

Completed acquisition by PUG LLC (viagogo) of the StubHub business of eBay Inc.

Final report

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The Competition and Markets Authority has excluded from this published version of the report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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Glossary

Summary

1. The Competition and Markets Authority (**CMA**) has found that the completed acquisition by Pugnacious Endeavors Inc (**viagogo**), through its subsidiary 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 (together, **StubHub**) (**the Merger**) has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events.

Coronavirus (COVID-19)

2. We have undertaken our merger inquiry at a time when the live events industries, and associated ticketing activities, have been severely impacted by the Coronavirus (COVID-19) pandemic. We have considered the impact of the Coronavirus (COVID-19) pandemic where appropriate in our assessment of the counterfactual as well as in our competitive assessment and in our consideration of remedies. The Coronavirus pandemic has not resulted in any change of the standards by which mergers are assessed or the CMA's investigational standards.

The Parties

3. **viagogo** is the trading name of the Pugnacious Endeavors Inc group, a US incorporated company. viagogo is a global provider of online exchange platforms for buying and selling tickets to live events. viagogo is active in over 175 countries.
4. **StubHub** is a global provider of online exchange platforms for buying and selling tickets to live events. It is the largest secondary ticketing platform in the world.
5. StubHub was founded in 2000. In 2007, it was acquired by eBay Inc (**eBay**). In 2012 it entered in the UK. StubHub currently operates in 48 countries.
6. We refer to viagogo and StubHub collectively as **the Parties**.

Jurisdiction

7. We have found that the Merger has resulted in the creation of a relevant merger situation.

8. Each of viagogo and StubHub is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct. The Parties have a combined share of supply of at least 25% in the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events.

The industry

9. The Parties provide secondary ticketing platform services for the buying and selling of tickets to live events which have been made available for resale. Tickets to live events (live music, sports and theatre events) are made available in the 'primary market'. Depending on the event, primary tickets are sold by official distributors, the venue itself, an event organiser or an organising body (such as a sports organisation). Tickets sold in the primary market are sold at face value.
10. Some primary tickets can be resold via secondary ticketing channels. Resold tickets are called secondary tickets. The main channels available for reselling tickets are:
 - (a) *uncapped secondary ticketing platforms* – online platforms that allow ticket holders (resellers) to resell tickets to buyers at any price that they choose;
 - (b) *capped secondary ticketing platforms* – online platforms that set a limit on what the reseller can charge for the ticket. These can be fan-to-fan sites (on which any reseller can list a ticket within the capped price rule of the platform), or a capped resale exchange within a primary platform (on which a reseller who initially bought the ticket on the primary platform can resell the ticket via a resale exchange platform operated by the same primary ticket seller);
 - (c) *non-specialist channels and social media* – such as Gumtree and Facebook; and
 - (d) *offline channels* – such as box office return outlets and ticket touts outside venues.
11. Both viagogo and StubHub operate uncapped secondary ticketing platforms.

How we have undertaken our assessment

12. We have assessed the Merger against a counterfactual of pre-Merger conditions of competition.

13. We have found that the appropriate market definition in this case is the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events. In coming to this finding, we have examined the constraint from the primary market. On the reseller side, primary ticketing does not provide an alternative to the Parties' platforms. On the buyer side secondary tickets are often sold at a significant mark-up above primary face value. With respect to other channels, we have found that these, including capped secondary ticketing platforms and non-specialist channels and social media, are not close alternatives for resellers or buyers currently using uncapped secondary ticketing platforms.
14. In undertaking our assessment, we have focussed on the most important competitive parameters for attracting resellers, which we have found are:
- (a) access to a large pool of potential buyers;
 - (b) the freedom for resellers to set their own resale ticket price;
 - (c) the level of reseller fees and payment terms;
 - (d) platform services which give resellers the ability to manage their inventory, making ticket listings easy; and
 - (e) the quality of support services (eg to deal with technical or payment issues).
15. We have also focussed on the most important competitive parameters for attracting buyers, which we have found are:
- (a) access to tickets for a particular event, including the range of available tickets and ease of discovery (eg through search advertising);
 - (b) the price of the ticket (which includes the level of the buyer and seller fees);
 - (c) the buyer guarantee in the event that the ticket is unusable; and
 - (d) awareness of the brand.
16. In our analyses, where appropriate, we have taken into account the fact that the Parties' platforms are two-sided and are characterised by strong indirect network effects. That is to say, the value of the platform for users on one side often depends on the number of users on the other side: it is easier to attract buyers if there are many ticket listings by resellers on a platform, and vice versa.

17. Before considering the competitive effects of the Merger, we first assessed viagogo's arguments that its incentive to expand the size of the market (by attracting more resellers and buyers to its platform who were not already using an uncapped secondary ticketing platform), in order to benefit from greater indirect network effects, constrained its pricing and non-pricing behaviour more than any competition in the market.
18. We have found that in addition to the considerable overlap in head-to-head competition for a significant proportion of resellers and buyers, the Parties were both competing for these new platform users. The desire for more liquidity does not negate the role of competition. We therefore consider that competition between platforms in the market is an important factor in driving improvements in the Parties' platforms including the terms that they offer buyers and resellers.
19. We have also assessed the Parties' submissions that more buyers and resellers on their platforms (ie greater liquidity) could drive down secondary ticketing prices. We are not convinced by the evidence that increased liquidity on a single platform (as a result of the Merger) would be beneficial for buyers by driving down ticket resale prices. In our view, unless the Merger led to an overall increase in the supply of secondary tickets (while the demand remains unchanged) or to a decline in demand on the combined platform compared with the two separate platforms pre-Merger, greater liquidity on a single platform could not be assumed to drive down secondary ticketing prices.

The Parties are close competitors

20. We have found that viagogo and StubHub are close competitors in the provision of uncapped secondary ticketing platform services in the UK. We have found that:
 - (a) The Parties' market shares are very high. Based on 2019 sales, their combined share of the market is 90–100%, with an increment of 30–40% as a result of the Merger;
 - (b) viagogo has enjoyed consistently high shares over recent years; and
 - (c) StubHub has a sizeable share and has had strong annual growth rates in recent years.
21. These structural measures very strongly indicate that the Parties compete closely in the UK. In uncapped secondary ticketing platform services, aside from the Parties, resellers and buyers do not have any meaningful choice of another platform of any scale or depth of liquidity.

22. Further, we have found that the Parties' platforms are very similar to each other in terms of what they offer buyers and resellers. In particular, they are uncapped which presents resellers the opportunity of making a profit, which we consider to be the primary driver of why resellers list on the Parties' platforms. They have been successful at attracting buyers and high volume resellers to their platforms and, through the network effects, an increase in users on one side of their platforms has led to an increase in users on the other side (thereby enabling resellers to access a large pool of prospective buyers, and buyers to access available tickets to an event, both of which we have identified as key parameters of competition). The Parties invest more in advertising than any other uncapped or capped secondary ticketing platform, facilitating ticket discovery for prospective buyers. This alone indicates that they are likely to be close competitors.
23. We consider the evidence specific to resellers and buyers, separately, below.

Competition between the Parties for resellers

24. In our questionnaire responses, viagogo was viewed as a very strong alternative to StubHub by most reseller respondents: 43 out of 59 listed viagogo as a close alternative to StubHub, with 28 out of 43 saying it was their only alternative. Likewise, StubHub was also seen as the closest alternative to viagogo by 46 out of 59 of respondents. We have found that resellers' sales patterns are consistent with this.
25. We have found that the largest resellers account for a very large share of the ticket sales value being sold on the Parties' platforms (and therefore of the Parties' own revenue). We have therefore focussed on the largest resellers in our analysis.
26. We examined the extent to which resellers sold tickets on both of the Parties' platforms (ie they 'multi-home'). We found that some of the largest resellers that sold tickets on viagogo, who collectively accounted for more than half of sales value on viagogo's platform, also sold tickets on StubHub's platform accounting for over a third of sales value on StubHub. Similarly, some of the largest resellers that sold tickets on StubHub, who collectively accounted for nearly half of the sales value on StubHub's platform, also sold tickets on viagogo's platform accounting for almost half of the sales value on viagogo.
27. The Parties argued that an analysis of multi-homing itself does not show that the Parties' platforms compete and are being used as substitutes – they might, instead, be used as complements. The Parties conducted their own survey of resellers using viagogo which showed resellers use both Parties' platforms in order to (to varying degrees): access different customers; utilise

the relative strength of a platform for a type of event; sell with better terms; or take advantage of less competition from other resellers on the platform. Although some of these responses support the notion that resellers used both of the Parties' platforms as complements, many such resellers also gave reasons which indicated that they used the Parties as substitutes.

28. This is consistent with our own calls with resellers. Many of the Parties' resellers that we spoke to have told us that they view and treat the Parties as substitutes, and the Parties tend to list tickets for many of the same events and compete for buyers through internet search advertising and organic searches, which together indicate that there are not separate pools of consumers which can only be accessed through their respective platforms.
29. Our analysis has shown that resellers not only view the Parties as substitutes, but in practice do use both platforms to a very large extent. We would expect that having this degree of sales volumes being spread across the Parties' platforms would incentivise the Parties to set price and non-price terms that take into account the competition between them, particularly in the context where resellers are making frequent decisions about how to split their inventory between different platforms.
30. We have found some evidence of StubHub flexing fees and payments terms in response to competition from viagogo. We have also found that viagogo tests changes to different parameters of its overall offer and we would expect that testing and the decisions taken as a result to reflect the close competitive presence of StubHub in the market.

Competition between the Parties for buyers

31. We have found that attracting buyers to a ticketing platform, when the prospective buyer is discovering what tickets are available to the event that they wish to attend, is an important part of competition.
32. Our analysis of the Parties' transaction data found that UK events for which tickets are sold on both platforms account for a large proportion of both Parties' gross transaction value (GTV). Indeed, between January 2018 and February 2020 on average more than 50% of both Parties' weekly sales came from tickets to events for which tickets were sold on both viagogo and StubHub.
33. In order to attract potential buyers to their platforms, both Parties invest in paid search advertising, spend a significant proportion of their marketing expenditure on this form of advertising and have each, in recent years, spent more on advertising than other ticketing platforms in the UK. This is also

consistent with the evidence on the majority of visitors to the Parties' websites arriving after clicking through a link shown in organic or paid search results and the very low level of repeat purchases by the same buyer on the Parties' platforms. Prospective buyers tend to search for tickets using event-specific search terms and not to use the Parties for repeat transactions.

34. In examining the Parties' paid search activities, we have found that viagogo bid on a sizeable proportion of StubHub's keywords on average each month, suggesting that the Parties compete strongly for the buyers of tickets for UK events listed on StubHub.
35. The Parties conducted their own survey of buyers using viagogo which the Parties submitted shows buyers consider that they have a range of providers and distribution channels to choose from when buying tickets, including Ticketmaster. We have placed comparatively little weight on the results of this survey given the large gap in time between the survey taking place (December 2020) and when buyers last acquired a ticket (because of the Coronavirus (COVID-19) pandemic), buyers using the StubHub platform were not surveyed, and Ticketmaster (a large seller of tickets in the primary market) may not be a viable alternative in many instances for the buyers who would consider the Parties' platforms (because the event has sold out in the primary market).
36. Given the degree of overlap in events and the importance of search traffic (paid and organic) in attracting buyers, we found that the Parties compete closely to attract consumers and that other ticketing platforms pose a weaker constraint on the Parties' ability to attract customers to their websites through marketing and advertising.

Conclusion on competition between the Parties

37. Overall, we have found that the Parties are close competitors and have been competing for resellers and buyers, and absent the Merger can be expected to continue to compete with each other to a substantial degree.

Third parties are weak competitors

38. Having identified that the Parties compete closely, we have examined what competitive constraints third parties would place on the merged entity.

Uncapped secondary ticketing platform competitors

39. Within uncapped secondary ticketing platform services, the merged entity would face Gigsberg as the only competitor of note. Gigsberg, which has only

been in the market for a relatively short time, has a market share that is very small [0-5%], and although a third of the 59 resellers we spoke to said that Gigsberg was an alternative for them, only 7 had used Gigsberg in the past. The Parties' resellers typically rated Gigsberg as being a weak alternative to the Parties. Gigsberg itself told us that building scale and liquidity on its platform is difficult and increasing the number of sellers on its platform is a slow process.

40. We do not consider that Gigsberg would be an effective constraint to the merged entity.
41. Although we have found other types of secondary ticket platform to be outside of the relevant market, we nonetheless have considered what competitive constraints they might impose on the merged entity.

Capped secondary ticketing platform competitors

42. Within capped secondary ticketing platforms, Twickets and TicketSwap operate fan-to-fan sites. Both (separately and together) are small relative to the Parties' combined size in the UK. When capped and uncapped secondary ticketing platforms are examined together, we have found that Twickets and TicketSwap combined account for [<5%] relative to the Parties' [80–90%] share. This is a very considerable difference in size, especially given the Parties' representations on the importance of scale and liquidity.
43. Only a small number of the resellers we spoke to mentioned fan-to-fan sites within capped secondary ticketing platforms as a viable alternative to the Parties. We do not find this surprising given the capped nature of these platforms restricts the profit that a reseller can make. No fan-to-fan, or other capped platform, operator told us that it had plans to remove its pricing cap or would do so in response to the Merger.
44. On the buyer side, capped sites told us that they make little use of paid search advertising to acquire buyers, as the Parties do.
45. We have found that the value and volume of ticket sales through the capped resale exchanges within the primary platforms was low compared with the Parties' uncapped platforms. When capped and uncapped secondary ticketing platforms are examined together, we have found that all capped resale exchanges within the primary platforms together account for [5–10%] of the value of secondary ticketing sale on capped and uncapped sites relative to the Parties' [80–90%] share. This is a very considerable difference in size and the differential would remain considerable even if fan-to-fan sites and capped resale exchanges within the primary platforms were considered together.

46. One capped resale exchange within a primary platform told us that it did not expect to grow in the short to medium term. Even if the remaining platforms were to grow very considerably, we do not consider that this would be sufficient to offset the loss of competition arising from the Merger.
47. As with fan-to-fan sites, only a small number of the resellers mentioned capped resale exchanges within the primary platforms as a viable alternative for them. Not only do these platforms restrict the profit that a reseller can make but their business model restricts who can use the platform to those resellers who acquired the ticket from the same primary ticket seller which reduces the pool of resellers available.
48. We consider that capped secondary ticketing platforms will offer weak constraints on the merged entity.

Competitors in non-specialist online channels and social media

49. Most of the large resellers we spoke to told us that social media and classified listings sites are not a credible route to market for their sales, because they offer a different service with no guarantees to buyers (making it less attractive to buyers), and have little support services for resellers. Moreover, other secondary ticketing platforms do not consider them to be strong competitors. Finally, we did not find any evidence that the Parties view these channels as constraints.
50. We do not consider that non-specialist online channels and social media will offer any material constraint on the merged entity.

Competitors in offline channels

51. The vast majority of respondents did not consider offline channels to be viable alternatives to the Parties' platforms, with a number of resellers we spoke to referring to the lack of guarantees, protections and visibility of tickets.
52. Other secondary ticketing platforms indicated that they did not, in their view, compete with offline channels. We did not find any evidence that the Parties view these channels as constraints.
53. We do not consider that offline channels will offer any material constraint on the merged entity.

Competition from primary sellers

54. The Parties argue that primary ticketing platforms act as a significant competitive constraint on their business because ticket buyers do not always

distinguish between primary and resale tickets, and primary ticketing platforms are increasingly engaging in dynamic pricing (where the price can vary with demand) and slow release of tickets (which might reduce the flow of tickets into secondary channels).

55. In assessing the potential constraint from primary ticketing platforms, we have distinguished between factors that might affect resale prices or reduce the size or profitability of the secondary market on the one hand, and competitive constraints on secondary platforms' offering to buyers and sellers, in terms of fees, terms or quality of service, on the other. While the former factors could affect the Parties' profitability with or without the Merger, they will not change the conditions of competition in the uncapped secondary market unless they also lead to a constraint on the Parties' fees and other conditions.
56. Our analysis shows that, on average, there is a very considerable difference in the prices at which tickets are sold between the primary and secondary channels. This suggests that for the majority of ticket sales on the Parties' sites, the price of primary tickets does not act as a competitive constraint on the price of secondary tickets, and hence on the Parties' fees and other terms to buyer and sellers.
57. We also analysed evidence on the timing of primary and secondary purchases. We found a significant difference in the average timing of purchase of primary and secondary tickets. In some cases, there have been material volumes of primary tickets remaining on sale for weeks beyond the initial 'on-sale' date. However, this overlap in availability for some events did not appear to lead to a material pricing constraint from primary sales on secondary sales on the Parties' platforms.
58. With respect to dynamic pricing in the primary channel, the evidence indicates that it represents a very small proportion of primary sales in the UK. Although dynamic pricing in the primary channel might reduce the attractiveness of the secondary market to resellers, and hence reduce market liquidity, it would not affect the degree of competition in the provision of uncapped secondary ticketing platforms services, which is the focus of our inquiry.
59. Our view is that, while there are several important interactions between primary and secondary ticket sales which could have a significant impact on the Parties' business, they will not materially constrain the ability of the Parties to increase fees or worsen non-price terms following the Merger. In particular, the Parties' arguments that point towards a strong constraint from primary sales on resale prices, even if they did have some impact on reseller pricing, would not materially constrain the Parties' offer to its resellers and/or buyers.

60. On the basis of the evidence set out above, we have concluded that none of the alternative channels for sales of secondary tickets, individually or cumulatively, would provide a significant competitive constraint on the Parties following the Merger.

Countervailing factors

Entry and expansion

61. In the event of worsening fees or non-price terms to resellers and/or buyers, we considered whether entry or expansion in the provision of uncapped secondary ticketing platform services by third parties would be timely, likely and sufficient to mitigate or prevent an SLC from arising.
62. We are not aware of any plans for entry by a third party.
63. We have found that there are strong indirect network effects present in the operation of uncapped secondary ticketing platform services. The presence of indirect network effects is clearly corroborated by evidence from the Parties and from third parties.
64. Indirect network effects mean having large pools of resellers and buyers, such as the Parties' platforms have established, increases the likelihood that the pool of resellers and buyers will increase as resellers seek buyers for secondary tickets and buyers seek tickets for events. This, in turn, strengthens the position of the platform relative to its competitors. For an entrant, the need to attract a large number of resellers and buyers to both sides of its platform in order to be an effective constraint to the merged entity is likely to be both costly and risky.
65. The presence of strong indirect network effects is therefore likely to hamper any attempt at entry or expansion and to make such attempts insufficient and less timely in constraining the merged entity.
66. Related to this, evidence from the Parties and third parties is that the merged entity is likely to have a significant scale advantage over any entrant which would likely disadvantage the entrant in competing with the merged entity on Google Ads and slowing its ability to develop an effective customer acquisition strategy.
67. We have also found that brand awareness is a factor that helps drive traffic onto a particular platform and that it would take an entrant time to build up brand awareness.

68. We also note that there are very few examples of large-scale successful entry in uncapped secondary ticketing platform services in the UK. For example, Gigsberg entered the UK market in April 2019 and in that time, it has managed to achieve a small share. This is considerably below what would be sufficient to prevent or mitigate an SLC from arising as a result of the Merger. Gigsberg told us that its biggest challenge is to acquire users to its platform via paid search.
69. No existing provider of capped secondary ticketing platform services currently intends to remove the ticket price cap from their platforms nor, they told us, would they in the event that the merged entity worsens price or non-price terms on its uncapped secondary ticketing platform.
70. We considered whether primary sellers could facilitate entry by appointing an authorised resale platform. In this regard we note that authorised resellers only allow capped resale and are therefore not in the same market as the Parties. Moreover, we have not seen capped resale platforms expand into uncapped secondary ticketing platforms in the UK. We have not received any evidence that such entry facilitated by primary sellers would be timely, likely or sufficient in this case.
71. Given this evidence we consider that it is not likely that entry or expansion of sufficient scale would occur in a timely manner in order to prevent and SLC from arising as a result of the Merger.

Efficiencies

72. The Parties have not made any representations that the Merger is likely to lead to rivalry-enhancing efficiencies nor have we seen any evidence that there will be such efficiencies as a direct result of the Merger.

Countervailing buyer power

73. After the Merger, customers of the Parties' platforms will have greatly reduced choice of uncapped secondary ticketing platforms. We do not consider that there would be sufficient alternatives for resellers or buyers to switch to after the Merger.
74. Nor do we consider it likely that resellers will be able quickly, easily and at sufficient scale to set up their own resale website in order to prevent an SLC from arising.
75. We consider that it is not likely that countervailing buyer power will prevent an SLC from arising as a result of the Merger.

Conclusions

76. We have concluded that the completed acquisition by viagogo of StubHub has resulted in the creation of a relevant merger situation which has resulted, or may be expected to result, in an SLC within the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events.

Remedies

77. Having concluded that the Merger has resulted in, or may be expected to result in, an SLC, we are required by the Enterprise Act 2002 (**the Act**) to decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effect resulting from the SLC.
78. In deciding on the appropriate remedy, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will then select the least costly and intrusive remedy that it considers to be effective, having regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.
79. We considered the following remedy options:
- (a) Requiring the full divestiture of either StubHub or viagogo; and
 - (b) Requiring a partial divestiture of StubHub or viagogo.
80. We have found that a full divestiture of either StubHub or viagogo, as well as a partial divestiture of StubHub would, in principle, be an effective remedy to address the SLC and its resulting adverse effects we have found, provided a suitable purchaser could be found. We have concluded that a partial divestiture of viagogo would not be an effective remedy.
81. Where we have found three effective remedies, we are required on the grounds of proportionality to select the least intrusive, effective remedy. We have found that a partial divestiture of StubHub – ie the StubHub International business which is the StubHub business outside of North America – to be the least intrusive effective remedy. Therefore, we are requiring that the merged entity sell off the StubHub International business subject to the CMA's approval of the identity of the purchaser and the terms of the transaction.
82. We propose to implement the partial divestiture of StubHub remedy by seeking suitable undertakings from the Parties. We will issue an Order if we are unable to obtain suitable undertakings from the Parties in a timely fashion.

Findings

1. The reference

- 1.1 On 25 June 2020, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Act referred the completed acquisition by Pugnacious Endeavors Inc (**viagogo**), through its subsidiary 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 (together, **StubHub**) (**the Merger**) for further investigation and report by a group of CMA panel members (the Inquiry Group).
- 1.2 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.
- 1.3 We are required to prepare and publish our final report by 3 February 2021.¹
- 1.4 Our terms of reference are set out in Appendix A.
- 1.5 This document, together with its appendices, constitutes the Inquiry Group's findings published and notified to viagogo and StubHub in line with the CMA's rules of procedure.² Further information can be found on our webpage.³

2. The Parties and the Merger

viagogo

- 2.1 viagogo is a global provider of secondary ticketing platform services for buying and selling tickets to live events made available for resale. 'viagogo' is the trading name of the Pugnacious Endeavors Inc group, a US company incorporated in Delaware, USA. The company was founded in 2006 by the current CEO Eric Baker and began operations in the UK. It has since grown

¹ Notice of extension, 13 November 2020.

² CMA rules of procedure for merger, market and special reference groups (CMA17).

³ See: [viagogo/StubHub merger inquiry](#).

to be the fourth largest secondary ticketing platform by revenue in the world. The company is [REDACTED].⁴ Pugnacious Endeavors Inc [REDACTED]. [REDACTED].

- 2.2 The majority of viagogo's staff are employed by these subsidiaries, [REDACTED].⁵ viagogo told us that [REDACTED]. [REDACTED]. [REDACTED] and is the counterparty for buyers and resellers transacting on viagogo.co.uk as well as various contracts for services provided to the viagogo business.⁶
- 2.3 viagogo had a global revenue of £[REDACTED] million in 2019 of which £[REDACTED] million ([REDACTED]%) was in the UK. It provides services to buyers and sellers in over 175 countries. In 2019, [REDACTED] million tickets were sold globally through viagogo's platform for events in over 80 countries. Of these, approximately [REDACTED]% were for events in UK venues (the single highest proportion of any country).
- 2.4 viagogo also sells a small proportion ([REDACTED]) on the primary market on behalf of event organisers and content rights holders such as sports teams. Of the [REDACTED] tickets sold for UK venues in 2019 only [REDACTED] related to primary tickets sales of which [REDACTED]. These are mainly sold [REDACTED].

StubHub

- 2.5 StubHub Inc., StubHub (UK) Ltd, StubHub Europe SARL, StubHub India Private Limited, StubHub International Limited, StubHub Taiwan Co.,Ltd. StubHub GmbH and Todoentradas S.L collectively 'StubHub' is a globally active provider of secondary ticketing platform services for buying and selling tickets to live events made available for resale. It is the largest secondary ticket platform in the world.
- 2.6 Prior to the Merger, StubHub was owned by eBay Inc (**eBay**). eBay is a global ecommerce and classified advertisement platform listed on the Nasdaq Global Select Market in the US with revenues of over US\$10 billion in 2019.⁷ StubHub was founded in 2000 jointly by the current viagogo CEO, Eric Baker and Jeff Fluhr. In 2007 it was acquired by eBay. In 2012 it launched in the UK.⁸ Unlike viagogo, StubHub's activities in the UK are [REDACTED].
- 2.7 In 2019 StubHub had a global revenue of approximately £[REDACTED] million, £[REDACTED] million of which was earned in the UK (around only [REDACTED]%). StubHub

⁴ [REDACTED].

⁵ In paragraph 2.1 of our [Provisional Findings](#) we said that viagogo's headquarters is in Geneva, Switzerland. We now understand that viagogo is headquartered in the US. In addition, we understand [REDACTED].

⁶ viagogo Inc and Pugnacious Endeavors, Inc are counterparties to some of the other contracts required to operate the viagogo business.

⁷ See [eBay form 10-K P35](#). All dollar figures in our report are US dollars.

⁸ See press release dated 4 August 2016 '[eBay Completes the Acquisition of Ticketbis](#)'.

currently operates in 48 countries. In 2019, over [X] million tickets were sold globally through StubHub's platform. Of these, around [>500,000] were for events in the UK.

2.8 StubHub also has a primary ticketing business. In the UK, it sold [<50,000] primary tickets for UK live events in 2019.

2.9 Table 2.1 summarises the relative size of the Parties' secondary ticketing platforms globally and in the UK.

Table 2.1: viagogo and StubHub revenue, GMS and EBITDA (£ millions)

	<i>Global</i>		<i>UK</i>	
	<i>viagogo</i>	<i>StubHub</i>	<i>viagogo</i>	<i>StubHub</i>
Revenue	[X]	[X]	[X]	[X]
Gross merchandising sales	[X]	[X]	[X]	[X]
EBITDA	[X]	[X]	[X]	[X]

Source: The Parties.

Note: Gross merchandising sales (GMS) refers to the value of the tickets sold on the Parties' platforms.

The Merger

2.10 In early 2019, eBay decided to dispose of StubHub. In [X]. It ultimately received [X] for the business from viagogo, [X]. [X] with viagogo ultimately selected as the preferred bidder.

2.11 A share purchase agreement was signed by eBay and PUG LLC on 24 November 2019 to acquire the entire issued share capital of StubHub for US\$4.05 billion. The transaction completed on 13 February 2020.

The rationale for the Merger

2.12 viagogo submitted that the Merger would enable it to enter and compete in the US online ticketing sector by combining [X] with StubHub's strong '[X]' in online [X]. There is supporting evidence for this in viagogo's internal documents produced in contemplation of the Merger which, for example, indicate that '[X]' and which refer to its '[X]'. viagogo submitted that enhancing viagogo's presence in the UK has neither been a driver for, nor a perceived advantage of, the Merger.

3. Jurisdiction

3.1 We have found that the Merger has resulted in the creation of a relevant merger situation.

- 3.2 Each of viagogo and StubHub is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
- 3.3 The Parties have a combined share of supply of at least 25% in the supply of uncapped secondary ticketing platform services for resale of tickets to UK events.⁹ The Parties had a combined share of supply of [90–100%] (with an increment of [30–40%]) by GTV in 2019.
- 3.4 The Merger completed on 13 February 2020. The four month deadline for a decision under section 24 of the Act was 13 June 2020 but on 11 June 2020, in its Phase 1 decision¹⁰ that the Merger would be referred unless undertakings were accepted, the CMA gave viagogo notice pursuant to section 25(4) of the Act that it was extending the four-month period mentioned in section 24 of the Act. This extension came into force on the date of receipt of the notice by viagogo and indicated that it would end with the earliest of the following events: the giving of undertakings by viagogo under section 73 of the Act; the expiry of the period of ten working days beginning with the first day after the receipt by the CMA of a notice from viagogo stating that it did not intend to give the undertakings under section 73 of the Act; or the cancellation by the CMA of the extension. None of these events came to pass and the Merger was referred to a phase 2 investigation on 25 June 2020. We are therefore satisfied the reference was made within the statutory time limit.

4. The counterfactual

- 4.1 When considering whether a merger has resulted, or may be expected to result, in an SLC, we need to compare the competitive situation in the market with the merger against the likely future competitive situation in the market absent the merger.¹¹ The latter is called the counterfactual.¹²
- 4.2 Before we assess the relevant counterfactual in this case, we should note that we have undertaken our merger inquiry at a time when the live events industries, and associated ticketing activities, have been severely impacted by the Coronavirus (COVID-19) pandemic. The Coronavirus (COVID-19) pandemic has not brought about any relaxation of the standards by which mergers are assessed or the CMA's investigational standards. It remains critical to preserve competition in markets through rigorous merger

⁹ Based on data obtained from the Parties and third parties. See Table 7.1.

¹⁰ See [Phase 1 decision](#).

¹¹ [Merger Assessment Guidelines](#), paragraphs 4.3.1 and 4.3.6.

¹² [Merger Assessment Guidelines](#), paragraph 4.3.1.

investigations in order to protect the interests of consumers in the longer term.¹³ Nonetheless, we consider the impact of the Coronavirus (COVID-19) pandemic where appropriate in our assessment of the counterfactual as well as in our competitive assessment.

The CMA's counterfactual assessment framework

- 4.3 As part of its counterfactual assessment, the CMA may examine several future scenarios and the resultant competitive situation, one of which may be the continuation of the pre-merger situation. At phase 2, the CMA will select the most likely competitive situation, based on the facts of the case, as the counterfactual.¹⁴ It will incorporate into the counterfactual only those aspects of scenarios that appear likely, based on the facts available to it and the extent of its ability to foresee future developments.¹⁵ The foreseeable period can sometimes be relatively short.¹⁶ However, even if an event or its consequences are not sufficiently certain to include in the counterfactual they may be considered in the context of the competitive assessment.¹⁷
- 4.4 Depending on the evidence, the choice of the counterfactual could be a situation either more or less competitive than the competitive conditions before the merger. Therefore, the selection of the appropriate counterfactual may increase or reduce the prospects of an SLC finding.¹⁸

Views of the Parties

- 4.5 The Parties' view is that absent the Merger the relevant counterfactual is one in which StubHub would be a weaker competitor as a result of its inefficient business model and the impact of Coronavirus (COVID-19) on it and the market generally. However, whilst the Parties did not make any submissions to suggest that StubHub should be considered a failing firm, they submitted that:
- (a) The Coronavirus (COVID-19) pandemic has had a significant adverse impact on revenue generation in the ticketing industry, with most live events in the UK having been cancelled or postponed, thereby causing an

¹³ [Merger assessments during the Coronavirus \(COVID-19\) pandemic](#).

¹⁴ [Merger Assessment Guidelines](#), paragraph 4.3.6. In contrast, at phase 1, the effect of the merger is compared with what is considered to be the 'most competitive' counterfactual (provided that this situation is considered to be a realistic prospect).

¹⁵ [Merger Assessment Guidelines](#), paragraph 4.3.6.

¹⁶ [Merger Assessment Guidelines](#), paragraph 4.3.6.

¹⁷ [Merger Assessment Guidelines](#), paragraph 4.3.2.

¹⁸ [Merger Assessment Guidelines](#), paragraph 4.3.4.

unprecedented decrease in demand for tickets at both the primary ticketing and secondary ticketing levels.

- (b) The outlook for live events is now markedly improved, given the emergence of effective vaccines to Coronavirus (COVID-19) and live events will return to scale in due course.
- (c) There is no evidence that all ticketing players will be impacted in the same way by Coronavirus (COVID-19). [REDACTED], in contrast to the lean, centralised, performance marketing driven viagogo organisation which is better positioned to survive a prolonged period of zero revenues. [REDACTED].¹⁹
- (d) While the longer-term consequences of the Coronavirus (COVID-19) pandemic remain unclear, Primary Ticketing Platforms are better placed for survival due to their control over inventory. The pandemic means that venues, promoters and content rights holders will need to 'ensure that they capture a larger portion of fans' willingness to pay to offset costs associated with new hygiene and social-distancing rules'. This will lead to increased 'dynamic pricing' tactics (that is, more use of pricing strategies that adjust prices based on demand) by Primary Ticketing Platforms, and fewer tickets being available on Secondary Ticketing Exchange Platforms.

Our assessment

- 4.6 We note that the Coronavirus (COVID-19) pandemic has had, at least in the short-term, a substantial impact on the live events and ticketing industries. Very few tickets have been sold during this period and the cancellation of events has led to refund requests from buyers. Both of these developments have had a substantial impact on the Parties' businesses and [REDACTED]. However, as the Parties acknowledge, there remains some uncertainty about the duration of this impact and the long-term effects on the secondary ticketing market. As set out in the CMA's guidance on merger assessments during the Coronavirus (COVID-19) pandemic, a merger control investigation typically looks beyond the short-term and considers what lasting structural impacts a merger might have on the markets at issue.²⁰
- 4.7 In this context, we consider that the evidence available to us does not indicate that the Coronavirus (COVID-19) pandemic will have a disproportionate impact on either of the Parties relative to the rest of its competitors in the secondary ticketing market. Importantly, several vaccines have been approved and are being rolled-out in some countries (including

¹⁹ [REDACTED].

²⁰ [Merger assessments during the Coronavirus \(COVID-19\) pandemic \(CMA120\)](#), 22 April 2020, paragraph 22.

the UK) currently and current indications are that vaccines will be rolled-out in many other countries over the course of 2021. We agree with the Parties that the outlook for live events is improved (paragraph 4.5).

- 4.8 However, in the meantime the Parties, like many businesses, need funds to survive. We have examined the financial position and forecasts of the Parties and note that they have been significantly impacted by the Coronavirus (COVID-19) pandemic with the cancellation of events [REDACTED]. [REDACTED].
- 4.9 [REDACTED]²¹
- 4.10 In addition, with respect to StubHub's business, we consider that, in the absence of the Merger, StubHub is likely to have been acquired by an alternative purchaser. [REDACTED].
- 4.11 We have received responses from [REDACTED] alternative bidders who have stated that their intention on acquisition was to continue competing in the UK secondary ticketing market through StubHub's UK business. Furthermore, whilst the Coronavirus (COVID-19) crisis was not anticipated at the time of their bids, they have submitted that [REDACTED].
- 4.12 Therefore, the evidence suggests that under ownership of [REDACTED] StubHub would have remained in the UK market and that StubHub would not have been a substantially weakened competitor relative to its rivals as a result of the Coronavirus (COVID-19) pandemic.
- 4.13 In response to the Parties' representations on whether absent the Merger [REDACTED], we have not seen any evidence that it would do so to such an extent to alter the counterfactual against which we should assess the Merger. Indeed, [REDACTED] and we have seen some evidence that it is already changing its marketing approach. We also note that StubHub's sales in the UK increased between 2017 and 2019, both in absolute terms and relative to viagogo's sales.²² Therefore, the evidence available to us indicates that StubHub, [REDACTED], would continue to compete under the pre-Merger conditions of competition. These conditions of competition include StubHub having the incentive to improve its position in the marketplace, as it had been doing over recent years, [REDACTED] in order to make itself a more effective competitor in the marketplace over time. We therefore consider that the pre-Merger conditions of competition provide an appropriate proxy for the competitive dynamics

²¹ [REDACTED].

²² See Table 7.1.

and structure of the secondary ticketing industry in the absence of the Merger.

- 4.14 As regards the Parties' submissions on the incentives that the Coronavirus (COVID-19) pandemic will have on primary ticket sellers to use dynamic pricing, we do not consider this to be relevant in the context of the counterfactual assessment (which is a comparison of competitive conditions with the merger to those without the merger). We have not seen any evidence that indicates the incentives of venues, promoters and content rights holders would materially change because of the Merger nor are we aware of any evidence as to why any changed approach by primary ticket sellers would affect either of the Parties any differently from others in the secondary ticketing sector. We have considered the evidence on dynamic pricing and slow (or staggered) release of tickets accounts in our competitive assessment.
- 4.15 We have found for the purpose of our assessment that the relevant counterfactual against which to assess the Merger is the pre-Merger conditions of competition.

5. Industry and regulatory background

The supply of tickets in the UK

- 5.1 The Parties provide secondary ticketing platform services for the buying and selling of tickets to live events which have been made available for resale. This chapter briefly discusses the ticketing industry, the main categories of parties involved in it and the relevant regulatory environment. Further details on the industry are provided in Appendix B.
- 5.2 The chapter first discusses how tickets are made available for resale and are resold, the options consumers (ie fans) have in acquiring a ticket to a live event, the business models of reselling tickets and the relative size of the different sectors within the ticketing industry. It then goes on to outline the relevant regulatory environment.
- 5.3 The main categories of live events of relevance to our inquiry are live music events (including festivals), sports and theatre although live events encompass a wide range of activities which also include, for example, stand-up comedy. Although our inquiry is concerned with the Parties' activities in the resale of tickets, all tickets available for resale must first be sold in the 'primary market', which we describe below.

The primary supply of tickets

- 5.4 In the first instance, all tickets to live events are made available in what is commonly called the primary market. Tickets sold at this stage of the supply chain are commonly called primary tickets.
- 5.5 Depending on the event, primary tickets are sold by official distributors, the venue itself, an event organiser or an organising body (such as a sports organisation). For example, many live music or comedy events are sold via the event's official distributor such as Ticketmaster or AXS. Tickets to sporting events might be sold by individual sports clubs (eg an individual football club) or the official sports body. Theatre tickets might be sold directly by the venue itself.
- 5.6 Primary tickets are sold at face value (we discuss this further in our competitive assessment when examining dynamic pricing).²³ That is, all tickets of the same type (eg seated in the same section of the venue) are typically sold at the same price and the face value is displayed on the ticket. Although it varies widely across events, for many events where demand exceeds supply the face value of the ticket is below the market-clearing price for the ticket.²⁴ This therefore raises the possibility that if a ticket can be resold, it could be resold at a profit.
- 5.7 However, not all tickets can be resold. For some events, anyone who acquired a ticket in the primary market is restricted in whether, and, in some instances, where they can resell the ticket. For example, for some sports events ticket holders may need to use specialist exchange platforms, while the same is true for some music events.²⁵ Other events have lower levels of restrictions on resale and so ticket holders may decide to use one of the resale channels discussed below.
- 5.8 The Parties submitted that primary ticket sales in the UK were worth around £5–6 billion in 2018.²⁶ In 2019, over 35 million primary tickets were sold to UK events.
- 5.9 The main primary ticket distributors in the UK are Ticketmaster, See Tickets and AXS.

²³ Plus fees such as booking fees or payment processing fees.

²⁴ The reasons for this vary. For example, this might be in order to make the event more accessible to some sections of the population or to encourage 'real fans' to attend the event.

²⁵ For example, as discussed below, the resale of tickets to some football games is prohibited in order to prevent banned persons from entering the stadium and to prevent home and away fans from mixing.

²⁶ The data that we have available indicates that the primary ticket sector in the UK from third party distributors was worth at least £1.5 billion in 2019. However, this does not include sales direct from venues or non-distributors (eg sporting clubs or bodies) and so the true figure is likely to be much higher.

The secondary supply of tickets

- 5.10 As set out above, some tickets sold in the primary channel may then be resold. Tickets available for resale are listed in secondary ticket channels. We refer to those who sell tickets in secondary ticket channels as resellers and tickets sold through any of these channels as secondary tickets.
- 5.11 The typical consumer journey in the secondary ticketing channel has several distinct phases. Most consumers search on the internet for tickets to an event that they would like to attend (the discovery phase) where they may be directed to secondary ticketing platform. From there consumers might go to a particular secondary ticketing platform and compare ticket characteristics of available tickets (eg price, date and seat location) and may even compare offers across platforms (the research phase). The consumer will then choose whether to make a purchase (the purchase phase). The final stage is fulfilment of the purchase ie getting the ticket to the consumer in time so that they can attend the event.
- 5.12 We are not aware of a commonly accepted source of information for the secondary supply of tickets and estimates vary. The Parties submitted that anywhere between [X]% and [X]% of primary tickets sold are resold through secondary channels, although this varies considerably between types of event. According to estimates provided by the Parties, secondary ticketing sales accounted for around £1.5–2.5 billion in the UK in 2018.
- 5.13 We think that is an overestimate. In 2019, there were about 1.9 million secondary tickets sold across online secondary platforms which accounted for around 5–6% of the number of primary tickets sold and around 12–20% of primary tickets based on value.²⁷ Based on data provided from all the main secondary platform providers in the UK, we think that the value of secondary tickets sold in 2019 through online ticketing platforms (ie excluding direct sales from venues and other channels not involving online ticketing platforms) was about £350 million.²⁸
- 5.14 The main channels for selling secondary tickets are:
- (a) uncapped secondary ticketing platforms;
 - (b) capped secondary ticketing platforms;
 - (c) non-specialist channels and social media; and

²⁷ CMA analysis of the secondary and primary ticketing platforms' ticket sales data.

²⁸ CMA analysis of the secondary ticketing platforms' ticket sales data.

(d) offline channels.

5.15 We briefly describe each below.

Uncapped secondary ticketing platforms

- 5.16 Secondary ticketing platforms are online platforms that allow ticket holders to resell tickets to fans searching for a ticket to a live event. The platform therefore matches resellers of tickets with fans who wish to buy a ticket. Anyone can buy or sell on secondary ticketing platforms.
- 5.17 That the secondary ticketing platform is ‘uncapped’ means that the platform does not impose any restrictions on the ticket price and as such allows resellers to market and sell tickets at any price that they choose. The Parties both operate uncapped platforms.
- 5.18 The main uncapped secondary ticketing platform operators in the UK are viagogo, StubHub and Gigsberg. Ticketmaster, via the platforms GetMein! and Seatwave, operated uncapped secondary ticketing platforms until 2018 when it closed them down (paragraph 7.53).

Capped secondary ticketing platforms

- 5.19 Capped secondary ticketing platforms are online platforms that set an upper limit on what the reseller can charge, whether that is the face value of the ticket or some cap on the mark-up to the face value.
- 5.20 Capped secondary ticketing platforms can themselves be segmented into capped fan-to-fan sites and capped resale exchanges within primary platforms.
- 5.21 Fan-to-fan sites allow anyone to buy or sell on the platform (as long as the resellers are willing to abide with the strict restrictions on the resale price, and other conditions of the platform).
- 5.22 The main capped fan-to-fan sites in the UK are Twickets and TicketSwap.
- 5.23 The main primary ticket distributors in the UK – Ticketmaster, See Tickets and AXS – all operate capped resale exchanges sites. These only allow people to resell tickets on their platform if the reseller first acquired the primary ticket from the platform operator’s own primary ticket site. The resale price is capped (usually at the level of the face value of the ticket plus platform fees). On the seller side they therefore typically cater for those fans who cannot attend an event and wish to get their money back (and not to resellers looking to make a profit from the buying and selling of tickets).

Non-specialist channels and social media

- 5.24 Some secondary tickets are sold through channels not specifically designed for the exchange of secondary tickets. These include classified sites (eg Gumtree) and social media (eg Facebook). There are no restrictions on the price at which tickets can be sold via these channels nor are there any consumer protection guarantees in place (see below).

Offline channels

- 5.25 Tickets are also available for resale through offline channels. Buyers might be able to source a ticket through their personal networks (eg friends and family), box office returns at event venues, secondary ticket booths and from ticket resellers or 'touts' outside of the event venues.
- 5.26 There are no restrictions on the price at which tickets can be sold via these channels nor are there any consumer protection guarantees in place (see below).
- 5.27 We now discuss the fee structure for secondary ticketing platforms.

Fees

- 5.28 All secondary ticketing platforms active in the UK charge fees based on completed transactions to one or both of the reseller and the buyer. None of the platforms charge a joining or membership/subscription fee or a listing fee. Transaction fees are based on a percentage of the resale price paid.
- 5.29 Table 5.1 shows the average level of reseller fees, buyer fees and delivery fees charged by the main secondary ticketing platforms. It shows that uncapped platforms typically have higher fees than those of the capped platforms:
- (a) Uncapped secondary ticketing platforms typically have seller fees between 5–15% and buyer fees of 15–20%.
 - (b) Capped secondary platforms operated by the primary platforms charge seller fees of 0–10% and buyer fees of 10–15%.
 - (c) Other capped secondary platforms charge seller fees of 0–5% and buyer fees of 8–15%.

Table 5.1: Fee structure adopted by the main secondary ticketing platforms

	<i>Reseller fee</i>	<i>Buyer fee</i>	<i>Delivery fee</i>
<u><i>Uncapped secondary ticketing platforms</i></u>			
Viagogo	[X]	[X]	[X]
StubHub	[X]	[X]	[X]
Gigsberg	[X]	[X]	[X]
GetMeIn! (up to November 2018)	[X]	[X]	[X]
Seatwave (up to November 2018)	[X]	[X]	[X]
<u><i>Capped secondary ticketing platforms operated by primary platforms</i></u>			
Ticketmaster Ticket Exchange	[X]	[X]	[X]
AXS Resale	[X]	[X]	[X]
Eventim UK FanSALE	[X]	[X]	[X]
See Tickets Fan-to-fan	[X]	[X]	[X]
Gigantic	[X]	[X]	[X]
<u><i>Other capped secondary ticketing platforms</i></u>			
TicketSwap	[X]	[X]	[X]
Twickets	[X]	[X]	[X]

Source: CMA questionnaire responses from the Parties and third parties.

- 5.30 We have found that fee levels do change, sometimes temporarily as platforms attempt to attract resellers to their platform by offering them a better deal. For example, StubHub has made promotional offers to resellers, which are discussed in our competitive assessment (paragraph 7.164). Fees may also sometimes vary between sellers (eg according to the volume of tickets that they sell) at a given point in time but buyer fees do not vary across buyers.

Payment terms

- 5.31 Another important element of the offer of a secondary ticketing platform is the terms on which a seller is paid for the sale of their secondary tickets. We have seen evidence that a reseller can either be paid ‘upon delivery’ (ie when a ticket is delivered to the end consumer) or ‘after the event’ (ie when an event has taken place and the ticket has successfully been used).
- 5.32 The industry standard currently, and especially since the start of 2020, is that resellers are paid after an event takes place, so that funds stay with the platform until they are no longer liable for the ticket under any buyer guarantee they offer. We have found that this too can be flexed as an incentive to sellers to use a certain platform, as they normally prefer to be paid upon delivery (see Appendix G). It is also possible that a seller may be paid after the event in some instances but in others receive payment ‘upon delivery’.

Consumer protections and guarantees

- 5.33 One important element in how secondary ticketing platforms differ from non-specialist channels, social media and many offline channels is through the consumer guarantees that they offer. For example, viagogo provides buyers with a 'buyer guarantee' whereby if buyers are not provided with a valid ticket for the event in time by the seller then viagogo will endeavour to either provide the buyer with a full refund or source a similar substitute ticket. [✂]. Viagogo will usually not pay the seller until the event has taken place and the buyer has been able to attend, thereby discouraging the sale of fake tickets on the platform. Other secondary ticketing platforms operators have similar protections in place.
- 5.34 Since fan-to-fan sites (and box office returns) are better able to track the provenance of the ticket being resold (given the ticket is being sold via the same platform operator in both the primary and secondary channels) they are able to offer greater assurance to fans that the ticket will get them into the event.

Regulatory background

- 5.35 This section discusses the legal framework within which secondary ticketing platforms operate. It also provides an overview of CMA consumer enforcement activity in this sector.

Regulatory and contractual restrictions on the resale of tickets

- 5.36 Ticketholders are, generally, legally permitted to resell tickets, subject to certain limited exceptions.
- 5.37 UK legislation restricts the sale and resale of tickets to certain, limited types of event other than by authorised persons (notably designated football matches and the Olympic and Commonwealth Games). These restrictions can limit the ability of ticketholders to resell tickets to these events.
- 5.38 In addition to the statutory exceptions, in some cases, venues, event organisers or artists will seek to impose contractual restrictions on the transferability of tickets, which have the effect of restricting resale.
- 5.39 However, restrictions against resale will not be enforceable where they are in breach of UK consumer law. The Consumer Rights Act 2015 (the CRA) expressly prohibits event organisers from relying on unfair terms to cancel tickets or ban resellers from operating and gives the prescribed enforcement authorities powers to impose financial penalties where this happens. The

CMA's Unfair Contract Terms Guidance (CMA37) indicates that a term which undermines a consumer's right to sell what they own is at risk of being regarded as unfair. The CMA has also stated that such terms are more likely to be considered fair if there is a legitimate reason for restricting resale and any restrictions are necessary and proportionate for achieving that aim.

Legal and regulatory background

5.40 The resale of tickets for live events is regulated by various general and specific legal and regulatory provisions in the UK (and elsewhere). Below we outline the key legal and regulatory provisions and highlight the key recent enforcement activity in the sector.

The Consumer Rights Act 2015 (the CRA)

5.41 Re-selling tickets is permitted under the CRA, but where it takes place online certain information must be provided. Its key provisions include:

- (a) A duty on resellers and secondary ticketing facilities to provide certain information, where applicable, about tickets to buyers, including:
 - (i) The face value of the ticket;
 - (ii) Information to enable the buyer to identify the location within the venue of the ticket, for example the particular seat or standing area at the venue;
 - (iii) Information about any restriction limiting the use of the ticket to persons of a particular description (for example wheelchair users or people within a certain age range); and
 - (iv) Where applicable, information about certain connections the seller has with either the online facility on which they are selling, or the organiser of the event for which the ticket is being sold. Event organisers cannot cancel tickets offered for resale or ban resellers from operating merely because the ticket is re-sold or offered for re-sale unless this was a term of the contract under which the original buyer purchased the ticket and that term was not unfair (in respect of which, see above).
- (b) A requirement that secondary ticketing facilities must report any criminal activity (such as fraud or theft) in relation to the re-sale of tickets on its platform to the police and the event organiser.

- 5.42 These provisions are enforced by Local Authority Trading Standards Services in Great Britain and by the Department for Enterprise, Trade and Investment in Northern Ireland.

Other consumer law

- 5.43 The CRA contains specific provisions in relation to secondary ticketing, as discussed above. However, the sale and resale of tickets to live events is also subject to general consumer law, some provisions of which are briefly outlined below.

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)

- 5.44 The CPRs prohibit traders from engaging in unfair commercial practices in their dealings with consumers. They cover commercial practices which are unfair because they are misleading (whether by action or omission) or aggressive and cause or are likely to cause the average consumer to take a transactional decision they would not otherwise have taken. They also prohibit practices which fall below the standards of professional diligence and materially distort, or are likely materially to distort, the economic behaviour of the average consumer. Certain specified practices are banned in all circumstances. The CPRs are relevant in relation to the provision of information about tickets and events to consumers when tickets are offered for sale or resale, such as price and other characteristics, and apply to the commercial practices of traders offering tickets for resale and online platforms that provide a resale facility.

The Consumer Contracts (Cancellation, Information and Additional Charges) Regulations 2013 (the CCRs)

- 5.45 The CCRs apply to transactions between traders and consumers and require that certain information is provided when goods, services or digital content are sold. The required information includes the main characteristics of goods, services or digital content; the identity, address and contact details of the trader, the total price of goods, services or digital content including taxes, delivery charges and any other costs. Although the information that traders are required to give to consumers under the CCRs is assessed by reference to general categories, it will include the specific information that all resellers (both individuals and businesses) must provide to all buyers under the secondary ticketing provisions of the CRA. The CCRs also set out how and when pre-contractual information should be given to consumers.

