

## COMPLETED ACQUISITION BY PUG LLC (VIAGOGO) OF THE STUBHUB BUSINESS OF EBAY INC.

## PHASE 2 INITIAL SUBMISSION

Please note that [X] indicates figures or text which have been deleted at the request of the parties for reasons of commercial confidentiality.

**1. INTRODUCTION AND SUMMARY**

1. The acquisition of StubHub by Pugnacious Endeavors, Inc (**viagogo**) will not give rise to a Substantial Lessening of Competition (**SLC**) in the supply of secondary ticketing in the UK.
2. The Phase 1 decision found a “realistic prospect” of an SLC based on the appearance of competition between viagogo and StubHub through a static analysis and a presumption of harm arising from putative high shares. viagogo considers that a more in-depth investigation at Phase 2, requiring a higher evidentiary standard, will, in particular, allow the CMA to take account of the two-sided nature of secondary ticket platforms and the indirect network effects which exist, as well as [X]. viagogo believes that once these factors become apparent to the CMA and are taken into account, it will conclude that StubHub does not place a material competitive constraint on viagogo in the UK, and the transaction will not result in higher prices, reduced ticket availability or reduced overall quality for customers.
3. On 13 February 2020, viagogo acquired the whole 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 transaction brings together two global operators of secondary ticketing platforms. StubHub is primarily active in the United States (with approximately [X]% of its business being US-based), while viagogo is primarily active outside the United States (with approximately [X]% of its business being ex-US (or “international”)).
4. As a preliminary point, it is important to note that viagogo’s acquisition of StubHub was driven by two factors. First, viagogo believes that it can manage the StubHub [X]. Second, viagogo believes that the acquisition is [X].
5. As is clear from the internal documents provided to the CMA, StubHub’s UK operations played no role in viagogo’s decision to acquire StubHub. Although both parties are present in the UK, StubHub’s UK activities represent a trivial portion of its worldwide turnover (no more than [X]%<sup>1</sup>). Rather, the transaction is [X].
6. The CMA reviewed the transaction and found, at Phase 1, that it gave rise to a “realistic prospect” of an SLC. The CMA concluded that the prospect of an SLC arose because of the high combined share of supply of the parties (which the CMA found to be in excess of [80-90]%, with an increment of over [30-40]%<sup>2</sup>, and indications suggesting that the parties compete closely and that there is an absence of other material constraints on the parties.

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<sup>1</sup> Calculated based on StubHub’s 2019 UK net revenue against its worldwide net revenue in USD.

<sup>2</sup> These figures are taken from the CMA’s Phase 1 decision. viagogo assumes these are an error given [80-90]% plus [30-40]% is more than 100%. Taking the mid-points of both Phase 1 decision estimates would give a combined share of [110-130]%.

7. The Phase 1 decision appears to have assumed that StubHub is a strong competitive constraint on viagogo and that, by removing this constraint, the transaction could result in increased prices or reduced service/innovation, to the detriment of customers. This is based on a static analysis and a presumption of harm arising from high shares. A more in-depth investigation at Phase 2 will allow the CMA to properly assess the nature of the constraints faced by viagogo and why the transaction will not result in higher prices, reduced ticket availability or reduced overall quality for customers.
8. In particular, viagogo considers that the conclusions in the Phase 1 decision are significantly overstated for a number of reasons, including:
  - (a) Incorrect assumptions about the competitive nature of secondary ticketing. viagogo believes that an in-depth investigation will show that viagogo's activities were and are driven by the incentive to attract those buyers and sellers that currently do not use secondary platforms. The size and benefits of this new source of demand and supply massively outweigh any benefit that would accrue from capturing lost sales post-completion.
  - (b) Overstating the extent to which StubHub constrains viagogo in the UK. The Phase 2 investigation will show that StubHub is a [redacted] competitor than was assumed in the Phase 1 decision, because of its [redacted], the two-sided nature of secondary ticketing and the role of indirect network effects - viagogo provides buyers with access to [redacted] than StubHub, and provides resellers with access to [redacted] of buyers.
  - (c) Conversely, underestimating the competitive constraints, both direct and indirect, from other actual and potential operators including primary suppliers, smaller secondary ticketing platforms and large non-UK operators.
9. Without prejudice to the other arguments made in Phase 1, this initial submission focuses on outlining the framework for assessing the second of these factors, namely the limited constraint that StubHub places on viagogo, given the nature of secondary ticketing.
10. It is important to note at the outset that, contrary to the findings in Phase 1, viagogo's price, quality and innovation decisions are primarily driven by the desire to increase liquidity (i.e. the increase in the number of buyers and sellers using the platform). Greater liquidity on a platform results in lower resale prices (as more sellers compete to sell tickets), higher "quality" (buyers preferring platforms with more sellers and sellers preferring platforms with more buyers) and a larger range of tickets on offer.
11. As explained in paragraphs 26 to 29 below, the key sources of future liquidity is *not* the [redacted] liquidity on the StubHub UK platform but instead "new liquidity" i.e. (i) untapped demand from unsold/unused tickets; (ii) other secondary ticketing methods (such as offline channels and online classifieds); and (iii) primary ticketing.
12. Attracting existing liquidity from other secondary platforms is of minimal importance to viagogo: the potential for increased revenues and profits from drawing in new liquidity are far greater than those which would accrue to viagogo if it sought to increase fees or reduce the quality of its services. Another way to say this is that viagogo is focused on "growing" the secondary ticketing segment.

