

Showmen's Guild of Great Britain

**Notice of intention to accept binding commitments
offered by the Showmen's Guild of Great Britain in
relation to certain of its rules**

Case number 50243

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1. Introduction

- 1.1 In December 2015, the Competition and Markets Authority (CMA) opened an investigation into certain of the rules of the Showmen's Guild of Great Britain (the Guild) in relation to a suspected infringement of the Chapter I prohibition of the Competition Act 1998 (the Act).
- 1.2 The Chapter I prohibition prohibits agreements and concerted practices between undertakings and decisions by associations of undertakings which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK.¹
- 1.3 On 26 July 2017, the Guild offered commitments for the purposes of addressing the CMA's competition concerns in this investigation.²
- 1.4 Section 31A of the Act provides that, for the purposes of addressing the competition concerns it has identified, the CMA may accept, from such person (or persons) concerned as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate.³
- 1.5 By this document the CMA gives notice⁴ that it proposes to accept these commitments. Acceptance of the commitments by the CMA would result in the termination of its investigation, with no decision being made on whether the Chapter I prohibition has been infringed by the Guild. The commitments offered by the Guild are set out in full in the Annex to this notice.

Invitation to comment

- 1.6 The CMA invites interested parties to provide comments on the proposed commitments which it will take into account before making its final decision on whether to accept the commitments.

¹ Section 2(1) of the Act. The Chapter I prohibition does not apply in any of the cases in which it is expressly excluded under the Act (section 3) or in respect of an agreement, concerted practice or decision by an association of undertakings that is exempt in accordance with the provisions of Part I of the Act (section 2(1)).

² A party under investigation can offer commitments at any time during the course of an investigation until a decision on infringement is made (see paragraph 4.16 of the Enforcement Guidance (Office of Fair Trading, *Competition law application and enforcement - incorporating the Office of Fair Trading's guidance as to the circumstances in which it may be appropriate to accept commitments*, OFT 407, December 2004, as adopted by the CMA Board) and paragraph 10.18 of the Procedural Guidance (*Guidance on the CMA's investigation procedures in Competition Act 1998 cases (CMA8)*; see also section 31A(1) of the Act). In this case, no decision on infringement has been made.

³ Section 31A(2) of the Act.

⁴ In accordance with paragraph 2 of Schedule 6A to the Act.

- 1.7 To assist interested parties in responding to this consultation, this notice provides information on the CMA's investigation, the Guild and the relevant sector context, the rules in question, and the CMA's competition concerns. This document then summarises the commitments offered by the Guild and sets out their purpose and the way in which the CMA provisionally considers that the proposed commitments would meet its competition concerns.
- 1.8 Details on how to make comments on the proposed commitments offered by the Guild are provided at the end of this document. The CMA has allowed 6 weeks for interested parties to make comments because it understands that this is a very busy time of year for those involved in the travelling fairs sector and it wants to allow sufficient time for those likely to be affected by the proposed commitments⁵ to consider and comment on them. Accordingly, the closing date for comment is Tuesday, 3 October 2017.⁶

⁵ They include some 2,000 Guild members, other showmen, landowners on whose land fairs are held, as well as the fairgoing public.

⁶ It should be noted that the period allowed in the present case is significantly longer than the statutory minimum (which is at least 11 working days starting with the date on which notice is given of the CMA's proposal to accept the proposed commitments - paragraph 2(3) of Schedule 6A to the Act).

2. The CMA's investigation

The investigation

- 2.1 In December 2013, the Office of Fair Trading (the functions of which transferred to the CMA on 1 April 2014) received a complaint relating to certain of the rules of the Guild.
- 2.2 In December 2015,⁷ the CMA launched a formal investigation,⁸ having established that there were reasonable grounds for suspecting that the Chapter I prohibition had been infringed and having determined that a formal investigation would be consistent with the CMA's Prioritisation Principles.⁹
- 2.3 During the course of its investigation, the CMA has undertaken a number of investigative steps to gather evidence from the Guild and third parties. These steps have included:
- (i) sending formal notices requiring documents and information to be provided by the Guild and certain of its members;¹⁰
 - (ii) holding state of play meetings with the Guild and its legal representatives;
 - (iii) obtaining further information from the Guild through additional meetings, telephone conferences and other correspondence;
 - (iv) obtaining information from third parties; and
 - (v) desk research.
- 2.4 On 21 December 2016, the CMA issued a Statement of Objections (SO) to the Guild, setting out its provisional view that certain of the Guild's rules infringed the Chapter I prohibition. The Guild provided the CMA with written representations on the SO on 1 March 2017 and made oral representations on the SO to the CMA on 25 April 2017.

⁷ Between receipt of the complaint and launching a formal investigation, the Office of Fair Trading and the CMA corresponded and met the Guild in relation to the complaint.

⁸ Under section 25 of the Act.

⁹ *CMA Prioritisation Principles' (CMA16)* paragraphs 3.1 – 3.8.

¹⁰ Under section 26 of the Act.

2.5 Both in its written representations on the SO and in further discussions with the CMA, the Guild indicated its intention to offer commitments to address the CMA's competition concerns.¹¹

The commitments offer

2.6 On 30 May 2017, the Guild submitted a draft commitments proposal to the CMA. It did so without prejudice to its position that it had not infringed the Act. Following discussion with the CMA, the Guild revised its proposal and formally offered commitments to the CMA on 26 July 2017. The proposed commitments are set out in the Annex to this notice.¹² The offering of commitments does not constitute an admission of an infringement of the Chapter I prohibition by the Guild.

2.7 The Guild's proposed commitments have been offered in good faith by the leadership of the Guild (having taken soundings of the wider membership of the Guild) on the basis that, if the CMA were to accept them, then in accordance with the Guild's rules, the Guild's membership would implement them by a vote at the Guild's Central Council to take place no later than 31 January 2018.¹³

2.8 Having considered the Guild's proposed commitments, the CMA's provisional view is that, once implemented, they would address its competition concerns, for the reasons set out in this notice, and that it is appropriate for the CMA to exercise its discretion to accept the commitments.

2.9 Acceptance of commitments would result in the CMA terminating its investigation, and not proceeding to an infringement decision.¹⁴

2.10 Acceptance of the proposed commitments would not prevent the CMA from reopening the investigation, making an infringement decision or giving a direction in circumstances where the CMA has reasonable grounds for

- Believing that there has been a material change of circumstances since the commitments were accepted;

¹¹ See chapter 4 below.

¹² The Guild made some very minor amendments to its proposed commitments at the request of the CMA subsequent to 26 July 2017. The latest version of the Guild's proposed commitments is set out in the Annex and dated 16 August 2017.

¹³ The Guild would also commit to publish its amended rule book by no later than 31 March 2018.

¹⁴ Section 31B(2) of the Act.

- Suspecting that a person has failed to adhere to one or more of the terms of the commitments; or
- Suspecting that information that led the CMA to accept the commitments was incomplete, false or misleading in a material particular.¹⁵

2.11 For example, if it were the case that the membership of the Guild did not vote in favour of and implement the commitments as approved by the CMA by 31 January 2018, the CMA would not be prevented from reverting to its normal administrative procedure for the investigation.

The party under investigation

2.12 The party currently under investigation is the Guild. The CMA's investigation concerns certain of the current rules of the Guild (see paragraphs 4.2 to 4.11).

2.13 The Guild is an association of travelling showmen, and describes its function in the following terms: *'to protect the interests of its members - travelling showmen who gain their livelihoods by attending funfairs. It does this in two ways; by its code of Rules for members and through the legal and constitutional processes of the land'*.¹⁶

2.14 The Guild is organised on a regional basis: it consists of a central office and 10 regional offices (or Sections). Each Section has its own Section Committee, which is responsible for managing the relevant Section. Members of the Section Committees are members of the Guild who are elected from the membership of the Section and are therefore travelling showmen themselves. Sections are responsible for dealing with complaints about members (in the first instance) and considering membership applications.

2.15 The overall management of the Guild is deputed to a Central Council which oversees other committees such as the Appeals Committee and Appeals Tribunal (the appellate bodies which adjudicate on disputes between members in relation to the rules following a complaint). The Central Council consists of the President of the Guild, all Past Presidents who are full members or 'Life Members' of the Guild, two Vice-Presidents, the Treasurer, Sergeant-at-arms and General Secretary.¹⁷

¹⁵ Section 31B(4) of the Act.

¹⁶ The website of the [Showmen's Guild of Great Britain](#).

¹⁷ The rules relating to the Central Council are primarily contained within rule 9 of the rules of the Guild.

- 2.16 The Guild is by far the largest association of travelling showmen in the UK with around 2,000 members¹⁸ actively organising or participating in travelling fairs, or both. The actual total number of persons is considerably higher as the membership lists only heads of families.¹⁹ The CMA estimates that around 90% of active showmen in the UK are members of the Guild²⁰ and that around 90% of fairs in the UK are organised by one of its members.²¹
- 2.17 The Guild is a democratic organisation. Its officers are elected by the membership of the Guild. The Guild's rules can only be changed following a vote by its members, and then only following a complex process set out in its rules. As the commitments offered by the Guild relate to proposed changes to the Guild's rules, they cannot be implemented until the Guild's procedures for changing its rules have been completed. The Guild has informed the CMA that the procedures for changing its rules can be completed before the end of January 2018.²²

¹⁸ The Guild reported an active membership of around 2,000 showmen (letter from the Guild to the CMA dated 20 January 2016).

¹⁹ The website of the [Showmen's Guild of Great Britain](#).

²⁰ The Guild informed the CMA that around 97% of showmen are members (meeting between the Guild and the CMA on 10 March 2016) although the CMA's estimate is that around 90% of showmen are members. The CMA's estimate is based on the figures for active members reported to it by the two major trade associations. The Guild reported an active membership of around 2,000 showmen (letter from the Guild to the CMA dated 20 January 2016) and the Association of Independent Showmen (AIS) reported an active membership of around 300 showmen (call between the AIS and the CMA on 6 June 2016). This equates to approximately 87% of showmen being members. For the sake of simplicity and noting the higher figure given by the Guild, the CMA has rounded this figure up to around 90%.

