraphs 6.271 and ff.

70 Form CO, paragraph 6.274: […].

The Parties submit that […], the increment brought about by HotelsCombined would be less than [0-5]%.[71]

(110) At national level, the Parties estimate the increment at Member State level to be below [0-5]% for each Member State and below [0-5]% in the majority of Member States. Even under the most conservative estimate, the increment is below [0-5]% in all Member States.

(111) In a market for MSS and OTA for all travel services, the increment would be smaller still, as HotelsCombined is only active in hotels.

(112) The market investigation, on the basis of turnover data, confirmed the relative position of the Parties in the markets considered. The Parties will continue to be constrained by competitors active in the MSS segment (such as Google, Trivago, TripAdvisor and Skyscanner), as well as OTAs (such as Expedia, Airbnb and HRS).

(113) The entry plans mentioned in the section on MSS directly above also apply to a broader market encompassing both MSS and OTA. This indicates that barriers to entry and expansion are low. The investment costs for entering the market are limited. Many incumbents seem to be well placed to expand their market presence.

5.3.2.2. MSS and OTA combined - commercial affiliate programmes[72]

(114) According to the Parties' best estimates, the Parties' combined market share in a broad market encompassing OTA and MSS commercial affiliate programmes for all types of travel is [30-40]% at worldwide level with an increment brought about by HotelsCombined of [0-5]%. In the EEA, according to the Parties' best estimates, the Parties' combined market share is [30-40]% with an increment brought about by HotelsCombined of only [0-5]%. The Parties will continue to be constrained by large competitors such as Expedia, CarTrawler and Hotelbeds among others, with market shares of [20-30]%, [10-20]% and [10-20]% respectively.

(115) At national level, given that reliable data is not available, the Parties submit that they expect the increment to be moderate in all EEA Member States except possibly the Nordic countries. However, the Parties highlight that due to the fact that HotelsCombined's contract with […], was terminated in 2017, HotelsCombined's revenues in the Nordic countries and the relevant increment will have reduced.

(116) Focussing on the hotels segment in a market combining MSS and OTA, commercial affiliate programmes, according to the Parties' best estimates, the combined market share at worldwide level would be [40-50]% with an increment brought about by HotelsCombined of [0-5]%. At EEA level, according to the

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71 The Parties submit that they do not have reliable information on the market size and thus on their own market shares, let alone competitors' market shares. The increment analysis is based on a comparison between the two Parties' revenues.

72 See footnote 62 above on the methodology for the calculation of market shares.

Parties' best estimates, the combined market share would be [40-50]% with an increment of [0-5]% brought about by HotelsCombined. The Parties will continue to be constrained by large competitors such as Expedia and Hotelbeds among others, with market shares of [20-30]% and [10-20]% respectively.

(117) At national level, given that reliable data is not available, the Parties submit that they expect the increment to be significantly less than [5-10]% in all EEA Member States except possibly the Nordic countries. However, the Parties highlight that due to the fact that HotelsCombined's contract with […], was terminated in 2017, HotelsCombined's revenues in the Nordics and the relevant increment will have reduced.

(118) The Parties are not close competitors in a potential market for MSS and OTA commercial affiliate programmes, as the vast majority of Booking Holdings turnover is derived from the OTA segment in which HotelsCombined is not active. The entry plans mentioned in the section on MSS commercial affiliate programmes directly above also apply to a broader market encompassing both MSS and OTA commercial affiliate programmes. Commercial affiliate programmes are characterised by low barriers to entry and expansion. While barriers to entry in respect of consumer-facing OTA services are generally higher than consumer-facing MSS, the same does not hold in respect of OTA and MSS commercial affiliate programmes as, in both cases, commercial affiliate programmes are simply an add-on to the consumer-facing site and require little promotional investment.

