

SUBMISSION FROM STUBHUB TO THE DJEI CONSULTATION ON TICKET RESALE

16 MARCH 2017

EXECUTIVE SUMMARY

- **The key issue of importance in any review of policy on the resale of tickets for entertainment and sporting events must be the protection of consumer interests and not the preservation or protection of the business and commercial interests of event organizers, promoters and primary ticket distributors. In fact, in many cases the interests of consumers and these vested interests do not converge.**
- **Greater transparency is required as regards existing links between the primary and secondary markets. Event organisers should be required to publish what percentage of tickets for events are made available to the public and how many are channeled to corporate sponsors, VIPs, and given by way of ticket allocations to secondary ticket agents.**
- **There is an increasing industry problem of tickets being cancelled by event organisers simply because they were offered for resale – in some cases without notification so that buyers are turned away at the gate. We have seen an even greater number of threat letters from event organisers, demanding that they cease and desist from selling on StubHub or risk cancellation. We believe the law needs to be amended to provide for tougher safeguards for consumers against cancellation and blacklisting.**
- **This goes to the heart of the issue on this matter – should consumers have rights over goods that they have purchased, or is it appropriate and lawful that these rights can be restricted by the sellers of the goods in a way that would not be canvassed or countenanced for any other consumer good or service?**
- **If policymakers wish to promote access to sporting and cultural events, the only way to achieve this is to reform the primary distribution model which is currently broken and operating in a way that is not in the interests of consumers. Trying to control the circulation of tickets once they have been made available to the public is likely to prove ineffectual and counterproductive. For example, there is considerable academic evidence from the US that demonstrates that price caps actually lead to higher prices. We note that the UK government has recently explicitly rejected price caps.**
- **There is a significant public policy issue as to whether it is appropriate, necessary and proportionate for the Irish State to seek to intervene in a competitive international secondary marketplace and seek to limit how that market operates – could such intervention be justified if it applied to a secondary market for other consumer goods, including cars, houses, chattels and mementoes?**
- **It is important to be discerning when examining the market for the resale of tickets – the consumer protection (and other compliance issues) that relate to street ticket touts do not apply to a secondary marketplace such as StubHub which offers cast iron guarantees to consumers.**
- **In particular there are a range of important benefits for consumers and for the events industry from a well-functioning secondary market. A range of new business models have emerged over the past five years which now offer consumers robust customer protection guarantees. An objective of consumer protection policy should be to encourage the use of such facilities in preference to street sales or other internet channels which are less secure.**
- **Consumer research suggests a high degree of public support for the secondary ticket market, with strong support for the right to resell tickets freely, clear opposition to cancellation and blacklisting, as well as clear concern amongst consumers about providing seat details in the light of such threats.**

- The level of fraud on StubHub is incredibly low because of our ability to hold the payment from the buyer to the seller until after the event. Despite this, fraud is an acknowledged problem in the industry. However, we note that there is no shortage of legislation to tackle fraud.
- There is considerable evidence that the secondary ticket market does not adversely impact on access to sporting and cultural events and indeed enhances it. StubHub's figures demonstrate that only a small percentage of tickets are sold on its marketplace for major events – typically less than 1% of all tickets even for major events – with even smaller figures for less high profile events. Moreover, the secondary market supports access for fans who would otherwise be unable to source tickets for sold out events.
- We do recommend legislation to tackle the problem of botnets which are presenting problems in how the primary distribution market functions.
- It is important that Ireland ensures that any commitments given to international sporting bodies take account of the broader consumer protection issues involved in the secondary ticket selling market and are not exclusively focused on the protection of the business and corporate interests of the promoters of both tournaments.

INTRODUCTION

In addition to allowing for the resale of event tickets on almost all of its localised European sites, eBay owns StubHub, a dedicated online ticket marketplace which currently serves customers in over 45 countries around the world including Ireland. eBay currently employs over 700 people in Ireland, including around 40 servicing StubHub customers.

StubHub offers buyers a comprehensive FanProtect Guarantee which means that in the rare instances where there is an issue with a ticket, StubHub will ensure that the buyer receives either a comparable or even better replacement ticket or at the very least, a full refund. Similarly, buyers are granted full refunds where an event is cancelled. Moreover, by intermediating both the payment and the delivery of tickets between buyer and seller, StubHub is able to ensure a much safer and more convenient resale experience for consumers who would otherwise be forced to buy their tickets from street touts or parts of the internet where there is no consumer protection.

BENEFITS OF THE SECONDARY MARKET

Benefits for Consumers

There are many benefits associated with a well-functioning secondary ticket market.

Firstly, for all the discussion about prices in the secondary market, it should be noted that fans are frequently able to secure resale tickets for less than the original primary 'face value' price, since the price of tickets fluctuates according to demand, supply and the timing and profile of the event. As a result, fans who would otherwise not be able to afford to attend sporting and cultural events are able to attend such events.

This is particularly the case where fans are allowed to resell individual games from their season tickets as in the US - e.g. for MLB, NFL, NBA, and NHL games. Indeed, the prevalence of tickets being sold at below face value has actually led to teams imposing price floors in the secondary market as a condition of partnerships with secondary ticket marketplaces. It is also common for tickets to be made available at less than face value in knock-out sporting events.

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

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

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

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

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

We do, however, believe that fans should benefit from consumer protection – both in the form of Fan Guarantees and other statutory protections – and that it is better that people should be able to buy tickets in an environment which is open, safe, transparent and subject to consumer redress than be forced to purchase a ticket from a tout on the street or leave themselves open to fraud by buying elsewhere on the Internet. For example, there are real risks associated with buying tickets on the street – aside from the fact that fans are passing large amounts of cash in areas which are unlikely to be well policed, there is no consumer protection if there is a problem with the transaction (e.g. the ticket turns out to be fake). And by the time a fan is placed in a position of buying from a street tout, they are often more desperate, having travelled far to the venue. As a result, street touts are placed in a much stronger bargaining position and are able to extract much higher prices from consumers than if they had bought these tickets on a secondary ticket marketplace that offered robust customer guarantees. There is also an added concern with street touts that they are essentially functioning as part of the black economy and all aspects of their “business operations” remain detached from the law and without traceability.

Benefits for the Primary Market

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

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

However, it should be noted that, with artists increasingly selling tickets on platforms such as Ticketmaster Platinum for hundreds of euros, the case for price caps appears even weaker. For example, why is it any less fair for a ticket with a €25 face value to be sold for €50 on the secondary market than it is for a ticket to be sold for hundreds of euros on the primary market. Why regulate prices in the secondary market but not the primary market?

