



Department
for Culture
Media & Sport

ticketing mailbox <ticketing@culture.gov.uk>

STUBHUB EVIDENCE TO REVIEW ON CONSUMER PROTECTION MEASURES APPLYING TO EVENT TICKET RESALE

2 messages

To: <ticketing@culture.gov.uk>

22 November 2015 at 19:07

Ian:

Please find attached StubHub's response to the Call for Evidence on the ticketing review. It would be good to discuss with yourself and Craig when might be an appropriate time to come in and talk directly to the Chair. Let's touch base next week.

Kind regards

Director, Government Relations (UK & Ireland)

eBay

11/23/2015

Department for Culture Media & Sport Mail - STUBHUB EVIDENCE TO REVIEW ON CONSUMER PROTECTION MEASURES APPLYING TO EVENT TICKET RESALE



Call for Evidence Response - StubHub.docx

326K

23 November 2015 at 12:09

ticketing mailbox <ticketing@culture.gov.uk>

To:

Your message

To: ticketing mailbox

Subject: STUBHUB EVIDENCE TO REVIEW ON CONSUMER PROTECTION MEASURES APPLYING TO EVENT TICKET RESALE

Sent: 11/20/15, 7:07:04 PM GMT

was read on 11/23/15, 12:09:44 PM GMT

953



MEMORANDUM FROM STUBHUB TO THE REVIEW ON CONSUMER PROTECTION MEASURES APPLYING TO TICKET RESALE

20 NOVEMBER 2015

EXECUTIVE SUMMARY

- There are a range of important benefits for consumers and for the events industry from a well-functioning secondary market. A range of new business models have emerged over the past five years which now offer consumers robust customer protection guarantees. An objective of consumer protection policy should be to encourage the use of such facilities in preference to street sales or other internet channels which are less secure.
- Consumer research suggests a high degree of public support for the secondary ticket market, with strong support for the right to resell tickets freely, low levels of awareness of existing legal requirements to provide row and seat number and clear opposition to cancellation and blacklisting, as well as clear concern amongst consumers about providing seat details in the light of such threats.
- We strongly urge the Review to consult with Action Fraud regarding the level of online ticket fraud given the enormous disparity in figures between reported online ticket fraud and other published sources. However, we note that there is no shortage of legislation to tackle fraud.
- There is considerable evidence that the secondary ticket market does not adversely impact on access to sporting and cultural events and indeed enhances it. StubHub's figures demonstrate that only a small percentage of tickets are sold on its marketplace for major sporting events – ranging from 0.04% of all tickets for the 2014 Ryder Cup to 1.2% of tickets for The Ashes 2015. Moreover, the secondary market supports access for fans who would otherwise be unable to source tickets for sold out events.
- If policymakers wish to promote access to sporting and cultural events, the only way to achieve this is to reform the primary distribution model which is currently broken. Trying to control the circulation of tickets once they have been made available to the public is likely to prove ineffectual and counterproductive. For example, there is considerable academic evidence from the US that demonstrates that price caps actually lead to higher prices.
- Greater transparency is required as regards existing links between the primary and secondary markets. Event organisers should be required to publish what percentage of tickets for events are made available to the public and how many are channeled to corporate sponsors, VIPs, and ticket allocations to secondary ticket agents.
- Since the passage of the Consumer Rights Act, there have been an increasing number of tickets cancelled by event organisers (e.g. for the Ashes and the Rugby World Cup) – in some cases without notification so that buyers are turned away at the gate. We have seen an even greater number of threat letters from event organisers, demanding that they cease and desist from selling on StubHub or risk cancellation.
- The Consumer Rights Act therefore needs to be amended to provide for tougher safeguards against cancellation and blacklisting and clarify the role of secondary ticket marketplaces. Such profoundly anti-consumer practices should be completely outlawed.
- In addition, the Home Office should consult with supporters groups such as the Football Supporters' Federation on whether the current law on football tickets should be relaxed to allow fans to recoup some of their outlay on season tickets.
- We also recommend a Home Office review on possible legislation to tackle the problem of botnets.

INTRODUCTION

StubHub is an online ticket marketplace, owned by eBay Inc, which currently serves customers in the UK and Germany via StubHub Europe S.a.r.l, and operates also in the United States and Canada. StubHub does not own, purchase or price any tickets for any events and does not sell any tickets in its own right, operating solely as a ticket marketplace for buyers and sellers.

StubHub offers buyers a comprehensive Fan Guarantee which means that if a ticket does not arrive on time and as advertised, we will ensure that they receive either a comparable replacement ticket or a complete refund. Similarly, buyers are granted full refunds where an event is cancelled. Moreover, by intermediating both the payment and the delivery of tickets between buyer and seller, we are able to ensure a much safer and more convenient resale experience for consumers who would otherwise be forced to buy their tickets from street touts or other parts of the internet where there is no consumer protection.

StubHub also has a number of partnerships with leading stakeholders within the entertainment industry covering, promoters, venues, media channel owners, primary ticketing platforms and sports rights holders including AEG (The O2 and Wembley Arena), AXS ticketing, Tottenham Hotspur, Everton, Aviva Premiership Rugby Final, Global Radio (Summertime Ball, Wembley Stadium and Jingle Bell Ball), Bauer Media (Kiss Haunted House, Wembley Arena) and Matchroom Boxing.

BENEFITS OF THE SECONDARY MARKET

Benefits for Consumers

As the Government and the CMA have frequently noted, there are many benefits associated with a well-functioning secondary ticket market which have been highlighted in the various Government and Select Committee inquiries on this subject over the past ten years.

Firstly, for all the discussion about prices in the secondary market, it should be noted that fans are frequently able to secure resale tickets for less than the original primary 'face value' price, since the price of tickets fluctuates according to demand, supply and the timing and profile of the event. As a result, fans who would otherwise not be able to afford to attend sporting and cultural events are able to attend such events. In the UK, the number of tickets available at face value or less depends to a large extent on the supply dynamics within the marketplace i.e. the mix of suppliers as well as the proximity in time to the event (as prices reduce closer to the event) but can reach to over 40% of all tickets.

In the US this figure is higher with typically around 50% of tickets sold on StubHub sold at or below face value as a consequence of fans being allowed to resell individual games from their season tickets as in the US - e.g. for MLB, NFL, NBA, and NHL games. Indeed, the prevalence of tickets being sold at below face value has actually led to teams imposing price floors in the secondary market as a condition of partnerships with secondary ticket marketplaces. In England and Wales, the resale of football tickets is currently restricted so football fans have been unable to benefit from the same effect. However, we set out the case below for reviewing the law on football tickets below.

It is also common for tickets to be made available at less than face value in knock-out sporting events. For example, ticket prices dropped dramatically for the England v Uruguay fixture in the Rugby World Cup after it became clear that England would not qualify for the next stages of the tournament.

Secondly, for many ordinary fans the only way they can get hold of a ticket to popular events is by buying a ticket in the secondary market. This is because many events are routinely over-subscribed with demand exceeding supply.

Our consumer research shows that fans struggle to source tickets through the primary distribution mechanisms with the experience often being one of constantly engaged phone lines and websites crashing due to excessive demand. As a result, fans are often forced to make multiple applications for tickets on behalf of others and are left with spare tickets when they discover that their friends and relatives cannot attend.

Thirdly, with restrictions placed on refunds, returns and transfers by event organisers, often the only way fans can get rid of spare tickets and recoup some of their costs in buying those tickets is by selling them through the secondary market. Opening up the resale of tickets also makes it more likely that fans will be able to afford to purchase season tickets since they would be able to defray the overall cost of selling tickets for games which they could not attend. By the same token, if a consumer believed that when they bought a ticket they would have to occupy the seat or let it go empty, it would dramatically reduce the advance demand for events, particularly for season tickets or knock-out sporting events where tickets for future rounds are sold in advance.

