

Digital Comparison Tools Market Study:

Update Paper - Response form

1. Thank you for taking the time to respond to the questions in the Update Paper for our Market Study of Digital Comparison Tools (DCTs), published on our [website](#) on 28 March 2017.
2. Please download and save this form before completing it. Please submit your response by **5pm on Monday, 24 April 2017**, either by:
 - Email to: comparisontools@cma.gsi.gov.uk.
 - Or by post to: Digital Comparison Tools Market Study
Competition and Markets Authority
7th floor
Victoria House
37 Southampton Row
London WC1B 4AD
3. Please note:
 - You can choose which questions to respond to, but we ask all respondents to provide a small amount of background information at the start of this form. The boxes will 'expand' to accommodate long responses if required.
 - We are particularly keen to receive evidence in support of responses. If you are able to supply evidence please attach this with your response.
 - We intend to publish responses to our Update Paper in full. If you wish to submit information that you consider to be confidential, this should be indicated to us clearly and an explanation given as to why you consider it to be confidential.
 - The CMA may use the information you provide for the purposes of facilitating the exercise of any of its statutory functions. This may include the publication or disclosure of the information. Prior to publication or disclosure, in accordance with its statutory duties under Part 9 of the Enterprise Act 2002, the CMA will have regard to (among other considerations) the need to exclude, so far as is practicable, any information relating to the private affairs

of an individual or any commercial information relating to a business which, if disclosed, would or might, in our opinion, significantly harm the individual's interests or, as the case may be, the legitimate business interests of that business (confidential information). Further information about how the CMA will use information submitted during the Market Study can be found on our [website](#).

4. If you have any questions about our Market Study or this online form please contact the team at comparisontools@cma.gsi.gov.uk.

Your details

(Fields marked * are required)

Title*	Senior Legal Counsel
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Forename	André
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Surname*	Thalmann
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Email*	
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What is your role / profession*	Senior Legal Counsel of KAYAK in Europe
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Are you representing yourself or an organisation?*	An organisation <i>(please delete as appropriate)</i>
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If you are representing yourself rather than an organisation would you be content for us to include your name when we publish your response?*	Yes/No <i>(please delete as appropriate)</i>
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If you are representing an organisation:

(a) What is the organisation's name?*	KAYAK
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(b) Please could you briefly explain the role of your organisation, including the sectors in which it operates or has most interest?*
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KAYAK operates a travel metasearch engine for Flights, Hotels, Car Rentals, Packages and Activities. The KAYAK metasearch engine is available on several platforms: website (desktop and mobile), mobile applications, chatbots on messenger services. The KAYAK metasearch engine has two levels: consumers can search for flight options and compare the prices of different flights; consumers can also compare booking options for the same flight .

Our replies are limited to the travel sector only; we do not express any views regarding the other sectors in the scope of the study.

Consumers

1. Should we focus our attention on the consumer groups we identify in Chapter 5 (see paragraphs 5.82 to 5.95) and if not, what groups should we focus on?

N/A

2. In which sectors do DCTs not currently play a major role but could in principle offer substantial benefits to consumers? Why have they not become established in these sectors?

N/A

3. How has the growing use of DCTs affected suppliers' offers to consumers who do not use DCTs in our case study sectors and more broadly? What impact have DCTs had on suppliers' ability to discriminate between active and inactive consumers? What are the implications for vulnerable consumers?

Suppliers try to retain consumers in their direct channels through loyalty programs, coupons and similar offers. We are not aware that DCTs, at least in the travel sector, have increased suppliers' ability to discriminate between active and inactive consumers. We believe that consumers not using the internet would go to a brick and mortar travel agency for advice, which they may have to pay for in the form of booking or agency fees, as was the case before the advent of travel booking over the internet.

4. What factors, if any, have we missed that may be holding back consumers from using DCTs?

N/A

5. What, if anything, should be done about consumers' concerns about data sharing and the extent to which they feel in control?

Data protection laws already address all those concerns and the GDPR is around the corner. This is more a task for DCTs to inform consumers about their data protection practices and give consumers trust regarding the use of their data. KAYAK can be used anonymously.

6. What actions, if any, are needed to improve the way consumers use DCTs – including multi-homing and using DCTs' functionalities such as filtering and ranking?

We believe that the user experience is a core area of competition between DCTs, which can provide different functionalities in different ways to consumers, and innovate by providing additional functions and filters in such a smart way that the consumers who care about them find them, while the other consumers are not distracted by them. Any regulatory intervention in that area would only restrict competition between DCTs.

