



EUROPEAN COMMISSION

***CASE DMA. 100019 Booking - Online
intermediation services***

(Only the English text is authentic)

**Digital Markets Act
Regulation (EU) 2022/1925 of the European Parliament
and of the Council**

Article 3 Regulation (EU) 2022/1925

Date: 13/05/2024

This text is made available for information purposes only. A summary of this decision is published in all EU languages in the Official Journal of the European Union.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].



Brussels, 13.5.2024 C(2024) 3176 final

PUBLIC VERSION

COMMISSION DECISION

of 13.5.2024

designating Booking Holdings Inc. as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector

DMA.100019 Booking - Online intermediation services

(Only the English text is authentic)

TABLE OF CONTENTS

1.	Introduction.....	2
2.	The Undertaking.....	2
3.	Procedure.....	3
4.	Legal framework for the designation of gatekeepers pursuant to Regulation (EU) 2022/1925.....	3
4.1.	The delineation of CPSs.....	3
4.2.	The designation of gatekeepers pursuant to Article 3 of Regulation (EU) 2022/1925	5
5.	The core platform service.....	6
5.1.	BHI’s online intermediation service Booking.com.....	6
5.1.1.	CPS qualification and delineation	6
5.1.1.1.	The Undertaking’s view	6
5.1.1.2.	The Commission’s assessment.....	10
5.1.1.3.	Conclusion.....	20
5.1.2.	Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925	20
5.1.2.1.	The Undertaking’s view	20
5.1.2.2.	The Commission’s assessment	21
5.1.2.3.	Conclusion	22
6.	Conclusion.....	22

COMMISSION DECISION

of 13.5.2024

designating Booking Holdings Inc. as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector

DMA.100019 Booking - Online intermediation services

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), in particular Article 3 thereof¹,

Whereas:

1. INTRODUCTION

- (1) On 1 March 2024, Booking Holdings Inc. notified the Commission, pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925, that Booking Holdings Inc. together with all legal entities directly or indirectly controlled by Booking Holdings Inc. (hereinafter collectively referred to as “BHI” or “the Undertaking”), meets the thresholds laid down in Article 3(2) of that Regulation in relation to the following core platform service (“CPS”): BHI’s online intermediation service Booking.com.

2. THE UNDERTAKING

- (2) BHI is a travel technology company that operates the following five platforms: Agoda, Booking.com,² KAYAK, OpenTable and Priceline:
- (a) Agoda is an Online Travel Agent (“OTA”) focused on travel within the Asia-Pacific region and has a limited presence in the European Union (EU).
 - (b) Booking.com is an OTA listing offers for accommodations, flights, car rentals, public transport, airport taxis, attractions, and other forms of travel provided to end users. Booking.com’s offering includes Rentalcars.com.
 - (c) KAYAK is a meta search service allowing its end users to search and compare travel itineraries across a variety of travel platforms and providers at once on the KAYAK app and website.³

¹ OJ L 265, 12.10.2022, p. 1.

² The Booking.com offering includes Rentalcars.com.

- (d) OpenTable is a restaurant reservations platform enabling end users to make reservations at restaurants and providing reservation management services to restaurants, primarily in the United States of America (USA).
 - (e) Priceline is an OTA focused on discount travel offers. Priceline includes offers for accommodations, flights, cars, packages, cruises, and experiences.⁴
- (3) BHI is a public holding company founded in 1996 and headquartered in Norwalk, Connecticut, USA. BHI directly or indirectly wholly owns the subsidiaries that operate the five platforms listed in recital (2) above.⁵

3. PROCEDURE

- (4) On 1 March 2024, BHI submitted a complete notification pursuant to Article 3(3), first subparagraph of Regulation (EU) 2022/1925 (“Form GD”).
- (5) On 18 March 2024 and 9 April 2024, BHI re-submitted internal documents it had initially submitted to the Commission on 24 November 2023 and 8 January 2024.
- (6) On 25 March 2024, the Commission sent BHI a letter (“the Commission’s letter of 25 March 2024”)⁶ in which it set out its preliminary views on BHI’s possible designation as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 and on its intention to list in the designation decision the following CPS that is provided by BHI and which individually appears to constitute an important gateway for business users to reach end users: BHI’s online intermediation service Booking.com.
- (7) On 4 April 2024, BHI submitted written observations in response to the Commission’s letter of 25 March 2024 (“BHI’s reply of 4 April”).

4. LEGAL FRAMEWORK FOR THE DESIGNATION OF GATEKEEPERS PURSUANT TO REGULATION (EU) 2022/1925

- (8) Article 3 of Regulation (EU) 2022/1925 sets out the rules for the designation of gatekeepers. An undertaking shall be designated as a gatekeeper under that Regulation if it satisfies the requirements set out in Article 3(1) thereof. An undertaking shall be presumed to satisfy those requirements where it meets the quantitative thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925. Pursuant to Article 3(9) of that Regulation, the designation decision shall list the relevant CPSs that are provided by the undertaking and that are an important gateway for business users to reach end users as referred to in Article 3(1)(b).

4.1. The delineation of CPSs

- (9) Article 2, point (2) of Regulation (EU) 2022/1925 lists ten CPS categories, namely:
 - (a) online intermediation services, (b) online search engines, (c) online social networking services, (d) video-sharing platform services, (e) NIICS, (f) operating

³ As is the case for Booking.com, KAYAK’s service can be hosted on other sites and KAYAK operates several sites that host the KAYAK service, including Momondo, Cheapflights, Hotelscombined, Swoodoo, Checkfelix, and Mundi. Irrespective of the access point, end users can use KAYAK to search for flights, accommodations, cars, train, and travel packages.

⁴ Form GD, paragraph 12.

⁵ Form GD, paragraphs 3 and 4.

⁶ The letter followed up on exchanges that took place with BHI prior to its notification.

systems, (g) web browsers, (h) virtual assistants, (i) cloud computing services, and (j) online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the CPSs listed in points (a) to (i).

- (10) In order to determine whether a service provided by an undertaking is a CPS that meets the requirement set out in Article 3(1)(b) of Regulation (EU) 2022/1925, it is necessary, as a preliminary step, to proceed to the delineation of this service. To delineate a service, a number of provisions in Regulation (EU) 2022/1925 are of relevance, including in particular the following.
- (11) Section D, paragraph 2, of the Annex to Regulation (EU) 2022/1925 provides that, for the purpose of calculating the number of ‘active end users’ and ‘active business users’ under Article 3(2)(b) of that Regulation:
- undertakings shall not identify CPSs that belong to the same category of CPSs pursuant to Article 2, point (2), of Regulation (EU) 2022/1925 as distinct mainly on the basis that they are provided using different domain names, whether country code top-level domains (ccTLDs) or generic top-level domains (gTLDs), or any geographic attributes;⁷
 - undertakings shall consider as distinct those CPSs that either (i) do not belong to the same category of CPSs pursuant to Article 2, point (2), of Regulation (EU) 2022/1925, even if they are offered in an integrated way;⁸ or (ii) are used for different purposes by either their end users or their business users, or both, even if their end users and/or business users may be the same, even if the CPSs belong to the same category pursuant to Article 2, point (2), of that Regulation, and even if they are offered in an integrated way.⁹
- (12) In light of the foregoing, CPSs may be considered distinct even if they fall within the same category of CPSs. In such cases, a relevant criterion for identifying distinct CPSs within the same category of CPSs is the purpose for which the service is used by either end users or business users, or both.¹⁰ Furthermore, different services may constitute a single CPS, if they are used for the same purpose from both an end user and a business user perspective, unless they belong to different categories of the CPSs listed in Article 2, point (2), of Regulation (EU) 2022/1925.
- (13) Moreover, Article 13(1) of Regulation (EU) 2022/1925 provides that no practice by an undertaking providing CPSs which consists of segmenting, dividing, subdividing, fragmenting, or splitting those services through contractual, commercial, technical or any other means in order to circumvent the quantitative thresholds laid down in Article 3(2) of that Regulation shall prevent the Commission from designating it as a gatekeeper pursuant to Article 3(4) of that Regulation.
- (14) As recital (11) of the preamble to Regulation (EU) 2022/1925 points out, that Regulation pursues an objective that is complementary to, but different from, that of EU competition rules, which is to protect undistorted competition on any given market. Consequently, the application of EU competition rules, including competition law precedents, is without prejudice to the application of Regulation

⁷ Annex to Regulation (EU) 2022/1925, Section D, point 2(a).

