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Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Regulatory Impact Analysis

Sale of Tickets (Cultural, Entertainment,
Recreational and Sporting Events) Bill 2021

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1 Summary of RIA

Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Department of Enterprise, Trade and Employment	Title of Legislation: Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2021
Stage: Text of Bill	Date: April 2021
Related Publications: https://enterprise.gov.ie/en/Consultations/Consultation-Resale-of-Tickets-Entertainment-Sporting-Events.html	
Available to view or download at: www.oireachtas.ie/en/bills	
Policy Objectives	
<p>The Bill seeks to promote fairer access to event tickets by prohibiting the sale, or advertising for sale, for a price exceeding the original sale price of tickets for events in designated venues or for designated events. It sets out the conditions and procedures that will apply to the designation of venues and events, the refusal of applications for designation and the revocation of designations. The Bill specifies the information that must be provided when tickets for events in designated venues or for designated events are sold, or advertised for sale, by primary ticket sellers or are sold, or offered for sale, by secondary ticket sellers. It further prohibits the unauthorised sale of tickets for matches and official events during EURO 2020 in line with a commitment given by Government to UEFA as part of the bid for staging a number of matches in the tournament in Dublin. The Bill would also render void contract terms that exclude or limit the transfer of event tickets for no monetary consideration or their sale for a price not exceeding the original sale price unless such exclusions or limitations apply on the grounds of safety, public health or public order.</p>	
Policy Options	
1.	No Policy Change
2.	Introduction of Legislation
Preferred Option: Introduction of legislation.	

OPTIONS		
No policy change		
COSTS	BENEFITS	IMPACTS
<p>Fair access to tickets for high-demand sporting and entertainment events would continue to be undermined by the resale at a price above the original sale price of sizeable numbers of tickets for these events on secondary ticket markets. Such resale could reach higher levels than in the past if attendance at events is initially restricted on public health grounds when publicly attended entertainment and sporting events resume.</p> <p>Event organisers would continue to see revenues from high-demand sporting and entertainment events go to third-party ticket resellers who have no involvement in, or make no contribution to, sport or entertainment.</p> <p>No administrative or enforcement costs would be incurred by the State. There would be no cost or other impacts on secondary ticket sellers or secondary ticket marketplaces.</p>	<p>Secondary ticket sellers could continue to resell tickets for high-demand events at the highest price obtainable. The revenues of secondary ticket marketplaces whose fees for ticket sellers and buyers are set as a percentage of the resale price of tickets would be unaffected.</p>	<p>The Government would not fulfil its commitment to UEFA to prohibit the unauthorised sale of tickets for matches and official events during the EURO 2020 tournament. This could have an adverse effect on the credibility of Government commitments for future international sporting events.</p>

Introduction of legislation		
COSTS	BENEFITS	IMPACTS
<p>Secondary ticket sellers would be prevented from making the gains currently made from the resale of event tickets for a price above their original sale price. Due mainly to the relatively small size of the Irish event market, industry sources believe that most secondary ticket sellers here engage in such resale on an occasional, small-scale basis. The Bill's impact on such sellers will be limited, but will be more significant on secondary sellers operating on a larger scale and a more regular basis.</p> <p>There would be an impact on the revenues of secondary ticket marketplaces whose fees are set as a percentage of the resale price of tickets. The direct impact on the two main secondary ticket marketplaces currently operating in Ireland would be limited by the fact that the Irish market accounts for a relatively small part of their operations here. Secondary ticket marketplaces would also continue to be able to provide a platform for the sale of tickets at a price at or below their original sale price. Such sales are estimated to account for 25-40 per cent of ticket sales on these marketplaces.</p> <p>There would be a cost to the Exchequer arising from the need to provide the necessary enforcement resources to the Garda Síochána. This cost will depend on the level of necessary enforcement action and cannot be accurately quantified in advance. The</p>	<p>Access to tickets for high-demand events for sports and music fans on the primary ticket market would be enhanced by the reduced incentive and opportunity for secondary ticket sellers to purchase tickets in order to resell them for gain.</p> <p>Subject to exceptions on grounds of safety, public health or public order, ticket holders would no longer be precluded by the terms of ticket contracts from transferring tickets for free or from selling them at a price at or below the original sale price.</p> <p>Purchasers of tickets from secondary ticket sellers would benefit from the requirement on such sellers to provide information on the original sale price of the ticket and on the location of the seat or standing area to which the ticket entitles the holder to gain admission.</p> <p>Sporting bodies, event organisers and artists would see less revenue from events which they organise and stage going to secondary ticket sellers.</p> <p>The Government would fulfil its obligation to UEFA to prohibit the unauthorised resale of tickets for the EURO 2020 championship.</p>	<p>Some secondary ticket sellers may resort to the resale of event tickets on online marketplaces based in other countries or through black market and other sales channels that may be difficult to monitor and which do not provide the type of guarantees offered to ticket purchasers by established secondary ticket marketplaces.</p> <p>Given the borderless nature of online transactions, some Irish sports or music fans unable to obtain for tickets for sold-out events here may seek out tickets on websites in other jurisdictions. As the proceedings taken against a Norwegian reseller for the sale of tickets for the London Olympics outlined below demonstrate however, a secondary ticket seller outside Ireland who, after the enactment of the present Bill, states or otherwise creates the impression that the sale of tickets for events in Ireland for a price above the original sale price is lawful would be in breach of the Unfair Commercial Practices Directive.</p> <p>If resale above the original sale price is no longer an option on established secondary ticket marketplaces, some secondary sellers may shift their activities to underground or black market sales channels and some buyers may purchase tickets</p>

<p>procedure for the designation of venues and events will give rise to administrative costs for the Department of Enterprise, Trade and Employment. As the number of venues seeking designation is expected to be limited and the procedure for designation is relatively straightforward, these costs will mainly arise in the period following the Act's commencement and are not expected to be substantial.</p>		<p>through these channels. Those who purchase tickets from illicit secondary sellers in the knowledge that such purchases are in breach of the law on the resale of event tickets would take, and would have to accept, the risk that they would have no redress if tickets were not delivered or were counterfeit.</p>
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2 Policy context

Ticket resale

1. Tickets sold by venues, promoters and sporting bodies, or by ticketing service providers authorised by them, constitute primary ticket sales and the arrangements by which such tickets are sold constitute the primary ticket market.¹ On the secondary ticket market, tickets previously sold or allocated through the primary ticket market are resold or offered for resale. Though ticket sale and resale are subject to general consumer protection legislation, there is no currently statutory prohibition of ticket resale in Ireland or regulation of the mark-up over the face value of tickets offered for sale on the secondary ticket market.

2. While the figures can vary from year to year, the number of entertainment events that give rise to a non-marginal level of above sale price resale is estimated to be around fifty annually and the number of such events that give rise to a significant level of resale is generally around ten or fewer. Discussions with industry representatives and the Department's monitoring of secondary ticket platforms suggest that secondary ticket sales can account for 1 to 5 per cent of the tickets sold for major entertainment events and may rise to 10 per cent or more for some exceptionally high-demand events. The number of sporting events that give rise to an appreciable level of resale is, depending on fixtures, generally between five and ten annually. The proportion of tickets for these events offered for resale is usually below that for major entertainment events due to the more restrictive ticket distribution arrangements that apply to major sporting events.

