

## **TUI Group Views – Digital Services Act Package**

### **Executive Summary**

#### **Liability and platform responsibility**

TUI supports a revision of the liability regime under the e-Commerce Directive, in light of the opportunity to develop a more differentiated system with legal clarity for all actors. We understand the ambition to expand transparency and due diligence requirements for platforms, but also warn of overburdening smaller operators.

#### **Ex-ante instrument**

TUI observes that **specific market players have established themselves as gatekeeper** in the EU online environment, by virtue of their large user bases, user lock-in and network effects (a.o.). This results in these players having **rulemaking powers** in some markets, limiting competition, innovation and consumer welfare. TUI believes that while the EU's online travel and tourism market currently offers the many SMEs of the sector an opportunity to effectively reach customers, certain **concerning developments regarding systemic operators and gatekeeping activities** can be observed.

In light of this, TUI underlines that **only a very limited number of systemic operators should be regulated** via the ex-ante instrument. Their status as systemic operator should be determined on the basis of **network effects, user lock-in and a lack of available alternatives**. Factors such as revenue and wide geographical coverage should not be used. **A wide regulation** of non-systemic platforms (as already pursued in the Platform-to-Business Regulation) **should be avoided** at all costs.

With this scope in mind, practices such as intra-platform self-preferencing and practices aimed at excessive user lock-in should be prohibited for systemic operators, while mandatory data sharing obligation and interoperability measures should be instated, so that all platforms, suppliers and consumers are treated fairly online.

#### **New Competition Tool**

Complementing the ex-ante instrument and the existing competition policy framework, the New Competition Tool should be developed as an instrument of inquiry and information gathering. It should not be equipped with additional powers to impose remedies, as this would lead to duplication and reduced legal clarity.

**It is our view that the Digital Services Act should set out a clear set of rules and frameworks for the digital (tourism) economy for the coming years. The rights and responsibilities of platforms, suppliers and users should further be clarified, in the interest of maintaining a consumer-friendly and competitive environment for all actors. TUI remains committed to actively contributing to the ongoing regulatory debate surrounding the digital travel and tourism economy.**

## Introduction

TUI Group is the world's leading integrated tourism group operating in more than 100 destinations worldwide. The company is headquartered in Germany. TUI offers its 28 million customers integrated services from a single source. Apart from the expansion of its core business with hotels, cruises and destination activities, TUI is increasingly investing in digital platforms.

In this context, TUI welcomes the opportunity to comment on the European Commission's plans for a Digital Services Act package, which will define the EU's Digital Single Market for the years to come. As the leading European tourism player and an established digital business, which is further expanding its platform business model, we are responding to this consultation solely based on our extensive experience and observations in the travel & leisure market and its connected fields. As such, all responses should be considered in light of this particular market, as TUI is not giving input on issues not directly related to its commercial activities.

TUI welcomes the EU institutions' ambitions regarding regulation and enforcement in the Digital Single Market. The tourism and leisure travel sectors have experienced fundamental changes as a result of ongoing digitalisation and resulting new business models over the past decade. Much of this change has been to the benefit of consumers and travelers, but also particularly the suppliers of the sectors (such as hotels), which are most often SMEs<sup>1</sup>. Nonetheless, the online tourism ecosystem has not been completely immune to the challenges of the wider digital economy regarding platform competition and abusive practices. It has become evident that a reconsideration of EU policy approaches to platform competition and the wider digital ecosystem is necessary.

In light of this, TUI particularly supports a positive revision of the eCommerce-Directive of 2000<sup>2</sup>, as its provisions are no longer suitable for today's eCommerce environment. TUI also supports the introduction of an additional regulatory instrument to ensure a level playing and fair competition in the Digital Single Market.

## Liability regime and platform responsibility

TUI agrees with the prevailing view among digital economy stakeholders that the eCommerce Directive (eCD) and its fundamental principles have been crucial to the successful development of the EU's Digital Single Market and should not be challenged as such. The safe harbor principle and the concept of the ban on general monitoring obligations should thus be safeguarded in the revision of the eCD as part of the Digital Services Act.

Nonetheless, TUI is of the view that legal clarifications are necessary to ensure a proper functioning of the Single Market and give greater legal certainty to established and newly arising business models.

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<sup>1</sup> Ecorys, EASME, *Study on the Contribution of Tourism to Local and Regional Development – Evidence from the European Structural and Investment Funds 2012-2018* (2020)

<sup>2</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market

Art. 14 of the eCD, relating to liability (exemptions) for hosting providers, is of particular interest for tourism platforms, which (partially) rely on third-party content.

