

Secondary ticketing

Recommendations to government for
improving consumer protection

August 2021

© Crown copyright 2021

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk.

Contents

	<i>Page</i>
Summary	4
1. Overview of the secondary ticket sector	12
2. Compliance concerns in the secondary tickets sector and action taken to address them.....	24
3. Addressing ongoing problems in the secondary tickets sector	33
4. Who should address ongoing issues in the secondary tickets sector?	50

Summary

1. The CMA and Trading Standards have dedicated significant enforcement resource to tackling non-compliance in the UK uncapped secondary tickets market (where tickets are resold at any price that the seller chooses) for almost a decade, and there have been marked improvements in compliance as a result. The CMA's enforcement has resulted in viagogo and StubHub, the two major platforms in the uncapped market, gathering key information about tickets from ticket resellers and displaying it to consumers. National Trading Standards (NTS) has secured convictions for fraudulent trading in a criminal case against two professional resellers.
2. Despite this significant enforcement action by the CMA and Trading Standards and the Coronavirus (COVID-19) pandemic resulting in nearly all live events being cancelled or postponed for a period of over a year, the sector still generates considerable concern from the public, Parliamentarians and campaigners. It also continues to generate national and local media attention.
3. The CMA has used its existing powers to the fullest in the sector and is concerned that, without reforms to the way that the uncapped secondary tickets market is regulated, problems in the sector are likely to grow as restrictions on attending live events are lifted.
4. In this paper the CMA sets out its concerns about compliance with the law in the uncapped secondary tickets sector and makes recommendations to government on how its regulation could be improved and we look forward to the government's response. The paper is structured as follows
 - a) Chapter 1 provides an overview of the secondary ticketing sector, describing how it has evolved, providing key information about the current structure of the uncapped secondary ticket market and describing how the current law applies to it;
 - b) Chapter 2 describes the key compliance concerns that have emerged in the uncapped sector and how the law applies to them. It then goes on to consider whether and how the law has been enforced to address them;
 - c) Chapter 3 identifies significant problems in the uncapped secondary ticket sector that are likely to endure without further action, and proposes regulatory reforms to address them; and

- d) Chapter 4 considers whether changes to the institutional approach to regulating the sector will be necessary to bring about sustained compliance.

Market structure

5. In the UK, most tickets for live events can be purchased through a variety of channels on the primary market (e.g. from the 'box office'), as well as from ticket resellers, including via secondary ticketing websites such as viagogo.co.uk and stubhub.co.uk.
6. The Coronavirus (COVID-19) pandemic has had a significant adverse impact on the events industry, with most live events in the UK cancelled or postponed from March 2020 up until recently. This has resulted in very few tickets being sold on the uncapped secondary ticketing market during that period. The outlook for UK live events now appears to be more positive, given the emergence of effective vaccines for COVID-19. It is hoped that the live events sector will return to its previous size in due course – so our analysis is largely based on data from 2019, prior to the pandemic.
7. There are two main secondary platforms in the uncapped UK secondary ticket market – viagogo and StubHub. In 2019, a CMA merger investigation into the acquisition of StubHub by viagogo ('the CMA's merger investigation') found between 90% and 100% of tickets by value were sold to UK consumers through these platforms. Their closest rival Gigsberg had a share of supply of less than 5% during the same period.¹ These platforms are 'two-sided'. They enable buyers and sellers to trade tickets for music, sports, theatre and other live events.
8. Professional resellers buy tickets from the primary ticket market with a view to selling them for a profit on the secondary market. The CMA's merger investigation also found the majority of tickets that are traded through uncapped secondary ticket platforms are sold by such resellers. The CMA's merger investigation also found that the 200 largest resellers account for around 50% of the ticket sales (by value) being sold on secondary ticketing platforms.
9. Based on data provided from all the main secondary platform providers in the UK, the CMA's merger investigation estimated the value of the tickets sold in 2019 through secondary ticketing platforms was about £350 million.

¹ [Analysis from the CMA's merger investigation.](#)

Government policy and regulation

10. In general, the UK Government has allowed resellers to buy tickets from the primary market at face value and to sell them at a profit. Notable exceptions to this include certain specialised sporting events (such as the Olympic Games, Commonwealth Games and professional and international football matches) where legislation limits the resale of tickets to authorised parties.
11. There is a complex web of general and specific legal and regulatory provisions that govern the resale of tickets for live events (and in some cases the purchase of primary tickets).
12. No enforcer has lead responsibility or specific ongoing funding for tackling consumer protection issues in this sector. Further, of those enforcers with relevant powers, none has all the relevant expertise and powers to tackle all the compliance issues in the sector.

Enforcement action in the sector to date

13. The CMA has run two major multi-party enforcement cases against uncapped secondary ticket platforms, the first from 2012 to 2015 and a second from 2016 to 2020. Both aimed to address platforms' failures to comply with consumer protection law.
14. The CMA's most recent action generated many important improvements to secondary ticketing platforms' practices, including:
 - a) consumers being informed of resale restrictions that apply to events, which could have left them being turned away at the door;
 - b) misleading pressure selling messages being removed from these platforms;
 - c) the prevention of tickets being sold for events that have not yet gone on general sale;
 - d) people being told whether they are buying from a business seller; and
 - e) £400,000 in compensation being paid to viagogo customers who were denied a refund when their ticket was not valid for entry to an event.

15. Separately, NTS² has also dedicated significant resource to enforcement in the sector, funding enforcement cases against professional ticket resellers for procuring tickets illegally and selling tickets in breach of the law. Criminal convictions have been secured against two of these resellers, with a further trial scheduled to take place in 2022.

Remaining issues in the sector

16. However, despite significant enforcement action by the CMA and Trading Standards, two key issues are likely to endure without further action:
- a) We are concerned that some approaches used by professional resellers to buy up tickets may be illegal – involving committing fraud and/or breaching legislation introduced to prevent the bulk purchase of tickets using computer bots (often referred to as ‘bots’). Such illegal activity will reduce the number of tickets available at face value on the primary market – and increase the number of tickets advertised through secondary ticket platforms at significantly higher prices. The CMA often receives complaints about these practices but does not have the powers to tackle them. Trading Standards and the Police do – but we are not aware that either plan to prioritise further action to investigate these issues.
 - b) We are concerned that professional resellers may be i) speculatively advertising tickets that they do not own and ii) advertising tickets with inaccurate information about the ticket or the seller’s identity, which sellers are required to provide, by law, when listing tickets for sale. The CMA’s recent enforcement cases required viagogo and StubHub to put in place certain safeguards to ensure key information was gathered and displayed to consumers and that where such information was being displayed inaccurately this could be addressed.³ However, even if platforms comply in full with these obligations, speculative listings and inaccurate information may still appear if the resellers do not provide correct information to the platforms about themselves and/or the tickets they are listing. In many cases only the seller will know

² NTS provides leadership, resources and infrastructure to deal with serious regional and national consumer protection issues. This includes funding national teams hosted within local authorities to tackle specific issues. Enforcement action is taken by those authorities rather than NTS itself.

³ These platforms must, for example, confirm that tickets are actually available for sale on the primary market, require resellers to disclose specific information about their ticket and, if they are a professional seller, require their name and postal address before they can list tickets. They were also required to put in place processes that allowed event organisers to notify them if they reasonably suspect incorrect information is included in ticket listings.

whether these details are correct, and the platforms are not required to fact check every detail provided by a seller at the outset.⁴

17. These issues generate significant concern amongst Parliamentarians, campaigners and the media.
 - a) The All-Party Parliamentary Group (APPG) on Ticket Abuse, which has met regularly since 2016, and is co-chaired by Sharon Hodgson MP and Lord Moynihan, regularly questions the CMA and others about problems occurring in the uncapped secondary ticketing sector.
 - b) Despite the sector being in hibernation during the period, campaigners wrote 24 times to the CMA between 1 March 2020 and 1 July 2021 to raise concerns about the functioning of the sector and call for further CMA enforcement.
 - c) These issues are also regularly the focus of national and local media interest. For example, *The Guardian* has published 7 articles since March 2020 alleging illegal activity on secondary ticket platforms. Most recently an article in the Guardian on 23 March 2021, alleged that tickets worth over £1 million were being speculatively advertised on viagogo.co.uk⁵ and featured Parliamentarians and campaigners calling for the CMA to carry out a further investigation in the sector.
18. As new events begin to go on sale and the secondary ticket resale market restarts, we anticipate growth in:
 - a) the media attention on the remaining problems in the secondary tickets sector; and
 - b) calls for further enforcement in the sector.

How to amend existing legislation to address ongoing issues in the secondary tickets sector

⁴ Platforms do not tend to take possession of the physical or electronic tickets before they are sold (or at all). However, if the secondary ticket platforms are notified that information about a ticket or seller is missing or incorrect then the platforms must take appropriate remedial action in response. The CMA reviews intelligence it receives which complainants consider indicates that the platforms have breached the measures that the CMA secured through its enforcement. Upon further examination we tend to find that where incorrect information about the details of the tickets or sellers' identities has been disclosed, it has been the result of professional resellers failing to provide this accurately

⁵ [Viagogo accused of listing non-existent tickets on behalf of seller linked to firm | Viagogo | The Guardian](#)

19. The issues set out at paragraph 16 cannot be tackled efficiently under the existing law. **The CMA recommends two key changes to legislation aimed at addressing them:**
- a) **Prohibit platforms from allowing sellers to list more tickets for an event than the seller is able to legally procure from the primary market.** Given the potential rewards of using bots and other fraudulent techniques to obtain tickets and resell them at a profit, the illegal procurement of tickets by professional resellers cannot be addressed under existing law without a long term programme of enforcement by those enforcers with the requisite powers (the Police and Trading Standards). We are not aware that either plan to prioritise action to investigate these issues. We therefore propose that the law should be changed to make it more difficult to sell tickets that have been obtained illegally. Practically, the operation of this new law would involve secondary ticket platforms checking these limits⁶ – and preventing any seller from listing a number of tickets greater than this.
 - b) **Make platforms strictly liable for incorrect information about tickets listed on their websites.** Sellers have a strong incentive to provide false information about the key details of tickets they sell and their own identities to avoid the risk of their tickets being identified and cancelled by event organisers and / or to avoid being identified if they are selling tickets speculatively. Given the number of active resellers in the sector (the CMA’s merger investigation found that both viagogo and Stubhub had between 40,000 and 75,000 active resellers),⁷ addressing this issue under the existing law would require an expensive, year on year rolling programme of enforcement against a significant number of resellers. The most efficacious way to address the issue would therefore be to make platforms strictly liable for ensuring that information about tickets listed on their sites and the identities of sellers is accurate, by removing any possible legal defences linked to the fact that the product/information is supplied by a third party.
20. We have also considered whether a ban on the uncapped secondary ticket market would resolve the issues identified. In summary, we believe that such a ban would not significantly diminish the incentives to buy up tickets for popular events and resell them at a profit and that it would be very difficult to

⁶ Event organisers and others involved in primary ticket sales are able to lawfully restrict ticket sales by providing clear and consistent messaging regarding the number of tickets a person can legally buy from the primary market. Terms and conditions used by the primary market need to comply with Part 2 of the CRA (Unfair Terms) and the provisions of Chapter 5 of the CRA in respect of cancellation and blacklisting.

⁷ [Analysis from the CMA's merger investigation.](#)

enforce. For it to be successful, it would likely require a significant ongoing resource commitment to, for example, i) take down or block access to overseas secondary ticket websites that UK consumers may seek to buy from, ii) take down tickets being offered for sale through social media websites and iii) tackle other alternative ticket resale methods, such as street selling.

