

# Anticipated acquisition by Auction Technology Group plc of Live Auctioneers, LLC

## Decision on relevant merger situation and substantial lessening of competition

**ME/6942/21**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 29 September 2021. Full text of the decision published on 12 November 2021.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

### SUMMARY

1. On 17 June 2021, Auction Technology Group plc (**ATG**) agreed to acquire the entire issued share capital of Live Auctioneers, LLC (**Live Auctioneers**) (the **Merger**). ATG and Live Auctioneers are together referred to as the **Parties** and, for statements concerning the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of ATG and Live Auctioneers is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. The CMA therefore believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties operate online auction marketplaces for arts and antiques (**A&A**) (**Online Auction Marketplaces for A&A**). Online Auction Marketplaces for A&A are two-sided platforms that connect auction houses and bidders. On one side, they allow auction houses to list and market their A&A auctions on the platform and thereby reach more potential bidders for their auctions. On the other side, they enable bidders to browse and bid on A&A auctions run by multiple auction houses.

4. The CMA considered whether the Merger may give rise to a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects and conglomerate effects in the operation of Online Auction Marketplaces for A&A in the UK.
5. The CMA found that ATG operates by far the largest Online Auction Marketplace for A&A in the UK. However, the CMA found that Live Auctioneers is largely focused on the North American market and attracts very few UK bidders to its platform. To the extent that its platform is used by UK auction houses, it is generally to reach US bidders. The CMA found that while some UK auction houses value access to an international audience, bidders based outside the UK are not considered substitutable with UK bidders. There are a number of reasons for this, including different buyer preferences and the complexity of processing international transactions. As a result, the CMA found that there is no material competitive interaction between the Parties. The CMA also found no evidence to suggest that this would have changed absent the Merger.
6. The CMA also found that there are at least two alternative Online Auction Marketplaces for A&A in the UK and out-of-market constraints, such as white label solutions. The CMA believes that cumulatively these alternative options impose the competitive constraint that exists on ATG today, and as such the Merger will not alter the competitive dynamics in the market.
7. The CMA also assessed whether the Merger could give rise to conglomerate effects, by enabling the Merged Entity to leverage Live Auctioneers' position in the US, where it has a significant number of bidders using its Online Auction Marketplace for A&A, to increase the number of auction houses using ATG's Online Auction Marketplace for A&A in the UK. This could occur through the bundling of Live Auctioneers' US bidder base, to make ATG's offer more attractive to UK auction houses. The CMA found that given the Parties' respective shares of supply in the US and UK, Live Auctioneers is unlikely to have market power in the US and ATG has a pre-existing strong position in the UK. Accordingly, the Merged Entity is likely to have limited ability and incentive to implement a leveraging strategy in the UK.
8. As a result, the CMA does not believe that it is or may be the case that the Merger may be expected to give rise to an SLC as a result of horizontal unilateral effects or conglomerate effects in the operation of Online Auction Marketplaces for A&A in the UK.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

10. ATG offers online auction services to auction houses and bidders in the UK, US, and Austria, Germany and Switzerland (the **DACH region**). In the UK, these services include the operation of an Online Auction Marketplace for A&A (*the-saleroom.com*) (**TSR**), and the supply of white label solutions which allow UK auction houses to offer online bidding on their own branded websites.<sup>1</sup> ATG is headquartered in the UK and is listed on the London Stock Exchange. Its turnover in the financial year ending 30 September 2020 was £56,320,000 worldwide and £[REDACTED] in the UK.<sup>2</sup>
11. Live Auctioneers offers online auction services to auction houses and bidders predominantly in the US, and to a lesser extent in the UK. These include the operation of an Online Auction Marketplace for A&A (*liveauctioneers.com*) and the supply of a [REDACTED] white label solution to auction houses.<sup>3 4</sup> Live Auctioneers is headquartered in the US and is controlled by investment funds affiliated with Cove Hill Partners, L.P (**CHP**). Its turnover in 2020 was £[REDACTED] worldwide and £[REDACTED] in the UK.<sup>5</sup>

### Transaction

12. Through a securities purchase agreement dated 17 June 2021, ATG agreed to acquire the entire issued share capital of Live Auctioneers for a total consideration of up to \$525 million (ie approximately £377 million).<sup>6</sup>
13. ATG submitted that the Merger will
  - (a) expand its geographical footprint by developing its presence in the operation of Online Auction Marketplaces for A&A in North America, where ATG's Online Auction Marketplaces for A&A have limited

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<sup>1</sup> ATG also publishes the Antiques Trade Gazette and supplies back office technology products to auctioneers to assist the administrative process of running an auction house. Merger Notice, paragraphs 58-59.

<sup>2</sup> Merger Notice, paragraph 60, Table 1.

<sup>3</sup> Live Auctioneers submitted that its white label solution creates a separate landing page for bidders to bid on auctions under the auction house's own brand [REDACTED] (Merger Notice, paragraph 68). Given that Live Auctioneers only has [REDACTED] UK customers actively using its white label solution in the UK (as of 26 May 2021; Merger Notice, paragraphs 26, 68) and that there are at least five other suppliers of white label solutions in the UK in addition to the Parties (see footnote 52), this overlap is not considered further.

<sup>4</sup> Live Auctioneers also operates a small online auction house in the US and offers a digital publication called Auction Central News. Merger Notice, paragraph 69.

<sup>5</sup> Merger Notice, paragraph 70, Table 2.

<sup>6</sup> Merger Notice, paragraphs 73-74.

exposure and Live Auctioneers' Online Auction Marketplace for A&A is used by a wide array of auction house customers and bidders;<sup>7</sup> and

- (b) enable the Merged Entity to improve the end-to-end customer experience on online auction marketplaces, including via the addition of an integrated payments solution developed by Live Auctioneers to the Merged Entity's online auction marketplaces.<sup>8 9</sup>
14. CHP submitted that the Merger represents a [X] exit opportunity for it and that ATG is an attractive buyer for Live Auctioneers.<sup>10</sup>
  15. The internal documents submitted by ATG<sup>11</sup> and Live Auctioneers<sup>12</sup> are broadly consistent with their stated rationale for the Merger.

## Jurisdiction

16. Each of ATG and Live Auctioneers is an enterprise under section 129 of the Act. As a result of the Merger, these enterprises will cease to be distinct for the purposes of sections 23(2)(a) and 26 of the Act.
17. The share of supply test in section 23(2)(b) of the Act is met. The Parties overlap in the operation of Online Auction Marketplaces for A&A in the UK,<sup>13</sup> where they had a combined share of supply of [80-90]% based on 2020 revenues, with an increment of [0-5]% brought about by the Merger (see Table 1 below).
18. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 10 August 2021 and the statutory 40 working day deadline for a decision is therefore 6 October 2021.

