

# viagogo/StubHub

Provisional findings report

Notified: 22 October 2020

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 [Some numbers have been replaced by a range.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

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## Glossary

## Summary

1. The Competition and Markets Authority (CMA) has 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.

# Provisional findings

## 1. The reference

- 1.1 On 25 June 2020, the CMA, in exercise of its duty under section 22(1) of the Act referred the completed acquisition by Pugnacious Endeavours Inc, 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 for further investigation and report by a group of CMA panel members (the Inquiry Group).
- 1.2 In exercise of its duty under section 35(1) of the Act, the CMA must decide: (a) whether a relevant merger situation has been created; and (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom for goods or services.
- 1.3 We are required to prepare and publish a final report by 9 December 2020.
- 1.4 Our terms of reference are set out in Appendix A.
- 1.5 This document, together with its appendices, constitutes the Inquiry Group's provisional findings published and notified to viagogo and StubHub in line with the CMA's rules of procedure.<sup>1</sup> Further information can be found on our webpage.<sup>2</sup>

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<sup>1</sup> [CMA rules of procedure for merger, market and special reference groups \(CMA17\)](#)

<sup>2</sup> [viagogo/StubHub merger inquiry](#)

## 2. The Parties and the Merger

### viagogo

- 2.1 viagogo is a global provider of secondary ticketing platform services for buying and selling tickets to live events made available for resale. 'viagogo' is the trading name of the Pugnacious Endeavours Inc group, a US company incorporated in Delaware, USA.<sup>3</sup> The company was founded in 2006 by the current CEO Eric Baker and began operations in the UK. It has since grown to be the fourth largest secondary ticketing platform by revenue in the world.<sup>4</sup> It is headquartered in Geneva, Switzerland. The company is [REDACTED].<sup>5</sup>
- 2.2 viagogo had a global revenue of £[REDACTED] million in 2019 of which £[REDACTED] million [REDACTED] was in the UK. It provides services to buyers and sellers in over 175 countries.<sup>6</sup> In 2019, [REDACTED] million tickets<sup>7</sup> were sold globally through viagogo's platform for events in over 80 countries. Of these, approximately [REDACTED] % were for events in UK venues (the single highest proportion of any country).
- 2.3 viagogo also sells a small proportion ([REDACTED]) on the primary market on behalf of event organisers and content rights holders such as sports teams. Of the [REDACTED] [>750,000] tickets sold for UK venues in 2019 only [REDACTED] [>5,000] related to primary tickets sales of which [REDACTED]<sup>8</sup> These are mainly sold [REDACTED].<sup>9</sup>

### StubHub

- 2.4 StubHub Inc., StubHub (UK) Ltd, StubHub Europe SARL, StubHub India Private Limited, StubHub International Limited, StubHub Taiwan Co.,Ltd. StubHub GmbH and Todoentradas S.L collectively 'StubHub' is a globally active provider of secondary ticketing platform services for buying and selling tickets to live events made available for resale. It is the largest secondary ticket platform in the world.
- 2.5 Prior to the Merger, StubHub was owned by eBay Inc ('eBay'). eBay is a global ecommerce and classified advertisement platform listed on the Nasdaq Global Select Market in the US with revenues of over US\$10 billion in 2019.<sup>10</sup>

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<sup>3</sup> Final Merger Notice Annex 72

<sup>4</sup> Annex 20 of the Final Merger Notice '[REDACTED]: Perspective on Secondary Ticketing Marketplace' Slide 10

<sup>5</sup> [REDACTED]. [REDACTED].

<sup>6</sup> [REDACTED]

<sup>7</sup> [REDACTED]

<sup>8</sup> [REDACTED]

<sup>9</sup> [REDACTED]

<sup>10</sup> eBay form 10-K P35 <https://investors.ebayinc.com/financial-information/sec-filings/default.aspx>

StubHub was founded in 2000 jointly by the current viagogo CEO, Eric Baker and Jeff Fluhr. In 2007 it was acquired by eBay. In 2012 it launched in the UK.<sup>11</sup>

- 2.6 In 2019 StubHub had a global revenue of approximately £[REDACTED] million, £[REDACTED] million of which was earned in the UK (around only [REDACTED] %). StubHub currently operates in 48 countries. In 2019, over [REDACTED] million tickets were sold globally through StubHub's platform. Of these, around [REDACTED] [>500,000] were for events in the UK.
- 2.7 StubHub also has a primary ticketing business.<sup>12</sup> In the UK, it sold [REDACTED] [<50,000] primary tickets for UK live events in 2019.<sup>13</sup>
- 2.8 Table 1 summarises the relative size of the Parties' secondary ticketing platforms globally and in the UK.

**Table 1: viagogo and StubHub revenue, GMS and EBITDA (£ millions)**

[REDACTED]<sup>14</sup>[REDACTED]<sup>15</sup>[REDACTED]<sup>16</sup>[REDACTED]<sup>17</sup>[REDACTED]<sup>18</sup>[REDACTED]<sup>19</sup>[REDACTED]<sup>20</sup>[REDACTED]<sup>21</sup>[REDACTED]<sup>22</sup>[REDACTED]<sup>23</sup>

## The Merger

- 2.9 In early 2019, eBay decided to dispose of StubHub. In [REDACTED], [REDACTED]. It ultimately received [REDACTED] for the business from viagogo [REDACTED] with viagogo ultimately selected as the preferred bidder.
- 2.10 A share purchase agreement was signed by eBay and PUG LLC on 24 November 2019 to acquire the entire issued share capital of StubHub for US\$4.05 billion. The transaction completed on 13 February 2020.

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<sup>11</sup> <https://www.ebayinc.com/stories/news/stubhub-to-expand-its-global-reach-into-47-markets-with-the-acquisition-of-ticketbis/>

<sup>12</sup> [REDACTED]  
<sup>13</sup> [REDACTED]  
<sup>14</sup> [REDACTED]  
<sup>15</sup> [REDACTED]  
<sup>16</sup> [REDACTED]  
<sup>17</sup> [REDACTED]  
<sup>18</sup> [REDACTED]  
<sup>19</sup> [REDACTED]  
<sup>20</sup> [REDACTED]  
<sup>21</sup> [REDACTED]  
<sup>22</sup> [REDACTED]  
<sup>23</sup> [REDACTED]

## The rationale for the Merger

2.11 viagogo submitted that the Merger would enable it to enter and compete in the US online ticketing sector by combining [redacted] with StubHub's strong '[redacted]' in online [redacted].<sup>24</sup> There is supporting evidence for this in viagogo's internal documents produced in contemplation of the Merger which, for example, indicate that '[redacted]and which refer to its [redacted]'.<sup>25</sup> viagogo submitted that enhancing viagogo's presence in the UK has neither been a driver for, nor a perceived advantage of, the Merger.<sup>26</sup>

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<sup>24</sup> [redacted]  
<sup>25</sup> [redacted]

### 3. Jurisdiction

- 3.1 We have provisionally found that the Merger has resulted in the creation of a relevant merger situation.
- 3.2 Each of viagogo and StubHub is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
- 3.3 The Parties have a combined share of supply of at least 25% in the supply of uncapped secondary ticketing platform services for resale of tickets to UK events.<sup>27</sup> The Parties' had a combined share of supply of [X] [90-100%](with an increment of [X] [30-40%]) by gross transaction value (GTV) in 2019.
- 3.4 The Merger completed on 13 February 2020. The four month deadline for a decision under section 24 of the Act was 13 June 2020 but on 11 June 2020, in its Phase 1 decision that the Merger would be referred unless undertakings were accepted, the CMA gave viagogo notice pursuant to section 25(4) of the Act that it was extending the four-month period mentioned in section 24 of the Act. This extension came into force on the date of receipt of the notice by viagogo and indicated that it would end with the earliest of the following events: the giving of undertakings by viagogo under s73 of the Act; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from viagogo stating that it did not intend to give the undertakings under s73 of the Act; or the cancellation by the CMA of the extension. None of these events came to pass and the Merger was referred to a Phase 2 investigation on 25 June 2020. We are therefore satisfied the reference was made within the statutory time limit.

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<sup>27</sup> Based on data obtained from the Parties and third parties. See Table 2.

## 4. The counterfactual

- 4.1 When considering whether a merger has resulted, or may be expected to result, in an SLC, we need to compare the competitive situation in the market with the Merger against the likely future competitive situation in the market absent the merger.<sup>28</sup> The latter is called the counterfactual.<sup>29</sup>
- 4.2 Before we assess the relevant counterfactual in this case, we should note that we have undertaken our merger inquiry at a time when the live events industries, and associated ticketing activities, have been severely impacted by the Coronavirus (COVID-19) pandemic. The Coronavirus 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.<sup>30</sup> Nonetheless, we consider the impact of the Coronavirus (COVID-19) pandemic where appropriate in our assessment of the counterfactual as well as in our competitive assessment.

### The CMA's counterfactual assessment framework

- 4.3 As part of its counterfactual assessment, the CMA may examine several future scenarios and the resultant competitive situation, one of which may be the continuation of the pre-merger situation. At Phase 2, the CMA will select the most likely competitive situation, based on the facts of the case, as the counterfactual.<sup>31</sup> It will incorporate into the counterfactual only those aspects of scenarios that appear likely, based on the facts available to it and the extent of its ability to foresee future developments.<sup>32</sup> The foreseeable period can sometimes be relatively short.<sup>33</sup> However, even if an event or its consequences are not sufficiently certain to include in the counterfactual they may be considered in the context of the competitive assessment.<sup>34</sup>
- 4.4 Depending on the evidence, the choice of the counterfactual could be a situation either more or less competitive than the competitive conditions

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<sup>28</sup> [Merger Assessment Guidelines](#), paragraphs 4.3.1 and 4.3.6.

<sup>29</sup> [Merger Assessment Guidelines](#), paragraph 4.3.1.

<sup>30</sup> [Merger assessments during the Coronavirus \(COVID-19\) pandemic](#)

<sup>31</sup> [Merger Assessment Guidelines](#), paragraph 4.3.6. In contrast, at Phase 1, the effect of the Merger is compared with what is considered to be the 'most competitive' counterfactual (provided that this situation is considered to be a realistic prospect).

<sup>32</sup> [Merger Assessment Guidelines](#), paragraph 4.3.6.

<sup>33</sup> [Merger Assessment Guidelines](#), paragraph 4.3.6.

<sup>34</sup> [Merger Assessment Guidelines](#), paragraph 4.3.2.

before the Merger. Therefore, the selection of the appropriate counterfactual may increase or reduce the prospects of an SLC finding.<sup>35</sup>

## Views of the Parties

4.5 The Parties' view is that absent the Merger the relevant counterfactual is one in which StubHub would be a weaker competitor as a result of its inefficient business model and the impact of Coronavirus (COVID-19) on it and the market generally. However, the Parties did not make any submissions to suggest that StubHub should be considered a failing firm. In particular, the Parties submitted that:

- (a) The outbreak of Coronavirus (COVID-19) has had a significant adverse impact on revenue generation in the ticketing industry, with most live events in the UK having been cancelled or postponed, thereby causing an unprecedented decrease in demand for tickets at both the primary ticketing and secondary ticketing levels.
- (b) There is no evidence that all ticketing players will be impacted in the same way by Coronavirus (COVID-19).<sup>36</sup> [REDACTED], in contrast to the lean, centralised, performance marketing driven viagogo organisation which is better positioned to survive a prolonged period of zero revenues.<sup>37</sup> [REDACTED].<sup>38</sup>
- (c) While the longer-term consequences of Coronavirus (COVID-19) are currently unclear, Primary Ticketing Platforms are better placed for survival due to their control over inventory.<sup>39</sup> The outbreak means that venues, promoters and content rights holders will need to 'ensure that they capture a larger portion of fans' willingness to pay to offset costs associated with new hygiene and social-distancing rules'. This will lead to increased 'dynamic pricing' tactics (that is, certain market-based pricing tactics) by Primary Ticketing Platforms, and fewer tickets being available on Secondary Ticketing Exchange Platforms.

## Our provisional assessment

4.6 We note that the Coronavirus (COVID-19) outbreak has had, at least in the short-term, a substantial impact on the live events and ticketing industries. Very few tickets have been sold during this period and the cancellation of

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<sup>35</sup> [Merger Assessment Guidelines](#), paragraph 4.3.4.

<sup>36</sup> [REDACTED].

<sup>37</sup> [REDACTED].

<sup>38</sup> [REDACTED]. [REDACTED].

<sup>39</sup> [REDACTED]; [REDACTED].

events has led to refund requests from buyers. Both of these developments have had a substantial impact on the Parties' businesses and [REDACTED]. However, as the Parties acknowledge, there remains considerable uncertainty about the duration of this impact and the long-term effects on the secondary ticketing market. As set out in the CMA's guidance on merger assessments during the Coronavirus (COVID-19) outbreak, a merger control investigation typically looks beyond the short-term and considers what lasting structural impacts a merger might have on the markets at issue.<sup>40</sup>

- 4.7 In this context, we consider that the evidence available to us does not indicate that the Coronavirus (COVID-19) outbreak will have a disproportionate impact on either of the Parties relative to the rest of its competitors in the secondary ticketing market.
- 4.8 We have examined the financial position and forecasts of the Parties and note that they have been significantly impacted by the Coronavirus (COVID-19) outbreak with the cancellation of events [REDACTED].
- 4.9 [REDACTED].
- 4.10 In addition, with respect to StubHub's business, we consider that, in the absence of the Merger, StubHub is likely to have been acquired by an alternative purchaser. [REDACTED].<sup>41</sup>
- 4.11 We have received responses from [REDACTED] alternative bidders who have stated that their intention on acquisition was to continue competing in the UK secondary ticketing market through StubHub's UK business. [REDACTED].<sup>42</sup>
- 4.12 Therefore, the evidence suggests that under ownership of the [REDACTED] StubHub would have remained in the UK market and that StubHub would not have been a substantially weakened competitor relative to its rivals as a result of the Coronavirus (COVID-19) outbreak.
- 4.13 In response to the Parties' representations on whether absent the Merger [REDACTED], we have not seen any evidence that it would do so to such an extent to alter the counterfactual against which we should assess the Merger.<sup>43</sup> Indeed, [REDACTED] and we have seen some evidence that it is already changing its marketing approach.<sup>44</sup> We also note that StubHub's sales in the UK increased between 2017 and 2019, both in absolute terms and relative to

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<sup>40</sup> [Merger assessments during the Coronavirus \(COVID-19\) pandemic](#) (CMA120), 22 April 2020, paragraph 22.

<sup>41</sup> [REDACTED].

<sup>42</sup> [REDACTED].

<sup>43</sup> [REDACTED].

<sup>44</sup> [REDACTED].

viagogo's sales.<sup>45</sup> Therefore, the evidence available to us indicates that StubHub [REDACTED] would continue to compete under the pre-Merger conditions of competition. These conditions of competition include StubHub having the incentive to improve its position in the marketplace, as it had been doing over recent years, [REDACTED] in order to make itself a more effective competitor in the marketplace over time. We therefore consider that the pre-Merger conditions of competition provide an appropriate proxy for the competitive dynamics and structure of the secondary ticketing industry in the absence of the Merger.

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

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<sup>45</sup> See Table 2.

## 5. Industry and regulatory background

### The supply of tickets in the UK

#### The supply of tickets in the UK

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

#### *The primary supply of tickets*

- 5.4 In the first instance, all tickets to live events are made available in what is commonly called the primary market. Tickets sold at this stage of the supply chain are commonly called primary tickets.
- 5.5 Depending on the event, primary tickets are sold by official distributors, the venue itself, an event organiser or an organising body (such as a sports organisation). For example, many live music or comedy events are sold via the event's official distributor such as Ticketmaster or AXS. Tickets to sporting events might be sold by individual sports clubs (eg an individual football club) or the official sports body. Theatre tickets might be sold directly by the venue itself.
- 5.6 Primary tickets are sold at face value (we discuss this further in our competitive assessment when examining dynamic pricing).<sup>46</sup> That is, all

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<sup>46</sup> Plus fees such as booking fees or payment processing fees.

tickets of the same type (eg seated in the same section of the venue) are typically sold at the same price and the face value is displayed on the ticket. Although it varies widely across events, for many events where demand exceeds supply the face value of ticket is below the market-clearing price for the ticket.<sup>47</sup> This therefore raises the possibility that if a ticket can be resold, it could be resold at a profit.

- 5.7 However, not all tickets can be resold. For some events, anyone who acquired a ticket in the primary market is restricted in whether, and in some instances, where they can resell the ticket. For example, for some sports events ticket holders may need to use specialist exchange platforms, while the same is true for some music events.<sup>48</sup> Other events have lower levels of restrictions on resale and so ticket holders may decide to use one of the resale channels discussed below.
- 5.8 The Parties submitted that primary ticket sales in the UK were worth around £5-6 billion in 2018.<sup>49</sup> Last year over 35 million primary tickets were sold to UK events.
- 5.9 The main primary ticket distributors in the UK are Ticketmaster, See Tickets and AXS.

### ***The secondary supply of tickets***

- 5.10 As set out above, some tickets sold in the primary channel may then be resold. Tickets available for resale are listed in secondary ticket channels. We refer to those who sell tickets in secondary ticket channels as resellers and tickets sold through any of these channels as secondary tickets.
- 5.11 The typical consumer journey in the secondary ticketing channel has several distinct phases. Most consumers search on the internet for tickets to an event that they would like to attend (the discovery phase) where they may be directed to secondary ticketing platform. From there consumers might go to a particular secondary ticketing platform and compare ticket characteristics of available tickets (eg price, date and seat location) and may even compare offers across platforms (the research phase). The consumer will then choose whether to make a purchase (the purchase phase). The final stage is

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<sup>47</sup> The reasons for this vary. For example, this might be in order to make the event more accessible to some sections of the population or to encourage 'real fans' to attend the event.

<sup>48</sup> For example, as discussed below, the resale of tickets to some football games is prohibited in order to prevent banned persons from entering the stadium and to prevent home and away fans from mixing.

<sup>49</sup> The data that we have available indicates that the primary ticket sector in the UK from third party distributors was worth at least £1.5 billion last year. However, this does not include sales direct from venues or non-distributors (eg sporting clubs or bodies) and so the true figure is likely to be much higher.

fulfilment of the purchase – ie getting the ticket to the consumer in time so that they can attend the event.

5.12 We are not aware of a commonly accepted source of information for the secondary supply of tickets and estimates vary. The Parties submitted that anywhere between [redacted]% and [redacted]% of primary tickets sold are resold through secondary channels, although this varies considerably between types of event.<sup>50</sup> According to estimates provided by the Parties, secondary ticketing accounted for around £1.5-2.5 billion in the UK in 2018.<sup>51</sup>

5.13 We think that is an overestimate. In 2019, there were about 1.9 million secondary tickets sold across online platforms which accounted for around 5-6% of the number of primary tickets sold and around 12-20% of primary tickets based on value.<sup>52</sup> Based on data provided from all the main resale platform providers in the UK, we think that the value of secondary tickets sold last year through online ticketing platforms (ie excluding direct sales from venues and other channels not involving online ticketing platforms) was about £350 million.<sup>53</sup>

5.14 The main channels for selling secondary tickets are:

- (a) uncapped secondary ticketing platforms;
- (b) capped secondary ticketing platforms;
- (c) non-specialist channels and social media; and
- (d) offline channels.

5.15 We briefly outline each below.

#### *Uncapped secondary ticketing platforms*

5.16 Secondary ticketing platforms are online platforms that allow ticket holders to resell tickets to fans searching for a ticket to a live event. The platform therefore matches resellers of tickets with fans who wish to buy a ticket. Anyone can buy or sell on secondary ticketing platforms.

5.17 That the secondary ticketing platform is ‘uncapped’ means that the platform does not impose any restrictions on the ticket price and as such allows

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<sup>50</sup> [redacted].

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

<sup>52</sup> CMA Analysis of the secondary and primary ticketing platforms’ ticket sales data.

<sup>53</sup> CMA Analysis of the secondary ticketing platforms’ ticket sales data.

resellers to market and sell tickets at any price that they choose. The Parties both operate uncapped platforms.

- 5.18 The main uncapped secondary ticketing platform operators in the UK are viagogo, StubHub and Gigsberg. Ticketmaster, via the platforms GetMein! and Seatwave, operated uncapped secondary ticketing platforms until 2018 when it closed them down (paragraph 7.59).

#### *Capped secondary ticketing platforms*

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

#### *Non-specialist channels and social media*

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

#### *Offline channels*

- 5.25 Tickets are also available for resale through offline channels. Buyers might be able to source a ticket through their personal networks (eg friends and family),

box office returns at event venues, secondary ticket booths and from ticket resellers or 'touts' outside of the event venues.<sup>54</sup>

5.26 There are no restrictions on the price at which tickets can be sold via these channels nor are there any consumer protection guarantees in place (see below).

5.27 We now discuss the fee structure for secondary ticketing platforms.

### Fees

5.28 All secondary ticketing platforms active in the UK charge fees based on completed transactions to one or both of the reseller and the buyer. None of the platforms charge a joining or membership/subscription fee or a listing fee. Transaction fees are based on a percentage of the resale price paid.

5.29 Table 1 shows the average level of reseller fees, buyer fees and delivery fees charged by the main secondary ticketing platforms. It shows that uncapped platforms typically have higher fees than those of the capped platforms:

- (a) Uncapped secondary ticketing platforms typically have seller fees between 5 and 15% and buyer fees of 15-20%.
- (b) Capped secondary platforms operated by the primary platforms charge seller fees of 0-10% and buyer fees of 10-15%.
- (c) Other capped secondary platforms charge seller fees of 0-5% and buyer fees of 8-15%.

**Table 1 – Fee structure adopted by the main secondary ticketing platforms**

	Reseller Fee	Buyer Fee	Delivery Fee
<i>Uncapped secondary ticketing platforms</i>			
viagogo	[X]	[X]	[X]
StubHub	[X]	[X]	[X]
Gigsberg	[X]	[X]	[X]
GetMeIn (up to Nov'18)	[X]	[X]	[X]
SeatWave (up to Nov'18)	[X]	[X]	[X]
<i>Capped secondary ticketing platforms operated by primary platforms</i>			
Ticketmaster Ticket Exchange	[X]	[X]	[X]
AXS Resale	[X]	[X]	[X]
Eventim UK FanSALE	-	[X]	[X]
See Tickets Fan-to-fan	[X]	[X]	[X]

<sup>54</sup> [X].

Gigantic	[X]	[X]	[X]
<i>Other capped secondary ticketing platforms</i>			
TicketSwap	[X]	[X]	[X]
Twickets	[X]	[X]	[X]

Source: CMA questionnaire responses from main and third parties.