Achieving enduring compliance in the secondary ticketing sector

21. If the CMA's proposed reforms were to be introduced and successfully enforced, they would:
 - a. make it very difficult for professional sellers to sell tickets procured unlawfully, thereby reducing their incentives to do so;
 - b. make it much harder for professional sellers to sell through secondary ticketing platforms in breach of the law; and
 - c. potentially make it easier for event organisers whose terms prohibit or restrict resale to identify and cancel tickets.
22. These measures could therefore cause significant disruption in the market. They may lead to the proportion of tickets for UK events being bought and resold by professional resellers falling – with some major resellers choosing to exit the UK market. Other resellers might seek to evade the measures by, for example:
 - a) providing fraudulent evidence to the platforms – by forging ticket information or creating multiple identities;
 - b) selling tickets through social media sites rather than secondary ticket platforms. Given that these social media sites are not covered by the CMA's measures in the same way as viagogo and StubHub it is highly likely that many of these sales would breach consumer protection law; or
 - c) attempting to sell tickets directly to consumers themselves by setting up their own websites.
23. In order to achieve compliance with our proposed measures and consumer law provisions more generally, vigorous enforcement and monitoring would therefore be required.
24. For this to be achievable, there will need to be institutional reform to the way that the market is regulated. **We recommend that a new regulatory function, with lead responsibility for regulating the uncapped secondary**

tickets sector, should be set up within an existing regulator such as Trading Standards, the CMA or other regulatory body. This function should:

- a) have the responsibility for overseeing:
 - i. secondary ticketing platforms and any other platforms where tickets can be sold for profit to UK consumers online; and
 - ii. businesses who resell tickets through them;
- b) licence all online platforms that target UK consumers with secondary tickets to ensure that those platforms hold and can be compelled to provide key information about themselves and professional resellers that list tickets through them (particularly important given some of the potential difficulties in collecting evidence from market participants that choose to base themselves outside the jurisdiction);
- c) be given the power to introduce licencing for professional resellers of tickets if at some future point it deems this to be necessary to ensure compliance in the sector;
- d) be allocated sufficient funding to enable it to run between 5 and 25 enforcement cases per year depending on their size and complexity;
- e) be funded by the secondary ticketing sector itself either directly or indirectly. There are a number of models for how these funds could be raised such as a levy on licence-holding platforms or all purchases through secondary ticketing websites; and
- f) be given all the powers necessary to address compliance issues in the sector. This should include the powers to enforce the most relevant legislation and to impose strong sanctions – such as the ability to i) take down websites, ii) withdraw a business’s right to operate in the UK market and iii) levy large fines on non-compliant businesses.⁸

⁸ For the avoidance of doubt, these sanctions would apply equally to overseas websites that are targeting UK consumers.

1. Overview of the uncapped secondary ticket sector

1.1 This section sets out:

- (a) a description of the origins of the uncapped secondary ticket sector and how it has evolved;
- (b) key information about the current UK sector;
- (c) the Government's approach to policy in the sector; and
- (d) the relevant laws that apply to the sector and who is responsible for enforcing these laws.

What is secondary ticketing?

1.2 Tickets to live events (live music, sports and theatre events) are first made available in the 'primary market'. Depending on the event, primary tickets are sold by official distributors, the venue itself, an event organiser or an organising body (such as a sports organisation). Tickets sold in the primary market are sold at face value – i.e. the amount printed on the ticket (albeit a booking fee is often charged as well).

1.3 Many primary market tickets, once bought, can then be resold via certain platforms that enable this. This process of reselling tickets is known as secondary ticketing. The main channels that are used to resell tickets are:

- (a) uncapped secondary ticketing platforms – online platforms that allow ticket holders (resellers) to resell tickets to buyers at any price that they choose;
- (b) capped secondary ticketing platforms – online platforms that set a limit on what the reseller can charge for the ticket. These can be fan-to-fan sites (on which any reseller can list a ticket within the cap applied by the platform), or a capped resale exchange within a primary platform (on which a reseller who initially bought the ticket on the primary platform can resell the ticket via a platform operated by the same primary ticket seller);
- (c) non-specialist channels and social media – such as Gumtree and Facebook; and
- (d) offline channels – such as box office return outlets and ticket touts who resell tickets typically outside venues.

- 1.4 The main uncapped secondary ticketing platform operators in the UK are viagogo, StubHub and Gigsberg.⁹
- 1.5 The uncapped secondary ticketing platforms are ‘two-sided’ online platforms that enable buyers and resellers to trade tickets for music, sports, theatre and other live events. The platforms are made up of a set of technical functionalities, marketplace policies and back office support. They do not at any point take ownership of the ticket inventory and only facilitate the buying and reselling of tickets. viagogo and StubHub both offer contractual guarantees in relation to purchases through their platform, and in certain circumstances will refund buyers if there is a problem with a ticket they have purchased.
- 1.6 Tickets available through the uncapped secondary platforms, such as viagogo and StubHub, can be offered at any price, and may attract add-on costs such as commission fees or postage.
- 1.7 In general, secondary tickets provide a similar right to enter an event to primary tickets, although the tickets bought and sold may be constrained by terms or conditions relating to resale. These terms can deem a ticket to be invalid or cancelled in the event of resale or prevent a person from entering an event if they are not the original purchaser, or are not been accompanied by that person.
- 1.8 Tickets are listed for sale on uncapped secondary ticketing platform by resellers. These resellers typically choose from a catalogue of pre-populated events on the uncapped secondary ticketing platform and enter their ticket details, including the location of the seat. Resellers set their ‘take home fee’ or the amount they will be paid after charges.
- 1.9 There are four main types of resellers that use uncapped secondary ticketing platforms:
 - (a) Fan resellers – individuals with a small number of tickets to sell, often for events for which they are no longer able to attend;
 - (b) Professional resellers – resellers who buy tickets, often in bulk, from the primary ticket market with a view to selling them for a profit on the uncapped secondary market;
 - (c) Authorised ticket resellers – similar to professional resellers, this group are agents who have a direct relationship with primary ticket sellers or

⁹ Ticketmaster, via the platforms GetMein! and Seatwave, operated uncapped secondary ticketing platforms until 2018 when it ceased operating them.

event organisers who are used by them to widen distribution and are, in some circumstances, given a bulk allocation by event organisers to resell; and

- (d) Event organisers – the organisers of events who may also use secondary ticket markets to widen distribution for their tickets, and / or to price discriminate by selling tickets at a higher or lower price than face value according to demand for that event.

- 1.10 Secondary ticketing platforms active in the UK usually charge fees based on completed transactions to one or both of the reseller and the buyer. Transaction fees tend to be based on a percentage of the resale price paid.
- 1.11 Secondary ticketing platforms will usually not pay the seller until the event has taken place and the buyer has been able to attend, thereby discouraging the sale of fake tickets on the platform. There may be some exceptions to this, with some top sellers, who provide strategically important supply or sell significant volumes of tickets, getting paid upfront.
- 1.12 Prospective buyers using the uncapped secondary ticketing platforms can see a range of tickets for a particular event, with details of specific tickets such as the location in the venue. Once buyers have selected and paid for a ticket, the platform will arrange for the fulfilment or delivery of their ticket (depending on whether it is a physical or electronic ticket).

Evolution of the secondary ticket sector

- 1.13 Ticket resale for music, theatre and sporting events is not a new phenomenon. For decades, up until ticket sales moved online, this happened outside venues in the hours leading up to an event.
- 1.14 Over the last 10-20 years the resale market has been transformed:
 - (a) Internet ticket sales for major events have made it easier for professional resellers to bulk-buy tickets for popular shows from the minute they go on sale; and
 - (b) Uncapped secondary ticket platforms like viagogo and StubHub have provided an efficient mechanism for re-selling tickets at a profit.
- 1.15 More recently there has been a growth in the number of capped platforms, where prices are capped at, or slightly above, the face value or the original cost of the ticket (with an allowance made to cover the seller's original booking, and/or other, fees). This has resulted, in part, from concerns raised by the public and the primary market about tickets being bought in bulk and

then being resold at significant mark ups on the uncapped platforms. Some artists or event organisers permit the resale of tickets through capped platforms – so tickets for their events that are resold in this way will remain valid.

- 1.16 Some of the largest of these capped platforms are operated by the primary ticketing platforms and only facilitate the resale of tickets that have been purchased from the same primary site. These include Ticketmaster Ticket Exchange, AXS Resale, Eventim UK FanSALE, See Tickets Fan-to-fan and Gigantic. Two additional platforms with material sales volumes – Twickets and Ticketswap – offer a similar service, but without the restriction on where the ticket was originally purchased.
- 1.17 The capped nature of these platforms means that they are not often likely to be used by professional resellers.

Key information about the current UK market

- 1.18 In 2019 around 1.9 million tickets were sold across online secondary platforms.¹⁰ Based on data provided from all the main secondary ticketing platforms in the UK, the value of secondary tickets sold in 2019 through online ticketing platforms (ie excluding direct sales from venues and other channels not involving online ticketing platforms) was about £350 million.¹¹
- 1.19 viagogo and StubHub’s combined share of the uncapped secondary ticketing market in 2019 was between 90% and 100%. Gigsberg entered the market in April 2019, and despite growth over the course of 2019, it had a share of supply of below 5% of the market.
- 1.20 Up until 2018, there were two other major platforms in the uncapped market, GetMeIn! and Seatwave. Both websites ceased to operate in September 2018.¹²
- 1.21 In February 2021, a CMA merger investigation found that the completed acquisition by viagogo of StubHub gave rise to competition concerns in the supply of uncapped secondary ticketing platform services for the resale of tickets to UK events. This was in part because viagogo and StubHub competed closely against each other in the UK’s secondary ticketing market

¹⁰ [CMA analysis of the secondary and primary ticketing platforms’ ticket sales data.](#)

¹¹ [CMA analysis of the secondary ticketing platforms’ ticket sales data.](#)

¹² These platforms were both acquired by Ticketmaster: GetMeIn! in 2009 and Seatwave in 2014. In September 2018, Ticketmaster decided to exit the market and ceased to operate both websites.

and had no other significant competitors. As a result, viagogo was required to sell off the StubHub's business outside of North America.¹³

- 1.22 The professional resale sector appears to be significantly less concentrated:
- (a) The CMA's merger investigation found that the 200 largest resellers account for around 50% of the ticket sales (by value) being sold on secondary ticketing platforms;
 - (b) In 2019 both viagogo and StubHub had between 40,000 and 75,000 active resellers each; and
 - (c) There also appear to be low barriers to entry and expansion, with those who can access sufficient funds able to purchase tickets and relist them for profit on uncapped secondary ticketing sites.
- 1.23 The Coronavirus (COVID-19) pandemic has had a significant adverse impact on revenue generation in the ticketing industry, with most live events in the UK having been cancelled or postponed from 1 March 2020 up until 1 July 2021. This has caused an unprecedented decrease in demand for tickets in both the primary and secondary ticketing markets, with fewer tickets being resold during the period.
- 1.24 The outlook for the live events sector has improved recently. Given the emergence of effective vaccines for COVID-19, it is hoped that the live events sector in the UK will return to pre-pandemic levels in due course.

Government policy and relevant legislation

- 1.25 The Government's approach to secondary ticketing has evolved iteratively over time as the online sector has matured and new issues arose.
- 1.26 In general, the Government has allowed online ticket resale – including allowing resellers to buy tickets from the primary market at face value and to sell them at a profit. Notable exceptions to this include certain specialised sporting events (such as the Olympic Games, Commonwealth Games and certain football tickets) where legislation prevents the resale of tickets.
- 1.27 Tickets available on the primary market tend to be less expensive and also ensure entry to an event – as they are backed by the full faith and assurance of the rights holder and venue.

