

Further Submissions In Respect Of The CMA Phase 2 Investigation Into The Merger of Pug LLC (viagogo) And Stubhub

Having read the CMA Merger Teams interim report into the proposed merger, an SLC clearly exists should this merger be allowed to go ahead in its current form

In our evidence to the CMA we estimated that viagogo held some 60% of the uncapped ticket resale market in the UK with Stubhub holding some 30% of the same market

This appears to have been independently corroborated in the CMAs report

As pointed out in the report, a merger of the two entities in its current form would give viagogo some 90% of the uncapped ticket resale market in the UK, a monopoly by any standards

Cause and Effect

Should the merger go ahead in its current form there is very clearly a significant loss of competition with Pug LLC gaining a very clear monopoly in uncapped ticket resale in the UK

Viagogos main market has always been the UK ticket resale sector

Stubhubs main market has always been the USA

The UK uncapped resale sector has consistently been overinflated as to its size for many years by uncapped resale sites starting with Joe Cohen, who founded Seatwave, when in 2009 he stated that ticket resale in the UK was a £1 billion market

Similar submissions were made by Getmein and viagogo at the time to Europe Economics in a report commissioned on behalf of HM Government

We were the single dissenting voice estimating the market to be at or less than £800 million

At that time the secondary market was enhanced by UK promoters dumping tens of thousands of tickets at a time directly onto secondary sites such as viagogo

Since the exposure of this activity in the media, the practice has not entirely stopped

It is, however, a fraction of the size it was in 2009

Factor in the advances in ticketing technology which has made it far more difficult for touts to harvest tickets in bulk, and pass them on to purchasers, and the secondary market has shrunk further

Yet viagogo and Stubhub, despite the fact they have their own figures as to how many tickets they have resold, and to what value, appear to have attempted to seriously mislead the CMA in respect of the size of the uncapped secondary market in the UK

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The conclusion in the CMA report that the UK secondary market is only of the order of magnitude of some £350 million, viagogo's largest market, would indicate that its revenue stream, pre and post pandemic, is likely to be very small when compared to its debt position in respect of the \$4 billion acquisition of Stubhub

The financial pressures on Pug LLC at this time must be enormous especially given the impact of the Covid-19 pandemic and legal action against the site in various countries such as France and Australia

Viagogo is also at risk from further litigation and regulatory restrictions in several other countries, including the Republic of Ireland, where a total ban on above face value resale looks as if it will be passed into law in the very near future

Pug LLC, as viagogo, has a proven track record of ignoring and breaking consumer protection legislation over a period of years, refusing refunds to consumers for invalid tickets, levying dubious fines on resellers and misleading consumers with false claims to be "official"

Viagogo's customer ratings on sites such as Trustpilot are appalling, indicating significant problems with invalid tickets sold through the website, poor customer service, and a failure to refund where tickets were invalid or events cancelled

All this against a background of exceedingly high fees charged to both resellers and purchasers alike

If the merger goes through in its current form, it would be reasonable to suspect that, given viagogo's previous behaviour, the situation for consumers and resellers alike would deteriorate significantly with rising service charges to both sellers and purchasers with more consumers misled by the business

It would be an unfettered monopoly and the worst of the bad and unlawful practices at viagogo will almost certainly be replicated at Stubhub

In summary, this is the company that only complies with the Consumer Rights Act 2015, after ignoring it for nearly three years, because the CMA obtained an enforcement order against it in court forcing it to do so

To hand a monopoly to this type of business would be a devastating blow for consumer rights in the UK

"Growing the Market"

We note that the parties in the acquisition stated an intent to “grow the market”

It is difficult to see how this could be achieved lawfully

From the CMA interim report into the merger it is clear that both viagogo and Stubhub are absolutely dependent on ticket touts harvesting tickets in bulk and reselling them at inflated prices through the two websites

For many years both businesses have had staff look out for people reselling tickets regularly and then approach them with a view to offering access to top seller or power seller programmes

These schemes offer access to software allowing the bulk listing of tickets, the ability to adjust ticket prices in bulk, suggestions as to what price should be charged for tickets and settings allowing the prices to be micro adjusted up or down automatically