- 5.30 We have found that fee levels do change, sometimes temporarily as platforms attempt to attract resellers to their platform by offering them a better deal. For example, StubHub has made promotional offers to resellers, which is discussed in our competitive assessment (paragraph 7.133). Fees may also sometimes vary between sellers (eg according to the volume of tickets that they sell) at a given point in time but buyer fees do not vary across buyers.

### *Payment terms*

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

### *Consumer protections and guarantees*

- 5.33 One important element in how secondary ticketing platforms differ from non-specialist channels, social media and many offline channels is through the consumer guarantees that they offer. For example, viagogo provides buyers with a ‘buyer guarantee’ whereby if buyers are not provided with a valid ticket for the event in time by the seller then viagogo will endeavour to either provide the buyer with a full refund or source a similar substitute ticket. [X]. viagogo will usually not pay the seller until the event has taken place and the buyer has been able to attend, thereby discouraging the sale of fake tickets on the

platform.<sup>55</sup> Other secondary ticketing platforms operators have similar protections in place.

- 5.34 Since fan-to-fan sites (and box office returns) are better able to track the provenance of the ticket being resold (given the ticket is being sold via the same platform operator in both the primary and secondary channels) they are able to offer greater assurance to fans that the ticket will get them into the event.

## **Regulatory background**

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

### ***Regulatory and contractual restrictions on the resale of tickets***

- 5.36 Ticketholders are, generally, legally permitted to resell tickets, subject to certain limited exceptions.
- 5.37 UK legislation restricts the sale and resale of tickets to certain, limited types of event other than by authorised persons (notably designated football matches and the Olympic and Commonwealth Games). These restrictions can limit the ability of ticketholders to resell tickets to these events.
- 5.38 In addition to the statutory exceptions, in some cases, venues, event organisers or artists will seek to impose contractual restrictions on the transferability of tickets, which have the effect of restricting resale.
- 5.39 However, restrictions against resale will not be enforceable where they are in breach of UK consumer law. The Consumer Rights Act 2015 (the CRA) expressly prohibits event organisers from relying on unfair terms to cancel tickets or ban resellers from operating, and gives the prescribed enforcement authorities powers to impose financial penalties where this happens. The CMA's Unfair Contract Terms Guidance (CMA37) indicates that a term which undermines a consumer's right to sell what they own is at risk of being regarded as unfair. The CMA has also stated that such terms are more likely to be considered fair if there is a legitimate reason for restricting resale and any restrictions are necessary and proportionate for achieving that aim.

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<sup>55</sup> [🔗]

## ***Legal and regulatory background***

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

### *The Consumer Rights Act 2015*

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

(a) A duty on resellers and secondary ticketing facilities to provide certain information, where applicable, about tickets to buyers, including:

(a) The face value of the ticket;

(b) Information to enable the buyer to identify the location within the venue of the ticket, for example the particular seat or standing area at the venue;

(c) Information about any restriction limiting the use of the ticket to persons of a particular description (for example wheelchair users or people within a certain age range); and

(d) where applicable, information about certain connections the seller has with either the online facility on which they are selling, or the organiser of the event for which the ticket is being sold. Event organisers cannot cancel tickets offered for resale or ban resellers from operating merely because the ticket is re-sold or offered for re-sale unless this was a term of the contract under which the original buyer purchased the ticket and that term was not unfair (in respect of which, see above).

(b) A requirement that secondary ticketing facilities must report any criminal activity (such as fraud or theft) in relation to the re-sale of tickets on its platform to the police and the event organiser.

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

### *Other consumer law*

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

### *The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)*

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

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

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

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

- 5.46 The ECRs impose information requirements on those providing an 'information society service'. This includes operating an online marketplace and engaging in online sales. Secondary ticketing facilities will be an information society service provider and must provide certain information

about themselves and their users. When selling tickets through a secondary ticket platform a business seller will also be providing an information society service, and will also be subject to the requirements of the ECRs including the requirement to provide information about itself.

### *Code of Advertising*

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

### *Tickets for football matches and the Olympics*

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

### *Fraud*

- 5.49 The Fraud Act 2006 sets out a general offence of fraud that can be committed by (i) false information; (ii) failing to disclose information; or (iii) abuse of position where there has been dishonesty and an intent to make a gain or cause a loss. This may cover, for example, the sale of fake or counterfeit tickets or obtaining tickets by deception. *The Digital Economy Act 2017 and the Breaching of Limits on Ticket Sales Regulations 2018*.
- 5.50 Under the Breaching of Limits on Ticket Sales Regulations 2018, made pursuant to the Digital Economy Act 2017, the use of automated software to buy more tickets for events than are allowed with a view to financial gain is an offence, and a breach of the legislation can result in an unlimited fine.

## ***Enforcement***

### *Advertising Standards Authority Ruling*

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

### *OFT / CMA enforcement*

- 5.53 In July 2012, the Office of Fair Trading (OFT), a predecessor body to the CMA, opened an investigation into suspected breaches of consumer protection law in the secondary ticketing market. The investigation focused on the four largest secondary ticket websites that operated in the UK at the time – GetMeIn!, Seatwave, StubHub and viagogo – and primarily related to suspected breaches of the CPRs and ECRs. It aimed to ensure that the operators of these websites disclosed information which, in the OFT’s view, consumers needed before buying tickets on secondary ticket websites. The OFT considered such information to include:
- (a) Information on restrictions on entry (such as age restrictions and concessionary tickets) and the view that may apply to the ticket;
  - (b) Whether or not multiple seats that were listed together were located together;
  - (c) Whether there were any additional charges not included in the listed ticket price;
  - (d) The price for which the ticket was originally purchased and which is usually the price printed on the ticket itself (the face value);
  - (e) The identity of the ticket seller; and
  - (f) A contact email address for buyers to use if something went wrong.

- 5.54 The OFT accepted undertakings which addressed these concerns from StubHub, GetMeIn! and Seatwave in 2014 and from viagogo in 2015.<sup>56</sup>
- 5.55 In June 2016, the CMA launched a review of the compliance of the four main secondary ticketing platforms with their undertakings and their legal obligations, which it concluded in December 2016. The review identified concerns that secondary ticketing platforms and/or resellers were not disclosing sufficient information to consumers, in breach of consumer protection legislation. In particular:
- (a) Whether it was clear to consumers when tickets were being offered for sale by businesses;
  - (b) Whether it was clear to consumers when tickets were being offered for sale by event organisers or ticketing platforms;
  - (c) Whether sellers were providing important information about tickets (such as information about seat numbers, face value of the ticket and restrictions on the use of the ticket); and
  - (d) Whether platforms were fulfilling their own obligations in relation to such information.
- 5.56 This led to the CMA opening a new investigation into the compliance of secondary ticketing platforms with consumer law.<sup>57</sup>
- 5.57 On 20 April 2018, the CMA accepted undertakings from Ticketmaster (owner of Seatwave and GetmeIn!) and StubHub to make changes to the websites' practices which addressed the CMA's concerns.
- 5.58 In November 2018, the CMA secured a court order against viagogo requiring viagogo to change the way it operated (which should have been implemented by mid-January 2019) and which should have addressed the CMA's concerns set out above. In September 2019 the CMA announced that viagogo had addressed the CMA's concerns.
- 5.59 In January 2020, the CMA set out concerns to StubHub relating to the way it operates and the information it provides in relation to tickets advertised on its website that could breach consumer law. In August 2020, the CMA accepted new undertakings from StubHub and confirmed the CMA's concerns had been addressed.

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<sup>56</sup> GetMeIn! and Seatwave exited the market in 2018

<sup>57</sup> Details of the CMA's enforcement action are on the case page of the CMA's website: [Secondary Ticketing Websites](#)

## 6. Market definition

6.1 Market definition provides the framework for assessing the competitive effects of the Merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the Merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in our competitive assessment.<sup>58</sup>

### Product market

6.2 The Parties overlap in the supply of online platforms for the sale of tickets for events in the UK, with the vast majority of these transactions being the sale of secondary tickets. As set out below the Parties are also active in the sale of primary tickets, but their shares of primary sales in the UK are low (see below), so we do not consider it likely that the Merger would result in an SLC in the supply of primary tickets alone. As such, our assessment of the relevant market in this section focuses on the relevant market starting with the Parties' secondary ticketing platform activities as the focal product.

6.3 As set out below, our assessment of both market definition and of the effect of the Merger on competition has taken account of the Parties' arguments in relation to the interaction between primary and secondary ticketing. As set out in more detail at paragraphs 7.236 to 7.241, we have considered the broader ways in which primary and secondary platforms interact, and whether these are likely to create competitive constraints on the Parties which might mitigate any reduction in competition resulting from the Merger. In summary, we note that:

- (a) At present, the Parties' primary ticket sales account for less than [X]% of the Parties' sales in the UK, and their combined share of supply in primary tickets in the UK was less than [X]% in 2019 and less than [X]% in 2018 and 2017.<sup>59</sup>

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<sup>58</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>59</sup> We note that a number of third parties referred to the Parties' recent involvement in the primary market. [X] referred to competition from resellers seeking to [X], but stated that these 'instances have remained very limited in the UK' and referred to StubHub's role as a primary seller for boxing events involving Anthony Joshua. ([X]). AXS submitted that viagogo did not 'infringe' on the primary market, but noted StubHub's involvement in

(b) StubHub's primary sales were [REDACTED] in the past (accounting for [REDACTED] of StubHub's GTV in 2017 and [REDACTED] in 2018)<sup>60</sup> and both Parties have [REDACTED].<sup>61</sup> As set out below, some references to primary sellers in the Parties' internal documents should be read with this context in mind.

(c) The Parties made a number of arguments in relation to the constraints that primary sellers place on their platforms, both as competitors for consumers seeking to buy tickets and in their role in supplying (or restricting the supply of) tickets that can be resold on the Parties' platforms. These are dealt with below where they are relevant to our assessment of the relevant market and of the competitive constraints that are likely to apply to the merged firm post-Merger.

6.4 The Parties submitted that they operate within a broad overall market for live ticketing events, including both primary and secondary ticketing. They told us that content rights holders and promoters can sell tickets to attendees directly or through agents who offer primary ticketing services. Ticket holders, whether individuals who cannot attend the event or individuals who have purchased a ticket specifically to sell it on, can resell their tickets through secondary channels. The Parties submitted that secondary ticketing platforms, such as viagogo and StubHub, are one secondary channel, alongside other secondary ticketing sales channels including classified advertising services, person-to-person sales, concierge services, ticket brokers (offline and online) and social networks.<sup>62</sup>

6.5 The CMA has previously considered online ticketing platforms in *Ticketmaster/Seatwave*,<sup>63</sup> in which the CMA concluded that there was a distinct frame of reference for the supply of online exchange platforms for selling and buying secondary tickets for all types of live entertainment events in the UK.<sup>64</sup> We note that, in that decision:

(a) Primary tickets were excluded from the frame of reference, as, even where primary and secondary tickets are available for the same event at

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primary sales for a number of events, including boxing events involving Anthony Joshua and Capital FM's Summertime Ball. [REDACTED].

<sup>60</sup> [REDACTED].

<sup>61</sup> [REDACTED].

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

<sup>63</sup> ME/6505/14 *Completed acquisition by Ticketmaster Europe Holdco Limited of Seatwave* (2015) ([Ticketmaster/Seatwave](#)).

<sup>64</sup> [Ticketmaster/Seatwave](#), paragraph 50.

the same time, the primary tickets will often be at a much lower price (for popular events) or a much higher price (for unpopular events).<sup>65</sup>

(b) Offline channels were excluded from the frame of reference, due to differences between the offline and online channels, including: offline channels not offering guarantees, commission fees being relatively low, and the limited ability to match supply and demand using offline channels.<sup>66</sup>

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

6.7 In some two-sided markets the Parties may face very different competitive constraints on each side of the market.<sup>67</sup> In those cases, it may be necessary to define two separate markets: one on each side of the platform, with distinct product and geographic scopes and separate sets of competitors and competitive constraints.

6.8 By contrast, in the case of a two-sided platform where the platform is 'matching' or facilitating transactions and where there are positive network effects in both directions – ie. more buyers attract more sellers and vice versa – a single market definition is typically more appropriate, taking account of the competitive constraints on both sides of the market. This assessment takes account of the relevant close substitutes to the platform on each side (reseller and buyer) and the impact of any indirect network effects on the platform. Given the characteristics of the Parties' secondary ticketing platforms, we consider that defining a single market is appropriate in this case, taking account of competition on both sides.

6.9 In coming to a view on the appropriate scope of the product market within which the Parties operate we have assessed the extent of substitutability between their secondary ticketing platforms and:

(a) Primary tickets, bearing in mind that primary platforms are only a potential alternative for buyers and not for resellers using the Parties' platforms;

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<sup>65</sup> [Ticketmaster/Seatwave](#), paragraph 43.

<sup>66</sup> [Ticketmaster/Seatwave](#), paragraph 44.

<sup>67</sup> [Merger Assessment Guidelines](#), footnote 60. Also see [Lear, Ex-Post Assessment of Merger Control Decisions in Digital Markets](#), paragraph I.91

- (b) Other secondary ticketing platforms, which provide similar services to the Parties to both buyers and sellers, though taking account of the extent to which ‘capped’ platforms may not be a close substitute for some resellers;
- (c) Other online channels, including social media (such as Twitter and Facebook) and classified ads websites (such as Gumtree); and
- (d) Offline channels, which include the resale of tickets in person close to the venue or elsewhere, ticket sales between friends and acquaintances, and ticket sales by outlets, such as travel agents, hospitality providers and ticket wholesalers.

### ***Primary ticketing***

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

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

### ***Price differentials between primary and secondary***

6.11 We found that there is a material difference in the prices charged for primary tickets (‘face value’) and those charged for secondary tickets on the Parties’ platforms. Our analysis of the Parties’ transaction data for UK events found that, in 2019:

- (a) [redacted] [80-100]% of tickets sold on the viagogo platform were sold at more than 20% above face value,<sup>68</sup> with a median mark-up of [redacted]; and
- (b) [redacted] [60-80]% of tickets sold on the StubHub platform were sold at more than 20% above face value, with a median mark-up of [redacted].

6.12 Those resellers that are either ‘professional’ or ‘intentional’ resellers aiming to make a profit and sourcing their inventory from primary sellers must be (on average) selling at prices that are above face value, in order to stay in business. Responses from the Parties’ resellers<sup>69</sup> that we spoke to (which were mainly larger, professional resellers) indicated that they tended to source their inventory from primary sellers and set their resale prices above face value, typically with a target margin in mind, which is consistent with our quantitative pricing analysis.

#### *Dynamic pricing and similar pricing practices in the primary market*

6.13 On the ‘convergence’ between pricing on primary and secondary platforms, the Parties made two broad arguments:

- (a) First, that primary ticketing platforms are increasingly enabling the secondary resale of tickets, for example through Ticketmaster Ticket Exchange and AXS Resale. We consider whether these secondary sales should be part of the relevant market in the following section (‘capped ticketing platforms’).
- (b) Second, that primary tickets are increasingly being sold in different ways which might affect the secondary market, including through dynamic pricing, ‘VIP’ pricing and the slow release of primary tickets. We consider these arguments here.

6.14 The evidence we collected suggested that the ticketing practices referred to by the Parties cover only a very small proportion of overall primary ticket sales. For example, data on [redacted]<sup>70</sup> use in the UK of a range of strategies that take account of buyer demand for its primary tickets indicate that, in 2019:

- (a) [redacted] was applied to [redacted]% of tickets, accounting for [redacted]% of GTV;
- (b) [redacted] was used in the sale of c. [redacted]% of tickets, accounting for [redacted] % of GTV;

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<sup>68</sup> On a conservative basis, we focus on the proportion of tickets that are sold at more than 20% above face value to allow for sellers covering the cost of primary booking fees and delivery costs.

<sup>69</sup> See Appendix G for more details about the sample and the responses.

<sup>70</sup> [redacted] of primary GTV.

(c) 'VIP tickets' accounted for [REDACTED] % of ticket sales, accounting for [REDACTED] % of GTV; and

(d) Discounting (ie, sales below face value) was applied to [REDACTED] % of ticket sales, accounting for [REDACTED] % of GTV.

6.15 The [REDACTED] primary resellers also made relatively little use of these types of strategies in the UK.<sup>71</sup>

(a) [REDACTED] told us that it had not [REDACTED]; while VIP tickets accounted for [REDACTED]% of its primary ticket sales in 2019, accounting for % of GTV;<sup>72</sup>

(b) [REDACTED] told us that dynamic pricing and VIP tickets made up [REDACTED] of its primary ticket sales, with the latter tending to be driven by one promoter [REDACTED].<sup>73</sup>

6.16 Given the limited use that is being made of these strategies in the UK and the very low share of primary sales that they represent, the evidence currently does not point towards significant convergence between primary and secondary ticket pricing. The Parties argued that the use of dynamic pricing was growing rapidly, but the evidence they put forward suggesting growth of around 66% per year was based on US trends. We have not seen evidence to suggest that there is likely to be a significant increase in the use of dynamic pricing in the foreseeable future in the UK.<sup>74</sup>

6.17 Even if these practices were to become more prevalent over time, we consider that their main impact would be to affect the supply of tickets into the secondary market, rather than imposing a direct competitive constraint on uncapped secondary platforms.<sup>75</sup>

6.18 Finally, we note that the Parties argued more generally that there was convergence over time between primary and secondary sales, and that this would impose competitive constraints on the Parties following the Merger. We do not consider that these arguments affect our conclusions on market

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<sup>71</sup> Other primary sellers did not submit detailed evidence on their use of dynamic pricing or related strategies, with Eventim indicating that it did use it for some ticket sales but did not provide any details (see [REDACTED]), and Gigantic providing no response on the issue.

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

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

<sup>74</sup> Two primary sellers told us that their intention was to increase their use of dynamic pricing in the UK in the future, but their evidence indicated that the extent of this would still be very limited. Ticketmaster, while stating that it '[REDACTED]', noted that its 'Platinum' product had been around since 2007 and had '[REDACTED].) AXS had planned to make 'variable' pricing an option for UK clients in 2020, but this had been delayed when COVID-19 halted live events. It noted that variable pricing had been in use for some of its US clients for the past five years, but pointed out that, in the US, it was used on a very small percentage of tickets, [REDACTED].

<sup>75</sup> We discuss this point further in the Chapter 7 competitive effects assessment.

definition, but we have considered them as part of the assessment of competitive effects of the Merger below, at paragraphs 7.207 to 7.242.

### *Competition for buyers and timing of purchase of tickets*

- 6.19 Not all buyers may be willing to purchase secondary tickets (for example because of concerns about whether the ticket is genuine or transferable), but we can expect that most buyers who are willing to purchase a secondary ticket for a particular event would see a primary ticket for the same event and similar seat location as a substitute. However, the extent to which primary ticketing constrains secondary ticketing on the buyer side depends crucially on the availability of relevant primary inventory. If primary tickets are not available (or the primary tickets that are available are not viewed by buyers as sufficiently close substitutes), then the primary market will not act as a constraint on secondary sales
- 6.20 In relation to online competition for buyers, a number of primary and secondary platforms and resellers have stated that the main way in which buyers find tickets online is through searching using terms related to the artist/ and/or event in question, that they tend to click on links that appear at the top of search results page – often a paid search link – and often do not distinguish between primary and secondary ticketing platforms. As such, consumers may buy secondary tickets even when primary tickets are still available.
- 6.21 As set out in Appendix C, based on a sample of 13 live events, we have compared the timing of sales and the prices paid for tickets through the primary (in this sample, [REDACTED]) and secondary (both viagogo and StubHub) channels. This analysis indicates that:
- (a) While there is considerable variation across events, on average the timing of sales differs markedly between the primary and secondary channels for the events in our sample, with:
    - (a) Primary sales taking place predominantly in the first week of release (for our sample of events, [REDACTED] sales took place then), compared to [REDACTED] [20-40]% of viagogo sales and [REDACTED] [0-20]% of StubHub sales for the same event; while
    - (b) An average of around [REDACTED] [0-20]% and [REDACTED] [20-40]% of tickets that were sold for our selected events on the viagogo and StubHub websites, respectively, were purchased in the last week before the event; while the equivalent share for [REDACTED] primary sales was [REDACTED] less than 10% of tickets.

(c) For a number of these events, there were material numbers of primary tickets available and sold in weeks close to the event, at the same time as substantial secondary sales were taking place. However, as above, the overall pattern of primary vs secondary sales was markedly different. In addition, even in weeks when material primary and secondary sales for the same event took place simultaneously, the secondary sales took place, on average, at significant mark-ups over face value. This indicates that primary sales were not imposing a competitive constraint on secondary sales for those events, either because buyers were not searching across primary and secondary sites when purchasing tickets or because they did not consider the tickets on sale in the primary channel were comparable. A substantial majority of tickets for the 13 events were sold at a higher price on the viagogo and StubHub platforms than on [redacted] primary site, with, on average, [redacted] [80-100]% of tickets sold on viagogo being sold above face value, while the share on StubHub was [redacted] [60-80]%, with substantial mark-ups over face value being paid on the Parties' sites.

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

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

### *Competition for resellers*

- 6.23 On the reseller side, by definition, primary ticketing does not provide an alternative to the Parties' platforms.
- 6.24 The Parties have argued that a strong constraint from primary (and other channels) on the buyer side would constrain the Parties' offer to resellers too. However, we do not agree that this should lead to a wider definition of the relevant market in this case, because:
- (a) As set out above, the lack of constraint from primary tickets on the resale prices achieved on the Parties' platform indicates that there is not a strong constraint on the buyer side of the platforms; and
  - (b) Even if there were strong competition for buyers, this would not protect the reseller side from increased fees or other worsening of the Parties' offer. If the Parties increased fees to resellers, strong competition on the buyer side of the platform would mean that these could not be passed on to buyers in the form of increased resale prices. As such, the resellers could be expected to bear the fee increase themselves, and resellers would not benefit from any constraint from primary tickets on the buyer side of the platform. Even if the primary market constrained resale prices on the Parties' platforms, a hypothetical monopolist platform would still have a high degree of market power in the fees it charged to resellers, potentially pricing up to the point where resellers were indifferent between remaining in the market and ceasing their reselling activities.