²¹ Letter from the Guild to the CMA dated 3 February 2016.

²² The Guild's procedures for changing its rules are in rule 34 of the Guild's rule book. There are several steps required to change a rule, the final one being 'a resolution of the Central Council passed by a poll by card vote by a majority representing not less than two-thirds of the Members of the Guild who are represented by one or more elected delegates at the relevant meeting of the Central Council' (rule 34(a)).

3. Background

3.1 The travelling fairs sector has a number of unique features. While it is clearly commercial in nature, it is also steeped in tradition and highly influenced by the rules of its largest association, the Guild.

Travelling fairs

3.2 The Guild has stated that there are around 200 fairs a week, held between Easter and bonfire night,²³ with many others held at other times of year. The principal characteristics of travelling fairs are that:

- They are put on by showmen who travel around the country with their amusements (such as rides, other attractions and refreshment stalls);
- They may be held in cities, towns and villages across the UK - most fairs are held on local authority land, but some take place on common land or private land;
- They tend to be of fairly short duration, usually lasting from a few days to a few weeks;²⁴
- They are held at certain times of the year and usually every year;
- There is a well-established calendar of existing fairs;
- They vary in size (operating from around 1-6 amusements to several hundred amusements);²⁵
- They comprise a range of amusements to attract fairgoers;
- The equipment for the amusements can cost from as little as £1,000 up to £2m or more;²⁶ and

²³ <http://www.showmensguild.com/safety.htm>.

²⁴ Examples of the duration of fairs can be found in editions of [The World's Fair](#), a publicly available trade magazine for the travelling fairs sector.

²⁵ For example, Bury Spring Charter Fair was reported to have six amusements in attendance ([The World's Fair](#), March 4-10 page 5), whereas the fair at Newcastle Hoppings was reported to have around 370 amusements in attendance in 2012 ([The Guardian](#), 28 June 2012).

²⁶ The Guild provided examples of the cost of amusements including one for £1,000 (letter from the Guild to the CMA dated 15 April 2016). For an example of a ride reported to have cost £2m see the article in the Hull Daily Mail dated 7 October 2011 entitled 'The Ultimate Guide to Hull Fair'.

- Showmen do not acquire property law rights in the land on which fairs are held.²⁷

The main participants in the travelling fairs sector

3.3 The main participants in the travelling fairs sector are described below:

- **Landowner:** a private or public landowner (such as a local authority) on whose land a fair is held. The landowner receives rent from the fair organiser in exchange for access to the land for the duration of the fair. A landowner will sometimes employ an agent to lease the land to a fair organiser.
- **Fair organiser:** a fair organiser is generally a showman who takes responsibility for the organisation and promotion of a fair, and dealing with the landowner and amusement operators at the fair. Fair organisers pay rent to the landowner in exchange for access to the land (that is, the ground)²⁸ for the duration of the fair, and receive rent from amusement operators for the ground they occupy within the fair for its duration.
- **Amusement operator:** an amusement operator is a showman who operates or supervises the operation of amusements at a fair. Amusement operators pay rent to the fair organiser generally based on the ground they occupy within the fair, and charge fairgoers for using their amusements or when selling refreshments.
- **Fairgoers:** members of the public who attend a fair. Fairgoers will generally pay for each ride they take.²⁹

The Guild's position in the sector and the role of its rule book

3.4 The Guild is the largest association of showmen in the UK and (as noted above) around 90% of fairs in the UK are organised by Guild members (see paragraph 2.16). Therefore, the vast majority of fairs in the UK are covered by the Guild's rules.

²⁷ Letter from the Guild to the CMA dated 1 March 2017.

²⁸ References in this document to 'ground' include a 'position' at a fair.

²⁹ This reflects what happens at a fair at which fairgoers pay per ride. The CMA has been told that this is the most common model of payment, but others exist, such as payment for entry to the fair with all rides subsequently free, or various combinations of these models.

- 3.5 The Guild's rules are contained in its rule book (which is generally only available to members of the Guild). The rule book contains over 400 rules and sub-rules which govern its members' conduct. Members of the Guild agree to adhere to the Guild's rules on joining the Guild.³⁰ The members of the Guild are showmen who are actual or potential competitors at various fairs in the UK. Therefore, for competition law purposes, the rules are treated as being akin to an agreement between its members who are actual or potential competitors.³¹
- 3.6 Although the Guild's rules do not apply to non-member showmen, they can nonetheless affect their business in the following ways:
- The rules and related procedures for Guild membership impact on their ability to become a member of the Guild and enjoy the benefits of membership of the largest association of showmen in the travelling fairs sector in the UK;³²
 - They prevent non-members from attending as amusement operators, fairs organised by Guild members ('Guild fairs') which comprise some 90% of UK fairs;³³
 - They operate to prevent them working with Guild members at non-Guild fairs which means that in practice non-member showmen are prevented from working together with the majority of showmen in the UK in order to put on a fair.³⁴

Certain of the Guild's rules regulate access to ground for the purposes of holding fairs or attending fairs

- 3.7 The Guild has explained to the CMA that frequent but temporary access to suitable ground for fairs is essential for a showman's business. The Guild has stated that: '*access to land on a repeated and predictable basis is essential to a showman's business because, without it, he has no business*'.³⁵ The Guild has further stated that '*access to land on which to hold a fair is fundamental to*

³⁰ Each member of the Guild has to adhere to its rules or face punishment through fines and ultimately expulsion from the Guild (rule 19(a)).

³¹ In technical terms, for the purposes of the Chapter I prohibition, the rules constitute a decision by an association of undertakings: the Guild being the association of its members who are undertakings as they engage in economic activity (for example, selling services or refreshments to fairgoers).

³² See rule 8(g) which relates to membership of the Guild.

³³ See rule 21(a) which prevents Guild members from letting ground at a fair to non-members of the Guild.

³⁴ See rule 21(a) which also prevents Guild members from taking ground from non-members of the Guild who are showmen.

³⁵ High Level Submissions from the Guild to the CMA dated 15 April 2016.

*the business of a showman: without access, the showman has nowhere to install his equipment for the purpose of providing services to the public and earning money’.*³⁶

- 3.8 However, access to suitable ground for fairs is limited by certain factors beyond the control of showmen. For example, there are physical factors which determine whether the ground is suitable for holding a fair such as the need for the ground to be relatively flat. Also, some landowners may not want a fair on their property either because they do not want any disruption or they may be able to find a more profitable or different use for the ground.³⁷
- 3.9 The Guild explained that normal property rights do not afford showmen protected access to ground for holding a fair, or within a fair, or at a run of fairs during the year, all of which they need to operate a viable business.³⁸
- 3.10 The Guild has sought to address this issue by creating a form of protected right to the ground for holding a fair, or within a fair, (called an ‘established right’) and a mechanism for the allocation of such rights between its members. The established right to the ground is essentially agreed between the members of the Guild as they all adhere to the relevant rule as set out in the Guild’s rule book.
- 3.11 As explained at paragraphs 4.2 to 4.11, the Guild has other rules which offer additional protection to members with established rights, restricting competition from other members of the Guild and from non-member showmen. There are also rules which limit the ability of landowners to implement changes to a fair in respect of which Guild members have established rights.³⁹
- 3.12 The CMA sets out below its competition concerns with these rules, in relation to members of the Guild, non-members, landowners and ultimately fairgoers.

³⁶ High Level Submissions sent from the Guild to the CMA dated 15 April 2016.

³⁷ For a specific example of a fair having to move because the landowner wanted to use the fair for a different purpose, see [Western Telegraph](#) article dated 6 October 2014, which describes, amongst other things, how the fair at Haverfordwest in Pembrokeshire was moved to allow a leisure centre to be built. For a similar example, see the [Milford Mercury](#) article dated 6 October 2016.

³⁸ Letter from the Guild to the CMA dated 1 March 2017.

³⁹ Rule 21(k) (the Out of Order Rule) allows for the possibility of a collective boycott by Guild members of a fair in certain circumstances. For example, a fair can be placed out of order by a Section of the Guild if a landowner is imposing or seeking to impose conditions relating to the occupation or control of the fairground that are contrary to the interest of members of the Guild.

4. The CMA's competition concerns

4.1 This chapter sets out the CMA's competition concerns arising from certain of the Guild's rules. For the exact wording of the rules and the proposed changes please see the Annex.

Summary of rules of the Guild that give rise to competition concerns

4.2 The CMA's provisional view, for the reasons set out below, is that the rules of the Guild constitute a decision by an association of undertakings⁴⁰ which may affect trade within the UK and is restrictive of competition within the UK in breach of the Chapter I prohibition.

4.3 The rules of the Guild in respect of which the CMA has competition concerns are as follows:

(a) The Membership rule (rule 8(g))

4.4 Under the rule that governs membership of the Guild, the assessment of membership applications is not based on an exhaustive list of objective and transparent criteria, and so makes it more difficult for a showman to become a Guild member. Under the current rule, a showman who seeks membership needs support from a proposer and seconder (who are actual or potential competitors of the applicant). He or she does not know, at the time of the application, on what basis it will be assessed by those making the final decision on the application.⁴¹ The decision to approve or reject an application is ultimately taken at the discretion of a Section Committee (made up of members who are actual or potential competitors of the applicant) on the basis of criteria that are not transparent and that may be applied inconsistently between applications.⁴² Moreover, the rule does not require the Section

⁴⁰ For the purposes of the Chapter I prohibition, the Guild is an association of undertakings, as it was formed and operates to represent the interests of its members in commercial matters (among other matters) and through its rules it coordinates the conduct of its members at fairs (see Trade associations, professions and self-regulating bodies (OFT 408, December 2004), adopted by the CMA Board, paragraph 1.4; see also Judgment in *Wouters*, C-309/99, EU:C:2002:98, paragraph 64). Showmen are undertakings, as they engage in economic activity (Judgment in *Hofner and Elser v Macrotron*, C-41/90, EU:C:1991:161, paragraph 21) for example, selling services or refreshments to fairgoers.

⁴¹ As rule 6(a) only provides a non-exhaustive list of criteria that the applicant must meet. However, it does not appear that all applicants that meet these criteria will be accepted into the Guild, as an applicant must also have their application approved by a Section (made up of members who are actual or potential competitors of the applicant).