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<sup>7</sup> Merger Notice, paragraphs 87-88, 90.

<sup>8</sup> Merger Notice, paragraphs 79(c), 89, 92-93.

<sup>9</sup> Live Auctioneers currently allows successful bidders to pay auction houses automatically through card details saved to Live Auctioneers' system via an autopay function. ATG expects to integrate Live Auctioneers' payments solution into its online auction marketplaces in North America, the UK and the DACH region after completion of the Merger. [RNS announcement of the Merger](#) on 17 June 2021.

<sup>10</sup> Merger Notice, paragraph 94.

<sup>11</sup> Merger Notice, Annex 9.1.2, Annex, 9.1.4, Annex 9.1.12, Annex 9.1.24.

<sup>12</sup> Merger Notice, Annex 9.3.6, Annex 9.3.7, Annex 9.3.8, Annex 10.2.21, Annex 10.2.27.

<sup>13</sup> For the purposes of the share of supply test, a key factor to determine the geographic allocation of supply is the location of customers. [Merger: Guidance on the CMA's jurisdiction and procedure](#) (CMA2 revised), December 2020, paragraph 4.64(b).

## Counterfactual

20. The CMA assesses a merger's impact relative to the situation that would prevail without the merger (ie the counterfactual).<sup>14</sup> For anticipated mergers, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.<sup>15</sup> In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.<sup>16</sup>
21. The CMA considered whether, absent the Merger, Live Auctioneers' Online Auction Marketplace for A&A would have grown in the UK and therefore increased the competitive constraint it exerts on ATG's Online Auction Marketplace for A&A in the UK.

### *Parties' submissions*

22. Live Auctioneers submitted that it is a US based and predominantly US focused supplier, and that the UK is not an area of focus.<sup>17</sup> Live Auctioneers explained that when soliciting auction houses, it focuses on winning business in [REDACTED].<sup>18</sup> Similarly, its Online Auction Marketplace for A&A is primarily used by US bidders.<sup>19</sup>
23. Live Auctioneers submitted that it had no plans to increase its level of investment or focus in the UK due to, among other factors, [REDACTED].<sup>20</sup>
24. Live Auctioneers submitted that around [REDACTED] it introduced a [REDACTED].<sup>21</sup> This was directed at attracting more UK auction houses to its Online Auction Marketplace for A&A in particular by promoting its US bidder base.<sup>22</sup> To this end, [REDACTED].<sup>23</sup>

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<sup>14</sup> [Merger Assessment Guidelines](#) (CMA129), 18 March 2021 (**Merger Assessment Guidelines**), paragraph 3.1.

<sup>15</sup> [Merger Assessment Guidelines](#), paragraph 3.2.

<sup>16</sup> [Merger Assessment Guidelines](#), paragraph 3.9.

<sup>17</sup> Merger Notice, paragraphs 209, 225.

<sup>18</sup> Merger Notice, paragraph 317.

<sup>19</sup> Merger Notice, paragraph 18.

<sup>20</sup> Merger Notice, paragraphs 123-126.

<sup>21</sup> Merger Notice, paragraph 226.

<sup>22</sup> Merger Notice, paragraphs 225-226. See also, Live Auctioneers' response to CMA questions of 27 July 2021, paragraph 3.9.

<sup>23</sup> Merger Notice, paragraph 226.

25. Live Auctioneers submitted that the [redacted] lasted approximately [redacted] and was a [redacted].<sup>24</sup> [redacted] Live Auctioneers submitted that it ceased the [redacted].<sup>25</sup> Live Auctioneers submitted that the [redacted] most likely [redacted] because its Online Auction Marketplace for A&A was unable to [redacted] for those UK auction houses that used it.<sup>26</sup>
26. Live Auctioneers submitted that there are not and will not be [redacted] organic expansion in the UK.<sup>27</sup> Live Auctioneers also explained that it does not [redacted] in the UK and does not [redacted].<sup>28</sup>

### **CMA assessment**

27. The CMA has not found any evidence in Live Auctioneers' internal documents indicating that it has (or plans to introduce) a UK-focused marketing strategy directed either at attracting UK auction houses or expanding its UK bidder base. In particular, consistent with Live Auctioneers' submissions [redacted], the CMA found no references to [redacted] in Live Auctioneers' internal documents [redacted].
28. More generally, the CMA has not found any evidence in Live Auctioneers' internal documents of [redacted] expand organically in the UK.<sup>29</sup>
29. Third party evidence received by the CMA also indicated that despite having operated its Online Auction Marketplace for A&A in the UK for more than a decade, Live Auctioneers continues to be regarded as a predominantly US based player offering access to US auctions and US bidders,<sup>30</sup> and would be unlikely to gain a significant foothold in the UK unless it did something very different from what it is currently doing in the UK (which there is no evidence to suggest would happen, as set out in paragraphs 27-28).<sup>31</sup> This is also corroborated by UK bidder data provided by Live Auctioneers (see paragraph 59).

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<sup>24</sup> Merger Notice, paragraph 227.

<sup>25</sup> Merger Notice, paragraph 227.

<sup>26</sup> Merger Notice, paragraphs 227-228.

<sup>27</sup> Merger Notice, paragraph 124. See also, Live Auctioneers' response to CMA questions of 27 July 2021, paragraph 3.1.

<sup>28</sup> Merger Notice, paragraph 256.

<sup>29</sup> For example, [redacted]. Merger Notice, eg Annex 10.2.15, Annex 10.2.18, Annex 10.2.20, Annex 10.2.27, Annex 10.2.28, Annex 10.2.39, Annex 10.2.47, Annex 10.2.52. See also, Live Auctioneers' response to CMA questions of 27 July 2021, paragraphs 3.7-3.8.

<sup>30</sup> [redacted].

<sup>31</sup> [redacted].

## ***CMA conclusion on the counterfactual***

30. The CMA believes that, absent the Merger, Live Auctioneers would not have expanded its activities in the UK such that there would be stronger competition between the Parties in the future. On this basis, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## **Competitive assessment**

### ***Frame of reference***

31. Market definition is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise from the competitive assessment.<sup>32</sup> It involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.<sup>33</sup>
32. ATG and Live Auctioneers both operate Online Auction Marketplaces for A&A.<sup>34</sup> For the most part, their Online Auction Marketplaces for A&A focus on different geographies:
- (a) ATG's Online Auction Marketplaces for A&A focus on the UK (TSR) and the DACH region (Lot-tissimo); and
  - (b) Live Auctioneers' Online Auction Marketplace for A&A focuses on North America, in particular the US.
33. Live Auctioneers' Online Auction Marketplace for A&A is also used in the UK, but typically by UK auction houses seeking access to US bidders, or UK bidders bidding on auctions run by US auction houses (see paragraph 46).
34. The CMA's assessment of the competitive effects of the Merger does not need to be based on a highly specific description of any particular market definition (including, for example, descriptions of the precise boundaries of the relevant markets).<sup>35</sup> In this context, the CMA has identified below the appropriate frame of reference for its assessment of the Merger.