The Electronic Commerce (EC Directive) Regulations 2002 (the ECRs)

- 5.46 The ECRs impose information requirements on those providing an 'information society service'. This includes operating an online marketplace and engaging in online sales. Secondary ticketing facilities will be an information society service provider and must provide certain information about themselves and their users. When selling tickets through a secondary ticket platform a business seller will also be providing an information society service and will also be subject to the requirements of the ECRs including the requirement to provide information about itself.

Code of Advertising

- 5.47 The advertising industry operates an independent self-regulatory system, with the Advertising Standards Authority (ASA) responsible for enforcing the UK Code of Advertising produced by the Committee of Advertising Practice (the CAP Code). The 12th Edition includes on-line marketing communications and came into force in March 2011. It applies to tickets bought for events including stage products, films, concerts, museums and sports fixtures. It prohibits misleading advertising and sets out how prices for tickets should be advertised. In particular it sets out how the face values of tickets should be advertised including how mandatory, non-mandatory and one-off charges should be communicated to consumers.

Tickets for football matches and the Olympics

- 5.48 The sale of tickets for a limited number of sports events such as the 2012 London Olympic Games and Paralympic Games and the 2022 Commonwealth Games are restricted under specific legislation, which makes it unlawful for anyone other than an authorised person to sell or re-sell tickets to those events. The resale of tickets for designated football matches by an unauthorised person online is an offence under section 166 of the Criminal Justice and Public Order Act 1994. Where a secondary ticketing platform is not authorised by the organisers of the designated football match, it too may be committing an offence if tickets for a designated football match are advertised for sale on its platform.

Fraud

- 5.49 The Fraud Act 2006 sets out a general offence of fraud that can be committed by (i) false information; (ii) failing to disclose information; or (iii) abuse of position where there has been dishonesty and an intent to make a gain or cause a loss. This may cover, for example, the sale of fake or counterfeit tickets or obtaining tickets by deception.

The Digital Economy Act 2017 and the Breaching of Limits on Ticket Sales Regulations 2018

- 5.50 Under the Breaching of Limits on Ticket Sales Regulations 2018, made pursuant to the Digital Economy Act 2017, the use of automated software to buy more tickets for events than are allowed with a view to financial gain is an offence, and a breach of the legislation can result in an unlimited fine.

Enforcement

Advertising Standards Authority Ruling

- 5.51 On 7 March 2018, the ASA made a ruling against StubHub, viagogo, Seatwave and GetMeIn! in relation to the way that they advertised prices because they did not make clear the total ticket price including the booking fee at the beginning of the customer journey and they did not make clear the applicable delivery fee.
- 5.52 The ASA banned viagogo from using the claim 'official site' because it misleadingly implied it was an official, primary ticket outlet rather than a secondary ticketing platform. The ASA also banned viagogo from using the claim '100% Guarantee' as this suggested that consumers who bought tickets from viagogo would be guaranteed to gain entry into an event, when that was not the case.

OFT/CMA enforcement

- 5.53 In July 2012, the Office of Fair Trading (OFT), a predecessor body to the CMA, opened an investigation into suspected breaches of consumer protection law in the secondary ticketing market. The investigation focused on the four largest secondary ticket websites that operated in the UK at the time – GetMeIn!, Seatwave, StubHub and viagogo – and primarily related to suspected breaches of the CPRs and ECRs. It aimed to ensure that the operators of these websites disclosed information which, in the OFT's view, consumers needed before buying tickets on secondary ticket websites. The OFT considered such information to include:
- (a) Information on restrictions on entry (such as age restrictions and concessionary tickets) and the view that may apply to the ticket;
 - (b) Whether or not multiple seats that were listed together were located together;

- (c) Whether there were any additional charges not included in the listed ticket price;
 - (d) The price for which the ticket was originally purchased and which is usually the price printed on the ticket itself (the face value);
 - (e) The identity of the ticket seller; and
 - (f) A contact email address for buyers to use if something went wrong.
- 5.54 The OFT accepted undertakings which addressed these concerns from StubHub, GetMeIn! and Seatwave in 2014 and from viagogo in 2015.²⁹
- 5.55 In June 2016, the CMA launched a review of the compliance of the four main secondary ticketing platforms with their undertakings and their legal obligations, which it concluded in December 2016. The review identified concerns that secondary ticketing platforms and/or resellers were not disclosing sufficient information to consumers, in breach of consumer protection legislation. In particular:
- (a) Whether it was clear to consumers when tickets were being offered for sale by businesses;
 - (b) Whether it was clear to consumers when tickets were being offered for sale by event organisers or ticketing platforms;
 - (c) Whether sellers were providing important information about tickets (such as information about seat numbers, face value of the ticket and restrictions on the use of the ticket); and
 - (d) Whether platforms were fulfilling their own obligations in relation to such information.
- 5.56 This led to the CMA opening a new investigation into the compliance of secondary ticketing platforms with consumer law.³⁰
- 5.57 On 20 April 2018, the CMA accepted undertakings from Ticketmaster (owner of Seatwave and GetmeIn!) and StubHub to make changes to the websites' practices which addressed the CMA's concerns.
- 5.58 In November 2018, the CMA secured a court order against viagogo requiring viagogo to change the way it operated (which should have been

²⁹ GetMeIn! and Seatwave exited the market in 2018.

³⁰ Details of the CMA's enforcement action are on the case page of the CMA's website: [Secondary Ticketing Websites](#).

implemented by mid-January 2019) and which should have addressed the CMA's concerns set out above. In September 2019, the CMA announced that viagogo had addressed the CMA's concerns.

- 5.59 In January 2020, the CMA set out concerns to StubHub relating to the way it operates and the information it provides in relation to tickets advertised on its website that could breach consumer law. In August 2020, the CMA accepted new undertakings from StubHub and confirmed the CMA's concerns had been addressed.

6. Market definition

- 6.1 Market definition provides the framework for assessing the competitive effects of the merger and involves an element of judgement. The boundaries of the 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.³¹

Product market

- 6.2 The Parties overlap in the supply of online platforms for the sale of tickets for events in the UK, with the vast majority of these transactions being the sale of secondary tickets. As set out below, the Parties are also active in the sale of primary tickets, but their shares of primary sales in the UK are low, so we do not consider it likely that the Merger would result in an SLC in the supply of primary tickets alone. As such, our assessment of the relevant market in this section focuses on the relevant market starting with the Parties' secondary ticketing platform activities as the focal product.
- 6.3 Before setting out this assessment, we briefly outline our approach to two features of the market(s) in which the Parties operate: the interaction between primary and secondary ticket sales; and the two-sided nature of the Parties' secondary platforms.

Interaction between primary and secondary ticket sales

- 6.4 Our assessment of both market definition and of the effect of the Merger on competition has taken account of the Parties' arguments in relation to the

³¹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

interaction between primary and secondary ticketing. In their submissions to us during our investigation, the Parties argued that we were taking an overly narrow view of the impact of primary ticketing platforms on their business, and hence ignoring wider sources of competitive constraint. In coming to a view on the scope of the relevant markets and on the competitive constraints on the Parties, we have considered the broader ways in which primary and secondary platforms interact, and whether these are likely to create competitive constraints on the Parties which might mitigate any reduction in competition resulting from the Merger.

6.5 We have identified five main forms of interaction between primary sellers and secondary ticketing platforms:

- (a) Primary sellers are a source of supply of tickets for resellers using the Parties' platforms, so their pricing and terms (eg in relation to transferability) can affect the supply of tickets for resale.
- (b) The major primary sellers provide facilities for ticketholders to resell their tickets on their websites, typically with the resale price capped at, or close to, the original price that the ticketholder paid for the primary ticket.
- (c) Primary and secondary tickets compete for some of the same buyers when both are on sale for the same event at the same time.
- (d) Primary sellers (or event organisers/venues/sports clubs) can appoint a third party to be an authorised resale platform for their ticketholders.
- (e) Some secondary platforms are active in the distribution of primary tickets, or are seeking to enter or expand in the distribution of primary tickets.

6.6 The first three of these interactions are considered in our assessment of the relevant market and of the competitive effects of the Merger, below.

- (a) In relation to primary sellers as a source of secondary ticket inventory, we have noted that some primary sellers are taking steps to capture more of the revenue from high-demand events, for example, through setting higher primary prices (dynamic and VIP pricing) and through restricting resale, either using technology or contractual terms which limit the ease of transferring the ticket. These actions can have the effect of increasing the prices at which resellers can purchase primary tickets and limiting the supply of tickets for resale. We have assessed the extent to which this can be expected to constrain the fees or terms that the Parties offer to their resellers or buyers, at paragraphs 7.263 to 7.266 below.

- (b) The impact of secondary ticket sales via primary sellers' websites is assessed as part of the constraint from capped secondary platforms on the Parties.
 - (c) We have set out below our evidence showing that primary and secondary tickets are typically purchased at different times, with secondary tickets often being purchased when primary tickets are not available, and, for most of the transactions on the Parties' platforms, the resale prices are substantially higher than the equivalent primary ticket face-value price.
- 6.7 In relation to the fourth form of interaction listed in paragraph 6.5, the Parties argued that primary sellers (or event organisers/venues/sports clubs) can facilitate entry by appointing an authorised resale platform. This could help an entrant or a smaller player to expand. This is discussed in our assessment of entry and expansion (Chapter 8).
- 6.8 In relation to the fifth type of interaction, the Parties and some other secondary platforms have direct relationships with event organisers to sell primary tickets. However, the extent of primary sales by the Parties is currently very small.
- (a) In 2019, the Parties' primary ticket sales accounted for less than [X]% each of their respective sales in the UK.
 - (b) Their combined share of supply in primary tickets in the UK was less than [X]% in 2019 and under [X]% in 2018 and 2017.³²
- 6.9 StubHub submitted that its primary sales were [X] in the past (accounting for [X]% of StubHub's GTV in 2017 and [X]% in 2018) and both Parties have [X], while some smaller platforms have also noted this as a way to enter or expand in the UK. However, this appears largely to be a potential mode of entry/expansion into the primary market rather than a source of competitive constraint on the Parties' secondary sales following the Merger, as discussed further at paragraphs 6.20 to 6.26 below.
- 6.10 More generally, the Parties submitted that they operate within a broad overall market for live ticketing events, including both primary and secondary ticketing. They told us that content rights holders and promoters can sell tickets to attendees directly or through agents who offer primary ticketing

³² We note that a number of third parties referred to the Parties' recent involvement in the primary market. [X] referred to competition from resellers seeking to '[X]', but stated that these 'instances have remained very limited in the UK' and referred to StubHub's role as a primary seller for boxing events involving Anthony Joshua. AXS submitted that viagogo did not 'infringe' on the primary market, but noted StubHub's involvement in primary sales for a number of events, including boxing events involving Anthony Joshua and Capital FM's Summertime Ball.

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. The Parties submitted that secondary ticketing platforms, such as viagogo and StubHub, are one secondary channel, alongside other secondary ticketing sales channels including classified advertising services, person-to-person sales, concierge services, ticket brokers (offline and online) and social networks.³³

6.11 The CMA has previously considered online ticketing platforms in *Ticketmaster/Seatwave*,³⁴ in which the CMA concluded that there was a distinct frame of reference for the supply of online exchange platforms for selling and buying secondary tickets for all types of live entertainment events in the UK.³⁵ We note that, in that decision:

- (a) Primary tickets were excluded from the frame of reference, as, even where primary and secondary tickets are available for the same event at the same time, the primary tickets will often be at a much lower price (for popular events) or a much higher price (for unpopular events).³⁶
- (b) Offline channels were excluded from the frame of reference, due to differences between the offline and online channels, including offline channels not offering guarantees, commission fees being relatively low, and the limited ability to match supply and demand using offline channels.³⁷

Two-sided nature of the Parties' secondary ticketing platforms

6.12 In approaching our assessment of the relevant market in the current investigation, we first considered whether to define a single market covering the Parties' services to buyers and resellers, or to define separate markets for buyers and resellers on either side of the platform.³⁸

6.13 In some two-sided markets the Parties may face very different competitive constraints on each side of the market.³⁹ In those cases, it may be necessary to define two separate markets: one on each side of the platform,

³³ [Parties' phase 2 initial submission](#), paragraph 19.

³⁴ ME/6505/14 Completed acquisition by Ticketmaster Europe Holdco Limited of Seatwave (2015) ([Ticketmaster/Seatwave](#)).

³⁵ [Ticketmaster/Seatwave](#), paragraph 50.

³⁶ [Ticketmaster/Seatwave](#), paragraph 43.

³⁷ [Ticketmaster/Seatwave](#), paragraph 44.

³⁸ As set out in the [Merger Assessment Guidelines](#) (paragraph 5.2.20), the implementation of the hypothetical monopolist test may be more complicated when products are two-sided.

³⁹ [Merger Assessment Guidelines](#), footnote 60. Also see Lear, [Ex-Post Assessment of Merger Control Decisions in Digital Markets](#), 9 May 2019, page 28, paragraph I.91.

with distinct product and geographic scopes and separate sets of competitors and competitive constraints.

- 6.14 By contrast, in the case of a two-sided platform where the platform is ‘matching’ or facilitating transactions and where there are positive network effects in both directions – ie more buyers attract more sellers and vice versa – a single market definition may be more appropriate, taking account of the competitive constraints on both sides of the market.⁴⁰ This assessment takes account of the relevant close substitutes to the platform on each side (reseller and buyer) and the impact of any indirect network effects on the platform. Given the characteristics of the Parties’ secondary ticketing platforms, in particular the fact that the platforms match resellers and buyers in order to facilitate a transaction and there are strong positive indirect network effects between customers on each side of the platform, we consider that defining a single market is appropriate in this case, taking account of competition on both sides.⁴¹
- 6.15 In coming to a view on the appropriate scope of the product market within which the Parties operate we have assessed the extent of substitutability between their secondary ticketing platforms and the following categories of platform or channel:
- (a) Primary ticket platforms, bearing in mind that primary platforms are only a potential alternative for buyers and not for resellers using the Parties’ platforms;
 - (b) Other secondary ticketing platforms, which provide similar services to the Parties to both buyers and sellers, though taking account of the extent to which ‘capped’ platforms may not be a close substitute for some resellers;
 - (c) Other online channels, including social media (such as Twitter and Facebook) and classified ads websites (such as Gumtree); and
 - (d) Offline channels, which include the resale of tickets in person close to the venue or elsewhere, ticket sales between friends and acquaintances, and ticket sales by outlets, such as travel agents, hospitality providers and ticket wholesalers.

⁴⁰ See, for example, the CMA’s [Just Eat/Hungryhouse](#) Final report (16 November 2017), paragraph 4.11.

⁴¹ This is our view notwithstanding that some aspects of competition on one side of the market would not constrain a price rise on the other (for example, see paragraph 6.35).

Primary ticketing

6.16 The Parties have argued that primary tickets should be included in the same relevant market as secondary tickets. In assessing whether primary ticket sales are likely to constrain the Parties in their offer to buyers and/or resellers of secondary tickets on their platforms, we have considered:

- (a) Price differentials, including the Parties' arguments on the 'convergence' of pricing and the 'blurring' of the distinction between primary and secondary tickets;
- (b) The extent to which both primary and secondary platforms compete for buyers, in particular when they search online for specific events, as well as an analysis of the timing of sales and prices paid across primary and secondary channels for a set of live events;
- (c) The constraint that primary sellers impose on the Parties in their offer to sellers; and
- (d) Evidence from the Parties' internal documents.

Price differentials between primary and secondary

6.17 We found that there is a material difference in the prices charged for primary tickets ('face value') and those charged for secondary tickets on the Parties' platforms. Our analysis of the Parties' transaction data for UK events, described in more detail in paragraphs 7.252 to 7.257 below, and in Appendix C, found that, in 2019:⁴²

- (a) [80–100%] of tickets sold on the viagogo platform were sold at more than 20% above face value,⁴³ with a median mark-up of [X]%; and
- (b) [60–80%] of tickets sold on the StubHub platform were sold at more than 20% above face value, with a median mark-up of [X]%.

6.18 Those resellers that are either 'professional' or 'intentional' resellers aiming to make a profit and sourcing their inventory from primary sellers must be (on average) selling at prices that are above face value, in order to stay in

⁴² The Parties argued that the data on ticket face values in their transaction data was 'unverified' and relied on customer reporting, and that this would affect the robustness of our estimates of the price differential. Notwithstanding the Parties' arguments, we consider that we can place weight on these estimates for the reasons set out in paragraphs 7.254 to 7.257.

⁴³ On a conservative basis, we focus on the proportion of tickets that are sold at more than 20% above face value to allow for resellers covering the cost of primary sellers' booking fees and of delivery costs.

business.⁴⁴ Responses from the Parties' resellers⁴⁵ that we spoke to (which were mainly larger, professional resellers) indicated that they tended to source their inventory from primary sellers and set their resale prices above face value, typically with a target margin in mind, which is consistent with our quantitative pricing analysis.

6.19 The size of these average price differentials indicates that reseller pricing of secondary tickets is not materially constrained by primary ticket sales. The price differential suggests that, for those sales made on the Parties' platforms, buyers did not have the option of a primary ticket that was a sufficiently close substitute for the secondary tickets in question. As such, applying the framework of the 'hypothetical monopolist' test referred to in the CMA's Merger Assessment Guidelines⁴⁶ indicates that:

- (a) Secondary ticket prices on the Parties' platforms are not, in general, constrained by primary tickets; and
- (b) Given this, a small but significant increase in the fees charged (or an equivalent worsening of other aspects of the platform's offer) to resellers or to buyers of these secondary tickets is unlikely to lead to material switching by buyers between secondary and primary tickets.⁴⁷ As such, primary and secondary ticketing platforms are likely to operate in separate markets.⁴⁸

Dynamic pricing and similar pricing practices in the primary market

6.20 On the 'convergence' between pricing on primary and secondary platforms, the Parties made two broad arguments:

- (a) First, that primary ticketing platforms are increasingly enabling the secondary resale of tickets, for example through Ticketmaster Ticket Exchange and AXS Resale. We consider whether these secondary sales should be part of the relevant market in paragraphs 6.38 to 6.48 below.

⁴⁴ The different types of resellers using the Parties' platforms are outlined in paragraph 7.54.

⁴⁵ See Appendix G for more details about the sample and the responses.

⁴⁶ [Merger Assessment Guidelines](#), paragraphs 5.2.9 to 5.2.20.

⁴⁷ As an illustration, we estimate that the median price on the viagogo platform in 2019 was £[§] and the median mark-up over face value was [§]%. Given a reseller fee of around 10% of the resale price and a buyer fee of around 15% of the resale price, a small increase in either of these fees is unlikely to lead to a material number of buyers switching to primary tickets. For example, the buyer fee for the median ticket on viagogo is approximately £[§]. A 10% increase in the buyer fee (ie an increase of £[§]) is unlikely to lead to material switching to primary sellers, given the large price differential in question – in this example, the price of the secondary ticket on viagogo is [§] the face-value or primary price. We infer from this large price differential that a substitutable primary ticket is unlikely to be available to the buyer.

⁴⁸ [Merger Assessment Guidelines](#), paragraphs 5.2.10 and 5.2.11.

(b) Second, that primary tickets are increasingly being sold in different ways which might affect the secondary market, including through dynamic pricing (where primary ticket prices are adjusted over time in response to demand), 'VIP' pricing (where tickets are able to be sold at a premium if they are a part of a package which includes, eg additional access or hospitality) and the slow release of primary tickets (where tickets are released gradually rather than having a single 'on sale' date when the bulk of tickets are made available). In particular, the use of more flexible pricing in the primary market, allowing prices to increase for high-demand events, could reduce the differentials between primary and secondary ticket prices observed in the previous section and increase the competitive interactions between them.⁴⁹ We consider these arguments here.

6.21 The evidence we collected suggested that the ticketing practices referred to by the Parties cover only a very small proportion of overall primary ticket sales. For example, data on [X]⁵⁰ use in the UK of a range of strategies that take account of buyer demand for its primary tickets indicate that, in 2019:

- (a) '[X]' was applied to [X]% of tickets, accounting for [X]% of GTV;
- (b) '[X]' ([X]) was used in the sale of [X]% of tickets, accounting for [X]% of GTV;
- (c) 'VIP tickets' accounted for [X]% of ticket sales, accounting for [X]% of GTV; and
- (d) Discounting (ie sales below face value) was applied to [X]% of ticket sales, accounting for [X]% of GTV.

6.22 The [X] primary resellers also made relatively little use of these types of strategies in the UK:⁵¹

- (a) [X] told us that it had not [X]; while VIP tickets accounted for [X]% of its primary ticket sales in 2019, accounting for [X]% of GTV.

⁴⁹ The Parties have argued that primary sellers' use of dynamic pricing makes our calculation of the mark-up over face value. We deal with this issue at paragraph 7.256. See [Parties' response to Provisional Findings](#), paragraphs 54 and 55.

⁵⁰ [X] accounts for [X]% of primary GTV.

⁵¹ Other primary sellers did not submit detailed evidence on their use of dynamic pricing or related strategies, with Eventim indicating that it did use it for some ticket sales but did not provide any details, and Gigantic providing no response on the issue.

- (b) [X] told us that dynamic pricing and VIP tickets made up [X] of its primary ticket sales, with the latter tending to be driven by one promoter ([X]).

6.23 Given the limited use that is being made of these strategies in the UK and the very low share of primary sales that they represent, the evidence does not point towards significant convergence between primary and secondary ticket pricing. The Parties argued that the use of dynamic pricing was growing rapidly, but the evidence they put forward, suggesting growth of around 66% per year, related to LiveNation only and was based on US trends.⁵² Looking at recent (pre-Coronavirus (COVID-19)) trends in the UK, focussing, as above, on [X] use of dynamic and VIP pricing, its use in the UK has not materially changed in recent years:

- (a) The use of dynamic pricing increased between 2017 and 2018, based on proportion of GTV (from [X]% to [X]%), of ticket volumes ([X]% to [X]%) and of events ([X]% to [X]%) but decreased between 2018 and 2019 on all three measures – back to, or below, 2017 levels.
- (b) The use of VIP pricing fell between 2017 and 2018 and fell further between 2018 and 2019, again, based on share of GTV (from [X]% in 2017 to [X]% in 2019), of ticket volumes (from [X]% to [X]%) and of events ([X]% down to [X]%).

6.24 We have not seen evidence to suggest that there is likely to be a significant increase in the use of dynamic pricing in the foreseeable future in the UK. While two primary sellers told us that their intention was to increase their use of dynamic pricing in the UK in the future, their evidence indicated that the extent of this would still be very limited:

- (a) Ticketmaster, while stating that it '[X]', noted that its 'Platinum' product had been around since 2007 and had '[X]'.
- (b) AXS had planned to make 'variable' pricing an option for its UK clients in 2020, but this had been delayed when the Coronavirus (COVID-19) pandemic halted live events. It noted that variable pricing had been in use for some of its US clients for the past five years, but pointed out that, in the US, it was used on a very small percentage of tickets, [X].

⁵² Parties' response to Working Papers, paragraph 33, referencing [Live Nation's Q4 2019 results](#), which states that: 'Average ticket prices for our amphitheatre and arena shows are up double-digits since 2017, while sales of dynamically-priced Platinum tickets were up 66% for the year across 3,000 shows, as artists want more of the best seats in the house sold at market value at the onsale'.

- 6.25 Even if these practices were to become more prevalent over time, we consider that their main impact would be to affect the supply of tickets into the secondary market, rather than imposing a direct competitive constraint on uncapped secondary platforms.⁵³
- 6.26 Finally, we note that the Parties argued more generally that there was convergence over time between primary and secondary sales, and that this would impose competitive constraints on the Parties following the Merger. We do not consider that these arguments affect our conclusions on market definition, but we have considered them as part of the assessment of competitive effects of the Merger below (paragraphs 7.242 to 7.272).

Competition for buyers and timing of purchase of tickets

- 6.27 Not all buyers may be willing to purchase secondary tickets (for example because of concerns about whether the ticket is genuine or transferable), but we can expect that most buyers who are willing to purchase a secondary ticket for a particular event would see a primary ticket for the same event and similar seat location as a substitute. However, the extent to which primary ticketing constrains secondary ticketing on the buyer side depends crucially on the availability of relevant primary inventory. If primary tickets are not available (or the primary tickets that are available are not viewed by buyers as sufficiently close substitutes), then the primary market will not act as a constraint on secondary sales.
- 6.28 In relation to online competition for buyers, a number of primary and secondary platforms and resellers have stated that the main way in which buyers find tickets online is through searching using terms related to the artist and/or event in question, that they tend to click on links that appear at the top of search results page – often a paid search link – and often do not distinguish between primary and secondary ticketing platforms. As such, consumers may buy secondary tickets even when primary tickets are still available.
- 6.29 As set out in Appendix C, based on a sample of 13 live events, we have compared the timing of sales and the prices paid for tickets through the primary (in this sample, [X]) and secondary (both viagogo and StubHub) channels. This analysis found that, while there is considerable variation across events, on average the timing of sales differs markedly between the primary and secondary channels for the events in our sample, with:

⁵³ We discuss this point further in paragraphs 7.265 and 7.266.

- (a) Primary sales taking place predominantly in the first week of release (for our sample of events, [60–80%] of [X] sales took place then), compared to [20–40%] of viagogo sales and [0–20%] of StubHub sales for the same event; while
- (b) An average of around [0–20%] and [20–40%] of tickets that were sold for our selected events on the viagogo and StubHub websites, respectively, were purchased in the last week before the event; while the equivalent share for [X] primary sales was [less than 10%] of tickets.
- (c) For a number of these events, there were material numbers of primary tickets available and sold in weeks close to the event, at the same time as substantial secondary sales were taking place. However, as above, the overall pattern of primary compared to secondary sales was markedly different. In addition, even in weeks when material volumes of primary and secondary sales for the same event took place simultaneously, the secondary sales took place, on average, at significant mark-ups over face value. This indicates that primary sales were not imposing a competitive constraint on secondary sales for those events, either because buyers were not searching across primary and secondary sites when purchasing tickets or because they did not consider the tickets on sale in the primary channel were sufficiently close substitutes. A substantial majority of tickets for the 13 events were sold at a higher price on the viagogo and StubHub platforms than on [X] primary site, with, on average, [80–100%] of tickets sold on viagogo being sold above face value, while the share on StubHub was [60–80%], with substantial mark-ups over face value being paid on the Parties' sites.

6.30 As set out in Appendix H, the Parties conducted a survey of viagogo's buyers, arguing that its results pointed to 'significant constraints to viagogo on the buy side from platforms other than StubHub – and in particular from Ticketmaster, which dominates the entire ticketing supply chain'. In particular, they pointed to the results that:⁵⁴

- (a) [70–80%] of buyers would have searched/purchased elsewhere if the viagogo platform had been closed down at the time of their last transaction, with only [0–5%] of buyers selecting StubHub as their most likely alternative, compared to [50–60%] choosing Ticketmaster/Live

⁵⁴ Appendix H, paragraph 9.

Nation, [10–20%] direct from venue/sports club, [0–5%] AXS and [10–20%] others.⁵⁵

- (b) The majority of these buyers also said that they had checked prices and/or availability of tickets at the alternative platforms or channels selected, and thus, in the Parties' view, had made an informed substitution choice, including [60–70%] for buyers that had responded saying that they would have most likely used Ticketmaster.

6.31 We have a number of concerns about the strength of this evidence and of the conclusion drawn from it.

- (a) First, as set out in Appendix H, we had a number of concerns about conducting a survey of the Parties' buyers, including the risk of a low response rate and concerns about buyers' ability to accurately recall their last 'normal', pre-Coronavirus (COVID-19) transactions.⁵⁶ We note that the Parties' survey, did in fact achieve a low response rate among viagogo buyers.⁵⁷
- (b) Second, the survey is limited to only viagogo buyers, which means it only provides a partial measure of the competitive interaction between the Parties, and is likely to understate the loss of competition as a result of the Merger.
- (c) Third, on the questions of where buyers would have searched, had the viagogo platform not been available at the time of their last purchase, and whether they had actually checked price and/or availability on these alternative platforms and sales channels, we note that:
 - (i) It is unsurprising that most respondents said that they would look elsewhere and many of these then responded that they would 'most likely' have checked on the same primary sources (Ticketmaster, direct from venue, etc) that they had previously used.
 - (ii) Many of those buyers who responded that they would 'most likely' have used an alternative platform had viagogo been unavailable at the time of their last transaction also responded that they had checked the availability or the price (or both) on alternative platforms and sales channels at the time. However, there was no indication that

⁵⁵ The Parties pointed out that these shares are even lower when expressed as a percentage of all viagogo buyers responding to the survey, with StubHub only accounting for [0–5%] of those buyers, compared to [40–50%] choosing Ticketmaster/Live Nation, [10–20%] choosing direct from venue/sports club, [0–5%] AXS and [10–20%] others.

⁵⁶ Appendix H, paragraphs 11 to 14.

⁵⁷ Appendix H, paragraph 6.

those buyers found suitable, alternative tickets on those other platforms or websites. As set out above, the evidence on price differentials for the vast majority of sales on the viagogo platform and the equivalent primary tickets indicate that closely substitutable primary tickets are typically not available, whether buyers have checked the relevant primary sources or not.

6.32 Overall, the evidence suggests that primary platforms are not a close alternative to sales on the Parties' platforms on the buyer side, given:

- (a) Resale prices on the Parties' platforms are, in general, substantially higher than the face value of the tickets in question, indicating that equivalent primary tickets were not an option for these buyers or did not constrain the prices they paid on secondary platforms. Although in a minority of cases primary and secondary tickets may both be available (for example, when there is an excess supply of tickets), we note that the average secondary ticket sold on the Parties' platforms is sold at a price that is substantially above face value and that the equivalent primary ticket is either not, or not seen as, an effective substitute by buyers at the time of purchase. This indicates that the scope of the relevant market should not be widened to include the sale of primary tickets.⁵⁸
- (b) To the extent that the Parties' paid search marketing (eg Google Ads) results in them attracting buyers that could have purchased primary tickets, this would not necessarily be evidence that primary sales provide a competitive constraint to the Parties. This lack of buyer search may result in secondary sales where the buyer could have found an equivalent primary ticket, but this does not represent a constraint from primary sales on the Parties' platforms as, clearly, in those circumstances, the availability of primary tickets has no impact on the resale price achieved and, hence, on the Parties' revenue from the transaction. Again, this indicates that the relevant market should not be widened to include primary sales.

Competition for resellers

6.33 On the reseller side, by definition, primary ticketing does not provide an alternative to the Parties' platforms.

6.34 As set out in Appendix H, the Parties conducted a survey of viagogo's resellers, arguing that:

⁵⁸ [Merger Assessment Guidelines](#), paragraph 5.2.15.

- (a) Its resellers faced competition from primary sellers, with many resellers indicating that their sales volumes and pricing were affected when primary tickets were available to the same event at the same time;⁵⁹ and
- (b) Resellers' responses that indicated a fall in buyer numbers on the viagogo platform would lead to a fall in resellers' ticket sales, and thus a loss in viagogo revenue, supported a 'demonstrable indirect constraint on viagogo's commercial offer to resellers', given that there were strong constraints on the buyer side and the importance of indirect network effects for the platform.

6.35 However, we do not agree that these results support a wider definition of the relevant market in this case:

- (a) First, as set out above, the lack of constraint from primary tickets on the resale prices achieved on the Parties' platform indicates that there is not a strong constraint on the buyer side of the platforms. Even if some of viagogo's resellers were affected by primary ticket availability for some of their sales – something that we also found in our reseller evidence,⁶⁰ and which is consistent with [X]% of sales on viagogo taking place at a price that is at or below the ticket's face value – the constraint on viagogo's resellers' pricing is typically weak.
- (b) Even if there were strong competition for buyers, this would not protect resellers from increased fees or other worsening of the Parties' offer. If the Parties increased fees to resellers, strong competition on the buyer side of the platform would mean that these could not be passed on to buyers in the form of increased resale prices. As such, the resellers could be expected to bear the fee increase themselves, and resellers would not benefit from any constraint from primary tickets on the buyer side of the platform. Even if the primary market constrained resale prices on the Parties' platforms, a hypothetical monopolist platform would still have a high degree of market power in the fees it charged to resellers, potentially pricing up to the point where resellers were indifferent between remaining in the market and ceasing their reselling activities.

Evidence from the Parties' internal documents

6.36 The Parties' internal documents are also consistent with a finding that primary and secondary ticketing should be treated as distinct markets:

⁵⁹ Appendix H, paragraph 20.

⁶⁰ Appendix G, paragraphs 48 to 50.

- (a) We found that the secondary and primary sites tended to be discussed as distinct channels for ticket sale or purchase, with references to viagogo's and StubHub's positions and shares within the 'secondary market' contained in a number of documents; for example:
- (i) [REDACTED];
 - (ii) [REDACTED]; and
 - (iii) [REDACTED].
- (b) Some internal documents focus mainly on, or refer only to, competition between the Parties, rather than indicating a wider market including the primary ticketing platforms. [REDACTED]. viagogo stated '[REDACTED]'.
- (c) [REDACTED], noting that some resale opportunity was expected to remain and that the risk of primary restricting secondary is greatest for events with high ticket resale values. Another viagogo document referred to the risk from primary sellers attempting to restrict resale as '[REDACTED]', pointing to [REDACTED].⁶¹
- (d) Similarly, a number of StubHub documents mention [REDACTED]. Another of StubHub's documents refers to [REDACTED].
- (e) Our document review did not reveal documents which explicitly discussed primary and secondary tickets competing for the same buyers when both types of tickets are available for the same event at the same time. Some documents mention the main primary ticket firms as a competitive threat to the Parties but through those firms' secondary platforms.
- (f) [REDACTED]
- (g) There are documents that discuss secondary platforms being involved in primary tickets. Some documents generally discuss partnerships to operate in the primary market. These StubHub documents [REDACTED] and that SeatGeek has partnerships with Manchester City FC meaning it entered the primary market.⁶² The SeatGeek partnership with Manchester City FC began in 2018 and is still ongoing. There are viagogo and StubHub documents discussing [REDACTED]. The Parties' ambitions to expand their presence in the primary market are also likely to explain some of the

⁶¹ This document was prepared by the Dragoneer Investment Group for a discussion on viagogo. The document appears to cover issues [REDACTED].

⁶² [SeatGeek Announced New Ticketing Partnership With Manchester City FC](#), 20 April 2018 (date accessed 14 December 2020). [Manchester City website: Tickets & Hospitality](#) – SeatGeek named at the bottom of website (date accessed 14 December 2020).

monitoring and discussion of primary platforms in their internal documents.

Conclusion on whether primary and secondary ticketing are in separate markets

6.37 Given this evidence, we have found that primary ticketing platforms are in a separate market from the Parties' secondary ticketing sales. In particular, we have found that:

- (a) Primary platforms are not a constraint at all for resellers wishing to list tickets for resale to buyers.
- (b) There is no evidence that they are a material constraint for buyers – secondary tickets are typically purchased closer to the event, often when there is limited or no equivalent primary ticket availability, and this is reflected in the fact that secondary tickets are often sold at a significant mark-up over primary face value. This suggests that most buyers would not switch from secondary to primary tickets in the event of a small but significant increase in fees charged (or deterioration in terms or service) by secondary ticket platforms.
- (c) These findings are consistent with the Parties' internal documents.

Capped ticketing platforms

6.38 A number of secondary platforms provide for the resale of tickets, but with restrictions on the resale price that can be charged. Typically, prices are capped at, or slightly above, the face value or the original cost of the ticket (with an allowance made to cover the seller's original booking, and/or other, fees). Some of the largest of these 'capped' platforms are operated by the primary ticketing platforms and only facilitate the resale of tickets that have been purchased from the same primary site. These include Ticketmaster Ticket Exchange, AXS Resale, Eventim UK FanSALE, See Tickets Fan-to-fan and Gigantic. Two additional platforms with material sales volumes – Twickets and Ticketswap – offer a similar service, but without the restriction on where the ticket was originally purchased.

6.39 In assessing the constraint that these capped platforms are likely to impose on the Parties, we considered:

- (a) The implications of price differentials between primary and secondary ticketing on the degree to which resellers and buyers were likely to view capped platforms as a substitute for the Parties' uncapped platforms;
- (b) Differences in fees between capped and uncapped platforms;

(c) Views of resellers; and

(d) Evidence from the Parties' internal documents.

6.40 First, as set out in the previous section on primary ticketing, we found that there were significant differentials between resale prices and ticket face value on both the viagogo and StubHub platforms. This indicates that, for the vast majority of transactions on the Parties' platforms, resellers would not consider switching to a capped platform in response to a small but significant increase in fees on uncapped secondary platforms. Capped platforms would only be a substitute in cases where resellers were not able to charge a material mark-up on face value – for example in cases where the supply of tickets exceeded demand.

6.41 In addition, given that sales on most capped platforms are restricted to tickets that were purchased on the operator's primary site, this will mean that the set of alternative secondary sites for any given ticket listing will be limited to the relevant primary sellers' resale facility and to the capped sites that are not operated by primary sellers (eg Twickets or Ticketswap).

6.42 On the buyer side, for the vast majority of transactions on the Parties' platforms, these large price differentials also indicate that most of the Parties' buyers either did not have the option to buy an equivalent or closely substitutable ticket on a capped platform, or did not discover them because of the much more limited search advertising carried out by capped platforms (see paragraphs 7.201 and 7.219).

6.43 Second, as set out at paragraph 5.29, above, we found that the fees charged to buyers by capped platforms are materially lower than those charged by the Parties, while reseller fees are also materially lower or, in most cases, there is no charge to resellers. This difference in fees suggests that the fees of capped platforms do not significantly constrain the fees charged by uncapped platforms on either side of the platform. The lower (or zero) level of reseller fees on the capped platforms may also reflect the fact that selling on the Parties' platforms allows resellers to make a profit, whereas this is not possible on the capped platforms.

6.44 Third, the Parties' resellers that responded to our questionnaires did not consider capped platforms to be close alternatives to the Parties. These sites were very rarely among the top sites where resellers listed tickets, were mentioned by very few resellers as alternatives to the Parties' platforms, and not rated as close alternatives. In particular:

(a) Capped sites were mentioned by only a small number of the reseller respondents as alternatives to the Parties, and were typically given a low

rating in terms of their strength as an alternative resale platform to viagogo or StubHub (average score of 1.7-out-of-5).

- (b) Although resellers told us that they had used (and do use) capped platforms, only a small number of these listed capped platforms as alternatives to the Parties.⁶³ This is consistent with some resellers using the capped platforms as complementary channels for ticket resale - rather than as substitutes to the Parties – in particular, for selling inventory close to the time of the event if it had not sold on the one of the Parties' platforms. Given the capped prices and low (or no) reseller fees, those sales are not comparable to the (on average) above-face-value sales made on the Parties' platforms, with a [REDACTED]% reseller fee being incurred. Therefore, resellers would look to capped platforms when they need to cut their losses. For example, the Parties' resellers that we spoke to stated that they used these sites 'to dispose of unsold inventory' and 'when tickets did not sell on uncapped platforms' or 'would not make that much profit'. One reseller also explained that the capped sites are present but that they are not suitable alternatives for resellers.

- 6.45 As noted in Appendix G, the reseller evidence outlined above came mainly from larger resellers who are attempting to make a profit on ticket sales, and we received less evidence from 'occasional' consumer resellers.⁶⁴ These occasional resellers may be more likely to see the capped platforms as an alternative sales channel, particularly if they are not primarily motivated by making a profit on the ticket sale. However, if this were the case it would apply to a relatively small proportion of the Parties' sales, and does not change our view that, overall, most resellers do not view the capped platforms as strong alternatives to the Parties' uncapped platforms.
- 6.46 Finally, references to capped platforms in the Parties' internal documents did not indicate that these were seen as strong competitors to the Parties. For example, one viagogo document referred to [REDACTED]. A UK-specific StubHub document from [REDACTED].
- 6.47 On the other hand, there were a number of references to competition from these platforms,⁶⁵ including references to the risk of primary ticketing platforms using market power to increase their share in secondary markets

⁶³ Only 12 out of 59 resellers that responded to our questionnaires mentioned the capped secondary platforms as alternatives to the Parties and even these respondents did not rate them as close or strong alternatives. Appendix G, paragraph 38.

⁶⁴ See paragraph 7.54, where we set out the different types of resellers that use the Parties' platforms.

⁶⁵ For example, [REDACTED]; StubHub appears to compete with them by wanting to improve fulfilment for buyers who have purchased tickets in this document: [REDACTED].

(although the same document suggested that this could be mitigated by content rights holders' reluctance to allow a ticketing monopoly). [X].⁶⁶ However, as noted above, these occasional resellers (who may be happy to accept capped resale prices) make up a small proportion of the value of sales on the Parties' platforms.⁶⁷

- 6.48 Given this evidence, we do not consider that capped secondary platforms provide a close alternative to the Parties' uncapped secondary platforms. The evidence available to us also does not indicate that the nature of this constraint would change materially in the foreseeable future. We have therefore found that capped secondary ticketing platforms are in a separate market from the Parties' secondary uncapped ticketing platforms. However, we have considered whether these platforms impose a competitive constraint, at least for some of the transactions on the Parties' platforms, as part of our competitive assessment.

Other online channels for secondary ticket sales – social media and classified listings websites

- 6.49 The Parties submitted that the online ticketing market in which they operate includes a range of other online channels, in particular social media (eg Facebook) and classified listings websites (eg Gumtree).⁶⁸ In relation to the constraint from these channels, the evidence indicates that:
- (a) Buyers and resellers value the security of completing transactions on dedicated platforms and the guarantees offered to buyers on secondary platforms, and that these are important differentiating features between the Parties and social media and classified sites.
 - (b) The vast majority of resellers who responded to our questionnaires did not make material use of these channels, with 10 out of 59 using them. Where they did so, this was often in exceptional circumstances rather than in the normal course of business, eg, at the last minute to 'dispose of tickets'. They also did not consider them to be viable alternatives to the Parties' platforms, with a number of resellers referring to the risk of 'fraud' and a 'lack of safeguards or guarantees' on Gumtree and other classified listings websites (see paragraph 43 of Appendix G). As noted in

⁶⁶ See paragraphs 7.231 and 7.240 below.

⁶⁷ As set out at paragraph 7.55, while there is not an accepted definition of how to classify different types of resellers, those in the top decile, for both Parties, account for [X]% of GTV on the platforms, with 'Traders' on viagogo accounting for [X]% of GTV, and resellers that StubHub defines as B2C ('business to consumer') accounting for [X]% of its secondary GTV in 2019. While these measures vary, occasional resellers clearly account for a minority of the Parties' GTV.

⁶⁸ We note that Gumtree is owned by eBay and therefore was in the same ownership group as StubHub pre-Merger.

paragraph 6.45, most of the resellers that we spoke to were large resellers seeking to make a profit on ticket sales, and smaller occasional resellers may be more willing to view wider online channels as an alternative. However, this does not change our view that resellers making up the large majority of the Parties' sales do not view wider online channels as strong alternatives.

- (c) [REDACTED].⁶⁹ As set out in paragraph 7.55, below, occasional resellers account for a minority of sales for both Parties, with the larger professional resellers accounting for the majority of GTV on both platforms.

6.50 Given these important differences and the evidence on resellers' use of these other channels, we consider that other online channels, such as social media and classified listings websites, do not form part of the same relevant market as the Parties' secondary ticketing platforms. Resellers would not switch to these alternative channels in response to a small but significant increase in fees by the Parties' platforms. While there is some evidence that they represent a viable alternative for some occasional resellers and for some at- or below-face-value sales by professional resellers, this is not the case for the above-face-value sales by the professional resellers that make up the majority of the Parties' sales. Given this, we have considered whether these platforms impose a competitive constraint, at least for some of the transactions on the Parties' platforms, as part of the competitive assessment.

Offline channels

6.51 We have also considered whether offline channels (which include the sale of tickets in person close to the venue or elsewhere, ticket sales between friends and acquaintances, and ticket sales by outlets, such as travel agents, hospitality providers and ticket wholesalers) were likely to be in the same relevant market as the Parties' platforms. The evidence indicates that:

- (a) Buyers and resellers value the security of completing transactions on dedicated platforms and the guarantees offered to buyers on secondary platforms, and that these were important differentiating features between the Parties and offline channels.
- (b) The vast majority of resellers that responded to our questionnaires:
 - (i) Either had not made any use of offline channels (34 out of 41 respondents) or generally used them in very limited circumstances,

⁶⁹ See paragraph 7.230 below.

eg reselling to friends, family and for existing clients or agents (see paragraph 46 of Appendix G); and

(ii) Did not consider them to be viable alternatives to the Parties' platforms, with a number of resellers referring to the lack of guarantees, protections and lack of visibility of tickets in offline sales.⁷⁰

(c) The Parties' internal documents made very little reference to offline channels as a source of constraint. [REDACTED].⁷¹ However, the use of offline channels for reselling tickets appears to have been on an [REDACTED].

6.52 Given these important differences and the evidence on resellers' use of these other channels, we consider that offline channels do not form part of the same relevant market as the Parties' secondary ticketing sales. Where relevant, we have considered whether these channels impose a competitive constraint, at least for some of the transactions on the Parties' platforms, as part of the competitive assessment.

Geographic scope

6.53 Both Parties are international businesses, with viagogo operating country-specific platforms in over 60 countries, while StubHub operates in over 40. viagogo stated that it sets many elements of its offer (including buyer and seller fees) on a global basis. However, the Parties submitted that there is a national geographic frame of reference, based on the resale of tickets for live entertainment events in the UK.

6.54 The evidence we gathered during our investigation is consistent with the Parties' view that the market should be defined on a national basis.

6.55 First, tickets sold on ticketing platforms are event- and location-specific, with the majority of ticket buyers and sellers for UK events being located in the UK.

6.56 Second, the Parties' online ticketing platforms are configured on a national basis, with terms and conditions often varying between countries, and the Parties' marketing strategies and spend are set at the national level.⁷² In

⁷⁰ Appendix G, paragraph 47.

⁷¹ See paragraph 7.230.

⁷² [Merger Assessment Guidelines](#), paragraph 5.2.23.

addition, the relevant consumer legislation in relation to ticket resale differs across countries.

- 6.57 Third, the conditions of competition between secondary ticketing platforms vary considerably across countries, eg two of the major secondary ticketing platforms in the US market (SeatGeek and Vivid Seats) are not present in the UK, while the presence and relative market shares of different secondary platforms varies considerably across Europe.
- 6.58 We have not received any evidence that points towards a geographic scope that is wider or narrower than a national market and have proceeded on the basis of a geographic market covering the resale of tickets to UK events.
- 6.59 In coming to a view on the geographic scope of the relevant markets, we have considered whether this should be defined in terms of the location of the events, the resellers or the buyers.⁷³ For viagogo, around [X]% of tickets to UK events sold on its platform were purchased by buyers outside the UK, while about [X]% of tickets sold to UK customers were for events held outside the UK. For StubHub, [X]% of tickets to UK events sold on its platform were sold to buyers outside the UK, while [X]% of tickets sold to UK customers on the platform were for events held outside the UK.
- 6.60 For the purposes of our competitive assessment we have used a geographic scope based on ticket sales for UK events. We have followed this approach because UK resellers are likely to concentrate on UK events and non-UK events are likely to have other sales channels, which may not be easily accessed by UK buyers. This approach is also consistent with the way the platforms typically collect data on the UK market. It also reflects the way that the Parties (and other ticketing platforms) set some elements of their marketing strategies and marketing spend at the national level.

Conclusion on market definition

- 6.61 We have found that the relevant market in this case is the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events.

⁷³ As set out in Chapter 10, a material share of the Parties' sales to UK events are made through websites with non-UK domains. While this issue may be relevant to the scope of any divestment package, it has not affected our assessment of the scope of the relevant geographic market, where we have considered a focal product based on transactions for tickets to UK events – regardless of the domain of the website(s) in question.

7. The competitive effects of the Merger

7.1 This chapter sets out our assessment of the competitive effects of the Merger, including the nature of competition between the Parties, how closely they competed pre-Merger and the constraint that other platforms and sales channels are likely to exert on the merged firm. In summary, we have concluded that:

- (a) The Parties are the only providers of uncapped secondary ticketing platform services in the UK of any significant size; they have very similar business models and similar fee levels for both resellers and buyers;
- (b) The Parties' internal documents indicate that they see the market as a narrow one, with limited competitive constraints from third parties, with StubHub in particular seeking to react to viagogo;
- (c) The Parties compete in the provision of secondary ticketing platform services across a range of parameters, eg fees, reseller payment terms, the range of functionalities that allow resellers to manage relatively large volumes of ticket listings, and support services on offer. Although some parameters are aimed specifically at resellers or at buyers, given the network effects present, these are relevant to how the Parties' platforms compete overall;
- (d) The Parties directly compete for resellers to use their platforms. Resellers use both Parties' platforms to a large degree and both Parties' large resellers (which account for the majority of the Parties' revenues) regard them as close substitutes;
- (e) The Parties directly compete for buyers to use their platforms. Both spend substantial sums on paid search (the main mechanism to attract buyers), more than any other UK ticketing platform;
- (f) The competitive constraints on the Parties from other secondary platforms, other online channels (such as social media and classified listings websites) and from offline channels are collectively weak (with some being a negligible constraint); and
- (g) The primary ticketing sector does not impose a competitive constraint on the Parties' offer to their resellers and buyers in the secondary market.

Introduction to the analysis

- 7.2 In this chapter we assess the competitive effects of the Merger as they relate to the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events.

Structure of our assessment

- 7.3 The chapter is structured as follows:

- (a) First, we summarise the sources of evidence used in our analysis;
- (b) Second, we set out a high-level summary of the Parties' views on the Merger, as well as a summary of third-party views;
- (c) Third, we describe the nature of competition in the market, including the parameters on which the Parties compete and the role of indirect network effects and liquidity;
- (d) Fourth, we outline our theory of harm for how the Merger might lead to worse outcomes for consumers, both resellers and ticket buyers;
- (e) Fifth, we set out evidence on the closeness of competition between viagogo and StubHub pre-Merger;
- (f) Sixth, we assess the strength of wider competitive constraints on the Parties which would remain post-Merger from other secondary ticketing platforms, primary ticketing platforms and other online and offline channels;
- (g) Seventh, we assess the evidence on whether the merged entity would have the incentive to increase fees and worsen quality; and
- (h) Finally, we set out our conclusions of the effect of the Merger on competition in the relevant market.

Evidence used in our analysis

- 7.4 In assessing the competitive effects of the Merger we have used a range of evidence which includes:
- (a) Submissions, representations, data, hearings and internal documents from the Parties;

- (b) Questionnaire responses and discussions with third-party operators of ticketing platforms, ticket resellers and interested third-party bodies (eg FanFair Alliance); and
- (c) Data from third parties on ticket prices, monthly transactions, volume and value of ticket sales, and marketing and advertising spend.

7.5 In our assessment of this Merger, we have considered all the evidence in the round and in its relevant context. In particular, we have carefully exercised our judgement to determine how it informs our assessment, the extent to which it is probative and robust, and therefore the weight to give each type of evidence.

Reseller questionnaires

7.6 We have used reseller questionnaire responses qualitatively and not treated them as a statistical survey of resellers. In relation to this reseller evidence, the Parties have argued that:

- (a) The responses come from ‘an extremely limited number of resellers (59), accounting for [less than 5%] of viagogo’s customers’;⁷⁴
- (b) The responses account for [less than 30%] of the reseller base, based on GTV;⁷⁵
- (c) [X] of the [X] resellers contacted by the CMA did not respond and ‘are presumably therefore either neutral or not concerned about the [M]erger’;⁷⁶
- (d) Some of the questions in the questionnaire were leading, meaning that it is unreasonable to rely on the evidence.