### *Evidence from the Parties' internal documents*

- 6.25 The Parties' internal documents are also consistent with a finding that primary and secondary ticketing should be treated as distinct markets:
- (a) The secondary and primary sites tended to be discussed as distinct channels for ticket sale/purchase, with references to viagogo's and StubHub's positions and shares within the 'secondary market' contained in a number of documents; for example:
    - (i) [REDACTED];<sup>76</sup> and
    - (ii) [REDACTED].<sup>77</sup>

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<sup>76</sup> [REDACTED].  
<sup>77</sup> [REDACTED].

- (b) Consistent with the point above, many internal documents focus mainly on, or refer only to, competition between the Parties, rather than indicating a wider market including the primary ticketing platforms – for example, [REDACTED].<sup>78</sup>
- (c) [REDACTED], noting that some resale opportunity was expected to remain.<sup>79</sup> Another viagogo document referred to the risk from primary sellers attempting to restrict resale as '[REDACTED]', pointing to [REDACTED];<sup>80</sup>
- (d) [REDACTED].<sup>81</sup> The Parties' ambitions to expand their presence in the primary market are also likely to explain some of the monitoring and discussion of primary platforms in their internal documents.

### *Conclusion on whether primary and secondary ticketing are in separate markets*

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

- (a) Primary platforms are not a constraint at all for resellers wishing to list tickets for resale to buyers;
- (b) There is no evidence that they are a constraint for buyers – secondary tickets are typically purchased closer to the event, often when there is limited or no primary ticket availability, and this is reflected in the fact that secondary tickets are often sold at a significant mark-up above primary face value;
- (c) These findings are consistent with the Parties' internal docs.

### ***Capped ticketing platforms***

6.27 A number of secondary platforms provide for the resale of tickets, but with restrictions on the resale price that can be charged. Typically, prices are capped at, or slightly above, the face value or the original cost of the ticket (with an allowance made to cover the seller's original booking, and/or other, fees). Some of the largest of these 'capped' platforms are operated by the primary ticketing platforms and only facilitate the resale of tickets that have been purchased from the same primary site. These include Ticketmaster Ticket Exchange, AXS Resale, Eventim UK FanSALE, See Tickets Fan-to-fan

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<sup>78</sup> [REDACTED].

<sup>79</sup> [REDACTED].

<sup>80</sup> This document appears to cover issues [REDACTED].

<sup>81</sup> For example: [REDACTED].

and Gigantic. Two additional platforms with material sales volumes – Twickets and Ticketswap – offer a similar service, but without the restriction on where the ticket was originally purchased.

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

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

(b) Differences in fees between capped and uncapped platforms;

(c) Views of resellers; and

(d) Evidence from the Parties' internal documents.

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

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

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

6.32 Third, the Parties' resellers that responded to our questionnaires did not consider capped platforms to be close alternatives to the Parties. These sites were very rarely among the top sites where resellers listed tickets, were

mentioned by very few resellers as alternatives to the Parties' platforms, and not rated as close alternatives. In particular,

- (a) Capped sites were mentioned by only a small number of the reseller respondents as alternatives to the Parties, and were typically given a low rating in terms of their strength as an alternative resale platform to viagogo or StubHub (average score of 1.7-out-of-5);
- (b) More resellers told us that they had used capped platforms than listed them as alternatives to the Parties. This is consistent with some resellers using the capped platforms as complementary channels for ticket resale - rather than as substitutes to the Parties - in particular, for selling inventory close to the time of the event if it had not sold on the one of the Parties' platforms. Given the capped prices and low (or no) reseller fees, those sales are not comparable to the (on average) above-face-value sales made on the Parties' platforms, with a [REDACTED] reseller fee being incurred. For example, the Parties' resellers that we spoke to stated that they used these sites 'to dispose of unsold inventory'<sup>82</sup> and 'when tickets did not sell on uncapped platforms'<sup>83</sup> or 'would not make that much profit'.<sup>84</sup> One reseller also explained that the capped sites are present but that they are not suitable alternatives for resellers.<sup>85</sup>

6.33 As noted in Appendix G, the reseller evidence outlined above came mainly from larger resellers who are attempting to make a profit on ticket sales, and we received less evidence from 'occasional' consumer resellers. These occasional resellers may be more likely to see the capped platforms as an alternative sales channel, particularly if they are not primarily motivated by making a profit on the ticket sale. However, if this were the case it would apply to a relatively small proportion of the Parties' sales, and does not change our view that, overall, most resellers do not view the capped platforms as strong alternatives to the Parties' uncapped platforms.

6.34 Finally, references to capped platforms in the Parties' internal documents did not indicate that these were seen as strong competitors to the Parties. For example, one viagogo document referred to [REDACTED].<sup>86</sup> On the other hand, there were a small number of references to competition from these platforms<sup>87</sup> [REDACTED].<sup>88</sup> However, as noted above, these occasional resellers (who may be

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<sup>82</sup> [REDACTED].

<sup>83</sup> [REDACTED].

<sup>84</sup> [REDACTED].

<sup>85</sup> [REDACTED].

<sup>86</sup> [REDACTED].

<sup>87</sup> For example, [REDACTED].

<sup>88</sup> See paragraph 7.195, below.

happy to accept capped resale prices) make up a small proportion of the value of sales on the Parties' platforms.<sup>89</sup>

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

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

- 6.36 The Parties submitted that the online ticketing market includes a range of other online channels, in particular social media (eg, Facebook) and classified ads sites (eg, Gumtree). In both cases, the evidence indicates that:
- (a) Buyers and sellers value the security of completing transactions on dedicated platforms and the guarantees offered to buyers on secondary platforms, and that these are important differentiating features between the Parties and social media, classified sites and offline channels.
  - (b) The vast majority of resellers who responded to our questionnaires did not make material use of these channels, and where they did so this was often in exceptional circumstances rather than in the normal course of business, eg, at the last minute to 'dispose of tickets'. They also did not consider them to be viable alternatives to the Parties' platforms, with a number of sellers referring to the risk of 'fraud' and a 'lack of safeguards or guarantees' on Gumtree and other classified listings websites (see paragraph 43 of Appendix G). As noted in paragraph 6.33 most of the resellers that we spoke to were large resellers seeking to make a profit on ticket sales, and smaller occasional resellers may be more willing to view wider online channels as an alternative. However, this does not change

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<sup>89</sup> As set out at paragraph 7.42, while there is not an accepted definition of how to classify different types of resellers, those in the top decile, for both Parties, account for c. [X]% of GTV on the platforms, with 'Traders' on viagogo accounting for [X]% of GTV, and resellers that Stubhub's defines as B2C ('business to consumer') accounting for [X]% of its secondary GTV in 2019. While these measures vary, occasional resellers clearly account for a minority of the Parties' GTV.

our view that resellers making up the large majority of the Parties' sales do not view wider online channels as strong alternatives.

- (c) [REDACTED].<sup>90</sup> As set out in paragraph 7.42, below, occasional resellers accounts for a minority of sales for both Parties, with the larger professional resellers accounting for the majority of GTV on both platforms.

6.37 Given these important differences and the evidence on resellers' use of these other channels, we consider that other online channels, such as social media and classified ads sites, do not form part of the same relevant market as the Parties' secondary ticketing sales. While there is some evidence that they represent a viable alternative for some occasional resellers, this is not the case for the professional resellers that make up the majority of the Parties' sales. Given this, we have considered whether these platforms impose a competitive constraint, at least for some of the transactions on the Parties' platforms, as part of the competitive assessment.

### **Offline channels**

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

- (a) Buyers and resellers value the security of completing transactions on dedicated platforms and the guarantees offered to buyers on secondary platforms, and that these were important differentiating features between the Parties and offline channels.
- (b) The vast majority of resellers that responded to our questionnaires:
- (a) Either had not made any use of offline channels or generally used them in very limited circumstances (eg, friends, family and for existing clients or agents) (see paragraph 46 of Appendix G); and
- (b) Did not consider them to be viable alternatives to the Parties' platforms, with a number of resellers referring to the lack of guarantees or protection and the 'hassle' involved in offline sales (see paragraph 47 of Appendix G).

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<sup>90</sup> See paragraph 7.195, below.

(c) The Parties' internal documents made very little reference to offline channels as a source of constraint [REDACTED].<sup>91</sup>

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

## Geographic scope

6.40 Both Parties are international businesses, with viagogo operating country-specific platforms in over 60 countries, while StubHub operates in over 40. viagogo stated that it sets many elements of its offer (including buyer and seller fees) on a global basis. However, at Phase 1, the Parties submitted that there is a national geographic frame of reference, pointing to the definition of a national market in the *Ticketmaster/Seatwave* decision.

6.41 At Phase 1, we did not receive any evidence to suggest that the geographic frame of reference should be any narrower (or wider) than national, and so concluded on a national geographic frame of reference.

6.42 We note that the boundary of the national market might be defined in several ways: by location of ticket buyers, by location of resellers, or by location of events. For viagogo, around [REDACTED]% of tickets to UK events sold on its platform were purchased by buyers outside the UK, while about [REDACTED]% of tickets sold to UK customers were for events held outside the UK.<sup>92</sup> For StubHub, [REDACTED]% of tickets to UK events sold on its platform were sold to buyers outside the UK, while [REDACTED]% of tickets sold to UK customers on the platform were for events held outside the UK.<sup>93</sup>

6.43 For the purposes of our competitive assessment we have used a geographic scope based on ticket sales for UK events. We have followed this approach because UK resellers are likely to concentrate on UK events and non-UK events are likely to have other sales channels, which may not be easily accessed by UK buyers. This approach is also consistent with the way the platforms typically collect data on the UK market. It also reflects that way that

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<sup>91</sup> See paragraph 7.195, below.

<sup>92</sup> [REDACTED].

<sup>93</sup> [REDACTED].

the Parties (and other ticketing platforms) set some elements of their marketing strategies and marketing spend at the national level.

- 6.44 We have not received any evidence that suggests that we should reconsider a national market and have proceeded on the basis of a geographic market covering the resale of tickets to UK events.

### **Provisional conclusion on market definition**

- 6.45 We have provisionally 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.

## 7. The competitive effects of the Merger

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

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

## **Introduction to the analysis**

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

### ***Structure of our assessment***

7.3 The chapter is structured as follows:

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

### ***Evidence used in our analysis***

7.4 In assessing the competitive effects of the Merger we have used a range of evidence which includes:

- (a) Submissions, representations, data, hearings and internal documents from the Parties;

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

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

7.6 We have used reseller questionnaire responses qualitatively and not treated them as a statistical survey of resellers. Although we received responses mainly from larger 'professional' resellers and note that smaller 'occasional' sellers may have other views, we consider that we can place weight on our findings as indicative of the views of larger resellers that make up the significant majority of the Parties' revenues, and hence drive the most important competitive interactions between the Parties.

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

7.8 In assessing the content of an internal document, we have taken into account the purpose for which it was prepared, the context in which it appears and the author.<sup>94</sup> In particular:

- (a) we typically have placed greater weight on documents prepared to inform decision making by senior management as these are likely to be most reflective of the Parties' strategic thinking. However, we have not disregarded some documents simply because they were prepared in the Merger sales process (in the due diligence process, for example) where these documents are consistent with other evidence that we have;

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<sup>94</sup> To fully understand the context and importance of the documents, we (i) requested background information about the documents including the date the document was produced, the name of the author and the names of the recipients, and/or (ii) requested that the Parties tailor their internal document submissions so as to only submit documents produced by individuals with the most relevant knowledge on particular aspects of our enquiry (as identified by the Parties), and/or considered the submissions of the Parties in response to the issues statement and annotated issues statement and working papers.

(b) similarly, when assessing the competitive constraints on the Parties we have considered the context in which information appears in a particular document. For example, the fact that a competitor's name appears in a document is less informative than the context in which it appears including the detail and nature of the commentary regarding that competitor. It may be appropriate to consider references to certain competitors less probative where the analysis of these competitors is more cursory or substantively different to others in the document.

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

7.10 As noted in the counterfactual, we are undertaking our inquiry during the period of the Coronavirus (COVID-19) pandemic (paragraph 4.2). The CMA's merger investigations are forward-looking and evidence-led, and we have considered the impact in our substantive assessment of a merger where appropriate (eg in our assessment of the counterfactual). Although it is clear that, at least in the short-term, there has been a very substantial impact on the live events and ticketing industries, there remains considerable uncertainty about the extent and duration of this impact. A merger control investigation typically looks beyond the short-term and considers what lasting structural impacts a merger might have on the markets at issue. Even significant short-term industry-wide economic shocks may not be sufficient, in themselves, to override competition concerns that a permanent structural change in the market brought about by a merger could raise. The CMA needs to ensure its decisions are based on evidence and not speculation, and we have carefully considered the available evidence in relation to the possible impacts of Coronavirus.<sup>95</sup>

7.11 We have generally placed greater weight on evidence from before Coronavirus for two reasons: first, it better allows us to understand the competitive dynamics in 'usual' circumstances; and second the pre-Merger period coincides with time before Coronavirus (paragraph **Error! Reference source not found.**). Notwithstanding this, we have considered the impact of

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<sup>95</sup> [Merger assessments during the Coronavirus \(COVID-19\) pandemic](#)

Coronavirus in our assessment of the competitive effects of the Merger where relevant.

## The Parties' submissions

7.12 We have considered the Parties' arguments as part of our assessment. We have summarised their main arguments in relation to the assessment of competition:

- (a) viagogo argued that it was focused on 'growing the market',<sup>96</sup> in particular attracting additional listings in order to increase liquidity;
- (b) viagogo argued that StubHub is not a constraint on its offer to buyers or resellers, pointing to 'the absence of evidence showing that Stubhub provides a competitive constraint to viagogo, except the views of some resellers ... [which] were in fact very mixed';
- (c) There is a lack of references to competitive interactions between the Parties in viagogo's internal documents;
- (d) viagogo argued that its suspension from Google Ads for several months in 2019 'suggests that the extent of competition between the Parties is limited', with only a small share of the sales that viagogo lost diverting to StubHub in this period (approximately [X] %);
- (e) The Parties also argued that the primary ticketing platforms exert a competitive constraint on the Parties, pointing to policies that, in their view, 'blur' the line between primary and secondary prices;
- (f) In addition, these resale platforms are in competition with the Parties, for both buyers and sellers, and, could adjust their business models in the future to allow sellers to list tickets at uncapped resale prices, hence, becoming even closer competitors to the Parties.<sup>97</sup>

## Third-party representations

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

- (a) Among primary ticketing platforms, AXS expressed concerns about the Merger, pointing to a number of likely effects - the merged firm 'controlling

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<sup>96</sup> Parties' Phase 2 Initial Submission, 27 July 2020, paragraphs 8, 11, 12.

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

the substantial majority of the resale market, because they would be able to attract and retain 100% of the professional resellers', consumers continuing to pay higher prices 'than they need to' and to be 'misled into thinking that [the Parties' platforms] are official sites'.<sup>98</sup> [REDACTED] Eventim did not give a view.<sup>99</sup> Gigantic stated that it was 'difficult to see any benefits to competition or customers from the Merger', pointing to viagogo's 'powerful' position in the market' and to 'its dominance of Google Ads', arguing that neither Party has 'high standards of customer care' and predicting that a 'stronger' merged platform could lead to more primary tickets being sold to 'touts and fewer directly to fans, leading to higher prices for consumers overall'.<sup>100</sup>

- (b) Some secondary ticketing site operators also presented views on the Merger, addressing both the impact on their business and the market overall. For example, [REDACTED] stated that the Merger would not substantially affect it or its market share, and that the Merger could even help [REDACTED]. However, it also acknowledged that the Merger 'would give consumers fewer options and could be problematic' and that 'in general the Merger is not good for the market'.<sup>101</sup> These concerns were echoed by other capped secondary platforms. [REDACTED] suggested that 'the big loser will be the consumer' if the Merger goes ahead because the merged entity will have more marketing power which will increase the number of people using their platform 'at exorbitant prices and ever escalating fees'.<sup>102</sup> [REDACTED] told us that the Merger would lead to the 'concentration of power for pricing transactions' and 'monopolistic power for purchasing ad words'.<sup>103</sup>
- (c) We received a range of views from resellers on what the impact on competition would be from the Merger. The majority of the resellers who we spoke to expressed concerns about the impact of the Merger, mentioning that there would be little, and some said no, competition post-Merger leading to a worse service for buyers of tickets and a worse offer to resellers when it came to fees and terms. However, there were also a significant minority who did not have concerns, suggesting potential benefits to buyers in terms of the simplicity of having more tickets consolidated on one platform, improvements to StubHub in those aspects of the product offered by both Parties that viagogo does better, and some resellers said that the Merger would not have an impact because the

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<sup>98</sup> [REDACTED].  
<sup>99</sup> [REDACTED].  
<sup>100</sup> [REDACTED].  
<sup>101</sup> [REDACTED].  
<sup>102</sup> [REDACTED].  
<sup>103</sup> [REDACTED].

market would still set the ticket resale prices. These reasons are explored in further detail in Appendix G: Summary of evidence from resellers.

7.14 A final group who we received views from were consumer and industry bodies, who were against the Merger. Two of the groups we spoke to ([REDACTED] and the Fair Ticketing Alliance) suggested that the Merger would eliminate competition completely, adding that without competition ‘fees may increase’ and ‘customer service may drop off’.<sup>104</sup> Two other groups stated a different reason for having concerns about the Merger, as they suggested that ‘the Merger would increase public detriment’<sup>105</sup> and might see the merged entity ‘lapse into its historical bad practices... to the detriment of consumers’.<sup>106</sup>

## **Nature of competition in secondary ticketing**

7.15 The Parties submitted that competition between them does not influence their level of fees and wider service offering and instead it is the search for liquidity that does. We have therefore evaluated this argument by assessing the nature of competition in the current market. Our analysis demonstrates that competition does matter, so we have gone on in subsequent sections to assess what competition between the Parties is being lost by the Merger and what competition from third parties will remain after the Merger.

7.16 This section sets out:

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

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

<sup>105</sup> [REDACTED].

<sup>106</sup> [REDACTED].

## ***Parameters of competition***

- 7.17 Secondary ticketing platforms compete by matching resellers with buyers of tickets. Platform operators need to attract both resellers and buyers to their platform in order to generate sales.
- 7.18 Evidence from resellers and from the Parties' internal documents and responses indicates that the most important competitive parameters for attracting resellers are:
- (a) Access to a large pool of potential buyers – resellers want to be on platforms where they are most likely to be able to sell their inventory; this means that, other things being equal, the platform with the greatest ability to attract potential buyers will also be the most attractive to resellers.
  - (b) Ability to set the resale price – for resellers who want to make a profit from selling tickets as opposed to reselling them at or below face value, the freedom to set the resale listing price is an important competitive differentiator between uncapped platforms like viagogo and StubHub and capped platforms like Twickets and Ticketmaster Exchange.<sup>107</sup>
  - (c) Level of reseller fees - the Parties charge resellers a percentage fee based on the listing price of the ticket. There is typically no listing fee or standing charge to list on the platform. However, percentage reseller fees can vary.
  - (d) Payment terms – while resellers are usually paid once an event takes place, some resellers have been offered payment at the point of sale. For example, some resellers pointed to StubHub offering promotions (eg reduced fees or improved payment terms) as a reason for choosing the platform.<sup>108</sup>
  - (e) Ability to manage inventory and ease of listing – the Parties both provide software to larger resellers, allowing them to manage their ticketing inventory. The Parties told us that this service was important for enabling large sellers to manage large volumes of ticket listings efficiently. This was also consistent with responses from resellers – for example, one reseller said that it had more technical problems on StubHub and that listing was easier on viagogo.<sup>109</sup>

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<sup>107</sup> This is explained further in Appendix G: Summary of evidence from resellers, paragraphs 37-40.

<sup>108</sup> See Appendix G: Summary of evidence from resellers, paragraph 30.

<sup>109</sup> See Appendix G: Summary of evidence from resellers, paragraph 32.

- (f) Quality of service – the Parties told us that they contacted large resellers regularly and provide support to deal with technical or payment issues. A number of resellers who we contacted pointed to better customer service with StubHub as a reason for using them.<sup>110</sup>

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

- (a) Access to tickets, including the range of available tickets and ease of discovery by buyers – the Parties told us that ticket buyers are usually searching for tickets to a particular event, and in some cases for a particular type of ticket or seat location for that event. Having access to a large pool of tickets to different events therefore maximises the chances that any given buyer will purchase from the platform. The ease with which buyers can discover tickets through search is also an important competitive parameter, which the Parties can influence eg by paying for search advertising and optimising their sites for organic search results.
- (b) The price of the ticket and level of the buyer fee – buyer fees are typically charged as a percentage of the sale price of the ticket. In most cases the total cost presented to the buyer is broken down into ‘ticket price’ and ‘booking fee’. viagogo told us that it had [redacted].<sup>111</sup> Some platforms also charge a delivery fee. StubHub’s platforms presents buyers with a ‘ticket price’ and ‘total fees’ which includes the buyer fee, delivery charges and VAT. The reseller fee is not presented.
- (c) Nature of the buyer guarantee – the Parties both guarantee buyers a refund of the price paid for the tickets in question if they are found to be unusable. The Parties noted the importance of this guarantee in giving buyers the confidence to purchase secondary tickets. By contrast, other online channels such as social media and classified advertising channels do not provide any guarantee to buyers.
- (d) Brand awareness – we received mixed evidence on the importance to buyers of being aware of the platform brand. On the one hand, some third parties (comprising some resellers, competitors and industry groups) suggested that buyers might be more willing to purchase secondary tickets from a well-known brand. Some of StubHub’s internal documents also talked about the value of brand awareness in the broader ticketing sector. On the other hand, the Parties told us that buyers most often

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<sup>110</sup> See Appendix G: Summary of evidence from resellers, paragraph 30.

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

accessed their platforms through searching for events or artists (either through organic or paid search) and not by going directly to the platform and [REDACTED].<sup>112</sup>

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

### ***Role of indirect network effects and importance of liquidity***

7.21 In a two-sided market the value of the platform for users on one side often depends on the number of users on the other side: it is easier to attract buyers if there are many ticket listings by sellers on a platform, and vice versa. Given this, indirect network effects are likely to be important, with an increase in users on one side leading to an increase in users on the other side. However, the strength of indirect network effects can vary depending on the nature of the platform and consumers' behaviour.<sup>113</sup>

7.22 The Parties made two main arguments in relation to the role of indirect network effects and liquidity in our Merger assessment. First, they argued that their key strategic objective was to 'grow the secondary market'. In particular, they argued that the incentive to attract new buyers and resellers onto the platform was greater than the incentive to win buyers or resellers from other secondary ticketing platforms, and that this would constrain the incentive to increase fees or worsen terms post-Merger. Second, the Parties provided analysis suggesting that greater liquidity (ie more tickets listed for a particular event attracting larger pools of prospective buyers) on the viagogo platform had led to lower ticket prices to buyers, as well as higher conversion rates and more revenue for the platform. This might indicate that ticket prices would be lower on the merged platform.

