

Call for Evidence co-ordinator
Department for Culture, Media and Sport (DCMS)
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From: J. [redacted]

Direct line: C. [redacted]

20 November 2015

cc ticketing@culture.gov.uk

Dear Mr [redacted],

CMA's response to the BIS/DCMS Call for Evidence

The Competition and Markets Authority (CMA) welcomes the opportunity to respond to the BIS/DCMS Call for Evidence that will inform Professor Waterson's independent review of consumer protection measures in the online secondary ticket market. We enclose our response with this letter.

The CMA is a non-ministerial government department which works to promote competition both within and outside the UK, for the benefit of consumers. Our aim is to make markets work well for consumers, businesses and the economy. We were created out of a merger between the Competition Commission and the Office of Fair Trading (OFT) in April 2014.

In our response, we draw in particular on our experience undertaking consumer enforcement work in this sector and on our leadership role on unfair contract terms issues.

The CMA is keen to assist Professor Waterson's review and looks forward to participating further in the work that follows this Call for Evidence.

Yours sincerely,

[redacted]
[redacted]

Review of the secondary ticket market: CMA's response to the BIS/DCMS call for evidence

Introduction

1. In this submission, the Competition and Markets Authority (CMA):
 - (a) briefly explains its role as both a competition and consumer regulator;
 - (b) summarises the work that the CMA, and the Office of Fair Trading (OFT) before it, carried out on secondary tickets;
 - (c) describes the relevant consumer protection laws that apply to secondary tickets and the bodies that can enforce them;
 - (d) describes the CMA's responsibilities in relation to secondary tickets and how they fit alongside other bodies' responsibilities; and
 - (e) sets out our views on the secondary tickets sector and our observations on the key concerns that have been voiced about it, where the review is seeking evidence and the CMA has information to give.

The CMA: who we are and what we do

2. The CMA is an independent non-ministerial government department. It took on its powers as the UK's lead competition and consumer authority in April 2014, and brought together most of the roles and responsibilities of the Competition Commission and the OFT into the new authority.
3. The CMA works to promote competition for the benefit of consumers, both within and outside the UK. Its mission is to make markets work well for consumers, businesses and the economy.¹
4. The CMA has powers to enforce a range of consumer protection legislation. However, Trading Standards Services (TSS), not the CMA, have lead enforcement responsibility for this legislation. The focus of the CMA's consumer protection powers is to support competition and choice and to effect

¹ The CMA's primary duty is to promote competition, both within and outside the United Kingdom, for the benefit of consumers - Enterprise and Regulatory Reform Act 2013, s25(3).

market-wide change where it identifies systemic issues that might hinder a market from functioning well.^{2 3}

5. The CMA's other functions include to: investigate mergers which could restrict competition; conduct market studies where there may be competition and consumer problems; investigate possible breaches of UK or EU prohibitions against anti-competitive agreements and abuses of dominant positions; and bringing criminal proceedings against individuals who commit the cartels offence.
6. The CMA generally prioritises its work according to its published Prioritisation Principles.⁴

The CMA's and OFT's previous work on secondary tickets

7. Prior to the creation of the CMA, the OFT (its predecessor body in terms of consumer enforcement) carried out the following work in relation to the secondary ticket sector:
 - In 2005, the OFT produced a market study, *Ticket Agents in the UK*,⁵ which looked at both primary and secondary agents. The study focused on additional charges, poor price information in advertisements, poor service and contractual issues when events were cancelled or tickets did not arrive, and problems with secondary agents such as the lack of information about the face value of the ticket or the seat location.⁶
 - The OFT took action in 2012 against unauthorised resellers of Olympic tickets (working with the Metropolitan Police and the Serious Organised Crime Agency).⁷

² The CMA's consumer protection work supports competition, in particular, by: enabling consumers to make well-informed choices, which reward those firms that best satisfy their needs; tackling practices, such as a lack of transparency or obstructions to switching, that hamper the ability of consumers to access information, assess information or act to choose the best deal; and improving compliance across markets to create a level playing field between fair dealing businesses and traders that are not complying with the law.

³ Further information about the CMA's approach to the use of its consumer powers can be found at www.gov.uk/government/uploads/system/uploads/attachment_data/file/288624/CMA7_Consumer_Protection_guidance.pdf.

⁴ www.gov.uk/government/publications/cma-prioritisation-principles.