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

Consumer Attitudes Towards The Secondary Ticket Market

While the issue of ticket prices is one which arouses strong views, it is far from clear that the public is crying out for further regulation in this area. For example, a recent Opinium survey of 1,000 Irish consumers found that:

- Two thirds of those surveyed (67%) had purchased tickets for live entertainment or sporting events in the last 12 months. Almost half (48%) had bought these tickets online, a quarter (24%) from a ticket broker and a fifth (18%) bought tickets in person.
- Over a third (37%) bought tickets for an event but discovered that they were later unable to attend. Out of these non-attenders a third (33%) offered them to a friend or relative for free, and a fifth (18%) offered free tickets to somebody else. Over a quarter (28%) of these adults resold the unused tickets.
- Although over three quarters (78%) had never resold any tickets, 12% had sold tickets in person to another individual, a tenth (10%) had sold through an online market place and 2% to a broker.
- Two fifths (40%) had looked for alternative ways to buy tickets. The top alternative tactics these adults employ to find tickets are to ask friends and family (55%); over half (52%) have browsed online market places or classified websites have searched on social media; and 51% via social networks
- Considering a ticket owners' rights, 57% believe if they purchase a ticket, it is their personal property and have full control over what they do with it. However, 22% disagree and think that although they own the ticket the original issuer controls that ticket and can limit the owners' actions. Two thirds (66%) think that they should not need to ask permission of the original ticket seller when re selling tickets.
- Once a ticket is bought but the owner is no longer able to attend, two thirds (67%) believe that it is up to the individual to choose how tickets are resold, but a fifth (21%) disagree and think that the original ticket seller can determine how tickets are resold.
- Thinking about the price of re-sold tickets, over a third (37%) think that the ticket owner should be free to determine the price. A smaller number, 29%, believe the original ticket issuer should determine the resale price and only 22% think the government should determine the price through legislation.
- Given that clubs and event promoters can now cancel tickets they find being sold outside of pre-approved online platforms, over half (55%) would be less likely to buy and sell tickets online to avoid this.
- Furthermore, 70% were not aware that some sports teams have cancelled fans' tickets, and their season ticket packages, because the fans were reselling tickets.
- Knowing that sports teams have cancelled tickets because of re-sold tickets, almost half (47%), would not be comfortable having their name and seat location become available when they re-sell their tickets online.
- When asked about whether there should be legislative safeguards preventing clubs and event promoters from cancelling fans' tickets that were bought and sold outside of pre-approved

platforms, 56% said they would support such safeguards compared to a fifth (20%) who would be against this.

- A total of 41% said they thought it would be fair for event promoters to cancel fans tickets because a supporter is re selling tickets, whereas 46% thought that this would be unfair.

ACCESS TO SPORTING AND CULTURAL EVENTS

Scale and Extent of the Secondary Ticket Market

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

The reality, however, is that the secondary market existed long before the internet. What the internet has done is make an existing market (a) more visible (b) more transparent and (c) more competitive. As a result, consumers are far more aware of the going rate in the secondary market; competition and supply has been increased; and this in turn has driven down prices throughout the secondary market, including on the street. Since StubHub arrived in the UK in 2012, for example, the average re-sold ticket price on our site has come down by nearly 25%.

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

We are not aware of any reliable published figures for the size of the secondary market. However, we calculate that for the recent U2 dates at Croke Park that less than 1% of all tickets sold were sold on StubHub. Similarly, only 0.13% of tickets for Ireland's home games during the 2016 Six Nations Rugby Tournament were sold on StubHub.

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

'Holdbacks' – The Real Problem

The real problem in terms of access to sporting and cultural events comes not from the very small percentage of tickets which are sold on platforms like StubHub but from the much higher percentage of tickets which the primary distributors/primary distributors never put on public sale.

For example, a recent report by the New York Attorney General found that on average less than half (46%) of the tickets for New York events actually went on public sale and that 16% of the tickets were going to industry insiders. Specifically, this found that:

“the majority of tickets for the most popular concerts are not reserved for the general public at least in the first instance. Rather before a member of the public can buy a single ticket for a major entertainment event, over half of the available tickets are either put on “hold” and reserved for a variety of industry insiders including the venues, artists or promoters, or are

reserved for “pre-sale” events and made available to non-public groups, such as those who carry particular credit cards.”¹

In some cases, the percentage of tickets held for industry insiders was as high as 29% for some events, averaging 16% across the board.

State	Venue	Artist	Concert	Tickets Available	Held Back
CA	Save Mart Center	Justin Bieber	10/5/12	12,020	90%
FL	Amway Center	Taylor Swift	4/12/13	12,118	86%
NJ	IZOD Center	Maroon 5	2/23/13	16,574	68%
NJ	IZOD Center	Pink	3/23/13	16,823	84%
NJ	IZOD Center	One Direction	7/2/13	13,687	67%
TN	Bridgestone Arena	Justin Bieber	1/18/13	13,783	93%
TN	Bridgestone Arena	Keith Urban	11/11/09	14,904	70%
TN	Bridgestone Arena	Taylor Swift	9/12/09	13,330	88%
WA	Tacoma Dome	Justin Bieber	10/9/12	20,410	71%

Similarly, the table above (based on information from the Fan Freedom Project in the US) shows that for some events, only 7% of tickets were made available to regular fans. And indeed some artists make it a condition of their contracts with concert promoters that an allotment of tickets is held back from general public sales so that it can be sold on the secondary market.

Obviously, these are US examples. However, they are indicative of a broader trend within the industry globally and they illustrate the need for a legal transparency requirement to apply to the primary market in respect of ticket allocations. For example, the information in the table above was obtained only by submitting requests under the US Freedom of Information Act on venues that are publicly owned or subsidized. It is currently not possible to obtain such legislation in other jurisdictions in this way.

We would therefore strongly recommend that the Irish Government consider a statutory requirement for event organisers to specify publicly the precise percentage of the overall ‘ticket manifest’ that is actually made available to the public. Such a requirement would go a long way to ensuring that more tickets are placed on public sale, rather than being reserved for industry insiders. It would also represent an appropriate policy response by Government to controversy last year concerning the allocation of tickets by the Olympic Council of Ireland where there were reports that families of competitors were restricted in their capacity to acquire tickets, although significant numbers of tickets were allocated by the OCI authorised reseller for corporate or other purposes

We note that other jurisdictions have legislated in this area. For example, the ticket resale statute of the State of Victoria in Australia allows the Government to “provide that a specified minimum proportion of tickets to an event must be made available for sale or distribution to the public generally or to particular classes of persons.”

¹ https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

Similarly, some event organisers in the UK e.g. the English Rugby Football Union have provided detailed public statements about their ticket allocations at Twickenham – specifying, for example, the number of tickets reserved for corporates and VIPs, as well as those reserved for sporting bodies and rugby clubs. We therefore see no reason why other event organisers should not be required to follow suit.

