

The Digital Economy Bill—making online ticket touts face the music

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Commercial analysis: The Digital Economy Bill was introduced into the House of Commons in July 2016. The House of Lords have proposed amendments to criminalise the use of specialised purchasing software to bulk buy tickets online without the consent of the ticket issuer. Robin Kingham, barrister at Gough Square Chambers specialising in consumer and regulatory law, comments on the implications of the Digital Economy Bill for ticket sellers.

Original news

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The Digital Economy Bill was introduced into the House of Commons in July 2016. It has passed all its Commons' stages and moved for consideration in the House of Lords in December 2016. In its report stage in the House of Lords, amendments have been moved that would allow primary ticket sellers to obtain an injunction to prevent the resale of those tickets by secondary resellers in certain circumstances. Other amendments seek to amend the [Consumer Rights Act 2015 \(CRA 2015\)](#) and to introduce additional disclosure requirements on ticket sellers

What amendments have been proposed and what prompted these?

This is the latest in a series of proposed amendments to the Digital Economy Bill. Indeed, it is in many ways the continuation of a debate which took place during the drafting of [CRA 2015](#) and in the context of a subsequent Competition and Markets Authority (CMA) investigation into the secondary ticketing market. Although [CRA 2015](#) does address secondary ticketing, several key proposals were left out, including a new offence targeting ticket resellers who failed to comply with their obligations.

However, with ticket resellers continuing to attract criticism from the public and the media as a result of alleged unfair dealing, some members of the House of Lords have sought to introduce these previously omitted provisions into the Digital Economy Bill by way of amendment. The amendments moved both in the House of Commons and at the Committee stage were withdrawn and have now been replaced by a more limited set of amendments at the Bill's report stage.

In summary, the currently proposed amendments would:

- impose a new obligation on ticket sellers to state any conditions relating to resale of the tickets
- create a new summary offence of using specialised purchasing software to buy large numbers of tickets for resale, and
- permit primary ticket issuers to apply for an injunction preventing ticket resellers from breaching their obligations under [CRA 2015](#) to provide certain information to consumers

It is not clear how the government is treating these proposals or what support they have behind them. The Bill remains very much in a state of flux. However, the reappearance of amendments relating to secondary ticketing suggests that there is an appetite for further regulation of the sector—even if it is not yet clear what form that will take.

What obligations are secondary ticketing websites currently under to prevent touts from selling on tickets at inflated prices?

Ticket resellers are required by [CRA 2015](#) to tell the consumer what the face value of the ticket is prior to sale. Resellers are also prevented from hiding the true cost of tickets from consumers prior to purchase (for example by adding so-called 'hidden charges') by virtue of the Consumer Protection from Unfair Trading Regulations 2008, [SI 2008/1277](#). However, neither statute imposes an upper limit on resale prices or limits resellers' profit margins.

To what extent would the proposed new offence be enough to deter ticket touts in engaging in these activities?

To be clear, the proposed offence deals solely with the use of specialised purchasing software that enables resellers to bulk buy large numbers of tickets without the permission of ticket issuers. This technique has been the subject of significant public criticism, as it enables a small number of resellers to influence the sale price of the tickets without the consent of ticket issuers. Currently, there are no amendments that would criminalise other aspects of ticket reselling—although they have been discussed.

Despite its relatively narrow ambit, the proposed offence is clearly the most significant of the amendments put forward by the Lords.

The imposition of a Level 5 fine (which is in fact an unlimited fine, following entry into force of section 85 of the Legal Aid Sentencing and Punishment of Offenders Act 2012) has the potential to seriously disrupt these practices. At this very early stage it is impossible to know how sentencing under the proposed offence would be approached by the courts. However recent sentencing guidelines dealing with other corporate offences (for example food or health and safety offences) have adopted the approach of directly relating the scale of the fine to the size of the corporate defendant's turnover. This practice has led to dramatic increases in the size of fines. If a similar approach were adopted in this area, the proposed offence could have a real deterrent effect.

On the other hand, since the proposed amendment does not contain provision for directors' or managers' liability, and since most of the major ticket resellers are incorporated entities, the sanction of up to 51 weeks' imprisonment is unlikely to have wide application.

Have there been any recent court rulings worth mentioning regarding ticket touts or any other developments?

There have not been any major reported cases in the area since the Supreme Court's decision in *Rugby Football Union v Consolidated Information Services Limited (Formerly Viagogo Limited) (In Liquidation)* [2012] UKSC 55, [2012] All ER (D) 236 (Nov). In the run up to international rugby matches in 2010 and the six nations tournament, the Rugby Football Union (RFU) discovered that Viagogo had been used to advertise thousands of tickets for the matches at Twickenham. Tickets with a face value of £20 to £55 were being advertised for sale at up to £1300. The RFU's terms and conditions stipulated that any resale of a ticket or any advertisement of a ticket for sale at above face value would constitute a breach of contract rendering the ticket null and void. In this case the Supreme Court upheld the validity of the making of a Norwich Pharmacal order against Viagogo (see also *Norwich Pharmacal Co v Customs and Excise Comrs* [1974] AC 133, [1973] 2 All ER 943) which required it to disclose the identities of those involved in the ticket sales.

Finally for those interested in reading more on the subject of ticket touting may find it useful to consult the House of Commons briefing paper on secondary ticketing (Number CBP 4715) published on 20 February 2017.

Interviewed by David Bowden.

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