In this context, the stipulations of Recital 42 of the eCD and its resulting legal interpretations should be reconsidered. Specifically, the binary distinction between passive and active hosts should be replaced with a more precise and gradual classification, based on the actual degree of knowledge and control of third party content. Here, TUI particularly argues for the possibility of retaining the liability exemption, while holding limited control over content, e.g. through basic editorial powers (supervision the form of description text, but not the included information). The concept of knowledge of falsehoods or illegality of the content is key, in our view. Conversely, a differentiation among different types of hosting providers should be approached cautiously, although an exclusion of hosting provider directly involved in the handling and provision of third party services/goods (such as large E-Commerce market places for goods) from the liability exemption may be beneficial.

A revision as outlined above would enable online tourism operators to conduct their business with legal clarity, while ensuring platforms are held liable where they have relevant degrees of knowledge and control over illegal content.

An aspect to be carefully analyzed is the capacity of platforms of various sizes to adhere to the same rules. As with competition of and on platforms under the potential ex-ante instrument, it may be worthwhile to contemplate a distinction of the degree of (legal) platform responsibility, based on very large (systemic) platforms' ability to adhere to strict regulations with relative ease, while smaller competitors may struggle significantly.

Regarding an potential expansion of due diligence and transparency requirements for platform operators in the context of the Digital Services Act, TUI underlines the importance of avoiding overburdening administrative costs. In this respect, an asymmetric approach as outlined above may be suitable to avoid a consolidation of the market power of very large digital businesses, based on their ability to more easily comply with regulatory requirements than smaller operators or market entrants.

## Ex-ante regulation of large platforms

Our extensive experience tells us that in the EU online environment, certain **players hold significant market power** and may be judged to be **performing a gatekeeping role also in the tourism sector**, specifically in tourism advertising and marketing. Here, we see that even larger online operators in the tourism sector have developed a dependence on a very limited number of platforms in terms of their traffic in general, whether organic or paid (which is clearly reflected in their marketing and advertising spending).

As such, we are witnessing that the current state of the online travel advertising and distribution market is characterized by strong systemic actors, who act as **bottlenecks for all economic operators wishing to offer tourism services online**. These systemic actors oversee entire integrated platform ecosystems, which do not only operate in adjacent, but also completely unrelated markets.

In its most extreme form, we can observe how **Google is able to leverage** its search engine, consumer review channels, social media and app store to significantly strengthen its position as an **unavoidable partner for online travel advertising and distribution**. Returning to the concept of bottlenecks, we observe that most customers begin their holiday booking process on Google's search engine. Google's extremely strong position in the search engine and consumer reviews channels (a.o.) thus enables it to control the beginning of many booking processes, making an advertising/marketing relationship with Google not only vital, but indeed completely unavoidable for many online tourism operators.

The situation regarding the online travel and tourism market itself may be much less clear-cut, as some research points to a relatively competitive landscape, in which consumers use a wide variety of platforms before making a booking decision.<sup>3</sup> Nonetheless, some may consider that certain large travel platforms are beginning to exhibit certain characteristics of systemic actors. **The situation of the online travel and tourism market should be closely appraised and considered** in the drafting of the ex-ante regulatory instrument.

In light of this, **following are the factors** which TUI considers to be **relevant for the definition** of gatekeeper/systemic actors in the online travel sector. These should not be cumulative in all cases, but rather guide an individual assessment by regulators:

- **Significant barriers to entry:** As identified in the Commission's tender for a support study on platforms with significant network effects acting as gatekeeper, parts of the digital economy are characterized by an accumulation of a critical amount of users and data by certain operators.<sup>4</sup> TUI considers this to be one of the defining characteristic of systemic actors, which render market entry or scale-up of competitors extremely difficult, by virtue of their large competitive advantage. This competitive advantage is a result of systemic actors' economies of scale, with their cost per user often approaching zero, and their economies of scope, enabling them to gain efficiencies from offering several unrelated services.<sup>5</sup> In the context of such market dynamics, data accumulation is a relevant element to take into account.
- **Market power:** Another key feature of systemic actors is, in line with the above description of economies of scope, their ability to leverage their market power in a specific market (e.g. search engines) into adjacent or even unrelated markets (e.g. transportation meta-search). Such leveraging of market power interplays with other gatekeeper characteristics use their significant data advantages over competitors and exclusionary practices to disrupt competition.
- **Lock-in of users:** In large parts of the digital economy, systemic actors prevent businesses and users from multi-homing through the use of tied products and technical barriers (a.o.). As "switching and multi-homing by users of platforms can be the antidote to strong network effects"<sup>6</sup>, TUI deems it to be a decisive criterion for the definition of systemic actors. Locking-