⁸ Annex to Regulation (EU) 2022/1925, Section D, point 2(c)(i).

⁹ Annex to Regulation (EU) 2022/1925, Section D, points 2(b) and (c)(ii).

¹⁰ The same applies when the undertaking provides CPSs in an integrated way.

(EU) 2022/1925, and vice versa. Accordingly, the delineation of CPSs under Regulation (EU) 2022/1925 has no bearing on the definition of the relevant market for the purpose of applying EU competition rules (and vice versa) and those two types of analyses may thus lead to different results.

4.2. The designation of gatekeepers pursuant to Article 3 of Regulation (EU) 2022/1925

- (15) According to Article 3(1) of Regulation (EU) 2022/1925, the Commission is to designate an undertaking as a gatekeeper if it fulfils three cumulative requirements, namely: (a) it has a significant impact on the internal market; (b) it provides a CPS which is an important gateway for business users to reach end users; and (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.
- (16) Article 3(2) of Regulation (EU) 2022/1925 lays down a presumption that those requirements are satisfied where certain quantitative thresholds are met, namely:
- (a) an undertaking is presumed to have a significant impact on the internal market where it achieves an annual Union turnover equal to or above EUR 7.5 billion in each of the last three financial years, or where its average market capitalisation or its equivalent fair market value amounted to at least EUR 75 billion in the last financial year, and it provides the same CPS in at least three Member States;
 - (b) an undertaking is presumed to provide a CPS which is an important gateway for business users to reach end users where it provides a CPS that, in the last financial year, had at least 45 million monthly active end users established or located in the Union and at least 10 000 yearly active business users established in the Union, identified and calculated in accordance with the methodology and indicators set out in the Annex to Regulation (EU) 2022/1925;
 - (c) an undertaking is presumed to enjoy an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future, where the thresholds in point (b) were met in each of the last three financial years.
- (17) Pursuant to Article 3(3) of Regulation (EU) 2022/1925, an undertaking providing CPSs that meets all of the thresholds in Article 3(2) is to notify the Commission without delay and in any event within two months after those thresholds are met, by providing it with the relevant information referred to in Article 3(2). Pursuant to Article 3(4) of Regulation (EU) 2022/1925, the Commission is to designate the undertaking as a gatekeeper without undue delay and at the latest within 45 working days after receiving the complete information referred to in Article 3(3) of that Regulation.
- (18) Pursuant to Article 3(8), first subparagraph of Regulation (EU) 2022/1925, an undertaking that does not satisfy each of the thresholds laid down in Article 3(2) but meets each of the requirements of Article 3(1) of that Regulation is to be designated as a gatekeeper in accordance with the procedure laid down in Article 17.

5. THE CORE PLATFORM SERVICE

(19) As set out in recital 1 of this Decision, BHI's Form GD refers to one CPS: BHI's online intermediation service Booking.com.

5.1. BHI's online intermediation service Booking.com

5.1.1. CPS qualification and delineation

5.1.1.1. The Undertaking's view

(20) BHI describes Booking.com as a service that lists offers for accommodations, flights, car rentals, public transport, airport taxis, attractions, and other forms of travel provided to end users.¹¹

(21) BHI considers that Booking.com constitutes an online intermediation CPS within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925.¹² The online intermediation CPS Booking.com consists of the Booking.com platform whether accessed directly through the Booking.com website and app or through an embed on other websites under a so-called Hosting Partnership.¹³ According to BHI, it covers all features and functionalities available to end users as part of the Booking.com intermediation service, enabling end users to search for, select, book, and pay for travel offers, and all technology, data, indexes, APIs, and infrastructure required to deliver these features and functionalities. In response to the Commission's letter of 25 March 2024, BHI further clarifies that the interface on Booking.com that enables the user to make a payment cannot itself fall outside of the online intermediation CPS Booking.com since it is an inherent part of the functionality and purpose of the online intermediation CPS Booking.com.¹⁴ However, BHI also stipulates that this would be without prejudice to the fact that other steps in the online payment value chain may fall outside the scope of the online intermediation CPS Booking.com, which can be left open for the purposes of a designation decision, and which would not exclude that a payment service may be a separate service that is offered together with, or in support of, the online intermediation service CPS Booking.com.¹⁵

(22) As an online intermediation service's functionality is dedicated to intermediating transactions, the online intermediation CPS Booking.com also includes all its listing and ranking functionalities in relation to the commercial offers of business users.¹⁶ BHI also claims that Hosting Partnerships should be distinguished from "forward distribution," which is a common practice in the online travel industry consisting of the distribution of inventory from, for example, Booking.com to other OTAs, and vice-versa. Forward distribution occurs when one OTA supplies its inventory to

¹¹ Form GD, paragraph 12 and 18 to 24. As a result of Hosting Partnerships, BHI allows third parties to host or embed the Booking.com service on their own websites, providing users on those sites with a direct access point to Booking.com. These embeds of the Booking.com service provide users with access to Booking.com's inventory from Booking.com's business users, and Booking.com is responsible for serving up this content and ranking it according to its own algorithms.

¹² Form GD, paragraph 12.

¹³ Form GD, paragraph 36.

¹⁴ BHI's reply of 4 April 2024, paragraphs 15-19.

¹⁵ BHI's reply of 4 April 2024, paragraphs 15-19.

¹⁶ Form GD, paragraph 36.

third-party sales channels (which may include other OTAs) in an effort to increase its volumes.¹⁷

- (23) BHI argues that the online intermediation CPS Booking.com should be delineated based on its purpose in line with Section D(2)(b) of the Annex to Regulation (EU) 2022/1925 as a separate online intermediation service from the other platforms operated by BHI which constitute distinct online intermediation services – Agoda, Priceline, KAYAK and OpenTable.¹⁸
- (24) According to BHI, the purpose of the online intermediation CPS Booking.com is to enable end users to search and book travel offerings that are available on the Booking.com platform by business users. These business users come to Booking.com to have their offers intermediated by Booking.com with respect to the end users of that platform.¹⁹
- (25) On this basis, BHI claims that Booking.com operates as a standalone online intermediation service with its own areas of focus and targets audiences as part of its own distinct business strategies that are supported by its own marketing initiatives. It has its own access points and its own inventory. It is used by end users and business users through its own front ends – none of which provide access to BHI’s other online intermediation CPSs. It is accessed with account structures and loyalty programs that are distinct from BHI’s other online intermediation CPSs and is subject to its own independent terms of service and privacy policies.²⁰
- (26) BHI considers that a broader alternative delineation that includes all of BHI’s online intermediation CPSs is not plausible given that (i) end users and business users view all of the platforms as distinct;²¹ (ii) each platform has different offers available;²² (iii) each platform relies on different mechanisms to determine which offers to show in response to a search;²³ (iv) each platform organizes its inventory in distinct ways;²⁴ (v) each platform operates separate end user and business user account structures;²⁵ (vi) each platform offers unique and distinctive experiences for their end users;²⁶ (vii) the platforms have different geographic footprints (i.e., focus of Booking.com on Europe, Agoda on South-East Asia and Priceline on North America);²⁷ (viii) business users have different marketing strategies at their disposal;²⁸ (ix) BHI operates the platforms as self-standing, independent business units (x) there is no single, overarching entity encompassing several or all platforms that could itself constitute an online intermediation CPS;²⁹ and (xi) a broader

¹⁷ Form GD, paragraph 22.