7.7 As set out in Appendix H, very late in the process, the Parties also conducted a survey of viagogo’s resellers, arguing that they were submitting it ‘as a means of illustrating the flaws in the CMA’s evidence gathering process’, and pointing to the higher share of GTV accounted for by respondents to that survey compared to the CMA’s ‘limited and biased sample’ of reseller questionnaire responses.

⁷⁴ Parties’ response to Provisional Findings, paragraph 68.

⁷⁵ Parties’ response to Provisional Findings, paragraph 68.

⁷⁶ Parties’ response to Provisional Findings, paragraph 69.

- 7.8 As set out in more detail in Appendix H, we consider that there a number of reasons to be concerned about the robustness of the Parties' survey results, but we have considered the substantive findings and the Parties' argument based on these as part of our competitive assessment.⁷⁷
- 7.9 The Parties also made specific points about our interpretation of reseller responses on two specific issues: resellers' views on the Merger⁷⁸ and their views on the Parties as substitutable sales channels,⁷⁹ which are dealt with at paragraphs 7.31 and 7.115, respectively.
- 7.10 On the coverage of our questionnaire responses, we note that in total we received responses from 59 resellers from RFIs issued in phase 1 and phase 2. As described in detail in Appendix G, 54 of these were from large 'professional' resellers who were among the top resellers of each of the Parties as measured by GTV, four responses were from mid-sized resellers and one was from a small reseller. We note that resellers other than the large resellers may have other views. However, we consider that we can place weight on our findings as informative of the experience and views of large professional resellers that account for a large share of the Parties' revenues, and hence drive the most important competitive interactions between the Parties. All but one of the respondents were drawn from the top decile of the Parties' resellers, which accounts for over 80% of GTV for each of the Parties. 54 of the 59 respondents were drawn from each Parties' top 200 resellers, a group which accounts for over 50% of each Parties' GTV in 2019 ([X] % and [X] % of viagogo's and StubHub's GTV respectively). The 59 respondents overall accounted for [10–20 %] of viagogo's GTV and [10–20 %] of StubHub's GTV in 2019.
- 7.11 The Parties' point that non-response should be interpreted as a lack of concern about the Merger is clearly incorrect. Questionnaire recipients may not respond for any of a range of reasons. We do not have information on why recipients did not respond, although, in Appendix H we set out a number of reasons why we might expect a poor response rate from resellers at the time we collected this evidence. We note that the CMA frequently conducts surveys of customers in merger cases and a 10% response rate is not interpreted as a finding that 90% of customers are neutral, unconcerned or positive about a given merger.

⁷⁷ Appendix H, paragraphs 10 to 16, 26 and 27.

⁷⁸ Parties' response to Provisional Findings, paragraph 47.

⁷⁹ Parties' response to Provisional Findings, paragraph 71.

7.12 Finally, in relation to whether certain questions from the reseller questionnaire were 'leading', the Parties' concerns appear to relate specifically to how we have asked resellers whether they have concerns about the Merger.⁸⁰ We agree with the Parties that care needs to be taken when interpreting the responses. However, we also note that respondents provided a range of views about the Merger, pointing to both positive and negative effects on the Parties' customers, accompanied by credible and sometimes detailed explanations for these views.⁸¹

Internal documents

7.13 The Parties submitted that our use of internal document evidence should not be 'cursory and selective' and not downplay references to third party competitors. The Parties also submitted that the vast majority of documents submitted by viagogo were created in the context of the Merger and were aimed at securing investor participation and that we had not made an allowance for this in our interpretation of the documents.

7.14 In assessing the content of an internal document, we have taken into account the purpose for which it was prepared, the context in which it appears and the author.⁸² In particular:

- (a) We typically have placed greater weight on documents prepared to inform decision making by senior management as these are likely to be most reflective of the Parties' strategic thinking. However, we have not disregarded some documents simply because they were prepared in the Merger sales process (in the due diligence process, for example) where these documents are consistent with other evidence that we have.
- (b) Similarly, when assessing the competitive constraints on the Parties we have considered the context in which information appears in a particular document. For example, the fact that a competitor's name appears in a document is less informative than the context in which it appears including the detail and nature of the commentary regarding that competitor. It may be appropriate to consider references to certain competitors less

⁸⁰ In our questionnaire we asked resellers, 'Do you have any concerns about the impact on competition of viagogo's acquisition of StubHub?'

⁸¹ See paragraph 7.21 and Appendix G, paragraphs 51 to 56.

⁸² To fully understand the context and importance of the documents, we (i) requested background information about the documents including the date the document was produced, the name of the author and the names of the recipients, and/or (ii) requested that the Parties tailor their internal document submissions so as to only submit documents produced by individuals with the most relevant knowledge on particular aspects of our enquiry (as identified by the Parties), and/or considered the submissions of the Parties in response to the [issues statement](#) and annotated issues statement and working papers.

probative where the analysis of these competitors is more cursory or substantively different to others in the document.

- 7.15 In this inquiry we have not relied on the Parties' internal documents as standalone confirmation of any one of our findings or even individual pieces of analysis. Instead, we have looked at all the evidence in the round and used the internal documents to corroborate or to contradict other evidence or to otherwise inform us of the context in which other evidence should be interpreted. Where relevant, we have also taken into account and addressed the Parties' observations on specific documents in our assessment.

Impact of the Coronavirus (COVID-19) pandemic

- 7.16 As noted in the counterfactual, we are undertaking our inquiry during the period of the Coronavirus (COVID-19) pandemic (paragraph 4.2). The CMA's merger investigations are forward-looking and evidence-led, and we have considered the impact of the pandemic in our substantive assessment of a merger where appropriate (eg in our assessment of the counterfactual). Although it is clear that, at least in the short-term, there has been a very substantial impact on the live events and ticketing industries, there remains some uncertainty about the extent and duration of this impact. However, we also note that the Parties submitted that the outlook for live events is now markedly improved, given the emergence of effective vaccines (paragraph 4.5). A merger control investigation typically looks beyond the short-term and considers what lasting structural impacts a merger might have on the markets at issue. Even significant short-term industry-wide economic shocks may not be sufficient, in themselves, to override competition concerns that a permanent structural change in the market brought about by a merger could raise. The CMA needs to ensure its decisions are based on evidence and not speculation, and we have carefully considered the available evidence in relation to the possible impacts of the Coronavirus (COVID-19) pandemic.⁸³
- 7.17 We have generally placed greater weight on evidence from before the Coronavirus (COVID-19) pandemic for two reasons: first, it better allows us to understand the competitive dynamics in 'usual' circumstances; and second the pre-Merger period coincides with time before the Coronavirus (COVID-19) pandemic. Notwithstanding this, we have considered the impact of the Coronavirus (COVID-19) pandemic in our assessment of the competitive effects of the Merger where relevant.

⁸³ [Merger assessments during the Coronavirus \(COVID-19\) pandemic.](#)

The Parties' submissions

- 7.18 We have considered the Parties' arguments as part of our assessment. We have summarised their main substantive arguments in relation to the assessment of competition below.
- 7.19 In relation to closeness of competition, the Parties argued that StubHub was not a close competitor or a material constraint on viagogo:
- (a) viagogo argued that it was focused on 'growing the market',⁸⁴ in particular by attracting additional listings in order to increase liquidity, such that the Merger would not impact fees or terms, as the merged firm would still be focussed on increasing liquidity, supported by viagogo offering the same fees over time (even when its activity in the UK has increased significantly) and across countries (even when its activity and position in each country differs);⁸⁵
 - (b) viagogo argued that StubHub is not a constraint on its offer to buyers or resellers, pointing to factors including: 'the absence of evidence showing that StubHub provides a competitive constraint to viagogo, except [for] the views of some resellers ... [which] were in fact very mixed' and were based on a very limited proportion of viagogo's resellers;⁸⁶ the differences in the Parties' customer acquisition strategies included [~~✂~~];⁸⁷ and the lack of references to competitive interactions between the Parties in viagogo's internal documents;
 - (c) Pointing to the two-sided nature of the market, the Parties argued that buyers tend to single-home (ie they use only one platform or another, but rarely both), such that any reseller multi-homing across both platforms is driven by the complementary nature of the Parties' platforms (that is, they offer access to different pools of buyers), rather than by resellers using the platforms as substitutable sales channels.
- 7.20 On the wider competitive constraints on the Parties, they argued that they compete within a broader ticketing market alongside other primary and secondary platforms, as well as social media and other online channels. They pointed in particular to:

⁸⁴ Parties' phase 2 Initial Submission, paragraphs 8, 11 and 12.

⁸⁵ Parties' phase 2 Initial Submission, paragraphs 42 and 43.

⁸⁶ The Parties also argued that the views of resellers submitted to the CMA were obtained through a 'leading and biased question', as set out in paragraph 7.12 above.

⁸⁷ Parties' response to Provisional Findings, paragraphs 30 to 32.

- (a) The impact of viagogo's suspension from Google Ads for several months in 2019, which 'suggests that the extent of competition between the Parties is limited', with only a small share of the sales that viagogo lost diverting to StubHub in this period (approximately [REDACTED] %);
- (b) The competitive constraint from primary ticketing platforms, including policies that, in their view, 'blur' the line between primary and secondary prices, as well as policies that seek to reduce the scope for profitable resale of tickets;
- (c) In addition, the resale platforms operated by primary ticketing sellers are in competition with the Parties, for both buyers and sellers, and, could adjust their business models in the future to allow sellers to list tickets at uncapped resale prices, hence, becoming even closer competitors to the Parties.⁸⁸

Third-party representations

7.21 A number of third parties also put forward views on the impact of the Merger on competition, which are summarised below:

- (a) Among primary ticketing platforms, AXS expressed concerns about the Merger, pointing to a number of likely effects – the merged firm 'controlling the substantial majority of the resale market, because they would be able to attract and retain 100% of the professional resellers', consumers continuing to pay higher prices 'than they need to' and to be 'misled into thinking that [the Parties' platforms] are official sites'. [REDACTED] and Eventim did not give a view. Gigantic stated that it was 'difficult to see any benefits to competition or customers from the Merger', pointing to viagogo's 'powerful' position in the market' and to 'its dominance of Google Ads', arguing that neither Party has 'high standards of customer care' and predicting that a 'stronger' merged platform could lead to more primary tickets being sold to 'touts and fewer directly to fans, leading to higher prices for consumers overall'.
- (b) Some secondary ticketing site operators also presented views on the Merger, addressing both the impact on their business and the market overall. For example, [REDACTED] stated that the Merger would not substantially affect it or its market share, and that the Merger could even help [REDACTED] as it would become the next best alternative for users of the Parties' platforms. However, it also acknowledged that the Merger 'would give consumers

⁸⁸ [REDACTED].

fewer options and could be problematic' and that 'in general the Merger is not good for the market'. These concerns were echoed by other capped secondary platforms. [X] suggested that 'the big loser will be the consumer' if the Merger goes ahead because the merged entity will have more marketing power which will increase the number of people using their platform 'at exorbitant prices and ever escalating fees'. [X] told us that the Merger would lead to the 'concentration of power for pricing transactions' and 'monopolistic power for purchasing ad words'.

- (c) We received a range of views from resellers on what the impact on competition would be from the Merger. The majority of the resellers who we spoke to expressed concerns about the impact of the Merger, mentioning that there would be little, and some said no, competition post-Merger leading to a worse service for buyers of tickets and a worse offer to resellers when it came to fees and terms.⁸⁹ However, there were also a significant minority who did not have concerns, suggesting potential benefits to buyers in terms of the simplicity of having more tickets consolidated on one platform, improvements to StubHub in those aspects of the product offered by both Parties that viagogo does better, and some resellers said that the Merger would not have an impact because the market would still set the ticket resale prices. These reasons are explored in further detail in Appendix G.

- 7.22 A final group from whom we received views were consumer and industry bodies, who were against the Merger. Two of the groups we spoke to ([X] and the Fair Ticketing Alliance) suggested that the Merger would eliminate competition completely, adding that without competition 'fees may increase' and 'customer service may drop off'. Two other groups stated a different reason for having concerns about the Merger, as they suggested that 'the Merger would increase public detriment' and might see the merged entity 'lapse into its historical bad practices ... to the detriment of consumers'.

Nature of competition in secondary ticketing

- 7.23 The Parties submitted that competition between them does not influence their level of fees and wider service offering and instead it is the search for liquidity that explains their conduct. We have therefore evaluated this argument by assessing the nature of competition in the current market. Our analysis demonstrates that competition does matter, so we have gone on in subsequent sections to assess what competition between the Parties is

⁸⁹ As above, we have considered these views in the context of our question to resellers on the impact of the Merger potentially having been 'leading' for some respondents, as set out at paragraph 7.12, above.

being lost by the Merger and what competition from third parties will remain after the Merger.

7.24 This section sets out:

- (a) How the Parties compete for resellers and buyers and what are the key parameters of competition on each side of the platform.
- (b) The role of indirect network effects and liquidity, including the Parties' arguments on the importance for the Parties of growing the secondary market.
- (c) The impact of single- or multi-homing by buyers and resellers on the conditions of competition.
- (d) The importance of reseller segmentation in the market.

Parameters of competition

7.25 Secondary ticketing platforms compete by matching resellers with buyers of tickets. Platform operators need to attract both resellers and buyers to their platform in order to generate sales.

7.26 Evidence from resellers and from the Parties' internal documents and responses indicates that the most important competitive parameters for attracting resellers are:

- (a) Access to a large pool of potential buyers – resellers want to be on platforms where they are most likely to be able to sell their inventory; this means that, other things being equal, the platform with the greatest ability to attract potential buyers (whether this is in absolute numbers, geographic coverage, or reaching buyers with an interest in particular types of events) will also be the most attractive to resellers.
- (b) Ability to set the resale price – for resellers who want to make a profit from selling tickets as opposed to reselling them at or below face value, the freedom to set the resale listing price is an important competitive differentiator between uncapped platforms like viagogo and StubHub and capped platforms like Twickets and Ticketmaster Exchange.⁹⁰
- (c) Level of reseller fees – the Parties charge resellers a percentage fee based on the listing price of the ticket. There is typically no listing fee or

⁹⁰ This is explained further in Appendix G, paragraphs 37 to 40.

standing charge to list on the platform. However, percentage reseller fees can vary.

- (d) Payment terms – while resellers are usually paid once an event takes place, some resellers have been offered payment at the point of sale. For example, some resellers pointed to StubHub offering promotions (eg reduced fees or improved payment terms) as a reason for choosing the platform.⁹¹
- (e) Ability to manage inventory and ease of listing – the Parties both provide software to larger resellers, allowing them to manage their ticketing inventory. The Parties told us that this service was important for enabling large sellers to manage large volumes of ticket listings efficiently. This was also consistent with responses from resellers – for example, one reseller said that it had more technical problems on StubHub and that listing was easier on viagogo.⁹²
- (f) Quality of service – the Parties told us that they contacted large resellers regularly and provide support to deal with technical or payment issues. A number of resellers who we contacted pointed to better customer service with StubHub as a reason for using them.⁹³

7.27 On the buyer side, we have found that the main parameters of competition are:

- (a) Access to tickets, including the range of available tickets and ease of discovery by buyers – the Parties told us that ticket buyers are usually searching for tickets to a particular event, and in some cases for a particular type of ticket or seat location for that event. Having access to a large pool of tickets to different events therefore maximises the chances that any given buyer will purchase from the platform. The ease with which buyers can discover tickets through search is also an important competitive parameter, which the Parties can influence eg by paying for search advertising and optimising their sites for organic search results.
- (b) The price of the ticket and level of the buyer fee – buyer fees are typically charged as a percentage of the sale price of the ticket. In most cases the total cost presented to the buyer is broken down into ‘ticket price’ and ‘booking fee’. viagogo told us that it had [X]. Some platforms also charge

⁹¹ See Appendix G, paragraph 28.

⁹² See Appendix G, paragraph 30.

⁹³ See Appendix G, paragraph 28.

a delivery fee. StubHub's platforms present buyers with a 'ticket price' and 'total fees' which includes the buyer fee, delivery charges and VAT.

- (c) Nature of the buyer guarantee – the Parties both guarantee buyers a refund of the price paid for the tickets in question if they are found to be unusable. The Parties noted the importance of this guarantee in giving buyers the confidence to purchase secondary tickets. By contrast, other online channels such as social media and classified advertising channels do not provide any guarantee to buyers.
- (d) Brand awareness – we received mixed evidence on the importance to buyers of being aware of the platform brand. On the one hand, some third parties (comprising some resellers, competitors and industry groups) suggested that buyers might be more willing to purchase secondary tickets from a well-known brand. Some of StubHub's internal documents also talked about the value of brand awareness in the broader ticketing sector. On the other hand, the Parties told us that buyers most often accessed their platforms through searching for events or artists (either through organic or paid search) and not by going directly to the platform [X].

7.28 By flexing these competitive parameters, the Parties can make their platforms more or less attractive to buyers and resellers.

Role of indirect network effects and importance of liquidity

7.29 In a two-sided market the value of the platform for users on one side often depends on the number of users on the other side: it is easier to attract buyers if there are many ticket listings by sellers on a platform, and vice versa. Given this, indirect network effects are likely to be important, with an increase in users on one side leading to an increase in users on the other side. However, the strength of indirect network effects can vary depending on the nature of the platform and consumers' behaviour.⁹⁴

7.30 The Parties made two main arguments in relation to the role of indirect network effects and liquidity in our Merger assessment. First, they argued that their key strategic objective was to 'grow the secondary market'. In

⁹⁴ Markets that are characterised by strong network effects may 'tip' into monopoly. However, we do not think that this is inevitable in this market. Evidence from the Parties is that there are a number of competing platforms in the US. Further, in the UK StubHub has been winning market share in recent years. We also note that there are some characteristics in the market which reduce the likelihood of tipping – for example, there is a large degree of multi-homing by resellers across the Parties' platforms (section on 'Reseller multi-homing analysis') which is consistent with resellers viewing both platforms as attractive sales channels (rather than all customers moving towards the largest one) and with the costs of multi-homing not being so high as to lead to customers choosing a single platform (typically the largest one).

particular, they argued that the incentive to attract new buyers and resellers onto the platform was greater than the incentive to win buyers or resellers from other secondary ticketing platforms, and that this would constrain the incentive to increase fees or worsen terms post-Merger. Second, the Parties provided analysis suggesting that greater liquidity (ie more tickets listed for a particular event attracting larger pools of prospective buyers) on the viagogo platform had led to lower ticket prices to buyers, as well as higher conversion rates and more revenue for the platform. This might indicate that ticket prices would be lower on the merged platform.

- 7.31 In relation to the argument that increased liquidity on viagogo was associated with lower resale prices, the Parties argued that: ‘this reduction in prices provides a reason why it can be expected that some resellers will raise objections to the merger: greater competition between sellers, and greater buyer price discovery and transparency will lead to worse outcomes for sellers (to the benefit of buyers)’.⁹⁵ As set out in Appendix G, resellers’ views on the Merger included some who pointed to the potential for the Merger to lead to lower resale prices, as well as other benefits to resellers or to buyers. The majority of resellers that responded to our questionnaires were concerned about the Merger, pointing to a loss of competition between the Parties, poorer service for buyers, or worse fees or terms for resellers,⁹⁶ although, as above, we note the potentially ‘leading’ nature of the question that elicited views on the impact of the Merger on competition (see paragraph 7.12).
- 7.32 In relation to the first argument, that the Parties’ key objective is to ‘grow the market’, we found evidence in viagogo’s internal documents to support the view that liquidity is important. For example, [REDACTED] (its own articulation of indirect network effects), [REDACTED].
- 7.33 However, we also found that the Parties were both competing for these new sources of liquidity (paragraph 7.176). We would expect the same parameters of competition set out in the previous section to be as relevant to attracting new buyers and resellers to the platform as to encouraging existing buyers and resellers to switch between the Parties. Any loss of competition following the Merger would therefore also reduce competition for these new sources of liquidity.
- 7.34 In relation to the impact of liquidity on ticket prices, the Parties’ advisers submitted an econometric study which found a negative relationship between the number of tickets listed for a particular event on viagogo and

⁹⁵ Parties’ response to Provisional Findings, paragraph 47.

⁹⁶ Appendix G, paragraphs 51 to 56.

the average resale price on the platform, based on an analysis of the relationship between viagogo's past sales prices and volumes. They argued that:

- (a) attracting more liquidity to a platform results in increased competition between resellers, which lowers resale prices to buyers; and
- (b) increased liquidity also leads to consumers having access to a greater range of events and ticket types.

7.35 We do not consider that this modelling provides evidence that ticket resale prices would be expected to be lower on the Parties' platform following the Merger, for the following reasons.

7.36 First, other evidence on resale prices and platform size indicates that a larger platform (which could be expected to have greater liquidity) does not necessarily lead to lower resale prices. viagogo has been substantially larger than StubHub (in terms of GTV) in the UK: around [X]% larger in 2019, and [X] in both 2017 and 2018. As such, viagogo is likely to have higher liquidity than StubHub at present.

7.37 Our analysis of resale prices on the Parties' platforms based on all transactions in 2019 found that ticket sales on viagogo tended to have a much higher mark-up over face value (with a median mark-up of [X]%) compared to StubHub (with a median mark-up of [X]%). Sales on viagogo also had a higher proportion of tickets that took place at resale prices of more than 20% above face value than did sales on StubHub ([X]% of transactions compared to [X]% of transactions).⁹⁷

7.38 The Parties pointed out that these differences in price mark-ups were likely to reflect different time periods, different events and seats in different price categories for the same event being sold on the platforms.⁹⁸ We agree that these factors all make comparisons difficult. However, even when looking at tickets to the same events and sold in the same week, price mark-ups appear to be higher on viagogo than on StubHub, as set out below.

7.39 Our analysis of 13 high-ticket-volume events for which secondary tickets were sold on both Parties' platforms, pointed to a higher proportion of resale prices on viagogo exceeding face value ([X]% on average) than on StubHub

⁹⁷ See Appendix C, Table C.1.

⁹⁸ The Parties also pointed out that pricing comparisons based on face values in their transaction data cannot be relied upon, as these face values 'cannot be verified and rely on customer reporting'. The issue of the accuracy of face value data and the likely direction of any bias in this reseller-reported data are dealt with in paragraph 7.255, below.

([X]%).⁹⁹ For our sample of events, the number of tickets sold on viagogo was higher than on StubHub for all but two of these events.

- 7.40 In terms of timing, our analysis also looked at the median resale prices in each week and found that prices on viagogo were higher than StubHub in [90–100%] of weeks where the Parties were both selling tickets leading up to an event.¹⁰⁰
- 7.41 Therefore, the Parties’ econometric evidence on the impact of liquidity on resale prices is not consistent with our analysis of the Parties’ transaction data.
- 7.42 Second, the Parties’ analysis reflects the relationship between supply of inventory and prices on viagogo’s platform. It is unsurprising that, in this analysis, as supply increases, resale prices fall. The analysis does not model what the impact would be of combining the Parties’ platforms (which would shift demand for, as well as supply of, inventory) and does not take account of the impact of any loss of competition on fees and other payment terms.
- 7.43 In our view, unless the Merger led to an overall increase in the supply of secondary tickets (while demand remains unchanged) or a decline in demand on the combined platform compared with the two separate platforms pre-Merger, then prices would be expected to increase because of the upward pressure on buyer and/or seller fees from a reduction in competition. The Parties’ analysis does not show why overall demand or supply would be expected to change.
- 7.44 StubHub itself, in its Response Hearing, pointed out that ‘[X]’. The Parties have not been clear on what the econometric study is aiming to model, stating that it ‘was not intended to model a full merger impact. Rather, the point is a simple one, namely, that increased volume results in increased liquidity and therefore lower prices’¹⁰¹ while also stating that ‘this reduction in prices provides a reason why it can be expected that some resellers will raise objections to the Merger’.¹⁰² The latter implies that the analysis is aiming to model the effect of the Merger.
- 7.45 Third, if the merged firm were able to gain a greater share of overall ticket volumes than the two separate platforms as a result of greater network effects, the overall effect on the prices paid by buyers is ambiguous, depending on the source of this additional liquidity, in the form of additional

⁹⁹ See Appendix C.

¹⁰⁰ See Appendix C.

¹⁰¹ Parties’ response to Provisional Findings, paragraph 45.

¹⁰² Parties’ response to Provisional Findings, paragraph 47.

ticket listings on viagogo. The Parties' analysis purports to show that additional listings for an event on viagogo were associated with lower resale prices on viagogo relative to resale prices when viagogo had fewer listings. The source of the additional listings is not made clear, but a brief overview of the possible options suggests that buyers of secondary tickets would be unlikely to benefit even if the Parties' analysis is accurate:

- (a) If additional listings come from smaller uncapped platforms, then (in principle) the enhanced competition between resellers may lead to lower resale prices, as the Parties have argued. However, the Parties also argued that StubHub (despite being the only other uncapped platform of any size) is a not an important potential source of additional liquidity for viagogo.
- (b) If the additional listings come from resellers moving inventory from capped secondary platforms, then resale prices are likely to be higher when listed on viagogo given the lack of restriction on resale prices, so buyers are likely to be worse off.
- (c) If additional listings come from other online channels, such as social media or classified listings websites, then this is likely to come from 'occasional' or fan resellers, rather than professional resellers, so we might expect resale prices to be higher than on social media or classified listings websites when listed on viagogo.
- (d) If additional listings come from a higher proportion of primary tickets entering the secondary market (from professional or 'occasional' resellers) then the effect on buyers (as a whole, for a particular event) is likely to be to increase average ticket prices, as fewer end-users/fans pay the (on average, significantly) lower primary price than would otherwise have been the case, even if secondary prices may be (slightly) lower than they otherwise would have been.

7.46 Overall, in response to both of the Parties' arguments we consider that competition between viagogo and StubHub, and not just the desire to grow the secondary market, matters in how the Parties attract users to their platforms, and thereby ensuring that users get the benefit of that competition. Competition for these new sources of buyers and inventory is an important part of competitive dynamics in this market.¹⁰³

¹⁰³ See paragraph 7.176 below.

Single- and multi-homing by buyers and resellers

- 7.47 Another potentially important factor in assessing competition between two-sided platforms relates to whether customers on either side of the market tend to single-home or multi-home.
- 7.48 When more than one ticketing platform is available, resellers can choose whether to use only one platform (ie they ‘single-home’) or multiple platforms (ie they ‘multi-home’) when listing their tickets for resale. Similarly, buyers can choose whether to search for tickets on only one platform or across multiple platforms.
- 7.49 The degree of multi-homing on each side of the platform can be informative of where competition is most likely to occur between platforms. For example:
- (a) A high proportion of single-homing buyers may mean that platforms face less direct competition from other platforms in attracting resellers. This is because, when a high proportion of buyers single-home, the platform becomes the only way for a reseller to access that particular group of buyers. Resellers then need to multi-home, and so use both platforms rather than choose one or the other, in order to access the different groups of buyers. In this context, we might expect competition to be stronger on the buyer side, with platforms trying to attract single-homing buyers.
 - (b) In contrast, a high proportion of multi-homing buyers means that a platform may face greater immediate competition from other platforms in trying to attract resellers, as multiple platforms provide access to the same set of buyers.
- 7.50 The Parties submitted that most competition takes place on the buyer side of the platform because buyers tend to single-home. They provided analysis suggesting that [REDACTED]. They argued that this meant that resellers would treat the Parties’ platforms as complements rather than substitutes, since they would each provide a channel for reaching a different set of single-homing buyers. Platforms would then compete to attract customers on the buyer side not the reseller side. As set out below, the Parties have also argued that the differences in their customer acquisition strategies, including [REDACTED], indicate that they are not close competitors for buyers either.¹⁰⁴

¹⁰⁴ Parties’ response to Provisional Findings, paragraphs 30 to 32.

7.51 We disagree with the Parties' argument that buyers typically single-home and would not switch between the Parties' platforms:

- (a) The Parties told us that most buyers purchase very small volumes of tickets, with few repeat purchasers in any given year, which is also evident from our analysis of both Parties' transaction data.¹⁰⁵ Given this pattern of buyer behaviour, it is not surprising that the proportion of buyers purchasing tickets on both platforms in a given year is low,¹⁰⁶ and this alone cannot tell us anything about whether buyers would be willing to substitute between the two platforms.
- (b) The Parties also told us that buyers largely search for tickets to a specific event, [X] and that there are very few repeat purchases.¹⁰⁷ This suggests that buyers are willing to switch between different secondary ticketing platforms and we have not seen convincing evidence that the Parties serve separate, mutually-exclusive pools of consumers.
- (c) Our analysis of 'cross-visiting' behaviour based on comScore data, set out in more detail in Appendix F, indicates that a substantial minority ([20–40%]) of visitors to StubHub in a given month also visit viagogo. For viagogo, this share is much lower, with [less than 10%] of its visitors also viewing the StubHub website in a given month.
- (d) As the Parties have pointed out, customers' 'homing' behaviour typically reflects platform differentiation and the costs of multi-homing.¹⁰⁸ In this case, the evidence suggests that, for most buyers, the purchase of a secondary ticket is an infrequent event, driven by the desire to find tickets for a specific event (possibly after being unable to buy a ticket in the primary market), so the costs of multi-homing are likely to be less relevant and certainly do not apply in the way they would in some two-sided platforms where joining fees, subscriptions, or loyalty discounts may induce single-homing. Platform differentiation is also likely to be less relevant too, and we note the similarity in the Parties' business models, buyer fees and terms, and the high degree of event overlap. Given this, in principle, the Parties are likely to compete for buyers. In practice, based on the evidence set out above, their current buyers are not single-homing in any meaningful sense. That is, they are not 'captive', exclusive or loyal to one platform rather than another, and face no material costs to switching or multi-homing.

¹⁰⁵ See paragraph 7.132 below.

¹⁰⁶ See also [Parties' response to Provisional Findings](#), paragraph 13.

¹⁰⁷ [X].

¹⁰⁸ [Parties' response to Provisional Findings](#), paragraph 12.

7.52 As such, there is no evidence that each platform attracts fundamentally different buyer groups or that these are in any way ‘locked in’, exclusive or ‘captive’ to one platform or the other. We would therefore expect resellers to see the platforms to some extent as substitutes for reaching buyers. This is also consistent with the evidence from resellers, described in more detail below.

Different types of resellers

7.53 Finally, we considered whether there were different types of resellers using the Parties’ platforms, and what implication this might have for our competitive assessment.

7.54 The Parties’ platforms provide services to a range of different types of resellers:

- (a) At the top of the distribution in terms of ticket sales are likely to be ‘volume’ resellers, who are professional resellers;
- (b) At the other end are ‘occasional’ resellers, essentially one-off resellers who are likely to be fans who can no longer make an event; and
- (c) Between these are likely to be ‘intentional’ resellers, amateurs who have bought tickets with the intention of later reselling them to make a profit.

7.55 These are not necessarily well-defined segments within the Parties’ reseller customer bases and the boundaries between them are not clear. The most relevant distinctions that the Parties themselves make between different types of resellers are:

- (a) Resellers that sell more than 100 tickets per year on a given platform are defined as ‘Traders’. These accounted for [more than 50%] of each Party’s GTV¹⁰⁹ in 2019;
- (b) Similarly, viagogo defines its resellers that sell more than 100 tickets within a six-month period as ‘power sellers’; and
- (c) StubHub classifies its resellers as ‘B2C’ (business to consumer) and ‘C2C’ (consumer to consumer), with its B2C resellers accounting for [X]% of StubHub’s GTV in secondary ticket sales in 2019.

¹⁰⁹ Gross Ticketing Value (GTV) is the total value of ticket sales on the platform. When we use GTV in relative terms or in proportional terms, it is a good proxy for the Parties’ own revenue because fees are typically calculated as a percentage of the sale price.

7.56 While the basic offer to all resellers is similar, there are some elements of the Parties' offers that differ between higher- and lower-volume resellers:

- (a) StubHub charges [X] to its largest resellers, while viagogo charges (on average) [X] to its largest resellers (as set out in paragraph 7.118);
- (b) Both Parties are more likely to offer attractive payment terms to their [X] resellers (as set out in paragraphs 7.121 to 7.123); and
- (c) Both Parties offer enhanced services, eg dedicated sales team support, inventory management advice, etc. to their largest resellers.

7.57 In taking this segmentation into account in our competitive assessment, we note that:

- (a) First, for both Parties the largest resellers account for the majority of their sales, with those in the top decile accounting for approximately [more than 70%] of platform GTV.
- (b) Second, our analysis has focused on this top decile, as it accounts for the majority of sales and it also includes some of the smaller resellers, given that, for both Parties, these top deciles include all resellers with annual GTV in excess of £[X]. As such, this is likely to capture all professional resellers that make a living from reselling tickets, as well as many higher-volume 'intentional' amateur resellers. Our assessment of the extent of reseller multi-homing across the Parties' platforms and our engagement with resellers (through questionnaires and telephone calls) was focused on those in this top decile.
- (c) Third, given the mixed evidence on the treatment of larger resellers in terms of fees paid on each platform (with larger resellers paying [X] on viagogo, compared to its smaller resellers, and StubHub's larger resellers paying [X] its smaller resellers) we consider the implications for competition as part of our assessment of the closeness of competition between the Parties.
- (d) Fourth, different types of resellers are likely to face different alternatives to the Parties when considering other ways in which to sell secondary tickets. For example, some professional resellers operate their own websites, whereas some of the Parties' internal research points towards 'occasional' or C2C resellers using social media, classified listings websites or 'friends and family' to resell tickets. Our competitive assessment of these constraints takes account of any differences in the extent to which different types of resellers may be subject to competition from these channels.

- 7.58 Buyers all face the same terms on the Parties' platforms and therefore we have not found it necessary to consider segmenting buyers.
- 7.59 Overall, our competitive assessment is not conducted separately for any segment within the Parties' reseller customer bases, but differences between resellers are taken into account where relevant. Notwithstanding this, as set out above (at paragraph 7.10), our reseller evidence comes almost exclusively from the Parties' largest resellers.

Theory of harm

- 7.60 This section briefly sets out the harm to buyers and resellers that might arise from a loss of competition between the Parties' secondary ticketing platforms.
- 7.61 Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity to profitably raise prices or degrade the quality of its services on its own and without needing to coordinate with its rivals.¹¹⁰ Horizontal unilateral effects are more likely when the merging parties are close competitors. We have therefore assessed in the following sections how closely the Parties compete, and what competitive constraints would remain following the Merger.
- 7.62 The loss of competition between the Parties as a result of the Merger could lead to harm to customers on either side of the platforms.
- 7.63 On the reseller side, harm could take the form of:
- (a) Higher fees charged for the sale of tickets to consumers;
 - (b) Fewer consumers visiting and purchasing secondary tickets through the Parties' platforms following any increase in fees charged by the Parties or reduction in bidding for paid search terms;
 - (c) Worse terms and conditions (especially in relation to payment terms) when selling tickets to consumers; and
 - (d) Lower quality of customer service to resellers and platform functionality.
- 7.64 On the buyer side, a loss of competition may lead to:

¹¹⁰ Hence, these are 'unilateral', as opposed to coordinated, effects (see [Merger Assessment Guidelines](#), from paragraph 5.4.1).

- (a) Higher fees charged for the purchase of tickets from resellers;
- (b) Worse range of events (or fewer tickets being made available for a given event) if resellers delist from/do not list on the Parties' platforms following any increase in reseller fees charged by the Parties;
- (c) Worse terms and conditions (especially in relation to refunds) when purchasing tickets from resellers; and
- (d) Lower quality of customer service to consumers and platform functionality.

7.65 Regarding the platform (affecting both buyers and resellers) there could also be a reduction in innovation and incentives for the Parties to compete to attract new buyers and sellers, including by making their platforms easy to discover and transact on compared to their rivals.

Closeness of competition between the Parties

7.66 In this section we assess how closely viagogo and StubHub competed with one another before the Merger relative to how closely they competed with other ticketing platforms. The more closely the Parties compete, the greater will be the loss of competition resulting from the Merger and the likelihood of buyers and/or resellers facing higher fees or worse payment terms or quality.

7.67 We carried out analysis of:

- (a) Structural indicators including shares of supply and distribution of the Parties' sales between different types of events.
- (b) Resellers' use of the platforms, including evidence of resellers' multi-homing between the Parties, resellers' views on closeness of competition between them, and evidence from the Parties' internal documents on how they compete for sellers.
- (c) The Parties' strategies to attract ticket buyers, including the extent to which the Parties overlap in the sales of tickets to the same events, evidence from Google Ads bidding strategies and evidence from the Parties' internal documents.
- (d) The impact of viagogo's suspension from Google Ads in 2019.

7.68 As set out above, the Parties' main arguments on the Merger relate to the closeness of competition between the Parties. We deal with these points as they arise below.

Structural indicators

7.69 In this section, we present evidence on structural indicators in the market, which inform our assessment of closeness of competition between the Parties, including:

- (a) their market shares and those of other secondary ticketing platforms;
- (b) the relative size and growth of the Parties' platforms in recent years; and
- (c) the types of events for which tickets are listed for sale on the Parties' platforms.

Market shares

7.70 As set out above, we have concluded that the relevant market in which the Parties compete is the market for the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events. The Parties are by far the two largest platforms in the market, with only one small, recent entrant competing with them at present.

7.71 As set out in Table 7.1, below, the Parties' average combined share of the market in 2019 was [90–100%], with an increment of [30–40%] as a result of the Merger.¹¹¹

Table 7.1: Market shares for Uncapped Secondary Ticket Exchange Platform services, by GTV, 2017–2019

	%		
	2017	2018	2019
viagogo	[60–70]	[70–80]	[60–70]
StubHub	[20–30]	[20–30]	[30–40]
Parties combined	[80–90]	[90–100]	[90–100]
GetMeIn!	[10–20]	[5–10]	-
Seatwave	[0–5]	[0–5]	-
Gigsberg	-	-	[0–5]
Total	100	100	100

Source: CMA analysis of Parties' and third parties' sale data.

Note:

1. GetMeIn! and Seatwave exited the UK market in September 2018.

2. Gigsberg entered the UK market in April 2019.

7.72 Up until 2018, there were two other competing platforms in the market, GetMeIn! and Seatwave. These secondary ticketing platforms were acquired by Ticketmaster: GetMeIn! in 2009 and Seatwave in 2014,¹¹² before being

¹¹¹ Given the extreme impact of the Coronavirus (COVID-19) pandemic on live events in the UK, we have not calculated market share based on annual data for 2020. However, some of our other analysis in this report does include data for the first two months of 2020, where indicated.

¹¹² CMA Decision in [Ticketmaster/Seatwave](#), 26 March 2015, paragraphs 1 and 10.

shut down in September 2018. The Parties have argued that Gigsberg is a growing competitor, but we note that, while it entered in April 2019 and grew over the course of 2019, and so the [0–5%] share may understate its more recent market position, even based on monthly GTV data up to and including February 2020, it accounted for at most [0–5%] of the market in any given month.

- 7.73 Even looking at a wider set of secondary ticket exchange platforms – including capped as well as uncapped platforms – the Parties’ share of supply is [80–90%] by value ([70–80%] by volume), with an increment of [30–40%] ([20–30%] by value) as a result of the Merger, based on 2019 shares.

Table 7.2: Shares of supply across Capped and Uncapped Secondary Ticket Exchange Platform services, by GTV, 2017–2019

	GTV			Volume			%
	2017	2018	2019	2017	2018	2019	
viagogo	[60–70]	[60–70]	[50–60]	[60–70]	[60–70]	[40–50]	
StubHub	[20–30]	[20–30]	[30–40]	[10–20]	[10–20]	[20–30]	
Parties combined	[80–90]	[90–100]	[80–90]	[80–90]	[80–90]	[70–80]	
GetMeIn! and Seatwave	[10–20]	[5–10]	-	[10–20]	[5–10]	-	
Gigsberg	-	-	[0–5]	-	-	[0–5]	
<i>Capped run by primary</i>							
Ticketmaster	-	-	[5–10]	-	-	[5–10]	
AXS Resale	-	-	[0–5]	-	-	[0–5]	
Eventim FanSALE	[0–5]	[0–5]	[0–5]	[0–5]	[0–5]	[0–5]	
SeeTickets fan-to-fan	[0–5]	[0–5]	[0–5]	[0–5]	[0–5]	[0–5]	
Gigantic fan-to-fan	-	[0–5]	[0–5]	-	n/a	n/a	
<i>Other capped</i>							
Twickets	[0–5]	[0–5]	[0–5]	[0–5]	[5–10]	[5–10]	
TicketSwap	[0–5]	[0–5]	[0–5]	[0–5]	[0–5]	[0–5]	
Total	100	100	100	100	100	100	

Source: CMA analysis of Parties’ and third parties’ sale data.

Note:

1. Ticket volume data was not submitted by Gigantic.

- 7.74 Even in this broader sector, the other platforms have far smaller secondary sales than the Parties, with the largest – Ticketmaster’s exchange platform – accounting for only a [5–10%] share by value ([5–10%] by volume).

Relative size and growth of the Parties in recent years

- 7.75 [X]. The Parties submitted that this means StubHub is a weak competitor to viagogo.

Figure 7.1: Parties' annual GTV from the sales of secondary tickets to UK events

[X]

Source: CMA analysis.

Note: viagogo's data covers the period from the launch of the platform (in 2009) to 2019. Although StubHub entered the UK market in 2011, StubHub's data covers the period from 2015 to 2019 only. This is because, StubHub explained, no financial data specific to the UK was available for the period 2011 to 2014.

7.76 We note that, based on annual GTV data submitted by the Parties as presented in Figure 7.1 above, StubHub has not been a declining presence in the UK market in recent years:

- (a) [X], with an overall increase in its GTV between 2017 and 2019;¹¹³
- (b) While viagogo is larger than StubHub in the UK and, has seen higher growth over the past decade [X].
- (c) The fall in viagogo's GTV in 2019 was partly due to its suspension from Google Ads, although it is not clear that this explains all of the reduction in viagogo's position relative to StubHub in 2019 (see Appendix E, Figure E.2); and
- (d) Even if viagogo were to recover its share of GTV and StubHub's market share (in the market for uncapped secondary platforms) returned to [20–30%], as it had been in 2017 and 2018, StubHub would remain a sizeable competitor and by far the closest secondary platform in size to viagogo in the UK.¹¹⁴

Types of events for which tickets were sold on each platform

7.77 The Parties argued that there was differentiation between the platforms, with viagogo specialising in music-related events and StubHub in sports events.¹¹⁵ A number of resellers submitted that StubHub was a better platform for listing tickets for some sports, given it had previously had relationships with a number of sports clubs.

¹¹³ We note that while StubHub's revenue has grown by about [X]% year-on-year during the past four years, between 2017 and 2019 StubHub's revenue from the sale of secondary tickets to UK events slightly decreased (by about £[X]). However, over the same period (ie from 2017 to 2019) StubHub's GTV increased by about £[X].

¹¹⁴ The Parties pointed out that the CMA had not compared StubHub's growth rate to those of Ticketmaster Resale, Facebook, Twitter or Gigsberg (see [Parties' response to Provisional Findings](#), paragraph 51). As set out in Chapter 6, above, we found that uncapped secondary platforms are in a separate market to capped secondary platforms and social media platforms. Gigsberg's [X] was a new entrant to the market; [X], it remains a small competitor compared to both viagogo and StubHub.

¹¹⁵ [Parties' response to Provisional Findings](#), paragraph 52.

- 7.78 Based on the Parties' transaction data, there are some differences in the mix of sales across different events on the Parties' platforms, with:
- (a) [X]% of StubHub sales being for sports events in 2019, while the equivalent share on viagogo was [X]%; and
 - (b) [X]% of viagogo's sales coming from live music events, while for StubHub the share was [X]%.
- 7.79 In coming to a view on whether this difference was sufficient to point to a material degree of differentiation between the Parties, we considered the following evidence:
- (a) As set out below and in Appendix D, a significant number of large resellers, representing a high proportion of the Parties' sales, multi-home across both platforms – including selling tickets for the same events on each platform – and treat the Parties' platforms as substitutes;
 - (b) The resellers who we spoke to generally did not recognise a significant difference between the Parties' platforms, with few pointing to this as a reason to use one platform and not the other, and both platforms being viewed as strong alternatives to each other (paragraphs 20 to 32 of Appendix G); and
 - (c) On fees and terms offered to resellers (or buyers), there was no evidence that the Parties had materially different offers based on what genre of events tickets were listed (or bought) for.
- 7.80 Overall, the evidence suggests that, in spite of this difference in focus, the Parties are close competitors across all event types.

Conclusion on structural indicators

- 7.81 Evidence on structural indicators points towards the Parties being close competitors, with:
- (a) A very high combined market share, and a substantial increment as a result of the Merger, which remains the case even when a wider set of capped platforms are included;
 - (b) StubHub representing a sizeable share of the market, with annual growth rates in GTV of around [X]% in the past four years; and
 - (c) No evidence that the Parties had materially different offers to resellers or buyers based on genre of event, even though there are differences in the types of events that tend to be listed on each platform.

Competition between the Parties for platform services

- 7.82 In addition to the structural indicators discussed above, we have also examined how the Parties have competed against each other. We have considered how the Parties compete in reference to their platform characteristics and to the factors that are important in attracting resellers and buyers to their platforms.
- 7.83 In paragraphs 7.26 and 7.27 we listed the main factors in attracting resellers and buyers to platforms. To recap, to attract resellers these are:
- (a) access to a large pool of potential buyers;
 - (b) ability to set the resale price;
 - (c) level of reseller fees;
 - (d) payment terms;
 - (e) ability to manage inventory and ease of listing; and
 - (f) quality of service.
- 7.84 To attract buyers, these are:
- (a) access to tickets for a particular event, including the range of available tickets and ease of discovery (eg through search advertising);
 - (b) the price of the ticket and level of the buyer fee;
 - (c) nature of the buyer guarantee; and
 - (d) awareness of the brand.
- 7.85 Having the freedom to set the resale listing price is an important competitive differentiator between uncapped platforms and capped platforms from the perspective of resellers (see paragraph 7.26). The resellers who we spoke to told us that they look to sell at a profit if they can (Appendix G, paragraph 19), and transaction data that we have analysed shows the majority of tickets sold on the Parties' platforms had a mark-up over face value of at least 20% and average mark-ups are high (see paragraph 6.17). The opportunity to make a profit from the resale of tickets seems to be the primary driver of resellers to the Parties platforms.
- 7.86 When resellers who use the Parties' platforms do use capped sites, we have been told that they do so to sell inventory that will not typically make a profit on the uncapped sites (Appendix G, paragraph 39).

- 7.87 In the previous section we showed how the Parties are the only two uncapped secondary ticketing platforms of any material size (Table 7.1). Even if uncapped secondary ticketing platforms are included with capped secondary ticketing platforms in the comparison to the Parties, the Parties' size still far outstrips any of these (Table 7.2). Indeed, by volume of tickets sold, the Parties are around [X] of all other platforms combined (Table 7.2), which, apart from Gigsberg, are capped platforms.
- 7.88 We consider that the uncapped nature of the Parties' platforms is a key competitive parameter for the Parties and the Parties are by far the two most successful secondary ticketing platforms in the UK.
- 7.89 They have been successful at attracting high-volume resellers and buyers to their platforms (which is discussed further, below) and through indirect network effects, an increase in users on one side of their platforms has led to an increase in users on the other side (thereby enabling resellers to access a large pool of prospective buyers and buyers to access available tickets to an event, both of which we have identified as key parameters of competition). The Parties invest more in advertising than any other uncapped or capped secondary ticketing platform, facilitating ticket discovery for prospective buyers. viagogo was visited by many more unique visitors than StubHub or other secondary ticketing exchange platforms.
- 7.90 We consider that these factors, some of which are discussed in more detail below, indicate that the Parties are likely to be close substitutes.¹¹⁶
- 7.91 viagogo has submitted that StubHub is not a constraint on its offer to buyers or resellers. We consider that although viagogo may not be explicitly taking StubHub into account in setting its competitive offering, it is nevertheless influenced by the presence of StubHub in setting that offering, at least to some extent. For example, viagogo told us that:
- '[X].'
- 7.92 Given the structure of the market (discussed above) and that the Parties' platforms are the only two platforms of any material size that enable resellers to make a profit, it therefore seems to us that when viagogo tests its parameter setting in the market (examples include adjusting payment terms or suggesting resale ticket pricing to resellers, although it is also applicable to other parameters such as fee levels) – when it 'turns the dial' as they told us in the hearing – it is very likely that the impact in the market (and on

¹¹⁶ We consider these are the main factors that drive competition between the Parties although they are not the only factors. For example, we also note that some resellers told us that the Parties had similar functionalities (Appendix G, paragraph 27).

viagogo's business) reflects the close competitive presence of StubHub in the market.

- 7.93 We now turn to discussing some of these factors, as well as others, in regard to how they are used to attract resellers or buyers to the Parties' platforms. It is important to note that although we have examined how the Parties compete to attract resellers and buyers to their platforms, we have not lost sight of the indirect network effects operating in the market. Therefore, we are acutely aware that if the Parties are strongly competing for resellers they are also strongly competing for buyers as buyers seek the ticket inventory that resellers bring to the platforms, and vice versa.

Resellers' use of the Parties' platforms and competition to attract resellers

- 7.94 In this section we summarise the evidence which informs our assessment of how closely the Parties compete for resellers, including:

- (a) An assessment of similarities in characteristics of the Parties' resellers.
- (b) A quantitative analysis of the extent of multi-homing across the two platforms by the Parties' large resellers, including an event-level analysis of multi-homing behaviour.
- (c) Evidence from the Parties' resellers, based on:
 - (i) Those that responded to our questionnaires, including on their use of the Parties' platforms, reasons for their listing behaviour, and their views on the closeness of competition between the Parties; and
 - (ii) The results of a survey of viagogo's resellers in December 2020, submitted by the Parties, which also asked about their use of different platforms and reasons for using both Parties.
- (d) Evidence of flexing of reseller fees and terms in response to competition.

Characteristics of the Parties' resellers

- 7.95 We gathered data from the Parties on the characteristics of their resellers, including information on the number and value of tickets sold by each reseller between January 2017 and February 2020. We used this data to understand the distribution of resellers (in terms of size and genre of events covered) and test whether there were any significant differences in the Parties' reseller bases.

- 7.96 We found that there were a similar number of resellers on each platform – around [40,000–75,000] active resellers on viagogo in 2019 and [40,000–75,000] on StubHub in 2019. We also found that the mean and median GTV per reseller was similar for the Parties. In 2019, viagogo’s resellers had a mean annual GTV of £[X] and a median of £[X], while StubHub’s had a mean GTV of £[X] and a median of £[X] per annum.
- 7.97 For both viagogo and StubHub, there is a significant skew in the size of resellers, with a small proportion of resellers making up the vast majority of the value of sales on each platform. The largest 10% of resellers accounted for [more than 70%] of GTV on StubHub and [more than 70%] on viagogo, in 2019. Even within the top decile, we found that the size of resellers varied significantly, between an annual GTV of around £[X] at the lower end of the top decile to more than £[X] for the largest sellers on each platform.
- 7.98 Based on this evidence, the Parties’ resellers appear to have similar characteristics. There is no evidence that the Parties are competing for significantly different groups of resellers. They both serve a wide range of sellers, from one-off ‘casual’ occasional or fan resellers to large ‘for profit’, professional or volume resellers.