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<sup>3</sup> Milward Brown Digital, Expedia Media Solutions, *Traveler Attribution Study* (2015)

<sup>4</sup> European Commission, *Platforms with significant network effects acting as gatekeeper Impact assessment support study - VIGIE 2020/0630 under Framework contract SMART 2019/0024 Lot 1* (2020)

<sup>5</sup> Jacques Crémer, Yves-Alexandre de Montjoye, Heike Schweitzer, European Commission, *Competition policy for the digital era* (2019)

<sup>6</sup> Digital Competition Expert Panel, Jason Furman, *Unlocking digital competition* (2019)

in users and businesses is a crucial element of systemic actors' ability to act as private regulators of the digital economy. In the online travel and tourism market, multi-homing of business users is a particularly crucial element, as it enables customers and businesses to access a wide range of demand of supply and ensures increased independence from specific booking platforms.

The factors outlined above allow systemic actors to play roles as **unavoidable partners** in a particular market and act as **private regulators of the digital economy**, to the detriment of users, suppliers and innovation.

We deem to be the following **factors not to be relevant for the definition** of gatekeeper/systemic actors in the online travel sector:

- **Accumulation of data:** travel and accommodation platforms accumulate a significant amount of data and information on their customers. This data is highly valuable to all operators, as it serves to improve the services on offer (e.g. through targeted recommendations and the ability to provide the right information at the right time). In line with European and national data protection legislation, TUI also follows this approach by using collected data to significantly improve a range of services. As nearly all online travel and tourism platforms accumulate significant data, it is spread among a range of operators small and large in size. It would be counterproductive and incorrect to define such data collection as a criterion for a gatekeeping role.
- **Geographical scope:** by their very nature, travel and accommodation platforms (regardless of size) operate in a wide geographical scope. This is not an indication of dominance or gatekeeping in any way. We deem such a criterion to be completely inappropriate to determine gatekeeper status in this market.
- **Share of market revenue:** the market revenue created and impact on a particular sector may be a relevant tool to determine gatekeeper status, but needs much clearer delineation. Remedies for abusive practices in the context of market dominant positions are already covered in EU competition law and should not simply be duplicated here. The issue of market definition is also of significance, as already existing issues in defining digital markets should not be carried over to the ex-ante tool. Depending on the market definition, medium-sized platforms could be defined as systemic and thus overburdened with regulation. The approach to market definition should thus be cautious and trend towards a broad definition.
- **Size of organisation:** we deem factors related solely to the size of an organisation to be completely inappropriate to determine whether an economic actor can be characterized as systemic. Considering the annual revenue generated may completely distort the image of the role of a particular operator, as these factors are often the result of unrelated (e.g. offline) activities. In general, a gatekeeper cannot simply be defined by its size, but rather by its predominant influence over a significant share of users and the digital economy.

As with dominant companies under competition policy, an examination of the practices and abuses of systemic actors in the digital economy is necessary. The main concerning practices related to data usage and sharing surround established strategies by systemic operators to **effect consumer lock-in and strengthen their network effects in an effort to significantly raise barriers of entry** to any market and thus cement their dominant and gatekeeping position.

An operator such as Google has succeeded in attracting a large number of single-homing users, also specifically relating to the travel and tourism market. Here, the **dominance of Google's search engine is leveraged** and incentivises users to utilise other Google services, including price comparison engines and customer review services, also through joint data usage and an effective integration of a variety of platform services.<sup>7</sup> As a result of these practices, **users often find themselves confronted with significant switching costs** when contemplating a multi-homing approach (e.g. a different search engine does not have the necessary data to make highly customized recommendations)<sup>8</sup>. These effects thus do not only affect competition in the single market (i.e. among search engines), but give an operator such as Google the necessary data advantage to aggressively enter an adjacent market, thus potentially also tipping it in its favour to the detriment of consumer choice and innovation. TUI observes that such a scenario is possible for the online travel and tourism market, in which the current range of metasearch engines and booking platforms may be pushed aside by an operator with such a significant single-homing user base, network effects and data advantage.