¹⁸ Form GD, paragraph 32, and point B of Section 2.1.2.

¹⁹ Form GD, paragraph 35.

²⁰ Form GD, paragraph 35.

²¹ Form GD, paragraphs 31 and 42.

²² Form GD, paragraphs 45 and 46.

²³ Form GD, paragraphs 47 and 48.

²⁴ Form GD, paragraph 48.

²⁵ Form GD, paragraphs 49 and 50.

²⁶ Form GD, paragraphs 51 to 53.

²⁷ Form GD, paragraphs 54 to 56.

²⁸ Form GD, paragraphs 51 to 53 and 57.

²⁹ Form GD, paragraphs 59 to 63. BHI’s platforms are combined within BHI, which is a holding company with no end users or business users and is not an OIS. Furthermore, BHI’s platforms other than Booking.com are also not part of Booking.com and Booking.com is not part of any other BHI platform. End users of Booking.com cannot access or otherwise interact with the other platforms’ functionality through Booking.com. Business users of Booking.com likewise are not interacting with these other

approach would raise significant practical issues. With regards to KAYAK, BHI considers that this online intermediation service is a different category of service altogether, i.e., a metasearch provider, rather than an OTA.³⁰

- (27) BHI also points out that such a broader alternative delineation would not be consistent with the Commission’s practice in previous designation decisions.³¹
- (28) BHI further submits that the Booking.com website displays categories of travel services at the top of the page that help end users refine their experience of the service to browse and book specific limbs of a trip such as: accommodation, flights, car rentals, taxi, and attractions. These categories of travel services are considered by BHI as parts of the online intermediation CPS Booking.com and not as separate services.³²
- (29) BHI considers that dividing its online intermediation CPS Booking.com by the type of travel service it offers in the form of tabs at the top of the Booking.com page would be at odds with the purpose of the online intermediation CPS Booking.com and would not reflect reality.³³
- (30) According to BHI, the purpose of the online intermediation CPS Booking.com for end users is to display travel services for them to book, within the bounds of their search and intention. The existence of categories within the service does not alter the overall purpose of Booking.com but merely seeks to provide end users the opportunity of purchasing different limbs of an overall trip. This is further supported by the fact that loyalty programs are not tied to individual categories of service offers. From the side of the business users, even though the offers shown on one tab do not overlap with those on another tab, the purpose of the online intermediation CPS Booking.com is to facilitate end users’ interactions with different types of travel offerings to better enable them to book different types of travel services through a seamless interaction with the business users available on its platform. This can amount to being able to find more than one kind of travel within one category or to being exposed to promotions or loyalty programs that are not specific to one category.³⁴
- (31) BHI further emphasizes that splitting the online intermediation CPS Booking.com by travel categories would be at odds with how the industry operates.³⁵ Furthermore, BHI provides that many of the end users of the online intermediation CPS Booking.com buy connected travel services, e.g., multiple travel services such as a flight and accommodation.³⁶
- (32) BHI also points out that further fragmenting the online intermediation CPS Booking.com based on the types of travel services it intermediates would not be consistent with the Commission’s practice in previous designation decisions.³⁷

platforms through Booking.com. Booking.com – the largest of the BHI platforms – cannot therefore be an overarching CPS of which the other BHI platforms “form a part”.

³⁰ Form GD, paragraph 12.

³¹ Form GD, paragraph 42.

³² Form GD, paragraph 14.

³³ Form GD, paragraph 31, and paragraphs 64 to 81.

³⁴ Form GD, paragraphs 69 and 71.

³⁵ Form GD, paragraphs 71 and 76 to 79.

³⁶ Form GD, footnote 44.

³⁷ Form GD, paragraphs 64 to 66, 80 and 81.

- (33) BHI further submits that the RentalCars.com service is part of the online intermediation CPS Booking.com.³⁸ BHI claims that, historically, it has operated the RentalCars.com brand as a separate platform but has since integrated it into the Booking.com platform while also retaining some limited brand presence.³⁹ BHI argues that following this integration, RentalCars.com became a window into the Booking.com site, meaning that if an end user clicks on a tab on the RentalCars.com website,⁴⁰ that user is directed to the corresponding Booking.com page.⁴¹ Furthermore, business users access RentalCars.com exclusively through their Booking.com account structure.⁴² BHI further clarifies that the integration did not involve any need to migrate end user RentalCars.com accounts onto Booking.com accounts, because the first does not support end user accounts.⁴³ BHI also submits that the RentalCars.com website and app on mobile are branded as a service provided by Booking.com,⁴⁴ the underlying technology and back end are integrated,⁴⁵ the user experience is the same⁴⁶ and RentalCars.com provides access to Booking.com results.⁴⁷
- (34) BHI further submits that the online intermediation CPS Booking.com includes only a small part of the Booking Networks Sponsored Ads (“BNSA”) service, i.e., (i) the final selection of the BNSA ad it ultimately displays from a slate of possible ads provided by the third-party provider Koddi and (ii) the display of these ads on Booking.com. BHI argues that the online intermediation CPS Booking.com does not include the parts of the BNSA offering, which in its view normally constitute an advertising service,⁴⁸ and which are handled by the third-party provider Koddi, such as advertiser account set-up, campaign creation, and the yielding of a slate of relevant ads to be displayed on the online intermediation CPS Booking.com.⁴⁹
- (35) BHI considers that the ad selection handled by the online intermediation CPS Booking.com cannot be described as a self-standing service because the ad selection handled by Booking.com serves the same purpose as the selection process that this online intermediation CPS Booking.com operates for its standard results and does not stand alone as a consumer or business offering.⁵⁰
- (36) BHI disagrees with the preliminary view set out in the Commission’s letter of 25 March 2024 that (i) BNSA is a single service provided by BHI comprising both the parts that are provided by the third-party provider Koddi and the part operated by the online intermediation CPS Booking.com, and (ii) that this service is separate from

³⁸ Form GD, paragraph 9 and footnote 5.

³⁹ Form GD, paragraph 9 and footnote 5.

⁴⁰ Such as “Stays” or “Flights”.

⁴¹ Form GD, footnote 7.

⁴² Form GD, footnote 5.

⁴³ Form GD, footnote 5.

⁴⁴ See page 3 and 4 of “Booking.com DMA: internal documents regarding Rentalcars.com integration with Booking.com Cars” 18 March 2024.

⁴⁵ See BHI’s submission of 18 March 2024 “Booking_EC_DMA-00000053”.

⁴⁶ See page 3 and 4 of “Booking.com DMA: internal documents regarding Rentalcars.com integration with Booking.com Cars” 18 March 2024.

⁴⁷ See Slide 7 of “Form GD & Initial Implementation Overview”, 28 September 2023; See also the BHI deck submitted to the Commission in January 2024 “Rentalcars.com integration”.