Reseller multi-homing analysis

- 7.99 We also gathered evidence on the degree of multi-homing by resellers across the Parties’ platforms. Our analysis is set out in more detail in Appendix D.
- 7.100 Our analysis shows that a significant proportion of the largest resellers use both Parties’ platforms in a year and the degree to which they do so is substantial. This suggests the Parties’ overlap on the reseller side of the platform is substantial and that both Parties’ platforms are considered a valuable sales channel. In particular, we found that:
- (a) [20–30%] of viagogo’s largest resellers sold tickets on both platforms in 2019. These sellers accounted for [X]% of viagogo’s total GTV and [X]% of StubHub’s GTV; and
 - (b) [20–30%] of StubHub’s largest resellers sold tickets on both platforms in 2019. These sellers accounted for [X]% of StubHub’s total GTV and [X]% of viagogo’s GTV in 2019.
- 7.101 Since the Parties were only able to provide information on ticket sales rather than on all ticket listings, these results provide a lower bound indication of the actual competitive overlap on the reseller side of the Parties’ platforms. Resellers may have considered both Parties’ platforms before placing

inventory on one platform, or even listed tickets on both while ultimately making a sale only on one. Neither of these forms of multi-homing would be caught by our analysis, which is based on actual ticket sales achieved by the largest resellers across both Parties' platforms in a given year.

7.102 We also found a significant level of multi-homing when looking at resellers' ticket sales for a set of large events as well as for the same event, inferring from this that multi-homers are likely to regard both platforms as viable channels for the same type of tickets, rather than using them for a different purpose (eg using viagogo for concert tickets and StubHub for sports events). In particular, we looked at a sample of 96 popular events where tickets were sold on both of the Parties' platforms and found that:

- (a) Overall the sales by multi-homers accounted for at least 21% of the total GTV achieved by the Parties for these events; and
- (b) For each event included in our sample, there were some large resellers concurrently using both Parties' platforms to sell tickets to the same event.

7.103 The data that we have does not allow us to observe whether resellers listed the exact same ticket on both platforms, rather than different tickets to the same event. However, resellers told us that there were costs of listing the same ticket on more than one platform because of the risk of selling the same ticket twice to buyers across the two websites. For this reason, it appears to be more common for large resellers to split their ticket inventory between the Parties' platforms (and potentially other sales channels), rather than putting all their tickets onto both platforms. This is also consistent with the fact that, although our analysis shows that many resellers do use both platforms, we do not see all resellers multi-homing – if it were costless to list the same tickets on both platforms then we might expect to observe significantly higher rates of multi-homing. The Parties' reseller survey similarly suggested that only [30–40%] of multi-homers listed the same ticket on more than one platform.¹¹⁷

7.104 One implication of this is that some large resellers that use both the Parties' platforms are having to make decisions continuously over how many tickets to put on each.¹¹⁸ Even where resellers see the Parties' platforms as being better for targeting different groups of buyers, and so see them to some

¹¹⁷ See Appendix H, paragraph 20 and Appendix G, paragraph 15.

¹¹⁸ Resellers told us that they consider on which platforms to list their tickets, or how to allocate the listing of multiple tickets, and will take into account how well tickets are selling on platform or whether they should be listed on another platform, the type of event to which the ticket is for and the estimated pool of potential buyers on the platform for that event (see Appendix G).

degree as complementary ways of reaching different buyers, there is still strong substitutability between the platforms in deciding which and how many tickets to list on each.

- 7.105 The Parties argued that our finding of high levels of multi-homing did not necessarily demonstrate that sellers were using the platforms as substitutes. Instead, the Parties argued that the platforms might be used as complements. This might be the case if buyers typically single-home, in which case viagogo and StubHub would be viewed by resellers as complementary channels for accessing different pools of buyers served by the two platforms.
- 7.106 The Parties carried out their own reseller survey to ask resellers how and why they multi-homed.¹¹⁹ The Parties argued that the results of their survey of viagogo resellers ‘compellingly show that resellers are using the platforms as complements and only to a limited extent as substitutes’.¹²⁰ They pointed to the responses to two questions:¹²¹
- (a) On how resellers used more than one platform, among resellers that had responded that they used both StubHub and viagogo, around a third ([X]%) listed the same ticket(s) on more than one platform, almost half ([X]%) listed tickets for the same event on more than one platform, and [50–60%] listed tickets to different events on more than one platform.
 - (b) On why they used more than one platform, among resellers that had responded that they used StubHub and viagogo, [60–70%] of these resellers responded that it was to ‘reach/access different customers through different platforms’, [50–60%] responded that ‘different platforms are stronger for different events’, [30–40%] said that they wanted ‘to sell a ticket on the platform with more preferable terms (eg lower fees)’, and [20–30%] responded that their reason was ‘less competition from other resellers on other platforms’.¹²²

¹¹⁹ The Parties submitted the survey very late in the inquiry timetable and after the deadline for responses to our [Provisional Findings](#). We note that the CMA’s [Good practice in the design and presentation of customer survey evidence in merger cases \(CMA78\)](#) says that timing should be a key consideration for the Parties when considering whether to conduct a survey (paragraph 1.21) and that parties wishing to conduct a survey for a merger case are strongly encouraged to contact the CMA in the early stages of the survey process (paragraph 1.23).

¹²⁰ See Appendix H, paragraph 25.

¹²¹ See Appendix H, paragraph 20.

¹²² The Parties pointed out that these shares are lower when expressed as a percentage of all viagogo resellers responding to the survey, rather than when expressed (as here) as a proportion of those viagogo resellers that were also using StubHub. The Parties submitted that [50–60%] of resellers responded that they were using more than one platform in order to ‘reach/access different customers through different platforms’, [30–40%] responded that ‘different platforms are stronger for different events’, [20–30%] said that they wanted ‘to sell a ticket on the

7.107 However, we disagree with the Parties' argument and consider that our multi-homing evidence does suggest that many resellers treat the Parties' platforms as substitutes, for the following reasons:¹²³

- (a) As set out at paragraph 7.51, we have found that buyers are generally willing to switch between different secondary ticketing platforms and the evidence does not support their contention that the Parties' platforms serve distinct and largely mutually exclusive pools of consumers. Given this behaviour by buyers, we would expect many resellers to treat the Parties' platforms largely as substitutes rather than complements.
- (b) It is also consistent with the views of resellers that responded to our questionnaire, who in many cases told us that they treated the Parties' platforms as substitutes when deciding where to list and sell tickets. This evidence is summarised in the following section and in Appendix G.
- (c) While the Parties' survey of viagogo resellers found that 'the vast majority' of those viagogo resellers that used both of the Parties' platforms did so for reasons that suggested complementary use (eg to 'reach/access different customers through different platforms'), many such resellers also gave reasons which indicated that they used the Parties as substitutes (eg 'to sell a ticket on the platform with more favourable terms (eg lower fees)'). Even where resellers pointed to a reason for using both platforms which indicates that the Parties' reach some different potential buyers, this falls far short of indicating that the Parties provide access to distinct and largely mutually-exclusive pools of buyers, such that they do not compete for resellers' listings, as the Parties have argued.¹²⁴
- (d) Finally, as noted in paragraph 7.103 above, resellers often split their ticketing inventory between the Parties' sites rather than listing all of their tickets on both platforms. This means that, even if they see benefits of listing inventory on both Parties' sites in order to attract a wider pool of buyers, there is strong substitutability between the platforms in deciding which and how many tickets to list on each.

7.108 Overall, our view is that both our own analysis and the results of the Parties' reseller survey suggest that resellers multi-home for a mix of different reasons. However, as noted in paragraph 7.51, the evidence does not show that the Parties are serving distinct, mutually-exclusive groups of different customers, and we have direct evidence from resellers that the Parties'

platform with more preferable terms (eg lower fees)', and [20–30%] responded that their reason was 'less competition from other resellers on other platforms'.

¹²³ See Appendix D, paragraph 12.

¹²⁴ Parties' response to Provisional Findings, paragraphs 13 and 15.

platforms are treated to some extent as substitutes. While the evidence also suggests that some resellers use the platforms as a way of targeting different customers, this does not remove the competitive interactions between them, particularly in the context where resellers are making frequent decisions about how to split their inventory between different platforms.

Resellers' views on closeness of competition

- 7.109 We asked resellers about their use of the Parties' platforms and whether they viewed the Parties as close alternatives. As described further in Appendix G, 54 of the 59 respondents were from large 'professional' resellers and so these responses mostly reflect the views of this type of reseller who make up a substantial share of the Parties' revenues.
- 7.110 28 out of 59 respondents told us that they only sold on the Parties' platforms and did not use any other sales channels in 2019, and a significant majority, 51 out of 59, listed the Parties as their first and/or second most-used resale channels. For the resellers for whom this was not the case, only one reseller mentioned an alternative secondary platform instead, with the other resellers pointing to their own websites or other 'offline' sales (eg through travel agencies) in their top two.
- 7.111 viagogo was viewed as a strong alternative to StubHub by 43 out of 59 resellers listing viagogo as an alternative to StubHub and most of these (28 out of the 43) saying that it was the only alternative. Indeed, this is likely to understate the significance of viagogo as an alternative, as only a very small number provided alternatives without including viagogo. Of those that did list viagogo as an alternative, the average strength given was 4.5-out-of-5, which was the highest given to any platform.
- 7.112 StubHub was also seen as the strongest alternative to viagogo. More resellers, 46 out of 49, listed StubHub as an alternative to viagogo than the other way around, with 23 of that 46 who viewed StubHub as the only alternative and with an average strength of alternative of 3.2-out-of-5, which was the highest for any alternative to viagogo. This is consistent with other sources of evidence which indicate that StubHub is the closest alternative to viagogo.
- 7.113 Open text responses from some resellers also suggested close competition between the parties. A number of resellers recognised viagogo to be the leading platform in the market, described as the 'market leader' by one reseller, who also said that StubHub was 'the only serious competitor to

viagogo'.¹²⁵ Resellers also indicated that they thought of the Parties as 'each other's main competitor' and as the only two well-known options because of what they spend on Google Ads.

7.114 The Parties questioned our interpretation of resellers' responses in a number of areas, arguing that:

- (a) Reseller responses to the question of whether the Parties were 'alternatives' did not demonstrate that they were close competitors, nor did they justify a finding of an SLC;¹²⁶ and
- (b) Resellers that were using both platforms may be using them as either complements or as substitutes, but the CMA had not engaged with resellers on the issue.¹²⁷

7.115 As set out above (paragraphs 7.111 and 7.112), reseller responses indicated that they considered the Parties to be 'strong or close alternatives' and much closer than other platforms and sales channels. Many resellers also provided reasons to support their assessment of the extent to which the Parties and other platforms and sales channels were strong or close alternatives. These comments and explanations showed a mix of responses, but tended to support the view that, for many resellers, the Parties were substitutes rather than complements:

- (a) Seventeen of the multi-homing resellers gave responses which suggested that they viewed (and used) the Parties' platforms as substitutes, eg 'StubHub is a fairly big, proper site which takes business away from viagogo'.
- (b) Twelve of these resellers gave responses which suggested that they viewed (or used) the Parties' platforms as complements, eg 'I listed the same tickets on both ... as I perceived they appeal to different markets. ... StubHub appeals more to US customers, viagogo more to Europe'.
- (c) Many resellers, when asked why they used the Parties' platforms, responded that they used both to reach a greater number of buyers. This suggests that some resellers see the Parties as reaching some different buyers, such as StubHub reaching more US-based buyers or football

¹²⁵ Various resellers view viagogo as leading in the market – for example (in response to the CMA's reseller questionnaire): [redacted] states '[redacted]', [redacted] describes viagogo as a '[redacted]', [redacted] describes '[redacted]' and [redacted] stated that viagogo generates the most sales in the UK, with StubHub being 'the only serious competitor to viagogo'.

¹²⁶ Parties' response to Provisional Findings, paragraph 71.

¹²⁷ Parties' response to Provisional Findings, paragraph 12.

fans, but not that they reach distinct or largely exclusive pools of buyers, as the Parties have argued.¹²⁸

- (d) Remaining multi-homing reseller responses were either ambiguous (17), eg saying that they will move tickets to another site if they are selling badly, or that tickets sell better on one than the other, or did not include any relevant comments over and above their basic response on which platforms were considered to be ‘close alternatives’.

7.116 Overall, this evidence indicates that most resellers with whom we engaged viewed the Parties as close substitutes, and much closer competitors than other potential resale platforms and channels. A number of resellers did point to some differences in the buyers that they tended to attract on each platform (eg StubHub giving better access to US buyers or to fans of specific sports, while viagogo reached more buyers overall due to its greater spend on Google Ads), suggesting that there was also a degree of complementarity in some resellers’ use of the two platforms for listing their tickets.

Evidence of flexing of reseller fees and terms in response to competition

- 7.117 We looked at evidence on the Parties’ reseller fees and payment terms offered to resellers, and any changes to these fees, payment terms or other aspects of their offers in order to attract resellers to their platforms. We did this in order to determine the extent to which the Parties were responding to competitive constraints in making those decisions.
- 7.118 viagogo submitted that it had not changed its reseller fees since 2017, while StubHub stated that its last material change was in January 2018. We found that there were few material changes in either viagogo or StubHub’s average reseller fees in the period 2018–2020. Based on the Parties’ 2019 transaction data (for UK events), viagogo’s average reseller fee was around [X]%, while StubHub’s average reseller fee was around [X]%. We also found that larger resellers paid, [X] on viagogo [X], while StubHub’s larger resellers paid, [X].
- 7.119 However, we found some changes to fee levels for individual resellers made by each Party. For example, we observed a temporary decrease in average reseller fees paid by StubHub’s largest resellers in July 2019. This is consistent with StubHub’s internal documents which pointed to a number of initiatives offering time-limited or event-specific reseller fee discounts in response to the suspension of viagogo from Google Ads in that period

¹²⁸ [Parties’ response to Provisional Findings](#), paragraphs 13 to-15.

(discussed in more detail below). As shown in Figure 7.2, average fees decreased by around [REDACTED], ie from approximately [REDACTED]% to [REDACTED]%.

- 7.120 We have also found that StubHub gives different segments of resellers [REDACTED]. The reseller segments include: ‘Consumers’ who receive the [REDACTED]; ‘Mini Sellers’ who receive this [REDACTED]; and ‘Top Sellers’ who are business-to-consumer resellers providing strategically important supply or selling significant volumes of tickets. These top sellers have [REDACTED]. StubHub told us that it has [REDACTED] other reseller segments that also receive [REDACTED].

Figure 7.2: StubHub average reseller fees, by decile, January 2019 to February 2020

[REDACTED]

Source: CMA analysis of StubHub’s transaction data.

- 7.121 viagogo had several instances in which resellers had been offered non-standard fees, [REDACTED]. viagogo submitted that it does not offer performance or volume-related discounts to resellers. [REDACTED].
- 7.122 With regard to payment terms, viagogo offered [REDACTED] to [REDACTED] in 2017. More recently, [REDACTED] have been paid for at least some of their transactions [REDACTED].
- 7.123 In 2019, StubHub [REDACTED] that were paid before the event for at least some of their transactions. The share of GTV accounted for by these resellers [REDACTED]. The evidence from the Parties’ internal documents indicated that StubHub [REDACTED], and, in particular during the period that viagogo was suspended from Google Ads, [REDACTED]. Consistent with viagogo’s submission that it produces few written documents recording its commercial decision-making around setting and adjustment of buyer and seller fees, there were few ‘normal course of business’ documents showing adjustments in reseller fees or payment terms and the rationale for these.
- 7.124 Overall, this evidence shows that the Parties can flex – and have flexed – the parameters of competition, including fees and payments terms, in response to competition. We found more evidence of StubHub directly responding to viagogo (including following viagogo’s suspension from Google Ads, as described below) than the other way around. However, as noted in paragraph 7.92, when viagogo tests changes to different parameters, we would expect its decisions to reflect the close competitive presence of StubHub in the market.
- 7.125 The Parties submitted that one would expect the level of flexing found would be higher on events for which they competed (ie both sold tickets) compared to events for which they did not compete. In our view, this implies that viagogo and StubHub should be discriminating across different events for

each reseller – offering better sale conditions in relation to ticket listings for events that are also on sale on the other platform, while applying less favourable sale conditions in relation to ticket listings for events for which tickets are not available on the other platform. We disagree that, as a result of competition, higher fees on non-overlapping events should be observed. Indeed, the strategy of discriminating across different events for each reseller is likely to be very difficult to implement in practice as it would require the Parties to continuously monitor each other's website and update their commercial offer to resellers as new tickets get uploaded to the platform. In addition, we note that raising the fees on the tickets for events that are not on sale on the other Party's platform is likely to act as an incentive for resellers to move the inventory concerned onto the rival platform. Given the importance of attracting and retaining inventory on the platform for the Parties' business model, it is unclear why they would discriminate across the tickets provided by resellers and hence risk losing ticket listings to a platform that can offer a very similar sales channel for that reseller's listing.

Conclusions on competition for resellers

7.126 We have found that the Parties compete very closely for resellers:

- (a) They have very similar profiles of resellers, ranging from small occasional sellers through to large professional resellers;
- (b) A significant proportion of the largest resellers sell across both platforms, including for the same event, which, in combination with evidence from resellers on their reasons for multi-homing, indicates that many resellers are substituting between the two platforms in deciding where, which and how many tickets to list on each;
- (c) Resellers that we spoke to see the Parties as strong alternatives to one another, and much stronger alternatives than other available platforms and sales channels. This is reflected in how resellers actually use the Parties' platforms compared to other platforms and channels, including those resellers that use the Parties that use both platforms to list tickets for the same event, and so are continuously deciding how many tickets to list on each platform; and
- (d) There is some evidence that the Parties flex their fees and payment terms in an attempt to attract and retain resellers, and that StubHub in particular has done so in response to actions taken by viagogo.

Competition between the Parties to attract buyers

- 7.127 We have found that attracting buyers to a ticketing platform when the prospective buyer is discovering what tickets are available to the event that they wish to attend is an important part of competition. To understand the closeness of competition between the Parties on the buyer side of their platforms, we have considered the extent to which the Parties overlap in the sales of tickets to the same events and how buyers typically search for and purchase secondary tickets online. We have also assessed the consumer acquisition strategies of the Parties and other primary and secondary ticketing platforms. Below we discuss the evidence related to the main measures that the Parties take to attract buyers directly. Our analysis is set out in more detail in Appendix F.
- 7.128 In addition to these measures taken by the Parties, paragraph 7.27 sets out the relevant factors that buyers themselves take into account when purchasing secondary tickets on uncapped secondary ticketing platforms. These are availability of tickets to the live event that they wish to see, the price of the ticket, the buyer guarantees in place and the brand of the platform operator. Of these, the availability and price of tickets are dependent on the resellers using the platform. These two factors are therefore examples of how the indirect network effects between resellers and buyers work in practice. Given these network effects, if the Parties are very close competitors for resellers, as we have found above, then this implies that they will also be close competitors for buyers.

Parties' event overlap and consumer journey

- 7.129 Based on the Parties' transaction data, we found that there was significant overlap in the events for which tickets were sold on both viagogo and StubHub. Indeed, the majority of both platforms' weekly sales typically come from events for which tickets were sold (and therefore listed) on both platforms. In particular, Figure 7.3 shows that on average more than 50% of both Parties' weekly sales during the period between January 2018 and February 2020 came from buyers purchasing tickets to events for which tickets were sold on both viagogo and StubHub. Indeed, in many weeks over the period the figure was over 60% for either viagogo or StubHub. This indicates that the Parties' platforms tend to have tickets to the same events

at the same point in time, although tickets for each specific event may be available in different numbers on the Parties' platforms.¹²⁹

Figure 7.3: Parties' weekly sales (GTV) coming from the sale of tickets to overlap events

[REDACTED]

Source: CMA analysis of the Parties' transaction data.

Note: [REDACTED].

- 7.130 Our understanding, based on the Parties' submissions, is that when looking for tickets to an event most consumers typically start their search by using an internet search engine. Therefore, we have gathered data to assess the importance of search traffic to the Parties' and other ticketing platforms. Based on SimilarWeb data on the sources of traffic to ticketing platforms in 2019, we found that paid and organic search results accounted for the vast majority of the unique visitors to the Parties' platforms in a month (more than [REDACTED]% of the unique visitors) and that online search is a much more important source of traffic for the Parties and for Gigsberg (for which search results accounted for over [REDACTED]% of its traffic) than for the other primary and secondary ticketing platforms.
- 7.131 Having established that online search is the main channel whereby the Parties attract buyers, we also note that the Parties told us that the 'fan searches for tickets will virtually always be event specific', and that buyers are willing to choose between platforms based on ticket availability and prices.¹³⁰ Given the extent of the Parties' event overlap, we consider this indicates the Parties are likely to be close competitors from the buyers' perspective.
- 7.132 Further, consistent with their focus on consumer search as a source of traffic, the Parties told us that most buyers purchase very small volumes of tickets with few repeat purchases in any given year.¹³¹ We found confirmation of the low levels of repeat purchase by the same buyer in the Parties' transaction data. Our analysis found that only [0–5%] of the ticket buyers who used viagogo made more than two transactions on its platform during the period from January 2018 to February 2020, while [over 80%]

¹²⁹ The Parties submitted that the CMA's finding about the extent of the event overlap between the Parties' platforms should be interpreted as evidence that the competitive overlap between viagogo and StubHub is actually limited. We disagree with the Parties and, as mentioned above, consider that the analysis indicates that the Parties compete to attract buyers interested in attending the same events. As explained in the note to Figure 3, we also note that the approach adopted to match events across the Parties' platforms is likely to deliver a conservative indication of the competitive overlap between the Parties.

¹³⁰ Together with other factors like customer service and the offer of guarantees.

¹³¹ See, for example, [REDACTED] where viagogo clearly states that it focused primary on buyer acquisition over retention and investing in repeat and retention is described as a 'future opportunity'.

made no repeat purchase on the viagogo platform. Similarly, the equivalent analysis for StubHub shows that the customers who used StubHub to buy tickets more than twice amount to only [0–5%] of StubHub’s customer base, with [more than 80%] making just a single transaction in that 26-month period.

- 7.133 The Parties have submitted that ticket buyers single-home, with a tiny proportion of StubHub’s buyers also using viagogo to purchase tickets within the same year and vice versa.¹³² However, as explained above, we do not consider that the limited use of the Parties’ platforms by the same set of buyers provides evidence of buyer single-homing in a way that is relevant to the assessment of the competition between the Parties. Rather, the lack of evidence of buyers purchasing tickets on both viagogo and StubHub is wholly consistent with the infrequent purchase of tickets to live events, especially secondary tickets.
- 7.134 Overall, this evidence shows that online search is the most important channel for traffic to the Parties’ websites and, being interested in attending a particular event, fans’ search terms are typically event-specific rather than involving a particular platform. This search-driven consumer journey is consistent with the low levels of repeat purchases (that is, by the same buyer on a given platform) observed in the Parties’ transaction data. We also found that the Parties overlap significantly in the events for which tickets are on sale on their platforms at any given time, with over 50% of the Parties’ weekly sales coming from tickets to a common set of events. This suggests that a significant proportion of the ticket inventory available on the Parties’ platforms will appeal to the same set of buyers for whose attention the Parties are likely to compete.

The Parties’ consumer acquisition strategies and ad spend

- 7.135 We have found that the Parties compete to attract buyers to their websites by using several channels, such as promoting their websites in paid search results or through advertising events for which they have tickets available on social media platforms.
- 7.136 As explained above, search traffic is key to the Parties’ platforms. Based on an analysis of SimilarWeb data, we found that paid search advertising accounted for a similar proportion of traffic to the Parties’ websites: in 2019

¹³² [Parties’ response to Provisional Findings](#), paragraph 13.

about [X]% of monthly visitors to viagogo and StubHub arrived to their websites by clicking through an ad in paid search results.¹³³

- 7.137 The importance of paid search advertising is reflected in our analysis of the Parties' data on their marketing spend, their internal documents and the statements made by Parties in their submissions, representations and hearings.
- 7.138 The Parties submitted that our analysis of the marketing spend data does not point to material competition between them and their consumer acquisition strategies 'mean that StubHub is not competing for the same consumers as viagogo', including in relation to paid search advertising, where StubHub focuses to a much lesser degree and their overlap in the keywords is only [X]%.¹³⁴
- 7.139 viagogo is largely focused on acquiring consumers through paid search advertising to support its growth, which accounted for the vast majority ([X]%) of its advertising spend in each year of the period 2017–2019. [X]. viagogo described how this could improve the effectiveness of its paid search advertising strategy: '[X]'.
- 7.140 While StubHub's marketing strategy has been more diverse (ie by promoting its brand through 'above-the-line' campaigns and on social media channels), paid search advertising has accounted for more than half ([X]%) of its advertising spend in each year of the period 2017–2019. StubHub told us that it had previously used a paid search strategy that [X]. StubHub told us that it changed this strategy [X], which it said would allow it to manage its paid search advertising [X]. In addition, StubHub told us that it currently considers the average buyer to have little brand affinity with secondary ticketing platforms. This is because StubHub sees a relationship between the ticketing inventory available on its platform and how it executes its marketing and advertising strategy. For example: [X].
- 7.141 We found that the advertising activities of other platforms are much more limited than those of the Parties, particularly in relation to the use of paid search advertising. [X] and [X] do not have separate marketing and advertising strategies for their secondary ticketing exchange platforms and typically rely on their relationships with event organisers for the majority of

¹³³ As reported in the Appendix F, we found that on average [X]% and [X]% of monthly visitors to viagogo and StubHub, respectively, clicked through a paid search link in 2019. We consider that these proportions have been affected by viagogo's Google Ads suspension in the period July 2019 to November 2019. For example: the average proportion of monthly visitors to viagogo's website who arrived by clicking through a link in paid search results was around [40–50%] when excluding the period July 2019 to November 2019 from our analysis.

¹³⁴ Parties' response to Provisional Findings, paragraph 30.

traffic to their websites. Gigsberg said that, while the majority of traffic to its site generally comes through Google search, StereoBoard (a ticketing comparison website) is an important affiliate for attracting traffic (and source of consumers who purchase tickets) to its platform. Other ticketing platforms said that they undertake very limited or no marketing and advertising (including paid search advertising) to attract buyers to their websites.

- 7.142 This is reflected in the marketing and advertising spend of the Parties and other platforms. The Parties have been the ticketing platforms with the largest annual advertising spend in the period 2017–2019, with viagogo’s advertising spend in 2019 being [more than £5 million] and StubHub spending [more than £5 million]. In relation to paid search advertising, viagogo’s spend in 2019 was [more than £5 million] (which is lower than may have otherwise been the case without its Google Ads suspension) and StubHub’s spend was [less than £5 million]. Aside from the Parties, the ticketing platforms with the next largest paid search advertising spend in 2019 were [X] with [£2–4 million] and Gigsberg with [£0–2 million].
- 7.143 Overall, the evidence available to us indicates that the Parties’ consumer acquisition strategies, while being somewhat differentiated, are more closely aligned than those of other competitors. Both place a more significant focus on capturing demand through paid search advertising than on other buyer acquisition strategies and spend a significant proportion of their marketing spend on similar strategies. This is also consistent with the evidence on number of unique visitors to each site, with the majority of visitors to the Parties’ websites arriving after clicking through a link shown in organic or paid search results (paragraph 7.130). Both Parties also focus on paid search that relates to specific events, which, given the extent to which their ticket sales relate to the same events, also points towards close competition for buyers. This therefore suggests that the Parties compete closely to attract consumers and that other ticketing platforms pose a weaker constraint on the Parties’ ability to attract customers to their websites through marketing and advertising.

Analysis of keyword bidding on Google Ads

- 7.144 To further investigate similarities and differences between viagogo’s and StubHub’s consumer acquisition strategies, we also gathered information from the Parties on their paid search bidding strategies, including the list of all keywords that they had bid for on Google Ads each month during the period January 2018 to February 2020 and the list of the top 50 keywords, by number of impressions, per month.

- 7.145 We noted at the outset that comparing paid search strategies is difficult in this market for several reasons. First, most bidding occurs on keywords relevant to a particular event that is inherently tied to a specific point in time (ie the date of the event), making the keyword bidding strategies subject to continuous updating. This in turn affects the size of the dataset on historic bidding information and the feasibility of matching related keywords across time and across different platforms' keyword data. Second, we noted that the amount spent on different keyword search terms varied significantly, but we were not able to collect information on spend broken down by each keyword due to the difficulties of retrieving this data that were raised by the Parties. Third, the possibility of undertaking a contemporaneous analysis of the Parties' Google Ads bidding strategies by looking at real-time paid search results was not a viable one for our investigation because of the inactivity of the live events and ticketing industry caused by the Coronavirus (COVID-19) pandemic and the fact that this is a completed merger. Our analysis of the Parties' Google Ads bidding strategies has therefore been relatively limited in scope.
- 7.146 We found that the Parties have a similar approach to paid search advertising because [REDACTED], whereas rival ticketing platforms tend to take a narrower approach.¹³⁵ However, when bidding on Google Ads keywords the Parties have had different approaches which were not driven only by the difference in the Parties' relative sizes (with viagogo selling tickets to a much larger number of UK events than StubHub – ie [REDACTED] in 2019 and about [REDACTED] in 2018). During the period January 2018 to February 2020 viagogo bid on [more than 100,000] keywords on average each month whereas StubHub bid on fewer keywords, around [28,000–30,000] on average each month, which are targeted at buyers more likely to make a purchase.
- 7.147 These different approaches are reflected in the overlap of keywords bid on by the Parties in each month. When looking at the list of all keywords the Parties bid for on Google Ads, we found that StubHub bid on [less than 10%] of viagogo's keywords on average each month whereas viagogo bid on [40–50%] of StubHub's keywords on average each month.¹³⁶ However, we note

¹³⁵ In particular, we note that the Parties' approach differs from [REDACTED].

¹³⁶ By restricting the analysis to the Parties' top 50 keywords in a month, we found the overlap to be [less than 10%]. In the Parties' response dated 14 January 2021, the Parties submitted that this finding points towards limited direct competition between the Parties. However, we consider that this analysis is unlikely to be informative about the level of competitive interaction between the Parties. This is because the Parties typically bid on a large volume of keywords each month (ie [more than 100,000] for viagogo and [28,000–30,000] for StubHub) and when focussing on the top 50 keywords the analysis would cover about or less than 0.1% of the total number of keywords. The limited coverage that focussing on this small set of keywords would achieve is also confirmed by the fact that the top 50 keywords only account for a limited fraction of the Parties' monthly spend (ie on average [REDACTED]% and [REDACTED]% of viagogo's and StubHub's monthly spend respectively). Given the difference in the Parties' sales mix (with viagogo having a stronger focus on music and StubHub being more

that these results only provide a lower bound indication of the overlap in the Parties' paid search bidding activity because they are based on keywords that exactly match across the Parties' lists.¹³⁷ This means that, due to small differences in the keywords submitted by the Parties, which are often irrelevant to how the Google Ads algorithm matches keywords to actual search terms, our analysis would not consider as an overlap some keywords which would in practice see the Parties compete head-to-head for buyers.¹³⁸

7.148 Given that both Parties focus a substantial share of their marketing spend on paid search, and that this tends to be event-specific, the substantial overlap that we observe in the events for which tickets were sold on each platform means that it is likely that the effective overlap in keywords that leads to ads being seen by the same potential buyers is higher than our analysis suggests.

7.149 The Parties highlighted the low proportion of viagogo's keywords bid on by StubHub and argued that this was evidence that StubHub provides only a very a limited competitive constraint on viagogo and, consistent with the logic adopted by the CMA in the recent *Hunter Douglas N.V./247 Home Furnishings Ltd* merger case,¹³⁹ the Parties' limited overlap in their Google Ads keywords indicates that the Parties are not particularly close competitors on the buy side of the platform.¹⁴⁰ In relation to the larger proportion of StubHub's keywords that are bid on by viagogo, the Parties submitted that, in identifying the overlap, the CMA's analysis does not take full account of the different types of keywords, in particular 'match types' and [X],¹⁴¹ used by viagogo and this would result in an overestimate of the overlap between the Parties as 'many of the potential matches of "closely related keywords" highlighted in the CMA's results will not, in fact, be matches at all'.¹⁴²

7.150 In response, we note that:

sport-oriented), it is also unsurprising that looking at a very small number of keywords may result in a limited overlap.

¹³⁷ See also Appendix F, paragraphs 58 to 60.

¹³⁸ Examples of small differences in overlapping keywords which would lead to false negatives in our analysis include different ordering of the same words (like '[Sting Tickets]' and '[Tickets Sting]' should be considered as an overlap but this is not currently being picked up by the analysis) and, in relation to 'broad matches', the use of synonyms and misspellings. See [About keyword matching options](#), Google Ads Help (accessed 17 December 2020).

¹³⁹ See *Hunter Douglas N.V./247 Home Furnishings Ltd*, Final Report (14 September 2020).

¹⁴⁰ [Parties' response to Provisional Findings](#), section B(iii) and paragraphs 31 and 33.

¹⁴¹ A 'negative keyword' is when an advertiser specifies that its ad is not shown when a particular phrase is searched for. For example, viagogo may want its ad to be shown in results for searches for 'Ed Sheeran' but not for 'Ed's Shearing barber' therefore it would include 'barber' as a negative keyword. We understand that the Parties' argument is that, had the analysis taken the large number of 'negative' keywords purchased by viagogo into account the extent of the overlap between the Parties would be significantly lower.

¹⁴² [Parties' response to Provisional Findings](#), paragraph 32.

- (a) The asymmetry between StubHub and viagogo largely reflects the different Google Ads bidding approaches, and in particular the fact that viagogo bids on [X] as many keywords as StubHub on average each month. We found that there was an average of [X] perfectly matching keywords across the Parties each month,¹⁴³ and that viagogo and StubHub compete head-to-head on at least these keywords.
- (b) Our analysis takes account of ‘match types’ by adopting a very conservative approach according to which an overlap is identified only when the keywords as submitted by the Parties are exactly the same.¹⁴⁴ Also, as confirmed by viagogo, the performance data provided already reflects the presence of the [X] applied to the campaigns confirming that they are not a concern for our analysis. Given this and the conservative approach adopted in relation to ‘match types’, we considered it very unlikely that our analysis would lead to an overestimate of the Parties’ overlap.
- (c) Our assessment of the Parties’ strategies in relation to Google Ads keyword bidding is not inconsistent with the CMA’s position in the recent *Hunter Douglas N.V./247 Home Furnishings Ltd* merger case.¹⁴⁵ This is because (i) the feasibility and interpretation of an analysis are always grounded in the specifics of the case; (ii) despite the challenges with comparing the Parties’ keyword bidding behaviours in a dynamic setting like the one in which the Parties operate (see paragraph 7.144) we found that viagogo bid on a significant proportion of StubHub’s keywords even on a very conservative measure of the overlap; and (iii) in both cases the analysis of the Parties’ keywords bidding strategies was assessed alongside other quantitative and qualitative evidence on competition between the Parties.

7.151 Our view is that the small proportion of viagogo’s keywords bid on by StubHub is mainly a reflection of the Parties’ differing bidding approaches (and in particular the higher degree of sophistication of viagogo’s strategy covering a broader range of keywords compared to StubHub’s simpler ‘bottom of the funnel’ approach¹⁴⁶ involving fewer keywords) and the

¹⁴³ As explained in paragraph 59 of Appendix F, our analysis compares keywords that perfectly match – in that they include the same words in the same order. Since this entails finding an overlap only in the instance where the Parties’ keywords are exactly the same, this approach is very conservative and only provides a lower bound estimate of the overlap in the Parties’ paid search bidding activity.

¹⁴⁴ See Appendix F, paragraphs 58 to 60.

¹⁴⁵ See *Hunter Douglas N.V./247 Home Furnishings Ltd*, Final Report (14 September 2020).

¹⁴⁶ See the definition of ‘funnel’ provided in the glossary for more information.

different number of events with tickets on sale on the Parties' platforms,¹⁴⁷ not evidence of a lack of competitive interaction. In any case, even if there was strong evidence of an asymmetric constraint between the Parties, this would still indicate closeness of competition and a likely loss of competition as a result of the Merger.¹⁴⁸ We also note that paid search strategies – and broader marketing approaches – could change over time, but, given the Parties' event overlap and similar offer to consumers, they are likely to be targeting the same potential buyers, regardless of the relative effectiveness of their paid search bidding activity at a given time.

Parties' survey of viagogo buyers

- 7.152 As set out in detail in Appendix H, the Parties conducted a survey of viagogo's buyers in December 2020.¹⁴⁹ They argued that the CMA had 'dismissed the possibility of substitution by buyers to alternatives other than secondary marketplaces without any robust buyer-side substitution analysis or any buyers' views. viagogo's buyer survey demonstrates the flaws in this approach: in reality there are significant constraints to viagogo on the buy side from platforms other than StubHub – and in particular from Ticketmaster, which dominates the entire ticketing supply chain'.
- 7.153 They pointed to the responses to two questions in their survey of viagogo's buyers, which found that:¹⁵⁰
- (a) [70–80%] of buyers would have searched/purchased elsewhere if the viagogo platform had been closed down at the time of their last transaction (the 'forced diversion' question), with only [0–5%] of buyers selecting StubHub as their most likely alternative, compared to [50–60%] choosing Ticketmaster/Live Nation, [10–20%] direct from venue/sports club, [70–80%] AXS and [10–20%] others.¹⁵¹
 - (b) The majority of these buyers who said that they would have searched or purchased a ticket elsewhere also said that they had checked prices

¹⁴⁷ Based on monthly data on the Parties' platform activity, viagogo sold tickets to about [X] UK events as StubHub in an average month in 2019. In 2018, viagogo sold tickets to about [X] UK events as StubHub in an average month.

¹⁴⁸ The Parties also submitted that our assessment has focused on whether viagogo is a constraint on StubHub while the key question in this case is whether StubHub constrains viagogo, which, they argued, is not supported by the evidence ([Parties' response to Provisional Findings](#), paragraph 33).

¹⁴⁹ Appendix H, paragraphs 6 and 7.

¹⁵⁰ Appendix H, paragraph 9.

¹⁵¹ The Parties pointed out that these shares are even lower when expressed as a percentage of all viagogo buyers responding to the survey, with StubHub only account for [0–5%] of those buyers, compared to [40–50%] choosing Ticketmaster/Live Nation, [10–20%] choosing direct from venue/sports club, [0–5%] AXS and [10–20%] others.

and/or availability of tickets at the alternative platforms or channels selected. This was the case for [60–70%] for buyers that had responded that they would have most likely used Ticketmaster.

7.154 As set out in Appendix H, we had a number of concerns about this survey evidence and the Parties' interpretation of it, including:¹⁵²

- (a) Concerns about the low response rate and the accuracy of buyer recall, given that most buyers are infrequent or one-off users of the Parties' platforms, as well as a number of issues related to the impact on the live events sector of the COVID-19 pandemic.
- (b) The risk that the survey is likely to provide a partial measure of the competitive constraints on the Parties, as it relates to viagogo buyers only – it may well be the case that a survey of buyers using StubHub would give a different view.
- (c) On the 'forced diversion' questions (referred to in paragraph 7.153 above), it is unsurprising that many buyers would mention Ticketmaster as a likely alternative that they would 'most likely' have checked, as this is the platform that buyers had most commonly used in previous ticket purchases. Many buyers also indicated that they had checked ticket availability or prices (or both) on an alternative platform. Of those respondents who had said they would 'most likely' have searched for or purchased tickets on the Ticketmaster website, [X%] responded that they had checked price or availability or both. There is no indication that these buyers found suitable, alternative tickets on the Ticketmaster website at the time of the transactions.¹⁵³ The evidence that we have on the (typically very) large price differential between tickets sold on the viagogo platform and the relevant face values shows that, for the vast majority of viagogo sales, a closely substitutable primary ticket was not available to the buyer in question.

Conclusions on competition for buyers

7.155 Overall, we have found that viagogo and StubHub compete closely for buyers:

¹⁵² Appendix H, paragraphs 10 to 16, and 18.

¹⁵³ We note that the context here differs from many other markets, where a potential customer checking other suppliers is likely to find the relevant goods or services to be available from alternative suppliers – and can then compare price, quality, terms and conditions, and so on. In the context of this market, there is no guarantee that substitutable tickets are available for sale on other websites at the time of the viagogo transaction.

- (a) The fact that the Parties compete closely for resellers and have inventory for similar events, as outlined in the previous section, means that they are also in competition for buyers to purchase these tickets.
- (b) The fact that online search is the main source of traffic to the Parties' websites, the incidence of repeat purchases by the same buyer on a given platform is very low and the Parties' event overlap is high (over 50% of the Parties' sales come from tickets to a common set of events) indicates that a significant proportion of the ticket inventory available on the Parties' platforms appeals to the same set of buyers for whose attention the Parties have to continuously compete.
- (c) The evidence available to us indicates that the Parties' consumer acquisition strategies, while being somewhat differentiated, are more closely aligned than those of other competitors. The Parties both spend more than any other primary or secondary ticketing platform on marketing and advertising, including paid search advertising.
- (d) We found that viagogo and StubHub broadly have a similar approach to paid search advertising, [REDACTED], but they have pursued different approaches to bidding on Google Ads, which makes a comparison of their keyword overlap difficult to interpret. Nevertheless, we found that viagogo bid on [at least 40–50%] of StubHub's keywords on average each month, suggesting at least that viagogo is competing strongly for the buyers that purchase tickets on StubHub.

Analysis of viagogo's suspension from Google Ads

- 7.156 We also assessed what viagogo's suspension from Google Ads in 2019 could tell us about competition between the Parties. Our analysis is set out in more detail in Appendix E.
- 7.157 viagogo was suspended from Google paid search advertising between 17 July 2019 and 24 November 2019 due to its breach of Google Ads policy ('the Google Ads suspension'). Since paid search represents a key customer acquisition channel for viagogo, the suspension led to a significant decrease in customer visits and ticket sales.
- 7.158 The Parties argued that the Google Ads suspension was a useful natural experiment for assessing the closeness of competition between viagogo and

StubHub.¹⁵⁴ While we agree that it can be informative to assess how customers responded to the suspension, we note that, given the very significant variation in ticket events and sales on the Parties' platforms from month to month, it is very difficult to predict with any degree of confidence what viagogo's and StubHub's sales would have been in the absence of the Google Ads sales ban. In our view this significantly limits the extent to which we can rely on this event to quantify the strength of the competitive constraint StubHub and other online ticketing platforms exert on viagogo. Nevertheless, we considered the Parties' submissions in detail and carried out our own investigations into the circumstances of the suspension and its impact on the business activity of different competitors in the market.

7.159 The Parties submitted two pieces of analysis suggesting that StubHub had not gained significantly from the suspension:

- (a) At phase 1, the Parties conducted analysis using SimilarWeb data on customer traffic to different ticketing platforms and websites. They estimated the diversion of traffic from viagogo to StubHub to be small ([X]) and substantially smaller than the diversion to primary ticketing platforms.
- (b) At phase 2, the Parties carried out analysis on viagogo and StubHub's monthly ticket sales (GTV) and platform revenue. Unlike the SimilarWeb analysis at phase 1, this analysis considered the impact of the suspension only on the Parties' platforms and focussed on GTV and revenue rather than website traffic. The Parties' baseline results estimated that StubHub recaptured about [X]% of viagogo's lost total sales during the period. The results of the sensitivity analysis suggested that diversion from viagogo to StubHub could amount to [X]%, depending on the model used for the analysis.¹⁵⁵

7.160 We note that the Parties' analyses produced quite different results and that the second one, and most recent estimates, suggest that the diversion to

¹⁵⁴ A natural experiment means that we are observing an exogenous change in conditions of competition, in this case resulting from Google's decision to suspend viagogo, and can observe how the market reacts. While natural experiments can provide valuable insight into competitive conditions, for example by showing how consumers would react to a sudden change, in order to provide reliable results, it is essential that the studied change occurs at a time when no other changes were taking place in the market. If the change in competitive conditions instead occurs in the presence of other market changes (like changes in the level of demand or supply of tickets), it is essential that the analysis can appropriately control for them. Due to the ever-changing nature of the event landscape, the CMA considered that a quantitative assessment of the impact of the Google Ads suspension on the activity of online ticketing platforms presents serious limitations.

¹⁵⁵ Except for one model not controlling for seasonality in ticket sales, CRA's sensitivity analysis suggested that diversion from viagogo to StubHub (estimated by using the value of ticket sales (GTV)) would range between [X]%.

StubHub was material, albeit less than would have been suggested by the Parties' respective market shares.

7.161 Having assessed the Parties' econometric submissions, we considered that neither of them can reliably measure the impact of the suspension on the activity of viagogo and of the other platforms, including StubHub. The estimates of diversion ratios provided have therefore been interpreted only as evidence of the existing competitive interaction between the Parties rather than providing an accurate measure of the strength of such interaction. Our assessment of the Parties' submissions is set out in more detail in Appendix E.

7.162 We gathered further evidence on the impact of the Google Ads suspension in three ways:

- (a) We examined how the Parties thought the suspension had affected them, based on their internal documents and responses to requests for information.
- (b) We asked third parties for their views on the impact of the suspension on their business.
- (c) We also examined the impact on secondary ticket sales based on monthly sales data from the Parties and the other largest ticketing platforms who might have been affected by the Google Ads suspension.

7.163 First, in relation to the Parties' views, [REDACTED]. It did not provide any internal documents discussing the impact of the suspension on viagogo or its competitors.

7.164 StubHub provided several internal documents relating to its assessment of the suspension. These suggest that StubHub took a series of actions, some of which were UK-specific, in an attempt to attract resellers and buyers away from viagogo:

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED];
- (d) [REDACTED];
- (e) [REDACTED]; and
- (f) [REDACTED].

7.165 [REDACTED]

7.166 Overall, StubHub's internal documents and responses to our information requests indicate that it took active and specific steps to respond to the Google Ads suspension. As a result, it saw increased traffic, listings and sales. However, StubHub submitted [REDACTED].¹⁵⁶

7.167 We also asked third parties (including primary and secondary ticketing platforms and some large resellers) to comment on the impact of the Google Ads suspension on their business activity. Overall, third-party responses indicated that no rival platforms significantly benefitted from the viagogo suspension. In particular:

- (a) Most platforms contacted said that the suspension had no discernible impact on their sales (independently of whether in primary or secondary ticketing) or that the impact could not be quantified but it is unlikely to be material in terms of increased sales on their platforms;
- (b) Most platforms are not active in paid search advertising, therefore did not note a change in their online marketing performance during the suspension. Only two platforms observed [REDACTED] in their cost-per-click, however this was small and confined to a limited number of campaigns, while one platform took the view that the absence of viagogo ads from Google search results pages may have helped it to attract traffic through organic search; and
- (c) Resellers generally noted that StubHub was the main and only clear beneficiary of the suspension as, when inventory was moved away from viagogo, it went to StubHub. No other platform was indicated as increasing its share of the market during that time, based on the actions and views of the resellers that we spoke to.

7.168 Finally, we analysed the impact of the Google Ads suspension on most of the secondary ticketing platforms active in the UK by looking at trends in ticket sales and any changes in patterns around the time of the suspension. The methodology and results of this analysis are set out in Appendix E.

7.169 Based on this analysis, we found that StubHub appears to have captured a material amount of the business lost by viagogo during the suspension period. Our findings are broadly consistent with the Parties' second set of estimates. We agree with the Parties that StubHub captured only a

¹⁵⁶ For more details see Appendix E, paragraphs 31 to 34.

proportion of viagogo's lost sales, albeit a material one. However, we have found that no other platform markedly benefitted from the suspension, with some platforms experiencing an increase in their sales, but far smaller than the increase in StubHub's sales.¹⁵⁷

7.170 In light of their own analysis outlined above, the Parties argued that the extent of estimated diversion from viagogo to StubHub was lower than would be expected based on our estimate of the Parties' market shares. They argued that this indicated that StubHub only placed a limited competitive constraint on viagogo and the Parties are subject to a much wider range of competitive constraints than just from uncapped secondary ticketing platforms.¹⁵⁸

7.171 The Parties also raised methodological issues with our quantitative analysis. They argued that:

- (a) The CMA 'dismissed the Parties' analysis (which controls for a wide variety of different factors that could affect supply and demand), and instead relied on an over-simplistic analysis of its own' that controlled for nothing and was based on a short period of time (nine months of data).¹⁵⁹
- (b) The CMA did not collect data on sales by primary ticket suppliers and other ticket sales methods, which 'points to biases in the evidence

¹⁵⁷ In the [Parties' response to Provisional Findings](#), paragraph 26(a), the Parties submitted that the CMA has been selective in the presentation of the findings of its own graphical analysis. In particular, the Parties argued that instead of focussing on metrics that provide a good proxy of the Parties' incentives (like revenue or value of sales) the CMA's graphical analysis puts more emphasis on the results based on ticket sales in terms of volume. We note that our decision to present the findings of the analysis was driven by the fact that assessing the impact of viagogo's suspension by looking at the change in the volume of ticket sales (as opposed to the value of such sales) allows a more accurate assessment of the sale trends while also being a more favourable approach to the Parties. Indeed, given the capped nature of the majority of the Parties' rivals, assessing the relative performance of the various platforms before and during the suspension in terms of GTV could lead to an underestimation of the constraint exerted by the other secondary platforms.

¹⁵⁸ [Parties' response to Provisional Findings](#), paragraphs 21 and 28.

¹⁵⁹ The Parties also submitted that the small secondary platforms which recently entered the market (like [X]) grew significantly and as a result of viagogo's suspension, much faster than StubHub did in the period covered by our analysis and that, in their view, this would question the CMA's conclusion that StubHub is a much closer competitor to viagogo than other secondary ticketing platforms. We note that, while it is particularly difficult for new entrants to disentangle platform's organic growth from the impact of the suspension on their sales (due to the fact that they may be a substitute to viagogo), [X] are small platforms with relatively little traffic and ticket inventory on their websites. Given the importance of scale and network effects in this market and the difference in business model (in particular [X]), it is unlikely for [X] to be able to effectively compete with viagogo and to be as valid a substitute for both ticket buyers and resellers to viagogo as StubHub is. In addition, we note that focusing on growth rates when analysing the impact of viagogo's suspension is likely to be misleading: indeed, even if the new platforms had grown significantly over the period of the suspension and some of their growth might be attributed to ticket sales that were re-captured from viagogo, the relevant question for assessing closeness of competition in this setting is which platforms accounted for a material share of the 'lost' viagogo sales and not what platforms grew the most during the time of the suspension. For this reason, our analysis focused on a comparison of the absolute changes to sales on the various secondary platforms (rather than on a comparison of growth rates).

gathering process and provides no probative value of the strength of competition between the Parties or from other platforms’.

7.172 In response to the Parties’ arguments, we note that:

- (a) Neither our own quantitative analysis nor the econometric study carried out by the Parties can fully control for wider variations in ticket sales which might affect different platforms in different ways. This means that, while it is clear that viagogo lost sales as a result of the Google Ads suspension, it is not clear by how much they fell relative to the counterfactual if the Google Ads suspension had not occurred. Similarly, it is not clear how much StubHub’s sales have increased with respect to the counterfactual. As a result, the quantitative estimates of diversion provided by the Parties need to be treated with a high degree of caution. Nevertheless, consistent with the findings of the Parties’ econometric analysis, we do observe a material increase in StubHub’s ticket sales during this period compared to previous years and relative to the change experienced by other ticketing platforms.

The purpose of our own quantitative analysis was to compare changes in sales for viagogo and StubHub during the period of the Google Ads suspension with those of other secondary ticketing platforms. Given the inherent challenges in controlling for other factors affecting ticket sales noted above,¹⁶⁰ we focused on observing the change in sales during a relatively short period before and after the start of the Google Ads suspension. We focused on secondary platform sales because our wider analysis strongly suggests that these are likely to be the closest competitors to the Parties, so if there was a significant impact of the Google Ads suspension, we would expect to observe this in other secondary platforms’ sales. We have also viewed this evidence alongside the other qualitative evidence gathered from third parties, outlined above, which included primary ticketing platforms as well as secondary ticketing sales, and confirmed that primary ticketing platforms did not observe any material impact from the Google Ads suspension.

