

PROPOSED MERGER BETWEEN CROWDCUBE LIMITED AND SEEDRS LIMITED

Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups¹

Introduction

1. On 12 November 2020, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**), referred the proposed merger between Crowdcube Limited (**Crowdcube**) and Seedrs Limited (**Seedrs**) (the **Merger**), for further investigation and report by a group of CMA panel members.
2. In its provisional findings on the reference notified to Crowdcube and Seedrs (the **Parties**) on 24 March 2021, the CMA, among other things, provisionally concluded that the Merger, if carried into effect, will result in the creation of a relevant merger situation, and that the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the market for the supply of equity crowdfunding (ECF) platforms to SMEs and investors in the UK.²
3. The CMA has provisionally concluded that this SLC may be expected to result in the following adverse effects: higher prices and/or reduced quality and/or reduced innovation than would otherwise be the case absent the Merger.
4. This Notice sets out the actions which the CMA considers it might take for the purpose of remedying, mitigating or preventing the SLC³ and/or any resulting adverse effects identified in the Provisional Findings Report.⁴
5. The CMA invites comments on possible remedies by 7 April 2021.

¹ CMA Rules of Procedure for Merger, Market and Special Reference Groups (CMA17, March 2014, corrected November 2015 (**CMA Rules**)).

² Ibid.

³ Elsewhere in this Notice, references to remedying the SLC are used as shorthand for the statutory reference to remedying, mitigating or preventing the SLC.

⁴ See also sections 36(2) and 41 of the Act and rule 12.1 CMA Rules.

Criteria

6. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.⁵
7. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects. In assessing the effectiveness of a potential remedy the CMA will consider:⁶
 - (a) The impact which the proposed remedy would have on the SLC and the resulting adverse effects;
 - (b) The appropriate duration and timing of the proposed remedy;
 - (c) The practicality of the proposed remedy; and
 - (d) Whether the risk profile of the proposed remedy is acceptable.
8. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁷ In cases where more than one remedy is available, the CMA will select the least costly and intrusive remedy that it considers to be effective.⁸

Possible remedies on which views are sought

9. In merger inquiries, the CMA prefers structural remedies, such as divestiture or prohibition, over behavioural remedies, because:
 - (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
 - (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
 - (c) structural remedies rarely require monitoring and enforcement once implemented.⁹

⁵ Section 36(3) of the Act.

⁶ *Merger Remedies: CMA87* (December 2018), paragraph 3.5.

⁷ *Merger Remedies: CMA87* (December 2018), paragraph 3.4.

⁸ *Merger Remedies: CMA87* (December 2018), paragraph 3.4.

⁹ *Merger Remedies: CMA87* (December 2018), paragraph 3.46.

10. At this stage, the CMA's initial view is that the structural remedy of prohibition of the Merger is the only effective remedy to the SLC and the adverse effects which may result from it. Prohibition of the Merger would represent a comprehensive solution to all aspects of the SLC that has been provisionally found (and any resulting adverse effects) and the risks in terms of the implementation and effectiveness of prohibition are low.
11. The CMA is currently of the view that no other structural remedy, including a differently configured or smaller divestiture package (partial divestiture), or any behavioural remedy, is likely to be an effective remedy to the provisional SLC or any resulting adverse effects.
12. Partial divestiture would require splitting up the Seedrs and/or the Crowdcube business(es). These separated assets which currently contribute to a single, integrated, competitive proposition would then need to compete effectively under separate ownership, either as a separate group of assets, or in combination with the assets and commercial proposition of an acquirer of the divested assets.
13. At this stage, it is not clear what differently configured assets, or smaller subset of assets, could be divested to enable an acquirer to compete effectively. As such, it is unlikely that such an approach could comprehensively remedy the SLC or any resulting adverse effects identified in the Provisional Findings. Further, such an approach would be likely to have an unacceptable level of risk, in particular in relation to composition risks, purchaser risks and asset risks.¹⁰ Accordingly, the CMA's initial view is that partial divestiture is not likely to represent an effective remedy.
14. Behavioural remedies seek to change aspects of business conduct from what may be expected, based on businesses' incentives and resources.¹¹ The circumstances of this case do not justify reliance on a behavioural remedy.¹² Behavioural remedies need to be carefully designed to avoid various risks materialising, to enable any behavioural remedy to be effective.¹³ These risks - specification risk, circumvention risk, distortion risk and monitoring and enforcement risk - are all likely to be significant and extremely difficult to

