

Executive Summary

viagogo is one of the world's largest secondary marketplaces for tickets to live events. We have many years of experience in this industry and welcome the opportunity to contribute our expertise and experience to ensure the best outcome for consumers.

Secondary ticketing is a logical behaviour rooted in fundamental factors such as supply and demand. The secondary market exists as a result of a combination of the failings of the primary market - such as failure to provide sufficient ticket allocations to meet public demand, failure to warn the public when supply is below market that they cannot satisfy everyone, lack of refunds or a mechanism for people to sell unwanted tickets.

We are concerned that there has not been a regulatory impact analysis conducted by the Department of Enterprise, Trade and Employment (the "Department"). This is a very technical and nuanced industry, one which the Government has no direct experience in. This lack of research is unusual given according to An Tánaiste, it is priority legislation.

While we believe that COVID-19 is temporary and vaccines are coming in stream, this law is permanent, and we are surprised that this legislation is being rushed through without adequate consultation and that COVID-19 is in fact the reason being given. Due to this legislation, it would seem that the Government would be trading in constitutional property rights for unfounded, unresearched temporary solutions that do not address the root problems in the ticketing industry. Moreover, the COVID-19 pandemic has had an especially severe impact on the entertainment industry, with uncertainty around whether some smaller venues, event organisers or other players will survive the downturn, or when live events will be business as usual. This proposed legislation would not ameliorate those adverse effects (i.e. with economic stimulus or other modes of cooperation), but instead only add to the adverse effects.

The consequences of this bill are clear: it will enshrine a ticketing monopoly in Ireland for the primary market players, it will lead to an unregulated and uncontrollable black market, without the consumer protection offered by established secondary ticket marketplaces, and will ultimately damage the entire Irish tourism sector.

In this submission, we articulate how Ireland will move away from established best practices – in the UK, Europe and otherwise - of regulating the secondary ticketing market with a consumer centred approach to an outright above face value resale ban.

We also do not support the broad ranging powers which may affect contract values and create disputes under Head seven regarding venue designation. Head eight, while well-intentioned, will lead to significant unintended consequences, reduce choice for consumers and represents a fundamental misunderstanding of how pricing occurs in the ticketing industry as well as how tickets are procured. The Department themselves have highlighted the flaws with Head eight and this should be noted. Head eight represents a real threat to viagogo's employment and business model in Ireland and if this law is passed as written, we will immediately be reconsidering our future planned investments.

Head nine and ten illustrate how this legislation has not be thoroughly thought through, and the realities of the long-established ticketing infrastructure. This market is becoming ever more complex

and this legislation as written is already outdated by over a decade. It seeks to address problems in e-commerce without considering the internet is global in nature.

Head eleven is technically challenging and puts an element of good faith and trust into the law which is supposed to be prescriptive. It creates a huge grey area and no one to police or enforce it in real time and it cherry pick's favourites for whom the law won't apply.

Head thirteen is not only concerning but raises several State Aid questions of why one commercial entity and sporting federation can receive such special treatment at the exclusion of all others. Every year Ireland hosts sporting tournaments, and none are afforded such provisions.

Head fourteen is concerning for the extent of powers that An Garda Síochána will be entrusted with. It could give rise to the situation where platforms could be subject to search and seizure of company property without any evidence being offered up or requiring any direct engagement with the company.

We do welcome though, that under this legislation blacklisting by event operators will be prohibited, where a person had previously purchased a ticket through resale and were denied entry. We believe that legislation with other similar requirements for the primary market and secondary market would be better suited than the current approach.

viagogo is a safe, secure and transparent secondary ticketing marketplace that provides both the buyer and the seller on our platform with the comfort that should anything go wrong we have staff around the world working 24 hours a day to provide world class customer support to ensure our customers receive the tickets they paid for as advertised in a timely fashion so they can enjoy the best live events across the planet.

We are committed to a better ticketing market at all levels and we have included several recommendations in this document which we feel would increase the supply of tickets to consumers, ensure all tickets are priced competitively and increase the information the consumer has so that they can make an informed and responsible decision.

