

Showmen's Guild of Great Britain

**Competition and Markets Authority investigation
under the Competition Act 1998**

**Decision 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 this decision made under section 31A of the Competition Act 1998 (the ‘Act’), the CMA accepts the binding commitments offered by the Showmen’s Guild of Great Britain (the Guild) as set out in the Annex to this decision.
- 1.2 As a result of accepting the commitments, the CMA is discontinuing its investigation into whether or not section 2(1) of the Act (the ‘Chapter I prohibition’¹) has been infringed by certain of the rules of the Guild. The CMA has made no final decision in that investigation on whether there have been any such infringements.²
- 1.3 However, acceptance of the commitments does 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;
 - 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.³
- 1.4 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.
- 1.5 The remainder of this document is structured as follows:
- (a) Chapter 2 sets out the details of the CMA’s investigation and the undertaking under investigation;

¹ 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. The Chapter I prohibition does not apply in any of the cases in which it is expressly excluded under the Act (section 3 of the Act) 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) of the Act).

² Section 31B(2) of the Act.

³ Section 31B(4) of the Act.

- (b) Chapter 3 sets out the background to the sector in which the Guild operates;
- (c) Chapter 4 describes the CMA's competition concerns and the specific rules it has concerns about;
- (d) Chapter 5 sets out the commitments proposed;
- (e) Chapter 6 sets out the CMA's assessment of the proposed commitments, summarises the representations made in response to the CMA's notice of intention to accept commitments published on 22 August 2017 ('Consultation Responses'), and sets out the CMA's decision to accept the commitments, thereby making them binding on the Guild; and
- (f) Chapter 7 records the CMA's decision.

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 2015,⁴ the CMA launched a formal investigation,⁵ 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.⁶
- 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:
- (a) sending formal notices requiring documents and information to be provided by the Guild and certain of its members;⁷
 - (b) holding state of play meetings with the Guild and its legal representatives;
 - (c) obtaining further information from the Guild through additional meetings, telephone conferences and other correspondence;
 - (d) obtaining information from third parties; and
 - (e) desk research.
- 2.4 On 21 December 2016, the CMA issued a Statement of Objections (the '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.

⁴ 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.

⁵ Under section 25 of the Act.

⁶ *CMA Prioritisation Principles' (CMA16)* paragraphs 3.1 – 3.8.

⁷ 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.⁸

The commitments offer

2.6 On 30 May 2017, the Guild submitted a draft commitments proposal to the CMA. Following discussion with the CMA, the Guild revised its proposal and formally offered commitments to the CMA on 26 July 2017.⁹ It did so without prejudice to its position that it had not infringed the Act. The offering of commitments does not constitute an admission of an infringement of the Chapter I prohibition by the Guild. The proposed commitments were set out in the Annex to the CMA's notice of intention to accept commitments published on 22 August 2017 (the 'Notice').

2.7 The Guild's proposed commitments were offered in good faith by those representing 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 2018.¹⁰

2.8 On 22 August 2017, the CMA issued the Notice setting out its provisional intention to accept the commitments offered and inviting those likely to be affected by the proposed commitments to make representations on them.¹¹

2.9 The consultation period ran from 22 August 2017 until 3 October 2017. The CMA received 41 Consultation Responses commenting on the Notice. The Consultation Responses, and the CMA's consideration of them, are summarised in Chapter 6.

⁸ See chapter 4 below.

⁹ On 16 August 2017, the Guild made some very minor amendments to its proposed commitments at the request of the CMA.

¹⁰ The Guild would also commit to publish its amended rule book by no later than 31 March 2018.

¹¹ In addition to, and in support of, the Notice, the CMA published a [Press release](#), and a [60-second summary and video on the proposed commitments](#) relating to the proposed commitments. The CMA also issued an [Open letter to members of the Showmen's Guild of Great Britain](#) dated 22 August 2017 and further publicised the proposed commitments using Facebook Ads.

The party under investigation

- 2.10 The party under investigation is the Guild. The CMA's investigation concerns certain of the current rules of the Guild (see paragraphs 4.3 to 4.12).
- 2.11 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'*.¹²
- 2.12 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.
- 2.13 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.¹³
- 2.14 The Guild is by far the largest association of travelling showmen in the UK with around 2,000 members¹⁴ 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.¹⁵ The CMA estimates that around

¹² The website of the [Showmen's Guild of Great Britain](#).

¹³ The rules relating to the Central Council are primarily contained within rule 9 of the rules of the Guild.

¹⁴ The Guild reported an active membership of around 2,000 showmen (letter from the Guild to the CMA dated 20 January 2016).

¹⁵ The website of the [Showmen's Guild of Great Britain](#).

90% of active showmen in the UK are members of the Guild¹⁶ and that around 90% of fairs in the UK are organised by one of its members.¹⁷

2.15 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 2018.¹⁸

¹⁶ 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 (the '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%.

¹⁷ Letter from the Guild to the CMA dated 3 February 2016.

¹⁸ 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,¹⁹ 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;²⁰
- 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);²¹
- 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;²² and

¹⁹ [The Showmens Guild of Great Britain Yorkshire Section](#).

²⁰ 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.

²¹ 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).

²² 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.²³

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)²⁴ 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.²⁵

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 2.14). Therefore, the vast majority of fairs in the UK are covered by the Guild's rules.

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

²³ Letter from the Guild to the CMA dated 1 March 2017.

²⁴ References in this document to 'ground' include a 'position' at a fair.

²⁵ 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.

sub-rules which govern its members' conduct. Members of the Guild agree to adhere to the Guild's rules on joining the Guild.²⁶ 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.²⁷

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;²⁸
- They prevent non-members from attending, as amusement operators, fairs organised by Guild members ('Guild fairs') which comprise some 90% of UK fairs;²⁹
- 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.³⁰

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*'.³¹ The Guild has further stated that 'access to land on which to hold a fair is fundamental to the business of a showman: without access, the showman has nowhere to

²⁶ 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)).