3. The investigation undertaken in 2020 by the UK Competition and Markets Authority into the purchase of the secondary ticket marketplace StubHub by the rival viagogo marketplace found that secondary ticket sales in the UK in 2019 accounted for 5-6 per cent of the number of primary tickets sold and around 12-20 per cent of the value of primary ticket sales.²

¹ A more detailed account of the primary and secondary markets for event tickets can be found in the Consultation Paper on the resale of tickets for entertainment and sporting events issued by the Department of Jobs, Enterprise and Innovation and the Department of Transport, Tourism and Sport in 2017. The Consultation Paper can be accessed at <https://enterprise.gov.ie/en/Consultations/Consultation-Resale-of-Tickets-Entertainment-Sporting-Events.html> .

² Competition and Markets Authority, 22 October 2020, *viagogo/Stubhub provisional findings report*, paragraph 5.13. The report can be accessed at <file:///C:/Users/willc/Dropbox/CMAviagogoStubhubreport.pdf> .

4. Though the entertainment and sporting events that give rise to the above sale price resale of tickets account for a small proportion of the thousands of ticketed entertainment and sporting events that take place each year, the resale of tickets for these events attracts justifiable criticism from music and sports fans and generates considerable public and media attention. Sporting bodies, event organisers, and artists and entertainers who set ticket prices below a market-clearing level in order to ensure that tickets are not priced at a figure beyond the reach of ordinary fans are understandably unhappy at seeing revenues from the sale of tickets going to third-party resellers who have no involvement in, or make no contribution, to sport, culture or entertainment. The terms and conditions of the ticket contracts of the main sporting bodies prohibit the resale of match tickets for a price above the original sale price as do the ticket contracts for some entertainment events. Primary ticket sellers also limit the number of tickets that individual buyers can purchase in order to prevent those intent on purchasing tickets for resale from acquiring a large quantity of tickets. Though such terms are uncommon, the terms of ticket sales for some events have also precluded any transfer of tickets or their sale for a price at or below face value.

Secondary ticket marketplaces

5. While tickets are still offered for resale outside sports stadiums and concert venues, the secondary sale of event tickets is now mainly conducted online. Some of this resale occurs on general online platforms such as DoneDeal and eBay as well as on social networks such as Facebook or Twitter, but much of it now takes place on specialist online ticket platforms. While both types of platform emphasise that they do not fix the resale price of tickets and are not parties to the ticket sale, the specialist ticket marketplaces are more directly involved in the sale process. These platforms receive the payment for the ticket sale and, other than for certain regular or 'trusted' resellers, retain it until after the event has taken place. They also offer ticket buyers a guarantee that their payment will be refunded if tickets are not delivered or prove to be fake.

6. The secondary ticket market has undergone major change in recent years. The resale websites owned by Ticketmaster, Seatwave and Get Me In, ceased operations in 2018 and have been replaced by a ticket exchange facility operated by Ticketmaster which permits the resale of tickets purchased through Ticketmaster for a price not exceeding the face value of the ticket plus any applicable booking fees. The closure of Ticketmaster's resale sites left two main online ticket marketplaces operating in the Irish market, viagogo, the most widely used resale platform in markets outside North America, and the eBay subsidiary, StubHub, the dominant player in the US secondary ticket market. Though both platforms operate on an international basis, each has a website with an Irish domain name. Viagogo has an operations centre in Limerick while StubHub has a presence here as part of the wider eBay operation in Dublin. In November 2019, viagogo announced that it was buying StubHub from eBay for \$4.05bn and the purchase was completed in February 2020. While the sale has gone through in the US, it has been on hold elsewhere pending the outcome of a lengthy investigation by the UK Competition

and Markets Authority (CMA). In February 2021, the CMA ruled that viagogo must sell all of StubHub's operations outside North America.³

7. While the two main secondary ticket marketplaces do not charge for listings on their websites, both buyers and sellers are charged a percentage fee in the event of a sale. The fees for buyers generally range from 15 to 30 per cent of the resale price of tickets while the fees for sellers are typically between 5 and 15 per cent of that price. The ticket exchange facility operated by Ticketmaster Ireland charges buyers a 15 per cent fee while no fee applies to ticket sellers.

8. In November 2020, the Competition and Consumer Protection Commission (CCPC) completed an almost three-year long investigation into suspected anti-competitive practices in the operation of ticketing services for live events.⁴ While Ticketmaster Ireland denied breaching competition law, it gave commitments to the CCPC to remove exclusivity clauses with respect to venues in relation to the supply of outsourced ticketing services and to limit the duration of exclusivity clauses with live event organisers to three years. The CCPC applied to have the agreement made an order of the High Court and an order of the Court implementing the agreement took effect on 29 January 2021.

9. The secondary ticket market has been severely affected by the near-total cessation of publicly attended entertainment and sporting events in most countries that has resulted from the public health measures introduced to counter Covid-19. On 17 March 2020, UEFA announced that the EURO 2020 football championship would be postponed until June-July 2021, though it would continue to be known as EURO 2020. Following the postponement, UEFA sought a renewal of the commitments given by the Government on ticket sales and other matters as part of the bid for the hosting of a number of matches in Dublin. A renewed commitment on the prohibition of the unauthorised sale of tickets was signed by the Secretary General of the Department of Enterprise, Trade and Employment on 23 April 2020.

Secondary ticket sellers

10. Those who resell event tickets do so in different circumstances and for different reasons. As tickets for major events are often purchased up to a year in advance, ticket holders can find that they are no longer able to attend an event. Some of those who find themselves in this position are happy to recoup their original outlay, while others may seek to sell their tickets at a premium if resale prices on the secondary ticket market are above the original sale price. In some cases, ticket purchasers who plan to attend an

³ <https://www.gov.uk/government/news/cma-requires-viagogo-to-sell-stubhub-s-international-business> .

⁴ <https://www.ccpc.ie/business/notice-under-section-14b-of-the-competition-act-2002/> .

event may buy additional tickets for resale with a view to subsidising their own attendance at the event.

11. In addition to occasional, small-scale resellers of these kinds, there are others who engage in the secondary sale of tickets on a more regular and systematic basis. Industry sources suggest that the relatively small scale of the Irish event market means that it does not offer the same scope for the high-volume resale of event tickets by professional resellers found in larger markets. An indication of the level of resale engaged in by some secondary sellers in such markets emerged from the successful prosecution of two London-based resellers by UK National Trading Standards in 2020.⁵ The court heard that the pair had made a profit of £3.2 million from the resale of event tickets over a period of 32 months. Detailed information on the profile of secondary sellers in the UK has emerged from the investigation undertaken by the UK Competition and Markets Authority into viagogo's purchase of StubHub. The investigation found that in 2019 the largest 10 per cent of resellers accounted for 80-100 per cent of the total value of ticket sales on StubHub and more than 70 per cent of the value of ticket sales on viagogo.⁶ Resellers selling more than 100 tickets accounted for more than 50 per cent of the total value of ticket sales on both platforms in 2019.

12. The secondary ticket marketplaces operating in Ireland were unable or unwilling to provide information to the Department on the level of resale accounted for by high volume resellers. On the basis of the UK evidence, it seems reasonable to assume that there are likely to be some secondary sellers operating on a relatively large scale here and that these are responsible for a disproportionate share of listings and sales on secondary tickets websites for events in this country, though perhaps a lower share than in the larger UK market. An investigation into ticket listings on viagogo for the 2019 Six Nations championship, for example, revealed that a reseller who gave his or her details as 'Dublin' had 173 tickets for sale with a total asking price of £80,000, an average of £460 per ticket.⁷

13. Given that ticket purchases for major events are generally limited to 4-6 tickets per buyer, the question obviously arises as to how resellers offering large numbers of tickets for resale manage to acquire these tickets. The UK court proceedings referred to above provided a detailed insight into the methods used by organised secondary ticket sellers. The resellers in this case used at least 97 different names, 88 different postal addresses and more than 290 different e-mail addresses for the purposes of their ticket purchases. Bot software was also used to facilitate the

⁵ <https://www.nationaltradingstandards.uk/news/pair-jailed-for-secondary-ticketing-fraud/> .