More generally, we believe that greater transparency is required in relation to the links between the primary and secondary markets. Clearly accessing this information will prove challenging, but we would hope that the CPCC would be able to produce evidence on this aspect, using statutory powers to acquire the information if required.

Prices

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

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

Moreover, a large number of tickets may sell for well below face value. This is particularly the case in the US for Major League Baseball and National Football League tickets where a season ticket holder may often struggle to recoup face value for a ticket if their team is underperforming. This has led some sporting bodies in the US to insist on price *floors* in order to limit competition from low prices in the secondary market.

We do not yet possess reliable figures for Ireland given the comparatively small size of the market. However, in the UK, our research shows that, at any given time, up to 40% of tickets offered on StubHub are priced at or below face value. In the US, where the market is more developed and established, this figure is even higher at 50%.

We would argue that what should determine the price of a ticket is what someone is prepared to pay for it. Moreover, as can be seen from the consumer research set out below, there is clear evidence of consumer support for such a proposition. For example, the Opinium research mentioned above found that over a third (37%) think that the ticket owner should be free to determine the price. A smaller number, 29%, believe the original ticket issuer should determine the resale price and only 22% think the government should determine the price through legislation.

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

For example, we do not regulate the price at which people can resell their homes, despite the fact that land and affordable homes are scarce. Why are tickets fundamentally any different?

Moreover, why is it any more 'fair' to pay €100 for a ticket in the primary market than it is to pay €50 in the secondary market for a €25 face value ticket? *This raises an even more fundamental question: "why should ticket prices be regulated in the secondary market but not for the primary market or their authorized resellers?"*

For example, it is now common practice for artists themselves to sell tickets at full market prices in the primary market via platforms such as Ticketmaster Platinum. Some examples can be seen in the screenshots below with two tickets for a Phil Collins concert being advertised at €720 and other tickets for Robbie Williams, Justin Bieber, Kings of Leon and Olly Murs being priced at hundreds of euros:

Delivery Details	Payment Details	Order Confirmation
<p> Your tickets are not yet reserved. Complete this section to reserve tickets.</p>		
<p>METHOD OF DELIVERY</p> <p>Please select your preferred method of delivery or collection</p>		
<input type="radio"/> Standard Mail	Free	Your tickets will be mailed to your billing address and delivered no later than 7-10 days before the event
<input type="radio"/> International Mail	€3.00	Your tickets will be mailed to your billing address and delivered no later than 7-10 days before the event.
<input checked="" type="radio"/> DHL Secure Courier Republic of Ireland and Northern Ireland	€20.00	Delivery with tracking facility via DHL Express to addresses in the Rep. of Ireland and Northern Ireland. A signature is required to complete delivery. You can track your item at www.dhl.ie. If you have not received your tickets 7 days before the event contact Customer Service who will co-ordinate with the shipping carrier to try to get them delivered to you. Not available to PO Box addresses.
<input type="radio"/> DHL Express Secure Courier Great Britain	€22.00	Delivery with tracking facility via DHL Express to addresses in the Great Britain. A signature is required to complete delivery. You can track your item at www.dhl.ie. If you have not received your tickets 7 days before the event contact Customer Service who will co-ordinate with the shipping carrier to try to get them delivered to you. Not available to PO Box addresses.
<p>EVENT DETAILS</p> <p>Phil Collins Sunday 25 June, 2017, 18:00 Aviva Stadium, Dublin Republic of Ireland</p>		
<p>ORDER DETAILS</p> <p>Tickets x 2</p> <p>Section: Block 106 Row: P </p> <p>Ticket Price: €350.00 x 2 Tickets Total: €700.00</p> <p>Method of Delivery DHL Secure Courier Republic of Ireland and Northern Ireland</p> <p>TOTAL €720.00</p>		

Delivery Details	Payment Details	Order Confirmation
<p> Your tickets are not yet reserved. Complete this section to reserve tickets.</p>		
<p>METHOD OF DELIVERY</p> <p>Please select your preferred method of delivery or collection</p>		
<input type="radio"/> Standard Mail	Free	Your tickets will be mailed to your billing address and delivered no later than 7-10 days before the event
<input type="radio"/> International Mail	€3.00	Your tickets will be mailed to your billing address and delivered no later than 7-10 days before the event.
<input checked="" type="radio"/> DHL Secure Courier Republic of Ireland and Northern Ireland	€20.00	Delivery with tracking facility via DHL Express to addresses in the Rep. of Ireland and Northern Ireland. A signature is required to complete delivery. You can track your item at www.dhl.ie. If you have not received your tickets 7 days before the event contact Customer Service who will co-ordinate with the shipping carrier to try to get them delivered to you. Not available to PO Box addresses.
<input type="radio"/> DHL Express Secure Courier Great Britain	€22.00	Delivery with tracking facility via DHL Express to addresses in the Great Britain. A signature is required to complete delivery. You can track your item at www.dhl.ie. If you have not received your tickets 7 days before the event contact Customer Service who will co-ordinate with the shipping carrier to try to get them delivered to you. Not available to PO Box addresses.
<input type="radio"/> DHL Secure Courier European Union	€24.00	Delivery with tracking facility via DHL Express to addresses in the European Union. A signature is required to complete delivery. You can track your item
<p>EVENT DETAILS</p> <p>Justin Bieber Wednesday 21 June, 2017, 17:00 RDS, Dublin Republic of Ireland</p>		
<p>ORDER DETAILS</p> <p>Tickets x 2</p> <p>Section: Pit "J" </p> <p>Ticket Price: €450.00 x 2 Tickets Total: €900.00</p> <p>Method of Delivery DHL Secure Courier Republic of Ireland and Northern Ireland</p> <p>TOTAL €920.00</p>		

ticketmaster PLATINUM THE BEST AVAILABLE TICKETS

Secure | https://platinum.ticketmaster.ie/checkout/delivery?sid=d8f4a92a-b744-4d8b-a707-611669e0accb

Apps | Managed bookmarks | Fin It | New Tab | New Tab Search | Brexit | Football | Tax

Delivery Details | Payment Details | Order Confirmation

Warning: Your tickets are not yet reserved. Complete this section to reserve tickets.