¹³ See <https://www.gov.uk/cma-cases/viagogo-stubhub-merger-inquiry>

- 1.28 Consumers can nevertheless benefit from the existence of a well-functioning uncapped secondary ticket market in various ways:
- (a) It can offer a safe and straightforward option for consumers who have bought tickets, often a long way in advance of the event, to get some money back if they cannot use them. The uncapped secondary sector often has a significant number of buyers and sellers participating for a single event, and these 'network effects' may increase the likelihood that a consumer can successfully resell their ticket.
 - (b) It provides an opportunity to attend events for people unaware of, or unable to participate in, the original primary ticket sale. Tickets for many events sell out very quickly and not everyone will be aware of when a major event has gone on sale. Depending on the popularity of the event a consumer using the secondary ticket market may have to pay a premium over those who bought tickets from the primary source, but this is a value judgment for them to make. Further, on some occasions tickets for events that have not sold out may also be available at below face value on secondary ticket platforms, as professional sellers look to sell all remaining inventory at a lower price before the event occurs, giving people who might not otherwise have been able to afford the event, the chance to buy; and
 - (c) Tickets bought on secondary ticketing platforms generally come with greater protections for the consumer than those bought through other sources, such as via social media. The platforms tend to offer guarantees to replace tickets which do not arrive and make refunds if a ticket is not valid for entry.

Laws that apply to the sector

- 1.29 The resale of tickets for live events (and in some cases the purchase of primary tickets) is regulated by various general and specific legal and regulatory provisions in the UK (and elsewhere). Below we outline the key legal and regulatory provisions and highlight the recent relevant enforcement activity in the sector.

The Consumer Rights Act 2015 (the CRA)

- 1.30 Where tickets are resold online via a secondary ticketing facility, the CRA requires certain information to be provided. Its key provisions include:
- (a) A duty on resellers and secondary ticketing facilities to provide certain information, where applicable, about tickets to buyers, including:

- i. The face value of the ticket;
- ii. Information to enable the buyer to identify the location within the venue of the ticket, for example the particular seat or standing area at the venue;
- iii. Information about any restriction limiting the use of the ticket to persons of a particular description (for example wheelchair users or people within a certain age range); and
- iv. Where applicable, information about certain connections the seller has with either the online facility on which they are selling, or the organiser of the event for which the ticket is being sold.¹⁴

(b) A requirement that secondary ticketing facilities must report any criminal activity (such as fraud or theft) that they are aware of in relation to the re-sale of tickets on its platform to the police and the event organiser.¹⁵

1.31 These provisions are primarily enforced by Local Authority Trading Standards Services in Great Britain and by the Department for Enterprise, Trade and Investment in Northern Ireland, who have fining powers in respect of breaches. The CMA does not currently have fining powers, a matter which is the subject of a public consultation.

Other consumer law

1.32 The CRA contains specific provisions in relation to secondary ticketing. However, the sale and resale of tickets to live events is also subject to general consumer law, some relevant provisions of which are summarised below.

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)

1.33 The CPRs prohibit traders from engaging in unfair commercial practices in their dealings with consumers. They cover commercial practices which are unfair because they are misleading (whether by action or omission) or aggressive and cause, or are likely to cause, the average consumer to take a transactional decision they would not otherwise have taken. They also prohibit practices which fall below the standards of professional diligence and materially distort, or are likely materially to distort, the economic behaviour of

¹⁴ Event organisers cannot cancel tickets offered for resale or ban resellers from operating merely because the ticket is re-sold or offered for re-sale unless this was a term of the contract under which the original buyer purchased the ticket and that term was not unfair.

¹⁵ To date, we are not aware of any such reports from the platforms. This may, in part, be due to the high threshold required – under the law the requirement to report criminal activity is triggered where platforms know that criminal activity is occurring, not where they only have a suspicion of it.

the average consumer. Certain specified practices are banned in all circumstances. The CPRs are relevant in relation to the provision of information about tickets and events to consumers when tickets are offered for sale or resale, such as price and other important characteristics and information, and apply to the commercial practices of traders offering tickets for resale and online platforms that provide a resale facility.

The Consumer Contracts (Cancellation, Information and Additional Charges) Regulations 2013 (the CCRs)

- 1.34 The CCRs apply to transactions between traders and consumers and require that certain information is provided when goods, services or digital content are sold. The required information includes the main characteristics of those goods, services or digital content; the identity, address and contact details of the trader, the total price of goods, services or digital content including taxes, delivery charges; and any other costs. Although the information that traders are required to give to consumers under the CCRs is assessed by reference to general categories, it will include the specific information that all resellers (both individuals and businesses) must provide to all buyers under the secondary ticketing provisions of the CRA. The CCRs also set out how and when pre-contractual information should be given to consumers.

The Electronic Commerce (EC Directive) Regulations 2002 (the ECRs)

- 1.35 The ECRs impose information requirements on those providing an 'information society service'. This includes operating an online marketplace and engaging in online sales. Secondary ticketing facilities will be an information society service provider and must provide certain information about themselves and their users. When selling tickets through a secondary ticket platform a business seller will also be providing an information society service and will also be subject to the requirements of the ECRs including the requirement to provide information about itself.

Code of Advertising

- 1.36 The advertising industry operates an independent self-regulatory system, with the Advertising Standards Authority (ASA) responsible for enforcing the UK Code of Advertising produced by the Committee of Advertising Practice (the CAP Code). The 12th Edition includes online marketing communications and came into force in March 2011. It applies to tickets bought for events including stage productions, films, concerts, museums and sports fixtures. It prohibits misleading advertising and sets out how prices for tickets should be advertised. In particular it sets out how the face values of tickets should be

advertised including how mandatory, non-mandatory and one-off charges should be communicated to consumers.

Tickets for certain sporting events

- 1.37 There is bespoke legislation that applies to certain sporting events. The sale of tickets for a limited number of sports events such as the 2012 London Olympic Games and Paralympic Games and the 2022 Commonwealth Games are restricted under specific legislation, which makes it unlawful for anyone other than an authorised person to sell or re-sell tickets to those events. The resale of tickets for designated football matches by an unauthorised person is an offence under section 166 of the Criminal Justice and Public Order Act 1994, which applies to England and Wales. Where a secondary ticketing platform is not authorised by the organisers of the designated football match, it too may be committing an offence if tickets for a designated football match are advertised for sale on its platform.

Fraud

- 1.38 The Fraud Act 2006 sets out a general offence of fraud that can be committed by (i) false information; (ii) failing to disclose information; or (iii) abuse of position where there has been dishonesty and an intent to make a gain or cause a loss. In addition, the Companies Act 2006 sets out an offence of fraudulent trading. In Scotland, the Fraud Act 2006 does not apply, and fraud matters are generally dealt with as common law offences. These offences may cover, for example, the sale of fake or counterfeit tickets or obtaining tickets by deception.

The Digital Economy Act 2017 and the Breaching of Limits on Ticket Sales Regulations 2018

- 1.39 Under the Breaching of Limits on Ticket Sales Regulations 2018, made pursuant to the Digital Economy Act 2017, the use of automated software to buy more tickets for events than are allowed with a view to financial gain is an offence, and a breach of the legislation can result in an unlimited fine.

Responsibility for enforcement in the sector

- 1.40 No one individual entity has lead responsibility for enforcement in the secondary tickets sector.
- 1.41 The current regime for enforcement of consumer protection legislation relies to a great extent on the resources and priorities of local Trading Standards Services. Trading Standards is the primary enforcer of the CRA secondary ticketing provisions (and holds fining powers in respect of those provisions),

as well as other relevant consumer laws. Trading Standards delivers its objectives and priorities through a number of mechanisms, including collaboration with other enforcement bodies directly and through the Consumer Protection Partnership through NTS and Trading Standards Scotland.

- 1.42 NTS itself cannot deal with individual complaints from consumers. Citizens Advice, which is funded by BEIS to deal with consumer queries and complaints, can make referrals to local Trading Standards Services which, in turn, can refer a complaint to NTS in accordance with certain agreed protocols.
- 1.43 In some cases, Trading Standards Services can issue a penalty notice, in effect imposing a fine directly on a business without the need for court proceedings. Such notices are available under a range of legislation, including laws relating to secondary ticketing.
- 1.44 The CMA has powers to enforce breaches of the CPRs, the unfair terms provisions and the secondary ticketing provisions of the CRA,¹⁶ as well as the CCRs and ECRs. The CMA principally enforces consumer protection law through civil proceedings brought under Part 8 of the Enterprise Act 2002. This requires the CMA to take traders to court, seeking an order that they cease any breach of consumer protection law and that the court make any appropriate accompanying directions (including enhanced consumer measures). The CMA can accept undertakings from traders that agree to change their behaviour (without an admission of liability) in lieu of a court order.
- 1.45 The CMA cannot itself decide that a trader has breached consumer protection law and order it to stop. There are also no fines or individual sanctions for civil breaches of consumer protection law. Even when the CMA wins in court, no civil fines are available. Nor are there any sanctions targeted at individuals, unless that individual breaches a court order (the route to address such a breach is through contempt of court proceedings).
- 1.46 None of the CMA, Trading Standards Services, NTS or Trading Standards Scotland has specific powers to investigate and enforce the Breaching of Limits on Ticket Sales Regulations 2018, the sanction for a breach of which is an unlimited fine. The Police may investigate suspected breaches of the Breaching of Limits on Ticket Sales Regulations 2018, and the Police primarily deal with issues relating to fraud under the Fraud Act 2006 and Theft

¹⁶ The CMA can only indirectly enforce the ticketing provisions of the CRA. For instance, even when an enforcement order is pursued, it is not possible for the CMA to issue fines under the CRA.

Act 1968 in England and Wales and Northern Ireland, and Police Scotland typically investigate fraud committed in Scotland. The Police also have the power to enforce legislation in relation to unlawful sales of football tickets (for example, in England and Wales under the Criminal Justice and Public Order Act 1994) and in respect of unlawful ticket sales for specific events such as the Olympics (as they did for the 2012 London Games) and upcoming Commonwealth Games to be hosted in Birmingham (planned for 2022).

- 1.47 The current system for pursuing fraudulent activity requires referral by the National Fraud Intelligence Bureau (NFIB) to the relevant local police force in the locality of the accused or perpetrator. Reports of fraud are initially received by Action Fraud, which is the UK's national reporting centre for fraud and cybercrime.¹⁷ The centre is run by the City of London Police working alongside the NFIB, who are responsible for assessing the reports received by Action Fraud and ensuring they reach the right enforcer. In Scotland, reports of fraud are initially made to Police Scotland. As referred to in Chapter 2, Trading Standards Services departments may also pursue fraud and fraudulent trading offences.
- 1.48 Where a crime has been committed, it may be possible for a relevant enforcer¹⁸ to pursue recovery of proceeds of crime under the Proceeds of Crime Act 2002.

Proposed reforms to CMA's competition and consumer powers

- 1.49 The Government is currently considering how the enforcement of consumer law by individuals and regulators might be strengthened. On 20 July, the Government published 'Reforming Competition and Consumer Policy',¹⁹ which includes proposals to allow the CMA to:
- (a) decide for itself where consumer protection law has been breached;
 - (b) issue fines of up to 10% of global turnover for traders that breach consumer law; and
 - (c) sanction traders that seek to frustrate, delay, or otherwise not comply with the enforcement process including flouting information gathering powers and breaching undertakings.

¹⁷ Action Fraud is the reporting centre for fraud and cybercrime in England, Wales and Northern Ireland. There is no equivalent to Action Fraud in Scotland.

¹⁸ The CMA cannot investigate under the Proceeds of Crime Act 2002.

¹⁹ The full set of proposals can be read at: [Reforming Competition and Consumer Policy \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

1.50 If following its consultation, the Government decides to introduce legislation to implement these proposals, these new powers have the potential to increase the efficiency and effectiveness of the CMA's enforcement and increase compliance with the law across the economy. We consider their impact on the CMA's ability to tackle the enduring compliance issues in the sector at paragraph 3.58.

2. Compliance concerns in the uncapped secondary tickets sector and action taken to address them

2.1 This section provides an overview of the compliance concerns that have emerged in the secondary ticket sector and any action taken to address them.

2.2 It sets out:

- (a) the problems that have occurred;
- (b) how the law applies to these issues; and
- (c) whether / how the law has been enforced to address those issues.