Introduction

I wish to thank to the Chair and Members for allowing me to provide a written submission to the Joint Committee on Enterprise, Trade and Employment for the pre-legislative scrutiny phase in relation to the General Scheme of the Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2020. My role is Head of Government Affairs with viagogo, and I also serve as a Director with VGL Support Services Ireland Limited (“VGL Ireland”), an Ireland services company that provides customer service support for viagogo and is part of the viagogo Group of companies. VGL Ireland’s service facility was opened in 2015 in Limerick by the Minister for Jobs, Enterprise and Innovation, Richard Bruton TD.

In February 2020, viagogo completed the acquisition of Stubhub Inc. This acquisition is subject to the Competition and Markets Authority (“CMA”) in the United Kingdom approval, and we continue to be subject to a global hold separate over the businesses, and to work diligently with the CMA. To that end, this submission is being made on behalf of the viagogo business only. This acquisition will allow viagogo to provide Irish customers with the largest selection of tickets to events worldwide, but perhaps the greatest benefit to Ireland will be that it will increase the exposure of Irish events to a new audience. In 2019, 27 % of the tickets listed on viagogo for Irish events were sold to overseas buyers, who came to this country as tourists and were able to inject huge sums of money into the Irish economy and events industry.

About viagogo

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.

viagogo is a secure, safe and transparent option for reselling tickets that the original buyer no longer wants or can use. We give Irish customers a second chance to buy the tickets they may have missed out on first time round. viagogo does not buy or sell tickets and it does not set prices.

viagogo has partnered with many of the world’s leading brands in sport and entertainment and has helped customers from almost every country in the world access tickets to their favourite events in the language, currency and on the device of their choice.

Secondary ticket market

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.

Secondary ticketing is a logical behaviour rooted in fundamental factors such as supply and demand; season ticketing; long lead-in times for events; and terms & conditions of primary ticket sellers around refunds or returns. In addition, there are significant structural problems within the primary market, including the unwillingness to invest in technology that deter bots and the practice of event organisers and others withholding premium tickets from the public sale process. viagogo provide access to events because of the limited number of tickets available released by primary ticket providers.

viagogo: a safe and secure platform

viagogo provides a safe and secure resale platform, offering the consumer protection measures that consumers expect from an online retailer. Buyers are guaranteed to receive valid tickets, and in the

very rare instance that there is a problem with the delivery of tickets, viagogo steps in to find comparable replacement tickets, or offer a full refund. Fraudulent sellers or buyers are kept off viagogo's platform by a range of security measures including not paying the seller until the buyer has successfully gained entry to the event.

Our research shows that people use the secondary ticket market (sites like viagogo) for several reasons. Buyers have typically missed out on the small number of tickets available in pre-sale or general release. They might be attending an event out of town, looking for premium seats or locations, or have only heard about a concert or sporting event at the last minute. These people are typically happy to pay a premium to secure events that they consider 'must see'. Sellers are typically unable to attend an event due to unforeseen circumstances like a change of plans or diary clash. This is not surprising when you consider many events are sold several months in advance, and organisers and primary ticket sellers do not offer refunds.

COVID-19 Pandemic

In his press release on the 29th September 2020¹ announcing the progression of the Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Bill 2020, the Tánaiste and Minister for Enterprise, Trade and Employment Leo Varadkar TD remarked that *“This is about making sure people aren’t getting ripped off once live events, matches and concerts get up and running again, especially considering numbers are likely to be restricted to begin with.”* To date, he has offered no evidence of this occurring and without a regulatory impact analysis (RIA) we are unable to ascertain how the Tánaiste, or his officials have come to this conclusion.

If this law is in response in part to the COVID-19 pandemic, then it should be proportional and limited to the time frame in which the pandemic lives with us. It is not a time limited law; it has no sunset clause, nor does it have a Heading which would allow the law to be reviewed for its effectiveness once implemented. Moreover, it is not specifically targeted at UEFA.

If the Government is choosing to limit the value of property rights enshrined in the Constitution in light of public health concerns, then as with the temporary restrictions on rental prices as per the Governments own statements on this matter, then it should only be targeted and tailored to the issue at hand. This law is a broad stroke on the introduction of price caps and will result in broader analysis required as to what property qualifies for protection under the Constitution and what property does not.