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<sup>32</sup> [Merger Assessment Guidelines](#), paragraph 9.1.

<sup>33</sup> [Merger Assessment Guidelines](#), paragraph 9.2.

<sup>34</sup> ATG also operates online auction marketplaces in other verticals, including in the consumer surplus and returns segment (via i-bidder) and in the industrial and commercial segment (via BidSpotter, BidSpotter US and Proxibid) (Merger Notice, paragraph 58). Given that Live Auctioneers is only active in the A&A segment, the CMA has not found it necessary to consider further in this decision any other verticals where ATG is active.

<sup>35</sup> [Merger Assessment Guidelines](#), paragraph 9.5.

### *Online Auction Marketplaces for A&A in the UK*

35. Historically, A&A auctions would take place at physical sites operated by auction houses. Bidders would bid on lots by attending the auctions in person, leaving commission bids with auctioneers, bidding via telephone or authorising intermediaries to bid on their behalf.
36. The A&A auction space in the UK has progressively adapted to online opportunities, with the COVID-19 pandemic accelerating this process.<sup>36</sup> UK auction houses increasingly seek to offer online bidding functionality to attract more potential bidders and to achieve greater visibility for their auctions.<sup>37</sup> Similarly, UK bidders are increasingly using online bidding solutions.<sup>38</sup>
37. Online Auction Marketplaces for A&A (as operated by the Parties) are two-sided platforms that connect auction houses and bidders. On one side, they allow auction houses to list and market their A&A auctions on the platform and thereby reach more potential bidders for their auctions. On the other side, they enable bidders to browse and bid on A&A auctions run by multiple auction houses.
38. Auction houses can also offer online bidding on their own branded websites either by developing this functionality in-house or by using a white label solution provided by a third-party supplier. White label products are licensed to auction houses as a cloud-based, software-as-a-service technology solution that enables them to offer online bidding on their own branded websites.

### *Product scope*

39. The Parties submitted that the relevant product frame of reference is the supply of online auction services to auction houses operating in the A&A segment,<sup>39</sup> comprising both Online Auction Marketplaces for A&A and white label solutions.<sup>40</sup> The Parties also submitted that the product frame of reference should not be further segmented by type of auction (ie live online

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<sup>36</sup> Merger Notice, paragraphs 175(a), 179-180, Annex 10.1.30, Annex 10.1.32, Annex 10.1.34, Annex 10.1.35, Annex 10.2.47. See also, [§].

<sup>37</sup> Merger Notice, paragraphs 131, 178, Annex 10.1.32, Annex 10.1.34, Annex 10.1.35. See also, [§].

<sup>38</sup> Merger Notice, Annex 10.1.32, Annex 10.1.34, Annex 10.1.35. See also [§].

<sup>39</sup> Merger Notice, paragraph 142.

<sup>40</sup> Merger Notice, paragraphs 140(b), 143, 153-162.



bidding (**LOB**) and timed auction),<sup>41 42</sup> type of A&A product,<sup>43</sup> or into services provided to auction houses and services provided to bidders.<sup>44</sup>

40. The Parties referred to the CMA's decision to accept binding commitments offered by ATG in relation to LOB auction platform services following an investigation under the Competition Act 1998 (**Commitments Decision**). In that case, the CMA reached the preliminary view that the relevant market was the supply of LOB auction platform services to auction houses, excluding white label solutions.<sup>45</sup> They also referred to the CMA's decision on the completed acquisition by ATG of Lot-tissimo (**ATG/Lot-tissimo Decision**), where the CMA assessed the impact of the transaction in the supply of LOB auction platform services for A&A auctions.<sup>46</sup>
41. The CMA considered whether it was appropriate to adopt narrower frames of reference distinguishing between (a) services supplied to auction houses and services supplied to bidders; (b) Online Auction Marketplaces for A&A and white label solutions; (c) LOB and timed auction functionalities; and (d) each category of A&A product.
42. The evidence received by the CMA indicated that:
  - (a) There are strong network effects<sup>47</sup> between the auction house and the bidder sides of Online Auction Marketplaces for A&A, such that the greater the number of bidders on a platform, the more attractive it is for auction houses to list their auctions with that platform<sup>48</sup> and, similarly, the greater the number of auction houses on a given platform, the more attractive it is for bidders to use that platform.<sup>49</sup>

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<sup>41</sup> Merger Notice, paragraphs 144-147.

<sup>42</sup> Online bidding functionality is offered in two main formats on Online Auction Marketplaces for A&A: LOB and timed auction functionalities. LOB enables remote access to physical auctions. Timed auction allows auctions to be held entirely online, with lots being made available for a specific pre-determined timeframe.

<sup>43</sup> Merger Notice, paragraphs 140(b), 164-169.

<sup>44</sup> Merger Notice, paragraphs 140(a), 151-152.

<sup>45</sup> [CMA decision to accept binding commitments offered by ATG Media in relation to live online bidding auction platform services](#) of 29 June 2017, case number 50408, paragraphs 3.5-3.8.

<sup>46</sup> [CMA decision on relevant merger situation and substantial lessening of competition in relation to the completed acquisition by Auction Technology Group of S.P.H. Softwarepartner GMBH & Co KG](#) of 12 July 2018, Case ME/6754/18, paragraphs 31-35.

<sup>47</sup> [Merger Assessment Guidelines](#), paragraphs 4.24, 9.12.

<sup>48</sup> For instance, out of the 16 UK auction houses that responded to the CMA's merger investigation, 10 [redacted] listed access to bidders as the most important factor when choosing an Online Auction Marketplace for A&A. This was corroborated by two operators of Online Auction Marketplaces for A&A that responded to the CMA's merger investigation [redacted]. In addition, ATG's internal documents [redacted]. See Merger Notice, eg Annex 10.1.5, Annex 10.1.7, Annex 10.1.25.

