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Department of Jobs, Enterprise and Innovation



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Department of Transport,
Tourism and Sport

CONSULTATION ON THE RESALE OF TICKETS FOR ENTERTAINMENT AND SPORTING EVENTS

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EXECUTIVE SUMMARY

PART 1 INTRODUCTION

1. 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. This consultation seeks the inputs and views of interested parties – 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 list of the questions on which views are sought is given in the Annex to the consultation paper.

2. Concern over ticket resale is not confined to Ireland. Provisions aimed at regulating ticket resale have recently been enacted or are currently under consideration in the United States, the United Kingdom, Italy and the Netherlands. The issue was given further prominence by the investigation by Brazilian law enforcement authorities into the reselling of tickets for the Rio Olympic Games alleged to have been originally allocated to the Olympic Council of Ireland. As the matter is the subject both of court proceedings in Brazil and of a non-statutory inquiry chaired by Justice Carroll Moran, it is not referred to further in this paper.

PART 2 THE PRIMARY AND SECONDARY MARKETS FOR TICKETS TO ENTERTAINMENT AND SPORTING EVENTS

Primary Ticket Sale and the Primary Ticket Market

3. Concerts and other entertainment events typically involve a contract between a promoter and a performer for the latter to appear at a specified date and venue in return for an agreed fee. The promoter is responsible for organising the concert, including the hire of the venue. Sporting events differ from entertainment events in that the bodies which govern the sport organise matches involving affiliated clubs, provinces, counties or national teams and commonly also own the venues in which they take place. Ticket prices for entertainment events are set by the performer and his or her representatives in consultation with the promoter. Event promoters commonly contract with a specialist ticketing service provider for the sale and distribution of tickets, often under exclusive multi-year contracts. In return, the ticketing service providers receive a booking fee or service charge per ticket, a charge that is generally added to the price of the ticket. Though sporting bodies generally allocate a substantial proportion of tickets to affiliated clubs and fan groups and also

operate season and multi-year ticket schemes, they may also use the services of ticketing service providers for some fixtures. The largest and best known ticketing service provider in Ireland is Ticketmaster which is a division of Live Nation Entertainment, the leading global event promotion and ticketing business. 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.

Secondary Ticket Sale and the Secondary Ticket Market

4. On the secondary ticket market, tickets previously sold or allocated through the primary ticket market are sold or offered for sale. While the resale of tickets for entertainment and sporting events characterised by high demand and limited supply is far from new, the forms it takes have been transformed by the growth of online selling. An activity that was once largely confined to the black market is now increasingly conducted on specialist ticket resale marketplaces. These resale marketplaces do not sell tickets or set their prices but facilitate sales between sellers and buyers for which they receive a fee from one or both of the parties to the sale. They differ from traditional ticket 'touts' in that they do not sell the ticket themselves, operate openly as legitimate businesses and give a guarantee to buyers that if they do not receive their ticket from the seller, or if it goes astray in transit or if they are denied entrance to the event, that a replacement ticket or refund will be provided. The main secondary marketplaces operating in Ireland are Seatwave which was acquired by Ticketmaster in 2014, StubHub which was acquired by eBay in 2007, and viagogo, a European based platform founded in 2006 by a former co-founder of StubHub. Though each of these platforms operates in a number of countries, all have websites with an Irish domain name. Tickets for entertainment and sporting events are also commonly offered for secondary sale on general online platforms or advertising websites such as DoneDeal, Gumtree (owned by eBay) and eBay itself as well as on social networks such as Facebook or Twitter. Finally, tickets are still also resold in the vicinity of venues on the day or night of entertainment or sporting events.

Extent of Ticket Resale

5. Though the resale of tickets for high-demand events at inflated prices is the subject of considerable comment, there is a lack of reliable data about the extent of the practice. Thousands of ticketed entertainment and sporting events take place in Ireland every year. The number of

events for which an excess of demand over supply results in significant numbers of tickets being resold at a price well above their face value almost certainly accounts for a small proportion of the total number of events, though it accounts for a greater share of tickets and ticket revenues.

Outcome of Ticket Resale

6. Media reports about ticket resale invariably focus on tickets offered for sale on secondary marketplaces at prices far in excess of their face value. The prices advertised on secondary sites shortly after, or sometimes even before, tickets go on general sale, however, are not necessarily the prices at which the tickets are subsequently sold. The evidence from other countries suggests moreover that the price paid for tickets on the secondary market in a sizeable number of cases is at or below the face value of the ticket. Though such findings do not negate the fact that very high prices are paid on the secondary market in some cases, they help provide a more rounded and representative picture of that market. While much of the focus on ticket resale is on the inflated prices charged on the secondary market, the most serious detriment occurs where consumers who buy tickets from resellers receive fake tickets or no tickets at all.

PART 3 THE SUPPLY OF TICKETS TO THE SECONDARY TICKET MARKET

7. The secondary market can obviously function only if tickets purchased or obtained on the primary ticket market are offered for resale. Information on the sources of the tickets that end up on the secondary market is critical accordingly to understanding ticket resale and assessing how it can be addressed.

Tickets Originating in Allocations and Sales Prior to General Sale

8. Though it is sometimes assumed that all of the tickets to entertainment or sporting events go on general sale to the public, this is not typically the case. Tickets for entertainment events are commonly made available to a range of parties – including performers and their managements, members of performers' fan clubs, venues and members of their clubs, corporate sponsors, holders of some credit cards, customers of some telecoms services, record labels and media organisations – prior to going on general sale. Estimates from the US and the UK suggest that half or more of tickets for concerts by top acts may be allocated or sold prior to the commencement of the general public sale. Though we are not aware of any similar estimates for this country, it may be the case that allocations and sales prior to tickets going on general sale are a good deal smaller here. For major

sporting events, all of the tickets may be allocated to affiliated clubs and boards or to subscribers with multi-year or season tickets with none available on general sale. If a proportion of tickets for high-demand events are not available for general sale, potential purchasers' chances of obtaining tickets on the primary market are correspondingly reduced. These pre-sales and allocations also go some way to explaining why tickets for some events can be offered for sale on secondary marketplaces within minutes of their going on general sale or, in some cases, even before the start of the general sale.

9. The question arises as to whether, or to what extent, tickets allocated or sold to various parties prior to their going on general sale end up for resale on the secondary market. From time to time, evidence has emerged in other countries that tickets put up for sale on secondary marketplaces had originated with promoters, performers' representatives or primary ticket sellers. It is important to state that there is no evidence in Ireland of tickets being supplied to secondary sellers or marketplaces by artists or their agents, venues, promoters or primary ticket sellers. In the light of the evidence from other countries, however, it would be naïve to discount the possibility.

Tickets Originating on the Primary Ticket Market

10. Purchasers of tickets on the primary ticket market who subsequently go on to resell them can usefully be understood as falling into three broad categories. First, those who buy tickets with the intention of attending the event but later find that they are unable to attend it or to afford the travel and accommodation costs associated with attendance. Secondly, some ticket buyers who plan to attend an event may buy extra tickets in order to subsidise the purchase of their own tickets and the other costs associated with attendance. Thirdly, there are purchasers who buy tickets for events which they have no intention of attending in order to resell the tickets at a profit. Some may do so occasionally, while others may be engaged in this activity on a more systematic basis. This last category of ticket reseller, particularly those engaging in the activity on an organised, large-scale basis, is the one that gives rise to the greatest public concern and is most likely to be seen as engaged in ticket 'touting'.

11. Ticket purchases on the primary market are normally restricted to a specified number of tickets per purchaser, typically four to eight. If organised resellers wish to obtain significant numbers of tickets, they must find ways around these restrictions. In the case of phone or online sales, those

engaged in ticket resale on an organised basis may employ teams of people with multiple devices using different residential and IP addresses and payment cards in order to obtain the largest possible number of tickets. Increasingly, however, evidence from other countries suggests that large-scale purchases are undertaken with the aid of special software or 'bots' that facilitate the purchase of batches of tickets in a short space of time. In some markets, particularly the US, there is clear evidence of large-scale purchases of tickets by brokers using bots. Information on the make-up and characteristics of secondary ticket sellers and the means they use to source tickets is particularly relevant to the assessment of possible future regulatory intervention. If ticket resales are mainly accounted for by large numbers of people selling tickets occasionally or on a small scale, enactment and enforcement of any statutory prohibitions or restrictions on resale is likely to be more problematical than if resales are mainly the work of a relatively small number of large-scale sellers. If a sizeable proportion of tickets offered for resale come from sellers outside Ireland, this too would have implications for the enforceability of statutory prohibitions or restrictions.

PART 4 THE CURRENT REGULATION OF TICKET RESALE

Statutory Regulation in Ireland and Other Countries

12. There is no statutory prohibition of ticket resale in Ireland or regulation of the mark-up over the face value of tickets offered for sale on secondary marketplaces. As part of the conditions agreed with UEFA for the staging of four matches in the EURO 2020 soccer championship, however, Ireland has given a commitment to introduce legislative provisions banning the unauthorised resale of tickets for these matches. A similar commitment is to be given to World Rugby in connection with the bid for the 2023 rugby World Cup. Ticket resale is also permitted in most European Union member states. In the UK, the recently enacted provisions of the Consumer Rights Act 2015 impose a number of information duties on secondary ticket sellers but do not prohibit resale. Though a number of US states enacted legislation on ticket touting or 'scalping' as far back as the 1920s, the trend, until recently at least, has been for these restrictions to be repealed or curtailed. This policy shift occurred largely because the rise of online selling had exacerbated long-standing difficulties with the enforcement of statutory restrictions or prohibitions. In December 2016, however, provisions aimed at combating the use of ticket purchasing software have been enacted by the US Congress.

Application of General Consumer Protection Legislation to Ticket Sale and Resale

13. Though ticket sale and resale are not governed by specific legislative provisions in Ireland, they are subject to general consumer protection legislation. 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 or a secondary ticketing platform. If the seller of the ticket on 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 – these protections would not apply. If such a seller is engaging in resale on a regular basis such that he or she qualifies as a trader, they will be subject to the applicable provisions of consumer protection legislation and consumers who buy tickets from them will be entitled to the protection of that legislation.

Regulation of Bot Software

14. Section 5 of the Criminal Damage Act 1991 makes it an offence for a person to operate a computer without lawful excuse with intent to access data. In the UK, it has been suggested that a similar provision at section 1 of the Computer Misuse Act 1990 could apply to the unauthorised use of bots for the purpose of accessing tickets on the websites of secondary platforms. The application of these provisions to bot-assisted ticket purchases has not been considered by the courts in either Ireland or the UK, however, and it is unclear whether a prosecution taken on this basis would be successful.

Non-Statutory Regulation of Ticket Sale and Resale

15. In the absence of statutory prohibitions on ticket resale, the main controls on the flow of tickets to the secondary market stem from prohibitions in primary ticket contracts on multiple ticket purchases, the use of bots, and on the resale of tickets. While it can be argued that the apparent prevalence and scale of secondary selling points up the ineffectiveness of such measures, the incidence and level of secondary sales might be even greater in the absence of such measures. While primary ticket sellers and ticketing service providers may be able to exercise some control over ticket purchases in excess of permitted numbers, enforcement of contractual restrictions on resale necessarily involves interaction with secondary marketplaces and presents a greater challenge as a result. In order for event organisers to cancel tickets offered for resale or to deny

those holding resold tickets access to an event, the event organiser will normally require details of the seat number. For standing areas in venues or stadia, however, there is no such number. Where there is a seat number, resellers do not normally give details of it in advertisements on secondary marketplaces. If event organisers want to identify resellers in order to prevent them from reselling in future, they need details of the reseller's identity. Again, this information is typically omitted from listings by resellers on secondary marketplaces.

16. The apparent reluctance of secondary platforms to assist event organisers in identifying persons who supply tickets to the platforms is unsurprising given that these marketplaces can only remain in business if they receive a steady supply of tickets for resale. Secondary marketplaces appear to take a different view of the legal status of tickets than sporting bodies and other event organisers. While the latter regard a ticket as the property of the event organiser which is issued to the purchaser under a revocable licence, secondary marketplaces see tickets as similar to other goods which can be traded by the buyer and should not be subject to restrictions on their resale once purchased. The different interests and stances of event organisers and secondary marketplaces are arguably one of the main obstacles to reform of ticket resale.

PART 5 POSSIBLE FUTURE ACTIONS TO ADDRESS TICKET RESALE

17. Given the long history of ticket resale, the likelihood that demand will continue to exceed supply for certain types of event and the patchy record of efforts to curb the activity elsewhere, action to address the issue may have a greater prospect of success if it involves a range of measures by all of the parties with a stake in the organisation of entertainment and sporting events and the provision of ticketing services for them.

Performers, Sporting Bodies and Promoters

18. For orthodox economic analysis, the fundamental cause of the resale of tickets above their face value is a mismatch between supply and demand caused by setting ticket prices at a price below their market value. On this view the only effective solution to such a mismatch is to increase the supply of tickets and/or their price. Unlike films which can be shown on multiple screens in many cinemas for extended runs, however, the supply of live entertainment or sporting events cannot be increased in response to demand in many cases.

19. Though raising ticket prices for high-demand events may be a more readily available option for performers and promoters, performers and their managements opt to under-price tickets for a number of reasons, including the wish to maximise long-term revenue by retaining the loyalty of fans and to ensure the positive publicity and the enhanced experience for performers and audiences associated with a sell-out event. For sporting organisations, under-pricing of tickets for high-demand events reflects a core commitment to the development of the sport and the enhancement of its appeal. While considerations such as these tend to deter performers and promoters from raising prices to a market-clearing level, some interest has been shown in the adoption of a dynamic pricing model under which prices would be driven by, and adjusted in line, with changing demand with the aim of maximising revenue per seat along the lines of the pricing model used for airline tickets. Though demand-based pricing would almost certainly help to curb ticket resale, many fans would see it as a solution that would be no better than the problem it sought to address in that fans who are now priced out of the secondary ticket market would instead find themselves priced out of the primary ticket market.

20. The more widespread use of personalised and/or paperless tickets by primary sellers is among the practical measures most commonly suggested to combat ticket resale. If tickets display the name of the buyer, or if the buyer's payment card or mobile device is made the means of admission, and the buyer is further required to show ID in order to gain entry to the venue, a purchaser who bought tickets for resale purposes would have to be prepared to attend the event along with those to whom the tickets had been sold. While this approach appears to have been effective in reducing, and in some cases eliminating, ticket resale, it has some drawbacks for ticket buyers. As it is incompatible with the sale of tickets from retail outlets, it would deny access to tickets to fans who are restricted to this mode of purchase. Persons who find themselves unable to attend an event would be left with non-transferable tickets unless provision was also made for the refund of tickets at face value. Personalised tickets cannot be given as a gift unless the person giving the gift is also willing to attend the event. These types of tickets also place greater demands on access mechanisms at venues and, if adequate ingress arrangements are not in place, may lead to congestion, delays and possible crowd trouble.

