HOTREC's response to the consultation on the European Commission's review of the Digital Markets Act (DMA)

The Digital Markets Act (DMA) represents a landmark step in Europe's effort to rebalance digital markets and limit the power of gatekeeper platforms. For the hospitality industry, the DMA holds significant promise: it could open up fairer access to digital distribution channels, reduce dependency on large intermediaries, and empower hotels to reconnect directly with their guests.

Yet as the implementation of the DMA advances, several challenges have become apparent. Certain provisions remain ambiguous, compliance solutions risk producing unintended consequences, and the regulatory framework may not yet fully reflect technological shifts such as AI-driven distribution. In addition, questions around private enforcement and data sharing rules could limit the effectiveness of the DMA for smaller business users such as independent hotels.

This paper sets out key areas where the DMA review should provide greater clarity and stronger safeguards from the perspective of the hospitality sector. The aim is to ensure that the regulation not only curbs harmful practices of today's gatekeepers, but also creates a sustainable framework that supports innovation, fairness, and growth for Europe's hospitality industry in the digital age.

1. Prevent unintended reinforcement of alternative gatekeepers

The ban on self-preferencing under Article 6(5) of the Digital Markets Act (DMA) was introduced to reduce the dominance of gatekeeper platforms and to create fairer, more contestable digital markets. Yet, from the perspective of the hotel industry, current compliance solutions risk producing unintended effects. When one gatekeeper is forced to scale back its prominence in certain services, the resulting visibility is often captured not by independent businesses but by another gatekeeper already holding a powerful position in hotel distribution.

This shift undermines the DMA's goal of strengthening fairness and consumer choice. Instead of directing more traffic to hotel websites or supporting more diverse distribution channels, compliance adjustments are reinforcing existing dependencies on large intermediaries. Hotels face higher distribution costs and less control over their own visibility, while consumers ultimately pay the price through reduced transparency and higher booking costs.

To avoid such outcomes, the implementation of the DMA must adopt **a cross-gatekeeper perspective**. Regulators should carefully assess how compliance obligations imposed on one gatekeeper may unintentionally bolster the market power of another. In parallel, **consistent enforcement across all gatekeepers** is essential,

addressing practices such as restrictive clauses, opaque rankings, and limited data access wherever they arise.

Finally, independent hotel distribution must be actively safeguarded. This requires ensuring fair visibility for hotel websites, non-discriminatory treatment in rankings, and meaningful access to customer data needed to serve guests. Only through a balanced and holistic enforcement approach can the DMA deliver on its promise of fairer digital markets that benefit both business users and consumers.

2. Clarify the boundary between personalization and self-preferencing

From the perspective of the hotel industry, it is essential that the upcoming review of the DMA provides greater clarity on how personalization interacts with the prohibition of self-preferencing. Personalized ranking and recommendation systems can legitimately help consumers discover offers that better fit their preferences. However, the same practices can also serve to mask subtle forms of discrimination, allowing gatekeepers to privilege their own services or those of closely aligned partners under the guise of relevance.

This ambiguity creates real risks for business users in the hospitality sector. Hotels and other accommodation providers rely on fair and transparent access to digital platforms to reach consumers. If **personalization is permitted to operate as a blanket defence against findings of self-preferencing**, business users may be disadvantaged in ways that are difficult to detect, since ranking differences can be explained away as the product of individual consumer profiles. Without clear rules, covert prioritisation of a gatekeeper's own services could persist, undermining the DMA's objective of ensuring a level playing field.

For this reason, the DMA review should clarify that personalization is not inherently incompatible with Article 6(5), but nor does it exempt gatekeepers from compliance. Ranking outcomes must be demonstrably linked to objective and reproducible relevance criteria rather than to commercial self-interest. To make this principle enforceable, gatekeepers should be required to maintain auditable records of ranking inputs and to provide structured transparency to business users or independent auditors on the main parameters influencing visibility.