- (b) Taking the qualitative and quantitative evidence together, the evidence we gathered from the other primary and secondary ticketing platforms indicates that they did not gain materially from the Google Ads

¹⁶⁰ In addition to the challenges highlighted above, we note that three out of the five ticketing platforms that are active in secondary ticketing in the UK (and were able to respond to our data requests despite the difficulties due to the Coronavirus (COVID-19) pandemic) entered the market during the first months of 2019 ([§]). Recent entry and the lack of historic data for more than half of the main secondary ticketing platforms operating in the UK (in addition to the Parties) was an additional factor which weighed into our decision not to undertake our own econometric analysis of viagogo’s Google AdWords suspension.

suspension. None of the third parties we gathered evidence from attempted actively to benefit from the suspension in the way that StubHub did. The fact that StubHub saw viagogo's suspension as a clear opportunity to gain sales (and did so) indicates that they are close competitors for buyers and resellers, and closer than other secondary platforms.

- 7.173 Overall, our view is that the evidence from viagogo's suspension from Google Ads is mixed. We found that viagogo's sales declined as a result of the suspension (which is not disputed by viagogo). StubHub actively responded and gained sales as a result (which is not disputed by StubHub). The gains made by StubHub were less than might be anticipated given the broader evidence on closeness of competition between the Parties. However, we did not find evidence that any other third Parties materially gained from the suspension, either in the quantitative evidence from their data on ticket sales or in qualitative evidence provided by third parties and resellers. Therefore, we consider that the evidence from the Google Ads suspension suggests that the Parties are each other's closest competitors, and close enough as competitors for StubHub to benefit from the event. However, we do not consider that this evidence materially informs the quantitative strength of the competitive constraint between the Parties. Although we consider it appropriate to take this evidence into account in our assessment, we have placed greater weight on other evidence.

The Parties' analysis of 'switching in'

- 7.174 The Parties submitted an analysis of the sources of new customers (both buyers and resellers) for viagogo. They found that:

(a) [REDACTED].

(b) [REDACTED].

- 7.175 The Parties argued that this analysis demonstrated that StubHub is not a significant source of new liquidity for viagogo and vice versa. Instead, new liquidity from outside of secondary platforms is far more important than liquidity from the rival platform.
- 7.176 We agree that the Parties' analysis demonstrates that attracting new buyers and sellers onto the platform is important for both viagogo and StubHub, and that 'growing the market' is a key part of the competitive dynamic. However, we consider that the Parties' analysis is consistent with a finding that the Parties compete closely, for the following reasons:

- (a) On the buyer side, low shares of new buyers coming from the other platform can be explained by the fact that buyers typically purchase tickets infrequently. The Parties told us that there are low rates of repeat purchasing among their own buyers, so in this context it is not surprising that a relatively small share of buyers have also previously used the other Party's platform. The fact that [REDACTED]% of StubHub's buyers have previously used viagogo, in spite of this low rate of repeat purchasing, indicates that buyers are willing to use different purchasing channels.
- (b) On the reseller side, since the Parties' analysis is looking only at new resellers making a first sale on the platform, we would expect these to be disproportionately made up of smaller resellers – for example, occasional resellers, who are typically fans looking to sell a ticket to an event they can no longer attend. The Parties' analysis does not indicate the value of tickets sold by resellers joining from the other platform. It also does not take account of the fact that a substantial proportion of the Parties' largest (existing) resellers already use both platforms, as demonstrated by our multi-homing analysis, and are hence able to shift inventory between the Parties in response to competitive changes without this being registered in the Parties' analysis of switching in by new resellers.
- (c) Finally, to the extent that the analysis shows that the Parties are each attracting new buyers and resellers to their platforms, we would expect them to be competing strongly for these new customers, given:
- (i) On the reseller side, the Parties submitted that viagogo aims to attract liquidity from a wide range of sources, including unused tickets, tickets currently sold offline, tickets currently sold online using classified listings websites (such as Gumtree) or social media, and tickets sold by professional resellers (among others).¹⁶¹ StubHub's internal documents refer in a number of instances to [REDACTED].¹⁶²
- (ii) As set out above, the high degree of overlap in the Parties' events and in their customer acquisition strategies points towards their being close competitors for buyers in the market to attract new liquidity too.

¹⁶¹ Parties' Phase 2 Initial Submission, paragraph 29.

¹⁶² See paragraph 7.230 below.

Conclusion on closeness of competition between the Parties

7.177 We have found that the Parties are each other's closest competitors and there is strong competition between them for both resellers and ticket buyers:

- (a) They are by far the two largest uncapped ticketing platforms in the UK and would have a market share post-Merger of [90–100%].
- (b) Although StubHub is the smaller platform, its market share in 2019 (in terms of GTV) was [30–40%] and its GTV grew by [~~8~~] % per year over the past four years.
- (c) They compete closely for resellers for the reasons given in paragraph 7.126.
- (d) The Parties also compete closely for ticket buyers for the reasons given in paragraph 7.155.
- (e) StubHub responded to the Google Ads suspension by seeking to win buyers and sellers from viagogo, including through flexing its terms to resellers and increasing its bidding on Google Ads. It was able to increase its revenues as a result. While the gains made by StubHub were less than might be anticipated given the broader evidence on closeness of competition between the Parties, we did not find evidence that other third parties gained materially from the Google Ads suspension. Although we consider it appropriate to take this evidence into account in our assessment, we have placed greater weight on other evidence (paragraph 7.173).
- (f) The Parties' 'switching in' analysis does not demonstrate a lack of competition between the Parties for the reasons set out, at paragraph 7.176.

Remaining constraints from third parties following the Merger

7.178 In this section we assess the strength of the remaining competitive constraints on the Parties from other secondary ticketing platforms, other online channels (such as social media and classified listings) and offline channels following the Merger.

- (a) We first consider the constraint from other uncapped secondary ticketing platforms in the relevant market;

- (b) We then consider the constraint from other sales channels outside the uncapped secondary ticketing platform market, including:
- (i) Capped secondary ticketing platforms – including what are sometimes referred to as ‘fan-to-fan’ ticket exchanges and similar resale facilities within the primary ticketing platforms;
 - (ii) Wider online (eg social media) and offline channels for secondary sales; and
 - (iii) Primary ticketing sales.

Competition from other uncapped secondary platforms

7.179 Aside from the Parties, the only other uncapped secondary ticketing platform of any material scale currently operating in the UK is Gigsberg.¹⁶³

7.180 Until 2018 there were two other uncapped platforms operating in the market – Seatwave and GetMeIn! – which were acquired by Ticketmaster in 2009 and 2014, respectively. Ticketmaster closed these platforms in September 2018, before launching its own capped resale platform (Ticketmaster Exchange). We consider the impact of Ticketmaster Exchange and other capped platforms in the next section.

7.181 Gigsberg is a recent entrant, having entered the UK market in April 2019. It provides a very similar secondary ticketing platform to that of the Parties, enabling professional resellers to list tickets at any price and providing similar buyer and reseller payment guarantees to the Parties.

7.182 The Parties argued that:

- (a) Having entered in April 2019, Gigsberg has already achieved [X];
- (b) The CMA’s own evidence from resellers suggested that Gigsberg shows ‘promise’, is cited as an alternative to both viagogo and StubHub and offers an alternative to the combined entity post-Merger; and
- (c) Gigsberg represents a clear example of an actual and credible constraint on the Parties, both pre- and post-Merger.¹⁶⁴

¹⁶³ As mentioned in paragraph 117 of the [CMA’s Phase 1 Decision](#), VIBE also operates an uncapped secondary ticketing platform in the UK, but no third parties (nor the Parties themselves) raised this as a relevant competitor in the course of our Phase 2 evidence gathering.

¹⁶⁴ We note that the Parties’ buyer survey asked buyers where they would have been most likely to purchase their tickets if viagogo had closed down permanently and Gigsberg was indicated as a likely option by only [X] respondents (less than [X]%).

- 7.183 To assess the strength of the competitive constraint which Gigsberg would place on the Parties post-Merger, we gathered evidence on:
- (a) Gigsberg's market share and growth since launch;
 - (b) Reseller and other third-party views on the strength of Gigsberg as an alternative to the Parties; and
 - (c) Gigsberg's own views of its position and potential growth.
- 7.184 Based on the analysis of market shares set out above in Table 7.1, we found that Gigsberg accounted for [0–5%] of GTV in the market for uncapped secondary ticketing platforms in 2019. Even allowing for its growth during the year, we found that its highest monthly share (in November 2019) was around [0–5%]. Gigsberg's GTV in that month was around [£0–1 million], compared with viagogo and StubHub which each had a GTV of around [£5–10 million].
- 7.185 We found that Gigsberg used a similar consumer acquisition model to that of the Parties, including using paid search advertising (including Google Ads) as a key route for attracting customers. However, its spend on search advertising in 2019 was significantly lower than that of the Parties – [£1.0–1.2 million] compared with [less than £5 million] spent by StubHub and [more than £5 million] by viagogo (which is lower than may have otherwise been the case without its Google Ads suspension). We also found it bid on [2,000–4,000] keywords on average each month in the period April 2019 to February 2020, which is much less than the [more than 100,000] and [28,000–30,000] keywords bid on by viagogo and StubHub, respectively, on average each month in the period January 2018 to February 2020.
- 7.186 When we asked resellers for their views on alternatives to the Parties (see Appendix G), around one third of resellers (20 out of 59) noted Gigsberg as an alternative. However, these resellers typically rated Gigsberg as being a weak alternative to the Parties' platforms (rated as 1.4-out-of-5). Furthermore, very few of the resellers that responded to our questionnaire told us that they had used Gigsberg in 2019 (7 out of 59) and never for more than 10% of their sales, suggesting that it was not seen as a practical alternative for large volumes of their inventory.
- 7.187 The qualitative views of resellers were consistent with this, most referring to Gigsberg as a relatively new company with a small presence in the market. One stated that 'Gigsberg's payment terms are currently better than viagogo's and StubHub's, but its brand recognition and reach is still nothing in comparison' and that it is 'not a credible alternative to the Parties, either now or in the future'. Another, who rated Gigsberg more highly (4-out-of-5),

stated that they ‘look promising’ but told us that they had never actually used the platform to make a sale.

- 7.188 Other third parties also shared these views about Gigsberg being a weak alternative. For example, Fan Fair Alliance, a consumer group, suggested that ‘other uncapped platforms are not credible alternatives to viagogo and StubHub’. It acknowledged that Gigsberg exists, but said that there are only two significant uncapped sites in the UK because Gigsberg is ‘less dominant in online advertising and difficult for consumers to find’.
- 7.189 This evidence is consistent with Gigsberg’s own views of its market position and potential growth. It told us that it is a ‘viable alternative’ but admitted that ‘it is a fraction of the size of viagogo and StubHub’ and while Gigsberg has a strategy to build brand awareness, attract customers and try and offer an attractive position to resellers it noted that it would take years and considerable expense to reach the size of StubHub.
- 7.190 Overall, our view is that Gigsberg would not place a material competitive constraint on the Parties following the Merger. It currently operates at a very small scale relative to the Parties and, based on its own internal projections, it would remain a very small platform relative to the Parties’ combined offering for the foreseeable future and would not provide a viable alternative for resellers wanting to sell large volumes of inventory.

Competition from capped secondary sites

- 7.191 Although we have found that capped secondary sites are in a separate market from the Parties’ uncapped platforms for the reasons set out above, we have nonetheless considered the extent to which they will exert a competitive constraint on the Parties following the Merger.
- 7.192 We have looked separately at the constraint from standalone capped secondary platforms and from capped resale platforms operated by primary ticketing platforms.

Standalone capped secondary sites

- 7.193 There are two secondary ticketing platforms of material scale currently operating in the UK which facilitate the resale of tickets at, or close to, face value: Twickets and TicketSwap.
- 7.194 To assess the constraint that fan-to-fan platforms place on the parties, we gathered evidence on:

- (a) The scale of the fan-to-fan sites compared with the Parties’ platforms;

- (b) Differences in fees, terms and conditions between the capped platforms and the Parties;
- (c) Resellers' use of these platforms and their views on substitutability of the platforms in relation to the Parties' platforms;
- (d) Evidence on consumer acquisition, including the use of search advertising; and
- (e) Their future plans, in particular any planned changes to their business models, including their resale price caps.

7.195 Twickets and TicketSwap are both small platforms compared with the Parties. As set out in the analysis of shares of supply above (see Table 7.2), we found that, although they have been growing over the last three years, they remain much smaller than the Parties:

- (a) In 2019 Twickets had a share of overall secondary ticketing sales through capped and uncapped platforms of [0–5%] by value, compared with [80–90%] in total for the Parties. It had a higher share of ticket volumes – reflecting the fact that average resale prices are lower on the capped than on the uncapped platforms – but it still had only a [0–10%] share of supply on this basis.
- (b) TicketSwap had a [X] share of secondary ticketing sales through capped and uncapped platforms in 2019 – [0–5%] by value and [0–5%] by volume.

7.196 We also found that the capped sites had significantly different fees and terms compared with the Parties. Aside from restricting sellers from charging above face value, we also found that the capped platforms charge lower fees to buyers and resellers. In particular, they often charge very low or zero fees on the reseller side (see Table 5.1).

7.197 Resellers who responded to our questionnaire commented on the strength of the capped platforms as an alternative to the Parties. Overall, capped sites were mentioned by only a small number of resellers as alternatives to the Parties and were typically given a low rating in terms of their strength as a resale platform (average score of 1.7-out-of-5).

7.198 More resellers told us that they used capped platforms than listed them as alternatives. This supports the view that the capped platforms are seen as complements rather than substitutes to the uncapped platforms by resellers, in particular for selling inventory close to the time of the event if it had not sold on the uncapped platform. For example, some resellers stated that they

used these sites ‘to dispose of unsold inventory’ and ‘when tickets did not sell on uncapped platforms’ or ‘would not make that much profit’. One seller explained that the capped sites are present but that they are not suitable alternatives for resellers. Therefore, evidence from resellers has emphasised that the ability to set the listing price on uncapped platforms and to make a profit is a key differentiator between uncapped and capped platforms and an important reason why the two types of platforms are not close competitors. We note that ticket price differences are considerable across the different types of platforms with resellers on the Parties’ platforms earning high mark-ups above face value (paragraph 6.17).

- 7.199 The platforms themselves told us that they engage in very little active marketing to attract sellers and are largely aiming to attract smaller and occasional resellers. Twickets stated that it does not allow bulk sellers at all, and that it ‘does not target valuable sellers and does not incentivise anyone to sell on our (its) marketplace’, whilst TicketSwap said that ‘professional brokers/commercial resellers were not the focus of the platform’. Both Twickets and TicketSwap also stated a preference for building relationships with primary players, whether this be promoters and event organisers or other primary outlets, in order to be their preferred resale partner.
- 7.200 Fan Groups to whom we spoke also agreed that there was a ‘distinction between capped and uncapped sites’, with one going so far as to say that they are ‘polar opposites’ in terms of what they offer and who they serve. This builds on the idea that the capped platforms do not compete for the same business as the uncapped platforms like the Parties do.
- 7.201 On the buyer side, we looked at the extent to which standalone capped secondary sites compete with the Parties to attract consumers to their websites. We found that the capped platforms carried out no or very limited marketing and advertising (including paid search advertising) to attract buyers. They told us that this, in part, reflected the fact that the capped platforms made much lower profit per sale on each transaction than the Parties, because of the capped ticket price and the lower percentage fees charged on each transaction.
- 7.202 We also considered whether the fan-to-fan sites might remove the cap and allow uncapped sales in future, for example in response to the Parties increasing fees or worsening terms to their sellers. If this happened, then the fan-to-fan sites might be expected to compete more closely with the Parties for resellers (albeit that they would still have a low market share compared with the Parties’ platforms).

7.203 We asked the capped platforms about their business model and future strategy. [X] told us that they had no plans to remove the cap.¹⁶⁵ We further consider that these sites would have very limited incentive to remove the cap in the foreseeable future because:

- (a) The fan-to-fan sites actively promote themselves to ticket buyers on the basis of capped sales and contrast themselves with the Parties in this respect.
- (b) Twickets told us that its focus is on achieving growth by ‘working with an ever increasing number of event partners in the UK as their official resale channel’, and that operating a capped model was a core part of this strategy.¹⁶⁶ [X].
- (c) The [X] previously captured by Ticketmaster’s uncapped platforms prior to closure may act as a disincentive to return [X]. [X].

7.204 Overall, we concluded that the capped fan-to-fan sites would pose a very weak competitive constraint on the Parties’ uncapped secondary platform post-Merger.¹⁶⁷

Capped resale exchanges within the primary platforms

7.205 We also assessed the extent of the competitive constraint from capped resale exchanges within the primary platforms.

7.206 The Parties argued that these secondary exchanges were an important source of competitive constraint on uncapped ticketing platforms. They argued that:

- (a) On the buyer side, primary platforms can present resale tickets to consumers alongside primary tickets in a ‘co-mingled’ environment, ‘blurring the lines’ between primary and resale tickets and making it easy

¹⁶⁵ Twickets said ‘We have never considered removing or relaxing the cap to be above face value, and will absolutely not do so in the future as it represents the key proposition of our business’, [X].

¹⁶⁶ In many instances, promoters, event organisers and performing artists deliberately set primary ticket prices below market clearing levels. Therefore, it is their preference for resale prices to be close to the face value of the ticket.

¹⁶⁷ We note that this is consistent with the findings of Parties’ buyer survey which found TicketSwap and Twickets together accounted for between one-fifth and two-fifths of the diversion from viagogo that went to StubHub. In particular, when replying to the ‘forced diversion’ question (ie where buyers would have been most likely to purchase their tickets if viagogo had closed down permanently) only [X] respondents indicated TicketSwap as the most likely alternative (less than [X]%) while results for Twickets were not even presented individually, but grouped in the ‘other’ category (representing about [X]% of responses in total).

for buyers to compare and switch between primary and secondary tickets.¹⁶⁸

- (b) On the reseller side, the primary platforms can increase ticket volumes by encouraging consumers who have bought a ticket through the primary platform to resell it on the secondary exchange, for example if they can no longer attend an event.

7.207 The Parties submitted that viagogo undertook a 'brief' survey of new buyers in 2019, which asked buyers where they made their last ticket purchase prior to first using viagogo. The results show that only a very limited proportion of buyers that responded (1%) previously used StubHub. Instead, customers last bought from Ticketmaster (35%), AXS Tickets, Eventbrite and Seetickets more so. Indeed, more buyers had purchased a ticket last from Facebook (2%) than from StubHub.

7.208 They also argued that resale prices on these platforms were not necessarily capped,¹⁶⁹ pointing to:

- (a) Ticketmaster adjusting resale prices on its platform 'to match dynamically priced primary tickets';¹⁷⁰
- (b) Two examples of tickets listed as 'Resale Tickets' on the Ticketmaster website, which were 15% and 18% above face value;¹⁷¹ and
- (c) The fact that AXS Resale allows tickets to be listed for up to 10% above face value.¹⁷²

7.209 The Parties also argued more generally that primary platforms imposed a wider competitive constraint on them. We consider these broader interactions in the following section on the constraint from primary ticketing platforms.

7.210 In order to assess the constraint from the primary platforms' secondary exchanges we gathered evidence on:

- (a) The scale of the capped platforms' sales relative to those of the Parties;
- (b) Views of the Parties' resellers; and

¹⁶⁸ See, for example, [Parties' response to Provisional Findings](#), paragraph 54.

¹⁶⁹ [Parties' response to Provisional Findings](#), paragraph 57.

¹⁷⁰ [Parties' response to Provisional Findings](#), paragraph 54.

¹⁷¹ [Parties' response to Provisional Findings](#), paragraph 57.

¹⁷² [Parties' response to Provisional Findings](#), paragraph 57.

(c) These platforms' future plans, in particular any planned changes to their business models, including their resale price caps.

7.211 As set out in the discussion of shares of supply (see Table 7.2), we found that the value and volume of ticket sales through the capped platforms operated by the primary platforms was low compared with the Parties' uncapped platforms. Ticketmaster is significantly larger than the other platforms in this category, accounting for [5–10%] of all secondary ticket sales through uncapped or capped platforms in 2019, and [5–10%] by volume. We were aware of four other primary sites which had capped secondary resale exchanges – AXS Resale, Eventim, SeeTickets and Gigantic – which in 2019 together accounted for a share of [0–5%] by GTV and [0–5%] by volume.

7.212 [REDACTED] and AXS Resale have entered the market relatively recently, so we considered whether they were likely to grow in future.

7.213 [REDACTED]

7.214 Even if Ticketmaster Exchange were to pick up all the sales previously generated by Seatwave and GetMeIn!, the share of these platforms amounted to only [10–20%] by value ([10–20%] by volume) in 2017, the last full year before they were closed by Ticketmaster.

7.215 We asked resellers whether they viewed capped exchanges operated by the primary ticketing platforms as an alternative to the Parties. As set out in Appendix G, they were only mentioned by a small number of resellers as being an alternative and were not given a high average rating (2.5-out-of-5).

7.216 In addition to the general points made by resellers about the limitations of the capped platforms set out in the previous section, some resellers also noted that where a capped platform was connected with a primary site then it was only possible to resell tickets bought on the same primary site. Some resellers suggested that this made them less attractive as an alternative route for selling ticket inventory.

7.217 On the Parties' argument that these platforms were not imposing a price cap – pointing to Ticketmaster's adjustment of resale prices and some examples of resale prices that were above face value on the Ticketmaster website – the evidence from primary sellers contradicted this:

(a) Ticketmaster stated that:

(i) 'users of its reseller resale service in the UK can only list the ticket for resale at the original price paid for that ticket including any fees

incurred in the purchase and that the original price paid was the face value (plus any additional fees);

- (ii) 'it does not dynamically or otherwise adjust the price of tickets listed for resale on its UK platform ...'.

(b) Ticketmaster's terms for resale explicitly allow resellers to include any fees and delivery charges when setting a resale price,¹⁷³ which is consistent with resale prices that equate to the face value, plus Ticketmaster's service charge, facility fee, handling fee, as well as delivery charges.¹⁷⁴

7.218 Similarly, on the Parties' point that AXS Resale allows prices to be 10% above face value, AXS has stated that this is 'to compensate the seller for transaction costs'. In any case, in our analysis of pricing on the Parties' platforms, we have looked at resale prices that were more than 20% above face value in order to account for resellers' transaction costs in purchasing the primary ticket.¹⁷⁵

7.219 On the buyer side, as described in Appendix F, the primary sites make use of search advertising as a channel for attracting consumers. [REDACTED] in particular has [REDACTED] spend on search advertising. [REDACTED]. However, it told us that [REDACTED]. It told us that the Parties tend to be more active in search engine marketing due to their higher margins. We also noted that, [REDACTED] StubHub or viagogo on paid search advertising.

7.220 As with the standalone capped platforms (paragraphs 7.202 and 7.203), we considered whether Ticketmaster or the other primary platforms might have an incentive to remove the cap on secondary ticket prices and allow uncapped sales, which might then allow them to compete more closely with the Parties for resellers post-Merger. The Parties noted that Ticketmaster allows uncapped sales in the US, and argued that it was likely that Ticketmaster would [REDACTED] in the UK.

7.221 Ticketmaster – having closed down two uncapped platforms that it owned in 2018 (GetMeIn! and Seatwave) – told us that [REDACTED]. [REDACTED].

¹⁷³ See, for example, 'How much can I sell for?' on the '[Resale Help Center](#)' section of the Ticketmaster UK website (accessed 19 January 2021).

¹⁷⁴ For example, primary tickets to The Damned at the Eventim Apollo in July 2021 were (as of 19 January 2021) advertised on the Ticketmaster UK website with a face value of £65, plus a service charge of £8.25, facility charge of £1.75, handling fee of £2.85, as well as a postage charge of £0.60. Overall cost is, therefore, 21% above face value. As such, a reseller recouping her/his costs could be expected to charge up to 21% above face value using Ticketmaster's resale facility.

¹⁷⁵ See footnote to paragraph 6.17 above.

- 7.222 [X] primary sellers that operate capped secondary platforms stated that they were unlikely to remove their price caps. [X]. [X] simply said 'No', while [X]. Gigantic told us that it only acted as a resale platform on limited occasions, that its plans to develop its resale service had been delayed and that its model for resale would be that the reseller would get back the value of the ticket and the booking fee. While it was still finalising some elements of its resale service, Gigantic stated that it saw its resale function as a service to customers, not as a way of making money.
- 7.223 Overall, we have concluded that the capped resale exchanges operated by primary platforms would pose a very weak competitive constraint on the Parties' uncapped secondary platform post-Merger.

Competitive constraint from other online channels, including social media and classified listings websites

- 7.224 In this section we consider the extent to which other online channels will exert a competitive constraint on the Parties following the Merger.
- 7.225 Online platforms such as Facebook and Gumtree can be used to buy and sell secondary tickets. The Parties argued that these platforms could provide an option for resellers wanting to place inventory and for consumers seeking to buy tickets,¹⁷⁶ which they put forward as evidence of 'how competitive the UK ticketing sectors is.
- 7.226 Resellers told us that social media and classified listings sites are not a credible route to market for sales by volume sellers, with a small minority of the Parties' resellers that we spoke to having used these to sell tickets in the past year, and an even smaller amount viewing them as close alternatives to the Parties. Reasons given for this view by the resellers that we spoke to included that there is 'more aggravation and time wasters using social media', 'a lot of fraud' and no 'buyer safeguards or guarantees' which makes the sites unattractive to buyers. When these alternative sites were used, it was in very specific circumstances such as to 'dispose of tickets no longer available to list on resale sites' or 'to update existing clients of new announcements'.
- 7.227 The limitations of these sites as an option for selling tickets was highlighted further by the fact that only a very small number of resellers indicated that these could be considered a close alternative to the Parties, both referring to Gumtree. The vast majority of resellers, even if aware that it was possible to

¹⁷⁶ Parties' Phase 2 Initial Submission, paragraphs 27(c) and 29(d).

sell tickets through these channels, did not consider them viable alternatives for carrying out their activities.

- 7.228 Other secondary ticketing platforms also expressed doubts over the alternative that these wider online channels offered. For example, [REDACTED] said that it was not concerned by the competition from social media or other online channels. Gigsberg said that these channels are not a competitor for it, noting that it focussed on 'popular tickets only and does not need to consider resale activity on social media and classified advertising sites'. Twickets stated that, while it did compete with these channels, they do not offer 'protection against fraud', nor do they 'offer any guarantees... either to the seller or the buyer'.
- 7.229 Based on the resellers' comments and the Parties' responses, the main limitations of wider online channels appear to be:
- (a) Lack of buyer guarantees and security of transactions – the Parties submitted that these classified sites and social media channels 'do not provide customers with post-trade services (including customer service and guarantees on the authenticity of tickets)'.¹⁷⁷ StubHub also stated that, on other online channels, buyers 'have to take more of a risk on the transaction, because it is not underwritten. There is no FanProtect guarantee and fulfilment is not monitored in the same way'.
 - (b) Lack of services for resellers to manage inventory – the Parties told us that larger resellers needed a specialist user interface to manage their inventory efficiently; this is not provided by wider online channels such as Facebook and Gumtree. StubHub stated that, for resellers, 'it is very high maintenance ... it does not have the services that somebody who is selling tickets at volume may want in terms of tools and so forth', adding that it is 'a very real alternative for fan-to-fan or C2C [consumer to consumer] resellers'.
- 7.230 There was some evidence in StubHub's internal documents that [REDACTED].¹⁷⁸ [REDACTED].¹⁷⁹ [REDACTED].
- 7.231 Taking this evidence from StubHub's internal documents in conjunction with the views of the (generally larger, professional) resellers that responded to the CMA's questionnaires indicates that, where these channels are likely to

¹⁷⁷ Parties' Phase 2 Initial Response, paragraph 27(c).

¹⁷⁸ [REDACTED].

¹⁷⁹ [REDACTED].

be a viable option for the Parties' resellers, it is likely to be only for 'occasional' resellers.

7.232 Overall, the evidence demonstrates that other online channels would (in aggregate) provide a very weak constraint on the Parties post-Merger.¹⁸⁰

Competitive constraint from offline channels

7.233 In this section we consider the extent to which offline sales channels will constrain the Parties post-Merger. The offline channels that are likely to be relevant to the resale of tickets in this context include the sale of tickets:

- (a) In person close to the venue or elsewhere;
- (b) Between family, friends and acquaintances; and
- (c) By outlets, such as travel agents, hospitality providers and ticket wholesalers.

7.234 The Parties have argued that StubHub is not a key source of new liquidity for the viagogo platform, listing offline channels such as 'in-person trades, street sellers, concierge services, ticket booths' as among the sources of increased liquidity on its platform.¹⁸¹

7.235 We examined evidence on the extent to which the Parties' resellers and/or buyers may consider these channels substitutable based on:

- (a) Guarantees in relation to the authenticity of tickets and the security of transactions;
- (b) Resellers' use of, and views on, these offline channels;
- (c) Third-party views on the competitive constraint from offline sales channels; and
- (d) Evidence from the Parties' internal documents.

7.236 A number of operators of other secondary ticketing platforms, primary sellers and the Parties' resellers pointed to the importance that buyers and resellers place on the security of completing transactions on dedicated platforms and

¹⁸⁰ We note that this is consistent with the results of Parties' buyer survey, which found other online channels to be weak alternatives to viagogo. In particular, when replying to the 'forced diversion' question (ie where buyers would have been most likely to purchase their tickets if viagogo had closed down permanently), Facebook, Gumtree and Twitter were indicated as the 'most likely' alternative by only [3%] ([3%]), [3%] ([3%]) and [3%] ([3%]) out of [3%] respondents, respectively.

¹⁸¹ Parties' Initial Submission, paragraphs 27(c) and 29(d).

the guarantees offered to buyers on secondary platforms. A number noted that these were important differentiating features between the Parties and offline channels. For example, Twickets noted that it competed with: 'offline channels (eg a tout at a venue) ... principally on price and protection against fraud, as well as providing assurances that the event goer has a genuine ticket to the event before arriving at the venue'. As set out below, a number of the Parties' resellers also pointed to these as significant differentiating factors between the Parties' platforms and these channels.

7.237 The responses from the Parties' resellers that responded to our questionnaires indicated that:

- (a) The vast majority, 34 out of 41, had either not made any use of offline channels or had generally used these in very limited circumstances (eg friends, family, or for selling to existing clients).¹⁸²
- (b) The vast majority of respondents did not consider offline channels to be viable alternatives to the Parties' platforms, with a number of resellers referring to the lack of guarantees, protections and visibility of tickets.

7.238 Other secondary ticketing platforms also indicated that they did not, in their view, compete with offline channels, including Gigsberg, AXS Resale, and [REDACTED]. This view is also shared by the fan groups we spoke to.

7.239 The Parties' internal documents made very little reference to offline channels as a source of constraint, although:

- (a) [REDACTED]; and
- (b) viagogo offered [REDACTED].

7.240 In the case of the StubHub consumer surveys, StubHub's research into consumers' use of other resale channels appeared to focus on these as potential sources of new customers rather than as competitive constraints on its current customer base. In addition, given this research focussed on consumers reselling unused tickets, it is likely that these offline channels (such as 'friends and family') are likely to be viable alternatives only for 'occasional' resellers.¹⁸³

¹⁸² See Appendix G, paragraph 46.

¹⁸³ We also note that the results of Parties' buyer survey, which found offline channels to be weak alternatives to viagogo. In particular, when replying to the 'forced diversion' question (ie where buyers would have been most likely to purchase their tickets if viagogo had closed down permanently) only [REDACTED] respondents indicated that 'ticket tout outside venue' was the 'most likely' alternative (less than [REDACTED]%).

7.241 Overall, the evidence demonstrates that offline channels would provide a very weak constraint on the Parties post-Merger.

Competition from primary sellers

7.242 In this section we assess the extent to which primary ticketing will exert a competitive constraint on the Parties' secondary ticketing business post-Merger. As set out below, the Parties have put forward a number of different arguments about how the interaction between primary and secondary ticketing is likely to constrain their platform post-Merger. These related both to: the constraints that primary platforms may impose on the prices that resellers charge on the Parties' platforms or on resellers' access to inventory; and to the constraints that the primary platforms may impose on the Parties' ability to raise fees, worsen terms or degrade their quality of service to their resellers and/or buyers post-Mergers. While there is some overlap in the Parties' arguments and evidence on this, we have sought to assess these two issues separately. We note that, even if primary platforms were a material constraint on resale prices, this would not necessarily lead to a constraint on the Parties' offer to resellers and buyers, for the reasons set out below.

7.243 The Parties argue that primary ticketing platforms act as a significant constraint on their businesses, with viagogo describing primary ticketing as '[X]'. Their main arguments are that:

- (a) Resale prices on the Parties' platforms are constrained by the fact that primary platforms 'provide a competitive alternative to secondary channels' 'until an event is sold out'.¹⁸⁴
- (b) Primary ticketing platforms are increasingly engaging in practices which affect the availability and cost of tickets available in the secondary market, leading to a 'blurring [of] the line between primary and secondary sales'. These practices include:
 - (i) Dynamic pricing and VIP tickets, which allow the primary platform to increase primary ticket prices in response to demand, bringing prices closer to those that might emerge in the secondary market.
 - (ii) Slow-release ticketing ie holding back the supply of tickets to an event in order to regulate the flow of tickets into the secondary market.

¹⁸⁴ Parties' Phase 2 Initial Submission, paragraph 21.

- (iii) Restricting the transfer of tickets to prevent resale (except through the primary platform's own resale channel).
- (c) Primary ticketing platforms are increasingly moving into the resale of tickets – for example, Ticketmaster and AXS have both launched ticket exchanges where ticket holders can resell tickets purchased on the primary site. Buyers can compare primary and secondary tickets directly on these platforms (ie they are 'co-mingled' platforms), while resellers can also use these platforms.¹⁸⁵
- (d) Overall, the Parties argue that they operate within 'the broader overall market for live event tickets', which includes content rights holders and promoters, as well as agents providing primary ticketing services, and the 'traditional boundary between primary and secondary ticketing channels is fast dissolving'.

7.244 In assessing the potential impact of primary ticketing platforms' activities on the Parties' secondary ticketing platforms, it is important to distinguish between factors that might constrain resale prices or reduce the size or profitability of the secondary market on the one hand, and competitive constraints on secondary platforms' offering to buyers and sellers, in terms of fees, terms or quality of service, on the other. For the reasons set out below, our view is that, while there are several important interactions between primary and secondary ticket sales which could have a significant impact on the Parties' business, they will not materially constrain the ability of the Parties to increase fees or worsen non-price terms following the Merger. In particular, the Parties' arguments that point towards a strong constraint from primary sales on resale prices, even if they did have some impact on reseller pricing, would not materially constrain the Parties' offer to resellers and/or buyers.

7.245 We have assessed:

- (a) The economic characteristics of primary and secondary ticket sales;
- (b) Evidence of primary and secondary ticket purchase prices and timing of purchase, as indicators of the extent to which primary and secondary sales are close substitutes for buyers, and the extent to which resale takes place closer to events than primary sales;

¹⁸⁵ This point is discussed in more detail in the section on the competitive constraints from capped secondary platforms.

- (c) Evidence of the impact on secondary ticketing of dynamic ticketing and slow release ticketing in the primary market; and
- (d) Evidence from internal documents on the nature of the interactions between primary and secondary ticketing.

Economic characteristics of primary and secondary ticket sales

- 7.246 As set out in the market background section, there is a clear distinction between the primary and secondary supply of tickets. Resellers are purchasers from primary sites, so for the resellers using the Parties' platforms, there is no substitutability between primary and secondary platforms.
- 7.247 From the perspective of ticket buyers, some consumers may view primary and secondary tickets as substitutes when they are both available to purchase. Not all buyers may be willing to purchase secondary tickets (for example because of concerns about whether the ticket is genuine or transferable), but we can expect that most buyers who are willing to purchase a secondary ticket for a particular event would see a primary ticket for the same event and similar seat location as a substitute.
- 7.248 However, the extent to which primary ticketing constrains secondary ticketing on the buyer side depends on the availability and attractiveness of primary inventory. If primary tickets are not available (or the tickets that are available are not viewed by buyers as sufficiently close substitutes for a particular secondary ticket, for example because they are in a different location in the venue), then the primary market will not act as a constraint on secondary sales. As set out below (see paragraphs 7.258 to 7.262), our analysis of a sample of events found that even in weeks close to the event date when primary tickets had not sold out, there were material numbers of secondary sales, which is consistent with primary sales not constraining secondary sales due to, eg the higher demand seats selling out faster on the primary market, or with buyer search behaviour (clicking through top-ranked paid search ads or organic search results) leading them to secondary listings even when equivalent primary inventory was still available.
- 7.249 In order to test the relative availability and attractiveness of primary tickets for buyers we have conducted analysis on:
- (a) Pricing differentials between primary and secondary tickets, as significantly higher prices for secondary tickets would indicate that primary tickets are not sufficiently available and/or attractive to constrain the secondary market.

- (b) Buyer purchasing behaviour, specifically when buyers are purchasing primary and secondary tickets as differences in timing are likely to suggest differences in the relative availability of tickets. For example, if most primary tickets are sold soon after an event goes on sale whereas most secondary tickets are sold closer to the event, this suggests that primary tickets are not as available or attractive to buyers and therefore unlikely to constrain the secondary market.

Price differentials between primary and secondary tickets

- 7.250 In order to test the degree of constraint between primary and secondary ticket sales in practice, we looked first at evidence of the price differentials between primary and secondary tickets. The existence of significant price differentials between primary and secondary sales of the same tickets would suggest that there is a limited competitive constraint between them.¹⁸⁶
- 7.251 As described in more detail in Appendix C, we analysed price differentials in two ways:
- (a) First, we collected data from the Parties on all their secondary ticket transactions in 2019. This data included the secondary sale price and a record of the face value of the ticket in the primary market. We calculated the differential between secondary sale price and recorded face value for each transaction, and then examined the distribution of differentials across all transactions.
- (b) Second, we carried out a similar analysis for a subset of major events for which tickets were sold on both of the Parties' platforms. For these events we also gathered transaction data from the primary ticketing platforms, to compare directly the prices on the primary and secondary platform.
- 7.252 Based on the aggregate analysis, we found that the average resale price of event tickets sold through the Parties' platforms was significantly above their face value. Our analysis found that most tickets sold through the Parties' platforms in 2019 had a mark-up over their face value of more than 50%. There was also very significant variability in the differentials, with some tickets being sold below face value, and others at a very high mark-up. Overall, this analysis suggests that for the majority of ticket sales on the

¹⁸⁶ Even though we are mostly interested in buyer and seller fees, we think evidence of the total ticket prices is relevant to understanding the competitive interaction between these two types of site. However, we note that, even if there were competitive interactions between the prices on primary and secondary sites, this would not necessarily mean that primary sites impose a material competitive constraint on the Parties' buyer and reseller fees and terms.

Parties' sites, the sale of primary tickets is unlikely to constrain the price of secondary tickets.

- 7.253 The analysis of a subset of events produced very similar results. When estimating the proportion of tickets that were sold through the Parties' platforms above their face value, we found that an average of [80–100%] and [60–80%] of tickets sold by resellers for our selected events on viagogo and StubHub's website were above the face value of a ticket.
- 7.254 The Parties argued that this analysis was unreliable because:
- (a) The Parties do not verify the face value of the tickets recorded in their transactions data; these are entered manually by ticket sellers; and
 - (b) The comparison with face value does not account for the fact that primary tickets may be priced dynamically in the primary market, ie the face-value price that a reseller paid may not reflect the 're-priced' face value once the primary seller adjusted this in response to primary demand.
- 7.255 On the first point, we accept that there may be some inaccuracies in the face value of tickets entered by resellers. However, we would expect buyers to complain if the face value recorded on the ticket was different from that stated by the resellers and the Parties told us that they did not receive many such complaints. To the extent that resellers have an incentive to misrepresent the stated face value, we would expect them to be more likely to overstate rather than understate this, as the former would make the price look more attractive for the buyer.¹⁸⁷
- 7.256 On the second point, we agree that where tickets are sold dynamically then this could, in principle, affect the inferences we draw from our analysis of price differentials, but it does not affect the calculation of the mark-ups. As the Parties argue, a reseller may have bought a dynamically-priced ticket at a low price, but the primary seller may have later 're-priced' tickets for the same type of seats. In this way, the calculated mark-ups are not affected, but the inference that the mark-up is a good estimate for the differential between primary and secondary prices may not be correct. However, the evidence we have gathered on the extent of dynamic pricing (see paragraphs 7.263 to 7.265) suggests that only a small minority of primary tickets are sold dynamically. We therefore do not consider it plausible that dynamic pricing could account for the extent of price differentials that we observe in the

¹⁸⁷ We also checked a subset of transactions recorded by the Parties against data provided by a primary platform ([§]). Based on a visual inspection of charts describing the distribution of ticket prices sold through [§] and face values of tickets sold through the Parties' platforms, we found the face value data provided by the Parties to be comparable to the ticket prices included in the data provided by [§].

Parties' data. Indeed, to the extent that dynamic pricing increases primary prices for some seats for some high-demand events, we would expect this to increase costs to resellers and lead to lower observed mark-ups for these resellers, rather than the high mark-ups that we found.

- 7.257 The findings of our analysis are also consistent with resellers' responses to our questionnaires, as they emphasised the variability that can come into the prices that they sell their secondary tickets for. Some suggested that they would look for a consistent mark-up above the total cost of a ticket, while others highlighted how prices on the secondary platform could fall below the face value, particularly as an event drew closer.

Timing of primary and secondary ticket sales

- 7.258 We also gathered evidence on the timing of primary and secondary purchases. This analysis allowed us to test empirically the suggestion made by some primary platforms and resellers that the majority of ticket sales on primary platforms occur in the first weeks after the first tickets go on sale.¹⁸⁸ If true, this means that consumers are likely to 'migrate' to secondary ticketing exchange platforms as the date of the event approaches, demonstrating that there is a difference in consumer behaviour between primary and secondary ticketing platforms. At the extreme, there may be little or no scope for competitive interaction between primary and secondary ticketing platforms where events sell out – meaning that buyers cannot purchase tickets from primary channels as the event date approaches.
- 7.259 As described in more detail in Appendix C, we collected transaction data from a large primary platform ([§§]) covering 13 of the Parties' 21 highest revenue-generating events in 2019. This allowed us to compare the data on primary sales with the Parties' own transaction data on secondary sales for the same events.
- 7.260 We compared the proportion of tickets sold for our selected events on Ticketmaster and the Parties' platforms in both the first week they were made available to buyers and the last week before the date of the event. We found that an average of [60–80%] of tickets that were sold for our selected events on Ticketmaster's website were purchased in the first week they were made available to buyers. In contrast, an average of [20–40%] and [0–20%] of tickets that were sold for our selected events on viagogo and StubHub's

¹⁸⁸ One reseller suggested that they would generally buy tickets at the start of the sale but then wait a few weeks for prices to settle before listing. A number of third parties also pointed out that resale listings or transaction tended to take place close to the event, [§§], while Twickets stated that buyer activity peaked in the one to two weeks before an event. [§§] stated that increased reseller listing on its resale site from [§§] prior to the event date.

websites, respectively, were purchased in the first week they were made available to buyers.

- 7.261 An average of [0–20%] and [20–40%] of tickets that were sold for our selected events on viagogo and StubHub’s website, respectively, were purchased in the last week before the event. [Less than 10%] of tickets that were sold for our selected events on [X] website were purchased in the last week before the event.
- 7.262 Our analysis therefore confirmed that there is a significant difference in the average timing of purchase of primary and secondary tickets. However, these findings also point to (in some cases) material volumes of primary tickets remaining on sale for weeks beyond the initial ‘on-sale’ date. Even with this overlap in availability for some events, as our pricing analysis demonstrated, this did not appear to lead to a material pricing constraint from primary sales on secondary sales on the Parties’ platforms.

Dynamic ticketing, ‘VIP’ tickets and slow release

- 7.263 As noted above, the Parties argued that primary ticketing platforms are increasingly engaging in practices which affect the availability and cost of tickets available in the secondary market, including:
- (a) Dynamic pricing and VIP tickets, which allow the primary platform to increase primary ticket prices in response to demand, bringing prices closer to those that might emerge in the secondary market.
 - (b) Slow (or staggered) release ticketing – ie holding back the supply of tickets to an event in order to regulate the flow of tickets into the secondary market.
 - (c) Restricting the transfer of tickets to prevent resale (except through the primary platform’s own resale channel).
- 7.264 In order to test the Parties’ arguments, we collected evidence from primary ticketing platforms on the extent to which they are engaging in these practices and whether they are likely to create a competitive constraint on the Parties’ secondary ticketing sales in the future.
- 7.265 The evidence we collected suggested that the ticketing practices referred to by the Parties cover only a very small proportion of overall ticket sales.
- (a) As set out in paragraphs 6.21 to 6.23, we found that dynamic pricing (and related strategies like the sale of ‘VIP’ tickets) represent a very small proportion of primary sales in the UK (eg for Ticketmaster, dynamic

pricing represented [X]% of GTV in 2018 and [X]% in 2019, while AXS has not used dynamic pricing in the UK). The Parties argued that the use of dynamic pricing was growing rapidly, but the evidence they put forward suggesting growth of around 66% last year was based on a figure for Live Nation and referred to its US sales.¹⁸⁹

- (b) While the Parties have argued that the ‘slow release’ of tickets and increasing restrictions on the transferability (and, hence, the resale) of tickets were having an impact on the secondary market, we found limited evidence that these practices were having a material impact in the UK market. On the ‘slow release’ of primary tickets, we received limited evidence that this practice was increasing, with our analysis of a sample of events finding that, on average, [60–80%] of primary sales took place in the first week of an event being on sale,¹⁹⁰ although a number of resellers referred to the practice.¹⁹¹ On restricting the transfer of tickets (to prevent resale), a number of primary sellers referred to the increased use of digital (or mobile) ticketing and that this could facilitate restrictions on transferability and on resale, but that this was a decision for the artist, content rights holder or event organiser, with some choosing to restrict transferability in order to limit the scope for resale.
- (c) Even if these practices were to become more prevalent over time, we consider that their main impact would be to affect the supply of tickets into the secondary market, rather than imposing a direct competitive constraint on secondary platforms. An increase in the use of dynamic pricing could reduce the number of tickets coming onto the secondary market or reduce resellers’ margins when they resell these tickets. However, even if this change in supply were to affect prices in the secondary market, our view is that it will not have a material impact on the fees that secondary platforms can charge resellers or buyers for the sale of those tickets, given the current very large price differentials between primary and secondary tickets.

7.266 In a similar way, the slow release of tickets and restrictions on the transferability of tickets could both lead to a reduction in the availability of inventory to sell onto the secondary market, as indicated by some of the

¹⁸⁹ Parties’ response to Working Papers, referencing [Live Nation’s Q4 2019 results](#), which states that: ‘Average ticket prices for our amphitheater [sic] and arena shows are up double-digits since 2017, while sales of dynamically-priced Platinum tickets were up 66% for the year across 3,000 shows, as artists want more of the best seats in the house sold at market value at the onsale’.

¹⁹⁰ See Appendix C, Table C.3.

¹⁹¹ See Appendix G, paragraph 49.

Parties' resellers that we spoke to.¹⁹² However, we would not expect this to impose a competitive constraint on the Parties' decisions on setting fees and other terms.

7.267 The Parties pointed to an example of viagogo cutting its reseller fee '[REDACTED]'.¹⁹³ However, as set out at paragraph 7.118, above, at an aggregate level viagogo's average reseller fee did not materially change in 2018, so the transaction data are not consistent with any material cut in reseller fees for a significant number of viagogo resellers. The specific example identified by viagogo related to a pilot scheme that [REDACTED]. As such, we consider that this does not indicate a material constraint from primary pricing and appears to have been an attempt to attract listings from secondary capped platforms (or other low-cost online sales channels) where resellers may sell their low-priced or loss-making tickets.

Evidence from the Parties' internal documents

7.268 We looked for references in the Parties' internal documents to primary ticketing platforms in order to assess the Parties' argument that they are an important source of competitive constraint.

7.269 We found that both Parties regularly monitored and compared awareness of their brands to other brands in the broader ticketing sector, including primary sellers. For example:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

7.270 On the other hand, as set out in paragraph 6.36 above:

(a) Many of the Parties' documents tended to discuss the secondary and primary platforms as distinct channels for ticket sale/purchase, with references to viagogo's and StubHub's positions and shares within the 'secondary market' contained in a number of documents;

(b) Similarly, some internal documents, especially from StubHub, focus mainly on, or only refer to, competition between the Parties, rather than indicating a wider market including the primary platforms (we have found proportionately fewer viagogo documents referencing StubHub compared

¹⁹² See Appendix G.

¹⁹³ [Parties' response to Provisional Findings](#), paragraph 41.

to the proportion of StubHub's internal documents that reference viagogo);

- (c) While a number of viagogo documents referred to [X], some of these documents characterised the risk to the Parties' business model [X]; and
- (d) Much of the consideration of primary ticketing platforms, especially Ticketmaster, but also See Tickets, Eventbrite and AXS, related to 'brand awareness', consumers' perceptions of, and attitudes' towards various brands in the broader ticketing sector, and more general competition for ticket sales across all channels.

7.271 Overall, the Parties' internal documents include references to a broader ticketing ecosystem, in which primary sellers play an important role. They also discuss some threats that these primary platforms pose to their own businesses as a result of their control of supply. However, they also recognise that secondary platforms are doing something different, and often consider competition through the lens of secondary platforms only.

Conclusions on competition from primary sellers

7.272 Based on the evidence set out above, we have concluded that primary platforms would not pose a significant competitive constraint on the Parties following the Merger.

- (a) The pricing of primary ticketing in most cases does not constrain secondary market prices, and nor does it affect the Parties' incentives to set fees and other payment terms.
- (b) The use of dynamic ticketing and other similar pricing practices by the primary platforms is currently limited and, in any case, would not create a material competitive constraint on the Parties.
- (c) There are several broader interactions between the primary and secondary markets which could affect the future scale and profitability of the Parties' platforms. However, these would not constrain the Parties in relation to their fees, wider payment terms and other conditions of service to ticket buyers and resellers.

Conclusion on competition with third parties

7.273 On the basis of the evidence set out above, we have concluded that none of the alternative channels for sales of secondary tickets, individually or cumulatively, would provide a significant competitive constraint on the Parties following the Merger. The only remaining competitor in the market –

Gigsberg – is much smaller than the Parties and was not seen as being a viable alternative for selling the bulk of resellers’ ticketing inventory. We consider that Gigsberg will be only a weak constraint on the Parties.

7.274 In terms of out-of-market constraints:

- (a) We found that capped secondary platforms – both those operating on a standalone basis and those within primary ticketing platforms – were not viewed as a viable alternative for resellers wanting to make a profit from secondary ticketing. While they might be an alternative for smaller and occasional resellers, this would not impose a significant constraint on the Parties’ platforms given that most of their revenues are made from larger ‘professional’ sellers.
- (b) Given the Parties’ platforms are so much bigger than capped secondary platforms (around [X] bigger on the basis of GTV in 2019, Table 7.2) and resellers do not view capped platforms as a viable alternative, buyers are unable to transact on capped platforms to the same extent as they would be able to on the merged entity’s platform.
- (c) We similarly found that wider online and offline channels would impose a negligible competitive constraint on the Parties, given their unattractiveness for professional resellers, and the lack of guarantees to buyers and security of transaction that these channels provided.
- (d) While the primary ticketing platforms have the ability to reduce to some degree the availability of tickets on the Parties’ sites, and hence could significantly affect the future revenues and profitability of uncapped secondary ticketing platforms, we found that these behaviours would have a very limited impact on the incentives of the Parties in competing for resellers and buyers of secondary tickets.

7.275 Given the weak, and sometime negligible, constraints that we have identified in paragraph 7.274 (a) to (d), we do not think that it is likely that these out-of-market constraints would be sufficient to constrain the merged entity either individually or cumulatively (including when combined with the weak constraint offered by Gigsberg).

