FanFair Alliance submission to
Department for Business, Energy and Industrial Strategy consultation on
"Reforming competition and consumer policy"

SEPTEMBER 28TH 2021

Summary of submission

- This submission has been prepared by Adam Webb, campaign manager for the FanFair Alliance
- FanFair Alliance is a music industry campaign to tackle online ticket touting of music events. The campaign was established in mid-July 2016 by a group of music managers, and has since gained widespread support throughout the live music industry. Our goal is to stop exploitation of audiences on uncapped resale sites like Viagogo, and to support capped consumer-friendly resale where fans can sell a ticket for the price they paid or less.
- To discuss this submission further, please email [redacted]
- FanFair Alliance has engaged closely with the Competition & Markets Authority since before the launch of an enforcement investigation into secondary ticketing in December 2016. We have met regularly with the enforcement team, and continue to send them evidence of suspected breaches of consumer protection law by both secondary ticketing websites and their suppliers.
- Our experience of the CMA's enforcement capabilities is mixed. When dealing with more reputable public companies like Ticketmaster and StubHub, who agree to sign undertakings, the CMA are highly effective. However, when faced with an operator like Viagogo, an overseas rogue operator that is resistant to following the law and continues to push boundaries, the limitations of the CMA's powers are clear.
- In the case of Viagogo, having failed to agree undertakings, the CMA served the company with a court order in November 2018 requesting a complete overhaul of its website. The deadline for compliance was January 18th 2019. This deadline came and passed with only minor tweaks to Viagogo's website, but not before Viagogo self-declared their own compliancy on January 17th - announcing on social media that "*Further to the agreement we reached with the Competition and Markets Authority (CMA) we have met the deadline and are now compliant. All tickets on viagogo are valid and it is perfectly legal to resell a ticket or give it to someone else if you want to.*"
- Astonishingly, this Tweet by viagogo is still yet to be taken down. They are literally laughing in the face of regulators. The same company no-showed at two meetings of the DCMS Select Committee.
- Rather than deal with this problematic company forcibly - a company that has knowingly breached UK consumer protection law for years, that has mis-sold hundreds of millions of pounds of tickets to UK consumers, that has steadfastly refused to agree undertakings, and that has now, effectively, stuck two fingers up to the regulators - the CMA instead embarked on a strategy of "compliance".
- What followed over the course of 2019 were a series of incremental warnings, with the CMA threatening court action, and Viagogo continually tweaking its site until - finally - in September 2019 the CMA announced that Viagogo was compliant with the terms of its court order.
- There have been some benefits to this compliance strategy. Viagogo's UK website is now far more transparent than the version of Viagogo operating in all other parts of the world.

- However, the strategy has also left this rogue overseas company unblemished. It's done nothing to rectify years of systematic breaches of consumer protection law, or to benefit the consumer victims of those breaches. Consequently, and to zero great surprise, we continue to see Viagogo push the boundaries of the law, and to engage in anti-consumer practices - including the mass-scale speculative listing, where sellers advertise tickets they do not actually possess. By over-focussing on legal compliance, it feels that the CMA is missing the bigger picture and understanding whether a market is either functioning properly for consumers or that they're being protected from unfair trading practices.
- There have been other negative consequences of the CMA's legally-focussed compliance-first approach. Since 2017, FanFair had been embroiled in a long and arduous conversation with Google, appealing for changes to their advertising practices to stop rogue secondary sites like Viagogo from buying their way to the top of search results. These dynamics (as detailed in this research) have long been a key contributory factor to audiences being misled in this market. There's a strong argument to say that regulators should have identified and tackled these problems, not campaigning groups.
- In July 2019, Google finally relented and suspended Viagogo's advertising account. This was a major step forward. However, as a direct consequence of the CMA's hasty and premature announcement of September 2019, Google then returned Viagogo to its advertising networks in November 2019. We were back again to square one. This entirely backward move lacked all common sense and only caused detriment to the consumers that the CMA is supposed to be protecting.
- Furthermore, combined with the CMA's reluctance to enforce, the agency appears to lack an evidence-led strategy. For instance, despite declaring Viagogo as "legally compliant" with the terms of its court order, we have not been made aware of any consumer research to demonstrate that changes made by Viagogo to its website have improved things for ticket buyers. The metrics of success are being driven by lawyers, not by other more demonstrable outcomes.
- Equally, having announced that Viagogo was legally compliant in September 2019, the CMA proceeded to effectively shut down all enforcement resources and switch to what they refer to as "monitoring" mode. From our experience, this means that any evidence sent to the CMA in relation to suspected breaches of the law will be "monitored" but not acted upon.
- As a result, rather than complete the job of cleaning up this market and ensuring bad actors are prosecuted, we can already see Viagogo falling back into familiar habits - while simultaneously claiming to be "leaders in consumer protection". Similarly, despite FanFair flooding the CMA with evidence about continuing transgressions by Viagogo - including evidence of test purchases where fraud was committed, and fraudulent listings in excess of £5m - the CMA has seemingly straightjacketed itself into a "monitoring" phase.
- Therefore, while FanFair supports fully the idea of the CMA obtaining more powers to stand up for and support consumers, we also believe the CMA also requires a change of direction - essentially to put consumers first.
- In our experience, the CMA operates without ministerial oversight and prioritises legal compliance over enforcement. As a result, this country is practically encouraging rogue overseas companies that don't play by the rules to prosper.
- On August 16th, the CMA published an additional report calling for stronger laws to tackle illegal ticket resale. See here. We fully support these calls, however, given that 90%+ of illegal ticket resale in the UK is taking place through a single platform that has been investigated by the CMA since 2016, we also feel that the CMA should have taken a far more hardline and active approach