⁴² No objective, or indeed any, membership criteria are contained within rule 8(g) beyond those listed in rule 6(a), and therefore the decision on whether to accept or reject an application is at the discretion of the Section and so may allow for discrimination. Rule 8(g)(8) states that 'The amount of the entrance fee shall be fixed in each case by the Section Committee concerned, and shall form part of the conditions of Membership'. The CMA has seen evidence of Section Committees setting the entrance fee at between £10 and £500.

Committee to justify its decision and does not allow for a right of appeal to an independent tribunal in cases where an application is rejected.

(b) The Non-Members Rule (rule 21(a))

- 4.5 This rule prevents members of the Guild (whether fair organisers or amusement operators) from letting ground at fairs to non-members. It also prevents members of the Guild who are amusement operators from taking ground from a non-member showman.

(c) The Established Rights Rule (rule 23(a))

- 4.6 This rule allows members of the Guild who have organised a fair for the previous two years, or have provided amusements on ground at a fair for the previous two years, to have an established right to organise that fair, or occupy the ground in question at that fair, for the following year. As between members of the Guild, an established right amounts to a priority right, year on year, to occupy the position of fair organiser or provide an amusement at the same ground, on an exclusive basis. As long as the same fair is held, the holder of an established right may maintain this right forever if they comply with the rules of the Guild.
- 4.7 There are two other rules which have a bearing on how the Established Rights Rule operates:

(i) The Transfer Rule (rule 7(h))

This rule allows for the transfer of established rights among Guild members. However, a transfer requires the approval of a Section Committee, which is composed of actual or potential competitors of the transferor and/or transferee.

(ii) Preservation of Rights Rule (rule 23(b))

Under this rule, a member may apply for the preservation of established rights which they do not use for up to 3 successive years in respect of any one fair. This application may only be made where: (1) two or more fairs overlap in terms of date in a particular year and a member who has established rights at both fairs wishes to preserve those established rights; or (2) a member who has established rights at a fair is unable to attend that fair, or that fair is not to be held in a particular year. The Section Committee may, *'if the circumstances so warrant'*, grant preservation of established rights in excess of 3 years, but not exceeding 7 years.

(d) The Time and Distance Rule (rule 23(c))

- 4.8 This rule prevents members within a period of four weeks before the opening of an existing Guild fair (at which there are established rights), or 22 days after the opening (if that fair is still open), from organising or attending fairs taking place within 2 miles from the existing fair.
- 4.9 Certain Sections have increased or reduced, by bye-laws, the time and/or distance aspects of this rule.

(e) The Out of Order Rule (rule 21(k))

- 4.10 This rule allows members of a Section to make a resolution (requiring a two-thirds majority at an extraordinary general meeting) to put a fair 'out of order' on certain grounds. Those grounds include the situation in which it has been proven that a member has broken any rule relating to established rights or the taking or letting of ground (in other words, that includes proven breaches of the Established Rights Rule, the Non-Members Rule or the Time and Distance Rule). Given the link between the Out of Order Rule and the rules relating to established rights or the taking or letting of ground, the existence of the Out of Order Rule operates to reinforce compliance with those other rules.

(f) Lack of transparency of the rules

- 4.11 The Guild's rules are not published or otherwise made available in the public domain. Persons dealing with or attempting to compete with the Guild do not therefore have ready access to those rules.

The CMA's competition concerns arising from these rules

- 4.12 Given the context set out in Chapter 3, the CMA is concerned that the rules of the Guild set out above are restrictive of competition both at existing Guild fairs and between Guild fairs and rival fairs. Such concerns relate to competition between members of the Guild and between members of the Guild and non-members. The rules work together to protect incumbent⁴³ members of the Guild, and their fairs, from competition as described below.⁴⁴
- ⁴⁵ In so doing they reduce the prospect of greater choice, further innovation

⁴³ For the purposes of this document, references to an 'incumbent' are to a member of the Guild that has established rights.

⁴⁴ The CMA acknowledges that in other respects, within any individual Guild fair, incumbent members of the Guild will compete amongst themselves for fairgoers' custom.

⁴⁵ The CMA acknowledges that in other respects, with respect to competition between Guild fairs and rival fairs, Guild fairs will compete with fairs held by other members and with fairs held by non-members.

(for example, new or improved rides) and an even more attractive service for fairgoers.

Restriction of competition at existing Guild fairs

4.13 The CMA is of the provisional view that the following rules are restrictive of competition for ground at Guild fairs between members of the Guild and between members of the Guild and non-members. In doing so, they protect incumbent Guild fair organisers and Guild amusement operators at existing Guild fairs from competition for ground at those fairs. They do this as follows.

(a) The Membership Rule⁴⁶

4.14 The Membership Rule makes it difficult for non-member showmen to join the Guild thereby preventing them (given the Non-Members Rule) from competing for ground at existing Guild fairs because:

- Members of the Guild who act as proposer and seconder are actual or potential competitors of the applicant and therefore may not take an objective view of the application or may even have an incentive to discriminate against the applicant and seek to influence the members in a Section to reject the application;
- The rules do not provide for an exhaustive list of membership criteria; instead, the decision to approve or reject the application is taken at the discretion of a Section Committee (made up of members who are actual or potential competitors of the applicant) who can decide, on a case by case basis, which criteria to apply (and how); this process has the potential to be used to discriminate against applicants, in particular because:
 - a Section does not need to give reasons for rejecting an application, so members of the Guild have a wide margin of discretion when deciding whether to grant membership (and the conditions on which membership is granted);
 - there is no effective appeal process before an independent tribunal to challenge and potentially overturn applications that are rejected.

⁴⁶ Rule 8(g).

(b) The Non-Members Rule

4.15 The Non-Members Rule prevents non-member showmen from competing for ground at existing Guild fairs.⁴⁷ This restriction on competition for ground at a fair protects incumbent members from the threat of competitive pressure from non-members attending these fairs.

(c) The Established Rights Rule, the Transfer Rule and the Preservation of Rights Rule

4.16 The Established Rights Rule protects incumbent members from further⁴⁸ competitive pressure at Guild Fairs. Together with certain restrictions set out in the Transfer Rule and the Preservation of Rights Rule, it reduces competition for ground at Guild fairs. This is because:

- The Established Rights Rule prevents members of the Guild from competing to take ground at Guild fairs from an incumbent member at those fairs. In particular, the CMA is concerned that the Established Rights Rule restricts landowners and fair organisers from replacing poorly performing fair organisers, or amusement operators, with showmen who can offer a more attractive service, which would be to the benefit of fairgoers. This further insulates incumbent Guild members from competitive pressure.
- The Transfer Rule contains some restrictions that make it more difficult for incumbent Guild members to transfer their established rights to other Guild members who might be able to provide a more attractive service to fairgoers. Under this rule, the decision whether to allow a transfer of established rights rests with the Section Committee (a body comprising actual or potential competitors of the transferor and/or transferee). There are no objective criteria for allowing or rejecting a proposed transfer. This effectively gives competitors on the Section Committee a right to veto the proposed transfer to a new holder of the established right.
- The Preservation of Rights Rule is restrictive of competition by allowing the retention of established rights, for up to 7 years, even if the incumbent is unable to use the ground in question. This hinders the

⁴⁷ This is exacerbated by the difficulty for non-members in gaining membership posed by the Membership Rule.

⁴⁸ As noted at footnote 44 above, the CMA acknowledges that within any individual Guild fair, incumbent members of the Guild will compete amongst themselves for fairgoers' custom.

allocation of established rights to members who might be able to offer a more attractive service to fairgoers.

(d) The Out of Order Rule

4.17 The Out of Order Rule reinforces the restrictions of competition at existing Guild fairs by:

- Reinforcing compliance with the Non-Members Rule and the Established Rights Rule by providing a more far-reaching disincentive for members to break those rules (that is, the whole fair being put 'out of order' with its attendant adverse consequences for all other members that would otherwise attend that fair).
- Acting as a counterbalance to any landlord looking to replace an incumbent member of the Guild by providing for collective action (in the form of a boycott) by members.

(e) Lack of transparency of the rules

4.18 The lack of transparency around the rules reinforces the restrictions of competition at existing Guild fairs because:

- Landowners will not necessarily understand the concept of established rights, nor the impact that established rights have on competition between incumbent members and other members of the Guild at existing Guild fairs.
- It may disadvantage landowners when contracting with Guild fair organisers, as a landowner may be unaware that they may not be able to replace an incumbent fair organiser or amusement operator if they have acquired established rights.
- It prevents non-member showmen from having knowledge that may help them compete more effectively with members of the Guild.

Restriction of competition between Guild fairs and rival fairs

4.19 The CMA is of the provisional view that the following rules restrict member and non-member showmen from holding and participating in rival fairs which compete with existing Guild fairs. They do this as follows.

(a) The Non-Members Rule

4.20 The Non-Members Rule protects incumbent members of the Guild, and their existing Guild fairs, from competitive pressure, by preventing Guild members from taking ground from non-member showmen at any fair, including rival fairs. Guild members collectively own more amusements than non-member showmen and tend to operate the larger amusements. Non-members do not have the capacity to put on large fairs by themselves, so would be reliant on Guild members and their amusements if they are to compete more effectively with existing Guild fairs. The rule therefore makes it more difficult for non-member showmen to start or expand rival fairs above a certain scale.⁴⁹

(b) The Time and Distance Rule

4.21 The Time and Distance Rule prevents members of the Guild from setting up, or participating in, a rival fair in competition with an existing Guild fair, within the stipulated time and distance of the existing fair (at which there are established rights). The Guild has explained, and the CMA accepts, that existing fairs may merit some protection from a rival fair setting up in close proximity (in time and distance) and thereby free-riding on the reputation of, and investment by members in, the existing fair. This is particularly the case where the local area cannot support (in terms of there being sufficient fairgoers to make a fair economically viable) more than one fair in a given time period.