TUI is generally of the view that the online travel and tourism market should be closely monitored regarding the practices outlined above and the influence of systemic actors. Specific concerning trends are already observable, which may pose a risk to future competition in this particular market. Specifically, certain **corporates active in the online travel markets operate multiple metasearch and booking platforms under a single umbrella and may be able to leverage an integration** of these platforms to their benefit, thus reducing competition and establishing significant network effects. In this case, such travel platform ecosystems could result in harmful practices, such as **self-preferencing of associated platforms**. As already observed by the Commission in the Google Search (Shopping) case<sup>9</sup>, there is a clear **incentive for gatekeeper to give their services favourable ranking and display** within search engines, to secure users' attention and clicks. These practices could also be pursued by newly arising gatekeepers in the online travel and tourism market, meaning users would experience similar lock-ins and switching costs as is currently the case for Google, due to the possible integration and joint usage of customer data. In this context, TUI highlights the need for the responsible authorities to closely monitor market developments, in light of the introduction of a possible ex-ante instrument.

Nonetheless, TUI would like to underline that **self-preferencing poses a major challenge only in markets dominated by systemic actors**.<sup>10</sup> In competitive and open markets, self-preferencing can be a legitimate and non-abusive business practice to increase efficiencies and recuperate the costs

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<sup>7</sup> Australian Competition & Consumer Commission, *Digital Platforms Inquiry* (2019)

<sup>8</sup> Néstor Duch-Brown, Joint Research Centre, European Commission, *The Competitive Landscape of Online Platforms* (2017)

<sup>9</sup> Case AT.39740 Google Search (Shopping)

<sup>10</sup> Expert Group for the Observatory on the Online Platform Economy, European Commission, *Progress Report - Work stream on Differentiated treatment* (2020)



involved in establishing a prominent digital presence. As mentioned in the Special Advisers' Report: "imposing far-reaching conduct rules on all platforms, irrespective of market power, could not be justified, given that many types of conduct – including potentially self-preferencing – may have pro-competitive effects"<sup>11</sup>. Further, a competitive market offers customers and suppliers the opportunity to switch to other platforms, should they be dissatisfied with their current provider's business model. **A general prohibition of self-preferencing should thus be strictly avoided**, as it would impede the further digitalisation of the tourism sector by removing sensible incentives.

To effectively remedy the outlined issues surrounding systemic actors and abusive practices, TUI suggests the following regulatory measures and obligations:

- **Limitations on self-preferencing and differentiated treatment:** it is clear that self-preferencing of vertically integrated platforms can be a significant issue. While this topic has not yet reached the core of TUI's business, it is evident that many players in the online travel and tourism market are already heavily affected and the situation is likely to worsen, as systemic operators extend their reach. A worrying example of this are the practices outlined in the complaint lodged with Executive-Vice President Vestager by vacation rental intermediation services in February 2020.<sup>12</sup> Additionally, such practices could pose an even more significant challenge for the online travel and tourism market, as established market players will further seek integration of their booking and metasearch services. Thus, it is crucial that a prohibition of intra-platform self-preferencing is considered as a regulatory tool to limit the influence of gatekeeper. Nonetheless, TUI is strictly opposed to a wider prohibition of self-preferencing practices by non-systemic platforms, as these offer important benefits and incentives for the crucial digital transition of the tourism sector.

In addition, when considering non-integrated intermediation platforms acting as gatekeeper, recommendation biases may be purposefully introduced, to maximize platform profits by preferring sellers which pay higher commissions, to give a concrete example.<sup>13</sup> Such practices can result in very similar disadvantages for suppliers and customers as pure self-preferencing and should thus be treated similarly.

- **Prohibition of practices aimed at excessive consumer lock-in:** a further critical regulatory tool is a potential prohibition on practices aimed at excessive consumer lock-in, which seek to raise the costs of switching service providers. This is not to suggest that consumer-lock in should be prohibited as a general rule, as it is important for all types of (non-systemic) platforms to give consumers incentives to stay within their ecosystem. Nonetheless, in the case of gatekeeper, excessive consumer lock-in has extremely negative effects on innovation, competition and consumer choice, as it makes it difficult for consumers to leave the

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<sup>11</sup> Jacques Crémer, Yves-Alexandre de Montjoye, Heike Schweitzer, European Commission, *Competition policy for the digital era* (2019)

<sup>12</sup> Trade associations and companies active in the short-term rental sector, *Our concerns about Google's preferencing and tying of its new product Google Vacation Rentals within general search results pages* (2020)

<sup>13</sup> Expert Group for the Observatory on the Online Platform Economy, European Commission, *Progress Report - Work stream on Differentiated treatment* (2020)

gatekeeper' ecosystem without losing significant functionality and convenience in the wider online market and environment.