It is opening the door to not just legal challenge, but a raft of new anti-personal property laws which will limit the freedom of an individual to dispose of their property as they see fit. Nothing in these Heads expressly state that this bill is in anyway a reaction or a precautionary measure considering the COVID-19 pandemic at all, and it uses none of the recognised language for legislation to view it under those circumstances.²

Issues with process

Lack of a Regulatory Impact Analysis

Following attempts in the 32nd Dáil to legislate in this area, the Minister answering to the second stage of a Private Members Bill on 11th May 2017 outlined *“that good legislation is evidence-based and should be underpinned by a rigorous regulatory impact analysis. Such an impact analysis must assess the need for proposed legislation and whether it would have the desired impacts.”*³

Despite this commitment on the Dáil record over three years ago, neither the last Government nor its successor undertook the important work around examining this issue through a regulatory impact analysis (RIA) exercise. The Department officials responsible for this draft have not asked any of the following questions as per their own RIA guidelines:

- Is the regulation necessary?
- Is the regulation properly targeted?
- Are we satisfied that the advantages outweigh the disadvantages of the regulation?

¹ https://merrionstreet.ie/en/News-Room/Releases/Government_Agrees_to_Bring_Forward_Anti-Ticket_Touting_and_Reselling_Legislation.html

² <https://www.tandfonline.com/doi/full/10.1080/20508840.2020.1786272>

³ <https://www.oireachtas.ie/en/debates/debate/dail/2017-05-11/speech/229/>

- Have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is there good back-up explanatory material?
- Is it clear under the regulation precisely who is responsible to whom and for what? Is there an effective appeals process?
- Will the regulation give rise to anomalies and inconsistencies given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?

These Heads fail several of the guiding questions and I would ask that you consider returning to the Minister and request that this RIA be carried out in the first instance before this legislation proceeds any further.

Unintended consequences

Monopoly

By enforcing a price cap on secondary resale, it may force secondary marketplaces and their associated employment out of Ireland. In Ireland, we have one of the most concentrated ticketing markets in the world with two to three players controlling the primary ticketing market as well as the venues, promotion and associated pricing of all. Some of these players also operate their own secondary platforms. By implementing a price cap, it may become economically unviable to operate in a relatively small market in an industry that depends on speed and scale. This would leave Irish consumers exposed to the further concentration of the market and a lack of alternative streams of ticketing inventory.

Due to the dominant position of the primary market players whom also run secondary resale sites, what we would witness is the continued rollout of dynamic pricing. This is a system whereby an allocation of tickets that would usually be available at “face value” can see their prices rise at any given time based on demand. By Ticketmaster’s own description of their Platinum ticketing product:

“No these aren’t resale tickets. Platinum Tickets are being sold for the very first time through Ticketmaster. The prices are adjusted according to supply and demand, 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 most in-demand tickets while allowing the artists and everyone involved in staging live events to price tickets closer to their true value.”⁴

They could choose to limit their secondary site listings until they have extracted the highest value from purchasers using dynamic pricing. This will lead to significant ticket price inflation for the average consumer. Sites like viagogo were designed to combat this.

Furthermore, the primary market has engaged in the practice of drip selling for years. This is where tickets are slowly released, or previously sold out events have new allocations released. This creates deliberate, artificial shortages, which allows promoters to keep costs artificially high. This is somewhat perplexing to the average consumer and reasonable explanations have never been forthcoming from primary ticketing providers as to why the substantial change in ticket availability occurs, nor are they required to be transparent about such practices under the law.

⁴ <https://help.ticketmaster.ie/hc/en-ie/articles/360015432773-What-are-Platinum-Tickets->

Black Market

In their own testimony before this Committee during the previous Oireachtas, the Department outlined the pitfalls on implementing a price cap on this market –

“If, as is possible, the proposed legislation would lead to the departure of the established secondary marketplaces from the Irish market, the resale channels that will, to whatever extent, fill the gap left by their departure are very unlikely to offer the same guarantees to ticket buyers or to operate a business model that provides as effective a deterrent against ticket fraud.”⁵

By simply introducing a price cap via this legislation, the demand for a secondary market won't disappear, and this will lead to a black market being created and enlarged, forcing consumers to use unsafe measures where no other viable options are available. This has not only been acknowledged by the Department as noted above, but also by the European Consumer Centre in Ireland⁶ and many other academic studies⁷ and the Department themselves. In large part, this acknowledgement is why no other market has introduced any legislation that so broadly limits the existence of a functioning secondary ticketing market, as it is not beneficial to consumers.

