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Competition & Consumer Policy Section,
Department of Jobs, Enterprise & Innovation,
Earlsfort Centre,
Lower Hatch Street,
Dublin 2.

By e-mail: conspol@djei.ie

Re: The Consultation on the resale of Tickets for Entertainment and Sporting Events

Dear Minister,

The Consultation on the resale of Tickets for Entertainment and Sporting Events (the “Consultation”) is to be welcomed as both an exploration of specific ticketing related issues that have affected the entertainment and sporting industries in Ireland to date and as a forward looking initiative for Ireland Inc. on the world stage as a future host nation for major international sporting and entertainment events.

In accordance with paragraph 26 of the Consultation invitation to respond as an individual with a predominant interest in a specific aspect of the issue, my contribution is limited to Question 21¹ but may touch in part upon Question 19 – in the context of the treatment of ticket sales / management for a one-off major global event of reasonable duration. In particular I emphasise the reality that tickets to major international sporting events are a highly valuable commodity not just in themselves as points of access but where they are combined as part of a package of services thereby producing an exponential value to the selling or associating party.

I am a practicing barrister with a specialisation in Sports Law, the opinions expressed in this submission are my own. In the interests of full transparency I should advise that I was until 2016 the former Head of Legal and Legislative Affairs for World Rugby with overall responsibility for the planning and enforcement of the Rights Protection Programmes for Rugby World Cup 2011 (New Zealand) and Rugby World Cup 2015 (England).

¹ Q21: 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?

Effects of Unauthorized Reselling of Tickets

One of the most prevalent and potentially most harmful *unauthorised associations* which can be created are those which involve tickets. This is particularly the case with regard to the sale/offer for sale of tickets to major sporting events frequently packaged with travel and/or hospitality offerings, the reselling of tickets ('scalping') and other ambush market practices (promotions / bundling / commercial give-aways etc.) involving tickets. This unofficial and unauthorised market operates increasingly in the online environment and in parallel to the official sales channels of the Host organisation, thereby directly competing with it.

Most major international sporting events like the Rugby World Cup, UEFA European Championships and Olympic Games (for ease I will referred to as a "Major Event") takes place over a short period of time in a quadrennial or bi-annual cycle in different jurisdictions. Yet the advertising and pre-sales period for *unauthorised* tickets to the Major Event commence long before. It is not uncommon for ticket websites to offer a 'registration of interest' service for fans up to three years in advance of the Major Event, followed by specific ticket offers once the Major Event fixture list is announced - frequently pre-dating the official ticket purchasing programme of the Host (which may be structured in phased or targeted sales pattern to ensure that genuine fans have the best possible access to tickets).

Such *unauthorised* ticket acquisition practices lead to consumer confusion. The targeted fan / consumer is exploited through (i) inflated ticket prices, (ii) has no guarantee of delivery of the ticket or service attaching thereto and/or (iii) they obtain tickets which are subject to cancellation by the Major Event Host (e.g. for breach of the ticket terms and conditions). Ultimately the whole official ticketing programme of the Major Event is rendered vulnerable and brand reputation issues for the Major Event / Event Host consequently arise.

Ticket sales in particular where they are bundled with other add-on services such as travel or hospitality garner an aura of authenticity because of the presence of the ticket in the offer. Tickets represent in and of themselves a direct and explicit association with the Major Event. They are the embodiment of the intellectual property of the Major Event. This creates confusion in the minds of the public as well as threatening the value and integrity of the commercial programme and the ticketing strategy of the Major Event Host.

This situation has developed to the point where it is extremely difficult for the Major Event Host to take proportionate and expedited action (whether under the ticket terms and conditions, consumer legislation or otherwise) in the absence of specific enabling legislation. The fact that the sales environment has significantly migrated online makes it all the more infeasible. All this in the context of a commercial environment where sponsors, broadcasters and licensors expect a 'clean environment' free from *unauthorised associations* (or ambush marketing) and with exclusive access (in their sector) for which they have paid a premium. It is perhaps worth noting that the funds generated by these Major Events (Sport) are repatriated back into the development of the sport and therefore there is an added social, educational and health benefit to protecting the source of funds from attack by unauthorised third parties.

