

Antitrust Advisory

OCTOBER 15, 2026

EU Court's Booking/Etraveli Ruling Brings Heightened Merger Risk for Dominant Companies

By [Jens-Olrik Murach](#), [Irene Fraile](#), [Lydia Rachianioti](#) and [Jonathan Kress](#)

On 9 September 2026, the European Union General Court upheld the European Commission's (EC) decision prohibiting Booking Holdings Inc.'s proposed acquisition of Etraveli Group AB ([Case T-1139/23](#)).

The general court confirmed the EC's first merger prohibition based on the novel theory of harm of 'reverse leveraging' in a conglomerate merger. Under this theory, a company may anticompetitively reinforce its dominant position in one market by acquiring a company in another market, even one with a moderate position, to make its own position less contestable, such as through network effects.

The EC's Prohibition Decision

Booking, a provider of hotel and other online travel agency (OTA) services, proposed to acquire Etraveli, an OTA specialising in flight bookings. The EC assessed the case as a conglomerate merger combining activities in separate product markets, namely Booking in the hotel OTA services market and Etraveli in the flight OTA market.

The EC found that Booking held a dominant position in the hotel OTA market, with a market share above 60% and growing. Booking's services would outperform those of its competitors, and the company would benefit from network effects, customer inertia, and advertising spendings that rivals could not match. By contrast, Etraveli operated in a relatively fragmented flight OTA market, in which the market leader held shares of 20–30%, followed by Etraveli and another provider with 10–20% each.

The EC blocked the deal by applying a novel conglomerate theory of harm. A traditional theory of harm would have focused on the risk that Booking would leverage its dominant position in the hotel OTA market to gain an anticompetitive advantage in Etraveli's flight OTA market, using practices such as tying or bundling. Instead, the EC applied what it called 'reverse leveraging' and found that Booking would use Etraveli's complementary flight-booking business to reinforce its existing dominance in the hotel OTA market by raising barriers to entry or expansion in that market.

As flight bookings generated significant traffic and were often the first step in planning a trip, Etraveli would have given Booking a key customer acquisition channel, steering more customers to its hotel OTA business. The additional traffic to Booking's platform would have strengthened its network effects and increased barriers

to entry and expansion, making it harder for other OTAs to compete.

The General Court's Main Reasons for Upholding the EC's Decision

Booking challenged the decision before the general court with three pleas and various complaints. The court confirmed the EC's decision with a 70-page-strong ruling.

Departure from the non-horizontal merger guidelines

Booking argued that by resorting to the novel reverse leveraging theory of harm, the EC had departed without justification from its 2008 non-horizontal merger guidelines which require the EC to demonstrate that anticompetitive foreclosure is likely.

The court rejected this argument. It held that the guidelines set out only a general framework for the assessment, without limiting the EC in exercising its discretion to all the elements they discuss. The court also held that the guidelines reserve the EC's right to rely on theories of harm other than those expressly set out in them. Although the EC would be bound by the notices issued in the area of merger control, the competitive analysis must only be based on an overall assessment of the foreseeable impact of a merger, though not all the elements identified in the guidelines would be relevant in every case. The court also noted that the case concerned digital markets with specific characteristics which could give rise to concerns that were not sufficiently considered when the guidelines were adopted.

On substance, the court found the EC's approach consistent with the concept of foreclosure defined in the guidelines. The test the EC applied would be comparable to the one described in the guidelines. Interestingly, the court appeared to accept that Booking's ability and incentive to cross-sell services would be sufficient to establish a foreclosure strategy. The court also held that the EC's theory of reverse leveraging was in line with the generic concept of leveraging used in the guidelines and that the direction in which the leveraging effect occurred would be irrelevant.

Protection of dominant position is sufficient

Another important aspect of the judgment involves the applicable test for prohibiting a concentration. Booking argued that the contested decision did not meet the standard of proof required to demonstrate a significant impediment to effective competition (SIEC). In rejecting this argument, the court clarified that the strengthening of a dominant position does not in itself automatically amount to an SIEC. The court confirmed, however, that the finding that the transaction would make Booking's dominant position in the hotel OTA market less contestable was sufficient for the assumption of an SIEC.

