

31<sup>st</sup> March 2017

Competition and Consumer Policy Section  
Department of Jobs, Enterprise and Innovation  
Earlsfort Centre  
Lower Hatch Street  
Dublin 2

Re. Consultation on the Resale of Tickets for Entertainment and Sporting Events

Dear Minister,

Thank you for inviting [Tickets.ie](http://Tickets.ie) to submit a response to the Consultation Paper on the resale of tickets. Please find our responses to the specific questions asked in the consultation paper enclosed.

[Tickets.ie](http://Tickets.ie) processed just over 2.7 million tickets in 2016 and has the most extensive retail network of ticket agents in Ireland with over 370 [outlets](#). [Tickets.ie](http://Tickets.ie) is the second largest ticket agent in Ireland (by ticket volume, with approximately 40% market share of the primary market for music and sports). [Tickets.ie](http://Tickets.ie) is the largest sports ticket agent in Ireland (by ticket volume).

We would welcome the opportunity to meet with you and your team to discuss further the issues and challenges around legislation.

Yours sincerely,

John O'Neill, CEO

Encl.

## INTRODUCTION

Until very recently, the secondary ticket market in Ireland has been very small. It is likely that less than 10,000 tickets were sold at a mark-up from a total of over 13 million tickets and event entries in any given year. The touted tickets were sold for a very limited number of events, less than 50 in our estimation.

There has been an increase in the number on secondary markets recently, mainly for concerts by international artists playing in the larger Dublin venues. It does seem that these tickets are skipping the primary market completely and being placed on secondary markets straight away. In effect, the secondary channels are a means to increase the price of the ticket. It is not apparent if the artists are involved in this process.

The presence of a secondary market is not detrimental in our view. The transparency of that market is a concern however and the vertically integrated nature of the largest promoter with the largest primary ticket agent, the largest secondary ticket agent and the largest venue owner does create an environment in which the smaller promoters and the consumer can be taken advantage of. We have heard tell of the smaller promoters being denied the right to prevent the appearance of tickets on the secondary market by the venue owner. In such cases, the venue owner insists upon the use of one primary agent and the primary agent is then free to do what it likes with the tickets. In effect, smaller promoters are being coerced into selling their tickets to the primary agent at a fixed price and the primary agent is then free to sell those tickets at a substantial mark-up and there is nothing the promoter can do to prevent it.

We believe that the best means to protect the consumer is to properly enforce the existing consumer protection and competition laws as opposed to the introduction of new legislation that will have limited impact in practice, be difficult to enforce and will ultimately raise costs for consumers and potentially reduce the number of live events in Ireland.

## ANSWERS TO THE ANNEX QUESTIONS INCLUDED IN CONSULTATION

### **Question 1**

*What proportion of primary ticket sales are accounted for respectively by –*

- a) online sales*
- b) telephone sales*
- c) sales through agents in retail outlets*
- d) box office sales*

- a) 40%
- b) <2%
- c) 40%
- d) c. 18%

### **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?*

Maybe fifteen to twenty from over 6,000 events per annum. The events involved are sell-outs or at least anticipated sell-outs. That is the key determinant. The venue sizes vary from very small (under 200) to very large (over 80,000). The type of event varies from local teen disco to festival to sporting events. Of the 15 to 20, the majority would be large scale events.

There is another 'tier' of event types, whereby a secondary market exists but it is not proportionally significant. These would be mostly sporting events where traditional "street touts" engage in re-sale of tickets that they have procured either at a pre-purchase discount or at a concession rate.

### **Question 3**

*What proportion of tickets offered for sale on secondary marketplaces and platforms are bought or 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.*

a) >90%

b) Maybe 5%

c) Maybe 5%

Above face value sales are the most common that we are aware of. There is an information gap here of course - the professional tout will not generally let it be known that tickets are "dumped" for any event as that would decrease the likelihood of a sale at a later date. Mark-ups vary dramatically but would range from 5% above the face value to '20 times' the face value.

The major sporting events tend to have very, very large mark-ups - often running into hundreds or even thousands of Euro. The purchasers for these tickets tend to be corporate event companies or overseas visitors but that is not exclusive. Prices on sale below face value would generally be limited to the "street touts" on event days. The majority of tickets we sell are very reasonably priced - our clients offer value for money via the primary sales channels (particularly for families) so the vast majority of customers know what to buy and where to buy it.