7.23 In relation to the first argument, we found evidence in viagogo's internal documents to support the view that liquidity is important. For example, [REDACTED] (its own articulation of indirect network effects [REDACTED]).

7.24 However, we also found that the Parties were both competing for these new sources of liquidity (see our assessment of the Closeness of competition

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<sup>112</sup> [REDACTED].

<sup>113</sup> Markets that are characterised by strong network effects may 'tip' into monopoly. However, we do not think that this is inevitable in this market. Evidence from the Parties is that there are a number of competing platforms in the US. Further, in the UK StubHub has been winning market share in recent years. We also note that there are some characteristics in the market which reduce the likelihood of tipping – for example, there is a large degree of multi-homing by resellers across the Parties' platforms (section on 'Reseller multi-homing analysis') which is consistent with resellers viewing both platforms as attractive sales channels (rather than all customers moving towards the largest one) and with the costs of multi-homing not being so high as to lead to customers choosing a single platform (typically the largest one).

between the Parties, below). We would expect the same parameters of competition set out in the previous section to be as relevant to attracting new buyers and resellers to the platform as to encouraging existing buyers and resellers to switch between the Parties. Any loss of competition following the Merger would therefore also reduce competition for these new sources of liquidity.

- 7.25 In relation to the impact of liquidity on ticket prices, the Parties' advisers submitted an econometric study which found a negative relationship between the number of tickets listed for a particular event on viagogo and the average resale price on the platform, based on an analysis of the relationship between viagogo's past sales prices and volumes. They argued that:
- (a) Attracting more liquidity to a platform results in increased competition between resellers, which lowers resale prices to buyers; and
  - (b) Increased liquidity also leads to consumers having access to a greater range of events and ticket types.<sup>114</sup>
- 7.26 We do not consider that this modelling provides evidence that ticket resale prices would be expected to be lower on the Parties' platform following the Merger, for the following reasons.
- 7.27 First, other evidence on resale prices and platform size indicates that a larger platform (which could be expected to have greater liquidity) does not necessarily lead to lower resale prices. viagogo has been substantially larger than StubHub (in terms of GTV) in the UK: around [REDACTED] larger in 2019, and [REDACTED] in both 2017 and 2018. As such, viagogo is likely to have higher liquidity than StubHub at present.
- 7.28 Our analysis of resale prices on the Parties' platforms based on all transactions found that sales on viagogo tended to have a much higher mark-up over face value (with a median mark-up of [REDACTED]%) compared to StubHub (a median mark-up of [REDACTED]%). Sales on viagogo also had a higher proportion of transactions that took place at resale prices of more than 20% above face value than did sales on StubHub ([REDACTED]% of transactions compared to [REDACTED]% of transactions).<sup>115</sup>
- 7.29 Our analysis of 13 high-ticket-volume events for which secondary tickets were sold on both Parties' platforms, pointed to a higher proportion of resale prices on viagogo exceeding face value ([REDACTED]% on average) than on StubHub

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<sup>114</sup> [REDACTED].

<sup>115</sup> See Appendix C, Table C.1.

([REDACTED]%).<sup>116</sup> For our sample of events, the number of tickets sold on viagogo was higher than on StubHub for all but two of these events.

- 7.30 Therefore, the Parties' econometric evidence on the impact of liquidity on resale prices is not consistent with our analysis of the Parties' transaction data.
- 7.31 Second, the Parties' analysis reflects the relationship between supply of inventory and prices on viagogo's platform. It is unsurprising that, in this analysis, as supply increases, resale prices fall. The analysis does not model what the impact would be of combining the Parties' platforms (which would shift demand for, as well as supply of, inventory) and does not take account of the impact of any loss of competition on fees and other payment terms. StubHub pointed out that 'the [REDACTED].'<sup>117</sup>
- 7.32 Third, if the merged firm were able to gain a greater share of overall ticket volumes than the two separate platforms as a result of greater network effects, the overall effect on the prices paid by buyers is ambiguous, depending on the source of this additional liquidity, in the form of additional ticket listings on viagogo. The Parties' analysis purports to show that additional listings for an event on viagogo were associated with lower resale prices on viagogo relative to resale prices when viagogo had fewer listings. The source of the additional listings is not made clear, but a brief overview of the possible options suggests that buyers of secondary tickets would be unlikely to benefit even if the Parties' analysis is accurate:
- (a) If additional listings come from smaller uncapped platforms, then (in principle) the enhanced competition between resellers may lead to lower resale prices, as the Parties have argued. However, the Parties also argued that StubHub (despite being the only other uncapped platform of any size) is a not an important potential source of additional liquidity for viagogo.
  - (b) If the additional listings come from resellers moving inventory from capped secondary platforms, then resale prices are likely to be higher when listed on viagogo given the lack of restriction on resale prices, so buyers are likely to be worse off.
  - (c) If additional listings come from other online channels, such as social media or classified listings websites, then this is likely to come from 'occasional' or fan resellers, rather than professional resellers, so we

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<sup>116</sup> See Appendix C.

<sup>117</sup> [REDACTED].

might expect resale prices to be higher than on social media or classified listings websites when listed on viagogo.

- (d) If additional listings come from a higher proportion of primary tickets entering the secondary market (from professional or 'occasional' resellers) then the effect on buyers (as a whole, for a particular event) is likely to be to increase average ticket prices, as fewer end-users/fans pay the (on average, significantly) lower primary price than would otherwise have been the case, even if secondary prices may be (slightly) lower than they otherwise would have been.

7.33 Overall, in response to both of the Parties' arguments we consider that competition between viagogo and StubHub, and not just the desire to grow the secondary market, matters in how the Parties' attract users to their platforms and to ensure that users get the benefit of that competition.

### ***Single- and multi-homing by buyers and resellers***

7.34 Another potentially important factor in assessing competition between two-sided platforms relates to whether customers on either side of the market tend to single-home or multi-home.

7.35 When more than one ticketing platform is available, resellers can choose whether to use only one platform (i.e. they 'single-home') or multiple platforms (i.e. they 'multi-home') when listing their tickets for resale. Similarly, buyers can choose whether to search for tickets on only one platform or across multiple platforms.

7.36 The degree of multi-homing on each side of the platform can be informative of where competition is most likely to occur between platforms. For example:

- (a) A high proportion of single-homing buyers may mean that platforms face less direct competition from other platforms in attracting resellers. This is because, when a high proportion of buyers single-home, the platform becomes the only way for a reseller to access that particular group of buyers. Resellers then need to multi-home, and so use both platforms rather than choose one or the other, in order to access the different groups of buyers. In this context, we might expect competition to be stronger on the buyer side, with platforms trying to attract single-homing buyers.
- (b) In contrast, a high proportion of multi-homing buyers means that a platform may face greater immediate competition from other platforms in trying to attract resellers, as multiple platforms provide access to the same set of buyers.

- 7.37 The Parties submitted that most competition takes place on the buyer side of the platform because buyers tend to single-home. [REDACTED]. They argued that this meant that resellers would treat the Parties' platforms as complements rather than substitutes, since they would each provide a channel for reaching a different set of single-homing buyers. Platforms would then compete strongly to attract customers on the buyer side.
- 7.38 We disagree with the Parties' argument that buyer behaviour suggests that the platforms will not compete for resellers:
- (a) The Parties told us that most buyers purchase very small volumes of tickets, with few repeat purchasers in any given year.<sup>118</sup> Given this pattern of buyer behaviour, it is not surprising that the proportion of buyers purchasing tickets on both platforms in a given year is low, and this alone cannot tell us anything about whether buyers would be willing to substitute between the two platforms.
  - (b) The Parties also told us that buyers largely search for tickets to a specific event, [REDACTED],<sup>119</sup> [REDACTED] and that there are very few repeat purchases. This suggests that buyers are willing to switch between different secondary ticketing platforms and there is no evidence that the Parties serve separate pools of consumers.
  - (c) Our analysis of 'cross-visiting' behaviour based on comScore data, set out in more detail in Appendix F, indicates that a substantial minority ([REDACTED] 20-40%) of visitors to StubHub in a given month also visit viagogo. For viagogo, this share is much lower, with [REDACTED] less than 10% of its visitors also viewing the StubHub website in a given month.
  - (d) If competition were mainly for buyers rather than for resellers, we would also expect to see lower buyer fees, and potentially other efforts to lock in buyers, such as by offering discounts for repeat purchases. The fact that we do not see such outcomes, and that fees are generally higher on the buyer side than on the reseller side, suggests that the Parties' commercial behaviour is not consistent with a high level of single-homing by buyers, in the sense that buyers are likely to be exclusive or loyal to one platform rather than another.
- 7.39 As such, there is no evidence that each platform attracts fundamentally different buyer groups or that these are in any way 'locked in', exclusive or 'captive' to one platform or the other. We would therefore expect resellers to

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

<sup>119</sup> [REDACTED].

see the platforms to some extent as substitutes for reaching buyers. This is also consistent with the evidence from resellers, described in more detail below.

### **Segmentation of resellers**

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

7.41 The Parties' platforms provide services to a range of different types of resellers:

(a) At the top of the distribution in terms of ticket sales are likely to be 'volume' resellers, who are professional resellers;

(b) At the other end are 'occasional' resellers, essentially one-off resellers who are likely to be fans who can no longer make an event; and;

(c) Between these are likely to be 'intentional' resellers, amateurs who have bought tickets with the intention of later reselling them to make a profit.

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

(a) Resellers that sell more than 100 tickets per year on a given platform are defined as 'Traders'. These accounted for more than 50% of each Party's GTV<sup>120</sup> in 2019;

(b) Similarly, viagogo defines its resellers that sell more than 100 tickets within a six-month period as 'power sellers'; and

(c) StubHub classifies its resellers as 'B2C' (business to consumer) and 'C2C' (consumer to consumer), with its B2C resellers accounting for [X] % of StubHub's GTV in secondary ticket sales in 2019.<sup>121</sup>

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

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<sup>120</sup> Gross Ticketing Value (GTV) is the total value of ticket sales on the platform. When we use GTV in relative terms or in proportional terms, it is a good proxy for the Parties' own revenue because fees are typically calculated as a percentage of the sale price.

<sup>121</sup> [X].

- (a) StubHub charging [X] to its largest resellers, while viagogo charges (on average) [X] to its largest resellers (as set out in 7.98);
- (b) Both Parties are more likely to offer attractive payment terms to their [X] resellers (as set out in paragraphs 7.103 and 7.104); and
- (c) Both Parties offer enhanced services, eg, dedicated sales team support, inventory management advice, etc. to their largest resellers.

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

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

7.45 Buyers all face the same terms on the Parties' platforms and therefore we have not found it necessary to consider segmenting buyers.

7.46 Overall, our competitive assessment is not conducted separately for any segment within the Parties' reseller customer bases, but differences between resellers are taken into account where relevant.

## Theory of harm

7.47 This section briefly sets out the harm to buyers and resellers that might arise from a loss of competition between the Parties' secondary ticketing platforms.

7.48 Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity to profitably raise prices or degrade the quality of its services on its own and without needing to coordinate with its rivals.<sup>122</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors. We have therefore assessed in the following sections how closely the Parties compete, and what competitive constraints would remain following the Merger.

7.49 The loss of competition between the Parties as a result of the Merger could lead to harm to customers on either side of the platforms.

7.50 On the reseller side, harm could take the form of:

- (a) Higher fees charged for the sale of tickets to consumers;
- (b) Fewer consumers visiting and purchasing secondary tickets through the Parties' platforms following any increase in fees charged by the Parties or reduction in bidding for paid search terms;
- (c) Worse terms and conditions (especially in relation to payment terms) when selling tickets to consumers; and
- (d) Lower quality of customer service to resellers and platform functionality.

7.51 On the buyer side, a loss of competition may lead to:

- (a) Higher fees charged for the purchase of tickets from resellers;
- (b) Worse range of events (or fewer tickets being made available for a given event) if resellers delist from/do not list on the Parties' platforms following any increase in reseller fees charged by the Parties;

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<sup>122</sup> Hence, these are 'unilateral', as opposed to coordinated, effects. [Merger Assessment Guidelines](#), from paragraph 5.4.1.

(c) Worse terms and conditions (especially in relation to refunds) when purchasing tickets from resellers; and

(d) Lower quality of customer service to consumers and platform functionality.

7.52 Across both sides of the platform there could also be a reduction in innovation and incentives for the Parties to compete to attract new buyers and sellers, including by making their platforms easy to discover and transact on compared to their rivals.

### **Closeness of competition between the Parties**

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

7.54 We carried out analysis of:

(a) Structural indicators including shares of supply and distribution of the Parties' sales between different types of events.

(b) Resellers' use of the platforms, including evidence of resellers' multi-homing between the Parties, resellers' views on closeness of competition between them, and evidence from the Parties' internal documents on how they compete for sellers.

(c) The Parties' strategies to attract ticket buyers, including evidence from Google Ads bidding strategies and evidence from the Parties' internal documents.

(d) The impact of viagogo's suspension from Google Ads in 2019.

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

#### ***Structural indicators***

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

(a) Their market shares and those of other secondary ticketing platforms;

- (b) The relative size and growth of the Parties' platforms in recent years; and
- (c) The types of events for which tickets are listed for sale on the Parties' platforms

### Market shares

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

7.58 As set out in Table 2, below, the Parties' average combined share of the market in 2019 was 90-100[redacted]%, with an increment of 30-40[redacted]% as a result of the Merger.

**Table 2: Market shares for Uncapped Secondary Ticket Exchange Platform services, by GTV, 2017-2019 (%)**

	2017	2018	2019
viagogo	[redacted] 60-70	[redacted]70-80	[redacted]60-70
StubHub	[redacted] 20-30	[redacted]20-30	[redacted]30-40
<b>Parties combined</b>	<b>[redacted] 80-90</b>	<b>[redacted]90-100</b>	<b>[redacted]90-100</b>
GetMeln!	[redacted] 10-20	[redacted]0-10	-
SeatWave	[redacted]0-5	[redacted]0-5	-
Gigsberg	-	-	[redacted]0-5
<i>Total</i>	<i>100</i>	<i>100</i>	<i>100</i>

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

Note:

1. GetMeln! and Seatwave exited the UK market in September 2018.
2. Gigsberg entered the UK market in April 2019.

7.59 Up until 2018, there were two other competing platforms in the market, GetMeln! and Seatwave. These secondary ticketing platforms were acquired by Ticketmaster: GetMeln! in 2009 and Seatwave in 2014,<sup>123</sup> before being shut down in September 2018. The Parties have argued that Gigsberg is a growing competitor, but we note that, while it entered in April 2019 and grew over the course of 2019, and so the 0-5[redacted]% share may understate its more recent market position, even based on monthly GTV data up to and including February 2020, it accounted for at most 0-5[redacted]% of the market in any given month.

<sup>123</sup> CMA Decision in [Ticketmaster/Seatwave](#), 26 March 2015, paragraphs 1 and 10.

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

**Table 3: Shares of supply across Capped and Uncapped Secondary Ticket Exchange Platform services, by GTV, 2017-2019 (%)**

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

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

Note:

1. Volume data was not submitted by Gigantic.

7.61 Even in this broader sector, the other platforms have far smaller secondary sales than the Parties, with the largest - Ticketmaster’s exchange platform - accounting for only a 0-10[%] share by value (0-10[%] by volume).

*Relative size and growth of the Parties in recent years*

7.62 [X]. viagogo submitted that this means StubHub is a weak competitor to viagogo;<sup>124</sup>

7.63 We note that, based on annual GTV data submitted by the Parties:

- (a) [redacted] and StubHub has increased its GTV between 2017 and 2019, whereas viagogo's GTV has reduced over the same period;
- (b) viagogo's GTV fell in 2019, but StubHub also increased its level of GTV. Whilst viagogo lost share due to the Google Ads suspension, these sales were not fully recaptured by StubHub (see paragraph 7.141); and
- (c) Even if StubHub's market share in the future were to be around 20-30[redacted]%, StubHub would remain by far the closest secondary platform in size to viagogo.

*Types of events for which tickets were sold on each platform*

- 7.64 At Phase 1 the Parties argued that there was differentiation between the platforms, with viagogo specialising in music-related events and StubHub in sports events. A number of resellers submitted that StubHub was a better platform for listing tickets for some sports, given it had previously had relationships with a number of sports clubs.
- 7.65 Based on the Parties' transaction data, there are some differences in the mix of sales across different events on the Parties' platforms, with:
- (a) [redacted]% of StubHub sales being for sports events in 2019, while the equivalent share on viagogo was [redacted]%; and
  - (b) [redacted]% of viagogo's sales coming from live music events, while for StubHub the share was [redacted]%;
  - (c) Theatre and comedy events made up the remainder of events on each platform.
- 7.66 In coming to a view on whether this difference was sufficient to point to a material degree of differentiation between the Parties, we considered the following evidence:
- (a) As set out below and in Appendix D, a significant number of large resellers, representing a high proportion of the Parties' sales, multi-home across both platforms - including selling tickets for the same events on each platform - and treat the Parties' platforms as substitutes;
  - (b) The resellers who we spoke to generally did not recognise a significant difference between the Parties' platforms, with none pointing to this as a reason to use one platform and not the other, and both platforms being viewed as strong alternatives to each other (see paragraphs 23 to 32 of the Appendix G); and

- (c) On fees and terms offered to resellers (or buyers), there was no evidence that the Parties had materially different offers based on what genre of events tickets were listed (or bought) for.

7.67 Overall, the evidence suggests that this difference in focus does not mean that the Parties are not close competitors across event types.

*Provisional conclusion on structural indicators*

7.68 Evidence on structural indicators points towards the Parties being close competitors, with:

- (a) A very high combined market share, and a substantial increment as a result of the Merger, which remains the case even when a wider set of capped platforms are included;
- (b) StubHub representing a sizeable share of the market, with annual growth rates of around [X]% in recent years; and
- (c) On fees and terms offered to resellers (or buyers), there was no evidence that the Parties had materially different offers based on genre of event.

***Competition between the Parties for platform services***

7.69 In addition to the structural indicators discussed above we have also examined how the Parties have competed against each other. We have considered how the Parties compete in reference to their platform characteristics and to the factors that are important in attracting resellers and buyers to their platforms.

7.70 In paragraphs 7.18 and 7.19 we listed the main factors in attracting resellers and buyers to platforms. To recap, to attract resellers these are:

- (a) access to a large pool of potential buyers;
- (b) ability to set the resale price;
- (c) level of reseller fees;
- (d) payment terms;
- (e) ability to manage inventory and ease of listing; and
- (f) quality of service.

7.71 To attract buyers, these are:

- (a) access to tickets for a particular event, including the range of available tickets and ease of discovery (eg through search advertising);
- (b) the price of the ticket and level of the buyer fee;
- (c) nature of the buyer guarantee;
- (d) awareness of the brand.

7.72 Having the freedom to set the resale listing price is an important competitive differentiator between uncapped platforms and capped platforms from the perspective of resellers (paragraph 7.18). The resellers who we spoke to told us that they look to sell at a profit if they can (Appendix G, paragraph 21), and transaction data that we have analysed shows the majority of tickets sold on the Parties' platforms had a mark-up over face value of at least 20% and average mark-ups are high (paragraph 6.11). The opportunity to make a profit from the resale of tickets seems to be the primary driver of resellers to the Parties platforms.

7.73 When resellers who use the Parties' platforms do use capped sites, we have been told that they do so to sell inventory that will not typically make a profit on the uncapped sites (Appendix G, paragraph 39).

7.74 In the previous section we showed how the Parties are the only two uncapped secondary ticketing platforms of any material size (Table 2). Even if uncapped secondary ticketing platforms are included with capped secondary ticketing platforms in the comparison to the Parties, the Parties' size still far outstrips any of these (Table 3). Indeed, by volume of tickets sold, the Parties are around [X] of all other platforms combined (Table 3), which, apart from Gigsberg, are capped platforms.

7.75 We consider that the uncapped nature of the Parties' platforms is a key competitive parameter for the Parties and the Parties are by far the two most successful secondary ticketing platforms in the UK.

7.76 They have been successful at attracting high-volume resellers and buyers to their platforms (which is discussed further, below) and through indirect network effects, an increase in users on one side of their platforms has led to an increase in users on the other side (thereby enabling resellers to access a large pool of prospective buyers and buyers to access available tickets to an event, both of which we have identified as key parameters of competition). The Parties invest more in advertising than any other uncapped or capped secondary ticketing platform, facilitating ticket discovery for prospective buyers. viagogo was visited by many more unique visitors than StubHub or other secondary ticketing exchange platforms.

- 7.77 We consider that these factors, some of which are discussed in more detail below, indicate that the Parties are likely to be close substitutes.<sup>125</sup>
- 7.78 viagogo has submitted that StubHub is not a constraint on its offer to buyers or resellers (paragraph 7.12). We consider that although viagogo may not be explicitly taking StubHub into account in setting its competitive offering, it is nevertheless influenced by the presence of StubHub in setting that offering, at least to some extent. For example, viagogo told us that:

[REDACTED]<sup>126</sup>

- 7.79 Given the structure of the market (discussed above) and that the Parties' platforms are the only two platforms of any material size that enable resellers to make a profit, it therefore seems to us that when viagogo tests its parameter setting in the market (examples include adjusting payment terms or suggesting resale ticket pricing to resellers, although it is also applicable to other parameters such as fee levels) – when it 'turns the dial' as they told us in the hearing – it is very likely that the impact in the market (and on viagogo's business) reflects the close competitive presence of StubHub in the market.
- 7.80 We now turn to discussing some of these factors, as well as others, in regard to how they are used to attract resellers or buyers to the Parties' platforms. It is important to note that although we have examined how the Parties compete to attract resellers and buyers to their platforms, we have not lost sight of the indirect network effects operating in the market. Therefore, we are acutely aware that if the Parties are strongly competing for resellers they are also strongly competing for buyers as buyers seek the ticket inventory that resellers bring to the platforms, and vice versa.

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

- 7.81 In this section we summarise the evidence which informs our assessment of how closely the Parties compete for resellers, including:
- (a) An assessment of similarities in characteristics of the Parties' resellers.
  - (b) A quantitative analysis of the extent of multi-homing across the two platforms by the Parties' large resellers, including an event-level analysis of multi-homing behaviour;

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<sup>125</sup> We consider these are the main factors that drive competition between the Parties although they are not the only factors. For example, we also note that some resellers told us that the Parties had similar functionalities (Appendix G paragraph 29)

<sup>126</sup> [REDACTED].