Incentive for harm to users

7.276 The analysis above shows that the Parties are each other’s closest competitor for both resellers and for buyers, and that there will be very limited competitive constraints from other platforms and sales channels following the Merger. We consider that this evidence demonstrates that the

competitive offer of the Parties post-Merger is likely to be worsened – whether in terms of increased fees, worse terms and/or reduced quality or innovation, to the detriment of resellers and/or buyers.

7.277 This section addresses the Parties’ arguments: that establishing that the Parties are ‘alternatives’ or ‘close competitors’ does not mean that the Merger will lead to an SLC; that the CMA has not attempted to quantify the extent of the constraint on viagogo from StubHub; that, notwithstanding this loss of competition, they will not have an incentive to raise fees or worsen other elements of their offering post-Merger; and that the provisional finding that the Merger would give the Parties an incentive to increase fees or worsen terms or service was based on ‘assertions and assumptions’.

7.278 The Parties have argued that:

- (a) There is very little variation in fees and other terms (eg timing of payment and quality of service) offered to resellers and buyers, either over time or between different resellers and buyers.¹⁹⁴
- (b) This reflects the fact that the Parties’ incentives are primarily to grow liquidity, because of the indirect network effects of increasing the volume of buyers and resellers on the platform. Greater liquidity leads to increased conversion rates and hence higher revenues for the platform.¹⁹⁵
- (c) Given the importance of increasing liquidity, post-merger, and the negligible liquidity obtained from Stubhub in the UK, it would therefore not be in viagogo’s interests to raise fees or worsen other elements of the offering post-Merger, because this would ‘harm its business model and future growth’.¹⁹⁶
- (d) Overall, there is ‘limited evidence ... showing a material constraint from StubHub on viagogo. On the contrary, the evidence shows that StubHub, in fact, exercises only a weak constraint on viagogo in the UK ...’.¹⁹⁷
- (e) The CMA’s Provisional Findings ‘conflate the fact that StubHub is a competitor or an “alternative” to viagogo with the concept of viagogo and StubHub being closest competitors with the existence of an SLC’.¹⁹⁸ Even

¹⁹⁴ Parties’ Phase 2 Initial Submission, paragraph 42.

¹⁹⁵ Parties’ Phase 2 Initial Submission, paragraph 41.

¹⁹⁶ Parties’ Phase 2 Initial Submission, paragraphs 16, 31, 38, 41 to 44 and 47.

¹⁹⁷ Parties’ response to Provisional Findings, paragraph 2.

¹⁹⁸ Parties’ response to Provisional Findings, paragraph 7.

if StubHub is the closest competitor to viagogo, 'nowhere has the CMA made an attempt to actually calculate the magnitude of this constraint'.¹⁹⁹

- (f) The CMA's provisional finding that the Merger is likely to result in the incentive to increase fees or worsen term or service post-Merger relies on 'a number of assertions and assumptions, none of which properly support the CMA's theories of harm'.²⁰⁰

7.279 We do not agree that the Parties would have no incentive to increase fees and/or worsen terms following the Merger relative to the counterfactual. As set out below:

- (a) The evidence demonstrates that the Parties compete closely, including on fees and terms.
- (b) Although viagogo has made a number of submissions that StubHub does not constrain it in its setting of its fees and terms (which have been addressed above), even if the competitive constraints that the Parties impose on each other were asymmetric, the loss of competition as a result of the merger would still be substantial.
- (c) Such a loss of competition can be expected to lead to a change in the Parties' incentives to offer competitive fees and terms post-Merger.
- (d) The merged firm's incentives to increase liquidity on the platform (both before and after the Merger) do not remove the effects of this loss of competition on incentives to set fees and terms post-Merger.

7.280 We have shown that the Parties compete closely, including on setting fees and terms, in particular to their resellers (paragraphs 7.126 and 7.155). For example, we have seen several initiatives by StubHub where it has competed for resellers' listings by offering better payment terms and/or reduced its reseller fees, although these have tended to be time-limited or event-specific (paragraphs 7.117 to 7.124). There are also other elements of service that would be expected to worsen if resellers had no option but to use the Parties' platforms post-Merger. Several of the Parties' resellers that we heard from had concerns that the Merger would lead to worse service for buyers, while a number also explicitly predicted higher fees or worse terms for the Parties' resellers post-Merger.²⁰¹

¹⁹⁹ Parties' response to Provisional Findings, paragraph 75.

²⁰⁰ Parties' response to Provisional Findings, paragraph 76.

²⁰¹ See Appendix G, paragraph 53.

7.281 On the Parties' argument that there is limited evidence of StubHub imposing a material constraint on viagogo, even if this were true or (in the less extreme case) even if there were asymmetric competitive constraints between the Parties, the loss of the constraint from viagogo on StubHub would still represent an SLC. By the Parties' logic, many mergers involving a firm with an existing strong position acquiring a smaller rival should be considered unproblematic. This is not the case, in general, and is certainly not relevant to this Merger, where both Parties are sizeable players in the market, such that the loss of competitive constraint in either direction represents a substantial weakening of competition. We have found direct evidence of StubHub charging lower fees and offering improved payments terms in order to attract resellers' listings from viagogo, while, on the buyer side, the overlap in terms of events and in customer acquisition activities points clearly towards direct competition between the Parties, which would be lost as result of the Merger.

7.282 On the issue of whether the closeness of competition between the Parties is such that the loss of this rivalry can be expected to result in an SLC post-Merger, we also disagree with the Parties, given that:

- (a) As set out above, our assessment of the closeness of competition between the Parties (see paragraph 7.177) concludes not only that the Parties are each other's closest competitor,²⁰² but that there is strong competition between them for both resellers (with a number of the Parties' resellers referring to the creation of a 'monopoly' and the complete loss of competition as a result of the Merger)²⁰³ and ticket buyers (where the high degree of event overlap and importance of online search as a customer acquisition channel demonstrates the strength of the competition between the Parties).
- (b) Our assessment of the other competitive constraints on the Parties (see paragraphs 7.273 to 7.275), concludes that: other secondary ticketing platforms were not viable alternatives to the Parties' platforms; other online channels (eg social media and classified listings websites) and offline sales channels imposed a negligible constraint; and any constraint from primary sellers was likely to have a very limited impact on the Parties' offer to their customers.

²⁰² The merging firms need not be each other's closest competitors for unilateral effects to arise from the merger. It is sufficient that the merging firms compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them.

²⁰³ Appendix G, paragraph 53.

- (c) Overall, the evidence base strongly supports a finding that the Merger is likely to lead an SLC, rather than simply pointing to a finding that pre-Merger the platforms were ‘alternatives’ or ‘competitors’, as the Parties have suggested.²⁰⁴
- (d) As found in a number of relevant cases, ‘substantial’ in the context of an SLC does not necessarily mean ‘large’, ‘considerable’ or ‘weighty’ in absolute terms, and it is capable of meaning ‘not trifling’ at one extreme and ‘nearly complete’ at the other.²⁰⁵ A lessening of competition may also be considered substantial where there is only limited competition in the market to begin with.²⁰⁶

7.283 On the Parties’ argument that the CMA has not sought to ‘calculate the magnitude’ of the constraint that StubHub imposes on viagogo.²⁰⁷

- (a) As above (in paragraph 7.281), we note that the constraint on viagogo from StubHub is not the only competitive constraint that is relevant to our assessment of the Merger, and, as above, there are a number of concrete examples of StubHub offering lower fees, improved terms or enhanced service in competing for reseller listings from viagogo. Clearly, the loss of competition between the Parties will remove any incentive to offer these sorts of benefits to resellers in order to attract their listings.
- (b) As found in a number of cases, an element of judgement is necessary in deciding whether any loss of competition is substantial rather than any exact quantitative measurement.²⁰⁸ The Competition Appeal Tribunal (**CAT**), in *Tobii AB v Competition and Markets Authority*, confirmed that the CMA is not required to quantify an SLC,²⁰⁹ while its judgment in *Intercontinental Exchange v Competition and Markets Authority* confirmed that a quantitative assessment is not always necessary or informative.²¹⁰

7.284 On the Parties’ argument that their incentive to attract liquidity to their platform(s) means that there will be no change to their incentives in relation

²⁰⁴ Parties’ response to Provisional Findings, paragraph 7.

²⁰⁵ The meaning of the word substantial in the context of an SLC is considered in *Global Radio Holdings Limited v CC* [2013] CAT 26; and *R v Monopolies and Mergers Commission ex p South Yorkshire Transport Ltd* [1993] 1 WLR 23.

²⁰⁶ For example, in *Celesio AG/Sainsbury’s Pharmacy Business* (paragraph 7.160(a)), the CMA found that regulation inhibited to some extent the degree of competition, but the amount of competition was still sufficiently significant that its loss would be a matter of concern.

²⁰⁷ Parties’ response to Provisional Findings, paragraph 75.

²⁰⁸ See, for example, the CAT judgment in *Global Radio Holdings Limited v Competition Commission*, [2013] CAT 26, paragraphs 18 to 25.

²⁰⁹ *Tobii AB v Competition and Markets Authority* [2020] CAT 1, paragraphs 392-393.

²¹⁰ *Intercontinental Exchange Inc. v Competition Authority and NASDAQ Stockholm AB* [2017] Cat 6, paragraph 246.

to fees and terms as a result of the Merger, we accept that the Parties benefit from attracting a greater volume of tickets to their sites, however:

- (a) Given that StubHub and viagogo are currently competing to attract liquidity from the same sources, we can conclude that the merged firm's incentives to offer competitive fees and terms will be weaker than pre-Merger.
- (b) While the need to attract liquidity may incentivise the platform to make a competitive offer to customers on both sides, a merger that substantially reduces the attractiveness of customers' outside options on both sides of the platform will weaken that incentive and can be expected to lead to a worsening in the merged firm's offer.
- (c) Further, mergers can result in long-term structural change in markets and the merged entity's incentives may change over time, eg even if the merged entity's desire to grow the market and attract additional liquidity means that it does not worsen fees or terms in the short-term, that growth may slow and competition for existing customers becomes more important than competing for sources of growth. In the context of this marketplace, the most likely competition would be between the Parties. It is therefore important to protect that competition.

7.285 On the Parties' contention that the CMA's provisional finding that the incentives to increase fees or worsen terms or service was based only on 'assertions and assumptions':²¹¹

- (a) As set out above, we considered the evidence on the strength of the rivalry between the Parties pre-Merger in coming to a view on the likely effect of the Merger, including in relation to fees charged, payment terms, and competition for buyers. As such the various parameters of pre-Merger competition were assessed in appropriate detail.
- (b) As set out in the CMA's guidelines: '... when levels of rivalry are reduced, firms' competitive incentives are dulled, to the likely detriment of customers. ... A merger gives rise to an SLC when it has a significant effect on rivalry over time, and therefore on the competitive pressure on firms to improve their offer to customers or become more efficient or innovative. A merger that gives rise to an SLC will be expected to lead to an adverse effect for customers'.²¹²

²¹¹ [Parties' response to Provisional Findings](#), paragraph 76.

²¹² [Merger Assessment Guidelines](#), paragraph 4.1.3.

7.286 The CAT has repeatedly confirmed that the CMA is not obliged, in assessing the effects of a merger, to predict future events or courses of events on a balance of probabilities. Rather, it must consider the evidence in the round in applying the statutory test.²¹³ This was confirmed in the recent judgment in *JD Sports Fashion plc v Competition and Markets Authority*, where the CAT rejected the argument that the CMA was obliged to identify specific parameters of competition where an SLC's effect would be felt and to find direct evidence that 'the PQRS offer of one merging party on at least one parameter meaningfully affects the PQRS of the other merging party':

'Where the CMA finds evidence that (a) the merging parties are close competitors, who compete on a variety of aspects of PQRS; and (b) sufficiently demonstrates that the merger will result in an SLC, there is no need to undertake a granular exercise in respect of each of the parameters of competition'.²¹⁴

Conclusion on loss of competition arising from the Merger

7.287 We have found that:

- (a) The Parties are each other's closest competitors in supply of uncapped secondary ticketing platform services for the resale of tickets to UK events and there is strong competition between them for both resellers and ticket buyers (paragraph 7.177). The Merger would remove the rivalry between them in. Even if there were asymmetric competitive constraints between the Parties, the loss of the constraint from viagogo on StubHub would still represent an SLC (paragraph 7.280).
- (b) Gigsberg, the only other provider of any material scale of uncapped secondary ticketing platform services for the resale of tickets to UK events, would not place a material competitive constraint on the Parties following the Merger (paragraph 7.190).
- (c) There would be very limited wider competitive constraints on the Parties from any out-of-market constraints of other ticketing platforms and sales channels, either individually or cumulatively (paragraphs 7.204, 7.223, 7.232, 7.272 to 7.275). This is particularly the case for resellers, who will have almost no alternative options for reselling tickets at scale and at prices above face value.

²¹³ *British Sky Broadcasting Group plc v CC* [2008] CAT 25.

²¹⁴ *JD Sports Fashion plc v Competition and Markets Authority* [2020] CAT 24, paragraph 99.

- (d) Primary platforms would not pose a significant competitive constraint on the Parties following the Merger (paragraph 7.272).
- (e) Although the Parties will continue to have an incentive to grow their platforms by attracting new buyers and resellers following the Merger, this does not mean that the loss of competition between them has no effect, relative to a market where two sizeable platforms remain competing for listings and for sales. Indeed, the Merger would lead to a substantial reduction in competition for new buyers and resellers, as well as for existing buyers and resellers already using the Parties' platforms (paragraph 7.284).

7.288 We therefore have found that the Merger would lead to an SLC, subject to countervailing factors which are considered in the following section.

7.289 We think the adverse effects resulting from the Merger (relative to the counterfactual situation) are likely to include any of higher fees for resellers and/or buyers, worse non-price terms and conditions for resellers and/or buyers, a lower quality of customer service and reduced innovation (eg in platform functionality and ease of use) .

7.290 For the reasons given in paragraphs 7.34 to 7.46, we do not consider that the Merger is likely to lead to lower secondary ticket prices for consumers.

8. Countervailing factors

8.1 There are some instances when a merger may reduce competition substantially but for one or more countervailing factors in reaction to a worsening of terms by the merged entity. One countervailing factor might be, once the reaction by rivals or potential rivals is taken into account, by examining the likelihood of them entering into a market or expanding their activities in it, an SLC is not likely to arise. Another is because a merger allows the merger parties to realise efficiencies which enhance rivalry between the firms left in the market after a merger. A third is that customers have sufficient options available that they have countervailing buyer power which prevents an SLC (or an adverse effect resulting from an SLC) from coming about.

8.2 Therefore, in this section we assess whether there are any countervailing factors which would prevent an SLC from arising despite the findings from our competitive assessment discussed above.

Entry and expansion

- 8.3 As part of the assessment of the effect of a merger on competition we examine whether, in the event of worsening fees or non-price terms to resellers and/or buyers, entry or expansion by third parties would be timely, likely and sufficient to mitigate or prevent an SLC from arising.

Parties' submissions and evidence

- 8.4 The Parties submitted that 'the evidence shows that entry and expansion is not only possible, but is already occurring'. In support of this they identified the following areas.
- 8.5 Firstly, they noted that [REDACTED] and that as an 'open competitive bidding platform' this method of customer acquisition is available to any potential entrant. Whilst they acknowledged that 'this would require some cash investment' they did not view this as an insurmountable barrier to entry citing their own investment to grow their market position. They further pointed out that, [REDACTED].
- 8.6 Secondly, the Parties stated more generally that 'the evidence shows a marked absence of significant barriers to entry'. Specifically, they cited:
- (a) their view that as buyers and resellers multi-home there is no customer lock-in to incumbents on either the buy or sell side;
 - (b) the absence of regulatory barriers to entry such as licencing requirements; and
 - (c) the minimal capital investment required in terms of inventory, physical locations or employees.
- 8.7 Finally, as evidence that entry was already occurring they cited the example of Gigsberg which they stated that since entry in April 2019 had already achieved '[REDACTED]' and had been described by some resellers as showing 'promise' and as being an alternative to a combined entity post-Merger.
- 8.8 The Parties also made statements and provided documents which provided further insight into their views on barriers to entry and expansion during the investigation.
- 8.9 viagogo told us [REDACTED] although it did note that there were significant differences between the US and UK markets. It also noted that in the UK there was a large market of untapped buyers and sellers for potential

entrants and that no unique, proprietary or patented technology was required.

8.10 [REDACTED]

8.11 [REDACTED]:

(a) [REDACTED];

(b) [REDACTED]; and

(c) [REDACTED].

8.12 [REDACTED]

8.13 In addition to the above, a viagogo internal document (October 2019) prepared [REDACTED] stated '[REDACTED]'.

8.14 Further, a viagogo document from October 2017 setting out [REDACTED] notes that there are '[REDACTED]' in the form of:²¹⁵

(a) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(b) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(c) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

(d)

(i) [REDACTED]

(ii) [REDACTED]

8.15 The same document goes on to say that '[REDACTED]' and that:

'[REDACTED]'.

8.16 In respect of the selection and bidding on key word Google paid search advertising, viagogo stated that, in addition to information provided by Google on the effectiveness of keywords to generate impressions and clicks, the keywords for these campaigns are selected by using its '[REDACTED]'.

Third party views on entry and expansion

8.17 In addition to the views of the Parties above, the CMA also sought views from existing operators of secondary ticketing platform services in the UK and potential third party entrants. The latter broadly fell into two categories:

- (a) Large secondary ticketing platforms operating in other jurisdictions ([REDACTED]).
- (b) Operators of capped secondary ticketing platforms in the UK (Ticketmaster, AXS, Eventim, See Tickets, Gigantic, Ticketswap and Twickets).

8.18 We also spoke to [REDACTED].

Views of secondary ticketing platforms operating in the UK

8.19 We received views from several uncapped and capped secondary ticketing platform operators in the UK. Even though we have found that capped secondary ticketing platform services were not in the same economic market as uncapped secondary ticketing platform services, we consider them to face similar issues with regard to attracting buyers and resellers and in building scale, and therefore could provide some insight to us.

8.20 Gigsberg entered the uncapped secondary ticketing platform services market in April 2019 and had a market share of just under [0–5%] in 2019 (although this was higher in later months of 2019, peaking at around [0–5%] in November 2019). Gigsberg submitted that the main barriers to entry were:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

8.21 [REDACTED]

8.22 As set out above (paragraph 7.186) only around one third of the resellers we spoke to identified Gigsberg as an alternative to the Parties, with the majority of them viewing them as a weak alternative at that. One did rate them as 'promising' but had yet to use them.

8.23 Three operators of capped secondary ticketing platforms told us that competing against viagogo in paid search was not cost effective for them given their smaller scale, with one telling us that the absolute value of its fee per ticket is significantly smaller than for viagogo or StubHub.

8.24 One source of potential entry to the uncapped secondary ticketing platform market would be for operators of existing capped platforms in the UK to change their policy on capping the resale prices that can be charged, either loosening existing caps or removing these altogether. In the UK, these platforms consist of five linked to primary ticketing providers (as an ancillary service for resale of tickets for which they act as the primary ticketing provider) and two independent capped platforms. All these providers stated that they had no intention currently to lift the cap on their platforms (paragraph 7.203).

Views of secondary ticketing platforms operating in other jurisdictions

8.25 [REDACTED]

8.26 [REDACTED]

8.27 The third parties above collectively identified a number of significant barriers to entry in the UK market citing:

(a) [REDACTED]; and

(b) [REDACTED].

Our assessment

8.28 We have considered whether entry or expansion in the provision of uncapped secondary ticketing platform services by third parties would be timely, likely and sufficient to mitigate or prevent an SLC from arising.²¹⁶

²¹⁶ [Merger Assessment Guidelines](#), paragraphs 5.8.1 to 5.8.15.

- 8.29 We are not aware of any plans for entry by a third party.
- 8.30 We have found that there are strong indirect network effects present in the operation of uncapped secondary ticketing platform services (see paragraphs 7.29 to 7.46). The presence of indirect network effects is clearly corroborated by viagogo's internal documents discussed above.
- 8.31 Evidence from some third parties also provides some support to the notion that indirect network effects are an important dynamic in the marketplace. For example, a common theme noted by the resellers we spoke to on why they choose to use the viagogo platform was that viagogo has a significant presence on Google search in attracting buyers (Appendix F). [X] submitted that building scale to achieve an efficient level of liquidity is an important element of competition and one of the main barriers to entry and expansion.
- 8.32 As we have shown in Chapter 7, indirect network effects mean that the benefit resellers derive from being on the platform depends on the number of buyers on the other side of the market, and vice versa. The indirect network effects therefore strengthen the position of the platform relative to its competitors. This effect will be stronger on the merged entity's platform than it is currently with viagogo or StubHub.
- 8.33 We consider that for an entrant, the need to attract a large number of resellers with a large volume of tickets across a large number of events and buyers to both sides of its platform in order to be an effective constraint to the merged entity is likely to be both costly and risky, particularly in the presence of larger incumbents. In this light we note that the merged entity would have a share of [90–100%].
- 8.34 We consider that the presence of strong indirect network effects is therefore likely to severely hamper any attempt at entry or expansion against the merged entity and to make such attempts insufficient and therefore less likely, slower and therefore less timely.
- 8.35 The evidence also indicates that indirect network effects are likely to make a buyer acquisition strategy from an entrant less effective, as discussed below.
- 8.36 Third party operators of secondary ticketing platform services drew our attention to the costs of acquiring buyers and their current ineffectiveness in competing against viagogo and StubHub in paid search. We have been told by some third-party platform operators that they are already at a cost disadvantage relative to viagogo in bidding on Google Ads to attract buyers. [X].

- 8.37 We note that our competitive assessment has identified paid search as the main mechanism to attract buyers to a platform.
- 8.38 Resellers who prefer uncapped platforms are very likely to list tickets on the merged entity's platform and will view it as a 'must have' platform. Once these listings occur, the merged entity will have an inherent advantage in its consumer acquisition. This might come about in several ways. First, given the scale of the merged entity's platform, it will be more likely than an entrant to have depth of inventory – in other words, more tickets (on average) for each event. This will improve its conversion from both internet paid search and organic search hits. A smaller platform, however, will risk not having available inventory for some buyers entering the platform via either paid search or organic search. Therefore, the platform might miss out on proportionately more sales from prospective buyers relative to the merged entity. We would expect that the entrant platform would bid a lower amount on Google Ads than the merged entity to take account of the expected comparatively lower return on advertising spend.
- 8.39 Second, given the scale of the merged entity's platform, it will be more likely than an entrant to have breadth of inventory. In other words, tickets available for more events (on average). Therefore, once a prospective buyer is on the platform via either paid search or organic search the merged entity's platform will have a higher likelihood of making a sale of some kind even if it is not to the specific event that the buyer initially searched for. We would expect that the entrant platform would bid a lower amount on Google Ads than the merged entity to take account of the expected comparatively lower return of advertising spend.
- 8.40 Third, there are likely to be some economies of scale (through gaining more data points) in developing and honing effective bidding strategies in order to generate traffic onto their platforms and convert searches into sales. This is also likely to be an advantage of experience in knowing which keywords to bid on to attract buyers to a platform. [REDACTED]. This is its growth flywheel. It would therefore take time for a new entrant understand how to efficiently drive traffic to its platform through paid search.
- 8.41 Although viagogo told us that this reference to network effects as a high barrier to entry (paragraphs 8.10 to 8.12) came from [REDACTED] we consider that it has probative value given its consistency with the other documents, discussed in paragraphs 8.13 to 8.15, which were prepared in the ordinary course of business.
- 8.42 Some third parties have raised the importance of brand awareness in helping to convert searches into sales. In our competitive assessment we

received mixed views on the importance of brand and reputation in this market (paragraph 7.27). [REDACTED].

- 8.43 We note that third parties have stressed to us that it is the awareness of the Parties' brands – not their reputations – that matters in helping to drive sales (by way of example, see paragraph 7.187). One third party told us that '[REDACTED]'. [REDACTED].
- 8.44 We also note that viagogo is the market leader in the UK and, as discussed above, has managed to build up a competitive '[REDACTED]' via indirect network effects (which we expect will be even stronger for the merged entity). Within that context, its brand awareness (or reputation) may be less important to it relative to an entrant trying to establish a position in the market with resellers and buyers. Both [REDACTED] have cited the high cost of building brand awareness as a significant barrier to entry and expansion.
- 8.45 From a buyer perspective, brand awareness may be important not only in making buyers aware of the new platform, but a known brand is also likely to be important in building the legitimacy of the platform particularly in guaranteeing valid tickets or refunds. [REDACTED]. We think that branding may hamper entry and expansion to some extent but not to the degree of indirect network effects and the cost disadvantage of bidding against the merged entity for paid search results.
- 8.46 We also note that there are very few examples of large-scale successful entry in uncapped secondary ticketing platform services. For example, Gigsberg entered in April 2019. Although Gigsberg has not been competing against viagogo and StubHub for very long, and especially when we take into account the Coronavirus (COVID-19) pandemic, its market position of [REDACTED] is considerably below what would be sufficient to prevent or mitigate an SLC from arising as a result of the Merger. [REDACTED].
- 8.47 The Parties argued that primary sellers (or event organisers/venues/sports clubs) can facilitate entry by appointing an authorised resale platform (paragraph 6.7). This could help an entrant or a smaller player to expand. In this regard we note that authorised resellers only allow capped resale and are therefore not in the same market as the Parties. Moreover, we have not seen capped resale platforms expand into uncapped secondary ticketing platforms in the UK. We have not received any evidence that such entry facilitated by primary sellers would be timely, likely or sufficient in this case.
- 8.48 Finally, we note that the evidence in our competitive assessment is that no existing provider of capped secondary ticketing platform services currently intends to remove the ticket price cap from their platforms nor, they told us,

would they in the event that the merged entity worsens price or non-price terms on its uncapped secondary ticketing platform. For the capped secondary ticketing platforms operated by primary sellers, the relatively small share of their revenues that come from their resale facilities and the importance of their relationships with event organisers, content rights holders, artists and venues means that these are unlikely to have strong incentives to change their existing business models in response to the Merger (paragraph 7.203).

- 8.49 As set out above the sales of secondary tickets through these platforms are small compared to the Parties and they are not regarded by the resellers we spoke to as strong alternatives to the Parties.
- 8.50 The evidence therefore shows that it is not likely that entry or expansion of sufficient scale would occur in a timely manner in order to prevent an SLC from arising as a result of the Merger.

Efficiencies

- 8.51 Efficiencies arising from a merger may enhance rivalry with the result that the merger does not give rise to an SLC.²¹⁷ In order for us to take efficiencies into account we must expect that they would be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger) and the efficiencies must be a direct consequence of the merger.²¹⁸
- 8.52 In this case the Parties submitted during the CMA's phase 1 investigation that following their integration, they will be able to realise cost-saving opportunities that will [✂].
- 8.53 In our phase 2 investigation the Parties have not made any representations that the Merger is likely to lead to rivalry-enhancing efficiencies nor that the Merger would benefit consumers. We have not seen any evidence that there will be such efficiencies as a direct result of the Merger.
- 8.54 The evidence therefore indicates that it is not likely that rivalry enhancing efficiencies arise from the Merger to prevent an SLC from arising as a result of the Merger.

²¹⁷ [Merger Assessment Guidelines](#), paragraph 5.7.2.

²¹⁸ [Merger Assessment Guidelines](#), paragraph 5.7.4.

Countervailing buyer power

- 8.55 In some circumstances, a customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. If all customers of the merged firm possess countervailing buyer power post-merger then an SLC is unlikely to arise. However, if only some customers possess countervailing buyer power the CMA may assess the extent to which that ability may be relied upon to protect all customers.²¹⁹
- 8.56 In this case the Parties submitted during the CMA's phase 1 investigation that secondary marketplaces face downward pressure on fees from professional resellers who have greater leverage than they did previously due to the adoption of inter-broker agreements or the use of a consolidator. If resellers are dissatisfied with the services of the Parties, they could set up their own resale website within the foreseeable future. viagogo recently [X]. The Parties have not made any representations about countervailing buyer power in our phase 2 investigation.
- 8.57 As discussed above in 'entry and expansion' we do not consider it likely that resellers will be able to quickly, easily and at sufficient scale of liquidity set up their own resale website in order to prevent an SLC from arising.
- 8.58 In addition, as discussed in our competitive assessment, after the Merger customers of the Parties' platforms will have greatly reduced choice of uncapped secondary ticketing platform services. We do not consider that there would be sufficient alternatives for resellers or buyers to switch to after the Merger.
- 8.59 The evidence therefore indicates that it is not likely that countervailing buyer power will prevent and SLC from arising as a result of the Merger.

9. Conclusions

- 9.1 We have concluded that the completed acquisition by viagogo of StubHub has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events.

²¹⁹ [Merger Assessment Guidelines](#), paragraph 5.9.1.

10. Remedies

Introduction

- 10.1 We have found the Merger is likely to give rise to an SLC. We have also found that the adverse effects resulting from the SLC (relative to the counterfactual situation) are likely to include any of: higher fees for resellers and/or buyers; worse non-price terms and conditions for resellers and/or buyers; a lower quality of customer service; and reduced innovation (eg in functionalities and improving the ease of use of the Parties' ticketing platforms).²²⁰
- 10.2 Therefore, we must decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effect resulting from the SLC.²²¹
- 10.3 In the Notice of Possible Remedies (**Remedies Notice**), we sought views on possible remedies to the SLC.²²² In particular, we sought responses on full or partial divestiture of StubHub or viagogo.
- 10.4 We also invited views on other practicable remedies to address the SLC and any resulting adverse effects, including any behavioural remedies that could be required to support the effectiveness of a divestiture.
- 10.5 This chapter discusses:
- (a) The process we undertook in considering remedy options.
 - (b) The framework for our consideration of remedies.
 - (c) the effectiveness of a full divestiture of either StubHub or viagogo.
 - (d) the effectiveness of a partial divestiture of StubHub.
 - (e) the effectiveness of a partial divestiture of viagogo.
 - (f) the proportionality of effective remedies.

²²⁰ Paragraph 7.289.

²²¹ The Act, [Section 35\(3\)](#).

²²² The [Notice of Possible Remedies](#) sets out the actions which the CMA considers it might take for the purpose of remedying the SLC and resulting adverse effects identified in the [Provisional Findings](#).

Our remedy consideration process

- 10.6 We published the Remedies Notice together with our Provisional Findings on 22 October 2020. In response the Parties submitted a remedy proposal (the **Initial Remedy**) based on a partial divestiture of the StubHub business.²²³
- 10.7 We shared a working paper with the Parties (**the Remedies Working Paper**) which was prepared after consideration of further written and oral responses received from the Parties and third parties following the publication of the Remedies Notice. In addition, we held calls with 12 third parties (a mix of UK and non-UK ticketing platform operators, and resellers) to discuss potential remedy options, and sent a questionnaire to 25 third parties, receiving 12 responses. A brief summary of third-party evidence is set out in the relevant sub-sections of our assessment of each remedy; a more detailed summary is set out in Appendix I.
- 10.8 In response to the working paper, the Parties submitted an 'Enhanced Remedy' proposal (the **'Enhanced Remedy'**) which we explain and consider below. Although the Enhanced Remedy was submitted relatively late in our inquiry timetable, we discussed aspects of the Enhanced Remedy on calls with a number of third parties as was practicable (four).
- 10.9 We consider that the views of both Parties and of third parties may be influenced to some extent by commercial or other incentives. We considered all submissions carefully and with regard to this possible influence, and we judged the extent to which evidence available to us supports the views submitted. Where appropriate, we sought further information to ensure that our conclusions are evidence-based.
- 10.10 In paragraph 4.2, we noted that we have undertaken our merger inquiry at a time when the live events industry, and associated ticketing activities, have been severely impacted by the Coronavirus (COVID-19) pandemic and the measures taken to restrain the spread of Coronavirus (COVID-19). These measures have included the banning or restricting spectator numbers at live events with the result that live events have largely ceased or can no longer be attended by paying customers. The impact on the industry and the uncertainty surrounding when, how and where live events will re-emerge (which may vary between geographical markets), and the steps needed to re-commence activities at scale, may affect the potential effectiveness of any remedy in this case. We have taken this context into account, where appropriate, in our considerations.

²²³ [Parties' response to the Notice of Possible Remedies](#).

Framework for the assessment of remedies

- 10.11 The Act requires that the CMA, when considering possible remedial actions, shall 'in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it'.²²⁴
- 10.12 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects. The effectiveness of a remedy is assessed by reference to its:
- (a) impact on the SLC and the resulting adverse effects;
 - (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration;
 - (c) practicality in terms of implementation and any subsequent monitoring; and
 - (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effect.²²⁵
- 10.13 Where the CMA has found equally effective remedies, it will select the least costly and intrusive remedy that it considers to be effective.²²⁶ The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. The CMA may also have regard, in accordance with the Act,²²⁷ to the effect of any remedial action on any Relevant Customer Benefits (RCBs) arising from the merger.

Overview of remedies options

- 10.14 In the Remedies Notice, we set out the following remedy options:
- (a) An unwinding of the Merger involving the full divestiture of StubHub or viagogo;
 - (b) the partial divestiture of StubHub; or
 - (c) the partial divestiture of viagogo.

²²⁴ The Act, [section 35\(4\)](#).

²²⁵ [Merger remedies guidance CMA87](#), paragraph 3.5.

²²⁶ [Merger remedies guidance CMA87](#), paragraphs 3.4 and 3.6.

²²⁷ The Act, [section 35\(5\)](#).

- 10.15 We also invited views on aspects of remedy design which might be needed to make a divestiture remedy effective and to ensure that no new competition concerns would arise. These may include requirements relating to the scope of any divestiture package, the process of selecting the asset to be divested, the identification of a suitable potential purchaser, and the divestiture process including the timing of divestiture.
- 10.16 In the Remedies Notice, we said that we were not proposing behavioural remedies on their own as none appeared likely to be effective in addressing the SLC that we had provisionally found. Nonetheless, we said that we were willing to consider any behavioural remedies that were put forward as part of the consultation. No respondents suggested behavioural remedies on their own as a solution to the SLC, but some did suggest behavioural remedies to support full divestiture. The Parties also proposed certain behavioural commitments as part of the Enhanced Remedy. We consider these in the assessment of the divestiture remedy options.
- 10.17 The next section sets out design issues relating to the effectiveness of any divestiture remedy, including the scope of the divestiture package, the identification and availability of suitable purchasers, and ensuring an effective divestiture process. The following sections then assess the design issues relating to each of the remedy options.

Overview of remedy design issues and risks relating to divestiture remedies

- 10.18 An effective divestiture remedy will address at source the loss of rivalry resulting from the merger by changing or restoring the structure of the market.²²⁸
- 10.19 There are three categories of risk that could impair the effectiveness of any divestiture remedy: composition risk, purchaser risk and asset risk:^{229,230}
- (a) composition risk arises if the scope of the divestiture package is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;

²²⁸ [Merger remedies guidance CMA87](#), paragraph 3.38.

²²⁹ [Merger remedies guidance CMA87](#), paragraph 5.3.

²³⁰ In considering these risks in the current case, we have had regard to the impact of the Coronavirus (COVID-19) pandemic, and the resulting economic uncertainty on possible remedy options.

- (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser, or if a suitable purchaser is not available; and
- (c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture.

10.20 An effective divestiture remedy must give us sufficient confidence that these practical risks can be properly addressed in its design and execution. We therefore consider the following design issues:

- (a) the appropriate scope of the divestiture package;
- (b) the identification and availability of suitable purchasers; and
- (c) ensuring an effective divestiture process.

Composition of divestiture package

10.21 In considering the appropriate scope for a divestiture package, we should ensure that it:

- (a) is sufficiently broad in scope to address all aspects of the SLC(s) and resulting adverse effects;
- (b) would enable the eventual purchaser to operate the divested business as an effective competitor; and
- (c) is sufficiently attractive to potential purchasers.

10.22 The CMA takes divestiture of all or part of the acquired business as its starting point because ‘restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy’.²³¹

10.23 In defining the scope of a divestiture package that will remedy an SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap. This may comprise a subsidiary or a division or the whole of the business acquired.²³² There is nothing to prevent the CMA considering whether the acquirer’s business (or a division of it) may represent the smallest, viable stand-alone business.

²³¹ [Somerfield PLC v Competition Commission \[2006\] CAT 4](#) at 99; [Merger remedies guidance CMA87](#), paragraph 5.6.

²³² [Merger remedies guidance CMA87](#), paragraph 5.7.

10.24 Chapter 2 describes the Parties and the Merger. The acquired StubHub companies are currently held by subsidiaries of PUG LLC. We understand that [X]. Further information on the division of responsibilities between the StubHub US and international companies is set out in the assessment of the Enhanced Remedy.

Identification and availability of suitable purchasers

10.25 In our Remedies Notice, we invited views on whether there were any specific factors to which we should pay particular regard in assessing purchaser suitability, and whether there were risks that a suitable purchaser was not available.²³³

10.26 The CMA will wish to satisfy itself that a prospective purchaser:

- (a) is independent of the merger parties;
- (b) has the necessary capability to compete;
- (c) is committed to competing in the relevant market; and
- (d) that divestiture to the purchaser will not create further competition or regulatory concerns.²³⁴

Ensuring an effective divestiture process

10.27 An effective divestiture process will safeguard the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale, as well as allowing prospective purchasers to make an appropriately informed acquisition decision.²³⁵

10.28 The incentives of merger parties may serve to increase the risks of divestiture. Although merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves. Merger parties may therefore seek to sell their less competitive assets/businesses and target them to firms which they perceive as weaker competitors. They may also allow the competitiveness of the divestiture package to decline during the divestiture process.²³⁶

²³³ [Notice of Possible Remedies](#), paragraph 31.

²³⁴ [Merger remedies guidance CMA87](#), paragraph 5.21.

²³⁵ [Merger remedies guidance CMA87](#), paragraph 3.51.

²³⁶ [Merger remedies guidance CMA87](#), paragraph 5.4.

10.29 The circumstances of this case, including the context of the ongoing restrictions on live events arising from Coronavirus (COVID-19) (paragraph 10.10), raise the following issues for consideration in relation to the divestiture process:

- (a) the appropriate timescale for divestiture to take place;
- (b) whether, and under what circumstances, there is a need to appoint an external and independent trustee to complete a divestiture (**Divestiture Trustee**) to mitigate the risk that the divestiture does not complete within the timescale specified; and
- (c) the role of interim measures during the divestiture process.

10.30 We consider these issues in the sections assessing each remedy option below.

Full divestiture of StubHub or viagogo

10.31 We consider first the effectiveness of a full divestiture of either StubHub or viagogo, before turning to consider the effectiveness of partial divestiture options, involving operations from either StubHub or viagogo.

Description of remedy

10.32 This remedy would involve the Parties unwinding in full the completed Merger. This would involve either divesting all of the StubHub companies purchased by viagogo, or the companies owned by Pugnacious Endeavours Inc that own the assets and carry out the operations of the viagogo business. In the event of full divestiture, in line with usual practice, we would expect the senior management team to transfer with the business.

10.33 Either divestiture would represent a starting point for identifying a divestiture package, as each would restore the pre-Merger structure in the market where we have found an SLC.²³⁷

²³⁷ [Merger remedies guidance CMA87](#), paragraph 5.6.

Views of the Parties and third parties

The Parties

- 10.34 The Parties stated that risks regarding potential litigation by viagogo's lenders would create risks for the effective implementation of a full divestiture. We discuss these issues further in paragraphs 10.43 to 10.55.
- 10.35 The Parties also stated that a full divestiture remedy could not be assumed to be effective because, as [X]% of the GTV of StubHub comes from the North American operations, 'the CMA cannot exclude with any degree of certainty that a purchaser would prefer to devote its future commercial efforts more on running the [X]% US portion of its business than it would devote to the UK'.²³⁸
- 10.36 viagogo's management stated that were viagogo to be divested instead this would result in the same issue, [X].²³⁹
- 10.37 In support of this they cited the example of StubHub's previous owner eBay, under whose ownership in their view StubHub had 'ignored the UK almost entirely' which they saw as a natural consequence of [X]% of the GTV being in North America. They also stated that in their view there was some risk that eBay may have shut down the UK business at some point as they did not think it should get the same attention as the US. However, the Parties did not suggest an alternative to the counterfactual, which is set out in Chapter 4 of this report anticipates the pre-Merger of conditions of competition would exist between the Parties, nor did we receive evidence to show that this would be likely absent the Merger.

Third parties

- 10.38 Of the eight third parties that we spoke to regarding full divestiture, all eight told us that they consider the full divestiture of either StubHub or viagogo to be an effective means to remedy the SLC.²⁴⁰
- 10.39 Of the third party responses to the questionnaires we received, five stated that a full divestiture would be effective, with a further three providing a qualified response. Of these three, two suggested that full divestiture should be accompanied with enabling behavioural remedies, such as a restriction on the Google Ad spend of viagogo in the UK. The third respondent stated

²³⁸ [Parties' response to the Notice of Possible Remedies](#), paragraph 11.

²³⁹ Note CMA analysis based on the figures supplied by the Parties shows the UK business of viagogo to comprise [X]% by GTV of the global business.

²⁴⁰ [X].

that its perception was that StubHub's European operations were in decline prior to the crisis and given viagogo had a significantly higher market share in the UK it would be better to fully divest viagogo. The other four questionnaire responses we received did not comment on the effectiveness of a full divestiture remedy.

- 10.40 In relation to the third parties we held calls with, four expressed an interest in buying a fully divested StubHub.²⁴¹ Another two told us that behavioural enabling measures should be implemented alongside a structural divestiture.²⁴² Suggestions included open distribution of tickets, prohibitions on other acquisitions, prohibition of the operation of multiple brands, and pricing transparency. Another third party told us that although it may be interested in acquiring StubHub, it has some concerns regarding the liabilities for ticket refunds that StubHub is carrying and the damage to the StubHub brand in the US arising from StubHub not providing customer refunds, providing limited customer support and having adopted an 'aggressive posture' towards ticket sellers. This third party also expressed concern about the availability of debt to support (what it assumed would be) the necessary purchase price.
- 10.41 None of the parties that we spoke to expressed an interest in purchasing a fully divested viagogo business. Four third parties [X] told us or indicated that the reputation associated with viagogo's brand was a key reason for not being interested.

Effectiveness – full divestiture

- 10.42 In paragraph 1.20 we set out three risks that could impair the effectiveness of any divestiture remedy. An effective divestiture remedy must give the CMA sufficient confidence that these risks can be properly addressed in its design. We therefore consider the following design issues in determining whether or not a full divestiture remedy would be effective:
- (a) the appropriate scope of the divestiture package – and the implications for composition risk;
 - (b) the identification and availability of suitable purchasers – and the management of purchaser risk; and

²⁴¹ See Appendix I, paragraph 18.

²⁴² See Appendix I, paragraph 16.

- (c) ensuring an effective divestiture process – to ensure a timely remedy and to manage asset risk associated with this completed merger.
- 10.43 In addition, and in response to the Remedies Working Paper, the Parties submitted that any Order for full divestiture may affect the rights of viagogo's lenders. They stated that, in connection with the Merger, [X].
- 10.44 The Parties stated that a global divestiture would 'be liable to result in a substantial breach of viagogo's contractual obligations to its lenders, under the financing arrangements', which will '[X]'. They asserted that the lenders would be likely to take action in the U.S. courts to seek to protect their position, [X]. The Parties also submitted that 'U.S. Courts will not automatically recognize the domestic effects in the United States of the CMA's orders, or even orders of a UK court'.
- 10.45 The Parties asserted that these issues create risks for effective implementation of the remedy, such that the CMA 'cannot be satisfied' that a full divestiture would be an effective remedy.
- 10.46 We have carefully considered the Parties' arguments.
- 10.47 We first observe that it is viagogo that owes contractual duties to its lenders, and to the extent that the consequences of viagogo entering into (and completing) a transaction that gives rise to a substantial lessening of competition lead viagogo to breach those obligations, that is a matter between viagogo and its lenders. It does not follow that the effectiveness of the remedy is called into question.
- 10.48 The Act places viagogo under a duty to comply with any Order or undertaking for full divestiture.²⁴³ We assume that viagogo will itself take the steps needed to comply with that statutory duty. If it were not to do so, the CMA may bring enforcement proceedings in UK court.²⁴⁴ The fact that viagogo asserts that complying with an Order for full divestiture may affect third-party rights does not alter our expectation that it will take the steps required to give effect to such a remedy.
- 10.49 We note that where third-party financiers fund an acquisition that may be subject to UK merger control, they bear the risk that full divestiture may

²⁴³ The Act, [section 94\(2\)](#).

²⁴⁴ The Act, [section 94\(6\)](#). Failure to comply with a UK court order could lead to the CMA pursuing contempt of court proceedings. As a matter of principle, and consistent with the CMA's published guidance ([Merger Assessment Guidelines](#), paragraph 4.3.3) we do not consider it appropriate to consider the likelihood that the recipient of a CMA order will violate UK law.

ultimately be required by the CMA.²⁴⁵ Parties involved in transactions of this nature ought to understand and accept this risk.

- 10.50 The alternative view is that third-party financiers involved in a global merger expect their private law rights and interests to take priority over regulatory enforcement action taken in the wider public interest. We see no reason to adopt this assumption which we did not consider plausible, given the mandatory nature of orders made in merger control proceedings.
- 10.51 We further note that, if the CMA were to give weight to the prospect that a divestiture remedy could be frustrated by action taken by third party financiers, that would incentivise parties to structure future transactions using third party finance so that the interests of the financiers could be relied on to impede effective enforcement action.
- 10.52 For these reasons, we did not accept that our assessment of the effectiveness of a divestiture remedy should be affected by the existence of third party finance for the transaction and the risk that the lenders could take steps to disrupt the implementation of such a remedy.
- 10.53 Even if the Parties' submissions based on the position of the financiers were capable in principle of impacting our assessment, we have no basis to consider that lenders would take the steps put forward by the Parties (which appear to be highly speculative),²⁴⁶ and no basis to conclude that the US courts would ultimately prefer the lenders' private law rights over a CMA order which seeks to protect the interests of UK consumers.²⁴⁷
- 10.54 Whilst the Parties have raised the possibility that the lenders might pursue various legal avenues against viagogo in the event of a full divestiture, the possibility of them doing so is inherently uncertain. We also note that the lenders in this case have not indicated any likelihood that they will take action intended to frustrate full divestiture. Like all third parties, lenders were able to respond to the CMA's public invitations to comment on its Provisional Findings and the Remedies Notice, which clearly canvassed the possibility of

²⁴⁵ Lenders may seek representations and covenants from borrowers in the context of negotiating debt documents, the scope of which may include regulatory and other risks.

²⁴⁶ The Parties' submissions speculate as to the possible causes of action that the lenders might pursue and the possible outcomes of such litigation. They do not provide evidence of the lenders' incentives or intentions (which may vary considerably) or of the likely position in fact, including in relation to viagogo's financial position, that would be relevant to a US court considering any such litigation.

²⁴⁷ The Parties have submitted an opinion from US counsel that notes that, in the event proceedings were brought by the lenders, US courts 'will not automatically recognize the domestic effects in the United States of the CMA's orders or even orders of a U.K. court' and that their willingness to do so is uncertain. The CMA acknowledges that the position is untested but does not consider that it must be satisfied that there is no risk of litigation connected to enforcement in order to be satisfied that full divestiture would be an effective remedy. Any alternative approach would, in light of the inherent risks and uncertainty attached to litigation, risk undermining the ability of the CMA to enforce competition laws to the benefit of UK consumers.

a remedy requiring full divestiture of either viagogo or StubHub. None did so, and JPMorgan, as lead administrator of viagogo's credit agreement, expressly declined an invitation to comment.

- 10.55 In conclusion, we do not consider that the litigation risks asserted by the Parties are relevant to our assessment of the effectiveness of full divestiture and, in any event, they are inherently uncertain and do not identify any bar on enforcement that could impact our assessment of the effectiveness of full divestiture.

Scope of divestiture package-full divestiture

- 10.56 In considering the appropriate scope for a divestiture package, the CMA seeks to ensure that it:

- (a) is sufficiently broad in scope to address all aspects of the SLC and resulting adverse effects;
- (b) would enable the purchaser to operate the divested business as an effective competitor; and
- (c) is sufficiently attractive to potential purchasers.

- 10.57 There has been no integration between viagogo and StubHub since the Merger as a result of the hold separate requirements under the Interim Order.²⁴⁸ We therefore consider that it would be a relatively straightforward exercise to specify the scope of the divestiture package under a full divestiture remedy without the need for a complex and drawn-out separation process.

- 10.58 A full divestiture remedy would unwind the Merger. It would therefore minimise the risk of having a remedy package that omitted any key assets or management teams. This would enable the purchaser of either viagogo or StubHub to operate as an effective competitor immediately following acquisition.

- 10.59 No third parties raised any concerns with the effectiveness of a full divestiture of either StubHub or viagogo. We consider the attractiveness of a full divestiture to potential purchasers below.

- 10.60 We considered the third-party comments on the need for additional behavioural remedies. Our view is that if we consider a full divestiture to be

²⁴⁸ See [Interim Order](#), 3 July 2020.

effective by itself then it would be unnecessary and therefore disproportionate to require additional behavioural measures.

Identification and availability of suitable purchasers-full divestiture

10.61 We have considered the criteria for a suitable purchaser of either viagogo or StubHub, and the likely availability of such suitable purchasers.

Purchaser suitability in the current case-full divestiture

10.62 In considering purchaser suitability we intend to apply the criteria in our guidance, set out in paragraph 10.26 of this paper, that a suitable purchaser:

- (a) is independent of the Parties;
- (b) has the necessary capability to compete;
- (c) is committed to competing in the relevant market (in this case the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events); and
- (d) that divestiture to the purchaser will not give rise to a realistic prospect of further competition or regulatory concerns.²⁴⁹

10.63 Under a full divestiture, as stated above, the management and staff of either business would transfer with that business. This would mean that a purchaser would not necessarily need to have its own prior expertise in secondary ticketing in order to have the necessary capability to compete, though other factors, such as financial resilience, may be important.

10.64 We noted the Parties' comment that a buyer of the whole of StubHub would not necessarily devote enough effort to managing the UK business, since it represents a very small part of the whole business.

10.65 We consider that there are likely to be potential purchasers of StubHub who have an appetite to develop and grow its UK activities. StubHub told us that the UK is its largest market outside of North America and the UK market ought to be an attractive one for potential buyers of the business. In our market testing, of those parties who indicated to us that they may be interested in acquiring the entirety of StubHub, all stated that they intended to continue to operate the business in the UK given the significance and size

²⁴⁹ [Merger remedies guidance CMA87](#), paragraph 5.21.

of the market. It was also stated by two third parties that the UK is one of the most important markets globally outside North America.

- 10.66 A commitment to competing in the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events is an important criterion when choosing a suitable purchaser. Examination of the business plans and assessment of the capability to support competition in the UK are important parts of the CMA's purchaser approval process that is carried out as part of the remedy implementation. Purchasers who are not able to demonstrate such a commitment to the relevant market will not be approved.
- 10.67 Furthermore, we have not received any evidence supporting the Parties' claim that eBay was planning to shut down StubHub's international operations.²⁵⁰ By contrast, internal documents submitted by the Parties show that [X]. [X]. In our view, the relatively limited scale [X] in 2019, combined with pre-existing plans for reorganisation, suggests that StubHub's UK operations have the potential to become profitable after a [X].
- 10.68 Set against these positive medium-term incentives for any purchaser to develop the UK operations of StubHub, we are mindful that the Coronavirus (COVID-19) pandemic has had a particularly severe impact on the ticketing industry. It is possible this might affect the incentive of a buyer of the entire StubHub business to focus relatively more of its energies immediately post-acquisition on North America where approximately [X]% of pre-Coronavirus (COVID-19) revenue was generated in 2019. This in turn might lead to a temporarily reduced focus on UK operations post-acquisition than would be the case without Coronavirus (COVID-19). However, we have not received any evidence that this risk is likely to materialise or, if it did, whether and for how long any such reduced focus would be likely to persist following any acquisition.
- 10.69 In addition, the Parties argued that in the event that StubHub was retained and viagogo divested, as the owner of StubHub, Pugnacious Endeavours Inc [X]. For the reasons set out in paragraph 10.70 we consider the UK operations of StubHub to be an important and attractive part of that business to any owner of StubHub, including the current owners. We also note that third parties with less experience of the the UK market (but one of whom is nevertheless an [X] who we consider is well-positioned to assess the attractiveness of the UK market) told us that, in the event of a divestiture of StubHub, were they to acquire StubHub they would continue to compete in

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We also note that the Parties did not argue the 'failing firm' defence that in the absence of the Merger StubHub or its UK operations would cease to operate within the UK.

the UK. Some third parties noted that the UK is an attractive and large market (paragraph 10.65). Based on this evidence we see no reason why the the owner of StubHub – whether that would be Pugnacious Endeavours Inc or a third party – would not have the incentive and ability to compete effectively in the UK for the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events.

