

Ticket agents in the UK

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1 SUMMARY AND CONCLUSIONS

Introduction

1.1 This study looks at the services provided to consumers by ticket agents. There are two broad categories of ticket agent:

- **primary agents** – these have agreements with event promoters (usually concert promoters and theatre producers) to sell tickets for various entertainment and other events. Examples of primary agents include Ticketmaster UK and See Tickets
- **secondary agents** – these agents obtain tickets from a range of sources for resale to the public at a price the market will bear. This price can be substantially higher than the ticket's face value.¹

Background

1.2 In 2003 the total value of advance ticket sales in the UK was approximately £1.4 billion. Of this, around £580 million were sales made through primary ticket agents.

1.3 The amount of business going through primary ticket agents has increased substantially in recent years. We estimate that between 1999 and 2003 turnover grew by around 150 per cent in real terms. Reasons for this growth include:

- an increase in the number of events held each year
- consumer demand for greater convenience when booking a ticket
- increased use of the internet to buy tickets.

¹ Secondary agents usually operate from ticket booths, websites or through internet auctions. This category also includes individuals selling tickets on the street outside an event's venue (the traditional 'tout').

1.4 Ticket agents provide an important service, both for event promoters and consumers. They offer event promoters a potentially more efficient means of distributing tickets, allowing them to increase overall ticket sales. They offer consumers potential benefits in terms of easier access to tickets for the events they want to see.

Consumer concerns

1.5 Our research has found that the majority of consumers are satisfied with the services of ticket agents. Eighty-six per cent of surveyed consumers who had made their last purchase through a ticket agent were satisfied with the service they received.

1.6 A proportion, however, was not satisfied. Nine per cent of consumers surveyed were unhappy with buying through a ticket agent. The agents themselves received over 54,000 complaints in 2003. Although many of these complaints are about issues that are outside the control of the agent (such as the layout and accessibility of the venue or the quality of the performance itself), some are not. We estimate that Trading Standards Departments (TSDs) receive at least 450 complaints a year. The OFT also receives some complaints, the majority of which are about secondary agents.

1.7 We found that consumer concerns regarding ticket purchases generally related to the following areas:

- **additional fees** - many people dislike paying the additional fees charged by primary ticket agents on top of the face value of the ticket, as they feel these fees are too high.
- **price information issues** - pricing information is important if consumers are to make an informed choice, but key information is often not displayed in advertisements and is only available late in the buying process.

- **service and contractual issues** - consumers are concerned about a range of service issues varying from the speed of transaction through to basic contractual issues, such as their rights following an event cancellation or the non-delivery of tickets.
- **secondary ticket agents** - we have identified a high level of concern around the activities of secondary agents. This sector accounted for half of the TSD complaints and 75 per cent of those submitted to the OFT.

1.8 Therefore we focussed our study on these areas.

Additional fees

- 1.9 Our consumer survey indicates that there are concerns about the level of additional fees. Almost a third of consumers surveyed thought that the additional fees they had been charged when making their last ticket purchase had been higher than expected. As well as this 28 per cent of dissatisfied consumers who had bought their tickets from ticket agents cited higher additional fees or a dislike of additional fees as the reason for their dissatisfaction. We consequently assessed whether competition between primary ticket agents works to keep additional fees at competitive levels.
- 1.10 We noted that the amount of money going to ticket agents often differed from the level of additional fees. Sometimes it was more as the ticket agent also received from the event promoter a proportion of the ticket's face value; sometimes however it was less as some of the additional fees went to the promoter. In this context the key question was whether total ticket prices (inclusive of additional fees) were higher than they would be as a result of a lack of competition between ticket agents.
- 1.11 An issue was the existence of arrangements between individual event promoters or venues on the one hand, and larger ticket agents on the other, that grant preferential contractual rights to certain agents to access for sale a proportion of tickets allocated to ticket agents by the promoters or

venues. The concern was that these arrangements might preclude competition between ticket agents and stop fees being driven down to competitive levels.

- 1.12 The existence of these arrangements does not, in itself, imply that competition is not working effectively. The key issue is whether they lead to prices being higher than they would be otherwise. If there is effective competition between different ticket agents for these preferential rights from promoters, then the arrangements will not raise prices, because the agent offering the most suitable service at lowest cost will be the one that is most attractive to the promoter. Furthermore, if there are efficiencies associated with the promoter relying on primarily one ticket agent, instead of a range of agents, these arrangements could lead to lower prices.
- 1.13 We accordingly looked at the nature of competition for these preferential rights and also at whether the nature of the contracts was such that, in the future, they could be expected anti-competitively to reduce the number of agents competing for contracts. Our assessment is that there is no evidence of ineffective competition for these contracts at present, and no basis to expect this to become a problem in the future. We also noted that there are identifiable efficiency gains to be associated with these arrangements insofar as they allow some of the fixed costs of distribution and retailing to be spread over a larger number of ticket sales.
- 1.14 Overall, therefore, we did not find a lack of competition between ticket agents leading to higher prices to consumers. This is not to say that the concerns that people have about additional fees are misplaced. For many consumers the concern stems from the fact that they are not adequately made aware of the existence of fees, and where to buy tickets without them. For this reason, we believe the main pricing issue for consumers is whether they receive adequate price information to make a more informed ticket purchase.

Price information issues

- 1.15 Typically, advertisements for events currently contain very little information about ticket prices. Such information would help consumers make better informed choices, including as between different ways of buying tickets for a given event.
- 1.16 The current lack of pricing information in event advertisements is, in good part, a consequence of guidance issued to event advertisers by the Committee for Advertising Practice (CAP).² The intention of the guidance was to ensure that consumers are not misled about pricing. Event advertisers effectively have two choices in complying with the guidance. They can either:
- provide details of the face value of a ticket (that is, the cost of the ticket itself) plus all additional fees so that consumers know the total cost; or
 - provide **no** pricing information on advertisements.
- 1.17 Event advertisers generally follow the latter option citing practical considerations that limit the amount of information that can be provided.
- 1.18 While it is essential that advertisements do not mislead, it is important that they do inform. The current situation is unsatisfactory since it has resulted in consumers often losing all pricing information except at the point of sale. We consider that better information can be given at the advertising stage that is clear and not misleading to consumers, while still being practical for advertisers to provide.

² The industry body that writes and enforces the codes of advertising practice. The codes are the responsibility of two industry committees of Advertising Practice - CAP (Broadcast) and CAP (Non-broadcast). These are independently administered by the Advertising Standards Authority (ASA). The ASA is the independent body set up by the advertising industry to police the rules laid down in the advertising codes.

- 1.19 We recommend that the CAP amend its guidance so all non-broadcast event advertising is required to include the face value of the ticket, while indicating that additional fees may apply and could vary depending upon the sales channel and ticket seller used. We also recommend that advertising indicates where tickets can be purchased at face value. All information relating to pricing should be displayed in a clearly readable form.**
- 1.20 The OFT is aware that the Advertising Standards Authority (ASA) and the CAP are working together to change the guidance in light of the ASA Council's decision that the provision of price information in non-broadcast advertising be revised. We very much welcome the positive approach the ASA and the CAP have adopted and we understand that the CAP will now amend its guidance, along the lines set out in our report.
- 1.21 We recommend to event advertisers that they follow any amended CAP guidance to provide consumers with the fullest information possible when advertising events.**

Service and contractual issues

- 1.22 At the centre of many of the service issues of concern to consumers are potentially unfair consumer contract terms. We too have concerns about the standard terms and conditions in the consumer contracts used by some ticket agents. These contracts are regulated by the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) under which the OFT and other enforcement bodies can prevent the continued and future use of certain unfair terms.³

³ Terms in consumer contracts that set the price or define the product or service being supplied are not 'standard terms'. These are 'core terms' and are exempt from the test of fairness as long as they are set out in plain language understandable to the average consumer.

1.23 Unfair terms reduce the level of protection available to consumers. Examples of terms that can cause harm to consumers in ticket agent contracts are those that seek to:

- deny consumers the right to a refund in all circumstances
- allow the event supplier to make changes to the event that has been contracted for without a valid reason
- provide the supplier with the unfettered right to refuse admission

1.24 The OFT and other enforcement bodies such as TSDs, act in a number of ways to improve consumer contract terms. These include campaigns to raise consumer awareness, publishing guidance and taking enforcement action. In 2003 the OFT published the guidance on unfair terms in consumer entertainment contracts to help ensure that standard terms used in contracts in this sector are fair.⁴ This guidance has been used by advisers and trade associations in assisting ticket sellers to improve their contracts. We also issued a consumer leaflet in February 2004 raising awareness amongst consumers of their rights in relation to entertainment contracts. As well as issuing guidance the OFT has taken enforcement action to secure fair terms in a number of ticket agents' standard contracts.

1.25 However, despite this progress our research has highlighted a number of contracts still containing potentially unfair terms. We conducted a review of ticket agents' websites. Our findings confirm a general reliance on certain standard terms we would consider potentially unfair under the UTCCRs. Our research also revealed a general failure to offer consumers their refund rights as set down in the Consumer Protection (Distance Selling) Regulations 2000 (DSRs). As well as this, through our mystery shopping exercise, we tested the clarity of consumer contract terms on ticket sellers' websites. In 26 per cent of internet mystery shops the shopper was not able to find the ticket seller's contract terms. When the contracts could be found around a quarter of these appeared unclear to the mystery shoppers.

⁴ OFT 667. This can be found on the OFT website under 'Publications' at www.of.gov.uk.

- 1.26 Experience shows that the creation by trade associations of model terms for their members' consumer contracts is an effective and efficient way to improve standards in a large number of contracts, and can raise standards across a sector as a whole. The Society of Ticket Agents and Retailers (STAR) is the main trade association for primary ticket agents and other ticket sellers such as venue box offices. We are currently discussing the possibility of model terms with the STAR.
- 1.27 We therefore recommend that the Society of Ticket Agents and Retailers (STAR) produce model terms for its members. We are happy to work with the STAR in producing these terms**
- 1.28 There is ongoing regulatory activity, specifically by TSDs, to improve compliance in this sector. In addition there are initiatives aimed at increasing consumer awareness on points to consider when buying tickets, such as the one launched by Westminster TSD in 2003. We support the good work already being undertaken in this sector and this report builds on such campaigns by explaining how entertainment tickets are distributed, the pitfalls of ticket buying, and what redress consumers can expect when they experience certain problems.⁵
- 1.29 The OFT will continue to work with TSDs to ensure that ticket sellers comply with the relevant consumer protection legislation, and will consider enforcement action where necessary. We will publicise the outcome of any action taken. We will also continue to raise awareness of consumer rights in order that consumers are better equipped to make informed choices and exercise those rights where necessary.**

Secondary ticket agents

- 1.30 Secondary ticket agents resell tickets for all kinds of events, usually at a premium price. The cost of the ticket is effectively the price the market will bear at the time - when demand is high, the price will be at a premium.

⁵ Questions for consumers to consider when buying tickets are set out in this report at Annexe G.

When there is limited demand the price may be below the face value and the agent may not be able to sell the ticket at all. This is the risk the secondary agent takes when acquiring advance tickets for events.

1.31 Secondary agents can therefore benefit some consumers on some occasions, for example when they are willing and able to pay a premium price for high-demand events. Because of this, reselling tickets is not generally illegal but secondary agents are, nonetheless, required to comply with consumer legislation. However, we found that a number of secondary agents are breaching this legislation resulting in harm to consumers.

1.32 Complaints to the OFT about secondary agents, while low in absolute terms, occur three times more often than complaints about primary ticket agents. This is despite secondary agents accounting for a much lower proportion of ticket purchases. Half of the complaints to TSDs relate to secondary agents. Several TSDs believe complaints are under-reported because disreputable secondary agents frequently target tourists who are unfamiliar with UK complaint procedures or leave the country before they can seek redress.

1.33 The complaints identify the following key problems:

- consumers not being made aware of, or being misled about, the face value of the ticket, and thereby the size of premium they are paying, and finding out only after they have made the purchase
- consumers being misled about the seat location (such as a severely restricted view)
- consumers not receiving pre-paid tickets.

1.34 All of these are potentially breaches of consumer protection legislation. We will work closely with enforcement partners to ensure compliance with consumer protection legislation by secondary agents and discuss with other relevant bodies how best to inform overseas tourists, who appear particularly vulnerable to the practices of some secondary agents, of the key issues to consider when buying tickets.

2 INTRODUCTION

2.1 This market study, launched on 17 June 2004, has been carried out under the Office of Fair Trading's (OFT) function contained in section 5 of the Enterprise Act 2002.

2.2 We have looked at how effectively the supply of tickets by ticket agents for entertainment events is working for consumers.

2.3 We looked at:

- existing arrangements between event promoters/producers and ticket agents
- informational issues surrounding the selling of tickets to consumers
- the effectiveness of consumer protection legislation

2.4 In carrying out this study we:

- surveyed consumers to get their experiences of buying tickets
- surveyed ticket agents to obtain financial information relating to ticket sales and get an idea of the relationships between companies
- commissioned a mystery shopping exercise to gauge how transparent ticket prices were and the amount of information available during the buying process

2.5 We also consulted with:

- those involved in selling tickets including ticket agents, venue owners and event promoters
- the Advertising Standards Authority and the Society of Ticket Agents and Retailers
- Trading Standards Departments
- consumer groups and government and regulatory bodies with an interest in this sector
- regulators in other countries

2.6 The following chapters provide background on this sector, the issues we have considered, the problems we found and proposed remedies where we think they are appropriate. Chapter 3 sets out the broad picture, looking at the selling of tickets and the players involved, chapter 4 considers the possible impact of agreements between promoters/producers and ticket agents covering the distribution of tickets, chapter 5 looks at consumer buying preferences, chapter 6 assesses consumer concerns surrounding the buying of tickets and chapter 7 looks at issues regarding secondary agents. We have also included a glossary and list of acronyms.

2.7 Details of our methodology, research and relevant legislation can be found in the annexes to this report. The studies we commissioned are the responsibility of the authors concerned and any views expressed in them are those of the authors and not necessarily of the OFT. The views of the OFT are expressed in this report, which has drawn on those studies.