METHOD OF DELIVERY

Please select your preferred method of delivery or collection

- Standard Mail** **Free** Your tickets will be mailed to your billing address and delivered no later than 7-10 days before the event
- International Mail** **€3.00** Your tickets will be mailed to your billing address and delivered no later than 7-10 days before the event.
- DHL Secure Courier Republic of Ireland and Northern Ireland** **€20.00** Delivery with tracking facility via DHL Express to addresses in the Rep. of Ireland and Northern Ireland. A signature is required to complete delivery. You can track your item at www.dhl.ie. If you have not received your tickets 7 days before the event contact Customer Service who will co-ordinate with the shipping carrier to try to get them delivered to you. Not available to PO Box addresses.
- DHL Express Secure Courier Great Britain** **€22.00** Delivery with tracking facility via DHL Express to addresses in the Great Britain. A signature is required to complete delivery. You can track your item at www.dhl.ie. If you have not received your tickets 7 days before the event contact Customer Service who will co-ordinate with the shipping carrier to try to get them delivered to you. Not available to PO Box

EVENT DETAILS

Robbie Williams
Saturday 17 June, 2017, 18:00
Aviva Stadium, Dublin
Republic of Ireland

ORDER DETAILS

Tickets x 2

Section: Block 106
Row: N
[View Seat\(s\)](#)

Ticket Price: €285.90 x 2
Tickets Total: €571.90

Method of Delivery
DHL Secure Courier Republic of Ireland and Northern Ireland €20.00

TOTAL €591.90

17:26 22/02/2017

ticketmaster PLATINUM THE BEST AVAILABLE TICKETS

Delivery Details | Payment Details | Order Confirmation

Warning: Your tickets are not yet reserved. Complete this section to reserve tickets.

METHOD OF DELIVERY

Please select your preferred method of delivery or collection

- Standard Mail** **Free** Your tickets will be mailed to your billing address and delivered no later than 7-10 days before the event
- International Mail** **€3.00** Your tickets will be mailed to your billing address and delivered no later than 7-10 days before the event.
- DHL Secure Courier Republic of Ireland and Northern Ireland** **€20.00** Delivery with tracking facility via DHL Express to addresses in the Rep. of Ireland and Northern Ireland. A signature is required to complete delivery. You can track your item at www.dhl.ie. If you have not received your tickets 7 days before the event contact Customer Service who will co-ordinate with the shipping carrier to try to get them delivered to you. Not available to PO Box addresses.
- DHL Express Secure Courier Great Britain** **€22.00** Delivery with tracking facility via DHL Express to addresses in the Great Britain. A signature is required to complete delivery. You can track your item at www.dhl.ie. If you have not received your tickets 7 days before the event contact Customer Service who will co-ordinate with the shipping carrier to try to get them delivered to you. Not available to PO Box addresses.

EVENT DETAILS

Olly Murs
Monday 3 April, 2017, 20:00
3Arena, Dublin
Republic of Ireland

ORDER DETAILS

Tickets x 2

Section: Pit B
[View Seat\(s\)](#)

Ticket Price: €180.00 x 2
Tickets Total: €360.00

Method of Delivery
DHL Secure Courier Republic of Ireland and Northern Ireland €20.00

TOTAL €380.00

Kings of Leon - Platinum Tickets

WELCOME!

Ticketmaster Platinum offers fans the best available tickets for an event direct from the artist. Platinum Tickets enable market-based pricing (adjusting prices according to supply and demand) for live event tickets. The goal is to give fans fair and safe access to the best tickets, while enabling artists and other people involved in staging live events to price tickets closer to their true value.



[FAQ](#) | [More about Ticketmaster Platinum](#)

KINGS OF LEON TICKETS

Section	Price Per Ticket	Qty	
Standing	€146.00	<input type="text" value="2"/> of 6	BUY
BLOCK C Row 31	€180.00	<input type="text" value="2"/> of 6	BUY

Kings of Leon

Date: Saturday 1 July, 2017
Time: 18:30
Venue: 3Arena
City: Dublin
Country: Republic of Ireland

United Kingdom)

It should be stressed that the above screenshots are for tickets only. They are not for VIP packages or hospitality or travel packages. Nor are they resale tickets. They are tickets being sold in the primary market directly by the artist.

This is made clear on the Ticketmaster Platinum site which states:

“Platinum Tickets were not purchased initially and then posted for resale; they are being sold for the first time through Ticketmaster Platinum. Ticketmaster Platinum enables market-based pricing (adjusting prices according to supply and demand) for live event tickets, similar to how airline tickets and hotel rooms are sold. The goal is to give the most passionate fans fair and safe access to the best tickets, while enabling artists and other people involved in staging live events to price tickets closer to their true value.”²

The greater use of dynamic pricing makes the whole concept of capping resale prices at face value (or face value plus 10%) even more flawed. Already, it is impossible for enforcers and marketplaces to know what the correct face value is. Not only does it vary between events and between different seats within a venue. Now the price of a ticket may fluctuate up and down, depending on when it is sold. As such, the whole concept of face value becomes a meaningless one.

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

² <http://platinum.ticketmaster.ie/help>

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

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

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

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

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

Links Between the Primary and the Secondary Markets

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

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

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

"Dispatches went undercover inside one of the UK's biggest ticket reselling websites - Viagogo - and found that major promoters allocate hundreds or even thousands of tickets to be sold through their website at well above the face value. Tickets for recent gigs and tours by Coldplay, Rihanna, Westlife, Take That, and V Festival have been allocated by the promoters in this way.

Dispatches has discovered that at least 29,000 tickets were allocated to viagogo for the 2011 Take That tour - promoted by SJM Concerts

4,500 tickets for the 2011 V Festival - promoted by SJM Concerts, Metropolis Music and MCD

Dispatches has also seen a document that shows that viagogo has been allocated nearly 50,000 tickets, for 50 well known acts, music events, sporting occasions mostly for 2012 including:

- 9,000 tickets for Coldplay's upcoming Stadium tour - promoted by SJM Concerts, and Metropolis Music.
- Over 3,000 for Westlife's 2012 tour - promoted by Live Nation
- 2,200 tickets for Rihanna's UK tour - promoted Live Nation
- 800 tickets for the live show of the BBC's Strictly Come Dancing - promoted by Phil McIntyre Entertainment and Stage Entertainment UK
- 800 tickets for the live tour of the X Factor - promoted by 3A Entertainment

There is no indication that any of the artists involved were aware of these allocations.”

While such allocations are not illegal and may in some cases be used legitimately by event promoters as a means of managing commercial risk, we believe that they should be subject to far greater transparency than exists at present. Specifically, event organisers should be required to specify publicly what percentage of the overall ticket allocation has been put on general sale, set aside for corporate allocations and VIPs, or made available through fan clubs and debentures, or allocated to secondary ticket agents. This increased level of information would be important in introducing transparency into processes and practices which are currently concealed from consumers and policy makers.

‘Authorised Resale’ Versus ‘Open Resale’

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

Indeed, the political debate around resale represents part of a much broader struggle between two competing models of resale, namely restrictive or ‘authorised’ resale on the one hand, and ‘open resale’ on the other. StubHub believes that an ‘open’, competitive resale model is the one which will best serve consumers.