A note on face value in the primary market: The majority of tickets sold in Ireland in the primary market are sold at a price higher than the value face in. This is due to the fact that service charges are not included in the ticket price.

#### **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?*

"Surprisingly infrequent" would be the best description we can provide. We would see maybe 80 to 100 attempts to use either fraudulent or stolen tickets per annum in total. Far more frequent are attempts to use inappropriate tickets, such as presenting a child's ticket as an adult or the like. This would occur 1500 to 2000 times per annum.

We believe the comparatively low rates of abuse can be ascribed to the installation and use of proper access control systems by [Tickets.ie](http://Tickets.ie) and other agents over a number of years. All our tickets have barcodes. The barcode must be valid for a ticket holder to gain entry. No valid barcode, no entry.

We also use advanced secure ticketing methods to reduce the likelihood of fraud, such as bespoke ticket stock for the most in-demand events.

**Question 5**

*What proportion of tickets for high-demand entertainment events are typically allocated for pre-sale or other allocation prior to going on general sale to the public? What parties or groups are the main recipients of such pre-sales and pre-allocations?*

[Tickets.ie](http://tickets.ie) is a ticket sales agent so we do not organise or own the events for which we sell tickets. This means we are not necessarily privy to the full number of tickets available for any given entertainment event. Based upon the knowledge we do have, 'house' tickets would account for <5% of the tickets we sell and would rarely exceed 10% on any given event. We do provide some promoters with printed tickets for their own distribution - to sponsors, management, fan clubs or the like - but again, we are not privy to the final destination of these tickets.

**Question 6**

*Are you aware of tickets being supplied to secondary sellers or marketplaces by persons involved in the primary market for entertainment or sporting events such as artists and their representatives, promoters or primary ticket sellers? If so, how prevalent is the practice and what is its scale?*

We are not aware of any of our own clients engaging in this practice. It could be the case that some of the large event owners do engage in this practice. This could explain the sale patterns of many major event sales, particularly those for international artists playing in Dublin venues. For such high demand events featuring international artists it has become the norm for secondary websites to commence sales within minutes if not seconds of the primary sales window opening. Based upon our own knowledge, the speed and scale of transfer from primary to secondary market sales does not fit with regular consumer purchase speeds. We are aware of this happening in the UK and have heard tell of the practice of a promoter holding back tickets for the secondary market.

**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?*

Yes and no.

Yes, in that it does seem to be systematic on certain event types.

No, in that it is unlikely that there is a distinction between the primary seller and the secondary seller.

**Question 8**

*Is there evidence of the use of software (bots) to source multiple tickets for high-demand events on the primary market in Ireland and to circumvent security measures? How common or extensive is the use of such software for this purpose?*

**Question 9**

*What means other than bots are used to obtain large numbers of tickets on the primary market for the purpose of resale?*

Bulk buying "over the counter" would be the most common we see - although the scope for this is quite limited. Buying directly from the promoter at a fixed price would be the most successful approach.

**Question 10**

*What proportion of tickets offered for resale for major entertainment and sporting events in Ireland are listed by sellers from outside Ireland?*

The largest agent operating in Ireland is from outside Ireland so it is a significant proportion.

**Question 11**

*What actions are currently taken by primary ticket sellers and ticketing service providers to prevent purchases in excess of the contractually permitted number of tickets or resales in breach of the terms of the primary ticket contract? What is the level of ticket cancellations for the breach of such terms? What is the level of denial of access to venues and stadia for breach of such terms?*

Every event has a limit on the number of tickets that can be purchased in a single transaction - usually 8 tickets although sometimes less than that. Purchase patterns are monitored and assessed on high demand events to spot those who have purchased a significant number of tickets. We maintain a list of known "offender" accounts and card numbers which we review on a regular basis.

It is worth noting that we have few (if any) clients that wish to cap sales. Sell outs tend to happen very quickly (in minutes) so are self-policing in one way. We also employ a rigid queueing system for those who purchase online which provides additional protection.

When an event does sell out we monitor known tout-websites for unapproved re-sale activity. If and when a ticket can be identified, we cancel that ticket. There would be several dozen similar instances

in any given year. Our clients would also engage in similar controls including on event day itself so that number is higher for some events.