3 BACKGROUND TO THE DISTRIBUTION AND SALE OF TICKETS FOR ENTERTAINMENT EVENTS

Introduction

- 3.1 This chapter looks at how tickets are distributed for entertainment events. It examines the part played by those involved in the distribution process: concert promoters, theatre producers, owners of venues at which events are held, with a particular emphasis on ticket agents and their relationship with those parties.
- 3.2 We have focussed on the role of primary ticket agents as they handle the majority of sales by all ticket agents. Primary agents sell tickets obtained as part of the event promoters' distribution arrangements. We have also considered issues relating to secondary ticket agents, who buy tickets from box offices and other sources and then resell them, usually at a premium price. These issues fall chiefly in the area of consumer protection and are considered in chapter 7. When discussing ticket agents in the rest of this report it should be assumed that we are referring to primary ticket agents, while secondary agents are referred to explicitly.
- 3.3 The types of entertainment events included in this study are rock/pop, theatre and sporting events. Although the sale of tickets for sporting events is considered, it does not form a central piece of our analysis because the role played by ticket agents is much less significant in this sector. In our consumer survey only 18 per cent of respondents had bought an advance ticket to a sporting event in the last six months and only a quarter of these purchases were from a ticket agent. This compares with 43 per cent of consumers who had bought a ticket for a theatre event (nearly a third of which bought from ticket agents).⁶

⁶ The consumer survey conducted for the OFT by FDS International Ltd (referred to elsewhere in this report as FDS). Investigation into possible consumer detriment in the market for advanced tickets for leisure events, September 2004. This report contains data from a consumer survey of 1002 people and 568 mystery shops. This data does not cover purchases made by foreign tourists.

PROMOTERS AND VENUES

The role of event promoters

- 3.4 Event promoters negotiate with artists' agents for their appearance, hire venues, determine the face value of tickets and their allocation between the venue box office and ticket agents, and undertake the advertising and marketing of the event.
- 3.5 The largest concert promoter in the UK is Clear Channel Entertainment UK (Clear Channel) In 2003 Clear Channel had a turnover from rock/pop concerts of approximately £64 million and a total turnover from promotion of all events of nearly £160 million. Clear Channel has a parent company in the USA which also owns concert promoters in other European countries. In the UK, Clear Channel also owns or manages a number of concert venues and owns five regional theatres, which are used both for its own and other promoter's/producer's events.
- 3.6 Other UK promoters/producers include SJM, Metropolis Music, the Mean Fiddler Group, Marshall Arts, Kennedy Street Enterprises and Cameron Mackintosh.

Venues

- 3.7 Both concert venues and theatres play a significant part in ticket distribution and the involvement of ticket agencies. While concert promoters and theatre producers will undertake overall advertising and marketing of their events, individual venues undertake on-going advertising of forthcoming events, which will be aimed in particular at the local area/region and therefore frequently at those more likely to purchase tickets than those living further away.

- 3.8 To meet the demand for tickets from those buying from box offices, venues will usually expect to receive around half or more of the tickets for an event. Our consumer survey found that 63 per cent of consumers bought their last ticket from a box office and only 37 per cent through an agent.⁷ It should also be in the interests of promoters and producers to make available a sufficient allocation of tickets to venues.
- 3.9 There are a number of large venues in the UK which stage a range of events including top rock/pop acts for which the demand for tickets is significant. These venues are listed at Annexe D. Some venues, including the NEC Birmingham and the Scottish Exhibition and Conference Centre, operate their own box office facility. Others contract with a ticket agent to handle telephone and internet bookings on their behalf. Some of those venues operating their own box office facility also provide a ticketing service for other venues.

Venue charges

- 3.10 Tickets purchased from the venue box office in person (and paid for in cash) will not normally incur a booking charge, although a charge will sometimes be made if tickets are paid for by credit or debit card. For tickets purchased from the venue's box office by phone or internet there will usually be a booking fee, and possibly a postage fee, whether or not these sales are handled for the venue by a ticket agent.

⁷ Note, though, that in some cases the consumer may think they are dealing with a venue when it is in fact an agent providing the service. FDS consumer survey.

THE ROLE OF TICKET AGENTS

- 3.11 Ticket agents sell tickets for various entertainment and other events on behalf of those staging such events (usually concert promoters and theatre producers). Ticket agents also provide additional facilities for venue box offices to enable them to maximise their ticket sales. Bookings for events through a ticket agent are mainly by telephone or via the internet. Our consumer survey found that of those whose last purchase was from a ticket agent, 50 per cent used the internet, 43 per cent the phone and the remainder bought in person.⁸
- 3.12 Ticket agents also sell tickets for events where the venue does not have a box office, such as outside concerts and festivals. Some ticket agents provide box offices with ticketing systems and computer software used in the sale of tickets, and with data relating to their customers, that can be used by the venue in marketing future events.

Benefits of ticket agents

- 3.13 Maximising the sale of tickets for events often cannot be achieved through the single sales outlet provided by venue box offices. By providing additional booking facilities, ticket agents enable the sale of a larger number of tickets than could be achieved through the box office alone. Furthermore, for those large events, such as popular pop/rock concerts, which attract a high level of demand for tickets over a short period, the volume of bookings can often only be handled by a ticket agent. Large ticket agents usually have call centres and large numbers of staff who can be allocated to take bookings for specific events according to requirements.

⁸ FDS consumer survey.

3.14 Ticket agents also have greater flexibility in switching resources between different events and clients than the box offices of individual venues. They can also take bookings on behalf of venues 24 hours a day 7 days a week, which many consumers have come to expect. The larger volume of sales handled by ticket agents, acting for a number of clients, enables them to achieve economies of scale and hence lower unit costs in distributing tickets than can many individual venues, which would have much higher unit costs if they were to provide the same level of service themselves. Use of ticket agents also removes responsibility and cost from the venue for updating ticketing software when this becomes necessary.

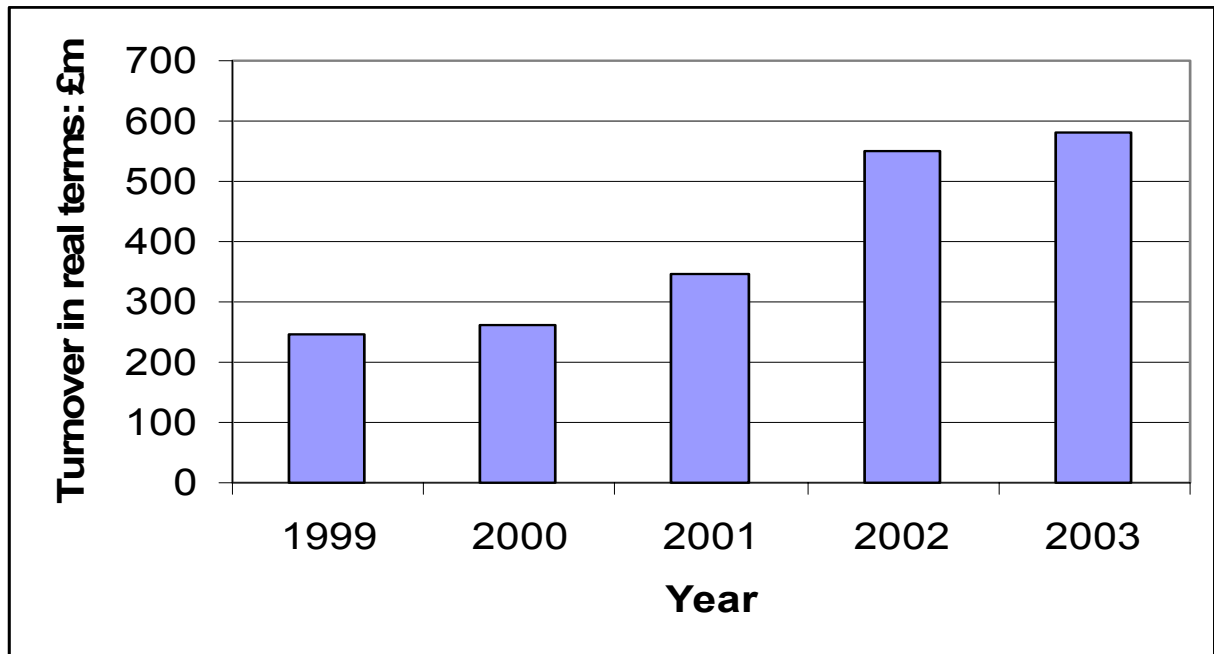
Growth of ticket agents

3.15 In 2003, the total value of ticket sales by ticket agents was estimated to be around £580 million.⁹ This represents almost a 150 per cent increase in real terms on the estimated 1999 sales.¹⁰ Figure 3.1 shows estimated total sales for ticket agents for each of the years 1999 to 2003.

⁹ From ticket sales alone (including processing and handling charges), before any cost of sales have been deducted. 'This figure relates to the total value of ticket sales by agents, not just the additional charges levied. The annual industry turnover of £80-£100 million quoted when we launched the study was an estimate of net sales (ie excluding the face value of the ticket) from published sources. We have now used the gross turnover figure since this was supplied to the OFT by each of the main agents and is thus a more reliable estimate of the activity in the market.'

¹⁰ OFT estimate from responses to information requests. The real-terms change in turnover was calculated by deflating the figures using the all items Retail Prices Index excluding mortgage interest payments.

Figure 3.1: Estimated value of ticket agents sales (at constant (2003) prices) - 1999 to 2003¹¹



3.16 Growth in ticket agents' business has been encouraged by growth in the number of events held each year. In turn, this increase in event numbers has been made possible by the additional booking facilities which ticket agents provide. For example, the number of event performances at the main arenas in 2003 was 991 compared with 370 in 1996.¹²

3.17 The general growth in use of the internet, with regular internet users wanting the convenience of buying tickets in this way, has also benefited ticket agents who provide this service via their websites. Also, many venues that do not outsource their ticketing to ticket agents now accept internet bookings, having invested in the necessary software to enable them to offer this service.

¹¹ OFT estimates from responses to information requests.

¹² Sixteen arenas in membership of the National Arenas Association.

3.18 The ability of ticket agents to take bookings 24 hours a day, 7 days a week is also relevant. It is often not convenient for consumers booking tickets to go in person to the venue box office and, whilst it is possible to telephone a box office, this can involve a long wait and can only be done during the hours the box office is open.

Ticket allocation between channels

3.19 For rock/pop concerts, **concert promoters** determine the allocation of tickets for sale between the box office at the venue where the concert is being held and ticket agents. These allocations are subject to:

- any agreement between the promoter and the venue on the proportion of tickets going to the venue (as part of the conditions for hiring the venue)
- any prior or wider contractual arrangements which individual concert promoters have with individual ticket agents regarding sales of tickets for events which they promote
- any contractual arrangements between venues and ticket agents (which will typically specify the proportion of the tickets for events at that venue which will be made available for sale by that ticket agent).

3.20 Informal relationships between promoters and ticket agents, established over time, are also important in determining how tickets are allocated. We were told, both by promoters and venues, that there is some movement of the allocated tickets for an event between different agents, and between agents and the box office, depending on how well sales of each are going. The promoter's main objective is to maximise ticket sales through the combined distribution channels.

- 3.21 **Producers** have overall control of ticket distribution for theatrical productions, but box offices frequently handle the allocation of tickets to the various ticket agents on their behalf. The size of allocation to individual ticket agents is usually determined by long-term arrangements between the producer and the agent.
- 3.22 **Artists and artists' agents** may also require some share of the available tickets to sell directly. A proportion of tickets both for rock/pop and theatre events are usually set aside for the promoter/producer of the event to use as they choose rather than being allocated to either venues or ticket agents. Unused tickets are usually returned to the venue box office shortly before the event.
- 3.23 As indicated below, ticket agents generally play a smaller role in selling advance tickets for sporting events than for rock/pop concerts or theatre. A varying proportion of the seats for club football matches are taken by season ticket holders of the club, these accounting in some cases for most of the available tickets. Many clubs sell the remaining seats themselves. For international matches that the Football Association (FA) organises, a single ticket agent (Ticketmaster) is currently contracted by the FA to provide the ticketing service for home international games.

Sales by ticket agents

3.24 We estimate that in 2003, the total value of advance tickets sold in the UK was in the region of £1.4 billion.¹³ Primary ticket agents sold nearly 20 million tickets which amounts to about 40 per cent of these sales (£580m). Sales through ticket agents for rock/pop concerts were highest with more than 8 million tickets sold. Over six and a half million tickets were sold by agents for theatrical productions, over a million tickets for sporting events and over three million tickets for all other events¹⁴.

3.25 The largest ticket agents are:

- Ticketmaster UK Ltd (Ticketmaster)
- See Tickets
- Seatem Theatre, Sport and Concert Tickets (UK) Ltd (Seatem).

3.26 Table 3.2 shows the proportion of total turnover of all ticket agents from ticket sales by these larger ticket agents for the years 1999 to 2003. Note that See Tickets has only been trading as such since 2004 but that both Way Ahead and RUT (Really Useful Theatres) are now a part of See Tickets.

Table 3.2: Largest ticket agents' proportion of ticket agents' total turnover from ticket sales for the years 1993 to 2003

Ticket agent	1999 (%)	2000 (%)	2001 (%)	2002 (%)	2003 (%)
Ticketmaster	[...]	[...]	[...]	[...]	[...]
RUT*	[...]	[...]	[...]	[...]	[...]
Way Ahead*	[...]	[...]	[...]	[...]	[...]
Seatem	[...]	[...]	[...]	[...]	[...]

*Trading as See Tickets since February 2004

Source: OFT calculations from information request responses

¹³ Estimate based on the results of the FDS consumer survey and information supplied by ticket agents in response to the OFT's information request.

¹⁴ This category includes theme parks, attractions, art galleries, exhibitions, flower shows etc.

3.27 When the 2003 turnover was broken down into rock/pop concerts and theatrical productions two different ticket agents had the largest share of ticket sales for each type of event.¹⁵ The three largest ticket agents, Ticketmaster, See and Seatem are described further below.

Ticketmaster

3.28 Ticketmaster's activities include:

- retailing tickets in agreement with promoters and producers, for a range of entertainment and similar events including rock/pop concerts, theatre, sport, attractions etc
- providing a ticketing service on behalf of various venues
- supplying ticketing systems and software to venue box offices.

3.29 Ticketmaster sells tickets by telephone, through its website and through Ticketmaster Ticket Centres located throughout the UK. There are nearly 100 Ticket Centres in retail outlets and tourist information centres.

3.30 Ticketmaster also has a sister company, TicketWeb, which provides an internet box office for venues and event promoters without the necessity for the venue/promoter to license or purchase ticketing software.

