



Department for
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Dear Marcus and Sarah,

SECONDARY TICKETING REPORT

I am responding on behalf of the government to the CMA's report and recommendations on Secondary Ticketing, which you published on 16 August 2021.

I understand that officials from my department, along with officials from the then Department for Digital, Culture, Media and Sport, fed some comments into the CMA ahead of the publication of the report. I welcome the continued enforcement work that trading standards and the CMA carried out in this important area in recent years, and your report provides a helpful document of that. Like you, I believe this has led to some real changes to the way material information is presented to consumers so that they can make choices that are right for them.

The government believes in the power of competitive markets to give consumers choice and flexibility. This applies to both the primary and secondary markets in event tickets. It is right that consumers have the ability to sell on tickets they no longer want or are able to use, and that there is a market in such sale and resale. Technology is improving the consumer experience in both security and flexibility of ticketing but as with all online purchases, consumers must be careful in making purchasing decisions and ensure they understand what they are buying. While many operate in the secondary ticketing market successfully, some consumers are left feeling misled or ripped off and this is not acceptable.

It is currently difficult to make a detailed assessment of the impact of trading standards and CMA enforcement work, given the massive disruption to the event industry in the last two years, caused by the Coronavirus pandemic. Events across the UK are only now beginning to proceed on a predictable basis and that has significantly impacted the volume of tickets coming to either the primary or secondary ticket markets. The nature of tickets and the options for replacing them should you no longer be able to use them has been changing and the primary market is still developing new approaches. As part of that we would expect to see greater use of technology but the impacts of this on the consumer need to be understood.

Similarly, some decisions that might be expected to affect the secondary ticket market have only recently been taken, including your own decision to require that viagogo sell the StubHub ticketing platform which they acquired through a merger in 2019. How that affects the market including compliance with competition and consumer protection rules on the separate platforms would be a question for CMA monitoring, but its outcome remains to be seen.

Likewise, I am very aware of the successful court action taken by North Yorkshire Trading Standards team supported by National Trading Standards that resulted in the conviction of two illegal ticket resellers in early 2020. Moreover, it was not until November 2021 that we received the welcome confirmation that the Court of Appeal had upheld their convictions. That decision can be expected to resonate with illegal ticket traders, who will think twice before breaking the law in future, but probably not until the ticket market has regained its former equilibrium.

Your report also references the government's proposed legislative changes to the CMA consumer enforcement regime, which we intend to bring forward in third session government legislation. I am committed to giving the CMA the tools it needs to adequately enforce the law and create a competitive and attractive UK market for business and consumers.

Some of the CMA's recommendations set out potential additional legislative changes to strengthen further the requirements on those using secondary platforms to resell tickets and on the platforms themselves to check these requirements are being met. You also suggest creating a dedicated enforcer to be funded by a levy on the secondary ticket market. I am not convinced that the additional costs that would fall on ticket buyers (as regulatory costs would be passed on) are justified by the degree of harm set out in your report. This is especially the case when we are already proposing to give the CMA additional administrative powers to protect consumers which the CMA could deploy in the secondary ticketing market. However, we propose to keep the position on maximum numbers of ticket resales under review as part of our ongoing monitoring of the legislative landscape in the ticketing market and in the light of technological, enforcement and other market developments.

The government notes and agrees with the CMA recommendation that there should not be a ban on the uncapped secondary ticket market. Whilst both the way tickets are sold and used are changing and there is a growing authorised capped ticket resale market to help those who can no longer use their purchased ticket, it appears the uncapped market may still provide a service of value to some consumers.

For the reasons I have set out above, I feel it is too soon to conclude that the only way forward is further legislation focused on this market. As you are aware, there are a number of improvements to other aspects of consumer law which we have now published in our response to the 2021 consultation. These will be our priority in the immediate future, rather than changes to the secondary ticketing regime specifically. I have set out in the Annex to this letter a more detailed response to the recommendations and more detailed assessments in the CMA report.

I would like to thank you for the valuable work you have done as part of this report. It forms a helpful reference point, both for enforcement work undertaken to date, and as a milestone against which to assess the proposed wider consumer enforcement tools. It also provides some options for further action should the government decide that this is necessary and

appropriate. I hope the CMA will continue to monitor this sector closely for consumer detriment and continue to take action where justified and, as appropriate, give us further advice.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kevin', with a light grey circular stamp or watermark behind it.