⁵ <http://webarchive.nationalarchives.gov.uk/20140402142426/http://www.of.gov.uk/OFTwork/markets-work/ticket-agents>.

⁶ We note that the secondary ticket sector has developed significantly over the past 10 years. The 2005 study may no longer reflect the current state of the sector or the CMA's current views on it.

⁷ www.gov.uk/cma-cases/olympic-tickets-sales-by-unauthorised-traders.

8. Since its creation, the CMA has carried out the following work in this area:
- In March 2015, the CMA announced that it had received undertakings from the four main resale platforms (GET ME IN!, Seatwave, StubHub and Viagogo) to build upon their existing practices and give improved information to buyers about the tickets listed on their sites. This followed a consumer enforcement investigation into the sector initiated by the OFT and continued by the CMA. The improved information included:
 - the 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 the resale price; and
 - a contact email address for buyers to use if something goes wrong.

The Consumer Rights Act 2015 has subsequently introduced specific information requirements in some of these areas (as described in paragraph 9). We explain at paragraphs 37 to 43 how the undertakings and the ticketing provisions of the CRA seek to address concerns about the adequacy of information provided to consumers.

- Also in March 2015, following agreement with the four platforms, the CMA:
 - wrote to other major ticket resale platforms, brokers and businesses that resell tickets, reminding them of their obligations under consumer protection law,⁸ and
 - produced a single-page ‘60-second summary’ sheet for buyers, setting out what they can expect from businesses and what they should check before making a purchase.⁹
- In March 2015, the CMA, exercising its merger control functions, cleared the acquisition by Ticketmaster (a primary agent, which already owned

⁸ www.gov.uk/government/publications/letter-from-the-cma-to-secondary-ticket-businesses-on-consumer-law and www.gov.uk/government/publications/letter-from-the-cma-to-secondary-ticket-websites-on-consumer-law.

⁹ [/www.gov.uk/government/publications/secondary-ticket-websites-advice-for-consumers](http://www.gov.uk/government/publications/secondary-ticket-websites-advice-for-consumers).

GET ME IN!) of Seatwave. The CMA found that the merging parties faced strong competition in the ticket resale market from both Viagogo and StubHub, and additional but more limited competitive constraints from many smaller online secondary ticket exchanges. The CMA decision also noted that the market for online secondary ticket platforms in the UK is relatively new and dynamic, with rapidly changing market shares.¹⁰

- In April 2015, the CMA took part in an international campaign advising consumers what to look out for when buying online tickets for the Rugby World Cup (RWC).¹¹ For example, consumers were given advice on how to avoid fraudulent sites and were advised to check whether tickets came with any restrictions (e.g. on age) and whether there were any delivery or administration fees.
- In July 2015, the CMA published guidance on the provisions of the Consumer Rights Act 2015 which deal with unfair contract terms and notices.¹² The guidance specifically refers to the resale of tickets bought online, and says that a term which undermines a consumer's right to sell what they own is at risk of being regarded as unfair.¹³

Relevant consumer law and which authorities can enforce it

9. The call for evidence has asked for information about a range of 'consumer protection measures'. The industry itself will be better placed to comment on voluntary or self-regulatory measures. Here, the CMA refers only to the relevant consumer protection law that applies to the resale of tickets:

- Chapter 5 of Part 3 of the Consumer Rights Act 2015 (CRA):
 - requires sellers (whether businesses or consumers) and resale platforms to provide specified information about a ticket (e.g. face value, seat location and any usage restrictions);

¹⁰ www.gov.uk/cma-cases/ticketmaster-europe-holdco-limited-seatwave.

¹¹ www.tradingstandardscrime.org.uk/beware-of-rugby-world-cup-2015-ticket-scams/. This was part of the International Consumer Protection Enforcement Network (ICPEN) Fraud Prevention Month. The CMA worked with the National Trading Standards eCrime Team, City of London Police's National Fraud Intelligence Bureau, and the Rugby World Cup 2015 Organising Committee.

¹² www.gov.uk/government/publications/unfair-contract-terms-cma37. Parts 1 and 2 of the Consumer Rights Act 2015 consolidate and replace the Unfair Terms in Consumer Contracts Regulations 1999 and relevant provisions of the Unfair Contract Terms Act 1977. The CMA's guidance supersedes the general unfair contract terms guidance originally issued by the OFT.

¹³ The Consumer Rights Act 2015 specifically provides that event organisers cannot rely on unfair terms in the original contract for sale to cancel resold tickets or blacklist resellers.