⁴⁸ Form GD, paragraph 39 letter (a) and paragraph 40.

⁴⁹ Form GD, paragraph 40.

⁵⁰ Form GD, paragraph 39 letter (a) and (b).

the online intermediation CPS Booking.com.⁵¹ BHI claims that considering BNSA as a single service is not supported by Regulation (EU) 2022/1925 and has not been reflected in previous designation decisions adopted by the Commission.⁵² According to BHI, the outcome of such an approach would be impractical if BNSA were to be designated as an online advertising CPS in the future, because Regulation (EU) 2022/1925 would impose obligations on a gatekeeper in relation to a CPS that is largely outside of the gatekeeper's control and on a third party undertaking that does not qualify as a gatekeeper.⁵³ BHI also disagrees with the Commission's preliminary view that BNSA is used by business users for a different purpose to business users of the online intermediation CPS Booking.com.⁵⁴ According to BHI, both services are used by business users for the same purpose of displaying an offer to attract users to book a travel service and having their listings clicked on and securing more bookings.⁵⁵ BHI further considers that the online intermediation CPS Booking.com should not be segmented based on the different means available to business users to increase their success on the platform, irrespective of whether all business users use all of these different means or whether they may be accessed through separate interfaces.⁵⁶

- (37) Therefore, BHI considers that the parts of the BNSA service that it operates do not qualify as an online advertising CPS pursuant to Article 2, point (2), subpoint (j) of Regulation (EU) 2022/1925 and are, in any event, not a separate service from the online intermediation CPS Booking.com.⁵⁷ In the alternative, BHI argues that if the ad selection did not form part of the online intermediation CPS Booking.com, it would constitute a service offered together with, or in support of that online intermediation service.⁵⁸ In this context, BHI also notes that irrespective of the qualification of the BNSA service as a possible distinct service, including a distinct CPS, this service would not meet the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925.

5.1.1.2. The Commission's assessment

5.1.1.2.1. Booking.com constitutes an online intermediation CPS

- (38) Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 lists online intermediation services as one of the categories of CPSs within the meaning of that Regulation. Article 2, point (5), of Regulation (EU) 2022/1925 defines 'online intermediation services' by cross-referring to Article 2, point (2), of Regulation 2019/1150. According to Article 2, point (2), of Regulation 2019/1150, online intermediation services are services that meet all of the following requirements:

⁵¹ BHI's reply of 4 April 2024, paragraphs 6 to 8.

⁵² BHI's reply of 4 April 2024, paragraph 9.

⁵³ BHI's reply of 4 April 2024, paragraph 10.

⁵⁴ BHI's reply of 4 April 2024, paragraphs 11 and 13.

⁵⁵ BHI's reply of 4 April 2024, paragraph 13.

⁵⁶ BHI's reply of 4 April 2024, paragraph 12.

⁵⁷ Form GD, paragraphs 28 and 40.

⁵⁸ Form GD, paragraph 41.

- (a) they constitute an information society service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council;⁵⁹
 - (b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded;
 - (c) they are provided to business users on the basis of contractual relationships between the provider of those services and business users which offer goods or services to consumers.
- (39) In line with the information provided by BHI, the Commission considers that Booking.com fulfils that definition of online intermediation services. First, Booking.com constitutes an information society service within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535. Second, Booking.com allows business users to offer goods or services (e.g., accommodation, flights, car rentals or attractions) to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded. Third, Booking.com is provided to business users on the basis of contractual relationships between the provider of the intermediation service, i.e., Booking.com, and business users which offer goods or services (e.g., accommodation, flights, car rentals or attractions) to consumers.⁶⁰ For example, Booking.com operates on the basis of Terms and Conditions for end users⁶¹ and business users.⁶² Consequently, Booking.com constitutes an online intermediation service within the meaning of Article 2, point (5), of Regulation (EU) 2022/1925 and thus a CPS within the meaning of Article 2, point (2), subpoint (a), of that Regulation.
- (40) The Commission further considers, for the reasons set out in Section 5.1.1.2.2., that Booking.com constitutes an online intermediation CPS which is distinct from the other intermediation services provided by BHI, such as the online intermediation services Agoda, KAYAK, Priceline and OpenTable.
- (41) For the reasons set out in 5.1.1.2.3, the Commission also considers that Booking.com constitutes a single online intermediation CPS, irrespective of the different types of travel services intermediated through the Booking.com service (e.g., hotels, flights and other types of travel services, or categories). For the reasons set out in Section 5.1.1.2.4, Booking.com encompasses several features and functionalities enabling the online intermediation service. For the reasons set out in Section 5.1.1.2.5, the Commission also considers that the RentalCars.com service provided by BHI forms part of BHI's online intermediation CPS Booking.com.

⁵⁹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), OJ L 241, 17.9.2015, p. 1.

⁶⁰ Form GD, paragraph 12.

⁶¹ Customer terms of service: <https://www.booking.com/content/terms.html> last accessed on 2 May 2024.

⁶² General Delivery Terms: <https://admin.booking.com/hotelreg/terms-and-conditions.html?language=xu;cc1=null> last accessed on 2 May 2024.

(42) Finally, for the reasons set out in 5.1.1.2.6, the Commission considers that the BNSA service is provided by BHI as a distinct service from the online intermediation CPS Booking.com, irrespective of whether that service itself constitutes a CPS.

5.1.1.2.2. Booking.com constitutes a distinct online intermediation CPS from Agoda, KAYAK, OpenTable and Priceline

(43) First and foremost, the Commission considers that Booking.com, Agoda, KAYAK, OpenTable and Priceline constitute distinct online intermediation services because BHI offers them separately to end users and business users on the market, as is apparent from the following features of those services:

- (a) they are branded differently with distinct trademarked logos and names and listed as distinct brands on BHI's website;⁶³
- (b) they are marketed as entirely distinct services: this is apparent from the fact that each online platform has a distinct online interface or software application presenting its specific features to end users and commercial offers to business users. As a result, they are accessed through entirely different online interfaces (Booking.com, Priceline.com, Agoda.com, Kayak.com and Opentable.com) and software applications;
- (c) BHI offers its business users different marketing features and emphasizes that every platform has its own loyalty programs, special deals, and range of booking features;⁶⁴
- (d) they are marketed to different user audiences: [for example, description of Priceline's business strategy].⁶⁵ At the same time, besides leisure travel, Booking.com focuses also on business travel;⁶⁶
- (e) they each show different results in return to end use queries due to the fact that they have their own inventories, policies, prices, availability, ranking, user experience and loyalty programs;⁶⁷
- (f) they have a distinct strategy in terms of geographic focus: Booking.com has historically been focused on European markets, Agoda is focused on Asian markets, and Priceline is focused on American markets.⁶⁸ Priceline and Agoda derive only a small proportion of revenues and end user engagement from the EU, whereas the EU is by far the largest market for Booking.com.⁶⁹ As a consequence, Booking.com has a much larger geographic footprint in the EU compared to Agoda and Priceline. This is supported by the fact that only [0-10]% and [0-10]% of Priceline and Agoda's worldwide transacting monthly

⁶³ See <https://www.bookingholdings.com/brands/booking/> last accessed on 2 March 2024.

⁶⁴ Form GD, paragraphs 43, 51 and 52. For instance, the online intermediation CPS Booking.com offers its own Genius loyalty program where users can receive discounts and travel rewards by booking with participating business users. However, bookings made on other BHI platforms do not count towards the Genius program and the Genius program deals are not available to users on other BHI platforms.