²⁷ In technical terms, for the purposes of the Chapter I prohibition, the rules constitute a decision by an association of undertakings. This is because the Guild is the association of its members which are undertakings as they engage in economic activity (for example, selling services or refreshments to fairgoers).

²⁸ See rule 8(g) which relates to membership of the Guild.

²⁹ See rule 21(a) which prevents Guild members from letting ground at a fair to non-members of the Guild.

³⁰ See rule 21(a) which also prevents Guild members from taking ground from non-members of the Guild who are showmen.

³¹ High Level Submissions from the Guild to the CMA dated 15 April 2016.

install his equipment for the purpose of providing services to the public and earning money'.³²

- 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.³³
- 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.³⁴
- 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 4.3 to 4.12, 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.³⁵
- 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.

³² High Level Submissions sent from the Guild to the CMA dated 15 April 2016.

³³ 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.

³⁴ Letter from the Guild to the CMA dated 1 March 2017.

³⁵ 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 incorporating the proposed changes please see the Annex to this decision.

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 undertakings³⁶ which may affect trade within the UK and is restrictive of competition within the UK in breach of the Chapter I prohibition. The rules of the Guild in respect of which the CMA has competition concerns are set out below.

The Membership rule (rule 8(g))

- 4.3 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.³⁷ 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.³⁸ Moreover, the rule does not require the

³⁶ 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.

³⁷ 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).

³⁸ 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.

Section 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.

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

- 4.4 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.

The Established Rights Rule (rule 23(a))

- 4.5 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.
- 4.6 There are two other rules which have a bearing on how the Established Rights Rule operates, as follows.

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

- 4.7 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))***

- 4.8 Under this rule, a member may apply for the preservation of established rights which they do not use for up to three 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 three years, but not exceeding seven years.

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

- 4.9 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.
- 4.10 Certain Sections have increased or reduced, by bye-laws, the time and/or distance aspects of this rule in respect of areas within their jurisdiction.

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

- 4.11 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.

Lack of transparency of the rules

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

The CMA's competition concerns arising from these rules

- 4.13 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 incumbent³⁹ members of the Guild, and their fairs, from competition as described below.
^{40,41} In so doing they reduce the prospect of greater choice, further innovation

³⁹ For the purposes of this document, references to an 'incumbent' are to a member of the Guild that has established rights.

⁴⁰ The CMA acknowledges that in other respects, within any individual Guild fair, incumbent members of the Guild will compete amongst themselves for fairgoers' custom.

⁴¹ 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

4.14 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. The concern is that they protect incumbent Guild fair organisers and Guild amusement operators at existing Guild fairs from competition for ground at those fairs.

The Membership Rule

4.15 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 an 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.

The Non-Members Rule

4.16 The Non-Members Rule prevents non-member showmen from competing for ground at existing Guild fairs.⁴² This restriction on competition for ground at a fair protects incumbent members from the threat of competitive pressure from non-members attending these fairs.

The Established Rights Rule, the Transfer Rule and the Preservation of Rights Rule

4.17 The Established Rights Rule protects incumbent members from further⁴³ 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 allocation of established rights to members who might be able to offer a more attractive service to fairgoers.

⁴² This is exacerbated by the difficulty for non-members in gaining membership posed by the Membership Rule.

⁴³ As noted at footnote 40 above, the CMA acknowledges that within any individual Guild fair, incumbent members of the Guild will compete amongst themselves for fairgoers' custom.

The Out of Order Rule

4.18 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 landowner looking to replace an incumbent member of the Guild by providing for collective action (in the form of a boycott) by members.

Lack of transparency of the rules

4.19 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

4.20 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.

The Non-Members Rule

4.21 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.⁴⁴

The Time and Distance Rule

- 4.22 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.
- 4.23 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.⁴⁵ 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;
 - 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.⁴⁶
- 4.24 The Time and Distance Rule contains a limited exception by allowing members of the Guild to attend galas, carnivals and local celebrations within

⁴⁴ 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).

⁴⁵ 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.

⁴⁶ 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.

the time and distance of an existing fair, but only with juvenile rides⁴⁷ and stalls.⁴⁸ This exception does not apply to mainstream fairground equipment which would be more likely to compete with the equipment at an existing Guild fair.

The Out of Order Rule

4.25 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.

⁴⁷ Juvenile rides are those designed to entertain children and are defined in the rule book at rule 8(b).

⁴⁸ 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 commitments are set out in the Annex to this decision and are summarised below.

The Guild's commitments

5.2 The Guild has offered commitments to amend certain of the rules of the Guild by no later than 31 January 2018⁴⁹ as follows.

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

5.3 As a result of the commitments offered by the Guild:

- 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.⁵⁰
- 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

⁴⁹ This date has been selected to accommodate the Guild's formal rule changing procedures as provided for in Rule 34.

⁵⁰ 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.

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.

- 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 (i) take up their offer of membership within 28 days, (ii) abide by the Guild's rules and (iii) pay the joining fee.

Non-Members Rule (rule 21(a))

5.4 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

5.5 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.

5.6 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 – provided that the conviction remains unspent at the time that member is seeking to take ground,⁵¹
- 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.

⁵¹ The Notice referred to "criminal conviction" (i.e. without the exclusion of unspent criminal conviction). At a meeting on 10 October 2017 and in a subsequent email of 20 October 2017 the Guild confirmed to the CMA that as regards criminal convictions, the prohibition on members taking ground from former members who had been expelled from the Guild because of a criminal conviction would apply only where the criminal conviction was unspent. The commitments offered on 25 October 2017 have been amended to clarify this point (see the Annex to this decision).

Letting ground to non-members

- 5.7 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.
- 5.8 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.
- 5.9 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').⁵²

Out of Order Rule (rule 21(k))

- 5.10 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.

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

- 5.11 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.⁵³ In

⁵² Rule 21(a) states that '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.'

⁵³ 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.

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.

5.12 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".

5.13 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.

5.14 The Guild has also proposed changing the Preservation of 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).

5.15 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).

Time and Distance Rule (rule 23(c))

5.16 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.

5.17 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.