- prohibits event organisers from cancelling resold tickets or blacklisting sellers, unless this is provided for in a term of the original contract for sale and the term is not unfair for the purposes of Part 2 of the CRA; and
 - imposes a duty on resale platforms to report criminal activity.
- Part 2 of the CRA (which replaces the Unfair Terms in Consumer Contracts Regulations 1999) requires terms in business to consumer contracts to be fair and transparent.
 - The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) require businesses to treat consumers fairly and to provide them with the information they need to make informed transactional decisions.
 - The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) require businesses to provide certain specified information to consumers.
10. TSS have powers to enforce the provisions of the CRA which relate to secondary tickets (where they have the power to issue civil penalties) and unfair contract terms, as well as the CPRs and the CCRs. The CMA shares powers to enforce the CPRs and the provisions of the CRA which relate to unfair terms. TSS and the CMA can also obtain civil court orders under Part 8 of the Enterprise Act 2002 to stop breaches of the legislation listed at paragraph 9, where there is harm to the collective interests of consumers. At paragraphs 12 to 19, we expand on these bodies' respective roles in relation to secondary tickets.
11. Aside from consumer protection law, some activities may fall within broader criminal offences, such as fraud, deception or theft, which can be enforced by the Police and/or the National Crime Agency.

The CMA's responsibilities in relation to secondary tickets and how they fit alongside other bodies' responsibilities

12. Following the consumer landscape changes that took effect in 2013/14, the CMA is one of a number of bodies with a role in ensuring that consumers are protected. TSS now have lead enforcement responsibility for all consumer protection legislation at national, regional and local levels. The CMA's role is explained below at paragraphs 13 to 17.

The CMA's responsibilities

13. As explained at paragraph 4, the focus of the CMA's consumer protection work is to support competition and choice and to effect market-wide change where we identify systemic issues that might hinder a market from functioning well. Below, we explain the CMA's leadership role on unfair contract terms issues, the things that it is and is not monitoring with regard to secondary tickets; and how it handles complaints and other intelligence.

Leadership role on unfair contract terms

14. As part of the consumer landscape changes it was agreed that the CMA should continue to exercise the leadership role that the OFT had on unfair contract terms issues. This role includes lead responsibility for:
- developing policy, and
 - guidance for businesses, consumers and other enforcers (which we would do in partnership with the Chartered Trading Standards Institute, Citizens Advice and others).

The March 2015 undertakings from four resale platforms

15. With regard to the undertakings that the CMA obtained from the four resale platforms in March 2015 (referred to in paragraph 8), the CMA is monitoring these to ensure that the companies are still in compliance. However, the CMA is not monitoring the sector more widely nor monitoring the new provisions of the CRA or any wider issues. See paragraph 21 for the monitoring role that the Consumer Protection Partnership's Knowledge Hub performs.

Handling of complaints and other intelligence

16. Where the CMA receives complaints or identifies issues relating to the secondary ticket market:
- it considers whether potential systemic market issues are raised and, if so, decides whether to take work forward by reference to its published Prioritisation Principles;
 - where there is no evidence of a systemic market problem, it will ensure that any complaint/issue is routed to the body most likely to be able to deal effectively with that information:

- with consumer complaints, the CMA will direct consumers to contact an advice service (see paragraph 17), where the complaint may be referred to TSS, if appropriate;
 - where the CMA identifies a potential enforcement issue, the relevant local Trading Standards Service will in most cases be the most appropriate body to consider whether enforcement action is necessary, and they can escalate to regional and national TSS teams if they think this is appropriate;
 - where issues may require a more coordinated TSS response (for example where a number of businesses may be in breach of legislation), the CMA can refer the problem to the National Tasking Group in England and Wales,¹⁴ or to the Scottish National Tasking Group;
- it also forwards all relevant information to the Consumer Protection Partnership's Knowledge Hub (see paragraph 21 below).
17. The CMA does not have a consumer complaints database. As part of the consumer landscape changes, the database run by the OFT (as part of the 'Consumer Direct' service) moved to Citizens Advice (as the 'Citizens Advice Consumer Service'). This covers England, Scotland and Wales; a separate service (Consumerline) operates in Northern Ireland and is run by the Trading Standards Service located within the Department of Enterprise, Trade and Investment.