Removal of consumer protection

If this bill as written under these Heads were to pass, and we end up in the inevitable situation of the emergence of a black market, this will lead to the reduction in consumer protections being offered to consumers who wish to purchase tickets for an event they may have been unable to procure on the primary market.

Well-established and legitimate secondary marketplaces such as viagogo, provide a level of security, customer service and recourse that cannot be offered by informal markets or in-person transactions, and should be supported. viagogo validates credit cards, provides high level customer support through our contact centre in Limerick, and takes other actions – such as withholding seller payment until after an event has taken place– to remove any incentive for fraud. viagogo provides other services for its customers convenience and safety, such as our viagogo Guarantee, so in the rare circumstances where an issue arises, the customer can rest assured that they will be provided a full refund or, if possible, a replacement ticket. None of this will occur on the black market and if price caps are enforced on legitimate operations such as viagogo, sellers will easily sell or attempt to sell on channels that cannot be policed or regulated. This will lead to increased fraud to the detriment of the consumer experience.

Tourism

Events and travel are very much intertwined and complementary to each other. This applies to sports, music concerts, cultural events and festivals alike. These events wish to attract a broad range of

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https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_business_enterprise_and_innovation/submissions/2018/2018-05-22_opening-statement-kieran-grace-principal-officer-department-of-business-enterprise-and-innovation_en.pdf

⁶ <https://enterprise.gov.ie/en/Consultations/Consultations-files/ECC-submission-resale-of-tickets.pdf>

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/525885/ind-16-7-independent-review-online-secondary-ticketing-facilities.pdf

attendees from as many places as possible to showcase their offering and spread the word about their performance or product. Some barriers exist though to garnering the widest possible audience, namely internet geo-blocks on websites, language, lack of awareness and even currency. Our platform cuts through all of this and offers 12 language options, 70 country-specific domains and allows our customers the ability to pay in 49 different currencies. We allow Irish events to be sold to a global audience, not just to those on our doorstep.

People want to see events in their native locality for example, Riverdance or U2 in Ireland or visit the Edinburgh Fringe Festival or Formula 1 in Monaco. These are large events of worldwide notoriety but there is also the concept of visiting a country to see an emerging artist that have not and may not ever tour abroad or the ad hoc visitor coming to Cork and realises they need something to do. It is a wide-ranging affair that generates tourism, foreign currency by way of being an invisible export and exposure to our arts and events. Secondary ticket marketplaces by their nature want to have the largest inventory available at the best price to the most people. On our platform, a staggering 27% of tickets sold for Irish events were to overseas buyers bringing over 10,000 visitors to Ireland in 2019, many of whom would not have come if they had not been able to easily secure tickets, or were planning their entire trip to Ireland around such events. Increasing barriers would significantly impact the ability these overseas tourists to secure tickets. Again, this precise issues has been flagged previously to this previous incarnation of this committee by Department officials stating *“that (if) such legislation was effective in reducing the supply of tickets for events in Ireland to overseas buyers, there would be a consequential loss in tourism revenues to Irish hospitality providers and the Exchequer”*.⁸

International comparison

In the UK, the Department for Business, Innovation and Skills and the Department for Culture, Media and Sport commissioned a report entitled "Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities", which was published in May 2016. The aim of the report was 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.”⁹

He further stated on price caps –

“It would be of limited effect since there are rapidly changing routes to market, including social networking sites, some of which are based in other jurisdictions, meaning any legislation would be extremely difficult to police or future-proof.”

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”.¹⁰

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.¹¹

In the UK, the position against further regulation in the secondary market was endorsed by Philip Davies MP, who stated 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”.

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 helps consumers and suppliers, by providing more access to tickets, allowing easy transferring, and improving ticket sales, publicity and crowd numbers.¹²

Furthermore, academics such as Mark James and Guy Osborne in “Criminalising Contract: Does Ticket Touting Warrant the Protection of the Criminal Law?”, 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.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/525885/ind-16-7-independent-review-online-secondary-ticketing-facilities.pdf

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/599193/review-online-secondary-ticketing-facilities-government-response.pdf

¹¹ <https://www.acm.nl/en/publications/publication/15911/ACM-sees-no-reason-for-further-investigation-into-resale-tickets>

¹² <https://assets.gov.ie/19627/718de52dba11440085c78ac3dfe67e22.pdf>

“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.”¹³

The last statement should be seriously considered before endorsing the levels of fines and custodial sentences offered under these Headings.

