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BOOKING.COM SUBMISSION TO THE ACCC DIGITAL PLATFORM SERVICES INQUIRY 2020-2025 FINAL REPORT

Thank you for the opportunity to provide input into the final report of the ACCC's Digital Platform Services Inquiry. Booking.com has been observing the important steps the ACCC and Treasury has been taking to ensure Australia's digital economy is safe, fair, and competitive. We support the efforts to ensure a level playing field for digital platforms, particularly in areas with very low levels of competition, such as search engines, digital advertising and social media. We encourage the government to promote healthy competition online by understanding the needs and motivations of consumers and the existing benefits provided to them by digital platforms.

Introduction

Booking.com is a global online travel agency founded in the Netherlands in 1996 and has its global headquarters in Amsterdam. In the past 20 years, Booking.com has become the world's leading accommodation website. It is among the most successful start-ups born in the EU and one of the few that has become a true global champion.

Booking.com commenced operations in Australia in 2009 and currently has around 80 local employees in three offices in Sydney, Melbourne and Brisbane. Our current total listings in Australia number more than 400,000. Around half of the bookings on our platform in Australia go to small- and medium-sized hotels and over 50% of bookings on our platform in Australia go to regional destinations outside of capital cities. Without a platform like Booking.com, SMEs would struggle to attract travelers from around the world and are hard-pressed to compete with bigger chains that have larger marketing budgets, brand name recognition, and more resources to invest in the latest technology.

Our core business is an online marketplace that brings together accommodation providers and potential guests in one place and our mission is simple: empower people to experience the world. To us, that means leveraging technology to take the friction out of travel, while offering a seamless experience and customer service at the best price. It's important to note that we do not own or operate any properties and consumers do not incur any charges for using the platform, neither do accommodation providers for registering and listing their property. Only when a successful booking occurs, and the customer has paid for his or her stay, do we charge a commission for our services. In return, accommodation partners benefit from our constant investments in the latest technology, global marketing, and customer service. Lodgings can sell their rooms to a global customer base on their own terms and conditions, setting their own price. Our business generates jobs, growth, and investment while providing consumers around the world with increased choice, transparency, value for money, and trusted reviews. At the same time, we empower hotels. B&B, short-term rental accommodation and experience providers as well as all other partners to capitalise on the internet enabling them to market themselves professionally and efficiently to a global audience.

Global Digital Platform Regulations

Digital Markets Act (EU)

As an EU-based company operating globally, we have significant experience with the various regulatory frameworks for digital platforms. Most significantly, we operate under the European

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Union's Digital Markets Act (the "DMA") and we are pleased to share our experience and learning from this.

We are supportive of the DMA and its objectives to keep digital markets fair and open. Our primary reservations to the original DMA proposal were:

1. The gatekeeper designation criteria

The DMA works to address issues around "gatekeeping." These are platforms that operate in such a manner or environment that they effectively control who can participate in the digital economy, in what way, or at what cost. We see this also occurring in the Australian digital economy. The DMA took the approach of identifying certain criteria to define a gatekeeper which included size. We raised concerns that an over emphasis on size would catch platforms that were not in a gatekeeper position. It also risks, at least over time, disproportionately capturing home-grown platforms, who naturally tend to be stronger in their home market than elsewhere. Instead, we recommend a close look at criteria which would identify the **notion of dependency** to better identify where gatekeeping exists.