3.31 Ticketmaster has a close commercial relationship with Clear Channel, the largest promoter of rock/pop concerts in the UK and owner of a number of theatre and concert venues. Clear Channel has a contract with Ticketmaster for the processing and distribution of tickets for events promoted by Clear Channel and at Clear Channel owned venues, including other promoters' events staged at these venues. Ticketmaster also had a contract with

¹⁵ However, for the purposes of this study we have not sought to define a specific market for ticket agents.

promoter Mean Fiddler, which expired on 12 January 2005¹⁶ and has a contract with DF Concerts.

- 3.32 Ticketmaster operates a box office service on behalf of a number of venues for rock concerts and similar events in addition to those owned by Clear Channel. These include: the Manchester Evening News Arena, the Metro Radio Arena in Newcastle (both owned by SMG in Philadelphia) and the Brighton Centre. Ticketmaster also provides a box office service for the Ambassadors Theatre Group, which owns over 20 theatres in London and other parts of the UK.
- 3.33 In the sports sector the Football Association has an agreement with Ticketmaster for the sale of tickets to home international matches.

See Tickets

- 3.34 See Tickets only came into existence a few years ago as a result of the Really Useful Group, which owned a number of theatres, deciding to develop its existing ticketing operation, Really Useful Ticketing. Formation of the larger group was achieved by acquisition of two existing ticketing businesses, Way Ahead and Wembley Arena Ticketing. It has only been trading as See Tickets since February 2004. See Tickets now comprises: Way Ahead Box Office, Ticket Select, and Really Useful Theatres Ticketing. See Tickets retails tickets for theatre, concerts and other events and has agreements with some promoters to provide internet and telephone sales on their behalf. For example, the internet website gigsandtours.com is operated by See Tickets on behalf of Metropolis and SJM.
- 3.35 See Tickets also provides a ticketing service for the 12 London theatres owned by its parent company, Really Useful Theatres. It has further agreements to act as the call centre for a number of other venues including Wembley Arena and Earls Court.

¹⁶ Mean Fiddler have now agreed a long-term contract with See Tickets commencing on 13 January 2005.

- 3.36 See Tickets' London operation licenses ticketing software from Galathea STS for its call centres. See Tickets Nottingham uses software developed specifically for that business by Way Ahead.

Seatem

- 3.37 Seatem was established in 1994 with a view to building an internationally based ticketing operation. It pursued this goal by acquiring ticketing businesses across Europe, in the USA and in the southern hemisphere. In the UK Seatem are owners of Keith Prowse (which has absorbed existing ticket agents First Call, Global Tickets and Applause). While it sells tickets across a number of events, the proportion of total ticket sales from theatre and concerts is lower for Seatem than those from sales for other types of events, including tickets for theme parks, attractions, art galleries, exhibitions and flower shows.
- 3.38 Seatem owns Galathea STS Ticketing, a ticketing software business providing ticketing systems and licensing ticketing software for use by box offices in a variety of entertainment venues.

TICKET AGENTS' CHARGES

- 3.39 The total price of a ticket sold through a ticket agent usually includes the following elements:
- the face value of a ticket – the price printed on the ticket itself
 - a booking fee (per ticket)
 - additional processing fee – this can have a number of names but is an additional processing charge per transaction, related to printing, postal and other costs in sending out tickets.
- 3.40 The booking fee provides ticket agents with their main source of revenue.

- 3.41 Fees can vary greatly across ticket agents, depending on how they are calculated and the type of event. Fees also vary within agents; the amount charged can depend on the type of event, the show or act and the venue location. It is therefore difficult to assign a standard fee for an event type to each agent.
- 3.42 To best illustrate the variation in fees, we compared tickets with the same face value for the same show, bought via the internet and delivered by post. Table 3.3 shows fees and total ticket prices for certain theatre shows and rock/pop concerts. The fees shown are illustrative examples, which are not necessarily typical of the fees charged by these agents for all events on offer. As well as showing the different charges that can be applied, Table 3.3 also indicates that ticket agents are neither always the most, nor least, expensive - this varies depending on the event. Also, differences in terms of the service provided by different ticket agents and the scale on which they operate may be reflected in the fees they charge. It should be noted that while the highest/lowest prices in Table 3.3 are the highest/lowest from our survey, they may not be the highest/lowest overall.

Table 3.3: Total price of tickets to theatre and rock/pop concert events (purchased on the internet and delivered by post)¹⁷

	Face value	Total additional fees	Total price of ticket	£ Fee as a % of face value
Theatre events				
Chicago¹ (evening show 3/7/04 West End, London)				
Abbey Box Office	42.50	11.00	53.50	26
Keith Prowse	42.50	7.90	50.40	19
See Tickets	42.50	5.70	48.20	13
Ticketmaster	42.50	2.75	45.25	6
Hamlet¹ (evening show 3/7/04 West End, London)				
Abbey Box Office	37.50	9.70	47.20	26
London Theatre Direct	37.50	6.90	44.40	18
Keith Prowse	37.50	5.25	42.75	14
See Tickets	37.50	5.20	42.70	14
Ticketmaster	37.50	2.25	39.75	6
The Old Masters¹ (evening show 4/09/04 West End, London)				
London Theatre Direct	37.50	5.90	43.40	16
Keith Prowse	37.50	5.25	42.75	14
See Tickets	37.50	5.20	42.70	14
Ticketmaster	37.50	2.25	39.75	6
Rock/pop concert events				
Corrs¹ (26/10/04 NEC, Birmingham)				
See Tickets	32.50	6.50	39.00	20
Ticketmaster	32.50	6.25	38.75	19
Lastminute.com	32.50	5.80	38.30	18
Venue Box office	32.50	4.50	37.00	14
Bryan Adams² (24/10/04 Hallam Arena, Sheffield)				
Lastminute.com	30.00	10.35	40.35	35
See Tickets	30.00	9.45	39.45	32
Ticketmaster	30.00	8.45	38.45	28
Ticketline/Piccadilly	30.00	7.95	37.95	27
Venue Box office	30.00	6.75	36.75	23

¹⁷ OFT mystery shopping exercise.

Jimmy Cliff² (9/7/04 Shepherds Bush Empire, London)				
Ticketmaster	18.50	7.70	26.20	42
Ticketline/Piccadilly	18.50	6.95	25.45	38
See Tickets	18.50	6.55	25.05	35
Hope of the States² (14/7/04 Electric Ballroom, London)				
See Tickets	10.00	6.70	16.70	67
Ticketmaster	10.00	4.25	14.25	43

1. Reserved seating

2. Unreserved seating or standing only

- 3.43 It is usually possible to avoid fees if you can purchase a ticket in person at the box office and pay in cash.
- 3.44 In addition to the revenue from booking and processing additional booking fees, ticket agents also obtain revenue from so called 'inside fees' for some events. These are paid to ticket agents primarily by theatre producers, but also some promoters, for their service. We were told by some ticket agents that traditionally ticket agents are generally paid around four per cent of the face value of theatre tickets, which producers allow for by including an inside fee within the face value price.
- 3.45 Conversely, for some events, mainly rock/pop concerts, a proportion of the revenue that ticket agents get from booking and transaction fees is paid back to the promoters of those events. Agreements between promoters and ticket agents frequently provide for a specific amount to be paid to the promoter for each ticket sold by the agent. A reason we were given by one promoter for these payments was that they were contributions to advertising costs for the event, for which the promoter takes responsibility rather than the ticket agent.

3.46 Another factor is that the terms of agreements between promoters and artists and their agents often require a proportion of revenue from ticket sales to be returned to the artist/artist's agent by the promoter. It is, therefore, in the promoter's interest to share in the **additional** charges made by ticket agents, which are outside the face value price. These payments are taken into account by ticket agents when setting their booking fees. This source of income for promoters can mean that face value ticket prices are lower than they would be otherwise.

4 COMPETITION IN TICKET DISTRIBUTION

Summary

- 4.1 In examining consumers' concerns that ticket agents charge high fee levels, we considered whether there is a distortion of competition between agents which could be resulting in higher fees. In this context, one particular feature of ticket distribution for events that we looked at closely is the existence of vertical agreements between various parties in the distribution chain. In particular we looked at vertical agreements between individual event promoters or venues and larger ticket agents that grant preferential contractual rights to certain agents to access for sale a proportion of tickets allocated to ticket agents by the promoters or venues.
- 4.2 Our assessment is that, on balance, these arrangements in practice do not act to the detriment of consumers by leading to higher prices, but, instead, enable lower costs to be passed on in lower prices. Competition between ticket agents mainly takes place in the form of rivalry for these preferential contractual rights.
- 4.3 We have found no evidence that even the largest of these agreements, between Clear Channel and Ticketmaster has affected the intensity of this competition.

Introduction

- 4.4 When selling tickets, agents charge one or more additional fees on top of the face value of the ticket. Whilst most consumers accept that taking advantage of the benefit of using a ticket agent will involve an extra cost, concern has been expressed at the level of these additional fees and the particular way in which they are levied. Thirty-two per cent of surveyed consumers who last bought tickets through a ticket agent thought the additional fee was higher than expected, and 28 per cent of consumers dissatisfied with their last ticket purchase from a ticket agent cited high

additional fees or a dislike of additional fees as the reason.¹⁸ In addition to consumers not being fully aware of what services they are getting for their money, this dissatisfaction at fee levels can be reinforced by the perception of an absence of direct competition between ticket agents and therefore little downward pressure on fees.

- 4.5 The way in which tickets are sold for individual events does indicate that there is at least some potential for consumers to suffer detriment from the fees of ticket agents. But by itself this is not conclusive. The key issue is whether total ticket prices (inclusive of additional fees) were higher than they would be as a result of a lack of competition between ticket agents. If there is effective competition, rivalry between agents will help to drive fees down towards their underlying costs, and only the efficient, lowest-cost agents will stay in business. This would ultimately benefit consumers. Alternatively, if there is a distortion to competition, agent fees will not face effective downward pressure, their profits will be too high and consumers will be harmed.
- 4.6 We therefore considered closely the form and intensity of competition between ticket agents. In this context, an important feature in the industry is the existence of arrangements between individual event promoters or venues on the one hand, and larger ticket agents on the other, that grant preferential contractual rights to certain agents to access for sale a proportion of the tickets allocated to ticket agents by the promoters or venues. This naturally limits direct competition between agents in selling tickets to final consumers for a given event, and means that promoters can have an influence on the fee levels and structure. But this is not only the form of competition that can potentially constrain prices and benefit consumers. Ticket agents can also compete for the right to sell tickets on behalf of a promoter.
- 4.7 We consider whether this alternative form of competition is effective and delivers benefits to consumers. This necessitates taking a close look at these contractual relationships to see if they might stand in the way of

¹⁸ FDS consumer survey.

effective competition. In particular, we look at whether the form and use of the most important contracts could, in the long term, reduce the number of agents competing to win new contracts.

- 4.8 The agreements in ticket distribution are described in paragraphs 4.9-4.14. Paragraphs 4.15-4.23 examines the form and intensity of competition between agents, while paragraphs 4.24-4.47 considers the means by which competition between ticket agents and/or promoters could potentially be harmed through the vertical agreements between promoters and ticket agents. It then considers the evidence as to whether or not this is happening in practice. The analysis is based on our discussions with the various parties in ticket distribution, and on data, information and agreements/contracts that the parties have supplied to us.

THE AGREEMENTS

- 4.9 Vertical agreements in the sector exist between:
- promoters and ticket agents
 - venues and ticket agents
- 4.10 The largest ticket agents are Ticketmaster, See Tickets and Seatem. The largest promoters are Clear Channel, SJM, Metropolis Music, the Mean Fiddler Group, Marshall Arts and Kennedy Street Enterprises. Details of the industry's structure and key participants are given in chapter 3.
- 4.11 An agreement exists between the largest promoter, Clear Channel, and the largest agent, Ticketmaster. What this means in practice is that Ticketmaster is Clear Channel's primary ticket agent and has preferential rights to access for sale a high proportion of the tickets which Clear Channel has the right to sell after negotiations with venues and other promoters. This does not include tickets sold by Clear Channel through its own box offices or any tickets sold through box offices at venues and certain other ticket sales. The agreement runs until [...] (5 to 10 years in duration).

- 4.12 The contract contains details of all payments made by Ticketmaster to Clear Channel and vice versa. Contracts in the ticketing industry sometimes involve the charging of inside fees, booking fees and payments by ticket agents to venues and promoters. They may also make provision for listing telephone numbers. We have considered the Clear Channel/Ticketmaster contract during the study. The report does not contain fuller information on this and other contracts for reasons of commercial confidentiality.
- 4.13 Ticketmaster has a contract with DF Concerts to act as its primary agent. It also had an agreement with promoter Mean Fiddler which ran until 12 January 2005 but has not been renewed. Ticketmaster also provides ticketing services to a number of venues including the Manchester Evening News Arena and the Ambassador's Theatre Group. These venues also have agreements with Ticketmaster.
- 4.14 The second largest ticket agent, See Tickets, has formal agreements with Metropolis and Triple A and also provides a ticketing service for 12 London theatres owned by its parent company Really Useful Theatres. It has further agreements with a number of other venues including Wembley Arena and Earls Court. SJM allocate a proportion of tickets to all major ticket agents, including See Tickets

THE FORM OF COMPETITION BETWEEN AGENTS

- 4.15 The competitive pressure on retail margins in many sectors of the economy typically stems from retailers with similar products or services competing on price and quality to win custom. Competitive pressure on supplier margins comes from competition between wholesalers or manufacturers to get products into retailing. There may be an expectation amongst consumers using ticket agents that the same type of competition at each level is appropriate for this sector. In particular, consumers have often complained that there is insufficient downward pressure on fees in the form of more direct retail competition between ticket agents. Of those respondents to our consumer survey who were not satisfied with their last ticket purchase and who had made the purchase from a ticket agent, 28 per cent cited overcharging/too many fees/dislike of additional fees as the reason.