Unauthorized Selling of Travel/Hospitality

The bundling of tickets with other products / services is not particularly focused upon in the Consultation invitation but it is an important factor in any Rights Protection strategy for a Major Event Host. Therefore it is possibly worth commenting on its importance to Major Events as part of the overall access routes provided to such events, protection of fans / consumers and a significant income source.

Tickets lend the air of authenticity to such offerings without which both their attractiveness and value to sport supporters / consumers is greatly lessened. The persistent infringers tend to be larger more professional operations that take the risk that the Major Event will not take every case to court. Often, these companies structure their organizations and offerings in such a way as to avoid liability in contract and there are legal cases in various jurisdictions which evidence these failed efforts. Add to this the Internet and it is evident that such entities are reaching a global audience to the detriment of sports rights holders, sponsors and ultimately the consumer who may ultimately be denied access to the stadium.

In the absence of legislative protection it is quite likely that there will be rampant exploitation of a captive market. Consumers who purchase official travel and/or hospitality packages via the Official Major Event Travel and Hospitality Programmes are guaranteed *inter alia* (i) access to the Event, (ii) a top quality service with various price point entry levels and (iii) a Hospitality Programme ordinarily backed by a guaranteed refund policy in the event of a failure on the part of the Licensee to deliver. By contrast consumers who purchase hospitality or travel packages from unauthorised resellers run the risk that the promised tickets are not available / were never available or that the reseller has gone bust / disappears before delivery. Most Major Events have seen such occurrences in the past and vulnerable consumers are left without any redress. Major Event Hosts frequently engage in advertising and promotion campaigns to put the public on notice of the travails of purchasing tickets from unofficial sources. This is funding that could be more usefully employed elsewhere.

Ticket scalping in the context of Ambush Marketing

There is exclusivity afforded to sponsors of Major Events which revolves primarily around access to and control of an allocation of tickets. If the relevant Major Event were to come to be regarded as an event where tickets (as a key association and access feature) were not rigidly controlled the value of the Major Event sponsorship rights would reduce dramatically. This is another reasons why protective measures are sought as conditions of bidding for Major Events and why legislation in other jurisdictions incorporates specific prohibitions on unofficial ticketing activity as a fundamental element of the protections needed by sporting events.

The overwhelming benefit of tickets to commercial third parties, who have no official status with a Major Event, is being able to associate themselves in an apparently 'official' guise through the use of tickets in promotions. Often tickets are offered in consumer promotions by entities that were not the official sponsors. To the extent that these companies had

actually acquired match tickets, there was little the Major Event Host can do other than threaten ticket cancellation. In most cases the infringer argues they are not aware of the prohibitions contained in the ticket terms and conditions at the time of acquisition was put forward. Opportunities for such activity can be significantly reduced by legislation.

Ticket Touting

The black market and ticket touting practices also pose significant risk. It results in genuine fans getting ripped off and/or missing out on the chance to attend the Major Event when denied access and the Exchequer losing out on revenue as touts do not generally tend to pay VAT or income/corporation tax etc. It is well established that there is often a significant link between ticket touting, serious organised crime, money laundering, ticket fraud and counterfeit tickets. It is critical therefore that an effective deterrent is in place to stop the problem arising in the first instance.

Major Event Hosts are also very mindful of the 'at venue' situation where the turnstiles (if automated) refuse admission or stewards may in certain circumstances attempt to cancel a ticket which has been obtained in breach of the ticket terms and conditions. Public order problems are a risk when individuals are refused admission because their tickets have been obtained/identified as being obtained other than by official means. This has implications for potential police intervention resulting in turn in an increased burden on the public purse.

The contractual position is entirely inadequate to deal with (i) re-selling by the non-original purchaser of tickets, (ii) sophisticated scalpers who are aware of the gaps in the relevant national legislation, (iii) the Internet as a sales channel, (iv) requirements for expediency, (v) sponsor expectations (vi) maintaining the image of the Major Event / Major Event Host and (vii) protecting the public from uncertainty over ultimate ticket availability. Consumer exploitation and the vulnerability of the overall Major Event ticketing programme are the foreseeable outcomes if there is no legislative protection surrounding the ticketing programme in order to neutralise unofficial ticketing mischief.

Such legislation for that specific type of Major Event could easily be introduced as part of an overall framework to address the ticketing issues in the Irish market or on a standalone basis as part of a framework that creates the right environment to pitch for major international events going forward. Such legislation would not however need to be everlasting. It could be structured in a way so that it could be 'turned on and off' for specific Major Events and/or for specific periods of time.