As previously stated in this submission, there is an absence of a regulatory impact analysis here which should be required, and which predecessors agreed should be required. Without such analysis, viagogo cannot in any way support material changes to the market, which so many other geographic markets have concluded would in fact be quite harmful to consumers and provide no benefits.

Bill Headings

Head seven

Under head seven, subhead seventeen, we believe the Minister should not be able to designate a venue at their own discretion. This would remove the flexibility organisers may require and would represent a significant intervention into the market by Government. It could have the unintended consequence of effecting the value of a property and potentially damage the value of contracts held for the operating of such properties.

The language in this subhead only prescribes for the Minister to consult with a venue operator, but this consultation is not properly defined in the draft of heads and could create a situation where an event venue owner or lessee could be “consulted” independent of each other, both of whom have separate interests in a venue and would potentially create a conflict in this process, as just one example. There is no definition or formula either as to what form or depth a consultation with a venue operator would take; for instance, would a simple note informing them of their decision suffice?

Head eight

Heading eight presents certain issues for all parties. This includes where brokers or agents for event organisers secure an allocation through the purchase of tranches of tickets. These tranches can be for multiple events over an extended period and can come with a premium payment for being given first choice of tickets before public sale, whereby they may pay above the notional or future original sale

price. In the modern ticketing market where dynamic pricing¹⁴ exists on primary markets, it will be impossible to identify a comparable original sale price as it will be fluid and constantly changing.

By applying subheading B to these tickets, you are ensuring authorised ticketing agents cannot sell for a breakeven point let alone a profit. This bill will remove a key piece in the ticketing ecosystem that allows several things to occur:

- Reduce risk on event organiser by selling upfront blocks of tickets.
- Spread risk across multiple events
- Increase distribution across multiple channels, networks and countries

By including subheading B, the legislation would ensure the immediate and rapid increase in ticket prices as well as reduce the number of events that could be held in Ireland, as many parties may need to make the decision to hold their events elsewhere to avoid confusion or complex risks from this legislation. Ireland is a ticketing small market and our ticketing eco-system has developed within our industry which allows us to attract a broad and diverse range of acts to our country.

By including subsection A, the legislation would take such a broad, blanket approach that would lead to the removal of listings on legitimate, secondary resale websites and the creation of massive, unregulated informal resale sites that will lead to an increase in fraud and removal of customer protection. The existence of a secondary market - where tickets are resold - is a sign that they have been undersupplied, under-priced or a combination of the two. Passing a law on price caps will just remove the legitimate players but the demand and desire to attend these events remain. This will lead to an increase in the need for policing the fraudulent behaviour that will stem from this, which I am not certain the Government is prepared for (and which they have not prepared for in this legislation).

The Department themselves who are responsible for this legislation, have even questioned the ability of enforcing this price cap: "If ticket resale in Ireland is subject to a statutory price cap, the borderless character of online trading makes it likely that some people in this country who wish to sell tickets at a higher price than that permitted by the legislation, or who are prepared to buy tickets at such a higher price, will go to secondary ticket marketplaces in countries where ticket resale is legal and is not subject to a similar price cap."¹⁵

In addition, many tickets do not have a readily or independently ascertainable primary market price, including without limitation, season or other membership tickets, corporate box tickets, promotional tickets, sponsors or house tickets, and tickets originally sold as a part of a VIP or similar package. How the price for an individual event to be accessed with any of the examples listed should be calculated, remains unclear at this point and would create significant legal uncertainties.

¹⁴ Dynamic pricing and the prices paid are often obscured by design by primary ticketing operators to give the appearance that the consumer is securing a better or exclusive deal, when in reality they have paid a higher cost than the person sitting next to them for an identical experience.

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https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_business_enterprise_and_innovation/submissions/2018/2018-05-22_opening-statement-kieran-grace-principal-officer-department-of-business-enterprise-and-innovation_en.pdf

We believe this entire Heading to be fundamentally harmful to consumers and presents a deep misunderstanding of how ticket pricing works in this industry.

Head nine

We address some of the issues contained within Heading nine under replies to other Headings, but we would like to raise the issue of season tickets, club memberships and debenture tickets such as 10-year schemes, specifically.