- 4.16 Competition might, however, work in a different way, with the competitive pressure on retailers deriving from competition for preferential distribution arrangements with suppliers. Suppliers then compete on the basis of the total retail price and strive to achieve the best distribution for the lowest cost. This form of competition can act in consumers' interests if it generates efficiencies and if there is sufficient competition for the right to be a preferred retailer.
- 4.17 Competition between ticket agents takes this form. The main contracts between promoters and agents that we examined were first subject to bidding and negotiation. We were told by Ticketmaster that Clear Channel had told them it considered several options, in addition to them, for its ticketing. Another major promoter indicated that it had several options, including taking the service completely in-house, when the contract with its existing agent came up for renewal. Wembley Arena, whose ticketing service is currently provided by See Tickets, has tendered the service ahead of expiry of its existing contract.
- 4.18 In general, agents retain some or all the booking fee charged, and sometimes a proportion of the face value (known as an inside fee). The influence of agents over the booking fee and retained commission varies from contract to contract but, ultimately, promoters make use of competition between agents for the right to distribute tickets through being awarded contracts to do so.
- 4.19 This form of competition is less visible to consumers, but it can be beneficial providing it is not impeded in any way. It has the potential advantage of overcoming the problem that consumers themselves rarely search for alternative outlets for tickets and exert less competitive pressure on ticket agents' profit margins. Ninety-four per cent of consumers surveyed bought their tickets from the first ticket seller they contacted and half believed their tickets were only available from one source or did not know of any other.¹⁹ By inviting competition for the contract, the promoter

¹⁹ FDS consumer survey and evidence obtained through our mystery shop survey, desk research and information supplied by promoters, ticket agents and venues.

could be undertaking that function for consumers, and ultimately competing with other promoters for the overall gross price of events. It is in the promoters' interest to pass on the benefits of this competition to consumers since promoters are in competition with each other to stage events and higher gross ticket prices overall are likely to result in smaller attendances.

- 4.20 The other potential advantage is that granting one or a limited number of agents the right to distribute tickets may also help realise other efficiencies such as reducing the overall underlying costs of distribution (for example, through avoiding duplication of retailing costs and spreading them over a wider volume of ticket sales).
- 4.21 See Tickets told us that venues greatly benefit from deploying a single preferred ticket agent to sell the majority of its tickets because ticket distribution costs are reduced. In addition, they stated that consumers may find it convenient to know that one agency is selling tickets as this reduces consumer search time if they are looking for specific seats for an event. This may be the case for theatre events and events which are more likely to sell out.
- 4.22 The key to whether this form of competition benefits consumers is whether there is effective competition for the relevant contracts. We therefore looked very closely at whether the contracts – either by themselves or in combination with other industry characteristics – foreclosed the market to smaller agents and potential new agents. Market foreclosure is a term to describe how agreements between firms might unfairly weaken existing rivals or exclude potential entrants to the extent that the underlying level of competition is weakened and consumers suffer in the form of higher prices or lower quality services.

4.23 We consequently looked at the available evidence to assess whether or not the market for contracts is foreclosed and harms consumers. If so, this could have the effect of:

- raising booking fees by reducing the ability of other agents to provide effective competition to Ticketmaster in bidding for preferential distribution contracts
- raising the face value of tickets by excluding ticket agents to the extent it affects other promoters' ability to compete and reduces competition between different events.

FORECLOSURE

4.24 Vertical contracts that grant preferential rights of access to tickets in this industry might impede effective competition between agents by giving Ticketmaster (or a small number of large agents) disproportionate cost or demand-side advantages over other agents. These are considered in turn.

Potential cost advantages

4.25 An agreement between a promoter and a ticket agent that grants preferential rights of access to tickets has the potential to bring about foreclosure if it has the effect of denying significant economies of scale to rival ticket agents. This is the most likely source of foreclosure in this industry.

4.26 Economies of scale refer to reductions in unit costs that can be achieved by a business through having a high output and spreading its fixed costs over this larger volume. Agents denied such economies face higher operating costs and therefore potentially greater difficulty competing with other agents.

- 4.27 Certain agents might face high cost disadvantages if one promoter is of such a size that, by entering into a distribution contract with a ticket agent that grants the agent preferential rights of access to tickets, other ticket agents are unable to achieve a sufficient level of economies of scale to compete effectively²⁰. This is most likely to occur the longer and more exclusive the contract, the higher the proportion of tickets that it covers for any one event, and the more comprehensive it is in coverage of the range of the promoter's events and venues.
- 4.28 If ticket agents were not able to achieve these scale economies they would face higher costs and find it difficult to win contracts with remaining promoters. This reduction in competition from other ticket agents for contracts would have a direct effect on the level of fees to consumers and the quality of service they receive. This might also block or delay the introduction of new innovations and technologies from potential new entrants.
- 4.29 Detriment to consumers would also occur if a promoter offering events of a type that requires particular ticket agents is unable to continue in business because it requires the existence of the foreclosed ticket agents to be able to distribute tickets for its events. This in turn could lead to a reduction in the extent of competition between individual events and resulting higher ticket prices to consumers.

Evidence on economies of scale

- 4.30 We found that the operations of ticket agents do indeed rely on the exploitation of economies of scale. Our assessment of the agreements in place, however, does not lead to the view that economies of scale are denied to otherwise efficient agents to the extent that it would affect their ability to compete effectively.

²⁰ A network of agreements between various promoters and a single ticket agent (or a small number of ticket agents) can have the same effect by tying up a high proportion of different promoters' events with that agent and preventing other agents from achieving a viable scale of operation.

The nature of economies of scale

- 4.31 By selling tickets for multiple events at various venues ticket agents are well equipped to smooth what would otherwise be uneven demand for a promoter. For ticket agents the unit costs of providing a 24 hour service are much lower. In addition, ticket agents are able to spread the periodic cost of updating the ticketing software across a higher level of ticket sales than many venues can.
- 4.32 Economies of scale also exist through the ability of ticket agents to build up a database of individuals who purchase various types of ticket. Such a database is of value to promoters and ticket agents when carrying out marketing activities because there are cost savings from serving the same customer more than once. However, most events are specific in nature and the promoter cares about the relevant segments of the database rather than the overall size.
- 4.33 The potential for foreclosure would be higher if Ticketmaster or a small number of agents had engineered superior cost advantages by virtue of the high number of contracts held with a wide range of promoters or venues. The widespread use of distribution arrangements granting preferential rights of access to tickets would then prevent other agents winning the necessary number of contracts to match these cost advantages. However, the bulk of economies of scale in the industry outlined above can be achieved through generating high volume within a small number of contracts.

Length and form of contracts

- 4.34 Contracts between promoters and ticket agents need to be reasonably long in order to secure the efficiencies outlined in section 2 of this chapter, and to provide incentives for agents to compete for the preferential rights to access a proportion of a promoter's tickets. But on the other hand, the

likelihood of other agents failing to win the level of business necessary to be competitive on costs increases with the average length of contracts and the degree of the preferential access rights granted to agents in the industry.

- 4.35 In general, we found that contracts, usually up to five years, were not particularly long. The clear exception to this is the contract between Clear Channel and Ticketmaster which is longer than any other contract we are aware of.
- 4.36 The degree of preferential access rights within contracts also varies markedly. We were told by Ticketmaster that although the agreement with Clear Channel provided a firm long-term basis for a commercial relationship there was a need for some flexibility on an event-by-event basis. In some instances third party ticket agents have actually sold a higher percentage of tickets than Ticketmaster for a Clear Channel event.
- 4.37 The next longest agreement was between Mean Fiddler and Ticketmaster at [...] (2-7 years) years²¹.
- 4.38 In addition to formal contracts there are also a variety of informal arrangements between promoters and ticket agents which could be terminated with little notice. Many venues also put ticketing contracts up for tender periodically. There are, therefore a range of options for new entrants or existing ticket agents to form agreements, formal or informal, with promoters and venues.
- 4.39 In summary, the length of the Ticketmaster/Clear Channel contract would not, by itself, prevent other agents in the industry realising cost efficiencies. Other ticket agents can achieve the necessary level of economies of scale by winning contracts with other promoters and venues which come up for renewal much more frequently. In reality contracts in the sector are not, in practice, as preferential, in terms of granting access to tickets, as they

²¹ This agreement expired on 12 January 2005.

might appear, making it easier for other agents to have a larger share of ticket sales than the contract terms might suggest.

Demand Side Advantages

- 4.40 We also examined the extent to which promoters and venues are dependent on Ticketmaster as a crucial partner in the distribution of tickets, because of Ticketmaster's standing with final consumers. If this is the case, and the use of preferential distribution arrangements is widespread, the scope for other agents to win business alongside Ticketmaster as a first choice agent is reduced. The use of Ticketmaster could then grow to the point where the market 'tips' completely in its favour. This would be the point at which demand for Ticketmaster began to be strongly favoured because of its size and coverage irrespective of its quality of service or price.
- 4.41 At some point, final consumers might be attracted to Ticketmaster because it has agreements with the majority of promoters. In turn, promoters may become equally attracted to Ticketmaster because it is used by the majority of consumers. This may be sufficient to foreclose the market to new entrants and existing players. Some American commentators have argued that tipping in this sector has led to foreclosure of agents in the US.
- 4.42 The evidence we obtained from promoters does not, however, suggest they are unduly reliant on Ticketmaster. See Tickets in particular is important to some promoters and Mean Fiddler has a contract with it commencing on 13 January 2005. Promoters use Ticketmaster in addition to other agents because multi-agent distribution is attractive to them, but they indicated that they are not dependent on Ticketmaster for distribution.
- 4.43 A further indication that tipping is unlikely to occur is shown by Ticketmaster's share of the value of ticket sales by agents, which has remained relatively stable between 1999 and 2003. And although there are two ticket agents that have significantly larger shares of the value of ticket

sales than the rest of the market, there are at least eight other ticket agents (offering some or all types of event), with shares of ticket sales between [...] per cent and [...] per cent, operating in this sector. If tipping were taking place it is likely that some of these smaller players would have left the sector, which has not happened.

- 4.44 Another feature that indicates that market tipping is unlikely to occur is the way in which final consumers currently use ticket agents. Any demand side advantage that Ticketmaster possesses is more likely to be reinforced if consumers regard a range of events as substitutes and use ticket agents to search for them. To the extent that consumers are mainly interested in attending particular events, they are more likely to find out about them from marketing carried out by promoters, and hence purchase tickets using the telephone number or website address included in advertisements. The other events offered by ticket agents will not be important to them. This will therefore act as a constraint on any tipping effects since it is not necessary for ticket agents to offer a full range of events to be able to continue in business.
- 4.45 Promoters can also act to counterbalance tipping effects. For example, the promoters SJM and Metropolis Music share the website gigsandtours.com (run by See Tickets) which provides information and ticket sales for all their rock/pop concerts.

Conclusions

- 4.46 We have not found a lack of competition between ticket agents resulting in a higher level of gross ticket prices to consumers. The form of competition in the sector is mainly between ticket agents to secure contracts from promoters and venues, which by individually putting high volumes of tickets with a single (although not necessarily the same) agent, enable efficiencies to be achieved.

4.47 We examined whether the use of preferential rights of access to tickets in vertical arrangements in the industry might impede agents competing effectively and prevent consumers from benefiting from this form of competition. But we found no evidence that the use of such contracts in practice offered Ticketmaster (or a small number of large agents) disproportionate cost or demand-side advantages over other agents.

5 BUYING ADVANCE TICKETS FOR ENTERTAINMENT EVENTS

Introduction

- 5.1 This chapter examines consumer behaviour patterns and perceptions when buying advance tickets for entertainment events.
- 5.2 It sets out how many consumers purchase advance tickets, what selling channels are used, what sort of events tickets are bought for and in what proportion. The chapter then reviews consumer satisfaction levels with buying advance tickets and areas of consumer concern.

CONSUMER BEHAVIOUR

- 5.3 Consumer preferences in relation to advance ticket purchases were revealed in our consumer survey.

The number of consumers who buy tickets

- 5.4 Thirteen per cent of adults surveyed had bought at least one ticket in advance for an entertainment event in the last six months.²²
- 5.5 Geographically, ticket buyers are spread fairly evenly throughout the UK. London and the South East residents tend to make slightly more purchases with 15 per cent of adults having bought a ticket in the last six months. Throughout the rest of the UK around 12 per cent of adults had bought a ticket in the last six months.²³

²² FDS consumer survey.

²³ FDS consumer survey.

The type of events tickets are bought for

5.6 Of those who had attended at least one event in the last six months, most purchased tickets for a play, musical or comedy show. In order of preference respondents bought tickets for the following:²⁴

Table 5.1: The type of events tickets are bought for

Type of event	%
play, musical or comedy show	43
rock/pop concert	38
sporting event	18
classical concert	7
festival	7
opera/ballet performance	6
other	2

Where tickets are bought

5.7 Advance tickets are usually bought from venue box offices or ticket agents. The majority of those questioned in our consumer survey (63 per cent) purchased their last ticket to an entertainment event from a venue box office. Thirty-seven percent of consumers bought their tickets from a ticket agent.²⁵ However, as some venues contract out box office services to ticket agents, it is possible that some consumers who thought they bought tickets from a venue may have actually purchased from a ticket agent. The use of ticket agents may therefore be higher than suggested.

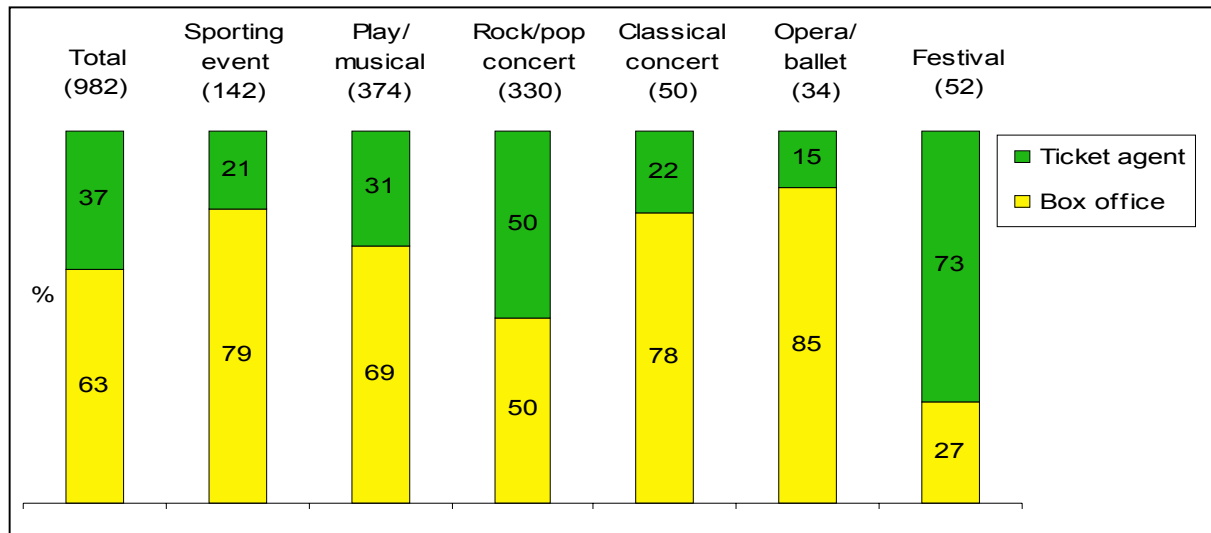
5.8 These percentages vary depending on the event the ticket was purchased for. Figure 5.1 displays the proportions of tickets sold by type of event. Half of rock/pop purchases were through a ticket agent compared to 15 per cent of those for the opera or ballet. Festival goers are most likely to obtain their tickets from a ticket agent. Festivals are often one-off, outdoor events

²⁴ FDS consumer survey. Respondents could choose multiple events.