- (c) Evidence from resellers that responded to our questionnaires, including on their use of the Parties' platforms, reasons for their listing behaviour, and their views on the closeness of competition between the Parties; and
- (d) Evidence of flexing of reseller fees and terms in response to competition.

### *Characteristics of the Parties' resellers*

- 7.82 We gathered data from the Parties on the characteristics of their resellers, including information on the number and value of tickets sold by each reseller between January 2017 and February 2020. We used this data to understand the distribution of resellers (in terms of size and genre of events covered) and test whether there were any significant differences in the Parties' reseller bases.
- 7.83 We found that there were a similar number of resellers on each platform – around 40,000-75,000 [redacted] active resellers on viagogo in 2019 and 40,000-75,000 [redacted] on StubHub in 2019. We also found that the mean and median GTV per reseller was similar for the Parties. In 2019, viagogo's resellers had a mean annual GTV of £[redacted] and a median of £[redacted], while StubHub's had a mean GTV of £[redacted] and a median of £[redacted] per annum.
- 7.84 For both viagogo and StubHub, there is a significant skew in the size of resellers, with a small proportion of resellers making up the vast majority of the value of sales on each platform. The largest 10% of resellers accounted for 80-100% [redacted] of GTV on StubHub and [redacted] more than 70% on viagogo, in 2019. Even within the top decile, we found that the size of resellers varied significantly, between an annual GTV of around £[redacted] at the lower end of the top decile to more than £[redacted] for the largest sellers on each platform.
- 7.85 Based on this evidence, the Parties' resellers appear to have similar characteristics. There is no evidence that the Parties are competing for significantly different groups of resellers. They both serve a wide range of sellers, from one-off 'casual' occasional or fan resellers to large 'for profit', professional or volume resellers.

### *Reseller multi-homing analysis*

- 7.86 We also gathered evidence on the degree of multi-homing by resellers across the Parties' platforms. Our analysis is set out in more detail in Appendix D.
- 7.87 Our analysis shows that a significant proportion of the largest resellers use both Parties' platforms in a year and the degree to which they do so is substantial. This suggests the Parties' overlap on the reseller side of the

platform is substantial and that both Parties' platforms are considered a valuable sales channel. In particular, we found that:

- (a) 20-30[REDACTED]% of viagogo's largest resellers sold tickets on both platforms in 2019. These sellers accounted for [REDACTED]% of viagogo's total GTV and [REDACTED]% of StubHub's GTV; and
- (b) 20-30[REDACTED]% of Stubhub's largest resellers sold tickets on both platforms in 2019. These sellers accounted for [REDACTED]% of StubHub's total GTV and [REDACTED]% of viagogo's GTV in 2019.

7.88 Since the Parties were only able to provide information on ticket sales rather than all ticket listings, these results provide a lower bound indication of the actual competitive overlap on the reseller side of the Parties' platforms. Resellers may have considered both Parties' platforms before placing inventory on one platform, or listed tickets on both while ultimately making a sale only on one. Neither of these forms of competitive interaction would be caught by our analysis, which is based on actual ticket sales.

7.89 We also found a significant level of multi-homing when looking at resellers' ticket sales for a set of large events as well as for the same event, inferring from this that multi-homers are likely to regard both platforms as viable channels for the same tickets, rather than using them for a different purpose (eg, using viagogo for concert tickets and StubHub for sports events). We looked at a sample of 96 popular events where tickets were sold on both of the Parties' platforms and found that overall the sales by multi-homers accounted for at least 21% of the total GTV achieved by the Parties for these events. In addition, our analysis showed that large resellers concurrently use both Parties' platforms to sell tickets to the same event. This indicates that the large resellers who multi-home tend to see and use the Parties as substitute sales channels.

7.90 The Parties argued that our finding of high levels of multi-homing did not necessarily demonstrate that sellers were using the platforms as substitutes. Instead, the Parties argued that the platforms might be used as complements. This might be the case if buyers typically single-home, in which case viagogo and StubHub would be viewed by resellers as complementary channels for accessing different pools of buyers served by the two platforms.<sup>127</sup>

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<sup>127</sup> [REDACTED].

7.91 We disagree with the Parties' argument and consider that our multi-homing evidence does suggest that the sellers treat the Parties' platforms as substitutes, for the following reasons:<sup>128</sup>

- (a) As set out at paragraph 7.39, we have found that buyers are willing to switch between different secondary ticketing platforms and there is no evidence that the Parties serve separate pools of consumers. Given this behaviour by buyers, we would expect resellers to treat the Parties' platforms largely as substitutes rather than complements.
- (b) This finding is consistent with the evidence that a high rate of multi-homing occurs even when looking narrowly at sales of tickets to the same event. If the Parties' platforms were treated as complements for different groups of consumers, we would not expect sellers to use them to sell tickets for the same events.
- (c) It is also consistent with the views of resellers, who in many cases told us that they treated the Parties as substitutes when deciding where to list and sell tickets. This evidence is summarised in the following section and in Appendix G.

#### *Resellers' views on closeness of competition*

7.92 We asked resellers about their use of the Parties' platforms and whether they viewed the Parties as close alternatives. As described further in Appendix G, we have received evidence from some resellers, which we consider to be indicative of wider views, particularly of larger resellers who make up the majority of the Parties' revenues.

7.93 Around half of the respondents told us that they only sold on the Parties' platforms and did not use any other sales channels in 2019, and a significant majority listed the Parties as their first and/or second most-used resale channels. For the resellers for whom this was not the case, only one reseller mentioned an alternative secondary platform instead, with the other resellers pointing to their own websites or other 'offline' sales (e.g. through travel agencies) in their top two.

7.94 viagogo was viewed as a very strong alternative to StubHub by most of the resellers that we spoke to, with about three quarters listing viagogo as an alternative to StubHub and most of these saying that it was the only alternative. Indeed, this is likely to understate the significance of viagogo as an alternative, as only a very small number provided alternatives without

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<sup>128</sup> See also Appendix D, paragraph 12.

including viagogo. Of those that did list viagogo as an alternative, the average strength given was 4.5-out-of-5, which was the highest given to any platform.

- 7.95 StubHub was also seen as the strongest alternative to viagogo. More resellers listed StubHub as an alternative to viagogo than the other way around, with an average strength of alternative of 3.2-out-of-5, which was the highest for any alternative to viagogo. This is consistent with other sources of evidence which indicate that StubHub is the closest alternative to viagogo.
- 7.96 Qualitative responses from some resellers also suggested close competition between the parties. A number of resellers recognised viagogo to be the ‘market leader’ and said that StubHub were ‘the only serious competitor to viagogo’.<sup>129</sup> Resellers also indicated that they thought of the Parties as ‘each other’s main competitor’<sup>130</sup> and as the only two well-known options because of what they spend on Google Ads.<sup>131</sup>
- 7.97 Overall, this evidence indicates that most resellers whom we engaged with viewed the Parties as close substitutes, and much closer competitors than other potential resale platforms and channels. Although we spoke mainly to larger ‘professional’ resellers and note that smaller ‘occasional’ sellers may have other views, we consider that we can place weight on our findings as indicative of the views of larger resellers that make up the significant majority of the Parties’ revenues, and hence drive the most important competitive interactions between the Parties.

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

- 7.98 We looked at evidence on the Parties’ reseller fees and payment terms offered to resellers, and any changes to these fees, payment terms or other aspects of their offers in order to attract resellers to their platforms. We did this in order to determine the extent to which the Parties were responding to competitive constraints in making those decisions. This evidence is set out below.
- 7.99 viagogo submitted that it had not changed its reseller fees since 2017, while StubHub stated that its last material change was in January 2018.<sup>132</sup> We found that there were few material changes in either viagogo or StubHub’s average reseller fees in the period 2018-2020. Based on the Parties’ 2019 transaction data (for UK events), viagogo’s average reseller fee was around [REDACTED]%, while

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<sup>129</sup> [REDACTED].

<sup>130</sup> [REDACTED].

<sup>131</sup> [REDACTED].

<sup>132</sup> [REDACTED].

StubHub's average reseller fee was around [REDACTED]%. We also found that larger resellers paid, [REDACTED] on viagogo [REDACTED], while StubHub's larger resellers paid, [REDACTED].

7.100 However, we found some changes to fee levels for individual resellers made by each Party. For example, we observed a temporary decrease in average reseller fees paid by StubHub's largest resellers in July 2019. This is consistent with StubHub's internal documents which pointed to a number of initiatives offering time-limited or event-specific reseller fee discounts in response to the suspension of viagogo from Google Ads in that period (discussed in more detail below). As shown in Figure 1, average fees decreased by around [REDACTED], ie from approximately [REDACTED]% to [REDACTED]%.<sup>133</sup>

7.101 We have also found that StubHub gives different segments of resellers [REDACTED]. The reseller segments include: 'Consumers' who receive the [REDACTED]; 'Mini Sellers' who receive this [REDACTED]; and 'Top Sellers' who are business-to-consumer resellers providing strategically important supply or selling significant volumes of tickets. These top sellers have [REDACTED]. StubHub told us that they have [REDACTED] other reseller segments that also receive [REDACTED].<sup>133</sup>

7.102 viagogo had several instances in which resellers had been offered non-standard fees, [REDACTED]. viagogo submitted that it does not offer performance or volume-related discounts to resellers. [REDACTED].<sup>134</sup>

**Figure 1: StubHub average reseller fees, by decile, January 2019 to February 2020**

[REDACTED]

7.103 With regard to payment terms, viagogo offered [REDACTED] to [REDACTED] in 2017. More recently, [REDACTED] have been paid for at least some of their transactions [REDACTED].<sup>135</sup>

7.104 In 2019, StubHub [REDACTED] that were paid before the event for at least some of their transactions. The share of GTV accounted for by these resellers [REDACTED]. The evidence from the Parties' internal documents indicated that StubHub [REDACTED], and, in particular during the period that viagogo was suspended from Google Ads, [REDACTED]. Consistent with viagogo's submission that it produces few written documents recording its commercial decision-making around setting and adjustment of buyer and seller fees, there were few 'normal course of business' documents showing adjustments in reseller fees or payment terms and the rationale for these.

7.105 Overall, this evidence shows that the Parties can flex parameters of competition – including fees and payments terms – in response to

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<sup>133</sup> [REDACTED].

<sup>134</sup> [REDACTED].

<sup>135</sup> [REDACTED].

competition. We found more evidence of StubHub directly responding to viagogo (including following viagogo's suspension from Google Ads, as described below) than the other way around. However, as noted in paragraph 7.79, when viagogo tests changes to different parameters, we would expect its decisions to reflect the close competitive presence of StubHub in the market.

#### *Provisional conclusions on competition for resellers*

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

- (a) They have very similar profiles of resellers, ranging from small occasional sellers through to large for-profit resellers;
- (b) A significant proportion of the largest resellers (by GTV) sell across both platforms, including for the same event, therefore indicating that resellers will substitute between the two platforms;
- (c) Resellers that we spoke to see the Parties as strong alternatives to one another, and much stronger alternatives than other available platforms and sales channels. This is reflected in how resellers actually use the Parties' platforms compared to other platforms channels; and
- (d) There is some evidence that the Parties flex their fees and payment terms in an attempt to attract and retain resellers, and that StubHub in particular has done so in response to actions taken by viagogo.

#### ***Competition between the Parties to attract buyers***

7.107 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. We have assessed the consumer acquisition strategies of the Parties and other ticketing platforms to understand the closeness of competition between them and with other ticketing platforms on the buyer side of their platforms. Below we discuss the evidence related to the main measures that the Parties take to attract buyers directly. Our analysis is set out in more detail in Appendix F.

7.108 In addition to these measures taken by the Parties, paragraph 7.19 sets out the relevant factors that buyers themselves take into account when purchasing secondary tickets on uncapped secondary ticketing platforms. These are availability of tickets to the live event that they wish to see, the price of the ticket, the buyer guarantees in place and the brand of the platform

operator. Of these, the availability and price of tickets are dependent on the resellers using the platform. These two factors are therefore examples of how the indirect network effects between resellers and buyers work in practice. Given these network effects, if the Parties are very close competitors for resellers, as we have provisionally found above, then this implies that they will also be close competitors for buyers.

### *The Parties' consumer acquisition strategies and ad spend*

7.109 We have provisionally found that the Parties compete to attract buyers to their websites by using several channels, such as promoting their websites in paid search results or through advertising events for which they have tickets available on social media platforms.

7.110 As we understand that most consumers typically start their search for tickets to an event by using a search engine, we have specifically considered the importance of search traffic to the Parties. We also note that the Parties told us that most buyers purchase very small volumes of tickets, with few repeat purchasers in any given year,<sup>136</sup> which is also consistent with the Parties' [REDACTED] as a source of traffic (without direct experience buyers rely on internet search). Based on an analysis of SimilarWeb data, we have found that the majority of visitors to the Parties' websites arrive after clicking through a link shown in organic or paid search results. An average of [REDACTED] and around [REDACTED] of monthly visitors to viagogo arrived by clicking through a link in organic search results and an ad in paid search results, respectively, in 2019.<sup>137</sup> For StubHub, an average of around [REDACTED] and around [REDACTED] of monthly visitors arrived on its website by clicking through a link in organic search results and an ad in paid search results, respectively, in 2019.

7.111 The importance of paid search advertising is reflected in our analysis of the Parties' data on their consumer acquisition strategies, their internal documents and the statements made by Parties in their submissions, representations and hearings.

7.112 The Parties submitted that their consumer acquisition strategies 'mean that StubHub is not competing for the same consumers as viagogo', including in

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<sup>136</sup> See, for example, [REDACTED].

<sup>137</sup> We consider that these proportions have been affected by viagogo's Google Ads suspension in the period July 2019 – November 2019. For example: the average proportion of monthly visitors to viagogo's website who arrived by clicking through a link in paid search results was around 40-60% [REDACTED] when excluding the period July 2019 – November 2019 from our analysis.

relation to paid search advertising, where their overlap in the keywords they both bid on is only [REDACTED]%.<sup>138</sup>

7.113 viagogo is largely focused on acquiring consumers through paid search advertising to support its growth, which accounted for the vast majority of its advertising spend in each year of the period 2017 – 2019. [REDACTED]. [REDACTED].<sup>139</sup> viagogo described how this could improve the effectiveness of its paid search advertising strategy: [REDACTED].

7.114 While StubHub’s marketing strategy has been more diverse (i.e. by promoting its brand through ‘above-the-line’ campaigns and on social media channels), paid search advertising has accounted for more than half of its advertising spend in each year of the period 2017 – 2019. StubHub told us that it had previously used a paid search strategy that [REDACTED].<sup>140</sup> StubHub told us that it changed this strategy [REDACTED], which it said will allow it to manage its paid search advertising [REDACTED]. In addition, StubHub told us that it currently considers the average buyer to have little brand affinity with secondary ticketing platforms.<sup>141</sup> This is because StubHub sees a relationship between the ticketing inventory available on its platform and how it executes its marketing and advertising strategy. For example: [REDACTED].

7.115 We found that the advertising activities of other platforms are much more limited than those of the Parties, particularly in relation to the use of Paid search advertising. [REDACTED] and [REDACTED] do not have separate marketing and advertising strategies for their secondary ticketing exchange platforms and typically rely on their relationships with event organisers for the majority of traffic to their websites. Gigsberg said that, while the majority of traffic to its site generally comes through Google search, StereoBoard (a ticketing comparison website) is an important affiliate for attracting traffic (and source of consumers who purchase tickets) to its platform. Other ticketing platforms said that they undertake very limited or no marketing and advertising (including paid search advertising) to attract buyers to their websites.

7.116 This is reflected in the marketing and advertising spend of the Parties and other platforms. The Parties have been the ticketing platforms with the largest annual advertising spend in the period 2017 – 2019, with viagogo’s advertising spend in 2019 being more than £5 [REDACTED] million and StubHub spending more than £5 [REDACTED] million. In relation to paid search advertising, viagogo’s spend in 2019 was more than £5 [REDACTED] million (which is lower than

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<sup>138</sup> [REDACTED].

<sup>139</sup> [REDACTED].

<sup>140</sup> [REDACTED].

<sup>141</sup> [REDACTED].

may have otherwise been the case without its Google Ads suspension) and StubHub's spend was less than £5 [REDACTED] million. Aside from the Parties, the ticketing platforms [REDACTED] paid search advertising spend in 2019 were [REDACTED] with £2-4 [REDACTED] million and Gigsberg with £0-2 [REDACTED] million.

- 7.117 Consistent with the evidence on the marketing and advertising strategies of the Parties and other ticketing platforms, we found that viagogo was visited by many more unique visitors than StubHub or other secondary ticketing exchange platforms on average in the period between July 2018 and June 2020. Only [REDACTED] and [REDACTED] (which are both primary ticketing platforms) were typically visited by more unique visitors in any month than viagogo, with the majority of other ticketing platforms typically being visited by less than 500,000 unique visitors each month.
- 7.118 Overall, the evidence available to us indicates that the Parties' consumer acquisition strategies, while being somewhat differentiated, are more closely aligned than those of other competitors. Both place a more significant focus on paid search advertising and spend a significant proportion of their spend on similar strategies. This is also consistent with the evidence on number of unique visitors to each site, with the majority of visitors to the Parties' websites arriving after clicking through a link shown in organic or paid search results. This therefore suggests that the Parties compete closely to attract consumers and that other ticketing platforms pose a weaker constraint on the Parties' ability to attract customers to their websites through marketing and advertising.

#### *Analysis of keyword bidding on Google Ads*

- 7.119 We also gathered evidence from the Parties on their paid search bidding strategies, particularly on Google Ads. We noted at the outset that comparing paid search strategies is difficult in this market because most bidding occurs on keywords relevant to a particular event. We also noted that the amount spent on different keyword search terms varied significantly, but we were not able to collect information from the Parties on spend broken down by each keyword. Nevertheless, in spite of these limitations we considered that the data on bidding could be helpful in understanding similarities and differences between viagogo and StubHub.
- 7.120 We found that the Parties have had different approaches when bidding on Google Ads. viagogo [REDACTED], bidding on more than 100,000 [REDACTED] keywords on average each month. StubHub also creates ads for events with tickets listed on its platform, but bids on around 28,000-30,000 [REDACTED] keywords on average each month, typically bidding on fewer keywords which are targeted at buyers more likely to make a purchase.

7.121 These different approaches are reflected in the overlap of keywords bid on by the Parties. We gathered from the Parties a list of all the keywords that they had bid for on Google Ads in the period January 2018 – February 2020. We found that StubHub bid on less than 10% [X] of viagogo’s keywords on average in each month of this period, whereas viagogo bid on 40-60% [X] of StubHub’s keywords on average each month.

7.122 The Parties highlighted the low proportion of viagogo’s keywords bid on by StubHub and argued that this was evidence that the Parties do not compete strongly for consumers.

7.123 In response, our view is that the asymmetry between StubHub and viagogo largely reflects the different Google Ads bidding approaches, and in particular the fact that viagogo bids on [X] as many keywords as StubHub on average each month. We found that there was an average of [X] closely matching keywords across the Parties each month. viagogo and StubHub compete head-to-head on these keywords. The small proportion of viagogo’s keywords bid on by StubHub is therefore a reflection of the Parties’ differing approaches and the different ticketing inventory available to buyers on the platforms, not evidence of a lack of competitive interaction. In any case, even if there was strong evidence of an asymmetric constraint between the Parties, this would still indicate closeness of competition and a likely loss of competition as a result of the Merger.

7.124 In addition, we found that, while both Parties bid on many thousands of keywords each month, a small proportion of those keywords likely account for a large share of traffic to their platforms. For example: the 50 top keywords on each platform account for [X]% and [X]% of viagogo and StubHub’s respective monthly spend on average.

#### *Provisional conclusions on competition for buyers*

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

- (a) The fact that the Parties compete closely for resellers and have inventory for similar events, as outlined in the previous section, means that they are also in competition for buyers to purchase these tickets.
- (b) The evidence available to us indicates that the Parties’ consumer acquisition strategies, while being somewhat differentiated, are more closely aligned than those of other competitors. The Parties both spend more than any other primary or secondary ticketing platform on marketing and advertising, including paid search advertising.

- (c) We found that viagogo and StubHub have pursued different approaches to bidding on Google Ads, which makes a comparison of their keyword overlap difficult to interpret. Nevertheless, we found that viagogo bid on 40-60% [redacted] of StubHub's keywords on average each month, suggesting at least that viagogo is competing strongly for the buyers that purchase tickets on StubHub.

### ***Analysis of viagogo's suspension from Google Ads***

7.126 We also assessed what viagogo's suspension from Google Ads in 2019 could tell us about competition between the Parties. Our analysis is set out in more detail in Appendix E.

7.127 viagogo was suspended from Google paid search advertising between 17 July 2019 and 24 November 2019 due to its breach of Google AdWords policy ('the Google Ads suspension'). Since paid search represents a key customer acquisition channel for viagogo, the suspension led to a significant decrease in customer visits and ticket sales.

7.128 The Parties argued that the Google Ads suspension was a useful natural experiment for assessing the closeness of competition between viagogo and StubHub.<sup>142</sup> They submitted two pieces of analysis suggesting that StubHub had not gained significantly from the suspension:

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

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<sup>142</sup> A natural experiment means that we are observing an exogenous change in conditions of competition, in this case resulting from Google's decision to suspend viagogo, and can observe how the market reacts.

that diversion from viagogo to StubHub could amount to [REDACTED]%, depending on the model used for the analysis.<sup>143</sup>

- 7.129 We note that the Parties' analyses produced quite different results and that the second, and most recent estimates, suggest that the diversion to SH was material, albeit less than would have been suggested by the Parties' respective market shares.
- 7.130 Having assessed the Parties' econometric submissions, we considered that neither of them can robustly identify the impact of the suspension on the activity of viagogo and of the other platforms, including StubHub. The estimates of diversion ratios provided can therefore be interpreted only as an indication of the existing competitive interaction between the Parties rather than providing a precise measure of the strength of such interaction. Our assessment of the Parties' submissions is set out in more detail in Appendix E.
- 7.131 We gathered further evidence on the impact of the Google Ads suspension in three ways:
- (a) We examined how the Parties thought the suspension had affected them, based on their internal documents and responses to requests for information.
  - (b) We asked third parties for their views on the impact of the suspension on their business.
  - (c) We also examined the impact on secondary ticket sales based on monthly sales data from the Parties and the other largest ticketing platforms who might have been affected by the Google Ads suspension.
- 7.132 First, in relation to the Parties' views, [REDACTED].<sup>144</sup> It did not provide any internal documents discussing the impact of the suspension on viagogo or its competitors.
- 7.133 StubHub provided several internal documents relating to its assessment of the suspension. These suggest that StubHub took a series of actions in an attempt to attract resellers and buyers away from viagogo:

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<sup>143</sup> In particular, CRA's implied diversion ratio from viagogo to StubHub are higher when the model does not control for advertising spend, which as explained in more detail in the dedicated appendix it is likely to introduce a bias into the analysis.