Key compliance issues

2.3 The problems in the uncapped secondary ticket sector fall into the following categories:

- (a) Bulk-purchasing of tickets in large numbers from the primary market for resale at a profit;
- (b) Tickets being advertised for sale without all of the relevant information being provided to consumers;
- (c) The use of misleading pressure selling messages by the main secondary ticketing platforms;
- (d) The failure of secondary ticketing sites to provide refunds to consumers that are entitled to them; and
- (e) Scams

Bulk purchase of secondary tickets

2.4 The primary market often puts in place limits on the number of tickets that can be bought for popular events. For example, there are often limits of 2, 4 or 6 tickets per purchaser. Some professional resellers may use fake identities and multiple credit cards to breach these limits. They may also use automated software or bots to do so.

2.5 The bulk-buying of tickets with the aim of selling them at a profit reduces the number of tickets available on the primary market to fans at face value. This is likely to lead to many fans paying more for their tickets for popular events than they otherwise would.

- 2.6 By way of illustration, the CMA’s merger investigation found that “most tickets sold through viagogo and StubHub in 2019 had a mark-up over their face value of more than 50%.²⁰”
- 2.7 Reselling tickets at a profit is not illegal. However, as set out below, the law has been broken whilst doing so.
- 2.8 Depending on the circumstances, sellers using fake identities and multiple credit cards to obtain tickets may have committed offences in respect of fraud, including under the Fraud Act 2006,²¹ and offences under the Companies Act 2006 and the Breaching of Limits on Ticket Sales Regulations 2018.²²
- 2.9 The City of York Council’s prosecution of resellers – including Peter Hunter and David Smith (‘Hunter and Smith’) in March 2020 – demonstrated that a number of the activities that business resellers may be carrying out in order to buy more tickets than permitted by the primary market may constitute fraud.
- 2.10 The Breaching of Limits on Ticket Sales Regulations 2018 were introduced after this case began. Suspected breaches of this legislation are primarily a matter which the Police has powers to investigate and enforce. While this legislation has not been enforced to date, it is possible the activities described above contravene this new legislation.

Tickets advertised for sale without all of the relevant information being provided to consumers

- 2.11 As set out a paragraph 1.30 above certain information is required to be displayed by a secondary ticket platform to consumers. This information includes:
- (a) who the seller is;
 - (b) any connections the seller may have with the platform or event organisers;
 - (c) whether there are any restrictions on the use of resold tickets which could result in the person being denied access to the event; and
 - (d) where a seat is located in the venue, including, as relevant, seat details, standing area or unique ticket number.

²⁰ [Analysis from the CMA’s merger investigation.](#)

²¹ In Scotland, fraud is mainly dealt with as a common law offence, with a number of statutory offences.

²² The use of computer bots to evade purchase limits in respect of ticket sales was made illegal from 5th July 2018 by Regulation 3 of the Breaching of Limits on Ticket Sales Regulations 2018

- 2.12 Both ticket resellers and platforms have the responsibility to ensure that this information is displayed accurately to consumers. Resellers clearly have the responsibility to provide information accurately on who they are, whether they have any connections that need disclosing and the location of the ticket they are selling. As secondary ticketing platforms do not generally buy and sell tickets themselves they are reliant on resellers providing the correct information. Secondary ticketing platforms, nevertheless, have an important role to play in ensuring that accurate information is gathered and provided to consumers.
- 2.13 The CMA (and its predecessor body the Office of Fair Trading) carried out its first investigation into the sector between July 2012 and March 2015 under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Under the CPRs, businesses must give consumers all the information they need to make informed transactional decisions. In their undertakings, GETMEIN!, Seatwave, StubHub and viagogo agreed to improve the information provided to consumers about tickets advertised on their sites, including:
- restrictions on entry and view that may apply to the ticket;
 - whether or not multiple seats that are listed together are located together;
 - whether there are any additional charges not included in the listed ticket price;
 - the face value of the ticket; and
 - a contact email address for buyers to use if something goes wrong.
- 2.14 After the investigation had begun the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) came into force. As discussed above, under the CCRs businesses must give consumers certain specified information before they enter into certain types of contract, including contracts entered into online.
- 2.15 The Consumer Rights Act 2015 (CRA) came into force on 26 May 2015, after the CMA had concluded its first investigation in the sector and obtained undertakings from the four secondary ticket platforms. The CRA introduced specific information requirements in relation to the sale of secondary tickets. In particular, they require sellers (whether businesses or consumers) and secondary ticket platforms to provide certain specified information about tickets (for example face value, seat location and any usage restrictions) to potential buyers. Both the seller and the platform are jointly responsible for

providing this information under the CRA, although in certain circumstances fines cannot be imposed if a person has been supplied with incorrect information by a third party and they had taken reasonable precautions. The CRA also imposes a duty on secondary ticket platforms to report criminal activity connected with the sale of tickets through their platform, which they are aware of, to the Police and event organisers.

- 2.16 In June 2016, the CMA launched a review of the compliance of the 4 main secondary ticketing platform websites – GETMEIN!, Seatwave, StubHub and viagogo. This examined the platforms' compliance with the undertakings obtained from them in 2015 as well as their compliance with the recently introduced CRA. The review revealed concerns about information provision and compliance with consumer protection law across the sector as a whole, which prompted the CMA to launch its second and more recent enforcement investigation in December 2016.
- 2.17 In April 2018, the CMA obtained formal commitments from StubHub, GETMEIN! and Seatwave to ensure that better information would be given about tickets being resold through their platforms to consumers.²³ Key elements of these commitments included:
- (a) requiring restrictions on resale to be clearly and prominently displayed on the platforms' websites, including age restrictions and whether the consumer will need to be accompanied by someone (an adult, the seller or any person determined by the seller) to enter the venue;
 - (b) providing information on what is covered by the platforms' guarantee and how the consumer can make a claim;
 - (c) the seller confirming seating and related information, including which seat in the venue the consumer will get and whether it is standing or seated; and
 - (d) making it clear who the seller is, including their identity, postal address and whether they are connected to the event they are listing tickets for.
- 2.18 On 27 November 2018, following enforcement action, the CMA secured a court order against viagogo, which required it to overhaul its business practices. This followed legal proceedings launched by the CMA in August 2018, which related to concerns that viagogo was breaking consumer

²³ Seatwave and GETMEIN! are owned by Ticketmaster. Although Ticketmaster has now closed the Seatwave and GETMEIN! platforms, it has committed that all its secondary ticket sales going forward, including those through its primary ticketing site, will comply with the undertakings it agreed with the CMA.

protection law. The High Court agreed to make a legally binding order instructing viagogo to comply with the law by:

- (a) requiring sellers to confirm whether or not they are a business, and if so requiring them to provide their details, including whether they have a connection²⁴ to the event or viagogo's platform and, if so, how they are connected;
- (b) before letting people list tickets on their website, looking at the primary ticket seller's website for information about any event-wide restrictions on use which apply to an event (including resale restrictions) and ensuring that the details of any restrictions they find are disclosed to consumers before they buy tickets;
- (c) making it mandatory for sellers to disclose any applicable information about restrictions on use, seat number and face value (as well as any other important information). For example, asking resellers to confirm whether tickets are seated, and if so preventing them from listing the tickets unless they enter the seat number (or can demonstrate that a seat number has not been issued);
- (d) ensuring that sellers must confirm, prior to listing a ticket for sale on the viagogo's website, that they have purchased, or have a right to purchase it; and
- (e) requiring viagogo to take appropriate action if notified by an event organiser or enforcer that there are problems with the information displayed on its site (eg information is missing, incorrect or incomplete).

2.19 As discussed in the sections below the court order also instructed viagogo to:

- (a) not give misleading information about the availability and popularity of tickets - which had the potential to lead to customers being rushed into making a buying decision or making the wrong choice; and
- (b) make it easier for people to get their money back under viagogo's guarantee when things go wrong.

2.20 Separately, in 2018 the ASA took action to tackle 'drip pricing' on secondary ticket sites. ASA's action has ensured that the total price, inclusive of VAT and

²⁴ Within the meaning of section 90(6) of the Consumer Rights Act 2015.

the compulsory booking fee, is displayed to consumers upfront at the start of the consumer journey.²⁵

- 2.21 In 2019 North Yorkshire County Council took forward a number of civil enforcement cases under the CRA against secondary ticket resellers who had failed to provide accurate information about the tickets that they sell. The investigation led to them issuing fining notices against a number of resellers, though these penalties were successfully appealed. Trading Standards used evidence that had originally been gathered by the CMA in the course of its own enforcement work.
- 2.22 In 2020, East Ayrshire Council's Trading Standards Service, issued uncontested fines under the CRA on a professional seller who had not disclosed seating location information when selling tickets.²⁶

The use of misleading pressure selling messages by the main secondary ticketing platforms

- 2.23 Before the CMA's most recent enforcement case, the CMA considered that viagogo routinely used pressure selling messages which both individually and in the aggregate had the effect of creating a misleading impression about the availability, popularity, demand, scarcity and value for money of the tickets sold on its website. For example, the content of the messages were factually incorrect on a number of occasions, and in such cases, created the false impression that tickets will only be available for a very limited time or at a particular price – and therefore put pressure on consumers to make a quick purchase.
- 2.24 Additionally, the CMA considered that the timing, location, content, frequency and persistence of the messages created an artificial sense of urgency and put pressure on consumers to make rushed decisions (including to make a purchase), whilst also distracting them from other information. For example, the messages appeared constantly throughout the purchasing process, often at points where consumers were making purchasing decisions or where important information about tickets was being displayed (e.g. the price of the ticket).
- 2.25 The CMA took the view that the use of these messages often constituted misleading actions and / or misleading omissions under the CPRs as they created a misleading impression about the availability, popularity, demand,

²⁵ See here: [ASA secures changes to viagogo's website – misleading pricing information removed and costs now clearly displayed and transparent to consumers - ASA | CAP](#).

²⁶ [Successful Crackdown on Ticket Tout - Trading Standards Scotland \(tsscot.co.uk\)](#).

scarcity and value for money of the tickets sold on the secondary ticketing websites. Depending on the circumstances, the use of such messages had the potential to constitute an aggressive commercial practice under the CPRs.

2.26 The court order secured by the CMA in November 2018 required viagogo to:

- remove and not replace any misleading messages;
- make it clear that messages relating to ticket availability on viagogo did not relate to the totality of tickets available for an event;
- not suggest that website traffic or demand for tickets was affecting website performance unless that was actually the case;
- not suggest that tickets were being sold in real time;
- not display any loading bars or slow down navigation on its website, unless they were actually caused by technological constraints or the volume of traffic; and
- not display any messages on the pages where a consumer enters their delivery details, their payment details or reviews the details of their purchase.

2.27 In August 2020, the CMA also secured updated formal commitments from StubHub that addressed our concern about its introduction of misleading messages relating to ticket availability.

Failure of secondary ticket sites to provide refunds to consumers that are entitled to them

2.28 The CMA identified during its most recent investigation that consumers were experiencing difficulties in getting their money back under viagogo's guarantee when things went wrong with their purchase. viagogo's guarantee is provided in addition to consumers' statutory rights to a refund such as under the CRA where goods are not fit for the purpose for which they are bought (for example, if the tickets purchased were not valid for entry).

2.29 As for other information presented on the website, the CMA had concerns that information about the guarantee was false or misleading, either by action or omission, under the CPRs.