It is also often asserted that ticket sales in the secondary market limit public access to sporting events because of the premium attached to such tickets. However, by providing consumers with a means of getting hold of scarce tickets, the secondary market actually enables access and provides a valuable service to many consumers who may wish to purchase tickets at the last minute, for example if their schedule changes or they are visiting a city on holiday and they want to see a show or a sporting event. This is a very considerable benefit to consumers who greatly value the flexibility that the secondary market provides. For example, it should be noted that 25% of ticket sales on StubHub for the Rugby World Cup came within 3 days of a match.

It is perfectly reasonable for those providing such a service to make a profit – just as an event promoter profits from staging a concert, and primary agents such as Ticketmaster make a profit by charging processing and handling fees on top of the ticket face value, or venues make money from charging facilities fees. The issue from a public policy standpoint is therefore whether it is appropriate to regulate the level of profit (or ban it altogether) in a competitive marketplace. We believe that such an approach is wrong in principle.

We do, however, believe that fans should benefit from consumer protection – both in the form of Fan Guarantees and other statutory protections – and that it is better that people should be able to buy tickets in an environment which is open, safe, transparent and subject to consumer redress than be forced to purchase a ticket from a tout on the street or leave themselves open to fraud by buying elsewhere on the Internet. For example, there are real risks associated with buying tickets on the street – aside from the fact that fans are passing large amounts of cash in areas which are unlikely to be well policed, there is no consumer protection if there is a problem with the transaction (e.g. the ticket turns out to be fake). And by the time a fan is placed in a position of buying from a street tout, they are often more desperate, having travelled far to the venue. As a result, street touts are placed in a much stronger bargaining position and are able to extract much higher prices from consumers than if they had bought these tickets on a secondary ticket marketplace that offered robust customer guarantees.

Benefits for the Primary Market

It is often asserted that performers or promoters lose out as a result of the secondary market because they do not see the benefit of the full market value of the ticket. Yet ultimately both retain the right to charge in the primary market whatever price they wish for events.

Indeed, the trend in the music industry has been one of increasing ticket prices as revenues from record sales decline. And while dynamic or demand-based pricing may not be appropriate for all event organisers, it is increasingly a part of the industry, with the primary market routinely using secondary ticket marketplaces to maximize their ticket revenues by selling tickets at market prices – most often those tickets for the 8-10 rows nearest the stage (the so-called ‘Golden Circle’). Currently about 8% of sales on StubHub are from sellers in the primary market. As a result, we would strongly encourage the Review to explore the expanding use of dynamic or demand-based pricing by event organisers as part of the continuing evolution of the market.

Moreover, where an individual has a spare ticket and is unable to attend, it is better that this ticket is re-allocated rather than have the seat remain empty as was the case for many events in the London 2012 Olympics. Not only does someone else get to go to an event of their choice – the event promoter also benefits from increased spend at the concert e.g. on merchandise, refreshments and other revenues. Finally, from the promoter’s perspective, if a consumer believed that when they bought a ticket they would have to occupy the seat or let it go empty, it would dramatically reduce the advance demand for events, particularly for season tickets or knock-out sporting events where tickets for future rounds are sold in advance.

Consumer Attitudes Towards The Secondary Ticket Market

While the issue of ticket prices is one which arouses strong views, it is far from clear that the public is crying out for further regulation in this area. For example, a survey of over 2,000 adults by Opinion Research conducted between 6-9 November 2015 found that:

Tickets and events

- Just over half (54%) of those surveyed had purchased a ticket for a live entertainment or sporting event in the last 12 months.
- Of those that had purchased a ticket, they had purchased on average 5 within the last year.
- The main events for which they have purchased tickets are:
 - Concerts (51%)
 - Theatre (39%)
 - Football (31%)
 - Musicals (23%)
- All sporting events were more likely to be purchased by men (83% vs 40%), whilst women are more likely to buy tickets for the theatre (45% vs 34%) and musicals (28% vs 18%).

Purchasing habits

- Three fifths (61%) had purchased a ticket for a live entertainment or sporting event online at some point, rising to 74% of those aged 25-34.
- A quarter (24%) had bought from an online marketplace, whilst a sixth (16%) had purchased off an individual in person and 9% from a ticket broker.

Unable to attend

- A fifth (21%) of UK adults had bought a ticket to an event that they were later unable to attend.

- When thinking of the last time they were unable to attend a ticketed event, just over half (57%) offered their ticket to someone for free, though a quarter (25%) resold their ticket. However, 14% did nothing with their ticket.

Reselling tickets

- A sixth (16%) have resold tickets to another individual, most notably through an online marketplace (11%), followed by in person (9%) or to a ticket broker (2%).
- Those aged 25-34 are most likely to have resold tickets (35%)

Alternative ways to buy tickets

- A quarter (23%) have looked for alternative ways to buy tickets for sold out events, rising to 38% of those 25-34.
- Of those that did, half (52%) looked on an online marketplace or classified website, with the same proportion (52%) looking at a specific ticket resale marketplace. Other places to look for tickets include:
 - Social networks (47%)
 - Friends / family (42%)
 - Ticket brokers (34%)

Views on ticket ownership

- When asked which statement is closest to their view around ticket ownership, half (51%) selected "If I purchase a ticket, it is my personal property, and I have full control over what I can do with it", whilst 18% chose "If I purchase a ticket, the original ticket issuer / artist / team / venue controls the ticket and can limit what I can do with it".

Views on reselling tickets

- In cases where fans are no longer able to attend an event, nearly two thirds (62%) believe they should be able to resell their now unusable tickets to whoever they wish, whereas 56% think they should be able to resell them back to distributor for face value. 53% think they should be able to give away their tickets for free.
- When asked which was closest to their view on reselling tickets, two thirds (63%) chose the statement "I can choose how to resell my tickets (e.g., to a friend, to a broker, through an online market)". However, 17% more closely align with the statement "The original ticket seller or venue can determine how I resell my tickets".
- When shown statements around how the resale price should be determined, half (51%) chose that the ticket owner should be free to determine the resale price, whilst 21% feel this should be determined by the original ticket issuer and a further 8% by the government.
- Nearly two in ten (18%) believe you should need to ask permission from the original ticket seller in order to resell their tickets, however 64% do not think this is necessary.

Government legislation

- Almost nine in ten (87%) were not aware of the new government legislation requiring people to declare their exact row and seat number in order to sell their ticket, so this can be used to cancel the ticket by the organiser if they see fit.
- With this in mind, 53% would be less likely to buy and sell tickets online to avoid risk of their tickets being cancelled.
- Half (52%) of UK adults would support tougher legislative safeguards preventing event promoters from cancelling fans tickets that were bought and sold outside of pre-approved platforms. However, 16% would not.
- Four fifths (79%) were not aware that some sports teams have cancelled fans tickets and season ticket packages due to them reselling their tickets.
- Half think it is unfair for clubs to cancel fans tickets because it has been resold, though a third (32%) believe it is fair.

- Knowing that tickets have been cancelled, 46% would not feel comfortable providing their seat location when reselling, however 24% would.

VIP tickets

- Seven in ten (71%) believe that event organisers should declare what proportion of tickets are made available to the public for given events and what proportion are set aside for VIP guests and alternate sale.