²⁵ FDS consumer survey.

where it can be more efficient for their promoters to contract out the event’s box office services to a ticket agent rather than operating their own box office.

Figure 5.2: Ticket agent / box office share of all entertainment events²⁶



5.9 We found the largest group to use ticket agents were 18 – 34 year olds. Fifty-two per cent of those in this age group surveyed had bought their last tickets from a ticket agent. Geographically ticket agents were used most often in the North of England, where 46 per cent of respondents had last bought tickets from them. Ticket buyers in the Midlands used ticket agents the least, at 27 per cent.²⁷

Sales channels used

5.10 Figure 5.2 shows which sales channel consumers used to buy their advance tickets through, whether by telephone, via the internet or in person. Most consumers purchased tickets by telephone (54 per cent). The internet is

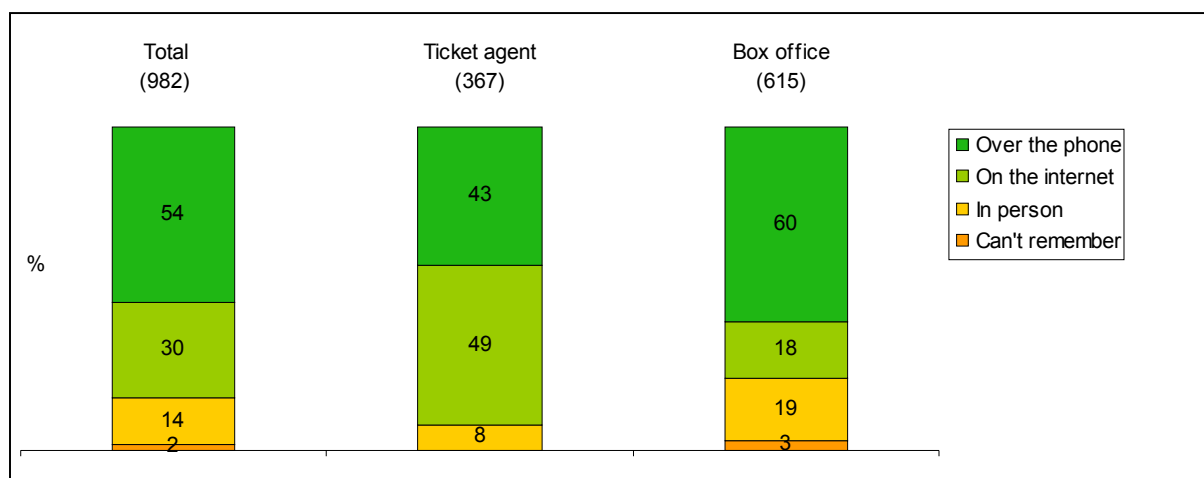
²⁶ FDS consumer survey.

²⁷ FDS consumer survey.

also popular, with 30 per cent buying in this way. Only 14 per cent bought tickets in person. We found that:

- most box office purchases (60 per cent) were made by telephone, followed by in person (19 per cent)
- the internet (49 per cent) was primarily used to buy tickets from agents, followed by the phone (43 per cent).

Figure 5.3: Share of ticket sales by channel and source²⁸



Factors influencing where to buy tickets

5.11 Respondents to our consumer survey were asked to identify factors important to them in deciding where to buy tickets. 'Ease of buying' was thought important by 92 per cent followed by 'availability of tickets' 86 per cent, 'ease of collecting' 83 per cent, 'price' 73 per cent and 'advertising' 63 per cent.²⁹

²⁸ FDS consumer survey.

²⁹ FDS consumer survey.

Benefits of ticket agents to consumers

5.12 As noted above, consumers value ease of buying when purchasing tickets. It is not always convenient to go to a venue to buy tickets in person and some venue box offices are not able to provide extended hours or multiple lines for phone bookings. Many ticket agents have the resources to handle many phone calls and considerable amounts of internet traffic 24 hours a day 7 days a week. Forty-four per cent of respondents in our consumer survey gave 'convenience' as the reason for choosing a ticket agent to buy their ticket over a box office.³⁰

Shopping around before buying tickets

5.13 We found that consumers tend not to try several ticket sellers in order to compare prices and services before buying tickets. Ninety-four per cent of ticket buyers purchased their last ticket from the first ticket seller they contacted. In addition, over half of consumers believed their tickets were only available from one source or did not know of any other.³¹ Some of the potential reasons for the lack of shopping around are examined in more detail in chapter 6.

CONSUMER SATISFACTION LEVELS AND CONCERNS

5.14 We also assessed what consumers thought of the ticket buying process. To do this we used results from our consumer survey together with complaint data from primary ticket agents, the OFT, and TSDs.

Consumer survey

5.15 Most consumers who had purchased tickets for entertainment events in the last six months were positive about their experience. Although there was some dissatisfaction, 86 per cent who had bought tickets from a ticket

³⁰ FDS consumer survey.

³¹ FDS consumer survey.

agent, and 95 per cent of those who gone to a venue box office, were either very or quite satisfied with the service received. Of those who were dissatisfied with their last ticket buying transaction, from either a ticket agent or a box office, the main reasons were:³²

- overcharging/too many fees/dislike of additional fees - 20 per cent
- slow service - 17 per cent
- lack of information - 10 per cent

5.16 Separate results for ticket agents show similar figures. The exception is for the overcharging/too many fees/dislike of additional fees category where dissatisfaction with ticket agent purchases is higher at 28 per cent.

Consumer complaints

Complaints to ticket agents

5.17 There were around 55,000 complaints to primary ticket agents in 2003. This equates to approximately one complaint every 309 sales³³. The reason most mentioned here is late or non-delivery of tickets. Two thirds of ticket agents said they received complaints on this issue, with over half of them placing it in their top two reasons for complaint.

5.18 Other reasons for complaint vary between ticket agents. These include refund issues, seat allocation, venue facilities, internet bookings, booking fees and lack of information at the point of sale.

³² FDS consumer survey.

³³ Information provided by primary ticket agents in our information request. We received complaints data from all bar one major ticket agent.

Complaints to the OFT and TSDs

- 5.19 The level of consumer complaints relating to event ticket sales received by the OFT and TSDs is relatively low. In a snapshot survey over a three month period, the OFT received 48 complaints on ticket agents and TSDs received at least 115. Just over half of the TSD complaints relate to London-based businesses.³⁴
- 5.20 An analysis of complaints data identifies two key areas where consumers encounter problems:
- pricing issues, including fee levels
 - late or non-delivery of prepaid tickets, which is a service issue.³⁵
- 5.21 Complaints to TSDs are split roughly 50:50 between primary and secondary agents while 75 per cent of those made to the OFT concern secondary agents.

Consumer complaints in other countries

- 5.22 We also spoke to regulatory bodies in other countries to assess international experiences of ticket sales for entertainment events. The findings are set out in full in Annexe F. We found that like the UK, complaints are relatively low. However, these complaints identify additional fees and lack of price information as issues for overseas ticket buyers. Another problem, unfair contract terms on refunds, is also highlighted.

³⁴ Trawl of TSDs – we estimate TSDs receive at least 450 complaints a year on ticket purchases. Our snap shot survey ran from February to April 2004 and we obtained responses from 57 out of 203 TSDs, including most of the larger TSDs.

³⁵ This is in breach of contract and in some cases complainants may have been victims of fraud.

Consumer concerns

- 5.23 An analysis of the consumer survey and complaints data reveals the concerns important to ticket buyers. These can be grouped into **pricing issues** and **service issues**.

Pricing issues

Overcharging/too many fees/dislike of additional fees

- 5.24 Of those respondents not satisfied with their last ticket purchase, 20 per cent cited overcharging/too many fees/dislike of additional fees as the reason. This figure rose to 28 per cent of those who had purchased their tickets from a ticket agent. This was also the reason why one third of all respondents did not like using ticket agents over box offices.³⁶
- 5.25 As well as this, we asked everyone who took part in the survey for their view on the level of additional fees they paid. Thirty-two per cent of ticket agent customers thought their fees were more than expected while 16 per cent of those who purchased from a box office thought the same.

Lack of price information

- 5.26 Most consumers surveyed were aware of the face value of the last ticket they bought before they received it. However, it is possible that a lack of price information could be more of an issue than consumers perceive. About 40 per cent of all surveyed consumers said they did not incur additional fees such as booking, processing or postage fees, or did not know.³⁷ Evidence from our mystery shopping exercise, however, suggests it is very rare for no additional fees to be charged. Usually this only happens when consumers pay in cash and in person at a venue box office.

³⁶ FDS consumer survey

³⁷ Though only 16 per cent of ticket agent customers.

- 5.27 Consumers tend not to know ticket price information prior to contacting a ticket seller. Only a third of those surveyed said they knew the price of the last ticket they bought from an advertisement.
- 5.28 As well as the survey results, one of the major reasons for consumer complaints to the OFT and TSDs on ticket purchases is from consumers who did not realise that the total amount they paid was often considerably more than the face value of the tickets they received.³⁸ This is of most concern for consumers who bought their tickets from secondary ticket agents. Secondary agents are discussed more fully in chapter 7.

Service issues

- 5.29 Here, the major issues for consumers are slow service and the late or non-delivery of prepaid tickets.

Slow service

- 5.30 Speed of the purchasing transaction is a major area of dissatisfaction consumers had with their last ticket buying transaction. Seventeen per cent of dissatisfied consumers thought the service they received too slow. Sixty-three per cent of these bought by phone, 25 per cent via the internet and 12 per cent in person. Respondents expressed concerns with the length of time they had to wait on the phone before beginning their transaction, the length of the transaction itself and how long it took to find out the total price of a ticket. The data also shows that those who bought rock/pop concert tickets are more likely to quote slow service as a reason for dissatisfaction.³⁹

³⁸ This is breach of the Price Indications (Resale of Tickets) Regulations.

³⁹ FDS consumer survey.

Late or non-delivery of prepaid tickets

- 5.31 This issue is the most common reason for consumer complaints to TSDs on ticket purchases (36 per cent of all complaints) and one of the most common reasons to the OFT (30 per cent of complaints). Most of these complainants who did not receive their tickets in time to go to an event bought them from secondary ticket agents, but two-thirds of primary ticket agents responding to our information request said that they also received complaints in this area. In addition, 35 per cent of complaints made to TSDs about primary agents concerned non-delivery.

Conclusions

- 5.32 We found that consumers are mostly satisfied with the ticket buying process. However the evidence suggests that some pricing and service issues can be problematic for consumers. As well as this the data also shows that most consumers tend not to shop around between ticket sellers to compare the prices and services before purchase. The implications of these findings are assessed in chapter 6.

6 ASSESSMENT OF CONSUMER CONCERNS

Introduction

- 6.1 Generally, where consumer protection regulation is applied, it appears to be working well. High levels of consumer satisfaction with the ticket buying process confirm this. However, our consumer survey and analysis of complaints to primary agents, TSDs and the OFT identifies areas of consumer concern. These are **price information issues** or **service and contractual issues**.
- 6.2 This chapter examines these issues in more detail and looks at the effectiveness of consumer protection in relation to them. This protection is provided in the form of Government legislation and industry self-regulation covering the advertising, selling and supply of tickets to events.

PRICING ISSUES

- 6.3 Most consumers surveyed were satisfied with their last ticket purchase, although a minority were not. Pricing issues, in particular additional fees, were a major area of dissatisfaction for around 20 per cent of these consumers⁴⁰.

Additional fees

- 6.4 Some consumers surveyed felt the additional fees they paid to obtain their tickets were too high or disliked paying them.⁴¹ However, it is extremely

⁴⁰ Twenty-eight per cent of consumers who bought tickets from a ticket agent.

⁴¹ Additional fees are not new. Theatres have had arrangements with ticket agents to sell tickets on their behalf for a fee for over 80 years. An example of such an arrangement was the 'Libraries Code', an agreement between the Society of West End Theatre (now the Society of London Theatre) and certain theatre ticket selling agencies (known as libraries). The agreement included a restriction on who could operate as an agent for the theatres concerned and fixed the amount ticket agents could charge as a booking fee. In 1985 the Restrictive Practices Court found these and other aspects of the agreement contrary to the public interest under the Restrictive Trade Practices Act 1976.

rare not to be charged an additional fee when buying tickets. In practice, the only way to avoid paying fees is to go to venue box offices and pay in cash.

- 6.5 A range of fees exist including: booking fees, processing fees, transaction fees, handling fees, service charges and postage fees. Different ticket sellers may use different terminology but all charge these additional costs as well as the face value of the ticket.
- 6.6 The level of additional fees varies depending on where and how tickets are purchased. Rock/pop concerts generally attract the highest additional fees, although this sector shows the least variation in total ticket price, including additional fees, between ticket sellers. The level of fees charged by ticket agents for the same event can also vary. Consumers were more likely to pay additional fees when purchasing through a ticket agent rather than a venue's box office.
- 6.7 Our mystery shopping exercise found additional fees represented, on average, a 14.4 per cent mark up on tickets face values sold through ticket agents and 11.6 per cent on tickets sold by venue box offices. Around 20 per cent of ticket agents charged fees that represented a mark up of more than 20 per cent on tickets as opposed to 10 per cent of box offices.⁴²

The perception that additional fees are too high

- 6.8 Many consumers perceive additional fees to be high. Thirty-two per cent of surveyed consumers who last bought tickets through a ticket agent thought their fees were higher than expected. Twenty per cent of consumers not satisfied with their last ticket purchase cited a dislike of additional fees as the reason. This figure rises to 28 per cent of those who bought through ticket agents. In chapter 4 we examine if ticket agents' fees are set competitively or not.⁴³

⁴² Mark up is calculated as additional fees (e.g. booking and processing fees) divided by face value of the ticket. FDS mystery shop.