5.18 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.

5.19 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.

Publication of the Rule Book

5.20 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 public consultation on the Notice, the CMA has concluded that the package of commitments, in the terms set out in the Annex to this decision, once implemented, would address the competition concerns it has identified, for the reasons set out below.

The CMA's Guidance

6.2 As noted above (see paragraph 1.1), 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.

6.3 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.⁵⁴

6.4 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.⁵⁵

The CMA's assessment

6.5 In coming to the conclusion set out in paragraph 6.1 above, the CMA has given full consideration to all the relevant material in its possession, including all the Consultation Responses.

6.6 The CMA received 41 Consultation Responses. The Consultation Responses came from a variety of bodies, including

- Showmen who are members of the Guild;
- Showmen who are not members of the Guild;
- Associations of showmen other than the Guild; and

⁵⁴ Paragraph 4.3 of the Enforcement Guidance and paragraph 10.16 of the Procedural Guidance.

⁵⁵ Paragraph 4.5 of the Enforcement Guidance.

- Other interested parties, such as local authorities and consultants.

6.7 Broadly, representations welcomed the commitments, but some respondents raised certain concerns or suggested that the commitments should provide for more fundamental changes to the rules, while others submitted that no changes were needed.

The competition concerns are readily identifiable

6.8 The CMA's view is that the competition concerns arising from the rules set out in Chapter 4, paragraphs 4.3 to 4.12, 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.

6.9 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.

6.10 The CMA has set out these competition concerns in Chapter 4 (paragraphs 4.13 to 4.25).

The package of commitments offered by the Guild, once implemented, would address the CMA's competition concerns

6.11 For the reasons set out below, the CMA has reached the view that the package of 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

The Membership Rule

6.12 In the Notice, the CMA's provisional view was that 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.

6.13 The CMA's provisional view was also that 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.

Assessment of Consultation Responses

6.14 The CMA received a number of Consultation Responses welcoming the proposed changes to the Membership Rule. For example, one respondent submitted that the proposed rule changes would address the concern about applicants being excluded for matters unrelated to their ability to act as a showman.

6.15 At the same time, some concerns were raised regarding the proposed changes to the Membership Rule. First, a number of Consultation Responses submitted that there was still potential for discrimination arising from the process for calculating the fee to be charged to applicants seeking to obtain retrospective recognition of established rights under rule 8(g)(4) (see paragraph 5.3). The fee in question is decided by the relevant Section (comprising actual or potential competitors of the applicant) and is therefore

potentially open to discrimination. For example, a Section could seek to prevent an applicant from joining the Guild by charging them an unreasonably high fee, for whatever reason, even if the applicant meets all of the other criteria for membership.

- 6.16 The CMA acknowledges this concern about the potential for discrimination. However, the CMA first notes that this fee is not an absolute bar to entry. An applicant may still become a member of the Guild, without obtaining retrospective recognition of their established rights. In addition, the CMA notes that the proposed changes to the rule provide a safeguard, and direct remedy, against discrimination. As regards the retrospective recognition of established rights, the revised rule⁵⁶ provides that '*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***' (emphasis added).
- 6.17 The CMA's view is that the requirement for an objective basis and an objective assessment means that, if a decision were taken, for example, on a discriminatory or arbitrary basis, it would amount to a constructive refusal of a membership application under rule 8(g)(5).
- 6.18 Accordingly, the unsuccessful applicant would be able to appeal that decision to the Appeals Tribunal under rule 8(g)(6) using the rule 20(m) procedure. If the Appeals Tribunal were to determine that a fee did not reflect the value to the applicant of that retrospective recognition,⁵⁷ it should reverse or amend the decision of the members of the Section and impose appropriate conditions, or make an appropriate order as set out in rule 8(g)(6)(i). In so doing, it should set the fees to be paid by the applicant in relation to their retrospective recognition of established rights on an objective basis.⁵⁸
- 6.19 In light of the above, the CMA's view is that fees in relation to the retrospective recognition of established rights are required to be set on an objective basis and by way of an objective assessment, and unsuccessful applicants would have direct recourse to the Appeals Tribunal.⁵⁹

⁵⁶ Rule 8(g)(4).

⁵⁷ Based objectively upon what the applicant is likely to gain financially through access to the economic benefits that Guild membership brings. See proposed rule 8(g)(4).

⁵⁸ It should be noted that the Appeals Tribunal would not be made up of potential or actual competitors to the applicant – see paragraph 6.82.

⁵⁹ The Guild confirmed that it agreed that disputes over fees for retrospective recognition of established rights would be appealable directly to the Appeals Tribunal in an email to the CMA dated 20 October 2017.

- 6.20 A number of Consultation Responses argued in favour of keeping parts of the Membership Rule that would be deleted as a result of the commitments. One respondent submitted that the existing requirement for an applicant to be supported by a proposer and seconder retained certain merit, as it provided some defence against unsuitable people joining the Guild and gaining access to fairs. Some respondents submitted that the requirement for a proposer and seconder could be optional. This is because for many Guild members, being asked to propose or second members of their family is an honour and is akin to a rite of passage. However, these respondents also said that it should not be obligatory to have a proposer or seconder in order to ensure that potential applicants who did not have a proposer or seconder would not be discriminated against.
- 6.21 The CMA considers that the proposed changes will provide sufficient safeguards to prevent unsuitable people from joining the Guild and gaining access to fairs. The proposed changes to the Membership Rule contain the following provisions: *'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: [. . .] the applicant has a criminal record (excluding any spent convictions) [or] 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'*. Therefore, the CMA considers that the proposed changes to the Membership Rule provide the Section Committee with transparent, objective and non-discriminatory grounds on which to refuse applications from unsuitable people.
- 6.22 The CMA considers that the existing requirement for an applicant to have a proposer and seconder (who are actual or potential competitors of the applicant) is problematic from a competition angle (see paragraph 4.15 above). That said, any applicant who wishes to support their application using a proposer and/or seconder would not be prevented from doing so by the proposed changes. However, the Guild would need to ensure that, where an applicant is not supported by a proposer and/or seconder, there is no resulting discrimination against them and their application is decided upon solely in accordance with the Membership Rule in force at the time.
- 6.23 Some Consultation Responses expressed a general concern that even if the Guild's proposed changes to this rule were adopted (see paragraph 5.3), discrimination could still take place. In particular, there was a concern that existing members (and new members who come from families traditionally associated with the Guild) would be treated by members in a preferential way to new members who did not come from families traditionally associated with

the Guild. For example, it was felt that Guild members might choose not to let ground to, or take ground from, members who do not come from traditional Guild families.