Inputs to DCTs

7. Have we captured the range of issues that might prevent DCTs from operating effectively?

In Flights, some airlines refuse altogether to provide their flight schedules and pricing to DCTs and use technical and legal means to prevent DCTs from accessing such information, thus hindering a comprehensive comparison of flight options.

Airfares are increasingly unbundled and segmented by level of service, e.g. “light” or “basic” fares that do include checked baggage, food or seat reservation, and “premium” fares that include such plus additional services such as priority boarding. To improve effectiveness of the comparison, DCTs need access to these fare details to allow consumers to make a more informed choice.

8. Do the issues identified materially affect DCTs’ ability to operate effectively and deliver good consumer outcomes?

The ability to access all flights schedules and fares is material to the effective operation of a Flight DCT. Without such, the usefulness of the comparison for the consumer would be seriously diminished, as they would miss on certain flight options that may be more optimal for them, e.g. lower fare, but also shorter flight times or more optimal departure and/or arrival time.

9. Are current or planned initiatives sufficient to address the issues found?

Flights are a global business and standards about data formats have to be defined globally for efficiency. It would be counterproductive if there were UK specific regulations regarding data formats. KAYAK sees the role of the CMA in this area as ensuring a fair playing field without abuse of a dominant position by some suppliers.

Competition

DCTs' market position and barriers to entry and expansion

10. What explains the strong position of a specific DCT in each of our case study sectors? What do DCTs do to grow their business in sectors where they appear to be relatively small compared to the leading DCT of the sector?

KAYAK grows its business through continuous improvements to its product and through marketing in different channels.

For various travel verticals in the UK, other DCTs may have a stronger position due to an earlier market launch and/or more aggressive marketing expenditures.

11. What are the barriers, if any, for DCTs to enter or expand into sectors where they currently do not provide comparison services or where they are currently relatively small?

KAYAK focuses on travel and sees its core competence in operating DCTs in that industry. Within the travel industry, some verticals are harder to expand into because the products are very fragmented and harder to compare (e.g. activities), or the market is small and dominated by a few specialised suppliers (e.g. cruises), or there are no data exchanges and no suppliers providing the required information in a useful format (e.g. trains).

Agreements between DCTs and suppliers

12. What has been the impact of the removal of wide MFNs in the private motor insurance sector?

N/A

13. What has been the impact of narrow MFNs in the sectors where we have observed them (home insurance, private motor insurance, credit cards, broadband and flights)?

Metasearch DCTs, at least for flights and other travel offers, do not set their own prices and do not sell anything, but present the offers of airlines and online travel agencies and provide links to their websites. In other words, a DCT does not present its own price, it presents the prices of Supplier A, Supplier B, Supplier C etc. KAYAK only asks its suppliers to provide their lowest available public fare. The purpose of this clause is to ensure the accuracy of KAYAK's DCT, i.e. that the price displayed on KAYAK for Supplier A is also the price found by consumers on Supplier A's website. The clause is therefore necessary to increase consumers' trust in DCTs.

KAYAK does not believe that this clause reduces competition and especially price competition, because competition exists between the multiple suppliers compared on the DCT. Each supplier sets its own price and the consumers can compare these prices on KAYAK and decide whether to book their flights with Supplier A, Supplier B, Supplier C, etc. KAYAK observes a strong price competition between suppliers on its DCT.

14. What is the commercial rationale for the non-brand bidding and negative matching agreements we have observed (in all of our case study sectors) and what is their commercial and competitive impact?

We do not want to speculate on suppliers' rationale for requiring non-brand bidding and negative matching undertakings from DCTs.

DCTs need to protect themselves against suppliers, especially less established ones (e.g. small Online Travel Agencies), which could try to benefit from the DCTs marketing efforts by bidding on the DCTs well known brands. Therefore, KAYAK uses such clauses in its contracts to protect its investment in building its brand. We also believe that any search made by a consumer for "KAYAK" is either intended to find our DCT or refers to the generic term kayak, but is never intended to find an OTA or other supplier. From that point of view, we also do not see how that could lead to consumer harm, as the consumer gets the expected result.

We do not believe that these agreements have a negative commercial or competitive impact, since DCTs and suppliers, except for a few free-riders, would anyway not bid on each others brands, since the costs would be too high and the return on investment negative.