⁶ Competition and Markets Authority, 22 October 2020, *viagogo/Stubhub provisional findings report*, paragraphs 7.42 and 7.84.

⁷ <https://www.theguardian.com/sport/2019/feb/05/thousands-of-six-nations-tickets-touted-on-viagogo-investigation-reveals> .

automated bulk-buying of tickets. As outlined in the next section, a prohibition on the use of bot software to circumvent limits on the number of permitted ticket purchases forms part of the Scheme of a Consumer Rights Bill that has been submitted for approval to Government.

14. Though the focus of media and public attention is invariably on tickets that are resold for a multiple of the original sale price, not all tickets offered for resale are sold at a profit or in some cases sold at all. One of the secondary ticket platforms which responded to the 2017 consultation on ticket resale undertaken by the Department of Jobs, Enterprise and Innovation and the Department of Transport, Tourism and Sport indicated that 62 per cent of listings failed to sell, though the response from another platform stated that the 'vast majority' of listed tickets were sold. One platform indicated that 25 per cent of sales were at or below the original sale price, while another stated that the figure was up to 40 per cent in the UK and around 50 per cent in the US. Tickets listed for resale shortly before an event by those who find themselves unable to attend are more likely to be sold at or below their face value or to go unsold.⁸

⁸ UK Independent Review 2016 of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities (Waterson review), paragraph 5.30. The review can be accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/525885/ind-16-7-independent-review-online-secondary-ticketing-facilities.pdf .

3 Legal context and background to Bill

Existing consumer protection legislation and ticket resale

15. Though ticket sale and resale are not currently the subject of specific statutory provisions in Ireland, they are subject to general consumer protection legislation. The sale of event tickets outside stadiums or venues or in other public places is a contravention of the Casual Trading Act 1995 if the seller does not hold a casual trading licence or is not acting for a person who holds such a licence.

16. The European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 which give effect to the 2011 Consumer Rights Directive (CRD) set out a detailed list of information requirements that traders must provide to consumers before the conclusion of a contract. This includes information on the main characteristics of the goods or service; the identity, address and contact details of the trader; and the price of the goods or service along with all additional freight, delivery or postal charges. The right to cancel distance and off-premises contracts within a fourteen-day cooling-off period provided for in the Directive and the Regulations does not apply however to contracts for a service related to leisure activities where the contract provides for a specific date or period of performance. Consumers who enter into a contract to buy tickets online do not have the right therefore to cancel the contract.

17. The Consumer Protection Act 2007 which gives effect to the 2005 Directive on Unfair Commercial Practices (UCPD) prohibits traders from engaging in unfair, misleading or aggressive practices affecting consumers. The Act also contains a 'blacklist' of specific commercial practices that are prohibited in all circumstances. The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 which give effect to Directive 93/13/EEC provide that a term in a consumer contract is unfair if it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer. Contract terms relating to the definition of the main subject matter of the contract or to the adequacy of the price and remuneration as against the goods or services provided in return are exempt from assessment for unfairness however if these terms are expressed in plain, intelligible language. The price of an event ticket offered for sale or resale is excluded from assessment for unfairness therefore provided that it has been stated plainly and intelligibly.

18. These statutory provisions apply only to contracts and transactions between traders and consumers. As such, they cover a contract or commercial practice involving a consumer purchaser and a primary ticketing service provider such as Ticketmaster, or a consumer buyer or seller and a secondary ticketing platform such as Seatwave or Stubhub. Contracts for the purchase of tickets on secondary ticket platforms however are made between the seller and buyer of the ticket. If the seller of tickets on such a secondary platform is not a trader - that is, a natural or legal person acting for purposes relating to his or her trade, business, craft or profession – the buyer will not enjoy the

protection of these provisions. If a seller on a secondary marketplace is engaging in resale on a regular basis such that he or she qualifies as a trader, however, he or she will be subject to the applicable provisions of consumer protection legislation and consumers who buy tickets from such a seller will be entitled to the protection of that legislation.

19. As ticket resellers range from those who may list tickets for sale just once to those who sell sizeable numbers of tickets on a regular basis, it will not generally be clear to ticket buyers if the person from whom they purchase a ticket is a trader or not. Whether or not such a reseller is regarded as a trader for the purposes of consumer protection law will be determined on a case-by-case basis by reference to a range of criteria, including the number and frequency of transactions, the turnover from resales, and whether the seller is engaging in the activity in order to make a profit.⁹ It is an offence under the Consumer Protection Act 2007 for a trader to make a representation, or create an impression, that he or she is not acting for purposes related to their trade, business or profession when he or she is so acting, or that he or she is acting as a consumer when he or she is not so acting.

20. Directive (EU) 2019/2161 on the Better Enforcement and Modernisation of EU Consumer Protection Rules has amended the Unfair Commercial Practices Directive and the Consumer Rights Directive to strengthen the requirements relating to the identity of traders and the application of consumer protection legislation. These amendments will, among other things, require online marketplaces to inform consumers before a consumer is bound by a contract whether or not a third party offering goods or services is a trader on the basis of that third party's declaration to the marketplace. Where the third party is not a trader, the marketplace must inform consumers that consumer rights stemming from EU consumer protection law will not apply to the contract. These and other amendments in Directive (EU) 2019/2161 must be transposed by Member States by 28 November 2021 and applied from 28 May 2022 and are to be given effect by the Consumer Rights Bill 2021, the Scheme of which has recently been submitted to Government for approval.

21. Directive (EU) 2019/2161 also amends the Unfair Commercial Practices Directive by the addition of the following provision to the Directive's 'black list' of commercial practices that are considered unfair in all circumstances:

⁹ European Commission. 2016. *Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices*, pp.33-34, http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf . In its engagement with secondary ticket marketplaces, the UK Competition and Markets Authority takes the view that a ticket reseller who satisfies one or more of the following criteria should be regarded as a trader: (i) the seller has confirmed to the secondary ticket marketplace that he or she is a business seller; (ii) the seller has confirmed to the secondary ticket marketplace that it is a registered company and/or has a VAT registration number; and (iii) the seller has sold more than 100 tickets on the secondary ticket marketplace's website in any twelve month period.

23a Reselling event tickets to consumers if the trader acquired them by using automated means to circumvent any limit imposed on the number of tickets that a person can buy or any other rules applicable to the purchase of tickets.

While it had been intended to include a provision on the use of bots in the Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill, the new UCPD provision will be inserted instead in the Consumer Protection Act 2007 and a provision to this effect has been included in the Scheme of the Consumer Rights Bill submitted to Government. This is being done for two reasons. First, the scope of the Unfair Commercial Practices Directive and of the Consumer Protection Act is limited to transactions between a trader and a consumer, while the scope of the Sale of Tickets Bill covers the sale, or advertising for sale, of event tickets regardless of whether the seller is a trader or a consumer. Secondly, EU consumer protection legislation gives rise to specific obligations in respect of co-operation between enforcement authorities in different Member States and other matters. This function is appropriate to the Competition and Consumer Protection Commission which is the principal competent authority for the purposes of the EU consumer protection regime, but would not be appropriate to the Garda Síochána which will have responsibility for enforcing the legislation on the sale of tickets.

22. Directive (EU) 2019/2161 provides also for the following addition to the UCPD blacklist of commercial practices that are considered unfair in all circumstances:

11a. Providing search results in response to a consumer's online query without clearly disclosing any paid advertisement or payment specifically for achieving higher ranking of products within the search results.