In addition to this, a number of venues in Dublin are owned by the same company as the ticketing provider or have agreements in place with a ticketing provider who also operates a secondary platform. Independent third parties, looking to hire these venues to organise an event, are being forced to use this ticketing provider.

### **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?*

Do they assist? [Donedeal.ie](#) has done so in the past but no other in our experience.

Should they? It would be better to remove the unapproved touts from the equation completely.

The questions and answers above do not address a specific risk associated with these "secondary" sellers - plain fraud as opposed to fraudulent tickets. Non-existent "tickets" are being sold to unsuspecting people. These people pay money and receive nothing so we assume the vast majority do not come to our attention.

### **Question 13**

*Should websites which sell tickets for an event on the primary market redirect purchasers to secondary platforms selling tickets to the same event? Should any such redirection be subject to a requirement that the consumer be informed of the status of the secondary site and that ticket prices are likely to be higher?*

If re-directs are to be permitted, then purchasers should be informed by requirement.

We also believe that the identity of the seller should be disclosed. The purchaser should be aware if he or she is purchasing from the artist, promoter, the primary ticket agent or an individual who purchased and is re-selling.

#### **Question 14**

*How many events in Ireland and what proportion of their tickets, have featured 'Platinum Tickets' or other dynamic-pricing approaches to ticket pricing? What was the average price of such tickets?*

*Did they sell out?*

"Dynamic" pricing can be a misleading description. In most cases, it simply means skipping the primary channels to list directly on the secondary channels to increase the base price. Our clients do not employ such methods generally and there is limited usage in Ireland.

#### **Question 15**

*Is a dynamic pricing approach to event tickets likely to be adopted on a significant scale? If so, when and for what type of event is this likely to occur? If not, what are the main reasons why it will not be pursued?*

"Dynamic" pricing is somewhat misleading in many, if not most, cases. Dynamic pricing is still subject to significant manual intervention by the event owner - who will certainly set a "floor" price but not always set a "ceiling". It is not an automated process.

Dynamic pricing is all about revenue maximisation and fundamentally means increasing the face value of individual tickets / sections / areas within a venue. This is an entirely legitimate pursuit for a company to pursue – it is indeed what most businesses strive to do. This does mean that "dynamic" pricing is not a consumer protection measure. It is designed to increase revenues and not balance pricing for customers. Advanced dynamic pricing software is in use throughout the USA and to a lesser extent in the UK, Australia and Germany. It is primarily in use by sports teams but that is changing somewhat.

The major American sports, Broadway in New York and the West End in London remain the most important markets for both secondary ticketing and its 'cousin' dynamic pricing. The essential point here is volume: a Major League Baseball team plays 81 home games per annum in the regular season and the average capacity of the stadia is around 35,000. That is 2,835,000 tickets per team or over 85 million tickets for just the top tier in one sport. As such, there is plenty of inventory. Season ticket holders in such an environment do require some method to 're-sell', i.e. secondary sales. The available purchasing population is also substantially greater in these markets.

The scale of the Irish market and the constrictions on that market (see answer to Question 20) mean that dynamic pricing will become the 'norm' in entertainment if and when the primary promoter decides to deploy such methods on a wider scale. There is some limited use of dynamic pricing in sports in Ireland but given the low-price points for Irish sports tickets and the general over-capacity, dynamic pricing will remain the exception.

Comparisons between dynamic pricing in airline ticket sales and the sports & entertainment field have been made but are also a little lopsided. There are certainly similarities but there is a basic difference: airline tickets are substitutable whereas tickets for Game A or Concert B generally are not. An airline passenger can book a different flight or use an alternative means of transport. The



other elements in the pricing equation for airlines include: availability of aircraft, weight, fuel prices, staffing, weather conditions at destination airport etc. Prices of available substitutes is also a major consideration for airline tickets, that is less the case for a sell-out concert.

In music and entertainment, the sums are different. A baseball team cannot avoid playing a fixture: the game must go ahead regardless of ticket sales. Neither can a baseball team 'create' a fixture: so, a sold out game cannot simply be "added again". That is one key difference for concerts, plays or shows. There are some operational and logistical restrictions but fundamentally an entertainment event can be cancelled if ticket sales are deemed too low or an "extra" concert can be added if sales are better than anticipated.