These findings are consistent with qualitative consumer research commissioned by DCMS under the previous Labour government which found inter alia:

- *"...little or no spontaneous complaint about pricing levels or availability of tickets."*
- *"...the vast majority of this sample, typically, felt that the marketplace operated competitively and fairly."*
- *"Many believe there is no role for further regulation and are particularly cynical about Governmental intervention in this marketplace. Widely, people believe that the Government is, itself, 'on the make' in the sense that its only concern would be to raise revenue and/or 'hector' a beleaguered population in a 'nannyish' fashion."*
- *"...consumers are inclined to view tickets as acceptably transferable (at least not something you would get into trouble about), that (re) selling at a profit is also acceptable so long as it is done in a small-scale fashion and by 'individuals.'"*
- *"As most consider the right to transfer and/or sell on (small scale) as totally reasonable and a practice many either do, or would be happy to do, it is suggested that this should be more actively 'permitted'."*
- *"The ticket marketplace is not seen, as those in the industry construe it, as 'primary' or 'secondary' based on authorization/regulation by promoters, but rather, more simplistically as 'honest, real, official' versus 'dodgy, fake, invalid.' Touts, agents, other individuals or classifieds can be the source of either category of ticket, in consumer understanding and experience."*

ACCESS TO SPORTING AND CULTURAL EVENTS

Scale and Extent of the Secondary Ticket Market

It is often asserted that the internet or online marketplaces like StubHub have either created or exacerbated the 'problem' of touting.

The reality, however, is that the secondary market existed long before the internet. What the internet has done is make an existing market (a) more visible (b) more transparent and (c) more competitive. As a result, consumers are far more aware of the going rate in the secondary market; competition and supply has been increased; and this in turn has driven down prices throughout the secondary market, including on the street. Since StubHub arrived in the UK, the average re-sold ticket price on our site has come down by nearly 25%.

While secondary ticket marketplaces have been the focus of much attention in this debate, it is worth noting that there are an almost limitless number of alternative channels for people to buy and sell tickets. Individuals and businesses alike are able to sell tickets in classifieds (online and offline), individual websites, other online marketplaces, and are now able to drive traffic to such listings using paid search through, for example, Google Adwords or Adsense.

¹ The Secondary Market for Tickets, Qualitative Research Summary, Campbell Keegan Limited, 2007

We are not aware of any reliable published figures for the size of the secondary market. However, we calculate that for the following major sporting events the percentage of tickets sold on our platform was as follows:

- Rugby World Cup 2015 – 1.1%
- The Ashes 2015 – 1.2%
- Six Nations Rugby 2014 – 0.4%
- Ryder Cup 2014 – 0.04%
- The Open 2015 – 0.1%
- The Grand National 2015 – 1.1%
- The Derby 2015 – 0.04%
- Rugby League Challenge Cup Final 2015 – 0.4%

These figures suggest that the total size of the secondary ticket market is relatively small and that public access to sporting and cultural events is not being adversely affected by the secondary market. Indeed, given the potential benefits of the secondary market for consumers and event promoters alike, we believe these figures suggest there is scope to expand resale opportunities still further. While tickets are of course available on other ticket marketplaces, we would expect to see similar figures elsewhere.

Prices

Much of the debate surrounding ticket resale has focused on the issue of ticket prices with media attention frequently focusing on the most highly priced tickets available for sale on secondary ticket marketplaces.

However, firstly it should be noted that just because a ticket is listed for sale at a particular price on a ticket marketplace, that does not mean that the ticket will actually sell for that amount. Indeed, prices change constantly on the secondary market in response to supply and demand. For example, we witnessed a clear drop in prices for England v Uruguay Rugby World Cup tickets on our site after it was clear that England could no longer progress beyond the group stages.

Moreover, a large number of tickets may sell for well below face value. This is particularly the case in the US for Major League Baseball and National Football League tickets where a season ticket holder may often struggle to recoup face value for a ticket if their team is underperforming.

We would argue that what should determine the price of a ticket is what someone is prepared to pay for it. Moreover, as can be seen from the consumer research set out below, there is clear evidence of consumer support for such a proposition. For example, the Opinium research mentioned above found that 51% of consumers agreed with the statement that the ticket owner should be free to determine the resale price, whilst only 21% felt this should be determined by the original ticket issuer and only 8% believed it should be set by the government.

It is often asserted that unfair prices in the secondary market foreclose access to the genuine fan. But this begs two questions – firstly, what is a fair price to pay for a ticket? And secondly, what is a genuine fan?

For example, why is it any more 'fair' to pay £100 for a ticket in the primary market than it is to pay £50 in the secondary market for a £25 face value ticket? And more importantly, from a public policy perspective, we would strongly argue that what should determine the price of a ticket is what someone is prepared to pay for it. For example, we do not regulate the price at which people can resell their homes, despite the fact that land and affordable homes are scarce. Why are tickets fundamentally any different?

In relation to access, while we support the objectives of the Government and event organisers to promote fair access to sporting and cultural events, we are not sure that the concept of 'the genuine fan' is a helpful one. For example, it is misleading and unfair to suggest that those who pay above face value for a ticket are not somehow genuine fans. Indeed, the fact that they are prepared to pay a premium to see the event clearly suggests that they are particularly passionate about the artist or team.

It is also arbitrary and unfair to equate the method or a time that someone buys a ticket with being a 'genuine fan'. A real fan might not be able to get hold of tickets in the first place because they are either unaware of the tickets being put on sale or they are unsuccessful in applying for a ticket. Similarly, a fan might not be able to attend an event but then wish to buy a ticket when their schedule changes.

As is noted above, often the only place that genuine fans can get hold of tickets is through the secondary ticket market. This is because the primary market distribution models do not work properly for all fans in all circumstances, with tickets typically put on sale in a single block at times that are inconvenient to fans, via phone lines that are constantly engaged or websites which routinely crash.

This is frequently the case in the concert sector where tickets are sold in a single block and sell out in minutes. Promoters then use the publicity surrounding the sale of these tickets to sell tickets for the next tour date, in many cases using examples of high prices in the secondary market to demonstrate demand for the artist.

Such a model is clearly in the interests of promoters who understandably wish to limit costs associated with ticket distribution and marketing but it does not serve either the interests of consumers or the objectives of promoting access.

Again, we would argue that the only way to ensure fair access is to give fans a fair chance to get hold of tickets in the first place. We have therefore set out below some suggestions for reforming the primary market in the 'Non Legislative Measures' section below.

Links Between the Primary and the Secondary Markets

Another key development which is not properly understood by many commentators is the trend towards greater integration between primary and secondary markets – for example, with Ticketmaster's acquisition of secondary ticket marketplaces in the UK and US (such as Tickets Now, Get Me In and Seatwave) and their merger with Live Nation. In addition, we have increasingly seen the primary market using online ticket marketplaces as a distribution channel.

What is much less visible to consumers is the extent to which the primary market actively funnels tickets directly to the secondary market without these allocations ever being made available to the public. This is now common industry practice, with event organisers selling tickets directly to a network of authorised secondary ticket agents at well above face value and/or benefiting from a revenue share of the resale proceeds.

For example, in 2012 the Channel Four Dispatches programme found that major promoters allocated hundreds or even thousands of tickets to be sold through secondary market websites at well above the face value, and that tickets for concerts and tours by Coldplay, Rihanna, Westlife, Take That, and V Festival were found to have been allocated by the promoters in this way.

While such allocations are not illegal and may in some cases be used legitimately by event promoters as a means of managing commercial risk, we believe that they should be subject to far greater transparency than exists at present. Specifically, event organisers should be required to specify publicly what percentage of the overall ticket allocation has been put on general sale, set aside for corporate allocations and VIPs, or made available through fan clubs and debentures, or allocated to

secondary ticket agents. As can be seen from the Opinion Research, there is considerable public support for such a proposal with 71% believing that event organisers should declare what proportion of tickets are made available to the public for given events and what proportion are set aside for VIP guests and alternate sale. Transparency should be a two way street – it is just as important in the primary market as it is in the secondary market.