4.22 However, the time and distance restrictions in the current rule have not been justified by the Guild as being necessary and proportionate to allow members to organise and participate in their fairs on an economically viable basis in light of prevailing local conditions.⁵⁰ The current blanket restrictions are, at least in some cases, unduly restrictive of competition and unduly protect incumbent members of the Guild, and their existing Guild fairs, from competition from rival fairs. They do this by:

- preventing new fairs being organised or attended by Guild members within the time and distance limits of an existing Guild fair;

⁴⁹ The Association of Independent Showmen (AIS), a smaller association of showmen, provided examples of its members finding it difficult to put on fairs due to this rule (call between the AIS and the CMA dated 6 June 2016).

⁵⁰ The Guild has submitted that the time and distance restrictions in the current rule are aimed at protecting the investments by Guild members in existing Guild fairs at a national level.

- preventing Guild members attending another existing fair (at which they do not have established rights) within the time and distance limits of a Guild fair at which there are established rights.⁵¹

4.23 The Time and Distance Rule contains a limited exception by allowing members of the Guild to attend galas, carnivals and local celebrations within the time and distance of an existing fair, but only with juvenile rides⁵² and stalls.⁵³ This exception does not apply to mainstream fairground equipment which would be more likely to compete with the equipment at an existing Guild fair.

(c) The Out of Order Rule

4.24 The Out of Order Rule reinforces the restrictions of competition from rival fairs. It does this by reinforcing compliance with the Non-Members Rule and the Time and Distance Rule by providing a more far-reaching disincentive for members to break those rules.

⁵¹ In some cases, Guild members have historically held established rights at two existing fairs that are within the time and distance limits of each other. The rule does not apply in such cases.

⁵² Juvenile rides are those designed to entertain children and are defined in the rule book at rule 8.b.

⁵³ As defined in rule 8.b.

5. The commitments

5.1 For the purpose of addressing the CMA's competition concerns (as described in chapter 4 above), the Guild has offered formal commitments to the CMA, largely in the form of changes to its rules. The proposed commitments are set out in the Annex to this notice and are summarised below.

The Guild's proposed commitments

5.2 The Guild has offered commitments to amend certain of the rules of the Guild as follows:

(a) Applications for Membership (rules 8(f) and 8(g))

- The requirement for a proposer and seconder will be removed, as will the requirement for the advertising fee to be submitted with the application form.
- Applications will only be refused on certain, transparent, objective and non-discriminatory grounds.⁵⁴
- A Section Committee will need to provide the applicant with reasons as to why their application has been rejected. Its decision will be appealable directly to an independent Appeals Tribunal (rather than to the Guild's Management Committee comprising actual or potential competitors to the applicant as is currently the case), and any such appeal shall be free of charge.
- An applicant whose appeal is rejected will be notified of the reasons and evidence on which the decision for refusal was taken.
- Joining fees will be set by each Section by reference to a reasonable estimate of the administrative costs of processing membership applications, and each Section shall publish its joining fee on its website. If the applicant has also applied for the retrospective recognition of established rights, the Section may charge in relation to such recognition an additional fee that shall reflect the financial benefit to the member associated with that right. This charge will be set on an objective basis.

⁵⁴ The grounds for refusal are: if the applicant is under 18; if the applicant is not, and has no intention to be, a showman; if the applicant has a criminal record (excluding any spent convictions); if the applicant falls short of the standards of conduct to be expected of a showman dealing with the public.

- Joining fees will be payable only in the event that an application for membership is successful.
- Conditions attached to membership will be limited to the following: the applicant must (1) take up their offer of membership within 28 days, (2) abide by the Guild's rules and (3) pay the joining fee.

(b) Non-Members Rule (rule 21(a))

- The Non-Members Rule will be re-written so as to address separately, on the one hand, the limb of the rule relating to members not taking ground from non-member showmen and, on the other hand, the limb of the rule relating to members not letting ground to non-members.

Taking ground from non-members who are showmen

- This limb of the Non-Members Rule will be changed so as to make it expressly clear that, subject to one exception, it does not prevent members of the Guild from taking ground at fairs from non-member showmen.
- The exception is that a prohibition will remain on members taking ground from certain former members of the Guild who have been expelled from the Guild on one or more of the following grounds:
 - Criminal conviction
 - Unruly behaviour
 - Infringement of Guild rules that indicates dishonesty, lack of care for public safety, or some other reason showing that the person falls short of the standards of conduct to be expected of a showman dealing with the public, or
 - The non-payment of fines imposed by the Guild.

Letting ground to non-members

- This limb of the Non-Members Rule will be changed so as to make it expressly clear that, subject to certain exceptions, it does not prevent members from letting ground to non-members.
- The first exception will be that Guild members shall not let ground to any person

- who has an unspent criminal conviction;
 - where there is evidence that that person, on an objective assessment, fell short of the standards of conduct to be expected of a showman dealing with the public; or
 - who has been expelled from the Guild on certain specific grounds.
- There will also be a further exception: where a landowner expressly requests in writing that a fair shall be an "All-Guild Fair", the fair organiser can only let ground to members of the Guild, and members can only sub-let ground to other members of the Guild (subject to the exception already set out in the current rules, which allows ground to be let or sub-let to a 'local trader').⁵⁵

(c) Out of Order Rule (rule 21(k))

- The Guild has proposed inserting an additional step to the process of making a decision under the Out of Order Rule, by requiring that the fair organiser attempts first in good faith to negotiate with the landowner to resolve the dispute in question.

(d) Established Rights Rule (rule 23(a)), Transfer Rule (rule 7(h)) and Preservation of Rights (rule 23(b))

- The Guild has proposed amending the Established Rights Rule by inserting a new provision enabling a landowner to replace an incumbent fair organiser or amusement operator on grounds of the incumbent's poor performance.⁵⁶ In such circumstances, the incumbent's established rights will not apply so as to prevent their replacement by another showman. Poor performance shall be a matter to be judged by the landowner, although a landowner's decision may be appealed to the Guild's Appeals Tribunal, at which decisions are taken by an independent barrister.

⁵⁵ Rule 21(a) states that "No member shall let ground to any person who is not a member save as provided in rule 8.I. (4) or shall take or accept ground from any person having the qualifications referred to in rule 6 a. who is not a member. Provided that a member may let ground to a local trader who is not a member to enable the local trader to sell goods usually sold by him in the course of his normal business. For the purposes of this rule a "local trader" is a person who is a ratepayer, resident or one who usually carries on business in the town or place in which the Fair is held."

⁵⁶ Poor performance shall mean performance falling below the standards which the landowner could reasonably expect in terms of (i) the raising of revenue and/or (ii) quality standards (including innovation) and/or (iii) compliance with relevant legislation including but not limited to consumer protection and health and safety legislation.

- In addition, under the proposed new rule, the proposed transferor and/or the relevant Section Committee may advertise that the relevant ground is “for sale”.
- The Guild has proposed amending the Transfer Rule so as to ensure that objections to the transfer of rights must fall within the list of acceptable reasons, namely that:
 - The proposed transferee is not a member;
 - The proposed transferee has a criminal conviction (excluding spent convictions);
 - There is evidence, on an objective assessment, showing that the transferee fell short of the standards of conduct to be expected of a showman dealing with the public; or
 - The proposed transferor has not acquired the relevant established rights.
- The Guild has also proposed changing the Preservation of Established Rights Rule when a member is unable to attend a fair at which it has such rights. Under the proposed amendment, the Section Committee will only regard the member as being unable to attend such a fair on one or more of the following grounds:
 - Ill-health;
 - Bereavement;
 - Unavailability of equipment due to malfunction;
 - Where a member wishes to operate a new business venture other than at travelling fairgrounds (but only for one year);
 - Other circumstances beyond the relevant showman's control (the proposed rule changes make clear that the matter being ‘beyond ... control’ cannot be interpreted to include circumstances where negotiations to hold/attend a fair between a landowner or fair organiser and an amusement operator, and negotiations to attend a fair between a fair organiser and an amusement operator, have failed).

- Moreover, under the proposed revised rule, in no circumstance will established rights be preserved for more than five years (compared to seven years under the current rule).

(e) Time and Distance Rule (rule 23(c))

- The scope of the Time and Distance Rule will be reduced to the extent that:
 - The rule shall apply only within one mile, rather than two miles, from any fair at which there are established rights, so reducing the geographical area covered by the restriction by three quarters.
 - Through their bye-laws, Sections shall no longer be allowed to impose time or distance limits that exceed the national maximum (but they will be allowed to impose reduced limits to those specified in this rule).
 - Sections whose time and distance limits are already below those of the new national maximum can only extend the time and distance limits after first having published their reasoning on their website as to why such extension is necessary and proportionate in the context of local circumstances.
- Sections that have not reduced their time and distance limits through bye-laws, and Sections that have increased their time and distance limits by bye-laws (but not above the national maximum), on the basis that it was necessary and proportionate to do so, will review this matter from time to time (and at least every five years) in the context of the prevailing local circumstances.
- Members can challenge a decision taken by a Section to extend or reduce the time and distance limits that are already below the national maximum, or a decision by a Section not to reduce the time and distance limits from the national maximum. This will take the form of an appeal to the Guild's Appeals Tribunal, at which decisions are taken by an independent barrister.
- The rule shall not apply to events, festivals, galas, carnivals and local celebrations for the period of the event organised by a bona fide local council, committee or similar body, where members may now attend with all forms of fairground equipment.

(f) **Publication of the Rule Book**

- 5.3 In addition, the Guild has offered to ensure that as from the end of March 2018 an up-to-date copy of its rule book shall be published on its website, reflecting the changes set out above and (as soon as reasonably practicable thereafter and by not later than one month following the change) any subsequent changes.

6. The CMA's assessment of the proposed commitments

- 6.1 Following engagement with the Guild, and for the reasons set out below, the CMA has reached the provisional view that its competition concerns would be addressed by the commitments offered by the Guild, once implemented. Formal acceptance of commitments would result in the CMA terminating its investigation and not proceeding to an infringement decision.
- 6.2 Accordingly, a decision by the CMA accepting binding commitments will not include any statement as to whether the rules of the Guild under investigation infringed the Chapter I prohibition prior to the acceptance of the commitments.