<sup>49</sup> For instance, one of the operators of Online Auction Marketplaces for A&A that responded to the CMA's merger investigation highlighted the importance of attracting auction houses to its marketplace to attract bidders. See [redacted]. In addition, one of the UK auction houses that responded to the CMA's merger investigation highlighted the value of auction houses' content for operators of Online Auction Marketplaces for A&A attracting potential bidders to their marketplaces. See [redacted]. Evidence from ATG's internal documents also indicates that the range of

- (b) Online Auction Marketplaces for A&A and white label solutions serve different purposes for auction houses and bidders. From an auction house's perspective, white label solutions do not provide marketing or aggregation functions (ie do not bring new bidders to the auction house increasing its reach) and are typically used alongside Online Auction Marketplaces for A&A.<sup>50</sup> From the bidder's perspective, white label solutions do not display A&A products being sold by a wide range of auction houses and do not allow them to bid on auctions run by different auction houses.<sup>51</sup> From a supply standpoint, the set of suppliers for Online Auction Marketplaces for A&A and white label solutions is different.<sup>52</sup>
- (c) Online Auction Marketplaces for A&A typically offer both LOB and timed bidding functionalities,<sup>53</sup> but timed auctions appear to currently account for a very small proportion of auctions.<sup>54</sup>
- (d) Suppliers of Online Auction Marketplaces for A&A are generally active in the sale of all types of A&A products (although their competitive strengths may vary across the A&A segment reflecting the auction houses and bidders they attract. See, for example, paragraph 71).<sup>55</sup>

43. On the basis of the above, the CMA has assessed the impact of the Merger in the operation of Online Auction Marketplaces for A&A, but has taken into account in its assessment the different competitive strengths of each supplier across the A&A segment and competitive constraints from other A&A sales channels, including white label solutions. However, since no competition concerns arise on any plausible basis, it was not necessary for the CMA to conclude on the exact product frame of reference.

### *Geographic scope*

44. The Parties submitted that the relevant geographic frame of reference is the UK. The Parties submitted that, consistent with this, they consider that Live Auctioneers offers a fundamentally different proposition to ATG because, as a

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auction houses on an Online Auction Marketplace for A&A is a key attraction to bidders. See Merger Notice, eg Annex 10.1.39.

<sup>50</sup> Merger Notice, Annex 10.1.34. See also, [REDACTED].

<sup>51</sup> [REDACTED].

<sup>52</sup> White label solutions are supplied both by operators of Online Auction Marketplaces for A&A (eg ATG, Invaluable, EasyLive) and suppliers focused on white label solutions (eg Bidpath, Auction Marketer, Bidlogix).

<sup>53</sup> [REDACTED].

<sup>54</sup> For example, the Parties submitted that timed auctions accounted for approximately [REDACTED]% of TSR's total hammer value in 2020. The corresponding figure for Live Auctioneers in 2020 was [REDACTED]%. Merger Notice, paragraph 147.

<sup>55</sup> Merger Notice, Annex 10.1.40. See also, [REDACTED].

US based provider, any UK auction houses that engage Live Auctioneers do so to access US bidders.<sup>56</sup>

45. The Parties referred to the Commitments Decision<sup>57</sup> and the ATG/Lot-tissimo Decision,<sup>58</sup> which both considered the geographic frame of reference to be UK-wide on the basis that competitors based abroad are not an adequate alternative to a UK platform for UK based auction houses given their predominantly overseas bidder base, and that auction houses engage different platform providers to reach bidders outside the UK depending on the country they are seeking to reach.
46. The CMA has found no evidence that warrants departing from the approach adopted in the CMA's precedents. For instance, the evidence received from the Parties and third parties indicated that:
  - (a) UK auction houses typically engage different Online Auction Marketplaces for A&A depending on the country where the target bidders are located. For example, UK auction houses will typically engage an UK-based supplier to reach UK bidders, and will similarly engage a US-based supplier to reach US bidders.<sup>59</sup> Moreover, while some UK auction houses value access to an international audience, bidders based outside the UK (such as US bidders) are not considered substitutable with UK bidders. There are a number of reasons for this, including different buyer preferences (eg some A&A items have a greater appeal to a US-based audience)<sup>60</sup> and the complexity of processing international transactions (eg shipping and related costs,<sup>61</sup> legally pursuing bidders based outside the UK for non-payment).<sup>62</sup> Consistent with this, Live Auctioneers is typically used by UK auction houses alongside other Online Auction Marketplaces for A&A, such as ATG's marketplace (ie TSR), that are focused on UK bidders.<sup>63</sup>
  - (b) UK bidders will typically use a UK Online Auction Marketplace for A&A to bid on auctions of UK-based auction houses. On the occasions where

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<sup>56</sup> Merger Notice, paragraphs 170-171.

<sup>57</sup> [CMA decision to accept binding commitments offered by ATG Media in relation to live online bidding auction platform services](#) of 29 June 2017, case number 50408, paragraph 3.9.

<sup>58</sup> [CMA decision on relevant merger situation and substantial lessening of competition in relation to the completed acquisition by Auction Technology Group of S.P.H. Softwarepartner GMBH & Co KG](#) of 12 July 2018, Case ME/6754/18, paragraphs 36-40.

<sup>59</sup> Merger Notice, Annex 10.1.33, Annex 10.1.40. See also, [REDACTED]. See also, [REDACTED].

<sup>60</sup> Merger Notice, Annex 10.1.30, Annex 10.1.33. See also, [REDACTED]. See also, [REDACTED].

<sup>61</sup> Merger Notice, Annex 10.1.30, Annex 10.1.33. See also, [REDACTED].

<sup>62</sup> [REDACTED].

<sup>63</sup> Out of the five UK auction houses that responded to the CMA's merger investigation and which use Live Auctioneers' Online Auction Marketplace for A&A [REDACTED], only one [REDACTED] did not use Live Auctioneers alongside other Online Auction Marketplaces for A&A with a larger UK bidder base. See also, Merger Notice, Annex 10.1.29, Annex 10.1.33, Annex 10.1.38, Annex 10.1.40.

UK bidders use non-UK Online Auction Marketplaces for A&A, they will typically bid on auctions by non-UK based auction houses.<sup>64</sup>

47. The CMA therefore considers that the appropriate geographic frame of reference is the UK.

*Conclusion on frame of reference*

48. For the reasons set out above, the CMA has assessed the impact of the Merger in the operation of Online Auction Marketplaces for A&A in the UK.

***Horizontal unilateral effects***

49. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>65</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.

