

## Skating on thin ice – exploitative activities in the secondary ticket market

Towards the end of 2016, secondary ticketing was publically rebuked with a vigour not previously experienced – and not just in the UK.

A pivotal development came courtesy of an Italian investigative programme, *La Iene*. It challenged the Italian branch of the industry titan, Live Nation, after concerns about tickets to a Coldplay concert in Milan that appeared on secondary sites almost simultaneously with the general release.

As reported by the BBC,<sup>1</sup> Live Nation Italy's MD, Roberto De Luca, initially said that the company did not issue tickets direct to secondary ticket platforms. When later interviewed by journalist, Matteo Viviani, he retracted this admitting that: "In fact, we issue some tickets, a very limited number of tickets on other sites, in this case Viagogo."

De Luca attempted to sweeten this by playing down the number of tickets affected. He claimed that the tickets issued direct to secondary sites represented 0.2% of the ticket sales, commenting that: "We are not talking about tens of thousands of tickets, but hundreds of tickets for a concert." Query whether that is any consolation to the hundreds of fans who cannot secure face-value tickets at the primary point of sale – or the artists, who can be left singing to blocks of empty seats when those secondary tickets do not sell.

The knock-on results of De Luca's admission have been serious. It has been widely reported that several Italian artists have ceased to work with the promoter, including Vasco Rossi, and legal proceedings may be instigated. Audience magazine<sup>2</sup> has since reported that Claudio Trotto, of Barley Arts Promotion in Italy, has filed criminal complaints against a number of secondary ticketing websites, which have resulted in charges against currently unknown individuals for "computer fraud and impersonation". The Italian government is also taking a hard-line approach to ticket touting, which can abuse secondary ticket platforms. In December 2016 IQ, the live event magazine, reported the approval of an amendment to Italy's budget law, which would criminalise ticket touting and hold secondary ticketing sites accountable if they facilitate such illegal resales.<sup>3</sup>

### UK initiatives

In the UK, a cross-party campaign of MPs and peers, supported by entertainment industry figureheads, has been increasing pressure on the UK government to clamp down on the use of online "bots" to buy large numbers of tickets.

The Culture, Media and Sport Committee's ongoing inquiry into ticket abuse heard its latest evidence on 15 November 2016 from Josh Franceschi of the band You Me At Six, Ian McAndrew of Wildlife Entertainment, the MMF, Ticketmaster UK, StubHub and eBay (to name a few). Evidence given during the session suggested that there may be under-reporting of income earned from secondary ticketing. Security consultant, Reg Walker, commented that: "This is meant to be a £1.2 billion industry in the UK alone, and yet we can only find a turnover of around £200 million on published accounts. What I would like to see is a full investigation by HMRC."<sup>4</sup> It has since been reported that HMRC will indeed be considering the tax affairs of secondary ticketing companies.

<sup>1</sup> <http://www.bbc.co.uk/news/entertainment-arts-37985565>.

<sup>2</sup> Audience, Issue 202, November 2016, *Outrage follows TV exposure of insider ticket deals with Viagogo*, page 4.

<sup>3</sup> [http://www.iq-mag.net/2016/11/italian-lawmakers-outlaw-secondary-ticketing/#.WD\\_O7KLQ7Y](http://www.iq-mag.net/2016/11/italian-lawmakers-outlaw-secondary-ticketing/#.WD_O7KLQ7Y).

<sup>4</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/inquiries/parliament-2015/inquiry1/>.

Further, on 19 December 2016, the Competition and Market Authority (**CMA**) opened an enforcement investigation into potential breaches of consumer protection law in the online secondary ticketing market. The investigation has been prompted by concerns that consumers are not being given certain key information when buying tickets on re-sale sites. The CMA Acting Chief Executive, Andrea Coscelli, said: “A night out at a concert or a trip to a big match is something that millions of people look forward to. So it’s important they know who they are buying from and whether there are any restrictions that could stop them using the ticket. We have heard concerns about a lack of transparency over who is buying up tickets from the primary market. We also think that it is essential that those consumers who buy tickets from the secondary market are made aware if there is a risk that they will be turned away at the door ... If we find breaches of consumer law, we will take enforcement action.”<sup>5</sup>

