

COMPLETED ACQUISITION BY VIAGOGO OF STUBHUB

Issues statement

23 July 2020

The reference

1. On 25 June 2020, the Competition and Markets Authority (CMA), in exercise of its duty under section 22 of the Enterprise Act 2002 (the Act), referred the completed acquisition by PUG LLC of StubHub Inc, StubHub (UK) Limited, StubHub Europe S.a.r.l., StubHub India Private Limited, StubHub International Limited, StubHub Taiwan Co Limited, StubHub GmbH and Todoentradas SL, for further investigation and report by a group of CMA panel members (the Group).
2. In exercise of its duty under section 35(1) of the Act, the CMA must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
3. In answering these two questions we are required to apply a 'balance of probabilities' threshold to our analysis.¹
4. In this statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence referred to in the CMA's Phase 1 decision on SLC (the Phase 1 Decision).²
5. We are publishing this issues statement to assist parties submitting evidence to our investigation. The issues statement sets out the issues we currently envisage being relevant to our investigation and we invite parties to notify us if

¹ [Merger Assessment Guidelines](#) (CC2/OFT1254), paragraph 2.12. The Merger Assessment Guidelines have been adopted by the CMA board (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), Annex D)

² [The Phase 1 Decision](#)

there are any additional relevant issues which they believe we should consider.

6. We are publishing this issues statement during the coronavirus (COVID-19) pandemic, which is having significant impacts on consumers and businesses across the world.
7. The CMA has published a statement on its website on how it has adjusted its working arrangements in response and guidance on key aspects of its practice during the Coronavirus (COVID-19) pandemic.³ Our approach to evidence-gathering will take into account the difficulties that the pandemic may be causing for market participants in this sector. If appropriate, we will also take into account the impact of the pandemic in our assessment of the competitive effects of the Merger, although we are required to look beyond the short-term and consider what lasting structural impacts the merger might have on the markets at issue.
8. We intend to continue from the CMA's Phase 1 investigation. Parties are encouraged to read this document in conjunction with the Phase 1 Decision. We intend to focus our investigation on the areas in which the CMA found that the Merger gives rise to a realistic prospect of an SLC. That is, as a result of horizontal unilateral effects in the supply of Secondary Ticketing Exchange Platforms in the UK (as defined in the Phase 1 Decision).⁴
9. Although we are not precluded from considering other issues which may be identified during the course of our investigation, we are only likely to consider such issues in light of new evidence being brought to our attention by third parties. We consider this to be a proportionate way in which to conduct our inquiry.

The merger

10. 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**). viagogo and StubHub are together referred to as **the Parties**.

³ [Merger assessments during the Coronavirus \(COVID-19\) pandemic](#)

⁴ [The Phase 1 Decision](#), paragraphs 4 and 179

The Parties and the industry

The Parties

11. PUG is a Delaware limited liability company, wholly owned by viagogo. viagogo is a global provider of online platforms used by both businesses and individuals to buy and sell tickets to live events. viagogo is headquartered in Geneva, Switzerland, and operates across many jurisdictions, including the UK.
12. StubHub is also a global provider of online platforms used by both businesses and individuals to buy and sell tickets to live events, operating across many jurisdictions, including in the UK. Prior to the Merger, StubHub was owned by eBay, Inc. (**eBay**). StubHub is headquartered in California, United States.

The industry

13. Tickets for live events are typically sold initially on online primary ticketing websites at a face value set by event providers and content rights holders (**Primary Ticketing Platforms**). These tickets may then be made available for resale platforms that enable ticket buyers and ticket resellers to buy and resell the tickets they have bought for music, sports and other live events (**Secondary Ticketing Exchange Platforms**).
14. The Parties overlap in the supply of online platforms for the sale of tickets for events in the UK and, in particular, in the supply of Secondary Ticketing Exchange Platforms. The Parties also have some limited activities in the supply of Primary Ticketing Platforms in the UK.
15. Both Parties' Secondary Ticketing Exchange Platforms are two-sided, offering services to both buyers and resellers of tickets. The Parties therefore compete for buyers and resellers of tickets. Buyers are consumers (or fans) that wish to attend the event. Resellers consist of consumers that originally intended to attend the event but are now unable or do not wish to go, as well as professional resellers (ie, individuals or businesses that buy tickets to resell at a profit). Secondary Ticketing Exchange Platforms charge fees to both buyers and resellers. The price a purchaser pays for a ticket on a Secondary Ticketing Exchange Platform is passed on to the reseller, less the platform's fees.

Our intended inquiry

16. Below we set out some specific areas of our intended assessment in order to help parties who wish to make representations to us. However, these will not

be the only areas for our assessment. For example, we will also look at key characteristics of how the industry operates and the rationale for the Merger.