Trading Standards Services

18. For all consumer protection legislation, including that on unfair terms, TSS have lead responsibility for national, as well as regional and local, enforcement. Through the National Trading Standards Board (NTSB),¹⁵ TSS have the means to prioritise, fund and coordinate national and regional enforcement in England and Wales through their Scams, e-Crime and

¹⁴ This group is commissioned by the National Trading Standards Board to fund and manage collective TSS enforcement action through their Scams, e-Crime and Scambuster teams.

¹⁵ The NTSB was established in April 2013 to coordinate and prioritise TSS enforcement activity at a regional and national level across England and Wales. The NTSB is funded directly by BIS and comprises representatives from Wales and each of the nine English regions.

regional Scambuster teams. Trading Standards Scotland provide a similar national enforcement capacity in Scotland.¹⁶

19. TSS have powers to enforce the secondary ticket provisions in the CRA, and are the only enforcer given the power to issue civil penalties under that legislation.

The Consumer Protection Partnership

20. Given the various different interests in the consumer landscape, there is a need to coordinate activity and the most appropriate way to do this is through the Consumer Protection Partnership (CPP).¹⁷ The CPP brings together key consumer protection organisations to identify and prioritise areas causing the greatest harm to consumers and to agree and coordinate collective action to tackle such detriment.
21. The CPP's Knowledge Hub is responsible for monitoring and coordinating new intelligence about problems affecting consumers in order to inform CPP's strategic priorities. In relation to the secondary ticket market, it has a lead role in monitoring, on behalf of CPP Partners, consumer complaints and other intelligence.

The Advertising Standards Authority

22. The Advertising Standards Authority (ASA) is the independent body that endorses and administers the UK Advertising Codes. These Codes include rules that state that advertising must not be misleading. The ASA's activities include investigating and adjudicating on complaints, and it has carried out work seeking greater clarity of pricing from both primary and secondary ticket sellers.¹⁸

¹⁶ In July 2015, the CMA published a suite of revised guidance on unfair terms to: support the implementation of changes resulting from the CRA; help businesses to comply with the new legislation; and help TSS and other enforcers to use the new enforcement powers effectively.

¹⁷ The members of the CPP are: the CMA; the National Trading Standards Board; Trading Standards Scotland; the Department for Enterprise, Trade and Investment Northern Ireland; the Chartered Trading Standards Institute; the Financial Conduct Authority; the Consumer Council for Northern Ireland; Citizens Advice; and Citizens Advice Scotland.

¹⁸ For example www.asa.org.uk/News-resources/Media-Centre/2013/Misleading-ticket-prices.aspx#.Vk3pAnIJzcs, www.asa.org.uk/Rulings/Non-compliant-online-advertisers/Viagogo.aspx#.Vk3qBXIJzcs, and www.asa.org.uk/News-resources/Media-Centre/2014/Bringing-the-curtain-down-on-misleading-ticket-fees.aspx#.Vk3rDnIJzcs.

23. The ASA is considered an 'established means' for ensuring compliance with the CPRs in non-broadcast advertising. Where appropriate, the CMA may refer cases falling within the ASA's area of expertise to the ASA for action.

The CMA's observations on some of the key issues with secondary tickets

24. In this section, we offer some general observations on the ticket resale market and then consider some of the main concerns that have been voiced about it, where the review is seeking evidence and the CMA has information to give. These concerns are:
- provisions that could prevent good-faith purchasers of tickets on the secondary market from gaining access to the event in question (through cancellation of resold tickets or restrictions on resale),
 - the adequacy of the information provided to consumers,
 - scams, and
 - bulk reselling.

General observations

25. A well-functioning secondary ticket market has the potential to deliver benefits to consumers, for instance:
- (a) It can allow people who no longer wish to use their ticket for an event – such as those who are no longer able to attend – to sell it.
 - (b) It can allow people who did not buy tickets for an event when they originally went on sale to do so at a later date.
26. We also note that some large ticket resale platforms offer guarantees to consumers to find replacements tickets or provide refunds if, for example, tickets do not arrive or the consumer is denied entry due to a counterfeit ticket. These guarantees offer added protections to consumers.
27. There may be issues, however, that hinder a well-functioning market. We would be particularly concerned about any unfair terms or unlawful practices that caused significant harm to consumers, for example by having the effect that a consumer who purchased a ticket (on the secondary market) in good faith found that it did not grant admittance to the event concerned. Existing

law, strengthened by the ticketing provisions of the CRA, give enforcers tools that can be used to try to tackle these issues.