- 10.70 We also considered the extent to which a purchaser of viagogo would be incentivised to develop its UK operations after a divestiture. The UK is the largest single market for viagogo and accounted for [X]% of revenue in 2019 and had [X], suggesting it is also one of the most profitable locations in which viagogo operates. Given this, we consider that a buyer would have a strong incentive to continue to operate in the UK in light of the importance of the UK market to viagogo.

Likely availability of suitable purchasers-full divestiture

- 10.71 Both StubHub and viagogo had a [X] before the Coronavirus (COVID-19) pandemic ([X]) and we have no evidence they would [X]. Indeed, StubHub's financial position would be expected to improve further after a successful restructuring. Currently, on a combined basis, and [X] in December 2020, the Parties have sufficient cash forecasted to last to [X] (excluding cash that is due to sellers). We note that the expected gradual return of spectators to live events in 2021 should improve the Parties' funding position.
- 10.72 Four of the third parties that we spoke to told us that they may be interested in purchasing the entire StubHub business.
- 10.73 We also note the CMA's Merger remedies guidance, which says:
- In relation to whether divestiture is feasible, substantial uncertainty as to whether a suitable purchaser will emerge will generally not be sufficient for the CMA to conclude that any form of divestiture remedy is not feasible. The CMA has found that it is normally possible to implement divestiture remedies, despite such uncertainties, given flexibility in the disposal price.²⁵¹
- 10.74 There are also several factors which may limit the number of suitable purchasers at the current point in time:

²⁵¹ [Merger remedies guidance CMA87](#), paragraph 3.51.

- (a) The value of viagogo and StubHub may limit the ability of smaller purchasers to raise sufficient funds to purchase one or either of them (noting also that globally StubHub is considerably larger than viagogo). In addition, there may be challenges for significantly smaller acquirers in the management and operation of a large, global company.
- (b) The continued economic uncertainty caused by the Coronavirus (COVID-19) pandemic and the current state of secondary ticketing mean that there is greater risk attached to acquiring a business such as viagogo or StubHub, compared with businesses in other sectors that have been less adversely affected. Specifically, both viagogo and StubHub carry liabilities relating to events that have been, or may be, cancelled, which makes quantification of the liabilities difficult and inherently uncertain. How quickly the live events sector will recover in the UK and around the world remains uncertain. However, Coronavirus (COVID-19) vaccines are starting to be rolled out in the UK and other countries (including the US), so it is possible that trading conditions will have improved and the level of business uncertainty reduced by the time of implementation of any divestiture.
- (c) The differing reputations of the Parties and the reputational risk appetite of any purchaser, including the fit with the purchaser's business were the purchaser to have an existing ticketing business. None of the parties that we spoke to expressed an interest in purchasing a fully divested viagogo business. Four third parties [X] told us or indicated that the reputation associated with viagogo's brand was a key reason for not being interested.

10.75 While these factors may deter some purchasers and reduce the size of the pool of potential purchasers, we do not consider them to alter our expectation that a suitable purchaser for either StubHub or viagogo would be found, given flexibility in the disposal price.

10.76 We note the comments relating to viagogo's reputation, but consider that given viagogo's success and profitability, including in the UK, a suitable buyer is likely to be found for the business. Any purchaser would need to consider how they wished to position viagogo's brand post-acquisition; however, the strength of the underlying business is likely to be attractive to a variety of purchasers.

10.77 We conclude that there is likely to be purchaser interest in a full divestiture of either viagogo or StubHub. This may include trade buyers, or – given the stand-alone, self-sufficient nature of both businesses (paragraph 10.63) – purchasers without prior exposure to the secondary ticketing sector.

Ensuring an effective divestiture process-full divestiture

10.78 As set out in paragraphs 10.27 to 10.30, we have considered the following process issues concerning full divestiture:

- (a) the appropriate timescale for divestiture to take place;
- (b) whether, and under what circumstances, there is a need to appoint a Divestiture Trustee; and
- (c) the role of interim measures during the divestiture process.

10.79 A full assessment of these issues is set out in the section covering the Enhanced Remedy (paragraphs 10.257 to 10.271). These issues and the asset risks which they address are common to all of the remedy options we are assessing. Therefore, we consider the findings in that assessment also apply to the full divestiture of either StubHub or viagogo.

Summary of our assessment of the effectiveness of full divestiture

10.80 We have found that a full divestiture of either viagogo or StubHub would maintain the competitive structure of the market that would have otherwise been changed by the merger.²⁵² As a result, either divestiture (of viagogo or StubHub) has sufficient scope to provide a comprehensive remedy to the SLC we have found.

10.81 Our view is that the CMA's standard purchaser criteria – ie that the purchaser is independent from the Parties, is capable and committed to compete in the relevant market, and it is not likely to give rise to competition concerns – are appropriate in relation to full divestiture options. An important focus of our purchaser suitability assessment for full divestiture would be the commitment of potential purchasers to the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events – using the purchaser approval process to manage this risk factor would be particularly relevant in relation to a divestiture of StubHub, whose UK operations represent a smaller proportion of sales and profitability than viagogo.

10.82 Given current economic and market conditions, the full divestiture of StubHub or viagogo may carry some risk regarding the availability of suitable purchasers. We also note that some (but not all) potential trade purchasers did not wish to acquire viagogo, given their views about its reputation. In addition, we have considered whether it is likely that a purchaser of StubHub

²⁵² [Merger remedies guidance CMA87](#), paragraph 3.35.

would focus initially on restructuring its North American business, leading to a risk that the UK business would receive insufficient management attention, thereby possibly diminishing its effectiveness as a competitor. However, we consider that the UK is an attractive market in which StubHub has an established position and we have not seen any evidence that had StubHub continued as an independent competitor in the UK, it would have neglected the UK market. To the extent any purchaser of the business would focus on the US restructuring, it is likely to be only in the short-term. Moreover, this risk was not borne out in our market testing with third parties. We also consider that this particular risk would not apply to a divestiture of viagogo.

- 10.83 Overall, given the Parties' pre-Coronavirus (COVID-19) track records, evidence from potential purchasers and other third parties, and the possibility of flexibility in the disposal price, we consider the risk of failing to find a suitable purchaser to be small.

Conclusion on the effectiveness of full divestiture

- 10.84 We have concluded that the full divestiture of either StubHub or viagogo would represent an effective and comprehensive remedy to the SLC and its adverse effects. While we consider that the two full divestiture options have an acceptable risk profile, both options nevertheless involve some uncertainty, particularly in the context of the global ticketing industry looking to recover from the lack of live events because of Coronavirus (COVID-19). We have considered the proportionality of all effective remedy options in paragraphs 10.303 to 10.326.

Partial divestiture of StubHub – the Enhanced Remedy

- 10.85 In response to our Remedies Notice the Parties proposed the Initial Remedy – a divestiture of StubHub's International operations comprising the primary and secondary ticketing businesses in all the geographies that StubHub operates including its UK operations but excluding its North American operations. The Parties' Initial Remedy proposal was also published on the CMA website following which a number of third parties commented on the proposal. A full description of the Initial Remedy is set out in Appendix J.
- 10.86 Following the publication of the Initial Remedy proposal, and the receipt of comments on that proposal by third parties, the CMA developed a Remedies Working Paper which was shared with the Parties.²⁵³ This set out, among other things, a number of concerns we had with the scope, risk profile and

²⁵³ [CMA Merger remedy guidance](#), paragraph 4.64.

overall effectiveness of the Initial Remedy. In response to our Remedies Working Paper, the Parties submitted the Enhanced Remedy which included the operations within the Initial Remedy and additional assets and behavioural undertakings.

- 10.87 The following sections set out a description of the Enhanced Remedy and summarise the views of the Parties and third parties. A more detailed summary of third-party views is set out in Appendix I. Most of the responses from third parties related to the Initial Remedy, reflecting the timing of the public consultation process. However, we undertook further consultation with a more limited group of third parties on the Enhanced Remedy. We also took account of third party views on the Initial Remedy where they remained relevant to the proposals in the Enhanced Remedy. Finally, we assess the effectiveness of the Enhanced Remedy, including the extent to which it addresses our concerns with the Initial Remedy.

Description of remedy – The Enhanced Remedy

Overview

- 10.88 The Enhanced Remedy submitted by the Parties focuses on the current International operations of StubHub (being the jurisdictions outside the US and Canada (North America)) as the basis of the remedy. In addition to these International operations, the Parties propose divesting the current StubHub secondary ticketing platform and offering an option of either a ten year licence for the use of the StubHub brand in these jurisdictions or ownership of the viagogo brand. They also propose offering the purchaser the choice of any staff from the wider StubHub group it could reasonably foresee would be required, as well as all of the staff currently employed in the International operations.
- 10.89 In response to issues raised in our Remedies Working Paper, the Parties have also made proposals in respect of redirecting buyers and resellers using the North American StubHub websites (which would be retained by the Parties) to the divested business for UK live events for five years. During that period the Parties confirmed that the retained StubHub US websites would not list inventory for UK events and proposed that, in addition, the Parties would not advertise UK events to Google users in North America using the StubHub brand. At the same time, the divested business would be permitted to advertise UK events to Google users in the US using the StubHub brand.
- 10.90 These aspects and the wider points in the Enhanced Remedy proposal are outlined in more detail below, grouped into sections covering:

- (a) Legal entities;
- (b) Platforms and mobile app;
- (c) Customer data and inventory;
- (d) Brand;
- (e) Staff;
- (f) Liabilities;
- (g) Redirections;
- (h) viagogo inventory export capability reintroduction;
- (i) Offer on Google SEM prohibition in UK; and
- (j) Profitability.

Legal entities

10.91 The Enhanced Remedy proposes transferring the entire shareholding in the 23 StubHub subsidiaries through which StubHub's international business is operated. The shares in these subsidiaries are currently held by Viagogo Luxembourg Holding Company S.a.r.l..

Platforms and mobile app

10.92 The Parties propose 'selling' the StubHub secondary ticketing platform to the Enhanced Remedy entity either by means of an exclusive, royalty-free, perpetual, irrevocable worldwide licence to all the intellectual property in the platform, or by transferring the intellectual property to the purchaser on the condition that the divested business would grant the Parties a licence-back to use the intellectual property for (at least) migration purposes. [X]. Once this has been completed the Parties propose creating a copy of the platform, with the original production platform that currently supports StubHub's business in the live environment being retained by the Enhanced Remedy entity. The Parties' combined viagogo and StubHub North American operations (the merged entity) would then retain a copy of the platform in order to ensure they retain North American buyer and reseller data, which should be deleted by the divestment business to the extent it relates solely to North America whilst they migrate this data to an alternative platform (after which the copy of the StubHub platform would be 'destroyed'). [X]. In addition, the Parties said that they would share all platform developments

from the date of copying this platform until the divestiture of the Enhanced Remedy.

- 10.93 The Parties stated that they currently plan to complete [X] by '[X]' with the StubHub platform expected [X] by '[X]'. They expect t[X] by '[X]'.
- 10.94 All primary ticketing platforms currently used in the international operations together with associated primary ticketing partnerships would also form part of the Enhanced Remedy and would be transferred to the divested business.
- 10.95 A cloned copy of the StubHub mobile app would be included in the Enhanced Remedy with a commitment to direct its UK app users to the purchaser's app. The original copy, including its data and app store reviews, would be retained by the merged entity and would not form part of the divestiture package.
- 10.96 The Parties stated that they were 'confident' that contracts for all third-party vendor services currently used in the StubHub International operations would be transferred. If this was not possible they stated that the services could either be provided by the purchaser (who may have its own contracts for such services) or be renegotiated with the suppliers.

Customer data and inventory

- 10.97 The Parties stated that the Enhanced Remedy 'will come with a full transfer package of ex-North American registered customer/transactions data and live inventory listings (irrespective of the location of events)'. The only exclusion will be for customer and transaction data concerning transactions where both customers (StubHub resellers and buyers) are registered with a North American address. The Parties further stated that 'UK inventory existing at the time of divestiture will transfer to the divested business and there will not be any UK listings linked to inventory on the StubHub.com or StubHub.ca websites after divestment'. They also note that, during the period that the redirection of buyers and resellers (discussed further in paragraph 10.104 below) is in place, 'the StubHub.com and StubHub.ca websites [...] will not list any UK inventory for sale'.
- 10.98 In addition to transferring all customer data relating to resellers and buyers with an address outside North America, the Parties also propose transferring all customer data where either the buyer or the reseller is registered in a geography within the scope of the Enhanced Remedy (so, for example, data

on US buyers that have purchased from UK resellers would be within the scope of the remedy).

Brand

- 10.99 In relation to brand the Parties proposed giving the purchaser the choice of two options:
- (a) The exclusive use of the StubHub brand for a period of ten years for all geographies outside North America. The Parties confirmed that, were the purchaser to rebrand within this period, then the ten-year licence would still apply to exclude use of the StubHub brand by the merged entity outside North America. The Parties would also grant rights to use the StubHub brand for adverts for UK live events directed to Google users in the US for five or ten years. It is not entirely clear from the Parties' submissions whether this should be for five or ten years. We consider both durations in our assessment of the remedy. The Parties also stated that any additional restrictions on the brand licence would be negotiated with the purchaser but envisaged that these will be 'ordinary commercial protections, common in brand licensing agreements'. This option would also include exclusive global rights to the Ticketbis brand.
 - (b) Alternatively, the Parties proposed divesting the viagogo brand globally. As part of this they state that they would 'commit at their cost in terms of time and money (within reason)' to work with the purchaser of the divested business to rebrand the business within 12 months and in any event prior to divestiture.

Staff

- 10.100 The Enhanced Remedy includes all StubHub employees currently employed within the StubHub International business and any employees in the wider StubHub organisation 'who could be deemed by purchasers, acting reasonably, as being required to operate the business and maintain the platform'. As of November 2020, there were [X] staff employed in the StubHub International business.
- 10.101 In its Remedies Working Paper the CMA expressed concern over whether the Parties' Initial Remedy proposal had sufficient staff to support, maintain and develop the platform as it proposed having the [X] developers in Bilbao described below and a [X]. In response to this, the Parties have stated that in the Enhanced Remedy, the purchaser will also have the choice of as many of the [X] developers and engineers in China, currently employed by StubHub to maintain the platform as, acting reasonably, it may reasonably


require. The Parties also state they will require a short-term TSA from the purchaser to help them maintain their copy of the StubHub platform whilst they migrate to an alternative platform.

- 10.102 The Parties also state that most of the StubHub International management team will be included in the Enhanced Remedy with significant retention packages in place to November 2021 for key staff.

Liabilities

- 10.103 The Parties state that the Enhanced Remedy 'includes covering the financial liability for money owed to resellers or customers (whether for cancelled events or otherwise)'. At the viagogo response hearing viagogo stated 'importantly viagogo will assume all of the liabilities that StubHub has in the international business'. They further stated that they would be willing to put an amount in escrow to cover the full amount of these forecasted liabilities.

Redirections

- 10.104 In order to provide access to resellers and buyers who access UK live events via the StubHub-branded North American websites²⁵⁴ that will remain with the merged entity, the Parties propose redirecting resellers and buyers to the divested business' UK website, which is included in the Enhanced Remedy, when those same resellers and buyers go to the StubHub North American domains to list or buy tickets for UK live events. This redirection would last for a period of five years from completion of the divestiture.
- 10.105 More specifically, the Parties propose that when a buyer or consumer reseller selects a UK live event listing on the StubHub-branded North American websites, a 'pop-up window' would appear explaining that they are being automatically redirected to the StubHub.co.uk website (or another website at the choice of the purchaser). In the case of buyers this would then take them to the homepage of the StubHub.co.uk website (or another website at the choice of the purchaser) from where they could navigate to their desired live event. For consumer resellers, once on the StubHub.co.uk website (or another website at the choice of the purchaser) they could then list their inventory for the relevant UK live event. For sellers who list inventory through StubHub's large-resellers tool ([]), a similar pop-up will appear within the tool to direct the reseller to the StubHub.co.uk website (or another website at the choice of the purchaser).

²⁵⁴ These are StubHub.com and StubHub.ca.

- 10.106 The Parties stated that the implementation of these redirections would be ‘straightforward’ and only require work on the merged entity’s side.
- 10.107 The Parties stated that during the five year period of the redirection, the sale and purchase of tickets to UK live events would cease on the StubHub North American websites, and no inventory relating to UK live events would be listed on these websites. Furthermore, the Parties would not target search engine ads to North American users searching for UK live events using the StubHub brand for five years. This would mean that they would not bid on UK event keywords to display advertisements using the StubHub brand or with links to the retained StubHub North American sites. As part of the brand licence proposals (which are outlined below) the divested business would be permitted to target North American users for UK live events on paid search using the StubHub Brand for five or ten years (see paragraph 10.99).
- 10.108 In order to ensure that UK live events listings are complete and current on the StubHub North American websites, despite no inventory being listed, the Parties would undertake to mirror the UK live event catalogue that was held on viagogo’s UK site (showing the events only and not the viagogo brand or available inventory). The Parties also stated they were willing to have a Monitoring Trustee appointed to oversee this arrangement for which they would pay the costs.
- 10.109 In respect of the StubHub Mobile app the Parties also proposed a redirection for a period of 5 years where UK users of the merged entity’s app would receive a push message requesting that they download the divested business’s app and delete the merged entity’s app. Furthermore, they proposed incentivising users by offering \$[REDACTED] (equivalent to approximately £[REDACTED]) to download the UK app, and withdrawing the merged entity’s StubHub branded app from all Apple/Google app stores outside North America for ten years. They propose the financial incentive would be paid as a lump sum to the purchaser and would be calculated based on the number of unique UK users of the app from its introduction in 2012 until completion of the sale of the divested business, with the purchaser free to use that sum for the marketing of the mobile app as it saw fit. Finally they stated that the merged entity’s StubHub branded mobile app would also not show any inventory to UK live events for a period of ten years.

Inventory export management tool

- 10.110 The Parties also offered to reintroduce viagogo’s inventory export management capability tool in the UK. This feature was previously offered by viagogo until 2014 and would facilitate the export of inventory from viagogo UK to the divested business. [REDACTED].

UK Google paid search prohibition

10.111 The Parties stated their willingness to engage on additional measures, specifically suggesting a prohibition on Google search paid advertising in the UK for a period of 6- or 12 months for UK live events for the merged entity (including the use of the viagogo brand).

Financial performance of the divested business

10.112 The Parties initially submitted a set of management accounts for the international operations of StubHub in July 2020 that showed it incurring an [X] \$[X] million in 2019. They subsequently submitted a pro forma profit and loss account for the StubHub International business that shows it incurring an [X] \$[X] million in 2019 and forecasts operating income of \$[X] million in 2022 by which time it is [X]. The principal differences between the two sets of accounts for 2019 are:

- (a) pro-forma revenue reflects all transactions made by buyers or sellers based outside North America rather focusing only on International events (as the management accounts do);
- (b) the pro forma reflects a [X] that has not yet occurred; and.²⁵⁵
- (c) The pro-forma excludes items that will not transfer with the divested business, for example, revenue and costs associated with agreements that have since expired.

10.113 The increase from a \$[X] million [X] in 2019 to [X] \$[X] million in 2022 in the pro forma profit and loss account for the StubHub international business is largely driven by a [X].

Views of the Parties and third parties

The Parties

10.114 The Parties stated that if the option to use the StubHub brand outside North America for ten years is chosen by the purchaser then this combined with the proposals on staff, sale of the platform and redirections effectively means that the divestment is a 'de facto' disposal of the whole of the StubHub International operations outside North America. They argued therefore that the remedy addresses the reservations outlined in the Remedies Notice and

²⁵⁵ A restructuring had been planned before the Merger. Currently, StubHub is prevented from significant restructuring under the terms of the Interim Order.

the risk of carving out a business is mitigated as the Enhanced Remedy entity is already a standalone business. They also noted that the proposed restructure of the international operations combined with the right ownership structure would allow it to compete even more effectively in the future.

10.115 They stated that, in their view, the remedy goes beyond what is required to address the SLC in the UK. The Parties also noted that, as the UK accounts for [X]% of the StubHub International business GTV compared to [X]% and less than [X]% respectively for the whole of the viagogo and StubHub businesses, they regard this as the better option to ensure any buyer is focused on the UK.²⁵⁶ They also stated that it is certain and achievable, being within the lending covenants.

10.116 In addition, in their view, a large number of credible bidders had expressed an interest in the Initial Remedy and the likely additional interest as a result of the material changes in the Enhanced Remedy from credible buyers will in itself demonstrate its effectiveness and viability to the CMA.

10.117 The Parties claimed that the risk of deterioration of the competitive capability of divested business was also addressed by [X] and retention packages being put in place as part of the Interim Order process. In addition, as the data transfer was by reference to the registered address of the buyer or reseller it was clear what was being transferred and it would not be possible for the Parties to attempt to prevent their transfer.²⁵⁷

Third parties

10.118 The views of third parties regarding the Enhanced Remedy are summarised in Appendix I.

10.119 Three of the four third parties that we spoke to about the Enhanced Remedy generally regarded it as a significant improvement on the previous proposal, and noted a potential interest in purchasing a partially-divested StubHub business.

10.120 However, one third party ([X]) told us that [X].

²⁵⁶ Note CMA analysis based on the figures supplied by the parties shows the UK business of viagogo to comprise [X]% by GTV of the global business.

²⁵⁷ [Parties' response to the Notice of Possible Remedies](#), paragraph 25.

Assessment of effectiveness

- 10.121 In evaluating the effectiveness of remedies, the CMA will seek remedies that have a high degree of certainty of achieving their intended effect. Customers or suppliers of merger parties should not bear significant risks that remedies will not have the requisite impact on the SLC or its adverse effects.²⁵⁸
- 10.122 As set out in paragraphs 10.18 to 10.20 above, an effective remedy must enable the CMA to have sufficient confidence that any risks associated with it can be properly addressed.
- 10.123 The StubHub International business, which covers the UK and the other territories that form the Parties' divestiture proposals, was and is currently being managed as a standalone business unit within the StubHub group, with its own management team. In principle, this makes its divestiture a more straightforward and less risky process than had it been more fully integrated into the group's operations. However, there were specific areas where we considered that risks to the overall effectiveness of the remedy might arise.
- 10.124 The following sections examine issues relating to the scope of the Enhanced Remedy with respect to the inclusion of buyers and resellers of UK event tickets, and specific risks associated with the IT platform, branding, the profitability and scale of the divestiture business, and the asset risks of the proposed package. We have also considered whether there is likely to be a pool of potential suitable buyers for the Enhanced Remedy.

Buyers and resellers in the divestiture package – scope risks

- 10.125 In considering the appropriate scope for a divestiture package, we have sought to ensure that it encompasses a sufficiently broad set of buyers and resellers to provide effective competition to the merged entity in the UK, thereby addressing all aspects of the SLC(s) and resulting adverse effects.²⁵⁹
- 10.126 We have found an SLC in the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events. We found that inventory for UK events is bought and sold by non-UK as well as UK buyers and resellers. For example:

²⁵⁸ [Merger remedies guidance CMA87](#), paragraph 3.5(d).

²⁵⁹ [Merger remedies guidance CMA87](#), paragraph 5.6.

(a) [REDACTED];²⁶⁰

(b) [REDACTED];

(c) [REDACTED];²⁶¹ and

(d) [REDACTED].

10.127 Therefore, historically a significant minority of StubHub's inventory of tickets to UK events has been transacted through website domains (such as StubHub.com) and a mobile app. This is significant because:

(a) these domains and app are not part of the business to be divested in the Enhanced Remedy; and

(b) a significant minority of StubHub's buyers and resellers of tickets to UK events are based in North America.²⁶²

Description of the Enhanced Remedy relating to buyers and resellers

10.128 We considered whether both these factors would make the divested business a weaker competitor to viagogo in the UK relative to the pre-Merger conditions of competition. In doing so, we considered whether the divested business might become a less attractive proposition for resellers of UK events if they consider that they are unable to access as many potential buyers with a single listing. Because of network effects, this could have a knock-on effect on the business's attractiveness to UK and other buyers. If this were to happen, resellers – and, as a consequence, buyers – might see the merged entity as a more attractive venue to list tickets to UK events in order to access potential buyers across the world including in the UK and North America.

10.129 In our view, these risks were not adequately mitigated in the design of the Initial Remedy, such that the competitiveness of the divestiture package would, in the absence of mitigating measures, be likely to be materially weaker relative to the counterfactual conditions of competition, undermining the effectiveness of the remedy as a result. We set out this concern in the Remedies Working Paper.

²⁶⁰ [REDACTED].

²⁶¹ [REDACTED].

²⁶² We are not concerned about buyers and resellers of UK event tickets in other non-UK markets as the divestiture includes those other markets, and in any case they are less significant in terms of volume.

10.130 In order to address our concerns, the Parties proposed additional measures in the Enhanced Remedy with respect to buyers and resellers. These measures are set out in paragraphs 10.104 to 10.109 above.

Views of the Parties

- 10.131 In their response to the Remedies Working Paper, which set out their Enhanced Remedy proposal, the Parties noted that [X] of the GTV for UK events sold through StubHub's North American domains is to [X] in which viagogo has only a 'negligible' activity and hence the divested entity should be able to re-route these through another domain. Furthermore they said that a further [X] of sales by GTV on these domains are to non-North American registered customers (i.e. customers in the UK or internationally) and, as the details of these customers would pass to the divested business, it should be able to re-route them through its domains.
- 10.132 In addition, they noted that not all these sales come from direct traffic to these domains and a high proportion are generated by paid search. They noted therefore the divested business could invest in paid search in order to attract these customers to their domains.
- 10.133 They further noted that US resellers are likely to multi-home and, given the access to potential buyers provided by the divested business's site, they will be incentivised to list inventory there for UK events. Similarly, given its UK inventory, US buyers would continue to be attracted to the divested business's UK domains for UK live events.
- 10.134 The Parties stated that the proposed redirections in the Enhanced Remedy would ensure that the divested business continues to benefit from the same level of US traffic as pre-Merger. Furthermore, the ability of the divested business to use (and the restriction on the merged entity from using) the StubHub brand to advertise UK live events on Google US paid search, combined with the fact that the UK inventory will be on the divested business's platform, would allow it to effectively access US buyers for these events. They also noted that the redirects are easy to engineer in the retained domains and would not give rise to any data transfer concerns.

Views of third parties

- 10.135 The third parties that we spoke to highlighted that the redirection process disrupts the customer journey and that some attrition of US customers purchasing tickets to UK events could be expected as a result. It was noted that it may also result in customer confusion, particularly where the 'StubHub' brand was used on both the original website and the website

which they were redirected to. Some queries were raised as to the logistics of how a customer could be redirected if tickets to UK events were not listed in the first place, and potential issues regarding the Parties' incentive to ensure the completeness and accuracy of listings. Further details on the views of third parties regarding the scope element of the Enhanced Remedy are summarised in Appendix I.

Our assessment – buyers and resellers in the divestiture package

- 10.136 We considered the proposals in the Enhanced Remedy, and in particular whether they provided a package with sufficiently broad initial scope to comprehensively address the SLC. We judged that these proposals are only likely to be necessary as a transitional measure to allow the divested business to establish itself as an effective competitor for resellers and North American buyers of UK event tickets.
- 10.137 StubHub is a globally-integrated company on whose platforms resellers can sell tickets in many countries in the world. For example, a reseller listing a ticket on StubHub.co.uk will have that listing visible on all of StubHub's websites, and may realise a sale via StubHub.co.uk, StubHub.com or any other StubHub website. Similarly, buyers can access a particular event ticket through their own country's StubHub website or search engine domain, irrespective of which StubHub website the reseller has initially listed that ticket on. StubHub is the largest platform in North America where it has strong brand recognition, and is the second largest uncapped platform in the UK. In this context it is not surprising that it is an attractive proposition for many resellers with tickets for UK events and that it makes substantial sales in North America for UK events.
- 10.138 In the event of a partial divestiture, however, StubHub would no longer be globally-integrated to the same extent. Its North American operations would be separated from the divested business, and tickets listed on the divested platform would no longer automatically be listed on the StubHub websites retained by the Parties in North America. We considered whether the Enhanced Remedy proposals provided sufficient opportunity for resellers and buyers that currently use StubHub's North American websites for tickets to UK events to be directed to the website of the divested business. In particular, we have considered whether they can be directed to the divested business as a result of the divested business competing to acquire buyers in the US through internet search and/or by means of a redirection mechanism from StubHub's North American domains. In doing so we have noted that the advertising restriction proposal reinforces and enhances the effectiveness of the redirection proposal and so both should be considered together.

10.139 We first consider the potential reaction of resellers to this aspect of the Enhanced Proposal, and then turn to buyers. We then look at the effectiveness risks arising from these proposals.

- *Resellers*

10.140 We would expect that resellers who would currently list UK event tickets on StubHub's North American websites, particularly sellers with large amounts of inventory, would react to such a separation of the North American websites from those of the divested business by listing tickets for UK events wherever they could be easily sold at a profit-maximising price by reaching a large number of potential buyers. Resellers (especially larger resellers) face low costs to switching.

10.141 This view was supported by third-party evidence. One of the third parties that we spoke to commented that resellers wish to maximise their profits, suggesting that it is likely that if they were aware of the divested business then they would list on the divested business website in order to generate revenue. This point was echoed by another third party which told us that resellers will use the divested entity's website 'if it suits them' and that it anticipated that there would be almost no leakage between listings to UK events that were previously on the StubHub North American sites and those that would end up on the divested business's websites.²⁶³

10.142 As a result, while the Parties' proposal to provide a redirection pop-up on its tool for large resellers may assist those sellers in their awareness of the divested business, these resellers would only, in our view, be likely to list tickets for UK events on the divested business if they could be satisfied that there would be sufficient potential buyers. The ability of the divested business to be able to advertise UK tickets to North American buyers who use search engines to find tickets is likely to be an important factor in achieving this.

- *Buyers*

10.143 We have found that StubHub's buyers of tickets to UK live events typically make infrequent, one-off purchases. They tend to access listed tickets in one of two ways: by searching for the desired event on Google or another search

²⁶³ See points raised by [X] and [X] in Appendix I.

engine and clicking through to a StubHub website, or by going directly to one of StubHub's websites because they are aware of the brand.²⁶⁴

- 10.144 The divested business will be able to compete for the first group of these customers by advertising, using the StubHub brand, on search engines, to target North American buyers for UK events. The Parties will not place any restrictions in the brand licence preventing the purchaser of the divested business from doing this. The Parties' submissions on the duration of this undertaking were somewhat inconsistent. However, we consider that the divested business should be able to use the StubHub brand, on search engines, to target North American buyers for UK events for a period of ten years, aligning this period with the duration of the StubHub brand licence included in the Enhanced Remedy (see paragraph 10.99). While this may mean that both the merged entity and the divested business can use the StubHub brand to target adverts to North American search engine users during years six to ten of the brand licence, we consider that any potential confusion arising during this period is likely to be small, and will in any case be outweighed by the benefits of the divested entity being able to advertise in this way for the whole duration of its brand licence.
- 10.145 Since under the Enhanced Remedy proposal the Parties will not be listing any UK event ticket inventory on StubHub.com (or any other North American domain of StubHub) for five years, they do not have an incentive to compete to place advertisements that link to StubHub's North American websites. The merged entity would, however, be able to advertise using the viagogo brand.
- 10.146 As a result, for this group of buyers, the situation arising from implementation of these proposals in the Enhanced Remedy is likely to be similar to that in the counterfactual, namely potential North American buyers of UK event tickets using search engines being able to choose from a selection of secondary ticketing providers including StubHub and viagogo.
- 10.147 We now turn to the potential buyers that go directly to StubHub's North American websites. Under the proposals in the remedy, these buyers would be redirected to the divested business's website for UK tickets, which, in the short term at least, would be likely to be StubHub.co.uk.

²⁶⁴ The Parties submitted that for UK events, online search traffic accounts for [X]% of total GMS through the North American domains, [X]% through direct accounts and [X]% through other channels. Similarly, an internal document shows that approximately [X] StubHub's global GMS in 2018 (and the US accounted for [X]% of that) came via buyers going to StubHub directly and around [X]% of buyers came via either paid or organic internet searches.

10.148 We considered whether the redirection proposal would work well enough in practice that the effectiveness of the remedy package as a whole would not be undermined. We noted the evidence from third parties (see Appendix I) that generally there was the potential for significant customer loss when attempting to redirect them between sites, and that, while the redirection process could be streamlined, there would still be elements (for example, having to search for the event again after being redirected to the StubHub.co.uk website) which would also deter customers.

10.149 We also note the evidence from some other third parties, who considered the redirection proposal to be useful²⁶⁵ but not essential as they had identified other areas for business growth.²⁶⁶ We disagree with these views because the redirection proposals are intended to address the scope of the SLC and we have not seen firm evidence that this would be achieved by these other areas for business growth, at least in the short- to medium-term.

10.150 The third-party views in the paragraphs above provide some evidence that the redirection proposals on their own may not be sufficient to successfully direct all relevant buyers to the divested business's website. However, we also considered that the Enhanced Remedy's proposals with respect to North American advertising (paragraph 10.107) should enable the divested business to compete effectively for US buyers, and would increase the effectiveness of the remedy as a whole.

- *Effectiveness risks relating to the redirection and advertising proposals*

10.151 These aspects of the Enhanced Remedy rely on transitional behavioural undertakings to help ensure the effectiveness of the partial divestiture. CMA Guidance says that 'the design of behavioural remedies should seek to avoid four particular forms of risk to enable these measures to be as effective as possible'.²⁶⁷ These are:

- (a) Specification risks;
- (b) Circumvention risks;
- (c) Distortion risks; and

²⁶⁵ [X] told us that it is 'useful for an initial period of time' and noted that consumers operate in a globalised world so it is 'useful to have the cross border redirection'.

²⁶⁶ [X] noted that it does not consider the redirection process to be the key to building a customer base in the US or to the success of the divested business. Instead, any buyer would need to compete by building up its own presence in the US. It noted that it helps in providing the divested business with customer information and data, but that the historical information does not necessarily indicate future customers.

²⁶⁷ [Merger remedies guidance CMA87](#), paragraph 7.4.

(d) Monitoring and enforcement risks.

- 10.152 We considered these risks, starting with the need for accurate specification of the undertakings on redirection. In our view, it appears straightforward to specify both the terms of the redirection and the Parties' obligations. It also appears to us to be straightforward to specify the events on which the Parties are restricted from advertising.
- 10.153 Furthermore, we would see there as being only a low risk that the specification of both the redirection and the advertising restriction becomes less accurate and relevant over their duration due to market developments. The secondary ticketing market has historically been relatively stable in terms of the types of products offered, and this seems unlikely to change in the next five years.
- 10.154 CMA guidance says that, if one form of behaviour is restricted, it is possible that other adverse forms of behaviour may arise, leading to circumvention of the remedy.²⁶⁸ We consider circumvention risk in this instance to be low. Both the redirection process and the undertakings relating to advertising are visible and thus can be readily monitored by a suitably qualified and resourced Monitoring Trustee or detected by the divested business, which would restrict the ability of the Parties to try and hamper its effectiveness. There is also little incentive for the Parties to circumvent the restriction on advertising UK events using the StubHub brand, since they will not be holding any inventory for these events on StubHub's North American websites for the same period.
- 10.155 Both the redirection of customers from one company's site to a competitor's, and the restriction of the merged entity from advertising UK events in North America using the StubHub brand, have the potential, in principle, to distort market signals. These distortions might arise through the automatic redirection of buyers from one competitor to another, or from the loss of choice arising from the advertising restrictions.
- 10.156 In practice, we consider that any potential distortions are likely to be very limited. North American buyers looking for UK event tickets will end up at a website where those tickets are available broadly as before the divestiture. Furthermore, the Enhanced Remedy proposals provide North American buyers with a similar choice of uncapped secondary ticketing platform service providers to that which they had before the divestiture. We would

²⁶⁸ [Merger remedies guidance CMA87](#), paragraph 7.4(b).

also note that these proposals are intended to be transitional, and any distortions are likely to only occur in the short-term.

10.157 Finally, while these proposals will require regular monitoring, we consider that this could be effectively carried out by a suitable Monitoring Trustee. If the Enhanced Remedy were to be adopted, the proposals would be included in a final Order or final undertakings, along with an obligation to appoint a suitably resourced and qualified Monitoring Trustee to oversee compliance, and any breaches could be enforced through the CMA's usual processes. In addition, the proposals relating to redirection and advertising should be built into the contractual arrangements for the divestiture between the Parties and the divestment purchaser, which will also provide a direct enforcement mechanism and contractual redress to the divestment purchaser in the event of breach.

- *Mobile app*

10.158 We assessed the Parties' proposals with respect to redirection of customers of StubHub's mobile app for a period of five years, the details of which are set out in paragraph 10.109.

10.159 The process for redirection of customers using the mobile app is more cumbersome than for those using the website, involving a download of a new app and logging in to or setting up an account with the divested business. The scope of the mobile redirection is also slightly different to the scope of the market in which we have found an SLC, applying to all UK-based buyers rather than all buyers of UK event tickets.

10.160 However, we do not consider these issues to materially undermine the effectiveness of the remedy. Both before the effects of the Coronavirus (COVID-19) pandemic and currently, the mobile app had been downloaded by a very small proportion of StubHub's buyers and accounted for a very small proportion of sales to UK buyers. In the 18 months to December 2020, approximately [X] purchases were made on the StubHub app by UK customers, compared to over [X] by US customers. It is therefore likely that very few customers will be sufficiently deterred by the redirection process that they would not download the divested business's app or find another route to accessing its inventory. However, we recognise it is also possible that the mobile channel will become a more important area of competition in the future.

10.161 We consider that the period for which the merged entity does not list UK event tickets on its mobile app should be five years and not ten. This should allow sufficient time for UK users of the app to switch apps, and is also

consistent with the duration of redirections for the websites. However, we consider that the duration of the removal of the merged entity's StubHub branded app from non-North American app stores should be ten years (as proposed by the Parties), as this element of the remedy is more closely aligned with the proposals around brand licence (see paragraph 10.99 above), which have a similar duration.

10.162 The withdrawal of the Parties' StubHub branded app from the app stores in the territories where the divested business operates will ensure that customer confusion is minimised and that the divested business is able to use its app to compete in the relevant market.

10.163 The introduction of a financial payment to incentivise redirection of existing UK customers of the StubHub mobile app may provide some limited assistance to a purchaser. However, we consider that it may give rise to some specification and circumvention risks relating to the quantification and certification of UK app users up to and at the point of divestiture. Furthermore, the expected costs of redirection of mobile customers to a purchaser of the divested business are likely to be reflected in the purchase price, making a separate financial payment unnecessary. As a result, we do not propose to include this payment in a partial divestiture remedy.

- *Inventory export management tool*

10.164 We also assessed the Parties' proposals for re-activating the viagogo inventory management tool, which are set out in paragraph 10.110.

10.165 The impact of this measure is unclear to us, as is whether the tool might introduce unforeseen distortions in competition between the Parties or other market participants. In particular, we consider that there may be risks that the re-introduction of the tool may re-enforce the position of the two leading market participants – viagogo and the divested business – and inhibit the growth of smaller competitors.

10.166 As a result of these risks, we consider that viagogo's inventory export management tool should not be included in a partial divestiture remedy.

- *UK advertising restrictions*

10.167 The Parties stated their willingness to engage on additional measures, specifically suggesting a prohibition on Google search paid advertising in the UK for a period of 6- or 12 months for UK live events for the merged entity (including the use of the viagogo brand).

10.168 We consider that risks of distortion arising from a restriction on using the viagogo brand in the UK are significant, as UK buyers of UK event tickets would no longer see adverts from the market-leading platform. We also consider that the restriction will not have any effect on the scope of the remedy, which includes the StubHub website and brand licence in the UK.

10.169 As a result, we consider that there should be no such restriction on the merged entity with respect to UK paid search advertising.

- *Conclusions on impact on buyers and resellers*

10.170 The proposals in the Enhanced Remedy, and in particular the commitment not to list UK inventory on StubHub's North American websites, the redirection of North American customers for UK events to the divested business's websites, the ability of the divested business to advertise tickets for UK events on Google (and other internet search engines) to US and Canadian buyers, the restriction on the Parties from using the StubHub brand in competition to that advertising, and the re-direction proposals relating to mobile, taken together give us sufficient assurance that the scope of the remedy is sufficient to address the SLC we have found.

10.171 We also note that these proposals are intended to be a transitional arrangement, allowing the divested business to establish a track record and compete to attract buyers and resellers of UK event tickets, wherever they are located. We consider that the five-year period for redirection, and the associated provisions around advertising, provides a sufficient amount of time for this to happen.

10.172 The Parties also proposed a restriction in using the StubHub brand in UK paid search advertising (summarised at paragraph 10.111). We consider that the risks of distortion arising from this restriction are disproportionate to its benefits and so we do not intend to include this provision in any partial divestment remedy.

10.173 With regard to the proposals concerning the mobile app, we note that the mobile app is not currently a significant channel for tickets to UK events, although mobile transactions may grow over time, given wider trends in online retailing. Therefore we consider it necessary to include measures in relation to the StubHub app as part of the remedy, with the redirection element being reduced to five years, in line with the proposals relating to website redirection. We consider that the proposals relating to the mobile app as a whole, and in particular the withdrawal of the Parties' StubHub app from relevant app stores for ten years, are sufficient to ensure the

effectiveness of this aspect of the remedy. We therefore propose to exclude the financial incentive proposal from any partial divestiture remedy.

10.174 We consider that the re-introduction of viagogo's inventory export management capability (summarised in paragraph 10.110) may introduce distortions and is not necessary for the effective operation of the remedy and so propose to exclude it from any partial divestiture remedy.

10.175 In summary, we consider the following elements of the Enhanced Remedy relating to scope and customer transfer to be essential components in ensuring an effective remedy:

- (a) Automatic redirection of buyers and resellers of UK event tickets from the StubHub North America websites to StubHub.co.uk (or a successor site in the event of re-branding) for a period of five years;
- (b) An undertaking from the Parties not to list UK event tickets on the StubHub North America websites for a period of five years;
- (c) An undertaking from the Parties not to target search engine ads to North American users searching for UK live events for a period of five years;
- (d) A term in the StubHub brand licence allowing the divested business to advertise for tickets for UK live events on paid search in the North America for a period of ten years;
- (e) Redirection of UK event ticket buyers using the StubHub mobile app for a period of five years;
- (f) Removal of the app from the non-North American app stores for a period of ten years.
- (g) Appointment of a suitably qualified Monitoring Trustee to monitor the Parties' compliance with these undertakings.

StubHub IT platform

10.176 A reliable and effective IT platform is a critical component of any divestiture package.

Description of the Enhanced remedy relating to the StubHub IT platform

10.177 In relation to the IT platform and related systems elements of the Initial Remedy, we identified concerns in the following areas:

- (a) the knowledge and capabilities required to successfully operate the StubHub platform, in particular the experience and expertise of the engineers included in the proposal;
- (b) the process of replication of the platform and associated systems such as the StubHub mobile app. In particular, we were concerned with the replication process itself, the transfer of vendor contracts, the transfer of customer data, and the changes made to the platform between replication and completion of a divestiture; and
- (c) the effect of having two competitors using the same platform.

10.178 In response, the Parties set out the following proposals in the Enhanced Remedy.

Views of the Parties

10.179 The Parties state that the proposals will allow up to [X] developers and engineers (comprising [X] in Bilbao and [X] in Shanghai currently) to transfer to the divested entity which they submitted will be more than sufficient to address the CMA's concerns on staffing required to run the platform.²⁶⁹ They noted that the [X] employees in Shanghai currently [X] so would be more than sufficient to support the International operations alone. They also noted that the staff in Bilbao already [X]. Further they stated that these engineers would be entirely capable of addressing any need for Coronavirus (COVID-19) related development needs and also to address the wider development needs of the platform.

10.180 Furthermore, the Parties stated that the merged entity's knowledge of the platform will not result in a reduction of competition as, in addition to the platform not being highly complex or proprietary to begin with, the purchaser would be free to develop and change the platform as it sees fit, and that these changes would not be visible to the Parties. They said that therefore it would be no different from any other partial divestiture in this respect.

10.181 The Parties said that they were 'confident' that all third party contracts could be transferred with the platform. Alternatively they state a purchaser could choose to replace some of the existing contracts or third parties with their own suppliers. In addition, they note that as the contracts relate to back

²⁶⁹ The Parties' response to the Remedies Working Paper explained that the proposals will allow up to [X] developers and engineers (comprising [X] in Bilbao and [X] in Shanghai) to transfer to the divested entity. StubHub's response to the CMA's information request of 18 January 2021 explained that due to natural attrition, the number of employees in Shanghai is currently [X]. This means that the total number of developers and engineers is currently [X].

office services it will be in the interests of these providers to renegotiate these contracts to grow their business.

Views of third parties

10.182 With regard to the proposal to divest the platform as part of the Enhanced Remedy, and to increase the available staff to the purchaser, the third parties we spoke to generally noted that this was a positive development of the divestiture package. However, one third party noted that the Enhanced Remedy proposal did not address the underlying concerns relating to high expenses and complexity within the platform. A more detailed summary of third party comments is set out in Appendix I.

Our assessment – StubHub IT platform

10.183 The Enhanced Remedy proposes that the StubHub IT platform is sold outright as part of the divestiture package, with the Parties retaining a copy for a short transitional period while data is transferred to an alternative platform. The Enhanced Remedy also includes a similar number of engineers as are currently employed to support and develop the platform. While these engineers only represent a small proportion of the total StubHub International business workforce, we consider that they are fundamental to the successful operation of the IT platform. As a result, the concerns that we had with the Initial Remedy (summarised at paragraph 10.177 relating to the knowledge and capabilities required to operate the platform, and also to the same platform being used by competing firms) have been addressed to a significant degree. Our assessment therefore focuses on the risks to effectiveness associated with the replication of the platform.

10.184 The evidence from third parties largely supported the Parties' view that the replication process would be reasonably straightforward, as the platform code would be hosted 'in the cloud' using Google's Bare Metal Solution.²⁷⁰ We note that StubHub [X].

10.185 The divestiture of the platform also reduces risks concerning the successful transfer of third party contracts and linked applications, and also of customer data. While it is inevitable that some risk will remain, we are satisfied that this risk can be managed to a level where it is not material.

²⁷⁰ Details of the solution can be found at: <https://cloud.google.com/bare-metal/docs/bms-planning>.

- 10.186 While the StubHub platform will be used by both the Parties and the divested business for a short period after completion of the divestiture, any risks to effective competition arising from this will reduce at the end of this period, during which the Parties will transfer the StubHub operations in North America to a new platform. We would require this period to be no longer than six months post-divestiture, with oversight from a Monitoring Trustee.
- 10.187 Furthermore, after this period, there will be no requirement for on-going co-operation between merged entity and the purchaser of the divested business. We disagree with the Parties' view that the platform is not proprietary and give weight to the views of third parties that such platforms that have been developed in-house over a long period of time are likely to have significant proprietary elements. As a result, we acknowledge that some of the merged entity's staff may have some knowledge of the strengths and weaknesses of the divested StubHub platform, both as former employees and having overseen the data transfer process. However, the value of this knowledge will depreciate over time as the divested business develops and changes the platform (or migrates to another platform). We also note that while the StubHub platform is an essential component of the divested business, third party evidence suggests that other factors such as brand awareness and inventory are at least as important determinants of its attractiveness to customers.
- 10.188 In summary, we consider that the risks relating to the replication and operation of the StubHub platform and related systems have been satisfactorily mitigated by the proposals in the Enhanced Remedy.

Brand

- 10.189 We consider a strong, active brand to be an important attribute for an effective competitor in the short- to medium-term, and therefore an important part of an effective remedy.

Description of the Enhanced Remedy relating to brand

- 10.190 In the Remedies Working Paper, we expressed concerns about the Initial Remedy proposal, which included a limited licence for the StubHub brand in the UK only for a period of three years. We considered that this would give rise to four significant composition risks:
- (a) the limited geographic licence would mean that a purchaser of the divested business would need to rebrand its non-UK operations immediately, diverting focus from the UK and causing customer confusion;

- (b) although we received evidence from some third parties that three years was sufficient to rebrand, the limited period of the UK licence would reduce a purchaser's incentives to improve and develop the StubHub brand (for example through advertising or agreeing partnerships with rights holders);
- (c) the use of the StubHub brand by two different entities could cause customer confusion and may also mean that damage to the brand in the US (for example through litigation over refunds) would have a knock-on effect in the UK; and
- (d) the provision for the Parties to re-enter the UK using the StubHub brand after a one-year blackout period might further reduce the incentives of the acquirer of the divested business to invest in the brand and also cause further confusion for customers.

10.191 The Enhanced Remedy proposes giving the purchaser the choice of two options:

- (a) The first option was the exclusive use of the StubHub brand licence for a period of ten years and an extension of the scope to include all geographies outside North America. The parties confirmed that, were the purchaser to rebrand within this period, then the ten year licence would still apply to exclude use of the StubHub brand by the Parties outside North America. The Parties also stated that any additional restrictions on the brand licence would be negotiated with the purchaser but envisaged that these will be 'ordinary commercial protections, common in brand agreements'. This option would also include the Ticketbis brand.
- (b) Alternatively, the Parties proposed divesting the viagogo brand globally. As part of this they stated that they would 'commit at their cost in terms of time and money (within reason)' to work with the purchaser of the divested business.

Views of the Parties

10.192 The Parties noted that the first option (the exclusive licence to the StubHub brand for ten years outside North America) was a material advance on the Initial Remedy proposal. They stated that this proposal would provide a purchaser the flexibility to rebrand as and when they see fit whilst also providing an incentive to invest in the brand as 'a long-term asset' of the divested business. They also noted that the extension of the geographical scope of the licence allowed for continuity and consistency of the brand across the proposed divestiture.

- 10.193 The Parties argued that the significant differences between the International and North American markets should negate customer confusion from the use of the brand by two different entities. Furthermore, in their view the redirection proposals would allow the divested entity to continue to benefit from the strength of the StubHub brand in the US in respect of UK live events.
- 10.194 The Parties submitted that the alternative offer of the viagogo brand in perpetuity globally was a material undertaking given its market leading position in the UK. They stated this would also avoid any risk of perceived brand confusion by ensuring the divested business and the merged entity operated under separate brands, and may suit some purchasers who want a single global brand as opposed to a brand outside North America. They noted that StubHub has previously undergone a rebranding process with Ticketbis and that this is relatively common and straightforward and is capable of completion within 12 months.
- 10.195 The Parties told us that brand is of little importance in this industry outside the US as ‘you are not experiencing a transaction with a brand you are buying a ticket for an event. The event is the product’. [REDACTED]. In support of this, the Parties referred to the fact they have [REDACTED].
- 10.196 The Parties also told us that because [REDACTED] of the business and [REDACTED] of the brand value relates to the US, the risk lies with the merged entity during the transition period in which both businesses will use the StubHub brand in different jurisdictions as [REDACTED]% of the GTV is in the US. The Parties told us that they [REDACTED].
- 10.197 The Parties told us the Ticketbis brand has a much longer history and is a much better domain name internationally than StubHub and therefore this longer history means Google gives it ‘more credence for.... SEO’. In their view the rebranding of the StubHub international operations from Ticketbis was more likely an ‘ego decision’. They also told us that rebranding is a relatively straightforward process in an e-commerce business and that the rebranding of a website can be done in days. The cost of this rebranding would be related to the marketing strategy employed by the acquirer and whether it was the partnership route [REDACTED] or the Google Ads route [REDACTED]. In the case of the latter the costs would be largely the opportunity costs of the developers’ time engaged in this. They did however state [REDACTED].
- 10.198 In response to the issues raised in the Remedies Working Paper the Parties stated that the fact that [REDACTED] in the UK market come through direct channels and [REDACTED] are through paid or organic search shows that the StubHub brand has [REDACTED] in the UK and that customer behaviour is event driven. Further to

this if a purchaser wished to invest in a brand to gather direct sales this effectively would be a 'de novo' investment and could just as easily be done with a new brand.