Prospective ticket buyers commonly end up on a secondary ticket website following a query on a search engine such as Google.¹⁰ In some cases, these buyers are unaware that this website is not the primary ticket seller and that ticket prices and charges may be substantially higher than the prices and fees charged by the primary seller. The UK Competition and Markets Authority investigation of viagogo's purchase of StubHub found the majority of visitors to both websites arrived there after clicking on a link from a search engine. What such purchasers may not realise is that secondary ticket platforms spend large amounts to achieve a high ranking in the results of online searches.¹¹ In 2019, viagogo spent more than £5m. in paid search advertising despite the suspension of its

¹⁰ In July 2019, Google announced that it was suspending viagogo's advertising account with the search engine for breaches of its advertising rules. The suspension led to a sharp fall in visits to viagogo's websites before being lifted in November 2019.

<https://www.theticketingbusiness.com/2019/10/07/viagogo-suffers-major-user-decline-since-google-ban/>
<https://www.theticketingbusiness.com/2019/11/27/viagogo-ads-return-google/>.

¹¹ Competition and Markets Authority, 22 October 2020, *viagogo/Stubhub provisional findings report*, paragraphs 7.110 and 7.116.

advertising account with Google for four months that year, while Stubhub paid less than £5m. The new UCPD provision will mean that the results of search engine queries will have to disclose in future whether a high ranking has come about through a paid advertisement or other payment.

Legal issues raised by regulation of ticket resale

23. In the wake of the Government decision of July 2018 to support the second stage reading of the Private Members' Prohibition of Above-cost Ticket Touting Bill 2017, the secondary ticket marketplace viagogo submitted a legal opinion in November 2018 on the proposed regulation of ticket resale prices. The main thrust of the opinion was that a prohibition on the above face value resale of event tickets would infringe the constitutionally protected rights of ticket holders. The legal advice on the viagogo opinion obtained by the Department noted that the courts have held that contracts such as those for the sale of tickets can create property rights which are protected under Article 43 of the Constitution. The courts have further held however that these rights are not without limitation. Article 43.2.1 of the Constitution states that the exercise of a property right should be regulated by the principles of social justice and Article 43.2.2 provides that the State may as required limit the exercise of a property right with a view to reconciling its exercise with the exigencies of the common good. The Department is satisfied on the basis of the legal advice it has received that the Bill does not constitute an unjust or unconstitutional infringement of the property rights of ticket holders but provides for a legitimate and proportionate regulation of those rights.

24. In March 2019, a legal opinion on the proposed legislation was submitted by the secondary ticket marketplace, StubHub. The main contention of this opinion was that legislation regulating the resale price of event tickets would be in conflict with EU law, in particular the maximum harmonisation nature of the Unfair Commercial Practices Directive. In response to questions on the issue in the European Parliament, the European Commission have stated that the resale of tickets for cultural, sports and other events is not prohibited at EU level, but did not express a view on whether national legislation prohibiting or regulating such resale is contrary to EU law.¹² The resale of event tickets above their face value is prohibited in Belgium, Croatia, Denmark, France (unless authorised by the event organiser),¹³ Italy and Portugal and also in the EFTA Member State, Norway. Though these national laws have been in place for a considerable time in some cases, they have not been the subject of any action by the European Commission on the grounds of an infringement of EU law. Directive (EU)

¹² European Parliament, Parliamentary Question E-001982/2019, 26 June 2019.

¹³ A challenge by viagogo to the constitutionality of the French legislation on ticket resale was rejected by France's Constitutional Council in 2018.

<https://www.theticketingbusiness.com/2018/12/19/viagogo-considers-taking-frances-resale-ban-eu-courts/> .

2019/2161 which provides for an addition of a prohibition on the use of bots to circumvent ticket purchasing limits and rules to the Unfair Commercial Practices Directive also includes the following recital which clarifies the compatibility of legislation regulating the resale price of event tickets with EU law:

(50) Traders should be prohibited from reselling to consumers tickets to cultural and sports events that they have acquired by using software such as ‘bots’ enabling them to buy tickets in excess of the technical limits imposed by the primary ticket seller or to bypass any other means put in place by the primary seller to ensure accessibility of tickets to all individuals. *This prohibition is without prejudice to any other national measures that Member States can take to protect the legitimate interests of consumers and to secure cultural policy and broad access of all individuals to cultural and sports events, such as regulating the resale price of tickets* (our emphasis).

25. Questions concerning the compatibility with EU law of legislation regulating the resale of event tickets arose for consideration in a case referred by the Norwegian Court of Appeal in 2018 to the Court of Justice of the European Free Trade Association (EFTA).¹⁴ The referral arose from an appeal taken by a Norwegian ticket reseller, Andreas Gyrre, against the imposition of a fine of 200,000 Norwegian kroner (approximately €20,000) by the Norwegian Market Council for the sale in Norway by Mr. Gyrre’s company of tickets for the 2012 London Olympic Games in contravention of a prohibition on the unauthorised sale of the tickets for the Games in the UK London Olympic Games and Paralympic Games Act 2006. The fine imposed on Mr. Gyrre was based on an alleged violation of the Norwegian law which gives effect to the prohibition on ‘stating or otherwise creating the impression that a product can legally be sold when it cannot’ at Annex I(9) of the Unfair Commercial Practices Directive. As a Member State of the European Economic Area, Norway is required to adopt and apply EU consumer protection and other rules as a condition of access to the EU Internal Market. As among the questions referred to the EFTA Court was whether a national law prohibiting the resale of event tickets was compatible with the UCPD, the Irish Government submitted written observations in the case.

26. In its judgment of December 2019, the EFTA Court held that the prohibition on the resale of tickets in the UK London Olympic Games and Paralympic Games Act came within the scope of the UCPD Annex provision. The Court further held that whether the national legislative provisions at issue applied in the Member State in which a ticket was sold or in the Member State in which an event took place had no bearing on the matter. The term “legally” in the UCPD prohibition must be interpreted as referring to the law in force at the time the consumer makes a purchasing or other decision about the product

¹⁴ Case E-01/19 - *Andreas Gyrre v the Norwegian Government*. The judgment and other documents relating to the case, including the written observations submitted by the Irish Government, can be accessed at <https://eftacourt.int/cases/e-01-19/> .

in question. It was immaterial whether the trader considered the legislative provision in question to be contrary to EEA law or whether that provision might subsequently be found to be contrary to EEA law. Though decisions of the EFTA Court are not binding on the European Court of Justice (CJEU), the CJEU can take account of the judgments of the EFTA Court. The ruling of the EFTA Court that the UCPD prohibition on “stating or otherwise creating the impression that a product can legally be sold when it cannot” covers national laws on the resale of event tickets serves to uphold a potentially important mechanism for the cross-border enforcement of such laws. The EFTA Court stated that, in view of its decisions on the other questions referred by the Norwegian Court of Appeal, there was no need for it to consider the question of whether national laws regulating the resale of event tickets were compatible with the Unfair Commercial Practices Directive. As noted in paragraph 24, this question has been addressed by the recognition of the right of Member States to regulate the resale price of tickets in recital (50) of Directive (EU) 2019/2161.

27. Directive (EU) 2015/1535 on the procedure for the provision of information relating to technical regulations and the rules for information society services requires Member States to notify the European Commission of proposed measures within the scope of the Directive for assessment of their compatibility with EU law. As the sale and resale of event tickets is now largely conducted online, it constitutes an information society service and it was necessary accordingly to notify the Scheme of the Bill approved by the previous Government in January 2020. The three-month standstill period for the assessment of the Bill by the European Commission, Member States and interested parties concluded on 6 May 2020. No issue of compatibility with EU law or the Internal Market was raised by the Commission or other Member States.

