

## Summary

1. The Competition and Markets Authority (CMA) has provisionally found that the completed acquisition by Pugnacious Endeavours 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.
2. This is not our final decision. We now invite submissions from any interested parties on these provisional findings by **5pm Thursday 12 November 2020**.
3. Alongside these provisional findings, we have published a notice of possible remedies, which sets out the CMA's initial view on the measures that might be required to remedy the SLC that we have provisionally found and/or the resulting adverse effects. We also invite submissions from any interested parties on these initial views by **5pm Thursday 5 November 2020**.
4. We shall take all submissions received by the above dates into account in reaching our final decision, which will be issued by 9 December 2020.

## Coronavirus (COVID-19)

5. 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 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 investigations in order to protect the interests of consumers in the longer term. 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 Parties

6. **viagogo** is the trading name of the Pugnacious Endeavours 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.
7. **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.
8. 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.

## Jurisdiction

9. We have provisionally found that the Merger has resulted in the creation of a relevant merger situation.
10. 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

11. 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.
12. 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.

13. Both viagogo and StubHub operate uncapped secondary ticketing platforms.

### **How we have undertaken our provisional assessment**

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

15. 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 provisional 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.

16. In undertaking our provisional 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).
17. 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.
18. 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 sellers on a platform, and vice versa.
19. 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 encouraging 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.
20. 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.
21. 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.

## **The Parties are close competitors**

22. We have provisionally found that viagogo and StubHub are close competitors in the provision of uncapped secondary ticketing platform services in the UK. We have provisionally 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; and
  - (b) StubHub has a sizeable share but, moreover, it has demonstrated an annual growth rate, which represents a considerable threat to viagogo's UK business.
23. 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.
24. 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 high volume resellers and buyers 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.
25. We consider the evidence specific to resellers and buyers, separately, below.

### ***Competition between the Parties for resellers***

26. In our questionnaire responses, viagogo was viewed as a very strong alternative to StubHub by most reseller respondents – around three-quarters of resellers listed viagogo as a close alternative to StubHub, with around two-thirds saying it was their only alternative. Likewise, StubHub was also seen as the closest alternative to viagogo by over three-quarters of respondents. We have found that resellers' recent sales patterns are consistent with this.

27. 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.
28. We examined the extent to which resellers sold tickets on both of the Parties' platforms. 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.
29. The Parties argued that an analysis of multi-homing itself does not show that the Parties platforms are being used as substitutes – they might be used as complements. However, most of the Parties' resellers that we spoke to have told us that they view and treat the Parties as substitutes, and the Parties compete for buyers through internet search advertising and organic searches, suggesting that there are not separate pools of consumers which can only be accessed through their respective platforms.
30. Therefore, our analysis shows that resellers not only view the Parties as substitutes, but in practice do use both platforms to a very significant 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.
31. 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***

32. 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.
33. Both Parties place a more significant focus on paid search advertising and spend a significant proportion of their spend on similar strategies than other ticketing platforms. 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. 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

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 viagogo is competing strongly for the buyers that purchase tickets on StubHub.

### ***Provisional conclusion on competition between the Parties***

35. Overall, we have provisionally 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**

36. 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***

37. 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, and although a third of resellers we spoke to said that Gigsberg is an alternative for them, they 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
38. We do not consider that Gigsberg would be an effective constraint to the merged entity.
39. Although we have found other types of secondary ticket platforms 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***

40. 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.
41. 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 operator told us that it had plans to remove its pricing cap or would do so in response to the Merger.
42. On the buyer side, capped sites told us that they make little use of paid search advertising to acquire buyers, as the Parties do.
43. 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.
44. 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. No platform told us that it had plans to remove its pricing cap or would do so in response to the Merger.
45. 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.

46. We consider that capped secondary ticketing platforms will offer weak constraints against the merged entity.

### ***Competitors in non-specialist online channels and social media***

47. 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.
48. 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***

49. 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.
50. 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.
51. We do not consider that offline channels will offer any material constraint on the merged entity.

### ***Competition from primary sellers***

52. 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 lessen of the flow of tickets into secondary channels).
53. 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.

54. 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.
55. 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.
56. 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.
57. Our provisional 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.
58. On the basis of the evidence set out above, we have provisionally 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*

59. 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.
60. 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.
61. 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. We consider that, 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.
62. 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.
63. 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.
64. 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.
65. 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.

66. 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.
67. 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***

68. 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***

69. 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.
70. Nor do we do not consider it likely that resellers will be able to quickly, easily and at sufficient scale to set up their own resale website in order to prevent an SLC from arising.
71. We consider that it is not likely that countervailing buyer power will prevent and SLC from arising as a result of the Merger.

### **Provisional conclusions**

72. We have provisionally 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.