Jurisdiction

17. We shall consider the question of jurisdiction in our inquiry. A relevant merger situation exists where the following conditions are satisfied:⁵
- (a) two or more enterprises have ceased to be distinct; and
 - (b) either:
 - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the turnover test); or
 - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the share of supply test).
18. The CMA's Phase 1 Decision found that the CMA had jurisdiction to review the Merger and applied the share of supply test.⁶

The counterfactual

19. The application of an SLC test involves a comparison of the prospects for competition with a merger against the competitive situation without a merger. The latter is called the 'counterfactual'. We shall, therefore, assess the possible effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation that would have been most likely to have arisen absent the Merger) including how viagogo, StubHub and other providers would have competed in the absence of the Merger.

Market definition

20. The market definition provides a framework for assessing the competitive effects of a merger for a relevant product and geographic market. It involves an element of judgement. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the

⁵ Section 23 of the Act

⁶ [The Phase 1 Decision](#), paragraphs 21-25

relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in our competitive assessment.⁷

21. The CMA's Phase 1 Decision considered the impact of the Merger in the supply of online exchange platforms for selling and buying secondary tickets (ie Secondary Ticketing Exchange Platforms) in the UK.
22. We shall consider market definition in our inquiry including whether to include primary ticket selling platforms, social media platforms, specialist selling and classified ad sites which are not specifically focussed on event tickets (eg Gumtree) and specialised online platforms for a specific venue or sport. Further, we will consider whether there are differences between types of Secondary Ticketing Exchange Platforms (eg capping the price at which tickets can be resold) such that they might be in different markets.

Assessment of the competitive effects of the Merger

Theory of harm

23. The term 'theory of harm' describes the possible ways in which an SLC could arise as a result of a merger. The theory of harm provides the framework for our analysis of the competitive effects of a merger. Identifying a theory of harm in this issues statement does not preclude an SLC from being identified on another basis following receipt of additional evidence. We welcome views on the theory of harm described below.
24. In this case we shall assess whether the Merger gives rise to an SLC in the supply of services, such as Secondary Ticketing Exchange Platforms, to buyers and sellers of tickets made available for resale.
25. Our theory of harm that we shall investigate is a horizontal unilateral effect. Unilateral effects can arise in a horizontal merger where one firm merges with a direct competitor that provides and/or is expected to provide a competitive constraint. Unilateral effects resulting from a merger are more likely where the merger eliminates a significant competitive force in the market or where customers have little choice of alternative suppliers.⁸
26. We shall consider whether the Merger is likely to lead to:

⁷ [Merger Assessment Guidelines](#), paragraph 5.2.2

⁸ [Merger Assessment Guidelines](#), paragraph 5.4.12

- (a) higher fees charged for the sale and/or purchase of tickets available for resale on Secondary Ticketing Exchange Platforms;
 - (b) worse non-price terms for sellers and/or buyers of tickets available for resale on Secondary Ticketing Exchange Platforms;
 - (c) lower quality of service to sellers and/or buyers of tickets available for resale on Secondary Ticketing Exchange Platforms including platform functionality.
27. To assess this theory of harm, the factors we currently consider that we are likely to include are:
- (a) market structure and market shares;
 - (b) evidence from resellers of tickets in the UK;
 - (c) the behaviour of resellers in the sector and how platforms compete to attract resellers;
 - (d) the extent to which resellers of tickets use both Parties' Secondary Ticketing Exchange Platforms;
 - (e) the extent to which resellers of tickets use third parties' Secondary Ticketing Exchange Platforms or other means (eg social media platforms, specialist selling sites, classified ad sites and specialised online platforms for a specific venue or sport) to resell tickets and extent to which these impose competitive constraints on the Parties' platforms;
 - (f) the behaviour of buyers in the sector and how platforms compete to attract buyers;
 - (g) any competitive constraint from primary ticket sellers (including evolving practices from these sellers such as dynamic pricing); and
 - (h) the Parties' and third parties' internal documents.
28. In addition to the evidence discussed above in investigating our theory of harm we shall also consider evidence on entry and expansion of third parties in competition to the Parties and on barriers to entry and expansion. Further, we shall consider any arguments advanced on efficiencies arising from the Merger.

Possible remedies and relevant customer benefits

29. Should we conclude that the Merger is expected to result in an SLC in one or more markets, we shall consider whether, and if so what, remedies might be appropriate, and will issue a further statement.
30. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.

Responses to the issues statement

31. Any party wishing to respond to this issues statement should do so in writing, by **no later than 17:00 on 6 August 2020**. Please email Viagogo.StubHub@cma.gov.uk