Some of these tickets may have been issued before this legislation comes into effect and may not meet these standards. We hope that this would be addressed by committee.

We would also highlight our objection to subhead two, subparagraph b, as we are consistent in our opposition to original sale price resale limitations.

Head ten

Under subheading 4 subparagraph a, this does not account for season tickets or grouped ticket purchases. For instance, season tickets can be across a span of games and the comparable price for individual tickets can fluctuate, there is also the possibility that in certain instances there may not even be a public sale for some of these matches. For grouped or bundled tickets, which are quite common in Ireland, a similar issue arises where tickets may not be available publicly for certain games, thus no original sale price exists outside of the package deal. This would leave the onus on the event organiser to place a notional original sale price on such tickets and make this exceptionally clear to the original purchaser, as their price point will likely differ (and this is just by way of example to how complicated this endeavour could become).

We are also increasingly seeing the use of promotional clubs or fans clubs which have a membership cost or offer a subscription service to allow people to purchase tickets in advance of public sale. This has a cost and a value that would not be represented by the original sale price printed on the ticket.

For subhead 5, while a secondary ticket operator may be able to provide space for this information, it would be unable to verify if it is correct and this legislation is void of any notification period, or chance to correct this issue before it becomes a criminal offence. While the hosting defence under Heading nineteen offers some level of protection we are concerned that a secondary ticket operator could be held criminally liable for the act of a third party. As discussed previously, the unintended consequences of this legislation could thus lead to a dearth of availability of tickets to events for Irish consumers, and even a lack of events taking place in Ireland, in order to avoid this onerous legislation.

Head eleven

This Head presents some difficulty in terms of managing listings. It will be impossible for a secondary ticket marketplace to be able to validate either of the sub-headings contained within this Heading. Marketplaces would be relying on the honesty and promises offered by a seller.

This would leave marketplaces in the position of being the arbiter of law and potentially leave the marketplaces subject to criminal complaints by 3rd parties who are unaware of the compliance of either sub-heading. Also, regarding the subheading two, this would be an undertaking of good faith by the event organiser to ensure that this occurs, and leaves open the possibility that it might be abused. It also fails to define what activities would be allowable, anything at all?

This section also raises the question as to why an exemption is being granted. If ticket reselling at above cost is such an issue, then why would any exemption be granted? We believe this has been added to lessen opposition to resale restrictions and keep certain stakeholders' content at the expense of the ordinary seller.

Above cost reselling is either damaging or it is not, why shouldn't the primary market or the organiser simply be able to do this or donate the equivalent sum of money. It further underscores that this proposed legislation is not coherent and cherry-picks who to please.

Head thirteen

Head thirteen deals entirely with the special sweetheart allowances afforded to UEFA. We are somewhat perplexed at the exclusivity that has been afforded to a single commercial entity in this piece of legislation. This Head uniquely places UEFA on a pedestal and provides them with the ability to enforce their view of their commercial rights in Irish courts extra-territorially as this Heading will apply to all games of the EURO 2020 Championships, no matter what country they take place in.

This head will apply across Europe and act as a conduit for UEFA to persecute Irish traders and secondary ticketing marketplaces through the Irish courts. The much lauded €50 million bonanza that was expected from hosting games for this tournament, is now unlikely to occur due to COVID-19 restrictions and these matches may even end up costing Ireland money to host if they do take place.

We have also received legal advice that this special provision not afforded to any other commercial entity, tournament or sporting federations meets the bar of illegal state aid and places one corporate body on a tiered platform where some laws apply, and others don't. We are gravely concerned that such a development has been allowed to occur in draft legislation.

This provision due to subhead two under head thirteen does not seek to impose commercial court sanctions under civil law but to apply criminal sanctions as well. It is not proportional or in any way a credible head for the severity that these custodial sentences range to, in addition to the monetary penalties.

Head fourteen

As a matter for general consideration, we are concerned by the extent of powers that will be granted under Heading fourteen. It could give rise to the situation where even though Heading nineteen offers us a form of protection, we could be subject to search and seizure on our company's property and of our company's property on the basis of a nuisance complaint without proof being offered up or validated (as we would be *ex-parte* to the District Court proceedings) through direct engagement with us.

