

DMA Enforcement Workshops

Booking

Brussels, 25 November 2024

Agenda

10:00 - 10:15	Introductory remarks on DMA compliance by the Commission	
10:15 – 11:30	Session 1 - Parity clauses and measures having equivalent effect (Article 5.3 DMA)	
11:30 – 12:20	Session 2 - Anti-steering (Article 5.4 DMA)	
12:20 - 13:20	Lunch Break	
13:20 - 14:35	Session 3 - Data related obligations (Articles 5.2, 6.9, and 6.10 DMA)	
14:35 – 15:15	Session 4 - Other DMA obligations and prohibitions	
15:15 – 15:30	Conclusions by the Commission	



Rules of engagement l

- No reference to ongoing or past proceedings
- No attacks; questions should remain polite and constructive.
- The Commission will moderate the discussions. Its role will be to steer the discussion
- The Commission will not provide legal interpretations / take any positions
- No sharing of business sensitive information
- Goal is to hear stakeholders' feedback on the concrete compliance solutions
- We may not be able to take all comments and questions. Any observations can be sent to <u>EC-DMA@ec.europa.eu</u>



Rules of engagement II

- Always state your **name and organisation** (in room and via **slido**)
- Questions and comments should be
 - clear and short = 2 min max,
 - relevant and on-topic of the specific DMA obligation,
 - constructive.
- One question or comment per intervention

Sido Online questions and comments via: https://app.sli.do/event/7y3FQmebP458sCFZ1eAFVW slido.com - # 1275306

Booking.com DMA compliance workshop

25 November 2024



Our speakers







Ella van den Brink

Senior Director, Competition & Consumer Law and Litigation

Peter Lochbihler

Senior Director Public Affairs Carlo Olejniczak

VP & Managing Director EMEA Accommodations Business Unit



Niko Vijayaratnam

Product Director Ground Transportation



Juliette Sailleau

> Senior Legal Counsel, Competition & Consumer



Emmi Kuivalainen

> Senior Legal Counsel, Competition & Consumer

Overview



Parity clauses and measures having equivalent effect Art. 5(3) DMA



Anti-steering Art. 5(4) DMA

3 Data related obligations Art. 5(2), 6(9), and 6(10) DMA



Booking.com's commitment to DMA compliance

Early and active involvement

Policy discussions with the European Commission, undertaking extensive assessments of our business practices to identify what each of the DMA's provisions means for Booking.com

Invested significant resources

Involving hundreds of employees from front-line account teams to senior executives for over $2{}^{1\!\!/}_{2}$ years

Clear and transparent communication

Consultations and communications on all relevant DMA requirements, across offerings, with a range of partners, and associations representing partners and travellers

Booking.com empowers travel through technology



... to make it easier for everyone to experience the world

... so that entrepreneurs of all sizes can grow their business



Booking.com's story in numbers



1996 Founded in The Netherlands



100+ offices in over 70 countries



10,000+ dedicated employees

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5 Travel offerings

Session 1 - Parity clauses and measures having equivalent effect

(Article 5.3 DMA)

Article 5(3) DMA

"The gatekeeper shall not prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper."



Recital 39 DMA

"In certain cases, for instance through the imposition of contractual terms and conditions, gatekeepers can restrict the ability of business users of their online intermediation services to offer products or services to end users under more favourable conditions, including price, through other online intermediation services or through direct online sales channels. Where such restrictions relate to third-party online intermediation services, they limit inter-platform contestability, which in turn limits choice of alternative online intermediation services for end users. Where such restrictions relate to direct online sales channels, they unfairly limit the freedom of business users to use such channels. To ensure that business users of online intermediation services of gatekeepers can freely choose alternative online intermediation services or direct online sales channels and differentiate the conditions under which they offer their products or services to end users, it should not be accepted that gatekeepers limit business users from choosing to differentiate commercial conditions, including price. Such a restriction should apply to **any** measure with equivalent effect, such as increased commission rates or de-listing of the offers of business users."