Secondary Ticket Marketplaces

21. Secondary ticket platforms describe themselves as marketplaces where fans can buy and sell tickets for entertainment and sporting events. The evidence from other countries suggests however that a substantial proportion of the tickets listed for resale on these platforms come from resellers who engage in the activity on a regular basis and on a significant scale. This group of resellers may receive preferential payment or other terms from the platforms by virtue of the volume of business they bring to them. If this is the case, it is arguable that such resellers should be regarded as traders who are subject to the requirements of consumer protection legislation, including the extensive information obligations applicable to online contracts under the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013. While secondary ticketing marketplaces may not consider themselves under an obligation to enforce the terms of contracts between primary ticket sellers and ticket purchasers, they cannot disregard obligations that may apply to them under consumer protection law, including any obligation to provide a facility for sellers to indicate to buyers if they are traders and, if so, to provide details of their identity and their address in accordance with statutory requirements.

Possible Statutory Regulation of Ticket Resale

22. The legislative options for tackling ticket resale range from the far-reaching – a ban on secondary ticketing – to the more modest such as greater information requirements for secondary ticket transactions. Though a legislative response may look to be the most appropriate way to deal with the issue, reviews in a number of countries have concluded either that legislation is not warranted and/or that it is unlikely to be effective. In the UK, for example, the comprehensive review of online secondary tickets undertaken by Professor Michael Waterson in 2015-2016 recommended against the introduction of additional legislation whether in the form of a ban on the secondary ticketing market, a cap on resale price levels or making the use of bots illegal.

23. A legislative ban on secondary ticketing has been applied in a number of US states and Canadian provinces and would send a strong signal of public disapproval of ticket profiteering and offer a clear and comprehensive approach to dealing with the issue. In assessing the case for such a measure, a number of considerations would have to be taken into account:

- Would the likely effect be to drive ticket resale underground or to divert it to other countries rather than end or substantially reduce it?
- Would the benefits of a ban outweigh the disadvantages, in particular the loss of the guarantees given to purchasers by the established secondary marketplaces; the loss of the facility to dispose of tickets that buyers are unable to use; and the loss of the opportunity to purchase tickets at or below their face value which is availed of in a substantial proportion of transactions on the secondary market?
- Would a ban be enforceable given the potentially large number of transactions that may take place for even a single event and the obstacles encountered in the investigation and enforcement of laws on online selling?

24. A second option for legislative action would be to permit ticket resale subject to a specified cap on the permitted premium above the face value of the ticket. A number of US states have enacted laws of this kind and their price caps have ranged from a low of 10 per cent to a maximum of up to 50 per cent. While this would be a less draconian form of intervention than a ban on secondary ticketing, a number of the considerations relevant to the assessment of such a ban are relevant here also, in particular the questions around enforceability and the possibility that resale would be redirected to the black market or to platforms outside Ireland. Other factors specific to this form of regulation would also have to be considered, including the level at which any such price cap would be fixed and, if this is set at a modest mark-up over the face value, the implications for established secondary marketplaces.

25. A more targeted form of legislative intervention involves the introduction of statutory provisions to prohibit the use of bot software to purchase tickets to entertainment and sporting events. Legislation along these lines has recently been enacted by the US Congress and is currently under consideration in the UK. A further, more limited form of legislative intervention would involve the enactment of additional information and reporting obligations for secondary sellers and marketplaces. The UK Consumer Rights Act 2015 requires persons reselling an event ticket, whether acting as consumers or traders, and the operators of secondary ticketing facilities to ensure that buyers are given certain specified information, including the face value of the ticket, the information necessary to allow the buyer to identify the seat or standing area, and information

about any restrictions which limit the use of the ticket. In addition to the consumer protection purpose of these provisions, the requirement to indicate the seat number or standing area section of tickets can be of assistance to primary ticket sellers seeking to identify tickets offered for resale in breach of the terms and conditions of the primary ticket contract.

Responses

26. Responses to the consultation should be sent by Friday 31 March 2017 by e-mail to conspol@djei.ie or by post to Competition and Consumer Policy Section, Department of Jobs, Enterprise and Innovation, Earlsfort Centre, Lower Hatch Street, Dublin 2. Individuals or organisations with an exclusive or predominant interest in a specific aspect or aspects of the issue, or in just some of the questions on which information or views are sought, are free to confine their responses to those aspects or questions. Responses to the consultation will be made available on the websites of the Department of Jobs, Enterprise and Innovation and the Department of Transport, Tourism and Sport. Any material contained in submissions to the consultation which respondents do not wish to be made public in this way should be clearly identified as confidential in the submission. Respondents should also be aware that submissions may be disclosed by the Departments in response to requests under the Freedom of Information Act 2014. Any information that is regarded as commercially sensitive should be clearly identified and the reason for its sensitivity stated. In the event of a request under the Freedom of Information Act, the Departments will consult with respondents about information identified as commercially sensitive before making a decision on such a request.

PART 1 INTRODUCTION

1. 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. This consultation seeks the inputs and views of interested parties – 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. Policy-making should be based as far as possible on sound evidence and there is a lack of such evidence on many aspects of ticket resale in Ireland, including its scale, the sources of the tickets that end up for resale on the secondary market, and the price distribution of resold tickets relative to their face value. A recent survey of members of the UK consumer association Which? found that almost a third said that they did not understand the difference between primary and secondary ticket companies.¹ As members of consumer bodies are likely to be better informed than the generality of consumers, this underlines the difficulties that ordinary ticket purchasers may experience in trying to understand the issues around ticket resale.

2. Concern over the resale of tickets for major events is not confined to Ireland. Reviews of the issue have been undertaken in a number of countries in recent years.² While information from such reviews is instructive and helps to fill the information gap resulting from the lack of Irish material on the sale and resale of tickets, data from large markets such as the US and UK may not always be applicable to this country. As outlined later, proposals aimed at regulating ticket resale have recently been enacted or are under consideration in the United States, the United Kingdom, Italy and the Netherlands. Where relevant, these proposals are cited in this consultation paper.

3. The issue of ticket resale was given further prominence by the investigation by Brazilian law enforcement authorities into the reselling of tickets for the Rio Olympic Games alleged to have been originally allocated to the Olympic Council of Ireland. As the matter is the subject both of

¹ Which? 13 November 2015. *Which probes ticket resale rip-off: Why it's so hard to buy tickets at face value*, <http://www.which.co.uk/news/2015/11/which-probes-ticket-resale-rip-off-422307/>

² Most recently, in the UK, the *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities* (Waterson Review) published in May 2016; in New York, *Obstructed View: What's Blocking New Yorkers from Getting Tickets*, a report from the Office of the New York State Attorney General published in January 2016; in Australia, *Consumers and the Ticket Market*, a report from the Commonwealth Consumer Affairs Advisory Council published in 2010, and *Ticket Scalping*, a report from the Economics References Committee of the Australian Senate, published in March 2014.

court proceedings in Brazil and of a non-statutory inquiry chaired by Justice Carroll Moran, it is not referred to further in this consultation paper.

4. Part 2 of this paper gives an account of the workings of the primary and secondary ticket markets for entertainment and sporting events. Part 3 deals with the question of how tickets sold or allocated through the primary market end up for resale on the secondary ticket market. Part 4 outlines what different stakeholders currently do, or do not do, to address the issues and concerns raised by ticket resale. Part 5 sets out the legislation regulating ticket resale in Ireland, other EU Member States, the US and other countries and outlines, and seeks views on, a number of possible measures that might be taken by stakeholders and Government to help bring about fairer access to tickets. Information and views are sought in each of the Parts from interested parties; a list of the questions on which views are sought is given in the Annex to the paper.

5. We would encourage interested parties to provide information and submit views on the issues and questions set out in the Paper. Individuals or organisations with an exclusive or predominant interest in a specific aspect or aspects of the issue, or in just some of the questions on which information or views are sought, are free to confine their responses to those aspects or questions. Respondents who are not in a position to answer the specific questions that are asked are free to submit a general statement. Responses to the consultation should be sent by 31 March 2017 by e-mail to conspol@djei.ie or by post to Competition and Consumer Policy Section, Department of Jobs, Enterprise and Innovation, Earlsfort Centre, Lower Hatch Street, Dublin 2.

6. Responses to the consultation will be made available in due course on the websites of the Department of Jobs, Enterprise and Innovation and the Department of Transport, Tourism and Sport. Any material contained in submissions to the consultation which respondents do not wish to be made public in this way should be clearly identified as confidential in the submission. Respondents should also be aware that submissions may be disclosed by the Departments in response to requests under the Freedom of Information Act 2014. Any information that is regarded as commercially sensitive should be clearly identified and the reason for its sensitivity stated. In the event of a request under the Freedom of Information Act, the Departments will consult with respondents about information identified as commercially sensitive before making a decision on such a request.

PART 2 THE PRIMARY AND SECONDARY MARKETS FOR TICKETS TO ENTERTAINMENT AND SPORTING EVENTS

Primary Ticket Sale and the Primary Ticket Market

7. Concerts and other entertainment events typically involve a contract between a promoter and a performer for the latter to appear at a specified date and venue in return for an agreed fee. For major acts, this fee is understood to be in the region of 80-90 per cent of ticket revenues, part of which is guaranteed and payable in advance; the share of revenues and the size of the advance fee will vary with the box office appeal and bargaining power of the performer. Promoters tend accordingly to bear much of the risk for the success or failure of events. The promoter is responsible for organising the concert, including the hire of the venue. Where, as is sometimes the case, the promoter owns or operates the venue, this need will not arise.³ Sporting events differ from entertainment events in that the bodies which govern the sport organise matches involving affiliated clubs, counties, provinces or national teams and commonly also own the venues in which they take place.

8. Ticket prices for entertainment events are set by the performer and his or her representatives in consultation with the promoter. Event promoters commonly contract with a specialist ticketing service provider for the sale and distribution of tickets, often under exclusive multi-year contracts. In return, the ticketing service providers receive a booking fee or service charge per ticket, a charge that is generally added to the price of the ticket.⁴ Promoters may receive a share of the booking fees in return for agreeing to sell tickets through a chosen primary seller.⁵ Though sporting bodies commonly allocate a substantial proportion of tickets to affiliated clubs and fan groups and also operate season and multi-year ticket schemes, they may also use the services of ticketing service

³ Live Nation, the major global promoter, owns the 3Arena in Dublin and owns, operates, has exclusive booking rights for, or an equity stake in, a further 166 venues worldwide. The Irish promoter, MCD Productions, owns or operates a number of venues, including the Olympia and Gaiety theatres in Dublin. The other main Irish promoter, Aiken Promotions, operates the Vicar Street venue in Dublin.

⁴ The current Ticketmaster service charge for events promoted by the principal Irish promoters, Aiken Promotions and MCD Productions, are for Internet and telephone bookings 12.5 per cent of the ticket price (subject to a maximum of €6.10 to €6.85) and €2.10 to €3.30 for tickets bought from Ticketmaster agents in retail outlets.

⁵ The Competition Authority. 2005. *Decision of the Competition Authority: Alleged excessive booking fees by TicketMaster Ireland and its exclusive contractual arrangements with MCD Promotions Limited and Aiken Promotions Limited*, paragraph 2.31. *Independent (Waterson) Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, paragraph 1.10.

providers and retail outlets for some fixtures. The GAA, for example, sells tickets through tickets.ie and selected Supervalu and Centra stores in addition to distributing them through county boards and clubs.

9. The largest and best known ticketing service provider in Ireland is Ticketmaster which is a division of Live Nation Entertainment, the leading global event promotion and ticketing business whose headquarters are in the United States and which operates in over twenty countries.⁶ A number of other ticketing service providers operate here, including tickets.ie, ticketshop.ie and ticketgroup.ie. 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.

10. Specialist ticketing service providers emerged in response, first, to developments in computer technology which permitted the creation of databases on which information about ticket inventory sold through different outlets could be shared and the allocation of tickets more efficiently managed. Prior to this development, tickets were mainly sold from box offices or outlets such as record stores licensed by venues or promoters. Ticketmaster was one of a number of enterprises set up in the US in the 1970s to provide outsourced ticketing services to promoters, sports bodies and venues. In Ireland, computerised ticket sales in Ireland were pioneered by Ticket Shop in 1992, a business established by individuals previously engaged in the sale of tickets in record shops. Ticketmaster took a stake in Ticket Shop in 1997 and subsequently purchased it outright.

11. The ticketing service business underwent a further transformation when the Internet opened up a major new channel through which tickets could be marketed and purchased. Along with air travel and holiday accommodation, ticketing is one of the industries with the highest levels of online transactions. Ticketmaster commenced selling tickets online in Ireland in 2000. In 2004, it was estimated that 30-40 per cent of its Irish ticket sales were made online.⁷ Though tickets continue to be sold at box offices and through retail outlets and call centres, online sales now account for the bulk of the sales by Ticketmaster and other primary sellers. In 2015, 90 per cent of Ticketmaster's

⁶ Ticketmaster's merger with the events promoter, Live Nation, to form Live Nation Entertainment occurred in 2010.

⁷ The Competition Authority. 2005. *Decision of the Competition Authority: Alleged excessive booking fees by TicketMaster Ireland and its exclusive contractual arrangements with MCD Promotions Limited and Aiken Promotions Limited*, table 1.

primary ticket sales globally were accounted for by transactions on websites or mobile apps compared with just 7 per cent through ticket outlets and 3 per cent through call centres.⁸ Sales from retail outlets may account however for a greater share of sales in Ireland. Information would be welcome from primary ticket sellers and ticketing service providers on the proportion of tickets sold in Ireland through different distribution channels.

Question 1

What proportion of primary ticket sales are accounted for respectively by –

- a) online sales
- b) telephone sales
- c) sales through agents in retail outlets
- d) box office sales

Secondary Ticket Sale and the Secondary Ticket Market

12. On the secondary ticket market, tickets previously sold or allocated through the primary ticket market are sold or offered for sale. While the resale of tickets for entertainment and sporting events characterised by high demand and limited supply is far from new, the forms it takes have been transformed by the growth of online selling. An activity that was once largely confined to the black market is now increasingly conducted on specialist ticket resale marketplaces. These resale marketplaces do not sell tickets or set their prices but facilitate sales between sellers and buyers for which they receive a fee from one or both of the parties to the sale, typically around 10 per cent of the ticket price for buyers and 15 per cent for sellers. They differ from traditional ticket 'touts' in that they do not sell the tickets themselves, operate openly as legitimate businesses and give a guarantee to buyers that if they do not receive their ticket from the seller, or if it goes astray in transit or if they are denied entrance to the event, that a replacement ticket or refund will be provided.⁹

⁸ Live Nation Entertainment. 2016. *Annual Report 2015*, p. 5.