### **Question 16**

*What additional steps, if any, could performers and their managements, sporting bodies and event promoters take to minimise secondary ticket selling at inflated prices and ensure fairer access to tickets for fans.*

The question is somewhat subjective but there are steps that could be taken to at least give the impression of "fairer access" at specific face values, assuming face value is not perceived as "inflated".

Some American promoters have enjoyed success in reducing the 'spread' between primary prices and secondary prices by simply increasing the face value on all tickets. This has reduced the purchasing power of the touts which in turn reduced the number of tickets on sale on the secondary market. Substantial price increases across the board is probably the simplest method to shrink the secondary market. Such a move would reduce the number of purchasers that seek to re-sell as margins will decrease. This would almost certainly reduce the number of tickets sold in the first place and in turn reduce the number of viable events. Fewer events would mean higher demand for those events, meaning higher prices again and / or the re-emergence of secondary sales.

An extreme option would be to sell hard copy tickets only from a single location, one ticket at a time, with the requirement to pay by credit card using valid identification and to sign a contract upon purchase acknowledging the ownership has not transferred and that any attempt at re-sale will lead to a financial penalty, taken automatically from that card. Even then, the penalty would need to exceed the increase in price available on any open secondary market.

Preventing re-sale of a ticket can be done using strict rules and criteria, such as the requirement to present valid ID and the payment card used to purchase the ticket at the venue to either collect the ticket or in addition to the ticket. These "process" driven options do work but there is an additional cost to manage these methods and if such staff heavy approach were to become the norm the cost will eventually be passed on to the customer.

### **Question 17**

*What additional technical measures, if any, are primary ticket sellers planning to implement or develop to prevent purchases made with the use of bots?*

**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?*

Many small promoters use “lists” at the door and simply identify the individual at door. This works well for small events. These events would rarely, if ever, attract a secondary market however.

Larger promoters do deploy more formal identification using the payment card use for the ticket purchase. The decision to take this step must really be made well in advance of the ‘on sale’ and in the Irish market, the “present your card” approach has generally been at the insistence of the artist or act in question.

Do these techniques work in terms of permitting access? Yes, up to a point. Attempting such an approach for a large Irish sporting event would be extremely challenging. Irish sports fans do tend to arrive close to start-time and not necessarily in the company of the original ticket purchaser. This could lead to long entry queues which brings operational, safety and security issues.

The other consideration regarding paperless ticketing is that its presence may limit any resale options but that does not necessarily mean there would have been a secondary market for that event in the first place. In effect, it could be a meaningless protection. The presence of such restrictions may also depress primary sales. Attempts to link purchases to payment cards as a means to prevent re-sales is already under pressure with new payment methods available that could circumvent the intended restrictions, such as ‘topped up’ payment cards which can be purchased over the counter in shops.

**Question 19**

*Do primary sellers or venues offer a facility for the return and refund of tickets that purchasers are unable to use? If so, what conditions apply to this facility? If not, what are reasons why primary sellers do not offer this facility? Would they consider the introduction of such a facility and, if so, under what conditions?*

The availability of return and refund options is at the discretion of the event owner. Most of our clients have a standing “no returns” policy but by the same token would adopt a case-by-case approach to requests for refunds due to extenuating circumstances. Refunds on postponed or cancelled events would be the norm.

There has been a consistent and dedicated effort by many market participants over many years to encourage pre-purchase of tickets and in turn reduce the on-the-day sales. This has benefited all actors:

- customers gain access in advance
- promoters can plan ahead and increase controls - venue owners can control numbers
- artists gain better visibility on gate receipts
- the Revenue Commissioner gains better visibility on VAT receipts

Imposing more “open” refund and returns policy would undermine these positive behaviours and inevitably drive promoters back to cash.

We do not believe it is practical to expect an event organiser to have an open policy. Event owners and promoters are essentially betting that the ticket sales will cover the cost of an event. The earliest sales are crucial for event organisers to meet obligations to venues, artists and service providers. Early sales represent a form of finance. If those sales were to be put in jeopardy, then it would undermine the event organiser’s own commitment and most likely reduce the number of events put on sale.

More “open” return policies, even with conditions, would also encourage secondary market players to make speculative purchases. There is less downside to a speculative ticket purchase if the ticket can simply be returned for a marginal fee or during a fixed time period.

