



Response of ECC Ireland to the Department of Jobs, Enterprise and Innovation's consultation on the Resale of Tickets for Entertainment and Sporting Events.

The European Consumer Centre in Ireland (ECC Ireland) offers information and advice on both domestic and European consumer law and assistance in the resolution of cross-border consumer complaints through ECC-Net, a network present in 30 European countries funded by the European Commission and the Member States.

ECC Ireland consistently receives a large number of consumer complaints each year in relation to ticket sales, and while we are not in a position to address all questions posed in the consultation, ECC Ireland would like to take this opportunity to provide the Department with the following information.

Question 2

Approximately how many entertainment and sporting events each year in which you are involved or about which you have information give rise to a significant level of secondary ticket sales? What characteristics, if any, do these events have in common? Do they wholly or mainly involve large-scale events in major venues?

Of the complaints received by ECC Ireland over the past five years in the area of ticket sales, 65% of complaints related to sales on the secondary ticket market. All of these complaints related to major musical and sporting events which can be characterised by high demand and inflated prices. Aside from complaints as to pricing, a significant portion (over 60%) of these complaints related to non-performance i.e. the purchaser failed to receive the event tickets in time or at all, or where the consumer failed to gain admittance to the event with the tickets provided. Of recent concern is the number of consumers reporting to have been unaware they were purchasing on a secondary marketplace at a premium cost, after having been redirected there by the official ticket agent.

Question 3

What proportion of tickets offered for sale on secondary marketplaces and platforms are bought or sold -

- a) for a price above the face value of the ticket (plus any applicable service charges or booking fees)**
- b) at the face value of the ticket**
- c) for a price below the face value of the ticket**
- d) fail to sell.**

Information on the size of the mark-ups above, or discounts below, face value prices would also be welcome.

Of the complaints received by ECC Ireland regarding tickets sold on the secondary marketplace, all related to tickets which had been sold for a price above face value.

Question 4

How common is ticket fraud involving the supply of fake tickets or the non-delivery of tickets? How frequently, and in what numbers, are persons producing fake tickets denied access to entertainment and sporting events?

Approximately 20% of the complaints reported to ECC Ireland in the area of ticket sales related to suspected fraud. The proportion of consumers reporting that they have received fake or invalid tickets is quite small with the vast majority of such complaints concern non-delivery of the event tickets in question. In our experience sales of fake tickets, or more accurately the non-delivery of tickets by fraudulent ticket websites, tends to peak around prominent sporting events eg London Olympic Games, Rugby World Cup, Uefa European Championships etc. though we have also seen dedicated websites emerge purporting to sell tickets to specific concerts or festivals.

Q 13. Should websites which sell tickets for an event on the primary market redirect purchasers to secondary platforms selling tickets to the same event? Should any such redirection be subject to a requirement that the consumer be informed of the status of the secondary site and that ticket prices are likely to be higher?

For those consumers whose circumstance have changed and are no longer able to attend an event, for which they bought tickets, as well as for those who have not had an opportunity to purchase tickets through the general sale from primary sellers, a secondary market has clear benefits. Redirecting consumers to secondary platforms selling tickets online to the same event can help fans to hold on to tickets where tickets on the primary market have sold out. However, while many consumers would be willing to conduct a purchase through a ticket resale marketplace and be prepared to pay the price above the face value of the ticket, complaints reported to ECC Ireland show that consumers often are uncertain about how to differentiate between a primary and secondary platform and are led to believe that primary sellers put tickets up on sale directly through recommended sources, where in fact they only facilitate searches and provide the links to relevant online platforms open to anyone intending to buy or sell tickets, including professional resellers, individuals and event organisers. Many find the process of acquiring tickets through a redirection by a primary operator to a secondary resale market, where ticket availability and prices – often significantly higher than the face value – ultimately depend on anonymous third party sellers, unfair and misleading.

Whilst ticket sale and resale are not subject to any specific legislative provisions, consumers are protected by other instruments with more general scope such as Directive 2011/83/EU on consumer rights, Directive 2005/29/EC on unfair commercial practices or Directive 93/13/EEC on unfair terms in consumer contracts. However, certain business practices by primary and

secondary ticket market operators and cases of consumer detriment reported to ECC Ireland give rise to concern and may suggest that the above mentioned consumer protection legislation is not adequately complied with. Complaints frequently pertain to the operators' failure to disclose clear information on the costs a purchase of resale tickets entailed and that material information, such as the status of the secondary site or the identity of the seller, is provided in an untimely and unclear manner, if at all. Consumers must be provided with certain key information to make an informed decision on whether to engage into a transaction through a secondary ticket platform and whether the resale price is the one they would be willing to pay. It is ECC Ireland's view that websites which sell tickets for an event on the primary market should not be prohibited from redirecting fans to secondary platforms selling tickets to the same event provided they would be required to inform the consumer in a clear and timely manner about the status of the secondary site and state plainly and intelligibly prior to redirection taking place that the price tickets are available for through the secondary selling platform might be different from the face value of the ticket.