13. Further evidence for this dynamic comes from the sources of viagogo's historic growth – as set out in paragraph 26, very little of its revenue growth has come from attracting liquidity from other platforms.
14. It is also important to note at the outset that the explanation for the divergence between the performance of the parties rests on a number of factors not identified in the Phase 1 decision, including StubHub UK's [REDACTED] and differences in the availability of tickets (resellers) for buyers and demand (buyers) for resellers - viagogo provides buyers with access to greater inventory than StubHub and provides resellers with access to greater numbers of buyers. Conversely, contrary to some online sectors, technology has not been a key driver of performance given that all secondary ticketing platforms have broadly the same functionality.
15. The fact that StubHub has been a [REDACTED] (and weaker constraint on viagogo) than the Phase 1 decision found is corroborated by:
- (a) evidence of the [REDACTED] StubHub made when viagogo's Google activity was suspended; and
  - (b) the absence of reference to StubHub UK in viagogo's internal documents and the lack of evidence showing that viagogo takes any account of StubHub in its commercial decision making in the UK.
16. Even on the (overly) narrow market definition adopted by the CMA in Phase 1, the transaction will not result in a SLC because StubHub is a weak constraint on viagogo. Therefore, viagogo's incentives in relation to price (i.e. its fees), quality and innovation will not be materially changed by the acquisition. Moreover, viagogo's commercial imperative to attract new liquidity on the platform in order to compete with primary and other secondary ticket sources means that it will not have an incentive to increase prices and/or reduce quality or innovation.
17. This initial submission provides the CMA with an overview of secondary ticketing platforms and the potential effects of the acquisition, as follows:
- Section 2 considers secondary ticketing dynamics;
  - Section 3 provides an overview of why StubHub poses a weaker competitive constraint than the Phase 1 decision found;
  - Section 4 considers why price, quality, and innovation will not be impacted negatively by the transaction; and
  - Section 5 concludes.
18. viagogo will continue to develop and evidence the arguments set out below as the Phase 2 investigation progresses and looks forward to engaging with the Inquiry Group and the Phase 2 case team on these issues, the wider issues noted in paragraph 8 above, and any other issue that may arise during the investigation.

## 2. SECONDARY TICKETING PLATFORM DYNAMICS

### A. Background

19. viagogo and StubHub operate within the broad overall market for live event tickets. Tickets for sporting, music, theatrical and other events are sold in a number of ways. Content rights holders and

promotors can sell tickets to attendees directly or through agents who offer primary ticketing services. Ticket holders, whether individuals who cannot attend the event or individuals who have purchased a ticket specifically to sell it on, can resell their tickets through secondary channels. Secondary ticketing platforms, such as viagogo and StubHub, are one secondary channel. Other secondary ticketing sales channels include classified advertising services, person-to-person sales, concierge services, ticket brokers (offline and online), and social networks.