⁶⁵ Form GD, paragraph 51.

⁶⁶ Booking.com for Business provides for exclusive business rates, loyalty points, and provides from complimentary 24/7 support (<https://business.booking.com/>).

⁶⁷ Form GD, paragraphs 43, 45, 46 and 47.

⁶⁸ Form GD, paragraph 54.

⁶⁹ Form GD, paragraphs 54 and 55.

active users respectively are located in the EU while [35-45]% of Booking.com's transacting monthly active users are located in the EU;⁷⁰

- (g) they require separate end user accounts and separate registration and log-in processes: an end user who creates an account on Booking.com to access the Booking.com service cannot use the account to access BHI's other online intermediation services, and vice versa;⁷¹ the use of each service is based on distinct terms of service;⁷²
 - (h) they are managed separately as self-standing businesses within BHI's organization with their own distinct leadership, business and technology roadmaps, and employees.⁷³
- (44) Second, and in any event, Booking.com, KAYAK and OpenTable appear to be used for different purposes by their end users and their business users. Pursuant to Section D(2)(b) of the Annex to Regulation (EU) 2022/1925, CPSs which are used for different purposes by either their end users or their business users, or both, shall be considered as distinct CPSs, even if their end users or business users may be the same and even if they belong to the same category of CPSs pursuant to Article 2, point (2), of that Regulation. The Commission's view that end users and business users use Booking.com and BHI's other online intermediation services for different purposes is based on the following considerations.
- (45) As regards KAYAK, that service is used by end users for the specific purpose of searching and comparing travel services across different travel platforms and providers,⁷⁴ which is different from the purpose for which end users and business users use the online intermediation CPS Booking.com as described in recital 24. KAYAK is a metasearch platform⁷⁵ that enables a consolidated view of available accommodation and connected travel options. It retrieves results from multiple sources and redirects users to a specific online platform where they can complete their reservation of an accommodation or connected travel. Metasearch platforms allow users to make comparisons across different travel platforms and providers (potentially including smaller or specialized ones), helping them to find the best deal from a variety of offers.⁷⁶ Unlike Booking.com, which has a commission-based business model and whose inventory is available on a specific online platform, KAYAK does not have a commission-based business model⁷⁷ and does not maintain its own inventory. On KAYAK, the search is initiated on a metasearch platform and

⁷⁰ Form GD, paragraph 55.

⁷¹ Form GD, paragraph 49.

⁷² See respective terms of service at:

https://www.booking.com/content/terms.en-gb.html?aid=356980&label=gog235jc-1BCBQoggJCBXRlcm1zSDNYA2gViAEBmAEbAENuAEXyAEM2AEB6AEBiAIBqAIDuAL-uptevBsACAdICJGFInmQ0YzMwLThiZGZtNGJkMi1hYWl3LTg3NDg2YWJkOTJhMdgCBcACAQ&sid=eaed5d2c93da49a0a7600d812181263c&tmpl=docs%2Fterms-and-conditions&lang=en-gb&soz=1&lang_click=other&cdl=fr&lang_changed=1,
<https://www.agoda.com/info/termsofuse.html?cid=1844104&ds=dJREoNb4%2BP4la%2BQ7>,
<https://www.priceline.com/pl/global/terms>,
<https://www.opentable.com/legal/terms-and-conditions>, and
<https://www.kayak.com/terms-of-use>, last accessed on 19 April 2024.

⁷³ Form GD, paragraph 58.

⁷⁴ Form GD, paragraph 12 letter (c) and footnote 36.

⁷⁵ Form GD, footnote 36.

⁷⁶ Form GD, paragraph 12 letter (c).

⁷⁷ Form GD, footnote 55.

is then followed by a significant number of clicks and redirections to various providers' platforms. This makes the process that leads the user to make a choice lengthier. Furthermore, in the case of KAYAK, which does not have a commission-based remuneration model, end users visit to search across distinct platforms.⁷⁸ KAYAK does not focus on enabling users to make travel bookings but instead enables its end users to search and compare travel itineraries across hundreds of travel platforms' inventories and providers.⁷⁹

- (46) As regards OpenTable, that service is used by end users for the specific purpose of restaurant search and reservations,⁸⁰ which is distinct from the purpose for which end users and business users use the online intermediation CPS Booking.com, as described in recital 24.
- (47) In light of the above, the Commission concludes that Agoda, KAYAK, OpenTable and Priceline constitute distinct online intermediation services which are provided separately from the online intermediation service CPS Booking.com.

5.1.1.2.3. Booking.com constitutes a single online intermediation CPS irrespective of the types of travel services it intermediates

- (48) The online intermediation CPS Booking.com intermediates different types of travel services. Its online interface displays several categories of travel services at the top of the page and application⁸¹ in the form of tabs used by end users to refine their experience of browsing and booking specific limbs of a trip, such as accommodation, flights, car rentals, attractions, and taxis.⁸² The Commission considers that the online intermediation CPS Booking.com constitutes a single online intermediation CPS, irrespective of the travel services intermediated on its online interface. Booking.com is used for all types of travel services by both end users and business users for the same purpose - to intermediate the distribution of travel services available on it.
- (49) End users use Booking.com for the purpose of easily accessing travel services in one single location, where they can search for and book different types of travel services using a single account for all of these travel services.⁸³ Booking.com thus displays travel services for end users to book, including for multiple segments of the same trip, within the boundaries of their search intentions, thus intermediating travel options more generally⁸⁴ - from all of the providers available on the Booking.com platform⁸⁵ - and not just for one category such as accommodations.⁸⁶ This is

⁷⁸ Form GD, paragraph 43.

⁷⁹ Form GD, paragraph 12.

⁸⁰ Form GD, paragraph 12, letter (d).

⁸¹ The only exception is Flight + Hotel, which links out to an independent third-party package travel service hosted and operated by lastminute.com, at the domain <https://booking-dp.lastminute.com/>. Flight + Hotel is not part of Booking.com (nor the Booking.com CPS): the inventory is owned by lastminute.com, lastminute.com is responsible for the display and ranking of search results, business users and end users of this service are business users and end users of lastminute.com (not Booking.com), Booking.com has no access to any data from those end users or business users, and Booking.com has no control over the backend or frontend of this service. Flight + Hotel is not integrated into the Booking.com mobile app. However, this is without prejudice to the Commission's possibility of taking a different view in case the third-party provider would not have the level of autonomy as to be considered an independent provider.

⁸² Form GD, paragraph 14.

⁸³ Form GD, paragraph 68.

⁸⁴ Form GD, paragraphs 68 and 69.