6.24 The CMA's competition concerns are that the Membership Rule is restrictive of competition because it is not sufficiently transparent, objective and non-discriminatory. The CMA considers that the proposed changes allow for applications to be made in accordance with transparent, objective and non-discriminatory criteria and thereby will open up the prospect of membership to non-members in this way. The CMA's view is that members have incentives to work with strong performing new members as they improve the overall offering at a fair. Indeed, the CMA has observed that a number of Guild members have previously – in apparent contravention of the prevailing rule - taken ground from, and let ground to, non-members. Therefore, following the rule change, there will be the prospect of non-members – even those who are not from traditional Guild families - becoming new members and letting ground to, or taking ground from, existing members.

6.25 In light of the CMA's consideration of the Consultation Responses in relation to the Membership Rule, the CMA has concluded that the proposed changes to that rule remain appropriate, without further modification, for the purposes of addressing the competition concerns identified by the CMA.

The Non-Members Rule

6.26 In the Notice, the CMA's provisional view was that 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. Further, as noted above, 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.

6.27 As a result of the proposed changes to the Non-Members Rule, the CMA's provisional view was that:

- Non-members would have the opportunity to exert competitive pressure on incumbent members at Guild fairs; and

- Non-members would also be able to compete with members of the Guild to replace a poorly performing incumbent member.

Assessment of consultation responses

- 6.28 A number of Consultation Responses welcomed the proposed changes to the Non-Members Rule, for instance noting that the proposed rule change would lead to Guild members and non-members working together more frequently, but also noting that this process might take time. However, a number of other Consultation Responses expressed concern.
- 6.29 First, some Consultation Responses raised concerns in respect of the proposed inclusion in the rules of a provision explicitly providing an option for landowners to request fair organisers to hold an “all-Guild” fair (Rule 21(a)(2) - see paragraph 5.9 above). Respondents (none of which were landowners) submitted that if such an option were to be set out explicitly in the rules, landowners could be more likely to agree to, or request, an “all-Guild” fair. They submitted that this could be because the existence of the provision would make them aware of the possibility whereas, without this provision, they might not have been aware of it. In addition, Guild members would be able to point out the specific rule with a view to encouraging landowners to agree to an “all-Guild” fair. Respondents submitted that, as a result of this, non-members would be prevented from attending fairs and thereby competing with members.
- 6.30 Although the CMA acknowledges this concern, it notes that a landowner would be able to request a fair organiser to hold an “all-Guild” fair (or indeed a fair exclusively attended by members of any other association) even in the absence of such a provision in the rules. However, in the absence of such an “all-Guild” fair provision, a Guild fair organiser may encounter practical difficulties in ensuring that only members attend the fair in accordance with the landowner’s request. Indeed, as a result of the proposed amendment of the Non-Members Rule, amusement operators with ground at the fair in question would normally be able to sub-let their ground to a non-member. The Guild’s reason for including such a provision is to allow a fair organiser to prevent members sub-letting to non-members when an “all-Guild” fair is requested without the need for this to be set out in individual contracts with all amusement operators.
- 6.31 In the CMA’s view, landowners should be free to specify whether they want a non-members fair, a fair comprising members and non-members or a fair comprising members only. This provision is therefore a pragmatic solution to the specific situation where a landowner decides, for its own reasons, to

require that a fair comprises Guild members only. Further, the CMA notes that no landowner has submitted that this “all-Guild” fair provision may restrict their ability to choose the type of fair they want.

- 6.32 In addition, the CMA notes that the proposed publication of the Guild’s rule book (see paragraph 5.20) will mean that landowners who are considering an “all-Guild” fair will be better informed about what that will involve, including how the other relevant rules, such as the Established Rights Rule and Time and Distance Rule, may impact on that fair. To this end, the CMA encourages landowners, in particular local authorities, to consider the implications for competition when making their decision as to whether to hold a non-members fair, a fair comprising members and non-members or a fair comprising members only, and exercise their discretion accordingly.
- 6.33 In light of the above, the CMA has concluded that referring to the possibility of an “all-Guild” fair in the rule book would not reduce the effectiveness of the proposed changes to the Non-Members Rule.
- 6.34 Second, a number of respondents – primarily non-member showmen - expressed concern that, despite the proposed changes to the rules, non-members would still be prevented from working with members of the Guild. One respondent submitted that Guild members may choose not to work with non-members (even when allowed to do so by the rules), and that non-members would therefore continue to be excluded from the vast majority of fairs. To deal with that concern, it was recommended that registers are kept of the ground that Guild members have available to let both to members and non-members. These registers would then be audited to ensure there was an even amount of ground let to members and non-members by Guild members.
- 6.35 In response to this concern, the CMA’s view is that the proposed changes to this rule will open up the prospect of non-members taking ground from, and letting ground to, Guild members. It is neither necessary nor proportionate to stipulate further that Guild members should keep registers of ground to let to both members and non-members with a view to checking on the appropriate amount of ground being let to non-members and members. The CMA’s view is that members are incentivised to work with strong performing non-members as they would improve the overall offering at a fair. Indeed, the CMA has observed that a number of Guild members have previously – in apparent contravention of the prevailing rule – taken ground from, and let ground to, non-members.
- 6.36 Third, a respondent submitted that the proposed changes to the Non-Members Rule would make little practical difference as there is a relatively

small number of non-members active in the industry. Those that are active, often specialise in specific types of fair, such as steam fairs, or operate on a part-time basis. As such, the respondent submitted that they would rarely provide competition to Guild members, even if the rules were changed.

