FANFAIR ALLIANCE SUBMISSION ON REMEDIES

As a campaign to reform the UK's online secondary ticketing market, we fully support the CMA's provisional conclusions which confirm that Viagogo's purchase of StubHub has resulted in a serious lessening of competition in the UK, and will likely be of detriment to UK consumers. These are all arguments FanFair and others have made in submissions to the merger inquiry.

However, we also acknowledge that finding remedies to this situation will be challenging, for a variety of reasons:

1. Viagogo held a monopoly position in the UK before the merger

Even before the merger, Viagogo dominated uncapped secondary ticketing in the UK, with a market share of between 60% and 70%.

The company has exerted a stranglehold on Google advertising - bidding for an estimated 100,000 search terms per month. As highlighted by FanFair Alliance research, Google is frequently the first step on the purchase journey for tickets, and this marketing strategy has successfully enabled Viagogo to direct buyers towards the inflated listings of their suppliers, and away from face value tickets on sale in the primary market.

This arms race for search rankings has also stifled rival platforms from entering and competing in the uncapped market. StubHub UK, for instance, bids for significantly fewer search terms than Viagogo and, since the merger, appear to have stopped bidding full stop.

Meanwhile, new entrants, such as Gigsberg, although adopting a copycat business model to Viagogo - ie using Google search advertising to find buyers, relying on commercial resellers for inventory, and obfuscating to consumers about the nature of their business - have gained little traction.

SimilarWeb analytics indicate Gigsberg attracts approximately 2% of Viagogo's traffic. Over recent weeks, they too appear to have stopped taking Google adverts.

Therefore, even if the merger was completely rewound, UK consumers would still find themselves in a less than perfect situation because of Viagogo's pre-existing dominance.

Ultimately, there has been little innovation or competition in this market for more than a decade. The main competitive dynamics have been between the platforms themselves (eg between Viagogo, StubHub and, when they were still active, the Ticketmaster-owned websites Get Me In! and Seatwave) to court the services of the largest re-sellers, including those based outside of the UK.

The resulting B2C market is something of an artificial construct, and has led to UK consumers being misled and mis-sold tickets at inflated prices when face value inventory was readily available from primary ticketing agents.

On this point, FanFair is especially pleased that the CMA supported our contention that the primary ticketing market and the capped consumer-to-consumer ticket resale market are not in effective competition with uncapped secondary ticketing.

This differences between the sectors are stark.

For instance, while the UK's uncapped secondary ticketing market displays a distinct lack of innovation, the UK's capped consumer-only resale market already supports a growing range of platforms with a diversity of business models and fee structures.

2. This is a US-focussed merger

Viagogo's primary motivation in acquiring StubHub was to gain access to the US market.

The merger had little consideration for either company's UK operations.

However, there are striking differences between uncapped secondary ticketing in the two markets.

For example, in the US there is intense competition for StubHub from rival uncapped secondary ticketing platforms such as VividSeats and SeatGeek, as well as Ticketmaster, which still derives significant revenues from uncapped secondary ticketing and (unlike the UK) has not shuttered its secondary ticketing operations.

Similarly, while StubHub UK has struggled to gain a foothold in this country, StubHub's US operations are firmly established. The company is a highly recognisable brand in North America with a wide range of ticketing contracts and commercial partners.

It is only outside the US that the merger has raised competition concerns.

3. Financial irregularities

Adding to these complications are unanswered questions around the financing of the merger - all of which could be relevant to a potential divestiture.

As the CMA identified, both parties have apparently grossly inflated the size of the UK's online secondary ticketing market - claiming it to be worth £1.5bn-£2.5bn.

The CMA estimate the market's actual worth is closer £350m - potentially 12% of what the parties claim.

If correct, this would make Viagogo's turnover in its biggest market relatively modest - and significantly short of funding a $4.05bn acquisition of a far more substantial North American business.