'Authorised Resale' Versus 'Open Resale'

More fundamentally, we believe the close links between the primary and secondary market uncovered by the Dispatches programme has shed new light on the true nature of the debate around the secondary ticket market, which has less to do with a desire on the part of event organisers to promote access to sporting and cultural events and more to do with an ambition to move towards a world of 'authorised resale' where event organisers are able to gain complete commercial control of the resale market and thereby capture profits while depriving consumers of the benefits of open resale.

Indeed, the political debate around resale represents part of a much broader struggle between two competing models of resale, namely restrictive or 'authorised' resale on the one hand, and 'open resale' on the other.

For example, over the past 5-10 years, the industry has seen legislative efforts by event organisers to restrict resale to authorised resellers mirrored by attempts on the commercial side to consolidate broker networks and enforce restrictive terms and conditions prohibiting resale and transfer (e.g. through cancellation of tickets and blacklisting of sellers); and new technological means of restricting resale through e-ticketing.

ONLINE TICKET FRAUD

As the Review will be aware, there has been a great deal of public commentary about the level of online ticket fraud. Firstly, as noted below, the seller fraud rate on StubHub is 0.1% and in 2014 we didn't see a single counterfeit ticket sold on our site.

There is also considerable doubt as to the accuracy of some of the figures which have been used by event organisers to justify restrictions. For example, many peers during the passage of the Consumer Rights Act repeatedly cited a 2013 National Fraud Authority report which estimated online ticket fraud at £1.5 billion in 2013. However, no detail is provided by the report's authors as to how they arrived at such a figure.

We seriously question the accuracy of this figure, not least because it would vastly outstrip the likely size of the secondary market as a whole. Moreover, there is an enormous disparity between this figure and those cited by other public authorities. For example, intelligence from law enforcement suggests that Action Fraud estimate the actual level of reported ticket fraud in the first 6 months of 2015 at £1.2 million.

These figures are of course provisional and as yet unpublished. However, they are clearly of a much lower order of magnitude. In addition, they are entirely at odds with StubHub's data which shows an *exceptionally low* level of seller fraud on our site (see below). We would therefore strongly recommend that the Review seeks evidence from Action Fraud and other authorities to establish the true level of reported ticket fraud.

We do not dispute that, even on this scale, online ticket fraud is a serious issue which needs to be addressed. However, we would question whether it makes sense to describe such fraud as occurring in the secondary market. For example, the two main types of fraud are (1) counterfeit tickets and (2) fraudsters selling tickets which are either non-existent or which they have no right to sell. There have

also been examples of websites purporting to be official when they are not, or claiming that tickets for events are sold out when they are not. We would question whether such cases represent examples of fraud in the primary market or the secondary market and indeed whether such a distinction is meaningful. Moreover, we would note that fraud exists in all markets for goods and services and that there is no shortage of laws designed to address such activity².

We would strongly support measures to improve cooperation between all parts of the industry and law enforcement to improve cooperation in tackling fraud. In addition, we would support a review of existing laws relating to fraud to determine whether these need to be strengthened. For example, a considerable number of tickets are purchased fraudulently on the primary market (e.g. with stolen credit cards) and are then discovered and cancelled without any attempt by the primary seller to notify the secondary industry, despite the fact that such information could be used to reduce buyer fraud elsewhere.

Where fraud exists in a market, we would argue the correct public policy response is to tackle this fraud, not to close the market. Indeed, further measures to restrict resale will do nothing to tackle fraud and will simply push the trade in tickets away from legitimate sites like StubHub and onto the streets or other parts of the Internet where there is no consumer protection.

Even where resale of certain tickets is the subject of criminal law (as is the case with football tickets), enforcement is necessarily weak, given that law enforcement inevitably has higher priorities. As a result, bad actors are further incentivised to engage in such behaviour since the restriction of supply on resale marketplaces only pushes prices higher in the black market.

Case Study: Football Tickets Legislation

The case of the UEFA Champions League Final in 2007 demonstrates how restrictions on resale, even when backed up by the criminal law, simply push consumers into the hands of black market street touts:

The final was between Liverpool and AC Milan. Each club was given 17,000 tickets – in other words, just 34,000 tickets out of the 64,000 total ticket allocation went to fans from the two clubs.

The unauthorised sale or resale of tickets is a criminal offence in England and Wales. eBay and other similar sites banned the sale of these tickets on their site. As a result, Liverpool fans found it hard to obtain legitimate tickets in the secondary market.

Liverpool fans still travelled to Athens in huge numbers in the hope that they could buy them on the streets from locals, with reports suggesting that as many as 20,000 fans travelled without tickets. Press reports suggested that locals were selling tickets for over £1,700 and black-market prices for match tickets reached more than €5,000 for a single ticket.

To feed this demand, fraudsters then created large numbers of fake tickets (with reports suggesting that as many as 5,000 were circulating on the black market). Fans were then paying large amounts of money for these tickets and obtaining entry to the ground. As a result, even fans with legitimate tickets were being denied entry to the ground because it was already full with fans who had entered with fake tickets.

² In addition to the many laws on fraud, for example, there is also specific legislation in the form of the Consumer Protection from Unfair Trading Regulations which is designed to prevent misleading commercial practices.

The end result was crowd trouble and genuine fans either paying over the odds for fake tickets, or being denied entry even if they had genuine tickets, and fans threatening legal action against UEFA after being turned away. For those fans who bought fake tickets and were denied entry, there was of course no consumer protection.

So even where the full force of criminal law was in place to try and prevent resale of tickets, it proved unenforceable; fans were literally forced on to the streets to buy tickets, and were left with no consumer protection when they bought fakes. This is also a powerful example of where regulation made matters worse, and the solution to the problem lay in the hands of event organisers who could have ensured that demand from Liverpool and AC Milan fans was better matched with supply through more generous ticket allocations.

Reference:

<http://www.telegraph.co.uk/sport/football/2313927/Security-fears-over-fake-tickets.html>

<http://www.telegraph.co.uk/sport/football/2313898/Champions-League-final-Liverpool-v-AC-Milan.html>

<http://www.telegraph.co.uk/sport/columnists/henrywinter/2314316/Liverpool-fan-to-sue-Uefa-over-Athens-chaos.html>

<http://www.dailymail.co.uk/sport/football/article-453980/Liverpool-fury-Champions-League-final-ticket-freeze.html>

It should also be noted that marketplaces like StubHub offer potential market based solutions to the problem of fraud in the market. For example, with only limited exceptions of specific sellers who have been carefully vetted, we require that sellers are not paid until after the event. This acts as a powerful disincentive for potential fraudsters to use our site.

As result, seller fraud is virtually non-existent on StubHub with a seller fraud rate at 0.1% and counterfeits are even more rare. In 2014, for example, we did not see a single case of a counterfeit ticket being sold successfully through our UK marketplace. This was thanks to our stringent security measures which include the use of advanced metrics to detect and prevent fraud in real time. Moreover, in the very rare cases where something goes wrong and we cannot find a replacement ticket of comparable value, fans are backed by our Fan Protect Guarantee which entitles them to a full refund.

It should also be noted that in order to provide payment intermediation services on our platform, StubHub Europe S.a.r.l. is licensed as a payment institution and provides payment services to our sellers which means that we identify and verify the identity of our sellers in accordance with applicable Anti-Money-Laundering regulations.

Cases of buyer fraud (e.g. fraudsters attempting to buy tickets on our site and resell them elsewhere using stolen credit card details) are generally detected immediately through our advanced range of fraud tools. On rare occasions when fraudulent buyers are successful in transactions, StubHub would still honour the payment to the seller.