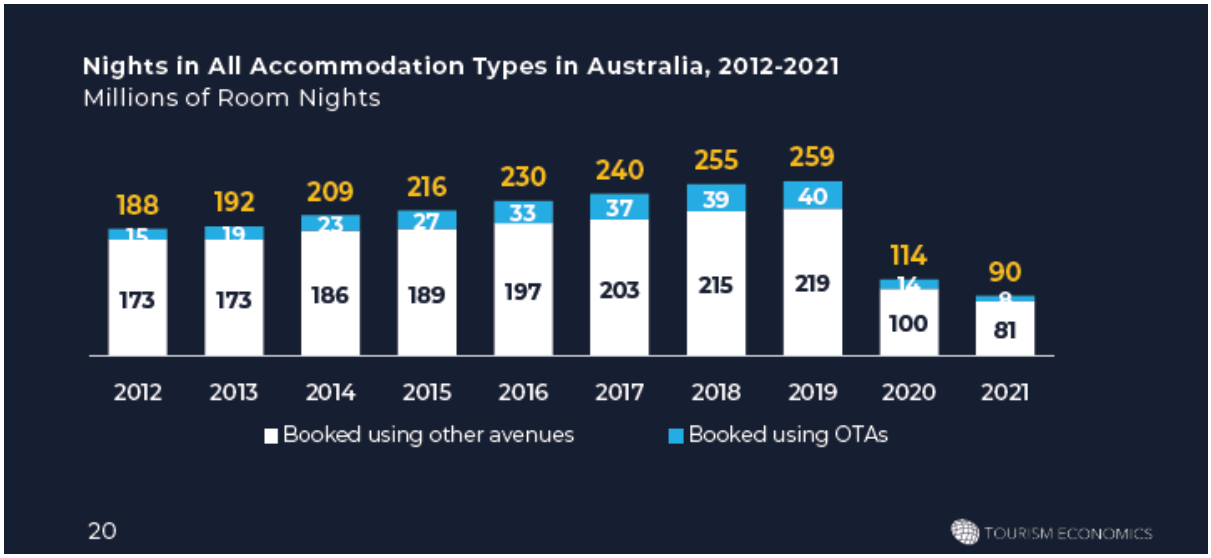
The control of an ecosystem should also be considered in the qualitative assessment of a gatekeeper designation. It is not just that a gatekeeper platform leaves no other choice to its users than to transact through them; gatekeepers can leverage their power from one market to extend their reach ever further, creating their own ecosystems and determining "the rules of the game" within them. This holds true even for sectors where strong, albeit much smaller, digital platforms are already present, e.g. Google Shopping or Google Travel. It takes little effort for gatekeeper platforms to leverage their power from one market to another, for instance through the bundling of services or self-preferencing. Being active in a number of markets, gatekeeper platforms also collect data with unrivalled breadth and depth that other players cannot match. This entrenches their existing gatekeeper position and makes challenges from adjacent (future) markets unlikely. The role of a platform as an "ecosystem orchestrator" should be, in our view, considered as a strong indication of gatekeeping and entrenchment.

2. Greater consideration for differences between business models

The DMA proposal treated platform business models as one and the same whereas it is widely acknowledged that platform business models and platform core services actually have very different dynamics and create very different challenges. **Taking a one-size-fits-all approach risks insufficiently addressing identified contestability issues**. We would therefore see value in regulation recognising from the outset the differences in platform business models and tailoring certain key provisions to reflect those differences.

Overall, we feel any regulation referencing the DMA needs to ensure it is specific enough not to negatively impact companies that are operating fairly within a competitive environment. **Broad regulation risks unduly discriminating against successful companies, including European success stories, in sectors where no dependencies of business users or consumers exist.** For example, in the accommodation sector, there are a multitude of different ways of either "booking" (consumers) or distributing (business users) accommodation. There are many alternatives available and being

used by both consumers and business users that enable intense and dynamic competition between not only a multitude of important players but modalities (online (direct), online (major OTA), online (boutique OTA), offline (in-person travel agent), offline (telephone). In fact accommodation reservations made via "OTA" channels account for only a minority of transactions out of the total:



Source: [The Economic Impact of Online Travel Agencies in APAC 2019-2021, Oxford Economics]

Further information on the competitive dynamics in the accommodation section are provided in the Annex to this document, provided further below.

Digital Services Act (EU)

The obligations on online intermediary services introduced in the Digital Services Act (DSA) addressed concerns around misleading online reviews and consumer protection measures.