- 6.37 The CMA's competition concern is that the Non-Members Rule provides an absolute block on non-members taking ground at Guild fairs and members taking ground at non-members' fairs. The proposed changes to the Non-Members Rule, the Established Rights Rule and the Time and Distance Rule will open up the prospect of non-members being able to compete more readily with Guild members. The CMA acknowledges that the majority of showmen are Guild members and that members would be likely to exert the most competitive pressure on each other once the proposed changes are implemented. However, non-members (who may also let ground to members at their fairs) would be better placed, particularly when working with members, to apply competitive pressure to existing Guild fairs.
- 6.38 Fourth, a respondent expressed a concern that the proposed changes to the Non-Members Rule would mean that the Guild's rules would no longer be able to 'supress' non-members who wanted to compete to operate fairs presently run by Guild members. In turn, the respondent submitted that the rule changes could mean that non-members would be more capable of competing to put on fairs on local authority land.
- 6.39 The CMA disagrees that this is a concern. The proposed changes to the Guild's rules seek to remove or significantly reduce (to a necessary and proportionate level) the restrictions faced by members of the Guild and non-member showmen that give rise to the CMA's competition concerns. The CMA considers that because the proposed changes are made with the intention of engendering an appropriate degree of competition within the sector, they necessarily reduce the opportunity for the Guild's rules to be used to 'supress' non-members.
- 6.40 In light of the CMA's consideration of the Consultation Responses in relation to the Non-Members Rule, the CMA has concluded that the proposed changes to that rule remain appropriate, without further modification, for the purposes of addressing the competition concerns identified by the CMA.

The Established Rights Rule, the Transfer Rule and the Preservation of Rights Rule

- 6.41 In the Notice, the CMA's provisional view was that 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).⁶⁰ 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.

Assessment of consultation responses

6.42 A number of respondents welcomed the proposed changes to the Established Rights Rule. For example, one respondent welcomed the proposal to allow a

⁶⁰ Assuming the established rights were not transferred to them under the Transfer Rule.

landowner to replace an incumbent Guild member who had performed poorly with another showman. Another respondent welcomed the fact that established rights would continue to exist, albeit in a moderated form, as they found it easier to obtain finance for their equipment because of their established rights.

- 6.43 The Consultation Responses also raised several concerns. First, a number of respondents submitted that the continued existence of established rights following the implementation of the proposed changes would maintain a barrier to non-members replacing members at fairs. It was submitted that Guild members would continue to be more likely to relinquish their ground to other Guild members rather than non-members. This is because established rights can only be transferred to other members (not also to non-members) and therefore the incumbents would always be more likely to choose to transfer ground to other members as they would receive payment for the established rights associated with it.
- 6.44 In the CMA's view, the complete removal of the Established Rights Rule is not necessary or proportionate to address the competition concerns it has identified. This is because, for the reasons set out below, 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, in gaining access to Guild fairs, that give rise to competition concerns.
- 6.45 Moreover, although established rights amount to arrangements between members of the Guild which are recognised only within the Guild and cannot be transferred to non-members, the proposed changes to the Membership Rule would make it easier for non-members to become members. Those new members would then be able to purchase established rights from other members. Indeed, the proposed changes to the Transfer Rule (see paragraph 5.13) would remove the scope for potential unfairness or discrimination by ensuring that objection to a transfer could only be on limited, objective and non-discriminatory grounds.
- 6.46 In addition, the proposed changes to the Established Rights Rule and Preservation of Rights Rule would increase such opportunities to gain access to ground at fairs, as incumbent members may not be able to hold onto their established rights (either because the members are replaced by a landowner on grounds of poor performance or because they lose their established right under the amended Preservation of Rights Rule).

- 6.47 Furthermore, the proposed changes to the Non-Members Rule would also 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.
- 6.48 The second concern raised by a number of respondents was that the proposed change, allowing landowners to replace poor performing incumbent members and thereby open up competition for the vacated ground, could be used by unscrupulous landowners or fair organisers to replace Guild members at fairs, even if the incumbent had not been performing poorly.
- 6.49 In the CMA's view, landowners and fair organisers are likely to want to continue to work with members that perform in line with expectations and should have little incentive to replace Guild members unless these are genuinely 'poor performers'. Further, even if a landowner or fair organiser decided to replace an incumbent Guild member on grounds of 'poor performance', under the revised rule the incumbent Guild member would have recourse to the Appeals Tribunal. This would be 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'*.⁶¹ It follows therefore that if the landowner is found to have acted unreasonably, the incumbent's established rights would be protected.
- 6.50 A third concern submitted by respondents relates to circumstances in which established rights are not 'recognised' by a landowner. This would be, for example, where a landowner and a Guild member fair organiser have agreed to conditions of let preventing the member from asserting those rights in relation to that fair (in effect, the member would have waived its rights). The concern raised was that, in such circumstances, Guild members may continue to rely on established rights as against other Guild members so as to prevent challenge from them for that fair, and thereby undermine the waiver of established rights secured by the landowner and fetter its ability to procure the best fair organiser for that fair.
- 6.51 The CMA's response to that concern is based on its reading of a relevant decision of the Guild's Appeals Tribunal relating to the enforcement of established rights in such circumstances. In that decision, the Appeals Tribunal recognises that such a contractual 'waiver' arrangement with the landowner prevails over the established right, and therefore, the CMA

⁶¹ Proposed changes to rule 23(a)(5)(b).

understands that the Guild would treat the member that has waived their rights as not having established rights at that fair. The Guild has confirmed in writing to the CMA that this is the case.⁶² On this basis, where a landowner and a Guild member have entered into such an agreement, other Guild members would be free to bid for that ground in the event that the landowner decides to open up the ground for competition. In so doing they will not be in breach of Guild rules.