PROBLEMS WITH THE CONSUMER RIGHTS ACT

As the Review will be aware, the ticketing provisions in the Consumer Rights Act were the result of a last minute compromise amendment agreed between the Government and various peers representing the interests of the sporting bodies and were not the subject of any formal consultation with the industry. As a result of this lack of consultation, we have seen a number of problems with the Consumer Rights Act which need to be addressed.

Cancellation and Blacklisting

The most fundamental problem with the Consumer Rights Act is that the safeguards against cancellation and blacklisting provided by the legislation are entirely inadequate. For example, the CRA expressly allows cancellation and blacklisting if there were terms and conditions attached to the original sale of the ticket which provided for this, and provided such terms are fair.

We find it astonishing that such profoundly anti-consumer terms should even be considered for inclusion in any event organiser's terms and conditions. We cannot think of a single example of where similar terms and conditions would be allowed for other goods. By way of analogy, imagine a DVD retailer telling a consumer that they could not resell a DVD that they no longer wanted, that they would not be allowed a refund (except where the DVD was faulty), and that if the consumer tried to resell the DVD (or tried to resell that DVD on a platform that was not authorised by the retailer), the retailer would destroy the DVD rendering it worthless, without in any way compensating the buyer. Such practices would not be allowed in respect of other items. So why should they be allowed in respect of event tickets?

There are certainly strong grounds for considering terms allowing for cancellation and blacklisting to be unfair. For example, the CMA have issued guidance on Unfair Contract Terms and how they apply to the Consumer Rights Act. Paragraph 5.33.4 of this guidance makes it clear that the CMA believes that terms which undermine a consumer's right to resell tickets risk being regarded as unfair. This states specifically:

"The resale (assignment) of tickets bought online is the subject of separate provisions of the Act. The re-selling of tickets remains permitted, but where it takes place online, certain information must be provided. The [Consumer Rights] Act expressly requires that a term which allows an event organiser, where a ticket is being resold or offered for resale, to cancel it or blacklist the seller must meet the requirements of Part 2 of the Act. In other words, it makes such terms subject to the usual tests of fairness and transparency. As indicated above, it is the CMA's view that a term which undermines a consumer's right to sell what they own is at risk of being regarded as unfair."³

Ultimately, though, the law remains unclear on this point. And as the CMA has stated elsewhere, only a court can decide whether such terms are fair or not under the Unfair Contract Terms Regulations and there is an absence of established case law in this area. We believe it is extremely unlikely that a consumer would possess the means to initiate legal action against an event organiser. Nor is it possible for marketplaces such as ours to challenge these terms directly since we are not party to the original contract between the event organiser and the purchaser of the ticket.

However, it is clear that the Unfair Contract Terms Regulations do not apply to B2B transactions. As a result, secondary ticket agents are not protected at all by the Consumer Rights Act from

³ "Unfair Contract Terms: Guidance on the unfair terms provisions in the Consumer Rights Act 2015", Competition and Markets Authority, 31 July 2015, CMA37

cancellation and blacklisting, despite the fact that they provide a valued service to consumers by enabling them to buy last minute tickets to sold out events.

Since the passage of the Act, we have seen an increasing number of tickets cancelled (e.g. for the Ashes and the Rugby World Cup) – in some cases without notification so that buyers are turned away at the gate. We have seen many more examples of threat letters from event organisers, demanding that they cease and desist from selling on StubHub or risk cancellation. And we have seen other event organisers such as the LTA threaten to cancel tickets for future events. We have attached various emails and threat letters at Annex A for reference, with the names of sellers redacted for data protection purposes.

These developments are all the more concerning given that Ministers made it abundantly clear not only that they did not wish to see such activity, but also that *they only agreed to the compromise amendment offered in the House of Lords on the basis that it would not occur*. For example, in accepting the last minute compromise amendment proposed by peers, Baroness Neville-Rolfe expressly stated:

“Some comments made during our discussions have understandably raised concerns that event organisers would use the information provided to cancel tickets which are put up for resale, or blacklist the seller, preventing them from buying tickets in the future. This is definitely not what should happen. Our reading of these provisions, and the basis on which we accept them, is that cancelling tickets and blacklisting sellers is not fair or the right way to treat consumers.” [Emphasis added]

In addition, it would appear that Ministers’ concerns reflect those of consumers. For example, the Opinion Research shows that while most consumers were generally unaware of this problem, half of those surveyed thought it was unfair for clubs to cancel fans’ tickets in this way.

We are concerned that the current trend towards cancellation and blacklisting, if left unchecked, will seriously undermine legitimate ticket marketplaces like our own and push consumers into the hands of street touts and fraudsters. It should also be noted that cancellation of tickets penalise unfairly those marketplaces that offer consumer protection guarantees. For example, when a ticket is cancelled after the ticket is sold on our marketplace, StubHub is obliged to compensate the buyer as per our Fan Guarantee. This serves to undermine the legitimate secondary market still further.

We cannot envisage any circumstances whereby terms and conditions allowing for cancellation and blacklisting could be regarded as fair, especially when consumers with spare tickets are in almost all cases denied any guaranteed right of refund if they can no longer attend the event⁴ and when the same terms and conditions typically provide for cancellation without compensation. Moreover, we are not aware of a single example of where similar terms and conditions would be allowed when it comes to the sale of other items.

The following examples of terms and conditions from different event organisers are instructive as they show that terms allowing for cancellation of resold tickets without compensation are now standard practice:

“Tickets may only be purchased from ER 2015 (via the Official Ticketing Agent) or from the Authorised Agents or through the Official Ticket Resale Scheme or through any other sale or transfer mechanism authorised in writing by RWCL. TICKETS PURCHASED OR OBTAINED FROM ANY OTHER SOURCE SHALL BE VOID AND MAY BE SEIZED OR CANCELLED WITHOUT REFUND OR COMPENSATION.” (Rugby World Cup)⁵

⁴ Typically, refunds are reserved only for those instances where an event is cancelled entirely.

⁵ <https://tickets.rugbyworldcup.com/staticpages/termsandconditions.aspx>

"Tickets you purchase are for personal use. Except as we may agree, you and your party must not re-sell or transfer (or seek to re-sell or transfer) the tickets in breach of the applicable terms. A breach of this condition will entitle SEE or the Promoter to cancel the tickets without prior notification, refund, compensation or liability." (See Tickets)⁶

"Tickets purchased are strictly non-transferable and are for the sole use of the purchaser. Tickets may not, under any circumstances, be auctioned, offered for sale or re-sold in any manner except via our Ticket Exchange, accessible via our website and shall not be purchased or obtained from or through any person, commercial agent, company or by any method other than directly by the applicant from Kennington Oval Limited (KOL), the England and Wales Cricket Board (ECB), or its authorised agent. KOL/ECB reserves the right to refuse to sell to individuals or agencies suspected of intending to re-sell their tickets...Any ticket obtained in breach of these Conditions ('invalid tickets') shall be void and all rights conferred or evidenced by such ticket shall be nullified. This may include the purchaser or holder of the ticket being refused admission or a cancellation of the booking without notification."

It should also be noted that the threat of cancellation and blacklisting is also seriously undermining the Government's objective of providing greater transparency to consumers. For example, our consumer research shows that consumers are less likely to provide row and seat number given the threat of cancellation and blacklisting. Knowing that tickets had been cancelled, 46% of consumers in the Opinionium research said that they would not feel comfortable providing their seat location when reselling.

Legislation should be designed to incentivise good behaviour but the lack of adequate legislative safeguards against cancellation and blacklisting does precisely the opposite. Tougher, clearer legislative safeguards are therefore required to protect resellers' right to resell tickets freely. These should provide that terms providing for cancellation and blacklisting are not allowed under any circumstances – whether for B2C sales or B2B sales.