⁴³ FDS consumer survey.

- 6.9 For many consumers, concerns regarding additional fees stem from the fact that they are not adequately made aware of the existence of fees, and where to buy tickets without them. For this reason, we believe the main pricing issue for consumers is whether they receive adequate price information to make a more informed ticket purchase.

Why consumers need price information

- 6.10 In order to shop around and to make more informed ticket purchases, consumers need clear information on ticket prices and other services provided.
- 6.11 The level of additional fees charged by ticket sellers varies according to the event and can be different for different ticket sellers for the same event. We have found that consumers can often achieve some savings on the level of additional fees by shopping around and comparing prices between ticket sellers. Where an event's tickets are only available through one outlet, the question is not whether the fees are too high but if consumers consider they have enough price information to decide whether they want to pay the overall price, including face value and additional fees. This leads us to consider whether consumers receive adequate price information.
- 6.12 The consumer survey, mystery shopping exercise and complaints analysis reveal that a significant number of consumers do not receive clear or adequate information on ticket pricing prior to, or at the point of, purchase. The result of this is that some ticket buyers are not clear on the total price of their ticket. This lack of information may affect how consumers purchase their tickets and the prices they pay.
- 6.13 Early awareness of price information is vital for consumers to be sure of what they are paying for. Even some of those consumers who expressed an overall satisfaction with the last time they bought tickets were not sure if they had paid additional fees as well as the face value of their tickets.

- 6.14 A lack of price transparency reduces a ticket buyer's ability to compare prices between ticket sellers. This may partly explain ticket buyers' tendencies not to shop around. Ninety-four percent of consumers surveyed bought their tickets from the first ticket seller they contacted and over half believed their tickets were only available from one source or did not know of any other. This is in contrast to our research which shows that most tickets are on sale through a variety of outlets and purchase methods.⁴⁴
- 6.15 To see how final ticket price can vary between ticket sellers, we conducted an internal internet mystery shopping exercise. We found a ticket's total price for the same performance can vary substantially depending on where the ticket is obtained. For example the total ticket price for a ticket to the musical Chicago with a face value of £42.50 varied by £8.25 between two ticket agents⁴⁵. In some cases a lack of shopping around may lead consumers to pay a higher ticket price than otherwise.
- 6.16 Another factor we considered was the length of time taken to receive the information from a ticket seller at the point of sale. We tested how promptly tickets sellers volunteered price information in our mystery shopping exercise:
- in 24 per cent of telephone transactions ticket sellers did not voluntarily provide information on the face value of the ticket prior to purchase
 - in 25 per cent of transactions ticket sellers did not voluntarily provide information regarding the total ticket price prior to purchase
 - in nearly 40 per cent of transactions callers did not receive unprompted information on additional fees
 - in 22 per cent of the transactions callers had to wait over five minutes to receive price details.

⁴⁴ FDS consumer survey and evidence obtained through our mystery shop survey, desk research and information supplied by promoters, ticket agents and venues.

⁴⁵ Evening performance of Chicago on the 3rd July 2004. The total price at Ticketmaster was £45.25 for a performance of Chicago, at Abbey Box Office it was £53.50. Details of this and other case studies can be found at Table 3.3, chapter 3.

- 6.17 This can also have an impact on a consumer's decision to purchase from the first ticket seller contacted. The more time and effort needed to acquire price information from a ticket seller, the harder it will be for consumers to opt out of one purchasing process to check prices through another. Consumers might feel more compelled to purchase tickets from the first ticket seller they contact when they perceive an event is likely to sell out.
- 6.18 Our evidence is that a lack of price information in advertising and the length of time it can take to receive price information at the point of purchase can reduce consumers' abilities to shop around. This can result in some consumers paying higher ticket prices than they would have done otherwise.

When consumers need price information

- 6.19 In our view, consumers need clear and accurate price information at key stages in the buying process in order to make a reasoned purchasing decision. These stages are:
- **the advertising stage** – to provide consumers with an idea of the price of tickets and of the different sales channels through which to purchase them
 - **the purchasing stage** – having chosen a sales channel, price information at this stage is to provide consumers with information on additional fees and the total sum payable before they decide to proceed with their purchase.
- 6.20 The amount of time and effort consumers must spend to obtain price information can also affect their willingness to shop around. Only around 30 per cent of surveyed consumers said they knew the ticket's face value from advertising. This means many consumers have no knowledge of ticket prices prior to contacting a ticket seller.

6.21 To ensure consumers are not misled, and that they are clear on what they are paying, the provision of price information is regulated by government and by industry. We have found that the application of some aspects of this regulation may be having a harmful effect on how some consumers make their ticket purchases.

Price information in event advertising

6.22 The basic premise behind regulation of advertising is that it should not mislead, or be likely to mislead, consumers. There are a number of regulations that impact on how ticket prices are displayed in advertising:

- Control of Misleading Advertisements Regulations 1988 – these regulate the display of ticket prices and also cover all aspects of how a good or service is advertised
- Consumer Protection Act 1987 - this requires ticket sellers to make prices clear.⁴⁶

6.23 Price information provided in event advertising is primarily regulated by the Committee of Advertising Practice (CAP). The CAP is the industry body that writes and enforces the codes of advertising practice. The codes are the responsibility of two industry committees of Advertising Practice - CAP (Broadcast) and CAP (Non-broadcast). These are independently administered by the Advertising Standards Authority (ASA). The ASA is the independent body set up by the advertising industry to police the rules laid down in the advertising codes.⁴⁷

6.24 If advertisers breach the Code, it can apply sanctions including adverse publicity for the advertiser, publishers refusing to provide further advertising space to the advertiser and legal proceedings. In the event of a persistent

⁴⁶ Fuller details on legislation applying to ticket purchases can be found at Annexe B.

⁴⁷ Although the CAP is contracted by Ofcom, the communications industries' regulator, to also regulate broadcast advertising, our focus is non-broadcast advertising.

or deliberately misleading marketing communication, the ASA can refer an advertiser to the OFT under the Control of Misleading Advertising Regulations. Event advertisers tend to be those promoting or producing the event.

- 6.25 Prior to April 2004, industry practice was for event advertisers to display a ticket's face value, usually with the additional statement that 'booking fees may apply'. This changed after the ASA received a complaint regarding a national press advertisement for concert tickets in 2001. The advertisement displayed the face value of a ticket but no information on additional fees. The ASA adjudication stated the advertisement was likely to mislead as it was not possible to buy a ticket to the event in question at the price stated **without** paying additional fees.⁴⁸
- 6.26 Following the ASA's ruling, the CAP produced guidance in the form of a help note in April 2004 to clarify the rulings implications for advertisers. The note advises that 'Face value prices may be quoted in marketing communications only if no extra charges apply when buying tickets through any of the sales channels'.⁴⁹ Therefore, where face value prices are stated, all additional fees must also be quoted in full.
- 6.27 Many advertisers have found quoting all ticket prices and additional fees are often unfeasible or burdensome. Quoting all applicable prices might require payment for extra advertising space. Some events, particularly theatre performances, have complex pricing structures which might not easily fit a restricted advertising space. As a consequence many advertisers now advertise events without pricing information. As this is not misleading, this practice complies with both the CAP guidelines and with the Control of Misleading Advertising Regulations.

⁴⁸ ASA Adjudication December 2001, regarding an advertisement placed by Triple A Entertainments Ltd.

⁴⁹ CAP Help Note on Ticket Pricing, April 2004. The note can be found on the CAP's website at www.cap.org.uk.

6.28 Despite not being misleading, having no prices in advertisements can lead some consumers to a purchasing decision they may not have made with more information. As well as this it potentially reinforces the tendency of ticket buyers not to shop around and compare prices prior to purchase.

Price information at the point of purchase

6.29 Price information given at the point of purchase has to be honest, clear and unambiguous. Its purpose is to confirm the cost of a particular consumer's transaction and is most helpful to consumers when they have basic price information prior to purchase.

6.30 There are a number of regulations that govern how ticket sellers should provide price information at the point of purchase:

- Consumer Protection Act 1987 - this also affects how prices are provided at the point of sale as well as in advertising
- Price Indications (Method of Sale) Regulations 1991 - these aim to ensure that consumers are aware of any differences in price if paying by different methods (for example by cash or payment card)
- Price Indications (The Resale of Tickets) Regulations 1994 – these aim to ensure consumers are clear on a ticket's face value and seat location ⁵⁰
- Electronic Commerce (E-Commerce) Regulations 2002 - these apply to goods and services bought via the internet. These require suppliers to provide clear and unambiguous prices and state whether they include tax and delivery costs.

⁵⁰ These apply in England, Scotland and Wales. In Northern Ireland the Price Indications (The Resale of Tickets) Regulations (Northern Ireland) 1995 apply.

- 6.31 Price information at the point of sale is also regulated to some extent by the industry, principally by the Society of Ticket Agents and Retailers (STAR). The STAR is a trade association for primary ticket agents and other ticket sellers, such as venues.
- 6.32 The STAR code of practice influences how its members provide price details to consumers purchasing via phone or in person. The code requires members to inform customers of a ticket's face value and the total price including booking fee/or service charge. More generally, the code also requires members to comply with all legislation and regulation relating to the sale and supply of tickets including the Consumer Protection Act 1987, secondary legislation and the Code.⁵¹
- 6.33 Although some consumers do experience problems in receiving price details at the point of purchase, we consider these would be reduced if better price information was available through non-broadcast event advertising.

SERVICE AND CONTRACTUAL ISSUES

- 6.34 Our consumer survey, mystery shopping exercise and complaints analysis show that the quality of service provided by some ticket sellers can cause problems for consumers. Service issues affecting ticket buyers are:
- slow service
 - non-delivery of prepaid tickets
 - consumer contract terms

⁵¹ The STAR code of practice does not refer to internet purchases. STAR membership includes most major primary tickets agents as well as some venues such as the national arenas. The code of practice and full membership details can be found on the STAR's website at www.s-t-a-r.org.uk.

Slow service

- 6.35 Seventeen per cent of those dissatisfied with the last time they bought tickets were unhappy about the speed of the purchasing transaction. The consumer survey data identified those who purchased tickets by phone and those who bought rock/pop concert tickets are more likely to quote slow service as a reason for dissatisfaction.
- 6.36 Evidence obtained from our mystery shopping exercise shows that some transactions are longer due to the point at which price information is received. In 23 per cent of the phone transactions in our mystery shop, callers received total price information over five minutes into the call.
- 6.37 We recognise that a number of surveyed consumers thought their last ticket purchase too slow. However, we believe the important issue here is that for most events consumers have a choice of where to buy tickets. If one sales channel or ticket seller is not satisfactory our evidence is that it is usually possible to buy tickets elsewhere.

Non-delivery of prepaid tickets

- 6.38 Late or non-delivery of prepaid tickets is the main common cause for complaint to the OFT and TSDs. Our data indicates that the non-delivery of tickets is most likely to be a problem for consumers who bought their tickets from secondary agents not complying with consumer protection regulation. We assessed this issue more fully in chapter 7.
- 6.39 Consumers also complain about this issue to ticket agents themselves. Over half of the primary ticket agents surveyed mentioned this as one of their two top reasons for receiving consumer complaints. Two thirds of these ticket agents stated that they had received complaints on this issue.

6.40 Failure to deliver tickets may be a breach of contract under the:

- Supply of Goods and Services Act 1982 – under this Act consumers can sue for breach of contract if they do not receive their tickets within a reasonable time⁵²
- Consumer Protection (Distance Selling) Regulations 2000 – these regulations create a statutory obligation on the ticket seller and a consumer could potentially take a civil action for a breach of that duty where tickets have been bought by phone or via the internet.

6.41 Where it is obvious that consumers' money has been taken by those with no intention of supplying tickets, TSDs have undertaken enforcement action.⁵³

6.42 As the number of complaints received by the OFT and TSDs is relatively low in relation to other sectors, the consumer survey provides a more representative picture of this particular issue. We found that three per cent of surveyed consumers did not receive their pre-paid tickets indicating this is not a common occurrence.

Consumer contract terms

6.43 When consumers purchase a ticket for an entertainment event they are entering into a contract with a ticket seller. Often the terms and conditions of ticket sellers' consumer contracts can be found on their websites or on the back of tickets.

⁵² This requirement is implied into a contract covered by the 1982 Act where no time is agreed by the parties in the contract. Where a time is agreed and the supplier fails to meet this deadline, the failure would be a breach of contract and the consumer would take legal action for compensation under general principles of contract law.

⁵³ Information provided by TSDs.

- 6.44 Government regulation requires ticket sellers to offer consumers fair standard terms.⁵⁴ A term is unfair if 'contrary to the requirement of good faith it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of consumers. The regulations that provide this protection are the **Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs)** – these give the OFT and other enforcement bodies the power to prevent the continued and future use of unfair standard terms.
- 6.45 Consumers who purchase tickets via the internet or by phone may also benefit from the protection provided by the **Consumer Protection (Distance Selling) Regulations 2000 (DSRs)** – these offer additional protection on purchases made by such distance sales methods.
- 6.46 To assess the fairness of terms we conducted a snapshot review of a random selection of ticket agents' consumer contracts. We found some contract terms to be unfair.⁵⁵ The main terms that reduce consumer protection in ticket agent contracts are those that can:
- deny consumers the right to a refund in all circumstances
 - allow the event supplier to make changes to the event that has been contracted without a valid reason
 - provide the supplier with the unfettered right to refuse admission.
- 6.47 Unfair terms reduce the level of protection available to consumers. Often hidden in the detail of contracts, they can harm consumers in a number of ways. For example, they can seek to exclude the businesses' legal obligations or can impose unfair penalties or restrictions on consumers.

⁵⁴ Terms in consumer contracts that set the price or define the product or service being supplied are not 'standard terms'. These are 'core terms' and are exempt from the test of fairness as long as they are set out in plain language understandable to the average consumer.

