

Secondary ticketing safeguards imposed on ticket resellers and event organisers

After securing a court order against viagogo in November 2018, the Competition and Markets Authority issued a reminder to viagogo, StubHub and Ticketmaster that, by midnight on 17 January 2019, they were each required to have overhauled their processes to improve information on tickets listed for resale.

The CMA also published an open letter to secondary ticketing websites, reminding them of their obligations under consumer law, stressing the relevance of the court order to any website that facilitates the resale of tickets, even if that is not the primary purpose of the website. The CMA published a separate open letter to event organisers on how to ensure that information on event tickets is disclosed on secondary ticketing websites, as well as the steps that users of restrictions on resale can take to reduce the risk of enforcement action.

Background

On 27 November 2018, the CMA secured a High Court order against viagogo, requiring it to overhaul its business practices. This followed legal proceedings issued by the CMA in August 2018, which related to concerns that viagogo was breaking consumer protection law. The order followed formal commitments from the three other largest secondary ticketing websites, StubHub, GETMEIN! and Seatwave (owned by Ticketmaster). Those websites formally committed in April 2018 to ensure that better information would be given on tickets resold through their platforms to consumers. All websites subject to the investigation were required to make the necessary changes by 18 January 2019. GETMEIN! and Seatwave have since closed, but the commitments continue to apply to the resale of tickets through Ticketmaster's website.

Overhaul

The changes are meant to ensure that any new ticket listed for resale on the viagogo, StubHub and Ticketmaster platforms will include information on:

- whether there is a risk that the buyer will be turned away at the door;
- which seat in the venue the buyer will get; and
- the identity of the seller if it is a business – so that people can benefit from enhanced legal rights when buying from businesses.

In particular, viagogo was also required to make changes to its processes:

- to prevent customers from being misled by messages about the availability and popularity of tickets;
- to make it easier for customers to get their money back under its guarantee when things go wrong; and
- to ensure that certain customers who made claims under viagogo's guarantee but didn't get their money back will receive refunds if they were entitled to them.

In its open letter to secondary ticketing websites, the CMA refers to the High Court order against viagogo and stresses its relevance to any website that facilitates the resale of tickets, even if that is not the primary purpose of the website.

Advice for event organisers

The open letter to event organisers sets out what they can do to help ensure that information on tickets for their events is disclosed on the platforms and the steps they can take to reduce the risk that the CMA might prioritise enforcement action against them for using unfair terms. The letter also reminds event organisers of their obligations under consumer protection law if they host a facility on their own websites that allows consumers to resell event tickets.

Before letting people list tickets, the platforms must look at certain pages on the website of at least one official seller on the primary market for information about restrictions on use that apply to an event with restrictions on resale. So that restrictions on use are picked up by these checks and displayed, the CMA is asking event organisers to ensure that, as a minimum, information about restrictions on use is clearly and prominently disclosed on the event home page and the first page of the purchase process on the websites of all official sellers.

Before tickets go on sale on the primary market, event organisers can notify the platforms that tickets for an event will be subject to restrictions, confirm the tickets (or categories of ticket) to which the restrictions apply and the terms of the restriction on use, and provide a copy of, or link to, the relevant terms and conditions. They can also notify the platform that block/area, row and seat details, if relevant, will be issued for all tickets, or all tickets within an identifiable category. After tickets go on sale, event organisers can notify the platforms of any missing or incorrect information. The platforms must then take appropriate action in response.

The CMA's letter also reminds event organisers that, if they operate a secondary ticketing facility on their website, they must ensure that it complies with consumer protection law, in the same way as a secondary ticketing website.

Although the CMA's focus has been on the platforms, it has also worked with event organisers to avoid the potential for consumer harm caused by terms and conditions that restrict resale. To this end, the CMA has issued a prioritisation statement, a copy of which is attached to the open letter, on terms and conditions that restrict resale, explaining the circumstances in which it is less likely to prioritise enforcement action against them. This would be where event organisers that use contractual restrictions on resale have a legitimate reason for using them, their use is necessary and proportionate for achieving this, and the restrictions are communicated with sufficient transparency.

Legitimate reasons, the statement explains, would include ensuring that as many tickets as possible for an event are sold at a price affordable to a greater number of consumers or where such restrictions are required or permitted by specific legislation (e.g. Premier League football matches).

As to transparency and proportionality, the statement sets out steps that event organisers can take to reduce potential harm to consumers. Those include providing full, clear, up-front and consistent disclosure of the relevant restrictions to the original ticket buyer on all sales channels and refunding customers who can no longer attend an event, or providing buyers of resold tickets who are prevented from using them with the evidence that they need to get their money back from the reseller.

Comment

The CMA has since conducted a comprehensive review of the changes that each website has made to its processes to ensure that they have all fully complied with the formal commitments given to the CMA by StubHub and Ticketmaster and the court order imposed on viagogo. The CMA has made it clear that continuing compliance failures will result in their taking further action, including through the courts.

So regulatory action against ticket resellers continues unabated. The CMA investigation is just part of a broader campaign to combat ticketing abuses. For example, the Breaching of Limits on Ticket Sales Regulations 2018, which came into force on 5 July 2018, now outlaw the use of bots to override limits on ticket sales, by making it a criminal offence to buy more tickets than the maximum permitted for

recreational, sporting or cultural events in the UK, where the purchase is made electronically through the use of software designed for that purpose, and where the intent is to obtain financial gain.

In September 2018 the Advertising Standards Authority announced that it had secured changes to viagogo's website to stop drip pricing, and Ticketmaster appears to have committed to offering a capped resale service.

Still, doubts remain over viagogo's level of commitment, in light of which the anti-ticket touting lobbying group FanFair Alliance said that it would "begin a process of collating and submitting further evidence to the CMA".

More recently, on 5 March 2019, the CMA warned viagogo that it is still not compliant with the court order and has insisted that improved information be displayed about the tickets listed for resale on its site. Accordingly, although some improvements have been made since the CMA first demanded action to address areas of non-compliance, further checks have demonstrated that there are still issues of concern. As a result, the CMA plans to take legal action to ask a court to find viagogo in contempt. Time will tell whether that action is a strong enough incentive to other secondary ticketing websites to ensure compliance.

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