- 6.52 It should also be noted that the proposal to publish the rules of the Guild would mean that landowners have a clearer understanding of how the rules operate and would therefore be better able to structure their contractual terms which are affected by, or relate to, established rights. For instance, a landowner may seek to include a contractual clause under which the fair organiser agrees not to assert any rights which may accrue under the Established Rights Rule, and that they will publish a statement to this effect in the World's Fair⁶³ thus ensuring that, other Guild members and the Guild itself, are aware that the landowner can open up the ground for competition at that fair.
- 6.53 Fourth, one Consultation Response submitted that the Established Rights Rule had recently started being applied to 'airspace' above an attraction, with the result that larger attractions could not overhang smaller attractions. It contended that an interpretation of established rights which included 'airspace' could reduce the number of showmen able to attend a fair.
- 6.54 The CMA considers that this point is more related to health and safety matters which can be addressed by the Guild under its rules. It does not change the CMA's analysis of the proposed changes to the Established Rights Rule.
- 6.55 Fifth, another Consultation Response submitted that Established Rights should only be preserved for one year, to avoid ground at fairs being blocked.
- 6.56 The CMA has considered this point but has decided that the proposed changes, which allow for established rights to be preserved for a shorter period than currently, ie up to five (rather than seven) years, in fewer and more clearly delineated circumstances are a proportionate approach. That approach takes into account, on a pragmatic basis, matters which may prevent showmen being able to attend a given fair and balances those matters against the prospect of opening up the relevant ground at the fair to more competition. It should also be noted that a member can (and would likely

⁶² Email to the CMA from the Showmen's Guild dated 20 October 2017.

⁶³ The World's Fair is the weekly newspaper for travelling showmen and the funfair industry, providing information for showmen on all aspects of the fairground sector. See [Word's Fair](#)

have an incentive to) sub-let ground that has been preserved so that it does not remain unused during the fair.

- 6.57 In light of the CMA's consideration of the Consultation Responses in relation to the Established Rights Rule, the Transfer Rule and the Preservation of Rights Rule, the CMA has concluded that the proposed changes to those rules remain appropriate, without further modification, for the purposes of addressing the competition concerns identified by the CMA.

The Out of Order Rule

- 6.58 In the Notice, the CMA's provisional view was that the Out of Order Rule reinforces the current restrictions of competition at existing Guild fairs by reinforcing compliance with the Non-Members Rule and the Established Rights 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 after the Guild will have entered into these commitments, 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.

Assessment of consultation responses

- 6.59 There were very few responses in relation to the proposed change to the Out of Order Rule.
- 6.60 The CMA received one response submitting that the proposed change to the Out of Order Rule (see paragraph 5.10) would have little effect in practice as, under the current rules, a Guild member in dispute with a landowner would always attempt to negotiate an agreement before calling for a fair to be put 'out of order'. Consequently, the respondent submitted, a fair would still be subject to the threat of being put 'out of order'.
- 6.61 The CMA's view remains that, in light of the proposed changes to the Non-Members Rule and the Established Rights Rule, if the Out of Order Rule were to be invoked and a fair were to be put 'out of order', it would not be on the basis of rules that raise competition concerns. Further, for the reasons set out in paragraph 6.58 above, the proposed changes would also ensure that fairs are not put 'out of order' prematurely or unnecessarily.
- 6.62 In light of the CMA's consideration of the Consultation Responses in relation to the Out of Order Rule (in the light of proposed changes to other rules of the

Guild), the CMA has concluded that the proposed changes to that rule remain appropriate, without further modification, for the purposes of addressing the competition concerns identified by the CMA.

Increased transparency of the rules

6.63 In the Notice, the CMA's provisional view was that 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).

Assessment of consultation responses

6.64 The Consultation Responses generally agreed with the proposal to publish the rules of the Guild and no concerns were expressed in respect of the proposal.

6.65 In light of the CMA's consideration of the Consultation Responses in relation to the proposal to publish the rules of the Guild, the CMA has concluded that the proposal remains appropriate, without further modification, for the purposes of addressing the competition concerns identified by the CMA.

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

The Non-Members Rule

6.66 In the Notice, the CMA's provisional view was that 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 exceptions are 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.

- 6.67 The CMA has already covered and addressed the Consultation Responses germane to the Non-Members Rule at paragraphs 6.26 to 6.40 above. In addition, in light of one Consultation Response, it should be noted that the CMA and the Guild have agreed that the reference to ‘criminal convictions’ in the proposed changes to the ‘Taking Ground’ limb of the Non-Members Rule requires a minor correction, namely that it should only refer to ‘unspent criminal convictions’ (as is the case for the ‘Letting Ground’ limb of the rule).
- 6.68 In light of the CMA’s consideration of the Consultation Responses in relation to the Non-Members Rule, the CMA has concluded that the proposed changes to that rule remain appropriate, without further modification, for the purposes of addressing the competition concerns identified by the CMA.

The Time and Distance Rule

- 6.69 In the Notice, the CMA’s provisional view was that 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 one and two 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 for doing so. The reasons would need to explain why the increase was necessary and proportionate to ensure the continued viability of a fair in the context of prevailing local conditions.

- 6.70 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).
- 6.71 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 prevailing local conditions and the decision to impose or retain them could be appealed to the Guild's Appeals Tribunal.
- 6.72 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.

Assessment of consultation responses

- 6.73 A number of Consultation Responses welcomed the proposed changes to the Time and Distance Rule. For example, one Consultation Response stated that the proposal would be a great improvement over the current rule.
- 6.74 Some Consultation Responses raised concerns that the proposed reduction in the minimum distance specified in the Time and Distance Rule (from two miles to one mile) was insufficient and that there should be no restriction at all on the time and distance between fairs. Some respondents submitted that any arbitrary distance limit on new fairs could restrict the ability of businesses to compete with existing fairs by putting on new fairs. This would be particularly harmful if the existing fair was very small and there was demand for a larger fair within the prohibited distance. Another respondent submitted that it would be simpler to have a one-mile restriction, and not permit Sections to lower this limit in response to local conditions. A respondent further submitted that the proposed changes may allow members to circumvent the Time and Distance Rule and actually hold a fair within the time and distance limits of an existing fair. The respondent submitted they could do this by calling the fair in question an event or festival.
- 6.75 In the Notice, the CMA has acknowledged that some form of time and distance rule may be necessary and proportionate to ensure the continued viability of a fair, depending on the relevant local conditions. This would be necessary if the viability of an existing fair were undermined by the possibility

of another fair being held just before it was due to open, capturing the custom of the existing fair's fairgoers and so disincentivising any investment by the showman who organises the existing fair or, indeed any other fair. This may also be necessary to prevent 'free-riding' where a fair was held in such close proximity to the existing fair that fairgoers attended the new fair and not the existing fair on the back of the existing fair's marketing.

