

## A POTENTIAL DIGITAL MARKETS ACT

### AIRBNB COMMENTS

#### Introduction

This paper supplements the position paper submitted by Airbnb Ireland in response to the Digital Services Act proposals to introduce new ex-ante rules for “gatekeeper platforms”.

In our previous paper, we acknowledged the real competitive concerns that exist in certain sectors and that new rules may be required to protect competition in those sectors. However, we cautioned that any new regulation should be carefully targeted to ensure that it addresses those concerns and does not create risks to competition in sectors where the same issues do not arise. In that regard, we explained that Airbnb operates in the highly competitive accommodation and experience sectors – competing with online and offline providers and distributors, including other platforms, hotel websites, travel aggregators, offline travel agencies and many others. Both guests and accommodation providers use multiple channels (known as “multi-homing”) to list and book accommodation. Some sites facilitate this activity, for example by offering API connections or by allowing customers to import their listing content directly from other sites (e.g. booking.com allows import of Airbnb listing data).

In light of all of this, there are no concerns that the accommodation sector will tip to a single dominant operator. Moreover, there is a significant competitive threat posed to the sector by the continued entry of platforms with access to large data sets and/or control of online search, and the ability to leverage strong market positions to enter new areas of activity by self-preferencing.

Against this background, there may be significant risks of harm to European consumers and inadvertent anti-competitive effects depending on (i) how the concept of a “gatekeeper” is defined; and (ii) the scope of any practices included on a “blacklist” that would apply to regulated “gatekeepers”, particularly if the gatekeeper concept is defined broadly. The potential for unintended consequences can be illustrated by considering the likely impact of banning three types of conduct, which Airbnb understands have been considered for inclusion on a proposed “blacklist”, in the accommodation sector.

#### *1. Ban on gatekeepers preventing third party sellers from promoting their services or concluding contracts off platform (“anti-steering”)*

There are concerns that platforms that face little competition in their markets may entrench their market power if they prohibit third party sellers from concluding contracts outside of the platform. However, in the context of a sector characterised by intense competition from a wide range of platforms and other channels, such a prohibition would be likely to be damaging to competition, rather than beneficial.

If applied to the accommodation sector, a prohibition on anti-steering risks increasing fraud and safety risks for European users, as well as leaving them without protection where there is an issue with a booking. Trust and safety are core to Airbnb's business: Airbnb has put in place numerous measures to ensure that users can book with confidence, and to prevent bad actors from using the Airbnb platform to divert guests "off platform" to conclude fraudulent transactions (including a secure payment and booking system, measures to detect and remove fraudulent activity on the platform, and to check the identity of users). "Off platform" transactions have resulted in consumers being subject to payments fraud, staying in accommodation that they did not book, and being left with nowhere to stay. In addition, bookings made through trusted booking channels give European consumers benefits and protection if there is an issue with a booking. For example, Airbnb operates a 24/7 customer service line, offers property damage protection to hosts, and refund policies for extenuating circumstances. Although other channels offer comparable protections, this is not universal and consumers who switch channels mid-booking may not realise that they are left with no protection.

This prohibition would also encourage free-riding by competitors, who could take advantage of investment in the platform to advertise their services while keeping all of the benefits of the investment by the platform. If Airbnb were subject to such a prohibition, competitors, including large international companies such as vacation rental management companies with their own websites, would be incentivised to market their inventory on Airbnb and also encourage users to conclude contracts on their own websites (some of which are a more significant distribution channel for that inventory than Airbnb). This would act as a strong deterrent for further investment and innovation in Europe and would have significant adverse unintended consequences for competition, likely creating a disincentive to grow and enter new markets, and thus reducing (rather than strengthening) competition.

## *2. Prohibition of exclusive use of data*

The theory of harm and any anti-competitive effects stemming from the exclusive use of data does not apply to all forms of data or all platforms. Businesses such as Airbnb, which do not sell advertising or personal data, do not "collect" consumer personal data as a core part of their business or use user data as a source of revenue. To the contrary, Airbnb receives limited data from European users in order to provide and optimise the user experience on Airbnb (e.g. by providing relevant search results to users).

There is nothing unique about this data. Other distribution channels obtain very similar data and do not need access to any data from Airbnb in order to compete effectively. Any obligation which, for example, required Airbnb to share data with its competitors is therefore unnecessary for effective competition. It could also lead to significant adverse effects for the competitive playing field in Europe. For example, if Airbnb were to become subject to such an obligation and its platform or non-platform competitors were not, this would amount to a one-way obligation for Airbnb to share data with what could be a large competitor. Far from providing a level playing field, or any increased competition, this would confer a significant competitive advantage on Airbnb's rivals.

Indeed, there would be a strong free-rider incentive for competitors that may not be subject to the proposed regulations (e.g. large hotel groups) to list a small amount of inventory on Airbnb purely in order to obtain access to additional data from Airbnb to benefit their own website. This would have clear unintended anti-competitive effects.

### 3. Ban on narrow parity clauses

Narrow price parity clauses (where suppliers cannot offer a lower price via their own channels) are a clear example of a provision that should only be assessed on a case-by-case basis and which we would submit are unsuitable for inclusion on a blacklist. This has already been demonstrated in some European countries by the explicit endorsement of narrow price parity clauses for online accommodation platforms. Indeed, numerous Member States have expressly recognised the pro-competitive effects of narrow parity clauses and their role in preventing the types of free-riding concerns described above.

The European Competition Network's own study on the monitoring carried out in the online hotel booking sector also assessed the impact of the varying approaches taken in different Member States and found that is unclear whether the outright ban of parity clauses in Germany and France led to better results than the switch to narrow parity clauses in other Member States that moved from wide to narrow parity clauses.<sup>1</sup>

### Conclusion

The above examples illustrate the importance of adopting a harm-based and proportionate approach to ensure that the scope of the *ex-ante* rules does not inadvertently capture platforms operating in highly competitive sectors, where multi-homing is prevalent and there is no plausible risk of the market "tipping". Focusing on only three types of conduct which Airbnb understands are currently being considered for inclusion on the proposed "blacklist" as examples, it is clear that there is significant scope for unintentionally distorting the competitive playing field, ultimately to the detriment of the end consumer.

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<sup>1</sup> See [https://ec.europa.eu/competition/ecn/hotel\\_monitoring\\_report\\_en.pdf](https://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf).