

ANTICIPATED MERGER BETWEEN CROWDCUBE LIMITED AND SEEDRS LIMITED

Issues statement

4 December 2020

The reference

1. On 12 November 2020, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated merger (the Proposed Merger) between Crowdcube Limited (Crowdcube) and Seedrs Limited (Seedrs) (together, the Parties) for further investigation and report by a group of CMA panel members.
2. In exercise of its duty under section 36(1) of the Act, the CMA must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that relevant merger situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom for goods or services.
3. In answering these two questions we will apply a 'balance of probabilities' threshold to our analysis. That is, we will decide whether it is more likely than not that the Proposed Merger will result in an SLC.¹

Purpose of this issues statement

4. In this issues statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (set out in paragraph 2(b) above)², having had regard to the evidence available to us to date, including

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 During our phase 2 inquiry, we will also confirm whether the jurisdictional question (set out in paragraph 2(a) above) is met.

the evidence referred to in the CMA's phase 1 decision (the phase 1 decision).³

5. While the case was referred to a phase 2 investigation under the "fast track" procedure⁴, a significant amount of information-gathering and analysis has already been carried out in the CMA's phase 1 investigation (in particular, because the Proposed Merger was subject to a significant period of pre-notification before it was announced). We intend to use and build on the information gathered and analysis undertaken at phase 1 in the course of our phase 2 inquiry.
6. We are publishing this statement in order to assist parties submitting evidence to our investigation. This statement sets out the issues we currently envisage being relevant to our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should also consider.
7. At phase 2, we intend to focus our investigation on whether the Proposed Merger may be expected to result in an SLC in the supply of equity crowdfunding platforms to SMEs⁵ and investors in the UK.
8. Although this does not preclude the consideration of any other issues which may be identified during the course of our investigation, we are only likely to consider other issues in light of new evidence being brought to our attention by interested parties. We consider this to be a proportionate way in which to conduct our investigation.
9. We are publishing this issues statement during the Coronavirus (COVID-19) pandemic, which is having significant impacts on consumers and business across the world. The CMA has published a [statement](#) on its website on how it has adjusted its working arrangements in response as well as [guidance](#) on key aspects of its merger control practice during the pandemic. In our approach to evidence-gathering, we will take into account the difficulties that the pandemic may be causing for businesses and other relevant stakeholders. If appropriate, we will also take into account the impact of the pandemic in our assessment of the competitive effects of the Proposed Merger, although we are required to look beyond the short-term and consider what lasting structural impacts the Proposed Merger might have on the markets at issue.

³ [Phase 1 Decision](#)

⁴ [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraphs 6.62 and 6.63.

⁵ That is, small and medium-sized enterprises.

Background

10. On 2 October 2020, the Parties entered into an agreement for Crowdcube to acquire all of the outstanding share capital of Seedrs by way of a scheme of arrangement.
11. On 14 and 15 October 2020, each of the Parties submitted a request for a “fast track” reference of the Proposed Merger.
12. On 12 November 2020, having conducted a phase 1 investigation, the CMA concluded that the test for reference was met because, in the CMA’s view, there was a realistic prospect that the Proposed Merger will result in an SLC as a result of horizontal unilateral effects, in relation to the supply of both: (i) equity crowdfunding platforms to SMEs in the UK; and (ii) equity crowdfunding platforms to investors in the UK.

The Parties

13. Crowdcube and Seedrs are both UK-based private companies, each of which operates its own equity crowdfunding platform.

Our intended inquiry

14. 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 how the industry operates (including the place of equity crowdfunding within the wider SME financing landscape), the appropriate counterfactual,⁶ and any other relevant issues.

The Parties’ services and market definition

15. Market definition provides a framework for assessing the competitive effects of a merger. 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 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

⁶ Our starting point for this phase 2 investigation is that the relevant counterfactual is the prevailing conditions of competition between the Parties.

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

16. For the purposes of its phase 2 inquiry, the CMA has carefully considered the most suitable frame of reference for assessing the Proposed Merger.
17. The phase 1 decision considered the impact of the Proposed Merger within separate frames of reference for the supply of: (i) equity crowdfunding platforms to SMEs in the UK; and (ii) equity crowdfunding platforms to investors in the UK.⁸ This is consistent with the CMA's usual approach at phase 1 to analyse a merger by reference to the narrowest plausible frames of reference in which merging parties overlap.
18. The Parties overlap in the supply of equity crowdfunding platforms in the UK.
19. Equity crowdfunding platforms operate as 'two-sided' online platforms and provide a 'matching' service (in addition to other related services) whereby SMEs are connected with potential investors via the platform and a transaction between both sides (an equity investment in a SME) is facilitated by the platform. As such, the CMA currently considers that there may be positive indirect network effects so that each side of an equity crowdfunding platform values the presence of more users on the other side.
20. Further, while the phase 1 decision assessed the Proposed Merger against two separate frames of reference (see paragraph 17 above) in keeping with the cautious approach typically applied in a phase 1 investigation, the CMA currently considers that there is evidence that competition for investors and for SMEs may be linked,⁹ such that competition to attract SMEs to equity crowdfunding platforms is likely to be an important focus of competition between platforms.
21. Accordingly, on the basis of the factors set out in paragraphs 19 and 20 above, our current view is that it is appropriate to consider the impact of the Proposed Merger within a single frame of reference comprising the supply of equity crowdfunding platforms to SMEs and investors in the UK.
22. The CMA welcomes views on this proposed frame of reference.
23. The CMA will also consider:
 - (a) whether it may be appropriate to consider the Proposed Merger against a narrower or segmented frame of reference – for example, whether

⁸ See paragraphs 32 and 48 of the phase 1 decision.

⁹ See paragraphs 31 and 32 of the phase 1 decision.

competitive conditions may vary depending on the stage of growth of SMEs;¹⁰ and

- (b) whether it may be appropriate to consider the Proposed Merger against a wider frame of reference – for example, whether to include alternative funding sources to equity crowdfunding platforms within our frame of reference.¹¹

Assessment of the competitive effects of the Proposed Merger

Theory of harm

24. 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 often 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.
25. Subject to the evidence we obtain regarding the relevant frame of reference (see paragraphs 21 to 23 above), we intend to assess whether the Proposed Merger may be expected to result in an SLC in the supply of equity crowdfunding platforms to SMEs and investors in the UK. This is a horizontal, unilateral effects theory of harm.
26. Unilateral effects can arise in a horizontal merger where one firm merges with a direct competitor that previously provided a competitive constraint. Through the Proposed Merger, removing one party as a competitor might allow the Parties profitably to increase prices, lower the quality of their products or customer service, reduce the range of their products/services, and/or reduce innovation.¹² 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.¹³ Where products or services are differentiated, for example by branding or quality differences, unilateral effects are more likely where the merger firms’ products compete closely.¹⁴

¹⁰ For example, whether a SME may be characterised as being in a “seed”, “venture”, “growth” or “established” stage.

¹¹ For example, venture capital (VC) investors, “angel investors”, or other funding sources.

¹² [Merger Assessment Guidelines](#), paragraph 5.4.1.

¹³ [Merger Assessment Guidelines](#), paragraph 5.4.12.

¹⁴ [Merger Assessment Guidelines](#), paragraph 5.4.6.

27. To assess the theory of harm set out in paragraph 25, we will consider among other matters:
- (a) the Parties' market position (including any pre-existing market power);
 - (b) the closeness of competition between the Parties; and
 - (c) the remaining post-merger competitive constraints, including any "out of market" competitive constraints.
28. In making our assessment, we will use the data and information collected in phase 1 and seek to expand and augment this evidence base as appropriate. We intend to consider among other matters:
- (a) information on shares of supply, by the value of equity crowdfunding finance invested and by the number of successful equity crowdfunding deals;
 - (b) evidence from the Parties' internal documents;
 - (c) third-party (SME, investor, competitor/potential competitor, and other relevant stakeholder) questionnaire responses and views; and
 - (d) any other relevant information.
29. We will also consider evidence on entry and/or expansion by third parties (including whether there are any regulatory or other barriers to entry/expansion) and whether such entry or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Proposed Merger.¹⁵
30. As the evidence currently available to the CMA suggests that competition to attract SMEs to equity crowdfunding platforms is likely to be a particularly important focus of competition between the Parties (see paragraph 20 above), we currently intend to focus our evidence-gathering to a greater extent on the SME side of the platform (although we will also examine available evidence and views on the investor side, to the extent possible and as relevant to our inquiry).

¹⁵ [Merger Assessment Guidelines](#), section 5.8.

Possible remedies and relevant customer benefits

31. Should we conclude that the Proposed Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and, if so, what, remedies might be appropriate.
32. 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 Proposed Merger and, if so, what these benefits are likely to be and which customers would benefit.¹⁶

Responses to this issues statement

33. Any party wishing to respond to this issues statement should do so in writing, by **no later than 5pm on Friday, 18 December 2020** by emailing: Crowdcube.Seedrs@cma.gov.uk. Please note that, due to the ongoing COVID-19 pandemic, we are not able to process any documents or correspondence by post or courier to any of our offices.

¹⁶ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15 to 3.24.