- 10.199 The Parties also stated that the risk of brand damage to the purchaser from the dual use of this brand doesn't take into account the value viagogo has attached to the StubHub brand in the US on acquisition and therefore the incentives of the merged entity to maintain the brand in North America. Moreover, they stated that issues relating to the brand outside the UK have no relation to the SLC finding and, to any limited extent that they do, the Parties noted that international buyers will be searching for the UK event and not for a given brand. The brand and domain will not matter as it is not driving web traffic. Therefore, given that in many jurisdictions the StubHub brand is relatively new following the Ticketbis rebranding, it is not driving web traffic for UK events.

Views of third parties

- 10.200 Of the third parties that we spoke to during our initial remedies calls, all eight participants told us that brand was an important asset within the secondary ticketing sector. Of the respondents to the questionnaire eight told us that brand was important in this industry whilst four stated that it was unimportant. Those that stated it was important noted the role it played in consumer trust that the ticket they purchase would allow them access to an event whilst one noted that it served to reduce the cost of customer acquisition and reliance on paid search.
- 10.201 The four respondents who stated that brand was not important in this industry stated that instead it was Google search that was the key to customer acquisition. Some of them noted that the StubHub brand was 'very strong' and that it would take considerable time and expense to replace this. Others however were of the view that migration from another brand would be relatively straightforward from their experience, and that it would take two years. They also thought there was some value in the Ticketbis brand.
- 10.202 The third parties that we spoke to expressed generally positive views regarding the StubHub element of the Enhanced Remedy proposal on brand. One noted that it was a move in the right direction, and the extension of the period of use was generally viewed positively. However, there were

some concerns over investing in a brand that would be returned at the expiry of the licence period, as well as the potential for customer confusion.²⁷¹

- 10.203 With regard to the alternative option of the divestment of the viagogo brand, there remained mixed views. Two parties noted concerns with the reputation of the viagogo brand, while one noted that the use of the viagogo brand would be its preference if it were to purchase the divested StubHub business.²⁷²

Our assessment - brand

- 10.204 We assessed the composition risks arising from the brand elements of the Enhanced Remedy.
- 10.205 We have found that brand awareness is one of the main factors of competition for buyers.
- 10.206 StubHub's internal documents [REDACTED]. One document [REDACTED]. StubHub [REDACTED].
- 10.207 We found a strong consensus in the evidence from third parties that brand is an important component of effective competition in the uncapped secondary ticketing market. The Parties told us that when StubHub acquired Ticketbis it subsequently rebranded its operations, which indicates to us that it saw the StubHub brand as having more value, and that there was some value in using a strong, established brand. We also received similar evidence from [REDACTED] that it had rebranded an acquisition because of the strength of the [REDACTED] brand.
- 10.208 We received no evidence to support the Parties' contention that market conditions in the US compared to other countries are sufficiently different to enable us to conclude that brand is only important in the US and not elsewhere. In addition, we received consistent evidence from third parties that brand was important for providing assurance to customers which facilitated the acquisition and conversion of those customers. We therefore consider that brand is an important competitive element in the UK market.
- 10.209 The third parties we spoke to regarding the Enhanced Remedy presented a variety of plans for the rebranding of the divested business. All of them welcomed the extension to the geographic scope of the licence, but there was not a unanimous view that a ten-year licence was sufficient.

²⁷¹ See further detail of third party comments in Appendix I.

²⁷² See further detail of third party comments in Appendix I.

- 10.210 We consider that any remaining customer confusion over the use of a single brand by two different competitors would be significantly reduced by the redirection proposals discussed in paragraphs 10.104 to 10.109, since only the divested business would be offering tickets to UK events using the StubHub brand.
- 10.211 We also considered the Parties' alternative proposal to permanently divest the viagogo brand, should the purchaser of the divested business require it. In our view, while this divestment would overcome the issues regarding customer confusion relating to the same brand being used by different companies, it would also give rise to a number of significant effectiveness risks. The result of this proposal would be, in effect, a brand swap in the UK and other territories outside North America where the Parties currently compete. We consider that this swap would represent a major change to the competitive conditions, cause significant customer confusion (for example in relation to liabilities for cancelled events), and add further complexity to the remedy. As a result, we do not consider this proposal to be suitable for a remedy concerning the partial divestiture of StubHub.
- 10.212 We note that the exclusion of the viagogo brand divestment option might reduce the number of potential purchasers of a partial divestiture. However, only one of the third parties we spoke to had a preference for this option, with most third parties planning to eventually rebrand after using the StubHub brand. We consider the risks concerning the likelihood of suitable purchasers in the section starting at paragraph 10.239.
- 10.213 In conclusion, we consider a strong, active brand to be an important attribute for an effective competitor in the short- to medium-term, and therefore an important part of an effective remedy. The Enhanced Remedy proposal provides a wide-ranging licence of the StubHub brand, both in terms of duration and geographic scope, and would allow the divested business to compete effectively from the date of divestiture while allowing a sufficient period to implement a successful rebranding. As a result, we consider that the Enhanced Remedy (excluding the viagogo brand divestment option) does not cause material composition risks with respect to brand.

Scale and profitability

- 10.214 When considering a partial divestiture, we must be confident both that the divested business has sufficient scale to be able to compete effectively and that it is sufficiently well-positioned financially to operate viably on a stand-alone basis and to attract a suitable purchaser.

- 10.215 StubHub's international operations have been managed as a separate unit within the StubHub group. However, it relies on its parent company for maintenance and development of the StubHub platform, marketing and other services.
- 10.216 StubHub management accounts show that StubHub's international operations made an operating [X] \$[X] million in 2019. It is currently forecasting [X] \$[X] million in 2020, although management forecasts suggest that [X].
- 10.217 As part of the Enhanced Remedy, the Parties will retain responsibility for liabilities to buyers and resellers relating to events affected by the Coronavirus (COVID-19) pandemic.

Views of the Parties

- 10.218 The Parties said that the previous [X] its attractiveness to buyers as the live events industry is an attractive industry to investors.
- 10.219 StubHub submitted that its key assumptions that allow the StubHub International business [X] were valid. It said that it would be possible to run the business with [X] staff and that the same revenue as [X] could be achieved, were the market to return to the same size in [X], with a marketing budget of approximately [X] the size. They reiterated their view that through giving the customer data for UK and International customers the Enhanced Remedy would stand a good prospect of retaining these sales regardless of event location and therefore this revenue should be included in the assessment.
- 10.220 In relation to staff they stated that the international operations of StubHub have been inefficient for some time and that the restructuring was considered pre-merger and would allow the Enhanced Remedy entity to compete more effectively. Furthermore they noted the lower requirement for engineers and developers in the divested business given the lower volumes and absence of complex partnership integrations when compared to the North American business.
- 10.221 In addition, they stated that the cash generation of the international operations was 'solid' and that [X] it had generated significant GTV which could be viewed as an alternative measure of success. In addition, in the Parties' view there was likely to be a lot of pent up demand post Coronavirus (COVID-19) which would present an opportunity [X] in the aftermath of the pandemic.

Views of third parties

10.222 Under the Enhanced Remedy proposal, the two points raised as potential concerns relating to profitability reflected those raised in response to the Initial Remedy and related to:

- (a) Outstanding liabilities; and
- (b) The underlying cost structure of the business.

10.223 However, some third parties we spoke to noted that a track record of profitability was not necessary providing they could see a route to profitability in the future.

10.224 Third party views are set out in detail in Appendix I. Most of the third parties we spoke to told us that scale was important for:

- (a) geographic reach;
- (b) data and technology;
- (c) financial resilience; and
- (d) network effects.

10.225 Some third parties noted that the reduction in size of the divested business could result in it being less effective in gaining the benefits resulting from scale at points (a) to (d) above.

10.226 Some responses to questionnaires from potential buyers stated that whilst scale was important, in their view the divested business had sufficient scale to operate effectively, and had the potential to grow and develop further over a period of time. Other responses from those who expressed an interest stated that it was not scale that was the issue but the high cost base of the business relative to its scale.

Our assessment – scale and profitability

10.227 We have considered whether the scale and profitability of the Enhanced Remedy proposal would be sufficient to compete in the market for tickets to UK events effectively, both in terms of access to inventory and the ability to cover fixed costs and trade profitably.

10.228 We have found that, within the market for uncapped secondary ticketing for UK events, scale provides a greater breadth and depth of inventory. Internal documents prepared by viagogo highlighted [REDACTED], and [REDACTED].

10.229 In the Remedies Working Paper we set out our concern that the divested business specified in the Initial Remedy would have fewer resellers and buyers relative to the counterfactual position for StubHub in the UK. However, as we set out in the section of our assessment of scope of the divestiture package (paragraphs 10.123 to 10.174), the customer redirection and associated proposals contained in the Enhanced Remedy provide assurance to us that the scale of the divested business with respect to UK live events would be broadly similar in the short- to medium-term to that which would be expected under the counterfactual, and would provide the basis for the divested business to compete effectively for both buyers and resellers. As a result, we do not have material concerns that the scale of the divested business would be insufficient to access the necessary inventory to compete effectively.

10.230 We also considered the potential for the divested business to operate profitably. We noted the Parties' financial forecast for the StubHub International business. We have concerns over the accuracy of this forecast for three reasons. First, it is based on buyer location rather than event location, which leads to a mismatch with the scope of the remedy. Secondly, it does not include any additional costs relating to the IT platform and, potentially, other group functions. Thirdly, we are of the view that some of the assumptions concerning restructuring and returns on advertising spend may be overly optimistic.

10.231 There are also a number of factors which make projections of the divested business' future profitability very uncertain. These include:

- (a) Uncertainty concerning the timing and extent of the resumption of live events from the Coronavirus (COVID-19) pandemic.
- (b) Uncertainty concerning the exact composition of the divestiture business, as the remedy includes the option for a purchaser to choose additional staff from the wider StubHub group.
- (c) Uncertainty concerning the scope and scale of any restructuring that a purchaser would carry out.

10.232 As a result, we consider it appropriate to place limited weight on the Parties' forecast. We propose to give weight to the views of third parties and our overall judgment of the business' prospects.

10.233 We considered the elements of the Enhanced Remedy relating to liabilities. The Parties' retention of liabilities relating to tickets sold for events affected by the pandemic are an important factor in the effectiveness of the Enhanced Remedy. In our view, this commitment will help to ensure a wider

pool of potential buyers and should allow the divested business to operate with a 'clean slate', without the risks of having to pay out money or become distracted by litigation. However, we consider that for this provision to be effective, it must cover all tickets sold by the business to be divested up to the date of completion of the divestiture, regardless of whether the cancellation or postponement is before or after that date.

- 10.234 Third Parties were generally of the view that the divested business had the potential to operate profitably. We also note that the significant number of potential purchasers for the Enhanced Remedy package gives us assurance that the composition of the package is sufficient to provide the opportunity for it to compete effectively. Our assessment of purchaser risk is set out in the section below, commencing at paragraph 10.239.
- 10.235 Based on the evidence we have received and the analysis we have conducted over the course of this Merger inquiry, our view is that the divested business is well placed to take advantage of the resumption of live events. It has a strong market position in the many of the territories in which it operates, and the market for uncapped secondary ticketing for live events is expected to grow over time.
- 10.236 We are also of the view that there is an opportunity for any purchaser of the Enhanced Remedy to make significant cost savings through restructuring. There is evidence that prior to the transaction both viagogo and StubHub considered that the [X], and as noted above, StubHub have proposed extensive restructuring of the International business during the course of this inquiry.
- 10.237 We considered whether any such restructuring should take place prior to divestiture. While the continued employment of these staff may lead to poorer financial performance for the StubHub International business in the short-term before divestiture, we consider that a purchaser of the business should be able to restructure as it sees fit, rather than this being carried out by the Parties prior to its sale. Furthermore, we consider that to the extent that the cost of the restructuring will fall on the purchaser rather than StubHub, this expected cost is likely to be reflected in a lower purchase price.
- 10.238 In conclusion, while there is uncertainty over market conditions in the short term (due to the disruption of the Coronavirus pandemic), we consider the divested business has the potential to operate profitably in the UK in the medium term, in light of its position in the market, the scope for material improvements in operating efficiency and the potential for market growth as the sector recovers. There appear to be a number of interested purchasers,

which gives support to our view that the business is attractive and offers an opportunity for a purchaser to restructure. While the costs of restructuring and financing short-term losses may be material, we consider that they would also be reflected, to an extent, in a lower purchase price. We consider implications of the potential need to finance short-term losses during any restructuring process in the next section on purchaser suitability.

Identification and availability of suitable purchasers – the Enhanced Remedy

10.239 In this section, we assess the likelihood of a suitable purchaser being available for the Enhanced Remedy. We set out the criteria that a suitable purchaser would need to meet, and then assess the availability of such purchasers.

10.240 Most of our calls with third parties took place before the Parties submitted the Enhanced Remedy. As a result, these third party views refer to the Initial Remedy. Although the Parties submitted the Enhanced Remedy at a late stage in our process, we held further calls with four third parties to gain views on the new elements of the remedy. These are summarised in a separate section below.

Views of the Parties

10.241 The Parties stated that they are confident that a purchaser meeting the CMA's criteria could be found for the Initial Remedy proposal as it provided a fully functional viable stand-alone business that is able to compete effectively and where all of the risks of the divestiture fall on the Parties.²⁷³ The Parties also state that there was an effective management team transferring to the divested entity that would allow it to operate as an effective standalone entity and therefore was suitable for either a financial buyer or a buyer from the industry. Also, they noted that the forced nature of the sale and potentially lower purchase price would attract investors as would the attractiveness of the live events industry.

10.242 The Parties stated that the Enhanced Remedy is likely to be even more attractive to and widen the pool of credible bidders. They noted that they provided the names of seven parties to the CMA who were interested in the Initial Remedy and that the Enhanced Remedy was likely to be even more attractive in particular due to:

²⁷³ [Parties' response to the Notice of Possible Remedies](#), paragraph 33.

- (a) The materially enhanced StubHub brand licence or permanent access to a globally active brand in viagogo;
- (b) Preservation of the existing geographical reach of the StubHub International operations through continued access to North American buyers and resellers;
- (c) A clear and full divestment of the underlying technology platform;
- (d) Provision of all the staff necessary to run the platform and wider business; and
- (e) Additional liquidity provided by the provision of the viagogo inventory export capability enhancing the scale and liquidity of the business in the UK.

10.243 The Parties stated they have had expressions of interest since phase 1 of the CMA's Investigation from ten parties including [REDACTED].

10.244 In addition, the Parties stated that whilst they had only marketed the Enhanced Remedy for a short period of time they had already received 11 Letters of Intent from [REDACTED].

10.245 The Parties established a dataroom to which they have currently given access to 13 companies: [REDACTED].

Views of third parties

10.246 The views of third parties regarding the Initial Remedy and the Enhanced Remedy are summarised in Appendix I. We asked third parties for their views on what would be required of a potential purchaser of the initial remedy, for example what skillsets they may require and whether a particular type of buyer (eg a trade buyer compared to a financial buyer) would be most suitable. The two key requirements noted were:

- (a) Experience in the industry; and
- (b) Financial resources.

10.247 While financial resources would be required, it was noted by two firms that a financial buyer would not necessarily be a preferred purchaser as it may not have the required skills or experience in running a secondary ticketing platform.

10.248 Of the four third parties that we spoke to regarding the Enhanced Remedy, three expressed an interest in purchasing the divested business. In addition,

six other third parties we spoke to regarding the Initial Remedy had expressed interest in purchasing the divestiture package.

Criteria for purchaser suitability in the current case

10.249 We consider that the purchaser criteria set out in our guidance, and summarised at paragraph 10.26, provide a useful starting point for this remedy option.

10.250 There are a number of factors relating to the operation of the divested business and the design of this remedy which should be taken into account in applying these criteria:

- (a) While the divested business includes the StubHub IT platform and the engineers required to support and develop it, the complexity of the IT platform and its linkages with third-party systems means that any purchaser should have experience in managing critical or complex IT environments, preferably those relating to ticketing.
- (b) As noted in paragraphs 10.112 to 10.113 above, the divestiture package has historically [redacted]. Any purchaser will need to [redacted] at least for the period while the uncapped secondary ticketing market is still being affected by the Coronavirus (COVID-19) pandemic. In our view, any purchaser will also need to restructure the business (as discussed in paragraphs 10.214 to 10.238) in order to [redacted] in the medium term.

10.251 Any purchaser wishing to demonstrate that they could effectively address these factors is likely to have had experience of managing and operating a ticketing (or related) business, or be able to demonstrate that it could acquire this experience. In addition, any suitable purchaser will need to be of a sufficient size to have the financial and management resources to [redacted].²⁷⁴

Likely availability of suitable purchasers

10.252 The criteria outlined in paragraphs 10.249 to 10.251 are likely to restrict the number of purchasers that might be suitable for the Enhanced Remedy business.

10.253 However, we note that the Parties have provided us with the names of a significant number potential buyers, including 13 who have signed a letter of intent indicating their interest in the purchase of the Enhanced Remedy

²⁷⁴ StubHub has previously given undertakings to the CMA with respect to compliance with UK consumer protection law. The CMA will seek assurance that the purchaser of the divested business will honour these undertakings.

business. We have also spoken to a number of third parties who have expressed an interest in purchasing the Enhanced Remedy business.

10.254 While we have not conducted a full purchaser suitability assessment at this stage, we consider that the number and credentials of the potential purchasers identified provide good evidence that a suitable purchaser is likely to be available.

10.255 We also note our guidance that flexibility in the disposal price may mitigate purchaser risks and make it easier for a divestiture package to be sold. However, as noted above, any purchaser would still need to fulfil the suitability criteria mentioned above.

Conclusion on purchaser risk

10.256 We have identified interest from potential credible purchasers for the partial divestiture of StubHub as set out in the Enhanced Remedy. As a result, we do not consider that identification of a suitable purchaser is likely to be a material risk.

Asset risk and ensuring an effective divestiture process

10.257 As set out in paragraphs 10.27 to 10.30, we have considered the following process issues concerning the Enhanced Remedy package:

- (a) the appropriate timescale for divestiture to take place;
- (b) whether, and under what circumstances, there is a need to appoint a Divestiture Trustee; and
- (c) the role of interim measures during the divestiture process.

Timescale allowed for divestiture

10.258 We considered what would be an appropriate timescale to allow a purchaser to implement the required divestiture (the 'Initial Divestiture Period'). The Initial Divestiture Period would normally run from the acceptance of final undertakings or the making of a final order (for which the statute provides a period of up to 12 weeks after the final report) until legal completion of an effective divestiture (ie a sale to a purchaser approved by the CMA).

10.259 In considering an appropriate Initial Divestiture Period, the CMA Guidance states that we 'will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that favour a longer duration, such as canvassing a sufficient

selection of potential suitable purchasers and facilitating adequate due diligence'.²⁷⁵ In this case we also considered the effects of the Coronavirus (COVID-19) pandemic.

Taking account of the Coronavirus (COVID-19) pandemic

- 10.260 Three of the third parties that we held calls with provided a timeframe for how long they considered that the due diligence process might take, ranging between two and six months.
- 10.261 In this case, we consider there to be a number of factors to take into account when considering an appropriate Initial Divestiture Period. The period since the Merger has been characterised by considerable uncertainty for both Parties, and a longer divestiture period risks prolonging that uncertainty and increasing asset risk. In addition, both businesses [X]. A longer divestiture period means that viagogo [X].
- 10.262 Conversely, views from the Parties and other industry participants suggest that economic and market conditions are expected to start to improve at some point in 2021, and then continue to improve throughout the year. This would suggest that a longer divestiture period might increase the attractiveness of the remedy package to a potential purchaser. In addition, there are currently international travel and other restrictions, which may make the divestiture process more difficult. For example, in the context of a global business any due diligence that requires a physical presence or in-person inspection or audit may prove problematic. This may mean that a longer period is needed.
- 10.263 In summary, we consider the evidence for extending or shortening the Initial Divestiture Period is balanced. As a result, we propose an Initial Divestiture Period of [X]. We would note that the CMA has the ability to extend this Initial Divestiture Period where this is necessary to achieve an effective disposal.²⁷⁶

Provision for appointment of a divestiture trustee

- 10.264 It is the CMA's standard practice to provide for the appointment of a Divestiture Trustee to dispose of the divestiture package, if the Parties fail to achieve an effective disposal within the Initial Divestiture Period, or if the CMA has reason to be concerned that the Parties will not achieve an effective disposal within the Initial Divestiture Period. This helps ensure that

²⁷⁵ [Merger remedies guidance CMA87](#), paragraph 5.41.

²⁷⁶ [Merger remedies guidance CMA87](#), paragraph 5.41.

the Parties have a sufficient incentive to implement the divestiture promptly and effectively.

10.265 In our Remedies Notice, we invited views on whether the circumstances of this Merger necessitated the appointment of a Divestiture Trustee at the outset of the divestiture process.²⁷⁷

10.266 The Parties stated that as their divestiture proposal is fully functional, viable and standalone, and there are no risks in respect of deterioration of the package or a suitable purchaser being found it is not necessary to appoint a Divestiture Trustee. They noted that a 'Monitoring Trustee had been appointed under the Interim Order and are content for them to remain in place until the divestiture is effected'.²⁷⁸

10.267 We currently have no material concerns that the Parties would not achieve an effective disposal of the Enhanced Remedy within the Initial Divestiture Period. As a result, we do not propose to appoint a Divestiture Trustee at the outset of the divestiture process.

10.268 To ensure a timely completion of this remedy, we conclude that the CMA should reserve its right to appoint a Divestiture Trustee if:

- (a) the Parties fail to complete the divestiture process within the Initial Divestiture Period;
- (b) the CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;
- (c) the Parties are not engaging constructively with the divestiture process; or
- (d) there is a material deterioration in StubHub or viagogo during the divestiture process.

10.269 In line with the CMA's normal practice,²⁷⁹ if appointed, a Divestiture Trustee should be tasked with completing the divestiture of StubHub or viagogo to a potential purchaser approved by the CMA and at no minimum price.

²⁷⁷ See [Notice of Possible Remedies](#).

²⁷⁸ [Parties' response to the Notice of Possible Remedies](#), paragraph 38.

²⁷⁹ [Merger remedies guidance CMA87](#), paragraph 5.43.

The role of interim measures during the divestiture process

- 10.270 We have put in place interim measures to govern the conduct of viagogo and StubHub during the investigation,²⁸⁰ though these will end upon final determination of the inquiry (ie when the CMA accepts Final Undertakings or makes a Final Order). It is the usual practice of the CMA to incorporate relevant interim measures in the Final Undertakings or Final Order, in order to maintain separation between the Parties during the period of implementation of the remedy.
- 10.271 We also consider that a Monitoring Trustee should be appointed, and that its mandate covers compliance with the separation provisions in the Final Undertakings or Final Order, and to provide the CMA with information on the progress of the disposal process.

Conclusions on asset risk

- 10.272 Asset risk is the risk that the competitive capability of a divestiture package will deteriorate before completion of the divestiture, for example, through the loss of customers or key members of staff or degradation of the platform during the divestiture period.
- 10.273 A great deal of knowledge of StubHub's operations, customer relationships and IT platform resides with the current employees, and the loss of this expertise would present a material risk to the competitive capability of the StubHub International Business. The Parties have told us that loss of expertise risk is addressed by the key staff already being part of the international operations and retention packages are being put in place as part of the Interim Order process. We are satisfied that the provisions of the Interim Order are sufficient to manage this risk.
- 10.274 The remaining asset risk can be managed, and mitigated to an extent, by ensuring an effective divestiture process. We propose a [X] divestiture period, the continuation of measures to separate and support both the StubHub and viagogo businesses, and the potential to appoint a Divestiture Trustee. We consider that these measures would be appropriate to manage and mitigate asset risk in relation to the Enhanced Remedy.

²⁸⁰ See details of the Interim Order and corresponding amendments/consents granted at: [viagogo/StubHub merger inquiry case page: Interim Order](#).

Conclusions on the effectiveness of the Enhanced Remedy

10.275 Below we set out our conclusions on the effectiveness of the Enhanced Remedy.

10.276 The Enhanced Remedy is based on the operations of the StubHub International business, which is currently being managed as an established standalone business within the StubHub group. This provides us with the necessary assurance that the risks of disruption to the continuity of operations on divestiture will be limited.

Scope of the remedy

10.277 We note that the StubHub International business does not include StubHub's North American websites, which are used by buyers and resellers of tickets to UK events, who are within the scope of the SLC. However, the Enhanced Remedy contains a number of transitional proposals that sufficiently address this issue over and above those resellers and buyers who do not migrate to using the divested business themselves. These include re-direction of these buyers and resellers for a period of five years, a restriction on the merged entity to advertise to North American users of Google and other search engines using the StubHub brand for a period of five years, the ability of the divested business to advertise to North American users of Google and other search engines using the StubHub brand for a period of ten years, and the removal of the Parties' StubHub app from app stores outside North America for a period of ten years. We consider that these proposals address the scope issue adequately, and allow for a limited transitional period during which existing customers and resellers can be re-directed and other customers can be attracted to the divested business.

10.278 We examined the behavioural elements of the Enhanced Remedy to assess risks relating to specification, circumvention, market distortion and monitoring and enforcement. While we found some risks regarding market distortion, monitoring and enforcement, where necessary we have modified the remedy to ensure that these risks are reduced to an acceptable level. For example, we have removed proposals concerning viagogo's inventory management tool and also restrictions on UK advertising.

Remedy effectiveness – composition risks

10.279 The inclusion of the StubHub platform (including additional engineers, as needed) in the divestiture package mitigates many of the potential risks we had identified relating to the replication of the platform, its effective operation

after a divestiture, and the potential competition problems that might arise from two competitors using the same platform over a sustained period.

- 10.280 The ten year licence for the StubHub brand and the broadening of its geographic scope to all territories outside North America provides optionality to a purchaser and allows the divested business to establish itself under its new ownership before rebranding takes place.
- 10.281 The divested business is not currently profitable, due principally to the effects of the Coronavirus (COVID-19) pandemic but also to underlying inefficiencies which were identified and scheduled to be addressed through restructuring before the Merger completed. However, we consider the StubHub international business has potential to operate profitably in the medium term, due to its position in the market, the potential for market growth and opportunities for a purchaser to realise efficiencies through restructuring.
- 10.282 We are aware that, even though it has the potential to be profitable in the medium-term, the divested business faces a number of short-term challenges. StubHub had restructuring plans in place before the Merger, and we expect that a purchaser may wish to restructure the business (or integrate it with its own). In addition, the pace and path of the uncapped secondary ticketing market's recovery from the Coronavirus (COVID-19) pandemic is currently uncertain. We consider the time-limited behavioural provisions to be important as a transitional measure to enable the divested business to become an established and effective competitor.

Remedy effectiveness – purchaser risks

- 10.283 While some residual risks arising from the composition of the Enhanced Remedy remain, we consider that these could be successfully mitigated by a suitable purchaser with relevant experience and the necessary financial resources. Based on the evidence from the Parties and our calls with third parties, we expect there to be a sufficient number of suitable potential purchasers that we do not judge there to be a material amount of purchaser risk relating to this proposal. We also do not consider that the Enhanced Remedy gives rise to any significant asset risk owing principally to the continued operation of the Interim Order.

Remedy effectiveness – asset risks

- 10.284 We consider that asset risks can be effectively mitigated or managed through a [X] divestiture period, the continuation of measures to separate

and support both the StubHub and viagogo businesses, and the potential to appoint a Divestiture Trustee.

Remedy effectiveness - modifications

10.285 Having given detailed consideration to the design of the remedy, we propose to change the following elements of the Enhanced Remedy:

- (a) Exclusion of the proposal to re-introduce viagogo's inventory export management capability;
- (b) Redirection of UK event ticket buyers using the StubHub app for a period of five years;
- (c) Exclusion of the \$[X] per UK app customer incentive payment to the purchaser;
- (d) Exclusion of the proposal to restrict advertising by the Parties on UK websites;
- (e) Exclusion of the option to divest the viagogo brand;
- (f) A time limit of six months for any TSA agreed between the merged entity and the purchaser relating to use of the StubHub platform;
- (g) Extension of the Monitoring Trustee's remit to cover the merged entity's use of the StubHub platform; and
- (h) Clarification that the ability of the divested business to advertise to North American users of Google and other search engines using the StubHub brand is limited to a period of ten years.

Conclusion

10.286 As a result, we conclude that the Enhanced Remedy, as specified in paragraphs 10.88 to 10.113, and as modified by the provisions in paragraph 10.285, (the **Modified Enhanced Remedy**) represents an effective and comprehensive solution to the SLC we have found.

Partial divestiture of viagogo

Description of the remedy

10.287 The CMA's guidance states:

In defining the scope of a divestiture package that will satisfactorily address the SLC, the CMA will normally seek to identify the smallest viable, standalone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.²⁸¹

10.288 While we have found that a full divestiture of viagogo would represent an effective remedy, we also considered whether a partial divestiture could also be effective.

Views of the Parties and third parties

10.289 The Parties have not suggested a partial divestiture of viagogo as a remedy, and accordingly have not provided any detail about what such a divestiture package might contain and how any such divestment would be structured and effected.²⁸² In the response hearing, viagogo said that a partial divestiture of viagogo would be ‘harder’ than a partial divestiture of StubHub and ‘quite messy’, particularly with regard to the transfer of employees.

10.290 viagogo also said that replication of its platform would be ‘easy to do and involve minimal risk’, although [REDACTED]. It also said that it could provide its brand for a UK divestiture on the same terms as proposed for the StubHub Partial Divestiture. However, it said that [REDACTED].

10.291 Of the third parties we contacted, two noted that the partial divestiture of viagogo would have the same issues as those identified in the partial divestiture of StubHub International. Further, parties highlighted concerns with the viagogo brand name. However, one of the third parties told us that in the short term the partial divestiture of viagogo would be a better remedy.

Assessment of effectiveness

10.292 We considered whether a partial divestiture of viagogo operations, including, but not limited to, the company’s UK business, could be an effective remedy.

10.293 We consider this remedy option contains composition risks relating to brand, the replication of the viagogo platform and the transfer of staff. In particular, viagogo’s highly centralised operating structure means that any partial divestiture is likely to be difficult to specify and separate from the viagogo

²⁸¹ [Merger remedies guidance CMA87](#), paragraph 5.7.

²⁸² [Merger remedies guidance CMA87](#), paragraph 4.57 says that the CMA may consider its own remedy proposals.

business. We would also note that the Parties did not consider the partial divestiture of viagogo to be an effective remedy, and most third parties shared this view. These risks are inherent to the design of the remedy and could not, in our view, be sufficiently mitigated by a suitable purchaser.

Conclusions on the effectiveness of a partial divestiture of viagogo

10.294 Having considered the evidence available to us, our decision is that a partial divestiture of viagogo would not provide an effective remedy to the SLC we have found.

Conclusions on remedy effectiveness

10.295 We have decided that the following remedies would be effective in remedying the SLC and adverse effects that we have found:

- (a) Full divestiture of StubHub; or
- (b) Full divestiture of viagogo; or
- (c) Partial divestiture of StubHub (the Modified Enhanced Remedy).

10.296 Based on the evidence currently available to us, we have concluded that the following remedy is unlikely to be effective:

- (a) Partial divestiture of viagogo (as specified in paragraphs 10.292 to 10.294).

10.297 Having identified which remedies would be effective, we next consider whether there are any RCBs which should affect our decision on remedies, before considering the issue of proportionality.

Relevant customer benefits

10.298 The Act allows RCBs to be taken into account when considering remedy options. RCBs are defined as being lower prices, higher quality or greater choice of goods or services in any market in the UK, or greater innovation in relation to the goods or services.²⁸³

10.299 An effective remedy to an SLC could be considered disproportionate if it prevents customers from securing substantial benefits arising from the Merger, where these benefits outweigh the SLC and any resulting adverse

²⁸³ The Act, [Section 30](#).

effects. Insofar as these benefits constitute RCBs for the purposes of the Act, the statutory framework allows us to take them into account in our proportionality assessment.

- 10.300 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy. The CMA may modify a remedy to ensure retention of an RCB or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy, or it may decide that no remedy is appropriate.²⁸⁴
- 10.301 The burden of proof of whether RCBs arise from a merger is on the merging parties: '[t]he merger parties will be expected to provide convincing evidence regarding the nature and scale of RCBs that they claim to result from the merger and demonstrate that these fall within the Act's definition of such benefits'.²⁸⁵
- 10.302 The Parties have made no submissions regarding RCBs arising from the Merger. Consequently, we have not modified our view of the proportionality of the effective remedy options in light of RCBs.

The proportionality of effective remedies

- 10.303 In paragraphs 10.295 to 10.297 we summarised our conclusions on which remedy options would be effective in addressing the SLC and the resulting adverse effects. We set out below our assessment of, and conclusions on, which of these would constitute a proportionate remedy.

Framework for assessment of proportionality of merger remedies

- 10.304 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least intrusive or restrictive. In addition, the CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.²⁸⁶
- 10.305 When considering the costs of an effective remedy, the CMA's considerations may include (but are not limited to):²⁸⁷

²⁸⁴ [Merger remedies guidance CMA87](#), paragraph 3.16.

²⁸⁵ [Merger remedies guidance CMA87](#), paragraph 3.20.

²⁸⁶ [Merger remedies guidance CMA87](#), paragraph 3.6.

²⁸⁷ [Merger remedies guidance CMA87](#), paragraph 3.10.

- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
- (c) the loss of any RCBs that may arise from the Merger which are foregone as a result of the remedy.

10.306 However, CMA Guidance states that '[as] the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties. In particular, for completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the merger parties as a result of a divestiture remedy',²⁸⁸ as it is 'for the merger parties to assess whether there is a risk that a completed merger would be subject to an SLC finding, and the CMA would expect this risk to be reflected in the agreed acquisition price'.²⁸⁹ As noted by the CAT, in completing the Merger the Parties have taken a foreseeable risk that the CMA may order a divestiture.²⁹⁰

10.307 Having identified the least costly effective remedy, we consider whether this remedy would be disproportionate to the aim of remedying the SLC and its resulting adverse effects. In doing so, we compare the extent of harm associated with the SLC with the relevant costs of the proposed remedy.²⁹¹

Views of the Parties

10.308 The Parties stated that even if a full divestiture were to be effective it is likely to be disproportionate as the UK market in which the SLC was found relates to less than [~~3~~]²⁹²% of StubHub's global revenues²⁹². They cited paragraph 3.35 of the Merger remedies guidance which states:

Partial rather than full prohibition may be appropriate, if feasible, where the merger parties carry out activities in a market or markets other than those that are expected to give rise to an SLC.²⁹³

²⁸⁸ [Merger remedies guidance CMA87](#), paragraph 3.8.

²⁸⁹ [Merger remedies guidance CMA87](#), paragraph 3.9.

²⁹⁰ *Intercontinental Exchange Inc v CMA*, [2017] CAT 6, paragraph 101.

²⁹¹ [Merger remedies guidance CMA87](#), paragraph 3.6.

²⁹² [Parties' response to the Notice of Possible Remedies](#).

²⁹³ [Merger remedies guidance CMA87](#), paragraph 3.35.

- 10.309 The Parties said that since there was a feasible partial divestiture remedy that would be effective in addressing the SLC (ie the StubHub Partial Divestiture Proposal) then a full divestiture would be disproportionate.
- 10.310 In their response to the Remedies Working Paper the Parties stated that it is a 'basic public law principle' that proportionality of a remedy should also be assessed on a standalone basis in the round. As a full divestiture would affect multiple jurisdictions where there are no competition issues and the vast majority of the Parties' combined revenue is generated outside the UK they stated that on a standalone basis full divestiture would be disproportionate.
- 10.311 They further stated that there were precedents in case law for this view citing *Tesco vs Competition Commission*²⁹⁴ and *Groupe Eurotunnel S.A. v Competition Commission*²⁹⁵ and also the CMA's own guidance at paragraph 3.53 which states:
- '[i]n cases where all feasible remedies are likely to be disproportionate, the CMA may conclude that no remedial action should be taken'²⁹⁶.
- This, in the Parties' view, shows that a remedy must not be disproportionate to the SLC it seeks to remedy and reflects the requirement on the CMA to select a remedy that is 'reasonable'.²⁹⁷
- 10.312 They also stated that, in this case, full divestiture was not foreseeable and, accordingly, it would be appropriate to take into account the costs of a full divestiture to the Parties.

Our assessment of proportionality

- 10.313 In our assessment of proportionality, we applied the framework set out in our guidance and applied in the two cases referred to in paragraph 1.309. We first identified those remedies that are likely to be effective and selected the remedy with the lowest cost, or that was least restrictive or intrusive. We then considered whether this remedy was disproportionate to the SLC and its adverse effects.

²⁹⁴ Tesco plc v Competition Commission [2009] CAT 6, paragraph 139.

²⁹⁵ Groupe Eurotunnel S.A. v Competition Commission [2013] CAT 30, paragraph 380.

²⁹⁶ [Merger remedies guidance CMA87](#), paragraph 3.53.

²⁹⁷ The Act, [Section 35\(4\)](#).

Identification of the least intrusive, effective remedy

10.314 We identified the following remedies as effective remedies to the SLC that we have found:

- (a) Full divestiture of StubHub; and
- (b) Full divestiture of viagogo; and
- (c) Partial divestiture of StubHub (the Modified Enhanced Remedy).

10.315 We first assessed the relevant costs associated with each option.

10.316 A full divestiture of either StubHub or viagogo restores competition to pre-Merger levels, and as a result does not distort market outcomes and would incur no ongoing compliance or monitoring costs. Furthermore, the Parties have not submitted that there any RCBs arising from the Merger that we may have regard to in assessing relevant costs, as set out in our assessment in paragraphs 10.298 to 10.302.

10.317 We have not taken account of any potential losses to the Parties' lenders, which the Parties claimed may occur on the execution of a full divestiture of StubHub or viagogo. We discuss this issue in paragraphs 10.43 onwards. As set out in that section, we consider that lenders involved in transactions that are subject to merger control ought to be aware of the risks involved. Nor would it be plausible for third-party lenders to companies that engage in transactions subject to merger control to expect their private law rights and interests to take priority over regulatory enforcement action taken in the wider public interest. Accordingly, we consider that any costs to third party lenders should be considered as analogous to the Parties' costs for the reasons set out in paragraph 10.306. In any event (and as discussed above) we have no evidence that such costs are likely to arise.

10.318 Some of the behavioural elements of the Modified Enhanced Remedy, in particular the limitations on advertising UK event tickets on Google's US website and other US search engines, may give rise to costs arising from market distortions. However, as set out in paragraphs 10.151 to 10.157, the time-limited nature of these proposals, and the fact that there will not be a reduction in choice for US buyers of UK event tickets, leads us to consider that the relevant costs of the partial divestiture will be very low. We also consider that the relevant monitoring costs to the CMA will likely be minimal as circumvention should be capable of detection by the divested business, and monitoring adherence will be undertaken by a monitoring trustee whose costs will be paid by the Parties.

- 10.319 We found that the two full divestiture options incur no relevant costs, and the Modified Enhanced Remedy incurs a very low level of relevant costs.
- 10.320 We considered the intrusiveness of each of the effective remedies. We took note of the case law where the CAT has reviewed the proportionality of divestiture remedies in merger cases. It has consistently recognised the CMA's ability to find full divestiture to be a proportionate remedy, albeit an intrusive, one,²⁹⁸ and to find partial divestiture to be a proportionate and generally less intrusive remedy.²⁹⁹
- 10.321 We found that the Modified Enhanced Remedy was an effective remedy and although it would attract minimal and time-limited monitoring costs, considered it was a less intrusive remedy than either of the two full divestiture remedies as it allowed the Parties to divest a smaller proportion of the acquired entity (StubHub). We concluded that the Modified Enhanced Remedy is an effective and proportionate remedy and is our preferred effective remedy.

Is the preferred remedy disproportionate to the SLC and/or adverse effects?

- 10.322 We considered whether our preferred effective remedy was disproportionate to the SLC and its adverse effects that we had found.
- 10.323 As set out in our Guidance, the CMA's proportionality assessment will focus on weighing the relative costs of effective remedies. The CMA is not generally obliged, on proportionality grounds, to select a remedy that is not effective to remedy the SLC it has identified.³⁰⁰
- 10.324 As noted in Chapter 9, we have found that the Merger has resulted or is likely to result in an SLC with the likely adverse effects including higher fees for resellers and/or buyers, worse non-price terms and conditions for resellers and/or buyers, a lower quality of customer service and reduced innovation (eg in functionalities and improving its ease of use). Given the scale of the market, we would expect the resulting detriment to be material as would be the benefits of achieving an effective remedy.
- 10.325 The Parties have made no submissions that the Merger will result in RCBs that would be foregone by the implementation of this remedy. In respect of

²⁹⁸ See *BAA Limited v Competition Commission* [2012] CAT 3 at 20 and quoted with approval in *Ryanair Holdings Plc v Competition Commission* [2014] CAT 3 at 47 and *Intercontinental Exchange, Inc v Competition and Markets Authority* [2017] CAT 6 at 101.

²⁹⁹ *BskyB Limited v Competition Commission* [2008] CAT 25 and *Ryanair Holdings Plc v Competition Commission* [2014] CAT 3.

³⁰⁰ *Ryanair Holdings plc v Competition Commission* [2014] CAT 3, paragraph 185. See also *Ecolab Inc v CMA* [2020] CAT 12, paragraph 77.

the Modified Enhanced Remedy (our preferred remedy) we have found relevant costs of monitoring will be low and limited in duration (paragraph 10.318). We consider these to be substantially smaller in scale than the detriment arising from the adverse effects caused by the Merger.

10.326 Therefore, we conclude that our preferred effective remedy is a proportionate remedy to the SLC.

Conclusion on proportionality

10.327 We found that the full divestiture of StubHub, the full divestiture of Viagogo, and the Modified Enhanced Remedy to be effective remedies to the SLC and its adverse effects. Where we have found three effective remedies, we are required on the grounds of proportionality to select the least intrusive, effective remedy.³⁰¹

10.328 We found that the partial divestiture of StubHub (the Modified Enhanced Remedy) was an effective remedy and less intrusive than both full divestiture options.

10.329 We conclude that the partial divestiture of StubHub (the Enhanced Remedy) is an effective and proportionate remedy to the SLC and its adverse effects.

Decision on remedies

10.330 We have concluded that our preferred remedy is a partial divestiture of StubHub, in the form of Modified Enhanced Remedy. It is set out in full below.

Legal entities

10.331 The transfer of the entire shareholding in the 23 StubHub subsidiaries through which StubHub's international business is operated. The shares in these subsidiaries are currently held by Viagogo Luxembourg Holding Company S.a.r.l.

Platforms and mobile app

10.332 In respect of the Platform the remedy comprises:

³⁰¹ Ecolab Inc v CMA [2020] CAT 14 at 76.

- (a) The StubHub secondary ticketing platform either by transfer of the intellectual property in the platform or, if by licence, then a licence that is equivalent in effect to a transfer of the intellectual property.
- (b) The merged entity may retain a copy through the process described in paragraph 10.92 for a period of no more than six months after completion of the divestiture. This copy will include only the data relating to North American buyers and resellers (for North American live events) and will be used only for the purposes of migrating this data to an alternative platform. After this period it must be destroyed by the Parties.
- (c) The Parties will also share all platform developments from the date of copying this platform until completion of the sale.
- (d) Furthermore the Parties must have completed the transitional steps outlined in paragraph 10.93 ([§]) prior to divestiture unless otherwise agreed by the CMA. This will be overseen by the Monitoring Trustee. They must also provide any necessary assurance required by the purchaser that this has been successfully completed prior to completion of the sale.
- (e) All primary ticketing platforms currently used in the international operations (including the Ticketbis platform) together with associated primary ticketing partnerships will also be transferred to the purchaser.
- (f) A cloned copy of the StubHub mobile app will be passed to the divested business. The original copy, including its data and app store reviews, will be retained by the merged entity and does not form part of the divestiture package.
- (g) The Parties will remove their StubHub-branded mobile app from app stores outside North America, and will not be permitted to re-list it for a period of 10 years after completion.
- (h) The Parties must on a 'best endeavours basis' work to ensure that all contracts for all third party vendor services currently used in the international operations and required by the purchaser will be transferred.

Customer data and inventory

10.333 The divestiture will include the following;

- (a) All inventory listings live at the completion date where the reseller does not have a registered address in North America.

- (b) All UK event inventory listings live at the completion date regardless of the registered address of the reseller.
- (c) All active and historic customer data relating to resellers and buyers with an address outside North America.
- (d) All active and historic customer data for both parties for any transaction where either the buyer or the reseller with an address outside North America.

Brand

10.334 The divestiture package will include the following:

- (a) The exclusive use of the StubHub brand through a royalty-free licence for a period of ten years for all geographies outside North America after completion, irrespective of whether the purchaser rebrands during this period.
- (b) A prohibition on the use of the StubHub brand by the merged entity to target North American buyers for UK live events in paid search (including Google and all other search engines) for a period of five years.
- (c) The Parties would also permit the divested entity to use the StubHub brand on Google paid search and all other search engines to target North American users for UK live events for a period of ten years.
- (d) There will be no additional restrictions on the brand licence other than those required for 'ordinary commercial protections, common in brand agreements'.
- (e) The exclusive global rights in perpetuity to the Ticketbis brand.

Staff

10.335 The divestiture will include:

- (a) All StubHub employees currently employed within the international operations.
- (b) All employees in the wider StubHub organisation 'who could be deemed by purchasers, acting reasonably, as being required to operate the business and maintain the platform'. [X].
- (c) Any associated office space and equipment the purchaser deems these employees require to carry out their duties.

- (d) Those members of the International Management team and key staff for which retention packages are in place to November 2021 as per paragraph 10.102.
- (e) The Parties may negotiate a short-term TSA with the purchaser to provide staff to maintain the platform as set out in paragraph 10.332 to last for no more than six months.

Liabilities

10.336 The merged entity will remain liable for all and any liabilities of the divestment business arising from acts or omissions that occurred up to the date of completion of the sale. This includes provisions, to be agreed with the purchaser and approved by the CMA, for prompt compensation for any liabilities arising in respect of tickets sold or purchased prior to completion, regardless of whether the cancellation or postponement is before or after that date.

Redirections

10.337 In respect of redirections:

- (a) The merged entity will redirect resellers and buyers to the StubHub.co.uk domain, which will transfer to the divested business, where those same resellers and buyers come to the StubHub North American domains to list or buy tickets for UK live events. This redirection will last for a period of five years from completion of the divestiture. The redirection will follow the process set out in paras 10.104 to 10.108.
- (b) This redirection will also apply to any successor StubHub branded websites of the merged entity in North America or any success or reseller tools to '[X]' within the five year period. This redirection will also apply should the purchaser rebrand within this time and establish a successor website to the StubHub.co.uk domain.
- (c) During the period of the redirection the sale and purchase of tickets to UK live events would cease on the StubHub North American websites for a period of five years after completion of the divestiture.
- (d) A Monitoring Trustee will be appointed by the Parties, subject to approval by the CMA, to oversee these arrangements for five years after completion of the divestiture, during which the merged entity will pay the costs and provide any access or information that Monitoring Trustee may require.

10.338 In respect of the StubHub Mobile app;

- (a) The Parties will introduce a redirection for a period of five years from the date of completion of the divestiture where UK users of the merged entity's app will receive a push message requesting that they download the Enhanced Remedy's app and delete the merged entity's app as per paragraph 10.109.
- (b) The merged entity will not display any inventory for UK live events on the merged entity's StubHub app during the period of this redirection.
- (c) The Parties will not list the merged entity's StubHub app in Apple and Google app stores outside North America for ten years after the date of completion of the divestiture.
- (d) A Monitoring Trustee will be appointed by the Parties, subject to approval by the CMA, to oversee these arrangements for five years after completion of the divestiture, during which the merged entity will pay the costs and provide any access or information that Monitoring Trustee may require.

Implementation of the Remedy

10.339 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings if the Parties wish to offer them, or by making a final order. Either the final undertakings or the final order must be implemented within 12 weeks of publication of a final report (or extended once by up to six weeks under exceptional circumstances), including the period for any formal public consultation on the draft undertakings or order.³⁰²

10.340 In line with our Guidance once this remedy has been fully implemented in line with the conclusions set out in this decision, we have decided that Pugnacious Endeavors Inc and PUG LLC, should be prohibited from subsequently acquiring (directly or indirectly) the assets or shares of companies relating to or controlling the StubHub business comprising the Modified Enhanced Remedy package or acquiring any material influence over them. Our Guidance states that the CMA will normally limit this prohibition to a period of ten years.³⁰³ We find no compelling reason to

³⁰² [Section 82](#) (final undertakings) and [Section 84](#) (final order) of the Act. Also, [Schedule 10](#).

³⁰³ [Merger remedies guidance CMA87](#), paragraph 5.10.

depart from the Guidance in this case by seeking a shorter or longer prohibition period.

10.341 We have concluded that an Initial Divestiture Period of [X] is appropriate in this case.

10.342 To ensure timely completion of this remedy, we conclude that the CMA should reserve its right to appoint a Divestiture Trustee if:

- (a) the Parties fail to complete the divestiture process within the Initial Divestiture Period;
- (b) the CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;
- (c) the Parties are not engaging constructively with the divestiture process; or
- (d) there is a material deterioration in the Modified Enhanced Remedy package during the divestiture process.

10.343 In line with the CMA's normal practice,³⁰⁴ if appointed, a Divestiture Trustee should be tasked with completing the divestiture of the Modified Enhanced Remedy package to a potential purchaser approved by the CMA and at no minimum price.

10.344 We put in place interim measures to ensure the continued independent operation of StubHub and viagogo during this inquiry. These will expire upon final determination of the merger reference: that is, when the CMA accepts final undertakings or makes a final order. With a divestiture remedy, there will be a continuing need to preserve the independence and competitive capability of the Modified Enhanced Remedy package until the divestiture is completed. As our guidance acknowledges, although 'merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves'.³⁰⁵

10.345 We will therefore maintain similar provisions to our existing interim measures during the implementation of this remedy until completion of the divestiture remedy. The existing Monitoring Trustee's appointment will continue, in order to monitor the Parties' compliance with them. The Monitoring Trustee will also be involved in certain aspects of the divestiture process, as

³⁰⁴ [Merger remedies guidance CMA87](#), paragraph 5.43.

³⁰⁵ [Merger remedies guidance CMA87](#), paragraph 5.4.

appropriate and consistent with our guidance, in order to monitor the Parties' compliance with any final order or undertakings in relation to a divestiture remedy and to ensure an efficient divestiture process, including with respect to the CMA's approval of prospective purchasers and the divestiture agreement between the Parties and the purchaser of the divested business.

- 10.346 We will adjust the Monitoring Trustee's mandate to reflect these new functions as part of any final order or undertakings.