2.30 The court order required viagogo to take the following steps to improve the presentation of its guarantee:

- ensure that all exceptions or qualifications which apply to its guarantee are clearly disclosed on its website; and
 - not reject a claim under the guarantee unless the reason relied on was clearly disclosed at the time of purchase.
- 2.31 viagogo was also required to not refuse a claim where a consumer can prove that they have been refused entry, or where the consumer was not told about a restriction on resale when they bought the ticket (and they should have been).
- 2.32 Additionally, viagogo also had to carry out an independently supervised review of unpaid claims made between January 2016 and November 2018 and provide refunds to consumers when required. This resulted in £400,000 in compensation being paid to viagogo's customers.
- 2.33 Separately, since March 2020, when the pandemic began to impact on the events sector and events began to be cancelled, the issue that has generated the most complaints from consumers about the sector has been the way that refunds for events that are postponed or cancelled have been handled.
- 2.34 The CMA has received a notable number of complaints from consumers seeking refunds for cancelled and postponed events after buying tickets from either the primary or secondary tickets markets. We received 1,634 complaints about cancellations and refunds regarding event tickets between 1 March 2020 and 31 July 2021.
- 2.35 The CMA has dedicated significant resources to tackling refunds issues across the economy in recent months. We have published detailed materials about consumer rights relating to the pandemic generally, the most recent of which was updated in August 2020; and prioritised action in relation to cancellations and non-refunds in a number of important sectors including:
- (i) package travel;
 - (ii) holiday lettings;
 - (iii) nurseries; and
 - (iv) weddings.
- 2.36 In line with the CMA's [Annual Plan for 2021/22](#), the protection of consumers during the pandemic will remain an organisational priority in the year ahead. We will take forward the investigations we have launched; we will monitor complaints and other sources of intelligence to understand new and emerging consumer issues; and we will take further action where appropriate.

2.37 However, our resources are finite, and for now we have chosen to dedicate our resources to the sectors where consumers have suffered the greatest financial loss. Any future action the CMA may take will be considered in accordance with our published prioritisation principles.

Scams and fraud

2.38 Beyond the CRA secondary ticketing provisions and other consumer legislation, the law relating to fraud is of key relevance to ticketing.

2.39 The key piece of legislation for England and Wales is the Fraud Act 2006. It sets out a general offence of fraud that can be committed in one of three ways: (1) by false representation; (2) by failing to disclose information; and (3) by abuse of position. In Scotland, the Fraud Act 2006 does not apply, and criminal fraud is mainly dealt with under the common law and a number of statutory offences.²⁷

2.40 As evidenced above, fraud by false representation (and in Scotland, the offence of uttering) is likely to be particularly relevant, especially in relation to the sale of fake or counterfeit tickets, where sellers have dishonestly misrepresented the validity or existence of the tickets for financial gain.

2.41 Another potentially relevant offence in England and Wales is that of fraud by abuse of position, where persons in positions of trust (who are expected to safeguard the financial interests of another person) dishonestly abuse their position either for their own gain or to cause loss; for example, persons using their position within a primary ticketing agency or event organiser to obtain tickets and sell them on the secondary ticketing market. In Scotland, common law fraud is likely to be relevant to such conduct.

2.42 To give consumers reassurance when buying on the secondary market, viagogo and StubHub currently offer a guarantee in relation to the tickets purchased on their websites. For example, viagogo's guarantee stipulates that, if a problem arises and the original ticket seller does not provide the consumer with the tickets listed for sale, viagogo will provide comparably priced tickets and offer replacement tickets at no additional cost or issue a refund for the cost of the tickets. However, this does not mean the consumer will always be able to attend the event. The CMA addressed a number of concerns with the operation and presentation of viagogo's guarantee during its more recent investigation into secondary ticketing.

²⁷ In Scotland, the main fraud offences are common law fraud, uttering, embezzlement and statutory frauds.

3. Addressing ongoing problems in the secondary tickets sector

- 3.1 This section identifies the problems in the secondary ticket sector that are likely to endure without further action. It then goes on to consider the steps that could be taken to address them.
- 3.2 We set out below:
- a) the problems that are likely to endure in the sector and why they are difficult to tackle under existing law;
 - b) improvements that could be made to the substantive law to make enforcement aimed at addressing them more impactful;
 - c) the impact that such legislative changes could have on the market.
- 3.3 The section then concludes by considering other alternative approaches to tackling problems in the sector.

Current compliance picture in the sector

- 3.4 Enforcement action by the CMA has generated a number of important improvements to the two largest secondary ticket websites:
- (a) consumers are informed of resale restrictions that apply to events, which could lead to them being turned away at the door, as well as the seating or location information and face value of the ticket;
 - (b) misleading pressure selling messages have been removed;
 - (c) resellers on viagogo have been prevented from advertising tickets speculatively for events that have not yet gone on general sale (unless they demonstrate that they have pre-sale tickets or the right to such tickets);
 - (d) buyers are now being told whether they are buying a ticket from a business seller and the correspondence address of that business; and
 - (e) £400,000 in compensation has been paid to viagogo customers who were entitled to it (those that were denied a refund when their ticket was not valid for entry to an event).
- 3.5 Further, City of York Council has taken successful criminal action against two ticket resellers Hunter and Smith for fraudulent trading of tickets, as set out in

paragraph 3.8 below. Trading Standards also undertook two further investigations into the activities of ticket resellers. The COVID-19 pandemic has impacted the timing and outcomes of these cases. One of those cases will no longer go to trial and has instead been dealt with via an undertaking that prevents the reseller continuing the behaviour going forward. The final case, which was due for trial in January 2021, has been adjourned until 2022.

- 3.6 Nevertheless, despite a considerable investment of enforcement resources towards tackling issues in the sector, two key compliance issues continue to be raised with the CMA:
- (a) tickets being secured illegally by touts before being sold through secondary ticketing websites; and
 - (b) sellers breaching consumer law when they advertise tickets for sale through secondary ticketing websites.

Tickets being secured illegally by resellers

- 3.7 The primary market often sets limits on the number of tickets that an individual can buy for an event (for example 2 or 4 tickets per person).
- 3.8 In March 2020, Hunter and Smith were found guilty at Leeds Crown Court of fraudulent trading offences in relation to the purchase of multiple tickets from primary ticket sellers such as Ticketmaster, Eventim and AXS. The sellers were found to have dishonestly and fraudulently misrepresented their identities when purchasing tickets from the websites of primary sellers – before going on to resell those tickets on secondary ticket platforms.
- 3.9 The sellers’ tactics circumvented the primary sellers’ terms and conditions and their automated systems to block multiple purchases. Hunter and Smith did this despite knowing that the purchases contravened the primary sellers’ terms and conditions – making tickets liable to be cancelled – and knowingly continued to resell these tickets to consumers at significant mark ups on their original face values.
- 3.10 To evade the platforms’ systems, Hunter and Smith:
- Used a number of different people to buy tickets;
 - Applied other people’s personal details to purchase tickets;
 - Deployed at least 97 different names, 88 postal addresses and more than 290 email addresses to evade platform restrictions. These identities were

enhanced through the use of bots, which are designed to support the automated bulk-buying of tickets;²⁸ and

- Used different internet identities (i.e. their IP addresses) and concealed such identities to disguise bulk buying.
- 3.11 In 2018 after the investigation of Hunter and Smith had already begun, new legislation was introduced to prohibit the use of bots to buy more tickets for events than are permitted by primary sellers with a view to financial gain. We are not aware of this legislation being enforced to date.
- 3.12 Many of the approaches that professional resellers use to obtain tickets for events in bulk – without the authorisation of the primary market – may involve committing one or both of the above criminal offences.
- 3.13 In the course of our work in the sector we have heard reports from the primary market about resellers bulk-buying or otherwise obtaining tickets in quantities that exceed the limits set by the primary market.
- 3.14 A recent review saw a number of sellers on viagogo's UK website that appear to be listing more tickets for sale for UK festivals than they should have been able to obtain under the primary markets' ticket limits. Although, based on the information we have seen, this does not appear to be a breach by viagogo of the court order obtained by the CMA²⁹ it does suggest that tickets may have been secured by resellers in excess of ticket limits or illegally. We note that where such instances are identified, we are not able to say with certainty whether those specific tickets have been bought in excess of ticket limits imposed by the primary market or using unlawful means, because, from the information available, we do not know how the seller came to hold the tickets. For example, it is possible that there may be some circumstances where those tickets had been bought with the primary sellers' authorisation.
- 3.15 Bulk-buying and reselling reduces the number of tickets that are available for consumers to buy from the primary market at face value – and often leads to consumers having to pay more to secure a ticket than they otherwise might. For context, the CMA's merger investigation found that there is a material difference in the prices charged for primary tickets ('face value') between the primary market and those charged for secondary tickets on secondary ticket

²⁸ To note, during the period in question, the anti-bots legislation was not in force.

²⁹ viagogo may let people list tickets once it has checked that tickets for the event have been officially released on the primary market. In this case tickets had been released. If an event organiser notifies viagogo about missing or incomplete information, then viagogo must update or correct the relevant ticket listings. We are not aware whether viagogo has received any notification in relation to these tickets.

sites – with most tickets sold through viagogo and StubHub in 2019 having a mark-up over their face value of more than 50%.³⁰

Options for addressing the issue under the existing law

- 3.16 Over the last four years, NTS has provided funds to Trading Standards Services to run three criminal investigations into professional resellers aimed at addressing these issues. Such cases tend to be complex, lengthy and expensive to run. The three cases began in July 2017 and so far, only the Hunter and Smith case has reached a verdict, which is now under appeal. Of the two other cases, one has been settled via an undertaking, and the other has been adjourned until late 2021 or early 2022. NTS estimated in March 2021 that the three cases had cost approximately £1.96 million in total up until that point.
- 3.17 Though this enforcement has been important in clarifying that the practices employed by Hunter and Smith can breach the law it is unlikely to deter other professional resellers from continuing these practices. As discussed above, the CMA merger investigation in 2019 found that the 200 largest resellers accounted for around 50% of the ticket sales (by value) being sold on secondary ticketing platforms. A considerable proportion of these resellers may be deploying illegal practices to bulk purchase tickets from the primary market. In order for seller enforcement to genuinely deter such activity, the number of criminal enforcement investigations being pursued would need to be increased to the point where it would be able to secure multiple convictions per year as part of a rolling programme of enforcement. As set out below at paragraph 4.10 (b), NTS has told us that such action is unlikely to be prioritised.
- 3.18 The CMA has considered whether there might be an alternative or additional way of addressing illegal bulk buying – through criminal enforcement against secondary ticket platforms which may have enabled such activity – rather than resellers.
- 3.19 Other enforcement agencies have the powers to investigate such allegations about serious criminal behaviour. The CMA does not.
- 3.20 In 2020, the CMA engaged with other UK enforcement agencies with relevant powers to discuss the implications of the Hunter and Smith case for secondary ticketing platforms, including:

³⁰ [Analysis from the CMA's merger investigation.](#)

(a) which law or laws platforms might have breached if they enabled the resale of tickets that had been secured illegally – focusing on whether there might have been a breach of money laundering legislation in particular; and

(b) which agency or agencies might have the powers to investigate this.

3.21 We understand that the enforcers who have the appropriate powers are unlikely to prioritise this action at this stage.

Addressing these issues with changes to the law

3.22 Given the potential rewards of using bots and other fraudulent techniques to obtain tickets and resell them on the secondary market, compliance amongst professional resellers would be unlikely to be improved under existing legislation without a significant programme of rolling enforcement against sellers under fraud and/or anti-bots legislation. Such enforcement would require a significant investment of resources and is therefore unlikely to be prioritised by those enforcers with the requisite powers.

3.23 We have therefore considered whether the law might be changed to make it more difficult to sell tickets that have been obtained illegally. Such legislation would aim to prevent a single reseller from selling more tickets for an event than they were allowed to purchase under the ticket limits set by the primary market.

3.24 This could be achieved through amendments to the ticket specific provisions of the CRA or, alternatively, other legislation could be introduced.

3.25 Relevant provisions might include:

(a) **A ban on a seller or a seller's associate advertising more tickets for an event than they are permitted to buy from the primary market** (often there is a limit of 2, 4 or 6 tickets)³¹ - unless the seller provides proof that they are doing so with the consent of the event organiser;

(b) **A ban on secondary ticketing websites allowing sellers or their associates to list more tickets for an event than can be bought by a single person** (unless provided with proof that the seller has obtained the tickets with the consent of the event organiser); and / or

³¹ The primary market will also need to make sure that, as a minimum, information about ticket limits is clearly and prominently disclosed on the event home page and the first page of the purchase process of their websites.