<sup>144</sup> [REDACTED].

- (a) [REDACTED];<sup>145</sup>
- (b) [REDACTED]<sup>146</sup> [REDACTED];<sup>147</sup>
- (c) [REDACTED].<sup>148</sup>
- (d) [REDACTED].<sup>149</sup>
- (e) [REDACTED];<sup>150</sup> and
- (f) [REDACTED].<sup>151</sup>

7.134 [REDACTED].<sup>152</sup> [REDACTED].<sup>153</sup>

7.135 Overall, StubHub’s internal documents and responses to our information requests indicate that it took active and specific steps to respond to the Google Ads suspension. As a result, it saw increased traffic and sales. StubHub also told us that it would have benefited more strongly from the suspension if its search advertising strategy had been more effective.<sup>154</sup> This suggests that the estimates of diversion estimated by the Parties may be an underestimate of the future competitive constraint that would be imposed on viagogo by StubHub.

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

- (a) Most platforms contacted said that the suspension had no discernible impact on their sales (independently of whether in primary or secondary ticketing) or that the impact could not be quantified but it is unlikely to be material in terms of increased sales on their platforms;
- (b) Most platforms are not active in paid search advertising, therefore did not note a change in their online marketing performance during the

<sup>145</sup> [REDACTED] and [REDACTED]

<sup>146</sup> [REDACTED]

<sup>147</sup> [REDACTED].

<sup>148</sup> [REDACTED].

<sup>149</sup> [REDACTED].

<sup>150</sup> [REDACTED].

<sup>151</sup> [REDACTED].

<sup>152</sup> [REDACTED].

<sup>153</sup> [REDACTED]; and [REDACTED]

<sup>154</sup> [REDACTED]. For more details see Appendix E, paragraphs 31- 34.

suspension. Only two platforms observed [REDACTED] in their cost-per-click, however this was small and confined to a limited number of campaigns, while one platform took the view that the absence of viagogo ads from Google search results pages may have helped it to attract traffic through organic search;<sup>155</sup> and

- (c) Resellers generally noted that StubHub was the main and only clear beneficiary of the suspension as, when inventory was moved away from viagogo, it went to StubHub. No other platform was indicated as increasing its share of the market during that time, based on the actions and views of the resellers that we spoke to.

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

7.138 Based on this analysis, we found that StubHub captured a material amount of the business lost by viagogo during the suspension period. Our findings are broadly consistent with the Parties' second set of estimates. We agree with the Parties that StubHub captured only a proportion of viagogo's lost sales, albeit a material one. However, we have found that no other platform markedly benefitted from the suspension, with some platforms experiencing an increase in their sales, but far smaller than the increase in StubHub's sales.

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

7.140 In response to the Parties' argument, we note that:

- (a) Neither our own quantitative analysis nor the econometric study carried out by the Parties can fully control for wider variations in ticket sales which might affect different platforms in different ways. This means that, while it is clear that viagogo lost sales as a result of the Google Ads suspension, it is not clear by how much they fell relative to the counterfactual if the Google Ads suspension had not occurred. As a result, the estimates of diversion need to be treated with a high degree of caution, and do not tell us whether customers instead diverted to other sales channels (other than

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<sup>155</sup> [REDACTED].

other ticketing platforms – below). Nevertheless, we do observe a material increase in StubHub’s sales in this period,

- (b) The evidence we gathered from the other primary and secondary ticketing platforms indicates that they did not gain materially from the Google Ads suspension. None of the third parties we gathered evidence from attempted actively to benefit from the suspension in the way that StubHub did. The fact that StubHub saw viagogo’s suspension as a clear opportunity to gain sales (and did so) indicates that they are close competitors for buyers and resellers, and closer than other secondary platforms.

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

### ***The Parties’ analysis of ‘switching in’***

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

(a) [REDACTED].

(b) [REDACTED].

7.143 The Parties argued that this analysis demonstrated that StubHub is not a significant source of new liquidity for viagogo and vice-versa. Instead, new liquidity from outside of secondary platforms is far more important than liquidity from the rival platform.<sup>156</sup>

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<sup>156</sup> [REDACTED].

7.144 We agree that the Parties' analysis demonstrates that attracting new buyers and sellers onto the platform is important for both viagogo and StubHub, and that 'growing the market' is a key part of the competitive dynamic. However, we consider that the Parties' analysis is consistent with a finding that the Parties compete closely, for the following reasons:

- (a) On the buyer side, low shares of new buyers coming from the other platform can be explained by the fact that buyers typically purchase tickets infrequently. The Parties told us that there are low rates of repeat purchasing among their own buyers, so in this context it is not surprising that a relatively small share of buyers have also previously used the other Party's platform. The fact that 15-17% of StubHub's buyers have previously used viagogo, in spite of this low rate of repeat purchasing, indicates that buyers are willing to use different purchasing channels.
- (b) On the reseller side, since the Parties' analysis is looking only at new resellers making a first sale on the platform, we would expect these to be disproportionately made up of smaller resellers – for example, casual resellers looking to sell a ticket to an event they can no longer attend. The Parties' analysis does not indicate the value of tickets sold by resellers joining from the other platform. It also does not take account of the fact that a significant proportion of the Parties' largest (existing) resellers already use both platforms, as demonstrated by our multi-homing analysis, and are hence able to shift inventory between the Parties in response to competitive changes without this being registered in the Parties' analysis of switching in.
- (c) Finally, to the extent that the analysis shows that the Parties are each attracting new buyers and resellers to their platforms, we would expect them to be competing strongly for these new customers. The Parties submitted that viagogo aims to attract liquidity from a wide range of sources.<sup>157</sup> StubHub's internal documents refer in a number of instances to [REDACTED].<sup>158</sup>

### ***Conclusion on closeness of competition between the Parties***

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

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<sup>157</sup> [REDACTED].

<sup>158</sup> See paragraph 7.195, below.

- (a) They are by far the two largest uncapped ticketing platforms in the UK and would have a market share post-Merger of 90-100[redacted]%.
- (b) Although StubHub is the smaller platform, its market share in 2019 (in terms of GTV) was 30-40[redacted]% and its GTV grew by [redacted]% per year over the past four years.
- (c) The vast majority of the Parties' resellers that we spoke to viewed the Parties as each other's closest competitors, and close substitutes for each other. The evidence from resellers on the extent to which they used both platforms and why, and our quantitative analysis that pointed to significant multi-homing by resellers between the Parties, supported this.
- (d) The Parties also compete closely for ticket buyers. Paid search is an important means of acquiring customers for both viagogo and StubHub. They are the largest spenders on Google Ads compared with all other ticketing platforms including the [redacted]).
- (e) StubHub responded to the Google Ads suspension by seeking to win buyers and sellers from viagogo, including through flexing its terms to resellers and increasing its bidding on Google Ads. It was able to increase its revenues as a result. While the gains made by StubHub were less than might be anticipated given the broader evidence on closeness of competition between the Parties, we did not find evidence that other third parties gained materially from the Google Ads suspension. Although we consider it appropriate to take this evidence into account in our assessment, we have placed greater weight on other evidence.

## **Remaining constraints from third parties following the Merger**

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

- (a) We first consider the constraint from other uncapped secondary ticketing platforms in the relevant market;
- (b) We then consider the constraint from other sales channels outside the uncapped secondary ticketing platform market, including:
  - (a) Capped secondary ticketing platforms – including what are sometimes referred to as 'fan-to-fan' ticket exchanges and similar resale facilities within the primary ticketing platforms;

- (b) Wider online (eg, social media) and offline channels for secondary sales; and
- (c) Primary ticketing sales.

### ***Competition from other uncapped secondary platforms***

- 7.147 Aside from the Parties, the only other uncapped secondary ticketing platform of any material scale currently operating in the UK is Gigsberg.<sup>159</sup>
- 7.148 Until 2018 there were two other uncapped platforms operating in the market – SeatWave and GetMeIn! – which were acquired by TicketMaster in 2009 and 2014, respectively. TicketMaster closed these platforms in September 2018, before launching its own capped resale platform (TicketMaster Exchange). We consider the impact of TicketMaster Exchange and other capped platforms in the next section.
- 7.149 Gigsberg is a recent entrant, having entered the UK market in April 2019. It provides a very similar secondary ticketing platform to that of the Parties, enabling professional resellers to list tickets at any price and providing similar buyer and reseller payment guarantees to the Parties.<sup>160</sup>
- 7.150 The Parties argued that:<sup>161</sup>
- (a) Having entered in April 2019, Gigsberg has already achieved [REDACTED];
  - (b) The CMA’s own evidence from resellers suggested that Gigsberg shows ‘promise’, is cited as an alternative to both viagogo and StubHub and offers an alternative to the combined entity post-Merger;
  - (c) Gigsberg represents a clear example of an actual and credible constraint on the Parties, both pre- and post-Merger.
- 7.151 To assess the strength of the competitive constraint which Gigsberg would place on the Parties post-Merger, we gathered evidence on:
- (a) Gigsberg’s market share and growth since launch;
  - (b) Reseller and other third-party views on the strength of Gigsberg as an alternative to the Parties; and

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<sup>159</sup> As mentioned in the CMA’s Reference Decision, VIBE also operates an uncapped secondary ticketing platform in the UK, but no third parties (nor the Parties themselves) raised this a relevant competitor in the course of our Phase 2 evidence gathering.

<sup>160</sup> [REDACTED].

<sup>161</sup> [REDACTED].

(c) Gigsberg's own views of its position and potential growth

- 7.152 Based on the analysis of market shares set out above in Table 2, we found that Gigsberg accounted for [REDACTED]0-5% of GTV in the market for uncapped secondary ticketing platforms in 2019. Even allowing for its growth during the year, we found that its highest monthly share (in November 2019) was around [REDACTED]0-5%. Gigsberg's GTV in that month was around £[REDACTED]0-1 million, compared with viagogo and StubHub which each had a GTV of around £[REDACTED] 5-10 million.
- 7.153 We found that Gigsberg used a similar consumer acquisition model to that of the Parties, including using paid search advertising (including Google Ads) as a key route for attracting customers. However, its spend on search advertising in 2019 was significantly lower than that of the Parties – £1.0-1.2 [REDACTED] million compared with less than £5 [REDACTED] million spent by StubHub and more than £5 [REDACTED] million by viagogo (which is lower than may have otherwise been the case without its Google Ads suspension). We also found it bid on 2,000-4,000 [REDACTED] keywords on average each month in the period April 2019 – February 2020, which is much less than the more than 100,000 [REDACTED] and 28,000-30,000 [REDACTED] keywords bid on by viagogo and StubHub, respectively, on average each month in the period January 2018 – February 2020.
- 7.154 When we asked resellers for their views on alternatives to the Parties (see Appendix G), around one third of resellers noted Gigsberg as an alternative. However, these resellers typically rated Gigsberg as being a weak alternative (rated as 1.4-out-of-5). Furthermore, very few of the resellers that responded told us that they had used Gigsberg in 2019, and never for more than 10% of their sales, suggesting that it was not seen as a practical alternative for large volumes of inventory.
- 7.155 The qualitative views of resellers were consistent with this, all referring to Gigsberg as a 'new' company with a 'small' presence in the market. One stated that 'Gigsberg's payment terms are currently better than viagogo's and StubHub's, but its brand recognition and reach is still nothing in comparison' and that it is 'not a credible alternative to the Parties, either now or in the future.'<sup>162</sup> Another, who rated them more highly (4-out-of-5), stated that they 'look promising' but told us that they had never actually used the platform to make a sale.<sup>163</sup>
- 7.156 Other third parties also shared these views about Gigsberg being a weak alternative. For example, Fan Fair Alliance, a consumer group, suggested that

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<sup>162</sup> [REDACTED].

<sup>163</sup> [REDACTED].

'other uncapped platforms are not credible alternatives to viagogo and StubHub'. They acknowledged that Gigsberg exists, but said that there are only two significant uncapped sites in the UK because Gigsberg is 'less dominant in online advertising and difficult for consumers to find'.<sup>164</sup>

7.157 This evidence is consistent with Gigsberg's own views of its market position and potential growth. It told us that it is a 'viable alternative' but admitted that 'it is a fraction of the size of viagogo and StubHub' and while Gigsberg has a strategy to build brand awareness, attract customers and try and offer an attractive position to resellers it noted that it would take years and considerable expense to reach the size of StubHub.<sup>165</sup>

7.158 Overall, our provisional view is that Gigsberg would not place a material competitive constraint on the Parties following the Merger. It currently operates at a very small scale relative to the Parties and, based on its own internal projections, it would remain a very small platform relative to the Parties' combined offering for the foreseeable future and would not provide a viable alternative for resellers wanting to sell large volumes of inventory.

### ***Competition from capped secondary sites***

7.159 Although we have found that capped secondary sites are in a separate market from the Parties' uncapped platforms for the reasons set out above, we have nonetheless considered the extent to which they will exert a competitive constraint on the Parties following the Merger.

7.160 We have looked separately at the constraint from standalone capped secondary platforms and from capped resale platforms operated by primary ticketing platforms.

### ***Standalone capped secondary sites***

7.161 There are two secondary ticketing platforms of material scale currently operating in the UK which facilitate the resale of tickets at, or close to, face value: Twickets and TicketSwap.

7.162 To assess the constraint that fan-to-fan platforms place on the parties, we gathered evidence on:

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

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<sup>164</sup> [REDACTED].

<sup>165</sup> [REDACTED].

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

7.163 Twickets and TicketSwap are both small platforms compared with the Parties. As set out in the analysis of shares of supply above (see Table 3), we found that, although they have been growing over the last three years, they remain much smaller than the Parties:

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

7.164 We also found that the capped sites had significantly different fees and terms compared with the Parties. Aside from restricting sellers from charging above face value, we also found that the capped platforms charge lower fees to buyers and resellers. In particular, they often charge very low or zero fees on the reseller side (see Table 1).

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

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

these sites ‘to dispose of unsold inventory’ and ‘when tickets did not sell on uncapped platforms’ or ‘would not make that much profit’. One seller explained that the capped sites are present but that they are not suitable alternatives for resellers. Therefore, evidence from resellers has emphasised that the ability to set the listing price on uncapped platforms and to make a profit is a key differentiator between uncapped and capped platforms and an important reason why the two types of platforms are not close competitors. We note that ticket price differences are considerable across the different types of platforms with resellers on the Parties’ platforms earning high mark-ups above face value (paragraph 6.11).

7.167 The platforms themselves told us that they engage in very little active marketing to attract sellers and are largely aiming to attract smaller and occasional resellers. Twickets stated that they do not allow bulk sellers at all,<sup>166</sup> and that they ‘do not target valuable sellers and do not incentivise anyone to sell on our (their) marketplace’<sup>167</sup>, whilst TicketSwap said that ‘professional brokers/commercial resellers were not the focus of the platform’<sup>168</sup>. Both Twickets and TicketSwap also stated a preference for building relationships with primary players, whether this be promoters and event organisers or other primary outlets, in order to be their preferred resale partner.

7.168 Fan Groups to whom we spoke also agreed that there was a ‘distinction between capped and uncapped sites’, with one going so far as to say that they are ‘polar opposites’ in terms of what they offer and who they serve. This builds on the idea that the capped platforms do not compete for the same business as the uncapped platforms like the Parties do.

7.169 On the buyer side, we looked at the extent to which standalone capped secondary sites compete with the Parties to attract consumers to their websites. We found that the capped platforms carried out no or very limited marketing and advertising (including paid search advertising) to attract buyers. They told us that this, in part, reflected the fact that the capped platforms made much lower profit per sale on each transaction than the Parties, because of the capped ticket price and the lower percentage fees charged on each transaction.

7.170 We also considered whether the fan-to-fan sites might remove the cap and allow uncapped sales in future, for example in response to the Parties increasing fees or worsening terms to their sellers. If this happened, then the

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<sup>166</sup> [REDACTED].

<sup>167</sup> [REDACTED].

<sup>168</sup> [REDACTED].

fan-to-fan sites might be expected to compete more closely with the Parties for resellers (albeit that they would still have a low market share compared with the Parties' platforms).

7.171 We asked the capped platforms about their business model and future strategy. [REDACTED] told us that they had no plans to remove the cap.<sup>169</sup> We further consider that these sites would have very limited incentive to remove the cap in the foreseeable future because:

- (a) The fan-to-fan sites actively promote themselves to ticket buyers on the basis of capped sales and contrast themselves with the Parties in this respect.
- (b) Twickets told us that its focus is on achieving growth by 'working with an ever increasing number of event partners in the UK as their official resale channel', and that operating a capped model was a core part of this strategy.<sup>170</sup> [REDACTED].<sup>171</sup>
- (c) The [REDACTED] previously captured by Ticketmaster's uncapped platforms prior to closure may act as a disincentive to return [REDACTED]. [REDACTED].

7.172 Overall, we provisionally consider that the capped fan-to-fan sites would pose a very weak competitive constraint on the Parties' uncapped secondary platform post-Merger.

#### *Capped resale exchanges within the primary platforms*

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

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

- (a) On the buyer side, primary platforms can present resale tickets to consumers alongside primary tickets in a 'co-mingled' environment, which makes it easy for buyers to compare and switch between primary and secondary tickets.

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<sup>169</sup> Twickets said 'We have never considered removing or relaxing the cap to be above face value, and will absolutely not do so in the future as it represents the key proposition of our business' ([REDACTED]), [REDACTED]

<sup>170</sup> [REDACTED]. In many instances, promoters, event organisers and performing artists deliberately set primary ticket prices below market clearing levels. Therefore, it is their preference for resale prices to be close to the face value of the ticket.

<sup>171</sup> [REDACTED].

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

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

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

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

- (a) The scale of the capped platforms' sales relative to those of the Parties;
- (b) Views of the Parties' resellers; and
- (c) These platforms' future plans, in particular any planned changes to their business models, including their resale price caps.

7.178 As set out in the discussion of shares of supply (see Table 3), we found that the value and volume of ticket sales through the capped platforms operated by the primary platforms was low compared with the Parties' uncapped platforms. Ticketmaster is significantly larger than the other platforms in this category, accounting for 0-10 [%] of all secondary ticket sales through uncapped or capped platforms in 2019, and 0-10[%] by volume. We were aware of four other primary sites which had capped secondary resale exchanges – AXS Resale, Eventim, SeeTickets and Gigantic – which in 2019 together accounted for a share of 0-5[%] by GTV and 0-5 [%] by volume.

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

7.180 [%].<sup>172</sup>

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<sup>172</sup> [%].

- 7.181 Even if Ticketmaster Exchange were to pick up all the sales of previously generated by SeatWave and GetMeIn!, the share of these platforms amounted to only 10-20[REDACTED]% by value (10-20[REDACTED]% by volume) in 2017, the last full year before they were closed by Ticketmaster.
- 7.182 We asked resellers whether they viewed capped exchanges operated by the primary ticketing platforms as an alternative to the Parties. As set out in Appendix G, they were only mentioned by a small number of resellers as being an alternative and were not given a high average rating (2.5 out of 5).
- 7.183 In addition to the general points made by resellers about the limitations of the capped platforms set out in the previous section, some resellers also noted that where a capped platform was connected with a primary site then it was only possible to resell tickets bought on the same primary site. Some resellers suggested that this made them less attractive as alternative route for selling ticket inventory.
- 7.184 On the buyer side, as described in Appendix F, the primary sites make use of search advertising as a channel for attracting consumers. [REDACTED] in particular has [REDACTED] spend on search advertising. [REDACTED],<sup>173</sup> [REDACTED]. However, it told us that [REDACTED].<sup>174</sup> It told us that the Parties tend to be more active in search engine marketing due to their higher margins.<sup>175</sup> We also noted that, [REDACTED] StubHub or viagogo on paid search advertising.
- 7.185 As with the standalone capped platforms (paragraphs 7.170 and 7.171), we considered whether Ticketmaster or the other primary platforms might have an incentive to remove the cap on secondary ticket prices and allow uncapped sales, which might then allow them to compete more closely with the Parties for resellers post-Merger. The Parties noted that Ticketmaster allows uncapped sales in the US, and argued that it was likely that Ticketmaster would [REDACTED] in the UK.<sup>176</sup>
- 7.186 Ticketmaster – having closed down two uncapped platforms that it owned in 2018 (GetMeIn! and Seatwave) - told us that [REDACTED].<sup>177</sup> [REDACTED].<sup>178</sup> [REDACTED].<sup>179</sup> [REDACTED].

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<sup>173</sup> [REDACTED].

<sup>174</sup> [REDACTED].

<sup>175</sup> [REDACTED].

<sup>176</sup> [REDACTED].

<sup>177</sup> [REDACTED].

<sup>178</sup> [REDACTED].

<sup>179</sup> [REDACTED].

7.187 [redacted] primary sellers that operate capped secondary platforms stated that they were unlikely to remove their price caps. [redacted].<sup>180</sup> [redacted] simply said 'No',<sup>181</sup> while [redacted].<sup>182</sup> Gigantic told us that it only acted as a resale platform on limited occasions, that its plans to develop its resale service had been delayed and that its model for resale would be that the reseller would get back the value of the ticket and the booking fee. While it was still finalising some elements of its resale service, Gigantic stated that it saw its resale function as a service to customers, not as a way of making money.<sup>183</sup>

7.188 Overall, we provisionally consider that the capped resale exchanges operated by primary platforms would pose a very weak competitive constraint on the Parties' uncapped secondary platform post-Merger.

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

7.189 In this section we consider the extent to which other online channels will exert a competitive constraint on the Parties following the Merger.

7.190 Online platforms such as Facebook and Gumtree can be used to buy and sell secondary tickets. The Parties argued that these platforms could provide an option for resellers wanting to place inventory and for consumers seeking to buy tickets,<sup>184</sup> which they put forward as evidence of 'how competitive the UK ticketing sectors is.'<sup>185</sup>

7.191 Resellers told us that social media and classified listings sites are not a credible route to market for sales by volume sellers, with a small minority of the Parties' resellers that we spoke to having used these to sell tickets in the past year, and an even smaller amount viewing them as close alternatives to the Parties.. Reasons given for this view by the resellers that we spoke to included that there is 'more aggravation and time wasters using social media',<sup>186</sup> 'a lot of fraud'<sup>187</sup> and no 'buyer safeguards or guarantees'<sup>188</sup> which makes the sites unattractive to buyers. When these alternative sites were used, it was in very specific circumstances such as to 'dispose of tickets no

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<sup>180</sup> [redacted].