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

ONLINE TICKET FRAUD

As the DJEI will be aware, there has been a great deal of public commentary about the level of online ticket fraud. We do not dispute that online ticket fraud is a serious issue which needs to be addressed. However, we would question whether it makes sense to describe such fraud as occurring in the secondary market. For example, the two main types of fraud are (1) counterfeit tickets and (2) fraudsters selling tickets which are either non-existent or which they have no right to sell. There have also been examples of websites purporting to be official when they are not, or claiming that tickets for events are sold out when they are not. We would question whether such cases represent examples of fraud in the primary market or the secondary market and indeed whether such a distinction is

meaningful. Moreover, we would note that fraud exists in all markets for goods and services and that there is no shortage of laws designed to address such activity³.

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

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

Even where resale is restricted or banned in some jurisdictions, enforcement is necessarily weak, given that law enforcement inevitably has higher priorities. As a result, bad actors are further incentivised to engage in such behaviour since the restriction of supply on resale marketplaces only pushes prices higher in the black market.

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

As result, seller fraud is virtually non-existent on StubHub with a seller fraud rate at 0.01% and counterfeits are even more rare. In 2016, for example, we did not see a single case of a counterfeit ticket being sold successfully through our UK marketplace. This was thanks to our stringent security measures which include the use of advanced metrics to detect and prevent fraud in real time. Moreover, in the very rare cases where something goes wrong and we cannot find a replacement ticket of comparable value, fans are backed by our Fan Protect Guarantee which entitles them to a full refund.

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

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

³ In addition to the many laws on fraud, for example, there is also specific legislation in the form of the EU Unfair Commercial Practices Directive which is designed to prevent misleading commercial practices.

THE UK CONSUMER RIGHTS ACT

The DJEI consultation raises the possibility of legislative intervention along the lines of the UK Consumer Rights Act (CRA) 2015. We therefore offer the following analysis of the shortcomings of the CRA.

As the DJEI may be aware, the ticketing provisions in the Consumer Rights Act were the result of a last minute compromise amendment agreed between the UK Government and various peers in the UK House of Lords and were not the subject of any formal consultation with the industry. As a result of this lack of consultation, we have seen a number of problems with the Consumer Rights Act.

Cancellation and Blacklisting

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

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

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

"The resale (assignment) of tickets bought online is the subject of separate provisions of the Act. The re-selling of tickets remains permitted, but where it takes place online, certain information must be provided. The [Consumer Rights] Act expressly requires that a term which allows an event organiser, where a ticket is being resold or offered for resale, to cancel it or blacklist the seller must meet the requirements of Part 2 of the Act. In other words, it makes such terms subject to the usual tests of fairness and transparency. As indicated above, it is the CMA's view that a term which undermines a consumer's right to sell what they own is at risk of being regarded as unfair."⁴

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

⁴ "Unfair Contract Terms: Guidance on the unfair terms provisions in the Consumer Rights Act 2015", Competition and Markets Authority, 31 July 2015, CMA37

As to whether general terms and conditions prohibiting resale and transfer of tickets (or mandating that resale takes place on a single platform authorised by the event organiser) are fair, our firm view is that they are not. Indeed, it should also be noted that the then Office of Fair Trading (OFT) – now the CMA – said in its evidence to the Culture, Media and Sport Committee in 2007 that:

“The OFT believes that there is scope under the UTCCRs for a term prohibiting consumers from reselling tickets for profit as being considered unfair. However, only a court can decide if a term is unfair.”

We also question whether event organisers have the right to enforce terms and conditions against consumers who have purchased resale tickets on our site but who were not party to the original contract as between the event organiser and the original buyer. We think it is particularly instructive that there is an absence of case law on this matter as it demonstrates an unwillingness on the part of event organisers to test terms and conditions in court.

However, it is clear that the Unfair Contract Terms Regulations do not apply to B2B transactions. As a result, secondary ticket agents are not protected at all by the Consumer Rights Act from cancellation and blacklisting, despite the fact that they provide a valued service to consumers by enabling them to buy last minute tickets to sold out events.

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

In addition, the Opinium Research shows that while most consumers were generally unaware of this problem, almost half (46%) of those surveyed thought it was unfair for event organisers to cancel fans’ tickets in this way.

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

We cannot envisage any circumstances whereby terms and conditions allowing for cancellation and blacklisting could be regarded as fair, especially when consumers with spare tickets are in almost all cases denied any guaranteed right of refund if they can no longer attend the event⁵ and when the same terms and conditions typically provide for cancellation without compensation. Moreover, we are not aware of a single example of where similar terms and conditions would be allowed when it comes to the sale of other items.

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

“7.3 You may not resell or transfer your tickets if prohibited by law. In addition, Event Partners may prohibit the resale or transfer of tickets for some events. Any resale or transfer (or attempted resale or transfer) of a ticket in breach of the applicable law or any restrictions

⁵ Typically, refunds are reserved only for those instances where an event is cancelled entirely.

imposed by the Event Partner is grounds for seizure or cancellation of that ticket without refund or other compensation.”⁶

“The GAA reserves the right to render this ticket null and void for any action in breach of the above rules. This may result in:

- a. entry to the venue being refused to the ticket holder
- b. a bar on future ticket purchases from the GAA by those involved in the prohibited transaction
- c. legal proceedings against the ticket holder and/or those involved in the prohibited transaction.”⁷

“Tickets you purchase are for personal use. Except as we may agree, **you and your party must not re-sell or transfer (or seek to re-sell or transfer) the tickets in breach of the applicable terms.** A breach of this condition will entitle SEE or the Promoter to cancel the tickets without prior notification, refund, compensation or liability.” (See Tickets)⁸

“**Tickets may only be purchased from the IRFU or officially authorised agents of the IRFU. Any ticket obtained from any other source (for example, unauthorised intermediaries such as ticket brokers, internet auctions, internet ticket agents) will be rendered void, and all rights of entry into the Stadium will be nullified.** Any person seeking to use such a ticket obtained through unauthorised sources will be refused entry into the Stadium, ejected from the Stadium and/or will have their ticket seized by the Management, in addition to other remedies available to the Management... **Tickets are non-transferable.** In particular, it is prohibited to sell, advertise or offer to sell this ticket to any person at a price in excess of its face value. Further, it is a breach of the Terms to advertise the sale of this ticket in any forum, including placing the ticket for auction on any online auction website. This ticket shall not be used as a prize in any lottery or competition or for any promotional or advertising purpose or otherwise as part of a corporate package or hospitality package unless expressly authorised in writing by the IRFU. Without the express consent of the IRFU, such ticket shall be rendered void, and all rights of entry into the Stadium will be nullified. Any such action may also result in legal proceedings against the ticket holder and/or the advertiser or on-line auction website.”⁹

It should also be noted that the threat of cancellation and blacklisting serves as a barrier to greater transparency for consumers. For example, our consumer research shows that consumers are less likely to provide row and seat number given the threat of cancellation and blacklisting. Knowing that tickets had been cancelled, 47% of consumers in the Opinium research said that they would not feel comfortable providing their seat location when reselling.