Booking.com fully supported the objectives of the Act, but voiced some areas of improvement during consultation.

1. <u>The Definition of Advertising</u>

The original draft of the DSA included the definition of advertising as "information designed to promote the message of a legal or natural person [...] displayed by an online platform on its online interface against remuneration specifically for promoting that information."
Booking.com cautioned that this definition was overly broad and did not distinguish between advertising proper (i.e. paying for a specific placement) and commission-based business models such as Online Travel Agents or online marketplaces. According to the initial draft, every single item listed on Booking.com (i.e. every hotel, flight, or rental car) could be considered advertising. This did not match the intent of the regulation.

2. <u>The Concept of Very Large Online Platforms (VLOP)</u>

We agree that large platforms must act responsibly within the market. However, it is important to define any category being treated separately by regulation very carefully to ensure outcomes match policy intents. The draft VLOP category in the DSA was designed with a very specific platform business model and type of illegal content in mind. The draft provisions were not well adapted to different business models, such as marketplaces and their different risk profiles. Due diligence obligations should be tailored to the risk profiles of different platform business models. Furthermore, the concept of "average monthly recipients of the service" (AMRS), which is the basis for defining VLOPs, can be open to different interpretations.

Our Reflections on Existing ACCC Inquiry Recommendations

- **Digital platform-specific consumer measures.**

Booking.com supports a code of conduct which would include reasonable measures to verify users and reviews and a transparent process for addressing fake listings within the digital economy.

Fake listings and reviews harm not only unsuspecting guests, but the reputation of Booking.com and the tourism industry overall.

We have a well-established process for addressing fake listings. We take great care in verifying our listings through both advanced machine learning and AI tools as well as robust manual verification processes when more thorough vetting is required. In addition to these verification steps, we have internal formal processes to identify and address any properties listed fraudulently, should they somehow slip through the cracks.

In some instances, listings are flagged to us from guests as being fraudulent. These are reported to our central security team who perform an investigation. If the outcome of that investigation is that the property is indeed inauthentic, we will close the listing and communicate with the affected guests to find suitable alternatives.

Besides our listings, the other facet of our services which we take very seriously is user feedback and reviews. Booking.com operates a closed review system, whereby only guests who have actually made a reservation and actually stayed at the property (which is separately verified electronically) are invited to write a review. Our closed review system approach ensures the integrity of reviews are very high and the number of "fake" or fraudulent reviews are exceptionally low.

- **Additional competition measures for digital platforms**

Through the ACCC's work, a number of competition issues have been clearly identified. Booking.com supports a clear framework for fair competition within the digital economy. In line with our submissions to consultations for the DMA and DSA, we urge the ACCC and the federal government to ensure obligations are targeted and specific to address these identified concerns – particularly around gatekeeping – and not too broad as to catch businesses operating in a fair and competitive manner. A platform "designation" could become a very generic identification over time, and we would encourage very specific, targeted definitions developed through considerable consultation with industry. We are interested to understand more on how the suggested service-specific designation coding system could be applied.

- **Targeted competition obligations**

We believe that any obligations on platforms should be tailored to their services, business models and business practices. On the specific topic of price parity, Booking.com does not enforce price parity clauses, but we do include narrow price parity clauses in our contracts to discourage accommodation partners from using our platform as a free marketing tool. Many aspects of price parity have already been the subject of ACCC investigations and a 2022 consultation with Treasury. Booking.com agreed with the ACCC in 2016 to amendments to our contracts with accommodation partners to address these issues. If significant concerns still exist, we would be very open to discussing the use of parity clauses in further consultation.

Conclusion

Booking.com thanks the ACCC for its in-depth and valuable inquiry into digital platform services. It is critical that all markets ensure the growing digital economy is fair for all users. We support the inquiry's review of regulation introduced in other jurisdictions and how Australia can learn from those experiences. We also commend the inquiry for taking into consideration the wide views of industry participants, suppliers, consumers and other regulators. Booking.com looks forward to the ongoing engagement with the ACCC and government on the various recommendations made through this inquiry.