⁹ For details of these guarantees, see <http://www.seatwave.ie/Help> ; www.stubhub.ie/information-about-us ; and www.viagogo.ie/about

13. The main secondary marketplaces operating in Ireland are Seatwave which was acquired by Ticketmaster in 2014¹⁰, StubHub which was acquired by eBay in 2007¹¹, and viagogo, a European based platform founded in 2006 by a former co-founder of StubHub. Though each of these platforms operates in a number of countries, all have websites with an Irish domain name. Viagogo has an operations centre in Limerick, while StubHub has a presence as part of the wider eBay operation here. There are also some smaller Irish resale websites, including needaticket.ie and Premier Tickets. While all of these platforms permit the seller to fix the price at a level above the face value of the ticket, there are also 'fair exchange' platforms, such as toutless.com, which permit resale only at the face value of ticket (plus service charges) and prohibit the resale of tickets for events whose terms and conditions debar it.

14. Tickets for entertainment and sporting events are also commonly offered for secondary sale on general online platforms or advertising websites such as DoneDeal¹², Gumtree (owned by eBay) and eBay itself as well as on social networks such as Facebook or Twitter. While ticket transactions on some such websites are covered by the website's purchase protection programme, in others no such protections apply. Finally, tickets are still also resold in the vicinity of venues on the day or night of entertainment or sporting events.

15. As this brief account shows, both the live entertainment sector for major events and the ticketing service sector have undergone large-scale change and consolidation over the past decade. Live Nation Entertainment now combines the functions of artist management, event promotion, venue management and ticket sales.¹³ In 2015, it produced over 25,000 events for almost 3,300

¹⁰ Ticketmaster also owns another European ticket resale marketplace, Get Me In, which it acquired in 2008 and on which tickets for events in Ireland are offered for sale, though the website does not have an Irish domain name. In the same year, it also acquired TicketsNow, the second largest resale platform in the US after StubHub. In 2007, Ticketmaster had launched TicketExchange, a platform designed to facilitate peer-to-peer ticket resales. The company's entry into the secondary ticket market, a market it had previously opposed, represented a significant change of direction on its part and an important development in the secondary ticket sector. Budnick, D. & Baron, J. 2012. *Ticket Masters: The Rise of the Concert Industry and How the Public Got Scalped* (New York: Penguin USA), pp. 294-296.

¹¹ In 2016, eBay also purchased Ticketbis, a large secondary ticket platform based in Spain with a view to integrating it into StubHub and expanding its operations in Europe, Latin America and Asia Pacific. It has also invested in Ticketstreet, a Tokyo-based secondary ticketing marketplace.

¹² DoneDeal does not accept advertisements for tickets for GAA matches for more than their face value and has also placed a limit on the mark-up over the face value of tickets for some entertainment events.

¹³ Live Nation's Artist Division manages touring, merchandising and other activities for a range of acts, including under long-term contracts with U2, Madonna and Jay-Z. In 2013, it purchased U2's management company, Principle Management.

artists to attendances of 63 million.¹⁴ With the acquisition of Seatwave and Get Me In, Ticketmaster is now extensively engaged in both the primary and secondary ticket markets. In 2015, it sold over 465 million tickets through its various distribution systems for 12,500 clients in over 20 countries. The other main players on the secondary ticketing market also operate on an increasingly global scale. Viagogo has websites in 60 countries with a reported 5 million tickets on offer at any time. StubHub states that it has more than 10 million tickets available for events at any given time and over 16 million visitors per month to its websites. The borderless nature of the Internet, along with the greater availability and affordability of air travel, has meant that the market for major events which was once mainly regional or national is now increasingly international. Irish fans regularly purchase tickets for sporting and entertainment events outside Ireland and fans from other countries do likewise for events here.

Extent of Ticket Resale

16. Though the resale of tickets for high-demand events at inflated prices is the subject of considerable comment and criticism, there is a lack of reliable data about the extent of the practice. Thousands of ticketed entertainment and sporting events take place in Ireland every year. The number of events for which an excess of demand over supply results in significant numbers of tickets being resold at a price above their face value almost certainly accounts for a very small proportion of the total number of events, though it accounts for a greater share of tickets and ticket revenues. In the UK, it has recently been estimated that the secondary ticketing marketing is between 3 and 7 per cent of the size of the primary ticket market in volume terms, though the figure is higher for large venues.¹⁵ In value terms, the revenue from secondary ticket sales is estimated to be around one-eighth of that of primary ticket sales in the UK. A tracking analysis of 1 million tickets for 56 concerts sold by Ticketmaster to buyers on the primary market in the US found that 5 per cent were subsequently resold on Stubhub or eBay, the then dominant players in the secondary market.¹⁶ In Australia, the Consumer Affairs Advisory Council concluded that, while online ticket resale sites have made the operation of the secondary market more visible, 'the

¹⁴ Live Nation Entertainment. *Annual Report 2016*, p. 2.

¹⁵ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, paragraph 5.19.

¹⁶ Leslie, P. and Sorensen, A. 2009. *The Welfare Effects of Ticket Resale*. National Bureau of Economic Research Working Paper 15476, p. 12.

offering of tickets for resale is generally a very small percentage of tickets sold to any given event'.¹⁷

17. To assist in the consideration of the need for possible regulatory action, it is desirable to have an informed estimate of the number and type of events annually for which there is a significant level of ticket resale on the secondary market. The views of promoters, sporting bodies, ticketing service providers and secondary ticketing platforms would be particularly welcome on this point. It is appreciated that the number of such events will vary depending on factors such as the artists who are touring in a given year, the teams who are involved in the final stages of sporting championships as well as external factors such as the state of the economy.

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?

Outcome of Ticket Resale

18. Media reports about ticket resale invariably focus on tickets offered for sale on secondary marketplaces at prices far in excess of their face value. The greater the mark-up over the original price the more likely it is to receive attention and to provoke criticism. The prices advertised on secondary sites shortly after, or sometimes even before, tickets go on general sale, however, are not necessarily the prices at which the tickets are subsequently sold. The evidence from other countries suggests that, for some events at least, the prices sought and achieved on the secondary market tend to peak at this point and to decline as the date of the event approaches.¹⁸ In a sizeable number of cases moreover the price paid for tickets on the secondary market appears to be at or

¹⁷ Commonwealth Consumer Affairs Advisory Council. 2010. *Consumers and the Ticket Market*, p. 21.

¹⁸ Connolly, M. & Krueger, A.B. 2010. *Rockonomics: The Economics of Popular Music*. National Bureau of Economic Research Working Paper 11282, p.28. *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraph 5.30.

below the face value of the ticket. A recent survey of UK consumers who had purchased tickets on the secondary market found that 32 per cent of respondents had paid the face value, 22 per cent had paid less than the face value, 21 per cent had paid slightly more than the face value, and 11 per cent had paid substantially more than the face value.¹⁹ Industry estimates for music events in the UK suggest that at least 30 per cent of tickets sell for less than face value. In the US, it has been variously estimated that 25 to 40 per cent of tickets resold on the secondary market are sold for less than their face value.²⁰ There are presumably also cases where tickets offered for resale fail to find a buyer. Though the figures cited here do not negate the fact that very high prices are paid on the secondary market in some cases, they help provide a more rounded and representative picture of that market. Information from purchasers of tickets on the secondary market and, in particular, from ticket resale marketplaces and other platforms on the prices paid for resold tickets would be appreciated.

Question 3

What proportion of tickets offered for sale on secondary marketplaces and platforms are 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.

19. While much of the focus on ticket resale is on the inflated prices charged on the secondary market, the most serious detriment occurs where consumers who buy tickets from resellers receive fake tickets or no tickets at all. Following the seizure in January 2014 of counterfeit tickets for

¹⁹ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraph 6.18.

²⁰ Kirkman, C.P. 2009. *Who Needs Tickets: Examining Problems in the Growing Online Ticket Resale Industry*. *Federal Communications Law Journal*, 61(3): 748. Leslie, P. and Sorensen, A. 2009. *The Welfare Effects of Ticket Resale*, op.cit., p. 13.

upcoming concerts, the Gardaí stated that the sale of counterfeit tickets continued to be a challenge for the force in the policing of events with members of the public often only realising that they had purchased fake tickets when they were denied access to the event.²¹ When sizeable numbers of people turn up at venues with fake tickets or having been wrongly told that tickets they had bought in good faith would be available for collection at the box office, this is the cause of obvious disappointment and distress for the individuals concerned and creates a difficult situation for venues to manage.

20. Of its nature, the scale of ticket fraud is difficult, if not impossible, to establish. In the UK, the London Metropolitan Police conservatively estimated in 2013 that there were at least 100 fraudulent websites engaged in the sale of tickets.²² Ticket fraud was significantly under-reported with consumers finding it difficult to distinguish between authorised ticket websites, unauthorised websites and fraudulent websites. In addition to monetary loss, those engaging with fraudulent sites risked having their payment details compromised. Fraudulent websites were often difficult to identify and, even when identified, evidence of fraud generally emerged only after an event had taken place. Enforcement action against websites or resellers based outside the UK presented particular difficulties. We would welcome information from promoters, venues, primary ticket sellers and secondary ticket marketplaces about the incidence and scale of ticket fraud here. Details of ticket fraud experienced by consumers would also be welcome.

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?

²¹ An Garda Síochána. 30 January 2014. *Advice surrounding the purchase of concert and event tickets*, <http://www.garda.ie/Controller.aspx?Page=12623&Lang=1>

²² Metropolitan Police. February 2013. *Ticket Crime: Problem Profile*, p.5.

PART 3 THE SUPPLY OF TICKETS TO THE SECONDARY TICKET MARKET

21. The secondary market can obviously function only if tickets purchased or obtained on the primary ticket market are offered for resale. Information on the sources of the tickets that end up on the secondary market is critical accordingly to understanding ticket resale and assessing how it can be addressed.

Tickets Originating in Allocations and Sales Prior to General Sale

22. Though it is sometimes assumed that all of the tickets to entertainment or sporting events go on general sale to the public, this is not typically the case. Tickets for entertainment events are commonly made available to a range of parties – including performers and their managements, members of performers’ fan clubs, venues and members of their clubs, corporate sponsors, holders of some credit cards, customers of some telecoms services, record labels and media organisations – prior to going on general sale. An analysis by the Office of the New York Attorney General of the allocation and distribution of tickets for the top-grossing 74 shows organised by the city’s two largest promoters between 2012 and 2015 found that, on average, only around 46 per cent of tickets were reserved for the general public.²³ The remaining 54 per cent of tickets was divided among two groups. First, 16 per cent of tickets were so-called ‘holds’, that is tickets reserved for industry insiders such as artists, agents, venues, marketing departments, record labels, and sponsors.²⁴ Second, 38 per cent of tickets were made available on pre-sale to non-public groups, most commonly credit card holders and members of artists’ fan clubs, though also through pre-sale events run by venues, promoters and others. Tickets reserved or allocated in these ways were also more likely to be for premium seats. Some respondents to the Waterson Review of online secondary ticketing facilities in the UK suggested that 60 per cent or more of tickets for events by major acts may have been allocated or sold prior to the commencement of the general public sale.²⁵ New York is an atypical market in some respects and the restriction of the estimates for the US and the UK to high-demand events must also be borne in mind. Though we are not aware of any

²³ Office of the New York State Attorney General, *Obstructed View: What’s Blocking New Yorkers from Getting Tickets*, op. cit., p.11.

²⁴ The report notes that ‘holds’ are reservation rather than sales and that in most cases a group allocated a portion of tickets through a hold will not use a portion of the tickets. In such cases, the tickets are released back to the promoter who will typically make them available for sale to the public, *ibid.* p.12.

²⁵ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraph 7.10.

similar estimates for this country, it may be the case that allocations and sales prior to tickets going on general sale are a good deal smaller here. If a proportion of tickets for high-demand events are not available for general sale, potential purchasers' chances of obtaining tickets on the primary market are correspondingly reduced. These pre-allocations also go some way to explaining why tickets for some events can be offered for sale on secondary marketplaces or within minutes, of their being put on general sale by the primary ticket seller or, in some cases, even before the start of the general sale. A monitoring of the four main UK resale sites by the UK consumer association Which? between August and October 2015 found one instance where over 300 tickets were on sale on a secondary marketplace the day before even the presale began.²⁶

Question 5

What proportion of tickets for high-demand entertainment events are typically allocated for pre-sale or other allocation prior to going on general sale to the public? What parties or groups are the main recipients of such pre-sales and pre-allocations?

23. The manner of allocation and distribution of tickets for major sporting events differs from that for entertainment events. Sporting bodies have the broader, longer-term objective of promoting the sport and may also wish to recognise and reward the contribution of volunteers in affiliated clubs and boards. For major matches, all of the tickets may be allocated in this way with none available on general sale. The main sporting organisations also have schemes under which tickets for specified events can be purchased for a number of years. The GAA offers both season tickets and 3, 5 and 10 debenture contracts for tickets. The Irish Rugby Football Union offer ten year premium tickets. The Football Association of Ireland offers season tickets as well as six and ten year tickets; tickets for a number of international matches are also regularly sold as a package. The pre-

²⁶ Which? 13 November 2015. *Which probes ticket resale rip-off: Why it's so hard to buy tickets at face value*, <http://www.which.co.uk/news/2015/11/which-probes-ticket-resale-rip-off-422307/> .

allocation of tickets for sporting events under these various arrangements substantially reduces the number of tickets available on general sale and, in some cases, may even preclude any such sale.