- (c) **Imposing a specific duty on secondary ticketing websites to check evidence from the seller that the tickets have been obtained legally and within ticket limits** – and making them jointly responsible for the resale of tickets in excess of these limits.

Possible impact of proposed reform

- 3.26 The objective of these proposed measures would be to ensure that all tickets that go on sale through secondary ticket websites have been obtained legally and within ticket limits.
- 3.27 After they are introduced, secondary ticket websites would need to put in place systems to:
 - (a) check what the maximum number of tickets an individual can buy from a primary site is; and
 - (b) only allow a seller and any associates to list a number of tickets which is equal to or below the limit for the event (unless evidence is provided to the platform that the tickets were obtained with the authorisation of the primary market).
- 3.28 Based on previous experience, these measures are likely to require enforcement to bring about compliance. When the secondary ticketing measures of the CRA were introduced, the platforms did not adapt their behaviour significantly – until the CMA took enforcement action.
- 3.29 If the measures are introduced successfully, with platforms adapting their practices to bring themselves into compliance, they may have a number of consequences for the UK secondary ticket market, including:
 - (a) the number of tickets made available to UK consumers through secondary ticket platforms may fall – as professional resellers buy up fewer tickets each. This may, in turn, mean there are more tickets available to consumers on the primary market at lower prices;
 - (b) the UK secondary ticket sector may become less lucrative for professional resellers to operate in, with some sellers potentially choosing to exit the UK market and / or lowering investment in technology to bulk buy tickets;
 - (c) Other professional resellers might seek to evade the measure – thereby requiring further seller enforcement – by:
 - (i) selling tickets through social media platforms. Given that these websites are not covered by the CMA's measures in the same way as

viagogo and StubHub, it is highly likely that these sales will breach consumer protection law;

- (ii) setting up multiple false identities so that they are able to sell a greater number of tickets in breach of the legislation; and
- (iii) providing fraudulent evidence to the platforms.

3.30 We have considered how these undesirable consequences might be mitigated by the proposed measures we have set out for preventing sellers breaching consumer law when they advertise tickets through secondary ticket platforms, discussed in the section below and at paragraph 3.54, in particular.

Sellers breaching consumer law when they advertise tickets for sale through secondary ticketing websites

3.31 The law does not currently specify exactly what steps secondary ticketing platforms should take to ensure that all information required under the law when tickets are put up for resale is gathered from sellers and displayed to buyers.

3.32 The nature and extent of the steps which a platform must take will ultimately be a matter of judicial discretion, subject to tests of reasonableness and proportionality, and open to interpretation and argument. In particular platforms are often reliant on resellers to provide the correct information about tickets, as in most cases they are not the seller, and there may be limited scope to corroborate details with publicly available information. Whilst the CMA will have a view about what steps a platform must take, the nature and extent of those steps will ultimately be a matter of judicial discretion, subject to tests of reasonableness and proportionality, and open to interpretation and argument.

3.33 In that context, through its enforcement action, the CMA obtained the fullest and most ambitious set of changes and safeguards from platforms that it was able to, which have greatly reduced the risks to consumers.

3.34 This is also consistent with the secondary ticketing provisions of the CRA, which contain a defence to a fine where a person (for example, a platform) has relied on information provided by another and taken reasonable precautions and exercised due diligence.

3.35 In light of the above it is challenging to obtain the very specific or prescriptive measures which might be necessary to completely prevent the following illegal activities by determined sellers:

- a. providing false information about key details of the tickets;
- b. a form of speculative selling, which did not feature in our previous investigation, whereby sellers advertise tickets they don't have on a secondary ticket platform, and only purchase tickets from the primary market to fulfil an order, once a consumer has 'bought' the tickets they have advertised; and
- c. false information being provided about sellers' identities and addresses.

Advertising tickets with false information about the ticket

3.36 We are concerned that many professional sellers may be providing false information about key details of the tickets that they sell – including fictitious seat numbers, row numbers and / or the face value of the tickets. This will result in consumers not receiving tickets that they thought that they had bought. There is a strong incentive on sellers to provide false information as it makes the tickets more difficult for the primary market to identify. Sellers can thereby avoid the risk that their ticket orders will be cancelled by the primary market or that they will be identified and blacklisted from future sales by an event organiser.

Speculative selling

3.37 We have also identified a form of speculative selling whereby sellers may advertise tickets that they do not yet own with fictitious details, for events that have not yet sold out, and then buy-up similar tickets from the primary market to fulfil the sale. For example, City of York Council found evidence that the resellers Peter Hunter and David Smith were fraudulently listing tickets for sale on secondary ticketing websites that they had not purchased and did not own. The Guardian also published an article in March 2021 alleging widespread speculative selling and fraud by a secondary ticket reseller.³²

3.38 This is a form of arbitrage where a seller will advertise tickets with a mark-up above face value and, once the tickets have sold, they buy up a corresponding ticket at face value, with the aim of making a risk-free profit on each sale. Such activity is prohibited under the terms and conditions of viagogo and StubHub. The concern is that the consumer has understood that they have bought a ticket that guarantees them entry into an event, when in some circumstances the reseller may not be able to secure the tickets and

³² See here: <https://www.theguardian.com/money/2021/mar/24/viagogo-accused-non-existent-tickets-seller-linked-to-firm-fraud-speculative>

fulfil the order. A consumer might therefore book travel and accommodation on the basis that they have secured a ticket and then fail to receive one. Further they are also likely to pay more for a ticket that they have bought than they otherwise would have on the primary market.

Advertising the ticket with false information about the reseller

- 3.39 Some sellers appear to be providing false or incomplete information about their trading names and addresses. They may do so to avoid being identified and, potentially 'blacklisted' from buying further tickets in the future by the primary market and / or being publicly identified in the media or by those who campaign against ticket touting. However, the activity prevents the consumer from understanding who they are buying from, where the seller is located and potentially makes it more difficult for the buyer to exercise their consumer rights against a seller if they experience a problem with the tickets that they buy.
- 3.40 More broadly it may be reducing the potential for competition to develop between professional sellers based on their reputation for reliability. That said, given that viagogo and StubHub provide a guarantee that if a consumer does not receive valid tickets they will offer replacement tickets at no additional cost or issue a refund, the impact of this non-compliance is somewhat mitigated – as in most instances a consumer will seek compensation from the platform where they experience a problem.
- 3.41 The breaches described above have only become visible because of the enforcement action the CMA has taken – as previously the relevant information about resellers and the tickets that they advertise was not gathered by the secondary platforms or displayed to consumers.
- 3.42 Such breaches are more likely to be widespread for events where the organiser is seeking to restrict resale as there is a strong incentive on sellers to avoid the tickets that they sell being identified and cancelled by the primary market.

CMA's current handling approach

- 3.43 The CMA receives a significant number of complaints about such issues from both campaigners and the primary market.³³ However, these issues have not so far resulted in high levels of consumer complaints to the CMA.

³³ It would require a significant and costly test purchasing exercise to estimate non-compliance with accuracy.

- 3.44 Where evidence of incorrect information about a ticket or a seller is identified, this issue can be addressed using the notification mechanism that the CMA's enforcement remedies have created. If viagogo and StubHub are notified that information about a ticket or seller is missing or incorrect then the platforms must take appropriate remedial action in response. However, this is not an efficient mechanism for tackling widespread or repeated non-compliance efficiently. For example, there are cases where primary sellers strongly suspect that a ticket has been listed with incorrect details but are unable to produce all of the evidence required to demonstrate it.
- 3.45 The issues regarding seller actions are often erroneously confused for breaches of the law by the platforms and / or the measures that the CMA secured against the platforms during its enforcement. Each instance identified and provided to the CMA is investigated – with the CMA still having to dedicate significant resources to such investigations. This is not an efficient use of taxpayers' money and has the potential to undermine faith and trust in the consumer protection regime.

Options for addressing these issues under the existing law

- 3.46 We have considered a number of options for tackling failures by professional resellers to provide key information required by law within the current regulatory framework. For example:
- (a) Trading Standards could take enforcement action against individual business sellers to deter speculative selling and / or their failures to provide accurate information about tickets. Trading Standards are best placed to lead such work because, as explained at paragraph 1.41, only Trading Standards have fining powers to address these issues. However, in order to change business sellers' practices, a rolling programme of punitive enforcement would be required and Trading Standards are unlikely to prioritise such action in the sector in the future.
 - (b) The CMA could attempt to tackle these issues ourselves under the existing law. We could carry out an investigation into these issues and, if we find sufficient evidence, try and pursue a specific remedy through the courts that requires secondary ticketing platforms to check every ticket before it is listed to ensure that the details are correct. However, there are two key difficulties with this approach:
 - (i) As noted above, the law does not specify what steps a platform should take and is not straightforward. It is therefore not certain that a court could be persuaded to impose the specific and unprecedented requirement of ordering a platform like StubHub or viagogo to check

the detail of every ticket sold through its platform before it is listed for sale; and

- (ii) Running such a case would likely require the CMA to dedicate significant resources to a likely long running investigation when, as discussed above, the outcome is uncertain.

How else could these issues be addressed?

- 3.47 If the Government wishes to address problems regarding sellers offering tickets for sale through secondary ticketing platforms, then in the CMA's view an alternative, tailored approach is required, to put in place specific requirements on secondary ticket platforms that would address the above issues. The need for specific measures in this sector is already reflected in the ticket-specific provisions of the CRA.
- 3.48 In order to ensure that platforms do enough to prevent the above non-compliance, existing legal requirements on platforms will need to be amended or new, more prescriptive, requirements introduced through legislation. Specifically, secondary ticket platforms need to be given greater and more specific responsibilities for preventing inaccurate information about tickets and the identities of sellers being included on their sites.
- 3.49 Such changes could be made by:
- (a) amending the ticket-specific provisions of the CRA to make secondary ticket platforms strictly liable for particular aspects of incorrect information listed on their platforms (including sellers' names and addresses which are not currently covered under the CRA). At the moment the platforms have a due diligence defence against a fine if they have taken reasonable steps to ensure that the correct information is displayed (and they have a strong argument that they are already doing this by implementing the measures the CMA's recent enforcement secured). If the due diligence defence was withdrawn, such a change could potentially allow fines of up to £5,000 a ticket to be levied for each breach. However, unless the CMA is given the power to levy fines for breaches of this legislation, any further enforcement would need to be carried out by Trading Standards; or
 - (b) Introducing new legislation that makes it explicit that secondary ticketing websites must verify i) that the seller owns a ticket before they list it; ii) the accuracy of information provided about the ticket; and iii) the seller's address.

- 3.50 Making secondary ticket platforms strictly liable for preventing particular types of incorrect information displayed to consumers about tickets would be an unprecedented step.
- 3.51 However, the CMA has concluded that this is the only way to efficiently tackle these enduring issues given the unique circumstances in the sector. As things stand, there are limited reputational incentives on sellers to improve the accuracy of the information that they provide to platforms in order to build a reputation for fair dealing – indeed making themselves and the tickets that they sell, difficult to identify (thereby avoiding tickets being cancelled or being identified and blacklisted by the primary market) are key elements of a successful business model for sellers. In addition, the platforms may have limited incentives to address sellers’ non-compliance. As a result of the CMA’s enforcement, the platforms are now addressing inaccurate information once they are provided with clear evidence that it is incorrect – but they are unlikely to take a more proactive approach to identifying and addressing non-compliance without legislation because this may: (i) upset their sellers, (ii) require further investment in their systems and (iii) reduce the number of tickets available through their sites.
- 3.52 We also note that our experience in investigating digital sectors suggests there should be technology available to allow platforms to efficiently verify information from tickets, or from invoices for tickets purchased.