In this regard the example provided by New Zealand through its Major Events Management Act 2007 ("MEMA") is excellent. It was specifically introduced for Rugby World Cup 2011 and other major events to supplement existing copyright and fair trading legislation but it can however be applied to any event which is designated by the New Zealand Government as falling within the definition of a Major Event. It contains both civil and criminal recourse options and is backed by strong deterrents and enforcement mechanisms. Its' very presence acted as a deterrent to would be ambushers, scalpers

and those looking to take advantage of the presence of the Major Event in their territory in advance of and for the duration of Rugby World Cup 2011.

Host Nation Legacy

In recognition of the importance of ticket protections, and the damage which unauthorised use of tickets causes Major Events (particularly the systematic, commercial use), the majority of recent legislative measures adopted in other jurisdictions in this regard have also included specific ticket resale/use protections and prohibitions on unofficial ticketing activity. These types of protections ultimately enhance the overall event and reflect well on the Host nation. Specific event protections introduced by such legislation go beyond tickets alone and have extended to include protecting names (e.g. Olympic Games, Rugby World Cup) and indicia, prohibitions on ambush marketing by association, implementing ticketing controls (including secondary market ticket sales, such as ticket-scalping), creating clean venue and environment rights and protecting against counterfeit goods, along with expedited remedies and enforcement measures for such protections, all of which go to enhance the stature of the relevant Major Event and the Host nation. The absence of such protections can naturally have the opposite effect.

The Irish Government now has a real opportunity as a proposed Host country to utilise the Bid for Rugby World Cup 2023 to position itself as an attractive destination to host that global event and other Major Events in the future. Major Event legislation could supplement current legislation in Ireland by introducing a brand and rights protection mechanism that caters for the unique requirements of Major Events and become a model for best practice in the protection against ambush marketing activities around major events – in which tickets play such a key role.

Conclusion

Although a range of legal (e.g. trademark or other intellectual property rights of an event owner) and other measures (e.g. contractual arrangements, ticketing terms and conditions, and the creation of an official ticket exchange for the Major Event fans²) are available to and utilised by event organisers - so called “Self-Help Measures”- these are, in reality, ineffective alone in combating the types of ticketing infringements and sophisticated ambush marketing that Major Event Hosts face.

Integrity of the Major Event is maintained and enhanced by legislative support in a key area where traditional legal mechanism either are insufficient or too slow to be of any true value to the Major Event Host. When the ambush occurs or the unofficial ticket package has been sold it is too late and frequently the resulting damage is not evident until the next sponsorship sales cycle and ticket sales event which may be many years down the line.

² Such a facility was put in place by England Rugby 2015 Limited (the Host Union for RWC 2015) and a truncated facility was also established by New Zealand 2011 Limited for the RWC 2011 permitting the exchange of tickets at face value by fans who could no longer attend.

The solution to the various ticket related issues raised in the Consultation is likely to be multifaceted. In the context however, of the Major Events which are considering Ireland as a Host venue the solution is perhaps less nuanced. Based on my experience of implementing Major Event Rights Protection Programmes in jurisdictions which both had specific legislation and those which did not, the most effective by a considerable way was where there was specified legislation, tailored to address the acute needs of Major Events, of limited duration, with proper deterrents and enforcement mechanisms of both a civil and criminal nature.

If specific legislation of phased or limited duration is introduced to address *inter alia* the issue of unauthorised ticket sales (i) on the secondary market, (ii) prohibit scalping, (iii) prohibit the bundling of tickets (howsoever sourced) with any products or services without Major Event owner authorisation, and (iv) prohibit the advertising of tickets or pre-registration schemes for Major Events which are not authorised, it would go a long way towards protecting consumers, the integrity of the Major Events and their commercial programmes.

It would also constitute an opportunity to develop a rounded offering in legislative terms to address the issues of ambush marketing, unauthorised associations, protection of Major Event intellectual property necessary for the delivery of the event and address the designation of clean zones and clean routes which are so key to the successful delivery of a Major Event.

I hope that this submission is of some useful assistance in the task the Department has undertaken under the Consultation.

Yours faithfully,



Susan Ahern BL