24. The question arises as to whether, or to what extent, tickets allocated or sold to various parties prior to their going on general sale end up for resale on the secondary market. The Fanfair Alliance, a UK campaign body established by the managements of a number of major music acts, promoters and others to combat online ticket resale, recently cited the case of tickets for a seven-night tour by Black Sabbath in February 2017 for which tickets went on pre-sale on 15 June and on general sale on 17 June.²⁷ By the time the general sale opened, 11,695 tickets were available for sale on secondary ticketing websites, equivalent to almost one night's tickets. The review of ticket resale undertaken by the Office of the New York Attorney General found that ticket brokers purchase heavily during pre-sales of tickets for popular events, using ticket purchasing software and other means, including signing up for performers' fan clubs.²⁸

25. While such analyses show that tickets allocated or sold prior to general sale may end up on the secondary market in significant quantities, it does not tell us the source of those tickets. As such transactions are likely to be undertaken covertly, it is unsurprising that there is no systematic information available on the practice. From time to time, however, evidence emerges of the source of tickets put up for sale on secondary marketplaces which did not originate in purchases on the primary market. In November 2016, the managing director of Live Nation Italy acknowledged, following an investigation by a television news show, that the promoter had been the source of several hundred tickets for a Coldplay concert in Milan that were listed for resale on viagogo.²⁹ In 2012, the chief operating officer of Live Nation International stated that it was a matter of fact that 'in the UK Live Nation places less than 1 per cent of its controlled tickets directly into the secondary market with one or other of the platforms.'³⁰ He added that, other than for 'the odd proprietary event', these placements were 'invariably at the behest of artist management/agents. On 'the odd

²⁷ Digital Economy Bill, 1 November 2016. Written evidence submitted by the Fanfair Alliance, <http://www.publications.parliament.uk/pa/cm201617/cmpublic/digitaleconomy/memo/deb83.pdf>

²⁸ Office of the New York State Attorney General, *Obstructed View: What's Blocking New Yorkers from Getting Tickets*, op. cit., p.14 & p.21.

²⁹ M. Savage. 15 November 2016. 'Italy moves to curb secondary ticketing', <http://www.bbc.com/news/entertainment-arts-37985565> .

³⁰ 'Ticketing: A Statement from Live Nation's Paul Latham'. 04 December 2012, <http://www.musicstank.co.uk/blog/ticketing-a-statement-from-live-nations-coo-paul-latham>

occasion', the company had 'put considerably higher allocations across all platforms to dilute the price and mitigate profiteering.' In 2012, an undercover investigation by Channel 4's *Dispatches* programme showed evidence that a prominent resale platform was receiving regular large-scale allocations of tickets for resale for concerts by major acts from promoters and venues. It also found evidence that the platform was itself buying tickets for resale for some events from the primary seller.³¹ In 2009, the Wall Street Journal claimed that, according to 'several managers of top artists and Ticketmaster executives, the company (Ticketmaster) routinely offers to list hundreds of the best tickets per concert on one of its two resale Web sites and divides the extra revenue ... with artists and promoters.'³² Despite the stated opposition of sporting bodies to the resale of tickets above their face value, it is believed that some of the tickets that end up for resale on secondary sites come from allocations made to players, officials and members in affiliated clubs and bodies.

26. The recent Waterson review of secondary ticketing in the UK stated that it had not received any 'hard evidence' about the placing of tickets on the secondary market by parties related to the primary market such as promoters, artists, managers or agents or those in sporting bodies.³³

Different views were expressed on the issue with some stakeholders stating that this was improbable as it would be in breach of contractual arrangements and others stating that it was likely due to factors such as the relatively low chance of discovery, the lack of transparency around ticket sales and resales, and the large gains to be made from resales. While the UK Concert Promoters' Association assured the review that promoters did not engage in this practice, other respondents suggested that promoters may dispose of poorly selling tickets at reduced prices on secondary ticket sites, or pass premium tickets for high-demand events to such sites in order to maintain resale arrangements for future poorly selling shows.

27. It is important to state that there is no evidence in Ireland of tickets being supplied to secondary sellers or marketplaces by artists or their agents, venues, promoters or primary ticket sellers. In the light of the evidence from other countries, however, it would be naïve to discount the possibility.

³¹ Channel 4 Statement. 5 July 2013. 'The Great Ticket Scandal', <http://www.channel4.com/programmes/dispatches/articles/all/the-great-ticket-scandal> . The programme can be viewed on YouTube at <http://www.youtube.com/watch?v+WWInL8drsw>

³² Smith, E. 'Concert Tickets Get Set Aside, Marked up by Artists, Managers', *Wall Street Journal* 11 March 2009, <http://www.wsj.com/articles/SB123672740386088613>

³³ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraphs 5.36-5.38.

Information on the matter would be welcome, particularly from parties engaged in the entertainment and ticketing sectors.

Question 6

Are you aware of tickets being supplied to secondary sellers or marketplaces by persons involved in the primary market for entertainment or sporting events such as artists and their representatives, promoters or primary ticket sellers? If so, how prevalent is the practice and what is its scale?

Tickets Originating on the Primary Ticket Market

28. Purchasers of tickets on the primary ticket market who subsequently go on to resell them can usefully be understood as falling into three broad categories.³⁴ First, those who buy tickets with the intention of attending the event but later find that they are unable to attend or to afford the travel and accommodation costs associated with attendance. As tickets for major event are commonly sold up to a year in advance, a proportion of ticket buyers will put tickets up for resale for this kind of reason. This group of buyers will not generally be among those, however, who put tickets up for resale immediately or shortly after they go on general sale. Estimates from other countries suggest that tickets from this group account for around 5 per cent of listings on secondary marketplaces.³⁵ Secondly, some ticket buyers who plan to attend an event may buy extra tickets in order to subsidise the purchase of their own tickets and the other costs associated with attendance. Thirdly, there are purchasers who buy tickets for events which they have no intention of attending in order to resell the tickets at a profit. Some may do so occasionally, while others may be engaged in this activity on a more systematic basis.

29. This last category of ticket reseller, particularly those engaging in the activity on an organised, large-scale basis, is the one that gives rise to the greatest public concern and opposition and is most likely to be characterised as engaged in ticket ‘touting’. Consumers may be more tolerant of resale

³⁴ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraphs 5.28-5.29.

³⁵ *Ibid.*, paragraph 3.38.

by the other two groups, particularly but not only those unable to attend the event. Research into consumer attitudes in the UK, for example, found that ‘consumers were inclined to view tickets as acceptably transferable ... that (re) selling at a profit is also acceptable so long as it is done in a small-scale fashion and by “individuals”’.³⁶ While respondents saw block purchases of tickets as unfair, they did not have a ‘problem with anyone covering their costs by selling a few extra tickets’. The Waterson review noted that the public understanding of a ticket was of ‘something that *guarantees* the holder (not necessarily the original purchaser) of the ticket entrance to the event in question’ rather than a personal licence that was revocable by the event organiser.³⁷

30. Ticket purchases for high-demand events on the primary market are normally restricted to a specified number of tickets per purchaser, typically four to eight. If organised resellers wish to obtain significant numbers of tickets, they must find ways around these restrictions. In the past, such resellers might have organised teams of people to join ticket queues at venues or other outlets and this may still occur to a limited extent. In the case of phone or online sales, organised resellers may employ teams of people with multiple devices using different residential and IP addresses and payment cards in order to obtain the greatest possible number of tickets.³⁸ Increasingly, however, large-scale purchases are undertaken with the aid of special software or ‘bots’ or ‘botnets’ (a number of connected computers using bots) that facilitate the purchase of batches of tickets in a short space of time.³⁹ Software of this kind undertakes a number of operations designed to achieve the purchase of large numbers of tickets. First, it monitors primary ticket selling sites for information about the release of tickets. Secondly, it conducts multiple searches when tickets go on sale, thereby putting significant numbers of tickets on reserve and removing them from the pool of tickets available for others to purchase. When very large numbers of prospective purchasers log onto a ticketing service provider’s website at the time tickets go on sale, the website’s servers may not be able to accommodate all such requests with the result that some will be placed in the

³⁶ Campbell Keegan Ltd. 2007. *The Secondary Market for Tickets (Music and Sport): Qualitative Research Report for the Department of Culture, Media and Sport*, p.8 & p.24.

³⁷ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraph 4.11.

³⁸ Office of the New York State Attorney General, *Obstructed View: What’s Blocking New Yorkers from Getting Tickets*, op. cit., p.21.

³⁹ For accounts of how ‘bots’ operate, see Loewenstein, A. 2010. *Ticket Sniping*, *Journal of Telecommunications and High Technology Law*, 8(1), pp. 243-276 at pp. 244-247. Office of the New York State Attorney General, *Obstructed View: What’s Blocking New Yorkers from Getting Tickets*, op. cit., pp.15-16.

electronic equivalent of a queue. Bots essentially inundate ticket selling websites with automated requests that pack the queue with hundreds or thousands of requests and enable the harvesting of sizeable numbers of tickets. Thirdly, bots automate the process of purchasing and paying for tickets, using large numbers of different names, addresses and payment details. Lastly, bot software circumvents the security measures put in place by primary sellers to prevent automated purchases, most commonly the CAPTCHA (Completely Automated Turing Test to Tell Computers and Humans Apart) test. Ticket bots tailored for particular websites are believed to be available for sale on the Internet.⁴⁰

31. In some markets, particularly the US, there is clear evidence of large scale purchases of tickets by brokers using bots. A recent analysis by the Office of the New York Attorney General, for example, found that three ticket brokers using bots collectively purchased more than 140,000 tickets to events in New York over a three-year period from 2012 to 2014.⁴¹ Some of the bots in question had enabled the purchase of 500 to 1,000 tickets in the space of one to five minutes. In 2010, the owners of a California-based ticket resale operation pleaded guilty to the purchase of an estimated 1.5 million tickets for high-demand entertainment and sporting events at an estimated profit of \$25m.⁴² Those behind the resale operation used computer programmers in Bulgaria to operate a network of computers that mimicked the activity of individual ticket buyers.

32. Though comparable evidence is not available for other countries, there appears to be a growing acceptance that the acquisition of tickets by organised resellers has increased substantially in recent years. While the Waterson review in the UK was unable to obtain reliable evidence of the relative size of the different categories of reseller, some stakeholders in the industry indicated that professional resellers accounted for 70 per cent and upwards of ticket resales for high-demand entertainment events.⁴³ It further noted that, as this group of resellers were able to access batches

⁴⁰ Davies, R. 'Powerful software to assist ticket touts widely available online', *Guardian* 21 May 2016.

⁴¹ Office of the New York State Attorney General, *Obstructed View: What's Blocking New Yorkers from Getting Tickets*, op. cit., p.11.

⁴² Federal Bureau of Investigation. November 18 2010. 'Three Plead Guilty in "Wiseguys" Scheme to Purchase 1.5m. Premium Tickets to Events Through Computer Hacking and Fraud', <https://archives/fbi.gov/archives/newark/press-releases/2010/nk111810.htm>

⁴³ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraphs 5.29-5.30. By contrast, an analysis undertaken in the UK in 2009 found 'quite wide support' for the view that 95 per cent of resales were by consumer sellers, though it noted the potential impact of software that enabled

of tickets for in-demand events, they could be ‘rewarded’ with better terms by ticketing marketplaces. While ticket sellers on secondary marketplaces were not normally paid until the ticket buyer had attended the event, some ‘power sellers’ were believed to have contractual arrangements with the marketplaces that enabled them to be paid beforehand.⁴⁴

33. In 2012, the Chief Operating Officer of Live Nation International said in a statement to a UK music industry summit on ticketing that ‘every major [event] on-sale sees primary ticketing company websites attacked by bots seeking to claim as much inventory as possible by these resellers... Any home-spun theories that ... it is a free market and people must be able to resell their tickets if they cannot go to events is blown out of the water by the fact that more than 70% of these tickets posted are by “power sellers” ... tech-savvy enough to gain access to swathes of tickets.’⁴⁵ The theatre producer, Sir Cameron Mackintosh, recently commented that, ‘in the old days with Cats, you knew who the touts were. You’d pick them out of the queue and tell them to hop it. Now you’ve got these sophisticated computer programs hoovering up tickets – and you’ve also got members of the public tempted by those inflated price to sell tickets themselves.’⁴⁶ In recent written evidence to the UK House of Commons, Ticketmaster stated that they ‘regularly witness high levels of bot activity when tickets go on sale for major events and international tournaments. Across our global ticketing businesses, we block millions of attempts by bots to access our websites every day.’⁴⁷

34. The views of primary ticket sellers, secondary marketplaces and platforms and other industry sources on the make-up and characteristics of secondary ticket sellers in Ireland and the means they use to source tickets would be welcome. This information is particularly relevant to the assessment of possible future regulatory intervention. If ticket resales are mainly accounted for by large numbers of people selling tickets occasionally or on a small scale, enactment and enforcement

large numbers of ticket purchases. Europe Economics. 2009. *Analysis of the Secondary Sales Market for Tickets for Sporting, Cultural and Other Events*, paragraphs 4.48-5.54.

⁴⁴ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraphs 5.13, 5.30 & 5.48.

⁴⁵ ‘Ticketing: A Statement from Live Nation’s Paul Latham’. 04 December 2012,

<http://www.musicstank.co.uk/blog/ticketing-a-statement-from-live-nations-coo-paul-latham>

⁴⁶ ‘Cameron Mackintosh: My war on ticket touts’, 14 October 2016,

<http://www.telegraph.co.uk/theatre/playwrights/cameron-mackintosh-my-war-on-ticket-touts>

⁴⁷ Digital Economy Bill, 1 November 2016. *Written evidence submitted by Ticketmaster (DEB 76)*,

<http://www.publications.parliament.uk/pa/cm201617/cmpublic/digitaleconomy/memo/DEB76.htm>

of any statutory prohibitions or restrictions on resale is likely to be more problematical than if resales are mainly the work of a relatively small number of large-scale sellers. If a sizeable proportion of tickets offered for resale come from sellers outside Ireland, this too would have implications for the enforceability of statutory prohibitions or restrictions.

Question 7

Are parties who engage in ticket resale on a systematic basis and on a significant scale a feature of the secondary ticket market in Ireland? What proportion of secondary sales for high-demand events are accounted for by such sellers? Do such sellers receive more preferential terms, such as early payment, from secondary marketplaces?

Question 8

Is there evidence of the use of software (bots) to source multiple tickets for high-demand events on the primary market in Ireland and to circumvent security measures? How common or extensive is the use of such software for this purpose?

Question 9

What means other than bots are used to obtain large numbers of tickets on the primary market for the purpose of resale?

Question 10

What proportion of tickets offered for resale for major entertainment and sporting events in Ireland are listed by sellers from outside Ireland?