Background to Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2021

Prohibition of Above-Cost Ticket Touting Private Members’ Bill 2017

28. This Private Members’ Bill was initiated by Deputies Noel Rock and Stephen Donnelly T.D. on 31 January 2017 and provided as follows:

- it would be an offence for a person to sell, or to offer, expose or advertise for sale, a ticket for a specified event for a price in excess of the price officially designated on the ticket;
- ‘specified event’ was defined as any sporting, musical or theatrical event at which it is reasonable to anticipate more than 300 people would attend;
- ‘designated price’ was defined as the price, including any service charge, designated by the organiser of a specified event for the purchase of a ticket for the event;
- the offence provisions would not apply to a registered charity or voluntary or community organisation that had been authorised in writing by the event

organiser to sell a ticket for a specified event for a price in excess of the designated price;

- a Garda with reasonable cause for believing that a person was committing or had committed an offence under the Act would have the power to arrest without warrant, to enter and search premises, to confiscate tickets found on an arrested person or in the premises where the person was arrested, and to make an arrested person known to the organiser of the event in question;
- a person found guilty of an offence under the Act would be liable in respect of each offence committed on summary conviction to a fine not exceeding €5,000.

29. On 24 July 2018, the Government agreed to support the Private Members' Bill at Second Stage. The Second Stage debate on the Bill commenced in Government time on 31 January 2019 and concluded on 21 February 2019. There was broad cross-party support for the Bill's objectives. The Bill did not proceed to Committee Stage and lapsed on the dissolution of the 32nd Dáil on 14 January 2020.

30. The Government decision to support the Private Members' Bill also approved the drafting of the following amendments to the Bill and noted the intention of the Minister for Business, Enterprise and Innovation to revert to Government for the approval of such amendments to be tabled at Committee or Report Stage following their drafting:

- the ban on the above face-value resale of event would apply to events in designated venues with a capacity of 1,000 or above rather than to events with an expected attendance of 300 or more;
- venues seeking to be designated would be required to state that their capacity was 1,000 or above and that events in the venue were likely to give rise to significant levels of ticket resale;
- the Minister for Business, Enterprise and Innovation would have a reserve power to designate venues for the purposes of the legislation where this would be in the interest of consumers;
- the use of bot software to buy more than the number of tickets permitted by event organisers would be prohibited;
- the ban on above face value resale would not apply to ticket sales undertaken for fund-raising purposes by sporting bodies and clubs as well as by registered charities;
- a ban on the unauthorised transfer and use of tickets for matches and official events taking place during the EURO 2020 tournament in line with the commitment given to UEFA by the Government as part of the bid for the hosting of matches here.

31. The Scheme of the Bill as amended to include these changes was approved by Government on 29 January 2020 for the purpose of its submission to the European Commission in accordance with the requirement under Directive (EU) 2015/1535 on the procedure for the provision of information on technical standards and rules on

information society services. The Scheme was resubmitted to the new Government for approval for drafting on 28 September 2020 and forms the basis of the present Bill. While the Scheme of the Bill approved by Government in September 2020 was included in the Autumn Legislation Programme for enactment in 2020, this did not prove possible due to further technical drafting required following the Government decision and the requirement for pre-legislative scrutiny of the Scheme.

Sale of Tickets (Sporting and Cultural Events) Private Members' Bill 2017

32. This Bill was introduced by Deputy Maurice Quinlivan on 1 March 2017. Its main provisions were as follows:

- it would be an offence for a person to sell, or offer for sale, a ticket for a designated event at a price greater than 10 per cent above the face value of the ticket;
- a 'designated event' was defined as a sporting or cultural event for which more than 300 tickets had been offered for sale;
- registered charities would not be required to have authorisation to sell tickets for designated events for a price greater than 10 per cent above face value;
- an online marketplace would not be guilty of an offence under the Act solely by virtue of making facilities available in connection with electronic communication or the storage of electronic data unless it permitted the continued provision of such facilities after being notified that the facilities were being used for the commission of an offence;
- a Garda with reasonable cause for believing that a person was committing or had committed an offence under the Act would have the power to arrest without warrant, to enter and search premises, and to confiscate tickets found on an arrested person or in the premises where the person was arrested;
- a person guilty of an offence under the Act would be liable on summary conviction to a fine not exceeding €5,000;
- a court could make an order for the confiscation of the proceeds of illegal ticket sales from a person convicted of an offence under the Act;
- the Minister for Transport, Tourism and Sport would be required to consult with venue operators, event organisers and ticketing agents with the aim of establishing a voluntary code regarding ticket refunds and/or an official ticket exchange facility.

33. The Bill's Second Stage commenced on 11 May 2017 and resumed on 18 May 2017. A Government motion which provided that the Bill would 'be deemed to be read a second time this day nine months to allow for scrutiny by the Select Committee on Jobs, Enterprise and Innovation' was passed by 85 votes to 40. In its scrutiny report published in October 2018, the Committee -

- noted the broad support for the principle of the Bill and that it had passed Second Stage reading;

- recognised that the problem of ticket touting must be addressed by legislation as the continued absence of regulation is leaving consumers vulnerable to exploitation;
- recommended that ticket touting legislation be introduced immediately to ensure that consumers are protected;
- recognised that, if introduced, the Sale of Tickets (Sporting and Cultural Events) Bill 2017 would help eliminate the problem of ticket touting in Ireland.
- recommended that, subject to the receipt of a Money Message, the Bill should proceed to Committee Stage.

The Bill did not receive a Money Message from the Government prior to the dissolution of the 32nd Dáil on 14 January 2020 and lapsed on that date.

34. Consideration was given to the inclusion in the present Bill of a provision that, in line with the provision in Deputy Quinlivan's Private Members' Bill, would allow tickets to be resold for a price of up to 10 per cent more than the face value of the tickets, including any applicable booking or other fees. Though a case can be made for a provision of this kind, it has not been included in the present Bill. It was decided that, on balance, permitting a margin of 10 per cent above the original sale price of the ticket would complicate both the communication of the prohibition on above sale price resale and, in particular, its application in practice. As defined in the Bill, the original sale price of the ticket includes any additional fee or charge applying to the sale of the ticket. The current service charge applied by Ticketmaster, the main primary seller for major entertainment events, is 12.5 per cent of the cost of the ticket subject to a minimum charge of €1.65 and a maximum charge of €7.75. Permitting a further 10 per cent mark-up on the sale price in addition to such charges would add to the complexity of the calculation of the maximum permitted resale price of tickets.

