

To  
Competition and Consumer Policy Section  
The Department of Jobs, Enterprise and Innovation  
Earlsford Centre  
Lower Hatch Street, Dublin 2  
**By email:** consol@djie.ie

31 March 2017

**RE: Responses to the consultation on the resale of tickets for entertainment and sporting events**

Dear Sir

We write in relation to the public consultation issued by the Department of Jobs, Enterprise and Innovation (“**DJEI**”) and the Department of Transport, Tourism and Sport (“**DTTS**”) in January 2017 on the resale of tickets for entertainment and sporting events (the “**Consultation Document**”).

viagogo is a global online platform for live sport, music and entertainment tickets. viagogo aims to provide ticket buyers with the widest possible choice of tickets to events across the world, and helps ticket sellers ranging from individuals with a spare ticket to large multi-national event organizers reach a global audience.

**Question 2**

*Approximately how many entertainment and sporting events each year in which you are involved or about which you have information give rise to a significant level of secondary ticket sales? What characteristics, if any, do these events have in common? Do they wholly or mainly involve large-scale events in major venues?*

- There are some types of events that see more significant volumes of secondary sales, including:
  - o Events where tickets are sold a long time in advance of the event date, which is particularly true for concerts. Ticket buyers are required to commit a long time ahead of time, and are more likely to find they cannot use tickets later;
  - o Knock out tournaments where the participants in a particular stage are not known at the time tickets are put on sale;
  - o Events where only a limited number of tickets are distributed to the general public, for example rugby events where tickets are often sold via club and other ‘closed’ channels.
- Ticket resale is not limited to large-scale events, as individuals can have a spare ticket they wish to sell on to all sizes of event, and benefit from the availability of secondary marketplaces for every event.

### **Question 3**

*What proportion of tickets offered for sale on secondary marketplaces and platforms are sold -  
a) for a price above the face value of the ticket (plus any applicable service charges or booking fees)*

*b) at the face value of the ticket*

*c) for a price below the face value of the ticket*

*d) fail to sell.*

*Information on the size of the mark-ups above, or discounts below, face value prices would also be welcome.*

Based on 2016 sales on viagogo.ie:

- 75% of tickets sell for a price above the face value of the ticket;
- 25% of tickets sell at or below the face value price;

The overwhelming majority of tickets listed do in fact sell. The tickets that don't sell are typically those listed at high and unrealistic prices, which are those that are often reported in sensationalist media articles.

### **Question 4**

*How common is ticket fraud involving the supply of fake tickets or the non-delivery of tickets? How frequently, and in what numbers, are persons producing fake tickets denied access to entertainment and sporting events?*

- Prior to secure online ticket marketplaces like viagogo, ticket fraud was unfortunately very common. Consumers were forced to take their chances outside venues, putting themselves at risk of purchasing fraudulent or invalid tickets with little or no recourse should things go wrong.
- viagogo provides a secure platform, offering all the consumer protection measures that consumers expect from an online retailer – buyers are guaranteed to receive valid tickets, and should there be a problem with the delivery of tickets, viagogo steps in to find comparable replacements or offers a full refund
- Fraudulent sellers are kept off viagogo's platform by a range of security measures designed to dis-incentivise anyone trying to sell fraudulent tickets. These include:
  - o Sellers are paid for tickets once buyers have successfully gained entry to the event;
  - o The platform registers all seller information and performs security checks against that information with world-class 3<sup>rd</sup> party fraud protection providers;
  - o E-tickets uploaded through viagogo's platform are scanned for validity and to ensure they have not been tampered with or duplicated.
- As a result, ticket fraud is now extremely rare. The percentage of our customers who report to us that they have received fraudulent tickets is less than 0.1%.

**Question 7**

*Are parties who engage in ticket resale on a systematic basis and on a significant scale a feature of the secondary ticket market in Ireland? What proportion of secondary sales for high-demand events are accounted for by such sellers? Do such sellers receive more preferential terms, such as early payment, from secondary marketplaces?*

Based on 2016 sales on viagogo.ie:

90% of sellers on viagogo's platform sell fewer than 10 tickets per year.

**Question 12**

*Do secondary marketplaces consider themselves to be under an obligation to assist event organisers who wish to identify ticket resellers acting in breach of their contract with the primary seller? Should they do so? Should they be required to do so?*

Contract terms and conditions that prevent consumers from reselling tickets are unfair and undermine a consumer's right to sell on their property. If a consumer has purchased a ticket, it should be theirs to sell if they cannot use it, as with any other goods. We understand that the overwhelming majority of consumers agree with this view and do not agree that an event organiser should have the right to dictate what they do with a ticket. Sadly, we have recently seen an increase in event organisers deliberately cancelling tickets that they observe being offered for sales on secondary marketplaces. This unfair practice only punishes consumers.

