

Completed acquisition by PUG LLC of 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.

Please note that [§] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

Decision to refer

ME/6868/19

Introduction

1. On 13 February 2020, PUG LLC (**PUG**), a subsidiary of Pugnacious Endeavors, Inc (**viagogo**) purchased the whole of the issued share capital of 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. (together, **StubHub**) (the **Merger**).
2. On 11 June 2020, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (**UK**) (the **SLC Decision**)¹ as a result of horizontal unilateral effects in relation to the supply of online exchange platforms for selling and buying secondary tickets (**Secondary Ticketing Exchange Platforms**) in the UK. Terms defined in the SLC Decision have the same meaning in this decision on reference unless otherwise specified.
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to viagogo of the SLC Decision. However, in order to

¹ See [viagogo/StubHub case page](#).

allow viagogo the opportunity to offer undertakings to the CMA for the purposes of section 73(2) of the Act, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision. On 11 June 2020 the CMA extended the statutory four-month period mentioned in section 24(1) of the Act by notice pursuant to section 25(4) of the Act.

4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so before the end of the five working day period specified in section 73A(1)(a) of the Act. The SLC Decision stated that the CMA would refer the Merger for a phase 2 investigation pursuant to section 22(1), and in accordance with section 34ZA(2) of the Act, if no undertakings for the purposes of section 73(2) of the Act were offered to the CMA by the end of this period (ie by 18 June 2020); if viagogo indicated before this deadline that it did not wish to offer such undertakings; or if the undertakings offered were not accepted.

The Proposed Undertaking

6. On 18 June 2020, viagogo offered the CMA the following undertaking (**the Proposed Undertaking**): divestment to an upfront buyer of StubHub's European and certain other international legal entities.²
7. The Proposed Undertaking includes: the [X] secondary ticketing platform, [X]; StubHub's stake in [X]; customer and supplier bases; primary ticketing partner relationships; staff covering certain functional areas [X]; intellectual property (including the [X] brand and global domains); and other related assets [X]. viagogo also offered a licence to use the [X] brand in the UK and the UK domain name for a transitional period of [X], followed by a [X] blackout period during which neither viagogo nor any third party would be entitled to use the [X] brand in the UK, if requested by a potential purchaser.
8. viagogo also offered transitional support for [X].

Assessment of the Proposed Undertaking

9. As noted at paragraph 2 above, in the SLC Decision, the CMA concluded that it is or may be the case that the Merger has resulted or may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of Secondary Ticketing Exchange Platforms in the UK.

² Namely [X].

10. Section 73(2) of the Act states that the CMA may, instead of making a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which, in relation to completed mergers, has or may have resulted from it or may be expected to result from it, accept undertakings in lieu of a reference (**UILs**) to take such action as it considers appropriate. In accordance with section 73(3) of the Act, when deciding whether to accept UILs, the CMA shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it.
11. In order to accept UILs, the CMA must be confident that all of the potential competition concerns that have been identified at phase 1 would be resolved by means of the UILs, without the need for further investigation. UILs are therefore considered appropriate only where the proposed remedy is clear-cut and capable of ready implementation.³ Further:
 - (a) In relation to the substantive competition assessment, the clear-cut requirement 'means that there must not be material doubts about the overall effectiveness of the remedy'; and
 - (b) In practical terms, the clear-cut requirement means that UILs of such complexity that their implementation is not feasible within the constraints of the phase 1 timetable are unlikely to be accepted.⁴
12. The CMA's starting point in deciding whether to accept a proposed UIL is to seek an outcome that restores competition to the level that would have prevailed absent the merger, thereby comprehensively remedying the SLC.⁵ As a general rule, the CMA considers that at phase 1 it is appropriate for it to seek to remedy or prevent competition concerns rather than merely mitigating them.⁶
13. The CMA generally prefers structural remedies, such as divestiture, over behavioural remedies.⁷ Further, the CMA will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, independently of the merger parties, to the divestiture of part of a business or a collection of assets. This is because divestiture of a complete business is

³ CMA Guidance, [Merger Remedies \(CMA87\)](#) (December 2018), paragraph 3.27.