⁸⁵ Form GD, paragraph 35.

supported by data provided by BHI showing that, in 2023, [a significant subset] of end users who booked a flight on Booking.com also booked accommodation on Booking.com [thereafter with this number increasing year-on-year].⁸⁷ Furthermore, [a significant subset] of users who booked car rentals on Booking.com’s online interface also booked accommodation and more than one kind of travel category can be shown under each tab.⁸⁸

- (50) The travel categories available on Booking.com thus merely facilitate users’ interactions with the Booking.com travel services, assisting end users to refine their use of the service.⁸⁹ The singular purpose for which end users utilize the online intermediation CPS Booking.com is further reinforced by the fact that when Booking.com allows users to search within a category - such as “stays” or “flights” - it presents multiple types of travel categories on each tab.⁹⁰ Also, the loyalty programs are not tied to individual categories of service offers, end users being able to find more than one kind of travel within one category or being exposed to promotions or loyalty programs that are not specific to one category.⁹¹ At the same time, end users can search on the platform by region or city for trip ideas, which provides users with offers for integrated travel experiences, including accommodation, car rental, and flight options.⁹²
- (51) As regards business users, the Commission considers that they use the online intermediation CPS Booking.com for the purpose of engaging with end users who seek to explore and book different types of travel services through a single online intermediation service. Business users thus use the online intermediation CPS Booking.com for the purpose of reaching the widest possible end user base interested in exploring travel options, irrespective of whether end users have the intention of booking one, some, all, or none of the offerings available.⁹³ An end user who visits Booking.com with the intention to book a hotel may also end up booking a flight by the end of his/her user journey on Booking.com or may do so at another point in time. It is irrelevant whether different limbs of a journey are being purchased concomitantly, in a bundled trip type of product (travel package), or different products are being purchased in a sequential order. The Commission also considers that a segmentation of the online intermediation CPS Booking.com based on the type of travel services available on Booking.com would run against a business practice which has become a widespread approach in the industry.⁹⁴ Specifically, companies

⁸⁶ Form GD, paragraph 70.

⁸⁷ Form GD, footnote 44; BHI claims that in July 2023, [a significant subset] of end users booking a flight on Booking.com also booked accommodation [thereafter with this number increasing year-on-year].

⁸⁸ Form GD, footnote 44.

⁸⁹ Form GD, paragraphs 14 and 71.

⁹⁰ Form GD, paragraph 71, letter (b).

⁹¹ Form GD, paragraph 71, letter (d).

⁹² Form GD, paragraph 71.

⁹³ Form GD, paragraph 72.

⁹⁴ Form GD, paragraphs 71, 78 and 79. This is further supported by the fact that the Commission has previously outlined that “*Combined travel arrangements are on the rise*” (Commission Staff Working Document Executive Summary of the Impact Assessment Proposal for a Directive of the European Parliament and of the Council on package travel and assisted travel arrangements, amending Regulation (EC) No 2006/2004 of the European Parliament and the Council and Directive 2011/83/EU and repealing Council Directive 90/314/EEC, second paragraph of section 2.1), and that “*Nowadays, consumers combine travel services (transport, accommodation, car rental, leisure activities) for the same trip or holiday in many different ways*” (Report From the Commission to the European Parliament and the Council on the provisions of Directive (EU) 2015/2302 of the European Parliament and of the

offering similar travel intermediation services also offer a similar range of travel services.⁹⁵

5.1.1.2.4. Booking.com encompasses several features and functionalities enabling the online intermediation service

- (52) Furthermore, the Commission considers that Booking.com constitutes a single online intermediation CPS, irrespective of whether end users access the platform through a dedicated online interface, a software application, or access points hosted by third parties which direct to Booking.com (“Hosting Partners”).⁹⁶ Irrespective of these access points, end users have an interaction with Booking.com because they are exposed to, among others, Booking.com’s inventory, search box, search mechanism and ranking.⁹⁷
- (53) Finally, the Commission considers that while the online interface of Booking.com’s payment functionality may be integrated in the online intermediation CPS Booking.com, the other steps provided by that functionality may still constitute a distinct service.

5.1.1.2.5. RentalCars.com forms part of the online intermediation CPS Booking.com

- (54) The Commission considers that RentalCars.com, provided by BHI, is part of the online intermediation CPS Booking.com, since BHI offers RentalCars.com as a conduit to the same travel services offering provided through the Booking.com online interface. This is based on the following reasons.
- (55) Despite the fact that RentalCars.com and Booking.com continue to be accessible via different entry points, e.g., a different domain name and software application, performing searches on RentalCars.com generates identical results to those that are available on the Booking.com car rentals tab.⁹⁸ That is because business users have a single-entry point for listing their car rental offers on RentalCars.com and the car rental services tab of Booking.com. Business users therefore do not require separate accounts to use RentalCars.com and Booking.com.⁹⁹ Instead, business users of RentalCars.com rely on Booking.com’s account structure. Therefore, the inventory of cars that users can search for and rent on RentalCars.com is identical to the inventory displayed on the online intermediation CPS Booking.com. This allows end users to search for and rent the exact same offers of car rental services, irrespective of whether they do so through the RentalCars.com or the Booking.com online interface.
- (56) The Commission also observes that BHI has integrated RentalCars.com and Booking.com by converging the user experiences and making clear to users that the car rental services accessed via the RentalCars.com website and app are the same as those accessed via the Booking.com service (branded as “RentalCars.com by Booking.com”).¹⁰⁰ The user experience and interface (e.g., the car rental search,

Council of 25 November 2015 on package travel and linked travel arrangements applying to online bookings made at different points of sale, first paragraph of section 1).

⁹⁵ Form GD, paragraph 78.

⁹⁶ Form GD, paragraph 21.

⁹⁷ Form GD, paragraphs 18 to 21.

⁹⁸ See Slide 7 of “Form GD & Initial Implementation Overview”, 18 March 2023.

⁹⁹ Form GD, footnote 5 and Slide 4 of “Rentalcars.com integration January 2024”, 9 April 2024.

¹⁰⁰ See <https://www.rentalcars.com> last accessed on 13 March 2023.

display and booking experience) of RentalCars.com and Booking.com is very similar, with only insignificant formal variations.

- (57) The finding that RentalCars.com is a conduit to the same travel services' offering provided through the Booking.com site is further supported by the fact that the tabs displayed for the different categories of travel services on the RentalCars.com website – such as Stays or Flights – redirect users to the corresponding Booking.com page.¹⁰¹ While the Car Rental Services tab on the Booking.com online interface does not redirect users to the RentalCars.com online interface, it provides the exact same offers of car rental services as RentalCars.com as explained in recital 55 above.
- (58) Finally, the fact that RentalCars.com is part of the online intermediation CPS Booking.com is further supported by the fact that in BHI's Annual 10-K reports for the fiscal years 2021 and 2022, BHI presents Booking.com and RentalCars.com as a single service offering and claims that "*Rentalcars.com operates as part of Booking.com*".¹⁰²

5.1.1.2.6. Booking Network Sponsored Ads is a service provided by BHI which is distinct from the online intermediation CPS Booking.com

- (59) The Commission considers that, for the reasons set out below, BNSA is provided as a distinct service from BHI's online intermediation CPS Booking.com because BNSA and the online intermediation CPS Booking.com fulfil specific and distinct purposes.
- (60) First, the Commission considers that BNSA is a service that allows business users of Booking.com to promote their listings on the online intermediation CPS Booking.com with the specific purpose of increasing the visibility of these business users' offers and bookings.¹⁰³ Through a dedicated platform,¹⁰⁴ BNSA provides features that allow business users to purchase ads and set up their advertising campaigns, including features such as bid setting, auction management, billing and campaign reporting. The ads purchased by those business users are then displayed on a dedicated space for sponsored offers and are given additional prominence as opposed to all other offerings, on the online intermediation CPS Booking.com.
- (61) Contrary to BHI's view,¹⁰⁵ the Commission considers that the fact that certain features of the BNSA service are accessed through the platform of the third party provider Koddi, with whom BHI¹⁰⁶ has a commercial relationship pursuant to which BHI entrusts Koddi to deal with parts of the business user interaction on BHI's behalf, does not prevent this service from constituting a self-standing service provided by BHI, encompassing all features and elements outlined in recital 60 above. This is for the following reasons.

¹⁰¹ Form GD, footnote 7.