- 6.76 In assessing the necessity and proportionality of the restriction that would subsist after the implementation of the proposed changes to the Guild's rules, the CMA notes that each local Section would only be able to reduce, but not increase (as was previously the case), the time and distance limits set out in the revised rules. This means, for instance, that distances shorter than one mile could be imposed or any restriction on distance could be eliminated in respect of areas where the disincentives for investment or 'free-riding' concern were weaker – for example, in high-population areas. Indeed, some already do so (and after implementation of the proposed changes, a Section would have to justify a decision to increase it back to the maximum limit authorised under the revised rules).⁶⁴ There is also a provision in the proposed changes that require all Sections that have not amended the time and distance by bye-law to review the matter of time and distance from time to time, and at least every five years.
- 6.77 The CMA therefore considers that, as a result of the proposed changes to the Time and Distance Rule, the maximum time and distance limit allowed should only be applied in circumstances where this is necessary and proportionate to ensuring the continued viability of fairs, and therefore that it would be disproportionate to remove the Time and Distance Rule in its entirety. Further, the CMA does not consider that the proposed changes are likely to increase the ability of members to start fairs that masquerade as an event or festival in order to circumvent the Time and Distance Rule. This is because members may already attend galas, carnivals and local celebrations under the Time and Distance Rule and the CMA has not received evidence of fairs masquerading as galas, carnivals or local celebrations in order to circumvent the Time and Distance Rule. In any event, any member acting in this way is likely to be held to account under the Guild's rules.
- 6.78 In light of the CMA's consideration of the Consultation Responses in relation to the Time and Distance Rule, the CMA has concluded that the proposed

⁶⁴ For instance, the distance limit has been reduced to one mile by various Sections (eg Midland Section and Yorkshire Section), and to one third of a mile within the North and South Circular roads by the London Section. The Scottish Section excluded the Time and Distance Rule in relation to Glasgow, Edinburgh, Dundee, Aberdeen and Carlisle.

changes to that rule remain appropriate, without further modification, for the purposes of addressing the competition concerns identified by the CMA.

The Out of Order Rule

- 6.79 In the Notice, the CMA's provisional view was that, as noted above (paragraph 4.25), 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.

Assessment of consultation responses

- 6.80 No specific concerns in relation to competition between Guild fairs and rival fairs were raised in connection with this rule.⁶⁵ In light of the CMA's consideration of the Consultation Responses in relation to the Out of Order Rule (in the light of proposed changes to other rules of the Guild), the CMA has concluded that the proposed changes to that rule remain appropriate, without further modification, for the purposes of addressing the competition concerns identified by the CMA.

Other concerns raised in the Consultation Responses

- 6.81 Some Consultation Responses also raised a number of other points, which are addressed below.

Independence of the Appeals Tribunal

- 6.82 A number of Consultation Responses questioned whether the Appeals Tribunal was an appropriate forum to hear certain appeals against decisions taken by Sections of the Guild.^{66,67} There was concern that the composition of

⁶⁵ See paragraph 6.60 for a concern raised in relation to competition within a fair.

⁶⁶ A number of Consultation Responses noted that some of the Guild's rules are open to interpretation. Therefore, decisions of the Sections may be subject to appeal and so the independence of the Appeals Tribunal is vital.

⁶⁷ Under the commitments, the Guild is proposing to make changes to certain of its rules by introducing a right of appeal direct to its Appeals Tribunal. The rules in question are Rule 8(g) (the Membership Rule); Rule 23(a) (the Established Rights Rule) and Rule 23(c) (Time and Distance Rule).

the Tribunal may make it difficult to guarantee the barrister's impartiality. The Tribunal comprises an independent barrister who chairs the Tribunal and two senior Guild members, known as Assessors who sit with the barrister.⁶⁸ The concern raised was that the independent barrister could be influenced by the Assessors.

- 6.83 In the CMA's view, the composition of the Appeals Tribunal would not allow the Assessors to influence the barrister chairing the Appeals Tribunal. That is because the relevant Guild rule provides that '*The Tribunal shall consist of a Chairman, who shall be a practising Barrister... . Decisions of the Tribunal shall be determined by the Chairman*'.⁶⁹
- 6.84 Further, as explained by the Guild to the CMA,⁷⁰ even if an Assessor disagrees with the decision of the Chairman, the Chairman's decision is final and binding. In addition, the CMA notes that parties to any case before the Appeals Tribunal can have an Assessor replaced if they had been previously concerned with the case.⁷¹
- 6.85 Finally, the CMA notes that an independent barrister will be well versed in the principles of natural justice and consequently will avoid being, or giving the impression of being, influenced.

Use of money received from fines

- 6.86 One Consultation Response submitted that the rules of the Guild should be changed to allow money received from fines levied as part of the Guild's disciplinary process to be paid to the member who suffered the detriment, rather than collected by the Guild itself. It was suggested that this would serve to act as a form of damages to compensate the injured party.
- 6.87 The CMA has considered this point, but as it does not relate to the CMA's competition concerns, or in itself raise other competition concerns, no further action is being taken by the CMA on this point.

⁶⁸ Rule 20(m)(2) (Appeals Tribunals).

⁶⁹ Rule 20(m) (Appeals Tribunals).

⁷⁰ CMA note of meeting with the Guild on 10 October 2017.