On a macro level, requiring a return facility on ticket sales would represent an easy means for criminal elements to launder their ill-gotten gains for a marginal cost. Placement, layering and integration would in effect be facilitated by the return rules. A criminal could simply put an event on sale with a legitimate agent, “purchase” a number of tickets, “return” the tickets and receive the refund and then cancel the event due to poor sales.

#### **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?*

Not to our knowledge.

#### **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?*

As we understand it, the purpose of any legislation would be to benefit the consumer. In our view, the introduction of wide-ranging legislation will not benefit the consumer and should probably not

be pursued as a result. Any new regulation of ticket sales, even if targeted at the secondary market, will lead to increased transaction costs for promoters and event owners. These additional costs will inevitably be passed on to consumers leading to increased ticket prices across the board.

Circumvention of any new legislation would also be possible. A 'ticket plus hotel room' would be a different product for instance – would the legislation cover such a package also? If so, to what extent and in what way? How would cross-border activity be managed? There are many questions.

We do believe that existing consumer protection legislation and competition law should be properly enforced within the Irish ticketing market. There is certainly an absence of transparency on some events as tickets do appear rather rapidly on the secondary market. The fact that for many high profile events the artist, artist management, promoter, venue owner, primary ticket agent and secondary ticket agent are in effect the same legal entity has a more pronounced impact upon the Irish consumer than the existence of a secondary market. There are no market forces at play for much of the live event sector, as there is just one market player. A fair marketplace, that allows new acts and promoters access, would be of more benefit to the consumer and promoters in general than anything legislation can provide.

Pricing of tickets and more specifically, access to tickets is an emotional business for the ticket purchaser but it is just business for the performer and the promoter. "Inflated prices" is a relative term. "Fairer access... for fans" is a relative term. If there is a customer willing to pay top price for a ticket, is that not indicative of real interest in an act or artist? Does paying more make you less of a fan? Are artists and promoters not entitled to take advantage of the rare (and generally short-lived) opportunities to earn? Would "fans" prefer that this is not the case? It is difficult to objectively define these terms.

It is understandable that no individual wants to miss out on an event. That is however the point of an event in the first place: it is a shared experience that is limited to those in attendance. Those who miss out, miss out. Capacity restrictions will always exist. Changes to the secondary market or regulation of the secondary market will not change this.

In Ireland, today there are maybe seven companies running profitable, mid-to-large sized music or entertainment events. Maybe four of those enjoy sell out events every year and just one of those enjoys regular sell outs every year. Successful promotion is an extremely challenging business. This must be acknowledged. The two most successful promoters in Ireland became so by taking very significant risks and enduring many loss-making events over many years. The majority of artists and performers have very limited opportunities to earn during successful career periods. There are very few international acts – maybe fifteen who visit Ireland regularly – that have a sustained track record of selling out large shows here. If any of the parties involved in the business were prevented from maximising revenues by law, it would lead to a reduction in large events which would have a corresponding impact upon the broader economic benefits of events in general.

The arts sector, in particular theatre, may indeed benefit more from a functioning secondary market than the any other. This would have ancillary benefits as many theatres and arts events rely heavily upon public funds to remain viable. A reduction in that reliance would benefit all players. That would need to be explored further of course.

Only a handful of sporting events have any notable 'secondary' activity. Frequent attendees are, by and large, very well accommodated by the Irish sporting bodies and teams. The Irish sports ticket market is high volume but low transaction value in nature. All the major sports bodies and teams have excess capacity for nearly every game. Sell-outs are rare and represent less than 2% of the

number of games. There is an annual round of "disgust" over touts selling tickets for certain sporting events. The oft-quoted "ordinary dedicated fan" in these cases is generally best described as someone who wants to go to the game but has yet to get a ticket. This hardly forms a solid basis for new legislation. Discussion on the topic rarely references the many "primary" routes that sporting bodies in Ireland generally provide to high demand events, the self-policing nature of Irish sporting events or the "fiction" of frequency of attendance that surrounds a successful sports team.

As noted above, sports teams do not have discretion of participation. A game must take place whether people wish to watch it or not. For the small number of professional teams in Ireland, the sell-out events are a rare opportunity to earn. It would be detrimental to restrict the potential or existing source of revenue that the secondary market represents for these teams as the eventual consequence of reduced sources would be to increase ticket prices across the board. This in turn may depress attendances, leading to lower overall revenues and eventually to lack of success on the field of play leading to even lower attendances and so on. The consumer would not benefit in that scenario.