4. Public consultation and pre-legislative scrutiny

Public consultation on resale of tickets for entertainment and sporting events

35. In response to public and political concern about ticket resale, a public consultation on the issue was launched on 20 January 2017 by the then Minister for Jobs, Enterprise and Innovation, Mary Mitchell O'Connor T.D.; the then Minister for Transport, Tourism and Sport, Shane Ross T.D.; and the then Minister for Tourism and Sport, Patrick O'Donovan T.D. The consultation sought the inputs and views of interested parties including consumers, performers and their representatives, promoters, sporting bodies, primary ticketing services providers, secondary ticket marketplaces and others, on possible measures aimed at securing fairer access to tickets for consumers. A total of twenty-four responses were received to the consultation, including from the main sporting organisations (the GAA, FAI and IRFU); the Consumers' Association of Ireland and the European Consumer Centre Ireland; primary ticket sellers (Ticketmaster and tickets.ie); secondary ticket marketplaces (viagogo, Stubhub, Seatwave); and one of the two main event promoters, Aiken Promotions. The submissions were published on the Department's website on 9 May 2017.¹⁵

36. Officials of the Department of Jobs, Enterprise and Innovation had further extensive engagement with stakeholders in the second and third quarters of 2017, including the second main event promoter MCD Productions, as well as exchanges with public authorities in a number of EU and EEA Member States with legislation restricting the resale of tickets. The responses to the public consultation and the subsequent discussions with stakeholders showed strong, though not universal support, for legislation to prohibit the resale of tickets above their face value or above a specified margin over their face value. Legislation along these lines received support from two of the three main sporting bodies, the GAA and FAI, the two main event promoters, Peter Aiken and Denis Desmond,¹⁶ the Consumers' Association of Ireland and a number of public representatives and consumers. The IRFU reserved its position on the introduction of legislation on ticket resale and indicated its willingness to participate in further discussions on the issue. Opposition to legislation prohibiting resale above face value came mainly from primary ticketing services providers, including Ticketmaster, and the three main secondary ticket marketplaces then operating in Ireland, Seatwave, StubHub and viagogo. The European Consumer Centre Ireland expressed reservations about price cap legislation on the grounds that the secondary ticket

¹⁵ The submissions can be accessed at <https://enterprise.gov.ie/en/Consultations/Consultation-Resale-of-Tickets-Entertainment-Sporting-Events.html> .

¹⁶ In written observations to the Joint Committee on Enterprise, Trade and Employment on the pre-legislative scrutiny of the Scheme of the present Bill, Mr. Desmond in his capacity as Chairman of Live Nation Ireland expressed some reservations about the Scheme of the Bill and stated that the priority should be to get the live entertainment sector working again.

market could have benefits for consumers and that a cap on prices would be difficult to enforce particularly in cross-border transactions.

Pre-legislative scrutiny of Scheme of Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2020

37. The Scheme of the Bill approved by Government on 28 September 2020 was submitted to the Joint Committee on Enterprise, Trade and Employment for pre-legislative scrutiny in October 2020. The Committee agreed to undertake scrutiny of the Scheme on 10 November 2020 and invited a number of stakeholders to make written submissions. It held a meeting with officials of the Department of Enterprise, Trade and Employment on 9 December 2020 and published the pre-legislative scrutiny report on 18 February 2021.¹⁷ In his foreword to the report, the Committee's Chair, Deputy Maurice Quinlivan, stated that he broadly welcomed the proposals in the Scheme of the Bill. With the exception of the submission from viagogo and the partial exception of the submission from Live Nation Ireland, the submissions to the Committee from other stakeholders were largely supportive of the aims of the Scheme. As outlined in paragraph 43 below, a number of the recommendation in the Committee's report and of the proposals contained in the submissions from stakeholders are addressed in the present Bill.

¹⁷ The pre-legislative scrutiny report can be accessed at https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_enterprise_trade_and_employment/reports/2021/2021-02-18_pre-legislative-scrutiny-of-the-sale-of-tickets-cultural-entertainment-recreational-and-sporting-events-bill_en.pdf . The submissions received from stakeholders can be accessed at <https://www.oireachtas.ie/en/publications/?committee%5B0%5D=%2Fen%2Fcommittees%2F33%2Fenterprise-trade-and-employment%2F&topic%5B0%5D=correspondence&topic%5B1%5D=opening-statements-submissions> .

5. Policy objectives of Bill

Outline of Bill

38. The provisions of the four Parts of the Bill are summarised below. A more detailed account of the individual sections of the Bill can be found in the Explanatory Memorandum to the Bill.

Part 1 – Preliminary and General

39. Part 1 comprises sections 1 to 6 of the Bill and provides for its short title and commencement, interpretation, expenses, regulations, the service of documents and application.

Part 2 – Sale of Tickets for Cultural, Entertainment, Recreational and Sporting Events in Designated Venues and for Designated Events

40. Part 2 comprises sections 7 to 14 of the Bill. As the prohibition on the above sale price resale of tickets and ticket packages will apply to events in designated venues and to designated events, Part 2 sets out the provisions and procedures governing the making of applications for the designation of venues or events by venue operators or event organisers, and the making, refusal and revocation of such designations by the Minister for Enterprise, Trade and Employment. A venue operator may apply for the designation of a venue if the venue has the capacity to hold 1,000 or more and the operator is of the reasonable opinion that the venue will hold events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price. An event organiser or venue operator may apply for the designation of an event if he or she is of the reasonable opinion that the event may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding their original sale price. Part 2 further provides, and specifies the conditions, for the designation by the Minister of a venue or an event that has not been the subject of an application for designation by a venue operator or event organiser, including a venue with a capacity of less than 1,000. A venue operator or event organiser notified of the proposed refusal or revocation of a designation may make representations to the Minister and may also appeal such a refusal or revocation, or a designation made by the Minister that has not been the subject of an application by the venue operator or event organiser, to the District Court. Part 2 also requires the Minister to establish, maintain and publish a register of designated venues and events.

Part 3 – Prohibition of Sale of Tickets for Cultural, Entertainment, Recreational and Sporting Events and Related Information Requirements

41. Part 3 comprises Sections 15 to 18 of the Bill. It contains the Bill's core prohibition on the sale, or advertising for sale, of tickets or ticket packages for events in designated venues, or for designated events, for a price exceeding the original sale price of the ticket or ticket package. It provides that primary ticket sellers shall not sell, or advertise for sale, a ticket or ticket package for an event in a designated venue or a designated event without providing information that the sale of the ticket is for such an event and that its sale for a price

exceeding the original sale price is prohibited unless it comes within the exemption for charitable organisations and amateur sports clubs. Part 3 further provides that a secondary ticket seller shall not advertise, or offer, for sale on a secondary ticket marketplace a ticket or ticket package for an event in a designated venue or for a designated event without providing information on the original sale price of the ticket and the location of the seat or standing area to which it entitles the ticket holder to gain admission. It also requires the operators of secondary ticket marketplaces to ensure that a ticket or ticket package is not advertised or offered for sale on the operator's marketplace without the provision of this information by the secondary ticket seller. These provisions will not apply to the sale, or advertising for sale, of a ticket or ticket package by, or on behalf of a charitable organisation or amateur sports club provided that the sale has been approved by an event organiser and that its proceeds are used only to fund the activities of the organisation or club.

Part 4 – Matters relating to sale of tickets for events, including events in designated venues and designated events

42. Part 4 comprises sections 19 to 27 of the Bill. It provides that, subject to specified exceptions relating to EURO 2020 or on grounds of safety, public health and public order, the terms of ticket contracts may not exclude or limit the transfer of a ticket or ticket package for no monetary consideration or for a price not exceeding the original sale price. The Part also gives effect to the commitment given by Government to UEFA by prohibiting the unauthorised sale of tickets or ticket packages for matches or official events during EURO 2020. It sets out the powers of the Garda Síochána to enforce the Act's provisions and the penalties for persons found guilty of an offence under the Act. It further provides for a general defence for persons against whom proceedings are brought under the Act as well as specific defences for the operators of secondary ticket marketplaces in line with the requirements of Directive 2000/31/EC on electronic commerce. It deals lastly with legal privilege relating to the disclosure of information compelled or taken pursuant to the Act.

43. A number of changes to the Bill since the Scheme of the Bill approved by Government in September 2020 was submitted to the Joint Committee on Enterprise, Trade and Employment address matters raised in the recommendations in the Committee's pre-legislative scrutiny report and in submissions to the Committee from stakeholders. The main such change involves the inclusion of a provision for the designation of events as well as the designation of venues. Other changes relate to the conditions applying to the designation of venues and events and the definitions of 'venue operator' and 'ticket package'. A number of recommendations in the Committee's report have not been adopted as, among other considerations, they involved enforcement measures that raise legal and constitutional issues or would have required the renotification of the Bill to the European Commission under Directive (EU) 2015/1535. Renotification is required where changes made to a proposed national measure following its original notification significantly alter the scope of the measure, add specifications or requirements, or make such specifications and requirements more restrictive. The Office of the Attorney General have advised the Department that the changes to the Bill since its notification in February 2020 are not such as to require its renotification.