KEVIN HOLLINRAKE MP

Parliamentary Under Secretary of State – Department for Business and Trade

Government Response to CMA Recommendations on Secondary Ticketing

Overview

1. The government believes in the power of competitive markets to give consumers choice and flexibility. This applies to both the primary and secondary markets in event tickets. Consumers should have the ability to sell on tickets they no longer want or able to use and therefore need a market for resale.
2. The government welcomes the CMA's report and the work it has done to enforce the rules applicable to secondary ticketing. However, given COVID-19, the events industry has found itself in involuntary dormancy for much of the period since the largest secondary platforms¹ made undertakings to the CMA to provide more information to consumers. So the full impact of the most recent enforcement action and undertakings are unclear. The CMA also identifies some incentives for professional sellers to deceive platforms and consumers, but these are not new, whereas much of the compliance regime is. To propose further legislation in the sector at this stage is not yet appropriate or justified by the available evidence.
3. Repeated additions over the years to legislation do not seem to have significantly impaired the flow of tickets onto the secondary market. So it is not clear that further regulation in this space would be likely to change this. While the impacts of COVID-19 make comparison difficult, before considering additional rules there should be an onus placed on the primary market to show that they have used the existing tools and to assess the work they are doing to prevent tickets from routinely entering the hands of professional resellers and thence to the secondary market, where this is against the T&Cs of tickets for an event. We note that some work is going on to track tickets and provide options for authorised resales, but some of the practices that make professional reselling viable remain in place. There is still little transparency over the volumes of tickets being made available for events coupled with a tendency to go for a 'big bang' sale of tickets rather than a staggered release that might provide greater opportunity for consumers to access tickets. There is also little sign of effective work to authenticate tickets to build consumer confidence outside of the authorised capped resale sector.
4. The government notes that the obligations on secondary platforms and sellers using them are already in excess of those applicable to the sale of most other goods. There is a question of whether these are proportionate to the risk and potential harm suffered – the recommendations suggest measures in some cases tougher than those envisaged to be necessary for online safety. The purchase of tickets is a voluntary action and buyers need to exercise due care in transactions. Further, event tickets are not essential products to which access must be maintained. A licensing regime is envisaged, but these are the exception rather than the norm in the UK and come with their own costs and enforcement challenges. There is a consequent risk that some current protections, legal and otherwise, will be lost to consumers as sellers seek to circumvent the strictures of a new tougher regime. The government therefore will not be seeking to introduce further specific regulation of the secondary ticket market at this time, beyond those inherent in its planned strengthening of the consumer enforcement regime overall. We will, however, keep this position under active review particularly in relation to the practicalities of applying a maximum limit on ticket resales as proposed by the CMA. We will do this part of an ongoing assessment of the effectiveness of the legislative landscape in this market.
5. The CMA set out a number of recommendations in their report as captured in the paper's executive summary focused on remaining issues. These are considered in order below:

Para 16 (a) Illegal actions by professional resellers:

¹ viagogo and Stubhub

6. The CMA report expresses concerns about potential illegal activity by professional sellers. The report notes that the CMA themselves lack the relevant enforcement powers to address breaches of the rules on the use of computer technology and other methods to bulk buy tickets in the primary market for subsequent resale. However, trading standards have taken action in this space and successfully charged two ticket touts (Hunter and Smith) with offences including the use of fraudulent means to obtain tickets. Their conviction was upheld by the Court of Appeal on 26 November 2021 and together they were sentenced for a total of six and half years in jail. The charges were brought in relation to their touting companies, which operated as Ticket Wiz and BZZ. Legislation introduced by DCMS in 2018 (after the case against Hunter and Smith had commenced) clarifies the offence. The Breaching of Limits on Ticket Sales Regulations 2018 (BOTS), state that it is an offence to use software that is designed to enable or facilitate completion of any part of a ticket buying process with intent to breach limits placed on ticket sales for financial gain.
7. There have been few enforcement references recorded to date in relation to the BOTS regulation and no prosecutions, despite it being supported by the primary market at the time of its introduction. Before looking at further legislative options as the CMA is suggesting, we need to see evidence that the improved legislation is not enough and is being actively used by the primary market and enforcement proceedings have been taken by the police. The CMA also note that enforcement agencies will always need to prioritise those areas for action according to their assessment of damage and priority.