Q 20. Do secondary ticketing websites consider themselves under an obligation to ensure that resellers who qualify as traders under relevant consumer protection legislation inform consumers of their status as traders and of the rights that consumers buying from such sellers have under that legislation?

The expansion of the internet and the anonymity it offers have increased the opportunity for resale of tickets and so tickets can be listed for sale through secondary ticketing platforms by anyone, including professional resellers, event organiser and individuals, and at any price. Information in respect of the reseller's identity is often not disclosed on listings. This makes impossible for the consumer to identify resellers with respect to whom the consumer would have rights under consumer protection legislation. Complaints reported to ECC Ireland show that secondary platforms do not appear to consider themselves under an obligation to disclose the identity of resellers as consumers are rarely made aware whether they are entering into business-to-consumer transaction. If anything goes wrong, obtaining redress may prove challenging as affected consumers continue to face difficulties in pursuing their claims. While certain secondary ticketing platforms offer purchasers some form of guarantee against, for instance, the event being cancelled, non-delivery of tickets or admission to the venue not being granted, this should not relieve sellers engaging in resale in the course of their trader, business

or profession from their obligations to provide consumers with information about their identity. To ensure consumers have key information in order to make an informed transactional decision, the secondary marketplaces should be required to display the name and contact details of resellers, who in light of the purposes of the activity on the ticketing platform can be regarded as ‘traders’.

Question 21

Should legislation be introduced to regulate ticket resale and the secondary ticketing market? If so, what form should such legislation take and what penalties should apply to breaches of its provisions? If not, what are the reasons why legislative measures should not be pursued?

As acknowledged in the Consultation Report, the resale of tickets for major entertainment and sporting events at a price in excess of their face value is a cause of recurring public concern. However, it needs to be acknowledged that the secondary market in broad terms may hold significant benefits for consumers both as vendors and purchasers of tickets in particular instances.

In a context wherein it would seem, therefore, that a nuanced legislative response is appropriate, the US experience wherein a policy shift has occurred away from prohibition of secondary markets largely because the rise of online selling serves as a particularly salutary warning with respect to any prospective regulation of secondary markets.

ECC Ireland has seen a notable increase in complaints from consumers involving web-based traders who appear to have deliberately situated themselves in locations often outside of the EU wherein regulation is light or poorly enforced. Furthermore, included in the complaints received by ECC Ireland are complaints relating to secondary ticket traders dealing across national boundaries.

On the evidence of complaints received by ECC Ireland, therefore, the likelihood of traders operating from outside the state in order to circumvent attempts that may be made to regulate secondary ticket markets appears to be high. Consequently, it would seem that legislative efforts might be more fruitfully directed to providing enhanced protections for consumers using

secondary markets rather than imposing heavy sector-specific regulations on traders that may ultimately be difficult to enforce.

Against this backdrop, it is worth restating the particular aspects of the secondary tickets market that ECC Ireland has observed to be most frequently at the root of consumers' difficulties in this area. As outlined above, it is the operators' failure to clearly disclose clear information on the purchase price of resale tickets and failure to clearly disclose other material information such as the status of the dealer involved as a secondary trader or the identity of the seller.

To a certain extent, the consumer's need for enhanced transparency could be served by more robust enforcement and enhanced mechanisms for obtaining individual redress under existing consumer legislation. However, further legislative mechanisms specific to secondary ticket markets might require primary sellers in instances wherein redirection occurs to state plainly and intelligibly prior to redirection taking place that the price tickets are available for through the secondary selling platform might be different from the face value of the ticket, and would require secondary traders to inform consumers in a clear and timely manner about the secondary nature of a proposed sale, and in instances wherein tickets are being sold in excess of face value to clearly indicate this and provide information on the face value of the ticket.

In terms of enforcement, it is the experience of ECC Ireland that such mechanisms as allow consumers obtain individual redress in respect of are the most effective in combatting contraventions of consumer law. Breaches of proposed legislation should thus not only be subject to rigorous enforcement by appropriate authorities but should give rise to clear entitlements to consumers in the breach.