50. As set out in paragraph 42(a), the Parties operate in a two-sided market with network effects. Network effects can mean growth of a two-sided platform is self-reinforcing, and lead to a ‘tipping’ effect, where one platform becomes dominant and smaller platforms exert only a weak constraint and find it difficult to expand.<sup>66</sup>

51. The CMA assessed whether the Merger may be expected to give rise to an SLC in relation to horizontal unilateral effects in the operation of Online Auction Marketplaces for A&A in the UK, as a result of the loss of competition between ATG and Live Auctioneers. To this end, the CMA considered:

- (a) the market structure, including shares of supply;

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<sup>64</sup> For instance, data on registered bidders provided by the Parties indicated that most of the UK registered bidders on TSR register for auctions run by UK auction houses, whereas the majority of UK registered bidders on Live Auctioneers’ Online Auction Marketplace for A&A register for auctions run by US auction houses. Merger Notice, Annex 15.15 (Annex A). See also [redacted].

<sup>65</sup> [Merger Assessment Guidelines](#), paragraph 4.1.

<sup>66</sup> [Merger Assessment Guidelines](#), paragraph 4.23.

- (b) the closeness of competition between ATG’s Online Auction Marketplace for A&A and Live Auctioneers’ Online Auction Marketplace for A&A in the UK;
- (c) the competitive constraints from other Online Auction Marketplaces for A&A in the UK; and
- (d) other competitive constraints.

*Market structure*

52. The Parties submitted that Live Auctioneers has a limited share in the operation of Online Auction Marketplaces for A&A in the UK and that such a limited increment is not indicative of competition concerns.<sup>67</sup> The Parties estimated that they had a combined share of supply of approximately [40-50]% in 2020, with an increment of [0-5]% resulting from the Merger based on total online hammer value<sup>68</sup> for products sold by UK auction houses on Online Auction Marketplaces for A&A.<sup>69</sup>

53. The CMA gathered revenue data from the Parties and third parties to estimate its own shares of supply (see Table 1 below).

**Table 1: Shares of Supply for Online Auction Marketplaces for A&A (revenues for A&A auctions held by UK auction houses), 2018 – 2021 (end of May)<sup>70</sup>**

	2018	2019	2020	2021
ATG (via TSR)	[80-90]%	[80-90]%	[80-90]%	[70-80]%
Live Auctioneers	[0-5]%	[0-5]%	[0-5]%	[0-5]%
<b>ATG (via TSR) + Live Auctioneers</b>	<b>[90-100]%</b>	<b>[80-90]%</b>	<b>[80-90]%</b>	<b>[80-90]%</b>
EasyLive	[0-5]%	[0-5]%	[5-10]%	[10-20]%
Invaluable	[5-10]%	[5-10]%	[5-10]%	[5-10]%

Source: CMA’s analysis of data provided by the Parties and third parties.

Notes: EasyLive provided revenue data for its whole business, so assumptions were used to estimate the proportion related to A&A auctions. EasyLive’s shares of supply may be overstated as the submitted revenue data did not distinguish between commissions from sales made on its online auction marketplace and from sales via its white label solution licensed to auction houses. Roundings may mean sums do not add up and totals may not sum to 100%.

<sup>67</sup> Merger Notice, paragraph 30.

<sup>68</sup> Online hammer value is the price at which a lot is sold via an Online Auction Marketplace for A&A.

<sup>69</sup> Merger Notice, Table 9.

<sup>70</sup> Excluding UK Auctioneers as it was not able to respond in time to the CMA’s merger investigation. The CMA believes that excluding UK Auctioneers is unlikely to have a material impact on the share of supply estimates as the CMA believes UK Auctioneers is a minor player (see competitive constraints section).

54. The data shows that ATG operates by far the largest Online Auction Marketplace for A&A in the UK (ie TSR), although ATG's share of supply appears to have decreased over time (ie from [80-90]% in 2018 to [70-80]% in 2021). All the other Online Auction Marketplaces for A&A are significantly smaller, with the next largest being EasyLive's Online Auction Marketplace for A&A. The Parties had a combined share of supply of [80-90]% in 2020, with the Merger resulting in an increment of [0-5]% from Live Auctioneers.
55. Although the CMA's estimates differ in magnitude to those of the Parties, both sets of estimates present a similar view of the market and are consistent with third-party evidence and evidence from the Parties' internal documents. In particular:
- (a) The majority of the UK auction houses that responded to the CMA's merger investigation submitted that ATG operates the leading Online Auction Marketplace for A&A in the UK (ie TSR),<sup>71</sup> with some of them commenting that there are few alternative Online Auction Marketplaces for A&A available.<sup>72</sup>
  - (b) Two operators of Online Auction Marketplaces for A&A that responded to the CMA's merger investigation ranked ATG (ie TSR) as their top competitor in the UK.<sup>73</sup> Additionally, other than the Parties, only two other suppliers were named as competitors active in the UK.
  - (c) Consultancy reports from January 2020 indicate that TSR has a strong position in the UK, in terms of number of auction houses and bidders using its platform.<sup>74</sup> Where ATG's internal documents make reference to Live Auctioneers, these references generally identify it as having [redacted] in the UK.<sup>75</sup>

### *Closeness of competition*

56. The CMA assessed the closeness of competition between the Parties' Online Auction Marketplaces for A&A in the UK and considered within its assessment:
- (a) the Parties' submissions on closeness of competition;

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<sup>71</sup> [redacted].

<sup>72</sup> [redacted].

<sup>73</sup> [redacted].

<sup>74</sup> Merger Notice, Annex 10.1.39, Annex 10.1.40.

<sup>75</sup> See paragraph 60.

- (b) data from the Parties on visits to the Parties' Online Auction Marketplaces for A&A from registered bidders;
- (c) evidence from the Parties' internal documents; and
- (d) third party views on closeness of competition.

#### *Parties' submissions*

57. The Parties submitted that they are not close competitors, as they offer UK auction houses and UK bidders fundamentally different propositions.<sup>76</sup> According to the Parties, UK auction houses typically engage Live Auctioneers when seeking access to US bidders<sup>77</sup> and, similarly, UK bidders using Live Auctioneers typically bid on US auctions.<sup>78</sup> By contrast, UK auction houses typically engage ATG (ie TSR) to access a UK bidder base,<sup>79</sup> and UK bidders typically use ATG (ie TSR) to bid on UK auctions.<sup>80</sup>

#### *CMA assessment*

58. As set out in Table 1 above, Live Auctioneers has a share of supply in the UK of less than [0-5]%. However, these shares of supply do not provide a clear view on the relative strength of the Parties in attracting UK bidders. This is because the data on which they are based is agnostic as to the location of the bidder (ie they capture all revenue generated by items sold by UK auction houses on Online Auction Marketplaces for A&A regardless of where the winning bidders are located).
59. For the reasons set out above (see paragraph 46(a)) UK and non-UK bidders are not considered substitutes by UK auction houses (and UK auction houses generally use different Online Auction Marketplaces for A&A to reach bidders in different countries). The CMA therefore collected data from the Parties on the number of UK registered bidders using their Online Auction Marketplaces for A&A to access UK auctions.<sup>81</sup> This showed that in 2020 Live Auctioneers had on average [X] visits per month from UK registered bidders, whereas ATG's marketplace (ie TSR) had on average [X] visits per month.<sup>82</sup> This

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<sup>76</sup> Merger Notice, paragraph 24.