- **Obligation to instate 'data silos':** to specifically tackle the issue of excessive data advantages by systemic actors being leveraged from one market to another, a so-called data silo rule would be a suitable remedy. This would mean that an operator overseeing a platform ecosystem would be obliged to instate a data silo structure, thus prohibiting the usage of specific datasets for certain business purposes.
- **Data portability obligation:** as much of the gatekeeper' power revolves around and derives from user data, a data portability obligation would be a constructive regulatory tool. More specifically, an obligation to reduce user lock-in via API solutions, would enable travel and tourism consumers to easily and safely port their data to other platforms, in line with EU data protection legislation. Such an obligation for systemic platforms would reduce the risk of locking in users by lowering switching costs and thus also lowering barriers of entry for new market entrants.
- **Data access obligation:** the Commission should further seek to address the issue of systemic operators leveraging a dominant position in one market to strengthen their position in an adjacent or even non-related market, by using the significant data advantages they have accrued elsewhere. The economies of scale and scope involved are so large for these systemic operators that real competition can no longer occur in some instances and a regulatory remedy (beyond EU competition law) has become necessary to ensure a functioning market for consumers and competitors. This problem may be addressed via obligatory data access for gatekeeper' competitors and users. As laid out in Executive Vice-President Vestager's Special Advisers' Report: "In order to enable formerly disadvantaged competitors to regain strength, it may (...) be necessary to give them access to the dominant platform's competitively relevant data resources"<sup>14</sup>. For the travel and tourism sector specifically, such data should be commercially relevant to act as a remedy (e.g. data related to search terms, consumer preference and the supply of touristic services). For tourism business users already partnering with systemic operators (e.g. in marketing), the possibility to export relevant datasets (incl. post-click and post-view data on paid advertisements) and allow for aggregation with third-party data would be particularly useful, as this could allow a more accurate analysis of user booking journeys, to name an example.

TUI believes that the outlined prohibitions and obligations should be comprehensively **enumerated in a list of potential remedies**. After having designated a platform as a gatekeeper/systemic operator, the European Commission should then determine which regulatory tools are to be applied on a **case-by-case basis**.

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<sup>14</sup> Jacques Crémer, Yves-Alexandre de Montjoye, Heike Schweitzer, European Commission, *Competition policy for the digital era* (2019)



As the business models, characteristics and specific markets of gatekeeper vary widely, the Commission should apply the **possible remedies in a targeted manner, based on the gatekeeper's abusive practices**. As such, not all available options should be applied in all cases. Platforms should be able to provide a proper justification for their practices, which must be reviewed fairly in light of their impact on consumers, suppliers and other (business) customers before any decisions are taken regarding their status as gatekeeper. After decisions have been taken, full judicial review must also be available, in line with the application of EU competition law. Additionally, a periodical review of the gatekeeper designation and imposition of remedies must be mandatory.

Consequently, **TUI does support case-by-case remedies**, although these should be based on a pre-defined list of prohibitions and obligations, attached to a suitable regulatory procedure. We do not support regulatory intervention with remedies which have not been specified by the European legislator. Following this approach, regulators, potential gatekeeper companies, competitors and consumers would have a reasonable degree of certainty regarding how the ex-ante regulation may affect their business and activities in the digital economy. While we do understand the desire to implement highly targeted remedies for individual systemic operators, the procedure outlined above strikes a positive balance between individualised remedies and certainty for all involved actors.

Considering the nature of systemic operators in the European digital economy and the potential ex-ante instrument's close interaction with conventional EU competition policy, as well as the New Competition Tool (NCT), **TUI is of the view that enforcement must be handled by a single authority**. In the interest of avoiding incoherent national enforcement and a resulting fragmentation of the Digital Single Market, **DG Competition of the European Commission should be entrusted to enforce the novel rules under the ex-ante instrument**. This approach would ensure a coherent application of the rules in the Digital Single Market, while also contributing to a coherent interpretation and interplay between applicable competition rules and the ex-ante instrument.