PART 4 CURRENT REGULATION OF TICKET RESALE

Statutory Regulation in Ireland and Other Countries

35. There is no statutory prohibition of ticket resale in Ireland or regulation of the mark-up over the face value for tickets sold or offered for sale on secondary marketplaces. The same is true of most other European Union member states, while the European Commission has stated that it has no plans for EU legislation on ticket resale.⁴⁸ In the UK, the recently enacted provisions of the Consumer Rights Act 2015 impose a number of information duties on secondary ticket sellers but do not prohibit resale. The Act further prohibits event organisers from cancelling tickets, or blacklisting sellers, for reselling tickets unless a term of the contract provided for cancellation or blacklisting in the event of resale and the term was not unfair under the Act's provisions on unfair terms in consumer contracts. Resale other than by vendors authorised by the event organiser is prohibited in France.⁴⁹ In Belgium, secondary sale is permitted only where the reseller is authorised by the event organiser and the ticket is resold at face value; a limited exception is made for cases where a ticket holder cannot attend an event.⁵⁰ In Portugal, resale of tickets above their face value is contrary to general laws on 'anti-economic' or 'speculation' crime. Resale for gain is also prohibited in Croatia, Denmark and Poland.⁵¹

36. Though a number of US states enacted legislation on ticket touting or 'scalping' as far back as the 1920s, the trend, until very recently at least, has been for these restrictions to be repealed or curtailed. This policy shift occurred largely because the rise of online selling had exacerbated long-standing difficulties with the enforcement of statutory restrictions or prohibitions. A review of state laws undertaken in 2012 noted as follows:⁵²

... the current trend in ticket scalping regulation is toward leniency and acceptance of the practice. Although some states attempt to regulate scalping by introducing buffer zones around

⁴⁸ European Parliament, Parliamentary Questions 9 January 2014: *Answer given by Mr. Barnier on behalf of the Commission*.

⁴⁹ Centre Européen des Consommateurs France. *The resale of tickets in the EU*, <https://www.europe-consummateurs.eu/en/news-and-alerts/sports-and-events/the-resell-of-tickets-in-the-eu-forbidden-or-allowed/>

⁵⁰ European Consumer Centre Belgium, Concert tickets, <http://www.ecc.belgium/be/themes/unfair-practices-/misleading-practices-concert-tickets>

⁵¹ Centre Européen des Consommateurs France. *The resale of tickets in the EU*, op. cit

⁵² Schroeder, E. et al. 2012. 'A Brief Overview on Ticket Scalping Laws, Secondary Ticketing Markets, and the StubHub Effect', Entertainment and Sports Law 30(2), pp. 1 & 26-32, <http://www.esl.com>

venues or requiring brokers to be registered, very few states completely ban ticket scalping. Instead, many states, such as Missouri, Mississippi and Connecticut, have recently repealed the prohibition against scalping. Additionally, state bills attempting to regulate the secondary ticket market further are generally unsuccessful.

In New York, anti-scalping laws first enacted in 1922 originally prohibited the resale of tickets at more than two dollars above face value.⁵³ The permitted mark-up rose over time to 20 per cent above face value for venues seating up to six thousand and 45 per cent above it for venues over this size. In 2007, these restrictions were repealed in favour of a revised licensing system for ticket brokers, including the posting of a bond to provide protection for buyers whose tickets turn out to be counterfeit. A 2010 amendment banned the use of ticket buying software in order to bypass security measures on primary ticket websites, though the penalties for violations were civil rather than criminal. As outlined in Part 5, however, ticket resale, particularly provisions to combat ticket purchasing software, is now back on the legislative agenda at federal and state level in the US.

37. In Canada, restrictions on resale apply in a number of provinces. In Quebec, reselling of tickets for sporting and cultural events is prohibited unless authorised by the event organiser; where authorised by the organiser, tickets can be resold at a price above their face value.⁵⁴ In Saskatchewan, the Ticket Sales Act governing entertainment and sporting events at seven major venues in the province prohibits resale or resale advertisements until at least 48 hours after the initial release of tickets to the general public.⁵⁵ The use of software for the automatic purchase of tickets is also prohibited. Subject to these and other specified restrictions, ticket resale is legal in the province. Manitoba prohibits the resale of tickets for entertainment and sports events at a price in excess of their face value.⁵⁶ In Ontario, a Ticket Speculation Act enacted in 1990 which had made it an offence to sell tickets at a price higher than that at which they were first issued, or to buy tickets with the intention of reselling them at a profit, underwent substantial amendment in 2015. The amended Act allows resale where the primary seller either authenticates the tickets offered for

⁵³ Office of the New York State Attorney General, *Obstructed View: What's Blocking New Yorkers from Getting Tickets*, op. cit., pp. 7-9.

⁵⁴ Office de la protection du consommateur Québec, 30 June 2016. 'Buying tickets from a reseller', <http://www.opc.gouv.qc.ca/en/consumer/good-service/goods-consumer/en-billets-de-spectacles/achat/revendeur/>

⁵⁵ Financial and Consumer Affairs Authority Saskatchewan. 2016. *The Ticket Sales Act*, <http://fcaa.gov.sk.ca/Default.aspx?dN+ee657ee51-e810-4a9a-ac83-1319f122dd8e>

⁵⁶ Manitoba Laws. The Amusements Act (C.C.S.M. c.A70), <http://web2.gov.mb.ca/laws/statutes/ccsm/a070e.php>

resale or offers a money back guarantee if the tickets prove to be fraudulent.⁵⁷ Resale is legal also in the other main Canadian provinces, Alberta and British Columbia.

Event-Specific Statutory Regulation

38. Though there is no general ban on ticket resale in the UK, there is a specific prohibition on the resale of tickets for soccer matches under the Criminal Justice and Public Order Act 1994. Sections 166 and 166A of the Act provide that an information service provider, such as a secondary ticketing platform, commits an offence in relation to the sale of such tickets through the Internet if it is aware that tickets are being listed for sale by an unauthorised person. The purpose of these provisions is to prevent crowd trouble at football grounds by ensuring the segregation of rival fans rather than to curb profiteering. Subsequent to the Act's introduction, a number of Premiership clubs entered into arrangements with StubHub and viagogo in order to make these marketplaces authorised ticket sellers. The London Olympic Games and Paralympic Games Act 2006 made it an offence for a person to sell an Olympic ticket without a written authorisation issued by the London Organising Committee. The enactment of such a prohibition was one of a number of conditions of the International Olympic Committee bidding process for the Games.

39. In Australia, Victoria prohibits the unauthorised resale of tickets for events designated by the relevant Minister under the Major Sporting Events Act 2009.⁵⁸ In Queensland, the Major Sports Facilities Act 2010 makes it an offence to sell or buy tickets for events held at eight specified venues for a price in excess of ten per cent above the original ticket price. Other Australian State and Territories have more specific provisions governing ticket resale in the vicinity of specified stadia or venues. In New Zealand, the Major Events Management Act 2007 prohibits the resale of tickets for a price in excess of that originally charged (plus fees) for events that meet a range of criteria, such as being of international significance. To date, 10 sporting events have been declared major events for the purposes of the Act, most notably the 2011 Rugby World Cup.

40. As part of the conditions agreed with UEFA for the staging of four matches in the EURO 2020 soccer championship, Ireland has given a commitment to introduce legislative provisions banning

⁵⁷ Yosovich, M. 27 June 2016. 'Changes in Ticket Speculation Act allows for legal scalping in Ontario', Findlaw Canada 27 June 2016, legalblogs.findlaw.ca/legal-business/changes-in-ticket-speculation-act-allows-for-legal-ticket-scalping-in-ontario-845/

⁵⁸ Commonwealth Consumer Affairs Advisory Council. 2010. *Consumers and the Ticket Market*, pp. 29-31.

the unauthorised resale of tickets for these matches. A similar commitment is also to be given to World Rugby in connection with the bid for the 2023 Rugby World Cup.

Application of General Consumer Protection Legislation to Ticket Sale and Resale

41. Though ticket sale and resale are not the subject of specific legislative provisions in Ireland, they are subject to general consumer protection legislation. The European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 which give effect to Directive 2011/83/EU on Consumer Rights 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 contracts to buy tickets online do not have the right therefore to cancel those contracts.

42. The Consumer Protection Act 2007 which gives effect to Directive 2011/83/EU on Unfair Commercial Practices 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. The Regulations do not apply however to 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 and services provided in return where these terms are expressed in plain, intelligible language. The price of a ticket offered for sale or resale therefore is excluded from assessment for fairness provided it has been stated plainly and intelligibly.

43. Other contract terms relevant to ticket sales, such as the restrictions on resale discussed in the next section, are assessable for fairness under the Unfair Terms Regulations. In guidance on the UK legislation that gives effect to the Unfair Terms Directive, the Competition and Markets Authority

noted that ‘contract law ordinarily allows purchasers to transfer (or ‘assign’) to someone else what they bought’.⁵⁹ Terms which ‘seek to restrict this right are considered to be open to scrutiny as regards fairness’ and, in the context of the resale of tickets, a term ‘which undermines a consumer’s right to sell what they own is at risk of being regarded as unfair’. In response to interpretations of this guidance by secondary ticketing platforms suggesting that contract terms which restrict resale would always be unfair, the Authority has clarified that, although such terms are open to scrutiny regarding their fairness, ‘they should not automatically be regarded as unfair terms’.⁶⁰ Such terms ‘are more likely to be considered fair if there is a legitimate reason for restricting resale; ultimately ‘it is for the courts to decide whether a term is fair or unfair’. Other relevant factors in our view would include whether contract terms restricting resale had properly been brought to the attention of consumers or permitted resale at face value. It is relevant to note that in its judgment on the action taken by the English Rugby Football Union against viagogo for disclosure of the identity of resellers of tickets for international rugby matches, the English Supreme Court did not challenge the term in the primary ticket contract stipulating that any resale, or advertisement for resale, of a ticket at a price above face value constituted a breach of contract that rendered the ticket null and void.⁶¹ The question of the fairness of such a term under the unfair contract terms provisions in force in the UK was not raised in the course of the proceedings.

44. The statutory provisions outlined in this section 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. If the seller of the ticket on 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 would not enjoy the protection

⁵⁹ Competition and Markets Authority. 2015. *Unfair contract terms guidance: Guidance on the unfair terms provisions in the Consumer Rights Act 2015*, paragraphs 5.33.1 & 5.33.4, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/450440/Unfair_Terms_Main_Guidance.pdf

⁶⁰ Competition and Markets Authority, 12 August 2016. *CMA Response to Independent Review of consumer protection measures concerning online secondary ticketing facilities*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/545526/cma-letter-prof-watsonson.pdf

⁶¹ *The Rugby Football Union v Consolidated Information Services Limited (Formerly Viagogo Limited) (In Liquidation)*. [2012] UKSC 55.

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, he or she will be subject to the applicable provisions of consumer protection legislation and consumers who buy tickets from them will be entitled to the protection of that legislation. It may not necessarily be clear to buyers however whether a seller who engages in ticket resale on an intermittent basis is to be regarded as a trader. Whether or not such a reseller is to be so regarded 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.⁶² It is an offence under the Consumer Protection Act 2007 for a trader to make a representation or create an impression that the trader is not acting for purposes related to their trade, business or profession when he or she is so acting, or that the trader is acting as a consumer when he or she is not so acting.

Regulation of Bot Software

45. Section 5 of the Criminal Damage Act 1991 makes it an offence for a person to operate a computer without lawful excuse with intent to access data. Section 1 of the Act provides that 'data' is 'information in a form in which it can be accessed by means of a computer, and includes a program'. Section 6 provides, among other things, that a person will be treated as having a lawful excuse if he believes that the person entitled to consent to the accessing of the data had consented to it or would have done so if he or she had known of it or its circumstances. In the UK, it has been suggested that a similar provision at section 1 of the Computer Misuse Act 1990 could apply to the unauthorised use of bots for the purpose of accessing tickets on the websites of secondary platforms.⁶³ The application of these provisions to bot-assisted ticket purchases has not been considered by the courts in either Ireland or the UK, however, and it is unclear whether a prosecution taken on this basis would be successful. As discussed in Part 5, recent legislative proposals in the US and the UK to combat bot use have been drafted in a more specific and targeted manner.

⁶² 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

⁶³ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraphs 28, 2.15-21.16 and 2.23-2.26.

Non-Statutory Regulation of Ticket Sale and Resale

46. In the absence of statutory prohibitions on ticket resale, the main controls on the flow of tickets to the secondary market stem from contractual prohibitions in primary ticket contracts on multiple ticket purchases and on resale. MCD Productions' ticket terms and conditions of sale state that tickets 'may not be resold for more than face value.'⁶⁴ Aiken Promotions customer care policy provides that ticket holders must 'adhere to the conditions as stated on the ticket or promotional material or as set by the venue.'⁶⁵ Ticketmaster's terms of use do not prohibit the resale of tickets per se, but state that where the promoter or organiser of an event (the Event Partner) prohibits the resale or transfer of tickets, 'any resale or transfer (or attempted resale or transfer) of a ticket in breach ... of any restrictions imposed by the Event Partner is grounds for seizure or cancellation of that ticket without refund or other compensation.'⁶⁶ The company's terms of use also contain a number of provisions specifically aimed at restricting the supply of tickets for resale.⁶⁷ Ticket buyers, first, are limited to a specified number of tickets per person for each event, typically four to six, in order 'to discourage unfair buying practices'. Tickets 'may be restricted to a maximum number per person, per credit card and, for some events, a restriction may apply per household' and Ticketmaster 'reserve the right to cancel tickets purchased in excess of this number without prior notice'. The terms and conditions of tickets.ie contain a similar provision.⁶⁸ Ticketmaster's terms of use further state that ticket buyers 'agree not to obtain or attempt to obtain any items through unauthorised use of any robot, spider or other automated device or any other illegal activity'.⁶⁹

47. Sporting bodies typically prohibit the resale of tickets for gain. The terms and conditions for tickets issued by the Irish Rugby Football Union (IRFU) state that tickets 'may only be purchased from the IRFU or officially authorised agents' and that 'it is prohibited to sell, advertise or offer to sell tickets to any person at a price in excess of its face value'.⁷⁰ Any 'ticket obtained from any other

⁶⁴ www.mcd.ie/age/

⁶⁵ www.aikenpromotions.com/customer-care-policy

⁶⁴ Ticketmaster Ireland – Purchase Policy, paragraph 7.3, <http://www.ticketmaster.ie/legal/purchase/html>.

⁶⁵ Ticketmaster Ireland – Purchase Policy, paragraph 7.1, <http://www.ticketmaster.ie/legal/purchase/html>.

⁶⁶ Tickets.ie Terms and Conditions, www.tickets.ie/terms-conditions/#1477474081185-90452022-5900.