The Opinionium research found strong consumer support for such measures with 52% of UK adults supporting tougher legislative safeguards to prevent event promoters from cancelling fans' tickets that were bought and sold outside of pre-approved platforms with only 16% opposing.

C2C Sales

Secondly, whereas all other major consumer protection legislation has placed information obligations on traders, the ticketing provisions of the Consumer Rights Act place these on both consumers and businesses. This represents a worrying shift towards regulating C2C activity which has wider consequences for other areas of e-commerce including the sharing economy.

Moreover, we believe it is wrong to criminalise consumers for failing to provide information, especially when there is clear evidence that, in the vast majority of cases, consumers are completely unaware of their responsibilities under the regulation.

For example, as noted above, the Opinionium research shows that almost 9 out of 10 (87%) consumers were not aware of the new government legislation requiring people to declare row and seat number and that this could be used to cancel the ticket by the organiser if they see fit.

Responsibility of Secondary Ticket Marketplaces

⁶ <http://www.seetickets.com/content/terms-and-conditions>

⁷ <http://www.kiaoval.com/tickets/terms-conditions/>

Thirdly, the Consumer Rights Act places the responsibility for providing key ticket information (such as face value, row and seat number and relevant restrictions e.g. age, restricted views etc) on both the seller and the marketplace, despite the fact that the latter do not have access to such information and have no means of verifying it.

It should be noted that, while the provisions of the CRA clearly apply to our UK based sellers, we do not believe that StubHub Europe S.a.r.l. as a Luxembourg company is covered by the specific requirements for operators in the Consumer Rights Act. Unless there is provision suggesting the contrary, UK legislation is presumed not to have effect beyond the jurisdiction. Indeed, section 99(4) of the CRA appears to confirm that the legislation is not intended to have extra-jurisdictional effect. However, it is worth considering whether the law should apply even to UK operators of secondary ticketing facilities.

Whilst it is a condition of using our site that any seller listing a ticket for sale on our website must at all times comply with applicable laws and regulations, and while we clearly prompt our users to provide the information required under Section 90(2) of the CRA and more, we do not believe it is reasonable or practical to expect online marketplaces to monitor their site to ensure that this information is provided.

For example, StubHub does not sell any of the tickets listed on our Website and we have no ownership of any tickets. We therefore rely on our sellers to provide complete and accurate information pertaining to their tickets in order to comply with their legal obligations.

Similarly, we are not in a position to know whether the required information is available to each and every seller selling a ticket on our website, nor whether any information that is provided is accurate and complete. Moreover, requiring marketplaces to verify information provided by their sellers clearly runs contrary to Article 15 of the EU E-Commerce Directive which prohibits Member States from imposing general monitoring obligations on information society service providers.

For these reasons, we believe it is wrong to require marketplaces to provide information which they do not have and to expose them to financial and legal liability for failure to do so. We believe the law should place the obligation for complying with the law squarely on the seller. However, we are committed to exploring constructively with the Government and law enforcement bodies what more marketplaces can do to encourage sellers to comply fully with their obligations.

Compliance Issues

Some commentators have pointed to a lack of compliance by sellers in providing row and seat number when listing on secondary ticket marketplaces. However, this ignores the fact that there are many instances when a consumer simply may not be able to provide row and seat numbers.

- Firstly, it may not be applicable – for example, in cases where the ticket provides only for general admission, or access to a festival.
- Secondly, the buyer may have purchased the ticket without even knowing their row and seat number. For example, consumers buying Rugby World Cup tickets were only able to purchase a price category of ticket and were only informed of their row and seat number much closer to the event. Despite this, a seller is rightly allowed under law to resell their ticket before they know where they will be seated. *Moreover, the Rugby World Cup case raises a fundamental question as to why it should be considered essential for the row and seat number to be provided when tickets are resold in the secondary market but not when they are first sold in the primary market, especially when other sporting events may follow the example of the Rugby World Cup.*

- Thirdly, and most importantly, it is common practice in the industry (especially in the music sector) for the primary market to provide large allocations of tickets directly to secondary ticket agents without necessarily informing them as to where these tickets will be located in a venue. As such, a secondary ticket agent may well have a right to resell these tickets but still be unable to specify the row and seat number.

In each of these cases, the law allows for non-provision of row and seat number on the grounds that the information is either not applicable or that the seller was reliant on the information being provided by another person as per Section 93(5)(a)(ii) of the Consumer Rights Act.

Moreover, as our consumer research clearly shows, consumers are entirely unaware of their legal responsibilities in this area, and may well be fearful of cancellation and blacklisting. This further underlines the need to amend the law to completely outlaw cancellation and blacklisting in all circumstances. Consumers should not have to worry that transparency and compliance with the law will lead to them being unfairly penalised by event organisers.

OTHER POTENTIAL LEGISLATIVE OPTIONS

Price Caps

We believe it would be a retrograde step for the Government to go down the path of regulating prices in a competitive market. The law does not regulate the price at which people can resell their car or their house. We see no compelling reason as to why tickets should be treated any differently.

While we understand the Government's desire to promote access to sporting and cultural events, we believe that these objectives can only be achieved by reforming the primary market to make it easier for fans to get hold of tickets in the first place. Trying to control the circulation of tickets once they have been made publicly available is practically impossible.

We would also question why prices should be regulated in the secondary market but not in the primary market. For example, price regulation pre-supposes that there is such a thing as an acceptable price to pay for an event ticket. But what is this level? For example, why is it any more fair to pay £100 for a ticket in the primary market than it is to pay £50 in the secondary market for a £25 face value ticket.

More fundamentally, the entire concept of face value is increasingly meaningless in a world where the primary market is moving towards dynamic or demand-based pricing and where consumers routinely pay well above face value in the primary market because of various associated fees. In addition, the concept of face value does not make any sense when reselling individual matches which have been purchased at a discount as part of a season ticket. It therefore makes little sense to base price caps on such an arbitrary and uncertain concept.

It is entirely inconsistent to cap the resale price of one concert ticket at face value in the secondary market, but leave event organisers free to charge hundreds of pounds for tickets in the primary market. As noted above, as revenue from record sales decreases, we are seeing a clear trend whereby artists are beginning to charge more and more for concerts to replace this lost revenue for artists, yet no one would seriously suggest that prices in the primary market should be regulated.

Unintended Consequences

In addition to being wrong in principle, price caps are also unworkable in practice and have unintended consequences. For example, we have seen attempts to set price caps in markets such as Belgium at no more than 10% above the original price of the ticket. However, this does not allow consumers to recoup the full costs associated with either the original purchase of the ticket – which can include not just booking fees, but also credit card fees, shipping fees, and also parking charges and now even ticket insurance (in case of cancellation of the event) – or the resale of the ticket – which can include the costs of onward shipping to the new buyer and any fees associated with using an online ticket marketplace.

More importantly, price caps have the effect of pushing the trade in tickets underground into the black market – onto the streets or other parts of the internet which are not regulated and not subject to consumer protection. As the academic evidence below demonstrates, this ultimately leads to higher prices.

This is because regulation does nothing to alter the market clearing price of a ticket i.e. the price that someone is prepared to pay for it. This is ultimately determined by supply and demand, neither of which can be altered by regulation. Supply, for example, is determined by decisions taken by artists and event organisers – for example, the size of the venue, the number of tour dates or games, the number of tickets put on sale by the venue etc. Demand is merely a function of the popularity or otherwise of the artist or team.

In addition, by pushing the resale of tickets underground, resale restrictions serve to reduce competition and concentrate supply in the hands of a small number of determined sellers who are then able to charge higher prices as a result, whilst at the same time reducing price transparency and the use of safe online marketplaces with consumer protections like the Fan Protect Guarantee.