⁴ CMA87, paragraph 3.28(b).

⁵ CMA87, paragraph 3.30. CMA87 notes that the objective is to ensure competition following the implementation of the remedy is as effective as pre-merger competition.

⁶ CMA87, paragraph 3.31.

⁷ CMA87, paragraph 3.46

less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.⁸

14. In the present case, for the reasons set out below, the CMA has material doubts that the Proposed Undertaking would effectively remedy the competition concerns identified in the SLC Decision. While the CMA notes that the Proposed Undertaking comprises all of StubHub's European (and certain other international) legal entities and is of a wider geographic scope than the SLC identified by the CMA in its SLC Decision, the CMA considers that the Proposed Undertaking does not offer a clear-cut solution to the competition concerns identified in the SLC Decision for the following reasons.
15. First, the CMA has material concerns regarding the overall effectiveness of the remedy. The CMA considers that the scope of the Proposed Undertaking may not be appropriately configured to allow a purchaser to operate as an effective competitor in the UK market. In particular:
 - (a) The Proposed Undertaking requires a carve-out from the global StubHub business and does not comprise an existing standalone business. For example, StubHub's Secondary Ticketing Exchange Platform in the UK currently [redacted] (which, [redacted], is not included in the scope of the Proposed Undertaking) and a number of steps are required to align the [redacted] Platform offered as part of the Proposed Undertaking with the [redacted] in order for it to be operational in the UK market.
 - (b) In addition to and/or as part of this re-platforming exercise, the creation of a standalone business as proposed by viagogo under the Proposed Undertaking is dependent on the successful implementation of various steps impacting the StubHub UK business including, *inter alia*, [redacted], [redacted], [redacted] and [redacted]. The CMA considers that the creation of a standalone business through a carve-out and a number of implementation steps presents material composition risks. It is not clear that the divestiture package will function effectively after re-platforming and other related steps such as to allow a purchaser to operate as an effective competitor in the UK market, noting that this particular combination of elements of the StubHub business has not previously operated together in the UK market.
 - (c) The CMA is not confident that the temporary ability to use the [redacted] brand in the UK and the UK domain name for [redacted] would give the potential licensee the necessary incentives and ability to compete sufficiently strongly with viagogo in the UK market. The CMA has significant doubts that the proposal is sufficient to allow the potential licensee to establish

⁸ CMA87, paragraph 5.12.

and transition to a suitably strong alternative brand with a level of consumer awareness and loyalty equivalent to the [X] brand, as required to compete effectively after expiry of the licence term.

16. Second, the CMA considers that the Proposed Undertaking raises material concerns regarding implementation. The CMA notes that the large number of steps required in order for the Proposed Undertaking to be implemented (as noted at paragraphs 15(a) and 15(b)) raises material concerns that these will not be feasible within the constraints of the phase 1 timetable. viagogo submitted that [X]. However, the CMA considers that each of these steps presents potential risks in terms of delivery and/or delays that, both individually and in combination, present material risks to the effective implementation of the Proposed Undertaking.
17. The CMA therefore considers that there is a significant risk that the Proposed Undertaking would not restore competition to the level that would have prevailed absent the Merger and would not fully address the significant competition concerns identified in the SLC Decision without the need for further investigation.

Decision

18. For the reasons set out above, after examination of the Proposed Undertaking, the CMA does not believe that it would achieve as comprehensive a solution as is reasonable and practicable to the SLC identified in the SLC Decision and the adverse effects resulting from that SLC.
19. Accordingly, the CMA has decided not to exercise its discretion under section 73(2) of the Act to accept undertakings in lieu of reference.
20. Therefore, pursuant to sections 22(1) and 34ZA(2) of the Act, the CMA has decided to refer the Merger to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to conduct a phase 2 investigation.

Andrea Gomes da Silva
Executive Director, Mergers and Markets
Competition and Markets Authority
25 June 2020