It also raises questions over Viagogo's public claims that StubHub was acquired "in cash" - especially as Viagogo operates what Moody's defines as an" asset-lite" business.

The company has no substantial ticketing contracts. It has no commercial partners. All Viagogo's public-facing relationships with event organisers (eg ATP Tennis) have been terminated as a result of its controversial practices.

Viagogo's business is wholly reliant on Google advertising and large-scale ticket resellers.

Without these, the platform appears to have little tangible value, and that value will have diminished further since the pandemic.

There are also other complications. For instance, the merger has not resulted in the creation of a larger entity in its primary market.

The $4.05bn paid to eBay has not increased StubHub's share of the US market - where Viagogo has a minimal presence - it has simply transferred control of StubHub to PUG LLC / Eric Baker, Bessemer Venture Partners and Madrone Capital Partners.

4. The pandemic

As already stated, the value in this merger lies predominantly in StubHub's US business.

Viagogo is a business with no substantial contracts, no partnerships and - since March 2020 - few customers.

On 19th August 2020, Moody's downgraded Viagogo's Corporate Family Rating to B3 status, while on 24th August the company took on loans of $330m.

Furthermore, in the US, both Viagogo and StubHub face class actions lawsuits after failing to refund customers and effectively changing their terms and conditions post-sale.

These are significant financial pressures.

Meanwhile, according to media reports, StubHub's business outside the US has been subject to wide-ranging cutbacks.

In tandem with the reasons above, this would potentially make any divestment process challenging - and could result unforeseen consequences.

We would certainly have concerns if Viagogo or StubHub's UK business were purchased by either their suppliers (ie high-volume ticket resellers) or by a platform such as Gigsberg.

REMEDIES

The CMA has already rejected Viagogo's proposed remedy to sell-off StubHub's European business.

This is understandable. The European side of StubHub's business is of limited value compared to its US operations. It has been subject to significant cutbacks since the pandemic, and its sale would do nothing to address a lack of competition in the UK's uncapped secondary ticketing market.

For all the reasons raised above, and unless Viagogo and StubHub both agree to leave the UK market and not target UK consumers, the only appropriate remedy we can suggest is two-fold:

(i) a total reversal of the merger and a divestiture of StubHub's global business, effectively taking us back to February 12th 2020.

(ii) and then to enforce behavioural remedies on Viagogo and StubHub in the UK, and across the UK's entire uncapped secondary ticketing sector, in order to engender greater competition.

Given the lack of competition before the merger, the lack of new entrants, and the apparent difficulties of enforcing consumer protection law in this sector we believe behavioural remedies will be important in all scenarios - and that the following should be considered in the UK:

i. Restraints placed on Viagogo's use of search advertising, and on the search advertising of all uncapped secondary ticketing platforms. Our preference would be for a blanket ban, or for advertising to be permitted by authorisation of an event organiser only. This would effectively end the arms race for search terms and level the playing field between uncapped secondary operators, while helping consumers locate official and authorised sources of tickets. We note that in November 2020 a Parisian court has, in line with French law, ordered Google not to take advertising from ticketing companies unless they have authorisation from the event organiser.

ii. Clearer provision of information to consumers from the platforms and their suppliers. Although the court order served to Viagogo in November 2018 has resulted in welcome changes to their business practices and greater compliance with consumer law, we believe further changes would help engender greater competition. These would include:

- Providing clearer information about ticket pricing, and not hiding face value prices behind hover text
- Providing clearer information about event restrictions, and ensuring these are made prominent to purchasers
- Providing clearer information about “traders”, and ending practices whereby addresses and identities are hidden behind captcha and other barriers.

Again, although the merger is focussed on Viagogo and StubHub, we believe these behavioural remedies should be applied across the UK’s uncapped secondary ticketing sector - ensuring a level playing field and stimulating competition.

If any of these behavioural remedies require legislative change, the CMA should recommend this is implemented as a matter of urgency.