Para 16 (b) Sellers breaching consumer law when advertising tickets:

8. The CMA identifies a possible incentive for ticket sellers, using platforms that comply with the rules, to mislead the platform and therefore customers as to the details provided of the tickets they are offering. The report acknowledges that only the seller will know the accuracy of the information provided but where the platforms are notified (e.g. by the event organiser) that information about a ticket is inaccurate they are obliged to take the appropriate remedial action. Such obligations which relate to the platforms being jointly liable under the Consumer Rights Act 2015 (CRA) for information provided on their platforms and is a higher degree of liability than that applying to most other platforms that are used for e-commerce. The platforms argue that a combination of their payment mechanisms (whereby sellers are paid after an event) and ticket guarantee schemes act to mitigate these incentives.
9. The provision of misleading information by “traders” (most professional resellers will meet the definition of “trader”) is an offence under consumer law. It would also be a breach of the specific secondary ticketing rules set out in the CRA and therefore the seller could be fined. The offence identified by the CMA could therefore be prosecuted under existing law without the need for additional legislation. Therefore, in relation to this matter and the CMA recommendation of further legislation, we do not see that this is justified at present with insufficient evidence that the current legislation is seen to be wanting. The new administrative powers on consumer enforcement we are proposing for the CMA or possibly an extension of the existing trading standards held fining powers on secondary ticketing should make CMA enforcement on this issue more straightforward.

Proposed additional legislative measures

Para 19 (a) Prohibit listings in excess of primary market limits:

10. This would prohibit any seller from offering more tickets on a secondary platform than the primary allows to be bought on its market. This amounts to using consumer law to enforce the terms and conditions of the private sector on behalf of business. It would require the secondary ticketing platforms to check the limits on the primary market and then preventing them offering more than that for sale on their platform. This would seem to be quite an onerous task for a number of practical reasons, mainly related to the operation of the primary market and assessing the nature of a contractual limit. However, while noting the challenges below, we will review our position as to whether such a mechanism could, in practice, be

applied and provide appropriate levels of additional consumer protection, as part of ongoing work to review the legislative landscape.

11. As the Waterson Review² identified, the primary market for tickets is far from homogenous, with most of the risk for an event falling on the promoter. For the promoter the key to them making money is to sell tickets. For this reason they may not want a limit on how many tickets can be sold to an individual. If they do, it might not be clear how those limits are to be applied.
12. It is also worth noting that events tickets are frequently sold well in advance of the event itself. If a tour is announced for the autumn but tickets go on sale in January, there will be eight or nine months before the ticket is actually used. In that time some people's plans will change and they may choose to sell their ticket or spares they do not need. These could be picked up by resellers on the secondary market but the number of buyers for these might be diminished if the potential buyer has already bought or sold their platform limit of tickets for an event.
13. Finally, it is worth noting that promoters or artists can sometimes be the source of tickets on secondary platforms (e.g. when events are imminent and not yet sold out). In those circumstances they may not want a ticket limit to apply, though they should be clear about the source. Given all this complexity in the primary market, it might be difficult to hold a platform to account for more than a given limit of tickets being resold by the same vendor on their site. It is common in consumer law to have a due diligence defence and in such circumstance, the platform may point to a number of steps as "reasonable precautions" for the court to take into account in respect of its efforts to comply with the rules. This could amount to a fairly low bar in practice.

Para 19 b) Make platforms strictly liable for incorrect ticket information on their sites:

14. The CMA argues that given the volume of professional resellers on the main platforms it is infeasible to expect them to be effectively policed by the consumer enforcement bodies³. Instead it would be more efficient to effectively ask the platforms to do the enforcement work, by making them liable for the content on their sites and monitor their degree of compliance instead. In particular, the CMA suggests platforms should be responsible for verifying that:
 - (i) The seller has taken ownership of the ticket before listing
 - (ii) The information provided is accurate and complete
 - (iii) The seller has provided correct address data.
15. The CMA recognise that this would be an unprecedented step, placing obligations on secondary ticketing sites that were greater than any other platforms, including some measures proposed for the forthcoming Online Safety Bill. The outcomes the CMA is seeking to achieve through these measures are set out in paragraph 3.53 of its report. The aim is to ensure that:
 - (i) all sellers have a lawful right to sell tickets that they advertise
 - (ii) all sellers advertise tickets correctly and accurately
 - (iii) traders disclose accurate information as to their identity
16. The CMA also suggest in paragraph 21c) that the measures could make it easier for event organisers to identify and cancel tickets. The government notes that any such cancellation (or blacklisting) would need to be undertaken in line with S.91 of the CRA, which sets out requirements for contractual terms to be clear on cancellation and not unfair.