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

The Opinium research found strong consumer support for such measures with 56% of Irish consumers supporting tougher legislative safeguards to prevent event promoters from cancelling fans’ tickets that were bought and sold outside of pre-approved platforms with only 20% opposing.

⁶ http://www.ticketmaster.ie/legal/purchase.html?tm_link=tm_home&i_ourpolicy

⁷ <http://www.gaa.ie/tickets/terms-and-conditions>

⁸ <http://www.seetickets.com/content/terms-and-conditions>

⁹ http://www.irishrugby.ie/ireland/tickets/terms_and_conditions.php

C2C Sales

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

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

Responsibility of Secondary Ticket Marketplaces

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

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

For example, StubHub does not sell any of the tickets listed on our Website. We therefore rely on our sellers to provide complete and accurate information pertaining to their tickets in order to comply with their legal obligations.

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

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

Compliance Issues

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

- Firstly, it may not be applicable – for example, in cases where the ticket provides only for general admission, or access to a festival.
- Secondly, the buyer may have purchased the ticket without even knowing their row and seat number. For example, consumers buying Rugby World Cup tickets were only able to purchase a price category of ticket and were only informed of their row and seat number much closer to the event. Despite this, a seller is rightly allowed under law to resell their

ticket before they know where they will be seated. *Moreover, the Rugby World Cup case raises a fundamental question as to why it should be considered essential for the row and seat number to be provided when tickets are resold in the secondary market but not when they are first sold in the primary market, especially when other sporting events may follow the example of the Rugby World Cup.*

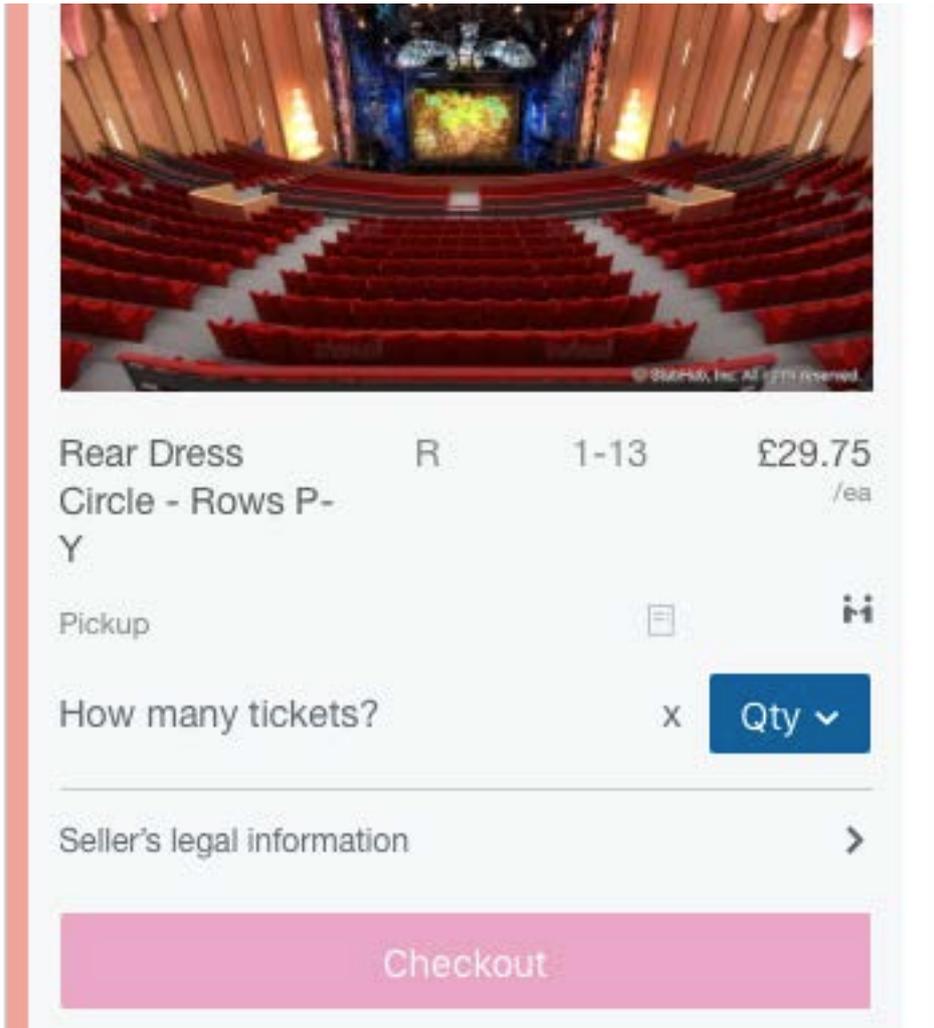
- Thirdly, and most importantly, it is common practice in the industry (especially in the music sector) for the primary market to provide large allocations of tickets directly to secondary ticket agents without necessarily informing them as to where these tickets will be located in a venue. As such,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

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

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

It should also be noted that there are alternative methods of ensuring transparency for consumers when it comes to seat location. For example, StubHub has begun to roll out 2D and 3D views for ticket listings which show the consumer the view they would have. This is far superior to providing row and seat number and recent consumer research in the UK indicates that a virtual view was the most helpful (41%) factor in making a decision to buy tickets. This was followed by a venue map (37%), with block, row and seat number coming in last (16%). We would therefore strongly urge the Irish government, if considering transparency requirements for seat location data to allow the alternative option for secondary ticket marketplaces to offer 2D and 3D views (as opposed to requiring the precise row and seat number). Such an option would greatly increase customer transparency without creating the problems mentioned above in relation to cancellation and blacklisting.

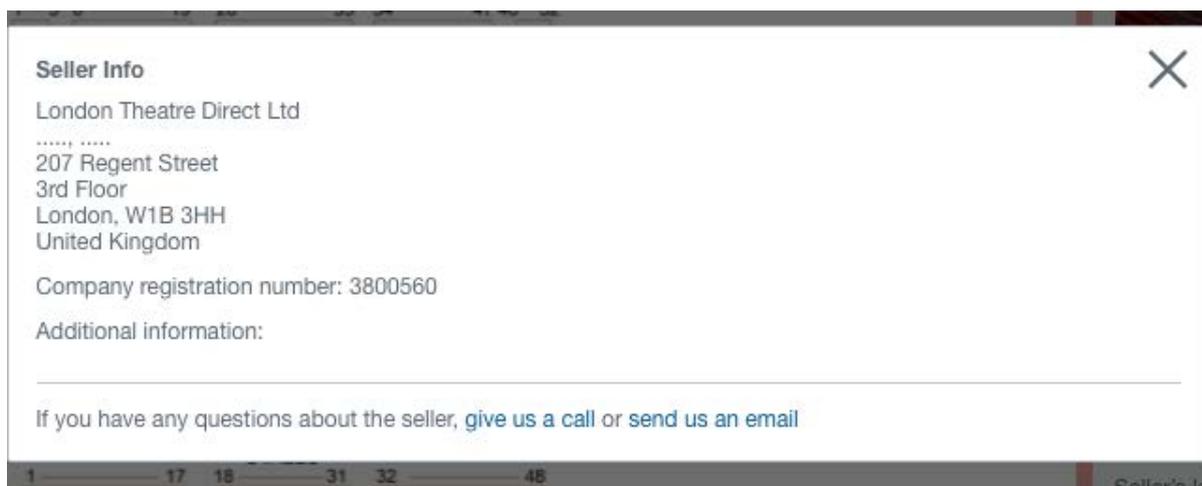
An example of 2D views is set out below:



Business Seller Disclosures

As per EU law, businesses are legally required to declare themselves as such and it is an offence under the Unfair Commercial Practices Directive to falsely declare oneself as a consumer. However, it should be stressed that it is the responsibility of the seller to declare themselves properly.

As a marketplace, we enable our business sellers to comply with their disclosure duties. For example, we have changed our UK site so that, when a seller declares themselves as a business and provides us with their business details, we automatically populate all their listings with that information (rather than leaving it to the seller to manually input these details on each listing). This is then displayed to the buyer (as shown in the screengrab below).



We also force all sellers above a particular sales threshold to disclose themselves as businesses. But again, it should be stressed, the ultimate responsibility for compliance rests with the seller, not the marketplace. This is essential given that there is no clear statutory definition as to what constitutes a business or trading activity as opposed to C2C activity.

OTHER POTENTIAL LEGISLATIVE OPTIONS

Price Caps

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

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

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

More fundamentally, the entire concept of face value is increasingly meaningless in a world where the primary market is moving towards dynamic or demand-based pricing and where consumers routinely pay well above face value in the primary market because of various associated fees. It therefore makes little sense to base price caps on such an arbitrary and uncertain concept.

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

Unintended Consequences

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

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

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

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

Academic Evidence Against Price Caps

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

“By focusing on penalties for those who engage in prohibited transactions, anti-ticket scalping regulations seem to lead to higher prices in the resale market. In states with resale regulations, competition in the resale market is reduced and is pushed towards out-of-state buyers whose costs of ticket acquisition are likely to be higher and are passed on to consumers in the resale market. The end result of this reduction in supply is higher ticket prices in the secondary market.”¹⁰

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

“Empirical analysis suggests that in cities with anti-scalping laws average per-game season ticket prices are approximately \$2 greater in baseball and \$10 greater in football. Anti-scalping laws actually increase team revenues, as the laws have no adverse effect on attendance. Thus event promoters might have sufficient pecuniary incentive to tacitly or explicitly support anti-scalping legislation.”¹¹

¹⁰ “Do Anti-Ticket Scalping Laws Make a Difference Online? Evidence from Internet Sales of NFL Tickets”, Dan Elfenbein, September 2004, University of California, Berkeley

¹¹ “Another Look at Anti-Scalping Laws: Theory and Evidence”, University of Texas, June 2006.

Other academic studies have also heavily called into question the wisdom of anti-ticket scalping laws in the US¹².

More recently, we note that the UK review into secondary ticketing by Professor Michael Waterson explicitly rejected price caps and the UK government has accepted his recommendations in full. Professor Waterson's reasons for rejecting price caps are set out in full in Annex A of this submission.

Ticket Verification

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

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

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

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

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

We note that, for many of the reasons set out above, both the Waterson Review and the UK Government rejected this proposal outright and we would urge the Irish Government to do the same.

Botnets

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

StubHub has consistently advocated for legislation to tackle bot misuse in the US as well as in other jurisdictions. There is now anti-bot legislation in force at federal level and in the following US states: California, Florida, Indiana, Maryland, Minnesota, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Vermont, and Washington (which also makes it illegal to sell bots for purchasing tickets – in itself a lucrative trade).

We note that the UK government has also published tougher measures in this regard as part of the new UK Digital Economy Bill and we would strongly recommend that the Irish government follow suit as it would greatly increase the chances of fans being able to get hold of tickets in the first place.

It should be noted, however, that the botnet problem cannot be tackled by legislation alone. Firstly, the primary market needs to do more to notify law enforcement of bot attacks. Secondly, event organisers need to invest more in anti-bot technology. For example, Ticketmaster have invested

¹² "The Folly of Anti-Scalping Laws", Stephen K Happel and Marianne M Jennings, Arizona State University, 1996; "The Economics of Ticket Scalping", James Atkinson, University of Notre Dame, May 2004

heavily in anti-bot technology (both in using up-to-date CAPTCHA technology and in back end processes to detect multiple purchases from the same credit card or the same IP address) but others have not. We believe that more could be done to spread best practice within the primary market.

Speculative Selling

Concern has been expressed by some consumer groups and others about speculative ticket selling. Although such practices are not illegal, StubHub's policies expressly prohibit speculative selling - i.e. listing for sale tickets which have not been made available to the public through direct sales, fan clubs, debentures or any other means.

It is important that such activity is distinguished from the perfectly legitimate practice of fans reselling tickets which are not in their physical possession but which they have purchased, and that of secondary ticket agents selling tickets which may have been allocated to them by an event organiser.

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

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

ALTERNATIVES TO REGULATION

Technological Measures

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

Photo IDs

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

Personalised Tickets

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

'Paperless' Tickets/E-Ticketing

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

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

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

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

Reforming the Primary Market Distribution Mechanism

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

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

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

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

towards offering refunds for unwanted tickets for the simple reason that they have no incentive to sell the same ticket twice.

For the same reason, our experience has been that 'official' resale platforms are often extremely poor. With the London 2012 Olympics, for example, consumers could not even offer a ticket for resale within 7 days of the event (even though this is often the time when people may be forced to cancel due to last minute changes in personal circumstances). Similarly, with the 2014 Commonwealth Games in Glasgow, the resale website - the only authorised way for sports fans to sell Commonwealth Games tickets they are no longer able to use - was opened only on June 13 and all tickets for resale had to be returned by June 26 (i.e. less than 2 weeks notice).¹³

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

We note that the Irish Government has made commitments to UEFA and World Rugby to introduce legislation to ban the unauthorized sale of tickets for matches held as part of the Euro 2020 Soccer Championship and the 2023 World Cup. We would encourage the Government to seek to give effect to these commitments in a way that addresses the issues and concerns that we have raised, takes account of relevant EU law on unfair contract terms and are generally implemented in a manner which protects consumer rights and entitlements. More importantly, we note that the UK government has consistently refused to extend restrictions which are required as a condition of hosting international sporting events to other sporting and cultural events. We would urge the Irish government to follow that example.