⁶⁷ Ticketmaster Ireland – Purchase Policy, paragraph 2.3, <http://www.ticketmaster.ie/legal/purchase/html>

⁶⁹ IRFU. Tickets Terms and Conditions, http://www.irishrugby.ie/ireland/tickets/terms_and_conditions.php

source (for example, unauthorised intermediaries such as ticket brokers, internet auctions, internet ticket agents) will be rendered void, and all rights of entry into the Stadium will be nullified'. Any person 'seeking to use such a ticket obtained through unauthorised sources will be refused entry into the Stadium, ejected from the Stadium and/or will have their ticket seized by the Management'. The GAA take a similar stance for games such as the All-Ireland finals where demand for tickets exceeds supply. Prior to this year's All Ireland football final replay, the Association stated that 'people who attempt to buy or sell tickets outside this (authorised) network were at risk of having their tickets cancelled and would be denied entry to the stadium'.⁷¹ The GAA 'does not condone the touting of match tickets at above face value and our Ticket Office was active until throw-in last weekend identifying and cancelling such tickets that were being sold privately and online for above face value.'

Effectiveness of Contractual Restrictions on Resale

48. It can be argued that the apparent prevalence and scale of secondary ticket selling points up the ineffectiveness of the measures taken to enforce contractual restrictions on multiple ticket purchases and on resale. While this conclusion may have some validity, it might also be the case that the incidence and level of secondary sales would be even greater in the absence of such measures. It would be helpful in this context to get an indication of the type and scale of enforcement actions currently taken by event organisers and sporting bodies.

Question 11

What actions are currently taken by primary ticket sellers and ticketing service providers to prevent purchases in excess of the contractually permitted number of tickets or resales in breach of the terms of the primary ticket contract? What is the level of ticket cancellations for the breach of such terms? What is the level of denial of access to venues and stadia for breach of such terms?

⁷⁰ www.gaa.ie/news/gaa-football-all-ireland-final-replay-ticket-sales/

49. While primary ticket sellers and ticketing service providers may be able to exercise some control over ticket purchases in excess of permitted numbers, enforcement of contractual restrictions on resale necessarily involves interaction with secondary marketplaces and presents a greater challenge as a result. In order for event organisers to cancel tickets offered for resale or to deny those holding resold tickets access to an event, the event organiser will normally require details of the seat number. For standing areas in venues or stadia, however, there is no such number. Where there is a seat number, resellers do not normally give details of it in listings on secondary marketplaces. If event organisers want to identify resellers in order to prevent them from reselling in future and to deter others from engaging in resale, they need details of the reseller's identity. Again, this information is typically omitted from listings by resellers on secondary marketplaces.

50. The practical difficulties event organisers face in enforcing contractual prohibitions on resale were apparent from the legal action taken by the English Rugby Football Union (RFU) in 2011-12 against viagogo.⁷² Concerned that the resale of tickets at exorbitant prices was making it difficult for genuine fans to attend rugby internationals, the RFU began monitoring secondary ticket marketplaces in an effort to discover the identity of the persons or clubs selling tickets in breach of the terms of the Union's ticket contract. These efforts made little headway because of the anonymity afforded to sellers by secondary ticketing platforms. A request from the RFU's legal advisers to viagogo for disclosure of the identity of the sellers was rejected. The Union then initiated court proceedings for disclosure of this information and the High Court acceded to this application. Viagogo appealed this decision and was given leave to raise a new ground against the grant of a court order. The Court of Appeal rejected the company's appeal whereupon the company appealed to the Supreme Court. Though the Supreme Court dismissed the appeal and found in favour of the RFU, viagogo had put its UK company into liquidation before the judgment was given and transferred its operations to Switzerland. A spokesperson for the company commented after the judgment that, 'while the RFU may have run off with a handful of names from sales that took place years ago, I can assure you this will not happen again.'⁷³ Our 'data protection is now better, so fans may therefore now buy and sell tickets on viagogo with absolute confidence that their

⁷² *The Rugby Football Union v Consolidation Information Services Limited (Formerly Viagogo Limited) (In Liquidation)*. UKSC 55.

⁷³ Jones, R. 'Court ruling raises question over future of ticket resale websites', *Guardian* 21 November 2012.

information is safe.’ Following the court judgment, tickets for international rugby fixtures involving England continued, and continue, to be offered for sale on viagogo in significant numbers. While the Rugby Football Union may have won the legal argument, the lengthy, time-consuming and costly litigation involved appears to have had limited practical impact on the activity it sought to tackle.⁷⁴

51. The apparent reluctance of secondary platforms to assist event organisers in identifying persons who supply tickets to the platforms is unsurprising given that these marketplaces can only remain in business if they receive a steady supply of tickets for resale. As noted earlier, sellers who supply sizeable volumes of tickets on a regular basis may be rewarded with preferential terms by secondary marketplaces. These marketplaces appear to take a different view of the legal status of tickets than sporting bodies and other event organisers. While the latter regard a ticket as the property of the event organiser which is issued to the purchaser under a revocable licence, secondary marketplaces see tickets as similar to other goods that can be traded by the buyer and should not be subject to restrictions on their resale once purchased.⁷⁵ The different interests and stances of event organisers and secondary marketplaces are arguably one of the main obstacles to reform of ticket resale.

Question 12

Do secondary marketplaces consider themselves to be under an obligation to assist event organisers who wish to identify ticket resellers acting in breach of their contract with the primary seller? Should they do so? Should they be required to do so?

52. It would be instructive to establish in this context if secondary marketplaces that are under common ownership with primary ticketing service providers, as is the case with Seatwave and Get Me In and Ticketmaster, are more likely to assist primary sellers in investigating and enforcing

⁷⁴ For a discussion of the limits of litigation as a solution to ticket touting, see Loewenstein, A. 2010. *Ticket Sniping*, op. cit., pp. 254-65.

⁷⁵ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraph 4.10. Digital Economy Bill, 1 November 2016. *Written evidence submitted by StubHub (DEB 72)*, <http://www.publications.parliament.uk/pa/cm201617/cmpublic/digitaleconomy/memo/deb83.pdf>

contractual prohibitions on resale. The situation in which Ticketmaster webpages that advertise tickets for primary sale carry a link to the sale of tickets for the same event on Seatwave as soon as, or shortly after, they go on general sale, has become a source of contention for consumers and some performers. It can be argued that as a business which sells tickets on the primary market for event organisers in return for an agreed fee, Ticketmaster, unlike the event organiser, has no direct incentive to enforce restrictions on resale. For Live Nation, a primary sale on Ticketmaster followed by a secondary sale on Seatwave or Get Me In seems to some to involve an advantageous form of double payment. As noted earlier, the service charge to the buyer on an online primary sale is 12.5 per cent subject to a maximum charge of €6.10 to €6.85. The combined buyer's and seller's fee on a secondary sale, however, is typically around 25 per cent of what will often be a substantially higher ticket price. In written evidence submitted to a US Senate Committee, Ticketmaster stated that its fees for primary ticket sales for Bruce Springsteen concerts in New York and New Jersey in 2008 averaged \$12.83 and \$12.39 respectively. The average service charges for the same concerts on its Tickets Now subsidiary, however, were \$45.07 and \$45.16.⁷⁶

53. Ticketmaster's connection with its related secondary platforms has given rise to enforcement action in the US and to litigation in Canada. In 2010, the Federal Trade Commission (FTC) in the US reached a settlement with Ticketmaster over charges that it had engaged in deceptive sales tactics in displaying a 'no tickets found' message on its webpage for concerts by Bruce Springsteen in order to steer consumers to its Tickets Now platform where tickets were on offer at higher prices without first disclosing both facts.⁷⁷ In the FTC's view, this was a form of 'bait and switch' tactic under which consumers are attracted by lower-price offers that prove to be unavailable and are then redirected to higher-price versions of the same product. Many of the tickets advertised on Tickets Now moreover were not tickets that had been secured for sale but were merely offers to find tickets. Under the settlement, Ticketmaster agreed to reimburse eligible consumers who had not previously received a refund the difference between the primary and secondary ticket prices. A related court order permanently restrained the company from failing to disclose material

⁷⁶ Hearing of the Subcommittee on Antitrust, Competition Policy and Consumer Rights of the US Senate Committee on the Judiciary. 24 February 2009. *The Ticketmaster/Live Nation Merger: What Does it Mean for Consumers and the Future of the Concert Business*, Request No. 2, p.48.

⁷⁷ Federal Trade Commission. 18 February 2010. *Ticketmaster and Tickets Now Settle FTC Charges of Deceptive Sales Tactics, Refunds for Springsteen Concertgoers Provided; FTC Warns Other Ticket Resellers*, <https://www.ftc.gov/news-events/press-releases/2010/02/ticketmaster-ticketsnow-settles-ftc-charges-deceptive-sales>

information regarding ticket resale websites and from misrepresenting the status of tickets listed for resale on such websites.⁷⁸ A class action suit brought in Canada against Ticketmaster and Tickets Now was settled in 2012.⁷⁹ The suit was brought on the ground that, in redirecting ticket buyers from its primary site to its secondary marketplace, Ticketmaster was in breach of Ontario's Ticket Speculation Act. Though the company did not admit liability, it agreed to reimburse all ticket purchasers in Ontario, Alberta, Manitoba and Quebec \$36 per ticket for tickets purchased at various dates between 2006 and 2012. Ticketmaster also shut down its Tickets Now operation in the province.

Question 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?

⁷⁸ United States District Court for the Northern District of Illinois Eastern Division. *Federal Trade Commission v Ticketmaster L.L.C and Ors*, Case 1: 10-CU-01093.

⁷⁹ Infantry, A. 'Ticketmaster settles class-action lawsuit', Ontario Star 4 April 2012, https://www.thestar.com/business/2012/04/04/ticketmaster_settles_classaction_lawsuit.html, www.ticketsettlement.com/docs/Notice_of_Settlement_English.pdf

PART 5 POSSIBLE FUTURE ACTIONS TO ADDRESS TICKET RESALE

54. Before considering what possible measures might be taken to address ticket resale, it is worth summarising the information about the primary and secondary ticket markets outlined in the previous parts of this paper. Among the main points to emerge were the following:

- Events in which tickets are resold at prices in excess of their face value account for a small proportion of the total number of ticketed entertainment and sporting events.
- The prices advertised for tickets on secondary websites are not necessarily the prices for which the tickets are sold. Prices tend to peak at, or shortly after, the time tickets go on general sale and may decline as the date of the event approaches. Up to half of tickets sold on secondary sites may be sold for a price at or below their face value.
- A proportion of tickets for major entertainment events are distributed through allocations and sales occurring prior to the commencement of the general sale. For major sporting events, there may be no tickets available to the public on general sale. Some tickets offered for sale on secondary websites may be sourced from these pre-allocations and sales.
- Though some tickets on secondary websites come from fans unable to attend the event or who seek to subsidise their own attendance by purchasing extra tickets, a sizeable proportion appear to come from parties involved in the resale of tickets on a regular basis. This last group is the main focus of public concern over ticket resale.
- Increasingly tickets obtained on the primary market for subsequent resale are obtained through the use of software (bots) that enables large numbers of tickets to be purchased in a short time and security measures put in place by primary sellers to be circumvented.
- Event organisers and sporting bodies who seek to enforce contractual restrictions on the resale of tickets encounter difficulties in identifying the location in venues of tickets listed for resale and the identity of the sellers who list them. Secondary ticketing marketplaces do not appear to consider themselves under an obligation to assist with such identification.
- The practice of primary ticket sellers redirecting purchasers to related secondary websites is a source of contention to consumers and some performers and has given rise to enforcement and legal action in other countries.

55. The next sections look at the possible actions that might be taken by (i) performers, promoters and sporting bodies, (ii) primary ticketing services providers, (iii) secondary ticket marketplaces and (iv) Government. Given the long history of ticket resale, the likelihood that demand will continue to exceed supply for certain types of event and the mixed record of efforts to curb the activity elsewhere, action to address the issue may have a greater prospect of success if it involves a range of measures by all of the parties with an interest or stake in the organisation of entertainment and sporting events and the provision of ticketing services for them.

Performers, Sporting Bodies and Promoters

Pricing Strategies

56. On the face of it, performers and promoters stand to lose most from the resale of tickets at inflated prices on the secondary market. Revenues that could go to the artists who create the demand for an event or the promoters who organise and bear much of the risk for it go instead to parties with no creative role or financial stake in the live entertainment industry. The scale of the potential losses to performers was brought out by a survey by a US economist of 850 fans attending a Bruce Springsteen concert in a venue with a capacity of 20,000.⁸⁰ The face value of the tickets was \$75 and 20-25 per cent of the tickets had been bought on the secondary market at an average price of \$280. If the tickets on primary sale had been priced at this level, the revenues from ticket sales would have amounted to \$5.6 million compared to actual revenues of \$1.5 million. Though this example is based on certain assumptions, in particular that 20,000 tickets would have sold at \$280, it illustrates nevertheless the scale of the potential losses to major acts. These losses loom all the larger as revenues from live appearances are now a more important income source for musicians than recordings.⁸¹

57. For orthodox economic analysis, this type of scenario serves to underline that the fundamental cause of the resale of tickets above their face value is a mismatch between supply and demand

⁸⁰ Connolly, M. & Krueger, A.B. 2010. *Rockonomics: The Economics of Popular Music*, op.cit, pp. 27-28.

⁸¹ Revenues from live performances are estimated to be close to \$25bn. in 2016 compared with sales of under \$10bn. for recorded music. PWC. *Music Revenues 2015-2020*, www.pwc.com/gx/en/industries/entertainment-media/outlook/segments-insights/music.html

caused by setting ticket prices at a price below their market value.⁸² On this view the only effective solution to such a mismatch is to increase the supply of tickets and/or their price. Unlike films which can be shown on multiple screens in many cinemas for extended runs, the supply of live entertainment or sporting events cannot be increased in response to demand in many cases. The GAA cannot put an 'extra' All Ireland football final, or the IRFU an 'extra' Ireland v England Six Nations match, to satisfy all those who would like to attend. The concerts for which demand tends to be greatest generally involve international touring acts whose schedules may not permit additional dates. Even where artists are able to perform additional dates, venue licensing restrictions may prevent it in some cases. Adding an additional date or dates also runs the risk that supply may exceed demand. As entertainment events have high fixed costs, this is a risk that promoters in particular wish to avoid.

58. Though raising ticket prices for high-demand events may be a more readily available option for performers and promoters, there are a number of reasons why performers and their managements choose to under-price tickets⁸³:

- to maximise long-term revenue by retaining the loyalty of fans, broadening the performer's fan base and maintaining goodwill;
- to reduce the risk that the event will be under-attended with a consequential impact on ticket and other revenues;
- to ensure the positive publicity and the enhanced experience for performers and audiences, associated with a sell-out event;
- to realise the other benefits and revenues that arise from sell-out events such as merchandise sales, food and beverage sales, sponsorship, and media rights.

For sporting organisations, under-pricing of tickets for high-demand events reflects a core commitment to the development of the sport and the enhancement of its public appeal.