The CMA's Guidance

- 6.3 As noted above (see paragraph 1.4), pursuant to section 31A of the Act, for the purposes of addressing the competition concerns it has identified, the CMA may accept from such person (or persons) concerned as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate.
- 6.4 The CMA is likely to consider it appropriate to accept binding commitments only in cases where (1) the competition concerns are readily identifiable; (2) the competition concerns are addressed by the commitments offered; and (3) the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time.⁵⁷
- 6.5 However, the CMA will not accept commitments where compliance with such commitments and their effectiveness would be difficult to discern and/or where the CMA considers that not to complete its investigation and make a decision would undermine deterrence.⁵⁸

The CMA's provisional assessment

- 6.6 The CMA has carefully considered the Guild's proposed commitments, as set out in the Annex to this notice, and for the reasons set out below it is of the provisional view that, once implemented, the commitments would address its competition concerns and that this is an appropriate case for commitments.

⁵⁷ Paragraph 4.3 of the Enforcement Guidance and paragraph 10.16 of the Procedural Guidance.

⁵⁸ Paragraph 4.5 of the Enforcement Guidance.

The CMA has reached the provisional view that the competition concerns are readily identifiable

- 6.7 The CMA's provisional view is that the competition concerns arising from the rules set out in Chapter 4, paragraphs 4.4 to 4.11, are readily identifiable. The rules variously set out express and clear restrictions on the conduct of members in various situations (both in relation to other members as well as non-members). Furthermore, the lack of transparency and objective criteria in some of the rules (for example, as to membership) make it difficult for those wishing to join the Guild to do so.
- 6.8 Given the context set out in Chapter 3, and as explained in Chapter 4, the CMA is concerned that these rules are restrictive of competition both at existing Guild fairs and between Guild fairs and rival fairs. Such concerns relate to competition between members of the Guild and between members of the Guild and non-members. The rules work together to protect incumbent members of the Guild, and their fairs, from competition. In so doing they reduce the prospect of greater choice, further innovation (for example, new or improved rides) and an even more attractive service for fairgoers.
- 6.9 The CMA has set out these competition concerns in Chapter 4 (paragraphs 4.12 to 4.24).

The CMA has reached the provisional view that the commitments offered by the Guild, once implemented, would address its competition concerns

- 6.10 For the reasons set out below, the CMA has reached the provisional view that the proposed commitments offered by the Guild, once implemented, would address its competition concerns. The commitments are to amend the Guild's rules so as to remove or significantly reduce (to a necessary and proportionate level) the restrictions faced by members of the Guild and non-member showmen that currently give rise to the CMA's competition concerns, thereby opening up Guild fairs and the incumbent members of the Guild at such fairs to the prospect of greater competitive pressure.

Addressing the competition concerns in respect of restrictions of competition at existing Guild fairs

(a) The Membership Rule

- 6.11 The proposed amendment to the Membership Rule would remove the provisions that make it difficult for showmen to join the Guild, thereby enabling them to compete at existing Guild fairs, because:

- Applications for membership would not require the support of actual or potential competitors.
- Applications would be judged against transparent, objective and non-discriminatory criteria. Joining fees would be set at objective and cost-reflective levels.
- Unsuccessful applicants would receive reasons for the Guild's decision to reject their application.
- Unsuccessful applicants would have access to an effective appeal mechanism before an independent Appeals Tribunal.

6.12 New members would be able to take advantage of the proposed amendments to the Established Rights Rule, Transfer Rule and Preservation of Rights Rule (see below), thereby opening up more opportunities for them to compete with incumbent members of the Guild.

(b) The Non-Members Rule

6.13 The proposed amendment to the Non-Members Rule in relation to letting ground to non-members would effectively remove the restriction on non-member showmen being able to compete for ground at Guild fairs. The limited exceptions are objectively justified in all the circumstances: for example, the prohibition against letting ground to non-members having an unspent criminal conviction would help to maintain the requisite levels of protection for, and trust from, fairgoers; and the exception for cases in which the landowner expressly requests an 'All-Guild Fair' would preserve the landowner's freedom to specify the type of fair it wants.

6.14 As a result of this proposed change to the Non-Members Rule:

- Non-members would have the opportunity to exert competitive pressure on incumbent members at Guild fairs.
- Non-members would also be able to compete with members of the Guild to replace a poorly performing incumbent member.

(c) The Established Rights Rule, the Transfer Rule and the Preservation of Rights Rule

6.15 The combined changes to the Established Rights Rule, the Transfer Rule and the Preservation of Rights Rule would remove or, in some cases, significantly reduce (to a necessary and proportionate level) the restrictions faced by Guild members and non-members that give rise to competition concerns. This

would result in incumbent members of the Guild being exposed to the prospect of greater competitive pressure, enabling those members of the Guild who are best placed to provide an attractive service to fairgoers to replace more readily the incumbents. This is because, for example:

- The proposed changes to the Established Rights Rule would enable landowners to bring about changes to the fair by replacing poorly performing incumbent members (whether fair organisers or amusement operators) and so open up competition for the ground vacated by those incumbent members. In addition, the proposed changes to the Non-Members Rule would mean that, where an incumbent member was replaced by a landowner for poor performance, there would be an opportunity for non-members to compete with members of the Guild for the vacated ground.
- The proposed changes to the Transfer Rule would remove the scope for potential unfairness or discrimination in the transfer of established rights (for example, to another member of the Guild who is better placed to provide a more attractive service to fairgoers). This is because the proposed changes would ensure that a transfer of established rights may only be objected to on limited, objective and non-discriminatory grounds.
- The proposed changes to the Preservation of Rights Rule would mean that, where incumbent members were unable to use the ground on which they held an established right, there would be fewer and more clearly delineated circumstances in which they would be able to preserve their established rights. Moreover, they would be able to preserve them for a shorter period of time (up to a maximum of 5 years).⁵⁹ It is relevant to note that in the period in which established rights were preserved, it would remain possible for the member preserving their rights to sub-let the ground in question to another member, with the result that the other incumbent members at the fair would face competitive pressure from the incoming member in that period.

(d) The Out of Order Rule

6.16 As noted above (paragraph 4.17), the Out of Order Rule reinforces the restrictions of competition at existing Guild fairs, in particular by reinforcing compliance with the Non-Members Rule and the Established Rights Rule.

⁵⁹ Assuming they do not take advantage of the Transfer Rule.

Given the proposed changes in respect of these two rules, as well as related rules, it follows that if the Out of Order Rule were to be invoked, it would not be on the basis of rules that raise competition concerns. Moreover, the proposed changes to the Out of Order Rule (which are aimed at ensuring that a landowner and a fair organiser attempt to negotiate in good faith to resolve their dispute before a decision is taken to put a fair ‘out of order’), would ensure that fairs are not put ‘out of order’ prematurely or unnecessarily.

(e) Increased transparency of the rules

6.17 The proposed commitment to ensure that an up-to-date version of the rules is available on the Guild’s website would contribute to addressing the CMA’s competition concerns in respect of the rules set out above as:

- Landowners would be better informed about the concept of established rights.
- Landowners would be better informed that they may be in a position to make improvements to a fair by replacing poorly performing members of the Guild or by not requesting in writing an ‘All-Guild’ fair, thereby enabling non-members to work together with members to put on a fair.
- Non-members would also have a better understanding of the rules, thereby being able to assess how to compete more effectively with Guild members (whether by joining the Guild or seeking to influence landowners not to request an ‘All-Guild’ fair).

Addressing the competition concerns in respect of restrictions of competition between Guild fairs and rival fairs

(a) The Non-Members Rule

6.18 The proposed changes to the Non-Members Rule to remove the prohibition against members of the Guild taking ground at fairs from non-member showmen would enable members of the Guild to work with non-members to hold rival fairs. The limited exception is objectively justified in all the circumstances: for example, the prohibition against taking ground from non-members who have been expelled from the Guild on grounds such as dishonesty or lack of care for public safety would provide an added incentive on current members to maintain the highest standards of conduct, since if they were to be expelled on one of the specified grounds their freedom to let their ground at a fair to members of the Guild would be removed.

(b) The Time and Distance Rule

6.19 The proposed changes to the Time and Distance Rule would significantly reduce (to a level that was necessary and proportionate to ensure the continued viability of a fair) the scope of the restrictions on where and when members of the Guild could organise, or take ground at, rival fairs. Moreover, in certain situations these restrictions would be reviewed from time to time (and at least every five years) to ensure that the relevant time and distance limits remained necessary and proportionate to ensure the continued viability of a fair, in the context of prevailing local conditions. In particular:

- Incumbent members would no longer be prevented from starting or participating in rival fairs which were between 1 and 2 miles in distance from existing Guild fairs. This would amount to a reduction of the land area currently covered by the restriction by three quarters;
- Where a Section had previously reduced, through its bye-laws, the time and distance limits set out in the national rules, and subsequently wished to increase such time and distance limits back to the national maximum, it would have to publish its reasons as to why any proposed increase to the time or distance limits (which were already below the national maximum) was necessary and proportionate to ensure the continued viability of a fair, in the context of prevailing local conditions.
- Further, Sections would need to review from time to time the time and distance limits on a local basis (and at least every five years) where:
 - The time and distance limits were at the national maximum, or
 - Where the time and distance limits had been increased previously (but were still below the national maximum).
- The time and distance limits imposed or retained under the above bullet point would need to be justified as being necessary and proportionate in the context of local conditions and the decision to impose or retain them could be appealed to an independent Appeals Tribunal.
- Members of the Guild would also be able to attend events and festivals in addition to galas, carnivals and local celebrations with all types of fairground rides and amusements (not just juvenile rides and stalls) that were within the time and/or distance of an existing Guild fair, thereby increasing the competitive pressure on the fair in question.

(c) The Out of Order Rule

6.20 As noted above (paragraph 4.24), the Out of Order Rule reinforces the restrictions of competition from rival fairs by reinforcing compliance with the Non-Members Rule and the Time and Distance Rule. Given the proposed changes in respect of these two rules, as well as related rules, it follows that if the Out of Order Rule were to be invoked, it would not be on the basis of rules that raise competition concerns. Moreover, the proposed changes to the Out of Order Rule (which are aimed at ensuring that a landowner and a fair organiser attempt to negotiate in good faith to resolve their dispute before a decision is taken to put a fair 'out of order'), would ensure that fairs are not put 'out of order' prematurely or unnecessarily.