We do believe that the practices of search engines have a much higher commercial and competitive impact than any agreement between suppliers and DCTs, especially if a search engine promotes its own DCT ahead of any natural search result, thus pushing these natural search results below the fold. This has the effect of redirecting a good part of traffic to search engine's own DCT, and therefore forces DCTs and suppliers to bid on a broad range of keywords for a chance at consumers' attention.

15. What is the commercial rationale for the non-resolicitation agreements we have observed (in home insurance and energy) and what is their commercial and competitive impact?

N/A

16. In which other sectors, if any, are (i) wide or narrow MFNs; (ii) non-brand bidding or negative matching; or (iii) non-resolicitation agreements in place? What impacts do they have in these sectors?

KAYAK sees narrow MFNs and non-brand bidding agreements in all travel verticals (e.g. hotels, car hires). Our comments on impact applies also to these travel verticals.

17. Are there any other agreements in place that may affect the effectiveness of DCTs and/or the effectiveness of competition between DCTs (and competition between DCTs and other sales channels)?

N/A

Unbundling and hollowing out

18. How has the growth of DCTs affected product features and/or the product mix in our case study sectors over time? What specific evidence/examples indicate these changes?

N/A

19. How widespread is the use of product reviews and ratings on DCTs and what has been the impact, if any, of the use of these tools?

Reviews provide an additional choice criteria for consumers, especially for products that are less interchangeable. They add depth to DCTs by making them not only about price comparison. This is particularly relevant in the comparison of Hotels for example.

20. What needs to be in place to prevent or mitigate any harmful impact of product unbundling or hollowing out and what can DCTs do about it?

Suppliers have to provide the relevant information to DCTs, e.g. payment fees, baggage fees. See also our response to question 7.

Regulation

21. What are your views on the issues we list in Table 8.1 and at paragraphs 8.13 to 8.42 of Chapter 8 and how could they be addressed?

Inconsistencies:

Currently regulations of online travel offerings is a combination of sectoral and generic regulations, e.g. for Flights

- Sector specific: The Operation of Air Services in the Community (Pricing etc.) Regulations 2013
- E-commerce specific: The Electronic Commerce (EC Directive) Regulations 2002
- Generic: The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, within the limit of regulation 7(3) thereof

For other travel verticals (e.g. package travel), entirely different regulations are applicable. We do believe that the density and complexity of these layers of regulation creates a risk of contradictions and unclarity. This complexity can also create barriers to entry especially for smaller DCTs, and for DCTs established in other jurisdictions and wanting to extend their reach to the UK. Even within the EU, the national regulations differ and we observe an increase in this divergence as national regulators attempt to specifically regulate certain aspects of DCTs.

Too prescriptive and not future-proof:

It is a major concern for KAYAK that any new rules and regulations could be too prescriptive and too focused on the current state of the technology. New developments are already emerging now and we expect further technological innovations, especially regarding the platforms used for DCTs, e.g. chatbots, voice controlled devices. KAYAK believes that high level principles are more adequate. We also believe that these high level principles are already in force in the form of various consumer protection regulations, and that there is no need for defining further principles or regulations. To the extent that unclarity or inconsistencies remain, they can be addressed through guidance.

Enforcement:

We do not believe that there is insufficient enforcement. KAYAK has engaged with the CMA in its car rental brokers and intermediaries compliance action, and we believe that this action has been very effective at achieving results in that specific market, including in respect of DCTs active in that sector. We also believe that the purely legal action focused enforcement we see in other countries, e.g. Germany, is very ineffective, because such legal actions take years and are directed at one market actor at a time and one specific alleged infringement at the time, usually around the precise wording of some clause or disclaimer; it is literally a “comma by comma” approach to enforcement.

‘whole of the market’ requirement

While KAYAK seeks to be comprehensive and provide its users with an attractive range of travel and booking options, a requirement for full coverage would be neither feasible nor practical at least for travel DCTs. Many suppliers, both OTAs and airlines, have their seat abroad and it would be difficult to enforce an information supply obligation against them. KAYAK already proposes more than a dozen booking options for some popular routes, and the incremental value to the consumer of additional options is very questionable. DCTs also have a gatekeeper function in keeping suppliers with a high incidence of complaints out of their comparison; a listing obligation would open the door for all sort of suppliers with little regard for consumer protection. The choice of suppliers available on each DCT is also a key component of the competition between DCTs.