⁸² Happel, S. & Jennings, M.M. 'The Eight Principles of the Microeconomic and Regulatory Future of Ticket Scalping, Ticket Brokers and Secondary Ticket Markets'. 2010. *Journal of Law and Commerce*, vol.28, 115—209 at pp. 119-133 et passim.

⁸³ Australian Consumer Affairs Advisory Council. 2010. Issues Paper. *Ticket scalping: Ticket onselling and consumers*, p.7.

59. While considerations such as these tend to deter performers and promoters from raising prices to a market-clearing level, some interest has been shown in the adoption of a dynamic pricing model under which prices would be driven by, and adjusted in line, with changing demand with the aim of maximising revenue per seat. This would entail a shift from the present fixed price model for event tickets to one similar to that used for airline tickets where passengers on the same flight in the same type of seat may have paid widely varying amounts depending on demand at the time they booked their flight. Proponents of such a model claim that it could result in an increase of around 30 per cent in primary ticket revenues and would enable event organisers to recoup monies that currently go to secondary sellers and platforms.⁸⁴ The adoption of a dynamic pricing model would represent a major change for the live entertainment industry however and there is little sign as yet of this occurring on any significant scale. Ticketmaster's 'Platinum Ticket' offering represents a step in the direction of such a model.⁸⁵ It involves the primary sale of tickets for premium seats under 'market-based pricing (adjusting prices according to supply and demand)' thereby enabling artists and others involved in staging live events to 'price tickets closer to their real value'.

60. Though demand-based pricing would almost certainly help to curb ticket resale, many fans would see it as a solution that would be no better than the problem it sought to address. Public dissatisfaction with ticket prices for high-demand events on secondary markets stems from a view that these put events out of the reach of many ordinary fans. The adoption of a dynamic pricing model for such events might simply mean that fans who are now priced out of the secondary ticket market would instead be priced out of the primary ticket market. Though official EU statistics on comparative price levels do not cover expenditure on cultural services, ticket prices here are generally believed to be appreciably higher than those in most other EU member states. The price of concert tickets, moreover, has risen more sharply in recent decades than the price of other goods and services. Data for the US show that average ticket prices increased by almost 400 per cent between 1981 and 2012 compared with a 150 per cent rise in overall price inflation.⁸⁶ Though no comparable figures are available for Ireland, there is likely to have been a significant disparity

⁸⁴ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraph 6.28.

⁸⁵ Ticketmaster. *About Platinum Tickets*, http://platinum.ticketmaster.ie/about?tm_link=ms_home_navtab_learnmore&ac_link_ms_home_navtab_learnmore

⁸⁶ Krueger, A. Chairman of US Council of Economic Advisers. 2013. *Rock and Roll, Economics and Rebuilding the Middle Class*. <https://www.whitehouse.gov/blog/2013/06/12/rock-and-roll-economics-and-rebuilding-middle-class>

between ticket price inflation and general price inflation. The overall consumer price index in November 2016 stood at 101.5 by reference to the index of 100 for the base period in December 2011, while the price index for admittance to cultural events stood at 121.5 over the 2011 index.⁸⁷

Question 14

How many events in Ireland, and what proportion of their tickets, have featured 'Platinum Tickets' or other dynamic-pricing approaches to ticket pricing? What was the average price of such tickets? Did they sell out?

Question 15

Is a dynamic pricing approach to event tickets likely to be adopted on a significant scale? If so, when and for what type of event is this likely to occur? If not, what are the main reasons why it will not be pursued?

Other Initiatives

61. Many well-known performers – including Adele, Elton John, Mumford and Sons, Radiohead and Bruce Springsteen - have publicly expressed their opposition to secondary ticket sales. Earlier this year, the managers of a number of major acts – including One Direction, Ed Sheeran, Arctic Monkeys, Mumford and Sons and Little Mix – joined with UK promoters and music trade bodies in July 2016 to establish the Fan Fair Alliance to 'take a stand against industrial-scale online ticket touting'.⁸⁸ In addition to lobbying Government for legislative measures, the Alliance has set out ten actions that performers and their managements can take to combat ticket resale.⁸⁹ These include the following:

- Informing the primary ticket seller in advance, and inserting in the contract for the primary sale, that the performer wants tickets kept off secondary markets and that the primary seller must not facilitate the resale of tickets above face value in any way.

⁸⁷ CSO. 8 December 2016. *Consumer Price Index November 2016*, tables 1 & 12.

⁸⁸ Fanfair Alliance. 2016. *About the Fanfair Alliance*, <http://fanfairalliance.org/about/>

⁸⁹ Music Managers Forum & Fanfair Alliance. 2016. *Touts Out: A guide for music managers and artists to tackle online ticket touting*.

- Asking promoters and primary ticket sellers for the name of the ticket purchaser to be printed on tickets, if possible with a further requirement that ID will be needed to gain entry to the venue.
- Requesting the use of non-transferrable ‘paperless tickets’, i.e. tickets which require the person attending the event to present the payment card or mobile device used to purchase the ticket. If possible, balancing this restriction with a face value ticket exchange service.
- Limiting ticket transaction numbers ideally to 4 per household and asking the primary seller to go through lists of ticket buyers and to cancel any orders where there are multiple purchases from the same address or from known re-sellers.
- Asking for a bigger ticket allocation which can be sold directly to fans and operating a pre-sale in conjunction with technology providers specialising in direct-to-consumer sales and in minimising resales.

A number of these measures would mainly require implementation by primary ticketing service providers and venues and are considered further in the next section

62. We would welcome the views of performers and their managements, sporting bodies and promoters on any measures not currently taken that they might adopt in future to ensure fairer access to tickets for fans.

Question 16

What additional steps, if any, could performers and their managements, sporting bodies and event promoters take to minimise secondary ticket selling at inflated prices and ensure fairer access to tickets for fans?

Primary Ticket Sellers and Venues

63. In Part 4, a number of questions were asked about the measures taken by primary ticket sellers to detect and prevent multiple purchases made by bots and other means. Despite the investment in anti-bot technologies which it and other ticketing service providers have made, Ticketmaster has stated that it is ‘engaged in an arms race against the bot users’ and that the problem is not one that

'it can fight on its own'.⁹⁰ In its view, legislation and criminal sanctions need to be introduced in order to strengthen the position of ticketing companies. Other commentators have similarly questioned whether bots can ever be fully defended against by technical counter-measures. In this, as in other areas affected by cyber-attacks, 'it is exceedingly difficult to create a test which is implemented by a computer but which cannot be reverse engineered by another computer'.⁹¹ The case for anti-bot legislation is considered later in this Part. We would welcome details from primary ticket sellers of any additional technical anti-bot measures currently under consideration or in development.

Question 17

What additional technical measures, if any, are primary ticket sellers planning to implement or develop to prevent purchases made with the aid of bots?

64. The more widespread use of personalised and/or paperless tickets by primary sellers is among the practical measures most commonly suggested to counteract ticket resale. Combined with limits on ticket numbers per buyer, it is argued that this measure has the potential to make primary tickets significantly more resale proof. If tickets display the name of the buyer, or if the buyer's payment card or mobile device is made the means of admission, and the buyer is further required to show ID in order to gain entry to the venue, a purchaser who bought tickets for resale purposes would have to be prepared to attend the event along with those to whom the tickets had been resold. This is the ticketing model that has long been used by the Glastonbury Festival where it has been successful in ensuring that few, if any, tickets end up on secondary websites.⁹² In the sporting field, it is the approach taken by the organisers of the Ryder Cup with an additional requirement for the inclusion of a photo of the purchaser on all general admission tickets. While some tickets for the 2014 Ryder Cup in Gleneagles were offered for sale on secondary marketplaces, one such

⁹⁰ Digital Economy Bill, 1 November 2016. *Written evidence submitted by Ticketmaster* (DEB 76), op. cit.

⁹¹ Loewenstein, A. 'Ticket Sniping', op. cit., p.247.

⁹² *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraphs 1.33 & 3.13-3.15.

marketplace subsequently withdrew them from sale because of the identification requirements.⁹³ Those available for sale on another platform appear to have been mainly non-personalised tickets which had been supplied to corporate buyers. Personalised tickets have also been insisted upon by other artists, including Adele, Kate Bush, Radiohead and David Gilmour. Though their use has not prevented some tickets from being offered for resale in these cases, it appears to have reduced the level of resales.⁹⁴ Though tickets for Adele's Wembley concerts in June 2017 are on offer on some secondary platforms at very high places, Ticketmaster's secondary marketplaces, Seatwave and Get Me In, are not listing tickets for the shows whether because of the artist's insistence on it, public relations considerations, the fact that tickets are personalised or a combination of these factors.⁹⁵

65. In general, however, resale platforms appear to take a laissez-faire approach to the resale of personalised tickets. The help centre on the viagogo website states as follows⁹⁶:

In some instances the original purchaser's name may be printed on your tickets. The tickets are valid. Your name does not need to match the name printed on the ticket to gain entry to the event.

The help section on the Seatwave website states⁹⁷:

... because we're a marketplace where tickets are resold they're often printed with the original purchaser's name, but this won't affect your booking and the tickets are still valid for your entry to the event.

66. There are drawbacks to personalised or paperless ticketing for ticket buyers. This form of ticketing would not permit sales from retail outlets and would deny access to tickets to fans who favour, or are restricted to, this mode of purchase. Persons who find themselves unable to attend an event would be left with non-transferable tickets unless, as with Glastonbury, provision was also made for the refund of tickets at face value. Personalised tickets cannot be given as a gift unless the person giving the ticket as a gift is also willing to attend the event. These types of ticket also

⁹³ Rumsby, B. 'Ryder Cups tickets offered for resale for 1000', *Daily Telegraph* 24 September 2014.

⁹⁴ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraph 3.16.

⁹⁵ Davies, R. 'Adele tickets appear on resale sites for up to 9,000 despite moves to stop touts', *Guardian* 3 December 2016.

⁹⁶ <http://www.viagogo.com/Help/Buyer/32>.

⁹⁷ <http://www.seatwave.com/help>

place greater demands on access mechanisms at venues and, if adequate ingress arrangements are not in place, may lead to congestion, delays and possible crowd trouble. If resellers are sufficiently determined and the gains sufficiently great, ways around the identification requirement may well be found in some cases, even if this requires the reseller or an agent of the reseller to attend the event with the ticket purchaser, or at least to enter the venue. Lastly, to the extent that paperless or personalised systems are successful in reducing the supply of tickets to secondary platforms, the effect paradoxically may be to increase the price of the smaller volume of tickets available for resale.

67. It would be helpful in this context to learn more about how personalised and paperless tickets have worked in practice, in particular the effect on resale levels and prices and on any difficulties experienced at venues. We would welcome the views of ticketing service providers, promoters and venues on the limited experience with personalised ticketing in Ireland. General admission standing tickets to the U2 concerts in Dublin and Belfast in September 2015 were paperless with those attending required to present the payment card used to make the ticket purchase in order to gain entry to the venue. Tickets for the Radiohead concert to be held in Dublin in June 2017 will feature the name of the purchaser and he or she will be required to show matching photo identification at the venue.

Question 18

Are personalised or paperless tickets an effective method for curbing ticket resale? What drawbacks, if any, are associated with such approaches? Has experience with these methods in Ireland been positive, negative or mixed?

68. If personalised or paperless tickets are more widely used, or other restrictions on resale are introduced, fans who buy tickets with the intention of attending an event and subsequently find that they are unable to do so may find themselves at a financial loss if there is no mechanism for ticket exchange and refund. Even where such constraints do not apply, fans who find themselves with tickets that they cannot use might be less likely to offer them for resale at a price above face

value if primary ticket sellers provided a facility whereby such tickets could be returned to the primary seller and the price refunded. The National Concert Hall, for example, will accept the return of tickets for resale if the event is sold-out and, if resold, will refund the initial purchaser the ticket price subject to a charge of €2 per ticket. It would be useful to know if other primary sellers or venues operate such facilities or are willing to consider their introduction.

Question 19

Do primary sellers or venues offer a facility for the return and refund of tickets that purchasers are unable to use? If so, what conditions apply to this facility? If not, what are the reasons why primary sellers do not offer this facility? Would they consider the introduction of such a facility and, if so, under what conditions?

Secondary Ticket Marketplaces

69. Secondary ticket platforms describe themselves as marketplaces where *fans* can buy and sell tickets for entertainment and sporting events.⁹⁸ As outlined in Part 3, however, the evidence from other countries suggests that a substantial proportion of the tickets listed for resale on these platforms come from resellers who engage in the activity on a regular basis and on a significant scale. This group of resellers may receive preferential payment or other terms from the platforms by virtue of the volume of business they bring to them. If this is the case, it is arguable that such resellers should be regarded as traders who are subject to the requirements of the consumer protection legislation summarised in Part 4, including the extensive information obligations applicable to online contracts under the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013. In the opinion of the UK Waterson review, all resellers with whom secondary platforms negotiate terms involving payment before events take place should be presumed to be traders.⁹⁹ The information obligations under the 2013 Regulations, contravention of which is an offence, include a requirement on traders to inform the consumer of their identity, address and contact details. As noted earlier, it is also an offence under the

⁹⁸ <http://www.seatwave.ie/info/aboutus> ; www.stubhub.ie/faq .

⁹⁹ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraph 5.74.

Consumer Protection Act 2007 for a trader to represent himself or herself as a consumer when he or she is in fact acting as a trader.

70. While, as discussed in Part 4, secondary ticketing marketplaces may not consider themselves under an obligation to enforce the terms of contracts between primary ticket sellers and purchasers, they cannot disregard obligations that may apply to them under consumer protection law. In March 2015, the UK Competition and Markets Authority (CMA) informed the main secondary marketplaces – Seatwave, Get Me In, StubHub and viagogo - that it expected them to provide a facility for sellers to indicate to buyers if they are traders and, if so, to provide details of their identity and their address in accordance with statutory requirements.¹⁰⁰ The marketplaces subsequently provided undertakings to the CMA in which they agreed to give improved information to buyers about tickets listed on their sites. Following a review of the compliance of the marketplaces with these undertakings and with their obligations under consumer law, the Authority has opened an enforcement investigation into suspected breaches of consumer law in the online secondary ticketing market.¹⁰¹ Among other issues, this investigation will examine whether information is provided on the identity of ticket sellers and on any connections sellers may have with the platform or event organisers. We would welcome the views of secondary ticket platforms on their understanding of the obligations that may apply to them in respect of sellers who qualify as traders under consumer protection legislation. A separate, but important issue, is that of the tax liability arising from income earned through ticket resale and the role, if any, that intermediaries such as platforms may have in providing information about such income. This is a matter for the Revenue Commissioners however rather than for the present policy review.¹⁰²

¹⁰⁰ Competition and Markets Authority. 16 March 2015. *Open letter to secondary ticket websites*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413278/Open_letter_to_websites.pdf

¹⁰¹ Competition and Markets Authority. 19 December 2016. *'CMA launches enforcement investigation into online secondary ticketing*, <https://www.gov.uk/government/news/cma-launches-enforcement-investigation-into-online-secondary-ticketing>

¹⁰² In the UK, the Revenue authorities have indicated that they intend to investigate possible under-reporting of income in the secondary ticketing sector. Izundu, C.C. *'HMRC targets secondary ticket industry'*, BBC 30 November 2016, <http://bbc.com/news/entertainment-arts-38156940>

Question 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?

