

Professor Mike Waterson
C/O
Department for Business, Energy
& Industrial Strategy
1 Victoria Street
London
SW1H 0ET

From: Jon Riley
Project Director

12 August 2016

CC Craig Belsham
Ian Jenkins

Dear Professor Waterson,

CMA response to Independent Review of consumer protection measures concerning online secondary ticketing facilities

I am writing to set out the CMA's response to your Independent Review of consumer protection measures concerning online secondary ticketing facilities, published on 26 May 2016.

The CMA welcomes your review and the opportunity to respond. Our response focuses on your findings and recommendations relating to:

- Legality of terms restricting a consumer's right to resell a ticket;
- Secondary ticketing platforms' compliance with information requirements in consumer protection law; and
- Issues for the primary ticketing industry, including use of 'bots'.

Legality of terms restricting a consumer's right to resell a ticket – unfair terms legislation

Your review recommended that the CMA should work with other consumer protection bodies and with the live events industry to develop best practice guidance on the application of unfair terms legislation to ticketing terms and conditions.

We look forward to discussing with representatives of the live events industry and others how unfair terms law applies to ticketing terms and conditions. These discussions will allow us to establish the most effective means to bring greater clarity for the industry.

We have heard recent concerns raised about the interpretation of our unfair contract terms guidance in the tickets sector. In particular, we have heard concerns that suggest that terms which restrict resale will always be unfair. In advance of these discussions we would like to clarify that, although terms which restrict a consumer's right to resell a ticket are open to scrutiny regarding their fairness, they should not automatically be regarded as unfair terms. The basis on which the CMA considers that terms open to scrutiny under consumer law are likely to be regarded as fair and unfair is explained in our guidance, which is general in character and is intended to apply to ticketing contracts regardless of legal arguments as to whether a ticket is a good or a licence. 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.

Secondary ticketing platforms' compliance with information requirements in consumer protection law

Although your review did not make any recommendations to the CMA about compliance, we thought it would be helpful to share details of our work in this area. Our work does not seek to address your recommendation for a lead body, such as National Trading Standards, to carry out a concerted investigation of compliance (Recommendation 1), but it should help to inform the compliance picture.

In March 2015 the four main secondary ticket platforms – GET ME IN!, Seatwave, StubHub and viagogo – provided undertakings to the CMA following an investigation under the Consumer Protection from Unfair Trading Regulations 2008. On 14 June 2016 the CMA launched a 'compliance review' to assess whether the secondary ticket platforms are complying with the undertakings provided as part of the CMA's investigation and their legal obligations, including more recent legal requirements under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Rights Act 2015.

In their undertakings, the platforms agreed to provide improved information to consumers, including: restrictions on entry and view that may apply to the ticket; whether or not multiple seats that are listed together are located together; whether there are any additional charges not included in the listed ticket price; the face value of the ticket, which may be different from its price through the secondary ticketing platform; and a contact email address for buyers to use if something goes wrong.

Our compliance review is also considering whether the platforms are providing adequate information to consumers, in accordance with their legal obligations. As you will be aware, the Consumer Rights Act 2015, which came into force on 26 May 2015, requires sellers and secondary ticket platforms to provide certain information about tickets to potential buyers (for example face value, seat location and any usage restrictions) and imposes a duty on secondary ticket platforms to report criminal activity connected with the sale of tickets through their platform. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which came into force on 13 June 2014, require businesses to give consumers certain specified information before they enter into contracts.

The information gathered during our review will help the CMA to determine what, if any, further action is warranted. We will also continue to liaise closely with National Trading Standards and the Consumer Protection Partnership, given the interest and role of other consumer enforcers and bodies in this sector.

Issues for the primary ticketing industry, including use of 'bots'

We note that you have recommended that the primary tickets industry consider a number of other issues, including transparency about which outlets are selling tickets for a particular event, the manner in which pricing information is displayed, and how to prevent professional resellers using automated software ('bots') to buy up significant numbers of tickets that might otherwise be bought by other consumers. We intend to take part in discussions that the industry decide to hold in order to gain a greater understanding of the issues.

We hope this response is helpful.

Yours sincerely

Jon Riley
Project Director