¹⁰ Composition risks are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market. Purchaser risks are risks that a suitable purchaser is not available or that the merger parties will dispose to a weak or otherwise inappropriate purchaser. Asset risks are risks 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 (see also [Merger Remedies: CMA87](#) (13 December 2018), paragraph 5.3).

¹¹ [Merger Remedies: CMA87](#) (December 2018), paragraph 7.4.

¹² The circumstances in which behavioural remedies are more likely to be used as the primary source of remedial action are set out in [Merger Remedies: CMA87](#) (December 2018), paragraph 7.2.

¹³ [Merger Remedies: CMA87](#) (December 2018), paragraph 7.4.

successfully mitigate in this case. The CMA's initial view is that a behavioural remedy is not likely to be effective in addressing the provisional SLC or any resulting adverse effects. Further, in this case, a structural remedy, in the form of prohibition, is feasible and would be effective in addressing the provisional SLC or any resulting adverse effects

15. We invite views on whether prohibition of the Merger would be an effective remedy.
16. The CMA will also consider any other effective and practicable remedies that the Parties, or any interested third parties, propose in order to address the provisional SLC and/or the resulting adverse effects. Accordingly, we also invite views on any other such effective and practicable remedies.

Cost of remedies and proportionality

17. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, of those remedy options that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the provisional SLC and its adverse effects. If the CMA is choosing between two remedies that it considers would be equally effective, it will choose that which imposes the least cost or that is the least restrictive.¹⁴
18. The CMA's initial view is that the costs associated with prohibition would be low and that prohibition would be proportionate in addressing the provisional SLC and its adverse effects.
19. The CMA invites views about proportionality and the costs that are likely to arise in implementing prohibition, as well as in relation to any alternative remedy proposed by respondents.

Relevant customer benefits

20. In deciding the question of remedies, the CMA may have regard to the effect of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.¹⁵

¹⁴ [Merger Remedies: CMA87](#) (December 2018), paragraph 3.6.

¹⁵ [Merger Remedies: CMA87](#) (December 2018), paragraphs 3.15 and 3.16.

21. Relevant customer benefits are limited by the Act to benefits to relevant customers¹⁶ in the form of:
 - (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or
 - (b) greater innovation in relation to such goods or services.'¹⁷
22. The Act provides that a benefit is only a relevant customer benefit if:
 - (a) it accrues or may be expected to accrue to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
 - (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.¹⁸
23. The CMA welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the different remedy options considered.

Next steps

24. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by 7 April 2021 (see Note (i)).
25. A copy of this notice will be posted on the CMA website.

Kirstin Baker
Inquiry Group Chair
24 March 2021

Note

- (i) This notice of possible actions to remedy, mitigate or prevent the SLC and/or any resulting adverse effects is made having regard to the Provisional Findings announced on 24 March 2021. The Parties and third parties have until 14 April 2021 to respond to the Provisional Findings. The CMA's findings may alter in

¹⁶ For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution and are therefore not limited to final consumers. See also section 30(4) of the Act.

¹⁷ Section 30(1)(a) of the Act, see also [Merger Remedies: CMA87](#) (December 2018), paragraph 3.17.

¹⁸ Section 30(3) of the Act, see also [Merger Remedies: CMA87](#) (December 2018), paragraph 3.19.

response to comments it receives on its Provisional Findings, in which case the CMA may consider other possible remedies, if appropriate.