Parity clauses and measures having equivalent effect

Art. 5(3) DMA



Partners are now free to offer different rates and conditions on other channels

Booking.com has ensured compliance for inventory in the EEA by:

1 Removing parity requirements

Deploying policies and controls for preventing measures with equivalent effect to parity

We removed parity obligations for all EEA-based offerings









of communications sent to partners

Parity requirements removed for accommodations prior to the DMA's entry into force following national decisions and/or regulations.

Parity requirements removed to comply with the DMA in the remaining EEA countries.



We communicated all parity changes to partners

Through emails, conversations, Partner Hub and more.

Example of email and FAQ sent to Cars partners

Dear Partner,

We hope this message finds you well. We are writing to inform you about some changes to our terms and conditions.

As part of our ongoing efforts to improve our services and comply with new laws, we have updated our Marketplace General Terms. You can review the new terms and conditions at the following link: Marketplace General Terms. You can also review the previous version of curr Marketplace General Terms via the link at the bottom of the page.

Under the existing contract and Platform 2 Business regulations in the EU, we are required to give you 15 days notice of any changes to the Marketplace General Terms. However, as a courtiesy, and to give you more opportunity to review the Marketplace General Terms, the effective date of the updated Marketplace General Terms is 27 July 2024, 30 days after this letter is being sent.

To help you better understand the changes, we have included the following FAQs:

3. Q: What is changing in the Marketplace General Terms?

A2: EU Digital Markets Act

We are amending the Marketplace General Terms in readiness for anticipated compliance with the EU Digital Markets Act. These changes will ensure our platform can comply with relevant obligations relating to interactions between ourselves and our partners logether with the partners' ability to market to "acquired" travellers (an acquired traveller means a customer who has already entered into a commercial relationship with you directly, as facilitated by Booking.com, and for which Booking.com has been remunerated for such acquisition).

In addition, we will no longer require you to provide us with the best market rates available on your direct channels. This means that you don't have to provide the same or botter rates and conditions to Booking.com than those that you make available on any online or offline channel.



Example of email sent to Accommodations partners

Booking.com	QQ		
Dear ,			
We're writing to let you know that as of 1 July 2024, parity obligations in our agreements will no longer apply to our accommodation partners!			
properties located in the European Economic Area			
This means that you don't have to provide the same conditions to Booking.com than those that you mak online or offline channel.			

This change will also apply to the terms and conditions for participating in Genius and the Preferred Partner Programmes. This means that the external prices of properties located in the EEA will no longer be taken into account for the eligibility of these programmes.

There will be no change for properties located in Austria, Belgium, France, Germany, Italy and Portugal, where parity obligations already didn't apply.

We're making these changes as part of our efforts to comply with the EU Digital Markets Act.

You can learn more about parity in clause 2.2 of our General Delivery Terms (GDT).

If you'd like to request a copy of our GDT, you can find out how in this Partner Help article.

To learn more about parity, take a look at this Partner Help article.

Kind regards, Your Booking.com team

Updated General Delivery Terms (GDT)

0

June 2024

Moved the European Economic Area to the list of geographies not subject to any parity requirements

Booking.com

Dear Lena,

We're writing to let you know that as of **1 July 2024**, parity obligations in our agreements will no longer apply to our accommodation partners' properties located in the European Economic Area (EEA).

This means that you don't have to provide the same or better rates and conditions to Booking.com than those that you make available on any online or offline channel.

This change will also apply to the terms and conditions for participating in Genius and the Preferred Partner Programmes. This means that the external prices of properties located in the EEA will no longer be taken into account for the eligibility of these programmes.

There will be no change for properties located in Austria, Belgium, France, Germany, Italy and Portugal, where parity obligations already didn't apply.

We're making these changes as part of our efforts to comply with the EU Digital Markets Act,

To learn more about parity, take a look at this Partner Help article.

Kind regards, Your Booking.com team

November 2024

To further simplify our contractual terms, Booking.com is introducing updated versions of the GDT for properties located in the EEA, which exclude any references to parity

QQ

Booking.com

Dear Sylwia,

We're writing to let you know about updates we're making to our General Delivery Terms (GDT). We generally review and update the GDT twice a year. This updated version will be effective from 2 December 2024.