The CMA has reached the provisional view that the commitments offered are capable of being implemented effectively and, if necessary, within a short period of time

6.21 The conduct of Guild members is governed by the Guild's rule book, which includes the rules that are the subject of the present consultation. By amending these rules in the rule book, the proposed commitments would be implemented and enforceable by the Guild against each of its members. The Guild would implement the rule changes by a vote at the Guild's Central Council to take place no later than 31 January 2018⁶⁰ in accordance with the provisions from the Guild's rule book governing the amendment of its rules. The CMA's provisional view is that this timescale is reasonable: the Guild's rules set out a formal procedure for amending the rules which means that the Guild would not be able to implement the rule changes materially more quickly.

The CMA has reached the provisional view that compliance with such commitments and their effectiveness would not be difficult to discern

6.22 The proposed commitments would take the form of changes to the Guild's rules. The Guild's rule book will retain strong enforcement mechanisms (including rules allowing the Guild to impose financial penalties on members and expel members from the Guild for certain breaches of the rules) together with an independent review mechanism in the form of an Appeals Tribunal (at which decisions are taken by an independent barrister). These mechanisms would, in the CMA's provisional view, ensure that the future conduct of the Guild and its members complies with the rule changes under the proposed commitments. Further, members would have the incentive to raise a

⁶⁰ The Guild would commit to publish its amended rule book by no later than 31 March 2018.

complaint using these mechanisms of instances of non-compliance with the rules as changed pursuant to the proposed commitments, or any failure of their effectiveness.

The CMA has reached the provisional view that deterrence would not be undermined by not completing its investigation and not making a decision

6.23 The CMA's provisional view is that accepting commitments in this case would not undermine deterrence. The proposed commitments, once implemented, would entail significant pro-competitive amendments to the Guild's rule book, which would change long standing practices within the Guild.

6.24 The CMA's action in pursuing this investigation and accepting these commitments will send a strong signal to other trade associations, deterring them from implementing the same or similar rules or practices that protect their members from competition (whether from other members or non-members).

7. The CMA's intentions and invitation to comment

- 7.1 In light of the foregoing, the CMA's provisional view is that the commitments offered by the Guild as set out in the Annex to this notice would, once implemented, address its competition concerns and it is appropriate to accept them. Therefore, the CMA intends to accept the commitments by means of a formal commitments decision.
- 7.2 As required by the Act,⁶¹ the CMA now invites interested parties to make representations on the proposed commitments and will take such representations into account before making its final decision whether to accept the commitments.
- 7.3 The CMA is particularly interested to hear from showmen (whether or not members of the Guild), landowners who host fairs (including local authorities) and fairgoers. The CMA has also published a '60 Second Summary' providing short summary details of the proposed commitments offered by the Guild which can be found [here](#) and a letter to members of the Guild which can be found [here](#). As noted above, the CMA has not reached a final view on the matter of the commitments and invites all interested parties to submit observations and evidence in order to assist the CMA in its final assessment of the commitments offered.

Invitation to comment

- 7.4 Any person wishing to comment on the commitments should submit written representations to the postal or email addresses given below by **5pm on Tuesday 3 October 2017**, or telephone our Contacts Team on 020 3738 6000. Please quote the case reference 50243 in all correspondence related to this matter. Although it is easier for the CMA to take into account representations made in writing, we can also accept those made verbally.
- 7.5 Please respond using the following address:

By post: George Brenton
Competition and Markets Authority
Victoria House
Southampton Row

⁶¹ Section 31A(5) and paragraph 2 of Schedule 6A to the Act.

London

WC1B 4AD

By email: ProjectCrystal-External@cma.gsi.gov.uk

Confidentiality

- 7.6 The CMA does not intend to publish the responses to the consultation with any commitments decision or notice to provisionally accept any modified commitments (as may be the case). However, the information contained in the responses may be used or summarised on an anonymous basis in these documents.
- 7.7 In the event that the commitments are not accepted and the CMA is considering disclosing the information (such as in or with an infringement decision), it will revert to the provider of that information to obtain representations on confidentiality. The CMA will then consider those representations before deciding whether the information should be disclosed under Part 9 of the Enterprise Act 2002.

Annex: the commitments offered by the Guild

OFFER OF COMMITMENTS

BY THE SHOWMEN'S GUILD OF GREAT BRITAIN ("the GUILD") TO AMEND ITS RULES AS CONTAINED IN THE 2017-2018 YEAR BOOK

Introduction

This formal offer of commitments is approved by the Guild's CMA Committee a body authorised by the senior decision making body in the Guild to offer commitments in this way.

Publication of the Showmen's Guild of Great Britain Year Book

The Showmen's Guild of Great Britain Year Book shall be published on the Guild's website at the latest by 31 March 2018. Any subsequent changes to any of the rules contained in the Showmen's Guild of Great Britain Year Book shall be published on the Guild's website as soon as is reasonably practicable and by no later than one month from the date on which the change is passed by the Central Council.

Membership – Rule 6(a)

6(a)- Full Membership

- (1) Nationals of any Member State of the European Economic ~~Community (E.E.C)~~ ~~Area (EEA)~~ over the age of 18 who satisfy the Section Committee that they own and operate at Travelling Fairs or Travelling Circuses (or that they propose so to own and operate) any of the equipment listed in Rule 8b subject to the definitions contained in Rule 38, are eligible for election to full Membership. Firms which operate and companies which are registered in any Member State of the ~~E.E.C.~~ ~~EEA~~ and who have the above qualifications are eligible for full membership subject to paragraphs c. and d. below.
- (2) Individuals, firms or Companies who so own and operate stalls other than amusement stalls, as defined in Rule 38, shall not thereby have a qualification for Membership, except that a Section Committee shall refer any such application for Membership to the Management Committee who may approve it, if they are satisfied that special circumstances exist which, in their opinion, would justify such approval. The Section Committee shall not put such an application before their members under Rule 8.g (5), unless and until the Management Committee have first approved it, and in default any Membership purported to be granted shall be null and void.
- (3) Individuals over the age of 18 who are the spouse, son or daughter of a full ~~members~~ member, and who are not qualified under clause (1) above, provided they take

an active part in that full member's business of Travelling Showmen are eligible for election to full Membership.

- (4) Any member/person who has a fine and/or fees outstanding shall not be eligible for Partnership Membership or to continue as the sole surviving partner of a firm under the terms of Rule 6(d)(5).

Membership – Rule 8(f)

Rule 8(f) – Application for Membership

- (1) Application for membership including application for Associate Membership, may be made to the Secretary of the Section which the applicant wishes to join ~~and the applicant must state his full name and present address, also his permanent address and the full amount of equipment or concerns which he proposes to use and any other particulars the Committee may require~~ using the application form of that Section.
- (2) The Application form which shall be in a form approved by the Central Council must be ~~obtained from the proposer of the applicant, who shall in turn obtain it published either on the website of the relevant Section or on the Guild's website, identifying the Section(s) to which the form applies and obtainable~~ from the Section Secretary.
- (3) No person shall be a member of more than one Section.

Membership – Rule 8(g)

Rule 8(g) - Procedure for Electing Members

- (1) It shall be the duty of the Secretary of any Section to whom application is made for Membership to advertise the same for two weeks in "The World's Fair" newspapers or other Guild approved system giving the full name and address of the applicant ~~with proposer and seconder~~ before putting his application before the Section Committee. When any representations are received by the Section as a result of the advertisement they shall be first made available to the applicant (subject to any applicable redactions on grounds of protecting confidentiality) and then considered by the Committee concerned. ~~Advertising fee to be submitted with application.~~
- (2) The applicant, ~~proposer and seconder~~ shall appear before the Section Committee at such times as such application for Membership is being considered by such Committee. ~~It shall not be necessary for the proposer and seconder both to appear at the same time as the applicant, but both shall appear before the application is finally dealt with.~~ The Section Committee, at their discretion, may dispense with the written application for Membership under Rule 7, a, or b, of a widow or widower of a deceased member ~~and/or the personal attendance of his/her proposer and seconder.~~
- (3) The application for Membership shall first be considered by the Section Committee

who shall have power when placing any application before the ~~member-membership of the Section~~ under clause (5) below, to recommend whether the application be granted or refused and if it is recommended that the application be granted only upon ~~what the following~~ conditions :

- (a) that the applicant shall take up an offer of membership within 28 days, after which time if not accepted, the offer of membership lapses;
- (b) that the applicant must abide by the Guild's rules; and
- (c) payment by the applicant of the fee

Applications may only be refused, and may only be recommended by the Section Committee for refusal, on the basis of evidence of one or more of the following :

- (a) the applicant is under 18;
- (b) the applicant is not, and has no intention to be, a showman;
- (c) the applicant has a criminal record (excluding any spent convictions);
- (d) ~~(3)~~the applicant's conduct falls short of the standards of conduct to be expected of a showman dealing with the public, the matter to be determined on an objective assessment of the evidence.

(4) Occasionally applications for membership are accompanied by applications for retrospective recognition of established rights. Should an applicant have held or occupied ground or position at a Fair or Fairs or taken ground for the purpose of holding a Fair or Fairs for the two successive years immediately prior to his application, the Section Committee may also order that in the event of his election he shall be deemed to have an established right of tenure to such ground or position or any part of such ground or position as they may at their absolute discretion determine. If the Section Committee make no such order that applicant, if elected, shall have no established rights in respect of the same. In cases where established rights are recognised, an additional fee may be charged which reflects the value to the member of that retrospective recognition (see (8) below for general entrance fees). Fees charged for retrospective recognition of Established Rights for an applicant for membership must be objectively based upon what a member is likely to gain financially through access to the economic benefits that Guild membership brings and must be assessed accordingly.

(5) As soon as the Committee has considered the application-, ~~but in any event no later than 14 days following the Committee's next meeting (not to be unreasonably delayed) after receipt of the application,~~ it shall, together with ~~the recommendation any conditions or order if any~~ the Committee ~~deem fit to impose or make~~ deems fit to recommend pursuant to sub-section (3) of Rule 8(g), be placed before the Members at their next meeting, who may approve or reject it. All applicants are bound by this decision, unless the application is withdrawn or Appealed.