CONCLUSION

In conclusion, we welcome the opportunity to contribute to the DJEI's review into the consumer protection measures applying to ticket resale. Amidst the many issues raised as part of our response, we believe the central issue facing policymakers is not whether the secondary ticket market should exist. This market existed long before the Internet and the growth of ticket resale marketplaces, and will continue to exist whether there is further regulation or not.

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

Or we can choose a model where fans are able to get fair access to tickets through a reformed primary market and a secondary market which is open, transparent, competitive and subject to consumer protection. It is our firm view that the latter of these two models is the only way to deliver a sustainable ticket market that works for consumers and we therefore commend it to the Irish Government.

¹³http://www.heraldscotland.com/news/13166599.Public_not_alerted_in_time_to_Commonwealth_Games_ticket_resale_site/

ANNEX A - EXTRACTS FROM UK WATERSON REVIEW

Price Caps

6.35 Respondents to the Call for Evidence who were concerned about high prices made suggestions for a percentage cap on mark-ups, or occasionally profits, with proposals ranging from 10 - 20% of nominal face value. Those who supported a cap considered that it was necessary to avoid the consumer being exploited by those with no interest in music or the artist, other than making an excessive profit. Such respondents considered that a cap would reduce the prevalence of touts, brokers, professional sellers in the market and particularly the incentive to invest in "bot" technology to acquire the most lucrative seats at high demand events.

6.36 There have also been suggestions that ticket resale prices should include a percentage resale right levy akin to "droit de suite", so that the live music industry shares in the proceeds of resold tickets via a collecting society. I am not convinced of the arguments for such a right in relation to ticketing, rather than performance, as artists already benefit from music copyright and royalties.

6.37 I am not convinced that a price capping is an appropriate solution at this time and I *am not* therefore, recommending it. It is therefore incumbent on me to explain why I take this view.

Price Capping: Reason 1

6.38 My first reason for not capping is that the problem stems in part, in some cases in large part, from the actions of participants in the primary ticketing market and therefore to impose a price cap would be imposing a solution on one group of market players whilst ignoring the role of another group. There needs to be a fundamental recognition, across all sectors of the primary ticketing market, that pricing, distribution and enforcement are, as I say elsewhere in the report, intimately linked and that controlling one of these is insufficient. Some sectors of the primary industry, both in sport and music, recognise this and take steps to respond; others do not. When prices are set deliberately low, and this is widely seen by other market operators, then these other operators will seek to buy up tickets to sell on to other customers. Insiders in the industry may also recognise this and themselves move tickets onto the secondary ticketing market.

6.39 As discussed previously, current steps taken by some sectors of the primary ticketing market are not robust enough. Imposing a limit on numbers of tickets sold in one transaction is not proof against such simple strategies as someone making purchases on a number of occasions, or making purchases from a number of primary sellers. It is not imposing a meaningful limit at all. A personalisation of a ticket (for example by printing a name on it) is not a meaningful personalisation, if it is not subject to venue checks.

6.40 For a variety of reasons, both in sport and in music, as well as other areas, there are various special groups who receive tickets under circumstances different from the general public, which may include preferential pricing, but always involve preferential access to tickets. These include participants in sporting clubs, fan club members, corporate sponsors of the event, companies that have bought naming rights to a venue which give their customers preferential rights, debenture holders, and so on. Some but not all of these are under a moral obligation not to sell their tickets on to people who are not part of one of these groups. Their morals in this regard are a matter for themselves or the group, and not, I would suggest, for general legislation.

6.41 Many primary websites do not impose burdensome restrictions on individuals using their sites. Whilst some impose no checks, others use technologies such as Captcha. Most forms of Captcha are known to be vulnerable to machine learning attacks. The general public appreciates this and complaints about bots were evident from the Call for Evidence. Superior technologies exist and have proven efficacy that require the individual purchasing the ticket to be registered as a known human being (for example verified by means of a set of identity documents provided to the registration body). Such technologies, together with enforced ticket limits, do provide much more secure systems at relatively low cost and, if implemented, would improve matters considerably.

6.42 In summary, if the problem is that primary ticketing market tickets appear immediately to transfer to the secondary ticketing market (at higher prices), I would argue that this is just as much a fault of the primary ticketing market as the secondary ticketing market.

Price Capping: Reason 2

6.43 My second reason is that price caps applied against disparate sellers are likely to break down or be subject to manipulation by various means. A price cap as imposed by an industry regulator against, for example, National Grid in respect of its electricity transmission activities, or against a water company in respect of its charges, can work reasonably well. There is a clear regulatory authority, a clear body to be regulated, and a clear set of rules to be operated, together with appropriate penalties. It works less well against bodies where only some of the prices are regulated, such as rail franchise operators, because they can adjust the prices of unregulated fares. In the past when many rents were regulated, it worked much less well against landlords, a disparate group, who skimmed on maintenance or resorted to extortion techniques to evict tenants in order to circumvent the restrictions.

6.44 The landlord issue is somewhat melodramatic, but it does raise an important point that constitutes my third reason.

Price Capping: Reason 3

6.45 Merely imposing a rule on pricing is clearly insufficient. Individuals need to complain to someone, and actions then need to be taken. A full enforcement mechanism must be devised, it must be decided whether this is a criminal or a civil offence, penalties must be determined and enforcement would need to be funded and prioritised as against other activities carried out by the enforcement agency. This is not costless, and it will inevitably be imperfect. If an individual of ample means wishes to purchase a ticket for an event and can find a way of obtaining it, they are not going to complain if the price is high. Such a purchase may take place outside the UK so authorities may not hear of it. If the venue operator does not police who enters the event, they will not discover it. Unlike New York, for example, ticket brokers in the United Kingdom are not licensed, so action cannot necessarily be taken easily against an individual seller unless the primary site has full details as to their identity and is willing to participate. Moreover, there are significant numbers of sales conducted through sites such as Facebook and Twitter, where sellers' identities may not be revealed, or sellers may not be who they seem.

Price Capping: Reason 4

6.46 Finally, suppose a price limit were imposed at say 10% or 20% of the full face value ticket cost including face value and fees. This is a substantial margin for any business, albeit less than the mark-up on the current secondary ticketing sites. Imposing a mark-up limit in the absence of primary ticketing market controls in effect legitimises through legislation the operator who makes multiple

purchases from the primary site in order to themselves to operate a secondary ticketing site charging the full mark-up, plus whatever fees are allowed by the legislation. This would not alleviate the concerns of an event organiser who opposes secondary ticketing sales on moral grounds. It would not have a substantially different effect on the market from the case where a primary operator chooses a particular secondary ticketing partner and imposes restrictions on it directly.