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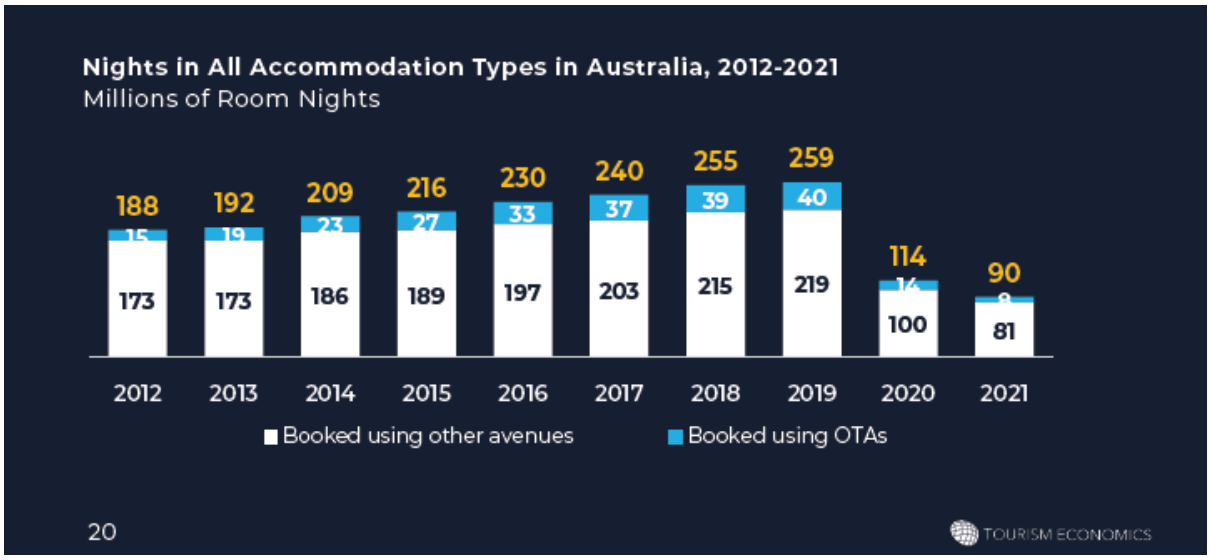
ANNEX:

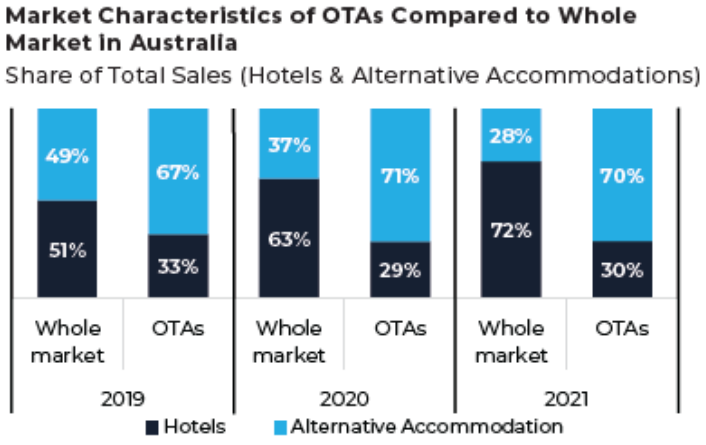
Booked room nights across all accommodation types:



Alternative accommodation bookings:

OTAs are important for alternative accommodation providers

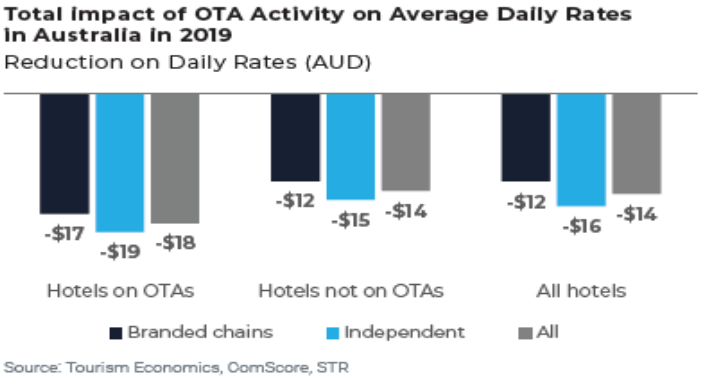
Guests are more strongly orientated towards alternative accommodations when booking through OTAs. In 2021 70% of bookings via OTAs were for alternative accommodations compared with 28% for the market as a whole.



Rate reduction due to OTAs:

OTA platforms impact rates across the whole market

Price reduction effects are stronger for hotels that advertise on OTAs compared to those that do not. Those listed on OTAs saw an average reduction of AU$18; those not listed saw an average reduction of AU$14.



OTAs impact on long-haul travel:

COMPOSITION OF TRAVEL

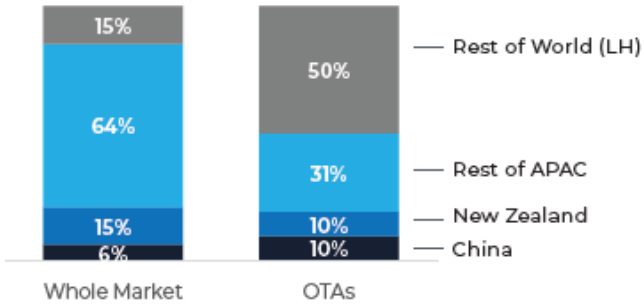
OTAs provide relatively more support for long-haul markets compared to the broader market composition

Half of international overnight stays in Australia booked through OTAs were arranged by individuals from elsewhere in APAC, including 10% each from China and New Zealand. Half of OTA international overnight stays originated from long-haul markets – more than triple the share in the market overall (15%). This means that OTAs provide greater support for long-haul visitors than the accommodation sector as a whole.

OTAs support for long-haul arrivals is primarily directed towards arrivals from Western Europe, with this region accounting for 75% of OTA bookings compared to 56% of all international overnight arrivals. By contrast, OTAs provided relatively less support for visitors from North America – these visitors accounted for 11% of OTA bookings, as opposed to 31% of all international arrivals. For other long-haul regions, the support provided by OTAs was relatively small and typically similar to their broader market presence.

Composition of International Travel

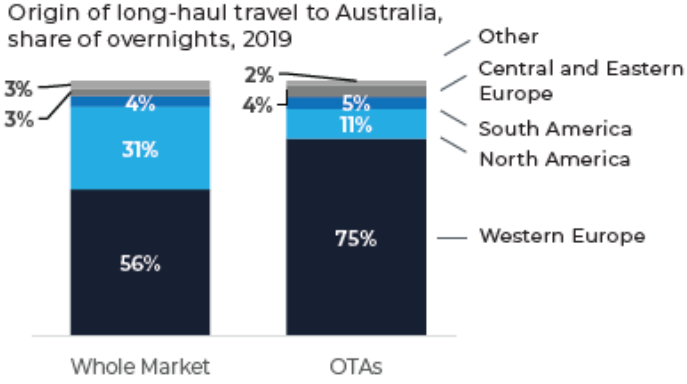
Origin of international travel to Australia, share of overnights, 2019



Source: Tourism Economics & Booking.com

Composition of Long-Haul International Travel

Origin of long-haul travel to Australia, share of overnights, 2019



Source: Tourism Economics & Booking.com

Summary impact of OTAs in Australia:

Source: All charts and data were taken from: *The Economic Impact of Online Travel Agencies in APAC 2019-2021, Oxford Economics*