**Question 18**

*Are personalised or paperless tickets an effective method for curbing ticket resale? What drawbacks, if any, are associated with such approaches? Has experience with these methods in Ireland been positive, negative or mixed?*

In our view, personalised ticketing has a detrimental impact on consumers. Restricting someone's ability to sell on something they have purchased is unfair in principle. If someone has purchased a ticket, it is their property and they have a right to sell it on to someone else if they wish.

Personalised ticketing is also operationally and commercially flawed. Imposing greater restrictions on the transferability of tickets increases hassle for consumers in purchasing tickets and accessing events. Consumers are less likely to purchase event tickets in the first place if they are unable to sell them on and recoup their costs in the event they cannot attend. Moreover, the costs of operating these types of ticketing system are higher, potentially increasing ticket prices at the box office.

**Question 20**

*Do secondary ticketing websites consider themselves under an obligation to ensure that resellers who qualify as traders under relevant consumer protection legislation inform consumers of their*

*status as traders and of the rights that consumers buying from such sellers have under that legislation?*

- viagogo abides by all applicable laws and will always do so;
- viagogo provides a level of consumer protection, with respect to replacement tickets, refunds and providing customer service, that exceeds that required by consumer protection legislation;
- Informing consumers of the status of a seller has no impact on the level of protection that they are afforded by viagogo's platform. Every transaction is equal, and equally protected, whether the seller is a trader, or an individual;
- Any obligation to identify resellers who qualify as traders should be matched by an obligation on event organisers not to deliberately cancel tickets that are being resold on secondary marketplaces by traders.

#### **Question 21**

*Should legislation be introduced to regulate ticket resale and the secondary ticketing market? If so, what form should such legislation take and what penalties should apply to breaches of its provisions? If not, what are the reasons why legislative measures should not be pursued?*

We have reviewed the concerns posed by the Consultation Document, and agree that it is crucial to prevent consumers from being exploited. We believe for the reasons set out below that these concerns are addressed through the secure platform that secondary ticket marketplaces like viagogo provide buyers.

Please note that viagogo already provides a secure online platform that has systems in place to prevent ticket fraud. It offers all the consumer protection measures that consumers expect from an online retailer. Buyers are guaranteed to receive valid tickets, and should there be a problem with the delivery of tickets, viagogo steps in to find comparable replacements or offers a full refund.

Moreover, fraudulent sellers are kept off viagogo's platform by a range of security measures designed to dis-incentivise anyone trying to sell fraudulent tickets. Sellers are only paid for tickets once buyers have successfully gained entry to the event. Moreover, the viagogo platform registers all seller information and performs security checks against that information with world-class 3rd party fraud protection providers. In addition, E-tickets uploaded through viagogo's platform are scanned for validity and to ensure they have not been tampered with or duplicated. The percentage of our customers who report to us that they have received fraudulent tickets is less than 0.1%. viagogo's platform has in effect all but eliminated ticket fraud in the secondary ticket market.

The Consultation Document considers several avenues for reform, one of which is the use of personalised and/or paperless tickets by primary sellers. The suggestion is that the tickets would attach to a specific buyer. This could mean that the ticket would display the name of the buyer or the buyer's payment card, mobile device or photo identification is made the means of admission to the venue or both.

Please note that buyer-linked ticketing has significant drawbacks. As the Consultation Document correctly points out, in such cases, the purchaser who find themselves unable to attend an event would only be able to resell their tickets if they were prepared to accompany the subsequent buyer into the event, or would in effect be left with non-transferable tickets. Moreover, personalised tickets cannot be given as a gift unless the person giving the gift is also willing to attend the event. Buyer-linked tickets also mean that the tickets would have to be checked at the venue entry, which typically leads to delay and congestion.

There are a number of fundamental issues with the system of buyer-linked ticketing, beyond these inconveniences to consumers. Contract terms and conditions that prevent consumers from reselling tickets are unfair and undermine a consumer's basic right to sell on their property should they wish to. If a consumer has purchased a ticket, it should be theirs to sell on if they cannot use it, as with any other goods. We understand that the overwhelming majority of consumers agree with this view and do not agree that an event organiser should have the right to dictate what they do with a ticket. Sadly, we have recently seen an increase in event organisers deliberately cancelling tickets that they observe being offered for sales on secondary marketplaces. This unfair practice only punishes consumers.