to their work - rather than ending up publishing a series of "recommendations" that Government may or may not take up.

The below submission answers relevant questions from the consultation document.

Consumer rights

Q42. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs[1] the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of goods or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?[2]

Yes. We believe this is an issue with uncapped ticket resale sites, and all these additions combined would better protect consumers and enable them to make more informed choices.

Q45. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of traders offering or advertising to submit, commission or facilitate fake reviews?

Yes.

Q46. Are consumers aware of businesses using behavioural techniques to influence choice that affect their purchasing decisions? Is this a concern that they would want to be addressed?

No, and quite clearly consumers need far more support and protection across the digital economy.

Although significant steps have been taken to stop Viagogo from drip pricing and other misleading behavioural techniques, the site is still less than wholly transparent - and we have seen no firm evidence or research to confirm that changes made by the website are actually understood by consumers. The CMA should commit some of its legal budget for these purposes, and to help it better understand how consumers are faring in fast-moving digital markets.

However, the most pressing issue to be addressed is Google's 'sold to the highest bidder' advertising model, that allows scamsters, fraudsters and worse to dominate the top of search results. Forcing liability onto Google should be a priority issue for Government and for regulators, and would be the single-most important step in protecting consumers.

As can be seen from media reports in regards to Euro 2020 tickets, Google's position here is utterly indefensible and simply favours profit and fraudsters over consumers.

https://www.thetimes.co.uk/article/euro-2020-england-v-scotland-tickets-touted-on-google-for-1-600-despite-ban-h5ldjm8l9

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[1] CPRs = The Consumer Protection from Unfair Trading Regulations 2008, which prohibit unfair commercial practices which (broadly) cause or are likely to cause the average consumer to take a different transactional decision.

[2] From page 92 of the consultation document: In light of the adverse consequences of fake reviews, government is considering whether to explicitly prohibit the commercial practice of commissioning consumer reviews - in all circumstances - or a narrower prohibition on the commercial practice of commissioning fake consumer reviews.

Q47. Do you think government or regulators should do more to address (a) 'drip pricing' and (b) paid-for search results that are not labelled accordingly, as practices likely to be breached under the CPRs?

Yes, both Government and regulators have a part to play in addressing both of these practices.

Drip pricing in the ticketing market was addressed after FanFair submitted a lengthy complaint to the Advertising Standards Authority - who subsequently compelled Viagogo and other secondary sites to stop the practice. Inevitably, Viagogo only agreed to do so when the case was referred to National Trading Standards.

Paid for search is a much bigger problem, but if Google continues to take advertising money from ticket resale sites operating in outright breach of the law then reform of this market will always be challenging.

One of these websites, called seatsnet.com, was listing Premier League football tickets (an offence in itself) during the entirety of the pandemic (ie when fans were banned from attending) and yet still managed to adhere to Google's advertising guidelines. Seatsnet also bought its way to the top of Google search during the Euro 2020 football tournament - despite displaying zero compliancy with the Consumer Rights Act. From Trustpilot reviews, it is evident that the site has created significant numbers of victims.

FanFair has held countless meetings with representatives from Google about ending these practices or, preferably, prioritising search advertising from ticket companies who are members of self-regulatory body STAR (the Society of Ticket Agents & Retailers).

However, given Google's dominance in search advertising, greater regulation is undoubtedly required in this area to ensure consumers are protected. As it stands, Google's driving incentive is to do nothing and keep accepting advertising money.

Consumer law enforcement

Q55. Do you agree with government's proposal to empower the CMA to enforce consumer protection law directly rather than through the civil courts?

Yes, although with some caveats.

It is undoubtedly true that action against viagogo was delayed because the CMA lacks the power to directly enforce consumer protection law directly.

Therefore, it stands to reason that further empowering the CMA could "conclude cases faster", "bring infringements to an end sooner and secure redress for consumers more promptly."[3]

However, we also believe that the CMA has also failed consistently to use its existing powers, and is almost hardwired to avoid enforcement action - preferring instead to pursue a strategy of compliance. Effectively, this has left Viagogo with an unblemished record - despite acting in almost total breach of consumer protection law for years.

Additional powers should be requisite on a root and branch change in the CMA's approach to consumer protection.

[3] Quotes from page 105 of the consultation document