5.3.2.3. Conclusion on MSS and OTAs

(119) The Commission considers that it is not necessary to assess the impact of the proposed Transaction on a broader possible affected market for MSS and OTA combined including commercial affiliate programmes[73] for the following reasons: (i) the Parties do not overlap in the OTA segment, (ii) the market position will be driven by the B2C segment, (iii) according to the Parties' best estimates, the combined market share at worldwide level is [20-30]% (with an increment of less than [0-5]% ) for each of all travel and hotels, (iv) the relevant increment at EEA level for hotels would be less than [0-5]%,[74] (v) at national level,[75] the Parties expect that the increment for the hotels segment in the Nordic countries and Ireland will be [0-5]% or less and considerably below [0-5]% in all other Member States.

73 There is no reliable data for the OTA and for the commercial affiliate segments.

74 Booking Holdings' hotels OTA revenues (B2C and B2B) were around €[…]bn in the EEA in 2017. HotelsCombined's hotels MSS revenues (B2C and B2B) were €[…]m in the EEA.

75 The Parties submit that across the EEA as a whole, Booking Holdings' OTA B2C+B2B revenues were around €[…]bn in the hotels segment in 2017. HotelsCombined only had revenues of €[…]m in the EEA as a whole. Booking.com's hotels OTA B2C+B2B revenues are at least […] larger than HotelsCombined's MSS B2C+B2B revenues in all member states (indeed, they are […] larger in all Member States outside the Nordic countries and Ireland).

*5.3.3. General view of market participants*

(120) The majority of the respondents to the market investigation (two-thirds) did not raise any concerns about the competitive effects of the proposed Transaction. One-third of the competitors who responded to the market investigation expressed the general concern that, due to the fact that post-Transaction there will be one less independent MSS provider in the market, the proposed Transaction would lead to increased concentration or increase the market power of Booking Holdings. None of the respondents who raised such concerns provided any evidence for the strength of the competitive constraint imposed by HotelsCombined or the closeness of competition between the Parties to counter the small increment and the complementarity of the Parties in terms of type of travel service mentioned above.

*5.3.4. Summary and conclusion on horizontal effects*

(121) Irrespective of the precise market definition, in all horizontally affected markets, the increment brought about by HotelsCombined (or KAYAK Group) is small or even negligible, with the exception of MSS commercial affiliate programmes for all travel services provided by MSS, where however the combined market share is moderate; the Parties are not close competitors as HotelsCombined is only active in hotels while Booking Holdings is much stronger in flights; the merged entity will continue to be constrained by large and well-known competitors and there is evidence for entry or expansion plans including for flights and hotels in the EEA.

(122) Therefore, the Commission concludes that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market as regards the Parties' horizontal overlaps.

## 5.4. Vertical effects

(123) The proposed Transaction also gives rise to three groups of vertically affected potential markets, namely (i) MSS in the hotels segment (excluding commercial affiliate services) – OTAs in the hotels segment (excluding commercial affiliate services); (ii) MSS commercial affiliate programmes in the hotels segment – MSS excluding commercial affiliate programmes in the hotels segment; and (iii) combined MSS and OTA commercial affiliate services in the hotels segment – MSS in the hotels segment (excluding commercial affiliate services).

*5.4.1. Market for the supply of MSS in the hotels segment (excluding commercial affiliate programmes) to OTAs in the hotels segment (excluding commercial affiliate services)*

(124) Both Parties are active in the upstream market for MSS for hotels (excluding commercial affiliate programmes). HotelsCombined is only active in the hotels segment. The Commission therefore considers that any foreclosure of lead generation services by MSS or OTAs resulting from the proposed Transaction derive from the Parties' position in hotels MSS, since this is the only market segment in which the merged entity would have a stronger position post-Transaction. Consequently, even on a broader market for all travel OTAs, what would be impacted by such input foreclosure strategy would be traffic directed to

hotels OTAs. Therefore, the input foreclosure analysis focussed on the relationships between hotel MSS and hotels OTAs.[76]

5.4.1.1. MSS excluding commercial affiliate programmes in the hotels segment (*upstream*)

(125) According to the Parties' best estimates, the Parties' combined market share in the upstream market for MSS for hotels excluding commercial affiliate services is [0-5]% at worldwide level, [0-5]% at EEA level and less than 30% in all EEA Member States (with the only exception of Denmark, in which it will be [30-40]%).