20. For event-goers who wish to purchase a ticket, all of the above are viable alternative options. Until an event is sold out, primary sales channels provide a competitive alternative to secondary channels. Only after an event has completely sold out do these alternatives cease to be available.
21. In fact, the traditional boundary between primary and secondary ticketing channels is fast dissolving because increasingly primary tickets are being released in stages – rather than, as was the case until recently, all being offered for sale at the same time. This means that primary tickets remain an alternative for buyers for longer than was the case in the past.
22. In addition, more and more primary tickets are subject to dynamic pricing (i.e. they are sold at prices that reflect demand at a particular point in time rather than at a fixed “face” value). This is further blurring the line between primary and secondary sales.

**B. The key to growth is attracting liquidity from outside the secondary ticketing segment**

23. Secondary ticketing platforms match buyers who want to purchase a ticket for an event with sellers of tickets for that event. As noted below, viagogo believes that the key to growth is to increase the proportion of tickets that are bought and sold through secondary platforms in preference to other modes.
24. Attracting more liquidity to a platform has a positive effect on supply and demand. With more buyers on a platform, sellers are more likely to list inventory which, in turn, is likely to attract more buyers who are searching for tickets. As the conversion rates for buyers increase, traffic and sales rates increase and this in turn drives more inventory, which continues to attract more buyers (and sellers).
25. The fact that attracting new liquidity on its platform is a key driver for viagogo can be seen from the internal documents submitted during Phase 1, which consistently refer to viagogo’s efforts to increase liquidity and to the success that its focus on this strategy has brought in the UK and elsewhere.

**C. The key sources of new liquidity are not other secondary ticketing platforms**

26. In 2018, the global ticketing market was estimated to be worth \$120 billion or more, of which primary ticketing accounted for around \$100-110 billion and secondary ticketing for around \$25-30 billion. In the UK, viagogo estimates, based on third-party data, that the total market is around \$9-10 billion, with primary ticketing accounting for around \$7-8 billion and secondary ticketing for around \$2-3 billion. Indeed, over the last 10 years, ticket sales through viagogo have grown by an average of [X]% per annum ([Y]% in total), a negligible amount of which came from taking share from other online secondary ticketing platforms. viagogo’s strategy is therefore to drive liquidity onto its platform.
27. For viagogo, market growth of buyers is driven by:

- (a) **Unserved demand:** Most prospective buyers will have never purchased a secondary ticket before. This includes those who are unused to online channels or concerned about possible fraud when using an online platform to buy tickets; buyers who previously assumed events were sold out (or thought they had to buy tickets well in advance of the event); and buyers who were not aware of events because of poor marketing by promoters.
  - (b) **Primary ticketing:** Buyers who would normally only consider buying from primary ticketing sources. As noted above, primary and secondary channels compete so long as suitable tickets are available to customers from both primary and secondary sellers. However, as noted above, in recent years primary ticket sellers have been extending the period during which they continue to offer tickets that compete with secondary tickets. With primary ticketing accounting for approximately three quarters or more of overall ticketing in the UK, this offers a significant additional source of liquidity.
  - (c) **Those currently buying through other channels,** either offline (such as in-person trades, street sellers, concierge services, ticket booths, etc.) or other online channels including classifieds (such as Gumtree or craigslist) or social media (such as Facebook) or other sites that do not provide customers with post-trade services (including customer service and guarantees on authenticity of tickets).
  - (d) **Businesses and international tourists** that are not being served through either primary or secondary channels.
28. viagogo's aim is to demonstrate to those less familiar with reselling and online platforms that the viagogo platform offers an easy, convenient, and trustworthy method of buying and selling tickets, and to demonstrate to those that use other online sources that viagogo's platform offers better pricing and service (notably its guarantee that buyers will receive the tickets they paid for in time for the event and that sellers will be paid for their sales).
29. At the same time, increasing the number of sellers can be driven by:
- (a) **Unused tickets:** a significant proportion of tickets simply go unused. For example, third party sources indicate that sports events have a roughly 10% to 20% no-show rate, whereby tickets that have been sold are not used. This represents a potentially significant source of untapped sell-side demand – with primary ticketing accounting for \$7-8 billion, split roughly 50/50 between sports and concerts, if one assumes only a 10% no-show rate, this would amount to \$350-400 million in sports tickets alone.
  - (b) **Unsold tickets:** where tickets are unsold through primary channels (e.g. through lack of event marketing or lower primary ticket demand), these can be distributed through secondary ticketing platforms. Again, this is a potentially significant source of additional demand. By illustration, data from Live Nation (the owner of Ticketmaster) indicates that approximately 40% of primary concert tickets remain unsold. With primary ticketing accounting for \$7-8 billion, split roughly 50/50 between sports and concerts, that 40% could account for around \$1.5 billion in concert tickets alone.
  - (c) **Gifted tickets:** tickets that were previously given away by the primary ticket holder.
  - (d) Those currently selling through **alternative secondary ticketing options**, either offline (such as in-person trades, classifieds) or online including classifieds (Gumtree, craigslist, etc.) and social media. These sellers have already demonstrated an inclination to re-sell tickets and are therefore a prime target. As indicated above, secondary ticketing in the UK accounts for