<sup>77</sup> Merger Notice, paragraphs 19, 214.

<sup>78</sup> Merger Notice, paragraph 212.

<sup>79</sup> Merger Notice, paragraph 20.

<sup>80</sup> Merger Notice, paragraph 212.

<sup>81</sup> A registered bidder is a potential bidder who has an account with either Party and registers to participate in an auction. A registered bidder may not necessarily end up participating in the auction they registered for. Both Parties require bidders to register to be able to participate in an auction.

<sup>82</sup> Merger Notice, Annex 15.15 (Annex A).

indicates that Live Auctioneers is likely to exert less competitive pressure in the UK than suggested by its share of supply.

60. The Parties' internal documents support this, and show that ATG (via TSR) generally focuses on the UK and Live Auctioneers focuses on the US. When Live Auctioneers discusses how to attract UK auction houses ([REDACTED]), it focuses on offering access to US bidders.<sup>83</sup> Although ATG's internal documents make some limited references to Live Auctioneers, these references generally identify it as [REDACTED].<sup>84</sup> This is also supported by ATG's internal documents, relating to its decision to increase TSR's commission rates from 3 to 4.95% of online hammer value in 2018, which show that ATG was mostly concerned about losing customers to [REDACTED] rather than Live Auctioneers.<sup>85</sup>
61. ATG's internal documents discussing the rationale for the Merger (see paragraph 15) are also consistent with this distinction between the Parties' offerings. They suggest that Live Auctioneers' focus is on the US and that the rationale for the Merger is to enable ATG to expand into the North American market.
62. Evidence from third parties also corroborates the differing UK and US focuses of the Parties, as more than half of the UK auction houses that responded to the CMA's merger investigation suggested that the Parties have different geographic reach, with ATG focusing on the UK and Live Auctioneers focusing on the US.<sup>86</sup> The majority of the UK auction houses that responded to the CMA's merger investigation and which have used or currently use Live Auctioneers also stated that they have done or do so predominantly to access US bidders.<sup>87</sup> Additionally, third-party evidence indicates that there is limited competitive interaction between the Parties as none of the UK auction houses that responded to the CMA's merger investigation said they would respond to a price increase by one Party by switching to the other Party, or by increasing the volume of business they place with the other Party such as by increasing the number of auctions on the marketplace, or multi-homing.
63. The CMA has also taken into consideration the fact that although Live Auctioneers has been active for more than a decade as an operator of an Online Marketplace for A&A in the UK, it continues to be a US focused provider.<sup>88</sup> Further, and as explained in the counterfactual section above, the

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<sup>83</sup> Merger Notice, eg Annex 15.10.4, Annex 15.10.5, Annex 15.10.6.

<sup>84</sup> Merger Notice, eg Annex 9.1.4, Annex 10.1.5, Annex 10.1.7, Annex 10.1.29, Annex 10.1.33, Annex 10.1.38, Annex 10.1.39.

<sup>85</sup> Merger Notice, eg Annex 10.1.108, Annex 15.1.2, Annex 15.1.4, Annex 15.1.5, Annex 15.1.6, Annex 15.1.7, Annex 15.1.9.

<sup>86</sup> [REDACTED]. The remaining UK auction houses did not comment on the geographic reaches of the Parties.

<sup>87</sup> [REDACTED].

<sup>88</sup> See shares of supply in Table 1.



CMA found no evidence indicating that Live Auctioneers would have expanded its activities in the UK to compete more significantly with ATG absent the Merger.<sup>89</sup>

*Conclusion on closeness of competition*

64. The CMA has found that due to the different geographic focus of the ATG and Live Auctioneers businesses – with ATG being primarily active in the UK and Live Auctioneers in the US –, as reflected in the limited number of UK bidders that use Live Auctioneers’ marketplace and the fact that it is predominantly used by UK auction houses to obtain access to the US market, there is no material competitive interaction between the Parties and no evidence to suggest that this would change absent the merger. The CMA has therefore found that Live Auctioneers does not exert a material competitive constraint on ATG.

*Competitive constraints from other Online Auction Marketplaces for A&A in the UK*

65. The Parties submitted that their largest competitors are EasyLive, Invaluable and UK Auctioneers.<sup>90</sup>
66. The CMA assessed the constraint from these suppliers by taking into consideration:
- (a) the Parties’ submissions;
  - (b) shares of supply;
  - (c) evidence from the Parties’ internal documents; and
  - (d) third-party views.

*EasyLive*

67. The Parties submitted that EasyLive has grown rapidly in recent years to become [redacted] of an Online Auction Marketplace for A&A in the UK.<sup>91</sup> The CMA’s estimated shares of supply show EasyLive’s growth in the UK in recent years, although its share of supply remains much smaller than ATG’s (see Table 1 above).

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<sup>89</sup> See from paragraph 27.

<sup>90</sup> Merger Notice, paragraph 183.

<sup>91</sup> Merger Notice, paragraph 182(a).

68. ATG's internal documents [X] monitor [X]. For instance, [X] is frequently mentioned in [X]<sup>92</sup> [X]<sup>93</sup> (eg [X] is referenced almost twice as often as [X], and both are mentioned more than [X]).<sup>94</sup> ATG's internal documents also include a number of references to ATG's specific plans to [X] in the UK.<sup>95</sup>
69. The CMA has not found references to [X] in Live Auctioneers' internal documents. The CMA considers this is most likely because Live Auctioneers' internal documents are generally focused on the US.
70. The majority of the UK auction houses that responded to the CMA's merger investigation said that following a 5% price increase by either Party they would consider at least one of switching from either Party, multi-homing their auctions across other Online Auction Marketplaces for A&A, reducing the number of auctions they list on either Party's Online Auction Marketplace for A&A and/or adding online bidding capability to their own branded websites (in particular via white label solutions).<sup>96</sup> Of those UK auction houses that specified which Online Auction Marketplaces for A&A they would switch to following a 5% price rise by ATG, [X] said they would switch to EasyLive.<sup>97</sup>
71. The CMA believes that there may be some limits to the competitive constraint posed by EasyLive. For instance, the Parties' internal documents and third-party evidence indicated that EasyLive is popular with low-value A&A auctions,<sup>98</sup> and that low-cost business models (such as the one offered by EasyLive) may not attract higher value A&A auctions.<sup>99</sup> Third-party evidence also indicated that not everyone is aware of EasyLive's Online Marketplace for A&A.<sup>100</sup>

### *Invaluable*

72. The Parties submitted that Invaluable is a leading global operator of an Online Auction Marketplace for A&A.<sup>101</sup> The CMA's estimated shares of supply indicate that Invaluable is the third largest Online Auction Marketplace for A&A in the UK (see Table 1 above).