⁵⁵ These are terms the OFT considers unfair. Only a court can decide if terms are fair or not. The terms listed here are discussed in detail in the OFT guidance on unfair terms in consumer entertainment contracts (OFT 667).

6.48 We conducted a review of ticket agents' websites. Our findings confirm a general reliance on certain standard terms which we would consider potentially unfair under the UTCCRs. The websweep also revealed a general failure to offer consumers their refund rights as set down in the DSRs. As well as reviewing the content of terms, through the mystery shopping exercise, we tested their clarity. If a term is not clear, this is also a breach of the UTCCRs. Of the ticket sellers' contracts that could be found, around a quarter contained terms unclear to the mystery shoppers.⁵⁶

6.49 Through the mystery shopping exercise we also tested if ticket sellers' websites contained information on how consumer problems might be dealt with after purchase. Some of these situations should normally be covered in consumer contract terms. In 26 per cent of internet mystery shops the shopper did not find any of the following information on ticket sellers' websites.⁵⁷

- what happens if an event is cancelled or rescheduled
- whether tickets are transferable or not
- when tickets are refundable
- when will the tickets arrive
- what happens if tickets are lost or destroyed

6.50 The OFT has published guidance on unfair terms in consumer entertainment contracts. The guidance aims to ensure the standard terms used in contracts by this sector are fair. It sets out the kinds of standard contract terms that the OFT considers unfair and gives advice on how such terms

⁵⁷ FDS mystery shop

can comply with the regulations.⁵⁸ As well as issuing guidance, the OFT has also taken enforcement action to secure fair terms in a number of ticket agents' standard contracts.⁵⁹ However, despite this progress, our research has highlighted a number of contracts still containing potentially unfair terms.

CONCLUSIONS AND RECOMMENDATIONS

6.51 Our evidence indicates consumers have difficulties with the way they receive ticket price information and where consumer contract terms are unfair and/or unclear. We conclude that where there are real grounds for concern, these changes would benefit consumers:

- **price information** – better price information in non-broadcast event advertising to help consumers to shop around and make more informed purchases.
- **consumer contract terms** - fairer terms in consumer contracts to ensure consumers receive the full level of protection available.

Price information

6.52 Government and industry regulation govern how ticket price information is provided to consumers in advertising and at the point of purchase. The purpose of this regulation is to ensure that consumers are not misled, or likely to be misled, as to ticket prices.

⁵⁸ This is the Entertainment Guidance (OFT 667). More general guidance on UTCCRs is contained in the Unfair Contract Terms Guidance (OFT 311). Both publications are available at www.of.gov.uk. Where ticket sellers are unsure if their terms are compliant, they should contact their local TSD or seek their own legal advice. Consumers should do the same if terms provided by a supplier appear unfair.

⁵⁹ These are published in the Unfair Contract Terms Bulletin. See editions 26, 27 and 28.

- 6.53 However we would like to see regulation that helps consumers to shop around. The way price information is currently regulated in non-broadcast event advertising does not appear to facilitate this as existing guidelines do not require ticket prices to be displayed.
- 6.54 Our research suggests that pricing information is important if consumers are to make a more informed choice but key information is often not displayed in advertisements and only available late in the buying process.
- 6.55 A lack of price information in event advertising has an adverse affect on consumers making an informed decision and can suppress their potential to shop around. It can mean that some consumers are not aware of different sales channels offering differing levels of additional fees. This may lead them to paying higher ticket prices than they would otherwise.
- 6.56 As price information is often only available within a purchasing transaction this increases the time and effort consumers need to spend to obtain this information. This will make it harder for them to opt out of the purchasing process, particularly if they feel the event is likely to be sold out and any delay may result in missing out on a ticket.
- 6.57 On seeing an advert, for an event a consumer makes an initial decision on whether or not to go to the event. Price information should be provided at this point as cost assessment is part of this decision making process. For many consumers, advertising is the only way price information can be received without contacting a ticket seller.
- 6.58 Price information in advertising should be honest, clear and consistent across the market. It should:
- not mislead the consumer
 - prompt the consumer to shop around and make a more informed decision on whether and where to purchase a ticket.

- 6.59 Displaying prices in advertising should leave a reasonable consumer in no doubt as to the face value price of the ticket, that additional fees may apply which may vary depending upon their choice of sales channel.
- 6.60 We recommend that the CAP amend its guidance so all non-broadcast event advertising is required to include the face value of the ticket, while indicating that additional fees may apply and could vary depending upon the sales channel and ticket seller used. We also recommend advertising indicates where tickets can be purchased at face value. All information relating to pricing should be displayed in a clearly readable form.**
- 6.61 The OFT is aware that the ASA and the CAP are working together to change the guidance in light of a decision by the ASA's Council that the provision of price information in non-broadcast advertising be revised. We very much welcome the positive approach the ASA and the CAP have adopted and we understand that the CAP will now amend its guidance, along the lines set out in our report.
- 6.62 We recommend to event advertisers that they follow any amended CAP guidance to provide consumers with the fullest information possible when advertising events.**
- 6.63 We agree it is essential that advertising does not mislead and believe these recommendations are in line with this. However, our recommendations would also assist consumers to shop around and be practical for advertisers to provide.

Consumer contract terms

- 6.64 Despite publishing guidance and taking enforcement action, our analysis of ticket sellers' consumer contracts revealed that some current terms offered to consumers may be unfair under the regulations.⁶⁰ As well as this, the mystery shopping exercise found that while the majority of ticket sellers

⁶⁰ The Unfair Terms in Consumer Contract Regulations 1999 and the Consumer Protection (Distance Selling) Regulations 2000.

could provide consumer contract terms, 26 per cent were unclear to the mystery shoppers.

- 6.65 Experience shows that the creation by trade associations of model terms for their members' consumer contracts is an effective and efficient way to improve standards in a large number of contracts, and can raise standards across a sector as a whole. The STAR is the main trade association for primary ticket agents and other ticket sellers such as venue box offices. We are currently discussing the possibility of model terms with the STAR.
- 6.66 We therefore recommend that the Society for Ticket Agents and Retailers (STAR) produce model terms for its members. We are happy to work with the STAR in producing these terms.**
- 6.67 There is ongoing regulatory activity, specifically by TSDs, to improve compliance in this sector. In addition, there are projects aimed at increasing consumer awareness on points to consider when buying tickets, such as the one launched by Westminster TSD in 2003. We support the good work already being undertaken in this sector and this report builds on such campaigns by explaining how entertainment tickets are distributed, the pitfalls of ticket buying, and what redress consumers can expect when they experience certain problems.⁶¹
- 6.68 The OFT will continue to work with TSDs to ensure compliance with the relevant consumer protection legislation by both primary and secondary agents and will consider enforcement action where necessary. We will publicise the outcome of any action taken. We will also continue to raise awareness of consumer rights in order that consumers are better equipped to make informed choices and exercise those rights where necessary.**

⁶¹ Questions for consumers to consider when buying tickets are set out at Annexe G. These questions can also be found on our website under 'Your rights when shopping' at www.oft.gov.uk/Consumer/Your + Rights + When + Shopping/default.htm.

7 SECONDARY TICKET AGENTS

Summary

- 7.1 A secondary agent is a person who re-sells tickets, usually at a premium, for a concert, theatrical or other event. Some secondary agents, usually those that sell outside venues rather than through the internet or booths, are sometimes referred to as 'touts'. Secondary agents differ from primary agents in that they have no formal agreements with promoters and/or venues to distribute tickets. Only once a ticket has been distributed at the point of original sale can it be resold on the secondary market.
- 7.2 Secondary agents can therefore benefit some consumers by enabling those who cannot obtain tickets in the primary market to obtain tickets for high demand events, if they are willing and able to pay a premium price. The activity of secondary ticket agents is consequently not illegal. It is, however, regulated to a degree by consumer legislation. Nevertheless, it is clear that some secondary agents have moved beyond legitimate secondary dealing and are breaching this legislation resulting in harm to consumers. This problem has been particularly noted by those Trading Standards Departments (TSDs) whose areas cover a large number of entertainment venues such as London's West End.
- 7.3 The activities of secondary agents generate three times more complaints to the OFT than those of primary ticket agents (although in absolute terms they are small in numbers) and around a half of complaints to TSDs.^{62 63} It is felt by TSDs we spoke to, that complaints are under-reported, since consumers most frequently targeted by disreputable secondary agents are tourists, who are not familiar with the law or complaints procedures.

⁶² Forty-eight complaints were received by the OFT in a snapshot survey over 12 weeks, actual numbers were: primary agents 8, secondary 24, other or unknown ticket related issues 16. See Chapter 5 for further information on complaints.

⁶³ We obtained 57 responses from a trawl of 203 TSDs – 115 complaints were received between February and April 2004. The complaints, where the agent was known, were split roughly equally between primary and secondary agents.

- 7.4 Enforcement action against secondary ticket agents not complying with consumer protection regulations primarily takes place under either the Price Indications (Resale of Tickets) Regulations 1994 or the Enterprise Act 2002 as appropriate.⁶⁴
- 7.5 We have found that while some traders are complying with the law there are those who need to do more to meet their obligations to consumers. Evidence collected identifies the following key problems:
- consumers not made aware, or deliberately misled, as to the face value of the ticket, and thereby the premium they are paying, until after they have made the purchase
 - consumers being misled about the seat location (such as a severely restricted view)
 - consumers not receiving pre-paid tickets.
- 7.6 We have also found evidence of non-compliance by ticket agents with a range of consumer protection legislation, most typically the Distance Selling Regulations and the Unfair Terms in Consumer Contracts Regulations.
- 7.7 We will work closely with enforcement partners to ensure compliance with consumer protection legislation by secondary agents and discuss with other relevant bodies how best to inform overseas tourists, who appear particularly vulnerable to the practices of some secondary agents, of the key issues to consider when buying tickets.**

⁶⁴ Although a range of other regulation, for example the Unfair Terms in Consumer Contracts Regulations 1999 can also apply.

Introduction

7.8 This chapter looks at the role of secondary agents in the distribution of tickets for entertainment events. It examines the part played by secondary agents: who they are, what they do, and their effect on the market.

THE SCOPE OF SECONDARY TICKET AGENTS

What are secondary agents?

7.9 A secondary agent is a person or company that re-sells a ticket for a concert, theatrical production, sporting event or other public entertainment, usually at a premium price. The cost of the ticket is effectively the price the market will bear at the time - when demand is high the price will be at a premium, when there is limited demand the price may be below the face value. This is the risk the secondary agent takes when acquiring tickets for events. Some secondary agents, usually those that sell outside venues rather than through the internet or booths, are referred to as 'touts' (or, in the US and Australia, a 'ticket scalper').

7.10 The original point of original sale of tickets placed on the market is either the venue or the promoter. Primary ticket agents have agreements with promoters and/or venues to distribute tickets. As set out in chapter 3, primary agents make their money through a booking fee and/or other charges in addition to the face value of each ticket. However, the face value will always remain fixed.

7.11 Tickets can be distributed at the point of original sale through three sources; a primary ticket agent, the venue box office or given to 'friends of the family'.⁶⁵ Only once the ticket has been distributed through one of these three sources can the ticket be resold on the secondary market. Secondary agents are especially prevalent in London's West End offering tickets for popular musical and other theatrical productions.

⁶⁵ 'Friends of the family' includes agents, promoters and other groups associated with the production and promotion of the entertainment event.

7.12 There are three main types of sellers in the secondary market:

- **Professional** – whose business is to acquire tickets for resale, preferably at substantial mark-ups. The majority of complaints about secondary agents to TSDs and the OFT are regarding the activities of this type of agent
- **Corporate** – this refers to the practice of incorporating or bundling tickets with hospitality packages, such as hotel nights or air flights, where the cost of the ticket is incorporated in the package price. Only a few formal complaints have been made to the OFT about this type of practice
- **Non-professional** – this normally refers to individual consumers who have bought tickets for events but find they are no longer required. They therefore attempt to recoup the cost of the ticket by reselling at the venue or by other means. We have found no evidence of complaints or consumer detriment generated through the activities of these individuals.

7.13 The rest of this chapter focuses on issues arising out of the resale of tickets by professional secondary ticket agents.

How are tickets resold?

7.14 Secondary agents mainly resell tickets via three sales channels:

- ticket booths – this is particularly prevalent in London’s West End
- directly by individuals – normally outside the venue holding the event. However in the London Borough of Westminster it is a criminal offence to ticket tout in a public place as it can be in Scotland. Similarly under the Criminal Justice and Public Order Act, it is illegal to re-sell football tickets unless expressly authorised
- internet websites - the growth of the internet has seen a large rise in secondary ticket agents selling via this sales route.

- 7.15 A practice prevalent on the internet is the selling of 'futures' in potentially hard-to-get tickets for events anticipated to have a high demand. Tickets for these events are not on public sale yet, and, in a number of cases, may not have been printed. These tickets will carry very large premiums and the secondary agent is gambling on the fact that he will be able to get tickets once they go on general release. However, there is no guarantee they will be able to get a ticket, with the result that consumers purchasing tickets are taking a risk that they may not arrive. The Glastonbury Festival was one of the first big events to see this sort of activity back in 2003.
- 7.16 Another growing practice on the internet is reselling tickets using on-line auction sites. While many of these tickets are genuine, the practice has also resulted in the growth of fraudulent tickets and non or late delivery of tickets.

How do secondary agents acquire tickets?

- 7.17 Anecdotal evidence received during our market study, and reports by the Office of New York State Attorney General⁶⁶ and Victoria State⁶⁷ relating to markets in the US and Australia respectively suggest a variety of means by which secondary agents obtain tickets.
- 7.18 Methods used include:
- sending people to buy at the box office
 - using high-speed dialing equipment and other methods to increase their chance of getting through to venue box offices and primary ticket agents by telephone. This is especially useful for high demand events that sell out quickly

⁶⁶ 'Why Can't I Get Tickets? Report On Ticket Distribution Practices', Bureau Of Investor Protection And Securities, Office Of New York State Attorney General. 27th May 1999.

⁶⁷ 'Controlling ticket scalping and improving major event ticketing practices', Victoria State July 2001.

- using numerous credit cards from friends, families and in different names in order to bypass primary agents' restrictions on the number of tickets to be sold to an individual customer
- buying tickets from individual consumers who have acquired tickets but can no longer go to the event (the non-professional reseller)
- joining clubs and societies in order to receive preferential mail order tickets
- buying tickets wholesale from tour operators who have failed to sell their hospitality packages
- trading with other secondary agents.