Key changes to the GDT

We've made some changes that were necessary to meet regulatory and commercial requirements. We've:

- Updated the language to cover an obligation we have in specific jurisdictions to calculate, collect, and remit the applicable taxes that apply to certain reservations made on our platform.
- Simplified and clarified wording in the GDT, where
 possible, without detracting from its meaning or changing
 its effect. This is part of our ongoing effort to make sure
 that the GDT clearly set out the agreement between us,
 and that it is as clear to read and easy to understand as
 possible.
- Removed any reference to parity in the GDT applicable to properties located in the European Economic Area (EEA) and Switzerland, as an example of such a simplification and clarification of the GDT. As a reminder, parity obligations in our agreements no longer apply to properties located in the EEA since our last update of the GDT, effective 1 July 2024.

Partners offering lower rates elsewhere are now eligible for our Premium Programmes



Despite not being required by the DMA, to simplify compliance operations, Booking.com has removed parity as an eligibility requirement throughout the EEA.



Communicated to partners via email in June 2024 in their preferred language.



Preventing measures with equivalent effect to parity

- In-depth review of business practices
- Introduction of policies and controls

→ Booking.com does not have and will not introduce any condition to participate on the platform that considers the terms on which that partner's offer is available off Booking.com.



We implemented controls and systems for future-proofing

Preventing the introduction of parity obligations or measures with equivalent effect



Formal cycles and approval processes for updates to standard terms and negotiated agreements.



Trainings of partner-facing employees on the new requirements under Art. 5(3).



Updates and reviews of supporting materials for partners and partners-facing employees.

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Session 2 - Antisteering (Article 5.4 DMA)

Article 5(4) DMA

"The gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper."



Anti-steering

Art. 5(4) DMA



Partners are free to communicate directly with acquired travellers

Contractual adjustments to clarify that partners are free to communicate directly with acquired travellers outside of our platform



We consider a traveller to be 'acquired' once the travel service they paid for begins

The DMA requires two conditions to be fulfilled:



In practice a traveller is acquired when they check in at the property





Partner can contact travellers regarding bookings via phone or Booking.com's chat to **answer questions or provide check in information**

Partner is free to directly communicate promotional offers outside of Booking.com's platform

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 - constructive.
- One question or comment per intervention

Online questions and comments via:SIGOhttps://app.sli.do/event/7y3FQmebP458sCFZ1eAFVWslido.com - # 1275306

Lunch break

Session 3 - Data related obligations (Articles 5.2, 6.9, and 6.10 DMA)

Article 5(2) DMA

"The gatekeeper shall not do any of the following:

- a) process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core platform services of the gatekeeper;
- b) combine personal data from the relevant core platform service with personal data from any further core platform services or from any other services provided by the gatekeeper or with personal data from third-party services;
- c) cross-use personal data from the relevant core platform service in other services provided separately by the gatekeeper, including other core platform services, and vice versa; and
- d) sign in end users to other services of the gatekeeper in order to combine personal data,

unless the end user has been presented with the specific choice and has given consent within the meaning of Article 4, point (11), and Article 7 of Regulation (EU) 2016/679.

Where the consent given for the purposes of the first subparagraph has been refused or withdrawn by the end user, the gatekeeper shall not repeat its request for consent for the same purpose more than once within a period of one year.

This paragraph is without prejudice to the possibility for the gatekeeper to rely on Article 6(1), points (c), (d) and (e) of Regulation (EU) 2016/679, where applicable."



Articles 6(9) and (10) DMA

"9. The gatekeeper shall provide end users and third parties authorised by an end user, at their request and free of charge, with effective portability of data provided by the end user or generated through the activity of the end user in the context of the use of the relevant core platform service, including by providing, free of charge, tools to facilitate the effective exercise of such data portability, and including by the provision of continuous and real-time access to such data.