Regarding transparency about market coverage, we would like to note that it is not only

impossible to achieve 100% comprehensiveness, it is actually not even possible to quantify our market coverage since for each flight itinerary there could be dozens of booking options. So any requirements in respect of disclosure of market coverage cannot go beyond requiring statements that the displayed options are “not exhaustive”, which is meaningless and anyway expected by consumers as shown by the consumer research.

22. What is the balance between potential benefits and risks in introducing a cross-sector approach? What would be the most effective approach(es), and why?

As set out in answer 21, travel DCTs are already struggling today with different regulations applicable to different travel types (flights, packages, hotels and car hire), and this is a downside to a sector specific approach. However, we have serious reservations regarding any regulatory approach targeted specifically at DCTs and the potential distortion of competition they can introduce. We expect that the differences between DCTs/metasearch travel engines, online travel agencies and travel providers (e.g. airlines) will diminish in the coming years, as metasearch engines are providing direct booking options, OTAs have comparison options, and airlines propose hotel, car hires and other cross-sell options. This convergence is likely to increase also through cooperation between the different players. Ultimately, all players, whether travel providers, OTAs or DCTs, compete for the attention and the business of the same consumers. Therefore any regulatory approach should maintain a level playing field and not specifically target certain players in the distribution chain.

We welcome in this respect the approach taken by the CMA in the car hire market, i.e. building on high level principles and working with all market actors from car hire companies to DCTs via brokers and intermediaries to apply these high level principles in the specific sector in a consistent way while maintaining a level playing field for all actors.

Looking specifically at the possible components of a cross-sector approach set out in table 8.4, we believe that most of this themes and components are already addressed and should remain addressed by competition between the DCTs. Typically, relevancy is a subjective criteria, and it should be left to the operators of DCTs to strive to provide the most relevant results to each consumer and decide which functionality to provide in terms of filtering and sorting. Same for accessibility and user friendliness; power users are not looking for simple language. Regulating such aspects would not only negatively impact the development of new technology that may not enable such components from the get-go, it would also define a model consumer and a model DCT as the standard everybody has to comply with, thus reducing competition through product features and innovation and preventing the development and market entry of new DCT models that address the specific needs of a specific consumer niche.

23. How could a cross-sector approach interact with existing regulatory frameworks?

As discussed in our answer to question 22, we do not believe that a cross-sector approach targeted at DCT is opportune. It would add an additional layer of complexity to the numerous existing regulations, see e.g. our answer to question 21.

We also believe that the key components considered in table 8.4 are already covered by existing regulatory frameworks, e.g. completeness of information, price display rules, collection of personal data, display of contact details, alternative dispute resolution, whereas other components specific to DCTs are better left to the market as discussed above.

Our view is that such cross-sector principles would occupy a middle ground between the existing regulatory framework and the specific sector guidance (e.g. the results of the car hire compliance initiative). As such, it would either only repeat the existing principles, or add new rules that limit competition between DCTs or put them at a competitive disadvantage towards the other actors on the market.

The future of DCTs

24. What future developments outlined in Chapter 9 are likely to have the greatest impact in driving engagement? If there are any important developments we have missed, what are they and why are they important?

This is hard to assess. We expect the trend towards mobile to continue and to generate more or more frequent user engagement. Alternative interfaces such as voice activated devices could increase engagement from consumers who would otherwise avoid keyboard/screen interfaces, but that is speculation at this time.

Smart televisions are an interface not mentioned in the paper, see e.g. <https://www.kayak.com/news/kayak-apple-tv/>. As these technologies become more broadly available and easy to use, they could also increase engagement.

25. What future DCT-related technologies might affect or assist vulnerable consumers?

We believe that the introduction of new, additional platforms that are easier to use,, whether this is AI supported searches, voice processing, or chatbots, will assist vulnerable users in benefiting from DCTs. .

We believe that DCTs can protect consumers from automated decision making and personalisation, by acting as a layer between the consumer and the suppliers.

Other comments and further contact

We welcome submissions on any of the issues we address in our update paper from interested parties. We would particularly like to hear views, supported wherever possible by evidence, on the following themes if not already addressed above:

- a) What DCTs do and the benefits they can offer.
- b) Consumers' views on and use of DCTs.
- c) Inputs to DCTs.
- d) Competition between DCTs and between DCTs and the suppliers whose services they compare.
- e) Regulation of DCTs.
- f) The future of DCTs.
- g) The focus of the second part of the market study.

Do you have any other comments you would like to add?

Would you be willing for us to contact you to discuss your response?*	Yes / No <i>(please delete as appropriate)</i>
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Thank you for taking the time to complete this form.

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