Impact on the sector

- 3.53 The key objective of the CMA’s proposed measures would be to ensure that in all cases the seller:
- (a) lawfully has the tickets (or has a right to sell the tickets) that they advertise;
 - (b) advertises the tickets with the correct details; and
 - (c) discloses accurate information about their identity (if the seller is a business).
- 3.54 Our proposals to ensure tickets sold through secondary ticket websites have been obtained legally and within ticket limits would be supported by ensuring the accuracy of information gathered and displayed about sellers’ identities. As explained above, many sellers might seek to evade the proposals by, for example, setting up multiple false identities so that they are able to sell a greater number of tickets in breach of the legislation. A requirement on platforms to verify the identities of sellers would make this more difficult.

- 3.55 After it is introduced, secondary ticket websites would need to put in place enhanced systems to ensure that this information is displayed accurately. This could be done by:
- (a) seeking evidence from the seller to verify the name and address that they display on the website;
 - (b) checking the details of every ticket before they go on sale; and / or
 - (c) putting in place a risk-based system for auditing this information which keeps instances of non-compliance and their own liabilities to a minimum.
- 3.56 Based on previous experience, these measures are likely, if implemented, to require enforcement to bring about compliance. As discussed above, when the ticket specific measures of the CRA were introduced platforms did not adapt their behaviour significantly – until the CMA took enforcement action.
- 3.57 If the measures are introduced, they may have a number of other consequences for the UK secondary ticket market, including:
- (a) the number of tickets sold to UK consumers through secondary ticket platforms may fall, as business resellers may decide not to buy and resell tickets for events where the primary market is likely to attempt to cancel them when put up for resale;
 - (b) some major sellers choosing to exit the UK market and lower investment in technology to bulk buy tickets;
 - (c) other resellers might seek to evade these measures – thereby requiring further seller enforcement – by:
 - (i) selling tickets through social media platforms (given that these websites are not covered by the CMA’s measures in the same way as viagogo and StubHub, it is highly likely that any of these types of sales will breach consumer protection law); and / or
 - (ii) providing fraudulent evidence to the platforms.

Other alternatives

- 3.58 On 20 July, the Government published proposals for strengthening the enforcement of consumer law by allowing the CMA to:
- (a) decide for itself where consumer law has been breached;

- (b) issue fines of up to 10% of global turnover for traders that breach consumer protection law; and
 - (c) sanction traders that seek to frustrate, delay, or otherwise not comply with the enforcement process including flouting information gathering powers and breaching undertakings.
- 3.59 If following its consultation, the Government decides to introduce legislation to implement these proposals, these new powers have the potential to increase the efficiency and effectiveness of the CMA's enforcement and increase compliance with the law across the economy.
- 3.60 The reforms are not, however, likely to be sufficient to fully address our concerns about non-compliance in the secondary ticketing sector because:
- (a) professional ticket sellers buying up tickets in breach of ticket limits, will not necessarily involve a breach of the laws enforced by the CMA – so these new powers cannot be deployed to tackle that issue; and
 - (b) while these new powers could be deployed to take enforcement action against sellers who provide incorrect ticket details – sector specific fining powers for tackling incorrect information already exist and have not enabled enforcers to tackle the issues effectively. Given the number of active resellers in the sector, a significant number of enforcement cases against resellers would need to be taken forward each year to create effective deterrence.

What if the Government's secondary ticketing policy was to change?

- 3.61 The overall effect of the UK Parliament's legislation to date has been that the professional resale of tickets at a profit is permitted as long as the seller:
- (a) procures the tickets legally – i.e. without breaching ticket limits or using fraudulent methods; and
 - (b) sells the tickets with all the required information.
- 3.62 However, the CMA is concerned that many sellers may be failing to consistently comply with (i) and / or (ii).
- 3.63 The recommendations are focused on how the law could be amended to ensure that current Government policy in the sector can be achieved more successfully and efficiently.

- 3.64 We have not considered in detail whether a change in Government policy should be considered but nevertheless provide the following observations about two alternative approaches:
- (a) Banning uncapped resale altogether; and
 - (b) Taking steps to mandate the primary market's enforcement of their own resale restrictions.

Banning uncapped resale altogether

- 3.65 Banning the uncapped secondary ticket market, if successfully implemented, would likely increase the number of tickets available to consumers on the primary market at face value.
- 3.66 However, the downside to such action would be that consumers would forgo some of the benefits of these platforms, most notably the loss of (i) the ability to access liquid online market places, where there are high numbers of buyers and sellers, if they wish to sell tickets for events they no longer wish to attend; (ii) the ability to buy tickets for events that have 'sold out' on the primary market through these platforms, and (iii) the loss of protection afforded by viagogo and StubHub against the risk of buying invalid tickets (under the guarantees those secondary ticket platforms offer) in comparison to buying tickets outside a venue or via social media.
- 3.67 Further, leaving aside the theoretical pros and cons, such a ban would practically be very difficult to enforce. The CMA is not aware of any jurisdictions where uncapped resale has been successfully eradicated.³⁴ The incentives to buy up tickets for popular events to resell them at a profit will remain strong. Therefore the successful implementation of such a ban would likely require a significant ongoing resource commitment to, for example, taking down or blocking access to overseas secondary ticket websites that UK consumers wished to buy from, attempting to take down tickets being offered for sale through social media websites and otherwise tackling other ticket touting methods.

³⁴ Ireland is scheduled to enact *The Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill* by 11 June 2021. The Bill will ban the resale of tickets to live events, matches and concerts in designated events and venues, at a price above face value.

Mandating the primary market's enforcement of their own resale restrictions

- 3.68 Another option is to encourage, or mandate, the primary market to take steps to prevent the unauthorised resale of their own tickets.
- 3.69 The CMA has seen examples where the primary market has acted to prevent or, at least reduce, the resale of tickets. Over recent years, for example, the Glastonbury Festival, the production of Hamilton at the Victoria Palace Theatre and Ed Sheeran have all taken such steps. However, such action is the exception rather than the norm. These steps tend to be most commonly used for the most successful or lucrative events or tours because they involve allocating specific tickets to customers, checking the identities of attendees as they make their way into the venue and handling those attendees that have been refused entry because they have bought resold tickets – all requiring additional resources and incurring additional costs. Some of these steps may increase costs for certain events in a way that makes them less profitable or increases the face value of tickets on the primary market.
- 3.70 It may be possible for the Government to encourage and / or compel event organisers to do this. For example, the Government could create new laws which mandate event organisers to take reasonable and proportionate steps to enforce their own terms and conditions. So, for example, if an event organiser has terms and conditions that prohibit ticket resale they would be required by law to enforce them by, for instance, placing ticket holders' names on tickets and checking fans identities as they enter the venue. Such legislation is likely to be controversial, given the compulsion would be against a party who has not engaged in wrongdoing in respect of the tickets, and would compel action that might be expensive and/or otherwise dictate their approach to running particular events.
- 3.71 If successfully implemented, there might be some advantages to such a scheme. It would ensure that event organisers meet a greater proportion of the costs required to police the resale of their own events rather than leaving it to enforcers whose costs are met by the taxpayer. There might also be some disadvantages as well. It may not be economically viable for many event organisers. This may result in event organisers doing away with resale restrictions entirely and the proportion of tickets bought up by resellers could rise. Further the costs of enforcement in the sector may increase if enforcers begin taking enforcement against event organisers as well as secondary ticket market participants.

4. Who should address ongoing issues in the secondary tickets sector?

- 4.1 This section considers whether, in addition to changes to the laws governing secondary ticketing, there should be changes to the institutional approach to regulating the sector.
- 4.2 It considers:
- (a) the current approach;
 - (b) other possible models of regulation; and
 - (c) recommends an alternative institutional approach to regulating the sector.

Summary of the existing position

Relevant experience and powers of enforcers

- 4.3 No single organisation currently has all the relevant expertise and powers to tackle the issues in the secondary tickets sector:
- (a) The CMA has used its civil enforcement powers under the consumer protection regime to secure measures aimed at ensuring that secondary ticket platforms gather and display key information about tickets to consumers. However, the CMA is unable to take punitive civil enforcement action against secondary ticket sellers that fail to provide accurate information about the tickets that they sell because it does not have the powers to fine traders under the CRA (or any other provisions of consumer law). Further, the CMA does not have the powers to investigate the illegal procurement of tickets by sellers under the Fraud Act 2006 or the Breaching of Limits on Ticket Sales Regulations 2018.
 - (b) Trading Standards Services have attempted to use their fining powers under the CRA to tackle sellers that fail to provide accurate information about the tickets that they sell. City of York Council has also used the Fraud Act 2006 and other legislation to take punitive action against non-compliant sellers, securing convictions against Hunter and Smith, with another case still to come to trial. However, Trading Standards do not have specific powers to investigate or take action under the Breaching of Limits on Ticket Sales Regulations 2018 and have limited experience in using civil enforcement powers to achieve forward looking, preventative remedies, such as those used by the CMA against viagogo and StubHub.

(c) The Police could in theory enforce all of the relevant criminal law to tackle issues in the sector.³⁵ However, their most recent notable investigation into the sector was in respect of unlawful ticket sales for the London 2012 Summer Olympic Games. We understand it is currently unlikely that they will dedicate further resources to addressing compliance in the events ticket sector in the near term.

Resources committed to the sector by enforcers

- 4.4 Significant resources have already been dedicated to tackling non-compliance in the sector by both the CMA and NTS (in NTS' case, providing funding to Trading Standards Services). Further, both organisations³⁶ already plan to dedicate ongoing resources to the sector.
- 4.5 Since it began its most recent investigation into secondary ticketing in December 2016, the CMA spent £2.5 million on enforcement in the sector up until March 2021. Further, we anticipate that the CMA will need to continue to dedicate notable resources to the sector in order to investigate complaints about the platforms' compliance with the measures that our enforcement to date has secured. NTS (providing funding to Trading Standards Services to take enforcement action) have also dedicated significant resources to tackling compliance in the sector. From the time that the investigation began in 2017 until March 2021 they spent approximately £1.96 million³⁷ on running the three criminal enforcement cases.
- 4.6 In total around £4.5 million of taxpayers' money was spent by the CMA and NTS on enforcement in the sector from December 2016 until March 2021.
- 4.7 Further, even if no new enforcement work is launched in the sector, we estimate a further £600,000 of taxpayers' money will be spent by the CMA and NTS in relation to enforcement and other related follow-up work for the 12-month period from April 2021.

Other priorities

- 4.8 Given other pressing demands on their resources, the CMA and Trading Standards may not allocate additional resources, over above those already

³⁵ In Scotland, Police Scotland usually investigates and pursues fraud offences, rather than Trading Standards Scotland.

³⁶ In NTS' case, the ongoing resource will be focused on concluding its ongoing cases.

³⁷ This figure does not include overheads relating to finance, audit, comms, management and governance.

committed, to tackling compliance issues in the sector in the short to medium term.

- (a) The CMA has a large portfolio of consumer protection enforcement cases, and must ensure that its portfolio is able to address new and emerging areas of consumer harm. The CMA's wider work includes investigations into issues such as the alleged mis-selling of leasehold housing, and thematic investigations into problems with fake reviews, auto-renewing contracts and undisclosed endorsements on social media. The CMA also has a portfolio of work dedicated to tackling problems caused by COVID-19, including cancellations in the package travel, holiday lettings, nurseries and weddings sectors.
- (b) In 2017, NTS were provided with specific resources by BEIS to support secondary ticketing enforcement work for a three-year period. These cases have taken longer to resolve than the three-year period, although NTS have told us that they plan to see them to the appropriate conclusion. NTS has, however, a limited budget to support further ticketing work and, on the basis of a strategic intelligence assessment, NTS's Board has decided that there are higher priority matters for NTS to be using its resources to tackle.³⁸

Other barriers to taking effective enforcement

- 4.9 In Chapter 3 we set out factors that make tackling certain enduring compliance issues in the sector challenging. However, there are a number of other barriers to taking effective enforcement in the sector.

Difficulties in collecting evidence

- 4.10 Neither the CMA nor Trading Standards Services have found evidence collection straightforward in this sector – and it is likely that any future investigations will be even more difficult.
- 4.11 The CMA and Trading Standards Services rely on being provided with timely and accurate information to carry out, or consider whether to carry out, their enforcement functions effectively. When businesses fail to provide the requested information on time or at all or provide misleading information, there are currently no direct civil fines available to punish and deter such behaviour.