\$2-3 billion, of which online sales account for only around \$1 billion. Additionally, StubHub estimates that, of those listing a ticket for resale through an online channel, between 70% and 80% of users listed a ticket on a platform whose main focus was not ticket resale.

- (e) **Historic professional sellers** moving online.
- (f) Tickets that previously were sold by fans to ticket selling professionals but can now sell easily directly through a platform.
- (g) **Businesses and hospitality providers.**
- (h) **Issuers** (teams, artists, venues) using secondary ticket platforms directly.

#### D. The pursuit of additional liquidity acts as a competitive constraint on viagogo

- 30. In the context of a rapidly growing market – and significant migration of buyers and sellers onto online platforms – the strong incentive to draw in these customers acts as the primary driver, and therefore main competitive constraint, on viagogo.
- 31. viagogo’s incentive is to grow and capture this ‘untapped’ demand from customers new to secondary ticketing or new to using a secondary ticketing platforms. The key to its success is increasing volumes and it must therefore continue to remain attractive and improve its offering in order do so. Increasing fees or offering a lower quality service would not make sense in this context. It is important to note that StubHub turnover in the UK is less than £[X] million (or less than circa \$[X] million).

### 3. STUBHUB IS A WEAK CONSTRAINT ON VIAGOGO IN THE UK

- 32. As a preliminary point, it is submitted that StubHub UK’s estimated share of supply in 2019 is not representative of its actual position. The increase in StubHub’s share in 2019 was driven primarily by a mixture of [X]. The increase in share therefore reflects the reduction in viagogo’s activity and thus reduction in overall volumes, *not* any “gain” in share by StubHub from viagogo (see below for further details). StubHub’s share of secondary ticketing platforms is better reflected by the position in 2018 with a share of [10-20]%.
  - 33. More importantly, viagogo does not dispute that StubHub is the second-largest secondary ticketing platform in the UK. However, contrary to the conclusions of the Phase 1 decision, it does not exercise a strong competitive constraint on viagogo.
  - 34. Over the last 10 years, viagogo has grown by [X]% on average each year in the UK while StubHub has grown by [X]% or less. This is striking in the context of rapidly increasing volumes and migrating customers.
  - 35. One reason for this poor performance is that the “quality” of StubHub’s offering in the UK is lower than that of viagogo:
    - (a) **For buyers**, viagogo offers greater numbers of sellers than StubHub. As a result, for a buyer, there is a greater incentive to use viagogo over StubHub.
    - (b) **For sellers**, viagogo offers access to greater numbers of buyers than StubHub meaning the likelihood of making a sale at a price above their reserve price is higher.

36. The limited constraint from StubHub on viagogo can be seen from the effect of viagogo's Google Ads suspension in 2019. As a result of this, viagogo lost approximately \$[X] or [X]% of its in GMS compared to 2018. If StubHub were a close competitor to viagogo, it would have picked up a significant portion of this lost revenue. However, StubHub's GMS increased by only \$[X] million, [X]. This is equivalent to diversion of [X]% of the GMS lost by viagogo. This is also supported by more detailed empirical analysis showing that the diversion to StubHub during this period was significantly less than its share of a notional secondary ticketing exchange platform market would suggest and pointing to only a limited competitive constraint (a more detailed analysis of which will be provided by viagogo).
37. Additionally, the absence of reference to StubHub UK in viagogo's internal documents and lack of evidence showing that viagogo takes any account of StubHub in its commercial decision making in the UK further evidence the fact that any competitive constraint that StubHub places on viagogo is weaker than the CMA found in its Phase 1 decision.