### **Artist concerns**

There has also been a huge surge in the number of UK artists and entertainment industry representatives publically speaking out against ticket abuse. Sponsorship of the Q Awards in November 2016 back-fired on secondary ticketing platform, StubHub, after several artists reportedly used their acceptance speeches as a “thinly-veiled attack at sites such as the headline sponsor”.<sup>6</sup> James Bay, winner of Best Solo Act, is quoted by Live UK as remarking: “Apologies to my fans for ever having to deal with secondary sites ... I hope we see the end of them.” Voicing the issue at government level is FanFair Alliance,<sup>7</sup> a campaign group consisting of a wealth of household names, such as Arctic Monkeys, One Direction and Mumford & Sons, and the business stalwarts behind them.

### **Industry measures**

Increasing numbers are taking a stand in practical terms. Cameron Mackintosh, for example, producers of the UK run of *Hamilton*, the 2017 hotly anticipated Broadway smash, are “determined to combat this unauthorised profiteering by third-party resellers and ticket touts and to protect patrons from having to pay high-inflated prices”.<sup>8</sup> Instead of being issued with a ticket, theatre-goers will be sent an email confirmation following purchase. The email confirmation permits access to the theatre on the night, if presented along with the original payment card and official ID. The theatre will then swipe the payment card to produce “seat location slips”, which will gain access to the auditorium. The cardholder must be present and attend the show, and all members of the party must enter the theatre at the same time. *Hamilton’s* website clearly lists three authorised ticketing websites and states unequivocally that: “Tickets offered for sale on any other website including any secondary ticket retail site will be automatically voided. Those tickets will be refused admission.”

A further example of growing practical progress is, Twickets<sup>9</sup> – a fan-to-fan site where tickets can be re-sold at face value or less across a host of theatre, music and sport events. Twickets started by using social media to find unwanted tickets, but users can now look for tickets via the Twickets app and website. The company has demonstrated since 2011 that re-selling tickets can be transparent and positively and fairly managed. The company is becoming increasingly prevalent and, following a

<sup>5</sup> <https://www.gov.uk/government/news/cma-launches-enforcement-investigation-into-online-secondary-ticketing>.

<sup>6</sup> Live UK, Issue 202, November 2016, *Secondary ticketing slammed at Q Awards*, page 4.

<sup>7</sup> <http://fanfairalliance.org/>.

<sup>8</sup> <http://www.hamiltonthemusical.co.uk/faqs>.

<sup>9</sup> <https://www.twickets.co.uk/>.

recent campaign to raise £700,000 via crowd-funding to enable it to expand internationally,<sup>10</sup> it ultimately secured over £1.2 million.<sup>11</sup> Major A-list artists and events are also now partnering with the website. It is currently the official re-sale site for tickets to Adele's sold-out shows at Wembley Stadium this coming summer and is listed as partner with Massive Attack, Little Mix, The 1975, among many others, in addition to popular events including The Secret Garden Party and Kendal Calling.

### Continuing difficulties

It must be extremely frustrating, however, for artists, promoters and producers to discover that, despite their attempts to curb secondary ticketing, tickets still appear on secondary sites. Soon after the priority booking period opened for *Hamilton*, The Guardian reported that "tickets" to the show were already on secondary ticketing sites.<sup>12</sup> Indeed, on 17 January 2017, Viagogo had three dress-circle tickets to the preview show on 21 November 2017 advertised at a colossal £2,199.12.<sup>13</sup> Various excitable messages warned the visitor that "Tickets are likely to sell out soon!" and "2,648 other people are viewing Hamilton – London tickets!". Lending credence to the CMA's investigation, it was hard to find any information about who the seller was and where they were based. An unhelpful note stated that the original ticket price was between "20.00 – 200.00 GBP". There was apparently no warning that the ticket would be voidable, and that the purchaser would be denied admission to the theatre.