³⁸ [NTS published priorities](#)

- 4.12 So called 'dawn raids' have proved effective in obtaining evidence, however they can often require significant additional resourcing and, as they are used more often, determined businesses may take steps to try and frustrate them. In particular, if a business and/or relevant information is located overseas it can be more challenging for enforcers to obtain evidence.

Indemnifying local authorities that sponsor enforcement

- 4.13 NTS has identified a further barrier to taking forward enforcement action in the sector.
- 4.14 For enforcement action of this type to be taken forward, the work needs to be undertaken by a prosecuting local authority (whether supported with funds from NTS or not). As noted above, these cases are not currently a priority for the NTS Board,³⁹ and may well not be for any local TSS either. Even if a case were to be prioritised, they can be lengthy, complex and costly and can result in counterclaims for damages or judicial reviews or similar from defence teams.⁴⁰
- 4.15 NTS has told us that, even if dedicated funding could be found, it is unlikely further enforcement will be taken unless any potential indemnity could be underwritten by the Government.

What will happen next without further intervention?

- 4.16 The current approach to regulating the secondary tickets sector is unlikely to improve compliance further. Oversight of the sector is somewhat disjointed, with no lead authority that has the powers and resources to tackle all the enduring issues in the sector.
- 4.17 Without reforms to the way that the uncapped secondary tickets market is regulated, the issues identified at Chapter 3 are likely to endure.
- 4.18 Furthermore, once restrictions are lifted and the events sector gears up, it is possible that compliance in the sector may gradually fall:
- (a) if it becomes clear to market participants that further enforcement by the CMA and Trading Standards Services is unlikely; and

³⁹ See: [Our Priorities - National Trading Standards](#)

⁴⁰ The location of the person being pursued would also be a key consideration. This is because unpaid fines become a debt that the Council must enforce under civil procedure, and there needs to be a realistic prospect of recovery for this to be worthwhile.

- (b) once the required annual independent reviews of viagogo and StubHub's compliance with the measures that the CMA's enforcement secured have been completed (by 1 October 2023 for viagogo and 1 March 2024 for StubHub). This will remove an added layer of scrutiny of viagogo's and StubHub's compliance.

Potential impact of the CMA's proposed reforms and the new compliance challenges that they may present

- 4.19 Without changes to the relevant substantive and institutional regulation of the sector, non-compliant practices of professional sellers seem likely to quickly re-establish themselves as lockdown restrictions ease and new events are advertised.
- 4.20 In Chapter 3 we recommended changing legislation to i) prohibit sellers from listing for sale more tickets for an event than they are able to legally procure from the primary market and ii) make platforms strictly liable for incorrect information about the details of tickets listed for sale or their sellers. If these recommendations were to be implemented and vigorously enforced, then non-compliant practices could be significantly disrupted and deterred.
- 4.21 If implemented, these new regulations would make it very difficult for professional sellers to sell illegally procured tickets through secondary ticket platforms or to list tickets for sale in breach of the law by failing to disclose all the required information. It may also increase the likelihood that some of the tickets put up for resale with accurate information are identified and cancelled by those event organisers that have put in place terms and conditions that prevent or restrict resale. These developments may in turn lead to the proportion of tickets for UK events being bought and resold by professional resellers falling – with some major resellers choosing to exit the UK market.
- 4.22 However, it is also likely that some professional resellers might seek to evade these new measures by, for example:
 - (a) providing fraudulent evidence to the platforms – forging ticket information or creating multiple identities;
 - (b) selling tickets through social media platforms anonymously instead of through the secondary platforms (given that these websites are not covered by the CMA's measures in the same way as viagogo and StubHub it is highly likely that these sales will breach consumer protection law); or

- (c) attempting to sell tickets directly to consumers themselves by setting up their own platforms.

4.23 An enforcer would therefore need the powers and resources to tackle these and other new forms of non-compliance which could emerge.

Alternative institutional approaches

4.24 In order to be successful, and to address the shortcomings in the current approach to regulating the sector, any new institutional approach should incorporate the following key elements:

- (a) **dedicated, ring-fenced, resources to run multiple enforcement cases simultaneously against both platforms and sellers.** In order to secure enduring changes to the behaviour of secondary ticket platforms and resellers, there needs to be a demonstrable, long term commitment of resources to enforcement in the sector. Barriers to entering the market for resellers are low and the rewards for non-compliance are potentially high. Therefore, if the threat of enforcement against market participants recedes the level of non-compliance is likely to rise.
- (b) **established sector-specific knowledge.** If the decision is taken to resource ongoing enforcement in the sector it makes sense for a single entity to assume a lead role in the sector so that knowledge of the sector and the complex bespoke regulation that applies, can be established within that entity.
- (c) **the necessary enforcement powers to combat non-compliance.** The powers to address compliance in the sector are currently spread between the various enforcers rather than concentrated within any of those entities – meaning that it is not always clear which entity, if any, has responsibility to resolve issues. It would be more efficient to concentrate all necessary powers and resources to tackle non-compliance in the sector, within a single lead entity.
- (d) **the powers to ensure that market participants hold – and can be compelled to provide – key information to that lead enforcer.** This is crucial given some of the potential difficulties in collecting evidence from market participants that choose to base themselves outside the jurisdiction. This could be done through a system of licences, a code or through legislation which makes holding and providing information to the authorities a condition.

- (e) **strong sanctions available to it which can be readily deployed.** There has been significant criticism of the lack of punitive action taken to address issues in the sector – much of which is based on a lack of understanding of the powers that the CMA and other enforcers have available to them. Given the already strong incentives towards non-compliance and the potential for some professional sellers to attempt to evade the new regulations that we propose – a stronger set of punitive measures which can be readily deployed, would be necessary to address non-compliance. Such powers could include the ability to:
- (i) issue fines to non-compliant secondary ticket platforms (for example where a platform fails to comply with the new regulations once implemented) or professional sellers (if they provide misleading information to platforms);
 - (ii) suspend a company’s ability to trade tickets in the UK; and
 - (iii) take down a company’s website (this may be particularly useful where a professional seller sets up a new, non-compliant secondary ticketing website).⁴¹

Other models of regulation

4.25 The CMA has identified a number of other entities or functions that have been created to regulate a sector, including:

- (a) The Gambling Commission;
- (b) The Estate Agents Regulator; and
- (c) The Phonepaid Services Authority.

4.26 The table below sets out key information about these three models.

	Estate agents regulator ⁴²	Gambling Commission	Phone-paid Services Authority (PPSA)
Role	Regulates 20,000 estate agents across the UK and 30,000 letting/ property	Regulates 20,000 companies that offer Gambling Services to GB consumers – from sole traders to major	Regulates providers of premium rate telephone services – including: 4 network operators, 10+

⁴¹ For the avoidance of doubt, these sanctions would apply equally to overseas websites that are targeting UK consumers.

⁴² Statistics provided by Estate Agent regulator.

	management agents in England.	gambling companies. Many based overseas.	intermediaries and 100+ premium services.
Source of powers	The Tenants Act 2017; Estate agents Act 1979; The Fraud Act 2006; and Consumer Protection from Unfair Trading 2008.	Gambling Act 2005; and National Lottery etc. Act 1993.	PPSA has the right to produce a code which can be enforced.
Size of market	Based on sales agent fees £492 million	£14.3 billion	£500 million
Annual budget	£500k	National Lottery: £17.2 million; All other services £19.2 million ⁴³	£4 million
Source of funding	The Ministry of Housing, Communities and Local Government (MHCLG).	National Lottery: grant funding. All other services: funded by Secretary of state and approved by Parliament.	Industry levy (but can also fund itself via retained financial penalties).
Number of employees	17- of which there are 7 investigators.	280 of which up to 40 may be involved in an application review at one time and 42 are involved in enforcement and intelligence work. ⁴⁴	45 (of whom around half are involved in enforcement).
Approach to enforcement	Around 40 active enforcement cases at any one time. During 2020, 25 estate agents were banned from the market.	Deploy range of interventions including i) attaching conditions to their licences ii) fines iii) suspension of licence iv) revocation of licence. More than 160 regulatory and criminal investigations were carried out in 2020.	Primarily enforcement of the code – including fines and suspension of right to trade. Ran 152 enforcement cases in 2020.

⁴³ See pg. 24-26 of the Gambling Commission's 2019/20 Annual Report.

⁴⁴ Statistic provided by the Gambling Commission.

Sponsoring body	Powys Council for Estate Agents Authority (EAA) and Bristol Council for Tenant Fees Association (TFA). The Estate agents regulator is commissioned by NTS.	Department for Culture, Media and Sport (DCMS).	The Office of Communications (Ofcom).
Shared services with sponsoring body	Human Resources and IT.	No	No

Recommendation

4.27 The CMA recommends a new regulatory function, with lead responsibility for regulating the uncapped secondary tickets sector,⁴⁵ should be set up within an existing regulator such as Trading Standards, the CMA or another regulatory body:

- (a) The following should fall within the scope of its powers:
 - (i) All businesses that resell tickets online to UK consumers (sole traders, brokers, professional sellers, etc.); and
 - (ii) All online platforms that are used to resell tickets to UK consumers at prices that are not capped at face value or an increment above it;
- (b) It should be given the powers in legislation to enforce relevant existing law and to produce and enforce codes for both:
 - (i) businesses that resell tickets online to UK consumers; and
 - (ii) uncapped platforms where secondary tickets are resold to UK consumers.
- (c) The entity should:
 - (i) operate a system of licences for all online platforms where secondary tickets are resold at prices that are not capped at face value to UK consumers online. The conditions of the licence would require the

⁴⁵ This new regulatory function could also be extended to include secondary ticket sellers. However, we think the most effective way to address the ongoing compliance issues in the sector is by regulating uncapped secondary ticket platforms.

platforms to maintain and, upon request, produce key information on their own business and those individuals and businesses that sell through them. (This is particularly important given some of the potential difficulties in collecting evidence from market participants that choose to base themselves outside the jurisdiction);

- (ii) be given the powers to enforce against unlicensed online platforms where secondary tickets are resold directly to UK consumers at prices that are not capped. (This might include enforcing against new unlicensed platforms set up to help sellers to evade the new rules or enforcing against other platforms, such as social media sites, which chose not to obtain a licence, but fail to prevent ticket resale occurring through their websites); and
 - (iii) be given the power to introduce licencing for all - or alternatively the largest – professional resellers who sell tickets to UK consumers online if it deems this to be necessary to maintain widespread compliance with the law. We do not recommend the introduction of licencing for resellers at this point because there is a risk that licencing all online ticket resellers may not prove to be value for money given that the number of online ticket resellers on both viagogo and StubHub in the UK has been estimated to be between 40,000 and 75,000.⁴⁶ These resources would be better focused on enforcement against resellers where particular issues arise.
- (d) The entity should be appropriately funded to enable it to run between 5 and 25 enforcement investigations per year depending on their size and complexity.
- (e) The entity should be funded either directly or indirectly by the secondary tickets sector itself. There are a number of models for how these funds could be raised – such as a levy on licence-holding platforms, a small surcharge added to the cost of every ticket sold, or a transaction tax on all purchases of resold tickets by UK consumers. (The Government might also consider whether the primary market might contribute to the funding of the regulator in light of the contribution that the function would be making in helping to ensure that fewer tickets would be bought from the primary market illegally).

⁴⁶ Analysis from the CMA's merger investigation.

- (f) As far as possible, the lead enforcer should have all the powers necessary to address compliance issues in the sector. This should include the powers to:
- (i) issue fines for any breaches of its code;
 - (ii) suspend a trader's ability to resell tickets online to UK consumers;
 - (iii) prevent a person who is not a 'fit and proper' person from holding a licence; and
 - (iv) take down a trader's website (this may be particularly useful where a professional seller sets up a new, non-compliant secondary ticket website to sell direct to consumers).