#### 4. THE TRANSACTION WILL NOT NEGATIVELY AFFECT PRICE, QUALITY OR INNOVATION

38. Contrary to the assumptions in the Phase 1 decision, the transaction will not negatively impact price, quality or innovation. Indeed, viagogo's incentives in relation to price (i.e. fees), quality and innovation will not be materially changed by the merger. In fact, to the extent that any changes do occur, the deal is likely to result in lower ticket prices.

##### A. Prices will not increase

39. With respect to price of tickets sold on the platform, these are set by the sellers, in response to demand and supply (i.e. if similar tickets are available). The greater the liquidity on a platform, the more competition between sellers and thus the greater pressure there is on sellers to reduce price in order to sell the ticket. Thus, as viagogo continues with its strategy of acquiring new liquidity from the various sources of addressable demand - a strategy that is not affected by the transaction - overall ticket prices would be expected to drop on average. This can be seen from viagogo's response to question 18 of s109(3) in Phase 1, which showed an average decrease in ticket prices [X].
40. viagogo notes that this downward pressure on ticket prices is a key reason why sellers on the platform may be inclined to complain, although this was unfortunately not recognised or noted in the Phase 1 decision.
41. As regards the fees it charges, it is important to note that the key strategic driver for viagogo is to grow secondary sales. In particular, for people that have not previously sold or bought tickets through a secondary channel or have done so through classified ads or social media, questions like the ease of trading and availability of guarantees are important factors. Therefore, to get new customers using secondary platforms, viagogo seeks to improve post-trade services, increase buyer trust, and reduce opportunity costs for sellers to list. Increasing fees post-merger would not enable viagogo to achieve this strategy. The benefit that viagogo could obtain from doing so as a result of acquiring StubHub would clearly be outweighed by the harm to its business model and future growth.

42. The fact that viagogo would have no incentive to increase fees can be seen from the fact that its “take rates” (which are an aggregation of fees charged to buyers and sellers, excepting delivery fees) have remained between [X]% and [X]% since 2009, despite the increase in viagogo’s share and the exit of a number of competitors from secondary ticketing in the UK. The only change to fees was [X].
43. Further, viagogo’s take rate is consistent as between the UK and the US (and across other countries), where viagogo is a much smaller player. If the level of fees charged to buyers and sellers was driven by its share of secondary ticket exchange platforms, one would expect viagogo’s take rate in the US to be much lower (in order to attract users to its platform). However, this is clearly not the case.
44. To the extent that viagogo could be said to have any incentive to change its fees, this incentive would not be to increase fees, as doing so would harm its ability to attract new liquidity. In addition, as viagogo’s liquidity growth strategy continues, it can be expected that the pressure on ticket prices overall will continue to be in the form of downward pressure. The transaction will not, therefore, result in an increase in prices or fees for users of the viagogo platform.

#### **B. Quality and Innovation will not be harmed**

45. As set out at paragraph 41 above, the commercial imperative to pursue new liquidity means that viagogo’s incentives in relation to quality and innovation will remain unchanged. If viagogo were to reduce its focus on innovation and quality following the acquisition of StubHub, it would likely see a reduction in the willingness of new users to try the platform and would thus harm its overall strategy. The downsides from a reduction in quality of services (or innovation) would clearly outweigh any savings viagogo would achieve.

### **5. CONCLUSION**

46. viagogo respectfully reiterates that its decision to acquire StubHub was unrelated to the UK market. It was driven by the desire to grow its business in the US and its view that it could manage the StubHub business [X].
47. As regards the UK, as explained in this paper and in previous submissions, the transaction cannot lead to an SLC for a number of different reasons including the competitive constraints exerted by primary ticket sources and other secondary ticket sources and the fact that StubHub is not an especially close competitor to viagogo. Moreover, the clear commercial imperative for viagogo to pursue and attract new sources of liquidity means that its incentives in relation to price, quality and innovation will remain unchanged.

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