¹⁰² See https://s201.q4cdn.com/865305287/files/doc_financials/2021/ar/2021-Annual-Report-booking.pdf and https://s201.q4cdn.com/865305287/files/doc_financials/2022/q4/5704910b-d65d-4528-a869-e1e1216a1f8b.pdf last accessed on 14 March 2023.

¹⁰³ The Commission does not exclude that, as stated by BHI, BNSA may also be used by business users of BHI's other platforms.

¹⁰⁴ Accessed through <https://bookingnetwork.koddi.com/>.

¹⁰⁵ Form GD, paragraph 40 and BHI's reply of 4 April 2024, paragraph 9.

¹⁰⁶ BHI solely controls and indirectly owns Booking.com, See Form GD, paragraph 4.

- (62) Business users of BNSA must sign up to the BNSA terms and conditions.¹⁰⁷ Since business users of BNSA must also be business users of Booking.com in order to promote their listings on the online intermediation CPS Booking.com,¹⁰⁸ those business users must also sign up to the Booking.com terms and conditions. In Booking.com’s terms and conditions, BHI presents BNSA as “*our programme that lets Accommodation Service Providers bid through a third party (Koddi) for their product to appear in second place when your search results are ordered by ‘Our top picks’.*” [emphasis added].¹⁰⁹ Furthermore, in the BNSA terms and conditions, BHI claims that “*certain aspects of the Service may be performed by third party Koddi on behalf of the BHI Brands*” [emphasis added] and that BHI has “*the sole discretion to terminate or restrict business users’ use of the BNSA.*”¹¹⁰
- (63) Contrary to BHI’s view,¹¹¹ the activities performed by BHI as part of the BNSA service cannot be considered to be merely a small part of the BNSA service. This is because Booking.com, which is solely controlled by BHI, decides whether to show an ad and which bidder to show in the ad slot. The information provided by BHI indicates that BHI is responsible and has control over the ads that are ultimately selected and displayed on the online intermediation CPS Booking.com. Booking.com also remains in control of removing any ad if needed. Booking.com also determines the winning bidder by [...].¹¹² Therefore, Koddi cannot act autonomously from BHI to display sponsored offers on the online intermediation CPS Booking.com and its activity consists of providing a technical execution of a service that is operated by BHI. Furthermore, even if BNSA were to be considered to consist only of the selection and display of the ad (*quod non*), the selection and display of the ad cannot be considered to constitute merely a small part of the BNSA service for the reasons set out in recital 64.
- (64) The Commission observes that the selection and display of an ad on the online intermediation CPS Booking.com constitutes the culmination of the ad selection process within the distinct BNSA service. It is the ad delivery process which activates every layer of the advertising value chain, with the ultimate purpose of exposing end users to ads. All the steps of the process outlined in recital 60 above, including the display of the ad and the features accessed through Koddi, are therefore inextricably linked and interdependent and cannot therefore be divided into two separate services – one provided by BHI, and one provided by Koddi.
- (65) For the reasons set out in recital 64, the Commission further considers that the display of ads on Booking.com should be considered as part of both the online intermediation CPS Booking.com and the distinct service BNSA.

¹⁰⁷ Form GD, footnote 12.

¹⁰⁸ See <https://partner.booking.com/en-us/help/commercial-insights/keys-success/all-you-need-know-about-booking-network-sponsored-ads> last accessed on 29 April 2024.

¹⁰⁹ Booking.com Customer terms of service, available at <https://www.booking.com/content/terms.en-gb.html?label=gen173nr-1FCAEegg146AdIM1gEaBWIAOQGYAOm4ARfIAOzYAOHoAOH4AQuIAGGoAgO4Aujctq8GwAIB0gIkZDk5MjllZGIYmRiZi00ZjQzLThiMTQtY2I0Nzc5NTFkNjlm2AIG4AIB&sid=14655a7d4137b9942fc6fcc4f3940784> last accessed on 10 March 2024.

¹¹⁰ Booking Network and Koddi Terms and Conditions for Sponsored Ads, available at <https://info.koddi.com/hubfs/Booking.com/Booking%20Network%20Priceline%20and%20Koddi%20Terms%20and%20Conditions%20for%20Sponsored%20Ads.pdf> last accessed on 10 March 2024

¹¹¹ Form GD, paragraph 28.

¹¹² Form GD, paragraph 29

- (66) Second, contrary to BHI's view,¹¹³ the Commission considers that BNSA offers dedicated specific functionalities which serve a purpose that is different from that of the online intermediation CPS Booking.com. As acknowledged by BHI,¹¹⁴ and as set out in recital 24, the online intermediation CPS Booking.com is used by end users to search and book travel offerings from business users and business users to have the listing and booking of their travel offerings by end users intermediated by the online intermediation CPS Booking.com. In contrast, BNSA's functionalities have the specific purpose of promoting offers in the designated space on the online interface on top of the search results of the online intermediation CPS Booking.com,¹¹⁵ with the aim of increasing business users' chance of being clicked on and securing more bookings.¹¹⁶
- (67) Contrary to BHI's view,¹¹⁷ BNSA is not merely one of a number of different means available to business users to pursue the same purpose on the online intermediation CPS Booking.com. The different purposes of BNSA and the online intermediation CPS Booking.com are illustrated by the fact that business users specifically choose, without being mandated, and pay to have their Booking.com offering promoted as an ad through a separate service in order to achieve a different outcome for their listing. The use of the online intermediation CPS Booking.com, in combination with BNSA, has the potential of yielding a different outcome for business users compared to the mere use of the online intermediation CPS Booking.com without BNSA. This is because a listing promoted through BNSA has a higher chance of being clicked on and booked, as also acknowledged by BHI.¹¹⁸ As stated by BHI,¹¹⁹ listings of business users on the online intermediation CPS Booking.com and listings promoted through BNSA are subject to different ranking mechanisms. Indeed, listings on the online intermediation CPS Booking.com are displayed into slots subject to that online platform's default ranking, while BNSA allows business users to promote their listings on the online intermediation CPS Booking.com into different slots designated for ads on top of the search results.
- (68) The fact that users can book travel offerings in the same way, irrespective of whether they do so after clicking on a sponsored listing or on an organic result on the online intermediation CPS Booking.com does not alter the fact that BNSA and Booking.com are used for different purposes.
- (69) Contrary to what BHI suggests, even if BNSA has interdependencies with the online intermediation CPS Booking.com,¹²⁰ as outlined in recitals 66 and 67, the BNSA service is provided as a distinct service to interested business users, since business users of the online intermediation CPS Booking.com are not required to use BNSA.¹²¹ Business users who opt to use BNSA are required to sign up, create and

¹¹³ Form GD, paragraph 38 and 39.

¹¹⁴ Form GD, paragraphs 35, 43, and 69.

¹¹⁵ Form GD, paragraphs 25 and 26.

¹¹⁶ See <https://partner.booking.com/en-us/help/commercial-insights/keys-success/all-you-need-know-about-booking-network-sponsored-ads> last accessed on 11 March 2024.

¹¹⁷ BHI's reply of 4 April 2024, paragraphs 11-13.

¹¹⁸ See <https://partner.booking.com/en-us/help/commercial-insights/keys-success/all-you-need-know-about-booking-network-sponsored-ads> last accessed on 19 April 2024.

¹¹⁹ Form GD, paragraphs 15 and 26.

¹²⁰ Form GD, paragraph 39 letter (b).