We would request that the committee review this Heading and formulate a system whereby court action and search and seizure would not be the first step, but rather the last, and that the requirements for such action being met, be extremely strict. It would seem counterproductive and potentially disruptive to business operations as well as a waste of the courts time.

Positives

Head twelve

We welcome the progression into legislation to void unfair contract terms which allowed the blacklisting of entry to events simply because a ticket has been resold. This follows similar laws in comparable jurisdictions such as New South Wales, who have had such consumer protections for several years. We would, however, like to see the voiding of this unfair contract term not being tied to the notional original sale price.

We take some issue with the protections afforded to a commercial entity such as UEFA as this seems to underscore the sweetheart deal, they have secured.

We support steps to address concerns of safety and public order. However, we would like to see this language being strengthened to ensure it is not abused. A system like the venue designation could resolve this, whereby it would be under the decision-making responsibility of the Minister and the Garda Commissioner. This would ensure only genuine grounds for inserting such a clause and based on the assessment of informed bodies would be allowable.

Alternatively, the Government could adopt a position similar to that found in the Consumer Rights Act 2015 in the United Kingdom whereby a primary ticket seller could not cancel a ticket sold on the secondary market or blacklist a secondary ticket seller unless the contractual term allowing the primary ticket seller to do so “was not unfair” for purposes of the European Communities (Unfair Terms in Consumer Contracts) Regulations or similar statutory enactments

Neutral

We are neutral or have chosen not to offer any opinion on Headings not previously mentioned in this submission.

Recommendations

viagogo proposals

We support improving the customer experience at all levels of ticketing to live events, and below we outline our proposals to how the Government should legislate if their true intent is to prevent consumers from being taken advantage of, increasing the transparency and information available to consumers, while still allowing consenting consumers to make an informed decision in how they buy and sell their own property.

We have been successful and grown our offering in Ireland and worldwide because we address a gap in the market and provide a safe, secure and transparent service to our customers.

We suggest the following immediate actions:

- Conduct a regulatory impact analysis. Will this legislation work, a key question is completely unanswered? We are concerned that this bill is doomed for failure and this will be at the consumers expense and quite possibly our staff in Limerick.
- Outlaw the use of bots / computer software and other illicit practises to purchase tickets in excess of ticket purchase limits on all websites.
 - We believe this should have been the Department’s first foray into regulating ticketing, and they have delayed any action in this area waiting for the EU to decide what action they will prescribe.
 - This can make a real difference and put the onus on the primary market to secure their own inventory first and prevent illegitimate tickets from entering the market.

- Improve access to tickets on primary websites by making a minimum percentage of tickets available to the general public
 - This will increase access and availability of tickets to the general public and bring down prices on the secondary market by increasing supply.
- Require the primary market to declare the number of tickets they are selling and the remaining stock, to make clear where there is dynamic pricing.
 - This will allow consumers to make an informed decision and remove the possibility of super-inflated prices appearing on secondary marketplaces because there is a void of information.
 - It will also make it clear where the primary market is exploiting information gaps by using dynamic pricing and preventing buyers from accessing cheaper comparable tickets.
- Regulate the resale market to ensure consumers are informed and protected, however allow prices to vary to balance supply with demand
 - Clear disclosure of all mandatory fees up front
 - Messaging to make clear that consumers are buying on a resale marketplace
 - Money-back guarantee and minimum standards for customer service

Conclusion


While we are certain that this piece of legislation is being introduced with the best of intentions for consumers, we remain convinced that it will have the worst of outcomes.

It will lead to the increase of the black market for ticket resale and remove legitimate players that provide security, transparency and high levels of customer support. It will eliminate recourse for consumers and leave them at the will of questionable players who can hide their identity on the internet. The European Consumer Centre in Ireland's acknowledgment "that the secondary market in broad terms may hold significant benefits for consumers both as vendors and purchasers of tickets in particular instances"¹⁶ should not be discounted.

I thank you for allowing me to submit on this small but important piece of legislation and should you wish to discuss further, or require any clarifications, please contact me at (email address redacted).

Yours sincerely,

Frankie Mulqueen



Head of Government Affairs

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Director of VGL Support Services Ireland Ltd.

¹⁶ <https://enterprise.gov.ie/en/Consultations/Consultations-files/ECC-submission-resale-of-tickets.pdf>