Pre pandemic it was also common for both websites to pay top sellers and power sellers on delivery of tickets rather than having to wait until after an event

From our examination of sales data in recent years, touts were practically tripping over each other to harvest tickets for high demand events

This led to an arms race amongst touts in order to acquire more efficient ticket harvesting software that enabled them to target the most highly sought after tickets for events in quantities that fraudulently reduced the number of tickets available to the public at face value (R v Hunter and Smith Leeds Crown Court 2020 (Subject to appeal against conviction))

The numbers of active touts in the UK had, by and large, reached a natural limit

Both viagogo and Stubhub started to introduce overseas touts to the UK market in order to “grow the market”

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These examples are given to show what viagogo and Stubhub mean by “growing the market”

A more accurate description would be to encourage more people to harvest more tickets in bulk, to the detriment of consumers, and resell them on their platforms

Given the fact that these platforms have been attempting to “grow the market” in the UK for many years, and the market has, in fact, shrunk, this expressed desire rings hollow as a justification for the merger

It is difficult to see how any new entrant into the uncapped resale market could compete with viagogo or Stubhub in order to attract the resellers on which the uncapped market is entirely dependent

The relationship between viagogo, Stubhub and the resellers that use their platforms is so deeply entrenched, we cannot envisage a new entrant into the market being able to build up a similar relationship, with resellers necessary to provide viable competition in the marketplace

Nor can we see how a new entrant could offer the same advantages to resellers, such as ticket management software, discounts on service charges and payment on delivery of tickets, and platforms that are constantly driving traffic to their sites by dominating google paid ads that Stubhub and viagogo can offer

The Merger

Our view is that it would be difficult to see how the merger in its current form can stand

A 90% share of the uncapped ticket resale market is a monopoly leading to an absence of competition to the detriment of consumers and resellers alike

The offer from viagogo to sell off Stubhub UK has already been rejected once by the CMA

It would be difficult to see who would buy the business, or how they could compete with viagogo in an effective manner if they did

Further, any potential purchaser could only provide effective competition by continuing to operate Stubhub in the same manner as it operates now

That would mean being absolutely dependent on ticket touts committing offences to harvest tickets in bulk and then allowing them to resell those tickets through the platform

This exposes any purchaser to incredible risk especially in a climate where investigations and prosecutions of ticket touts are taking place across the UK for exactly this type of activity

It also poses potential legal risks for anyone involved in the sale of the business

An alternative scenario would be if viagogo UK was sold off with Pug LLC retaining Stubhub including Stubhub UK

Stubhub UK is not a particularly attractive purchase given its relatively small size and lack of assets

Stubhubs value is in its brand and, more importantly, in its US business with a multi billion dollar turnover

The UK is viagogos biggest market and clearly a much more attractive purchase given the percentage of the market it controls

However, the toxicity of the brand could be a negative factor for any potential purchaser

If viagogo UK was sold off there would certainly need to be behavioural remedies put in place to ensure that Stubhub did not adopt the same aggressive Google Paid Ads policy that viagogo currently uses to suffocate any competition

The extremely aggressive Google Paid Ads policy operated by viagogo, as we believe, mentioned as a major factor in Gigsbergs inability to provide meaningful competition in the resale sector

There would also need to be further remedies to prevent Pug LLC setting up a new vehicle in the UK uncapped resale market to work alongside the Stubhub brand in order to eliminate competition from the divested viagogo UK

The use of aggregators or consolidators to prevent Google Paid Ads dominance would also have to be prohibited

In order for viable and credible competition to emerge and grow, it may be necessary for a behavioural remedy by way of a ban on Google Paid Ads for up to 5 years

However, any behavioural remedy is dependent on the party involved complying

Viagogos track record for breaching undertakings speaks for itself and, in our opinion, rules out the possibility of behavioural remedies in any partial divestiture

Simply put, viagogo cannot be trusted

This leaves one remedy and one remedy only, a total reversal of the merger in order for Stubhub to remain as credible competition to viagogos dominance of the UK uncapped secondary ticket market

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