¹²¹ See <https://partner.booking.com/en-us/help/commercial-insights/keys-success/all-you-need-know-about-booking-network-sponsored-ads> last accessed on 10 March 2024.

manage advertising campaigns and track campaign performance through a separate interface¹²² and account,¹²³ and to adhere to specific BNSA terms and conditions.¹²⁴

- (70) According to Sections D(2)(b) and D(2)(c) of the Annex to Regulation (EU) 2022/1925, services offered by an undertaking are to be considered distinct where they are used for different purposes by end users or business users or both, even if their end and business users may be the same and even if they may be provided in an integrated way or belong to the same category of CPSs. Therefore, for the reasons explained above, BNSA constitutes a distinct service from the online intermediation CPS Booking.com since it serves a different purpose.
- (71) As regards BHI's claim that considering BNSA as a self-standing service provided by BHI, encompassing all features and elements outlined in recital 60, would yield an impractical outcome with regards to compliance with Regulation (EU) 2022/1925,¹²⁵ the Commission observes that compliance with the prohibitions and obligations laid down in that Regulation by designated gatekeepers in relation to their relevant CPSs cannot affect or condition the delineation and qualification of the services provided by such gatekeepers as CPSs and their designation for the purpose of said Regulation.
- (72) In light of the above, the Commission considers that the service BNSA provided by BHI is a service distinct from the online intermediation CPS Booking.com, irrespective of whether or not that service constitutes, in itself, a CPS within the meaning of Article 2, point (2), of Regulation (EU) 2022/1925 and that the display of ads on Booking.com should be considered as part of both the online intermediation CPS Booking.com and the distinct service BNSA. Moreover, the Commission considers that, since BHI has indicated that BNSA would not meet the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925 it is not necessary to determine whether that service constitutes a CPS within the meaning of Article 2, point (2), of Regulation (EU) 2022/1925.

5.1.1.3. Conclusion

- (73) For the reasons set out above, the Commission concludes that Booking.com constitutes an online intermediation service within Article 2, point (5), of Regulation (EU) 2022/1925 and therefore a CPS within the meaning of Article 2, point (2), subpoint (a), of that Regulation.

5.1.2. *Thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925*

5.1.2.1. *The Undertaking's view*

- (74) BHI indicates that it meets the market capitalisation threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925. As summarised in Table 1 below, BHI indicates that it generated an annual Union turnover in excess of EUR 7.5 billion in the last financial year and that its average market capitalisation or its equivalent fair market value in the last financial year was above the threshold of EUR 75 billion.¹²⁶

¹²² Accessed via <https://bookingnetwork.koddi.com/>

¹²³ Accessed via <https://koddi.io/#/bookingnetwork/login>

¹²⁴ Booking Network and Koddi Terms and Conditions for Sponsored Ads available at <https://info.koddi.com/hubfs/Booking.com/Booking%20Network%20Priceline%20and%20Koddi%20Terms%20and%20Conditions%20for%20Sponsored%20Ads.pdf> last accessed on 10 March 2024

¹²⁵ BHI's reply of 4 April 2024, paragraph 10.

¹²⁶ Form GD, paragraphs 89 and 90.

Table 1: Annual Union turnover (in EUR billion) and average market capitalisation submitted by BHI (in EUR billion)

Turnover based on the booker's location			Turnover based on the booker's destination			Average market capitalisation
2021	2022	2023	2021	2022	2023	2023
[<7.5 bn]	[<7.5 bn]	[>7.5 bn]	[<7.5 bn]	[<7.5 bn]	[>7.5 bn]	95 bn

Source: Form GD, paragraphs 89 and 90.

- (75) In addition, BHI indicates that its online intermediation CPS Booking.com is available in all Member States of the EU.¹²⁷
- (76) As summarised in Table 2 below, BHI further indicates that its online intermediation CPS Booking.com meets the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925.¹²⁸
- (77) Finally, in relation to Article 3(2)(c) of Regulation (EU) 2022/1925, as summarised in Table 2 below, BHI indicates that its online intermediation CPS Booking.com has met the thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 in each of the last three financial years.¹²⁹

Table 2: Monthly active end users and yearly active business users of BHI's online intermediation services established or located in the Union in each of at least three financial years

Financial year	Monthly active end users	Yearly active business users
2021	[>45M]	[>10 000]
2022	[>45M]	[>10 000]
2023	[>45M]	[>10 000]

Source: Form GD, paragraphs 99 and 100.

5.1.2.2. The Commission's assessment

- (78) Based on the information provided by BHI, the Commission considers that BHI, meets the market capitalisation threshold laid down in Article 3(2)(a) of Regulation (EU) 2022/1925, as well as the requirement laid down in that provision that the CPS at issue, i.e., Booking.com, is offered in at least three Member States.
- (79) Moreover, based on the information provided by BHI,¹³⁰ the Commission considers that BHI's online intermediation CPS - Booking.com - meets the monthly active end users and the yearly active business user thresholds laid down in Article 3(2), point (b) of Regulation (EU) 2022/1925. Finally, based on the information provided by

¹²⁷ Form GD, paragraph 91.

¹²⁸ Form GD, paragraphs 99 and 100.

¹²⁹ Form GD, paragraphs 99 and 100.

¹³⁰ Form GD, paragraphs 99 and 100.

BHI, the Commission considers that BHI's online intermediation CPS - Booking.com - meets the requirement laid down in Article 3(2)(c) of Regulation (EU) 2022/1925 that the monthly active end users and the yearly active business user thresholds laid down in Article 3(2)(b) of Regulation (EU) 2022/1925 were met in each of the last three financial years.

- (80) As regards the thresholds laid down in Article 3(2)(b) and (c) of Regulation (EU) 2022/1925, it is not necessary to determine whether BHI's approach to identifying and estimating monthly active end users and yearly business users of its online intermediation CPS Booking.com is sufficiently inclusive in line with the relevant definition in Section E of the Annex to Regulation (EU) 2022/1925, given that the aforementioned thresholds are met based on the information provided by BHI.

5.1.2.3. *Conclusion*

- (81) For the reasons set out in recitals 38 to 73 and 78 to 80 above, the Commission concludes that Booking.com constitutes an online intermediation CPS within the meaning of Article 2, point (2), subpoint (a), of Regulation (EU) 2022/1925 and that BHI meets the thresholds laid down in Article 3(2) of Regulation (EU) 2022/1925 in relation to that CPS. Consequently, BHI is to be designated as a gatekeeper pursuant to Article 3(4) of Regulation (EU) 2022/1925 in relation to the online intermediation service CPS Booking.com.

6. CONCLUSION

- (82) In light of the above, the Commission concludes, pursuant to Article 3 of Regulation (EU) 2022/1925, that BHI is to be designated as a gatekeeper and that the following CPS of BHI is individually an important gateway for business users to reach end users: its online intermediation service Booking.com.
- (83) The findings in this decision are based on the information available to the Commission at the time of its adoption. They are without prejudice to the possibility that the Commission may reconsider or amend this Decision, pursuant to Article 4(1) of Regulation (EU) 2022/1925, should there be any substantial change in any of the facts on which this Decision was based, or if this decision was based on incomplete, incorrect, or misleading information.

HAS ADOPTED THIS DECISION:

Article 1

BHI is designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925.

Article 2

The following core platform service of BHI is an important gateway for business users to reach end users within the meaning of Article 3(1), point (b), of Regulation (EU) 2022/1925:

- (a) BHI's online intermediation service Booking.com.

Article 3

This Decision is addressed to Booking Holdings Inc., 800 Connecticut Ave, Norwalk, Connecticut, 06854, United States of America.

Done at Brussels, 13.5.2024

Signed
For the Commission
Margrethe VESTAGER
Executive Vice-President