(6) Any person who has been refused Membership under Rule 8.g. (5) (the unsuccessful applicant) shall have the right of appeal to ~~the Management Committee~~ an independent Appeals Tribunal under the Rule 20(m) procedure. The Secretary of the Section concerned ~~when giving shall give~~ notice in writing to the unsuccessful applicant of the decision refusing him Membership ~~must inform him within 14 days of the decision (the Notice of Refusal).~~ The Notice of Refusal shall include the reasons, and relevant

evidence, on which the refusal of an application, and any recommendation by the Section for refusal, are based, and must inform the unsuccessful applicant of his right of appeal, the fact that it is free of charge, and of the manner in which it may be exercised and shall provide him with the appropriate forms of appeal.

- a. The right of appeal shall not be exercisable unless the unsuccessful applicant gives notice by completing the appropriate forms and sending the completed forms both to the General Secretary Appeals Tribunal and to the Secretary of the Section ~~convened~~ within 14 days of the date upon which he was served ~~notice of the decision~~ Notice of Refusal, if the unsuccessful applicant is resident in the United Kingdom, or 21 days if he is resident in any other member state of the EECEEA. Provided that the Management Committee Appeals Tribunal shall have power to hear an Appeal notice of which has been given outside 14 days if they are satisfied that special reasons exist for the delay.
- b. The unsuccessful applicant shall not be required to pay any fee or deposit in respect of an Appeal under this rule.
- c. An Appeal lodged may be withdrawn on application to the Management Committee Appeals Tribunal.
- d. The Notice of Appeal shall state the grounds of the Appeal and the address at which the unsuccessful applicant may be found ~~and the names and addresses of his Proposer and Seconder~~. At the time of giving Notice of Appeal the unsuccessful applicant shall also send to the General Secretary Appeals Tribunal copies of all correspondence and other relevant documents bearing on the appeal.
- e. Upon receiving the Notice of Appeal, the Secretary of the Section concerned shall notify the General Secretary Appeals Tribunal whether the Section Committee on considering the application under Rule 8.g (3) recommended that it be refused or granted (in which case he shall also notify the General Secretary Appeals Tribunal of the names and addresses of the Proposer and Seconder of the motion, before the Members of the Section, that the application be refused) and shall provide the Appeals Tribunal with a copy of the Notice of Refusal.
- f. The parties to the Appeal in addition to the unsuccessful applicant shall be the Section Committee representative and also the Proposer and Seconder of the motion that the application be refused.
- g. The General Secretary Appeals Tribunal shall notify all parties ~~and the unsuccessful applicant's Proposer and Seconder~~ of the date, time and place of the hearing of the Appeal. It shall be the duty of all parties who have been given proper notice to attend the Hearing and in default of such attendance or an adequate explanation of absence, the Management Committee Appeals

Tribunal shall have power:

1. To proceed with the Appeal in such parties absence, or
2. To treat the case as in default, and to determine the Appeal accordingly.

h. The Section Secretary will be responsible for ensuring that the Section Minute Book, or a copy of the relevant extracts therefrom (including any previous Minutes relating to the case and a copy of the Notice of Refusal) is certified correct by the Section Secretary and a member of the Section Committee, and all other relevant documents in the possession of the Section are produced on the hearing of an Appeal.

i. Upon the hearing of an Appeal the Management Committee Appeals Tribunal may:-

1. Affirm or reverse the decision of the Members of the Section and if it reverses the decision it may impose any conditions or make any order under Rule 8.g. (4) which the Section Committee might have imposed or made. The conditions governing acceptance for membership must be completed by the applicant within one month of the date of the Management Committee Appeals Tribunal at which the application is considered, otherwise such conditions and acceptances shall become null and void.
2. The Management Committee Appeals Tribunal shall not exercise its power under this sub-rule unless the parties to the Appeal ~~and the unsuccessful applicant's Proposer and Seconder~~ have been given an opportunity of appearing on the hearing of the Appeal and if they so wish making representations on their own behalf.

(7) Should an application for Membership be refused it shall not again be considered for a period of twelve months from the date of such refusal or the date of the determination of any Appeal against such refusal.

(8) An applicant for Membership shall not become a member until the entrance fee has been paid. Entrance fees are payable only in the event that an application for membership is successful. The amount of the entrance fee shall be fixed ~~in~~ for each ~~ease~~ Section by the Section Committee concerned, and shall form part of the conditions of Membership. Entrance fees must be set by each Section at levels set exclusively by reference to a reasonable estimate of the administrative cost of processing membership applications. Each Section shall publish its joining fee on its website.

(9) – (11) [No change]

Appeals Tribunal – Rule 20(m)

20 (r)

The Tribunal may affirm, reserve or amend the decision of the Appeals Committee and may make any order or decision the Appeals Committee might have made, and may give any directions necessary to implement their decision, and, unless they otherwise direct, their decision shall be complied with within seven days of notification, such notification to include a copy of the Tribunal’s decision and written reasons. If it appears that any such decision has not been complied with within seven days, or such other period as may have been directed as aforesaid, the member concerned shall be summoned to appear before the Tribunal, and on his appearance may give such explanation as to his compliance or lack of compliance with the decision as he may desire. If, after hearing such explanation, the Tribunal are satisfied that the member concerned has not complied with the decision they shall declare his Membership immediately at an end, unless they are satisfied, having regards to all the circumstances of his case, of his non-compliance, that some penalty or order less than cessation of Membership would be just, in which event they shall impose such lesser penalty or order.

20 (u) “Member” shall include a “person refused Membership” ~~but the Tribunal shall not hear a Reference by such a person unless both his Proposer and Seconder are present together at the Tribunal meeting concerned.~~

Non-Members Rule – Rule 21(a)

21(a) Letting Ground

(1) Subject to clause (2) below, there is no prohibition on Lessees, Sections or members letting or sub-letting ground to any Amusement Operator who is not a member, save that there shall be a prohibition on letting or sub-letting ground to

- (i) any person who has a criminal conviction (excluding any spent convictions) or
- (ii) any person where the member letting Ground has evidence, on an objective assessment, showing that that person fell short of the standards of conduct to be expected of a showman dealing with the public or
- (iii) with respect to non-members who have been expelled from the Guild, any person where the reason for their expulsion was an infringement of Rule 19(a)(5) or of Rule 19(e)(1) or of any other Rule that indicates dishonesty or a lack of care for public safety.

(2) Where a Landowner makes an express request in writing to a Lessee or Section to have a Fair attended by Members only (an ‘all-Guild’ Fair):

- (i) that Lessee or Section shall not let ground to any Amusement Operator who is not a member;
- (ii) no member shall sub-let ground to any Amusement Operator who is not a member;
- (iii) No member shall let ground to any person who is not a member save as provided in rule 8.1.(4) or shall take or accept ground from any person having the qualifications referred to in Rule 6 a. who is not a member. Provided that a member may let ground to a local trader who is not a member to enable the local trader to sell goods usually

sold by him in the course of his normal business. For the purposes of this rule a “local trader” is a person who is a ratepayer, resident or one who usually carries on business in the town or place in which the Fair is held.

Taking Ground

No member shall take ground from any person who is not a member and who has been expelled from the Guild, where the reason for their expulsion was:

- (i) criminal conviction;
- (ii) unruly behaviour;
- (iii) infringement of Guild rules that indicates dishonesty, lack of care for public safety, or some other reason showing that the person fell short of the standards of conduct to be expected of a showman dealing with the public; or
- (iv) non-payment of fines.

Otherwise, members are not prohibited from taking ground from non-members.

Established Rights

Rule 23(a) – Established Right of Tenure at Fairs

(5) Power to deprive a member of established rights of tenure in cases of certain default

(a) If a Section Committee shall find, on hearing a complaint against a member, that he has broken any of the following rules, namely:

- 19a.(3) (conduct prejudicial to the Guild)
- 19a. (5) (unruly conduct)
- 21 b. (undesirable business)
- 21 c. (1), (2), (3), (4) (overbidding)

the Committee may instead of, or in addition to, any other penalty, order that the member shall forfeit his right of tenure at the Fair where the breach occurred, or that the year in which the breach occurred shall not count towards the member’s establishment of right of tenure at that Fair, provided they are satisfied that such an order is desirable to safeguard the Fair or the interests of other members thereat. A member who is proved to have held a Fair or occupied ground or position at a Fair in breach of Rule 23a.(3) shall not count such occupation towards the establishment of any rights of tenure to that Fair or ground or position; or shall forfeit any such rights as the case may be. A member whose rights are proved to have been infringed shall retain such rights for the following year without any further order.

(b) Where a Landowner chooses to replace an incumbent Fair Organiser and/or any Amusement Operator with Established Rights (an “Incumbent”) at the following year’s Fair on grounds of the Incumbent’s poor performance at a previous Fair, the Incumbent’s Established Rights shall not apply so as to prevent his replacement by another showman (a “Replacement Showman”). Poor performance means

performance falling below the standards which the Landowner could reasonably expect in terms of (i) the raising of revenue and/or (ii) quality standards (including innovation) and/or (iii) compliance with relevant legislation including but not limited to consumer protection and health and safety legislation. Poor performance is a matter to be judged by the Landowner.

Following the replacement of an Incumbent with a Replacement Showman who is a member on grounds of poor performance, a complaint by the Incumbent against the Replacement Showman pursuant to Rule 17 may only be made on the basis that the Landowner had no reasonable grounds for regarding the Incumbent's performance as 'poor', and the complaint (and any subsequent appeal to the Appeals Tribunal) shall be determined accordingly.

Rule 23(b) – Preservation of an established right of tenure

(3)(3) Applications for preservation of established rights of tenure where a member is unable to attend a Fair or when a Fair is not to be held.