<sup>181</sup> [redacted].

<sup>182</sup> [redacted].

<sup>183</sup> [redacted].

<sup>184</sup> Parties' Phase 2 Initial Submission, paragraphs 27 (c) and 29 (d).

<sup>185</sup> [redacted].

<sup>186</sup> [redacted].

<sup>187</sup> For example, responses from [redacted], [redacted].

<sup>188</sup> For example, [redacted].

longer available to list on resale sites'<sup>189</sup> or 'to update existing clients of new announcements'.<sup>190</sup>

7.192 The limitations of these sites as an option for selling tickets was highlighted further by the fact that only a very small number of resellers indicated that these could be considered a close alternative to the Parties, both referring to Gumtree. The vast majority of resellers, even if aware that it was possible to sell tickets through these channels, did not consider them viable alternatives for carrying out their activities.

7.193 Other secondary ticketing platforms also expressed doubts over the alternative that these wider online channels offered. For example, [X] said that it was not concerned by the competition from social media or other online channels.<sup>191</sup> Gigsberg said that these channels are not a competitor for it, noting that it focussed on 'popular tickets only and does not need to consider resale activity on social media and classified advertising sites'.<sup>192</sup> Twickets stated that, while it did compete with these channels, they do not offer 'protection against fraud', nor do they 'offer any guarantees... either to the seller or the buyer'.<sup>193</sup>

7.194 Based on the resellers' comments and the Parties' responses, the main limitations of wider online channels appear to be:

- (a) Lack of buyer guarantees and security of transactions – the Parties submitted that these classified sites and social media channels 'do not provide customers with post-trade services (including customer service and guarantees on the authenticity of tickets)'.<sup>194</sup> StubHub also stated that, on other online channels, buyers 'have to take more of a risk on the transaction, because it is not underwritten. There is no FanProtect guarantee and fulfilments is not monitored in the same way'.<sup>195</sup>
- (b) Lack of services for resellers to manage inventory – the Parties told us that larger resellers needed a specialist user interface to manage their inventory efficiently; this is not provided by wider online channels such as Facebook and Gumtree. StubHub stated that, for resellers, 'it is very high maintenance ... it does not have the services that somebody who is

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<sup>189</sup> [X].

<sup>190</sup> See, for example, [X].

<sup>191</sup> [X].

<sup>192</sup> [X].

<sup>193</sup> [X].

<sup>194</sup> Parties' Phase 2 Initial Response, paragraph 27 (c).

<sup>195</sup> [X].

selling tickets at volume may want in terms of tools and so forth,' adding that it is 'a very real alternative for fan-to-fan or C2C resellers.'<sup>196</sup>

7.195 There was some evidence in StubHub's internal documents that [REDACTED].<sup>197</sup> [REDACTED].<sup>198</sup> [REDACTED].

7.196 Taking this evidence from StubHub's internal documents in conjunction with the views of the (generally larger, professional) resellers that responded to the CMA's questionnaires indicates that, where these channels are likely to be a viable option for the Parties' resellers, it is likely to be only for 'occasional' resellers.

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

### ***Competitive constraint from offline channels***

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

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

7.199 The Parties have argued that StubHub is not a key source of new liquidity for the viagogo platform, listing offline channels such as 'in-person trades, street sellers, concierge services, ticket booths' as among the sources of increased liquidity on its platform.<sup>199</sup>

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

- (a) Guarantees in relation to the authenticity of tickets and the security of transactions;
- (b) Resellers' use of, and views on, these offline channels;

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<sup>196</sup> [REDACTED].

<sup>197</sup> [REDACTED]. [REDACTED]. [REDACTED].

<sup>198</sup> [REDACTED].

<sup>199</sup> Parties' Initial Submission, 27 July 2020, paragraphs 27 (c) and 29 (d).

(c) Third-party views on the competitive constraint from offline sales channels; and

(d) Evidence from the Parties' internal documents.

7.201 A number of operators of other secondary ticketing platforms, primary sellers and the Parties' resellers pointed to the importance that buyers and resellers place on the security of completing transactions on dedicated platforms and the guarantees offered to buyers on secondary platforms. A number noted that these were important differentiating features between the Parties and offline channels. For example, Twickets noted that it competed with: 'offline channels (e.g. a tout at a venue) ... principally on price and protection against fraud, as well as providing assurances that the event goer has a genuine ticket to the event before arriving at the venue'.<sup>200</sup> As set out below, a number of the Parties' resellers also pointed to these as significant differentiating factors between the Parties' platforms and these channels.

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

(i) The vast majority had either not made any use of offline channels or had generally used these in very limited circumstances (eg, friends, family, or for selling to existing clients);<sup>201</sup>

(a) The vast majority of respondents did not consider offline channels to be viable alternatives to the Parties' platforms, with a number of resellers referring to the lack of guarantees, protections and visibility of tickets.

7.203 Other secondary ticketing platforms also indicated that they did not, in their view, compete with offline channels, including Gigsberg,<sup>202</sup> AXS Resale,<sup>203</sup> and [REDACTED].<sup>204</sup> This view is also shared by the fan groups we spoke to.<sup>205</sup>

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

(a) [REDACTED]; and

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<sup>200</sup> [REDACTED].

<sup>201</sup> See Appendix G, paragraph 45.

<sup>202</sup> [REDACTED].

<sup>203</sup> [REDACTED].

<sup>204</sup> [REDACTED].

<sup>205</sup> See responses from [REDACTED].

(b) viagogo offered [REDACTED].<sup>206</sup>

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

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

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

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

7.208 The Parties argue that primary ticketing platforms act as a significant constraint on their businesses, with viagogo describing primary ticketing as '[REDACTED]'.<sup>207</sup> Their main arguments are that:

(a) Resale prices on the Parties' platforms are constrained by the fact that primary platforms 'provide a competitive alternative to secondary channels' 'until an event is sold out'.<sup>208</sup>

(b) Primary ticketing platforms are increasingly engaging in practices which affect the availability and cost of tickets available in the secondary market,

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<sup>206</sup> [REDACTED].

<sup>207</sup> [REDACTED].

<sup>208</sup> [REDACTED].

leading to a 'blurring [of] the line between primary and secondary sales'.<sup>209</sup> These practices include:

- (a) Dynamic pricing and VIP tickets, which allow the primary platform to increase primary ticket prices in response to demand, bringing prices closer to those that might emerge in the secondary market.<sup>210</sup>
- (b) Slow-release ticketing – i.e. holding back the supply of tickets to an event in order to regulate the flow of tickets into the secondary market.<sup>211</sup>
- (c) Restricting the transfer of tickets to prevent resale (except through the primary platform's own resale channel).<sup>212</sup>
- (c) Primary ticketing platforms are increasingly moving into the resale of tickets – for example, Ticketmaster and AXS have both launched ticket exchanges where ticket holders can resell tickets purchased on the primary site. Buyers can compare primary and secondary tickets directly on these platforms (ie. they are 'co-mingled' platforms), while resellers can also use these platforms.<sup>213</sup>
- (d) Overall, the Parties argue that they operate within 'the broader overall market for live event tickets', which includes content rights holders and promoters, as well as agents providing primary ticketing services, and the 'traditional boundary between primary and secondary ticketing channels is fast dissolving'.<sup>214</sup>

7.209 In assessing the potential impact of primary ticketing platforms' activities on the Parties' secondary ticketing platforms, it is important to distinguish between factors that might constrain resale prices or reduce the size or profitability of the secondary market on the one hand, and competitive constraints on secondary platforms' offering to buyers and sellers, in terms of fees, terms or quality of service, on the other. For the reasons set out below, our 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

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<sup>209</sup> [REDACTED].

<sup>210</sup> [REDACTED].

<sup>211</sup> [REDACTED].

<sup>212</sup> [REDACTED].

<sup>213</sup> This point is discussed in more detail in the section on the competitive constraints from capped secondary platforms.

<sup>214</sup> [REDACTED].

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.

7.210 We have assessed:

- (a) The economic characteristics of primary and secondary ticket sales;
- (b) Evidence of primary and secondary ticket purchase prices and timing of purchase, as indicators of the extent to which primary and secondary sales are close substitutes for buyers, and the extent to which resale takes place closer to events than primary sales;
- (c) Evidence of the impact on secondary ticketing of dynamic ticketing and slow release ticketing in the primary market;
- (d) Evidence from internal documents on the nature of the interactions between primary and secondary ticketing;
- (e) Wider interactions between primary and secondary markets and the extent to which these point to competitive constraints between the two.

*Economic characteristics of primary and secondary ticket sales*

7.211 As set out in the market background section, there is a clear distinction between the primary and secondary supply of tickets. Resellers are purchasers from primary sites, so for the resellers using the Parties' platforms, there is no substitutability between primary and secondary platforms.

7.212 From the perspective of ticket buyers, some consumers may view primary and secondary tickets as substitutes when they are both available to purchase. Not all buyers may be willing to purchase secondary tickets (for example because of concerns about whether the ticket is genuine or transferable), but we can expect that most buyers who are willing to purchase a secondary ticket for a particular event would see a primary ticket for the same event and similar seat location as a substitute.

7.213 However, the extent to which primary ticketing constrains secondary ticketing on the buyer side depends on the availability and attractiveness of primary inventory. If primary tickets are not available (or the tickets that are available are not viewed by buyers as sufficiently close substitutes for a particular secondary ticket, for example because they are in a different location in the venue), then the primary market will not act as a constraint on secondary sales. As set out below (see paragraphs 7.223 to 7.227), our analysis of a sample of events found that even in weeks close to the event date when

primary tickets had not sold out, there were material numbers of secondary sales, which is consistent with primary sales not constraining secondary sales due to, eg, the higher demand seats selling out faster on the primary market, or with buyer search behaviour (clicking through top-ranked paid search ads or organic search results) leading them to secondary listings even when equivalent primary inventory was still available.

7.214 In order to test the relative availability and attractiveness of primary tickets for buyers we have conducted analysis on:

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

*Price differentials between primary and secondary tickets*

7.215 In order to test the degree of constraint between primary and secondary ticket sales in practice, we looked first at evidence of the price differentials between primary and secondary tickets. The existence of significant price differentials between primary and secondary ticket would suggest that there is a limited competitive constraint between them.<sup>215</sup>

7.216 As described in more detail in Appendix C, we analysed price differentials in two ways:

- (a) First, we collected data from the Parties on all their secondary ticket transactions in the period January 2019 to February 2020. This data included the secondary sale price and a record of the face value of the ticket in the primary market. We calculated the differential between

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<sup>215</sup> Even though we are mostly interested in buyer and seller fees, we think evidence of the total ticket prices is relevant to understanding the competitive interaction between these two types of site. However, we note that, even if there were competitive interactions between the prices on primary and secondary sites, this would not necessarily mean that primary sites impose a material competitive constraint on the Parties' buyer and reseller fees and terms.

secondary sale price and recorded face value for each transaction, and then examined the distribution of differentials across all transactions.

- (b) Second, we carried out a similar analysis for a subset of major events for which tickets were sold on both of the Parties' platforms. For these events we also gathered transaction data from the primary ticketing platforms, to compare directly the prices on the primary and secondary platform.

7.217 Based on the aggregate analysis, we found that the average resale price of event tickets sold through the Parties' platforms was significantly above their face value. Our analysis found that most tickets sold through the Parties' platforms in the period January 2019 to February 2020 had a mark-up over their face value of more than 50%. There was also very significant variability in the differentials, with some tickets being sold below face value, and others at a very high mark-up. Overall, this analysis suggests that for the majority of ticket sales on the Parties' sites, the sale of primary tickets is unlikely to constrain the price of secondary tickets.

7.218 The analysis of a subset of events produced very similar results. When estimating the proportion of tickets that were sold through the Parties' platforms above their face value, we found that an average of 80-100% [redacted] and 60-80% [redacted] of tickets sold by resellers for our selected events on viagogo and StubHub's website were above the face value of a ticket.

7.219 The Parties argued that this analysis was unreliable because:

- (a) The Parties do not verify the face value of the tickets recorded in their transactions data; these are entered manually by ticket sellers; and
- (b) The comparison with face value does not account for the fact that primary tickets may be priced dynamically in the primary market, i.e. the face-value price that a reseller paid may not reflect the 're-priced' face value once the primary seller adjusted this in response to primary demand.<sup>216</sup>

7.220 On the first point, we accept that there may be some inaccuracies in the face value of tickets entered by resellers. However, we would expect buyers to complain if the face value recorded on the ticket was different from that stated by the resellers and the Parties told us that they did not receive many such complaints. To the extent that resellers have an incentive to misrepresent the stated face value, we would expect them to be more likely to overstate rather

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<sup>216</sup> [redacted].

than understate this, as the former would make the price look more attractive for the buyer.<sup>217</sup>

7.221 On the second point, we agree that where tickets are sold dynamically then this could, in principle, affect the inferences we draw from our analysis of price differentials, but it does not affect the calculation of the mark-ups. As the Parties argue, a reseller may have bought a dynamically-priced ticket at a low price, but the primary seller may have later ‘re-priced’ tickets for the same type of seats. In this way, the calculated mark-ups are not affected, but the inference that the mark-up is a good estimate for the differential between primary and secondary prices may not be correct. However, the evidence we have gathered on the extent of dynamic pricing (see paragraph 7.228 onwards) suggests that only a small minority of primary tickets are sold dynamically. We therefore do not consider it plausible that dynamic pricing could account for the extent of price differentials that we observe in the Parties’ data. Indeed, to the extent that dynamic pricing increases primary prices for some seats for some high-demand events, we would expect this to increase costs to resellers and lead to lower observed mark-ups for these resellers, rather than the high mark-ups that we found.

7.222 The findings of our analysis are also consistent with resellers’ responses to our questionnaires, as they all emphasised the variability that can come into the prices that they sell their secondary tickets for. Some suggested that they would look for a consistent mark-up above the total cost of a ticket,<sup>218</sup> while others highlighted how prices on the secondary platform would often fall below the face value, particularly as an event drew closer.<sup>219</sup>

#### *Timing of primary and secondary ticket sales*

7.223 We also gathered evidence on the timing of primary and secondary purchases. This analysis allowed us to test empirically the suggestion made by some primary platforms and resellers that the majority of ticket sales on primary platforms occur in the first weeks after the first tickets go on sale.<sup>220</sup> If true, this means that consumers are likely to ‘migrate’ to secondary ticketing exchange platforms as the date of the event approaches, demonstrating that

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<sup>217</sup> We also checked a subset of transactions recorded by the Parties against data provided by a primary platform [REDACTED]. Based on a visual inspection of charts describing the distribution of ticket prices sold through [REDACTED] and face values of tickets sold through the Parties’ platforms, we found the face value data provided by the Parties to be comparable to the ticket prices included in the data provided by [REDACTED].

<sup>218</sup> See, for example, [REDACTED].

<sup>219</sup> See, for example, [REDACTED].

<sup>220</sup> One reseller suggested that they would generally buy tickets at the start of the sale but then wait a few weeks for prices to settle before listing (See [REDACTED] response). A number of third parties also pointed out that resale listings or transaction tended to take place close to the event, [REDACTED], while Twickets stated that buyer activity peaked in the 1-2 weeks before an event ([REDACTED]). [REDACTED] stated that increased reseller listing on its resale site from [REDACTED] prior to the event date ([REDACTED]).

there is a difference in consumer behaviour between primary and secondary ticketing platforms. At the extreme, there may be little or no scope for competitive interaction between primary and secondary ticketing platforms where events sell out - meaning that buyers cannot purchase tickets from primary channels as the event date approaches.

7.224 As described in more detail in Appendix C, we collected transaction data from a large primary platform [redacted] covering 13 of the Parties' 21 highest revenue-generating events in 2019. This allowed us to compare the data on primary sales with the Parties' own transaction data on secondary sales for the same events.

7.225 We compared the proportion of tickets sold for our selected events on Ticketmaster and the Parties' platforms in both the first week they were made available to buyers and the last week before the date of the event. We found that an average of 60-80% [redacted] of tickets that were sold for our selected events on Ticketmaster's website were purchased in the first week they were made available to buyers. In contrast, an average of 20-40% [redacted] and 0-20% [redacted] of tickets that were sold for our selected events on viagogo and StubHub's websites, respectively, were purchased in the first week they were made available to buyers.

7.226 An average of 0-20% [redacted] and 20-40% of tickets that were sold for our selected events on viagogo and StubHub's website, respectively, were purchased in the last week before the event. Less than 10% [redacted] of tickets that were sold for our selected events on [redacted] website were purchased in the last week before the event.

7.227 Our analysis therefore confirmed that there is a significant difference in the average timing of purchase of primary and secondary tickets. However, these findings also point to (in some cases) material volumes of primary tickets remaining on sale for weeks beyond the initial 'on-sale' date. Even with this overlap in availability for some events, as our pricing analysis demonstrated, this did not appear to lead to a material pricing constraint from primary sales on secondary sales on the Parties' platforms.

#### *Dynamic ticketing, 'VIP' tickets and slow release*

7.228 As noted above, the Parties argued that primary ticketing platforms are increasingly engaging in practices which affect the availability and cost of tickets available in the secondary market, including:

- (a) Dynamic pricing and VIP tickets, which allow the primary platform to increase primary ticket prices in response to demand, bringing prices closer to those that might emerge in the secondary market.
- (b) Slow (or staggered) release ticketing – i.e. holding back the supply of tickets to an event in order to regulate the flow of tickets into the secondary market.
- (c) Restricting the transfer of tickets to prevent resale (except through the primary platform’s own resale channel)

7.229 In order to test the Parties’ arguments, we collected evidence from primary ticketing platforms on the extent to which they are engaging in these practices and whether they are likely to create a competitive constraint on the Parties’ secondary ticketing sales in the future.

7.230 The evidence we collected suggested that the ticketing practices referred to by the Parties cover only a very small proportion of overall ticket sales.

- (a) As set out in paragraphs 6.14 to 6.16, we found that dynamic pricing (and related strategies like the sale of ‘VIP’ tickets) represent a very small proportion of primary sales in the UK (e.g. for Ticketmaster, dynamic pricing represented [redacted]% of GTV in 2018 and [redacted]% in 2019, while AXS has not used dynamic pricing in the UK). The Parties argued that the use of dynamic pricing was growing rapidly, but the evidence they put forward suggesting growth of around 66% last year was based on a figure for LiveNation based on its global sales.
- (b) While the Parties have argued that the ‘slow release’ of tickets and increasing restrictions on the transferability (and, hence, the resale) of tickets were having an impact on the secondary market, we found limited evidence that these practices were having a material impact in the UK market. On the ‘slow release’ of primary tickets, we received limited evidence that this practice was increasing, with our analysis of a sample of events finding that, on average, the [redacted]60-80% of primary sales took place in the first week of an event being on sale,<sup>221</sup> although a number of resellers referred to the practice.<sup>222</sup> On restricting the transfer of tickets (to prevent resale), a number of primary sellers referred to the increased use of digital (or mobile) ticketing and that this could facilitate restrictions on transferability and on resale, but that this was a decision for the artist,

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<sup>221</sup> See Appendix C, Table C.3.

<sup>222</sup> See Appendix G, paragraph 40.

content rights holder or event organiser, with some choosing to restrict transferability in order to limit the scope for resale.<sup>223, 224</sup>

- (c) Even if these practices were to become more prevalent over time, we consider that their main impact would be to affect the supply of tickets into the secondary market, rather than imposing a direct competitive constraint on secondary platforms. An increase in the use of dynamic pricing could reduce the number of tickets coming onto the secondary market or reduce resellers' margins when they resell these tickets. However, even if this change in supply were to affect prices in the secondary market, our view is that it will not have a material impact on the fees that secondary platforms can charge resellers or buyers for the sale of those tickets.

7.231 In a similar way, the slow release of tickets and restrictions on the transferability of tickets could both lead to a reduction in the availability of inventory to sell onto the secondary market, as indicated by some of the Parties' resellers that we spoke to.<sup>225</sup> However, we would not expect this to impose a competitive constraint on the Platforms' decisions on setting fees and other payment terms.

#### *Evidence from the Parties' internal documents*

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

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

(a) [REDACTED].<sup>226</sup>

(b) [REDACTED].<sup>227</sup>

(c) [REDACTED].<sup>228</sup>

7.234 On the other hand, as set out in 6.25 (on Market Definition), above:

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<sup>223</sup> [REDACTED].

<sup>224</sup> [REDACTED].

<sup>225</sup> See Appendix G: Summary of evidence from resellers.

<sup>226</sup> [REDACTED].

<sup>227</sup> [REDACTED].

<sup>228</sup> [REDACTED].

- (a) Many of the Parties' documents tended to discuss the secondary and primary platforms as distinct channels for ticket sale/purchase, with references to viagogo's and StubHub's positions and shares within the 'secondary market' contained in a number of documents;
- (b) Similarly, some internal documents, especially from StubHub, focus mainly on, or only refer to, competition between the Parties, rather than indicating a wider market including the primary platforms (we have found proportionately fewer viagogo documents referencing StubHub compared to the proportion of StubHub's internal documents that reference viagogo);
- (c) While a number of viagogo documents referred to [REDACTED], some of these documents characterised the risk to the Parties' business model [REDACTED];<sup>229</sup> and
- (d) Much of the consideration of primary ticketing platforms, especially Ticketmaster, but also See Tickets, Eventbrite and AXS, related to 'brand awareness', consumers' perceptions of, and attitudes' towards various brands in the broader ticketing sector, and more general competition for ticket sales across all channels.

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

#### *Analysis of wider interactions between primary and secondary*

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

7.237 We have identified five main forms of interaction between primary and secondary sites:

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<sup>229</sup> [REDACTED].

- (a) Primary sites are a source of supply of tickets for sellers using the Parties' platforms
- (b) The major primary sellers provide secondary resale on their sites.
- (c) Primary and secondary tickets compete for the same buyers when both are on sale at the same time
- (d) Primary sellers (or event organisers/venues/sports clubs) can facilitate entry in the secondary market by appointing an authorised resale platform
- (e) Some secondary platforms are involved in the distribution of primary tickets.