Academic Evidence Against Price Caps

Experience from the US is instructive in this regard, with various academic studies finding that anti-scalping laws (preventing sales above face value) have actually led to increased prices in the secondary market:

"By focusing on penalties for those who engage in prohibited transactions, anti-ticket scalping regulations seem to lead to higher prices in the resale market. In states with resale regulations, competition in the resale market is reduced and is pushed towards out-of-state buyers whose costs of ticket acquisition are likely to be higher and are passed on to consumers in the resale market. The end result of this reduction in supply is higher ticket prices in the secondary market."⁸

A study from the University of Texas found that anti-scalping laws increased prices in the primary market as well:

"Empirical analysis suggests that in cities with anti-scalping laws average per-game season ticket prices are approximately \$2 greater in baseball and \$10 greater in football. Anti-scalping laws actually increase team revenues, as the laws have no adverse effect on attendance. Thus event promoters might have sufficient pecuniary incentive to tacitly or explicitly support anti-scalping legislation."⁹

⁸ "Do Anti-Ticket Scalping Laws Make a Difference Online? Evidence from Internet Sales of NFL Tickets", Dan Elfenbein, September 2004, University of California, Berkeley

⁹ "Another Look at Anti-Scalping Laws: Theory and Evidence", University of Texas, June 2006.

Other academic studies have also heavily called into question the wisdom of anti-ticket scalping laws in the US¹⁰. Copies of these are attached.

¹⁰ "The Folly of Anti-Scalping Laws", Stephen K Happel and Marianne M Jennings, Arizona State University, 1996; "The Economics of Ticket Scalping", James Atkinson, University of Notre Dame, May 2004

Ticket Verification

Some commentators have suggested that a way of reducing online ticket fraud would be to require that the booking reference number is provided in addition to the row and seat number.

Such a requirement would do nothing to reduce fraud since booking reference numbers could be easily copied or made up without them being easily verified. Moreover, even where a booking reference number could be verified, it would only serve to prove that a ticket with that booking reference number existed. It would not tell a consumer whether or not the seller of the ticket actually had the right to sell that ticket.

In cases where tickets with the same booking reference number appeared on multiple websites, it would therefore not be possible for a consumer to tell which ticket was the real one (or indeed whether both were genuine given that sellers frequently sell across multiple channels).

There are also good reasons to believe that providing booking reference numbers would increase fraud, not reduce it. This is because such information could easily be used by fraudsters either to have a ticket sent to a different address or for ID theft through social engineering.

The real reason for event organisers lobbying for such a requirement is that it would provide yet more information in addition to row and seat number which could be used to cancel tickets and blacklist sellers.

We note that, for many of the reasons set out above, the Government rejected this proposal outright during the passage of the Consumer Rights Act and we would urge the Review to do the same.

'Crown Jewels' List

A number of sporting bodies have suggested that existing laws in relation to football tickets (as well as those relating to the London 2012 Olympics and the 2014 Commonwealth Games) should be extended to other categories of event. Indeed, the previous Labour government examined the case for a list of designated major sporting events which could benefit from specific restrictions, based upon the so-called list of 'crown jewel' sporting events contained in the UK Broadcasting Act.

We would note, however, that the existing football tickets legislation was introduced to deal with problems of hooliganism by maintaining strict fan segregation. In the case of the Olympics and the Commonwealth Games, the Government was required by the IOC and Commonwealth Games Federation to introduce such legislation as a condition for hosting these events. Neither justification can plausibly be offered in respect of other sporting or cultural events.

It should also be noted that both the Culture, Media and Sport Committee inquiry into ticket touting in 2007 and the last Labour Government's review into this matter explicitly rejected such an approach as it would lead to greater confusion amongst consumers.

Football Tickets

In addition to rejecting calls for further regulation of resale for sporting events, we would urge the Review to consider whether the justification for existing restrictions in relation to football tickets remain valid. Due to other legislative and enforcement measures, the extent of soccer violence has been dramatically curtailed and there is considerable evidence that fans tend to self-segregate anyway, with any violence now being confined to the areas outside the ground rather than in the stadium. In addition, it is now common practice for clubs themselves to sell tens of thousands of tickets online with no practical way of verifying that the purchaser of the ticket is a home fan or an away fan.

Opening up the resale of football tickets would make it more likely that fans could afford to purchase season tickets since they would be able to defray the overall cost by selling tickets for games which they could not attend. There is considerable evidence from the US in relation to NFL and MLB season tickets to suggest that such a move would be welcomed by supporters.

We would therefore urge the Review to consult with supporters groups such as the Football Supporters Federation as a first step towards a wider Home Office review of the legislation surrounding football tickets.

Botnets

We would endorse concerns within the industry about the use of botnets to bombard ticketing websites and make multiple applications for tickets, thereby foreclosing access for ordinary fans.

Currently, the Computer Misuse Act makes it an offence to use a computer programme to engage in illegal activity. However, this does not outlaw the use of computer programmes to buy tickets since the act of buying a ticket is perfectly legal. We have already seen a number of US states pass legislation outlawing the use of "bot software" for obtaining tickets and would therefore recommend that the Review examines the case for further UK legislation in this area, perhaps through a Home Office review.

Speculative Selling

Concern has been expressed by some consumer groups and others about speculative ticket selling. Although such practices are not illegal, StubHub policies expressly prohibit speculative selling – i.e. listing for sale tickets which have not been made available to the public through direct sales, fan clubs, debentures or any other means. It is important that such activity is distinguished from the perfectly legitimate practice of fans reselling tickets which are not in their physical possession but which they have purchased, and that of secondary ticket agents selling tickets which may have been allocated to them by an event organiser.

Where we are made aware of speculative selling on our site, we are committed to taking swift and appropriate action. However, ultimately we are reliant upon reports from event organisers since we cannot possibly know as a marketplace when tickets for events are made available and under what terms. For example, certain sellers may have received an allocation or know that they will receive tickets by different means e.g. hospitality or fan clubs. Finally, it should be noted that, in those instances where tickets are speculatively listed, customers are ultimately protected by the StubHub Fan *Protect* Guarantee.

While we would support tougher measures to tackle fraudulent selling, we would question whether legislation banning speculative selling would be appropriate given that there are plenty of examples of well-functioning 'futures markets' in other spheres. However, we would certainly welcome further cooperation between the primary and secondary markets to address this issue.

ALTERNATIVES TO REGULATION

Technological Measures

In recent years, we have seen the growth of new technological measures to restrict resale and transfer of tickets. These include the use of photo IDs, the increased use of personalised tickets, and the growth of paperless or e-ticketing.

Photo IDs

Photo IDs have been used to restrict the resale of tickets for the Glastonbury Festival and have succeeded in all but eliminating resale. However, our understanding is that most other event organisers consider the broader use of photo IDs to be impractical and therefore not capable of replication for other events. Moreover, we would caution against their further use as they serve to restrict not just resale but also transfer of tickets.

Personalised Tickets

We would similarly caution against the greater use of personalised tickets unless some means can be provided to enable consumers to easily change the names associated with tickets and thereby allow open resale and transfer of tickets. One model exists with StubHub's partnership with the O2 which allows for integration between our marketplace and the venue, which provides for new tickets to be reissued seamlessly in the name of the new buyer. We believe that consumers would benefit if such a model were rolled out across the industry.

'Paperless' Tickets/E-Ticketing

The past few years have seen the growth of 'paperless' or e-ticketing whereby a buyer's tickets (and those of their guests) are stored electronically on their credit card, ID card or mobile device. While paperless ticketing is currently more widespread in the US, it is becoming increasingly common in Europe with artists such as Robbie Williams, Radiohead, Coldplay, Kate Bush and U2 starting to use it, and we expect it will grow over time. This raises a number of important policy issues.