Policy objectives of Bill

44. The Bill seeks to promote fairer access to event tickets by prohibiting the sale, or advertising for sale, for a price exceeding the original sale price of tickets for events in designated venues or for designated events. Fair access for music and sports to major sporting and entertainment is undermined by the sale of sizeable number of tickets for high-demand events at prices above, and in some cases many times above, the original sale price. While some of those who list tickets for resale may do so only occasionally and on a small scale, there is evidence that others engage in resale activity on a larger scale and a more regular basis. In many cases, the resale of tickets above the original sale price is in breach of the terms of the initial contract for the sale of ticket. As primary ticket sellers typically limit the number of tickets that an individual purchaser can buy, secondary sellers may acquire large numbers of tickets for resale by circumventing these limits by the use of multiple identifies and addresses and/or bot software.

45. Sporting bodies, event organisers, and artists and entertainers who set ticket prices below a market-clearing level in order to ensure that tickets are not priced at a figure beyond the reach of ordinary fans are understandably unhappy at seeing revenues from the sale of tickets going to third-party resellers who have no involvement in, or make no contribution, to sport, culture or entertainment. Fans who are unable to secure tickets to a concert by a favourite artist or a match involving a favourite team understandably resent seeing tickets for those concerts or matches on sale on secondary ticket marketplaces at a multiple of the original sale price. The objectives of the Bill and of the previous Private Members' Bills on ticket resale introduced have received broad backing from sporting bodies and event organisers and, in the Department's view, are supported also by most sports and music fans. The Dáil debates on previous Private Members' Bills that provided for the regulation of the resale price of event tickets also showed wide cross-party support for the aims of the Bills.

46. The Bill seeks to achieve its objective of ensuring fairer access to event tickets in a proportionate and targeted manner. As the resale of tickets above their original sale price affects only a relatively small number of high-demand events, the prohibition on above sale price resale will apply only to events in designated venues and to designated events. It is good regulatory practice, first, to regulate only where, and to the extent that, this is necessary. The Office of the Attorney General also advised the Department that the restriction of the prohibition on above sale price resale in this way is advisable in order to ensure the objective necessity and proportionality of the restrictions on business in the Bill, having regard, among other things, to the application of Article 16 of the EU Charter on Fundamental Rights. Secondly, the monitoring of compliance with the legislation will be easier and more effective if the prohibition on above sale price resale applies only to events in a limited number of known venues which will be listed in a public register. Thirdly, the Act will impose certain information requirements on primary ticket sellers in order to underpin the ban on above sale price resale. It would be disproportionate to require small venues that may never host an event that gives rise to above sale price resale to have to comply with

these requirements. Finally, the prohibition of above sale price resale is balanced by a provision that, subject to exceptions on the grounds of safety, public health and public order, will preclude event organisers from including terms in ticket contracts that exclude or limit the transfer of a ticket for no monetary consideration or its sale for a price not exceeding the original sale price.

47. The Bill provides that a venue operator may apply for the designation of a venue if the venue has the capacity to hold 1,000 or more and the operator is of the reasonable opinion that the venue will hold events which may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price. An event organiser or venue operator may apply for the designation of an event if he or she is of the reasonable opinion that the event may give rise to the sale of tickets or ticket packages by a secondary ticket seller for a price exceeding the original sale price. Venue operators and event organisers are in the best position to know if a venue is likely to host events that may rise to the above sale price resale of tickets or if an event that they are organising is likely to do so. Given the broad support for the Bill's objectives among sporting bodies, venue operators and event organisers, it is reasonable to assume that most, if not all, of the operators of venues, or the organisers of events, which are likely to give rise to the resale of tickets above their original sale price will apply for designation. If the operator of a venue that holds such events, or a promoter who organises such events, does not apply for designation, the Bill will give the Minister for Enterprise, Trade and Employment, a reserve power to designate the venue or event after consultation with the venue operator or event organiser. This power will apply to venues with a capacity below 1,000 as well as venues with a capacity above that figure whose operators have not applied for designation. While the evidence available to the Department suggests that above sale price resale occurs wholly or mainly in venues with a capacity of 1,000 or more, there may be a small number of venues with a capacity below this threshold that occasionally hold events that see some level of such resale.

48. While the Bill is being introduced at a time when no sporting or entertainment events are being held with fans in attendance present and the resumption of events of publicly attended events remains some way off, it may be possible at some point in the second half of the year. Any resumption of publicly attended events may initially involve substantial restrictions on the numbers permitted in sports stadiums and concert venues. The resultant mismatch between the supply and demand for tickets has the potential to give rise to significant levels of ticket resale for popular events. In addition to leading to public discontent, the secondary sale of tickets for such events would risk undermining any identification and contact tracing requirements that may apply to such events for public health reasons.

49. While legislation to regulate the resale price of event tickets will act to counter ticket profiteering and help to secure fairer access to tickets for high demand events, it will not mean that everyone seeking a ticket for such events will be able to obtain one. This could happen only if the supply and demand for tickets were always perfectly aligned. While this may be possible for some events, it cannot be done for others. The GAA cannot put on a

second All-Ireland football final, or the IRFU a second Six Nations match, to meet the demand for tickets. The touring schedules of major international acts may not always permit the staging of an additional concert in Ireland. In some cases, demand for tickets may exceed supply for one concert, but may not be sufficient to make a second concert economically viable.

50. The Bill's prohibition of the unauthorised sale of tickets for matches and official events during the EURO 2020 tournament supports the Government objective of attracting major international sporting events to this country. UEFA has said that it wishes to see some level of fan attendance at matches in all 12 host countries and asked its member associations in each of the host countries to indicate by 7 April what level of attendance is envisaged. The FAI stated in response that no assurances could be provided at this point on the attendance of spectators at the four matches scheduled to take place in Dublin. UEFA have indicated that Ireland and three other host countries which were unable to provide assurances about spectator attendance will have until 19 April to provide additional information on their plans for such attendance. A final decision will be taken on that date on whether these countries will remain host venues for the tournament. Even if the matches scheduled to take place in Dublin are transferred to another of the host countries, the Tánaiste wishes to see the Bill and the provision on the sale of tickets for EURO 2020 enacted before the start of the tournament. The undertaking given by Government to UEFA was not confined to the sale of tickets for the four matches to be held here. It is important in the Tánaiste's view that Government honour commitments given to international sporting bodies as part of the bid to host major sporting events here, particularly given the current examination of a possible joint bid with the UK for the hosting of the 2030 FIFA World Cup.

6. Policy options: cost, benefits and impacts

Option 1 No policy change

51. Costs

Fair access to tickets for high-demand sporting and entertainment events would continue to be undermined by the resale at a price above the original sale price of sizeable numbers of tickets for these events on secondary ticket markets. Such resale could reach higher levels than in the past if attendance at events is initially restricted on public health grounds when publicly attended entertainment and sporting events resume.

Event organisers would continue to see revenues from high-demand sporting and entertainment events go to third-party ticket resellers who have no involvement in, or make no contribution to, sport or entertainment.

No administrative or enforcement costs would be incurred by the State. There would be no cost or other impacts on secondary ticket sellers or secondary ticket marketplaces.