The same issue has cropped up for Adele. Adele's dedicated Twickets site unequivocally stated that: "Resale of tickets through any channel other than Twickets will not be accepted; you risk having them cancelled and being denied entry to the show."<sup>14</sup> Nonetheless, Viagogo was still the second non-advertised search result on Google after the show venue, Wembley Stadium. StubHub also had a number of tickets for sale from sellers unknown,<sup>15</sup> including, for the show on 28 June 2017, up to four tickets in area Club 208 for £6,000 each.<sup>16</sup> A note stated that the tickets originally cost £77 each.

### Comment

There is clearly a market for ticket re-sales, and it would be unjust to view the secondary market as dubious across the board. The Financial Times has reported that the global secondary ticketing market is worth \$8 billion.<sup>17</sup> It is hugely positive – for the fans, the artists, the events and the economy – that there is such enthusiasm for live events. Ticketing sites, including Ticketmaster International, which owns secondary sites GetMeIn and Seatwave, are apparently investing heavily in technology

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<sup>10</sup> Music Week, 12 December 2016, *Just the Twicket*, page 11.

<sup>11</sup> <https://www.seedrs.com/twickets>.

<sup>12</sup> <https://www.theguardian.com/stage/2017/jan/16/hamilton-west-end-tickets-found-on-resale-sites-viagogo-despite-anti-tout-measures>.

<sup>13</sup> Available as at 17 January 2017 at: <http://www.viagogo.co.uk/Theatre-Tickets/Musicals/Hamilton/Hamilton-London-Tickets/E-2023152>.

<sup>14</sup> <http://adele.twickets.co.uk/>.

<sup>15</sup> <https://www.stubhub.co.uk/adele-tickets/performer/345236/>.

<sup>16</sup> Available as at 19 January 2017 at: <https://www.stubhub.co.uk/adele-tickets-adele-london-wembley-stadium-28-6-2017/event/9745127/?mbox=1&rS=0&abbyo=false&sliderpos=false&qtyq=false&qtyddab=false&dUpq=false&sort=price+desc&ticketRank=2&cb=1&bla=false>.

<sup>17</sup> <https://www.ft.com/content/498a8068-b604-11e6-961e-a1acd97f622d>.

and resources to block bot activity.<sup>18</sup> StubHub has also reportedly stated that it supports legislation to tackle the issue.<sup>19</sup>

Despite these technological developments, securing secondary ticketing sites from abuse may still require an element of human involvement. Richard Davies, CEO of Twickets, has explained that, although Twickets attempted to automate the process of validating tickets as much as possible, the company found that the process “ultimately comes down to human eyes”, adding that: “Sometimes we might have to go back and validate that ticket with the seller ... It’s a combination of technology and human moderation, but also, importantly, our community can police that service for us if we do make a mistake.”<sup>20</sup>

The problems with secondary ticketing are undoubtedly expansive and complex. It is not just a question of alleged direct deals between promoter and platform without artist approval, but software touting bots and the classic tout that buy first-sale tickets in bulk for immediate re-sale at inflated prices. Add in touts selling fake or even non-existent tickets, and claims that proceeds of ticket abuse fund a hive of other criminal activity, and the problems become even darker.

The million-dollar question is what can be done to curb these problems. Leaving aside whether re-sale is contrary to specified ticket terms and conditions, there is legislation in the UK that could potentially deal with aspects of ticket abuse (for instance, under the Computer Misuse Act 1990, Consumer Rights Act 2015 and the Fraud Act 2006). But there seems to be little appetite for the impracticalities of piecemeal legislation. There is no simple solution: what is arguably needed is consolidated legislation with bite, coupled with regulation, alongside technological improvements. The issue is not the re-sale of tickets per se, but the potentially exploitative, unethical and unlawful practices that secondary platforms can facilitate – however unintentionally. There is no doubt that the entertainment business and its audiences are clamouring for action, and the ice is wearing thin on ticket exploitation. Perhaps 2017 will be the year we see it crack.

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<sup>18</sup> See the same Financial Times article.

<sup>19</sup> Live UK, November 2016, Issue 202, *Jail threat for tours using ‘bots’*, page 4.

<sup>20</sup> See footnote 12 above.