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<sup>92</sup> [X]. Merger Notice, paragraph 237.

<sup>93</sup> [X]. Merger Notice, paragraph 237.

<sup>94</sup> Merger Notice, Table 5.

<sup>95</sup> Merger Notice, eg Annex 10.1.7, Annex 10.1.25, Annex 15.1.1, Annex 15.1.9.

<sup>96</sup> Out of the 15 auction houses that responded to the relevant question, 11 said they have or would consider one or more of these alternatives following a 5% price rise by either Party [X].

<sup>97</sup> [X].

<sup>98</sup> Merger Notice, eg Annex 10.1.21. See also, [X].

<sup>99</sup> Merger Notice, eg Annex 10.29, Annex 10.1.33, Annex 10.1.38. See also, [X].

<sup>100</sup> [X].

<sup>101</sup> Merger Notice, paragraph 182(b).

73. ATG's internal documents indicate that Invaluable is a competitive constraint on TSR in the UK.<sup>102</sup>
74. Four UK auction houses also told the CMA they use Invaluable to access US bidders.<sup>103</sup> Moreover, one UK auction house that specified to which Online Auction Marketplace for A&A it would switch to following a 5% price rise from Live Auctioneers said it would switch to Invaluable.<sup>104</sup>

#### *UK Auctioneers*

75. The Parties submitted that UK Auctioneers was the second largest Online Auction Marketplace for A&A in the UK in 2018.<sup>105</sup> However, the Parties' internal documents make limited reference to UK Auctioneers. Moreover, none of the UK auction houses that responded to the CMA's merger investigation said they would switch to UK Auctioneers following a 5% price rise from either Party. Similarly, none of the Online Auction Marketplaces for A&A that responded to the CMA's merger investigation named UK Auctioneers as a competitor.

#### *Conclusion on the competitive constraint from other Online Auction Marketplaces for A&A in the UK*

76. For the reasons set out above, the CMA has found that although competitive constraints on ATG are relatively limited, EasyLive and Invaluable do provide some competitive constraint on ATG for UK auction houses and UK bidders. Similarly, Invaluable provides a competitive constraint on Live Auctioneers for UK auction houses seeking access to US bidders.

#### *Other competitive constraints*

77. The Parties submitted that they are also constrained by white label solutions, self-supply and e-commerce platforms (eg eBay, Amazon, Facebook Marketplace, Etsy).<sup>106</sup>
78. The CMA found mixed evidence on the constraint from white label solutions.

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<sup>102</sup> Merger Notice, eg Annex 10.1.7, Annex 15.1.6, Annex 15.1.9.

<sup>103</sup> [REDACTED].

<sup>104</sup> [REDACTED].

<sup>105</sup> Merger Notice, paragraph 182(c).

<sup>106</sup> Merger Notice, paragraphs 34, 194 and 46 respectively.

79. The evidence showed some clear indications of white label solutions providing a constraint on the Parties' Online Auction Marketplaces for A&A, at least for some auction houses and bidders. In particular:

- (a) data from the Parties showed that both the average number of lots sold per month and the average online hammer value of lots sold per month on TSR decreased by [REDACTED]% following an auction house's launch of a white label solution on its website;<sup>107,108</sup>
- (b) the Parties' internal documents frequently refer to white label solutions as a competitive threat;<sup>109</sup>
- (c) the CMA asked auction houses whether they would reduce their A&A auctions on Online Auction Marketplaces for A&A in favour of their own website/white label solution following a 5% increase in marketplace commission by either Party. Close to half of the respondents said they would;<sup>110</sup> and
- (d) two auction houses told the CMA that they began using a white label solution following an increase in TSR's commission rates in 2018 (see paragraph 60).<sup>111</sup>

80. However, the CMA also found some evidence that indicated that the constraint that white label solutions exert on Online Auction Marketplaces for A&A may be more limited. As noted in paragraph 42(b), Online Auction Marketplaces for A&A and white label solutions serve different purposes for auction houses and bidders:

- (a) From an auction house's perspective, white label solutions do not perform marketing or aggregation functions (ie do not bring new bidders to the auction house increasing its reach),<sup>112</sup> with many auction houses using Online Auction Marketplaces for A&A to reach additional bidders (even if auction houses subsequently try to encourage those bidders onto their own website with online bidding functionality enabled via white

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<sup>107</sup> Merger Notice, paragraphs 157, 282.

<sup>108</sup> The Parties' data compared the monthly number of lots sold on TSR, and the resultant online hammer value, six months before and after the launch of a white label solution by an auction house, where the date of launch is known from 2018 to November 2020. Merger Notice, paragraphs 157 and 282, and Annex 15.7.

<sup>109</sup> Merger Notice, eg Annex 10.1.7, Annex 10.2.39, Annex 10.2.47, Annex 15.1.1, Annex 15.1.6, Annex 15.1.7.

<sup>110</sup> [REDACTED].

<sup>111</sup> [REDACTED].

<sup>112</sup> Merger Notice, Annex 10.1.34. See also, [REDACTED]. See also, [REDACTED].

label solutions).<sup>113</sup> As a result, white label solutions are likely to be better alternatives for auction houses that are already well known and can attract a large number of bidders directly to their website. This is corroborated by the fact that the Parties' internal documents and third-party evidence indicated that white label solutions are more commonly used by larger auction houses.<sup>114,115</sup>

(b) From the bidder's perspective, white label solutions do not display A&A products from a wide range of auction houses and do not allow them to bid on auctions run by different auction houses.<sup>116</sup>