THE EFFECT OF SECONDARY AGENTS

7.19 Secondary agents can provide a useful function and benefit to consumers. Their existence arises in particular because, for some events or individual performances of a play or other entertainment event, the actual demand for tickets turns out to be greater than expected. This increases the price that can be paid for a ticket. This excess demand provides an opportunity to resell tickets purchased from venue box offices or through primary agents, at a higher price, to those who have a strong desire to attend and are prepared to pay the premium to get tickets.

7.20 Some of those consumers who ultimately plan to attend a particular event may be unable or unwilling to make a definite commitment to do so when tickets are still available from suppliers in primary distribution. When they decide to attend and primary distributors no longer have tickets for the event, such consumers can only do so by purchasing tickets from secondary agents who will charge what the market will bear. This trade facilitated by secondary agents benefits consumers.

- 7.21 One reason why demand for tickets can exceed supply is that at the time the face value prices for tickets are set by the promoter/producer, there may be uncertainty about the popularity of the event. Promoters and producers may, therefore, set the face value of the tickets at a lower level than the market will actually bear to ensure a good attendance or to retain the loyalty of fans. For some events where the performer has a fan base, the artist and the promoter will have an interest in not only the success of any individual event but also retaining the loyalty of these fans so that they are also likely to attend future performances by the same artist.
- 7.22 Another reason why there is an opportunity for secondary agents to buy and resell tickets is the limited price range for seats located in various parts of most venues. Some consumers may place a higher value on tickets for certain seats than is reflected in their face value.
- 7.23 Where ticket prices are set at a lower level than the market will bear it provides an opportunity for secondary agents to purchase tickets in the primary market and to resell these at a higher price. Secondary agents are, however, taking some risk in purchasing tickets for resale since, when doing so, they are making a judgement about the demand for tickets for particular events and individual performances. They may therefore be left with tickets or have to reduce the price at the last minute, since after the event they will have no value.

FINDINGS

Scale of problem – complaints

- 7.24 Secondary agents can provide benefits to consumers. However, from complaints evidence it is clear that the activities of some secondary agents can cause concern to consumers.

- 7.25 Complaints regarding ticket agents are relatively low compared to other complaints received by the OFT and Trading Standards. The OFT received three times as many complaints about the activities of secondary ticket agents than primary agents.⁶⁸ TSDs receive at least 55 complaints a quarter concerning the practices of secondary ticket agents.⁶⁹
- 7.26 The TSDs we spoke to felt that there was a substantial element of under-reporting, since many of the victims of breaches of the legislation are tourists who may not know who to complain to. For that reason, Westminster TSD, which monitors West End Theatres, launched a consumer education campaign in September 2004 to raise consumer awareness of the potential pitfalls in buying tickets.

Case Study

A typical case reported to Westminster TSD

Mr and Mrs H visited London to watch a production of Mamma Mia. Having spoken to a number of ticket agents they decided to buy two tickets from a booth in the Piccadilly Circus area. They were told that the tickets were in the centre of the Grand Circle and would cost £50 each. Mr A paid a deposit of £80 and was told to return later with the receipt to collect the tickets and pay the remaining £20. The receipt did not state the face value of the ticket. When Mr and Mrs A returned later that day they were given the tickets in a sealed envelope. When they examined the tickets they found the face value to be £10 and the location was a severely restricted view. The face value was only written on the receipt once Mr H had paid. The vendor refused to refund the money.

⁶⁸ Forty-eight complaints were received by the OFT over 12 weeks. Actual numbers were: primary agents 8, secondary agents 24 and other or unknown ticket related issues 16.

⁶⁹ 115 complaints were received between February and April 2004. The complaints, where the ticket agent was known, were split roughly equally between primary and secondary agents.

Issues arising out of complaints

7.27 Complaints received by the OFT and TSDs cover a number of concerns, the main ones being:

- **pricing and mis-description** - consumers not being made aware of the face value of the ticket, and as a result, the premium they may be paying, until after they have made the purchase
- **non-delivery** of pre-paid tickets.

7.28 **Pricing and mis-description** - While charging a premium is not illegal, it is the manner in which it is done that causes problems. Consumers will not be told the face value of the ticket or seat location and thus are unable to gauge the quality of the ticket in order to make an informed decision as to whether to purchase the ticket or not.

7.29 Tickets may be purchased through a ticket booth, outside a venue or through the internet. While purchasing tickets via the internet may be more convenient for the consumer, it does not mean that they are afforded any more protection or security of the standard or source of the ticket.

7.30 The mark-ups on the most sought after tickets can be substantial and a snap-shot search of ebay on a given day found tickets selling for at least (this was the opening bid for the auction) seven times more than the face value.⁷⁰

7.31 **Non-delivery and fraud** - There is also the risk in purchasing tickets from a secondary agent over the internet, through a ticket booth or by phone that, although paid for, these will never be received or are sent out too late to arrive in time for the event. It may also provide an opportunity for secondary agents to supply forged tickets.

⁷⁰ For example, we found £50 tickets for Rod Stewart at the Birmingham NEC on 15 May 2005 with an initial price on ebay of £349 (mark-up of 598%), £29.50 tickets for Will Young at Wembley Arena on 28 November 2004 at £160 (mark-up of 442%) and a £36 ticket for Sting at the NEC on 23 November 2004 at £150 (mark-up 317%).

Current legislation

7.32 As discussed in chapter 6, there are a number of pieces of legislation which regulate the activities of ticket agents, in relation to secondary agents, namely:

- secondary agents must comply with the Price Indications (The Resale of Tickets) Regulations 1994.⁷¹ This requires that the face value of a resold ticket has to be made clear to the consumer at the point of sale, including any seat location details and any other information provided on the ticket. This is to ensure buyers are aware of exactly what they are paying for, including the mark-up
- under the Unfair Terms in Consumer Contracts Regulations, a consumer is not bound by a standard term in a contract with a seller or supplier if that term is unfair
- under the Criminal Justice and Public Order Act, it is illegal to re-sell football tickets unless expressly authorised ⁷²
- some activities by disreputable secondary agents may fall within broader criminal offences, such as fraud, deception or theft
- in London, there are restrictions on street trading, making it an offence to sell or trade without the appropriate licence ⁷³
- in Scotland ticket touting in a public place can be an offence under the Civic Government (Scotland) Act 1982.

⁷¹ In Northern Ireland the Price Indications (The Resale of Tickets) Regulations (Northern Ireland Regulations) 1995 apply

⁷² Criminal Justice and Public Order Act 1994

⁷³ London Local Authorities Act 1990 and City of Westminster Act 1999

7.33 In addition to the above legislative restrictions, event organisers may impose conditions upon the sale of their tickets which can invoke other laws to tackle re-sale such as breach of contract. For example Glyndebourne Opera Festival has a strict policy that any person re-selling tickets will never be allowed to buy tickets for the event again. At the Glastonbury Festival 2004 all tickets had names printed on them and required proof of ID to enter.

Enforcement and education

7.34 Our research indicates that the legislation currently in place is sufficient to address the problems we have identified in the secondary market.

7.35 Enforcement action against secondary ticket agents not complying with consumer protection regulations has predominantly taken place under either the Price Indications (Resale of Tickets) Regulations 1994 (the Price Indications Regulations) or the Enterprise Act 2002. The Enterprise Act 2002 gives the OFT, TSDs and other designated enforcers the power to take enforcement action, as appropriate, against traders that breach certain consumer protection legislation, named under the Act.

How enforcement bodies currently tackle concerns

7.36 Enforcement bodies, in most cases, will initially contact secondary agents informing them of infringements and seeking their agreement to stop them. If the agent does not change its behaviour, court action can be taken under each of the pieces of legislation outlined above. Action under the Price Indications Regulations appears to be the most effective when a secondary agent has just breached these regulations.

7.37 Contravening the Price Indications Regulations is a criminal offence which carries a fine up to the statutory maximum of £5,000 on summary conviction by a magistrates' court, or an unlimited fine on conviction on indictment by a Crown court.

7.38 Alternatively the OFT, TSDs and other designated enforcers have powers under Part 8 of the Enterprise Act 2002 to take action to obtain undertakings or court orders to prevent infringements of a range of consumer protection legislation⁷⁴. Breach of an order can lead to action for contempt of court which may result in a fine or imprisonment. The Act requires that, in all but exceptional circumstances, the enforcer must consult with the trader to get them to cease the infringements before taking the matter to court.

Initiatives

7.39 A number of local initiatives have been set up in recent years to tackle the problem of unscrupulous secondary agents. The majority of these are led by TSDs. Some of these local projects are likely to result in enforcement action.

7.40 **Westminster Trading Standards Department** - In September 2004 Westminster TSD launched a publicity campaign to make people more aware of what they could be buying. Although some consumers, particularly tourists, can find it convenient to use the services of secondary agents, not all receive enough information to make an informed purchase. These ticket buyers may not be aware of the face value of the ticket they have bought or its seat location until they actually receive the ticket. This can be some time after purchase.⁷⁵ Westminster TSD is continuing to roll out this message across London's West End.

⁷⁴ See Enterprise Act 2002 Part 8. Legislation includes the Price Indications Regulations (under Consumer Protection Act), Distance Selling Regulations 2000 and Unfair Terms in Consumer Contracts Regulation 1999. The Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003 and the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003. Further information on Part 8 action under the Enterprise Act 2002 can be found at www.offt.gov.uk

⁷⁵ From discussions with Westminster TSD. In these situations ticket agents could be in breach of the Price Indications Regulations governing the resale of tickets.

Recent OFT action

- 7.41 As a part of this study the OFT carried out a web-sweep of ticket agents selling over the internet. We have found some evidence of non-compliance with a range of consumer protection legislation, most typically the Distance Selling Regulations and the Unfair Terms in Consumer Contract Regulations. This is discussed more fully in chapter 6.

CONCLUSIONS AND RECOMMENDATIONS

- 7.42 Secondary agents can provide a useful function for consumers who need tickets for events and are willing and able to pay premium prices. However, we have found that while some traders are complying with the law there are those who need to do more to meet their obligations to consumers. We have found evidence of a number of secondary agents who deliberately mis-sell or defraud consumers who are unaware of their rights. This activity clearly breaches existing regulations, in particular the Price Indications Regulations.
- 7.43 We have also found evidence during the course of this study of non-compliance by ticket agents, both primary and secondary, with a range of other consumer protection legislation, most typically the Distance Selling Regulations and the Unfair Terms in Consumer Contracts Regulations.
- 7.44 We will work closely with enforcement partners to ensure compliance with consumer protection legislation by secondary agents and discuss with other relevant bodies how best to inform overseas tourists, who appear particularly vulnerable to the practices of some secondary agents, of the key issues to consider when buying tickets.**
- 7.45 We also recognise the benefits of highlighting consumer awareness of these activities. We support consumer education campaigns such as Westminster TSD's and hope that this report will help raise consumer awareness of the questions they should ask when buying tickets.

8 GLOSSARY

Additional fees

Fees paid in addition to the Face Value of a ticket. They normally include a booking fee per ticket and a charge per transaction, the latter broadly to cover postage and packaging costs.

Advance purchase tickets

Tickets that can be purchased prior to the date of an event from ticket sellers via the internet, over the telephone, by post and/or in person.

Advertising Standards Agency (ASA)

The Advertising Standards Authority is the independent body set up by the advertising industry to police the rules laid down in the voluntary advertising codes of practice.

Artists

Performers of rock, pop, musical and/or theatrical events.

Artists' agents

Representatives of performers of rock, pop, musical and/or theatrical events, responsible for negotiating contracts with concert promoters and/or theatrical producers

Box office

A physical site, often at venues, where tickets may be purchased by consumers.

Committee of Advertising Practices (CAP)

A committee of the ASA responsible for enforcing the advertising industry's codes of practice.

Concert promoter

A company, group or person who obtains the right to market rock and/or pop concerts and allocate a proportion of the tickets available to them for sale, to ticket sellers.

Consumer contract

A contract for the sale of tickets between consumer purchasing tickets and ticket sellers. Contracts must conform to the requirements specified by regulations such as UTCCRs, DSRs and the Supply of Goods and Services Act 1982.

Entertainment events

Live events or performances open to the public, such as rock/pop concerts, theatre/musical productions, sporting events and festivals.

Event promoter

A company, group or person who obtains the right to market (entertainment) events and allocate a proportion of the tickets available to them for sale, to ticket sellers.

Face value

The price appearing on tickets for entertainment events. (The price a ticket is available for without additional charges).

Inside charge/commission

The percentage of a ticket's face value that is retained by ticket sellers.

Market foreclosure

Market foreclosure in the context of this study is a term to describe how agreements between firms might unfairly weaken existing smaller rival ticket agents or exclude potential entrants to the extent that the underlying level of competition is weakened, leading to consumers suffering in the form of higher prices or lower quality services.

Mystery shopping

A standard research technique where researchers purchase goods and/or services to assess their buying experience. Mystery shopping, can for example, provide information about the quality of goods and/or services, information provided to consumers during the transaction process and the time taken to make purchases.

Pre-paid tickets

Tickets bought and paid for prior to the date of an entertainment event.

Primary ticket agents

Ticket sellers that obtain allocations of tickets directly from Event Promoters, Theatrical Producers and/or Venues.

Secondary ticket agents

Ticket sellers who obtain tickets, often from other ticket sellers for entertainment events, to resell to consumers, usually at a premium.

Society of Ticket Agents and Retailers (STAR)

The trade organisation representing the majority of the UK's primary ticket agents.

Theatrical/musical producer

A producer of musical or live theatre shows, who has the right to market these events and allocate a proportion of the tickets available to them for sale, to ticket sellers.

Ticket sellers

A business or person that sells entertainment event tickets to consumers in either the primary or secondary markets.

Ticketing service

Ticket sales services and IT systems provided to venues by third parties.

Tipping

An extreme form of market foreclosure where, because of the size and coverage of products/services by one supplier, this supplier becomes favoured by consumers irrespective of the quality or price of its goods and/or services.

Trading Standards Departments (TSDs)

Local authority enforcement bodies with powers to enforce consumer protection regulations, usually in response to consumers' complaints about a trader or trading practice.

Venues

Indoor or outdoor sites where entertainment events are held.