Possible Statutory Regulation of Ticket Resale

71. A variety of legislative measures have been enacted or proposed to deal with ticket resale and the secondary ticket market. Though a legislative response may appear to be the most appropriate way of dealing with the issue, policy reviews in a number of countries have concluded either that legislation is not warranted and/or that it is unlikely to be effective. In the UK, for example, the comprehensive review of online secondary tickets undertaken by Professor Michael Waterson in 2015-2016 recommended against the introduction of additional legislation whether in the form of a ban on the secondary ticketing market, a cap on resale price levels or making bots illegal.¹⁰³ The Commonwealth Consumer Affairs Advisory Council in Australia similarly recommended against the introduction of specific legislation on ticket resale.¹⁰⁴ Though there was public dissatisfaction with the operation of the secondary market in Australia, it had positive impacts for both consumers and suppliers and did not generally give rise to significant detriment. The general consumer protection regulatory framework was adequate to protect consumers against unfair practices in the sector. Such consumer concerns as there were could usefully be addressed by an industry-led code of practice. In the Netherlands, the Authority for Consumers and Markets (ACM) concluded that, as the high prices charged on the secondary market were caused by the operation of supply and demand and not illegal behaviour, proposed legislation that would shut down legal secondary selling operations would send the activity underground, make oversight more difficult and lead to a deterioration in the position of consumers.¹⁰⁵

72. Other approaches to the issue take as their starting point the question of whether the harms resulting from ticket resale reach the level of seriousness required in order for criminal sanctions to

¹⁰³ *Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities*, op. cit., paragraphs 45-47 et passim.

¹⁰⁴ Commonwealth Consumer Affairs Advisory Council. 2010. *Consumers and the Ticket Market: Ticket Onselling in the Australian Market*, pp. iv-vi et passim. a report from the

¹⁰⁵ Authority for Consumers and Markets. 8 June 2016. 'ACM sees no reason for further investigation into resale markets', <http://www/acm/nl/en/publications/publication/15911/ACM-sees-no-reason-for-further>

attach to an activity.¹⁰⁶ On the one hand, it can be argued, first, that no obvious harm is caused to the buyer on the secondary market or, at least, that his or her consent to paying more for a ticket than they might have wished to pay is not a harm of sufficient magnitude to justify the criminalisation of ticket resale. There is no obvious harm, secondly, to the event organiser or rights holder in that, regardless of the price subsequently paid on the secondary market, they have received the price they themselves set for the ticket. On the other hand, it can be claimed that, notwithstanding the limited harms to the event organiser or to the buyer on the secondary market, ticket resale gives rise to wider social harms. First, when tickets to a sporting or entertainment event are resold at a price well in excess of their face value, the organiser's aim of selling tickets below their market value for socially beneficial reasons, such as the promotion of a sport or ensuring that ordinary fans are not priced out of attendance, is undermined. Secondly, by permitting resales above face value in breach of the terms of the primary ticket contract, the rights of event organisers and rights holders are ignored and large-scale breach of contract is tacitly endorsed. Different stakeholders are likely to come to different conclusions about the arguments for and against the criminalisation of ticket resale generally, or the specific circumstances in which it might be justified.

73. The legislative options for tackling ticket resale range from the far-reaching, such as a ban on secondary ticketing, to the more modest, such as enhanced information requirements for secondary ticket transactions. In considering possible legislative measures, regard should be had in this as in other areas to relevant principles of better legislation, in particular the following:

- necessity – is the regulation necessary?
- proportionality – is it clear that the advantages of regulation outweigh the disadvantages?
- effectiveness – is the regulation properly targeted? Is it likely to be properly complied with and enforced?

74. The most far-reaching form of statutory regulation - a ban on secondary ticketing - has been applied in a number of US states and Canadian provinces and is under consideration in Italy.¹⁰⁷ A

¹⁰⁶ James, M. & Osborn, G. 'Criminalising Contract: Does Ticket Touting Warrant the Protection of the Criminal Law?', [2016] *Criminal Law Review* (1), 4-19 at pp. 16-19.

¹⁰⁷ An amendment to Italy's 2017 budget law introduced by the Culture Minister which prohibits the sale or offering for sale of tickets by anyone other than the issuer of the ticket was approved by the Chamber of Deputies in November

statutory prohibition of this kind would send a strong signal of public disapproval of ticket profiteering and represent a clear and comprehensive approach to dealing with the issue. In assessing the case for such a measure, a number of considerations would have to be taken into account¹⁰⁸:

- Would the likely effect be to drive ticket resale underground or to divert it to other countries rather than end or substantially reduce it?
- Would the benefits of a ban outweigh the disadvantages, in particular the loss of the guarantee of replacement of the ticket or refund of the price given to purchasers by the established secondary marketplaces; the loss of the facility to dispose of unwanted tickets or tickets that buyers are unable to use; and the loss of the opportunity to purchase tickets at or below their face value which is availed of in a substantial proportion of transactions on the secondary market?
- Would a ban be enforceable given the potentially large number of transactions that may take place for even a single event and the difficulties encountered in the investigation and enforcement of laws on online selling?¹⁰⁹

75. A second option for legislative action would be to permit ticket resale at face value or subject to a specified cap on the permitted premium above the face value of the ticket. As noted in Part 4, a number of EU Member States prohibit resale at a price above the face value of the ticket. Private members' bills along similar lines which applied to events with an expected attendance greater than five hundred were introduced in the Oireachtas in 1998 and 2005 but not progressed in either case.¹¹⁰ A number of US states have enacted laws in the past with price caps on ticket resales

2016 and requires approval by a number of government ministries. 'Italy moves to criminalise touting', 3 December 2016, <http://musiclawupdates.blogspot.ie/2016/12/italy-moves-to-criminalise-touting.html> .

¹⁰⁸ For a detailed statement of the advantages and disadvantages of the secondary ticket market, see House of Commons, Culture, Media and Sport Committee. 2008. *Ticket Touting: Second Report of Session 2007-08* [HC 202], paragraphs 20-22.

¹⁰⁹ The London Metropolitan Police mounted an extensive operation to prevent ticket touting to the London Olympic Games in 2012. Despite their being only one authorised seller for the Games, the operation identified over 200 unauthorised websites and eight confirmed fraudulent websites. During the Games, 220 people were arrested for reselling tickets and 13 foreign nationals known for ticket touting at previous international events were stopped and searched when entering the UK prior to the Games. Enforcement activity on even a fraction on this scale would be difficult to sustain for regulatory bodies given the other demands on their limited resources. Metropolitan Police. February 2013. *Ticket Crime: Problem Profile*, pp. 5 & 8.

¹¹⁰ *Prohibition of Ticket Touts Bill 1998* [PMB] (No. 35 of 1998), sponsored by Deputy Alan Shatter. *Prohibition of Ticket Touts Bill 2005* [PMB] (No. 13 of 2005), sponsored by Deputy Jimmy Deenihan.

ranging from a low of 10 per cent to a maximum of up to 50 per cent. While this would be a less draconian form of intervention than a ban on secondary ticketing, a number of the considerations relevant to the assessment of such a ban are relevant here also, in particular the questions around enforceability and the possibility that resale would be redirected to the black market or to platforms outside Ireland. Other factors specific to this form of regulation would also have to be considered, including –

- the level at which any such price cap would be fixed and, if this is set at no, or only a modest, mark-up over the face value, the implications for established secondary marketplaces;
- the patchy performance at best of previous price caps and controls in other areas of the economy and the substantial enforcement resources which the operation of such controls requires.

76. A more targeted form of legislative intervention involves the introduction of statutory provisions to prohibit the use of ticket purchasing software to purchase tickets to entertainment and sporting events. On 14 December 2016, the Better Online Ticket Sales Act 2010 (or the BOTS Act) was signed into law in the US by President Obama.¹¹¹ The Act prohibits the circumvention of a security measure, access control system or other technical measure on an Internet website or online service of a ticket issuer that is used by the issuer to enforce ticket purchasing limits for public events with a capacity exceeding 200.¹¹² It further prohibits the sale of, or offers to sell, an event ticket in interstate commerce obtained through the violation of such a circumvention if the seller participated in, had the ability to control, or should have known about the violation. Violations of the Act will be treated as unfair or deceptive acts or practices under the Federal Trade Commission Act. While a number of US states already had anti-bot legislation, that legislation could readily be evaded by transferring ticket purchasing operations to states without such laws. While the enactment of federal legislation will address this particular issue, its wider impact is more difficult to assess at this point. Anti-bot legislation in force in New York since 2010 has had limited effect in curbing the use of ticket purchasing software and has recently been amended in order to improve its effectiveness. The main amendments involve the inclusion of an expanded definition of

¹¹¹ https://www.whitehouse.gov/briefing-room/signed-legislation?field_legislation_status_value=0&page=5

¹¹² <https://www.congress.gov/bill/114th-congress/senate-bill/3183/all-info>

ticket purchasing software and the introduction of new criminal penalties.¹¹³ In the UK an amendment to the Digital Economy Bill that would make it an offence to use digital purchasing software to purchase event tickets over and above the number permitted in the contract of sale has been proposed by the Culture, Media and Sport Committee with substantial cross-party support and is to be the subject of further consideration by Government.¹¹⁴

77. A further, more limited form of legislative intervention would involve the enactment of additional information and reporting obligations for secondary sellers and marketplaces. The UK Consumer Rights Act 2015 requires persons reselling an event ticket, whether acting as consumers or traders, and the operators of secondary ticketing facilities to ensure that buyers receive a number of specified items of information, including the face value of the ticket, the information necessary to allow the buyer to identify the seat or standing area, and information about any restrictions which limit the use of the ticket. The Act also imposes a duty on the operators of secondary ticketing facilities to report criminal activity relating to the resale of tickets, such as ticket fraud, that has been or is being committed by a person using the facility. In addition to the consumer protection purpose of these provisions, the requirement to indicate the seat number or standing area section of tickets can be of assistance to primary ticket sellers seeking to identify tickets offered for resale in breach of the terms and conditions of the primary ticket contract. This may be one of the reasons why compliance with these provisions of the Act has been limited to date and is currently the subject of an enforcement investigation by the UK Competition and Markets Authority. While the UK Government considered the inclusion of more extensive provisions aimed at facilitating the identification of resold tickets, in particular a mandatory requirement to provide a booking reference number for every ticket, it did not introduce such a requirement due to a concern that it would contravene the full harmonisation status of the information rules for online contracts under EU consumer legislation. If required, clarification will be sought from the European Commission as to whether the introduction of an obligation to provide an unique ticket identifier or other information requirements would contravene EU law.

¹¹³ <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-combating-unfair-ticket-purchasing-and-reselling-practices>

¹¹⁴ *Digital Economy Bill 2015*, Third Reading House of Commons 28 November 2016.

78. The views of stakeholders on the introduction of possible legislative measures to regulate ticket resale would be welcome.

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?

ANNEX QUESTIONS INCLUDED IN CONSULTATION

Question 1

What proportion of primary ticket sales are accounted for respectively by –

- a) online sales
- b) telephone sales
- c) sales through agents in retail outlets
- d) box office sales

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?

Question 3

What proportion of tickets offered for sale on secondary marketplaces and platforms are 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.

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.

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?

Question 5

What proportion of tickets for high-demand entertainment events are typically allocated for pre-sale or other allocation prior to going on general sale to the public? What parties or groups are the main recipients of such pre-sales and pre-allocations?

Question 6

Are you aware of tickets being supplied to secondary sellers or marketplaces by persons involved in the primary market for entertainment or sporting events such as artists and their representatives, promoters or primary ticket sellers? If so, how prevalent is the practice and what is its scale?

Question 7

Are parties who engage in ticket resale on a systematic basis and on a significant scale a feature of the secondary ticket market in Ireland? What proportion of secondary sales for high-demand events are accounted for by such sellers? Do such sellers receive more preferential terms, such as early payment, from secondary marketplaces?

Question 8

Is there evidence of the use of software (bots) to source multiple tickets for high-demand events on the primary market in Ireland and to circumvent security measures? How common or extensive is the use of such software for this purpose?

Question 9

What means other than bots are used to obtain large numbers of tickets on the primary market for the purpose of resale?

Question 10

What proportion of tickets offered for resale for major entertainment and sporting events in Ireland are listed by sellers from outside Ireland?

Question 11

What actions are currently taken by primary ticket sellers and ticketing service providers to prevent purchases in excess of the contractually permitted number of tickets or resales in breach of the terms of the primary ticket contract? What is the level of ticket cancellations for the breach of such terms? What is the level of denial of access to venues and stadia for breach of such terms?

Question 12

Do secondary marketplaces consider themselves to be under an obligation to assist event organisers who wish to identify ticket resellers acting in breach of their contract with the primary seller? Should they do so? Should they be required to do so?

Question 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?

Question 14

How many events in Ireland and what proportion of their tickets, have featured 'Platinum Tickets' or other dynamic-pricing approaches to ticket pricing? What was the average price of such tickets? Did they sell out?

Question 15

Is a dynamic pricing approach to event tickets likely to be adopted on a significant scale? If so, when and for what type of event is this likely to occur? If not, what are the main reasons why it will not be pursued?

Question 16

What additional steps, if any, could performers and their managements, sporting bodies and event promoters take to minimise secondary ticket selling at inflated prices and ensure fairer access to tickets for fans.

Question 17

What additional technical measures, if any, are primary ticket sellers planning to implement or develop to prevent purchases made with the use of bots?

Question 18

Are personalised or paperless tickets an effective method for curbing ticket resale? What drawbacks, if any, are associated with such approaches? Has experience with these methods in Ireland been positive, negative or mixed?

Question 19

Do primary sellers or venues offer a facility for the return and refund of tickets that purchasers are unable to use? If so, what conditions apply to this facility? If not, what are reasons why primary sellers do not offer this facility? Would they consider the introduction of such a facility and, if so, under what conditions?

Question 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?

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?