3. Address ongoing shortcomings in Google's compliance with Article 6(5)

Google's current approach to Article 6(5) DMA, particularly its shift to a Vertical Search Services (VSS)-only model, has introduced new challenges for direct hotel suppliers. While the European Commission's investigation into Google's compliance is ongoing, several negative consequences are already evident:

- **Direct hotel listings are excluded** from showing real-time prices and availability in Google Search.
- **Visibility and traffic are dominated by VSS platforms** like Booking.com, effectively replacing one gatekeeper (Google) with another.
- The **"Supplier Box" for direct hotel links is limited**, less prominent, and lacks the functionality of platform listings.

- The technical setup creates **dependency on third-party platforms**, rather than enabling open and neutral access for business users.

These changes disadvantage independent hotels and SMEs, weaken direct distribution channels, and reduce price transparency and consumer choice, undermining the DMA's core goals of fairness, openness, and contestability.

To ensure the DMA delivers meaningful outcomes, enforcement must go beyond formal compliance and assess real-world competition impacts. This includes:

- Enabling direct suppliers to participate fully, with access to their own data, visibility, and booking channels.
- Preventing forced intermediation via dominant platforms.
- Ensuring that the spirit of the DMA is reflected in technical implementation.

We strongly urge the European Commission to evaluate and adjust enforcement accordingly, especially in tourism and hospitality, where digital gatekeepers exert disproportionate influence.

4. Ensure fair and effective data sharing under Article 6(10)

For hotels, access to guest data is not a secondary issue but a fundamental condition to deliver quality service, foster innovation, and remain competitive in digital markets. Hotels must be able to communicate directly with their guests, not only to manage reservations and provide tailored services during their stay, but also to build long-term relationships, attract new customers, and improve their profitability. If key data, such as contact details and payment information, remains locked in the hands of gatekeepers, hotels risk being cut off from the very customers they host and serve.

However, Article 6(10) DMA currently restricts the sharing of personal data between gatekeepers and business users solely to situations where the end user has given consent under the GDPR. This narrow approach appears unduly restrictive. In practice, **other legal bases under the GDPR are often more appropriate**. For example, when a guest books a room through a platform, the performance of a contract (Article 6(1)(b) GDPR) provides a natural basis for the hotel to access the necessary information to fulfil the booking. Similarly, legitimate interest (Article 6(1)(f) GDPR) could lawfully support the sharing of certain data points, such as email addresses, where this is balanced with the user's rights and expectations.

Along with the European Data Protection Board (EDPB), the European Commission should therefore broaden or clarify the reference in Article 6(10) in its upcoming guidelines on the interplay between the DMA and the GDPR, making clear that consent is not the only legal basis available for gatekeeper-to-business data sharing. Recognising other GDPR legal grounds would ensure that hotels can access the data they legitimately need to serve their guests, while still fully respecting data protection rules.

Such clarification would better reflect the realities of the hospitality sector, where direct communication and access to financial and contact information are essential for

growth, digitalisation, and competitiveness. Ultimately, hotels are the ones providing the service and hosting the guest, fair and effective data sharing must recognise this central role.

5. **Extend DMA oversight to AI-driven distribution channels**

Artificial intelligence is already deeply embedded in many core platform services (CPS) relevant to the hospitality industry, from search and recommendation tools to targeted advertising systems. At the same time, new AI-based services such as large language models (LLMs), generative AI, and conversational assistants are rapidly emerging as major distribution channels in their own right. These tools do not just complement existing CPS, but they increasingly act as new gatekeepers by directing consumer queries, providing travel advice, and surfacing accommodation offers. For hoteliers and restaurateurs, this shift could fundamentally reshape how travellers discover and book rooms and restaurants.

The European Commission has noted that **the principles of the DMA also apply when AI is embedded into existing CPS**. However, we believe that this should be made far more explicit to avoid uncertainty in implementation. A clarification in the DMA recitals, for example, could ensure that AI-driven ranking, recommendation, or targeting practices are clearly subject to the same obligations against self-preferencing. This would give hotels and restaurants greater legal certainty that DMA protections extend to the new AI-driven tools through which consumers increasingly access accommodation offers.