5.4.1.2. OTAs excluding commercial affiliate programmes (*downstream*)

(126) There is no overlap between the Parties at OTA level as HotelsCombined is only active at MSS level. In addition, the Parties submit that Booking Holdings does not have accurate data on its share of the hotels OTA segment.

5.4.1.3. Input foreclosure

(127) With regard to ability, the Parties will have no ability to foreclose rival OTAs, given that, according to the Parties' best estimates, the Parties' combined market share in the upstream market for MSS for hotels excluding commercial affiliate programmes is only [0-5]% at global and at EEA level and below 30% in all the EEA Member States with the only exception of Denmark.

(128) With regard to incentive, the Parties submit that vertical integration is already commonplace in the industry, yet this has not led to input foreclosure. In addition, any hypothetical strategy by the Parties to delist rival OTAs would likely drive consumers to bigger rivals. Moreover, vertically integrated rivals could retaliate, thereby further reducing the incentives to engage in input foreclosure.

5.4.1.4. Customer foreclosure

(129) With regard to ability to foreclose, in the present case it is difficult to assess whether the Parties will have the ability to foreclose rival hotels MSS by only listing Booking Holdings' hotels OTAs on the Parties' MSS post-Transaction, since there are no accurate data available on Booking Holdings' share of the hotels OTA segment.

(130) However, the Parties will have no incentive to engage in customer foreclosure, by refusing to list their OTAs on rivals' MSS platforms, since Booking.com generates approximately […]-times the revenues generated by the Parties' combined MSS excluding commercial affiliate programmes. In addition, Booking.com receives less than […]% of its MSS traffic from the Parties' MSS.

[76] M. 8416 – *Priceline/Momondo*, paragraph 165 in which the relevant market segment was flights.

*5.4.2. Market for the supply of MSS commercial affiliate programmes in the hotels segment – to MSS excluding commercial affiliate services in the hotels segment*

(131) HotelsCombined is only active in the hotels segment, whilst Booking Holdings is active in relation to travel services more broadly. As a result, equivalent markets for the supply of travel services would also be technically vertically affected. However, the Commission considers that, given that there would only be an overlap in the hotels segment, any input foreclosure strategy would only impact the operation of hotels MSS and any customer foreclosure strategy would only affect the operation of hotels commercial affiliate programmes. As a consequence, it is only necessary to examine relationships between the provision of hotels commercial affiliate programmes and the operation of MSS and OTAs for hotels.[77]

5.4.2.1. MSS commercial affiliate programmes in the hotels segment (*upstream*)

(132) According to the Parties' best estimates, the Parties' combined market share is [30-40]% at worldwide level and [40-50]% at EEA level, and there will also be affected markets at national level. However, the above-mentioned market shares are overstated. Once adjusted to take into account HotelsCombined's loss of the […] contracts (and even if updated to reflect anticipated revenues from new customers) market shares will be lower.

5.4.2.2. MSS excluding commercial affiliate programmes in the hotels segment (*downstream*)

(133) According to the Parties' best estimates, the Parties' combined market share in the downstream market for MSS excluding commercial affiliate services in the hotels segment is [0-5]% at worldwide level, [0-5]% at EEA level and less than 30% in all EEA Member States (with the only exception of Denmark, in which it will be [30-40]%).

5.4.2.3. Input foreclosure

(134) With regard to ability to foreclose, the Parties will have no ability to foreclose rival MSS providers in the hotels segment. The Parties' combined market share is overstated as it should be adjusted to take into account the loss of the […] contracts (and even if updated to reflect anticipated revenues from new customers) the Parties' combined share would be lower. In addition, the merged entity will continue to be constrained by major MSS competitors such as Trivago, TripAdvisor and Skyscanner.