It should be stressed that StubHub is not opposed to digital ticketing as a technology, but we do have serious concerns that e-ticketing could be used to restrict resale and transfer, resulting in 'closed loop' ticketing systems whereby consumers can only resell tickets through the same operator that sold them the ticket in the first place. Such a development would be deeply anti-competitive and unfair to consumers and inevitably lead to higher prices.

In line with the current debate at EU level on platform regulation, we believe that policymakers should look to develop model framework conditions for ensuring open, fair and non-discriminatory access to resale platforms – for example, by allowing other resale platforms to access event promoters' platforms via a secure API to effect transfer from the original buyer of the ticket to its new owner. Given that such a model is possible in the airline industry, we see no reason why it could not be applied in the ticketing sector.

We would therefore urge the CMA and others to conduct a study into the policy and competition issues surrounding paperless ticketing, including the feasibility of allowing open access conditions to ticketing platforms, not least because it would serve as a useful test case for some of the policy issues associated with the resale of other digital goods.

Reforming the Primary Market Distribution Mechanism

As noted above, we strongly believe that the best way of securing the Government's aim of maximizing public access to sporting and cultural events is not to broaden existing regulation, but instead to explore market-based solutions that make it easier for real fans to get hold of tickets in the primary market.

For example, tickets are often sold in bulk at times which are inconvenient to ordinary fans. This decreases their likelihood of being able to get hold of a ticket in the primary market. Alternatively, tickets could be made available in successive tranches. Event organisers could do more to release

tickets at times which are more convenient to ordinary fans e.g. at lunchtime, or in the evenings or at weekends.

We believe event organizers should do more to examine the balance of corporate allocations for major events, thereby increasing the number of tickets available in both the primary and the secondary markets. Primary market distributors frequently block off tens of thousands of tickets for major sporting events for corporate sponsors, hospitality packages and VIPs. These do far more than the secondary market to restrict supply. Even where these are used to subsidise lower ticket prices for everyone else, this need not impact on revenues if event promoters simply charged more for fewer corporate tickets.

The primary market could also be encouraged to offer better refunds. It is standard industry practice not to offer guaranteed refunds. This makes it more likely that fans with unwanted tickets will look to sell on the secondary market.

In addition, the primary market could increase access through better matching of demand with supply. For concerts, it is to some extent in the hands of artists and promoters which venues they choose to play, how many dates they choose to perform etc. Yet increasingly, there is a trend in the music industry for major artists to play smaller, more intimate venues, thereby restricting supply. If artists instead chose to play extra tour dates, or play bigger venues, this would help to reduce prices.

Other areas which could be explored include tougher controls on the number of tickets to be made available to each customer. Limits on the number of tickets which can be bought at the original point of sale are increasingly common. However, not all ticket distributors operate these controls, and they are of varying degrees of technical sophistication. And there is justifiable concern at the use of botnets to buy up tickets in bulk, thereby foreclosing access for ordinary fans.

In addition to tougher legislation on botnets, we would advocate the greater use of technological solutions. For example, Ticketmaster use sophisticated CAPTCHA technology and back end controls to tackle botnets but not all websites have the same degree of security. We believe that more could be done to spread this best practice throughout the industry.

CONCLUSION

In conclusion, we welcome the opportunity to contribute to the Government's review into the consumer protection measures applying to ticket resale.

Amidst the many issues raised as part of our response, we believe the central issue facing policymakers is not whether the secondary ticket market should exist. This market existed long before the Internet and the growth of ticket resale marketplaces, and will continue to exist whether there is further regulation or not.

The real question in this debate is what sort of secondary ticket market we want.

We can choose a model of authorized resale which allows event organisers to completely control the ticket resale market and to profit from allocating tickets without any transparency whatsoever to secondary ticket agents whom they control, where the primary allocation mechanism remains broken, and where prices are higher as a result.

Or we can choose a model where fans are able to get fair access to tickets through a reformed primary market and a secondary market which is open, transparent, competitive and subject to consumer protection.

It is our firm view that the latter of these two models is the only way to deliver a sustainable ticket market that works for consumers and we therefore commend it to the Review.

Annex A

Seller Communication from Rugby World Cup Organisers

Dear [NAME DELETED FOR PRIVACY REASONS]

By way of introduction, we are the organising committee of the Rugby World Cup 2015 and the exclusive distributor of tickets for the tournament.

We are monitoring StubHub and other similar websites and it has been drawn to our attention that you are offering a number of your Rugby World Cup 2015 tickets for sale on StubHub.

The use of Rugby World Cup 2015 tickets is governed by our ticket terms and conditions, which are set out on our ticketing website at <https://tickets.rugbyworldcup.com>. When you purchased your Rugby World Cup 2015 tickets from us you were required to accept these terms and conditions as a condition of your purchase. These terms and conditions place restrictions on the resale of Rugby World Cup 2015 tickets. Tickets are strictly non-transferable (unless resold via our official 'Resale Service') and may be cancelled at our discretion if sold or transferred in contravention of the ticket terms and conditions, and holders of cancelled tickets will be denied entry to the ground.

If you no longer want to use all of the tickets that you have purchased you can post them for resale using our official Resale Service. The Resale Service is intended to provide Rugby fans with a safe, transparent and authorised means to resell unwanted Rugby World Cup 2015 tickets at face value to other Rugby fans.

We must therefore ask that you cease offering your Rugby World Cup 2015 tickets for sale otherwise than using our official Resale Service. We should be grateful if you would write to us by no later than 12th September 2015 to confirm that you will do so. We reserve our right to cancel your tickets should you fail to comply with the terms of this letter.

If you have not listed your tickets for sale on StubHub please contact us a matter of urgency so that we can alert the police to this fraudulent activity.

We look forward to hearing from you.

Yours faithfully,

Ticketing Team
England Rugby 2015 Limited

Seller communication to non SCCC Members - Outright cancellation and refund

From: "Ticket Office" <tickets@surreycricket.com>

To: "Ticket Office" <tickets@surreycricket.com>

Subject: Ticket touting as the KIA Oval

Hello,

You are receiving this email as tickets you have purchased for the 5th Investec Ashes Test starting next week on the 20th of August have been found on a 3rd Party touting website (StubHub). You may not be aware but re-selling our tickets for at inflated price breaks our terms and condition and voids the tickets you have purchased (details of our T's & C's can be found at <http://www.kiaoval.com/tickets/terms-conditions/>.)

As a result of this breach we will be cancelling the tickets you have purchased back to the original card used minus any booking fee's you may have paid. We will not be black listing your account on this occasion however we will be monitoring it closely for the foreseeable future.

All the best and please email tickets@surreycricket.com if you have any queries,

All the best,

SCCC

Seller Communication to SCCC Members - Warning

From: Ticket Office <tickets@surreycricket.com>
Date: 11 August 2015 13:06:38 BST
To: Ticket Office <tickets@surreycricket.com>
Subject: Members with Touted Tickets-Ashes 2015

Hello,

You are receiving this email as we tickets that have been associated to your account have been found listed on a 3rd party touting website (StubHub). As you hold a membership with us we are happy to use discretion at this stage and remind you of our terms and conditions which can be found at <http://www.kiaoval.com/tickets/terms-conditions/>

We would kindly ask that you take these tickets of sale immediately-unfortunately recent touting guidelines now put forward by the ECB dictate that we now monitor your account for the foreseeable future to prevent further similar activity,

If your listings have been removed by the end of the week then the tickets will remain valid (this won't affect your membership either),

All the best and please email tickets@surreycricket.com if you have any queries,