52. Benefits

Secondary ticket sellers could continue to resell tickets for high-demand events at the highest price obtainable. The revenues of secondary ticket marketplaces whose fees for ticket sellers and buyers are set as a percentage of the resale price of tickets would be unaffected.

53. Other impacts

The Government would not fulfil its commitment to UEFA to prohibit the unauthorised sale of tickets for matches and official events during the EURO 2020 tournament. This could have an adverse effect on the credibility of Government commitments for future international sporting events.

Option 2 Introduction of legislation

54. Costs

Secondary ticket sellers would be prevented from making the gains currently made from the resale of event tickets for a price above their original sale price. Due mainly to the relatively small size of the Irish event market, industry sources believe that most secondary ticket sellers here engage in such resale on an occasional, small-scale basis. The Bill's impact on such sellers would be limited, but would be more significant on secondary sellers operating on a larger scale and a more regular basis.

There would be an impact on the revenues of secondary ticket marketplaces whose fees for buyers and sellers are set as a percentage of the resale price of tickets. The direct impact on the two secondary ticket marketplaces currently operating in Ireland would be limited by the fact that the Irish market accounts for a relatively small part of their operations here. Secondary ticket marketplaces would also continue to be able to provide a platform for the sale of tickets at a price at or below their original sale price. Such sales are estimated to account for 25-40 per cent of ticket sales on these marketplaces.

There would be a cost to the Exchequer arising from the need to provide the necessary enforcement resources to the Garda Síochána. This cost will depend on the level of necessary enforcement action and cannot be accurately quantified in advance. The procedure for the designation of venues and events will give rise to administrative costs for the Department of Enterprise, Trade and Employment. As the number of venues seeking designation is expected to be limited and the procedure for designation is relatively straightforward, these costs will mainly arise in the period following the Act's commencement and are not expected to be substantial.

55. Benefits

Access to tickets for high-demand events for sports and music fans on the primary ticket market would be enhanced by the reduced incentive and opportunity for secondary ticket sellers to purchase tickets in order to resell them for gain.

Subject to exceptions on grounds of safety, public health or public order, ticket holders would no longer be precluded by the terms of ticket contracts from transferring tickets for free or from selling them at a price at or below the original sale price.

Purchasers of tickets from secondary ticket sellers would benefit from the requirement on such sellers to provide information about the original sale price of the ticket and on the location of the seat or standing area to which the ticket entitles the holder to gain admission.

Sporting bodies, event organisers and artists would see less revenue from events which they organise and stage going to secondary ticket sellers who have no involvement in, or make no contribution, to these events.

The Government would fulfil its commitment to UEFA to prohibit the unauthorised resale of tickets for matches and official events during the EURO 2020 championship.

56. Other impacts

Some secondary ticket sellers may resort to the resale of event tickets on online marketplaces based in other countries or through black market and other sales channels that may be difficult to monitor and which do not provide the type of guarantees offered to ticket purchasers by the established secondary ticket marketplaces.

Given the borderless nature of online transactions, some Irish sports or music fans unable to obtain for tickets for sold-out events here may seek out tickets on websites in other jurisdictions. In discussions with the Department, officials in a number of EU and EEA Member States indicated that while their legislative prohibitions on the resale of tickets for a price above face value had been effective in preventing such resale within their national borders, it had not prevented some level of resale on websites in other countries. As the proceedings taken against a Norwegian reseller for the sale of tickets for the London Olympics outlined above demonstrate however, a secondary ticket seller outside Ireland who, after the enactment of the present Bill, states or otherwise creates the impression that the sale of tickets for events in Ireland for a price above the original sale price is lawful would be in breach of the prohibition at Annex I(9) of the Unfair Commercial Practices Directive. Despite the UK's exit from the European Union, this prohibition remains part of UK law.

If resale above the original sale price is no longer an option on established secondary ticket marketplaces, some secondary sellers may shift their activities to underground or black market sales channels and some buyers may purchase tickets through these channels. Secondary ticket marketplaces contend that the loss in such cases of the consumer guarantees which the established marketplaces provide will be a direct and detrimental consequence of the proposed legislation. Those who purchase tickets from illicit secondary sellers in the knowledge that such purchases are in breach of the law on the resale of event tickets would take, and would have to accept, the risk that they would have no redress if the tickets were not delivered or were counterfeit. While the guarantees offered by secondary ticket marketplaces can be of benefit to ticket buyers, the consumer experience of these marketplaces has not been altogether positive in other respects. In recent years, for example, viagogo has been subject to court proceedings and other enforcement actions for alleged breaches of consumer protection laws in Australia, New Zealand, the UK, Austria and Switzerland.¹⁸

¹⁸ <https://www.accc.gov.au/media-release/viagogo-to-pay-7-million-for-misleading-consumers> .
<https://comcom.govt.nz/case-register/case-register-entries/viagogo/media-releases/commission-wins-appeal-over-viagogo-injunction-case> .
<https://www.gov.uk/government/publications/summary-of-the-court-order-secured-by-the-cma-against-viagogo> .
<https://www.gov.uk/government/news/viagogo-fixes-concerns-in-face-of-further-cma-legal-action> .
<https://www.theticketingbusiness.com/2021/02/19/austrian-supreme-court-deems-42-of-viagogos-terms-to-be-illegal/> .
<https://www.theticketingbusiness.com/2020/05/07/austrian-supreme-court-rules-viagogo-forcing-transparency-ticketing-platforms/> .
<https://www.theticketingbusiness.com/2021/01/05/swiss-court-rules-in-favour-of-viagogo/> .

57. Impact on employment

In its submission to the Joint Committee on Enterprise, Trade and Employment on the pre-legislative scrutiny of the Scheme of the Bill, viagogo stated that the proposed prohibition on the resale of event tickets for a price above the original sale price 'represents a real threat to viagogo's employment and business model in Ireland' and that 'if this law is passed as written, we will immediately be reconsidering our future planned investments'. As noted above, the direct impact of the proposed legislative prohibition on the two main secondary ticket marketplaces currently operating in Ireland would be limited by the fact that the Irish market accounts for a relatively small part of their operations in this country. While any loss of investment here would be a cause for regret, investment decisions by individual companies are a matter for those companies and are taken for a variety of reasons. Legislative or other measures introduced in the public interest and for the common good cannot be subject to the investment decisions of individual companies.

58. Impacts on the socially excluded and vulnerable groups, the environment, rights of citizens, North-South and East-West relations.

No impacts in these areas.

7. Enforcement and compliance

No policy change

59. The Garda Síochána would continue to have responsibility for tackling the sale of event tickets outside sports stadiums and concert venues if such sale was in breach of the Casual Trading Act 1995. The Competition and Consumer Commission (CCPC) would continue to have responsibility for the enforcement of general consumer protection legislation insofar as it applies to the sale and resale of event tickets. Neither the Gardaí nor the CCPC would have any enforcement function in respect of the sale of event tickets above the original sale price on online platforms or social media. Following the enactment of the proposed Consumer Rights Act, the CCPC would be responsible for the enforcement of the new prohibition on the resale by traders to consumers of event tickets acquired by using automated means to circumvent limits on the number of tickets a person can buy or any other rules applicable to the purchase of tickets.

Introduction of legislation

60. The Garda Síochána would be responsible for the enforcement of the provisions of the legislation on the resale of event tickets. Part 4 of the Bill sets out the powers that Gardaí would have in enforcing the legislation.

8. Review mechanism

61. Following enactment, the legislation would be reviewed as part of the ongoing review of by the Department of Enterprise, Trade and Employment of legislation for which it has policy responsibility.

9. Publication

62. This Regulatory Impact Analysis will be published on the website of the Department of Enterprise, Trade and Employment (<https://enterprise.gov.ie/en/Consultations/>).