Purchasers of resold tickets finding them invalid

28. Event organisers might include contractual terms that allow them to cancel tickets which are resold or prohibit resale outright. If they enforce these terms, purchasers of valid tickets on the secondary market may be denied access to an event and, in addition, ticketholders who cannot attend an event may be unable to sell their tickets to recoup what they have paid.
29. The CRA Part 3 Chapter 5 contains provisions which aim to protect consumers who purchase tickets on secondary markets by preventing event organisers from relying on unfair terms in the original contract to cancel tickets as a result of resale.
30. Under Part 2 of the CRA, terms in consumer contracts must be fair. The CMA takes the view that contract law ordinarily allows purchasers to sell on what they have bought to someone else. Terms which seek to restrict this right, directly or indirectly, are therefore potentially unfair. However, it should be noted that such terms may not always be 'unfair' on the legal definition.
31. An assessment of fairness, under Part 2 of the CRA, would involve taking into account the nature of the subject matter of the contract, all the circumstances existing when the term was agreed and all the other terms of the contract. Ultimately, the final decision on whether a term is unfair rests with the courts.
32. Fairness is more likely to be achieved if there is a legitimate reason for restricting resale. A term which reflects statutory restrictions on the resale of tickets for the event in question (e.g. the 2012 Olympic Games) is likely to be fair. Examples of other relevant considerations might include the nature of the event or ticket; and/or whether a consumer was guaranteed to receive back the full amount that they paid if they returned a ticket to the event organiser.
33. If the terms are unfair, then they do not bind the original purchaser (Regulation 62(1) of the CRA).
34. Under Part 3 Chapter 5 of the CRA, an event organiser cannot rely on an unfair term in the original contract to cancel a resold ticket (Regulation 91(2) of the CRA).
35. The CMA and other enforcers, including TSS, can apply for court orders to prevent the use of terms which they think are unfair. TSS can also issue fines

to event organisers who breach the provisions of the CRA on the cancellation of tickets.

36. The CMA has a lead role in relation to unfair terms law. If the CMA receives complaints about businesses using potentially unfair terms, it will consider whether to take action and, if so, what action would be most appropriate for dealing with the issue (for example, formal enforcement action or issuing guidance).¹⁹ In deciding whether to take action, we would consider a number of factors including whether such action would have a market-wide impact or precedent-setting value. See also paragraph 16 which explains how the CMA handles complaints.

The adequacy of the information provided to consumers

37. Consumers need certain key information in order to make an informed decision on whether to buy a ticket through a resale platform. For example, without the original face value of the ticket and details of any restrictions, they will not be clear what they are getting for their money and whether the resale price is one they would be willing to pay (for that particular ticket).
38. The CPRs and CCRs require resale platforms and business sellers to give consumers important information²⁰ about themselves (e.g. their identity and contact details) and the tickets they sell (e.g. the main characteristics of the ticket and the price). What information is required under the CPRs and the CCRs depends on the particular circumstances and is assessed by reference to general categories of information. The CRA has now also introduced specific information requirements in relation to the sale of secondary tickets (see paragraph 41 where we compare the legislation).
39. As mentioned above, the CMA has taken action to improve transparency in the sector under the CPRs.²¹ In March 2015 (before the introduction of the CRA ticketing provisions), following the OFT and CMA investigation, the CMA announced that four large UK resale platforms – GET ME IN!, Seatwave, StubHub and Viagogo – had provided undertakings²² to it to build upon their

¹⁹ The CMA makes decisions on which work to undertake based on its published prioritisation principles.

²⁰ Under the CPRs, businesses must give consumers all the information they need to make informed transactional decisions. Under the CCRs, businesses must give consumers certain specified information before they enter into contracts.

²¹ The CCRs came into force after the CMA commenced its investigation.

²² Under Part 8 of the Enterprise Act 2002, the CMA will usually give businesses an opportunity to address its concerns. If a business gives a satisfactory undertaking, then court action will be unnecessary provided, of course, that the undertaking is honoured.

existing practices and give improved information to buyers about the tickets listed on their sites. This improved information includes:

- the 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 the resale price; and
- a contact email address for buyers to use if something goes wrong.