If a member who has an established right of tenure at a Fair is unable to attend such Fair, or if a Fair at which a member has such a right is not to be held in a particular year, such member must apply to the Section Committee concerned for the preservation of his said right, if he wishes to preserve the same. ~~If a tenant member, he shall state the name of the Lessee member concerned (confirming that he has advised the Lessee of such application) whereupon the Section Committee may order that the said right shall be preserved provided that any such application shall be made not less than six weeks before the date of the said Fair, unless the Section Committee shall in the circumstances of the case deem a lesser period before the said date to be reasonable; and provided further that not more than three successive annual applications (or such other number of annual applications as the Section Committee may be by law provide,~~

A Member shall only be regarded as unable to attend a Fair on one or more of the following grounds:

- (i) Ill-health of that Member or of a member of their immediate family;
- (ii) Bereavement;
- (iii) Unavailability of equipment due to malfunction;
- (iv) Where a tenant member wishes to operate a new business venture other than at travelling fairgrounds, in which case subsection (a) below applies;
- (v) Other circumstances beyond the relevant member's control (excluding circumstances where negotiations to hold/attend a Fair between a Landowner or Fair Organiser and an Amusement Operator, and negotiations to attend a Fair between a Fair Organiser and an Amusement Operator have failed).

If a tenant member, he shall state the name of the Lessee member concerned (confirming that he has advised the Lessee of such application) whereupon the Section Committee may order that the said right shall be preserved provided that any such application shall be made not less than six weeks before the date of the said Fair, unless the Section Committee shall in the

circumstances of the case deem a lesser period before the said date to be reasonable; and provided further that not more than three successive annual applications (or such other number of annual applications as the Section Committee may be by-law provide up to a maximum of five) shall be so granted. This clause shall not apply in cases where a member cannot attend a Fair due to occupation by a non-member (see a.(6) above). If a non-member Lessee's Fair is not held in any particular year it shall be the duty of the Section Committee concerned, to make an order preserving the established rights of all the tenants concerned, without prior application from the tenants. Not more than three successive annual orders for preservation of established rights may be made under this rule in respect of any one Fair. If an application is made under clause (1) above or this clause within six weeks after the opening date of a Fair the Section Committee may, nevertheless, order that the member concerned shall have an established right to the ground or position in question for the following year; provided they are satisfied that for any special reason he could not ~~reasonable~~reasonably have applied before the Fair. The Section Committee may, if the circumstances so warrant, grant Preservation of Rights in excess of three years, but not exceeding ~~seven~~five. Where a Section is a party to an objection it shall be referred by that Section to the Appeals Committee or to any of the three principal Officers of the Guild who shall appoint another section to hear the objection.

[Subsection (a) which follows is unchanged.]

Rule 7(h) – Transfer of Rights

- (1) If a full member of the Guild wishes to transfer his rights and privileges enjoyed by him because of his Membership of the Guild, or granted to him under Rules 7a. or 7b. to another member, the Committee of the Section concerned shall have the power on application to approve the transfer of such rights and privileges, provided such an application shall be made not less than six weeks before the date of the Fair concerned unless the Section Committee in the circumstances of the case, deem a lesser period before the said date to be reasonable.
- (2) The Section Committee shall advertise in “The World’s Fair” or other Guild approved system all applications made under this rule at the cost of the applicant, and may take into account any representations received; ~~in~~ provided that any objections to the proposed transfer must fall within the list of acceptable reasons in (3) below. Any such representations should be made available to the parties to the proposed transfer to allow them to reply to any objections made. In particular they may take into account whether or not the proposed transfer has approval or otherwise of the Lessee concerned, provided that the Lessee's objections must fall within the list of acceptable reasons in (3) below. It is the duty of a member making an application to send the Lessee details of such application within the time specified above. Should any member object to a Transfer of Rights for one of the reasons listed in (3) below they should put their objections in writing within 14 days of the date of the advert and send it to the Section Secretary with a deposit of £25.00. The deposit to be returned if the objection is upheld.

(3) Objections by members and Lessees to a proposed transfer may only be made, and Section Committee approval may only be withheld, if there is evidence of one or more of the following:

- (i) The proposed transferee is not a member;
- (ii) The proposed transferee has a criminal conviction (excluding any spent convictions);
- (iii) The objector has evidence, on an objective assessment, showing that the transferee fell short of the standards of conduct to be expected of a showman dealing with the public or
- (iv) ~~(3)An approval of any transfer by the Section Committee concerned shall be subject to the member transferring the ground having in fact~~ The proposed transferor has not occupied the position(s) in question with his own equipment (and ~~submitting~~ submitted appropriate confirmation thereof), on the recognised Fair dates during the two immediate previous years or such lesser period as may be provided by the Section Byelaw in conjunction with Rule 23 to constitute established rights to a position.

(4) That for the purpose of the transfer, provided that the Preservation of Rights has been granted according to Rules 23 b.(1), (2), (3), (4) and (5), the ground in question can be transferred.

(5) The member making application for transfer of rights and privileges on non-member Lessee grounds shall produce to the Section Committee concerned written agreement to such transfer from the non-member Lessee. It shall be the responsibility of the applicant to obtain such consent but the Section Committee shall have the power at their discretion to take any steps to assist.

~~(6) If a member with established rights to ground or position wishes to apply to transfer such rights to another member under this sub-rule, neither he nor the Section Committee shall state in any public advertisement that such ground or position is “for sale”.~~

Time and Distance

Rule ~~23b(8)(c)~~ Restrictions on attending 23 (c) Holding Rival Fairs

~~(1)(4)~~ A member shall not ~~with~~ within a period of four weeks before the opening of a Fair (at which established rights exist) or within 22 days after the opening, if the Fair is still open, hold, occupy, let or take ground or position at ~~any other a~~ Fair (at which he ~~has~~ does not ~~have~~ established rights) ~~held or~~ proposed to be held within ~~two miles one mile~~ of that Fair, save that a ~~Selection Section~~ Committee may by Bye-law ~~within two miles of that Fair~~ reduce, save that a Selection Committee may by Bye law vary but not increase, the times and distance prescribed by this sub-clause, and/or exclude altogether the operation of this sub-clause in respect of any specified area or areas within their jurisdiction. It shall also be an offence to contract or negotiate at any time for the holding of a Fair that would, if held, contravene the above times and distances.

- (2) Where a Section Bye-Law, at any time since 1 July 2017 has applied a time and/or distance less than those set out in sub-clause (1) above, that Section may not increase the time and/or distance set out in that Bye-Law without first publishing its reasoning on its website(s) as to why the proposed increase in time and/or distance is necessary and proportionate in any specified area or areas within their jurisdiction to ensure the continued viability of the Fair or Fairs in question in the context of prevailing local circumstances, in particular taking into account whether a greater number of Fairs could be sustained within the time and/or distance in question and the written views of the relevant Local Authority and the emergency services.
- (3) A Section that has not amended the time and distance set out in sub-clause (1) above by Bye-Law, as well as a Section that has done so pursuant to sub-clause (2) above, shall review the matter of time and distance from time to time (and at least every five years) and decide whether in any specified area or areas within their jurisdiction such time and/or distance remain necessary and proportionate to ensure the continued viability of the Fair or Fairs in question in the context of prevailing local circumstances, in particular taking into account whether a greater number of Fairs could be sustained within the time and/or distance in question and the written views of the relevant Local Authority and emergency services.
- (4) A Member wishing to challenge a decision taken pursuant to sub-clause (2) or (3) above may appeal directly to an independent barrister at the Appeals Tribunal in accordance with Rule 20(m). The Appeals Tribunal may affirm, reverse or amend any decision taken under sub-clause (2) or (3) above.
- ~~(2)~~(5) The distance between two Fairs shall be deemed to be the distance between the respective entrances of such Fairs by which vehicles draw on and off the Fairground and shall be measured over the shortest route by which vehicles ~~owed~~ owned by Members may lawfully travel along the crown of the public highway.
- ~~(a)~~a: For the purpose of this Rule the distance between the respective entrances shall be that which the majority of members' equipment attending— i.e. Rides, Shows, Juveniles, Caravans etc, may lawfully travel on a public highway.
- ~~(6)~~(3) The operation of any ~~amusement equipment~~ Equipment (without established rights to do so) outside the boundaries of a Fair, at which established rights exist, and within the time and distance above set out, shall constitute a Fair for the purpose of this sub-rule.
- ~~(4)~~(7) Notwithstanding anything in sub-rule ~~(36)~~ above, the attendance of Members with ~~juvenile Rides and stalls as defined in Rule 8.b. at~~ Equipment at events, festivals, galas, carnivals and local celebrations for the period of the event organised by a bona fide local council, committee or similar body, which do not have as their primary purpose the holding of a Fair, shall not constitute a Fair for the purposes of Rule 23 c., but the attendance of Members at such events,

festivals, galas, carnivals and local celebrations which are within the time and distance of an established Fair will not entitle a member to any rights under Rule 23–~~a(a)~~. Nothing in sub-rule (47) shall affect the right of a member with established rights to protect such rights under Rule ~~23a~~23(a).

Out of Order

Rule 21(k)~~(1)~~ – Fairground “Out of Order”

(1) A Fairground used by a member for his business may be put out of order by Resolution made at an Extraordinary General Meeting of members of a Section specially and solely called for the purpose of considering the Fair in question in relation to this rule, and advertised as such in “The World’s Fair” newspaper. The Section shall call an extraordinary meeting whenever a requisition in writing, signed by not less than twenty members of the Section and/or Established tenants of the fair in question if they are from another Section, stating fully the objects of the meeting, is deposited with the Section Secretary. The Section shall not call an Extraordinary General Meeting unless the Fair Organiser has attempted in good faith to negotiate with the Landowner to resolve the dispute without an Out of Order decision being required. If it appears to the satisfaction of two thirds of the Members present and voting at such meeting that either:

- a. The person letting or seeking to let, the fairground is charging or seeking to charge at the date of the meeting, a price which is an increase on the price paid when the Fairground was last occupied by a member at a corresponding event; or
- b. The said person is imposing or seeking to impose conditions at the date of the meeting, relating to the occupation or control of the Fairground that are contrary to the interest of Members of the Guild – or
- c. The member concerned has in relation to the Fairground, being proved following a complaint (or appeal if appropriate) to have broken any rule or Bye-law relating to the established rights of tenure, the taking or letting of ground, or the price which may be paid or offered for the taking or letting of ground.
- d. A motion by a member, at an Extraordinary General meeting, that does not receive the satisfaction of two thirds of Members present and voting shall not again be brought forward within the same year where the circumstances and objects of the meetings are the same.

16 August 2017