10. The gatekeeper shall provide business users and third parties authorised by a business user, at their request, free of charge, with effective, high-quality, continuous and real-time access to, and use of, aggregated and non-aggregated data, including personal data, that is provided for or generated in the context of the use of the relevant core platform services or services provided together with, or in support of, the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users. With regard to personal data, the gatekeeper shall provide for such access to, and use of, personal data only where the data are directly connected with the use effectuated by the end users in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end users opt in to such sharing by giving their consent."

Traveller consent

Art. 5(2) DMA



The 5 main Booking Holdings Inc. (BHI) services operate as independent businesses

Each constitutes a separate data controller under the GDPR



Booking.com engages in limited cross-service processing of traveller personal data. For this reason, BHI opted not to institute an Art. 5(2) DMA consent moment.

NEW

Traveller data will not be used by BHI in ways that would require traveller consent under the DMA

BHI has ensured compliance by:

NEW


Data portability

Art. 6(9) DMA



Travellers now benefit from a new Data Portability API





Travellers can now download and export their data from the Booking.com website...

1

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... as well as using their mobile devices (Android and iOS)



Travellers can quickly and easily port data to the registered third-party platform of their choice

2

3rd party website		
	Sign in or create an account	Share your data with Dma Test
Paste the link you get from Booking.com into the field below https://	You can sign in using your Booking.com account to access our services. Email address	
Confirm the export duration	Enter your email address	Share your data with Dma Test
One-time Import		Арр
180 days import	Continue with email	Backing +
		as: ap.e2e.1730369840926.ycsl2 p7r3xb@booking.com
	G 🔹 🖪	Net you? Dria Test App wants to access: Continuous data export includes continuous access to user-generated data such as your performat details, booking history, molecyre, effect
	By signing in or creating an account, you agree with our Terms & Conditions and Privacy Statement All rights reserved.	By allowing data sharing, you consent to your data being shared with a company that might adhere to different privacy standards if it's located outside the EEA
	Copyright (2006-2024) - Booking.com™	Allow access

We ensure secure data transfer by implementing a registration process for third parties interested in accessing the API

Answer basic verification questions Submit application with information about the requesting company

Complete identity and data security checks

Agree to comply with API Terms of Use Onboard to Booking.com's OAuth 2.0 implementation

Data Access

Art. 6(10) DMA



Partners now benefit from new and improved data access tools



Dedicated data access tools are available to all partners across all travel offerings

Travel offerings	Data access tools
Stays	 Stays data portal ('Extranet') Connectivity APIs
TAXI Taxi	 Taxi Supplier APIs (separate APIs for driver and booking information) Taxi data portal APIs for Third-party Dispatch Systems
Scherken Flights	• API
Cars	 Cars Marketplace New Insights Dashboard in the Cars data portal APIs
& Attractions	 New Insights Dashboard in the Attractions data portal APIs



A wealth of data insights

in the Stays data portal ('Extranet')

Going beyond what is required under Art. 6(10) - Aggregated and non-aggregated data for Accommodation providers. Available at any time, free of charge.



An Insights Dashboard in the Taxi data portal

Aggregated and non-aggregated performance data as well as ratings and reviews for Taxi partners, downloadable in xlsx. format. Available at any time, free of charge.

& Download

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NEW

An Insights Dashboard

in the Cars data portal







NEW

An Insights Dashboard

in the Attractions data portal

Aggregated and non-aggregated performance data as well as ratings and reviews for Attractions partners, downloadable in xlsx. format. Updated once a day and available at any time, free of charge.

wnload ratings & review

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We also offer partners continuous and real time data access through APIs

Available to partners across all travel offerings Depending on partners' needs they can integrate directly with us or via third-party

Effectively manage data according to their needs

Rules of engagement

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Session 4 - Other DMA obligations and prohibitions

Other DMA obligations and prohibitions

- Article 5(6) DMA Legal recourse
- Article 5(7) DMA Alternative payment services
- Article 6(2) DMA Data silos
- Article 6(5) DMA Ban on self-preferencing
- Article 6(6) DMA End user switching
- Article 6(13) DMA Termination of service
- Article 15 DMA Consumer profiling



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Thank you