

COMPLETED ACQUISITION BY PUG LLC OF THE STUBHUB BUSINESSES OF EBAY INC.

Directions issued on 3 July 2020 pursuant to paragraph 11 of the Interim Order imposed by the Competition and Markets Authority on Pugnacious Endeavors, Inc., PUG LLC, IFOT Services Ltd, VGL Services Ltd and StubHub on 3 July 2020.

The Competition and Markets Authority (**CMA**) is currently investigating the completed acquisition by PUG LLC (**PUG**) of the StubHub businesses of eBay Inc. PUG completed the acquisition of the StubHub businesses of eBay Inc. on 13 February 2020 pursuant to an agreement dated 24 November 2019.

On 7 February 2020, the CMA made an Initial Enforcement Order (**IEO**), addressed to Pugnacious Endeavors, Inc. (**viagogo**), PUG, and eBay Inc. in accordance with section 72(2) of the Enterprise Act 2002 to prevent pre-emptive action.

On 30 March 2020, the CMA issued a direction pursuant to paragraph 13 of the IEO to viagogo and PUG to appoint a monitoring trustee.

On 25 June 2020, the CMA referred the Merger for a phase 2 investigation pursuant to section 22 of the Act (the **Reference**).

On 3 July 2020, the CMA made an Interim Order in accordance with section 81 of the Act for the purpose of ensuring that no action is taken pending determination of the Reference which might prejudice the Reference or impede the taking of any action by the CMA under Part 3 of the Act which may be justified by the CMA's decisions on the Reference.

The Reference has not been finally determined in accordance with section 79 of the Act.

The CMA now issues written directions under paragraph 11 of the Interim Order that, for the purposes of securing compliance with the Interim Order, viagogo, PUG, VGL Services Ltd (VGL) and IFOT Services Ltd (IFOT) must appoint a monitoring trustee in accordance with the terms provided for in the Annex and shall comply with the obligations set out in the Annex.

Stuart McIntosh
Group Chair

Annex

Directions to appoint a monitoring trustee

Interpretation

1. In these Directions:

‘the Act’ means the Enterprise Act 2002;

‘business’ has the meaning given by section 129(1) and (3) of the Act;

‘CMA’ means the Competition and Markets Authority;

‘IFOT’ means IFOT Services Ltd, a UK incorporated company with company number 07881174;

‘Merger’ means the transaction by which viagogo and StubHub ceased to be distinct within the meaning of section 23 of the Act;

‘MT’ means the monitoring trustee appointed in accordance with paragraphs 2 to 4 of this Annex;

‘Order’ means the interim order made by the CMA on 3 July 2020 and addressed to PUG, viagogo, IFOT, VGL and StubHub;

‘PUG’ means PUG LLC, a Delaware limited liability company with file number 7688148;

‘StubHub’ means StubHub, Inc., StubHub (UK) Limited, StubHub Europe S.à.r.l., StubHub India Private Limited, StubHub International Limited, StubHub Taiwan Co., Ltd., StubHub GmbH, and Todoentradas, S.L.;

‘the StubHub business’ means the businesses of StubHub and its subsidiaries carried on as at 7 February 2020,

‘the viagogo business’ means the business of viagogo, PUG, VGL, IFOT and its subsidiaries but excluding the StubHub business carried on as at 7 February 2020 ,

‘subsidiary’, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

‘VGL’ means VGL Services Ltd, a UK incorporated company with company number 07882020; and

‘viagogo’ means Pugnacious Endeavors, Inc., a Delaware corporation with file number 3899246,

unless the context requires otherwise, the singular shall include the plural and vice versa.

Terms and expressions defined in the Order have the same meaning in these directions, unless the context requires otherwise.

Appointment

2. Viagogo, PUG, VGL and IFOT must appoint a MT in order to ensure compliance with the Order, in particular to:
 - a. avoid any pre-emptive action (within the meaning of the Act) taking place during the CMA's investigation;
 - b. monitor and report to the CMA on compliance by viagogo, PUG, VGL, IFOT and StubHub and their subsidiaries with the Order; and
 - c. support the CMA taking any remedial action which may be required to maintain the StubHub business and viagogo business as going concern.
3. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out its functions to the best of its abilities.
4. Viagogo, PUG, VGL, IFOT and StubHub must cooperate fully with the MT, in particular as set out below, and viagogo, PUG, VGL, IFOT and StubHub must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of viagogo, PUG, VGL, IFOT and StubHub as set out in these directions.

General

5. The MT must possess appropriate qualifications and experience to carry out its functions.
6. The MT must neither have, nor become exposed to, a conflict of interest that impairs its objectivity and independence in discharging its duties under these directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
7. Viagogo, PUG, VGL and IFOT shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out its functions.
8. Subject to the CMA approving the draft terms and conditions of appointment of the MT notified to the CMA in accordance with paragraphs 9(b) and (c) below, viagogo, PUG, VGL and IFOT must appoint the MT as soon as is reasonably practicable and in any event by **10 July 2020** and the MT will continue to act either until the reference is determined or until the CMA directs that the MT is no longer required.
9. The appointment of a MT by viagogo, PUG, VGL and IFOT is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and:
 - a. the name of the proposed MT must be notified to the CMA as soon as is reasonably practicable and in any event by **7 July 2020**;

