

# eu travel tech

## Digital Markets Act:

### eu travel tech position paper for the inter-institutional negotiations

Eu travel tech is a strong proponent of the European Commission's ambition for a Digital Markets Act, and we commend the efforts of the European Council and the European Parliament to swiftly agree on their positions without losing focus of the objectives of this important legislation.

After a year of discussions, the European institutions have made important progress, seeking balanced proposals to tackle unfairness and incontestability issues raised by the emergence of "gatekeepers", ensuring that the EU markets remain fair and contestable to the benefit of consumers.

As we move into the next phase of inter-institutional negotiations, eu travel tech would like to present its views regarding the refinements that can be brought to the final text and on specific proposals tabled by the institutions:

#### I. DEFINITION OF GATEKEEPERS AND SCOPE OF THE REGULATION (ARTICLE 3)

- **Article 3.6 (e): The lock-in effects gatekeepers have on consumers and businesses must be a core element of the definition of a gatekeeper as proposed by the European Parliament.**

**Position:** While both Council and Parliament sought to enhance the lock-in effects in the requirements to be considered when designating gatekeepers, the Council's wording on Article 3.6 (e) does not sufficiently address the level of dependency for users, business or consumers. Therefore, **eu travel tech encourages policymakers to support the European Parliament's proposal**<sup>1</sup> which would root the concept of user dependency on the definition of a gatekeeper.

**Justification:** Recital 2 of the European Commission's proposal acknowledges that one of the characteristics of "gatekeepers" is a "*significant degree of dependence of both business users and end users*" resulting in "*lock-in effects, a lack of multi-homing for the same purpose by end users*". Indeed, gatekeepers are playing a role of orchestrator of an ecosystem and create a dependency for their users, characterised by the lack of multi-homing, and therefore such a behaviour must be regulated. However, if consumers and business users retain wide possibilities to circumvent the gateway by transacting outside the platforms, then the platform cannot be considered a gatekeeper.

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<sup>1</sup> Row 159a, trilogues 4-columns document

- **The notion of “active end users” for online intermediation services must be clarified and relate to the platforms’ ability to monetise their use.**

**Position:** Eu travel tech supports the shared approach taken by the Council and the Parliament to provide a definition for ‘active end user’ via an Annex to the Regulation taking into consideration the different business models and its specificities. However, **it is still necessary to clarify the concept of “active end users” for online intermediation services that are transaction-based platforms.** To this end, **we propose an additional point to the Annex which would increase the required legal certainty.**

Text of the Annex (as adopted in IMCO and agreed in Council)	Suggestion of amendment
Annex, section b.4., point c (new)	Annex, section b.4., point c (new)  <i><b>c. Collecting data according to the methodology described in points a and b may in some instances not result in the most accurate metric to calculate active end users. In the case of undertakings providing online intermediation services where the number of concluded transactions is the most accurate metric for counting the number of active end users, unique users shall be identified based on such concluded transactions. Hence, the undertaking shall submit aggregate anonymized data on the number of unique end users that concluded a transaction via the online intermediation service.</b></i>

**Justification:** In the case of transaction-based platforms (ie. travel offers but also platforms for consumer goods, fashion, food-delivery, etc), “active end users” should be counted as customers who bought at least one item in a month. First, a high number of “visitors” (on site or through an app) does not automatically translate into customers actually purchasing goods or booking services. Second, the business model of transaction-based platforms is based on receiving remuneration when an end user (ie. a consumer) makes a purchase. Counting “visitors” is therefore incorrect when “active customers” matter.

## II. OBLIGATIONS IMPOSED ON THE GATEKEEPERS (ARTICLES 5 AND 6)

- **In order to be effective, the ban on self-preferencing (article 6 (d)) must consider the specific issues raised by the search engine business model as proposed by the European Parliament.**

**Position:** we support the European Parliament position including the definitions of ranking and search results in Article 2 (paragraph 18 and 18 a) respectively).<sup>2</sup> They are fundamental to ensure that the ban is effective and covers discriminatory display in favour of the services offered by the search engine.

**Justification:** On the search results page (SERP) of a search engine, the more favourable treatment of its own services by the gatekeeper can take place not through more favourable “ranking” within organic search results but through more favourable positioning on the page, with the vertical services of the gatekeeper being displayed above the organic search results, which are in most cases relegated ‘below the fold’ (especially on mobile).

- **The anti-steering obligation (article 5 (c)) must limit any unintended impact on marketplaces as meant by the European Commission.**

**Position:** eu travel tech urges the institutions to agree on the original European Commission proposal, left unchanged by the Council.<sup>3</sup> Any alternative solution must consider that an acquired end user should not be defined merely based on the contractual relationship with the business user. Instead, an end-user shall be considered as acquired once an initial irrevocable transaction under this contract has been completed. For online accommodation platforms, this would mean that an end-user could be only considered as acquired once the customer has stayed at the accommodation they booked.

**Justification:** The provision targets a conduct currently investigated by the Commission in a case relating to app stores. The proposals from both Council and Parliament would extend the obligation allowing marketplaces’ business users to communicate and promote offers to end users acquired via the core platform service or other channels. This would encourage free-riding<sup>4</sup>, threatening the commission-based business model of marketplaces such as online travel agents.

### About eu travel tech

[eu travel tech](#) represents the interests of travel technology companies. eu travel tech uses its position at the centre of the travel and tourism sector to promote a consumer-

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<sup>2</sup> Rows 131 and 131a, trilogues 4-columns document

<sup>3</sup> Rows 178, 178a and 178b, trilogues 4-columns document

<sup>4</sup> Benefiting of the visibility offered by a marketplace without any cost, as the transaction would eventually take place outside of the platform without paying any commission. See “*The Billboard effect: still alive and well*”, Chris K. Anderson and Saram Han, [Cornell Hospitality Report](#), April 2017

driven, innovative and competitive industry that is transparent and sustainable. Our membership<sup>5</sup> spans Global Distribution Systems (GDSs), Online Travel Agencies (OTA), Travel Management Companies in business travel (TMCs) and metasearch sites.

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<sup>5</sup> eu travel tech's members include Amadeus, Booking.com, eDreams Odigeo, Expedia Group, Skyscanner and Travelport. Associate members include American Express GBT, etraveli, Trainline and Tripadvisor. Strategic Partners include Travix, Travelgenio and CWT.