⁷¹ The relevant rule (Rule 20(m)(1)) states in part that 'The Tribunal shall consist of a Chairman, who shall be a practising Barrister of not less than seven years' standing and who has not advised or acted for the Guild in a professional capacity otherwise than as Chairman of a Tribunal, and two Assessors who shall be Past Presidents of the Guild or members of the Management Committee or past serving Section Chairmen not previously concerned with the case.' Further, the Guild confirmed by email dated 20 October 2017 that case parties can have an Assessor who is conflicted removed from the Appeals Tribunal.

'Token' fairs should be banned

- 6.88 One Consultation Response was concerned about fairs where consumers purchase tokens, and then exchange the tokens for rides or amusements at the fair. The respondent was concerned that only certain showmen at the fair were allowed to sell tokens to the public.
- 6.89 The CMA has considered this point, but as it does not relate to the CMA's competition concerns, or in itself raise other competition concerns, no further action is being taken by the CMA on this point.

Conditions of let provided by landowners for showmen should be clearer

- 6.90 One Consultation Response submitted that the conditions of let to which landowners ask showmen to agree should be clearer, as some versions can be open to interpretation.
- 6.91 This point neither relates to the CMA's competition concerns, nor in itself raises other competition concerns. Accordingly, no further action is being taken on this point. To the extent that this point relates to landowners preventing (by contract) Guild members from asserting their established rights, the CMA has addressed this at paragraphs 6.50 to 6.52 above.

Definition of a 'fair'

- 6.92 One Consultation Response submitted that some of the Guild's rules were subject to interpretation as there was no reliable definition of a 'fair'. For example, the respondent stated that they had requested interpretation of the term 'fair' from the Guild in relation to a dispute, but did not receive a satisfactory explanation.
- 6.93 The Guild has confirmed that there is no written definition of a fair but the advice that is given by Sections is that to constitute a fair there must be more than one piece of equipment.⁷² Accordingly, no further action is being taken by the CMA on this point.

⁷² CMA note of meeting with the Guild on 10 October 2017 and the Guild's email to the CMA dated 20 October 2017. Qualifying equipment is listed at rule 8(b).

The Guild will be less able to ‘police’ fairs

- 6.94 One Consultation Response submitted that the proposed rule changes would mean that the Guild would be less able to ‘police’ fairs. Currently, the Guild has strong disciplinary measures for members who breach its rules.⁷³
- 6.95 The CMA’s view is that the proposed rule changes do not erode the Guild’s disciplinary measures and so the Guild will remain equally capable of ‘policing’ fairs.

Conclusion on the proposed package of commitments

- 6.96 Having carefully considered all the Consultation Responses and having re-visited its provisional view (as set out in the Notice) in light of those Consultation Responses, the CMA has concluded that the proposed package of commitments, once implemented, would address the competition concerns it has identified.

The commitments are capable of being implemented effectively and, if necessary, within a short period of time

- 6.97 The conduct of Guild members is governed by the Guild’s rule book, which includes the rules that are the subject of this decision. 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 2018⁷⁴ in accordance with the provisions from the Guild’s rule book governing the amendment of its rules. The CMA’s 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.

Compliance with the commitments and their effectiveness would not be difficult to discern

- 6.98 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 the Appeals Tribunal (at

⁷³ Rule 19 – Fines and Penalties

⁷⁴ Under the commitments the Guild will publish its amended rule book by no later than 31 March 2018 (see the Annex).

which decisions are taken by an independent barrister). These mechanisms would, in the CMA's view, ensure that the future conduct of the Guild and its members comply with the rule changes under the proposed commitments. Further, members would have the incentive to raise a complaint using these mechanisms in respect of instances of non-compliance with the rules as changed pursuant to the proposed commitments.

Deterrence would not be undermined by not completing the CMA's investigation and not making a decision

- 6.99 The CMA's 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.
- 6.100 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 decision

- 7.1 In light of the above, the CMA considers that the commitments offered by the Guild as set out in the Annex to this document address its competition concerns and that it is appropriate to accept the commitments. Accordingly, the CMA is discontinuing its investigation.

Ann Pope

on behalf of the Competition and Markets Authority
Senior Director, Antitrust Enforcement 26 October 2017

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 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 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 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 using the application form of that Section.
- (2) The Application form which shall be in a form approved by the Central Council must be 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 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.
- (2) The applicant shall appear before the Section Committee at such times as such application for Membership is being considered by such Committee. 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.
- (3) The application for Membership shall first be considered by the Section Committee who shall have power when placing any application before the 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 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) 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 any conditions the Committee 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 an independent Appeals Tribunal under the Rule 20(m) procedure. The Secretary of the Section concerned shall give notice in writing to the unsuccessful applicant of the decision refusing him Membership 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 Appeals Tribunal and to the Secretary of the Section within 14 days of the date upon which he was served the 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 EEA. Provided that the 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 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. At the time of giving Notice of Appeal the unsuccessful applicant shall also send to the 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 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 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 Appeals Tribunal shall notify all parties 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 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 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 Appeals Tribunal at which the application is considered, otherwise such conditions and acceptances shall become null and void.
2. The Appeals Tribunal shall not exercise its power under this sub-rule unless the parties to the Appeal 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 for each 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”.

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) 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 - provided that the conviction remains unspent at the time the member is seeking to take ground;
- (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) 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.

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 by bye-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 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 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 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) The proposed transferor has not occupied the position(s) in question with his own equipment (and 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.

Time and Distance

Rule 23 (c) Holding Rival Fairs

- (1) A member shall not 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 a Fair (at which he does not have established rights) proposed to be held within one mile of that Fair, save that a Section Committee may by Bye-law reduce, 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.
- (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 owned by Members may lawfully travel along the crown of the public highway.
 - (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) The operation of any 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.
- (7) Notwithstanding anything in sub-rule (6) above, the attendance of Members with 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). Nothing in sub-rule (7) shall affect the right of a member with established rights to protect such rights under Rule 23(a).

Out of Order

Rule 21(k) – 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 extra-ordinary 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 2017¹

¹ See footnote 51 of the CMA's Decision.