An additional point of consideration is the **overlap between the ex-ante instrument and the New Competition Tool**. We see an imminent danger of significant overlap between these two instruments in the regulation of large platforms, which could create legal uncertainty and an incoherence in application. The Commission must very clearly define how the ex-ante regulatory framework and the New Competition Tool will interact and how **overlap can be avoided**. In this context, TUI would support **a stronger and more clearly defined role for the ex-ante instrument**, which could be complemented by additional **market investigation powers under the New Competition Tool** (without the possibility to impose case-by-case remedies). In our view, the **more distinct and clearly defined scope of the ex-ante instrument**, focusing entirely on systemic operators, leads it to be **more appropriate for the imposition of remedies** in the interest of safeguarding competition in the Single Market.

## New Competition Tool

In TUI's view, the policy approaches to (digital) competition regulation under the New Competition Tool and ex-ante instrument are closely interrelated and should be considered in this context. These instruments should be complementary in nature.

As such, we believe that the New Competition Tool should serve as a market inquiry instrument, which enables the regulator to gather information through requests, inspections and expert consultations. Such activity should support and complement the imposition of remedies under the ex-ante instrument. The NCT should not allow for the imposition of remedies on market operators, whether structural, non-structural or of hybrid nature.

This approach to the NCT would ensure a proper function and the creation of synergies between ordinary competition policy (focused on dominant operators), the ex-ante instrument (focused on non-dominant operators in the traditional sense) and the NCT itself (focused on market inquiry), thus avoiding duplication and creating legal clarity, while further reinforcing regulators' ability to ensure a competitive Single Market.

## Evaluation of policy options

### Digital Services Act Package: ex-ante regulatory instrument

#### **Option 1: Revise the horizontal framework set in the Platform-to-Business Regulation:**

TUI is **strongly opposed to the idea of revising the P2BR as a method to** implement ex-ante regulatory tools for two reasons. Firstly, the P2BR has not been in force long enough to justify any revision. While the Commission states that "this revision of the Platform-to-Business Regulation would not seek to review the current provisions", any alteration of the Regulation before it has been evaluated or even applied for a significant amount of time would be counterproductive and inconsistent with the principle of evidence-based policymaking. Secondly, the P2BR was devised as a horizontal regulatory instrument, providing for applicable rules and guidelines for all platforms in the Digital Single Market and thus creating a solid foundation for further regulation. This stands in fundamental opposition to the targeted nature of the possible ex-ante instrument, which would only affect a very limited number of systemic operators. As such, the **P2BR and ex-ante instrument should be complementary** and tackled in separate legal acts, rather than being integrated in a single revision.

#### **Option 2: Adopt a horizontal framework empowering regulators to collect information from large online platforms acting as gatekeeper:**

TUI is not fundamentally opposed to the measures outlined under this option, although this policy approach would clearly be lacking in ambition and coherence. Such a lack of ambition to properly regulate the worrying practices of systemic actors in the digital economy, by expanding only transparency requirements and investigative powers of regulatory authorities, would not be sufficient to address the problems identified in the Commission's Inception Impact Assessment. A lack of coherence would be the result of the lack of clarity on how this policy approach would interact with existing and envisaged investigative powers under current competition policy and the New Competition Tool.

### **Option 3: Adopt a new and flexible ex-ante regulatory framework for large online platforms acting as gatekeeper:**

TUI is of the view that policy option 3 details the most comprehensive and matured policy approach presented in the IIA. We are generally positive towards this option, but underscore once more the need to define the scope of Regulation in a very limited manner. The respective criteria and scope should be established in close consideration of our comments above.

TUI judges sub-option 3a to be very positive. As outlined above, a restriction of unfair practices by systemic actors would be a positive step, under the conditions outlined above. Nonetheless, care must be taken regarding a sectoral approach to regulation, as sectoral legislation is often already quite significant.

We can support option 3b in parts. It is evident that the concept of a 'whitelist' next to a prohibition of practices is necessary, in line with our comments on suggested obligations for systemic actors above. Nonetheless, these should be pre-defined in a detailed manner by the European legislator, so as to give consumers, suppliers and other online operators a clear and predictable legal framework.

### **Digital Services Act Package: deepening the Internal Market and clarifying responsibilities for digital services**

Policy option 2 identified in the relevant Inception Impact Assessment is most aligned with TUI's view on the necessary legal changes. Specifically, we support the ambition revise the liability framework for platforms, in line with our comments above. We would like to highlight that the approach to transparency, reporting and auditing of algorithmic systems should be risk-based, focusing on the most problematic moderation and recommender systems. As such, common systems in use across many online marketplaces should not be the subject of such regulatory scrutiny. TUI fully supports asymmetric obligations based on the type, size and risk of the digital service in question.