In the UK, the Department for Business, Innovation and Skills and the Department for Culture, Media and Sport commissioned a report, pursuant to Section 94(3) of the Consumer Rights Act 2015 (the "**2015 Act**"), entitled "Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities", which was published in May 2016. The aim of the report is to assess consumer protection measures applying to the resale of tickets for recreational, sporting or cultural events in the UK through online secondary ticketing facilities.

The report, prepared by Professor Michael Waterson, offers a detailed and comprehensive review of the online secondary ticketing market. In general, Professor Waterson suggested that the current legislation in the UK is adequate to tackle the concerns regarding the online secondary ticketing market, and recommended against the introduction of additional legislation whether in the form of a ban on the secondary ticketing market, a cap on resale price levels or making the use of bots illegal. Professor Waterstone concluded as follows:

*"In the course of my review, I have been provided with significant evidence of problems existing in the market for tickets. These relate most especially to fraud, pricing and availability of tickets, particularly in the market for music and, to a lesser extent, sport. It is also clear to me that these problems would exist to some extent even in the absence of a secondary ticketing market as such."*

Professor Waterson proceeds to provide recommendations for the primary ticketing markets which he believes would protect consumers in the secondary market as well.

Professor Waterson stated that a blanket prohibition on secondary ticketing but would simply drive secondary ticket sales underground or offshore, which could leave consumers, who were otherwise afforded protection of the secured online platforms, exposed to fraud.

In response to Professor Waterson's review, in March 2017, the UK government responded, and stated its position, which we strongly agree with:

*"The government notes that Professor Waterson has not recommended further significant legislation, a ban on the secondary ticketing market, or a cap on resale prices. The government accepts these and the grounds that Professor Waterson sets out as the basis for them".*

Measures such as imposing price caps would also be ineffective. In the Netherlands, the Authority for Consumers and Markets (ACM) concluded that, as the high prices charged on the secondary market were caused by the operation of supply and demand and not illegal behaviour, proposed legislation that would eliminate legal secondary selling operations in the Netherlands would serve only to divert the activity underground, make oversight more difficult and lead to a deterioration in the position of consumers.

While price capping would be a less extreme form of intervention than a ban on secondary ticketing, regulators need to take into account several factors, in particular the questions around enforceability and the possibility that resale would be redirected to the black market or to platforms outside Ireland.

Please note that there are also other factors specific to this form of regulation would also have to be considered, including: (a) the level at which any such price cap would be fixed and, if this is set at no, or only a modest, mark-up over the face value, the implications for established secondary marketplaces; and (b) the patchy performance at best of previous price caps and controls in other areas of the economy and the substantial enforcement resources which the operation of such controls requires.

In the UK, the position against further regulation in the secondary market is endorsed by Conservative MP Phillip Davies, who states that increased regulation will have little effect on touts and will simply result in less, not more, protection for consumers. He said: *"The government needs to realise that needless intervention is not the answer and will only serve to drive many consumers away from safe online platforms and into the arms of street touts. Any regulations in this area therefore need to be carefully thought through and firmly guided by the available evidence".*

Similarly, Conservative peer Lord Borwick expressed concern that regulation *"could actually allow consumers to be ripped off under the guise of protecting them. All the tickets which the sports and music bodies are concerned about will now go back to being sold in pubs, clubs and car parks, where no consumer protection exists."*

In Australia, the Commonwealth Consumer Affairs Advisory Council (CCAAC) reviewed ticket on-selling in 2010 and its impact on consumers. Following the extensive review, the CCAAC reported

that the volume of on-selling is exaggerated. As a result, the CCAAC determined that there is no need to bring in laws to regulate the on-selling market as current laws were adequate. It stressed that on-selling on the internet actually helps consumers and suppliers, by providing more access to tickets, allowing easy transferring, and improving ticket sales, publicity and crowd numbers.

Furthermore, academics such as Mark James and Guy Osborne in “Criminalising Contract: Does Ticket Touting Warrant the Protection of the Criminal Law?”, [2016] Criminal Law Review (1)” have considered the starting point to be the question of whether the harms resulting from ticket resale reach the level of seriousness required in order for criminal sanctions to attach to an activity. In this connection, we are of the opinion that, first, no obvious harm is caused to the buyer on the secondary market or, at least, that his or her consent to paying more for a ticket than he or she might have wished to pay is not a harm of sufficient magnitude to justify the criminalisation of ticket resale. Secondly, there is no obvious harm to the event organiser or rights holder in that, regardless of the price subsequently paid on the secondary market, they have received the price they themselves set for the ticket.

We thank the DJEI and the DTTS for inviting our opinion on the issue of the resale of tickets for entertainment and sporting events. If you have any queries, please let us know.

Kind regards,

viagogo