² Waterson Review: <https://www.gov.uk/government/publications/consumer-protection-measures-applying-to-ticket-resale-waterson-review>

³ Local trading standards and the CMA

17. These outcomes correlate with those to be expected from the existing legal requirements on ticket sellers or other traders. However, it is not always the case that the primary seller is able to provide all the relevant information at the time of sale and some account for this may be needed. Tickets for certain types of event may not be despatched earlier than two weeks before an event and internal configuration within venues can also be finalised fairly close to the event taking place.
18. The government is committed to proportionate regulation and ensuring businesses only face necessary regulation. It is not clear from the CMA report what specific additional consumer harm characterises the ticket resale market that justifies measures in excess of those applied in other markets. Tickets are not an essential good, people choose whether to buy on the secondary market and thanks to the previous enforcement work of the CMA and others those choices and associated costs are more transparent than they were five years ago.
19. The CMA believe a lot of the necessary checks could be undertaken automatically through technology, and we propose to explore this further. The CMA believe a lot of the necessary checks could be undertaken automatically through technology, and we propose to explore this further. Following the Waterson review the primary sector has made increasing use of technology e.g. with tickets increasingly being available only on phones. Authorised resales can also be facilitated through this but there is, no willingness on behalf of the primary market to provide similar access to the uncapped ticket resale market. Compliance would be difficult to achieve without also placing obligations in the primary market which unprecedented and drive up the face value cost of tickets for everyone. The events sector has been particularly impacted by the COVID-19 pandemic and the measures taken to combat it and the government does not want to add further difficulties.
20. The report identifies a number of measures professional sellers may be likely to take to avoid the current regulations in terms of providing false identities and information. It is difficult to see why these are not equally applicable to the additional measures the report proposes. Indeed, they may increase the incentive to evade the rules thus undermining the progress achieved to date. The report identifies in paragraph 22 some avoidance measures sellers may adopt. In particular, the threat to offshore sales and use an alternative more anonymised medium such as social media platforms⁴ through which to make sales is likely to increase. That will diminish the protection provided by the secondary ticket sites own ticket guarantees and thus increase the risks of loss and poor outcomes to consumers. In order to avoid that loss of business, the platforms may seek to place themselves beyond the effective jurisdiction of the CMA. Some of the biggest already have operations outside the UK and cross border enforcement could be much harder for the CMA without the benefit of local enforcement options. It could require significant cooperation with other countries' consumer authorities, the infrastructure for which is not yet established.

Para 24) Create a new regulatory function for secondary ticketing within a current enforcer

21. The CMA acknowledges that a certain amount of expertise is necessary for effective enforcement and suggests that responsibility for enforcement regarding the uncapped secondary ticketing market should sit with a specialist unit in a single enforcement agency. That body would be given the existing enforcement powers and any additional powers necessary for enforcing a new licensing regime for secondary ticketing platforms.
22. Putting all the enforcement powers into one place could include giving the authority to utilise police powers including those relevant to the Fraud Act, the Computer Misuse Act 1990, and those referring to the resale of tickets for football matches in England and Wales under The Criminal Justice and Public Order Act 1994, and the BOTS 2018 regulations. These would then combine with the powers set out in consumer legislation that currently sit

⁴ Notwithstanding the fact that it is the government's view that the CRA provisions regarding secondary ticketing apply equally to sales via social media platforms.

with the CMA and/or local trading standards⁵ or may do so in the foreseeable future⁶. This sort of combination of powers is unprecedented for general consumer protection measures in one segment of the economy.

23. Paragraph 24 c) suggests it should also have the power to impose a licensing regime on business sellers using the platforms in the future, should it decide it is necessary for compliance. Parliament has expressed previous concerns about delegating powers without the application of significant oversight and constraints.

24. The government does not believe the case is made sufficiently by the report for new dedicated measures of this kind to be introduced. There are other areas of consumer regulation which the government sees as greater priority for both legislation and resource (e.g. general enforcement tools across the economy). As the report makes clear, the CMA and trading standards have put considerable time and resource into enforcement of secondary ticketing over the past 5-6 years. As a result, compliance by the major platforms seems to have improved with some of the more egregious practices addressed through undertakings, and jail sentences and fines for some of those breaking the rules. It is not clear that the outstanding issues are such to justify a new dedicated licensing regime with funding to be raised from the sector and its customers. The Consumer Protection Partnership (CPP) has just completed its Consumer Detriment survey and the main issues identified were in financial services, home improvements and car purchase and repairs. Whilst financial services have their own regulatory regime, we are not proposing to introduce a new licensing regime for either of the latter.

⁵ Including Dept for the Economy in NI

⁶ BEIS has been consulting on a range of tools to strengthen consumer enforcement.