- b. the draft terms and conditions of appointment must be notified to the CMA as soon as is reasonably practicable and in any event by **7 July 2020**; and
- c. once the MT has been approved by the CMA and appointed, viagogo, PUG, VGL and IFOT must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

10. The functions of the MT will be to:

- a. ascertain and report to the CMA in relation to the current level of compliance by viagogo, PUG, VGL, IFOT and StubHub and their subsidiaries with the Order;
- b. assess and report to the CMA in relation to the arrangements made by viagogo, PUG, VGL, IFOT and StubHub and their subsidiaries for compliance with the Order and what changes to those arrangements, if any, are necessary to preserve the possibility of the CMA taking any remedial action, if required;
- c. identify and supervise, if necessary, the arrangements made by viagogo, PUG, VGL, IFOT and StubHub for ensuring compliance with the Order;
- d. monitor compliance by viagogo, PUG, VGL, IFOT and StubHub and their subsidiaries with the Order; and
- e. without prejudice to the right of viagogo, PUG, VGL, IFOT and StubHub to contact the CMA, respond to any questions which viagogo, PUG, VGL, IFOT and StubHub may have in relation to compliance with the Order, in consultation with the CMA.

11. The MT must take such steps as it reasonably considers necessary in order to carry out its functions effectively, including requiring the provision of information or the production of documents relating to communications within and between the viagogo business and the StubHub business, such as written and electronic communications, telephone conversations and meetings as may be required.

12. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by viagogo, PUG, VGL, IFOT and StubHub and their subsidiaries with the Order.

Obligations of viagogo, PUG, VGL, IFOT and StubHub

13. Viagogo, PUG, VGL, IFOT and StubHub and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge its functions, including but not limited to:

- a. the provision of full and complete access to all personnel, books, records,

documents, facilities and information of the viagogo business and the StubHub business as the MT may reasonably require; and

- b. the provision of such office and supporting facilities as the MT may reasonably require.

14. If viagogo and/or PUG and/or VGL and/or IFOT and/or StubHub are in any doubt as to whether any action or communication would infringe the Order, they are required to contact the MT for clarification.

15. If viagogo and/or PUG and/or VGL and/or IFOT and/or StubHub has any reason to suspect that the Order may have been breached, they must notify the MT and the CMA immediately.

Reporting functions

16. The MT is required to provide an initial report to the CMA by no later than 5pm (UK time) on **10 July 2020**, giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Order, and including among other things:

- a. details of the current extent of compliance with the Order;
- b. a description of the current arrangements made for the operation of the StubHub business and for the preservation of the assets required to operate the StubHub business;
- c. recommendations as to what changes to those arrangements, if any, are necessary.

17. In addition to providing the initial report referred to in paragraph 16 above, the MT must provide a statement to the CMA every two weeks thereafter (or otherwise as required by the CMA) stating whether or not, in its view, viagogo, PUG, VGL, IFOT and StubHub and their subsidiaries have complied with the Order. At the same time, the MT must provide the CMA with a report setting out the following:

- a. the basis for the MT's view that the Order has or has not, as the case may be, been complied with and in particular whether:
 - i. anything has caused the MT to be concerned as to whether viagogo, PUG, VGL, IFOT and StubHub and their subsidiaries have complied with the Order, and if it has, whether those concerns have been resolved and why;
 - ii. the MT has any remaining doubts or uncertainties as to whether viagogo, PUG, VGL, IFOT and StubHub and their subsidiaries have complied with the Order; and
 - iii. anything that causes the MT to be concerned about a possible future breach of the Order (whether deliberate or inadvertent);

- b. details of the performance of the viagogo business and StubHub business, including any factors that might indicate asset deterioration;
 - c. whether appropriate steps are being taken to maintain the StubHub business as a going concern;
 - d. the extent to which viagogo, PUG, VGL, IFOT and StubHub and their subsidiaries have cooperated with the MT in its task of monitoring their compliance with the Order and details of any aspects of the cooperation of viagogo, PUG, VGL, IFOT and StubHub or any of their subsidiaries that the MT considers could be improved;
 - e. the extent to which the MT considers that it is in an appropriate position to monitor the compliance of viagogo, PUG, VGL, IFOT and StubHub and their subsidiaries with the Order and if there is anything that the MT considers would assist it in monitoring compliance;
 - f. any current or anticipated requests for consent to vary the Order; and
 - g. the information it used to compile the report.
18. When providing reports to or otherwise engaging with the CMA, the MT must ensure that it does not disclose any information or documents to the CMA which viagogo, PUG, VGL, IFOT and StubHub or any of their subsidiaries would be entitled to withhold from the CMA on the grounds of legal privilege and nothing in these directions requires viagogo, PUG, VGL, IFOT and StubHub to produce any information or documents to the MT which are privileged.
19. The MT must immediately notify the CMA in writing if it forms a reasonable suspicion that the Order has been breached, or if it considers that it is no longer in a position to effectively carry out its functions. In that situation, the MT must give reasons for this view, including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 18 above).
20. All communications between the MT and the CMA (including the statements and reports referred to in paragraphs 16 and 17) are confidential and should not be disclosed to viagogo, PUG, VGL, IFOT and StubHub or any of their subsidiaries, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.