40. The CMA continues to monitor compliance with these undertakings. It is not, however, monitoring the industry more widely or the four platforms' compliance with the CRA's ticketing provisions. Such monitoring will be carried out by the CPP's Knowledge Hub which has a lead role in monitoring, on behalf of CPP partners, consumer complaints and other intelligence relating to the secondary ticket market.
41. The consumer protection legislation that existed before the introduction of the CRA, and under which the CMA secured undertakings, applies generally to all businesses. Provisions in the CRA, which came into force in May 2015, provide additional clarity on the information which sellers and resale platforms must provide to buyers in the context of secondary tickets. In particular they require sellers (whether businesses or consumers) and resale platforms to provide certain specified information about tickets (e.g. face value, seat location and any usage restrictions) to potential buyers. The provisions also create an additional basis for TSS to take enforcement action if this information is not provided. The CRA now gives TSS a power to issue fines of up to £5,000 for each breach of the provisions on secondary tickets.²³ The CRA also includes provisions which prevent an event organiser from relying on an unfair term in the original contract to cancel a resold ticket.
42. Whilst the CRA (which came into force after the CMA obtained its undertakings) introduces specific information requirements in some of the areas previously covered by the CMA's investigation, the undertakings that the CMA obtained remain relevant. They help to ensure that consumers are

²³ TSS, and other enforcers (including the CMA), can obtain court orders to prevent or stop breaches of the CCRs and CPRs. Some breaches of the CPRs are also criminal offences.

not misled by the way that tickets are marketed or presented on resale platforms, and that consumers are provided with other important information (outside the specific requirements of the CRA) such as additional charges and contact details if something goes wrong.

43. For an explanation of how the CMA would handle complaints or other intelligence about this issue, see paragraph 16.

Scams

44. From previous work carried out by the OFT and concerns raised publicly, the CMA is aware of scams connected with the resale of tickets (e.g. sites that trick consumers into buying tickets which do not exist). Complaints about such scams should go either to the Citizens Advice Consumer Service or (via Action Fraud) to the National Fraud Intelligence Bureau. The CMA cannot therefore comment on the scale and impact of such activity.
45. Some scams may involve breaches of the CPRs, although they are also likely to involve broader criminal offences, such as fraud.²⁴ TSS and other enforcers (including the CMA) can take action to tackle breaches of the CPRs, whilst offences such as fraud can be enforced by the Police.

Bulk reselling

46. The CMA is aware of concerns that bulk reselling, either facilitated by botnets or carried out in some other way, has the potential to raise the prices that some fans pay. If professional resellers buy tickets from the primary market and resell those tickets on the secondary market at a higher price, this will reduce the number of tickets available through primary sellers at a lower price.
47. It is difficult to estimate the impact of the activities of bulk resellers without information on, for example: the number of events where this type of activity is taking place; the proportion of tickets for those events which are being bought by professional resellers; the difference in prices being charged between primary and secondary ticket channels for those events; and the extent to which the practice enables more consumers who place higher value on tickets to obtain them. The CMA has not gathered such information in the course of its work in the sector to date.

²⁴ We also note that the CRA imposes a new duty on resale platforms to report instances of criminal activity to the Police and event organisers.

48. In any event, there may be some circumstances where bulk resale of tickets may have some benefits, in the public interest. One example might be where an event organiser sells a significant quantity of tickets to professional resellers as a way of reducing the event organiser's exposure to the risk that the event will fail to sell out. If resellers buy up tickets for the event but consumer demand turns out to be weaker than anticipated, the resellers would bear a proportion of any resultant loss. This may potentially facilitate events being held in the first place (or reduce the costs of doing so) by effectively serving as an 'underwriting' function. Moreover, these activities may enable consumers who place a higher value on tickets for an event, and are willing to pay the prices that the resellers charge, to get hold of tickets that they may not otherwise have been able to obtain.
49. In terms of the application of consumer measures to these activities, transactions between primary sellers and bulk resellers are between two businesses, so consumer protection measures do not apply to them. However, resellers who bulk buy tickets may breach the laws enforced by other agencies, such as the Police – for example some tactics used to bulk buy tickets may breach the Fraud Act 2006 or the Computer Misuse Act 1990.
50. Primary sellers may be able to take steps to prevent bulk purchasing of their tickets by resellers. We note that some primary sellers have, for instance, taken steps to prevent bulk purchasing facilitated by botnets by using CAPTCHA tools²⁵ and monitoring buyers' IP addresses.

²⁵ CAPTCHA stands for 'Completely Automated Public Turing test to tell Computers and Humans Apart'. It is a program that protects websites against botnets by generating and grading tests that humans can pass but current computer programs cannot.