81. Therefore, white label solutions are typically used alongside Online Auction Marketplaces for A&A and are likely to be complementary to such marketplaces. However, the available evidence suggests that there is some competitive interaction between white label solutions and Online Auction Marketplaces for A&A, in so far as auction houses may introduce or increase their use of white label solutions in response to price increases by Online Auction Marketplaces for A&A.
82. The CMA considers that self-supply has a similar effect on Online Auction Marketplaces for A&A as white label solutions. However, the CMA considers that the constraint from self-supply is likely to be more limited than from white label solutions, as it is unlikely to be a viable alternative for most auction houses due to high set up costs and the technology/expertise required. The Parties only identified four auction houses that currently self-supply and noted that these are larger and medium-sized auction houses.<sup>117</sup> Additionally, two medium-sized auction houses told the CMA that they would not be interested in developing online bidding technology in-house.<sup>118</sup>
83. The CMA found limited evidence to suggest that e-commerce platforms exert a material competitive constraint on Online Auction Marketplaces for A&A. The Parties' internal documents suggest these e-commerce platforms are used as benchmarks, or ways to improve their own offering, rather than directly competing with them.<sup>119</sup> Additionally, these e-commerce platforms are not mentioned as alternatives by auction houses in [REDACTED].<sup>120</sup> Moreover, a number of ATG's internal documents [REDACTED].<sup>121</sup> ATG's internal documents and

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<sup>113</sup> [REDACTED]. See also, [REDACTED].

<sup>114</sup> Excluding big 4 auction houses (ie Christie's, Sotheby's, Phillips and Bonhams).

<sup>115</sup> Merger Notice, Annex 10.1.17, Annex 10.1.34, Annex 10.1.35, Annex 10.1.40. See also, [REDACTED]. See also, [REDACTED].

<sup>116</sup> [REDACTED]. See also, [REDACTED].

<sup>117</sup> Merger Notice, paragraph 194.

<sup>118</sup> [REDACTED].

<sup>119</sup> Merger Notice, Annex 10.1.43, Annex 15.2.1.

<sup>120</sup> Merger Notice, Table 5.

<sup>121</sup> Merger Notice, eg Annex 10.1.39, Annex 10.1.40.

third-party evidence also indicate that e-commerce platforms such as eBay have a different business model and audience and are used for different purposes (eg typically used for 'buy-now' transactions rather than auction sales).<sup>122</sup> Further, no UK auction house that responded to the CMA's merger investigation identified e-commerce platforms as an alternative to Online Auction Marketplaces for A&A.

#### *Conclusion on other competitive constraints*

84. For the reasons set out above, the CMA has found that the Merged Entity would face some constraint from white label solutions, particularly for larger and medium-sized auction houses, but no material constraint from self-supply and e-commerce platforms.

#### *Conclusion on horizontal unilateral effects in the operation of Online Auction Marketplaces for A&A in the UK*

85. For the reasons set out above, the CMA believes that, despite the Parties' high combined share of supply in the operation of Online Auction Marketplaces for A&A in the UK, the available evidence indicates that there is no material competitive interaction between the Parties. This is primarily due to the Parties' different offerings to both UK auction houses and UK bidders. There are also at least two alternative suppliers of Online Auction Marketplaces for A&A as well as out-of-market constraints, such as white label solutions. The CMA believes that cumulatively these alternative options impose the competitive constraint that exists on ATG today, and as such the Merger will not alter the competitive dynamics in the market.
86. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the operation of Online Auction Marketplaces for A&A in the UK.

#### ***Conglomerate effects***

87. Under a conglomerate theory of harm the merged entity may restrict its rivals in one 'focal' market from accessing customers using its strong position in an 'adjacent' market, in turn harming its rivals' competitiveness and therefore competition.<sup>123</sup> The merged entity could do this through linking sales of the

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<sup>122</sup> Merger Notice, Annex 10.1.33, Annex 10.1.35, Annex 10.1.38, Annex 10.1.40. [REDACTED].

<sup>123</sup> [Merger Assessment Guidelines](#), paragraph 7.8(c).

two products in some way, for example, by offering a discount on the adjacent product that is conditional on also purchasing the focal product.<sup>124</sup>

88. The CMA considered whether the Merged Entity would have the ability and incentive to leverage Live Auctioneers' position in the US, where it has a significant number of bidders using its Online Auction Marketplace for A&A, to increase the number of auction houses using TSR in the UK. This could occur through the bundling of Live Auctioneers' US bidder base, to make ATG's offer more attractive to UK auction houses (eg offering UK auction houses a discount to use Live Auctioneers' Online Auction Marketplace for A&A to access US bidders, conditional on using TSR to access UK bidders) in order to foreclose rival Online Auction Marketplaces for A&A in the UK.
89. The CMA believes that ATG's share of supply and other evidence (see from paragraph 53) indicates that it already has a strong position in the UK, so any UK auction house customer gains resulting from a foreclosure strategy would likely be small. In addition, although Live Auctioneers is one of the largest Online Auction Marketplaces for A&A in the US, the CMA considers that it is unlikely to have market power. The Parties submitted that Live Auctioneers has a share of supply of approximately [10-20]% in the US.<sup>125</sup> Live Auctioneers' internal documents support this, [redacted].<sup>126</sup> Evidence from third parties also suggests that Invaluable is an alternative for UK auction houses looking to access US bidders.<sup>127</sup>
90. The CMA therefore considers that the Merged Entity is unlikely to have the ability and incentive to implement a leveraging strategy.
91. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in the operation of Online Auction Marketplaces for A&A in the UK.

### **Third party views**

92. The CMA contacted customers and competitors of the Parties. Third party comments have been taken into account where appropriate in the competitive assessment above.
93. Some third parties raised concerns that ATG has a dominant position in the operation of Online Auction Marketplaces for A&A in the UK. The CMA considered these concerns but found that ATG's acquisition of Live

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<sup>124</sup> [Merger Assessment Guidelines](#), paragraph 7.30.

<sup>125</sup> Merger Notice, Table 11.

<sup>126</sup> Merger Notice, Annex 10.2.55, Annex 10.2.20.

<sup>127</sup> Four UK auction houses told the CMA they use Invaluable to access US bidders (see paragraph 74).

Auctioneers would not, for the reasons outlined in the competitive assessment, materially affect ATG's position in the UK market.<sup>128</sup>

## Decision

94. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
95. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Naomi Burgoyne**  
**Director, Mergers**  
**Competition and Markets Authority**  
**29 September 2021**

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<sup>128</sup> In addition, a few third parties [redacted] raised the concern that the Merged Entity may try to offer direct listing services for sellers of A&A products (ie to operate a business model similar to those of e-commerce platforms such as eBay), thereby providing an intermediation function that is currently provided by auction houses. A few third parties [redacted] also raised the concern that ATG publishes the only printed publication that reports on A&A auctions in the UK, the Antiques Trade Gazette, and so would not publish anything that is against ATG's business interests and would often not allow competitors to advertise in the publication. The CMA considered these concerns but did not find them to be Merger-specific.