(135) With regard to incentive to foreclose, the Parties will have no incentive to refuse to supply hotels MSS commercial affiliate programmes to rival MSS providers or to raise their costs. Indeed, […]. An input foreclosure strategy would put at risk HotelsCombined's commercial affiliate revenues, which account for [the majority] of its EEA revenues, without a clear benefit for the Parties.

(136) In addition, any plausible input foreclosure strategy would only benefit Booking Holdings' MSS if it had a strong presence in the downstream MSS market in the

77 M. 8416 – *Priceline/Momondo*, footnote 97 to paragraph 193.

hotels segment. Even if an input foreclosure were pursued, it is unlikely that consumers would switch to one of the Parties' brands in sufficient numbers to compensate for the loss of the upstream revenues. Furthermore, existing vertical integration in the sector has not led to foreclosure.

5.4.2.4. Customer foreclosure

(137) The merged entity will have neither the ability nor the incentive to engage in customer foreclosure, i.e. to raise the price of (or refuse access to) MSS services excluding commercial affiliate services (i.e., B2C), since the Parties' combined market share in the downstream market is limited and the Parties are not customers of MSS commercial affiliate services, with the only exceptions of (i) […] and (ii) […].

*5.4.3. Market for the supply of both MSS and OTA commercial affiliate programmes in the hotels segment – to both MSS and OTA in the hotels segment (excluding commercial affiliate services)*

5.4.3.1. MSS and OTA commercial affiliate programmes in the hotels segment (*upstream*)

(138) According to the Parties' best estimates, the Parties' combined market share is [40-50]% at worldwide level (with an increment of [0-5]%) and EEA level (with an increment of [0-5]%), and there will also be affected markets at national level.

5.4.3.2. MSS and OTAs in the hotels segment (excluding commercial affiliate services) (*downstream*)

(139) At worldwide level, according to the Parties' best estimates, the Parties' combined market share is [20-30]%, with an increment lower than [0-5]%. At EEA level, according to the Parties' best estimates, the combined share is affected. The Parties provided […].[78] The Parties submit that […], the increment would be less than [0-5]%.[79] At national level, the Parties estimate the increment at Member State level to be below [0-5]% for each Member State and below [0-5]% in the majority of Member States. Even under the most conservative estimate, the increment is below [0-5]% in all Member States.

5.4.3.3. Input foreclosure

(140) With regard to ability to foreclose, the Parties will have no ability to foreclose rival MSS and OTAs as a number of major MSS will continue to provide commercial affiliate programmes in the hotels segment. In addition, the increment brought about by the proposed Transaction is limited. However, even assuming that the Parties will have ability to foreclose, they will have no incentive.

78 Form CO, paragraph 6.274: the Parties have conducted the assessment […].

79 The Parties submit that they do not have reliable information on the size of the market and thus on their own market shares, let alone competitors' market shares. The increment analysis is based on a comparison between the two Parties' revenues.

(141) With regard to incentive to foreclose, the Parties will have no incentive to refuse to supply MSS or OTA commercial affiliate programmes for hotels to rival MSS or OTAs. […]. Thus, any input foreclosure is unlikely to benefit the Parties. In addition, the Parties submit that vertical integration by their competitors has not led to foreclosure.

5.4.3.4. Customer foreclosure

(142) With regard to ability and incentive to foreclose, the proposed Transaction cannot give rise to a risk that rival providers of MSS and OTA commercial affiliate programmes for hotels will be foreclosed as the Parties are not customers of hotels OTA commercial affiliate programmes.

*5.4.4. Summary and conclusion on vertical effects*

(143) For the reasons set out above, irrespective of the precise market definition, in all vertically affected markets, the merged entity will not have the ability and incentive to engage in customer or input foreclosure. Therefore, the Commission concludes that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market as regards the Parties' vertical links.

## 6. CONCLUSION

(144) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*
*Margrethe VESTAGER*
*Member of the Commission*