7.238 The first three of these interactions have already been considered in the analysis above. In relation to primary as a source of inventory, we have noted that some primary sellers are making attempts to restrict this supply through higher primary prices (dynamic and VIP pricing) and through restricting resale. However, this is not a constraint on the fees or terms that the Parties offer to their sellers or buyers. The impact of secondary ticket sales on the primary sites was assessed in the previous section on constraints of the capped platforms. And we set out above our evidence showing that primary and secondary tickets are typically purchased at different times, with secondary tickets often being purchased when secondary tickets are not available.

7.239 In relation to the fourth form of interaction, the Parties argued that primary sellers (or event organisers/venues/sports clubs) can facilitate entry in the secondary market by appointing an authorised resale platform. This could help an entrant or a smaller player to expand. We agree that both primary and secondary platforms are to some extent competing for inventory from event organisers. However, this would not have an impact on the pricing decisions by secondary sellers once they have obtained inventory.

7.240 In relation to the fifth type of interaction, we agree that the Parties and some other secondary platforms have direct relationships with event organisers to sell primary tickets. However, as noted in paragraph 6.3 above, the extent of primary sales by the Parties is currently very limited. StubHub has been [redacted] in this in the past, and both Parties have noted [redacted], while some smaller platforms have also noted this as a way to enter or expand in the UK.

7.241 Primary sales appear to be able to complement a secondary platform's secondary sales, especially if it is also the authorised resale platform, and, in any case, is likely to attract additional buyers to its website and may increase brand awareness. However, as with the other forms of interaction considered above, this appears largely to be a potential mode of entry/expansion into the

primary market rather than a source of competitive constraint on the Parties' secondary sales following the Merger.

### *Provisional conclusions*

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

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

### ***Conclusion on competition with third parties***

7.243 On the basis of the evidence set out above, we have concluded that none of the alternative channels for sales of secondary tickets, individually or cumulatively, would provide a significant competitive constraint on the Parties following the Merger. The only remaining competitor in the market – Gigsberg – is much smaller than the Parties and was not seen as being a viable alternative for selling the bulk of resellers' ticketing inventory.

7.244 In terms of out-of-market constraints:

- (a) We found that capped secondary platforms – both those operating on a standalone basis and those within primary ticketing platforms – were not viewed as a viable alternative for resellers wanting to make a profit from secondary ticketing. While they might be an alternative for smaller and occasional resellers, this would not impose a significant constraint on the Parties' platforms given that most of their revenues are made from larger 'professional' sellers.
- (b) Given the Parties' platforms are so much bigger than capped secondary platforms (around [§] bigger on the basis of GTV last year, Table 3) and resellers do not view capped platforms as a viable alternative, buyers are

unable to transact on capped platforms to the same extent as they would be able to on the merged entity's platform.

- (c) We similarly found that wider online and offline channels would impose a negligible competitive constraint on the Parties, given their unattractiveness for professional resellers, and the lack of guarantees to buyers and security of transaction that these channels provided.
- (d) While the primary ticketing platforms have the ability to reduce to some degree the availability of tickets on the Parties' sites, and hence could significantly affect the future revenues and profitability of uncapped secondary ticketing platforms, we found that these behaviours would have a very limited impact on the incentives of the Parties in competing for resellers and buyers of secondary tickets.

### **Incentive to increase fees and worsen quality post-Merger**

7.245 The analysis above shows that the Parties are each other's closest competitor for both resellers and for buyers, and that there will be very limited competitive constraints from other platforms and sales channels following the Merger. This section addresses the Parties' arguments that, notwithstanding this loss of competition, they will not have an incentive to raise fees or worsen other elements of their offering post-Merger.

7.246 The Parties have argued that:

- (a) There is very little variation in fees and other terms (e.g. timing of payment and quality of service) offered to resellers and buyers, either over time or between different resellers and buyers.<sup>230</sup>
- (b) This reflects the fact that the Parties' incentives are primarily to grow liquidity, because of the indirect network effects of increasing the volume of buyers and resellers on the platform. Greater liquidity leads to increased conversion rates and hence higher revenues for the platform.<sup>231</sup>
- (c) Given the importance of increasing liquidity, post-merger, and the negligible liquidity obtained from Stubhub in the UK, it would therefore not be in viagogo's interests to raise fees or worsen other elements of the offering post-Merger, because this would 'harm its business model and future growth'.<sup>232</sup>

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<sup>230</sup> Parties' Phase 2 Initial Submission, 27 July 2020, paragraph 42.

<sup>231</sup> Parties' Phase 2 Initial Submission, 27 July 2020, paragraph 41.

<sup>232</sup> Parties' Phase 2 Initial Submission, 27 July 2020, paragraphs 16, 31, 38, 41 to 44, 47; [X].

- 7.247 We do not agree that the Parties would have no incentive to increase fees or worsen terms following the Merger relative to the counterfactual.
- 7.248 First, we have shown that there is some evidence of competition on fees and terms. For example, we have seen several examples of StubHub competing for resellers by offering better payment terms and reducing fees, although these have tended to be time-limited or event-specific. There are also wider elements of service that would be expected to worsen if resellers had no option but to use the Parties' platforms post-Merger. Several of the Parties' resellers that we heard from had concerns that the Merger would lead to worse service for buyers, while a number also explicitly predicted higher fees or worse terms for the Parties' resellers post-Merger.<sup>233</sup>
- 7.249 Second, while we agree that the Parties benefit from attracting greater volumes of tickets to their sites, this does not mean that the merged firm will not have a changed incentive to worsen its terms or increase its fees to resellers and/or buyers as a result of the Merger. Further, mergers can result in long-term structural change in markets and the merged entity's incentives may change over time (eg because it may become harder to grow the market). While the need to attract liquidity may incentivise the platform to make a competitive offer to customers on both sides, a merger that substantially reduces the attractiveness of customers' outside options on both sides of the platform will weaken that incentive and can be expected to lead to a worsening in the merged firm's offer.

## **Conclusion on loss of competition arising from the Merger**

- 7.250 We have provisionally found that
- (a) The Parties are by far the closest competitors in uncapped secondary ticketing, and that the Merger would remove the rivalry between them in competing for resellers and buyers.
  - (b) There would be very limited wider competitive constraints on the Parties from other ticketing platforms and sales channels. This is particularly the case for resellers, who will have almost no alternative options for reselling tickets at scale and at prices above face value.
  - (c) Although the Parties will continue to have an incentive to grow their platforms by attracting new buyers and resellers following the Merger, this does not mean that the loss of competition between them has no effect, relative to a market where two sizeable platforms remain competing for

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<sup>233</sup> See Appendix G, paragraph 53.

listings and for sales. Indeed, the Merger would lead to a substantial reduction in competition for new buyers and resellers, as well as for existing buyers and resellers already using the Parties' platforms.

- 7.251 We therefore provisionally find that the Merger would lead to a substantial lessening of competition, subject to countervailing factors which are considered in the following section.
- 7.252 We think the adverse effects resulting from the Merger (relative to the counterfactual situation) are likely to include any of higher fees for resellers and/or buyers, worse non-price terms and conditions for resellers and/or buyers, a lower quality of customer service and reduced innovation (eg in functionalities and improving its ease of use).
- 7.253 For the reasons given in paragraphs 7.27 to 7.33, we do not consider that the Merger is likely to lead to lower secondary ticket prices for consumers.

## 8. Countervailing factors

- 8.1 There are some instances when a merger may reduce competition substantially but for one or more countervailing factors in reaction to a worsening of terms by the merged entity. One countervailing factor might be, once the reaction by rivals or potential rivals is taken into account, by examining the likelihood of them entering into a market or expanding their activities in it, an SLC is not likely to arise. Another is because a merger allows the merger parties to realise efficiencies which enhance rivalry between the firms left in the market after a merger. A third is that customers have sufficient options available that they have countervailing buyer power which prevents an SLC (or an adverse effect resulting from an SLC) from coming about.
- 8.2 Therefore, before provisionally concluding on the Merger, in this section we assess whether there are any countervailing factors which would prevent an SLC from arising despite the provisional findings from our competitive assessment discussed above.

### Entry and expansion

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

#### *Parties' submissions and evidence*

- 8.4 The Parties submitted that 'the evidence shows that entry and expansion is not only possible, but is already occurring'.<sup>234</sup> In support of this they identified the following areas.
- 8.5 Firstly, they noted that [REDACTED] and that as an 'open competitive bidding platform'<sup>235</sup> this method of customer acquisition is available to any potential entrant. Whilst they acknowledged that 'this would require some cash investment' they did not view this as an insurmountable barrier to entry citing their own investment to grow their market position.<sup>236</sup> They further pointed out that, [REDACTED].<sup>237</sup>

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<sup>234</sup> [REDACTED]

<sup>235</sup> [REDACTED]

<sup>236</sup> [REDACTED]

<sup>237</sup> [REDACTED]

- 8.6 Secondly, the Parties stated more generally that ‘the evidence shows a marked absence of significant barriers to entry’. Specifically, they cited;
- (a) Their view that as buyers and resellers multi-home there is no customer lock-in to incumbents on either the buy or sell side;
  - (b) The absence of regulatory barriers to entry such as licencing requirements;
  - (c) The minimal capital investment required in terms of inventory, physical locations or employees<sup>238</sup>.
- 8.7 Finally, as evidence that entry was already occurring they cited the example of Gigsberg which they stated that since entry in April 2019 had already achieved [REDACTED] and had been described by some resellers as showing ‘promise’ and as being an alternative to a combined entity post-Merger.
- 8.8 The Parties also made statements and provided documents which provided further insight into their views on barriers to entry and expansion during the investigation.
- 8.9 viagogo told us [REDACTED]’ although it did note that there were significant differences between the US and UK markets.<sup>239</sup> It also noted that in the UK there was a large market of untapped buyers and sellers for potential entrants and that no unique, proprietary or patented technology was required<sup>240</sup>.
- 8.10 [REDACTED]<sup>241</sup> [REDACTED].<sup>242</sup> [REDACTED].<sup>243</sup>
- 8.11 [REDACTED].<sup>244</sup>
- 8.12 [REDACTED].<sup>245</sup>
- 8.13 In addition to the above, a viagogo internal document (October 2019) prepared [REDACTED] stated ‘[REDACTED]’.<sup>246</sup>

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238 [REDACTED]  
239 [REDACTED]  
240 [REDACTED]  
241 [REDACTED]  
242 [REDACTED]  
243 [REDACTED]  
244 [REDACTED]  
245 [REDACTED]  
246 [REDACTED]

8.14 Further, a viagogo document from October 2017 setting out [REDACTED]' notes that there are '[REDACTED]' in the form of [REDACTED]<sup>247</sup>:

8.15 The same document goes on to say that '[REDACTED]' and that: [REDACTED]<sup>248</sup>

8.16 In respect of the selection and bidding on key word Google paid search advertising, viagogo stated that, in addition to information provided by Google on the effectiveness of keywords to generate impressions and clicks, the keywords for these campaigns are selected by using its '[REDACTED]'.<sup>249</sup>

### ***Third party views on entry and expansion***

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

(a) Large secondary ticketing platforms operating in other jurisdictions ([REDACTED])

(b) Operators of capped secondary ticketing platforms in the UK (Ticketmaster, AXS, Eventim, See Tickets, Gigantic, Ticketswap and Twickets)

8.18 We also spoke to [REDACTED]

### ***Views of secondary ticketing platforms operating in the UK***

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

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

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<sup>248</sup> [REDACTED]

<sup>249</sup> [REDACTED]

(a) [REDACTED]<sup>250</sup>

(b) [REDACTED]<sup>251</sup>

(c) [REDACTED]<sup>252</sup> [REDACTED]<sup>253</sup>

(d) Execution ([REDACTED])<sup>254</sup>

8.21 [REDACTED].

8.22 As set out above (paragraphs 7.154-7.155) only around third of the resellers we spoke to identified Gigsberg as an alternative to the Parties, with the majority of them viewing them as a weak alternative at that. One did rate them as ‘promising’ but had yet to use them.

8.23 Three operators of capped secondary ticketing platforms told us that competing against viagogo in paid search was not cost effective for them given their smaller scale<sup>255</sup>, with one telling us that the absolute value of its fee per ticket is significantly smaller than for viagogo or StubHub<sup>256</sup>.

8.24 One source of potential entry to the uncapped secondary ticketing platform market would be for operators of existing capped platforms in the UK to change their policy on capping the resale prices that can be charged, either loosening existing caps or removing these altogether. In the UK, these platforms consist of five linked to primary ticketing providers (as an ancillary service for resale of tickets for which they act as the primary ticketing provider) and two independent capped platforms. All these providers stated that they had no intention currently to lift the cap on their platforms (paragraph 7.171).

#### *Views of secondary ticketing platforms operating in other jurisdictions*

8.25 [REDACTED].<sup>257</sup>

8.26 [REDACTED].<sup>258</sup>

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<sup>250</sup> [REDACTED]

<sup>251</sup> [REDACTED]

<sup>252</sup> [REDACTED]

<sup>253</sup> [REDACTED]

<sup>254</sup> [REDACTED]

<sup>255</sup> [REDACTED] and [REDACTED] and [REDACTED]

<sup>256</sup> [REDACTED]

<sup>257</sup> [REDACTED] and [REDACTED]

<sup>258</sup> [REDACTED]

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

(a) [REDACTED];<sup>259</sup> and

(b) [REDACTED]<sup>260</sup> [REDACTED]<sup>261</sup>

### **Our assessment**

8.28 We have considered whether entry or expansion in the provision of uncapped secondary ticketing platform services by third parties would be timely, likely and sufficient to mitigate or prevent an SLC from arising.<sup>262</sup>

8.29 We have found that there are strong indirect network effects present in the operation of uncapped secondary ticketing platform services (see ‘Role of indirect network effects and importance of liquidity’). The presence of indirect network effects is clearly corroborated by viagogo’s internal documents discussed above.

8.30 Evidence from some third parties also provides some support to the notion that indirect network effects are an important dynamic in the marketplace. For example, a common theme noted by the resellers we spoke to on why they choose to use the viagogo platform was that viagogo has a significant presence on Google search in attracting buyers (Appendix F). [REDACTED], submitted that building scale to achieve an efficient level of liquidity is an important element of competition and one of the main barriers to entry and expansion.

8.31 As we have shown in chapter 7, indirect network effects mean that the benefit resellers derive from being on the platform depends on the number of buyers on the other side of the market, and vice versa. The indirect network effects therefore strengthen the position of the platform relative to its competitors. This effect will be stronger on the merged entity’s platform than it is currently with viagogo or StubHub.

8.32 We consider that for an entrant, the need to attract a large number of resellers with a large volume of tickets across a large number of events and buyers to both sides of its platform in order to be an effective constraint to the merged entity is likely to be both costly and risky, particularly in the presence of larger

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<sup>259</sup> [REDACTED]

<sup>260</sup> [REDACTED]

<sup>261</sup> [REDACTED]

<sup>262</sup> Merger Assessment Guidelines, paragraphs 5.8.1-5.8.15

incumbents. In this light we note that the merged entity would have a share of [REDACTED] [90-100%].

- 8.33 We consider that the presence of strong indirect network effects is therefore likely to severely hamper any attempt at entry or expansion against the merged entity and to make such attempts insufficient and therefore less likely, slower and therefore less timely.
- 8.34 The evidence also indicates that indirect network effects are likely to make a buyer acquisition strategy from an entrant less effective, as discussed below.
- 8.35 Third party operators of secondary ticketing platform services drew our attention to the costs of acquiring buyers and their current ineffectiveness in competing against viagogo and StubHub in paid search. We have been told by some third-party platform operators that they are already at a cost disadvantage relative to viagogo in bidding on Google Ads to attract buyers. [REDACTED]
- 8.36 We note that our competitive assessment has identified paid search as the main mechanism to attract buyers to a platform.
- 8.37 Resellers who prefer uncapped platforms are very likely to list tickets on the merged entity's platform and will view it as a 'must have' platform. Once these listings occur, the merged entity will have an inherent advantage in its consumer acquisition. This might come about in several ways. First, given the scale of the merged entity's platform, it will be more likely than an entrant to have depth of inventory – in other words, more tickets (on average) for each event. This will improve its conversion from both internet paid search and organic search hits. A smaller platform, however, will risk not having available inventory for some buyers entering the platform via either paid search or organic search. Therefore, the platform might miss out on proportionately more sales from prospective buyers relative to the merged entity. We would expect that the entrant platform would bid a lower amount on Google Ads than the merged entity to take account of the expected comparatively lower return on advertising spend.
- 8.38 Second, given the scale of the merged entity's platform, it will be more likely than an entrant to have breadth of inventory. In other words, tickets available for more events (on average). Therefore, once a prospective buyer is on the platform via either paid search or organic search the merged entity's platform will have a higher likelihood of making a sale of some kind even if it is not to the specific event that the buyer initially searched for. We would expect that the entrant platform would bid a lower amount on Google Ads than the

merged entity to take account of the expected comparatively lower return of advertising spend.

- 8.39 Third, there are likely to be some economies of scale (through gaining more data points) in developing and honing effective bidding strategies in order to generate traffic onto their platforms and convert searches into sales. This is also likely to be an advantage of experience in knowing which keywords to bid on to attract buyers to a platform. [REDACTED]<sup>263</sup> It would therefore take time for a new entrant understand how to efficiently drive traffic to its platform through paid search.
- 8.40 Although viagogo told us that this reference to network effects as a high barrier to entry (paragraphs 8.10-8.12 above) came [REDACTED] we consider that it has probative value given its consistency with the other documents, discussed in paragraphs 8.13 to 8.15, which were prepared in the ordinary course of business.
- 8.41 Some third parties have raised the importance of brand awareness in helping to convert searches into sales. In our competitive assessment we received mixed views on the importance of brand and reputation in this market (paragraph 7.19). [REDACTED].<sup>264</sup>
- 8.42 We note that third parties have stressed to us that it is the awareness of the Parties' brands - not their reputations - that matters in helping to drive sales (by way of example, see paragraph 7.155). One third party told us that '[REDACTED].<sup>265</sup>[REDACTED].<sup>266</sup>
- 8.43 We also note that viagogo is the market leader in the UK and, as discussed above, has managed to build up a competitive [REDACTED] via indirect network effects (which we expect will be even stronger for the merged entity). Within that context, its brand awareness (or reputation) may be less important to it relative to an entrant trying to establish a position in the market with resellers and buyers. Both [REDACTED] have cited the high cost of building brand awareness as a significant barrier to entry and expansion.
- 8.44 From a buyer perspective, brand awareness may be important not only in making buyers aware of the new platform but a known brand is also likely to be important in building the legitimacy of the platform particularly in guaranteeing valid tickets or refunds [REDACTED]<sup>267</sup>. We think that branding may

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<sup>263</sup> [REDACTED]

<sup>264</sup> [REDACTED]

<sup>265</sup> [REDACTED]

<sup>266</sup> [REDACTED]

<sup>267</sup> [REDACTED]

hamper entry and expansion to some extent but not to the degree of indirect network effects and the cost disadvantage of bidding against the merged entity for paid search results.

- 8.45 We also note that there are very few examples of large-scale successful entry in uncapped secondary ticketing platform services. For example, Gigsberg entered in April 2019. Although Gigsberg has not been competing against viagogo and StubHub for very long, and especially when we take into account the Coronavirus (COVID-19) pandemic, its market position of [X] is considerably below what would be sufficient to prevent or mitigate an SLC from arising as a result of the Merger. [X].
- 8.46 Finally, we note that the evidence in our competitive assessment is that no existing provider of capped secondary ticketing platform services currently intends to remove the ticket price cap from their platforms nor, they told us, would they in the event that the merged entity worsens price or non-price terms on its uncapped secondary ticketing platform. For the capped secondary ticketing platforms operated by primary sellers, the relatively small share of their revenues that come from their resale facilities and the importance of their relationships with event organisers, content rights holders, artists and venues means that these are unlikely to have strong incentives to change their existing business models in response to the Merger (paragraph 7.171).
- 8.47 As set out above (paras 7.170-7.175) the sales of secondary tickets through these platforms are small compared to the parties and they are not regarded by the resellers we spoke to as strong alternatives to the parties.
- 8.48 The evidence therefore indicates 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

- 8.49 Efficiencies arising from a merger may enhance rivalry with the result that the merger does not give rise to an SLC.<sup>268</sup> In order for us to take efficiencies into account we must expect that they would be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would

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<sup>268</sup> Merger Assessment Guidelines, paragraph 5.7.2

otherwise result from the merger) and the efficiencies must be a direct consequence of the merger.<sup>269</sup>

- 8.50 In this case the Parties submitted during the CMA's Phase 1 investigation that following their integration, they will be able to realise cost-saving opportunities that will [REDACTED].<sup>270</sup>
- 8.51 In our Phase 2 investigation the Parties have not made any representations that the Merger is likely to lead to rivalry-enhancing efficiencies nor that the Merger would benefit consumers. We have not seen any evidence that there will be such efficiencies as a direct result of the Merger.
- 8.52 The evidence therefore indicates that it is not likely that rivalry enhancing efficiencies arise from the Merger to prevent and SLC from arising as a result of the Merger.

### **Countervailing buyer power**

- 8.53 In some circumstances, a customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. If all customers of the merged firm possess countervailing buyer power post-merger then an SLC is unlikely to arise. However, if only some customers possess countervailing buyer power the CMA may assess the extent to which that ability may be relied upon to protect all customers.<sup>271</sup>
- 8.54 In this case the Parties submitted during the CMA's Phase 1 investigation that secondary marketplaces face downward pressure on fees from professional resellers who have greater leverage than they did previously due to the adoption of inter-broker agreements or the use of a consolidator. If resellers are dissatisfied with the services of the Parties, they could set up their own resale website within the foreseeable future. viagogo recently [REDACTED].<sup>272</sup> The Parties have not made any representations about countervailing buyer power in our Phase 2 investigation.
- 8.55 As discussed above in 'entry and expansion' we do not consider it likely that resellers will be able to quickly, easily and at sufficient scale of liquidity set up their own resale website in order to prevent an SLC from arising.
- 8.56 In addition, as discussed in our competitive assessment, after the Merger customers of the Parties' platforms will have greatly reduced choice of

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<sup>269</sup> Merger Assessment Guidelines, paragraph 5.7.4

<sup>270</sup> [REDACTED]

<sup>271</sup> Merger Assessment Guidelines, paragraph 5.9.1

<sup>272</sup> [REDACTED]

uncapped secondary ticketing platform services. We currently do not consider that there would be sufficient alternatives for resellers or buyers to switch to after the Merger.

- 8.57 The evidence therefore indicates that it is not likely that countervailing buyer power will prevent and SLC from arising as a result of the Merger.

## **9. Provisional conclusions**

- 9.1 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 supply of uncapped secondary ticketing platform services for the resale of tickets to UK events.