The EC did not have to establish that the concentration would further reduce the already low level of competition, only that it would entrench that level of competition to the benefit of the parties and to the detriment of existing and potential competitors and consumers. The SIEC follows from the low level of competition becoming consolidated and perpetuated.

In applying these principles, the court sided with the EC that, in a market characterised by strong network effects, even with a relatively small increase in market shares, Booking was capable of strengthening the network effects, with a chilling effect on the already weak competitive dynamics, resulting in the consolidation of its dominant position. Further, by adding a flight channel to its hotel channel, Booking would have created a travel ecosystem that competitors would find difficult to replicate.

Notably, the court held that the following factors did not undermine the finding of an SIEC: The fact that (1) it could not be ruled out that the share increment on the hotel OTA market for Booking would be limited to only a few tenths of a per cent; (2) the EC did not establish that the growth which Booking could achieve would lead hotels to transfer an additional part of their hotel room inventory to Booking's platform or to terminate their commercial relationship with other hotel OTAs; and (3) such growth would enable Booking to increase the commissions received from hotels. Ultimately, as the court clarified, the EC may base a finding of an SIEC on qualitative evidence alone, without supporting quantitative evidence, provided that it is sufficiently cogent, consistent, and credible.

Takeaways

Although an appeal to the Court of Justice remains possible, the judgment is highly instructive for M&A activities of companies holding a dominant market position. Given that horizontal and vertical deals for these companies are almost by definition challenging, historically, conglomerate mergers were considered to be a benign means of external growth. Now, by proposing a relatively low bar for the finding of an SIEC, the judgment adds further red tape to diversification deals by dominant companies.

The court made clear that the merger guidelines are just a framework and should not be taken by the letter when assessing a potential deal. That said, the draft new merger guidelines currently under consultation already reflect the EC's novel 'ecosystem' and 'entrenchment' theories of harm partially validated by this decision. The court also held that the EC does not necessarily have to demonstrate that the conglomerate deal would result in an increase of market share on the dominated market or more generally in an increase of market dominance. Moreover, the court confirmed that it was sufficient that the deal would just make the market position of the dominant acquirer less contestable. In simplified terms, the red line appears to be the expected preservation of how things were, rather than an expected growth in the dominated market.

The decision obviously concerns a specific segment of the digital economy with particular market dynamics and a very strong player on that market. Therefore, broader conclusions should be taken with a pinch of salt. However, against the background of a growing trend of conglomerate mergers in the tech space, as well in the biotech, pharmaceutical, and medical devices industries, the decision carries considerable weight. It follows for parties to such deals that they should not assess the effects of a deal formulaically only based on the guidelines but by thinking outside the box of an individual case and considering the specific dynamics of the underlying industry.

In particular, parties should document and quantify potential efficiencies and other mitigating factors thoroughly and present them to the EC in a substantiated way. As a reminder, the court rejected Booking's claim that the transaction would benefit hotels and consumers by creating a one-stop shop because the parties had not elaborated on why this would result in efficiencies in the merger control proceeding before the EC.



Jens-Olrik Murach

Partner, Brussels
jens.murach@alston.com
+32 2 486 8826



Irene Fraile

Counsel, London/Brussels
irene.fraile@alston.com
+44 20 8161 4375



Lydia Rachianioti

Senior Associate, London
lydia.rachianioti@alston.com
+44 20 8161 4353



Jonathan Kress

Associate, Brussels
jonathan.kress@alston.com
+32 2 486 8827

You can subscribe to future Antitrust advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you have any questions, or would like additional information, please contact one of the [attorneys](#) with our [Antitrust Team](#).

ALSTON & BIRD

Atlanta | Brussels | Century City | Charlotte | Chicago | Dallas | London | Los Angeles | New York | Raleigh | San Francisco | Silicon Valley | Washington, D.C.