Beyond embedded AI, foundation models and generative AI systems raise an even bigger challenge. These systems are evolving rapidly into separate products and gateways to commerce, capable of competing directly with or even substituting traditional search engines. If, in the near future, travelers rely on conversational assistants or agentic AI to find and book hotels and restaurants, the existing DMA rules focused on current CPS may no longer deliver their intended benefits. Without adequate oversight, the risk is that these **new AI channels replicate the same gatekeeping dynamics of today's platforms, but outside the scope of current regulation.**

For the hospitality industry, it is essential that policymakers and regulators anticipate this shift. We recommend the Commission closely monitor the emergence of LLMs and generative AI as potential gatekeepers and consider whether future revisions of the DMA should explicitly bring them within scope. Otherwise, there is a serious risk that the positive impact of the DMA for business users will be eroded as distribution migrates from search engines to AI assistants beyond the reach of today's framework.

6. **Strengthen private enforcement mechanisms for business users**

The DMA is intended to be "self-executing," meaning that its provisions should, in principle, be directly enforceable before national courts. The European Commission has suggested that private parties can rely on the DMA in the same way they do with other EU regulations. However, in practice, the **prospects for private enforcement**

remain uncertain, particularly for business users. Unlike EU competition law, where the Antitrust Damages Directive harmonises rules on damages and procedural rights across Member States, the DMA contains no equivalent framework. This leaves business users facing a patchwork of national rules and procedures, creating fragmentation, uncertainty, and a potential risk of under-enforcement.

This legal uncertainty is particularly burdensome for SMEs, who often lack the resources to challenge powerful gatekeepers. Many business users are also reluctant to come forward with complaints or evidence of gatekeeper misconduct due to a well-founded **fear of retaliation, such as reduced visibility or restricted access**, given their dependence on these platforms for online traffic and bookings. Such risks create a chilling effect, discouraging stakeholders from reporting abuses and undermining effective enforcement.

As early as 2021, the Ministers of Economy of France, Germany, and the Netherlands already highlighted the need to ensure that private enforcement of DMA obligations would be possible. Yet the regulation does not spell out who exactly has standing to bring an action, whether direct or indirect business users can claim, and which remedies are available beyond damages. The absence of clear guidance is particularly problematic for smaller business users, who are least able to bear the complexity and cost of litigation against gatekeepers with significant financial and legal resources. Some Member States, such as Germany[1], are already considering domestic legislation to facilitate DMA-based private enforcement, including injunctions, rectification, and damages. While welcome, such national initiatives risk exacerbating legal fragmentation across the EU.

For the DMA to achieve its full potential, EU policymakers should take **proactive steps to clarify and harmonise the rules governing private enforcement.** This could include defining business user standing more clearly, specifying the scope of remedies available before national courts, and considering an EU-wide framework for damages and injunctions, similar to the Antitrust Damages Directive. Such measures would provide much-needed legal certainty, reduce fragmentation, and empower business users, including SMEs in the hospitality sector, to effectively challenge gatekeeper practices and secure the fair and contestable digital markets that the DMA was designed to deliver.

7. Strengthening Article 11 DMA from box-ticking to meaningful consultation

Under Article 11 DMA, gatekeepers must submit annual compliance reports detailing their compliance measures. Nevertheless, HOTREC's experience with the compliance reports of certain gatekeepers has revealed some shortcomings. Specifically, Booking.com's report claims to have "consulted around 200 partners," yet provides

[1] Germany adopted an amendment to the German Competition Act on 11 July 2023, which intends to facilitate private enforcement of the DMA. https://www.recht.bund.de/bgbl/1/2023/294/VO.html

little transparency on who was involved, the consultation process, or its geographic scope. This lack of detail casts doubt on whether Article 11's requirement for meaningful stakeholder dialogue was truly met. In practice, **the consultation was widely seen as a box-ticking exercise for compliance**, rather than genuine engagement.

For instance, HOTREC was listed under "positive feedback," which could mislead readers into thinking HOTREC endorsed Booking.com's measures. In reality, the meeting with HOTREC was neither intended as an endorsement nor did it provide positive feedback. Such misrepresentations further undermine the report's credibility.

To ensure authentic stakeholder engagement, the Commission should require gatekeepers to transparently document consultations, specifying which stakeholders were involved, how input was considered, and what changes resulted. The Commission should also actively verify the completeness and accuracy of compliance reports against stakeholder feedback to ensure they reflect the real-world impact of gatekeeper measures.

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